

# The Vanishing Trial: An Examination of Trials and Related Matters in Federal and State Courts

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This article traces the decline in the portion of cases that are terminated by trial and the decline in the absolute number of trials in various American judicial fora. The portion of federal civil cases resolved by trial fell from 11.5 percent in 1962 to 1.8 percent in 2002, continuing a long historic decline. More startling was the 60 percent decline in the absolute number of trials since the mid 1980s. The makeup of trials shifted from a predominance of torts to a predominance of civil rights, but trials are declining in every case category. A similar decline in both the percentage and the absolute number of trials is found in federal criminal cases and in bank-

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In thinking about this topic, I had the benefit of presenting early versions in a session sponsored by the Civil Procedure Section of the Association of American Law Schools at the Association's meeting in Washington in January 2003 and to a meeting of New York area law and society scholars at New York Law School on May 2, 2003. Helpful feedback was elicited at later presentations to the Spring Meeting of the Center for Public Resources in New Orleans in April 2004 and to the Seventh Circuit Judicial Conference in Chicago in May 2004.

ruptcy cases. The phenomenon is not confined to the federal courts; there are comparable declines of trials, both civil and criminal, in the state courts, where the great majority of trials occur. Plausible causes for this decline include a shift in ideology and practice among litigants, lawyers, and judges. Another manifestation of this shift is the diversion of cases to alternative dispute resolution forums. Within the courts, judges conduct trials at only a fraction of the rate that their predecessors did, but they are more heavily involved in the early stages of cases. Although virtually every other indicator of legal activity is rising, trials are declining not only in relation to cases in the courts but to the size of the population and the size of the economy. The consequences of this decline for the functioning of the legal system and for the larger society remain to be explored.

## I. THE NUMBER OF CIVIL TRIALS

This project reflects the growing awareness of a phenomenon that runs counter to the prevailing image of litigation in the United States. Over the past generation or more, the legal world has been growing vigorously. On almost any measure—the number of lawyers, the amount spent on law, the amount of authoritative legal material, the size of the legal literature, the prominence of law in public consciousness—law has flourished and grown.<sup>1</sup> It seems curious, then, to find a contrary pattern in one central legal phenomenon, indeed one that lies at the very heart of our image of our system—trials. The number of trials has not increased in proportion to these other measures. In some, perhaps most, forums, the absolute number of trials has undergone a sharp decline. A sense of the change can be gathered from Table 1, which charts the number of civil trials<sup>2</sup> in the federal courts by nature of suit at 10-year intervals from 1962 to 2002.<sup>3</sup>

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<sup>1</sup>Marc Galanter, *Law Abounding: Legalisation Around the North Atlantic*, 55 *Mod. L. Rev.* 1 (1992).

<sup>2</sup>The Administrative Office counts as a trial “a contested proceeding before a jury or court at which evidence is introduced” (AO, Form JS-10). The definition of trial varies in the state courts (see Table A-25 in the Appendix). In sorting out terminations, the AO’s record-keeping category is cases terminated “during or after trial” so the number of trials counted includes cases that settle during trial. We use 1962 as our starting point because due to changes in record keeping then, it is the first year that is readily comparable to present-day figures.

<sup>3</sup>All federal figures are for fiscal years. Until 1992, the reporting period, or statistical year, ran from July through June (e.g., statistical year 1990 covered the period July 1, 1989 through June 30, 1990). In 1992, the Administrative Office of the U.S. Courts changed the court’s statistical reporting period to conform to the federal government’s standard fiscal year, October through September. So, for example, fiscal year 1993 covered the period October 1, 1992 through September 30, 1993. The 1992 data cover a 15-month time span (July 1991 through September 1992) to accommodate the conversion period (available at <<http://webapp.icpsr.umich.edu/cocoon/ICPSR-STUDY/08429.xml>>). The Administrative Office figures for 2003, which became available after the preparation of this article, do not mark any significant change in the trends reported here. The total number of civil trials in 2003 was 4,206, 8 percent fewer than in 2002.

As illustrated by Table 1, dispositions have increased by a factor of five—from 50,000 to 258,000 cases. But the number of civil trials in 2002 was more than 20 percent lower than the number in 1962—some 4,569 now to 5,802 then. So the portion of dispositions that were by trial was less than one-sixth of what it was in 1962—1.8 percent now as opposed to 11.5 percent in 1962.<sup>4</sup>

The drop in civil trials has not been constant over the 40-year period; it has been recent and steep. As Figure 1 shows, in the early part of our period, there was an increase in trials, peaking in 1985, when there were 12,529.<sup>5</sup> From then to now, the number of trials in federal court has dropped by more than 60 percent and the portion of cases disposed of by trial has fallen from 4.7 percent to 1.8 percent.

The Administrative Office's Table C-4, from which these figures are derived, is not a count of completed trials but of cases that arrive at the trial stage. A substantial portion of the cases that reach the trial stage terminate before the trial is completed (see Figure 3). In 1988, some 24 percent of all cases reaching trial were disposed of "during" trial—28 percent of jury trials and 19 percent of bench trials. By 2002, when the number of cases reaching the trial stage had fallen by 60 percent, the percentage disposed of "during" trial dropped to 18 percent, with little difference between jury and bench trials. As fewer cases managed to survive until the trial stage, those that began a jury trial were more resistant to being deflected from pursuing the trial through to its conclusion.

For purposes of Table C-4, a trial is defined as "a contested proceeding at which evidence is introduced." This includes classical trials, leading to judgment, but it also includes other proceedings, such as a hearing to determine the appropriateness of a temporary restraining order. The numbers derived from Table C-4 do not provide an exact count of classic trials, or of classic trials plus early "evidentiary" trials, or of terminations by judgment after trial, or of the number of trials conducted by district judges. But by telling us the number of cases in which a trial event commenced, they provide a useful indicator of the amount of trial activity as it changes from year to year and topic to topic.<sup>6</sup>

The decline in the rate of civil trials in the post-World War II federal courts continues and accentuates a long historic trend away from trial as the mode of

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<sup>4</sup>These figures are based on Table C-4 of the annual reports of the Administrative Office of the U.S. Courts, which counts cases that terminated "During and After Trial." Since some cases settle after trial has commenced, these figures overstate the number of completed trials. The degree of overstatement depends on the portion of commenced trials that end before judgment, due to settlement or other cause.

<sup>5</sup>Tables with the data underlying figures in the text are collected in the Appendix.

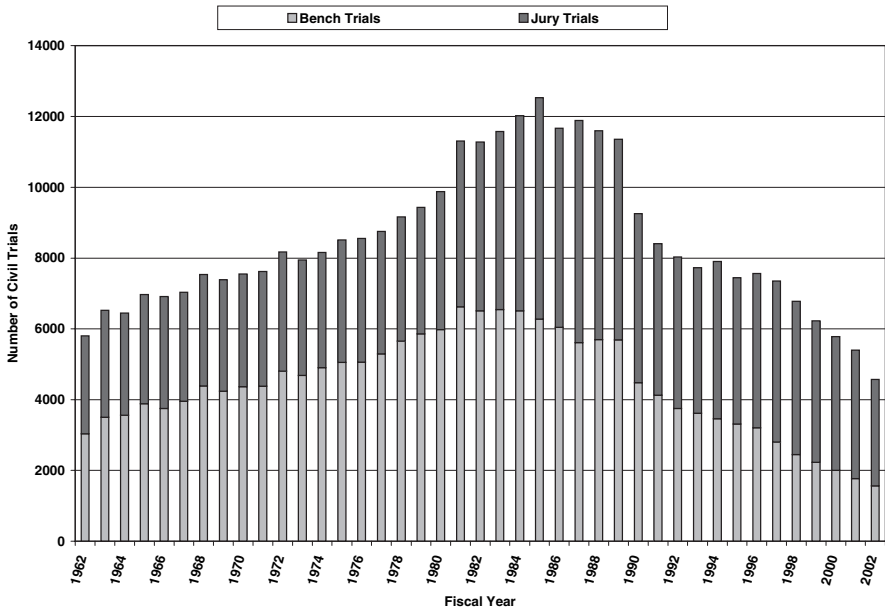
<sup>6</sup>Gillian Hadfield's Table 1 comparison of the C-4 table with several other counts of trials confirms that it is a plausible if inexact indicator of both the magnitude and year-to-year trends in trial activity. Gillian Hadfield, *Where Have All the Trials Gone? Settlements, Nontrial Adjudications and Statistical Artifacts in the Changing Disposition of Federal Civil Cases*, 1 J. Empirical Legal Stud. 705, 713 (2004).

Table 1: Civil Trials in U.S. District Courts at 10-Year Intervals, 1962–2002

	Dispositions	Jury Trials		Bench Trials		All Trials		Trials as % of Dispositions		Jury Trials as % of Dispositions		Bench Trials as % of Dispositions		Case Type as % of All Trials		Case Type as % of Bench Trials		Jury Trials as % of All Trials	
		Jury Trials	Bench Trials	All Trials															
1962																			
Civil	50,320	2,765	3,037	5,802	11.5%	5.5%	6.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Torts	19,254	2,238	946	3,184	16.5%	11.6%	4.9%	34.9%	37.5%	80.9%	80.9%	2.8%	4.9%	54.9%	66.3%	11.3%	11.3%	31.1%	47.7%
Contracts, diversity	12,353	1,834	342	2,176	17.6%	14.8%	2.8%	17.6%	19.3%	66.3%	66.3%	5.5%	2.8%	37.5%	66.3%	11.3%	11.3%	84.3%	70.3%
Contracts	14,981	303	818	1,121	7.5%	2.0%	5.5%	7.5%	19.3%	11.0%	11.0%	10.5%	5.5%	19.3%	11.0%	26.9%	26.9%	27.0%	27.0%
Contracts, diversity	4,529	279	474	753	16.6%	6.2%	10.5%	16.6%	13.0%	10.1%	10.1%	3.1%	10.5%	13.0%	10.1%	15.6%	15.6%	37.1%	37.1%
Prisoner	3,118	0	96	96	3.1%	0.0%	3.1%	3.1%	1.7%	0.0%	0.0%	0.4%	3.1%	1.7%	0.0%	3.2%	3.2%	0.0%	0.0%
Civil rights	317	11	42	53	16.7%	3.5%	13.2%	16.7%	0.9%	0.4%	0.4%	8.0%	13.2%	0.9%	1.1%	6.6%	6.6%	20.8%	20.8%
Labor	2,479	31	199	230	9.3%	1.3%	8.0%	9.3%	4.0%	1.1%	1.1%	10.2%	8.0%	4.0%	1.1%	6.6%	6.6%	13.5%	13.5%
I.P.	1,595	6	163	169	10.6%	0.4%	10.2%	10.6%	2.9%	0.2%	0.2%		10.2%	2.9%	0.2%	5.4%	5.4%	3.6%	3.6%
1972																			
Civil	90,177	3,361	4,807	8,168	9.1%	3.7%	5.3%	9.1%	100.0%	100.0%	100.0%	5.3%	100.0%	43.6%	72.9%	23.2%	23.2%	100.0%	41.1%
Torts	25,952	2,451	1,114	3,565	13.7%	9.4%	4.3%	13.7%	43.6%	72.9%	72.9%	2.7%	4.3%	29.5%	59.4%	8.5%	8.5%	68.8%	68.8%
Contracts, diversity	15,232	1,997	409	2,406	15.8%	13.1%	2.7%	15.8%	20.9%	59.4%	59.4%	6.6%	2.7%	29.5%	59.4%	8.5%	8.5%	83.0%	83.0%
Contracts	18,200	507	1,203	1,710	9.4%	2.8%	6.6%	9.4%	20.9%	15.1%	15.1%	8.8%	6.6%	20.9%	15.1%	25.0%	25.0%	29.6%	29.6%
Contracts, diversity	9,361	480	821	1,301	13.9%	5.1%	8.8%	13.9%	15.9%	14.3%	14.3%	2.7%	8.8%	15.9%	14.3%	17.1%	17.1%	36.9%	36.9%
Prisoner	15,802	27	431	458	2.9%	0.2%	2.7%	2.9%	5.6%	0.8%	0.8%	2.3%	2.7%	5.6%	0.8%	9.0%	9.0%	5.9%	5.9%
Civil rights	5,023	116	651	767	15.3%	2.3%	13.0%	15.3%	9.4%	3.5%	3.5%	7.2%	13.0%	9.4%	3.5%	13.5%	13.5%	15.1%	15.1%
Labor	4,936	25	353	378	7.7%	0.5%	7.2%	7.7%	4.6%	0.7%	0.7%	8.2%	7.2%	4.6%	0.7%	7.3%	7.3%	6.6%	6.6%
I.P.	2,223	10	183	193	8.7%	0.4%	8.2%	8.7%	2.4%	0.3%	0.3%		8.2%	2.4%	0.3%	3.8%	3.8%	5.2%	5.2%
1982																			
Civil	184,835	4,771	6,509	11,280	6.1%	2.6%	3.5%	6.1%	100.0%	100.0%	100.0%	3.5%	100.0%	43.6%	72.9%	23.2%	23.2%	100.0%	42.3%
Torts	30,630	2,439	1,050	3,489	11.4%	8.0%	3.4%	11.4%	30.9%	51.1%	51.1%		30.9%	43.6%	72.9%	23.2%	23.2%	69.9%	69.9%

Torts, diversity	19,085	1,913	391	2,304	12.1%	10.0%	2.0%	20.4%	40.1%	6.0%	83.0%
Contracts	59,977	890	1,492	2,382	4.0%	1.5%	2.5%	21.1%	18.7%	22.9%	37.4%
Contracts, diversity	22,457	856	1,112	1,968	8.8%	3.8%	5.0%	17.4%	17.9%	17.1%	43.5%
Prisoner	25,864	180	716	896	3.5%	0.7%	2.8%	7.9%	3.8%	11.0%	20.1%
Civil rights	14,821	707	1,456	2,163	14.6%	4.8%	9.8%	19.2%	14.8%	22.4%	32.7%
Labor	9,836	126	481	607	6.2%	1.3%	4.9%	5.4%	2.6%	7.4%	20.8%
I.P.	4,305	58	214	272	6.3%	1.3%	5.0%	2.4%	1.2%	3.3%	21.3%
1992											
Civil	230,171	4,279	3,750	8,029	3.5%	1.9%	1.6%	100.0%	100.0%	100.0%	53.3%
Torts	44,754	1,799	657	2,456	5.5%	4.0%	1.5%	30.6%	42.0%	17.5%	73.2%
Torts, diversity	32,279	1,422	257	1,679	5.2%	4.4%	0.8%	20.9%	44.7%	10.4%	84.7%
Contracts	52,006	745	768	1,513	2.9%	1.4%	1.5%	18.8%	17.4%	20.5%	49.2%
Contracts, diversity	22,746	679	564	1,243	5.5%	3.0%	2.5%	15.5%	15.9%	15.0%	54.6%
Prisoner	44,247	359	696	1,055	2.4%	0.8%	1.6%	13.1%	8.4%	18.6%	34.0%
Civil rights	21,136	889	772	1,661	7.9%	4.2%	3.7%	20.7%	20.8%	20.6%	53.5%
Labor	15,557	82	252	394	2.1%	0.5%	1.6%	4.2%	1.9%	6.7%	24.6%
I.P.	5,491	84	96	180	3.3%	1.5%	1.7%	2.2%	2.0%	2.6%	46.7%
2002											
Civil	258,876	3,006	1,563	4,569	1.8%	1.2%	0.6%	100.0%	100.0%	100.0%	65.8%
Torts	49,588	782	289	1,071	2.2%	1.6%	0.6%	23.4%	26.0%	18.5%	73.0%
Torts, diversity	27,563	639	85	724	2.6%	2.3%	0.3%	15.8%	21.3%	5.4%	88.3%
Contracts	38,085	371	338	709	1.9%	1.0%	0.9%	15.5%	12.3%	21.6%	52.3%
Contracts, diversity	22,285	342	251	593	2.7%	1.5%	1.1%	13.0%	11.4%	16.1%	57.7%
Prisoner	56,693	292	199	491	0.9%	0.5%	0.4%	10.7%	9.7%	12.7%	59.5%
Civil rights	40,881	1,294	290	1,524	3.7%	3.0%	0.7%	33.4%	41.1%	18.6%	81.0%
Labor	15,864	69	121	190	1.2%	0.4%	0.8%	4.2%	2.3%	7.7%	36.3%
I.P.	7,872	120	65	185	2.4%	1.5%	0.8%	4.0%	4.0%	4.2%	64.9%

SOURCE: Annual Reports of the Administrative Office of the U.S. Courts, Table C-4.

*Figure 1:* Number of civil trials, U.S. district courts, by bench or jury, 1962–2002.

SOURCE: Administrative Office of the U.S. Courts, Annual Report of the Director, Table C-4 (1962–2002).

disposing of civil cases. In 1938, the year that the Federal Rules of Civil Procedure took effect, 18.9 percent of terminations were by trial.<sup>7</sup> In his study of litigation in the St. Louis Circuit Court from 1820 to 1970, Wayne McIntosh observes:

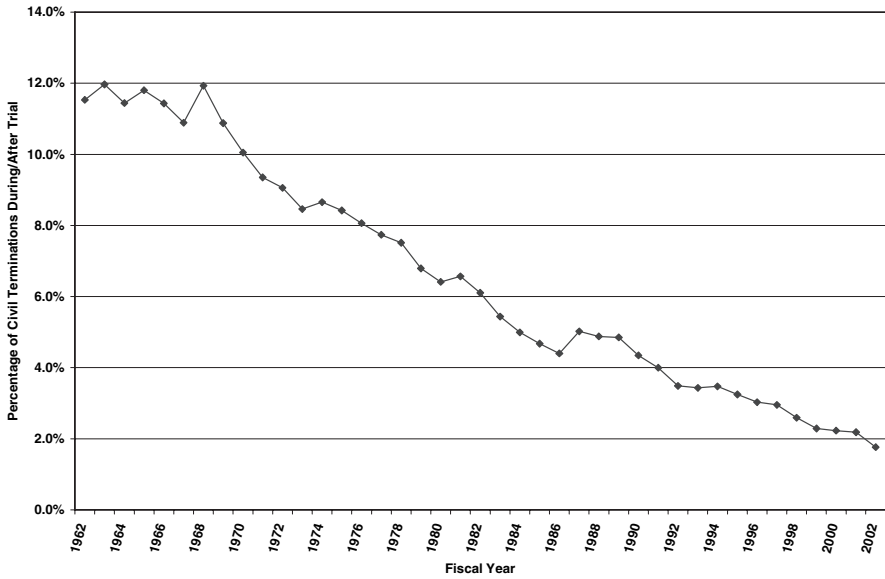
During the first 100 years of the study period, the percentage of cases culminating in a contested hearing or trial remained fairly steady (around 25 to 30 percent). After 1925, though, the average skirted downward into the 15 percent range. [Figures] . . . reveal that the shift from adjudication to bargaining is . . . wholesale and not restricted to any one issue.<sup>8</sup>

In a study of trial courts in two California counties at 20-year intervals from 1890 to 1970, Lawrence Friedman and Robert Percival found that trials in Alameda County dropped from 36 percent of the sampled civil cases in 1890 to 16.1 percent in 1970;

<sup>7</sup>Steven C. Yeazell, *The Misunderstood Consequences of Modern Civil Process*, 1994 *Wis. L. Rev.* 631, 633 n.3 (1994).

<sup>8</sup>Wayne McIntosh, *The Appeal of Civil Law: A Political-Economic Analysis of Litigation* 124, 126–28 (1990).

Figure 2: Percentage of civil terminations during/after trial, U.S. district courts, 1962–2002.



SOURCE: Administrative Office of the U.S. Courts, Annual Report of the Director, Table C-4 (1962–2002).

and in rural San Benito County from 25.8 percent in 1890 to 10.7 percent in 1970.<sup>9</sup> In their study of civil litigation in Los Angeles Superior Court, Molly Selvin and Patricia Ebener compared samples of cases from the era before World War II (1915–1940) and the postwar era (1950–1979).

We . . . observed changes in the method by which cases are terminated. More cases were disposed of by the court in the earlier sample than later, and 16 percent of these cases were tried. In the cases filed since 1950 more settled or were dismissed by the plaintiff. Fewer had court dispositions and very few were tried.<sup>10</sup>

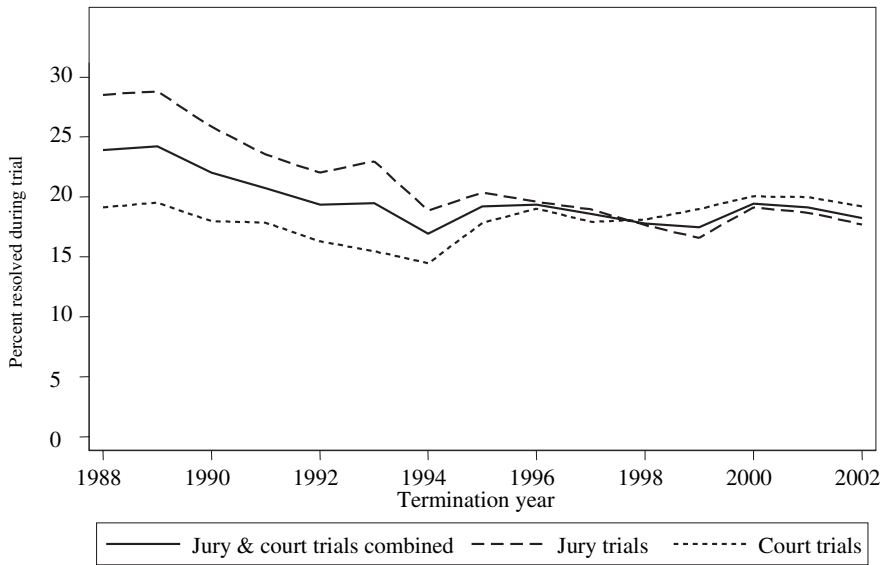
#### A. Bench Trials and Jury Trials

In the course of the rise and then fall in the number of federal civil trials, the make-up of these trials changed. More of them are before juries and fewer are bench trials

<sup>9</sup>Lawrence M. Friedman & Robert V. Percival, A Tale of Two Courts: Litigation in Alameda and San Benito Counties, 10 *Law & Soc'y Rev.* 267 (1975).

<sup>10</sup>Molly Selvin & Patricia A. Ebener, Managing the Unmanageable: A History of Civil Delay in the Los Angeles Superior Court 49, 50 fig. 2.13 (1984).

Figure 3: Percentage of civil cases reaching trial resolved during trial, U.S. district courts, 1988–2002.



SOURCE: Federal Judicial Center.

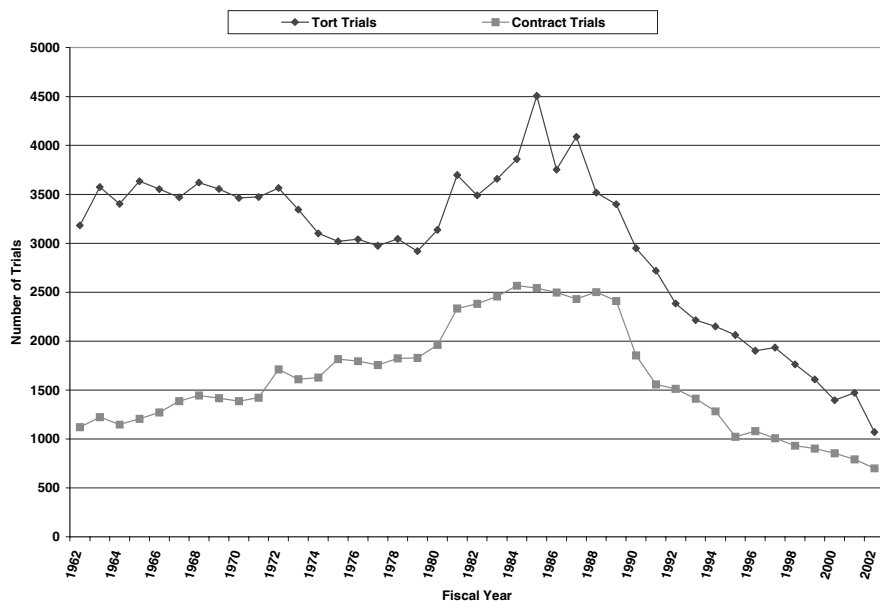
(see Figure 1). In 1962, there was a slight preponderance of bench trials, which grew until the early 1980s. Starting in 1990, the number of bench trials fell sharply, so that by 2002, jury trials made up almost two-thirds (65.8 percent) of all civil trials. Indeed, measuring against 1962, the number of bench trials has fallen by 49 percent from 3,037 to 1,563, while the number of jury trials has increased by 8.7 percent from 2,765 to 3,006. Jury trials fell precipitously in 2002 (by 17 percent from the 3,632 in 2001), nearing their 1962 level. In 2003, jury trials numbered 2,603, 5.9 percent below the 1962 total.

#### *B. Torts Trials*

Back in 1962, most federal civil trials involved torts: tort cases were 55 percent of all trials and 81 percent of all jury trials (see Table 1). By 2002, torts had dropped to just 23.4 percent of all trials and to 26 percent of jury trials. Where once 1 in 6 (16.5 percent) tort cases went to trial, this has dropped steadily so that now only 1 in 46 (2.2 percent) do. In part this reflects the arrival of mass settlements, for example, in Agent Orange, asbestos, breast implants (see discussion in Section IV). But since the drop in trial rates has been steady and prolonged, antedating the era of mass tort



Figure 4: Tort and contract trials, U.S. district courts, 1962–2002.



SOURCE: Administrative Office of the U.S. Courts, Annual Report of the Director, Table C-4 (1962–2002).

settlements,<sup>11</sup> and since a comparable decrease appears in other kinds of cases as well, it presumably reflects other factors in addition to mass settlements.

### C. Contracts Trials

Apart from torts, the largest set of trials in 1962 was in contracts—almost one-fifth (19.3 percent) of all trials, almost three-quarters of them bench trials (see Table 1). In 2002, contracts accounted for 15.3 percent of all trials, but now there are slightly more jury trials (53.0 percent) than bench trials. However, our beginning and end points hardly tell the story of contracts. There was a great surge of contract litigation starting in the 1970s, so that in the 1980s there were more contract than tort cases filed in the federal courts.<sup>12</sup> Although the percentage of contract cases terminated by trial fell, the number of contract trials increased from 1,121 in 1962 to 1,962 in

<sup>11</sup>The timing of the onset of mass tort litigation is displayed in Table A-3 in the Appendix.

<sup>12</sup>Marc Galanter, *Contract in Court, or Almost Everything You May or May Not Want to Know About Contract Litigation*, 2001 Wis. L. Rev. 577 (2001).

1980, and peaked at 2,562 in 1984. However, contract trials fell precipitously during the 1990s to 700 in 2002—less than a third of the number of trials through the 1980s. There is no ground for suspicion that this reflects mass settlements. Something else is pushing these trial numbers down.

#### *D. Civil Rights Trials*

As contract and tort trials fell from comprising 74 percent of all trials in 1962 to 38 percent in 2002, what replaced them? Largely, it was civil rights: in 1962, there were only 317 civil rights dispositions; in 2002, there were 40,881. In 1962, civil rights accounted for less than 1 percent of all civil trials; in 2002, they were just over a third of all trials (1,543 of 4,569) and 41 percent of jury trials (1,234 of 3,006). This is particularly remarkable in light of the required diversion of many civil rights cases through the Equal Employment Opportunities Commission<sup>13</sup> and the readiness of courts to grant summary judgment in such cases.<sup>14</sup> For 30 years, even as the portion of cases tried has fallen, civil rights has remained the type of case most likely to reach trial: trials were 19.7 percent of all civil rights dispositions in 1970 and 3.8 percent in 2002.<sup>15</sup>

#### *E. Prisoner Petitions*

The other large new batch of trials is prisoner petitions. The prison population multiplied six times from 1962 (218,830) to 2001 (1,324,465). Together with the jail population of 631,240, there were almost 2 million total inmates in 2001.

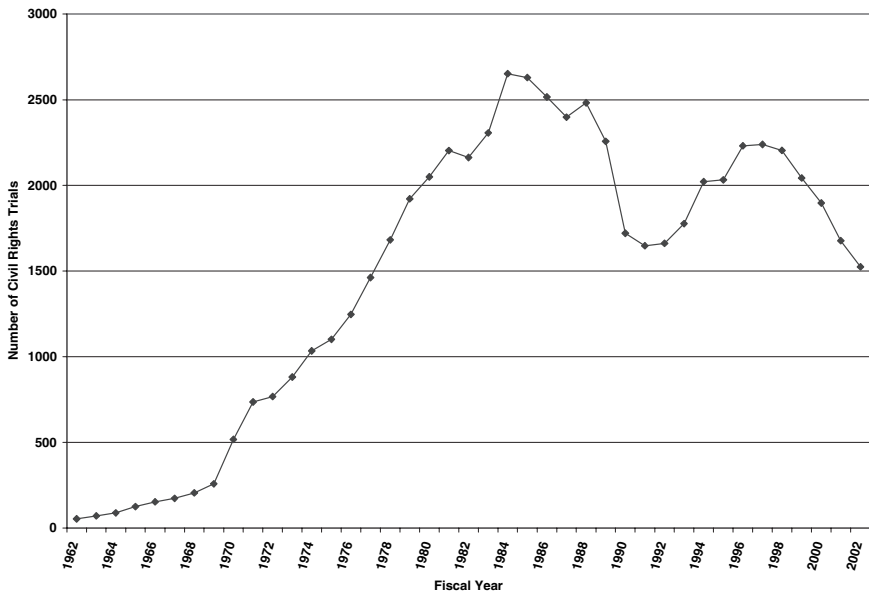
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<sup>13</sup>Claimants with grievances under Title VII of the Civil Rights Act of 1964 or under the Americans with Disabilities Act must first submit them to the Equal Employment Opportunities Commission (EEOC). See 42 U.S.C. § 2000e-5 and 42 U.S.C. § 12117; see also 29 C.F.R. § 1601.6. Generally speaking, the EEOC then has a fixed time limit—usually 180 days—in which to investigate the claim, only after which may the claimant request a “notice of right to sue” enabling the party to commence a civil suit in federal or state court. 29 C.F.R. § 1601.28. If the EEOC determines that there are reasonable grounds to support the claim, then the EEOC may begin a conciliation process. If the EEOC is unsuccessful in securing a conciliation agreement, then the EEOC (or the Attorney General if a government respondent) may file a civil suit against the respondent in the complaint. 42 U.S.C. § 2000e-5(f)(1); 29 C.F.R. § 1601.27. If the EEOC dismisses the charge, then the EEOC shall issue a notice of right to sue to the claimant. 29 C.F.R. §§ 1601.18 and 1601.28(3). Any inaction by the EEOC does not prevent de novo consideration of the claim in federal or state court. *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 798–99 (1973).

<sup>14</sup>An exploratory study of summary judgment activity in district courts at five-year intervals from 1975 to 2000 found notably higher rates in civil rights cases. Joe S. Cecil, Dean P. Miletech & George Cort, Federal Judicial Center, *Trends in Summary Judgment Practice: A Preliminary Analysis* 5 (2001).

<sup>15</sup>This seems to reflect the greater emotional intensity of civil rights disputes. A generation ago, Leon Mayhew reported that among respondents to a Detroit-area survey reporting serious problems, only a tiny proportion sought justice or legal vindication except for discrimination problems. Only 5 percent of respondents with serious problems connected with expensive purchases sought justice, as did 2 percent of those with neighborhood problems. However, 31 percent of those reporting discrimination problems sought justice. Leon Mayhew, *Institutions of Representation*, 9 Law & Soc’y Rev. 401, 413 (1975). Such disputes may entail assertions that discredit the identity of defendants, as well as plaintiffs.

Figure 5: Civil rights trials, U.S. district courts, 1962–2002.



SOURCE: Administrative Office of the U.S. Courts, Annual Report of the Director, Table C-4 (1962–2002).

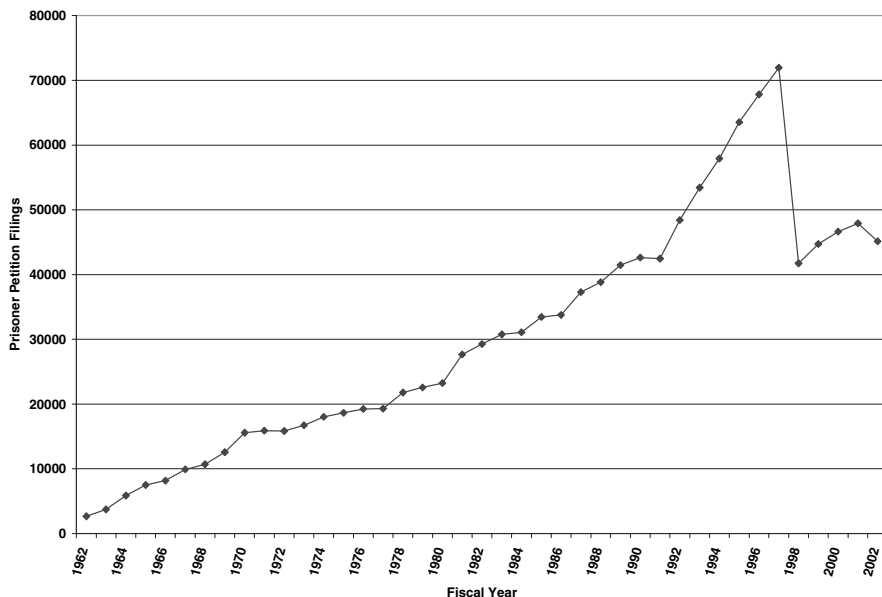
These numerous prisoners share with other Americans an increase in rights consciousness. America's love affair with imprisonment has multiplied this class of claimants, who have vexing grievances, unlimited time, few competing recreations, and very low opportunity costs (but very few resources for litigation).

The rate of prisoner petitions rose rapidly during the 1960s from 12 per 1,000 prisoners in 1962 to over 80 per 1,000 in the early 1970s (these figures are higher than Schlanger's (see Table 2) because they include habeas corpus as well as civil rights filings). But these petitions, unpopular with judges and politicians, have not kept pace with the growth of the prison population. The rate has been falling for 30 years to about 44 per 1,000 in 2001. In that time, there was a sharp decline in habeas corpus petitions from over 66 percent of the total in 1970 to 43 percent in 2002. Civil rights claims replaced habeas corpus as the largest category of prisoner cases in 1978 until such claims were curtailed by the Prison Litigation Reform Act of 1995 (PLRA).

The PLRA<sup>16</sup> was enacted to decrease the amount of prisoner litigation in the federal courts. Although it did not change much of the substantive law underlying

<sup>16</sup>Codified at 11 U.S.C. § 523; 18 U.S.C. §§ 3624, 3636; 28 U.S.C. §§ 1346, 1915A, 1932; 42 U.S.C. §§ 1997–1997(h).

Figure 6: Prisoner petitions filed, U.S. district courts, 1962–2002.



SOURCE: Administrative Office of the U.S. Courts, Annual Report of the Director, Table C-2 (1962–2002).

prisoner claims, the PLRA changed both the procedures and remedies available to prisoners in federal courts.<sup>17</sup> The PLRA accomplishes this through three chief measures: (1) by requiring that inmates exhaust all available administrative grievance procedures before filing a claim in district court;<sup>18</sup> (2) by imposing filing fees and court costs on inmates, regardless of indigency;<sup>19</sup> and (3) by requiring that district courts review prisoner complaints before docketing, or as soon as practicable thereafter, and dismiss them if they “fail to state a claim upon which relief may be granted; or . . . seek monetary relief from a defendant who is immune from such relief.”<sup>20</sup> The increased exhaustion and screening requirements are the strongest explanations for

<sup>17</sup>Margo Schlanger, *Inmate Litigation*, 116 Harv. L. Rev. 1555, 1627 (2003) (noting that because most inmate claims are premised on constitutional law, Congress is unable to change substantive rules of decision).

<sup>18</sup>42 U.S.C. § 1997e(a). See also Schlanger, *supra* note 17, at 1649–54 (describing how exhaustion requirement deprives courts of ability to correct conduct when plaintiffs fail to exhaust administrative remedies).

<sup>19</sup>28 U.S.C. § 1915(b)(1)–(2) (describing filing fees); 28 U.S.C. § 1915(f)(2)(A) (imposing court costs).

<sup>20</sup>42 U.S.C. § 1997e(c)(1). The court may order dismissal “on its own motion or on the motion of a party.”

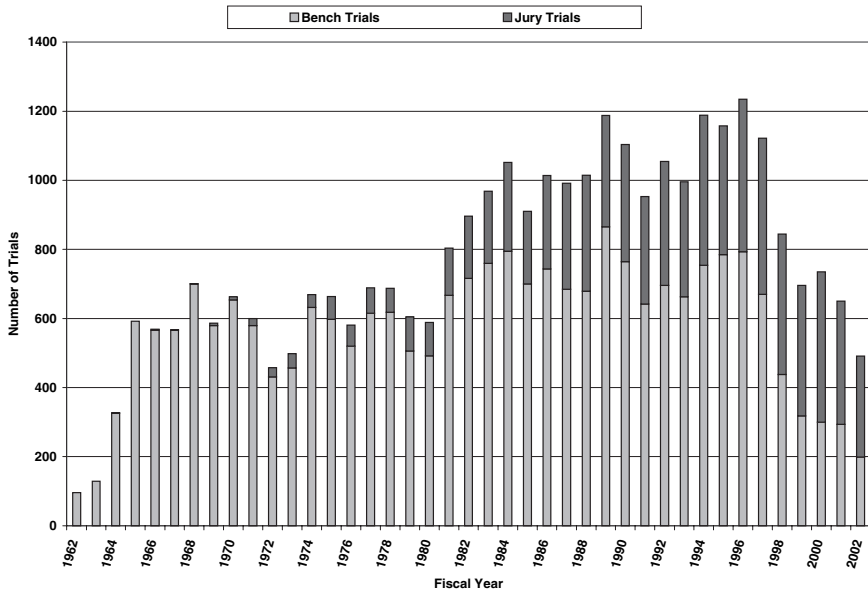
Table 2: Inmate Population and Civil Rights Filings, U.S. District Courts, 1970–2001

<i>Fiscal Year of Filing</i>	<i>Incarcerated Population (All Figures Are for People in Custody)</i>				<i>Inmate Civil Rights Filing in Federal District Court</i>			<i>Filings Per 1,000 Inmates (Estimates)</i>
	<i>Total</i>	<i>State Prison, Year End</i>	<i>Federal Prison, Year End</i>	<i>Jail, Mid- Year</i>	<i>Total</i>	<i>Nonfederal Defendants</i>	<i>Federal Defendants</i>	
1970	357,292	176,391	20,038	160,863	2,267	2,106	161	6.3
1971		177,113	20,948		3,163	2,949	214	(8.8)
1972		174,379	21,713		3,620	3,373	247	(10.2)
1973		181,396	22,815		4,646	4,233	413	(12.8)
1974		196,105	22,361		5,559	5,156	403	(14.7)
1975		229,685	24,131		6,523	6,004	519	(15.8)
1976		248,883	29,117		7,076	6,661	415	(16.2)
1977		258,643	30,920		8,335	7,810	525	(18.5)
1978	454,444	269,765	26,285	158,394	10,068	9,473	595	22.2
1979		281,233	23,356		11,681	11,094	587	(24.6)
1980	503,586	295,819	23,779	183,988	13,047	12,439	608	25.9
1981	556,814	333,251	26,778	196,785	16,302	15,483	819	29.3
1982	612,496	375,603	27,311	209,582	16,793	16,019	774	27.4
1983	647,449	394,953	28,945	223,551	17,485	16,719	766	27.0
1984	683,057	417,389	30,875	234,500	18,300	17,377	923	26.8
1985	744,208	451,812	35,781	256,615	18,445	17,560	885	24.8
1986	800,880	486,655	39,781	274,444	20,324	19,506	818	25.4
1987	858,687	520,336	42,478	295,873	22,005	21,231	774	25.6
1988	950,379	562,605	44,205	343,569	22,582	21,661	921	23.8
1989	1,078,935	629,995	53,387	395,553	23,647	22,580	1,067	21.9
1990	1,148,702	684,544	58,838	405,320	24,004	22,814	1,190	20.9
1991	1,219,014	728,605	63,930	426,479	24,331	23,355	976	20.0
1992	1,295,150	778,495	72,071	444,584	28,530	27,501	1,029	22.0
1993	1,369,185	828,566	80,815	459,804	31,679	30,614	1,065	23.1
1994	1,476,621	904,647	85,500	486,474	36,551	35,153	1,398	24.8
1995	1,585,586	989,004	89,538	507,044	39,008	37,649	1,359	24.6
1996	1,646,256	1,032,676	95,088	518,492	38,223	36,770	1,453	23.2
1997	1,743,643	1,074,809	101,755	567,079	26,132	25,002	1,130	15.0
1998	1,816,931	1,113,676	110,793	592,462	24,345	23,185	1,160	13.4
1999	1,893,115	1,161,490	125,682	605,943	23,705	22,566	1,139	12.5
2000	1,931,339	1,176,269	133,921	621,149	23,598	22,412	1,186	12.2
2001	1,955,705	1,181,128	143,337	631,240	22,206	20,973	1,233	11.4

SOURCE: Margo Schlanger, *Inmate Litigation*, 116 *Harvard L. Rev.*, 1555, 1583 (2002).

the decrease in prisoner trials because both mechanisms serve to eliminate complaints before they reach the trial stage. The PLRA also imposes limits on damages and attorney fees, and allows for nonresponse by defendants without fear of admitting to the allegations.<sup>21</sup> Moreover, at the same time Congress passed the PLRA, it

<sup>21</sup>42 U.S.C. § 1997e(e) (no claims “for mental or emotional injury . . . without a prior showing of physical injury”); 42 U.S.C. § 1997e(d) (limits on attorney fees); 42 U.S.C. § 1997e(g) (waiver of reply).

*Figure 7: Prisoner petition trials, U.S. district courts, by bench or jury, 1962–2002.*

SOURCE: Administrative Office of the U.S. Courts, Annual Report of the Director, Table C-4 (1962–2002).

imposed new restrictions on offices receiving federal legal funding, prohibiting them from representing inmates.<sup>22</sup>

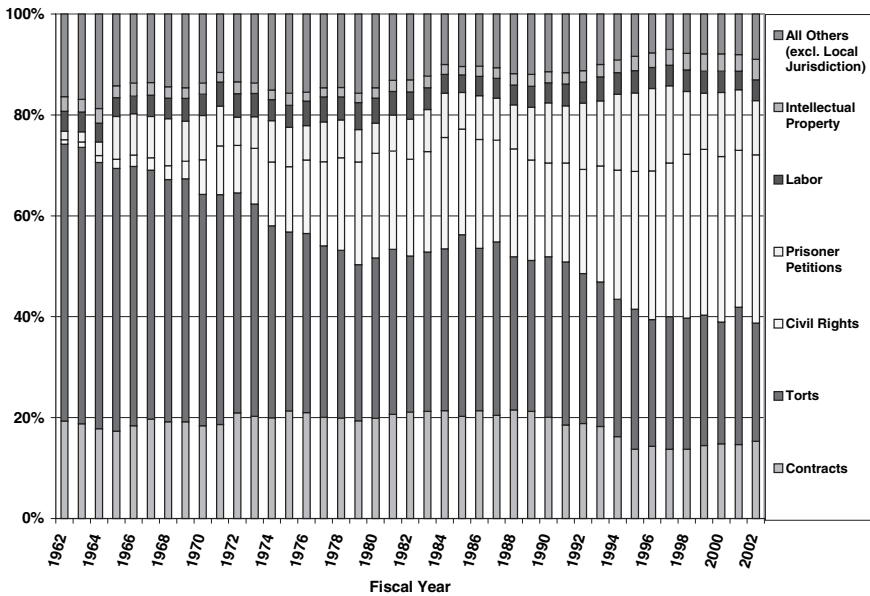
The result is that the PLRA suppressed trials even more than it suppressed filings. Margo Schlanger estimates that from the mid-1990s until 2001, “[f]ilings are down about forty percent—but trials are down fifty percent.”<sup>23</sup> The great surge of prisoner filings had driven the number of trials from 96 in 1962 to over 1,000 in 1984, peaking at 1,235 in 1996, and falling to 491 in 2002. The trials in 1962 were all bench trials. Prior to 1970, only a handful of prisoner trials were before juries, but the portion of jury trials grew, surpassing the number of bench trials in every year since 1999. In 2002, 59 percent of prisoner trials were before juries.

The rate of trials is low: at its peak in 1970, 4.5 percent of prisoner petition terminations were by trial; just 1 percent were by trial in 2002. From a mere 1.7 percent of trials in 1962, prisoner petitions made up one-sixth (16.3 percent) of all

<sup>22</sup>See Schlanger, *supra* note 17, at 1632.

<sup>23</sup>*Id.* at 1643.

Figure 8: Case type as portion of civil trials, U.S. district courts, 1962–2002.



SOURCE: Administrative Office of the U.S. Courts, Annual Report of the Director, Table C-4 (1962–2002).

trials and almost a quarter (24.7 percent) of all bench trials at their high point in 1996. Even after their suppression by the PLRA, they form 12.7 percent of trials: one out of every eight bench trials and almost one out of ten jury trials. The continued prominence of prisoner cases as a portion of trials reflects not only the growth in prison populations but also the greater decline in the rate of trials of other types of cases.

#### F. Trials in Other Kinds of Cases

Table 1 also includes two other composite categories each with a substantial number of trials: labor cases and intellectual property cases. As you can see, the same overall trends apply to them: a rise and then a recent fall in the number of trials; an ever-decreasing percentage of dispositions by trial; and a shift from a small to a substantial portion of jury trials. Of course, there are trials in other topics as well; they are shrinking even faster than these large categories. “Other” trials made up about 16 percent of total trials in 1962 and only 9 percent in 2002. Figure 8 sums up the changing subject-matter distribution of trials over the years.

*G. Trials Before Magistrates*

Could the apparent decline in trials reflect a shift in who is conducting the trials? The federal courts are also staffed by magistrate judges, who since 1979 are empowered to try cases if the parties consent to trial before the magistrate. The current system of magistrate judges was created by the Federal Magistrates Act of 1968.<sup>24</sup> It replaced the office of U.S. commissioner and conferred on magistrates three basic categories of judicial responsibility: (1) all the powers and duties formerly exercised by the U.S. commissioners;<sup>25</sup> (2) the trial and disposition of “minor” (i.e., misdemeanor) criminal offenses; and (3) “additional duties,” including pretrial and discovery proceedings in civil and criminal cases, preliminary review of habeas corpus petitions, and services as a special master.<sup>26</sup> In 1976, Congress increased the scope of magistrate authority, further conferring on magistrates the ability to hear and determine any pretrial matters in civil or criminal cases (with eight listed exceptions).<sup>27</sup> In 1979, Congress authorized magistrates to try and enter final judgment in any civil case with the consent of the parties, and expanded trial jurisdiction to extend to all federal misdemeanors.<sup>28</sup> Amendments in 1996 clarified that review of final orders of a magistrate judge were limited to the courts of appeal, and further amendments in 2000 enlarged the class of criminal cases that magistrates could enter judgment on and granted magistrates civil and criminal contempt authority.<sup>29</sup>

The number of civil cases terminated by magistrate judges multiplied by five from some 2,452 in 1982 to 12,710 in 2002. The number of trials before magistrates rose from 570 in 1979 (the first year for which data is available) to 1,919 in 1996, but then fell steadily to 959 in 2002. (The fall continued in 2003, during which there were 867 magistrate trials.)

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<sup>24</sup>Codified at 28 U.S.C. §§ 604, 631–639 and 18 U.S.C. 3060, 3401–3402 (2003). The magistrate system was finally implemented nationwide in July 1971. At its inception, it consisted of 82 full-time magistrates, 449 part-time magistrates, and 11 combination bankruptcy/magistrates and clerks/magistrates. Peter G. McCabe, *The Federal Magistrate Act of 1979*, 16 *Harv. J. on Legis.* 343, 350–51 (1979). In 2002, there were 470 full-time magistrates, 59 part-time magistrates, and 3 “combination” magistrates. Administrative Office of the U.S. Courts, *Annual Report of the Director* 12 (2002).

<sup>25</sup>28 U.S.C. § 636(a)(1). For a brief history of commissioners, see Judicial Conference of the U.S., *The Federal Magistrate System: Report of Congress by the Judicial Conference of the United States* 1–2 (1981).

<sup>26</sup>28 U.S.C. § 636(b)(1).

<sup>27</sup>Pub. L. No. 94–577, 90 Stat. 2729 (1976) (codified at 28 U.S.C. § 636(b)). See also McCabe, *supra* note 24, at 351–55; Philip M. Pro & Thomas C. Hnatowski, *Measured Progress: The Evolution and Administration of the Federal Magistrate Judges System*, 44 *Am. U. L. Rev.* 1503, 1505–07 (1995).

<sup>28</sup>Pub. L. No. 96–82, 93 Stat. 643 (1979) (codified at 18 U.S.C. § 3401 and 28 U.S.C. §§ 631, 636).

<sup>29</sup>Pub. L. No. 104–317, § 207, 110 Stat. 3847 (1996) (codified at 28 U.S.C. § 636) and Pub. L. No. 106–518, §§ 202, 203(b), 114 Stat. 2410 (2000) (codified at 28 U.S.C. §§ 636(a), (e)).



Figure 9: Total civil consent cases terminated by magistrate judges, U.S. district courts, 1982–2002.

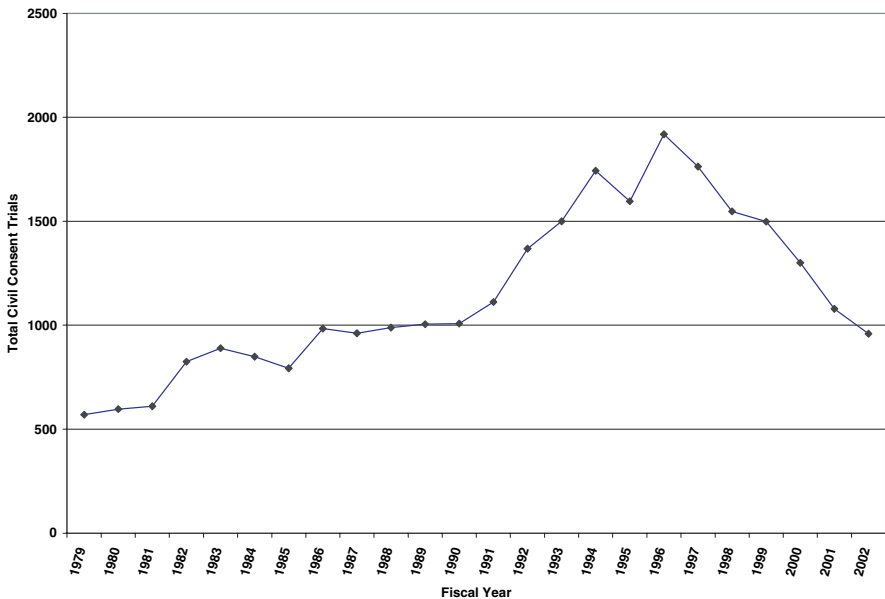


SOURCE: Administrative Office of the U.S. Courts, Annual Report of the Director, Table M-5 (1982–2002).

The percentage of magistrate dispositions by trial has fallen. In 1982, the first year for which a computation is possible, one-third (33.6 percent) of all magistrate civil dispositions were by trial. But as the number of dispositions by magistrates increased, the portion tried has fallen, so that in 2002 only 7.5 percent were by trial.

Are these magistrate trials included in the number of trials listed in the AO's Table C-4, which sorts all the cases terminated in a given year by the procedural stage reached? In 2002, there were 4,569 civil cases terminated "during or after trial." From the AO's Table M-5 we learn that magistrates conducted some 959 civil trials during that year. Does this mean that (1) there were actually a total of 5,528 civil trials? Or does it mean (2) that more than a fifth of the 4,569 trials listed in Table C-4 were conducted by magistrates and the remainder by district judges? Actually, neither of these alternatives is accurate. The 4,569 trials listed in Table C-4 include the cases in which the trial was conducted by a magistrate, so (1) is false. Alternative (2) gives a rough idea of the amount of trial activity, but should not be taken literally. Recall that Table C-4 is a count of all terminated cases in which a trial occurred and that a

Figure 10: Total civil consent trials before magistrate judges, U.S. district courts, 1979–2002.



SOURCE: Administrative Office of the U.S. Courts, Annual Report of the Director, Table M-5 (1979–2002).

trial is defined as “a contested proceeding at which evidence is introduced.” As noted above, this broad definition includes not only the classic trial leading to judgment, but other evidentiary hearings as well. A case counted as a trial in Table C-4 does not necessarily eventuate in a verdict or judgment. It may have settled during or after an early contested evidentiary hearing. Or it may have settled during or after a classic trial. Or a case may have more than one trial—for example, an early “trial” hearing and a classic trial. Table C-4 does not give us a count of trials, but rather a count of cases in which a trial has occurred (or at least begun). That trial may be before a district judge or before a magistrate. In cases where there is more than one trial event, it is possibly that one “trial” is before a magistrate and one is before a district judge.

Unfortunately, the magistrate disposition and trial data do not tell us about the types of cases (nature of suit) in which these dispositions and trials occur. Thus, we cannot specify the composition of magistrate trials and we do not know if this composition has changed over time and whether it parallels or complements the composition of trials before judges.

## II. THE CHANGING CHARACTER OF TRIALS: TIME AND COMPLEXITY

As we busy ourselves counting trials, we should not overlook the possibility that what constitutes a trial may have changed over the years. Lawrence Friedman reminds us that in earlier eras trials were often brief and perfunctory.<sup>30</sup> The elaboration of procedure, the enlargement of evidentiary possibilities, and the increased participation of lawyers have made the trial more complex and refined than its remote ancestors. It is widely believed that within the period covered here, the cases that are tried have become more complex and consume larger investments of resources. Unfortunately, we do not have longitudinal data from the federal courts on such features as the amount of discovery, number of motions, number of lawyers, number of objections, number of witnesses, and so forth. Studies of other courts suggest that complexity, investment, and length of trial are connected. In their study of Los Angeles Superior Court, Selvin and Ebener note that from their earlier (1915–1949) to their later (1950–1979) period, the number of events in filed cases increased<sup>31</sup> as did the portion of cases with discovery<sup>32</sup> and that the length of trials “dramatically increased.” “In the earlier sample of civil filings, 60 percent of the trials lasted no longer than one day. Since 1950, only 20 percent of all trials took one day or less.”<sup>33</sup>

A Canadian study also suggests a connection between case complexity and the decline of trials. In Toronto from 1973 to 1994, the number of trials fell (both absolutely and as a portion of dispositions) while the number of plaintiffs per case, the number of motions per case, the number of defenses, and the length of time consumed by cases all increased.<sup>34</sup> As an overall indicator of complexity, the researchers measured the average physical bulk of the court files produced in cases commenced in every fifth year of their study. There were some 106 files per storage box of cases commenced in 1973–1974, but only 24 cases per (equally tightly-packed) box of cases commenced in 1988–1989.<sup>35</sup>

Few measures of complexity are available for cases in federal courts. There is data on the length of trials in federal courts. A larger portion of trials take longer

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<sup>30</sup>Lawrence Friedman, *The Day Before Trials Vanished*, 1 J. Empirical Legal Stud. 689 (2004).

<sup>31</sup>Selvin & Ebener, *supra* note 10, at 46.

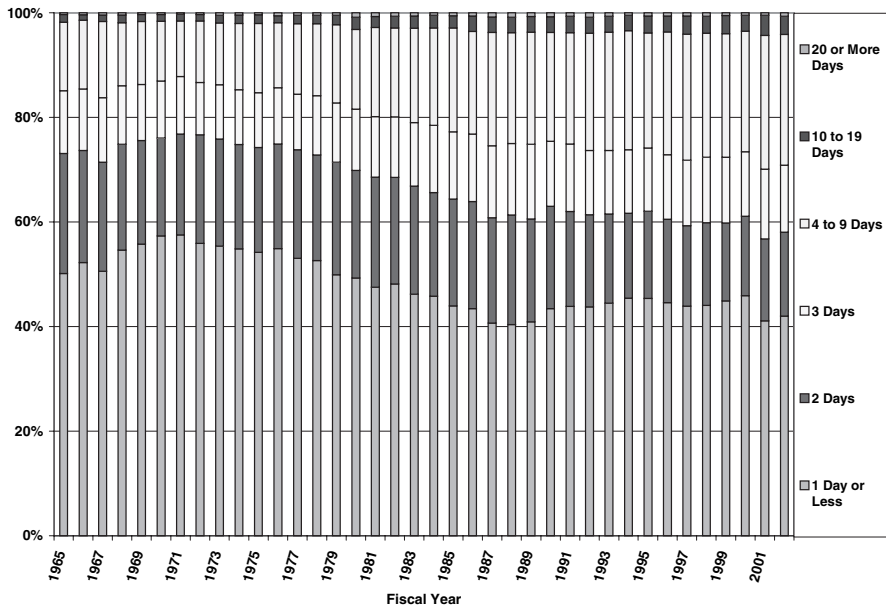
<sup>32</sup>*Id.* at 48.

<sup>33</sup>*Id.* at 49.

<sup>34</sup>John Twohig, Carl Baar, Anna Myers & Anne Marie Predko, *Empirical Analyses of Civil Cases Commenced and Cases Tried in Toronto 1973–1994*, in 1 *Rethinking Civil Justice: Research Studies for the Civil Justice Review* 77, 127, 119, 124, 131 (Ontario Law Reform Commission, 1996).

<sup>35</sup>*Id.* at 102.

Figure 11: Proportion of civil trials of a given length, U.S. district courts, 1965–2002.



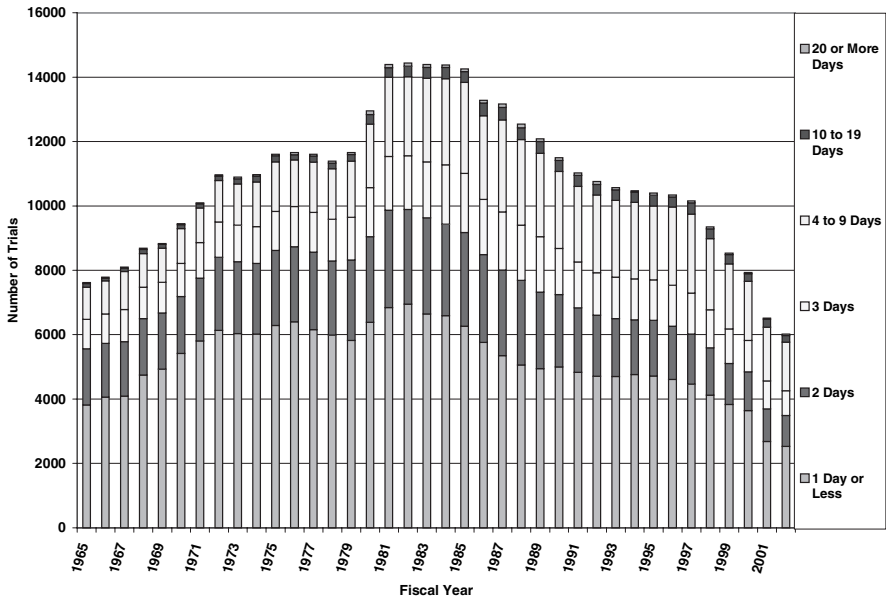
SOURCE: Administrative Office of the U.S. Courts, Annual Report of the Director, Table C-8 (1965–2002).

(Figure 11). Civil trials that lasted four days or more were 15 percent of trials in 1965 and 29 percent of trials in 2002; trials of three days or more rose from 27 percent to 42 percent over the same amount of time. But as Figure 12 indicates, this shift to longer trials is produced by an increase in the number of the longest trials combined with a shrinking of the number of short trials.

Several studies suggest that the number and length of trials are connected with the size of verdicts, that is, with the amount at stake. If the decline in the number of trials involves the squeezing out of smaller cases, then we might expect shorter trials to become less frequent and a corresponding increase in the portion of longer trials and in the size of verdicts. Examining jury verdicts in Cook County, Illinois, and at several California sites in the 1980s, Mark Peterson observed:

The trends over all cases suggest that the median jury award is related to the number of jury trials. Usually the median award moved in the opposite direction from changes in the number of trials: When the number of trials fell, the median increased; when the number of trials increased, the median decreased. This relationship suggests that the total number

Figure 12: Number of civil trials of a given length, U.S. district courts, 1965–2002.



SOURCE: Administrative Office of the U.S. Courts, Annual Report of the Director, Table C-8 (1965–2002).

of jury trials changed primarily because the number of smaller cases (*i.e.*, those that involved modest damages) increased or decreased at different times.<sup>36</sup>

Peterson's study was updated through 1994 by Eric Moller, who found that the number of jury trials fell in 11 of 15 sites—in many cases substantially. From 1985 to 1994, the number of verdicts in Los Angeles fell from 459 to 292; in San Francisco, 115 to 57; and in Cook County, Illinois, 699 to 468.<sup>37</sup> As fewer cases were tried, the size of verdicts increased. The causality here may run in both directions: not only would the settlement or abandonment of smaller cases tend to produce larger awards, but higher awards could provide greater inducements for defendants to avoid trial.

<sup>36</sup>Mark Peterson, RAND Inst. for Civil Justice, *Civil Juries in the 1980s: Trends in Jury Trials and Verdicts in California and Cook County, Illinois* 29–31 (1987) (footnote omitted).

<sup>37</sup>Erik Moller, *Trends in Civil Jury Verdicts Since 1985* tbl.2 (1996).

In recent data on the state courts of general jurisdiction in the nation's 75 most populous counties, the association of lower trial numbers with higher awards is more ambiguous.<sup>38</sup> From 1992 to 2001, the number of trials in these courts declined dramatically by 47 percent, but the amount awarded to winning plaintiffs underwent a striking decline overall: the median jury award fell 43 percent from \$65,000 in 1992 to \$37,000 in 2001.<sup>39</sup> But specific categories of cases displayed different patterns. For example, the number of product liability trials decreased by 76 percent, while the median jury award increased by 288 percent (from \$140,000 to \$543,000). However, premises liability trials decreased by 52 percent, while the median jury award fell by 17 percent (from \$74,000 to \$61,000). Rather than obeying a single hydraulic principle, specific kinds of cases seem to have distinctive careers.

Another factor that may be associated with cost and complexity is the length of time it takes a case to reach trial.<sup>40</sup> In 1963, the median time from filing to disposition by trial was 16 months; in 2002 the median time was over 20 months (see Figure 13). The time from filing to termination either with "no court action" or "before pretrial" has remained relatively constant over the years (six to seven months in the former; seven to eight months in the latter); however, the median time from filing to disposition "before or during pretrial" has fallen from 18 months in 1963 to only 13 months in 2002. Although the disposal of cases during pretrial has become more expeditious, cases proceeding to trial have been taking longer to move through the courts.

One measure of higher investment in tried cases that amplifies the stakes and complexity of trials is the burgeoning of "scientific jury selection" and a panoply of associated techniques involving mock trials, focus groups, and other devices for selecting juries and tailoring advocacy to them. From its beginnings in the early 1970s, the jury consulting industry has grown substantially. It was estimated that in 1982 there were about 25 jury consultants in the United States; in 1994 there were 10 times as many.<sup>41</sup> Another account concluded that in 1999 there were "over 700 people who call themselves jury consultants and over 400 firms offering these types

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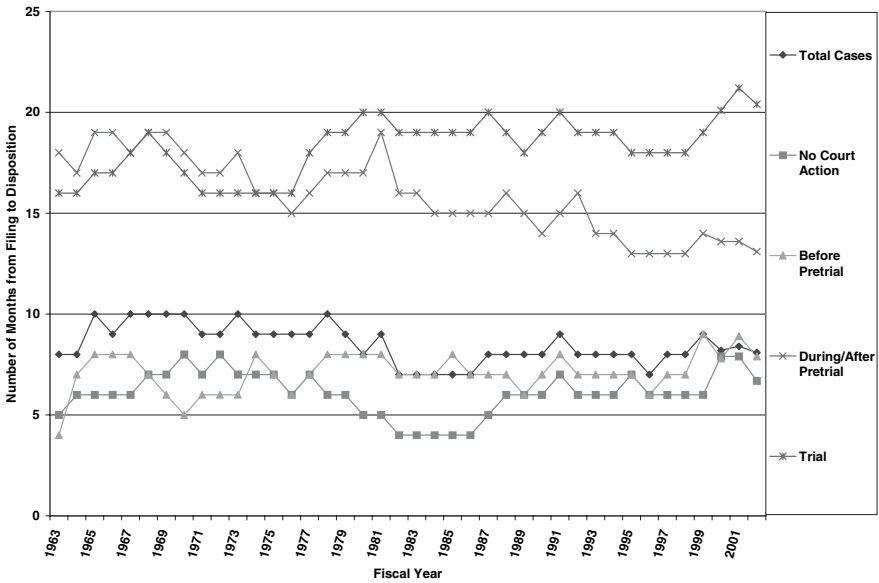
<sup>38</sup>Thomas H. Cohen & Steven K. Smith, *Civil Trial Cases and Verdicts in Large Counties, 2001*, 11–12 (Bureau of Justice Statistics Bulletin, Apr. 2004). The analysis is based on data from cases tried in the courts of 46 counties that represent a stratified sample of the nation's 75 most populous counties. These 75 counties contained 37 percent of the U.S. population in 2000. A thorough description of the sampling is available in the B.J.S. report available at <<http://www.ojp.usdoj.gov/bjs/pub/pdf/ctcvlc01.pdf>>. Thomas H. Cohen & Steven K. Smith, *Civil Trial Cases and Verdicts in Large Counties, 2001*, 11–12 (Bureau of Justice Statistics Bulletin, Apr. 2004).

<sup>39</sup>*Id.* at 9.

<sup>40</sup>Because the length of trial is relatively insignificant compared to the time between filing and commencement of trial, we use the time from filing to termination as a surrogate for the "wait for trial."

<sup>41</sup>Jeffrey Abramson, *We the Jury* 149 (1994).

Figure 13: Median time (in months) from filing to disposition of civil cases, by stage at which terminated, U.S. district courts, 1963–2002.



SOURCE: Administrative Office of the U.S. Courts, Annual Report of the Director, Table C-5 (1962–2002).

of service.”<sup>42</sup> Revenues in 2000 were estimated at about \$400 million.<sup>43</sup> The industry’s growth during a period in which there are fewer and fewer jury trials may reflect the thinning of lawyers’ trial experience. One consultant observes: “It’s only going to get bigger, because more and more lawyers will get to be sixty years old, having tried only five or ten cases.”<sup>44</sup>

### III. FROM FILING TO TRIAL

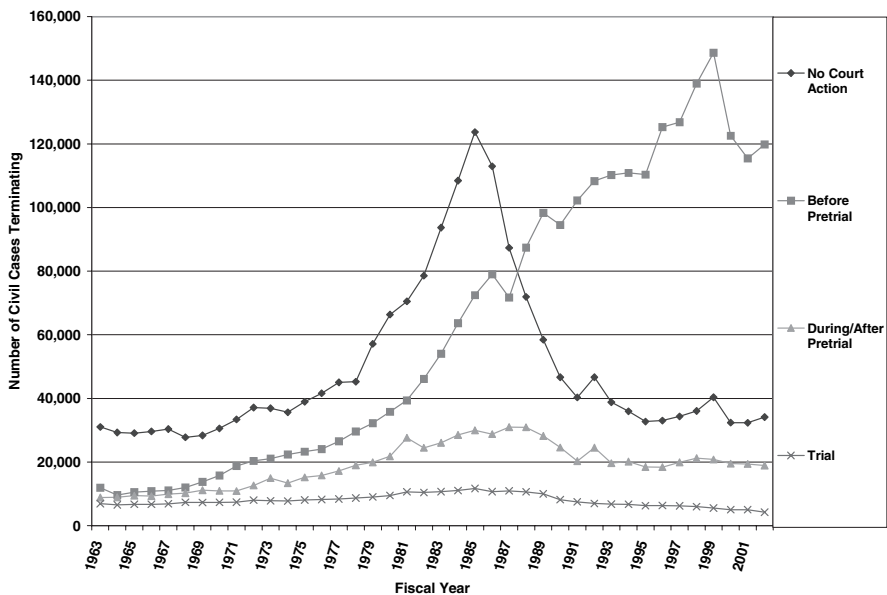
Interestingly, although the number and rate of trials has fallen, judicial involvement in case activity—at least on some level—has increased. Although the portion of cases

<sup>42</sup>Eric S. See, *Jury Consultants and the Criminal Justice System* 6 (2002).

<sup>43</sup>Neil J. Kressel & Dorit J. Kressel, *Stack and Sway: The New Science of Jury Consulting* 84 (2002).

<sup>44</sup>*Id.* at 57.

Figure 14: Number of civil cases terminating at each stage, U.S. district courts, 1963–2002.



SOURCE: Administrative Office of the U.S. Courts, Annual Report of the Director, Table C-4 (1962–2002).

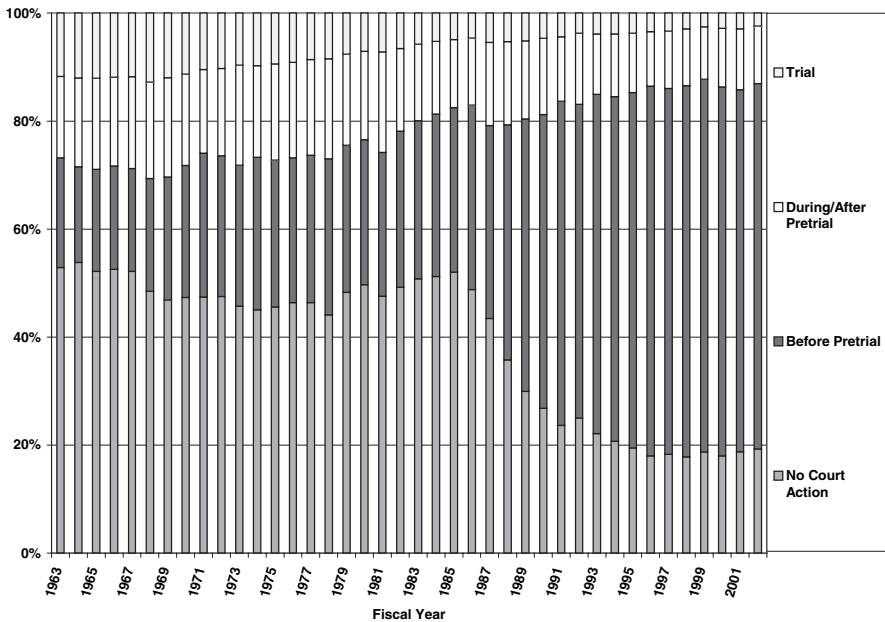
that terminate “during or after pretrial” has fallen only slightly from 15 percent in 1963 to 11 percent in 2002, the number of cases that terminated “before pretrial” (but with some type of court action) rose from 20 percent in 1963 to 68 percent in 2002. Clearly, courts are more involved in the early resolution of cases than they used to be.

Figure 15 shows the portion of cases that terminated at each stage of the process. In 1963, more than half (55 percent) terminated before the occurrence of any “court action.” By 2002, only 19 percent terminated at this stage. The big change came in the late 1980s, when the number of cases moving into the “before pretrial” stage began a dramatic increase, so that today nearly 70 percent of cases terminate at this stage as opposed to some 20 percent in 1962.

This tells us that cases are departing the court at an earlier stage, but not how. Both popular speech and a great deal of scholarly discourse proceed as if the universe of disposition is made up of trial and settlement, so that a decline in trials must



Figure 15: Percentage of civil cases terminating at each stage, U.S. district courts, 1963–2002.



SOURCE: Administrative Office of the U.S. Courts, Annual Report of the Director, Table C-4 (1962–2002).

mean an increase in settlements.<sup>45</sup> Analyzing dispositions in federal courts from 1970 to 2000, Gillian Hadfield concludes that settlements were actually “a smaller percentage of cases were disposed of through settlement in 2000 than was the case in 1970.”<sup>46</sup> What increased as trials disappeared was not settlement, but nontrial adjudication. This is consistent with a documented increase in the prevalence of summary judgment. Comprehensive and continuous data are not available, but a Federal Judi-

<sup>45</sup>The insufficiency of the trial/settlement model was pointed out by Herbert Kritzer, analyzing 1,649 cases in federal and state courts in five localities disposed of in 1978. Seven percent of these cases terminated through trial, but another 24 percent terminated through some other form of adjudication (arbitration, dismissal on the merits) or a ruling on a significant motion that led to settlement. Herbert M. Kritzer, *Adjudication to Settlement: Shading in the Gray*, 70 *Judicature* 161 (1986). On the attachment to the trial/settlement model in the law and economics literature, see Hadfield, *supra* note 6.

<sup>46</sup>Hadfield, *supra* note 6, at 705.

cial Center (FJC) study provides a glimpse of the change.<sup>47</sup> Comparing a sample of cases in six metropolitan districts over the period 1975–2000, the researchers found that the portion of cases terminated by summary judgment increased from 3.7 percent in 1975 to 7.7 percent in 2000.<sup>48</sup> Assuming that these districts were not grossly unrepresentative, we can juxtapose these figures with our data on trials. In 1975, the portion of disposition by trial (8.4 percent) was more than double the portion of summary judgments (3.7 percent), but in 2000 the summary judgment portion (7.7 percent) was more than three times as large as the portion of trials (2.2 percent).<sup>49</sup>

Analyzing the earlier studies of summary judgment activity and his own study of the Eastern District of Pennsylvania from 2000–2003, Stephen Burbank estimates that:

the rate of case terminations by summary judgment in federal civil cases nationwide increased substantially in the period from 1960 and 2000, from approximately 1.8 percent to approximately 7.7 percent. There is evidence, however, that the termination rate—indeed, the rate of activity more generally—under this supposedly uniform rule varies substantially in different parts of the country and in different types of cases.<sup>50</sup>

In the Eastern District of Pennsylvania, Burbank found that summary judgments increased from 4.1 percent to 4.7 percent of terminations from 2000 to 2003 while trials dropped from 2.5 percent to 1.0 percent.<sup>51</sup> Thus Burbank's figures, like those of the FJC, suggest that we have moved from a world in which dispositions by summary judgment were equal to a small fraction of dispositions by trial into a new era in which dispositions by summary judgment are a magnitude several times greater than the number of trials.<sup>52</sup>

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<sup>47</sup>Cecil, Miletich & Cort, *supra* note 14.

<sup>48</sup>*Id.* at 3. The six districts were E.D. Pa.; C.D. Cal.; D. Md.; E.D. La.; S.D.N.Y.; and N.D. Ill. Prisoner cases, Social Security cases, student loan repayment cases, and multi-district litigation cases were excluded from the sample.

<sup>49</sup>In other words, the ratio of summary judgment to trials rose from 0.44 to 3.5—about eight times as many summary judgments per trial. This comparison is only suggestive, since the trial data includes all districts, not just the six in the study. Also, the FJC study excluded several categories of cases from the total of dispositions, exclusions that are not matched in our trial data. A finer-grained comparison, limited to the six districts and the nonexcluded case categories, could not be done with the available published data.

<sup>50</sup>Stephen Burbank, *Drifting Toward Bethlehem or Gomorrah? Vanishing Trials and Summary Judgment in Federal Civil Cases*, 1 *J. Empirical Legal Stud.* 591, 593 (2004).

<sup>51</sup>*Id.* at 616.

<sup>52</sup>In a recent article, Professor Arthur Miller analyzes the doctrinal changes associated with the decline of trials, including the 1986 trilogy of Supreme Court cases that encouraged increased use of summary judgment. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986); *Anderson v. Liberty Lobby*,

## IV. CIVIL FILINGS

### A. General

We have been talking about dispositions. Do these changing patterns of dispositions merely reflect changes in filings? Clearly, the decline in trials is not simply a reflection of the cases coming to the federal courts, for the number of trials has declined while the number of filings has increased fivefold. Nor is the decline in trials simply a function of the changing makeup of a docket with fewer of the types of cases that are most likely to get tried and more of the types that rarely go to trial. There are many more civil rights cases (the most trial-prone category) and no appreciable decline in the absolute number of torts cases (the next most trial prone). In 2002, these two categories together made up 37 percent of all district court filings and 35 percent of dispositions, down from 45.5 percent of filings and 38.8 percent of dispositions in 1962. Instead, we see the drop in trial rates occurring in every category, suggesting that the difference lies in what happens in court rather than in a change in the makeup of the caseload.

Filings are the most direct link between courts and the wider society, so they are the place where we can observe changes in this linkage. From 1962 to 1986, filings per million persons increased steadily from about 260 per million persons to four times that; then they fell for six years and then began to fluctuate in the same range—at more than three times the 1960s level (Figure 19).

Filings rose more quickly than the population, but they declined in relation to the size of the economy. Filings per billion dollars of gross domestic product peaked in the mid 1980s at more than twice their 1962 level, but by 2002 they had fallen part of the way back to their 1962 level (Figure 20).

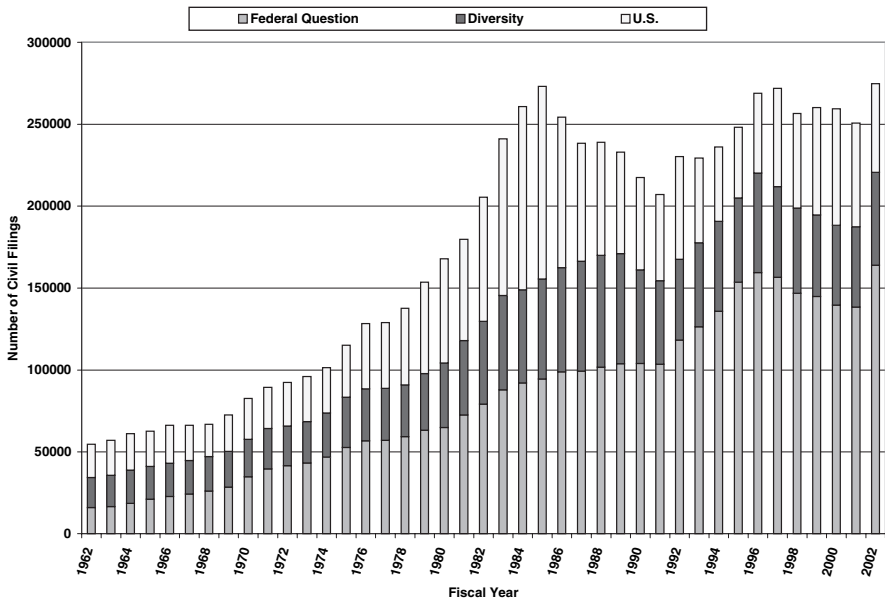
### B. Class Actions

One particular sort of filing that deserves special mention is class actions. It is striking that the pattern of class-action filings, falling through the 1980s but rising steeply in the 1990s (depicted in Figure 21), is the mirror image of the pattern of the number of trials depicted in Figure 1. Class-action filings fall during the late 1970s and early 1980s when trial numbers reach unprecedented peaks; class-action filings rise from the mid 1990s when trial numbers are falling to unprecedented lows. When we disaggregate class actions by case type we see that this “U” represents two distinct

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Inc., 477 U.S. 242 (1986); *Celotex Corp. v. Catrett*, 477 U.S. 317. Arthur Miller, *The Pretrial Rush to Judgment: Are the “Litigation Explosion,” “Liability Crisis,” and Efficiency Cliches Eroding Our Day in Court and Jury Trial Commitments*, 78 N.Y.U. L. Rev. 982 (2003). The Federal Judicial Center study of the incidence of summary judgment provides no evidence that increases were concentrated in the aftermath of the trilogy. Stephen Burbank concludes that “[s]uch reliable empirical evidence as we have . . . does not support the claims of those who see a turning point in the Supreme Court’s 1986 trilogy. Rather, that evidence suggests that summary judgment started to assume a greater role in the 1970s.” Burbank, *supra* note 50, at 620.

Figure 16: Number of civil filings by jurisdictional basis, U.S. district courts, 1962–2002.

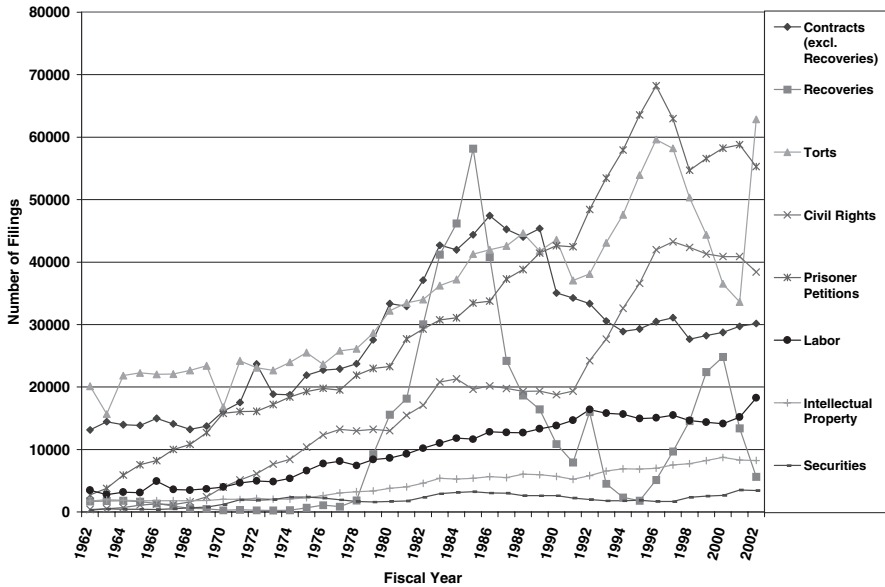


SOURCE: Administrative Office of the U.S. Courts, Annual Report of the Director, Table C-2 (1962–2002).

movements: the downward swing tracks the withering of civil rights class actions and the upward swing is driven by two major changes—a newfound willingness to permit tort class actions and a surge of securities class actions following Congress’s 1995 attempt to curtail such cases.<sup>53</sup>

<sup>53</sup>In 1995, Congress passed the Private Securities Litigation Reform Act (PSLRA) (codified at 15 U.S.C. §§ 77k–78) to reform the process by which shareholders filed class-action securities lawsuits. The legislation imposed higher pleading standards, stricter guidelines for appointing lead plaintiffs, and automatic stays of discovery; reduced the availability of joint and several liability; and included “safe harbor” provisions that shelter predictive statements from liability so long as they are identified as such. See generally Harvey L. Pitt et al., *Promises Made, Promises Kept: The Practical Implications of the Private Securities Reform Act of 1995*, 33 San Diego L. Rev. 845, 847–51 (1996). The PSLRA further reduced incentives for plaintiff’s attorneys (and consequently litigation) by requiring courts to make specific findings of compliance with Fed. R. Civ. P. 11—including imposing sanctions on frivolous litigants—and directing that any award of attorney fees not exceed a reasonable percentage of actual damages paid to the class. *Id.* at 890. Three years later, Congress passed the Securities Litigation Uniform Standards Act of 1998 in order to prevent litigants from simply changing forum and pursuing securities class-action lawsuits in state court so as to avoid the requirements of the PSLRA.

Figure 17: Number of civil filings by case type, U.S. district courts, 1962–2002.



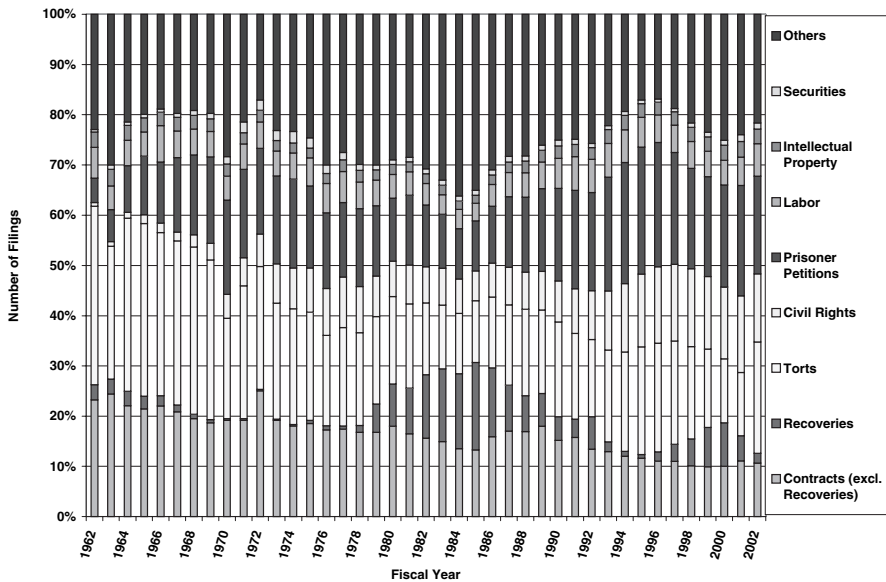
SOURCE: Administrative Office of the U.S. Courts, Annual Report of the Director, Table C-2 (1962–2002).

Trials in class-action cases are quite rare.<sup>54</sup> The adjudication in class actions tends to occur at pretrial stages—rulings on certification of the class, discovery, motions to dismiss—or after settlement in fairness hearings. It has long been observed that the low trial rate in class actions reflects the high stakes that such cases represent for defendants. Recent developments suggest that corporate defendants, with the help of sections of the plaintiffs’ bar, have learned to use the class-action device as an instrument to manage the risk of multiple claims. This provides a useful reminder that the rate of trials may reflect changing strategies by *defendants* as well as by plaintiffs.

There may be an indirect but important connection between class-action numbers and trial numbers: lawyers who file claims as class actions remove a large number of claims from the possibility of being tried individually and replace them with a much smaller number of cases in a category that very rarely eventuates in a trial. So when lawyers undertake to bundle claims in “high trial” areas like torts and

<sup>54</sup>Janet Cooper Alexander, *Do the Merits Matter? A Study of Settlements in Securities Class Actions*, 43 Stan. L. Rev. 497, 567 (1991).

Figure 18: Case type as relative portion of civil filings, U.S. district courts, 1962–2002.



SOURCE: Administrative Office of the U.S. Courts, Annual Report of the Director, Table C-2 (1962–2002).

civil rights into class actions, we might expect fewer trials. Conversely, the withering of civil rights class actions may be reflected in the great surge of filings and trials in individual civil rights cases.

### C. Multi-District Litigation

Another device for bundling large numbers of cases in the federal courts is transfer by the Judicial Panel on Multi-District Litigation (JPML). The JPML has its origins in the Coordinating Committee for Multiple Litigation for the United States District Courts, established in 1962 by Chief Justice Earl Warren to find a way to efficiently deal with more than 2,000 treble-damage antitrust actions, containing more than 25,000 claims for relief, filed in 36 district courts against heavy electrical equipment manufacturers.<sup>55</sup> To deal with these actions, the Committee introduced two major

<sup>55</sup>Robert A. Cahn, A Look at the Judicial Panel on Multidistrict Litigation, 72 F.R.D. 211 (1976). Although the Committee did not have jurisdiction over all the actions, it held national hearings on pretrial matters in which all parties and judges involved were invited to participate, after which it issued recommendations for adoption in the district courts.

Figure 19: Per capita civil filings, U.S. district courts, 1962–2002.



SOURCES: Administrative Office of the U.S. Courts, Annual Report of the Director, Table C-2 (1962–2002); Federal Reserve Bank of St. Louis <<http://research.stlouisfed.org/fred2/data/POP.txt>>.

innovations: (1) discovery was coordinated on a national basis, including the creation of a central document depository for use by all the parties; and (2) certain actions were transferred and consolidated for trial.<sup>56</sup> The overall impact of the Committee on this litigation was remarkable: only nine cases went to trial, and only five of those to judgment.<sup>57</sup> Based on that success, the JPML was established in 1968 as a way to coordinate national discovery in other multi-district litigations.<sup>58</sup>

Essentially, the JPML is authorized to transfer actions pending in two or more district courts “involving one or more common questions of fact” to a single district

<sup>56</sup>Id. at 211–12; see also John T. McDermott, *The Judicial Panel on Multidistrict Litigation*, 57 F.R.D. 215 (1973).

<sup>57</sup>McDermott, *supra* note 56, at 215–16.

<sup>58</sup>The Panel consists by statute of seven federal judges, either district or circuit. Because Congress felt that existing mechanisms for consolidation and transfer were sufficient to eliminate the risk of multiple trials on the same issues, the authority of the Panel was limited to pretrial and other discovery proceedings. Id. at 216–17.

Figure 20: Civil filings per billion dollars of gross domestic product, U.S. district courts, 1962–2002 (in 1996 chained dollars).<sup>a</sup>



<sup>a</sup>In January 1996, BEA [Bureau of Economic Analysis] replaced its fixed-weighted index as the featured measure of real GDP with an index based on chain-type annual weights. Changes in this measure of real output and prices are calculated as the average of changes based on weights for the current and preceding years. (Components of real output are weighted by price, and components of prices are weighted by output.) These annual changes are “chained” (multiplied) together to form a time series that allows for the effects of changes in relative prices and changes in the composition of output over time.” U.S. Census Bureau, Statistical Abstract of the United States 433–34 (2003).

SOURCES: Administrative Office of the U.S. Courts, Annual Report of the Director, Table C-2 (1962–2002); 2003 Economic Report of the President, Table B-2.

court for consolidated or coordinated pretrial proceedings.<sup>59</sup> Transfer may be initiated either by motion of a party or by the panel on its own initiative.<sup>60</sup> In theory, once pretrial activity takes place, the cases are returned to their originating districts.<sup>61</sup>

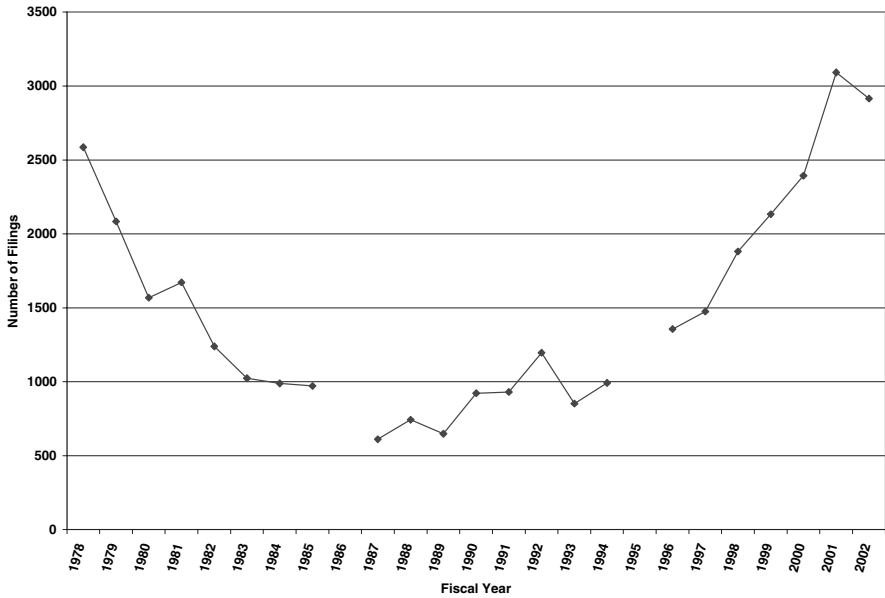
<sup>59</sup>28 U.S.C. § 1407(a).

<sup>60</sup>28 U.S.C. § 1407(c). Curiously, there is no appeal or review of panel orders denying transfer. 28 U.S.C. § 1407(c).

<sup>61</sup>When the JPML is either informed by the transferor court or “otherwise has reason to believe” that pretrial proceedings are complete, the panel may remand the actions back to the transferee courts for trial, though instances of this are rare. JPML R. P. 7.6 (2001).



Figure 21: Total class actions filed, U.S. district courts, 1978–2002.



SOURCE: Administrative Office of the U.S. Courts, Annual Report of the Director, Table X-5 (1978–2002).

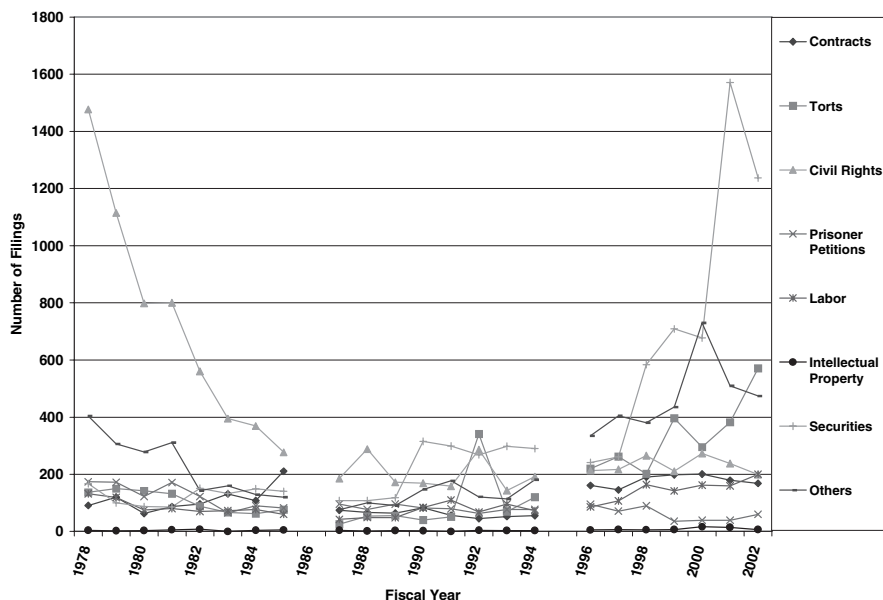
But in fact, most cases are resolved at the MDL stage. “Experience shows that few cases are remanded for trial; most MDL is settled in the transferee court.”<sup>62</sup> The percentage of cases remanded is typically in the low single digits. (See Appendix, Table A-14.)

The number of litigations (i.e., sets of cases) filed with the JPML has risen gradually over time (see Appendix, Table A-15), but there is no evident increase in the number of cases comprising them or the number that involve class-action allegations.<sup>63</sup> Nor is there any evident trend in the dominant subject matters, apart from the decline of anti-trust litigations and the increase in litigations that do not fall within the specified classifications.

<sup>62</sup>Manual of Complex Litigation (Third) § 31.132 (1995).

<sup>63</sup>Because the following tables on multi-district litigation include information only on litigations “retired” (terminated) by the JPML, they do not include information on the two largest filings with the Panel: asbestos (106,069 cases) and breast implant litigations (27,526 cases).

Figure 22: Class-action filings by case type, U.S. district courts, 1978–2002.



SOURCE: Administrative Office of the U.S. Courts, Annual Report of the Director, Table X-5 (1978–2002).

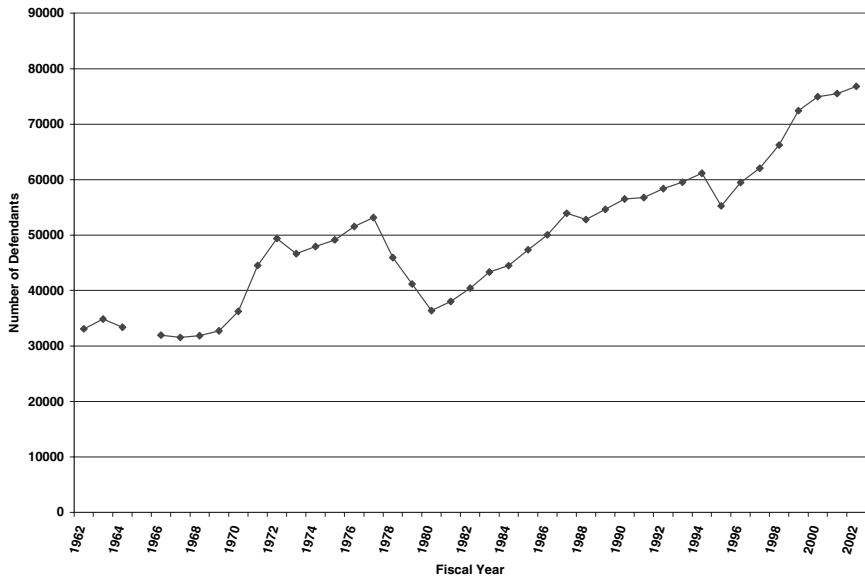
## V. FEDERAL FORUMS APART FROM CIVIL LITIGATION

### A. Criminal Cases and Trials

Some observers have suspected that the decline in civil trials is a response to increasing business on the criminal side of the federal courts. The criminal caseload (measured by the number of defendants) has risen, though more modestly than civil caseloads, from 33,110 in 1962 to 76,827 in 2002. This is about half the rate of increase on the civil side. The pressure to dispose of these cases expeditiously has increased due to the strictures of the 1974 Speedy Trial Act.<sup>64</sup> We occasionally do hear of courts refusing to try civil cases because of the press of criminal business, but one thing that has not happened is the occurrence of more criminal trials. Not only

<sup>64</sup>The Speedy Trial Act of 1974 (codified at 18 U.S.C. §§ 3161–3174) requires that criminal trials be held within 70 days of certain pretrial proceedings (e.g., filing of not guilty plea, consent to trial before magistrate), with certain enumerated exceptions made for permissible delay. Trials that have not commenced within the specified period of time may be dismissed on motion of the defendant; however, dismissal with or without prejudice is at the discretion of the court. 18 U.S.C. § 3162(a)(2).

Figure 23: Criminal defendant dispositions, U.S. district courts, 1962–2002.



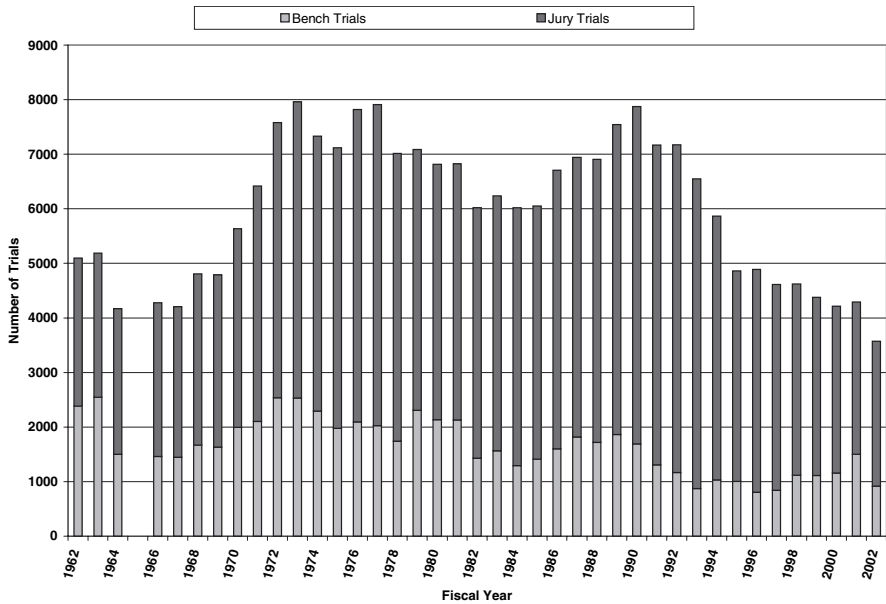
SOURCE: Administrative Office of the U.S. Courts, Annual Report of the Director, Table D-4 (1962–2002).

are a smaller percentage of criminal dispositions by trial—under 5 percent in 2002 compared with 15 percent in 1962—but the absolute number of criminal trials has diminished: from 5,097 in 1962 to 3,574 in 2002, a drop of 30 percent.

Are the factors impelling fewer civil trials also at work on the criminal side? Or are there other reasons for the decline of criminal trials? One distinctive feature that may account for the decline in criminal trials is the implementation of determinate sentencing in the federal courts. The federal sentencing guidelines were created by the Sentencing Reform Act of 1984 and went into effect on November 1, 1987.<sup>65</sup> Essentially, they produce a determinate sentencing range by creating two values—a criminal history score based on past criminal conduct and an offense level based on

<sup>65</sup>It should be observed, however, that there were extensive constitutional challenges to the guidelines—for example, out of 293 judges rendering 294 decisions on the matter in 1988 (one judge upholding the guidelines only to overrule himself four months later), 115 decisions (39 percent) found the guidelines constitutional, while 179 decisions (61 percent) found the guidelines unconstitutional. Gregory Sisk, Michael Heise & Andrew C. Morriss, *Charting the Influences of the Judicial Mind: An Empirical Study of Judicial Reasoning*, 73 N.Y.U. L. Rev. 1377, 1430 (1998). Therefore, systemwide implementation cannot be supposed until at least January 1989, when the U.S. Supreme Court finally declared the guidelines constitutional in *Mistretta v. United States*, 488 U.S. 361 (1989).

Figure 24: Criminal defendants disposed of by bench and jury trial, U.S. district courts, 1962–2002.



SOURCE: Administrative Office of the U.S. Courts, Annual Report of the Director, Table D-4 (1962–2002).

the severity of the instant offense—and then use these values as axes to locate the appropriate sentencing range (expressed in months) on a grid known as the sentencing table.<sup>66</sup> Unless the court determines that a departure from the given sentencing range is warranted due to factors not adequately addressed by the guidelines, the court is bound by the limits of the guideline range. The sentence created is non-parolable, and the availability of good-time credit while in prison is limited, thus enhancing the determinacy and the severity of the guidelines.<sup>67</sup> The guidelines offer an incentive to avoid trial in the form of a criminal-offense-level reduction (one axis of the sentencing grid) for what is termed “acceptance of responsibility.” Although proceeding to trial does not automatically disqualify an offender for the reduction,

<sup>66</sup>See generally, U.S. Sentencing Guidelines Manual (2002).

<sup>67</sup>Lucian B. Campbell & Henry J. Bemporad, *An Introduction to Federal Guideline Sentencing* 3 (5th ed. 2001).

the guidelines state that it is only in "rare situations" that the incentive can be preserved after exercising this option.<sup>68</sup>

Gauging the impact of the sentencing guidelines on the number of criminal trials in the federal courts is difficult because many other changes in the criminal justice system have taken place concurrently. Congress has enacted more statutes with mandatory minimum sentences and increased funding for law enforcement, while Department of Justice policies regarding plea and prosecution strategies have changed as well.<sup>69</sup> Although it is difficult to specify conclusions about the direct impact of the sentencing guidelines on trial rates, it is unmistakable that the number of criminal trials has decreased since the implementation of the guidelines. From 1962 to 1991, the percentage of trials in criminal cases remained steady between approximately 13 percent to 15 percent. However, since 1991, the percentage of trials in criminal cases has steadily decreased (with the exception of one slight increase of 0.06 percent in 2001): from 12.6 percent in 1991 to less than 4.7 percent in 2002.<sup>70</sup> That the guidelines contributed to this decline is consistent with the assumption that systemwide implementation of the guidelines did not take place until at least the beginning of the 1990s, due both to constitutional challenges and an overall period of adjustment.<sup>71</sup>

Early studies suggested that the presence of the guidelines increased the rate of trials. One study found that although the systemwide rate of trials remained virtually unchanged by 1990, there was an increase in trial activity for drug and firearms cases (where the penalties were most severe), but a decrease in the amount of trial activity for fraud and related cases.<sup>72</sup> Another early study noted a general increase in the amount of trial activity after the implementation of the guidelines,<sup>73</sup> and an ABA

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<sup>68</sup>See U.S. Sentencing Guidelines Manual § E1.1, application note 2 (suggesting that only when the defendant makes a constitutional challenge to a statute or challenges the applicability of a statute to his or her conduct does the defendant still qualify for the reduction with an appropriate showing of acceptance of responsibility).

<sup>69</sup>Terence Dunworth & Charles D. Weisselberg, *Felony Cases and the Federal Courts: The Guidelines Experience*, 66 S. Cal. L. Rev. 99, 111-13 (1992).

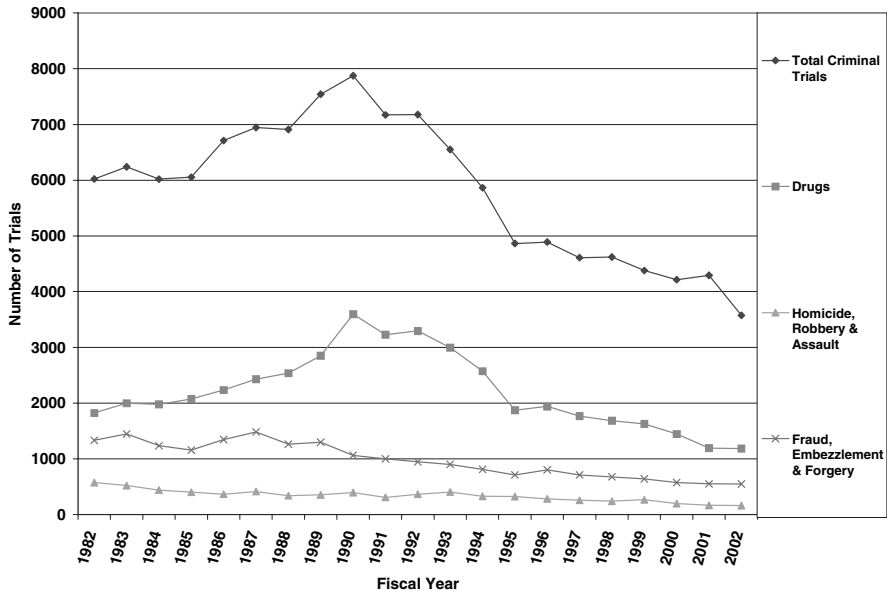
<sup>70</sup>There has also been a corresponding increase over this period of time in the number of criminal cases. Prior to 1986, the number of criminal defendant dispositions fluctuated between 30,000 and 50,000. Since 1986, there has been a general increase in the number of criminal defendant dispositions; rising from roughly 50,000 to over 76,000 in 2002 (see Figure 23).

<sup>71</sup>See Sisk et al., *supra* note 65.

<sup>72</sup>See generally, Dunworth & Weisselberg, *supra* note 69. "These relationships suggest that, with respect to trial rates, the additional number of guideline trials that result from the greater propensity for trial in drug cases appears to be offset by the fewer number of guideline trials that occur among FEC [Fraud, Embezzlement and Counterfeiting] and other felony convictions." *Id.* at 143.

<sup>73</sup>See generally, Gerald W. Heaney, *The Reality of Guidelines Sentencing: No End to Disparity*, 28 Am. Crim. L. Rev. 161, 175-76 (1991).

Figure 25: Number of criminal defendant dispositions by trial by case type—drugs, violent crimes, and fraud, U.S. district courts, 1982–2002.



SOURCE: Administrative Office of the U.S. Courts, Annual Report of the Director, Table D-4 (1982–2002).

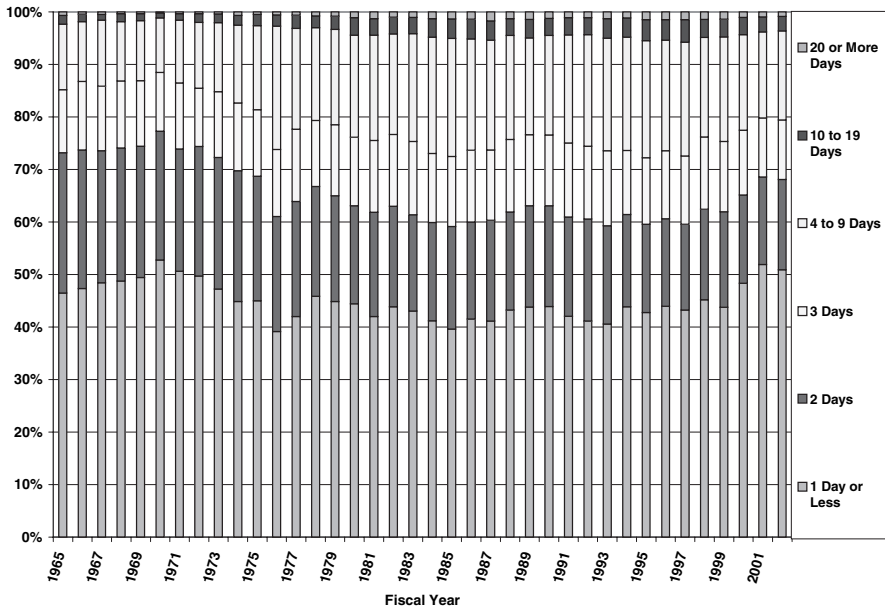
survey of district court judges published in 1992 found that 73 percent of those who responded believed that the guidelines increased the number of trials.<sup>74</sup> However, a study published in 1991 by the U.S. Sentencing Commission found that there was no appreciable difference in the rate of trials due to the sentencing guidelines.<sup>75</sup>

Indeed, there was an increase in trial activity for drug cases from 1987 to 1990; the percentage of drug cases that went to trial increased from 16.1 percent to 18.6 percent (see Appendix, Table A-18). Meanwhile, trial rates for violent crimes (homicide, robbery, and assault) and fraud-related crimes (fraud, embezzlement, and forgery) either remained relatively consistent or decreased slightly: 18.7 percent to

<sup>74</sup>Dunworth & Weisselberg, *supra* note 69 (citing Survey on the Impact of U.S. Sentencing Guidelines on the Federal Criminal Justice System, 1992 A.B.A. Sec. Crim. Just.).

<sup>75</sup>United States Sentencing Comm'n, *The Federal Sentencing Guidelines: A Report on the Operation of the Guidelines System and Short-Term Impacts on Disparity in Sentencing, Use of Incarceration, and Prosecutorial Discretion and Plea Bargaining* 65–77 (1991). “[T]he rate of defendants’ choosing to enter guilty pleas or stand trial has not changed appreciably as a result of guideline implementation.” *Id.* at 77.

Figure 26: Proportion of criminal trials of a given length, U.S. district courts, 1965–2002.



SOURCE: Administrative Office of the U.S. Courts, Annual Report of the Director, Table C-8 (1965–2002).

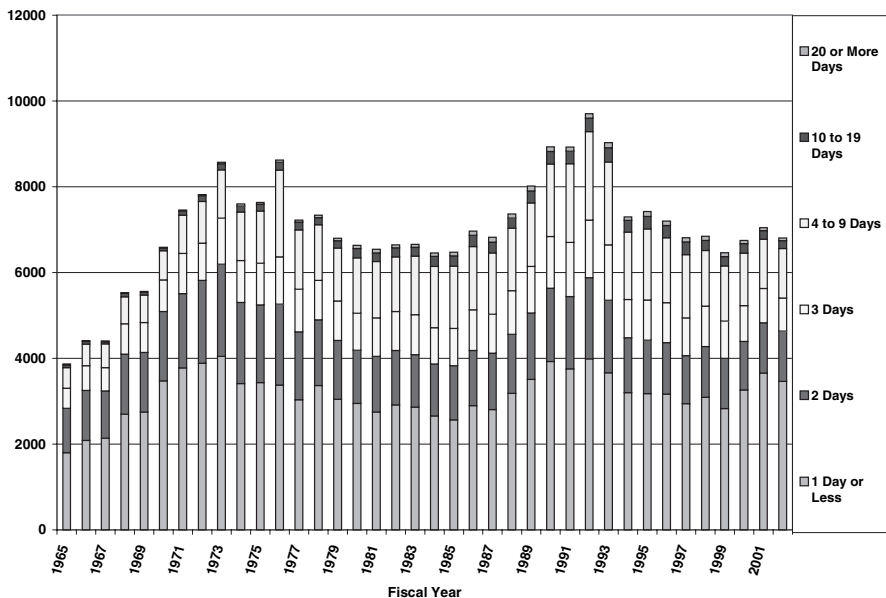
19.1 percent in the former, 10.9 percent to 8.5 percent in the latter.<sup>76</sup> However, beginning in 1991, the total number of cases—drug cases included—that went to trial began to steadily decrease, as noted above. Drug trials as a percentage of total drug defendants fell to 10 percent in 1995 and only 4.1 percent in 2002; trials for violent crime defendants fell to 13.7 percent in 1995 and 6.6 percent in 2002; while trials for defendants accused of fraud-related offenses fell to 6 percent in 1995 and 4.2 percent in 2002.

There has been no noticeable increase in the length of federal criminal trials.<sup>77</sup> The number of trials longer than one day was lower in 2002 than at any point in the previous 30 years. The totals in Figures 26 and 27 differ from those in Figure 24

<sup>76</sup>The trial rate in fraud-related cases began to decline in 1990, as opposed to 1991 for the other two categories of crimes.

<sup>77</sup>Due to definitional differences, the number of trials reported on A.O. Table C-8 (Figures 26 and 27) is not the same as the number of defendant dispositions by trial reported on A.O. Table D-4 (Figure 24).

Figure 27: Number of criminal trials of a given length, U.S. district courts, 1965–2002.



SOURCE: Administrative Office of the U.S. Courts, Annual Report of the Director, Table C-8 (1965–2002).

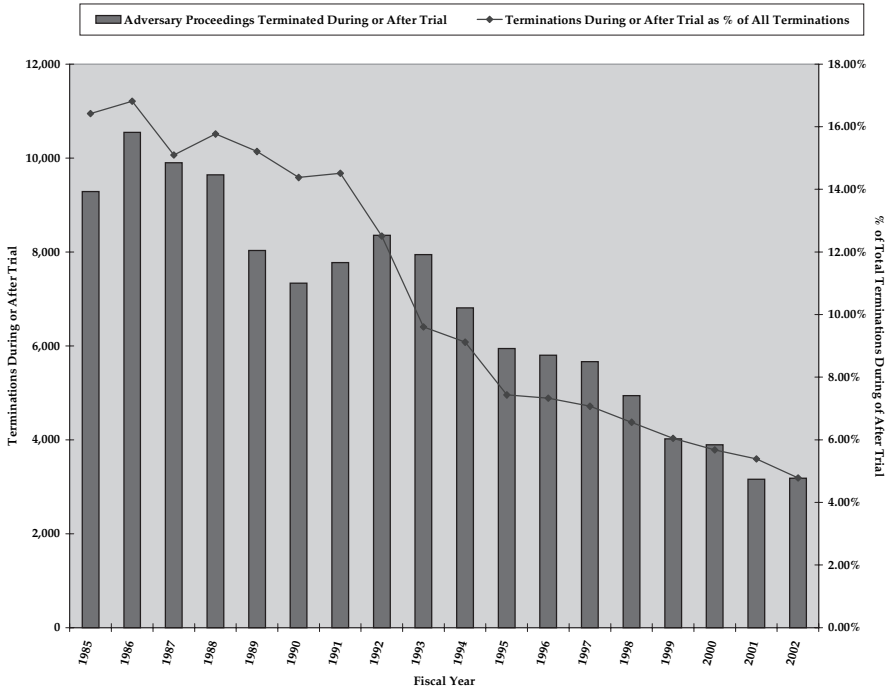
because the latter is a count of defendants while the former count multiple defendant trials as single events. (See Figure 26.) Trials longer than three days make up a larger portion of all trials than they once did, but there are actually fewer of them than there have been since the early 1970s (Figure 27).

### *B. Bankruptcy*

Our figures on the federal district courts do not include bankruptcy. The volume of bankruptcy filings is considerably larger than the volume of filings in the district courts and has been growing more rapidly (see Table A-20 in Appendix). However, while bankruptcy filings have multiplied, Elizabeth Warren's research indicates a shrinkage of trial activity that parallels those in the civil and criminal jurisdictions of the district courts. Professor Warren describes a modest increase in the number of adversarial proceedings from 1985 to 2002, but the portion of adversary proceedings terminated "during or after trial" fell from 16.4 percent in 1985 to 4.8 percent in 2002. In 1985, there were 9,287 trials in bankruptcy court; by 2002, there were



Figure 28: Adversary proceedings terminated during/after trial, U.S. bankruptcy courts, 1985–2002.



3,179—barely more than a third of the total in 1985.<sup>78</sup> Like their Article III brethren, bankruptcy judges preside over fewer trials: in 1985, the average was 37 trials; in 2002 it was about 10.<sup>79</sup>

### C. Administrative Adjudication

A significant portion of all adjudication takes place not in the courts, but in various administrative tribunals and forums. The federal government had 1,370 administrative law judges in 2001—more than double the 665 authorized Article III district

<sup>78</sup>Elizabeth Warren, *Vanishing Trials: The Bankruptcy Experience*, 1 J. Empirical Legal Stud. 913, 917 (2004).

<sup>79</sup>Id. at 929. The denominator is “authorized judgeships.”

court judgeships.<sup>80</sup> An uncounted number of similar positions exist in the states. Further research should be undertaken to ascertain the amount and features of this administrative adjudication and whether there are trends that are related to those observed in courts. One provocative foray is the work of Steven L. Schooner, who documents a dramatic drop in protests and contract appeals connected to government procurement over the course of the 1990s. Protests at the General Accounting Office decreased by half over the course of the decade; cases docketed at the five largest agency boards of contract appeals fell to a third or less of their earlier peaks.<sup>81</sup> Again we see parallels to the drop in adjudication in the courts, but can only wonder if these agency forums are typical and how the declines in these various settings are related.

## VI. COURT RESOURCES

The presence of larger caseloads, (presumptively) more complex cases, more elaborate pretrial proceedings, and longer trials invites us to imagine that the decline in trials is attributable to resource constraints that disable courts from conducting as many trials as they used to. The appeal of the resource explanation is highlighted by recent cuts in both federal and state courts.<sup>82</sup> Before embracing this view we should recall that in the 1980s a smaller number of district judges with fewer auxiliaries and more meager resources managed to conduct more than twice as many trials as their present-day counterparts. The trends are mixed, but it is difficult to conclude that there are fewer resources relative to demand, at least for the trial courts in the federal system. The number of Article III judges in the district courts has grown from 279 (of 307 authorized) in 1962 to 615 (of 665 authorized) in 2002. They were assisted

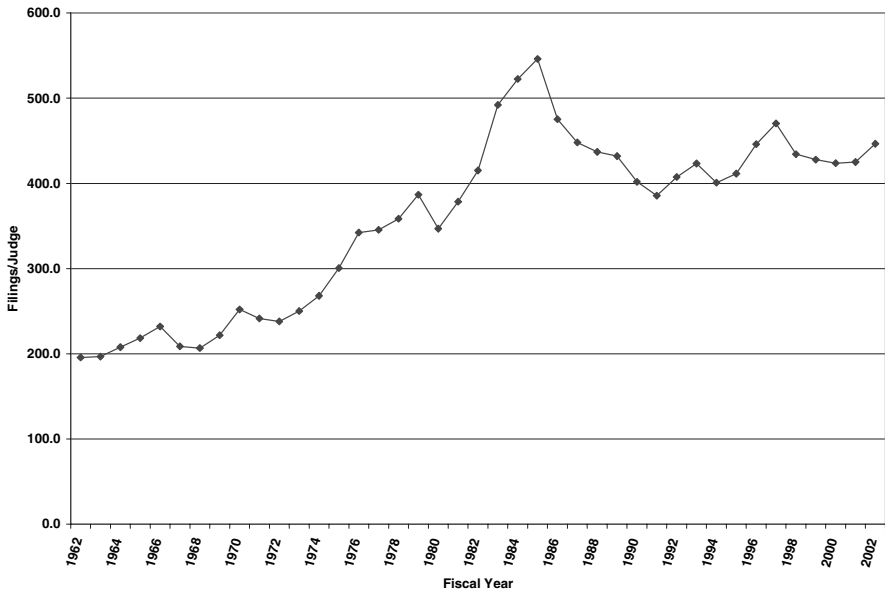
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<sup>80</sup>Judith Resnik, *Migrating, Morphing, and Vanishing: The Empirical and Normative Puzzles of Declining Trial Rates in Courts*, 1 J. Empirical Legal Stud. 783, Appendix A (2004). In addition to administrative law judges, who enjoy some protections to ensure their independence, there are other administrative adjudicators in the federal government. In 1992, John H. Frye III estimated their number at 2,700, most of whom have duties in addition to adjudication. John H. Frye III, *Survey of Non-AIJ Hearing Programs in the Federal Government*, 44 Admin. L. Rev. 261, 263 (1992). The total caseload of the 83 major case types handled by these non-AIJ "presiding officers" analyzed by Frye was about 343,000 (44 percent immigration; 20 percent health and human services; 17 percent veteran affairs; 6 percent Coast Guard; 4 percent agriculture, etc.). *Id.* at 343.

<sup>81</sup>Steven L. Schooner, *Fear of Oversight: The Fundamental Failure of Businesslike Government*, 50 Am. U. L. Rev. 627, 644–47 (2001).

<sup>82</sup>Adam Liptak, *Federal Judges Find Courts Short of Money to Pay Jurors*, N.Y. Times, A14 (Aug. 1, 2003) (Judicial Conference urges judges to defer "noncritical civil trials" but quickly reverses itself); Molly McDonough, *Federal Courts Cut Staff, Hours*, (Mar. 19, 2004) available at <[www.abanet.or/journal/ereport](http://www.abanet.or/journal/ereport)>; David L. Hudson, Jr., *Cutting Costs . . . and Courts*, A.B.A. J. 16 (Apr. 2003) (widespread cutbacks in state courts).

Figure 29: Civil filings per sitting judge, U.S. district courts, 1962–2002.



SOURCES: Administrative Office of the U.S. Courts, Annual Report of the Director, Table C-2 (1962–2002); Annual Report of the Director, Article III Judgeship Tables (1962–2002).

by 92 senior judges and more than 500 magistrates.<sup>83</sup> However, this increase has fallen short of the increase in caseload. Filing per sitting judge has more than doubled, from 196 in 1962 to 443 in 2002.

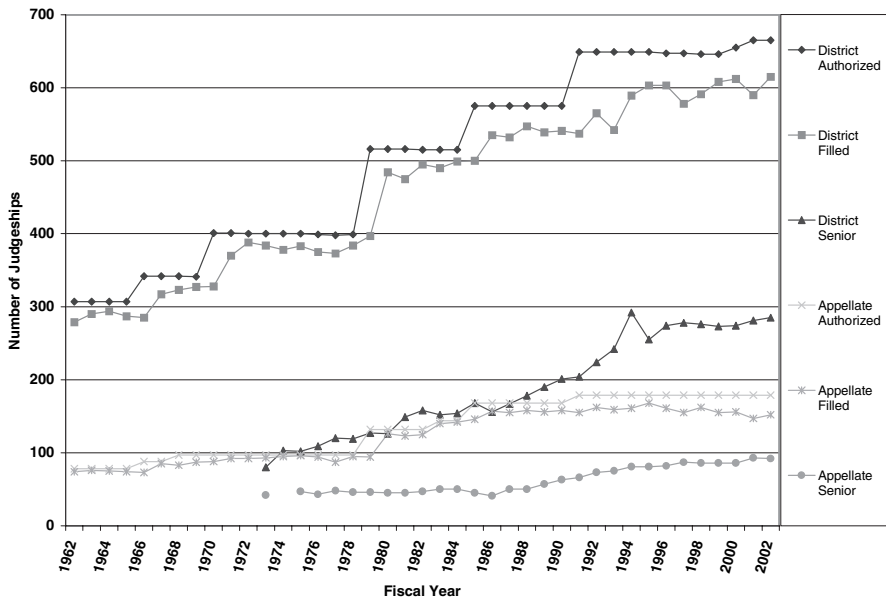
Concurrently, the number of non-Article III personnel and total expenditures grew more rapidly. In 1962, there were 5,602 nonjudicial personnel employed by the federal judiciary; in 1992 (the last year that figures were available), that number had grown to 25,947. Judicial expenditures increased from \$246 million (1996 dollars) in 1962 to \$4.254 billion (1996 dollars) in 2002.

So the decline in trials is accompanied by a larger judicial establishment of which judges form a smaller portion. In 1962 there were 18.9 nonjudicial employees for each Article III district court judge.<sup>84</sup> This fell slightly by 1972 (17.8) but jumped

<sup>83</sup>The number of magistrates serving has not been reported since 1992, when there were 475 serving and 479 authorized (369 full time and 110 part time). Since then the number authorized has increased to 477 full time and 57 part time. Assuming that the ratio of filled to authorized positions has not declined radically, it seems safe to conclude that there are somewhat more than 500 magistrates serving in the district courts.

<sup>84</sup>“Other employees” here refers to the total number of employees minus judges, referees, magistrates, and U.S. Commissioners.

Figure 30: Article III judgeships, U.S. appellate and district courts, 1962–2002.



SOURCE: Administrative Office of the U.S. Courts, Annual Report of the Director, Article III Judgeship Tables (1962–2002).

to 28.3 in 1982 and 45.9 in 1992. No figures are available after 1992, but the pattern of total spending by the judiciary suggests that the ratio is larger than ever.

Although the 1962 starting date was picked to maximize the comparability of data, it turns out to have an additional advantage—it lies at the very beginning of a set of momentous changes in the technology of legal work. Such technology had been fairly stable and unchanging since the turn of the last century, when legal work was reshaped by the telephone, the typewriter, comprehensive legal publication, and new research devices like digests and citators. Not much had changed by 1960; perhaps the only noticeable innovation in the first half of the century was the introduction of loose-leaf services. But starting in 1960, there was an accelerating succession of new technologies—photo-reproduction, computerization, fax machines, online data services, overnight delivery, electronic mail, teleconferencing, and so forth—that multiplied the amount of information that could be assembled and manipulated by legal actors. The lawyers who represent parties that appear in federal court work in larger entities, law firms or legal staffs, and come to the courts with enlarged capacities for record keeping, retrieval, and communication. The

Table 3: Non-Article III Judgeships and Other Federal Judicial Employees, 1962–2002

Fiscal Year	Total Non-Article III Judges	Magistrate				Bankruptcy			Other Employees <sup>c</sup>		
		Total Auth.	Full-Time Auth.	Part-Time Auth.	Serving	U.S. Comm'rs	Auth.	Filled		Recalled (Serving) <sup>a</sup>	Other Officers <sup>b</sup>
1962	884	—	—	—	—	694	—	—	—	190	5,602
1963	889	—	—	—	—	695	—	—	—	194	5,775
1964	902	—	—	—	—	706	—	—	—	196	5,818
1965	912	—	—	—	—	713	—	—	—	199	5,901
1966	914	—	—	—	—	708	—	—	—	206	6,002
1967	912	—	—	—	—	701	—	—	—	211	6,348
1968	917	—	—	—	—	700	—	—	—	217	6,518
1969	890	26	26	—	26	650	—	—	—	214	6,605
1970	867	518	61	457	28	629	—	—	—	210	6,741
1971	680	546	83	463	470	—	—	—	—	210	6,476
1972 <sup>a</sup>	721	561	90	471	518	—	—	—	—	203	6,923
1973	715	567	103	464	514	—	—	—	—	201	7,400
1974	729	541	112	429	517	—	—	—	—	212	8,169
1975	662	487	133	354	452	—	—	—	—	210	8,9416
1976	674	482	150	332	450	—	—	—	—	224	10,07
1977	682	487	164	323	454	—	—	—	—	228	10,683
1978	687	487	176	311	455	—	—	—	—	232	11,116
1979	680	488	196	292	444	—	—	—	—	236	11,392
1980	674	488	204	284	439	—	—	—	—	235	12,730
1981	681	490	217	273	441	—	—	—	—	240	12,929
1982	687	483	223	260	451	—	—	—	—	236	14,032
1983	678	476	238	238	435	—	—	—	—	243	14,839
1984	681	457	253	204	447	—	0	45	*	234 <sup>c</sup>	15,349
1985	668	467	272	195	440	—	232	*	*	228	16,231
1986	692	467	280	187	450	—	232	103	*	242	16,898
1987	703	467	292	175	451	—	284	216	*	252	17,963

Table 3: Continued

Fiscal Year	Total Non-Article III Judges	Magistrate				Bankruptcy					
		Total Auth.	Full-Time Auth.	Part-Time Auth.	Serving	U.S. Comm'rs	Auth.	Filled	Recalled (Serving) <sup>a</sup>	Other Officers <sup>b</sup>	Other Employees <sup>c</sup>
1988	745	470	294	176	452	—	284	280	15	293	19,298
1989	760	477	307	170	464	—	284	282	12	296	19,978
1990	779	483	323	160	476	—	291	289	13	303	21,022
1991	774	475	345	130	476	—	291	287	10	298	23,182
1992 <sup>b</sup>	769	479	369	110	475	—	291	287	12	294	25,947
1993	*	483	381	102	*	—	326	324	12	—	*
1994	*	492	396	96	*	—	326	314	22	—	*
1995	*	498	413	85	*	—	326	315	23	—	*
1996	*	496	416	80	*	—	326	313	23	—	*
1997	*	508	429	79	*	—	326	313	22	—	*
1998	*	510	436	74	*	—	326	315	25	—	*
1999	*	518	447	71	*	—	326	306	29	—	*
2000	*	521	456	65	*	—	325	307	30	—	*
2001	*	532	470	62	*	—	324	312	30	—	*
2002	*	534	477	57	*	—	324	302	31	—	*

<sup>a</sup>Beginning in 1992 and dating back to 1988, information was kept on the number of recalled bankruptcy judges serving.

<sup>b</sup>Until 1978, positions in the bankruptcy courts were as referees; from 1978 until 1984 the bankruptcy courts were in transition.

<sup>c</sup>"Other employees" figure generated by subtracting all Article III, magistrate, and bankruptcy judges from total judicial employees.

<sup>d</sup>1972 was the first full year of the magistrate system.

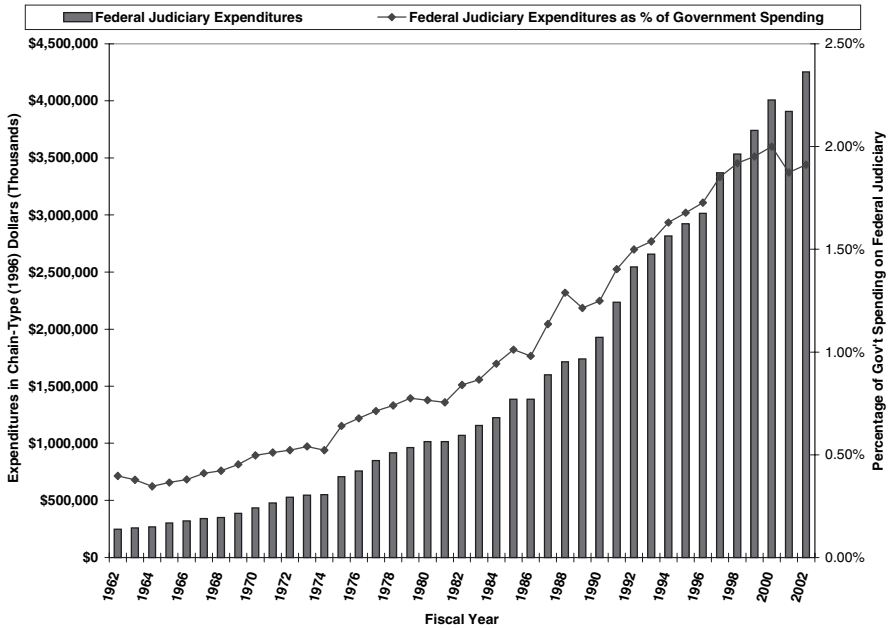
<sup>e</sup>This figure represents the total number of bankruptcy "judges" employed in a given year, including, presumably, the "filled" positions.

<sup>f</sup>After 1992, information was reported as of September 30 (previously reported as of June 30).

<sup>g</sup>Source information for data underlying figures is listed with the respective figures in the text.

SOURCE: Administrative Office of the U.S. Courts, Annual Report of the Director, Various Judgeship Tables (1962–2002).

Figure 31: Federal judiciary expenditures (in chain-type 1996 dollars) and federal judiciary spending as a percentage of government expenditures, 1962–2002.



SOURCE: Administrative Office of the U.S. Courts, Annual Report of the Director, Various Judgeship Tables and Expenditure Tables (1962–2002).

courts themselves enjoy a similar enhancement of capacity to record, find, examine, and disseminate information.

## VII. TRIALS ON APPEAL

Theodore Eisenberg's pioneering exploration of the relationship between trials and appeals finds that tried cases in the federal courts are appealed at roughly four times the rate of cases terminated without trials.<sup>85</sup> Nevertheless, because there are so few tried cases, tried cases form only a small fraction of those appealed—about one in eight in the years 1987–1996. And as the proportion of tried cases falls, the portion of concluded appeals that are from trials falls and so does the absolute number of appellate decisions in tried cases.

<sup>85</sup>Theodore Eisenberg, "Appeal Rates and Outcomes in Tried and Nontried Cases," 1 J. Empirical Legal Stud. 659 (2004).

Plaintiffs appeal at a higher rate than defendants in nontried cases; defendants appeal more against trial outcomes and they succeed at a higher rate than plaintiffs.<sup>86</sup> Tried cases are thus more likely to be subject to appeal than cases decided without trial and appealed tried cases are more likely to be reversed than appealed nontried cases.<sup>87</sup> What sorts of grounds are the basis for these reversals? Are cases that enter the law reports more likely to be those involving a trial? Or a reversal? Are these changing as the number of trials diminishes?

The body of reported cases continues to expand. In spite of restrictions on publication, the annual increment of published federal cases increased from 5,782 pages in 1962 to 13,490 pages in 2002, an increase of 133 percent.<sup>88</sup> Curiously, as the body of case law becomes ever larger, the presence of authoritative pronouncements of law at the peak of the hierarchy is thinned out. The Supreme Court of the United States decides fewer cases—less than half as many as 20 years ago—and its decisions are marked by less consensus.<sup>89</sup> So doctrine multiplies as decisive adjudication wanes.

## VIII. OTHER FORUMS

### A. *The Number of Trials in State Courts*

The great preponderance of trials, both civil and criminal, take place in the state courts. But data about the number, subject, and characteristics of state trials has been scarce and not readily comparable from one state to another. In their symposium paper, Brian Ostrom, Shauna Strickland, and Paula Hannaford of the National Center for State Courts have assembled an unprecedented bank of state trial data into comparable form.<sup>90</sup>

Table 4 shows the number of trials in the courts of general jurisdiction of 21 states (and the District of Columbia) that contain 58 percent of the U.S. population for the years 1976 to 2002. The data provide a picture of trends in the state courts that overall bear an unmistakable resemblance to the trends in federal courts we have

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<sup>86</sup>See also Kevin M. Clermont & Theodore Eisenberg, Appeal from Jury or Judge Trial: Defendants' Advantage, 3 Am. L. & Econ. Rev. 125 (2001); Eric Schnapper, Judges Against Juries—Appellate Review of Federal Civil Jury Trials, 1989 Wis. L. Rev. 237 (1989).

<sup>87</sup>Kevin M. Clermont & Theodore Eisenberg, Plaintiphobia in the Appellate Courts: Civil Rights Really Do Differ from Negotiable Instrument, 2002 U. Ill. L. Rev. 947, 967 (2002).

<sup>88</sup>Includes *Federal Reporter* and *Federal Supplement*.

<sup>89</sup>Philip Allen Lacovara, The Incredible Shrinking Court, Am. Lawyer 53 (Dec. 2003).

<sup>90</sup>Brian J. Ostrom, Shauna Strickland & Paula Hannaford, Examining Trial Trends in State Courts: 1976–2002, 1 J. Empirical Legal Stud. 755 (2004). The definition of a trial differs from state to state. The definitions used by the various states are given in the Appendix, Table A-25.



Table 4: Civil Trials in Courts of General Jurisdiction in 22 States, 1976–2002\*

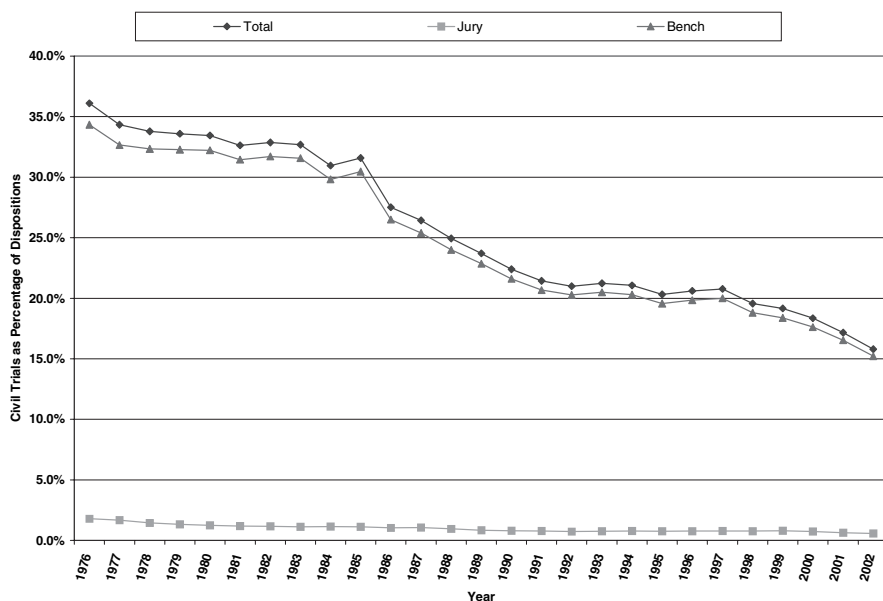
Year	Total Dispositions	Jury Trials	Bench Trials	Total Trials	Trials as % of Dispositions	Jury Trials as % of Dispositions	Bench Trials as % of Dispositions	Jury Trials as % of All Trials	Bench Trials as % of All Trials
1976	1,464,258	26,018	502,549	528,567	36.1%	1.8%	34.3%	4.9%	95.1%
1977	1,529,250	25,462	499,392	524,854	34.3%	1.7%	32.7%	4.9%	95.1%
1978	1,682,323	24,103	543,893	568,266	33.8%	1.4%	32.3%	4.2%	95.7%
1979	1,769,757	23,239	571,126	594,364	33.6%	1.3%	32.3%	3.9%	96.1%
1980	1,873,462	23,073	603,471	626,544	33.4%	1.2%	32.2%	3.7%	96.3%
1981	1,991,291	23,555	626,188	649,743	32.6%	1.2%	31.4%	3.6%	96.4%
1982	2,064,635	23,849	654,760	678,609	32.9%	1.2%	31.7%	3.5%	96.5%
1983	2,114,228	23,671	667,282	690,953	32.7%	1.1%	31.6%	3.4%	96.6%
1984	2,112,185	24,124	629,572	653,696	30.9%	1.1%	29.8%	3.7%	96.3%
1985	2,019,391	22,663	615,029	637,692	31.6%	1.1%	30.5%	3.6%	96.4%
1986	2,280,859	23,316	604,333	627,649	27.5%	1.0%	26.5%	3.7%	96.3%
1987	2,336,662	24,428	593,130	617,558	26.4%	1.0%	25.4%	4.0%	96.0%
1988	2,460,803	23,182	590,416	613,598	24.9%	0.9%	24.0%	3.8%	96.2%
1989	2,682,534	22,618	612,983	635,601	23.7%	0.8%	22.9%	3.6%	96.4%
1990	2,828,182	22,387	610,741	633,128	22.4%	0.8%	21.6%	3.5%	96.5%
1991	3,015,817	23,089	623,199	646,288	21.4%	0.8%	20.7%	3.6%	96.4%
1992	3,395,382	24,159	688,517	712,676	21.0%	0.7%	20.3%	3.4%	96.6%
1993	3,257,366	24,109	667,480	691,589	21.2%	0.7%	20.5%	3.5%	96.5%
1994	3,128,551	24,055	634,692	658,847	21.1%	0.8%	20.3%	3.7%	96.3%
1995	3,138,796	23,453	613,981	637,435	20.3%	0.7%	19.6%	3.7%	96.3%
1996	3,107,930	23,649	616,557	640,206	20.6%	0.8%	19.8%	3.7%	96.3%
1997	3,208,712	24,565	641,667	666,232	20.8%	0.8%	20.0%	3.7%	96.3%
1998	3,338,543	25,201	627,451	652,652	19.5%	0.8%	18.8%	3.9%	96.1%
1999	3,097,209	24,299	568,954	593,453	19.2%	0.8%	18.4%	4.1%	95.9%
2000	2,999,012	21,937	528,104	550,041	18.3%	0.7%	17.6%	4.0%	96.0%
2001	3,073,153	19,190	508,035	527,225	17.2%	0.6%	16.5%	3.6%	96.4%
2002	3,087,857	17,617	469,547	487,200	15.8%	0.6%	15.2%	3.6%	96.4%

\*For the purposes of Tables 4, 5, 6, 7, and 8 and Figure 32, the District of Columbia and Puerto Rico are treated as states.

NOTE: The general jurisdiction courts of the following states are included in the yearly data: Alaska, Arizona, California, District of Columbia, Florida, Hawaii, Indiana, Iowa, Kansas, Maine, Maryland, Massachusetts, Michigan, New Jersey, North Carolina, Ohio, Pennsylvania, South Dakota, Texas, Vermont, Virginia, and Washington.

SOURCE: Ostrom, Strickland—Hannaford, 1 J. Empirical Legal Stud. 755 (2004).

Figure 32: Civil trials as percentage of dispositions in 22 state courts of general jurisdiction, 1976–2002.



SOURCE: Ostrom et al.

been examining. The portion of cases reaching jury trial declined from 1.8 percent to 0.6 percent of dispositions and bench trials fell from 34.3 percent to 15.2 percent. The absolute number of jury trials is down by one-third and the absolute number of bench trials is down 6.6 percent. These trends are illustrated in Figure 32.

Table 5 displays trials in the nine states (and Puerto Rico) that counted general civil trials (that is, tort, contract, and real property) separately from 1992 to 2002. In this set of states, we see an even more pronounced 44 percent drop in the absolute number of jury trials, while bench trials drop 21 percent. Here the fall in trials is accounted for in part by a fall in the number of dispositions, which decline by 21 percent. So the portion of cases disposed of by bench trials ends where it begins, at 4.3 percent, while jury trials fall from 1.8 percent to 1.3 percent of dispositions.

The pattern of decline is confirmed by another sampling of state court activity that provides a more precise picture of the parties, claims, and outcomes of trials. Under the sponsorship of the Bureau of Justice Statistics of the U.S. Department of Justice, the National Center for State Courts tracked the trial activity in state courts of general jurisdiction in the 75 most populous counties in the years 1992, 1996, and 2001. The researchers counted all the tort, contract, and real property trials (presumably, those that were resolved by trial, since we are given judgment amounts). In

Table 5: Contract, Tort, and Real Property Trials (Combined) in Courts of General Jurisdiction in 10 States, 1992-2002

Year	Total Dispositions	Jury Trials	Bench Trials	Total Trials	Trials as % of Dispositions	Jury Trials as % of Dispositions	Bench Trials as % of Dispositions	Jury Trials as % of All Trials	Bench Trials as % of All Trials
1992	633,170	11,224	26,972	38,196	6.0%	1.8%	4.3%	29.4%	70.6%
1993	568,251	10,536	30,519	41,055	7.2%	1.9%	5.4%	25.7%	74.3%
1994	523,312	10,112	34,350	44,462	8.5%	1.9%	6.6%	22.7%	77.3%
1995	500,146	9,634	34,004	43,638	8.7%	1.9%	6.8%	22.1%	77.9%
1996	484,171	9,749	30,705	40,454	8.4%	2.0%	6.3%	24.1%	75.9%
1997	492,523	9,896	28,827	38,723	7.9%	2.0%	5.9%	25.6%	74.4%
1998	492,248	9,502	27,848	37,350	7.6%	1.9%	5.7%	25.4%	74.6%
1999	481,618	9,002	24,278	33,280	6.9%	1.9%	5.0%	27.0%	73.0%
2000	457,982	8,137	24,944	33,081	7.2%	1.8%	5.4%	24.6%	75.4%
2001	500,192	7,235	21,215	28,450	5.7%	1.4%	4.2%	25.4%	74.6%
2002	498,649	6,329	21,398	27,727	5.6%	1.3%	4.3%	22.8%	77.2%

\*General Civil is the combination of tort, contract, and real property rights cases.

NOTE: Percent totals may not equal due to rounding. The general jurisdiction courts of the following states are included in the yearly data: Arkansas, California, Florida, Hawaii, Minnesota, New Mexico, North Carolina, North Carolina, Washington, and West Virginia.

SOURCE: Ostrom, Strickland, & Hannaford (2004).

1992, there were 22,451 trials in these counties. In 2001, there were only 11,908, a 47 percent reduction. Tort trials were down 31.8 percent and contracts trials were down 61 percent. During these same years, tort trials in federal courts decreased by 37.6 percent and federal contract trials were down 47.7 percent.<sup>91</sup>

As we can see from the bottom row of Table 6, the attrition of trials in the decade covered was substantial in both state and federal courts, and across different case types. During this decade, state trials were decreasing at a greater rate than trials in federal courts, suggesting that the decline in trials is not driven by some factor peculiar to the federal courts, such as the increase in filings or appellate court endorsement of summary judgment.

On the criminal side, the trial rate has moved in the same direction in the state courts as in the federal courts. From 1976 to 2002, the overall rate of criminal trials in courts of general jurisdiction in the 22 states for which data is available dropped from 8.5 percent of dispositions to 3.3 percent. The decrease was similar in jury trials (from 3.4 percent to 1.3 percent) and bench trials (from 5.0 percent to 2.0 percent). Although dispositions grew by 127 percent in these courts, the absolute number of jury trials fell by 15 percent and of bench trials by 10 percent. The patterns of attrition resemble those in the federal courts, where criminal trials fell from 15.2 percent to 4.7 percent of dispositions in those years.

It might be supposed that the decline in the percentage of criminal trials reflects an increase in the proportion of lesser crimes and a decline in the presence of felonies, but Table 8 shows that in the 13 states that provide separate figures for felonies, trials as a portion of felony dispositions fell from 8.9 percent in 1976 to 3.2 percent in 2002. The absolute number of felony jury trials remained fairly constant, but in 2002 they made up only 2.2 percent of the larger number of felony dispositions, compared to 5.2 percent in 1976. The number of bench trials dropped substantially: in 2002, bench trials were only 1 percent of felony dispositions, down from 3.7 percent in 1976.

Although the state data is less comprehensive, it is sufficiently abundant to indicate that the trends in state court trials generally match those in the federal courts. In both there is a decline in the percentage of dispositions that are by jury trial and bench trial. In both there is a decline in the absolute number of jury trials and bench trials. In the federal courts, nonjury trials have declined even more dramatically than jury trials; in the state courts, it is jury trials that are shrinking faster.

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<sup>91</sup>Torts and contracts comprise practically the whole state trial docket but a declining sector of the trial docket in the federal courts. In 1992, tort and contract were 48.6 percent of federal trials, but by 2001 this had shrunk to 41.9 percent. (On the long-term shrinkage, see Figure 8.) Whether there was a comparable decline in the portion of state court trials in these subjects is unknown because both the Trial Court Network and the state counts of "general" civil trials are only of torts, contracts, and real property trials. In 1992, tort and contract accounted for 95.3 percent of the state court trials in the 75 counties. In 2001, this had increased to 97.87 percent of all trials. With the steeper decline in contract trials, tort trials were now two-thirds of all "general" trials, up from 51.9 percent in 1992.

Table 6: Attrition of Civil Trials in U.S. District Courts, in Two Sets of State Courts of General Jurisdiction, and in Bankruptcy Courts, 1992–2001

	All Trials			Tort Trials			Contract Trials		
	75 Counties		10 States	75 Counties		Fed	75 Counties		Bankruptcy
	Fed			Fed			Fed		
1992	8,029	22,451	38,196	2,385	11,660	1,513	9,744	8,353	
1996	7,565	15,638	40,454	19,902	10,278	1,081	4,850	5,802	
2001	5,400	11,908	28,450	1,471	7,948	792	3,698	3,160	
Change 1992–2001	–32.7%	–47.0%	–25.5%	–37.6%	–31.8%	–47.7%	–61.0%	–62.2%	

SOURCES: Table C-4 (federal); Thomas H. Cohen & Steven K. Smith, Civil Trial Cases and Verdicts in Large Counties, 2001 Bureau of Justice Statistics Bulletin, Apr. 2004 (75 counties); Ostrom et al. (10 states); Elizabeth Warren (bankruptcy).

Table 7: Criminal Trials in Courts of General Jurisdiction in 22 States (and District of Columbia and Puerto Rico), 1976–2002

Year	Total Dispositions	Jury Trials	Bench Trials	Total Trials	Trials as % of Dispositions	Jury Trials as % of Dispositions	Bench Trials as % of Dispositions	Jury Trials as % of All Trials	Bench Trials as % of All Trials
1976	1,222,972	42,049	61,382	103,881	8.5%	3.4%	5.0%	40.5%	59.1%
1977	1,270,769	42,593	46,252	88,845	7.0%	3.4%	3.6%	47.9%	52.1%
1978	1,303,583	39,335	47,232	86,567	6.6%	3.0%	3.6%	45.4%	54.6%
1979	1,398,504	38,242	45,071	83,313	6.0%	2.7%	3.2%	45.9%	54.1%
1980	1,549,416	38,703	53,961	92,664	6.0%	2.5%	3.5%	41.8%	58.2%
1981	1,681,439	39,615	53,328	92,943	5.5%	2.4%	3.2%	42.6%	57.4%
1982	1,755,429	40,583	48,098	88,681	5.1%	2.3%	2.7%	45.8%	54.2%
1983	1,798,427	39,921	50,914	90,835	5.1%	2.2%	2.8%	43.9%	56.1%
1984	1,841,318	38,150	49,848	87,998	4.8%	2.1%	2.7%	43.4%	56.6%
1985	1,933,439	38,557	46,686	85,243	4.4%	2.0%	2.4%	45.2%	54.8%
1986	2,031,079	39,019	46,124	85,143	4.2%	1.9%	2.3%	45.8%	54.2%
1987	2,154,238	39,324	46,162	85,486	4.0%	1.8%	2.1%	46.0%	54.0%
1988	2,245,898	39,520	47,908	87,428	3.9%	1.8%	2.1%	45.2%	54.8%
1989	2,402,465	44,971	59,802	104,773	4.4%	1.9%	2.5%	42.9%	57.1%
1990	2,418,363	46,271	63,420	109,691	4.5%	1.9%	2.6%	42.2%	57.8%
1991	2,508,408	47,518	56,543	104,061	4.1%	1.9%	2.3%	45.7%	54.3%
1992	2,503,835	46,722	58,494	105,216	4.2%	1.9%	2.3%	44.4%	55.6%
1993	2,534,210	44,730	64,383	109,113	4.3%	1.8%	2.5%	41.0%	59.0%
1994	2,469,446	43,447	61,107	104,554	4.2%	1.8%	2.5%	41.6%	58.4%
1995	2,527,505	41,794	57,520	99,314	3.9%	1.7%	2.3%	42.1%	57.9%
1996	2,650,122	42,385	57,938	100,323	3.8%	1.6%	2.2%	42.2%	57.8%
1997	2,677,410	43,661	57,806	101,467	3.8%	1.6%	2.2%	43.0%	57.0%
1998	2,786,415	41,646	63,138	104,784	3.8%	1.5%	2.3%	39.7%	60.3%
1999	2,776,537	40,985	62,090	103,075	3.7%	1.5%	2.2%	39.8%	60.2%
2000	2,773,175	38,966	63,769	102,735	3.7%	1.4%	2.3%	37.9%	62.1%
2001	2,762,261	37,438	57,348	94,786	3.4%	1.4%	2.1%	39.5%	60.5%
2002	2,780,440	35,664	55,447	91,111	3.3%	1.3%	2.0%	39.1%	60.9%

NOTE: The general jurisdiction courts of the following states are included in the yearly data: Alaska, Arizona, California, Delaware, District of Columbia, Florida, Hawaii, Indiana, Iowa, Kansas, Maine, Maryland, Michigan, Missouri, New Jersey, North Carolina, Ohio, Pennsylvania, Puerto Rico, South Dakota, Texas, Vermont, and Virginia.

Table 8: Felony Trials in Courts of General Jurisdiction in 11 States (and District of Columbia and Puerto Rico), 1976–2002

Year	Total Dispositions	Jury Trials	Bench Trials	Total Trials	Trials as % of Dispositions	Jury Trials as % of Dispositions	Bench Trials as % of Dispositions	Jury Trials as % of All Trials	Bench Trials as % of All Trials
1976	416,888	21,767	15,222	36,989	8.9%	5.2%	3.7%	58.8%	41.2%
1977	415,881	21,084	12,783	33,867	8.1%	5.1%	3.1%	62.9%	37.7%
1978	425,629	19,845	11,711	31,556	7.4%	4.7%	2.8%	62.9%	37.1%
1979	441,777	19,697	11,061	30,758	7.0%	4.5%	2.5%	64.0%	36.0%
1980	470,263	19,905	10,345	30,250	6.4%	4.2%	2.2%	65.8%	34.2%
1981	538,507	21,448	10,426	31,874	5.9%	4.0%	1.9%	67.3%	32.7%
1982	587,537	22,470	11,081	33,551	5.7%	3.8%	1.9%	67.0%	33.0%
1983	600,602	22,478	12,249	34,727	5.8%	3.7%	2.0%	64.7%	35.3%
1984	594,649	20,403	10,029	30,432	5.1%	3.4%	1.7%	67.0%	33.0%
1985	622,814	20,454	9,632	30,086	4.8%	3.3%	1.5%	68.0%	32.0%
1986	674,471	21,443	11,505	32,948	4.9%	3.2%	1.7%	65.1%	34.9%
1987	751,896	22,034	11,090	33,124	4.4%	2.9%	1.5%	66.5%	33.5%
1988	796,786	21,771	10,773	32,544	4.1%	2.7%	1.4%	66.9%	33.1%
1989	801,483	22,954	11,082	34,036	4.2%	2.9%	1.4%	67.4%	32.6%
1990	802,938	23,959	11,462	35,421	4.4%	3.0%	1.4%	67.6%	32.4%
1991	841,309	24,044	8,689	32,733	3.9%	2.9%	1.0%	73.5%	26.5%
1992	851,180	24,245	8,371	32,616	3.8%	2.8%	1.0%	74.3%	25.7%
1993	857,004	23,378	10,622	34,000	4.0%	2.7%	1.2%	68.8%	31.2%
1994	845,813	22,734	13,323	36,057	4.3%	2.7%	1.6%	63.1%	36.9%
1995	865,612	22,802	12,902	35,704	4.1%	2.6%	1.5%	63.9%	36.1%
1996	876,205	23,331	11,571	34,902	4.0%	2.7%	1.3%	66.8%	33.2%
1997	902,395	24,397	11,245	35,642	3.9%	2.7%	1.2%	68.5%	31.5%
1998	905,505	22,268	10,636	32,904	3.6%	2.5%	1.2%	67.7%	32.3%
1999	904,895	22,244	8,630	30,874	3.4%	2.5%	1.0%	72.0%	28.0%
2000	901,793	21,937	9,697	31,634	3.5%	2.4%	1.1%	69.3%	30.7%
2001	921,820	20,664	10,663	31,327	3.4%	2.2%	1.2%	66.0%	34.0%
2002	933,319	20,557	9,695	30,252	3.2%	2.2%	1.0%	68.0%	32.0%

NOTE: Percent totals may not equal due to rounding. The general jurisdiction court(s) of the following states are included in the yearly data: Alaska, California, District of Columbia, Florida, Indiana, Kansas, New Jersey, North Carolina, Ohio, Puerto Rico, South Dakota, Texas, and Vermont.

*B. The Number of ADR Proceedings*

One of the most prominent explanations of the decline of trials is the migration of cases to other forums. Thomas Stipanowich has pulled together the elusive data about the prevalence and growth of ADR, including both court-annexed programs and free-standing forums (e.g., the American Arbitration Association, Center for Public Resources, JAMS).<sup>92</sup> To these we might add forums within organizations—so-called internal dispute resolution (IDR)—a category that overlaps the “free-standing” one to the extent that organizations retain these providers to administer or staff their programs.<sup>93</sup>

How much does ADR/IDR affect the trial dockets of the courts? Once cases are filed in court, they may be deflected into mediation or arbitration with the encouragement of the court. Much of the most visible ADR occurs not as an alternative to filing, but after a case is filed in court. Stipanowich reports that in 2001, some 24,000 cases were referred to some form of ADR in the federal courts. That would be about one-seventh of the number of dispositions that year.<sup>94</sup> How this affected the number or rate of trials remains to be learned. In 1992, arbitration accounted for only 1.7 percent of contract dispositions and 3.5 percent of tort dispositions in the state courts in the nation’s 75 largest counties.<sup>95</sup>

Alternatively, claimants may pursue matters in noncourt forums without filing a case in court. They may do this either on their own volition or under the constraint of a mandatory arbitration clause. We know that a significant number of claims are kept out of the courts by such clauses, but we do not know how many. Data on the caseload of these free-standing forums is elusive. One of the oldest and best estab-

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<sup>92</sup>Thomas J. Stipanowich, ADR and the “Vanishing Trial”: The Growth and Impact of “Alternative Dispute Resolution,” 1 *J. Empirical Legal Stud.* 843 (2004).

<sup>93</sup>Lauren Edelman & Mark Suchman, When the “Haves” Hold Court: Speculations on the Organizational Internalization of Law, 33 *Law & Soc’y Rev.* 941 (1999); Lauren B. Edelman, Howard S. Erlanger & John Lande, Internal Dispute Resolution: The Transformation of Civil Rights in the Workplace, 27 *Law & Soc’y Rev.* 497 (1993).

<sup>94</sup>In 1989, the federal courts began the court-annexed arbitration program in selected districts. In the 10 selected districts, any civil case can be referred to arbitration if both parties consent or by court mandate in cases where the damages sought are less than \$100,000. The arbitrator’s decision is not binding; either party can file for trial within 30 days after the ruling. In 2002, the program attracted 3,965 cases, 7.8 percent of the civil filings in these districts. See Annual Report of the Administrative Office of the U.S. Courts 63 Table 5-12 (2002).

The Administrative Office does not publish figures on how many of these arbitrations are ultimately tried. In 1992, there were more than 7,000 cases referred to arbitration in this manner (17 percent of these districts’ civil filings). See Annual Report of the Administrative Office of the U.S. Courts 64 (1992). The subsequent decline is attributed to the implementation of the Civil Justice Reform Act, which authorizes the use of other ADR techniques, primarily mediation. See Annual Report of the Administrative Office of the U.S. Courts 8 (1994).

<sup>95</sup>See Carol J. DeFrances & Steven K. Smith, U.S. Dep’t of Justice, Bureau of Justice Statistics Special Report, Civil Justice Survey of State Courts 1992, Contract Cases in Large Counties 8.



lished of these is the American Arbitration Association (AAA). During the period that contract filings in federal court grew spectacularly, the AAA's Commercial Arbitration Docket underwent a corresponding growth from less than 1,000 cases in 1960 to 11,000 in 1988. In the 1990s, when contracts filings tumbled in both federal and state courts, the AAA docket remained steady and even began to increase late in the decade; by 2002 there were something over 17,000 of them.<sup>96</sup>

Overall, the caseload of ADR institutions remains small in comparison to that of the courts. A RAND Institute of Civil Justice study of Los Angeles estimated that the entire "private" caseload in 1993 was about one-twentieth of the caseload of the public courts (including small claims).<sup>97</sup> But recourse to ADR forums was growing rapidly while court caseloads were stable. Privately handled cases were larger: some 60 percent involved claims of \$25,000 or more, while only 14 percent of public claims were that large. This implies that private dockets contained almost one-fifth of the large cases. Not all of these would necessarily have gone to court earlier, but we see here diversion of cases away from the courts that is of a magnitude that might contribute significantly to the decline of trials in public courts. Los Angeles boasted an atypically rich variety of private dispute handlers, so these findings are provocative rather than representative. They also alert us to refine our formulation of the vanishing trial phenomenon. As Stipanowich observes, several prominent sectors of arbitration have increasingly acquired features associated with public litigation—for example, securities arbitration has acquired an organized specialist bar, discovery, published decisions, and punitive damages.<sup>98</sup> In such instances, perhaps we should think of the relocation of trials outside public courts rather than the disappearance of trials.

## IX. CAUSES AND CONSEQUENCES

### *A. Causes of the Trial Implosion*

For a long time, the great majority of cases of almost every kind in both federal and state courts have terminated by settlement.<sup>99</sup> This reflects the exigencies of litigation, which lead parties to trade off the possibility of preferred outcomes for avoidance of

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<sup>96</sup>The data on caseloads is elusive, but there is reason to think the AAA represents a significant portion of all commercial arbitrations. Drahozal examined the franchise agreements of 75 of the largest franchisers and found that 34 (45 percent) had predispute arbitration clauses. See Christopher R. Drahozal, "Unfair" Arbitration Clauses, 2001 U. Ill. L. Rev. 695, 726–27 (2001). Of these, 33 (97 percent) specified the AAA to administer the arbitration.

<sup>97</sup>Elizabeth S. Rolph, Erik Moller & Laura Petersen, *Escaping the Courthouse: Private ADR in Los Angeles* 17–18 (1994).

<sup>98</sup>Stipanowich, *supra* note 92, at 907.

<sup>99</sup>Marc Galanter & Mia Cahill, *Most Cases Settle: Judicial Promotion and Regulation of Settlements*, 46 Stan. L. Rev. 1301 (1994).

the costs and risks of proceeding through trial. It also reflects the architecture of the system, which has capacity to give full treatment to only a minority of the matters entitled to invoke it. Instead, it relies on a combination of cost barriers (not only out-of-pocket expenditures, but queues and risk) to induce parties to abandon claims or negotiate a settlement on the basis of the signals and markers that it generates. We would expect that as the population of claims increases more rapidly than the capacity of the system to provide full treatment, the portion receiving that treatment would decrease. What we are seeing since the late 1980s is not only a continuation in the shrinkage of *percentage* of cases that go to trial, but a shrinkage of the *absolute number* of cases that go to trial. The diminishment of the trial element in the work of the courts reflects and is entwined with many other changes. At the risk of underestimating the complexity of this process, let me attempt a rough foray into causes of the decline on the one hand and consequences of that decline on the other.

The first cluster of explanations are what might be called diminished-supply arguments, that is, that cases did not eventuate in trials because they did not get to court in the first place or, having come to court, they have departed for another forum. Not getting to court may be part of the explanation. Filings have been going down, especially in the state courts. This may reflect fewer unresolved grievances, or a change in estimations of cost and likely success by claimants or by lawyers who might have represented them.<sup>100</sup> But the declines in filings are more modest than the declines in trials. For example, in the 10 states in Table 5, the total number of cases (tort, contract, and real property) disposed of in 2002 (a rough indicator of the number of filings a year or two earlier) was down 21 percent from 1992, presumably leaving more resources for conducting trials in the remaining cases, but the number of trials in these states fell by 27 percent.

In any event, the diminished-supply explanation appears quite inapplicable to the federal courts. Filings dropped from their record high of 273,056 in 1985 (also the record year for trials) to a recent low of 207,094 in 1991 and since then have fluctuated mostly in the upper part of that range—approximately five times as great as filings in 1962. In comparison with the state data discussed above, federal filings rose by 19 percent from 1992 to a new record high in 2002 (Figure 17). During that decade, civil trials declined by 43 percent. Some observers have proposed that the drop in trials in federal courts is attributable to a shift of filings away from types of cases with high trial rates.<sup>101</sup> But civil rights and torts, the two most trial-prone categories, together comprised 39 percent of all filings in 1962 and 37 percent of a much larger total in 2002.

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<sup>100</sup>Steven Daniels & Joanne Martin, *It Was the Best of Times, it Was the Worst of Times: The Precarious Nature of Plaintiffs' Practice in Texas*, 80 Tex. L. Rev. 1781 (2002).

<sup>101</sup>Wayne D. Brazil, *Court ADR 25 Years After Pound: Have We Found a Better Way?* Ohio St. J. on Disp. Resol. 93, 126 (2002).

A more persuasive line of argument is the diversion argument—that the claims and contests are there but they are in different forums. In the discussion of ADR above, we saw that there seems to be some substance to this, but it should be kept in mind that the decline in trials is very general, across the board, and is not confined to sectors or localities where ADR has flourished.

A third explanation might be called the economic argument, that is, that going to trial has become more costly as litigation has become more technical, complex, and expensive.<sup>102</sup> Rising costs of increasingly specialized lawyers, the need to deploy expensive experts,<sup>103</sup> jury consultants, and all the associated expenses have priced some parties out of the market. For those who can afford to play, the increased transaction costs enlarge the overlap in settlement ranges. More and more of the players in the legal arena are corporate actors who view participation in the legal arena in terms of long-term strategy. Increasingly, they regard much legal involvement as just another business input, one that must be subjected to cost controls. One part of such control is alternative sourcing—diverting what might have been in the courts into alternative forums.

Litigant strategizing about trials is affected by perceptions of their costs and outcomes and, in particular, by the perception that awards (and therefore risks) are increasing in size. As we noted earlier, the evidence about award size is mixed. As trial becomes more rare and more expensive, it makes sense that smaller cases would leave the field and awards in the fewer claims that go to trial and prevail would be higher.<sup>104</sup> The departure of smaller cases is compatible with the increasing length of trials, the increasing frequency of appeals, the relatively greater decline of bench trials, and with reports from Jury Verdict Research of constantly rising awards, reports whose representativeness is suspect on other grounds. Yet the 75 county studies provide substantial contrary evidence that awards may be falling rather than rising.

However, litigants respond not to what is happening in the courts but to what they *believe* is happening. The perception of higher awards complements the widespread view in defense circles that trials are not only expensive, but are risky because

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<sup>102</sup>On the increased costs of trial and the distributive consequences of those costs, see Gillian K. Hadfield, *The Price of Law: How the Market for Lawyers Distorts the Justice System*, 98 Mich. L. Rev. 953 (2000).

<sup>103</sup>Unfortunately, there is little longitudinal data on these features of litigation. A useful benchmark is provided by Sam Gross's report that in civil cases tried by juries in the California Superior Court in 1985 and 1986, experts testified in 86 percent of cases. Overall, the number of experts was 3.3 per case (3.8 in the cases in which experts appeared). Most experts, Gross found, were disputed by similar experts for the opposing side. Samuel R. Gross, *Expert Evidence*, 1991 Wis. L. Rev. 1113, 1119–20.

<sup>104</sup>Are they tried because they are big or big because they are tried? "Bigger" cases does not mean just the monetary stakes in the case at hand but cases in which more resources—more lawyer time, more discovery, more experts—are invested, usually, but not invariably, a function of the monetary stakes. Willingness to invest may reflect anticipated precedential effects, both doctrinal and projecting readiness to fight, as well as commitment to principles.

juries are arbitrary, sentimental, and “out of control,” and reinforces strategies of settlement to avoid trial.<sup>105</sup> We know from several studies that the media are far more likely to report verdicts for plaintiffs and large awards than defendant verdicts, small awards, or the reduction or reversal of awards.<sup>106</sup> Notwithstanding occasional efforts to debunk some of the “litigation explosion” legends, the regular consumer of media reports would be badly misinformed about the number of product liability and medical malpractice cases, the size of jury awards, the incidence of punitive damages, and the regularity with which corporate defendants succeed in defeating individual claimants. Whatever the source of the skewed coverage, the audience receives the reassuring message that David generally manages to best Goliath, as well as the disturbing corollary that undeserving or spurious Davids are thick on the ground.<sup>107</sup> This pattern of media bias also suggests that the public greatly overestimates the number of trials and does not perceive the recent and drastic decline. This may well hold true for a very large section of legal professionals, as well.<sup>108</sup>

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<sup>105</sup>On the prevalence of such views, see John Lande, *Failing Faith in Litigation? A Survey of Business Lawyers' and Executive Opinions*, 3 Harv. Negot. L. Rev. 1 (1998).

<sup>106</sup>Steven Garber studied newspaper coverage of verdicts in product liability cases against automobile manufacturers decided from 1985 to 1996. Steven Garber, *Product Liability, Punitive Damages, Business Decisions and Economic Outcomes*, 1998 Wis. L. Rev. 237 (1998). He found that almost three-quarters of those verdicts were in favor of the defendant. However, newspapers reported just 3 percent of the defense verdicts, but 41 percent of verdicts for plaintiffs. *Id.* at 277. In other words, a verdict for the plaintiff is 12 times more likely to be reported than is a defense verdict. Consequently, in the reports that a conscientious and omnivorous newspaper reader would encounter, some four-fifths would have been verdicts for the plaintiff—roughly the opposite of the true percentage. Other studies have shown that the amounts won by plaintiffs and reported in newspapers and magazines are 10 to 20 times as large as the run of awards. Oscar Chase compared newspaper coverage of personal injury awards in New York with actual awards and discovered even larger discrepancies. Oscar Chase, *Helping Jurors Determine Pain and Suffering Awards*, 23 Hofstra L. Rev. 763 (1995). Another study found comparable discrepancies in the coverage of tort issues in five national magazines (*Time*, *Newsweek*, *Fortune*, *Forbes*, and *Business Week*) from 1980 to 1990. Donald S. Bailis & Robert J. MacCoun, *Estimating Liability Risks with the Media as Your Guide: A Content Analysis of Media Coverage of Tort Litigation*, 20 Law & Hum. Behav. 419, 436 (1996). Tort cases are not unique in provoking media distortion. A study comparing the outcomes of employment civil rights cases with coverage from 1990 through 2000 in six newspapers and four magazines found that plaintiffs won 85 percent of the time in media accounts but only 32 percent of the time in court, and that the average award presented in the media was “almost thirty times greater than what plaintiffs in federal district court were actually awarded.” Laura Beth Nielsen & Aaron Beim, *Media Misrepresentations: Title VII, Print Media and Public Perceptions of Discrimination Litigation*, 15 Stan. L. & Pol’y Rev. 237, 251, 253 (2004).

<sup>107</sup>See also Marc Galanter, *An Oil Strike in Hell: Contemporary Legends about the Civil Justice System*, 40 Ariz. L. Rev. 717 (1998).

<sup>108</sup>Lawyers may know what is happening in their own corner of the legal world, but there is some evidence that lawyers do not have a very good grasp of the quantitative parameters of the legal system. In a study comparing South Carolina lawyers', doctors', and legislators' assessments of tort litigation patterns, lawyers overestimated the portion of awards for plaintiffs and the size of awards and were only marginally more accurate than other respondents. After publication of accurate information about the level of litigation and size of awards, lawyers' responses (along with those of doctors and legislators) did not become appreciably more

The diminished supply, diversion, and cost arguments focus on the assessments, incentives, and strategies of the parties. Another set of explanations focuses on institutional factors, on the courts themselves.<sup>109</sup> One such explanation is the notion that courts lack the resources to hold more trials. The increase in expenditure and in nonjudicial personnel throws some doubt on this. And the history suggests that with fewer judges and personnel and far less money, the federal courts 20 years ago were conducting more than twice as many civil trials. Even given an increase in mandatory noncivil matters and postulating increased complexity of cases, it seems doubtful that lack of court resources is a major constraint on the number of trials.

Courts are not only worked on by external forces, but are the site and source of changing institutional practice and of ideology that inspires and justifies that practice. Modern procedure has conferred on trial court judges broader unreviewed (and perhaps unreviewable) discretion.<sup>110</sup> This discretion has been used to shape a new style of judging, frequently referred to as managerial judging. "[T]he discretion of trial judges has expanded partly because of increased complexity but even more so from the multiplication of discretionary procedural, evidentiary and management decisions."<sup>111</sup> The expansion of managerial judging enlarges the discretion of trial judges and diminishes the control of appellate judges:

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accurate. Donald R. Songer, Tort Reform in South Carolina: The Effect of Empirical Research on Elite Perceptions Concerning Jury Verdicts, 39 S.C. L. Rev. 585, 597, 600 (1988). See also Roselle L. Wissler, Allan J. Hart & Michael J. Saks, Decisionmaking about General Damages: A Comparison of Jurors, Judges, and Lawyers, 98 Mich. L. Rev. 751, 811 (1999) (judges and lawyers systematically overpredict level of juror awards).

<sup>109</sup>Perched between resource and ideology arguments is the question of whether the requirements for expert testimony established by *Daubert v. Merrill Dow*, 509 U.S. 579 (1993), have made trial a less accessible and more expensive option.

<sup>110</sup>Yeazell, *supra* note 7. The enlarged freedom of lower courts was summed up succinctly by a Colorado Supreme Court Justice who observed that "[w]hile an appellate court may have the opportunity to reverse any individual trial judge once every few years, I know that trial judges, in their numerous workday rulings, reverse appellate courts every day." Gregory Kellam Scott, Judge-Made Law: Constitutional Duties and Obligations Under the Separation of Powers Doctrine, 49 DePaul L. Rev. 511, 517 (1999). A century ago, a similar observation was attributed to "Fighting Bob" Bowling, a Kansas City justice of the peace, who

made a ruling in the trial of a case that was not acceptable to the attorney on one side, and he demurred to the decision of his Honor.

"Your Honor, you are overruling the Supreme Court," said the lawyer.

"I do that every day, my friend; sit down," replied the justice, and his decision was recorded.

Facetiae, 11 The Green Bag 599 (1899). Unlike Justice Scott's contemporary observation, the earlier one was labeled a joke, presumably because the justice of the peace's response was sufficiently surprising to serve as a punch line.

<sup>111</sup>Molot argues that "while judicial leeway in deciding legal questions may contribute to litigation uncertainty, this uncertainty pales in comparison to that generated by purely discretionary management decisions." Jonathan T. Molot, How Changes in the Legal Profession Reflect Changes in Civil Procedure, 84 Va. L. Rev. 955, 963 (1998).

Managerial decisions involve a different, and more expansive, sort of discretion than purely legal decisions. For one thing, a judge's managerial decisions typically are insulated from appellate review, because they are interlocutory in nature, often are made off the record, and, in any event, typically are subject to a lenient "abuse of discretion" standard of review. But the difference between legal decisions and managerial ones runs much deeper. When "judges make legal decisions, the parties have an opportunity to marshal arguments based on an established body of principles. . . ." [M]anagerial discretion is different in nature. Judges deciding how to manage cases on their dockets have a wide array of tactics available and, indeed, choose to exercise their supervisory discretion in widely disparate ways, even when handling the same exact case.<sup>112</sup>

These institutional changes flow from and reinforce changes in judicial ideology. Trial judges are equipped with enhanced discretionary power in order to resolve cases and clear dockets. In the 1970s, as institutional pressures focused measures of judges' performance on their control over caseload, influential judges and administrators of the federal courts embraced the notion that judges were problem solvers and case managers as well as adjudicators. Training programs emphasized the role of the judge as mediator, producing settlements by actively promoting them.<sup>113</sup> This turn to judges as promoters of settlement and case managers was endorsed by the amendment of Rule 16 of the Federal Rules of Civil Procedure in 1983<sup>114</sup> and by the enactment of the Civil Justice Reform Act in 1990.<sup>115</sup>

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<sup>112</sup>*Id.* at 1004. On activism among trial judges, see Marc Galanter, Frank S. Palen & John M. Thomas, *The Crusading Judge: Judicial Activism in Urban Trial Courts*, 52 Cal. L. Rev. 699 (1979).

<sup>113</sup>Marc Galanter, *A Settlement Judge, Not a Trial Judge: Judicial Mediation in the United States*, 12 J. L. & Soc'y 1 (1985); Marc Galanter, *The Emergence of the Judge as a Mediator in Civil Cases*, 69 *Judicature* 257 (1986) (displacement of earlier view that judges should welcome settlement as a byproduct of their efforts to move cases toward trial). The ascendancy of the "trial as failure" view is traced in Judith Resnik, *Trial as Error, Jurisdiction as Injury: Transforming the Meaning of Article III*, 113 *Harv. L. Rev.* 925 (2000).

<sup>114</sup>In 1983, Federal Rule of Civil Procedure 16 was amended in response to criticisms that the pretrial conference under the original Rule 16 had become inefficient and ineffective in modern litigation. Fed. R. Civ. P. 16 Advisory Committee's Note (1983). Accordingly, the rule was revised to promote more pretrial management by judges in recognition of the fact that "[i]ncreased judicial control during the pretrial process accelerates the processing and termination of cases." *Id.* The amendments explicitly suggested that pretrial conferences be used by judges to "facilitat[e] the settlement of the case" and that "settlement or the use of extrajudicial procedures to resolve the dispute" be considered by the participants at the conference. Fed. R. Civ. P. 16(a)(5), (c)(7) (1983). Some language of the rule was later changed by the 1993 amendments to more directly recognize alternative means of settling litigation, including mini-trials, summary jury trials, mediation, neutral evaluation, and nonbinding arbitration. Fed. R. Civ. P. 16 Advisory Committee's Note (1993).

<sup>115</sup>The Civil Justice Reform Act (CJRA) of 1990 (codified at 28 U.S.C. §§ 471–482) required each of the 94 district courts to adopt a civil expense and delay reduction plan in order to improve the litigation process in its own district. Among other factors, each district was required to consider early intervention by a judicial officer in the case and the use of case-management conferences to explore settlement possibilities, as well as the referral of appropriate cases to alternative dispute resolution, including mediation, mini-trial, and summary jury trial. 28 U.S.C. § 473(a). Unlike the near-contemporaneous amendments of the Federal Rules of Civil Procedure, which contemplated systemwide uniform modification of practice, the CJRA promoted variation at the local level.

### *B. Trial Lawyers and Judges*

As the number of judges and lawyers grows and the number of trials falls, the fund of trial experience of both judges and lawyers is diminished. The stock of judicial experience with trials is diminished. In 1962, there were 39 trials for each sitting federal district judge (18.2 criminal and 20.8 civil). Twenty-five years later in 1987, near the height of the boom in trials, there were 35.3 trials (13.0 criminal and 22.3 civil) for each sitting district judge. In 2002, there were just 13.2 trials (5.8 criminal and 7.4 civil) for each sitting district judge—roughly one-third as many as in 1962. It is not only district judges that are conducting fewer trials; Elizabeth Warren reports that trials per bankruptcy judge declined from about 37 per year in 1985 to 10 per year in 2002.<sup>116</sup>

These figures overstate the number of trials actually conducted by sitting district judges. We saw earlier that Table C-4 reported that in 2002 some 4,569 cases terminated “during and after trial.” Table M-5 told us that the magistrates conducted 959 trials in that year. If every magistrate trial event occurred in a separate case and that case did not also include a trial conducted by a district judge, the total number of trials held by district judges in 2002 would be something like 3,610. But since there were some cases in which both a magistrate and a district judge presided over trials, the number of such cases should be added to the 3,610 to determine the number of trials conducted by district judges. Not all of these judges were sitting judges. Some trials were conducted by senior judges, a category whose numbers have grown more rapidly than the roster of sitting judges. In 1973, there were 80 senior district judges, one for every 4.8 sitting district judges; in 2002, there were 285 senior judges, one for every 2.2 sitting judges (Figure 33, Appendix Table A-23).

It is harder to track the shrinkage of trial experience among lawyers. During the 1962–2002 period, the number of lawyers roughly tripled. The number of lawyers per 100,000 persons grew from 160.4 in 1970 to 366.0 in 2002.

It seems undeniable that the average lawyer has less trial experience. But within that larger lawyer population, the stock of experienced trial lawyers is diminished. The membership of the Association of Trial Lawyers of America, which includes a very substantial portion of lawyers who regularly represent individual plaintiffs at trial, is at roughly the same level as in the early 1980s.<sup>117</sup> The rise of programs for training trial lawyers through simulations (e.g., NITA) suggests a corresponding shrinkage of opportunities for “on-the-job” training.

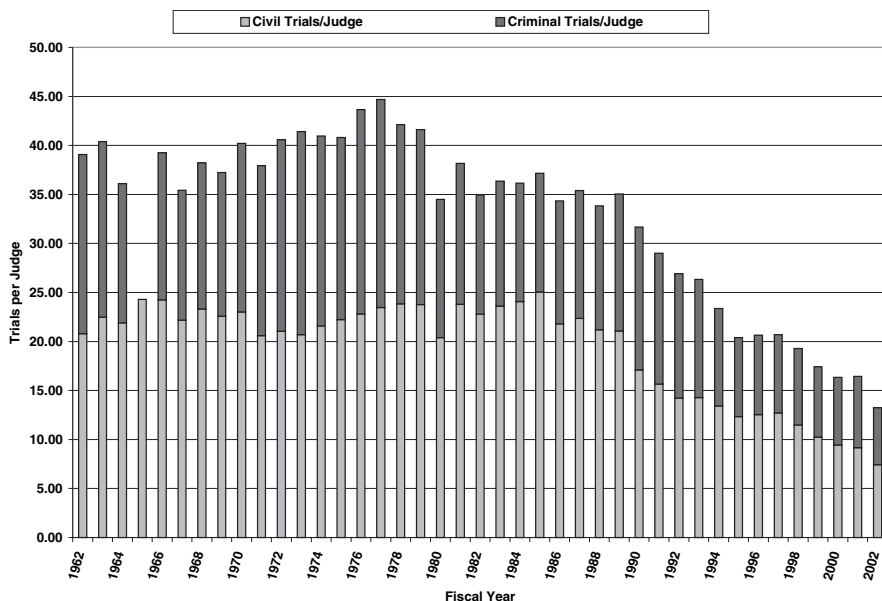
Kevin McMunigal argues that diminished trial experience results in an atrophy of advocacy skills that may both lessen future trials, as inexperienced lawyers are unwilling to undertake the risk of trial, and also distort settlements as lawyers without

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<sup>116</sup>Warren, *supra* note 78, at fig. 12.

<sup>117</sup>I base this observation on information supplied by Robert Peck.

Figure 33: Number of civil and criminal trials per sitting judge, U.S. district courts, 1962–2002.



SOURCES: Administrative Office of the U.S. Courts, Annual Report of the Director, Tables C-4 and D-4 (1962–2002); Administrative Office of the U.S. Courts, Annual Report of the Director, Article III Judgeship Tables (1962–2002).

trial experience are less able to evaluate cases accurately.<sup>118</sup> The decline in the centrality of trial advocacy to lawyers' work (and its replacement by pretrial maneuver) is registered in the language used by practitioners: by the 1970s, lawyers described themselves as "litigators" in contradistinction to "trial lawyers."<sup>119</sup>

### C. Consequences of the Trial Implosion

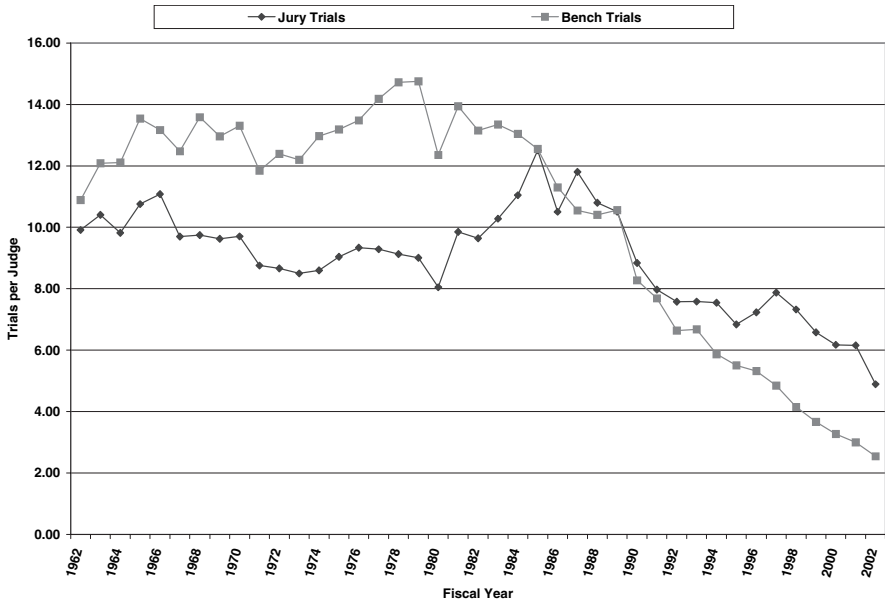
Every other part of the legal world grows: there are more statutes, more regulations, more case law, more scholarship, more lawyers, more expenditure, more presence in public consciousness. In all these respects the growth of the legal world outstrips that of the society or the economy. But trials are shrinking, not only in relation to

<sup>118</sup>Kevin C. McMunigal, *The Costs of Settlement: The Impact of Scarcity of Adjudication on Litigating Lawyers*, 37 UCLA L. Rev. 833, 856–61 (1990).

<sup>119</sup>John H. Grady, *Trial Lawyers, Litigators and Clients' Costs*, 4 Litig. 5, 6 (1978).



Figure 34: Bench and jury civil trials per sitting judge, U.S. district courts, 1962–2002.



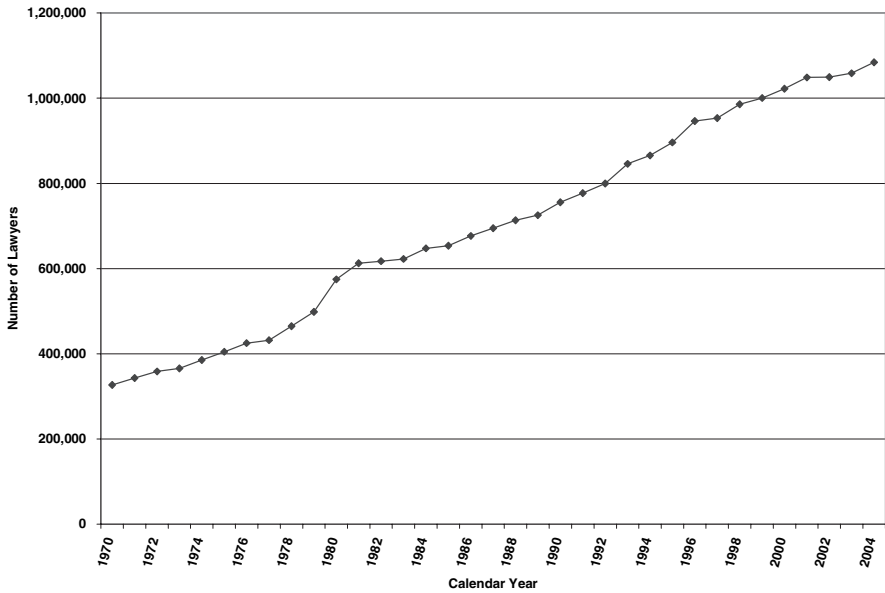
SOURCES: Administrative Office of the U.S. Courts, Annual Report of the Director, Table C-4 (1962–2002); Administrative Office of the U.S. Courts, Annual Report of the Director, Article III Judgeship Tables (1962–2002).

the rest of the legal world, but relative to the society and the economy. Figures 37 and 38 display the decrease in trials per capita in federal and state courts. From 1962 to 2002, federal trials per million persons fell by 49 percent; from 1976 to 2002, trials in 22 state courts of general jurisdiction fell by 33 percent.

Since the economy was growing more rapidly than the population, the number of trials per billion dollars of gross domestic product (GDP) has fallen more steadily and precipitously. By 2002 federal civil trials per billion of GDP were less than one-quarter as many as in 1962, even though spending on law as a portion of GDP had increased during that period.

What difference does it make? Aren't we just as well off with fewer trials?

Do fewer trials mean less law or worse law? Trials are not exactly an endangered species—at least for now. But their presence has diminished. In 2002, there were 20 percent fewer federal civil trials than in 1962 and about 30 percent fewer criminal trials. Trials as a portion of federal dispositions are a fraction of their earlier levels—roughly one-third for criminal cases and one-eighth for civil cases. Trends in

*Figure 35:* Approximate number of lawyers in the United States, 1970–2002.

SOURCE: American Bar Association, Market Research Department.

the state courts over the past quarter-century point to a comparable decline of trials there.

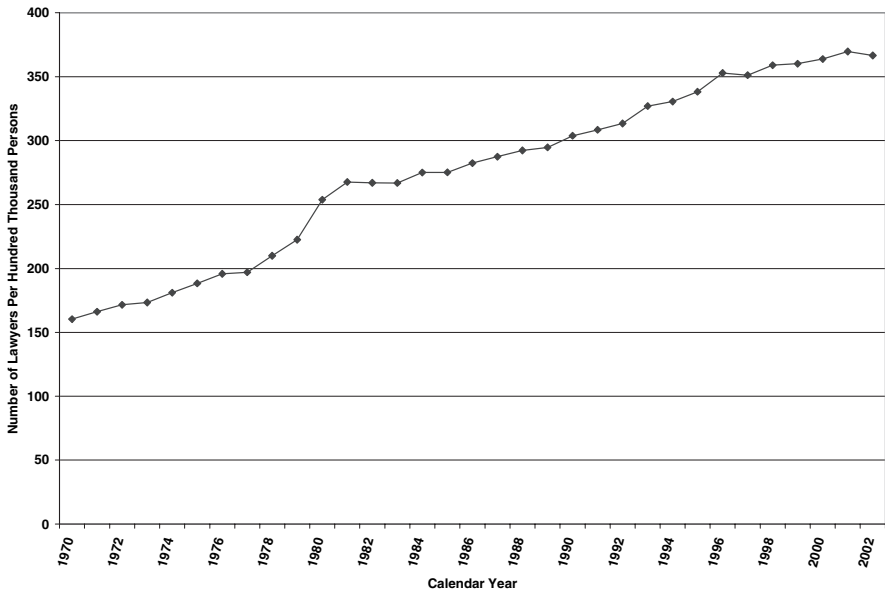
As trials shrink as a presence within the legal world, they are displaced from the central role assigned them in the common law. Although, as Lawrence Friedman observes, there was never a time when trial was the modal way of resolving civil cases,<sup>120</sup> common law procedure has been defined by the presence of this discreet plenary event, to which all else was prelude or epilog. But now we see a great elaboration of pretrial adjudication, of alternatives to trial, and of posttrial procedures. The number of disputes increases and the amount of legal doctrine proliferates, but they are connected by means other than trial.

The decline in trials may have some direct distributive effects. Eisenberg and Farber computed the win rates at trial and overall for various pairings of parties in nonpersonal injury diversity cases from 1986 to 1994.<sup>121</sup> They found that corporate

<sup>120</sup>Friedman, *supra* note 30.

<sup>121</sup>Theodore Eisenberg & Henry S. Farber, *The Litigious Plaintiff Hypothesis: Case Selection and Resolution*, 28 *Rand J. Econ.* 92 (1997).

Figure 36: Lawyers per capita in the United States, 1970–2002.

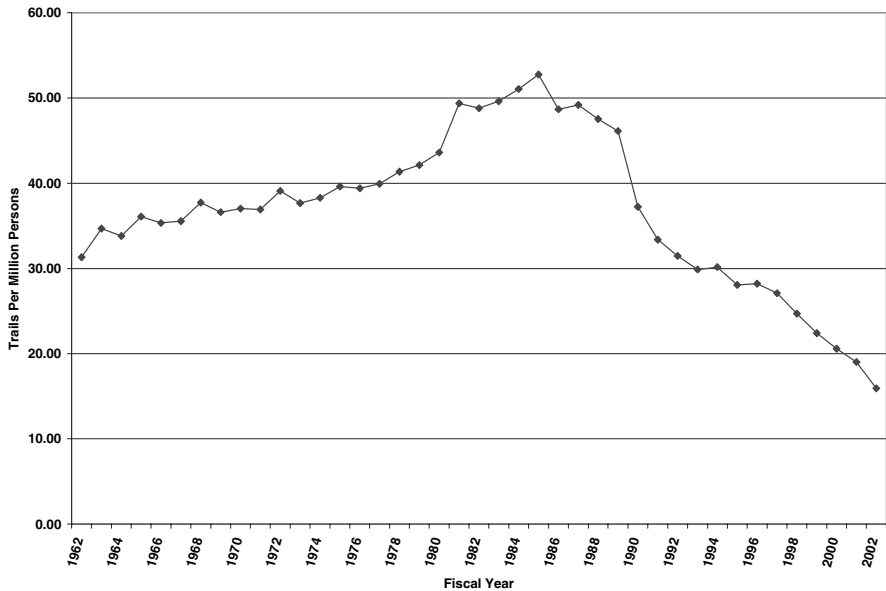


SOURCES: American Bar Association Marketing Department; Federal Reserve Bank of St. Louis <<http://research.stlouisfed.org/fred2/data/POP.txt>>.

parties were far more successful both as plaintiffs and defendants than were individual parties. Generally, in each pairing of party types, plaintiffs prevailed in settlement more frequently than they did at trial—with a single exception. That exception was when an individual plaintiff faced a corporate defendant; in that pairing, which went to trial at the highest rate, plaintiffs did better at trial. We do not know how much of this advantage remains after 10 more years of declining trials.

More generally, how is the character of the law changed by the absence of trials? Legal contests become more like those in the civil law, not a single plenary event, but a series of encounters with more judicial control, more documentary submissions, and less direct oral confrontation. Settlements entail “bargaining in the shadow of the law,”<sup>122</sup> so the influence of legal doctrine is present, but is thoroughly mixed with considerations of expense, delay, publicity and confidentiality, the state of the evidence, the availability and attractiveness of witnesses, and a host of other

<sup>122</sup>Robert H. Mnookin & Lewis Kornhauser, *Bargaining in the Shadow of the Law: The Case of Divorce*, 88 Yale L.J. 950 (1979); Marc Galanter, *Justice in Many Rooms: Courts, Private Ordering and Indigenous Law*, 19 J. Legal Pluralism 1 (1981).

*Figure 37: Per capita civil trials in U.S. district courts, 1962–2002.*

SOURCES: Administrative Office of the U.S. Courts, Annual Report, Table C-4 (1962–2002); Federal Reserve Bank of St. Louis <<http://research.stlouisfed.org/fred2/data/POP.txt>>.

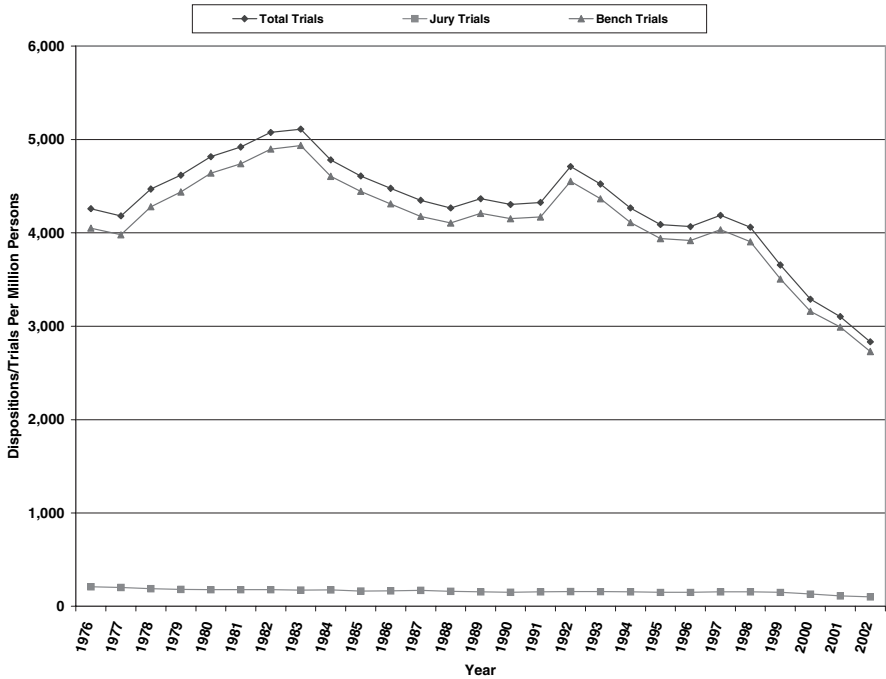
contingencies that lie beyond the substantive rules of law. It is “the law” in its broad sense of process that casts the shadow, not merely its doctrinal core.

The signals and markers that provide guidance for settlements derive increasingly from pronouncements that are not connected with an authoritative determination of facts. What does this do to the clarity of signals? Are clear signals better than fuzzy ones?

Several studies suggest that in the absence of trials, the decision-making process of adjudication may get swallowed up by the surrounding bargaining process. This dissolution of legal standards is evident in Janet Cooper Alexander’s description of securities class-action litigation as “a world where all cases settle.” In such a world, “it may not even be possible to base settlement on the merits because lawyers may not be able to make reliable estimates of expected trial outcomes. . . . There is nothing to cast a shadow in which the parties can bargain.”<sup>123</sup> Judges preside over routine settlements that reflect not legal standards but the strategic position of the repeat players.

<sup>123</sup>See Alexander, *supra* note 54.

Figure 38: Per capita trials in courts of general jurisdiction in 22 states, 1976–2002.



SOURCE: Ostrom et. al.

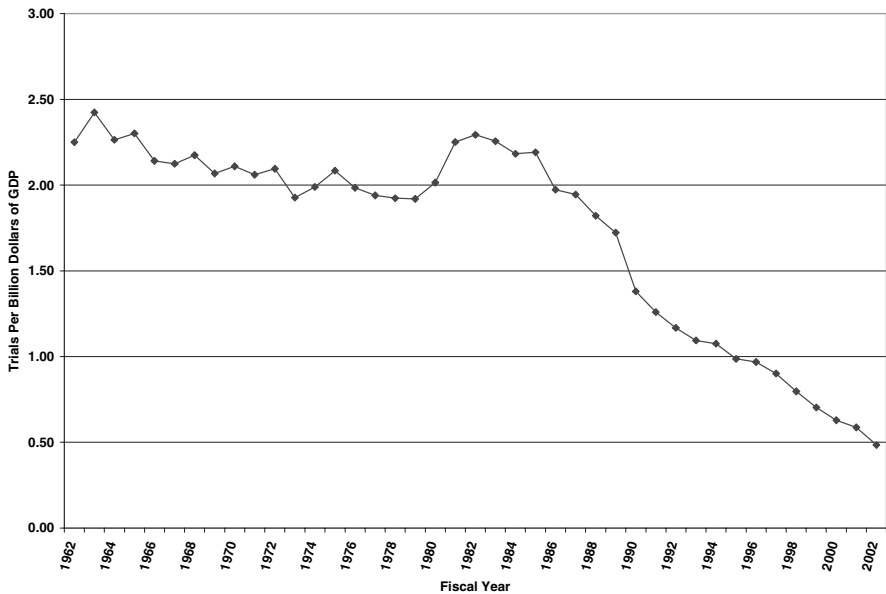
[B]ecause securities class actions rarely if ever go to trial, settlement judges, like lawyers, have little relevant experience to draw on other than their knowledge of settlements in similar cases . . . their role becomes not to increase the accuracy of settlements, but to provide an impetus to reach *some* settlement. In the absence of information about how similar cases fared at trial, settlement judges could be an important force in maintaining a “going rate” approach to settlements.<sup>124</sup>

Marygold Melli, Howard Erlanger, and Elizabeth Chambliss observed that in the child support arena they explored, there was a

question of who is in fact casting the shadow of the law. The expectation of what a particular judge would set for child support had to be determined from the cases in his or her court—most of which involved settlement. The shadow of the law, therefore, was cast by the agreements of the parties. It seems that, rather than a system of bargaining

<sup>124</sup>Id. at 566.

Figure 39: Civil trials per billion dollars of gross domestic product, U.S. district courts, 1962–2002.



SOURCES: Administrative Office of the U.S. Courts, Annual Report, Table C-4 (1962–2002); 2003 Economic Report of the President, Table B-2.

in the shadow of the law, divorce may well be one of adjudication in the shadow of bargaining.<sup>125</sup>

Judith Resnik found in the prevalence of consent decrees—in which judges (in effect) delegate official power to the negotiators before the bench—another example of the supposedly central and independent formal process of adjudication becoming subordinated to the supposedly penumbral process of bargaining that surrounds it.<sup>126</sup> In all these instances the absence of an authoritative determination of facts transforms adjudication into a spiral of attribution in which supposedly autonomous decisionmakers take cues from other actors who purport to be mirroring the decisions of the former.

<sup>125</sup>Marigold S. Melli, Howard S. Erlanger & Elizabeth Chambliss, *The Process of Negotiation: An Exploratory Investigation in the Context of No-Fault Divorce*, 40 Rutgers L. Rev. 1133, 1147 (1998).

<sup>126</sup>Judith Resnik, *Judging Consent*, 1987 U. Chi. Legal F. 43 (1987).

Indeed, the portion of the shadow cast by formal adjudication may be shrinking. Although the number of appeals has increased, the number subject to intensive full-dress review has declined. More appeals are decided on the basis of briefs alone, without oral argument.<sup>127</sup> Appellate courts decide many more of their cases without published opinions or without any opinion at all.<sup>128</sup> And increasingly they ratify what the courts below have done.

The decline of trials is occurring in a setting in which the amount of law is increasing rapidly. There are more federal regulatory statutes, more agencies, more staff, more enforcement expenditures, and more rules. A rough measure of the sheer quantity of rules may be derived from the number of pages added to the *Federal Register* each year: in 1960 there were 14,477 pages added; in 2002, 80,322 pages.<sup>129</sup> There were comparable increases in the amount of regulation by state and local government.

The corpus of authoritative legal material has grown immensely over our period. The amount of published commentary that glosses this authoritative material has grown apace. The number of law reviews has multiplied and the average output of each has grown.<sup>130</sup> The number of entries in the *Index to Legal Periodicals and Books* grew from 22,031 in 1982 to 382,428 in 2002.<sup>131</sup> Parallel to the growth of these scholarly sources was a proliferation of less formal channels of legal information.<sup>132</sup> The profusion of legal materials has outrun these printed sources.

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<sup>127</sup>In 2002, some two-thirds of appeals to U.S. circuit courts of appeal were decided without oral argument. Nancy Winkelman, *Just a Brief Writer*, 29(4) *Litig.* 50, 51 (2003).

<sup>128</sup>Lauren K. Robel, *Caseload and Judging: Judicial Adaptations to Caseload*, 1990 B.Y.U. L. Rev. 3 (1990); William M. Richman & William L. Reynolds, *Elitism, Expediency, and the New Certiorari: Requiem for the Learned Hand Tradition*, 81 *Cornell L. Rev.* 273 (1996); Mitu Gulati & C.M.A. McCauliff, *On Not Making Law*, 61 *L. & Contemp. Probs.* 157 (1998).

<sup>129</sup>This figure represents the gross addition for one year; some of it supplants or repeals earlier regulation and some is ephemeral. But making appropriate discounts for depreciation, it is clear that there has been a great increase in the "capital stock" of regulation. From 1961 to 1977, the number of pages in the *Federal Register* devoted to regulations increased from 14,000 to 66,000, with more than two-thirds of that growth occurring during the 1970s. Buhler, *Calculating the Full Costs of Governmental Regulation* (Office of the Librarian, *Federal Register*, 1978); Marc Galanter & Joel Rogers, *Institute for Legal Studies, A Transformation of American Business Disputing? Some Preliminary Observations*, Working Paper DPRP 10-3, *Disputes Processing Research Program* 55 (1991).

<sup>130</sup>Michael Saks found that between 1960 and 1985, the number of general law reviews in the United States increased from 65 to 186, while specialized reviews multiplied from 6 to 140. Michael J. Saks et al., *Is There a Growing Gap Among Law, Law Practice, and Legal Scholarship?: A Systematic Comparison of Law Review Articles One Generation Apart*, 28 *Suffolk U. L. Rev.* 1163 (1994).

<sup>131</sup>These figures were obtained from the H.W. Wilson electronic version of the *Index to Legal Periodicals and Books*.

<sup>132</sup>In 1989, there were nearly 1,000 newsletters published in Washington (in addition to those published by the 3,200 Washington-based associations that mailed newsletters to their members). Weiss, *If There's a Law, There's a Newsletter*, N.Y. Times 10 (June 2, 1989).

Since their inception in 1973, online databases have multiplied access to legal materials.

What is the relation between this profusion of legal information and the shrinking number of trials? Apparently, of the increasingly more numerous reported cases, a smaller portion reflect adjudication in which there was a trial.<sup>133</sup> And the secondary literature, which in almost every subject continues to grow at an even faster rate than the number of reported cases,<sup>134</sup> presumably analyzes materials that are generated in nontrial formats. So we have a growth in the amount of legal doctrine that is increasingly independent of trials.

In a realm of ever-proliferating legal doctrine, the opportunities for arguments and decisions about the law are multiplied, while arguments and decisions become more detached from the texture of facts—at least from facts that have weathered the testing of trial.<sup>135</sup> The general effects of judicial activity are derived less from a fabric of examples of contested facts and more from an admixture of doctrinal exegesis, discretionary rulings of trial judges, and the strategic calculations of the parties.<sup>136</sup> Contests of interpretation replace contests of proof. Paradoxically, as legal doctrine becomes more voluminous and more elaborate, it becomes less determinative of the outcomes produced by legal institutions.

Again, it is necessary to emphasize that the vanishing trial phenomenon includes not only a decline in trials within the core legal institutions but also a diffusion and displacement of trial-like things into other settings—administrative boards, tribunals, ADR forums, and so forth. Although trials in court become less attractive and/or available to litigants, legal counters are invoked in more settings. In these other forums, public law is both extended and blurred; there is more legal flesh and less bones to give it shape. At the same time that courts are a declining site

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<sup>133</sup>Catherine Albiston, *The Rule of Law and the Litigation Process: The Paradox of Losing by Winning*, 33 *Law & Soc'y Rev.* 869 (1999).

<sup>134</sup>Galanter, *supra* note 12, at tbl. 12.

<sup>135</sup>On the other hand, in appellate proceedings courts are bombarded by factual arguments that are not contained in the trial record. For example, in *State Farm Mutual Automobile Insurance Co. v. Campbell*, an amicus brief submitted by 16 large corporations relied on research commissioned and funded by one of their number, the Exxon Corporation, in the wake of a very large punitive award arising from the *Exxon Valdez* oil spill. Brief of Certain Leading Business Corporations as Amici Curiae in Support of Petitioner, 123 S. Ct. 1513, 155 L. Ed. 2d 585 (2003). A shift in sources is also reflected in judicial opinions. A study of the citations in published opinions found that the number of nonlegal sources (e.g., newspapers, general books) cited increased sharply after 1990, while citations of traditional legal secondary sources (e.g., law reviews, treatises) declined. Frederick Schauer & Virginia J. Wise, *Nonlegal Information and the Delegalization of Law*, 29 *J. Legal Stud.* 495 (2000).

<sup>136</sup>By “general effects” I refer to those effects of a legal decision beyond those in the case at hand. See Galanter, “The Radiating Effects of Courts” in *Empirical Theories about Courts* 117–42 (K. Boyum & L. Mather eds., 1983).



of trials, they are, at least potentially, an increasing site of supervisory oversight of the trial process elsewhere. As adjudication is diffused and privatized, what courts do is changing as they become the site of a great deal of administrative processing of cases, along with the residue of trials in high-stakes and intractable cases.

The consequences of these developments and the shape of the legal system to which they are leading remain hidden from us. If the continuation of the program of research begun in this collection were to bring these matters into clear view, we would be prepared to address the question raised by the following story.

Sherlock Holmes and Dr. Watson go camping. After pitching their tent, they make a fire and enjoy a pleasant dinner and turn in for a good sleep before the next day's exertions. In the middle of the night, Holmes shakes Watson awake and says: "Watson, look up and tell me what you deduce!"

Shaking himself awake, Watson says, "I see God's handiwork! The moon, millions of stars. If only a tiny fraction of them have planets like Earth, surely there must be life out there. What do you think it all means, Holmes?"

"Watson, you fool! It means someone has stolen our tent!"

## APPENDIX\*

Table A-1: Civil Trials in U.S. District Courts, by Bench or Jury, 1962–2002 (Data Underlying Figure 1)

<i>Fiscal Year</i>	<i>Bench Trials</i>	<i>Jury Trials</i>	<i>U.S. Jurisdiction</i>		<i>Federal Question</i>		<i>Diversity</i>	
			<i>Bench Trials</i>	<i>Jury Trials</i>	<i>Bench Trials</i>	<i>Jury Trials</i>	<i>Bench Trials</i>	<i>Jury Trials</i>
1962	3,037	2,765	1,161	143	978	473	898	2,149
1963	3,505	3,017	1,321	181	1,112	447	1,072	2,389
1964	3,559	2,886	1,298	147	1,247	409	1,014	2,330
1965	3,885	3,087	1,318	122	1,541	485	1,026	2,480
1966	3,752	3,158	1,231	149	1,544	448	977	2,561
1967	3,955	3,074	1,245	142	1,619	428	1,091	2,504
1968	4,388	3,148	1,385	169	1,773	520	1,230	2,459
1969	4,238	3,147	1,373	123	1,754	523	1,111	2,501
1970	4,364	3,183	1,301	153	1,964	619	1,099	2,411
1971	4,381	3,240	1,205	137	2,077	608	1,099	2,495
1972	4,807	3,361	1,183	120	2,319	724	1,305	2,517
1973	4,684	3,264	1,110	110	2,363	739	1,211	2,415
1974	4,903	3,250	1,221	114	2,562	815	1,120	2,321
1975	5,051	3,462	1,108	121	2,675	966	1,268	2,375
1976	5,055	3,501	1,200	191	2,514	1,007	1,341	2,303
1977	5,290	3,462	1,209	119	2,790	1,066	1,291	2,277
1978	5,653	3,505	1,305	150	2,974	1,080	1,374	2,275
1979	5,857	3,576	1,427	133	3,109	1,265	1,321	2,178
1980	5,980	3,894	1,349	123	3,233	1,432	1,398	2,339
1981	6,623	4,679	1,548	166	3,461	1,688	1,614	2,825
1982	6,509	4,771	1,545	140	3,382	1,801	1,582	2,830
1983	6,540	5,036	1,466	146	3,516	1,914	1,558	2,976
1984	6,508	5,510	1,361	157	3,528	2,209	1,619	3,144
1985	6,276	6,253	1,396	141	3,254	2,581	1,626	3,531
1986	6,045	5,621	1,281	164	3,138	2,377	1,626	3,080
1987	5,611	6,279	1,172	170	2,923	2,547	1,516	3,562
1988	5,691	5,907	1,139	172	3,044	2,684	1,508	3,051
1989	5,690	5,666	1,284	206	2,920	2,528	1,486	2,932
1990	4,476	4,781	878	165	2,436	2,067	1,162	2,549
1991	4,127	4,280	900	184	2,247	1,855	980	2,241
1992	3,750	4,279	771	162	2,127	1,983	852	2,134
1993	3,619	4,109	714	156	2,094	1,988	811	1,965
1994	3,456	4,444	653	146	2,099	2,388	704	1,910
1995	3,316	4,122	622	139	2,059	2,265	635	1,718
1996	3,206	4,359	562	154	1,999	2,553	645	1,652
1997	2,801	4,551	462	196	1,785	2,588	554	1,767
1998	2,452	4,330	437	161	1,488	2,607	527	1,562
1999	2,225	4,000	410	158	1,328	2,413	487	1,429
2000	2,001	3,778	330	165	1,192	2,327	479	1,286
2001	1,768	3,632	346	160	1,002	2,077	420	1,395
2002	1,563	3,006	300	125	910	1,865	353	1,016

\*Source information for data underlying figures in the text is given at the respective figures.

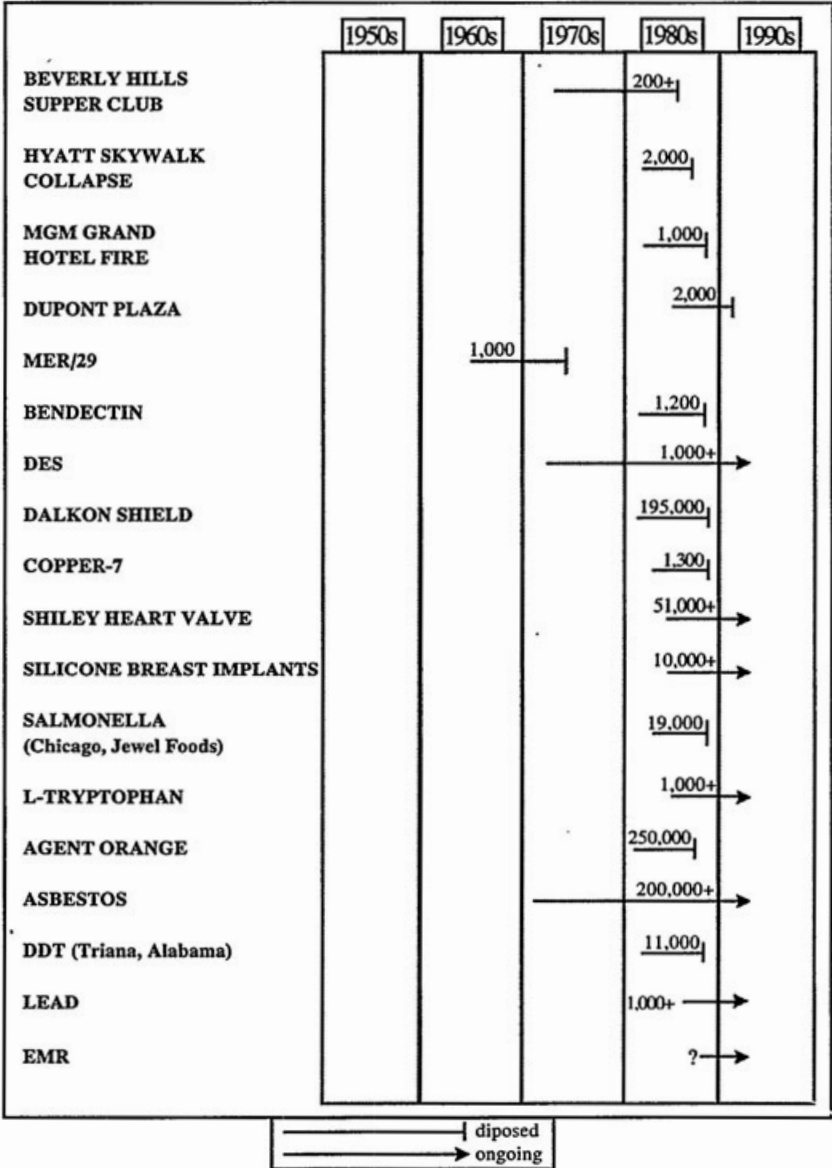
Table A-2: Percentage of Civil Terminations During/After Trial in U.S. District Courts, 1962–2002 (Data Underlying Figure 2)

Fiscal Year	Total Dispositions	No Court Action		Before Pretrial		During/After Pretrial		During/After Trial	
		Number of Dispositions	% of Total Dispositions	Number of Dispositions	% of Total Dispositions	Number of Dispositions	% of Total Dispositions	Number of Dispositions	% of Total Dispositions
1962	50,320	27,522	54.7%	9,502	18.9%	7,494	14.9%	5,802	11.5%
1963	54,513	29,181	53.5%	10,549	19.4%	8,261	15.2%	6,522	12.0%
1964	56,332	27,818	49.4%	13,581	24.1%	8,488	15.1%	6,445	11.4%
1965	59,063	27,842	47.1%	15,413	26.1%	8,836	15.0%	6,972	11.8%
1966	60,449	28,507	47.2%	16,141	26.7%	8,891	14.7%	6,910	11.4%
1967	64,556	29,588	45.8%	18,436	28.6%	9,503	14.7%	7,029	10.9%
1968	63,165	26,536	42.0%	19,255	30.5%	9,838	15.6%	7,536	11.9%
1969	67,914	26,614	39.2%	23,248	34.2%	10,667	15.7%	7,385	10.9%
1970	75,101	29,352	39.1%	27,778	37.0%	10,424	13.9%	7,547	10.0%
1971	81,478	32,265	39.6%	31,020	38.1%	10,572	13.0%	7,621	9.4%
1972	90,177	35,940	39.9%	33,819	37.5%	12,250	13.6%	8,168	9.1%
1973	93,917	36,008	38.3%	35,292	37.6%	14,669	15.6%	7,948	8.5%
1974	94,188	35,102	37.3%	37,292	39.6%	13,641	14.5%	8,153	8.7%
1975	101,089	38,212	37.8%	38,877	38.5%	15,487	15.3%	8,513	8.4%
1976	106,103	41,057	38.7%	40,311	38.0%	16,179	15.2%	8,556	8.1%
1977	113,093	44,026	38.9%	42,683	37.7%	17,632	15.6%	8,752	7.7%
1978	121,955	44,601	36.6%	48,487	39.8%	19,709	16.2%	9,158	7.5%
1979	138,874	59,389	42.8%	49,580	35.7%	20,472	14.7%	9,433	6.8%
1980	153,950	68,115	44.2%	53,648	34.8%	22,313	14.5%	9,874	6.4%
1981	172,126	71,573	41.6%	60,982	35.4%	28,269	16.4%	11,302	6.6%

Table A-2: Continued

<i>Fiscal Year</i>	<i>No Court Action</i>			<i>Before Pretrial</i>			<i>During/After Pretrial</i>			<i>During/After Trial</i>		
	<i>Total Dispositions</i>	<i>Number of Dispositions</i>	<i>% of Total Dispositions</i>	<i>Number of Dispositions</i>	<i>% of Total Dispositions</i>	<i>% of Total Dispositions</i>	<i>Number of Dispositions</i>	<i>% of Total Dispositions</i>	<i>% of Total Dispositions</i>	<i>Number of Dispositions</i>	<i>% of Total Dispositions</i>	<i>% of Total Dispositions</i>
1983	212,979	98,521	46.3%	75,788	35.6%		27,094	12.7%		11,576	5.4%	
1984	240,750	113,065	47.0%	86,081	35.8%		29,586	12.3%		12,018	5.0%	
1985	268,070	129,046	48.1%	95,434	35.6%		31,061	11.6%		12,529	4.7%	
1986	265,082	121,870	46.0%	101,693	38.4%		29,853	11.3%		11,666	4.4%	
1987	236,937	97,517	41.2%	95,167	40.2%		32,363	13.7%		11,890	5.0%	
1988	237,634	79,254	33.4%	114,588	48.2%		32,194	13.5%		11,598	4.9%	
1989	233,971	63,726	27.2%	129,410	55.3%		29,479	12.6%		11,356	4.9%	
1990	213,020	51,451	24.2%	126,795	59.5%		25,517	12.0%		9,257	4.3%	
1991	210,410	44,321	21.1%	136,562	64.9%		21,120	10.0%		8,407	4.0%	
1992	230,171	34,956	15.2%	161,813	70.3%		25,373	11.0%		8,029	3.5%	
1993	225,278	42,658	18.9%	154,458	68.6%		20,434	9.1%		7,728	3.4%	
1994	227,448	39,734	17.5%	158,867	69.8%		20,947	9.2%		7,900	3.5%	
1995	229,051	36,504	15.9%	165,805	72.4%		19,304	8.4%		7,438	3.2%	
1996	249,832	36,752	14.7%	186,281	74.6%		19,234	7.7%		7,565	3.0%	
1997	249,118	38,439	15.4%	182,714	73.3%		20,613	8.3%		7,352	3.0%	
1998	261,669	39,721	15.2%	193,306	73.9%		21,860	8.4%		6,782	2.6%	
1999	271,936	43,849	16.1%	200,428	73.7%		21,434	7.9%		6,225	2.3%	
2000	259,046	43,245	16.7%	189,660	73.2%		20,362	7.9%		5,779	2.2%	
2001	247,433	41,943	17.0%	180,074	72.8%		20,016	8.1%		5,400	2.2%	
2002	258,876	41,550	16.1%	191,949	74.1%		20,808	8.0%		4,569	1.8%	

Table A-3: The Onset of Mass Tort Litigation



SOURCE: Deborah R. Hensler & Mark A. Peterson, "Understanding Mass Personal Injury Litigation; A Socio-legal Analysis," 59 Brooklyn L. Rev. 961, 1062 (1993).

Table A-4: Tort, Contract, and Civil Rights Trials in U.S. District Courts 1962–2002 (Data Underlying Figures 4 and 5)

<i>Fiscal Year</i>	<i>Tort</i>			<i>Contract</i>			<i>Civil Rights</i>		
	<i>Total Trials</i>	<i>Bench Trials</i>	<i>Jury Trials</i>	<i>Total Trials</i>	<i>Bench Trials</i>	<i>Jury Trials</i>	<i>Total Trials</i>	<i>Bench Trials</i>	<i>Jury Trials</i>
1962	3,184	946	2,238	1,121	818	303	53	42	11
1963	3,575	1,125	2,450	1,225	899	326	71	55	16
1964	3,402	1,078	2,324	1,147	835	312	88	73	15
1965	3,634	1,123	2,511	1,206	885	321	125	97	28
1966	3,554	1,071	2,483	1,271	864	407	153	119	34
1967	3,470	1,049	2,421	1,386	984	402	173	131	42
1968	3,621	1,191	2,430	1,445	1,038	407	205	194	11
1969	3,555	1,122	2,433	1,418	1,000	418	258	192	66
1970	3,463	1,065	2,398	1,387	943	444	517	420	97
1971	3,473	1,017	2,456	1,422	962	460	736	645	91
1972	3,565	1,114	2,451	1,710	1,203	507	767	651	116
1973	3,343	1,019	2,324	1,610	1,111	499	881	741	140
1974	3,102	884	2,218	1,628	1,105	523	1,034	842	192
1975	3,019	872	2,147	1,817	1,252	565	1,101	851	250
1976	3,041	948	2,093	1,795	1,204	591	1,247	873	374
1977	2,974	898	2,076	1,756	1,151	605	1,462	1,074	388
1978	3,044	942	2,102	1,823	1,230	593	1,682	1,289	393
1979	2,919	897	2,022	1,829	1,224	605	1,922	1,459	463
1980	3,137	992	2,145	1,962	1,275	687	2,050	1,530	520
1981	3,698	1,168	2,530	2,334	1,482	852	2,203	1,572	631
1982	3,489	1,050	2,439	2,382	1,492	890	2,163	1,456	707
1983	3,658	1,101	2,557	2,457	1,483	974	2,306	1,529	777
1984	3,859	1,156	2,703	2,567	1,538	1,029	2,652	1,641	1,011
1985	4,506	1,100	3,406	2,541	1,511	1,030	2,629	1,529	1,100
1986	3,753	1,170	2,583	2,497	1,390	1,107	2,516	1,370	1,146
1987	4,089	999	3,090	2,431	1,340	1,091	2,398	1,230	1,168
1988	3,517	977	2,540	2,501	1,379	1,122	2,482	1,269	1,213
1989	3,400	938	2,462	2,411	1,361	1,050	2,257	1,088	1,169
1990	2,949	832	2,117	1,855	970	885	1,720	809	911
1991	2,719	771	1,948	1,558	874	684	1,648	803	845
1992	2,385	657	1,728	1,513	768	745	1,661	772	889
1993	2,214	636	1,578	1,412	724	688	1,776	753	1,023
1994	2,150	572	1,578	1,283	618	665	2,022	724	1,298
1995	2,063	586	1,477	1,023	510	513	2,032	668	1,364
1996	1,902	526	1,376	1,081	564	517	2,231	640	1,591
1997	1,935	460	1,475	1,009	473	536	2,239	539	1,700
1998	1,762	430	1,332	931	464	467	2,204	495	1,709
1999	1,609	445	1,164	902	436	466	2,043	447	1,596
2000	1,396	356	1,040	855	428	427	1,897	381	1,516
2001	1,471	320	1,151	792	387	405	1,677	301	1,376
2002	1,071	289	782	700	329	371	1,524	290	1,234

Table A-5: Prisoner Petitions Filed in U.S. District Courts, 1962–2002 (Data Underlying Figure 6)

<i>Fiscal Year</i>	<i>Total</i>	<i>Motions to Vacate Sentence</i>		<i>Habeas Corpus</i>		<i>Mandamus</i>		<i>Civil Rights</i>	
		<i>Filings</i>	<i>% of Total</i>	<i>Filings</i>	<i>% of Total</i>	<i>Filings</i>	<i>% of Total</i>	<i>Filings</i>	<i>% of Total</i>
1962	2,661	546	20.5%	2,115	79.5%	0	0.0%	0	0.0%
1963	3,727	595	16.0%	2,766	74.2%	366	9.8%	0	0.0%
1964	5,859	972	16.6%	4,413	75.3%	474	8.1%	0	0.0%
1965	7,488	1,244	16.6%	5,640	75.3%	604	8.1%	0	0.0%
1966	8,180	863	10.6%	6,180	75.6%	1,137	13.9%	0	0.0%
1967	9,909	958	9.7%	6,998	70.6%	1,953	19.7%	0	0.0%
1968	10,695	1,099	10.3%	7,376	69.0%	2,220	20.8%	0	0.0%
1969	12,562	1,444	11.5%	8,620	68.6%	2,498	19.9%	0	0.0%
1970	15,569	1,729	11.1%	10,563	67.8%	3,277	21.0%	0	0.0%
1971	15,883	1,335	8.4%	9,953	62.7%	1,470	9.3%	3,125	19.7%
1972	15,846	1,591	10.0%	9,256	58.4%	1,404	8.9%	3,595	22.7%
1973	16,733	1,722	10.3%	9,071	54.2%	1,353	8.1%	4,587	27.4%
1974	18,029	1,822	10.1%	9,336	51.8%	1,190	6.6%	5,681	31.5%
1975	18,638	1,690	9.1%	9,520	51.1%	822	4.4%	6,606	35.4%
1976	19,255	1,693	8.8%	9,238	48.0%	864	4.5%	7,460	38.7%
1977	19,294	1,921	10.0%	8,370	43.4%	770	4.0%	8,233	42.7%
1978	21,786	1,924	8.8%	8,749	40.2%	747	3.4%	10,366	47.6%
1979	22,562	1,907	8.5%	8,690	38.5%	771	3.4%	11,194	49.6%
1980	23,230	1,322	5.7%	8,442	36.3%	468	2.0%	12,998	56.0%
1981	27,655	1,248	4.5%	9,415	34.0%	519	1.9%	16,473	59.6%
1982	29,275	1,186	4.1%	9,963	34.0%	553	1.9%	17,573	60.0%
1983	30,765	1,311	4.3%	10,437	33.9%	541	1.8%	18,476	60.1%
1984	31,093	1,427	4.6%	10,240	32.9%	570	1.8%	18,856	60.6%
1985	33,455	1,527	4.6%	11,928	35.7%	553	1.7%	19,447	58.1%
1986	33,758	1,556	4.6%	10,719	31.8%	642	1.9%	20,841	61.7%
1987	37,298	1,676	4.5%	11,336	30.4%	589	1.6%	23,697	63.5%
1988	38,825	2,071	5.3%	11,734	30.2%	600	1.5%	24,420	62.9%
1989	41,472	2,526	6.1%	12,363	29.8%	626	1.5%	25,957	62.6%
1990	42,623	2,970	7.0%	12,784	30.0%	877	2.1%	25,992	61.0%
1991	42,452	3,328	7.8%	12,437	29.3%	645	1.5%	26,042	61.3%
1992	48,417	3,983	8.2%	12,803	26.4%	1,076	2.2%	30,555	63.1%
1993	53,436	5,379	10.1%	13,041	24.4%	1,083	2.0%	33,933	63.5%
1994	57,928	4,628	8.0%	13,349	23.0%	886	1.5%	39,065	67.4%
1995	63,544	5,988	9.4%	14,970	23.6%	907	1.4%	41,679	65.6%
1996	67,835	9,729	14.3%	16,429	24.2%	462	0.7%	41,215	60.8%
1997	71,966	11,675	16.2%	21,858	30.4%	798	1.1%	37,635	52.3%
1998	41,747	6,287	15.1%	20,897	50.1%	807	1.9%	13,756	33.0%
1999	44,718	5,752	12.9%	23,815	53.3%	1,068	2.4%	14,083	31.5%
2000	46,624	6,341	13.6%	24,941	53.5%	1,191	2.6%	14,151	30.4%
2001	47,909	8,644	18.0%	24,674	51.5%	1,156	2.4%	13,435	28.0%
2002	45,131	6,107	13.5%	23,862	52.9%	1,123	2.5%	14,039	31.1%

Table A-6: Prisoner Petition Trials in U.S. District Court, by Bench or Jury, 1962–2002 (Data Underlying Figure 7)

<i>Fiscal Year</i>	<i>Number</i>			<i>Percentage</i>	
	<i>Total</i>	<i>Bench</i>	<i>Jury</i>	<i>Bench</i>	<i>Jury</i>
1962	96	96	0	100.0%	0.0%
1963	129	129	0	100.0%	0.0%
1964	327	326	1	99.7%	0.3%
1965	592	592	0	100.0%	0.0%
1966	569	566	3	99.5%	0.5%
1967	568	566	2	99.6%	0.4%
1968	701	700	1	99.9%	0.1%
1969	586	580	6	99.0%	1.0%
1970	663	654	9	98.6%	1.4%
1971	600	580	20	96.7%	3.3%
1972	458	431	27	94.1%	5.9%
1973	498	457	41	91.8%	8.2%
1974	669	632	37	94.5%	5.5%
1975	664	598	66	90.1%	9.9%
1976	581	520	61	89.5%	10.5%
1977	689	615	74	89.3%	10.7%
1978	687	618	69	90.0%	10.0%
1979	605	506	99	83.6%	16.4%
1980	589	492	97	83.5%	16.5%
1981	804	667	137	83.0%	17.0%
1982	896	716	180	79.9%	20.1%
1983	968	760	208	78.5%	21.5%
1984	1,052	795	257	75.6%	24.4%
1985	910	700	210	76.9%	23.1%
1986	1,014	744	270	73.4%	26.6%
1987	992	685	307	69.1%	30.9%
1988	1,015	679	336	66.9%	33.1%
1989	1,188	866	322	72.9%	27.1%
1990	1,104	765	339	69.3%	30.7%
1991	953	642	311	67.4%	32.6%
1992	1,055	696	359	66.0%	34.0%
1993	996	663	333	66.6%	33.4%
1994	1,189	754	435	63.4%	36.6%
1995	1,158	785	373	67.8%	32.2%
1996	1,235	793	442	64.2%	35.8%
1997	1,122	670	452	59.7%	40.3%
1998	845	438	407	51.8%	48.2%
1999	696	318	378	45.7%	54.3%
2000	735	300	435	40.8%	59.2%
2001	650	294	356	45.2%	54.8%
2002	491	199	292	40.5%	59.5%



Table A-7: Case Type as Portion of Total Civil Trials in U.S. District Courts, 1962–2002 (Data Underlying Figure 8)

Fiscal Year	Contracts			Torts			Civil Rights			Prisoner Petition			Labor			Intellectual Property			All Others (ex. local jurisdiction)		
	Total Trials	# of Trials	% of Total	# of Trials	% of Total	# of Trials	% of Total	# of Trials	% of Total	# of Trials	% of Total	# of Trials	% of Total	# of Trials	% of Total	# of Trials	% of Total	# of Trials	% of Total	# of Trials	% of Total
1962	5,802	1,121	19.3%	3,184	54.9%	53	0.9%	96	1.7%	230	4.0%	169	2.9%	949	16.4%	1,101	16.9%	1,208	18.7%	990	14.2%
1963	6,522	1,225	18.8%	3,575	54.8%	71	1.1%	129	2.0%	255	3.9%	166	2.5%	1,101	16.9%	1,208	18.7%	990	14.2%	944	13.7%
1964	6,445	1,147	17.8%	3,402	52.8%	88	1.4%	174	2.7%	240	3.7%	186	2.9%	1,208	18.7%	1,208	18.7%	990	14.2%	944	13.7%
1965	6,972	1,206	17.3%	3,634	52.1%	125	1.8%	592	8.5%	260	3.7%	165	2.4%	990	14.2%	1,208	18.7%	990	14.2%	944	13.7%
1966	6,910	1,271	18.4%	3,554	51.4%	153	2.2%	569	8.2%	240	3.5%	179	2.6%	944	13.7%	1,208	18.7%	990	14.2%	944	13.7%
1967	7,029	1,386	19.7%	3,470	49.4%	173	2.5%	574	8.2%	297	4.2%	175	2.5%	954	13.6%	1,208	18.7%	990	14.2%	944	13.7%
1968	7,536	1,445	19.2%	3,621	48.0%	205	2.7%	701	9.3%	308	4.1%	171	2.3%	1,085	14.4%	1,208	18.7%	990	14.2%	944	13.7%
1969	7,385	1,418	19.2%	3,555	48.1%	258	3.5%	586	7.9%	334	4.5%	154	2.1%	1,080	14.6%	1,208	18.7%	990	14.2%	944	13.7%
1970	7,547	1,387	18.4%	3,463	45.9%	517	6.9%	663	8.8%	317	4.2%	170	2.3%	1,030	13.6%	1,208	18.7%	990	14.2%	944	13.7%
1971	7,621	1,422	18.7%	3,473	45.6%	736	9.7%	600	7.9%	362	4.8%	148	1.9%	880	11.5%	1,208	18.7%	990	14.2%	944	13.7%
1972	8,168	1,710	20.9%	3,565	43.6%	767	9.4%	458	5.6%	378	4.6%	193	2.4%	1,097	13.4%	1,208	18.7%	990	14.2%	944	13.7%
1973	7,948	1,610	20.3%	3,343	42.1%	881	11.1%	498	6.3%	366	4.6%	161	2.0%	1,089	13.7%	1,208	18.7%	990	14.2%	944	13.7%
1974	8,153	1,628	20.0%	3,102	38.0%	1,034	12.7%	669	8.2%	338	4.1%	156	1.9%	1,226	15.0%	1,208	18.7%	990	14.2%	944	13.7%
1975	8,513	1,817	21.3%	3,019	35.5%	1,101	12.9%	664	7.8%	374	4.4%	200	2.3%	1,338	15.7%	1,208	18.7%	990	14.2%	944	13.7%
1976	8,556	1,795	21.0%	3,041	35.5%	1,247	14.6%	581	6.8%	414	4.8%	155	1.8%	1,323	15.5%	1,208	18.7%	990	14.2%	944	13.7%
1977	8,752	1,756	20.1%	2,974	34.0%	1,462	16.7%	689	7.9%	435	5.0%	161	1.8%	1,275	14.6%	1,208	18.7%	990	14.2%	944	13.7%
1978	9,158	1,823	19.9%	3,044	33.2%	1,682	18.4%	687	7.5%	418	4.6%	172	1.9%	1,332	14.5%	1,208	18.7%	990	14.2%	944	13.7%
1979	9,433	1,829	19.4%	2,919	30.9%	1,922	20.4%	605	6.4%	502	5.3%	176	1.9%	1,480	15.7%	1,208	18.7%	990	14.2%	944	13.7%
1980	9,874	1,962	19.9%	3,137	31.8%	2,050	20.8%	589	6.0%	491	5.0%	206	2.1%	1,439	14.6%	1,208	18.7%	990	14.2%	944	13.7%
1981	11,302	2,334	20.7%	3,698	32.7%	2,203	19.5%	804	7.1%	531	4.7%	250	2.2%	1,482	13.1%	1,208	18.7%	990	14.2%	944	13.7%

Table A-7: Continued

<i>Fiscal Year</i>	<i>Contracts</i>			<i>Torts</i>			<i>Civil Rights</i>			<i>Prisoner Petition</i>			<i>Labor</i>			<i>Intellectual Property</i>			<i>All Others (ex. local jurisdiction)</i>		
	<i>Total Trials</i>	<i># of Trials</i>	<i>% of Total</i>	<i># of Trials</i>	<i>% of Total</i>	<i>% of Total</i>	<i># of Trials</i>	<i>% of Total</i>	<i>% of Total</i>	<i># of Trials</i>	<i>% of Total</i>	<i>% of Total</i>	<i># of Trials</i>	<i>% of Total</i>	<i>% of Total</i>	<i># of Trials</i>	<i>% of Total</i>	<i>% of Total</i>	<i># of Trials</i>	<i>% of Total</i>	<i>% of Total</i>
1982	11,280	2,382	21.1%	3,489	30.9%	2,163	19.2%	896	7.9%	607	5.4%	272	2.4%	1,471	13.0%						
1983	11,576	2,457	21.2%	3,658	31.6%	2,306	19.9%	968	8.4%	495	4.3%	266	2.3%	1,426	12.3%						
1984	12,018	2,567	21.4%	3,859	32.1%	2,652	22.1%	1,052	8.8%	454	3.8%	292	1.9%	1,202	10.0%						
1985	12,529	2,541	20.3%	4,506	36.0%	2,629	21.0%	910	7.3%	431	3.4%	212	1.7%	1,300	10.4%						
1986	11,666	2,497	21.4%	3,753	32.2%	2,516	21.6%	1,014	8.7%	445	3.8%	237	2.0%	1,204	10.3%						
1987	11,890	2,431	20.4%	4,089	34.4%	2,398	20.2%	992	8.3%	463	3.9%	251	2.1%	1,266	10.6%						
1988	11,598	2,501	21.6%	3,517	30.3%	2,482	21.4%	1,015	8.8%	453	3.9%	262	2.3%	1,368	11.8%						
1989	11,356	2,411	21.2%	3,400	29.9%	2,257	19.9%	1,190	10.5%	474	4.2%	269	2.4%	1,355	11.9%						
1990	9,257	1,855	20.0%	2,949	31.9%	1,720	18.6%	1,104	11.9%	367	4.0%	204	2.2%	1,058	11.4%						
1991	8,407	1,558	18.5%	2,719	32.3%	1,648	19.6%	953	11.3%	365	4.3%	188	2.2%	976	11.6%						
1992	8,029	1,513	18.8%	2,385	29.7%	1,661	20.7%	1,055	13.1%	334	4.2%	180	2.2%	901	11.2%						
1993	7,728	1,412	18.3%	2,214	28.6%	1,776	23.0%	996	12.9%	369	4.8%	187	2.4%	774	10.0%						
1994	7,900	1,283	16.2%	2,150	27.2%	2,022	25.6%	1,189	15.1%	340	4.3%	198	2.5%	718	9.1%						
1995	7,438	1,023	13.8%	2,063	27.7%	2,032	27.3%	1,158	15.6%	328	4.4%	211	2.8%	623	8.4%						
1996	7,565	1,081	14.3%	1,902	25.1%	2,231	29.5%	1,235	16.3%	318	4.2%	214	2.8%	584	7.7%						
1997	7,352	1,009	13.7%	1,935	26.3%	2,239	30.5%	1,122	15.3%	301	4.1%	232	3.2%	514	7.0%						
1998	6,782	931	13.7%	1,762	26.0%	2,204	32.5%	845	12.5%	290	4.3%	224	3.3%	526	7.8%						
1999	6,225	902	14.5%	1,609	25.8%	2,043	32.8%	696	11.2%	271	4.4%	214	3.4%	490	7.9%						
2000	5,779	855	14.8%	1,396	24.2%	1,897	32.8%	735	12.7%	241	4.2%	200	3.5%	455	7.9%						
2001	5,400	792	14.7%	1,471	27.2%	1,677	31.1%	650	12.0%	198	3.7%	179	3.3%	433	8.0%						
2002	4,569	700	15.3%	1,071	23.4%	1,524	33.4%	491	10.7%	189	4.1%	185	4.0%	409	9.0%						

Table A-8: Total Civil Consent Cases Terminated by Magistrate Judges in U.S. District Courts, 1982–2002; Total Civil Consent Trials Before Magistrate Judges in U.S. District Courts, 1979–2002 (Data Underlying Figures 9 and 10)

<i>Fiscal Year</i>	<i>Civil Consent Cases Terminated</i>	<i>Civil Consent Trials</i>	
		<i>Number</i>	<i>% of Dispositions</i>
1979	—	570	—
1980	—	597	—
1981	—	611	—
1982	2,452	825	33.6%
1983	3,127	890	28.5%
1984	3,546	849	23.9%
1985	3,717	793	21.3%
1986	4,960	984	19.8%
1987	4,970	962	19.4%
1988	5,903	989	16.8%
1989	5,354	1,005	18.8%
1990	4,958	1,008	20.3%
1991	4,986	1,112	22.3%
1992	5,479	1,368	25.0%
1993	6,740	1,500	22.3%
1994	7,835	1,743	22.2%
1995	8,967	1,596	17.8%
1996	9,948	1,919	19.3%
1997	10,081	1,763	17.5%
1998	10,339	1,548	15.0%
1999	11,320	1,498	13.2%
2000	11,481	1,300	11.3%
2001	12,024	1,079	9.0%
2002	12,710	959	7.5%

Table A-9: Number and Proportion of Trials of a Given Length in U.S. District Courts, 1965–2002 (Data Underlying Figures 11 and 12)

Fiscal Year	1 Day or Less			2 Days			3 Days			4 to 9 Days			10 to 19 Days			20 or More Days		
	Total	Number	% of Total	Number	% of Total	Number	Number	% of Total	Number	Number	% of Total	Number	Number	% of Total	Number	Number	% of Total	
1965	7,613	3,817	50.1%	1,748	23.0%	913		12.0%	997		13.1%	115		1.5%	23		0.3%	
1966	7,783	4,065	52.2%	1,669	21.4%	914		11.7%	1,024		13.2%	81		1.0%	30		0.4%	
1967	8,095	4,094	50.6%	1,686	20.8%	1,001		12.4%	1,178		14.6%	102		1.3%	34		0.4%	
1968	8,688	4,744	54.6%	1,760	20.3%	974		11.2%	1,043		12.0%	129		1.5%	38		0.4%	
1969	8,834	4,927	55.8%	1,748	19.8%	948		10.7%	1,063		12.0%	120		1.4%	28		0.3%	
1970	9,449	5,417	57.3%	1,770	18.7%	1,029		10.9%	1,079		11.4%	122		1.3%	32		0.3%	
1971	10,093	5,805	57.5%	1,947	19.3%	1,108		11.0%	1,073		10.6%	132		1.3%	28		0.3%	
1972	10,962	6,128	55.9%	2,275	20.8%	1,100		10.0%	1,284		11.7%	140		1.3%	35		0.3%	
1973	10,896	6,035	55.4%	2,231	20.5%	1,131		10.4%	1,286		11.8%	159		1.5%	54		0.5%	
1974	10,972	6,019	54.9%	2,192	20.0%	1,148		10.5%	1,387		12.6%	178		1.6%	48		0.4%	
1975	11,603	6,285	54.2%	2,327	20.1%	1,216		10.5%	1,538		13.3%	192		1.7%	45		0.4%	
1976	11,656	6,400	54.9%	2,331	20.0%	1,254		10.8%	1,447		12.4%	155		1.3%	69		0.6%	
1977	11,604	6,154	53.0%	2,411	20.8%	1,229		10.6%	1,564		13.5%	190		1.6%	56		0.5%	
1978	11,389	5,993	52.6%	2,299	20.2%	1,294		11.4%	1,565		13.7%	181		1.6%	57		0.5%	
1979	11,655	5,815	49.9%	2,507	21.5%	1,326		11.4%	1,740		14.9%	210		1.8%	57		0.5%	

1980	12,951	6,382	49.3%	2,666	20.6%	1,517	11.7%	1,971	15.2%	307	2.4%	108	0.8%
1981	14,398	6,840	47.5%	3,032	21.1%	1,663	11.6%	2,460	17.1%	301	2.1%	102	0.7%
1982	14,433	6,949	48.1%	2,942	20.4%	1,669	11.6%	2,454	17.0%	321	2.2%	98	0.7%
1983	14,391	6,642	46.2%	2,984	20.7%	1,744	12.1%	2,595	18.0%	336	2.3%	90	0.6%
1984	14,374	6,586	45.8%	2,849	19.8%	1,840	12.8%	2,678	18.6%	349	2.4%	72	0.5%
1985	14,254	6,263	43.9%	2,912	20.4%	1,835	12.9%	2,827	19.8%	335	2.4%	82	0.6%
1986	13,276	5,763	43.4%	2,724	20.5%	1,710	12.9%	2,605	19.6%	393	3.0%	81	0.6%
1987	13,162	5,352	40.7%	2,654	20.2%	1,811	13.8%	2,851	21.7%	389	3.0%	105	0.8%
1988	12,536	5,058	40.3%	2,630	21.0%	1,711	13.6%	2,663	21.2%	367	2.9%	107	0.9%
1989	12,085	4,942	40.9%	2,378	19.7%	1,726	14.3%	2,587	21.4%	365	3.0%	87	0.7%
1990	11,502	4,996	43.4%	2,251	19.6%	1,430	12.4%	2,393	20.8%	347	3.0%	85	0.7%
1991	11,024	4,835	43.9%	1,999	18.1%	1,423	12.9%	2,347	21.3%	345	3.1%	75	0.7%
1992	10,756	4,704	43.7%	1,898	17.6%	1,321	12.3%	2,413	22.4%	328	3.0%	92	0.9%
1993	10,566	4,697	44.5%	1,801	17.0%	1,286	12.2%	2,391	22.6%	323	3.1%	68	0.6%
1994	10,473	4,758	45.4%	1,701	16.2%	1,274	12.2%	2,379	22.7%	313	3.0%	48	0.5%
1995	10,395	4,718	45.4%	1,732	16.7%	1,256	12.1%	2,288	22.0%	338	3.3%	63	0.6%
1996	10,343	4,609	44.6%	1,653	16.0%	1,276	12.3%	2,425	23.4%	317	3.1%	63	0.6%
1997	10,155	4,459	43.9%	1,561	15.4%	1,271	12.5%	2,449	24.1%	353	3.5%	62	0.6%
1998	9,349	4,116	44.0%	1,479	15.8%	1,174	12.6%	2,218	23.7%	297	3.2%	65	0.7%
1999	8,592	3,833	44.9%	1,268	14.9%	1,076	12.6%	2,017	23.6%	293	3.4%	45	0.5%
2000	7,933	3,639	45.9%	1,209	15.2%	976	12.3%	1,831	23.1%	238	3.0%	40	0.5%
2001	6,513	2,675	41.1%	1,022	15.7%	869	13.3%	1,665	25.6%	249	3.8%	33	0.5%
2002	6,015	2,527	42.0%	963	16.0%	774	12.9%	1,501	25.0%	210	3.5%	40	0.7%

Table A-10: Median Time (in Months) from Filing to Disposition of Civil Cases, Number and Percentage of Civil Case Terminating at Each Stage in U.S. District Courts, 1965–2002 (Data Underlying Figures 13, 14, and 15)

Fiscal Year	Total Cases			No Court Action			Before Pretrial			During or After Pretrial			Trial	
	Number of Cases	Median Time Interval (Months)		Number of Cases	% of Total Cases	Median Time Interval (Months)	Number of Cases	% of Total Cases	Median Time Interval (Months)	Number of Cases	% of Total Cases	Median Time Interval (Months)	Number of Cases	% of Total Cases
1963	58,648	8		31,025	52.9%	5	11,907	20.3%	4	8,827	15.1%	18	6,889	11.7%
1964	54,303	8		29,232	53.8%	6	9,624	17.7%	7	8,931	16.4%	17	6,516	12.0%
1965	55,692	10		29,062	52.2%	6	10,509	18.9%	8	9,416	16.9%	19	6,705	12.0%
1966	56,397	9		29,624	52.5%	6	10,825	19.2%	8	9,253	16.4%	19	6,695	11.9%
1967	58,143	10		30,354	52.2%	6	11,051	19.0%	8	9,873	17.0%	18	6,865	11.8%
1968	57,271	10		27,772	48.5%	7	11,952	20.9%	7	10,224	17.9%	19	7,323	12.8%
1969	60,477	10		28,348	46.9%	7	13,783	22.8%	6	11,099	18.4%	19	7,247	12.0%
1970	64,571	10		30,567	47.3%	8	15,802	24.5%	5	10,902	16.9%	18	7,300	11.3%
1971	70,320	9		33,361	47.4%	7	18,797	26.6%	6	10,886	15.5%	17	7,346	10.4%
1972	78,092	9		37,107	47.5%	8	20,349	26.1%	6	12,618	16.2%	17	8,018	10.3%
1973	80,598	10		36,860	45.7%	7	21,042	26.1%	6	14,905	18.5%	18	7,791	9.7%
1974	79,101	9		35,640	45.1%	7	22,359	28.3%	8	13,393	16.9%	16	7,709	9.7%
1975	85,420	9		38,937	45.6%	7	23,239	27.2%	7	15,190	17.8%	16	8,054	9.4%
1976	89,623	9		41,560	46.4%	6	24,067	26.9%	6	15,799	17.6%	15	8,197	9.1%
1977	97,086	9		45,027	46.4%	7	26,518	27.3%	7	17,195	17.7%	16	8,346	8.6%

1978	102,488	10	45,222	44.1%	6	29,609	28.9%	8	18,976	18.5%	17	8,681	8.5%	19
1979	118,250	9	57,110	48.3%	6	32,223	27.2%	8	19,900	16.8%	17	9,017	7.6%	19
1980	133,394	8	66,329	49.7%	5	35,777	26.8%	8	21,798	16.3%	17	9,490	7.1%	20
1981	148,046	9	70,473	47.6%	5	39,376	26.6%	8	27,590	18.6%	19	10,607	7.2%	20
1982	159,496	7	78,534	49.2%	4	46,085	28.9%	7	24,452	15.3%	16	10,425	6.5%	19
1983	184,427	7	93,661	50.8%	4	54,057	29.3%	7	26,052	14.1%	16	10,657	5.8%	19
1984	211,548	7	108,411	51.2%	4	63,614	30.1%	7	28,499	13.5%	15	11,024	5.2%	19
1985	237,768	7	123,697	52.0%	4	72,447	30.5%	8	29,965	12.6%	15	11,659	4.9%	19
1986	231,380	7	112,934	48.8%	4	79,004	34.1%	7	28,752	12.4%	15	10,690	4.6%	19
1987	200,850	8	87,297	43.5%	5	71,686	35.7%	7	30,947	15.4%	15	10,920	5.4%	20
1988	200,754	8	71,873	35.8%	6	87,372	43.5%	7	30,908	15.4%	16	10,601	5.3%	19
1989	194,910	8	58,405	30.0%	6	98,306	50.4%	6	28,226	14.5%	15	9,973	5.1%	18
1990	173,834	8	46,628	26.8%	6	94,485	54.4%	7	24,563	14.1%	14	8,158	4.7%	19
1991	170,192	9	40,376	23.7%	7	102,177	60.0%	8	20,265	11.9%	15	7,474	4.4%	20
1992	186,416	8	46,632	25.0%	6	108,294	58.1%	7	24,507	13.1%	16	6,983	3.7%	19
1993	175,363	8	38,760	22.1%	6	110,224	62.9%	7	19,635	11.2%	14	6,744	3.8%	19
1994	173,636	8	35,925	20.7%	6	110,862	63.8%	7	20,128	11.6%	14	6,721	3.9%	19
1995	167,710	8	32,704	19.5%	7	110,289	65.8%	7	18,433	11.0%	13	6,284	3.7%	18
1996	182,983	7	33,030	18.1%	6	125,223	68.4%	6	18,400	10.1%	13	6,330	3.5%	18
1997	187,185	8	34,307	18.3%	6	126,767	67.7%	7	19,876	10.6%	13	6,235	3.3%	18
1998	202,073	8	36,017	17.8%	6	138,930	68.8%	7	21,189	10.5%	13	5,937	2.9%	18
1999	215,297	9	40,327	18.7%	6	148,644	69.0%	9	20,796	9.7%	14	5,530	2.6%	19
2000	179,360	8.2	32,350	18.0%	7.9	122,508	68.3%	7.8	19,474	10.9%	13.6	5,028	2.8%	20.1
2001	172,118	8.4	32,300	18.8%	7.9	115,405	67.0%	8.9	19,401	11.3%	13.6	5,012	2.9%	21.2
2002	176,960	8.1	34,098	19.3%	6.7	119,765	67.7%	7.9	18,892	10.7%	13.1	4,205	2.4%	20.4

Table A-11: Number of Civil Filings by Jurisdiction in U.S. District Courts, 1962–2002 (Data Underlying Figure 16)

<i>Fiscal Year</i>	<i>Total Filings</i>	<i>Federal Question Filings</i>		<i>Diversity Filings</i>		<i>U.S. Filings</i>	
		<i>Number</i>	<i>% of Filings</i>	<i>Number</i>	<i>% of Filings</i>	<i>Number</i>	<i>% of Filings</i>
1962	54,615	15,958	29.22%	18,359	33.62%	20,298	37.17%
1963	57,028	16,653	29.20%	18,990	33.30%	21,385	37.50%
1964	61,093	18,651	30.53%	20,174	33.02%	22,268	36.45%
1965	62,670	21,014	33.53%	20,005	31.92%	21,651	34.55%
1966	66,144	22,718	34.35%	20,245	30.61%	23,181	35.05%
1967	66,197	24,140	36.47%	20,464	30.91%	21,593	32.62%
1968	66,740	26,065	39.05%	21,009	31.48%	19,666	29.47%
1969	72,504	28,534	39.36%	21,675	29.89%	22,295	30.75%
1970	82,665	34,846	42.15%	22,854	27.65%	24,965	30.20%
1971	89,318	39,612	44.35%	24,620	27.56%	25,086	28.09%
1972	92,385	41,547	44.97%	24,109	26.10%	26,729	28.93%
1973	96,056	43,291	45.07%	25,281	26.32%	27,484	28.61%
1974	101,345	46,797	46.18%	26,963	26.61%	27,585	27.22%
1975	115,098	52,688	45.78%	30,631	26.61%	31,779	27.61%
1976	128,362	56,823	44.27%	31,675	24.68%	39,864	31.06%
1977	128,899	57,011	44.23%	31,678	24.58%	40,210	31.19%
1978	137,707	59,271	43.04%	31,625	22.97%	46,811	33.99%
1979	153,552	63,221	41.17%	34,491	22.46%	55,840	36.37%
1980	167,871	64,928	38.68%	39,315	23.42%	63,628	37.90%
1981	179,803	72,514	40.33%	45,444	25.27%	61,845	34.40%
1982	205,525	79,197	38.53%	50,555	24.60%	75,773	36.87%
1983	241,159	87,935	36.46%	57,421	23.81%	95,803	39.73%
1984	260,785	92,062	35.30%	56,856	21.80%	111,867	42.90%
1985	273,056	94,467	34.60%	61,101	22.38%	117,488	43.03%
1986	254,249	98,747	38.84%	63,672	25.04%	91,830	36.12%
1987	238,394	99,301	41.65%	67,071	28.13%	72,022	30.21%
1988	239,010	101,710	42.55%	68,224	28.54%	69,076	28.90%
1989	232,921	103,768	44.55%	67,247	28.87%	61,906	26.58%
1990	217,421	103,938	47.80%	57,183	26.30%	56,300	25.89%
1991	207,094	103,496	49.98%	50,944	24.60%	52,654	25.43%
1992	230,212	118,180	51.34%	49,432	21.47%	62,600	27.19%
1993	229,440	126,271	55.03%	51,445	22.42%	51,724	22.54%
1994	236,149	135,853	57.53%	54,886	23.24%	45,410	19.23%
1995	248,095	153,489	61.87%	51,448	20.74%	43,158	17.40%
1996	268,953	159,513	59.31%	60,685	22.56%	48,755	18.13%
1997	271,878	156,596	57.60%	55,278	20.33%	60,004	22.07%
1998	256,671	146,827	57.20%	51,992	20.26%	57,852	22.54%
1999	260,134	144,898	55.70%	49,793	19.14%	65,443	25.16%
2000	259,359	139,624	53.83%	48,626	18.75%	71,109	27.42%
2001	250,763	138,441	55.21%	48,998	19.54%	63,324	25.25%
2002	274,711	163,890	59.66%	56,824	20.69%	53,997	19.66%



Table A-12: Number of Civil Filings by Case Type as Relative Portion of Civil Filings in U.S. District Courts, 1962–2002 (Data Underlying Figures 17 and 18)

<i>Fiscal Year</i>	<i>Total Filings</i>	<i>Contracts*</i>		<i>Recoveries</i>		<i>Torts</i>		<i>Civil Rights</i>	
		<i>Number</i>	<i>% of Total</i>	<i>Number</i>	<i>% of Total</i>	<i>Number</i>	<i>% of Total</i>	<i>Number</i>	<i>% of Total</i>
1962	54,615	13,144	24.1%	1,709	3.1%	20,124	36.8%	402	0.7%
1963	57,028	14,465	25.4%	1,781	3.1%	15,690	27.5%	531	0.9%
1964	61,093	13,983	22.9%	1,812	3.0%	21,843	35.8%	709	1.2%
1965	62,670	13,889	22.2%	1,640	2.6%	22,257	35.5%	1,123	1.8%
1966	66,144	14,990	22.7%	1,377	2.1%	22,033	33.3%	1,295	2.0%
1967	66,197	14,121	21.3%	937	1.4%	22,084	33.4%	1,195	1.8%
1968	66,740	13,252	19.9%	600	0.9%	22,663	34.0%	1,636	2.5%
1969	72,504	13,765	19.0%	498	0.7%	23,422	32.3%	2,453	3.4%
1970	82,665	16,143	19.5%	287	0.3%	16,810	20.3%	3,985	4.8%
1971	89,318	17,532	19.6%	357	0.4%	24,201	27.1%	5,138	5.8%
1972	92,385	23,683	25.6%	273	0.3%	23,111	25.0%	6,133	6.6%
1973	96,056	18,853	19.6%	246	0.3%	22,673	23.6%	7,679	8.0%
1974	101,345	18,760	18.5%	293	0.3%	23,975	23.7%	8,443	8.3%
1975	115,098	21,924	19.0%	679	0.6%	25,512	22.2%	10,392	9.0%
1976	128,362	22,732	17.7%	1,086	0.8%	23,659	18.4%	12,329	9.6%
1977	128,899	22,905	17.8%	865	0.7%	25,790	20.0%	13,252	10.3%
1978	137,707	23,743	17.2%	1,855	1.3%	26,135	19.0%	12,986	9.4%
1979	153,552	27,557	17.9%	9,252	6.0%	28,655	18.7%	13,251	8.6%
1980	167,871	33,351	19.9%	15,588	9.3%	32,196	19.2%	13,003	7.7%
1981	179,803	32,928	18.3%	18,160	10.1%	33,476	18.6%	15,484	8.6%
1982	205,525	37,122	18.1%	30,047	14.6%	34,004	16.5%	17,115	8.3%
1983	241,159	42,699	17.7%	41,213	17.1%	36,250	15.0%	20,827	8.6%
1984	260,785	41,971	16.1%	46,189	17.7%	37,227	14.3%	21,304	8.2%
1985	273,056	44,397	16.3%	58,159	21.3%	41,279	15.1%	19,657	7.2%
1986	254,249	47,443	18.7%	40,824	16.1%	41,979	16.5%	20,218	8.0%
1987	238,394	45,246	19.0%	24,199	10.2%	42,613	17.9%	19,785	8.3%
1988	239,010	44,037	18.4%	18,666	7.8%	44,650	18.7%	19,323	8.1%
1989	232,921	45,372	19.5%	16,452	7.1%	41,787	17.9%	19,378	8.3%
1990	217,421	35,045	16.1%	10,875	5.0%	43,561	20.0%	18,793	8.6%
1991	207,094	34,259	16.5%	7,932	3.8%	37,065	17.9%	19,340	9.3%
1992	230,212	33,365	14.5%	16,006	7.0%	38,105	16.6%	24,233	10.5%
1993	229,440	30,573	13.3%	4,518	2.0%	43,090	18.8%	27,655	12.1%
1994	236,149	28,893	12.2%	2,329	1.0%	47,595	20.2%	32,622	13.8%
1995	248,095	29,306	11.8%	1,822	0.7%	53,911	21.7%	36,600	14.8%
1996	268,953	30,469	11.3%	5,139	1.9%	59,610	22.2%	42,007	15.6%
1997	271,878	31,108	11.4%	9,677	3.6%	58,221	21.4%	43,278	15.9%
1998	256,671	27,689	10.8%	14,577	5.7%	50,328	19.6%	42,354	16.5%
1999	260,134	28,254	10.9%	22,403	8.6%	44,383	17.1%	41,304	15.9%
2000	259,359	28,763	11.1%	24,838	9.6%	36,539	14.1%	40,908	15.8%
2001	250,763	29,717	11.9%	13,406	5.3%	33,623	13.4%	40,910	16.3%
2002	274,711	30,177	11.0%	5,651	2.1%	62,870	22.9%	38,420	14.0%

\*Contracts figures exclude recoveries. Recoveries are listed as a separate category.

Table A-12: Continued

<i>Fiscal Year</i>	<i>Prisoner Petitions</i>		<i>Labor</i>		<i>IP</i>		<i>Securities</i>		<i>Other</i>	
	<i>Number</i>	<i>% of Total</i>	<i>Number</i>	<i>% of Total</i>	<i>Number</i>	<i>% of Total</i>	<i>Number</i>	<i>% of Total</i>	<i>Number</i>	<i>% of Total</i>
1962	2,745	5.0%	3,479	6.4%	1,742	3.2%	273	0.5%	12,979	23.8%
1963	3,777	6.6%	2,804	4.9%	1,963	3.4%	513	0.9%	17,798	31.2%
1964	5,917	9.7%	3,187	5.2%	1,885	3.1%	439	0.7%	13,569	22.2%
1965	7,570	12.1%	3,105	5.0%	1,823	2.9%	460	0.7%	12,903	20.6%
1966	8,244	12.5%	4,932	7.5%	1,832	2.8%	419	0.6%	12,818	19.4%
1967	10,013	15.1%	3,614	5.5%	1,812	2.7%	546	0.8%	13,358	20.2%
1968	10,826	16.2%	3,518	5.3%	1,829	2.7%	689	1.0%	13,016	19.5%
1969	12,712	17.5%	3,721	5.1%	1,865	2.6%	796	1.1%	14,566	20.1%
1970	15,801	19.1%	3,999	4.8%	2,051	2.5%	1,211	1.5%	23,876	28.9%
1971	16,085	18.0%	4,663	5.2%	2,042	2.3%	1,962	2.2%	19,657	22.0%
1972	16,114	17.4%	4,987	5.4%	2,194	2.4%	1,919	2.1%	16,163	17.5%
1973	17,199	17.9%	4,861	5.1%	2,056	2.1%	1,999	2.1%	22,735	23.7%
1974	18,400	18.2%	5,390	5.3%	2,084	2.1%	2,378	2.3%	24,293	24.0%
1975	19,300	16.8%	6,617	5.7%	2,276	2.0%	2,408	2.1%	29,077	25.3%
1976	19,793	15.4%	7,743	6.0%	2,632	2.1%	2,230	1.7%	39,474	30.8%
1977	19,531	15.2%	8,139	6.3%	3,071	2.4%	1,960	1.5%	36,211	28.1%
1978	21,907	15.9%	7,461	5.4%	3,265	2.4%	1,703	1.2%	42,210	30.7%
1979	22,989	15.0%	8,404	5.5%	3,374	2.2%	1,589	1.0%	49,322	32.1%
1980	23,282	13.9%	8,640	5.1%	3,783	2.3%	1,694	1.0%	53,616	31.9%
1981	27,706	15.4%	9,300	5.2%	4,027	2.2%	1,768	1.0%	56,882	31.6%
1982	29,275	14.2%	10,227	5.0%	4,592	2.2%	2,376	1.2%	73,190	35.6%
1983	30,765	12.8%	11,033	4.6%	5,413	2.2%	2,915	1.2%	94,172	39.0%
1984	31,093	11.9%	11,821	4.5%	5,298	2.0%	3,142	1.2%	11,2071	43.0%
1985	33,455	12.3%	11,659	4.3%	5,412	2.0%	3,266	1.2%	11,7197	42.9%
1986	33,758	13.3%	12,839	5.0%	5,681	2.2%	3,059	1.2%	92,331	36.3%
1987	37,298	15.6%	12,746	5.3%	5,514	2.3%	3,020	1.3%	75,192	31.5%
1988	38,825	16.2%	12,688	5.3%	6,059	2.5%	2,638	1.1%	73,428	30.7%
1989	41,472	17.8%	13,328	5.7%	5,977	2.6%	2,608	1.1%	65,607	28.2%
1990	42,623	19.6%	13,841	6.4%	5,700	2.6%	2,629	1.2%	57,858	26.6%
1991	42,452	20.5%	14,686	7.1%	5,235	2.5%	2,244	1.1%	54,057	26.1%
1992	48,417	21.0%	16,394	7.1%	5,830	2.5%	2,002	0.9%	63,868	27.7%
1993	53,436	23.3%	15,820	6.9%	6,560	2.9%	1,793	0.8%	52,306	22.8%
1994	57,928	24.5%	15,662	6.6%	6,902	2.9%	1,810	0.8%	46,547	19.7%
1995	63,544	25.6%	14,954	6.0%	6,866	2.8%	1,906	0.8%	42,914	17.3%
1996	68,235	25.4%	15,073	5.6%	7,028	2.6%	1,704	0.6%	46,531	17.3%
1997	62,966	23.2%	15,508	5.7%	7,559	2.8%	1,669	0.6%	53,238	19.6%
1998	54,715	21.3%	14,650	5.7%	7,748	3.0%	2,358	0.9%	59,187	23.1%
1999	56,597	21.8%	14,372	5.5%	8,242	3.2%	2,563	1.0%	66,982	25.7%
2000	58,252	22.5%	14,142	5.5%	8,738	3.4%	2,678	1.0%	72,017	27.8%
2001	58,794	23.4%	15,195	6.1%	8,314	3.3%	3,538	1.4%	64,210	25.6%
2002	55,292	20.1%	18,285	6.7%	8,254	3.0%	3,465	1.3%	61,413	22.4%

Table A-13: Per Capita Civil Filings and Civil Filings per Billion Dollars of Gross Domestic Product (in 1996 Chained Dollars) in U.S. District Courts, 1962–2002 (Data Underlying Figures 19 and 20)

<i>Fiscal Year</i>	<i>Total Filings</i>	<i>United States Population (Millions)</i>	<i>Filings per Million of Population</i>	<i>Gross Domestic Product in Chain-Type (1996) Dollars (Billions)</i>	<i>Filings per Billion of GDP</i>
1962	54,615	185.2	294.83	2,578.9	21.18
1963	57,028	188.0	303.32	2,690.4	21.20
1964	61,093	190.7	320.42	2,846.5	21.46
1965	62,670	193.2	324.34	3,028.5	20.69
1966	66,144	195.5	338.27	3,227.5	20.49
1967	66,197	197.7	334.77	3,308.3	20.01
1968	66,740	199.8	334.02	3,466.1	19.26
1969	72,504	201.8	359.36	3,571.4	20.30
1970	82,665	203.8	405.52	3,578.0	23.10
1971	89,318	206.5	432.60	3,697.7	24.16
1972	92,385	208.9	442.21	3,898.4	23.70
1973	96,056	211.0	455.27	4,123.4	23.30
1974	101,345	212.9	475.95	4,099.0	24.72
1975	115,098	214.9	535.51	4,084.4	28.18
1976	128,362	217.1	591.27	4,311.7	29.77
1977	128,899	219.2	588.10	4,511.8	28.57
1978	137,707	221.5	621.77	4,760.6	28.93
1979	153,552	223.9	685.91	4,912.1	31.26
1980	167,871	226.5	741.31	4,900.9	34.25
1981	179,803	228.9	785.38	5,021.0	35.81
1982	205,525	231.2	889.11	4,919.3	41.78
1983	241,159	233.3	1,033.59	5,132.3	46.99
1984	260,785	235.4	1,107.91	5,505.2	47.37
1985	273,056	237.5	1,149.86	5,717.1	47.76
1986	254,249	239.6	1,060.97	5,912.4	43.00
1987	238,394	241.8	985.98	6,113.3	39.00
1988	239,010	244.0	979.63	6,368.4	37.53
1989	232,921	246.2	945.97	6,591.8	35.33
1990	217,421	248.7	874.37	6,707.9	32.41
1991	207,094	251.9	822.16	6,676.4	31.02
1992	230,212	255.2	902.04	6,880.0	33.46
1993	229,440	258.7	886.97	7,062.6	32.49
1994	206,544	261.9	788.58	7,347.7	28.11
1995	248,095	265.0	936.05	7,543.8	32.89
1996	268,953	268.2	1,002.99	7,813.2	34.42
1997	271,878	271.4	1,001.91	8,159.5	33.32
1998	256,671	274.6	934.62	8,508.9	30.17
1999	260,134	277.8	936.44	8,859.0	29.36
2000	259,359	281.0	923.06	9,191.4	28.22
2001	250,763	283.9	883.18	9,214.5	27.21
2002	274,711	286.8	957.72	9,439.9	29.10

Table A-14: Total Class-Action Filings and Class-Action Filings by Case Type in U.S. District Courts, 1978-2002 (Data Underlying Figures 21 and 22)

Fiscal Year	Total Filings	Contracts		Torts		Civil Rights		Prisoner Petitions		Labor		IP		Securities		Other	
		Number	% of Total	Number	% of Total	Number	% of Total	Number	% of Total	Number	% of Total	Number	% of Total	Number	% of Total	Number	% of Total
1978	2,586	91	3.5%	137	5.3%	1,477	57.1%	174	6.7%	132	5.1%	4	0.2%	167	6.5%	404	15.6%
1979	2,084	120	5.8%	150	7.2%	1,115	53.5%	172	8.3%	119	5.7%	2	0.1%	100	4.8%	306	14.7%
1980	1,568	63	4.0%	142	9.1%	798	50.9%	122	7.8%	75	4.8%	3	0.2%	87	5.5%	278	17.7%
1981	1,672	87	5.2%	132	7.9%	800	47.8%	171	10.2%	80	4.8%	5	0.3%	86	5.1%	311	18.6%
1982	1,238	96	7.8%	88	7.1%	560	45.2%	122	9.9%	70	5.7%	8	0.6%	151	12.2%	143	11.6%
1983	1,023	131	12.8%	66	6.5%	395	38.6%	65	6.4%	73	7.1%	0	0.0%	133	13.0%	160	15.6%
1984	988	108	10.9%	62	6.3%	369	37.3%	90	9.1%	77	7.8%	4	0.4%	149	15.1%	129	13.1%
1985	971	211	21.7%	76	7.8%	277	28.5%	82	8.4%	60	6.2%	5	0.5%	140	14.4%	120	12.4%
1986	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
1987	610	74	12.1%	25	4.1%	185	30.3%	96	15.7%	42	6.9%	4	0.7%	108	17.7%	76	12.5%
1988	742	66	8.9%	53	7.1%	288	38.8%	77	10.4%	49	6.6%	1	0.1%	108	14.6%	100	13.5%
1989	647	64	9.9%	55	8.5%	172	26.6%	96	14.8%	48	7.4%	3	0.5%	118	18.2%	91	14.1%
1990	922	83	9.0%	40	4.3%	169	18.3%	82	8.9%	84	9.1%	2	0.2%	315	34.2%	147	15.9%
1991	930	56	6.0%	51	5.5%	158	17.0%	79	8.5%	110	11.8%	0	0.0%	299	32.2%	177	19.0%
1992	1,196	45	3.8%	341	28.5%	286	23.9%	63	5.3%	68	5.7%	4	0.3%	268	22.4%	121	10.1%
1993	852	52	6.1%	69	8.1%	143	16.8%	77	9.0%	96	11.3%	3	0.4%	298	35.0%	114	13.4%
1994	991	55	5.5%	120	12.1%	192	19.4%	77	7.8%	73	7.4%	3	0.3%	290	29.3%	181	18.3%
1995	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
1996	1,356	161	11.9%	220	16.2%	213	15.7%	95	7.0%	86	6.3%	5	0.4%	241	17.8%	335	24.7%
1997	1,475	145	9.8%	262	17.8%	217	14.7%	71	4.8%	107	7.3%	7	0.5%	261	17.7%	405	27.5%
1998	1,881	190	10.1%	202	10.7%	265	14.1%	90	4.8%	164	8.7%	5	0.3%	584	31.0%	381	20.3%
1999	2,133	198	9.3%	396	18.6%	211	9.9%	36	1.7%	142	6.7%	6	0.3%	709	33.2%	435	20.4%
2000	2,393	201	8.4%	295	12.3%	273	11.4%	39	1.6%	162	6.8%	16	0.7%	677	28.3%	730	30.5%
2001	3,092	179	5.8%	382	12.4%	238	7.7%	39	1.3%	159	5.1%	14	0.5%	1,571	50.8%	510	16.5%
2002	2,916	168	5.8%	571	19.6%	199	6.8%	60	2.1%	200	6.9%	7	0.2%	1,237	42.4%	474	16.3%

Table A-15: Multi-District Litigation in U.S. District Courts, by Subject Matter, Five-Year Periods, 1968–2002

5-Year Periods Ending in Year	Intellectual Property						Tort			
	Antitrust	Contract	Employment	Copyright	Trademark	Patent	Common Disaster	Air Disaster	Product Liability	Total
1972										
# of litigations	36	4	0	0	1	15	2	26	2	117
% of total	31%	3%	0%	0%	1%	13%	2%	22%	2%	9%
1977										
# of litigations	42	11	16	2	2	16	9	22	7	203
% of total	21%	5%	8%	1%	1%	8%	4%	11%	3%	14%
1982										
# of litigations	37	6	9	1	2	15	18	37	15	213
% of total	17%	3%	4%	0%	1%	7%	8%	17%	7%	21%
1987										
# of litigations	18	8	2	2	2	18	14	25	11	215
% of total	8%	4%	1%	1%	1%	8%	7%	12%	5%	26%
1992										
# of litigations	16	18	3	1	3	12	2	15	15	213
% of total	8%	8%	1%	0%	1%	6%	1%	7%	7%	29%
1997										
# of litigations	31	24	12	2	2	7	3	21	39	248
% of total	13%	10%	5%	1%	1%	3%	1%	8%	16%	27%
2002										
# of litigations	47	15	7	3	1	22	6	13	29	295
% of total	16%	5%	2%	1%	0%	7%	2%	4%	10%	36%
Total	227	86	49	11	13	105	54	159	118	1,504
Total %	15%	6%	3%	1%	1%	7%	4%	11%	8%	25%

SOURCE: Administrative Office of the U.S. Courts, Annual Reports, 1968–2002.

Table A-16: Multi-District Litigation Filings, 1968–2002

Order Date	# of Litigations Filed	# of Cases Invoked	# of Litigations Filed w/ Class-Action Allegations		# of Cases Invoked w/ Class-Action Allegations		# of Cases Remanded	% of Cases Remanded	# of Cases w/ Class-Action Allegations Remanded		# of Litigations Denied/ Withdrawn/ Mooted		# of Cases Denied/ Withdrawn/ Mooted
			Class-Action	Allegations	Class-Action	Allegations			Class-Action	Allegations	Denied/ Withdrawn/ Mooted	Denied/ Withdrawn/ Mooted	
1968	9	841	2		546		39	4.6%	0		1		24
1969	16	557	5		242		15	2.7%	1		4		57
1970	25	730	4		157		2	0.3%	0		11		144
1971	31	552	11		377		14	2.5%	12		6		70
1972	36	712	14		274		40	5.6%	18		9		42
1973	29	462	15		286		23	5.0%	14		5		19
1974	37	746	13		160		39	5.2%	13		12		85
1975	40	1,764 <sup>a</sup>	13		234		609 <sup>a</sup>	34.5%	8		11		32
1976	49	777	18		296		11	1.4%	9		18		151
1977	48	831	18		273		41	4.9%	7		20		183
1978	41	1,932 <sup>b</sup>	10		133		1,314 <sup>b</sup>	68.0%	0		18		71
1979	44	858	18		180		95	11.1%	7		17		145
1980	42	729	10		107		1	0.1%	0		28		545
1981	39	984	9		121		10	1.0%	1		18		180
1982	47	2,275 <sup>c</sup>	9		1,480 <sup>c</sup>		331 <sup>c</sup>	14.5%	279		26		322
1983	39	701	6		272		105	15.0%	86		18		96
1984	51	598	13		234		13	2.2%	7		22		107

1985	48	2,291 <sup>d</sup>	16	178	8%	59	2.6%	1	21	1,843 <sup>d</sup>
1986	43	638	6	134	21%	25	3.9%	13	16	76
1987	34	1,216	13	584	48%	66	5.4%	9	11	40
1988	49	898	10	146	16%	11	1.2%	0	17	63
1989	29	605	8	264	44%	1	0.2%	1	13	57
1990	44	596	21	241	40%	8	1.3%	3	16	104
1991	41	849	19	223	26%	26	3.1%	1	15	94
1992	50	767	13	434	57%	14	1.8%	2	20	281
1993	36	327	19	266	81%	16	4.9%	16	10	44
1994	57	667	16	64	10%	7	1.0%	1	18	70
1995	46	816	18	255	31%	22	2.7%	1	16	71
1996	57	334	32	171	51%	2	0.6%	0	17	65
1997	58	466	31	336	72%	2	0.4%	2	18	125
1998	51	518	31	205	40%	0	0.0%	0	15	127
1999	62		35						17	62
2000	66		48						15	108
2001	52		37						13	49
2002	64		44						33	241

<sup>d</sup>Dalkon Shield: 1,136 cases involved/593 cases remanded.

<sup>e</sup>Swine Flu Immunizations: 1,605 cases involved/1,299 cases remanded.

<sup>f</sup>Benedictin: 1,189 cases involved/1,189 cases w/ class-action allegations/331 cases remanded.

<sup>g</sup>Dalkon Shield II: 1,680 cases involved/1,680 cases denied transfer.

SOURCE: Administrative Office of the U.S. Courts, Annual Reports, 1968–2002.

Table A-17: Criminal Defendant Dispositions and Criminal Defendant Dispositions by Bench and Jury Trial in U.S. District Courts, 1962–2002 (Data Underlying Figures 23 and 24)

<i>Fiscal Year</i>	<i>Total Defendants</i>	<i>Total Trials</i>		<i>Bench Trials</i>		<i>Jury Trials</i>	
		<i>Number</i>	<i>% of Defendants</i>	<i>Number</i>	<i>% of Defendants</i>	<i>Number</i>	<i>% of Defendants</i>
1962	33,110	5,097	15.39%	2,387	46.83%	2,710	53.17%
1963	34,845	5,187	14.89%	2,549	49.14%	2,638	50.86%
1964	33,381	4,172	12.50%	1,501	35.98%	2,671	64.02%
1965	—	—	—	—	—	—	—
1966	31,975	4,278	13.38%	1,463	34.20%	2,815	65.80%
1967	31,535	4,208	13.34%	1,449	34.43%	2,759	65.57%
1968	31,843	4,807	15.10%	1,668	34.70%	3,139	65.30%
1969	32,735	4,791	14.64%	1,635	34.13%	3,156	65.87%
1970	36,241	5,637	15.55%	1,993	35.36%	3,644	64.64%
1971	44,513	6,416	14.41%	2,103	32.78%	4,313	67.22%
1972	49,381	7,583	15.36%	2,537	33.46%	5,046	66.54%
1973	46,648	7,958	17.06%	2,534	31.84%	5,424	68.16%
1974	47,943	7,335	15.30%	2,293	31.26%	5,042	68.74%
1975	49,143	7,122	14.49%	1,977	27.76%	5,145	72.24%
1976	51,550	7,819	15.17%	2,095	26.79%	5,724	73.21%
1977	53,168	7,912	14.88%	2,027	25.62%	5,885	74.38%
1978	45,922	7,014	15.27%	1,739	24.79%	5,275	75.21%
1979	41,175	7,089	17.22%	2,309	32.57%	4,780	67.43%
1980	36,390	6,816	18.73%	2,134	31.31%	4,682	68.69%
1981	38,018	6,826	17.95%	2,133	31.25%	4,693	68.75%
1982	40,426	6,023	14.90%	1,430	23.74%	4,593	76.26%
1983	43,329	6,240	14.40%	1,567	25.11%	4,673	74.89%
1984	44,501	6,018	13.52%	1,296	21.54%	4,722	78.46%
1985	47,360	6,053	12.78%	1,409	23.28%	4,644	76.72%
1986	50,040	6,710	13.41%	1,600	23.85%	5,110	76.15%
1987	53,938	6,944	12.87%	1,817	26.17%	5,127	73.83%
1988	52,791	6,910	13.09%	1,720	24.89%	5,190	75.11%
1989	54,643	7,542	13.80%	1,863	24.70%	5,679	75.30%
1990	56,519	7,874	13.93%	1,693	21.50%	6,181	78.50%
1991	56,747	7,171	12.64%	1,307	18.23%	5,864	81.77%
1992	58,373	7,176	12.29%	1,165	16.23%	6,011	83.77%
1993	59,544	6,550	11.00%	873	13.33%	5,677	86.67%
1994	61,157	5,866	9.59%	1,030	17.56%	4,836	82.44%
1995	55,250	4,864	8.80%	1,006	20.68%	3,858	79.32%
1996	59,478	4,890	8.22%	806	16.48%	4,084	83.52%
1997	62,053	4,611	7.43%	841	18.24%	3,770	81.76%
1998	66,235	4,621	6.98%	1,117	24.17%	3,504	75.83%
1999	72,438	4,379	6.05%	1,111	25.37%	3,268	74.63%
2000	74,950	4,215	5.62%	1,159	27.50%	3,056	72.50%
2001	75,519	4,292	5.68%	1,503	35.02%	2,789	64.98%
2002	76,827	3,574	4.65%	919	25.71%	2,655	74.29%



Table A-18: Number of Criminal Defendant Dispositions by Trial, by Case Type—Drugs, Violent Crimes, and Fraud in U.S. District Courts, 1962–2002 (Data Underlying Figure 25)

Fiscal Year	Drugs				Homicide, Robbery & Assault				Fraud, Embezzlement & Forgery			
	Total Trials	Number of Trials	Number of Def. Dispositions	% Def. Dispositions at Trial	% of Trials			Number of Trials	Number of Def. Dispositions	% Def. Dispositions at Trial	Number of Trials	Number of Def. Dispositions
					Total Trials	per Total Trials	% Def. Dispositions at Trial					
1982	6,023	1,823	7,980	22.8%	30.3%	22.8%	22.8%	2,520	1,331	13.0%	10,250	13.0%
1983	6,240	1,997	9,164	21.8%	32.0%	21.8%	22.8%	2,283	1,446	12.1%	11,918	12.1%
1984	6,018	1,977	9,191	21.5%	32.9%	21.5%	20.8%	2,119	1,235	10.7%	11,534	10.7%
1985	6,053	2,076	11,177	18.6%	34.3%	18.6%	19.1%	2,112	1,157	10.1%	11,416	10.1%
1986	6,710	2,235	12,935	17.3%	33.3%	17.3%	18.1%	2,020	1,345	10.8%	12,414	10.8%
1987	6,944	2,428	15,084	16.1%	35.0%	16.1%	18.7%	2,218	1,482	10.9%	13,561	10.9%
1988	6,910	2,538	15,750	16.1%	36.7%	16.1%	17.5%	1,944	1,263	9.5%	13,250	9.5%
1989	7,542	2,849	16,834	16.9%	37.8%	16.9%	18.2%	1,951	1,297	10.2%	12,715	10.2%
1990	7,874	3,594	19,271	18.6%	45.6%	18.6%	19.1%	2,061	1,062	8.5%	12,548	8.5%
1991	7,171	3,228	19,226	16.8%	45.0%	16.8%	13.9%	2,223	1,001	8.3%	12,125	8.3%
1992	7,176	3,294	20,225	16.3%	45.9%	16.3%	14.6%	2,495	945	8.0%	11,776	8.0%
1993	6,550	2,994	21,557	13.9%	45.7%	13.9%	15.7%	2,577	899	7.2%	12,455	7.2%
1994	5,866	2,573	21,441	12.0%	43.9%	12.0%	12.3%	2,691	812	6.5%	12,579	6.5%
1995	4,864	1,871	18,772	10.0%	38.5%	10.0%	13.7%	2,357	712	6.0%	11,826	6.0%
1996	4,890	1,940	20,527	9.5%	39.7%	9.5%	12.3%	2,284	802	6.5%	12,348	6.5%
1997	4,611	1,768	21,834	8.1%	38.3%	8.1%	10.5%	2,448	711	5.5%	12,888	5.5%
1998	4,621	1,684	23,278	7.2%	36.4%	7.2%	9.4%	2,570	676	5.1%	13,379	5.1%
1999	4,379	1,625	26,560	6.1%	37.1%	6.1%	9.9%	2,672	641	4.8%	13,435	4.8%
2000	4,215	1,445	27,331	5.3%	34.3%	5.3%	7.8%	2,553	574	4.4%	12,921	4.4%
2001	4,292	1,196	27,991	4.3%	27.9%	4.3%	6.8%	2,430	552	4.4%	12,565	4.4%
2002	3,574	1,187	28,745	4.1%	33.2%	4.1%	6.6%	2,471	548	4.2%	13,060	4.2%

Table A-19: Number of Criminal Trials of a Given Length and Proportion of Trials of a Given Length in U.S. District Courts, 1965–2002 (Data Underlying Figures 26 and 27)

<i>Fiscal Year</i>	<i>1 Day or Less</i>			<i>2 Days</i>			<i>3 Days</i>			<i>4 to 9 Days</i>			<i>10 to 19 Days</i>			<i>20 or More Days</i>		
	<i>Total</i>	<i>Number</i>	<i>% of Total</i>	<i>Number</i>	<i>% of Total</i>	<i>Number</i>	<i>% of Total</i>	<i>Number</i>	<i>% of Total</i>	<i>Number</i>	<i>% of Total</i>	<i>Number</i>	<i>% of Total</i>	<i>Number</i>	<i>% of Total</i>	<i>Number</i>	<i>% of Total</i>	<i>Number</i>
1965	3,872	1,799	46.5%	1,034	26.7%	466	12.0%	483	12.5%	63	1.6%	27	0.7%					
1966	4,410	2,086	47.3%	1,165	26.4%	575	13.0%	503	11.4%	62	1.4%	19	0.4%					
1967	4,405	2,134	48.4%	1,106	25.1%	542	12.3%	553	12.6%	49	1.1%	21	0.5%					
1968	5,533	2,698	48.8%	1,401	25.3%	708	12.8%	625	11.3%	82	1.5%	19	0.3%					
1969	5,563	2,750	49.4%	1,390	25.0%	695	12.5%	636	11.4%	73	1.3%	19	0.3%					
1970	6,585	3,474	52.8%	1,615	24.5%	738	11.2%	682	10.4%	64	1.0%	12	0.2%					
1971	7,456	3,774	50.6%	1,735	23.3%	937	12.6%	891	12.0%	93	1.2%	26	0.3%					
1972	7,818	3,886	49.7%	1,929	24.7%	868	11.1%	978	12.5%	133	1.7%	24	0.3%					
1973	8,571	4,047	47.2%	2,149	25.1%	1,071	12.5%	1,128	13.2%	145	1.7%	31	0.4%					
1974	7,600	3,410	44.9%	1,892	24.9%	980	12.9%	1,128	14.8%	137	1.8%	53	0.7%					
1975	7,633	3,433	45.0%	1,813	23.8%	967	12.7%	1,220	16.0%	163	2.1%	37	0.5%					
1976	8,624	3,376	39.1%	1,890	21.9%	1,098	12.6%	2,026	23.5%	182	2.1%	52	0.6%					
1977	7,222	3,034	42.0%	1,581	21.9%	995	13.8%	1,386	19.2%	182	2.5%	44	0.6%					
1978	7,336	3,365	45.9%	1,532	20.9%	924	12.6%	1,295	17.7%	163	2.2%	57	0.8%					
1979	6,799	3,048	44.8%	1,372	20.2%	919	13.5%	1,232	18.1%	174	2.6%	54	0.8%					
1980	6,634	2,947	44.4%	1,239	18.7%	864	13.0%	1,290	19.4%	221	3.3%	73	1.1%					
1981	6,542	2,745	42.0%	1,300	19.9%	895	13.7%	1,314	20.1%	203	3.1%	85	1.3%					

1982	6,644	2,914	43.9%	1,271	19.1%	1,272	19.1%	212	3.2%	66	1.0%
1983	6,656	2,866	43.1%	1,220	18.3%	1,367	20.5%	205	3.1%	70	1.1%
1984	6,456	2,658	41.2%	1,211	18.8%	1,429	22.1%	228	3.5%	83	1.3%
1985	6,475	2,566	39.6%	1,263	19.5%	1,455	22.5%	239	3.7%	87	1.3%
1986	6,966	2,894	41.5%	1,286	18.5%	1,475	21.2%	264	3.8%	95	1.4%
1987	6,823	2,806	41.1%	1,309	19.2%	1,426	20.9%	249	3.6%	117	1.7%
1988	7,365	3,183	43.2%	1,376	18.7%	1,457	19.8%	233	3.2%	97	1.3%
1989	8,017	3,511	43.8%	1,547	19.3%	1,479	18.4%	282	3.5%	114	1.4%
1990	8,931	3,922	43.9%	1,714	19.2%	1,693	19.0%	289	3.2%	110	1.2%
1991	8,925	3,755	42.1%	1,684	18.9%	1,833	20.5%	293	3.3%	98	1.1%
1992	9,704	3,991	41.1%	1,887	19.4%	2,061	21.2%	316	3.3%	104	1.1%
1993	9,026	3,663	40.6%	1,689	18.7%	1,933	21.4%	333	3.7%	118	1.3%
1994	7,298	3,201	43.9%	1,281	17.6%	1,573	21.6%	269	3.7%	83	1.1%
1995	7,421	3,173	42.8%	1,249	16.8%	1,653	22.3%	297	4.0%	110	1.5%
1996	7,202	3,165	43.9%	1,200	16.7%	1,518	21.1%	283	3.9%	104	1.4%
1997	6,814	2,945	43.2%	1,114	16.3%	1,476	21.7%	293	4.3%	101	1.5%
1998	6,847	3,092	45.2%	1,183	17.3%	1,298	19.0%	236	3.4%	97	1.4%
1999	6,461	2,826	43.7%	1,175	18.2%	1,284	19.9%	219	3.4%	89	1.4%
2000	6,746	3,260	48.3%	1,135	16.8%	1,227	18.2%	222	3.3%	70	1.0%
2001	7,045	3,657	51.9%	1,173	16.7%	1,154	16.4%	201	2.9%	66	0.9%
2002	6,802	3,461	50.9%	1,173	17.2%	1,152	16.9%	189	2.8%	57	0.8%

Table A-20: Number of Bankruptcy Filings

*Bankruptcy statistics, by year, during the 12-month period ending December 31. Data from Administrative Office of the U.S. Courts, Tables F2 (total filings, total business filings, total business Chapter 13 filings, total nonbusiness filings), F2E (total joint business Chapter 13 filings), and F2F (total joint nonbusiness filings)*

<i>Year</i>	<i>Total Filings</i>	<i>Total Business Filings</i>	<i>Total Business Chapter 13 Filings</i>	<i>Total Nonbusiness Filings</i>	<i>Total Joint Business Chapter 13</i>	<i>Total Joint Nonbusiness</i>
1980	331,264	43,694	4,268	287,570	NA	NA
1981	363,943	48,125	5,050	315,818	2,827*	139,231*
1982	380,251	69,300	7,647	310,951	NA	NA
1983	348,880	62,436	6,840	286,444	NA	NA
1984	348,521	64,004	7,015	284,517	NA	NA
1985	412,510	71,277	7,464	341,233	NA	NA
1986	530,438	81,235	8,512	449,203	NA	NA
1987	578,012	82,445	11,999	495,567	5,930	206,051*
1988	613,465	63,653	7,607	549,612	3,938	224,258
1989	679,980	63,227	8,089	616,753	4,161	245,969
1990	782,960	64,853	8,802	718,107	4,466	NA
1991	943,987	71,549	10,123	872,438	4,586	313,122
1992	971,517	70,643	11,439	900,874	5,387	333,786
1993	875,202	62,304	10,309	812,898	4,930	297,785
1994	832,829	52,374	9,238	780,455	4,152	272,002
1995	926,601	51,959	10,363	874,642	4,644	301,577
1996	1,178,555	53,549	11,031	1,125,006	4,988	395,688
1997	1,404,145	54,027	11,095	1,350,118	5,170	472,506
1998	1,442,549	44,367	8,221	1,398,182	3,793	471,758
1999	1,319,465	37,884	5,903	1,281,581	2,640	412,975
2000	1,253,444	35,472	5,494	1,217,972	2,489	385,715
2001	1,492,129	40,099	5,542	1,452,030	2,537	463,965
2002	1,577,651	38,540	5,361	1,539,111	2,370	496,705
2003**	1,611,268	37,548	5,404	1,573,720	2,371	496,682

\*For 12-month period ending June 30, 1981. These data were gathered from Table F-3C (joint petition business bankruptcy numbers for 1981) and Table F-3D (joint petition nonbusiness bankruptcy numbers for 1981).

\*\*For 12-month period ending March 2003.

SOURCE: Elizabeth Warren, "Vanishing Trials: The Bankruptcy Experience," 1 J. Empirical Legal Stud. 913, 917 (2004).

Table A-21: Adversary Terminations, U.S. Bankruptcy Courts, 1985–2002 (Data Underlying Figure 28)

<i>Year</i>	<i>Total Terminations</i>	<i>Adversary Proceedings Terminated During or After Trial</i>	<i>Adversary Proceedings Terminated During or After Trial as % of All Terminations</i>
1985	56,562	9,287	16.42%
1986	62,733	10,545	16.81%
1987	65,603	9,901	15.09%
1988	61,160	9,642	15.77%
1989	52,802	8,031	15.21%
1990	51,004	7,334	14.38%
1991	53,558	7,772	14.51%
1992	66,791	8,353	12.51%
1993	82,710	7,942	9.60%
1994	74,665	6,807	9.12%
1995	79,970	5,945	7.43%
1996	79,165	5,802	7.33%
1997	80,083	5,662	7.07%
1998	75,359	4,943	6.56%
1999	66,467	4,019	6.05%
2000	68,573	3,893	5.68%
2001	58,632	3,160	5.39%
2002	66,508	3,179	4.78%

Table A-22: Civil Filings per Sitting Judge in U.S. District Courts, 1962–2002 (Data Underlying Figure 29)

<i>Fiscal Year</i>	<i>Sitting District Court Judges*</i>	<i>Civil Filings</i>	
		<i>Total</i>	<i>Filings/Sitting Judge</i>
1962	279	54,615	195.8
1963	290	57,028	196.6
1964	294	61,093	207.8
1965	287	62,670	218.4
1966	285	66,144	232.1
1967	317	66,197	208.8
1968	323	66,740	206.6
1969	327	72,504	221.7
1970	328	82,665	252.0
1971	370	89,318	241.4
1972	388	92,385	238.1
1973	384	96,056	250.1
1974	378	101,345	268.1
1975	383	115,098	300.5
1976	375	128,362	342.3
1977	373	128,899	345.6
1978	384	137,707	358.6
1979	397	153,552	386.8
1980	484	167,871	346.8
1981	475	179,803	378.5
1982	495	205,525	415.2
1983	490	241,159	492.2
1984	499	260,785	522.6
1985	500	273,056	546.1
1986	535	254,249	475.2
1987	532	238,394	448.1
1988	547	239,010	436.9
1989	539	232,921	432.1
1990	541	217,421	401.9
1991	537	207,094	385.6
1992	565	230,212	407.5
1993	542	229,440	423.3
1994	589	236,149	400.9
1995	603	248,095	411.4
1996	603	268,953	446.0
1997	578	271,878	470.4
1998	591	256,671	434.3
1999	608	260,134	427.9
2000	612	259,359	423.8
2001	590	250,763	425.0
2002	615	274,711	446.7

\*Number of sitting district court judges does not include senior judges.

Table A-23: Article III Judgeships in U.S. Appellate and District Courts, 1962–2002 (Date Underlying Figure 30)

<i>Fiscal Year</i>	<i>Total Auth.</i>	<i>Total Filled</i>	<i>Appellate</i>			<i>District</i>			<i>Spending in \$ (1,000s)</i>
			<i>Auth</i>	<i>Filled</i>	<i>Senior</i>	<i>Auth</i>	<i>Filled</i>	<i>Senior</i>	
1962	385	353	78	74	*	307	279	*	\$55,943
1963	385	366	78	76	*	307	290	*	\$59,692
1964	385	369	78	75	*	307	294	*	\$62,340
1965	385	361	78	74	*	307	287	*	\$71,861
1966	430	358	88	73	*	342	285	*	\$78,510
1967	430	402	88	85	*	342	317	*	\$86,046
1968	439	406	97	83	*	342	323	*	\$92,105
1969	438	414	97	87	*	341	327	*	\$106,319
1970	498	416	97	88	*	401	328	*	\$126,518
1971	498	462	97	92	*	401	370	*	\$145,957
1972	497	480	97	92	*	400	388	*	\$168,145
1973	497	477	97	93	42	400	384	80	\$183,152
1974	497	473	97	95	*	400	378	103	\$200,896
1975	497	479	97	96	47	400	383	102	\$283,016
1976	496	469	97	94	43	399	375	109	\$321,008
1977	495	460	97	87	48	398	373	120	\$381,433
1978	496	479	97	95	46	399	384	119	\$442,525
1979	648	491	132	94	46	516	397	127	\$503,180
1980	648	610	132	126	45	516	484	126	\$578,761
1981	648	598	132	123	45	516	475	149	\$633,790
1982	647	620	132	125	47	515	495	158	\$709,254
1983	659	630	144	140	50	515	490	152	\$796,044
1984	659	641	144	142	50	515	499	154	\$875,104
1985	743	646	168	146	45	575	500	168	\$1,021,680
1986	743	692	168	157	41	575	535	156	\$1,044,347
1987	743	687	168	155	50	575	532	167	\$1,241,487
1988	743	705	168	158	50	575	547	178	\$1,375,980
1989	743	695	168	156	57	575	539	190	\$1,448,258
1990	743	699	168	158	63	575	541	201	\$1,668,820
1991	828	692	179	155	66	649	537	204	\$2,004,661
1992	828	727	179	162	73	649	565	224	\$2,337,402
1993	828	701	179	159	75	649	542	242	\$2,497,713
1994	828	750	179	161	81	649	589	292	\$2,703,890
1995	828	771	179	168	81	649	603	255	\$2,867,539
1996	826	764	179	161	82	647	603	274	\$3,014,847
1997	826	733	179	155	87	647	578	278	\$3,436,326
1998	825	753	179	162	86	646	591	276	\$3,646,481
1999	825	763	179	155	86	646	608	273	*
2000	834	768	179	156	86	655	612	274	\$4,283,751
2001	844	737	179	147	93	665	590	281	\$4,274,481
2002	844	767	179	152	92	665	615	285	\$4,707,555

Table A-24: Federal Judiciary Expenditures and Federal Judiciary Spending as a Percentage of Government Expenditures, 1962–2002 (Data Underlying Figure 31)

Fiscal Year	Gross Domestic Product in		Gross Domestic Product in		Federal Judiciary Expenditures		Federal Judiciary Expenditures as % of GDP	Total Government Spending (Billions)	Federal Nondefense Spending (Thousands)	Federal Judiciary Expenditures as % of Government Spending
	Current Dollars (Thousands)	Chain-Type (1996) Dollars (Thousands)	Chain-Type (1996) Dollars (Thousands)	Current Dollars (Thousands)	in Chain-Type (1996) Dollars (Thousands)	in Chain-Type (1996) Dollars (Thousands)				
1962	\$586,500,000	\$2,579,200,000	\$2,579,200,000	\$55,943	\$246,011	\$246,011	0.010%	14.1	\$14,100,000	0.40%
1963	\$618,700,000	\$2,691,200,000	\$2,691,200,000	\$59,692	\$259,643	\$259,643	0.010%	15.8	\$15,800,000	0.38%
1964	\$664,400,000	\$2,846,700,000	\$2,846,700,000	\$62,340	\$267,095	\$267,095	0.009%	18.0	\$18,000,000	0.35%
1965	\$720,100,000	\$3,029,500,000	\$3,029,500,000	\$71,861	\$302,318	\$302,318	0.010%	19.7	\$19,700,000	0.36%
1966	\$789,300,000	\$3,228,300,000	\$3,228,300,000	\$78,510	\$321,104	\$321,104	0.010%	20.7	\$20,700,000	0.38%
1967	\$834,100,000	\$3,308,700,000	\$3,308,700,000	\$86,046	\$341,317	\$341,317	0.010%	21.0	\$21,000,000	0.41%
1968	\$911,500,000	\$3,467,100,000	\$3,467,100,000	\$92,105	\$350,342	\$350,342	0.010%	21.8	\$21,800,000	0.42%
1969	\$985,300,000	\$3,571,300,000	\$3,571,300,000	\$106,319	\$385,353	\$385,353	0.011%	23.5	\$23,500,000	0.45%
1970	\$1,039,700,000	\$3,579,100,000	\$3,579,100,000	\$126,518	\$435,518	\$435,518	0.012%	25.5	\$25,500,000	0.50%
1971	\$1,128,600,000	\$3,698,000,000	\$3,698,000,000	\$145,957	\$478,234	\$478,234	0.013%	28.6	\$28,600,000	0.51%
1972	\$1,240,400,000	\$3,899,500,000	\$3,899,500,000	\$168,145	\$528,59	\$528,59	0.014%	32.2	\$32,200,000	0.52%
1973	\$1,385,500,000	\$4,123,600,000	\$4,123,600,000	\$183,152	\$545,095	\$545,095	0.013%	33.9	\$33,900,000	0.54%
1974	\$1,501,000,000	\$4,101,100,000	\$4,101,100,000	\$200,896	\$548,896	\$548,896	0.013%	38.5	\$38,500,000	0.52%
1975	\$1,635,200,000	\$4,085,900,000	\$4,085,900,000	\$283,016	\$707,010	\$707,010	0.017%	44.2	\$44,200,000	0.64%
1976	\$1,823,900,000	\$4,312,900,000	\$4,312,900,000	\$321,008	\$759,064	\$759,064	0.018%	47.4	\$47,400,000	0.68%
1977	\$2,031,400,000	\$4,512,300,000	\$4,512,300,000	\$381,433	\$847,252	\$847,252	0.019%	53.5	\$53,500,000	0.71%



1978	\$2,295,900,000	\$4,761,400,000	\$442,525	\$917,721	0.019%	59.8	\$59,800,000	0.74%
1979	\$2,566,400,000	\$4,912,800,000	\$503,180	\$963,208	0.020%	65.0	\$65,000,000	0.77%
1980	\$2,795,600,000	\$4,900,300,000	\$578,761	\$1,014,480	0.021%	75.6	\$75,600,000	0.77%
1981	\$3,131,300,000	\$5,020,600,000	\$633,790	\$1,016,178	0.020%	84.0	\$84,000,000	0.75%
1982	\$3,259,200,000	\$4,918,900,000	\$709,254	\$1,070,411	0.022%	84.5	\$84,500,000	0.84%
1983	\$3,534,900,000	\$5,132,800,000	\$796,044	\$1,155,865	0.023%	92.0	\$92,000,000	0.87%
1984	\$3,932,700,000	\$5,504,900,000	\$875,104	\$1,224,950	0.022%	92.8	\$92,800,000	0.94%
1985	\$4,213,000,000	\$5,717,200,000	\$1,021,680	\$1,386,457	0.024%	101.0	\$101,000,000	1.01%
1986	\$4,452,900,000	\$5,912,000,000	\$1,044,347	\$1,386,547	0.023%	106.5	\$106,500,000	0.98%
1987	\$4,742,500,000	\$6,113,100,000	\$1,241,487	\$1,600,267	0.026%	109.3	\$109,300,000	1.14%
1988	\$5,108,300,000	\$6,367,900,000	\$1,375,980	\$1,715,258	0.027%	106.8	\$106,800,000	1.29%
1989	\$5,489,100,000	\$6,592,000,000	\$1,448,258	\$1,739,231	0.026%	119.3	\$119,300,000	1.21%
1990	\$5,803,200,000	\$6,706,600,000	\$1,668,820	\$1,928,603	0.029%	133.6	\$133,600,000	1.25%
1991	\$5,986,200,000	\$6,676,600,000	\$2,004,661	\$2,235,848	0.033%	142.9	\$142,900,000	1.40%
1992	\$6,318,900,000	\$6,879,600,000	\$2,337,402	\$2,544,803	0.037%	156.0	\$156,000,000	1.50%
1993	\$6,642,300,000	\$7,062,600,000	\$2,497,713	\$2,655,729	0.038%	162.4	\$162,400,000	1.54%
1994	\$7,054,300,000	\$7,347,500,000	\$2,703,890	\$2,816,259	0.038%	165.9	\$165,900,000	1.63%
1995	\$7,400,500,000	\$7,543,900,000	\$2,867,539	\$2,923,077	0.039%	170.9	\$170,900,000	1.68%
1996	\$7,813,200,000	\$7,813,200,000	\$3,014,847	\$3,014,847	0.039%	174.6	\$174,600,000	1.75%
1997	\$8,318,400,000	\$8,159,300,000	\$3,436,326	\$3,370,599	0.041%	185.6	\$185,600,000	1.85%
1998	\$8,781,500,000	\$8,509,300,000	\$3,646,481	\$3,533,412	0.042%	190.1	\$190,100,000	1.92%
1999	\$9,268,600,000	\$8,853,400,000	\$3,917,200	\$3,741,714	0.042%	200.7	\$200,700,000	1.95%
2000	\$9,872,900,000	\$9,236,600,000	\$4,283,751	\$4,007,626	0.043%	214.3	\$214,300,000	2.00%
2001	\$10,224,900,000	\$9,344,700,000	\$4,274,481	\$3,906,490	0.042%	228.2	\$228,200,000	1.87%
2002	\$10,446,200,000	\$9,439,900,000	\$4,707,555	\$4,254,068	0.045%	246.3	\$246,300,000	1.91%

Table A-25: Definitions of Bench and Jury Trials for Selected State Courts

Alaska	Jury and bench trials are counted if tried to judgment.
Arizona	A jury trial is counted when the voir dire examination of the panel begins. A bench trial is counted when the first witness is sworn.
Arkansas	A jury trial is counted when the jury is sworn. A bench trial is counted when an opening statement or the introduction of evidence occurs.
California	A jury trial is counted when the jury is empaneled. A bench trial is counted when an opening statement or the introduction of evidence occurs.
Delaware	A jury trial is counted when the jury is empaneled. A bench trial is counted when an opening statement or the introduction of evidence occurs.
District of Columbia	Civil jury and bench trials are counted if tried to verdict or decision. A criminal jury trial is counted when the jury is empaneled. A criminal bench trial is counted when the first witness is sworn or the introduction of evidence occurs.
Florida	A jury trial is counted when the jury is empaneled. A bench trial is counted when an opening statement or the introduction of evidence occurs.
Hawaii	A jury trial is counted when the jury is empaneled. A bench trial is counted when an opening statement or the introduction of evidence occurs.
Indiana	Jury and bench trials are counted if tried to verdict or decision.
Iowa	A jury trial is counted when the jury is sworn. A bench trial (contested) is counted when the first witness is sworn.
Kansas	A jury trial is counted when the jury is empaneled. A bench trial is counted if the case is contested (an attorney appears in opposition).
Maine	A jury trial is counted with the beginning of voir dire. A bench trial is counted when opening arguments occur.
Maryland	A jury trial is counted when the jury is sworn. A bench trial is counted when an opening statement or the introduction of evidence occurs.
Massachusetts	A jury trial is counted when the jury is sworn. A bench trial is counted when an opening statement or the introduction of evidence occurs.
Michigan	Jury and bench trials are counted if tried to verdict or decision.
Minnesota	A jury trial is counted when the jury is sworn. A bench trial is counted when the first witness or evidence is introduced.
Missouri	Jury and bench trials are counted after the presentation of evidence on the merits has begun, and the judge or jury renders a verdict.
New Jersey	Jury and bench trials are counted if tried to verdict or decision.
New Mexico	Jury and bench trials are counted when a decision is rendered.
North Carolina	A jury trial is counted when the jury is empaneled. A bench trial is counted when an opening statement or the introduction of evidence occurs. However, there is no jurisdiction for criminal nonjury trials.
Ohio	A jury trial is counted when the jury is sworn. A bench trial is counted when the first witness is sworn.
Pennsylvania	Jury and bench trials are counted when the verdict is rendered.
Puerto Rico	Current trial definitions are unknown.
South Dakota	A jury trial is counted when the jury is sworn/empaneled. A bench trial is counted when an opening statement or the introduction of evidence occurs. Hearing dispositions are also included in the count of bench trials.
Texas	Jury and bench trials are counted when an opening statement or the introduction of evidence occurs. Guilty pleas in criminal cases after the start of bench trials are counted as trials.

Table A-25: Continued

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Vermont	Jury and bench trials are counted if tried to verdict or decision.
Virginia	A jury trial is counted when the jury is empaneled and sworn. A bench trial is counted when an opening statement or the introduction of evidence occurs.
Washington	A jury trial is counted when the jury is sworn. A bench trial is counted when the first witness is sworn.
West Virginia	A jury trial is generally counted when the jury is selected and sworn. A bench trial is counted when an opening statement or the introduction of evidence occurs.

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SOURCE: Ostrom, Strickland &amp; Hannaford (2004).

Table A-26: Number of Civil and Criminal Trials per Sitting Judge in U.S. District Courts, 1962–2002 (Data Underlying Figure 33)

<i>Fiscal Year</i>	<i>Sitting District Court Judges*</i>	<i>Civil Trials</i>		<i>Criminal Trials</i>	
		<i>Total</i>	<i>Trials/Sitting Judge</i>	<i>Total</i>	<i>Trials/Sitting Judge</i>
1962	279	5,802	20.80	5,097	18.27
1963	290	6,522	22.49	5,187	17.89
1964	294	6,445	21.92	4,172	14.19
1965	287	6,972	24.29	—	—
1966	285	6,910	24.25	4,278	15.01
1967	317	7,029	22.17	4,208	13.27
1968	323	7,536	23.33	4,807	14.88
1969	327	7,385	22.58	4,791	14.65
1970	328	7,547	23.01	5,637	17.19
1971	370	7,621	20.60	6,416	17.34
1972	388	8,168	21.05	7,583	19.54
1973	384	7,948	20.70	7,958	20.72
1974	378	8,153	21.57	7,335	19.40
1975	383	8,513	22.23	7,122	18.60
1976	375	8,556	22.82	7,819	20.85
1977	373	8,752	23.46	7,912	21.21
1978	384	9,158	23.85	7,014	18.27
1979	397	9,433	23.76	7,089	17.86
1980	484	9,874	20.40	6,816	14.08
1981	475	11,302	23.79	6,826	14.37
1982	495	11,280	22.79	6,023	12.17
1983	490	11,576	23.62	6,240	12.73
1984	499	12,018	24.08	6,018	12.06
1985	500	12,529	25.06	6,053	12.11
1986	535	11,666	21.81	6,710	12.54
1987	532	11,890	22.35	6,944	13.05
1988	547	11,598	21.20	6,910	12.63
1989	539	11,356	21.07	7,542	13.99
1990	541	9,257	17.11	7,874	14.55
1991	537	8,407	15.66	7,171	13.35
1992	565	8,029	14.21	7,176	12.70
1993	542	7,728	14.26	6,550	12.08
1994	589	7,900	13.41	5,866	9.96
1995	603	7,438	12.33	4,864	8.07
1996	603	7,565	12.55	4,890	8.11
1997	578	7,352	12.72	4,611	7.98
1998	591	6,782	11.48	4,621	7.82
1999	608	6,225	10.24	4,379	7.20
2000	612	5,779	9.44	4,215	6.89
2001	590	5,400	9.15	4,292	7.27
2002	615	4,569	7.43	3,574	5.81

\*Number of sitting district court judges does not include senior judges.

Table A-27: Number of Bench and Jury Civil Trials per Sitting Judge in U.S. District Courts, 1962–2002 (Data Underlying Figure 34)

<i>Fiscal Year</i>	<i>Sitting District Court Judges*</i>	<i>Jury Trials</i>		<i>Bench Trials</i>		<i>Total Trials</i>	
		<i>Total</i>	<i>Trials/Sitting Judge</i>	<i>Total</i>	<i>Trials/Sitting Judge</i>	<i>Total</i>	<i>Trials/Sitting Judge</i>
1962	279	2,765	9.91	3,037	10.89	5,802	20.80
1963	290	3,017	10.40	3,505	12.09	6,522	22.49
1964	294	2,886	9.82	3,559	12.11	6,445	21.92
1965	287	3,087	10.76	3,885	13.54	6,972	24.29
1966	285	3,158	11.08	3,752	13.16	6,910	24.25
1967	317	3,074	9.70	3,955	12.48	7,029	22.17
1968	323	3,148	9.75	4,388	13.59	7,536	23.33
1969	327	3,147	9.62	4,238	12.96	7,385	22.58
1970	328	3,183	9.70	4,364	13.30	7,547	23.01
1971	370	3,240	8.76	4,381	11.84	7,621	20.60
1972	388	3,361	8.66	4,807	12.39	8,168	21.05
1973	384	3,264	8.50	4,684	12.20	7,948	20.70
1974	378	3,250	8.60	4,903	12.97	8,153	21.57
1975	383	3,462	9.04	5,051	13.19	8,513	22.23
1976	375	3,501	9.34	5,055	13.48	8,556	22.82
1977	373	3,462	9.28	5,290	14.18	8,752	23.46
1978	384	3,505	9.13	5,653	14.72	9,158	23.85
1979	397	3,576	9.01	5,857	14.75	9,433	23.76
1980	484	3,894	8.05	5,980	12.36	9,874	20.40
1981	475	4,679	9.85	6,623	13.94	11,302	23.79
1982	495	4,771	9.64	6,509	13.15	11,280	22.79
1983	490	5,036	10.28	6,540	13.35	11,576	23.62
1984	499	5,510	11.04	6,508	13.04	12,018	24.08
1985	500	6,253	12.51	6,276	12.55	12,529	25.06
1986	535	5,621	10.51	6,045	11.30	11,666	21.81
1987	532	6,279	11.80	5,611	10.55	11,890	22.35
1988	547	5,907	10.80	5,691	10.40	11,598	21.20
1989	539	5,666	10.51	5,690	10.56	11,356	21.07
1990	541	4,781	8.84	4,476	8.27	9,257	17.11
1991	537	4,280	7.97	4,127	7.69	8,407	15.66
1992	565	4,279	7.57	3,750	6.64	8,029	14.21
1993	542	4,109	7.58	3,619	6.68	7,728	14.26
1994	589	4,444	7.54	3,456	5.87	7,900	13.41
1995	603	4,122	6.84	3,316	5.50	7,438	12.33
1996	603	4,359	7.23	3,206	5.32	7,565	12.55
1997	578	4,551	7.87	2,801	4.85	7,352	12.72
1998	591	4,330	7.33	2,452	4.15	6,782	11.48
1999	608	4,000	6.58	2,225	3.66	6,225	10.24
2000	612	3,778	6.17	2,001	3.27	5,779	9.44
2001	590	3,632	6.16	1,768	3.00	5,400	9.15
2002	615	3,006	4.89	1,563	2.54	4,569	7.43

\*Number of sitting district court judges does not include senior judges.

Table A-28: Approximate Number of Lawyers in the United States and Lawyers per Capita in the United States, 1970–2002 (Data Underlying Figures 35 and 36)

<i>Calendar Year</i>	<i>Number of Lawyers</i>	<i>Lawyers per 100,000</i>
1970	326,842	160.4
1970	342,980	166.1
1972	358,520	171.6
1973	365,875	173.4
1974	385,515	181.1
1975	404,772	188.4
1976	424,980	195.8
1977	431,918	197.0
1978	464,851	209.9
1979	498,249	222.5
1980	574,810	253.8
1981	612,593	267.6
1982	617,320	267.0
1983	622,625	266.9
1984	647,575	275.1
1985	653,686	275.2
1986	676,584	282.4
1987	695,020	287.4
1988	713,456	292.4
1989	725,579	294.7
1990	755,694	303.9
1991	777,119	308.5
1992	799,760	313.4
1993	846,036	327.0
1994	865,614	330.5
1995	896,140	338.2
1996	946,499	352.9
1997	953,260	351.2
1998	985,921	359.0
1999	1,000,440	360.1
2000	1,022,462	363.9
2001	1,048,903	369.4
2002	1,049,751	366.0

Table A-29: Per Capita Civil Trials and Civil Trials per Billion Dollars of Gross Domestic Product in U.S. District Courts, 1962–2002 (Data Underlying Figures 37 and 39)

<i>Fiscal Year</i>	<i>Number of Trials</i>	<i>U.S. Population (Millions)</i>	<i>Trials per Capita (per Million)</i>	<i>GDP (Billions in 1996 Chain-Type Dollars)</i>	<i>Trials per Billion \$ of GDP</i>
1962	5,802	185.2	31.32	2,578.9	2.25
1963	6,522	188.0	34.69	2,690.4	2.42
1964	6,445	190.7	33.80	2,846.5	2.26
1965	6,972	193.2	36.08	3,028.5	2.30
1966	6,910	195.5	35.34	3,227.5	2.14
1967	7,029	197.7	35.55	3,308.3	2.12
1968	7,536	199.8	37.72	3,466.1	2.17
1969	7,385	201.8	36.60	3,571.4	2.07
1970	7,547	203.8	37.02	3,578.0	2.11
1971	7,621	206.5	36.91	3,697.7	2.06
1972	8,168	208.9	39.10	3,898.4	2.10
1973	7,948	211.0	37.67	4,123.4	1.93
1974	8,153	212.9	38.29	4,099.0	1.99
1975	8,513	214.9	39.61	4,084.4	2.08
1976	8,556	217.1	39.41	4,311.7	1.98
1977	8,752	219.2	39.93	4,511.8	1.94
1978	9,158	221.5	41.35	4,760.6	1.92
1979	9,433	223.9	42.14	4,912.1	1.92
1980	9,874	226.5	43.60	4,900.9	2.01
1981	11,302	228.9	49.37	5,021.0	2.25
1982	11,280	231.2	48.80	4,919.3	2.29
1983	11,576	233.3	49.61	5,132.3	2.26
1984	12,018	235.4	51.06	5,505.2	2.18
1985	12,529	237.5	52.76	5,717.1	2.19
1986	11,666	239.6	48.68	5,912.4	1.97
1987	11,890	241.8	49.18	6,113.3	1.94
1988	11,598	244.0	47.54	6,368.4	1.82
1989	11,356	246.2	46.12	6,591.8	1.72
1990	9,257	248.7	37.23	6,707.9	1.38
1991	8,407	251.9	33.38	6,676.4	1.26
1992	8,029	255.2	31.46	6,880.0	1.17
1993	7,728	258.7	29.87	7,062.6	1.09
1994	7,900	261.9	30.16	7,347.7	1.08
1995	7,438	265.0	28.06	7,543.8	0.99
1996	7,565	268.2	28.21	7,813.2	0.97
1997	7,352	271.4	27.09	8,159.5	0.90
1998	6,782	274.6	24.70	8,508.9	0.80
1999	6,225	277.8	22.41	8,859.0	0.70
2000	5,779	281.0	20.57	9,191.4	0.63
2001	5,400	283.9	19.02	9,214.5	0.59
2002	4,569	286.8	15.93	9,439.9	0.48

Table A-30: Per Capita Trials in Courts of General Jurisdiction in 22 States, 1976–2002 (Data Underlying Figure 38)

<i>Year</i>	<i>Total Population</i>	<i>Total Dispositions</i>	<i>Jury Trials</i>	<i>Bench Trials</i>	<i>Trials per Million Persons</i>	<i>Jury Trials per Million Persons</i>	<i>Bench Trials per Million Persons</i>
1976	124,140,528	1,464,258	26,018	502,549	4,259	210	4,050
1977	125,505,423	1,529,250	25,462	499,392	4,182	203	3,979
1978	127,061,751	1,682,323	24,103	543,893	4,469	190	4,279
1979	128,694,830	1,769,757	23,239	571,126	4,618	181	4,438
1980	130,059,872	1,873,462	23,073	603,471	4,816	177	4,639
1981	132,110,916	1,991,291	23,555	626,188	4,919	178	4,740
1982	133,684,935	2,064,635	23,849	654,760	5,076	178	4,897
1983	135,207,203	2,114,228	23,671	667,282	5,111	175	4,936
1984	136,729,506	2,112,185	24,124	629,572	4,782	176	4,606
1985	138,373,532	2,019,391	22,663	615,029	4,608	164	4,444
1986	140,190,926	2,280,859	23,316	604,333	4,477	166	4,311
1987	141,981,568	2,336,662	24,428	593,130	4,349	172	4,177
1988	143,768,90	2,460,803	23,182	590,416	4,267	161	4,106
1989	145,641,614	2,682,534	22,618	612,983	4,365	155	4,210
1990	147,134,858	2,828,182	22,387	610,741	4,304	152	4,152
1991	149,448,749	3,015,817	23,089	623,199	4,326	155	4,171
1992	151,252,580	3,395,382	24,159	688,517	4,710	160	4,551
1993	152,894,370	3,257,366	24,109	667,480	4,523	158	4,365
1994	154,404,590	3,128,551	24,055	634,692	4,266	156	4,111
1995	155,896,258	3,138,796	23,453	613,981	4,089	150	3,938
1996	157,413,542	3,107,930	23,649	616,557	4,067	150	3,917
1997	159,082,511	3,208,712	24,565	641,667	4,188	154	4,033
1998	160,727,242	3,338,543	25,201	627,451	4,061	157	3,904
1999	162,333,836	3,097,209	24,299	568,954	3,655	150	3,506
2000	167,235,347	2,999,012	21,937	528,104	3,290	131	3,159
2001	169,874,724	3,073,153	19,190	508,035	3,103	113	2,990
2002	171,974,667	3,087,857	17,617	469,547	2,832	102	2,730

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