

BEYOND THE VANISHING TRIAL: A LOOK AT THE COMPOSITION OF STATE COURT DISPOSITIONS

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The composition of case dispositions in the nation's state courts is changing. As the use of trials declines, knowledge of the use of non-trial dispositions becomes increasingly important as a means of maintaining public trust and confidence in the courts.

As documented in “Examining Trial Trends in State Courts: 1976-2002,” the use of trials by the nation’s general jurisdiction courts has been declining over the past two decades.¹ From 1976 to 2002, jury trials decreased by 15 percent for criminal cases and 32 percent for civil cases while bench trials declined 10 percent and 7 percent, respectively. This decline in trials took place at the same time as dispositions increased by over 100 percent for both case categories.

The phenomenon of the “vanishing trial” has prompted interest in the manner in which court cases are disposed and has led to varying theories as to why the use of trials is declining.² In anticipation of these discussions, the NCSC included in its State Court Disposition Trends database information on non-trial dispositions, and this article presents the first findings related to non-trial disposition trends in the state courts.

Non-Trial Dispositions

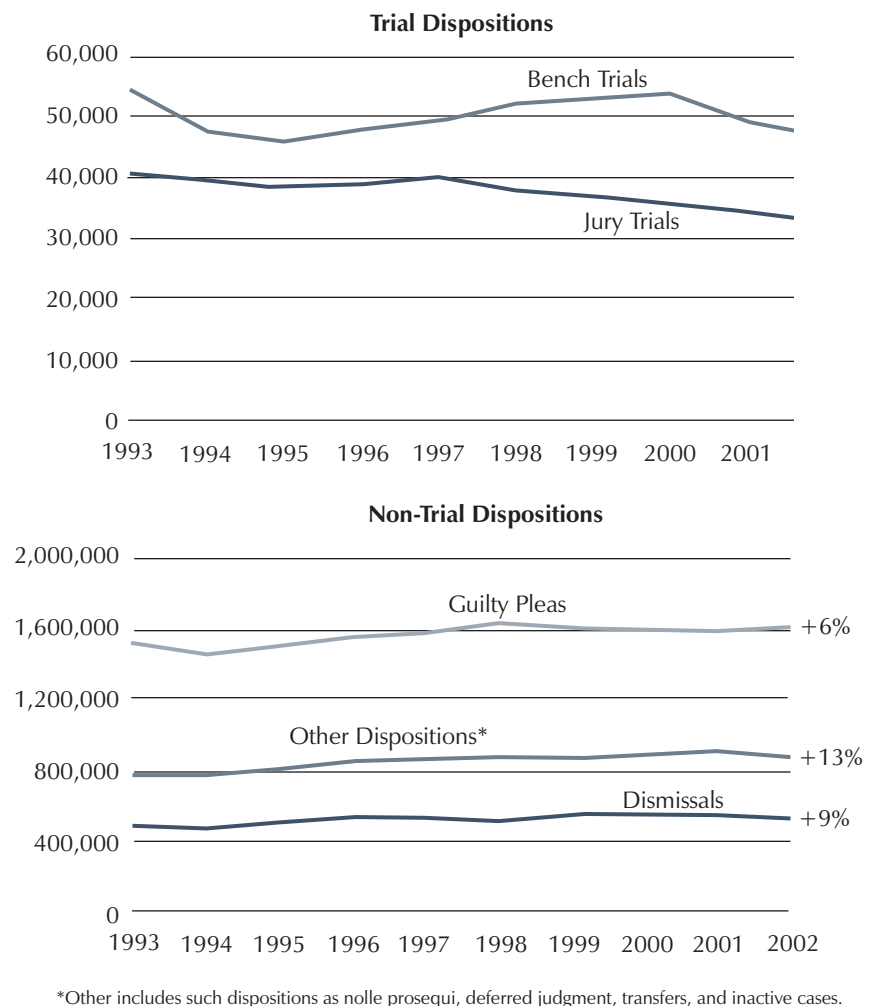
The NCSC’s State Court Disposition Trends database classifies criminal non-trial dispositions as guilty pleas, dismissals, and nolle prosequi (or not prosecuted). Civil non-trial dispositions are classified as default judgments, settlements/dismissals, and arbitration. Dispositions such as deferred or summary judgment are included in the database as well, but are not identified separately from “other” dispositions. Using the Disposition Trends database, 19 states provided criminal non-trial disposition data for the years 1993-2002 while 15 states provided civil data.³

Criminal Dispositions

As expected, total criminal dispositions increased (7 percent) during the period 1993 to 2002 for the 19 states included in the trend. Trial dispositions decreased

during this time period, with jury trials falling by 20 percent and bench trials declining by 14 percent. Non-trial dispositions, e.g., guilty pleas, dismissals, and other dispositions, increased. Figure 1 below illustrates these changes.

Figure 1: Criminal Dispositions Trends in 19 States, 1993-2003



Criminal trials, while consuming a vast amount of court resources, actually comprise very little of a court's disposition activity. In fact, trials accounted for no more than 4 percent of all criminal dispositions during the time period examined. Of the non-trial dispositions, guilty plea dispositions are the most common, comprising about 60 percent of all criminal dispositions. Dismissals account for 21 percent of dispositions while the remainder of disposition activity is captured as "other" dispositions.

Table 1: Criminal Manner of Disposition in 19 States, 1993-2002

Year	Total	Trial Dispositions		Non-Trial Dispositions		
		Jury	Bench	Guilty Pleas	Dismissals	Other
1993	2,391,251	2%	2%	63%	21%	33%
1994	2,321,848	2	2	63	21	33
1995	2,382,011	2	2	63	21	33
1996	2,497,638	2	2	63	21	34
1997	2,526,890	2	2	62	22	34
1998	2,592,804	2	2	62	21	34
1999	2,581,549	1	2	63	20	34
2000	2,574,782	1	2	62	21	34
2001	2,571,918	1	2	62	21	35
2002	2,566,600	1	2	61	21	35

In addition to showing the composition of criminal dispositions, Table 1 also shows how that composition has changed over time. One assumption regarding criminal dispositions was that trials were decreasing as a result of increased plea bargaining (an increase in the entering of guilty pleas). For the states included here, however, this assumption is not true, as guilty pleas have actually decreased as a proportion of total criminal dispositions, from 63 percent in 1993 to 61 percent in 2002. The only disposition category that has seen an increase in proportion is the category of "other," which was 35 percent of total dispositions in 2002.

The "other" category includes criminal dispositions such as nolle prosequi, deferred judgment, transfers, cases placed on inactive status, and post-

judgment activity that most likely relates to probation/parole violations. The State Court Disposition Trends database does not capture these dispositions individually since first, many states do not report such detail, and second, the states that do report such detail do not all report the same disposition categories.⁴ Because of this, it is not possible to determine the proportional change of these dispositions over time. It is, however, possible to determine if there are states with high percentages of "other" dispositions and investigate whether or not those states report their dispositions in finer detail.

For 2002, six states (Delaware, District of Columbia, New Mexico, Ohio, Texas, and Vermont) reported more than 20 percent of their dispositions in the "other" category. These states also reported detailed manner-of-disposition information for 2002. As seen in Table 2, the composition of the "other" category varies greatly from state-to-state. Vermont reported the highest percentage of cases that were nolle prosequi (75 percent) while Texas reported the highest percentage of deferred judgments (42 percent). The majority of Ohio's "other" dispositions are for cases that are placed on inactive status, and three-quarters of New Mexico's "other" dispositions are reported as being post-judgment activity.

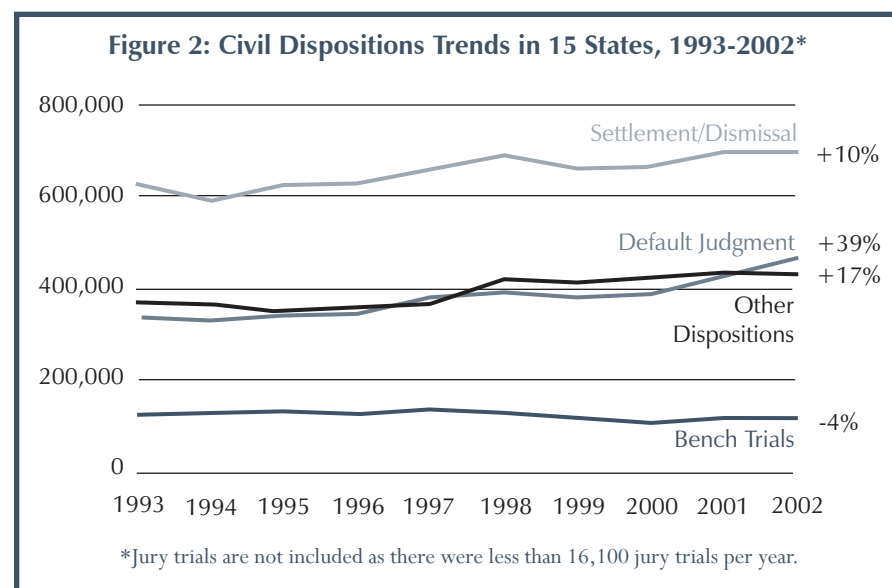
Table 2: Composition of "Other" Dispositions in 6 States, 2002*

	Total	Nolle Prosequi	Deferred Judgment	Transferred	Placed on Inactive Status	Post Judgment	Misc.
Delaware	2,326	48%	29%	1%	0%	0%	23%
DC	11,450	19			36		45
New Mexico	7,953	25				75	20
Ohio	16,123		14	33	43		10
Texas	85,187		42	1		57	10
Vermont	5,051	75	22	2			

*Blank cells indicate that the state did not report that disposition.

Civil Dispositions

Civil dispositions followed the same pattern as that seen in criminal dispositions. For the period 1993-2002, total civil dispositions increased by 17 percent while trial dispositions decreased and non-trial dispositions increased. Civil jury trials experienced a much larger decrease (27 percent) than civil bench trials (4 percent). For non-trial dispositions, default judgments saw the biggest increase (39 percent) followed by “other” dispositions (17 percent).



The composition of civil dispositions is shown in Table 3. The most common disposition is settled/dismissed, which accounted for 40 percent of all civil dispositions in 2002. Default judgments and “other” dispositions each comprise approximately 25 percent of all dispositions, while trials have never been more than 10 percent of dispositional activity.

The most apparent change in the composition of civil dispositions is the increase in default judgments. Beginning as 23 percent of all civil dispositions in 1993, default judgments accounted for 27 percent of 2002 dispositions. The increase in default judgments was accompanied by a corresponding decrease in settlements/dismissals,

which fell from 43 percent of all civil dispositions in 1993 to 40 percent in 2002. The proportion of “other” dispositions (alternative dispute resolutions, summary judgments, transfers, cases placed on inactive status, etc.) remained 25 percent of total dispositions.

Table 3: Civil Manner of Disposition in 15 States, 1993-2002

Year	Total	Trial Dispositions		Non-Trial Dispositions		
		Jury	Bench	Default Judgment	Settlement/Dismissals	Other
1993	1,540,258	1%	8%	23%	43%	25%
1994	1,495,466	1	9	23	41	26
1995	1,524,432	1	9	23	43	24
1996	1,534,395	1	9	23	42	24
1997	1,629,312	1	9	24	43	23
1998	1,718,197	1	8	24	42	25
1999	1,655,373	1	7	24	42	26
2000	1,665,557	1	7	24	42	26
2001	1,757,143	1	7	25	41	26
2002	1,748,307	1	7	27	40	25

Conclusion

The nature of dispositional activity in state courts is changing. Trials, though never a substantial proportion of dispositions, are being held even less frequently than 10 years ago. This decline in the use of trials has been accompanied by an increase in various types of non-trial dispositions. While guilty pleas remain the most common form of disposition for criminal cases, courts seem to be disposing of more cases by means of dispositions such as nolle prosequi and deferred judgments. In civil cases, settlements/dismissals remain the most common disposition, but the use of default judgments seems to be increasing.

This analysis provides preliminary insights into the composition of state court dispositions. Small, but consistent shifts in composition are occurring, and

additional research, particularly in the use of “other” criminal dispositions, is needed in order to better understand the impact that these changes are having on the courts.

ENDNOTES

¹ See Brian J. Ostrom, Shauna M. Strickland, and Paula L. Hannaford-Agor, “Examining Trial Trends in State Courts: 1976-2002,” *Journal of Empirical Legal Studies* 1, no. 3 (November 2004): 755-82.

² See *Journal of Empirical Legal Studies* 1, no. 3 (November 2004) for articles presented at the American Bar Association Section of Litigation’s “Vanishing Trials” symposium, and *Civil Action* 4, no. 1 (Spring 2005) for highlights of the NCSC’s 2004 Annual Justice Roundtable.

³ The states included in the trends are as follows: Criminal—Alaska, California, Delaware, District of Columbia, Florida, Indiana, Iowa, Kansas, Michigan, Missouri, New Jersey, New Mexico, North Carolina, Ohio, Pennsylvania, South Dakota, Texas, Vermont, and Washington; Civil—Alaska, Arkansas, District of Columbia, Florida, Indiana, Kansas, Michigan, Missouri, New Jersey, New Mexico, Ohio, Texas, Vermont, Virginia, and Washington.

⁴ The exception to this is nolle prosequi, which is captured within the Disposition Trends database. However, since only five states reported cases as being nolle prosequi, this data was combined with the “other” dispositions category for the purpose of initial analysis.

