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## Jury Trial Decline Wreaks Havoc On Profession, Judges Say

By **Dorothy Atkins**

Law360, Berkeley, Calif. (April 15, 2019, 9:38 PM EDT) -- Federal judges are at a loss over how to stem the declining number of jury trials, a drop that is a blight on both the future of the legal profession and the mental health of lawyers, jurists told a California conference.

Arizona U.S. District Judge David Campbell said the decline in jury trials is the "single biggest loss" to the profession and that he has resorted to adopting creative policies to encourage more parties to resolve their disputes at trial. But he hasn't had much success, he told an audience of legal scholars, attorneys and judges at a judiciary reform symposium Friday.

"People have lost trust in the jury system," Judge Campbell said. "I think that not only is a great loss for the system, but also a great loss for the society."

From 2000 to 2018, the number of federal civil and criminal jury trials annually has dropped by more than 53%, from 6,893 to 3,226. But the number of new civil and criminal cases filed annually has increased 7.7%, from 343,480 to 370,085, during the same period, according to data collected by the Administrative Office of the U.S. Courts.

### Jury Trials On the Decline

Since 2000, the annual number of federal civil and criminal jury trials has dropped by more than 53%, while the number of new civil and criminal cases filed annually has increased 7.7%, according to data collected by the Administrative Office of the U.S. Courts.

Civil and criminal jury trials	Total annual filings
2000 6,893	343,480
2018 3,226	370,085

*Annual data reflects the 12-month period ending on Sept. 30.*

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The trend has driven judges to try to incentivize lawyers and their clients to accept expedited litigation schedules so that the parties aren't embroiled in protracted pretrial disputes for years, according to federal judges speaking at the event, which was hosted by the University of California, Berkeley School of Law's Berkeley Judicial Institute and the California Law Review.

Judge Campbell said he tried giving parties the option of sending their cases to trial within

four months of filing suit. At the outset, he would require the lawyers to provide their clients with two budgets: one budget that estimated the costs of "old-fashioned" litigation and another that would estimate how much it would cost to go to trial within four months, which was always cheaper, he said.

Out of about 800 civil cases, Judge Campbell said not a single one went to trial under the expedited format. About 80 to 100 parties expressed an interest in the shorter litigation schedule, but the counter party in the case wouldn't agree to it, the judge said. In three instances, both parties took him up on the offer, but then all three cases were either settled or dropped before trial, Judge Campbell said.

Sixth Circuit Judge Amul Thapar said he adopted a strategy similar to Judge Campbell's when he served as a district judge in Kentucky. Judge Thapar said at the initial case management conference, he would give the parties the option of setting a trial date one year from the date the complaint was filed to encourage the parties to save on costs. But not many chose that option, he said.

Judge Thapar said that overall he thinks the decline in jury trials has led to an increase in the number of attorneys who are dissatisfied with the legal profession and as a result turn to alcohol and drugs, driving them further into depression.

"They went to law school to become trial lawyers, and they became discovery dispute [attorneys]," Judge Thapar said. "I think we need to get back to trials."

Ninth Circuit Chief Judge Sidney Thomas, who sat on the panel with Judge Thapar, agreed that many attorneys appear to be losing their trial skills, and nowadays lawyers often spend four to five years litigating discovery disputes with no intention of ever going to trial, and then they settle. He said everyone would be better off if the court's rules promoted jury trials and reduced discovery disputes.

Berkeley law professor Andrea Roth, who sat on an academic panel on problems the federal judiciary faces, noted that the decline in jury trials is particularly problematic for criminal defendants, who regularly negotiate plea deals outside the courtroom before hearings. Generally, the number of criminal cases filed over the past two decades has stayed relatively steady, Roth said. But between 2000 and 2018, the number of criminal jury trials has dropped by 48 percent, from 3,489 to 1,809, with 85% to 90% of defendants entering plea deals.

"And some people say efficiency is so exciting," she said.

While jury trials are becoming ever more rare, multiple judges speaking at the symposium said they have seen a significant rise in the number of individuals without lawyers who file pro se cases. During a keynote speech, Second Circuit Judge Jon O. Newman said he has seen a "major increase" in pro se litigants and that their appeals make up about half the cases before him.

Massachusetts U.S. District Judge Patti Saris agreed that she has seen a rise in pro se cases on her docket, which now take up about 30% of her caseload, up from about 20% in the 1990s. Although a few are vexatious litigants, Judge Saris said many of the pro se cases are filed by plaintiffs with legitimate disputes over immigration issues, wrongful foreclosures or inadequate medical care in prisons.

Judge Saris said she spends months encouraging those litigants to find pro bono lawyers, but law firms have not been very helpful in taking the cases. She added that pro se cases also take up more of her time because the plaintiffs often aren't familiar with legal procedures.

"I don't pretend to have a solution here ... but this is an important corner of law that we need to be careful about, so we're not too squeezed and tired [to address the disputes]," she said.

U.S. District Judge Josephine Staton of the Central District of California echoed Judge Saris' comments and suggested the courts could try to incorporate more technology into case filing procedures, like using chat bots, to ensure that both pro se litigants and lawyers are complying with local rules and legal procedures. She added that she spends a significant amount of her time addressing procedural mishaps that have nothing to do with the merits of the cases.

"It would free up our time, because we deal with the mess," she said.

--Editing by Jill Coffey.

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