

REPORT OF THE
SPECIAL COMMITTEE TO
STUDY THE DECLINE IN JURY TRIALS

Final Report

December 2011

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Staff: Joy A. Bruner, Assistant Ethics Counsel, The Florida Bar

INTRODUCTION

When Mayanne Downs became President of The Florida Bar in June 2010, one of her stated goals was to examine the decline in the number of jury trials and its impact on the judicial system, the public and lawyers. To this end, the Special Committee to Study the Decline in Jury Trials was created. The mission statement follows:

The mission of the Committee is to research and analyze the trend of declining jury trials in both civil and criminal matters, in state and federal courts; determine the reasons for the decline and the impact that it has upon the justice system, the citizens of the state of Florida and Florida lawyers; report to the Board of Governors on any issues of concern; and, if appropriate, recommend action.

The Committee appointed by President Downs consists of Florida lawyers and judges who practice in both civil and criminal law in state and federal courts. The Committee members were chosen for their experience and knowledge concerning the realities of modern trial practice. The Committee met in person four times: September 23, 2010, March 9, 2011, June 23, 2011 and September 6, 2011. In the course of its work, the Committee studied numerous law review and journal articles discussing the decline in the number of jury trials and reviewed studies done by other bar organizations that examined the phenomenon. This review included Professor Marc Galanter's article *The Vanishing Trial: An Examination of Trials and Related Matters in Federal and State Courts*¹ that was part of the American Bar Association's Vanishing Trial Project. The Committee also examined studies by the Boston Bar Association,² the Middle District Pennsylvania Civil Jury Trial Bench/Bar Task Force,³ the Multnomah County, Oregon

¹ 1 J. Empirical Legal Studies 459 (2004).

² Report Of The Boston Bar Association Task Force On The Vanishing Jury Trial (2006).

³ Report Of The Middle District [Pennsylvania] Civil Jury Trial Bench/Bar Task Force (2009).

Presiding Judge's Committee,⁴ and the American College of Trial Lawyers.⁵ Statistics provided by the Office of the State Court Administrator, beginning with fiscal year 1986/1987 through fiscal year 2009/2010, and federal court statistics as presented in Prof. Galanter's report were also examined.

The Committee has no stake in a particular outcome. Before the Committee could consider any potential recommendations, the Committee needed to learn why the number of jury trials was decreasing. The Committee also needed to consider what the possible effects the declining number of jury trials may have on the legal profession, the justice system and the public. Once the Committee examined these issues, the Committee considered recommendations it could make to address the declining number of jury trials. The Committee now presents its findings in this report to the President and Board of Governors of The Florida Bar.

THE NUMBER OF JURY TRIALS IS DECLINING

Nationwide

In the federal courts, Prof. Galanter looked at data from 1960 through 2002. In 1962, there were 50,320 civil dispositions and 11.5% (5,802) of those dispositions were by trial. In 2002, there were 258,876 civil dispositions, but only 1.8% (4,569) of those dispositions were by trial. Over this same time, the number of criminal cases also increased, with a similar decline in trials. In 1962, of 33,110 criminal dispositions (by defendant), 15% (5,097) were by trial. In contrast, by 2002 only 4.7% (3,574) of the 76,827 criminal dispositions were by trial.

⁴ The Vanishing Civil Jury Trial In Multnomah County, Report Of The Presiding Judge's ADR/Vanishing Civil Jury Trial Committee (2009).

⁵ The "Vanishing Trial:" The College, The Profession, The Civil Justice System, American College of Trial Lawyers Ad Hoc Committee on the Future of the Civil Trial (2004).

Prof. Galanter also studied data concerning state courts. Prof. Galanter discussed information gathered for the ABA Vanishing Trial Project from the National Center for State Courts. This information concerned 21 states (including Florida) and Washington, D.C. As to civil cases, in 1976 there were a total of 528,567 trials out of 1,464,258 total dispositions. This number represents 36.1% of the total dispositions. By 2002, there were 487,200 trials out of 3,087,857 total civil dispositions. This number represents 15.8% of the total dispositions. These numbers include both bench and jury trials, with the majority of trials in state courts being bench trials rather than jury trials.

There was a similar decline in the number of criminal trials held in the state courts examined. In 1976, 8.5% of the total number of criminal dispositions was by trial, whereas, in 2002 trials accounted for only 3.3% of the total dispositions.

State of Florida

The number of jury trials in the State of Florida is also declining. The Committee examined statistics provided by the Office of the State Court Administrator. The statistics for Circuit Court criminal cases⁶ show a decline in the percentage of cases disposed of by jury trial. As an overview, in fiscal year 1986/1987, there were 130,575 total dispositions and 4,091 jury trials, constituting 3.1% of total dispositions. In fiscal year 2009/2010, the total number of Circuit Court criminal dispositions had increased to 200,710, and 4,112 of the cases were disposed of by jury trials. This number of jury trials represents 2.1% of the total dispositions. While the total number of jury trials for these years is similar, when considered in light of the increased number of total dispositions, there is a marked decrease in jury trials as a percentage.

A similar decrease occurred in Circuit Court civil cases.⁷ In fiscal year 1986/1987, there were 155,407 total civil cases and, of those cases, 2,413 were disposed of by jury trial; a number representing 1.6% of total Circuit Court dispositions. In contrast, in fiscal year 2009/2010, there were a total of 401,463 Circuit Court civil dispositions, but only 879 of those were after jury

⁶ Appendix, Table 1

⁷ Appendix, Table 2

trial, representing 0.2% of the total number of Circuit Court civil dispositions. While the numbers for 2009/2010 may be somewhat skewed due to the number of foreclosure cases pending in the Circuit Courts, an examination of fiscal year 2006/2007 (before the foreclosure case increase) shows that of the total of 166,343 Circuit Court civil case dispositions, only 1,017 were disposed of after jury trial. This represents a jury trial rate of 0.3%.

Interestingly, the County Court statistics show less of a decline in the number of jury trials as an overall percentage of the case dispositions. In County Court criminal cases not involving criminal traffic offenses or DUI,⁸ the jury trial rate has remained at between 0.3% and 0.4% of the total dispositions during the period from fiscal year 1986/1987 through fiscal year 2009/2010. In fiscal year 1986/1987, there were 1,209 jury trials out of a total number of 362,445 dispositions. This equates to a jury trial rate of 0.3%. In fiscal year 2009/2010, there were a total of 437,121 dispositions, including 1,706 after trial by jury, for a jury trial rate of 0.4%.

The jury trial rate for County Court criminal traffic cases has also not shown much of a decline over this same time period.⁹ For fiscal year 1986/1987, there were 878 criminal traffic cases disposed of after trial by jury out of a total of 438,967 total dispositions. This represents a jury trial rate of 0.2%. In fiscal year 2009/2010, the jury trial rate was also 0.2%, representing 733 dispositions by jury trial out of 419,972 total dispositions. Over the years examined, the jury trial rate generally fluctuated between 0.1% and 0.2% of the total County Court criminal traffic dispositions, except for fiscal years 1996/1997 and 1997/1998, where the jury trial rate was effectively 0.0% of the total dispositions.

⁸ Appendix, Table 3

⁹ Appendix, Table 4

Conversely, the statistics for County Court misdemeanor DUI cases fluctuated greatly over the period examined by the Committee.¹⁰ In fiscal year 1986/1987, there were a total of 66,826 misdemeanor DUI cases disposed of, with 1,966 disposed of by jury trial for a jury trial rate of 2.9%. In fiscal year 2009/2010, there were a total of 45,614 misdemeanor DUI case dispositions with 1,055 disposed of after jury trial, for a rate of 2.3%. Over the years, however, the jury trial rate ranged from a low of 1.0% in fiscal year 1996/1997 (363 jury trial dispositions out of a total of 37,748 dispositions) to a high of 6.4% in fiscal year 2006/2007 (2,878 jury trial dispositions out of a total of 44,879 dispositions). Clearly, the statistics show that County Court DUI cases are not following the same trends as other types of cases.

In County Court civil cases, the jury trial rate held steady.¹¹ From fiscal year 1986/87 through 2009/2010, the jury trial rate for County civil cases was effectively 0.0% of total dispositions. In fiscal year 1986/87, there were a total of 776,904 dispositions, but only 108 were after trial by jury. In fiscal year 2009/2010, there were 2,696,314 total dispositions and only 119 were after trial by jury. The Committee wondered whether this was because a majority of the dispositions in this category comes from civil traffic infractions where there is no right to a jury trial. However, upon examining the jury trial statistics once the civil traffic cases were removed,¹² it appears that the civil traffic cases did not play a major role in the jury trial rate as the jury trial rate effectively remained at 0.0%, except for fiscal years 1995/1996, 1999/2000 and 2004/2005 when there was a jury trial rate of 0.1% of the total County Court civil dispositions.

WHY IS THE NUMBER OF JURY TRIALS DECLINING?

The Committee examined the statistics provided, various journal and law review articles and also relied on their anecdotal experiences in discussing possible reasons why the number of jury trials has decreased over the years. Several Committee members noted that, in their experience, while

¹⁰ Appendix, Table 5

¹¹ Appendix, Table 6

¹² Appendix, Table 7

there may be fewer trials overall, the trials that do occur tend to be longer and more complex. There also appears to be some differences between civil and criminal cases as to the reasons why the number of jury trials has declined.

Civil Cases

There are many potential causes contributing to the declining number of jury trials. Chief among them is the rise of alternative dispute resolution, including mediation and arbitration. Another factor is the expense involved, not just in conducting a trial, but in preparing a case for trial. These costs include the expenses involved in discovery, the costs of expert witnesses, the ability of the client or the attorney to fund the case and the attorney's fee. Another factor is the amount of time it takes to bring a case to trial and any delays that occur along the way. Another potential reason behind the decline in civil jury trials may be the risk involved when the opposing party has made an offer of judgment or proposal for settlement under the applicable rules and/or statute. These reasons, either separately or in combination, can lead a client to prefer to settle a case rather than to proceed to a jury trial.

Criminal Cases

As stated, the statistics establish that there has been a steady decline in the number of jury trials in Circuit (Felony) Court over the last thirty-five years.^{13 14} The Committee concludes that there are multiple factors that contribute to this decline: (1) the impact of the sentencing guidelines and the increased number of offenses punishable by mandatory minimum penalties, both of which result in a significant shift in control over sentencing from the judge to the prosecutor; (2) a

¹³ Per the office of the State Court Administrator, felony cases were going to trial in 1986 at just over 3%, and from 2000-2009 the average was approximately 2%.

¹⁴ Members of the Committee who practice criminal law believe that DUI cases go to trial more frequently than felony cases or non-DUI misdemeanors or civil cases for several reasons. DUI cases may be more defensible or have a reasonable chance of a not-guilty verdict making the risk of trial worthwhile since mandatory minimum penalties apply and cannot be waived, whether there is a guilty plea or guilty verdict. Moreover, attorneys involved have experience in trying DUI cases and are more likely to feel comfortable going to trial.

perception that a “jury trial penalty” of a more severe sentence may be imposed if the defendant elects the right to a jury trial and receives an adverse verdict; (3) the financial costs associated with going to trial; and (4) prosecutors and public defenders are better trained.

Sentencing Laws

In criminal cases, sentencing laws such as those concerning minimum mandatory sentences, habitual offender statutes and sentencing guidelines often drive clients to accept pleas rather than risk the outcome of a jury trial. The enactment of sentencing guidelines and mandatory minimum sentences are factors the Committee believes have directly led to a reduction of felony criminal jury trials.¹⁵ The first of many mandatory minimum sentences, the 3-year mandatory minimum for using a firearm in the commission of an offense, was passed in 1978. Florida’s sentencing guidelines, enacted in 1983, applied to felonies committed after October 1, 1983. The data provided to the Committee shows that in 1986-87 the jury trial rate for felony cases in the state court was 3.1%. Since that time, the rate of felony jury trials has steadily decreased.

Often, and particularly since the changes in sentencing, a plea agreement includes a cooperation agreement. In state and federal courts, upon motion of the government, the sentencing court may reduce the sentence, even a mandatory minimum sentence, if the court agrees the accused has provided substantial assistance. This change in the law vests greater power in the government and creates another incentive to plead guilty as opposed to going to trial.

Unlike the state court sentencing guidelines, the federal sentencing guidelines are no longer mandatory following *United States v. Booker*, 543 U.S. 222 (2005). Some federal practitioners believe this change could lead to a small increase in the number of criminal jury trials in the future.

Unlike in federal criminal cases, the state guidelines currently establish a “floor” as to sentencing, but no “ceiling” as to a potential sentence. To understand how this impacts the jury

¹⁵ The state guidelines do not apply to misdemeanors.

trial rate, a brief history of the state guidelines is helpful. The original sentencing guidelines had a “floor” and a “ceiling.” Under this system the sentencing judge was required, unless there were exceptional circumstances, to sentence a defendant within a “permitted range.” Thus, at that time there was a “top” range and a “bottom” range. The purpose was to establish more uniformity in sentencing throughout the State.

In October 1998, the Florida Legislature enacted the Criminal Punishment Code. When this was enacted, the sentencing guidelines were modified and the ceiling was removed. The net effect of this change is that for felonies committed after October 1, 1998, the sentencing judge is required to sentence the defendant at or above “the floor,” unless exceptional circumstances are present. Since there is no longer a ceiling, the judge may sentence the defendant to the statutory maximum.¹⁶ This change in the sentencing guidelines law seemingly has undermined the initial rationale for the sentencing guidelines to impose uniform sentences for similar conduct throughout the State. Additionally, changes in the sentencing guidelines have provided the Government more power to affect the sentencing decision, diminishing the traditional responsibility of the trial judge to impose a sentence based on the facts and circumstances of an individual case and the background and character of an individual defendant. For this reason, some members of the Committee feel strongly that the sentencing guidelines should be abolished or, at a minimum, amended to restore more traditional sentencing discretion to the trial judge.

The data provided to the Committee establishes a direct correlation between this change in the sentencing guidelines and the decline in felony jury trials. In 1998, the year the guidelines were modified, the rate of jury trials was 2.8%. Since 1998, with the exception of 2009-2010, the jury trial rate has declined every year. By 2007, the jury trial rate for felonies had dropped to 1.7% -- a 60% drop since the “ceiling” was removed from the guidelines.

The explanation for this drop is that sentencing guidelines give prosecutors a tremendous weapon with which to “encourage” defendants to plea, rather than go to trial. Richard E. Myers,

¹⁶ There are situations under Florida’s Criminal Punishment Code whereby the sentencing judge can sentence the defendant above the sentencing maximum.

II, a former prosecutor, quoted in a September 26, 2011, *New York Times* article, titled “Sentencing Shift Gives Clout to Prosecutors - Fewer Cases go to Trial,” explained: “We now have an incredible concentration of power in the hands of the prosecutors.” This power gives prosecutors the leverage to force defendants who otherwise would go to trial to accept plea offers.

Another difference between the federal guidelines and those in state court contributing to the decrease in jury trials is that in state cases a negotiated plea agreement is a legal basis for a downward departure which can result in a substantially lower sentence than called for by the guidelines. Additionally, unlike in federal court, the state guideline sentence is calculated based upon the type and number of charges, something that may be negotiable in a plea agreement. Both of these factors give prosecutors and not the court much greater discretion and control over the possible and actual sentence imposed in any case.

On the other hand, in federal cases, if an accused pleads guilty, the guideline sentence is reduced by 2-3 levels based upon the acceptance by the accused of responsibility for his or her criminal conduct. However, if the accused elects to go to trial and is convicted, no such guideline reduction is possible, except in exceedingly rare instances.

The impact of these considerations, alone and together, increase both the risk of going to trial and the benefit of pleading guilty in both federal and state felony criminal cases.

The various sentencing laws have substantially reduced, and in some cases entirely eliminated, judicial discretion over many aspects of sentencing decisions. Entering into a plea agreement offers more certainty (in federal court) and usually absolute certainty (in state court) than going to trial.

Perception of a " Jury Trial Penalty"

The Committee also finds that there is a perception held by some attorneys practicing in the criminal law area that, at times, a "jury trial penalty" is imposed by some judges on defendants merely because the defendant exercises his or her right to a jury trial. This may occur as a component of "docket control" or as discouragement of the perceived waste of judicial time and resources when the defendant stands on his or her right to a jury trial. Whether this perception is correct or not, the Committee recommends that in criminal cases there should be no explicit or implicit judicial or prosecutorial policy or procedure that suggests or results in a "jury trial penalty" imposing harsher penalties on a criminal defendant merely for exercising his or her right to a jury trial.

Expense of Going to Trial

Modern technology and scientific advancements in forensics have had a significant impact on criminal investigations. These advances have affected the manner in which criminal cases are prosecuted and defended. The expense of hiring experts for pre-trial preparation and/or trial may affect the decision of both the State and the defendant on whether to reach a pre-trial settlement or go to trial.

While the expense of litigation has an impact on the number of criminal cases that go to jury trial, this impact is probably far less than in civil cases. Prosecutors have the State of Florida's resources behind them. Defendants are often indigent and thus do not "have to come out of pocket" to pay for the expense of litigation. In addition, the fear of having a criminal record or going to prison, for example, often overrides financial concerns. However, in criminal cases in which the defense attorney is privately retained and may have charged a trial fee, this is a factor to be considered by the client when weighing whether to go to trial or accept a plea agreement.

Importantly, the Committee members, are concerned that the lack of full funding for the court system, especially insufficient funding for public defender and state attorney offices to hire and

retain quality lawyers, is forcing our overworked, publicly-paid lawyers to settle more cases, some of which would otherwise have gone to trial.

Increased Efficiency and Better Trained Advocates

The Committee members practicing criminal law note that in many ways the system has become more efficient through the use of DNA and other evidence. This increased efficiency may result in fewer trials. Assistant State Attorneys and Assistant Public Defenders are better trained than they were 30 years ago. This has led to lawyers who can more accurately evaluate the strengths and weaknesses of a case. In many instances, the better the lawyers the more likely a non-trial resolution will be reached.

In conclusion, the Committee determines that while other factors may have contributed to the decline in felony jury trials, Florida's sentencing guidelines provisions, especially the amendment removing the "ceiling," and mandatory minimum sentences, have had the biggest impact.

THE EFFECTS OF THE DECLINING NUMBER OF JURY TRIALS

The Committee considered the potential effects on lawyers, the judicial system, clients and the public due to the declining number of jury trials.

Effects on the Public

The declining number of jury trials does not just affect lawyers. It affects the public generally as well as specifically as clients and as jurors.

With fewer trials, fewer people get to participate in the judicial system as jurors. As with voting, jury service is a significant and meaningful way for the average citizen to directly play an integral role in governmental decision making. There is great value to the justice system in

having the public involved in the justice system as jurors. Jury service helps educate the public about the justice system. This in turn can help make the public understand the justice system and the role of the Rule of Law. An additional benefit is that jurors learn first-hand the importance of fully funding the third branch of government.

Effects on the Judicial System

The Committee studied how the declining number of jury trials affects the judicial system. The Committee is concerned with how this trend may affect the public's perception of the justice system. For instance, what happens in a courtroom is public. In contrast, what happens in mediation and arbitration is private and does not become part of the public record. An already untrusting public becomes further concerned when it does not see the basis for a legal outcome.

The Committee is also concerned how the decline in jury trials influences issues concerning the independence of the judiciary and the full funding of the court system. The Committee is concerned that the fact that fewer jury trials are being held could be used as a reason not to fully fund the court system; a never ending cycle of less funding and less independence begins to evolve.

As noted below, the fact that fewer jury trials are being conducted affects training for new lawyers and may also affect practicing attorneys' comfort levels at handling trials. These concerns potentially can also affect the trial bench. With fewer trials being conducted, lawyers who become judges may come to the bench with less jury trial experience.

Effects on Lawyers

An area of great concern to the Committee is the effect of the decline in jury trials on new lawyers. One of the obvious and traditional methods for new lawyers to learn how to handle jury trials is by actually conducting them. With fewer jury trials being held, there may need to be new ways to train lawyers. The decline in the number of jury trials also may have a negative

effect on practicing lawyers as to their comfort and skill level. The Committee recognizes that most cases settle. However, the decline in the number of jury trials could lead to an increase in cases settling because the attorneys involved do not know how to try the case.

The Committee also considered how the declining number of jury trials affects a lawyer's eligibility for board certification, an important program for the lawyers and for the public, as well as eligibility for admission to peer groups, such as ABOTA. A board certified lawyer is recognized as a specialist or expert in the field of certification. Both board certification and many peer groups have eligibility requirements, including that the attorney has tried a certain number of cases. With fewer trials being conducted overall, it can be more difficult for lawyers to qualify to become board certified or to join certain peer groups. The Committee is not recommending a change in the requirements for board certification, nor is the Committee recommending that the Bar encourage peer groups to change their eligibility requirements. However, the issue is an area of concern for these organizations and should be addressed in the near future.

THE COMMITTEE'S RECOMMENDATIONS

After considering the statistics that the number of jury trials is declining in both state and federal courts, the reasons why there are fewer jury trials, and the effect this trend has on the public, the judicial system and lawyers, the Committee faced the question of what recommendations it could make to assist The Florida Bar in addressing this phenomenon. The Committee's recommendations include those that are applicable to both civil and criminal cases, as well as those that are applicable solely to civil cases and solely to criminal cases. In making its recommendations, the Committee kept in mind the bedrock rights Americans have to a jury trial, both in our State and Federal Constitutions. It is the Committee's hope that through its recommendations, the importance of the jury trial is recognized anew and that the jury trial remains a viable option for resolving disputes.

Recommendations Applicable To Both Civil And Criminal Cases

Full Court Funding

The Committee recommends full funding of the judiciary according to the needs determined by the Florida Supreme Court. Court funding issues affect the decline in the number of jury trials. There is a need for more courtrooms and more judges to try cases. While the number of jury trials has decreased, the caseloads of the courts have greatly increased, placing increased pressure on the courts to move cases.

No Penalty for Exercising Right to Jury Trial

Jury trials are good for the parties involved in a case, the public, and the justice system as a whole. It is appropriate in some circumstances for people to exercise their right to a jury trial. This applies to both criminal and civil cases. Any penalty that is imposed after a jury trial that would not be imposed in a settlement of the case may be viewed as penalizing a party for exercising the right to a jury trial. The Committee recommends that courts refrain from imposing any penalty that could be perceived as punishment for the exercise of this constitutional right.

Recommendations about training and mentoring

The Committee is concerned about the future of the profession; that is, how new lawyers will be trained and how complex cases will be tried. The Committee believes there is a dramatic increase in the need for mentoring newer attorneys, whether through their firms or through other programs. However, while mentoring is important, there is no way of replicating a real trial. The following are the Committee's recommendations regarding training and mentoring:

Certified Legal Intern Program

One method allowing law students to get experience trying cases already exists. It is the law school practice program, governed by Chapter 11 of the Rules Regulating The Florida Bar. This program allows law students to become certified legal interns. Several Committee members have personal experience with the program, including supervising and training the certified legal interns. The program is a very valuable one. The Committee recommends expansion of the program to include more civil cases and, if possible, to allow civil law firms to use certified legal interns.

In order to participate, students now must get a letter of clearance as to character and fitness from the Board of Bar Examiners in order to become certified. This requirement may eliminate from the program students who do not intend to take the Florida Bar examination after graduation. Additionally, this requirement takes time and sometimes the interns do not get their certification until after they start at a prosecutor or public defender office. As a result, they do not get a chance to actually try cases until the end of their time at the office. The Committee recommends that consideration be given to try to streamline or expedite the necessary background investigation.

Another concern is that not all state attorney and public defender offices are in areas near one of the state's law schools, which impairs their ability to attract certified legal interns. The students are already paying tuition to earn school credit for the internship. If a student is assigned to an office that is not located near the law school, the student would also have to pay housing costs, which may not be affordable. This may discourage or even preclude some students from participating in the program. The Committee recommends that the Bar encourage the law schools, the alumni, the participating state attorney and public defender offices, local bar associations or some combination to try to find ways to help law students with these costs.

Internship with State Attorney or Public Defenders

Internships are another possible way to allow new attorneys to get trial experience. The Committee recommends consideration of a program to allow new associates at law firms and other attorneys to intern at State Attorney and Public Defender offices and try cases for them, perhaps as pro bono or to get CLE credit. However, any such program must be a service to the offices rather than a burden. For these reasons, the Committee recommends that any such program should be structured and last for a sufficient period of time, such as six months. This is due to the need to train and supervise the attorneys and still meet obligations to the clients. The Committee is mindful that such a program potentially could have an unintended negative consequence on the funding for public defender and state attorney offices as the legislature could be reluctant to fund any increases if these offices are getting volunteer help. Therefore, care would need to be taken to try to avoid such an unintended result. Cooperation among and involvement of the State Attorneys, Public Defenders, Chief Judges and the Criminal Law Section of The Florida Bar are critical to this concept.

Existing Programs

There already are Bar programs that can assist a new lawyer in gaining experience. One of those programs is the One Campaign. One Committee member has experience with the program and notes that the cases have already been vetted and prepared by legal aid. These cases just need to be tried. Another existing program is the SCOPE (Seek Counsel of Professional Experience) program, which allows an inexperienced attorney to contact an experienced attorney for advice. The Committee recommends that the Bar consider whether SCOPE should be expanded to allow the inexperienced attorney to help or sit through a trial conducted by an experienced attorney, provided the experienced attorney and client are willing and the client consents. Additionally, the Federal Court in the Southern District of Florida has a program for lawyers to accept and try a case in which a party is not entitled to court-compensated counsel.

Trial Observation

Law students learn how to conduct jury trial by observation. The Committee recommends that the Board encourage law schools to require, or to at least encourage, law students to observe at least one criminal and one civil trial before graduation. Local courts could facilitate trial observation by trying cases on occasion at the law schools.

Allowing Judicial Feedback Once Cases Are Concluded

The Committee's final recommendation regarding training and mentoring applies to all attorneys. The Committee believes that the amendment of appropriate rules to allow judges to discuss a case with attorneys after the case is concluded, without fear of facing future motions to recuse, would provide an invaluable learning experience from the sharing of judicial observations about the trial was conducted.

Case Management and Trial Divisions

The Committee specifically examined the role of the trial judge and how a court can conduct pre-trial matters and administer cases with more efficiency and less cost to litigants. It is well appreciated that the courts are presently working with somewhat scarce resources. However, if court funding could include for the provision of court assistants and clerks, then a court could properly manage pre-trial matters that reduce discovery issues and delays which tend to increase costs. Runaway costs are a leading factor to parties in deciding whether to opt for resolution by trial. Additionally, if adequate resources can be re-instituted, then trial divisions can be effective in advancing those cases that merit resolution by trial, but otherwise face numerous roadblocks.

Recommendations Applicable To Civil Cases

Discovery

One of the greatest costs in moving a case forward to trial, particularly in civil cases, is discovery. Cases today are more expensive and more complex. The amount of material stored on computers makes discovery more time consuming and expensive. The Committee believes that judges need the power to exercise greater discretion over discovery. For example, the discovery rules could consider the resources of the parties and the issues at stake in determining the scope of discovery. Therefore, the Committee recommends that the rules committees study how to streamline discovery.

Expedited Jury Trials

Existing statutes allow for expedited and summary trials. Section 45.075, Florida Statutes, allows for expedited trials and Section 51.011, Florida Statutes, governs summary procedures. The Committee recommends that lawyers consider and encourage use of these procedures where appropriate and in the client's interest.

Recommendation Applicable To Criminal Cases

Re-evaluation of Sentencing Laws

The Committee is mindful that the Legislature, not The Florida Bar, has the power and immense responsibility to draft and enact sentencing laws, and the Committee appreciates the process used by the Legislature to evaluate and consider many factors, including public safety, before enacting these laws. However, since the Committee believes the sentencing laws are the driving force behind the declining number of jury trials in criminal cases, and the Committee is concerned that the decline in jury trials is not in the best interest of the lawyers and courts as well as the citizens

of Florida, the Committee recommends the Board consider asking the Legislature to examine and reevaluate its sentencing laws to determine if these laws meet the Legislature's goals.

CONCLUSION

It is a fact that most criminal cases and civil cases have been and will continue to be resolved without a trial. That most cases settle is not a recent trend or phenomenon. The Committee recognizes that the justice system lacks the resources and personnel to try every case to a jury verdict and the Committee understands that the lawyer's duty is first to the client to resolve the client's matter in a manner the client directs, whether that be through settlement, mediation or trial. Nevertheless, there is a definite decline in the number of jury trials over the last few decades, and it appears to be a widening trend. The impact of the steady and severe decline in the number of jury trials greatly concerns the Committee. The Committee hopes its study and recommendations will lead to (1) increased and better jury trial training opportunities for law students and young lawyers; (2) greater efforts to educate the public about the importance of the Constitutional right to jury trials and the sixth and seventh amendments, along with the benefits of the jury trial system; and (3) streamlined discovery and other procedures to make jury trials more cost effective and efficient.

APPENDIX

TABLE 1**Circuit Criminal Dispositions FY 1986-87 through FY 2009-10**

Statistics Source: Office of the State Court Administrator

FY	Total Dispositions	Before Trial	After Trial Non-Jury	After Trial by Jury	Jury Trial Rate
1986-87	130,575	125,766	718	4,091	3.1%
1987-88	146,927	142,505	581	3,841	2.6%
1988-89	168,000	163,281	581	4,138	2.5%
1989-90	172,648	167,417	719	4,512	2.6%
1990-91	166,189	160,926	623	4,640	2.8%
1991-92	166,090	160,861	507	4,722	2.8%
1992-93	151,734	146,432	561	4,741	3.1%
1993-94	151,130	146,202	433	4,495	3.0%
1994-95	155,844	151,045	431	4,368	2.8%
1995-96	162,280	157,132	539	4,609	2.8%
1996-97	174,288	169,033	462	4,793	2.8%
1997-98	174,240	168,892	514	4,834	2.8%
1998-99	181,137	176,056	562	4,519	2.5%
1999-00	172,770	168,096	413	4,261	2.5%
2000-01	177,341	173,079	315	3,947	2.2%
2001-02	169,888	165,801	354	3,733	2.2%
2002-03	181,713	177,372	350	3,991	2.2%
2003-04	187,425	183,122	309	3,994	2.1%
2004-05	189,032	184,878	461	3,693	2.0%
2005-06	212,791	207,949	757	4,085	1.9%
2006-07	227,129	222,160	829	4,140	1.8%
2007-08	238,981	234,016	719	4,246	1.8%
2008-09	218,378	213,789	787	3,802	1.7%
2009-10	200,710	196,327	271	4,112	2.1%

TABLE 2**Circuit Civil Dispositions FY 1986-87 through FY 2009-10**

Statistics Source: Office of the State Court Administrator

Note: These statistics do not include family law or probate cases

FY	Total Dispositions	After Trial Non-Jury	After Trial by Jury	Jury Trial Rate
1986-87	155,407	4,614	2,413	1.6%
1987-88	160,945	4,541	2,467	1.5%
1988-89	168,823	4,983	2,274	1.3%
1989-90	179,271	5,358	2,078	1.2%
1990-91	182,923	4,425	1,976	1.1%
1991-92	178,108	3,143	2,256	1.3%
1992-93	153,399	2,476	2,220	1.4%
1993-94	132,934	1,597	1,879	1.4%
1994-95	129,151	1,099	1,769	1.4%
1995-96	123,052	985	1,894	1.5%
1996-97	137,000	1,344	1,875	1.4%
1997-98	149,697	1,089	1,996	1.3%
1998-99	152,845	907	2,064	1.4%
1999-00	153,691	848	1,788	1.2%
2000-01	157,148	945	1,523	1.0%
2001-02	162,056	805	1,402	0.9%
2002-03	173,195	1,227	1,295	0.7%
2003-04	169,082	658	1,160	0.7%
2004-05	155,605	712	1,129	0.7%
2005-06	148,830	678	1,037	0.7%
2006-07	166,343	845	1,017	0.6%
2007-08	228,081	1,809	986	0.4%
2008-09	328,622	504	985	0.3%
2009-10	401,463	553	879	0.2%

TABLE 3**County Criminal Dispositions FY 1986-87 through FY 2009-10**

Statistics Source: Office of the State Court Administrator

Note: These statistics do not include County Criminal Traffic and DUI

FY	Total Dispositions	Before Trial	After Trial Non-Jury	After Trial by Jury	Jury Trial Rate
1986-87	362,445	353,684	7,552	1,209	0.3%
1987-88	390,170	382,002	6,884	1,284	0.3%
1988-89	401,984	393,616	7,123	1,245	0.3%
1989-90	433,905	425,961	6,781	1,163	0.3%
1990-91	420,378	410,491	8,525	1,362	0.3%
1991-92	448,126	437,951	8,688	1,487	0.3%
1992-93	385,169	370,342	13,012	1,815	0.5%
1993-94	397,963	382,851	13,281	1,831	0.5%
1994-95	394,438	380,516	12,523	1,399	0.4%
1995-96	400,499	387,654	11,036	1,809	0.5%
1996-97	443,794	433,222	8,802	1,770	0.4%
1997-98	450,713	440,836	8,000	1,877	0.4%
1998-99	434,278	424,884	7,664	1,730	0.4%
1999-00	415,008	407,075	6,318	1,615	0.4%
2000-01	441,726	433,340	6,893	1,493	0.3%
2001-02	428,724	420,201	6,975	1,548	0.4%
2002-03	459,679	452,546	5,475	1,658	0.4%
2003-04	442,500	436,554	4,377	1,569	0.4%
2004-05	444,683	439,785	3,351	1,547	0.3%
2005-06	483,026	478,157	3,193	1,676	0.3%
2006-07	471,224	466,682	2,825	1,717	0.4%
2007-08	487,610	482,666	3,246	1,698	0.3%
2008-09	444,137	438,487	4,062	1,588	0.4%
2009-10	437,121	431,249	4,166	1,706	0.4%

TABLE 4**County Criminal Traffic Dispositions FY 1986-87 through FY 2009-10**

Statistics Source: Office of the State Court Administrator

FY	Total Dispositions	Before Trial	After Trial Non-Jury	After Trial by Jury	Jury Trial Rate
1986-87	438,967	414,471	23,618	878	0.2%
1987-88	339,957	320,849	18,267	841	0.2%
1988-89	366,935	354,802	11,482	651	0.2%
1989-90	401,251	388,696	11,605	950	0.2%
1990-91	414,825	404,189	10,215	421	0.1%
1991-92	467,874	459,994	7,563	317	0.1%
1992-93	396,094	387,460	8,385	249	0.1%
1993-94	383,964	376,024	7,699	241	0.1%
1994-95	382,812	370,849	11,753	210	0.1%
1995-96	353,769	300,582	52,988	199	0.1%
1996-97	361,104	293,073	67,906	125	0.0%
1997-98	309,772	244,020	65,680	72	0.0%
1998-99	298,775	238,964	59,621	190	0.1%
1999-00	268,625	213,002	55,331	292	0.1%
2000-01	278,658	221,509	56,644	505	0.2%
2001-02	296,551	232,777	63,421	353	0.1%
2002-03	353,238	293,675	58,798	765	0.2%
2003-04	363,175	339,405	23,088	682	0.2%
2004-05	375,560	331,175	44,189	196	0.1%
2005-06	418,191	373,275	44,342	574	0.1%
2006-07	453,355	409,324	43,595	436	0.1%
2007-08	413,612	366,085	47,291	236	0.1%
2008-09	441,950	379,919	60,945	1,086	0.2%
2009-10	419,972	355,361	63,878	733	0.2%

TABLE 5**County Criminal DUI Dispositions FY 1986-87 through FY 2009-10**

Statistics Source: Office of the State Court Administrator

FY	Total Dispositions	Before Trial	After Trial Non-Jury	After Trial by Jury	Jury Trial Rate
1986-87	66,826	57,176	7,684	1,966	2.9%
1987-88	55,227	47,973	5,235	2,019	3.7%
1988-89	50,769	45,747	3,345	1,677	3.3%
1989-90	59,152	54,888	2,715	1,549	2.6%
1990-91	57,124	53,534	2,322	1,268	2.2%
1991-92	58,087	56,042	794	1,251	2.2%
1992-93	48,587	47,031	620	936	1.9%
1993-94	44,236	43,095	429	712	1.6%
1994-95	39,802	38,648	521	633	1.6%
1995-96	40,524	38,531	1,394	599	1.5%
1996-97	37,748	32,589	4,796	363	1.0%
1997-98	38,910	34,856	3,640	414	1.1%
1998-99	40,695	35,373	4,820	502	1.2%
1999-00	48,416	40,786	7,045	585	1.2%
2000-01	52,404	44,583	7,200	621	1.2%
2001-02	56,864	48,319	7,682	863	1.5%
2002-03	56,790	47,663	7,347	1,780	3.1%
2003-04	55,698	47,359	7,597	742	1.3%
2004-05	50,342	38,099	11,684	559	1.1%
2005-06	52,751	40,879	9,887	1,985	3.8%
2006-07	44,879	30,454	11,547	2,878	6.4%
2007-08	46,105	31,913	11,831	2,361	5.1%
2008-09	47,952	40,264	6,582	1,106	2.3%
2009-10	45,614	37,283	7,276	1,055	2.3%

TABLE 6**County Civil Dispositions FY 1986-87 through FY 2009-10**

Statistics Source: Office of the State Court Administrator

FY	Total Dispositions	After Trial Non-Jury	After Trial by Jury	Jury Trial Rate
1986-87	776,904	25,465	108	0.0%
1987-88	790,391	23,065	69	0.0%
1988-89	710,602	21,375	69	0.0%
1989-90	695,705	21,793	65	0.0%
1990-91	684,935	21,863	65	0.0%
1991-92	755,144	22,494	76	0.0%
1992-93	680,997	17,974	76	0.0%
1993-94	713,092	18,270	78	0.0%
1994-95	806,296	15,999	78	0.0%
1995-96	895,631	14,807	166	0.0%
1996-97	1,041,985	13,621	109	0.0%
1997-98	1,201,264	11,594	139	0.0%
1998-99	1,244,069	8,718	132	0.0%
1999-00	1,205,568	8,346	184	0.0%
2000-01	1,231,716	7,700	107	0.0%
2001-02	1,251,229	9,031	115	0.0%
2002-03	1,596,257	9,759	188	0.0%
2003-04	1,813,081	6,594	215	0.0%
2004-05	1,735,126	5,911	212	0.0%
2005-06	1,900,754	5,224	208	0.0%
2006-07	1,732,757	4,856	138	0.0%
2007-08	1,877,922	5,078	113	0.0%
2008-09	2,612,586	4,496	142	0.0%
2009-10	2,696,314	4,688	119	0.0%

TABLE 7**County Civil Dispositions FY 1986-87 through FY 2009-10**

Statistics Source: Office of the State Court Administrator

Statistics do not include Civil Traffic Cases

FY	Total Dispositions	After Trial Non-Jury	After Trial by Jury	Jury Trial Rate
1986-87	318,575	25,465	108	0.0%
1987-88	312,644	23,065	69	0.0%
1988-89	329,754	21,375	69	0.0%
1989-90	329,315	21,793	65	0.0%
1990-91	313,300	21,863	65	0.0%
1991-92	299,671	22,494	76	0.0%
1992-93	294,536	17,974	76	0.0%
1993-94	289,471	18,270	78	0.0%
1994-95	277,245	15,999	78	0.0%
1995-96	286,674	14,807	166	0.1%
1996-97	306,849	13,621	109	0.0%
1997-98	317,552	11,594	139	0.0%
1998-99	320,476	8,718	132	0.0%
1999-00	317,866	8,346	184	0.1%
2000-01	344,194	7,700	107	0.0%
2001-02	390,444	9,031	115	0.0%
2002-03	444,317	9,759	188	0.0%
2003-04	487,847	6,594	215	0.0%
2004-05	423,117	5,911	212	0.1%
2005-06	433,273	5,224	208	0.0%
2006-07	453,606	4,856	138	0.0%
2007-08	541,662	5,078	113	0.0%
2008-09	513,253	4,496	142	0.0%
2009-10	492,230	4,688	119	0.0%