



The Future of Courts: The Next 10 Years

What is the Future of Trials?

The Scenario

The possible end of the civil jury trial is an issue that seems to be hotly debated within a fairly specific set of court professionals. Tom Munsterman and Shauna Strickland warned us of this phenomenon back in 2004 when they noted that civil jury trials had dwindled by 32 percent nationally from a high of close to 30,000 a year in 1976.ⁱ Civil jury trials in Virginia dropped 72 percent from 2,042 in 1999 to 570 in 2009;ⁱⁱ civil juries in Texas are down 20 percent; the civil jury trial rate in Florida in 2009–2010 stood at 0.2 percent.ⁱⁱⁱ Civil jury trials in Federal Courts have declined from 11.5 percent in the 1960s to currently 1.2 percent.^{iv}

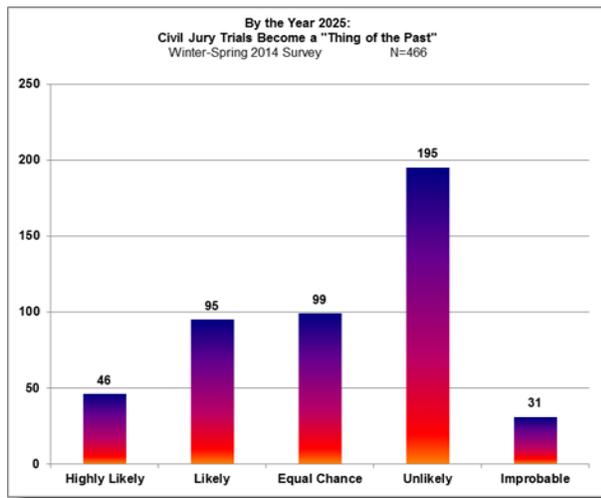
The debate centers around two camps. Those ringing alarm bells argue that 1) deep pocket law firms are able to prolong costly litigation and force plaintiffs to settle for less than is justified, 2) tort reform has often placed unfair caps on civil judgments, 3) smaller cases are basically shut out of the courts, 4) judges have a natural distrust particularly of civil juries, and 5) alternative dispute resolution has in fact been *too* successful at getting parties to settle. The consequence of the disappearing jury trial is that we lose a cornerstone of our democracy and a cherished Constitutional right: citizens can no longer participate in and be educated by the justice system.^v We are also raising an entire generation of attorneys incapable of trying cases to civil juries.^{vi}

Those seeing this as a net positive make essentially the same arguments. 1) As litigant costs escalate alternative dispute resolution *is* a reasonable way to bring justice to more people at lower cost. 2) Judges are justified to distrust juries: they bring needless unpredictability into a reasoned judicial proceeding. They can be swayed by emotion; they can be bored by technical discussion from engineers and scientists.^{vii} 3) Blaming tort reform is a straw-man since clients usually walk away with much less than two-thirds of any civil judgment anyway. 4) Those lamenting the loss of civil juries forget that criminal jury trials are alive and well.

Monday Morning, July 14, 2025

Maya, court administrator for a large urban trial court settles into her office by reviewing last fiscal year's statistics. She notices only in passing that her court registered only four civil jury trials all last year. The civil jury trial in Maya's court has indeed functionally come to an end.

Court Professionals Say This Scenario is Unlikely



The Winter–Spring 2014 survey canvassed 466 respondents who assessed this scenario as *Unlikely* with an average 3.2. This assessment was carried across the age cohorts with *Traditional Generation* respondents assessing it as 3.0; *Baby Boomers* and *Generation Xers* assessing it at 3.1; and *Millennials* assessing it at 3.2. The various jurisdictions were also fairly uniform with *Federal System* and *State General Jurisdiction* respondents assessing it at an average 3.3; *Limited Jurisdiction* respondents assessing it at 3.5, and *State Administrative Office* respondents assessing it at 3.2. Only when looking at cohorts with differing years of justice system experience does one see some slight response variation.

Respondents with *Less than Five Years of Experience* assessed the scenario as *Unlikely* with a 3.4; respondents with *Between Six and Ten Years of Experience* assessed it as *Improbable* with a 3.5; respondents with *Between Eleven and Twenty Years* and *Between Twenty–One and Thirty Years of Experience* assessed it as *Unlikely* with 3.2 and 3.0 respectively; respondents with *More than Thirty Years of Experience* assessed it as having a (50–50 Chance) with a 2.9.^{viii}

Respondents

To respond to the questions below about the scenario we asked Kenneth G. Pankey, Jr., Senior Planner at the Office of the Executive Secretary, Supreme Court of Virginia; Mark Hinnen, retired Deputy Clerk for the U.S. Bankruptcy Court for the District of Oregon; and Mark M. Dalton, District Court Administrator for the Court of Common Pleas, Lancaster County, Pennsylvania.

Why is The Scenario Unlikely?

Mark Dalton noted that in Pennsylvania over the last several years [civil] jury trials have been dropping (about 14%), but the number of new cases has also been dropping (about 8%). “Since 2010 in Lancaster the number of cases ready for trial (a subset of the total cases filed) dropped about 24% since 2010 while the number of jury trials stayed about the same.”

Kent Pankey agreed with the survey respondents that civil jury trials completely disappearing is unlikely within a 2025 horizon. “If most respondents are like me, then they don't foresee a sufficient change in litigation conditions within the next 10 to 11 years that would alter the current circumstances in which civil jury trials are few but not nonexistent.” Kent thought the current economic circumstances along the lines of those outlined in the scenario are partially responsible for the decline. In addition, the cost of a jury trial balanced against the greater uncertainty of how a jury might decide a case could motivate more parties to settle or try cases to a judge. “Tort ‘reform’ legislation has for the most part already done what it will do with respect to the calculus; I'm not aware of further legislative pushes that are likely to make much difference.”

Mark Hinnen said the fact that civil jury trials are costly, and parties can be bullied by big monied corporations doesn't preclude the right to a jury trial. “. . . most states have laws or court rules governing the right to a civil jury trial. This fact alone will prevent civil jury trials from disappearing within ten years.” Mark acknowledged that the discussion over whether civil jury trials should be

discontinued will persist and the perception of a right being lost will loom large.

What is a More Likely Scenario in the Next Ten Years?

In Mark Dalton' opinion that statistical trend will continue with a moderate decrease in the overall filings and with it the number of jury trials, but they will not be altogether eliminated. In addition, there is no indication of any impending changes in the either the laws or rules governing civil trials.

Mark Hinnen noted that arbitration and conflict resolution programs are important aspects of the court system. These programs continue to provide an avenue to help people resolve their civil disputes. "It is important that people have the right to opt out these programs if they feel strongly enough they can prevail in court with a civil jury trial."

Kent did see a future with fewer attorneys capable of trying civil jury trials. ". . . litigants would face greater uncertainty if proceeding with less experienced attorneys or greater costs if proceeding with the diminishing supply of experienced ones." Kent saw the benefit of more research in profiling cases that end up being decided by judge and those decided by a jury. "Are there tendencies to certain subject matter? Are there telltale profiles for the litigating parties (e.g., government vs. large corporation or corporation vs. corporation but not individual vs. corporation)?" He thought that more understanding of this area could reveal whether civil juries are likely continue. Is this an opportunity for "big data" and enhanced data analytics? That question will have to wait for another article.

What Could This Mean for Court Administration?

Kent does not see major changes in the status quo before 2025. "I don't see major considerations for court managers in terms of preparation. A good clerk/court administrator should have historical data by which to do reasonable calculations for juror yield and juror utilization. If one uses multi-year and seasonal averages to project needs, then a court should be able to gradually adjust to any change in frequency of civil jury trials." He noted that the main long-term consideration might be future courthouse facilities. With fewer jury trials (both civil and criminal), then the courthouses of the future would require fewer full-sized courtrooms with a jury box and supporting rooms for jurors.

Mark Dalton observed that budget constraints over the years prevented many courts from increasing staff when cases levels were much higher. "Now that the numbers are dipping, I don't see it effecting staff levels but merely allowing us to better serve our stakeholders."

We Want to Hear from You

Send us your comments to the following email address: pkiefer@superiorcourt.maricopa.gov

Get the Complete Results from the Survey

You can write to us and request a copy of the combined survey results at:
pkiefer@superiorcourt.maricopa.gov

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ⁱG. Thomas Munsterman & Shauna Strickland, “Jury News,” *The Court Manager*, Vol. 19, No. 2, Summer 2004.

ⁱⁱJanie Bryant, “Fewer Civil Cases Go to Juries Due in Large Part to Cost,” *The Virginian-Pilot*, February 9, 2010

ⁱⁱⁱReport of the Special Committee to Study the Decline in Jury Trials, Florida State Bar, December 2011.

^{iv}U.S. District Judge Xavier Rodriguez, “The Decline of Civil Jury Trials: A Positive Development, Myth, or the End of Justice as We Now Know It?”, *St. Mary’s Law Journal*, Vol. 45:333, May 6, 2014.

^vHon. John T. Broderick, Jr. “The Changing Face of Justice in a New Century: The Challenges It Poses to State Courts and Court Management,” *Future Trends in State Courts*, 2010

^{vi}Curriden

^{vii}Alan Shanoff, “Time to End Civil Trials by Juries – Judges Will Deliver Better and Faster Verdicts, Particularly in Auto Insurance Cases,” *Toronto Sun*, July 5, 2014

^{viii}In the three surveys we have so far distributed respondents were asked to assess scenarios using a 1 to 5 scale (1: highly likely, 2: Likely, 3: Maybe (50-50 Chance, 4: Unlikely, 5: Improbable). We then grouped responses by average assessment. (1.0–1.9: Highly Likely, 2.0–2.4: Likely, 2.5–2.9: Maybe (50–50 Chance, 3.0–3.4: Unlikely, Above 3.4: Improbable).