

Examining Trial Trends in State Courts: 1976-2002

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Recent examinations of federal litigation trends show that the use of trials by the federal courts is declining. This knowledge has invariably raised the question of whether or not the use of trials in state courts is also declining. Unfortunately, the ability to conduct parallel examinations of state court litigation trends has been hampered by the lack of available state court disposition data. In this paper we introduce the *State Court Disposition Trends* database and analyze, for the first time, long-term trial trends in the state courts. The present analysis examines 27-year trends of trials and trial rates for criminal, civil, and felony cases, and 11-year trends of trials and trial rates for general civil cases. We find that, despite substantial growth in the number of case dispositions, there has been a decrease, often significant, in the use of trials by state courts.

I. Introduction

Empirical light shines brightest on the federal courts. Long-term data trends have been closely examined and clearly demonstrate the sharp decline in trials for most federal court case types.¹ Extensive, readily available data sources are the primary reason that we know a great deal about litigation trends in the federal courts. This knowledge of federal court trends serves to pique our curiosity about the state court system and raises the obvious question of whether a parallel trend is occurring in the state courts, an empirical question many states still cannot answer. Determining whether trends in state courts, where the vast majority of litigation occurs,² match those observed at the federal level is often all but impossible. In many respects, basic data limitations have impeded our ability to determine national trends regarding the work of the state courts. With this paper, we introduce the results from a major new data collection initiative at the National Center for State Courts (NCSC) designed to ascertain trial trends in state general jurisdiction courts. The central finding is that, despite substantial increases in the number of dispositions, the

¹ Marc Galanter, *The Vanishing Trial: An Examination of Trials and Related Matters in Federal and State Courts*, October, 2003.

² Brian Ostrom, Neal Kauder and Neil LaFountain, [Examining the Work of State Courts, 2002: A National Perspective from the Court Statistics Project](#), National Center for State Courts 2003.

number and rate of jury trials has declined, often significantly, during the period 1976-2002 in almost all states included in the analysis.

Legal scholar Daniel Meador calls the state-federal line “the great divide in the American legal landscape.”³ From an analytical point of view, the defining feature of that divide has been the ability to build an empirical profile of court business. The perennial difficulty in compiling accurate and comparable data at the state level can in large measure be pinned on the fact that there are 50 states with at least 50 different ways of doing business and 50 different levels of commitment to data compilation. Numerous national initiatives now underway seek to improve data quality at the state level, but trend studies—such as an historical examination of trial rates—still require special data collection efforts.

In cooperation with the Vanishing Trials Project (sponsored by the Civil Justice Initiatives task force of the American Bar Association’s Section of Litigation), the Court Statistics Project (CSP) at the NCSC has compiled the most extensive information currently available on the trend of trials held in state general jurisdiction courts: the *State Court Disposition Trends* database.⁴ The data available from nearly half the states cover the 27-year period from 1976-2002. Most information is available only for broad case classifications (total criminal and total civil), although finer detail (felony, tort, contract, and real property rights) has been captured when available. Moreover, this new database contains information on the complete manner of disposition (i.e., both trial and non-trial case outcomes). Creation of this database involved a thorough search and examination of

³ Daniel J. Meador, *American Courts*, West Publishing Co. 1991. p.1.

⁴ Data from the *State Court Disposition Trends* database can be found on the Court Statistics page of the NCSC Web site at: http://www.ncsconline.org/D_Research/csp/CSP_Main_Page.html

archival sources and careful documentation of issues related to data accuracy and comparability.

In this article, we take a first look at the long-term trend in the number and rate of trials for a large sample of state court systems using the *State Court Disposition Trends* database. Our goal in examining the empirical record is to assess the vanishing trials proposition at the state court level. In Section II we set the stage through a brief comparison of state and federal court caseloads. In Section III, we describe the development of the *State Court Disposition Trends* database, the states included, and basic data definitions. Section IV examines the trend in criminal and felony trials, felony trial rates, civil and general civil trials, and general civil trial rates. Concluding observations are presented in Section V.

II. State and Federal Court Caseloads

Federal district courts and state courts of general jurisdiction are the primary trial courts of their respective judicial systems, and a quick comparison of the total volume of filings in these courts makes clear the relevance of state court data to the analysis of the vanishing trials proposition. Table 1 compares total civil and criminal filings in all federal district courts with state courts of general jurisdiction. The data show that state courts of general jurisdiction resolve nearly 28 times as many civil cases and 82 times as many criminal cases as federal district courts. Of course, the filings in state and federal court may not be directly comparable in terms of case complexity or scope⁵, but these

⁵ This comparison increases confidence that analogous caseloads are being compared. On the criminal side, U.S. district courts and the state courts of general jurisdiction handle primarily felonies, with some serious misdemeanor cases. On the civil side, the state trial courts of general jurisdiction somewhat approximate the dollar limits and case types faced by the U.S. district courts. The similarity is greatest for tort, contract and real property cases; there are, however, some differences in the remainder of the caseload. For example, domestic relations cases comprise a sizeable portion of general jurisdiction court civil caseloads, but are nonexistent in the U.S. district courts. U.S. district courts also have jurisdiction over some civil cases that require a minimum of judicial attention. These include, for example, cases involving

figures do convey some sense of the volume of business flowing into the two court systems.

Similar order of magnitude issues exist when comparing the number of trials held in state general jurisdiction courts with the number held in all federal district courts. Recent analysis by the CSP estimates nearly 88,000 general civil and felony jury trials were held in state courts of general jurisdiction in 1999.⁶ This total compares to 7,268 civil and criminal jury trials held in federal district courts. Therefore, to understand trial trends in the American courts, we need to look at both the state and federal systems.

Table 1: Federal and State Court Filings and Jury Trials, 1999

	<i>Federal District Courts</i>		<i>State Courts of General Jurisdiction</i>	
	<i>Filings</i>	<i>Jury Trials</i>	<i>Filings</i>	<i>Jury Trials</i>
Civil	260,271	4,000	7,171,842	33,125
Criminal	59,923	3,268	4,924,710	54,625
Total	320,194	7,268	12,096,552	87,750

Sources: Federal district courts: Judicial Business of the United States, Annual Report of the Director, 1999. State courts of general jurisdiction filings: Examining the Work of State Courts, 1999-2000, National Center for State Courts. State courts of general jurisdiction jury trials: Examining the Work of State Courts, 2001, National Center for State Courts.

The primary challenge has been compiling national statistics on trial trends in state courts. Existing data sources typically describe trial rates in one trial court or in a small group of trial courts over a limited period of time. During its 20-year history, the CSP has worked to build a comprehensive statistical profile of the work of the state trial and appellate courts. One indicator of success is that state-level trend data now exist on

defaulted student loans, the overpayment of veterans' benefits and social security claims as well as Section 1983 cases filed by state prisoners.

⁶ For a complete discussion of the methodology used to estimate jury trials in the state courts, see Brian Ostrom, Neal Kauder and Neil LaFountain, Examining the Work of State Courts, 2001, National Center for State Courts 2001, p. 88-103.

the total number of filings and dispositions by many case type categories.⁷ With effective procedures in place for the gathering of filing and disposition data, the CSP has recently turned to filling another major gap in the empirical record: the absence of trend data on the *manner of disposition* (e.g., the number of settlements, dismissals, defaults, and jury trials). The *State Court Disposition Trends* database represents a year-long effort to clarify the evolving pattern of case resolution in state general jurisdiction courts.

III. Developing a Profile of State Court Trials

Beginning in the 1970s there was a push in many state court systems to begin producing an annual record of the number and type of cases filed and disposed as well as the number and type of case dispositions (e.g., dismissal, settlement, trial). These state court annual report series varied in quality and longevity of existence. In addition, the data collected in some states were never published. Once located, these published and unpublished state-level sources became the foundation of the *State Court Disposition Trends* database (see Appendix E for data source citations). With the twin goals of building at least a 25-year trend and including as many states as possible, 1976 was selected as the starting point of the series⁸. As seen in Table 2, 23 states are part of the criminal trial trend, and 22 states are part of the civil trial trend.

Because data are simply not available from all states, the analysis of the trend in state court trials is based on a sample of states. Our selection process employed a non-probability sampling strategy in that states were selected based solely on the availability

⁷ For additional information on CSP data collection, see the Court Statistics page of the NCSC Web site at: http://www.ncsconline.org/D_Research/csp/CSP_Main_Page.html.

⁸ While data are available from several states prior to 1976, the use of 1976 as the starting point of the series allowed for the inclusion of 9 additional states in the criminal trend and 12 additional states in the civil trend. Among those states that would not have been included had an earlier year been chosen as the beginning of the trend are California, Florida, Michigan, Indiana, and Arizona.

of data going back to 1976.⁹ Although a convenience sample, the results in Table 2 show reasons to be optimistic about generalizing from the sample to the nation as a whole. For both criminal and civil cases, the sample contains a broad cross-section of states drawn from all population levels.¹⁰ In addition, based on state population sizes in 2002 (the most recent year in the trend), the states included in the criminal trend represent 58% of the total national population, and the states in the civil trend represent 59% of the total national population.

More data are available at higher levels of aggregation (Table 2). That is, while 23 states collect and report the number of trials conducted for “total criminal” cases, only 13 provide similar information for the subcategory of felony criminal caseloads. Trial trend data for both total criminal and felony cases are available for the period 1976-2002. On the civil side, 22 states report the number of trials conducted for “total civil” cases for the years 1976-2002 while 10 states provide disposition data on general civil caseloads (the combination of tort, contract, and real property rights cases) for the period 1992-2002.

⁹ For the most part, the state data series are complete for the period 1976-2002. However, for some states, there were small gaps (typically one year) in the trend. In these instances of missing data, CSP staff imputed missing values via linear interpolation. See, for example, J. L. Schafer, Multiple Imputation: A Primer, Statistical Methods in Medical Research, 1999.

¹⁰ In Table 2, the 50 states, District of Columbia, and Puerto Rico are divided into quartiles based on 2002 population. States included in the *State Court Disposition Trends* database include: Quartile 1—eight states reporting criminal dispositions and 10 states reporting civil dispositions; Quartile 2—five states reporting criminal dispositions and four states reporting civil dispositions; Quartile 3—three states reporting criminal dispositions and two states reporting civil dispositions; Quartile 4—seven states reporting criminal dispositions and six states reporting civil dispositions.

Table 2: States Included in the *State Court Disposition Trends Database*

State	Criminal		Civil		Population	2002
	Total	Felony	Total	General Civil	Rank	Population
California	X	X	X	X	1	35,116,033
Texas	X	X	X	X	2	21,779,893
New York					3	19,157,532
Florida	X	X	X	X	4	16,713,149
Illinois					5	12,600,620
Pennsylvania	X		X		6	12,335,091
Ohio	X	X	X		7	11,421,267
Michigan	X		X		8	10,050,446
New Jersey	X	X	X		9	8,590,300
Georgia					10	8,560,310
North Carolina	X	X	X	X	11	8,320,146
Virginia			X		12	7,293,542
Massachusetts			X		13	6,427,801
Indiana	X	X	X		14	6,159,068
Washington	X		X	X	15	6,068,996
Tennessee					16	5,797,289
Missouri	X				17	5,672,579
Maryland	X		X		18	5,458,137
Arizona	X		X		19	5,456,453
Wisconsin					20	5,441,196
Minnesota				X	21	5,019,720
Colorado					22	4,506,542
Alabama					23	4,486,508
Louisiana					24	4,482,646
South Carolina					25	4,107,183
Kentucky					26	4,092,891
Puerto Rico	X	X			27	3,858,806
Oregon					28	3,521,515
Oklahoma					29	3,493,714
Connecticut					30	3,460,503
Iowa	X		X		31	2,936,760
Mississippi					32	2,871,782
Kansas	X	X	X		33	2,715,884
Arkansas				X	34	2,710,079
Utah					35	2,316,256
Nevada					36	2,173,491
New Mexico				X	37	1,855,059
West Virginia				X	38	1,801,873
Nebraska					39	1,729,180
Idaho					40	1,341,131
Maine	X		X		41	1,294,464
New Hampshire					42	1,275,056
Hawaii	X		X	X	43	1,244,898
Rhode Island					44	1,069,725
Montana					45	909,453
Delaware	X				46	807,385
South Dakota	X	X	X		47	761,063
Alaska	X	X	X		48	643,786
North Dakota					49	634,110
Vermont	X	X	X		50	616,592
District of Columbia	X	X	X		51	570,898
Wyoming					52	498,703
Percent of total population	58%	40%	59%	34%		292,227,504

Note: The 50 states, District of Columbia, and Puerto Rico are divided into quartiles and ranked according to 2002 population.

Source: Population statistics: U.S. Bureau of the Census, 2003.

It hardly needs to be said that the study of litigation rates in state courts has many traps for the unwary. To begin with, the way cases are counted and classified can vary among states.¹¹ Of greater relevance to the current study, there is also variation in the definition of what constitutes a trial. For example, in some states a jury trial is counted at jury selection while in others a jury trial is counted only following a verdict. The definitions of terms such as jury trial and non-jury (hereafter referred to as bench) trial employed in this analysis are those used in the particular state. While there is certainly similarity among states in the definition of terms, there is not uniformity. This is not to suggest implicit problems with the data, just that care must be taken when gauging comparability across courts. Table 3 shows jury and bench trial definitions for the states in our sample.

¹¹ See State Court Caseload Statistics, 2002, National Center for State Courts, 2003 for state level information on case counting practices. Specifically, Figure D shows criminal case unit of count and Figure H shows civil case unit of count.

Table 3: Jury and Bench Trial Definitions

<i>State</i>	<i>Definitions</i>
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 bench 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.
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.

Note: Trial definitions are listed only for those states included in the trends. Unless otherwise stated, the trial definitions apply to all case types.

Source: National Center for State Courts' Court Statistics Project (CSP) 2003 data collection (unpublished).

IV. Criminal and Civil Trial Trends

Criminal and civil trial trends are examined separately, but employ a similar three-part design. First, for both total criminal and total civil cases, we discuss the aggregate 1976-2002 trends in the actual number of case dispositions, jury trials, and bench trials for the states in our sample. The criminal case trend includes 23 states, and the civil case trend includes 22 states. The annual data for the criminal and civil aggregate trends are contained in Appendices A and B.

Second, we examine the aggregate trend to learn more about state level variation in trials. Comparisons among states can be problematic because of differences in caseload composition as well as the way cases are counted and classified. Caseload composition refers, for example, to the proportion of felony and misdemeanor cases in the overall total of criminal cases. Because states vary in caseload composition, focusing on a single well-defined sub-group of cases enhances comparability among states. In the following analysis, we focus on the 13 states able to provide trend data on the number of *felony* jury and bench trials (1976-2002) and the 10 states reporting trend data on *general civil* (the combination of tort, contract, and real property rights cases) jury and bench trials (1992-2002). These sub-groups were chosen because the ways in which felony and general civil cases are counted and classified tend to be similar from state to state.¹² The annual data for the felony and general civil aggregate trends are shown in Appendices C and D.

Lastly, the analysis looks at felony and general civil trial *rates* (e.g., the number of felony jury trials per 1,000 felony dispositions). The use of jury and bench trial rates facilitates comparison by using a uniform yardstick to examine practice in states of

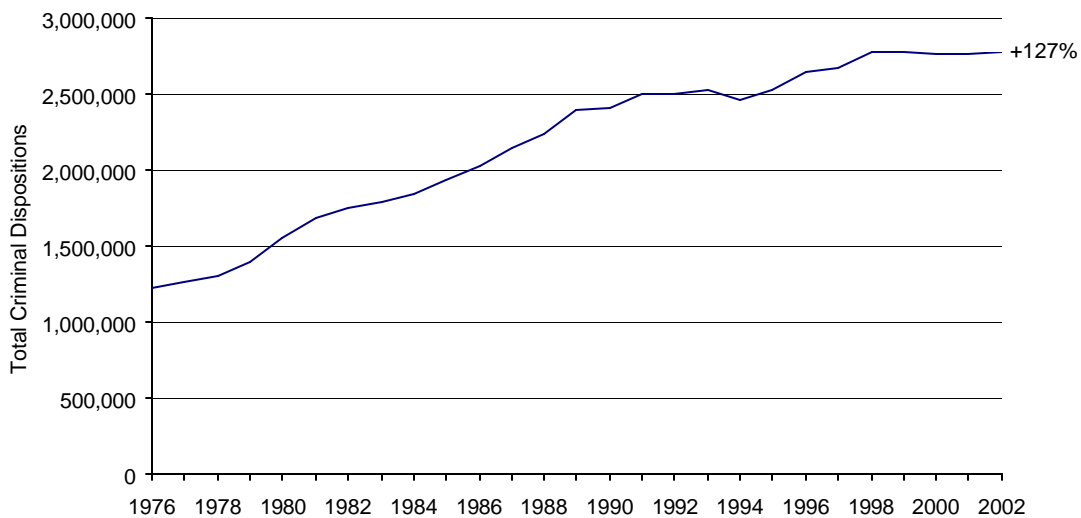
¹² Op. cit. 11.

different sizes and with different disposition trends. The annual data underlying the graphical presentation of felony and general civil trial rates are also shown in Appendices C and D.

A. Criminal trials

Between 1976 and 2002, there has been a substantial increase in the number of total criminal dispositions (up 127%) in the 23-state sample (Figure 1). During this 27-year period, total criminal dispositions have risen considerably faster than the 38% increase in total population experienced in these 23 states (Appendix A).

Figure 1: Total criminal dispositions in 23 states, 1976-2002

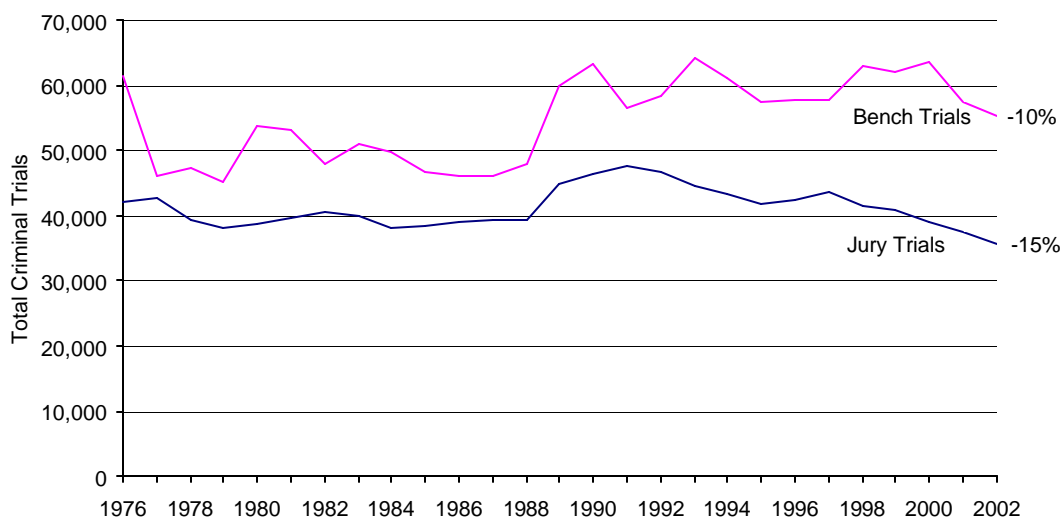


Notes: Data are for the general jurisdiction courts of the states included in the sample (see Table 2 for a list of states included in the sample). The term “total criminal” refers to the complete criminal caseload as reported by the individual courts; thus, the types of cases included in “total criminal” may vary by state.

The trends in total criminal jury trials and bench trials (Figure 2) provide a different perspective on the vanishing trials proposition at the state court level. In the first half of the 27-years examined, the trends in the number of jury trials and bench trials remained relatively steady, with the number of jury trials staying around 40,000 and the number of bench trials ranging between 45,000 and 55,000. A marked increase in the

number of jury and bench trials is seen during the early 1990s, and it is not until the latter years of the trend that the number of trials show a continual decline. Overall, for the period 1976-2002, the number of criminal jury trials has declined by 15% (from 42,049 to 35,664) while the number of bench trials has declined by 10% (from 61,382 to 55,447).¹³

Figure 2: Total criminal jury and bench trials in 23 states, 1976-2002



Notes: The definition of what constitutes a trial, either jury or bench, may vary by state (see Table 3 for the trial definitions used by each state). See Table 2 for a list of states included in the sample.

B. Felony trials

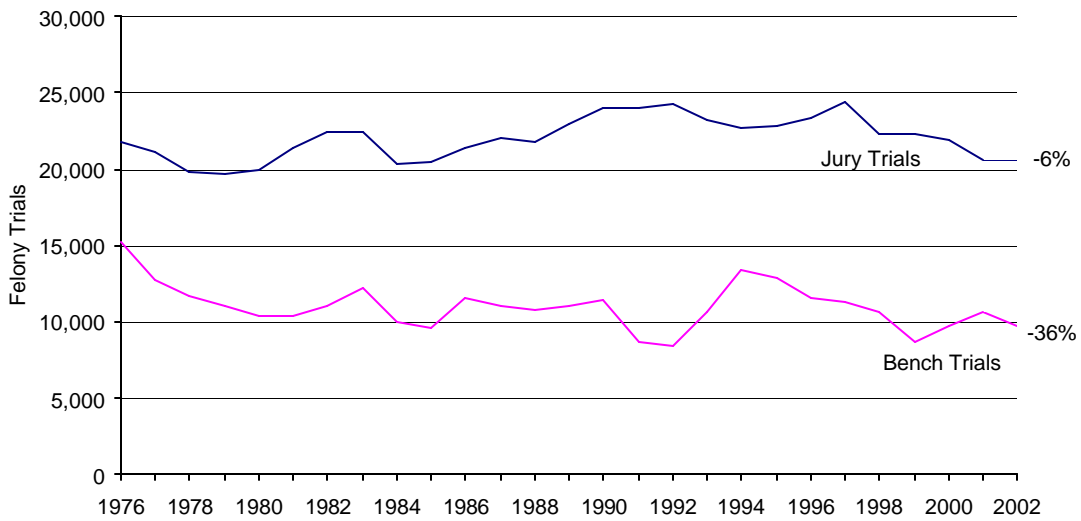
Thirteen of the 23 states that report total criminal disposition data for the period 1976-2002 also report felony disposition data for the same time period. In terms of caseload composition, the number of felony dispositions in these states average 41% of their total number of criminal dispositions. Mirroring the criminal trend, felony dispositions in these states have increased at a far greater pace than their population, with dispositions increasing 124% compared to a 46% increase in population (Appendix C). Despite the

¹³ Bench trial data are more problematic than jury trial data because of the greater cross-state variation in the bench trial unit of count. When known, these variations have been documented (see Table 3: Jury and Bench Trial Definitions).

overall rise in dispositions, the number of felony jury trials and bench trials have both decreased over the past 27 years, by 6% and 36% respectively.

Figure 3 illustrates these decreases, but also draws attention to the fact that jury trial dispositions are more prevalent in the felony caseload than in the criminal caseload in general. Whereas jury trials averaged 46% of the trials held in the total criminal trend, they comprise 67% of the trials held in the felony trend.

Figure 3: Felony jury and bench trials in 13 states, 1976-2002



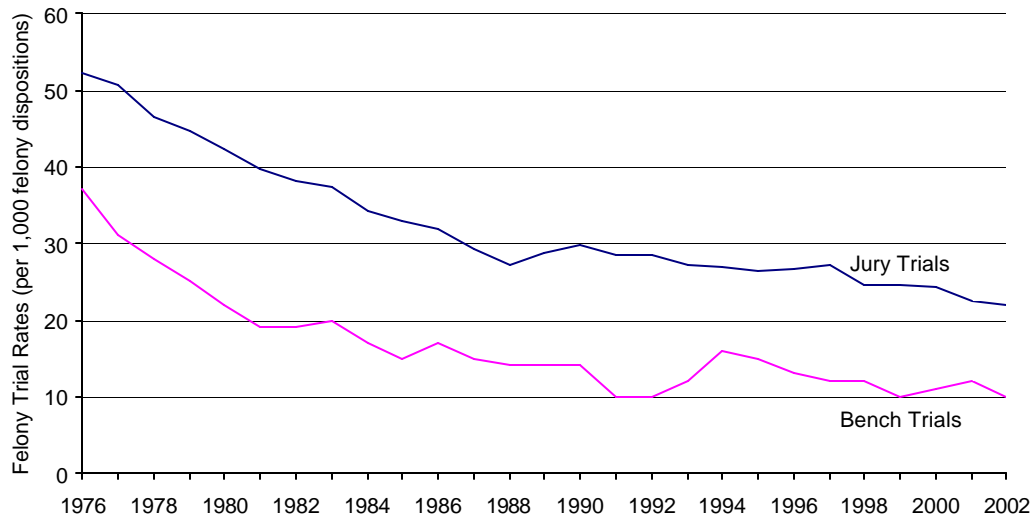
Notes: The felony trial trend was created in order to control for state-to-state variations in the caseload composition of “total criminal” cases. In addition, since felony cases tend to be counted and classified similarly in each state, the use of this smaller subset of cases enhances comparability among states. See Table 2 for a list of states included in the trend and Table 3 for a list of trial definitions.

C. Felony trial rates

Additional clarity on the trend in felony trials is gained by standardizing the data series in terms of trial rates (i.e., felony trials per 1,000 felony dispositions). Figure 4, Felony Trial Rates for 13 States, shows the dramatic decline in both felony jury and felony bench trial rates. In 1976, 9% of all felony dispositions were trials; there were 52 felony jury trials per 1,000 felony dispositions (approximately 5% of all felony dispositions) and 37 bench trials per 1,000 dispositions. By 2002, felony trials comprised only 3% of all

felony dispositions, and the felony jury trial rate had fallen to 22 per 1,000 dispositions (just over 2% of all felony dispositions).

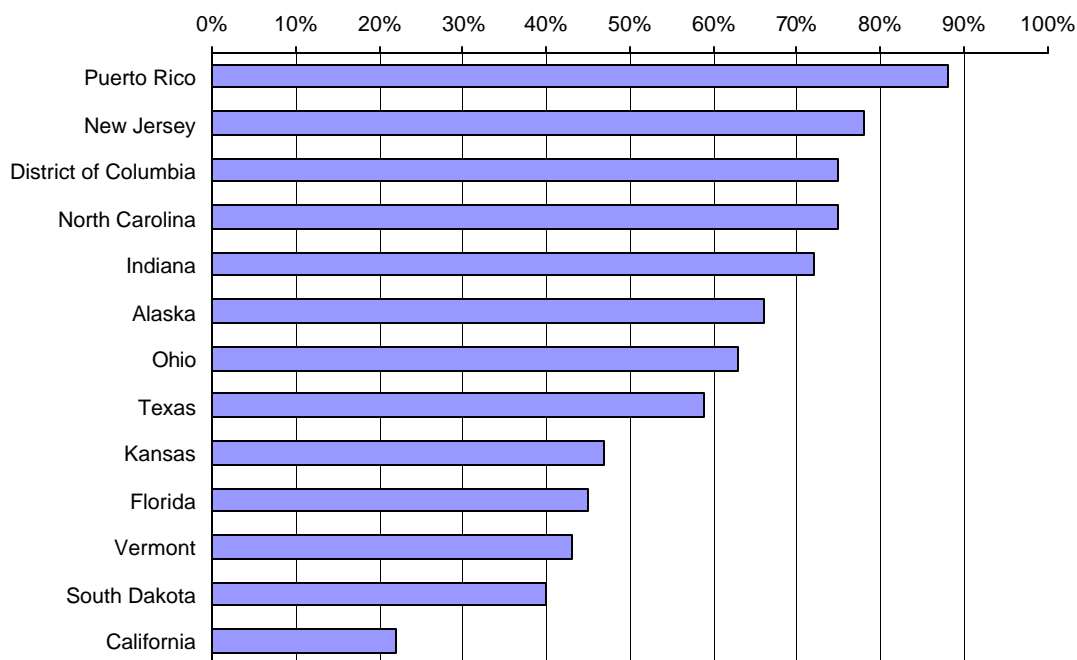
Figure 4: Felony trials rates (per 1,000 dispositions) for 13 states, 1976-2002



Note: The use of trial rates, which are calculated by dividing the total number of felony jury (or bench) trials by the total number of felony dispositions then multiplying by 1,000, standardizes the variations that are inherent in states of different sizes and with different disposition trends, thus allowing for better comparisons to be made among states.

Over the 27-year period, each of the 13 states in the felony trend sample experienced a decline in jury trial rates. The extent of the downturn varied by state (as seen in Figure 5) from declines in excess of 75% in Puerto Rico, New Jersey, the District of Columbia, and North Carolina to a drop of only 22% in California.

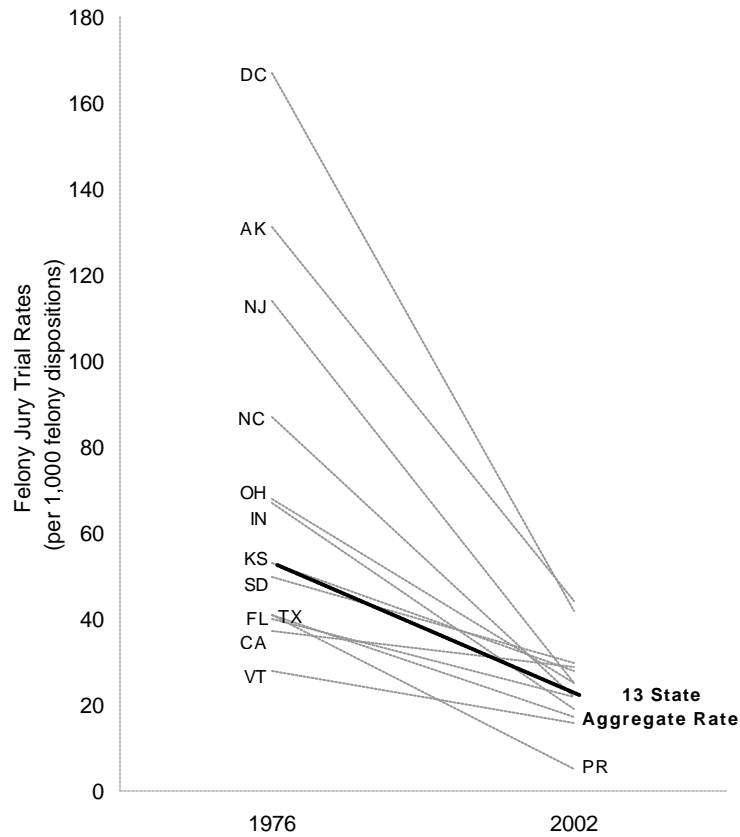
Figure 5: Percent decrease in felony jury trial rates, 1976-2002



Note: The jury trial rate (calculated per 1,000 dispositions) decreased for each state in the sample, with Puerto Rico experiencing the greatest decline and California experiencing the least.

Figure 6 provides another take on the extent of decline in jury trial rates. This “floating line” figure maps the change through a line connecting the jury trial rates at the start (1976) and at the end (2002) of the data series. For example, the rate in New Jersey fell from 114 per 1,000 felony dispositions in 1976 to 25 per 1,000 felony dispositions in 2002, a decline of 78%. The bolded line shows the overall drop for all 13 states being examined. This average line is relatively low in Figure 6 reflecting the influence of the three largest states in the sample: Texas, California, and Florida. These three states all started with about 40 jury trials per 1,000 felony dispositions and have since declined to 29 in California, 22 in Florida, and 17 in Texas.

Figure 6: Felony jury trial rates, 1976 v. 2002

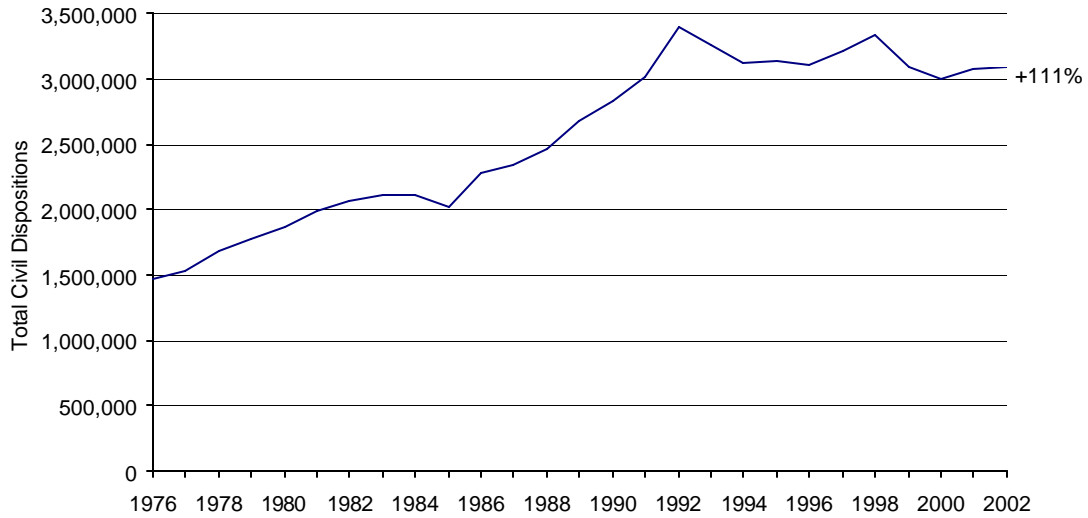


Notes: This “floating line” figure maps the change in each state’s jury trial rate by drawing a line from the start (1976) to the end (2002) of the data series. The bolded line indicates the change for all 13 states.

D. Civil trials

Total civil dispositions, like total criminal dispositions, increased dramatically between 1976 and 2002. Figure 7 shows that, at the beginning of the period, total civil dispositions in 22 states were just under 1.5 million. By 2002, civil dispositions had doubled to slightly more than 3 million, although the population for these 22 states increased only 39% during the same period (Appendix B).

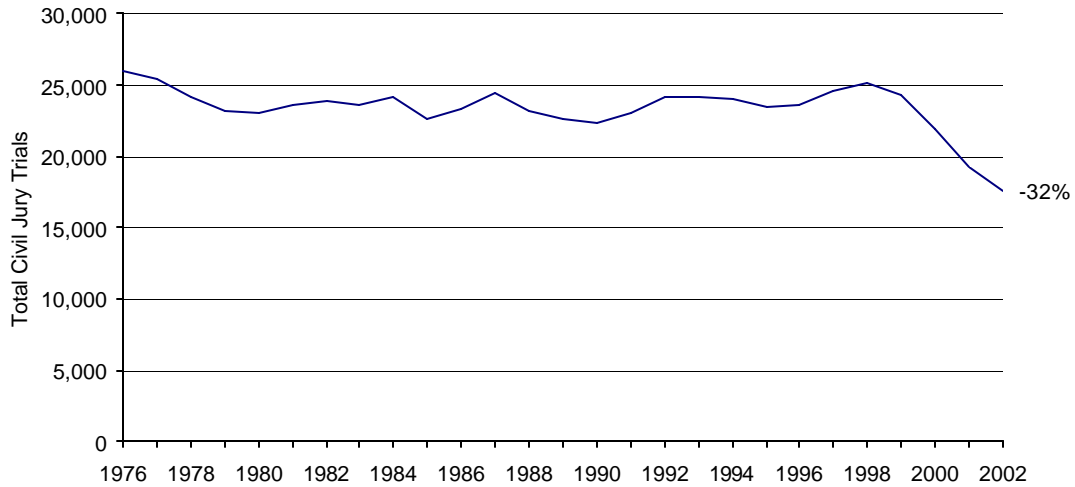
Figure 7: Total civil dispositions in 22 states, 1976-2002



Notes: Data are for the general jurisdiction courts of the states included in the sample (see Table 2 for a list of states included in the sample). The term “total civil” refers to the complete civil caseload as reported by the individual states; thus, the types of cases included in “total civil” may vary by state.

The number of civil jury dispositions remained relatively stable throughout much of the time series, but, due to the corresponding increase in total dispositions, the rate of civil jury trials has dropped. From 1976 through 1998, the number of civil jury trials hovered between 23,000 and 25,000 per year, but then fell abruptly to less than 18,000 by 2002, a 28% decline (Figure 8). Expressed as a proportion of total civil dispositions, civil jury trials have fallen by nearly two thirds from about 1.8% in 1976 to 0.6% in 2002. Overall, this decline is somewhat less dramatic than the decline in criminal jury trials (total criminal jury trial rates fell from 3.4% in 1976 to 1.3% in 2002), but then again the rate of civil jury trials was never as high initially as that for criminal jury trials.

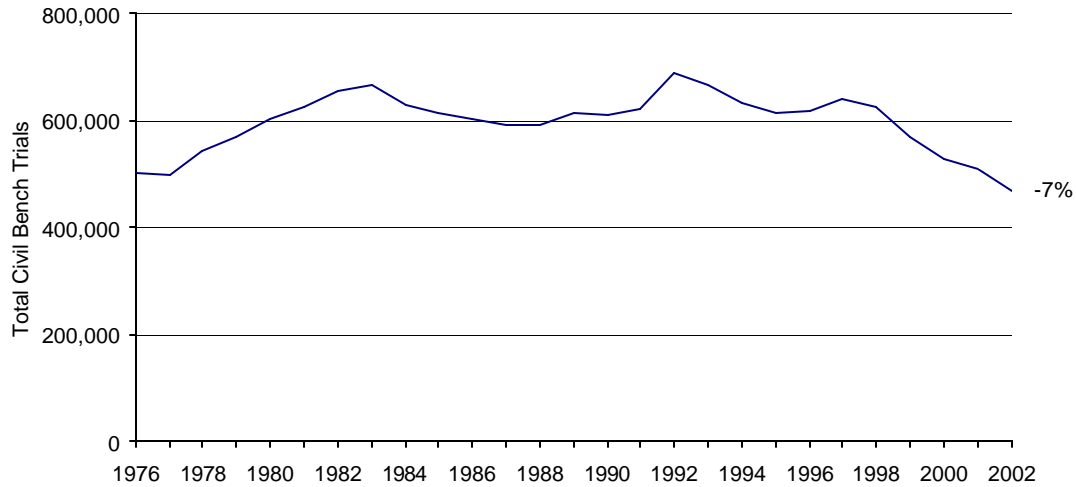
Figure 8: Total civil jury trials in 22 states, 1976-2002



Notes: The definition of what constitutes a jury trial may vary by state (see Table 3 for the trial definitions used by each state). See Table 2 for a list of states included in the sample.

We see in Figure 9 that bench trials for civil cases have fluctuated over the past 27-years. The number of bench trials rose from approximately 500,000 in 1976 to 667,000 in 1983. They then varied between 600,000 and 700,000 for the next 15 years before falling to less than 470,000 by 2002. Like jury trials, civil bench trials have not kept pace with total dispositions. The rate of bench trials as a proportion of civil dispositions, therefore, has steadily declined by more than half from 34% to 15%.

Figure 9: Total civil bench trials in 22 states, 1976-2002



Notes: The definition of what constitutes a bench trial may vary by state (see Table 3 for the trial definitions used by each state). See Table 2 for a list of states included in the sample.

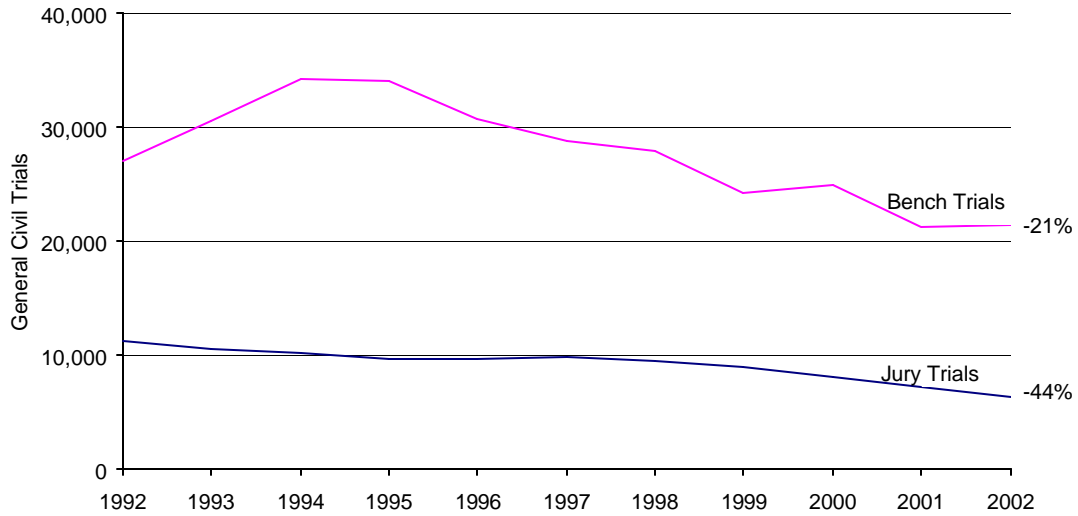
E. General civil trials

General civil refers to the combination of tort, contract, and real property rights cases, and the following analysis focuses on 10 states that collected and reported general civil disposition data for the years 1992-2002 (six of these states, as shown in Table 2, provided total civil disposition data for the full 27-year period mentioned above). Unlike the disposition trends discussed so far, the general civil disposition trend shows a 21% decline in the number of general civil dispositions from 1992-2002 despite an 18% increase in the population of the states included in the trend (Appendix D). This decline actually follows the last 11 years of the total civil disposition trend in that total civil dispositions declined by 9% in the years 1992-2002.

As illustrated in Figure 10, both general civil jury trials and general civil bench trials have decreased over the last 11 years, by 44% and 21% respectively. While the number of general civil jury trials has steadily declined, the number of general civil bench trials experienced an initial period of growth (a 27% increase from 1992 to 1994)

then decreased each year with the single exception of 2000, when there were approximately 600 more general civil bench trials than in 1999.

Figure 10: General civil jury and bench trials in 10 states, 1992-2002



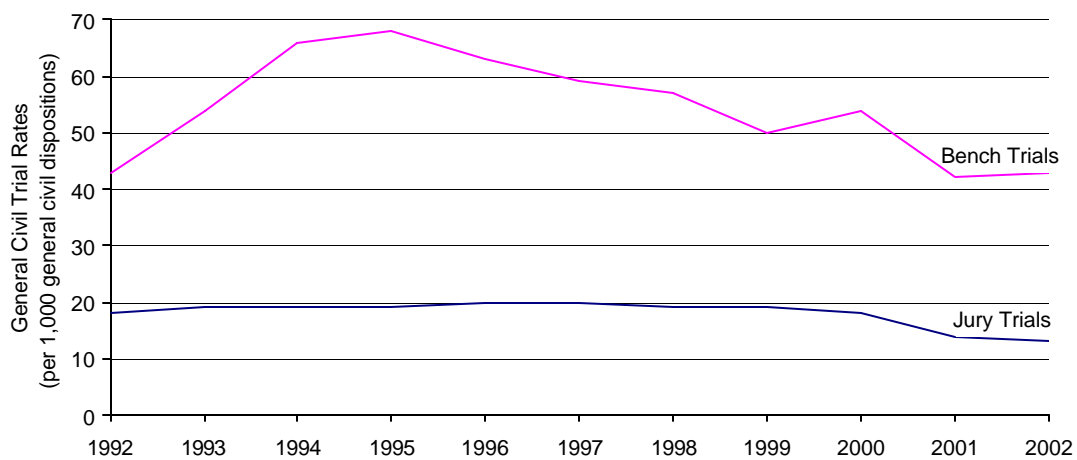
Notes: General civil refers to the combination of tort, contract, and real property rights cases. The general civil trial trend was created in order to control for state-to-state variations in the caseload composition of “total civil” cases. In addition, since general civil cases tend to be counted and classified similarly in each state, the use of this smaller subset of cases enhances comparability among states. See Table 2 for a list of states included in the trend and Table 3 for a list of trial definitions.

F. General civil trial rates

Examining general civil trial rates (i.e., general civil trials per 1,000 general civil dispositions) provides another perspective by which to discuss state trial trends. Figure 11 displays the general civil jury trial rates and bench trial rates for the 10 states in the sample for the period 1992-2002. The general civil trial rate trends echo the general civil trial trends in regards to the steady decline of jury trial rates and the initial growth then annual decline (again, with the exception of 2000) of bench trial rates. General civil jury trial rates remained constant between 1992 and 2000, around 19 jury trials per 1,000 dispositions or 1.9% of all general civil dispositions. After 2000, general civil jury trial rates fell dramatically to end at 13 jury trials per 1,000 dispositions in 2002. On the other

hand, general civil bench trial rates increased from 43 bench trials per 1,000 dispositions in 1992 to 68 bench trials per 1,000 dispositions in 1995 before slowly falling back to 43 bench trials per 1,000 dispositions, or 4.3% of all general civil dispositions, in 2002. The 1992 and 2002 general civil bench trial rates are the same due to the fact that both general civil dispositions and bench trials declined by 21% over the time series.

Figure 11: General civil trial rates (per 1,000 dispositions) for 10 states, 1992-2002

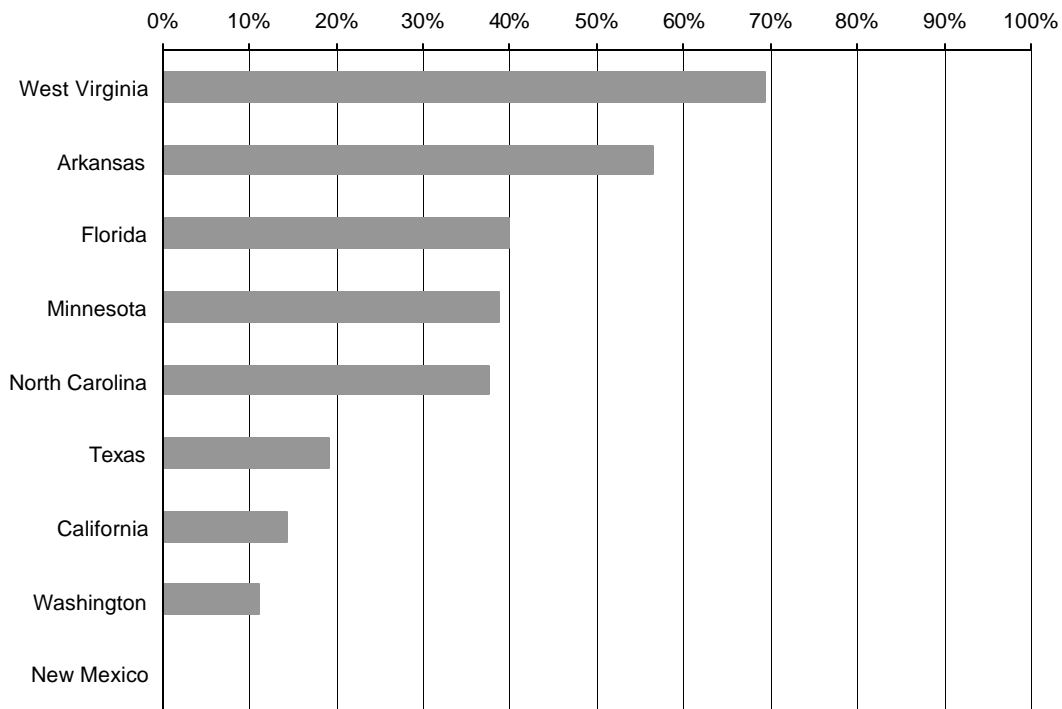


Note: The use of trial rates, which are calculated by dividing the total number of general civil jury (or bench) trials by the total number of general civil dispositions then multiplying by 1,000, standardizes the variations that are inherent in states of different sizes and with different dispositions trends, thus allowing for better comparisons to be made among states.

The aggregate trends shown in Figure 11 mask some dramatic differences among individual states. Examining general civil bench trial rates for each state we find that four of the states – Arkansas, California, New Mexico, and West Virginia – reported increased rates, most between 25 and 30%, with New Mexico reporting a huge 225% increase (36 to 117 bench trials per 1,000 general civil dispositions). The remaining six states, however, reported declines in their bench trial rates that ranged from 7% in Texas to 76% in Florida. Figure 12 shows that most states experienced a decline in general civil

jury trial rates. The two exceptions were New Mexico, where the jury trial rate actually jumped during the early and mid 1990s from 6 to as high as 24 (1994) before dropping back to 6, and Hawaii, whose jury trial rate fluctuated widely from year to year with a low of 5 in 1992 and a high of 13 in 2001.

Figure 12: Percent decrease in general civil jury trial rates, 1992-2002

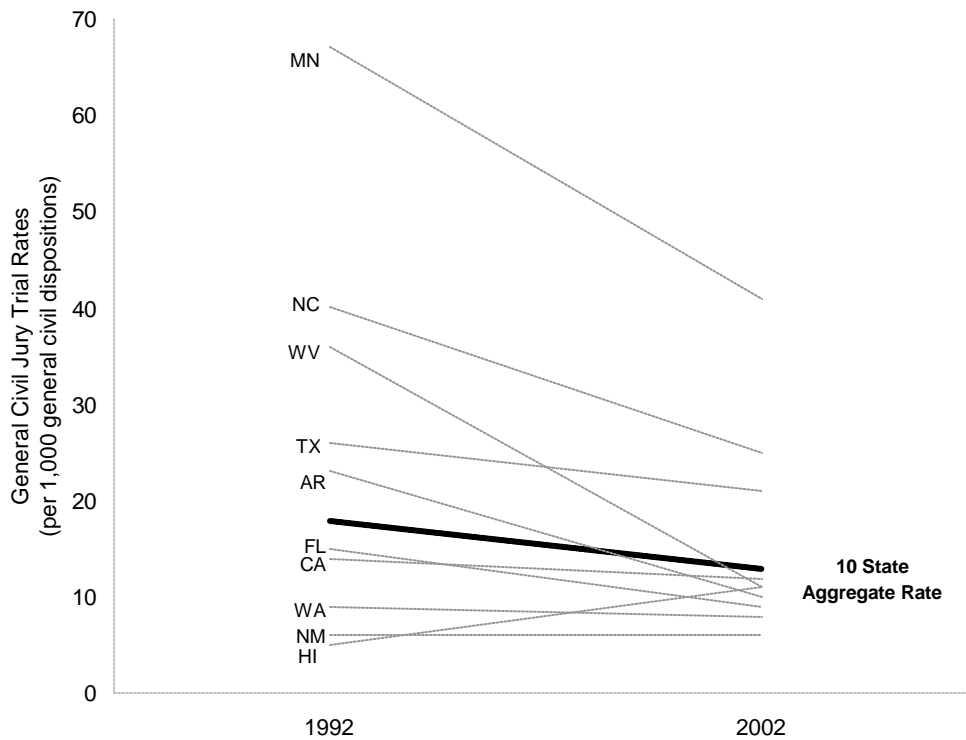


* Hawaii had a 120% increase from 1992-2002

Note: The jury trial rate (calculated per 1,000 dispositions) decreased for 8 of the 10 states in the sample, with West Virginia experiencing the greatest decline and Washington experiencing the least. New Mexico’s jury trial rate did not change from 1992 to 2002, and Hawaii’s jury trial rate actually increased.

For each state in the sample, Figure 13 compares the jury trial rate in 1992 with the rate in 2002. We find that variation in jury trials rates was more pronounced at the beginning of the series and has tended to tighten up over time, with most states now clustering between 8 and 12 jury trials per 1,000 general civil dispositions. Only those states – Minnesota, North Carolina, and Texas – that had comparatively higher rates in 1992 still maintained higher rates in 2002.

Figure 13: General civil jury trial rates, 1992 v. 2002



Notes: This “floating line” figure maps the change in each state’s jury trial rate by drawing a line from the start (1992) to the end (2002) of the data series. The bolded line indicates the change for all 10 states.

V. Conclusion

The *State Court Disposition Trends* database contains a comprehensive profile of manner of disposition data and allows, for the first time, an examination of disposition trends within the state court system. Focusing specifically on state general jurisdiction court trial dispositions, this paper used the *Disposition Trends* database to determine if the vanishing trials phenomenon seen in the federal courts also applies to the state courts. Analysis of the number and rate of state court trials showed that both jury and bench trials have declined over the last two decades despite substantial growth in the number of state court dispositions.

Trials appear to be declining at the same rate for both criminal and civil cases. Comparing total criminal and total civil jury trial rates, we found that, on average, there was 1 less jury trial per 1,000 dispositions each year for the period 1976-2002. This average loss of 1 jury trial per 1,000 dispositions per year was also seen when felony and general civil jury trial rates were compared for the period 1992-2002 (the 11 years for which general civil disposition data are available). In the case of total criminal and total civil bench trial rates, the average annual loss of criminal bench trials was 1 trial per 1,000 dispositions while there was an average annual loss of 7 civil bench trials per 1,000 civil dispositions (1976-2002). There was no perceptible yearly loss for either felony or general civil bench trials for the period 1992-2002 when comparing bench trial rates.

Appendix A: Total Criminal Dispositions in 23 States, 1976-2002

<i>Year</i>	<i>Total Population</i>	<i>Total Dispositions</i>	<i>Jury Trials</i>	<i>Bench Trials</i>
1976	121,730,313	1,222,972	42,049	61,382
1977	123,109,942	1,270,769	42,593	46,252
1978	124,657,101	1,303,583	39,335	47,232
1979	126,324,341	1,398,504	38,242	45,071
1980	127,696,710	1,549,416	38,703	53,961
1981	129,665,141	1,681,439	39,615	53,328
1982	131,228,530	1,755,429	40,583	48,098
1983	132,708,361	1,798,427	39,921	50,914
1984	134,181,743	1,841,318	38,150	49,848
1985	135,778,300	1,933,439	38,557	46,686
1986	137,540,478	2,031,079	39,019	46,124
1987	139,252,207	2,154,238	39,324	46,162
1988	140,956,355	2,245,898	39,520	47,908
1989	142,765,593	2,402,465	44,971	59,802
1990	144,263,418	2,418,363	46,271	63,420
1991	146,566,619	2,508,408	47,518	56,543
1992	148,344,811	2,503,835	46,722	58,494
1993	149,968,188	2,534,210	44,730	64,383
1994	151,459,924	2,469,446	43,447	61,107
1995	152,956,354	2,527,505	41,794	57,520
1996	154,470,847	2,650,122	42,385	57,938
1997	156,130,226	2,677,410	43,661	57,806
1998	157,756,873	2,786,415	41,646	63,138
1999	159,307,712	2,776,537	40,985	62,090
2000	164,002,439	2,773,175	38,966	63,769
2001	166,562,903	2,762,261	37,438	57,348
2002	168,592,094	2,780,440	35,664	55,447
Percent change	38%	127%	-15%	-10%

Source: Population Statistics: U.S. Bureau of the Census

Appendix B: Total Civil Dispositions in 22 States, 1976-2002

<i>Year</i>	<i>Total Population</i>	<i>Total Dispositions</i>	<i>Jury Trials</i>	<i>Bench Trials</i>
1976	124,140,528	1,464,258	26,018	502,549
1977	125,505,423	1,529,250	25,462	499,392
1978	127,061,751	1,682,323	24,103	543,893
1979	128,694,830	1,769,757	23,239	571,126
1980	130,059,872	1,873,462	23,073	603,471
1981	132,110,916	1,991,291	23,555	626,188
1982	133,684,935	2,064,635	23,849	654,760
1983	135,207,203	2,114,228	23,671	667,282
1984	136,729,506	2,112,185	24,124	629,572
1985	138,373,532	2,019,391	22,663	615,029
1986	140,190,926	2,280,859	23,316	604,333
1987	141,981,568	2,336,662	24,428	593,130
1988	143,768,896	2,460,803	23,182	590,416
1989	145,641,614	2,682,534	22,618	612,983
1990	147,134,858	2,828,182	22,387	610,741
1991	149,448,749	3,015,817	23,089	623,199
1992	151,252,580	3,395,382	24,159	688,517
1993	152,894,370	3,257,366	24,109	667,480
1994	154,404,590	3,128,551	24,055	634,692
1995	155,896,258	3,138,796	23,453	613,981
1996	157,413,542	3,107,930	23,649	616,557
1997	159,082,511	3,208,712	24,565	641,667
1998	160,727,242	3,338,543	25,201	627,451
1999	162,333,836	3,097,209	24,299	568,954
2000	167,235,347	2,999,012	21,937	528,104
2001	169,874,724	3,073,153	19,190	508,035
2002	171,974,667	3,087,857	17,617	469,547
Percent Change	39%	111%	-32%	-7%

Source: Population Statistics: U.S. Bureau of the Census

Appendix C: Felony Dispositions in 13 States, 1976-2002

<i>Year</i>	<i>Total Population</i>	<i>Total Dispositions</i>	<i>Jury Trials</i>	<i>Jury Trial Rate</i>	<i>Bench Trials</i>	<i>Bench Trial Rate</i>
1976	80,188,554	416,888	21,767	52	15,222	37
1977	81,283,987	415,881	21,084	51	12,783	31
1978	82,524,558	425,629	19,845	47	11,711	28
1979	83,826,713	441,777	19,697	45	11,061	25
1980	84,989,548	470,263	19,905	42	10,345	22
1981	86,742,294	538,507	21,448	40	10,426	19
1982	88,271,598	587,537	22,470	38	11,081	19
1983	89,663,143	600,602	22,478	37	12,249	20
1984	90,912,067	594,649	20,403	34	10,029	17
1985	92,283,572	622,814	20,454	33	9,632	15
1986	93,717,527	674,471	21,443	32	11,505	17
1987	95,006,153	751,896	22,034	29	11,090	15
1988	96,278,211	796,786	21,771	27	10,773	14
1989	97,711,256	801,483	22,954	29	11,082	14
1990	98,864,745	802,938	23,959	30	11,462	14
1991	100,600,081	841,309	24,044	29	8,689	10
1992	101,908,339	851,180	24,245	28	8,371	10
1993	103,078,933	857,004	23,378	27	10,622	12
1994	104,140,027	845,813	22,734	27	13,323	16
1995	105,190,613	865,612	22,802	26	12,902	15
1996	106,336,365	876,205	23,331	27	11,571	13
1997	107,657,090	902,395	24,397	27	11,245	12
1998	108,967,919	905,505	22,268	25	10,636	12
1999	110,213,768	904,895	22,244	25	8,630	10
2000	113,670,107	901,793	21,937	24	9,697	11
2001	115,697,765	921,820	20,664	22	10,663	12
2002	117,266,885	933,319	20,557	22	9,695	10
Percent change	46%	124%	-6%		-36%	

Source: Population Statistics: U.S. Bureau of the Census

Appendix D: General Civil Dispositions in 10 States, 1992-2002

<i>Year</i>	<i>Total Population</i>	<i>Total Dispositions</i>	<i>Jury Trials</i>	<i>Jury Trial Rates</i>	<i>Bench Trials</i>	<i>Bench Trial Rates</i>
1992	85,403,774	633,170	11,224	18	26,972	43
1993	86,591,189	568,251	10,536	19	30,519	54
1994	87,682,534	523,312	10,112	19	34,350	66
1995	88,762,409	500,146	9,634	19	34,004	68
1996	89,922,747	484,171	9,749	20	30,705	63
1997	91,232,490	492,523	9,896	20	28,827	59
1998	92,539,354	492,248	9,502	19	27,848	57
1999	93,766,806	481,618	9,002	19	24,278	50
2000	97,081,086	457,982	8,137	18	24,944	54
2001	99,066,741	500,192	7,235	14	21,215	42
2002	100,629,846	498,649	6,329	13	21,398	43
Percent Change	18%	-21%	-44%		-21%	

Source: Population Statistics: U.S. Bureau of the Census

Appendix E: Sources of *State Court Disposition Trends* Database Statistics

State	Published Data		Unpublished Data
	Annual Report	Web Page	
Alabama	Alabama Judicial System Annual Reports	www.alacourt.org	Administrative Office of the Courts 300 Dexter Ave., Montgomery, AL 36104-3741
Alaska	Alaska Court System Annual Reports	www.state.ak.us/courts	Office of Administrative Director 820 West 4 th Ave., Anchorage, AK 99501
Arizona	The Arizona Courts Data Reports, Appellate/General Jurisdiction	www.courts.state.ar.us	Supreme Court of Arizona 1501 W. Washington St., Suite 410, Phoenix, AZ 85007
Arkansas	Annual Report and Statistical Supplements of the Arkansas Judiciary	www.supreme.state.az.us	Administrative Office of the Courts 625 Marshall St., Little Rock, AR 72201
California	Judicial Council of California Annual and Court Statistics Reports	www.courtinfo.ca.gov	Judicial Council of California, Administrative Office of the Courts, Information Services Division, 455 Golden Gate Ave., San Francisco, CA 94102
Colorado	Judicial Branch Fiscal Year Annual Statistical Reports	www.courts.state.co.us	Office of the State Court Administrator, Colorado Judicial Department 1301 Pennsylvania St., Suite 300, Denver, CO 80203-2416
Connecticut	Biennial Reports of the Connecticut Judicial Department	www.jud.state.ct.us	State of Connecticut Judicial Branch, Court Operations Division 225 Spring St. Extension, 4 th Floor, Wetherfield, CT 06109
Delaware	Annual Report of the Statistical Judiciary and Statistical Report	www.courts.state.de.us	Administrative Office of the Courts Carvel State Office Building, 820 N. French St., 11 th Floor, Wilmington, DE 19801
District of Columbia	District of Columbia courts Annual Reports	www.dccsc.gov	Courts of the District of Columbia 500 Indiana Ave., NW, Room 1500, Washington, DC 20001
Florida	Florida Trial Courts Statistical Reference Guides	www.flcourts.org	Office of the State Courts Administrator Supreme Court Building, 500 South Duval St., Tallahassee, FL 32399-1900
Georgia	Annual Reports on the Work of the Georgia Courts	www.georgiacourts.org	Judicial Council of Georgia, Administrative Office of the Courts 244 Washington St., SW, Suite 300, Atlanta, GA 30334
Hawaii	The Judiciary State of Hawaii Annual Reports and Statistical Summaries	www.hawaii.gov/jud	Supreme Court 417 South King St., Suite 218, Honolulu, HI 96813
Idaho	Idaho Courts Annual Reports	www.state.id.us/judicial	Trial Court Services and Information Systems Idaho Supreme Court Building, 451 W. State St., P.O. Box 83720, Boise, ID 83720-0101
Illinois	Annual Reports of the Illinois Courts	www.state.il.us/court	Administrative Office of the Illinois Courts 222 N. LaSalle St., 13 th Floor, Chicago, IL 60601
Indiana	Indiana Judicial Service Reports.	www.ai.org/judiciary	Supreme Court of Indiana, Division of State Court Administrators 115 West Washington, Suite 1080, Indianapolis, IN 46204-3417
Iowa	Annual Statistical Reports to the Supreme Court of Iowa	www.judicial.state.ia.us	State Court Administration 111 East Court Ave., Des Moines, IA 50319
Kansas	Annual Reports of the Courts of Kansas	www.kscourts.org	Office of Judicial Administration 301 SW 10 th Ave., Topeka, KS 66612-1507
Kentucky	Annual Reports of the Kentucky Courts	www.kycourts.net	Administrative Office of the Courts 100 Millcreek Park, Frankfort, KY 40601
Louisiana	Annual Reports of the Judicial Council of the Supreme Court	www.lasc.org	Office of the Judicial Officer 1555 Poydras St., Suite 1540, New Orleans, LA 70112-3701
Maine	State of Maine Judicial Branch Annual Reports	www.courts.state.me.us	Administrative Office of the Courts P.O. Box 4820, 62 Elm St., Portland, ME 04112-4820

State	Published Data		Unpublished Data
	Annual Report	Web Page	
Maryland	Annual Reports and Statistical Abstracts of the Maryland Judiciary	www.courts.state.md.us	MD Judicial Center 580 Taylor Ave., Annapolis, MD 21401
Massachusetts	Annual Reports on the State of the Massachusetts Court System	www.state.ma.us/courts	Public Information Office, Supreme Judicial Court 210 New Courthouse, Boston, MA 02108
Michigan	Annual Reports of the Michigan Supreme Court	www.courts.michigan.gov	State Court Administrative Office 925 W. Ottawa, P.O. Box 30048, Lansing, MI 48909
Minnesota	Minnesota State Courts Annual Reports	www.courts.state.mn.us	Supreme Court of Minnesota 25 Reverand Dr. Martin Luther King, Jr. Blvd., 424 Minnesota Judicial Center St. Paul, MN 55155-6102
Mississippi	Annual Statistical Reports	www.mssc.state.ms.us	Administrative Office of the Courts P.O. Box 117, Jackson, MS 39205-0117
Missouri	Missouri Judicial Report Supplements	www.osca.state.mo.us	Supreme Court of Missouri, Office of the State Court Administrator 2112 Industrial Dr., P.O. Box 104480, Jefferson City, MO 65110
Montana	Annual Reports of the Montana Judiciary	www.lawlibrary.state.mt.us	Supreme Court of Montana Justice Building, Room 315, 215 North Sanders, Helena, MT 59620
Nebraska	The Courts of Nebraska Annual Caseload Reports	http://court.nol.org/	Administrative Office of the Courts P.O. Box 98910, State Capitol Building, Room 1220, Lincoln, NE 68509
Nevada	Annual Reports of the Nevada Judiciary	www.nvsupremecourt.us	Administrative Office of the Courts Supreme Court Building, 201 South Carson St., Suite 250, Carson City, NV 89701
New Hampshire	New Hampshire Judicial Branch Annual Reports	www.courts.state.nh.us	Administrative Office of the Courts 2 Noble Dr., Concord, NH 03301-6160
New Jersey	New Jersey Superior Court Caseload Reference Guides	www.judiciary.state.nj.us	Quantitative Research Unit, Administrative Office of the Courts P.O. Box 037-RJH Justice Complex, Trenton, NJ 08625-0037
New Mexico	New Mexico State Courts Annual Reports and Statistical Addendums	www.nmcourts.com	Judicial Information Division 2905 Rodeo Park E., Building 5, Santa Fe, NM 87505
New York	Annual Reports of the Chief Administrator of the Courts	www.courts.state.ny.us	Office of Court Administration 25 Beaver St., Room 975, New York, NY 10004
North Carolina	Annual Reports of the North Carolina Administrative Office of the Courts	www.nccourts.org	Administrative Office of the Courts Justice Building, P.O. Box 2448, Raleigh, NC 27602
North Dakota	North Dakota Courts Annual Reports	www.court.state.nd.us	Supreme Court of North Dakota Department 180, 600 East Boulevard Ave., Bismark, ND 58505
Ohio	The Ohio Courts Summaries	www.sconet.state.oh.us	Administrative Office of the Courts, Supreme Court of Ohio State Office Tower, 30 East Broad St., Columbus, OH 93215-3431
Oklahoma	Annual Reports on the Oklahoma Judiciary	www.oscn.net	Supreme Court of Oklahoma 1915 N. Stiles, Suite 305, Oklahoma City, OK 73105
Oregon	Annual Reports Relating to Judicial Administration in the Courts of Oregon	www.ojd.state.or.us	Office of the State Court Administrator Supreme Court Building, 1163 State St., Salem, OR 97301-2563
Pennsylvania	Caseload Statistics of the Judicial System of Pennsylvania	www.aopc.org	Administrative Office of PA Courts 1515 Market St., Suite 1414, Philadelphia, PA 19102
Puerto Rico	Informes Annual de la Rama Judicial	www.tribunalpr.org	Office of the Court Administrator P.O. Box 190917, San Juan, Puerto Rico 02903
Rhode Island	Reports on the Judiciary	www.courts.state.ri.us	Supreme Court of Rhode Island 250 Benefit St., Providence, RI 02903

State	Published Data		Unpublished Data
	Annual Report	Web Page	
South Carolina	Annual Reports of the Judicial Department of South Carolina	www.judicial.state.sc.us	South Carolina Judicial Department, Office of Information Technology 1015 Sumter St., Suite 108, Columbia, SC 29201
South Dakota	Annual Reports of the South Dakota Unified Judicial System	www.state.sd.us/state/judicial	Unified Judicial System 500 E. Capitol, Pierre, SD 57501-5070
Tennessee	Annual Reports of the Tennessee Judiciary	www.tsc.state.tn.us	Administrative Office of the Courts Nashville City Center, Suite 600, 511 Union St., Nashville, TN 37219
Texas	Annual Reports of the Texas Judicial System	www.courts.state.tx.us	Office of Court Administration 205 W. 14 th St., 6 th Floor, Austin, TX 78701
Utah	Annual Reports of the Utah Courts	www.utcourts.gov	Utah Administrative Office of the Courts 450 S. State St., P.O. Box 140241, Salt Lake City, UT 84114-0241
Vermont	Judicial Statistics, State of Vermont	www.vermontjudiciary.org	Supreme Court of Vermont, Office of the Court Administrator 109 State St., Montpelier, VT 05609-1701
Virginia	The Virginia State of the Judiciary Reports	www.courts.state.va.us	Supreme Court of Virginia 100 North Ninth St., Third Floor, Richmond, VA 23219
Washington	Annual Reports of the Courts of Washington	www.courts.wa.gov	Supreme Court of Washington P.O. Box 41170, 1206 Quince St. SE, Olympia, WA 98504-1170
West Virginia	West Virginia Court System Annual Reports	www.state.wv.us/wvscs	Court Services Division State Capitol, Building 1, Room E100, Charleston, WV 25305
Wisconsin	Wisconsin Judicial Statistics	www.courts.state.wi.us	Administrative Office of the Courts 110 E. Main St., Suite 410, Madison, WI 53703
Wyoming	Judicial Branch Annual Caseload Statistics	www.courts.state.wy.us	Supreme Court of Wyoming Supreme Court Building, 2301 Capitol Ave., Cheyenne, WY 82002