Trends in State Courts:
Rising Caseloads and Vanishing Trials
By David B. Rottman

During 2004, alarms sounded in many states both because of the conduct of the 2004 judicial elections and where improving state finances did not translate into adequate funding for the courts. The losers are the members of the public and businesses with disputes for which they cannot obtain resolution.

Introduction
Americans think about their judicial system the way they think about the water departments in their towns: the local water department is absolutely essential, but only comes to people’s minds when something appears to malfunction: a water main explodes, water restrictions go into effect because of shortages, or reports of contamination set off alarms.1

The metaphor is apt. Several alarms sounded during 2004, triggered primarily by the manner in which candidates, interest groups and political parties campaigned in judicial races. The 2004 judicial elections continued trends first dramatically evident in 2000: heavy spending, heavy involvement by non-candidate groups2, and campaign conduct—especially by outside groups—that included sharply negative attacks which might be ordinary in non-judicial elections but have with great care traditionally been barred from judicial races. While the 2004 elections signaled trouble ahead, they also provided some reassurance that the provisions built into the constitutions of all 39 states that elect judges to keep judicial races different from those held for the political branches of state government can be preserved (for an extended treatment of the 2004 elections, see the earlier article in this chapter, “2004 Judicial Elections”).

During 2004 other alarms sounded in many states where improving state finances did not translate into adequate funding for the courts, interrupting the services the courts provide. The courts in most states have been left to accommodate the steady rise in their workload without securing a commensurate growth in resources. The losers are the members of the public with disputes for which they cannot obtain resolution.

As in previous election years, the state courts were asked to resolve disputes concerning elections for legislative and executive branch offices. Prominent examples from 2004 include court challenges to election outcomes concerning the party controlling the Montana Legislature, the mayoral race in San Diego, and the governorship of Washington (still a trial court, with a jury trial set for May 2005). Inevitably, such disputes place the judiciary in the middle of a partisan political controversy that might affect subsequent relationships between the two branches.3

Court reform continued along mainly familiar tracks, including the longstanding movement toward court systems that are more centralized, streamlined, and funded at the state rather than the local level. Still more imaginative ways were found to respond to the needs of the growing number of citizens that prefer to represent themselves in court. For example, California’s network of support includes the provision of a family law facilitator in each county, family law information centers, five “pilot” models for self-help centers, and small claims advisors who assist litigants in these lawyer-free proceedings.4

Like water departments, courts need to anticipate changing demand for their service before alarms start to sound. Some signs that fundamental changes are taking place in the demand for court services were much discussed during 2004. Attention focused on the implications of what became known as “the vanishing trial” phenomenon, a sustained decline in the number of trials, both trials by jury and trials by judge, in the state courts.5

Trends in the Work of the State Courts
Throughout the year, the state courts conducted their essential but little noticed mission of responding to demand by adjudicating nearly one hundred million cases brought to them by the public, businesses and government. Courts like water departments must adjust their supply to accommodate increases and changes in the location of demand. There
were signs in 2004 that trends in demand have been slowly reshaping the composition of disputes courts are asked to resolve and also the role of trials in to resolving those disputes.

**Rising Demand.** Demand for court action continues to grow at a more rapid rate than the increase in the size of the general population. In 2002 (the most recent year for which statistics are available), 96.2 million cases were filed in the state courts.

Traffic-related cases accounted for 60 percent of all cases filed, a proportion that has been steadily declining for some time as administrative agency proceedings replace court adjudication for many traffic offenses. There has also been a slow but steady shift in the nature of the demand on the courts. The proportion of civil cases (tort, contract, and real property) has increased at a slower rate than criminal and family-related cases (see Table A).

The number of appeals filed in appellate courts has not increased as rapidly as that in trial courts. Still, in 2002, 278,000 appeals were filed in state appellate courts, an increase of 9 percent since 1993.6

A gap between demand and supply. The number of judges has not been increasing in pace with the rising case volume. The state judiciary grew by 5 percent between 1993 and 2002.7 Consequently, a gap is forming between the demand for court adjudication and the supply of judges to provide the adjudication. This gap is wider than might at first be assessed because the changes are replacing uncomplicated, quick to resolve traffic cases with more complicated and time intensive criminal, civil and family-related cases.

**Taking the long view.** We need to step back still further in time to 1976, to gain sufficient perspective to join in the discussions, prevalent in 2004, of the future of the state courts.

Issues of comparability over time and among states give us an incomplete picture of what has taken place. Still, we know that between 1976 and 2002, the number of criminal cases doubled, as measured in the 23 states for which reliable and comparable caseload information is available for the full time period. The cases in question were heard in courts of general jurisdiction, which primarily adjudicate felony cases. Much of the increase was recorded prior to the late 1980s (see Figure A).

Civil cases increased at a slightly slower pace than

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**Table A: Trends in State Trial Court Case Filings, 1993–2002**

<table>
<thead>
<tr>
<th>Case Type</th>
<th>Change (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Civil cases</td>
<td>+12%</td>
</tr>
<tr>
<td>Criminal cases</td>
<td>+19</td>
</tr>
<tr>
<td>Domestic relations</td>
<td>+14</td>
</tr>
<tr>
<td>Juvenile cases</td>
<td>+16</td>
</tr>
<tr>
<td>Traffic cases</td>
<td>+2</td>
</tr>
</tbody>
</table>

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**Figure A: Total Criminal Dispositions in 23 States, 1976–2002**

Source: American Bar Association

Note: Data are for the general jurisdiction courts of the 23 states selected because of the comparability over time in their caseload statistics.
The trend was distinct, with sharp increases in the late 1970s and early 1980s, followed up a precipitous climb in the number of cases until 1992. Over the last 10 years, civil cases are becoming less common in state courts of general jurisdiction (see Figure B).

The “Vanishing Trial” Phenomenon. For reasons that remain uncertain, the number of jury trials (and bench trials as well in criminal cases) has declined since 1976 (see Figure C). There were 15 percent fewer jury trials in criminal cases in 2002 than in 1976 despite the just documented sharp increase in the number of such case being brought to the courts and a growing population. For most of the recent past, fewer and fewer criminal cases have been decided by a jury (or a judge) trial. The exception was the late 1980s and early 1990s when the number of jury trials increased, although not sufficiently to keep the proportion of criminal cases decided by a trial from declining.

The pattern for civil juries in trial courts of general jurisdiction (basically tort, contract and real property cases) is different. The number of trials in 1976 was never subsequently equaled. Rather, in the face of rising civil caseloads, the number of trials remained relatively constant until the end of the 1990s. Most of the 32 percent decline in jury trials was recorded during those years.

Reading the tea leaves. These trends outlining a diminished role for the jury in deciding cases, especially for civil cases, have been treated as tea leaves through which the future of the state courts (and the courts generally because of similar trends in the federal courts) can be divined. Observers differ on the causes of the reduction in the use of juries and on how profound are the implications of these trends.

Jury trials now account for 2 percent of all civil and criminal case dispositions in the state courts. Their significance for the justice system vastly exceeds what their proportion of dispositions might indicate because jury decisions set the parameters within which negotiated settlements are reached in the vast majority of civil cases that settle between the parties and the vast majority of criminal cases resolved by a plea agreement. What is happening in jury trials? In one scenario, litigants, their lawyers, and judges are responding to changes in the practice of law, one that gives emphasis to settlements and the less costly and time draining judicial determination of a summary judgment. In another less benign scenario, the state courts are no longer responding well to the demand for dispute resolution. Potential litigants are turning to dispute resolution like private judges (hired by the parties to the dispute) and mediation. In those forums, the courts often have limited, if any, oversight. One possible future for the state courts sees them assuming an expanded role in ensuring that private dispute resolution is fair and the underlying legal analyses contribute to the im-

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**Figure B: Total Civil Dispositions in 22 States, 1976–2002**

<table>
<thead>
<tr>
<th>Year</th>
<th>Total Civil Dispositions</th>
</tr>
</thead>
<tbody>
<tr>
<td>1976</td>
<td>1,000,000</td>
</tr>
<tr>
<td>1978</td>
<td>1,500,000</td>
</tr>
<tr>
<td>1980</td>
<td>2,000,000</td>
</tr>
<tr>
<td>1982</td>
<td>2,500,000</td>
</tr>
<tr>
<td>1984</td>
<td>3,000,000</td>
</tr>
<tr>
<td>1986</td>
<td>3,500,000</td>
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<tr>
<td>1988</td>
<td>4,000,000</td>
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<tr>
<td>1990</td>
<td>4,500,000</td>
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<tr>
<td>1992</td>
<td>5,000,000</td>
</tr>
<tr>
<td>1994</td>
<td>5,500,000</td>
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<tr>
<td>1996</td>
<td>6,000,000</td>
</tr>
<tr>
<td>1998</td>
<td>6,500,000</td>
</tr>
<tr>
<td>2000</td>
<td>7,000,000</td>
</tr>
<tr>
<td>2002</td>
<td>7,500,000</td>
</tr>
</tbody>
</table>

*Source: American Bar Association*

*Note: Data are for the general jurisdiction courts of the 23 states selected because of the comparability over time in their caseload statistics.*
The year of celebrity trials. Real jury trials may be on the decline but the public’s exposure to them is on the rise due to a series of celebrity trials. The year 2004 was rich in such trials, notably the criminal cases against Kobe Bryant, Scott Peterson and Martha Stewart and the pre-trial maneuvers for the Michael Jackson and Robert Blake trials: “Aside from the war in Iraq, the most frequently reported story on broadcast TV morning news shows last year was the Peterson Case.” In all, celebrity trial stories outnumbered those about the California gubernatorial recall by two to one. Such pervasive coverage makes the jury more visible than ever before, but in a form so far from typical as to be aberrations. The typical jury trial begins and ends on the same day, typically including the time required for jury deliberations.

The citizen juror. The continuing importance of juries also is evident in the growing proportion of Americans who have served as a member of a jury. The best evidence from the late 1970s indicates that about some 6 to 10 percent of all American adults had served as a juror (that is, been sworn in as a juror on a specific case) compared to the 25 to 30 percent who can claim such experience today. A 2004 national survey found that 62 percent of all adults reported receiving a summons for jury service, with 29 percent having served as a juror.

What underlies such a dramatic change? The catalyst that began the democratization process was the replacement in 1968 of the “key man” system in the federal courts, in which local jury commissioners handpicked the individuals who would be in the jury pool for each term of system. By 1973, all of the states had made the same change. Initially, the list of registered voters defined the jury pool. Over time, all but four states have expanded their source lists to include licensed drivers, utility customers, and state income tax payers. The jury also became more democratic as automatic exceptions from jury service, like that once given to all women and to members of various occupations were gradually greatly reduced or eliminated. The U.S. Supreme Court halted the practice through which lawyers would use their peremptory challenges (ones for which no reason had to be stated) to exclude African-Americans or other ethnic groups from a jury.

Jury Democracy and Judicial Elections. A democratic jury is not to everyone’s satisfaction, however: “As the diversity of our society and its jurors has increased to the point that litigants can expect jurors unlike themselves, the pressure has risen to restrict
the power of juries.” Indeed, the “hottest” 2004 judicial elections were fueled by claims that certain jurisdictions by virtue of their demographic makeup were inhospitable to corporate defendants, especially those from out-of-state. In some respects, the realization of the promise of a jury system in which all citizens participate has contributed to the animus with which judicial elections are being conducted today.

What Lies Ahead?

State court workloads are on the rise. Current trends, such as reduced number of trial proceedings are unlikely to offer much relief. The three branches of government need to work out approaches, such as that pioneered last year in California, to provide stable funding for the courts. The courts, in turn, need to present a compelling case for their budget needs and then to monitor the effectiveness and efficiency with which the money so allocated is spent. There have been significant advances in the methodologies through which the courts can measure their resource needs and monitor their performance. Judicial and court staff workload assessments provide objective assessments of the number of positions needed to handle caseloads and identify where judicial and staff resources are “being allocated and used prudently.”

CourtTools offers 10 practical measures of court outcomes, including access and fairness; time to disposition, trial date certainty, and cost per case. There is ground for some optimism that such objective standards for establishing the need for court resources and accounting for the use of those resources can be grounded in the demonstrable needs of the public and businesses for court resolution of disputes.

Notes


3. These election law cases are important to the democratic process, concerning issues such as ballot access, accurate vote counts, and voter challenges; they often must be resolved with considerable haste. The William and Mary Law School and National Center for State Courts have established an Election Law Program to offer assistance to state judges who are called upon to resolve legal issues involving election law.


5. The phenomenon was explored by the ABA Litigation Section’s Vanishing Trial Project, which culminated in a symposium in December 2003.

6. See O’Neill v Coughlan, Case No. 1:04CV1612 (N.D.OH 2004) (in which the court issued a temporary injunction to prevent the state from enforcing sanctions against a candidate for Ohio Supreme Court), 64. Available at http://www.legalaffairs.org/howappealing/20040914ONeillinjunction.pdf.

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9Glenn Garvin, “Jury is in: Celebrity Trials a Hit for TV”, *The Miami Herald*, June 14, 2004. The article notes that these celebrity cases have “created a whole new class of TV journalists, nomadic bands that wander from courthouse to courthouse”.

10The best estimate of jury trial length is 13:30 hours in civil cases and 11:07 hours in criminal cases. Jury deliberations account for 1:55 hours and 2:45 hours, respectively, of those proceedings. See Dale A. Sipes and Mary E. Oram, *On Trial: The Length of Civil and Criminal Trials*, (National Center for State Courts: Williamsburg, VA, 1988).


12I am grateful to my colleague Paula Hannaford-Agor for this summary of factors underlying the post-1960s changes to the jury pool. U.S. Supreme Court decisions were the agents of much of the expansion in jury service: *Taylor v. Louisiana* (which ended automatic exemptions for women in 1975 and *Batson v. Kentucky* (prohibiting lawyers from creating all white juries) in 1986.

13Kenneth S. Klein, “Unpacking the Jury Box” 47 Hastings L.J. 1326.

14The state of the art of such assessments can be found in two studies conducted on behalf of the Minnesota State Court Administrator’s Office by the National Center for State Courts. See Brian Ostrom et al., *Minnesota Judicial Workload Assessment 2002* Williamsburg, VA: National Center for State Courts, 2003 and Minnesota Court Staff Workload Assessment, 2004, Williamsburg, VA: National Center for State Courts, 2004.

15The measures are described at http://www.ncsconline.org/D_Research/CourTools/tcpm_courttools.htm.

About the Author

David B. Rottman is a principal court research consultant at the National Center for State Courts, where he has worked since 1987. His current interests include judicial selection, public opinion on the courts, the evolution of court structure, and the pros and cons of problem-solving courts. He is the author of books on modern Ireland, social class and community courts. Rottman has a doctorate in sociology from the University of Illinois at Urbana, and previously worked at the Economic and Social Institute in Dublin, Ireland.