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What We Know and What We Should Know about American Trial Trends

Margo Schlanger*

More than a few people noticed that the American court system was seeing ever fewer trials before Marc Galanter named the phenomenon.¹ But until Galanter mobilized lawyers² and scholars to look systematically at the issue, inquiry was both piecemeal and sparse. Over the past three years, in contrast, Galanter's research³ and his idea entrepreneurship, crystallized in the "Vanishing Trial" label, has spawned if not a huge literature at least a substantial one. We have now gotten the benefit of sustained scholarly inquiry by researchers of many stripes. Their work has been largely, though not entirely, empirical, and so we have gained a good deal of positive knowledge.

This brief essay first summarizes some of that knowledge—in particular, the chief features we know about the shrinking civil trial docket in federal district courts. Next, it proposes four areas of future investigation necessary to understand the contours of the trend and to assess its causes. Then, I bring together the causal hypotheses that have already been proposed, none of which has yet been securely tested. Finally, in an appended bibliography, I list data sources, reports, and scholarly analyses that will be useful to those doing future work.

* Professor of Law, Washington University in St. Louis. My thanks to John Lande for inviting me to comment on Marc Galanter's 2005 Annual Distinguished Alternative Dispute Resolution Lecture, "A World Without Trials?" This paper is expanded from those brief comments. I received helpful comments from the members of the Washington University Workshop on Empirical Research in Law, and as always, from Sam Bagenstos. Any remaining errors are, of course, my responsibility.

1. See, e.g., Erik Moller, RAND Inst. For Civil Justice, Trends In Civil Jury Verdicts Since 1985 (1996); George L. Priest, *The Role of the Civil Jury in a System of Private Litigation*, 1990 U. CHI. LEGAL F. 161, 189 tbl.6; Kent Syverud, *ADR and the Decline of the American Civil Jury*, 44 UCLA L. REV. 1935, 1936-37 (1997); ADMINISTRATIVE OFFICE OF THE U.S. COURTS, ANNUAL REPORT OF THE DIRECTOR: JUDICIAL BUSINESS 25 (2001); ADMINISTRATIVE OFFICE OF THE U.S. COURTS, ANNUAL REPORT OF THE DIRECTOR: JUDICIAL BUSINESS 23-26 (2000); ADMINISTRATIVE OFFICE OF THE U.S. COURTS, JUDICIAL BUSINESS 23-24 (2002).

2. The American Bar Association's Section of Litigation sponsored Galanter's original project and the first of the resulting symposia. See Patricia Lee Rufo, *Opening Statement: The Vanishing Trial*, LITIG., Winter 2004, at 2. See also American College of Trial Lawyers, *The Vanishing Trial: The College, The Profession, The Civil Justice System* (Oct. 2004), available at http://www.actl.com/PDFs/Vanishing_Trial_wAppendices_Final.pdf (last visited Apr. 5, 2006).

3. Galanter himself has so far written three pieces exploring the topic. See Marc Galanter, *A World Without Trials*, 2006 J. DISP. RESOL. 7 [hereinafter Galanter, *World Without Trials*]; Marc Galanter, *The Hundred-Year Decline of Trials and the Thirty Years of War*, 57 STAN. L. REV. 1255 (2005); Marc Galanter, *The Vanishing Trial: An Examination of Trials and Related Matters in Federal and State Courts*, 1 J. EMPIRICAL LEGAL STUD. 459 (2004) [hereinafter Galanter, *Vanishing Trial*].

I. WHAT WE KNOW

Because the federal courts' information infrastructure is relatively fully developed, our knowledge is richest as to federal civil trials.⁴ These are only a very small portion of the American civil docket, let alone the entire court system. They leave out not only federal criminal cases, and not only state court cases, but also the many adjudicative events that we classify as administrative "hearings" rather than court "trials"—social security disability hearings, workers' compensation hearings, federal contract dispute appeals, and so on. In numbers, these dwarf the federal civil docket. Nonetheless, the federal civil docket looms large in importance if not in volume, if only because the federal bench is the most prestigious and federal procedures set the norms for other adjudicative arenas. In any event, given that we know so much more about federal civil trials than any other kind, it seems useful to begin there. So, after four Vanishing Trial symposia and numerous other articles, we know the following:

The district courts, taken as a whole, reports a decrease in the number of civil trials held. The major data source for this claim is information gathered for a variety of court administrative purposes by the Administrative Office of the U.S. Courts (AO).⁵ The shrinking trial docket is evident when one counts cases according to the figures in the AO's published tables, which classify cases by the adjudicative stage they reach prior to termination, and therefore enumerate cases that reach the trial stage regardless of whether they are resolved by a trial verdict.⁶ It is equally observable when one uses other measures of trial rates available after manipulation of the raw AO data—counting cases terminated by jury or judge verdict, or counting cases in which a jury or judge verdict is coded as producing "judgment for plaintiff," "judgment for defendant" or "judgment for both."⁷ In addition, there is a great deal of confirmatory evidence of other types. Just to pick an example, a *Wall Street Journal* article last December, headed "Trial-less Lawyers" described how law firms and corporate general counsels have been responding, recently, to the shrinking trial docket.⁸

Moreover, we know something about the character of the decline of the federal civil trial. The evidence suggests, for example, that over the past twenty-five years, jury trial rates have fallen much less than have bench trial rates. Jury trials have gone from about 2.5 percent of dispositions in 1979 to under 1 percent of dispositions in 2004—in raw numbers, from 3,526 to 2,529.⁹ This is a notable

4. For an exploration of the federal courts' information infrastructure, see Judith Resnik, *Migrating, Morphing, and Vanishing: The Empirical and Normative Puzzles of Declining Trial Rates in Courts*, 1 J. EMPIRICAL LEGAL STUD. 783, 790-93 (2003).

5. See Stephen B. Burbank, *Keeping Our Ambition Under Control: The Limits of Data and Inference in Searching for the Causes and Consequences of Vanishing Trials in Federal Court*, 1 J. EMPIRICAL LEGAL STUD. 571, 579 (2004) [hereinafter Burbank, *Ambition*].

6. See ANNUAL REPORTS OF THE ADMINISTRATIVE OFFICE OF THE U.S. COURTS, tbl.C-4. See also Galanter, *Vanishing Trial*, *supra* note 3.

7. See Gillian K. Hadfield, *Where Have All the Trials Gone? Settlements, Nontrial Adjudications, and Statistical Artifacts in the Changing Disposition of Federal Civil Cases*, 1 J. EMPIRICAL LEGAL STUD. 705, 713 tbl.1 (2004) [hereinafter Hadfield, *All the Trials*].

8. Nathan Koppel, *Trial-less Lawyers: As More Cases Settle, Firms Seek Pro Bono Work to Hone Associates' Courtroom Skills*, WALL ST. J., Dec. 1, 2005.

9. Galanter, *World Without Trials*, *supra* note 3.

change, to be sure; a 30 percent numeric decrease, and a 60 percent decrease as a proportion of dispositions. But bench trials have diminished much more; from about 4.5 percent of dispositions to about .5 percent (a decrease of close to nine-tenths), and 5,852 to 1,422 (a decrease of 75 percent).¹⁰ In other words, in federal courts, the jury trial may be shrinking, but it is the bench trial that is vanishing.

In addition, looking at the cases by substantive type, we know a good deal about the components of the federal civil trial docket. Tort cases in particular used to go to trial at a markedly high rate, but no longer do.¹¹ Prior to 1996, tort cases made up the largest group of tried cases (bigger than the next two categories combined until 1976), but now rank second.¹² Contract trials, too, have declined from the second to the third largest category.¹³ On the other hand, civil rights trials (which include statutory causes of action like employment discrimination suits, as well as constitutional litigation) have emerged as the largest single component of the trial docket, because even though they too are seeing a slowing trial rate, the change has been slower than for other case categories.¹⁴ The fourth biggest portion of the federal civil trial docket is prisoner civil rights cases, which have a complex history. The first important trend in this case category was the growing docket, prior to 1996. This was caused first by a precipitous increase in the inmate filing rate (measured as new suits per incarcerated person) in the 1970s, and then, even after the filing rate stabilized around 1980, by the tripling of the nation's incarcerated population. Restriction of prisoners' rights in 1996, by the Prison Litigation Reform Act,¹⁵ prompted a decline of over 40 percent in prisoner filings over the last 10 years. But prisoner's civil trials remain crucial to understand because, simultaneously, even though (like all the major case categories) inmate cases are reaching trial more rarely than they used to, they have grown just a bit closer to the ordinary low trial rate.¹⁶

I could go on, summarizing some of the more minor points the accumulating literature has established—observations about magistrate judge trials, multi-district litigation, length of trial, and the like. More important than any of these, however, are the things we do not know. If the goal is to understand *why* trials have declined, there seem to me to be four urgent areas of future inquiry, which apply both to the federal civil docket and to any other docket in which many trials are held. In none of these areas will traditional case research provide much in-

10. Hadfield, *All the Trials*, *supra* note 7, at 714, 715 fig.1.

11. Galanter states that the trial rate for tort cases was 16.5 percent of dispositions in 1962; the total trial rate that year was 11.5 percent of dispositions. See Galanter, *Vanishing Trial*, *supra* note 3, at 466; 533-34 tbl.A-2. By in 2002, only 2.2 percent of torts were resolved by trial, compared to the similar 1.8 percent of all dispositions. *Id.*

12. *Id.* at 536 tbl.A-4.

13. *Id.* at 467-68, 536 tbl.A-4.

14. Galanter reports that 19.7 percent of all (non-inmate) civil rights cases saw trial in 1970, compared to 10 percent of all cases; in 2002, 3.8 percent of civil rights cases were tried, compared to 1.8 percent of all cases. See Galanter, *Vanishing Trial*, *supra* note 3.

15. See Margo Schlanger, *Inmate Litigation*, 116 HARV. L. REV. 1555, 1643 (2003).

16. Galanter reports that "at its peak in 1970, 4.5 percent of prisoner petition terminations were by trial; just 1 percent were by trial in 2002." Galanter, *Vanishing Trial*, *supra* note 3, at 472. Because the overall trial rate was 10 percent in 1970 and 1.8 percent in 2002, that means that the inmate petition trial rate went from .45 of the overall rate in 1970 to .56 of the overall rate in 2002. Note that Galanter is following the AO's categorization, by considering together both inmate civil rights cases and habeas petitions. This is a bit misleading, because the two types of cases follow entirely different patterns.

sight; reported opinions are simply beside the point, for these questions. Rather, research will primarily need to use statistical information about case outcomes, docket and pleadings research, and interviews and surveys. The next part of this essay surveys what we should be trying to find out about American trial trends.

II. WHAT WE SHOULD KNOW

A. Confirmation

There can be little question that the number of trials is in decline. The magnitude of the decrease, however, is questionable. Gillian Hadfield's auditing work suggests that the actual magnitude of the decline may well be smaller than the AO data suggest.¹⁷ Even in the federal civil docket, it would be useful for researchers to understand better the mundane issues that are clearly producing some noise in the data. Some of the observed vanishing trial phenomena is probably a statistical artifact of the AO's 1987 docket coding changes, and its odd choice to include non-final terminations in the denominator of its published tables. In addition, there has been a change in the coding of magistrate judge trials that needs investigation. Confirmation and clean data are essential for more nuanced causal analysis.

Finally, it would be useful to confirm that the evident trends are not actually the result of a shift from court to administrative litigation. In the absence of national administrative data, this could be done with a few individual district studies.

B. Disaggregation

Even more urgent is disaggregation. We simply do not know much about the experience in different courts. Has the shift in the mean percentage of trials in the court system as a whole been accompanied by a shift in the variance among courts? Are any differences among trial rates by court caused by different approaches to similar cases, or are they rather artifacts of the courts' different dockets? Similarly, we do not really understand much about the different trial rates by case type and the differential shifts in those rates over time. Again, are these real features of the docket, do they simply mask correlative differences among districts, or are the rates based on the individual/collectivity status of the parties? Disaggregation would uncover the kind of variation that allows hypothesis testing.

More particularly, trial data should be disaggregated by system (that is, by district for federal court and by state for state court); by type of case; and by type of litigant (public, corporate, individual). The more detailed descriptive statistics that would emerge will be interesting in their own right. In addition, there would emerge plenty of room for multivariate inferential statistics. Furthermore, disaggregation would allow analysis to include potentially confounding non-causes. For example, changes in employment discrimination doctrine may well have an important impact on that portion of the trial court docket. Considering employment cases separately would allow this kind of possibility to be tested.

17. Hadfield, *All the Trials*, *supra* note 7, at 723-28.

C. Non-trial outcomes

One of the questions that needs answering is—*Where* have all the trials gone? Though everybody has a favorite candidate, there is little evidence with which to assess which non-trial outcomes have taken up the slack left by the trial, let alone if a particular feature of these non-trial outcomes is driving changes in trial rates. To answer that question will require improved data on the non-trial outcomes. These include: (A) non-final terminations of two types—large-scale dispositions such as class action consolidation and multidistrict litigation transfers, and individual dispositions such as removal or venue changes; (B) settlement via arbitration, mediation, or simple agreement; (C) non-trial adjudication by dismissal of one kind or another, or summary judgment; and (D) unilateral withdrawal or default by either party.

D. Disputes vs. Trials

Finally, we need to understand vastly more about the disputes from which litigation develops, and how the underlying dispute landscape has changed over time. This information is impossible to come by globally, but has sometimes been developed for individual case types. For example, in topical areas in which insurance is universal or near universal, closed claims files can often be used. Without information about changes in the number and nature of disputes, we run the risk of mistaking changing litigation trends for causes rather than effects.

III. HYPOTHESES

If these four areas of inquiry are developed, researchers will be in a much better position to examine hypotheses about causes of the decline in trials. After reading the accumulating research, I have compiled a list of plausible hypotheses:

- I. Changes in case mix have caused the decline in trials.
 - A. Cases have gotten bigger and more complex,¹⁸ costlier cases are less trial prone, because high transaction costs “enlarge the overlap in settlement ranges.”¹⁹
 - B. There has been a decreasing proportion of cases in substantive areas that are more trial prone.²⁰
 - C. The increase in amount in controversy required for diversity jurisdiction²¹ has contributed, because it has promoted a relative decline in filing of diversity cases, which are particularly likely to reach trial.²²

18. See Gillian K. Hadfield, *The Price of Law: How the Market for Lawyers Distorts the Justice System*, 98 MICH. L. REV. 953 (2000).

19. Galanter, *Vanishing Trial*, *supra* note 3, at 517.

20. See Burbank, *Ambition*, *supra* note 5, at 583-84 & nn.46-48.

21. 28 U.S.C. § 1332(a) (2000). Congress amended 28 U.S.C. § 1332, increasing the amount in controversy requirement for diversity jurisdiction cases from \$50,000 to \$75,000 in 1996. Federal Courts Improvements Act, Pub. L. 104-317, § 205, 110 Stat. 3847, 3850 (1996). Congress also raised the requirement four times prior to 1996, in 1887, 1911, 1958, and 1988.

22. See Burbank, *Ambition*, *supra* note 5, at 584.

- D. The decline of inmate civil rights filings since 1995 has contributed.²³
- E. The increase in (non-trial prone) cases in which individual plaintiffs sue collectivities has contributed.²⁴
- II. Changes in litigant abilities/needs/desires have caused the decline in trials.
 - A. Less experienced lawyers²⁵ and judges²⁶ want to avoid trial.
 - B. The push-effect of risk: Litigants, particularly organizational litigants, increasingly want to avoid trial because they (rightly or wrongly) perceive trial as increasingly risky.²⁷
 - C. The pull-effect of alternative dispute resolution: Perhaps litigants, especially corporate and governmental defendants, are influenced by the growing salience of positive accounts of settlement as collaborative, reparative, and otherwise attractive,²⁸ or the negative valence increasingly attached to trial as opposed to settlement.²⁹
 - D. As the economics of the plaintiffs' bar has developed, so that it is now characterized by more robust capitalization, diversification, and case selection, plaintiffs' counsel have become a more even match for the defense. This increased ability to invest in discovery and other litigation development pushes defendants to settle.³⁰
 - E. Increasingly well-trained lawyers are more skilled and better able to read signals and devise bargains, improving settlement prospects.
- III. The courts are decreasingly interested in or able to provide trials.
 - A. Increase in civil dockets coupled with resources constraints create a growing number of cases per judge and depresses trials.³¹
 - B. The press of criminal business – more federal prosecutions, more sentencing work, and less plea bargaining – depresses civil trials.³²
 - C. Managerial judging ideology, embraced by courts beginning in the 1970s, depresses trials.³³

23. See Schlanger, *supra* note 15 (documenting decline in inmate civil rights filings).

24. Gillian K. Hadfield, *Exploring Economic and Democratic Theories of Civil Litigation: Differentiating Between Individual and Organizational Litigants in the Assessment of the Changing Disposition of Federal Civil Trials*, 57 STAN. L. REV. 1275 (2005).

25. See American College of Trials Lawyers, *supra* note 2, at 22-21 (discussing the possibility that young lawyers have less trial experience than in earlier times); see also Koppel, *supra* note 8.

26. See Galanter, *Vanishing Trial*, *supra* note 3, at 521 (describing decline between 1962 to 2002 from 39 to 13 trials per federal district judge); *id.* at 522-23 figs.33-34, 566-67 tbls.A-26, A-27.

27. See American College of Trial Lawyers, *supra* note 2, at 18-20 (discussing counsels' increasing fear of juries).

28. See, Carrie Menkel-Meadow, *Is the Adversary System Really Dead? Dilemmas of Legal Ethics as Legal Institutions and Roles Evolve*, in CURRENT LEGAL PROBLEMS (Jane Holder *et al.* eds., 2004).

29. See Resnik, *supra* note 4, at 811-13.

30. Stephen C. Yeazell, *The Vanishing Civil Trial: Getting What We Asked For; Getting What We Paid For, and Not Liking What We Got?*, 1 J. EMPIRICAL LEGAL STUD. 943 (2004).

31. Cf. Galanter, *Vanishing Trial*, *supra* note 3, at 519 (casting doubt on this hypothesis).

32. See Shari Seidman Diamond & Jessica Bina, *Puzzles about Supply-Side Explanations for Vanishing Trials: A New Look at Fundamentals*, 1 J. EMPIRICAL LEGAL STUD. 637, 644-45, 649-50 (2004).

33. See Judith Resnik, *Trial as Error, Jurisdiction as Inquiry: Transforming the Meaning of Article III*, 113 HARV. L. REV. 924 (2001); Judith Resnik, *Managerial Judges*, 96 HARV. L. REV. 374 (1982); Arthur R. Miller, *The Pretrial Rush to Judgment: Are the "Litigation Explosion," "Liability Crisis," and Efficiency Clichés Eroding Our Day in Court and Jury Trial Commitments?*, 78 N.Y.U. L. REV. 982, 1004-05 (2003).

- D. The rise of the “law-giving” judge depresses trials, as judges increasingly adjudicate cases via law (dismissals, summary judgments) rather than facts.³⁴
 - E. Doctrine has grown more clear, creating less uncertainty about results, which promotes both settlement and legal, rather than factual, adjudication.
- IV. Procedural reforms and innovations now provide alternatives to trial, making trial less attractive.
- A. Class actions combine many trials into one settlement.
 - B. Multi-district litigation promotes settlement.
 - C. The rise of alternative dispute resolution, whether free-standing or court-annexed, voluntary or mandatory, has increased settlement.³⁵
 - D. Expanded pretrial discovery depresses trial in three ways.
 - 1. Where once a trial subpoena was necessary for some types of investigation, pretrial discovery can now reach all known information.³⁶
 - 2. Expansive discovery produces information, which in turn promotes shared expectations about trial damages, which promotes settlement.
 - 3. Expansive discovery imposing substantial costs means that law is cheaper than fact.
- V. The decline in trials is just one result of our society’s general “turn against law”—which is promoting a shift of law from hard to soft; rigor to bargaining, negotiation.³⁷

Some of these hypotheses are undoubtedly true; others will turn out to be demonstrably false. All are worth testing.

34. Miller, *supra* note 33, at 1071; Stephen B. Burbank, *Vanishing Trials and Summary Judgment in Federal Civil Cases: Drifting Towards Bethlehem or Gomorrah?*, 1 J. EMPIRICAL LEGAL STUD. 571 (2004).

35. As Steve Burbank suggests, this actually elides two different possibilities: “ADR is keeping out of court cases that are disproportionately those that would have gone to trial, and second, [. . .] court-annexed ADR is causing more settlements than otherwise would have occurred before trial.” Burbank, *Ambition*, *supra* note 5, at 585. For the limited data that exist, see Thomas J. Stipanowich, *ADR and the “Vanishing Trial”: The Growth and Impact of “Alternative Dispute Resolution,”* 1 J. EMPIRICAL LEGAL STUD. 843 (2004).

36. See Yeazell, *supra* note 30, at 949.

37. Galanter, *Vanishing Trial*, *supra* note 3; Galanter, *World Without Trials*, *supra* note 3; Marc Galanter, *The Turn Against Law: The Recoil Against Expanding Accountability*, 81 TEX. L. REV. 285 (2002); Resnik, *supra* note 4, at 813-14.

APPENDIX

The source list below includes several datasets that I have posted for public access at: <http://schlanger.wustl.edu> (under “Resources”).

I. Nationwide Federal Civil Cases.

A. Available data sources:

1. Administrative Office of the U.S. Courts. Terminated cases. The major data source about the federal civil docket is transmitted by district court clerks to the AO, which compiles it into a database.³⁸ It is available in four formats, and is also the basis of many of the reports cited below.
 - a) Published reports: under a variety of titles³⁹ as the Judicial Business of the U.S. Courts.
 - b) Raw data. The AO database is available from the Inter-university Consortium on Social and Political Research. The study numbers are 8429; 3415; 4059; 4026; 4348. See www.icpsr.umich.edu.
 - c) Somewhat processed data. Several researchers have merged the civil portion AO data, which requires some processing. My version of this database is available in Stata format at <http://schlanger.wustl.edu> (under “Resources”), along with code to replicate the aggregation of the various datasets. For more details on assembling and using the database, see the web-published Technical Appendix to Schlanger, *Inmate Litigation*, *supra* note 15, at <http://schlanger.wustl.edu> (under “Publications”).
 - d) Web-queryable form <http://teddy.law.cornell.edu:8090/que stata.htm>. Query engine sponsored by Ted Eisenberg and Kevin Clermont, Cornell Law School.
2. Administrative Office of the U.S. Courts, selected caseload statistics, 1988-2004 (some are 1977-2004), uscourts.gov website.
3. Federal Court Cases, 1962-64 (ICPSR 7245).
4. Federal Justice Statistics Program Data, 1978-94 (ICPSR 9296).
5. Federal Judicial Center’s data on 54 district courts’ use of ADR referrals (38 districts are complete for all years 1998-2005). Data are available, courtesy of the Federal Judicial Center, at <http://schlanger.wustl.edu> (under “Resources”).
6. Federal District Court Civil Decisions, 1981-87: Detroit, Houston, and Kansas City (ICPSR 9367).

38. See Theodore Eisenberg & Margo Schlanger, *The Reliability of the Administrative Office of the U.S. Courts Database: An Initial Empirical Analysis*, 78 NOTRE DAME L. REV. 1455 (2003); Hadfield, *All the Trials*, *supra* note 7; Gillian K. Hadfield, *Exploring Economic and Democratic Theories of Civil Litigation: Differentiating Between Individual and Organizational Litigants in the Assessment of the Changing Disposition of Federal Civil Trials*, 57 STAN. L. REV. 1275 (2005).

39. A complete list of titles and citations, assembled by Mark Kloempken, is available at <http://schlanger.wustl.edu> (under “Resources”).

B. Reports using the above:

- THOMAS H. COHEN, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, NCJ 208713, FEDERAL TORT AND TRIAL VERDICTS, 2002-03 (2005), *available at* <http://www.ojp.usdoj.gov/bjs/pub/pdf/fttv03.pdf>.
- MARIKA F.X. LITRAS & CAROL J. DEFRANCES, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, NCJ 172855, FEDERAL TORT TRIALS AND VERDICTS, 1996-97 (1999), *available at* <http://www.ojp.usdoj.gov/bjs/pub/pdf/fttv97.pdf>.
- ANDREW H. PRESS & CAROL J. DEFRANCES, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, NCJ 165810, FEDERAL TORT TRIALS AND VERDICTS, 1994-95 (1997), *available at* <http://www.ojp.usdoj.gov/bjs/pub/pdf/fttv95.pdf>.
- BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, NCJ 193979, CIVIL RIGHTS COMPLAINTS IN U.S. DISTRICT COURTS, 2000 (2002), *available at* <http://www.ojp.usdoj.gov/bjs/pub/pdf/crcus00.pdf>.
- MARIKA F. X. LITRAS, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, NCJ 173427, CIVIL RIGHTS COMPLAINTS IN U.S. DISTRICT COURTS, 1990-98 (2002), *available at* <http://www.ojp.usdoj.gov/bjs/pub/pdf/crcusdc.pdf> (tables from this report have been updated through 2000).
- ROGER A. HANSON & HENRY W.K. DALEY, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, NCJ 151652, CHALLENGING THE CONDITIONS OF PRISONS AND JAILS: A REPORT ON SECTION 1983 LITIGATION (2004), *available at* <http://www.ojp.usdoj.gov/bjs/pub/pdf/ccopaj.pdf>.
- JOHN SCALIA, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, NCJ 189430, PRISONER PETITIONS FILED IN U.S. DISTRICT COURTS, 2000, WITH TRENDS 1980-2000 (2001), *available at* <http://www.ojp.usdoj.gov/bjs/pub/pdf/ppfusd00.pdf>
- JOHN SCALIA, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, NCJ-164615, PRISONER PETITIONS IN THE FEDERAL COURTS, 1980-96 (1997), *available at* <http://www.ojp.usdoj.gov/bjs/pub/pdf/ppfc96.pdf>.

C. Scholarly investigations of trial rates using the above, at least in part.

- Marc Galanter, *The Vanishing Trial: An Examination of Trials and Related Matters in Federal and State Courts*, 1 J. EMPIRICAL LEGAL STUD. 459 (2004).
- Marc Galanter, *The Hundred-Year Decline of Trials and the Thirty Years of War*, 57 STAN. L. REV. 1255 (2005).
- Gillian K. Hadfield, *Where Have All the Trials Gone? Settlements, Nontrial Adjudications, and Statistical Artifacts in the Changing Disposition of Federal Civil Cases*, 1 J. EMPIRICAL LEGAL STUD. 705 (2004).
- Gillian K. Hadfield, *Exploring Economic and Democratic Theories of Civil Litigation: Differentiating Between Individual and Organizational Litigants in the Assessment of the Changing*

Disposition of Federal Civil Trials, 57 STAN. L. REV. 1275 (2005).

- Margo Schlanger, *Inmate Litigation*, 116 HARV. L. REV. 1555 (2003).
- Stephen B. Burbank, *Vanishing Trials and Summary Judgment in Federal Civil Cases: Drifting Toward Bethlehem to Gomorrah*, 1 J. EMPIRICAL LEGAL STUD. 591 (2004).

D. Other relevant data focused reports and scholarship.

- Joe S. Cecil, Dean P. Miletech & George Cort, *Federal Judicial Center, Trends in Summary Judgment Practice: A Preliminary Analysis* (Nov. 2001).
- Thomas J. Stipanowich, *ADR and the "Vanishing Trial": The Growth and Impact of "Alternative Dispute Resolution,"* 1 J. EMPIRICAL LEGAL STUD. 843 (2004).

II. Federal bankruptcy data, including on trials.

A. Raw data: Federal Court Cases: Integrated Data Base, 1994-2003: ICPSR study numbers 4303-4306, 4086, 4088, 4249, 4251, 4252.

B. Published report: Elizabeth Warren, *Vanishing Trials: The Bankruptcy Experience*, 1 J. EMPIRICAL LEGAL STUD. 913 (2004).

III. Federal criminal data, including data on trials.

A. Raw data: Federal Court Cases: Integrated Data Base (See I.A.1, above).

B. Published reports:

- STEVEN K. SMITH & MARK MOTIVANS, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, NCJ 207447, FEDERAL CRIMINAL CASE PROCESSING, 2002: WITH TRENDS 1982-2002 (2005), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/fccp02.pdf>.
- STEVEN K. SMITH & MARK MOTIVANS, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, NCJ 197104, FEDERAL CRIMINAL CASE PROCESSING, 2001: WITH TRENDS 1982-2001 (2003), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/fccp01.pdf>.
- STEVEN K. SMITH & JOHN SCALIA, JR., BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, NCJ 189737, FEDERAL CRIMINAL CASE PROCESSING, 2000: WITH TRENDS 1982-2000 (2001), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/fccp00.pdf>.
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