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Sharp decline in jury trials poses dilemma for lawyers

By GINA HOLLAND
The Associated Press

ATLANTA - Jury trials are in a sharp decline. More accused criminals are opting for plea deals and companies are finding it cheaper to settle disputes through arbitration or other means.

The nation's largest lawyers group is not sure if there is anything it could - or should - do about the situation, which is changing the way law schools educate future attorneys and making skilled negotiators in greater demand than trial lawyers.

About 40 years ago, more than 11 percent of civil cases in federal courts were resolved by trials. Today it is under 2 percent. Federal criminal trials have fallen by one-third over the past 40 years. Federal judges who once heard nearly 40 trials a year now preside over fewer than 13.

All this has dismayed lawyers and some judges.

"This ain't law, folks," Patrick Higginbotham, a federal appeals court judge from Dallas, said Saturday at an American Bar Association meeting on the subject.

He said trials in state courts are also on the decline, although those numbers are harder to track.

Lawyers accept part of the blame, acknowledging their costly fees and massive paperwork demands before a trial. Some lawyers recommend that clients settle out of court because they have more control and the results often can be kept secret.

"Trial lawyers are becoming a misnomer," said Robert Clifford, a Chicago lawyer who contends judges contribute to the situation by strongly encouraging settlements.

So far, the 400,000-member ABA has not taken up any policy suggestions. George Washington University law school professor Paul Butler said the ABA could endorse the idea that judges increase the number of trials. The group also could recommend changing federal criminal sentencing rules that now make it more attractive for defendants to plead guilty with the promise of lighter prison sentences, Butler said.

Recent rulings from the Supreme Court could mean more trials are coming.

In June, the high court decided that only juries, not judges, may lengthen prison terms beyond the maximum set out in state sentencing guidelines. The court will consider this fall whether federal judges also must change the way they sentence defendants. It's a major case because those judges hand out about 1,200

criminal sentences a week.

Separately, the justices in 2003 sought to restrict large punitive damage awards, ordering judges to ensure that judgments are reasonable and proportionate to the amount of alleged harm.

Lawyers said Saturday that decision should make company executives more comfortable about taking their chances in front of a jury.

Judith Resnik, a law professor at Yale University, urged greater public attention to the decline in jury trials because people may find that their legal rights have been cut off. She said contracts for credit cards, cell phones and other things require people to waive their right to sue, and instead arbitrate any complaints.

Most troubling, she said, is that proceedings are private as opposed to jury work done in public.

Butler said that the country's founders envisioned a system in which "little people decide disputes. It's power to the people."

Now he must tell idealistic law students that few will fulfill their dreams as courtroom lawyers. Instead, he said, many will "spend their lives in rooms of boxes" preparing for arbitration or settlement discussions.

Higginbotham said it may be possible to reverse the tide.

"We're just beginning to ask the right questions," said Higginbotham, author of "So why do we call them trial courts?"

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