

## Trial by jury becoming an endangered species

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ATLANTA - Jury trials are in a sharp decline. More criminal defendants 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 ABA meeting. He said trials in state courts are also on the decline.

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. But Robert Grey Jr., a lawyer from Richmond, Va., who becomes the group's president this week, is making juries a centerpiece of his agenda.

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.

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 guidelines. The court will consider this fall whether federal judges also must change the way they sentence.

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.

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

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