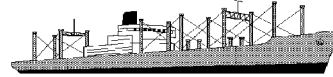
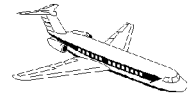




Rollin' On [®]



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FEWER TRIALS, MORE ADR, AND JURY WITHOUT ATTY

Fewer trials:

But no shortages

Many people believe that the legal system in the U.S. is out of control, that there are a zillion unnecessary and frivolous lawsuits, and that attorneys are the cause of the problem. There is validity to much of that criticism.

But there are some other interesting facts as well. According to a recent report by the Wall Street Journal, the number of trials is way down from where it used to be. In 1984 there were 14,300 federal civil trials. In 2004 there were only 5,500 federal civil trials, a drop off of approximately 62%. That is very remarkable, almost mind-boggling given that one would expect the number to increase by that % over that 20 year span.

Meanwhile, for the period from 1976 to 2003, state civil jury trials dropped 34%. During the same period, the number of cases rose 165%.

As for criminal cases, due to the very strict federal sentencing guidelines, more than 95% of the defendants enter into plea deals instead of taking their chances in court.

Some marginal or low-damage cases are not being filed, in view of caps that some state legislatures have imposed on jury verdicts.

So while it may seem like the justice system is running amok, just imagine what it would be like if the 1984 caseload was still in effect today.

Mediation and Arbitration:

ADR and Differences

Part of the reason for the drop in trials is due to the ever-increasing popularity of Alternative Dispute Resolution, or ADR. Due to cost and speed, or lack thereof, many parties

LARRY R. DAVIDSON
Attorney at Law
1850 Benj. Franklin Plaza
One SW Columbia St.
Portland, Oregon 97258
(503) 229-0199
Fax (503) 229-1856
E-Mail: larry@rollin-on.com
www.rollin-on.com

are resorting to ADR to get their cases handled more expeditiously. Within ADR there are options, such as arbitration, mediation and hired judges. In Oregon, all cases (OK, yes, there are exceptions but let's not quibble right now) with claims for less than \$50,000 are referred to mandatory, though nonbinding, arbitration. The



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case is heard by a lawyer in a law office. Either side is allowed to appeal the arbitration award. However, over 90% of these cases end at that point.

Arbitration may arise by virtue of a contract, where the parties earlier agreed, or at least the written agreement provided, that legal disputes would be decided by a "neutral".

Sometimes the parties instead end up in mediation. Again, this could arise by virtue of a referral from the court, or mediation may be provided for in an agreement. If a settlement is reached, it is put in writing, is signed and is enforceable, thus creating a potentially new lawsuit (possible but mainly just kidding since mediated agreements frequently involve getting paid right away).

Many attorneys have become full time mediators and arbitrators. They can rest easier at night since they no longer have the need to worry and fret about preparation and the outcome.

Jury verdicts:

No attorneys allowed

A common complaint is that attorneys are getting huge jury verdicts. One thing to keep in mind is that no attorneys (unless selected as jurors) are allowed in the jury room, which means that the jury verdicts are rendered by people from all walks of life. In the past many people could get out of jury duty, claiming inconvenience etc. While that is still true, nowadays the term of jury duty has been substantially shortened in many venues, even down to one or two days. This makes it more difficult to get out of jury duty, while also decreasing the need or incentive to do so. As a result, jury pools in many cases contain a better cross section of different people from different occupations and with different interests.

That's all for now. Until next time, keep the cargo *rollin-on!*

Short Bio

Admitted to the state bars of Oregon, Alaska, Florida and Massachusetts. Practicing law for over 25 years and emphasizing transportation law, business law and related litigation.

The Obligatory Disclaimer

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