The Vanishing Trial
An Empirical Update

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The Vanishing Trial: An Examination of Trials and Related Matters in Federal and State Courts

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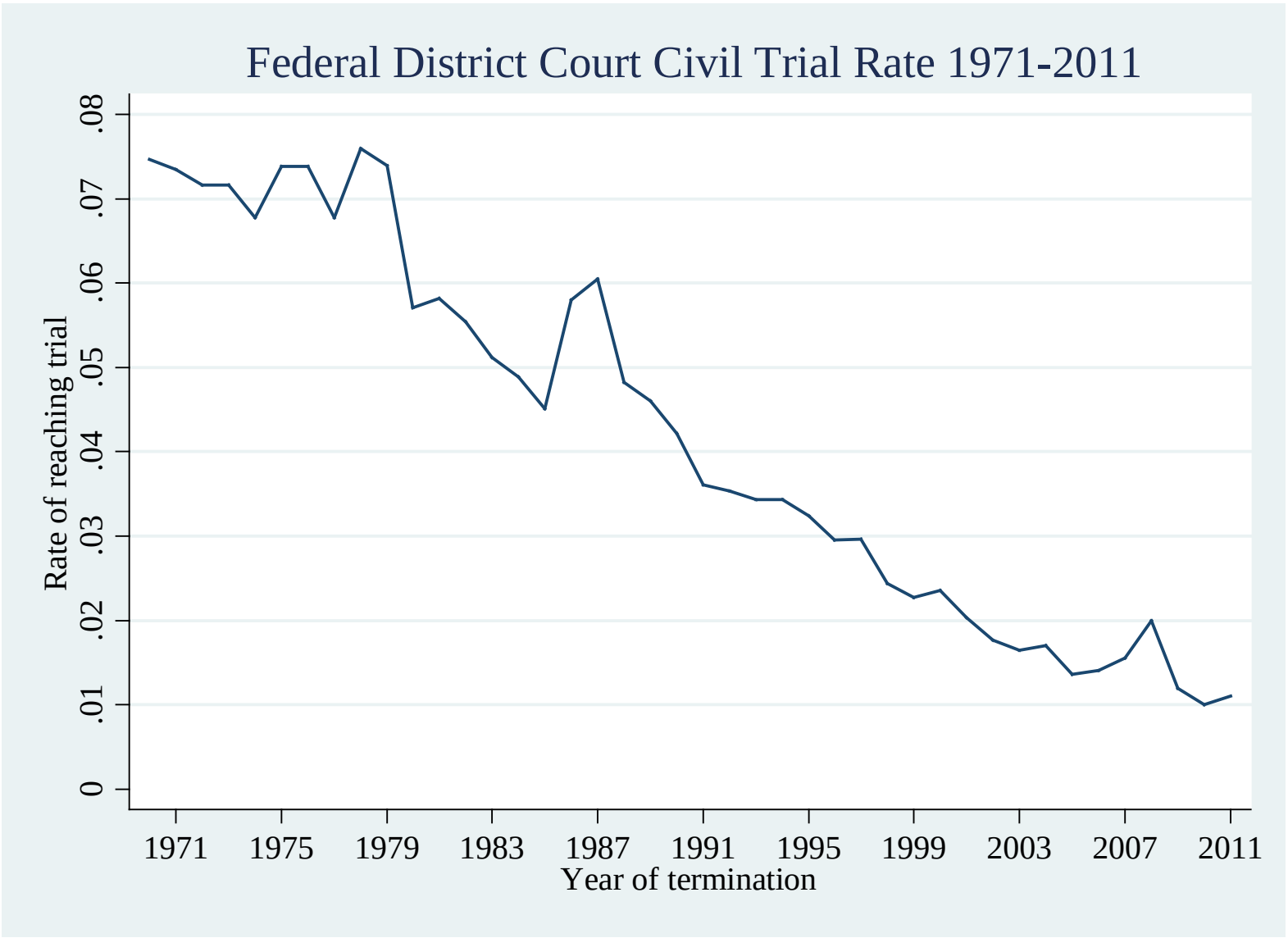
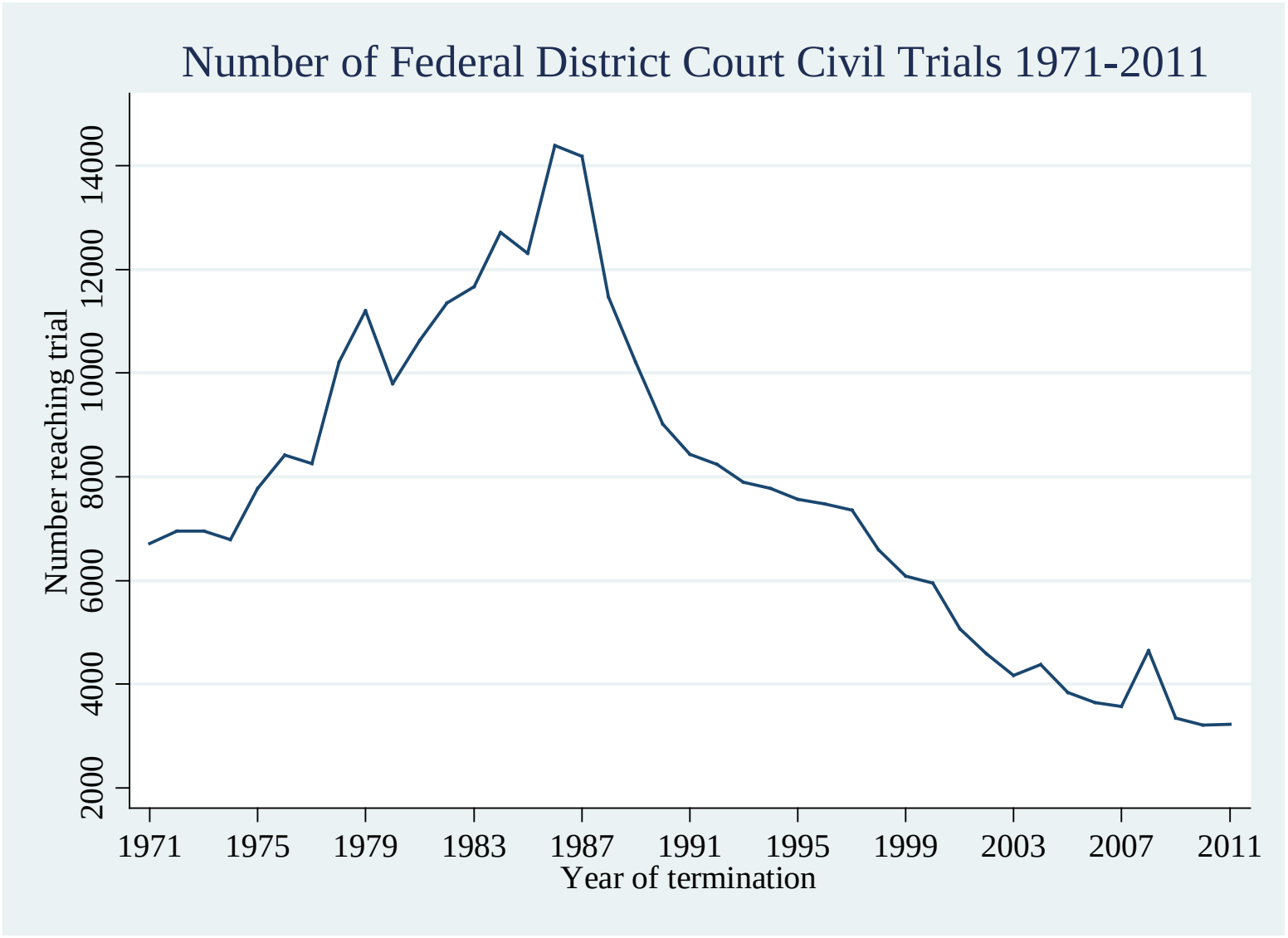
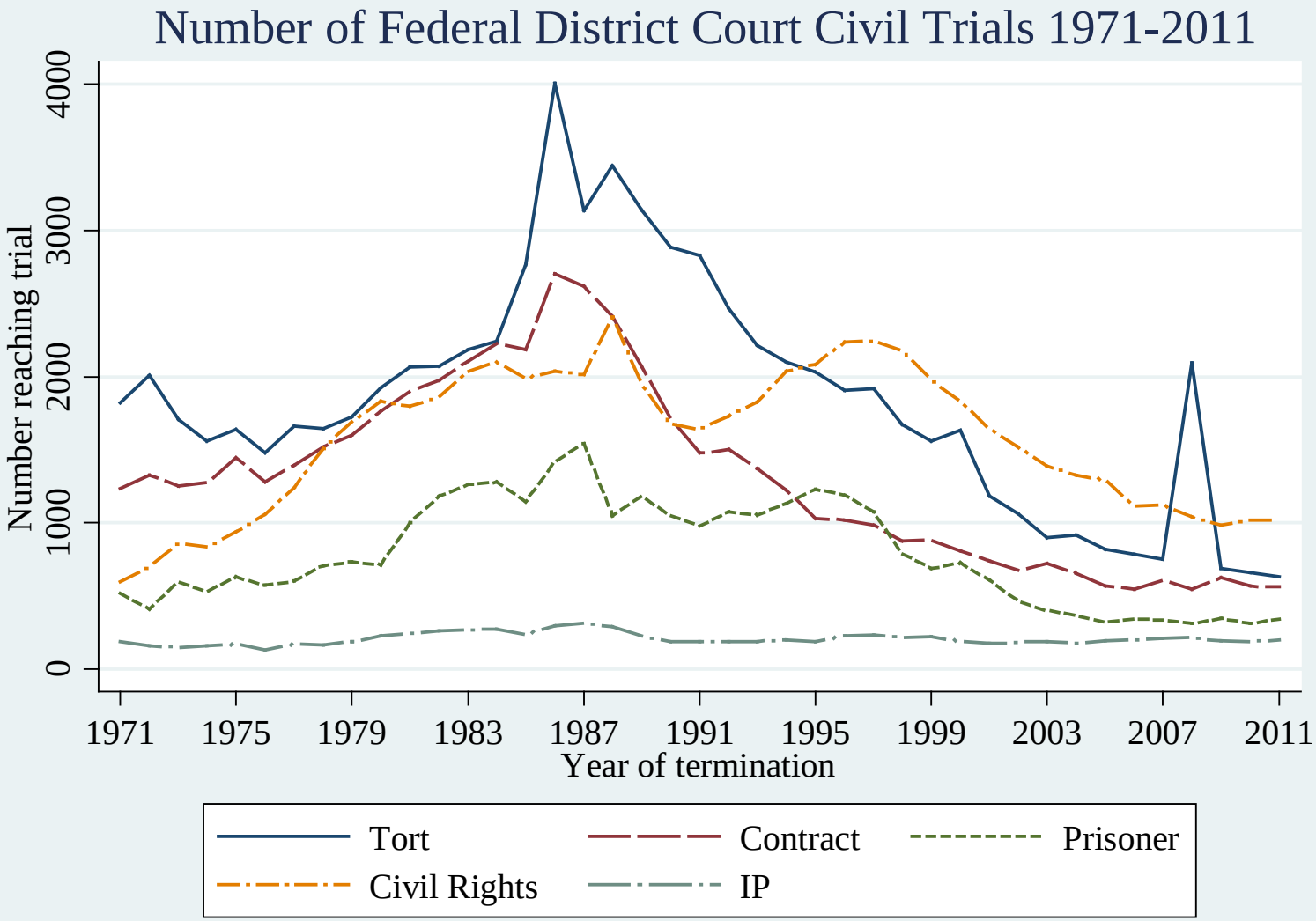
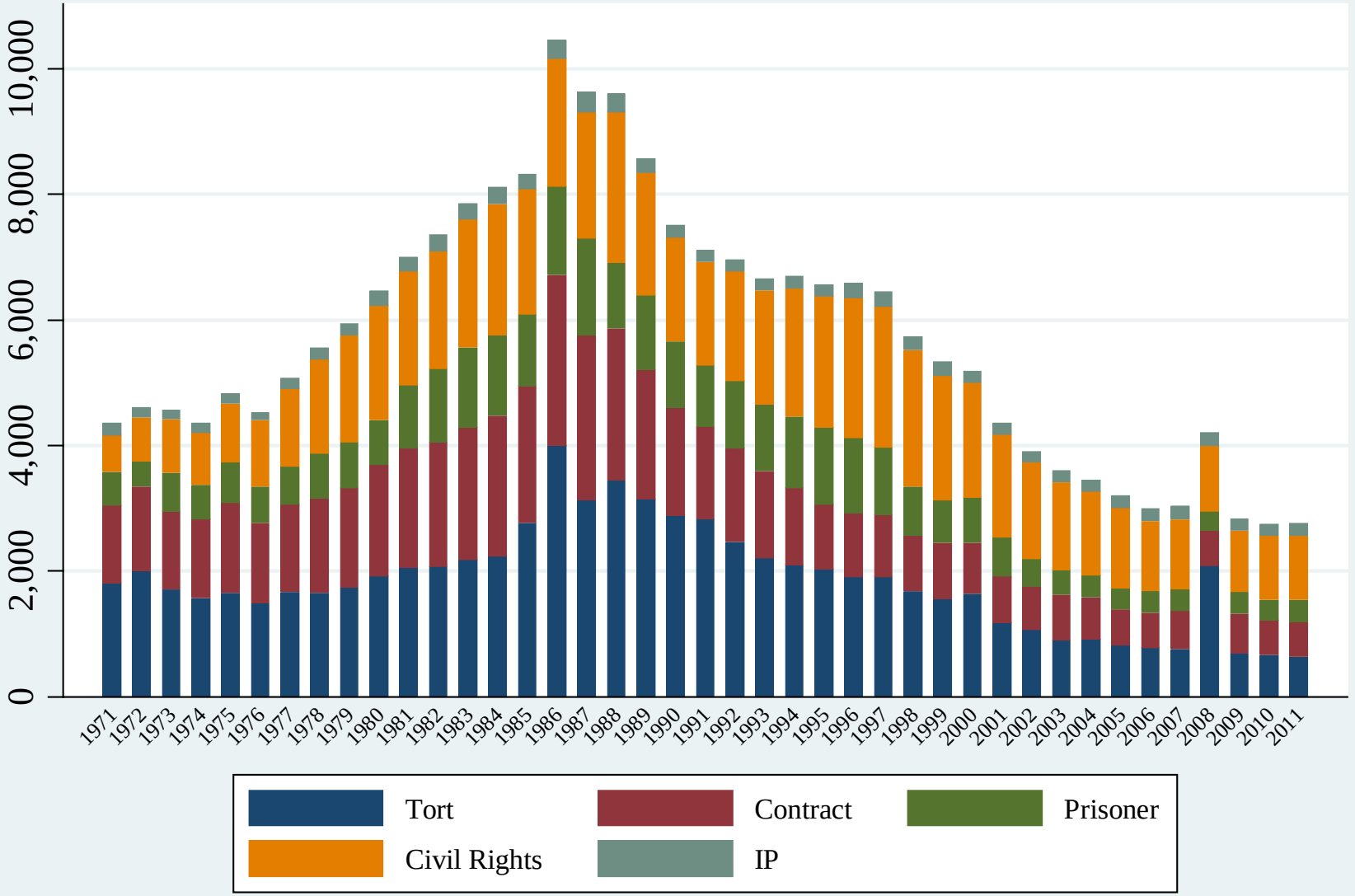
This article traces the decline in the portion of cases that are terminated by trial and the decline in the absolute number of trials in various American judicial fora. The portion of federal civil cases resolved by trial fell from 11.5 percent in 1962 to 1.8 percent in 2002, continuing a long historic decline. More startling was the 60 percent decline in the absolute number of trials since the mid 1980s. The makeup of trials shifted from a predominance of torts to a predominance of civil rights, but trials are declining in every case category. A similar decline in both the percentage and the absolute number of trials is found in federal criminal cases and in bank-


Federal District Court Civil Trial Rate 1971-2011
Rate of reaching trial
0
.01
.02
.03
.04
.05
.06
.07
.08
1971
1975
1979
1983
1987
1991
1995
1999
2003
2007
2011
Year of termination


Number of Federal District Court Civil Trials 1971-2011
Number reaching trial
2000
4000
6000
8000
10000
12000
14000
1971
1975
1979
1983
1987
1991
1995
1999
2003
2007
2011
Year of termination

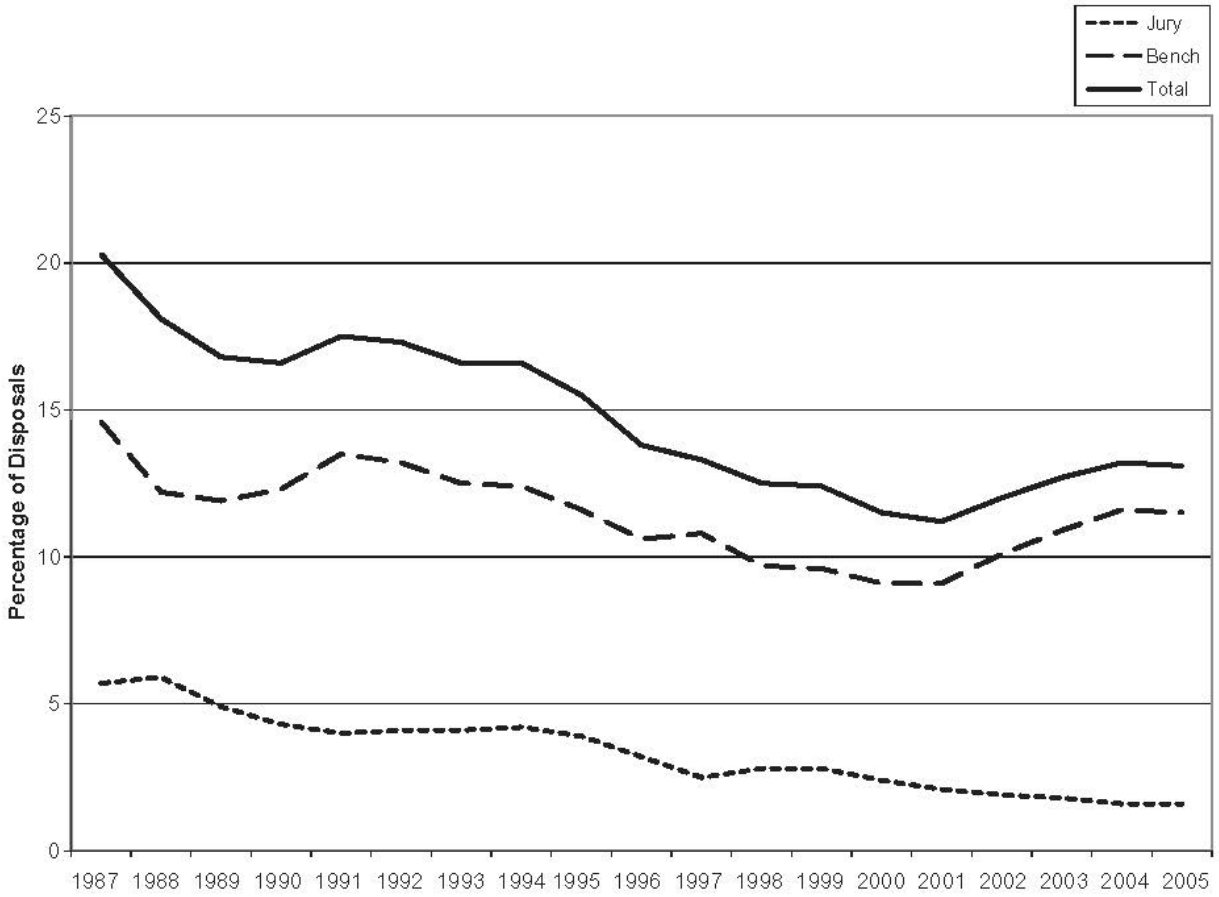

Number of Federal District Court Civil Trials 1971-2011
Number reaching trial
0
1000
2000
3000
4000
1971
1975
1979
1983
1987
1991
1995
1999
2003
2007
2011
Year of termination
Tort
Contract
Prisoner
Civil Rights
IP

Number of Federal District Court Civil Trials 1971-2011



Another State's Experience

Figure 4: Statewide jury, bench, and total trials as a percentage of disposals 1987–2005.

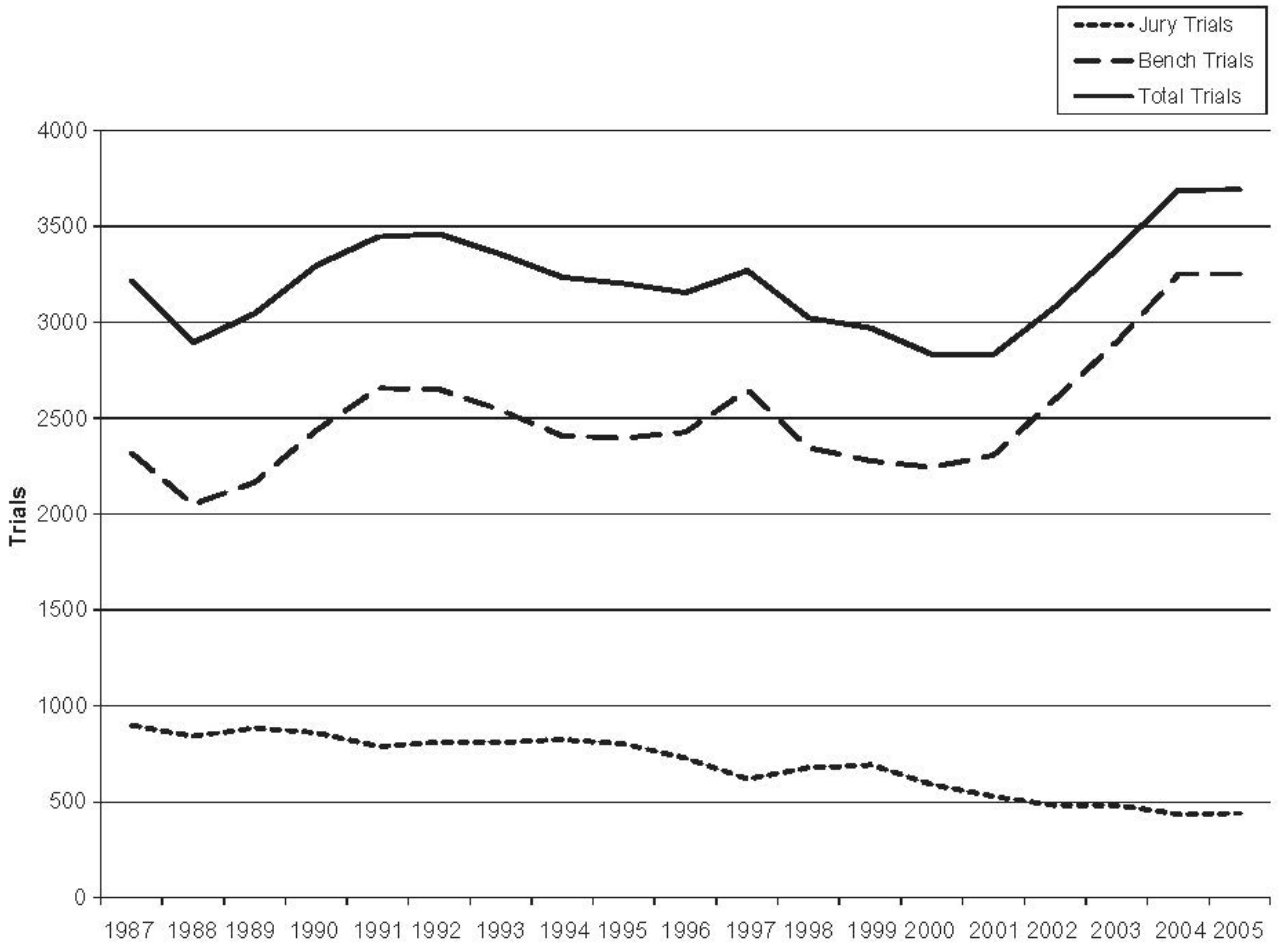


North Carolina Trial Court Caseload Statistics for 1987–1988 to 2005–2006, North Carolina Administrative Office of the Courts.

Source: Moog, Piercing the Veil of Statewide Data: The Case of Vanishing Trials in North Carolina, Journal of Empirical Legal Studies 2009

Another State's Experience

Figure 3: Statewide numbers of jury, bench, and total trials 1987–2005.

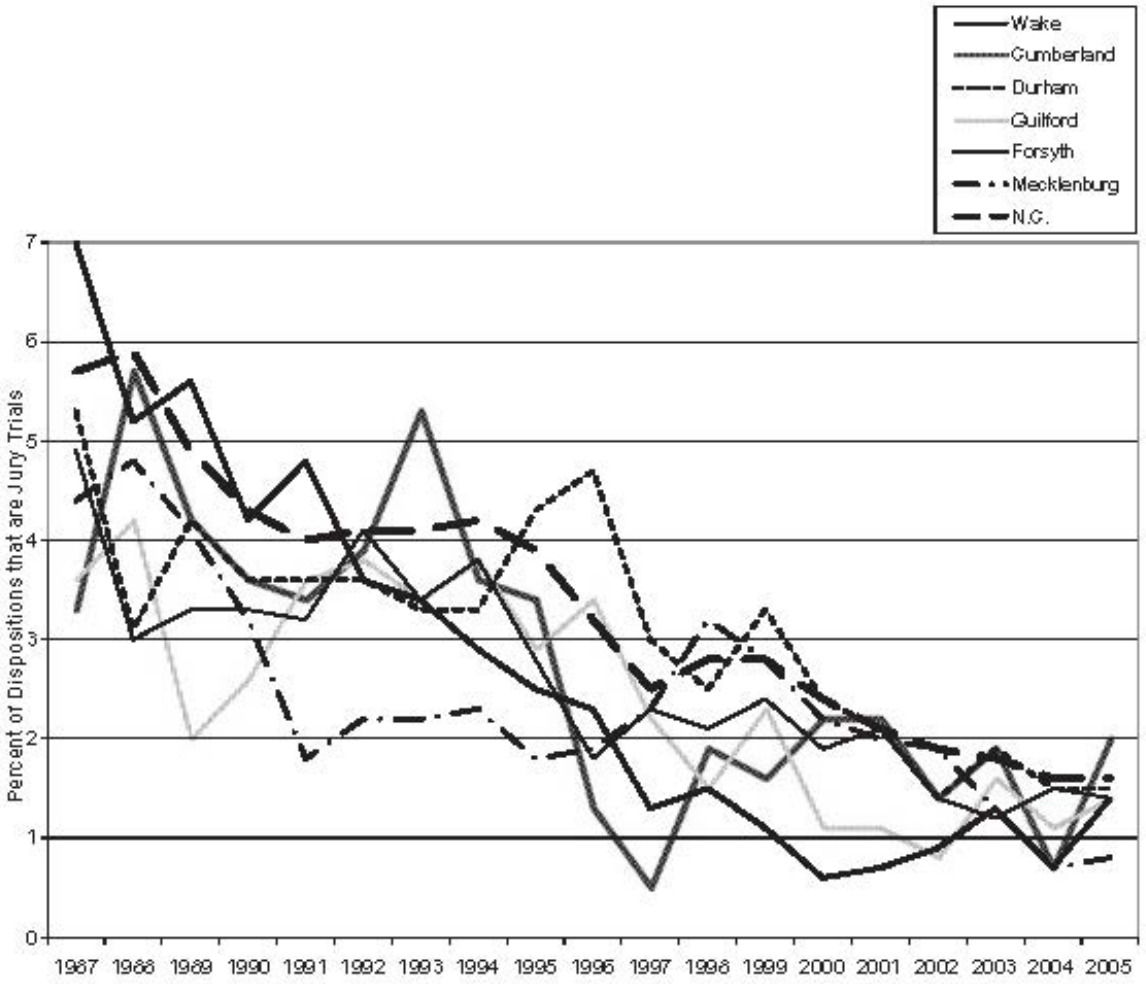


SOURCE: North Carolina Trial Court Caseload Statistics for 1987–1988 to 2005–2006, North Carolina Administrative Office of the Courts.

Source: Moog, Piercing the Veil of Statewide Data: The Case of Vanishing Trials in North Carolina, Journal of Empirical Legal Studies 2009

Another State's Experience

Figure 5: Statewide and county jury trials as a percentage of disposals 1987–2005.



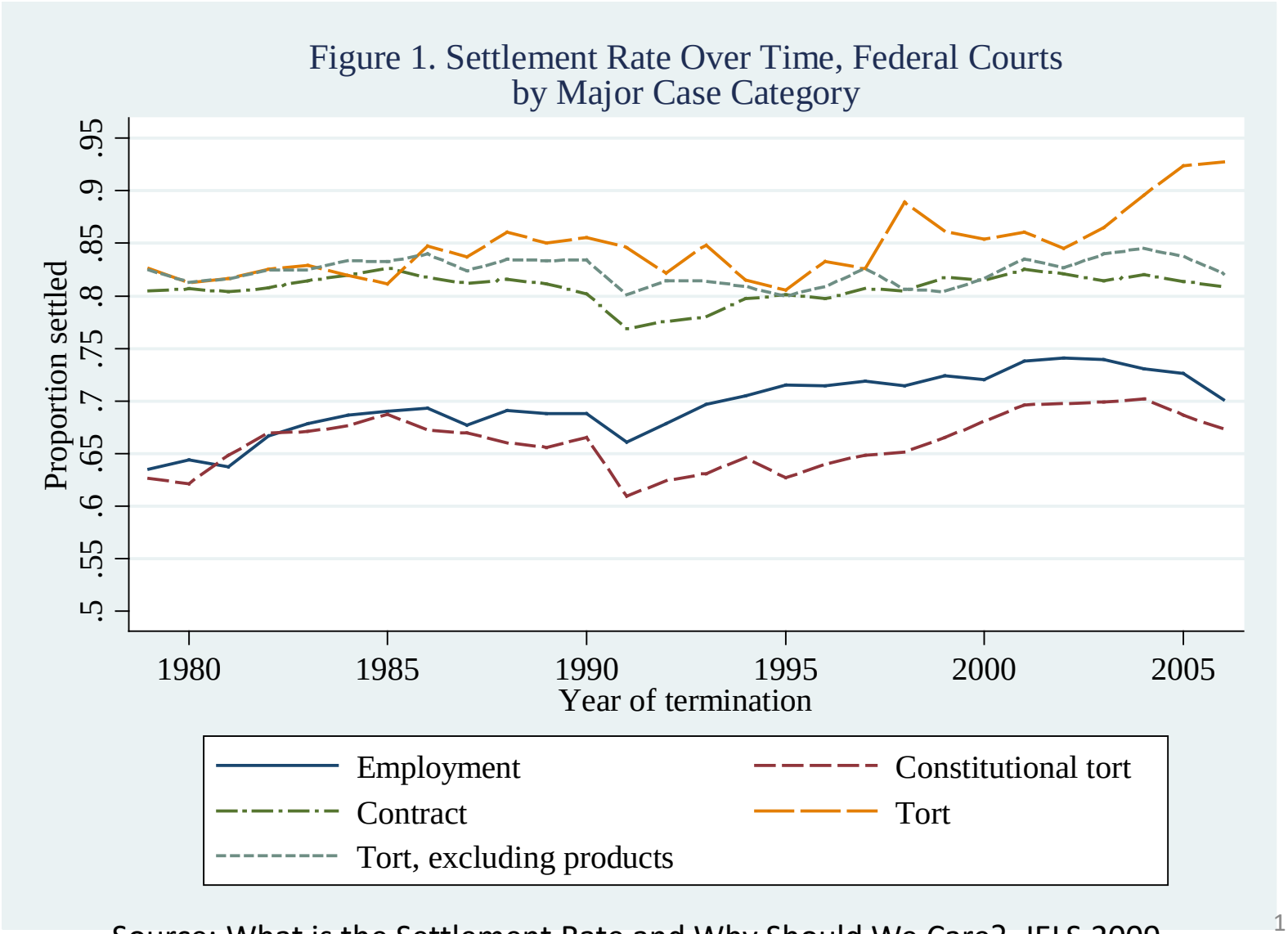
SOURCE: North Carolina Trial Court Caseload Statistics for 1987–1988 to 2005–2006, North Carolina Administrative Office of the Courts.

Source: Moog, Piercing the Veil of Statewide Data: The Case of Vanishing Trials in North Carolina, Journal of Empirical Legal Studies 2009

Explanations

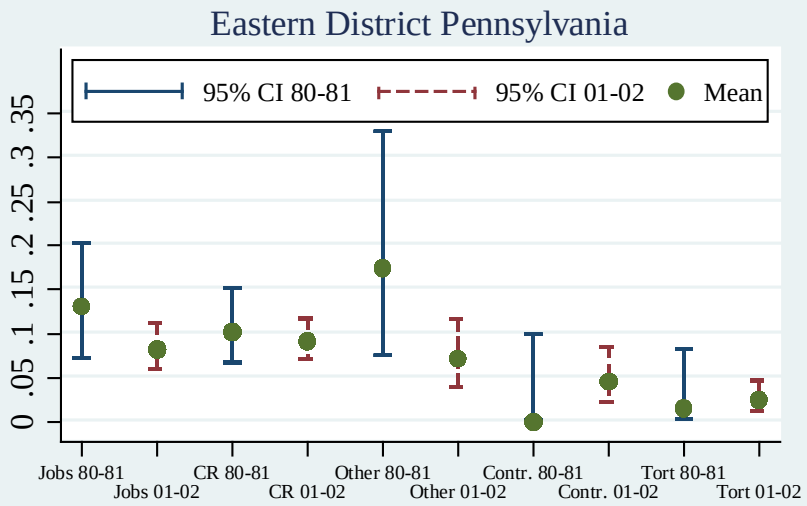
- Discovery reform (see Yeazell 2004; Langbein 2012)
  - Can that explain criminal trials decline?
- Settlement rate
- Summary judgment rate

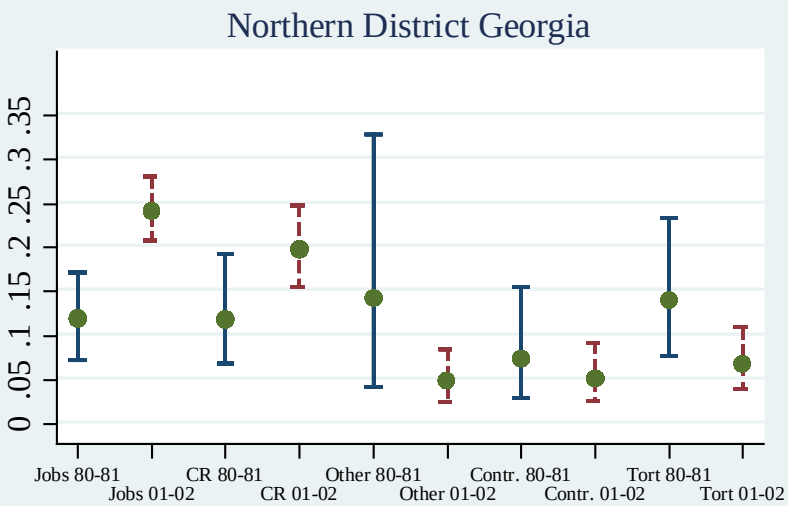
The Settlement Hierarchy
From AO Data (not good estimate of absolute level of settlement)

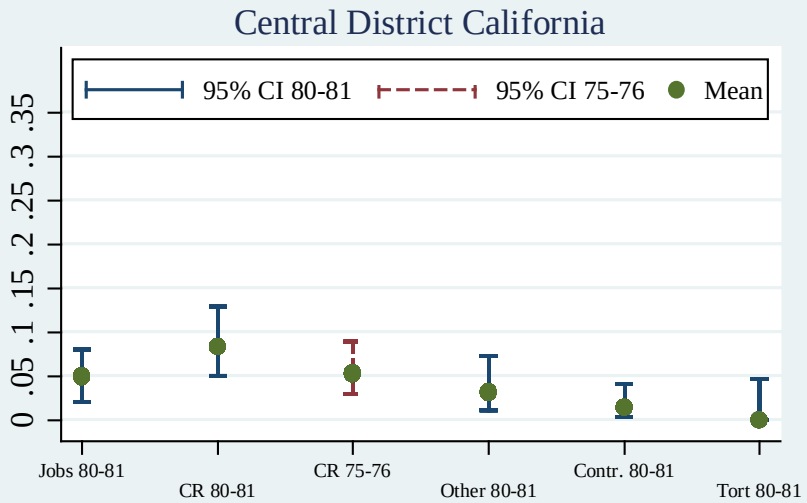


Source: What is the Settlement Rate and Why Should We Care?, JELS 2009

Figure 1. Summary Judgment Rates, Three Federal Districts, 1975-76, 1980-81 & 2001-02







Concluding Thought

- If adjudication has shifted from trial to discovery, that should influence our assessment of the cost of discovery.