

Conference on the Future of Legal Services

“Considering the Decisionmakers in 21st Century Litigation”

Adalberto Jordan

A conversation about the future of legal services can have many facets. Because the topic generally tends to focus on clients and lawyers, I'd like to highlight one aspect of the issue that may not get much attention, and that is the judges or tribunals who decide contested matters in litigation. Specifically, I want to note that judges, at least those in the federal courts in the United States, are spending much more time resolving cases on paper and less time adjudicating them in the courtroom. And that may be a harbinger of things to come.

I'll start with my court, which is the Eleventh Circuit Court of Appeals for the Eleventh Circuit, a federal regional appellate body that handles all of the appeals from Florida, Georgia, and Alabama, in cases arising under federal jurisdiction. We receive about 6,000 appeals a year, and about half of them are resolved on the merits. Of those cases, we hear oral argument only in about 20%, and resolve the other 80% on the parties' written submissions and the record. Those numbers are a far cry from a couple of decades ago, where the percentage of oral argument and the raw number of cases heard at argument

were much higher. But they are consistent with the related problem (as some call it) of the vanishing trial.

This leads to my next point, which is that, with the advent of technology – specifically artificial intelligence – there is going to be a move towards having less human decisionmakers adjudicate legal disputes. At this time, for example, insurance companies are developing AI platforms to speed up claims, *see, e.g.*, Sara Castellanos, “Farmers Insurance Tests AI, Automation’s Potential for Speeding Up Claims Process,” Wall Street Journal, June 28, 2018, and technology firms are selling programs to better resolve the crop loss claims of farmers. One example is Skymatics, a Calgary-based technology outfit which has launched a crop-damage mapping tool. Called “Skyclaim,” the tool purportedly identifies and quantifies crop loss areas in a variety of causal environments.

I believe that , in some places, AI programs are being used to decide liability and damages issues in crop damage litigation. Those types of disputes are, in some ways, *sui generis*. But I wonder if that model will become the norm in litigation in other areas of law. My fear is that it might, and right now I cannot imagine a computer exercising the sort of judgment that judges are required to employ on an everyday basis in hard cases where there are no easy answers.

