

Litigation Outcomes in State and Federal Courts: A Statistical Portrait

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"U.S. Juries Grow Tougher on Plaintiffs in Lawsuits," the *New York Times* page-one headline reads.¹ The story details how, in 1992, plaintiffs won 52 percent of the personal injury cases decided by jury verdicts, a decline from the 63 percent plaintiff success rate in 1989. The sound-byte explanations follow, including the notion that juries have learned that they, as part of the general population, ultimately pay the costs of high verdicts. Similar stories, reporting both increases and decreases in jury award levels, regularly make headlines.² Jury Verdict Research, Inc. (JVR), a commercial service that sells case outcome information, often is the source of the stories.³

The stories highlight a major gap in our knowledge of the legal system. Reported aggregate data tend to be exaggerated or incorrect. For example, the figures reported in the *Times* article almost certainly inflate plaintiff success rates for 1989 and report a time trend that probably does not exist. In an era when court reform and tort reform

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1. Richard Perez-Pena, *U.S. Juries Grow Tougher on Plaintiffs in Lawsuits*, N.Y. TIMES, June 17, 1994, at A1.

2. See, e.g., Richard Waters, *Juries Cut Product Liability Awards*, FIN. TIMES, Jan. 8, 1996, available in WESTLAW, 1996 WL 6135704; Edward Felsenthal, *Increase in Size of Jury Awards May Spur Efforts to Alter System*, WALL ST. J., Jan. 5, 1996, at B5; *Jury Awards Return to Record-Setting Levels, Report Says*, ASSOCIATED PRESS, Dec. 26, 1995, available in WESTLAW, 1995 WL 4420942.

3. Perez-Pena, *supra* note 1, at B18.

are constantly on the public policy agenda, the need for accurate national data about the litigation system is more important than ever.

This Article supplies the first comprehensive national assessment of litigation outcomes in state and federal courts. It uses data gathered by the National Center for State Courts and the Administrative Office of the United States Courts. Both data sources are national in scope and derive their information directly from court clerks' offices. The data portray a litigation system with case outcome patterns that differ from the patterns based on less comprehensive sources.

Our principal findings are: (1) plaintiff win rates in jury trials in state and federal court are strikingly similar; (2) award levels are much higher in federal court than in state court; (3) federal courts handle a relatively small fraction of the jury trials, but they distribute a surprisingly large percentage of the funds awarded in jury trials; (4) there probably is no significant time trend in plaintiff win rates in federal court jury trials; and (5) cases at almost every stage of disposition proceed more slowly through state courts than through federal courts.

I. THE DATA

Before reporting our results, it is helpful to describe the data sources on which we rely. We rely on the two most comprehensive sources of data about state and federal case outcomes. The state data come from the Civil Trial Court Network (CTCN), a joint project of the National Center for State Courts (NCSC) and the Bureau of Justice Statistics (BJS), which covers state courts of general jurisdiction in a sample consisting of 45 of the 75 most populous counties in the United States.⁴ The counties include approximately 33 percent of the 248,709,873 million people reported to be the 1990 United States population.⁵ The CTCN data cover fiscal 1991-92 (July 1 to June 30) and include a general civil case sample, as well as a jury trial data set.⁶ The data in the general civil case sample constitute a sample of all tort,

4. BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, NCJ-153177, SPECIAL REPORT: CIVIL JUSTICE SURVEY OF STATE COURTS, 1992: TORT CASES IN LARGE COUNTIES 6 (Apr. 1995). BJS used a two-stage stratified sampling technique that is described in the report. *Id.* The CTCN data are also discussed in John A. Goerdts et al., *Litigation Dimensions: Torts and Contracts in Large Urban Courts*, 19 STATE CT. J. 5 (1995).

5. BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, COUNTY AND CITY DATA BOOK, 1994, at 18 (1994).

6. BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, NCJ-154346, SPECIAL REPORT: CIVIL JUSTICE SURVEY OF STATE COURTS, 1992: CIVIL JURY CASES AND VERDICTS IN LARGE COUNTIES 1-2 (1995).

contract, and property cases in the 45 sampled counties.⁷ For each sampled case, the subject area of the case and the mode of disposition (e.g., jury trial) are known.⁸ The jury trial data set, while limited to jury trials, includes more detailed information about each sampled case, including subject matter area, prevailing party, amount awarded in damages, and time to disposition.⁹

The federal data used here, gathered by the Administrative Office of the United States Courts, cover the fiscal years 1979-93.¹⁰ When any civil case terminates in federal district court, the court clerk files with the Administrative Office a form containing information about the case. The form includes data regarding the subject matter; the jurisdictional basis; the dates of filing and termination; the procedural progress of the case at termination, the method of disposition, the date a judgment was entered, who prevailed, and the amount awarded in damages. The form distinguishes among many subject matter categories, including branches of tort, contract, and other areas of law.

Because the federal data cover many years, and the state data cover one year, fiscal 1991-92, we sometimes report federal results only for the period that corresponds to the period of the state CTCN data. The federal data for the other years supply a check on whether the 1991-92 federal results are unusual. Since we are primarily interested in comparing results across the common areas of tort and contract law, we limit the federal data to those cases in which diversity of citizenship constitutes the basis of federal jurisdiction. Thus, for all cases reported here, state law governed the case whether the case was adjudicated in state or federal court and whether or not the case could have been brought in state court.

The dual sources of data also raise the issue of whether the subcategories of cases are comparable. In the tables below, we report by subcategory only those classes of cases that are comparable across

7. *Id.* at 2.

8. *Id.*

9. *Id.* at 2-10.

10. For descriptions of the database, see Kevin M. Clermont & Theodore Eisenberg, *Xenophilia in American Courts*, 109 HARV. L. REV. 1120, 1123-24 (1996); Kevin M. Clermont & Theodore Eisenberg, *Trial by Jury or Judge: Transcending Empiricism*, 77 CORNELL L. REV. 1124, 1133-34 (1992). For readers with World-Wide Web browsers, see the following URL: <http://teddy.law.cornell.edu:8090/questata.htm>. A complete description of Administrative Office data appears in INTER-UNIVERSITY CONSORTIUM FOR POLITICAL AND SOCIAL RESEARCH, *FEDERAL COURT CASES: INTEGRATED DATA BASE, 1970-1987*, ICPSR 8429 (3d ed. Mar. 1993) [hereinafter ICPSR]. The data used here include preliminary versions of the ICPSR data for fiscal years 1992 and 1993. These preliminary versions do not differ materially from the final versions that were subsequently released.

the state and federal databases: contract, torts, and five subcategories of tort (motor vehicle, other tort, medical malpractice, products liability, and toxic torts). Thus, in the tables, the "All Tort" rows do not reflect a simple sum of the five tort subcategories because we report separately only the tort categories that are comparable across the federal and state data sets. We include cases that do not fit in one of the tort subcategories in the "All Tort" rows but not in any other rows in the tables. Similarly, the "All Cases" rows do not reflect a simple sum of the "All Contract" and "All Tort" rows. The "All Cases" category includes some state cases and federal diversity cases in other areas of law (mostly property law) that are not included in any other rows in the tables. As can be seen from the tables, the vast majority of diversity cases are contract and tort cases.

Differences in the federal and state data sets with respect to two tort subcategories should also be noted. First, the state-based CTCN data employ a residual category, labeled "other tort." The most closely analogous federal case category is "other personal injury." These residual categories differ in their makeup, but each of the two residual categories is the closest of any major category to being a general negligence category. Second, the toxic tort category for the federal data is limited to asbestos cases, the only toxic tort category separately identified in the federal data. In the CTCN data, the toxic tort category includes nonasbestos cases, but asbestos cases dominate the category.¹¹

II. PLAINTIFF WIN RATES IN JURY TRIALS

We first discuss plaintiff win rates in jury trials. Table 1 reports win rates for the sampled state courts in 1991-92, for all federal district courts in 1991-92, and for all federal district courts for the period 1979-93. For the fiscal year 1991-92, the success rates for similar categories of cases in federal and state courts were strikingly similar. Both the absolute level of success and the relative ranking of categories transcends the state-federal boundary.

In state court contract jury trials in 1991-92, plaintiffs prevailed in 62 percent of the cases versus 60 percent in federal court contract jury trials. In the combined tort category, the success rate in state court was 49 percent versus 55 percent in federal court. In the general residual personal injury tort category, the success rate in state and federal courts was almost equal. In both state and federal courts,

11. NCSC estimates that 75% of the toxic tort cases in its general civil sample and 86% of the toxic tort cases in its jury sample are asbestos cases.

noticeably lower success rates exist in the two most discussed areas of modern tort law: products liability and medical malpractice. In medical malpractice jury trials, plaintiff success rates in state court are 30 percent and in federal court are 26 percent. In products liability cases, success rates are 40 percent in state court and 37 percent in federal court. Asbestos cases in both state and federal courts showed the highest win rates at trial. The federal column, reporting results for 1979-93, indicates that the federal results for 1991-92 are atypical largely in their unusually high plaintiff success rate in motor vehicle and products liability cases.

TABLE 1

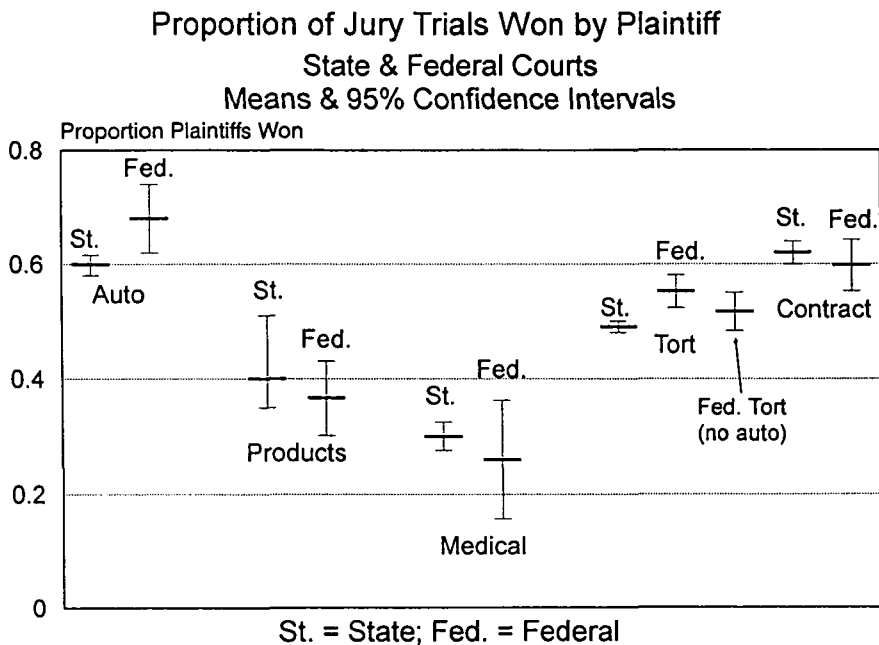
JURY TRIAL WIN RATES

Category Name	State N 1991-1992	State Win Rate 1991-1992	Federal N 1991-1992	Federal Win Rate 1991-1992	Federal N 1979-1993	Federal Win Rate 1979-1993
All Contract	2,134	.62	463	.60	8,182	.62
All Tort	9,308	.49	1,124	.55	18,377	.46
Motor Vehicle	3,813	.60	249	.68	4,521	.61
Other Tort	873	.45	304	.46	4,796	.48
Medical						
Malpractice	1,352	.30	73	.26	1,040	.27
Products						
Liability	356	.40	218	.37	5,057	.30
Toxic Torts	277	.73	199	.87	first coded in 1984	
ALL CASES	11,715	.51	1,608	.56	26,917	.50

Table 1. State data are from a sample of 75 state courts; federal data consist of all federal diversity cases; includes only cases in which judgment was entered for plaintiff or defendant.

Figure 1 shows the state and federal win rates, together with their upper and lower 95 percent confidence intervals. The figure highlights that absolute levels of success are not only similar, but that they share a common ranking. In both state and federal court, contract and motor vehicle jury trials are the most successful for plaintiffs, and medical malpractice jury trials are the least successful. Limiting the focus to tort law, plaintiffs succeed in jury trials at the highest rate in motor vehicle cases and at the lowest rate in medical malpractice cases. Only in motor vehicle cases can one reject the hypothesis of equal success rates in state and federal courts for 1991-92.

FIGURE 1



Sources: National Center for State Courts (1991-92)

Administrative Office of the U. S. Courts (1991-92)

III. AWARD LEVELS

We next examine the pattern of award levels, which sharply contrast with the pattern of win rates. Table 2 summarizes award levels for state and federal jury trials. It shows that award levels in federal court are consistently higher than award levels in state court. In every area of law covered other than medical malpractice awards for 1991-92, the federal mean and median awards are substantially higher than their state counterparts. Some ordering is again preserved. Products liability and medical malpractice cases in both court systems generate mean and median awards well above other areas of law, though the medical malpractice award levels in federal court in 1991-92 are atypically low in light of the federal experience from 1979 to 1993. Motor vehicle cases are at the low end of the tort award-level spectrum. Contract cases group between the high and low end tort areas. Asbestos cases in federal court are literally in a world of their own.

The sharp differences between the two sets of federal columns suggest that award levels increased over time. The mean and median

for each federal category for 1991-92 is substantially higher than the mean and median for that category for the period 1979-93. This generally upward trend in awards is discussed elsewhere.¹²

TABLE 2
JURY TRIAL AWARDS IN
THOUSANDS OF 1992 DOLLARS

Category Name	State Mean 1991-1992	State Median 1991-1992	Federal Mean 1991-1992	Federal Median 1991-1992	Federal Mean 1979-1993	Federal Median 1979-1993
All Contract	620	56	1,849	237	1,223	117
All Tort	408	51	2,288	881	1,196	136
Motor Vehicle	220	29	1,280	206	877	77
Other Tort	391	65	1,552	219	1,079	119
Medical						
Malpractice	1,484	201	809	264	1,663	267
Products						
Liability	727	260	2,332	668	1,547	318
Toxic Torts (asbestos)	526	101	4,269	3,873	first coded in 1984	
ALL CASES	455	52	2,157	515	1,203	128

Table 2. State data are from a sample of 75 state courts; federal data consist of all federal diversity cases; includes only cases with awards for plaintiffs.

The mechanics of how the federal data are gathered suggest that Table 2 tends to understate the gap between federal and state awards. The federal data system cannot record awards greater than \$9,999,000. Thus, all awards above that amount are recorded as \$9,999,000. The state data contain no such limitation. This suggests that the federal means in Table 2 are too low although the medians are unaffected.

The combined federal and state award data strongly suggest that JVR's reports of award levels are systematically upwardly biased. JVR has, for example, reported products liability awards that are even higher than the federal means and medians for the periods covered.¹³ Since the state award levels are so far below the federal levels, any

12. Theodore Eisenberg & James A. Henderson, Jr., *Inside the Quiet Revolution in Products Liability*, 39 UCLA L. REV. 731, 788-89 (1992).

13. *Id.* at 766-67. It should also be noted that the federal method of recording awards may result in some awards being inflated. Awards are recorded using four digits and should be reported in thousands of dollars. Thus, a \$1,000 award should be entered as "1." If a \$1,000 award was erroneously entered as "1,000," the award would be treated as a \$1,000,000 award.

system that reports median and means above the federal level probably is using a biased sample.

IV. ALLOCATION OF CASES AND AWARD AMOUNTS BETWEEN STATE AND FEDERAL COURTS

The two comprehensive data sources allow us to explore the allocation of cases and award amounts between federal and state courts. If one includes all case categories, the bulk of litigation is conducted in state court.¹⁴ Most of that litigation consists of traffic violations, domestic relations actions, juvenile cases, and criminal cases.¹⁵ To make meaningful comparisons, one must narrow the focus to the traditional areas of tort and contract law. In these areas we find that federal courts handle a relatively small fraction of the jury trials, but that they distribute a surprisingly large percentage of the funds awarded in jury trials.

To generate these results, we must extrapolate from the sample of counties in the CTCN data to the nation at large. The CTCN sample includes about 33 percent of the United States population but is limited to urban counties. We suspect that litigation rates are higher in urban counties than in more rural areas. Thus, rather than multiply the state figures based solely on the population data, which would suggest multiplying the CTCN figures by three, we adjust the multiplier to 2.16 based on National Center for State Courts estimates of the fraction of case terminations that occur in the 75 most populous counties.¹⁶ This merely adjusts for the lower litigiousness of rural areas, which are underrepresented in the CTCN sample. Using the 2.16 multiplier, one can estimate the relative role of state and federal courts in tort and contract law. Tables 3, 4, and 5 present the results.

Table 3, which is limited to jury trials, first estimates, for each area of law, the percent of jury trials that is conducted in federal court. The fourth numerical column shows that federal diversity cases

14. BRIAN J. OSTROM & NEAL B. KAUDER, EXAMINING THE WORK OF STATE COURTS, 1993: A NATIONAL PERSPECTIVE FROM THE COURT STATISTICS PROJECT at viii (1995).

15. *Id.*

16. The NCSC's state Court Statistics Project (CSP) (unpublished) data on tort filings from 28 states (which account for 69% of the U.S. population) suggest that there are 320 tort cases per 100,000 population. Using this ratio and 255,000,000 as the total U.S. population, we estimate that there were 816,000 tort filings in 1992. Based on the data from the 45 sampled counties, we estimate that there were 378,000 tort dispositions in the 75 counties (46.3% of the total tort cases in the state general jurisdiction courts in the U.S.). This yields a multiplier of 2.16. Note that there is a strong correlation between the number of filings and the number of dispositions in a jurisdiction, so we believe that using filings data from the CSP and disposition data from the CTCN produces a reasonable estimate.

comprised 6.6 percent of the jury trials in the common areas of tort and contract law. The federal share varies across tort and contract law. Federal courts account for about 6 percent of the tort jury trials versus 9 percent in contract. There is substantial variation in the federal role across tort categories. Federal jury trials play their most prominent role in products liability and asbestos cases where, in 1991-92, they accounted for 25.4 percent and 40.7 percent, respectively, of the jury trials.

TABLE 3
ALLOCATION OF JURY TRIALS AND AWARD
AMOUNTS BETWEEN STATE AND FEDERAL COURTS, 1991-92

Category Name	Number of Cases				Sum of Award (millions)			
	State	State Est.	Federal	Federal %	State	State Est.	Federal	Federal %
All Contract	2,441	5,273	519	9.0	820	1,771	442	20.0
All Tort	8,852	19,120	1,248	6.1	1,870	4,039	1,318	25.3
Motor Vehicle	3,721	8,037	270	3.3	503	1,086	206	16.4
Other Tort	554	1,197	329	21.6	154	333	205	39.0
Medical								
Malpractice	1,182	2,553	85	3.2	598	1,292	15	1.2
Products								
Liability	332	717	244	25.4	103	222	152	41.5
Toxic Torts								
(asbestos)	171	369	254	40.7	106	229	696	75.9
ALL CASES	11,691	25,253	1,790	6.6	2,704	5,841	1,778	24.0

Table 3. State data are from a sample of 75 state courts 1991-92; federal data consist of all federal diversity cases 1991-92.

Table 3 also provides an estimate of the amount of money that was awarded as the result of jury trials. For 1991-92, it suggests that the total amount awarded at jury trials was about \$7.6 billion, of which \$5.4 billion was awarded in tort cases. About one-quarter of the amounts awarded were awarded in federal court, and over 40 percent of the amounts awarded in products liability jury trials probably were awarded in federal trials. Thus, a raw counting of the number of trials

or cases understates the impact of federal court trials on tort and contract law.¹⁷

Tables 4 and 5 shift the inquiry to all outcomes, not just jury trial outcomes. (Note that the number of trials shown in Table 4 includes both bench and jury trials and, unlike Table 1, includes trials that did not have definitive judgments for plaintiffs or defendants. The number of trials shown in Table 4 is therefore substantially higher than the number shown in earlier tables.) Table 4, Panel A's third numerical column shows an overall completed state trial rate of 2.9 percent of terminations for 1991-92. Panel B shows that the federal rate, excluding asbestos, is 70 percent higher, at 5.0 percent. In both state and federal courts, contract cases have low trial rates compared to tort cases (excluding asbestos cases in federal court), and medical malpractice cases have the highest trial rates.

The routing of cases between judge and jury trials differs in federal and state courts. Federal courts have a lower percent of bench trials, presumably in part because the Seventh Amendment right-to-jury-trial does not apply to the states. In both state and federal courts, a small but nontrivial fraction of the tort trials are bench trials. Bench trials dominate state court contract trials but account for less than one-half of the federal court contract trials.

With respect to total terminations, Table 4 shows that motor vehicle cases dominate state court tort dockets to a much greater extent than federal dockets. Motor vehicle cases account for about 60 percent of state court tort terminations and for less than 25 percent of federal court non-asbestos tort terminations.

17. Much of the money transferred in tort and contract law is not transferred as the result of cases ending in jury trial. A full estimate of the amount transferred requires detailed information about non-trial outcomes.

TABLE 4

**TRIAL RATES (JURY AND BENCH TRIALS):
STATE AND FEDERAL COURTS, 1991-92**

	Est. # of Terminations	Number of Completed Trials	Trial Rate	Percent Bench Trials
A. State Dispositions				
All Contract	365,263	9,476	2.6	74.2
All Tort	377,421	11,063	2.9	20.0
Motor Vehicle	227,087	4,708	2.1	21.0
Other Tort	22,228	814	3.7	31.9
Medical				
Malpractice	18,396	1,268	6.9	6.8
Products				
Liability	12,763	421	3.3	21.1
Toxic Torts	6,045	185	3.1	7.6
ALL CASES	761,919	21,854	2.9	46.5
B. Federal Dispositions				
All Contract	22,936	1,016	4.4	48.9
All Tort	43,771	1,450	3.3	13.9
(w/o asbestos)	20,298	1,196	5.9	15.0
Motor Vehicle	4,784	306	6.4	11.8
Other Tort	5,594	389	7.0	15.4
Medical				
Malpractice	831	90	10.8	5.6
Products				
Liability	5,794	261	4.5	6.5
Toxic Torts	23,473	254	1.1	8.7
(asbestos)				
ALL CASES	69,137	2,522	3.7	29.0
(w/o asbestos)	45,664	2,268	5.0	31.3

Table 4. State data are from a sample of 75 state courts 1991-92; federal data consist of all federal diversity cases 1991-92.

Table 5 provides basic data about the stage of disposition. Panel A, which covers state courts, shows that over 70 percent of the cases settle, though the terms often are not known. The seemingly low settlement rate for state contract cases, 49.6 percent, is a consequence of the high rate of default judgments in state contract cases. If one excludes default judgments, state court contract settlement rates would be 67 percent.

TABLE 5
DISPOSITIONS: STATE AND FEDERAL COURTS, 1991-92

	Trial Rate	Dismiss, SJ, MBT*	Default	Transfer, Remand	Settle	Arbit.	Other
A. State Dispositions							
(in percent)							
All Contract	2.6	17.5	26.0	2.6	49.6	1.7	--
All Tort	2.9	11.1	3.1	5.1	74.0	3.5	--
Motor Vehicle	2.1	10.4	4.2	4.4	75.0	4.0	--
Other Tort	3.7	12.3	1.9	6.8	71.9	3.1	--
Medical							
Malpractice	6.9	16.2	0.8	3.5	70.7	1.4	--
Products							
Liability	3.3	10.5	0.5	6.1	76.5	2.7	--
Toxic Torts	3.1	5.3	0.0	4.2	86.2	0.2	--
ALL CASES	2.9	14.3	14.2	3.8	62.2	2.5	--
B. Federal Dispositions							
(in percent)							
All Contract	4.3	14.5	5.4	6.5	63.9	0.4	5.0
All Tort	3.3	4.9	0.3	49.3	34.9	0.2	7.0
(w/o asbestos)	6.2	10.1	0.5	12.1	67.5	0.5	3.1
Motor Vehicle	6.5	7.2	0.3	6.6	76.6	0.8	2.1
Other PI	7.4	11.4	0.3	11.0	66.5	0.7	2.7
Medical							
Malpractice	11.6	13.7	0.0	7.9	64.1	0.1	2.5
Products							
Liability	4.7	9.0	0.3	20.1	61.9	0.3	3.8
Toxic Torts	0.9	0.4	0.0	81.6	6.7	0.0	10.4
(asbestos)							
ALL CASES	3.6	8.3	3.1	33.5	44.9	0.3	6.2
(w/o asbestos)	5.0	12.4	4.8	8.8	64.6	0.4	4.1

* Dismissals, summary judgment, and dispositions by motion before trial.

Table 5. State data are from a sample of 75 state courts 1991-92; federal data consist of all federal diversity cases 1991-92.

The federal data, summarized in Panel B, require some decisions about how to aggregate the federal courts' 18 different disposition codes.¹⁸ There is room for disagreement about how to do so. The actual settlement rates and dismissal rates may therefore differ from those shown by 5 or 10 percent.

V. TIME TRENDS IN PLAINTIFF TRIAL WIN RATES

JVR's headline-grabbing report that plaintiff victories in jury trials declined in recent years can be scrutinized in light of our findings. There is no significant time trend in plaintiff win rates in federal court jury trials. And there is reason to be skeptical about assertions of such trends in state court jury trials.

Since comprehensive win rate data over time are not available from state courts, we must again make an assumption based on the general equivalence between state and federal jury trial win rates, as shown for 1991-92 in Table 1. If plaintiffs' state and federal win rates are not substantially different, we can rely on the federal data, which dates back to 1979, as an approximation of national trends. And recall that the federal courts apply state law in all cases in this study.

Figure 2 shows the federal time trend for personal injury tort litigation, as well as the plaintiff win rates reported by JVR for the years 1989 and 1992. In both years, JVR's reported win rates were well above the actual federal win rate. JVR's win rates likely are also above the state win rate for any year. Daniels and Martin report the results of 20,137 state and federal tort jury trials for over 100 counties in 16 states for the period 1988-90.¹⁹ The plaintiff win rate is not near 63 percent.²⁰ Indeed, no separate category of cases has a win rate as high as 63 percent.²¹ Erik Moller's recently published data covering 15 counties tells a similar story.²² Thus, whether one uses purely federal data or combined state and federal data, it is likely that there has been no noteworthy national time trend in plaintiff trial success rates. Any trend is likely an artifact of a biased data set.

18. Tables 5 and 6 use the federal data's disposition variable; the other tables use the data's procedural progress variable. This is the source of the different trial rates in Table 5 and the earlier tables and differences in time to disposition of trials between Tables 6 and 7, *infra*. See ICPSR, *supra* note 10.

19. STEPHEN DANIELS & JOANNE MARTIN, CIVIL JURIES AND THE POLITICS OF REFORM 68-72 (1995).

20. *See id.* at 70-72.

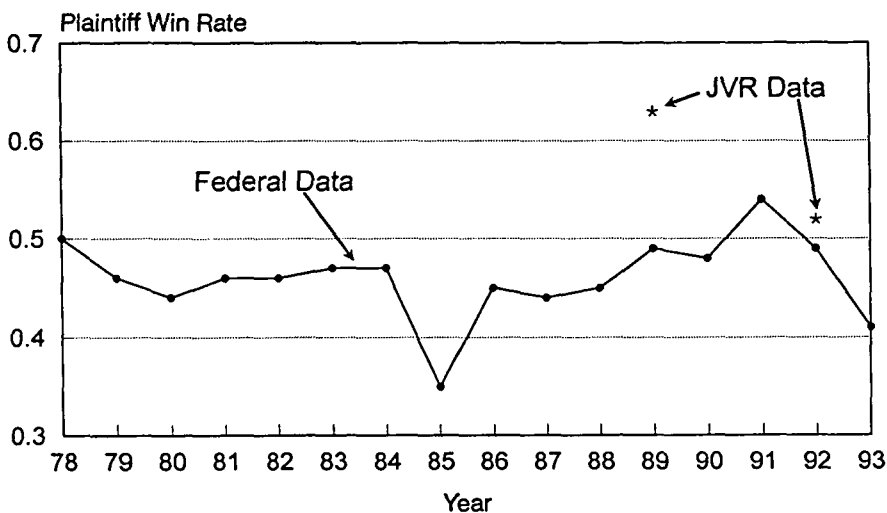
21. *Id.* at 79-81.

22. ERIK MOLLER, INSTITUTE FOR CIVIL JUSTICE, TRENDS IN CIVIL JURY VERDICTS SINCE 1985, at 46-47 (1996).

Figure 2 also suggests the danger of inferring time trends from individual years.²³

FIGURE 2

Plaintiff Win Rate: Personal Injury Jury Trials JVR Reports Compared with Federal Data



Sources: Administrative Office of the U.S. Courts;
Jury Verdict Research, Inc.

Figure 3 takes the time trend analysis one step further by showing specific tort categories. Figure 3 suggests no discernible time trend in plaintiff win rates in any of the categories of cases plotted. If there have been recent time trends in jury trial success rates, they are limited to state court cases.²⁴

Time trends, or the absence of time trends, in jury trials can be surprising. For example, a sharp downturn in plaintiff success rates in products liability cases in the 1980s was reflected in pretrial motions and published appellate opinions, but not in tried cases.²⁵ There are

23. The valley for 1985 in Figure 2 and in the products liability case line in Figure 3 is the consequence of a large combined Bendectin trial. See James A. Henderson, Jr. & Theodore Eisenberg, *The Quiet Revolution in Products Liability: An Empirical Study of Legal Change*, 37 UCLA L. REV. 479, 519 n.159 (1990).

24. See also DANIELS & MARTIN, *supra* note 19, at 87-90 (discussing time trends).

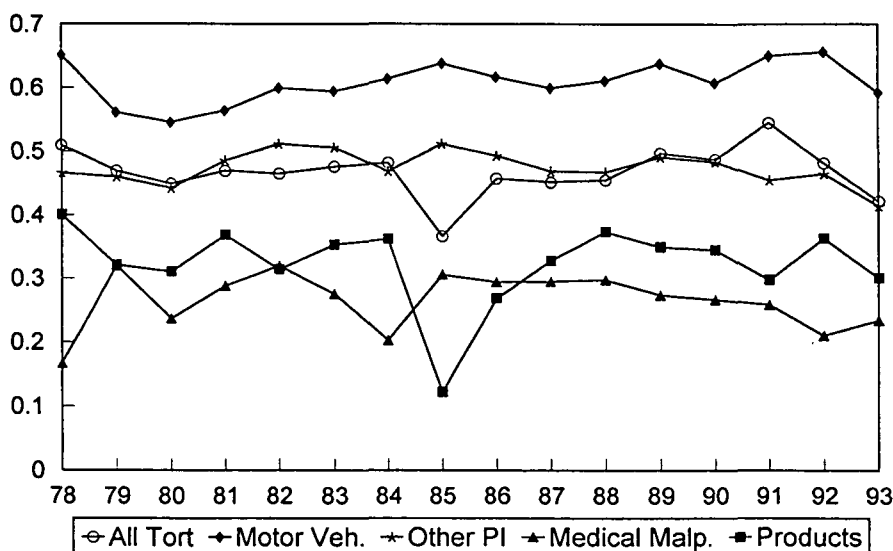
25. Theodore Eisenberg & James A. Henderson, Jr., *Is the Quiet Revolution in Products Liability Reflected in Trial Outcomes?*, CORNELL L. F., July 1990, at 2, 4.

substantial forces at work that tend to keep trial success rates from moving sharply over time.²⁶

Figure 3 does suggest a constancy in jury trial win rates within case categories. Plaintiff success rates in products liability and medical malpractice cases are always low. Success rates in motor vehicle cases are always high, and the residual category (other personal injury) is always between the extremes.

FIGURE 3

Time Trends in Plaintiff Jury Trial Win Rates



Source: Administrative Office of the U.S. Courts, 1978-93

VI. DURATION

Time to disposition of cases is an important public policy issue. Federal tort and contract cases, at almost every stage of disposition, tend to proceed more quickly than state cases.

Comparing processing time across state and federal courts faces the obstacle of different disposition patterns. For example, Table 5 shows that default judgments, which are processed relatively quickly, are much more prominent in state court than in federal court. In

26. E.g., George L. Priest & Benjamin Klein, *The Selection of Disputes for Litigation*, 13 J. LEGAL STUD. 1 (1984).

addition, Table 2 shows that federal courts tend to get larger cases, which may add to the vigor with which they are contested and, therefore, to their time on the docket. Table 6 reports the length of time on the docket for different procedural stages.

TABLE 6
MEDIAN DURATION IN DAYS BY DISPOSITION MODE

	State	Federal	Federal (no asbestos)
Trial	686	574	540
Dismissal, SJ, MBT	452	326	321
Default Judgment	145	113	113
Transfer	305	679	112
Settlement	354	334	321
Arbitration	356	358	358
Other	--	1,184	462
ALL CASES	340	420	302

Table 6. State data are from a sample of 75 state courts 1991-92; federal data consist of all federal diversity cases 1991-92.

Notwithstanding their greater stakes, federal cases tend to proceed more quickly than state cases. At all procedural stages other than transfer and arbitration, the median time to disposition in federal court is shorter than in state court. And the lengthier time for federal transfer and arbitration cases is solely a function of the federal asbestos cases. For tried cases, the median time to federal disposition is 574 days compared to 686 days in state court. For all dispositions combined, excluding federal asbestos cases, the federal median time to disposition is about one month shorter than the state median.

The relatively few cases that reach jury trial show an even stronger effect. Table 7 explores the time to disposition of jury trials. In every case category except toxic tort (asbestos), federal jury trials concluded more quickly than did state jury trials. The differences are quite large. For all cases, the federal median time to disposition was about 20 months, and the state median was about 25 months. Data-gathering methodology may tend to understate this difference. The

federal time periods include post-trial activity until the case is formally terminated for statistical purposes. This does not occur on the day a jury verdict is entered. The state data do not necessarily include this post-trial period.

TABLE 7

MEDIAN DAYS TO DISPOSITION OF JURY TRIALS 1991-92

Category Name	State Trials		Federal Trials	
	# of Trials	Days to Verdict	# of Trials	Days to Verdict
All Contract	1,927	753	519	543
All Tort	7,606	748	1,248	609
(w/o asbestos)	--	--	1,016	538
Motor Vehicle	3,381	660	270	486
Other Tort	667	787	329	513
Medical Malpractice	999	1,021	85	588
Products Liability	301	874	244	664
Toxic Torts	55	1,097	232	1,526
(asbestos)				
ALL CASES	9.745	751	1,790	588
(w/o asbestos)	--	--	1,558	540

Table 7. State data are from a sample of 75 state courts 1991-92; federal data consist of all federal diversity cases 1991-92.

The duration data are not evidence that, other things being equal, state court judges process cases more slowly than federal court judges. Other important factors are not held constant in this analysis. The number of cases per judge, the competition for judicial time from the criminal law docket, and the available resources all likely differ in state and federal courts. What the data do show is a bottom-line effect. From start to finish, jury-tried cases from similar areas of law proceed through federal court more quickly than they do through state court, and this difference is greater than in settled cases.

VII. SAMPLING ISSUES

One concern about the results presented in this Article is whether the counties used for the state data are representative of the country as a whole. In some respects, one should not expect them to be representative. Since the state court sample is limited to urban trial courts, rural litigation patterns are not represented. For example, we noted above that the sampled counties account for a disproportionately large volume of litigation in relation to their populations. This section addresses differences between the counties in the state court sample and the counties not in the sample.

The federal data supply the only handle we have on this problem because they provide a national sample not limited to urban areas. To assess the difference between sampled and not-sampled counties, we divide the federal cases into two groups: (1) cases from counties that correspond to counties in the state sample, and (2) cases from counties not in the state sample. The only substantial differences we found between these two groups of counties are in plaintiff win rates at jury trial.²⁷

Table 8 explores the differences in win rates between sampled and not sampled counties. Table 8 reports, by case category, the win rates in federal jury trials for (1) all federal 1979-93 cases in sample counties, and (2) all federal 1979-93 cases. The second numerical column merely reproduces the last column of Table 1.

27. We employ regression models to control for the varying characteristics of different classes of cases (for example, products liability and contracts cases). We assign a dummy variable to each federal case category. We distinguish between counties in the state court sample and counties not in the state court sample through a further dummy variable that equals 1 for counties in the sample and 0 for counties not in the sample. The coefficient on the county dummy variable should reveal differences between the group of sampled counties and the group of counties excluded from the sample. Using the plaintiff win rate, amount awarded, and days to disposition as dependent variables, the regressions suggest that, for award amounts and duration of jury trials, one cannot reject the hypothesis of no difference between sampled counties and counties not in the state sample. Awards are somewhat higher in sampled counties but not enough higher to affect any of our conclusions. Duration to disposition is not clearly higher or lower in sample counties. For plaintiff jury-trial win rates, however, counties in the state court data set have systematically lower win rates than nonsample counties, even controlling for case category.

TABLE 8

**FEDERAL JURY TRIAL WIN RATES: ALL
COUNTIES & STATE COURT SAMPLE COUNTIES**

Category	Federal Win Rate, 1979-93	
	Sample Counties	All Counties
All Contract	0.55	0.62
All Tort	0.42	0.46
Motor Vehicle	0.56	0.61
Other Tort	0.46	0.48
Medical Malpractice	0.29	0.27
Products Liability	0.29	0.30
Toxic Torts	first coded in 1984	
ALL CASES	0.47	0.50

Table 8. Data consist of federal diversity cases in which judgment was entered for plaintiff or defendant.

For all cases combined, for contract cases, for motor vehicle cases, and for combined tort cases, the sample counties had lower plaintiff jury trial success rates than did all counties combined. For the residual tort category and for products liability and medical malpractice cases, the differences are small. If one decided to adjust the success rates, Table 8 suggests, based on the counties sampled, that the overall contract, tort, and motor vehicle category success rates for state court cases should be increased slightly (based on the assumption that the sampled counties understate plaintiff success rates). Alternatively, the success rates for federal cases should be decreased slightly (based on the assumption that including nonsample counties inflates observed success rates).

The effect of these adjustments on the overall correspondence between state and federal win rates is ambiguous. The suggested adjustments would reduce the difference that Table 1 shows between federal and state motor vehicle success rates. But these adjustments would increase the difference that Table 1 shows between federal and state contract cases. And it would have an ambiguous effect on the

difference between state and federal tort cases. Raising the state court 1991-92 success rate for all tort cases combined above the .49 rate reported in Table 1 would bring the success rate closer to the federal 1991-92 combined tort win rates (.55); however, this would move it farther away from the federal 1979-93 combined tort win rates (.46). In addition, we do not know that a similar bias exists in the state data. Just because the counties in the state sample show lower plaintiff jury-trial win rates in federal court cases than do other counties in federal court cases does not necessarily mean that sample counties correlate with lower win rates in state court cases.

On balance, absent greater certainty that adjustment is required, and now being reasonably confident that massive adjustments would be inappropriate, we rely on the story told by Table 1 and Figure 1 with respect to comparative win rates.

VIII. CONCLUSION

This Article presents the first comprehensive portrait of both state and federal litigation outcomes. Amid the cries of inadequate data about the civil justice system,²⁸ our primary goal is to provide policymakers, members of the legal community, and the public with the most accurate description of what occurs in the nation's courts. Both federal and state court systems play a substantial role in tort and contract litigation. State courts play the dominant role, but the federal courts' larger award patterns give them a fiscal impact beyond their cases' numbers. If one wants to study "big" cases, omitting federal data would be a mistake. The striking similarity in state and federal trial win rates may assist observers limited to smaller samples or categories of cases in drawing inferences about larger patterns and in placing their findings in perspective.

Some policy implications are also worth noting. First, there is a need to continuously monitor the outcomes of state and federal litigation. Legal reform cannot proceed in an empirical vacuum. Much tort reform, for example, has proceeded on the basis of anecdotal and possibly biased data. We now know that in both state and federal courts, plaintiffs have low jury trial success rates in products liability and medical malpractice cases. The stereotypical notion that overly sympathetic juries have a knee-jerk pro-plaintiff response needs to be examined in light of this finding. And the pro-defendant trial time-trend, claimed by JVR and featured by the *New York Times*, probably

28. *E.g.*, Margaret A. Jacobs, *Reliable Data About Lawsuits Are Very Scarce*, WALL ST. J., June 9, 1995, at B1.

does not exist. Second, if we were to act on the longstanding wishes of some to abolish diversity jurisdiction, jury trials would be shifted from federal courts, which handle them relatively quickly, to state courts, which show a slower median time to disposition. Federal courts might become speedier at disposing of cases, but the national rate of disposition could well slow down.

Full discussion of these and other policy implications issues are beyond the scope of this Article. Regardless of the specific issue, the reality of how the litigation system functions should now be the first step, not the last, in contemplating law reform.