The Civil Jury

Trends in Trials and Verdicts, Cook County, Illinois, 1960-1979

Mark A. Peterson, George L. Priest
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The Civil Jury

Trends in Trials and Verdicts,
Cook County, Illinois, 1960-1979

Mark A. Peterson, George L. Priest

1982
The Institute for Civil Justice

The Institute for Civil Justice, established within The Rand Corporation in 1979, performs independent, objective policy analysis and research on the American civil justice system. The Institute’s principal purpose is to help make the civil justice system more efficient and more equitable by supplying policymakers with the results of empirically based, analytic research.

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Foreword

Although much is known about the laws, rules, and doctrines that govern the civil justice system, very little is known about the realities of how they are applied at the trial level by the juries that are their chief implementers. We know what the legislatures and the appellate courts that make and interpret the law intended to happen as a consequence of their actions. But we have very little empirically documented information about the verdicts that issue from the civil courts. The present study is the first in an extensive Institute series designed to fill this critical gap in our knowledge.

The reason for the gap is simple enough. Court systems are not designed to generate systematic and comparable data. Filling the gap requires poring through thousands of individual case records and laboriously coding and transferring to computer tape the specific characteristics of each one. So substantial is the investment required to build this analytic infrastructure that it has never before been constructed for any major metropolitan area or for any substantial period of time.

It is precisely this kind of gap that the Institute for Civil Justice was created to fill. With this report we begin to reap the fruits of an investment decision made shortly after the Institute was founded. With the cooperation of the publisher of a detailed and long-lived jury verdict periodical—the Cook County Jury Verdict Reporter—we have constructed a large-scale research data base on cases tried to verdict in the state and federal courts in the Chicago area since 1959. These data serve as a rich lode for historical analysis of past patterns in jury verdicts, the foundation for ongoing studies to detect changes in these patterns as they occur, and a model for constructing similar data bases for court systems in other parts of the country.

The information in this report details more than 9,000 civil suits tried to verdict in Cook County courts during the period 1960-1979. These include all civil suits for money damages other than those arising from automobile and common carrier accidents and a one-quarter
random sample of automobile and common carrier cases. In addition
to the dollar outcome of each case, the data describe the number of
litigants and their characteristics, the substance of the legal and fac-
tual issues in contention, the expert witnesses employed, and the set-
tlement demands and offers put forth in unsuccessful attempts to
settle the case prior to verdict. The data base is unique in its size and
comprehensiveness. It follows that the analysis presented here is also
without precedent. It represents the first systematic look at the com-
plex and shifting landscape painted by ground-level application of the
civil law in one of our largest metropolitan centers.

Practitioners, scholars, and decisionmakers will all find much use-
ful information here. We have hard data on what urban juries do in
automobile cases, or in product liability cases, or in all cases of a
given cost dimension or involving certain types of parties or issues.
Facts on trends and patterns can now be substituted for anecdotal
information. This work also makes it possible to begin identifying and
analyzing the negotiating judgments that result in the small but criti-
cal portion of civil disputes that are pressed all the way to verdict.
With these data we begin to have the wherewithal to estimate the
consequences of various kinds of changes in civil law and doctrine
(such as the introduction of strict product liability, or the change from
contributory to comparative negligence), which have up to now been
debated and enacted without any documented projection of their like-
ly effects. I believe these are seminal events in the history of empiri-
cal research on the civil justice system.

The reader will note that this study reports events; it does not seek
to explain them or to draw out their implications. The authors' con-
tribution lies in establishing the facts that are in need of explanation; it
will fall to later work, some of which will be sponsored by the Institu-
te, to delve into underlying causes. This report is best seen as the
first in a line of publications that will greatly enlarge the store of
public understanding of the workings of the courts.

Cook County is only one of several jurisdictions where detailed jury
verdict data can be obtained. The Institute has moved to build similar
computerized data bases for other court systems, starting with those
in San Francisco County, California. To the degree feasible, we intend
to develop an analytic network that permits comparative research at
many levels of detail. Only then will the civil justice research base
begin to reveal the economic and social consequences of the public
policy that is made and carried out in the courts—public policy that
affects all our citizens regardless of their station in life or the nature
and purpose of their enterprise.

Gustave H. Shubert
Director, The Institute for Civil Justice
Executive Summary

Decisions by juries are central to the American system of civil justice; they resolve tens of thousands of civil cases each year and indirectly influence the outcome of hundreds of thousands of other disputes that are settled without trial. These decisions reach into the everyday lives of all Americans, because many personal and business actions take into account the potential implications of civil liability.

Despite the enormous personal and financial impact of jury decisions, little factual knowledge is available about them: how juries reach them, how they correspond to legal rules, or how they have changed. The Institute for Civil Justice therefore is studying jury decisions and changes in those decisions in recent years. The present analysis, based on the largest survey of civil juries ever conducted, is the first to provide comprehensive information about the lawsuits tried to juries. It is based on over 9,000 civil jury trials in Cook County, Illinois, between 1960 and 1979, and describes all state and federal civil jury trials in Chicago during those years.

While our research on these cases is continuing, we have already found that:

- The total number of trials dropped during the 1970s, but trials of product liability, malpractice, and contracts and business tort cases increased.
- Two-thirds of all trials are about traffic accidents, but awards in the relatively few product liability trials now come to almost as much money.
- The proportion of trials won by plaintiffs has grown over the 20 years.
- The average jury award in Chicago doubled in the 1970s, after showing no change from 1960 to the early 1970s.
- The biggest awards—the top 10 percent—grew even faster, more than doubling in the 1970s.
Only the biggest awards increased, however. The value of most awards—up to the 75th percentile—was unchanged even during the 1970s.

- Awards increased most for slip-and-fall, road construction, and other street and sidewalk hazard cases.
- Professional malpractice awards increased 700 percent during the early 1970s and then decreased in the late 1970s.

METHODOLOGY

Our data come from descriptions of 19,000 cases published in the *Cook County Jury Verdict Reporter*, an independent newsletter used by plaintiffs' and defense lawyers and insurance companies who try cases in Cook County courts. We collected data for a sample of 25 percent of trials involving automobile accidents and common carriers and 100 percent of all other civil trials. For each sampled case, we obtained detailed information about the parties, their claims, settlement offers and demands, the timing and types of legal actions, and, of course, verdicts. The data were coded into computer-readable form by law students working under the supervision of the authors.

The statistical analyses in this initial report describe aggregate trends for all civil jury trials and for eleven separate case types:

- Automobile accidents.
- Common carriers' liability for injuries to passengers.
- Property owners' liability to tenants, guests, and trespassers.
- Dramshops' (i.e., bars, liquor stores) liability for injuries caused by intoxicated customers.
- Street hazard liability for obstructions or negligent design or maintenance of roads or sidewalks.
- Workers' injuries on the job.
- Intentional torts (i.e., assault, discrimination, and false arrest).
- Professional malpractice.
- Product liability.
- Contracts or business torts.
- Miscellaneous actions.

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1Civil jury verdicts comprise two decisions: First, the jury must decide if any defendant is liable to any plaintiff. We describe this as the decision about liability, and we refer to a case in which liability is found as a plaintiff “victory” or “win.” Second, if the jury decides that there is liability, it must decide the amount of money that will be awarded to the plaintiff(s). We use “award” or “judgment” to describe the size of verdicts for cases in which there is liability. We use the term “verdict” to describe the two interrelated decisions.
We have not attempted to test the hypotheses suggested in this report, nor have we attempted to explain our findings about trends and differences among types of lawsuits. These subjects are part of our continuing research. It should also be noted that the relatively small number of cases decided by juries, such as those described in this report, do not necessarily reflect all civil claims; perhaps as many as 95 percent of filed lawsuits are either settled or dropped without reaching trial. Although cases tried by juries undoubtedly influence settlements, we cannot be certain that the trends and patterns described here are representative of those for cases that are settled. The Institute for Civil Justice is conducting other research on the relationship between verdicts and settlements. This report examines only the verdicts of civil juries, the most central decisions.

NUMBER AND TYPES OF TRIALS

The number of trials dropped during the 1970s. Despite current concern with heavy court caseloads, there were about 150 percent more civil jury trials conducted between 1966 and 1968 (over 1200 per year) than in the most recent years of our study (an annual average of 814 trials between 1975 and 1979).2

While the total number of trials dropped, product liability, malpractice, contracts and business torts, and miscellaneous civil trials each showed sharp increases. Together these case types accounted for less than 5 percent of all civil jury trials in 1960-1964, but by 1975-1979 they made up more than 17 percent of the total. The growth was most impressive for contracts and business tort actions, which increased 1200 percent—from 3 trials per year in 1960-1965 to 40 per year in 1975-1979. However, five other types of cases—common carrier, dramshop, injury on property, street hazard, and worker injury—each decreased in frequency by 40 to 60 percent during the 1970s.

This change in caseload composition suggests that demands made upon jurors may be different today from those of 20 years ago. The types of cases that are now much more frequent (product liability, malpractice, contracts and business torts, and miscellaneous civil actions) often involve complicated technical issues and raise difficult normative questions. Further analyses will shed light on the ability of jurors to deal with problems of greater complexity.

2However, the number of trials increased again in the last years of our study and reportedly have continued to rise since then. We intend to update such trends in future reports.
THE DOMINANCE OF THE TRAFFIC CASELOAD

Despite changes in the frequency of other types of trials, automobile accidents continuously dominated the caseload of Cook County courts, accounting for 60 to 70 percent of all trials throughout the entire 20 years. No other type of case involved even 10 percent of all trials (Fig. 1).

Yet automobile accidents do not dominate the dollar amount of awards. Awards in most traffic cases are small, the smallest of any case type. And in recent years the number of small traffic cases has been growing. In the early 1960s half of all awards were under $8,000; after 1975, half were under $5,000 (all values in the report are adjusted for inflation and expressed in 1979 dollars). As a result, by the late 1970s the total awards in product liability cases almost equaled the total for traffic cases, although there were 11 times as many trials of traffic cases.

TRENDS IN LIABILITY

Plaintiffs became increasingly successful over the 20-year period: In eight of the 11 case types their proportion of victories rose, and in six types the percent of increase was substantial. In contracts and business tort trials, for instance, plaintiffs won 60 percent of their trials in 1975-1979, a 13 percent increase over the early 1960s. In product liability and malpractice trials the increase was 11 percent. Plaintiffs' rate of success also improved markedly in common carrier, dramshop, and miscellaneous civil cases.

Decisions about liability varied greatly among types of cases. Plaintiffs won 63 percent of the worker injury trials over the 20 years and 58 percent of the contracts and business tort trials. At the other extreme, they won only 33 percent of the malpractice trials and 38 percent of the product liability trials. They also had relatively poor success with claims of intentional tort and injury on property, winning only 43 percent of those cases. Plaintiffs won slightly more than half of all other types of trials (i.e., automobile, dramshop, common carrier, street hazard, miscellaneous actions).

Although plaintiffs' chances of winning improved for most types of civil trials, the proportion of their victories when summed across all cases remained constant at 51 percent. This oddity—that the aggregate proportion of plaintiffs' wins did not change although most types did—can be attributed to two causes. First, the total proportion of all trials won by plaintiffs reflects the dominance of traffic case statistics,
which remained fairly constant. That stability masked changes among the rest of the cases. Second, the changing mix of non-traffic cases offset plaintiffs' growing success within most types of trials. Plaintiffs were most apt to win worker injury cases, for example, but by the end of the 20-year period there were 40 percent fewer trials of that type. Conversely, plaintiffs continued to lose a relatively large proportion of malpractice and product liability trials, which together grew from 3.7 to 9.3 percent of the total caseload. In short, the larger number of types of cases in which plaintiffs did poorly tended to offset their improved chances of success in most types.

**SIZE OF AWARDS**

The average award to plaintiffs doubled during the 1970s (Fig. 8). During the 1960s, the average award (in 1979 dollars) remained at $30,000, but by the last five years of the 1970s plaintiffs' awards averaged $69,000. For 1978, the figure reached $82,000.

The average increased because the largest awards grew dramatically during the 1970s. By the late 1970s the value of the largest 10 percent of plaintiffs' awards exceeded $142,000, almost two and a half times the value of the largest 10 percent during the 1960s ($60,000).

In striking contrast to the sharp growth in big awards (and consequently in the average), most plaintiffs' judgments remained about the same size throughout the entire period. The value of the 75th percentile stayed even at $30,000, while the values of the median and 25th percentiles actually declined by about a third.

**THE SIZE OF AWARDS FOR CASE TYPES**

The value of plaintiffs' awards differed greatly among types of civil actions (Fig. 9). Half of the judgments in product liability cases exceeded $82,000; the average was more than a quarter of a million dollars. The median and average for automobile accident cases—the smallest—were only one-thirteenth as large. Plaintiffs also received large awards in malpractice, worker injury, and contracts and business cases. For each of those types, judgments averaged between $150,000 and $200,000, although half of the plaintiffs' awards were less than $60,000 for worker injury cases and less than $40,000 for the others. Both average and median judgments in most of the other case types were considerably lower.
One trend in the size of plaintiffs' awards was common for the various case types: The biggest awards (i.e., the largest 5 or 10 percent) increased greatly for all but one type (Table 6). This suggests either that jury trials increasingly involved plaintiffs with severe losses or that Cook County juries were becoming more sympathetic to plaintiffs who suffered severe injuries or economic losses. Our continuing research will help clarify the reasons for this dramatic increase in big awards.

For five case types—automobile accidents, common carrier, injury on property, dramshop, and intentional torts—the increase in awards was confined only to the largest values. During the 1960s, plaintiffs' awards for all of these case types had been relatively small (Table 7), and during the 1970s awards up to the 75th percentile remained small. Although the averages did rise, those values were swollen by the increasing size of judgments in the largest cases.

In contrast, plaintiffs' awards increased across the entire distribution for four kinds of claims: street hazard, malpractice, product liability, and worker injury. Indeed, because even medium and small awards increased in value, the average awards in each of these types grew markedly between 1960 and 1979 (Table 5).

The greatest increase, surprisingly, occurred in street hazard cases. In the early 1960s street hazard awards were equivalent to those in automobile accident trials. However, the value of small, medium, and large cases each doubled every five years until 1975 (after that only the largest cases went on climbing). By the end of the 1970s the median award in these cases exceeded $42,000, an increase from $8,000 in the early 1960s. The average award jumped 830 percent, from $20,000 to $165,000.

Less surprisingly, awards for professional malpractice cases also grew dramatically. Between the early 1960s and the late 1970s, the average award went up more than 600 percent and the median over 400 percent. The trends of these judgments provide some insight into the "malpractice crisis" controversy of the mid-1970s. In the early 1960s only a few malpractice cases reached juries. Those that did resulted in relatively small awards: Half were under $20,000, and only two exceeded $100,000. Moreover, these cases represented a trivial fraction of all civil trials, accounting for less than 1 percent of

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3The largest awards did not increase for dramshop actions, presumably because of a statutory ceiling of $30,000 per plaintiff. The increase for automobile accident and contracts and business tort cases occurred for a few extreme cases above the 90th percentile.

4This category included all types of professional malpractice, but over 95 percent of the cases involved claims of medical malpractice.
all plaintiffs' awards during the 1960s. However, in the early 1970s the largest malpractice judgments skyrocketed, driving the average up 700 percent from its level in the late 1960s. In 1974 the eight malpractice awards averaged $845,000, accounting for one-fourth of the entire amount awarded in Cook County in that year. More money was awarded to malpractice plaintiffs in 1974 alone than in the previous 14 years of the period studied.

The enormous growth in the average malpractice award in the early 1970s was derived from increases in the largest cases. Medium and small awards did not go up much during those years. Nor was there an unusual increase in the number of malpractice trials or the proportion of cases won by plaintiffs: Both trends had been upward during the 1960s and continued in that direction throughout the span of our study.

In the late 1970s the size of the largest judgments in malpractice cases dropped by two-thirds, and the average fell over $150,000. The decline in both amounts might have resulted either from jurors' reaction to publicity about malpractice awards or from the effects of short-lived "reform" legislation that limited the size of those awards,5 but our research cannot establish either as a cause.

The entire range of plaintiffs' awards also increased for product liability and worker injury trials, but judgments for both types of cases were already so great in the early 1960s that the rates of change do not seem as dramatic. The average annual award in product liability cases reached $377,000 between 1975 and 1979, the highest value we observed, while the average for worker injury cases reached $250,000. For each case type more than half of the successful plaintiffs in 1975-1979 were awarded over $100,000 each.

The changing mix in the types of cases, the stability of 75 percent of judgments, and the big increases in the largest cases resulted in a significantly different mix in the total awards to plaintiffs over time for the various case types. Between 1960 and 1964 plaintiffs in malpractice and contracts and business tort cases together were awarded $1 million. Between 1975 and 1979 that total was $31 million, 2000 percent higher in malpractice cases and 4300 percent higher in contracts and business tort trials. Product liability judgments account for almost one-fourth of the entire amount awarded to plaintiffs throughout the 1970s.

In short, the 20-year span has produced important changes in both

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5This legislation, which included a number of other provisions, was passed in 1975 and declared unconstitutional by the Illinois Supreme Court in 1976. For further information on the disposition of medical malpractice cases, see Dannon and Lillard, R-2792-ICJ (forthcoming), an Institute report that deals with such cases across the nation.
the mix of cases tried to juries and the distribution of money awarded by them, despite a continuing dominance of the traffic caseload and the stability of awards for traffic cases.

FURTHER RESEARCH

Our continuing research will help to explain these trends. That research will also examine other important issues, such as:

- How jury verdicts were affected by changes in law and procedure, including
  - adoption of the strict liability standard in product liability cases;
  - changes in sovereign immunity;
  - the use of six-person juries in federal courts.
- What the reasons may be for differences in juries' verdicts:
  - how are verdicts related to parties' characteristics?
  - have verdicts against "deep pocket" defendants increased more rapidly?
  - what are the relationships between plaintiffs' injuries and disabilities and verdicts?
  - what are the characteristics of cases that produce extremely large awards?
- What relationships exist among offers/demands, the losses claimed by plaintiffs, and subsequent verdicts.

Throughout this research we will produce a series of reports addressing many questions central to the operation of our civil justice system. For example:

- Do jury verdicts reflect legal rules?
- How adequate is compensation? As some have suggested, are plaintiffs who suffer minor injuries overcompensated and plaintiffs with catastrophic injuries undercompensated?
- Are all parties treated equally, or does a litigant's race, sex, or corporate status affect the verdict that the party will receive from a jury?
- How do juries perform in lengthy, complicated civil cases?

In addition to presenting further analyses of jury verdicts in Cook County, later reports will examine outcomes in San Francisco County, California, courts and compare lawsuits and jury decisions between these jurisdictions. With these additional data we will conduct more precise analyses, particularly with respect to the effects of changes in
the law, and we will be able to determine more confidently how our results apply to different jurisdictions.
Finally, we intend to add further jurisdictions to our data base and to conduct broader analyses of patterns and trends in jury verdicts and awards across the nation.
Acknowledgments

We want first to express our thanks to Max Sonderby, publisher of the Cook County Jury Verdict Reporter. Our research is possible only because Mr. Sonderby has published the Reporter with consistent high quality for over 20 years. We are grateful for his interest in and cooperation with our research.

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The critical job of coding and interpreting the reported case descriptions was carried out by 13 students attending the UCLA Law School: John S. Brandon, Gary S. Craig, Thomas W. Crawford, Richard J. Gruber, Harry J. LeVine, Michael A. Mayhew, Lee Ann Meyer, Rodney R. Mills, Andrew A. Nimmelman, Thomas C. Sadler, Laura B. Salant, W. Bradley Tully, and Reed S. Waddell. Richard Gruber also kept the coding moving, and William Lundquist helped organize the data collection.

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I. INTRODUCTION

The civil justice system is the central instrument in the ordering of society's private (and, to an increasing extent, public) affairs, yet little is known about how the system operates or about how it influences social behavior. Most studies of the civil justice system have focused on the content of legal doctrines announced in appellate opinions; very few have addressed either how legal doctrines are implemented or how those doctrines affect individual or corporate behavior. The available studies, moreover, typically ignore the most basic legal judgments: decisions made by juries and trial courts, which provide the foundation for all other decisions in the civil justice system. The little information that exists about civil jury trials derives chiefly from anecdotal evidence.

Juries and trial courts directly resolve tens of thousands of legal disputes each year. In addition, they indirectly determine the outcomes of the far greater number of disputes that are settled out of court and that never reach a jury. Because of the central role that civil trial courts and juries play in the civil justice system, they exert enormous influence on the daily lives of the American people.

Prior research tells us little about what determines jury verdicts or trial court decisions, or about how legal doctrines and other factors influence those decisions and changes in them.

The lack of research limits our ability to evaluate the performance of civil trial courts and juries. We cannot draw upon precise, comprehensive, and objective information to address basic issues such as, Do civil court and jury decisions correspond with legal doctrines and objectives? How equitable are those decisions? How adequate is compensation?

The lack of hard information limits the ability of appellate courts and legislatures to oversee the civil trial court system and makes pro-

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1See Posner, 1977; Priest and Klein, forthcoming.
2The Civil Litigation Research Project conducted jointly by the University of Wisconsin and the University of Southern California found in a survey of households that only 11 percent of claims reached the status of filed lawsuit. For tort claims, 19 percent reached court filing (Miller and Sarat, 1981). In California, 87 percent of the claims arising from automobile accidents are settled without a lawsuit being filed, and only 7 percent of the automobile accident claims that are filed actually go to trial (California Citizens Committee on Tort Reform, 1977). Over 80 percent of the closed product liability insurance claims surveyed by the Insurance Services Office (ISO) in a national study were settled before a lawsuit was filed, and over 95 percent of the claims were settled before trial (Insurance Services Office, 1977, pp. 95-96). Settlements are also the primary means for disposing of medical malpractice claims (Danzon, 1980).
cultural reform difficult. It also increases the difficulties that parties and lawyers face in avoiding or settling civil disputes. Decisions about offers and demands, whether to settle or try a case, and whether or not to undertake actions that might result in claims of civil liability must usually be made without systematic information about how past juries and courts have regarded similar disputes. Finally, the absence of research leaves the public with a misleading picture of the civil justice system that is based primarily on reporting of very large awards or other unusual verdicts that are considered newsworthy.

The present study was therefore undertaken to provide precise, comprehensive, and objective information about this central institution of the civil justice system. This report presents the results of an extensive examination of the decisions made by litigants, courts, and juries in a large number of civil jury trials. It is based on detailed data on 9,000 civil cases that were tried before juries in Cook County, Illinois (the nation's second largest county), between 1960 and 1979. Through the study, we expect to gain a better understanding of the types of cases that are heard by juries, the bases of juries' verdicts and of judges' directed verdicts in those cases, settlement attempts by parties, and changes in court caseload and delay, as well as many other issues that are important to litigants, to policymakers, and to the general public.

METHOD

We obtained our data from descriptions of cases reported by the Cook County Jury Verdict Reporter (CCJVR), which has published a weekly newsletter for lawyers and insurance companies since 1959, describing each civil case tried to a state or federal court in Cook County, Illinois. A typical description reports the court, parties, lawyers, disposition, experts, and offers and demands, plus a short paragraph describing the disputed incident, issues of liability, and claimed injuries and damages (see Fig. A.1 in Appendix A).

We checked the completeness and accuracy of the CCJVR in several ways. First, we interviewed a set of plaintiff and defense trial lawyers and insurance company executives, who confirmed the CCJVR's excellent reputation. Second, we compared descriptions published in the CCJVR with descriptions of the same cases prepared by law students.

3A more complete description of the method and of the CCJVR is given in Appendix A. Copies of several case reports from the CCJVR are also reproduced there.
who sat through trials under our employ, and again we found a very close correspondence (indeed, because they are derived from interviews with attorneys in the cases, the CCJVR descriptions contain information that was unavailable to our student observers). Third, we compared the number of jury trials reported by the CCJVR with Illinois court records. For most years, there was a close correspondence between the number of cases reported by the CCJVR and by the state courts (see Appendix A).

As a data source, the CCJVR provided three major advantages for studying civil jury cases. First, it appears to be an unbiased source of information; the cases we examined generally were reported in an objective manner. Second, it provides detailed information about the parties, issues, and dispositions of each case, which enables us to make thorough data analyses. Third, since it covers a period of 20 years with little change in reporting format, it provides a basis for examining changes in jury and directed verdicts over time and for exploring how those verdicts have been affected by changes in legal doctrine and procedures.

The CCJVR reported nearly 19,000 jury trials between 1959 and 1979. To keep our data-collection effort manageable, we randomly sampled 25 percent of the trials involving automobile accidents (by far the largest category) and 25 percent of those involving passengers’ claims against common carriers (another large category). We collected data on 100 percent of all other types of cases. We then weighted each automobile accident and common carrier trial by 4 to reconstruct the original population of cases.

We developed several alternative coding forms (described in Appendix A), each of which was designed to collect detailed information on a particular type of legal and factual issue. The data were recorded by law students working under the supervision of the authors. By selecting the appropriate forms, the coders were able to record information about all cases, despite the great heterogeneity of legal and factual issues among those cases.

In addition to the Cook County data, we subsequently collected data on 7,000 jury trials in San Francisco, using procedures and coding forms similar to those used for the Cook County data. These additional data will be used in subsequent analyses; the present report is based on data solely from Cook County. By itself, the analysis of Cook County jury trials in this and subsequent reports is the largest and most extensive empirical study ever attempted of civil trial courts and the civil jury system.
FORTHCOMING ANALYSES AND REPORTS

This report is the first in a series of analyses of civil jury trials in Cook County; forthcoming analyses of both the Cook County and San Francisco data are listed in Appendix B. The present report provides a very general description of the cases brought to juries and the outcomes in those cases. It describes changes that have occurred in cases and verdicts over 20 years and examines differences in verdicts among different types of legal disputes. Subsequent reports will look at explanations for these changes and differences, exploring, for example, whether they can be attributed to factual differences in physical injuries or special damages claimed by plaintiffs or by differences in the characteristics of plaintiffs or defendants.

Many of these analyses will provide information on the quality of decisions by courts and juries. We will examine the equity of decisions in civil trials by exploring whether trial outcomes differ depending upon the race or sex of the parties or the corporate or individual status of defendants.4

Our analyses will also produce empirical information about the relationships among injuries, financial losses, and verdicts. The detailed data should reveal how the level of compensation for particular injuries and financial losses varies for different types of cases, among different types of parties, and over time. Although conclusions about the "adequacy" of compensation depend ultimately on questions of value, our studies will provide the basis for careful and informed debate on this important issue.

We shall also consider the question of whether certain types of awards are excessive. In particular, we shall explore requests and awards for punitive damages, examining when punitive damages are requested, when they are awarded, which defendants they are awarded against, and how the amounts of punitive damages correspond to plaintiffs' losses and to the behavior of defendants.

The issue of how well jury verdicts correspond to legal doctrines and objectives is also of particular concern. We shall examine this, in part, by analyzing the effects upon verdicts of changes in legal rules and procedures. Many changes in law occurred between 1959 and 1979 (e.g., the adoption of strict liability for product defects, changes in sovereign immunity) and in legal procedure (e.g., the use of six-person juries in federal courts) which might have affected jury verdicts as

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4In many trials, the nominal defendant is an individual, but the defense is assumed by an insurance company, which is the real party of interest. Although jurors might have assumed that an insurance company was involved, the cases were tried against the named, individual defendants. Unfortunately, we have no data about whether insurance companies were the real party of interest.
well as litigants' decisions about whether to try cases. Analyses of the
effects of these changes will be difficult and complicated, because
changes in the verdicts that we observe could reflect either changes in
the way juries decide cases or changes in the mix of cases reaching
those juries. However, the richness of the data should facilitate these
analyses.

We would like to emphasize two points of caution regarding this
first report in the series. The cases from which the data reported here
derive and the resulting analyses are limited to civil cases that were
actually tried to juries, not all the civil disputes that occurred within
Cook County during the period of interest. It is well known that only
a small fraction of all disputes that occur are brought to litigation,
and it is extremely unlikely that those disputes that are litigated are
randomly selected.\textsuperscript{5} Therefore, the developments that we observe
among jury verdicts may not be representative of changes within the
larger set of disputes that were settled or dropped before reaching
juries. Second, although we occasionally speculate about sources of
the trends and differences that we observe, we must await further
analyses to evaluate possible explanations for the results presented
here. Nevertheless, we feel that this general, descriptive analysis will
be useful and interesting to professional and lay readers. We hope
that the report will generate valuable observations and questions by
others that we can explore in our continuing work.

\textsuperscript{5}See Priest and Klein, forthcoming; Danzon, 1980; Posner, 1977.
II. AN OVERVIEW OF CIVIL TRIALS

Approximately 19,000 civil cases were tried before juries in Cook County between 1960 and 1979, an average of 950 trials per year. Nearly all of these trials were held in state rather than federal courts. Two-thirds of all civil trials (11,364, or 64 percent) were held in the state court of general jurisdiction, the Law Division of the Cook County Circuit Court. Another 35 percent (5,455 cases) were tried in the inferior state court, the Municipal Division of the Cook County Circuit Court. Only 924 civil jury cases (5 percent) were tried in federal district courts during the entire 20 years.

Most civil jury trials involve tort claims. Figure 1 shows the percentage of jury trials for 11 categories of cases, each of which involves distinctive legal and factual issues. Only 298 lawsuits (1.5 percent of all civil jury trials) involved a claimed breach of contract. Contract actions were combined with 93 business tort cases to create the contracts/business category. A few non-tort civil actions were also included in the miscellaneous category, but altogether, fewer than 2 percent of civil trials involved non-tort issues.

More specifically, two-thirds of the civil jury trials in Cook County involved automobile accidents; no other type of lawsuit comprised even 10 percent of such trials (Fig. 1). Despite the great interest in and importance of product liability and malpractice actions, they ac-

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1The CCJVR reported 18,955 cases during this period. However, there are indications of underreporting by the CCJVR (see Appendix A), and the number of civil trials might, in fact, be greater than 20,000. Our data cover cases disposed between April 1, 1959, and August 31, 1979. We have ignored cases disposed in the first nine months of operation of CCJVR, prior to January 1, 1960. Data for the full year 1979 were extrapolated from data for the first 8 months of the year. This extrapolation was done by multiplying the sampling weight of each 1979 case (4 for automobile accident and common carrier cases, 1 for all other types of cases) by 1.5.

2The trial court was not reported for 1,252 cases, 6.6 percent of the sample.

3These categories comprise incidents of the following types: accidents involving automobiles or other vehicles; common carriers' liability to injured passengers; property owners' liability to tenants, guests, and trespassers; dramshops' (i.e., bars and liquor stores) liability to persons injured by intoxicated customers; street hazard liability (negligent design or maintenance of roads or sidewalks or obstructions on roads or sidewalks); workers injured on the job; intentional torts (i.e., assault, discrimination, false arrest); professional malpractice; liability for defective products; breaches of contract and unfair business practices; and miscellaneous actions.

4The categories are not mutually exclusive, but only 5 percent of trials involve multiple types of cases. For example, an automobile accident claimed to result from either a driver's negligence or a defective automobile is included in both the automobile accident and product liability categories. Analyses using a mutually exclusive categorization did not produce materially different outcomes from those described here.
counted for only 4 percent and 2 percent, respectively, of the Cook County jury trials.

Of course, the relative number of jury trials does not necessarily reflect the frequency of automobile accidents or other incidents that can create tort liability in Cook County. Civil claims reach juries only after a long process of decisions by parties and lawyers (see, e.g., Engel and Steele, 1979). There are probably differences among civil liability categories in how frequently injured parties make claims and how often those claims are settled or dropped before trial.

Cook County juries rarely award plaintiffs large judgments. 5 Figure

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5 Civil jury verdicts comprise two decisions: First, the jury must decide if any defendant is liable to any plaintiff. We describe this as the decision about liability, and we refer to a case in which liability is found as a plaintiff "victory" or "win." Second, if the jury decides that there is liability, it must decide the amount of money that will be awarded to the plaintiff. We use "award" or "judgment" to describe the size of verdicts for cases in which there is liability. We use the term "verdict" to describe the two interrelated decisions. Usually the jury makes both decisions, but in a small percentage of cases the trial judge either directs a verdict or adjusts the size of the award. We report the final action by the trial court after decisions by the jury and judge.
2 shows verdict sizes for all civil cases tried in Cook County courts between 1960 and 1979. Dollar values in Fig. 2 and throughout the report have been adjusted for inflation, using the consumer price index, and are stated in terms of 1979 dollars. Plaintiffs received awards in 51 percent of the cases, but they won nothing in the other 49 percent—verdicts were for the defendants in those cases.\(^6\) Even when juries found for plaintiffs, awards were usually quite small: The median size was $7,900—half were less than that amount.\(^7\) One-fourth of plaintiffs' awards were less than $3,000. In other words, in over 60 percent of the civil jury trials in Cook County, plaintiffs received either no money or less than $3,000.\(^8\)

Although plaintiffs received little in most cases, in a few cases they received large verdicts. In 15 percent of the cases that plaintiffs won, their recoveries were greater than $50,000; in 8 percent of those cases (a total of 753 cases), their recoveries were greater than $100,000.

Because most plaintiffs' awards are small, the few very large judgments account for most of the money awarded by juries. A total of $398 million was awarded to plaintiffs by juries in Cook County during the 20 years covered in this study, but over three-fourths of this amount was awarded to 15 percent of the plaintiffs—those who received awards greater than $50,000 (1,400 of 9,346 cases). Forty percent of the total amount ($159 million) was awarded to plaintiffs in only 157 cases, 1.7 percent of all the cases won by plaintiffs.

These large awards greatly skewed the average (mean) plaintiffs' judgment (Fig. 2). Although the average award was $43,000,\(^9\) only one winning plaintiff in five received an award that high.

Jury trials in Chicago remained unchanged in many respects throughout the 1960s and 1970s. Civil juries decided about 20 law-

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\(^6\)In fact, plaintiffs won an even smaller proportion of trials in which there was an actual dispute about liability. In about 2 percent of the trials, defendants did not dispute their liability; the cases were tried only to establish the amount of recovery for plaintiffs. As a result, plaintiffs won 49 percent of the remaining cases in which liability was contested. We would expect that in a large number of other cases the real issue in dispute was the amount of damages, such that the parties expected some plaintiff award even if liability was not formally conceded. At this point, we have no way of determining the number of such cases.

\(^7\)This result accords with findings by the Civil Litigation Research Project, which showed that among claims exceeding $1,000, 62 percent of those filed in state courts and 33 percent of those filed in federal courts produced outcomes of less than $10,000 (W.L.F. Pelstimer, personal communication).

\(^8\)Since all awards were adjusted to represent their value in 1979 dollars, the "face value" of judgments awarded by juries in years prior to 1979 was even smaller. In the 1960s, half of all judgments awarded to plaintiffs were under $4,000, although the 1979 median value of those awards was $7,900.

\(^9\)This figure is for cases in which some judgment was awarded to at least one plaintiff; cases without liability are not included here or in other discussions of dollar awards throughout this report.
Fig. 2—Distribution of verdicts
(all civil jury trials, Cook County, 1960-1979)
suits per week (a number which, as we shall see, did change over the years). Most of these cases were tried in state courts, most involved small dollar amounts, and most involved claims from automobile accidents. The juries awarded a great deal of money—almost $400 million—and far greater amounts were actually at stake, considering the fact that almost half the trials resulted in defendants’ verdicts. Nevertheless, neither the amounts awarded by juries nor the amounts at stake in trials represent more than a fraction of the total economic impact of those trials. Only a small proportion of tort claims and, presumably, an even smaller proportion of contract disputes ever reach a jury. The monetary stakes for the vast majority of claims that are not tried must be many times those of cases that actually proceed to trial.\textsuperscript{10} Moreover, trial outcomes influence many business and personal decisions that have important economic consequences. Thus, a relatively small number of jury verdicts (fewer than 1,000 per year in Cook County) exert a powerful effect on economic stakes far greater than those involved in the trials themselves.

\textsuperscript{10}Cases involving large stakes are more likely to be tried (Posner, 1977). As a result, verdicts are, on the average, substantially greater than settlements (Danzon, 1980). Nevertheless, because at least 20 to 50 times as many cases are settled or dropped as go to trial, the total monetary stakes of the untried cases must exceed those of the cases that are tried.
III. CHANGING TRENDS IN CIVIL JURY TRIALS AND VERDICTS

Civil law in Illinois, federal law, legal procedures in Illinois and federal courts, and American society itself changed in important ways between 1960 and 1979. The tasks and decisions of civil juries should also have changed. Thus we would expect to find differences in the types of claims tried to juries and in how juries view these claims.

In this section, we examine the changes both in cases tried before Cook County juries and in the juries' decisions over the past two decades. To examine how the civil justice system as a whole has changed, we first look at changes in the entire caseload of civil jury trials and at the overall outcomes of all cases. We then examine trends for 11 different types of civil claims and explore how these separate trends combine to produce aggregate trends. Finally, in the next section, we shall look more closely at the changes over time within 10 of the 11 types of claims (excluding miscellaneous actions).

NUMBER OF JURY TRIALS

The number of lawsuits tried to civil juries changed markedly between 1960 and 1978. Surprisingly, given recent concern about apparent increases in judicial workloads and trial delay, the greatest number of cases were tried in the late 1960s, not in the more recent years of the study (see Fig. 3).

The number of jury trials rose abruptly in 1963, increasing by 160 percent over the number in each of the three previous years (from an average of 675 trials during 1960-1962 to 1,133 trials in 1963). The number of civil jury trials then increased again, reaching over 1,200 per year in 1966, 1967, and 1968. After 1968, the number of jury trials decreased for ten years, reaching a low of 711 in 1977. The number

\[1\] We do not use the extrapolated data for 1979 in considering trends for the number of trials.

\[2\] This does not necessarily indicate that courts were busier or more productive in the late 1960s than they have been in recent years. The number of civil jury trials represents only one component of the judicial workload; that workload also includes trials of criminal cases and supervision and settlement of the vast number of civil and criminal cases that do not reach trial. A forthcoming report will examine trends in court workload and trial delay for state and federal courts in Cook County.
Fig. 3—Total number of civil jury trials, 1960-1978
(all Illinois and federal courts)

only began to increase again in 1978. These changes in the number of jury trials do not reflect population changes in Cook County. Both the population and the number of jury trials increased in the 1960s and decreased in the last half of the 1970s. But the population increased by 5 percent in the 1960s and decreased by 5 percent in the 1970s. In contrast, the number of jury trials increased 100 percent during the 1960s and decreased by 80 percent in the 1970s. 

THE MIX OF CIVIL JURY TRIALS

Throughout the 1960s and 1970s, suits derived from automobile accidents dominated the civil jury caseload. Consistently, in each year,

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3The increase in the number of trials in 1978 continued in the first 8 months of 1979 and is still continuing. We shall examine this continuing increase in future analyses of data from Cook County courts.

between 60 and 70 percent of the civil jury trials in Cook County courts involved automobile accident disputes (Table 1). In contrast, the composition of the remaining caseload changed markedly during these years.

Table 1

<table>
<thead>
<tr>
<th>Years</th>
<th>Increasing Caseload</th>
<th>Stable</th>
<th>Decreasing Caseload</th>
</tr>
</thead>
<tbody>
<tr>
<td>1960-64</td>
<td>2.3 0.4 1.4 1.0</td>
<td>3.9 61.6</td>
<td>11.8 6.3 8.8 3.8 3.9</td>
</tr>
<tr>
<td>1965-69</td>
<td>2.9 0.8 1.2 1.4</td>
<td>2.9 68.7</td>
<td>9.9 5.0 6.8 2.7 2.8</td>
</tr>
<tr>
<td>1970-74</td>
<td>4.4 2.4 2.0 1.6</td>
<td>3.5 68.0</td>
<td>8.6 5.6 4.3 2.3 2.2</td>
</tr>
<tr>
<td>1975-79</td>
<td>5.8 5.0 3.5 2.6</td>
<td>4.8 64.0</td>
<td>7.3 3.9 3.7 2.2 2.0</td>
</tr>
<tr>
<td>1980-82</td>
<td>3.8 2.0 2.0 1.6</td>
<td>3.7 65.9</td>
<td>9.4 5.2 5.9 2.8 2.7</td>
</tr>
</tbody>
</table>

*aRows total to more than 100 percent because some cases are included in more than one category.

Figure 4 shows trends in the number of civil jury trials for 11 types of actions. The curves are smoothed to show the long-term trends more clearly. (The smoothing suppresses year-to-year fluctuations within short time spans, which can obscure the long-term trends.) We use logarithmic scales in Fig. 4 (and in several later figures) so that we can show trends for curves that have widely different values, i.e., for the large number of automobile accident cases and the small number of malpractice cases. Thus, percentage or relative changes are shown, rather than changes in the actual number of trials. For example, in Fig. 4, a doubling in the number of trials from 500 to 1000 per year (a 100 percent increase) appears similar to a doubling in the number of trials from 50 to 100 per year (also a 100 percent increase).

The curves in Fig. 4 are grouped to contrast trends for the four categories of civil cases that increased in number with the five types that decreased and the two that remained stable. There were sharp increases during the period in product liability, malpractice, contracts/business tort, and miscellaneous cases. Product liability, malpractice, and miscellaneous cases increased steadily, each more than

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3The curves are based on data for separate years. They are smoothed by averaging the number of trials across overlapping five-year periods to produce a "running average." For each point on Fig. 4, the five-year period begins one year later than the period represented by the point to the left and one year earlier than the point to the right.

4If we had used a non-logarithmic scale, the 50-trial increase in one category would not be recognized in a graph displaying the 500-trial increase in another category.
Fig. 4—Number of jury trials for specific case types (curves display running "averages," i.e., average number of trials for successive, overlapping five-year periods)
doubling during the 20-year period. The number of jury trials for contracts/business tort cases in 1975-1979 was 1,200 percent of the number in 1960-1964 (Table 2). Only 17 breach of contract or business tort cases were tried during the first five years examined in this study (less than .5 percent of all cases during 1960-1964), but this category grew to be the fourth largest (5 percent of all cases) by 1975-1979 (Table 1).

In contrast, the number of jury trials for common carrier, dramshop, injury on property, and street hazard cases decreased during the 1970s after remaining constant during the 1960s. The trend for worker injury cases was similar, except that the number of worker injury trials began to decrease only in the late 1970s. The number of injury on property, worker injury, and street hazard cases declined by 40 percent from the early 1960s to the late 1970s; dramshop trials declined 50 percent from 1960-1964, and common carrier trials declined almost 60 percent (Table 2). The number of trials for intentional tort cases (involving assault, battery, false imprisonment, and discrimination) remained almost stable throughout the 20 years.

Because automobile accident trials constitute such a large proportion of all civil trials, trends for this category almost completely determined the trends that we observe for the entire civil jury trial caseload (Fig. 3). The number of automobile accident cases rose sharply during the early 1960s, increasing by nearly 50 percent from the first to the last five years of that decade (Table 2). This sharp growth was primarily responsible for the peak in jury trials in the late 1960s, since that was the only category to increase appreciably during the decade. The steady decline in the number of all civil trials in the 1970s reflects the reduced number of automobile accident cases, as well as reductions in several other categories.

The changes described in Fig. 4 and Table 2 indicate a changing role for civil juries. Although the resolution of automobile accident cases still dominates the civil jury workload, the remainder of the civil jury trial calendar has changed markedly. The proportion of trials of common carrier, street hazard, dramshop, injury on property, and worker injury cases has declined by almost 50 percent between 1960-1964 and 1975-1979. During the early 1960s, these cases constituted 34.1 percent of the total jury workload; during the latter half of the 1970s, they constituted 19.1 percent (Table 1). They have been replaced by product liability, professional malpractice, contracts/business torts, and miscellaneous civil actions, which collectively

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7Although the curves in Fig. 4 are smoothed and plotted on a logarithmic scale, the curve for the number of automobile accident cases still closely resembles the curve on Fig. 3 showing changes in the number of all civil trials.
Table 2

TRENDS IN THE NUMBER OF CIVIL JURY TRIALS
(Total number of civil jury trials involving each case type during each five-year period)

<table>
<thead>
<tr>
<th>Years</th>
<th>Increasing Caseload</th>
<th>Stable</th>
<th>Decreasing Caseload</th>
</tr>
</thead>
<tbody>
<tr>
<td>1960-64</td>
<td>96</td>
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<tr>
<td>1965-69</td>
<td>166</td>
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</tr>
<tr>
<td>1970-74</td>
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<td>1975-79</td>
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<td>1960-79</td>
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<tr>
<td>Change,</td>
<td>1960-64 to</td>
<td>246</td>
<td>1200</td>
</tr>
<tr>
<td>1975-79 (%)</td>
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Grew from 5.1 percent to 17.9 percent of all civil trials. These latter categories of cases often involve complicated factual circumstances and difficult normative questions.  

As the burden of the civil jury becomes more complex, concerns expressed by some about the competence of the lay jury become more pointed (Kirkham, 1976; Redish, 1975). Further analyses of our data may shed some light on how jurors decide difficult questions and on how well they deal with civil litigation that is increasingly complex. The effects of complexity on juries' decisions can be examined in subsequent analyses by comparing explanatory models of verdicts in simple cases with models of verdicts in complex cases involving multiple actions and parties. We can examine how juries resolve difficult issues in product liability and other areas of litigation—for example, whether they are less likely to find manufacturers liable for defects in products that are very old, that have been altered, or that were built according to prevailing standards. We can also consider whether juries apply a popular version of contributory negligence, i.e., whether they find liability but discount awards against manufacturers when a plaintiff’s misuse of a product contributes to his or her injury.  

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8Juries must determine, for example, whether a product was defectively designed, what the proper standard of medical care was, or how a plaintiff's carelessness should be compared with a manufacturer's strict liability for a defective product in establishing the amount of an award.

9See Waterman and Peterson, 1981. Through the period of our study, Illinois followed the contributory negligence doctrine. In 1981, the Illinois Supreme Court adopted a comparative negligence rule (Alvis v. Riber).
LIABILITY VERDICTS

As we have noted, juries returned verdicts in favor of the plaintiff in 51 percent of all trials between 1960 and 1979. As Fig. 5 indicates, the proportion of civil cases resulting in plaintiffs' verdicts changed from year to year, ranging from 44 percent to 56 percent. However, the "running average" revealed no systematic long-term trends in the proportion of cases won by plaintiffs. Over the long term, the proportion of liability for all jury trials remained between 50 and 52 percent.\(^1\)

The general trend, however, obscures changes in the proportion of plaintiffs' victories for specific case types. For eight of our 11 types of cases, the proportion of plaintiffs' victories increased over the 20 years considered (Table 3). This increase was substantial for six types of cases. In 1975-1979, plaintiffs won 60 percent of contracts/business tort trials, a 13 percent increase over the proportion in the early 1960s. Plaintiff victories increased by 11 percent for both product liability and malpractice trials.\(^1\) Even among four of the five types of cases in which liability was relatively stable, plaintiffs won a slightly larger proportion of trials in the late 1970s than they did in the early 1960s.

This apparent anomaly—that the overall proportion of plaintiff victories remained unchanged while the proportion for individual categories increased for most categories—results from two factors. First, plaintiffs' success in automobile accident cases remained virtually constant, and because automobile cases dominate all of the trends, this stability tended to suppress changes occurring in the trials that did not involve automobile accident claims.

The second factor is more interesting and provides a vivid reminder of the need for more refined analyses that will enable us to verify and understand the trends described here. As stated above, the mix of cases tried to juries changed between 1960 and 1979, with types of cases in which plaintiffs did relatively poorly replacing types in which they had better success. There was a steady increase in the number of product liability and malpractice cases—in which plaintiffs have the least chance of success—and a decrease in worker injury cases, in

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\(^1\) These figures overstate the proportion of plaintiffs' victories in cases that actually contest liability, because our calculations include cases in which defendants admitted liability or defaulted and cases where the jury determined liability but the parties litigated chiefly over issues of damages. Although we cannot adjust for the latter, we have calculated the proportion of plaintiffs' victories in cases where liability was not admitted or defaulted. This adjustment reduced the proportion of plaintiffs' victories slightly (to between 48 and 49 percent) but did not disturb any long-term trends.

\(^1\) For all three of these case types, changes in the 1960s must be regarded as unstable because of the small number of trials in the early 1960s.
Fig. 5—Proportion of plaintiffs' victories
Table 3  
TRENDS IN THE PROPORTION OF PLAINTIFFS’ VICTORIES FOR SPECIFIC CASE TYPES

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<td>.52</td>
<td>.48</td>
<td>.50</td>
<td>.29</td>
<td>.26</td>
<td>.52</td>
<td>.43</td>
<td>.46</td>
</tr>
<tr>
<td>1965-69</td>
<td>.62</td>
<td>.52</td>
<td>.53</td>
<td>.55</td>
<td>.56</td>
<td>.47</td>
<td>.36</td>
<td>.31</td>
<td>.53</td>
<td>.44</td>
<td>.40</td>
</tr>
<tr>
<td>1970-74</td>
<td>.61</td>
<td>.58</td>
<td>.52</td>
<td>.52</td>
<td>.54</td>
<td>.62</td>
<td>.41</td>
<td>.32</td>
<td>.52</td>
<td>.41</td>
<td>.42</td>
</tr>
<tr>
<td>1975-79</td>
<td>.67</td>
<td>.60</td>
<td>.53</td>
<td>.59</td>
<td>.58</td>
<td>.54</td>
<td>.40</td>
<td>.37</td>
<td>.54</td>
<td>.45</td>
<td>.45</td>
</tr>
</tbody>
</table>

**Note:** Proportion of all cases tried to civil juries in which liability is found against at least one defendant (including defaults and admitted liability).

which plaintiffs have the greatest chance of success. This replacement of high-liability by low-liability types of cases canceled out the increase in the proportion of plaintiffs’ verdicts that occurred in most types.

This result shows why we cannot yet be certain of the reasons for changes in outcomes that we observe in this period. These changes might have occurred because jurors are deciding cases differently—for example, they may be more likely to find defendants liable in comparable cases. On the other hand, changes in outcomes may occur because cases tried to juries have changed, as we just observed. To speak meaningfully about trends in verdicts, we must be able to compare outcomes for comparable cases. Our continuing analyses will examine features of cases that are likely to be important in determining outcomes (e.g., the nature of injuries, parties’ characteristics) so that we can evaluate the changes in the character of cases and determine whether juries’ decisions for comparable cases have changed. Until such analyses are performed, we can only describe trends and differences among cases that were tried to juries.

Plaintiffs’ chances of winning differed substantially among different types of civil cases. Even though their chances increased in later years (see Table 3), plaintiffs lost more product liability and malpractice trials than they won during the 20-year period. Plaintiffs were also more likely to lose intentional tort or injury on property cases, although their chances were always better than those of plaintiffs in product liability or malpractice cases. Only in worker injury cases were plaintiffs consistently far more likely to win than lose—the proportion of plaintiff victories always exceeded 60 percent. However, by the late 1970s, plaintiffs were also winning a majority of the con-
tracts/business tort, common carrier, dramshop, and miscellaneous civil actions that reached juries. We will look more closely at trends in liability for each type of civil trial in Section IV below.\textsuperscript{12}

\section*{SIZE OF PLAINTIFFS' AWARDS}

The average size of verdicts awarded to plaintiffs increased dramatically between 1960 and 1979. In the following, we describe these changes and begin to analyze which types of cases changed and whether changes occurred for verdicts of all sizes or only for part of the distribution, e.g., the smallest or largest cases. We then examine changes in the size of awards for specific types of cases.

Figure 6 shows the average judgments awarded to successful plaintiffs between 1960 and 1979,\textsuperscript{13} expressed in terms of real 1979 dollars. The growth in average award varied widely between the 1960s and the 1970s. In real dollars, judgments averaged about the same at both the beginning and the end of the 1960s ($34,000 during 1960-1962 and 1968-1972). During the early 1960s, the average award actually decreased by about 25 percent, to under $26,000.\textsuperscript{14} It began to increase slowly in 1963, but it was not until 1972 that the average ($42,000) again reached the 1960 value ($40,000).

In contrast, the average value of awards increased sharply during the 1970s, almost doubling during the decade (from $37,000 in 1970-1973 to $71,000 in 1977-1979). In 1978, plaintiffs' awards averaged $82,000.\textsuperscript{15}

\textsuperscript{12}Table 3 shows the proportion of plaintiffs' victories in all cases. When we examined only cases in which liability was contested, the proportion of plaintiffs' victories decreased for six categories of cases: a 3 percent reduction for automobile accident cases (plaintiffs won 50 percent); a 2 percent reduction for dramshop (plaintiffs won 52 percent); and 1 percent reductions for intentional torts (plaintiffs won 42 percent), worker injury (plaintiffs won 62 percent), malpractice (plaintiffs won 32 percent), and miscellaneous civil actions (plaintiffs won 55 percent).

\textsuperscript{13}The data in Fig. 6 include plaintiffs' verdicts that were either directed by judges or awarded by juries. Cases resulting in defendants' verdicts are excluded. In a small percentage of cases, jury awards were reduced by trial court judges, and in one case the award was increased. We have no information about jury awards that were overturned or adjusted as the result of appeals. Of course, verdicts awarded may not equal amounts actually paid by defendants.

\textsuperscript{14}This decrease is not the result of our adjustment for inflation, i.e., jurors were not simply awarding verdicts that had a constant nominal value but a decreasing real value. Even the nominal value of awards decreased by 20 percent, from $15,000 in 1960-1962 to $12,000 in 1963-1966.

\textsuperscript{15}Again, the trends toward increasing awards are not the product of our adjustment for inflation, since the increase in nominal awards was even greater. The nominal awards increased fourfold between 1960-1962 ($15,000) and 1977-1979 ($65,000), while the adjusted value doubled ($34,000 to $71,000).
Figure 6—Average awards

Figure 7 shows these long-term trends more clearly as a running average. When year-to-year fluctuations are suppressed, we see a sharp contrast in the growth of verdicts between the 1960s and the 1970s. The gradual increase of the mid-1960s changed to a sharp, steady increase throughout the decade of the 1970s.

Virtually all of the growth in the average size of plaintiffs' awards occurred because the largest cases greatly increased in value. Figure 8 presents smoothed curves for the average award as well as the 50th (median), 75th, and 90th percentile judgments. (Note that the values on the vertical axis are different from those of Fig. 7.) While the value of the average increased, the large majority of plaintiffs' awards

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16These fluctuations occur because the value of the average judgment can change dramatically with the presence or absence of a few extremely large awards. The smoothed curve is based on the same data as are used in Fig. 6. The curve is smoothed by averaging awards over overlapping five-year periods.

17The bottom line in Fig. 8 indicates the value of the median plaintiffs' judgment for that year (i.e., the verdict that is equal to or greater than the smallest 50 percent of judgments for the year); the top line indicates the 90th percentile.
remained within the same range throughout the entire 20-year period. The first, second, and third quartiles either remained constant or decreased between 1960 and 1979. In the large majority of cases, the bottom 75 percent, judgments in 1978-1979 were no greater than the bottom 75 percent of judgments in the early 1960s. Indeed, the median (50th percentile) judgment dropped from $10,000 during the early 1960s to $7,000 during the last 15 years (Table 4). The value of small judgments (the 25th percentile) decreased slightly in recent years.

The value of very large cases (the 90th percentile) changed quite differently. After dropping slightly at the beginning of the 1960s, it rose sharply and steadily during the 1970s. In 1978 and 1979, the largest 10 percent of judgments had values of at least $165,000, almost three times greater than the largest 10 percent of judgments during the 1960s. This increase in the value of very large cases accounted for the sharp increase in the average (mean) judgment during the 1970s.
Fig. 8—Awards, long-term trend

Table 4

TRENDS IN THE SIZE OF PLAINTIFFS’ AWARDS

<table>
<thead>
<tr>
<th>Years</th>
<th>Small Cases (25th percentile)</th>
<th>Medium Cases (50th percentile)</th>
<th>Large Cases (75th percentile)</th>
<th>Extremely Large Cases (90th percentile)</th>
<th>Average (mean)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1960-64</td>
<td>3</td>
<td>10</td>
<td>27</td>
<td>59</td>
<td>29</td>
</tr>
<tr>
<td>1965-69</td>
<td>3</td>
<td>7</td>
<td>23</td>
<td>60</td>
<td>31</td>
</tr>
<tr>
<td>1970-74</td>
<td>3</td>
<td>7</td>
<td>30</td>
<td>85</td>
<td>46</td>
</tr>
<tr>
<td>1975-79</td>
<td>2</td>
<td>7</td>
<td>32</td>
<td>142</td>
<td>69</td>
</tr>
<tr>
<td>1960-79</td>
<td>3</td>
<td>8</td>
<td>27</td>
<td>79</td>
<td>43</td>
</tr>
</tbody>
</table>
SIZE OF PLAINTIFFS' AWARDS BY CASE TYPE

There were marked differences among the various case types both in the size of plaintiffs' awards and in changes in their size over the 20 years of the study. These changes help to explain trends in the size of awards aggregated across all cases.

Figure 9 shows the average and median award for each case type, calculated for all jury trials from 1960 to 1979. The largest judgments (measured by both the average and median) were awarded in product liability, malpractice, contracts/business tort, and worker injury cases. The relatively high medians indicate that even routine cases in these areas produced large judgments. At least half of the plaintiffs' awards for product liability cases were greater than $82,000; half of the worker injury awards exceeded $59,000; half of the malpractice awards exceeded $37,000; and half of the contracts/business tort awards exceeded $30,000. For all four types, the averages are even greater, because of a few very large awards. The average award was $275,000 in product liability cases, $203,000 in malpractice cases, $160,000 in contracts/business tort cases, and $150,000 in worker injury cases.

In contrast, awards for intentional tort, injury on property, common carrier, dramshop, and automobile accident cases were modest. The average judgment for automobile accident cases ($21,000) was one-thirteenth the average for product liability cases. The averages for common carrier and dramshop were only slightly higher (both under $30,000), while those for injury on property and intentional torts were $36,000 and $44,000, respectively. Again, because the averages were increased by a few large awards, even these relatively low values do not reflect the small size of most judgments in these cases. Half of the plaintiffs' awards in automobile accident cases were less than $6,000; half of those in common carrier cases were less than $8,000; in intentional tort cases, $11,000; in injury on property cases, $13,000; and in dramshop actions, $17,000.

Judgments in street hazards and miscellaneous civil actions fell between these groups of small and large awards. The size of awards for street hazards grew dramatically during the period examined in the study, and the miscellaneous civil actions—a catch-all category—resulted in a mixture of large and small awards.¹⁸

The size of judgments changed for each of the different types of cases, but the changes were much more dramatic for some types than

¹⁸This can be seen by the great difference between the median and average awards for those actions in Fig. 9. The median for miscellaneous cases was $15,000, while the average was $74,000.
others. Table 5 lists the average (mean) plaintiffs' award during the four five-year periods covered by the study. The most dramatic increases occurred for malpractice and street hazard cases (Table 5). Both of these case types produced relatively small judgments during the early 1960s, but very large judgments by the late 1970s. The average malpractice judgment increased from $32,000 to $210,000, an increase of 656 percent. In the early 1970s, malpractice awards were even greater, averaging $370,000. The average judgment for street hazard cases increased still more sharply, by 830 percent, from $20,000 to $166,000.

The average judgments for product liability, worker injury, and contracts and business cases were already so large in the early 1960s that

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19We discuss trends for each case type separately in Section IV. Because of the heterogeneity of the cases in the miscellaneous category, data on these cases are not included in Tables 5, 6, and 7, and changes in the size of awards in miscellaneous actions are not examined.
### Table 5

**TRENDS IN AVERAGE PLAINTIFFS’ AWARDS FOR SPECIFIC CASE TYPES**

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1960-64</td>
<td>20</td>
<td>32</td>
<td>70</td>
<td>143</td>
<td>93</td>
<td>32</td>
<td>31</td>
<td>18</td>
<td>25</td>
</tr>
<tr>
<td>1965-69</td>
<td>44</td>
<td>54</td>
<td>155</td>
<td>168</td>
<td>127</td>
<td>51</td>
<td>37</td>
<td>18</td>
<td>24</td>
</tr>
<tr>
<td>1970-74</td>
<td>86</td>
<td>370</td>
<td>140</td>
<td>281</td>
<td>172</td>
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<td>30</td>
<td>21</td>
<td>33</td>
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<tr>
<td>1975-79</td>
<td>166</td>
<td>210</td>
<td>177</td>
<td>377</td>
<td>250</td>
<td>63</td>
<td>50</td>
<td>29</td>
<td>28</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Change, 1960-64 to 1975-79 (%)</th>
<th>830</th>
<th>656</th>
<th>269</th>
<th>260</th>
<th>253</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>197</td>
<td>161</td>
<td>161</td>
<td>104</td>
<td>100</td>
</tr>
</tbody>
</table>

*Case types are grouped by whether or not mean for individual type increased faster than mean for all cases (i.e., 237 percent, between 1960-64 and 1975-79).*

The substantial increase in judgments that occurred in these cases did not result in such dramatic percentage increases (Table 5). Between 1975 and 1979, plaintiffs’ awards in product liability cases averaged $377,000, the largest average that we observed. However, even in the early 1960s, plaintiffs’ judgments in this category averaged $143,000. Average plaintiffs’ awards in worker injury cases increased from $93,000 to $250,000, and awards for contracts/business tort cases increased from $70,000 to $177,000. For all three categories, average plaintiffs’ awards in 1975-1979 were about 260 percent higher than those in 1960-1964.

In contrast, plaintiffs’ judgments for automobile accident, common carrier, injury on property, dramshop, and intentional tort cases either increased more slowly or remained stable (Table 5). At the beginning of the 1960s, awards for all five types of cases were relatively small, and they remained small throughout the 20 years of the study. The greatest increase among these case types occurred in the intentional torts category, where the average size of plaintiffs’ judgments went from $32,000 to $63,000. This increase was still less than the 247 percent increase in the average award aggregated across all plaintiffs’ verdicts. The average plaintiffs’ award increased by 160 percent over the 20 years for injury on property and automobile accident cases but did not increase for either dramshop or common carrier cases.

The different trends for these two groups of case types are not sim-
ply the result of a few extremely large awards within the sharply increasing categories. In fact, the magnitude of extreme judgments (i.e., the greatest 10 percent) increased for 10 of the 11 case types, and those increases were not greater in the types with the sharpest increases in the average judgment (Table 6). Rather, the average awards for street hazard, malpractice, contracts/business tort, product liability, and worker injury cases increased rapidly because judgments throughout the entire range increased. In contrast, for intentional tort, injury on property, automobile accident, dramshop, and common carrier cases—the types that had the least growth—only large cases (i.e., above the 90th percentile) increased.

Table 6

TRENDS IN 90TH PERCENTILE OF PLAINTIFFS’ AWARDS FOR SPECIFIC CASE TYPES

<table>
<thead>
<tr>
<th>Years</th>
<th>Sharp Increases</th>
<th>Slow Increases/ Stable Injury</th>
</tr>
</thead>
<tbody>
<tr>
<td>1960-64</td>
<td>51 (b)</td>
<td>(b)</td>
</tr>
<tr>
<td>1965-69</td>
<td>110 (b)</td>
<td>(b)</td>
</tr>
<tr>
<td>1970-74</td>
<td>268</td>
<td>1338</td>
</tr>
<tr>
<td>1975-79</td>
<td>468</td>
<td>461</td>
</tr>
</tbody>
</table>

| Change, 1960-64 to 1975-79 (%) | 1271 (b) | (b) | 159 | 200 | 208 | 212 | 127 | 79 | 227 |

*Case types are grouped by whether or not mean for individual type increased faster than mean for all cases (i.e., 237 percent between 1960-64 and 1975-79).

Table 7 shows the median plaintiffs' award for each case type during each of the five-year periods. The median increased markedly for all five types that had sharply increasing average awards. Small (25th percentile) and large (75th percentile) cases generally showed comparable increases.

For the five other case types, medians remained almost constant. In fact, the typical judgment awarded to plaintiffs in automobile accident cases decreased steadily, if slowly, throughout the entire period, a

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20 The value of the 90th percentile did not increase for dramshop cases, because dramshop judgments were subject to the same statutory ceiling ($30,000 per plaintiff) throughout the study.
Table 7

TRENDS IN MEDIAN PLAINTIFFS' AWARDS FOR SPECIFIC CASE TYPES

<table>
<thead>
<tr>
<th>Years</th>
<th>Sharp Increases</th>
<th>Slow Increases/Stable Injuries</th>
</tr>
</thead>
<tbody>
<tr>
<td>1960-64</td>
<td>8</td>
<td>20</td>
</tr>
<tr>
<td>1965-69</td>
<td>19</td>
<td>31</td>
</tr>
<tr>
<td>1970-74</td>
<td>31</td>
<td>37</td>
</tr>
<tr>
<td>1975-79</td>
<td>42</td>
<td>84</td>
</tr>
<tr>
<td>1960-79</td>
<td>19</td>
<td>37</td>
</tr>
<tr>
<td>Change</td>
<td>1960-64 to 1975-79 (%)</td>
<td>255</td>
</tr>
</tbody>
</table>

*Case types are grouped by whether or not mean for individual type increased faster than mean for all cases (i.e., 237 percent between 1960-64 and 1975-79).

The trend that accounts for the decrease in the median for all civil judgments.21 Again, this stability extended through most of the range of judgments. The value of both the 25th and 75th percentiles (not shown on Table 7) remained constant during the 20 years for each case type. Only the values of the largest cases changed.

The trends in the size of plaintiffs' awards in all civil cases can be explained in terms of the separate trends for specific case types. The values of the median and 75th percentile judgments remained constant because all but the exceptionally large judgments remained constant for automobile accident, common carrier, injury on property, dramshop, and intentional tort cases. These five types accounted for more than 80 percent of all plaintiffs' judgments, most of which were at the low end of the distribution.

The most dramatic trends were the increases during the 1970s in both the average plaintiffs' awards and the values of the largest awards. These increases occurred for two reasons: First, all plaintiffs' judgments for product liability, malpractice, worker injury, street hazards, and contracts/business torts cases increased. Most plaintiffs' awards in these cases were so large (more than half were above the 75th percentile of all civil cases in each year) that the increases affected only the top end of the distribution for all cases, but they contributed to a sharp increase in values at that extreme. Second, the value

21Since two-thirds of the judgments awarded to plaintiffs were awarded in automobile accident cases, trends for this category dominate trends for all cases.
of the largest plaintiffs' awards increased markedly, even for the case types in which most awards remained stable.\textsuperscript{22}

The more important of these two causes was the increasing size of all awards in five categories and the increasing frequency of trials in four of these categories. In 1960-1964, only 15 percent of all of the largest judgments (i.e., above the 90th percentile) were awarded in product liability, malpractice, street hazard, and contracts/business tort actions. By 1975-1979, 58 percent of the largest plaintiffs' judgments were awarded in cases of those types. The proportion of worker injury cases among the largest judgments declined from 39 percent to 20 percent, because the number of worker injury trials declined, but together, these five types of cases increased from 54 percent to 78 percent of the large-award cases. Nevertheless, even in 1975-1979, over one-fifth of the largest plaintiffs' awards involved claims from automobile accidents.

\section*{TOTAL MONEY AWARDED}

As Fig. 10 shows, the total sum of money awarded by juries increased fairly steadily over the 20 years, increasing from an average of $12 million per year in 1960-1965 to $28 million per year in 1975-1979. Peaks in 1973, 1975, and 1978 (when the total awards reached around $35 million) resulted from increases in both the number of civil trials and the value of the average plaintiffs' judgment.

In 1960-1965, $4 million, or 6.4 percent of all awards, was awarded to product liability plaintiffs (Table 8). Because of the sharp increases in the number of product liability trials and in the size of plaintiffs' judgments, awards in these trials amounted to $33 million between 1975 and 1979—only slightly less than those in automobile accident cases ($40 million), which were 11 times more numerous.

Awards in malpractice and contracts/business tort cases were trivial in the early 1960s. Between 1960 and 1965, $500,000 was awarded in all malpractice cases, and the same amount was awarded in contracts/business tort cases (Table 8). Together, these represented less than 2 percent of all awards in those years (Table 9). By the late 1970s, both the number of trials of malpractice and contracts/business tort actions and the awards for those trials had greatly increased. The total dollar amount of judgments awarded to plaintiffs in contracts/business tort cases increased by 4300 percent, to $21 million during 1975-1979, and that for malpractice plaintiffs increased by 2040 percent, to $10 million.

\textsuperscript{22}The largest awards did not increase for dramashop cases. See note 20 above.
Table 8

TRENDS IN TOTAL AWARDS FOR SPECIFIC CASE TYPES

<table>
<thead>
<tr>
<th>Years</th>
<th>Sharp Increases</th>
<th>Slow Increases/Decreases</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Cont./Mal. Prod.</td>
<td>Int. Worker Auto Injury</td>
</tr>
<tr>
<td>1960-64</td>
<td>.5 .5 4 2 2</td>
<td>2 16 24</td>
</tr>
<tr>
<td>1965-69</td>
<td>4 1 10 1 3</td>
<td>3 22 36</td>
</tr>
<tr>
<td>1970-74</td>
<td>10 11 25 1 6</td>
<td>2 29 36</td>
</tr>
<tr>
<td>1975-79</td>
<td>21 10 33 6 7</td>
<td>5 25 40</td>
</tr>
</tbody>
</table>

Total 1960-79: 35 23 71 12 18

Change, 1960-64 to 1975-79 (%): 431 2040 890 485 471

*Case types are grouped by whether or not total awards for individual type increased faster than the increase for all cases (i.e., 242 percent between 1960-64 and 1975-79).

Table 9

TRENDS IN PROPORTION OF TOTAL AWARDS FOR SPECIFIC CASE TYPES

<table>
<thead>
<tr>
<th>Percentage of Total Awards</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sharp Increases</td>
</tr>
<tr>
<td>1960-64</td>
</tr>
<tr>
<td>1965-69</td>
</tr>
<tr>
<td>1970-74</td>
</tr>
<tr>
<td>1975-79</td>
</tr>
</tbody>
</table>

*Case types are grouped by whether or not total awards for individual type increased faster than the increase for all cases (i.e., 242 percent between 1960-64 and 1975-79).

Although the number of trials for street hazard cases declined by 40 percent, total payments for those cases increased from $2 million to $7 million, because of the great increase in the size of awards.

In 1960-1965, the total awards for product liability, malpractice, street hazard, contracts/business tort, and miscellaneous actions were less than $8 million (14 percent of the total awarded); by 1975-1979,
total payments for these five case types were almost $80 million (57 percent of the total awarded).

As noted earlier, verdicts awarded by juries represent only a small proportion of the stakes involved in civil disputes. Trends in the total amounts awarded through verdicts and out-of-court settlements might be different from those for verdicts alone. Nevertheless, if trends in total awards for the various types of cases do represent broader trends in payments for both settled and tried claims (a possibility that can be confirmed only through further research), the financial significance of the civil justice system in Chicago changed markedly between 1960 and 1979.

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2 Several studies of settlements and of the relationships between tried and settled cases are under way at the Institute for Civil Justice. These studies are using statistical and econometric models to examine dispositions of both settled and tried medical malpractice claims (see Danzon, 1980; Danzon and Lillard, forthcoming); artificial intelligence models to study lawyers’ and insurance companies’ settlement practices (see Waterman and Peterson, 1981); and general economic models of the determinants of settlement and litigation (see Priest and Klein, forthcoming).
IV. CHANGES IN TRENDS FOR SPECIFIC
CASE TYPES

This section examines the trends in case volume, proportion of plaintiffs' victories, average plaintiffs' awards, and size of small, medium, large, and extremely large awards for each of 10 case types.\footnote{Because of the smaller samples for individual case types, year-to-year fluctuations are often so extreme that they obscure long-term trends. We use running averages to suppress these year-to-year fluctuations.} We first look at trends for malpractice, street hazard, and contracts/business tort trials, the three case types that showed the most dramatic changes between 1960 and 1979. We raise questions about how statutory changes might have affected the outcomes of malpractice and street hazard trials—questions that will help to direct our future research in both areas.

We next examine trends for product liability and worker injury trials, two case types that account for a major share of the money awarded in civil trials, and we take a preliminary look at how the adoption of the strict liability standard changed the outcome of product liability trials.

We then look at trends for dramshop and intentional tort trials, particularly at changes within each type that might have resulted from repeated legal changes. Finally, we examine the declining importance of common carrier and injury on property trials and the remarkable stability of automobile accident trials, which continue to dominate civil jury trials in Cook County courts.

MALPRACTICE CASES

Trends for malpractice cases are particularly interesting, for two reasons: First, they show remarkable changes in the litigation of these cases during the past 20 years, and second, they help to clarify the controversy about the "malpractice crisis" of the mid-1970s (discussed below).\footnote{We defined our malpractice category to include all types of professional malpractice. However, over 95 percent of the cases in this category involve medical malpractice claims.}

People have become so accustomed to large malpractice awards, high malpractice insurance premiums, and frequent controversies about both that it is difficult to appreciate how insignificant malprac-
tice cases were as recently as 20 years ago. Between 1960 and 1965, only 12 malpractice cases per year were tried to Cook County juries, and plaintiffs were awarded verdicts in only 3 cases per year. Most of these awards were relatively small: Half were under $20,000, and only two were greater than $100,000. In total, malpractice judgments represented less than 1 percent of all civil judgments awarded by Cook County juries in those years. Even in the last half of the 1960s, the four malpractice judgments per year accounted for only 1 percent of all judgments, and the average award was around $50,000.

As Fig. 11 shows, a few big-money cases in the early 1970s changed malpractice into a very significant area of litigation. It has been widely claimed that the field of malpractice law experienced a "crisis" during this period. The crisis was of the following nature: At some point in the early 1970s, juries began to award verdicts so large that they could not have been anticipated by insurance companies, and as a consequence, medical insurers suffered huge losses on malpractice policies. These insurers responded by raising premiums sharply, which in turn led many doctors to refuse insurance and attempt to shield themselves from malpractice liability by other methods. In addition, both insurers and the medical community pressed legislatures in many states—including Illinois—to take measures to limit the size of malpractice awards. Plaintiffs' lawyers opposed this legislation, arguing that jury verdicts were not excessive and that insurance company losses resulted from investment losses rather than from inordinately large awards.

The malpractice-crisis controversy is complex, involving many issues. We cannot attempt to evaluate whether the large malpractice judgments were appropriate or excessive, but our data do show a striking increase in the size of malpractice judgments in the early 1970s (see Fig. 11). The average malpractice award between 1970 and 1974 ($377,000) was 700 percent greater than the average during the previous five years. In 1974, the eight plaintiffs' malpractice judgments averaged over $845,000. The total value of malpractice awards in that one year alone was greater than the total value of malpractice awards for the preceding 14 years. Increases of this magnitude probably would have been difficult to anticipate.

As Fig. 11 shows, the malpractice crisis in Cook County appears to have been exclusively a matter of the extraordinary increase in large cases. The size of the 90th and 75th percentiles increased greatly in

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3Rand and the Institute for Civil Justice have been conducting related studies of the malpractice crisis and the disposition of malpractice claims. These studies are reported in Danzon and Lillard, forthcoming; Danzon, 1980; Schwartz and Komesar, 1978; and Lipson, 1976.
Fig. 11—Long-term trends for medical malpractice trials
the early 1970s, while the median remained constant and the value of the smallest 25 percent of judgments dropped. The distribution of malpractice awards spread and the average increased as large cases increased and small cases decreased. There is no evidence of unusual increases in either the number of malpractice trials or the plaintiffs’ chances of winning those cases. Both of these did increase during the early 1970s, but the increases were merely continuations of steady increases throughout the entire time period of the study.

Our data include not only the period of the malpractice crisis, but the five years following the crisis, which saw the passage of “reform” legislation sponsored by insurance companies and the medical community. This legislation placed a $500,000 ceiling on medical malpractice judgments and enacted a number of other reforms, but each provision of the statute was declared unconstitutional by the Illinois Supreme Court in 1976. We do not know if it was the result of this short-lived statute, of the widespread publicity about the malpractice crisis, or of other factors, but the value of malpractice judgments declined precipitously after 1974. The average malpractice judgment declined $160,000 between 1970-1974 and 1975-1979, because of a decrease in the value of the largest judgments, as illustrated by the reduced value of the 90th percentile. The value of the median malpractice judgment, in fact, increased over the same period.

STREET HAZARD CASES

The size of plaintiffs’ awards increased more within the street hazard category than within any other category (Table 4). Between 1960-1964 and 1975-1979, the average judgment increased by 830 percent, from under $20,000 to over $165,000 (Fig. 12). Judgments grew continuously between 1960 and 1975: The average judgment doubled every five years. The growth also extended throughout the entire range of values; every five years between 1960 and 1975, the value of cases at the 25th, 50th, 75th, and 90th percentile doubled. Between 1975 and 1979, the average and 90th percentile continued to increase, but the value of smaller cases leveled off. Even with a leveling of the median, by the late 1970s, half of all street hazard judgments exceeded $42,000, up from $8,000 during the early 1960s.

*The legislation also froze malpractice insurance premiums and established a mandatory review process by a panel comprised of a doctor, a lawyer, and a judge before any medical malpractice action could be filed (Illinois P.A. 79-960).

**Wright v. Central DuPage Hospital Assn., 63 Ill.2d 313 (1976). After this decision, the legislature enacted a new statute, again reducing the statute of limitations and establishing a voluntary arbitration procedure for all malpractice actions.
Fig. 12—Long-term trends for street hazard trials
This growth in the magnitude of street hazard awards is perhaps the most surprising trend that we discovered. The types of actions included in this category seem quite similar to automobile accident and injury on property cases: They are primarily claims by drivers, passengers, or pedestrians who are injured because of a hazardous road, bridge, or sidewalk. In fact, trends in case volume and liability are similar to those for automobile accidents and injuries on property (see Tables 2 and 3), yet judgments for these other case types grew relatively little.

At this time, we can only point out this contrast among the three types of cases. In subsequent analyses, we shall examine carefully the resemblance between street hazard cases and automobile accident or injury on property cases. The characteristics of defendants in street hazard cases, for example, may account for much of the difference in the trends for the three case types. Many street hazard actions are brought against government agencies or construction companies, defendants that might be seen as "deeper pockets" or that might have different settlement practices than typical automobile accident or injury on property defendants.  

Awards for street hazard cases could also have been affected by legislative and judicial changes in the law of government immunity during this period. Generally, these changes moved toward piecemeal elimination of government immunity for various agencies, while some personal immunity for government officials was retained. The changes in immunity might have contributed to the increase in street hazard judgments by directing litigation against government agencies rather than individuals. However, this does not seem to be a sufficient explanation, since judgments continued to increase as rapidly during the entire 15 years after the abolition of government immunity in Illinois as they did between 1959 and 1965, when immunity was being abrogated.

The change in government immunity might also have had an impact on plaintiffs' ability to establish liability. Street hazard plaintiffs could typically claim liability against several defendants: construction companies, highway designers, government agencies, and so on. Before the abolition of government immunity, plaintiffs could sue only private defendants, even if a government agency was primarily

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6Of course, corporate or government defendants in automobile accident or injury on property cases may also be seen as deep pockets. If defendant characteristics do explain the differences in trends among these case types, we should find (1) that awards against deep-pocket defendants increase in all types of cases and (2) that the greater increase in awards for street hazard cases is in part the result of the greater number of such defendants in those cases.

responsible for the plaintiff's loss. Plaintiffs' chances of recovery might have increased when it became possible to sue government agencies as additional or even sole defendants.\(^8\)

The proportion of plaintiffs' victories did in fact increase with the end of government immunity—from 47 percent in 1965-1969 to 62 percent in 1970-1974. This proportion then decreased in the late 1970s but still remained above the level of the 1960s. Again, we cannot, on the basis of these findings alone, conclude that changes in government immunity were responsible for the trends observed. We shall continue to explore this question in subsequent analyses to see whether the trends resulted from changes in the types of street hazard cases brought to trial.

CONTRACTS/BUSINESS TORT CASES

Cook County civil juries heard very few contract actions and even fewer claims of business torts during the 20 years of the study. Only 1.6 percent of all civil trials (298 trials) involved breach of contract claims, and less than .5 percent (93 trials) involved business torts. Not only were there few such trials, many of those that were tried appear to be ancillary to disputes about non-business torts. Forty-two percent of the trials for contract actions involved disputes about insurance contracts, and 8 percent of the business tort cases involved claims of insurance fraud (Table 10). Disputes about sales or real estate contracts rarely reached juries; there was about one trial per year of each type. Because of the relative infrequency of contracts/business tort cases, we have combined these types into a single category. Trends for this category are shown in Fig. 13.

The significance of contract and business tort trials has increased dramatically, and in recent years these cases have comprised an appreciable part of the civil trial caseload in Chicago. Although they represented a trivial part of the civil jury trial caseload in the early 1960s, by the late 1970s contract and business claims accounted for 5 percent of all civil trials (Table 1).

\(^8\)This argument raises the question, Why would plaintiffs' lawyers be more willing to try a marginal case before the abolition of government immunity than after? Economic analyses suggest that lawyers would be unlikely to try cases involving marginal private defendants. Of course, it is possible that plaintiffs' lawyers did try a lower proportion of street hazard claims before government immunity was abolished. Since our data do not reflect claims that were not tried, we cannot determine whether there was a change in the proportion of claims that were tried. In any event, plaintiffs' lawyers may have been more willing to try weak cases against private defendants if such trials offered the only opportunity for recovery.
Table 10

**Types of Business and Contracts Actions**

<table>
<thead>
<tr>
<th>Actions</th>
<th>Number</th>
<th>Percent</th>
<th>Percent of Category</th>
</tr>
</thead>
<tbody>
<tr>
<td>Business Torts</td>
<td>93</td>
<td>...</td>
<td>23.8</td>
</tr>
<tr>
<td>Antitrust</td>
<td>14</td>
<td>15.1</td>
<td>3.6</td>
</tr>
<tr>
<td>Contract interference</td>
<td>17</td>
<td>18.3</td>
<td>4.3</td>
</tr>
<tr>
<td>Investment fraud</td>
<td>20</td>
<td>21.5</td>
<td>5.1</td>
</tr>
<tr>
<td>Insurance fraud</td>
<td>7</td>
<td>7.5</td>
<td>1.8</td>
</tr>
<tr>
<td>Other fraud</td>
<td>38</td>
<td>40.9</td>
<td>9.7</td>
</tr>
<tr>
<td>Contract Actions</td>
<td>298</td>
<td>...</td>
<td>76.2</td>
</tr>
<tr>
<td>Insurance</td>
<td>125</td>
<td>41.9</td>
<td>32.0</td>
</tr>
<tr>
<td>Sales</td>
<td>23</td>
<td>7.7</td>
<td>5.9</td>
</tr>
<tr>
<td>Real property</td>
<td>20</td>
<td>6.7</td>
<td>5.1</td>
</tr>
<tr>
<td>Personal service</td>
<td>67</td>
<td>22.5</td>
<td>17.1</td>
</tr>
<tr>
<td>Debt</td>
<td>33</td>
<td>11.1</td>
<td>8.4</td>
</tr>
<tr>
<td>Other</td>
<td>36</td>
<td>12.1</td>
<td>9.2</td>
</tr>
</tbody>
</table>

Over the same period, the rate of recovery by plaintiffs in contracts and business tort trials increased from around 50 percent (for the few cases tried) during the 1960s to 60 percent during the 1970s.

Trends in the magnitude of plaintiffs' awards are more complicated. The average plaintiffs' award remained roughly stable over the years in which there were sufficient numbers of cases to provide useful data, with the running average (mean) between 1968 and 1979 fluctuating between $140,000 and $200,000. The median decreased to $25,000 by the late 1970s, 80 percent of its value in the late 1960s and 60 percent of the value in the early 1970s ($41,000), when the median was at its highest point. By the late 1970s, the value of the 90th percentile was one-third of its value in the late 1960s ($240,000 vs. $750,000). This indicates that the rapidly increasing number of contracts and business tort trials involved cases that brought moderately large judgments. Nevertheless, a few plaintiffs' awards (less than 10 percent) in the late 1970s were so large that they maintained the average judgment at between $140,000 and $200,000, despite the declining value of almost all contracts/business awards.

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9Figure 13 presents statistics only for later years. There were too few cases to provide meaningful statistics in the early 1960s. We have calculated the median beginning in 1965 and all statistics beginning in 1967. Between 1965 and 1967, the average and order statistics other than the median were erratic because they were based on such small numbers of cases.
Fig. 13—Long-term trends for contracts and business tort trials
Our future research on contract and business cases will explore such questions as, What types of cases have increased in frequency? What types of cases brought such extraordinarily large judgments? Did these extraordinarily large judgments include treble damage awards for business torts or punitive damages for bad faith in insurance contracts? Are those extraordinarily large cases increasing?

With the combination of a rapidly increasing number of contract and business tort trials, increasing chances of victory for plaintiffs in such cases, and increasing average judgments, the total amount awarded in contract and business tort trials has grown enormously. Total awards increased by 4300 percent, from $500,000 in 1960-1964 to $21 million in 1975-1979 (Table 8). By the late 1970s, contracts and business tort cases accounted for 15 percent of the total sum awarded in all verdicts in Cook County courts (Table 9).

PRODUCT LIABILITY CASES

Marked increases in the number of product liability cases, the proportion of such cases won by plaintiffs, and the size of plaintiffs' judgments, shown in Fig. 14, all contributed to increasing judgments against product liability defendants. Total judgments in product liability cases increased from less than $4 million in 1960-1964 to $25 million in 1970-1974 and to $33 million in 1975-1979 (Table 8). By the 1970s, product liability judgments comprised 24 percent of all judgments in Cook County courts, up from 6 percent during the early 1960s (Table 9).

In 1965, the Illinois Supreme Court adopted the legal standard of strict liability for injuries resulting from defective products.16 The effects of strict liability in Illinois, and in other states, are uncertain and controversial. Some have argued that the adoption of strict liability caused the dramatic changes observed in products cases, while others argue that strict liability had no effect on the outcomes of such cases.11 Although we have not yet attempted a thorough test of the effects of this legal change, it is not apparent that strict liability accounted for the major growth in product liability cases.

Case volume and the size of judgments increased steadily both before and after the adoption of strict liability; neither increased more rapidly after 1965. Thus it seems unlikely that strict liability is responsible for the increase in either case volume or judgment size. However, plaintiffs were awarded verdicts in a greater proportion of

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11Schwartz, 1979; Waterman and Peterson, 1981.
Fig. 14—Long-term trends for product liability trials
product liability cases after the adoption of strict liability. Although
the probability of plaintiffs' victories is somewhat unstable, the rate of
success increased for several years after the adoption of strict liability
and then stabilized at a level appreciably higher than the pre-1965
level. Before the adoption of strict liability, plaintiffs won 29 percent
of product liability cases; after, they won 39 percent. Without further
analyses, we cannot attribute these changes to the adoption of strict
liability, nor can we either attribute to or discount possible effects of
the strict liability standard upon trends for case volume or judgment
size.

Finally, even with the adoption of a strict liability standard, the
trial of product liability cases represents a long shot for plaintiffs.
Most plaintiffs lose, receiving no judgment. However, those who win
typically receive substantial judgments. By the late 1970s, the largest
10 percent of awards exceeded $750,000, and more than half were
greater than $120,000. Few winning plaintiffs received small awards
—during the 1970s, the value of the 25th percentile was $25,000.

WORKER INJURY CASES

The worker injury category comprises all cases brought by workers
injured in the course of employment. The Illinois Workers' Compensa-
tion Act prohibits civil suits by employees against their employers or
fellow workers. Thus, the suits that we observe are brought by inde-
pendent contractors or by employees against unrelated job-site supervi-
sors, general contractors, architects, or property owners.

Recoveries by employees against their employers under the Workers'
Compensation Act are assumed to be less generous than civil trial
judgments, because general damages are not compensable under the
Act and because the schedule of Act payments is not indexed to in-
fation. As a consequence, it has been asserted that injured workers may
be more inclined to pursue civil actions against eligible defendants as
inflation increases. Our data, however, show no evidence of a substan-
tial worker shift to the civil liability system—although, again, the
data represent only judgments, not case settlements. Figure 15 shows
that the number of worker injury trials remained constant from 1960
to 1973 and then began a steady decline that has continued to recent
years. Less than half as many worker injury cases were tried to ver-
dicts between 1975 and 1979 as were tried during any of the preceding
five-year periods.

The magnitude of worker injury judgments, in contrast, increased
steadily throughout the entire time span of the study. The value of
Fig. 15—Long-term trends for worker injury trials
these judgments increased most rapidly between 1975 and 1979, growing from an average of $172,000 between 1970 and 1974 to over $250,000. Both the median and 90th percentile judgments increased comparably—the greatest recent increase occurred, in fact, for smaller cases. Between 1975 and 1979, three-fourths of all judgments were at least $44,000, up from $27,000 during the five previous years.12

During the first 15 years of the study, the probability of a plaintiff winning a worker injury case averaged over 60 percent but decreased slightly. Since 1975, the proportion of plaintiffs' victories has increased, reaching or exceeding 70 percent during three of the past five years (Table 3). This trend could reflect either more liberal verdicts by juries or changing settlement practices, i.e., relatively weak claims may not be reaching juries.

Judgments in worker injury cases comprise a large proportion of the total dollars awarded by Chicago juries throughout the 20 years of the study. Injured workers have the best chances of any plaintiff for recovery, and their average awards are among the largest of any type of suit. Between 1960 and 1974, 25 percent of all money awarded by juries to plaintiffs went to injured workers, although worker injury claims comprised only 6 percent of all jury trials (compare Table 9 with Table 1). However, by the late 1970s, awards for worker injury cases decreased to 18 percent of the total awards to plaintiffs, as the number of worker injury trials decreased to 3 percent of all civil jury trials.

**DRAMSHOP ACTIONS**

Dramshop actions are suits brought by plaintiffs who are injured by intoxicated persons, against bars or liquor stores that supplied alcohol to the intoxicated person. These suits represent only 2.7 percent of the civil jury trials in Cook County and 1.7 percent of the money awarded in all verdicts. Nevertheless, the trends for this category are interesting because they seem to show effects of several changes in the substantive law.

During the period of study, the statutory basis of dramshop liability was altered both judicially and by legislative amendment. In 1964, Illinois courts in two separate decisions clarified (1) the legal defini-

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12In later studies, we will explore whether this indicates that juries are now awarding larger judgments to workers who suffer relatively minor injuries or, alternatively, whether cases involving relatively minor injuries were more likely to be settled in recent years, so that the lowest 25 percent of judgments now involve more serious injuries.
tion of intoxication (to a great extent removing the issue from decision by jury) and (2) the proximate cause requirement for recovery.\textsuperscript{13} Presumably, the explicit legal standards provided clearer and more certain bases for predicting possible trial outcomes. To the extent that the legal standards were clearer, potential litigants should have been more likely to agree about the probable outcome of a case and, therefore, more willing to settle the dispute to avoid litigation expenses.\textsuperscript{14} The trends in case volume seem consistent with this analysis. Figure 16 shows that in the years following the 1964 decisions, there was a sharp and steady decline in what had been a fairly constant volume of dramshop jury trials. However, this hypothesis does not explain why the number of trials continued to fall after 1964.

In 1971, the Illinois legislature restricted recovery under the Dramshop Act by requiring an injured plaintiff to show that the defendant made a "material and substantial" contribution to the injurer's intoxication.\textsuperscript{15} There are two possible effects of this statutory change on civil jury trials. First, by limiting the number of potential dramshop defendants (previously, defendants could have been sued even if they sold only small amounts of alcohol to a person who then became intoxicated at a different establishment), the statutory change probably reduced the number of suits. The number of dramshop actions declined after 1971, although this may have been simply a continuation of the trend that was already under way.

A second possible effect results from the change in the types of dramshop actions brought to trial after 1971. The suits that previously could have been brought but were now prevented probably provided plaintiffs with little chance of success (i.e., they were cases in which defendants played little role in the intoxication). Thus, we might expect that plaintiffs would win a greater proportion of the remaining suits. Trends for dramshop cases are consistent with these analyses. In the five years before the statutory change, plaintiffs won an average of 50 percent of trials; after the statutory change, the success rate of plaintiffs averaged between 56 and 60 percent.

These preliminary observations are based on an assumption that before the 1971 statutory change, plaintiffs' lawyers tried cases that had little chance of success. The assumption seems implausible and contradicts economic theory and analysis concerning the determin-


\textsuperscript{14}See Priest, 1980; Waterman and Peterson, 1981; Priest and Klein, forthcoming.

\textsuperscript{15}Hoecker, 1974.
Fig. 16—Long-term trends for dramshop trials
nants of litigation and settlement. At the present time, we cannot test this assumption. In subsequent studies, we shall examine information we have collected about each dramshop defendant's role in providing intoxicants to parties causing the plaintiffs' injuries, i.e., whether an injuror had been drinking before he entered the defendant's tavern, whether the injuror drank in subsequent taverns. This will enable us to examine plaintiffs' success against defendants who did not make substantial contributions to the injuror's intoxication prior to the statutory change. We shall also examine whether plaintiffs' increased success in recent years has resulted in part from the elimination of such defendants.

Figure 16 shows that the average size of dramshop judgments changed very little over the period of the study, increasing slowly from under $25,000 in the early 1960s to around $40,000 in the middle 1970s, then decreasing in the late 1970s. This finding is not surprising, since the Illinois dramshop statute defines a maximum recovery of $30,000 for each plaintiff in a dramshop action. However, this statutory limit was not indexed to inflation. Because we have adjusted our data for inflation, the apparent stability in the size of judgments indicates that the nominal value of dramshop judgments increased roughly at the pace of inflation until the middle 1970s.

INTENTIONAL TORT CASES

The intentional tort category comprises assault, battery, false arrest, false imprisonment, and discrimination cases. All of these cases either involve a threat or use of force or a claim of discrimination.

Plaintiffs' chances of winning assault or civil rights cases dropped during the 1960s, from around 50 percent during the early 1960s to

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16 Priest and Klein, forthcoming.
17 Judgments in dramshop cases can exceed this statutory limit for two reasons: A verdict might include awards for multiple plaintiffs (e.g., a plaintiff injured by the intoxicated party and a recovery for loss of consortium to that plaintiff's spouse), or the action might include other theories of liability that are not subject to the statutory limit (e.g., liability against the injuror for negligent operation of an automobile).
18 We have not included defamation cases, which are usually also described as intentional torts. The relatively few defamation cases are included in the miscellaneous category.
less than 40 percent at the end of the decade (Fig. 17). After 1972, plaintiffs' chances again improved, rising to around 50 percent at the end of the 1970s.

These results may have been affected by changes in Illinois law and also by changes in opinions among Cook County jurors. In 1965, the Illinois legislature narrowed the scope of liability of police and other government officials, making them liable only for willful and wanton acts.\textsuperscript{19} This statutory change should have made it more difficult for plaintiffs to recover, reducing the proportion of plaintiff victories. In 1972, however, the Illinois Supreme Court expanded the liability of public officers, thereby increasing plaintiffs' chances of victory.\textsuperscript{20} And indeed, both of these trends were observed in the data.

Changes in liability verdicts may also reflect changing attitudes of jurors toward minorities and dissidents, who brought many of the assault and civil rights actions. By this hypothesis, the decreasing proportion of plaintiffs' victories during the 1960s might reflect a backlash toward the civil rights and antiwar movements. In turn, the increasing proportion of plaintiffs' victories in the 1970s might reflect a lessening of racial and political tensions.

Neither of these hypotheses, however, accounts for the persistence of the losing litigant in the face of a more stringent legal standard or a hostile jury.\textsuperscript{21} Thus, both explanations must be regarded only as speculation, and neither can be evaluated without further evidence.

The small number of plaintiffs' judgments in intentional tort cases during the late 1960s makes trends for these cases quite unstable. If we ignore the few very large verdicts awarded during the entire period, the level of intentional tort judgments did not change appreciably in any direction (Fig. 17).

\textsuperscript{19}Governmental Employees Tort Immunity Act, Ill. rev. stat., Ch.85, sec.1.101 et seq. (1965).

\textsuperscript{20}Arnold v. City of Highland Park, 52 Ill.2d 27, 282 N.W.2d 144 (1972).

\textsuperscript{21}Presumably, we should not observe great or long-lasting effects upon the proportion of plaintiff victories from either of these types of changes. Litigants should be aware of how new legal standards or juror decisions might affect their cases and should settle accordingly. Such readjustment of settlement practices may leave the proportion of victories for tried cases relatively unaffected. However, litigants' assessments may change only slowly over several years. Lawyers need to learn how legal changes or changes in juror attitudes in fact affect jury verdicts by examining actual verdicts. In the meantime, litigants are likely to try more cases, as long as the effects of the changes remain unclear. Furthermore, changes in the proportion of victories (or at least longer times for litigators to assess possible changes) will be particularly likely where statutes require juries to interpret indefinite concepts, such as the "willful and wanton" standard involved here. Finally, litigants' adaptation to new decision standards might be particularly slow where one or both parties is litigating for a matter of principle or politics, as is typical of assault and civil rights cases.
Fig. 17—Long-term trends for intentional tort trials.
COMMON CARRIER CASES

Across the entire 20 years, common carrier trials were the third most frequent type of trial, but their number dropped precipitously during these years (Fig. 18). Common carrier trials increased during the early 1960s, peaking at 94 trials in 1964, but after 1965 the number dropped steadily to an average of 17 per year in 1977-1979. Although some of the decline may be attributed to a reduction in ridership of common carriers, this cannot be the only explanation. The number of passengers on the Chicago Transit Authority (the largest common carrier in Cook County) declined only 13 percent during the years of the study, while the number of common carrier trials declined by 50 percent. Throughout the 20-year period, however, plaintiffs’ rate of success increased steadily.

During 1960-1962, the proportion of plaintiffs' verdicts was only 40 percent. Between 1975 and 1979, the proportion reached 58 percent.

The average size of plaintiffs’ awards fell during the early 1960s and then increased steadily. The average plaintiffs' award declined by one-third (from $34,000 to $21,000) between the first half of the 1960s and the second half. The median dropped by 25 percent (from $8,000 to $6,000), and the value of the 90th percentile dropped by one-third (from $56,000 to $37,000). However, after the 1960s, the size of plaintiffs’ awards increased. Nevertheless, the values of the awards did not exceed those of the early 1960s. By the last half of the 1970s, the median, average, and 90th percentile judgments had only returned to their values during the first five-year period of the study. The total sums awarded in common carrier trials declined by 50 percent between 1960 and 1979; in only one other case type was there a decline.

INJURY ON PROPERTY CASES

The injury on property category consists of cases brought against owners of property interests for their negligence. It includes actions by customers injured in commercial establishments, actions by tenants and guests against landlords and homeowners, and attractive nuisance and other actions by trespassers against property owners. Cases in this category were the second most frequently litigated to judgment during the 20-year period of study. There were no marked

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23CTA General Operations Division, Operations Planning Department.
24The number of common carrier cases was so small by the late 1970s that the value of the 90th percentile had become unstable.
Fig. 18—Long-term trends for common carrier trials
changes in legal doctrines in this area and the outcomes of trials remained quite stable. Perhaps for both of these reasons, injury on property cases have become a progressively smaller portion of civil jury trials (Fig. 19), dropping from 120 trials per year in the middle 1960s to 60 trials per year by the late 1970s. Settlements, of course, should be easier to reach in a stable area of law, where the implications of legal doctrine are fairly well understood and where past jury actions can be used to project likely future verdicts.

Trial outcomes remained stable for most of the 20 years of the study, with the proportion of plaintiffs’ victories ranging from 41 percent to 46 percent (Fig. 19). During most of the period, the size of plaintiffs’ awards increased at a slow and steady rate. The median and 75th percentile awards increased at about 2 percent per year throughout the entire period, and the 90th percentile increased at the same rate until the middle 1970s, after which it increased rapidly, growing from $79,000 in 1970-1974 to $138,000 by 1979. The value of the average judgment also increased sharply, but this was solely because of increases in the value of the largest awards. The average judgment in 1979 (almost $50,000) was about 150 percent of the average during the previous 15 years.

AUTOMOBILE ACCIDENT CASES

Automobile accident claims have been by far the most frequently litigated case type throughout the period, accounting for about two-thirds of all civil jury trials. Nevertheless, the number of jury trials has changed over the years. As Fig. 20 illustrates, the number of automobile accident cases rose steadily during the 1960s and reached a peak of 920 in 1968.24 Since then, the number has decreased to an average of about 500 trials per year during the last half of the 1970s.

Most judgments in automobile accident trials are small, but in recent years there has been an increase in the number of such small judgments. Between 1975 and 1979, 38 percent of the plaintiffs’ awards were less than $3,000, compared with 22 percent between 1960 and 1964. During each of the five years from 1975 to 1979, more than one-fourth of the automobile accident awards were below $2,000. The median has also steadily decreased. Half of all the plaintiffs’ judgments in automobile accident cases were less than $5,000 in 1975-1979, about half of the median in 1960-1964.

Two explanations might be offered for the growing proportion of

24Because Fig. 20 displays a running average, the peak shown is somewhat lower than 920 trials.
Fig. 19—Long-term trends for injury on property trials
Fig. 20—Long-term trends for automobile accident trials
small judgments in automobile accident cases. First, jurors might be less generous, i.e., the same loss may be awarded a smaller judgment than it would have received in earlier years. Alternatively, juries might continue to award judgments that have the same apparent dollar value without adjusting for inflation, so that the real value of recent awards has lessened. However, if jurors are less generous now than they were 20 years ago, they seem more likely to distinguish between big and small claims. Although the value of medium and small cases has declined, the value of the largest automobile accident judgments has substantially increased. Either explanation, of course, must explain the seeming difference in juror attitudes in automobile cases from their apparent attitudes in cases within other categories in which awards have increased.

An additional explanation might be that different types of cases were reaching trial in the late 1970s, cases that involve lesser injuries or more controversial questions of liability. Chicago area lawyers have suggested several reasons for litigants' failure to settle small automobile accident claims: A growing number of novice lawyers may want to gain experience by trying these small cases; certain defendants who are frequently sued may refuse to settle even small claims; or insurance companies may increasingly refuse to settle "nuisance" claims.

Our current analyses do not provide a basis for either supporting or rejecting explanations for the increasing proportion of small judgments. However, further research will explore whether juries have changed the level of judgments that they award in comparable cases or whether there have been changes in the severity of injuries in automobile accident cases.

Along with this growing number of small judgments, we observed a recent increase in the largest plaintiffs' awards. In the second half of the 1970s, the average automobile accident award increased even more sharply than the value of the 90th percentile. This indicates that the few largest awards were sharply higher in value (increasing even more rapidly than the value of the 90th percentile). Between 1975 and 1979, 41 awards in automobile accident cases exceeded $160,000 (22 percent of all the judgments over that value). Again, further analyses will be needed to examine why these cases brought such large awards.
V. CONCLUSIONS

Preliminary analyses have shown that in some respects civil jury trials and verdicts in Cook County have maintained remarkable stability over the 20 years between 1960 and 1979 and in other respects have changed markedly during that period.

Civil jury trials in Chicago remained primarily a means for resolving disputes resulting from automobile accidents. The size of most plaintiffs' awards also remained stable, when values are adjusted for inflation. The smallest three-fourths of the judgments awarded in the late 1970s were similar in size to the smallest three-fourths of judgments awarded in the early 1960s. The median and 25th percentile actually decreased.

Yet despite the stability of the majority of cases, there has been a change in the mix of non-automobile accident cases and dramatic changes in the outcomes of trials. Jury trials of malpractice, product liability, contracts, and business tort claims have become much more frequent, increasing the demand upon juries to make factual determinations and reach normative judgments for areas of activity that are often beyond the direct experience of most jurors.

The size of large awards, average awards, and the total amount of money awarded in jury trials have all increased dramatically during the 1970s. The proportion of plaintiffs' victories has also increased for almost every type of case. By the end of the 1970s, the monetary stakes of jury trials had increased markedly, and an increasing proportion of those stakes were being decided in complex areas of litigation that were rarely tried in the 1960s.

In this report, we have only documented these trends in jury trials and jury verdicts; we have not attempted to explain them, other than to point out differences for different types of cases. We are continuing to examine how verdicts are related to differences in plaintiffs' injuries, disabilities, and losses; differences in plaintiffs' and defendants' characteristics; and many factual and legal issues that are specific to each case type. In our continuing studies, we shall attempt to determine whether the trends observed in this preliminary investigation occurred because juries react differently to any of these factors or because trials now present different issues. We shall investigate, for example, whether an increasing number of trials involve plaintiffs who suffered catastrophic injuries; whether juries now award larger judgments to plaintiffs who suffer catastrophic injuries; and whether
changes in the frequency or effect of catastrophic injuries explain differences in trends for specific case types.

The trends described in this report provide important information about how the civil jury system functions in a major jurisdiction, but they provide few answers about why the system functions as it does. Instead, the report raises many questions about why observed trends have occurred; about how jury verdicts have been influenced by changes in laws and procedures; and about the nature of trends in other jurisdictions and in more recent years. All of these questions are becoming increasingly important as a result of the increasing stakes in and complexity of civil litigation.
Appendix A

DATA COLLECTION:
SOURCES AND METHODOLOGY

The analyses described in this report are based on reports of jury verdicts taken from the *Cook County Jury Verdict Reporter* (CCJVR), a private, weekly, subscription newsletter for lawyers and insurance companies in the Chicago area. This appendix describes the CCJVR and the methods we used to record information from it.

Since 1959, the CCJVR has described civil cases reaching verdict in the Law Division and Municipal Division of the Cook County Circuit Court, the U.S. Federal District Court for the Northern District of Illinois (Eastern Division), and the former Magistrates, Superior, and County Courts (which were consolidated into the Circuit Court in 1964). These descriptions are derived from information provided to the CCJVR by the lawyers trying the cases. To obtain the information, the CCJVR identifies cases reaching verdict from public records for each court and then mails a questionnaire to each attorney of record.

The CCJVR has been very successful in obtaining case descriptions. CCJVR reporting was most comprehensive for the Law Division of the Circuit Court. For 16 of the 19 years between 1960 and 1978, the number of civil law jury cases reported by the CCJVR was within 10 percent of the total number of cases reaching verdict, as reported by the Administrative Office of the Illinois Courts (see Table A.1).¹ CCJVR reporting of verdicts in the Municipal Division of the Circuit Court was also reasonably comprehensive, usually within 25 percent of the number of trials reported by the Administrative Office.² In 7 percent of the cases, we could not identify the trial court, so our comparisons understate the comprehensiveness of CCJVR reporting.

The CCJVR description of each case includes a heading that identifies the court, parties, lawyers, and expert witnesses; a list of relevant dates; the outcome for each party; offers and demands; and sometimes the amount of the ad damnum, insurance limits, and liens. Following

¹In eight years, the CCJVR reported more cases reaching verdict than did the Administrative Office of the Illinois Courts, either because the latter office failed to include cases or because it did not include some directed verdicts that were reported by the CCJVR.
²We do not have data to make a comparison for federal court cases.
<table>
<thead>
<tr>
<th>Year</th>
<th>Law Division</th>
<th>Municipal Division</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Cases Reported in CCJVR</td>
<td>Applicable Contested Verdicts&lt;sup&gt;a&lt;/sup&gt;</td>
</tr>
<tr>
<td>1960</td>
<td>393</td>
<td>388</td>
</tr>
<tr>
<td>1961</td>
<td>333</td>
<td>388</td>
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<td>1962</td>
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<td>1969</td>
<td>636</td>
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<td>1973</td>
<td>612</td>
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<td>540</td>
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<td>1977</td>
<td>438</td>
<td>412</td>
</tr>
<tr>
<td>1978</td>
<td>550</td>
<td>527</td>
</tr>
</tbody>
</table>

<sup>a</sup>CCJVR lists the number of cases reported by *Cook County Jury Verdict Reporter*; court data were provided by the Administrative Office of the Illinois Courts and the Court Administrator for Cook County (for the Law Division and Municipal Division).

<sup>b</sup>The Circuit and Superior Courts were consolidated on January 1, 1964. For the prior years, we have added the numbers reported for the separate courts.

<sup>c</sup>The Municipal Court was consolidated with the Circuit Court on January 1, 1964. Numbers for 1962 and 1963 are from the separate Municipal Court, and those for January 1, 1964, and after are for the six districts of the Municipal department of the Circuit Court.
this, a brief description (one paragraph to one page) summarizes the legal issues, claimed facts, injuries and other losses by the plaintiffs, the amount of medical and other special damages, and other relevant information. These brief descriptions are packed with information. Figure A.1 reproduces several case reports from the CCJVR.

DATA COLLECTION

Methodology

Our analyses of jury verdicts are intended, in part, to provide valid, statistically based inferences about the universe of all civil cases reaching verdicts. Because of the great heterogeneity of legal and factual issues involved in civil law suits, we developed a "modular" strategy for collecting data. We recorded a common set of general information for all cases, plus specific information about matters that are pertinent to particular types of lawsuits. Thus, the same types of data are recorded for all cases involving the same type of dispute.

For example, all of our automobile accident files contain both a "primary general" data form and a "traffic special" data form. Product liability case files contain a "primary general" form plus a "product liability special" form. Cases involving both types of actions have both "traffic special" and "product liability special" forms as well as the "primary general" form. Data were collected on as many additional forms as were required by the complexity and issues raised in each case.

We developed nine special forms to record data for specific types of legal disputes:

- **Traffic**: Claims for automobile, truck, motorcycle, and bicycle accidents, involving one vehicle, multiple vehicles, and/or pedestrians.
- **Common carrier**: Claims by passengers against common carriers (buses, trains, airplanes, amusement rides, elevators, escalators).
- **Street hazard**: Claims arising from construction or obstructions on roadways or sidewalks, improper design of roadways or sidewalks, failure to maintain roads or sidewalks that are public thoroughfares.
- **Dramshop**: Claims against bars, liquor stores, or hosts for providing intoxicants to persons who then injure claimants.
PLTF. TURNING-LEFT ACROSS ONCOMING-DEFT. SPEEDING, PASSING (1-C)
James Serafin and Violet Nygren vs. James A. Dierking
Filed 6-34-71
Tried Oct. 2-9
VERDICT:
$21,000 Serafin, $10,000 Nygren. Contrib. Serafin? "No"
JUDGE: Archibald J. Carey (County)
PLTF. ATTY: S. Jerome Levy of Lieberman, Levy, Baron & Stone
MEDL: Drs. Milton Costroff, James Gordon
DEFT. ATTY: William Ferstel of Tim J. Harrington's
DEMAND: $25,000
None Serafin

FAC'TS: August 13, 1970, 3:15 P.M., pltf. Serafin, 59, driving his daughter, 23, north on Rte. 83, turned left at Armitage ave., outside Elmhurst, intending to continue north on frontage road, and was hit by southbound deft., 24. Witness in car behind said he was speeding and passing other cars.
Injuries: Serafin, inguinal hernia, uncorrected, fracture one rib, and aggravation of lumbar arthritis, $2,700 med., $3,500 LT for 4 months as a printing inspector at NGD Graphics; Nygren, undisplaced fracture of nose, concussion, cervical whiplash, $3,000 med., $250 LT as a part-time secretary.

DEFT. TURNING-RIGHT FROM CENTER LANE-REAR ENDED BY PLTF'S. (1-B)
Cedric Brown and George Minard (both N) vs. Ruth E. Brouwer
Filed 3-15-73
Tried Sept. 30-Oct. 2
VERDICT:
$2,500 each pltf. JUDGE: Francis P. Butler (6th Music.-South Holland)
PLTF. ATTY: Frank E. Glowacki of Creswell & McLaughlin
MEDL: Dr. Louis Cervera
DEFT. ATTY: William Ferstel of Tim J. Harrington's office.
FAC'TS: Mar. 15, 1971, deft., 23, a surgical nurse, southbound on Euclid ave. at 21st, Chicago Heights, turned right from center of street and was hit in right rear by pltf.'s. Both had whiplashes. $235 and $245 doctor, $2,000 each LT laborers.

DRAGSHOP-NON AUTO-INSIDE-HIT WITH BOTTLE-12 INCH SCAR (10)
Roosevelt Harbin (N) vs. Arthur and Vivian Gist (N), 6/c/a Vivian's Lounge
(405 W. Roosevelt) 70L-15563
Filed 11-6-70
Tried Sept. 30-Oct. 4
VERDICT:
$4,500 JUDGE: Thomas H. Fitzgerald (County)
PLTF. ATTY: William L. Silverman MEDL: Dr. T. Shelley Ashbell (EvCounty Hospital)
DEFT. ATTY: Robert M. Burke of Heineke & Schrader
OFFER: $2,500
FAC'TS: July 19, 1970, pltf., 40, says hit by bottle when intoxicated woman patron tried to hit another man. Defense said pltf. began fight. Injuries: 12-inch scar from cheek to chest, $2,400 County Hosp. lien, $3,825 LT 4 months as mechanic, $1,700 future plastic surgery.

COMMON CARRIER-CAB-COLLISION-OTHER CAR TURNING LEFT ACROSS (4-B)
Jerilyn Anderson (N) vs. Checker Taxi Co. and Spence McDuffy (N)
71L-16488
Filed 11-10-71
Tried Sept. 27-Oct. 4
VERDICT:
$2,500 vs. McDuffy (Dir. Lias.) Directed not guilty cab co.
JUDGE: Harry G. Hershenson (County)
PLTF. ATTY: Harry B. Aron of Reese & Schaffner MEDL: Dr. William E. Cunningham
DEFT. ATTY: Charles E. Tannen of Jemerer & Harris (Checker)
John R. Garofalo of Garbutt & Jacobson (McDuffy)
DEMAND: $5,000
OFFER: $1,500

Fig. A.1—Examples of cases reported by the CCJVR
- **Worker injury:** Claims for injuries arising in a work place or during the claimant's employment, whether or not those claims also raise other types of issues.
- **Product liability:** Claims from injuries arising from defective products.
- **Malpractice:** Claims of professional malpractice, primarily medical malpractice.
- **Injury on property:** Claims for injuries sustained on the defendant's property, including attractive nuisance, negligence, and failure to warn.
- **Miscellaneous:** All other types of claims, including assaults, violations of civil rights, defamation, breach of contract, unfair competition, fraud, and other business disputes.

This modular strategy enabled us to deal with any level of complexity within a single case. Some actions involve complex cross claims, countersuits, third-party actions, and/or other ancillary actions that bring additional parties into the lawsuit or that involve parties in multiple roles, such as defending one claim while making another. We were able to collect information about these complex lawsuits while preserving their complexity by developing additional "modules"—"second-action" and "third-party" general and special forms, paralleling the primary general and special forms.

The second-action forms were used if a lawsuit involved more than one claim of liability, for example, if the plaintiff sued the defendant and the defendant in turn sued the plaintiff in a counterclaim. Information about the plaintiff's claim, the disposition of that claim, and factual and legal issues involved with it were recorded on the primary general and appropriate special forms. Information about the counterclaim by the original defendant was recorded on the second-action general form and second-action special form. The second-action forms are similar to the primary forms but exclude some information about the characteristics of the parties that have already been recorded on the primary forms. Second-action forms would be used, for example, for consolidated actions that involve separate incidents, different legal theories, or other distinct legal or factual matters; counterclaims; cross complaints in which the defendant sues another defendant for his/her own injuries; or third-party actions in which a defendant sues a person not a party to the initial lawsuit for the original defendant's own injuries.

Third-party action forms were used in cases in which a defendant sued another defendant (a cross claim) or a person not a party to the original action. However, in these actions, the defendant who raised the third-party claim was not attempting to recover for his/her own
injuries, but rather was seeking indemnification in the event the defendant was found liable to the original plaintiffs. The third-party general form is substantially different from either the primary general or the second-action general and captures information about the indemnification issues. Two types of third-party special forms were used to permit simple data collection where a third-party claim involved relatively few additional facts, or more elaborate data collection where the third-party claim raised new issues.

Any lawsuit can involve multiple ancillary actions. For example, two plaintiffs might sue two defendants in the primary action, one plaintiff might sue another plaintiff in a consolidated action, one defendant might sue one plaintiff in a counterclaim, and one defendant might sue another defendant for his own injuries in a cross claim. Such a lawsuit would require completion of the primary general form and three second-action forms for (1) the consolidated action between plaintiffs, (2) the cross complaint, and (3) the counterclaim. In addition, the lawsuit could involve third-party actions in which one defendant sued another defendant for indemnification and a defendant sued a new party not involved in the initial action for indemnification. This case involving five parties would require completion of six general forms and the appropriate special forms associated with each general form, as shown in Table A.2. Fortunately, no case involved the complexity of this illustrative case, but our modular forms would have enabled us to collect data for lawsuits of any level of complexity.³

In all, this modular data collection strategy required the preparation and use of 50 different data collection forms, listed in Appendix C.⁴ Each case required at least two forms, the primary general and one special action form (most of the Cook County cases required only two forms). The cases that required more than two forms were those involving multiple theories of legal liability or one or more of the ancillary actions coded on the second-action and third-party forms.

**Types of Data**

The general forms (primary, second-action, and third-party) were used to obtain information that was common to all cases, including

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³We also developed a subrogation/indemnification form to be used in cases in which a claimant had already recovered or settled with one party and that party then sued the defendant to obtain indemnification or to recover in subrogation (as if the suing party him/herself had sustained the initial injury). Rather than using a primary general and a third-party general form for this case, we would complete a primary general form as if the injured party were the actual plaintiff; we would then use the subrogation/indemnification form to indicate that the actual plaintiff was not the party that was injured.

⁴In fact, all but three of these forms were used in collecting the Cook County data.
Table A.2

**FORMS REQUIRED FOR AN ILLUSTRATIVE COMPLEX CASE**

<table>
<thead>
<tr>
<th>Action</th>
<th>Description</th>
<th>Form</th>
</tr>
</thead>
<tbody>
<tr>
<td>Primary action</td>
<td>P1, P2 v. D1, D2</td>
<td>Primary general</td>
</tr>
<tr>
<td>Consolidated action</td>
<td>P2 v. P1</td>
<td>Second-action general (first)</td>
</tr>
<tr>
<td>Counterclaim</td>
<td>D1 v. P2</td>
<td>Second-action general (second)</td>
</tr>
<tr>
<td>Cross complaint — cross complainant’s own injuries</td>
<td>D1 v. D2</td>
<td>Second-action general (third)</td>
</tr>
<tr>
<td>Third-party action — third-party plaintiff’s own injuries</td>
<td>D1 v. D3 (new)</td>
<td>Second-action general (fourth)</td>
</tr>
<tr>
<td>Cross complaint</td>
<td>D1 v. D2</td>
<td>Third-party general</td>
</tr>
<tr>
<td>Third party — indemnification</td>
<td>D1 v. D4 (new)</td>
<td>Third-party general</td>
</tr>
</tbody>
</table>

1. Matters of timing (when the incident occurred, when the suit was filed, beginning and end of trial, and so forth).
2. The number of plaintiffs and defendants involved in the action (and for the second-action and third-party forms, the correspondence between the party designation on that form and the designation on the original, primary general form).
3. The disposition of the action (which parties were involved in defaults, directed verdicts, partial settlements, compensatory jury awards, or punitive damage jury awards, and whether liability or the amount of damages was stipulated).
4. Whether any defendant’s behavior was found to be intentional or willful and whether any plaintiff was found to be contributorily negligent.
5. The amounts of defendants’ insurance policy limits, if given, and the amounts of defendants’ offers, plaintiffs’ demands, plaintiffs’ requests to juries, and the prayer or ad damnum.
6. The number of witnesses for each party.
7. The amount of special damages and claims for future expenses in various categories.
8. The court in which the action was tried.
9. Any statutory claims involved in the action.

The primary general and second-action forms were used to record information about the nature of injuries and disabilities claimed by liti-
gants, and all three general forms contained information about the characteristics of the plaintiffs and defendants in the actions.

Special forms were used to record factual claims and legal issues raised by the parties involved in a particular type of case. For example, the traffic special form collected information about the type, use, driver, and owner of each vehicle involved in the accident and about the location and action of pedestrians, riders, and drivers. The product liability form provided information about the kind of accident that injured the claimant; the type of defect that was responsible for the accident; the type of product involved; the relationship of each plaintiff and defendant to the product's use, manufacture, and sale; issues involving product warranties and standards appropriate to the product; and the plaintiff's care and knowledge about potential risks in using the product.

Most of the information was recorded separately for each plaintiff and defendant involved in an action. Thus, information about the nature of injuries, the amount of claimed specials, and characteristics and disposition of the action was obtained separately for each plaintiff, except when the CCJVR did not report that information separately. Similarly, information about the defendant's characteristics, the extent of the defendant's liability, and the particular involvement of the defendant in the incident was recorded separately for each defendant. Some information that applied to all parties, such as matters of timing and court jurisdiction, was not recorded separately for each party.

Because the number of parties can vary from case to case, we prepared two versions of the primary general and special forms: One version permitted data collection for up to three plaintiffs and three defendants; the second version was identical, except that it permitted data collection for up to six plaintiffs and six defendants.5

Procedure

Of the more than 19,000 civil cases that reached juries in state and federal courts in Chicago between 1959 and 1979, about 66 percent

5Occasionally, the CCJVR provided no specific information about separate parties in an action. For example, plaintiffs might sue the city of Chicago and seven police officers for an alleged violation of civil rights. The description of the case might not present separate information about each of those seven police officers and their role in the claimed incident, or unique information about the disposition of the case (e.g., all seven were acquitted). Similarly, a wife and three minor children might sue in a wrongful death action for the death of their husband/father without providing specific information about the individual children. We developed special coding conventions that permitted us to record all of the information about these identical parties as if they were
were lawsuits arising out of automobile accidents. To keep the data
collection effort within reasonable time and budget limits, we record-
ed information on only one of every four automobile accident cases.
For the subsequent analysis, we then multiplied the collected data by
four to reconstruct the original sample population. We used the same
procedure for a second large category of cases, common carrier claims.
A random-number table was used to select the sample from the vari-
ous CCJVR categories for cases involving any type of automobile,
truck, or pedestrian accident and for those involving a common carrier
claim. We recorded 100 percent of all cases in the other categories.

The data collection forms were completed by 13 UCLA second-year
law students. Each student prepared several legal memoranda deal-
ing with specific issues involved in litigation in Illinois and then cod-
ed cases that were related to the areas of his or her research. The
coders received training covering the various recording forms and the
policies for interpreting the information obtained from case descrip-
tions. The data collection was supervised by both of the authors of this
report, who answered questions about cases and coding conventions
and provided written decisions about coding policies. One or both of
the authors reviewed each case involving third-party, cross
complainants, or other ancillary actions and instructed the student
coders about the appropriate forms to use for those cases.

A recoding procedure was routinely used to evaluate the accuracy of
the coders, to resolve differences among them, and to develop consen-
sus in the coding. The procedure consisted of reassigning a sample of
cases coded by each student to another student or to one of the authors
for independent coding. The initial coder then compared both versions
of the work, listed the disagreements, and discussed those disagree-
ments with the second coder to reach the proper coding decision. The
original coding forms were changed to reflect any corrections, and the
numbers of errors were tabulated to reflect each student's accuracy.
Disagreements that could not be resolved by the students were re-
solved by the authors.

\[\text{one plaintiff or one defendant, while retaining information that we were in fact obtain-
ning for multiple parties. These "collapsing conventions" greatly simplified data collect-
ion.}\]

\[\text{Both authors are lawyers. One is a law professor; the other has designed and super-
vised numerous data collection efforts.}\]
Appendix B

PLANNED ICJ ANALYSES OF THE CIVIL JURY TRIAL SYSTEM

1. Trends in Civil Jury Verdicts: Cook County. Description of the number of cases, the likelihood of liability, and the size of awards for all civil jury verdicts and for 11 specific case types. (The present report.)

2. An Empirical Study of Civil Jury Verdicts. Review of empirical research on civil law and the civil justice system. A theoretical and practical rationale of the Cook County jury verdict study. Description of the methodology of the study and some early results.

3. Injuries, Special Damages, Offers, and Demands for Cook County Verdicts. Description of trends for injuries, special and future damages, offers, and demands for Cook County cases reaching jury verdicts. Relationships among these and between each and verdicts. Tests of effects of legislation and theories of offers and demands.

4. The Changing Workload of Chicago Courts. Changes over time in the types and complexity of civil jury trials, the number of witnesses, number of theories, and ancillary actions. Lengths of time from incident to filing to trial and length of trial. Separate analyses for federal and superior and inferior jurisdiction state courts.

5. Large-Verdict and Small-Verdict Cases. Description of cases with verdicts over $500,000 (in 1979 dollars), including types of injuries, parties, and nature of accident claims. Analysis of cases producing small verdicts (under $3,000 in 1979 dollars), including types of cases, injuries and special damages, and offers and demands.

6. Punitive Damages in Chicago Courts. Description of cases in which punitive damages were requested and in which such damages were awarded.


8. Sympathetic Plaintiffs and Target Defendants: How the Characteristics of Parties Affect Civil Jury Verdicts. Descriptive analysis of the effects of parties’ characteristics upon jury verdicts. Examination of jury “prejudices” concerning status of plaintiffs and defendants, including corporate status, trustee relationships, etc.

9. Explanatory Models of Jury Verdicts. Multivariate models of Cook County verdicts in terms of injuries, damages, party characteristics, legal issues, type of case, year, and court. Models will account
for observed verdicts and also provide a base for analyses of changes resulting from new legal doctrine.

10. Sources of Uncertainty in Civil Litigation—Injuries, Legal Standards. Analysis of the extent to which uncertainty in litigants' expectations about damages or liability leads to litigation rather than settlement. Examination of variance in settlement offers by separately holding constant injuries and legal standards.


12. Injuries, Special Damages, Offers, and Demands for San Francisco County Verdicts. Similar to Study 3.


14. Comparison of Jury Verdicts in Chicago and San Francisco. Comparison of trends, outcomes, types of cases, timing, and injuries in the two jurisdictions.

15. Does Jury Size Affect Trial Outcomes? Comparison of verdicts for twelve- and six-person juries in Federal District Court, Cook County and San Francisco County.


17. Unequal Alternatives: A Comparison of Worker Compensation and Civil Litigation in Chicago and San Francisco. Examination of the levels of compensation under workers' compensation and civil jury trials.

18. The Effects of the Adoption of Strict Liability for Product Defects. A multi-jurisdiction study (Cook County and San Francisco) that looks at the "natural experiment," considering changes at different times in the two jurisdictions; includes a closer look at developments in product liability in the two jurisdictions during the 1960s and 1970s.

19. The Growth of Contract and Business Litigation. Analysis of the increasing importance of litigation of business and contracts cases in Chicago and possibly San Francisco. Examination of types of cases and parties involved in civil jury trials, and of the new types of cases being tried. Examination of the outcomes of trials, including awards for treble and punitive damages.

20. Malpractice Crises. Examination of the rapid development of malpractice claims in the 1960s, the malpractice crises of the 1970s, effects of legislative reform, and the growth of verdicts.
# Appendix C

## DATA COLLECTION FORMS

### Primary Forms

<table>
<thead>
<tr>
<th>General</th>
<th>Street hazard</th>
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</thead>
<tbody>
<tr>
<td>Special forms</td>
<td>Dramshop</td>
</tr>
<tr>
<td>Traffic</td>
<td>Worker injury</td>
</tr>
<tr>
<td>Common carrier</td>
<td>Product liability</td>
</tr>
<tr>
<td>Street hazard</td>
<td>Malpractice</td>
</tr>
<tr>
<td>Dramshop</td>
<td>Injury on property</td>
</tr>
<tr>
<td>Worker injury</td>
<td>Miscellaneous</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
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<tbody>
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<td>Special forms</td>
<td>Traffic</td>
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<td>Malpractice</td>
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<td>Malpractice</td>
<td>Injury on property</td>
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<tr>
<td>Injury on property</td>
<td>Miscellaneous</td>
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### Third-Party Forms

<table>
<thead>
<tr>
<th>General</th>
<th>Long Form</th>
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<tbody>
<tr>
<td>Special forms</td>
<td>Traffic</td>
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<tr>
<td>Traffic</td>
<td>Common carrier</td>
</tr>
<tr>
<td>Common carrier</td>
<td>Street hazard</td>
</tr>
<tr>
<td>Street hazard</td>
<td>Dramshop</td>
</tr>
<tr>
<td>Dramshop</td>
<td>Worker injury</td>
</tr>
<tr>
<td>Worker injury</td>
<td>Product liability</td>
</tr>
<tr>
<td>Product liability</td>
<td>Malpractice</td>
</tr>
<tr>
<td>Malpractice</td>
<td>Injury on property</td>
</tr>
<tr>
<td>Injury on property</td>
<td>Miscellaneous</td>
</tr>
</tbody>
</table>

### Second-Action Forms

<table>
<thead>
<tr>
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<th>Pure Subrogation Form</th>
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<td>Special forms</td>
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<td>Traffic</td>
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<td>Common carrier</td>
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