Comparative Justice

Civil Jury Verdicts in San Francisco and Cook Counties, 1959-1980

Michael G. Shanley, Mark A. Peterson
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Civil Jury Verdicts in San Francisco and Cook Counties, 1959-1980

Michael G. Shanley, Mark A. Peterson

1983
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Foreword

Jury verdicts are among the most hallowed symbols of the American approach to civil justice. They are also extremely influential, both in shaping the substance of the law and in leveraging the settlement behavior of the vast majority of civil litigants who, in the light of their perceptions of what would occur if the case were to be heard by a jury, elect to drop or settle the matter at some stage short of verdict. Further, they are the most easily acquired of all data on civil justice outcomes. It seems to follow that these data would long since have been carefully compiled and analyzed.

To the contrary, comprehensive reporting of civil jury verdicts is, in fact, done only within the confines of some metropolitan areas. It reflects no attempt to standardize the reporting format across areas, and, before the pioneering work of Rand’s Institute for Civil Justice, the results accumulated over the years had never been coded or submitted to computer-aided analysis in an attempt to discern trends or compare results in different areas. Thus, although nearly everyone agrees that twentieth century legal practice has put more and more power in the hands of juries, as opposed to trial judges, the nation’s informational cupboard has been nearly bare of hard facts about how juries have actually behaved during the eventful decades just past.

In 1982, the Institute published its first contribution to the filling of this void—a report and analysis of jury verdicts in the state and federal courts operating in Cook County, Illinois (i.e., Chicago and its immediate environs) during the two decades ending in 1979. This second report in our jury verdict series not only extends coverage to another major metropolis—the City/County of San Francisco—but also presents our first comparative analysis of jury actions in one area and those in another. For the first time in the history of civil justice research, this work makes it possible for both scholars and policymakers to review and compare two decades of civil jury activity in comparable cases in the federal and state courts in two of the country’s most active jurisdictions.
The particular jurisdictions compared offer myriad opportunities to test tenets of conventional wisdom. Do heartland jurors really behave differently in similar cases from jurors in California? Has one group been systematically more generous? Has either systematically altered the balance between verdicts for the plaintiff and those for the defense? Do the courts in Northern California—the birthplace of such doctrines as strict product liability and compensability of loss of consortium—reflect this frontier thinking in higher awards in product liability or other kinds of cases? Did an explosion in average jury awards really fuel the medical malpractice "crisis" in both places during the mid-1970s? Does the revealed experience of California, which adopted a rule of comparative negligence in 1975, presage the effects likely to be experienced in Cook County, which adopted the same rule in 1981?

The comparisons made possible by the two studies also begin to reveal whether some of the major findings of the Cook County study may reflect national trends. Does the San Francisco experience confirm, for example, that, despite the common impression of increased pressure on the civil docket, the annual rate of civil trials has decreased significantly over the last 20 years? Is there confirming evidence that median awards have fallen whereas average verdicts have been driven up sharply because of the influence of a few large awards? Do small auto cases continue to dominate the docket, or has there really been a significant national rush of civil rights and other matters that have begun to reduce that dominance? Has the increased prominence of punitive damage claims actually translated into substantial effects upon the size of verdicts?

Once again, our capacity to shed light on all of these matters has been greatly facilitated by the cooperation of the publisher of a regular review of verdicts, in this case the journal *Jury Verdicts Weekly*, which provided summaries of the results of more than 5,000 San Francisco area jury trials held over a 21-year period ending in 1980. The techniques applied to code and analyze the data are the same as those used on the Cook County material, except that California's adoption of the doctrine of comparative negligence permitted the coding of additional data about the apportionment of fault among the parties. Taken as a whole, this is the largest base of comparable data on jury behavior that has yet been compiled. We at the Institute are excited both by the rich lode of policy-relevant information that has already been extracted and by the even richer potential for further revelations as the data are subjected to more refined analysis.

Followers of the work of the Institute can expect to see many more studies drawing on this data base, as well as concerted attempts to
extend it to other jurisdictions. The building of living data bases—bodies of data that can be regularly updated and studied to discern current trends—is among the highest of our priorities. The jury verdict information is an excellent case in point. The reader may be certain that mining and maintaining this unparalleled research resource is and will remain among the long-term efforts to which we are most committed.

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

California courts have a reputation for being generous to persons who bring lawsuits for their injuries and losses. Judges in that state have repeatedly developed legal doctrine extending plaintiffs' rights to recovery, and California juries seem to give big awards. This report examines jury trials in the City and County of San Francisco and compares the outcomes of those trials with jury decisions in Cook County, Illinois (Chicago), another major jurisdiction that we studied previously (Peterson and Priest, 1982). The report also provides initial information about how jury trials in San Francisco were affected by California's change to a comparative negligence rule in 1975.

Changes in the types of cases tried to juries and differences between the two jurisdictions limit the conclusions that we can draw from comparisons until we have conducted further, planned analyses. As a result, this report describes trends in jury trials and verdicts and raises hypotheses about our findings. We have not usually 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 (see, e.g., Peterson, 1983; Chin and Peterson, 1983). 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 more than 95 percent of filed lawsuits are either settled or dropped without reaching trial. Although cases tried to 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.
METHODOLOGY

As with our study in Cook County, we collected data about jury trials from a jury verdict reporter, *Jury Verdicts Weekly*, sold by subscription to lawyers and insurance companies. We obtained detailed information about the parties, their claims, settlement offers and demands, the timing and types of legal actions, and the outcomes of 5,300 trials in the San Francisco County Superior Court and the U.S. District Court for the Northern District of California. These data cover about 85 percent of all jury trials in those courts between 1959 and 1980. Our analyses of Cook County trials were based on 6,000 cases tried in the Law Division of the Cook County Circuit Court and the U.S. District Court for the Northern District of Illinois. The data were coded into computer-readable form by law students working under the direction of one of the authors of the present report and Professor George Priest of the Yale Law School.

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

- Automobile accidents.
- Common carriers' liability for injuries to passengers.
- Property owners' liability to tenants, guests, and trespassers.
- 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.

TYPES OF TRIALS

There are far fewer trials in San Francisco courts (usually between 200 to 300 per year) than in Cook County—well under one-half as many. But there were similar trends in recent years toward fewer trials in both jurisdictions. Also, in both jurisdictions there was a

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1This is a sample of one-fourth of all automobile and common carrier trials and 100 percent of all other trials reported by the Cook County *Jury Verdict Reporter*. The comparison does not include cases tried in the Municipal Division of the Cook County Circuit Court, the limited jurisdiction state court, since we had no information for the comparable court in San Francisco.
growing concentration of trials for several types of cases (malpractice, contracts/business, product liability, intentional tort, worker injury, and miscellaneous) that we identify as high-stakes case types—cases that typically involve greater personal injury or economic losses and result in larger awards (Peterson, 1983). All high-stakes types other than worker injury trials increased in frequency during the 1970s, whereas all low-stakes case types (auto accident, injury on property, common carrier, and street hazard) decreased in number. Sixty percent of all jury trials in San Francisco courts during the 1970s involved high-stakes case types, up from 35 percent in the 1960s. The Cook County trend was similar, but throughout the period a lower proportion of trials in the jurisdiction involved high-stakes case types (from 19 percent in the 1960s to 32 percent in the 1970s).

The types of cases heard by juries in the two jurisdictions have become less similar. During all the years we studied, at least six out of ten jury trials in Cook County involved automobile accidents; by the late 1970s less than 40 percent of jury trials in San Francisco involved auto accidents. Trials of intentional tort—particularly civil rights claims—were the fastest growing portion of the San Francisco caseload. By the late 1970s one in every eight trials involved a claimed intentional tort. Jury trials of intentional torts did not increase appreciably in Cook County; they accounted for between 4 and 6 percent of trials throughout the entire period.

Trials of workplace injury claims were also much more frequent in San Francisco—the second most frequent type of civil case, with 15 percent of trials. In comparison, by the late 1970s worker injury claims were raised in fewer than 7 percent of Cook County trials. Our continuing research is exploring this difference, examining, for example, whether there may be more trials of workplace injuries in San Francisco because California did not frequently adjust workers compensation benefits for inflation.

In both jurisdictions, trials involving contract and business disputes became increasingly important, accounting for 6 percent of all trials in Cook County and 11 percent of all trials in San Francisco during the late 1970s. Such trials were rare during the early 1960s, when they accounted for less than 1 percent of all trials in Cook County and less than 3 percent in San Francisco.

COMPARISON OF JURY VERDICTS

We discovered that despite the special reputation of California's courts, most of our earlier findings about Cook County courts also apply to jury trials in San Francisco:
In almost half of all trials, plaintiffs win no money (43 percent of trials where liability is contested).

Most trials involved small or moderate economic stakes: 25 percent of awards in San Francisco are less than $8,000, half are under $21,000.

After adjusting for inflation, the size of most awards by San Francisco jurors was the same in the late 1970s as in the early 1960s. Awards increased in the early 1970s but then fell in the second half of that decade.

Few verdicts involve extremely large sums of money, but million dollar awards have become more frequent in both San Francisco and Cook Counties. By the late 1970s almost half of all money awarded by San Francisco juries and 40 percent by Cook County jurors went to the 2 percent of plaintiffs who received million dollar awards.

The average award doubled in the 1970s in both jurisdictions. But the only reason for this increase in San Francisco was the growing frequency and size of awards near or over $1 million.

Plaintiffs in San Francisco jury trials won more often than those in Cook County—59 percent compared with 52 percent. And San Francisco plaintiffs received larger awards—both the typical (median) and average awards were about 40 percent greater than in Cook County. The median award in San Francisco was $21,000 compared with $15,000 in Cook County; the average was $84,000 compared to $61,000 (all dollar amounts are adjusted for inflation and shown in 1970 dollars).

These differences in trial outcomes might reflect a different mix of cases in the two jurisdictions, i.e., perhaps cases reaching juries in San Francisco involved stronger issues of liability and more serious losses. We found, for example, that a greater proportion of trials in San Francisco involved high-stakes types of cases that often produce large awards. These high-stakes cases more often involved serious injuries and also resulted in larger awards for the same injury (Peterson, 1983).

When we look at each specific type of case, awards were not always greater in San Francisco. In fact awards were larger in Cook County than in San Francisco for three high-stakes case types—10 to 20 percent greater for worker injury and contract and business disputes and over twice as large for product liability cases.

While the greater frequency of high-stakes cases in San Francisco can at least in part explain the larger awards in that jurisdiction, it
does not explain why plaintiffs won a larger proportion of cases in San Francisco. In both jurisdictions, plaintiffs' chances of winning varied markedly for different types of cases, ranging from victories in two out of every three worker injury trials to only one of three malpractice trials. But for all types of cases (other than street hazards) plaintiffs in San Francisco won a larger proportion of trials. The difference was the greatest in product liability trials; San Francisco plaintiffs won 54 percent of those trials; Cook County plaintiffs won only 40 percent.

Similarly, California's adoption in 1975 of the comparative negligence rule cannot explain differences in the proportion of trials that plaintiffs won. Plaintiffs won more often in San Francisco than in Cook County both before and after that legal change in California (Illinois adopted comparative negligence in 1981, after the period studied here).

We are continuing to explore why San Francisco plaintiffs fared better in jury trials as we compare how different legal rules, plaintiff losses, liability issues, and the identity of parties influenced jury verdicts in each jurisdiction. At present, we can neither conclude nor rule out the possibility that in similar cases San Francisco juries were more generous to plaintiffs than were Cook County juries.

TRENDS IN LIABILITY

Trends in liability differed between the two jurisdictions. Plaintiffs in Cook County generally fared better in recent years than they had previously—the proportion of plaintiff victories increased for eight types of cases and remained constant for the other three. The trends were mixed in San Francisco. Plaintiffs won an increasing proportion of trials for six types of cases, but changes for two types—automobile accidents and injuries on property—were greatest after 1975, probably reflecting the impact of comparative negligence. On the other hand, San Francisco plaintiffs won a smaller proportion of trials for four other types of cases.

Changes for several specific types of cases were strikingly different between the two jurisdictions. The greatest change in each occurred for contract and business disputes, but the changes were in opposite directions. Cook County plaintiffs improved their proportion of wins by 13 points, from 47 percent in the early 1960s to 60 percent in the late 1970s. In contrast, San Francisco plaintiffs lost 18 points, from 74 percent to 56 percent. Cook County plaintiffs were increasingly successful in product liability trials (from 29 percent to 40 percent), whereas their counterparts in San Francisco became less successful
(from 57 percent to 52 percent). But in contrast, San Francisco plaintiffs fared comparatively better in automobile accident cases. The proportion of wins by Cook County plaintiffs in automobile accident trials remained constant, near 50 percent during the 1960s and 1970s, while the proportion of plaintiff wins increased by 5 percent in San Francisco between 1960 and 1975 and by another 10 percent after comparative negligence was adopted in 1975. These different trends might reflect differences in legal changes in the two states, differences in how jurors in the two cities changed the way they decided liability issues, or differences in the way lawyers and litigators reached decisions about whether to settle or try cases.

TRENDS IN AWARDS

While trends in liability differed, trends in the size of awards were generally similar. The size of large awards increased greatly even after we adjusted for inflation, but the sizes of small and medium awards changed little in either jurisdiction.

The size of the largest awards (the top 10 percent) more than doubled in each jurisdiction. This increase occurred earlier in San Francisco, between the early 1960s and the early 1970s. The value of the 90th percentile then remained constant in San Francisco during the late 1970s. The increase in Cook County began later in the 1960s, five years after the increase began in San Francisco, but the value of the largest awards then continued to increase throughout the 1970s.

The average award doubled in each jurisdiction, but again the increase began about five years earlier in San Francisco. In fact, the average increased primarily because of the sharp increases in the amounts of the largest awards. Only big cases increased in value—there was no lasting change in the size of medium or small awards in either jurisdiction after adjusting for inflation. The median remained constant during the entire 20-year study period in Cook County. In San Francisco, the median increased 40 percent from the early 1960s to the mid-1970s (from $19,000 to $27,000), but then fell to its original value by the end of the 1970s.

One trend was identical in San Francisco and Cook Counties—million dollar cases continued to become more frequent and larger, even after we adjusted for inflation. Million dollar awards remained rare, occurring in only 1 or 2 percent of cases that plaintiffs won even in the late 1970s. But their increased frequency and size means that million dollar verdicts account for a larger proportion of all money won by plaintiffs.
Between 1975 and 1979, 45 percent of all money won by San Francisco plaintiffs was awarded in 18 cases with verdicts over a million dollars. During the same period, million dollar awards accounted for 40 percent of all money awarded in Cook County. In contrast, during the 1960s million dollar awards (i.e., cases that had an adjusted value of one million dollars but that might have been for an amount of $300,000 or $400,000 at the time) represented well under 10 percent of all money awarded in both jurisdictions.

These enormous awards had a great impact on the average and on defendants’ exposure. The average award in San Francisco doubled during the first half of the decade and remained constant in the late 1970s. This happened only because awards that were near or greater than a million dollars increased in size. Medium (50th percentile), large (75th percentile), and very large awards (90th percentile) remained at a constant value during the early 1970s, and medium and large awards actually decreased in the last half of that decade. Even while the value of most cases was moderating, the increasing size of these biggest awards increased the risks of litigation for defendants and the potential value of awards for seriously injured plaintiffs who were willing to take that risk.

**THE SIZE OF AWARDS FOR DIFFERENT CASE TYPES**

Within each jurisdiction the size of awards varied greatly among different types of cases. The range was wider in Cook County: Product liability awards in Cook County were the largest of any case type in either jurisdiction—half were over $110,000—and automobile accident awards in Cook County were the smallest—half were under $11,000.

In San Francisco malpractice trials produced the largest awards: Half were over $75,000 and the average was $280,000. The average malpractice award rose steadily, increasing over 500 percent from the early 1960s to the late 1970s. Again, this increase occurred only because a few trials produced increasingly large awards. The size of the typical (median) malpractice award fell steadily during the 1970s.

In our earlier analysis of jury trials in Cook County, we found such an extraordinary increase in the size of malpractice awards during the early 1970s that it could reasonably be characterized as a malpractice crisis. It is not so clear that trends in San Francisco can be characterized in the same way. Although the average (and extraordinarily large) awards increased markedly for malpractice cases in
the early 1970s, this trend occurred before and continued after the early 1970s. Both the number of trials and the proportion of cases that plaintiffs won reached peaks during the early 1970s, so that total awards doubled from the previous five-year period. But these trends can also be found for other case types in San Francisco during this and other periods in the 1960s and 1970s. If jury trials for malpractice cases produced a crisis in the early 1970s, then other areas of litigation seem also to have undergone crises.

In fact, trends in awards for most other high-stakes case types were similar to those for malpractice—the averages increased markedly because of the increasing size of large awards, but the value of the median award increased little. This is seen most dramatically for intentional tort awards. The median for intentional torts remained near $20,000 during the entire 20 years, and the average remained between $60,000 and $70,000 until the late 1970s. Then a few very large awards raised the average to over $300,000 during the late 1970s and raised the average to $180,000 over the entire 20-year period. These few extraordinary awards, together with the growing number of intentional tort trials, increased total awards by 700 percent between the early 1970s and the late 1970s. The few very large awards are not typical of most intentional tort cases, but they indicate the exposure to extraordinarily large awards that exists in those cases.

While the size of product liability awards increased sharply in both jurisdictions, throughout the period that we studied the outcomes for product liability cases differed so sharply between Cook County and San Francisco as to suggest that different kinds of cases were being tried in each jurisdiction. Product liability cases in Cook County were high risk for both sides: Plaintiffs usually lost, but when they won, awards were generally large. Trials in San Francisco seemed to involve a lower risk to both parties: Plaintiffs won over half of the trials, but awards were much more moderate—less than half the size of those in Cook County. In our continuing work we will explore how product liability cases differ between the two jurisdictions—differences in outcomes may reflect differences in cases reaching juries because parties make different decisions about settling or trying cases—or how differences in law influence outcomes—California plaintiffs might be more successful because, unlike plaintiffs in Illinois, they do not have to prove that products were unreasonably dangerous.

The biggest difference in trends between the two jurisdictions occurred for worker injury trials. While trends in Cook County were becoming increasingly favorable to injured workers, plaintiffs suing for on-the-job injuries did not fare nearly as well in San Francisco in
recent years. After adjusting for inflation, the average worker injury award in San Francisco increased by only 37 percent between the early 1960s and the late 1970s, less than for any other type of case in San Francisco. In Cook County the average worker injury award increased by over 200 percent. The median award increased by one-fourth in San Francisco, but by over 200 percent in Cook County. And trends for liability were also in opposite directions in the two jurisdictions. Plaintiffs won fewer cases in San Francisco, whereas those in Cook County were increasingly successful.

THE EFFECTS OF COMPARATIVE NEGLIGENCE

The study describes changes in San Francisco jury verdicts after California adopted the comparative negligence rule in 1975, but without further analyses we can draw only limited conclusions. Some types of lawsuits more frequently involve issues of comparative negligence (i.e., injury on property, worker injury, product liability, automobile accident, and common carrier). The number of jury trials for each type of case that frequently involves issues of comparative negligence declined after 1975, but the number of trials increased or remained constant for other types of cases. This suggests that comparative negligence might have made it easier for parties to compromise and settle claims. But it also means that our comparison of trial outcomes under contributory and comparative negligence can provide only preliminary information about the effects of the change on jury decisions.

Observed differences in trial outcomes could reflect either changes in the way jurors decide cases under the new legal doctrine or else changes in the types of cases reaching juries. Our present analyses suggest that the change to comparative negligence had only a modest impact on trial outcomes, perhaps because jurors were already applying the principle of comparative negligence before the law changed. Only in trials involving automobile or common carrier accidents did we see the expected change of increasing liability but smaller awards.

The study suggests that the form of comparative negligence adopted by a jurisdiction might make little difference. California (and Illinois in 1981, after the period studied here) adopted pure comparative negligence: Plaintiffs can recover even if they are primarily responsible for their own injuries. Few trials would have changed if California had adopted rules used in other states denying recovery to plaintiffs who were 50 percent or more than 50 percent responsible for their injuries. San Francisco jurors found few plaintiffs to be more than half responsible for their own injuries.
PLANS FOR THE FUTURE

Our continuing research will attempt to explain differences in outcomes between the two jurisdictions and changes in each over time. We have already examined how plaintiff injuries (Peterson, 1983) and the characteristics of plaintiffs and defendants influence jury decisions in Cook County (Chin and Peterson, 1983). We are comparing our findings in Cook County with similar analyses for San Francisco to better understand how trials and jury decisions differ between the two jurisdictions. We are also examining liability issues raised in trials in each jurisdiction and jury decisions about those issues.

These analyses provide an analytic background for identifying how jury decisions have been changed by changes in law, such as the change to comparative negligence in each jurisdiction and the effect of different standards of liability in product liability, work injury, and common carrier cases. We can also get better insights about how the different laws in Illinois and California determine the kinds of cases reaching jury trial and affect jury decisions in those cases: Does Illinois' structural work act change the kinds of defendants sued by injured workers and their chances for recovery? Do differences in legislative updates to workers compensation benefits influence the type of trials and opportunities for recovery in each state?

Through these studies of jury trials we will attempt to increase our understanding of how this critical institution in our civil justice system functions and how well it serves our expectations about justice.
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Contents

FOREWORD ........................................ iii
EXECUTIVE SUMMARY .............................. vii
ACKNOWLEDGMENTS ............................... xvii
FIGURES .......................................... xxii
TABLES ........................................... xxiii

Section
I. INTRODUCTION ..................................... 1

II. OVERVIEW OF CIVIL TRIALS ................... 5
   The Mix of Civil Jury Trials ................... 5
   Liability Verdicts ............................. 10
   The Size of Plaintiff Awards ................ 11
   Total Money Awarded ......................... 16

III. TRENDS IN CIVIL JURY TRIALS AND VERDICTS 19
    The Mix of Civil Jury Trials ............... 19
    Liability Verdicts ........................... 23
    Size of Awards ............................... 26
    Awards for Specific Case Types ........... 30
    Total Money Awarded ....................... 33

IV. EFFECTS OF COMPARATIVE NEGLIGENCE .......... 37

V. TRENDS FOR SPECIFIC CASE TYPES ............ 50
   Malpractice Cases ............................ 50
   Product Liability ............................ 54
   Contracts/Business Cases ................... 56
   Intentional Tort Cases ...................... 60
   Worker Injury Cases ......................... 63
   Automobile Accident Cases .................. 66
   Common Carrier Cases ....................... 69
   Injury on Property Cases .................... 71
   Street Hazard Cases ......................... 73
VI. CONCLUSIONS .................................................. 75

Appendix
A. DATA COLLECTION: SOURCES AND METHODOLOGY ........................................... 79
B. DATA COLLECTION FORMS ......................................................... 89
BIBLIOGRAPHY ................................................................. 91
Figures

2. Distribution of Verdicts in San Francisco and Cook Counties, 1960-1979 ........................................ 12
3. Median Awards for Specific Case Types, 1960-1979 ..... 15
4. Expected Awards for Specific Case Types, 1960-1979 ... 16
5. Total Number of Civil Jury Trials, 1960-1979 ............... 20
8. Awards, Long-Term Trends, 1960-1979 ....................... 28
10. Average Awards, Long-Term Trends, 1960-1979 .......... 30
11. Total Awards, 1960-1979 .................................. 34
13. Comparative Negligence Increased Awards by at Most 20 Percent .................................................. 39
14. Comparative Negligence Decreased Awards by at Most 10 Percent .................................................. 40
15. Comparison of Trends in Number of Case Types in Which Comparative Negligence Is Frequently or Infrequently an Issue: San Francisco, 1960-1980 ......................... 42
17. Comparison of Trends in Median Awards in Case Types in Which Comparative Negligence Is Frequently or Infrequently an Issue: San Francisco, 1960-1980 ......................... 45
18. Comparison of Trends in Average Awards in Case Types in Which Comparative Negligence Is Frequently or Infrequently an Issue: San Francisco, 1960-1980 ......................... 47
19. Long-Term Trends for Medical Malpractice Trials, 1960-1980 ........................................ 51
<table>
<thead>
<tr>
<th></th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>20</td>
<td>Long-Term Trends for Product Liability Trials, 1960-1980</td>
<td>55</td>
</tr>
<tr>
<td>21</td>
<td>Long-Term Trends for Contracts and Business Tort Trials, 1960-1980</td>
<td>59</td>
</tr>
<tr>
<td>22</td>
<td>Long-Term Trends for Intentional Tort Trials, 1960-1980</td>
<td>61</td>
</tr>
<tr>
<td>23</td>
<td>Long-Term Trends for Worker Injury Trials, 1960-1980</td>
<td>65</td>
</tr>
<tr>
<td>24</td>
<td>Long-Term Trends for Automobile Accident Trials, 1960-1980</td>
<td>67</td>
</tr>
<tr>
<td>25</td>
<td>Long-Term Trends for Common Carrier Trials, 1960-1980</td>
<td>70</td>
</tr>
<tr>
<td>26</td>
<td>Long-Term Trends for Injury on Property Trials, 1960-1980</td>
<td>72</td>
</tr>
<tr>
<td>27</td>
<td>Long-Term Trends for Street Hazard Trials, 1960-1980</td>
<td>74</td>
</tr>
<tr>
<td>A.1</td>
<td>Illustrative Case Report from <em>Jury Verdicts Weekly</em></td>
<td>82</td>
</tr>
</tbody>
</table>
Tables

1. Types of Civil Jury Trials .............................................. 6
2. Types of Civil Jury Trials by Site as a Percentage of All
   Civil Jury Trials ...................................................... 7
3. Percentage of Plaintiff Victories by Site ....................... 11
4. Size of Plaintiff Awards by Site .................................. 13
5. Size of Plaintiff Awards in San Francisco County ............. 14
6. Total Awards in Civil Jury Trials by Site as a Percentage
   of All Money Awarded .............................................. 17
7. Trends in the Types of Civil Jury Trials in San Francisco
   County ...................................................................... 21
8. Trends in the Proportion of Plaintiff Victories for Specific
   Case Types in San Francisco County .............................. 25
   County ...................................................................... 26
10a. Trends in Median Plaintiff Awards in San Francisco
     High-Stakes Cases ................................................... 31
10b. Trends in Median Plaintiff Awards in San Francisco Low-
     Stakes Cases ............................................................ 32
11. Trends in Total Awards in San Francisco County ............. 35
12. Frequency of Comparative Negligence in Case Types ......... 41
13. Plaintiffs' Share of Responsibility ................................. 48
14. Types of Business and Contract Actions in San Francisco
    County, 1960-1979 ................................................. 57
15. Trends in the Number of Intentional Tort Trials, by Type,
    in San Francisco County, 1960-1979 ............................. 62
A.1. Comparison of Civil Jury Verdicts Included in JVVW and
     Reported by the San Francisco Superior Courts ............. 80
A.2. Characteristics of Trials Not Reported by JVVW ............. 81
A.3. Forms Required for an Illustrative Complex Case .......... 85
I. INTRODUCTION

Decisionmaking by our legal system is fragmented and often unpredictable. Under our federal system we have 51 different jurisdictions with 51 different sets of laws. Within each of these jurisdictions, final decisions about many lawsuits are made by juries—ordinary citizens who have little or no experience with the legal system and who decide only one case.

The right of each state to make its own laws and a litigant's right to a jury trial are cornerstones of our political and legal systems. However, those rights spread the responsibility for legal decisions so widely that decisions are difficult to predict. Worse, decisions might be inconsistent and even capricious.

Concern about how juries decide civil claims has led us to study jury decisions in Cook County, Illinois, over a 20-year period (Peterson and Priest, 1982; Peterson, 1983; Chin and Peterson, 1983). Our comparisons of verdicts within that jurisdiction reveal some reasons for concern. We found that the amount of money plaintiffs receive depends upon who the parties are (Chin and Peterson, 1983) and what caused their injuries (Peterson, 1983). But, reassuringly, we also found that decisions by different juries are stable and generally consistent.

We are continuing to study jury decisions in Cook County, but a study of juries in one jurisdiction leaves important questions unanswered: How do decisions by jurors in Chicago compare with decisions by jurors in other jurisdictions? What differences arise because juries in different jurisdictions apply different laws? This report begins to explore these questions—as well as those that motivated our original study of Cook County jury trials—by examining jury decisions in San Francisco County, California.1

Besides adding some generality, analyses of San Francisco jury trials and jury verdicts are important in their own right. San Francisco is a major city and commercial center. And there is widespread interest in legal decisions in California generally because of its expansion of tort law and its reputation for generous jurors. There is a sense that even if juries are reasonable in Chicago, they may not be in California.

In this report, we describe San Francisco jury trials and jury verdicts during the 20-year period from 1960 through 1979, and we compare trends and patterns with those found in Cook County. We begin

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1 Which includes only the City of San Francisco.
to address a number of questions about legal and social policy (more complete answers will follow in future reports).

Are most trials economically justified? Most civil jury trials in Cook County produced small awards, often less than what it cost taxpayers to put on the trial (Kakahik and Robyn, 1982). The amount in dispute in most Cook County trials was almost certainly less than the combined costs to taxpayers and the parties. What proportion of San Francisco trials involve such small stakes? Can we resolve these cases in other, less expensive ways?

Have questions posed to juries changed? Civil jury trials in Cook County seemed increasingly to involve more complicated factual circumstances and more difficult questions of value. Is this happening in San Francisco? Should we be concerned about juries' competence to decide complicated cases? Do juries produce narrow and inconsistent decisions about sensitive issues of public policy (such as: How should government money be spent? What are proper police practices?)?

Are jury decisions changing? Most awards in Cook County remained stable through the study period. But the size of the largest awards increased greatly, and awards increased for product liability, malpractice, and other high-stakes cases. Were there similar increases in San Francisco? Do these indicate that juries are hearing cases involving more severe injuries, or that their decisions are changing?

Do jury decisions differ markedly among jurisdictions? If so, what problems does this difference create for multistate businesses? Do differences create inequities? Do they create incentives for forum shopping?

What changes resulted from adopting the comparative negligence rule? In 1975, the California Supreme Court substituted the doctrine of comparative negligence for the old contributory negligence rule. Before that decision, plaintiffs were not legally entitled to receive awards if their own carelessness contributed to their injury. After Li, careless plaintiffs could receive awards but the amount was reduced in proportion to their responsibility for their own injury. How did this legal change affect parties' decisions to take cases to juries? How did it change jury decisions?

The descriptions of jury trials and jury decisions in this report begin to explore these and other questions about legal and social policy, while providing basic comparisons between San Francisco and Cook Counties. In later reports we will explore these questions more thoroughly as we examine how decisions by San Francisco juries are influenced by the type and severity of plaintiffs' injuries, by who the

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2Li v. Yellow Cab Co., 13 Cal. 3d 804, 532 P.2d 1226, 119 Cal. Rptr. 858 (1975)
plaintiff and defendant are, and by the nature of the actions that led to the plaintiffs' injuries. We will continue to press our comparison with decisions by Cook County juries (cf. Peterson, 1983; Chin and Peterson, 1983).

As in our earlier study of Cook County, we obtained our information about jury trials and jury decisions from a jury verdict reporting service—Jury Verdicts Weekly. Since 1959, Jury Verdicts Weekly has published a newsletter for lawyers and insurance companies containing short descriptions of all civil jury trials in the San Francisco County Superior Court and the U.S. District Court, Northern District of California (which sits in San Francisco). Each description is usually from one-half to several pages long and reports the court, parties, lawyers, disposition, experts, offers and demands, plus a short description of the disputed incident, claimed bases of liability, and claimed injuries and special damages (see Fig. A.1 in Appendix A).

We checked the accuracy and completeness of Jury Verdicts Weekly in several ways. We interviewed lawyers and insurance company claims managers and found that they uniformly recognized the Weekly both as providing accurate descriptions and as comprehensively covering cases tried to juries. We also compared descriptions of trials in Jury Verdicts Weekly with descriptions provided by other jury verdict reporting services. We found a high degree of comparability between the descriptions provided by Jury Verdicts Weekly and other reporters. We then compared the number of jury trials reported by Jury Verdicts Weekly with California and federal court records. Results suggest that Jury Verdicts Weekly reported at least 80 percent of civil cases tried to juries.

Jury Verdicts Weekly reported over 5,300 jury trials in the Superior and U.S. District Courts between 1980 and 1989. We collected data for all of these cases, using forms that were very similar to those used in collecting data for the Cook County study. The major changes made related to collecting additional information about two issues of particular importance to jury verdicts in California, namely, the degree of a plaintiff's responsibility for his own injury and the size of awards for cases involving comparative negligence. As before, we developed fifty different forms on which we could record detailed information about the particular factual and legal issues for each case. The data were recorded by law students working under the supervision of Professor George Priest of Yale Law School. By selecting the

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2The Weekly also covers other California counties not studied in this research.
3These comparisons were made for cases in Los Angeles County, where Jury Verdicts Weekly and five other reporting services describe civil jury trials.
4Professor Priest is a colleague in the development and continuing analyses of these studies and coauthor of the first report in this research (Peterson and Priest, 1982).
appropriate forms, the coders were able to record information pertinent for each case. The coding forms are described in Appendix A.

In Sec. II of this report we compare characteristics of jury trials in San Francisco and Cook Counties across the entire 20-year period, focusing on the mix of cases brought before juries, jury decisions about the liability of defendants, jury decisions about the size of the awards to successful plaintiffs, and the total amount of money awarded by juries. In Sec. III we examine changes over the study period in those same variables, once again comparing results in the two jurisdictions. In Sec. IV we discuss the effects brought about by the new comparative negligence rule in San Francisco in the latter half of the 1970s. In Sec. V we discuss trends and patterns in both jurisdictions for individual case types. Finally, in Sec. VI we reconsider basic policy questions, discuss our conclusions, and raise questions for exploration in future reports.
II. OVERVIEW OF CIVIL TRIALS

Our data describe approximately 5,300 civil cases that were tried before juries in San Francisco County between 1960 and 1979—an average of 265 trials per year. State rather than federal courts provided the forum for the majority of the proceedings, accounting for 88 percent of all trials. In this section we describe the subject matter of those trials, the frequency of plaintiffs' victories, and the size and total amount of the resulting awards. In addition, we compare the San Francisco County findings with those (in comparable courts) in Cook County, Illinois—a comparison that shows striking similarities between the two jurisdictions.

We do find some systematic differences: San Francisco juries more frequently hear product liability, malpractice, worker injury, and other cases that we describe as high-stakes cases because they more frequently involve serious injury and economic losses (Peterson, 1983) and produce large awards (Peterson and Priest, 1982). San Francisco juries find for plaintiffs somewhat more often and make larger awards to successful plaintiffs. But the differences in jury decisions are not large. In fact, our results suggest that juries differ only slightly between jurisdictions. To a great extent, the higher awards in San Francisco can be explained by the greater frequency of product liability, malpractice, worker injury, and other high-stakes cases in that jurisdiction.

THE MIX OF CIVIL JURY TRIALS

Most of the cases that civil juries heard were concentrated among a few case types. Table 1 defines the 11 categories we used to describe cases heard by civil juries. Table 2 shows the percentage of civil jury trials in San Francisco and Cook Counties that were litigated on each issue. In San Francisco, automobile accidents alone account for

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1Other types of cases also result in some large awards but less frequently than case types that we describe as high-stakes. Also, at least in Cook County, jurors made larger awards to plaintiffs in worker injury, malpractice, and product liability cases than to plaintiffs with similar injuries in other types of cases (Peterson, 1983).

2Note that in the table totals sum to more than 100 percent because the categories are not mutually exclusive, some trials involve more than one type of claim. 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. Analysis using a mutually exclusive categorization did not produce mater-
<table>
<thead>
<tr>
<th>Type of Case</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Automobile accident</td>
<td>Liability of drivers, vehicle owners, or employers of drivers.</td>
</tr>
<tr>
<td>Common carrier</td>
<td>Common carriers' liability to passengers injured on buses, trains, cabs, airplanes.</td>
</tr>
<tr>
<td>Worker injury</td>
<td>Employers', manufacturers', property owners', coemployees' liability for workplace injuries.</td>
</tr>
<tr>
<td>Injury on property</td>
<td>Liability for dangerous conditions on private property.</td>
</tr>
<tr>
<td>Street hazard</td>
<td>Government, contractors', and others' liability for dangerous design, maintenance, or obstructions on public roads or sidewalks.</td>
</tr>
<tr>
<td>Professional malpractice</td>
<td>Liability for substandard medical, legal, or other professional practices.</td>
</tr>
<tr>
<td>Product liability</td>
<td>Manufacturers', sellers', or other business liability to persons injured from defective products.</td>
</tr>
<tr>
<td>Contracts/business</td>
<td>Breaches of contract or business torts (e.g., fraud, antitrust).</td>
</tr>
<tr>
<td>Intentional tort</td>
<td>Liability for assault, defamation, or violation of civil rights (e.g., false arrest or imprisonment, malicious prosecution).</td>
</tr>
<tr>
<td>Dramshop</td>
<td>Bars', liquor stores', individuals' liability for supplying alcohol to persons who cause injury while intoxicated.</td>
</tr>
<tr>
<td>Miscellaneous</td>
<td>Property damage, conversion, and other causes of action.</td>
</tr>
</tbody>
</table>
Table 2

<table>
<thead>
<tr>
<th>Type of Case</th>
<th>San Francisco County</th>
<th>Cook County$^a$</th>
</tr>
</thead>
<tbody>
<tr>
<td>Automobile accident</td>
<td>48</td>
<td>61</td>
</tr>
<tr>
<td>Worker injury</td>
<td>15</td>
<td>7</td>
</tr>
<tr>
<td>Injury on property</td>
<td>13</td>
<td>10</td>
</tr>
<tr>
<td>Common carrier</td>
<td>8</td>
<td>6</td>
</tr>
<tr>
<td>Product liability</td>
<td>7</td>
<td>5</td>
</tr>
<tr>
<td>Professional malpractice</td>
<td>7</td>
<td>3</td>
</tr>
<tr>
<td>Contracts/business</td>
<td>6</td>
<td>2</td>
</tr>
<tr>
<td>Intentional tort</td>
<td>6</td>
<td>4</td>
</tr>
<tr>
<td>Street hazard</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>Dramshop</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>Miscellaneous</td>
<td>5</td>
<td>2</td>
</tr>
<tr>
<td><strong>Total</strong>$^b$</td>
<td><strong>117</strong></td>
<td><strong>106</strong></td>
</tr>
</tbody>
</table>

| Total cases             | 13,300               | 13,300          |

$^a$Includes trials in the Law Division, Cook County Circuit Court, and U.S. Federal Court. Data cannot be compared with those reported in Peterson and Priest (1982), which also include trials in the Municipal Division of the Cook County Circuit Court.

$^b$Totals exceed 100 percent because some trials involve more than one type of claim. Totals do not sum because of rounding.

nearly 50 percent of the cases; the next most numerous type of lawsuit—suits by workers injured on the job—accounts for 15 percent; and the next—claims of injuries resulting from dangerous conditions on private property—accounts for 13 percent. In Cook County, traffic cases dominate the trial calendars even more strongly, accounting for 61 percent of all cases. No other case type there accounts for more than 10 percent of civil trials.

Despite workers compensation systems in each state, a relatively large proportion of jury trials in both states involve claims by injured workers. The number of such trials in Cook County (7 percent of the
total) is often attributed to Illinois' structural work act that provides a basis for recovery for injuries from hazardous scaffolds and a broad category of other workplaces. Although California does not have a similar statute, an even larger proportion of jury trials in San Francisco County (15 percent) involved claims by injured workers. The number of trials in California has been attributed to inflation and changes in legal doctrine. Critics of California courts claim that the "exclusive remedy" of workers compensation has been undercut by the steady expansion of the dual capacity doctrine by California courts. That doctrine allows suits against employers based upon nonemployment relations with employees, e.g., the employee purchased and was injured by the employer's defective product.

Some observers feel that injured employees increasingly turned to the tort system because workers compensation payments in California did not keep up with inflation. In other work, we are currently investigating the nature of worker injury trials and the effects of changes in workers compensation schedules in the two states. Our continuing but preliminary analyses suggest that the dual capacity doctrine is not responsible for the large number of trials involving workplace injuries. Most suits against employers were brought by railroad and maritime workers suing under federal statutes, the Federal Employers' Liability Act (FELA), and the Jones Act. But most injured workers sued defendants other than their own employers—suits not prevented by the "exclusive remedy" of workers compensation.

Statutory differences between California and Illinois explain the sharp contrast in the number of dramshop actions (i.e., liability of bars and liquor stores for injuries caused by intoxicated customers). While 3 percent of jury trials in Cook County (over 400 cases) were dramshop actions, only four such trials occurred in San Francisco County.

Overall patterns in the two counties appear similar; auto accident cases dominate, whereas every other type accounts for only a small percentage of trials. However, the pattern of the nonauto accident trials is significantly different in the two jurisdictions. San Francisco juries more frequently hear types of cases that involve serious losses (Peterson, 1983) and produce larger awards: product liability, professional malpractice, worker injury, contracts and business torts, inten-

3A series of Illinois statutes, first enacted in 1872, abrogated the common law rule that a person who provides alcohol to someone who is intoxicated is not the proximate cause of injuries caused by the intoxicated person (Ill. Rev. Stat. C43, sect. 135, 1976). Only in 1971 did the California Supreme Court reverse this common law rule (Vedy v. Sager 5 Cal. 3rd, 136), permitting lawsuits against businesses or individuals who supplied alcohol to intoxicated persons. With minor exceptions, the California Legislature restored the common law rule in 1975 (Cal. Bus. & Prof., sect. 25602), again preventing this type of lawsuit.
tional torts, and miscellaneous civil actions. In addition to involving more money, these high-stakes cases may often involve more complex legal and factual issues, more difficult normative questions, or claims about defendant actions that are not within the routine experience of most jurors. Forty-five percent of jury trials in San Francisco County (and reported in Jury Verdicts Weekly) involved such cases, compared with only 23 percent of trials in Cook County (Fig. 1).

![Graphs showing types of civil jury trials, 1960-1979]

**Note:** Totals sum to more than 100% because some trials involve more than one type of claim.

**Fig. 1—Types of civil jury trials, 1960-1979**

We cannot explain why these high-stakes cases constitute a larger proportion of trials in San Francisco. The differences may reflect different frequencies of injuries or particular causes of injuries. For example, the greater proportion of common carrier and fewer automobile accident trials might reflect greater use of public transportation in San Francisco than in Cook County, or the greater risk from cable cars and other common carriers in San Francisco. The relative frequency of trials might reflect differences in how often

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4San Francisco County covers only the central city. Cook County includes Chicago and a number of suburban communities.
injured persons make claims or in the parties' willingness to settle or drop cases before trial. Parties might be more or less willing to take cases to trial because they have different expectations about how jurors might decide cases. But whatever the cause of these differences in the type of cases reaching trial, those differences help to explain why the outcomes of jury trials in San Francisco and Cook County differ.

LIABILITY VERDICTS

In arriving at a verdict, a jury must first decide if any defendant is liable to any plaintiff. If a defendant is found liable, the jury must then reach a second decision—the amount of money to award—which we consider in the following subsection. Defendants in San Francisco County were found liable in 59 percent of all civil jury trials. However, in 8 percent of trials, juries did not have to decide the issue of liability. In 6 percent of the cases, defendants admitted their liability during trial (the parties disagreed only about the issue of damages) and in 2 percent judges directed the liability decision. As a result, when a defendant's liability was disputed before a jury, the jury found for the plaintiff 57 percent of the time. 7

The percentage of plaintiff victories in San Francisco County varied considerably by case type (see Table 3). At the two extremes, plaintiffs in malpractice cases won only a little more than a third of the time over the 20-year period, whereas plaintiffs who were injured at work won almost 70 percent of the time. Plaintiffs in two other types of cases—automobile accident and contracts/business tort cases—also won often, over 60 percent of the time. Only in malpractice cases were plaintiffs winning less than 45 percent of the time.

6Since jury trials represent only a minute proportion of all civil claims, differences in settlement practices might result in quite different cases being tried in the two jurisdictions. We are comparing differences in injury claims, party characteristics, and liability issues in the jurisdictions in our continuing analyses. Other research at the Institute for Civil Justice is examining how settlements and settlement practices are related to the outcomes of jury trials (Danton and Liliedahl, 1992; Priest and Klein, 1993; Waterman and Peterson, 1991).

7We could consider the liability question for only 95 percent of the cases. Four percent of trials and in a mistrial and 1 percent do not include a liability decision but involve declaratory judgments or condemnation actions.

8Although plaintiffs apparently win more than half the disputed trials, in many of these cases defendants do not actively challenge liability, even though they do not admit it. The proportion of plaintiff wins would likely decrease if we were able to consider only truly contested cases. Our survey captured formal concessions of liability (as mentioned above), but we do not know the number of cases where defendants simply did not fight liability.
San Francisco County plaintiffs won more often than their Cook County counterparts—59 percent in San Francisco County compared with 52 percent in Cook County (Table 3). With one exception—street hazard cases—San Francisco County plaintiffs were more successful in all types of trials. The difference is particularly striking for product liability trials—plaintiffs won 54 percent of these in San Francisco courts but only 40 percent in Cook County. San Francisco plaintiffs also fared considerably better in automobile accident trials. We consider in a later section how California’s adoption of a comparative negligence rule in 1975 may have contributed to plaintiffs’ greater success in San Francisco.

THE SIZE OF PLAINTIFF AWARDS

In addition to deciding whether or not liability exists in a case, juries must decide the amount of money to award plaintiffs if liability is found. Payments in the San Francisco County trials we examined totaled $252 million over the 20-year period, for an average of $84,000. (All dollar amounts are adjusted for inflation and given in 1979 dollars.) The average in Cook County was only $61,000. However, that does not necessarily imply that San Francisco County juries are that much more generous, because juries in the two juris-
dictions heard a different mix of cases. As we saw, high-stakes cases that produce larger awards were tried more frequently in San Francisco. The difference in case mix probably accounts for over half the difference in average awards in the two counties. In fact, as we describe below, Cook County juries tended to award larger sums in many high-stakes cases than San Francisco juries.

Most plaintiffs did not fare nearly as well as the average in either jurisdiction (Fig. 2). The averages are high because of a relatively small number of very large awards. In one-fourth of cases in San Francisco that they won, plaintiffs received less than $8,000 and in half they received less than $21,000 (Table 4). In only 19 percent of cases that plaintiffs won did their awards equal or exceed the $84,000 average. Most awards were even smaller in Cook County, where one-fourth of the plaintiffs received less than $5,000 and one-half less than $15,000.*

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*These estimates are higher than those given in Peterson and Priest (1982), which reported data for all trial courts in Cook County, including the Municipal Division of the Circuit Court. The latter court is excluded here.
Table 4

SIZE OF PLAINTIFF AWARDS BY SITE
(In thousands of 1979 dollars)

<table>
<thead>
<tr>
<th>Size of Case</th>
<th>San Francisco County</th>
<th>Cook County</th>
</tr>
</thead>
<tbody>
<tr>
<td>Small (25th percentile)</td>
<td>8</td>
<td>5</td>
</tr>
<tr>
<td>Medium (50th percentile)</td>
<td>21</td>
<td>15</td>
</tr>
<tr>
<td>Large (75th percentile)</td>
<td>59</td>
<td>43</td>
</tr>
<tr>
<td>Extremely large (90th percentile)</td>
<td>181</td>
<td>123</td>
</tr>
<tr>
<td>Average (mean)</td>
<td>84</td>
<td>61</td>
</tr>
</tbody>
</table>

Kakalik and Robyn (1982) estimated that the average civil jury trial in four jurisdictions costs taxpayers between $3,000 and $15,000. Legal and other expenses probably bring the total costs of trials above the size of many if not most awards in San Francisco and Cook County. Some of these civil trials involve more than economic issues, that is, they involve political rights, parties' reputations, or strongly held principles. But most trials do not. It is not surprising then that there is growing interest in developing less expensive ways to resolve many cases now tried to civil juries.

While most awards were small or moderate, plaintiffs in a few cases received strikingly large awards. Ten percent of awards in San Francisco exceeded $181,000 and 1 percent exceeded $1 million. Plaintiffs in the 31 cases with awards over $1 million received 28 percent of all the money awarded between 1960 and 1979.

As in San Francisco, a large proportion of the money awarded to plaintiffs in Cook County was concentrated among a few plaintiffs. Plaintiffs in cases with awards over $1 million accounted for 24 percent of all money awarded in Cook County. In both jurisdictions there is a sharp contrast between the bulk of jury trials that produce small verdicts and the few that award most of the money.

The size of plaintiffs' awards in San Francisco varied considerably by case type (see Table 5 for a comparison of medians and averages). Plaintiffs in auto accident and common carrier cases received the
### Table 5

**Size of Plaintiff Awards in San Francisco County**  
(In thousands of 1979 dollars)

<table>
<thead>
<tr>
<th>Type of Case</th>
<th>Median</th>
<th>Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>Professional malpractice</td>
<td>75</td>
<td>289</td>
</tr>
<tr>
<td>Worker injury</td>
<td>55</td>
<td>130</td>
</tr>
<tr>
<td>Product liability</td>
<td>37</td>
<td>149</td>
</tr>
<tr>
<td>Contracts/business</td>
<td>37</td>
<td>160</td>
</tr>
<tr>
<td>Miscellaneous</td>
<td>33</td>
<td>110</td>
</tr>
<tr>
<td>Street hazard</td>
<td>29</td>
<td>73</td>
</tr>
<tr>
<td>Injury on property</td>
<td>21</td>
<td>75</td>
</tr>
<tr>
<td>Intentional tort</td>
<td>19</td>
<td>180</td>
</tr>
<tr>
<td>Common carrier</td>
<td>18</td>
<td>84</td>
</tr>
<tr>
<td>Automobile accident</td>
<td>18</td>
<td>46</td>
</tr>
<tr>
<td><strong>All cases</strong></td>
<td><strong>21</strong></td>
<td><strong>84</strong></td>
</tr>
</tbody>
</table>

Smallest awards. Half of all awards for auto accident cases are under $15,000 and half of common carrier awards are under $18,000. Awards average about $50,000 for both types. Most awards in intentional tort cases were also small—under $20,000—but a few very large awards raised the average to $180,000, the second largest average for any type of case. Professional malpractice trials produced the largest awards. Half exceed $75,000 and those awards averaged $280,000.

For most types of trials, awards in San Francisco County were greater than in Cook County (both the median and average). But for three of the six types of trials that produce the largest awards—the high-stakes cases—Cook County awards exceeded those in San Francisco. Figure 3 compares the median awards by case type in the two jurisdictions. The difference for product liability cases is striking. The median in Cook County is almost three times that in San Francisco County. Medians are also greater in Cook County for awards involving worker injuries and those for breach of contract or business torts. Only awards in malpractice cases are substantially greater in San Francisco.

Cook County plaintiffs are more successful in these three high-stakes case types even when we account for plaintiffs' greater chances
of winning the liability issue in San Francisco. So far, we have looked only at the size of awards for plaintiffs who won. The expected award takes into account both the chances of a plaintiff win and the size of the award. It is the average award across all trials, including those with zero awards, that defendants win.\textsuperscript{9} For example, although professional malpractice cases produce the largest average award in San Francisco, they are "long shots" on liability; as a result, the expected award for contracts/business cases is greater.

Figure 4 shows expected awards by case type in both jurisdictions.\textsuperscript{10} Expected awards are still greater in Cook County for product liability, worker injury, and contracts/business tort trials. Cook County awards

\textsuperscript{9}It can also be computed by multiplying the probability of liability times the average award.

\textsuperscript{10}The pattern displayed on that figure justifies our grouping of high- and low-stakes case types.
are also greater for street hazard trials. However, the biggest difference was for intentional torts, because plaintiffs won a larger proportion of those cases in San Francisco and because a few large awards produced a very high average.

**TOTAL MONEY AWARDED**

San Francisco County juries awarded a total of $252 million. Most (90 percent of the total) reflected compensatory damages. However, juries did award $24 million (10 percent of all money awarded) in punitive damages spread over 4 percent of all cases with awards.

Judges intervened occasionally, either on their own or as statutorily required, to influence the amount of judgment. In a handful of cases trial judges directed the amount of damages, but the total of those directed awards was less than $100,000. More often, judges adjusted jury decisions. They reduced jury awards against defendants by $4
million in remittitrs and $100,000 in court costs and increased jury awards to plaintiffs by $1.5 million in additurs (almost entirely from tripling damages in antitrust cases) and $5,000 in court costs. On net, judges' decisions resulted in only a 1 percent ($2.6 million reduction in what juries would otherwise have awarded.

Of course, these figures do not reflect the impact of appellate courts, a matter beyond the scope of this study. Appellate court action might have had an appreciable effect. We know, for example, that the largest award in San Francisco—$10.5 million (when adjusted for inflation) in a libel case—was overturned on appeal. It was eventually settled for under $500,000.

Just as most of the money is concentrated among a few plaintiffs, so it is concentrated among a few case types (see Table 6). In both jurisdictions, trials involving auto accidents and worker injuries account for over half of the money awarded. In San Francisco all other case types account for a much lower proportion of awards; professional malpractice and contracts/business tort—the next in line—each account for only 13 percent of total awards. However, in Cook County product liability also accounts for a large proportion (19 percent) of total awards.

Table 6

<table>
<thead>
<tr>
<th>Type of Case</th>
<th>San Francisco County</th>
<th>Cook County</th>
</tr>
</thead>
<tbody>
<tr>
<td>Automobile accident</td>
<td>30</td>
<td>33</td>
</tr>
<tr>
<td>Worker injury</td>
<td>25</td>
<td>24</td>
</tr>
<tr>
<td>Professional malpractice</td>
<td>13</td>
<td>6</td>
</tr>
<tr>
<td>Contracts/business</td>
<td>13</td>
<td>9</td>
</tr>
<tr>
<td>Product liability</td>
<td>10</td>
<td>19</td>
</tr>
<tr>
<td>Injury on property</td>
<td>9</td>
<td>7</td>
</tr>
<tr>
<td>Intentional tort</td>
<td>9</td>
<td>3</td>
</tr>
<tr>
<td>Miscellaneous</td>
<td>6</td>
<td>3</td>
</tr>
<tr>
<td>Common carrier</td>
<td>5</td>
<td>4</td>
</tr>
<tr>
<td>Street hazard</td>
<td>2</td>
<td>5</td>
</tr>
<tr>
<td>Dramshop</td>
<td>0</td>
<td>2</td>
</tr>
</tbody>
</table>

Total awards ($ millions, 1979): 252 404

*Totals exceed 100 percent because some trials involve more than one type of claim.
Except for the higher proportion of high-stakes cases in San Francisco, we have found San Francisco and Cook Counties' civil jury systems remarkably similar. Substantial differences do appear for a few case types. For example, product liability trials were high-risk, high-payoff cases for Cook County plaintiffs but moderate-risk, modest-payoff cases for San Francisco plaintiffs; a few intentional tort trials brought extraordinary awards in San Francisco. But the overall patterns are similar. In the next section we look at whether these outcomes are recent developments or of long standing.
III. TRENDS IN CIVIL JURY TRIALS AND VERDICTS

State and federal law, legal procedures, and American society all changed in important ways between 1960 and 1979. Thus we were not surprised to find changes in the types of claims tried to juries and in how juries viewed those claims. What did surprise us was the similarity in the trends across jurisdictions. In both Cook and San Francisco Counties, the proportion of high-stakes cases and awards grew substantially. The average award more than doubled in each county, as a result mainly of the sharp increase in the size of big awards especially those exceeding $1 million (in 1979 dollars). Differences between San Francisco and Cook County were usually of degree only. For example, awards in San Francisco grew faster and earlier than those in Cook County.

In this section we examine the changes in jury decisions in San Francisco County over the past two decades and compare them with those in Cook County. We follow the same general outline as in the preceding section, considering changes in the mix of cases first, then changes in liability, the size of plaintiff awards, and the total money awarded. However, we leave for later sections detailed comparisons of specific case types and examination of the possible effects of the doctrine of comparative negligence.

THE MIX OF CIVIL JURY TRIALS

The number of lawsuits tried to civil juries changed markedly from year to year in San Francisco County, increasing or decreasing by as much as a third in one year.\textsuperscript{1} This yearly fluctuation disguised a long-term trend toward fewer trials. From the early 1960s to the mid-1970s San Francisco courts averaged 290 jury trials per year. However, beginning in 1974, the number of trials declined for five straight years to a new low of only 158 in 1978. The number of jury trials increased in 1979, but only to 210.

\textsuperscript{1}In this section we discuss the number of trials reported by \textit{Jury Verdicts Weekly}. This number is a slight underestimate but one that appears to be fairly stable for the years when we can make comparisons with relevant court records (Appendix A). We use data from \textit{Jury Verdicts Weekly} because these data are available for a longer period of time.
This is similar to the trend we observed in Cook County courts. Figure 5 compares these trends using a logarithmic scale that highlights percentage, or relative, changes. Both caseloads peaked in the mid-1960s, then declined during the rest of the period. However, the Cook County caseload trend began with an upsurge in the early 1960s, and the San Francisco trend ended with a sharp dip. As a result, Cook County showed a slight overall increase in jury trials per year, whereas San Francisco County showed an overall decrease.

Fig. 5—Total number of civil jury trials, 1960-1979

The overall decrease in San Francisco was not shared by all case types equally (Table 7). In fact, the mix of civil jury trials changed in important ways. In the 1960s almost all trials in San Francisco involved traditional types of personal injury cases, e.g., auto accidents or slip and fall; only a few involved contracts or business disputes or other non-personal injury issues. Most trials continued to involve issues of personal injuries, but by the late 1970s almost one-fourth of

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2A comparison of simple number changes is not meaningful. A drop of 100 trials per year would amount to a moderate change in Cook County (around 10 percent) but a drastic change in San Francisco County (about 30 percent). A more meaningful comparison is obtained by looking at the percentage changes from year to year. Presumably a 10 percent increase in the caseload would have the same significance in each jurisdiction, but that change would amount to about 100 trials in Cook County and 30 trials in San Francisco County. Thus an equal vertical change in both jurisdictions on Fig. 6 represents an equal percentage change in caseload in each place.
Table 7

TRENDS IN THE TYPES OF CIVIL JURY TRIALS IN SAN FRANCISCO COUNTY

<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>31</td>
<td>41</td>
<td>58</td>
</tr>
<tr>
<td>1965-69</td>
<td>58</td>
<td>76</td>
<td>92</td>
</tr>
<tr>
<td>1970-74</td>
<td>91</td>
<td>97</td>
<td>121</td>
</tr>
<tr>
<td>1975-79</td>
<td>121</td>
<td>109</td>
<td>100</td>
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</tbody>
</table>

Number of Trials

<table>
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<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Change, 1960-64 to 1970-75 (%)</td>
<td>330</td>
<td>266</td>
<td>172</td>
<td>170</td>
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<tr>
<td></td>
<td>89</td>
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<td>72</td>
<td>55</td>
</tr>
<tr>
<td></td>
<td>52</td>
<td>55</td>
<td>55</td>
<td>52</td>
</tr>
</tbody>
</table>

Percentage of Trials

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1960-64</td>
<td>26</td>
<td>23</td>
<td>21</td>
<td>20</td>
</tr>
<tr>
<td>1965-69</td>
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<td>11</td>
</tr>
<tr>
<td>1970-74</td>
<td>16</td>
<td>12</td>
<td>10</td>
<td>9</td>
</tr>
<tr>
<td>1975-79</td>
<td>8</td>
<td>6</td>
<td>4</td>
<td>3</td>
</tr>
</tbody>
</table>

aRows sum to more than 100 percent because some cases are included in more than one category.
trials involved contracts/business torts or intentional torts (discrimination, defamation, or assault). Some intentional torts did involve personal injuries, i.e., assault, but most of these trials did not.

Intentional tort cases, the fastest growing category, grew almost fourfold from the least frequent type of case in the early 1960s to the fourth most numerous in the late 1970s. Contracts/business cases were the only other type that increased continuously over the four five-year periods; every other case type, even those with an overall increase, decreased in the last five years. (We will discuss the possibility that the comparative negligence doctrine explains these trends in the next section.) Of those with a decreasing caseload, automobile accident cases provide a good example. Although that type remained the most frequent case type, its dominance decreased from over half of all cases in the early 1960s to a little over a third in the late 1970s.

When we look at these trends in terms of our distinction between high- and low-stakes cases, we see that all high-stakes case types increased or remained stable in number, whereas low-stakes cases decreased. Figure 6 shows the net effect of the rising frequency of most high-stakes case types (all but worker injury) and the decreasing fre-

Note: Totals sum to more than 100% because some trials involve more than one type of claim.

Fig. 6—Growth in high-stakes cases, 1960-1979
frequency of low-stakes cases. During the early 1960s, 35 percent of trials in San Francisco involved high-stakes cases; by the late 1970s, 60 percent of trials involved a high-stakes type of claim. The frequency of high-stakes cases also increased in Cook County, but since high-stakes cases started from a lower base there (19 percent of the caseload), the final proportion was also lower (32 percent of cases in the late 1970s).

The types of cases that increased—intentional torts, contracts/business torts, and high-stakes cases in general—often involve more complicated factual issues or more difficult value judgments than the more traditional types of cases they are replacing (Peterson and Priest, 1982). In turn, the greater complexity of these cases increases the importance of understanding how juries decide cases. Future analysis of our data may shed some light on how jurors decide difficult questions and deal with civil litigation that is increasingly complex.3

LIABILITY VERDICTS

As we have noted, juries returned verdicts in favor of plaintiffs in 57 percent of all contested trials between 1960 and 1979 and plaintiffs won 59 percent of cases. (See p. 10.) This subsection will discuss the intervening trends. As Fig. 7 indicates, in San Francisco the proportion of civil cases resulting in plaintiff victories kept within a fairly narrow range—from 52 percent (in 1969) to 64 percent (in 1977). The percentage climbed above the 60 percent mark in two periods—one briefly in 1965-66 and then for a more extended period, 1971-77. However, the increasing trend in this recent period was not sustained: In 1978, the proportion of plaintiff victories dropped to 53 percent and remained at 57 percent in 1979. As Fig. 7 also shows, except for one year, plaintiffs won more often in San Francisco County than in Cook County.4

Trends in liability across all cases were stable in both jurisdictions. This suggests that there has been little change over the two decades in jury decisions about liability. But we found in Cook County that a plaintiff's chances of winning increased for most types of cases. The

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3The effects of complexity on jury 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.

4Later studies will explore reasons for the differing long-term means in liability between the two jurisdictions.
Fig. 7—Proportion of plaintiff victories, 1960-1979

Overall trend was stable because the case mix changed. An increasing proportion of trials involved types of cases in which plaintiffs had a low chance of victory (e.g., malpractice) (see Peterson and Priest, 1982). The overall stability in San Francisco also masked changes that occurred for most case types (Table 8). The proportion of plaintiff victories increased for six of the ten case types. California's change to a comparative negligence rule might have led to the increase for several case types (i.e., auto accidents and injury on property). But for most types the increase occurred before this legal change in 1975.

Trends in liability differed unexpectedly before and after 1975. For seven types of cases plaintiffs did increasingly well between 1967 and 1974, especially in malpractice, street hazard, and miscellaneous civil actions. The decrease for the three other types was slight. After 1975, despite California's adoption of the comparative negligence rule, the proportion of plaintiff victories decreased for seven types of cases. Although comparative negligence should have made it easier for plaintiffs to win, a plaintiff's chance of winning increased only for two case types. These results might stem from the change in settlement practice that occurred under comparative negligence, changing the kinds of liability issues in cases reaching trial (Priest and Klein, 1983). After the comparative negligence rule was adopted, parties might have settled more cases where defendants' liability was clear, leaving for trial cases where liability was questionable.
Table 8

TRENDS IN THE PROPORTION OF PLAINTIFF VICTORIES FOR SPECIFIC CASE TYPES IN SAN FRANCISCO COUNTY\(^a\)

<table>
<thead>
<tr>
<th></th>
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<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1960-64</td>
<td>.60</td>
<td>.57</td>
<td>.51</td>
<td>.46</td>
<td>.40</td>
<td>.27</td>
<td>.67</td>
<td>.74</td>
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<td>1965-69</td>
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<td>.59</td>
<td>.57</td>
<td>.47</td>
<td>.45</td>
<td>.35</td>
<td>.72</td>
<td>.71</td>
<td>.55</td>
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<tr>
<td>1970-74</td>
<td>.65</td>
<td>.63</td>
<td>.62</td>
<td>.47</td>
<td>.62</td>
<td>.43</td>
<td>.70</td>
<td>.71</td>
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<td>1975-78</td>
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<td>.64</td>
<td>.57</td>
<td>.54</td>
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<td>.32</td>
<td>.66</td>
<td>.56</td>
<td>.52</td>
<td>.44</td>
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<tr>
<td>1960-79</td>
<td>.65</td>
<td>.60</td>
<td>.58</td>
<td>.48</td>
<td>.46</td>
<td>.35</td>
<td>.69</td>
<td>.66</td>
<td>.54</td>
<td>.45</td>
</tr>
</tbody>
</table>

\(^a\)Proportion of all cases tried to civil juries in which liability is found against at least one defendant (including defaults and admitted liability).
The trends after 1975 might have had little to do with comparative negligence; the drop was biggest for contracts and business tort cases, which rarely raise issues of comparative negligence. In the next section we will more fully explore the possible effects of comparative negligence.

SIZE OF AWARDS

To understand what has happened to the size of jury awards to plaintiffs, we must consider the few largest cases separately from the vast bulk of small and moderate awards. As we have seen, a small number of awards account for a large proportion of all money awarded to plaintiffs. These large awards strongly influence the value of the average (mean) award and produce trends in the average that do not apply to most cases. To examine what happened to the bulk of cases in San Francisco, we look at changes over time in the size of small, medium, large, and very large awards (i.e., those at the 25th, 50th, 75th, and 90th percentiles).

We see the same trends in the size of awards that we saw for jury decisions about liability (Table 9). The trends in awards steadily increased until the mid-1970s and then reversed, decreasing since 1975.

The pattern was the same for all but the largest cases. The value of the typical (median or 50th percentile) award increased 40 percent.

<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>9</td>
<td>19</td>
<td>46</td>
<td>199</td>
<td>49</td>
</tr>
<tr>
<td>1965-69</td>
<td>8</td>
<td>18</td>
<td>52</td>
<td>147</td>
<td>61</td>
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<tr>
<td>1970-74</td>
<td>10</td>
<td>27</td>
<td>84</td>
<td>136</td>
<td>105</td>
</tr>
<tr>
<td>1975-79</td>
<td>9</td>
<td>19</td>
<td>64</td>
<td>236</td>
<td>130</td>
</tr>
<tr>
<td>1980-79</td>
<td>8</td>
<td>21</td>
<td>59</td>
<td>181</td>
<td>84</td>
</tr>
</tbody>
</table>
between 1960 and the mid-1970s (from $19,000 to $27,000) and then returned to its original level by the end of the 1970s. The trend was similar for large awards (75th percentile) although the value of those cases did not return to their 1960s level. The value of small awards (the 25th percentile) fell to their lowest level in the late 1970s after remaining stable during the first 15 years. However, the largest awards (i.e., the 90th percentile) increased in value from 1960 to 1975 and then remained at their high levels in recent years. At the end of the 1970s, the value of large awards (the top 25 percent) remained greater than in earlier years, but most awards were no greater than during the early 1960s.

Figure 8 compares trends in San Francisco and Cook Counties for small, large, and very large awards, using smoothed curves to highlight the long-term trends. The pattern in Cook County was different from that in San Francisco. In Cook County, the size of awards increased across a much narrower range of cases. Substantial increases occurred only for extremely large awards. Also, awards in Cook County did not decrease in size after 1975 as they did in San Francisco. This suggests that California’s change to the comparative negligence rule may have reduced awards in San Francisco (we examine this more closely in the next section).

One trend was identical in both sites—million dollar cases continued to become more frequent and larger. Figure 9 shows the trends in both jurisdictions in the proportion of cases that exceeded $1 million (in 1979 dollars). That figure also shows what proportion of all money awards went to plaintiffs in cases with million dollar awards. In San Francisco, during the 1960s only five cases had an adjusted value of $1 million, 0.3 percent of all cases in which plaintiffs received an award. During the 1970s, 26 cases produced awards exceeding $1 million, and by the late 1970s these were 2.3 percent of all cases that plaintiffs won.

The number of million dollar verdicts in San Francisco was about evenly split between the first and last half of the 1970s, but the size of these largest verdicts continued to grow. During the 1960s, the total amount of money awarded in million dollar verdicts represented only 8 percent of all money. This grew to 30 percent during the early

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5Dollar values were adjusted for inflation, using the consumer price index, and are shown in 1979 dollars.
6The data are smoothed by averaging the number of trials across overlapping five-year periods to produce a “running average.” Thus, the percentage for each year represents an average of data for that year, the two previous years, and the two following years.
7Juries did not award $1 million for any of these cases. The value exceeded $1 million only after we adjusted for inflation. A San Francisco jury first awarded $1 million in 1973.
1970s. Now the few million dollar cases account for nearly half of the money awarded by juries (48 percent) in the late 1970s.

Million dollar cases constituted a smaller proportion of cases and awards in Cook County, but not by much. By the end of the 1970s, juries awarded a million dollars or more in 14 percent of cases with plaintiffs’ verdicts. These awards make up 40 percent of all the money awarded by juries in the late 1970s. And the trends in the two jurisdictions are almost identical.

Trends for these large awards are responsible for the sharp increase in the average award. Growth in the average awards in both jurisdictions was erratic—in San Francisco it sometimes doubled or fell to half in successive years in the 1970s. One or two “block buster” awards (verdicts well over $1 million) created these changes. But we can see long-term trends by examining the running average that suppresses short-term fluctuations. As Fig. 10 shows, the average award in San Francisco did not increase in the early 1960s or after 1975. But between 1965 and 1975 the average award more than doubled. At first—between 1965 and 1970—the growing average reflected the in-
increased value of most awards in San Francisco. But, as we have seen, the size of most awards, even those of the 90th percentile, did not increase in the 1970s (Fig. 8) when the average award grew the most. It was only because of the growing number and size of a few extraordinarily large awards—those near or above $1 million—that the average award increased in the early 1970s (Fig. 9). And the continuing growth of these extraordinary awards maintained the average, even though the value of almost all awards decreased after 1975 (Fig. 8). In the late 1970s, the average remained level as the few extraordinarily large verdicts compensated for declining awards in most cases.

Figure 10 compares the long-term trends in San Francisco and Cook Counties. Since 1960, San Francisco County averages have exceeded those in Cook County although trends in average awards in the two jurisdictions have generally paralleled each other. During the first years we studied, awards were relatively stable in both jurisdictions. This stability lasted longer in Cook County, during the entire decade of the 1960s. The slight decrease in the early 1960s was made up by a slight increase later in the decade. In both jurisdictions this period of stability was followed by a period of rapidly rising averages. Finally, both trends leveled off in the late 1970s.

Fig. 9—Trends in million dollar verdicts, 1960-1979
But despite this similarity, there were marked differences. The growth in the average came earlier and was greater in San Francisco.

AWARDS FOR SPECIFIC CASE TYPES

Trends in the size of awards differed among different types of cases in San Francisco (Tables 10a and 10b). The average award for five of the six high-stakes case types increased markedly: More than 500 percent for malpractice and intentional tort cases; more than 300 percent for product liability and contracts/business tort cases; almost doubling for miscellaneous civil actions. Among high-stakes cases only worker injury showed moderate growth, less, in fact, than for all low-stakes case types.

Comparisons of trends for means and medians provide some understanding of how the value of each case type changed. San Francisco jurors seemed to have broadly increased the size of awards for product liability cases. Both the average award and the value of the typical (median) product liability case tripled during the 1960s and 1970s.
Table 10a

TRENDS IN MEDIAN PLAINTIFF AWARDS IN SAN FRANCISCO HIGH-STAKES CASES
(In thousands of 1979 dollars)

<table>
<thead>
<tr>
<th>Year</th>
<th>Malpractice</th>
<th>Intentional Tort</th>
<th>Contracts/ Business</th>
<th>Product Liability</th>
<th>Worker Injury</th>
<th>Misc.</th>
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<tbody>
<tr>
<td></td>
<td>Mean</td>
<td>Med.</td>
<td>Mean</td>
<td>Med.</td>
<td>Mean</td>
<td>Med.</td>
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<tr>
<td>1960-64</td>
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<td>1965-69</td>
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</tr>
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<td>1970-74</td>
<td>319</td>
<td>88</td>
<td>67</td>
<td>16</td>
<td>181</td>
<td>45</td>
</tr>
<tr>
<td>1975-79</td>
<td>457</td>
<td>70</td>
<td>339</td>
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<td>280</td>
<td>75</td>
<td>179</td>
<td>19</td>
<td>164</td>
<td>37</td>
</tr>
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</table>

Change,
1960-64 to 1975-79
513 156 856 91   365 129 213 300 137 124 196 78

(Values represent means and medians for each category and period.)
Table 10b

**TRENDS IN MEDIAN PLAINTIFF AWARDS IN SAN FRANCISCO LOW-STAKES CASES**

(In thousands of 1979 dollars)

<table>
<thead>
<tr>
<th>Year</th>
<th>Injury on Property</th>
<th>Street Hazard</th>
<th>Common Carrier</th>
<th>Auto Accident</th>
</tr>
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<tr>
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<td>44</td>
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<td>1965-69</td>
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<tr>
<td>1970-74</td>
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<tr>
<td>1975-79</td>
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<td>73</td>
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<td>Change</td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1960-64 to 1975-79 (%)</td>
<td>143</td>
<td>115</td>
<td>153</td>
<td>336</td>
</tr>
</tbody>
</table>

But there is little evidence of broad increases in the value of awards for other case types, since medians increased slightly or even decreased. The sharp growth in the average value of other high-stakes cases seemed to result only from the increasing frequency or size of extraordinarily large cases, such as awards near or over a million dollars. While the value of the typical (median) malpractice award fell by a third during the 1970s, the increasing size of large malpractice awards made the average double. Medians changed little for contracts/business torts and miscellaneous actions; the averages grew sharply for both categories because of the increasing size of large awards in recent years. We treat intentional torts as high-stakes cases only because of a few extraordinary awards in the late 1970s. Most intentional tort claims produced small awards, but some had enormous awards.

Extraordinary awards also occur in low-stakes cases. The uncharacteristically large average for injury on property cases in the early 1970s reflects a million dollar award. Extraordinary awards occur more frequently for auto accident cases, but their effect is reduced because of the large number of such cases.
TOTAL MONEY AWARDED

As Fig. 11 shows, the total sum of money awarded by all civil juries in San Francisco stayed fairly constant over most of the 1960s, increased substantially in the mid-1970s, and then decreased in 1979 to an amount that, in real terms, was only slightly larger than that of the early 1960s. Until the last two years studied, the San Francisco County trend followed fairly closely the Cook County trend of gradually increasing awards. Total awards are generally greater in Cook County because of that jurisdiction’s larger volume of cases.

There were striking changes in how the money awarded by San Francisco juries was distributed among case types. Table 11 shows trends in awards for each case type, both as dollar figures and as the percentage of awards in all cases. In the early 1960s, auto accident and worker injury awards together accounted for about three-quarters of all awards. But no longer. In the late 1970s, plaintiffs in intentional tort cases received more in total than those in any other case types, and auto accident and worker injury awards together accounted for slightly more than one-third of all awards. Total awards in contracts/business, malpractice, and product liability cases all were comparable to those in auto accident or worker injury cases. These changes resulted from the growth in both the number and the size of high-stakes cases.

The same changes in the distribution of total awards occurred in Cook County, although to a lesser extent. The change in San Francisco was dramatic, as shown in Fig. 12. Figure 12 compares total awards for high- and low-stakes cases in the early 1960s and the late 1970s. By the late 1970s, high-stakes cases accounted for 90 percent of all awards in San Francisco, up from 60 percent in the early 1960s. In Cook County, the analogous change was from 40 to 70 percent.
Fig. 11—Total awards, 1960-1979
### Table 11

**TRENDS IN TOTAL AWARDS IN SAN FRANCISCO COUNTY**

<table>
<thead>
<tr>
<th>Years</th>
<th>High-Stakes Cases</th>
<th>Low-Stakes Cases</th>
<th>Amount of Awards (in millions of 1979 dollars)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1960-64</td>
<td>1.0</td>
<td>1.6</td>
<td>1.9</td>
</tr>
<tr>
<td>1965-69</td>
<td>1.2</td>
<td>5.5</td>
<td>0.5</td>
</tr>
<tr>
<td>1970-71</td>
<td>2.5</td>
<td>11.4</td>
<td>13.7</td>
</tr>
<tr>
<td>1975-79</td>
<td>17.6</td>
<td>13.5</td>
<td>11.0</td>
</tr>
</tbody>
</table>

**Change, 1960-64 to 1975-79 (%):**

<table>
<thead>
<tr>
<th>Percentage of Awards, a</th>
<th>1960-64</th>
<th>1965-69</th>
<th>1970-71</th>
<th>1975-79</th>
</tr>
</thead>
<tbody>
<tr>
<td>Int. Tort</td>
<td>3</td>
<td>2</td>
<td>3</td>
<td>22</td>
</tr>
<tr>
<td>Cont./ Business</td>
<td>5</td>
<td>11</td>
<td>13</td>
<td>17</td>
</tr>
<tr>
<td>Malprac.</td>
<td>5</td>
<td>14</td>
<td>14</td>
<td>14</td>
</tr>
<tr>
<td>Prod.</td>
<td>6</td>
<td>13</td>
<td>16</td>
<td>17</td>
</tr>
<tr>
<td>Worker</td>
<td>37</td>
<td>12</td>
<td>8</td>
<td>6</td>
</tr>
<tr>
<td>Injury</td>
<td>4</td>
<td>35</td>
<td>23</td>
<td>17</td>
</tr>
<tr>
<td>Misc.</td>
<td>9</td>
<td>7</td>
<td>14</td>
<td>5</td>
</tr>
<tr>
<td>Injury on Prop.</td>
<td>39</td>
<td>33</td>
<td>33</td>
<td>19</td>
</tr>
<tr>
<td>Auto</td>
<td>7</td>
<td>8</td>
<td>5</td>
<td>3</td>
</tr>
<tr>
<td>Comm.</td>
<td>4</td>
<td>1</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>Street Hazard</td>
<td>4</td>
<td>1</td>
<td>2</td>
<td>1</td>
</tr>
</tbody>
</table>

**Change in percentages (a):**

- Int. Tort: 1.5%
- Cont./ Business: 9%
- Malprac.: 2% (not significant)
- Prod.: 9%
- Worker: 6%
- Injury: 1%
- Misc.: 9%
- Injury on Prop.: 6%
- Auto: 2%
- Comm.: 2%
- Street Hazard: 1%

**Notes:**

- aCase types are grouped by whether or not total awards for individual types increased faster than the increase for all cases (i.e., 215 percent, between 1960-64 and 1975-79).
- bRows sum to more than 100 percent because some cases are included in more than one category.
Fig. 12—Growth in awards for high-stakes cases, 1960-1979
IV. EFFECTS OF COMPARATIVE NEGLIGENCE

Civil jury trials and outcomes changed markedly in San Francisco after 1975, the year that the California Supreme Court adopted the doctrine of comparative negligence in *Li v. Yellow Cab Co.* But much of this change seemed to have little to do with the changing legal significance of plaintiffs' negligence. California adopted comparative negligence at a time when jury verdicts in San Francisco were already changing. As a result, we cannot confidently determine the effects of the legal change at this initial stage of our study of civil jury trials. We will have to wait for further analyses to try to distinguish between changes caused by comparative negligence and changes that have other causes. Nonetheless, we can describe jury trials under comparative negligence and raise tentative conclusions that we will explore in our further research.

The *Li* decision changed how California jurors were supposed to treat plaintiffs whose negligence contributed to their own injury. Before *Li*, under the doctrine of contributory negligence, jurors were instructed to return verdicts for the defendant if they found that a plaintiff's carelessness was in part responsible for his own injury. After *Li*, under comparative negligence, plaintiffs could receive an award even if their own negligence contributed to their injury. If the jury found that the plaintiff's negligence contributed to his injury, they were required to decide the plaintiff's share of responsibility. The jury reported this decision along with its decision about the amount of money the plaintiff would have received if he had not been negligent. The trial judge then determined the amount of the plaintiff's award, reducing the total compensation by the proportion of the plaintiff's responsibility.

California's method for implementing comparative negligence let us determine how often jurors found plaintiffs to be negligent and the amount awards were reduced. Between 1976 and 1980, juries found that 31 percent of plaintiffs who won verdicts contributed to their own injuries. These negligent plaintiffs were found on average to be 42 percent responsible for their own injuries, resulting in an average reduction in their awards of $46,000 (in 1979 dollars).

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2And our analyses will be limited because we can only assume how settlement practices changed.
Whether negligent plaintiffs did better or worse under comparative negligence depends, of course, on how they would have fared under the old, contributory negligence doctrine. At this point we can only assume how juries might have decided cases under contributory negligence. But even when we make extreme assumptions, the changes in San Francisco that resulted from comparative negligence were modest.

In principle, the 31 percent of plaintiffs who received awards under the comparative negligence rule despite their own negligence would have received nothing if California had continued with the contributory negligence doctrine. This would have meant that only 41 percent of plaintiffs would have received awards in trials after 1975,a far lower than the 59 percent that we found under comparative negligence (Fig. 13). The average award for the remaining, nonnegligent plaintiffs would have been much greater (because awards to negligent plaintiffs were small). But because fewer plaintiffs would have won, the expected award (i.e., the average across all plaintiffs, win or lose) would have been 20 percent smaller than the value we observed during the late 1970s. In short, if, before Lii, San Francisco juries had adhered to the contributory negligence rule, the change to comparative negligence could have increased plaintiff awards by about 20 percent.

This analysis almost certainly overstates the impact of comparative negligence. It is unlikely that all plaintiffs who were found negligent under comparative negligence would have lost if California had retained the contributory negligence doctrine. The trends in trial outcomes that this analysis predicts are so far from the recent history in San Francisco as to be highly improbable. At no time during the 20-year study period did the proportion of plaintiff wins fall anywhere near 41 percent (Fig. 13). The average award under this analysis would have been far above its average during previous years and the expected award would have been lower than during the early 1970s.

It is probably safer to assume that juries frequently refused to follow the strict requirement of the old contributory negligent rule—that juries often awarded money to plaintiffs, particularly to seriously injured plaintiffs, even if they contributed to their own injuries (Schwartz, 1978; Waterman and Peterson, 1981). Our analysis of Cook County jury verdicts supports this. In recent years, but before Illinois changed to the comparative negligence rule in 1981, Cook County

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aFifty-nine percent of plaintiffs won verdicts after 1975. Of these 89 percent did not contribute to their own injuries. These plaintiffs would have won under either comparative or contributory negligence.
Fig. 13—Comparative negligence increased awards by at most 20 percent.
( Assumes that San Francisco jurors would have followed the contributory negligence rule if the law had not changed, i.e., bringing defense verdicts where plaintiffs were negligent.)

juries were more likely to find liability if a plaintiff was seriously injured (Peterson, 1983).

Again, we examined this alternative assumption at its most extreme. Figure 14 shows how the change to comparative negligence would have affected awards if, before Li, San Francisco juries had ignored the contributory negligence doctrine, that is, had never refused to find liability nor reduced an award because a plaintiff was negligent. Under this assumption, comparative negligence would have worked against plaintiffs. The same proportion of plaintiffs—59 percent—would have won awards under either doctrine. But the expected award (and the average award) would have been 10 percent greater without the reductions for comparative negligence.

It is unlikely that either extreme assumption that we examined is completely correct, but they set a range for the impact on trial outcomes when the contributory negligence rule was replaced by comparative negligence. The legal change might have either decreased or
Fig. 14—Comparative negligence decreased awards by at most 10 percent (Assumes that San Francisco jurors would have ignored a contributory negligence rule—they would have awarded verdicts even to negligent plaintiffs without reducing the size of their awards)

increased plaintiff awards, but only by 10 to 20 percent in either direction.

Comparative negligence probably had a bigger impact on settlements than on jury decisions. We found that the number of trials decreased after comparative negligence, perhaps because the rule made it easier for parties to reach settlement.

The frequency with which jurors found plaintiffs negligent varied among case types (Table 12). For six types of cases—property, street hazard, worker injury, product liability, automobile accident, and common carrier—plaintiffs were found negligent in one-third to one-half of all trials. Plaintiffs were seldom found negligent for the four other case types.

We found different trends in the number of trials between case types that frequently involved comparative negligence and those where plaintiffs were infrequently negligent. The number of trials dropped sharply after 1975 for case types where comparative negligence was found frequently, but there was no systematic change for the other four types of cases (Fig. 15).
Table 12

**Frequency of Comparative Negligence in Case Types**

<table>
<thead>
<tr>
<th>Type of Case</th>
<th>Frequency of Plaintiff Win (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Comparative Negligence Found Frequently</td>
<td></td>
</tr>
<tr>
<td>Injury on Property</td>
<td>49</td>
</tr>
<tr>
<td>Street hazard</td>
<td>45</td>
</tr>
<tr>
<td>Worker injury</td>
<td>44</td>
</tr>
<tr>
<td>Product liability</td>
<td>41</td>
</tr>
<tr>
<td>Automobile accident</td>
<td>35</td>
</tr>
<tr>
<td>Common carrier</td>
<td>34</td>
</tr>
<tr>
<td>Comparative Negligence Found Infrequently</td>
<td></td>
</tr>
<tr>
<td>Miscellaneous</td>
<td>80</td>
</tr>
<tr>
<td>Malpractice</td>
<td>14</td>
</tr>
<tr>
<td>Consumer/business</td>
<td>7</td>
</tr>
<tr>
<td>Intentional tort</td>
<td>3</td>
</tr>
<tr>
<td>Total all cases</td>
<td>31</td>
</tr>
</tbody>
</table>

This difference has a plausible explanation. Comparative negligence might have made it easier for parties to settle cases where disagreement about the plaintiff's negligence was a primary issue. Under the previous contributory negligence doctrine, parties were faced with extreme valuations of a case—between zero (if the jury found the plaintiff negligent) and the full value of the injury (if the jury found the plaintiff not to be negligent). The range of potential jury awards, and presumably the differences between the parties, would be much narrower under comparative negligence—i.e., the possible range of the plaintiff's responsibility for his injuries. Parties should settle more readily where their valuations of a case are closer.

Comparison of trends in trial outcomes for different case types shows weaker—or at least more confusing—effects of comparative negligence. Trends in trial outcomes do not differ as markedly between those case types where comparative negligence is frequent or those where it is infrequent. Although this suggests that the change had little impact on trial outcomes, we can only speculate about this until we have conducted further research. It is possible that compara-
Fig. 15—Comparison of trends in number of case types in which comparative negligence is frequently or infrequently an issue:
San Francisco, 1960-1980
tive negligence had a significant impact on case outcomes but that this impact differed among types of cases or was hidden by the new mix of cases under comparative negligence. Our further work will explore both of these possibilities.

Any effect of comparative negligence on the proportion of plaintiffs' victories might also have been masked by a general decrease in plaintiffs' successes during the latter 1970s. The proportion of plaintiffs' victories decreased for all of the types of cases that infrequently involve comparative negligence (Fig. 16). Similarly, although comparative negligence should have improved plaintiffs' chances, plaintiffs won a smaller percentage of product liability and worker injury trials, two types of cases where comparative negligence occurred frequently. However, the only three types of cases where plaintiffs' successes increased were all types that frequently involved comparative negligence—automobile accident, common carrier, and injury on property.4

This pattern could be explained if jurors' adherence to the old contributory negligence rule had differed among case types. Even before 1975, jurors might generally have ignored plaintiff negligence in product liability and worker injury trials, while following the contributory negligence rule in automobile accident, injury on property, and common carrier cases. This hypothesis is plausible: Our study of Cook County verdicts showed that plaintiffs fare far better in product liability and worker injury suits (Peterson, 1983). But again, we must wait for our further research to examine the hypothesis.

Trends in the size of awards are more difficult to analyze. In looking across all cases, the size of awards in San Francisco decreased after 1975, a result that coincides with California's adoption of the comparative negligence rule. But the comparison of cases that either frequently or infrequently involved comparative negligence suggests that the decreasing value of awards was merely coincidental to and not caused by comparative negligence. As we would expect from the change to comparative negligence, the size of the typical automobile accident award decreased after 1975 (Fig. 17), but the median size of awards remained constant or increased for all other types of cases that frequently involved comparative negligence. However, this does not reflect a general trend of stable or increasing awards among all case types. In fact, although the size of the typical award increased for most case types that involved comparative negligence, it decreased for three of the four types of cases that infrequently involved comparative negligence. The trends for the average award are just as inconsistent.

4We do not consider trends in trial outcomes after 1975 for street hazard cases, because of the small number of such trials.
Fig. 18—Comparison of trends in proportion of plaintiff victories in case types in which comparative negligence is frequently or infrequently an issue: San Francisco, 1960-1980
Fig. 17—Comparison of trends in median awards in case types in which comparative negligence is frequently or infrequently an issue: San Francisco, 1960-1980
with the prediction that awards would decrease in size under comparative negligence (Fig. 18).

Although most states have now adopted a comparative negligence rule, the form of the law differs. In particular, states differ in their treatment of plaintiffs who are primarily responsible for their own injuries. California adopted a "pure" comparative negligence rule—a plaintiff can recover even if he is primarily responsible for his own injuries. In fact, plaintiffs in two San Francisco trials received awards although they were 99 percent responsible for their injuries. Other states allow recovery only if a plaintiff is less than 50 percent or 51 percent responsible for his own injury.

Negligent plaintiffs in San Francisco were, on average, 41 percent responsible for their injuries. This suggests that the form of comparative negligence might have made a difference in San Francisco—that some plaintiffs with high responsibility would have been denied recovery under other forms of the rule. However, when we look closer, it seems unlikely that the outcome of trials in San Francisco would have changed much if California had adopted a different form of the comparative negligence rule. In fact, defendants might have paid larger awards if California had adopted the 50 percent or 51 percent rule.

As Table 13 shows, most negligent plaintiffs (70 percent) were less than 50 percent responsible for their injuries and another 10 percent shared responsibility equally with defendants. Only 20 percent of negligent plaintiffs were primarily responsible for their injuries, i.e., their recovery would have been denied by both the 50 percent and the 51 percent rules. This distribution would probably have changed if California had adopted a different form of the comparative negligence rule. If California used the 50 percent or 51 percent rule and jurors knew of the operation of the rule, it is likely that jurors would have reduced their assessment of responsibility for some plaintiffs who were now found to be at least 50 percent responsible for their injuries. If so, a different rule would not have prevented recovery for some plaintiffs even though they were primarily responsible for their injuries. Rather, because they would be judged less responsible by the jury, those plaintiffs would have received larger awards under the stricter form of comparative negligence.

The pure form of comparative negligence seems particularly unfair when plaintiffs are overwhelmingly responsible for their injuries. A defendant who is only 10 or 20 percent responsible for a plaintiff's

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5 By 1981, ten states had adopted this form (Rolph et al., 1983).
6 These states follow the 50 percent rule. 11 follow the 51 percent rule.
7 For this reason, three states follow a "slightly gross" rule, denying recovery to plaintiffs whose gross negligence contributed to their injury, but permitting recovery for plaintiffs whose contributory negligence was slight.
Fig. 18—Comparison of trends in average awards in case types in which comparative negligence is frequently or infrequently an issue: San Francisco, 1960-1980
Table 13

**PLAINTIFFS’ SHARE OF RESPONSIBILITY**

<table>
<thead>
<tr>
<th>Plaintiff Responsibility (%)</th>
<th>Number of Cases</th>
<th>Percent of Cases with Comparative Negligence</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 50%</td>
<td>118</td>
<td>70</td>
</tr>
<tr>
<td>Equal to 50%</td>
<td>17</td>
<td>15</td>
</tr>
<tr>
<td>More than 50%</td>
<td>34</td>
<td>20</td>
</tr>
<tr>
<td>51-59</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>60-69</td>
<td>10</td>
<td>6</td>
</tr>
<tr>
<td>70-79</td>
<td>10</td>
<td>6</td>
</tr>
<tr>
<td>80-89</td>
<td>4</td>
<td>2</td>
</tr>
<tr>
<td>90-99</td>
<td>8</td>
<td>5</td>
</tr>
</tbody>
</table>

injuries might nevertheless have to compensate a plaintiff who is 80 or 90 percent responsible. Fortunately, these troublesome cases were rare; only 7 percent of negligent plaintiffs were at least 80 percent responsible for their injuries. And because their awards are greatly reduced by their primary responsibility, these plaintiffs received relatively small awards.

We want to warn again that our discussion of comparative negligence represents only an initial consideration of the impact of that law in one (possibly atypical) jurisdiction. The marked change in the mix of cases reaching juries under comparative negligence emphasizes the need for further, more thorough analysis. In these analyses we could simply compare the outcomes of trials before and after Li. With our further work, we will be able to see how cases reaching juries after the Li decision differed from those tried to juries before. We will be able to examine how the outcomes of trials changed, adjusting for differences in injuries, parties’ characteristics, and issues involving liability.

Preliminary information about the impact of comparative negligence in Cook County raises further questions. Results drawn from the *Cook County Jury Verdict Reporter* (the source of our data on Cook County trials) indicate that the impact of comparative negligence in that jurisdiction is quite different from what we observed in San
Francisco. During the first year after Illinois adopted a pure form of comparative negligence, Cook County plaintiffs seemed to receive more favorable outcomes. Our further research will compare how the legal change affects trials and outcomes in both jurisdictions.

V. 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 nine case types.\(^1\) We concentrate on results for San Francisco, but we compare these with relevant results from Cook County, especially to highlight possible effects of comparative negligence and other changes in law. Because of their growing domination, we examine high-stakes cases first; but we also examine trends in low-stakes cases. As we have discussed, plaintiffs in million dollar cases took nearly 50 percent of all the money awarded by juries in the late 1970s. This section shows that million dollar awards occur and complicate analysis of trends even in low-stakes case types.

MALPRACTICE CASES

Professional malpractice cases in San Francisco have never constituted a large proportion of jury trials; averaging 14 to 22 cases per year over the 20-year period (see Fig. 19a), they ranged from only 6 percent of all trials in the late 1960s to 8 percent in the late 1970s. However, perhaps in part because medical malpractice\(^2\) suits tend to involve more serious injuries (Peterson, 1983), they bring the highest awards, whether measured by the median ($75,000 over the 20-year period), the average ($280,000), or the 90th percentile ($436,000). Further, in contrast to their stability in number, medical malpractice cases showed one of the largest increases in the average award over the period, from $89,000 in the early 1960s to $457,000 in the late 1970s (see Fig. 19a), and in total awards from about $2 million awarded in the early 1960s to about $14 million in the early 1970s.\(^3\)

Our data on malpractice cases shed some light on the controversy surrounding the malpractice crisis of the early and mid-1970s. Insurance companies argued that a crisis existed in the early 1970s when juries began to make large awards that could not have been antici-

\(^1\)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.

\(^2\)We defined our malpractice category to include all types of professional malpractice. However, about 90 percent of the cases in this category involve medical malpractice claims.

\(^3\)The total awards for intentional tort cases had a greater increase after 1975.
Fig. 19—Long-term trends for medical malpractice trials, 1960-1980
pated; and that these much larger awards (and settlement levels influenced by awards) were a principal cause of huge losses suffered by insurers on medical malpractice policies. Insurers responded to the losses by raising premiums sharply. These increases in turn led some doctors to refuse insurance and shield themselves from malpractice liability by other methods. In addition, both insurers and the medical community pressed legislatures in many states—including California—to limit the size of malpractice awards. Plaintiffs’ lawyers opposed this legislation and took issue with the claimed malpractice crisis. Among other points, the plaintiffs’ bar argued that large jury verdicts were neither excessive nor beyond what should have been anticipated; that insurance company losses resulted from investment losses rather than from inordinately large awards.

Our previous examination of malpractice awards in Cook County suggests that the crisis was real: Both the median and average malpractice awards increased enormously in 1973 and 1974 (Peterson and Priest, 1982). However, on first examination, the data for San Francisco County fail to support the argument of a malpractice crisis. First, the median malpractice award had been declining since the mid-1960s and continued to decline during the “crisis” period (see Fig. 13d). Second, the average appeared relatively stable in the early 1970s (see Fig. 19c), as did the 90th percentile award. These statistics increased before and after but not during the crisis period.

However, two features of malpractice awards did change significantly in the early 1970s. First, the probability of a plaintiff victory increased substantially in that period (see Fig. 19b), from 0.27 in the early 1960s to 0.43 in the early 1970s. More important, the size of the largest awards increased substantially. If a few big cases in Cook County changed malpractice into a significant area of legislation (Peterson and Priest, 1982), even fewer and bigger cases did the same in San Francisco County. In fact, just one case (with a judgment amount of $6.6 million) accounted for 60 percent of all malpractice awards in San Francisco County in the early 1970s. Cases over a million dollars were unheard of in the 1960s. These few extraordinarily large awards in the early 1970s added considerable instability to the malpractice area, increasing the risks of insurance company decisions about claims and underwriting.

Taken together, the increased proportion of plaintiff wins and the million dollar cases doubled the total money awarded in malpractice trials between the late 1960s and the early 1970s. They also drove the expected award amount*—what a defendant must on average expect

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*The expected award is obtained by averaging awards across all cases, including those that defendants win, i.e., cases with zero awards.
to pay in each malpractice trial—to $137,000 in the early 1970s, up from $76,000 during the previous five years.

In summary, we find some evidence of a malpractice crisis during the early 1970s in San Francisco County: Even though the median award was decreasing, total awards, the variation among those awards, and defendants’ exposure to extraordinary liability were all rising substantially during that period. However, if those factors constitute a crisis, then malpractice is only one part of a larger crisis in jury trials. Product liability, contract/business, intentional tort, and miscellaneous cases all showed similar increases in total awards and defendants’ exposure during the same period.

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, passed in 1975, placed a $250,000 ceiling on general (though not special) damages in medical malpractice judgments, limited contingent fees, and enacted a number of other changes that generally placed limitations and burdens on malpractice plaintiffs. Unlike the experience in Illinois, most provisions of the malpractice reform law in California have been upheld in state courts.

Our data suggest that this legislation might have had some modest effects. The most conspicuous change in the late 1970s was the decrease in cases brought to trial (see Fig. 19a), a change that probably did not result from comparative negligence (see pp. 40–42). This decrease suggests that plaintiffs may have had a more difficult time reaching trial. However, despite the limitation on the size of general damages, large (i.e., 75th percentile) and extremely large (i.e., 90th percentile) awards did not decrease, but, in fact, increased in the late 1970s (Fig. 19d). The average award also increased, because of one award, a $6.3 million judgment. Without it, the average value of malpractice awards would have declined precipitously in the late 1970s. But this case illustrates the possibility and impact of extraordinary awards. And it shows that limitations on general damages do not rule out large awards.

Footnotes:
1The Illinois statute used somewhat different provisions to limit malpractice actions and awards (Illinois P.A. 75-960) but was declared unconstitutional. Wright v. Central DuPage Hospital Assn., 63 Ill. 2d 313 (1976).
2Only one provision has been struck down. The California Court of Appeals ruled that a provision requiring periodic payment for future damages of at least $50,000 violated equal protection. American Bank and Trust Company v. Community Hospital, 104 Cal. App. 3d 219 (1980).
PRODUCT LIABILITY

Product liability trials became an increasingly important part of the San Francisco civil jury caseload during the 1960s and 1970s. Only 4 percent of trials and 6 percent of total awards in the early 1960s, product liability suits grew to 10 percent of trials and 14 percent of the awards by the late 1970s. Total awards increased continuously over each of the five-year periods we have used in this study (Table 11). The greatest changes occurred in the mid-1960s and again in the mid-1970s, as evidenced by the jumps in the average award (Fig. 20c) at those times.7

Unlike other types of cases, product liability suits always had a few very large awards. Even in the early 1960s the 90th percentile award exceeded $300,000 (see Fig. 20c). But the tendency toward large awards became more pronounced by the late 1970s. Not only was the 90th percentile award for product liability ($570,000) greater than for any other case type but, like malpractice, a few million dollar awards added greatly to the total. The largest two cases by themselves accounted for 38 percent of total awards in the late 1970s. Without them, the average award to product liability claimants would not be $219,000 as reported in Table 10a, but $145,000—only $7,000 higher than the average in the late 1960s.

Product liability cases differed strikingly between San Francisco and Cook Counties. Product liability constituted a larger share of the civil jury trial caseload in San Francisco, and trends in the frequency of such trials were the opposite in each jurisdiction. While in Cook County the frequency of such trials increased throughout the 20-year period, in San Francisco County it decreased in the late 1970s (see Fig. 20a).

Plaintiffs have a better chance of winning product liability trials in San Francisco, but the difference between the two sites is diminishing. In Cook County the proportion of plaintiff victories started low and generally increased over the period, whereas in San Francisco County the proportion started high and decreased (see Fig. 20b).

Although the shape of the average award curve was similar in the two sites, awards were much higher in Cook County, particularly in the 1970s (Fig. 20c). There, product liability awards were the largest of any case type, with a $110,000 median and a $325,000 average over the 20 years. In San Francisco County, on the other hand, award

7The sharp increase between the first two points on Fig. 20c indicates that the average award in 1965 was much larger than the average in 1960. The steady rise in the 1970s indicates that awards were on average much larger in the years 1973 through 1977 than during the previous five years.
Fig. 20—Long-term trends for product liability trials, 1960-1980
size was only about a third as large, with a $37,000 median and a $137,000 average.

The influence of comparative negligence in the late 1970s in San Francisco County might account for some of the difference between jurisdictions. Plaintiff negligence is often an issue in product liability trials—juries found comparative negligence in 38 percent of cases the plaintiffs won after 1975. The new trend toward a decreasing frequency of product liability cases coincided with the change to comparative liability. Parties might have found product liability claims easier to settle under comparative negligence. Average awards also took a slight downturn (the predicted direction), a change that was characteristic of nearly all case types.

Trends in liability, on the other hand, run contrary to the generally expected effect of comparative negligence. While the proportion of plaintiff victories remained relatively stable through most of the period, it took a sharp decline after 1975. Again, this might reflect the general trend of reducing plaintiff’s chances that we observed for most types of cases.

We can better understand the differences between the jurisdictions by considering liability and awards together. Cook County plaintiffs appear to take a large risk (winning only 38 percent of the time) in taking potentially big cases to trial. In San Francisco County plaintiffs tended to bring to trial more moderate-sized cases but at a moderate risk with only about as much chance of losing as the average plaintiff. This apparent difference in risk-taking behavior could have various explanations. One could be that defendants in San Francisco County might fear “block buster” verdicts because they see juries as less predictable than defendants view their Cook County counterparts. As a result, defendants in San Francisco County may be willing to contest liability on smaller cases but may be reluctant to risk a jury decision in larger cases. Alternatively, the nature of injuries or suits (both settled and tried) resulting from defective products might differ in the two areas.

CONTRACTS/BUSINESS CASES

Juries heard 323 actions claiming breach of contract or unfair business practices in San Francisco during the 20 years of the study, representing 6 percent of all jury trials. Among these, about a third

³We probably underestimate the proportion of contracts and business tort trials, since Jury Verdicts Weekly failed to report some of those trials if the jury made special verdicts or if the trials involved collection of notes or other money issues. These exclu-
of the trials appear to have been ancillary to disputes about insurance coverage or nonbusiness torts: 25 percent involved disputes about insurance contracts and 6 percent about insurance fraud.

Table 14 lists the types of issues in the contract and business category. Most (275 or 86 percent of the total) involved contract actions, sometimes (about 50 cases) also raising issues of business torts. Breach of contract trials most often involved personal service and insurance contracts. Nearly all cases in the business torts category raised issues of fraud. Other types of contract actions (e.g., debt or real property) and other types of unfair business practices (e.g., antitrust or contract interference) rarely reach juries; juries heard fewer than one of these types of cases per year, on average.

![Table 14](image)

**Table 14**

**Types of Business and Contract Actions in San Francisco County, 1960-1979**

<table>
<thead>
<tr>
<th>Type of Action</th>
<th>Number</th>
<th>Percent of All Contract or Business Tort Actions%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contract actions</td>
<td>275</td>
<td>85</td>
</tr>
<tr>
<td>Insurance</td>
<td>72</td>
<td>25</td>
</tr>
<tr>
<td>Personal Service</td>
<td>78</td>
<td>24</td>
</tr>
<tr>
<td>Sales</td>
<td>30</td>
<td>9</td>
</tr>
<tr>
<td>Debt</td>
<td>20</td>
<td>6</td>
</tr>
<tr>
<td>Real Property</td>
<td>12</td>
<td>6</td>
</tr>
<tr>
<td>Other</td>
<td>58</td>
<td>18</td>
</tr>
<tr>
<td>Business torts</td>
<td>101</td>
<td>31</td>
</tr>
<tr>
<td>Insurance fraud</td>
<td>18</td>
<td>11</td>
</tr>
<tr>
<td>Investment fraud</td>
<td>15</td>
<td>5</td>
</tr>
<tr>
<td>Other fraud</td>
<td>55</td>
<td>18</td>
</tr>
<tr>
<td>Antitrust</td>
<td>11</td>
<td>3</td>
</tr>
<tr>
<td>Contract interference</td>
<td>6</td>
<td>2</td>
</tr>
</tbody>
</table>

*Totals sum to more than 100 percent because some cases are included in more than one category.*

The number of trials involving contract or business tort claims increased dramatically in San Francisco, a pattern that we also found in Cock County. Although they represented only 3 percent of the civil actions would not have greatly increased the proportion of trials in this category. See Appendix A.
jury trial caseload in the early 1960s, by the late 1970s, contract and business claims accounted for 11 percent of all civil trials in San Francisco (Table 7). The number increased at a steady rate for most of the period, reaching about 22 cases per year in the late 1970s (Fig. 21a).

Awards in contract and business cases represent an even faster growing proportion of total awards. Juries awarded only $1.6 million in the early 1960s, representing 5 percent of total awards. By the late 1970s, plaintiffs in contract and business tort actions were awarded about $14 million, nearly 17 percent of all awards.

Contract and business cases played a much larger role in San Francisco County than they did in Cook County, although the difference between the two sites has decreased in recent years. Overall, contract and business cases represented 6 percent of all jury trials in San Francisco County, three times more than their share in Cook County. The difference has lessened, however, since the number of contracts and business cases grew at an even faster rate in Cook County than in San Francisco County (see Fig. 21a).

The percentage of wins by plaintiffs in contract and business cases remained at about 70 percent between 1960 and 1975, but dropped dramatically to only 56 percent in the late 1970s (see Fig. 21b). This trend is opposite to that in Cook County, where the proportion of plaintiff victories steadily rose (see Fig. 21b). By the end of the period plaintiffs in the two counties were winning at about the same rate.

Successful plaintiffs in contract and business cases in San Francisco received very large awards—$164,000 on average (see Fig. 21c). Only malpractice and intentional tort plaintiffs received more. The large average award, plus the high rate of plaintiff wins, gave contract and business trials the greatest expected verdict—$106,000 per trial.

However, awards did not always average that high. In the early 1960s, contract and business cases ranked sixth in average awards among case types ($65,000 in 1979 dollars). During the early 1970s, the average award doubled (see Fig. 21c). The value of all sizes of cases, from the smallest to those extremely large, rose during that period (Fig. 21d). As Fig. 21d shows, only the largest awards increased continuously. From the early 1960s to the late 1970s, the value of the largest 10 percent of cases (the 90th percentile) grew by 350 percent. From beginning to end, the value of the median or typical case grew only a modest 30 percent, despite a temporary rise in the early 1970s. Although the value of most cases decreased in the late 1970s, the continued rise in the extremely large awards was sufficient to hold the average constant. In fact, only three cases, all over $2 million, accounted for 50 percent of total awards in the last five years of the 1970s. Without those three cases, the average award in that five-year
Fig. 21—Long-term trends for contracts and business tort trials, 1960-1980
period would have been $129,000 rather than $237,000, and the average award would not have risen 350 percent over the study period, but only 180 percent.

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 triple damage awards for business torts or punitive damages for bad faith in insurance contracts?

INTENTIONAL TORT CASES

We include as intentional tort cases civil rights cases (false arrest, false imprisonment, and malicious prosecution), assaults, and defamation cases (libel and slander). Most of the cases involve a threat or use of force or a claim of discrimination.

The number of intentional tort cases in San Francisco County grew at a much faster rate than in Cook County (see Fig. 22a) and, in fact, faster than any other case type in the San Francisco courts. Only 31 jury trials involved such issues in the early 1960s, but during the late 1970s the number had grown to 121 cases—nearly a 400 percent increase. In recent years, intentional tort trials have become as commonplace in San Francisco as slip-and-fall and all other trials involving injuries on property—about 12 percent of all trials. Only auto accident and worker injury cases now reach juries more often.

Table 15 shows the increase for specific types of intentional tort trials. Civil rights cases have grown the fastest—from only 10 in the early 1960s to 73 in the 1975-79 period. The large increase in civil right trials in the late 1970s is entirely responsible for the continuing increase in the number of intentional tort trials (see Fig. 22a), an increase that is particularly striking because of the decreasing number of jury trials for most case types. Over the entire period assault cases are nearly as frequent as civil rights cases. Trials involving defamation or other types of intentional torts are relatively infrequent, although they have increased and at times they have involved large amounts of money.

Intentional tort cases show the fastest growth in total awards for any type of case. San Francisco County juries awarded only $1.0 million to intentional tort plaintiffs in the early 1960s, representing about 3 percent of all awards in that five-year period, but they awarded nearly $18 million in the late 1970s, representing about 22 percent of all the money awarded.
Fig. 22—Long term trends for intentional tort trials, 1960-1980
Table 15

TRENDS IN THE NUMBER OF INTENTIONAL TORT TRIALS,
BY TYPE, IN SAN FRANCISCO COUNTY, 1960-1979

<table>
<thead>
<tr>
<th>Civil Rights</th>
<th>Assault</th>
<th>Defamation</th>
<th>Other²</th>
</tr>
</thead>
<tbody>
<tr>
<td>1960-64</td>
<td>10</td>
<td>18</td>
<td>3</td>
</tr>
<tr>
<td>1965-69</td>
<td>41</td>
<td>28</td>
<td>6</td>
</tr>
<tr>
<td>1970-74</td>
<td>24</td>
<td>51</td>
<td>15</td>
</tr>
<tr>
<td>1975-79</td>
<td>73</td>
<td>53</td>
<td>11</td>
</tr>
<tr>
<td>1960-79</td>
<td>188</td>
<td>150</td>
<td>35</td>
</tr>
</tbody>
</table>

³Primarily cases of harassment or more technically, intentional infliction of emotional distress.

This increase in total awards reflects both the greater number of intentional tort trials and the sharp increase in the average award (Fig. 22c). But most awards did not increase (Fig. 22d). In fact, a few million dollar awards were responsible for the great increase in the average. The largest award in San Francisco County during the 20-year period was in a 1975 libel case—$10.5 million in 1979 dollars.⁹

We found no comparable trend for large intentional torts awards in Cook County. Although some large awards occurred there, they were not enough to dramatically affect the average. But if we ignore extremely large awards in San Francisco, the trends in the size of awards are strikingly similar in the two jurisdictions. Figure 22c shows a trough in the average intentional tort award in Cook County, a decrease during the mid-1970s followed by an increase. In San Francisco County, awards of all sizes showed the same trend (Fig. 22d).

Liability trends also show remarkable similarity between Cook and San Francisco Counties, a trough in the late 1960s (see Fig. 22b). In both places a plaintiff’s chances of winning dropped during the 1960s—by 14 points in San Francisco and by 6 points in Cook County. Then in both jurisdictions the percentage of plaintiff victories rose again in the early to mid-1970s to about its original value, before falling in recent years.

⁹This case was reversed upon appeal and subsequently settled for under $500,000.
We previously speculated that the liability trend in Cook County could have resulted from either modifications of governmental immunity laws in Illinois or changes in popular attitudes about civil rights, protesters, and police activities (Peterson and Priest, 1982). The similarity of these results across jurisdictions reduces the likelihood that changes in Illinois law on governmental immunity were responsible for the sharp changes in liability trends in Cook County. In California the law of government immunity remained stable throughout the study period, but we still see the same liability trends. This similarity strengthens the argument that changes in plaintiffs' success in civil rights and assault cases reflect changing attitudes of jurors. We suggested that the decreasing proportion of plaintiffs' victories during the late 1960s might have reflected a backlash toward the civil rights and antiwar movements. In turn, the increasing proportion of plaintiffs' victories in the 1970s may reflect a lessening of racial and political tensions. Of course, any hypothesis at this point must remain speculative until further analysis can test it.

WORKER INJURY CASES

Our category of worker injury cases includes all suits brought by workers injured in the course of employment, whether or not the employer was a defendant.

In San Francisco County, worker injury cases rank second only to auto accident cases in number and total awards. Fifteen percent of all cases and over one-fourth of all the money awarded involve workers injured on the job. These findings are somewhat surprising given that the workers compensation laws were enacted to prevent lawsuits by employees against their employers for on-the-job injuries. But such laws allowed suits against other defendants, providing, for example, for liens in such suits.

The California Workers' Compensation Act prohibits civil suits by most employees against their employers. Most of the suits we observe are brought by employees who are not covered by the California Workers' Compensation Act (e.g., railroad or maritime workers for whom the Federal Employers' Liability Act or Jones Act superseded the California statute), or by employees or independent contractors against defendants other than their employers, e.g., manufacturers, nonemployer job-site supervisors, general contractors, architects, or property owners. In some trials, injured workers might have sued their employers for actions that were not a part of their employer-employee relationship, e.g., the employee was injured by a product
manufactured by the employer. California courts, and Illinois courts to a lesser degree, have been expanding employees' rights to bring such suits under the "dual capacity" theory. We have not examined how many worker injury trials raise this theory, but will do so in our future work.

Commentators have speculated that workers go outside the workers compensation system because recoveries under the act are less generous than civil trial judgments, general damages are not compensable under workers compensation, and payments are not indexed to inflation. If inflation makes civil actions more attractive, one would expect to find a sharp increase in trials in the 1970s, when inflation was the worst. However, just the opposite trend occurred in both San Francisco and Cook Counties (see Fig. 23a). After 1974, the number of worker injury trials declined precipitously. In San Francisco only three-quarters as many worker injury cases reached trials in the late 1970s as in the early 1960s. Of course, this does not necessarily mean that the number of worker injury lawsuits decreased.

The comparative negligence doctrine might have accelerated the decline in worker injury trials. Worker injuries frequently involved issues of comparative negligence, so that parties might now find it easier to compromise claims for workplace injuries, avoiding trials. Alternatively, the reduced number of trials involving workplace injuries might have nothing to do with California's adoption of comparative negligence. As we noted, we observed a similar decline in Cook County before Illinois adopted comparative negligence in 1981. Perhaps worker injury case defendants in both jurisdictions were increasingly unwilling to allow these cases to reach juries. Worker injury cases produce verdicts that are highly favorable to plaintiffs in both jurisdictions. More detailed analysis of jurors' compensation decisions in Cook County shows that the same injury will result in a higher award in a worker injury case than for any other type (Peterson, 1983).

Over the entire period, injured workers in San Francisco won over two-thirds of the time, more than plaintiffs bringing any other type of suit. At the end of the 1960s, the rate of liability approached 75 percent. But then in the 1970s the percentage of plaintiff wins declined to a point below even the early 1960s. By the end of the 1970s plaintiffs' success in San Francisco fell below the success rate of plaintiffs in Cook County for the first time (see Fig. 23b).

This decline is contrary to what we expect to result from the comparative negligence doctrine. The surprising finding might reflect different settlement practices. Perhaps after adoption of comparative negligence, parties more readily settled worker injury cases, except those involving serious questions about defendants' liability. Alterna-
Fig. 22—Long-term trends for worker injury trials, 1960-1980
tively, the trend might indicate that the new doctrine of comparative negligence made little difference to jurors. Jurors might have operated under an informal comparative doctrine even before the doctrine became law, refusing to deny benefits to workers injured on the job even when they shared blame for their own injuries.

Average worker injury awards in San Francisco County were among the largest of all case types, with a $55,000 median and a $125,000 average. Awards increased in the mid-1960s, but leveled off after that at about $135,000 (see Fig. 23c). With a decreasing number of trials and a falling proportion of liability, the total amount of money awarded in worker injury cases has declined in recent years. Once 37 percent of total awards (in the early 1960s), worker injury cases accounted for only 17 percent of total awards in the late 1970s. The current value of awards in the late 1970s ($13.4 million) was only slightly greater than the current value of awards in the early 1960s.

Like product liability cases, jury awards in worker injury trials were larger in Cook County than in San Francisco County. The difference between the two jurisdictions arose only during the 1970s; before that, awards were comparable. But by the late 1970s the median award in San Francisco County was less than half the Cook County median, and both the average and 90th percentile awards were far larger in Cook County. Again, this change might reflect California's adoption of comparative negligence; but we must wait for further analysis to understand why the two jurisdictions experienced such different trends.

AUTOMOBILE ACCIDENT CASES

Automobile accident claims dominated jury trials throughout the period, accounting for about half (48 percent) of all trials in the Superior and U.S. District Courts in San Francisco. Plaintiffs fared well in auto accident trials, winning nearly two-thirds (65 percent) of the time, about 10 points higher than for most other types of cases. However, the size of awards ranked lower than for any other case types, enough to give automobile accident cases the lowest expected award ($31,000) among all case types. As a result, auto accident cases accounted for only 30 percent of awards overall.

Auto accident cases are less important in the courts now than they once were; in both jurisdictions the number of cases declined sharply in the latter part of the period (Fig. 24a). By the late 1970s in San Francisco, auto accident cases represented only 38 percent of all trials—a fifth of all awards. Concerning liability, both jurisdictions saw an
Fig. 24—Long-term trends for automobile accident trials, 1960-1980
increase in a plaintiff’s chances of winning in the 1970s, apparently peaking at the end of the period; the increase was considerably faster in San Francisco (see Fig. 24b), probably due in part to comparative negligence.

Average awards rose sharply in both jurisdictions before leveling off in San Francisco in the early 1970s and during the late 1970s in Cook County (Fig. 24c). The increase in the average size of awards came earlier and rose faster in San Francisco County, a trend we saw for awards as a whole.\(^6\)

The leveling of average awards in San Francisco during the late 1970s resulted because two different trends canceled out each other. The largest few awards increased greatly. In the late 1970s, three auto accident awards accounted for 30 percent of the total money awarded for all such cases. But at the same time, most awards decreased sharply (Fig. 24d). In San Francisco County, a growing proportion of judgments resulted in very small awards. Between 1975 and 1979, 25 percent of the winning auto accident plaintiffs received less than $4,700, even in the Superior and Federal Courts (see Fig. 23d). No other case type had such a low quartile value. Even in auto accident cases in earlier periods the first quartile award was much larger—nearly $8,100 in the early 1970s and $7,400 in the early 1960s.

Low as the first quartile is in San Francisco, awards were even smaller in Cook County. Figure 24d shows the lower first quartile in Cook County.

Several explanations could account for the growing proportion of small judgments in automobile accident cases. Jurors’ attitudes could have changed—the same loss might receive a smaller award now than earlier—but our analysis of compensation decisions in Cook County does not support this explanation (Peterson, 1983). Also, that explanation does not explain why this trend does not occur for other case types. Perhaps different types of cases reached trial in the late 1970s, cases that involved lesser injuries or more controversial questions of liability. This could have happened if insurance companies increasingly refuse to settle “nuisance” claims. Or perhaps, as some judges have conjectured, the growing number of novice lawyers might be willing to try small cases to gain experience.

\(^6\)The difference would even be greater if one looked at expected awards, since Cook County plaintiffs win less often.
COMMON CARRIER CASES

The number of jury trials in San Francisco County involving common carriers' liability to injured passengers remained quite constant, at about 25 a year, for the first three-quarters of the period. The number then declined to an average of about half that amount between 1975 and 1979 (see Fig. 25a). Similarly, the trend in liability suddenly accelerated in the late 1970s. From a slowly increasing percentage of plaintiff wins (around 60 percent), the trend rose sharply between 1975 and 1979 to near 70 percent (see Fig. 25b). Both changes suggest effects from California's adoption of comparative negligence.

The average award in common carrier cases, $54,000, fell short of the average for all cases ($84,000). After increasing in the 1960s, the average award declined to its original value during the 1970s (see Fig. 25c). This trend applied to common carrier cases of all sizes (see Fig. 25d).

Despite the smaller-than-average awards, common carrier plaintiffs in San Francisco County tended to win slightly more often (60 percent of the time) than plaintiffs in other types of cases. However, the higher winning percentage did not make up for the smaller average award, as evidenced by total awards. Although common carrier cases made up 8 percent of all trials, they made up only 5 percent of total awards.

Common carrier cases played similar roles in Cook and San Francisco Counties. They were fairly frequent—in both places they ranked fourth in number of cases overall—but were declining in frequency by the late 1970s. In the late 1970s common carrier cases ranked ninth in San Francisco County and eighth in Cook County in case frequency. In both jurisdictions plaintiffs in these cases won slightly more often than the average. Finally, in both Cook and San Francisco Counties, awards were small enough that common carrier cases ranked near the bottom in total awards.

Common carrier cases appear similar to auto cases, except for the abundance of extremely small auto accident awards. Both had sharp declines in frequency in the 1970s, high and increasing liability over the study period, and small average and expected awards. Most common carrier cases are similar to auto cases in that they involve traffic accidents. But the parties differ. Defendants in common carrier cases are government agencies or corporations; in auto cases, defendants are usually individuals (Chin and Peterson, 1983). Future analyses will help us understand how party identity influences case outcomes and, perhaps, helps account for the many small awards in auto accident cases.
Fig. 25—Long term trends for common carrier trials, 1960-1980
INJURY ON PROPERTY CASES

Cases that we include in our injury on property category—slips, trips, and other actions brought 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—have traditionally constituted a substantial portion of civil jury trials. In San Francisco County, injury on property trials rank third among all case types in frequency (behind auto accident and worker injury trials), even though the chances of a plaintiff win—48 percent—are less than those for average plaintiffs in other cases. The median award ($21,000) matches that for all cases taken together. However, the average ($75,000) lags behind the overall average because injury on property cases do not draw the high awards that other case types do. The value of the top 10 percent of awards ($120,000) is only about half the value for all cases. As a result, injury on property cases account for a smaller proportion of total awards (9 percent) than of total trials (13 percent).

We would expect trends in injury on property cases in San Francisco to be affected by the change to comparative negligence because comparative negligence was found in over 50 percent of those cases once the law took effect—the highest proportion among all case types. Both case frequency and liability trends show possible effects of the law. After a decade of a relatively constant number of trials, the frequency of such cases in San Francisco decreased sharply after 1975, the year comparative negligence took effect (see Fig. 26a). Similarly, liability jumped after 1975, as we would expect under comparative negligence, rising 6 or 7 percentage points over the earlier periods (see Fig. 26b).

Other evidence makes the point less clear. For example, the decline in the number of cases also occurred in Cook County and may be a more general phenomenon. Further, average awards in San Francisco increased after 1975, after an initial large dip, opposite the direction that conventional wisdom would predict. Future studies will examine the possibility of causal relationship between comparative negligence and San Francisco trends.

Big awards occasionally influenced the average and total awards in San Francisco County. Despite the modest size and relatively flat trend of the 90th percentile awards in injury on property cases in San Francisco (see Fig. 26d), two extremely large cases of over $1 million resulted in a sharp rise in the average award in the early 1970s (Fig. 26c). The trend in the Cook County average shadows the San Francisco average except for those years affected by the million dollar awards.
Fig. 26—Long-term trends for injury on property trials, 1960-1980
STREET HAZARD CASES

Street hazard cases are difficult to study in San Francisco County because of their small number—only 148 trials and 68 awards over the 30-year period. They are the least significant type of case, representing only 3 percent of all cases over the study period, even less than the miscellaneous category. Moreover, because plaintiffs win less often (46 percent of the time), and receive less money on average ($73,000) than other plaintiffs, total awards in street hazard cases make up even less of the total dollars—2 percent.

Nonetheless street hazard cases merit some examination, especially to compare results with those in Cook County. While the cases in Cook County represented an equally small percentage of total trials, the average award there increased at a rate that was higher than for any other case type in that County.

In San Francisco County, the number of street hazard cases remained stable at about eight or nine trials per year over the first 15 years of the study period, then dropped to about half that amount in the late 1970s; Cook County followed a similar trend (see Fig. 27a). Although small sample sizes make conclusions difficult, part of the drop in San Francisco County may have been due to comparative negligence; four of the nine plaintiff verdicts between 1975 and 1979 had judgments reduced by comparative negligence.

Because of these small numbers, liability trends in San Francisco exhibited great instability over the period, as shown by the oscillating pattern in Fig. 27b. Even the smoothed average ranges from 30 to 65 percent. Comparing the decade of the 1960s with the decade of the 1970s, however, it appears that the proportion of plaintiff victories has increased over the study period from an average of 42 to an average of 50 percent.

Like liability, trends in the average award in San Francisco show wide variance (see Fig. 27c). Nonetheless, two important observations can be supported with these data. First, the average award increased in the 1970s over its value in the 1960s, from $52,000 to $97,000. Second, that increase was considerably smaller than the enormous growth of awards in Cook County, where street hazard cases increased faster in average award than any other case type. Figure 27c compares the two trends and suggests two questions: Why was the average award in Cook County so much lower than in San Francisco County in the early 1960s and why was it so much higher in the late 1970s? A few large awards may be the answer to the latter question, as the medians in the two sites during the late 1970s were about the same (see Fig. 27d). However, we see no clear explanation for the small awards in Cook County in earlier periods.
Fig. 27—Long-term trends for street hazard trials, 1960-1980
VI. CONCLUSIONS

Our study suggests that there is reasonable similarity in jury decisions over time and in different places. We found that in San Francisco and Cook County, for example, civil trials and verdicts were comparable. The bulk of jury trials in both places involves low to moderate dollar amounts, and juries seem to provide balanced and moderate decisions for these trials. Plaintiffs win in 59 percent of trials in San Francisco and in 52 percent in Cook County. Although undoubtedly significant to most plaintiffs and defendants, jury awards are usually modest: Half in San Francisco are under $21,000; half in Cook County are under $15,000.1

Despite widespread social and legal change during the 1960s and 1970s, juries did not markedly change how they decided the vast bulk of cases. After we adjusted for inflation, the size of most awards did not increase in either jurisdiction across the two decades.

Although these results provide reassurance about juries, the frequency of these low-stakes cases raises questions about the economics of our civil justice system. In a large proportion of trials—perhaps over half in both jurisdictions—the economic stakes that the parties are fighting about are less than the combined costs of those trials to the parties (Trubek et al., 1983) and to taxpayers (see, e.g., Kakalik and Robyn, 1982). Undoubtedly many of these cases are tried because the parties disagree about basic facts or matters of principle, but some observers will conclude that the amount at stake in most trials does not seem to justify the public and private expense for those trials (see, e.g., Burger, 1983). These comparisons of the costs and economic stakes of trials do argue for using arbitration, settlement, or other means to resolve many of these disputes.

Still, most of these jury trials are probably economically justified for the parties. Jury awards of $10,000 to $20,000 are significant and involve amounts greater than the usual costs to parties in trying the case. If the parties substantially disagree about the likely outcome of the trials, it is worth their while to submit their case to a jury. It is only when we add public costs that the costs of many trials exceed the amount at stake.

1These are for trials in the federal courts in each city and for the unlimited jurisdiction state court, the San Francisco County Superior Court, and the Law Division of the Cook County Circuit Court. Awards are smaller in Cook County when we include the inferior state court, the Municipal Division of the Circuit Court (Peterson and Priest, 1982).
Although the analyses in this report cannot explain why, there was one important change in jury verdicts in both jurisdictions—the size of the largest awards. While the size of most awards remained fairly constant during the 1960s and 1970s, the size of the largest awards grew sharply in both jurisdictions. Million dollar awards are the most extreme example of this trend. The continuing growth of awards near or over a million dollars in San Francisco accounted completely for the increase in the average award during the 1970s. By the last half of the 1970s, in each jurisdiction over 40 percent of all the money awarded went to plaintiffs in a handful of cases that produced million dollar awards.

The increasing size of big awards might have broad significance. The growing size and frequency of these extraordinarily large awards may have raised plaintiffs’ incentives to try potentially high-award cases and the risks to defendants in not settling those cases. But the change may have increased the difficulty in reaching settlements, because of the uncertainty about the value of cases involving serious injuries or emotionally charged issues.

Despite their similarities, the outcomes of jury trials differed somewhat between the two jurisdictions. The average award more than doubled in both, but this growth was greater and happened earlier in San Francisco. Across the entire period awards were larger in San Francisco.

Most of these differences in the outcome of jury trials reflect differences in cases tried to juries in the two jurisdictions rather than differing decisions by juries. A larger proportion of cases heard by San Francisco juries involved high-stakes types of cases—trials involving injured workers, defective products, malpractice, contract or business disputes, intentional torts, or other issues that produce large awards. And the proportion of trials involving these high-stakes issues has increased faster in San Francisco. When we take into account differences in the types of cases heard by juries, there is relatively little difference among the two jurisdictions. In fact, jurors in Cook County awarded larger verdicts for three of the four biggest types of cases—product liability, worker injury, and contract and business disputes. It appears, in short, that differences in jury decisions are not so great between the two jurisdictions that plaintiffs with a choice would benefit by choosing to try lawsuits in San Francisco.

After California adopted the comparative negligence rule in 1975, both the types of cases tried to juries and the outcomes of trials changed notably in San Francisco. Comparative negligence seems to have made it easier for parties to settle cases—the number of trials decreased for each type of case in which plaintiff negligence was frequently an issue. It is less clear that comparative negligence changed
jury decisions. As we expected from this legal change, plaintiffs in automobile accident trials won a greater proportion of cases but received less money. But this expected pattern occurred for no other type of case in which plaintiff negligence was frequently an issue. Our conclusions about the effects of comparative negligence must remain tentative until we have conducted further analyses. But it seems that the law had only a modest effect upon the outcome of trials.

In this study and in our earlier study of jury trials in Cook County, we found a general stability and consistency in jury decisions over time and across jurisdictions. Nevertheless, decisions required of juries have become more complicated and sensitive as an increasing proportion of cases that jurors hear involve great economic stakes, complicated factual questions, or questions about the appropriate actions of government agencies. Certainly the greatest concern about the competency and fairness of jury decisions lies in those few cases that involve big economic and social issues.
Appendix A

DATA COLLECTION: SOURCES AND METHODOLOGY

SOURCES

The analyses described in this report are based on reports of jury verdict reporting services in each site. These are private, weekly subscription newsletters for lawyers and insurance companies in their respective areas. The Cook County Jury Verdict Reporter was described in an earlier report (Peterson and Priest, 1982). This appendix describes the publication relevant to San Francisco County, Jury Verdicts Weekly (J VW). It also describes the methods and procedures we used to collect the J VW data and the types of data obtained. The methodology was essentially the same in San Francisco as in Cook County, except where differing laws required different or additional questions (e.g., San Francisco required questions on the comparative negligence doctrine) or differing information was available (e.g., the race of plaintiffs was not recorded in J VW).

Since 1959, J VW has described civil cases reaching verdict in the Superior Courts and the U.S. Federal District Courts in California. The most comprehensive coverage of J VW is in the Los Angeles and San Francisco metropolitan areas. All descriptions are derived from information provided to J VW by the lawyers trying the cases. To obtain the information, J VW identifies cases reaching verdict from public records for each court and then mails a questionnaire to each attorney of record.

To judge the success J VW had in obtaining case descriptions, we first attempted to compare the total number of cases reported by J VW with that reported by the California Judicial Council in its annual report. While J VW reported only 59 percent of the number of cases listed by the Judicial Council, we discovered that the counts are not comparable for two reasons. First, the Judicial Council counts all trials that begin, whereas J VW reports consistently only those with jury verdicts. Dismissals, completely directed verdicts, and settlements during trial are not of prime concern to the J VW and were therefore not reported. Similarly, these incompletely tried cases are outside the concerns of our study. Second, in the Judicial Council reports, cases consolidated for trial are each counted separately as they were first
filed. In contrast, J VW reported consolidated actions as one multiple party trial.

To make a more precise estimate of J VW’s coverage, we sampled about 400 cases listed by the San Francisco County courts as having gone to jury trials in 1974 and 1979. To see how many of these cases were reported by J VW, we compared the parties in those sampled cases with those reported in the semiannual indexes published by J VW.

The J VW appears quite successful in obtaining case descriptions. J VW reported 84 percent of the Superior Court cases in which juries reached decisions (see Table A.1). This figure may underestimate the actual reporting. The J VW indexes sometimes identify cases differently from how they are identified by court records, so we could not find those cases in the index.

| Table A.1 |
| Comparison of Civil Jury Verdicts Included in J VW and Reported by the San Francisco Superior Courts |

<table>
<thead>
<tr>
<th>Item</th>
<th>1974</th>
<th>1979</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reported in J VW</td>
<td>123</td>
<td>102</td>
<td>225</td>
</tr>
<tr>
<td>Total sample</td>
<td>143</td>
<td>126</td>
<td>269</td>
</tr>
<tr>
<td>Percent reported</td>
<td>86</td>
<td>81</td>
<td>84</td>
</tr>
</tbody>
</table>

SOURCE: Sample of cases kept by San Francisco County Clerk.

To determine the effect the underreporting of J VW had on results of this report, we examined, where available, the type of case, the percentage of plaintiff victories, and the awards of the 44 cases missed (see Table A.2). Contracts/business cases are the only type of case greatly overrepresented in the sample of missed cases, and thus likely underrepresented in the data of this report. Further, J VW appears to have missed trials with smaller-than-average awards, especially small auto and contracts/business cases. We have noted the likely biases in the text.

In short, with a few exceptions, we feel comfortable that our sample of trials was reasonably representative of all civil trials decided by juries in San Francisco. Further, we feel that any sample bias had no effect on conclusions and only marginal effects upon the precise numbers and probabilities.
Table A.2

CHARACTERISTICS OF TRIALS NOT REPORTED BY JVW

<table>
<thead>
<tr>
<th>Type of Case</th>
<th>Cases</th>
<th>Plaintiff Wins (%)</th>
<th>Avg. Award ($1975)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Number</td>
<td>Percent</td>
<td></td>
</tr>
<tr>
<td>Automobile accident</td>
<td>19</td>
<td>43</td>
<td>60</td>
</tr>
<tr>
<td>Contracts/business</td>
<td>12</td>
<td>27</td>
<td>73</td>
</tr>
<tr>
<td>Common carrier</td>
<td>5</td>
<td>12</td>
<td>76</td>
</tr>
<tr>
<td>Other</td>
<td>8</td>
<td>15</td>
<td>71</td>
</tr>
<tr>
<td>All cases</td>
<td>44</td>
<td>100</td>
<td>63</td>
</tr>
</tbody>
</table>

SOURCE: Sample of cases kept by San Francisco County Clerk.

The JVW 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, and liens. Following this, a brief description 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 an illustrative case report from the JVW.

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 variety of legal and factual issues involved in civil lawsuits, 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
MAY 21, 1973

DAVID CALONE vs CITY AND COUNTY OF SAN FRANCISCO AND GREYHOUND LINES - San Francisco County

Number: 616604

Plaintiff Attorney: Franklyn X. Brann, San Francisco
Defendant Attorney: Deputy Attorney William Taylor for City
Hass, Van, St. Clair, Taggertini and Hines, San Francisco, by G.D. Taggertini for Greyhound

Plaintiff Medical: Lionel Sami M.D. (Orthopedist) San Francisco
Defendant Medical: None

Trial Judge: Hon. Charles E. Goff

BUS PASSENGER INJURED

May 27, 1968 at about 5:30 P.M. plaintiff, 25 year
old electronics assembler from San Francisco, was injured while a passenger
on a City bus at the intersection of Mission and Courtland Streets in San
Francisco.

Plaintiff stated that she was sitting in the rear
seat of the bus on the left side; that the bus was stopped at a bus zone to
discharge passengers when it was struck on the left rear side by defendant
Greyhound's bus.

It was contended by the plaintiff that defendant
City's bus driver was negligently parked and defendant Greyhound's
driver was negligent in striking the City bus.

Defendant City contended that the bus was properly
stopped to discharge passengers; that the Greyhound driver was negligent.
Defendant Greyhound contended that the City bus
was stopped with the rear portion of the bus 22 inches from the curb which
was in violation of a City Ordinance; that the City bus rolled backwards
contacting the bus as it passed.

Plaintiff attorney did not submit a figure but he
did state that the judgment should be against Greyhound only.
Jury out three hours and 25 minutes after a five day
trial.

Injuries: Claimed cervical sprain with hospitalization until
June 8th. When leaving the hospital she felt a
weakness in the left knee on which she had had previous surgery. She subsequently
fell at home in the shower, aggravating both the knee and cervical problems.
In August of 1968 she had an operation on her knee. No residual complaints.

Specials: Medical $5,600. Wage Loss $3,000.

Settlement talks: Demand $10,000. Offer by Greyhound only $3,750.

Result: PLAINTIFF VERDICT $14,000. vs BOTH DEFENDANTS
UNANIMOUS
Motion for new trial made by both Defendants
April 30, 1973

Fig. A.1—Illustrative case report from Jury Verdicts Weekly
"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, or pedestrians.
- **Common carrier**: Claims by passengers against common carriers (buses, airplanes, amusement rides, elevators, and escalators).
- **Street hazard**: Claims arising from construction or obstructions on roadways or sidewalks, improper design of roadways or sidewalks, and 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.
- **Worker injury**: Claims for injuries arising in a workplace 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, 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 involved separate incidents, different legal theories, or other distinct legal or factual matters; counterclaims; cross complaints in which the defendant sued another defendant for his own injuries; or third-party actions in which a defendant sued 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 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.3. Fortunately, no case involved the com-
Table A.3

<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. P3</td>
<td>Second-action general (second)</td>
</tr>
<tr>
<td>Cross complaint—</td>
<td>D1 v. D2</td>
<td>Second-action general (third)</td>
</tr>
<tr>
<td>cross complainant’s own injuries</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Third-party action—</td>
<td>D1 v. D3 (new)</td>
<td>Second-action general (fourth)</td>
</tr>
<tr>
<td>third-party plaintiff’s own injuries</td>
<td></td>
<td></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>

The complexity of this illustrative case, but our modular forms would have enabled us to collect data for lawsuits of any level of complexity. In all, this modular data collection strategy required the preparation and use of 50 different data collection forms, listed in Appendix B. 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.

1We 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 himself had sustained the initial injury). Rather than using a primary general and a third-party 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.

2In fact, all but three of these forms were used in collecting the Cook County data.
TYPES OF DATA

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

1. Matters of timing (when the action occurred, length of trial, end of trial date, 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, reductions due to comparative negligence, 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 have contributed to his own injury.
5. The amounts of defendants' offers, plaintiffs' demands, plaintiffs' requests to juries, and the prayer or ad damnum (i.e., the amount requested in the complaint).
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.
10. The nature of injuries and disabilities claimed by litigants.
11. The characteristics of the plaintiffs and defendants in the actions.

Special forms were used to record factual claims and legal issues raised by 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 na-
ture of injuries, the amount of claimed specials, and characteristics and disposition of the action was obtained separately for each plaintiff, except when the JVW 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.¹

PROCEDURE

We recorded information on each of the approximately 5,300 jury trials reported by JVW. The data collection forms were completed by second-year law students under the direction of a law professor, George Priest. Each student prepared several legal memoranda dealing with specific issues involved in litigation in California and then coded 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 descriptions. The supervisor answered questions about cases and coding conventions and provided written decisions about coding policies. He also 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 consensus in the coding. The procedure consisted of reassigning a sample of

¹Occasionally, the JVW provided no specific information about separate parties in an action. For example, plaintiffs might sue the City of San Francisco and seven police officers for an alleged violation of civil rights. The description of the case might not present separate information about each of these seven police officers and their roles in the claimed incident, or unique information about the disposition of the case (i.e., 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 one plaintiff or one defendant, while retaining information that we were in fact obtaining for multiple parties. These "collapsing conventions" greatly simplified data collection.
cases coded by each student to another student or to the supervisor for independent coding. The initial coder then compared both versions of the work, listed the disagreements, and discussed those disagreements 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 resolved by the supervisor.
Appendix B

DATA COLLECTION FORMS

Primary Forms

General
Special forms
  Traffic
  Common carrier
  Street hazard
  Dramshop
  Worker injury
  Product liability
  Malpractice
  Injury on property
  Miscellaneous

Street hazard
Dramshop
Worker injury
Product liability
Malpractice
Injury on property
Miscellaneous

Third-Party Forms

General
Special forms
Supplement
  Traffic
  Common carrier
  Street hazard
  Dramshop
  Worker injury
  Product liability
  Malpractice
  Injury on property
  Miscellaneous

Long Form
  Traffic
  Common carrier
  Street hazard
  Dramshop
  Worker injury
  Product liability
  Malpractice
  Injury on property
  Miscellaneous

Second-Action Forms

General
Special forms
  Traffic
  Common carrier

Pure Subrogation Form
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A special bibliography (SB 1064) provides a list of other Rand publications in the civil justice area. To request the bibliography or to obtain more information about The Institute for Civil Justice, please write or telephone: The Institute for Civil Justice, The Rand Corporation, 1700 Main Street, Santa Monica, California 90406, (213) 393-0411.