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CASELOAD HIGHLIGHTS

EXAMINING THE WORK OF STATE COURTS

Trial Trends and Implications for the Civil Justice System

Bench and jury trials have been declining steadily for the past twenty years, both in absolute numbers and as a proportion of civil dispositions. This “vanishing trial” phenomenon was long suspected by many within the state court system, but has only recently been empirically confirmed. This issue of *Caseload Highlights* focuses on trends in civil trial characteristics and discusses possible causes of these trends and their implications for practitioners and policy-

makers in state courts.

The upper line on the graph below documents an increase from 2.1 million civil dispositions in 22 states in 1984 to 3.1 million dispositions in 2002—a 46 percent increase. This increase closely tracks increases in population growth in those states during the same period. The lower line at the bottom of the graph shows bench and jury trials as a percentage of total civil dispositions. Trial dispositions fell from 31 percent in 1984 to 16

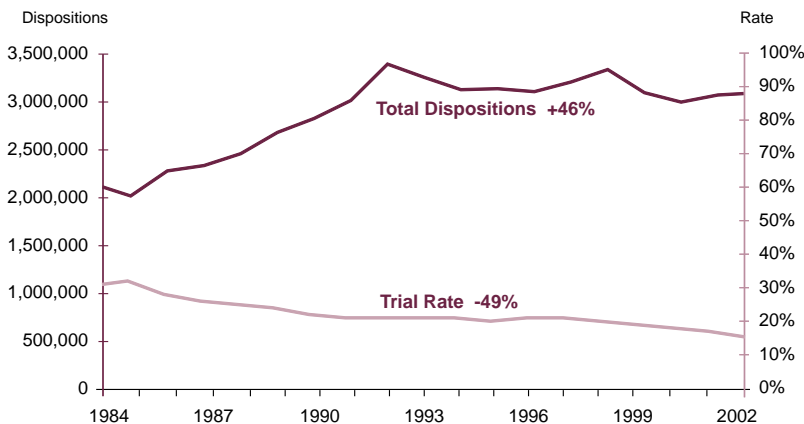
percent in 2002—a 49 percent decline overall. Note that jury trials have always represented only a tiny fraction of civil dispositions—1 percent or less

over the past two decades. During this period, the ratio of bench to jury trials has remained fairly stable—approximately 26 to 1.

When Did the Biggest Changes in Civil Dispositions and Trials Occur?

	1984	1992	2002
Total Dispositions	2,112,185	3,395,382 ▲	3,087,857 ▼
Jury Trials	24,124	24,159	17,617 ▼
Bench Trials	629,572	688,517 ▲	469,547 ▼

Civil Dispositions and Trial Rates in 22 States, 1984-2002



Comparing Outcomes in Bench and Jury Trials

Some commentators suggest that judges are better suited than juries to decide civil cases. They claim that judges are influenced by sympathies or prejudice less often than juries, making their decisions on liability fairer and their awards more reflective of the actual damages incurred by plaintiffs. The figures on the next page compare the rates at which judges and juries decide for plaintiffs on liability and the median awards for compensatory and punitive damages.¹

continued

¹ Tables and graphics related to trial outcomes in this issue are derived from the 2001 *Civil Justice Survey of State Courts*, a joint research project of the NCSC and the Bureau of Justice Statistics, which examined characteristics of bench and jury trials in 46 large urban courts in 22 states, representing 23 percent of the U.S. population. A grant from LexisNexis provided the authors with access to statutes, case decisions, and periodical literature necessary to prepare this publication.

Trial Trends and Implications for the Civil Justice System

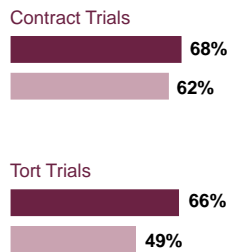
Comparing Outcomes in Bench and Jury Trials, *continued*

These graphs present a mixed picture: juries actually decide for plaintiffs less often than judges, but damage awards in the cases decided by juries are typically higher. Judges are more likely than juries to award punitive damages in tort trials, but less likely to award them in contract trials. In interpreting these figures, one complication

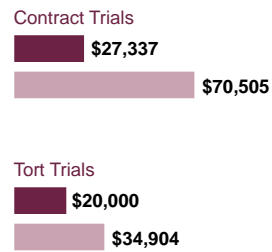
is that litigants deliberately opt for a bench or jury trial based on their assessment of which decision-maker will be most favorable to the evidence and issues in their case. Consequently, even within the same case categories, judges and juries are not necessarily deciding on the same kinds of cases.

Bench and Jury Trials (2001)

Plaintiff Win Rate

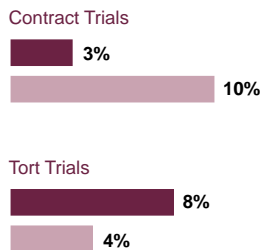


Median Compensatory Awards

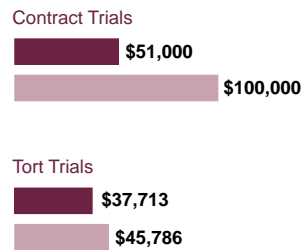


■ Bench ■ Jury

Punitive Award Rate



Median Punitive Awards



Jury Awards Have Fallen Over the Past Decade

Media reports of jury verdicts in civil cases tend to focus on cases involving large damage awards. Yet the damages typically awarded by juries are relatively modest and, in most types of cases, have declined substantially over the past decade. Among tort trials, only in medical malpractice, defamation, and product liability trials (less than 16 percent of total tort trials) have jury awards

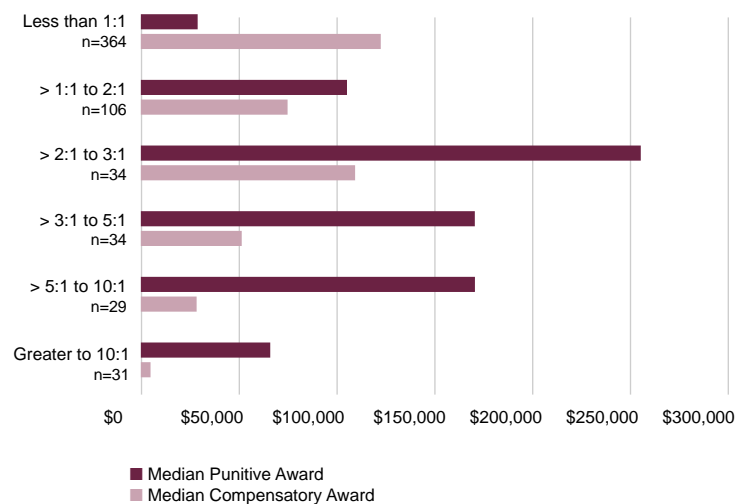
increased during this period. Some of the increase in medical malpractice awards may be explained by increases in health care costs, which have consistently outrun inflation and thus would tend to drive up compensatory damages. It is not clear why defamation and asbestos awards have increased at such high rates. Contract trials show a 20 percent increase in awards overall.

The ratio of punitive to compensatory awards is typically 2-to-1 or less.

A frequently voiced concern about punitive damages is whether punitive awards have any rational relationship to the magnitude of the injury suffered by plaintiffs (usually expressed as the ratio of punitive to compensatory

awards). In *State Farm v. Campbell*, 538 U.S. 408 (2003), the U.S. Supreme Court ruled that punitive-to-compensatory damage ratios that exceeded 10-to-1 would only rarely survive a due process challenge. Based on

Median Awards by Ratio of Punitive to Compensatory Damages



Median Final Awards in General Civil Jury Trials (in 2001 Dollars)*

	1992	1996	2001	Increase/ Decrease
Total Jury Trials	\$63,805	\$47,184	\$41,311	-35.3%
Total Tort	\$65,391	\$37,839	\$31,860	-51.3%
Case Type				
Auto tort	\$35,307	\$21,321	\$17,209	-51.3
Premises liability	\$76,019	\$73,837	\$61,953	-18.5
Intentional tort	\$56,329	\$36,830	\$48,997	-13.0
Product liability - non-asbestos	\$322,276	\$370,286	\$405,483	25.8
Medical malpractice	\$253,580	\$327,765	\$491,781	93.9
Defamation	\$29,872	\$28,353	\$120,265	302.6
Product liability - asbestos	n/a	\$403,399	\$1,649,597	308.9
Total Contract	\$64,379	\$94,503	\$77,047	19.7%
Case Type				
Fraud	\$81,881	\$87,408	\$84,675	3.4
Employment discrimination	\$184,826	\$269,505	\$226,177	22.4
Buyer plaintiff	\$49,448	\$55,242	\$62,736	26.9
Seller plaintiff	\$42,939	\$77,240	\$64,974	51.3

*1992 and 1996 figures adjusted for inflation: 13.4% increase from Jan. 1996 to Jan. 2001; 26.8% increase from Jan. 1992 to Jan. 2001.

three iterations of the *Civil Justice Survey of State Courts*, the vast majority of punitive damage awards would survive this test. The ratio in nearly 80 percent of the 598 cases with punitive awards from the three civil justice surveys was 2-to-1 or less. Moreover, the median compensatory award for cases with punitive awards exceeding a 10:1 ratio was a nominal \$4,260, which was one of the factors the U.S. Supreme Court cited as justifying a high-ratio punitive damage award.

Verdict Reports Overstate Awards

Media reports of trends in jury verdicts and awards are often based on statistics compiled by jury verdict reporters. A careful analysis of the accuracy of those statistics reveals that they often omit defense verdicts and low-dollar plaintiff

awards. A comparison of statistics from the 2001 *Civil Justice Survey of State Courts* and from jury verdict reporters in the same jurisdictions found that jury verdict reporters recorded only half of the jury trials that took place in

those jurisdictions. Plaintiff win rates were 9 percent higher in the jury verdict reporter data, and damage awards were systematically skewed toward higher compensatory and punitive awards.

Selected Comparisons of Dataset Characteristics

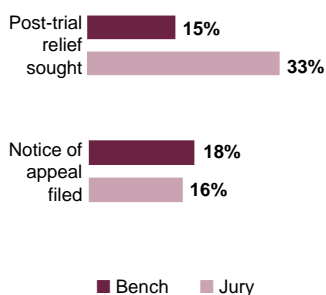
	2001 Civil Justice Survey Dataset	Verdict Reporter Dataset	Difference
Number of Cases	5,620	2,771	-2,849
Plaintiff Win Rate	51.2%	60.1%	8.9%
Median Compensatory Awards*	\$40,271	\$66,548	\$26,277
Mean Compensatory Awards*	\$680,581	\$1,247,218	\$566,637
% of Compensatory Awards Exceeding \$1 Million	9.4%	14.1%	4.7%
Rate of Punitive Awards	5.1%	5.3%	0.2%
Median Punitive Awards*	\$75,000	\$137,516	\$62,516
Mean Punitive Awards*	\$6,031,421	\$6,951,856	\$920,435
% of Punitive Awards Exceeding \$1 Million	16.6%	23.3%	6.7%

* Awards in real property cases are excluded.

Post-trial Activity in General Civil Trials

The filing of a judgment following a jury or bench trial normally reflects the final judicial action before a case is deemed fully disposed. Yet all state courts have procedures with which litigants in civil cases may seek post-trial review by either the trial judge or by an appeals court. Information about post-trial motions was collected for the first time in the 2001 *Civil Justice Survey of State Courts*, revealing how often litigants avail themselves of these procedures and the extent to which post-trial review alters the outcome of the trial.

Post Trial Motions in Bench and Jury Trials (2001)



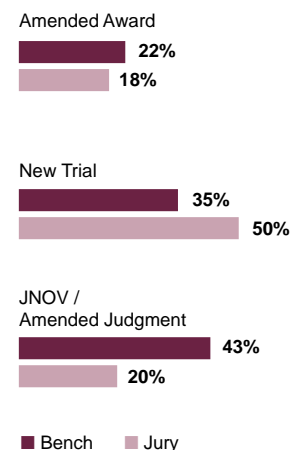
Litigants filed post-trial motions for relief more than twice as often following a jury trial compared to a bench trial, ostensibly believing that trial judges will be more likely to modify a jury verdict than their own trial judgments. Yet the rate of post-trial motions for relief varied considerably by jurisdiction from a low of 7 percent in Milwaukee, Wisconsin to a high of 67 percent in Palm Beach, Florida, suggesting that local legal culture plays a role in litigants' decisions to seek post-trial relief. Trial judges granted approximately one-quarter of post-trial motions for relief regardless of the type of trial. Litigants were equally likely to file notices of appeal in bench and jury trials.²

The type of relief sought by litigants in post-trial motions depended on whether the case was tried by a jury or by a judge. One-half of the post-trial

motions filed in jury trials requested a new trial, with motions for judgment notwithstanding the verdict, an amended award, or some other form of relief comprising the remainder in nearly equal proportions. Motions for an amended award were the only type of post-trial relief that received generally favorable consideration, with half of all such motions being granted in both bench and jury trials. Motions filed in bench trials were more evenly split, with motions for amended judgment comprising the highest proportion.

The table below, which documents the effects of amended awards, also reveals an unexpected detail: the vast majority of successful motions for an amended award are filed by the plaintiffs. Moreover, the adjustments are relatively modest—typically less than a \$10,000 increase or

Forms of Post Trial Relief Sought by Litigants in Bench and Jury Trials (2001)



decrease from the original award. In jury trials, some of these adjustments may be the result of pretrial high-low agreements between the parties. Other adjustments are likely due to calculation of prejudgment interest.

² The NCSC is currently conducting a supplemental study of appeals from the 2001 *Civil Justice Survey of State Courts*. Study findings concerning the rate at which litigants prevail on appeal will be available in late 2005.

Effect of Post-Trial Adjustments to Plaintiff Awards

Trial Type	Party Moving for Amended Award	N	If Motion Granted ...	
			Median Increase/Decrease	Percent of Original Award
Jury	Plaintiff Only	124	\$4,167	9%
	Plaintiff and Defendant	23	-3,342	-7
	Defendant Only	73	-14,778	-24
Bench	Plaintiff Only	24	10,653	39
	Plaintiff and Defendant	7	3,785	11
	Defendant Only	7	-1,210	-9

Why Are Trials Vanishing?

Researchers from the National Center for State Courts were among the select group of civil justice scholars participating in the ABA *Symposium on the Vanishing Trial*, held on December 12-13, 2003 in San Francisco, California. The papers and Symposium discussions highlighted three general factors that have contributed to the decline in jury trials: increased emphasis on caseflow management; growth in the popularity of alternative dispute resolution; and procedural and institutional constraints on the number of trials.³

³ The papers presented during the Symposium have been compiled and published by the *Journal of Empirical Legal Studies* (Volume 1, Number 3, November 2004).

Caseflow Management

The use of caseflow management techniques increased dramatically in the 1970s in response to growing criticism of the costs imposed on litigants by delays in case disposition. Time standards and firm trial dates were the initial hallmarks of effective caseflow management. Gradually, courts began to equate judicial productivity with the number of cases disposed, rather than the number of trials presided over. This produced a radical change in judicial views about active management of court case-loads; judges became increasingly interested and willing to engage in more aggressive efforts to resolve cases through various forms of non-trial disposition.

Alternative Dispute Resolution (ADR)

Alternatives to traditional adversarial methods of conflict resolution have blossomed over the past quarter century into a wide variety of mediation, arbitration, and other practices. The popularity of these approaches stems from the perception that they can resolve cases faster and with less expense to the parties than is likely through traditional adversarial methods. Other perceived benefits include the ability to craft more flexible and creative solutions to problems, to avoid disruption to ongoing relationships, and to preserve confidentiality.

Procedural, Institutional, and Social Constraints

A number of procedural, institutional, and social changes have affected the number of trials that take place each year. For example, many jurisdictions now require parties to engage in extensive discovery, reducing the level of uncertainty about potential trial outcomes and operating as an incentive for non-trial dispositions. The number of trial judges and courtrooms has not kept pace with increases in filings, effectively creating a ceiling on the number of trials that can be conducted in any one year. Finally, some commentators suggest that the role of the trial both as a public resolution of private disputes and as a form of public education about the American justice system may have become less important to society over time, particularly in light of the cost of a trial.

Implications for State Courts

The dramatic changes in the way that state trial courts dispose of cases discussed here have major implications for the future of the American civil justice system. Declining trial rates require courts to shift core resources, such as personnel and facilities, from trial to non-trial activities. This shift will also require investments in

training for judges and court staff in pretrial case management techniques and, to compensate for the loss of trial experience by lawyers ascending to the bench, in effective trial management.

These changes also have broader implications for civil society. For example, settlement agreements in civil cases rarely

become part of the public record and consequently do not contribute to the ongoing development of a body of publicly accessible law. As a result, businesses and individuals may face greater uncertainty about the parameters of legally acceptable conduct in civil matters. Declining trial rates also reduce the number of people

engaged in jury service, which traditionally has functioned as a critical component of our system of democracy. Fewer opportunities for the public to observe and participate in the justice system through jury service may also make the goal of improving public trust and confidence in the courts more difficult to achieve.

The Court Statistics Project (CSP)

In existence since 1975, the CSP is administered by the National Center for State Courts, with generous support by the Bureau of Justice Statistics. The CSP receives general policy direction from the Conference of State Court Administrators through its Court Statistics Project Advisory

Committee. Those wishing a more comprehensive review and analysis of the business of state trial and appellate courts are invited to go to www.ncsconline.org and click on the link to the Court Statistics Project.



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Points of view expressed herein are those of the authors and do not necessarily represent the official position or policies of the Bureau of Justice Statistics.

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