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Community preferences and trial court decision-making: the influence of political, social, and economic conditions on litigation outcomes

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COMMUNITY PREFERENCES AND TRIAL COURT DECISION-MAKING: THE
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---"[Juries] will introduce into their verdicts a certain amount--a very large amount, so far as I have observed--of popular prejudice, and thus keep the administration of the law in accord with the wishes and the feelings of the community." Oliver Wendell Holmes (238, 1920)

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Abstract

During the ratification debates the Federalists and Anti-federalists contested the merits of the civil jury. The Anti-federalists, preferring strong local government, argued that civil juries empowered communities to settle disputes themselves based on local standards. On the other hand, Federalists maintained that civil juries were outmoded and produced inconsistent applications of the law from one locale to another, jeopardizing the rule of law. Although the ratification debates ultimately ended with the inclusion of the Seventh Amendment guaranteeing the right to a jury trial in all disputes involving claims greater than $20, the disagreement between the Federalists and the Anti-federalists closely mirrors the current debate between advocates and opponents of tort reform. These persistent, normative questions regarding the role of civil juries in American society give rise to the empirical questions that my dissertation explores. First, are there differences in the way that civil juries resolve disputes and allocate resources from one community to another, and if there are, what factors explain and predict those differences? Secondly, are there similar differences across states in litigation outcomes? I endeavor to explain differences in civil trial outcomes based on social, political, and economic conditions, within and across states, using an original data set comprised of all 2009 cases decided in the Alabama, Hawaii, Indiana, Kentucky, and Tennessee civil trial courts, including an in-depth analysis of Alabama trial courts using interviews conducted in the state and data collected from 2002-2009. My dissertation also explores the underexplored relationship between judicial selection method and trial court decision-making by comparing outcomes across partisan, nonpartisan, retention, and gubernatorial appointment selection systems. I also analyze the effect of tort reforms seeking to limit non-physical and punitive damage awards on amounts awarded across states.

Introduction

During the ratification debates the Federalists and Anti-Federalists contested the

desirability of the constitutional protection of civil juries. The Anti-Federalists, preferring strong

local government, argued that civil juries empowered communities to settle disputes themselves

based on local standards. "Juries are constantly and frequently drawn from the body of the

people, and freemen of the country; and by holding the jury's right to return a general verdict in

all cases sacred, we secure to the people at large, their rightful control in the judicial department"

(Federal Farmer XV, Storing1981, 320). On the other hand, the Federalists maintained that civil

juries were outmoded and produced inconsistent applications of the law from one jurisdiction to

another, jeopardizing the rule of law. Hamilton argued that "The capricious operation of so

dissimilar a method of trial in the same cases, under the same government, is of itself sufficient

to indispose every well regulated judgment towards it…The best judges of the matter [civil

juries] will be the least anxious for a constitutional establishment of the trial by jury in civil

cases, and will be the most ready to admit that the changes which are continually happening in

the affairs of society may render a different mode of determining questions of property

preferable in many cases in which that mode of trial [civil juries] currently prevails" (Federalist

83, Goldman 2008, 416).

Although the Framers ultimately included the Seventh Amendment's guarantee of the

right to a jury trial in all disputes involving claims greater than $20, the disagreement between

the Federalists and the Anti-Federalists closely mirrors the current debate between advocates and

opponents of tort reform. The President of the America Tort Reform Association (ATRA)

asserts that "Some astonishing decisions come out of the courts these days. Hundreds of millions

in punitive damages piled on top of relatively minor actual damages. Meritless cases settled

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because defendants fear the outcome of an emotion-filled jury trial or a lawless court. That's why the ATRA leads the fight for a better civil justice system - one that's fair, efficient and predictable" (Joyce 2007). On the other hand, the American Association for Justice, a professional trial lawyers' association argues that "Special interests like big tobacco, the insurance industry, HMOs, and drug companies have mounted multi-million dollar campaigns against the civil justice system and Constitutional right to trial by jury. As part of those campaigns, companies and corporate lobbyists hype bogus numbers and questionable studies, make exaggerated and untrue claims about so-called 'frivolous' lawsuits, and fall back on age-old stereotypes about trial lawyers" (American Association for Justice 2005).

These persistent normative and political tensions regarding the role of civil juries in American society give rise to two empirical questions that this research seeks to explore. First, are there observable differences in the way that civil juries resolve disputes and allocate resources from one community to another? Secondly, if we observe differences across communities, what factors explain and predict those differences? Theoretically, the local community, from which civil litigation typically emerges, might directly affect trial court outcomes by shaping the participants' evaluation of the conflict. This research maintains that trial courts are political institutions that are affected by the local political, social, and economic context.

Despite numerous normative and political debates surrounding civil jury decision-making, a severe lack of reliable empirical data prevents a meaningful assessment of the claims of either side (Elliot 2004; Galanter 1993; Galanter, Garth, Hensler, and Zemans 1994; Hensler 1994; Saks 1992; Sanders and Joyce 1990; Vidmar 1995). The lack of civil trial court research is especially pervasive in political science. Political scientists devote considerable attention to

federal appellate courts, and the body of state supreme court research is growing rapidly; yet, the majority of all litigation never receives appellate review. Unfortunately, trial courts remain under-studied and underdeveloped theoretically, especially in political science. This research develops a model of trial court behavior and collects the data necessary to facilitate more in-depth study of the courts that form the foundation of the U.S. judicial system. Additionally, I seek to inform the debate through a comprehensive examination of jury verdicts in five states. This study improves our understanding of trial court decision-making and contributes to our theoretical understanding of the effects of extra-legal factors on the performance of judicial institutions. Furthermore, this study contributes much needed knowledge regarding the decision-making and functioning of trial courts and contributes to our understanding of the effects of local context on public institutions.

Although this research makes no specific policy recommendations, state and local governments possess strong policy interests in the civil litigation system. The questions of managing court workloads, eliminating "frivolous lawsuits," and assessing the need for reform remain central questions both at the state and national level. In particular, today's politicians frequently argue the need for medical malpractice reform in light of the current health care debate.   In fact, in the 2011 State of The Union Address[1], President Obama suggested medical malpractice reform as a potential way to bring down health care costs. In reference to bringing down health care expenses, President Obama said, "Still, I'm willing to look at other ideas to bring down costs, including one that Republicans suggested last year -- medical malpractice reform-- to rein in frivolous lawsuits." Unfortunately, both proponents and opponents of medical malpractice reform rely on minimal empirical evidence. The data collected for this project will

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[1] Office of the Press Secretary. 2011. "Remarks Made by the President in the State of the Union Address." United States Capital, Washington, D.C.

provide a data source allowing researchers and policy analysts to comprehensively compare

medical malpractice and other civil jury verdicts both across and within states.

Modern academics and political theorists also contest the virtues of the civil jury and seek

to empirically tests juries' competence. Latin (1993) summarizes the three dominant arguments

in favor of civil juries made by modern scholars. First, proponents of civil juries argue that

juries are more sensitive to community values and are therefore more capable of deciding

liability and determining damages regarding complex or conflicting social issues than judges.

Additionally, juries serve to localize courts in the federal structure and allow citizens to govern

themselves (Chapman 2007). Similarly, Haldon argues that juries provide the opportunity for

diverse groups to contribute to legal decision-making and "provide the local knowledge and

experience and community connection" that judges and experts lack (1994, 61). Furthermore,

juries might better represent the community, since jury verdict reflect groups' decisions, rather

than the decisions of a single judge (Jonakait 2009). Second, Latin states that supporters of civil

juries maintain that jurors can restrain governmental abuses of power. Finally, Latin states that

advocates of civil juries rely on De Tocqueville belief that civil juries educate citizens about

democracy. Marder (2003) maintains that juries fulfill an important political role in addition to

educating citizens in the democratic process, because juries also make difficult political

decisions regarding complex civil disputes.

However, Latin (1993) refutes all three justifications for the continued use of civil juries.

Latin argues that relatively few civil juries decide cases involving complex social issues.

Additionally, few cases involve the exercise of government power. When the government

participates in litigation, cases typically involve rudimentary issues such as poorly maintained

sidewalks or streets. Finally, in modern urban jurisdictions, an individual is unlikely to serve on a jury in an entire lifetime, thereby greatly decreasing the educational role of civil juries.

While normative evaluations of civil juries discuss the advantages and disadvantages of utilizing civil juries, empirical explorations of the virtues of civil juries typically evaluate the quality of jury decision-making relative to that of judges. However, like other areas of trial court research, scholars lack access to comprehensive empirical data and report conflicting findings. In an early investigation of jury competence, Kalven and Zeisel (1966) found the juries and judges reach the same conclusions when deciding cases 79% of the time. Wissler, Hart, and Saks (1999) compare decisions of jurors, judges, and lawyers in Illinois and New York and find consistent and comparable evaluations of plaintiff's injures by all three groups. Additionally, Eisenberg, LaFountain, Ostrom, Rottman, and Wells (2002) observe that juries and judges award punitive damages at similar rates.   On the other hand, other scholars find that juries are significantly more likely to award punitive damages than judges (Hersch and Viscusi 2004; Sunstein, Hastie, Payne; Schkade, and Viscuis 2002) and also dispense larger compensatory damage awards (Hersch and Viscusi 2004). Using mock jury simulations involving punitive damages, Hastie, Schkade, and Payne (1998) find that mock jurors understand less than 10% of judges' instructions regarding the assessment of punitive damages. Furthermore, they observe that typical juries consider less than half of the conditions for finding in favor of punitive damages. As jurors rely less on the law, the more likely the jury to render a verdict that disagrees with a judge's decision. Jurors also appear inattentive to judges' instructions (Hastie et al 1998; Sunstein et al 2002). Empirical investigations of jurors' decisions relative to judges generate mixed assessment of jury competence.

Beyond the normative and empirical questions, the conflict over civil jury decision-making also includes a political element. Civil trial courts rely on judges and juries to settle disputes and prescribe (typically) monetary retribution for injuries. In civil cases, participants convert damages to dollars and require jurors to determine both the winner and the appropriate compensation. Additionally, civil litigation performs the important functions of resolving disputes, allocating resources, and modifying behavior (Shapiro 1981). In political science, two common definitions of politics include "competition over scarce resources" and "who gets what, when, why, and how." Those seeking to limit the discretion available to jurors argue that trial verdicts do not represent rational, consistent analyses of the conflicts at bar, and variability in outcomes negatively affects businesses and individuals involved in litigation. Those who trust the constitutional mandate of a trial by jury assert that jurors are capable of equitable resolutions. These arguments clearly reflect a disagreement over how resources should be distributed and who should make the allocation decisions. Although scholars of judicial behavior have long acknowledged that political factors influence decision-making in appellate courts, the assertion that political forces also sway outcomes in trial courts remains underexplored.

Relying on both normative and empirical assessments of civil juries, this research develops and tests a model of civil trial courts as political institutions. Additionally, I seek to explain differences in civil trial outcomes based on demographic differences across communities and states using an original dataset comprised of all jury verdicts decided in the Alabama, Hawaii, Indiana, Kentucky and Tennessee civil trial courts of general jurisdiction in 2009 and an over-time examination of verdicts in Alabama from 2001 to 2009. To increase validity and garner the perspective of legal professionals, I conducted a series of interviews with judges and attorneys in two contiguous Alabama counties. These data allow for the examination of a greater

number of issues and alleged injuries than previous studies and provide the ability to control for litigant, judge, and attorney characteristics. Additionally, empirical models also explore courts' dispute resolution and resource allocation functions by examining both a plaintiff's likelihood of success and the amount awarded to successful plaintiffs.

Chapter 1 provides an overview of the current sources of state civil jury verdict data and provides a detailed description of the data used in this research. The chapter then develops a theory and a model of civil trial court decision-making based on interviews with legal professionals and previous scholarly research drawing on literature from civil trial courts, state appellate courts, state politics, and voting behavior. Chapter 2 provides a descriptive overview of the win/loss rates, docket composition, case issues, alleged injuries, and the parties at bar in Alabama, Hawaii, Indiana, Kentucky, and Tennessee trials in 2009.

Chapter 3 reports the results for nine years of quantitative analyses in the state of Alabama (2001-2009) to explore civil jury verdicts over time. Additionally, the chapter includes discussions of judges' and attorneys' perspectives regarding judicial retention mechanisms and tort reforms in Alabama. Chapter 4 begins with a description of the variables and measures used in subsequent analyses. The chapter then proceeds in four parts with a subsection for Hawaii, Indiana, Kentucky, and Tennessee. Each subsection discusses the jurisdiction and organization, institutions, and tort reforms under investigation in each state followed by empirical models and results. These sections are intended to assess the affect of within and cross-state variation in circuit demographic composition and institutions on outcomes and awards. The chapter concludes with a combined model utilizing data from Alabama, Hawaii, Indiana, Kentucky, and Tennessee in 2009 to determine the variables that commonly influence verdicts in all five states.

Finally, a conclusion summarizes and discusses the project's findings and outlines a plan for future research.

Chapter 1

Developing an Integrated Model of Trial Court Decision-Making

Although the vast majority of litigation occurs at the trial-court level, trial courts' dispute resolution and resource allocation functions remain underdeveloped theoretically, and researchers have produced mixed findings. A lack of robust and reliable data consistently hinders the study of civil jury verdict research. Unfortunately, scholars lack first hand observation of jury decision-making. Much of the process leading up to a civil trial, the trial itself, and the final jury verdict is unobservable to researchers after the fact, making outcomes in civil trials difficult to explain. The study of civil litigation is further complicated by the fact that there is no way of knowing the universe of cases from which trials are drawn, as many if not most, civil cases settle before reaching trial. In addition, courts keep no written record of the jury's composition or deliberations.

Due to a lack of access to jurors during trials, most studies of state trial court decision–making rely on experimental designs to predict jury decisions. A second approach utilizes post-trial interviews to assess jurors' decision-making processes. Other studies of state civil jury verdicts utilize data collected by the Civil Trial Network, a publicly available data source that reports annual verdicts handed down by civil trial courts in the 45 most populous counties in the United States. However, the data only provide information on the verdict and the case type. The Jury Verdict Research project (1988-1997) provides additional information regarding the alleged injuries in each case, but these data focus exclusively on the largest awards and have not been updated. The available data sources prevent researchers from examining the effects of the specific claims, the attorneys, the judges, or litigant characteristics. Additionally, because current quantitative sources focuses on the largest counties or the largest awards, neither

provides a representative sample of trials. Examining verdicts from only the most populous

counties obscures the major variation in political and social features in suburban and rural areas,

while examining only the largest awards eliminates the majority of jury decisions.

Although post-trial interviews, mock jury simulations, and extant quantitative studies of

jury verdicts all contribute to our understanding of trial court behavior, each method possesses

benefits and limitations. Post-trial interviews provide the ability to speak directly with actual

jurors; however, these interviews depend on self-reported data that might not adequately reflect

jurors' actual decision-making processes and evaluations (Sommers and Ellsworth 2003). Mock

trials often seek to observe the influence of individual juror traits on verdicts; however, scholars

critique mock jury experiments for their validity and research methods. Breau and Brook (2007)

conduct four mock jury simulations in which juries comprised of law students evaluated a fellow

student's alleged violation of the law school's code of conduct. The two "juries" with

knowledge of participation in a simulation, convicted the student of the violation. Of the other

two juries that believed the school would enforce the verdict, one found for the student and the

other could not reach a verdict. Breau and Brook conclude that mock jury simulations suffer

from a lack of validity, because knowledge of participating in a simulation biases the

participants' behavior. Additionally, mock jury simulations have been criticized for their

reliance on students (Bray and Kerr 1982; Devin, Clayton, and Dunford 2001; Howard and Leber

1988) and for lacking the depth, detail, and authenticity of actual trials (Bray and Kerr 1982).

The use of experimental methods also prevents the exploration of actual trials.

On the hand, scholars critique quantitative studies that rely on available data sources for

their inability to control for case facts, injuries, or quality of representation (Saks 2002).

Additionally, Saks argues that quantitative studies of jury decision-making that rely on U.S.

Census data to make assumptions about individual juror behavior suffer from ecological fallacy, since aggregate patterns might not reflect behavior at the individual level. Beyond the issue of ecological fallacy, scholars note that juror demographics might not adequately represent the jury pool, since not all demographic groups receive equal representation on juries (Saks 2002). Additionally, attorneys might attempt to prevent minorities from serving on juries (Badcock 1993; Benokraitis and Griffin-Keene 1982; Ramirez 1993).

While not immune from all of the previous critiques, this research improves the quality of civil jury verdict research through the creation of a comprehensive trial court database. Additionally, this research tests the hypothesis that the political, social, and economic composition of a community shapes the verdicts juries render. Although circuit-level demographics admittedly provide a weak test of the hypothesis that individual juror traits affect trial outcomes, examining the relationship between community composition and jury verdicts allows me to test the hypothesis that jury verdicts reflect the larger political, social, and economic conditions in the community, regardless of the composition of any particular jury.

Jury verdict reporters provide the primary data source utilized in this study. Jury verdict reporters are independent publications primarily used by attorneys that provide a summary of each civil case, the attorneys for the parties, the judge presiding over the case, the type of case, the type of injury alleged, and the jury verdict. Practicing attorneys use jury verdict reporters to assess what types of cases win, where cases win, and the types of awards juries hand down. The data collection for the volumes runs from November to November. Scholars have critiqued the use of jury verdict reporters, because some jury verdict reporters rely on self-reported data from attorneys or litigants in the state, or focus exclusively on large awards (Eisenberg et al 2002; Marder 1998; Vidmar, Gross, and Rose 1998). Additionally, some reporters focus exclusively

on one region or metropolitan area within as state. These types of data collection produce biased

data sources and unrepresentative samples; however, the reporters utilized in this study attempt

to collect the universe of civil jury verdicts for the entire state in a given time period.[2] Alabama,

Hawaii, Indiana, Kentucky, and Tennessee Reporters were selected, because the editors of these

volumes attempt to consistently report all of the jury verdicts in each state based on actual trial

records rather than self-reported data. The data provide significant advantages over other data

resources. First, the data are the only comprehensive records that include all civil trials for a

significant period of time for entire states. As noted previously, earlier studies include only the

most populous counties or largest awards, eliminating significant contextual variation. Second,

previous data did not allow scholars to explore the effects of the litigants, judges, or the attorneys

on each case. Additionally, these states provide considerable variation on political, social, and

economic indicators as well as variation in judicial selection method. Although the civil trial

courts in Alabama, Hawaii, Indiana, Kentucky, and Tennessee may or may not necessarily

represent the nation's civil courts, these data provide the most comprehensive source of civil

verdicts available. Additionally, these states provide ample variation at the sub-state level on

social, political, and economic indicators. Furthermore, the states utilize differing institutional

arrangement and rules for selecting judges and determining liability, allowing for an

investigation of trial outcomes across a number of institutional variables.

A second source of data for this project comes from interviews conducted with lawyers,

judges, and court administrators in Alabama. The interviews contribute the perspective of

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[2] The editor of the *Alabama, Indiana, Tennessee, and Kentucky Jury Verdict Reporters* describes the data collected for each volume as complete as possible. "[I]n the *AJVR* calendar year which runs for November to November, our coverage is as close to complete as an imperfect judicial system provides (Miller 2002-2008)." The editor who publishes *Personal Injury Judgments Hawaii* states that, "All personal injury judgments in the Circuit Courts and the U.S. District for the District of Hawaii [federal suits are not included in the data for this research] are reported (Semmens 2009)."

experienced legal practitioners and add validity and explanation to quantitative evidence. Interviews were conducted in two contiguous Alabama counties (see Appendix A for interview questionnaires). One county possesses a more urban, larger minority, and economically stratified population. Additionally, judges in the first county participate in elections with greater partisan competition. The second county's population is more rural, more affluent, with a considerably smaller minority population. Judges in the second county participate in largely uncontested, one-party-dominated judicial races. Interviews in the two counties allow for comparison of judges' and attorneys' views regarding the influence of community composition and judicial institutions on winners and losers and awards across the two circuits. I interviewed circuit clerks and court administrators to better understand civil procedure and rules in the Alabama Circuit Courts. In order to protect the identities of interview participants, the names of all interviewees and interview locations remain confidential. Where necessary, I removed identifying names and locales from quotations derived during interviews.

The Civil Litigation Process

In order to situate civil trials in the broader litigation process, I begin by exploring scholars' and legal experts' perceptions of the pre-trial process before moving on to the factors that affect winners and losers and awards. Although this research focuses primarily on the factors that influence civil litigation outcomes, trials represent only the final stage of the litigation process. In fact, Engel and Steele (1979) describe the civil litigation process as pyramid. "The 'life' of a legal case can be conceived in terms of five stages: (1) the primary event, (2) the response decision, (3) pre-judicial processing, (4) judicial processing, and (5) implementation and consequences" (Engel and Steel 1979, 300). Miller and Sarat (1981) also envision the civil litigation process as a pyramid in which the base of the pyramid contains all

societal grievances, and tappers offer as grievances become claims, which become disputes. The pyramid narrows even further as parties hire lawyers and disputes become litigation. Each stage of the pyramid contains fewer claims as disputes are resolved through various means. A civil case begins with the plaintiff's alleged accident or injury and the decision on the part of the injured to hire an attorney to represent his/her interests. Once the injured party contacts a personal injury attorney, the attorney must decide whether or not to take the case. In other words, the lawyer must decide if the case has merit. I assume that a plaintiff's attorney determines a case's merit based on the case's prospects and the potential monetary gain. Earning potential should possess additional weight for plaintiff attorneys, since most plaintiff attorneys in civil cases utilize contingency fees to attract clients. Lawyers that defer payment until the case is settled must believe that they can make a profit from the case; however, defense attorneys typically receive pay regardless of the outcome. Baum (1998) argues that the use of courts to solve civil disputes is attractive when the potential benefits of a trial outweigh the costs. Furthermore, previous studies maintain that because attorneys strategically determine which cases to settle prior to trial, the cases that reach trial tend to be those with the least predictable outcomes or the most at stake for the parties (Priest and Klein 1984; Waldfogel 1995). Due to attorney strategy, trial courts adjudicate only the most contentious and unpredictable cases.

If the attorney feels she can make a profit by taking the case, she becomes the plaintiff's lawyer and files the case in the appropriate county and waits for the assignment of a judge to the case. Plaintiffs' attorney possess the legal right in Alabama to file the case in the circuit where the alleged accident occurred or the circuit in which the plaintiff lives if the two locals differ. Once a case is properly filed in Alabama, changing the trial venue is difficult, and the original judge must approve the venue change. With the judge and county finalized, both attorneys must

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reevaluate their chances of winning the case based on the county characteristics, the county's previous jury verdicts, and the attorneys' prior knowledge of the judge. In Alabama juries are drawn from the total population possessing a driver's license, which should encompass the majority of Alabama residents; therefore, it is possible to approximate the potential jurors' demographic characteristics based on the distribution of income, education, partisan affiliations, and race. Both attorneys at this point estimate the interaction of the potential jury, the judge assigned to the case, the type of case, and the amount of money involved, and the parties to the case to determine their chances of winning. Baum (1998) states that 62% of all cases settle without a trial. Baum argues that trials present serious drawbacks for litigants, because litigation is expensive, the parties to the dispute lose control of the resolution, judges and juries may deliver unfavorable outcomes, and litigation increases the conflict between the parties.

In an examination of criminal cases, Albonetti (1987) finds that prosecutors attempt to avoid uncertainty in trial outcomes by trying only the cases they are the most likely to win based on the evidence, the type of criminal, and the type of victim. Her findings may be generalized to civil cases if attorneys in civil litigation follow a similar logic of trying cases they are confident in winning and settling more uncertain cases. Another study focusing on the decision to try criminal cases finds that attorneys use the seriousness of the crime, the strength of the case, and the defendants' background information to evaluate a cases' chances of success (Emmelman 1996). Emmelman argues that attorneys engage in the bargaining process leading up to the trial as long one attorney believes that the offer will improve as the adjudication process continues. Lawyers, regardless of whether a case is criminal or civil, should want to reduce uncertainty in outcomes based on the type of case and the parties involved. The decision to settle before trial should also reflect the attorney's beliefs about the best possible outcome of the case. According

to Bovjerg, Sloan, and Hsieh (1991), the attorneys' relative bargaining power varies with talent, experience, and resources. The decision to settle a case before trial seems to stem from the combination of the strength of the case and the attorneys' relative abilities to bargain.

The second calculation attorneys must consider is the judge assigned to the case. Practicing attorneys have professional knowledge and work histories with the judges in their state that allow them to predict the judges' reactions to certain types of cases. The county the case is tried in should also affect the likelihood that a trial occurs if attorneys calculate their chances of winning based on the counties' demographics.

Unfortunately, researchers cannot observe pre-trial or settlement procedures using jury verdict data obtained post-trial. However, I attempted to qualitatively investigate pre-trial case management and settlement procedures during my interviews with Alabama court clerks and administrators, judges, and attorneys. When interviewed, Alabama judges report that 90% of cases settle prior to the trial. Of those, half of the cases settle through mediation. The judges questioned maintain that, almost without exception, all cases in Alabama go to mediation before trial. Judges typically forgo the mediation step in the litigation process only in cases involving very small claims not justifying the additional cost of mediation. One circuit judge stated:

> I strongly support mediation, both because it helps parties, and because it helps the civil system. It cuts down on the amount of trials, but it also helps people settle disputes. Most people just want to have a say. If their attorney wants them to settle, a lot of people see that as sign of weakness; their attorney won't fight for them and bring their case to trial. But, if they hear it from a third party, they are much more willing to settle.

The parties typically split mediation costs evenly. However, there are times when one party cannot afford to pay mediation costs, and the judge can tax the other party with the cost. But, as one judge pointed out "No one wants a mediator that the other side is paying." Another

judge argued that the widespread use of mediation fosters the "lost art of settlement" among attorneys. The judge believes that prior to the initiation of mediation procedures in Alabama, attorneys engaged in more and more adept settlement negotiations.

My discussions with attorneys regarding the settlement process suggest that plaintiff and defense attorneys view the merits of settlement somewhat differently. In general, plaintiff's attorneys view settlement more favorably than defense attorneys. An attorney who represents both plaintiff and defense clients who told me that:

> Every case you hope to settle. A good settlement is one where the plaintiff thinks he settled for too little and the defendant thinks he gave too much. Even if you have a good case, you only go to trial when there is no choice--no choice means a fair and reasonable settlement was not offered. Trials are like rolling the dice; you never know what the jury is going to do. There is too much risk involved for both parties. Typically, I only try about four or five cases a year.

Other plaintiff attorneys confirmed the notion that trials involve greater risk than settlement, making settlement preferable. However, defense attorneys appear more willing to try cases, depending on the parties to the case, the trial locale, the judge, and the jury composition. One defense attorney told me that he sometime represents "obnoxious" clients who refuse to settle and insist on taking every case to trial. Occasionally, his firm will conduct mock jury experiments to convince obstinate clients that a jury might deliver a worst case verdict to encourage settlement. Other defense attorneys admit to waiting until the conclusion of *voir dire* to make the settlement decision. If the jury appears favorable to the defense, the attorney will then proceed to trial. A defense attorney said:

> Juries can determine the decision to settle up until the deliberation. The longer the jury is in there, the more likely the defendant is to settle. You know if they are taking a long time to deliberate, they are disagreeing about something; you have an angry jury in there. You're not supposed to be able to hear the jury deliberate, but sometimes I've heard jurors yelling at each other all the way in the courtroom. That's when it's time to make a deal.

Beyond consistent use of mediation, judges differ in their case management behavior.   A

judge described the difference in judges' case management techniques this way:

> You have to understand--this is a very broad generalization--judges fall into two
> categories. The first type are staunch docket managers. They stick to a strict time
> schedule and keep the attorneys on a strict schedule. I'm different. I'm more *laissez
> faire*, more lenient about postponing a trial. It gives the lawyers more time.

The particular judge asserts that allowing attorneys more time, when necessary, prevents

premature trials and under-prepared counsel.   Despite the variation in adherence of a strict time

schedule, most judges view their pre-trial role as fulfilling the need to move the case along at a

reasonable pace. The judge that admitted to a *laissez faire* pre-trial management philosophy

described his case management role as, "monitor[ing] the case so that it is moving along at a

reasonable pace." He said:

> The way I handle a case is: The case is filed. Then I set a pre-trial order; we have a status
> hearing. At the status hearing, both sides tell how long they think it will take to get the
> case ready. I decided on a second status or trial date 90 days later. At the second status
> [the lawyers] should know how and when the case will be ready. I set a trial date for no
> less than 60 days after the status. Then, that's a firm date. If it's a very complex case,
> and both sides need more time, I may set another status. But, I'm very strict once the
> trial date is set. My objective is to make sure that all sides have a full opportunity to get
> ready. It's not my job to give lazy lawyers more time. How aggressively lawyers
> prepare for a case is between them and their clients. They have problems on trial day
> when they're not ready. I hold their feet to the fire.

During the pre-trial procedures, judges must rule on a number of motions which

presumably affect attorneys' evaluations of their cases. A number of attorneys mentioned that

judges' pretrial rulings dramatically affect the settlement decision. According to judges, one side

typically makes a motion for summary judgment, a request that the case be thrown out for a lack

of merit, at some point during the pre-trial procedure. Attorneys view summary judgment as

both a way for judges to clear dockets and dispose of frivolous lawsuits. According to judges and attorneys Alabama civil courts dispose of a substantial number of civil disputes through summary judgment.

In Alabama the circuits use a statewide procedural guide called "Fast Track" that governs pre-trial procedure and orders with the intent of getting cases into trial within a year of the original filing date. When asked why cases take longer than a year to reach trial, a judge stated:

> Typically cases [take longer] where there are more defendants, which makes the cases take longer for scheduling reasons. The more parties, the more lawyers. The more lawyers, the more scheduling conflicts and the longer the time. Product liability and medical malpractice cases also tend to have more discovery and require expert witnesses, which also makes cases take longer. Auto cases are the standard. They take one day. Everything is easy, unless there is a serious injury with death; that can take longer.

Voir dire, the jury selection process, constitutes another important aspect of pre-trial procedure that likely affects attorneys' evaluations of their cases. In Alabama judges possess the right to conduct the entire *voir dire* process if they choose; however, typically *voir dire* begins with the judges' set of standard jury questions.   According to one judge, "The questions I ask are a script. I read them from a three-ring binder. Questions like: Are you related to, partners with, made up your mind already, convicted of a crime, an Alabama citizen. All judges ask the same questions." The attorneys then ask the jurors questions from an approved list. Alabama uses the *voir dire* process to select 12 jurors and two alternates. The number of strikes allotted to each side depends on the number of jurors in the original pool.   When asked to describe the *voir dire* process, an attorney said:

> Once a jury pool is selected, each attorney can ask questions about the facts of the case. Have you ever been convicted of this crime? Or, have you even been involved in an automobile suit? *Voir dire* is one of the only ways an attorney can talk directly to individual jurors. It allows you to get into those jurors' minds.

Although scholarly research suggests that the *voir dire* process often makes juries a less representative sample of the general population (Badcock 1993; Benokraitis and Griffin-Keene 1982; Ramirez 1993), overall, the Alabama attorneys and judges report that juries typically reflect the demographic composition of the circuit. However, one attorney told me that in his professional opinion, juries are representative. Yet, personally, he feels that juries could be made more representative than they currently are. The attorney attributed lack of jury representativeness to both individuals' self selection out of jury service and the *voir dire* process. According to the lawyer:

> Certain counties and districts are more lenient than others [when it comes to enforcing jury summons]. This is another example of where politics come into play [in the civil litigation process]. Circuits have different requirements for opting out of the jury process. Some aren't very strict. In some it's very strict. We could make juries a lot more representative if the jury service process was mandatory and policed in some way.

He also noted that "*Voir dire* allows crafty lawyers to choose what juries look like. The idea is that the pool is representative of the community. Crafty lawyers are good at making it less representative than it could be." On the other hand, one circuit judge argues *voir dire* actually serves to increase the representativeness of juries. The judge described his view of the *voir dire* process:

> At the beginning of the *voir dire* process, I ask a few qualifying questions. We sat a jury just the other day. I asked questions, and five jurors admitted that they thought they might be biased, so they were dismissed. Then, the lawyers ask more specific questions. So, we started out with 35 jurors. I dismissed the first five. Then the lawyers take turns striking until we get the 12. The plaintiff tries to strike the nine most conservative jurors and the defendant tries to strike the nine most liberal jurors--you understand by liberal and conservative, I mean relative to the case, not politically. So, what you're left with are 12 moderates, the people that seem like they could go either way depending on the evidence or the people the attorneys didn't figure out. So, you end up with moderate jurors, because the most extreme people are removed in *voir dire* process. Sure, plaintiff attorneys would like to have all liberals and defense attorneys would like to have all conservatives, but the *voir dire* process prevents that from happening.

Those cases that survive the pretrial process without settling then go on to trial. According to the pyramid theory, trials represent the least common civil disputes. After both parties conclude their arguments, the judge instructs the jury on the points of law relevant for the particular case. Alabama judges give two types of jury instructions, pattern jury instruction and general. General instructions involve the burden of proof, inferences, demeanor of jurors, unanimous verdicts, and admission of expert testimony. Pattern instructions are specific to the individual case. For example, depending on the case type, judges will provide definitions of negligence, wantonness, or other torts. The judge also informs the jurors of the charge on damages. In other words, the judge tells the jury the type of damages the plaintiff seeks (pain and suffering, future damages, punitive damages, or special damages).

The jury must consider the evidence and make a number of decisions in order to reach a verdict. For civil cases, the jury must evaluate the severity of the plaintiff's alleged injury. Then, the jury must decide if the defendant's actions or inactions caused the plaintiff's injury. In a negligence case, "Negligence refers to whether [a defendant] has taken the care of a reasonable person, whether by act or omission, in order to avoid the harms that might foreseeably flow from his actions (Jonakait 2003, 65)." If the jury deems the defendant liable, the jury must then determine the appropriate compensation. In *Determining Damages* (Greene and Bornstein 2003) outline three broad types of damages that juries consider. Compensatory damages are damages intended to compensate the injured party and return him or her to pre-injury levels of function or replace the loss caused by the injury or incident. If the defendant is liable, the jury typically awards compensatory damages. Plaintiffs may also seek, and juries sometimes award punitive damages. Punitive damages seek to punish the defendant and deter similar behavior in the future. The jury awards punitive damages when the defendant's conduct goes beyond negligence

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to the extent of reckless or malicious conduct (Ghiaridi and Kircher 1995). Most states only allow punitive damage awards when the jury first awards compensatory damages; however, some states, such as Alabama and Kentucky, allow juries to award only punitive damages. Plaintiffs may also seek and juries can award pecuniary (economic) damages and non-pecuniary (non-economic) damages. Economic damages include things such as property damage or monetary loss, while non-economic damages include awards for emotional injuries, pain and suffering, and loss of life enjoyment.

Although all juries within a unified judicial system utilize the same civil procedure to decide liability and damages, much of the actual jury decision-making process remains unobservable to researchers. MacCoun (1987) refers to the jury decision-making process as the "black box," because we only observe the evidence that goes in and the verdict that comes out. Because the jury deliberation process is largely a "black box," researchers are left to assess the relationship between observable variables and jury verdicts. However, previous research, conducted at the appellate court level, provides a guide for developing a model of trial court behavior. Brace and Hall's early research sought to develop and test integrated models of state supreme court decision-making. Brace and Hall (1993) build an integrated model based on four categories of variables, justices' personal preferences, case characteristics, institutional arrangements, and environmental characteristics. Brace and Hall go on to note, that although not relevant for their study of death penalty appeals, litigant resources and litigant status might influence outcomes in other contexts. This project adapts Brace and Hall's theoretical framework to create an integrated model of decision-making in civil trial courts. Theoretically, judicial ideology, institutional arrangements, environmental factors, litigant resources, and case facts should interact to shape litigation outcomes in trial courts. In particular, this research

investigates the influence of local community composition and judicial institutions on civil litigation outcomes.

Civil trials characteristically emerge from disputes that originate in the local community. Disputing litigants hire attorneys, usually from the immediate vicinity, to bring their disagreement before a jury also drawn from the area. Furthermore, the judge, elected from the district in many states, presides over the case. Although the judge, lawyers, disputants, and jurors possess a variety of goals in each individual case, all of the participants exist in the same community context. Theoretically, an institution's community context influences how all of the participants in a case perceive a just dispute resolution and adequate compensation for damages. Accordingly, local social, political, and economic conditions should influence a community's evaluation of litigants' claims and determine the monetary value the community deems fair compensation for an injury. Additionally, analyses of the relationship between social, political and economic conditions in a community and trial court outcomes will enhance our theoretical understanding of community interactions with local political institutions.

While this study focuses on five states, the approach is adaptable to other states with varying institutional arrangements and social, political, and economic environments. Additionally, this study attempts to create a truly integrated model of trial court decision-making that incorporates characteristics of the case, the judge, attorneys, litigants, and the surrounding community from which the jury is drawn. Furthermore the data include all reported cases for an extended period of time. Yet, I must acknowledge some limitations. First, although the data provide significant variation at the sub-state level, this is a five-state study, and I do not claim that Alabama, Hawaii, Indian, Kentucky, and Tennessee necessarily represent of the other 45 states. Furthermore, while I believe strongly that the community surrounding a court affects

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litigation outcomes, these analyses cannot control for the composition of any particular jury. Ideally, a model would include the demographic composition of each jury; however, if community composition exerts an independent influence on litigation outcomes, patterns of jury behavior should and do emerge across circuits regardless of the composition of any particular jury. Additionally, previous studies maintain that the cases that reach trial differ significantly from cases that settle beforehand (Priest and Klein 1984; Waldfogel 1995). Unfortunately, I am unable to compare settled cases to cases concluding in trial with these data.

An Integrated Model of Litigation Outcomes in Trial Courts

Local Context and Trial Court Outcome: Political, Social and Economic Influences

Jury trials require local citizens to settle disputes between litigants, directly involving members of the community in trial court decision-making. Although prior research has produced mixed results and considerable debate over the substantive effect of individual juror characteristics on jury decision-making, practicing attorneys obviously believe that individual juror traits influence jury verdicts. The following quote from and interview conducted with a civil defense attorney clearly illustrates the weight lawyers place on individual juror demographics when trying a case. The attorney stated:

> I tried a case- this was about 15 years ago-where I represented a department store. I had a case where two middle-aged, black women were leaving a store and [the store] had left the metal cuffs on their handbags. The sales clerk was a 19-year-old girl. The department store trains its clerks not to accuse anyone of stealing. According to the training manual, you're supposed to approach the customer and tell them that you've made a mistake and would they kindly come back inside so you can take the cuff off, so they don't tear their clothes later. I'll never know what really happened, but the ladies said she called them thieves and harassed them. They sued for outrage, slander, false imprisonment… The first time the jury had five black and three white jurors. The jury mis-tried along racial lines. So, we tried it again. This time I got lucky, there were no black jurors out of the 36 jurors that showed up. I didn't even have to strike anyone. I don't know how I got that lucky; juries in [the county] don't normally look like that. The plaintiff's attorney took one look at the jury and settled.

Despite lawyers' persistent beliefs that individual juror traits influence trial outcomes, civil courts keep jurors' names confidential and do not keep records of jurors' demographic information, making scholarly assessment of the belief difficult to study. Due to the lack of directly observable data, most examinations of juror demographics utilize mock jury scenarios to predict juror preferences. A second approach utilizes the demographic composition of the community surrounding the court to predict jury verdicts. However, both methods produce considerable scholarly debate and mixed findings. On one side of the debate, some scholars maintain that individual juror demographics substantially influence civil trial outcomes. Using mock trials, Overland (2009) finds that race, gender, education, income, and attitudes influence verdicts in civil cases. Devon and Imwinkelreid (1995) examine survey responses to hypothetical tort claims and find that men, white-collar workers, and African Americans exhibit the most pro-plaintiff tendencies. Helland and Tabarrock (2003) observe that tort awards appear to increase as the black and Hispanic populations in the county increase and especially as poverty rates among black and Hispanic residents increase. Other studies also support the finding that minority (Bornstein and Rajki 1994; Diamond, Saks, and Landsman 1998; Devon and Imweinklreid 1995) and low income (Bornstein and Rajki 1994; Diamond et al 1998; Devon and Imweinklreid 1995; Hastie, Schkade, and Payne 1998; Vidmar and Rice 1993) jurors exhibit pro-plaintiff tendencies. Hastie et al (1998) uncover a relationship between juror ideology and damage awards; Republican jurors appear to give significantly lower awards than Democrats.

Criminal trials also provide evidence that juror characteristics influence trial outcomes. Somers (2006) conducts an experiment in which he finds that the presence of African American jurors decreases the number of guilty votes before and after deliberations. Mills and Bohannon (1980) observe an interaction between gender and race in survey responses to hypothetical

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criminal cases in which African American women evidence the greatest tendency to deliver guilty verdicts.

Conversely, Eisenberg and Wells (2002) find little evidence that race, poverty, income, or urbanization effect trial outcomes. Other scholars find that juror demographics only account for a small amount of the variance in trial outcomes (Visher 1987) and produce weak and inconsistent relationships (Kassin and Wrightsman 1988). Furthermore, Diamond (1990) argues that the juror traits that emerge as pro-defendant in a particular case fail to maintain a consistent pattern across cases types. Other studies find no effect of juror's incomes on liability judgments (Bronstein and Rajki 1994; Vidmar 1993). Similar findings emerge regarding juror's education. Vidmar (1993) finds that jurors with higher education levels find defendants liable less often; although, more highly educated jurors appear to assess larger damage awards (Goodman, Loftus, and Greene 1990; Vidmar and Rice 1993).

However, none of the studies examining individual juror traits, tests the possibility that jurors' decisions reflect the socioeconomic and political leanings of the community at large. In addition, researchers tend to look at juror traits in isolation from each other. For example, scholars modeling juror traits examine race, income, education, and age as independent variables without assessing the combined influence that demographic variables might have on an individual or the makeup of the community in which the individual resides. This research tests the hypothesis that civil trial courts are political institutions that respond to the broader socioeconomic context of the circuit, regardless of the composition of any particular jury. If community preferences shape civil jury verdicts as Anti-Federalists suggest, civil litigation outcomes should vary with the political, social, and economic composition of the circuit.

Furthermore, a wealth of literature demonstrates that economic downturns impact election outcomes; the public blames the incumbent party for poor economic performance and punishes incumbents electorally (Abramowitz, Lanoue, and Ramesh 1988; Feldman 1982; Key 1966; Kramer 1971; Lau and Sears 1981; Nadeau and Lewis-Beck 2001; Rudolph 2003; Rudolph and Grant 2002). Conversely, scholars have devoted considerably less attention to the relationship between courts and economic conditions. However, prior studies supply preliminary support that economic conditions impact court outcomes. In his analysis of federal district courts, Heydebrand (1976) concludes that federal government economic activity both stimulates litigation and influences how judges decide cases. Theoretically, economic conditions in general, not just government economic activity, might influence litigation outcomes. Furthermore, this relationship should be apparent when examining the functioning of state courts. Trial court research also suggests that courts respond to economic conditions. Jury awards in tort cases appear to increase as county poverty rates increase (Helland and Tabarrock 2002, 2003; Tabarrock and Helland 1999). Although studies examining the local economic context and verdicts in civil cases provide groundwork for the hypothesis that economic conditions impact litigation outcomes, these studies fail to control for other attributes of the local community or for the characteristics of the case, parties, judges, or the attorneys.

On the other hand, my qualitative research demonstrates that judges and attorneys attribute considerable weight to local economic conditions in shaping civil litigation outcomes. I asked judges and attorneys if economic conditions, both in terms of the overall wealth of a community and business cycles, affect jury verdicts. In response to the overall wealth of the community judges and attorneys unanimously agree that more affluent communities render more conservative verdicts than less affluent communities. An attorney practicing at a large, defense

firm referred to poor, rural communities in Alabama as "free lunch" counties. The term "free lunch" county appears to refer both to those communities' socioeconomic status and their perceived willingness to render plaintiff verdicts and give large awards, regardless of the merits of the case. According to the attorney, his firm looks at the number of students on the free lunch program in the public schools in a circuit to determine their clients' likelihood of success. The lawyer and his firm believe that plaintiff verdicts and awards go up in a circuit as the number of children receiving free lunches increases.

Yet, I received mixed opinions regarding the influence of business cycles on jury verdicts. One attorney believes that unemployment influences jurors' decisions because of people's inherent tendencies to sympathize with each other. "Jurors sympathize with litigants. If jurors are feeling economic pressures they can relate to the economic pressures litigants are facing. People sympathize with each other." However, I interviewed a judge that sees little influence of changing economic conditions on the operation of trial courts but rather views economic cycles as driving the types of cases on courts' dockets. The judge said:

> Generally, business cycles don't affect verdicts much, but it does affect the types of cases. Two years ago when the economy was good, we heard lots of cases about condo development. Any time you have economic development, you're going to have lawsuits. Now, there's not as much business litigation on the high end, but now there's a lot of business litigation on the low end, people trying to get out of condo purchase agreements and things like that.

Yet, another attorney suggested that economic downturns might produce differential affects on litigation outcomes depending on the case and the litigants. He said:

> Yes [unemployment influences jury verdicts], but it's not one way all the time. For example, I had a client that was a beautiful woman who couldn't scuba dive anymore because of an accident. There were five unemployed jurors on the jury who couldn't relate. They think: I'm really hurting right now; your problem is not that bad. [But the opposite] is especially true when a business hurts the economy during bad times. I don't think you could lose a case against BP right now. But, I think it varies by case.

Sometime economic conditions can help you, sometimes they can hurt. You have to go on a case by case basis.

Although the precise relationship between economic conditions and jury verdicts remains somewhat unclear, previous research and interviews with Alabama judges and attorneys provide evidence that jury verdicts might reflect local economic conditions. Previous research also provides evidence that county-level demographics predict liberal/conservative voting patterns (Ardoin and Garand 2003; Koetzle 1998; Levendusky, Pope, and Jackman 2008), suggesting that the demographic makeup of a community might also influence other decision-making patterns. According to Koetzle (1998), communities characterized by larger minority populations, lower incomes, lower education levels, and greater percentages of urban dwellers tend to vote more liberally. Like Koetzle, I hypothesize that certain demographic combinations within a circuit should produce solidly liberal communities, which in turn should generate stronger support for plaintiffs.

Litigants Resources and Litigant Status

Since Galanter's seminal theory predicting the success of wealthy, repeat players in trial courts, scholars have dedicated considerable attention to investigating the effect of litigant resources on appellate court decisions. Scholarly research maintains that litigant resources and litigant status predict litigation outcomes. Extant academic research also maintains that legal representation constitutes an important resource in the litigation process which affects litigation outcomes. Litigants represented by more experienced (Haire, Lindquist, and Hartley 1999; McGuire 1995, 1998) and more capable (Haynie and Sill 2007; Johnson, Wahlbeck, and Spriggs 2006) attorneys achieve higher success rates. During interviews in Alabama, I asked practicing attorneys about the influence of firm size, differences between working for the plaintiff and the

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defendant, and the contingency fee system. Overall, most lawyers agreed that large firms

provide greater security, more resources, and talented co-workers; however, most also believe

that small firms or single practitioners often receive greater financial compensation.

According to Heinz and Laumann (1982), large legal firms serve mostly corporations,

attract highly skilled lawyers from elite law schools, and provide lawyers with higher incomes

and greater support services. Their research asserts that the attractiveness of jobs at large firms

and the support structure large firms provide, facilitate effective legal work by talented

practitioners, suggesting that attorneys at larger firms possess considerable advantages in terms

of resources, status, and perhaps talent. When asked about the advantages of working in large

firm, an independent practitioner said:

> There are some advantages to working at a big firm, but I think the disadvantages
> outweigh the advantages. Big firms operate like a big business. You are expected to
> generate hours and fees. You start at the bottom, and it takes a long time to work your
> way up. It takes nearly a lifetime to make partner…The advantage of working at a big
> firm is that you get to try the big cases that make new law.

The attorney went on to give an example of case that he, as a single practitioner, could not

accommodate that went on to established "bad faith" as a recognized legal claim in the state of

Alabama. According the lawyer:

> There was this fireman's wife who needed psychological treatment and had to go into the
> hospital. Her husband was insured through …, but the insurance company refused to
> pay. I wrote a letter to the insurance company. They wrote back and said they didn't
> believe that the woman needed to go into the hospital, and I would need to get a letter
> from the doctor. I got the doctor to write the letter saying it was necessary, but the
> insurance company said that still wasn't good enough. So, I went back to doctor and got
> him to write a more detailed letter; he even sent the woman's medical records. The
> insurance company said that still wasn't good enough. I told the woman, she was going
> to have to sue her insurance company. This was a bad faith claim. Alabama didn't
> recognize the bad faith tort at the time. I turned the case over to my friend at a big firm.
> He was able to go up to the insurance company and get the records of their conversations
> with me. He had documents where they said, 'This … guy doesn't know what he's
> doing; let's just play with him.' The original medical bill was only $900, but the award,

with punitives was three million dollars. The jury just couldn't believe that an insurance company would treat someone that way. It was appealed and went all the way up and back down again, but [the attorney] was finally able to get the money.

In addition to some career advantages associated with working in a large firm, lawyers also support the notion that large firms possess greater resources. Working at a large firm appears to both limit attorneys' personal financial pressures and increase the research and investigative resources available. One attorney working at a large, multi-state firm noted, "You definitely have more resources [at large firms]. Large firms provide security. You are not devastated if you lose a client. We also have a large research division at our firm in Birmingham." Possessing a research division allows the particular firm to conduct large investigative studies, hire expert witnesses, and even conduct mock jury simulations.

When asked whether defense attorneys typically enjoy greater resources, most attorneys agreed. While defense attorneys charge by the hour, allowing for a steady income, plaintiff attorneys typically work on a contingency fee basis. One plaintiff's attorney said, that working on contingency fee basis means "you never know if you are going to make money off a case or not. But, there is money in personal injury cases. Most of them settle; that's easy money." Although plaintiffs' attorneys lack the hourly salary supplied to defense attorneys, the contingency fee system means that cases with the potential for large damage awards might lead to large pay checks for successful lawyers. Additionally, the attorneys interviewed note that many cases involving small claims settle quickly once a lawyer becomes involved. Often, a phone call from an attorney leads to settlement in cases involving smaller damage claims. While small claims provide only a small pay check, they supply a relatively easy and frequent source of income. I also asked what percentage of the award a personal injury attorney typically makes, if he or she garners an award for the client. Plaintiffs' attorneys, working on a contingency fee

basis in personal injury cases, usually ask for a third of the award. Typically, the attorney's

share is not beyond 50%, but medical malpractice lawyers sometimes take more, because the

cases are tough and expensive.

Not only do plaintiff and defense attorneys typically represent different types of clients,

but scholarly research maintains that the litigants differ in their experience with the courts and

their ability to successfully navigate the litigation process. According to Galanter (1974), repeat

players such as business and the government routinely utilize the courts, allowing for greater

knowledge of the legal system. Galanter also hypothesized that repeat players could shape the

rules of the litigation process in their favor over time. Individuals, the prototypical one-shotters,

rarely use the courts and lack familiarity with legal proceedings. In order to assess Galanter's

thesis, I asked practicing lawyers their perspectives regarding the importance of litigant classes.

I interviewed an attorney who represents plaintiffs and defendants who largely confirmed

Galanter's thesis. The lawyer said, "Businesses constantly pursue litigation. Individuals are

clueless." The attorney went on to liken his attorney, client relationship with individual litigants

to that of a priest and a parishioner: "When I see individuals it is the first case in their lives. I am

their friend, their spokesperson, their guide. I am everything to them; I'm like their priest. They

totally rely on me. They do whatever I say. No one ignores my advice. I have never advised

someone to take a settlement, and had them not take it."

In addition to narrative evidence, political science research also maintains that parties

with greater resources incur considerable advantages when pursuing litigation in the United

States (Farole 1999; Songer and Sheehan 1992; Songer, Sheehan, Haire 1999; Wheeler,

Cartwright, Kagan, and Friedman 1987). Furthermore, possessing an advantaged status also

appears to improve a litigant's chances of success (Kinsey and Stalans 1999). The government,

in particular, achieves success rates in the courts above that of any other litigant class (Farole 1999; Kritzer and Sibley 2003). Similar advantages appear for better resourced parties in the United Kingdom (Atkins 1991) and in Canada (McCormick 1993).

However, structural and ideological considerations in developing countries seem to favor litigants with fewer resources. Haynie, Songer, Tate, and Sheehan (2005) conduct a nine country cross-national examination of litigant resources and discover that those with fewer resources achieve higher success rates in developing countries. Studies conducted in the Philippines (Haynie 1994, 1995), Israel (Dotan 1999) and South Africa (Haynie 2003) provide additional support for the assertion that disadvantaged litigants in developing countries achieve higher success rates than similarly situated litigants in developed countries. Taken together, previous research concerning litigant resources indicates that better-resourced parties possess considerable advantages; although, context appears to condition the extent of the benefit.

Previous research examining trial courts also provides insight into the effects of individual litigant characteristics on outcomes. Most of the trial court research examining the effect of the litigant status explores the "deep pockets" effect - the idea that civil juries hold wealthy defendants liable more often and assess larger damage awards against them when compared to other types of litigants. Yet, explorations of the deep pockets hypothesis produce mixed results. Some scholars maintain that civil juries judge corporate defendants more harshly (Hans and Ermann 1989) and assess large damage awards against corporations (Chin and Peterson 1985; Hans and Ermann1989). Using an experiment, Bornstein and Rajki (1994) observe that mock jurors judged a chemical company more harshly than a pharmaceutical company or a manufacturer for the same alleged injury. In another experiment varying defendant characteristics and wealth, MacCoun (1996) discovers that jurors treat corporations differently

than other types of defendants, but the difference is not attributable to wealth, since individuals with identical resources received less severe treatment. On the other hand, Vidmar (1995) detects no evidence that medical malpractice awards increase with perceived ability to pay. Conversely, Eisenberg, Goerdt, Ostrom, Rottman, and Wells (1997) caution that if award amounts partly serve to correct behavior, then the assessment of large awards against wealthy defendants does not necessarily indicate bias, because differential amounts produce varying degrees of punishment or deterrence based on defendant's wealth.

Yet, individuals bringing suits, especially torts, are often portrayed in the media as opportunists trying to capitalize on others' economic success. Previous research indicates that media coverage of civil trials leads to inaccurate views of the civil justice system. A number of scholars uncover empirical verification that the media exaggerate the pro-plaintiff image of juries (Diamond 2006) and disproportionately cover cases involving large awards while ignoring defense verdicts (Bailis and MacCoun 1996; Garber 1998; Garber and Bower 1999; Marder 2003). In an examination of newspaper coverage of product liability cases against automobile manufacturers, Garber (1998) finds that newspapers covered just 3% of defense wins compared to 41% of plaintiff wins. Additionally, newspapers' coverage increased with the size of the award, and papers covered 63% of cases in which the jury awarded punitive damages. Furthermore, the skewed nature of media coverage leads the public to adopt biased perceptions of the civil litigation process (Galanter 1993, 1998). Songer (1988) finds that exaggerate views of civil litigation not only persist among the general public, but highly educated professionals maintain similar views. When surveyed, South Carolina attorneys, doctors, and legislators overestimated the frequency of trials, the pro-plaintiff tendencies of juries, and the size of awards.

Furthermore, media exaggeration of civil verdicts might hurt plaintiffs' chances of winning their claims. The now nearly legendary tale of the woman who sued McDonald's because she burned herself with a cup of hot coffee is a prime example of a lawsuit portrayed as frivolous in much of the media in which a "runaway" jury awarded a massive sum (Hamilton and McCann 2004, for other examples see Hans 2000). Yet, few people realize that the woman involved suffered third-degree burns and required skin grafts as a result of the incident, or that McDonald's had been sued previously by other burn victims for maintaining coffee at unsafe temperatures. While the woman in the McDonald's case was able to garner financial compensation for her injury (although the final awards was greatly reduced), negative perceptions of individuals bringing frivolous claims might hurt individuals' chances of winning cases (Hans 2000; Robbennolt and Studebaker 2002). A second example of media exaggeration comes from the data I collected in Alabama. In 2003 a Macon County, Alabama jury awarded the plaintiff $1,000,000 in the uninsured motorist case, *Smith v. Allstate* (00-0054) (Miller AJVR 2003, 260). Despite, the jury's award, the plaintiff only received the maximum available coverage provided by the uninsured motorist policy of $40,000. However, the editor of the volume notes that when covering the verdict, *The Tuskegee News* mentioned the million dollar award several times without ever mentioning the contractual limit of $40,000. This trial provides another example of a case in which a media outlet covered a large damage verdict without discussing the details of the case or plaintiff's actual award.

Taken together, the previous literature examining litigant resources and litigant status suggest several implications for winners and losers and awards in civil trial courts. Overall, individual litigants may possess a resource disadvantage when pursuing litigation, because plaintiffs lack familiarity with courts and typically hire lawyers at smaller firms with fewer

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resources. Additionally, media bias and exaggeration of awards might prejudice juries against individual plaintiffs. Furthermore, Galanter's party capability theory asserts that wealthy parties such as business and the government might achieve higher success rates in the courts, because they possess greater familiarity with the courts, hire better legal representation, and shape the rules over time through repeat interactions with the legal system.   Yet, the "deep pockets" hypothesis maintains that wealthy parties might pay more when they lose. However, although Galanter (1974) theorized that wealthy would attain better counsel, the contingency fee system utilized by most plaintiff attorneys in civil litigation might attenuate some of defendants' representational advantages. Theoretically, individuals with strong cases could hire high quality representation because of the potential to make money from the claim. Furthermore, like defense attorneys, plaintiff attorneys are also repeat players with familiarity with the court system.

Judicial Ideology

Although scholars have devoted little attention to the relationship between judicial ideology and outcomes in trial courts (where jurors' preferences presumably have greater influence), research conducted at the appellate court level substantiates the notion that judicial ideology influences judges' decision-making. Scholars of the U.S. Supreme Court maintain that judges seek to create policy that mirrors their own preferences as closely as possible (Gibson 1983; Rhode and Spaeth 1976; Segal and Spaeth 1995, 2002; Schubert 1965, 1974). Previous research also demonstrates that ideology matters at the state supreme court level. Judges' partisan identifications appear to predict state supreme court judges' liberal or conservative policy preferences (Brace and Hall 1993, 1995). In addition, Brace, Langer, and Hall (2000) demonstrate that state supreme court judges' preferences reflect their partisan affiliations and ideology of their states at the time of their initial election/appointment. The overwhelming

impact of judicial ideology on appellate court judges' behavior suggests a relationship might exist between judicial ideology and trial court outcomes.

Like their appellate court counterparts, trial judges directly rule on numbers of pre-trial motions, suggesting considerable room for trial judges to express their ideological preferences during the pre-trial phase of litigation. However, jurors' preferences might influence jury trial outcomes to a greater degree than judges' dispositions, perhaps limiting judges' influence to the pre-trial stage and settlement process. Yet, trial judges presumably serve as important authority figures and information filters during the trial process, potentially allowing trial judges to transmit their preferences to jurors during trial. Unfortunately, scholars have devoted little attention to the relationship between judicial ideology and outcomes in civil trial courts and provide little guidance.

Admittedly, only an indirect relationship between judicial ideology and jury verdicts exists, if at all. However, in *Democracy in America*, Alexis De Tocqueville subscribes a substantial role to judges and their ability to influence juries in civil trials. De Tocqueville states, "It is the judge who sums up the various arguments which have wearied their [jurors'] memory, and who guides them the devious course of the proceedings; he paints their attention to the exact question of fact that they are called upon to decide and tells them how to answer the question of law. His influence over them [jurors] is unlimited (Bradley 1948, 286). If trial judges influence civil juries to the extent that De Tocqueville asserts, trial court judges might transmit their ideological preferences to jurors."

Despite the lack of consistent theoretical or empirical evidence that trial judges' dispositions influence jury verdicts, interviews with Alabama lawyers demonstrate that attorneys believe judges possess the ability to substantially influence juries. Alabama judges, on the other

hand, subscribe a minimal to nonexistent role to the judge in the jury decision-making process. When asked about judges' influence over the jury, one attorney related a view of the judge similar to that ascribe by De Tocqueville. According to the attorney:

> Judges have tremendous amount of influence over jurors. The jury looks to the judge as a respected, elected official. Juries look to the judge for guidance. Judges can influence the jury through their tone; their court room demeanor influences the jury—everything from conversing with council and witnesses to dealing with the jury. Judges instruct juries about the law. If the judge has a predisposition to the case, the jury knows. If a judge is predisposed to one side, the case is more likely to settle.

All of the attorneys interviewed agreed that judges possess the ability to influence juries' decisions. However, some attorneys believe that "good" judges seek to be as neutral as possible and hide their opinions from the jury. According to one attorney, "[the amount of influence over juries] varies from judge to judge. A fair judge uses, what they call a 'judicial attitude,' lets both sides make an argument. Good judges are neutral." However, the lawyer went on to describe a judge he believed failed the judicial attitude standard. "There used to be a [county] judge…that was very defense oriented. If there was a case that he thought was bad, he would let the jury know. A judge can influence the jury a lot." Despite the perceived conditional relationship between judicial ideology and judges' influence on juries, the same attorney admits that his firm begins each case by researching the judge's background, use of mediation, and past rulings on motions, demonstrating that the firm believes that judges' dispositions influence litigation outcomes strongly enough to devote investigative resources into researching each judge's life experiences and prior judicial behavior. An attorney at another firm told me that one of the partners tells all of the young lawyers to, "always start with judge," and encourages them to begin each case by researching the assigned judge.

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On the other hand, the judges interviewed firmly trust that judges play little to no role in influencing the jury. When asked how much influence judges' have on a trial's outcome, one judge gave a description very different than that of lawyers or De Tocqueville. When asked how much influence a judge has over the jury's verdict, the judge stated:

> I would say not very much. The judge should not have an influence on the outcome. The judge should be neutral. The judge should not be noticeable in the courtroom. The judge's job is to make the case understandable to the jurors, and the jurors make the decision based on the evidence. During the trial, I try to move things along. The legal instructions I give the jury are very standard. I don't want the jurors to feel like we are wasting their time. Then, I instruct them on the law. My job is to ensure that jurors understand the law. I try to make the law comfortable and understandable for jurors.

In fact, another judge maintained that judges lack ideological preferences at all. "When you become a judge, you're not supposed to have a philosophy. When you take the bench you agree to set ideology aside." Yet, another Alabama judge admitted, "We would all like to think of ourselves as neutral. We think we are all fair and impartial. No one has biases. We have as good of an unbiased system as possible, but we're all human. Everyone has biases."

If trial judges' influence jurors to the extent that De Tocqueville and lawyers assert, judges might transmit their ideological preferences to jurors through their rulings and courtroom demeanor. Additionally, previous research demonstrates that liberal state supreme court judges possess more pro-underdog policy preferences than their conservative counter parts (Brace and Hall 2001). If jury verdicts reflect judges' partisan leanings, plaintiffs, the prototypical underdogs in most cases, should win more often and receive larger awards in courts presided over by Democratic judges who presumably possess more liberal policy preferences. Additionally, previous research notes that more conservative populations tend to elect conservative judges (Brace and Boyea 2007, 2008), so elected judges' preferences may parallel those of the local population or judges may defer to their constituents.

Institutions

If judges play a critical role in shaping litigation outcomes in trial courts, judicial

institutions that condition judges' behavior on the bench might also affect jury verdicts. Brace

and Hall assert, "institutional arrangements, which consist of internal and external rules as well

as organizational structures, determine the aggregation of individual preferences within any

given decision-making body (1993, 916)." The judicial election literature provides insight into

the affects of institutional arrangements on judicial decision-making in appellate courts. Much of

the literature concerning institutional effects on litigation outcomes focuses on death penalty

cases, because of the highly salient nature of the issue and the relatively large amount of media

attention devoted to capital punishment cases. These studies find that judicial selection and

retention method shapes the types of judges on the bench, which conditions their initial

likelihood to support the death penalty (Brace and Boyea 2007, 2008). However, selection and

retention method also conditions judges' decisions in death penalty cases once on the bench

(Brace and Hall 1990, 1993, 1997; Brace and Boyea 2007, 2008). Both liberal and conservative

judges show increased support for the death penalty when constituencies become more

conservative and when judges are elected. Constituency influences result in even stronger

support for the death penalty when judges approach reelection, are selected through district-

based selection methods, and face competitive races (Hall 1992). Elected state supreme court

justices also show greater support for the death penalty as they gain experience as elected

officials, especially after a particularly close election (Hall 1995). The greater the judge's

reelection concerns, the more closely judges reflect constituent preferences in their decisions to

uphold the death penalty (Hall 1987). Hall also finds that elected judges not only feel

accountable to the public, but judges actually face electoral defeat (2001,a). Incumbent judges in

partisan state supreme court elections lose their offices more often than incumbents in the House of Representatives.

Previous research also suggests that reelection concerns affect judges in all levels of the legal system and at all stages in their careers. Huber and Gordon attribute sentencing inconsistencies in aggravated criminal cases to trial judges' electoral pressures (2004). They find that elected trial court judges, regardless of their ideological dispositions, hand out longer sentences with election proximity. While judges presumably wish to retain their posts, they may also wish to obtain a higher office. Langer, McMullen, Ray, and Stratton (2003) find that policy preferences and institutional design shape judicial promotions. In addition to judicial promotions, institutional design also shapes judges' decisions to retire (Hall 2001,b). Hall finds that judges retained through judicial elections choose to retire when faced with an especially competitive election.

In addition to fostering occupational insecurity among elected judges, judicial elections also require judges to raise campaign money for reelection bids. A growing body of research maintains that campaign spending influences voter participation and thereby affects campaign outcomes (Hall and Bonneau 2006, 2008). Like other elections, campaign spending in judicial races conveys information about the candidates to the public and increases voter participation in judicial races. Although incumbents possess considerable advantages (Hall 2001, a), incumbent vote shares decrease when a challenger, especially a quality challenger enters the race (Bonneau 2005, 2007 a, b; Bonneau and Hall 2003; Hall 2007). As judicial elections become more competitive and spending increases, judges may feel pressure to cast votes in favor of campaign contributors to secure funds for future elections (Cann 2007; Palmer and Levendis 2008, but see Newman, Speyer, and Terrell 2008). While the true influence of campaign contributions on

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judicial elections and judges' behavior remains in question, the reality of increasingly costly

judicial elections suggests that elected judges, like other elected officials must consider

campaigning and campaign fundraising as part of their careers.

Although much of the judicial election literature focuses narrowly on the one issue of the

death penalty, these studies provide considerable information concerning the role institutional

design plays in judicial decision-making. While Supreme Court Justices possess life tenure,

allowing them to decide cases in a manner consistent with justices' policy preferences, judicial

elections tie state court judges more closely to public preferences. Furthermore, the type of

electoral system (i.e. district-based vs. statewide elections) also appears to constrain judges'

actions. District-based elections appear to produce the most direct ties between judicial decision-

making and public opinion. Institutional constraints also seem to condition the relationship

between judges' policy preferences and judges' abilities to implement their preferred policy

without sanction. Judicial elections provide a method, whether the public utilizes it or not, to

sanction unpopular judicial behavior. Accordingly, elected judges appear to modify their

behaviors to avoid electoral sanction.

While examining the influence of campaign fundraising on trial judges' behavior exceeds

the scope of this project, Alabama judicial races continue to be some of the most expensive in the

nation, and I asked Alabama judges and attorneys about their perceptions of elections in the

state. When asked if judicial elections shape trial court judges' behavior, one judge stated, "I'm

not sure a person who had achieved sainthood could raise millions and millions of dollars and

then vote against the group that gave you $5 million. Even if you'd achieved sainthood, how

could you do that?" The judge went on to narrate his experience during the 2010 judicial race:

> This last election cycle I had a lot of law firms that contributed to my campaign, but two
> law firms really took the lead in supporting me. The first case I tried after the election,

they were on opposite sides. I'd like to think that they respect you if you treat them fairly. But, if there's not a true tainting, there is at least a tainting in the public's perception.

When asked if they supported judicial elections, most of the judges interviewed advocate moving from a partisan elections to a non-partisan system but support judicial elections overall. However, judges also report that Alabama typically relies on a gubernatorial appointment system to initially place judges on the bench. According to one circuit judge:

> I am the only circuit judge to get here by running; everyone else was appointed. On the local scale, there has been a big movement to get away from a partisan system. But, we pretty much have an appointed system already. Out of the 11 judges currently on the bench, I'm the only one to run. Typically, the governor fills mid-term vacancies. The [county] Bar Association makes a recommendation of three names to the governor, and the governor picks one of the three. It has also been the practice in [the county], like in other circuits, I would expect, that typically, you don't draw a challenger. In ten years, there's only been one judge removed since appointment.

Following appointment, a judge then runs for reelection under the partisan label of the governor that appointed him or her. A judge in a heavily Republican circuit stated that, because of the partisan imbalance in the circuit, elections there might be better classified as nonpartisan rather than partisan, since all of the judges run as Republicans in the primary. If judges in the circuit receive a challenge, it occurs in the Republican primary. "Most of the competition, when there is any, occurs in the primary. You can almost say elections here are nonpartisan, since all of the candidates run as Republicans. Generally, whoever is the Republican nominee wins." In that circuit, primary challenges typically occur only in open seat elections, which happen infrequently given the norm of gubernatorial appointment during mid-term vacancies. However, the judge admits that judges in circuits with high partisan competition might feel greater pressure to conform to constituent pressures. "I have a friend in another circuit where elections are closer. She told me, 'I'm ruling on things to appease my constituents. I shouldn't be ruling on things to

please voters.' I told her no, you shouldn't, but in areas where there's a lot of competition, judges feel like they have to."

On the other hand, trial court judges appear to perceive considerable advantages to partisan and nonpartisan judicial elections. In Alabama a judicial candidate must work as a practicing lawyer for at least five years prior to becoming a judge, thereby limiting the potential pool of judicial candidates. One judge said, "I like to think that, unlike other elected officials, not just anyone can run against me. They've got to find a lawyer to run against me. If you're fair to the lawyers, they're not going to run against you." Additionally, the judge pointed out that running against a seated judge could negatively impact the challenger's career if unsuccessful. "The only other time [a judge receives a challenge] is when an attorney is mad at a judge and runs to teach him a lesson. But, if you run against a judge, you better win. Otherwise, it could be quite uncomfortable for an attorney the next time he's in the judge's courtroom." In fact, judges seem to perceive changing demographic or partisan patterns in the community as the greatest threat to judges currently on the bench in Alabama. One judge told me, "I've heard horror stories about judges who lose their seats when the county switches parties and the judges don't switch in time. That happened to a friend of mine in another county. The county was switching from Democrat to Republican, and he didn't switch in time and lost his seat." Another judge said, "In 10 years, there's only been one judge removed since appointment [in this circuit]. But, for Democrats in an overwhelmingly Republican county, if they draw a challenge, they might well be gone. The area is so heavily Republican that a little known Republican can defeat you."

Conversely, a number of judges interviewed believe that retention elections make judges vulnerable to removal due to one unpopular decision. Unlike partisan or nonpartisan election,

citizens can mount campaigns against judges in retention systems without fielding a candidate. Several of the judges interviewed pointed to the removal of judges in Iowa for their support of gay marriage as an example of the dangers of retention elections. An Alabama circuit judge said, "On the other side, judges in retention elections can get run out of office for one bad decision, like those judges in Indiana that voted in favor of same-sex marriage. Those were highly respected judges that voted that their sincere beliefs that banning gay marriage violated the state constitution. All of those judges got run out of office[3]."

Although most attorneys view the influence of judicial elections as greater in appellate courts than trial courts, the attorneys interviewed report a more consistent and direct influence of constituent preferences on judges' behaviors than judges. One attorney said, "Judges, even though their goals may be pure, the fact is that they are human, and they are influenced by constituents." Other lawyers expressed views that the excessive cost of Alabama judicial races jeopardizes judges' potential impartiality. An Alabama defense attorney stated, "Judicial elections have gotten out of hand when judicial races cost millions of dollars and judges run on platforms. 'Vote for me, and I'll be a conservative judge.' 'Vote for me, and I'll be a liberal judge.' Furthermore, a plaintiff lawyer said, "Republican judges have to rule in favor of businesses to keep campaign money coming in, and Democrats have to rule in favor of individuals to keep the trial lawyers' associations happy."

While civil trials primarily entrust the final verdict to the jury, judicial retention methods and institutional arrangements might influence jury verdicts. If judicial selection methods affects judges' behaviors like Alabama lawyers or previous research demonstrates, we might observe

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[3] After declaring the state's gay marriage ban unconstitutional in 2009, the three Iowa State Supreme Court justices up for reelection in 2010 lost their seats, including the chief justice. Since judicial elections are staggered in Iowa, the other justices on the bench at the time of the decision have not yet stood for reelection. For more information see http://www.desmoinesregister.com/article/20101103/NEWS09/11030390/Iowans-dismiss-three-justices.

differences in jury verdicts across jurisdictions utilizing partisan, nonpartisan, retention elections, or gubernatorial appointment, especially given that Alabama, Indiana, Kentucky, and Tennessee all retain judges in district-based elections. Unfortunately, previous research provides little insight into the possible relationship between judicial selection method and trial court outcomes. On the other hand, Indiana provides the ideal context for exploring the influence of judicial selection method on jury verdicts, since Indiana utilizes partisan, nonpartisan, and retention elections to retain trial court judges. Both Alabama and Tennessee retain trial court judges through partisan elections, while Kentucky uses nonpartisan elections. Hawaii uses gubernatorial appointment and retention by committee. If judicial selection and retention mechanism shape judges' preferences and behaviors, jury verdicts may vary across states both in terms of who wins and how much successful parties receive. The judicial selection literature suggests that elected judges, especially those elected in partisan, district-based elections, feel pressure to comply with citizen demands. However, it is unclear whether elected judges, seeking to reflect citizens' preferences would favor individual citizens or the businesses that likely contribute to judges' campaigns.

On the other hand, a number of state institutions might directly affect jury verdicts. The manner in which civil juries determine fault constitutes an important institutional difference across states. Some states employ comparative fault standards, in which juries can determine the extent to which the plaintiff contributed to the alleged injury and adjust the award accordingly. On the other hand, states that apply the higher standard of contributory negligence prevent plaintiffs from collecting damages if the plaintiff contributed to his or her injury in any way. States that employ higher standards for determining the defendant's fault likely produce more pro-defense verdicts than states with lower standards of fault. On the other hand, states that

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allow the jury to diminish the plaintiff's award if he or she contributed to the alleged injury might hand out consistently lower awards. In other words, while a plaintiff in a comparative fault state might have a greater likelihood of wining given the lower standard of fault, the ability to adjust the award might lead to less compensation upon success. Through the mechanism of tort reform, both Indiana and Kentucky place statutory caps on the amount successful plaintiffs may receive in certain types of cases. Presumably, damage caps should diminish the size of awards in these states. Additionally, the state of Indiana relies on a unique institution called a medical review board to review medical malpractice cases. Presumably, the state intended the review board to limit "frivolous" medical malpractice suits. However, the actual affect of the review board on litigation has not been studied. On the other hand, all of the institutional structures might directly influence how juries determine liability and compensation.

Case Facts: Issues and Alleged Injuries

Saks (2002) argues that the mix of cases coming before a court plays a critical role in determining the initial likelihood that the plaintiff wins, since the mix of cases varies substantially from one jurisdiction to the next. However, the few studies that attempt to examine the influence of case types on jury verdicts come to opposite findings. Bovbjerg et al. (1991) argue that the case type and the severity of the injury predict the amount of the award in civil cases. The authors observe that plaintiffs win medical malpractice cases least often but garner the largest settlements upon success. Conversely, plaintiffs achieve the highest success rates in automobile cases but receive consistently less compensation. On the other hand, Vidmar (1994) concludes that jurors assess similar damage awards against liable defendants in medical malpractice and automobile cases.

Overwhelmingly, the judges and attorneys I spoke with identified medical malpractice cases as especially difficult. As one attorney summarized, "Medical malpractice cases are the most difficult cases. You never win those." Medical malpractice cases also require a large investment in resources given the long preparation time and the state of Alabama's requirement of expert witnesses. In fact, only two law firms take medical malpractice claims in the two counties where I conducted my field work. Judges and attorneys maintain that, because of the cost, lawyers turn down most medical negligence cases, even ones where individuals possess legitimate claims. According to one plaintiff lawyer:

> [Medical malpractice cases] are tough and expensive. When someone calls me and asks me to take a medical malpractice case, I ask them if they can still walk. You're on the phone, so obviously you can talk. Can you still work? If they say yes, I tell them that they really don't have a case. It's gotten to where, if you are not totally and permanently disabled, dead, or whatever, you don't have a case, which is unfortunate, because doctor's make mistakes.

A judge I spoke with informed me that even when an individual obtains representation and wins a medical malpractice case, the Alabama State Supreme Court often overturns those decisions. The judge said:

> If the plaintiff gets a big verdict in Alabama, the State Supreme Court looks over the record for anything to overturn it. There was one case where the Supreme Court found that the hospital was affiliated with the state and therefore had state sovereign immunity. There was another case where the judge told the jurors that the case was going to last two weeks and let the jurors go if they couldn't stay the two weeks. Even though there really wasn't any protest at the time, the appellate court found that that was improper and sent the case back down. Things have gone so far in the direction of the medical community that it's really unfair. In Alabama a nurse can kill someone every year for nine years, and that evidence isn't admissible. In fact, it's not even discoverable. What other profession can you make the same mistake and injure people year after year and it's not admissible?

Beyond medical malpractice, judges and attorneys also identify products' liability and slip and fall cases as especially difficult for plaintiffs. Like medical malpractice, product's liability cases

require large investments in research and expert witnesses. On the other hand, a plaintiff attorney told me that "Juries hate slip and fall cases," because jurors perceive slip and fall claims as frivolous.

Although scholarly results regarding the influence of case type are mixed, attorneys and judges perceive clear patterns of success rates across case types. Yet when turning to compensation, previous research clearly demonstrates that more seriously injured plaintiffs receive greater compensation in civil trials (Bornstein 1998; Bovbjerg et al 1991; Chin and Peterson 1985; Greene and Bornstein 2003; Vidmar, Gross, and Rose 1998). When asked what types of injuries make for a strong case, one plaintiff attorney I interviewed said, "You want broken bones. That way when you have the X-Ray that shows the break. There's no questioning that. I once had an attorney tell me that, 'I don't want a client that can walk into the office.'" Additionally, Hans (2008) ascertains that the type of injury alleged influences the likelihood that jurors perceive the injury as legitimate. In her experiment, Hans observed that jurors found fractures and broken bones more convincing than soft tissue injuries (scratches, bruises, and whiplash). A plaintiff attorney interviewed agreed with Hans' assessment of soft tissues cases. The lawyer identified soft tissue cases as especially difficult to win, because, "there is no objective evidence." Judicial practitioners' views and scholarly research indicate that plaintiffs likely prevail less often in medical malpractice, products' liability, and premises liability cases; however, plaintiffs alleging more concrete injuries presumably achieve higher success rates. Additionally, more seriously injured plaintiffs should garner large awards when successful.

Summary and Discussion

Based on empirical observations generated by political science, trial court, and state politics research, as well as the perceptions of experienced legal practitioners, this chapter

develops an integrated model of trial court decision-making. Specifically, I contend that the

socioeconomic and political context of the circuit, judges' ideological dispositions, state

institutional features, litigants' resources and status, and case facts predict jury verdicts both in

terms of winners and loser and awards. In particular, I hypothesize that the composition of the

local community in terms of race, economics, age, education, urban characterization, and

ideology will predict both the probability of plaintiff success and awards. Additionally, I

theorize that judges might transmit their preferences to juror through their rulings, courtroom

demeanor, or jury instructions. This study is the first to explore a possible relationship between

judicial ideology, judicial selection methods, and jury verdicts. If jury verdicts reflect judges'

ideological dispositions, I expect juries presided over by Democratic judges, who presumably

holding more liberal ideological views, to render more pro-plaintiff verdicts and larger awards.

Additionally, if judges influence jurors, judicial selection and retention mechanisms that alter

judges' behavior on the bench might also lead to varying patterns of jury outcome, but previous

research provides little guidance as to how this relationship might work at the trial court level. I

also hypothesize the plaintiffs with greater resources, in terms of legal representation, should

achieve higher success rates.   Additionally, party capability theory posits that, in general,

businesses and government possess greater resources than individuals, are more familiar with the

legal system, and likely hire better representation, suggesting that businesses and government

should typically garner more favorable verdicts than individuals. On the other hand, the "deep

pockets" hypothesis maintains that juries will assess larger damage awards against litigants such

as businesses and government who possess greater perceived wealth. While previous data

sources largely prevented researchers from exploring the influences of case issues and alleged

injuries on plaintiff success rates and awards, the greater detail provided by the database utilized

in this study allows for an in-depth examination of the effects. Prior research, although limited, and interviews with judges and lawyers suggest that plaintiffs prevail less often in medical malpractice cases; yet, successful plaintiffs likely receive greater compensation after sustaining more serious and demonstrable injuries. Subsequent chapters will apply this theory to investigate the factors that predict juries' dispute resolution and resource allocation functions within and across states in Alabama, Hawaii, Indiana, Kentucky, and Tennessee.

Chapter 2

Comparing Civil Courts in Five States: Docket Composition, Win/Loss Rates, and Awards

Variation in civil rules, procedures, and outcomes comprised Federalist's primary objection to a constitutional mandate protecting civil juries. In Federalist 83, Hamilton highlights the numerous dissimilarities in civil jury selection and civil procedure that existed at the time of the ratification and the potential for inconsistent outcomes. Presumably, more disparities currently exist in states' application of the civil jury system as the number of states and courts have increased in the United States. However, assessing the influences of state-level variation on civil jury verdicts requires previously unavailable comprehensive data. The following chapter descriptively examines the composition of courts' dockets, verdicts, institutional structures, and litigant characteristics in state civil courts in Alabama, Hawaii, Indiana, Kentucky, and Tennessee in 2009.[4] Admittedly, one year of data might not adequately represent the docket composition, the types of cases, or they types of verdicts a court handles over a broader period of time; however, no existing reason emerges to suggest that 2009 radically differs from subsequent or future years. Overall, the types of cases decided over a given year in a court ought to reflect the general pattern of cases and decisions-making in the civil trial courts in that state.

Table 2.1 reports the number of verdicts in each state in 2009, verdicts per one million residents (based on the size of the state's population in 2009 according to the U.S. Census), the median and maximum awards in each state, the percentage of verdicts favoring plaintiffs, and the percentage of verdicts in which the jury awarded punitive damages. In 2009 civil juries in the five states adjudicated 926 civil disputes and awarded $425,532,301 in total damages. Of the

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[4] Although the data reported in the 2009 volume for the five states does not perfectly reflect the 2009 calendar year, and includes part of 2008, I refer to the data as 2009 in the text for ease of discussion.

five states Alabama and Kentucky both possess similar population sizes, near 4.5 million residents. Tennessee and Indiana also hold comparable populations near 6.3 million persons. Hawaii's population is the smallest with only 1.3 million residents. However, the 2009 verdicts per one million residents suggest that Alabama juries adjudicate more trials than the other four states (56.1 verdicts per million residents), despite having a population smaller than both Tennessee and Indiana. Indiana trial courts rendered the second largest number of verdicts per million persons (48.8). Despite Hawaii's smaller population, it still appears that Hawaiian juries decided fewer cases than the other states. The Hawaii reporter reports only 12 civil jury trials for 2009. Kentucky and Tennessee trial courts both adjudicated around 200 cases in 2009. Overall, a comparison of the number of civil jury verdicts in each state, compared to state population, implies that factors beyond population size determine number of jury trials in each state. On the other hand, even in Alabama where civil juries adjudicate the most civil trial, the data show less than 60 trials for every million residents, demonstrating that trials are an infrequent event.

Table 2.1.Civil Jury Verdicts in Five States (November 2008 to November 2009)

State	Number of Jury Verdicts	Verdicts per Million Persons	Median Award	Maximum Award	% Pro-Plaintiff	% Punitive Damages
Alabama	258	56.1	$30,000	$33,257,694	50%	6.6%
Hawaii	12	9.2	$208,050	$6,150,000	42%	0
Indiana	244	38.1	$23,380	$157,000,000	62%	1.7%
Kentucky	210	48.8	$42,612	$55,900,000	49%	4.5%
Tennessee	199	32.1	$16,250	$23,600,000	56%	1.5%

Table 2.1 also reports the median and maximum awards to compare the typical award in each state to the largest awards given the highly skewed nature of awards (awards in 2009 range

from zero dollars to $157,000,000).[5] In order the capture the jury's evaluation of litigants'

claims, the data set records the jury's initial award in each case. I do not adjust awards for post-

trial increases or decreases. However, jury awards are often reduced post-trial either through

settlement, court action, or appeal (Border 1986; Greene and Bornstein 2003; Ostrom, Hanson,

and Daley 1993). Additionally, successful plaintiffs often recover little if any of the actual

award (Hans 2008). In an analysis of medical malpractice verdicts in New York City, Vidmar et.

al (1998) observe that 44% of all verdicts were reduced post trial, and that on average, plaintiffs

received 62% of the jury's initial award. Although plaintiffs may not receive the jury's initial

award, the median and maximum jury awards provide insight into the typical award in a state

and the factors that lead juries to generously compensate plaintiffs. Once again, I possess

relatively few observations for Hawaii, preventing a broad comparison; however, the largest

median award occurs in Hawaii, $208,050. The smallest median award, only $16,250 occurs in

Kentucky. The median award in Alabama is $30,000, while the median awards in Kentucky and

Indiana are $42,612 and $23,380, respectively. The median awards in each state, other than

Hawaii, suggest that the typical jury award is not especially large.

Obviously cases involving extremely large awards represent atypical trials; however, the

maximum award cases provide illustrations of actual litigation where juries delivered million

dollar verdicts. For example, Alabama juries awarded $33,257,694 to the state in *State of

Alabama v. Novartis Pharmaceuticals Corp. et al* in which the state claimed that Novartis

fraudulently over charged the state's Medicaid system for drugs (05-219.52) (Miller AJVR 2009,

412). Novartis charged the state of Alabama the average wholesale prices (AWP) or average

wholesale acquisitions costs (WAC) for drugs over a 10 year period. However, the state alleged

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[5] A zero dollar award occurs when the plaintiff wins but is not awarded damages.

that the true cost paid by pharmacies and providers was significantly less than that paid by the state. In Novartis' defense, the company claimed that the state knew that WAC and AWP did not reflect the actual prices charged to wholesalers. Additionally, Novartis maintained that the state possessed the right to audit pharmacies and should have done so. The trial lasted half a month, and the verdict currently awaits appellate review.

A Hawaiian jury awarded $6,150,000 to a plaintiff alleging a medical malpractice injury in *Ray v. Kkapiolani Medical Specialists* (0600304) (Semmens HJRR 2009, 838). The plaintiff, a teenage girl at the time, alleged that the high dosage of steroid used to treat her Lupus at a hospital resulted in permanent physical disability, leaving the plaintiff unable to walk without crutches. She argued that the hospital's use of the high dosage of steroid violated the accepted standard of care. The defense maintained that the hospital warned the family before treatment that a rare chance of muscle weakness might result. In addition, the defense noted other instances of higher doses of steroids used to successfully treat other patients.

The largest award in Indiana occurred in a product liability case. The jury awarded $157,000,000 to the family of a man who was tragically strangled to death when his treestand collapsed while hunting in the case *Estate of Simonton v. L&L Enterprises Inc.* (79D01-0602-CT-20) (Miller IJVR 2009, 475). After finding the man hanging from a tree, the plaintiffs, the wife and stepson of the deceased, alleged that the company was liable for the defective treestand. The treestand had been recalled the year before. The company, having previously gone out of business in 2004, did not participate in this litigation. The court granted the estate a default judgment on liability, and the jury issued a verdict on damages only. Although the jury decided to compensate the family, this case presents an example of the type of trial where the plaintiff

likely received little if any of the actual award since the business likely possesses few if any resources after going out of business.

Kentucky jurors awarded $55,900,000 ($53,000,000 of the verdict representing punitive damages) to the family of a woman involved in a fatal assault in *Wittich v. Flick* (08-4294) (Miller KJVR 2009, 581). The case began when two business partners in an optometry office had a business disagreement that apparently became violent. Flick, one of the business partners, invaded his colleague's home and shot and killed his girlfriend, Wittich. Flick then waited for his partner to return home, and shot him as well before being subdued (a Kentucky jury also resolved a civil suit regarding the second shooting in another trial). Wittich's estate filed suit against Flick, who by this time was serving a life sentence for her murder. However, like the previous example, the deceased's family is unlikely to obtain the amount awarded from a convicted murderer serving a life sentence.

In *Hill v. Moise* (000093-06) (Miller TJVR 2009, 288) a Tennessee jury awarded the plaintiff $23,600,000 in a medical malpractice suit. Hill, a woman in her early twenties in 2003, found a lump in her breast and reported it to her Ob-Gyn. After examining the lump in an office visit by palpating the lump, Dr. Moise concluded that the lump was harmless and ran no additional tests. In 2005, during her pregnancy, Hill noticed that the lump appeared larger and visited a second doctor. At that time, medical tests revealed that Hill had breast cancer that had spread to her liver. Hill's diagnosis predicts a small chance of survival, and she was physically unable to attend the trial. Hill alleged that Dr. Moise's failure to perform cancer screening on the lump violated the standard of care and lead to a later diagnosis of the cancer, allowing the cancer to spread and preventing early treatment. Dr. Moise's defense argued that, because of the plaintiff's age, cancer was unlikely, and therefore, additional screening was not necessary.

Although the cases where juries handed down the largest awards are atypical when compared to the majority of cases, these five cases have a number of features in common and shed light on the factors that lead jurors to the largest damage awards. Of the five cases involving the largest awards, there are two medical malpractice cases, one product liability, one fraud, and one fatal assault claim. All five cases involve severe injuries. Case injuries include two deaths, a high probability of death, a permanent disability, and a claim for a large monetary loss. In four of the five cases, an individual or an individual's estate alleged an injury against the defendant. Additionally, three of the five cases involve a business defendant. These trials suggest that the cases with the largest awards typically involve severely injured plaintiffs, individuals and businesses, and medical malpractice claims.

Turning to the types of cases shaping the dockets in Alabama, Indiana, Kentucky and Tennessee, comprehensive examination demonstrates that civil trial courts handle similar case issues; however, the distribution of case issues across states varies considerably.[6] Cases types are aggregated into the seven most common issue areas including auto negligence, premises liability, fraud, medical malpractice, products liability, uninsured motorist, and breach of contract (see Appendix B). A general negligence category captures all other types of negligence claims, while an "other issue" category represents cases not captured by any other category. The general public likely recognizes trials involving automobile accidents and medical malpractice, but other case types might be less familiar. For example, premises liability cases involve a plaintiff's claim that the defendant negligently maintained an unsafe premises. *Felix v. Wal-Mart* (06-0754) (Miller KJVR 2009, 659) provides an example of typical premise liability case in which a woman slipped and fell in a sticky substance on a Wal-Mart floor and dislocated her

[6] In 2009 Hawaiian juries decided only 12 cases. Unfortunately the small number of cases in Hawaii prevents a graphic comparison to the other states. Therefore, Hawaii is not included in the discussions of states' docket compositions. However, a discussion of the distribution of the cases in Hawaii is included Section 4.1 of Chapter 4.

hip in the fall. Although Wal-Mart prevailed at trial, the plaintiff argued that Wal-Mart failed to

maintain a reasonably safe floor. Products liability cases involve an allegation that the defendant

failed to provide a reasonably safe product. In the product's liability case, *Maroney v. Taurus*

International Manufacturing (07-73) (Miller AJVR 2009, 490), a man sued a gun manufacturer

for making and selling an unsafe product when the gun allegedly fired a bullet into the man's

buttocks after falling from the man's pocket and hitting a cement floor, despite the engaged

safety (the jury awarded Maroney $500,000 in compensatory damages and $750,000 in punitive

damages). Uninsured or under-insured motorist cases involve plaintiffs injured in automobile

accidents in which the driver at fault lacked insurance or adequate coverage for all of the

damages. In these cases, the injured plaintiff sues his or her own insurance company for

damages caused by the uninsured or under-insured driver. Civil trial courts also examine

economic cases such as fraud and breach of contract. The previously discussed case of *State of*

Alabama v. Novartis Pharmaceuticals Corp. et al (Miller AJVR 2009, 412) provides a good

example of a fraud trial. A breach of contract trial occurred following the alleged theft of a

man's SUV. When the man made a claim with his insurer for the loss of the stolen vehicle, the

insurance company found the theft fraudulent and denied that claim. Although unsuccessful at

trial, the man made a breach of contract claim against the insurer in *Green v. Allstate Insurance*

*Co*mpany (49D06-0606-PL-27082) (Miller IJVR 2009, 380).

Plaintiffs may also seek, and juries sometimes award punitive damages. Punitive

damages seek to punish the defendant and deter similar behavior in the future. Juries award

punitive damages when the defendant's conduct goes beyond negligence to the extent of reckless

or malicious conduct (Ghiaridi and Kircher 1995). Most states only allow punitive damage

awards when the jury first awards compensatory damages; however, some states, such as

Kentucky and Alabama, allow juries to award only punitive damages. However, the data show that juries award punitive damages infrequently. Alabama juries award punitive damages most often of the five states; however, even in Alabama only about 7% of awards include punitive damages. Of the available cases in Hawaii in 2009, none include punitive damages. Juries award punitive damages in about 2% of trials in Indiana and Tennessee and in 4.5% of trials in Kentucky.

Figure 2.1 provides a descriptive overview of the 2009 dockets in Alabama, Indiana, Kentucky, and Tennessee. States' dockets show that trials involving auto accidents make up close to fifty percent of the caseload in Alabama (48%), Indiana (49%), and Tennessee (54%). Unlike the other states, only 21% of the trials in Kentucky entail auto accidents. Medical Malpractice cases make up the second largest segment of the docket in Alabama (12%), Indiana (14%), and Tennessee (15%), and represent the largest segment of the docket in Kentucky (29%). The next largest category of trials varies by state. In Alabama uninsured motorist cases comprise 10% of the docket. Premises liability cases are the third largest segment of the docket in Indiana. In Kentucky, the third largest categories of issues are general negligence (15%) and other issues (15%). Kentucky courts appear to hear a greater number of negligence cases and cases involving more varied issues than the other three states. Economic cases, fraud and breach of contract, together account for 10% of the trials in Alabama, 2% in Indiana, 1% in Kentucky, and 3% in Tennessee. The dockets of all four states suggest that products liability cases occur infrequently. Products liability cases account for only 1% of the docket in Alabama and Indiana and just 2% of the cases in Kentucky and Tennessee. Overall, trials involving auto accidents, medical malpractice, and general negligence cases make up the majority of the dockets in all four states. However, Tennessee courts resolve considerably more auto negligence cases.
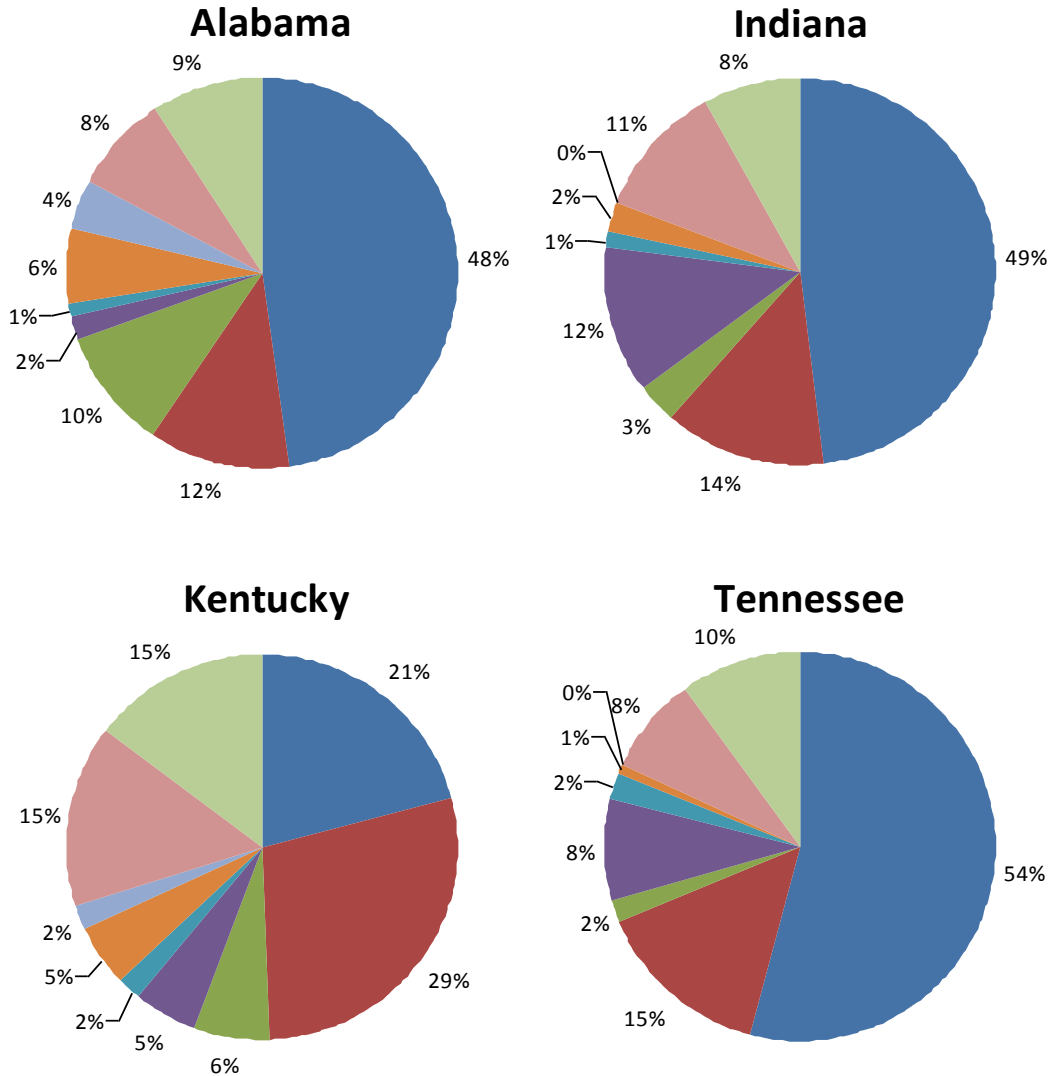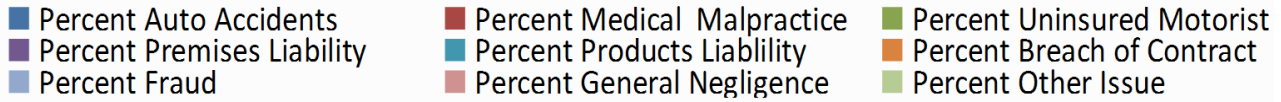
Figure 2.1. Docket Composition in Alabama, Indiana, Kentucky, and Tennessee

Kentucky civil trial courts adjudicate almost twice as many medical negligence cases as any of

the other states. Indiana courts hear considerably more premises liability cases, and Alabama

trial courts resolve more economic (fraud and breach of contract) disputes than any other state. Examining the cases that comprise the civil dockets in Alabama, Indiana, Kentucky, and Tennessee demonstrates that mix of cases coming before courts varies across states. Although explaining the differences in trial court's dockets is beyond the scope of this research, presumably, statutory and organizational variation accounts for some of the differences.

Institutional variation across states also provides another important distinction between state trial courts. Table 2.2 reports the institutional arrangements explored in this study. Although the influence of judicial selection and retention methods on trial court behavior remains understudied, previous research demonstrates that judicial selection and retention methods strongly influence decision-making at the state supreme court level, especially in highly salient cases (Brace and Hall 1990, 1993, 1997; Brace and Boyea 2007, 2008). If judges shape jury decision-making through their rulings or courtroom demeanor, jury verdicts might vary across judicial selection and retention mechanisms. Alabama selects and retains judges in partisan elections every six years in circuit-based elections.[7] However, the Alabama governor fills mid-term vacancies. In some counties the governor selects the replacement judge from a list generated by a judicial selection committee. In Hawaii, the governor selects judges from a list developed by a judicial selection committee. The appointed judge is then confirmed by the state senate. Every ten years, the judicial selection committee votes to retain or remove judges based on a majority vote. Unlike judicial selection and retention in the other states, Indiana utilizes three types of selection and retention methods at the trial-court level. In Indiana the governor fills all mid-term vacancies and most counties in Indiana use partisan, county-based elections every six years to retain judges. However, Allen and Vanderburgh counties use nonpartisan

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[7] All judicial selection information was collected from the American Judicature Society, and where possible, verified through state election returns.

elections to select and retain judges, while Lake and St. Joseph counties utilize merit selection and retention elections. Circuit judges in Kentucky serve eight-year terms and are retained in circuit-based, nonpartisan elections. Like other states, the governor in Kentucky fills mid-term vacancies. In Tennessee judges serve eight-year terms and are retained in district-based, partisan elections. Unlike the other states, Tennessee does not stagger judicial elections, so all judges in the state are up for reelection at the same. The governor in Tennessee fills mid-term vacancies.

Table 2.2. Institutional Variation

State	Judicial Selection Method	Damage Caps	Comparative Fault	Institutional Review Board
Alabama	Partisan Elections			
Hawaii	Gubernatorial Appointment		X	
Indiana	Mixed	X	X	X
Kentucky	Non-Partisan	X	X	
Tennessee	Partisan		X	

Additionally, some states have adopted institutional changes to their civil trial courts, often in response to tort reforms. One significant reform, damage caps, limits the amount of money successful plaintiffs may receive for compensation.[8] Indiana limits damage awards in medical malpractice suites to $1,250,000 and awards against municipalities to $500,000. In Indiana, awards exceeding the damage cap are reduced to the statutory maximum post trial. Although lacking strict damage caps like Indiana, defendants in Kentucky can request that judges cap damages to a certain amount on a case by case basis.

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[8] Although states have enacted caps on non-economic damages and punitive damages; the damage caps referred to here only reflect caps on compensatory damages and/or total awards.

Furthermore, the method states use to determine fault in the jury decision-making process constitutes a significant institutional difference between circuits. In a state that uses comparative fault such as Tennessee, a jury holding multiple defendants liable may split the damages between the parties. The case *Estate of Soots v. Shelly and Sands Inc., et al.* provides an example of a case in which the jury allocated fault across multiple defendants (49D11-0803-CT-10479) (Miller IJVR 2009, 376). Tragically, the conflict arose when a worker was killed at a road construction site. He suffered a fatal head injury after falling out of an open-bed truck while placing temporary signage at the site. The man's estate filed suit against the general contractor in charge of the construction project, Shelly & Sands Inc., for failing to follow standard safety protocol that, if followed, would have prevented the man's death. Shelly and Sands Inc. named the sub-contractor, Schutt-Lookabill, which had employed the deceased as a non-party to the lawsuit and blamed it for the man's death. The jury awarded the estate $10,200,000 but allocated fault 41% to Shelly and Sands Inc. and 39% to Schutt-Lookabill; thus, dividing the award between the two defendants ($4,182,000 against Shelly and Sands Inc. and $3,987,000 against Schutt-Lookabill). The juries assessed the other 20% liability to Soots. Juries in states utilizing comparative fault can also adjust awards to offset the plaintiff's contributing negligence. In *Drummer v. Stinson* (20940) (Miller TJVR 2009, 352) the plaintiff sued her dentist after he dropped a dental instrument down her throat during a root canal, requiring a surgical removal. The jury determined mixed fault, assigning 85% of the fault to the dentist and 15% to the plaintiff for swallowing the tool, offsetting the initial award of $24,991 by 15% and reducing the plaintiff's award to $21,242. Defense verdicts also occur in states that use comparative fault in cases in which the jury assesses more than 50% comparative fault to the plaintiff.

Conversely, Alabama uses what's called "no contribution among tort feasers" to allocate damages among multiple defendants. Under the no contribution system, jurors do not determine how much of an award each defendant will pay in multi-defendant cases. Instead, in a case where there are multiple defendants, the plaintiff can collect from all tort feasers. According to a judge in Alabama, "This creates an interesting dynamic when some defendants have high coverage and others have little. It can be a disadvantage to have 'deep pockets.' If you have the most money available, the plaintiff is most likely to try and collect from you, because in Alabama plaintiffs can collect as much of the verdict from one party as they can."

Conversely, in states such as Alabama, civil courts rely on the contributory negligence standard to determine fault.[9] In Alabama, jurors use a two-stage process to determine fault. First, jurors have to determine if the defendant is negligent. If jurors find the defendant negligent, they then decide if the plaintiff contributed in any way to his or her injury. Under contributory negligence, if the plaintiff was even 1% at fault, the plaintiff cannot recover damages. Contributory negligence creates two hurdles for plaintiffs. First, plaintiffs have to show that the defendant was negligent. They then have to show that they did not contribute to their own the injury. The contributory negligence standard of fault produces a greater hurdle for plaintiffs than comparative fault; however, comparative fault allows jurors to offset successful plaintiffs' awards. Presumably, plaintiffs win more often under the lower bar of comparative fault; however, successful plaintiffs likely receive less compensation.

Finally, the state of Indiana requires that all plaintiffs alleging medical malpractice must take their claims before an institutional review board prior to trial. The institutional view board is an independent institution comprised of medical experts that makes a non-binding evaluation

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[9] All information regarding the determination of fault in Alabama was obtained from in-depth interviews with judges in the state. In order to protect the identities of all interview participants, the names and locations of all interviews will remain confidential.

of the plaintiff's medical malpractice claim. Although the board's decision is not binding, the

board's determination is admissible as evidence at the trial and likely influences the plaintiff's

chances of success at.

Table 2.3.

State	Individual v. Individual	Individual v. Business	Individual v. Government	Individual v. Other Defendant
Alabama	54.2%	30%	0	1.2%
Hawaii	33%	33%	0	33%
Indiana	62.7%	19.7%	2.7%	2.5%
Kentucky	45.5%	36%	4.7%	1%
Tennessee	62.3%	26.6%	2.5%	1.5%
All States	56%	28%	2%	2%

In evaluating who participates in litigation, I code each plaintiff and defendant as an

individual, business, or government. Remaining classes of litigants such as organizations or

estates are coded as "other." This coding scheme is consistent with prior studies (Haynie 1994,

1995; Songer, Sheehan, and Haire 1999; Songer and Sheehan 1992; Wheeler, Carwright, Kagan,

and Friedman 1987) Examining the types of litigants participating in civil trials across the five

states in Table 2.3, demonstrates that most civil trials involve individual plaintiffs suing

individual defendants. The vast majority of all cases involve an individual plaintiff suing an

individual defendant.[10] The next largest category of litigants entails individuals seeking damages

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[10] Auto negligence cases always involve an individual plaintiff suing an individual defendant. However, the defendant typically relies on legal representation provided by an insurance company. Arguably, these cases might be considered individual v. business; however all five states under study have non-introduction clauses, preventing

from business defendants. Only 4% of cases involve an individual challenging the government

or any other class of defendant. Individual appellants challenging an individual, a business, the

government, or other defendants account for 88% of trials in the five states. The percentages of

litigants participating in trials show that, overall, individuals participate in litigation more often

than all other classes of litigants. Additionally, only 12% of cases entail a trial in which a non-

individual serves as the plaintiff, demonstrating that individuals overwhelmingly initiate the civil

trial process. The distribution of litigant classes across states suggests that the combinations of

litigants involved in civil trials are fairly consistent across states.

I also code for eight injury categories ranging from emotional to soft tissue (scratches,

bruises, and whiplash, etc.) to extreme injuries such as paralysis and death (see Appendix B).

Table 2.4 reports the frequencies of alleged injuries in cases coming before civil juries across the

five states. Although previous research finds that soft tissue injuries garner the less

compensation than other types of injuries (Bovbjerg et al 1991), suffer from a lack of familiarity

among the general public (Hans 2008), and are often viewed as illegitimate (Hans 2008), soft

tissue injuries are the most frequent type of injury in civil trials in the five states (195 total cases,

combined). While the data cannot explain the prevalence of soft tissue injuries in civil trials, soft

tissue injuries might simply occur more commonly than other injuries. On the other hand, the

difficulty in proving a soft tissue injury might encourage cases involving soft tissue symptoms to

go to trial rather than settling beforehand. The second and third most frequent injuries occur in

cases in which the plaintiff underwent a surgery as a result of an accident or died. Injuries

involving broken bones are the fourth most common in all states. Combined, physical injuries

account for 77.2% of civil trials (712 our 923 cases). Overwhelmingly, cases involving physical

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the admission of the defendant's insurance or policy limits as evidence. Additionally, jurors are instructed not to consider the defendant's ability to pay.

injuries dominate the dockets of state civil trial courts. Overall, the results suggest that the

frequency of alleged injuries in civil trials is relatively evenly distributed across states. The most

interesting difference between states is the far greater frequency of property and monetary

disputes in Alabama. While the other states appear to decide cases involving economic injuries

relatively infrequently, Alabama juries decide a comparatively large number of these cases in a

given year.

Table 2.4. Types of Injuries

Alleged Injury	Alabama	Hawaii	Indiana	Kentucky	Tennessee	Total
Property Loss/Damage	23	0	6	4	1	34
Monetary Loss	32	0	10	25	2	69
Emotional	3	2	2	7	2	16
Broken Bone(s)	8	1	14	16	17	56
Death	25	3	22	21	11	82
Injury Required Surgical Repair	22	1	26	24	11	84
Slip and Fall	1	1	11	3	9	25
Soft Tissue	32	2	51	31	84	200
Other Physical Injuries	111	1	96	76	57	270
Other Non-Physical Injuries	3	1	6	4	5	92

Findings

These data provide the first comprehensive database of civil trials allowing for an in

depth investigation of the dockets, case facts, and litigants in all of the civil jury trials in a state

in a given year. Examining courts' dockets comprehensively shows that the types of cases

adjudicated vary considerably across the states; however, auto negligence and medical

malpractice cases encompass the majority of trials in each state. While determining the factors

that shape courts' dockets remains beyond the scope of this project, future research should

explore the factors that drive the demand for particular types of litigation across states.

However, the disparities in case types across states indicate that models of civil litigation should

control for the mix of cases coming before courts. Additionally, factors beyond the population

size appear to determine the volume of cases adjudicated in each state. These findings also show

that the majority of civil trials involve physical injuries. Soft tissue injuries (scratches, bruises,

whiplash, etc.) represent the most frequent category of injury in civil trials. Although the precise

reason for the predominance of soft tissue injuries is unclear, soft tissue injuries may simply

occur more often. On the other hand, the inherent difficulty in proving a soft tissue injury might

simply encourage these types of cases to go to trial. Additionally, trials often involve severe

physical injuries such as death and broken bones. Although explaining this finding also requires

additional research, the data also show that in a given year Alabama civil juries decide

considerably more cases involving economic injuries. Turning to litigants, investigating the

participants in civil litigation shows that individuals are the most frequent participants in civil

litigation. Fifty-six percent of trials involve an individual suing another individual, and 88% of

all trials involve an individual plaintiff. Descriptive comparison of jury verdicts across states

provide evidence that considerable variation occurs across states in the types of cases civil juries

adjudicate, who wins and who loses, and how much successful parties receive. On the other

hand, the data show that the participants in litigation and the types of injuries involved in trials

remain fairly constant across states. Although state statutory restrictions like damage caps

presumably account for some the deviation, the data provide support for the Federalists'

contention that states employ dissimilar systems of civil law. The following chapters will utilize

multivariate analyses to further explore how these variables shape the dispute resolution and

resource allocation functions of courts.

Chapter 3

"Tort Hell"? Alabama Civil Jury Verdicts from 2001-2009

In 1993 Forbes magazine referred to Alabama as "Tort Hell." The American Tort Reform Association has also called Alabama a "judicial hellhole." The large amount of attention focused on the Alabama civil litigation system makes Alabama's civil jury verdicts especially interesting to compare to other states using comprehensive data. To date, researchers interested in the Alabama civil litigation system, have attempt to evaluate claims regarding Alabama jury verdicts. However, these studies, like other civil jury research, suffer from a lack of high quality, comprehensive data. In 1999 Moller, Pace, and Carroll attempted to compare civil jury verdicts in Alabama to verdicts in Cook County, Illinois, Harris County, Texas, the St. Louis metropolitan area, and New York. The author obtained data from the somewhat limited records available through the state of Alabama and jury verdict reporters operating in the other locations. Moller et. al conclude that Alabama juries return the largest damage awards relative to compensatory awards. On the other hand, Alabama juries appear to award punitive damages with a similar frequency to other jurisdictions. Although the findings suggest that Alabama juries might hand out larger awards, the study suffers from several limitations. First, since their previous work indicated that punitive damage awards occur more often in financial cases, the scholars choose only to look at financial injuries. While focusing on one type of case might facilitate the authors' research questions, it prevents a true comparison of all Alabama jury verdicts. Additionally, comparison is limited, because the researchers relied on jury verdict reporters covering different geographic units. For example, the authors compare verdicts in the state of Alabama to one county in Texas. While verdicts in Alabama might differ from Harris county, verdicts in Texas overall and Alabama might be quite similar. Furthermore, Moller et. al

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do not examine the determinants of winners and losers or attempt multivariate controls for other possible explanatory variables.

Priest (1996) argues in favor of punitive damage reform based on his research in three Alabama circuits. He finds that in the 1992-1993 time period all of the torts in Bullock County and 78.3% of all torts in Barbour County (Barbour and Bullock counties make up the 2nd circuit) included a punitive damage claim, and 65.1% of the filings in Lowndes County (part of the 1st circuit) included a punitive damage claim. Unfortunately, Priest does not report the percentage of those claims that plaintiffs actually won, or the amount, if any, they received. Additionally, Priest states that each county possesses a small, mostly rural population, without substantial industry, preventing a comparison to counties with different demographic characteristics.

However, if claims about Alabama civil juries' pro-plaintiff tendencies and excessive awards are correct, Alabama represents a worst case scenario for tort reformers. Additionally, if Alabama circuits exhibit high variability in verdicts and awards for similar cases, Alabama confirms Federalists' fears of inconsistent applications of the law. On the other hand, Anti-Federalists might argue that Alabama residents retain the right to decide disputes as they see fit. This research seeks to inform the debate using comprehensive data. Unlike previous studies this research examines Alabama civil jury decision-making using all reported verdicts rendered between 2001 and 2009 in the Alabama Circuit Courts. Additionally, this study controls for community composition, judicial ideology, case issues, the plaintiff's alleged injury, and the influence of litigant status. This research also uniquely incorporates attributes of the judge and attorneys into models of civil jury verdicts.

Theoretically, previous research suggests that community preferences, litigant resources and status, judicial ideology, institutions, and case facts shape civil trial outcomes both in terms

of winners and losers and awards. While the previous chapter finds descriptive evidence that civil jury verdicts vary across states, this chapter seeks to answer the question: Do jury verdicts vary from one jurisdiction to another within a state? If we observe differences across circuits, what factors explain and predict those differences? In order to ascertain whether civil jury verdicts vary across Alabama circuits in predictable ways, the chapter begins by developing measures for the variables associated with the theoretical model. The chapter then tests the model using three dependent variables in order to capture the pro-plaintiff tendencies of the circuits, how circuits settle disputes, and allocate resources. The results help to evaluate Federalists' and tort reformers' fears regarding inconsistent applications of the law and high variability in outcomes across jurisdictions. The findings also shed light on Anti-Federalists assertions that jury verdicts reflect community preferences. The chapter concludes with a summary and discussion of the results.

Modeling Civil Jury Verdicts in Alabama

The Alabama Circuit Courts comprise 41 circuits and decide an average of 284 civil cases a year with jurisdiction over cases involving damage claims of $3,000 or more. Alabama selects residents for jury service from lists of all registered drivers. The data include 2,246 civil cases adjudicated over the nine-year time period. Of the 2,246 cases, plaintiffs won 1,173 or 52.2%. Although the data contains minimum awards of only a dollar and large awards of multiple millions, the median award in Alabama over the nine years is $30,000. The percent pro-plaintiff verdicts for the entire time period and the median award are consistent with the percent pro-plaintiff verdicts and median award in 2009, reported in Chapter 2. The consistency in verdicts across the nine years also provides evidence that the editors of the Alabama Jury

Verdict Reporter collect consistent and reliable data. During the nine-year period, Alabama

juries awarded $1,928,101,054 in total awards.

Hypotheses and Independent Variables

I code each case for the verdict, the amount of the award, the judge, the attorneys, case

type, and alleged injury. Next, I develop three measures of the social, political, and economic

context of the circuit. Table 3.1 provides a summary of the key independent variables and their

coding. The first model examines the influence of the overall percent black, percent unemployed,

percent college educated, percent 65 and over, and urban characterization of the circuit

(measured as the percent farming employed). The second model tests the relationship between

the political leanings of the circuit and jury verdicts using the percent Democratic vote in the

2008 presidential elections. The index, the third measure of community composition, predicts

pro-plaintiff demographic characteristics in the circuit based on the relative level of

unemployment, percent college educated in the circuit, percent white, percent black and percent

farmers in each circuit.

I divide the variables that potentially affect the outcome in civil trials into five categories.

First, I examine institutional and ideological influences. Variables in this category include the

partisan identification of the judge and the court workload variable. Next, I explore litigant status

and litigant resources. The first litigant resource variable measures the relative advantage of the

plaintiff's representation. The model also examines the parties to each case comparing the

plaintiff's likelihood of success when challenging the government, other individuals, and other

defendants to the likelihood of the individual winning against business defendants (i.e. individual

versus business defendant is the excluded category).

Table 3.1 Key Independent Variables

Variable	Measurement
Institutions and Ideology (all models)	
	-Coded 1 if the judge is a Democrat, and 0 otherwise
Judges' Ideology [+]	
Democrat x Percent Democratic Vote	-Interacts the Democrat variable with percent Democratic vote in the circuit in the 2008 election
Decisions Per-Circuit Year	-Number of decision in each circuit in each year
Litigant Resources and Status (all models)	
Attorney Advantage [+] (all models)	# of Plaintiff Attorneys - # Defense Attorneys
Litigant Matches	Dichotomous Variables
Individual v. Individual	Compared to Individual v. Business
Individual v. Government	
Individual v. Other Defendant	Greater resources should increase success rate, but might also increase awards.
Circuit Demographics (Model 1)	US Census and Department of Agriculture Statistics
%White [-]	
%Black [+]	
%Poverty [+]	
%College Educated [-]	
%65 and Over [-]	
Urban [+]	-Coded 1 if The Circuit has More than 500 Persons Per Square Mile, and 0 otherwise
Circuit Ideology (Model 2)	Obtained for Election Returns Available Through the Alabama Secretary of State
Percent Democratic Vote in the 2008 Presidential Election	
Demographic Index (Model 3)	Takes the %White, Black, Unemployment, College Educated, 65 and over, Farming population, and subtracts from the state median on each indicator. The final measure sums the deviations from the median. Scaled so that higher values indicate pro-plaintiff demographic combinations.
Index Predicting Pro-Plaintiff Tendencies and Larger Awards	

Finally, I examine the issues involved in the case by comparing outcomes in medical negligence, general negligence, premises liability, uninsured or underinsured motorists, breach of contract, fraud, premises liability, product liability, and other issues to automobile negligence cases. Automobile negligence cases account for 45% of the trials adjudicated in Alabama during the seven-year time period, suggesting auto negligence cases are a routine occurrence in Alabama circuits. The models compare all less frequent case types to the base category of auto negligence claim; thus, automobile negligence serves as the excluded category. I then turn to the plaintiff's alleged injury. The analysis incorporates a larger number of issues than previous studies, allowing us to examine plaintiff success rates and awards across a variety of cases types. The model compares cases involving a property loss or damage, a monetary loss, broken bones, slip and fall, emotional injuries, injuries resulting in surgery, and injuries resulting in death to the excluded category of soft tissue injuries (scratches, bruises, whiplash injuries, etc). Previous research maintains that plaintiffs alleging soft tissue injuries (scratches, bruises, whiplash injuries, etc.) face significant difficulties at trial due the ambiguous nature of the injury, jurors' lack of familiarity with the term, and jurors' perceptions of soft tissue injuries as bogus claims (Hans 2008). I hypothesize that, the more serious and demonstrable the injury, the more likely the plaintiff is to win and to receive a larger award (Bronstein 1998; Bovbjerg et al 1989; Chin and Peterson 1985; Greene and Bornstein 2003). To test this hypothesis I compare all injury categories to soft tissue injuries. The models also include a variable that measures the number of decisions in each circuit each year. The number of decisions variable serves as a control for the workload of the circuit.

The first component of the theoretical model indicates that the community surrounding a court and from which jurors are drawn might influence courts' dispute resolution and resource

allocation functions. In order to capture the political, social, and economic composition of each circuit, I develop three measures of community composition with three corresponding models. Although circuit-level demographics cannot adequately predict the composition of any particular jury, the demographic composition of a circuit should reflect the political, social, and economic conditions in which the court resides. In addition, if jury verdicts reflect community preferences, the socioeconomic and political composition of a circuit should influence communities' preferences regardless of the composition of any particular jury. In Alabama most circuits encompass one county, though rural circuits often include multiple counties. For circuits including multiple counties, I generate average scores for each indicator.

Previous research provides evidence that county-level demographics predict the liberal/conservative policy preferences at the state and county levels (Ardoin and Garand 2003; Erikson, Wright, McIver 1993; Koetzle 1998; Levendusky, Pope, and Jackman 2008), suggesting that the demographic makeup of a community might also influence other decision-making patterns. To capture the social and economic community composition, I first model community composition using six demographic indicators using US Census and Department of Agriculture statistics. Next, I focus exclusively on the political make-up of the community using the percent Democratic vote in the circuit in the 2008 presidential election. Finally, I create a model that uses a demographic index to test the hypothesis that certain political, social, and economic indicators combine to create strongly pro-plaintiff jurisdictions.

Numerous legislative studies seek to measure constituent preferences using demographic indicators of racial composition, age, education, and urbanization (Pool, Abelson, and Popkin 1965; Sinclair-Decker 1976; Weber and Shaffer 1976). These studies assume that individuals' demographic characteristics shape their policy preferences and that the overall policy preferences

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of an area will reflect the aggregate demographic composition of the community. Theoretically, demographics might lead to individual policy preferences, because demographics reflect the interests of certain groups in society and, or represent differing societal socialization processes across groups. Scholars studying legislative politics typically maintain that urban, lower income and minority groups favor more liberal policy positions, while white and highly educated groups possess more conservative preferences (Koetzle 1998; Hogan 2003). Older citizens tend to hold more conservative views but also favor government intervention (Koetzel 1998; Hogan 2003).

Although scholars of juror behavior remain highly conflicted over the influence of individual juror traits on jury verdicts, previous research provides some evidence that juror demographics might shape juror preferences in a manner similar to the relationship between demographics and general liberal or conservative policy preferences. Some scholars observe that minority (Bronstein and Rajki 1994; Devon and Imwinklereid 1995; Diamond et al; Overland 2009), low income (Bornstein and Rajki 1994; Devon and Imwinklereid; Diamond et al 1998; Hastie et al 1998; Overland 2009), and urban (Eisenberg and Wells 2002) jurors exhibit more pro-plaintiff tendencies. Conversely, highly educated (Goodman et al 1999; Vidmar 1993; Vidmar and Rice 1993), and white (Overland 2009) jurors appear significantly less plaintiff oriented. Accordingly, the first model of community composition includes variables for the percent black or African American in the circuit (as compared to the percent white), the percent unemployment[11], and whether or not the circuit is urban or rural.[12] I hypothesize that circuits characterized by large minority populations, more unemployed citizens, and more urban dwellers will generate more pro-plaintiff verdicts and larger awards. The model also includes variables

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[11] Although Helland and Tabarrock (2002, 2003) find an influence of county poverty rates on jury verdicts and awards, I choose to focus on unemployment, because I believe it is a better indicator of the overall economic climate in a community. While poverty tends to isolated to certain areas and groups, high levels of unemployment dramatically impact community conditions such as home prices and public school funding.

[12] The US Census designates counties with 500 persons per square mile as urban.

for the percent college educated and 65 and over. I hypothesize that circuits with older and more highly educated populations will render fewer pro-plaintiff verdicts and lower awards. The percent of the population that is black, white, and college educated obtained using the 2005 U.S. Census.[13] In order to capture the effects of economic change, I collect the annual unemployment rate in each circuit instead of household income. Data for the percent unemployment were obtained from the U.S. Department of Agriculture.

While circuit demographics might reflect a community's liberal or conservative preferences, the percent Democratic vote in the circuit might provide a more direct measure of a community's political leanings. Instead of circuit demographics, the second model of community composition includes a measure of the percent Democratic vote in the circuit in the 2008 presidential election. A number of scholars, attempting to capture the overall liberalism or conservatism of a legislative district, have relied on the past presidential vote (Fleisher 1993; Glazer and Robbins 1985; Johannes 1984; LeoGrande and Jeydel 1997; Nice and Cohen 1983).

Although district partisanship and juror preferences might at first seem unrelated, a number of parallels exist between a community's partisan leanings and a community's preferences for the dispute resolution and resource allocation processes that occur in courts. First, strong partisan preferences likely shape the public's perceptions of litigation in a given community. Conservative and business groups, like the ATRA, often hold negative views of the civil litigation process and support tort reform initiatives, while liberal organizations and trial lawyer associations tend to view civil litigation more positively. Arguably, conservative communities should hold more negative views of civil trials than their liberal counterparts. Additionally, liberal and conservative ideological dispositions typically reflect preferences

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[13] I select the 2005 Census for data collection purposes because it is the median year in the data set. Though a single data point is used for the entire time frame analyzed, demographic features change relatively slowly across years. Because of the greater variability in the economic variables, we collect these annually.

toward resource distribution that presumably shape the awards juries deliver. If a large

Democratic vote share constitutes a more liberal population, I expect juries in these jurisdictions

to render more pro-plaintiff verdicts and larger awards.

As a third conceptualization of community composition, I adapt a measure of

Congressional district diversity used to predict district partisanship (Koetzle 1998). Koetzle's

original measure creates a demographic index by summing the percentage point deviations of a

district's population from the national median on five variables (the percent white, black,

household income above $50,000, college educated, and farming employed). The percent of

each circuit's population that works in agriculture measures the rural/urban nature of the district

(obtained from the US Department of Agriculture). The final index is then scaled so that higher

values represent more Democratic constituencies. According to Koetzle, communities

characterized by larger minority populations, lower incomes, lower education levels, and greater

percentages of urban dwellers tend to vote more liberally.

Like Koetzle, I hypothesize that certain demographic combinations within a circuit

should produce solidly liberal communities, which in turn should generate strong support for

plaintiffs. I replicate Koetzle's index using the percent of the population that is black, white, and

college educated obtained using the 2005 U.S. Census.[14] In order to capture the effects of

economic change, I utilize the annual unemployment rate in each circuit instead of household

income. The community composition index is scaled so that higher values should indicate more

pro-plaintiff jurisdictions. Thus, I expect circuits with higher index scores, circuits with larger

minority populations, greater unemployment, lower levels of education, fewer farmers and

college graduates, to vote in favor plaintiffs more often and give more generous awards when

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[14] I select the 2005 Census for data collection purposes because it is the median year in the data set. Though a single data point is used for the entire time frame analyzed, demographic features change relatively slowly across years. Because of the greater variability in the economic variables, I collect these annually.

they do. At the middle ranges of Koetzle's index, where the demographic mix favors neither party, Koetzle predicts high partisan competition and variability in election outcomes. Paralleling Koetzle, I predict that middle ranges on the index should produce high variability in trial outcomes.

Although none of the demographic indicators utilized in this study can account for the specific background of any particular juror, these measures should predict patterns of decision-making across circuits if community composition significantly affects trial outcomes. Furthermore, examining several demographic indicators should help explicate some of the mixed findings of previous studies. In particular, the demographic index provides a community-level measure and permits the examination of combinations of demographic variables.

The second set of expectations generated by the theoretical model suggests that litigant resources and litigant status influence winners and losers and awards. The relative strength of the plaintiff's representation compared to that of the defense constitutes a critical resource component. To measure resource advantages in terms of representation, the data set records the number of attorneys representing the plaintiff and the number of attorneys representing the defendant in each case as listed in the reporter. Plaintiffs and defendants that represent themselves, *pro se*, receive a score of 0 for the number of attorneys. Theoretically, the number of attorneys representing each side provides two measures of resources. First, the mere listing of additional counsel indicates that the attorney arguing the case belongs to a larger firm with multiple attorneys or has engaged other lawyers or firms for assistance. Secondly, the number of attorneys working on a case represents a measure of the resources the firm invests in the case, especially for cases taken on a contingency fee basis. The number of attorneys representing each side provides information regarding the size of the firm the attorney belongs to and approximates

the human capital the firm invests in each claim.[15] An attorney belonging to a large firm with multiple attorneys or working in accordance with another lawyer or lawyers arguably possess greater resources than any individual attorney working alone, regardless of the actual number of attorneys participating in a particular case. Although greater numbers of attorneys likely participate in cases involving the potential for large awards, the number of attorneys a firm devotes to a case also reflects an investment of time and money into a case.

To capture the *relative* resource advantage of the plaintiff versus the defendant, the attorney advantage variable subtracts the number of defense attorneys from the number of plaintiff attorneys. The resulting measure of the plaintiff's advocacy advantage currently ranges from -4 to 3 in Alabama. A score of zero indicates that equal numbers of attorneys represented the plaintiff and defendant. Although the number of attorneys cannot explicitly measure the quality of counsel, the party listing more attorneys arguably possesses a resource advantage over a party with fewer attorneys as legal counsel. Accordingly, higher values on the attorney advantage variable should indicate greater resources for the plaintiff.   Additionally, the measure provides greater information concerning litigants' resources than simply relying on litigant status. The measure provides a substantive gauge of actual resources in each case, thereby providing a better measure of litigant resources and improving our understanding of the role resource advantages play in litigation outcomes.

In addition to legal representation, litigant status might also condition litigation outcomes. Consistent with prior studies, each plaintiff and defendant is coded as an individual, business, or government to capture the relative resources of each party. Remaining classes of litigants are coded as "other." Such coding provides only an indirect measure of the plaintiff's

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[15] However, it should be noted that the number of attorneys listed in the reporter does not account for the attorneys actually collecting information and arguing the case. Attorneys at large firms may list multiple participants in a case when only one or two lawyers actually perform the bulk of the work.

and the defendant's resources. Yet, previous research has consistently applied such a coding

scheme, and in general, individuals have fewer resources than do either businesses or the

government. Party capability theory posits that individual litigants suffer a resource

disadvantage when interacting with courts that diminishes individuals' ability to garner favorable

outcomes. Conversely, while parties with greater resources may achieve higher success rates,

the "deep pockets" hypothesis maintains that parties, appearing to have greater resources, might

pay larger damage awards when they lose. Wealthy repeat players like businesses presumably

achieve higher success rates than other categories of litigants but might pay larger damage

awards when they lose. To test this hypothesis, the models include a variable for an individual

plaintiff challenging another individual, the government, or other defendants compared to an

individual suing a business.

The next prong of the theoretical model maintains that judicial ideology and institutions

shape civil litigation outcomes. Like other areas of trial court research, the effect of judicial

ideology on outcomes in civil litigation has received little attention. However, if judges are able

to filter information or otherwise affect the decision parameters of trial courts, jury verdicts

might reflect the ideological dispositions of trial court judges. Theoretically, plaintiffs should

win more often in courts presided over by Democratic judges who presumably posses more

liberal ideological policy preferences. The partisan identification for each judge was obtained

from state election returns available through the Alabama Secretary of State. The model tests the

hypothesis that plaintiffs achieve higher success rates and larger awards in trials presided over by

Democratic judges. The models incorporate a variable coded 1 for a Democratic judge and 0 for

Republicans or Independents**.**

Furthermore, previous research maintains that judges temper their ideological dispositions to conform to citizen preferences. Judges on the Supreme Court (Flemming and Wood 1997; Mishler and Sheehan 1993, 1996; Yates 2002) and state supreme courts (Baumgartner, DeBoof, and Boystun 2008; Brace and Boyea 2007, 2008) appear adverse to issuing rulings that deviate substantially from public opinion. Moreover, scholars observe that the ideological composition of a state is the major determinant of the liberalism/conservatism of the policies that policy makers adopt (Berry, Rinquist, Fording, and Hansford 1998; Brace et al 2002; Erickson, Wright, and McIver 1993; Wright, Erickson, & McIver 1987). Taken together, previous research suggests that an interaction effect might occur between s judge's ideological disposition and the liberalism or conservatism of the community in which a judge resides. To test the hypothesis that judges behave in a more partisan manner when their constituents reflect judges' partisan leanings, I create a variable that interacts judges' partisan identifications with the percent Democratic vote in the circuit in model 2. If trial judges influence jury verdicts, and judges feel pressure to conform to citizens' preferences, Democratic judges residing in the most Democratic counties should produces the most liberal outcomes. Accordingly, I hypothesize that plaintiffs will win more often and receive greater compensation when presided over by Democratic judges in highly Democratic jurisdictions.

Additionally, court workloads vary considerably from one circuit to the next, suggesting that the volume of cases a court decides constitutes an important institutional attribute. Some circuits decide only a handful of case each year, while other circuits adjudicate hundreds of cases in the same time frame. In order to control for court workloads, the models include a variable that measures the number of decisions in each circuit each year. However, the relationship between court workloads and jury verdicts remains unclear. Unfortunately, am unable to

investigate the possible of influence of judicial selection method on judges' behavior in a single-state model; however, the multi-state models in Chapter 4 include institutional variables for the judicial retention mechanism utilized in the circuit. Finally, to control for any remaining differences between the circuits, the models include dichotomous variables for each year of data, minus one excluded year to control for fixed effects. In models using cross-sectional data, fixed effects correct for potentially omitted variables by holding constant the average effect of annual change.[16]

The final prong of the theoretical model maintains that case facts affect jury verdicts. Accordingly, the models include variables for case issues and alleged injuries. Cases types are aggregated into eight issue areas such as auto negligence, medical malpractice, premises liability, fraud, and breach of contract (see Appendix A). This project incorporates a larger number of issues than previous studies, allowing me to examine success rates and awards across a variety of cases types. I also code for eight injury categories ranging from emotional to soft tissue (scratches, bruises, and whiplash) to extreme injuries such as paralysis and death (see Appendix A). I hypothesize that, the more serious and demonstrable the injury, the more likely the plaintiff is to win and to receive a larger award (Bronstein 1998; Bovbjerg et al 1989; Chen and Peterson 1985; Greene and Bornstein 2003).

Data and Methods

To assess the variables related winners and losers and awards in each circuit, I utilize three indicators of community composition across three dependent variables. The first

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[16] Fixed effects models are the standard approach used to captures the effect of other contextual differences between the states or sub-state units in cross sectional data (for examples of models using fixed effects see Alter 2002; Carson, Engstrom, and Roberts 2006; Desposato and Petrocik 2003; Huber and Arceneaux 2007; Lawless 2004; Preuhs 2006, 2007; Vavreck, Spiliotes, and Fowlker 2002; Whitford and Yates 2003). I have also tried controlling for circuit fixed effects with dummy variables for each circuit, minus one, both in combination with and without the year dummies and observe no changes in the significance of key independent variables.

dependent variable measures the percent pro-plaintiff verdicts by circuit. Since the percent pro-plaintiff verdicts in a circuit constitutes a continuous measure, I use ordinary least squares regression. Next, I seek to capture the dispute resolution and resource allocation functions of courts through the use of two additional dependent variables. The dependent variable in the plaintiff success model is whether or not the jury found in favor of the plaintiff, coded one if the plaintiff wins and zero otherwise. Due to the categorical nature of the dependent variable, I utilize logistic regression. The dependent variable in the award model is the logged dollar amount of the award upon success. I log the dependent variable in the award model due to the highly skewed nature of awards (awards range from $0 to $810,000,000). I use a linear regression model to explore jury awards.[17] If the plaintiff wins in the first model, I then examine the variables associated with awards. The unit of analysis in both the plaintiff success model and the award model is the primary claim in each case.

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[17] Awards constitute a selected sample given that the awards are dependent on the liability decision in the plaintiff success model. Selection models model two simultaneous equations to correct for potential selection bias and work under the assumption that the observation of the values on dependent variable in the second equation is dependent on the critical value of another variable(s). In practical terms, this means that the first equation of the model requires a selection variable or variables that are not included in the second equation. The selection variable(s) in equation one require strong theoretical justifications in order to correctly specify the model. Additionally, the selection variable(s) in equation one must not significantly affect the dependent variable in stage two. Although I gave this issue considerable thought, I unfortunately lack strong theoretical grounds to differentiate between the variables in the two models. This limitation of selection models is widely documented (see Cameron and Trivedi 2005; Green 1981; Melenberg and Van Soest 1996; Nawata 1993; Nawata and Nagase 1996; Puhani 2000; Winship and Mare 1992). While incorrectly specified, it is possible to run a sample selection model with identical variables in both equations, but an incorrectly specified sample selection model can produce even more biased results than an OLS with a selected sample. Nonetheless, I have run Heckman models using identical variables in both models. Heckman produces a Rho coefficient that tests for independence between the models. When run this way, I find that Rho is significant, suggesting selection issues. However, given that the model cannot be correctly specified, I have limited confidence in these results. On the other hand, I observe no changes in the direction or significance of the any of the key independent variables when using Heckman. Additionally, I have used the Tobit modeling procedure to correct for censored data. Although a Tobit model corrects for the fact that the distribution includes only positive integers, Tobit cannot address the selection bias issue. However, I have modeled awards using a Tobit model and obtain similar results to OLS and Heckman. Given the consistency in results across modeling techniques, I feel sufficiently confident in the robustness of the findings.

Analyses and Results

First, I seek to determine if communities make decisions differently. Figure 3.1 graphically portrays the percentage of pro-plaintiff verdicts in each of Alabama's circuits. Although some circuits hear considerably more cases than others, the wide disparities in plaintiff success rates across circuits provides descriptive support that substantial differences exist across communities. While plaintiff success rates remain around 50% in the state overall, at the circuit level, plaintiff success rates range from 11.8% to 87.5%. Turning to awards, I present a scatter plot of logged awards across the circuits in Figure 3.2. Figure 2 demonstrates that very large and small awards occur infrequently. Most awards appear to occur in the middle ranges of the distribution. However, the figure also shows differences in award distributions across circuits.
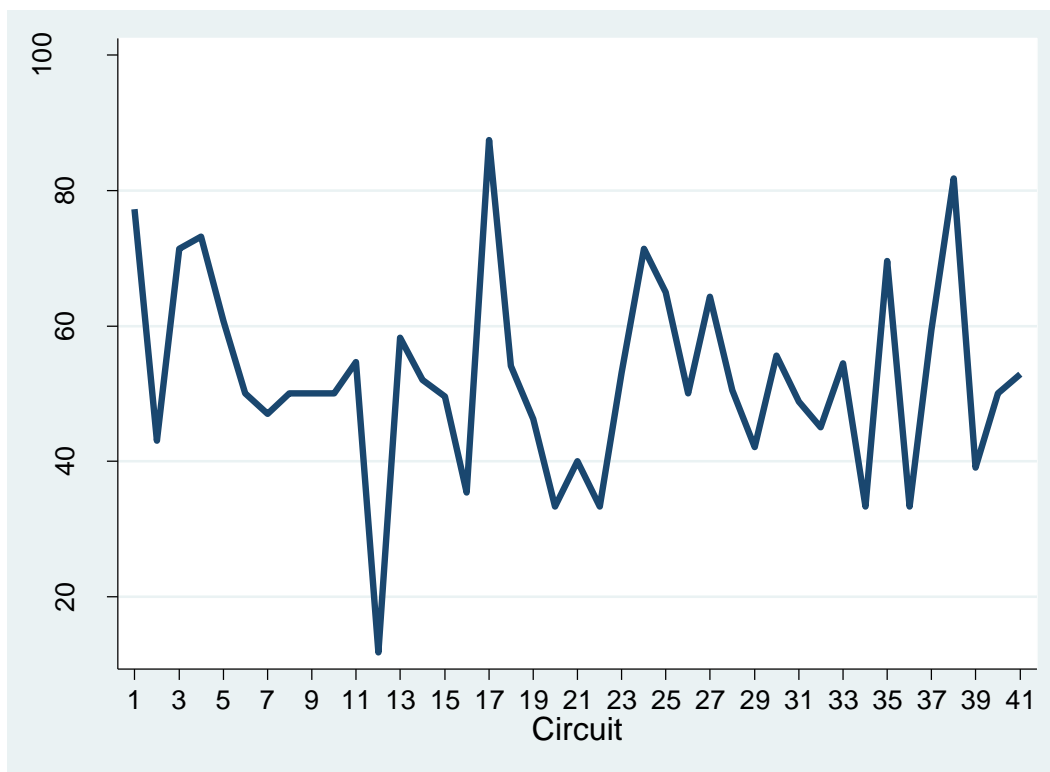
Figure 3.1 Percent Pro-Plaintiff Verdicts by Circuit
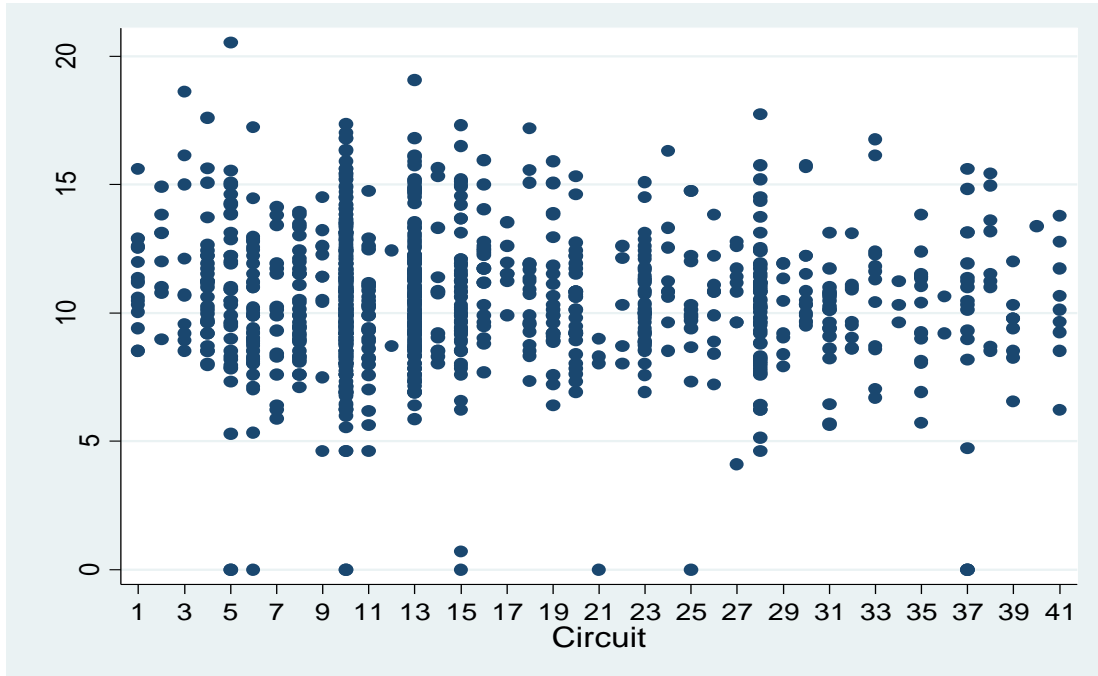
Figure 3.2 Distribution of Logged Awards

Although the descriptive statistics suggest differences across circuits in trial courts'

dispute resolution and resource allocation processes, multivariate analyses allow greater

understanding of the variables affecting litigation outcomes. Each model includes variables

measuring judicial ideology and institutions, litigation resources and litigation status, community

composition, and case facts; however, I utilize separate models for each measure of community

preferences (the percent black, unemployment, college educated, 65 and over, and urban, the

percent Democratic vote in the 2008 presidential election, and demographic index). First, I

examine the variables associated with the general verdict tendencies in the circuit using the

percent pro-plaintiff verdicts in the circuit. Next, I utilize models predicting the likelihood of

plaintiff success and award models predicting factors that influence awards upon plaintiff

success, reported in Table 3.2 and Table 3.2 Continued.[18]

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[18] Note: Although not shown in the table, the model controls for fixed effects by including dichotomous variables
for each circuit, minus one excluded circuit.

Table 3.2 Plaintiff Success and Awards in Alabama Circuits (2001-2009)

Variables	Regression Coefficients for % Pro-Plaintiff Verdicts			Logit Coefficients for Plaintiff Success (1 if the Plaintiff wins & O otherwise)			Regression Coefficients for Logged Awards		
	Model 1	Model 2	Model 3	Model 1	Model 2	Model 3	Model 1	Model 2	Model 3
Circuit Composition	b	b	b	b	b	b	b	b	b
% Black	0.002**	------	------	0.01**	------	------	0.02*	------	------
% Unemployed	0.02**	------	------	0.05*	------	------	0.04	------	------
% College	-0.001**	------	------	0.02*	------	------	-0.04	------	------
% 65 and Over	-0.03**	------	------	-0.02	------	------	-0.01	------	------
% Farming	-0.01	------	------	-0.01	------	------	-0.02	------	------
2008 Democratic Vote	------	0.04**	------	------	0.02**	------	------	0.02*	------
Index	------	------	0.01**	------	------	0.01**	-------	------	0.001**
Litigant Resources and Status									
Attorney Advantage	0.01**	0.01*	0.01**	0.01*	0.20*	0.20*	0.04	0.07	0.06
Individual v. Individual	-0.01	-0.01	-0.01	-0.01	-0.12	-0.12	-1.28**	-1.30*	-1.30*
Individual v. Government	-0.004	-0.001	-0.002	-0.52*	-0.50*	-0.51*	-0.83*	-0.80*	-0.80*
Individual v. Other Defendant	-0.01	0.01	0.01	-0.01	-0.48	0.49	-1.06**	-1.06**	-1.06**
Institutions and Ideology									
Democratic Judge	-0.02	-0.13**	-0.01	-0.02	-0.05	-0.02	-0.14	-0.33	-0.11
Democrat x 2008 Vote	------	0.003**	------	------	0.002	------	------	0.004	------
Decisions Per Circuit Year	-0.004**	-0.001**	-0.001**	-0.002	-0.002	-0.002	0.001	-0.003	-1.06

* significant at the 0.05 level or higher   ** significant at the 0.01 level or higher

Note: Although not shown in the table, the models control for fixed effects by including dichotomous variables for each year, minus one excluded year.

Table 3.2 Continued

Variables	Regression Coefficients for % Pro-Plaintiff Verdicts			Logit Coefficients for Plaintiff Success Rate (1 is the Plaintiff wins & O otherwise)			Regression Coefficients for Logged Awards		
	Model 1	Model 2	Model 3	Model 1	Model 2	Model 3	Model 1	Model 2	Model 3
Case Issues	b	b	b	b	b	b	b	b	b
Medical Negligence	-0.02**	-0.02**	-0.02**	-0.92**	-0.93*	-0.93**	1.78**	1.75**	1.80**
General Negligence	-0.004	-0.002	-0.002	0.08	0.10	0.10	0.26	0.30	0.30
Premises Liability	-0.02	-0.02	-0.004	-0.27	-0.26	-0.26	-0.77	-0.80	-0.80
Uninsured Motorist	-0.01	-0.01	-0.02	1.04*	1.03**	1.03**	-0.18	-0.21	-0.20
Fraud	0.002	0.002	-0.01	0.71	0.71	0.71	1.00*	1.04*	1.03*
Breach of Contract	0.01	0.01	0.004	0.65*	0.71	0.71	-0.23	-0.23	-0.23
Product Liability	0.003	0.004	0.005	-0.36	-0.37	-0.37	2.10**	2.10**	2.07**
Other Issue	0.01	0.01	0.01	0.37	0.40	0.40	0.06	0.08	0.08
Alleged Injuries									
Property Loss/Damage	-0.003	-0.002	-0.002	0.50*	0.50*	0.50*	-0.13	-0.15	-0.14
Monetary Loss	-0.001	-0.001	-0.001	0.23	0.79	0.23	1.04**	1.02**	1.03
Emotional Injury	-0.002	-0.001	-0.001	0.10	0.13	0.11	0.03	0.10	0.07
Broken Bone	-0.01	-0.001	-0.001	-0.31	-0.31	-0.31	1.26**	1.30*	1.30**
Death	-0.01	-0.01	-0.01	-0.52*	-0.52*	-0.52*	3.45**	3.43**	3.43**
Accident Resulted in Surgery	0.001	0.001	0.001	-0.27	-0.26	-0.27	1.20**	1.23**	1.24**
Slip and Fall	0.01	0.01	0.01	-0.74*	-0.74*	-0.74*	1.24**	1.24**	1.24**
Other Injury	-0.002	-0.002	-0.002	-0.02	-0.03	-0.02	0.90**	0.90**	0.89**
Constant	1.46**	1.45**	1.51**	1.66**	1.79**	1.59**	11.48**	11.45**	10.87**

N=369 N=360 N=369 N=2,248 N=2,202 N=2,248 N=1070 N=1024 N=1070

R^2=17.3 R^2=24.2 R2=16.3 X^2=194.11** X^2=189.9** X^2=191.5**

R^2=31.4** R^2=31.1** R^2=30.0**

F = 13.14** F = 18.32** F= 12.66**

F =13.44** F = 14.57** F = 15.04**

The percent pro-plaintiff, plaintiff success, and the award models provide strong support for the hypothesis that community composition strongly influences litigation outcomes in terms of winners and losers as well as awards. Additionally, case facts and litigant resources also shape trial court decisions. Table 3.5 reports the results of three measures of community composition. Each conception of community composition provides some evidence that the demographic composition of the community in which the court resides and from which courts draw jurors affect the pro-plaintiff tendencies of the circuit, the likelihood that the plaintiff wins, and the amount of award upon plaintiff success.

I hypothesized that the political, social, and economic context of a community would influence the decision-making of juries drawn from that community. The first model of community composition examines the effect of a circuit's racial composition, economic conditions, population age, education levels and urbanization on winners and losers and awards. The coefficients for model 1 show that circuits characterized by large black populations and more unemployed residents deliver more pro-plaintiff verdicts. Conversely, circuits with larger retired populations and more highly educated citizens appear to render fewer verdicts in favor of plaintiffs. The percent farming employed in a circuit fails to reach statistical significance in any of the models. On the other hand, both the percent black and the percent unemployed in the circuit continue to exhibit a positive influence on the likelihood that plaintiff wins. The award model shows that the percent black is the only variable to significantly affect the size of the plaintiff's award; awards in a circuit appear to increase as the percent black in the circuit increases. The findings indicate that the racial and economic composition of a community as well as the population's age and educational attainment influence the overall pro-plaintiff tendencies of a circuit. Although race and economics appear to shape the likelihood that the

plaintiff wins, race seems to have the most persistent influence on both winners and losers and awards.

Next, model 2 explores the effect of a circuit's political leanings on jury verdicts. The percent Democratic vote in 2008 presidential election is positive and significant for all three dependent variables, indicating that circuits become more pro-plaintiff and dispense larger awards as the Democratic population in the circuit increases. If the Democratic vote indicates political liberalism, the results suggest that liberal populations are more sympathetic to plaintiffs and more generous in giving compensation.

The final demographic model tests the hypothesis that combinations of demographic variables within a circuit combine to shape the jury verdicts emanating from the circuit. Specifically, I created an index that should predict demographic features that favor plaintiffs and produce larger awards in each circuit. The model demonstrates that higher values on the community composition index significantly increases the percent pro-plaintiff verdicts in a circuit, the likelihood that plaintiffs win, and predicts larger awards upon success. Although modeling each demographic indicator separately provides some evidence that circuit demographics shape juries' dispute resolution and resource allocation functions, the percent Democratic vote and the demographic index provide more consistent results. The ideological composition of the community appears to strongly influence how juries evaluate civil trials. Additionally, the demographic index suggests that combinations of demographic variables interact to produce an additive effect that shapes verdicts. In fact, the index seems to better predict outcomes and awards than individual demographic indicators.

Table 3.6 reports the results for litigant resources and status. The attorney advantage variable is positive and highly significant in both the percent pro-plaintiff model and the plaintiff

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success model, but insignificant in the award model, indicating that an attorney advantage helps plaintiffs win cases but produces little effect on the amount of the award. I also find, while unimportant with regard to the pro-plaintiff tendencies of the circuit, the type of litigant participating in each trial influences winners and losers and awards. When compared to challenging a business defendant, individual plaintiffs appear less likely to prevail when challenging the government. This result supports previous studies indicating that the government is in fact the gorilla in the courtroom (Kritzer and Sibley 2003). No other combination of litigants achieves statistical significance in the plaintiff success model. On the other hand, juries hand out significantly lower awards when individuals challenge other individuals, the government, and all other classes of defendants than when individuals challenge businesses. This finding reinforces extant literature demonstrating that juries award larger verdicts against businesses (Chin and Peterson 1985; Hans and Ermann 1989; MacCoun 1996).

However, turning to the ideology and institutional variables, only the model examining the percent pro-plaintiff verdicts provides evidence that judges' partisan identifications affect jury verdicts. The percent pro-plaintiff verdicts in a circuit appear to increase where both judges and citizens identify as Democrats. This result could imply that judges defer to constituent preferences or that judges and jurors' preferences parallel. On the other hand, the results could indicate that juries are truly the decision-makers in trial courts or that judges' influence the settlement processes more than the actual trial outcome. The variable denoting the number of decisions per year is negative and significant in the percent pro-plaintiff model but fails to achieve statistical significance in either the plaintiff success or award models. The finding that the percent pro-plaintiff verdicts diminish as the number of trials in the circuit increases could imply that citizens in high litigation jurisdiction view the civil litigation system critically. Or,

higher litigation rates might increase uncertainty regarding outcomes (Priest and Klein 1984; Waldfogel 1995) and encourage more cases to go to trial.

Turning to case issues, the results for the case issues and alleged injury variables. The models indicate that case facts and alleged injury produce differential affects on winners and losers and awards. Medical malpractice cases are the only case type to significantly impact the percent pro-plaintiff verdicts in the circuit; the percent pro-plaintiff verdicts decreases for medical malpractice claims. Turning to case facts and plaintiff success, I observe that plaintiffs are more likely to win breach of contract cases and less likely to win medical malpractice cases than cases involving automobile accidents, the excluded category. The model also shows that plaintiff's achieve greater success in uninsured motorist trials. The results demonstrate that plaintiffs face special difficulties winning medical malpractice cases. However, the award model shows that when plaintiffs win medical malpractice cases, they receive significantly larger awards. The model also predicts that despite the fact that plaintiffs making product liability or fraud claims appear no more or less likely to win than those involved in automobile claims, juries give successful plaintiffs greater compensation. Finally, the premises liability variable shows that juries give significantly lower awards in that issue area. Overall, both models confirm results from previous studies that the type of case before the court predicts both the likelihood of plaintiff success and the amount of the award upon success.

The models also show that the alleged injury in a case influences the plaintiff's likelihood of success and the amount of compensation the jury gives; however, the plaintiff's alleged injury appears to produce no effect on the overall percent pro-plaintiff verdicts in the jury. Yet, the impact of the alleged injury also appears to produce differential effects on the liability decision and the award. When compared to soft tissue injuries, plaintiffs appear more likely to prevail in

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cases in which the alleged injury involves a property loss and less likely to win when claiming negligence resulting in a death. The model predicting plaintiff success demonstrates that plaintiffs alleging non-physical injuries achieve greater success in civil trials even compared to the most severe physical injury, death.   On the other hand, the plaintiffs asserting more severe physical injuries, broken bones, death, and injuries requiring surgical correction, receive greater compensation when successful. Successful plaintiffs alleging a slip and fall or monetary loss also appear to receive larger awards. The results suggest that juries favor plaintiffs in claims involving non-physical injuries more often than physical injuries; however, when juries judge the defendant liable for a serious physical injury, juries appear willing to compensate the injured party.

To help substantively interpret the results, Table 3.3 provides predicted probabilities of the percent pro-plaintiff verdicts in each circuit, plaintiff success rates, and predicted awards, holding all other values in the models constant at the means. Although we cannot directly interpret logged awards as dollars, the predicted log awards reflect the variable's substantive influence on the size of the awards. Logged awards range from 0 to 20.51 with an average of 10.99.   The predicted effects of community demographics in model 1 demonstrate the racial, economic, retirement age population, and educational attainment of a community all shape the percent pro-plaintiff verdicts in a circuit. Moving from the least percent black to the greatest percent black increases the predicted percent pro-plaintiff verdicts from about 48% to about 59%. Moving from the least percent unemployment to the greatest percent unemployment produces the largest substantive influence on the predicted percentage of pro-plaintiff verdicts. At the greatest percent unemployed, the model predicts that 86% of all verdicts will favor plaintiffs, strongly substantiating the hypothesis that circuit economic conditions affect jury

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verdicts. As the percent of the population 65 and over increases from the minimum to the maximum the model predicts that pro-plaintiff verdicts in the circuit will decrease from about 54% to around 51%. The percent pro-plaintiff verdicts also decrease from about 54% to about 50% as the college age population increases. The percent black and the percent unemployment continue to exert a significant influence on the predicted probability of plaintiff success. Moving from the least percent black to the greatest percent black increases the predicted probability of plaintiff success by about 12%, while the moving from the minimum to the maximum percent unemployment increases the predicted probability of plaintiff success by about 21%. The predicted logged awards show that circuits with larger black populations also give larger awards to successful plaintiffs.

The predicted probabilities for the effect of the percent Democratic vote in the circuit in the 2008 presidential election demonstrate that the partisan leanings of the community influence the percent pro-plaintiff verdicts, the likelihood that individual plaintiffs win, and the size of the award success plaintiffs receive. Both the predicted percent pro-plaintiff in the circuit and the predicted probability of individual plaintiff success increase by about 21% when moving from the least to the greatest percent Democratic vote. Changes in the percent Democratic vote also increases the size of the award successful plaintiffs receive. Furthermore, the predicted percent pro-plaintiff verdicts for the interaction between the percent Democratic vote and Democratic judges shows that the percent pro-plaintiff verdict in the circuit increases from 52.3% to 65.8% as the percent Democratic vote increases from the minimum to maximum.

The community composition index also predicts substantial differences in jury verdicts across circuits. At the minimum index score about 46% of verdicts are pro-plaintiffs and plaintiffs win about 45% of the time. At the maximum index value, pro-plaintiff demographic

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Table 3.3 Predicted Percent Pro-Plaintiff Verdict, Plaintiff Success, and Awards

Variable	Predicted Percent Pro-Plaintiff	Predicted Plaintiff Success	Predicted Log Award
Circuit Demographics (model1)			
Least Percent Black	47.6 %	43.4 %	10.1
Greatest Percent Black	58.6 %	55.3 %	11.0
Least Percent Unemployment	48.3 %	52.5 %	N/S
Greatest Percent Unemployment	86.3 %	73.4 %	N/S
Least Percent 65 and Over	53.9 %	N/S	N/S
Greatest Percent 65 and Over	50.8 %	N/S	N/S
Least Percent College	54.3 %	N/S	N/S
Greatest Percent College	49.7 %	N/S	N/S
Democratic Vote (model 2)			
Least Percent Democratic Vote	44.7 %	43.5 %	10.1
Greatest Percent Democratic Vote	66.2 %	64.1 %	11.0
Democratic Judge x Min. Vote	52.3%	-----	-----
Democratic Judge x Max. vote	65.8%		
Demographic Index (model 3)			
Minimum Index	46.2 %	45.2 %	10.2
Mean Index	52.3 %	52.7 %	10.5
Maximum Index	61.4 %	63.5 %	10.9
Attorney Advantage (model1)			
Least Attorney Advantage	49.2 %	33.5 %	N/S
No Advantage	52.3 %	47.1 %	N/S
Greatest Attorney Advantage	54.6 %	67.2 %	N/S
Litigant Status (model 1)			
Individual v Individual	N/S	N/S	9.80
Individual v Government	N/S	40.0 %	9.67
Individual v Other Defendant	N/S	N/S	8.69
Case Issues and Injuries (model 1)			
Medical Malpractice	50.0 %	25.3 %	12.19
Death	N/S	41.0 %	13.75

*Logged awards range from 0 to 20.51; the average logged award is 10.99.
Missing values in the table represent non-significant variables in the original model.
All predicted probabilities are significant at the 0.5 level.

compositions demonstrate high predicted plaintiff success rates. The model predicts that 61% of verdicts will favor plaintiffs at the maximum index, and plaintiffs win about 64% of the time (an increase in plaintiff success of 17%). At the average index, the predicted percent pro-plaintiff verdicts and the plaintiff success rate are near 50% at 53%. Although plaintiffs appear to have a slight advantage at the average index, success rates at the mean index, as predicted, demonstrate the greatest variability.

Beginning with the plaintiff's attorney advantage, I find that moving from the most advantaged plaintiff (plaintiff advantage of 3) to the least advantaged (plaintiff advantage of -4) produces a 6% increase the percent pro-plaintiff verdicts and 33.7% increase in predicted plaintiff success. When parties are equally matched in terms of representation, circuits delivers pro-plaintiff verdicts about 52%, and plaintiffs win about 47% of the time, suggesting that when evenly matched in terms of legal representation, plaintiffs are slightly advantaged. Finally, compared to challenging a business, individuals win against the government about 40% of the time. The predicted logged awards demonstrate that the awards successful plaintiffs receive vary depending on the type of defendant. The model also suggests that individuals receive smaller awards when challenging the government and other defendants.

The predicted plaintiff success rates and awards show that the case issues and injuries produce considerable differences in the likelihood that plaintiffs prevail and generate the largest relative influence on award amounts. When pursuing litigation involving a medical malpractice claim, the model predicts that plaintiffs win about 25.3% of the time. In cases involving a death, plaintiffs prevail in 41% of cases. Successful plaintiffs receive the largest awards for cases involving a death, followed by medical malpractice claims.

Summary and Discussion

The findings indicate the variation in jury verdicts across circuits that Federalists and tort reformers fear exists to some extent. However, juries also demonstrate more consistency than opponents would suggest. Although pro-plaintiff verdicts vary considerably from one circuit to the next, juries appear to respond somewhat similarly to case facts and award the most generous compensation to the most seriously injured plaintiffs. The analyses also indicate that legal representation and the demographic composition of the circuit predict within-state variation in winners and losers and awards. Although scholars of voting behavior have long acknowledged that the demographic composition of a district predicts citizens' partisan preferences, few studies have explored the relationship between community composition and the courts. Through the use of three measures of community composition, I show that circuits with demographic compositions likely to favor plaintiffs demonstrate consistent pro-plaintiff verdicts and distribute larger awards. The results demonstrate that a circuit's social, political, and economic composition influences both the likelihood that juries find in favor of the plaintiff and conditions the amount of the award upon success, strongly substantiating the hypothesis that community composition shapes trial court decision-making. The results contribute to our theoretical understanding of trial court outcomes. The findings also validate Anti-Federalists' assertions that resolutions rendered by civil juries reflect attributes of the local community. Additionally, the analyses confirm Federalists' apprehensions that civil juries' decisions can lead to variability in outcomes across trial venues.

Although findings provide considerable information regarding civil jury decision-making in Alabama with more comprehensive data than previously available, it is not without limitations. First, although the data provide significant variation at the sub-state level, this is a

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single-state study, and I do not claim that Alabama is necessarily representative of the other 49 states. Subsequent analyses further apply this theory to other social, political, and economic contexts to ensure that the results are generalizable. Secondly, I would ideally model the demographic composition of each jury; unfortunately, trial courts keep jurors' identities confidential and do not record jurors' demographic statistics, making such an analysis impossible. However, if community composition exerts an influence on litigation outcomes, patterns of jury behavior should and do emerge across circuits, regardless of the composition of any particular jury. Additionally, Alabama civil procedure allows plaintiffs to file cases in either the circuit in which the alleged incident occurred or the circuit in which the plaintiff resides when the two locales differ. In that instance, procedural rules allow plaintiffs to choose between two venues, permitting plaintiffs to select the more favorable circuit. Although Alabama civil procedure largely limits "forum shopping," plaintiffs possess a slight advantage in limited circumstances. Although restricted, plaintiffs occasionally posses an upper hand in selecting trial venues, which could possibly result in a slight overestimation of the pro-plaintiff tendencies in the circuits. Furthermore, previous studies maintain that, because attorneys strategically determine which cases to settle prior to trial, the cases that reach trial tend to be those with the least predictable outcomes or the most at stake for the parties (Priest and Klein 1984; Waldfogel 1995). Due to attorney strategy, trial courts adjudicate only the most contentious and unpredictable cases. Unfortunately, I am unable to compare settled cases to cases concluding in trial with these data, and I acknowledge that community composition might affect litigation differently at the pre-trial stage. Despite these limitations, this study provides considerable insight regarding the factors that influence outcomes in civil litigation.

Furthermore, the results provide empirical support for theories regarding litigant resources and status. Galanter's (1974) original thesis predicted that better-resourced parties would prevail more often in trial courts; yet, few scholars have examined the role of litigant resources at the trial court level. This analysis provides considerable support for Galanter's theory; parties with a resource advantage, in terms of representation, win more often. On the other hand, the repeat player literature suggests that businesses and the government, generally the defendants, possess considerable advantages when interacting with the courts, because they acquire better representation, become familiar with the courts, and shape the rules over time. My findings indicate the plaintiffs are overwhelmingly individuals (see Table 2.3), while businesses and the government typically fill defendant roles. However, the literature ignores the important fact that plaintiff attorneys are also repeat players. Although individuals, Galanter's one-shotters, likely lack familiarity with the courts and possess fewer resources than businesses or government, the contingency fee system appears to allow plaintiffs with strong cases to hire quality legal representation. Additionally, as repeat players, plaintiff attorneys routinely interact with the courts and appear to devote greater resources to the cases with a high profit potential. The analyses indicate that when plaintiffs acquire a resource advantage in terms of representation, plaintiffs achieve higher success rates. Conversely, the model indicates that a representational advantage produces no effect on awards, implying that a resource advantage helps plaintiffs win cases, while issue and injury variables more strongly predict compensation.

Additionally, the number of attorneys participating in a case may also serve as a proxy for case salience. Attorneys likely devote greater time and resources to cases involving more serious injuries with greater potential for larger awards. On the other hand, the results show that juries assess larger damage awards against business defendants than any other classes of

defendant, implying that while those with greater resources may win more often, wealthier defendants pay more when they lose.

Results regarding case issues and alleged injuries also confirm previous research. I uncover an interesting relationship between medical malpractice claims and jury decision-making. While plaintiffs appear especially unsuccessful in garnering jury support in medical malpractice cases, once plaintiffs cross the liability threshold, juries hand down considerably larger awards. Overall, the results indicate that plaintiffs alleging non-physical injuries prevail at higher rates than plaintiffs seeking compensation for physical injuries. The analyses show that cases involving a death produce considerable hurdles for plaintiffs seeking jury support. The plaintiff success model demonstrates that plaintiffs prevail significantly less often when alleging that the defendant's negligence contributed to an individual's death, but when juries hold the defendant liable for a serious physical injury, juries give more generous compensation to the injured party. Through, the use of jury simulations Hans (2008) observes that the term "soft tissue injury" is often ambiguous to jurors, and jurors perceive whiplash and other soft tissue injuries as quintessential bogus injuries. Like Hans and other researchers, I observe that when compared to soft tissue injuries, plaintiffs alleging more severe and concrete injuries receive greater compensation (Bronstein 1998; Bovbjerg et al 1989; Chen and Peterson 1985; Greene and Bornstein 2003).

Is Alabama "Tort Hell"? The Evidence

The results also provide information concerning the ongoing tort reform debate. Admittedly, the major debates regarding the Alabama civil litigation system occurred well before the time period under review here. Perhaps, a better question might be, is Alabama still tort hell, if it ever was? However, the evidence suggests that Alabama's civil litigation system produces

more consistent verdicts than opponents would suggest but also demonstrates trends that some might find disturbing. As tort reformers suggest, the results show that business defendants suffer a disadvantage in certain contexts; however, other contexts strongly favor defendants. Yet, the models demonstrate that better-resourced parties, such as businesses, achieve higher success rates. On the other hand, even after controlling for case facts, Alabama juries assess larger damage awards against business defendants than other litigant classes. This finding likely provides reason for concern for tort reformers seeking to limit businesses' liability in civil claims.

Additionally, Table 2.1 in Chapter 2 suggests that Alabama civil courts generate more verdicts per-capita than the other states, implying the trials occur with somewhat greater frequency in the state. Although punitive damage awards occur infrequently, Table 2.1 also shows that Alabama civil juries award punitive damages more often than the other states. On the other hand, over the nine-year period, plaintiffs' success rate remain around 50% overall. However, at the circuit level, circuit workloads vary dramatically, and plaintiff success rates range from 11.8% to 87.5%.   Yet, the mean and mode for pro-plaintiff verdicts in all circuits consistently approaches 50%, implying that most circuits appear to possess no strong pro-plaintiff bias. On the other hand, circuits where plaintiffs win more or less than 50% of the time likely indicate pro-plaintiff and pro-defense tendencies. Furthermore, the analyses indicate that the social, political, and economic composition of the community partially explains circuit's decision-making tendencies. For those seeking consistency in the civil litigation system the wide disparities in number of trials and the percentage of pro-plaintiff wins might suggest cause for concern. However, those that see jury verdicts as citizens' constitutionally protected rights to

make decisions based on community evaluations likely consider differences across circuits as appropriate reflections of community values.

Beyond the empirical results, I also sought to determine Alabama judges' and attorneys' views regarding tort reform in the state. According to the American Judicature Society, "Judicial races in Alabama became increasingly politicized in the 1980s and 1990s, in large part because of the controversy over tort reform. The size of jury verdicts began to increase during this time, to the extent that Alabama was dubbed "Tort Hell" by *Forbes* magazine. The legislature passed a tort reform package in 1987, but many of its provisions were declared unconstitutional by the Alabama Supreme Court during the early 1990s. As judicial races took on heightened significance, campaign fundraising became more important. Between 1986 and 1996, expenditures by supreme court candidates grew by 776%. As campaigns became more expensive, they also became more contentious. The 1996 elections were dubbed "the year of the skunk" because of an ad run by an incumbent supreme court justice that alluded to his opponent and featured pictures of a skunk, accompanied by the caption 'Some things you can smell a mile away'."

Interviews with judges in attorneys in Alabama largely confirm the American Judicature Society's observations regarding transformations in the Alabama civil system. However, interviewees suggest that when the state supreme court overturned statutory tort reforms, Alabama business groups largely achieved tort reform through a conscious effort to change the ideological disposition of the state supreme court. According to one circuit judge, "A few years ago, ten to twelve, Alabama had a reputation of being 'tort hell.' But, over the last ten years or so, we've had two competing interests. Plaintiffs' lawyers and business defense groups are competing in the political arena. For years plaintiffs' lawyers controlled who was elected to the

appellate courts and the legislature. Ten years, ago businesses became very active in recruiting

conservative judges and legislators, and they were able to get some tort legislation passed. Some

of it was declared unconstitutional the first time around, before the composition of the supreme

court changed. The Business Council has become very active and has been successful.

Currently most of the supreme court is conservative. In the 2000 election cycle, Carl Rove had

two clients, George W. Bush and the Business Council of Alabama. The Business Council ran

elections for the judges they were supporting. Since 2000, we've had a very conservative

supreme court."

Most of the lawyers and judges interviewed agree that the switch from a Democratic

dominated to a Republican dominated court significantly altered the civil litigation system in

Alabama both in terms of winners and losers and awards. However, although a judge stated that,

"I think the courts in Alabama are operating at a good equilibrium that's not too extreme in any

direction," not all interviewees perceive the same balance. An attorney interviewed believes that

the tort reform and the large media attention focused on the subject in Alabama altered the way

jurors think about civil litigation with negative consequences for plaintiffs. "I think that tort

reform has had a big effect on jurors. All of the advertising that has been for the Alabama

whatever tort reform association, you know Skip Jones, has really influenced jurors. Juries think

about it a lot of the time now. They think: If we give them this it will raise our insurance. This

could affect us. It's bad for the state of Alabama. People fall for it." Another trial lawyer

complained that, "The entire Alabama state supreme court is Republican, and they overturn

rulings based on their preferences all of the time. The only reason all of the judges are

Republican is because the people of Alabama are so conservative and they go into the ballot box

and pull the Republican lever." In fact, one defense attorney agreed with the pro-defense nature

of Alabama civil courts following tort reform and the election of a conservative supreme court. When asked what the biggest change since reform and the reconstitution of the supreme court, he stated, "Small cases don't get filed. Plaintiff firms don't even file those cases. A lot more small cases settle without even filing a case. I don't have any evidence, but I would guess that fewer cases get filed now overall. At one point in time juries where totally out of control, like when a jury awarded $2,000,000 for a bad paint job in Gore v. BMW[…] 'Tort hell.' Those of us on the defense side thought there was a plaintiff bias. Since tort reform, there is a defense bias."

When asked if he supported additional tort reforms in Alabama, one self-identified Democratic attorney said, "No. No one wants tort reform, not even Republicans, because, if it happens, Republicans can't campaign on it any more. The whole tort reform debate was designed by Republicans as a campaign strategy, and Republicans and businesses duped Alabama Republicans into believing that everyone who files a case in Alabama wins a million dollars." Somewhat surprisingly, when asked if Alabama needs additional tort reforms, Alabama judges, plaintiff attorneys, and defense attorneys almost unanimously answered, "No." In response to the same question, a defense attorney told me, "No. Tort reform has gone far enough. I'm not so defense oriented that I don't think anyone ever does anything wrong." In fact, of all the lawyers interviewed, only one suggested an additional reform. The attorney said, "State and national governments are protected by sovereign immunity, but local government is not. Counties have limited sovereign immunity, and potentially large verdicts burden the county. […] When the government is forced to pay a large damage award it hurts citizens. Either government has to cut back on the services it can provide, or government must raise taxes. It's a circle; what government pays out, it gets back somewhere. We need more tort reform to protect local government. It would lessen the tax burden of citizens. Federal and state government would be

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sued a lot more than they currently are if they allowed themselves to be. Local government

needs the same kind of protections."

Chapter 4

Modeling Civil Jury Verdicts in Comparative Context

At the time of the ratification, Federalists feared that states would employ disparate civil jury systems that would lead to inconsistent outcomes across states. This chapter explores civil jury verdicts across four states, in addition to Alabama, in order to assess the variables that jointly and separately predict winners and losers and awards. Are civil juries reaching incongruent conclusions across states? Research conducted in Alabama indicates that circuit demographics, legal representation, litigant status, and case facts influence both winners and losers and awards across circuits. Do similar factors predict jury verdicts across circuits in Hawaii, Indiana, Tennessee, and Kentucky? This chapter begins with an overview of the specific variables included in the models and hypotheses regarding the effect of each variable. The chapter then proceeds with a section for Hawaii, Indiana, Kentucky, and Tennessee. Each section provides an overview of the organization and jurisdiction of the civil trial courts in that state along with a discussion of variables specific to each state. Following the overview, each section reports and discusses the analyses and results. The final section examines a combined model using 2009 data in Alabama, Hawaii, Indiana, Kentucky, and Tennessee to examine the variables that similarly affect outcomes across states and explores the influence of state-level institutions on trial court behavior. The chapter concludes with a discussion of the similarities and differences in jury verdicts across the five states.

Modeling Civil Jury Verdicts in Comparative Context

Table 4.1 lists the key independent variables utilized in the individual state analyses. The theoretical model previously developed maintains that civil jury verdicts reflect the community surrounding the court, and are also affected by judicial ideology, institutional arrangements,

Table 4.1 Key Independent Variables

Variable	Measurement
Institutions and Ideology	
Judges' Ideology [+]	-Coded 1 if the judge is a Democrat, and 0 otherwise
Democrat x Percent Democratic Vote [+]	-Interacts the Democrat variable with percent Democratic vote in the circuit in the 2008 election
Decisions Per-Circuit Year [+/-]	-Number of decision in each circuit in each year
Litigant Resources and Status	
Attorney Advantage [+] (all models)	# of Plaintiff Attorneys - # Defense Attorneys
Litigant Matches	Dichotomous Variables
Individual v. Individual	Compared to Individual v. Business
Individual v. Government	
Individual v. Other Defendant	Greater resources should increase success rates, but might also increase awards.
Circuit Demographics (Model 1)	US Census and Department of Agriculture Statistics
% Black, compared to % White [+]	
% Unemployment [+]	
% College Educated [-]	
% 65 and Over [-]	
% Farming [-]	
Circuit Ideology (Model 2)	Obtained from election returns available through the each states' secretary of state
Percent Democratic Vote in the 2008 Presidential Election	
Demographic Index (Model 3)	Takes the %white, black, unemployment, college educated, 65 and over, and farming population, and subtracts from the state median on each indicator. The final measure sums the deviations from the median. Scaled so that higher values indicate pro-plaintiff demographic combinations.
Index Predicting Pro-Plaintiff Tendencies and Larger Awards	

Note: Signs in brackets denote the predicted direction of the effect for each variable.

litigant resources and status, and case facts. Like Alabama, I predict that juries will render more

pro-plaintiff verdicts and give larger awards in Hawaii, Indiana, Kentucky, and Tennessee where

circuit demographics favor liberal ideological dispositions. Specifically, I theorize that circuits

with larger minority populations, higher unemployment, lower education levels, and more rural

residents will vote in favor of plaintiffs and give larger awards than their urban, highly educated,

white, economically better-off counterparts. I also utilize the percent Democratic vote in the

2008 Presidential election to test the hypothesis that population liberalism predicts jury verdicts

and a demographic index to assess the possibility of addictive effects among demographic

variables. Additionally, I hypothesize that the likelihood of pro-plaintiff verdicts and the size of

awards will increase when a Democratic judge presides over the case, and when the plaintiff

possesses a representational advantage. Furthermore, litigants such as businesses and

government should possess greater resources than individuals and achieve correspondingly

higher success rates. While greater resources should lead businesses and government to achieve

higher success rates than other classes of litigants, the "deep pockets" hypothesis maintains that

perceived wealth might lead juries to assess large damage awards against affluent parties when

they lose. Finally, the models compare all cases types to automobile negligence cases and all

alleged injuries to soft tissue injuries.[19]

      Since Hawaiian juries rendered only 12 verdicts in 2009, the Hawaii section reports only

descriptive statistics. The sections for Kentucky, Indiana, and Tennessee report the results for

logistic regression models predicting the likelihood of plaintiff success and regression models

predicting the size of the logged award successful plaintiffs receive. Since I currently lack data

over time in Indiana, Kentucky, and Tennessee I do not possess enough observations to model

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[19] For a detailed description of variable sand coding see Appendix B. For a detail discussion of the literature, theory, and hypotheses see Chapter 1 and 3.

the percent pro-plaintiff verdicts in each circuit like I did in Alabama. However, the combined

models in the final section explore the factors related to the percent pro-plaintiff verdicts in all

circuits, the likelihood that the plaintiff wins, and the size of the awards successful plaintiffs

receive.

Part I. Hawaii

Hawaii divides circuits among the Hawaiian Islands. Hawaii utilizes four circuits of

general jurisdiction with exclusive jurisdiction over cases involving damage claims of $25,000 or

more. Each circuit shares concurrent jurisdiction with district courts in cases involving damages

less than $25,000. Hawaii attempts to include all citizens in the pool of potential jurors and

creates a list of eligible jurors using voter registration, drivers' license, and state income records.

Hawaii's extensive efforts to collect the names of all citizens for jury roles suggests that jury

roles in the state should more closely reflect the states' population. Although the small number

of observations in Hawaii prevents multivariate analyses in the state, the very few trials in the

state make Hawaii unique. Additionally, Hawaii is one of very few states that appoint trial court

judges. Furthermore, of the five states under review, Hawaii possesses the most liberal

population with a percent Democratic vote in the 2008 Presidential Election at or above 70% in

all four circuits. Hawaii also holds the largest minority population of any of the states with no

circuit possessing a white population greater than 40%. Although it is impossible to draw any

definitive conclusions about Hawaii's civil jury system from only 12 observations, Hawaii

presents an interesting case. While I cannot fully assess all aspects of the theoretical model in

Hawaii, Table 4.2 and Table 4.3 descriptively examine legal representation and case facts in

Hawaii and provide preliminary information regarding the composition of Hawaii's docket and

the factors that might influence plaintiff success rates.

Table 4.2 provides the range of values on the attorney advantage variable (-2 to 1), the frequency of occurrence for each value and the corresponding percentage of times the plaintiff won. The observations show that the plaintiff possess a representational advantage in only three of the twelve cases; however, plaintiffs also achieved the highest success rates when they obtain the representational advantage, suggesting that plaintiffs achieve higher success rates in Hawaii when possessing a representational advantage.

Table 4.2 Attorney Advantage

Attorney Advantage	Frequency	% Plaintiff Wins
-2	2	0
-1	2	50%
0	5	25%
1	3	66.7%

Table 4.3 reports the percentages of the cases that make up the docket in Hawaii, the alleged injuries in the cases, and corresponding plaintiff success rates. Like Alabama, Indiana, and Tennessee, in 2009 the most common case type in Hawaii was auto negligence followed by medical malpractice, general negligence, other issues, and premises liability. Overall, Hawaiian juries appear to decide similar types of cases when compared to the other states; however, no clear pattern of plaintiff success rates emerges across case types for the 12 available cases. Examining the injury categories in Hawaii shows that death is the most common alleged injury at trial. Interestingly, plaintiffs lost all three cases involving a death, implying that a relationship between death cases and lower plaintiff success rates, like the one observed in Alabama, might also exist in Hawaii. Future research should expand the data collection in Hawaii to better understand the relationship between jury verdicts and the interesting social and political context Hawaii provides.

Table 4.3 Issues and Injuries

Variables			
Case Issues	N	% Docket	Plaintiff Wins
Auto Negligence	4	33%	1/4
Fraud	0	0	0
Breach of Contract	0	0	0
Premises Liability	1	8%	1/1
Products Liability	0	0	0
Uninsured Motorist	0	0	0
Medical Malpractice	2	17%	0/2
General Negligence	3	25%	2/3
Other Issue	2	17%	1/2
Total	12	100%	5/12
Alleged Injuries			
Soft Tissue	2	17%	1/2
Slip and Fall	1	8%	1/1
Emotional	2	17%	0/2
Surgery	1	8%	1/1
Property Loss/Damage	0	0	0
Monetary Loss	0	0	0
Death	3	25%	0/3
Broken Bone(s)	1	8%	1/1
Other Injury	2	17%	1/2
Total	12	100%	12/12

Part II. Indiana

Circuits in Indiana represent 91 counties, each with its own circuit, expect for Dearborn and Ohio counties which share a circuit. In 2009 Indiana civil juries decided 244 claims. Both superior and circuit courts in Indiana have general jurisdiction over civil disputes. However, some counties only maintain circuit courts. In counties without superior courts, the circuit courts also hear small claims. Circuit courts in counties with superior courts hear cases involving disputes involving damage claims greater than $6,000 and appeals from superior courts. Of all the states examined in this study, Indiana maintains the most decentralized system and allows individual circuits the greatest discretion in determining the circuits' jurisdiction and judicial

selection methods. Indiana allows circuits to utilize partisan, nonpartisan, and retention elections to retain judges, making Indiana a perfect context for testing the hypothesis that jury verdicts vary across judicial retention methods. Indiana's decentralized civil litigation system, utilization of multiple judicial selection methods, and the authority Indiana places within circuits could potentially lead to greater disparities in outcomes across circuits. On the other hand, the Indiana civil courts also operate under the most statutory regulation of the five states. For example, Indiana requires a medical review board to review all medical malpractice claims before trial. While non-binding, the review board's decision regarding the existence or non-existence of medical malpractice is admissible as evidence. In addition to the review board, Indiana places a damage cap of $1,250,000 in medical malpractice suits, often resulting in a considerable reduction of the award post-trail. Indiana also limits awards against a municipality to $500,000.[20]

The first series of models replicates the analyses conducted in Alabama and tests the hypothesis that judicial ideology, as measured by judges' partisan identifications, affects the likelihood that the plaintiff wins and the size of the award upon success.[21] The section examining circuit contextual influences reports the results from three separate models using each of the three measures of community composition. As described in detail in Chapter 3, I again utilize three measures of community composition to both compare various measures and to ensure that the results are indeed robust across various conceptions of community composition. The first model utilizes the percent unemployed, percent black as compared to the percent white, percent college educated, percent 65 and over, and the percent farming. The second and third models of

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[20] The dataset records only the jury's initial award, and jury instructions do not inform jurors of a cap on damages. However, subsequent analyses in the combined state models will test the hypothesis that damage caps affect the jury's initial award.
[21] For circuits that utilize retention or nonpartisan elections, judges' partisan identifications are unavailable, and therefore, these circuits are omitted from models examining judicial ideology.

community composition utilized the percent Democratic vote in the 2008 election and the

demographic index respectively. Next, I test that the retention method hypothesis using models

that compare winners and losers and awards across retention mechanisms in Indiana, omitting

the judicial ideology variable.   Finally, I descriptively explore the relationship between

institutional review board rulings and jury verdicts in medical malpractice trials. Prior to

exploring the results for the individual state models, it should be noted that with just one year of

data for Indiana, Kentucky, and Tennessee, I possess relatively few observations for each circuit,

and conclusions should be considered tentative.

Analyses and Results

Turning first to the models of Indiana jury verdicts including the judicial ideology

variable, Table 4.4 reports results for the community composition, litigant resources and status,

and judicial ideology variables. Examining the results from the three models of community

composition imply that the demographic characteristics of circuits in Indiana affect winners and

losers more than awards, but none of the demographic variables researches statistical

significance in any of the award models. However, the first model shows that plaintiffs in

Indiana achieve higher success rates in circuits with more retirement age and college educated

inhabitants. The findings regarding population age and education are opposite my expectations

and opposite of the findings in Alabama. Although preliminary, these findings could imply that

more highly educated and older populations in Indiana evaluate the civil litigation system more

favorably in Indiana than in Alabama. On the other hand, as expected, plaintiffs are significantly

less likely to win in circuits with larger farming populations. The model examining the political

leanings of the community demonstrates that plaintiffs also achieve higher success rates in

circuits where more citizens voted for Barack Obama, implying that greater population

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liberalism increases pro-plaintiff jury verdicts. Unlike Alabama, the demographic index appears

not to be a good predictor of community preferences regarding civil litigation outcomes in

Indiana, providing further evidence that demographics combinations might work differently in

Indiana.

Table 4.4 Plaintiff Success and Awards Indiana (2009)

Variables	Logit Coefficients for Plaintiff Success (1 if the Plaintiff wins & O otherwise)			Regression Coefficients for Logged Awards		
	Model 1	**Model 2**	**Model 3**	**Model 1**	**Model 2**	**Model 3**
Circuit Composition	b	b	b	b	b	b
% Black	-0.004	------	------	-0.06	------	------
% Unemployed	0.19	------	------	0.08	------	------
% College	0.08*	------	------	-0.05	------	------
% 65 and Over	0.34*	------	------	0.01	------	------
% Farming	-0.85*	------	------	-0.15	------	------
2008 Democratic Vote	------	0.05**	------	------	-0.01	------
Index	------	------	0.005	-------	------	0.96
Litigant Resources and Status						
Attorney Advantage	-0.12	-0.12	-0.10	0.42*	0.43*	0.44*
Individual v. Individual	-0.50	-0.42	-0.43	0.88	-0.87	-0.75
Individual v. Government	1.00	0.59	0.67	-0.88	-0.90	-0.85
Individual v. Other Defendant	0.29	0.25	-0.35	-0.37	-0.31	-0.21
Institutions and Ideology						
Democratic Judge	-0.26	1.97	-0.35	0.70*	0.67*	0.69*
Democrat x 2008 Vote	------	-0.05	------	------	-0.01	------
Decisions Per Circuit Year	0.01	0.02	0.01	0.001	0.001	0.01

* significant at the 0.05 level or higher   ** significant at the 0.01 level or higher

Table 4.4 Continued

Variables	Logit Coefficients for Plaintiff Success Rate (1 is the Plaintiff wins & O otherwise)			Regression Coefficients for Logged Awards		
	Model 1	Model 2	Model 3	Model 1	Model 2	Model 3
Case Issues	b	b	b	b	b	b
Medical Negligence	-1.94**	-2.17**	-2.05**	2.01**	1.99**	1.92**
General Negligence	-1.39*	-1.30*	-1.40*	1.40	1.10	1.02
Premises Liability	-3.93**	-3.46**	-3.50**	1.19	1.02	0.75
Uninsured Motorist	-1.38	-1.45	-1.34	1.26	1.05	1.12
Fraud	------	------	------	------	------	------
Breach of Contract	-1.66	-1.78	-1.90	4.85*	4.60*	4.36*
Product Liability	-1.20	-1.72	-1.71	6.29**	6.37**	5.66**
Other Issue	-1.29	-1.41	-1.18	0.35	0.34	0.27
Alleged Injuries						
Property Loss/Damage	-1.41	-1.83	-1.29	-1.56	-1.35	-1.01
Monetary Loss	-1.89	-1.37	-1.48	-3.20**	-3.45**	-3.07**
Emotional Injury	------	------	------	------	------	------
Broken Bone	-2.76**	-2.77**	-2.44**	-0.02	1.50	1.90
Death	-1.99*	-1.71*	-1.63*	2.18**	2.10**	2.11**
Accident Resulted in Surgery	-1.40*	-1.35*	-1.19*	2.24**	2.25**	2.41**
Slip and Fall	-0.53	-0.80	-0.62	-0.60	-0.65	2.27**
Other Injury	-0.95	-1.14	-1.01	0.30	0.32	0.31
Constant	-4.36**	-3.30*	-2.65*	9.72**	10.67**	10.07**

N =242 N =242 N =242 N=137 N=137 N=137

X^2 =90.66** X^2 =88.42** X^2 =81.19**

R^2 =53.3** R^2 =52.5** R^2=52.5**
F =4.83** F =5.44** F=5.74**

Note: For the purposes of consistency all issue and injury variables are included in each model for all states, but some states lack sufficient observations in every category, preventing multivariate analyses. Missing issue and injury variables in the tables denote insufficient observations.

The influence of litigant resources and status also appears less relevant to litigation outcomes in Indiana than in Alabama. In Alabama a representational advantage increases plaintiffs' success rates but fails to increase the size of the damage award successful plaintiffs receive; however, the exact opposite pattern emerges in Indiana. The attorney advantage variable (which ranges from -5 to 2 in Indiana) is insignificant in the plaintiff success model and

positive and significant in the award model, suggesting that a representational advantage neither helps nor hurts plaintiffs in Indiana but appears to assist successful plaintiffs in garnering greater compensation for their claims. Although inconsistent with the findings in Alabama, the results further confirm the finding that legal representation strongly influences litigation outcomes. On the other hand, none of the combinations of litigants achieves statistical significance in either model, suggesting that Indiana juries appear unresponsive to litigant status.

Like Alabama, the plaintiff success model shows no relationship between the presence of a Democratic judge presiding over the trial and the likelihood that the plaintiff wins. On the other hand, the award model provides evidence that awards in Indiana appear to increase when a Democratic judge presides over the case. This finding implies that Democratic judges might transmit their liberal policy preferences to the jury. However, neither the interaction between judicial ideology and the 2008 Democratic vote nor the number of decisions per year in each circuit produces significant effects in either model.

The issues and injuries variables, reported in Table 4.4 Continued, demonstrate that case facts contribute to plaintiff success rates and award amounts. The negative and significant effect of medical malpractice, premises liability, and general negligence cases produces additional evidence that, across states, plaintiffs receive less support in those issue areas. Plaintiffs in Indiana also appear less successful when pursing uninsured motorist claims. The award model also demonstrates patterns in Indiana similar to Alabama regarding the issue area and the size of the award. Successful plaintiffs garner greater compensation in medical malpractice, products' liability, and breach of contract cases. Consistent with previous findings, the injury variables show that plaintiffs suffering severe physical injuries encounter significant hurdles in

winning their cases; yet, when successful, injury severity predicts greater compensation. The models demonstrate that juries in Indiana find for the plaintiff significantly less often when the plaintiff seeks compensation for a death, broken bones, or an accident resulting in surgery. Conversely, the award model shows that juries deliver larger damage awards to successful plaintiffs in cases involving a death or injuries resulting in surgery. Interestingly, the award model also shows that plaintiffs seeking compensation for a monetary loss receive significantly less compensation.

Table 4.5 reports predicted plaintiff success rates and logged awards for the key independent variables in the plaintiff success and award models holding all other variables constant at their means. First, I report the predicted probabilities for the models examining circuit demographics, followed by the predicted results for the second model, measuring circuit ideology as the percent Democratic vote. Beginning with predicted plaintiff success rates in Indiana, the results indicate that the age, educational attainment, and farming population in each circuit substantially influence the likelihood of plaintiff success. Moving from the smallest retirement age population to the largest produces a predicted increase in plaintiff success rates of 57%. The model predicts that the least college-educated populations will produce plaintiff success rate about 41% of the time, while circuits with the highest percentage of college graduates produce plaintiff success rates of nearly 90%. As the farming population increases from the minimum to the maximum, plaintiff success rates decrease from about 69% to only 16%. As in Alabama, the model produces relatively low predicted plaintiff success rates for medical malpractice cases and cases involving a death. Plaintiffs achieve a predicted success rate of about 28% in medical malpractice cases and about 24% in death cases. However, predicted probabilities generated from the second model examining population liberalism, shows

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that moving from the least percent Democratic vote to the greatest percent Democratic vote increases that likelihood of plaintiff success by almost 37%.

As in previous models, predicted logged awards cannot be interpreted as dollar amounts; however, they provide a measure of the substantive influence of each variable on the size of the award. Logged awards in Indiana range from 6.33 to 18.87; the average logged award is 10.5.

Table 4.5 Predicted Plaintiff Success and Logged Awards (Indiana 2009)

Variable	Predicted Plaintiff Success	Predicted Logged Award
Model 1		
Democratic Judge	N/S	11.0
Least Attorney Advantage	N/S	8.4
Greatest Attorney Advantage	N/S	11.3
Minimum % 65	32.5%	N/S
Maximum % 65	89.8%	N/S
Minimum % College	41.4%	N/S
Maximum % College	90.1%	N/S
Minimum % Farming	69.3%	N/S
Maximum % Farming	16%	N/S
Medical Malpractice	27.7%	12.3
Death	24.4%	12.6
Model 2		
Minimum % Democratic Vote	50.7%	N/S
Maximum % Democratic Vote	87.5%	N/S

*Logged awards in Indiana range from 6.33 to 18.87; the average logged award is 10.5.
Missing values in the table represent non-significant variables in the original models.
All predicted probabilities are significant at the 0.5 level.

The model demonstrates that the presence of a Democratic judge and an attorney advantage produce a predicted logged award above the average award. On the other hand, awards diminish considerably when the defense possesses the greatest representational advantage. Like Alabama, plaintiffs achieve lower success rates in Indiana when involved in medical malpractice and death cases. However, medical malpractice and death cases produce that largest substantive impact in the size of the award, confirming that successful plaintiffs garner greater compensation in those cases.

Next, I investigate the influence of judicial selection method in Indiana by replicating the previous models, substituting the judicial selection variables for the judicial ideology variable. The judicial retention variables compare nonpartisan and retention election circuits to partisan elections, the excluded category. Each model includes variables for litigant resources and status, and the demographic composition of the circuit. I conduct separate models for each of three measures of community composition. Unfortunately, the one year of data provides relatively few observations for each circuit, making any conclusions tentative. The only evidence that judicial retention methods affect jury verdicts in Indiana comes from the model examining pro-plaintiff verdicts that utilizes the percent Democratic vote in the circuit in the 2008 election. After controlling for the partisan leanings of the community, plaintiffs appear more likely to win in circuits that utilize retention elections when compared to partisan elections. No statistical difference emerges between nonpartisan and partisan elections. The award models generate no significant effects for any of the retention variables. The results for models of plaintiff success and award using the judicial retention variables are reported in Appendix C. Given the small number of observations, making definitive conclusions from these results remains premature. However, the results imply a possible relationship between judicial retention mechanism and the ideological leanings of the community, which would support previous research (Brace and Boyea 2007, 2008; Brace and Hall 1990, 1993, 1997; Hall 1992, 1995, 1987). However, future research across a greater time period is needed to fully investigate the relationship between judicial selection method and civil trial outcomes in Indiana.

Institutional Review Board Rulings and Outcomes in Medical Malpractice Cases

Although the results for all case types in Indiana suggest that medical malpractice cases in Indiana achieve considerably lower success rates than other case types, Indiana's use of a

medical review board to issue a non-binding determination regarding the alleged breach in the standard of care presents an interesting institutional feature that likely influences outcomes in civil trials. The review board first determines if a breach in the standard of care occurred in the plaintiff's treatment. Then, if the board finds a breach in the standard of care, the board determines if that deviation in care caused the plaintiff's injury. Presumably, a review board ruling for or against the plaintiff affects the plaintiff's decision to pursue litigation into the trial stage. A vote from the review board maintaining that a breach of the standard of care contributed to the plaintiff's injuries likely encourages plaintiffs to take cases to trial, while a vote a to the contrary should encourage plaintiffs to seek settlement. Consequently, the medical review board likely serves as an important filtering mechanism that eliminates weaker cases prior to trial.

In 2009 Indiana juries decided 33 medical malpractice cases. Of those, the reporter provides the review boards' decision in 29 trials. The small number of observations prevents multivariate analyses; however, Table 4.6 reports the review boards' decisions and the corresponding jury verdicts. The table reports cases in which the review issued a unanimous vote in favor of the plaintiff; in other words, the board determined that the doctor or medical facility breached the standard of care, causing the plaintiff's injury. Mixed decisions occur when the board cannot agree on one or both parts of the decision. Decisions in favor of the defense result when either the board unanimously agrees the doctor or medical facility upheld the standard of care, or the breach in the standard of care was causally unrelated to the plaintiff's injury.

Overall, plaintiffs in Indiana won 11 out of 29 medical malpractice cases tried in the state in 2009. However, examining the table indicates that of the seven cases in which the review

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board found a breach in the standard of care that was causally related to the injury, plaintiffs won 6 or 85.7%. Although the board found in favor the plaintiff in only six cases, the plaintiffs'

4.6 Institutional Review Board Decisions

Review Board Decision	Plaintiff Verdicts Out of the Total	% Pro-Plaintiff Verdicts
For the Plaintiff	6/7	85.7%
Mixed Decision	1/6	16.7%
For the Defense	4/16	25%

success rates in those cases are substantially higher than the overall success rates for plaintiffs pursuing medical malpractice claims. On the other hand, the observations suggest that the review board issues considerably more verdicts in favor of the defense and mixed opinions than decisions in favor of the plaintiff. Sixteen decisions of the Institutional Review Board favored the defense while 6 were mixed decisions. However, it appears that even mixed decisions from the review board hurt plaintiffs' changes of success. When the board issued a mixed decision, juries decided only one out six cases (16.7%) in favor of the plaintiff. Interestingly, juries delivered more pro-plaintiff verdicts in trials where the board found against the plaintiff than in cases with mixed decisions from the board. Of cases in which the board found no breach in the standard of care or no injury to plaintiff as a result of the breach, plaintiffs won 4 of 16 trials (25%).

Of the five states, the Indiana civil courts operate under the most decentralized civil system, allowing circuits considerable control over jurisdiction and the retention of judges; yet, Indiana also utilizes the most statutory regulation over award amounts and medical malpractice claims. Despite this, Indiana juries seem to respond in manner similar juries in Alabama when evaluating case facts. On the other hand, Indiana juries appear unresponsive to litigant status.

Apparent wealth or litigant class seems unrelated to plaintiff success rates or awards in Indiana. This finding could indicate that the regulation of the civil litigation system in Indiana might diminish disparities between parties, or that reforms in the state encourage only the most contentious cases with relatively equal evidence to reach trial. Conversely, a representational advantage continues to exert an important impact on the jury decision-making process; although, attorneys in Indiana appear more successful in garnering compensation than in achieving pro-plaintiff verdicts. Furthermore, results in Indiana, demonstrate that community composition also affects outcomes. However, findings in Indiana only show a relationship between community composition and plaintiff success rates and not awards. Perhaps, regulation of awards in the state limits contextual influences on jury verdicts. The results also supply preliminary evidence that judicial ideology and selection method might shape juries' dispute resolution and resource allocation functions. Awards in Indiana appear to increase when a Democratic judge presides over the case. Additionally, plaintiffs appear to achieve higher success rates in circuits that retain judges through retention elections than in circuits that utilize partisan elections, once citizen ideology is controlled for.

Part III. Kentucky

The Kentucky circuit courts comprise 57 circuits made up of a county or counties. Kentucky Circuit courts have general jurisdiction over cases involving disputes over $4,000. Circuit judges serve 8-year terms and are retained through non-partisan, circuit-based elections. Kentucky compiles a list of available jurors based on state tax roles, registered voter lists, and driver's licenses. Although Kentucky does not utilize strict statutory damage caps like Indiana, judges in Kentucky may cap damages on case by case basis; thereby giving judges in Kentucky far greater control of the damage award. Like the other states, I hypothesize that community

composition, litigants' resources, and case facts will predict jury verdicts in Kentucky. However, nonpartisan elections in Kentucky prevent a test of the hypothesis that judges' partisan identifications affect jury verdicts in the state. In 2009 Kentucky civil juries adjudicated 210 trials.

Analyses and Results

Table 4.7 provides logistic and ordinary least squares regression results for the circuit composition and litigant resource variables associated with plaintiff success rates and awards in Kentucky. The coefficients demonstrate some evidence that the composition of the circuit predicts winners and losers and awards in Kentucky, but the results demonstrate less consistency than Alabama. Like Indiana, some demographics affect plaintiff success but not awards. The models show that the percent unemployment and the percent college educated in the circuit predict the likelihood of plaintiff success. However, contrary to my predictions, the model predicts that plaintiffs win less often in circuits with higher unemployment plaintiffs. This finding could support attorneys' perspectives that local economic conditions can help or hurt plaintiffs depending on the context. Conversely, greater percentages of college graduates decreases support for plaintiffs, as predicted. None of the individual circuit demographics significantly predicts awards. The model examining the ideological leanings of Kentucky circuits based on the percent Democratic vote in the 2008 Presidential Election shows that awards increase where greater percentages of the population vote for Democrats; yet, plaintiffs appear no more or less likely to prevail among liberal populations. Like the results for Indiana, the demographic index fails to achieve statistical significance in either model.

Next I turn to the attorney advantage and litigant status variables for winners and losers and awards in Kentucky. Like Indiana, the attorney advantage variable also influences outcomes

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in Kentucky but only significantly impacts awards. Plaintiffs in Kentucky with a representational advantage appear to garner greater compensation. On the other hand, individuals appear no more or less likely to win or receive greater compensation when challenging another individual or the government, than when challenging a business.

Table 4.7 Plaintiff Success and Awards Kentucky (2009)

Variables	Logit Coefficients for Plaintiff Success (1 if the Plaintiff wins & O otherwise)			Regression Coefficients for Logged Awards		
	Model 1	Model 2	Model 3	Model 1	Model 2	Model 3
Circuit Composition	b	b	b	b	b	b
% Black	0.02	------	------	0.01	------	------
% Unemployed	-0.43*	------	------	-0.31*	------	------
% College	-0.10*	------	------	-0.04	------	------
% 65 and Over	0.02	------	------	0.15	------	------
% Farming	-0.14	------	------	-0.21	------	------
2008 Democratic Vote	------	0.03	------	------	0.10*	------
Index	------	------	0.01	-------	------	0.03
Litigant Resources and Status						
Attorney Advantage	0.40	0.45	0.43	0.48*	0.54*	0.43*
Individual v. Individual	0.64	0.58	0.56	-1.97**	-1.86**	-1.66**
Individual v. Government	-1.74*	-1.99*	-1.91	-1.33	-1.33	-1.87
Individual v. Other Defendant	------	------	------	-0.89	-0.27	-0.67
Institutions						
Decisions Per Circuit Year	-0.01	-0.01	-0.01	-0.39	-0.39	-0.46

* significant at the 0.05 level or higher   ** significant at the 0.01 level or higher

Table 4.7 Continued

Variables	Logit Coefficients for Plaintiff Success Rate (1 is the Plaintiff wins & O otherwise)			Regression Coefficients for Logged Awards		
	Model 1	Model 2	Model 3	Model 1	Model 2	Model 3
Case Issues	b	b	b	b	b	b
Medical Negligence	-1.83**	-1.90**	-1.88**	3.50**	3.90**	3.40**
General Negligence	0.48	0.57	0.56	0.24	0.54	0.60
Premises Liability	0.97	0.66	0.67	-0.72	-0.19	-0.50
Uninsured Motorist	1.08	0.84	0.77	-0.77	-0.81	-0.53
Fraud	1.80	1.91	1.98	4.64**	4.81**	5.15**
Breach of Contract	3.51**	3.47**	3.36*	1.13	1.65	1.23
Product Liability	0.05	0.50	-0.07	2.82**	3.22**	3.12**
Other Issue	0.82	-0.04	-0.06	0.49	0.70	0.57
Alleged Injuries						
Property Loss/Damage	-0.80	-0.70	-0.63	2.32	1.86	2.14
Monetary Loss	-1.19	-1.53	-1.52	0.52	0.20	0.55
Emotional Injury	-2.22*	-1.77*	-1.72*	1.36	1.06	1.36
Broken Bone	-2.10*	-1.90*	-1.88*	3.26**	3.20**	3.23**
Death	-0.11	-0.10	-0.08	3.17**	3.15**	3.16**
Accident Resulted in Surgery	0.19	0.06	0.03	0.82	0.84	1.05
Slip and Fall	-1.69	-1.57	-1.57	-0.46	-1.05	-0.43
Other Injury	-0.50	-0.62	-0.60	0.60	0.24	0.58
Constant	-6.42*	-5.29*	-6.24*	12.64**	10.80**	10.79**

N =209 N =209 N =209   N=111   N=111   N=111

X^2 =66.93** X^2 =59.96**X^2 =59.96**

R^2 =57.0** R^2 =57.5**R^2=57.6**
F =4.73** F =5.73** F=3.46**

Note: For the purposes of consistency all issue and injury variables are included in each model for all states, but some states lack sufficient observations in every category, preventing multivariate analyses. Missing issue and injury variables in the tables denote insufficient observations.

Kentucky juries also seem to exhibit less sensitivity to case facts than juries in either

Alabama or Indiana. Verdicts in Table 4.7 Continued only significantly differ from auto

negligence claims in breach of contract and medical malpractice cases. Like the other states,

plaintiffs appear significantly less like to prevail when making medical malpractice claims, but

plaintiffs in Kentucky seem to win breach of contract cases more often. Fraud allegations,

medical malpractice, and product liability claims are the only alleged injuries to significantly influence awards. The positive and significant coefficients for the fraud, medical malpractice, and product liability variables indicate that successful plaintiffs receive greater compensation in those issue areas. Kentucky juries also appear less sensitive to alleged injuries. Plaintiffs' likelihood of success decreases in cases in which the plaintiff alleges an emotional injury or broken bones. However, like the other states, successful plaintiffs claiming more severe physical injuries receive greater compensation. When compared to soft tissue injuries, Kentucky juries deliver larger awards when successful plaintiffs are seeking compensation for broken bones or a death.

Table 4.8 reports predicted plaintiff success rates and predicted logged awards for Kentucky jury verdicts holding all other variables constant at their means. The table displays the results for the first model examining circuit demographics and the second model examining circuit ideological composition measured as the percent Democratic vote in the 2008 Presidential Election. The predicted plaintiff success rates for Kentucky jury verdicts further demonstrate the significant impact of unemployment and college education on jury verdicts. Although opposite my expectations and the findings in the other states, the model predicts that plaintiffs will prevail about 71% of the time in Kentucky circuits with lowest percent unemployed. The predicted plaintiff success rate drops almost 62 percentage points when moving circuits with the greatest percent unemployed (9.7% predicted plaintiff success). Although these findings cannot explain precisely why increased unemployment so dramatically decreases plaintiff success rates in Kentucky, the results demonstrate that economic conditions strongly influence trial court outcomes. On the other hand, the model predicts that moving from the least college educated circuit to the most college educated circuit decreases plaintiff's chance of success by about 51%,

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showing that the more highly educated populations in Kentucky tend to deliver more pro-defense verdicts. Furthermore, the model predicts that plaintiffs making breach of contract claims win over 90% of the time.

Table 4.8 Predicted Plaintiff Success and Logged Awards (Kentucky 2009)

Variable	Predicted Plaintiff Success	Predicted Logged Award
Model 1		
Least Attorney Advantage	N/S	8.4
Greatest Attorney Advantage	N/S	13.1
Minimum Unemployment	71.4%	N/S
Maximum Unemployment	9.7%	N/S
Minimum % College	71.8%	N/S
Maximum % College	20.2%	N/S
Fraud	N/S	16.0
Breach of Contract	91.52%	N/S
Medical Malpractice	91.5%	13.2
Death	N/S	14.6
Model 2 Minimum % Democratic Vote	N/S	9.17
Maximum % Democratic Vote	N/S	12.4

*Logged awards in Kentucky range from 7.17 to 17.84; the average logged award is 11.4.
Missing values in the table represent non-significant variables in the original models.
All predicted probabilities are significant at the 0.5 level.

Next, I examine Kentucky jurors predicted logged awards. Logged awards in Kentucky range from a minimum of 7.14 to 17.84 with mean award of 11.4. The predicted awards verify the significance of the plaintiffs' representational advantage in Kentucky. The most disadvantaged plaintiff in Kentucky receives a predicted logged award well below the mean award, while the most advantaged plaintiff receives an award well above the average. Interestingly, the predicted awards also show that plaintiffs receive the largest predicted awards in fraud cases. In fact, fraud cases, which typically involve monetary injuries, receive larger awards than cases involving a death. Finally, Table 4.17 reports the effect of circuit partisanship on predicted awards. Yet, consistent with results in Alabama, Successful plaintiffs receive larger

awards in medical malpractice cases. Moving from the least to the greatest percent Democratic vote increases the plaintiff's predicted award from below the mean award to an above average award.

The Kentucky analyses provide further evidence that community composition predicts civil jury decision-making patterns. In Kentucky, circuit educational attainment and economic conditions predict the likelihood of plaintiff success; although, the results suggest that economic conditions might produce differential influences across states. On the other hand, Kentucky circuits with more liberal populations appear to give consistently larger awards. Additionally, like Alabama and Indiana, a representational advantage continues to influence litigation outcomes; however, the plaintiff's relative advantage in representation seems to shape the size of the award more than plaintiff's probability of success. The results also indicate that juries in Kentucky respond to case issues and alleged injuries. Consistent with the results in Alabama and Indiana, plaintiffs are significantly less likely to win medical malpractice suits in Kentucky. Conversely, the results suggest that Kentucky juries demonstrate little significant difference in their treatment of other issues areas. Kentucky jurists also appear sensitive to alleged injuries and deliver fewer pro-plaintiff verdicts when the plaintiff alleges an emotional injury or broken bones. Awards in Kentucky increase for success plaintiffs in cases involving and a death or broken bones, further supporting the hypothesis that juries deliver larger awards when the plaintiff prevails in a case involving a more severe and concrete injury.

Part IV. Tennessee

Tennessee divides its 95 counties into 31 judicial circuits. Tennessee counties determine the jurisdiction of the courts in their corresponding circuits. Judges in Tennessee stand for reelection in partisan elections every eight years. All judges in the state run for reelection at one time. Tennessee civil juries decided 190 disputes in 2009.

Analyses and Results

Table 4.9 reports the coefficients for the plaintiff success and awards models across the three measures of community composition for Tennessee along with the litigant resource and status and judicial ideology variables. The results suggest that community composition, at least as measured, produces little influence on jury verdicts in Tennessee. None of the variables measuring a circuit's demographic or ideological composition affect the likelihood that Tennessee juries deliver pro-plaintiff verdicts. In the award model, only the percent unemployment in the circuit significantly impacts the amount juries award successful plaintiffs. Unlike my expectations, the size of the award Tennessee juries deliver decreases as the percent unemployed in the circuit decreases. The findings indicate the economic conditions affect juries' evaluations of fair compensation for an injury; however, inconsistent directional effect implies that economic conditions produce differential results from one context to the next.

Turning to litigant resources and status, the results for Tennessee indicate that plaintiffs achieve significantly higher success rates when they possess a representational advantage. Like Alabama, Indiana, and Kentucky, plaintiffs in Tennessee benefit from legal representation. On the other hand, none of the combinations of litigant matches achieves statistical significance in the award model, implying that Tennessee juries are indifferent to the status of the litigants involved in each case. Yet, the award model shows that Tennessee juries award success plaintiff significantly less when they challenge and individual then when challenging a business, providing evidence that Tennessee juries adjust awards according perceived ability to pay. Next, I examine the influence of ideology and institutions on jury verdicts in Tennessee. Although the plaintiff success model provides no evidence that judicial ideology affects the

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likelihood that plaintiffs win in Tennessee, the award model shows that judicial ideology and the interaction between ideology and constituent preferences shape the size of awards in the state.

The variable denoting a Democratic judge and the interaction between the presence of a Democratic judge and the percent Democratic vote in the circuit both produce positive and significant coefficients, indicating that plaintiffs receive larger awards in cases presided over by Democratic judges, especially where greater percentages of the population vote liberally.

Table 4.9 Plaintiff Success and Awards Tennessee (2009)

	Logit Coefficients for Plaintiff Success (1 if the Plaintiff wins & O otherwise)			Regression Coefficients for Logged Awards		
Variables	**Model 1**	**Model 2**	**Model 3**	**Model 1**	**Model 2**	**Model 3**
Circuit Composition	b	b	b	b	b	b
% Black	0.01	------	------	0.01	------	------
% Unemployed	0.12	------	------	-0.31*	------	------
% College	0.03	------	------	-0.04	------	------
% 65 and Over	-0.10	------	------	0.15	------	------
% Farming	-0.26	------	------	-0.21	------	------
2008 Democratic Vote	------	0.002	------	------	0.01	------
Index	------	------	0.01	-------	------	0.04
Litigant Resources and Status						
Attorney Advantage	0.90**	0.89**	0.89**	0.48	0.54	0.47
Individual v. Individual	0.11	0.08	0.12	-1.97**	-1.86**	-1.49**
Individual v. Government	-0.21	-0.11	-0.73	-1.33	0.93	0.99
Individual v. Other Defendant	-0.66	-0.59	-0.66	-0.89	-0.27	-0.60
Institutions and Ideology						
Democratic Judge	0.24	0.50	0.12	-0.39	2.98*	-0.46
Democrat x 2008 Vote	------	0.01	------	------	2.08*	------
Decisions Per Circuit Year	-0.001	-0.004	-0.005	-0.01	-0.01	-0.02

* significant at the 0.05 level or higher   ** significant at the 0.01 level or higher

Table 4.9 Continued

Variables	Logit Coefficients for Plaintiff Success Rate (1 is the Plaintiff wins & O otherwise)			Regression Coefficients for Logged Awards		
	Model 1	Model 2	Model 3	Model 1	Model 2	Model 3
Case Issues	b	b	b	b	b	b
Medical Negligence	-2.32**	-2.32**	-2.31**	3.50**	3.90**	3.40**
General Negligence	-0.88	-0.70	-0.71	0.24	0.54	0.60
Premises Liability	-0.31	-0.44	-0.47	-0.72	-0.19	-0.50
Uninsured Motorist	------	------	------	-----	-----	-----
Fraud	------	------	------	------	------	------
Breach of Contract	------	------	------	-----	-----	-----
Product Liability	0.93	0.67	0.62	2.82**	3.22**	3.12**
Other Issue	-1.06	-1.01	-0.96	0.49	0.70	0.57
Alleged Injuries						
Property Loss/Damage	------	-----	------	------	------	------
Monetary Loss	------	------	------	------	------	------
Emotional Injury	------	------	------	------	------	------
Broken Bone	-0.56	-0.56	-0.54	0.45	0.50	0.28
Death	-0.11	0.02	-0.04	0.40	0.21	0.60
Accident Resulted in Surgery	1.93*	1.89*	1.89*	0.82	0.84	1.05
Slip and Fall	-1.81	-1.73	-1.68	-0.46	-1.05	-0.43
Other Injury	0.87	0.87	0.86	0.60	0.24	0.58
Constant	-3.75*	-3.32*	-2.35*	12.64**	10.80**	11.03**

N =190 N =190 N =190   N=111 N=111 N=111

X^2 =43.39** X^2 =39.72** X^2 =40.22**

R^2 =57.0** R^2 =57.5** R^2=54.6**
F =4.73** F =5.73** F=5.42**

Note: For the purposes of consistency all issue and injury variables are included in each model for all states, but some states lack sufficient observations in every category, preventing multivariate analyses. Missing issue and injury variables in the tables denote insufficient observations.

Although the percent Democratic vote in the circuit fails to achieve statistical significance, the interaction between population liberalism and judicial ideology appears to predict more generous awards.[22] The findings imply that the size of the award juries deliver in

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[22] In addition to running a model that interacts the percent Democratic vote in the 2008 Presidential Election with the presence of a Democratic judge, I have also run models without the interaction. The presidential vote is insignificant in both models with and without the interaction.

Tennessee depends both on judges' and juries' ideological dispositions. The number of verdicts in each circuit fails to achieve statistical significance in either the plaintiff success or award models.

Table 4.9 Continued reports the results for the case issue and injury variables in Tennessee. The results show that juries in Tennessee evaluate medical malpractice claims similarly to the other states. The medical malpractice variable is the only statistically significant issue or injury variable. Like the Alabama, Indiana, and Kentucky, plaintiffs seeking compensation in medical malpractice cases prevail significantly less often in Tennessee. On the other hand, when successful, plaintiffs involved in medical malpractice cases achieve substantially larger awards. The models confirm that plaintiffs face special difficulties in winning medical malpractice cases in Alabama, Indiana, Kentucky, and Tennessee. However, none of the models demonstrate any significant difference between the other case types or alleged injuries in either the probability that the plaintiff wins or the size of the award upon success. Excepting medical malpractice, Tennessee juries appear to treat most cases and injuries similarly.

Table 4.10 reports predicted plaintiff success rates and predicted logged awards for Tennessee jury verdicts holding all other variables constant at their means. I examine the predicted plaintiff success rates for the model using separate variables for each demographic indicator, followed by the predicted values for the model examining the interaction between judicial ideology and the 2008 presidential vote in the circuit. The predicted plaintiff success rates further demonstrate the impact of legal representation on plaintiff success rates. The model predicts that moving for the least advantaged plaintiff (attorney advantage of -2) to the most advantaged plaintiff (attorney advantage of 1) increases the predicted plaintiff success rate from

18% to about 77%, an increase of 69%. On the other hand, the model predicts that plaintiffs in Tennessee win medical malpractice cases only about 15% of the time.

Table 4.10 Predicted Plaintiff Success and Logged Awards (Tennessee 2009)

Variable	Predicted Plaintiff Success	Predicted Logged Award
Model 1		
Least Attorney Advantage	18.1%	N/S
Greatest Attorney Advantage	77.2%	N/S
Minimum Unemployment	N/S	11.0
Maximum Unemployment	N/S	8.7
Medical Malpractice	15.8%	13.5
Model 2		
Democratic Judge	N/S	12.3
Republican Judge	N/S	9.4
Democrat x Min. Dem. Vote	N/S	5.03
Democrat x Max. Dem. Vote	N/S	13.4

*Logged awards in Tennessee range from 5.62 to 16.98; the average logged award is 10.21.
Missing values in the table represent non-significant variables in the original models.
All predicted probabilities are significant at the 0.5 level.

Next, I examine predicted logged awards in Tennessee. Logged awards in Tennessee range from a minimum of 7.14 to 17.84 with mean award of 11.4. The predicted logged awards show that moving from the lowest to the highest levels of unemployment in the circuit decreases the award from slightly over the mean award to a below average award. The predicted logged awards also suggest that plaintiffs receive the largest awards in medical malpractice cases. The predicted awards demonstrate that plaintiffs receive above average awards when a Democratic judge presides over the trial and below average awards when a Republican judge resides over the trial. Interestingly, the predicted logged awards for the interaction between judicial ideology and population liberalism indicate that plaintiffs receive even lower awards from Democratic judges in highly Republican circuits than from Republican judges. On the other hand, awards increase considerably when a Democratic judge presides over the cases in a highly Democratic circuit. The predicted logged awards further substantiate a relationship between judicial ideology and

litigation outcomes in Tennessee, as well as a relationship between judicial ideology and constituent preferences.

Compared to Alabama, Indiana, and Kentucky, Tennessee jury verdicts evidence the least responsiveness to circuit social, political, or economic conditions. The only indication that circuit demographics affect verdicts in Tennessee comes from the negative influence of unemployment on the size of awards in the states, suggesting that economic conditions influence how juries evaluate appropriate compensation. However, the Tennessee results uncover an interesting interaction between judicial ideology and population ideological preferences, suggesting that outcomes in Tennessee civil trial courts depend on both the preferences of the judge and the community. On the other hand, like the other states, plaintiffs in Tennessee benefit from legal representation. Additionally, the observed lack of plaintiff success in medical malpractice cases in Alabama, Hawaii, Indiana, and Kentucky persists in the Tennessee analyses.

Part V. 2009 Verdicts in Alabama, Hawaii, Indiana, Kentucky, and Tennessee

Multi-state analyses provide the opportunity to explore the social, political, and economic conditions that commonly affect civil courts' dispute resolution and resource allocation functions, as well as the influence of varying institutional arrangements. Overall, civil trial courts in the five states adjudicated 926 cases in 2009 of which plaintiffs won 500, or 54%. Table 4.11 lists the variables and measurement for the institutions under investigation in the multi-state models. In particular, multi-state models allow me to test the hypothesis that judicial retention methods affect jury verdicts. If elections substantially alter judicial behavior as previous research would suggest (Brace and Hall 1995, 1997; Hall 1987, 1992), jury verdicts might reflect judges' modified behaviors. In particular, partisan elections appear to encourage judicial responsiveness to public opinion (Brace and Boyea 2007,2008). However, prior studies

also maintain that judges' might favor campaign contributors (Cann 2007). Unfortunately previous research provides no clear guide regarding the possible effect of judicial retention method on trial court behavior. Should elected judges tend to favor individuals who typically serve as plaintiffs, or business which presumably contribute to judges' campaigns and typically participate in litigation as defendants? I hypothesize that plaintiff success rates and awards will vary systematically across partisan, nonpartisan, retention, and appointment systems; however, given the lack of theoretical guidance, I make no directional hypothesis.

The combined models also investigate the influence of the institutions of fault standards and damage caps on winners and losers and awards. States that utilize comparative fault allow juries to assess the plaintiff's relative contribution to his or her alleged injury and adjust the On the other hand, the contributory negligence standard prevents a plaintiff from collecting any damages if he or she shares any responsibility with the plaintiff for the alleged injury. Theoretically, the lower standard of fault applied in comparative fault states might produce higher plaintiff success rates. On the other hand, the ability to reduce successful plaintiffs' awards under the comparative fault standard might lead to systematically lower damage awards. Additionally, Indiana and Kentucky use damage caps to limit defendants' potential liability. Although the models only examine the juries' initial award and not post-trial reductions, the use of damage caps in the state might decrease the jury's initial award if individual jurors are aware of damage caps or if plaintiffs limit their initial demands in response to damage caps.

Table 4.11 Institutions

Variable	Measurement
<u>Judicial Selection Method</u>	
Partisan Elections [+/-]	Coded 1 for partisan elections, and 0 otherwise
Nonpartisan Elections [+/-]	Coded 1 for nonpartisan elections, and 0 otherwise
Retention Elections [+/-]	Coded 1 for retention elections, and 0 otherwise.
Unelected [+/-]	Coded 1 for judges retained through any procedure other than elections, and 0 otherwise.
<u>Other Institutions</u>	
Comparative Fault [+] plaintiff success [-] awards	Coded 1 for comparative fault, 0 for contributory negligence
Damage Caps [+/-] plaintiff success [-] awards	Coded 1 for states with damage caps, and 0 otherwise

Analyses and Results

Examining winners and losers and awards both within and across states produces evidence that community composition and institutions affect both how courts settle disputes and allocate resources. The following section investigates the variables associated with the percent pro-plaintiff verdicts in each circuit, the probability that the plaintiff wins, and the size of the award in Alabama, Hawaii, Indiana, Kentucky, and Tennessee in 2009. First, I examine how the institutional features of judicial selection method, comparative fault, damage caps, and court workloads affect pro-plaintiff tendencies, plaintiff success, and awards. The models compare judges retained in nonpartisan elections, retention elections, and appointment systems to judges

retained in partisan elections.[23] The damage cap variable compares states with statutory damage caps to states without. Then, I turn to community composition, litigant resources and status, and finally case issues and alleged injuries.

Table 4.12 reports the results for the institutional, community composition, and litigant resources and status variables, while Table 4.12 Continued reports the results for the issue and injury variables. The models show that institutional arrangements significantly shape the pro-plaintiff tendencies of a circuit. The percent pro-plaintiff verdicts in a circuit increase where states utilize comparative fault. Allowing juries to find in favor of the plaintiff even when the plaintiff contributes in part to his or her injury appears to increase the percentage of cases plaintiffs win. The plaintiff success model demonstrates that the lower standard of fault applied in comparative fault states also increases the probability that the plaintiff wins. The comparative fault variable produces a negative value in the award model, suggesting that, as predicted, successful plaintiffs receive smaller awards in comparative fault states, although the effect is not statistically significant. Interestingly, capping the amount that successful plaintiffs receive also seems to increase the percentage of plaintiff wins, suggesting that limiting the amount plaintiffs may collect actually increases juries' likelihood of finding in the plaintiff's favor. On the other hand, damage caps appear not to affect plaintiff success rates or awards. Although the award variable does not account for statutory reductions of the jury's verdict post-trial, this finding suggests that juries do not initially distribute lower awards in response to damage caps in the state. Conversely, the percent pro-plaintiff verdicts significantly decrease where judges retained in nonpartisan elections preside over trials. This finding provides initial support for the

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[23] Partisan elections include Alabama, Tennessee, and most Indiana circuits. Nonpartisan elections include Kentucky and Vanderburgh and Allen counties in Indiana. Retention elections include Lake and St. Joseph counties, Indiana. Hawaii judges are appointed and retained by selection committees.

Table 4.12 Plaintiff Success and Awards (Alabama, Hawaii, Indian, Kentucky, and Tennessee 2009)

Variables	Regression Coefficients for % Pro-Plaintiff Verdicts			Logit Coefficients for Plaintiff Success (1 if the Plaintiff wins & O otherwise)			Regression Coefficients for Logged Awards		
	Model 1	Model 2	Model 3	Model 1	Model 2	Model 3	Model 1	Model 2	Model 3
Circuit Composition	b	b	b	b	b	b	b	b	b
% Black	0.20**	------	------	0.01	------	------	0.002	------	------
% Unemployed	0.66**	------	------	0.01	------	------	0.01	------	------
% College	-1.93**	------	------	0.05	------	------	-0.31	------	------
% 65 and Over	0.94**	------	------	-0.02	------	------	0.06	------	------
% Farming	-10.21**	------	------	-0.52*	------	------	0.16	------	------
2008 Democratic Vote	------	0.04**	------	------	0.01**	------	------	0.02*	------
Index	------	------	0.01	------	------	0.01	-------	------	0.001
Litigant Resources and Status									
Attorney Advantage	-1.07	-1.05	-0.67	0.27**	0.45*	0.25*	0.55**	0.54**	0.56**
Individual v. Individual	0.12	0.41	0.53	0.07	0.05	0.03	-1.46**	-1.50*	-1.50*
Individual v. Government	5.19	4.08	4.53	-0.97*	-1.06*	-1.03*	-0.10	-0.18	-0.18
Individual v. Other Defendant	-0.24	-1.64	-2.30	0.43	0.44	0.40	-0.77	-0.80	-0.78
Institutions and Ideology									
Comparative Fault	12.85**	7.19**	7.75**	0.65**	0.45*	0.45*	-0.03	-0.06	-0.02
Damage Caps	6.64**	1.42*	3.34*	0.23	0.10	0.13	0.50	0.20	0.20
Nonpartisan	-13.90**	-13.10**	-15.1**	-0.17	-0.11	-0.24	0.19	0.61	0.54
Merit	-4.61	8.41**	4.29	0.05	0.77*	0.50	0.36	0.49	0.24
Unelected	------	------	------	------	------	------	0.80	------	------
Decisions Per Circuit Year	0.20**	0.40**	0.20**	0.01	0.01	0.01	-0.01	-0.01	-0.01

* significant at the 0.05 level or higher   ** significant at the 0.01 level or higher

Table 4.12 Continued

Variables	Regression Coefficients for % Pro-Plaintiff Verdicts			Logit Coefficients for Plaintiff Success Rate (1 is the Plaintiff wins & O otherwise)			Regression Coefficients for Logged Awards		
	Model 1	Model 2	Model 3	Model 1	Model 2	Model 3	Model 1	Model 2	Model 3
Case Issues	b	b	b	b	b	b	b	b	b
Medical Negligence	-7.20**	-7.43**	-7.74**	-1.32**	-1.38**	-1.45**	2.06**	2.04**	2.03**
General Negligence	-2.42	-3.70	-3.60	0.10	0.007	0.06	0.10	0.23	0.30
Premises Liability	-7.40**	-7.21*	-7.24*	1.26**	-1.31	-1.17**	-0.38	-0.33	0.26
Uninsured Motorist	-1.88	-2.00	-2.98	0.86*	0.84*	0.74	-0.26	-0.25	-0.25
Fraud	11.70	9.80	11.38	0.72	0.65	0.76	2.91**	3.03**	3.06*
Breach of Contract	-0.42	-0.58	0.20	1.07	1.10	1.10	1.23*	1.31*	1.34*
Product Liability	-1.76	-2.08	-2.56	0.25	0.20	0.38	2.30**	2.35**	2.07**
Other Issue	0.27	-0.13	-0.38	0.11	0.11	0.12	-0.10	-0.08	-0.08
Alleged Injuries									
Property Loss/Damage	2.16	3.49	-4.16	-0.52	-0.50	-0.49	-0.13	-0.15	-0.45
Monetary Loss	-2.66	-1.51	-1.91	-0.53	-0.51	-0.67	1.04**	1.02**	1.03**
Emotional Injury	-7.24*	-8.76*	-12.25*	-1.28*	-1.02	-0.62	0.03	0.10	0.07
Broken Bone	-5.65*	-6.20*	-8.20*	-1.17**	-1.21**	-1.24**	1.26**	1.30*	1.15**
Death	-5.48	-4.92	-3.25	-0.75*	-0.65*	-0.67*	3.45**	3.43**	2.82**
Accident Resulted in Surgery	-1.76	-1.60	-2.03	0.11	-0.10	-0.11	1.20**	1.23**	1.31**
Slip and Fall	-5.30	-5.94	-6.40	-0.71	-0.82	-0.83	1.24**	1.24**	1.24**
Other Injury	0.27	0.31	0.25	-0.38	-0.40	-0.38	0.90**	0.90**	0.87**
Constant	9.74**	43.49**	51.10**	1.69**	1.87**	1.57**	11.48**	11.45**	10.87**

N=225 N=225 N=225 N=922 N=911 N=896 N=472 N=467 N=369

R^2=16.6 R^2=16.7 R2=16.1 X^2=140.84** X^2=149.95** X^2=148.41**

R^2=43.1** R^2=43.0** R^2=42.8**

F = 10.73** F = 12.74** F= 12.66**   F =10.73** F = 12.74** F = 13.83**

hypothesis that judicial retention mechanisms condition trial court judges' behavior, which in turn shapes the jury's verdict. Finally, the percent pro-plaintiff verdicts in a circuit significantly increases as the annual number of decisions in the circuit increases, implying that where more cases go to trial plaintiffs win more often, perhaps providing evidence of attorney strategy.

Turning to circuit demographics, the table reports findings for three measures of community composition. The first model examines the overall influence of the percent black in the circuit, percent unemployment, percent 65 and over, percent college educated, and the rural/urban characteristic of the circuit (measured by the percent farming employed). The second model attempts to capture the overall liberalism of the circuit based on the percent Democratic vote in the 2008 Presidential Election. The third model utilizes the demographic index to capture the additive influence of circuit demographics on jury verdicts. Although the individual state analyses suggest that circuit demographics affect jury verdicts differently across states, the aggregate results for the percent pro-plaintiff verdicts for all of the circuits demonstrate that a general pattern of pro-plaintiff verdicts emerges across demographic indicators. For all circuits, the percent pro-plaintiff verdicts increase as the black and unemployed population increases, indicating that the racial and economic composition of a community shape jury decision-making. Although I originally predicted that older populations would produce more defense oriented verdicts, the combined models indicate that circuits with large retirement age populations vote in favor of plaintiffs more often. Finally, the percent pro-plaintiff verdicts for all circuits decrease as the college educated and farming population in the circuits increase. The results substantiate the hypothesis that circuit demographics affect the general pro-plaintiff tendencies of circuits across states.

Although circuit demographics appear to predict the general pro-plaintiff tendencies of circuits, the plaintiff success model and the award model demonstrate no consistent effect of circuit demographics on the likelihood that a plaintiff wins a particular case or the size of the award. Yet, the overall liberalism of the circuit, measured as the percent Democratic vote in 2008, significantly increases the percent pro-plaintiff verdicts in the circuit as well as the likelihood that the plaintiff wins but not awards. The findings demonstrate that circuits with larger Democratic populations tend to produce more pro-plaintiff verdicts than their more conservative counterparts. On the other hand, the combined models suggest that community composition affects the liability decisions to a far greater extent than the size of the award. Finally, the demographic index is positive across all three dependent variables but insignificant.

Next, I explore the results for litigant resources and litigation status on pro-plaintiff tendencies, winners and losers, and awards. Like the models for the individual states, the combined models evidence a substantial influence of attorneys on litigation outcomes. Although an attorney advantage seems not to influence that percent pro-plaintiff verdicts in the circuit in the combined models, possessing and attorney advantage positively and significantly increases the likelihood that plaintiffs win and increase the size of the award upon success. The consistent positive influence of a representational advantage confirms that when plaintiffs acquire a resource advantage in terms of representation, plaintiffs win more often and garner greater compensation. On the other hand, litigant resources, as typically measured based on litigant status, produces less of an affect after controlling for representation. None of the litigant matches significantly influences the percent pro-plaintiff verdicts in the circuits. On the other hand, the plaintiff success model shows that the plaintiff is less likely to win when challenging the government than when challenging a business, supplying additional evidence that the

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government is the "gorilla" in the courtroom. The award model also supplies some support for

the "deep pockets" hypothesis. The model produces negative coefficients for every category,

suggesting that individuals receive greater compensation when successfully challenging

businesses than other types of defendant. However, only the Individual vs. Individual variable

achieves statistical significance, demonstrating that plaintiffs garner larger awards when an

individual successfully sues a business than when an individual sues another individual.

Finally, I explore the influence of case types and alleged injuries on civil jury verdicts.

The models examining aggregate patterns of pro-plaintiff verdicts, the probability that a plaintiff

wins his or her cases, and the award model all provide evidence that the type of case and the

injury alleged affect the plaintiff's likelihood of success and the amount of compensation

received upon success. The percent pro-plaintiff verdicts across circuits significantly decreases,

when compared to auto negligence cases, for cases involving medical negligence, premises

liability, products liability, and uninsured motorist claims. On the other hand, aggregate patterns

of pro-plaintiff verdicts in the circuits exhibit no sensitivity to alleged injuries, perhaps indicating

that injuries are somewhat evenly distributed in the aggregate. Turning to the plaintiff success

model, the results demonstrate that plaintiffs win medical negligence claims less often and

uninsured motorist claims more often across the five states. However, the results for the

combined award model show that plaintiffs in Alabama, Hawaii, Indiana, Kentucky, and

Tennessee receive greater compensation when successfully pursing fraud, products liability, and

medical malpractice cases. Additionally, the plaintiff success model indicates that plaintiffs win

significantly less often when seeking compensation for an emotional injury, broken bones, and

death. Yet, the award model further confirms that juries in all five states give larger awards to

successful plaintiffs alleging concrete and severe physical injuries. Plaintiffs receive greater

compensation when successfully pursing claims for injuries resulting in surgery, death, and broken bones.

Table 4.13 reports predicted percent pro-plaintiff verdicts, predicted plaintiff success rates, and predicted logged awards for the combined models examining verdicts in Alabama, Hawaii, Indiana, Kentucky, and Tennessee in 2009, holding all other variables constant at the means. The predicted percent pro-plaintiff verdicts demonstrate that institutional variables shape the overall pro-plaintiff tendencies of the circuits. The model predicts that circuits which rely on comparative fault standards will generate more pro-plaintiff verdicts and damage caps will produce pro-plaintiff verdicts about 56% of the time. On the other hand, only about 42% of verdicts favor plaintiffs in circuits that utilize nonpartisan elections to retain judges. Additionally, the plaintiff success model predicts that plaintiffs will prevail under comparative fault standards about 57% of the time. The findings indicate that institutional arrangements significantly shape jury decision-making.

The predicted percent pro-plaintiff verdicts in all of the circuits support the theory that aggregate patterns of jury verdicts reflect the social, political, and economic composition of the circuit, providing considerable support for the hypothesis that jury verdicts reflect community preferences. Moving from the smallest black population in the circuit to the greatest percent black, increases the predicted percent pro-plaintiff verdicts by 13.1%. Economic conditions in the circuit, as measured by the percent unemployed also substantially shape verdicts. At the least percent unemployed, the models predict that about 44% of verdicts will favor plaintiffs. On the other hand, the model predicts that communities with the most unemployed residents will issue pro-plaintiff verdicts in about 67% of cases, an increase of almost 23%. Predicted pro-plaintiff verdicts for all circuits also increase with the retirement age population. The model predicts that

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Table 4.13 Predicted Percent Pro-Plaintiff Verdicts, Plaintiff Success, and Awards (Alabama, Hawaii, Indiana, Kentucky, and Tennessee 2009)

Variable	Predicted Percent Pro-Plaintiff	Predicted Plaintiff Success	Predicted Log Award
Institutions (model 1)			
Comparative Fault	55.7%	57.2%	N/S
Damage Caps	55.6%	N/S	N/S
Nonpartisan Elections	41.7%	N/S	N/S
Circuit Demographics (model1)			
Least Percent Black	48.5 %	N/S	N/S
Greatest Percent Black	61.6%	N/S	N/S
Least Percent Unemployment	43.7 %	N/S	N/S
Greatest Percent Unemployment	66.5 %	N/s	N/S
Least Percent 65 and Over	46.9 %	N/S	N/S
Greatest Percent 65 and Over	59.2 %	N/S	N/S
Least Percent College	76.8 %	N/S	N/S
Greatest Percent College	50.8%	N/S	N/S
Democratic Vote (model 2)			
Least Percent Democratic Vote	46.3%	45.1 %	N/S
Greatest Percent Democratic Vote	61.8 %	67.2 %	N/S
Attorney Advantage (model1)			
Least Attorney Advantage	48.0 %	24.7 %	7.8
No Advantage	52.3 %	54.1%	10.6
Greatest Attorney Advantage	57.7 %	76.7 %	12.8
Litigant Status (model 1)			
Individual v Individual	N/S	N/S	10.1
Individual v Government	N/S	32.9 %	N/S
Individual v Other Defendant	N/S	N/S	N/S
Case Issues and Injuries (model 1)			
Medical Malpractice	36.3 %	27.6 %	12.6
Death	N/S	39.0 %	13.5

*Logged awards range from 4.60 to 18.9; the average logged award is 10.7.
Missing values in the table represent non-significant variables in the original model.
All predicted probabilities are significant at the 0.5 level.

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46.9% of verdicts will favor plaintiffs in circuits with the smallest retirement age populations, while circuits most inhabitants 65 and over will support plaintiffs 46.9% of the time, an increase of about 12%. Finally, the predicted percent pro-plaintiff verdicts decrease from about 76.8% for least college educated circuits to 50.8% for the most highly educated circuits.

The predicted percent pro-plaintiff verdicts also demonstrate that circuits with larger Democratic populations generate more pro-plaintiff verdicts. The model predicts that 46% of the verdicts will favor plaintiffs in circuits with the least Democratic populations, while 62% of verdicts will favor plaintiffs in the most Democratic circuits. Additionally, the plaintiff success model predicts that an individual plaintiff will win about 45% of the time where the Democratic presidential candidate received the least percent of the vote and win about 67% where the Democratic candidate received that largest vote share.

Next, the attorney advantage variable indicates a substantial positive benefit for plaintiffs both on the predicted percent pro-plaintiff in the circuit, the likelihood that the plaintiff wins and the size of the award. The predicted percent pro-plaintiff verdicts in the circuit increase from 48% for the least advantaged plaintiffs to about 58% for the most advantaged plaintiffs. The plaintiff success model predicts an even greater increase for the change in plaintiff success rates. The model predicts that the least advantaged plaintiff will win about 25% percent of the time, while the plaintiff with the greatest advantage wins about 77% if the time, an increase of about 52%. When evenly matched, the models predict that plaintiffs and defendants are nearly equally likely to prevail.

Logged awards for all states range from 4.60 to 18.9 with an average award of 10.7. The predicted awards shows that the least advantaged plaintiffs, when successful, receive a below average award, while plaintiffs with the greatest representational advantage receive above

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average awards. The predicted probabilities for the combined models produce considerable evidence that legal representation substantially influences plaintiffs' likelihood of success and increases the amount successful parties receive. Turning to litigant resources and status, the plaintiff success model predicts that individual plaintiffs will win suits challenging the government only about 33% of the time, and the award model predicts that individual plaintiffs receive below average awards when they win when challenging another individual.

Finally, the predicted probabilities for medical malpractice cases and cases in which the plaintiff seeking compensation for death indicate that juries across states respond similarly to these case facts. The plaintiff success model predicts that plaintiffs win medical malpractice cases only about 28% of the time and death cases bout 39% of the time. However, when successful, the award model predicts that plaintiffs will receive above average awards.

Summary and Discussion

Table 4.14 summarizes the results for the key independent variables and reports the direction of the effect of each significant independent variable on the plaintiff's likelihood of success and the size of the award for each state. Comparing the results for the effect of community composition and awards across states suggests that the demographic composition of the circuit predicts winners and losers and awards, substantiating the notion that community preferences affect jury verdicts. The percent Democratic vote in 2008 Presidential election provides the most consistent indicator of jury verdicts across states, indicating that population liberalism plays a critical role in trial courts dispute resolution and resource allocation functions. However, the results also suggest different patterns of decision-making in response to circuit demographic across the states. When compared to Alabama, circuit demographics and citizen ideological preferences seemingly matter less in Indiana, Kentucky, and Tennessee.

Additionally, the circuit characteristics that positively affect plaintiff success rates and awards in one state negatively affect awards in other states. The results could indicate that the community composition affects jury verdicts differently across circuits and states. If different community features or varying social and political cleavages affect how juries in one community perceive fair dispute resolution and compensation, then jury verdict should reflect those differing values. For example, the results could imply that race may play a more critical role in community debates in Alabama than the other states. Yet, the results should be interpreted with caution. At this time I possess data for only the 2009 legal calendar in Hawaii, Indian, Kentucky, and Tennessee, which accounts for relatively few observations in many circuits in those states. Perhaps, more consistent effects of community composition would emerge in an investigation over a greater time period. However, overall, the analyses support Anti-Federalists' assertions that civil jury verdicts reflect local community preferences.

The analyses also demonstrate that possessing an advantage in representation clearly benefits plaintiffs. Although the effect of an attorney advantage appears in the plaintiff success model for some states and in the award model for others, the attorney advantage variable exhibits a consistent positive benefit for plaintiffs in every state. On the other hand, Alabama juries appear more responsive to litigant status than juries in the other states. However, the results overall suggest that the government achieves higher success rates than other litigants, and jurors assess smaller damage awards against individual defendants than business defendants. Additionally, judicial ideology seems to exhibit some influence on jury verdicts in Indiana and Tennessee, suggesting that judges can transmit their ideological preferences to jurors. Yet, in Alabama where judges also stand for reelection in partisan elections, I find no effect of judicial ideology. Although it is too soon to make definitive conclusions, my fieldwork in Alabama

might shed some light on this apparent contradiction. Alabama judges in one circuit state that the Alabama Bar Association recommends three lawyers as possible candidates to fill vacancies on the bench in that circuit (but not all circuits utilize this process), of which the sitting governor selects one. That judge will then run under the partisan label of the governor that selected him or her. Furthermore, judges typically run in competitive elections only in open-seat races. The judges indicate that where constituencies lean heavily in one partisan direction, the real election occurs during the primary, and judges run under the most favorable partisan banner. Both the processes of selecting judges to fill midterm vacancies in some Alabama counties and one-party dominated, largely uncontested races might result in judges running under incongruent partisan labels. Although future research is necessary to explain the variation across states in the influence of judicial ideology, the results imply a greater congruence between partisan identification in Indiana and Tennessee than in Alabama. However, while preliminary, the findings also suggest that a relationship between judges' preferences and jury verdicts does exist.

The results also demonstrate a consistent pattern of jury decision-making with regard to medical malpractice cases. Despite tort reformers' concerns that juries sympathize with plaintiffs in medical malpractice cases, the results show that plaintiffs prevail less often in medical malpractice cases in Alabama, Indiana, Kentucky and Tennessee. However, when plaintiffs win medical malpractice cases, juries give more generous compensation, suggesting an incentive for plaintiffs' lawyers to take medical malpractice cases despite the low probability of success. The large awards successful plaintiffs receive also provide a reason for medical professionals to continue to push for medical malpractice reform. The results for Alabama, Indiana, and Kentucky also exhibit a similar pattern for cases involving a death; plaintiffs prevail less often but receive greater compensation when they do.

However, the combined models provide evidence that institutional arrangements partially explain differences across states, supporting Federalists' assertions that state variation in civil justices systems leads to variability in outcomes. The type of fault standard states apply, the use of damage caps to limit defendants' potential liability, and the type of judicial retention mechanism utilized all significantly influence the probability that juries support plaintiffs, suggesting that how states shape the rules plays a critical role in the decision-making process. The combined models also show that the ability of plaintiffs to obtain better representation than the defense plays a critical role in shaping plaintiffs chances of success before juries as well as altering plaintiff's ability to garner compensation. Yet, despite differences across states and circuits, the combined models indicate that juries in Alabama, Hawaii, Indiana, Kentucky, and Tennessee respond similarly to medical malpractice cases and give larger awards to more seriously injured parties.

Conclusion

This research utilizes a comprehensive database and interviews to develop and test a theoretical model of civil trial court decision-making and provides important insights into the continuing debate regarding the merits of the civil jury system with implications for academic theory, the tort reform debate, and future research. The data utilized in this study provide the first comprehensive, multi-state database of civil jury verdicts in political science. Collecting these data allow me to examine the distribution of cases, plaintiff success rates, and awards within and across states. Drawing on the rich theoretical discussions regarding the virtues of civil juries, beginning with the ratification debates, I develop and test an empirical model of civil jury decision-making to ascertain whether or not jury verdicts vary in predictable ways across circuits and states. My quantitative analyses and qualitative investigations indicate that the social, political, and economic context of the circuit as well as state institutional features predict patterns of winners and losers, while case issues and injuries more strongly influence awards. Overall, the results provide considerable support for the hypothesis that community preferences shape trial courts' dispute resolution and resource allocation functions. Additionally, I find substantial evidence that civil litigation outcomes vary considerably from one jurisdiction to the next.

At the time of the ratification, Federalists' objected to a constitutional protection of civil juries, because Federalists believed that civil juries issue inconsistent verdicts and that states would employ disparate civil justice systems, resulting in a precarious and unpredictable legal system. Conversely, Anti-Federalists saw civil juries as important institutions of local government that allow citizens to settle disputes based on community values. Results comparing jury verdicts in Alabama, Hawaii, Kentucky, Indiana, and Tennessee provide support for

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Federalist apprehensions regarding disparate systems and outcomes and Anti-Federalists assertions that civil juries constitute an important mechanism of home rule.

If, like the Federalists, one values consistency in the legal system, this study provides considerable room for concern. Outcomes for participants in civil litigation vary across jurisdictions both within and across states. Additionally, states utilize different mechanisms for selecting jurors and judges, determining fault, and limiting damages, providing considerable evidence of the lack of uniformity that the Federalists feared. The results also demonstrate that both community preferences and state institutional features significantly affect litigation outcomes. Although the results for community composition vary across states, quantitative analyses indicate that the racial composition, economic conditions, population age, educational attainment, the rural/urban nature of the circuit, and the overall liberalism or conservatism of a circuit predict the circuit's pro-plaintiff tendencies, indicating that civil trial courts, like other political institutions, respond to local social, political, and economic conditions.

Furthermore, states employ dissimilar institutional arrangements which in turn lead to variability in outcomes. Plaintiffs prevail at higher rates where states utilize comparative fault standards and damage caps, while nonpartisan elections appear to decrease plaintiff success rates, demonstrating that disparate institutional arrangements across states lead to dissimilar outcomes for litigants. Comparative fault liability standards allow plaintiffs to prevail even in cases in which the jury determines that the plaintiff contributed to his or her own injury; thereby, boosting plaintiff success rates over states that apply the contributory negligence standard which negates the defendant's liability when the plaintiff contributed to the alleged injury. Although damage caps limit the defendant's possible financial liability to a statutory maximum, this reform seems to increase the probability that plaintiffs win, signifying that altering the amount of

damages a successful plaintiff may receive also alters the liability decision. This result could suggest that limiting the maximum award a plaintiff may receive lowers the liability threshold. On the other hand, limiting the plaintiff's maximum award presumably shapes pre-trial decision-making. Limiting the maximum award might encourage less contentious cases involving less severe injuries to settle prior to trial. The models provide only preliminary evidence that judicial selection and retention mechanisms influence outcomes in civil trials, but plaintiffs appear to garner greater support from juries presided over by judges retained through nonpartisan elections. The results suggest that judges influence the jury decision-making process and that the judicial retention mechanisms utilized conditions that relationship. These results support Federalists' assertions that varying institutions across states leads to inconsistent outcomes.

Yet, if one views civil juries through the Anti-Federalist lens as important mechanisms of local government that facilitate home rule and quintessentially reflect community preferences, then variability across states and circuits confirms that the civil jury system works correctly. Additionally, this study provides evidence that civil juries are significant political institutions that make decisions that appreciably affect individuals, businesses, and government. Civil trial courts settle disputes involving millions of dollars annually and often evaluate serious physical and nonphysical injuries. Although Latin (1993) argues that civil juries rarely solve cases involving important social issues, the typical civil trial involves an individual plaintiff seeking to hold a business or government entity accountable for an alleged injury. More so than appellate courts, trial courts routinely settle disputes between haves and have-nots, fulfilling a vital societal role currently provided by few other outlets. While this research does not resolve the debate, it provides room for both comfort and unease depending on one's normative evaluation of the civil jury system.

However, though plaintiff success rates vary across states and circuits with circuit socioeconomic conditions and institutional variation, the award models demonstrate less sensitivity to both circuit composition and institutions. When determining compensation, juries appear most sensitive to the type of case and the type injury. While variation in plaintiff success rates across states and circuits largely confirms Federalists' fears, those seeking consistency can take comfort from that fact that juries' awards consistently respond to injury severity with more seriously injured parties receiving greater compensation. Unlike plaintiff success rates, jury awards across states and circuits demonstrate far greater consistency than opponents would suggest. Taken together the findings suggest that civil jury decisions reflect local community preferences and vary with institutional arrangements; however, juries' awards evidence a consistently high correlation between injury severity and the amount awarded.

Beyond the debate regarding the merits of civil juries, this study also generates important insights into judicial politics theory. I rely on prior political science and trial court research to develop and test a theoretical model of trial-court decision-making. The theoretical model predicts that communities' socioeconomic and political composition, litigant resources and status, institutions, judicial ideology, and cases facts impact civil jury decision-making both in terms of dispute resolution and resource allocation. The analyses provide at least some support for each element of the theoretical model and present a foundation for future investigations of trial courts as political institutions.

The first component of the theoretical model suggests that the social, political, and economic makeup of a community shape the verdicts juries render. Most studies of civil jury decision-making investigate the influence of individual juror traits on jury verdicts and produce inconsistent results across studies. While individual juror traits might affect the outcome of

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particular trials, my results show that jury verdicts reflect the larger social, political, and economic conditions in a circuit, regardless of the composition of any particular jury. Unlike previous research which looks for a direct link between the particular individuals on a jury and the jury's verdict, the findings of this research imply that civil jury verdicts are a product of broad societal influences.

The second component of the theoretical model asserts that litigant resources and status affect the probability that the plaintiff wins and the size of the award that success plaintiffs receive. Although Galanter's (1974) original thesis regarding the influence of litigant resources on litigation outcomes originally referred to trial courts, scholars have largely investigated his theory in the context of appellate courts. This study represents one of the first to examine the effect of litigant resources on trial court outcomes. As Galanter predicted, the analyses demonstrate that the parties' legal representation constitutes a key aspect of litigant resources. The models utilize a new measure of representational advantage that subtracts the number of plaintiff attorneys from the number of defense attorneys. Theoretically, this variable captures at least two aspects of resources, the size of the firm the lawyer belongs to and the human capital invested in each case. The new measure provides a concrete indicator of the relative resources of each party beyond simply relying on litigant status as previous studies have done. Empirically, the data show that plaintiffs reap considerable benefits when they possess a representational advantage. In every state the attorney advantage variable achieves statistical significance in either the plaintiff success or the award model. The findings show that individuals, Galanter's prototypical one-shotters and the plaintiffs in 88% of trials, may hire quality representation and win at correspondingly higher rates, at least in certain circumstances. Future research should further examine the influence of legal representation on outcomes in trial courts. Perhaps, an

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investigation of the effect of firm size on attorneys' and litigant's success rates could better capture advocate resources.

The results in Alabama and the combined models also indicate that juries respond to litigant status. In Alabama and in the combined models, individuals win less often when challenging the government. The results confirm that studies finding a considerable advantage for government in appellate courts may be generalized to trial courts. Furthermore, the results in Alabama show that juries award plaintiffs larger verdicts against business defendants than any other litigant class, and the combined models demonstrate individual plaintiffs receive lower awards when challenging another individual than when challenging a business. The analyses provide support for the "deep pockets" hypothesis; juries appear to award larger damages against defendants with greater perceived wealth. The results for Indiana, Kentucky, and Tennessee evidence less sensitivity to litigant status; however, data over a greater time period is necessary to fully corroborate this finding.

Although judicial politics scholars ascribe a considerable role to judges in determining outcomes in appellate courts, political scientists and scholars of civil courts have devoted little attention to the possible effect of trial judges on jury verdicts. This study is also one of the first to investigate a possible link between civil jury verdicts and judicial ideology. Admittedly, measuring the influence of trial judges on jury verdicts presents a difficult task for researchers, since juries deliver the final verdict. Yet, trial judges might influence juries through their courtroom demeanor, rulings on evidence and procedure, and issuance of jury instructions. Despite the indirect relationship between judicial ideology and jury verdicts, the analyses provide at least preliminary support for a connection between jury verdicts and judicial ideology. While the influence of judicial ideology, as measured by judges' partisan identifications, appears

to impact civil jury verdicts in some states and not in others, this research provides preliminary

evidence that judges' rulings and courtroom demeanor can affect juries' evaluation of litigants'

claims. Results for Indiana and Tennessee both confirm that juries' awards increase when a

Democratic judge presides over the trial. Additionally, the findings in Tennessee also support a

link between judicial and citizen ideology; juries presided over by Democratic judges issue even

larger awards where the local community votes more liberally in presidential elections. The

findings could indicate an electoral link between judges and citizen preferences. Judges in

liberal communities might seek to vote in a manner consistent with their electorate.

Additionally, the results might also provide support for a direct link between judicial ideology

and public opinion; liberal populations generate more liberal juries and elect more liberal judges.

     Conversely, the lack of an influence of judicial ideology on jury verdicts in Alabama

could indicate that trial judges actually influence that settlement process more than the final

verdict, or that measures of judicial ideology, developed for appellate courts, are not sufficient

for capturing the ideological dispositions of trial judges. Furthermore, utilizing judges' partisan

identifications as a measure of judicial ideology provides only a blunt distinction between judges

and prevents an examination of judicial ideology in states or circuits that utilize nonpartisan,

retention, or appointment systems. Yet, my results suggest that trial court research that ignores

the influence of judicial ideology, omits a potentially important variable. Future research should

include measures of judicial ideology in models of trial court decision-making. Additionally,

scholars should develop better measures of trial judges' ideological dispositions in order to

create more nuanced measures of ideology and properly incorporate judicial ideology into

models of trial court behavior.

Furthermore, scholars studying state supreme courts maintain that judicial selection and retention mechanism substantially affect outcomes on state appellate courts. In particular, researchers observe that judicial selection and retention mechanism alter judges' behavior on the bench which in turn influences litigation outcomes on states supreme courts. Since scholars of trial courts focus their attention almost exclusively on jurors without examining the influence of judges, previous research fails to examine the possibility that jury verdicts vary across judicial selection and retention mechanism. If trial judges alter their behavior in response to the judicial retention mechanism utilized in the state or circuit, evidence of judges' altered behavior might emerge in varying patterns of jury decision-making. The combined models for Alabama, Hawaii, Indiana, Kentucky, and Tennessee provide foundational evidence that outcomes in civil trial courts vary depending on how states retain judges. Juries render more pro-plaintiff verdicts when judges retained in nonpartisan elections preside over the trial than when presided over by judges retained in partisan elections. Perhaps, the findings could imply that judges retained through partisan elections feel greater pressure to support businesses that typically serve as defendants in most trials and that supply a large source of campaign contributions. Despite the preliminary nature of these findings, the analyses suggest that future research should examine a larger number of states and observations to better understand the relationship between judicial selection and retention mechanisms and outcomes in civil litigation.

The final component of the theoretical model maintains that the type of case and the issue alleged predict plaintiff success rates and award amounts. The analyses confirm that the type of case in which litigants participate and the plaintiffs' alleged injury predict the winner and the amount of compensation. Comparing the dockets in Alabama, Hawaii, Indiana, Kentucky, and Tennessee shows that auto negligence and medical malpractice occupy the majority of civil trial

court's workloads. Yet, plaintiffs achieve higher success rates in automobile negligence case than in medical malpractice, but successful plaintiffs receive greater compensation in medical malpractice claims. Through the use of jury simulations Hans (2008) observes that the term "soft tissue injury" is often ambiguous to jurors, and jurors perceive whiplash and other soft tissue injuries as quintessentially phony claims. Like Hans and other researchers, I find that when compared to soft tissue injuries, plaintiffs alleging more severe and concrete injuries receive greater compensation (Bornstein 1998; Bovbjerg et al 1989; Chin and Peterson 1985; Greene and Bornstein 2003). Overall, the results confirm Sak's (2002) assertion that models of civil jury decision-making must control for case facts and alleged injuries.

While this research makes no specific policy recommendations, the analyses provide important insights into the ongoing tort reform debate. First, although much of the current tort reform debate revolves largely around medical malpractice suits, my quantitative and qualitative research strongly indicates that plaintiffs prevail less often in medical malpractice cases. In all five states plaintiffs win medical malpractice cases relatively rarely compared to other issue areas. Even in Indiana where a medical review board presumably filters weaker cases prior to trial, juries consistently find in favor of defendants in medical malpractice cases. While suits in which the defense wins are certainly not without cost, the medical profession appears to currently benefit from considerable protections. Yet, when successful, plaintiffs involved in medical malpractice cases receive the largest awards, but these cases also tend to involve seriously injured parties. Furthermore, while reformers, like the ATRA, accuse juries of delivering "emotion-filled" verdicts, the results indicate that the most seriously injuries plaintiffs, including those seeking compensation for a death, actually prevail less often, suggesting that in reality, juries evaluate defendant's liability for the most serious claims quite critically. Whether

or not the medical community requires further protections from legal liability remains an issue

for policy makers; however, the results indicate that plaintiffs rarely win these suits and receive

compensation in proportion to the severity of their injuries when they do.

Although tentative, the results also suggest that damage caps, a popular tort reform

utilized to limit defendants' potential liability, might actually lead to unintended consequences.

The analyses indicate that plaintiffs actually prevail more often where states cap the total damage

awards successful plaintiffs receive. If limiting the total amount successful plaintiffs receive

actually lowers the threshold for the liability decision, damage caps might limit the award in each

individual case but unintentionally open defendants to greater economic liability overall as

plaintiff success rates increase.

Although I find considerable support for the hypothesis that civil juries function as

political institutions whose verdicts reflect the larger social, economic, and political conditions in

the circuit, several limitations must be acknowledged. First, although the data collected provide

a more comprehensive database than any data source currently available, this study, like others,

suffers from data limitations. Although the states under study provide considerable variation at

the sub-state level and on state institutional variables, this research only examines five states, and

these five states might not adequately represent the entire nation. The analyses in Hawaii,

Indiana, Kentucky, and Tennessee are also limited, because I possess data for only one year,

making conclusions about these courts are tentative. Furthermore, while my findings

demonstrate that jury verdicts reflect the larger demographic and political context of a circuit, an

ideal model of civil jury decision-making would incorporate individual juror characteristics.

Unfortunately, courts keep jurors identities confidential and do not make juror's demographic

statistics available, preventing such an analysis. Also, states utilize different mechanisms for

determining eligible jurors, circuits enforce juror summons with varying stringency, and judges differentially monitor the extent to which lawyers illegally strike jurors during *voir dire*, making any assessment of jury representativeness in comparison to the population at large extremely difficult. Additionally, although I qualitatively investigated the settlement process in Alabama, I am unable to explore the settlement process quantitatively based on post-trial data. Given that lawyers strategically determine which cases to settle prior to trial (Priest and Klein 1984; Waldfogel 1995), attorneys likely utilize circuit demographics when calculating the settlement decision. Thus, circuit composition might produce an even greater effect on settled cases. Furthermore, trial judges directly make numerous decisions that influence trial outcomes during the pre-trial phase, creating considerable room for judicial ideology to influence the litigation process. Unfortunately, I am also unable to test the hypothesis that judges' ideological dispositions impact the settlement decision with these data. Despite these limitations, this study provides considerable insight regarding the factors that influence outcomes in civil litigation and advances both theory and policy debates regarding civil jury decision-making.

Future Research

In the end, the debate over the merits of the civil jury and the need for tort reform continues. Unfortunately, much of the deliberation relies on limited empirical evidence. While this study provides new insight into a number of issues regarding civil jury decision-making, there is still much we don't know. Future investigations of civil jury verdicts could benefit considerably from a deeper examination of the relationship between judges and jury verdicts. How do judges communicate their preferences to jurors? A continuous measure of judicial ideology at the trial court level that allows for greater distinction between judges' liberal and conservative preferences could potentially shed considerable light on this subject. Additionally,

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future research should further explore the connection between judicial retention mechanism and trial judges' behavior. How do trial judges respond to judicial retention mechanism, and how does their response affect jurors' decision-making? Future research should incorporate more states utilizing nonpartisan, retention, and appointment systems. Furthermore, the overwhelming influence of legal representation on litigation outcomes indicates a need to more fully explore the relationship between the quality of legal representation and jury verdicts. Future research should develop additional measures of representational quality and lawyer's resources in order to more fully understand this relationship.

In terms of the policy implications of civil litigation outcomes, upcoming research must directly address the tort reform issue with comprehensive data over time. Supporters and opponents of tort reform make numerous claims about the implications of civil jury verdicts, but both rely largely on normative evaluations and limited empirical evidence. How have tort reforms reshaped the civil jury system in states that have enacted them? Furthermore, tort reformers claim the jurisdictions that consistently award large damages against business defendants hinder economic growth; yet, little empirical evidence supports or refutes this claim. Future investigations of civil litigation should explore the link between jury verdicts and local economic growth. Tort reformers also argue that large damage awards assessed to insurance companies increase insurance premiums at the detriment of consumers. However, this assertion, like other claims about civil litigation, rests on limited objective evidence. Hopefully, this study will contribute to an expanded investigation of civil jury decision-making, so that scholars and policy makers can base future discussions regarding civil juries on firmer empirical evidence.

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Judge Questionnaire

Demographic Information
Age____
Race____
Sex____

Practitioner Questions
How long have you served as a circuit court judge for the Nth Circuit?

What did you do prior to becoming a circuit court judge?

Do you have experience outside of the county?

       (a) If so, do you find differences between this circuit and the previous circuit?

Judicial Elections
Judges I've talked to in X county tell me that there is more electoral competition in X than in Y county.

Do you perceive that as true?

If so, how does that affect the electoral process in X?

Do you support judicial elections?

Pre-trial procedure
How do you use mediation?

Post trial procedure
What are the steps leading up to a judgment?

When would you adjust or a jury's award?

Are there certain case types or verdicts that are more likely to receive appellate review?

Perception of Litigants
Do you think juries in the county are biased? For plaintiffs or defendants?

Would you support some kind of tort reform?

       (a) If so, what kind?

How well do juries in Mobile represent the population as a whole?

Do you think that economic conditions influence jury verdicts? For example are awards higher in economically disadvantaged areas?

How much influence do judges have on trial outcomes?

Follow Up
Is there anything that I didn't ask about the process of filing and taking a civil case to trial that you think I should know?

If I have additional questions in the future, would it be possible for me contact you?

Attorney Questionnaire

Demographic Information
Age____
Race____
Sex____

Occupation Information
Plaintiff Attorney_____
Defense Attorney_____

Practitioner Questions
You currently work as a plaintiff/defense attorney, do you specialize in a particular type of litigation?

      (a) How long?

      (b) Have you ever worked as a plaintiff/defense attorney?

      (c) If so, what is the biggest difference between the two?
Do you think defense attorneys typically have greater resources than plaintiff attorneys?

How many attorneys work at your office/firm?

Do you think attorneys at large firms have more resources than single practitioners or small firms?

Describe your typical client.

Judicial Elections
Do you support judicial elections?

Do you think judicial elections influence the litigation process?

If yes, how so?

Perception of Litigants
Do you think juries in the circuit are biased? For plaintiffs or defendants?

Would you support some kind of tort reform?

      (a) If so, what kind
How well do juries in the circuit represent the population as a whole?

What type of case do you think you are most likely to win in the circuit?

What type of case are you least likely to win?

What factors do you consider when deciding to take a case to trial rather than settle?

Do you think that economic conditions influence jury verdicts? For example are awards higher in economically disadvantaged areas?

How much influence do judges have on trial outcomes?

Are there differences between trying cases in Circuit 1 vs. Circuit 2?

Follow Up

Is there anything that I didn't ask about the process of filing and taking a civil case to trial that you think I should know?

If I have additional questions in the future, would it be possible for me contact you?

Questionnaire for Court Clerk

Procedural Questions

How long have your served as the court clerk?

Tell me about your typical job duties.

What is the procedure for filing a case?

What percent of cases would you say typically settle before trial?

How long does it typically take for a case to go to trial from the time the case is filed?

How are judges assigned to cases once they have been filed?

What is the procedure for moving a case to a circuit other than circuit where originally filed?

Are certain types of cases more likely to be moved than others?

What is the procedure for filing an appeal?

In automobile cases, the court records indicate that insurance companies "opt out" of litigation. How does opting out work?

Jury Selection

How are jurors selected?

In county, what are the allowable reasons to get out of jury duty?

How is *voir dire* conducted in the county?

How does the process of jury selection affect the composition of juries?

Would you say juries in Mobile are representative of the population as a whole?

Is there anything about the process of filing and taking a civil case to trial that you think I should know?

If I have additional questions in the future, would it be possible for me contact you?

Appendix B, Variables and Coding

Judge and Attorney Variables

Democrat-Coded 1 if the judge's partisan ID is Democrat, and 0 otherwise

Plaintiff Attorney Advantage-The number of plaintiff attorneys minus the number of defendant attorneys

Institutional Variables

Comparative Fault (comfault)
Coded 1 if the state use comparative fault and zero otherwise.

Judicial Retention Method (retention)
Coded 1 for partisan elections.
Coded 2 for nonpartisan elections.
Coded 3 for retention elections.
Coded 4 for retention by committee.

General Issue

Auto Negligence-Coded 1 for cases involving an auto accident, and 0 otherwise

Uninsured/Under Insured Motorist-Coded 1 for cases involving uninsured/underinsured

motorist, and 0 otherwise

Premises Liability-Coded 1 for cases involving premises liability, and 0 otherwise

Medical Negligence-Coded 1 for cases involving medical negligence and 0 otherwise

General Negligence-Coded 1 for cases involving general negligence, and 0 otherwise

Product's Liability-Coded 1 for cases involving product's liability, and 0 otherwise

Fraud-Coded 1 for cases involving fraud, and 0 otherwise

Breach of Contract-Coded 1 for cases involving a breach of contract and 0 otherwise

Other Issue-Coded 1 for cases involving(Excessive Force, Employment Retaliation,

Outrage/Wantonness, Defamation/Libel, Assault/Battery, Trespassing/Nuisance, Discrimination,

Civil Rights, Sexual Harassment, Insurance Subrogation, Invasion of Privacy, Wrongful Death, Conversion), and 0 otherwise

Type of Injury- note, for cases involving more than one injury, the most severe was used

Soft Tissue-Coded 1 for cases involving scratches, bruises, whiplash, et., and 0 otherwise

Emotional/Mental-Coded 1 for emotional and mental injuries, and 0 otherwise

Death-Coded 1 for cases where the plaintiff died as a result of the incident, and 0 otherwise

Broken Bone-Coded 1 for cases in which the plaintiff broke a bone, and 0 otherwise

Surgery-Coded 1 for cases in which the plaintiff underwent surgery as a result of the incident, and 0 otherwise

Slip and Fall-Coded 1 for cases involving a slip and fall, and 0 otherwise

Monetary Loss-Coded 1 for cases involving a monetary loss, and 0 otherwise

Property Loss/Damage-Coded 1 for cases involving a property loss or damage, and 0 otherwise

Other Injury-Coded 1 for cases involving (Disfiguration, Consortium, Laceration, Loss of Limb, Fetal Injury, I

Demographics

%Percent Black

%White

% Unemployment

% 65 and Over

% College Educated

Percent Democratic Vote-Percent of the popular vote for the Democratic candidate in the 2008 general election, obtained from state elections returns available online through the secretary of state in each state.

Index-The summed deviations from the state median for unemployment, percent white, percent

black, percent 65 and over, percent farmers, and percent college educated; scale so that higher

values indicate pro-plaintiff community features

Alabama Circuits

1. Choctaw (Clarke, Washington)
2. Butler (Crenshaw, Lowndes)
3. Barbour (Bullock)
4. Dallas (Bibb, Hale, Perry, Wilcox)
5. Randolph (Chambers, Tallapoosa, Macon)
6. Tuscaloosa
7. Calhoun, Cleburne
8. Morgan
9. DeKalb, Cherokee
10. Jefferson
11. Lauderdale
12. Coffee, Pike
13. Mobile
14. Walker
15. Montgomery
16. Etowah
17. Greene, Sumter, Marengo
18. Shelby
19. Autauga (Chilton, Elmore)
20. Houston (Henry)
21. Escambia
22. Covington
23. Madison
24. Pickens (Lamar, Fayette)
25. Marion, Winston
26. Russell
27. Marshall
28. Baldwin
29. Talladega
30. St. Clair
31. Colbert
32. Cullman
33. Dale, Geneva
34. Franklin
35. Monroe (Conecuh)
36. Lawrence
37. Lee
38. Jackson

39. Limestone
40. Clay, Coosa
41. Blount

Hawaii Circuits

12.1. First Circuit—O'ahu
12.2. Second Circuit—Maui, Moloka'i, Lana'i, Kaho'olawe, Molokini
12.3. Third Circuit—Hawai'i, 4th circuit merged into the 3rd circuit
12.5. Fifth Circuit—Kaua'i, Ni'hou

Indiana Circuits

14.1   Adams
14.2   Allen
14.3   Bartholomew
14.4   Benton (no superior court, circuit only)
14.5   Blackford
14.6   Boone
14.7   Brown (no superior court, circuit only)
14.8   Carroll
14.9   Cass
14.10 Clark
14.11 Clay
14.12 Clinton
14.13   Crawford (no superior court, circuit only)
14.14   Daviess
14.15   Dearborn/Ohio
14.16   Decatur
14.17   Dekalb
14.18   Delaware (no superior court, circuit only)
14.19   Dubois
14.20 Elkhart
14.21 Fayette
14.22 Floyd
14.23 Fountain (no superior court, circuit only)
14.24 Franklin (no superior court, circuit only)
14.25 Fulton
14.26 Gibson
14.27 Grant
14.28 Greene
14.29 Hamilton
14.30 Hancock
14.31 Harrison
14.32 Hendricks

14.33   Henry
14.34   Howard
14.35   Huntington
14.36   Jackson
14.37   Jasper
14.38   Jay
14.39   Jefferson
14.40   Jennings
14.41   Johnson
14.42   Knox
14.43   Kosciusko
14.44   LaGrange
14.45   Lake
14.46   LaPorte
14.47   Lawrence
14.48   Madison
14.49   Marion
14.50   Marshall
14.51   Martin (no superior court, circuit only)
14.52   Miami
14.53   Monroe (no superior court, circuit only)
14.54   Montgomery
14.55   Morgan
14.56   Newton
14.57   Noble
14.58   Ohio/Dearborn
14.59   Orange
14.60   Owen (no superior court, circuit only)
14.61   Parke (no superior court, circuit only)
14.62   Perry (no superior court, circuit only)
14.63   Pike (no superior court, circuit only)
14.64   Porter
14.65   Posey
14.66   Pulaski
14.67   Putnam
14.68   Randolph
14.69   Ripley
14.70   Rush
14.71   St. Joseph
14.72   Scott
14.73   Shelby
14.74   Spencer (no superior court, circuit only)
14.75   Starke (no superior court, circuit only)
14.76   Steuben
14.77   Sullivan
14.78   Switzerland (no superior court, circuit only)

14.79   Tippecanoe
14.80   Tipton (no superior court, circuit only)
14.81   Union (no superior court, circuit only)
14.82   Vanderburgh
14.83   Vermillion (no superior court, circuit only)
14.84   Vigo
14.85   Wabash
14.86   Warren (no superior court, circuit only)
14.87   Warrick
14.88   Washington
14.89   Wayne
14.90   Wells
14.91   White
14.92   Whitley

Kentucky Circuits

17.1   Ballard, Carlisle, Fulton, Hickman
17.2   McCracken
17.3   Christian
17.4   Hopkins
17.5   Crittenden, Union, Webster
17.6   Daviess
17.7   Logan, Todd
17.8   Warren
17.9   Hardin
17.10   Hart, Larue, Nelson
17.11   Green, Marion, Taylor, Washington
17.12   Henry, Oldham, Trimble
17.13   Garrard, Jessamine
17.14   Bourbon, Scott, Woodford
17.15   Carroll, Grant, Owen
17.16   Kenton
17.17   Campbell
17.18   Harrison, Nicholas, Pendleton, Robertson
17.19   Bracken, Fleming, Mason
17.20   Greenup, Lewis
17.21   Bath, Menifee, Montgomery, Rowan
17.22   Fayette
17.23   Estill, Lee, Owsley
17.24   Lawrence, Johnson, Martin
17.25   Clark, Madison
17.26   Harlan
17.27   Knox, Laurel
17.28   Lincoln, Pulaski, Rockcastle
17.29   Adair, Casey
17.30   Jefferson

17.31 Floyd
17.32 Boyd
17.33 Perry
17.34 Whitley, McCreary
17.35 Pike
17.36 Magoffin, Knott
17.37 Carter, Elliot, Morgan
17.38 Butler, Edmonson, Ohio, Hancock
17.39 Breathitt, Wolfe, Powell
17.40 Clinton, Cumberland, Monroe
17.41 Clay, Jackson, Leslie
17.42 Calloway, Marshall
17.43 Barren, Metcalfe
17.44 Bell
17.45 Muhlenberg, McLean
17.46 Breckinridge, Grayson, Meade
17.47 Letcher
17.48 Franklin
17.49 Allen, Simpson
17.50 Boyle, Mercer
17.51 Henderson
17.52 Graves
17.53 Shelby, Anderson, Spencer
17.54 Boone, Gallatin
17.55 Bullitt
17.56 Caldwell, Livingston, Lyon, Trigg
17.57 Russell, Wayne

Tennessee Judicial Districts

42.1 Carter, Johnson, Unicoi, Washington
42.2 Sullivan
42.3 Greene, Hamblen, Hancock, Hawkins
42.4 Cocke, Grainger, Jefferson, Sevier
42.5 Blount
42.6 Knox
42.7 Anderson
42.8 Campbell, Clairborne
42.9 Loudon, Meigs, Morgan, Roane
42.10 Bradley, McMinn, Monroe, Polk
42.11 Hamilton
42.12 Bledsoe, Franklin, Grundy, Marion, Rhea, Sequatchie
42.13 Clay, Cumberland, DeKalb, Overton, Pickett, Putnam, White
42.14 Coffee
42.15 Jackson, Macon, Smith, Trousdale, Wilson
42.16 Cannon, Rutherford

42.17 Bedford, Lincoln, Marshall, Moore
42.18 Sumner
42.19 Montgomery, Robertson
42.20 Davidson
42.21 Hickman, Lewis, Perry, Williamson
42.22 Giles, Lawrence, Maury, Wayne
42.23 Cheatham, Dickson, Houston, Humphreys, Stewart
42.24 Benton, Carroll, Decatur, Hardin, Henry
42.25 Fayette, Hardeman, Lauderdale, McNairy, Tipton
42.26 Chester, Henderson, Madison
42.27 Obion, Weakley
42.28 Crockett, Gibson, Haywood
42.29 Dyer, Lake
42.30 Shelby
42.31 Van Buren, Warren

Appendix C, Indiana Institutional Models

Table C.1 Plaintiff Success and Awards Indiana (2009)

Variables	Logit Coefficients for Plaintiff Success (1 if the Plaintiff wins & O otherwise)			Regression Coefficients for Logged Awards		
	Model 1	Model 2	Model 3	Model 1	Model 2	Model 3
Circuit Composition	b	b	b	b	b	b
% Black	0.02	------	------	-0.01	------	------
% Unemployed	0.001	------	------	0.05	------	------
% College	0.06	------	------	-0.01	------	------
% 65 and Over	0.24	------	------	-0.20	------	------
% Farming	-0.40	------	------	-0.90	------	------
2008 Democratic Vote	------	0.04**	------	------	-0.01	------
Index	------	------	0.01	-------	------	-0.01
Litigant Resources and Status						
Attorney Advantage	-0.08	-0.08	-0.10	0.35*	0.36*	0.38*
Individual v. Individual	-0.48	-0.61	-0.43	-0.90	-0.99	-0.87
Individual v. Government	0.73	0.48	0.67	-0.80	-0.88	-0.68
Individual v. Other Defendant	-0.01	-0.20	-0.35	-0.42	-0.41	-0.38
Institutions and Ideology						
Nonpartisan Elections	0.86	0.47	1.04	-0.81	-0.84	-0.51
Merit Elections	-0.16	1.11*	0.25	-0.10	-0.38	0.28
Decisions Per Circuit Year	0.02	0.01	0.02	0.002	0.01	0.01

* significant at the 0.05 level or higher   ** significant at the 0.01 level or higher

Table C.1 Continued

Variables	Logit Coefficients for Plaintiff Success Rate (1 is the Plaintiff wins & O otherwise)			Regression Coefficients for Logged Awards		
	Model 1	Model 2	Model 3	Model 1	Model 2	Model 3
Case Issues	b	b	b	b	b	b
Medical Negligence	-1.97**	-1.95**	-1.95**	1.86**	1.93**	1.92**
General Negligence	-1.30*	-1.33*	-1.33*	1.07	1.00	1.02
Premises Liability	-3.46**	-3.71**	-3.40**	0.66	0.51	0.75
Uninsured Motorist	-1.53	-1.58	-1.37	1.10	1.00	1.12
Fraud	------	------	------	------	------	------
Breach of Contract	-1.61	-1.57	-1.66	4.64*	4.33*	4.36*
Product Liability	-1.43	-1.33	-1.41	4.77**	5.78**	5.66**
Other Issue	-1.40*	-1.32*	-1.25*	0.24	0.31	0.27
Alleged Injuries						
Property Loss/Damage	-1.69	-1.75	-1.43	-1.05	-1.15	-1.01
Monetary Loss	-1.99	-1.61	-1.63	-3.05	-3.21	-3.07
Emotional Injury	------	------	------	------	------	------
Broken Bone	-2.92**	-3.09**	-2.74**	0.14	0.01	1.90
Death	-2.06*	-2.16*	-1.76*	2.18**	2.21**	2.11**
Accident Resulted in Surgery	-1.53*	-1.58*	-1.38*	2.40**	2.24**	2.41**
Slip and Fall	-0.91	-0.80	-0.76	-0.37	-0.29	2.27**
Other Injury	-1.16*	-1.12	-1.02	-0.43	0.30	0.31
Constant	-2.11*	-2.45*	-1.87*	12.48**	10.14**	8.80**

N =242   N =242   N =242   N=137   N=137   N=137
X^2 =85.05** X^2 =87.46** X^2 =82.19**

R^2 =52.7** R^2 =51.5** R^2=52.7**
F =4.50** F =5.21** F=5.25**

* significant at the 0.05 level or higher   ** significant at the 0.01 level or higher

Note: For the purposes of consistency all issue and injury variables are included in each model for all states, but some states lack sufficient observations in every category, preventing multivariate analyses. Missing issue and injury variables in the tables denote insufficient observations.

Appendix D, Letter of Permission

Community Preferences and Trial Court Decision-Making: The Influence of Political, Social, and Economic Conditions on Litigation Outcomes

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I am conducting dissertation research on the effects the local ecology, the local political, social, economic, and political conditions, on civil trial outcomes. As part of my research, I will be conducting interviews in Mobile with circuit clerk, local attorneys and judges, parties to civil suits, and jurors.

My research seeks to improve our general understanding of the civil trial process and the factors that predict jury verdicts. I will conduct in-depth, in-person interviews with legal practitioners and trial participants that have been involved in a civil trial between 2004 and 2009. Interview questions will cover interviewees' experiences with the civil trial(s) they have participated in and/or their relevant professional experiences. Interviews should last between 30 minutes and 1 hour. Most participants will only be interviewed once; however, I may make additional contacts for follow-up information. All participants also retain the right to refuse to participate in follow-up interviews.

All identities will be kept confidential. Additionally, to minimize any risk to interviewees, I will ask only questions about trials that have already concluded. Anyone contacted for an interview has the right to refuse to participate.

The Louisiana State University Institutional Review Board has approved this study. For Questions regarding participant rights, please contact the chair, Dr. Robert C. Matthews, 578-8692, or irb@lsu.edu.

Signing this form indicates that you consent to be interview.

Signature_____Date_____

Vita

Tao Lotus Dumas was born in Dallas, Texas, on June 30, 1979. She graduated from Thomas Jefferson High School in Port Arthur, Texas, in 1998. Tao completed a bachelor's degree in political science at Lamar University in Beaumont, Texas, in 2005 after surviving Hurricane Rita, which closed the university for nearly two months. She received a master of arts in political science from Louisiana State University in 2009 after successfully defending her comprehensive exams and surviving Hurricane Gustav. Tao will defend her dissertation during peak hurricane season and expects to receive her doctorate in philosophy in political science in December 2011. Tao's research interests include state trial and appellate courts, tort reform, comparative courts, and gender and judging. Her teaching interests involve constitutional law, judicial politics and process, American government, state and local government, and comparative courts.