



Department of Justice

Office of Justice Programs



ADVANCE FOR RELEASE AT 4:30 P.M. EDT
WEDNESDAY, AUGUST 17, 2005

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NUMBER OF FEDERAL TORT TRIALS FELL BY ALMOST 80 PERCENT FROM 1985 THROUGH 2003

WASHINGTON — The number of tort trials concluded in U.S. district courts declined by nearly 80 percent – from 3,600 trials in 1985 to fewer than 800 trials in 2003, the Department of Justice’s Bureau of Justice Statistics (BJS) announced today. Approximately nine out of 10 tort trials involved personal injury issues – most frequently, product liability, motor vehicle (accident), marine and medical malpractice cases. The percentage of tort cases concluded by trial in U.S. district courts has also declined from 10 percent in the early 1970s to 2 percent in 2003.

Although the annual number of tort cases handled by U.S. district courts has fluctuated since 1985 (averaging about 44,770 per year), the number of tort trials and the percentage of cases resolved by trial has steadily declined. The growing use of alternative dispute resolution as well as the increased complexity and costs inherent in taking a case to trial have been identified as contributing factors to the decline in the number of cases decided by a trial before a judge or a jury.

The estimated median damage awards (the amount at which half the awards are higher and half are lower) for plaintiffs who prevailed in tort trials concluded in 2002-2003 was \$201,000. The tort trial categories with the highest estimated median damage awards included medical malpractice (\$600,000) and product liability (\$350,000) cases.

The study examined tort cases completed by either bench or jury trials in U.S. district courts during fiscal 2002-2003 as well as trends in tort case and trial litigation since the 1970s. Tort cases involve plaintiffs claiming injury, loss or damage resulting from a defendant’s negligent or intentional acts.

The number of tort cases concluded in federal district courts each year, as measured by trial and non-trial cases closed, has varied from a high of 60,941 cases in 1999, to a low of 23,619 cases in 1976. In 2003, there were 49,166 tort cases completed in district courts. The changes in the tort caseloads reflected the strong influence of product liability cases. In 1999, for example, such cases accounted for 61 percent of all tort matters concluded, with large numbers of asbestos and breast implant cases driving the product liability caseload.

Case dispositions show the frequency with which tort matters are resolved by trial, settlement or alternative dispute resolution mechanisms. Settlements and other non-trial dispositions accounted for 98 percent of the 98,786 tort cases completed during the 2002-2003 period. A total of 1,647 tort cases (about 2 percent) were concluded by a bench or a jury trial.

The most common types of federal tort trials included motor vehicle accident (20 percent), product liability (13 percent), marine (10 percent) and medical malpractice (10 percent) cases.

Plaintiffs prevailed in nearly half (48 percent) of the tort cases completed by trial in 2002-2003. Plaintiffs won less frequently in tort trials involving medical malpractice (37 percent) and product liability (34 percent) issues.

During fiscal 2002-2003, juries decided about 71 percent of tort trials, while judges handled the remaining 29 percent. Plaintiffs prevailed more frequently in judge trials than in jury tort trials.

Non-asbestos product liability trials declined by about two-thirds from 1990 to 2003. During this period, plaintiffs prevailed in nearly a third of these trials. Since 1991, an average of five asbestos cases per year has been decided by a bench or jury trial in U.S. district courts.

The report, "Federal Tort Trials and Verdicts, 2002-03" NCJ-208713 was written by BJS statistician Thomas H. Cohen. Following publication, the document can be accessed at www.ojp.usdoj.gov/bjs/abstract/fttv03.htm.

Additional information about BJS statistical reports and programs is available from the BJS website at www.ojp.usdoj.gov/bjs.

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Bureau of Justice Statistics Bulletin

Federal Justice Statistics Program

August 2005, NCJ 208713

Federal Tort Trials and Verdicts, 2002-03

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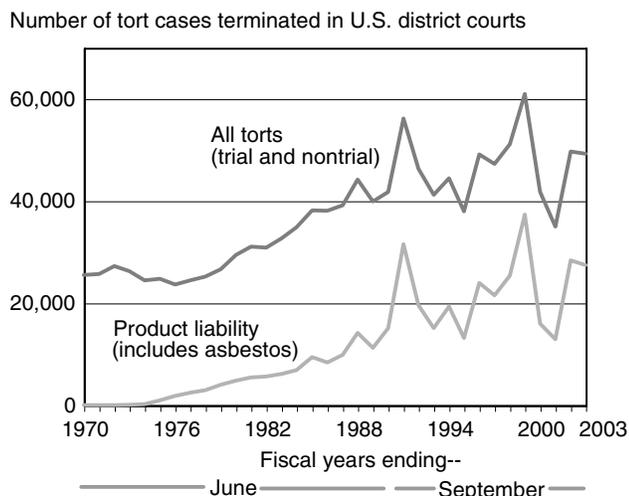
U.S. district courts terminated approximately 512,000 civil cases during fiscal years 2002-03. Nearly 20% or 98,786 of these cases were tort claims in which plaintiffs claimed injury, loss, or damage resulting from a defendant's negligent or intentional acts. Bench and jury trials accounted for about 2% (1,647) of tort cases terminated in U.S. district courts during this period.

From 1985 to 2003 the number of tort trials terminated in U.S. district courts declined 79%. Juries decided about 71% of tort trials in 2002-03, while judges adjudicated the remainder. Plaintiffs won in almost half of tort trials, and the estimated median award garnered by plaintiff winners in these trials was \$201,000. Personal injury claims comprised almost 90% of tort trials in U.S. district courts and property damage cases accounted for the remaining 10%. Almost two-thirds of tort trials were disposed of within 2 years of the filing date.

These are some of the findings from a report presenting data on tort cases decided by a jury or bench trial in U.S. district courts during fiscal years 2002 and 2003. Data for this 2-year period were combined to provide a larger number of cases for detailed analysis. Previously, the Bureau of Justice

Highlights

Changes in the tort caseloads of U.S. district courts primarily related to litigation involving asbestos and other product liability claims



- U.S. district courts terminated approximately 512,000 civil cases during fiscal years 2002-03. Nearly 20% or 98,786 of these cases were torts in which plaintiffs claimed injury, loss, or damage from a defendant's negligent or intentional acts.
- Of the 98,786 tort cases terminated in U.S. district courts in 2002-03, about 2% or 1,647 cases were decided by a bench or jury trial.
- An estimated 9 out of 10 tort trials involved personal injury issues — most frequently, product liability, motor vehicle (accident), marine, and medical malpractice cases.
- Juries decided about 71% of all tort cases brought to trial in U.S. district

courts; judges adjudicated the remaining 29%.

- Plaintiffs won in 48% of tort trials terminated in U.S. district courts in 2002-03. Plaintiffs won less frequently in medical malpractice (37%) and product liability (34%) trials.
- Eighty-four percent of plaintiff winners received monetary damages with an estimated median award of \$201,000.
- Plaintiffs won more often in bench (54%) than in jury (46%) tort trials. The estimated median damage awards were higher in jury (\$244,000) than in bench (\$150,000) tort trials.

Statistics (BJS) reported findings from a study of tort trials terminated in U.S. district courts during fiscal years 1994-95 and 1996-97.¹

This report focuses primarily on tort cases terminated by trial in U.S. district courts during fiscal years 2002-03 as well as trends in tort cases terminated in U.S. district courts since 1970. Analysis is limited to those cases terminated after the completion of a trial by jury or a trial before a district judge or magistrate judge. According to the Administrative Office of the U.S. Courts (AOUSC), a trial is considered complete when a verdict is returned by a jury or a decision is rendered by the court.² Jury or bench trials terminated before verdict or judgment were excluded from this analysis. Tort cases that were settled, dismissed, or disposed through summary judgment in the Federal district courts were not reported.

In previous publications BJS has reported on civil litigation in the State courts where the vast majority of the Nation's civil caseloads are disposed.³ Tort trials in U.S. district courts are also important to examine because this litigation affects individuals, corporations, and government officials across the United States and in different

¹See *Federal Tort Trials and Verdicts, 1994 – 95*, (NCJ 165810), and *Federal Tort Trials and Verdicts, 1996–97*, (NCJ 172855). Data for this report were based on information compiled by the AOUSC. The AOUSC Federal database can be downloaded from the National Archive of Criminal Justice Data <www.icpsr.umich.edu/NACJD>.

²The 2 variables in the AOUSC Federal data file that can be used to identify jury and bench trials are disposition “DISP” and procedural progress “PROCPROG.” In its annual report the AOUSC uses the procedural progress codes to classify bench and jury trials. This report maintains consistency with the AOUSC by counting as trials cases with procedural progress codes of 8 or 9. The disposition codes are not used to identify jury and bench trials.

³The National Center for State Courts (NCSC) reports that in 2002 16.3 million civil cases were filed in State courts of general (7.7 million) and limited (8.6 million) jurisdiction. In comparison, 274,841 civil cases were filed in Federal district courts during fiscal year 2002. NCSC, *Examining the Work of State Courts, 2003: A National Perspective from the Court Statistics Project*, Williamsburg, VA, and AOUSC, *2002 Annual Report of the Director: Judicial Business of the U.S. Courts*, Washington, D.C.

countries. The availability of Federal data from the 1970's allows for an examination of nearly 35 years of tort trial trends in the Federal courts. Data for this time period are generally not available for tort trials in the State courts. Federal tort trials also offer another venue for examining plaintiff win rates, damage award amounts, and other key case outcomes for this type of civil litigation. In most tort cases that settle at the State or Federal level, these details are typically not available.

Tort cases terminated in U.S. district courts since 1970

After steadily increasing during the 1980's, the annual number of tort cases terminated in U.S. district courts — settlements, dismissals, verdicts, and summary judgments — has been marked by sharp swings throughout the 1990's and early 2000's. (See *Highlights* figure.)

Asbestos and nonasbestos product liability cases have contributed substantially to the changes in tort caseloads in U.S. district courts. In the early 1990's thousands of asbestos cases were terminated in individual

Federal district courts and then transferred through multidistrict litigation into one Federal judicial district. As a result of this multidistrict transfer, asbestos case terminations peaked at about 25,700 cases during the early 1990's. Afterwards, asbestos case terminations declined to an average of about 6,800 dispositions during each fiscal year between 1993 and 2001. Asbestos case terminations climbed again in fiscal years 2002 and 2003 when each year there were on average approximately 14,400 cases terminated in U.S. district courts.

Nonasbestos product liability cases also influenced the increase of tort caseloads in U.S. district courts during the late 1990's. Most of the rise in nonasbestos product liability cases can be attributed to a transfer of breast implant cases by multidistrict litigation from multiple Federal district courts into a single Federal judicial district.⁴

⁴For source details see AOUSC, *Judicial Business of the U.S. Courts, 1992*, *Judicial Business of the U.S. Courts, 1999*, and *Judicial Business of the U.S. Courts, 2002*.

Since its peak in 1985, the number of tort trials terminated in U.S. district courts has declined 79%

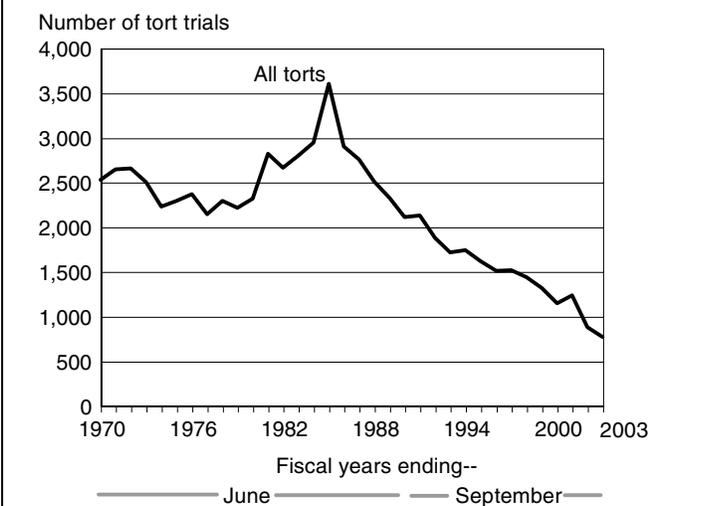


Figure 1

Tort trials terminated in U.S. district courts since 1970

After falling slightly during the 1970's, the overall number of tort trials increased more than 50% from 2,315 in 1980 to 3,604 in 1985 (figure 1). A substantial portion of this growth can be attributed to an increase in asbestos product liability trials.⁵

From 1985 to 2003 the overall number of tort trials has declined 79%. Tort trials fell to 2,108 in 1990 and then to 1,147 in 2000. By 2003 U.S. district courts terminated fewer than 800 tort cases by trial. Tort cases decided by trial as a percentage of all tort terminations have also declined from about 10% in 1985 to 2% in 2003.

The growing use of alternative dispute resolution (ADR) is frequently cited as a primary contributor to the falling trial rate. The AOUSC reports that in 2002 mediation and arbitration programs were used in 49 Federal judicial districts and impacted more than 25,000 civil cases. Other legal scholars have speculated that the increased complexity and costs inherent in taking a case to trial have contributed to the decreasing number of trials in U.S. district courts.⁶

U.S. district court jurisdiction

Federal courts cannot decide a tort case unless the criteria for Federal subject matter jurisdiction are met. Federal subject matter jurisdiction refers to the legal basis that allows a civil case to be filed and adjudicated in the U.S. district courts. U.S. district courts exercise jurisdiction in civil actions that —

(1) deal with a Federal question arising from the interpretation and application of the U.S. Constitution, acts of

⁵The separation of asbestos from product liability cases began in fiscal year 1984 but was not completed until the late 1980's. An increase in asbestos trial litigation in the mid-1980's, which at that time was not counted separately, contributed to the rise of tort trials during that period.

⁶AOUSC, *Judicial Business of the U.S. Courts, 2002*, and Marc Galanter, "The Vanishing Trial: An Examination of Trials and Related Matters in Federal and State Courts," *Journal of Empirical Legal Studies*, 1 (3), 2004, pp. 459-570.

Diversity of citizenship accounted for 60% or more of tort cases terminated by trial in U.S. district courts, 1970-2003

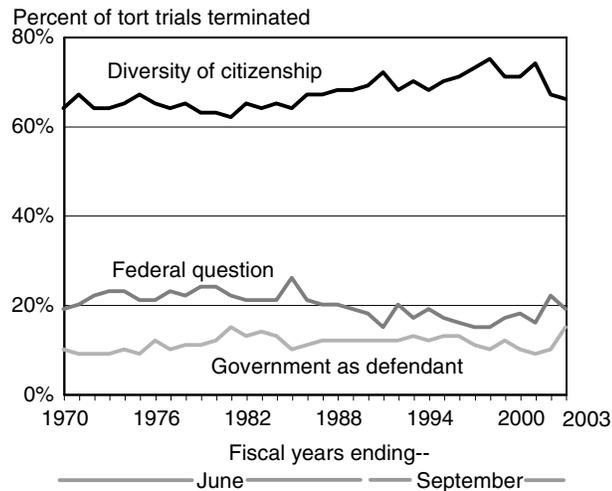


Figure 2

Congress, or treaties ("Federal question")⁷ or (2) exceed \$75,000 and are between parties (citizens and/or corporations) residing in different States or parties of a State and citizens, corporations, or subjects of a foreign country ("diversity of citizenship")⁸ or (3) are initiated by the U.S. Government ("U.S. plaintiff")⁹ or (4) are brought against the U.S. Government for alleged negligent or wrongful acts resulting in personal injury or property damage ("U.S. Defendant")¹⁰.

⁷Title 28 U.S.C. § 1331.

⁸Title 28 U.S.C. § 1332. The minimum value required was \$10,000 until 1989 and \$50,000 until 1996, when it was raised to \$75,000 in P.L. 104-317, Federal Courts Improvement Act.

⁹Title 28 U.S.C. § 1345.

¹⁰Title 28 U.S.C. § 1346.

Table 1. Type of jurisdiction for tort trials terminated in U.S. district courts, 2002-03

Jurisdiction	Tort cases terminated by trial	
	Number	Percent
Total	1,647	100.0%
Diversity of citizenship	1,091	66.2%
Federal question	345	20.9
U.S. defendant	205	12.4
U.S. plaintiff	6	0.4
Local question (U.S. Territories)	0	0.0

Note: Detail may not sum to total because of rounding.
Source: Federal Judicial Center, Integrated Data Base (Civil), fiscal years 2002-03.

Diversity of citizenship was the jurisdictional basis for nearly two-thirds of the 1,647 tort trials terminated in U.S. district courts during fiscal years 2002-03 (table 1). Federal questions provided the jurisdictional criteria for 21% of tort trials, while the U.S. Government was the defendant in 12% of tort trials in U.S. district courts. Jurisdiction based on the U.S. Government being the plaintiff accounted for less than 1% of tort trials terminated in U.S. district courts.

Diversity of citizenship cases accounted for at least 6 out of 10 tort trials in U.S. district courts from 1970 to 2003 (figure 2). The proportion of tort trials based on diversity of citizenship increased during the 1980's and 1990's so that by 1998 three-fourths of all tort trials involved diversity of citizenship jurisdiction. By 2002-03, however, the percentage of tort cases with diversity of citizenship jurisdiction declined to about two-thirds of tort trials.

From 1970 to 2003, tort cases in which the U.S. Government was sued as the defendant represented 9% to 15% of tort trials terminated in U.S. district courts. Federal question cases declined from an average of about 22% of tort trials during the 1970's and 1980's to an average of 17% of tort trials in the 1990's and early 2000's.

Origin of tort trials

The majority (64%) of the 1,647 tort trials terminated in fiscal years 2002-03 originated in U.S. district courts (table 2). An additional 24% of tort trials were civil actions initiated in State courts but removed to a U.S. district court, 8% were reopened or reinstated, and 3% were transferred from another Federal district. About 1% of tort trials were remanded from an appellate court or originated from multidistrict litigation.

The nature of suit in tort trials

For the purposes of this report, tort trials were organized into two case categories: personal injury and property damage cases. Personal injury involves injury to a person or to the reputation of a person, while property damage involves damage to one's personal or business property.

During 2002-03 personal injury cases accounted for nearly 90% of the 1,647 tort trials terminated in U.S. district courts (table 3). Motor vehicle (20%) cases, which in this report refer to accidents rather than defective products, and product liability (13%) cases were some of the most frequent types of personal injury tort trials, followed by marine (10%) and medical malpractice (10%) cases. Personal injury cases classified as "Other" also accounted for a substantial proportion (28%) of tort trials.

Type of trial termination: bench or jury

Federal civil trials can be decided by either a jury comprised of 6 to 12 members (jury trial) or a Federal district judge or magistrate judge (bench trial). The plaintiff or defendant may request that the case be decided by a jury trial. A jury verdict for either the plaintiff or defendant must be unanimous and cannot be taken from a jury with fewer than six members.¹¹ If no request for a

¹¹Title 28 Federal Rules of Civil Procedure § 38.

Table 2. The origin of tort trials terminated in U.S. district courts, 2002-03

Origin	Tort cases terminated by trial in U.S. district courts	
	Number	Percent
Total	1,647	100.0%
Original proceeding in district courts	1,057	64.2%
Removed from State court	402	24.4
Reopened or reinstated	129	7.8
Transfer from another district	41	2.5
Remanded from appellate court	17	1.0
Multidistrict litigation	1	0.1

Note: Detail may not sum to total because of rounding.

Source: Federal Judicial Center, Integrated Data Base (Civil), fiscal years 2002-03.

jury trial is made by either party, the case is tried by a bench trial. Federal law also stipulates that bench trials be required for most cases in which the United States is named as the defendant.¹²

¹²Title 28 U.S.C. § 2402.

Table 3. The nature of suit in tort trials terminated in U.S. district courts, 2002-03

Type of tort cases	Jury and bench trials terminated	
	Number	Percent
All tort trials	1,647	100.0%
Personal injury		
Total	1,464	88.9%
Airplane	16	1.0
Assault/libel/slander	37	2.2
Federal employers' liability	79	4.8
Marine	169	10.3
Motor vehicles	335	20.3
Medical malpractice	163	9.9
Product liability	210	12.8
Airplane	2	0.1
Marine	5	0.3
Motor vehicles	27	1.6
Asbestos	1	0.1
Other	175	10.6
Other personal injury	455	27.6
Property damage		
Total	183	11.1%
Fraud	66	4.0
Truth-in-lending	11	0.7
Product liability	30	1.8
Other property damage	76	4.6

Note: Detail may not sum to total because of rounding.

Source: Federal Judicial Center, Integrated Data Base (Civil), fiscal years, 2002-03.

About 7 out of 10 tort trials terminated in U.S. district courts during fiscal years 2002-03 were decided by a jury (table 4). Judges decided the remaining 30% of tort trials in U.S. district courts during this period. Whether the tort trial was terminated before a judge or jury varied by the basis for Federal jurisdiction. Juries handled nearly 90% of tort trials in which Federal jurisdiction was based on diversity of citizenship and 61% of tort trials in which a Federal question brought the case into U.S. district court. Judges, in comparison, decided 95% of the 205 tort trials in which the U.S. Government was sued.

Table 4. Comparing bench and jury tort trials terminated in U.S. district courts, by jurisdiction, 2002-03

Type of jurisdiction	Tort trials terminated in U.S. district courts		
	Number of tort trials	Jury trial	Bench trial
All tort trials	1,647	71.4%	28.6%
Diversity of citizenship	1,091	87.2%	12.8%
Federal question	345	61.4	38.6
U.S. defendant	205	4.9	95.1
U.S. plaintiff	6	**	**

Note: Detail may not sum to total because of rounding.

**Too few cases to obtain statistically reliable data.

Source: Federal Judicial Center, Integrated Data Base (Civil), fiscal years, 2002-03.

The type of trial termination also differed according to the nature of the suit (table 5). A jury decided about 73% of tort trials involving a personal injury issue. The personal injury case categories with the highest rates of jury trial terminations included product liability (90%), assault/libel/slander (89%), Federal employers' liability (84%), other personal injury (77%), and personal injury motor vehicle (74%) cases. Judges, in comparison, decided at least 40% of personal injury trials with a marine or medical malpractice claim. The bench trial rate for property damage cases was also 40%.

Trial terminations: Plaintiff winners

During fiscal years 2002-03, plaintiffs won almost half of tort trials terminated in U.S. district courts (table 6). Plaintiff win rates were fairly similar in both personal injury (48%) and property damage (49%) tort trials.

Plaintiffs prevailed in over half of personal injury tort trials involving Federal employers' liability (69%), motor vehicle (57%), and marine (54%) claims. In comparison, plaintiffs won less frequently in assault/libel/slander (38%), medical malpractice (37%), and product liability (34%) tort trials decided in U.S. district courts.

The plaintiff win rates also varied considerably among property damage trials. Plaintiffs won in 61% of fraud property damage trials. In property damage trials involving product liability issues, less than a third of plaintiffs prevailed.

Table 5. Comparing bench and jury tort trials terminated in U.S. district courts, by nature of suit, 2002-03

Type of tort cases	Jury and bench tort trials terminated		
	Number	Jury	Bench
All tort trials	1,647	71.4%	28.6%
Personal injury			
Total	1,464	72.9%	27.1%
Airplane	16	68.8	31.3
Assault/libel/slander	37	89.2	10.8
Federal employers' liability	79	83.5	16.5
Marine	169	43.8	56.2
Motor vehicles	335	74.3	25.7
Medical malpractice	163	58.9	41.1
Product liability	210	90.0	10.0
Airplane	2	**	**
Marine	5	**	**
Motor vehicles	27	92.6	7.4
Asbestos	1	**	**
Other	175	90.3	9.7
Other personal injury	455	76.7	23.3
Property damage			
Total	183	59.6%	40.4%
Fraud	66	68.2	31.8
Truth-in-lending	11	81.8	18.2
Product liability	30	80.0	20.0
Other property damage	76	40.8	59.2

Note: Detail may not sum to total because of rounding.

**Too few cases to obtain statistically reliable data.

Source: Federal Judicial Center, Integrated Data Base (Civil), fiscal years, 2002-03.

Table 6. Plaintiff winners in tort cases, terminated by trial in U.S. district courts by nature of suit, 2002-03

Type of tort cases	Number of jury and bench trials terminated	Percent of cases won by plaintiff*
All tort trials	1,476	47.7%
Personal injury		
Total	1,317	47.5%
Airplane	16	43.8
Assault/libel/slander	34	38.2
Federal employers' liability	68	69.1
Marine	128	53.9
Motor vehicles	311	56.9
Medical malpractice	147	36.7
Product liability	194	33.5
Airplane	2	**
Marine	4	**
Motor vehicles	25	44.0
Asbestos	0	0.0
Other	163	31.9
Other personal injury	419	46.3
Property damage		
Total	159	49.1%
Fraud	61	60.7
Truth-in-lending	11	36.4
Product liability	26	30.8
Other property damage	61	47.5

Note: Data for plaintiff winners were available for 89.6% (1,476) of the 1,647 Federal tort trials. Detail may not sum to total because of rounding.

*The plaintiff winner statistic does not include tort trials in which both the plaintiff and the defendant won.

**Too few cases to obtain statistically reliable data.

Source: Federal Judicial Center, Integrated Data Base (Civil), fiscal years, 2002-03.

Trial terminations: Monetary damage awards

Plaintiffs who prevail in tort trials are typically awarded compensatory awards for economic and noneconomic damages. Economic damages include financial losses stemming from the defendant's negligent conduct, while noneconomic damages encompass damages resulting from the pain, suffering, or emotional distress negligently inflicted by the defendant on the plaintiff. Distinct from compensatory awards, punitive damages are reserved almost exclusively for tort claims in which the defendant's conduct was grossly negligent or intentional. Punitive damages tend to be awarded infrequently in tort trials.¹³

In 590 or 84% of the 704 tort trials in which the plaintiffs prevailed, the jury or court awarded damages (not shown in a table). This varied little across the tort case types. Plaintiffs were awarded damages in 84% of personal injury trials and 81% of property damage trials in which they prevailed.¹⁴

The estimated median damage award garnered by plaintiff winners for all tort trials in U.S. district courts during fiscal years 2002-03 was \$201,000 (table 7).¹⁵ The median damage award for

personal injury tort trials was \$181,000, while for property damage trials, the median damage award was \$321,000.

In half of the 49 medical malpractice trials that produced monetary damages

for prevailing plaintiffs, the award amount was \$600,000 or above. The median award for plaintiff winners in personal injury motor vehicle trials was \$164,000 and for product liability trials was \$350,000.

Table 7. Award amounts for plaintiff winners, by nature of suit, for tort cases terminated by trial in U.S. district courts, 2002-03

Type of tort cases	Number of trials with monetary awards to plaintiff	Estimated median monetary awards to plaintiff winners*
All tort trials	590	\$201,000
Personal injury		
Total	527	\$181,000
Airplane	7	**
Assault/libel/slander	10	115,000
Federal employers' liability	43	124,000
Marine	55	203,000
Motor vehicles	152	164,000
Medical malpractice	49	600,000
Product liability	55	350,000
Airplane	1	**
Marine	0	0
Motor vehicles	11	345,000
Asbestos	0	0
Other	43	350,000
Other personal injury	156	90,000
Property damage		
Total	63	\$321,000
Fraud	28	701,000
Truth-in-lending	4	**
Product liability	7	**
Other property damage	24	215,000

Note: Award data were not available for all plaintiff winners because the award field is not mandatory for data entry. In addition, some plaintiff winners were awarded attorneys' fees and court costs, while others were awarded a judgment in the form of an injunction. These plaintiffs were also not counted as award winners. Detail may not sum to total because of rounding. Award data are rounded to the nearest thousand.

*Monetary damage awards are estimates rather than exact award amounts. These awards include both compensatory (economic and noneconomic) and punitive damage awards. Punitive damages could not be calculated separately from the actual monetary damage award because punitive damage award data were not available in the integrated Federal data file.

**Too few cases to obtain statistically reliable data.

Source: Federal Judicial Center, Integrated Data Base (Civil), fiscal years, 2002-03.

¹³In the tables and text presented in the next several sections, award amounts include both compensatory and punitive damages. Because of the nature of the data, the compensatory and punitive damage award amounts could not be separated.

¹⁴Award data were not available for all plaintiff winners because the award field is not mandatory for data entry. In addition, some plaintiff winners were awarded attorneys' fees and court costs, while others were awarded in the form of an injunction. These plaintiffs were also not counted as award winners.

¹⁵In this report the median awards should be understood as estimates rather than as exact award amounts. For further discussion of the award statistics, see *Methodology* on page 11.

Trial terminations: Plaintiff winners, damage awards, and case processing times for jury and bench trials

The plaintiff win rates, damage award amounts, and case processing times varied by whether the trial took place before a jury or judge. Plaintiffs overall tended to win more often in bench (54%) than in jury (46%) tort trials (table 8). Personal injury cases also manifested higher plaintiff win rates in judge (56%) trials than in jury (45%) tort trials. In property damage trials however, the percentage of prevailing

plaintiffs was greater in jury (53%) than in bench (42%) trials.

Although judges found for plaintiffs more often than juries, the estimated median damage award was higher in jury (\$244,000) than in bench (\$150,000) tort trials. The award differences were particularly striking between jury and bench property damage trials. Among the 45 property damage jury trials with prevailing plaintiffs, the median award was \$700,000; in comparison, the 18 property damage bench trials with plaintiff winners generated a median damage award amount of \$196,000.

Diversity of citizenship tort trials

Diversity of citizenship served as the basis of Federal jurisdiction for nearly two-thirds of tort trials terminated in U.S. district courts in 2002-03. Of these 1,091 diversity of citizenship tort trials, 59% involved individual U.S. citizens bringing suit as plaintiffs against U.S. businesses as defendants (table 9). An additional 31% of these trials dealt with U.S. citizens from different States suing each other, and about 3% were between U.S. businesses in different States. The plaintiff was a foreign citizen in about 2% of diversity of citizenship trials, while a foreign nation was the plaintiff in one of these trials during fiscal years 2002-03.

Table 8. Plaintiff winners, damage award amounts, and case processing times for bench and jury tort trials terminated in U.S. district courts, 2002-03

	Total number of tort trials	Trial categories	
		Jury	Bench
How many tort trials were decided by a jury or judge?	1,647	1,176	471
Who won? ^a			
Plaintiffs total cases	1,476	45.5%	53.8%
Plaintiffs in personal injury	1,317	44.7	55.9
Plaintiffs in property damage	159	53.0	42.4
How much did plaintiffs win? ^b			
Estimated median award			
Plaintiffs total cases	590	\$244,000	\$150,000
Plaintiffs in personal injury	527	200,000	150,000
Plaintiffs in property damage	63	700,000	196,000
How long did the case last?			
Median number of months	1,647	19.6mo	19.3mo

Note: Data on plaintiff winners were available for 92.2% of tort jury trials and 83.2% of tort bench trials. Monetary damage awards are estimates rather than exact award amounts. These awards include both compensatory (economic and noneconomic) and punitive damage awards. Punitive damages could not be calculated separately from the actual monetary damage award because punitive damage awards were not available in the integrated Federal data file. Award data rounded to the nearest thousand.

^aThe plaintiff win rates were calculated by dividing the number of plaintiff winners into the 1,084 jury and 392 bench trials for all tort cases (1,476), the 984 jury and 333 bench trials for personal injury cases (1,317), and the 100 jury and 59 bench trials for property damage cases (159).

^bThe monetary award statistics were calculated from the 414 jury and 176 bench trials for all tort cases (590), the 369 jury and 158 bench trials for personal injury cases (527), and the 45 jury and 18 bench trials for property damage cases (63).

Source: Federal Judicial Center, Integrated Data Base (Civil), fiscal years, 2002-03.

Table 9. Plaintiffs and defendants in diversity of citizenship tort trials terminated in U.S. district courts, 2002-03

Plaintiff/defendant	Diversity of citizenship tort trials in U.S. district courts	
	Number	Percent
All tort cases	1,091	100.0%
U.S. citizen versus:		
U.S. citizen	338	31.0%
U.S. business	647	59.3
Foreign citizen	32	2.9
Foreign nation	6	0.5
U.S. business versus:		
U.S. citizen	14	1.3%
U.S. business	33	3.0
Foreign citizen	0	0.0
Foreign nation	0	0.0
Foreign citizen versus:		
U.S. citizen	13	1.2%
U.S. business	7	0.6
Foreign nation versus:		
U.S. citizen	1	0.1%

Note: Detail may not sum to total because of rounding.

Source: Federal Judicial Center, Integrated Data Base (Civil), fiscal years 2002-03.

Plaintiffs won in 45% or 447 diversity of citizenship tort trials in 2002-03 (table 10). Plaintiff winners received monetary awards in 82% of diversity of citizenship tort trials with an estimated median damage award of \$232,000. The median damage awards, however, varied according to the type of case litigated. Among the personal injury diversity trials, the median damage awards were highest for plaintiff winners in medical malpractice (\$663,000) and product liability motor vehicle (\$548,000) trials. In personal injury motor vehicle trials, the median damage award for the 114 trials with prevailing plaintiffs was \$159,000.

Federal question tort trials

In fiscal years 2002-03 U.S. district courts terminated 345 tort trials that involved a Federal question. Eighty-five percent of these trials dealt with personal injury matters, relating particularly to marine personal injury (138 trials) and Federal employers' liability (72 trials) cases (not shown in a table). Plaintiffs won in 55% or 158 Federal question tort trials and received monetary awards in 136 of these cases. The estimated median damage award among plaintiff winners in tort trials involving a Federal question was \$179,000.

Case processing time

About two-thirds of tort cases disposed of by trial in U.S. district courts were completed within 2 years after filing of the initial complaint (figure 3). An additional 30% of tort trials were terminated within 3 to 4 years, while 5% took 5 years or more to dispose.

The median case processing times did not differ appreciably for tort cases terminated by jury or bench trial. The median time period from filing to disposition was 20 months for jury trials and 19 months for bench trials terminated in U.S. district courts during fiscal years 2002-03.

Table 10. Plaintiff winners and award amounts in tort trials involving diversity of citizenship terminated in U.S. district courts, 2002-03

Type of tort cases	Diversity of citizenship tort trials terminated in U.S. district courts				
	Number of jury and bench trials terminated	Percent of plaintiff winners ^a	Number of plaintiff —		
			Winners	Monetary awards ^b	Estimated median award ^c
All tort trials	1,002	44.6%	447	367	\$232,000
Personal injury					
Total	896	43.9%	393	325	\$185,000
Airplane	10	50.0	5	5	**
Assault/libel/slander	24	41.7	10	7	**
Federal employers' liability	0	0.0	0	0	0
Marine	15	60.0	9	7	**
Motor vehicles	243	54.7	133	114	159,000
Medical malpractice	95	27.4	26	24	663,000
Product liability	186	32.3	60	51	360,000
Airplane	2	**	1	1	**
Marine	2	**	0	0	0
Motor vehicles	23	43.5	10	10	548,000
Asbestos	0	0.0	0	0	0
Other	159	30.8	49	40	360,000
Other personal injury	323	46.4	150	117	90,000
Property damage					
Total	106	50.9%	54	42	\$577,000
Fraud	46	60.9	28	21	700,000
Truth-in-lending	0	0.0	0	0	0
Product liability	21	33.3	7	6	**
Other property damage	39	48.7	19	15	233,000

Note: Data for plaintiff winners were available for 91.8% of Federal tort trials in which jurisdiction was based on diversity of citizenship. Award data are rounded to the nearest thousand. Detail may not sum to total because of rounding.

**Too few cases to obtain statistically reliable data.

^aThe plaintiff winner statistic does not include tort trials in which both the plaintiff and the defendant won.

^bAward data were not available for all plaintiff winners because the award field is not mandatory for data entry. In addition, some plaintiff winners were awarded attorneys' fees and court costs, while others were awarded a judgment in the form of an injunction. These plaintiffs were also not counted as award winners.

^cMonetary damage awards are estimates rather than exact award amounts. These awards include both compensatory (economic and noneconomic) and punitive damage awards. Punitive damages could not be calculated separately from the actual monetary damage award because punitive award data are not available in the integrated Federal data file.

Source: Federal Judicial Center, Integrated Data Base (Civil), fiscal years, 2002-2003.

During fiscal years 2002-03, 66% of tort trials were disposed of within 2 years of being filed in U.S. district courts

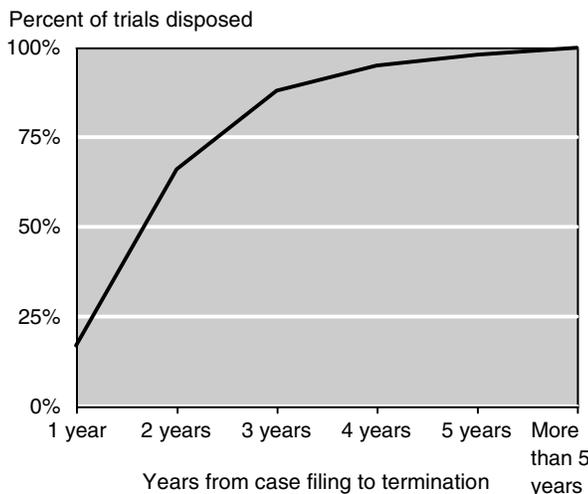


Figure 3

Tort trials involving the U.S. Government as defendant

The Federal Tort Claims Act governs tort actions against the U.S. Government. This act provides the legal mechanism for compensating persons injured by the negligent or wrongful acts of Federal employees committed within the scope of their employment. An administrative claim to the appropriate Federal agency is a prerequisite to filing suit in U.S. district court. The claimant can file suit in U.S. district court only if the claim is denied by the Federal agency in writing or if the Federal agency does not make a decision about the claim within 6

months. Most lawsuits under the act can only be tried by bench trial.¹⁶

The Torts Branch of the Civil Division within the Department of Justice represents the United States, its agencies, and officers sued in tort actions. This includes suits against the United States under the Federal Tort Claims Act, the Public Vessels Act, all admiralty suits, and common law suits against individual government employees.¹⁷

¹⁶Title 28 U.S.C. § 2671 - 2680.

¹⁷Title 28 U.S.C. § 2679. Urban A. Lester and Michael F. Noone, *Litigation with the Federal Government*, 3rd edition. Philadelphia: The American Law Institute, 1994.

During fiscal years 2002-03, the U.S. Government was the defendant in 205 tort trials terminated in U.S. district courts (table 11). These cases were mostly personal injury cases related to motor vehicles, medical malpractice, and other personal injury cases. Plaintiffs won in slightly over half of tort trials against the U.S. Government, and the estimated median amount awarded in these cases was \$196,000. Half of the plaintiffs who prevailed in the 25 medical malpractice trials against the U.S. Government in fiscal years 2002-03 were awarded damages of at least \$550,000.

Medical malpractice trials in U.S. district courts, 1990-2003

From 1990 to 2003, plaintiffs received monetary damages in an average of 28% of medical malpractice trials concluded in U.S. district courts. The estimated median awards ranged from \$306,000 in 1994 to over \$1 million in 1990, 1991, and 2003.

Fiscal year	Medical malpractice trials	Trials with plaintiff award winners	
		Number	Estimated median award
1990	164	50	\$1,565,000
1991	151	40	2,072,000
1992	143	43	354,000
1993	137	37	419,000
1994	151	38	306,000
1995	132	38	805,000
1996	115	35	401,000
1997	108	26	476,000
1998	117	33	748,000
1999	109	37	580,000
2000	98	23	535,000
2001	97	22	454,000
2002	75	25	510,000
2003	88	24	1,350,000

Note. Monetary damage awards are estimates rather than exact award amounts. Damage awards adjusted for inflation in 2003 dollars. Award data are rounded to the nearest thousand.

Source: Federal Judicial Center, Integrated Data Base (Civil), fiscal years, 1990-2003.

Table 11. Plaintiff winners and award amounts in tort trials involving the U.S. Government as defendant in U.S. district courts, 2002-03

Type of tort cases	U.S. Government as defendant				
	Number of jury and bench trials terminated	Percent of plaintiff winners ^a	Number of plaintiff winners	Monetary awards ^b	Estimated median award ^c
All tort trials	182	52.7%	96	84	\$196,000
All personal injury	176	54.5%	96	84	\$196,000
Selected case types					
Motor vehicles	55	63.6	35	29	150,000
Medical malpractice	52	53.8	28	25	550,000
Other personal injury	49	42.9	21	19	75,000

Note: Data for plaintiff winners were available for 88.8% (182) of the 205 Federal tort trials in which jurisdiction was based on the U.S. Government being sued as a defendant. Award data are rounded to the nearest thousand. Detail may not sum to total because of rounding.

^aThe plaintiff winner statistic does not include tort trials in which both the plaintiff and the defendant won.

^bAward data were not available for all plaintiff winners because the award field is not mandatory for data entry. In addition, some plaintiff winners were awarded attorneys' fees and court costs, while others were awarded a judgment in the form of an injunction. These plaintiffs were also not counted as award winners.

^cMonetary damage awards are estimates rather than exact award amounts. These damage awards include both compensatory (economic and noneconomic) and punitive damage awards. Punitive damages could not be calculated separately from the actual monetary damage award.

Source: Federal Judicial Center, Integrated Data Base (Civil), fiscal years, 2002-03.

Asbestos and nonasbestos product liability trials terminated in U.S. district courts, 1990–2003

Nonasbestos product liability trials have declined by about two-thirds from 279 trials in 1990 to 87 trials in 2003 (table 12).¹⁸

On average, plaintiffs prevailed in nearly a third of nonasbestos product liability trials during this period. This is lower than the overall plaintiff win rate of about 50% in tort trials in U.S. district courts. The estimated median damage awards garnered by plaintiff winners in nonasbestos product liability trials exceeded \$1 million in fiscal year 2000. In 7 of the 14 fiscal years examined, the median awards in nonasbestos product liability trials ranged from \$500,000 to less than \$1 million in damages.

Although asbestos cases account for a substantial portion of tort litigation in U.S. district courts, few of these cases are terminated by trial. After increasing from 87 trials in 1990 to 271 trials in 1991, the number of asbestos trials has declined substantially (table 13). Since 1991 in the U.S. district courts, a judge or jury has decided an average of five asbestos cases per year. In 2000, 2002, and 2003 there were no asbestos trials in which plaintiff winners could be identified in the Federal district courts. On average, plaintiffs won in nearly 3 out of 4 asbestos product liability trials.

¹⁸The number of asbestos and nonasbestos product liability trials in tables 12 and 13 are limited to trials in which the plaintiff winner could be determined.

Table 12. Plaintiff winners and damage awards in nonasbestos product liability trials terminated in U.S. district courts, 1990-2003

Fiscal year	Number of nonasbestos product liability trials ^a	Plaintiff winners in nonasbestos product liability trials Percent of plaintiff winners ^b	Number of plaintiff —		
			Winners	Awarded damages ^c	Estimated median award ^d
1990	279	35.5%	99	89	\$783,000
1991	284	33.1	94	85	923,000
1992	267	34.8	93	76	847,000
1993	237	29.5	70	66	673,000
1994	255	27.1	69	64	341,000
1995	229	29.7	68	61	355,000
1996	201	28.4	57	45	433,000
1997	233	29.2	68	59	805,000
1998	177	32.2	57	51	339,000
1999	165	26.7	44	36	783,000
2000	100	28.0	28	24	1,024,000
2001	79	38.0	30	22	702,000
2002	107	33.6	36	30	306,000
2003	87	33.3	29	25	450,000

Note: Damage awards are adjusted for inflation in 2003 dollars. Award data are rounded to the nearest thousand.

^aThe number of nonasbestos product liability trials is limited to those with a known judgment.

^bThe plaintiff winner statistic does not include tort trials in which both the plaintiff and the defendant won.

^cAward data were not available for all plaintiff winners because the award field is not mandatory for data entry. In addition, some plaintiff winners were awarded attorneys' fees and court costs, while others were awarded a judgment in the form of an injunction. These plaintiffs were also not counted as award winners.

^dMonetary damage awards are estimates rather than exact award amounts. These awards include both compensatory (economic and noneconomic) and punitive damage awards. Punitive damages could not be calculated separately from the actual monetary damage award because punitive award data are not available in the integrated Federal data file.

Source: Federal Judicial Center, Integrated Data Base (Civil), fiscal years 1990-2003.

Table 13. Plaintiff winners and number of cases with damage awards in asbestos product liability trials terminated in U.S. district courts, 1990-2003

Fiscal year	Number of asbestos product liability trials ^a	Plaintiff winners in asbestos product liability trials	
		Number of plaintiff winners ^b	Awarded damages ^c
1990	87	43	38
1991	271	232	228
1992	29	12	2
1993	2	2	2
1994	1	1	1
1995	3	2	1
1996	5	2	2
1997	8	3	1
1998	10	9	8
1999	1	1	1
2000	0	0	0
2001	4	3	3
2002	0	0	0
2003	0	0	0

^aThe number of asbestos product liability trials is limited to those with a known judgment.

^bThe plaintiff winner statistic does not include tort trials in which both the plaintiff and defendant won.

^cAward data were not available for all plaintiff winners because the award field is not mandatory for data entry. In addition, some plaintiff winners were awarded attorneys' fees and court costs, while others were awarded a judgment in the form of an injunction. These plaintiffs were also not counted as award winners. Median damage award data are not presented because there were too few asbestos trials in which plaintiffs were awarded damages.

Source: Federal Judicial Center, Integrated Data Base (Civil), fiscal years 1990-2003.

Methodology

The primary source of data presented in this report is the Federal Judicial Center's Integrated Data Base (Civil). Data tabulations were prepared from the BJS staff analysis of source agency data sets. The Federal civil tort categories used in this report are based primarily on the codes established by the Administrative Office of the United States Courts (AOUSC). Case level information is provided by individual U.S. district courts, which submit data to the AOUSC. The categories for types of cases in this report are based on those defined by the AOUSC. As a result no detailed information is available on the number of "other personal injury" cases and "other product liability cases." For tort cases that involved more than one type of action filed, the AOUSC instructs the plaintiff's attorney if the cause fits more than one nature of suit, to select the most definitive. It is the first nature of the suit code that was used in the analysis for this report.

For tort cases where more than one basis of jurisdiction applies, the case was coded according to the highest priority jurisdiction that applies. Cases in which the U.S. Government is the plaintiff have the highest priority, followed by the U.S. Government as defendant, Federal questions, diversity of citizenship cases, then local questions. Calculations pertaining to plaintiff winners and their award amounts were based on cases for which the plaintiff or defendant winner was known. The plaintiff winner category does not include instances where both parties won the case.

Note on fiscal years

The AOUSC reports on Federal caseloads by fiscal rather than calendar year. The period covered by a fiscal year changed in 1992. Prior to 1992 the fiscal year started on July 1 and ended on June 30 of the next year. The change in 1992 resulted in the fiscal year beginning on October 1 and ending on September 30.

In BJS reports on tort trials terminated in U.S. district courts during fiscal years 1994-95 (NCJ 165810) and 1996-97 (NCJ 172855), the fiscal years 1990, 1991, and 1992 were modified to reflect the current definition. This report maintains consistency with those earlier BJS reports: data for fiscal years 1990-92 have the October-to-September format. The fiscal years during the 1970's and 1980's, however, have not been revised.

Note on damage awards

Damage award amounts are presented as estimates limited by data coverage and quality issues. For further information about award variables see the AOUSC codebook at the National Archive of Criminal Justice Data <<http://www.icpsr.umich.edu/NACJD/index.html>>; the codebook is archived with studies 4026 and 4059. Eisenberg and Schlanger audited the AOUSC damage award data by comparing the Federal data files to the Public Access to Court Electronic Records (PACER) docket sheets. They found that the median awards offered a reasonable upper level estimate of the damages awarded to prevailing plaintiffs. The AOUSC median damage award for tort cases terminated by trial was 10% higher (\$151,000) compared to the \$137,000 median award calculated from the PACER docket sheets. See Theodore Eisenberg and Margo Schlanger, "The Reliability of the Administrative Office of the U.S. Courts Database: An Initial Empirical Analysis," *Notre Dame Law Review*, 78(5) 2003, pp. 101-143.

Definitions

After court trial — An action disposed of after the completion of a trial before a district judge or magistrate judge.

After jury trial — An action disposed of after the completion of a trial before a jury.

Procedural progress at termination — The point to which an action progressed when it was disposed of. When used as part of these definitions,

a trial is defined as a "contested proceeding where evidence is introduced." A trial is considered completed when a verdict is returned by a jury or a decision is rendered by the court.

Tort — A civil wrong or breach of a duty to another person, as outlined by law. A very common tort is negligent operation of a motor vehicle that results in property damage and personal injury in an automobile accident.

U.S. Government defendant — An action against agencies and officers of the United States.

U.S. Government plaintiff — An action by agencies and officers of the United States.

Federal question cases — Cases involving the interpretation and application of the U.S. Constitution, acts of Congress, or treaties.

Diversity of citizenship cases — Cases involving actions in which the amount in controversy exceeds \$75,000 between citizens or corporations of different States; citizens or corporations of a State and citizens or subjects of a foreign country; citizens or corporations of different States where citizens or subjects of a foreign country are additional parties; or a foreign state as defined in Title 28 U.S.C. Section 1603(a), as plaintiff, and citizens of a State or different States.

Local question — Cases involving non-Federal civil procedures based on local civil law in territorial districts.

Sources of definitions:

"Glossary of Terms Used in the Federal Courts," prepared by the Administrative Office of the U.S. Courts.

"Statistics Manual, Chapter V: Instructions for Completing District Court Report Forms." Guide to Judiciary Policies and Procedures, Volume XI, published and distributed by the Administrative Office of the U.S. Courts.

This report, the data which it analyzes, and other statistical information about civil justice may be accessed through the BJS website: <<http://www.ojp.usdoj.gov/bjs/>>

The Bureau of Justice Statistics is the statistical agency of the U.S. Department of Justice. Lawrence A. Greenfeld is director.

Thomas H. Cohen wrote this Bulletin under the supervision of Steven K. Smith. Mark Motivans provided statistical assistance and review. Devon Adams and Jessica Keating commented on the report. Maurice Galloway of the AOUSC provided data assistance and reviewed the report. Joe Cecil, Senior Researcher, Federal Judicial Center, provided comments on awards and trend data. Carolyn C. Williams and Tom Hester produced and edited the report.

August 2005, NCJ 208713

The primary source of data for tables presented in this report is the Federal Judicial Center's Integrated Data Base (Civil). The Center derives the data for the integrated data base (civil, criminal and appeals) from files provided by the Administrative Office of the U.S. Courts (AOUSC).

The AOUSC data are based on information received from the U.S. district courts regarding the filing and termination of cases and appeals in the Federal courts. The integrated data base is archived at the National Archive of Criminal Justice Data (NACJD) "Federal Court Cases: Integrated Data Base" (Study # 4026 and Study # 4059). Data can be obtained from the archive through 1-800-999-0960 or <<http://www.icpsr.umich.edu/NACJD/index.html>>.