

Commentary

The Bronx “Bronx Jury”: A Profile of Civil Jury Awards in New York Counties

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I. Introduction

The exact date for the baptism of the Bronx as New York’s most anti-prosecution, pro-plaintiff county is imprecise. Most likely the moniker “Bronx jury” is traceable to a plot line in Tom Wolfe’s 1987 novel, *The Bonfire of the Vanities*, in which a plaintiffs’ lawyer uses a novel rationale to file a malpractice claim in the Bronx rather than in Westchester County, motivated by his view that Bronx juries are a “vehicle for redistributing the wealth.”¹ Not long thereafter, the *New York Times* published articles describing Bronx juries as pro-plaintiff² and anti-prosecution.³ The pro-plaintiff portrait of the Bronx persevered: a 1992 *Wall Street Journal* article profiled several anecdotal civil awards from the Bronx and suggested they were unusually high when compared to other jurisdictions.⁴ In accounting for this “Bronx effect,” the media suggested that the most likely explanation is the county’s racial composition (majority African American and Hispanic).⁵

Although the complicated relationship between race and criminal jury verdicts has been and remains an active area of social science research,⁶ the

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1. TOM WOLFE, *THE BONFIRE OF THE VANITIES* 408–09 (Bantam Books 1988) (1987) (describing how the ambulance carrying a Westchester doctor and a Montauk patient had to pass through the Bronx, enabling the plaintiff to file suit in Bronx County).

2. Sam Roberts, *On Bronx Juries, Minority Groups Find Their Peers*, N.Y. TIMES, May 19, 1988, at B1.

3. John Kifner, *Bronx Juries: a Defense Dream, A Prosecution Nightmare*, N.Y. TIMES, Dec. 5, 1988, at B1.

4. Arthur S. Hayes, *Bronx Cheer: Inner-City Jurors Tend to Rebuff Prosecutors and to Back Plaintiffs*, WALL ST. J., Mar. 24, 1992, at A1.

5. See *supra* notes 2–4.

6. See, e.g., John M. Conley et al., *The Racial Ecology of the Courtroom: An Experimental Study of Juror Response to the Race of Criminal Defendants*, 2000 WIS. L. REV. 1185 (2000);

effect of demographic characteristics on civil jury verdicts has received far less scholarly attention.⁷ Eisenberg and Wells's detailed examination of county-level Census data and jury-verdict awards is a step toward remedying this situation.⁸ Yet despite the intrigue of their title—a search for a “Bronx effect”—the Bronx is not one of the counties they sample.⁹ In this Comment, we supplement Eisenberg and Wells's contribution by describing jury awards from the Bronx and from other New York counties surrounding the Manhattan area. We present empirical data on civil jury awards and plaintiffs' win rates in medical malpractice and products liability cases—those in which plaintiffs' adversaries are business or medical professionals with “deep pockets” and where a “Bronx effect” should be more likely.

II. The Sample

We relied on data from Russell F. Moran's *New York Jury Verdict Reporter*, a monthly publication that claims to report approximately ninety percent of all personal injury verdicts in Metropolitan New York and surrounding counties.¹⁰ Documented attorney submissions are the prime source for the reported data. The data on damages span awards from 1985 through 1997 for medical malpractice and 1981 through 1997 for products liability. The awards reported below have been adjusted for inflation, using 1995 dollars, a year chosen to maintain consistency with our prior work.¹¹ Because not all cases are likely to be reported to the service, there are a number of limitations inherent in the use of verdict reporter data.¹² Plaintiffs' victories and higher awards are likely overreported.¹³ However, for the present purposes, we do not consider this a severe threat to the validity of our results with respect to damages, since overreporting of high awards is not expected to be county-specific. As we discuss in section III.C, the possibility that data on defense verdicts are incomplete makes us more cautious about the data as

Samuel R. Sommers & Phoebe C. Ellsworth, *White Juror Bias: An Investigation of Prejudice Against Black Defendants in the American Courtroom*, 7 PSYCHOL. PUB. POL'Y & L. 201 (2001).

7. For an exception, see Shari S. Diamond et al., *Juror Judgments about Liability and Damages: Sources of Variability and Ways to Increase Consistency*, 48 DEPAUL L. REV. 301, 306–08 (1998) (finding that demographic characteristics had little predictive utility for awards in a products liability case).

8. Theodore Eisenberg & Martin Wells, *Trial Outcomes & Demographics: Is There a “Bronx Effect?”*, 80 TEXAS L. REV. 1839 (2002).

9. Cf. CAROL J. DEFRANCES ET AL., BUREAU OF JUSTICE STATISTICS, CIVIL JUSTICE SURVEY OF STATE COURTS, 1992: CIVIL JURY CASES AND VERDICTS IN LARGE COUNTIES (1995).

10. See Oscar G. Chase, *Helping Jurors Determine Pain and Suffering Awards*, 23 HOFSTRA L. REV. 763, 782 n.77 (1995) (discussing a 1993 interview with Russell F. Moran).

11. For more detail on the characteristics of these data, see Neil Vidmar et al., *Jury Awards for Medical Malpractice and Post-Verdict Adjustments of Those Awards*, 48 DEPAUL L. REV. 265 (1998).

12. See *id.* at 281–83. See also Eisenberg & Wells, *supra* note 8, at 1841 n.10.

13. Deborah Jones Merritt & Kathryn Ann Barry, *Is the Tort System in Crisis? New Empirical Evidence*, 60 OHIO ST. L.J. 315, 324–26 (1999).

a valid source of information regarding win rates; however, with caveats, we present the information available to us.

III. Results

A. *Medical Malpractice Awards*

Table 1 reports New York medical malpractice data by county, including both median and mean awards. The median award is at the very center of the distribution for each county (half of the awards were above this value, and half below). Westchester County had an exceedingly high median award—an irony given the maneuvers to avoid this particular jurisdiction, at least in the world of novels.¹⁴ However, as with Richmond County (Staten Island), there were too few awards to consider this a reliable estimate. Thus, excluding Westchester, the median awards indicate that Bronx juries did have the highest medical malpractice awards, at just over \$1.5 million. Kings County (Brooklyn) was just behind with a median of \$1.3 million, followed closely by New York (Manhattan) at \$1.1 million. Neither the Bronx nor the other counties, however, had a disproportionate number of awards above the overall median of \$1.2 million.¹⁵

A different marker, the average (mean) award, is influenced by the presence of very high or very low awards. This reveals a different ordering of the counties. On this gauge, Brooklyn had the highest awards, with Manhattan second, and the Bronx third. Nevertheless, the mean levels of awards across all counties were, once again, not statistically different from one another.¹⁶

14. See WOLFE, *supra* note 1.

15. A chi-square test examining deviations in the distribution of values in each county was non-significant, χ^2 (d.f. = 7) = 9.23, $p = 0.24$. Results were non-significant whether or not we included Westchester and Staten Island, both of which had small numbers of cases.

16. We established this through a one-way analysis of variance, examining awards by county. Results were non-significant (at the traditional cut-off of $p < 0.05$) regardless of whether we examined raw means (F-value < 1 , $p = 0.54$) or the mean of the natural log of awards (which accounts for skewed distributions in awards, F-value < 1 , $p = 0.50$), or whether we omitted Westchester and Staten Island ($p = 0.66$). Tests of whether the Bronx differed from all other counties, or from Brooklyn and Manhattan, were also uniformly non-significant.

TABLE 1
MEDICAL MALPRACTICE AWARDS IN NEW YORK COUNTIES (IN 1995 DOLLARS)

COUNTY	N	Median Jury Award	Mean Jury Award	Range	Median post-adjustment	Mean post-adjustment	Injury Mean+	Win Rates*
New York (Manhattan)	79	1,120,000	4,932,736	456 to 98,443,759	762,000	2,920,664	6.80	0.35
Bronx	69	1,512,000	4,507,340	13,900 to 31,590,000	1,043,750	3,060,896	6.86	0.50
Kings (Brooklyn)	50	1,312,600	6,120,403	73,500 to 90,469,540	1,112,000	3,199,211	6.76	0.50
Nassau	34	861,345	2,715,653	74,415 to 36,750,000	628,875	2,490,037	6.74	0.17
Suffolk	28	783,383	1,805,073	104,250 to 10,900,000	605,020	1,119,861	6.46	0.31
Queens	26	1,079,450	3,498,410	107,865 to 26,633,250	810,500	2,113,478	6.54	0.33
Westchester	4	10,755,750	9,820,693	58,774 to 17,712,500	2,888,750	3,587,818	7.00	0.07
Richmond (Staten Island)	3	1,057,800	1,499,352	157,500 to 3,282,757	545,000	578,017	7.67	0.22
Overall	293	1,211,550	4,383,367	456 to 98,443,759	892,125	2,703,848	6.75	0.31

* Data in the win rates column are based on a subset of the data from years 1992-1995 (n = 341 cases).

+ Injury severity rating based on a 1 to 9 scale with higher numbers indicating more severity. For a more detailed description, see note 21.

As we have argued elsewhere,¹⁷ jury verdict awards need to be considered in the context of the entire civil justice system, taking into account post-trial adjustments resulting from, for example, judicial remittitur and post-verdict settlements. The *Verdict Reporter* provides some information on post-verdict adjustments to awards, although it is unlikely that the *Reporter* provides all such adjustments.¹⁸ Even if incomplete, these data are telling. Almost all New York counties saw marked post-verdict reductions in jury awards. Manhattan's median final award was sixty-eight percent of its median jury award; likewise, the Bronx's was sixty-nine percent. These reductions brought Manhattan's verdicts to a level consistent with most other counties outside the immediate metropolitan area, although both the Bronx and Brooklyn remained at the higher end of the distribution (just over \$1 million). After adjustments, most of the metropolitan counties ended up with average awards of around \$3 million. As with other statistical analyses that we conducted, these post-verdict means did not differ from one another,¹⁹ nor did any of the counties have a disproportionate number of awards above the overall median award.²⁰ Injury levels across all the New York counties were fairly consistent, just above and below the overall mean of 6.75.²¹

In sum, Bronx juries ranked highest in medical malpractice cases only if one looks at the median rather than mean awards. Otherwise, the metropolitan areas surrounding and including Manhattan shifted in and out of the top spot. However, for both mean and median measures, there were marked post-verdict reductions in these awards. Most importantly, no matter how we

17. See Vidmar et al., *supra* note 11.

18. Many post-verdict adjustments occur months or years later, following appeals, and will not be captured by the *Reporter*. Moreover, high/low agreements between parties appear to be relatively frequent. In a high/low agreement, the parties agree in advance of the verdict that even if the defendant prevails the plaintiff will get a certain amount of money (low); in addition, regardless of the magnitude of the verdict, the plaintiff's recovery will be capped at a certain amount (high). Courts, news media, and verdict reporters are seldom aware of these agreements. See Neil Vidmar, *Juries and Verdicts in Medical Malpractice Cases: Implications for Tort Reform in Pennsylvania* (Jan. 28, 2002) (unpublished report on file with the second author).

19. All overall significance tests for differences in means resulted in $p > 0.57$.

20. Chi-square tests for distributions around the median were non-significant ($p > 0.40$), whether or not we included the small number of Westchester and Staten Island awards.

21. Using a scale developed by the National Association of Insurance Commissioners, we rated the severity of the injuries as they were described in the *Verdict Reporter*. The scale's nine categories are as follows: (1) Emotional damage only (fright, no physical damage); (2) Temporary insignificant (lacerations, contusions, minor scars, rash; no delay in recovery); (3) Temporary minor (infections, mis-set fracture, fall in hospital; recovery delayed); (4) Temporary major (burns, surgical material left, drug side-effect brain damage; recovery delayed); (5) Permanent minor (loss of fingers, loss or damage to organs, include non-disabling injuries); (6) Permanent significant (deafness, loss of limb, loss of eye, loss of one kidney or lung); (7) Permanent major (paraplegia, blindness, loss of two limbs, brain damage); (8) Permanent Grave (quadriplegia, severe brain damage, lifelong care or fatal prognosis); (9) Death. Due to the infrequency of minor injuries, we collapsed across all cases that were rated a "4" or below and coded them all "4." We used this same coding strategy in our prior work. See Vidmar et al., *supra* note 11.

analyzed the data, the Bronx never differed significantly from the other counties. This is because—as the award ranges in Table 1 make clear—the variability *within* each county is striking. In short, for medical malpractice jury awards, we found no reliable support for a “Bronx effect.”

B. Products Liability Awards

Table 2 shows that the pattern of comparatively high median awards for Bronx juries was not replicated for products liability awards. Manhattan led the other counties in both median and mean awards. Indeed, Manhattan’s mean award was over \$1 million higher than the Bronx’s mean award.²² After post-verdict reductions, the Bronx ended up with a slightly higher mean award. However, the difference between this and Manhattan’s was slight—just over \$100,000, which was not statistically different.²³

22. This is the only instance in which we uncovered even a borderline statistical difference among means. Manhattan’s products liability awards are not significantly different from the Bronx’s ($F < 1$, $p > 0.40$); however, Manhattan’s mean awards exhibit a trend toward being significantly different ($p < 0.10$) from the average of all other counties. However, this difference does not emerge in analyses of post-verdict adjusted awards. Test of medians produced no significant results.

23. $F < 0.10$, $p > 0.80$ for both raw mean and log mean differences.

TABLE 2
PRODUCTS LIABILITY CASES IN NEW YORK COUNTIES (IN 1995 DOLLARS)

COUNTY	N	Median Jury Award	Mean Jury Award	Range	Median post-adjustment	Mean post-adjustment	Injury Mean+	Win Rates**
New York	33	2,686,452	4,922,043	18,951 to 32,206,255	1,886,340	2,370,932	5.42	0.53
Bronx	27	1,849,515	3,529,822	45,500 to 31,130,810	1,286,699	2,515,213	5.70	0.68
Kings (Brooklyn)	9	1,396,329	2,712,717	29,151 to 13,412,541	1,206,243	1,570,850	6.00	0.23
Queens	5	376,372	457,554	1,677 to 1,054,671	263,460	359,526	4.80	0.19
Westchester	9	267,690	2,112,267	23,689 to 14,880,789	267,690	873,284	5.11	0.34
All Others*	10	488,608	1,463,913	75,445 to 5,867,180	484,018	1,444,388	4.80	0.16
Overall	93	1,320,985	3,420,262	1,677 to 32,206,255	872,094	1,978,471	5.43	0.36

* The "All others" category combines Nassau, Suffolk, and Richmond counties, each of which had only a small number of awards.

** Win rates analysis is based on n = 258 cases.

+ For details on the scale, see note 21.

C. Win Rates

Rather than altering damage awards, it is conceivable that a “Bronx effect” is evident in who wins at trial. To test this possibility, we counted the number of plaintiff versus defense victories on liability, although we note two important limitations to our data in this regard. First, as we indicated above, underreporting of defense verdicts has been detected in some jury verdict reporters.²⁴ Second, for reasons unknown to us, our malpractice dataset was missing several years of data on defense victories.²⁵ We therefore report malpractice win rates for the years 1992 through 1995, in which our records regarding defense verdicts seemed the most complete.

The last columns of Tables 1 and 2 report win rate results, and they provide the first bit of evidence that the Bronx differed markedly from other counties: in *both* products liability and medical malpractice awards, the Bronx had the highest win rates—at or above fifty percent—consistently higher than those for suburban Westchester and Nassau Counties.²⁶ Brooklyn had a rate as high as the Bronx for malpractice only. In both cases, New York County’s win rate was the second highest, lower than the Bronx by about fifteen percentage points in each instance.²⁷

IV. Conclusion

Tales of the “Bronx jury” have extended beyond newspaper articles. They have appeared in at least one litigation handbook,²⁸ and surfaced as a potential explanation for the results from our own prior empirical work on New York jury verdict awards.²⁹ Nevertheless, apart from journalistic anecdotes, there has been little well-documented evidence that Bronx juries

24. See Merritt & Barry, *supra* note 13, at 325–26. Once again, we cannot presume that such underreporting is county-specific, although this possibility cannot be ruled out.

25. The research assistant who collected these data may have accidentally failed to obtain defense verdicts for some years, or the data may have been collected but has been lost in the interim.

26. County and win rates showed a significant association for both malpractice cases ($\chi^2 = 29.08$, $df = 7$, $p < 0.0001$) and products liability ($\chi^2 = 44.45$, $df = 7$, $p < 0.0001$). In both instances, the Bronx contributed disproportionately to the chi-square value, which means that its win rate was higher than what would have been expected if county and win rates showed no association. Analyses testing differences between the urban (New York, Brooklyn, Bronx, Queens, and Staten Island) and suburban (Nassau, Suffolk, and Westchester) counties were also highly significant in both types of cases ($p < 0.0001$).

27. The difference between these two counties was just shy of statistical significance ($\chi^2 = 3.70$, $df = 1$, $p < 0.06$) but only for the products liability analysis (malpractice $\chi^2 = 2.06$, $p < 0.16$).

28. Anthony F. Tagliagambe, *Evaluation of Damages in Personal Injury Cases*, in *EVALUATING AND SETTLING A PERSONAL INJURY CASE: PLAINTIFFS’ AND DEFENDANTS’ PERSPECTIVES* 57–69 (Bert Bauman ed., 2000) (suggesting that defendants consider changing venue from the Bronx or Brooklyn to other areas).

29. See Nancy S. Marder, *Juries and Damages: A Commentary*, 48 DEPAUL L. REV. 427, 431 (1998) (commenting on Vidmar et al., *supra* note 11).

are, in fact, more generous to plaintiffs than juries in other New York counties. The data we report here systematically addresses the question: Is the Bronx jury a "Bronx jury"?

With respect to damage awards, one must mine the data to find even a kernel of truth in this particular stereotype. The median award for medical malpractice cases in the Bronx appeared to be higher than that for all other counties we examined. However, this difference was not statistically significant. According to all other indicators, Bronx juries are not distinct. Mean levels, which are sensitive to the influence of large awards, did not rank Bronx juries as the most generous in malpractice or in products liability cases. Most importantly, statistical tests of differences found no evidence that the Bronx awards exceeded others in any reliable way. For both medical malpractice and products liability cases, large awards occurred in the Bronx about as frequently as they did in other counties. On balance, with respect to damage awards, we concur with the conclusion of Eisenberg and Wells: "Our impression is that there is little support for strong stereotypical views of demographic influences on observed trial outcomes."³⁰

The Bronx, however, did rank the highest in plaintiff win rates for products liability and (together with Brooklyn) for medical malpractice cases.³¹ There are several potential explanations for this result. First, consistent with journalistic accounts,³² different demographic compositions and local cultures in the counties could be reflected in the attitudes of juries deciding civil cases, with the poor and minorities tending to favor plaintiffs on liability. However, a second alternative is that the "culture" that differs across these jurisdictions affects, instead, attorneys' decisions regarding filings and settlement practices. Perhaps in part because of particular beliefs about expected jury behavior, attorneys in different counties may have varying standards for which cases to pursue more (or less) vigorously, as well as for how to respond to settlement offers. Such factors would lead to

30. Eisenberg & Wells, *supra* note 8, at 1865.

31. Citing Moran's *New York Jury Verdict Reporter*, the *New York Times* reported in 1988 that Bronx County win rates were twice as high as Westchester's for products liability and medical malpractice cases, and that win rates were just over two-thirds for both case types. Roberts, *supra* note 2. Note that the win rate for products liability that we report is consistent with Moran's report; however, for medical malpractice, the win rate of 50% was lower. To check that the lower malpractice result is not attributable to something unusual to the selection of the years 1992 to 1995 for analysis, we also looked at the data from those years for products liability. The Bronx's win rate did not go down for this period, and it was still far higher than that observed in other counties. (There were, however, far fewer products cases reported on during this period than there were malpractice cases— $n = 59$ versus 341, respectively; hence, the rates for products cases during this period are less reliable). Thus, to the extent that outcomes in Bronx malpractice cases were less pro-plaintiff in the early 1990s compared to the late 1980s, it was not an across-the-board shift in all types of cases (noting that Westchester's win rate also fell during this period from that reported by Moran).

32. See *supra* notes 2–4.

qualitatively different jury trial case loads across counties.³³ In short, as has been discussed more extensively elsewhere,³⁴ jurisdictional comparisons must consider the following: are juries deciding cases differently or are they deciding different cases? We have attempted to account for this to some extent by coding for level of injury; however, injury severity is a crude indicator of differences. Lastly, given the limitations in our data and in verdict reporters more generally, we must consider the possibility that the true differences may not be as wide as those reported here. Most likely, some combination of these factors—demographics, filing and settlement practices, and the data source—explains the differential win rates across these New York counties.

This Comment is not designed to minimize the possibility that jury trial results vary across jurisdictions. Indeed, a casual look at both the damages awards and win rates suggests some differences in the New York area between the urban, metropolitan counties (New York, Kings, Queens, and Bronx) and the areas further outside the city (Westchester, Suffolk, and Nassau), although there was obviously still a great deal of variability within each of these groupings. We would argue only that a true “Bronx effect,” and any explanations thereof, are probably not to be found by looking only at the Bronx. A more comprehensive look at the entirety of the civil justice system—examining case filings, settlement practices, jury verdicts, as well as post-trial adjustments—would allow for a far greater understanding of the source of these differences. Ideally, one would look systematically across a number of years to assess the stability of juries’ behavior and the extent to which county reputations at one point might predict attorneys’ behavior at another.

Of course, once fixed, the label of “Bronx jury” will be difficult to erase. Each time the newspapers announce a large award from Bronx County, more anecdotal evidence for the label is compiled.³⁵ On balance, however, we reject the term “Bronx jury” as inapt. A true understanding of the causes and consequences of jury behavior will require a lens that is far wider and longer than the mass media provide.

33. This is similar to Eisenberg and Wells’s point that the relationship between percent African-American population and case outcomes may be due to weaker cases being filed in counties with higher percentages of African-Americans. Eisenberg & Wells, *supra* note 8, at 1869.

34. See generally Neil Vidmar, *Pap and Circumstance: What Jury Verdict Statistics Can Tell Us About Jury Behavior and the Tort System*, 28 SUFFOLK U. L. REV. 1205 (1994) (arguing that jury verdicts should be analyzed in terms of case type, not just award size).

35. For a more thorough analysis on how the media and public relations professionals distort jury award stories, see STEPHEN DANIELS & JOANNE MARTIN, CIVIL JURIES AND THE POLITICS OF REFORM 15–28 (1995). A recent sociological study also examines the persistence of rumors that, like the “Bronx jury,” are specifically intertwined with race. See GARY ALAN FINE & PATRICIA A. TURNER, WHISPERS ON THE COLOR LINE: RUMOR AND RACE IN AMERICA (2001).