

RESEARCHING CIVIL JUSTICE: PROBLEMS AND PITFALLS

DEBORAH R. HENSLER*

I

INTRODUCTION

Over the last decade there has been a burgeoning of empirical research on civil justice issues. Concern about congestion and delay on civil court calendars has rekindled analysts' interest in explaining civil case processing time.¹ Claims that the country is awash in litigation have provided support for continuing efforts to measure the number and types of lawsuits filed in state and federal courts² and to analyze Americans' propensity to litigate.³ Increases in liability insurance premiums have spawned new interest in describing trends in civil jury verdicts⁴ and modeling litigation processes.⁵ The spread of alternative dispute resolution procedures has produced a new market for program evaluation research.⁶

In addition to *more* research on civil justice questions, there is more interest in using the results of such research. Along with heightened interest has come controversy over the validity of results of different studies, how the studies should be interpreted, and what their implications for policymaking are.

Disputes over research methods and statistical inferences take on a new dimension as they move out of the seminar room and into the policy arena. Particularly in topical areas where data are fragmentary and the available

Copyright © 1988 by Law and Contemporary Problems

* Research Director, Institute for Civil Justice, The Rand Corporation.

1. See, e.g., AMERICAN BAR ASS'N, *ATTACKING LITIGATION COSTS AND DELAY: FINAL REPORT OF THE ACTION COMMISSION TO REDUCE COURT COSTS AND DELAY* (1984); T. CHURCH, A. CARLSON, J. LEE & T. TAN, *JUSTICE DELAYED: THE PACE OF LITIGATION IN URBAN TRIAL COURTS* (1978); S. FLANDERS, P. CONNOLLY, E. HOLLEMAN, J. LEDERER, J. McDERMOTT & D. NEUBAUER, *CASE MANAGEMENT AND COURT MANAGEMENT IN UNITED STATES DISTRICT COURTS* (1977); L. SIPES, A. CARLSON, T. TAN, A. AIKMAN & R. PAGE, *MANAGING TO REDUCE DELAY* (1980).

2. See, e.g., Galanter, *The Day After the Litigation Explosion*, 46 MD. L. REV. 3 (1986); Roper, *The Propensity to Litigate in State Trial Courts, 1981-1984, 1984-1985*, 11 JUST. SYS. J. 262 (1986).

3. See, e.g., Miller & Sarat, *Grievances, Claims, and Disputes: Assessing the Adversary Culture*, 15 LAW & SOC'Y REV. 525 (1980-81).

4. See, e.g., M. PETERSON, *CIVIL JURIES IN THE 1980s: TRENDS IN JURY TRIALS AND VERDICTS IN CALIFORNIA AND COOK COUNTY, ILLINOIS* (1987); Daniels & Martin, *Jury Verdicts and the "Crisis" in Civil Justice*, 11 JUST. SYS. J. 321 (1986).

5. See, e.g., P. DANZON & L. LILLARD, *THE RESOLUTION OF MEDICAL MALPRACTICE CLAIMS: RESEARCH RESULTS AND POLICY IMPLICATIONS 7-13* (1982); Viscusi, *The Determinants of the Disposition of Product Liability Claims and Compensation for Bodily Injury*, 15 J. LEGAL STUD. 321 (1986).

6. See, e.g., D. HENSLER, A. LIPSON & E. ROLPH, *JUDICIAL ARBITRATION IN CALIFORNIA: THE FIRST YEAR* (1981); J. ADLER, D. HENSLER & C. NELSON, *SIMPLE JUSTICE: HOW LITIGANTS FARE IN THE PITTSBURGH COURT ARBITRATION PROGRAM* (1983).

analytic tools are crude, there is considerable potential for both inconsistent results and disagreements over interpretation. Sometimes it is difficult to disentangle disagreements with analytic methodology from disagreements with the policy recommendations that might be drawn from a given set of results.

Researchers in the Institute for Civil Justice ("ICJ") at the Rand Corporation have been involved in debates over the reliability and meaning of research results on such varied topics as alternative dispute resolution, asbestos litigation, and trends in civil jury verdicts. Some of the issues that have been raised with regard to the research are specific to the topic under study. Some issues, however, cut across topics and arise repeatedly. This article discusses some of the problems that civil justice researchers face when their results are used in public policy debate.

II

MATCHING DATA AND QUESTIONS

It is not uncommon for media and interest groups to draw inferences regarding a policy question from data gathered to address altogether different questions. Researchers' protests that "those data cannot answer that question" often go unheeded. For example, in the recent debate over tort liability, data on the *amount* of litigation in state and federal courts were often cited as proof of Americans' "litigiousness," or propensity to sue.⁷ Most researchers would agree that measuring litigiousness requires relating the number of claims or suits filed (or some other measure of litigation) to the number of opportunities for litigation that arise.⁸ At best, however, researchers tracking the amount of litigation nationwide have been able to relate aggregate filings only to population.⁹ By themselves, such data do not show much about the propensity to sue.

The fact that filings on their own do not prove much about litigiousness does not, however, mean that the filings are irrelevant for other issues. When researchers who were trying to deal with the litigiousness issue seemed to downplay the growth in filings, some judges expressed fears that the suggestion that cases were *not* increasing in number would impair their ability to obtain additional court resources. The distinction between the statement that "these data are not the right data for your question" and the statement that "these data are not right" is easily lost when dealing with the mass media.

In another dimension of the tort liability debate, statistics indicating increases in civil jury awards for personal injury and contract cases were used

7. See, e.g., Church, *Sorry, Your Policy Is Canceled*, TIME, Mar. 24, 1986, at 16, 20.

8. See, e.g., Vidmar & Schuller, *Individual Differences and the Pursuit of Legal Rights: A Preliminary Inquiry*, 11 LAW & HUM. BEHAV. 299, 302-03 (1987).

9. See, e.g., J. KAKALIK & N. PACE, COSTS AND COMPENSATION PAID IN TORT LITIGATION 11 (1986); Roper, *supra* note 2, at 272-76.

by some to demonstrate that juries were “out of control.”¹⁰ Available jury verdict data indicate that average awards have been increasing over time, particularly for high stakes cases such as medical malpractice and product liability.¹¹ But jury verdict increases could reflect changes in the characteristics of cases reaching juries;¹² changes in the balance of skills and resources available to plaintiff and defense lawyers; or changes in how juries feel about the responsibility of professionals, corporations, and others to prevent injuries.¹³ None of these factors would indicate a lack of control on the part of juries, although separately or together they might well produce increases in awards that some would deem unacceptable for other reasons.

The debate over trends in jury verdicts was misdirected because analysts concentrated on whether the data evidenced jury control or a lack thereof. As in the case of the litigiousness controversy, the data were not appropriate for making either assertion. Without further knowledge of how juries have changed their *behavior*—information not readily obtained from analyses of jury verdict statistics—no one can really say whether juries are or are not out of control.

III

SELECTING STATISTICAL INDICATORS

The debate over the meaning of changes in jury verdicts has been complicated by a debate over statistical indicators. In summarizing the distribution of awards and changes over time in that distribution, researchers have reported either *median* or *mean* awards, or both.¹⁴ Because jury awards in the period for which data are available have been very skewed in the direction of high awards,¹⁵ one obtains very different pictures of the distribution of awards, depending upon which indicator one chooses. Some researchers have

10. See, e.g., Church, *supra* note 7, at 20, 23; Wermiel, *Courting Disaster: The Costs of Lawsuits, Growing Ever Larger, Disrupt the Economy*, Wall St. J., May 16, 1986, at 1, col. 6.

11. M. PETERSON, *supra* note 4, at 20-25.

12. Previous ICJ research on verdicts in Cook County, Illinois, and San Francisco, California, from 1960 to 1979 indicates that juries in those jurisdictions at the end of the period were seeing cases involving more serious injuries and larger medical expenses than in cases tried at the beginning of the period. But the research also showed that juries were awarding more money at the end of the period than at the beginning for cases with the same degree of severity, suggesting that something other than a shift in the composition of the trial caseload was at work. A. CHIN & M. PETERSON, *DEEP POCKETS, EMPTY POCKETS: WHO WINS IN COOK COUNTY JURY TRIALS* (1985); M. PETERSON, *supra* note 4; M. SHANLEY & M. PETERSON, *COMPARATIVE JUSTICE: CIVIL JURY VERDICTS IN SAN FRANCISCO AND COOK COUNTIES, 1959-1980* (1983).

13. D. HENSLER, M. VAIANA, J. KAKALIK & M. PETERSON, *TRENDS IN TORT LITIGATION: THE STORY BEHIND THE STATISTICS* 21 (1987).

14. See, e.g., A. CHIN & M. PETERSON, *supra* note 12, at 27-29 (reporting medians and means); M. PETERSON, *supra* note 4, at 20-26 (reporting medians, means and expected awards); M. SHANLEY & M. PETERSON, *supra* note 12, at 26-30 (reporting medians and means); Daniels & Martin, *supra* note 4, at 336-37 (reporting 25th, 50th and 75th percentiles). The median award is the midpoint of the distribution of awards to the plaintiffs. The mean award is the statistical average. If awards are distributed symmetrically, the median and mean will be equivalent. If, however, the distribution stretches out very far in one direction, the skewing will draw the mean away from the median.

15. M. SHANLEY & M. PETERSON, *supra* note 12, at 80; Daniels & Martin, *supra* note 4, at 327.

argued that because of the skewed quality of the data, it is inappropriate to calculate and to present mean awards.¹⁶ This author's own view is that each of the indicators is relevant for answering a different set of questions, and that selecting one over the other provides an incomplete view of the distribution of jury verdicts.

For example, an individual plaintiff wanting to estimate the likely outcome in her case might be interested in the recent median award for that type of case in her jurisdiction, since she can expect that her award has a 50 percent chance of falling below (or above) that award. To get a better picture of the distribution, she might also want to know verdict values at the twenty-fifth and seventy-fifth percentile (and perhaps at the ninetieth percentile as well).

On the other hand, repeat players in the litigation process, including attorneys and insurers, might be more interested in mean awards, since they reflect the probability of obtaining awards of different values. In fact, repeat players should be most interested in the *expected* award, which is the probability of obtaining a plaintiff verdict multiplied by the mean award in cases won by the plaintiffs. From a business point of view, it is the expected award that affects the bottom line, not the median.¹⁷

Some insurers and other business people have asserted that their concerns about recent trends in jury verdicts center around the unpredictability of the eventual award rather than its amount.¹⁸ If jury awards were becoming more unpredictable over time, the *variance* of the distribution, a statistical measure dealing with the spread of values around the mean, would be expected to increase. Yet, few reports include the variance.

The point is not that a particular indicator is right or wrong, but rather that it is important to select and report those indicators that are most relevant to the issue at hand. In the case of civil jury verdicts, where different measures appear to tell different stories, it is probably wiser to report multiple indicators than to focus on a single measure.

IV

EVALUATING MAGNITUDES AND DIFFERENCES

Despite disagreements over choices of statistical indicators and analytical approaches, researchers generally arrive at the same answer to research questions when using the same data. One value is either bigger or smaller

16. Daniels & Martin, *supra* note 4, at 326-27.

17. The bottom line is, of course, not just affected by jury awards. The bulk of personal injury and contract cases are settled. Although it is believed that jury awards drive settlement outcomes, we do not yet know very much about the dynamics of this process. In addition, the jury verdict is not the end of the disposition process for those cases that are tried. A substantial fraction of jury awards is rejected by one party or the other; most of these cases result in a negotiated outcome, while some are disposed of by appellate court judgment. See Broder, *Characteristics of Million Dollar Awards: Jury Verdicts and Final Disbursements*, 11 JUST. SYS. J. 349, 353-58 (1986); M. SHANLEY & M. PETERSON, *POSTTRIAL ADJUSTMENTS TO JURY AWARDS* 5 (1987).

18. Harris, *Will Liability Bankrupt Us?*, INS. REV., Sept. 1986, at 29, 30 (quoting Peter Lardner, President, American Insurance Association); Knapp, *Who's to Blame? Insurers or Courts?*, STATE GOV'T NEWS, Mar./Apr. 1986, at 4, 6. See Church, *supra* note 7, at 17.

than another, and the quantity of a variable is either going up over time or not. Researchers are in less agreement, however, with regard to what the data say about the *policy question* under debate.

The debate over tort liability provides numerous examples of how people differ in their evaluations of the same numerical data. In a recent *Justice System Journal* issue devoted to the "litigation explosion" controversy, Roper, focusing on court filings, and Daniels and Martin, looking at jury verdicts, conclude that there is little evidence of either "explosion" or "crisis" in the system.¹⁹ However, in a review of ICJ research looking at similar types of data (including those reported by Roper and Daniels and Martin), researchers concluded that there is evidence of substantial change in filings and verdicts in certain components of the caseload and that for some sorts of litigation, "explosion" may be an appropriate term.²⁰ The difference of opinion among researchers may reflect the different weight given to data for products liability, malpractice, business torts, and mass toxic cases.

In a second example of the same phenomenon, the Government Accounting Office ("GAO") recently issued a report on product liability trends in the federal district courts which questioned the extent of the explosion in litigation. The title of the report summarized their analyses succinctly because they found that much of the growth in product liability filings was attributable to a single type of litigation, asbestos worker injury suits.²¹ In a critique of the report included in its Appendix, the Justice Department retorted:

The [Tort Policy] Working Group was well aware that a significant number of the product liability cases filed in federal court since 1984 involved asbestos-containing products. This plainly was not considered an aberration in the data. To the contrary, it was perceived as merely the most pervasive example of a rapidly evolving variant of traditional product liability jurisprudence—toxic tort litigation To ignore these cases as somehow irrelevant to the growth trend in product liability litigation is to miss the forest for the trees.²²

Perhaps more interesting, researchers' inability to agree on judgments of magnitudes may be affected by choice of "anchor points."²³ Various researchers have noted that product liability filings in the federal courts have risen over the past decade. Using published United States Courts Administrative Office statistics, and doing the same type of calculation, a five- to eight-fold increase has been observed, depending on the base year used for calculating change.²⁴ Recently, T. Dungworth analyzed the raw data on which the Administrative Office reports are based and performed the same

19. Roper, *supra* note 2, at 281; Daniels & Martin, *supra* note 4, at 347.

20. See D. HENSLER, M. VAIANA, J. KAKALIK & M. PETERSON, *supra* note 13, at 11.

21. UNITED STATES GOVERNMENT ACCOUNTING OFFICE, *PRODUCT LIABILITY: EXTENT OF LITIGATION EXPLOSION IN FEDERAL COURTS QUESTIONED* (1988).

22. *Id.* at 51.

23. See D. KAHNEMAN, P. SLOVICK & A. TVERSKY, *JUDGMENT UNDER UNCERTAINTY: HEURISTICS AND BIASES* 14 (1982).

24. WHITE HOUSE TORT POLICY WORKING GROUP, *REPORT ON THE CAUSES, EXTENT AND POLICY IMPLICATIONS OF THE CURRENT CRISIS IN INSURANCE AVAILABILITY AND AFFORDABILITY* (1986); Galanter, *supra* note 2; D. HENSLER, M. VAIANA, J. KAKALIK & M. PETERSON, *supra* note 13.

calculation using as the base the year when the federal court system was fully converted to the use of a new product liability case-identifying system.²⁵ At a Rand seminar, Dungworth reported “only” a three-fold increase, much smaller than the White House Task Force calculation, and hence, he suggested, not very consequential. Some audience members not familiar with the White House report took issue with this interpretation; they thought a three-fold increase over a decade was very consequential indeed. Clearly, their expectations regarding change were quite different.

Similarly, the author has had personal conversations with demographer colleagues at Rand who criticize the characterization of a 4 percent annual growth rate in tort litigation as “modest”; in demographic research, 4 percent per year would be considered a substantial rate of change. The point of all of these examples, of course, is that “explosions” are in the eyes (or ears!) of the beholder.

Similarly, the measure of success or failure of programs or processes depends on the standard chosen. The reaction to another ICJ report dealing with posttrial adjustments to jury awards²⁶ indicates how responses to the same absolute number may differ, depending on the standard applied. The study showed that in Cook County, Illinois, and in a number of northern California jurisdictions, about 20 percent of jury verdicts were changed after trial. Across all cases sampled, the reduction in amount paid was about 30 percent; among the minority of cases that were changed, the reduction was close to 50 percent. The amount of reduction varied with award size and was largest in cases over \$1 million.²⁷

Some readers noted the report with pleasure because it supported the hypothesis that very large awards are frequently reduced by large amounts, making it clear that tales of runaway juries were much exaggerated. Others found that the report supported the hypothesis that the bulk of the money originally awarded survives review, indicating that jury awards remain relevant. Anticipating this reaction, the authors noted that the results were a classic case of the “is the glass half full or half empty?” phenomenon.²⁸

One can dismiss such differences in interpretation of data as merely reflecting differences in social values and political positions. However, inconsistencies between systematic empirical observations and perceptions of participants in the litigation process may constitute another form of data. When encountering individuals whose perceptions of trends in jury verdicts are inconsistent with researchers’ empirical analyses, rather than dismissing these perceptions as politically inspired or simply wrong, researchers should wonder whether these differences in perception suggest something about the settlement process. Do attorneys’ overestimates of the likelihood of very

25. T. DUNGWORTH, *PRODUCT LIABILITY AND THE BUSINESS SECTOR: LITIGATION TRENDS IN FEDERAL COURTS* 22-23 (1988).

26. M. SHANLEY & M. PETERSON, *supra* note 12. See also Broder, *supra* note 17 (reporting similar findings).

27. M. SHANLEY & M. PETERSON, *supra* note 12, at 47.

28. *Id.* at xii.

large jury awards influence their approach to negotiating claims in personal injury suits? When businessmen express concern about effects of the liability system on their businesses in the face of studies that suggest that the dollar effects are small in relation to revenues, does this indicate something about the way businesses respond to legal rules—something that research data on insurance premiums and litigation costs fail to capture? How different people evaluate magnitudes may tell us something important about social processes under study.

V

SPOTTING TRENDS

Just as interpretations of magnitudes vary from observer to observer, identifications of “trends” are subject to debate. Intuitively, a trend is defined as change toward or away from some initial point. The questions that arise are (1) what is the appropriate starting point? and (2) how long a period does one need to observe before one declares there is a trend?

Often, when researchers are not quite sure what they are looking for, they simply start plotting the trend from the first year data become available. However, as illustrated by the discussion of product liability “trends” above,²⁹ this may lead to incorrect inferences. Using a more careful approach, a researcher might calculate trend measures, such as change indices, using different starting points and report how results vary with the choice made. If a particular point in time is seen as a watershed year by policymakers, researchers might want to calculate trend measures for both the period prior to that year and some period after.³⁰

The technical problems associated with calculating trend indices are easy to solve. Determining when it makes substantive sense to start looking for a trend involves much more difficult problems. For example, after the spate of tort reform activity last year, many individuals on both sides of the tort reform debate were eager to see changes in the rate of claim filings, average jury awards, and/or insurance premiums. However, changes in statutory law, even when they are not challenged in the courts, take some time to work their way through the social system. If the changes that were made do have significant effects, these effects would not be expected to show up for some time. Since a complete understanding of the process by which changes in the law affect behavior remains elusive, researchers should begin tracking critical outcome variables now and should continue to do so for some time into the future.³¹ To this author’s knowledge, no one is engaged in this sort of data collection or analysis with regard to tort reform.

29. See *supra* notes 23-25 and accompanying text.

30. Another approach is to calculate year-to-year changes and average over the period. However, this approach may hide interesting discontinuities in the trend line.

31. For a discussion of approaches to assessing the impact of tort reforms, see S. CARROLL, *ASSESSING THE EFFECTS OF TORT REFORM* (1987).

A second element in the debate involves how long a period to track. Most researchers would probably agree that two years do not constitute a trend, but are three, five, even ten years enough? Again, no one right answer exists. Rather, the nature of the trend to be examined will often determine the best tracking period. If one is investigating whether significant shifts in social behavior have taken place, one should probably monitor change over a fairly long period of time since most such behavior changes gradually. For example, the response to information campaigns on health consequences of smoking has taken years to show up in survey data.³² Similarly, if Americans *are* becoming more litigious, we would not expect to see this reflected in litigation rates for just a few years. On the other hand, observing such rates over a short period could be sufficient to determine whether increases in litigation could have contributed to current congestion and delay on a civil calendar.

VI

WHEN IS IT AN ANECDOTE?

During the recent tort liability debate, much was made of stories about jury awards to the man who was injured in the refrigerator race, the burglars who fell through the skylight, and the psychic who lost her special powers.³³ Most listeners also heard the debunking of those stories.³⁴ By the end of the debate, everyone, it appears, had learned not to trust anecdotes.

The dictionary defines the term "anecdote" as "usually a short narrative of an interesting, amusing or biographical incident."³⁵ The definition does not require that the story be true or false. Much of the negative reaction to the use of anecdotes in the tort liability debate stems from the discovery that the stories circulated were usually false—or at least not completely true. But this reaction misses the main point: the problem with substituting anecdotes for more systematic data is that the story-teller does not (and usually cannot) provide any information to indicate whether the story is *representative*. Whether it was a professional burglar who fell through the skylight or a kid playing a prank, it is necessary to determine how representative that person's experience was of the total experiences of individuals who have accidents, seek tort compensation, and so on. Without such information, the significance of the story is uncertain.

With the new enthusiasm for rejecting anecdotes has come, unfortunately, a new negativism about qualitative research. Interview data are discounted as war stories. Interpretations of case study material are inherently suspect. If the researcher cannot estimate a regression model, that researcher must not be dealing with real data. The danger in such thinking lies in the fact that

32. J. WASSERMAN, *EXCISE TAXES, REGULATION AND THE DEMAND FOR CIGARETTES* 3 (1989).

33. Church, *supra* note 7, at 20-21; *see also* Daniels & Martin, *supra* note 4, at 325-26.

34. Church, *supra* note 7, at 20-21.

35. WEBSTERS NEW COLLEGIATE DICTIONARY (7th ed. 1972).

many of the civil justice phenomena that need study are not suited to current quantitative analytic techniques.

Researchers simply do not have available very good quantitative approaches to studying large social organizations or interaction processes. Often, political scientists and legal sociologists adapt anthropological techniques to find out how various dispute processing programs work or how lawyers manage their cases. The standards for such research are not incorporated in statistics textbooks, but they do derive from the same methodological paradigms that more quantitative analysts use: observing a large enough number of courts, lawyers, judges, or disputes; including the variety that exists among the population; and using techniques that are systematic enough so that another researcher using the same approach could expect to uncover the same facts. A researcher needs to provide enough raw descriptive information to enable a critic to decide whether the story constructed from these observations is supported by the data, or whether a contrary story is equally plausible. Accomplishing this task is more of an art than a science, but it is important for researchers to recognize the continuing importance of qualitative data in civil justice research.³⁶

VII

GENERALIZING FROM LIMITED DATA

One of the most difficult issues in designing social research is attempting to balance internal and external validity. Although this topic receives extensive consideration in social research methods texts, it is intuitively obvious that in conducting research one must often choose between knowing a good deal about a very specific population of people, cases, or courts, with a high degree of confidence, and knowing less about a broader population, with a lower degree of confidence. Often, particularly in a topical area for which there is poorly developed theory and a scanty empirical database, researchers opt for more careful and more intensive study of the narrowly bounded population. Sometimes they choose a population that is inherently interesting to them. For example, the ICJ has studied the Los Angeles Superior Court, in part because it is the local court and in part because, as the largest court in the nation, it seems to present particular challenges for court management.³⁷ Sometimes researchers choose groups or sites for study because they believe they will represent a particular class of experiences. In the ICJ study of asbestos litigation, the researchers chose jurisdictions with the largest asbestos caseloads in the country in part because they wanted to explore problems associated with the concentrated distribution of many mass

36. R. YIN, *CASE STUDY RESEARCH: DESIGN AND METHODS* (1984) (discusses systematic case-study research methods).

37. See M. SELVIN & P. EBENER, *MANAGING THE UNMANAGEABLE: HISTORY OF CIVIL DELAY IN THE LOS ANGELES SUPERIOR COURT* (1984).

exposure cases.³⁸ Sometimes, of course, researchers simply choose populations for which data are available.³⁹

These kinds of choices truly satisfy only the small group of policymakers who are specifically concerned with the population under study. Another set of policymakers may want to extrapolate from such findings to their own limited populations of interest. They want to know how arbitration works in their own state, not in California, or how juries respond to cases in Dade County, Florida, but not in Cook County, Illinois. Not surprisingly, these policymakers remain skeptical about the usefulness of the available data. A third set of policymakers wants to derive guidance for broader decisionmaking. These policymakers want to know what product liability filing trends in the federal district courts suggest about the impact of product liability on the economy, or what the experience with asbestos litigation indicates about the courts' ability to deal with toxic tort cases. They are only happy with the answers researchers give them until a policymaker on the opposite side of the issue brings forward her research experts to dispute the applicability of the limited available data.

Researchers either need to insist that their data pertain only to the specific population studied—if they believe that is the case—or to assist policymakers in making sensible inferences from the available data. California arbitration results may have general implications for other populous, urbanized states contemplating the same sorts of statutory provisions and rules that govern the California program. Jury verdict trends in Chicago and San Francisco are unlikely to be replicated in rural or suburban courts. The fact that two such different cities produce similar trends, however, coupled with more fragmentary data on national trends, suggest that the findings may be representative of trends in metropolitan areas generally. The number of product liability cases in federal courts, by itself, does not tell much about the impact of liability on the economy. The fact that one particular court has difficulty managing its asbestos caseload may tell more about that court than about toxic tort litigation. The fact that courts generally have difficulty dealing with statistical evidence linking asbestos exposure to various diseases, however, suggests strongly that they will have difficulty dealing with such evidence in other toxic exposure cases.

Perhaps the key factor that distinguishes policy analysts from their more basic-research-oriented colleagues is their willingness to extrapolate from limited data to broader policy questions, and their belief that such extrapolation, properly performed under appropriate circumstances, serves important policy goals. It has been said that a little knowledge is a dangerous thing, but for policymaking, small amounts of data—when they have been

38. See D. HENSLER, W. FELSTINER, M. SELVIN & P. EBENER, *ASBESTOS IN THE COURTS: THE CHALLENGE OF MASS TOXIC TORTS* 7 (1985).

39. This was the rationale behind the ICJ's choice of Cook County, Illinois, and San Francisco, California, for jury verdict analysis. M. PETERSON, *supra* note 4, at 1.

collected carefully and analyzed properly—are sometimes better than no data at all.

VIII

CONCLUSION

Researchers have a responsibility to indicate the sorts of inferences that can and cannot be drawn from the data they collect and analyze. They also have a responsibility to educate policymakers about the uses of different statistical data. They need to be self-conscious about how they describe magnitude differences, select standards for comparisons, and define time periods for graphing trends. They should be clear about definitions of what constitutes data and what should be relegated to the netherworld of anecdotes. They need to assist policymakers in deciding when it makes sense to extrapolate from limited data and when it does not. Last, but not least, they need to be sensitive to the ways in which their own political and social values affect their choices of research questions, research designs, and reporting of research data, and they should expect colleagues to point out instances in which those values have lead them astray. The highly politicized world of policy research challenges researchers to keep their political personae separate from their research analytic personae. But it also presents exciting opportunities to contribute to policymaking on legal issues while improving basic knowledge about civil justice processes.

