

IV. MLRC 2005 STUDY OF TRIALS AND DAMAGES

A. CASES AND TRIALS

TABLE 1: NUMBER AND RESULTS OF CASES

	Cases ¹²	Default Plaintiff Wins ¹³	Mistrials ¹⁴	Trial Verdicts	Defense Wins	% Defense Wins
1980	25		0	25	5	20%
1981	20		1	19	5	26.3%
1982	45	2	1	42	15	35.7%
1983	22		0	22	11	50%
1984	30		0	30	9	30%
1985	26		0	26	8	30.8%
1986	33		0	33	10	30.3%
1987	18		1	17	12	70.6%
1988	34		0	34	13	38.2%
1989	15		0	15	6	40%
1990	17		0	17	5	29.4%
1991	26		0	26	13	50%
1992	12		0	12	4	33.3%
1993	25		3	22	10	45.5%
1994	16		1	15	5	33.3%
1995	9		0	9	2	22.2%
1996	18		0	18	6	33.3%
1997	22		0	22	10	45.5%
1998	20		0	20	8	40%
1999	19	1	0	18	7	38.9%
2000	17	3	0	14	6	42.9%
2001	19	2	1	16	8	50%
2002	9	2	1	6	5	83.3%
2003	18	0	2	16	9	56.3%
2004	14	1	1	12	7	58.3%
1980-1989	266	2	3	263	94	35.7%
1990-1999	184	1	4	179	70	39.1%
2000-2004	77	8	5	64	35	54.7%
1980-2004	527	11	12	506	199	39.3%

12. In this REPORT, “cases” are legal proceedings filed with a court against a media defendant. A case that proceeds through the presentation of evidence to the point where it is presented to a finder of fact for a verdict on liability is a “trial.” A trial may result in a default verdict, directed verdict, bench verdict, a jury verdict, or a mistrial. See Appendix C, p. 107, *infra*, for these and other definitions used in this STUDY.

13. There were no default judgments recorded prior to the 1999 REPORT, leading to the conclusion that such cases were ignored. To the extent MLRC discovers default judgments in prior years, they have been and will be noted and included in this table. (The two 1982 defaults were first reported in the 2003 REPORT.) Defaults are excluded from all other tables in the STUDY.

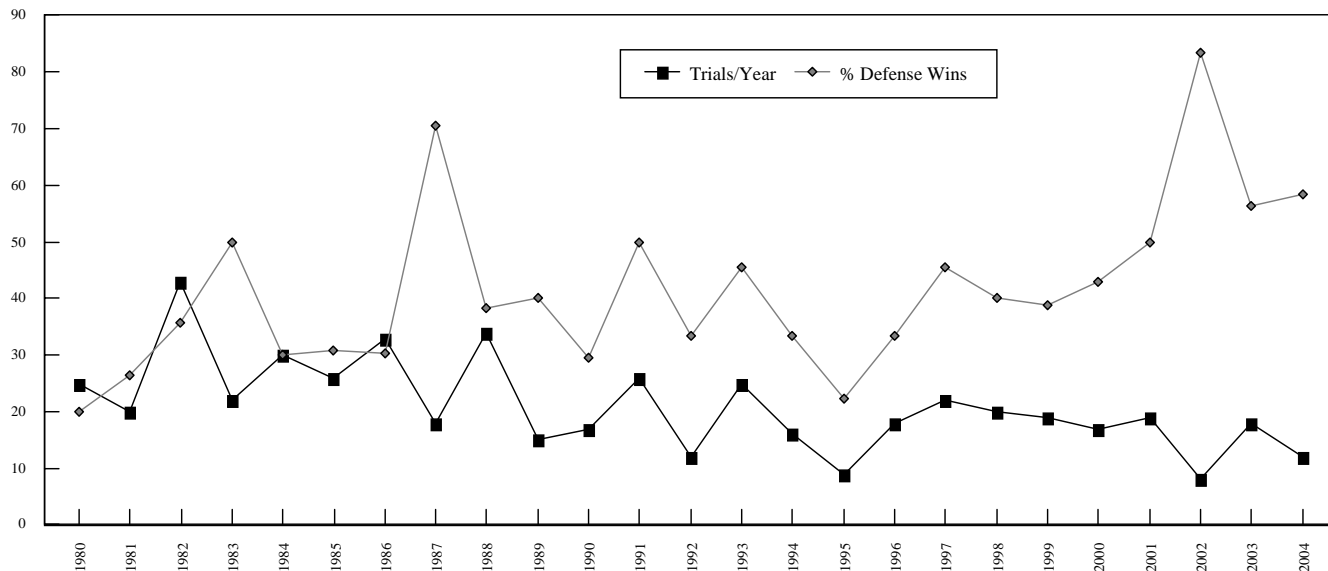
14. There have been ten trials since 1980 which ended in mistrials due to hung juries, and two for other reasons. The hung juries were in *Cramlet (I) v. Multi-Media Program Productions*, No. 80-C-1737 (D. Colo. 1981); *Braun (I) v. Flynt*, No. 82-1235 (W.D. Tex. 1982); *MacDonald v. McGinniss* (C.D. Cal. 1987); *Eidson v. Berry* (Ga. Super. Ct. 1993); *Lugo (I) v. Inside Edition*, No. C750-445 (Cal. Super. Ct. 1993); *Masson (I) v. The New Yorker*, No. C-84-7548 EFL (N.D. Cal. 1993); *Benson v. Philadelphia Daily News* (Pa. C.P. 1994); *Nannicola v. Warren Newspapers, Inc.*, No. 98-CV-771 (Ohio Ct. C.P. 2001); *Hewan v. Fox News Network*, Civil No. 01-0125 (E.D. Ky. 2003); and *Weaver v. Clear Channel Communications*, Civil No. 02-116 (D. Idaho 2003) (see p. 15, *supra*). Other mistrials were *Downing v. Aberchrombie & Fitch*, No. 99-CV-4612 (C.D. Cal. mistrial declared May 17, 2002) (misconduct by plaintiff), *dismissed with prejudice* (C.D. Cal. order May 26, 2004) (settled); and *Jarosak v. Bloyer*, No. _____ (Ind. Dist. Ct., Porter Co. mistrial declared March 24, 2004) (plaintiff’s counsel became ill) (see p. 12, *supra*). Note that *Anderson v. Gannett Co., Inc.*, No. 2001 CA 001728 (Fla. Cir. Ct., Escambia County June 23, 2004) (dismissal of two jurors in retrial on punitives, leaving no alternates) (see p. 12, *supra*), is not counted as a mistrial in Table 1 because it occurred during a retrial on damages only, not liability.

In last year's STUDY, we observed that the number of trials each year in the early years of the 2000s showed a continued downward trend, and predicted that the average would fall from the 1990s to the 2000s, as it had from the 1980s to the 1990s. The 2004 figure of 14 cases – 12 of which resulted in verdicts and are thus classified as “trials” in this REPORT – continues this trend. There were an average of 26.6 cases each year during the 1980s, 18.4 cases on average in the 1990s, and an average of 15.2 cases each year so far in the 2000s.

As the number of cases and trials have decreased, the defense win rate has risen. In the 1980s, media defendants won 35.7 percent of verdicts.¹⁵ During the 1990s, the defense win rate rose to 39.1 percent. So far in the 2000s, media defendants have seen a significant increase in their victory rate, rising to 54.7 percent.

The 2004 defense victory rate of 58.3 percent (seven of 12 verdicts) is the third highest in the 25 years of REPORT data, behind 2002 (83.3 percent, five of six cases) and 1987 (70.6 percent, 12 of 17 verdicts).

FIGURE 1: ANNUAL NUMBER OF VERDICTS AND PERCENTAGE OF DEFENSE WINS – ALL TRIALS, 1980-2004



Since 1980, the number of trials each year and the share of defense wins have generally moved in a rough sync: when the number of trials increased, so did the defense victory rate. This was especially true from 1990 to 2001.

But the correlation between number of trials and defense victory rate is not a solid one. In 2004, the number of trials dropped from the previous year, from 16 in 2003 to 12 in 2004. But the defense victory rate remained stable, from 56.3 percent in 2003 to 58.3 percent in 2004.

The six verdicts in 2002 were the lowest number since MLRC began compiling this REPORT in 1980, but the defense victory rate for that year was the highest, 83.3 percent.

Overall, defendants have won 39.3 percent of the 506 trial verdicts that have been rendered since 1980.

15. Throughout this REPORT, percentages are rounded to the nearest tenth of a percent. But percentages are calculated using unrounded dollar figures. See also note 27, *infra*, regarding rounding of dollar figures.

TABLE 5: DEFENSE WINS BY PLAINTIFF STATUS¹⁸

	Public Official			Public Figure			Private Figure		
	Trials	D Wins	% Won	Trials	D Wins	% Won	Trials	D Wins	% Won
1980	4	0	0	12	2	16.7	6	2	33.3
1981	5	2	40	7	2	28.6	3	0	0
1982	6	4	66.7	13	4	30.8	18	4	22.2
1983	3	2	66.7	6	3	50	13	6	46.2
1984	9	1	11.1	6	3	50	14	5	35.7
1985	6	3	50	8	2	25	11	3	27.3
1986	14	6	42.9	8	2	25	11	2	18.2
1987	3	2	66.7	3	3	100	9	6	66.7
1988	9	3	33.3	8	4	50	16	6	37.5
1989	4	2	50	4	1	25	7	3	42.9
1990	1	0	0	4	1	25	10	3	30
1991	3	1	33.3	4	1	25	16	9	56.3
1992	2	0	0	7	3	42.9	4	1	25
1993	0	0	0	9	6	66.7	11	3	27.3
1994	2	1	50	6	3	50	6	1	16.7
1995	1	0	0	4	0	0	3	1	33.3
1996	1	0	0	4	1	25	10	4	40
1997	5	1	20	3	2	66.7	11	6	54.5
1998	0	0	0	7	3	42.9	10	4	40
1999	0	0	0	7	3	42.9	8	3	37.5
2000	3	2	66.7	8	4	50	1	0	0
2001	2	2	100	2	1	50	9	4	44.4
2002	1	0	0	2	2	100	1	1	100
2003	3	2	66.7	1	1	100	9	5	55.6
2004	3	0	0	4	3	75	4	3	75
1980-1989	63	25	39.7	75	26	34.7	108	37	34.3
1990-1999	15	3	20	55	23	41.8	89	35	39.3
2000-2004	12	6	50	17	11	64.7	24	13	54.2
1980-2004	90	34	37.8	147	60	40.8	221	85	38.5

A significantly higher number of trials overall involved private figures than other types of plaintiffs.¹⁹ There have been 221 private figure trials since 1980, while there have been 147 public figure trials and only 90 public official trials.

Defendants have won slightly more trials involving public figures (40.8 percent) than trials involving public officials (37.8 percent). The defense win rate in private figure trials was in between, at 38.5 percent.

In the 2004 trials, defendants lost all of the verdicts in the three 2004 trials involving public officials, while in both the public figure and private figure categories defendants won three of four trials (75.0 percent).

18. Plaintiff types are recorded as they were determined by courts in each case. See Appendix C., p. 107, *infra.*, for definitions of plaintiff types. In some instances plaintiff status was either not available or not ruled on because of the nature of a specific case. See, e.g., *Graves v. Warner Bros.*, No. 95-494536-NZ (Mich. Cir. Ct., 1999), a wrongful death suit. For these reasons, the total of trials in this table does not equal the total number of trials reported in Table 1. Trials which involved both multiple plaintiff types are counted twice – once in each category. Trials ending in hung juries are excluded. See note 14, *supra*.

19. In prior REPORTS, trials were categorized into two categories of plaintiffs: public plaintiffs and private plaintiffs. “Public plaintiffs” were public officials or public figures (limited or general); “private plaintiffs” were all other plaintiffs. This year, we have divided the public plaintiff category into more recognizable categories for public officials and public figures.