

# **AMERICAN CONTINGENCY FEES**

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**SPECIAL THANKS TO:**

**National Science Foundation**  
**University of Wisconsin Graduate School**  
**The RAND Corporation**  
**Stephen Daniels, American Bar Foundation**

***Are contingency fees a  
uniquely American  
phenomenon?***

# What do I mean by “contingency fee”?

- **No win, no pay**
- **Percentage vs. other calculation**
- **Fully vs. partially contingent**
- **Defendant contingency fees**

# Use of Contingency Fees

- **United States**
- **England (“conditional fees”)**
- **Scotland (“speculative basis”)**
- **Canada; some provinces allow percentage fees**
- **Ireland (“no goal, no fee”)**
- **New Zealand (“speculative basis”)**
- **France**
- **Australia (at least in some class actions)**
- **Greece (percentage fees)**
- **Dominican Republic (percentage fees)**
- **Brazil**
- **Israel**
- **Germany (?)**

***While in most contingency fee cases there is a recovery, that does not mean that lawyers face little or no risk in handling cases on a contingency fee basis.***

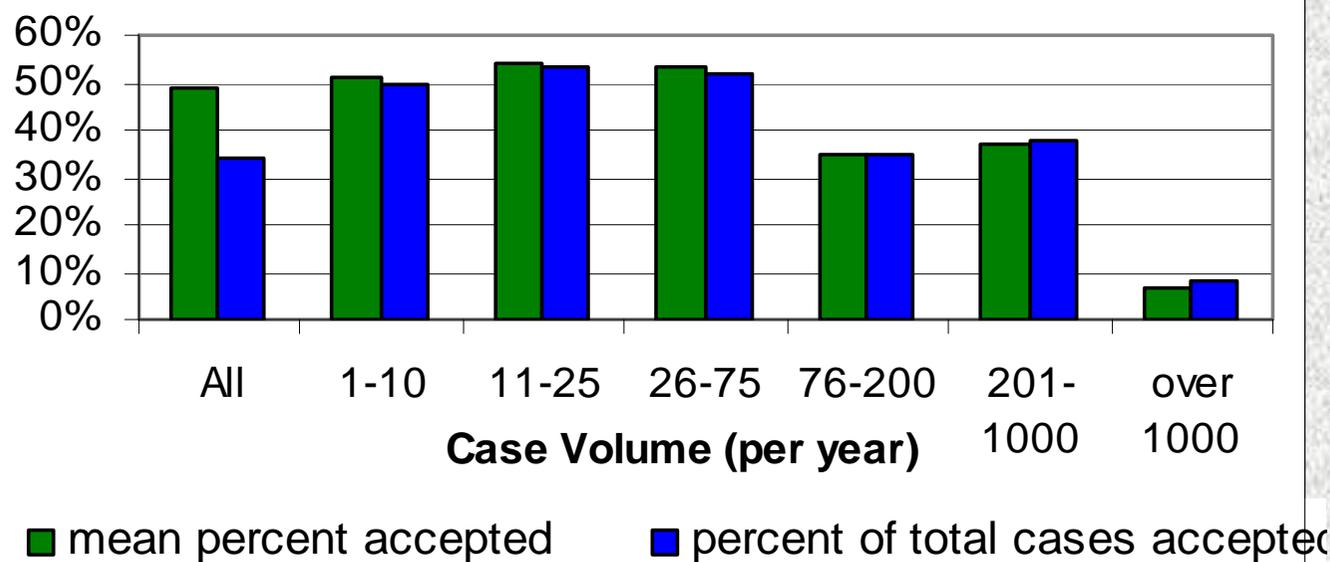
# Elements of Risk in Contingency Fees

- **Nonrecovery (“no-win, no-pay”)**
- **Size of recovery (and hence size of fee)**
- **Investment (time and disbursements) required for recovery**
- **Time until recovery**

***Contingency fee lawyers  
are key gatekeepers. They  
turn away more cases  
than the accept..***

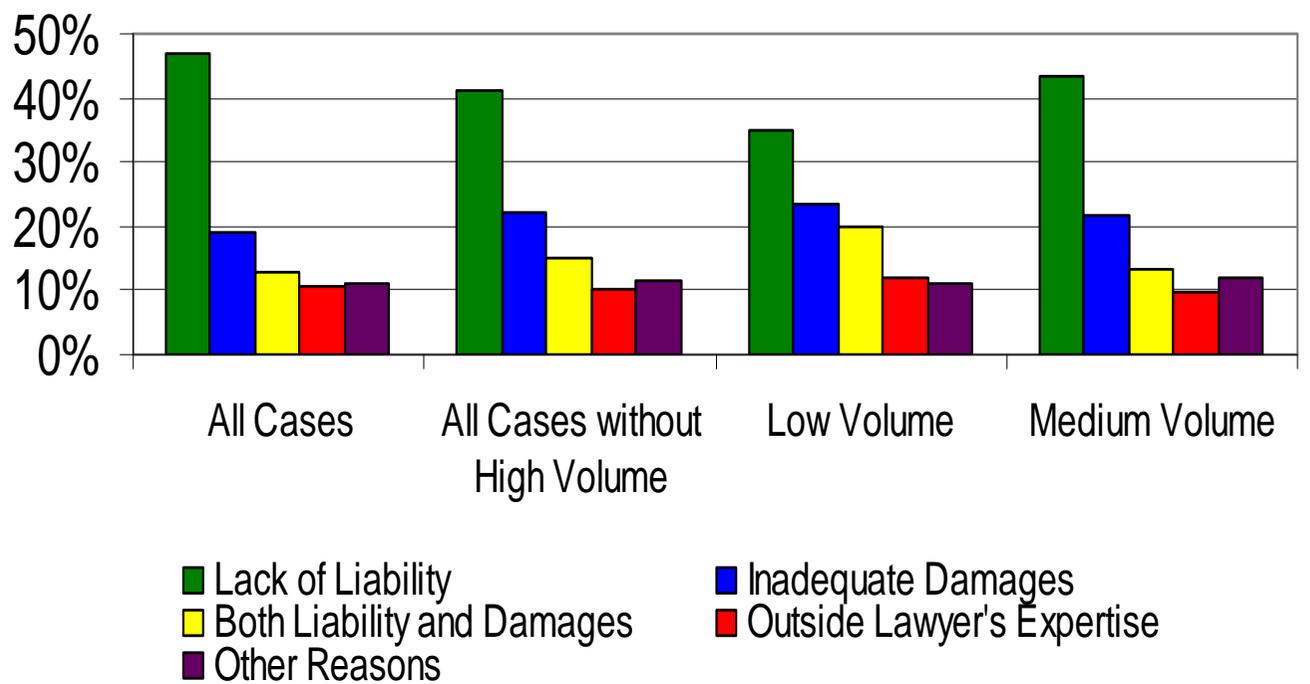
# Case Screening, Wisconsin

## Acceptance Rates

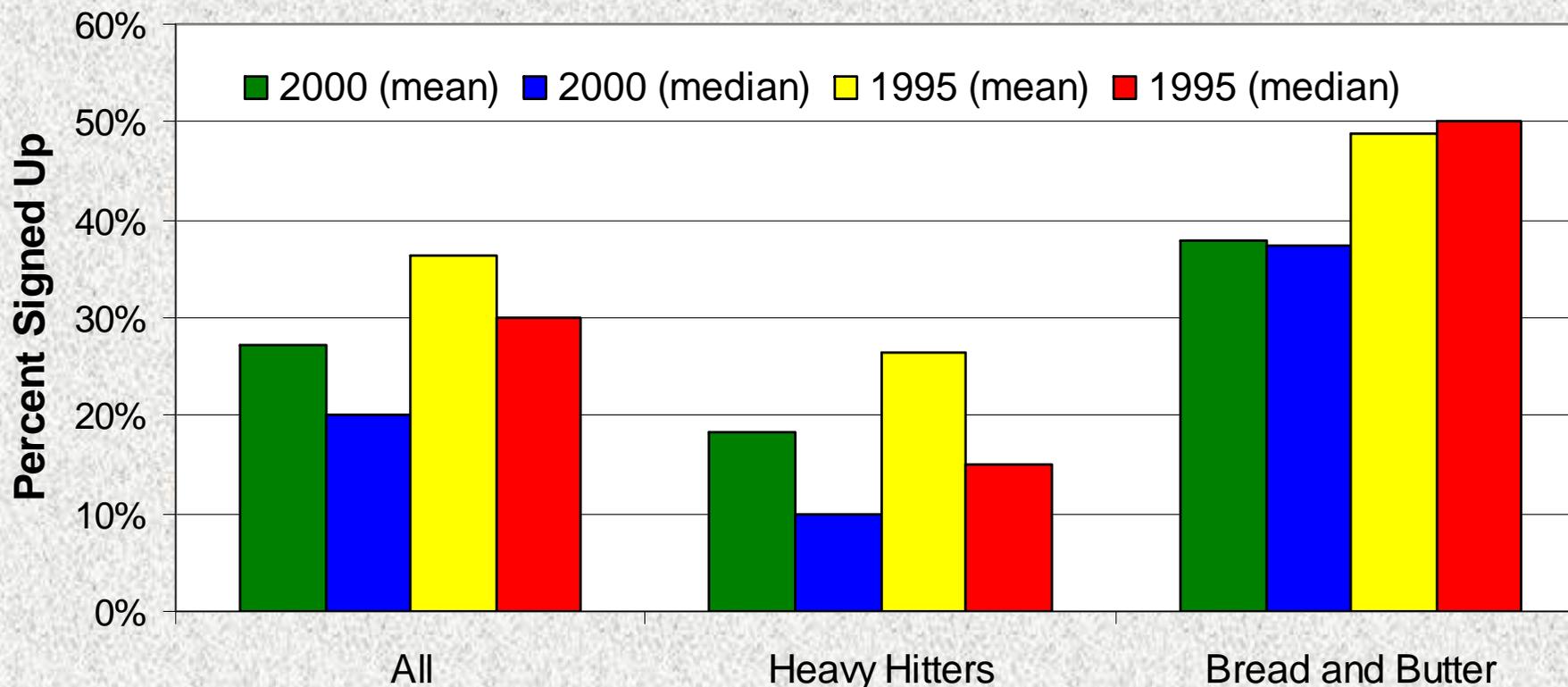


# Case Screening, Wisconsin

## Why Cases Are Declined



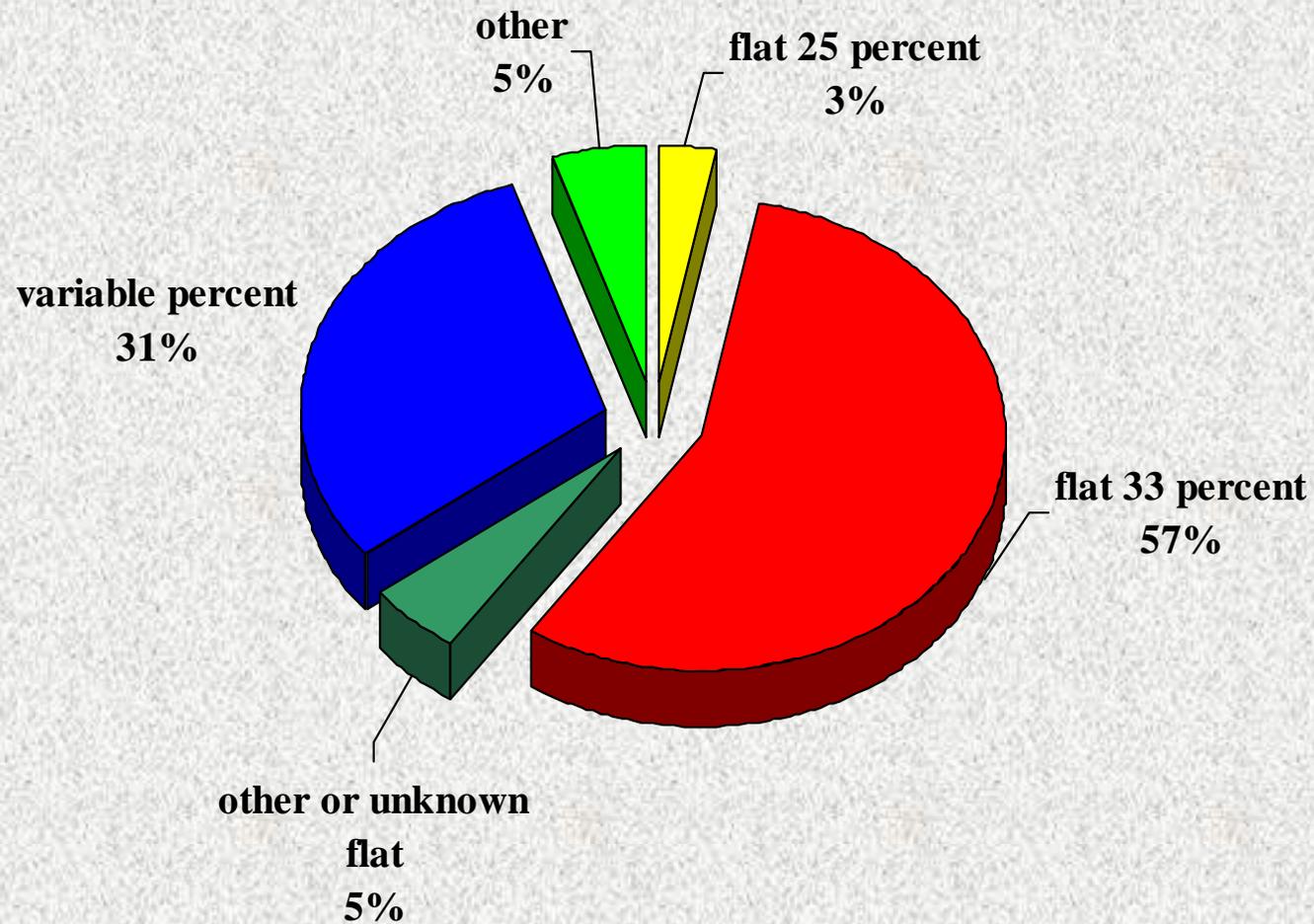
# Case Screening, Texas



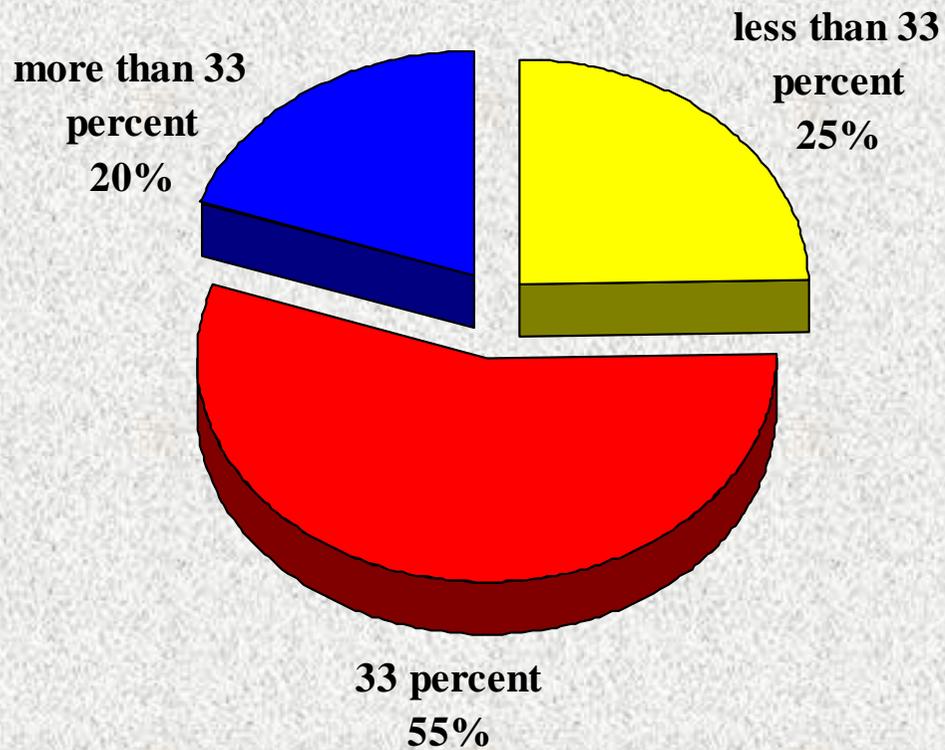
SOURCE: Stephen Daniels and Joanne Martin, "It Was the Best of Times, It Was the Worst of Times: The Precarious Nature of Plaintiff's Practice in Texas," 80 *Texas Law Review* 1781, 1789 (2002).

***While the most common contingency fee is one third, lawyers vary significantly in the fees they charge on a contingency basis.***

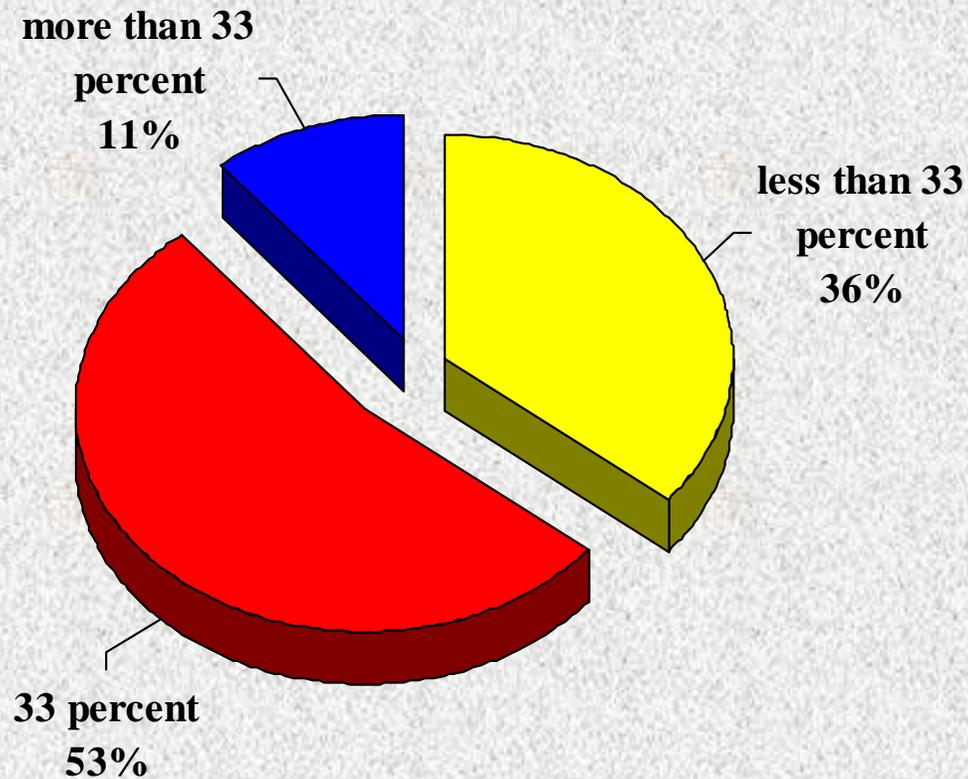
# Fee Percentages Wisconsin



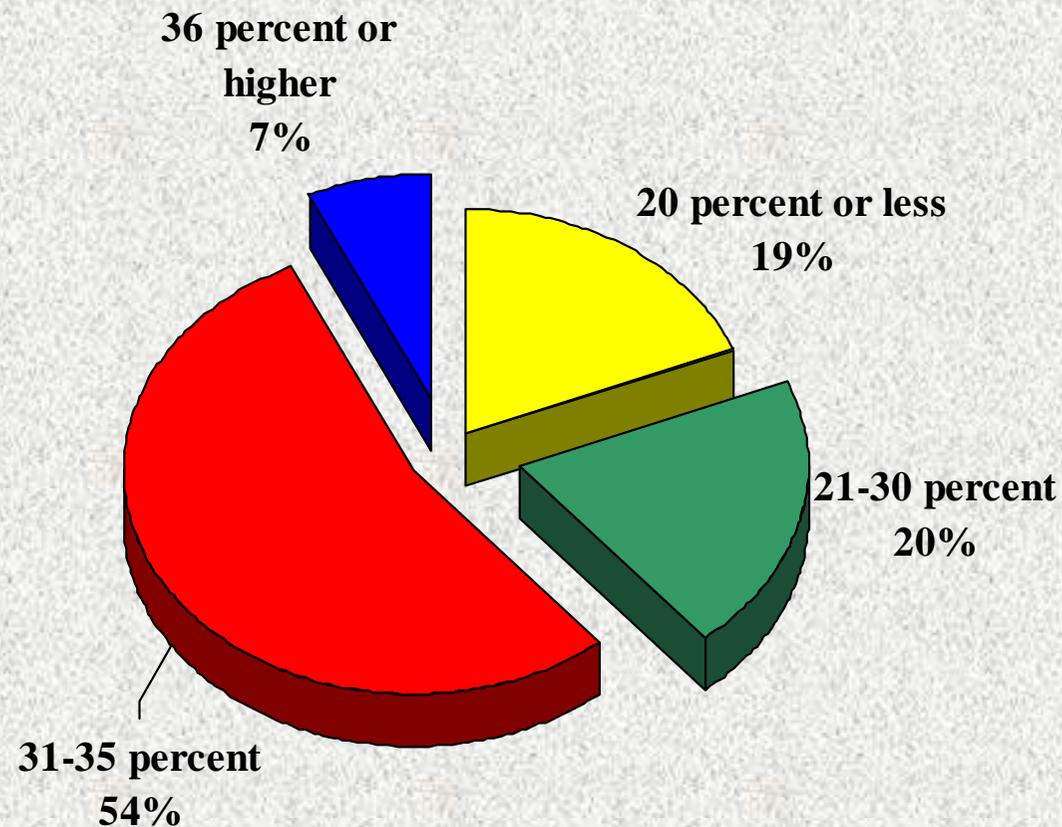
# Fee Percentages: Federal CJRA Study



# Fee Percentages: RAND Injury Study (1991)



# Fee Percentages: Insurance Research Council Consumer Study (1999)



***Most contingency fee cases general at best modest “profits” for the lawyer. Most lawyers profit most from a small proportion of their contingency fee***

# Measuring Return on Contingency Fee Work

- **Effective Hourly Rate**

$$EHR = \frac{\textit{fee received}}{\textit{hours}}$$

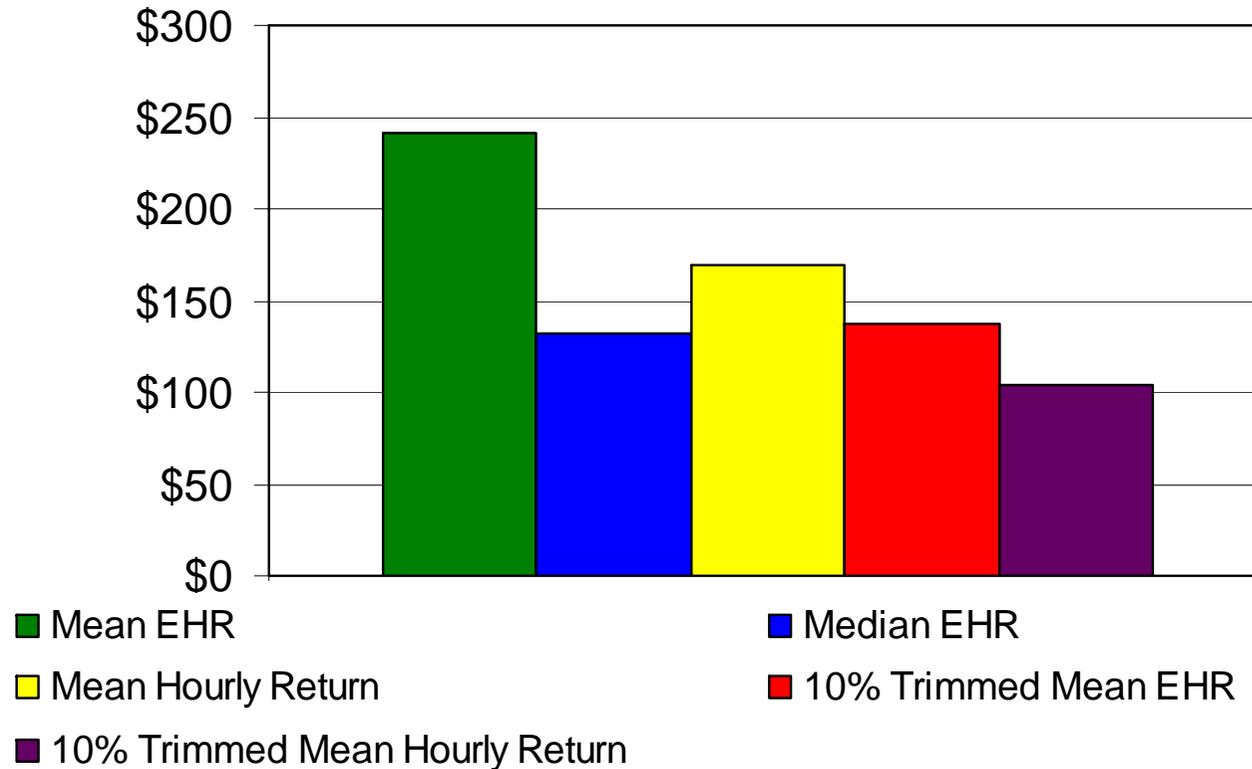
- **Mean Hourly Return**

$$MHR = \frac{\sum \textit{fees}}{\sum \textit{hours}}$$

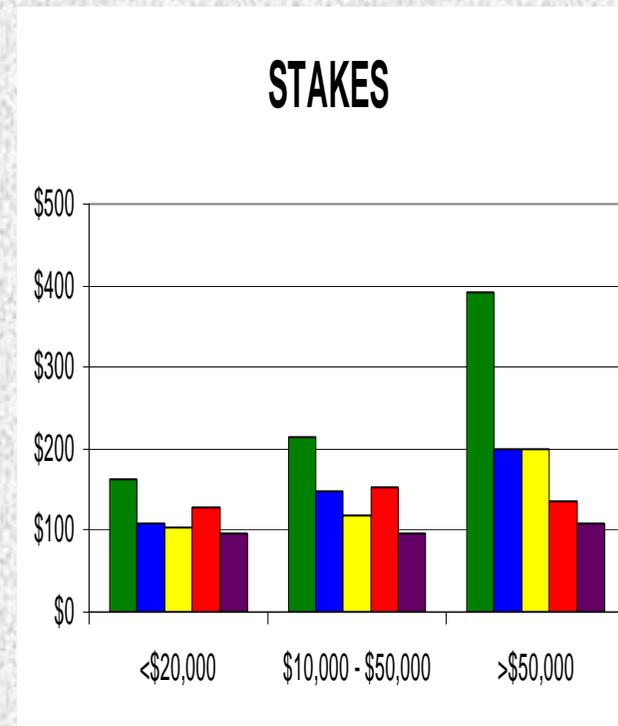
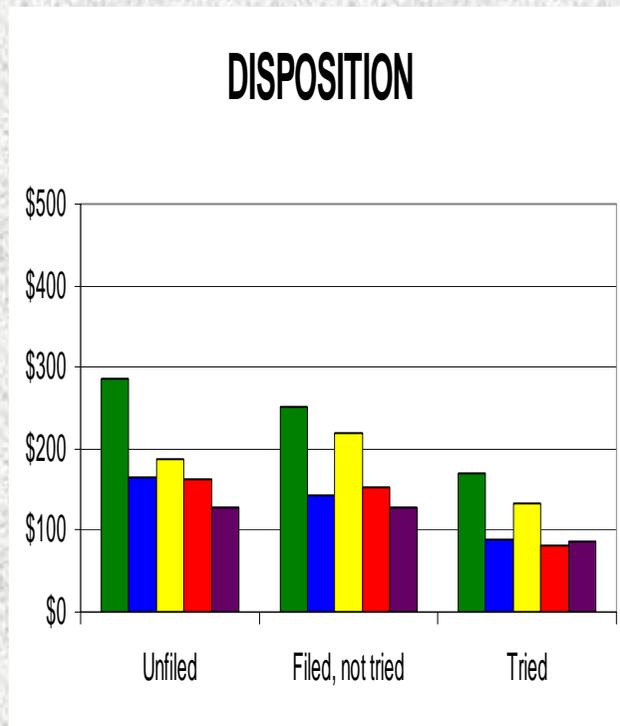
# Baselines for Comparison

- **Auto mechanic: \$75-\$100 per hour**
- **Twin Cities Plumber: \$150 per hour**
- **Routine doctor's exam: \$300-\$500 per hour**
- **Neurosurgery: \$3,000-\$5,000 per hour**
- **Median hourly rate for lawyers charging by the hour**
  - **Wisconsin: \$125 per hour**
  - **National: \$125-\$133 per hour**

# Returns from Contingency Fee Work, Wisconsin Data

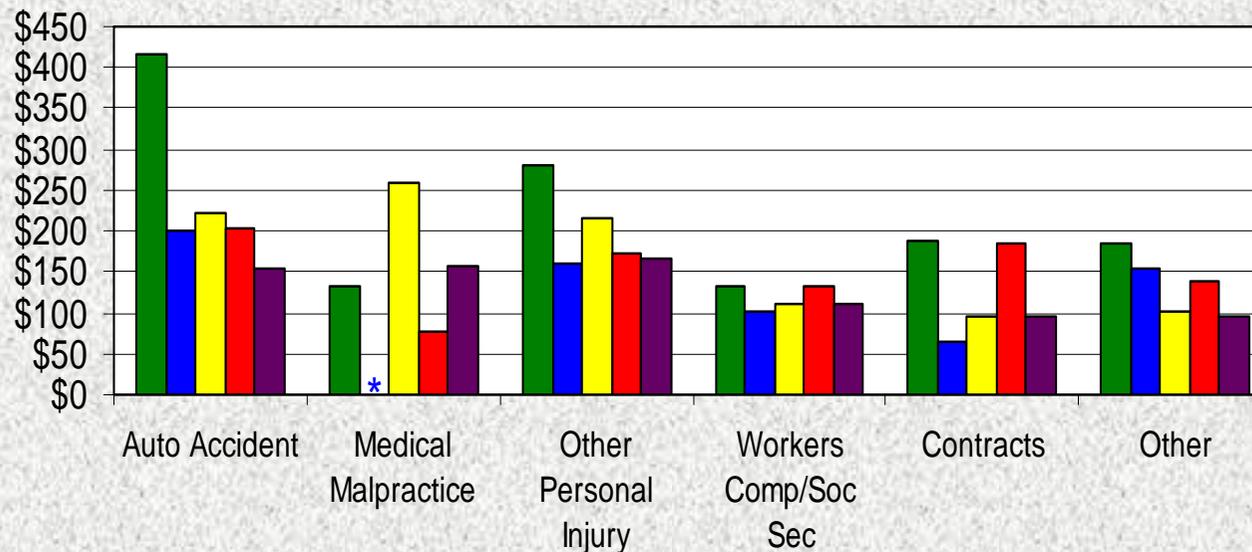


# Returns from Contingency Fee Work and Selected Case Characteristics I



# Returns from Contingency Fee Work and Selected Case Characteristics II

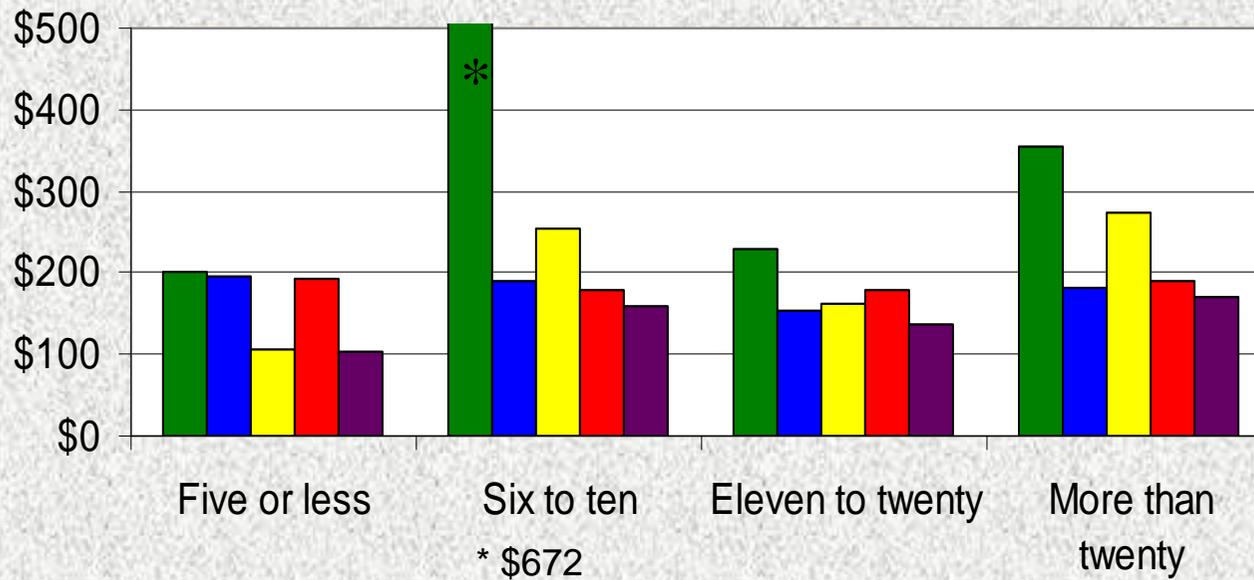
## Area of Law



\*NOTE: Median EHR for Medical Malpractice is -\$12

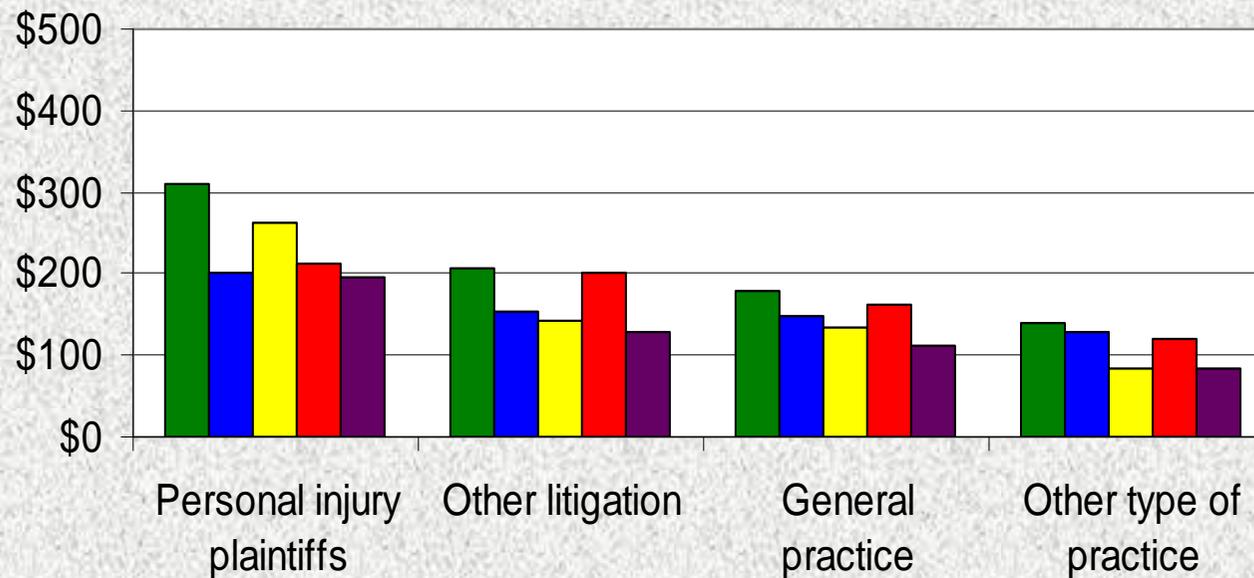
# Returns from Contingency Fee Work and Selected Lawyer Characteristics I

## Years of Experience



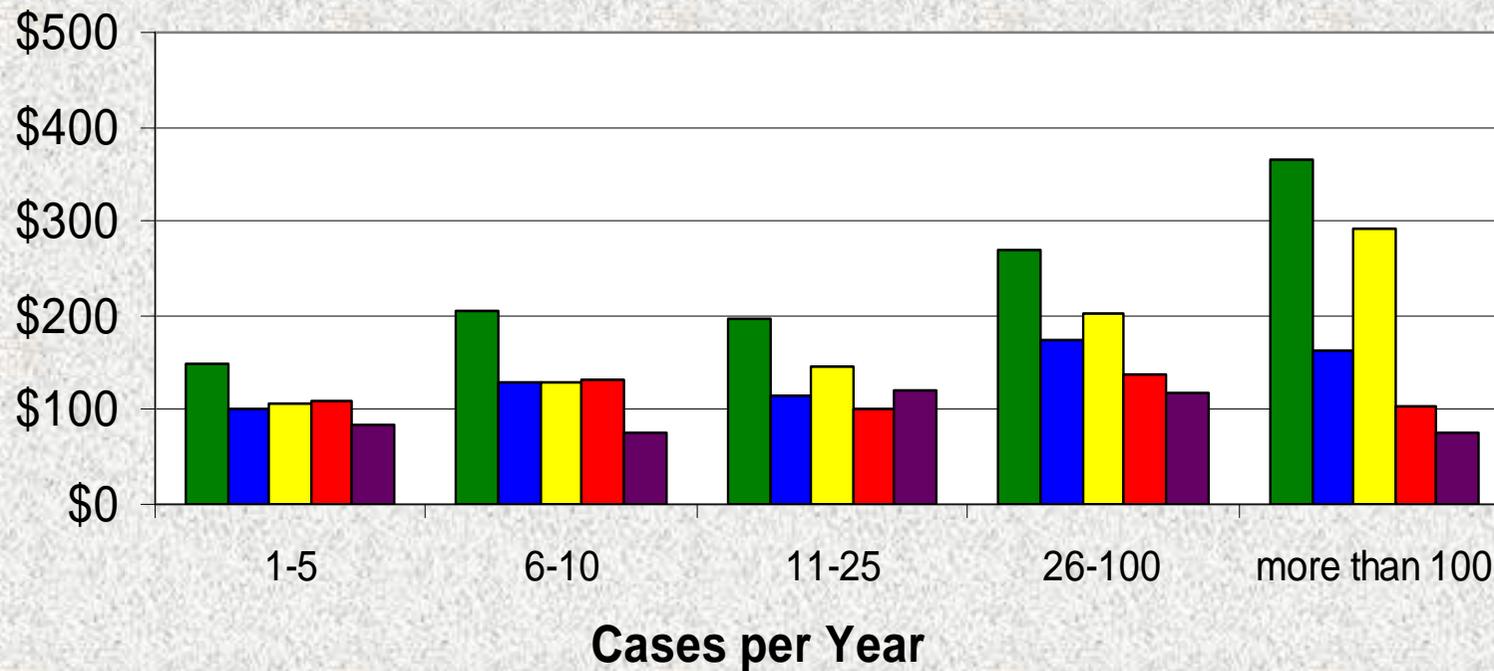
# Returns from Contingency Fee Work and Selected Lawyer Characteristics II

## Practice Area

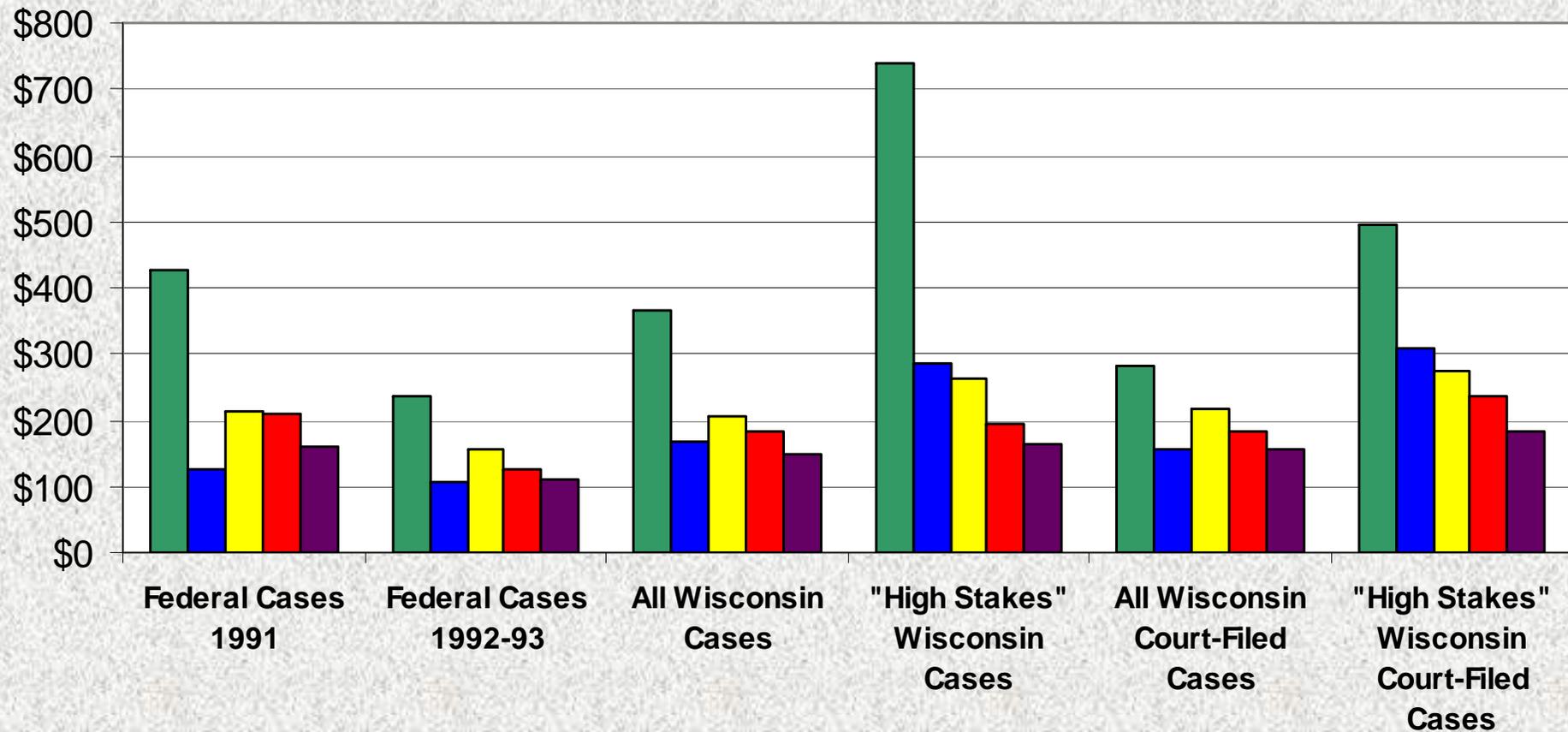


# Returns from Contingency Fee Work and Selected Lawyer Characteristics III

## Case Volume



# Returns from Contingency Fee Work: National Comparisons



***Lawyers may have short term interests in resolving contingency fee cases because with modest cases the fee potential is limited.***

# Economics of the Contingency Fee

\$125/hour

\$20,000 case, 1/3 contingency fee

“effective hourly rate” = fee/hours

hours	recovery	fee	rate	stage
4	\$3,000	\$1,000	\$250	

***Clients should not necessarily prefer the hourly fee as an alternative.***

# Is an Hourly Fee Better?

\$125/hour

hours	contingency fee	hourly fee	net recovery hourly fee	net recovery contingency fee
4	\$1,000	\$500	\$2,500	\$2,000
16	\$2,000	\$2,000	\$4,000	\$4,000
40	\$4,000	\$5,000	\$7,000	\$8,000
120	\$6,000	\$15,000	\$3,000	\$12,000
200	\$6,000	\$25,000	-\$7,000	\$12,000

***The long-term interests of contingency fee lawyers is best served by pursuing what is in the best interests of their client rather than by pursuing the lawyer's short-term interest.***

# **LONG TERM AND SHORT TERM INTERESTS**

- **The importance of good results for the lawyer's reputation.**
- **The role of reputation in obtaining clients.**
- **Lawyers are like investors, they need to approach their set of cases as a portfolio rather than being too concerned about individual cases.**

# **MORE INFORMATION?**

*Visit my home page at:*

<http://www.wmitchell.edu/faculty/kritzer>

*Full results of the study:*

***Risks, Reputations, and Rewards:***

***Contingency Fee Legal Practice***

***(Stanford University Press, 2004)***