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Courts in Cyberspace

Theodore Eisenberg and Kevin M. Clermont

“Did you hear about the psychic who got a million dollars for loss of her powers?”

“You’re kidding! We’ve *got* to get rid of that crazy jury system.”

The famous psychic story, like many others about civil juries, is not quite true.¹ But anecdotes are fun, grab headlines, race through the populace, and prove memorable. Empirical research is a drag. It involves numbers and fact-checking and consideration of alternative explanations, and often it requires qualification that strips away its headline potential and popular memorability.

This article champions the empirical approach over the anecdotal. It reports, by way of illustration, a counterintuitive empirical result about the speed with which jury-tried cases are processed. Our primary mission, however, is to report that obtaining this result was not a drag, thanks to some unique capabilities of the much-hyped information superhighway.

Methodology

Internet Site

To make this empirical observation, we used our Judicial Statistical Inquiry Form, which is on the World Wide Web. It is available for all to use, at this address:

<http://teddy.law.cornell.edu:8090/questata.htm>

The user will find there a form to fill out, specifying the user’s statistical interests and desires. Behind the form lies an immense database on all federal cases terminated after trial during the last couple of decades. Submitting the form will produce an immediate response containing empirical output that conforms to the user’s inquiries.²

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1. The claim for loss of psychic powers was not submitted to a jury; the pain-and-suffering award for allergic reaction was overturned by the trial judge. See Michele DiGirolamo, Judge Overturns \$986,000 Jury Award to Psychic, UPI, Aug. 8, 1986 (a.m. cycle); Craig Vetter, Psychic Whiplash: Lawsuit Awards Are Out of Control, Playboy, Aug. 1986, at 33.
2. For the technically minded, let us further explain. We wrote this hypertext document in HTML, and then mounted it and a Netscape server on a UNIX machine. The user with a graphical or textual browser accesses and fills out this input page according to his or her research interests. That input is sent to a Perl script, which reformats the input and sends it to

This research tool is powerful and flexible, yet simple to use. One can look at the whole database or specify a subset. One can then ask for a variety of statistical analyses. In short, empirical research is within the reach of anyone.

Academics should find this tool very useful. But so would journalists and commentators on the legal system. Of course, practitioners would benefit from ready information on incidence and outcome of cases, specified by case category and federal district. Indeed, anyone concerned with the law should find the information, and the technology, of keen interest.

Input and Output

Figure 1-A (page 98) shows the part of the form where the user focuses the data set. One can select certain case categories, calendar years, and federal districts. Further, the user can separate cases according to the jurisdictional basis, the way the case came into the district court, and whether the case was tried by judge or jury.

Figure 1-B (page 99) shows the rest of the form, where the user specifies the statistical operations to be performed on the focused data set. One can inquire about number of cases, time on the docket, plaintiffs' win rate, and amounts involved. Most useful is the ability to display results by case category, federal district, trial mode, calendar year, jurisdictional basis, or case origin. For example, a user interested in time trends of frequency, duration, win rate, or amounts could simply choose "year" on the form as the basis of aggregation, so that all the results would be stated year by year.

Once these choices are submitted electronically, the computer in a matter of seconds produces the output. The actual screen with the illustrative result of this article appears as Figure 2 (page 100).

Planned Expansion

We hope to expand the capabilities for both input and output beyond those represented by the figures.

We have already added access to federal appellate cases, whether administrative, civil, or criminal. We plan soon to increase the accessible database of district court civil cases from fully tried cases to all terminations, and we also plan eventually to extend the form's coverage to data on federal criminal cases. The current impediment is the capacity of the hardware. We would like to include cases from state courts too. The difficulty there is the availability of data.

On the output side, we are experimenting with output in the form of graphs, in addition to the current tables. Finally, we plan to rewrite the software to perform statistical significance tests and multiple regression analysis.

a Stata program for computations performed on the database. The statistical output goes back to the Perl script, which composes a hypertext document that is sent seamlessly back to the user's browser as the output page.

Illustration*Perception*

Commentators have blamed the civil jury for all sorts of sin, including of course inefficiency.³ They assume that jury-tried cases consume more time on the docket than judge-tried cases. Judge Posner, for example, says:

Court queues are almost always greatest for parties seeking civil jury trials. This makes economic sense. Such trials are more costly than bench trials both because of jury fees (which . . . understate the true social costs of the jury) and because a case normally takes longer to try to a jury than to a judge Parties are therefore "charged" more for jury trials by being made to wait in line longer.⁴

He is saying that not only does a jury trial take longer in terms of actual in-court time, but also the litigants must wait longer before and after jury trial. The longer time on the docket may be obvious, but is it true?

Reality

To subject this anti-jury perception to an easy reality check, one can access the Judicial Statistical Inquiry Form and its database. The data include the subject matter of the case, the dates of filing and termination, and the procedural progress at termination, including whether the case was tried before judge or jury. So one can look at those sizable case categories in which litigants have a clear choice between judge and jury trial,⁵ then examine the average time from filing to termination after full trial, and thereby determine whether jury-tried cases take longer than judge-tried cases.

Well, it turns out that the mean judge-tried case spends 755 days on the docket, while the mean jury-tried case terminates in 678 days.

Explanation

One possible explanation of the lengthier judge-tried cases is that they are more complex, and therefore more time-consuming, than jury-tried cases. Those judge-tried cases could take longer to get ready for trial. But it's worth noting that we still observe lengthier judge-tried cases when the data set is disaggregated by category. In eleven of the thirteen categories, judge-tried cases take longer than jury-tried cases.

3. See generally Kevin M. Clermont & Theodore Eisenberg, *Trial by Jury or Judge: Transcending Empiricism*, 77 *Cornell L. Rev.* 1124, 1125 (1992).
4. Richard A. Posner, *Economic Analysis of Law*, 4th ed., 582 (Boston, 1992); accord Leon Sarky, *Civil Juries, Their Decline and Eventual Fall*, 11 *Loy. L. Rev.* 243, 255-56 (1963) (semble); see Gordon Bermant et al., *Protracted Civil Trials: Views from the Bench and the Bar* 43-45 (Washington, 1981) (survey results).
5. See Clermont & Eisenberg, *supra* note 3, at 1135-37 (also explaining why it is vital so to limit the sample of trials). We use the same 20 case categories here, again amalgamate the eight different product liability categories into one, and eliminate cases in which the United States was a defendant and hence for which no jury right existed (but for simplicity's sake, this time we do not eliminate any cases because the datum of amount demanded was missing). A list of the resultant 13 categories appears in the table on page 97.

Results by Category
(categories in descending order of ratio of jury trials to judge trials)

	A.O. Code	Judge Trial			Jury Trial		
		Number of Cases	Mean Duration	Plaintiffs' Win Rate	Number of Cases	Mean Duration	Plaintiffs' Win Rate
PERSONAL INJURY							
Medical Malpractice	362	115	668	.44	1,249	685	.27
Federal Employers' Liability	330	167	636	.67	1,743	630	.72
Product Liability	365+	1,236	1,087	.46	8,034	769	.33
Motor Vehicle	350	903	597	.70	5,371	539	.60
Other Personal Injury	360	1,291	693	.48	6,052	627	.47
Assault, Libel, Slander	320	175	735	.43	659	679	.49
Airplane Personal Injury	310	198	972	.36	439	846	.63
Marine Personal Injury	340	1,938	787	.56	2,660	690	.62
NON-PERSONAL INJURY							
Torts to Land	240	285	849	.64	233	684	.56
Fraud	370	814	730	.63	590	713	.62
General Contract	190	9,423	727	.66	6,160	720	.65
Torts to Personal Property	380	1,091	831	.62	658	687	.59
Negotiable Instruments	140	978	673	.79	272	714	.70
TOTAL		18,614	755	.62	34,120	678	.52

Instead, for persuasive reasons explained elsewhere,⁶ the most probable explanation is that the actual trial and eventual decision by a judge are more prone to interruption and delay than the jury process. Judges tend to interrupt the trial, stretching it out, and they tend to delay final decision.

* * * * *

Contrary to intuition, jury cases proceed more quickly to termination than judge cases, because of the judges' tendency to interrupt the trial and delay eventual decision. More significantly, developments on the Internet are rushing to simplify empirical research, so that soon there will be no excuse for failing to back assertions about the court system with real facts.

6. Theodore Eisenberg & Kevin M. Clermont, Trial by Jury or Judge: Which Is Speedier? 79 *Judicature* 176 (1996). In that article we not only take several steps toward controlling for the type of case tried by jury and judge, but also show that these cases start trial before judges no later than before juries and yet reach final disposition significantly later. That is, the slowdown in judge-tried cases occurs after trial begins.

Federal District-Court Civil Trials

This form utilizes a database of about 3.5 million federal district-court civil cases terminated over the last 16 fiscal years. The data were gathered by the Administrative Office of the United States Courts, assembled by the Federal Judicial Center, and disseminated by the Inter-university Consortium for Political and Social Research. When any civil case terminates in federal district court, the court clerk transmits a form to the Administrative Office containing information about the case. The form includes data regarding the subject matter category (such as branches of tort, contract, civil rights, and other areas of law), the jurisdictional basis, the amount demanded, the case's origin in the district as original or removed or transferred, the dates of filing and termination in the district, the procedural stage of the case at termination (including whether it was tried by judge or jury), the procedural method of disposition, and, when a judgment was entered, who prevailed and any amount awarded in damages or other relief. (To get further information that should help in defining the critical terms, you can click on the highlighted terms or go to the 210KB ICPSR civil codebook.)

We have used the database in several articles. This form makes the database available to you for performing certain statistical analyses. So, at this point you take over. First, you specify the set of cases you want to examine. Second, you indicate what operations you want to perform on that data set. Note that we are assuming that you're using a Netscape-type browser, but we're making efforts to avoid being browser-specific. For the time being, to keep computer usage under control, you are limited to cases fully tried.

First, let's define the particular data set that interests me. I would like to examine the federal civil cases in the case category or categories of

all categories
 CONTRACT
 100 Indemnity on Admiralty Cases
 110 Insurance
 120 Marine
 130 Miller Act
 140 Negotiable Instruments
 150 Recovery of Overpayments & Enforcing Judg.
 151 Recovery of Medicare Overpayments
 152 Recovery of Defaulted Student Loans

1978-1994
 1976
 1979
 1980
 1981

terminated during the calendar year or years of

all districts
 First Circuit
 1 ME
 2 MA
 3 NH

in the district or districts of

all bases
 diversity of citizenship
 federal question
 US defendant
 US plaintiff

I want to focus on cases resting on the jurisdictional basis of

all trials
 jury trials
 judge trials

I am interested in

all origins
 original proceeding
 removal from state court
 transfer from another district, primarily under 1404(a)
 multidistrict litigation, under 1407

and coming to the district court by way of

Figure 1A

Second, given the selected data set, I would like to know:

FREQUENCY:

- the number of such cases.

DURATION:

- the time on the docket, being the mean time from filing to termination for such cases that show filing and termination dates.
- the time on the docket, being the median time from filing to termination for such cases that show filing and termination dates.

JUDGMENTS:

- the number of such cases that went to judgment (either for plaintiff or for defendant but not for both or for party unknown)—and the win rate or percentage of plaintiff wins among such judgments.

AMOUNTS DEMANDED:

- the mean amount demanded, in then current dollars, in those cases showing a positive dollar demand.
- the mean amount demanded, in 1994 dollars using the CPI, in those cases showing a positive dollar demand.
- the median amount demanded, in then current dollars, in those cases showing a positive dollar demand.
- the median amount demanded, in 1994 dollars using the CPI, in those cases showing a positive dollar demand.

AMOUNTS AWARDED:

- the mean amount awarded, in then current dollars, in those cases yielding judgments for plaintiffs and showing a positive dollar recovery.
- the mean amount awarded, in 1994 dollars using the CPI, in those cases yielding judgments for plaintiffs and showing a positive dollar recovery.
- the median amount awarded, in then current dollars, in those cases yielding judgments for plaintiffs and showing a positive dollar recovery.
- the median amount awarded, in 1994 dollars using the CPI, in those cases yielding judgments for plaintiffs and showing a positive dollar recovery.

BASIS FOR AGGREGATION:

- The default output will aggregate results by case category. If you would like cases aggregated on another available basis, select it here:

<input type="checkbox"/> case category <input type="checkbox"/> district <input checked="" type="checkbox"/> trial mode (judge vs. jury) <input type="checkbox"/> year (calendar) <input type="checkbox"/> basis of jurisdiction <input type="checkbox"/> origin of case

Figure 1B

YOU HAVE INPUTTED THE FOLLOWING:

• **case categories:** 140 Negotiable Instruments; 190 Other Contract Actions; 195 Contract Product Liability; 240 Torts to Land; 245 Tort—Product Liability; 310 Airplane; 315 Airplane Product Liability; 320 Assault, Libel, and Slander; 330 Federal Employers' Liability; 340 Marine; 345 Marine—Product Liability; 350 Motor Vehicle; 355 Motor Vehicle—Product Liability; 360 Other Personal Injury; 362 Personal Injury—Medical Malpractice; 365 Personal Injury—Product Liability; 368 Asbestos Personal Injury—Product Liability; 370 Other Fraud; 380 Other Personal Property Damage; 385 Property Damage—Product Liability;

(for a complete list of all case categories and their numbers, click [here](#))

- **groups of cases:** none;
- **calendar years:** all;
- **districts:** all;
- **groups of districts:** none;
- **bases of jurisdiction:** US plaintiff; diversity; federal question;
- **origins of cases:** all;
- **modes of trial:** judge and jury.

HERE IS YOUR OUTPUT:

19 Feb 1996

THE PLAINTIFF WIN RATE AT TRIAL IS:

Summary of pwin			
	Mean	Std. Dev.	Freq.
judge	.62436615	.48430208	15185
jury	.51864896	.49966048	29814
Total	.55432343	.49704573	44999

THE MEAN TIME FROM FILING UNTIL TERMINATION IN DAYS IS:

Summary of days			
	Mean	Std. Dev.	Freq.
judge	755.43075	557.40606	18614
jury	678.09933	459.975	34120
Total	705.3957	497.92214	52734

Figure 2