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. 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

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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. 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.


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)

<table>
<thead>
<tr>
<th>Category</th>
<th>Judge Trial</th>
<th>A.O. Code</th>
<th>Number of Cases</th>
<th>Mean Duration</th>
<th>Win Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>PERSONAL INJURY</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Medical Malpractice</td>
<td>362</td>
<td>115</td>
<td>668</td>
<td>.44</td>
<td>1,249</td>
</tr>
<tr>
<td>Federal Employers’ Liability</td>
<td>330</td>
<td>167</td>
<td>636</td>
<td>.67</td>
<td>1,743</td>
</tr>
<tr>
<td>Product Liability</td>
<td>365+</td>
<td>1,236</td>
<td>1,087</td>
<td>.46</td>
<td>8,034</td>
</tr>
<tr>
<td>Motor Vehicle</td>
<td>350</td>
<td>903</td>
<td>597</td>
<td>.70</td>
<td>5,371</td>
</tr>
<tr>
<td>Other Personal Injury</td>
<td>350</td>
<td>1,291</td>
<td>695</td>
<td>.48</td>
<td>6,052</td>
</tr>
<tr>
<td>Assault, Libel, Slandering</td>
<td>320</td>
<td>175</td>
<td>735</td>
<td>.43</td>
<td>659</td>
</tr>
<tr>
<td>Airplane Personal Injury</td>
<td>310</td>
<td>198</td>
<td>972</td>
<td>.36</td>
<td>439</td>
</tr>
<tr>
<td>Marine Personal Injury</td>
<td>340</td>
<td>1,958</td>
<td>787</td>
<td>.56</td>
<td>2,690</td>
</tr>
<tr>
<td>NON-PERSONAL INJURY</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Torts to Land</td>
<td>240</td>
<td>285</td>
<td>849</td>
<td>.64</td>
<td>233</td>
</tr>
<tr>
<td>Fraud</td>
<td>370</td>
<td>814</td>
<td>730</td>
<td>.63</td>
<td>590</td>
</tr>
<tr>
<td>General Contract</td>
<td>190</td>
<td>9,423</td>
<td>727</td>
<td>.66</td>
<td>6,160</td>
</tr>
<tr>
<td>Torts to Personal Property</td>
<td>380</td>
<td>1,091</td>
<td>831</td>
<td>.62</td>
<td>658</td>
</tr>
<tr>
<td>Negotiable Instruments</td>
<td>140</td>
<td>978</td>
<td>673</td>
<td>.79</td>
<td>272</td>
</tr>
<tr>
<td>TOTAL</td>
<td>18,614</td>
<td>755</td>
<td>.62</td>
<td></td>
<td>34,120</td>
</tr>
</tbody>
</table>

Instead, for persuasive reasons explained elsewhere, 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.

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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 Interuniversity 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. This 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 criteria terms, you can click on the highlighted terms or go to the 1993 VOPED 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 or web 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

- CONTRACT
- 100 Indemnity on Admiralty Cases
- 110 Insurance
- 125 Miller Act
- 126 Nonpecuniary Instrument
- 128 Recovery of Overpayments & Enforcing Judg.
- 131 Recovery of Medicare Overpayments
- 132 Recovery of Defaulted Student Loans

terminated during the calendar year or years of

- 1978-1994
- 1975
- 1979
- 1980
- 1981

in the district or districts of

- First Circuit
- 1 ME
- 3 MA
- 3 NH

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

- all cases
- diversity of citizenship
- federal question
- US defendant
- US plaintiff

and coming to the district court by way of

- all trials
- jury trials
- judge trials

I am interested in the original proceeding

- original proceeding
- removal from state court
- original proceeding, removal from state court, primarily under 1404(a)
- original proceeding and removal from state court, under 1407
- multidistrict litigation, under 1407
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:

<table>
<thead>
<tr>
<th>case category</th>
<th>district</th>
</tr>
</thead>
<tbody>
<tr>
<td>trial mode</td>
<td>judge vs. jury</td>
</tr>
<tr>
<td>year</td>
<td>(calendar)</td>
</tr>
<tr>
<td>basis of jurisdiction</td>
<td>origin of case</td>
</tr>
</tbody>
</table>

Submit Form  Clear Form
YOU HAVE INPUTTED THE FOLLOWING:
- 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 PLAINIFF WIN RATE AT TRIAL IS:

<table>
<thead>
<tr>
<th></th>
<th>Mean</th>
<th>Std. Dev.</th>
<th>Freq.</th>
</tr>
</thead>
<tbody>
<tr>
<td>judge</td>
<td>.62436615</td>
<td>.48430208</td>
<td>15185</td>
</tr>
<tr>
<td>jury</td>
<td>.51864896</td>
<td>.49966048</td>
<td>29814</td>
</tr>
<tr>
<td>Total</td>
<td>.55432343</td>
<td>.49704573</td>
<td>44999</td>
</tr>
</tbody>
</table>

THE MEAN TIME FROM FILING UNTIL TERMINATION IN DAYS IS:

<table>
<thead>
<tr>
<th></th>
<th>Mean</th>
<th>Std. Dev.</th>
<th>Freq.</th>
</tr>
</thead>
<tbody>
<tr>
<td>judge</td>
<td>755.43075</td>
<td>557.40606</td>
<td>18614</td>
</tr>
<tr>
<td>jury</td>
<td>678.09933</td>
<td>459.975</td>
<td>34120</td>
</tr>
<tr>
<td>Total</td>
<td>705.3957</td>
<td>497.92214</td>
<td>52734</td>
</tr>
</tbody>
</table>

Figure 2