

Table 1

**REVERSAL RATES AFTER FEDERAL CIVIL TRIALS BY JURY OR JUDGE
FOR FISCAL YEARS 1988-97, DISTINGUISHED BY TYPE OF CASE
Data Considered by Clermont and Eisenberg: Defendant/Plaintiff Differentials in
Personal Injury Jury Trials and Non-Personal Injury Judge Trials**

Type of Case	JURY TRIALS						JUDGE TRIALS					
	Ds' Reversal Rate		Ps' Reversal Rate		D-P Differential	Significance	Ds' Reversal Rate		Ps' Reversal Rate		D-P Differential	Significance
<i>n</i>	%	<i>n</i>	%	<i>n</i>			%	<i>n</i>	%	<i>n</i>		
Personal injury	369	31.17	680	12.35	18.82	.000	57	28.07	148	12.84	15.23	.013
Non-personal injury	254	31.10	162	16.67	14.43	.001	254	21.65	219	22.37	-0.72	.911

- Hypothesis:** • Appellate judges favor defendant/appellants whenever they suspect a pro-plaintiff bias by trial courts.
- Assumptions:** • Appellate judges suspect trial courts of favoring “little victim” plaintiffs over “big” defendants.
• “Little victim” plaintiffs and “big” defendants are most often found in personal injury cases.
• Appellate courts suspect that juries, even more than judges, improperly favor plaintiffs.
- Offered Proof:** • The greatest differential between defendant and plaintiff appellate win rates is in personal injury trials and the smallest is in non-personal injury judge-trials.

Adapted from Kevin M. Clermont & Theodore Eisenberg, *Appeal from Jury or Judge Trial: Defendants' Advantage*, 3 AM. L. ECON. REV. 125, 140 (2000).

Table 2

**REVERSAL RATES AFTER FEDERAL CIVIL TRIALS BY JURY OR JUDGE
FOR FISCAL YEARS 1988-97, DISTINGUISHED BY TYPE OF CASE
First Alternative Variable Not Considered by Clermont and Eisenberg:
Plausible Effect of the General Difference in Nature of Plaintiffs' and Defendants' Appeals**

	JURY TRIALS						JUDGE TRIALS					
	Ds' Reversal Rate		Ps' Reversal Rate		D-P Differential	Significance	Ds' Reversal Rate		Ps' Reversal Rate		D-P Differential	Significance
Type of Case	<i>n</i>	%	<i>n</i>	%			<i>n</i>	%	<i>n</i>	%		
Personal injury	369	31.17	680	12.35	18.82	.000	57	28.07	148	12.84	15.23	.013
Non-personal injury	254	31.10	162	16.67	14.43	.001	254	21.65	219	22.37	-0.72	.911

- Hypothesis:** • If one side more often relies on viable legal claims and the other on factual arguments, the side relying on viable legal claims will generally secure more reversals in most types of civil cases.
- Assumptions:** • Plaintiffs' appellate claims often go to the weight of the evidence—a factual matter.
• Defendants more often rely on legal analysis.
- Offered Proof:** • In three of the four categories of cases studied, defendant/appellants are more likely to succeed than plaintiff/appellants.

Adapted from Kevin M. Clermont & Theodore Eisenberg, *Appeal from Jury or Judge Trial: Defendants' Advantage*, 3 AM. L. ECON. REV. 125, 140 (2000).

Table 3

**REVERSAL RATES AFTER FEDERAL CIVIL TRIALS BY JURY OR JUDGE
FOR FISCAL YEARS 1988-97, DISTINGUISHED BY TYPE OF CASE
Second Alternative Variable Not Considered by Clermont and Eisenberg:
Plausible Effect of More Experienced Plaintiffs' Counsel**

Type of Case	JURY TRIALS						JUDGE TRIALS					
	Ds' Reversal Rate		Ps' Reversal Rate		D-P Differential	Significance	Ds' Reversal Rate		Ps' Reversal Rate		D-P Differential	Significance
	<i>n</i>	%	<i>n</i>	%			<i>n</i>	%	<i>n</i>	%		
Personal injury	369	31.17	680	12.35	18.82	.000	57	28.07	148	12.84	15.23	.013
Non-personal injury	254	31.10	162	16.67	14.43	.001	254	21.65	219	22.37	-0.72	.911

- Hypothesis:** • The experience of appellate counsel may effect the likelihood of success on appeal.
- Assumptions:** • Plaintiffs' appellate counsel in non-personal injury cases may tend to have more experience than plaintiffs' appellate counsel in personal injury cases.
- Offered Proof:** • Plaintiff/appellants have a greater chance of winning in non-personal injury trials than they do in personal injury trials, regardless of whether the cases were tried by a jury or judge.

Adapted from Kevin M. Clermont & Theodore Eisenberg, *Appeal from Jury or Judge Trial: Defendants' Advantage*, 3 AM. L. ECON. REV. 125, 140 (2000).

Table 4

**REVERSAL RATES AFTER FEDERAL CIVIL TRIALS BY JURY OR JUDGE
FOR FISCAL YEARS 1988-97, DISTINGUISHED BY TYPE OF CASE
Third Alternative Variable Not Considered by Clermont and Eisenberg:
Plausible Combined Effect of Findings of Fact by Judges and More Experienced Counsel**

Type of Case	JURY TRIALS						JUDGE TRIALS					
	Ds' Reversal Rate		Ps' Reversal Rate		D-P Differential	Significance	Ds' Reversal Rate		Ps' Reversal Rate		D-P Differential	Significance
	<i>n</i>	%	<i>n</i>	%			<i>n</i>	%	<i>n</i>	%		
Personal injury	369	31.17	680	12.35	18.82	.000	57	28.07	148	12.84	15.23	.013
Non-personal injury	254	31.10	162	16.67	14.43	.001	254	21.65	219	22.37	-0.72	.911

- Hypothesis:** • Judge verdicts (as compared to jury verdicts) increase the likelihood of reversals by plaintiff/appellants who have experienced counsel.
- Assumptions:** • It is easier for experienced plaintiffs' counsel to provide appellate courts with good issues (especially issues involving the burden of proof and factual matters) when the reasoning of the decision-maker is articulated.
- Offered Proof:** • In judge-tried cases, plaintiff/appellants win substantially more often in non-personal injury cases than in personal injury cases (**circled**).
• Plaintiff/appellants win no more in judge-tried personal injury cases than in jury-tried personal injury cases (**boxed**).

Adapted from Kevin M. Clermont & Theodore Eisenberg, *Appeal from Jury or Judge Trial: Defendants' Advantage*, 3 AM. L. ECON. REV. 125, 140 (2000).