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The Relationship between Plaintiff Success Rates before Trial and at Trial

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SUMMARY

Legal cases that reach trial are a biased subset of underlying disputes. This makes it difficult to study the legal system by observing tried cases. This paper examines the relationship between plaintiff success at pretrial motion and trial stages across many categories of cases. The large, significant positive relationship between plaintiff success rates at these two procedural stages suggests that characteristics of case categories influence outcomes at both stages. Observers of a category of tried cases or cases resolved by motion can make informed judgments about how that category of cases fares at the other procedural stage.

Keywords: LOGIT; PRETRIAL MOTION SUCCESS; REGRESSION; TRIAL SUCCESS; WEIGHTED LEAST SQUARES

1. INTRODUCTION

Recent interdisciplinary legal scholarship has explored the relationship between tried disputes and cases resolved at pretrial legal stages. One important result is that tried cases are not a random sample of underlying disputes (Priest and Klein, 1984; Eisenberg, 1989). This selectivity, sometimes called the 'selection effect', arises because cases that tend to be clear for either the plaintiff or the defendant under the applicable legal rules settle relatively quickly, leaving only the more difficult cases for trial. One hypothesis of interest to selection effect theorists is whether plaintiffs succeed in 50% of tried cases (Priest and Klein, 1984; Priest, 1985; Wittman, 1985). Although this hypothesis can be rejected (Eisenberg, 1990), other implications of selection effect theory remain to be explored.

A central point of selection effect theory is that one cannot necessarily draw inferences about the larger legal system from studies of tried cases. This point has been made both with respect to inferences based on tried cases and with respect to inferences based on published opinions (Priest and Klein, 1984; Eisenberg and Schwab, 1989). For example, if tried cases contain equal victories for plaintiffs and defendants, one cannot conclude that the applicable legal rules are even-handed. Even if the rules heavily favour the plaintiff, the similar trial success rates are consistent with there being many cases in which plaintiffs recover without going to trial.

Selection effect discussions emphasize the relationship between tried cases and the mass of disputes. Many studies of the legal system neglect cases resolved by pretrial motion even though many more cases are resolved by motion than at trial. This paper

focuses on the relationship between tried cases and cases resolved by pretrial motion. The paper establishes a large, significant positive relationship between success rates at trial and success rates on pretrial motion across civil litigation categories.

2. DATA

The Administrative Office of the United States Courts classifies by subject matter all federal civil cases filed (Administrative Office of the United States Courts, 1985; Inter-university Consortium for Political and Social Research, 1989). The subject matter areas include subcategories of contract, tort, property, social security, civil rights, prisoner and other cases (Administrative Office of the United States Courts, 1985). Appendix A lists the 73 categories and subcategories that are sufficiently large for inclusion in the analysis. When a case terminates, the Administrative Office also gathers data containing the procedural progress and subject matter category of the case and whether a judgment was recorded for the plaintiff or the defendant. Using the termination data, we can determine the percentage of plaintiff judgments at pretrial motion and at trial in each subject matter category. The data used here consist of all reported pretrial motion and trial outcomes in all non-bankruptcy civil cases concluded in all federal district courts for a period beginning in 1978 and ending in 1985, 57206 tried cases and 204560 cases resolved by pretrial motion. Settled cases are not included in this analysis. Strengths and weaknesses of the federal data are noted elsewhere (Schwab and Eisenberg, 1988; Henderson and Eisenberg, 1990).

3. MODEL AND RESULTS

The model tested treats the trial success rate in each case category as a function of the pretrial motion success rate in that category:

$$t_i = \beta_0 + \beta_1 m_i + \epsilon_i, \tag{1}$$

where t_i is the logit transformation of the plaintiff trial success rate in case category i and m_i is the logarithm of the plaintiff pretrial motion success rate. The subscripts range from $i = 1$ to $i = 73$ to reflect the different subject matter case categories. Fig. 1 presents a scatterplot of the trial success rates and the plaintiff motion success rates. It shows, for example, that in prisoner civil rights cases plaintiffs win in 0.02 of the cases resolved by pretrial motion and 0.13 of the cases resolved at trial. (The success rates are in Appendix A.)

Fig. 1 divides the case categories into two groups: those with large numbers of trial and pretrial motion cases (large being defined to include categories with more than 200 of each kind of case) and those with fewer cases. This division is useful in identifying the sources of scatter in the data. Both the large and the small categories show a significant positive relationship between pretrial success and success at trial. But the large categories, designated by + in the figure, show considerably less scatter than the smaller categories. This suggests that some of the scatter is due to sampling error rather than to equation error.

To reflect the greater reliability of the large case categories, weighted least squares regression is used. The weighting factor is the reciprocal of the variance of the residuals (Carroll and Ruppert, 1988), calculated using delta method linearization on the transformed variables in equation (1) and assuming binomial variation in the
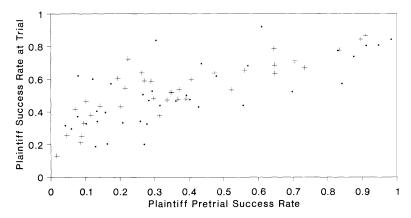
Fig. 1. Pretrial motion success and success at trial by case category (source: Administrative Office of the United States Courts (1985)): +, large categories; ●, small categories

observed success and failure rates of the pretrial and trial cases in each category. Table 1 presents the results.

4. CONCLUSION

The results show a strong positive relationship between success at pretrial motion and success at trial. Case categories may have inherent characteristics, such as different stakes to the parties (Priest and Klein, 1984), or favourable or unfavourable legal rules, with effects that transcend the pretrial motion/trial stages of procedural disposition. Classes of cases that fare relatively well at one stage fare relatively well at the other stage. Whether this relationship exists with respect to cases resolved by neither motion nor trial (settled or dropped cases) remains to be seen. But an observer who knows how a class of cases performs on pretrial motion may make an informed assessment of how that class fares at trial. Some of the cautionary note of selection effect theory about drawing inferences about larger classes of cases can be muted.

TABLE 1
Summary of results

Weighted least squares
Dependent variable, logit of win at trial rate

Multiple R	0.874
R^2	0.764
Adjusted R^2	0.761
Standard error (SE)	4.001
F	230.053
Significance F	0.0000

Variable	B	SE(B)	β	T	Significance T
Log(motion win rate)	0.745	0.049	0.874	15.167	0.0000
(Constant)	1.068	0.083		12.800	0.0000

The results also raise the possibility that a study of published opinions can tell us more about what happens at the trial court level than has been believed (Eisenberg and Schwab, 1989). If subject matter areas have inherent characteristics influencing success that cross the motion–trial barrier, they might cross the trial–appeal barrier as well. Future work should take into account the size of awards as well as the likelihood of the plaintiff's prevailing.

ACKNOWLEDGEMENTS

APPENDIX A

Type of case	Administrative Office code	Pretrial motion		Trial	
		N	Success rate	N	Success rate
Contract					
Insurance	110	3735	0.35	2494	0.52
Marine	120	2077	0.65	1089	0.69
Miller Act	130	391	0.64	285	0.79
Negotiable instruments	140	1913	0.83	560	0.78
Recovery of overpayments and enforcement judgments	150	1034	0.83	128	0.77
Recovery of defaulted student loans	152	288	0.98	19	0.84
Recovery of overpayments of veteran benefits	153	1102	0.91	51	0.80
Other contract actions	190	11222	0.47	6643	0.64
Contract product liability	195	196	0.17	252	0.57
Real property					
Unlabelled category	21–	24	0.88	19	0.74
Foreclosure	220	3168	0.89	211	0.84
Rent, lease, ejectment	230	274	0.57	91	0.68
Torts to land	240	235	0.26	297	0.64
Tort—product liability	245	17	0.06	44	0.30
Other real property actions	290	877	0.37	389	0.54
Torts—personal injury					
Aeroplane	310	242	0.21	448	0.55
Aeroplane product liability	315	136	0.13	149	0.40
Assault, libel and slander	320	829	0.07	490	0.42
Federal employers' liability	330	224	0.22	890	0.72
Marine	340	1999	0.27	2429	0.59
Marine—product liability	345	65	0.08	46	0.37
Motor vehicle	350	1684	0.19	3261	0.60
Motor vehicle—product liability	355	173	0.21	392	0.33
Other personal injury	360	3666	0.10	3808	0.46
Personal injury—medical malpractice	362	582	0.12	697	0.38
Personal injury—product liability	365	1857	0.09	3255	0.25

(continued)

APPENDIX A (continued)

Type of case	Administrative Office code	Pretrial motion		Trial	
		N	Success rate	N	Success rate
Torts—personal property damage					
Other fraud	370	1744	0.41	716	0.60
Truth in lending	371	108	0.12	10	0.60
Other personal property damage	380	872	0.29	980	0.59
Property damage—product liability	385	114	0.16	243	0.40
Civil rights					
Other civil rights	440	11106	0.10	4970	0.33
Voting	441	266	0.29	118	0.53
Jobs	442	6346	0.08	7165	0.21
Accommodations	443	208	0.20	223	0.43
Welfare	444	378	0.40	59	0.47
Prisoner petitions					
Vacate sentence section 2255	510	3782	0.16	89	0.20
Habeas corpus	530	27609	0.05	811	0.26
Mandamus and other	540	1574	0.04	35	0.31
Prisoner—civil rights	550	31368	0.02	3489	0.13
Forfeiture and penalty					
Agriculture Acts	610	43	0.70	23	0.52
Food and Drug Acts	620	281	0.95	93	0.81
Occupational safety/health	660	88	0.84	14	0.57
Other forfeiture and penalty suits	690	1922	0.91	644	0.86
Labour laws					
Fair Labor Standards Act	710	957	0.65	610	0.63
Labor/Management Relations Act	720	4986	0.37	873	0.48
Labor/Management Reporting and Disclosure Act	730	365	0.32	137	0.44
Railway Labor Act	740	343	0.13	50	0.34
Other labour litigation	790	1561	0.31	622	0.38
Employee Retirement Income Security Act, 1974	791	1280	0.52	279	0.53
Property rights					
Copyright	820	927	0.71	243	0.71
Patent	830	445	0.30	473	0.48
Trademark	840	927	0.73	407	0.67
Social security					
Social security (before July 1st, 1978)	860	10256	0.26	41	0.34
Medicare Act, Part A (42 USC 1395ff(b))	861	803	0.27	15	0.20
Disability insurance (42 USC 405(g))	863	26282	0.43	70	0.43
Supplemental security income disability, title XVI	864	4755	0.39	12	0.50
Other statutes					
Antitrust	410	1119	0.14	586	0.43
Bankruptcy trustee	420	131	0.44	118	0.69
Bankruptcy transfer	421	71	0.48	34	0.62
Bankruptcy appeals rule 801	422	2055	0.35	224	0.52
Banks and banking	430	321	0.36	58	0.47
Interstate commerce	450	4089	0.08	190	0.62
Deportation	460	226	0.13	27	0.19
Securities, commodities, exchange	850	1621	0.39	833	0.48

APPENDIX A *(continued)*

Type of case	Administrative Office code	Pretrial motion		Trial	
		N	Success rate	N	Success rate
Tax suits	870	4624	0.56	1313	0.65
Internal Revenue Service—third-party suits (26 USC 7609)	871	1078	0.61	160	0.92
Other statutory actions	890	6679	0.34	1100	0.47
Agricultural Acts	891	331	0.28	182	0.32
Environmental matters	893	564	0.27	182	0.51
Energy Allocation Act	894	112	0.30	55	0.84
Freedom of Information Act of 1974	895	1248	0.10	46	0.33
Constitutionality of state statutes	950	540	0.28	115	0.47
Other	990	45	0.56	32	0.44

Land condemnation cases (Administrative Office code 210) have been omitted because the traditional roles of plaintiff and defendant often are reversed.

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