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The Civil Litigation Research Project: Lessons for Studying the Civil Justice System

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Abstract

The Civil Litigation Research Project was a major study of the civil justice process, funded by the United States Department of Justice. This paper summarizes major findings of the Project and discusses the implications of those findings and the more general experience of the Project for future research on the civil justice system.

Introduction

Research on court systems in the United States has been an ongoing phenomenon for much of the twentieth century; one need only look to the work of Charles Clark (e.g., Clark and Shulman, 1937) or to the crime surveys of the 20's and 30's (see Hardulli, 1978: 3-39) for prominent examples of such work. Over the last two decades, the attention of scholars and court reformers has focused heavily on the criminal side of the justice system. Much of this research began as what might be called "gap" studies (see Nelken, 1981; Sarat, 1983), in which scholars and/or commentators discovered substantial gaps between the ideal (or ideology) of the system, and the way the system worked on a day by day basis. The gap study is most clearly represented in much of the work on plea bargaining (see particularly the series of articles by Alscher, 1968, 1975, 1976), though more recent work on plea bargaining (see Utz, 1978; Feeley, 1979) has suggested that the perceived gap may have reflected a misunderstanding of both the basis and the goal of the bargaining process. The gap study is particularly important for justice system policy because such studies often lead to proposals for reform. At the same time, however, a recent critical evaluation of criminal justice reform (Feeley, 1983) has suggested that many of the reform efforts have sought to oversimplify a complex phenomenon and have often intervened in situations that might have been better left alone.

In the last few years, court reformers have begun to turn their attention to the civil justice system. Spurred on by reports of the Chief Justice (see, for example, the Washington Post, January 25, 1982, p. 8), reformers have sought to channel disputes typically processed by the civil courts to other forums (e.g., see the report of the Pound Conference, 70 F.R.D. 79 [1976]; Johnson and Schwartz, 1978; Sander, 1982; Hemler, Lipson, and Rolph, 1981; Lind and Shepard, 1981). Dissatisfaction with what has become known as "discovery abuse" has led to proposals to alter rules of civil procedure to prevent such problems. Concern about problems of delay have resulted in new rules to enable judges to impose a timetable on pretrial preparation. Problems of high cost have led to suggestions for new procedures to handle "modest" cases (Epstein, 1981; Rosenberg, Bient, and Rowe, 1981) and to a consideration of modifications of the American rule regarding costs in litigation (Rowe, 1982a, 1982b). [1] Burgeoning case loads have led judges to expand their efforts to settle cases short of trial as a means of relieving the trial burden (Kritzer, 1982; Galanter, 1983). [2] The fundamental question for applied civil justice research is whether these reform efforts reflect (1) an accurate understanding of the condition of the civil justice system, (2) an understanding of the actual working of the system, and (3) an understanding of the purposes of the users of the system.

The amount of research on the civil justice system is small in comparison to that which has resulted from the massive resources that have been poured into studying the criminal justice system. Hurst's recent review (1980-81) of this (and other) research identifies a number of research themes and a number of relatively small scale research projects that have dealt with questions of civil justice. Yet the relatively narrow findings reported by Hurst reflect the absence of substantial support for research in this area. One can identify only a handful of large scale civil justice research projects (e.g., the Columbia University School of Law Project for Effective Justice of the early 1960's; largely unreported civil justice aspects of the American Jury Project of the 1950's; the district court study project of the Federal Judicial Center; the Civil Litigation Research Project; and the Rand Corporation's civil jury study). The role of these large-scale projects is of central importance because (1) they have the ability of putting the questions they pose into a fairly broad context, something which small projects are often (if not usually) unable to do; (2) they provide data sets which can be the basis of secondary analyses of many questions and issues; and (3) they can often provide insights into the issues and problems of studying the civil justice system.

The purpose of this discussion is to share with you some insights from the Civil Litigation Research Project (CLRP). All of the three points above are applicable to CLRP: results of the project provide broad contextual background that has been generally lacking in discussions of civil justice; the research experience of the project staff provides important lessons for future research on civil justice; and the data we produced is already being mined by a number of other researchers (e.g., scholars at Purdue and Ohio State Universities, and analysts at the Rand Corporation and the Federal Judicial Center). My comments will focus on some of the major substantive and methodological insights of the Project. First, let me give you a little background on the way the Civil Litigation Research Project came into being and the nature of the research that we carried out.
The Civil Litigation Research Project was a child of the Carter Department of Justice (DOJ). Attorney General Griffin Bell created within DOJ a planning and research office which was known as the Office for Improvements in the Administration of Justice (for some background on this see Sarat, 1981). Within this office (which had the fond acronym of OIAJ) was housed the Federal Justice Research Program (FJRP—FeJeRFP). FJRP was a very modest program with a budget of $2,000,000 per year. In 1978, the Assistant Attorney General in charge of OIAJ, Daniel Meador, and the administrator of FJRP, Harry Scarr, decided to begin to establish a research agenda on civil justice. The major (though not the only) research to come out of this decision was CLRP. In August 1978, DOJ published an RFP (Request for Proposals) describing a broad, ambitious study of disputing behavior inside and outside the courts, with a particular focus on the costs of dispute processing. Through a competitive process a consortium of the University of Wisconsin Law School’s Dispute Processing Research Program and the University of Southern California’s Program for Dispute Systems Research obtained the contract. The final research project differed in many ways from the original conception of DOJ. I will not here trace the evolution from DOJ’s conception to what we actually did, though that in itself is an interesting story. Needless to say, we believed that the final research design reflected a coherence and focus that was not present in the original RFP.

What was that final design?[3] The focus of the research was on dispute processing behavior in the courts, in alternative dispute processing institutions, and in what we termed “bilateral” dispute processing (i.e., negotiated resolution outside any third party institution). We selected samples of disputes from each of these modes of processing. Disputes were identified either through institutional records (in the case of courts and alternatives) or through screening surveys of households and organizations. For the institutional cases, we examined the record of the dispute and coded substantial information from those records; we also identified the major participants in the case (i.e., the disputants and their lawyers). From the screening surveys, we tried to obtain some very basic information about the dispute and to identify the participants. The disputes were drawn from five federal judicial districts (Eastern Wisconsin, Eastern Pennsylvania, South Carolina, New Mexico, and Central California); a total of 2,912 disputes were included in the overall “sample,” over 1,650 of which involved law suits.

Once the participants were identified, we sought to interview as many of them as we could find; as I will discuss later, we were very successful in finding and interviewing the lawyers and much less successful either in finding or interviewing the disputants (except in the cases identified through the screening surveys). The content of the interviews included questions about the way the case was processed, the nature of the case (in terms of what was at stake), the negotiation process, relationships among the parties to the dispute, relationships between lawyers and clients, time and cost of processing the dispute, and reactions to the processing experience. All of the information from the institutional records and from the participant interviews was combined into a single public use data base; we also constructed public use versions of organizational and household screening surveys. All of these data are now available through the Interuniversity Consortium for Political and Social Research (ICPSR).

Let me now turn to a discussion of some of our empirical findings. In this discussion, I will limit my remarks to analyses dealing directly with the courts. I will not discuss our analyses dealing with general disputing experience and behavior (see, for example, Miller and Sarat, 1980-81).

Important findings

Many of our findings are summarized in a paper (Trubek et. al., 1983) to be published in the fall 1983 issue of the UCLA Law Review. The title of that paper, “The Costs of Ordinary Litigation,” captures what is probably the most important single finding of our research: the “discovery” of “ordinary litigation.” The typical description of civil litigation sees cases that are relatively substantial in scope; take for example the comments by Wayne Brazil in two of his discussions of the discovery problem:

Most of my exposure to litigation has been in urban San Francisco with cases of moderate size involving claims ranging from $20,000 to $50,000 (1978: 1310).

The sample group was also well balanced with respect to the median dollar size of the cases on which the attorneys worked. All were asked to estimate the median dollar value of the cases in which they had been involved over the preceding five years. The answers ranged from four to eight digits, the median being approximately $150,000. The figures also show that the group was well balanced on the extremes: 39 (of 180) attorneys indicated that the median value of their cases had been $25,000 or less, while 42 lawyers reported $1,000,000 or more (1980: 220).

As Table 1 shows, only 36% of federal cases and only 11% of state cases come up to Brazil’s “small” case level of $25,000; I should note here that we excluded from our samples cases where the claim was for less than $1,000. The median case, as of 1978, in the state courts of general jurisdiction involved approximately $4,500. While the median federal case involved substantially more (around $15,000), the vast majority of civil cases (something between 95 and 98%) are filed in the state courts, and thus it is the state median that represents the most typical case. One possible reaction to this finding is that these cases represent the ones that seldom get to trial; that is, cases that go to trial are typically much more substantial. However, the Rand Chicago Jury Verdict study (Peterson and Priest, 1982: 22-24) has shown that the median jury verdict (even after eliminating those cases in which the defendant
wins and the verdict is §0), is on the order of $7,000, which is generally in line with our notion of ordinary litigation.

<table>
<thead>
<tr>
<th>Stakes</th>
<th>Federal Cases</th>
<th>State Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-5,000</td>
<td>26%</td>
<td>55%</td>
</tr>
<tr>
<td>5,001-10,000</td>
<td>15</td>
<td>18</td>
</tr>
<tr>
<td>10,001-25,000</td>
<td>23</td>
<td>16</td>
</tr>
<tr>
<td>25,001-50,000</td>
<td>17</td>
<td>7</td>
</tr>
<tr>
<td>50,001 &amp; up</td>
<td>19</td>
<td>4</td>
</tr>
<tr>
<td>(N)</td>
<td>(448)</td>
<td>(411)</td>
</tr>
</tbody>
</table>

Table 1. Distribution of Lawyers' Perceptions of Stakes

The nature of the 'everyday civil case is also to be seen in the nature of the activity reported in cases. We counted the number of discovery events, the number of nondiscovery-related motions, and the number of briefs in each case in our sample. Except for motions, the "typical" state case had no discovery and no briefs; if one discounted "motions to dismiss" because of settlement, it is likely that the typical case would also have zero motions.

<table>
<thead>
<tr>
<th>Discovery Events</th>
<th>Motions</th>
<th>Briefs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Federal State</td>
<td>Federal State</td>
<td></td>
</tr>
<tr>
<td>Number</td>
<td></td>
<td></td>
</tr>
<tr>
<td>0</td>
<td>52%</td>
<td>62%</td>
</tr>
<tr>
<td>1-5</td>
<td>31</td>
<td>30</td>
</tr>
<tr>
<td>6-10</td>
<td>10</td>
<td>5</td>
</tr>
<tr>
<td>116up</td>
<td>7</td>
<td>3</td>
</tr>
</tbody>
</table>
| (N) (809)         | (840) (809) | 100% (100%)

<table>
<thead>
<tr>
<th>Total Hours</th>
<th>Percent of Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 - 8</td>
<td>13</td>
</tr>
<tr>
<td>9 - 24</td>
<td>28</td>
</tr>
<tr>
<td>25 - 40</td>
<td>19</td>
</tr>
<tr>
<td>41 - 80</td>
<td>19</td>
</tr>
<tr>
<td>81 - 120</td>
<td>9</td>
</tr>
<tr>
<td>over 120</td>
<td>12</td>
</tr>
</tbody>
</table>

Table 2. Activity level in court cases

The idea of "ordinary" litigation is of crucial importance in the study of civil justice because it should tell us to distinguish between the ordinary and the "extraordinary" when we consider legal, procedural, and administrative reform. As I noted above, reform is typically considered in the context of an image of the civil justice system that does not focus on the "ordinary" case, and reform that is thinking in terms of the "big" case may have very negative implications for the ordinary case. The source of this big case bias is simply that it is the big case that catches the attention of the observer and the participant; the message of our research is simply not to lose sight of the everyday, case which makes up the bulk of a court's docket. I would suggest that the recent changes to Rule 16 of the Federal Rules of Civil Procedure, whereby judges are to issue a scheduling order in every civil case on their docket, is an example where the ordinary case would be better served by a more informal tickler system (cf., Flanders, 1977: 20).

A second major message of our research, one that is closely related to our first, is that one can view much of what goes on in the civil justice system within a framework that is not particularly complicated. We devoted substantial effort in our design of questionnaires to being able to handle complex cases involving multiple parties, numbers of changes in perceptions of what was at stake, intricate negotiations, complex relationships among the participants, and multiple dispute processing forums. While cases do occur where some (or even all) of these would apply, most cases are relatively modest in what is at stake, are handled in a relatively straightforward fashion that involves relatively little court activity (either by the court or by the lawyers), and are relatively simple in terms of the issues and relationships involved. Certainly every case has its unique aspects, but from the viewpoint of civil justice planning and administration, one can safely simplify many (perhaps even most) cases into categories of size, complexity, substance, etc.

A third major finding, again related to the message of modesty that I am presenting, is that lawyers spend relatively small amounts of time on most cases. Table 3 shows the amount of time lawyers reported spending on the cases in a part of our sample. In the median case, lawyers spend

<table>
<thead>
<tr>
<th>Median: 30.4</th>
<th>N = 719</th>
</tr>
</thead>
<tbody>
<tr>
<td>Table 3. Distribution of lawyer hours per case</td>
<td></td>
</tr>
</tbody>
</table>

less than 4 working days on the case, and in 60% of cases, lawyers spend less than a week. The message of this is that for most cases reforms that seek to reduce lawyer time might have a substantial effect because a small reduction in absolute time can often represent a substantial portion of the time devoted to a case; however, it may be difficult to make such reductions because lawyers are already spending relatively little time and there may be little that can be cut out. This finding also suggests that reforms that require lawyers to do additional things (e.g., appear in court for scheduling conferences) may significantly increase the amount of time that must be spent on cases; obviously, if the additional tasks increase the quality of the results
that lawyers achieve for their clients, the additional effort may be justified, though judgments of quality tend to reflect the eye of the beholder. One danger of many reform activities is that they seek to improve the situation from the viewpoint of the judge or from the viewpoint of the court administrator; while this may be a valid goal, one should keep in mind the potential costs to the consumer of court services.

The next finding I want to mention is directly related to the preceding point regarding the relatively modest amounts of time involved in court cases. Not surprisingly, we found that the lawyer’s fee represents virtually the entire out of pocket cost of processing a case from the viewpoint of the litigant. When one factors in the value of the disputant’s time (or the value of employee time for organizational litigants), the lawyer’s fee represents about 80% of the total cost. Furthermore, in the median case only 8% of the lawyer’s bill represents the lawyer’s non-time related expenses (e.g., travel, duplicating, copying, etc.). Thus, changes that affect the amount of time a lawyer must devote to a case directly affect the cost to the litigant (assuming that the litigant is paying the lawyer on an hourly basis). If one can reduce the lawyer’s time by 25%, one is going to reduce the litigant’s cost by almost 25%.

The last finding I will discuss goes off on a somewhat different direction. It has become popular in discussions of civil justice in the United States to emphasize the role of settlement in disposing of cases. At a recent conference in Madison, one of my colleagues from the Law School commented that perhaps the traditional sign above the court house door, “Equal Justice Under Law,” should be replaced with “Let’s Make a Deal.” While knowledgeable persons have known for many years that very few civil cases ever come to trial (and I will comment on the ambiguity of the notion of “coming to trial” in a few minutes), we should not underestimate the role of adjudication in disposing of cases. By adjudication, I mean an authoritative decision by a judge or an inferior court officer (e.g., a magistrate). There are two ways in which adjudication directly disposes of cases rather than through trial. First, a judge may directly dispose of a case through a ruling on a substantive or procedural motion (e.g., granting a motion for summary judgment). In one subset of cases, we found that only 5% of either federal or state cases were tried, but another 26% of federal and 16% of state cases were terminated through motions and involuntary dismissals (see Kritzer and Anderson, 1983). Second, a judge may indirectly dispose of a case by a ruling on a motion that answers the central dispute in a case (e.g., ruling on a point of law or on the admissibility of a piece of testimony); once that central question has been authoritatively resolved, the parties can proceed to arrive at a settlement. We have no explicit data on how often this happens, but in my discussion of “what is a trial,” which I will turn to shortly, I will suggest that this is not infrequent.

There are many other findings that I could mention (on the likelihood of disputes leading to lawsuits, on how lawyers spend their time, on what accounts for the amount of time a lawyer spends on a particular case, on the background and expertise of litigating lawyers, on the nature of the outcomes of litigation, on what accounts for those outcomes, on what accounts for hourly rates charged by lawyers, on a comparison of the courts and the American Arbitration Association via a case processing, and so on), but I think I have touched on the high points that you would find most interesting (though I will be happy to talk about other areas during the discussion if anyone has specific interests).

I should also note that we have only scratched the surface of our data to date. We are now working on analyses of the nature and import of non-monetary stakes, of what lawyers think about when they consider the alternative forums where they might take a given case, and of the negotiation process. Most of our analyses have been based on interviews with lawyers and on data from court records; we have done relatively little with data from individual and organizational disputant surveys, and we haven’t even touched data from a separate government lawyer survey (partly because of a relatively small number of interviews). Likewise, most of our analyses to date have focused on court cases. While we have looked at cases from the American Arbitration Association, we have not looked systematically at the cases from the ten other alternative institutions included in the study, and we have not looked at all at the bilateral cases included in our disputant surveys. We hope to be able to obtain funding to conduct some of these analyses in the future, though we know that many of them will have to be left to other researchers working with our data.

Lessons for the research community

As is true of any large study (and perhaps of any study regardless of size), I wish that I knew four years ago what I know now. There are things I would do differently if I had to start over again. When we first heard that we had been awarded the contract, one of my colleagues said that he felt like he had been big game hunting and had shot an elephant, and that the elephant had just been delivered to his front yard. I now know how to cut up the elephant to put it into the freezer. I would like to show some of the lessons I learned with you in the hope that when and if the elephant carcass arrives on your yard, you do not have to repeat many of the mistakes that we made.

The first lesson, which should already be clear from what I said previously, is to avoid over-complication. We tried to be very sophisticated in our understanding and research collection strategy. We would have been better off if we had ignored some of the complications that we knew existed and had sought to simplify the design. We would have missed some subtleties, but in the end, we found that there was relatively little that could be done analytically with those subtleties. Furthermore, to the degree that one is concerned with administration of civil justice, one has to simplify in order to administer; if everything is
deemed to be unique, then there is relatively little to administer. To the student of any organizational process (and that is what the civil justice process is), the goal must be to identify the similarities in order to structure the process while providing mechanisms to allow the unique aspects to be considered. In our research, we tried to include too much in the "common" component, and the result was that we later had to simply ignore some of the complexities that we captured.

The second lesson, one from elementary research methods, is that there should have been a pilot study prior to undertaking the main study. This was not a problem that we were unaware of. We sought to convince the Department of Justice of the importance of a pilot, but time and cost factors did not allow us to undertake a pilot prior to the main study. Given that there had never been a study anything like the one that DOJ wanted done, it would have made much more sense for the initial RFP to have been for a research design and pilot study (ideally, perhaps two designs and pilots by two different organizations). That this was not done reflected the fragility of OIAAJ and its need to quickly produce some research product that would legitimize its function.

Third, and this is something that we should have learned from the pilot that never existed, contrary to at least one recently reported research experience (Dnnet, Hoffman, and Kermish, 1980), lawyers are extremely cooperative. We were able to conduct long (averaging about an hour) and detailed (the survey instrument was over 100 pages long) interviews with most of the lawyers we contacted. Only 17% of the lawyers we contacted actually refused. An additional 17% indicated that they had not had sufficient involvement with the case to be able to discuss it in detail with us; certainly, some of these were polite refusals, but we believe that most of them represent another problem which is most clearly seen in our efforts to get information from organizations about their dispute experiences.

In order to obtain interviews with organizational litigants, we sought to identify within each organization we contacted a particular person to talk to, someone whom we referred to as the Key Organizational Decisionmaker (or, in Project Lingo, the KOD). In designing the organizational questionnaire, we went to some length to allow for situations where we would need to talk to several persons in the organization to get the whole picture of what happened; to my knowledge, we never actually spoke to more than one person. The problem that this reflected was that when we designed the questionnaire, we had in mind the big complex dispute of popular concern, not the modest, routine, everyday dispute represented in our sample. The biggest problem that we encountered with organizations, and the one I believe that was indicated by the responses of lawyers who said that they had little or no involvement in cases in our sample even though they were listed as the attorney of record in the court file, was that of organizational memory. The problem with ordinary cases is that they are not particularly memorable;[5] in fact, the processing of routine cases is likely to be dispersed through an organization with no one person having any significant memory of a particular case. Case files may be hard to find, and even if they can be found they may contain little information on the way the case was processed (they probably contain primarily factual information about the dispute). This lack of institutional memory makes it extremely difficult to study organizational processing of disputes using the kind of retrospective design that we were using.

Regarding individuals, we encountered a different problem: finding them. Court records contain very little information on how to contact litigants; this is not surprising since, after the initial complaint is served, service of papers is through the lawyers (in large part because the lawyers are easier to contact than are the litigants). We tried to solicit information from lawyers about how to get hold of their former clients, but most individual clients are "one shot" players, and the lawyers have no reason to maintain contact. Furthermore, geographic mobility is such that any information on where a person lives has a high probability of quickly becoming out of date; this is particularly true for individuals involved in divorce cases, since the termination of the marriage itself is likely to lead to relocation.

The theme that has been most dominant in this discussion has been the need to avoid oversimplification. I would like to close my discussion by suggesting at least one area where one should avoid oversimplification. One totally unexpected finding has to do with the ambiguity of terminology. For example, what is a "trial"? Given the formality, as defined in rules of civil procedure, of the civil justice process, we expected there to be relatively little ambiguity, at least in the formal proceedings. We noted in our data obtained from the court records whether there was an indication that a trial had taken place. In our interviews with the lawyers, we asked them whether a trial had taken place. We were shocked by the level of inconsistency between the court records and the lawyers' recollections.

<table>
<thead>
<tr>
<th>Was there a trial according to the court record?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Was there a trial according to the lawyer?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>was there a trial according to the court record?</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Yes</td>
<td>119</td>
<td>32</td>
</tr>
<tr>
<td>No</td>
<td>109</td>
<td>1117</td>
</tr>
</tbody>
</table>

Table 4. Is a trial a trial?

There are at least two interpretations to the inconsistencies shown in Table 4. First, one source of data, most likely the interview data, is unreliable. No doubt there is some reporting inaccuracies in the interview data, but we do not
think that this is the major problem reflected by the table. The second explanation is that the notion of a trial may be much more ambiguous than we had realized. When we first encountered this inconsistency, we took a sample of the cases and went to the raw data to see if we could figure out why the inconsistency was there. What we found was that in most cases the lawyer reported a trial but the court record did not show there was a hearing on a major issue in the case which resulted in a ruling by the judge; after the ruling the case was settled. We also found that in a number of cases where the record showed a trial but the lawyer did not recall there being one, the trial may have been a hearing that simply ratified a previously worked out agreement among the parties; for one reason or another the parties either needed (e.g., in a divorce case) or wanted some formal decision from a judge to legitimize or to make enforceable their agreement. [6]

A second way in which we encountered this kind of ambiguity was in our coding of court records. Our field staff frequently encountered motions they had never heard of. When they discussed this with the local court clerk, they were told that it was standard procedure for lawyers to simply file a motion for "Y" either if "Y" fell between "X" and "Z," which were provided for in the rules, or if "Y" was something they needed or desired even if it was not provided for in the rules. Needless to say, this creativity made for problems in coding and analyzing information on the individual events that make up the litigation process.

The implication of this ambiguity is that one has to be careful in adopting for research purposes the formal categories of the civil justice process. The categories may serve to disguise the process in important ways. It is better from a research standpoint to define analytic categories and then to frame questions around those categories. For example, instead of asking about whether a "trial" occurred, we could have asked whether a decision by a judge or other court officer served to resolve the major issue in dispute; if the answer were affirmative, we could have followed up with a question concerning whether the presentation of the issue to the judge involved primary questions of law, questions of fact, or a combination of law and fact. This would have provided a more useful analytic category scheme than simply asking whether there was something that was labeled a "trial."

Conclusion

I am very excited by the prospects for research on the civil justice system. There is much to be learned and there is much to be done. I believe that the Civil Litigation Research Project was an important beginning. We have learned a lot about the civil justice process (and there is much more yet to be learned from the data that we have in hand), and we have learned a lot about how to carry out research on this part of our court system. The civil justice system is an extremely important topic for research since it accounts for substantially more of the business of the courts than does the criminal side of justice.

Notes

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1. I suspect that current discussions of fee shifting also reflect a desire to create disincentives as a means of reducing the number of law suits.

2. Some of the interest in settlement reflects a belief that a resolution through settlement is "better" than a resolution through adjudication.

3. The research design is described in some detail in Kritzer (1980-81).

4. Adjudication is also a fundamental part of the settlement process in that the adjudication of other cases sets the context through which a given case is ultimately settled.

5. Last summer, I conducted field work in Toronto involving interviews with corporate lawyers and corporate officials. I found that, while corporations had many small cases, when I mentioned litigation to persons in these kind of positions, they immediately thought in terms of the "big" case. The "everyday" case simply gets lost within the routine of the organization or the legal practice.

6. This may be the civil equivalent of what is referred to as a "slow plea" in the study of criminal trials.

References


