

Summary

Civil Justice Roundtable Discussion

April 22, 2004
Bureau of Justice Statistics
810 Seventh Street, NW
Washington, D.C.
Third Floor Conference Room

Preface

Civil litigation in State courts represents a major component of total court workloads. Recent studies show that civil lawsuits outnumber their criminal counterparts by nearly 2 million cases. In addition to court workload, civil litigation generates a significant amount of societal interest. The imposition of multibillion dollar punitive damage awards, the filing of frivolous lawsuits, the concentration of mass tort or class action lawsuits in certain counties, and the large settlement awards involved in medical malpractice lawsuits are all cited by legislators, policymakers, and the media as evidence that the civil justice system is in need of major reform.

In spite of this attention, few efforts can empirically substantiate the many claims about the civil justice system. A variety of factors have contributed to the dearth of civil justice data including the focus of most governmental and academic research on criminal as opposed to civil justice, the lack of available resources for civil justice research, and the confidential nature of many civil settlement agreements. As a result, little if any information is available on a wide range of civil litigation subjects including civil settlements, class action litigation, the impact of tort reform on civil litigation, and the effects of medical malpractice litigation on health insurance costs. In fact, most conclusions and inferences regarding these civil litigation topics have been drawn from anecdote, rather than empirically driven data.

The lack of empirical data has led to a growing call for research which focuses on civil justice statistics. On April 22, 2004, the Bureau of Justice Statistics (BJS) — in cooperation with the litigating, policy, and State - and local - assistance components of the U.S. Department of Justice — convened a roundtable in Washington, D.C., to discuss the issues of collecting and analyzing civil litigation statistics. The meeting that is reported here was organized in part as a response to a recommendation by the Associate Attorney General of the United States, Robert D. McCallum, Jr., that a roundtable discussion be held to examine our current knowledge level of civil litigation statistics and the specific areas where greater research efforts in civil litigation are needed.

Many issues were discussed at the civil justice roundtable meeting, including the current level of knowledge on civil justice data, the potential flaws inherent in existing civil justice data collection efforts, and the areas where additional civil justice data research efforts are needed.

Roundtable Participants

Presenters —

- Bureau of Justice Statistics
- National Center for State Courts
- Vermont Center for Justice Research
- Administrative Office of the U.S. Courts (AOUSC)
- Tillinghast - Towers Perrin
- Cornell Law School
- Stanford Law School

Representatives of —

- U.S. Department of Justice
- Federal Judicial Center
- American Arbitration Association
- O'Melveny & Myers
- American Insurance Association
- Insurance Information Institute
- White House Council of Economic Advisors
- American Enterprise Institute
- Rand Institute for Civil Justice
- Public Citizen Litigation Group
- Justice Research and Statistics Association (JRSA)

Additional discussions focused on the steps that could be taken to increase the overall level of quality and scope of civil justice data. Associate Attorney General Robert D. McCallum, Jr., also made remarks about the U.S. Department of Justice's interest in attaining a more fully informed picture of civil justice statistics. After these exchanges, several recommendations were proffered on steps that could be taken to augment our civil justice data collection efforts. The discussions and subsequent recommendations are summarized in the text of this report.

This report was prepared by BJS. The participants have not reviewed the text of the report, for which BJS is solely responsible.

Discussion Summary

State of civil justice knowledge: What do we know?

A series of presentations at the roundtable reviewed the existing data collection efforts currently underway in civil justice. One of the primary civil litigation data collections discussed was the BJS studies on general civil (that is tort, contract, and real property) cases disposed of by bench or jury trial in the Nation's 75 most populous counties. The presentation focused on the fact that through this project, data have been collected on over 40,000 general civil trials disposed of in State courts of general jurisdiction in 1992, 1996, and 2001. Also discussed was information on the types of civil cases that are disposed by trial, the characteristics of litigants in civil trials, the percentage of plaintiff winners in civil trials, and the damages awarded to plaintiff winners in civil trials.

Another presentation focused on the National Center for State Court's efforts to collect civil litigation data at the State level through the Court Statistics Project (CSP). The CSP examines civil filing and disposition trends in general and limited jurisdiction courts, provides information on the composition of civil cases on a yearly basis, and shows which States have the largest

and fewest civil caseloads. In addition, the CSP has succeeded in furthering our knowledge of general civil litigation by highlighting trends in tort and contract filings over a 15-year period. The CSP is one of the few sources available that can provide State-level trend data on medical malpractice and product liability litigation.

Other civil litigation data sources discussed at the roundtable included the jury verdict reporters, the AOUSC reports on Federal civil litigation, insurance industry sources, and documents from the Federal Public Access to Court Electronic Records (PACER) system. The jury verdict presentation covered a selected number of self reported jury trials disposed in State or Federal courts along with data on litigant characteristics, plaintiff win rates, and damage awards from these jury trials. The AOUSC presentation included an examination of civil filing and disposition data at the Federal level. Tillinghast - Towers Perrin discussed its findings on the costs of tort litigation through the perspective of insurance companies. Lastly, some discussions centered on data from the Federal docket or PACER system.

What problems exist for current civil justice data collection efforts?

After a review of the existing studies, the participants critiqued the strengths and weaknesses of each civil justice data collection method. The discussants agreed that our efforts to fully describe the civil justice landscape have been frustrated by the variety of problems inherent in many of these data collection projects.

A key problem identified with the *BJS civil trial series* is that it focuses only on the small number of all civil cases that end in a trial (an estimated 3% or less). The vast majority of civil cases that settle are not included in these surveys. Furthermore, the BJS studies focus only on civil trials disposed in general jurisdiction courts in the Nation's 75 largest counties. Non-general civil trials, trials in limited jurisdiction courts, and trials in counties outside the 75 largest are not covered. Several participants also observed that

the studies were not timely enough to capture the latest trends occurring in civil trial litigation.

The problems confronting the *National Center for State Courts civil justice data collection* projects were also explored. First, the National Center only collects aggregate filing and disposition data, precluding a case specific examination of civil litigation in State courts. As a result, data on the number of parties in each case are unavailable. Moreover, it was observed that the National Center is heavily reliant upon the States to supply accurate and uniform civil data. Some States have adequate case management systems, allowing for the measurement of civil litigation with a high degree of specificity. Other States, however, do not have automated or uniform systems of case management, which forestalls a reliable count of civil filing and disposition data in many State courts.

Participants also noted the variety of weaknesses inherent in other civil justice data collection efforts. For example, the *jury verdict reporters* were observed to survey only trials reported by counsel to the reporter services or the media. As a result, a substantial portion of jury trials are never surveyed by the jury verdict reporters. Comments were made about the inability of the *Tillinghast - Towers Perrin studies* to disaggregate the obligated and unobligated insurance costs associated with tort litigation, and that these studies have not taken into account the benefits associated with tort litigation. Conference attendees noted that the federal courts maintain one of the more thorough civil case management systems but acknowledged that it had not yet been fully implemented and, due to budget constraints in the future, further implementation may be slowed.

What information is lacking in current civil litigation data collections?

In addition to the challenges facing many existing civil justice studies, the roundtable also identified the areas where civil litigation data collection is nonexistent. One of the most notable

gaps discussed involved the many civil disputes that are settled outside the court system. It was frequently remarked that many, if not an outright majority, of civil disputes are resolved between parties without a complaint being filed in the Nation's courts.

Some of these cases are settled through alternative dispute resolution (ADR) and others are resolved privately between the parties. While the general consensus was that ADR represents a crucial component of civil justice, surveying the ADR process would be problematic because of the issues associated with data access and availability. Participants also agreed that of civil cases filed in State and Federal courts few attempts have been made to collect data on the majority that settle. Moreover, none of the limited attempts to gather civil settlement data have successfully researched the specifics behind civil settlement awards. The discussants also concluded that civil litigation has yet to be thoroughly examined at the limited jurisdiction and appellate levels in State courts.

The U.S. Department of Justice as consumer of civil litigation statistics

Associate Attorney General Robert D. McCallum, Jr., addressed the U.S. Department of Justice's interest in attaining more accurate national civil litigation data. According to the Associate Attorney General, the United States is often exposed as the primary litigant in thousands of civil lawsuits. These suits are increasingly resolved through the ADR process. The Associate Attorney General argued that the growing use of ADR should be viewed as evidence that an increasing number of civil cases are being resolved outside the trial process. Additional research should be directed at these non-trial cases in order to better understand current civil litigation trends.

The Associate Attorney General also proffered that the Justice Department's own public records might represent another valuable source of civil justice data. Civil lawsuits handled by the Department of Justice represent a large

number of cases, arise in every part of the country, and involve a wide variety of tort, contract, and other civil disputes. Data from these sources might illuminate further trends in the U.S. civil justice system. Lastly, the Associate Attorney General called for academics, researchers, and other policy officials to share their ideas about ways to further enrich the national picture of civil justice statistics.

What steps should be undertaken to augment current civil litigation data collection efforts?

At the roundtable, participants proposed a variety of steps that could be taken to augment current civil justice data collection efforts. These included adopting a National Crime Victimization Survey (NCVS) model to survey citizens about civil disputes, obtaining civil settlement data, enhancing the ability of State systems to count and track civil cases, and focusing on class or mass action torts. The benefits associated with each strategy were examined. For example, participants observed that adopting an NCVS model would amount to a novel approach because it would allow for the counting of civil disputes that never make it into the formal civil justice system.

The role of civil settlements as an important component of civil litigation was also discussed. Participants agreed that additional efforts should be made to track civil settlements in State and Federal courts.

There was consensus that court management systems should be standardized so that States have uniform methods for defining and counting civil cases in State courts. The National Center for State Courts model court statistical dictionary was observed as an important step towards the more accurate counting of civil cases in State courts. Discussants also agreed that data collection efforts should focus on obtaining information about class or mass tort actions.

A Plan of Action

BJS outlined several civil data collection projects currently underway or planned over the next few years. These include the following:

Produce a civil justice flowchart that is similar to the BJS criminal justice flowchart included in the conference folder. Replicating the BJS criminal flowchart in a civil justice context would provide a more detailed view of how civil cases are processed through the court system, which areas are currently surveyed in civil justice, and where additional resources are needed in civil justice data collection to pinpoint case flows at major decision nodes. The proposed analytic framework would also provide for an examination of the flow of cases through the parallel civil justice system of ADR and mediation.

Examine ways to improve the U.S. Justice Department's collection and analysis of civil case data. The U.S. Department of Justice litigates thousands of civil cases a year; yet, data on these cases have not been thoroughly analyzed. BJS will provide assistance on ways to improve the Justice Department's access to its civil litigation data.

Continue funding the National Center for State Court's Court Statistics Project. The National Center's Court Statistics Project represents one of the few national efforts to collect State level civil litigation data. Supporting this project would ensure the continual collection and analysis of civil case data in State courts.

Produce another study of general civil bench and jury trials disposed in the Nation's 75 largest counties. BJS intends to collect data on general civil trials disposed in large counties in 2005 or 2006. These data will be used to produce another report of civil trial cases and verdicts in large urban counties.

Examine civil trials disposed in 2001 that are subsequently appealed. BJS plans to survey civil trials disposed in the Nation's 75

largest counties in 2001 that were subsequently appealed. The impact of the appellate process on civil trial outcomes will be closely scrutinized.

Analyze civil litigation at the Federal level. In the 1990's, BJS produced several reports on trials at the Federal level. Future reports will mirror the State civil trial studies focusing on trial characteristics and outcomes in the Federal district courts.

Conduct reliability checks on other civil litigation data sources such as the jury verdict reporters. BJS has requested that the National Center for State Courts provide an analysis comparing its trial studies to the jury verdict report results.

In addition, individuals proposed ideas on civil justice data collection efforts that BJS could sponsor over the next several years. These concepts are outlined below.

- **Replicate the 1992 study of all civil dispositions (e.g., trials, settlements) in the Nation's 75 largest counties.** In 1992 BJS surveyed all civil dispositions in the Nation's 75 largest counties. This allowed for an examination of a wide range of case outcomes including settlements, dismissals, summary judgments, and civil defaults. Replicating this study would allow for an examination of how civil litigation in State courts has changed since the early 1990's.
- **Supplement the National Crime Victimization Survey with a national study examining civil disputes.** Civil disputes resolved outside the court system represent one of the major components of civil justice for which no data are collected or available from administrative records. An examination of these disputes would shed light on the majority of civil actions that never come into court. In addition, this survey could help explain how the tort system induces people to act in ways that avoid civil liability.
- **Sponsor the adoption of the National Center for State Court's model court statistical dictionary by the States.** The National Center's model court statistical dictionary represents an important opportunity to collect more finely refined civil justice data at the State level. Additional resources could be provided to encourage States to implement the data dictionary.
- **Focus on mass tort or class action cases in certain counties.** There is much anecdotal evidence that specific counties are attracting a disproportionate number of class action lawsuits. An empirical approach could shed light on the overall seriousness of this problem.
- **Focus on civil settlements by developing protocols to protect the confidentiality of parties to civil settlements.** Although a majority of civil cases in State and Federal courts settle, few attempts have been made to study these cases and especially the awards they produce. Confidentiality requirements are one of the major impediments to studying civil settlements. Developing confidentiality protocols might provide incentives to release this information.
- **Explore the use of new technologies, such as the Internet, for collecting data from attorneys or insurance companies on settled cases.** The web could be used to augment our civil justice data collection efforts at the State and Federal level. Directed queries of insurance companies and their counsel could be used to probe the settlement process and to document the methods by which responsibility and harm are derived and assessed.

Participants

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Bureau of Justice Statistics
Civil Justice Publications

Civil Trial Cases and Verdicts in Large Counties,
2001

Medical Malpractice Trials and Verdicts in Large
Counties, 2001

Civil Trial Cases and Verdicts in Large Counties,
1996

Tort Trials and Verdicts in Large Counties, 1996

Contract Trials and Verdicts in Large Counties,
1996

Civil Rights Complaints in U.S. District Courts,
2000

Civil Rights Complaints in U.S. District Courts,
1990-1998

Federal Tort Trials and Verdicts, 1996-1997

Federal Tort Trials and Verdicts, 1994-1995

Contract Cases in Large Counties, 1992

Civil Jury Cases and Verdicts in Large Counties,
1992

Tort Cases in Large Counties, 1992

These reports can be found in full at
<http://www.ojp.usdoj.gov/bjs/civil.htm>

Bureau of Justice Statistics - Statistical Coverage of Civil Litigation

Civil dispute
between parties

