The Need for a National Civil Justice Survey of Incidence and Claiming Behavior

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Civil justice issues play a prominent role in society. Family law issues such as divorce[1] and child custody, consumer victimization issues raised by questionable trade practices,[2] and tort issues raised by surprisingly high estimated rates of medical malpractice,[3] questionable prescription drug practices,[4] and other behavior are part of the fabric of daily life. Policymakers and interest groups regularly debate and assess whether civil problems are best resolved by legislative action, agency action, litigation, other methods, or some combinations of actions. Yet we lack systematic quantitative knowledge about the primary events in daily life that generate civil justice issues. This paper explores the desirability of, and issues related to, creating what I will call a national civil justice survey (NCJS) analogous to the National Crime Victimization Survey (NCVS).

The NCVS is the primary source of information on criminal victimization.[5] The survey enables the Bureau of Justice Statistics (BJS) to estimate the likelihood of many crimes "for the population as a whole as well as for segments of the population such as women, the elderly, members of various racial groups, city dwellers, or other groups."[6] In 2005, U.S. residents age 12 or older experienced about 20 violent crimes per 1,000 people and about 150 property crimes per 1,000 people.[7] In comparison, decades-old national research on incidence of civil problems suggests that adults experience a long-term risk of serious personal injury at the rate of 120 per 1,000 and a risk of serious property damage of 400 per 1,000.[8] A more geographically limited early 1980s survey found a three-year risk of having a civil justice grievance of 416 per 1,000.[9] The rate of civil justice incidents plainly is high enough to warrant systematic quantitative knowledge of their patterns.

The first part of this paper briefly reviews selected available civil justice data and their limitations. The second part provides a preliminary discussion of the kind of information about civil justice events that might be gathered in an NCJS. The third part reviews methodologies and results in prior civil justice surveys. The final part briefly suggests the benefits and feasibility of an NCJS.

Selected Available Civil Justice Data and Their Limitations.

Important and useful data exist that relate to civil justice. BJS projects as well as those of other federal agencies supply much of that information. BJS data tend to focus on the end point of the civil disputing process, litigation, and not on the underlying pattern of grievances and claiming behavior that generate observable disputes. Other data sets, such as divorce rates and patient safety data from the National Center for Health Statistics,[10] might provide

[1]E.g., Center for Disease Control, National Center for Health Statistics, National Vital Statistics Reports: Births, Marriages, Divorces, and Deaths: Provisional Data for 2006, vol. 55 no. 20, Aug. 28, 2007, available at http://www.cdc.gov/nchs/data/nvsr/nvsr55/nvsr55_20.pdf.

[2]E.g., Federal Trade Comm'n, Consumer Fraud and Identity Theft Complaint Data: January–December 2006 (2007), available at http://www.consumer.gov/sentinel/pubs/Top10Fraud2006.pdf.

[3]E.g., Chunliu Zhan & Marlene R. Miller, Excess Length of Stay, Charges, and Mortality Attributable to Medical Injuries During Hospitalization, 290 JAMA 1868 (2003).

[4]E.g., Editorial, N.Y. Times, Cholesterol Drug Bombs, Jan. 16, 2008 ("it was …very disturbing to learn this week that a heavily promoted cholesterol-lowering drug had flunked a clinical trial of its effectiveness in reducing fatty deposits in arteries. The two companies that reap billions from the drug had been cynically sitting on the results for more than a year."); Gregory D. Curfman et al., Expression of Concern: Bombardier et al., "Comparison of Upper Gastrointestinal Toxicity of Rofecoxib and Naproxen in Patients with Rheumatoid Arthritis," 343 N. Engl. J. Med. 1520 (2000) ("It now appears . . . from a memorandum dated July 5, 2000, that was obtained by subpoena in the Vioxx litigation and made available to the Journal, that at least two of the authors knew about the three additional myocardial infarctions at least two weeks before the authors submitted the first of two revisions and 4½ months before publication of the article.").

[5]http://www.ojp.gov/bjs/cvict.htm#Programs (visited Feb. 2, 2008).

[6]Id.

[7]Shannan M. Catalano, National Crime Victimization Survey: Criminal Victimization, 2005, Bureau of Justice Statistics Bulletin, Sept. 2006, NCJ 214644.

[8]Barbara A. Curran, The Legal Needs of the Public: The Final Report of a National Survey (1977).

[9]Richard E. Miller & Austin Sarat, Grievances, Claims, and Disputes: Assessing Adversary Culture, 15 Law & Soc'y Rev. 525, 527 (1980-81).

[10]National Center for Health Statistics, NCHS Data on Patient Safety, July 29, 2005, available at http://www.cdc.gov/nchs/data/factsheets/patsafety1.pdf; CDC.

adequate information about particular topics.[11] In general, however, other sources of civil justice data are sporadic and depend on reporting by intermediaries rather than by those experiencing the problems. As in the case of crime victimization, a household level survey could provide the most reliable information to assess the true level of civil-justice-related activity. For purposes of this paper, I try to include a reasonably comprehensive list of civil justice topics that might be included in an NCJS. If it is determined that satisfactory information is already systematically gathered about one or more of the topics, that would reduce the necessary scope of a national civil survey. For purposes of illustrating the utility of an NCJS, I first focus on how it might enhance the utility of existing BJS data relation to civil justice.

Leading Civil Justice Data Contains Surprises

Existing BJS civil justice initiatives have already established their value by providing significant insights into civil justice system performance. The BJS and the National Center for State Courts (NCSC) make available online and through reports the best existing information about state courts, including trial outcomes and filings. For example the BJS Report, Civil Trial Cases and Verdicts in Large Counties, 2001, reports time trends, from 1992 to 2001, in the number of civil trial cases and the amount of jury awards.[12] These data shed light on the operation of our civil justice system, in which the vast majority of cases and trials are adjudicated in state court.

Some core BJS-NCSC results are truly striking. In 1992, state courts in the nation's 75 largest counties are estimated to have concluded 22,451 trials. By 2001, state courts in these counties concluded only 11,908 trials, a reduction of 47.0 percent.[13] The sharpest decreases came in products liability and real property cases, with reductions of 76.0 percent and 80.1 percent respectively.[14] The BJS-NCSC data, through a methodology consistently applied over the course of a decade, thus conclusively established the reduction in trials in state courts. The vanishing trial and its implications for the justice system has been the topic of extended discussion.[15] With respect to amounts awarded at trial,[16] the results are equally interesting. In 1992 the median jury award in all tort cases, adjusted for inflation, was $64,000. In 2001, the median award was only $28,000, a statistically significant decline.[17] Awards were down in automobile and premises liability cases, and up in product liability and medical malpractice cases.[18]

NCSC data on time trends in case filings, though limited to the subset of states that report information on a consistent basis, also are noteworthy.[19] For example, Figure 1 shows a long-term decline in tort filings, accompanied by a more modest decline in medical malpractice filings and little pattern in products liability filings.

Limitations of Existing Civil Justice Data and the Benefits of an NCJS.

So we have, as exemplified by torts, a downward trend in filings, a downward trend in the number of trials, and a downward trend in median awards.[20] As important as these data are, we cannot fully know what to make of them for many important purposes because we lack information about the possible number of grievances and disputes underlying them.

To show why, let's continue to pursue tort as an example. It is one thing if NCSC's declining tort filings are observed in light of a background of a stable rate of tort incidents over time. It is quite another if declining tort filings are observed and the rate of tort incidents per capita either has substantially increased or decreased. Unless we know about the number of underlying tort incidents, interpreting filings data is subject to unavoidable limitations. Policymakers cannot tell if legislative or other initiatives have had an effect in the expected direction or in the opposite direction to that intended. It may be that tort reforms reducing liability exposure increase the number of tort incidents. This would need to be balanced against the presumed litigation savings. This uncertainty is of course equally true of other civil justice subject areas, including consumer problems such as credit card and mortgage disputes.

Gathering systematic data over time about the rate of underlying tort and other civil justice incidents has another benefit that is also important, though not directly related to case filing and outcome patterns. Estimating the rate of tort incidents, and the rate at which incidents are satisfactorily resolved, would yield important knowledge about the needs for access to civil justice. Specifically, are civil legal services available to those who need them? Are they differentially available based on income, race, gender, or other factors? And how much access to civil justice is, in fact, needed?

[11]The National Health Interview Survey (NHIS) provides information about injuries. The largest category of external injury cause codes in the NHIS is code E9288 or E9289 ("other" or "unspecified" accident). These constitute about 520,000 out of 3.6 million NHIS "Other" accidents in the 2005 NHIS, available through ICPSR. But these data do not readily allow one to assess if a civil grievance would be warranted.

[12]Thomas H. Cohen & Steven K. Smith, Civil Trial Cases and Verdicts in Large Counties, Bureau of Justice Statistics Bulletin, April 2004, NCJ 202803.

[13]Id. at 9 (tbl. 10).

[14]Id.

[15]E.g., Marc Galanter, The Vanishing Trial: An Examination of Trials and Related Matters in Federal and State Courts, 1 J. Empirical Legal Stud. (2004).

[16]Cohen & Smith, supra note 12, at 9.

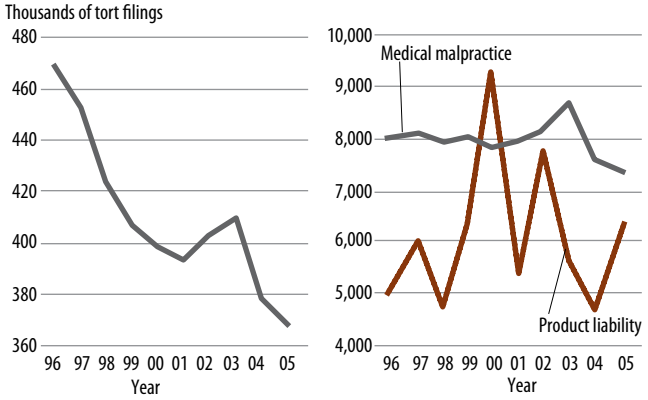
[17]Id. (tbl. 11).

[18]Id.

[19]These data are available at http://www.ncsconline.org/D_Research/csp/2006_files/CaseloadTrends.pdf.

[20]These results will be enhanced when the 2005 iteration of the BJS-NCSC civil trial data is released.

Figure 1. State Court Filings Over Time, Tort, Product Liability, Medical Malpractice



Note: Tort data based on 30 states, product on 8 states, medical on 9 states

Thus, helping to understand the systematic civil justice data we do have, as well as identifying the civil justice needs of citizens, are among the benefits that a systematic time series of data, based on valid national samples, could help supply. My proposal is that BJS, in cooperation with other agencies if necessary, formulate and implement an NCJS analogous to its current NCVS. Such an undertaking would be substantial and the rest of this paper focuses on some of the issues that arise in developing such a survey.

What to Keep Track Of?

Since the contemplated NCJS cannot be based on objectively observable court activity such as filings or trials, the proposed survey generates questions of methodology about what a civil justice incident or need is. Designing a survey assessing civil justice needs requires identifying events or occurrences that count as needs. Such events and occurrences may not always be self-evident even to respondents.

The Nature of the Activities Generating Civil Justice Needs.

Fortunately, prior thoughtful relevant work exists and can be built on by BJS in designing an NCJS. The earliest, major modern study regarded as a touchstone in the field of the incidence of civil justice problems is the American Bar Association and American Bar Foundation (ABA/ABF) project published in Barbara A. Curran's 1977 book, The Legal Needs of the Public: The Final Report of a National Survey.[21] One part of the survey used in Curran's study consisted of inquiring into "actual problem situations with which respondents might have been confronted at one or more times in their lives."[22] The other part of the Curran survey that is also directly relevant for present purposes elicited information about the use of lawyers for the delivery of legal services.[23] This included information about what the lawyer did on behalf of the respondent, including appearing in court or at some other hearing.[24]

Richard Miller and Austin Sarat, writing in 1980 as part of the Wisconsin Civil Litigation Research Project (CLRP), provide a helpful and more formal discussion of the events that might lead to legal action. The litigated dispute that ends up in court must be the topic of an underlying grievance. Citing others, Miller and Sarat describe a grievance as, "an individual's belief that he or she 'is entitled to a resource which someone else may grant or deny . . . .'"[25] A grievance is thus the beginning of a litigated dispute, but not all grievances lead to litigated disputes. The aggrieved party might not even communicate his or her belief about entitlement to the "someone else"—that is, no claim in or out of court is made. That would end the matter at the grievance stage. The aggrieved party might communicate the belief to the "someone else"—that is, a claim is made, at least out of court. The response in some cases will be satisfactory. That would end the matter at what might be called the claim stage. A claim may be made and no satisfactory response received. One would then have something worthy of the name "dispute." At the end of this stylized process, one might observe a formal civil dispute. Miller and Sarat provide the following useful chart to summarize this grievance to formal dispute process.

Table 1. Definitions of Disputing Stages

	Belief that one is entitled to a resource controlled by another party	Voicing that belief to the other party	Rejection of claim	"Litigable" claims
Grievance	X			
Claim	X	X		
Dispute	X	X	X	
Civil legal dispute	X	X	X	X

Source: Miller & Sarat (1980-81).

If the aggrieved party decides to pursue the matter, a lawyer or other appropriate third party might be consulted. An NCJS may want to ask not only about the grievance-claim-dispute and civil-legal-dispute stages but also about steps taken to consult lawyers or others at each stage. Many lawsuits are filed without counsel but one does not know which of the filed lawsuits were considered by counsel. Similar questions were included in the Curran study.[26]

[21]Curran, supra note 8, at 103-04.

[22]Curran, supra note 8, at 20.

[23]Curran, supra note 8, at 26-27.

[24]Curran, supra note 8, at 349 (question 16).

[25]Miller & Sarat, supra note 9, at 537.

[26]Curran, supra note 8, at 341-53.

The Subject Areas of Civil Justice Activities.

In addition to tracking the activities beginning with a possible grievance that might lead to a civil dispute, a civil justice survey needs to disaggregate grievances by specific subject areas. The aggregated category "civil justice" problem is too general to provide the kind of information needed. Almost all legal phenomena vary by the subject matter of case categories[27] and so data on refined subsets of the civil justice "super category" are needed.

Different studies have taken different approaches to subdividing the possible range of civil justice areas. Table 2 reports the subject areas defined by Curran's 1977 study (I exclude crimes from the list as beyond the scope of a civil justice survey).[28]

Table 2. Curran ABF/ABA Subject Areas of Civil Subject Matter Areas

ownership of real property
rental of real property
purchase of real property
purchase of personal property
credit transactions
jobs and wages
violation of civil or constitutional rights
marital matters
problems involving state, local or federal governmental agencies
torts
problems involving children
wills and estate planning
estates

Source: Curran (1977) at 21.

Important limitations attend using a fixed list to identify incident legal problems.[29] These include the survey instrument signaling the respondent that a problem is a legal one without the respondent having regarded it as such. The predefined list also risks limiting responses to problems previously defined as being legal. The actual legal needs may be new ones, not previously known, such as systematic identity theft. A list also risks under-reporting problems that are not on the list. The lengthier the list the more likely a respondent might not think he or she has a legal problem unless it appears on the list. And the survey methodology, of course, risks the reluctance of respondents to respond to strangers about important personal matters that they may regard as private. Some steps may be taken to ameliorate these concerns,[30] but some are inherent in the contemplated venture.

Table 3. Miller/Sarat Aggregation of Specific Grievances Into Problem Types

1. Tort	Auto accident, work injury, other injury to or damage to property of a household member
2. Consumer	Problem with a major purchase, medical services or other services; problem with home builder (*) or a home repair or improvement contractor (*).
3. Debt	Problem collecting money from an employer, debtor or insurance company; disagreement with a creditor or other problems paying debts; problems with a mortgage (*).
4. Discrimination	Employment problems (denied a job or promotion, lost a job, problems with working conditions, harassment, or being paid less because of discrimination), problems in schooling or education, buying or renting housing, or any other problems because of discrimination.
5. Property	Problems over what was permissible to build (*), boundary lines (*), someone else using the property (*), or other problems with ownership or use (*), excluding problems with business or rental property.
6. Government	Problems collecting social security, veterans, or welfare benefits or tax refunds, obtaining services from local government, obtaining any other government benefits or services; problems with any agency which claimed household owed money; other problems with a government office or agency.
7. Divorce (*)	Post-divorce problems: property division, alimony, and child support, visitation, or custody.
8. Landlord-tenant (*)	Problems over rent, eviction, condition of the property, or other problems with a landlord.
9. Other	Problems cited in response to a final, general probe for other problems; problems with the ownership or division of property jointly owned with someone outside of the household (*$); problems involving violation of civil rights, other than discrimination.

Note: * denotes grievances ascertained for households at risk.

Source: Based on Miller & Sarat (1980–81), Appendix I, p. 566.

Information to Be Gathered About Civil Justice Incidents and Related Matters

For each purported civil justice grievance, one must decide how much information to gather as part of an NCJS. One must of course gather information about the actual civil justice grievances themselves. But additional information is clearly desirable. For example, both the ABA/ABF study and the CLRP study included information about respondent demographics.[31] The pursuit and processing of the purported grievance is also important. Was a claim made, with or without a lawyer? Was counsel consulted? Was a legal action or other formal proceeding commenced?

[27]E.g., Theodore Eisenberg et al., Juries, Judges, and Punitive Damages: Empirical Analyses Using the Civil Justice Survey of State Courts 1992, 1996, and 2001 Data, 3 J. Empirical Legal Stud. 263, 279 (2006) (showing substantially different rates of punitive damages awards in motor vehicle cases and cases with and without bodily injury).

[28]Curran, supra note 8, at 21.

[29]Miller & Sarat, supra note 9, at 534 n.5.

[30]Id.

[31]Curran, supra note 8, at 23, 122-30 (reporting incidence of legal problems by sex, race, education, income, and age); Miller & Sarat, supra note 9, at 552 (reporting associations between claim rates and income, race, sex, age, and education).

What was the resolution of the grievance? This information allows assessing the rate at which respondents seek redress of grievances and the role of counsel and the courts. Both the ABA/ABF and CLRP studies included such information,[32] though the ABA/ABF study focused less on courts and more on the nature of lawyer use.

Another major civil justice study focused exclusively on accidental injuries and gathered more detail about those injuries than the ABA/ABF or CLRP studies. Deborah Hensler et al., in a RAND Institute for Civil Justice project, interviewed about 26,000 households by telephone, and about all sources of compensation and followed up with about 2,800 telephone interviews limited to liability claiming behavior.[33] The scale of the project was limited to one form of claiming behavior. RAND stated, "we did not have the resources to explore how Americans view and interact with other systems, such as workers' compensation or their own insurance claims adjusters."[34] Nevertheless, they gathered extensive information about claiming behavior with respect to accidental injuries. They gathered detailed information about the following aspects.[35]

- accident circumstances
- nature and severity of the injury
- health care and other direct expenditures and work loss associated with the injury
- sources of compensation
- amount of compensation from all sources
- liability claiming behavior

The designers of an NCJS would have to decide whether such detail about each incident should be gathered given that the scope of civil justice problems in an NCJS would have to be broader than the narrower class of problems studied by RAND.

Prior Research Methodologies and Results on Civil Incidents

The Curran survey was intended to examine the legal needs of the public by interviewing a representative sample.[36] The target was 2,000 respondents and 2,064 completed interviews were conducted.[37] The complex survey design used a random sample of the continental United States Standard Metropolitan Statistical Areas (SMSAs) and of counties outside SMSAs. Within each selected SMSA or county, a random sample of block groups was drawn and within these one sample of about 100 households was randomly selected.[38] The results reported in the study cannot reasonably be summarized in a short paper, but a key set of

[32]Curran, supra note 8, at 134-62 (describing use of lawyer services); Miller & Sarat, supra note 9, at 551 et seq. (describing claim rates given a grievance, success rates, and more).

[33]Deborah H. Hensler et al., Compensation for Accidental Injuries in the United States 3 (1991).

[34]Id.

[35]Id.

[36]Curran, supra note 8, at 33.

[37]Curran, supra note 8, at 34-35.

[38]Curran, supra note 8, at 33.

Table 4. Results of ABA/ABF Curran Study

		No. of Adults Who Had Problem Per 1,000 Adults in the Population	
Question	Problem Type	At Least Once	At Least Twice
	Real Property		
7	Acquisition	710	400
8	Interference with ownership	50	10
10	Serious dispute with home builder	20	<10
12	Serious dispute on home repair contract	40	<10
14	Serious dispute with mortgagee	20	0
	Employment Matters		
26	Serious difficulty collecting pay (excl. garnishment)	60	10
27	Job discrimination	90	30
	Consumer Matters		
16	Eviction	40	<10
17	Serious dispute with landlord	90	10
18	Serious dispute on major purchase	140	30
20	Serious dispute with creditor	50	10
21	Repossession	30	<10
	Estate Planning		
57	Wills	270	--
61	Inter vivos trust	50	10
	Estate Settlement		
52	Death of spouse	100	10
	Marital		
52	Divorce	150	20
55	Separation (custody/support)	10	--
56	Alimony/support	30	--
	Governmental		
34	Serious difficulty with municipal service	70	--
35	Serious difficulty with municipal/county agency	50	--
36	Serious difficulty with state agency	40	--
37	Serious difficulty with federal agency	50	--
	Torts		
38	Serious personal injury to respondent	120	20
39	Serious property damage to respondent	400	190
40	Serious personal injury or property damage by respondent	60	10
49	Serious injury to child of respondent	80	10
40F, 41	Crimes by respondent	40	10
	Constitutional Rights		
28	Infringement of constitutional rights	80	40
	Juvenile Matters		
50	Child of respondent had serious problem with juvenile authorities	60	20

Source: Curran (1977) at 103-04 (tbl. 4.8). Reprinted with permission.

results for present purposes is reported in Table 4.

The leading problem area reported by respondents relates to real property acquisition. Over 70 percent of respondents reported at least one real property acquisition problem and 40 percent reported at least two such problems. Other areas with high rates of problems were major purchases, wills, divorce, serious personal injury, and serious damages to property.

Data for the CLRP were from a telephone survey. The geographic scope was narrower than the Curran study but the proportion of households surveyed within the selected geographic area was substantial. The survey was administered in January 1980 to approximately 1,000 randomly selected households in each of five federal judicial districts: South Carolina, Eastern Pennsylvania, Eastern Wisconsin, New Mexico, and Central California.[39] The major cities of Philadelphia and Los Angeles would be included in these districts. The time frame assessed was narrower than in Curran. The Miller-Sarat respondents were asked "whether anyone in their household had experienced one or more of a long list of problems within the past three years . . .."[40] So one expects problem rates to be lower. But for many problem types, substantial rates were reported. For present purposes, the key results are reported in Miller and Sarat's Table (table 5), reconstructed on the next page.

Almost 16 percent of households reported a tort grievance within a three year period and almost 9 percent of consumers reported a grievance involving at least $1,000 in the same period. The Miller-Sarat threshold for consumer grievances was $1,000.[41] Given the prominence of class action policy discussions and activity, the $1,000 limitation might be ill-advised. In assessing aggregate litigation activity, it is important to know whether respondents believe they have a grievance about a matter, even if the matter is small. Many consumer and other class actions involve low stakes and recoveries per class member.[42]

This table and the underlying study can make useful contributions to the design of a civil justice survey. First, note the range of topics covered. The table distinguishes among eight categories of civil justice grievances, of which torts is just one. The table could be expanded to include pre-divorce family related matters, including spousal or partner abuse.

Second, the quantitative results contain several important results. The "claims" rate is high, about 80 percent or more, for all categories other than discrimination, where it is only 29.4 percent. In other grievance categories, the claims rate is so high that there is little room for statistically significant variation. In all categories other than torts, more than half of the claims resulted in disagreement or disputes. The torts dispute rate, 23.5 percent, is comparatively low. It would be desirable to separate the torts results by automobile and non-automobile claims. The massive, routinized automobile insurance system likely leads to satisfactory claims resolution in a higher percentage of cases than in less routine torts. Evidence from the RAND study confirms the need to separately consider motor vehicle accidents. RAND found that 89 percent of motor vehicle incidents lead to someone taking action compared to 16 percent of on-the-job products associated injuries and 7 percent of nonwork products associated injuries.[43]

Given a dispute, the rate of lawyer use varies. In two areas, post-divorce matters and torts, lawyer use was over 50 percent, with a notably higher rate in post-divorce grievances than in torts grievances. This likely is because attorneys often had already been consulted in connection with the divorce itself and only 24 percent of households were at risk for post-divorce problems. The high lawyer use rate in torts cases may be related to the low dispute rate in torts cases. Most torts grievances led to claims but not to disputes. The substantial filtering process likely results in high stakes or quite contested matters ripening into disputes. These should be expected to lead to consultation with lawyers at unusually high rates, 57.9 percent in the case of torts disputes.

The process of consulting with lawyers tends to be associated with filtering disputes away from court filings. Across all categories of disputes, lawyers were used in 23 percent of disputes, and court filings resulted in 11.2 percent of disputes. Working from grievances to court filings can be done by noting that 71.8 percent of grievances led to claims, and that 62.6 percent of claims led to disputes, and that 11.2 percent of disputes led to court filings. Multiplying through yields about 4 percent of grievances ending in court filings. In the CLRP data, only about one torts dispute in three led to a court filing and only about four percent of torts claims led to a court filing. RAND found that "about one injury in ten leads to an attempt to collect liability compensation."[44] Motor vehicle incidents tend to inflate the overall rate. In "nonwork, non-motor-vehicle accidents, only three injuries out of 100 lead to liability claims."[45]

RAND's data on consulting attorneys is difficult to compare with CLRP data because the CLRP data do not separately report on motor vehicle cases. In motor vehicle cases, RAND reports that 18 percent of injured persons hire a lawyer. In

[39]Miller & Sarat, supra note 9, at 537.

[40]Miller & Sarat, supra note 9, at 534.

[41]Miller & Sarat, supra note 9, at 566.

[42]E.g., Theodore Eisenberg & Geoffrey P. Miller, Incentive Awards to Class Action Plaintiffs: An Empirical Study, 53 UCLA L. Rev. 1303, 1324 (2006) (fig. 1).

[43]Hensler et al., supra note 33, at 121, 127.

[44]Hensler et al., supra note 33, at 120.

[45]Hensler et al., supra note 33, at 120.

[46]Hensler et al., supra note 33, at 123.

Table 5. Grievances, Claims, and Outcomes: Rates by Type of Problem

	All Grievances		Torts		Consumer		Debt		Discrimination		Property		Government		Post-Divorce		Landlord	
Grievances[a] (Percents of Households)	41.6%	(5147)	15.6%	(5147)	8.9%	(5147)	6.7%%	(5147)	14.0%	(5147)	7.2%	(3798)[b]	9.1%	(5147)	10.9%	(1238)[c]	17.1%	(2293)[b]
Claims (Percents of Terminated Grievances)	71.8	(2491)	85.7	(559)	87.3	(303)	94.6	(151)	29.4	(595)	79.9	(193)	84.9	(240)	87.9	(51)	87.2	(307)
Disputes: (Percents of Claims)																		
a. No Agreement	32.0		2.6		37.1		23.9		58.0		32.1		40.7		37.7		55.0	
b. Agreement After Difficulty	30.6		20.9		37.9		60.6		15.5		21.8		41.4		49.3		26.7	
c. Dispute	62.6	(1768)	23.5	(467)	75.0	(263)	84.5	(142)	73.5	(174)	53.9	(154)	82.1	(203)	87.0	(45)	81.7	(267)
Lawyer Used (Percent of Disputes)	23.0	(1100)	57.9	(107)	20.3	(197)	19.2	(120)	13.3	(128)	19.0	(84)	12.3	(163)	76.9	(39)	14.7	(218)
Court Filing[c] (Percent of Disputes)	11.2	(1093)	18.7	(107)	3.0	(197)	7.6	(119)	3.9	(128)	13.4	(82)	11.9	(159)	59.0	(39)	7.3	(218)
Success of Claims (Percent of Claims)																		
a. No Agreement (0)	32.0		2.6		37.1		23.9		58.0		32.1		40.7		37.7		55.0	
b. Compromise (1)	34.2		85.4		15.2		23.5		11.3		9.7		18.3		35.5		10.3	
c. Obtained Whole Claim (2)	33.8		11.9		47.7		52.6		30.7		58.3		41.0		26.8		34.6	
100.0	100.0		100.0		100.0		100.0		100.0		100.0		100.0		100.0			
d. Success Scale Mean[d]	1.02	(1782)	1.09	(479)	1.11	(265)	1.29 (	(142)	0.73	(174)	1.26	(154)	1.00	(203)	0.89	(45)	0.80	(267)

Note: Observations were weighted by the population of each judicial district so that the five samples could be combined. Weights were calculated to preserve the actual number of observations. Numbers in parentheses are the total upon which the reported proportions are based. The miscellaneous "other" category is included in the "all grievances" column but omitted as a separate item from this and subsequent tables. (3.5 % of households reported an "other" grievance.)

[a]Proportions are of households reporting one or more grievances of each type.

[b]These are proportions and numbers of households at risk. Households at risk of property problems are those owning their own home, apartment or land within the3-year period (73.8% of all households). Households at risk of post-divorce problems were the 24% of all households that had a divorced member. The 44.2 % of households thatrented within the 3 years were at risk of landlord problems.

[c]The numbers in these rows differ slightly due to missing data.

[d]The success of claims was scaled 0, 1, or 2: 0 if no agreement was reached, 1 if the agreement was a compromise, and 2 if the entire claim was met.

Source: Miller & Sarat, supra note, at 537. Reprinted with permission.

occupational injuries, six percent hire a lawyer and in other injury contexts, one percent hire a lawyer.[46]

As noted above, prior studies gather information on customary demographic categories and all of the results reported here could be subdivided by income, race, sex, age, and education.

Conclusion: the Benefits and Plausibility of a National Civil Justice Survey

The need for information about civil justice issues and the results of previous studies suggest that a major civil justice survey is warranted. Problems are prevalent enough to warrant systematic assessment of their presence and pursuit. The uses to which we could put systematic data about these areas are numerous. For example, over time, trends in serious personal injury or property damage could provide insight into the tort's system's effect on primary behavior, and the effect of policy initiatives on the tort system. An NCJS would also have synergistic effects with other datasets. Systematic knowledge about civil justice grievances over time would enhance the value of BJS-NCSC data about case filings and trials. And an NCJS would provide the best available information about claiming rates and disputing rates by U.S. residents.

Studies reviewed here also suggest that an NCJS is feasible. The sample sizes in the ABA/ABF, CLRP, and RAND studies suggest that a civil justice survey of magnitude similar to the NCVS would yield highly meaningful results. The NCVS each year collects data from a nationally representative sample of 77,200 households comprising nearly 134,000 persons on the frequency, characteristics and consequences of criminal victimization in the United States.[47] A civil justice project of similar scope, building on BJS expertise, would dwarf prior efforts described here, which included a maximum of about 26,000 households. A sufficiently large sample would allow a breakdown of results by state or locality. Such a breakdown would be helpful here to assess whether interstate variation might reveal real property acquisition systems that are associated with a reduced incidence of problems.

47 E.g., Catalano, supra note 7, at 11.