Tort Reform . . . How Will We Know Whether It "Worked"?

A Summary of Research Results

1987
THE INSTITUTE FOR CIVIL JUSTICE

The Institute for Civil Justice, established within The RAND Corporation in 1979, performs independent, objective policy analysis and research on the American civil justice system. The Institute's principal purpose is to help make the civil justice system more efficient and more equitable by supplying policymakers with the results of empirically based, analytic research.

RAND is a private, nonprofit institution, incorporated in 1948, which engages in nonpartisan research and analysis on problems of national security and the public welfare.

The Institute examines the policies that shape the civil justice system, the behavior of the people who participate in it, the operation of its institutions, and its effects on the nation's social and economic systems. Its work describes and assesses the current civil justice system; analyzes how this system has changed over time and may change in the future; evaluates recent and pending reforms in it; and carries out experiments and demonstrations. The Institute builds on a long tradition of RAND research characterized by an interdisciplinary, empirical approach to public policy issues and rigorous standards of quality, objectivity, and independence.

The Institute disseminates the results of its work widely to state and federal officials, legislators, and judges, to the business, consumer affairs, labor, legal, and research communities, and to the general public.

A special bibliography (SB 1064) provides a list of other RAND publications in the civil justice area. To request the bibliography or to obtain more information about the Institute for Civil Justice, please write the Institute at this address:

The Institute for Civil Justice
The RAND Corporation
1700 Main Street
P.O. Box 2138
Santa Monica, California 90406-2138
(213) 393-0411

Honorary Members

Kenneth J. Arrow, Joan Kenney Professor of Economics and Professor of Operations Research, Stanford University
William O. Baker, Vice Chairman, Aera Life and Casualty Company
Irving A. Blackstone, Professor of Labor Studies, Wayne State University; former Vice President, United Auto Workers
Jesse R. Beirne, President (retired), Sears, Roebuck & Company
Guido Calabresi, Dean and Sterling Professor of Law, Yale Law School
Richard P. Cooley, Chairman of the Board, Seaboard Corporation
Donald F. Crabbe, Jr., Chairman and Chief Executive Officer (retired), Allstate Insurance Group
Thomas P. Donahue, Secretary-Treasurer, AFL-CIO
Laurence S. Gold, General Counsel, AFL-CIO
W. Richard Goodwin
Shirley D. Hufstedler, Hufstedler, Miller, Carlson & Associates, former U.S. Circuit Judge; former Secretary, U.S. Department of Education
Edward H. Levi, Glen A. Lloyd Distinguished Service Professor Emeritus, School of Law, University of Chicago; former Attorney General of the United States
John A. Love, Davis, Graham & Stubbs, former Governor of Colorado; former Chairman, Ideal Basic Industries
Laurence E. Lynch, Jr., Dean, The School of Social Service Administration, The University of Chicago
Robert H. McIver, Chairman and Chief Executive Officer, FMC Corporation
Richard L. Mathias, former President, Property-Casualty Insurance Council
Chauncey J. Medberry, III, Chairman of the Board (retired), Bank of America
Edward J. Nohra, Chairman and Chief Executive Officer, CNA Insurance Companies
Samuel R. Pierce, Jr., Secretary, U.S. Department of Housing and Urban Development
Barbara Scott Preiskel, Attorney at Law
Donald H. Runstadler, Senior Adviser, William Blair & Co.
William B. Schwartz, vanneck Bush University Professor and Professor of Medicine, Tufts University

Eleanor B. Sheldon, former President, Social Science Research Council
Justin A. Stanley, Mayer, Brown & Platt; former President, American Bar Association
Ward Wagner, Jr., Conner, Wagner, Nugent, Johnson, Roth & Romano; former President, The Association of Trial Lawyers of America

Robert L. Wilcox, President, Property-Casualty Insurance Council (retired)
Sandra L. Willett, former Executive Vice President, National Consumers League
Margaret Bush Wilson, Wilson Smith and Seymour; former Chairman of the NAACP, National Board of Directors
Paul S. Wise, Chairman of the Board (retired), Alliance of American Insurers

Charles J. Zwick, Chairman and Chief Executive Officer, Southeast Bank, N.A., former Director of the U.S. Bureau of the Budget
How soon can we expect changes?

Changes in the law rarely take effect overnight. The full effect of a reform might not be felt until its meaning has been clarified; procedures to put it into operation have been developed; and attorneys, claims adjustors, and others involved in the dispute process have had enough time to learn what the change in law might mean for them and modify their behavior accordingly. To understand how those involved in dispute resolution behave during the implementation of a reform, we need to probe their expectations and perceptions. An appropriate strategy for doing this is to conduct case studies of their behavior both while the law is uncertain and after the law is settled but its effects are unknown.

Have tort reforms affected the outcomes of disputes?

In the area of dispute outcomes, the central policy issues are the effects of reform on aggregate outcomes: frequency of claims, percentage of claims closed with payment, and the average size of paid claims; disposition and filing patterns; and the costs of litigation to plaintiffs, defendants, and the public. To isolate the effects of different tort rules and changes in these rules, studies must compare outcomes across states, over time, or both. Thus the data required include information on aggregate outcomes of disputes, by state and year, and the relevant characteristics of each state’s legal environment. Statistical methods must be used to take account of factors other than the legal environment that can influence outcomes.

Who won? Who lost? How much?

Any reform that changes the outcomes of claims immediately raises questions regarding the adequacy and equity of compensation. To answer them, we need to know how the reform affected the outcomes of individual claims—probability of recovery, the amount recovered, and net recovery for claimants with different characteristics and injuries. Statistical analysis can define the link between legal rules and individual claim outcomes, while taking into account other characteristics of the claims and the claimants that can also influence outcomes. Like the analysis of aggregate outcomes, studies of recovery patterns must compare the outcomes of individual claims across states, over time, or both, to tease out the effect of changes in the legal environment.

Did reform affect economic behavior or injuries?

Whether or not changes to the tort system affect cost or equity, they can affect the characteristics, prices, and kinds of goods and services available to society, and the frequency and severity of injuries. However, it is not clear how to study these effects. The relationship between tort rules and economic activity is currently not well understood; nor do we know much about the distribution and causes of various types of injuries. Before tackling the question of tort reform impact in this area, we need to conduct more basic research.

WHAT CAN WE DO NOW?

Appropriately assessing the effects of tort reform means putting new data collection systems in place. However, in designing such systems, more is not necessarily better. The cost of data collection increases with scope. Those involved in the design process will have to weigh the benefits of increased accuracy against the costs of collecting and analyzing the information. Promising sources of data include the insurance industry, lawyers, and the courts. But each of these sources poses special problems and imposes special costs that must be included in the cost-benefit tradeoff.

Assessing the Effects of Tort Reforms may be obtained from The RAND Corporation’s Publications Department, 1700 Main Street, P.O. Box 2138, Santa Monica, California 90406-2138 by sending in the attached order form.

Besides its published research findings, the ICJ issues CIVIL JUSTICE ROUNDTABLE, a monthly newsletter that provides brief updates on current ICJ research and reactions to it and acts as a forum for the exchange of opinions among policymakers, practitioners, and researchers concerned with problems of the civil justice system.

The newsletter is available on request from the Institute.