

# ICJR Research Brief

## ***Litigant Perceptions of Legal Procedures: What Do Litigants Want from the Tort System?***

In recent years, considerable effort has been spent trying to reform civil court procedures. The major motive behind these efforts is the desire to reduce, or at least control, public expenditures for processing civil cases. In addition, concern has been expressed that trials impose unreasonable monetary and psychic costs on ordinary litigants. To reduce both those public and private costs, courts have experimented with a variety of mechanisms. In some courts, judges have required opposing attorneys to attend conferences aimed at settling cases without trial. In others, nonbinding arbitration has been provided as an alternative to trial. In evaluating these and other dispute resolution mechanisms, practitioners have relied on assumptions about what litigants want and which procedures will provide it.

*The Perception of Justice: Tort Litigants' Views of Trials, Court-Annexed Arbitration, and Judicial Settlement Conferences*, by E. A. Lind et al., tests these assumptions empirically. The study looks at whether tort litigants' assessments of fairness and their satisfaction with the civil justice system are affected by hearing procedures, case events, and impressions of the litigation process. It shows that litigants are indeed sensitive to procedural variations—and that their actual preferences and reactions run counter to some common beliefs about how they view trial, arbitration, and settlement conferences.

To investigate what tort litigants really want, the authors selected cases resolved by trial in the Nineteenth Circuit Court in Fairfax County, Virginia; cases resolved by court-annexed arbitration in the Court of Common Pleas in Bucks County, Pennsylvania; and cases resolved by judicial settlement conference in the Seventh Circuit Court in Prince Georges County,

Maryland. These state courts serve generally equivalent populations but differ with respect to their principal method of third-party dispute resolution.

The authors asked tort litigants in these jurisdictions about their experiences and their beliefs and impressions. They set out to determine:

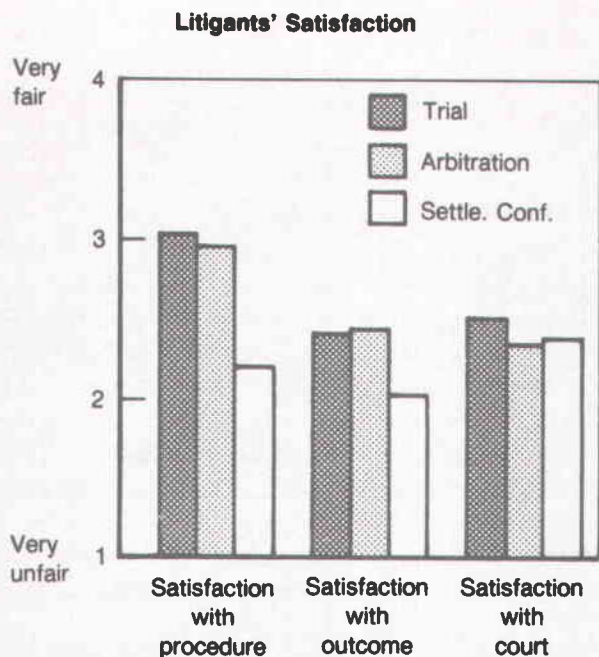
- Do tort litigants react differently to different procedures?
- What factors shape the litigants' perceptions of the justice system?
- How do case outcomes, cost, and delay affect litigant perceptions?

The study then focused on three key questions for each procedure: Did the litigants think the procedure was fair? Were they satisfied with the outcome? And how did they rate the system's performance overall?

### ***Litigants prove sensitive to procedural differences***

The results show that litigants clearly distinguish among procedures and that their personal impressions of the litigation process correlate strongly with their satisfaction and perceptions of fairness. In particular, the litigants cared strongly about whether their cases received dignified, careful, and unbiased hearings. They also wanted to exercise some control over the handling and ultimate outcome of their cases. They wanted procedures with which they could feel comfortable—but their specifications for comfort did not necessarily accord with the expectations of practitioners.

Recent literature has argued that trial, with its formality and impersonality, proves more troubling to litigants than do more informal, participatory procedures such as settlement conferences. The tort litigants we studied, however, did not find trials trying. Trials engendered higher levels of perceived control and participation, and the proceedings were better understood, than would be expected given the common criticisms of formal legal procedures. The data suggest, in fact, that these litigants felt that trials increase, rather than lessen, their involvement in the legal process. The litigants preferred trial to settlement—they thought trial more fair and found it to be more satisfactory.



Alternative procedures less formal than trial can be quite acceptable to these litigants, too, as suggested by their generally favorable reactions to court-annexed arbitration. However, the reasons why the litigants liked arbitration also differ from what the current literature might suggest. For example, litigants did not find arbitration fair and satisfying because it is relatively informal. They liked it because, like trial, arbitration struck them as dignified and careful.

The study indicates that whatever procedure is used, formal or informal, it must be enacted well and seriously if it is to be viewed as fair.

### **Subjective factors have strong impact**

While perceived dignity and carefulness weighed more heavily than common assumption would have predicted, the actual costs, outcome, and duration of the cases had a surprisingly light impact. For this type of litigant, litigation costs bore no substantial relationship to perceived fairness or satisfaction. As for outcomes, it is true that winners tended to be happier than were losers, but this accounts for only a small portion of the variation in litigant responses. And delay correlates even less closely with litigant satisfaction and perceived fairness than does case outcome.

As it turns out, tort litigants vary considerably in the standards they use to judge whether they have done well or whether a case has taken too long. Apparently it is not so much the actual outcome or duration of the case—as objectively measured—that raises or lowers satisfaction and perceived fairness. What counts more is how closely the outcome and delay match the individual litigant's expectations. The litigants' subjective, personal evaluations of outcome and delay correlate more strongly with perceived fairness and satisfaction than do any objective measures.

Overall, the study indicates that improvements in perceived justice and satisfaction are more likely to come from changes in the tone of the judicial process than from innovations designed to cut costs or reduce delay. Tort litigants seem to value serious, bias-free procedures more than they do speed and informality. Accordingly, the authors suggest, care should be taken to ensure that innovations intended to reduce cost and delay do not do so at the expense of those qualities of the judicial process that tort litigants find most important.

The research summarized in this brief was carried out within the Institute for Civil Justice of The RAND Corporation. Research results are described in detail in R-3708-ICJ, *The Perception of Justice: Tort Litigants' Views of Trial, Court-Annexed Arbitration, and Judicial Settlement Conferences*, by E. Allan Lind, Robert J. MacCoun, Patricia A. Ebener, William L. F. Felstiner, Deborah R. Hensler, Judith Resnik, and Tom R. Tyler, ISBN 0-8330-0961-3, 93 pp., \$7.50. For copies, contact Publications Department, The RAND Corporation, 1700 Main Street, P.O. Box 2138, Santa Monica, CA 90406-2138, (213) 393-0411.