Psychology in Civil Litigation: An Overview and Introduction to the Special Issue

In 1997, Law and Human Behavior editor, Richard Wiener, issued a call to broaden the journal’s coverage of areas of substantive law typically underrepresented in psycholegal research (Wiener, 1997). One such area was civil law. Of course, this was a plea for more than simply increased coverage; it was, in essence, a spurring-on of researchers to broaden their range of vision beyond criminal cases and criminal law. In the intervening years, a small but growing number of psychologists have focused their interests in the civil law direction, and have begun to think and write about psychological issues in civil law. (A comprehensive review of the theoretical and empirical issues relevant to psychology and civil law was written by Wayte, Samra, Robbennolt, Heuer, and Koch, 2002.) Although much of this research borrows from paradigms (e.g., examining decision-making processes) and methodologies (e.g., trial simulations, archival analysis) used in the criminal realm, some of it involves policy analyses, causal modeling, and a combination of quantitative and qualitative investigations in the same study. Several of the papers in this issue reflect these newer approaches.

Indeed, there is impressive diversity in the methodologies utilized in these papers. They include experimental techniques, causal modeling, policy capturing methods, and archival analyses. There is also an impressive range of backgrounds among the authors of these works. They include social, cognitive, and industrial/organizational psychologists, law professors, policy researchers, management professors, and a trial consultant.

In the first paper of this issue, law professor Jennifer Robbennolt, and research director Christina Studebaker, review the extant literature on media reporting on civil litigation and assess its impact on players in the civil justice system (litigants, jurors, judges, and policymakers). They find that the media present a distorted picture of the workings of the civil litigation system and that these misrepresentations can influence perceptions and outcomes of civil lawsuits (for litigants, jurors, and judges, alike). They also provide a theoretical framework that effectively integrates existing research and suggests new perspectives and directions for future inquiries.

Next, trial consultant Jill Huntley, and social psychologist Mark Costanzo, extend the story model of juror decision making to civil litigation in their analysis of jurors’ representations of evidence in sexual harassment cases. Content analyses of jurors’ responses to these cases showed strongly prototypic descriptions of plaintiffs’ and defendants’ actions and motivations. So despite being exposed to the same facts
At trial, proplaintiff and prodefendant jurors interpreted the evidence quite differently. When these prototypic stories were included as mediators in a model predicting verdicts in other cases, a sizeable amount of variance was accounted for. An understanding of the key components of jurors’ prototypes for particular types of cases would be especially useful for attorneys as it would help them to better construct a coherent and compelling story. This study leaves open the question of whether the story model might apply to other areas of civil litigation (e.g., antitrust, product liability) that have received less public attention than sexual harassment cases.

In the third paper, law professor Susan Poser, cognitive psychologist Brian Bornstein, and their student E. Kiernan McGorty, review case law on whether damage awards for lost enjoyment of life (LEL) should be regarded as a component of general (noneconomic) damages or whether, instead, they should be treated as a separate category. Courts have been divided on the issue. The practical question that arises from this distinction relates to how the jury should be instructed about awarding damages for LEL; the concern is that treating them as a separate category will lead to higher and therefore duplicative awards. These authors have taken the first empirical look at LEL instructions and their impact on jurors’ awards. Using experimental methodology, they found that providing jurors with instructions about awards for LEL did boost the resulting awards, but only when jurors were asked to give separate awards for LEL and for other components of general damages, namely pain and suffering. The interesting question that still remains is a conceptual or moral one: Which is the correct or proper way to treat damages for lost enjoyment of life? Coincidentally, one might ask whether empirical research might play a role in answering that normative question.

Two papers included in this issue explore the factors that influence judges’ decisions in federal cases. The fourth paper, by management professor Carol Kulik and her colleagues, Elissa Perry and Molly Pepper, examines the effects of judges’ personal characteristics (age, gender, race, political affiliation) and case characteristics (e.g., frequency and severity of complained of behavior, status of the offender, number of witnesses and documents) on trial judges’ decisions in federal cases of hostile environment sexual harassment. The study is important not only for the relationships it uncovered (viz., that younger judges and Democratic judges were more likely to find for the plaintiff) but for those it did not (that there were no differences in outcomes as a function of the race or gender of the judge). It also illustrates how archival data from actual case judgments can be used to answer important real-world questions.

The next paper, written by industrial/organizational psychologists Peter Wingate and George Thornton, along with their colleagues Kelly McIntyre and Jennifer Frame, also relies on archival analysis of real-world data. They examined the factors that impact outcomes of age discrimination cases tied to organizational downsizing. In particular, these researchers evaluated federal court decisions for summary judgment in age discrimination cases following company downsizing. They evaluated associations between various personnel practices (e.g., the existence of written layoff policies and performance appraisal systems), case characteristics (e.g., whether the organization documented substandard performance by the plaintiff or assessed the plaintiff’s capability to perform in newly created or different positions prior