

SUPPORTING STATEMENT

Civil Justice Survey of State Courts Trials on Appeal (CJSSCTA)

The Bureau of Justice Statistics (BJS) proposes to conduct a supplemental study of the 2005 Civil Justice Survey of State Courts (OMB # 1121-0300). This data collection will build on the Civil Justice Survey of State Courts by following general civil cases concluded by trial in 2005 that were appealed to an intermediate appellate court or court of last resort from 2005 through 2008. The CJSSCTA will focus on the types of legal issues raised on appeal, the impact of the appellate process on trial court outcomes, the extent that appellate claims are decided on the merits, and case processing time in appellate courts. Data will be collected in an automated and manual format.

A. Justification

1. Necessity of Information Collection

Under Title 42, United States Code, Section 3732, the Bureau of Justice Statistics is authorized to collect and analyze statistical information concerning the adjudication of civil disputes at the State and Federal levels. The Civil Justice Survey of State Courts Trials on Appeal (CJSSCTA) represents an essential component for meeting BJS' civil data collection goals.

Since 1992, BJS has sponsored a periodic survey titled the Civil Justice Survey of State Courts. The Civil Justice Survey of State Courts examines data on the adjudication of general civil (that is tort, contract, and real property) cases by trial in state courts and has occurred every 4 to 5 years encompassing the time periods of 1992, 1996, 2001, and 2005. The Civil Justice Survey of State Courts data collection series serves as the primary source for detailed level information on civil cases adjudicated by trial in state courts. Unlike BJS' data collection efforts in the criminal justice area, this data collection series covers cases involving personal injury claims or contractual disputes between private individuals or organizations. Some of the most common types of personal injury lawsuits involve legal issues stemming from automobile accident, physician or surgeon medical malpractice, faulty products (e.g., asbestos, tobacco), and slip and fall cases.

The information collected by the Civil Justice Survey of State Courts includes the types of civil cases concluded by bench or jury trial, the types of plaintiffs and defendants who litigate these cases, trial winners, the amount of compensatory and punitive damages awarded, post trial activity, and case processing time. These data have been used to produce various BJS reports on civil trial litigation. The most recent BJS civil report is titled *Civil Bench and Jury Trials in State Courts, 2005* and is available at <http://www.ojp.usdoj.gov/bjs/abstract/cbjtsc05.htm>.

As a result of the last four iterations of the Civil Justice Survey of State Courts, a much better picture exists about the scope of civil trial litigation in the nation's state and local courts. The intensive focus on trial court activity, however, overlooks the fact that the formal recordation of the jury's verdict or the judgment in a bench trial is not necessarily the end of the civil justice process. Litigants have the right to seek appellate review of trial outcomes. Either plaintiffs or

defendants can seek to reverse, modify, or challenge the trial court's decision by appealing the trial court verdict or judgment.

Little is known about the factors that prompt litigants to seek appellate review of trial outcomes or the results of those appellate reviews. The proposed study seeks to address this gap by tracking cases from the 2005 Civil Justice Survey of State Courts in which notices of appeal were filed in the trial court through the appellate process. This study would address the limited body of knowledge about civil litigation by documenting the relative finality of civil verdicts and judgments entered at the trial court level, the factors associated with litigant appeals, the decision to continue or abandon those appeals, the impact of appeals on trial court outcomes, the extent that appellate courts reduce damages awarded by juries, and the flow of cases from intermediate appellate courts to courts of last resort.

BJS civil justice projects, such as the proposed appellate survey, have generated a great deal of attention and interest among attorneys, scholars, policymakers, and the general public. In February of 2008 at the Bureau of Justice Statistics' Data Users Workshop, professor Theodore Eisenberg, a noted expert on empirical legal scholarship including civil litigation, stressed the pertinence of civil justice issues to today's society. Each day a countless number of individuals, businesses, and other groups enter into contractual agreements with one another or are knowingly or unknowingly the victims of negligent or intentional acts resulting in injury, harm, or damage. From a political standpoint, tort reform and the reduction of damage awards have long been hot-button issues, fueled in particular by specific, highly publicized cases. These types of statistical studies will allow for a more accurate assessment of the general nature of civil appellate litigation and the impact of the appeals process on trial court outcomes.

2. Needs and Uses

Civil litigation in state courts represents a major component of total court workloads. Recent studies show civil lawsuits outnumbering their criminal counterparts by nearly 2 million. In addition to court workload, civil litigation generates a significant level of public policy interest including tort reform.

CJSSCTA will provide detailed statistical information on civil cases adjudicated at the appellate level in state courts. CJSSCTA will collect information from court records on individual civil trials that were appealed to a state intermediate appellate court and/or court of last resort. The types of information collected will include the types of civil cases appealed after trial to an intermediate appellate court or court of last resort, the impact of the appellate process on trial court outcomes, the extent that appellate claims are dismissed or withdrawn before being decided on the merits, the types of legal issues raised on appeal, the number of appeals ending in a published opinion, and the rate of judicial dissent at the appellate level. In addition, the CJSSCTA will examine the flow of civil appeals from intermediate appellate courts to courts of last resort. Information will be collected on the number of cases that go through both levels of appellate review and the effect of courts of last resort on litigation outcomes. The survey will also collect aggregate count information on the number of appeals referred to and settled through a court annexed alternative dispute resolution (ADR) program.

There is no other authoritative or comprehensive source for this type of information on civil appeals in state courts. The BJS civil justice data is routinely used by members of the court community, as well as by federal and state policy-makers, researchers, academics, journalists, plaintiff and defense attorneys, insurance carriers, members of the public, and others interested in civil litigation. If these data are not collected, a serious gap will exist in our knowledge of the civil justice system.

3. Use of Information Technology

Respondents will be encouraged to complete online data collection forms for this survey. If internet access is not available, respondents will have the option of completing the data collection forms on a laptop or desktop computer and sending these files back to the collection agent in a diskette. In addition, many appellate courts are capable of electronically transferring appellate data from their case management systems or providing this information on the internet. These appellate courts will be encouraged to provide either online access or electronic data transfers of their appellate data. It is anticipated, however, that some appellate courts will not have access to the software or hardware needed to transmit data electronically or place their data online. In these jurisdictions, the appellate case information will be transcribed onto a paper data collection instrument and will be mailed to the project monitor.

In addition to exploring electronic data collection opportunities, publications from CJSSCTA will be generated in both printed *and* electronic formats. The electronic publications from CJSSCTA will be available on the BJS webpage. Moreover, the data from CJSSCTA will be available for public use at the University of Michigan Inter-University Consortium for Political and Social Research.

4. Efforts to Identify Duplication

A search of the National Criminal Justice Reference Service repository, WESTLAW, LEXIS, Hein Online legal research services, and other civil justice resources did not reveal any duplication. The information sought is not attainable from any other internal data source. BJS, moreover, will work closely with other agencies at the Office of Justice Programs such as the National Institute of Justice to ensure that duplication does not occur.

5. Efforts to Minimize Burden on small businesses

This information collection does not impact small businesses.

6. Consequences of Less Frequent Collection

While the BJS civil justice studies reveal a great deal about the trial phase of civil litigation, little information exists on the appellate phase of civil case processing. The consequences of less frequent data collection would mean that no information would be available on the impact of appellate litigation on trial court outcomes. In particular, an appellate study can reveal the frequency in which trial court outcomes are affirmed, modified, or reversed on appeal and the extent that damages being awarded by juries are reduced at the appellate level. These types of

data are crucial to various groups engaged in the practice of civil litigation in state courts including appellate judges, appellate court clerks, plaintiff and defense attorneys, insurance carriers, private litigants, and academics. Appellate data would also inform the tort reform debate by addressing questions related to the finality of trial court outcomes and the level of appellate oversight of civil juries.

7. Special Circumstances

No special circumstances have been identified.

8. Adherence to 5 CFR 1320.8(d) and Outside Consultations

BJS has consulted with scholars and policymakers who specialize in civil and appellate litigation statistics. These consultations occurred through meetings and conference calls aimed at developing the data collection forms and instructions. Some of the specialists who were consulted include law school professors, political and social scientists, government officials, and specialists at the National Center for State Courts who specialize in appellate litigation and processes. These discussions led to modifications in some of the elements being collected including whether the appellate process resulted in a published opinion and the terms used to identify various stages of appellate litigation.

BJS will publish the 60 day and 30 day notices in the Federal register to inform and seek comment from the public.

9. Paying Respondents

For those appellate courts where data collection involves the hiring of local contractors to review appellate case files and complete data collection forms, the contractors will be compensated for assisting with this project.¹ The contractors will be compensated on an hourly basis and it is anticipated that they will be paid \$45 per hour to complete the appellate court case forms.

10. Assurance of Confidentiality

Data will be obtained from publicly administered agencies and are, therefore, in the public domain and not legally confidential.

11. Justification for Sensitive Questions

There are no questions of a sensitive nature.

12. Estimate of Respondent Burden

¹ It is estimated that contractors will be hired to complete data collection forms in less than half the appellate courts involved in this survey. Details about the utilization of on-site contractors and other modes of data collection are available in the respondent burden section of the supporting statement.

CJSSCTA will collect data for the 1,500 civil cases concluded by trial in 2005 in which either the plaintiff or defendant filed a notice of appeal. State appellate courts are structured so that most appeals are heard by an intermediate appellate court with mandatory jurisdiction and a court of last resort with discretionary jurisdiction. In this study, three data collection instruments will be used to obtain information on these individual appellate cases. One data collection instrument will be used for civil cases adjudicated at the intermediate appellate court level. These should account for the majority of the civil appeals. The second data collection instrument will be used for the relatively smaller number of cases that are reviewed by courts of last resort. A third data collection instrument will be used to obtain aggregate count information on cases referred to and disposed of by alternative dispute resolution (ADR) programs managed by the participating appellate courts.

Although 1,500 general civil trials were appealed from a trial court to an intermediate appellate court or court of last resort, the burden hour computation encompasses only those appeals disposed in courts where online data collection is not possible. It is estimated that on-site data collection will be necessary for about 500 of the 1,500 civil appeals.² Pre-tests of the data collection instruments revealed that the average coding time was 1.5 hours per appeal. Therefore, to complete each of the appellate data collection forms will result in a total of 750 burden hours to complete the CJSSCTA (500 data collection forms multiplied by 1.5 hours per form = 750 burden hours).

The on-site data collection effort for this project is usually completed by the court administrators, clerks, or support staff from the sampled jurisdictions. At times, paralegals or law students will collect data for this survey. These data coders will be compensated for their time. It is anticipated that the burden will correspond to the size and capacity of each state's court system.

In addition to the case level appellate data collection forms, it is estimated that 40 appellate courts will have some form of court – annexed (ADR) program. These courts will be asked to complete a spreadsheet with aggregate count information on the number of appeals referred to and disposed of by the ADR program. Pretests of the ADR instrument found that the average time to complete the coding spreadsheet was about 2 hours per appellate court. Completion of the ADR spreadsheets for the participating appellate courts will result in a total of 80 burden hours for the ADR portion of this project: (40 appellate courts with ADR programs multiplied by 2 hours per coding spreadsheet = 80 burden hours).

The total burden hours for the CJSSCTA amounts to 830 burden hours (750 burden hours to complete the case level appellate forms + 80 hours to complete the ADR spreadsheets). The burden hours are also summarized in the table below.

² These estimates are derived from a survey of the online case management systems of the 65 appellate courts participating in the CJSSCTA project. In 35 of these 65 appellate courts, online data collection is possible. For these 35 appellate courts, the data collection agent (National Center for State Courts) will be solely responsible for collecting appellate data through online case management systems and online data repositories (e.g., posting published opinions). In the remaining 30 appellate courts, data collection will involve hiring on-site contractors, requesting case documentation, or traveling to the court for the purpose of data collection. The 35 appellate courts with online case management systems tend to reside in jurisdictions that handle more appeals compared to courts without online case management systems. Hence, it is estimated that fewer appeals will be disposed of in courts without online case management systems.

Data collection forms	Accessibility through online case management systems	Estimated number of appellate courts	Estimated number of data collection forms	Estimated burden hours
Collection of general civil cases appealed from trial to an appellate court	All information accessible through online case management systems.	35	1,000	None – data collection agent assumes burden associated with data collection.
	Information not accessible through online case management systems	30	500	750
<i>Sub-total</i>		<i>65 appellate courts</i>	<i>1,500 forms</i>	<i>750 hours</i>
Collection of aggregate counts of cases referred to ADR programs	Information not accessible through online case management systems	40 of 65 appellate courts estimated to have ADR programs	40	80
Totals		65 appellate courts	1,540 forms	830 hours

13. Estimate of Respondent's Cost Burden

We do not expect respondents to incur any costs other than that of their time to respond. The information requested is of the type and scope normally carried in their records and no special hardware or accounting software or system is necessary to provide information for this data collection. Respondents are not expected to incur any capital, start-up, or system maintenance costs in responding. Further, purchasing of outside accounting or information collection services, if performed by the respondent, is part of the usual and customary business practices and not specifically required for this information.

14. Costs to Federal Government

The total expected cost to the Federal Government for this data collection is estimated to be up to \$427,671 all to be borne by the Bureau of Justice Statistics.

Estimated costs for the Civil Justice Survey of State Courts Trials on Appeal (CJSSCTA)		
BJS costs		
	Staff salaries	
	GS-13 Statistician (25%)	\$20,000
	GS-14 Statistician (25%)	\$28,000
	GS-14 Supervisory Statistician (3%)	\$5,600
	GS-14 Chief Editor (25%)	\$3,000
	Other Editorial Staff	\$2,000
	Front-Office Staff (GS-15 & Directors)	\$1,000
	Subtotal salaries	\$59,600
	Fringe benefits (28% of salaries)	\$16,688
	Subtotal: Salary & fringe	\$76,288
	Other administrative costs of salary & fringe (15%)	\$11,538
	Subtotal: BJS costs	\$87,826
National Center for State Courts costs		
	Personnel	\$112,852
	Fringe Benefits	\$43,446
	Travel	\$21,440
	Consultant	\$26,730
	Other	\$6,115
	Total Indirect	\$129,262
	Subtotal: National Center for State Courts costs	\$339,845
	Total estimated costs	\$427,671

This work consists of planning, developing the questionnaires, preparation of materials, collecting the data, evaluating the results, and generating the reports. A BJS GS-Level 14 statistician will be responsible for overseeing this project.

15. Reason for Change in Burden

Revision of currently approved data collection

16. Project Schedule

The project will be completed through the following schedule.

Planning and preparation: October 2008 – December 2008
 Data collection: June 2009 – December 2009
 Data review and evaluation: December 2009 – February 2010
 Publication: March 2010 – September 2010

17. Display of Expiration Date

The expiration date will be shown on the survey form.

18. Exception to the Certificate Statement

None.

B. Collection of Information Employing Statistical Methods

1. Universe and Respondent Descriptions

This data collection project employs sampling methods. The sample design will be based on civil cases tried in 156 participating courts from the 2005 *Civil Justice Survey of State Courts* (CJSSC) that were appealed to approximately 65 separate courts of appeal in 36 states.³ Since the survey of civil appeals will build on the CJSSC sample, initially this section will describe the sampling framework used to generate the national sample of general civil trials concluded in 2005. After detailing the national civil trial sample, a summary of the methodological framework for following civil cases appealed from the trial court will be provided.

National sample of general civil trials

The CJSSC was designed to generate national level figures on tort, contract, and real property (e.g. general civil) cases concluded by bench or jury trial in state courts of general jurisdiction in 2005. The 2005 CJSSC contained two sampling frameworks. First, the sample was designed so that inferences could be made about general civil trials litigated in the nation's 75 most populous counties. The sample design for the 75 most populous counties sample was the same as the ones used for the 2001, 1996, and 1992 BJS civil trial studies and was maintained in order to compute trends in civil trial litigation. The sample is a stratified sample with 46 of the 75 most populous counties selected.⁴

In addition to sampling civil trial litigation in the nation's 75 most populous counties, a sample of non-metropolitan counties, from which to estimate the civil trial litigation in counties outside the 75 most populous, was developed. The sample of civil trial litigation outside the nation's 75 most populous counties was constructed by first forming 2,518 primary sampling units (PSUs) from 3,066 counties--3,141 U.S. counties total minus the 75 counties from the 2001 CJSSC. The 2,518 PSUs were stratified into 50 strata according to census region, levels of urbanization, and population size. From the 50 strata, a total of 100 PSUs containing 110 counties were selected for the supplemental sample of counties outside the nation's 75 most populous.⁵ Hence, a total of 156 counties, 46 representing the nation's 75 most populous, and 110 representing the remainder of the nation were used for the sample.

³ One reason for the approximation is that if an appellant subsequently appeals to the state court of last resort, most of which have discretionary review, data will be collected for these civil appeals.

⁴ For a list of the 46 counties used in the 75 most populous county sample, see the BJS report *Civil Bench and Jury Trials in State Courts, 2005* at <<http://www.ojp.usdoj.gov/bjs/abstract/cbjtsc05.htm>>

⁵ A list of the 110 counties that accounted for the non – urban county CJSSC sample is also available in the BJS report *Civil Bench and Jury Trials in State Courts, 2005*.

The second stage of the CJSSC sample design involved generating lists of general civil cases concluded by trial. Each participating jurisdiction was asked to identify a list of tort, contract, and real property cases that had been disposed of by jury trial or bench trial between January 1, 2005, and December 31, 2005. For the sample of civil trials occurring in the nation's 75 most populous counties, data on 7,682 bench and jury trials met the study criteria. For the sample of civil trials occurring outside the nation's 75 most populous counties, data on 1,190 civil trials met the study criteria. The un-weighted data represented 8,872 tort, contract, and real property trials. When these trials are weighted, they represented 26,948 general civil bench and jury trials disposed in a national sample of counties.⁶

Methodological framework of general civil trials that were appealed

The CJSSCTA will be based on those 8,872 general civil trials concluded in the CJSSC counties that were appealed to an intermediate appellate court or court of last resort. Preliminary data show the litigants filing a notice of appeal in 1,500 tort, contract, and real property trials in approximately 65 separate courts of appeal in 36 states. The study's plan is to track every general civil case concluded by bench or jury trial that was subsequently appealed to an intermediate appellate court or court of last resort.

Since the CJSSCTA is based on a national sample of civil trials, it will be capable of providing national estimates of the disposition of civil cases from the trial to the appellate courts. Overall, the project will have the capacity to provide national estimates on the rates of appeal and the levels of attrition civil cases experience in the appellate process. In addition, this project will highlight the rates that civil trials concluded in the national sample are affirmed, modified or reversed on appeal and the likelihood that the appeal will generate further activity in state supreme courts.

All 1,500 civil appeals will be followed until they are withdrawn, dismissed, or decided on the merits in the appellate courts. It is anticipated that the majority of appeals will be filed directly from the trial to the intermediate appellate courts in their respective states. In some states, however, civil appeals bypass the intermediate appellate court and are filed directly with the court of last resort. In addition, some civil appeals will be decided by the intermediate appellate court and subsequently appealed to the court of last resort. Both sets of appeals to the courts of last resort will be tracked in this data collection.

For appellate courts that sponsor alternative dispute resolution (ADR) programs, aggregate count information will be collected on those cases referred to and decided by ADR. Only courts with ADR annexed programs will be selected for this part of the survey. No sampling procedures will be used for the ADR part of this survey because aggregate count information will be collected for every case adjudicated through the ADR process.

2. Procedures for Collecting Information

⁶ These data were summarized in the BJS report *Civil Bench and Jury Trials in State Courts, 2005* available at <http://www.ojp.usdoj.gov/bjs/abstract/cbjtsc05.htm>

Data on civil appeals will be collected from the case management systems and administrative files of the estimated 65 intermediate appellate courts and courts of last resort participating in the survey. Detailed information will be collected on the 1,500 estimated civil appeals through three methods. First, staff from the data collection agent (National Center for State Courts) will utilize the online case management systems of appellate courts to collect detailed case level appellate information. For those appellate courts without online case access, contractors will be hired to review appellate case files and complete data collection forms onsite or staff from the data collection agent will travel onsite to complete the data collection.

Regardless of which of these coding approaches are adopted, all coders will be required to undergo extensive training on the coding process. On-site coders will be required to pass a coding test after reviewing the coding instructions. Each on-site coder will be assigned to a staff member from the data collection agent, who will oversee the training process and monitor their progress.

3. Methods to Maximize Response Rates

In order to maximize the response rate and minimize non-response bias, every attempt will be made to collect complete and accurate information on all 1,500 civil appeals. The data collection agent will, if necessary, travel to sites that are unwilling to participate in the survey. For the Civil Justice Survey of State Courts, information was collected on every civil trial concluded in the 156 surveyed counties. Moreover, the amount of missing or incomplete information was negligible and did not hinder this project. We anticipate will similar response patterns for the CJSSCTA project.

4. Testing of Procedures

The CJSSCTA data collection forms were pre-tested prior to data collection. Several respondents completed the data collection forms and provide feedback in terms of clarity and accuracy. In addition, an advisory board met to consult on the overall substance of information collected and the format in which questions are asked on the data collection form. Appropriate revisions and modifications were made to these data collection forms based on this feedback

5. Contacts for Statistical Aspects and Data Collection

CJSSCTA project staff at the National Center for State Courts in collaboration with prosecution and adjudications staff at the Bureau of Justice Statistics take responsibility for the overall design and management of the data collection, including the development of the questionnaires and the analysis and publication of the data. BJS contacts include

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