

Approved for Release

Questions and Answers Regarding:

The U.S. Chamber Harris Survey and the Pacific Research Institute Study

Question: Isn't there a discrepancy between the U.S. Chamber's survey results and the results of the Pacific Research Institute study that proves that the legal reform community is confused and contradictory in its pronouncements?

Answer: Not at all. The two studies together present complementary data that together provides a full picture of the health of the civil justice systems in the state.

The U.S. Chamber conducted telephone interviews with 1,456 senior attorneys across the country to identify what their experiences have been in managing litigation in the 50 states. Using very professional techniques, the Harris organization probed the experiences of these attorneys in dealing with 12 aspects of the litigation process. For example, Harris questioned these attorneys on the fairness and predictability of juries, the competence and impartiality of judges, existence and enforcement of venue requirements, the timeliness of summary judgment or dismissal and other factors relevant to how the civil justice systems function in the states. Thus, the U.S. Chamber survey presents the *litigator's* perspective.

The Pacific Research Institute (PRI) study focuses on a fundamentally different set of data. PRI focused on analyzing empirical data in 39 performance areas that are broken out in five categories. These categories reveal the results of how the civil justice systems perform. They include: Monetary Tort Losses, Threats, Monetary Caps, Substantive-Law Rules and Reform, and Procedural/Structural Rules and Reform. These categories include: how courts are structured, total monetary losses, monetary caps on non-economic and punitive damages, how lawsuit venue is decided, recently enacted reforms, and many others. In this way, the PRI study presents the *economist's* perspective.

There is some minor overlap in the research categories between the two, but together the studies present two major parts of the whole picture.

Question: But how can the U.S. Chamber survey show Texas ranked as number 43 out of 50 while the PRI study ranks Texas as number 1? Doesn't this difference prove that legal reform advocates are confused about what is important?

Answer: One of the PRI study's five categories is "Threats" which focuses on the litigation risks by examining the number of civil cases per 100,000 residents, the existence of "Judicial Hellholes" in a state and the number of attorneys per dollar of gross state product (GSP). The ranking for Texas in this "Threats" category of the PRI study is

42, which closely correlates to the ranking for Texas in the U.S. Chamber survey of litigators at 43.

Question: But how can the PRI study be credible when it ranks Texas as having the best overall civil justice system when it is ranked as number 43 in the U.S. Chamber survey?

Answer: The two studies measure different but complementary aspects of state civil justice systems.

The U.S. Chamber's survey focuses on the actual experiences of litigators in managing cases in Texas over the last year. There is no doubt that the civil justice system in Texas has been characterized by unfairness and a pro-plaintiff bias when it comes to cases tried in the Hellhole jurisdictions in Texas. This continues to be a serious problem.

The PRI study looks to a broader set of data beyond experiences in the litigation process and what is going on in the Hellhole jurisdictions to a host of additional issues that are also high-priority to the business community.

The American Tort Reform Association (ATRA) website points out the recent experience in Texas, which has been improved by a focused effort by business and government leaders to achieve legal reform, (much of which is reflected in the PRI data):

“In 2003, the Texas state Legislature passed H.B. 4 to further reform the state's civil justice system. The bill addressed issues such as: limits on noneconomic damages; product liability reform; punitive damages; medical liability reform joint and several liability; and class action reform. Voters also approved a constitutional amendment, Proposition 12, in 2003, which eliminates potential court challenges to the law that limited noneconomic damages to \$750,000. Since the enactment of H.B. 4 and the subsequent passage of Proposition 12, Texas has made great strides in growing its economy and providing jobs and accessible healthcare to its citizens.”

- Texas was awarded the 2004 Governor's Cup award for the largest number of job creation announcements (Site Selection Magazine, 3/05).
- Texas also was selected as the state with the best business climate in the nation by Site Selection Magazine (Site Selection Magazine, 3/05).
- The American Medical Association dropped Texas from its list of states in medical liability crisis (Houston Chronicle, 5/17/05).
- Malpractice claims are down and physician recruitment and retention are up, particularly in high risk specialties (Houston Chronicle, 5/17/05).
- The five largest Texas insurers cut rates, which will save doctors about \$50 million, according to the AMA (Houston Chronicle, 5/17/05).

- Malpractice lawsuits in Harris County have dropped to about half of what they were in 2001 and 2002. There were 204 cases filed in 2004, compared with 441 in 2001 and 550 in 2002. There were 1,154 lawsuits filed in 2003, attributed to attorneys trying to file before the new law took effect (Houston Chronicle, 5/17/05).
- Harris County has seen a net gain of 689 physicians, an 8.4 percent increase, according to the Texas State Board of Medical Examiners (Houston Chronicle, 5/17/05).

Additionally, the Supreme Court of Texas, once thought to be thoroughly corrupt, has been reformed and all of the nine currently sitting Justices are considered “Rule of Law” judges. This is a major success story for the legal reform community.

The U.S. Chamber survey also provides some evidence in that, based on their current familiarity with the litigation environment in Texas, 35% of the 243 litigators rating the state give Texas an “A” or a “B” on an A to F scale. While this is very low in comparison to the “A” and “B” rankings of other states in the U.S. Chamber survey, it shows that one-third of those attorneys “somewhat” or “very” familiar with the litigation environment in Texas have had good experiences in the state in some or all of the 12 rating categories in the U.S. Chamber survey. (Page 80)

So, while the Hellhole jurisdictions in Texas, Florida, Illinois and West Virginia are a serious problem that need urgent attention, these Hellholes are just one of the 39 factors considered in the PRI rankings.

As the U.S. Chamber survey highlights, these Hellholes are a very high priority for reform for the business community because they impose huge unfair and unwarranted risks and costs on employers.

Question: Where do the ATRA 2005 Hellhole jurisdiction states come out in the PRI study rankings?

Answer: PRI takes ATRA’s Hellhole designations into account as one of the 39 variables in assessing the health of each state’s civil justice system.

As indicated above, in the Threats category of the PRI study, Texas ranks 42nd, primarily because of the Hellhole jurisdiction in the Rio Grande and Gulf Coast area. Illinois ranks 32nd overall in the PRI study, partly because of Madison County; Florida ranks 42nd overall, partly because of the South Florida Hellhole; and, West Virginia ranks 43rd, again, partly due to its designation as a statewide Hellhole.

Question: Where do the ATRA 2005 Hellhole jurisdiction states come out in the U.S. Chamber survey rankings?

Answer: Respondents in the U.S. Chamber survey were asked which five cities or counties have the least fair and reasonable litigation environments. The worst jurisdiction was Los Angeles (mentioned by 20% of the respondents), followed by Texas (various other jurisdictions) which was mentioned by 15% of the respondents. At third worst is Cook County (Chicago), Illinois, mentioned by 14%, closely followed by Madison County in Illinois, (cited by 13% of the respondents). Following are the New York Greater Metropolitan Area (mentioned by 11% of the respondents), California (various other jurisdictions) (mentioned by 8% of the respondents), and then Alabama (various other jurisdictions) and New Orleans Parish, Louisiana (mentioned by 7% of respondents). Dade County (Miami), Florida (cited by 6% of the respondents) and Mississippi (various other jurisdictions) (mentioned by 5% of respondents) rounded off the top ten mentions in the U.S. Chamber survey. West Virginia (various other jurisdictions) was mentioned by 3%.

In the U.S. Chamber ranking, California ranked 44th, Texas ranked 43rd, Illinois ranked 45th, New York ranked 21st, Alabama ranked 47th, Louisiana ranked 49th, Florida ranked 38th, and Mississippi ranked 48th.

Thus, the four ATRA Hellholes states were ranked as follows in the U.S. Chamber survey: Texas, 43rd; Illinois, 45th; Florida, 38th; and West Virginia, 50th.

Question: Which of the two studies, U.S. Chamber or PRI, is to be taken most seriously as the definitive picture of the civil justice systems in the states? Don't the differences between the two in state rankings undermine the credibility of both studies?

Answer: They should both be taken seriously for different reasons because they each measure different aspects of state civil justice systems.

The U.S. Chamber study is the definitive analysis of how senior attorneys in the business community regard the fairness of the court systems in the states. These findings are extremely important because the perceptions held by these attorneys will greatly influence their companies' decisions about where to expand operations and create jobs. No company is going to expand jobs in a state where it believes the civil justice system is unfairly biased toward plaintiff lawyers looking to strike it rich at their shareholders' expense.

The PRI study is the definitive data-driven analysis of the various economic inputs and outputs of the state civil justice systems and thus how these state systems compare through the index rankings. The PRI rankings reflect the comparative overall liability-related costs burden borne now by the residents and employers in each state. Importantly, the PRI rankings predict the future cost burden all residents and employers will experience as these economic inputs and outputs continue to operate in coming years.

In considering the results of the two studies, it is clear that virtually every state has work to do.

- States ranked low in the U.S. Chamber survey need to focus on improving the fairness and competence of the judiciary, improving the performance of juries and adhering to stronger scientific standards for jury evidence, among other reform priorities.
- States ranked low in the PRI study need to pick up the pace of legislative reforms that address a myriad of issues including class action reform, joint and several liability reform, monetary caps, venue reform and many others.

Both studies substantiate that the fairness and predictability of civil justice systems have a major economic impact for both consumers and employers. This reality is finally getting through to state policymakers and many states are making major progress in fixing their broken legal systems, including such states as Texas, Georgia, Mississippi, South Carolina, Florida and others.

Now that the linkage between the fairness of a state's civil justice system and the state's economic competitiveness is crystal clear, no state that is serious about expanding jobs and building prosperity can afford to drag its feet on legal reform.

No state can afford to rest on its laurels because, with so many states actively pursuing legal reforms, laggards will fall in the future rankings of both studies.

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