

## Establishing a Judiciary Based Research Center – the Israeli Experience\*

Yigal Mersel\*\* and Keren Weinshall-Margel\*\*\*

### **Abstract**

The Israeli Courts Research Division (ICRD) was established in December 2010, under the auspices of the Israeli Supreme Court and the Institute for Advanced Judicial Studies. This paper will first describe why the Israeli Court System felt a need to establish a judiciary-based applied research capacity. We will then depict the ICRD's formation, its institutional features, the dilemmas involving their configuration and the challenges we have faced and still face; finally, we will portray what the ICRD has done so far and review its research agenda for the next year.

#### 1. The Need for Judiciary-Based Applied Research in the Israeli Court System

The need for a judiciary-based applied research capacity in Israel is no different than that of other court systems. This need stems from two complementary considerations. First, there is the need for empirical feedback and data. Second, it is understood that this data should come from an in-house judiciary-based capacity.

##### **1.a. The Need for Empirical Data**

Empirical data is essential in order to establish any managerial policy. This is true especially in large scale and widely dispersed institutions,<sup>1</sup> such as the court system.

---

\* Paper presented at The 5th International Conference on Judicial Training, Bordeaux (October 2011).

\*\* LLB LLM LLD judge at the district court of Jerusalem, Secretary General -IOJT

\*\*\* LLB BA MA PhD director of the Israeli Courts Research Division

As judicial procedures in Israel are becoming more and more complex, as in the case of most democracies, and as the caseload expands,<sup>2</sup> the courts' management can no longer rely on intuitions or common sense. Empirical feedback is needed in order to ascertain what works, what does not, why, and how to fix it.

In a paper elaborating the benefits from Judiciary-Based Applied Research Centers, Judges Rothstein and Archie<sup>3</sup> referred to the general importance of empirical data while planning judicial reforms. We would like to provide an example of that importance from our recent experience. Lately, a general rise in "bumper to bumper" damage claims has been felt in the Israeli magistrate courts. These are low-scale claims resulting from damage to vehicles in road accidents. These claims used to be settled between insurance companies in a voluntary Automobile Subrogation Arbitration Agreement, but now seemed to be flooding the magistrate courts. Thus, a new initiative for mandatory arbitration between car insurance companies was contemplated by the Israeli court management. The ICRD had just been established and its first research project centered on car subrogation claims. The study results showed that although claims for car damage were increasingly submitted to the courts, mandatory arbitration between car insurance firms would not help.

Empirical data showed that insurance companies still solved most disputes using arbitration. However, more and more citizens were choosing to renounce insurance compensation and to pursue their damages in court, thus avoiding payment of policyholder's participation fees. An increasing number of lawyers were encouraging

---

<sup>1</sup>Cheol H. Oh, *Explaining the Impact of Policy Information on Policy-Making*, Knowledge and Policy: The International Journal of Knowledge Transfer and Utilization, Vol. 10(3), 25 (1997).

<sup>2</sup>Raanan Sulitzeanu-Keinan, Amnon Reichman & Eran Vigoda-Gadot *Judicial Burden - a Comparative Study of 17 States* (Haifa Center for Public Management and Policy 2007) [in Hebrew].

<sup>3</sup>Barbara Rothstein & Ivor Archie, *Judiciary-Based Applied Research Centers: Enhancing the Administration of Justice while Strengthening Judicial Independence, and Improving Judicial Training*, Paper Presented in The 5th International Conference on Judicial Training, Bordeaux (2011) pp 1.

people to litigate and base their livelihood on lawyer fees ruled by the court in such claims. In this case, the empirical data obtained by the ICRD from analyzing a sample of car damage claims and interviewing lawyers, insurance agents and plaintiffs, was able to prevent a reform that was not called for.<sup>4</sup>

### **1.b. The Need for a Judiciary-Based Research Capacity**

The importance of empirical data for ensuring the efficiency and functioning of justice was established in Israel many years ago. We frequently out-sourced academics from leading universities or private applied research companies in order to plan judicial reforms or to make more informed administrative decisions. Our experience with out-sourcing research, although mostly fruitful, has led to the realization that we do need an in-house research capacity.

Judges Rothstein and Archie mention six benefits from a judiciary in-house research capacity:<sup>5</sup> (1) The judiciary can ensure scientific standards; (2) guarantee the availability of data; (3) ensure that results are not compromised; (4) retrieve data that is of interest to the judiciary (and not necessary publishable); (5) not depend upon different funding sources; (6) and acquire inter-legitimacy for research results. We would like to add three more benefits, from our modest experience.

First, an in-house research capacity develops a long-range relationship and an in-depth institutional knowledge of the court system and the available resources for data.

---

<sup>4</sup>This is yet another example of the importance of empirical data for planning judicial reforms. For more examples in different countries see Linna Hambergren, *Uses of Empirical Research in Refocusing Judicial Reforms: Lessons from Five Countries* (World Bank 2003).

<sup>5</sup>Rothstein & Archie, *supra* note 1 at 5-6.

This *specialization* allows for a more efficient research process. For example, it took an Israeli private research company more than a year just to collect data on case-weighting,<sup>6</sup> whereas the data collection for a comparable study was carried out by the ICRD over a four-month period. Moreover, as all the in-house research is aimed at answering questions about judicial policies and procedures, it can and should spend time and resources to develop empirical methodologies that are especially suitable for research on the judicial branch.

A second advantage resulting from the in-house research specialization is that its in-depth knowledge allows it to identify challenges that the system itself is not aware of. Any empirical research begins with a research question. Defining research questions is crucial because it directs the answers that the empirical endeavor might provide. The research questions originate in the court system and are then given to the research unit. A “repeat player” researcher of the judiciary can use her pre-knowledge to extend, if needed, beyond the defined research questions she receives.

Finally, an in-house capacity has the same general objective as the court system, which is to improve the efficiency and functioning of justice. This reduces the probability of problematic behavior that is motivated by different interests and agendas.

## 2. The ICRD's Establishment and Institutional Design

### **2.a. The ICRD's Establishment and the FJC's Role**

---

<sup>6</sup>Daniel Wasserteil & Shlomi Parizat, *Applied Summarizing Report for The Jerusalem District Court – Estimation of the relative work load of judges, by type of case, 2005* (2006) [in Hebrew].

The ICRD was finally established in December 2010, but its history begins a few years back. Between 2000 and 2003, before the establishment of the ICRD, a research unit started to operate within the Israeli court management system. The unit was headed by a magistrate judge, and almost all of the personnel were legal advisors. The proximity to court management and the lack of methodological training brought to the unit's closing after a short time.

A second attempt to establish an in-house research capacity was launched in 2008, following consultations with heads of esteemed judicial research centers, mainly the FJC. After decision makers within the judiciary made the decision to establish a judicial research center, we had to convince other governmental bodies that this effort is worth spending funds on. The Israeli judiciary is not entirely separated from the governmental branch, so budgeting courts is the responsibility of the treasury. We gave the treasury examples of how a judiciary based research center can save money, and we discussed the future relations between a judiciary research center and the Parliament Research and Information Center or other governmental research centers.

The ICRD's establishment was in many ways a bottom-up operation. All initiative for the establishment came from within court management field work. Unlike the case of the US federal system, there is no law or mandatory requirement that outlines the ICRD's research mission.<sup>7</sup> Although there are many advantages to founding an entirely new institution, with no directed guidelines, it also poses great challenges. The establishment of such an institution raises countless dilemmas, some large scaled,

---

<sup>7</sup> 28 U.S.C. §§ 620-629 (1967).

such as who determines the research projects, and some small scaled, such as the citation method to be adopted.

Therefore, as a starting point, we adopted the institutional features of the FJC's research division, which has proven experience as a leading judicial research center. We established the ICRD according to the FJC's research division model. We learned and implemented from the FJC's mission, research methods, senior and junior staffing, and other institutional features. However, differences in law or in the judicial system structure led to many disparities, which we will further describe.

## **2.b. The ICRD's Mission, Methods and Staff**

The ICRD's main mission is to conduct research that will help guide the courts' management and improve the efficiency and functioning of justice. Therefore, all studies conducted by the ICRD focus on judicial system institutional operation and not on individual cases or substantive law. This is similar to the FJC statutory duty to conduct and promote research on federal judicial procedures and court operations.<sup>8</sup>

Like the FJC's research division, the ICRD uses diverse social science methodologies to conduct its institutional research: (1) *Quantitative methods* are used to identify in-depth trends in case filings. For the purpose of sophisticated quantitative analysis, the ICRD has already constructed a dataset containing a representative sample of data on 8000 court cases, including information that does not exist in simple court statistics. (2) *Qualitative methods*, mainly interviews or observation of court hearings, are

---

<sup>8</sup> 28 U.S.C. § 620(b)(1) (2006).

combined in order to analyze reasons for behaviors and trends. (3) *Comparative methods* are used in order to learn from the experience of other court systems that often face the same challenges.

In order to carry out studies which conform to the highest standards of social sciences, we searched for suitable personnel who combine education and experience in institutional social research with the ability to speak the legal language. This is a rather rare combination in Israel, as legal education is an undergraduate degree, and law schools do not teach empirical methods. We first recruited the ICRD director, a former legal adviser in the Law and Constitution Committee of the Israeli parliament, who wrote her PhD thesis in Political Science, specializing in legal empirical studies and political methodology.

The ICRD was established as a small operation, which will hopefully grow in the future. The ICRD director leads a team of two researchers, assisted by two student research assistants. The researchers have dual education and training in both Law and Social Sciences. At present, the staff has academic education in Psychology, Economics, Sociology, Cognitive Studies and Political Science. The wide knowledge of various fields other than law allows the ICRD to observe and to investigate judicial operations from different perspectives, while utilizing each member's unique methodological training. The ICRD is also involved in its members' ongoing training, providing lectures on various new research methods, and training courses in software, such as SPSS (statistical program), SQL (computer software) and ATLAS (qualitative research software).

## 2.c. The ICRD Independence and Steering Committee

Judges Rothstein and Archie stress that a judicial research center must be free from executive or legislative influences and independent from judiciary administrative operations.<sup>9</sup> In the Israeli case, the independence from court management was especially important, as court management itself is *partly* an executive body, under the authority of the Ministry of Justice.

In order to ensure the ICRD's independence, a special steering committee was founded. The steering committee's functions can in many ways be compared to that of the Judicial Conference of the United States, governing the federal judiciary.<sup>10</sup> The committee is headed by the President of the Supreme Court of Israel. Its members include the director of the Institute for Advanced Judicial Studies (see further description in the next section), and a district court judge.

The ICRD's steering committee is the only authority guiding and directing the ICRD, thus keeping it free of pressures from other elements within or without the court system. The steering committee sets and prioritizes the research agenda, guides and overlooks the activity of the ICRD, and helps determine its mission in both the short and the long terms.

Learning from past mistakes of the early 2000 attempt to create a judiciary research unit, which did not separate between research and court management, the ICRD

---

<sup>9</sup> Rothstein & Archie, *supra* note 1 at 6.

<sup>10</sup> 28 U.S.C. §331 (2006).

headquarters is now placed in the Supreme Court of Israel, in close proximity to its steering committee and to the Institute for Advanced Judicial Studies.

Note that although the institutional design is rather strict, in practice the ICRD and court management work together in close ties. The court management is perceived as the main client for the ICRD research. The court manager participates in the steering committee's meetings, and research projects are determined by the steering committee after reviewing the courts manager's suggestions and consulting him.

#### **2.d. The ICRD and the Institute for Advanced Judicial Studies**

The relations between the Institute for Advanced Judicial Studies (IAJS) and the ICRD are based foremost on the professional guidance given by the IAJS and its president, a member in the ICRD's steering committee.

The IAJS and ICRD both reside in the Supreme Court, as institutions that are exterior to the courts' primary judicial mission, but exist to serve it. Education and research are naturally interlinked, as can be seen in most academic institutions and in the other judicial research centers mentioned in this paper. Our hope is that the ICRD will serve to improve judicial studies in many ways.

At the theoretical level, research units can identify challenges in court proceedings that can be addressed in IAJS educational judicial seminars. We frequently debate

about what should be the active force initiating judicial learning processes.<sup>11</sup> Should these be bottom-up processes, coming from the demands of acting judges? Top-down processes, initiated by chief justices of courts? Or should training needs be defined by outside players, such as legislators or lawyers? Whatever the answer should be, a research body can provide empirical inputs that will eventually lead to better planning of the judicial training. It can help identify target judicial population for different trainings or validate the training eventual success.

In practice, the ICRD is now conducting a time-series study aimed at improving judicial studies by evaluating judges' satisfaction with seminars held by the IAJS. The ICRD's first step was to analyze the results of previous questionnaires, handed out in seminars till today. Results primarily showed a rather high participation level in answering the anonymous questionnaires: about 70% of judges participating in all seminars answered the forms. The results also showed a very high satisfaction rate from the seminar – the average score was about 4.5 when 5 was the highest satisfaction mark possible. Almost no variance was detected between the results of different seminars, or across judges. Finally, the ICRD noticed that when satisfaction levels were relatively low (4), less of the participating judges tended to answer the questionnaires.

Assuming that not all seminars are successful, and that they vary in their level of interest or importance, it seems that judges are not comfortable with giving low scores

---

<sup>11</sup> See for example George Thomson, *The Judicial Education Curriculum: Developing a framework for judicial learning*, Paper presented in The 2th International Conference on Judicial Training Ottawa (2004), available at <http://www.nji.ca/nji/internationalforum/thomson.pdf>.

or with criticizing the seminar. Judges prefer not to answer the form when they are not satisfied.

For these reasons, the ICRD designed new questionnaires, which first expand the option of being generally content with a seminar to different levels of satisfaction. From a maximal score of 5, the new scores extend to 7 and sometimes 9. Secondly, the new questionnaire separates satisfaction levels in different dimensions: the level of interest is measured differently than the level of importance or utility to judicial work. In addition, the questionnaire adds two questions in order to assess the experience of the judge and his field of expertise (these questions were phrased very widely so that they would not jeopardize anonymity). This additional information will allow the IAJS to recommend certain seminars to new or experienced judges, or to distinguish between seminars for judges specializing in criminal versus civil matters.

In order to assess long-range satisfaction and to estimate the seminars' utility from the judges' subjective point of view, the ICRD will hand out very short questionnaires about six months after a seminar. Finally, with the intention of hearing all judges, not just those who regularly participate in seminars, the ICRD will interview a sample of judges.

In future work, the ICRD can also help to validate (or not, depending on results) methods used by the IAJS to assess the compatibility of candidates for judicial nominations. The IAJS holds a six-day course for lawyers who are candidates for judicial nomination. The course includes discussions and simulations intended to observe the candidates in different situations and to assess their suitability to serve as

judges in Israel. At the end of the course, a team of three senior judges, aided by a psychologist, prepares a written recommendation regarding each candidate and submits their non-binding recommendation to the Committee for the Selection of Judges.

A suited research plan can test the functioning of appointed judges a few years after their appointments, and compare them to varying recommendations given by the IAJS. Note that very few judges with poor IAJS recommendation are eventually appointed, so it could be hard to verify the applicability of bad recommendations (this also affects the robustness of verifying good recommendations). Another methodological challenge is the restriction of range of the judges' sample in the study, as we cannot test candidates who were rejected.

Assessing the functioning of the appointed judges can focus on easily measurable aspects, such as their effectiveness and clearance rates. However, those measurable factors are not nearly enough to define “good judges”. The quality of judges is mainly determined by the quality of her decisions, her judicial temper, her ability to manage court proceedings in a fair manner and more. These are aspects which were once considered “un-measurable”. However, the quality of judges has been empirically tested in some European countries during the last few years by measuring factors such as reversal rates of decisions by courts of appeal (from all appeals, relatively to the average reversal rate), by peer-review from other judges that observe hearings, by using judges' subjective assessment of themselves, or by reviewing surveys answered

by parties to judicial proceedings.<sup>12</sup> A future research project aspiring to define “the good judge” and assessing the current ways of predicting who will become a good judge, will be of great value to the IAJS. The benefits of such a project may extend to judicial management at large.

### **2.e. Forming Institutional Norms and Work Procedures**

We addressed the main institutional design and framework of the ICRD, such as its mission and relations with its steering committee. However, the formation of the ICRD, as a new institution, has involved and is still involving countless dilemmas and decisions that, due to limitations of space, we cannot attempt to cover. These range from deciding if and how to publicize results of study and raw data; to questions of relations with other applied research units in the administrative and legislative branch; ways of recruiting staff and the human resources from which to recruit (is legal education really necessary?); who should decide on budgeting the ICRD and how does budgeting impact its independence, etc.

We would like to develop the discussion surrounding one of these dilemmas, which we are currently facing. The ICRD’s empirical research is meant to serve and to assist policy making. This can be done only by portraying reality and letting the decision makers’ decide on the normative implications of that reality, or by directly recommending the policy that should be adopted as a result of the observed reality.

---

<sup>12</sup> The quality of judgments is tested using the first two methods in the Netherlands. See: De Rechtspraak, *Quality of the judicial system in the Netherlands* (2008); The Netherlands Council for the Judiciary, *Bench Marking in an International Perspective: An International Comparison of the Mechanisms and Performance of the Judiciary System* (2004); and using the two latter described measurements in Finland: *The Quality Project of the Courts in the Jurisdiction of the Court of Appeal of Rovaniemi, Finland, How to Assess Quality in the Courts?* Checklist for promoting the quality of justice and the courts (2005) ;

Applied research capacities in all fields, including judiciary research units, can be placed on a scale ranging from those focusing only on empirical data to those that recommend normative policy making. Where should the ICRD be placed? Should the ICRD act as a normative recommending body on matters of policy?

Many arguments can be made against the ICRD acting as a recommending body. First, the academic reputation of a recommending body is compromised because studies often look as though they were designed to meet a desired policy outcome. There is an element of truth in this image and indeed the academic level itself may be affected by the fact that the research body gives normative policy recommendations.

Second, a recommending body is more vulnerable to political influence and attempts to harm its academic independence. This point is especially valid in research units like the ICRD, which receive dictated research questions and work in close contact with court management.

Third, acting as a recommending body affects the type and the depth of the data that is being passed on to a research unit. Not writing policy recommendation frees interviewees from having to advocate the utility of their preferred policy. For example, in the car subrogation study previously described, the formulation of answers by lawyers and judges interviewed changed when they were told that the subrogation research's conclusions would not include operational recommendations. Their answers seemed less 'absolute' and expressed a wider range of dimensions,

Finally, a recommending body's recommendations can obviously be rejected by decision makers. This might endanger the prestige and morale of a newly formed institution such as the ICRD.

Arguments in favor of working as a policy recommending body are firstly that in many cases, the most trivial extension of empirically analyzing trends and reasons for a problematic phenomenon is stating how to solve the problem. This is exactly why empirically applied research so often leads to proposals for policy change. Not including policy recommendations can sometimes seem unnatural.

Secondly, defining the ICRD as a recommending body increases the motivation for cooperation from various parties. The research department can reach a wider audience and have a greater impact if it includes recommendations in its research.

The described policy dilemma has not yet been solved. For now, we choose a middle path, adding policy recommendations only when they are very much called for, as we will now further describe.

### 3. Research Projects Addressed by the ICRD

The ICRD's first task was building research infrastructure. These include two data sets: one containing data on 8,000 Israeli court cases and one dedicated to international comparative data on court systems.

The ICRD completed three studies. The first focused on car subrogation claims in the courts and did not include policy recommendations (see detailed description on page 1). The second tested reliability of data collected within the Israeli online case management software. The study identified where and why data was not reliable, and as a natural extension included detailed recommendations on how to improve data quality. The research was undertaken as a preliminary study, testing the kind of data that the ICRD could base future research on. It also proved to be an important study for court management that requires reliable data in order to efficiently manage courts. As a direct result of the reliability study, changes are now being programmed to the case management software, and new guidelines for updating data have been distributed to court administrative staff.

A third study analyzed results of criminal proceedings in magistrate and district courts. The results are very different from the conviction rate perceived by the general public. For example, the study shows that the conviction rate in magistrate courts is about 70% of all charges brought to the court (and not 99.8%, as previously thought). The study also tests complex relationships between legal representation, plea bargains, and sentencing.

A case-weight study is also in advanced stages. Its goal is to assess the varying amounts of judicial workload that different types of cases impose. Case-weights are today a common tool for courts' managements, and evaluating the weights is a task shared by judicial research centers of many countries. In its research plan, the ICRD relied on previous studies published by national judicial research centers, such as the

NCSC's<sup>13</sup> and the FJC's<sup>14</sup> case weighting studies.<sup>15</sup> Moreover, the ICRD contacted the FJC researchers that worked on the latest 2005 federal case-weight research. Some of the methodologies used by the FJC in order to quantify judges' impressions of their workload are now being implemented in the Israeli study.

The research plan set by the steering committee for the next year comprises of nine research projects. These include descriptive studies on small claims in magistrate courts, and a study that will focus on attorney costs and fees, as a result of different trends in awarding attorney fees that were observed in the former car subrogation claims study, and that seem to have an impact on lawyers' behavior. Three more studies are devoted to judicial reforms in different stages. The first is a study assessing the effects of changing civil procedure rules of expeditious proceedings. The goal is to analyze the costs and advantages of a meaningful change in civil procedures, which has been contemplated for many years. In the other two studies the ICRD will estimate the efficiency of two small-scale reforms that have already been adapted: one in ADR within the courts and one in adding evening hearing in cases decided by magistrate courts' registrars.

#### **4. Conclusions**

The need for a judiciary-based applied research capacity in Israel was greatly felt. A year into its establishment, it seems that the ICRD is starting to fill the void and is

---

<sup>13</sup> B.J. Ostrom, C.W. Ostrom, D. Hall, W.E. Hewitt, T.Fautsko, *Florida Delphi-based Weighted Caseload Project – Final Report*, (the National Center for State Courts 2000).

<sup>14</sup> P. Lombard and C., Krafka *2003-2004 District Court Case-Weighting Study – Final Report to the Subcommittee on Judicial Statistics of the Committee on Judicial Resources of the Judicial Conference of the United States* (Federal Judicial Center, 2005).

<sup>15</sup> Also see Lienhard & D. Kettinger, *Research on the Caseload Management of Courts: Methodological Questions*, 7(1) Utrecht Law Review, 66 (2011).

becoming an integral part of the judiciary's managerial decision-making processes. As more time passes, we will be able to gain a wider perspective on the contributions of the ICRD and its fulfillment of the goals underlying its conception.

One thing we can already learn from the Israeli experience is how un-unique it really is. The need for in-house judiciary research, its mission, the research methodologies and even many of the research projects are the same across different court systems. The many similarities between judicial-based research centers suggest the benefits of working together. Joint efforts between research centers from different judiciaries representing different legal systems should prove helpful and enriching.