The Politics of Research Access to Federal Court Data

Lynn M. LoPucki
University of Florida Levin College of Law, lopucki@law.ufl.edu

Follow this and additional works at: https://scholarship.law.ufl.edu/facultypub

Recommended Citation

This Article is brought to you for free and open access by the Faculty Scholarship at UF Law Scholarship Repository. It has been accepted for inclusion in UF Law Faculty Publications by an authorized administrator of UF Law Scholarship Repository. For more information, please contact kaleita@law.ufl.edu.
Commentary

The Politics of Research Access to Federal Court Data

Lynn M. LoPucki*

Since the 1970s, there has been a recognized need for detailed, accurate, and reliable information about the bankruptcy system. Unfortunately, this need is still largely unfulfilled.¹

Jay Westbrook's description of law school-based consumer bankruptcy empiricism is entirely too modest. He gives the impression of a vibrant field in which many legal scholars have been gathering and analyzing consumer bankruptcy court data over the past twenty years.² In fact, there have been only a few.³ Professor Westbrook and his co-authors, Terry Sullivan and Elizabeth Warren, have completely dominated the field during that period, producing what I estimate to be more than ninety percent of the work. The young legal scholars about whom Professor Westbrook writes have expressed interest in the field over the years, but few have entered it, and not one has stayed.

During that time, there has been substantial consumer bankruptcy empiricism by people outside legal academia—economists, sociologists, government agencies,⁴ foreign scholars, and organizations in the private

---

¹ 1 NAT'L BANKR. REV. COMM'N, BANKRUPTCY: THE NEXT TWENTY YEARS 923 (1997) [hereinafter COMMISSION REPORT].

² Jay Lawrence Westbrook, Empirical Research in Consumer Bankruptcy, 80 TEXAS L. REV. 2123, 2124 (2002) (“Today there are a fair number of young bankruptcy scholars genuinely interested in doing empirical work.”).

³ I believe the following is a complete list of scholars publishing studies of court data during the twenty-year period: Marianne B. Cullhane and Michaela M. White (one study as a team), Marjorie Girth (one study), Michael J. Herbert (one study), Scott F. Norberg (one study), and William C. Whitford (two studies). Westbrook refers to a broader group that would include empirical studies of consumer bankruptcy based on survey or interview data. Such studies do not depend on access to court data and therefore do not encounter the barriers discussed here. That list would more than double my list, but would still be remarkably short.

⁴ In sharp contrast to the lack of work in legal academia, two government researchers, Gordon Bermant and Ed Flynn, have published dozens of empirical studies in their column “Bankruptcy by the Numbers.” E.g., Gordon Bermant & Ed Flynn, Filers Most Likely in 25–44 Age Range, AM.
sector. Business bankruptcy and other federal court empiricism show similar patterns.

My thesis is that these patterns result from the manner in which federal court data are made available for research. Government officials, principally the judges, control access to the data. Acting individually, they make data available for the kind of work economists and sociologists do: studying economic and social processes. Acting in concert through the Judicial Conference of the United States, they withhold data from the kind of work that legal scholars tend to do: studying the judges’ work. The withholding process is so subtle as to be almost invisible. But empiricism is fragile and the withholding is enough to discourage it.

In Westbrook’s article, the data access problem is the dog that didn’t bark. Reading the article, I wondered why this problem that loomed so large for me was only a minor inconvenience for Westbrook and his co-authors. My conclusion is that their work is of the type that flourishes in economics and sociology. It is about debtors, not courts. Focusing their attention away from the courts enabled Sullivan, Warren, and Westbrook to forge relationships with the judges and ultimately reach unique, hard-to-duplicate solutions to the data access problem. Other legal academics have not been able to replicate those solutions, which accounts for the dearth of other research.

Part I of this Comment argues that researchers’ data access problems are principally political, not technological or economic. Part II shows that the problems are getting worse, not better. Quantum gains in data access should have flowed from the introduction of computer technology over the past twenty years. But in fact, political restrictions on data access have almost entirely offset technological advances, and additional restrictions are imminent. Part III highlights the bias that the data access problem causes in empirical research. Restrictions on data access discourage research that might produce results critical of the judges or the legal process.

I. Data Access is Principally a Political Problem

In 1994, Congress established a National Bankruptcy Review Commission to recommend bankruptcy reforms. Appalled by the lack of data or empirical findings that might guide the Commission in its work, the Commissioners established a Data Study Project to facilitate access to bankruptcy court data and thereby to promote empirical bankruptcy research.
The Data Study Project devised an elegant solution to the data access problem\textsuperscript{6} that would have made volumes of already-coded data available to researchers at nominal cost. Every bankruptcy court uses a database to manage its cases. The volume of data in these databases is substantial.\textsuperscript{7} The data are highly accurate because the courts use them in case management. Coding and entry are unnecessary because the data are already electronic and assembled in fields. The Data Study Project's solution was for the courts to release those databases "as is" by copying them to a public website each night. Although the data would not yet be in usable condition, entrepreneurs could restructure the data and sell them. Competition would assure a reasonable price for the value added. The Commission recommended this solution to Congress,\textsuperscript{8} and staffers incorporated it into the proposed bankruptcy legislation.\textsuperscript{9}

Only then did the true nature of the data access problem reveal itself. After ignoring the Commission's process, the Judicial Conference of the United States sent the chair of its data collection working groups to the Congressional hearings to directly oppose the release of bankruptcy data. Claiming data collection and dissemination to be a "technical, complex, and vital system" and relating the seven-year history of the Judicial Conference's efforts to grapple with the issues involved, Judge Michael J. Kaplan expressed the Conference's "concerns about rushing change."\textsuperscript{10} Taking a shotgun approach, he charged that the Commission's solution "would require a major investment,"\textsuperscript{11} would "replace [the] private marketplace with the courts themselves,"\textsuperscript{12} and would release "sensitive [personal] information" without "sufficient study."\textsuperscript{13}

In fact, the investment required to implement the Commission's solution would be negligible. The government would set up a simple file storage and

\textsuperscript{6} Id. at 921–32 (describing the proposal for bulk release of bankruptcy court data).
\textsuperscript{7} For example, the database for the Bankruptcy Court for the Western District of Wisconsin, Madison Division, contained about one thousand fields of data. Id. at 925.
\textsuperscript{8} See id. at 921 ("Recommendations 4.1.1. Establish as policy that all data held by bankruptcy clerks in electronic form, to the extent it reflects only public records as defined in Bankruptcy Code § 107, should be released in electronic form to the public, on demand.").
\textsuperscript{9} The Bankruptcy Abuse Prevention and Consumer Act of 2001, H.R. 333, 107th Cong. § 604(1) (2001) provided that:
\textquote{It is the sense of the Congress that the national policy of the United States should be that all data held by bankruptcy clerks in electronic form, to the extent such data reflects only public records (as defined in section 107 of title 11, United States Code), should be released in a usable electronic form in bulk to the public. . . .}
\textsuperscript{11} Id. at 157.
\textsuperscript{12} Id.
\textsuperscript{13} Id. at 154, 157.
retrieval website. The courts would not be required to “compile” any data; rather, each would be required to transfer one computer file to the site each night. From the moment a user downloads the file from that website, all further expenses would be borne by that user.

Nor was there any substance to Judge Kaplan’s charge that in releasing the data the courts would have been replacing the private marketplace. Judge Kaplan described his concern in these words:

[O]nly compiling information from court files and disseminating it to the public would be a major departure from the core responsibilities of courts for the last 200 years. We have always been, and still are, adjudicators of disputes and, in the process, recipients and archivists of documents submitted by parties for use by the judge, any jury, and the other parties in resolving a particular matter. Credit bureaus and other private entities already compile and disseminate court data that is of interest or commercial value to their customers. This bill, it seems to me, would replace this private market place with the courts themselves.4

In fact, the proposal would have reduced the courts’ involvement in dissemination. As Judge Kaplan related in other parts of his statement, the courts were already deeply involved in disseminating court data through PACER,15 on the Voice Case Information Service, and over the counter in the bankruptcy clerks’ offices.16 Such dissemination has been a substantial and costly burden. The proposed system would have made the data available through alternative, private-sector sources, thereby reducing demands on the court-operated systems and saving court resources. Nor would the system have displaced any private entities. Credit bureaus do not compile or disseminate data in competition with the courts—they obtain their information from the courts.17

As to the privacy issue, Judge Kaplan hinted darkly that “[o]thers have seen first hand what can happen when sensitive information is released without sufficient study. The Bankruptcy Courts do not want to repeat that unfortunate experience.”18 But he provided no specifics except this example: “[A] battered wife and children, successfully in hiding, might avoid seeking

---

14. Id. at 157.
15. Id. PACER is an acronym for Public Access to Court Electronic Records. The system is operated by the AO to provide electronic access to court dockets and to some of the records filed with the courts. Most of PACER is internet accessible to members of the public who have registered and obtained passwords.
16. Id. at 155.
17. WILLARD P. OGBURN, FAIR CREDIT REPORTING ACT 28 (4th ed. 1998) (“Other [credit reporting] information comes from public records—deaths, marriages, divorce notices, bankruptcies, court judgments and disposition of lawsuits.”). For credit bureaus, the alternative source of bankruptcy information would be the creditors. But creditors would know only what they learned from the courts, making them a secondary and necessarily less reliable source.
relief only the bankruptcy system could give if she felt it would reveal to the world—and her abusive spouse—her new home address and perhaps even the locations of the children’s schools.”

The example had no traction because, in the same testimony, Judge Kaplan lauded the establishment by the Administrative Office of the U.S. Courts (AO) of a “U.S. Party/Case Index” as part of PACER. By entering a name in the Index, a user could locate the court file of an individual who filed bankruptcy anywhere in the United States. The Party/Case Index is of marginal value for research because one can enter only a single name at a time and get only the name of the court and the number of the file. But the Index is the perfect tool for abusive husbands seeking to locate their battered wives-in-hiding. Once the husband locates the file, he has an absolute right to see the contents. He may even be able to see those contents on PACER, from the comfort of his own home.

Bulk data release would add no privacy threat beyond that posed by PACER and the Party/Case Index. As posted to the website, the released data would not be in an easily accessible form. Data intermediaries would provide interfaces to make it usable, and charge for their services. To the abusive husband of Judge Kaplan’s example, the resulting system would be virtually identical to PACER and the Party/Case Index in terms of convenience. In both systems, the husband would have to register and pay for the information.

Situations exist in which the privacy needs of individuals outweigh the public’s interest in monitoring the operation of the courts. In those situations, the bankruptcy courts already have legal authority to seal all or part of the file. The wholesale suspension of effective public access to court records sought by the Judicial Conference is therefore unwarranted.

Some might fear that bulk release would facilitate junk mailings to persons whose addresses appear in the records. But to the extent that

19. Id. at 154. Judge Kaplan did not elaborate on how the location of a child’s school might appear in the clerk’s database. That might occur if the debtor owed money to the school at the time of the bankruptcy filing, the creditor filed a proof of claim or request for notice, and the clerk entered the address to the claims file.

20. Id. at 155.

21. 11 U.S.C. § 107(a) (2002) (“[A] paper filed in a case under ... [the Bankruptcy Code] and the dockets of the bankruptcy court are public records open to examination by an entity at reasonable times without charge.”).


23. See, e.g., San Antonio Express-News v. Blackwell (In re Blackwell), 263 B.R. 505, 508–09 (Bankr. W.D. Tex. 2000) (vacating as not supported by the evidence a bankruptcy court order sealing a file on privacy grounds pursuant to the testimony of unidentified Mexican investors who claimed to fear for their safety and that of their families); In re MorAmerica Fin. Corp., 158 B.R. 135, 137–38 (Bankr. N.D. Iowa 1993) (refusing to seal documents because the public interest outweighed the asserted privacy interest of investors).
marketers prove to be a problem, Congress has the power to ban them from using the bulk-released information. The only threat posed by bulk release is to courts that fear public scrutiny. Bulk release would deprive those courts of the power to block research.

At the Judicial Conference’s request, Congress amended the bankruptcy bill to make its policy of bulk release “subject to such appropriate privacy concerns and safeguards as Congress and the Judicial Conference of the United States may determine.” The Judicial Conference now appears poised to exercise this veto power to block bulk release entirely.

This experience led me to realize that the data access problem is not a problem of technology or money, but a problem of political restrictions. I include in that term laws, regulations, and the more subtle means by which persons in power impose their wills.

The data access problem is not new. In 1981, Sullivan, Warren, and Westbrook sought an unprecedented volume of bankruptcy court data by an imaginative use of technology. They bought photocopy machines, flew the copiers air freight to the cities where they would collect the data, and rolled them into the clerks’ offices on dollies. The researchers copied the files and shipped the copies back to Austin, where the researchers then coded the copies and entered the data into the computer.

At the time, their solution seemed to be technological or economic. However, each of those clerks’ offices already had copy machines that sat idle every night. With the full cooperation of the courts, Sullivan, Warren, and Westbrook could have paid moonlighting clerks to copy the data on

24. See, e.g., Los Angeles Police Dept. v. United Reporting Publ’g Corp., 528 U.S. 32, 35, 40-41 (1999) (upholding against First Amendment challenge a California statute that prohibited direct or indirect use of government-released arrest data “to sell a product or service to any individual or group of individuals”); Fed. Election Comm’n v. Int'l Funding Inst., 969 F.2d 1110, 1118 (D.C. Cir. 1992) (upholding a statute that provides that lists of political contributors filed with the Federal Election Commission may not be sold or used by anyone else to solicit contributions or for a commercial purpose). Techniques exist by which such bans can be effectively enforced. See Lynn M. LoPucki, Human Identification Theory and the Identity Theft Problem, 80 Texas L. Rev. 89, 131 (2001) (explaining techniques for “seeding” publicly released information to prevent unauthorized use).


26. JUDICIAL CONFERENCE COMMITTEE ON COURT ADMINISTRATION AND CASE MANAGEMENT, REPORT ON PRIVACY AND PUBLIC ACCESS TO ELECTRONIC CASE FILES, Jun. 26, 2001, at A-6 [hereinafter ELECTRONIC CASE FILES REPORT] (“Remote electronic access [to court records] will be available only through the PACERNet system which requires registration with the PACER service center and the use of a log in and password.”).

27. For example, Jerome Frank reports of a study of judge-to-judge differences in the dispositions of minor criminal cases in the years 1914 to 1916:

The disclosures “were so startling and so disconcerting that it seemed advisable to discontinue the comparative tables of the records of the justices.” The bench and bar did not want to have called to their attention the extent to which judging is affected by the temperament, training, biases and predilections of the respective judges.

JEROME FRANK, LAW AND THE MODERN MIND 115 (1930) (quoting Charles Grove Haines, General Observations on the Effects of Personal, Political, and Economic Influences in the Decisions of Judges, 17 Ill. L. Rev. 96, 105 (1922)).
government machines. In bringing their own copy machines, the research team was not solving a technological or economic problem of gathering data. They and the Bankruptcy Clerks were cooperating to avoid the Judicial Conference rule that required the clerks to charge 50 cents a page for copies.\(^{28}\) To put it another way, the cost of copying in 1981 was about 5 cents a page. The other 45 cents represented a political restriction imposed on data access.

Although technology has changed a great deal since 1981, data access has not. In gathering their 2001 data, Sullivan, Warren, and Westbrook downloaded the court files from PACER over the internet. But they faced new political restrictions. PACER downloads are rendered one page at a time, at a charge of 7 cents a page.\(^{29}\) Sullivan, Warren, and Westbrook decided that the cheapest way to capture the data was to print hard copy, code the hard copy, and re-enter the data into the computer, as they did in 1981.

The ultimate irony was that in the midst of the project, the team discovered that by abandoning PACER altogether they could gather the data less expensively. With the cooperation of the judges in two courts, they hired moonlighting assistant clerks to photocopy the files and ship the copies. With the political constraints removed by judges, the 1981 technology—photocopying in the clerks’ offices—was cheaper than the 2001 technology—internet PACER—with its one-page-at-a-time political restriction.

II. Research Access to Court Data is Declining

In January 2001, three federal agencies jointly released a “Study of Financial Privacy and Bankruptcy.”\(^{30}\) Without offering a shred of data,\(^{31}\) the agencies expressed “concern” that open bankruptcy files “[contribut[e] unnec-
essarily to identity theft, threats of physical harm, credit fraud, and lender redlining and individual profiling.”\(^{32}\)

The agencies proposed to protect financial privacy by creating three classes of access to bankruptcy court files. The first class, parties in interest and potential parties in interest, would have access not to the whole file as


\(^{29}\) Judicial Conference Schedule of Fees, 28 U.S.C. § 1930(23) (Supp. IV 1999) (requiring an access charge of $0.07 a page for information obtained through an internet site).


\(^{31}\) The agencies acknowledged that “[d]ata on the actual harm resulting from [the creation of electronic case files and the electronic collection and dissemination of bankruptcy information] are relatively scarce” but thought “these developments could create a risk for possible misuse or objectionable re-use.” Id. at 18.

\(^{32}\) Id. at 30–31.
they do today, but to "a broad range of information." The second class, members of the public, would receive only "some general information," including "the fact that an individual has filed for bankruptcy, the type of bankruptcy proceeding, the identities of parties in interest, and other core information." The report made clear that personal identifiers such as social security number or date of birth would not be included, making the identity data largely illusory. The third class, researchers, could receive "the detailed information that appears in a bankruptcy filing" but only "in a manner that would not identify individuals." That is, the information available to researchers would not include any information from which the researcher could identify the person to whom the information pertained. The report referred to such data as "de-identified."

De-identified court data are inadequate for research for three reasons. First, a researcher has no way to check the accuracy of de-identified data. To understand the necessity of being able to check the data's accuracy in this context, one must realize that the AO has long collected and distributed notoriously inaccurate bankruptcy data. Bankruptcy researchers only learned of the AO data's unreliability because those data were not de-identified. Researchers, like Jennifer Frasier, could trace the AO's data back to the case files and prove them wrong. By definition, one cannot trace de-identified data to their source, and therefore cannot verify the data's accuracy.

33. Id. at 33.
34. Id. at 30.
35. Id. at 31 ("The risk of identity theft and predatory lending practices may be increased by the disclosure of . . . Social Security numbers . . . [and] dates of birth . . .").
36. About 1.4 million people file for bankruptcy each year. Names alone are not sufficient to distinguish them in many instances. For that reason, debtors are required to furnish social security numbers. See FED. R. BANKR. P. 1005 (requiring that the "title of the case . . . include the name, social security number and employer's tax identification number of the debtor and all other names used by the debtor within six years before filing the petition").
37. FINANCIAL PRIVACY AND BANKRUPTCY, supra note 30, at 33.
38. Id. at 34.
39. See Jennifer Connors Frasier, Caught in a Cycle of Neglect: The Accuracy of Bankruptcy Statistics, 101 COMM. L.J. 307, 340 (1996) (concluding that "[t]he AO demographic bankruptcy statistics are fraught with errors, meaning that they are not reliable as empirical data. The debtor's assets, liabilities, and number of creditors as shown on the face sheet are inaccurate 20 to 25 percent of the time.")) (emphasis omitted); Westbrook, supra note 2, at 2153 ("The AO has apparently never been given the resources to develop standard protocols for data classification and entry, which seriously compromises the data [they publish]."); COMMISSION REPORT, supra note 1, at 928 ("The problems of the fragmented collection of data, the lack of centralization of data and the lack of electronic access by the public to existing data are compounded by persistent problems with the accuracy of the data that do exist."). The problem is long-standing. See Teresa A. Sullivan, Elizabeth Warren & Jay Lawrence Westbrook, The Use of Empirical Data in Formulating Bankruptcy Policy, LAW & CONTEMP. PROBS., Spring 1987, at 195, 222–23 (criticizing the accuracy and utility of AO bankruptcy data); DAVID T. STANLEY & MARJORIE L. GIRTH, BANKRUPTCY, PROBLEM, PROCESS, REFORM 168 (1971) ("The [AO] has encountered difficulty for years in getting referees to submit [the form that is the source of annual statistics] promptly, completely and accurately.").
Second, the researcher cannot link de-identified data to other data about the same people. As a result, the researcher cannot: (1) link court data with Chapter 13 trustee data or U.S. trustee data generated on the same case,\(^\text{40}\) (2) link the record of one bankruptcy filing by the debtor with the records of other filings by the same debtor,\(^\text{41}\) (3) seek interviews with debtors, their attorneys, or creditors in selected cases,\(^\text{42}\) or (4) check the accuracy of data in court files against data in non-bankruptcy court records, real property records, or other public records.\(^\text{43}\) Without the ability to make these kinds of links, researchers must either accept as true the representations made by debtors in bankruptcy filings or confine their research to those usually nonrepresentative debtors who are willing to consent to the research.

Third, as is discussed in more detail in Part III, the courts will use deidentification as an excuse to remove judges' names from court data. Decades ago, the Legal Realists recognized that legal outcomes differed sharply from judge to judge. Those differences can be explained only by the differences in the judges’ experiences and philosophies.\(^\text{44}\) The minimal bankruptcy-case-outcome research that has been done confirms the predictions of the Realists: outcomes differ sharply from district to district.\(^\text{45}\) De-identification would make research on judge-to-judge differences impossible, thus closing off the most promising directions for research.

III. The Politics of Data Access Distort Research and Bias Outcomes

For each year from 1970 to 2000, the AO has compiled a database containing thirty fields of data on each of the approximately 250,000 cases

\(^{40}\) See COMMISSION REPORT, supra note 1, at 928–30 (criticizing the current inability to link U.S. trustee data with bankruptcy case data).

\(^{41}\) Id. at 106 ("[L]ittle is known about repeat bankruptcy filings, except to the extent diligent efforts have yielded samples of such information. A nationwide collection of bankruptcy filings, which contains information that is already a matter of public record, would bring this information to light.") (footnote omitted).

\(^{42}\) For example, Warren and Westbrook sought telephone interviews with each of the debtors they identified from court files in their recent study of business bankruptcy. Elizabeth Warren & Jay Lawrence Westbrook, Financial Characteristics of Businesses in Bankruptcy, 73 AM. BANKR. L.J. 499, 515 (1999) ("Once we had our sample of cases for the Business Bankruptcy Study, we set about trying to locate each debtor by telephone and ask a series of questions about the company and its problems.").

\(^{43}\) See, e.g., Frasier, supra note 39 (comparing case files with cover-sheet data from the AO).


terminated each year. The names of the judges are included in the database. The Federal Judicial Center releases a copy of each year’s database to the Inter-University Consortium for Political and Social Research (ICPSR), located at the University of Michigan. ICPSR then releases the database to the public for research purposes. During the release process, the agencies strip the judges’ names.

Researchers wishing to download the database from ICPSR—the only source—must sign a click-wrap agreement that prohibits restoring the judges’ names. Specifically, the “Responsible Use Statement” to which the researcher must agree recites that the “intentional identification or disclosure of a person or establishment violates the assurances of confidentiality given to the providers of the information.” Therefore, users agree “[t]o produce no links among ICPSR datasets or among ICPSR data and other datasets that could identify individuals or organizations.” ICPSR’s click-wrap agreement may or may not be enforceable, but it is effective. Restoring the judges’ names would be sufficiently expensive to require funding. The click-wrap agreement discourages that funding. Violation of the click-wrap agreement might also subject the violator to disciplinary action under regulations pertaining to human subjects research.

Whether by accident or design, Sullivan, Warren, and Westbrook have focused their study on the social and economic process of bankruptcy, and away from the performance of judges. Since 1981, they have reduced their reliance on court data and mastered data-access politics to the point that it


47. Id. at 11 (indicating that the “filing judge” field is “[b]lank on public use files”).

48. Id. (showing Federal Judicial Center as principal investigator).

49. Id. (downloadable files).

50. Id.


52. Id.


54. Such research arguably is “human subject” research within the meaning of 45 C.F.R. § 46.102(f) (2001) (“Human subject means a living individual about whom an investigator... conducting research obtains... identifiable private information... Private information includes... information which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public...”). Although that regulation does not directly apply to research not funded by the federal government, many universities apply it voluntarily. See, e.g., University of California, Los Angeles, Application to Involve Human Subjects in Research (Form HS-1 Guidelines), available at http://www.oprs.ucla.edu/human/FORMS.htm (“University policy requires that research involving human subjects conducted by or under the direction of UCLA personnel (faculty, students, or staff), using any property or facility of the University, extramurally funded or not, regardless of location, must be submitted to the HSPC for review and approval.”).

ceases to be a major consideration for them. This understanding of what they have achieved makes me more, not less, impressed with their accomplishments. Sullivan, Warren, and Westbrook steered a successful course that others could not find and maintained their integrity while doing so.

The team’s successes should not, however, be allowed to conceal the damage done by the courts’ refusal to submit court operations to public scrutiny through the lens of empirical research. By offering selective access to data, the courts have controlled legal scholars’ research agendas, encouraging research that focused on the social and economic implications of litigation and discouraging research that focused on the actions of judges and the impacts of those actions on both litigants and the public. The effect, if not the very purpose of that discrimination, has been to exaggerate both the effectiveness of law in controlling judicial behavior and the rationality of the legal process by withholding from the public critical evidence of the courts’ failures.

_BANKR. L.J._ 121, 125 (1994) (“Phase II is based largely on questionnaire data, an approach that enables us to gather facts not available by studying bankruptcy files as we did in Phase I.”).