Local Legal Culture and the Control of Litigation

Herbert M. Kritzer Frances Kahn Zemans

In 1983, the Federal Rules of Civil Procedure were modified to mandate sanctions against attorneys who filed frivolous pleadings or motions or who failed to make reasonable efforts to verify facts or statements of law made in pleadings or motions. There is substantial variation among federal judicial districts in the use of this Rule 11 provision. To what degree can these variations be explained by situational or legal factors? Does one need to use a concept such as local legal culture to account for at least some of the variation? These are the questions addressed by this article. We find that variations in most Rule 11–related activities can be explained by structural and situational factors. We conclude that beyond the expectations created by specific structural and legal factors, one does not need to resort to local legal culture to explain Rule 11–related phenomena. We suggest that the conditions that make local legal culture a useful construct in the context of the criminal courts may not apply in the civil justice system.

The rules governing the filing and prosecution of lawsuits constitute a key component of gatekeeping in the civil justice system. The rules of civil procedure, as they are typically called, can serve to encourage or discourage litigation, either by direct restrictions or by manipulation of incentives. As the debate about litigiousness waxes and wanes, rules of procedure are changed to reflect current perceptions of problems and issues. In 1983, Rule 11 of the Federal Rules of Civil Procedure was modified to rectify what was perceived to be an increased filing of motions and pleadings that were not grounded in fact or law. By 1990, these changes had produced an acrimonious debate among federal litigators, legal academics, and federal judges.

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The 1983 changes modified and strengthened the existing provisions of Rule 11 to create a presumption that lawyers who file pleadings or motions without ascertaining that they are well grounded in fact and/or law will be sanctioned by the Court. The language of the Rule is reasonably straightforward:

> The signature of an attorney or party constitutes a certificate by the signer that the signer has read the pleading, motion, or other paper; that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to cause unnecessary delay or needless increase in the cost of litigation. . . . If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay the other party or parties the amount of reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

The intention of the 1983 amendments to Rule 11, which shifted from permitting sanctions to effectively mandating sanctions,[1] was to reduce the filing of supposedly frivolous cases, claims, and motions.[2] There is no doubt that Rule 11 has had an impact; if nothing else, the number of sanctions imposed has increased sharply: between 1938 and 1976, Rule 11 sanctions were imposed in only *3* reported cases (out of 19 reported cases in which Rule 11 motions had been filed); between 1983 and 1989, trial judges imposed sanctions in 379 reported cases (Federal Judicial Center 1991:sec. 1D, p. 2).[3]

The debate over Rule 11 led the Advisory Committee on Rules of Practice and Procedure of the United States Judicial Conference to hold hearings in 1990 to determine whether a new set of amendments to Rule 11 was warranted. The criticisms of Rule 11 include:

- disparate impact on plaintiffs and defendants
- particularly negative impact on civil rights plaintiffs
- stifling of innovation in the law
- limiting access to justice

[1] The amendments also shifted from a standard of conduct that focused on what *was* known to one that focused on what *should have* been known.

[2] Ironically, no one bothered to ascertain whether there were in fact significant numbers of frivolous cases, claims, or motions; it was simply asserted that this was a problem and that some solution was needed to the problem.

[3] Reported cases can give a very distorted image of what is occurring in the courts, and we present this figure recognizing that fact; Wiggins et al. (1991:7) point out that 58% of Rule 11 opinions were published by just ten districts, and 38% were published by only two districts. Nonetheless, the sheer magnitude of the difference before and after 1983 is striking.

- generation of unnecessary "satellite litigation" and its attendant costs
- placing too much power in the hands of federal judges
- lack of uniformity in enforcement
- use of the rule by some federal judges to punish litigants who file cases with which the judge disagrees politically.

The critics include persons from many segments of the bar, from personal injury and civil rights plaintiffs' attorneys to big firm commercial litigators.[4]

To assess many of the claims about the use and impact of Rule 11, we undertook a survey of federal litigators in three circuits. The survey, which was conducted during the spring of 1991, sought information both on visible Rule 11 activities (actual sanctions, motions, and in-court warnings) and on those Rule 11 activities that take place outside of court. The research design targeted federal practitioners[5] in 11 federal judicial districts, some dominated by major metropolitan areas, others including larger regional cities, and others essentially nonurban in character.[6] Up to three mailings consisting of a 12-page questionnaire and a cover letter from the chief judge of the relevant circuit were sent to 4,496 practitioners;[7] 3,358, or almost 75%, responded.

One of the intriguing results from our previous analyses of these data (Kritzer, Marshall, & Zemans 1991, 1992; Kritzer, Zemans, & Marshall 1991; Marshall, Kritzer, & Zemans 1992) is the possibility that local differences exist in Rule 11 impacts and practices. Studies of several aspects of judicial practices have argued that local differences cannot be accounted for by simple reference to external factors such as caseloads, judicial structures, or local rules. These studies (see Church et al. 1978; Sherwood & Clarke 1981; Schiller & Manikas 1987; Eisenstein

[4] Interestingly, while many big firm commercial litigators have been included among the vocal critics of the rule, the large corporate clients of those litigators have either been silent or generally supportive of the rule as evidenced by testimony presented to the Advisory Committee on the Civil Rules (testimony by Alfred Cortese, 19 Feb. 1992, Atlanta; copy on file with the authors) and written comments on the proposed changes filed by the American Insurance Association (comments dated 31 Oct. 1990; copy on file with the authors).

[5] Federal practitioners were identified by selecting a sample of cases from each of the 11 districts and extracting from the docket sheets (either manually or electronically) the names of the lead attorneys on both sides; federal government attorneys were excluded from the sample.

[6] The specific districts were:

5th Circuit	*7th Circuit*	*9th Circuit*
S.D. Texas	N.D. Illinois	C.D. California
N.D. Mississippi	W.D. Wisconsin	D. Montana
W.D. Louisiana	S.D. Indiana	E.D. California
		D. Arizona
		D. Oregon

[7] The survey was administered by the University of Wisconsin's Letters and Sciences Survey Center.

et al. 1988) advance what has come to be called the "local legal culture" perspective (Church 1985, 1982); that is, local patterns of practice reflect in part informal norms and expectations that regular players in the system (lawyers and judges) have developed and have come to accept as "how we do things."

The concept "local legal culture" can take on two subtly different meanings. The first is that it simply reflects the complete set of norms and attitudes that govern the operation of a court system. Some of these norms are reflected in formal rules (e.g., time limits, discovery limits); others are the natural outgrowth of structural factors such as caseloads, numbers of players involved in the system, and the like; and still others are not traceable to formal procedure or structure but simply reflect a perception of "how we do things here." The second meaning of "local legal culture" is limited only to the last subset of norms and attitudes, those that do *not* reflect the internalization of structural and contextual differences. In a real sense, this latter, more narrow meaning constitutes a "residualization" of what could be a very broad, general concept. Nonetheless, it is this latter, residual definition that we have adopted for our analysis.

We do this for two reasons. First, the concept was initially advanced as a vehicle for explaining differences in patterns of "delay" in the courts that could not be explained by factors such as caseloads, community size, calendaring systems, or seriousness of cases. Church and his colleagues turned to the local legal culture explanation (Church et al. 1978:54):

> It is our conclusion that the speed of disposition of civil and criminal litigation in a court cannot be ascribed in any simple sense to the length of its backlog, any more than it can be explained by court size, caseload, or trial rate. Rather, both quantitative and qualitative data generated in this research strongly suggest that both speed *and* backlog are determined in large part by established expectations, practices, and informal rules of behavior of judges and attorneys. For want of a better term, we have called this cluster of related factors the "local legal culture." Court systems become adapted to a given pace of civil and criminal litigation. . . . These expectations and practices, together with court and attorney backlog, must be overcome in any successful attempt to increase the pace of litigation. Thus most structural and caseload variables fail to explain interjurisdictional differences in the pace of litigation.

Second, as suggested by the quote above, modifying those expectations that are not attributable to specific structural or contextual factors presents particular problems for court reformers, and determining the degree to which some aspect of judicial process reflects the narrower notion of local legal cul-

ture is important in predicting the likely impact of efforts to change that process.

Because Rule 11 relies primarily, though not exclusively,[8] on the action of attorneys for its enforcement, we expected that local norms and practices would influence substantially the application of and reference to the rule. While we recognized that our unit of analysis—federal judicial district—is larger than the "local community" examined in some (but not all—see Church et al. 1978:55–57) other studies that have applied the local legal culture construct, we believe that it is the relevant unit for purposes of analysis of actions in the federal trial courts. Furthermore, when we examined the gross pattern of Rule 11 use across the 11 federal judicial districts we surveyed, we found significant variation among the districts on each of our measures. Can these variations be accounted for by factors such as circuit precedents or size of the community served? If not, what evidence is there that these differences do reflect "local legal culture" in the narrow sense? These are the questions that motivated the analysis presented below.

In our original design of the research, we had not anticipated looking at a local legal culture explanation for our findings. However, in our initial analyses of our data, we found significant differences among the federal judicial districts in our sample, which alerted us to the need to consider local legal culture (in the narrow sense) as a potential factor accounting for the observed variation. A major potential problem for us was that we had not sought to specifically measure local norms and expectations in our survey, which would make it potentially very difficult to develop an independent measure of the local legal culture. However, as the analysis below will show, we are able to account for observed variations across the districts without resort to the residualized version of local legal culture. In section I, we briefly review the history and use of the concept of local legal culture. Section II describes the measures of Rule 11 activities and discusses the types of variables other than local legal culture that might account for variations in Rule 11 activities. Section III presents our statistical analysis.

I. Local Legal Culture

As noted previously, the concept of "local legal culture" was introduced by Tom Church and his colleagues (1978:54) to account for the perplexing finding that obvious factors such as backlog, court size, caseload, or trial rate failed to account for

[8] While judges may refer to or initiate Rule 11 sanctions without the Rule being raised by one of the attorneys, the judges are, by and large, members of the same local legal culture as the lawyers; they might also be part of a separate "judicial culture" (see Kagan et al. 1977:123, 155)—a phenomenon we do not consider in our analysis.

the pace of criminal case disposition. Church et al. suggest that "speed *and* backlog are determined in large part by established expectations, practices, and informal rules of behavior of judges and attorneys. . . . Court systems become adapted to a given pace of civil and criminal litigation." In follow-up work, Church (1985:449; see also Church 1982) moved to the broader definition of local legal culture: "common practitioner norms governing case handling and participant behavior in court." In this later research, which looked specifically at practitioner attitudes in four criminal courts, Church did not concern himself with whether the attitudes and norms simply reflect the structural and legal realities practitioners must deal with as opposed to local expectations that evolve independent of structural and legal imperatives. Not surprisingly, Church found support for the proposition that there are distinct attitudes concerning procedural issues and practices (e.g., pace of litigation, necessity for trial) in the four large urban jurisdictions he examined (Pittsburgh, Miami, Bronx, and Detroit), and that these attitudes tend to parallel actual practice (e.g., "patterns of actual trial utilization parallel attitudinal orientations of practitioners regarding preferred mode of disposition for the hypothetical case set [1985:480]"). In this followup research, because of the small number of jurisdictions examined, Church was not able to consider whether the attitudes and norms might be attributable to structural and legal factors or if the patterns of local culture, in whole or in part, arose independent of such factors.

Nonetheless, a variety of research lends support to an argument that within the criminal justice context, case processing, and expectations concerning case processing, may not simply reflect structural and legal imperatives. For example, while most criminal courts are dominated by guilty plea dispositions, Schulhofer (1984, 1985) reports that Philadelphia, both at the misdemeanor and felony levels, disposes of large proportions of cases through bench trials that he argues are not simply "slow pleas."[9] Schulhofer is not able to identify any types of structural or legal factors that might account for the apparent anomaly. In their study of criminal courts in nine smaller cities, Eisenstein, Flemming, and Nardulli (1988) describe what they label "court communities" that incorporate locally defined expectations about the proper handling and disposition of criminal cases; their research design, which involved looking at three cities in each of three states and three different types of cities

[9] White (1971:442) defines a "slow plea" of guilty as involving a proceeding that is formally labeled a bench trial in which "the defendant's counsel facilitates the presentation of evidence and . . . admits that the defendant is guilty of some offense, but does not enter a formal plea." Schulhofer's argument is intriguing in light of Mather's observation (1974:214 n.7) that the term originated in Philadelphia and Pittsburgh.

within each state, provides a measure of control over both structural and legal factors. Similarly, Levin (1972, 1977) reports sharp differences in the perspectives of the occupants of the local benches in Pittsburgh and Minneapolis, although he relates these differences more to political cultures[10] than to what Church labels local legal culture. Heumann (1978) shows how practitioners come to share views on how cases should be handled (e.g., trial versus guilty plea).

Given the emphasis on the impact of local legal culture on case processing, it seems logical to extend this to the handling of civil cases as well as criminal cases; in fact, one of the key findings that originally led Church to the "local legal culture" explanation was the correlation in disposition times in civil cases between state and federal courts in the same city (Church et al. 1978:56).[11] While some other work has considered other aspects of civil process across a number of federal and/or state courts,[12] little, if any, effort has been made to link patterns to local legal culture.

Data and Variables

In our survey of attorneys, we asked about Rule 11 activities both in court and out of court during the preceding 12 months:

- Cases in which sanctions were imposed ("sanctioned")
- Cases in which sanctions were formally proposed but not imposed ("motioned")
- Cases in which reference was made to Rule 11 in court or in papers filed with the court but no formal motion was made ("in-court")
- Cases in which reference was made to Rule 11 by one side to the other side outside of court ("out-of-court" or "out-court")
- Cases in which no reference was made to Rule 11 by the opposing side, but Rule 11 was considered in choosing a course of action—an anticipatory response to the possibility of Rule 11 coming up ("anticipatory response" or "affected")
- Cases declined because of a concern about potential sanctions ("declined")

[10] See Grossman & Sarat 1971, Kritzer 1979, and Grossman et al. 1982 for discussions of *political culture* (as distinct from *local legal culture*) applied to the study of the courts.

[11] However, Grossman et al. 1981, who found some sharp contrasts in state/federal patterns of pace of litigation in the five federal judicial districts they examined, question the applicability of the local legal culture explanation.

[12] For example, see Kritzer 1982 on intervention of judges in case management and settlement; Clermont & Eisenberg 1992 on the choice between jury and bench trials; and Friedman & Percival 1976 or Daniels 1990 on the evolution of case mix over time.

We refer to these different situations as "level" of Rule 11 activity. The exact wording of each of these questions is shown in Figure 1; when an attorney reported more than one case involving a particular level of Rule 11 activity, we asked the attorney to focus on only the most recent case involving that level in responding to follow-up questions. In addition to gathering information on Rule 11 practices and experiences, we asked the attorneys about their practices and experiences more generally, including such things as practice setting (firms of varying size, solo practice, etc.), substance of practice (percentage devoted to each of a number of legal areas), usual side represented, percentage of practice devoted to federal litigation, and number of years in practice.

As we noted previously, 3,358 attorneys responded to our survey. However, because we are specifically interested in local effects, we excluded from our analysis here those attorneys who reported federal litigation practices in more than one federal judicial district or who reported that their practices were not primarily in one of the districts in our sample. This eliminated about one third of our respondents, leaving 2,421 for analysis.

Analysis

Local Legal Culture

Table 1 shows the percentage of attorneys in each district who reported having had each of the six types of Rule 11 experiences during the 12 months prior to the survey. The χ^2 values shown at the bottom of the table indicate that for all six variables there are significant variations among the districts. The differences among the districts are not just "statistically significant," they are substantial; the ratio of highest to lowest percentage for each type of experience is around 2 to 1 for motions, in-court, out-of-court, and anticipatory responses, and around 3 to 1 for sanctions and declining cases.

There is one clear pattern in the table that might account for the significant differences among districts: the large urban districts (Central California, Southern Texas, and Northern Illinois) tend to be on the high end of the percentages. Table 2 collapses the districts into three types (large urban, urban, and nonurban), and shows that with the exception of declining cases, lawyers in large urban districts are more likely to report each of the various Rule 11 experiences than are lawyers in the other types of districts;[13] the ratio comparing large urban to

[13] One simple explanation for this might be that Rule 11 experiences are concentrated in the very large firms that are concentrated in large urban areas; however, when we construct Table 2 omitting respondents from "big firm" (more than 50 lawyers), the pattern is unchanged.

Sanction Imposed

In the last 12 months, have you been counsel or co-counsel in a case in any federal district court in which sanctions were imposed under Rule 11 of the Federal Rules of Civil Procedure?

Motion for Sanction

In the last 12 months, have you been counsel or co-counsel in a federal district court case in which Rule 11 sanctions were formally proposed, through a written or oral request (e.g., a motion by counsel) or through a show cause order (or equivalent), but no sanction was imposed?

In-Court Reference

In the last 12 months, have you been counsel or co-counsel in a federal district court case in which no formal Rule 11 sanction request or procedure (e.g., a motion, show cause order, or equivalent) was initiated, but some explicit warning or threat of a request for Rule 11 sanctions was made in court or judge's chambers, or some other clear reference was made to Rule 11 in papers filed with the court (e.g., a specific mention of Rule 11 or use of Rule 11 language—"the claim is not well grounded in fact and is not warranted by existing law or a good faith argument . . .")?

Out-of-Court Reference

In the last 12 months, focusing exclusively on cases in which the *only* Rule 11 activity, expressed or implied, was outside of court, have you been counsel or co-counsel in a federal district court case in which, in the course of conversation or correspondence outside of court (and judges' chambers), counsel for one of the parties raised the issue of a Rule 11 violation with counsel for another party?

Anticipatory Response

During the last 12 months, in preparing a case that was, or could have been, filed in federal district court, excluding cases you described in response to prior questions, have you specifically done something, or consciously decided not to do something, because of concerns about potential sanctions under Rule 11, even though there was never an explicit reference to Rule 11 by opposing counsel or a judge (or magistrate)? Here we are thinking of things such as omitting or modifying specific claims or defenses, deciding not to file particular documents, choosing to file in state court rather than federal court, seeking to remove to federal court from state court, undertaking additional investigation or research, etc.

Declined a Case

We are also interested in knowing about cases that were never filed primarily because of concerns about sanctions under Rule 11. During the last twelve months did you, primarily because of Rule 11:

- advise a client not to pursue a lawsuit that you thought had some merit?
- advise a client to settle a case to avoid a suit that would be difficult to defend?
- decline representation of a paying client in a particular matter?
- decline representation of a pro bono client?

Figure 1. Measures of Rule 11 Activity

Table 1. Frequency of Rule 11 Events and Actions by District

Usual District of Practice	% Sanctioned	% Motioned	% In-Court	% Out-Court	% Affected	% Declined
S. Texas	7.8	34.1	26.8	41.8	38.8	20.5
	(295)	(293)	(291)	(292)	(291)	(297)
N. Mississippi	7.7	26.9	18.6	30.2	26.6	29.2
	(130)	(130)	(129)	(129)	(128)	(130)
W. Louisiana	8.4	15.3	22.9	42.0	35.8	16.8
	(190)	(190)	(188)	(188)	(190)	(191)
Arizona	4.1	18.7	17.2	22.8	25.7	20.7
	(268)	(268)	(267)	(267)	(269)	(270)
Montana	3.7	17.5	16.5	19.7	22.5	16.8
	(191)	(189)	(188)	(188)	(187)	(191)
Oregon	5.7	23.5	20.8	32.7	21.7	16.6
	(246)	(247)	(245)	(245)	(244)	(247)
California	5.6	18.3	20.3	33.1	23.8	10.3
	(126)	(126)	(123)	(124)	(126)	(126)
C. California	10.3	31.5	27.9	39.2	30.9	13.3
	(262)	(260)	(262)	(260)	(262)	(264)
N. Illinois	11.5	24.3	35.4	43.9	39.5	22.0
	(347)	(345)	(345)	(342)	(344)	(350)
W. Wisconsin	8.1	14.3	20.3	24.3	21.6	18.9
	(148)	(147)	(148)	(148)	(148)	(148)
S. Indiana	9.2	21.2	20.4	35.4	26.1	14.5
	(207)	(203)	(206)	(206)	(207)	(207)
Total	7.7	23.3	23.6	34.3	29.7	18.3
χ^{2a}	21.88	53.02	47.74	70.23	53.97	28.66

[a] The χ^2 was computed on a table formed from the column under which it is shown; the table was 10 rows by 2 columns (the second column containing the complement of the percentage in the column actually shown above). All have 10 degrees of freedom, and all are statistically significant at the .02 level or better.

Table 2. Frequency of Rule 11 Event and Actions by Type of District

Type of District	% Sanctioned	% Motioned	% In-Court	% Out-Court	% Affected	% Declined
Large urban	10.0	29.6	30.4	41.8	36.8	19.0
	(904)	(898)	(898)	(894)	(897)	(911)
Urban	6.5	19.6	20.1	32.4	26.4	16.5
	(1,037)	(1,034)	(1,029)	(1,030)	(1,036)	(1,041)
Nonurban	6.2	19.1	18.3	24.1	23.3	20.9
	(469)	(466)	(465)	(465)	(463)	(469)
Total	7.7	23.3	23.6	34.3	29.7	18.3
χ^{2a}	10.21	32.49	37.24	45.63	35.84	4.60

[a] The χ^2 was computed on a table formed from the column under which it is shown; the table was 3 rows by 2 columns (the second column containing the complement of the percentage in the column actually shown above). All have 2 degrees of freedom, and all are statistically significant at the .05 level or better.

Table 3. Frequency of Rule 11 Events and Actions by Circuit

Type of District	% Sanctioned	% Motioned	% In-Court	% Out-Court	% Affected	% Declined
Fifth	8.0 (615)	26.8 (613)	23.8 (608)	39.4 (609)	35.3 (609)	21.2 (618)
Seventh	10.1 (702)	21.3 (695)	27.8 (699)	37.2 (696)	31.8 (699)	19.1 (705)
Ninth	6.0 (1,093)	22.6 (1,090)	20.8 (1,085)	29.6 (1,084)	25.3 (1,088)	16.1 (1,098)
Total	7.7	23.3	23.6	34.3	29.7	18.3
χ^{2a}	10.04	5.99	11.32	20.24	20.77	7.29

[a] The χ^2 was computed on a table formed from the column under which it is shown; the table was 3 rows by 2 columns (the second column containing the complement of the percentage in the column actually shown above). All have 2 degrees of freedom, and all are statistically significant at the .05 level or better.

the other districts (except for declining cases) tends to be on the order of 3 to 2. Given Donald Landon's (1985, 1990) work on nonurban legal practice,[14] it is interesting that it is the large urban districts that stand out as higher rather than the nonurban districts that stand out as lower.

There is another statistically significant, albeit much weaker and less consistent,[15] pattern in the data: differences among the circuits. These patterns are captured in Table 3. As that table shows, there are statistically significant differences among the circuits for all six of the Rule 11 experiences; however, the only clear pattern here is for the Ninth Circuit to have the lowest percentage of respondents reporting an experience (the one exception is motions that do not lead to sanctions, and here the Ninth Circuit is only slightly above the Seventh Circuit). Elsewhere, we considered whether there were any clear differences in the "law of the circuits" that might account for circuit-level differences. We could identify no precedential patterns that might account for differences among the three circuits; however, we did find differences in the *tone* of the appellate court decisions that could affect the attorneys' perceptions of whether the federal courts were interested in aggressively *applying* Rule 11 (Kritzer, Zemans, & Marshall 1991:20–22).[16]

[14] Landon argues that there are strong norms of comity among lawyers practicing in nonurban areas; this is captured nicely in the comment of one of his respondents who reported that he told clients at their first meeting, "You can hire me to fight your case, but you can't hire me to hate the opposing attorney" (1985:95).

[15] The pattern would be clearer if it were not for the District of Central California in the Ninth Circuit, which stands prominently as the highest of the five Ninth Circuit districts on all indicators of Rule 11 activity except declined cases.

[16] We eliminated one other explanation for the lower level of activity in the Ninth Circuit. Recall that we included one of each type of district (large urban, urban, and nonurban) in each circuit but added two extra urban districts for the Ninth Circuit; this means that compared to the Fifth and Seventh Circuits, our sample underrepresents practitioners in the large urban district from the Ninth Circuit. Given the pattern of greater frequency of Rule 11 experiences in the large urban districts (as shown in Table 2), the lower apparent rate in the Ninth Circuit might just have meant that we have

A variety of other factors might influence Rule 11–related experiences:

- Practice setting (firms of varying size, solo practice, etc.)[17]
- Substance of practice (is 50% or more of the lawyer's practice in civil rights, personal injury, commercial litigation?[18])
- Usual side represented (plaintiffs, defendants, mixed)
- Percentage of practice devoted to federal litigation
- Number of years in practice[19]

Since a number of these factors are likely to be correlated with the type of district (e.g., lawyers in nonurban districts are more likely to have a varied practice and be in small firms or solo practices, while lawyers in large urban districts might specialize in federal litigation and be in large firm practices), controls must be included for these other variables.

The standard statistical technique for introducing controls of this type is linear regression analysis; because all our dependent variables are dichotomous, we need to use logistic regression rather than ordinary least squares regression.[20] The central question for our statistical analysis was whether, after controlling for the variables listed above plus circuit and type of district, individual districts still differed significantly from one another; if significant differences remained, we would then need to explore the local legal culture explanation. Because type of district and circuit are directly confounded with individual districts, we could not simply include ten separate dummy variables for district differences; given our coding of circuit and type of district, we had to identify the appropriate subset of dummy variables to capture variations among the individual

fewer large urban practitioners in our Ninth Circuit sample. To test for this, we applied a crude weighting scheme to discount the overinclusion of lawyers from urban districts in our Ninth Circuit sample; when this was done, the pattern shown in Table 3 was virtually unchanged, indicating that we cannot dismiss the Ninth Circuit pattern as an artifact of our sample design.

17 We operationalized this variable as a trichotomy: solo practice and firms of 3 or fewer lawyers ("tiny"), larger firms with more than 50 lawyers ("big firm"), and other.

18 We used these categories because they are the dominant ones involving Rule 11 as well as comprising the largest identifiable categories of civil litigation in federal courts once government collection cases and prisoner petitions are omitted.

19 One variable we omitted from the analysis, because earlier work had shown no consistent pattern of relationship (see Marshall et al. 1992), was size of community in which the lawyer's practice was based. The lack of relationships for federal litigation patterns is not surprising because, as we noted previously, federal litigation is district-centered rather than immediate community-centered, and lawyers in a given case often come from different towns or communities.

20 Alternatively, we could have used probit analysis; however, we have chosen logistic regression because it models the dependent variable as the log of the odds. As described by Kritzer et al. (1991:538–39) in a recent issue of the *Review*, the parameters of the logistic regression model can be modified to allow them to be interpreted as multiplicative effects on the odds.

districts—six dummy variables were required to capture these differences.[21] In addition to circuit, type of district, and district, controls were included for each of the variables mentioned above (practice setting, substance of practice, usual side represented, concentration on federal litigation, and years of practice).[22] Six separate logistic regression equations were estimated, one for each dependent variable.

The portions of the logistic regression results that are relevant for the local legal culture issue are shown in Table 4; the complete regression results, along with a discussion of results not specifically related to local legal culture, can be found in the Appendix. Table 4 shows in bold type a series of Wald statistics; this is a χ^2-distributed test statistic that tests whether a set of coefficients taken together are statistically different from zero[23] (i.e., whether or not the set of parameters, taken together, accounts for any of the variation in the dependent variable). The relevant test for each of our measures of Rule 11 experience is the Wald statistic (6 d.f.) for the row in the table labeled DISTRICT, which indicates whether or not any of the variation in the dependent variable is accounted for by the district after *all* the other variables in the regression equation are taken into account (including circuit and type of district, which are shown in Table 4). Only for unsuccessful motions and for declining cases are there significant variations among districts that cannot be accounted for by the other variables in the model.[24] The failure of the significant district effects to cluster around a particular setting such as in-court activities (i.e., sanctions, motions, and in-court references) casts doubt on there being any type of strong local legal culture effects *beyond those that might be explainable by structural or legal factors*. In fact, the pattern of signs of the coefficients suggests no consistency of dis-

[21] The districts for the dropped dummy variables were captured by the following combinations:

Northern Illinois	Seventh Circuit
Central California	Ninth Circuit
Southern Texas	constant term
Northern Mississippi	nonurban
Western Louisiana	urban

[22] Most of the predictor variables were included as sets of dummy variables; the two exceptions were years of practice and percentage of practice devoted to federal litigation, both of which were included in a nonlinear form (the natural logarithm of years of practice and the square root of percentage of practice devoted to federal litigation were used as the transformations). Because of the particular concern raised about the impact of Rule 11 on civil rights plaintiffs, a specific interaction term was included for civil rights plaintiffs' attorneys.

[23] It can also be used to test whether an individual parameter estimate is zero; for individual parameters, the Wald statistic is simply the square of the Z-test (which has a standard normal distribution).

[24] Some individual districts differ significantly for motions, in-court references, and anticipatory responses, but these few individual differences are insufficient to support an argument that something on the order of local legal culture is an important factor in explaining these Rule 11 practices.

Table 4. Selected Logistic Regression Results

	Sanction Imposed		Motion for Sanction		In-Court Reference		Out-of-Court Reference		Anticipatory Response		Declined a Case	
	b	*s(b)*	*b*	*s(b)*	*b*	*s(b)*	*b*	*s(b)*	*b*	*s(b)*	*b*	*s(b)*
District	**5.3938**		**13.9720***		**5.6569**		**7.7659**		**7.3515**		**16.5774***	
Arizona	−1.0268	.5354	.4123	.3479	−.5610	.3353	−.7135*	.3015	−.2284	.2998	.9573*	.3695
Montana	−.8239	.6117	−.3352	.3592	−.3461	3781	−.3938	.3413	.1568	.3397	.0145	.3844
Oregon	−.9720	.5117	.5247	.3367	−.6579*	.3297	−.4399	.2921	−.6076*	.3031	.6312	.3729
E. California	−.7959	.5970	.2987	.3927	−.4245	.3731	−.1975	.3283	−.2710	.3390	.0865	.4453
W. Wisconsin	−.1237	.5669	−.3588	.4109	−.3412	.3891	−.0233	.3468	−.1302	.3559	−.4737	.3881
S. Indiana	−.3655	.4747	1.0570*	.3450	−.6755*	.3280	−.2207	.2892	−.4744	.2958	−.2066	.3685
Usual Circuit	**.8762**		**12.5688***		**3.8896**		**.6691**		**4.7739**		**9.1717***	
Seventh	.2743	.2939	−.6859*	.1951	.3765	.1933	−.0455	.1771	−.1339	.1769	.1044	.2105
Ninth	.1899	.3170	−.2719	.2007	.1706	.2092	−.1523	.1908	−.4143*	.1926	−.5952*	.2497
Type of District	**1.0089**		**9.5517***		**1.5603**		**6.3426***		**3.4546**		**4.1214**	
Urban	.3578	.3669	−.7969*	.2617	.2451	.2458	.1611	.2153	.1129	.2150	−.2283	.2666
Nonurban	.0767	.4352	−.1404	.2658	−.0944	.2907	−.4931	.2525	−.3752	.2563	.3664	.2731

NOTE: Figure shown in **bold** are Wald statistics.
* Statistically significant at .05 level or better.

trict effects; for example, for in-court references, all the coefficients are negative, while for motion for sanction there is a mix of positive and negative signs (interestingly, the district with the strongest positive effect on motions, Southern Indiana, has the strongest negative coefficient on in-court references). If there were local legal culture effects operating here, we would expect to find some consistency in the pattern of individual district coefficients.

Conclusions

When we undertook this analysis, we started from the empirical result that there appeared to be significant variations among the 11 federal districts in our study in the frequency of Rule 11–related activities. We posed for ourselves the question whether these differences might be attributable to local legal culture, a question that made sense in light of the earlier work reporting a link between local legal culture and procedural aspects of case processing (see Church 1985, 1982). Despite these theoretically based expectations, our analysis shows that much, if not most, of the observed variation among the districts is attributable to factors that can be distinguished from local legal culture *narrowly defined*. It is certainly likely that some of the variation reflects broader cultural influences, but those influences are captured in structural or contextual variables such as "urbanness of the district." This is not to rule out the existence of some *specific* local effects, whether based on cultural norms, practices of local judges, or some other factor; rather, one need not turn to this type of explanation to account for the overall pattern of variation. Assuming that our conclusion is correct (we will note several alternative interpretations of our results below), why is local legal culture at best a minor factor in the phenomenon we are studying?

The most obvious explanation is that our assumption that federal judicial districts constitute an appropriate unit of analysis for examining local legal culture in federal civil litigation is wrong. Some of our districts cover entire states (e.g., Oregon) and, with the possible exception of the District of Central California (Los Angeles), all our districts have multiple communities (typically including at least two cities of reasonable size). We do not have data available to try to identify the specific community of practice for every attorney in our sample; even if we did, the judges generally serve entire districts not specific communities (although in some districts federal judges may be assigned to particular "divisions" based in specific cities), and it is common for attorneys from the same district who are litigating a case to be from different cities or towns. In summary,

federal judicial districts may not be local enough for local legal culture to function.

This is a tempting explanation, but it runs directly counter to the initial work of Church and his colleagues that led to the development of the local legal culture construct. Specifically, the core statistical analysis that Church et al. (1978:56) used as a tentative validation of local legal culture was a comparison of pace of *civil* litigation in state and federal courts. For each of 17 large cities, the civil disposition time and time to trial for the state court were correlated with the corresponding figures for the federal judicial district that contained the city; the resulting correlations were .603 (r^2=.364) for disposition and .493 (r^2=.243) for trial. Several of these federal judicial districts were statewide (e.g., Oregon, Arizona, New Jersey), and all of them included areas much wider than those of the urban state court.

This early analysis of delay seems to suggest both that federal judicial districts are appropriate units for studying local legal culture and that local legal culture is a useful construct for understanding at least some aspects of the civil justice system. Unfortunately, there is a flaw in this statistical analysis that undermines such a conclusion. After reexamining Church et al.'s data,[25] we have doubts as to whether those data actually show a relationship between pace (either disposition time or time to trial) in state court and pace in federal court. For each of their two indicators Church et al. had only 17 observations, and they failed to consider the possibility that the apparent relationships resulted from one or two extreme cases. When we applied a set of tools for identifying influential observations, referred to as "regression diagnostics" (see Fox 1991), to the same data, we discovered that for each measure of pace, there was a single extreme case that accounted for the statistically significant correlation; when we dropped out those cases (Boston for the civil disposition time indicator and Bronx County for the time to trial indicator), the r^2s dropped precipitously (to .143 for the time to disposition and .100 for the time to trial indicator), neither of which is statistically significant.[26] Thus, we find that there is *not* a correlation between pace in state courts and pace in federal courts.[27] The absence of such a correlation brings us right back to the dilemma of whether there is a problem in our selection of geographic units.

The following speculations lead us to the hypothesis that

[25] These data appear in their report (Church et al. 1978:56).

[26] If one looks at r^2s adjusted for degrees of freedom, the drop is even sharper: from .32 to .08 for disposition time and from .19 to .04 for time to trial.

[27] Our analysis is consistent with that reported by Grossman et al. 1981, which did not find evidence of consistency in the pace of litigation in the state and federal courts of the five federal judicial districts they examined.

the important distinction here is *not* unit of analysis but important differences in the civil and criminal justice systems. The thrust of much of the research on criminal courts over the last decade and a half (see Eisenstein & Jacob 1977; Heumann 1978; Nardulli 1978; Mather 1979; Utz 1978; Eisenstein et al. 1988; Nardulli et al. 1988; Flemming et al. 1993; McIntyre 1987) has been on the relatively small group of core players who work with one another on a regular, day-in, day-out basis. This type of structure facilitates, perhaps even ensures, that a common set of expectations will develop among the regular participants. We expect that if one focused on the criminal side of the *federal* justice system, one would find something closely resembling the local legal cultures or "court communities" described in previous research on state criminal courts: there is a small group of judges, prosecuting attorneys (assistant U.S. attorneys), and public defenders who interact on a very regular basis who has evolved a set of expectations concerning appropriate ways of handling cases; furthermore, there is almost certainly movement of personnel across the prosecution/defense line on a regular basis. Thus, it is probably not the nature of the geographic community that affects formation of local legal cultures; rather, it is the regularity of interaction and the movement of players among different roles.

This type of highly regularized, day-in, day-out interaction is not a feature of civil litigation in federal courts (and, with the possible exception of divorce cases, probably not in state courts either), resulting in the absence of the type of small group of core players who dominate the work of a criminal court.[28] Civil practitioners tend to be independent entrepreneurs (usually organized into firms—see Kritzer 1990:44), as opposed to having strong "sponsoring organizations" (see Eisenstein & Jacob 1977; Eisenstein et al. 1988); and the judges do not need to be involved at all in the disposition of cases, unlike at least the formal requirement of sentence ratification in criminal cases.[29] While some research on the civil justice system has suggested individual-to-individual linkages (e.g., plaintiffs' lawyer and claims adjuster—see Ross 1980:82; Carlin 1962:78), even that work has not gone to the level of suggesting the existence of workgroups or communities.[30] In fact,

[28] This is not to say that there are no coherent groups that might form a "community"; plaintiffs' lawyers in a particular state court may well comprise a community, but the community does not encompass the full group of players Nardulli (1978) labeled the "courtroom elite."

[29] One exception might be divorce litigation, where the court must formally approve the settlement and grant the divorce decree, but this type of litigation does not occur in the federal courts.

[30] While Kritzer (1990:68–76) uses the "workgroup" terminology in his study of litigators, he reports little that approaches the strong linkages found in the criminal justice arena.

there is a clear literature suggesting conflictual relationships between plaintiffs' lawyers and the civil defense bar (see Watson & Downing 1969; Lipson 1984; Jackson & Riddlesperger 1991);[31] there is little or no research on the criminal justice system suggesting a hostile relationship between prosecutors and defense attorneys.[32] Lastly, while there is substantial movement between criminal defense and prosecution work, there is little similar movement among civil litigators, perhaps due to the tendency for a lawyer doing civil work to come to identify with the side he or she regularly represents (with a concomitant perception that the other side is often unreasonable). Thus, it is likely that the kinds of conditions in the criminal justice system that lead to the formation of "local legal cultures" do not exist, at least to the same degree, on the civil side.[33]

Of course there are alternative ways of interpreting the statistical results we have reported. Perhaps actions connected to Rule 11 are not related to local legal culture while other factors in the civil justice system, such as damage amounts or pace of litigation, are. Particularly in light of our reanalysis of Church et al.'s data, we know of no evidence showing a local legal culture effect for the pace of civil litigation. And, with regard to "going rates," in the civil arena it is not the members of the court community (if one can be said to exist) but outsiders—jurors—who establish the going rates. While yet other aspects of civil practice (e.g., settlement styles, pleading and motions practices, etc.) might be linked to local legal culture, we know of no evidence of such linkages.

One might look at our results and point to the types of activities where district level effects remain (filing motions and declining cases) and argue that they do constitute evidence of a need to look for local legal culture effects. Perhaps local legal culture operates in very specific ways, and rather than looking at the failure of most of the types of Rule 11 activities to be related of district after controlling for the other variables, we

[31] One minor indicator of this in our own data is found in the response to our open-ended question, "What is the biggest impact, if any, of the sanctioning provisions of Rule 11 on your practice?" Among those lawyers responding to this question who indicated that they largely represented plaintiffs, 21.7% said that civility had decreased and only 7.4% said that civility had increased; in contrast, among defense lawyers, almost equal numbers said that civility had increased (15.9%) and that civility had decreased (15.3%).

[32] Even where there is no workgroup, as in white-collar defense (see Mann 1985), there appears to be little hostility, perhaps because of the pattern of movement from prosecution to defense work (i.e., prosecutors and defense lawyers are likely to be former colleagues).

[33] The one point where there does appear to be some indication of localized expectations has to do with the appropriate pace of civil litigation. As we noted earlier, the core finding that Church et al. (1978:56) cite is the correlation between disposition time in *civil* cases in state and federal courts; Sherwood & Clarke (1981) report consistent attitudes about appropriate pace, but they look at only one locale, so it is difficult to assess whether this is a function of local legal culture.

should focus on the fact that some effects do show up—why dismiss what might be a half-full glass? In fact, in Table 1 we showed what amounted to an almost full glass, and it was our ability to empty much of it that we found most impressive. Without more data, we cannot definitively dismiss the possibility that the declining of cases due to Rule 11 or the filing of Rule 11 motions is at least partly a product of local legal culture.

In fact, our analysis suggests a number of interesting questions concerning local legal culture, and its applicability to the analysis of civil justice process:

- Within the criminal justice context, can local legal cultures, or court communities, exist in fairly large geographic areas such as federal judicial districts? Can the types of findings produced by research in state criminal courts be replicated in the federal criminal courts?
- Can we find evidence of local legal cultures or court communities operating in state court civil justice systems in either large or moderate size urban communities?
- What types of behaviors can and cannot be influenced by local legal cultures or the informal norms of court communities?

These and other questions suggest opportunities for research on the criminal and civil justice systems.

Appendix

The complete set of logistic regression results is shown in Table 5; while local legal culture, as we have defined it, does not seem to account for significant variation in Rule 11–related behavior, a number of our control variables do. First, not surprisingly, the strongest most consistent effect is for percentage of practice devoted to federal litigation: those who spend more time on federal litigation are more likely to have experience with Rule 11. None of the other variables produces a consistent effect across the range of Rule 11 activities. Area of specialization is significant for only experience with cases in which sanctions were imposed, and there it is civil rights specialists who stand out as most likely to have been involved in such cases (this may be consistent with some of the concerns raised about the use of Rule 11 in civil rights cases, but it is surprising that civil rights did not stand out in other in-court activities); civil rights plaintiffs' lawyers stand out, over and above even other plaintiffs' lawyers in the likelihood of declining cases due to Rule 11. Size of practice stands out with regards to declining cases (with very small firm or solo practices more likely to decline cases), even after controlling for the plaintiff/defense lawyer split.

Circuit and type of district effects, controlling for the other variables in the equation, vary depending on the type of activity involved. There are significant circuit effects for motions, out-of-court references, and declining cases; there are significant type of district effects for motions and out-of-court references; neither effect is significant for experience with cases in which sanctions were actually imposed, in-court references, or anticipatory re-

Table 5. Logistic Regression Analysis

	Sanction Imposed			Motion for Sanction			In-Court Reference			Out-of-Court Reference			Anticipatory Response			Declined a Case		
	b	*s(b)*	Wald	*b*	*s(b)*	Wald	*b*	*s(b)*	Wald	*b*	*s(b)*	Wald	*b*	*s(b)*	Wald	*b*	*s(b)*	Wald
Usual Circum.			.8762			12.5688*			3.8896			.6691			4.7739			9.1717*
Seventh	.2743	.2939	.8708	−.6859	.1951	12.3618*	.3765	.1933	3.7926	−.0455	.1771	.0661	−.1339	.1769	.5735	.1044	.2105	.2460
Ninth	.1899	.3170	.3590	−.2719	.2007	1.8364	.1706	.2092	.6647	−.1523	.1908	.6374	−.4143	.1926	4.6249*	−.5952	.2497	5.6827*
Type of district			1.0089			9.5517*			1.5603			6.3426*			3.4546			4.1214
Urban	.3578	.3669	.9509	−.7969	.2617	9.2752*	.2451	.2458	.9939	.1611	.2153	.5598	.1129	.2150	.2758	−.2283	.2666	.7335
Nonurban (Lg. urban)	.0767	.4352	.0310	−.1404	.2658	.2792	−.0944	.2907	.1055	−.4931	.2525	3.8147	−.3752	.2563	2.1433	.3664	.2731	1.8004
Normal side			1.8278			2.2321			1.1133			2.3278			2.0560			23.8269*
Plaintiff	−.2124	.2560	.6885	−.2228	.1572	2.0102	−.1430	−.1532	.8709	−.0276	.1355	.0413	−.1247	.1378	.8189	−.0615	.1523	.1632
Defendant (Mixed)	.1445	.2065	.4897	−.0096	.1358	.0050	−.1080	.1350	.6399	−.1823	.1236	2.1757	−.1722	.1257	1.8750	−.7662	.1627	22.1741*
Practice			.2127			.6000			4.8325			8.3948			3.4311			15.6460*
Tiny/solo	.0529	.2161	.0599	.0083	.1412	.0034	−.2873	.1425	4.0648*	−.3227	.1239	6.7872*	−.0606	.1254	.2337	.5277	.1359	15.0749*
Big Firm (Other)	−.0827	.2306	.1287	.1157	.1495	.5983	.0942	.1480	.4050	−.2182	.1408	2.4019	.2418	.1410	2.9423	−.0404	.1872	.0465
✓ % federal litigation	.1723	.0348	24.5432*	.2630	.0234	126.1820	.2230	.0229	94.7080*	.2259*	.0211*	115.0290*	.1675	.0211	63.1423*	.1267	.0251	25.5154*
log Years of practice	.1424	.1280	1.2370	−.1190	.0829	2.0598	−.0793	.0818	.9392	.1079	.0754	2.0488	−.0069	.0761	.0083	.1516	.0923	2.6986
50% or more			11.0419*			1.7719			6.8528			2.2705			6.1242			4.2556
P.I.	.1194	.2593	.2119	−.1345	.1611	.6976	.2133	.1607	1.7614	.2016	.1397	2.0822	.0774	.1434	.2915	.2672	.1667	2.5699
Civil rights	.8682	.2766	9.8515*	.1387	.2014	.4741	.2753	.2041	1.8184	.1695	.1865	.8261	−.0683	.1965	.1210	−.2035	.2648	.5910
Commercial (Other/none)	.2054	.2372	.7497	−.0028	.1461	.0004	.3786	.1462	6.7092*	.0887	.1337	.4397	.2883	.1339	4.6344*	.0977	.1624	.3620
Civil rights plaintiff	.1067	.4285	.0620	.3837	.3121	1.5112	.4593	.3090	2.2094	.4689	.2847	2.7129	.7840	.2920	7.2091*	1.3921	.3382	16.9484*
District			5.3938			13.9720*			5.6569			7.7659			7.3515			16.5774*
Arizona	−1.0268	.5354	3.6786	.4123	.3479	1.4044	−.5610	.3353	2.8003	−.7135	.3015	5.6014*	−.2284	.2998	.5804	.9573	.3695	6.7136*
Montana	−.8239	.6117	1.8139	−.3352	.3592	.8706	−.3461	.3781	.8381	−.3938	.3413	1.3312	.1568	.3397	.2131	.0145	.3844	.0014
Oregon	−.9720	.5117	3.6073	.5247	.3367	2.4285	−.6579	.3297	3.9819*	−.4399	2921	2.2684	−.6076	.3031	4.0186*	.6312	.3729	2.8655
E. Calif.	−.7959	.5970	1.7774	.2987	.3927	.5788	−.4245	.3731	1.2943	−.1975	.3283	.3622	−.2710	.3390	.6390	.0865	.4453	.0378
W. Wisc.	−.1237	.5669	.0476	−.3588	.4109	.7625	−.3412	.3891	.7688	−.0233	.3468	.0045	−.1302	.3559	.1339	−.4737	.3881	1.4897
S. Ind (Others)	−.3655	.4747	.5928	1.0570	.3450	9.3892*	−.6755	.3280	4.2400*	−.2207	.2892	.5820	−.4744	.2958	2.5731	−.2066	.3685	.3145
Constant	−4.0069	.4887	67.2306	−1.6898	.2980	32.1619	−2.2352	.3037	54.1529	−1.6835	.2749	37.5067	−1.3435	.2755	23.7808	−2.4848	.3350	55.0189

* Statistically significant at .05 level or better.

sponses. We are somewhat confused by the results for anticipatory responses because if we take all the district-related variables together (circuit, type of district, and individual district), they indicate significant variation among the districts after controlling for the nondistrict variables; we should note that two of the individual effects within the district-related variables are significant, and this may indicate a complex set of interrelationships among type of district, circuit, and individual district.

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