Introduction, "Issues in Civil Procedure: Advancing the Dialogue"

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The challenges facing the judiciary in this country have increased dramatically over the past two decades. Civil and criminal filings have grown at a pace that far outstrips any growth in the number of judges or judicial resources. The burden of case backlogs has become ponderous. The complexity of cases has increased, with the emergence of mass toxic torts as perhaps the most striking example. Multiple plaintiffs and defendants, sometimes in the hundreds or even thousands, coupled with highly technical scientific and engineering issues, have posed new demands on the management skills and intellectual resources of the judiciary.

At the same time, the litigation process has been the subject of unprecedented scrutiny. Though our civil justice system continues to serve as a central institution of social control, research has produced compelling empirical evidence of inefficiencies and extraordinary costs. This new information represents considerable progress toward a better understanding of the system, but it has substantially heightened public concern with its inner workings, increasing pressure on the judiciary to find and implement reforms.

Many procedural experiments have been launched, in some cases by state court systems or federal district courts, in others, by innovative, individual judges. Several hold considerable promise. Assessing their impact, however, is not an easy matter. Procedural reforms often attempt to change the behavior of litigants and judges in ways that improve efficiency while enhancing or at least not endangering fairness. Yet, it is an unavoidable reality that such efforts to modify behavior may have unintended consequences. Furthermore, studying the effects of procedural reforms is always confounded by the unique nature of each case and the difficulty in setting up a control against which one can measure any gains in efficiency or equity. As a
consequence, the effects of changes in procedure are often difficult to predict and sometimes even difficult to evaluate after the fact.

It is in this context that Yale Law School’s Program in Civil Liability, the Connecticut Bar Foundation, and Aetna Life & Casualty joined to convene a group of judges, academics, practicing lawyers, and business people to participate in a day and a half Symposium. This Symposium, “Issues in Civil Procedure: Advancing the Dialogue,” was designed to draw upon the vast experience and educated judgment of the most knowledgeable participants and students of the system. The papers commissioned for that Symposium, contained in this issue of the Boston University Law Review, range from the highly conceptual to the very concrete. The Symposium interchange was lively, sometimes heated, and consistently provocative. In the months following the Symposium, it has become clear that the papers and the Symposium discussion have stimulated and advanced changes that many hope will substantially improve the litigation process.