Research Note

THE RELATIVE SIGNIFICANCE OF DISPUTING FORUM AND DISPUTE CHARACTERISTICS FOR OUTCOME AND COMPLIANCE

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In a recent study of small claims mediation and adjudication in an Ontario court, Vidmar introduced the concept of "admitted liability" (1984). He argued that it is this case characteristic and not the forum type that accounts for the greater likelihood of accommodative settlements in mediation than in adjudication, as well as the higher rates of compliance with mediated outcomes. This article reanalyzes some of Vidmar's data in conjunction with both previously reported and new data about small claims cases in Maine. We conclude that the forum type remains a stronger predictor of case outcome and compliance than any case characteristic. However, the data do support Vidmar's alternative hypothesis that case characteristics help specify the relationships between forum type, on the one hand, and outcome and levels of compliance on the other.

In a recent paper in the *Law & Society Review*, Vidmar (1984) made a substantial contribution to our understanding of the characteristics of disputes and the ways in which they influence the outcomes of the disputing process. His data, drawn from a small claims court in Ontario, demonstrate the significance of a variable that he calls a "dimension of admitted liability." He observes that some disputes over money go forward even though the defendant admits to owing some part of the amount at issue. For example, a claim in court for $750 may in fact involve a dispute over only $250 if the defendant concedes owing $500 but contests the rest. Thus an outcome requiring the defendant to pay $500 would constitute a victory for that defendant with regard to the amount of money actually in dis-

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pute. These cases of partial liability differ from those of "no liability" where the defendant contests the full amount of the claim. Vidmar therefore criticizes the typical assessment of case outcome used by us and others in small claims research. To measure outcomes as the amount of settlement or judgment in relation to the amount of the claim ignores the dimension of admitted liability. Instead, Vidmar contends, one should gauge outcomes in relation to the amount actually in dispute.

Vidmar's important insight about the definition of a dispute led him to challenge a number of common contentions about small claims courts and about the significance of the type of disputing forum as opposed to dispute characteristics for both the outcomes of disputes and compliance with outcomes. We believe that his use of the admitted liability concept to help identify winners and losers in small claims courts provides a useful addition to much earlier work on this topic, including our own work on Maine (see McEwen and Maiman, 1981; 1984). However, we are not persuaded by Vidmar's argument that the dispute characteristics outweigh type of dispute forum in importance for outcome and compliance. It is this latter issue that we address here.

First, Vidmar argues that "case characteristics may not explain everything but they explain a great deal" of the variation in case outcomes (1984: 542). He asserts that the forum type—whether it is settlement in, before, or after a mediation session or judgment after trial—does little to predict whether the outcome is all or nothing of the disputed amount (binary outcome) or an intermediate figure (accommodative outcome). In contrast, he argues, the presence or absence of partial liability predicts these binary and accommodative outcomes quite well.

Second, Vidmar contends that "to the extent that there is compromise and compliance (as a consequence of mediation), it can be partly ascribed to admitted liability characteristics" (ibid., p. 515) of the cases that go to mediation. He shows that in the Ontario court he studied partial liability cases were more likely to be mediated (74%) than were so-called no liability cases (51%). This self-selection of cases along with several other competing explanations leads Vidmar to suggest that consensual processes might be less significant in generating compliance than we had previously argued. In a later article he proposes that "the foot in the door" principle works on defendants in partial liability cases. That is, "they have already conceded an obligation to pay something," and this "should induce pressure for compliance" (1985: 131).

Vidmar's critical stance toward other research on outcome

and compliance tends to disguise the striking similarity between his results and ours. In our opinion, a careful analysis of Vidmar's data alongside our own does not support his view that process is insignificant. However, such an analysis does provide strong evidence for Vidmar's hypothesis that an interaction between dispute characteristics and disputing process might account for our collective findings.

I. DISPUTE CHARACTERISTICS, PROCEDURES, AND OUTCOMES

Let us begin by examining data about outcome. Vidmar attempts to show in his original Table 4 (1984: 539) that "the degree of admitted liability is a crucial determinant of whether an intermediate [accommodative] outcome will be achieved" (ibid., p. 541). Whether the case was mediated or adjudicated, he argues, is significantly less important. Table 1 shows Vidmar's data for Ontario and our own for Maine on outcome type—both binary and accommodative—by procedure for deciding the case.[1] We have excluded from the analysis the settlements that were reached before or after mediation and simply contrasted mediated and adjudicated outcomes. At the top of the table, where both Ontario and Maine data are presented, outcome is defined, in the simplistic manner criticized by Vidmar, as the percentage of the claim filed that is represented by the total award. At the bottom of the table, where only Vidmar's Ontario data are presented, outcome is computed with the amount in contest—not the amount of the claim—as the base. When all the Ontario cases are examined together using this base for measuring outcome, the results are only modestly different from those obtained by using amount of claim as the base. Mediation still appears to be much more likely to yield accommodative outcomes (63%) than adjudication (25%). Vidmar's insight about the dimension of admitted liability, however, helps us elaborate this relationship between forum and outcome.

This presentation of data, when compared with Vidmar's own Table 4, more clearly establishes the basis for his argument that consensual processes are most likely to produce accommodative settlements in partial liability cases. In the language of Kendall and Lazarsfeld's elaboration model (1950; see also Babbie, 1983: 399–400), the admitted liability variable helps

[1] All of the cases examined in both studies were "contested." That is, both plaintiff and defendant appeared in court and resolved the case through mediation or adjudication. No defaulted cases were included in the analysis.

Table 1. Type of Outcome by Forum Type

	Forum Type			
	Ontario Data		Maine Data	
	Mediation	Adjudication	Mediation	Adjudication
All Cases				
Type of outcome computed with reference to total claim				
Binary	27%	69%	24%	66%
Accommodative	73%	31%	76%	34%
N	41	73	118	232
Type of outcome computed with reference to amount in dispute				
Binary	37%	75%		
Accommodative	63%	25%		
N	41	73		
Partial Liability Cases				
Type of outcome computed with reference to amount in dispute				
Binary	27%	69%		
Accommodative	73%	31%		
N	29	23		
No Liability Cases				
Type of outcome computed with reference to amount in dispute				
Binary	58%	78%		
Accommodative	42%	22%		
N	12	50		

to specify the relationship between forum type and outcome. That is, the relationship between forum and outcome is much stronger for partial liability cases than for no liability cases. As Table 1 here shows, binary outcomes dominate for both forms of resolution in no liability cases, although they are less likely after mediation (58%) than adjudication (78%).

Adjudication is not responsive to the differences between partial and no liability cases; accommodative settlements, although they occur through adjudication, are not much more likely in partial liability cases (31%) than in no liability cases (22%). By contrast, consensual processes *are* responsive to differences in case characteristics. Although the sample size is

small, Vidmar's data provide support for the "interaction effect" (or specification) hypothesis that he poses as an alternative to the supposition that "case characteristics dwarf procedures in their importance for outcomes" (ibid., p. 548).

Another interpretation of the data, however, suggests that procedures dwarf case characteristics even in this "interaction." Vidmar reports in a footnote that "it is worth mentioning that the referee frequently assumed a quasi-judicial role. Sometimes the referee sided wholly with one party on legal or factual grounds. In some instances unrepresented parties would refer to the referee as 'Your Honor' or by other behaviors indicate that they believed the referee was a judge" (ibid., p. 547, n. 22). It is not surprising, therefore, that he found that "in the 67 percent of the no liability cases settled after the hearing, the plaintiff just abandoned the claim. The hearing usually made it clear that the plaintiff had no claim" (ibid., p. 541). It appears that in the no liability cases the referee was particularly likely to abandon the mediative role and adopt that of a judge. This had a direct effect on the likelihood that a binary resolution would be reached either in or after a hearing. Thus, even if the forum in which these outcomes were achieved was nominally mediation, the process used to achieve them was sometimes more akin to adjudication.

Vidmar's concept of admitted liability thus helps to pinpoint variations in the way that mediation is carried out. Other mediation programs may be less likely to adopt an adjudicative posture, however. Certainly our observations of Maine mediation sessions showed that although mediators were at times judgmental on issues, they almost never adopted a judicial role with regard to the case outcome.

We can conclude from Vidmar's data on outcome, in combination with our own, that (1) consensual processes—especially mediation—are more responsive to the admitted liability dimension of cases than is adjudication; (2) forum types should not be confused with the processes that occur in them, and, indeed, in particular types of cases some mediators may judge and some judges may mediate; and (3) the procedure that is adopted for hearing a case has a substantial effect on the character of its outcome.

II. PROCESS, CASE CHARACTERISTICS, AND COMPLIANCE

One of the most striking aspects of Vidmar's data is the close correspondence between his findings on rates of compli-

ance with settlements and our own (see Table 2). The essentially simultaneous discovery of similar results by independent research teams in widely differing locations is noteworthy in itself (Merton, 1973). Vidmar acknowledges this close correspondence in data but challenges, at least inferentially, our interpretation of the results we shared in finding. In particular, he questions that part of our explanation that asserts that consensual processes are more legitimate and psychologically binding than authoritative forms of decision making. Once again the thrust of his argument is that forum type is less important than we had previously argued.

Vidmar's first alternative explanation rests on the observations that in the Ontario court he studied partial liability cases were significantly more likely to be settled through mediation than were no liability cases, and their settlements were also much more likely to elicit compliance. Thus, self-selection of cases might account for the higher rates of compliance after mediation.

Table 2 provides support for this argument. Consensual settlements are twice as likely to be complied with (100%), at least in part, as are court judgments (48%) in cases in which the defendant denied liability completely. The contrast is far less dramatic for partial liability cases (93% versus 84%). What this pattern of findings suggests, however, is not that the relationship between forum type and compliance disappears when controlling for admitted liability, but rather that the impact of forum type on compliance is more pronounced for some cases—no liability cases—than for others.[2] Once again the dimension of admitted liability helps to specify the relationship between forum type and compliance.

In our research setting we did not face the same problem of self-selection that Vidmar encountered. Whereas all the cases in the court he studied were first screened through the referee's hearing process, many of the cases we studied went directly to adjudication in courts in which mediators either were not available or were too busy. Therefore, self-selection of partial liability cases through consensual process is unlikely to explain much, if any, of the differences in compliance rates between adjudicated and mediated cases in our data.

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[2] Unfortunately, Vidmar's data do not provide the strongest test of the impact of admitted liability because he does not report frequency of full compliance. However, he does report mean percent of debt paid for degree of admitted liability and forum type (see 1984: 543, Table 5). These percentages suggest that the effect of forum on outcomes of partial liability cases is at least as strong as the effect of case type on compliance among tried cases.

Table 2. Compliance with Settlement by Forum Type

	Forum Type			
	Ontario Data		Maine Data	
	Mediation	Adjudication	Mediation	Adjudication
All Cases				
Compliance level				
At least partial compliance	95%	61%	93%	67%
Noncompliance	5%	39%	7%	33%
N	38	46	114	173
Partial Liability Cases				
Compliance level				
At least partial compliance	93%	84%		
Noncompliance	7%	16%		
N	30	17		
No Liability Cases				
Compliance level				
At least partial compliance	100%	48%		
Noncompliance	0%	52%		
N	8	29		

On the other hand, Vidmar's identification of the admitted liability dimension may help us to respond to a question we could not address in our own research: Why were some adjudicated cases likely to lead to compliance while others were not? The answer may be, as Vidmar argues, the prehearing sense of obligation felt by defendants in partial liability cases. The greatest value of the admitted liability dimension may then be in understanding the variability in reaction of litigants to consensual and adjudicative processes.

Our analysis of the Maine data also partially accounted for one aspect of the causal model that is implicit in Vidmar's study, even though we did not have the foresight to measure the dimension of admitted liability. In effect Vidmar seems to argue that people who admit partial liability and have their claims recognized through mediation or adjudication will believe the outcome to be fair and, as a consequence, will be particularly likely to pay the debt. The force producing compliance in these cases is not the forum that created the settlement but the sense of obligation that preceded the dispute. In our analysis of the impact of forum on compliance, we controlled for the defendant's sense of the fairness of the outcome. Indirectly, therefore, we held constant the effects on compliance of

Table 3. Payment of Settlement under Voluntary or Coercive Circumstances, for Those Paying Some of Debt

	Forum Type			
	Ontario Data		Maine Data	
	Mediation	Adjudication	Mediation	Adjudication
Compliance Conditions				
Voluntary compliance	92%	52%	84%	51%
Coerced compliance	8%	48%	16%	49%
N	64	44	77	85

level of admitted liability, at least as the variable operated through its effect on fairness.

The effect of forum is even more evident when we examine data on voluntary and coerced compliance. Table 3 reports Vidmar's data and our own more recent findings (McEwen and Maiman, 1986)[3] on whether compliance preceded (voluntary compliance) or followed (coerced compliance) further legal action by the plaintiff. Once again the data are remarkable in their similarity. In this instance, however, Vidmar (1984: 543) reports that his data show no effect of admitted liability on type of compliance but substantial forum effect. Mediated cases are far more likely to lead to voluntary compliance than are adjudicated cases. These data in particular appear consistent with the contention that consensual processes enhance the legitimacy of an outcome and create their own psychological pressures for compliance.

Vidmar notes in addition that forces other than the special legitimating character of consensual decision making may have been at work in producing higher voluntary compliance rates for consensual processes. He observes for Ontario, as did we of the small claims process in Maine, that referees' hearings more often produced arrangements for payment than did adjudication. Clearly this only explains how the disputing processes

[3] In this follow-up study, we drew a random sample of 337 cases from the docket books of the district courts in Portland, Brunswick, Lewiston, Augusta, and Waterville, Maine (5 of the 6 courts included in our original study; see McEwen and Maiman, 1981). The sampling frame consisted of all cases listed as resolved through default, judgment, agreement, or mediation and that required some payment by the defendant. We undersampled defaulted cases, which were the most numerous in the docket. Interviews were conducted with a subsample of defendants in these cases. In all cases we attempted to gather data on compliance through the use of court records, telephone or personal interviews with plaintiffs, and telephone or personal interviews with defendants. Data on compliance roughly 18 months after the court date were obtained for 89% of the cases.

differ and produce differing effects on compliance. It does not suggest that process is unimportant. Our data also make clear that compliance with consensual decisions is higher than with authoritative decisions even in those cases in which payment arrangements are not made.

Ultimately, we come away from an examination of Vidmar's data and analysis with renewed confidence in our shared findings, aware of the potential variation in the effect of forum on cases with different characteristics, but convinced that forum remains an extremely important predictor of both case outcome and voluntary compliance. However, future research should examine in more detail the significance of variations in the ways that mediation and adjudication are implemented. Despite the broad similarities in our research findings, the mediation processes of the two court systems studied—Ontario and Maine—differ substantially. For example, the Ontario referees are more authoritative and willing to take on quasijudicial authority than are Maine's mediators. This makes it far more likely that Ontario plaintiffs will abandon their suits after a failed mediation than will Maine plaintiffs. Such variations in mediation style and their correlates await further study. Meanwhile it appears that whatever the trappings of mediation, consent is a significant force indeed for case outcome and voluntary compliance.

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