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Empirical Studies in Civil Procedure: A Selected Annotated Bibliography

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EMPIRICAL STUDIES IN CIVIL PROCEDURE: A SELECTED ANNOTATED BIBLIOGRAPHY

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I

Introduction

This annotated bibliography, as the title indicates, consists of citations to empirical studies in civil procedure. It also lists and describes significant literature which addresses the need, or offers suggested empirical methodologies, for research in civil procedure.

The nature of the literature in this area makes any attempt to compile an exhaustive bibliography undesirable for several reasons. The quality and quantity of research in each topic identified in this bibliography varies greatly. In many of the topics, comprehensiveness would have resulted in unnecessarily cluttering the bibliography with marginal research. Also, the absence of meaningful subject headings in the existing bibliographic indexing tools meant that some items would be overlooked. For these reasons we decided on a selective bibliography, one which would hopefully be more meaningful for the user.

In order to insure that no significant materials were overlooked we instituted a three-tiered approach in our search for applicable materials. It began with a search of the standard tools for bibliographic research. For periodical literature we searched the *Index to Legal Periodicals*, *The Current Law Index*, and several non-law-related periodical indexes. For treatises we searched the catalogs of Duke University, the publication lists of the major organizations involved in empirical research on the courts, and the Library Acquisitions List of the Dispute Processing Research Program at the University of Wisconsin-Madison Law School.

The second tier of our research involved an investigation of all the pertinent footnotes of those applicable materials we discovered in our initial search. The third tier involved a second search by authors' names of the previously examined literature indexes. Every name that came to our attention in the first two levels of research was examined to determine if he or she had published other applicable empirical studies. We then searched by author on the OCLC bibliographic utility to determine if we had missed any treatises.

As mentioned above, the most difficult decision in the compilation of this bibliography was the scope of coverage within the specific sub-topics identified. In some areas there was a great deal of research—in others much less. Quality varied greatly. As a result, different sections of the bibliography have different levels of comprehensiveness. Each sub-topic addressed in this bibliography contains an introduction setting the scope of the accompanying section.

Every entry considered for inclusion in this bibliography was examined at least twice to determine if it was of merit. We further limited the scope by deciding to include only those materials dealing with American civil procedure. Comparative articles were included only if they focused on the American system, or were of such importance to the literature as to warrant inclusion. While the scope of the bibliography was not limited by date of publication, the literature provided its own date cut-off, since little of merit was published prior to the 1960's.

To facilitate the use of this bibliography, three indexes (author, subject, and issuing organization) are included at the end of this bibliography. The entries are numbered consecutively and are generally listed in reverse chronological order, with the most recent article listed first. Where there are multiple articles with the same publication date, they are listed alphabetically. The index listing refers to the entry numbers.

It is the hope of the bibliographers that the long hours of work on this project will be of some use to the civil procedure researcher. We express a final word of thanks to our word-processing Svengali, Evelyn Holt-Fuller. Her patience and eye for detail made this project that much easier.

II

General Materials

This section includes general materials dealing either directly or indirectly with empirical studies in civil procedure that did not fit easily into other categories within the bibliography, as well as entries concerning theory and methodology used in civil procedure research.

The collection of methodology entries is not exhaustive, but has been gathered in an attempt to reflect the development of empirical methodology concerning civil procedure from as early as 1948 through the present. Some of the entries, although not pertaining directly to civil procedure, hold some value because they impact on civil procedure reform, and have been included because they may be of interest to the civil procedure researcher.

1. Lind, E. Allan, and Tom R. Tyler. *The Social Psychology of Procedural Justice*. New York: Plenum Press, 1988. 263 pp. Tables. References. Index.

The book presents a field of social psychology that views people as more interested in issues of procedure than issues of outcome; and it addresses the way in which their evaluations of experiences and relationships are influenced by the form of social interaction. The authors review current theory and research on procedural justice and explore the implications for legal, political, interpersonal, and work-related settings. Of specific interest to legal researchers are chapters four and five, which deal with procedural justice in law.

The study of procedural justice phenomena has used a variety of research methods: laboratory experiments, scenario studies, field experiments, field studies, and surveys. The authors discuss each method and consider its

strengths and weaknesses. This is an excellent resource that will aid a researcher in understanding the history, methodology, and current research within the procedural justice discipline.

2. Carroll, Stephen J. *Assessing the Effects of Tort Reforms*. Santa Monica, Cal.: The Rand Corporation, 1987. 72 pp. Tables. Appendix.

This report offers a framework for assessing the effects of tort reforms. It attempts to provide a coherent structure for systematic thought about how research can contribute to the policy debate over tort reform. The report has three purposes: to alert policymakers to the issues that need to be considered when assessing tort reform; to suggest the kinds of research needed to illuminate the major policy issues; and to offer some guidance to data collection efforts by identifying the kinds of data required to perform the needed studies.

Analysis of the effects of tort reforms involves comparison of states that have enacted the reforms of interest with states that have not. The Appendix lists the reforms that were enacted in each state in 1986.

3. Shubert, Gustave H. *Changes in the Tort System: Helping Inform the Policy Debate*. Santa Monica, Cal.: The Rand Corporation, 1986. 4 pp.

This paper contains selected extracts from the Institute for Civil Justice's *Report on the First Six Program Years*, April 1980-March 1986, drawing upon research conducted by the Institute's program of analysis of major policy issues related to the American civil justice system. Shubert finds beneath the studies on outcome, costs, and effectiveness a deeper problem: society's inability to decide whether it wants a compensatory system or a fault-based system.

4. Danzon, Patricia M. *Medical Malpractice: Theory, Evidence, and Public Policy*. Cambridge, Mass.: Harvard University Press, 1985. 264 pp. Index. Bibliography.

Danzon develops a theoretical framework to evaluate the existing medical malpractice system and proposed reforms, demonstrating how an appropriately defined rule of liability can in principle operate as a highly efficient substitute for more cumbersome regulation of the quality of medical care. Specifically, liability for negligence is a means of providing health care practitioners with efficient incentives for injury prevention when patients lack the information to choose and monitor the quality of care themselves.

Empirical data provide some evidence on the extent to which actual operation conforms to the theoretical ideal. Danzon then examines issues in malpractice insurance, analyzing the causes and solutions of the 1974-75 malpractice crisis, the efficiency of current malpractice insurance institutions, and the case for government intervention in the market. In the final part, Danzon discusses various proposals for changing the current system, including the restructuring of tort awards, shorter statutes of limitation, proposals to reduce litigation costs, and more radical proposals.

Danzon concludes that the fault-based system is worth retaining if the benefits, in terms of injuries deterred, exceed the costs of litigating over fault and other associated costs, such as defensive medicine. A full cost-benefit evaluation is impossible because one cannot measure the number of injuries that are prevented as a result of the additional care exercised by medical providers in response to the threat of liability. If, however, the tort system deters at least one injury of comparable severity for every injury currently compensated, the deterrence benefits outweigh the additional costs of the liability system. Though the system should be retained, it could be made more cost-effective through reforms such as restructuring awards, freedom of private contract, redefinition of the standard of care, and short statutes of repose.

5. Trubek, David M. "Where the Action Is: Critical Legal Studies and Empiricism." *Stanford Law Review* 36 (1984): 575-622.

While not addressing civil procedure or civil justice reform per se, the author presents an interesting discussion of the meaning of "empiricism" in the debate over Critical Legal Studies. Pages 579-88 may be of interest to a researcher attempting to critique empirical methodologies.

6. Boyum, Keith O., and Lynn Mather eds. *Empirical Theories About Courts*. New York: Longman, Inc., 1983. 284 pp. Bibliography. Index.

This collection, which grew out of a National Institute of Justice research program and includes chapters by a number of well-known social scientists, attempts to develop explanatory generalizations about courts based on empirical data. The book is divided into three parts: "Comparing Courts Across Time and Space"; "Understanding the Work That Courts Do"; and "Understanding How Courts Do Their Work." Contributing authors include, in addition to the editors, M.P. Baumgartner, Donald Black, Malcolm M. Feeley, Lawrence M. Friedman, Marc Galanter, Herbert Jacob, Samuel Krislov, Mark Lazerson, and Barbara Yngvesson.

7. Engel, David M. "Cases, Conflict, and Accommodation: Patterns of Legal Interaction in an American Community." *American Bar Foundation Research Journal* (Fall 1983): 803-74. Tables.

The study investigates patterns of civil litigation and judicial case processing in relation to indigenous patterns of social interaction, problem perception, and community life. It focuses on the civil case load of the "Sander County Court" (pseudonym), a trial court of general jurisdiction in a primarily rural county in Illinois. Research was conducted in three phases: (1) a detailed examination of the civil docket of the local trial court; (2) open-ended interviews with civil litigants whose names appeared in the docket sample; and (3) open-ended discussions with a group of "community observers." Together, the three segments of the study provide a comprehensive, cross-cutting view of civil parties, cases, processes, and outcomes in Sander County.

Although the study is limited to a small sample, it provides insight into the benefits to be obtained from investigating the complex relationships and interchanges that link local level trial courts to their communities.

8. Kaplan, Martin F. ed. *The Impact of Social Psychology on Procedural Justice*. Springfield, Ill.: Charles C. Thomas, 1983. 250 pp. References. Index.

This collection of essays reports systematic efforts to apply social science in general and social psychology in particular to procedural justice systems, policies, and practice. It is intended both as a state-of-the-art treatise, to be used by legal psychology students and researchers for reference, and as an aid to practice by legal professionals. The authors have made an effort to go beyond suggestions that "more research is needed on . . ." and "this research has implications for . . ." to reporting successful and unsuccessful applications to policy and practice.

Although this volume is not directly concerned with civil procedure or civil justice reform, it provides insight into psychological factors which may have great impact on civil justice reform. Of specific interest to a researcher in federal court policy and procedure is Chapter 3, entitled "Substantive Contributions to Federal Court Policy and Procedures," which concerns the Federal Judicial Center, jury instructions, court-annexed arbitration, and juries and complex litigation.

9. Trubek, David M., Joel B. Grossman, William L.F. Felstiner, Herbert M. Kritzer, and Austin Sarat. *Civil Litigation Research Project Final Report*. Madison, Wis.: Civil Litigation Research Project, 1983. 532 pp.

This three-volume work is a summary of findings of the Civil Litigation Research Project, a study commissioned by the Federal Justice Research Program of the United States Department of Justice. The Project was conceived as a series of related inquiries into civil litigation and other forms of handling civil disputes.

The data base includes information from the court records of 1659 cases in state and federal courts; information from the institutional records of cases sampled from various alternative dispute processing institutions; a screening survey of households; and surveys of lawyers, litigants, organizations, and disputants identified by the screening survey.

Volume I of the final report describes the collection and archiving of the data base, and the overall theoretical perspectives used in its design, collection, and analysis. Volume II contains the core of the analysis undertaken. It includes descriptive statistics on the lawyers in the data base and their cases, the construction and empirical analysis of a model explaining time investment of lawyers, and an assessment of the costs of civil litigation compared with its benefits. Volume III contains the papers that resulted from the early theoretical work of the project, including those published in the *Law & Society Review*, as well as a number of subsidiary empirical analyses undertaken during the contract period.

10. University of Wisconsin Law School Disputes Processing Research Program. *Civil Justice and Disputes Processing: Five Years of Research at the UW-Madison 1977-1982*. Madison, Wis.: Disputes Processing Research Program, 1983. 22 pp.

This report seeks to reflect on the experience gained during the five-year operation of the University of Wisconsin-Madison Disputes Processing Research Program ("DPRP"). The Program blends the concerns of judicial administration and traditional legal scholarship with the theories and research methods of the social sciences.

Individual projects undertaken by DPRP are summarized, presenting their most general aspects and important findings. Publications, colloquia, conferences, working papers, and reprint series are listed as well.

11. FitzGerald, Jeffrey. *A Comparative Empirical Study of Potential Disputes in Australia and the United States*. Madison, Wis.: Disputes Processing Research Program, 1982. 82 pp. Tables.

This working paper is a report of a comparative, cross-national study aimed at exploring and explaining patterns of disputing in seven categories of grievance which are potentially litigable in the United States and Australia. The data analyzed in this study come from two household dispute surveys: one conducted in the United States during 1980, as part of the Civil Litigation Research Project (details of survey published in Miller and Sarat, 1981; Kritzer, 1981; Trubek, 1981), and the other conducted in Australia in 1981-82. The authors discuss the differences and similarities generally and within subject-specific areas.

12. Loewen, James W. *Social Science in the Courtroom: Statistical Techniques and Research Methods for Winning Class-Action Suits*. Lexington, Mass.: Lexington Books, 1982. 234 pp. Tables.

Social Science in the Courtroom helps attorneys learn how and when to use expert witnesses and teaches social scientists how to become more effective in their courtroom appearances. Loewen does not specifically address civil procedure reform or management, but provides useful information in such areas as how social scientists and lawyers can work together and the nature of statistics and research.

13. Menell, Peter S. *A Note on Private Versus Social Incentives to Sue in a Costly Legal System*. Law and Economics Working Paper Series, Working Paper no. 2 (1982): 1-20. Tables. References.

This note analyzes whether the costs of litigation result in a non-optimal number of suits. A model is presented in which one party (the injurer) chooses a damage level taking into account that if the damage to the victim exceeds the victim's litigation costs suit will occur. The author demonstrates that the injurer will "internalize" the victim's litigation costs in such a way that suit will only occur when the benefit of suit (the resulting efficiency gain) exceeds the total social cost (the sum of litigation costs). Thus, when the conditions stated in the paper are valid, there is no divergence between the

private and social incentives to sue. Applications of the analysis are also discussed.

14. P'ng, I.P.L. *A Model of Suit, Settlement and Trial in the United States Legal System*. Law and Economics Working Paper Series, no. 5. Stanford, Cal.: Law and Economics Program, Stanford Law School, 1982. 24 pp.

This paper develops a model of strategic behavior in litigation: It reveals how information is exploited, and how the litigants' strategies are interdependent. The model is analyzed to derive conditions on the parameters under which a lawsuit is filed, an action is settled, and an action is tried. Further, the model is applied to study the question of whether there is excessive litigation in the United States legal system. In certain cases, the outcome of litigation does not satisfy private efficiency—that is, ignoring effects on the rest of society, it is not efficient for the litigants.

15. *Experimentation in the Law: Report of the Federal Judicial Center Advisory Committee on Experimentation in the Law*. Washington, D.C.: Federal Judicial Center, 1981. 134 pp. Tables. Index. Appendix.

This report, commissioned by the Federal Judicial Center Advisory Committee, addresses so-called “program experiments” within the justice system. A program experiment is an alteration in the actual operation of the justice system designed to show whether such an alteration would be an improvement over the status quo.

Several questions are raised and explored regarding whether a program experiment should be undertaken: Do the circumstances justify consideration of a program experiment? What experimental designs will be adequate to produce the required information? What ethical problems might these experimental designs present, and how can they be resolved? And what authority and procedures are necessary for undertaking the experiment? The report suggests an approach to analyzing the questions that will help ensure socially responsible answers.

The appendix, which is divided into several sections, provides an overview of empirical research methods used to assess the effects of an innovation in the justice system. Section I is an introduction. Section II discusses the construction and timing of interventions and observations to increase the likelihood that a study will yield unambiguous information on whether an innovation caused a particular effect; this strategy is referred to as the “research design.” Section III concerns measurement of potential program effects; it deals with issues such as sources of error in measurement and the crucial question of whether an evaluation can speak at all to the questions on which ultimate policy decisions must be based. Section IV discusses interpretation of the results of an evaluation, focusing on issues that must be considered to give meaning to the raw data of the research. Section V addresses means to preserve the privacy of individuals studied in the course of the evaluation and the confidentiality of their responses and comments.

16. Levin, A. Leo. "Research in Judicial Administration: The Federal Experience." *New York Law School Law Review* 26 (1981): 237-62.

This essay focuses primarily on research in a special setting—within a judicial system—designed for the improvement of judicial administration. The author argues that research is the indispensable ingredient of any sustained effort to improve judicial administration.

To illustrate his premise, Levin provides an in-depth review of the Federal Judicial Center. The Center was created by Congress in 1967, and was charged with the obligation to conduct research and study the United States courts, focusing on effective and ineffective in-house research. This article is particularly useful in understanding the role and methodology of the Federal Judicial Center in relation to reform and improvement of judicial administration. It stresses, in conclusion, that increased "productivity" cannot be measured in terms of case dispositions alone, but must be measured against ultimate goals.

17. McIntosh, Wayne. "150 Years of Litigation and Dispute Settlement: A Court Tale." *Law & Society Review* 15 (1980-81): 823-48.

This article examines the behavior of civil litigants in a state general jurisdiction trial court from 1820 to 1970. It focuses on whether the dispute resolution function of courts diminished with social and economic development and rising litigation costs. The data consist of case records, sampled at fifteen-year intervals, from the Circuit Court of St. Louis, Missouri. The author finds that neither socioeconomic development nor increasing costs of litigation have withered the dispute resolution function of the St. Louis court.

18. Rosenberg, Maurice. "Civil Justice Research and Civil Justice Reform." *Law & Society Review* 15 (1980-81): 473-83.

This article emphasizes the importance and increase of empirical research in the reform of civil justice. It focuses on the administration of justice through case-by-case adjudication in non-criminal matters, including dispute resolution by alternatives to courts as well as by judicial process.

The author explores why empirical research is vital to soundly conceived reform of civil justice, offers examples of its use, and examines the new imperatives for effective research on the administration of civil justice.

Although somewhat dated, this article offers a sampling of the many empirical questions about civil justice topics that await illumination by systematic inquiry.

19. Shavell, Steven. *The Social Versus the Private Incentive to Bring Suit in a Costly Legal System*. Cambridge, Mass.: Harvard Law School, 1981. 17 pp.

A model is proposed, but not empirically applied, to test the relationship between the incentive for a private party to bring suit and what would be "socially appropriate" given the costs of use of the legal system.

20. Trubek, David M. "Studying Courts in Context," *Law & Society Review* 15 (1980-81): 485-501.

This article is an introduction to an issue comprised of papers resulting from the early stages of the Civil Litigation Research Project ("CLRP"). Trubek discusses the history and purpose of the project, its goals, and some conclusions resulting from the early empirical studies regarding successful and unsuccessful research methodologies.

21. Lind, E. Allan, Bonnie E. Erickson, Nehemia Friedland, and Michael Dickenberger. "Reactions to Procedural Models for Adjudicative Conflict Resolution." *Journal of Conflict Resolution* 22 (1978): 318-41. Tables.

This article reports findings of a cross-national experimental study examining perceptions of four procedural models for adjudicative conflict resolution conducted in four countries—the United States, Britain, France, and West Germany—whose legal procedures are based on differing adjudicative models.

One hundred seventy-eight subjects rated the four models on a number of dimensions, including their preference for using the model for settling a conflict, the fairness of the model, and the amount of control over the resolution of the conflict vested in each of several roles. The results showed a general preference for more "adversary" (disputant-controlled) models over more "inquisitorial" (adjudicator-controlled) models. The conclusions of the study focus on the relationship between subjects' model preferences and the distribution of control over the adjudicative process among roles, and on the generality of this relationship in the nations studied.

22. Saks, Michael J., and Reid Hastie. *Social Psychology in Court*. New York: Van Nostrand Reinhold Co., 1978. 245 pp. Tables.

Although not itself an empirical study, this book provides a thorough overview of the insights which social science research can provide about our system of adjudication. Parts of the book focus on empirical research methods. The authors use some jury size empirical questions to illustrate proper research methodology. Methodologies discussed include true experiments in laboratory and field conditions as well as nonexperimental correlational methods. Methods of measuring internal and external validity of findings are also discussed.

Parts of the book synthesize findings from empirical research in several areas of jury study, such as composition, structure, and decision process. Jury composition studies investigate issues such as how to compose a jury pool truly representative of a community cross section and scientific jury selection techniques. Jury structure studies focus on "group geography," size, and decision rule. Decision process studies consider behavioral psychology in group decisionmaking.

23. Zeisel, Hans. "Reflections on Experimental Techniques in the Law." *Journal of Legal Studies* 2 (1973): 107-24.

This article briefly explores the benefits and problems related to the use of the controlled experiment in determining what a rule of law does or does

not accomplish. The author discusses modifications which have been developed that make controlled experimentation tolerable even in sensitive areas: the indirect experiment, simulation, the natural experiment, and retrospective analysis. The article concludes with a brief discussion of the problem of extrapolation and cautionary conclusions. While not an actual empirical study related to civil procedure, the article offers thoughtful insight into the use of and problems with controlled experiment.

24. Rosenberg, Maurice. "Devising Procedures That Are Civil To Promote Justice That is Civilized." *Michigan Law Review* 69 (1970-71): 797-820.

The author's premise is that in a democracy, and more specifically in the judicial branch, procedure plays an important role. Rosenberg discusses the American Bar Association Task Force on Standards of Judicial Administration, created to improve the quality of the administration of justice and to establish standards to advance this goal; and reviews and criticizes past attempts at improving court procedures, arguing that these have largely failed. Alternatively, he presents ideas for improving the court system both quantitatively and qualitatively.

25. Hazard, Geoffrey C., Jr. *Research in Civil Procedure*. New Haven: Walter E. Meyer Research Institute of Law, 1963. 150 pp.

This book is a survey on research in the field of civil procedure, commissioned by the Walter E. Meyer Research Institute of Law. It focuses its attention on research in the last twenty-five years dealing with the procedures of courts in ordinary civil actions. The study excludes efforts directed to procedural reform resulting in the Federal Rules of Civil Procedure; it also omits criminal courts, specialized civil courts, and administrative procedure. However, the observations may have relevance to research in other branches of adjective (remedial) law. Included is an interesting critique of the methodology of legal research.

Conclusions drawn from the review include the following: Little thought has been directed to the philosophical problems of adjective law; there has been little quality "doctrinal" research aimed at legislative reform; there has been little "empirical" research directed toward adjective law; and historical research in procedure has been seriously neglected.

26. Shafroth, Will. "Federal Judicial Statistics." *Law and Contemporary Problems* 13 (1948): 200-15.

This article concerns the use and importance of court statistics in improving the administration of justice, both in an individual court and in a court system. Included are an historical review of federal judicial statistics, a discussion of the creation of and statistical methodology of the Administrative Office, and the role of the Statistics Committee of the Judicial Conference, which was created in 1943. The author discusses the Committee's most recent project of weighting the caseload. Although this article is dated, it may be of interest regarding the application of statistical analysis to the courts.

III

Courts

This chapter briefly describes empirical studies on court reform and management. The loose "court management" designation highlights four particular topics: delay, caseload, costs and disposition.

Although most studies conclude with recommended approaches to improving particular aspects of the justice system, the section on reform does not include such studies. They are instead organized by topic. The reform section contains older, general studies of individual state court systems which present system overviews and recommended changes.

Under the disposition heading appear a study on the efficacy of judicial certification procedures and a statistical analysis which concludes that a "modern trend" away from trials does not exist. Caseload topics include a study which deflates another myth; it finds that the modern per capita litigation rate in the United States has not attained an historical high. Other papers analyze the effectiveness of forecasting judicial needs by examining caseload.

Because of the growing popular discontent with litigation costs and delay, scholars seem particularly eager to examine these issues and propose new approaches. Thus, the sections on costs and delay contain the heaviest concentration of recent studies. Litigation costs and delay constitute areas in which numerous, well-documented studies exist offering insightful recommendations. A good resource which examines a variety of such studies and recommends the most viable techniques for reduction in costs and delay is the American Bar Association report, *Attacking Litigation Costs and Delay: Project Reports and Research Findings*. American Bar Association, 1984.

Litigation delay has engendered more scholarly research and discussion than any other topic in this chapter, including costs. This fact should come as no surprise to the litigation attorney, who increasingly must deal with the frustration of delays on a regular basis. As noted by Church and his co-authors in "Justice Delayed: The Pace of Litigation in Urban Trial Courts," *Orange County Bar Journal* 6 (Spring 1979): 61-104, the academic world in 1979 lacked a national concept of "delay." This lack of universality precluded uniformity among studies on litigation delay. In 1989, the state of research on delay suggests that such a concept still does not exist.

The Rand Corporation's Institute for Civil Justice published an extremely valuable resource on court delay in 1982 which addressed this and other delay-related issues. This paper consists of the synopsis and transcript of the proceedings from the Institute's 1981 Conference on the Pace of Litigation. Adler, Jane W., William L.F. Felstiner, Deborah R. Hensler, and Mark A. Peterson. *The Pace of Litigation Conference Proceedings*. Santa Monica, Cal.: The Rand Corporation, 1982 (entry 36).

The Institute had recognized that

[a]lthough the professional literature indicates dissatisfaction with the pace of legal proceedings in all civilizations . . . and describes isolated attempts to analyze the

specific situation in several American jurisdictions, it does not provide the reader with a documented picture of the general nature of the problem today. Neither does it provide much empirical evidence on the costs and benefits associated with various methods used to step up the pace, nor does it establish just how the major actors in the litigation tableau affect the pace of the drama over a sample of cases large or specialized enough to support much generalization that is academically respectable.

Id. at iii.

In light of these issues, the Institute organized a conference to examine litigation delay in detail. The report of this conference provides a concise, much-needed presentation of the problem of litigation delay, including its causes, extent, proposed remedies, and a general overview of the state of empirical literature in this area. It is a realistic starting point for one investigating the delay problem itself or searching for well-documented studies in this area.

A great need for such cohesive reports exists in the other topics covered in this and the following chapters. Perhaps we will see more of such reports in the future as their value becomes fully appreciated in the field.

A. Reform

27. United States Department of Justice. *Courts of Limited Jurisdiction: A National Survey*. Washington, D.C.: U.S. Government Printing Office, 1977. 423 pp.

This comprehensive publication describes the results of a study of the courts of limited and special jurisdiction in every state, including divorce courts, juvenile, and probate courts. It delineates the structure of these courts in 1975, compares alternative state systems, and then identifies specific problems for reform such as delay from excessive caseloads, shortages of resources, inadequate facilities, and inattention to due process requirements. The publication also identifies methods of selecting, removing, and compensating lower court judges and personnel.

28. Institute of Judicial Administration. *A Study of the Louisiana Court System*. New York: Institute of Judicial Administration, 1972. 339 pp. Tables.

The Institute of Judicial Administration undertook this study of the Louisiana court system at the request of the Judicial Administrator of the Louisiana Supreme Court. Its purpose was to identify specific needs and problems of the system. The study employs data from sixty-four parishes in Louisiana to examine the courts' resources, capacities, administration, and operations. After presenting its general findings, which primarily emphasize the district and appellate courts, the study suggests potential remedies.

29. Institute of Judicial Administration. *The Judicial System of South Carolina*. New York: Institute of Judicial Administration, 1972. 111 pp. Tables.

This study examines the South Carolina judicial system. It focuses specifically on each of the individual levels of the court system, system financing, and the judiciary. The study analyzes statistical information gathered from case papers and record books. From these data, it identifies

problems involving court workloads, case processing times, circuit riding, and other areas. It then recommends changes to the Judicial Council of South Carolina.

30. Institute of Judicial Administration. *The Judicial System of Tennessee*. New York: Institute of Judicial Administration, 1971. 91 pp. Tables.

This Institute of Judicial Administration study, undertaken at the request of the Tennessee Judicial Council, examines the Tennessee judicial system. It develops a picture of the Tennessee system in 1971 and analyzes data regarding the judiciary, the court levels, court financing, and facilities. The study concludes with a summary of recommended reforms including jurisdiction, administration, and procedure.

31. Institute of Judicial Administration. *Survey of the Judicial System of Maryland*. New York: Institute for Judicial Administration, 1967. 98 pp. Tables.

This survey describes the Maryland court system in terms of court structure, judges, administration, rules, and financing. It highlights the system's problems in each of these areas, describes the efforts being made to resolve them, and suggests possible changes. Suggestions include the need for reduction in the number of trial courts, judicial legal training and full-time service, and administrative integration of the lower courts into the state system.

32. Freels, J.W. "Illinois Court Reform—A Two-Year Success Story." *Journal of American Judicial Society* 49 (1966): 206-14.

This article describes the reformed judicial system in Illinois which became effective in 1964. It reviews the actual operation of the Illinois courts two years after these reforms, which included clearer jurisdictional principles, representative selection of supreme court justices, and grants of additional authority to the Supreme Court.

The centralization of administrative power in the local circuits and overall unification of the court system dramatically reduced case backlog and effectuated more efficient collection of court costs and fines.

B. Management

1. Delay.

33. Mahoney, Barry. *Changing Times in Trial Courts*. Williamsburg, Va.: National Center for State Courts, 1988. 245 pp. Tables.

This comprehensive publication discusses the results of the National Center for State Courts' study of case processing and court delay in eighteen urban trial courts between 1976 and 1985. The study, based upon data from 50,000 individual criminal and civil cases, indicates that caseflow management techniques in urban trial courts have become an important and effective approach to reducing court delay in recent years. By comparing courts with varying paces of litigation, the study isolates particular processing techniques factors which have successfully decreased delay in certain courts. These

include size of court, caseload mix, speedy trial laws, and case processing time standards.

34. Planet, Michael D. "Reducing Case Delay and the Costs of Civil Litigation: The Kentucky Economical Litigation Project." *Rutgers Law Review* 37 (1985): 279-97. Tables.

35. Connolly, Paul R.J., and Michael D. Planet. "Controlling the Caseflow—Kentucky Style." *The Judges' Journal* (Fall 1982): 8-13, 53-59.

This paper describes and analyzes the data from the Economical Litigation Project ("ELP"), an experiment in civil case management employed in two Kentucky circuit courts. The experiment implements new procedures founded on the principle of judicial control over litigation. These procedures include set deadlines for completing special phases of litigation and limits on discovery. The results of data analysis suggest that the ELP successfully increased cost savings while reducing case processing times and procedural activity.

36. Planet, Michael D., Sandra Smith, Lynae K.E. Olson, and Paul R.J. Connolly. "Screening and Tracking Civil Cases: Managing Diverse Caseloads in the District of Columbia." *Justice System Journal* 8 (1983): 338-53.

This article examines the District of Columbia Superior Court's screening and tracking program for civil cases. This program identified complex civil cases in order to place these cases on a calendar separate from the rest of the court's civil cases. The program's goal was to maximize efficient allocation of judicial resources by identifying and separating cases requiring extra attention. The article describes the court's intention in predicting a cases complexity and the different procedures applied to the two types of cases. It concludes that the D.C. Court's program has been effective in maximizing the allocation of judicial resources, while acknowledging that certain areas still need improvement.

37. Adler, Jane W., William L.F. Felstiner, Deborah R. Hensler, and Mark A. Peterson. *The Pace of Litigation: Conference Proceedings*. Santa Monica, Cal.: The Rand Corporation, 1982. 145 pp. Tables.

This comprehensive guide documents past and planned empirical studies on the nature of the delay problem in the courts: its extent, causes, and the effectiveness of reforms which have been undertaken. It provides a synopsis of proceedings from the Pace of Litigation Conference organized by the Rand Institute for Civil Justice and held in Santa Monica during May 14-15, 1981.

38. Bermant, Gordon, Joe S. Cecil, Alan J. Chaset, E. Allan Lind, and Patricia A. Lombard. *Protracted Civil Trials: Views from the Bench and the Bar*. Washington, D.C.: Federal Judicial Center, 1981. 93 pp.

This report presents the results of interviews with sixty-eight judges and attorneys regarding twenty-two major civil cases. The project focuses upon the nature and suspension of civil jury trials and the problems associated with

them in other areas. The project examines at length the jury role in protracted trials and the comparative efficiency of bench versus bar trials. Other areas of discussion include testimony's contribution to trial length, views on the merits of pretrial management, the role of expert and masters, and the need for judicial involvement.

39. Church, Thomas W., Jr. "Who Sets the Pace of Litigation?" *Judicature* 65 (1981): 76-85. (Earlier report in *Justice Delayed: The Pace of Litigation in Urban Trial Courts*. Williamsburg, Va.: National Center for State Courts, 1978.)

This article describes the author's follow-up research to the National Center for State Court's 1978 pretrial delay project. The earlier study had suggested that the attitudes of practitioners affect the speed of case disposition. To test this finding, Church distributed questionnaires based on hypothetical cases to judges and attorneys in four diverse urban courts. The questionnaires asked for the respondents' opinions on the appropriate length of time from arrest to commencement of trial in each case. From a sample of 242 respondents, the author found that distinctive practitioner attributes regarding appropriate disposition time existed in each region. These attitudes coincided with the actual disposition time in these regions.

40. Grossman, Joel B., Herbert M. Kritzer, Kristin Bumiller, and Stephen McDougal. "Measuring the Pace of Civil Litigation in Federal and State Trial Courts." *Judicature* 65 (1981): 86-113.

This article focuses on the causes of divergent litigation paces. It first examines the problem of delay and existing literature and theories about it. It then presents the findings of the authors' own study. The authors gathered data from court records of 1649 federal and state court cases in five federal judicial districts. They analyzed the pace of litigation (pattern of case processing time) by a mathematical technique called survival analysis to compare the time differences for case disposition among the various courts by controlling for factors such as mode of termination, volume of discovery, and type of case. The authors found that no single, generalized, national problem of court delay existed. No clear pattern emerged to explain differences in litigation pace, although smaller patterns were observed.

41. Flanders, Steven. "Modeling Court Delay." *Law and Politics Quarterly*. (1980): 305-20.

This article examines the use of quantitative modeling to reduce court delay. The author surveys published literature on modeling efforts which have attempted to steer policies on decreasing court delay. He notes that the models, as illustrated by the results to date, are less promising than they initially appear since the unpredictable, inconsistent nature of the court process makes it difficult to develop an accurate model. The article ultimately concludes that it may be more effective to help reduce court delay by manipulating court incentive structures.

42. Grau, Charles W., and Arlene Sheskin. *Ruling Out Delay: The Impact of Ohio's Rules of Superintendence on the Administration of Justice*. Chicago, Ill.: American Judicature Society, 1980. 220 pp.

This study examines the impact of the Ohio Rules of Superintendence upon the administration of justice and the status of judges. These rules give the Ohio Supreme Court authority to monitor judicial performance and hold judges responsible for the state of their civil docket. Through a combination of qualitative and quantitative data, the study examines the history of the rules, their implementation, the reasons for resistance or acceptance among judges, and the effects of the rules upon case processing time and the quality of justice.

43. Church, Thomas W., Jr., Alan Carlson, Jo-Lynne Lee, and Teresa Tan. "Justice Delayed: The Pace of Litigation in Urban Trial Courts." *Orange County Bar Journal* 6 (1979): 61-104. Tables. (Earlier report printed in *Justice Delayed: The Pace of Litigation in Urban Trial Courts*. Williamsburg, Va.: National Center for State Courts, 1978.)

This article describes the findings of a major empirical study of civil and criminal case disposition times in twenty-one metropolitan state trial courts. The data, gathered from court reports, covers processing speed, caseload, and procedures. The study's goal is to develop a national concept of "delay," seek explanation for intracourt delay discrepancies, and evaluate potential remedies for improving case disposition time. The empirical study itself is described in *State Court Journal* 2 (1978): 3-8, 41-7.

44. Nagel, Stewart S., and Marian Neef. "Time-Oriented Models and the Legal Process: Reducing Delay and Forecasting the Future." *Washington University Law Quarterly* (1978): 467-527. Tables.

This article suggests a variety of models for use in analyzing the legal process. These models consist of sets of concepts and methods used to determine either what should be done to decrease case processing time and delays, or to help predict future changes in the legal system to facilitate present planning. The article first describes the time-saving models and then delineates the future-predicting models. It also provides examples of each model's possible application.

45. Flanders, Steven. *Case Management and Court Management in United States District Courts*. Washington, D.C.: Federal Judicial Center, 1977. Tables. 153 pp.

Through judicial interviews, observation, and analysis of civil docket data from six federal district courts, this study seeks to determine the most effective procedures for speedy disposition of cases. It evaluates a variety of approaches in search of the procedure which is most efficient while assuring a high quality of justice. These procedures include court governance, case management in the pretrial period, and careful scheduling of trials. The study also tries to relate each court's procedures to the study's statistical results. It concludes with recommended procedures.

46. Gillespie, Robert W. "Production of Court Services: An Analysis of Sale Effects and Other Factors." *Journal of Legal Studies* 5 (1976): 243-65. Tables.

This article describes the author's creation and application of a model designed to explain the demand for and supply of court services. The study's goal is to reach a better understanding of how court services are produced. It first examines a theoretical model of court services production and then delineates the statistical model used for estimation of the production function. The author applies this statistical model to ninety federal district courts in the period 1968-1974 to discover why the average productivity of all the judicial resources available to each court varied.

47. Waybright, Roger J. "An Experiment in Justice without Delay." *Judicature* 51 (1969): 334-38.

Judge Waybright describes his experiment for reducing case backlog while in the Fourth Circuit. He attributes his successful backlog reduction to the use of semi-monthly reports on the status of each pending case, prompt scheduling of arguments on pending motions, limiting the number of attempts permission for framing a proper pleading, and a variety of other approaches.

48. "The Accelerated Civil Jury Trial Program in the District Court for the Eastern District of Pennsylvania." *Villanova Law Review* 13 (1967): 137-47.

This paper reports the results of an accelerated jury trial program employed in 1967 in the District Court for the Eastern District of Pennsylvania. The program's purpose was to eliminate quickly cases from the jury trial backlog by employing a variety of new procedures. On the basis of the statistical data gathered, the report concludes that the procedures were effective. The program succeeded in approaching an equilibrium between case filings and dispositions for the first time in eighteen years.

49. Sykes, Gresham M., and Michael Isbell. "Court Congestion and Crash Programs: A Case Study." *Denver Law Journal* 44 (1967): 377-86.

This paper reviews the findings of a study by the Administration of Justice Program of the University of Denver College of Law. The study examined the operation and results of a six-week program employed in 1966 to reduce the civil case backlog of the United States District Court for the District of Colorado. The program provided for the use of two judges trying cases five days a week in addition to the court's own three judges. It succeeded in reducing backlog. The authors observe that the court was overstating the time needed for trial work, and that the court could have completed cases even faster if unexpected settlements had not left holes in the court calendar.

50. Spangerberg, R.L., and Clarice Newmann. "Auditing the Auditor System: A Study of Auditor Referrals in Suffolk County, Massachusetts." *Boston University Law Review* 44 (1964): 271-86.

This article describes a study of 1961 tort cases referred to auditors in Suffolk County, Massachusetts, during certain periods in 1960 and 1961. The study's purpose was to determine whether auditor referrals, in which an auditor's fact findings, which, by statute, constitute prima facie case evidence, help reduce court congestion by facilitating case disposition. Because of the number of auditor referrals ultimately requiring retrial, the costly auditor system did not significantly reduce docket congestion. The article suggests alternate procedures to reduce backlog.

51. Zeisel, Hans, and Thomas Callahan. "Split Trials and Time Saving: A Statistical Analysis." *Harvard Law Review* 76 (1963): 1606-25. Tables.

This paper describes a study undertaken to determine whether use of separate trials for liability and damage issues saves trial time in civil cases. Specifically, the authors study data from the United States District Court for the Northern District of Illinois. The District Court had adopted Civil Rule 29 in 1959, which permitted separate trials on motion or court direction. Several statistical techniques yield the conclusion that separating trial issues appears to save approximately 20 percent of the time necessary to try a case under traditional rules.

52. Levin, A. Leo. *Dispatch and Delay: A Field Study of Judicial Administration in Pennsylvania*. Philadelphia: University of Pennsylvania Institute of Legal Research, 1961. 426 pp. Tables.

This book describes the field study of civil case delay from September 1953 through August 1954 in seven counties in Pennsylvania. It carefully documents the survey's sample and methodology, and breaks down data analysis by county. Based on data analysis, it recommends eradication of delay through a variety of methods including use of pretrial conferences, arbitration, and creation of a court administrative office. The study covers all stages of the litigation process. Data consist primarily of court records.

53. Zeisel, Hans, Harry Kalven, Jr., and Bernard Buchholz. *Delay in the Court*. Boston: Little, Brown and Company, 1959. 313 pp.

This comprehensive presentation of civil court congestion in the 1950's constitutes one of the classic studies of delay. Zeisel and his co-authors conducted research based primarily upon court records from the Supreme Court of New York County to determine the probable causes of court delay and develop potential remedies. The book first discusses their findings on the magnitude and causes of delay. It then develops a uniform measurement of delay and discusses three potential remedies: reducing the trial time, increasing settlements, and increasing the number of judges or their hours worked. The authors conclude that the proposed remedies are feasible steps that can make a modest contribution to reducing court congestion.

54. Conway, Albert. "Congested Calendars—and Why." *Buffalo Law Review* 6 (Fall 1956): 1-13.

This article presents the Judicial Conference Chairman's factual record of calendar congestion and trial delay. The scope of discussion is limited to

the New York metropolitan district. With the exception of Queens County, congestion and delay occurred only in jury trials involving personal injury and death claims. The Chairman cites statistically significant increase in the number of automobiles and automobile accidents, the increase in population of the eight metropolitan counties, and the limited number of justices available as potential causes of congestion.

55. Stayton, Robert W., and M.P. Kennedy. "A Study of Pendency in Texas Civil Litigation." *Texas Law Review* 21 (1943): 382-93. Tables.
56. Stayton, Robert W., and M.P. Kennedy. "A Study of Pendency in Texas Civil Litigation." *Texas Law Review* 23 (1945): 311-46. Tables.
57. Stayton, Robert W., and M.P. Waters. "A Study of Pendency in Texas Civil Litigation: Effect of Personal Vacation and Decision-Day Practice of the Supreme Court." *Texas Law Review* 26 (1948): 701-28. Tables.

This three-part article describes the results of an empirical study of the pendency of civil litigation in Texas courts from 1906 to 1942. The data are derived from Robert Stayton and Philip P. Brown's earlier study published in *Texas Law Review* 18 (1939): 1-26.

In the first installment, without attempting to draw conclusions, the article presents the average period of pendency from time of filing in the district court through disposition of the first appeal in the supreme court.

In the 1945 installment, the authors deduce that court vacations may contribute to pendency length, and test this hypothesis empirically. They discuss the effect of the supreme court's vacation on the length of case pendency, compare this vacation length with those in other courts, and suggest how to prevent delay from court vacation.

In the third installment of the Texas pendency study, the authors examine the effect that decision-day practice and judges' personal vacations have had on the pendency of civil litigation in the Supreme Court of Texas over the course of thirty years. After analyzing the effects of each of these practices, the authors compare the practices with those in other state and federal appellate courts of last resort, and suggest ways in which the delays caused by these practices may be offset.

2. *Caseload.*

58. Hensler, Deborah R., Mary E. Vaiana, James S. Kakalik, and Mark A. Peterson. *Trends in Tort Legislation: The Story behind the Statistics: Special Report*. Santa Monica, Cal.: The Rand Corporation, 1987. 37 pp.

This report synthesizes the results of previous Institute for Civil Justice studies on the tort system and attempts to place them in a broad policy context. Recent research suggests that the statistical discrepancies in the debate over tort litigation may be explained by the fact that there is no longer, if there ever was, a single tort system. There are at least three types of tort litigation: routine personal injury torts, high-stakes personal injury suits, and mass latent injury cases. Each type is characterized by a different litigation

growth rate, jury verdict trend, and cost profile. Routine personal injury torts are growing slowly in frequency and costs, and their outcomes have not changed much over the last twenty-five years. Higher-stakes torts are growing faster in frequency and costs, and their outcomes have increased dramatically. Mass latent injury torts, once identified, tend to explode in number, carry high transaction costs, and have highly uncertain outcomes. Researchers and policymakers must understand this framework when considering tort reform proposals.

59. Danzon, Patricia M. *New Evidence on the Frequency and Severity of Medical Malpractice Claims*. Santa Monica, Cal.: The Rand Corporation, 1986. 35 pp. Tables. Reprinted in "The Frequency and Severity of Medical Malpractice Claims: New Evidence." *Law and Contemporary Problems* (Spring 1986): 57-84.

This report analyzes the effect of tort reforms and other factors on trends in malpractice claims frequency and severity, using claim experience over the full decade 1975-1984, covering roughly 100,000 physicians and forty-nine states. The evidence suggests that the tort reforms of 1975-77 affected the frequency and severity of malpractice claims in a manner broadly consistent with theory and previous evidence. Claim frequency per physician grew at roughly 10 percent a year, and severity increased at twice the rate of inflation of consumer prices. States that enacted shorter statutes of limitation and set outer limits on discovery rules had less growth than states with statutes more lenient to plaintiffs. Statutes permitting or mandating the offset of collateral benefits reduced malpractice claim severity by 11-18 percent and claim frequency by 14 percent relative to comparable states without collateral source offset. Caps on awards reduced severity by 23 percent. Arbitration statutes increased claim frequency and reduced average severity. No other reforms appeared to have systematic effects. Urbanization remained a highly significant factor. Per capita income, the unemployment rate, and the number of attorneys per capita had no significant effects. The surgery rate in a state increases claim frequency, and the ratio of surgeons to medical specialists increases claim severity.

60. Flanders, Steven. "What Do the Federal Courts Do? A Research Note." *The Review of Litigation* 5 (1986): 199-217.

This study examines the sources of increased judicial workloads in 1985, compared to 1979. It identifies the different types of cases to which the judges are allocating their time by applying 1979 case weights to case filings data collected for 1985. Flanders observes two trends from his research: first, the three most time-demanding case types in 1979 remain quite time-demanding in 1985; second, since 1979 these case types have increasingly dominated judicial workloads at the expense of other types of cases, including general criminal cases. While the study discovers what changes in case types have occurred, it does not discuss the potential causes behind these changes.

61. Galanter, Marc. "The Day After the Litigation Explosion." *Maryland Law Review* 46 (1986): 3-39.

Galanter examines the assumption that increased caseloads prove that American society has become overly litigious. He also refutes the belief that the costs of litigation outweigh its benefits. First, he notes that earlier studies establish that present per capita litigation rates are not at an all time high. His presentation of empirical data establishes that from 1981 to 1984, per capita filings of civil cases in general actually decreased. While tort filings and certain other filing categories increased, the author offers alternate reasons for such increases aside from the conclusion that America has an excessively litigious population. He concludes that shifting patterns of filings occur over time, and that the extent of America's litigiousness has been exaggerated.

62. Marvell, Thomas B., and Stephen Daniels. "Are Caseloads Really Increasing?" *The Judges' Journal* 25 (Fall 1986): 34-46.

This article is actually two articles, each by a different author and each criticizing the other's views and findings regarding the alleged increase in court caseloads. Marvell claims that caseloads are increasing, and documents this view with data from studies of different types of cases. He disputes Daniels' earlier study that found little or no significant increase in court caseloads, and claims that Daniels' statistical results were selectively presented. Daniels refutes this claim and clarifies the earlier results of his study of Illinois state trial and appellate courts.

63. Meierhoefer, Barbara S., and Eric V. Armen. *The Caseload Experiences of the District Courts from 1972 to 1983: A Preliminary Analysis*. Washington, D.C.: Federal Judicial Center, 1985. 20 pp. Tables.

This report documents the federal district courts' caseload behavior from 1972 to 1983 to determine the effectiveness of using four hundred weighted filings per judge as the touchstone for recommending new district judgeships to Congress. The authors use statistical comparisons of caseload handling in relation to single-year filing cut-off points to determine how well filing classifications predict caseload problems. The data consist of caseload information from the *Federal Court Management Statistics Reports*. The report concludes that the single-year filing levels are an important but imperfect predictor of pending caseload behavior and suggests that the research take other variables into account.

64. Willging, Thomas E. *Asbestos Case Management: Pretrial and Trial Procedures*. Washington, D.C.: Federal Judicial Center, 1985. 39 pp.

Willging considers whether there really has been a crisis in the federal courts caused by asbestos litigation and, if so, what its dimensions are and what remedies may be appropriate. The findings, derived primarily from a 1984 conference of federal judges, magistrates, clerks, and other support personnel, indicate that "the reports of the demise of the federal judicial system are greatly 'exaggerated'." Procedural and case management alternatives can alleviate the pressures of asbestos litigation and facilitate

reasonably prompt hearings. Standardization of pretrial procedures and consolidation of cases can promote the scheduling of firm, credible trial dates, which lead to resolution of asbestos claims. Asbestos cases have in fact become relatively routine products liability cases that involve a large number of parties. The major remaining complications relate to disposition of claims against multiple defendants and disputes among defendants and their insurers about coverage.

65. Daniels, Stephen. "Ladders and Bushes: The Problem of Caseloads and Studying Court Activities Over Time." *American Bar Foundation Research Journal* 1984: 751-95.

This article examines long-term trends in court activity. It presents a critical review of the existing empirical literature on long-term trends in court caseload and the model presented by scholars to explain changes in litigation rates. It observes that studies have unrealistically expected litigation trends to follow a uniform pattern, and concludes that the present literature does not establish that a litigation explosion is occurring. The author posits that the question of a litigation explosion is still open.

66. Flango, Victor E., and Mary E. Elsner. "Estimating Caseloads: Two Methods Tested in Tulsa." *State Court Journal* 7 (1983):18-24.

This summary article presents two methods for estimating future case filings. The first, the "projection method," is based on the history of past filings and the second, the "forecast method," is based on independent variables which are the causes, explanations, or predictors of filings. These variables include population, crime rates, per capita income, and number of attorneys. The article illustrates the use of both methods through examples drawn from Tulsa County, Oklahoma, data, and concludes that while both techniques are viable, they are not necessarily 100 percent accurate.

67. Galanter, Marc. "Reading the Landscape of Disputes: What We Know and Don't Know (And Think We Know) About our Allegedly Contentions and Litigious Society." *University of California at Los Angeles Law Review* 31 (1983): 4-71. Tables.

This article examines the popular contention that the United States is experiencing a modern "litigation explosion," due to an increasingly litigious population. The article compiles statistical data from recent studies to test this contention. Galanter finds that a slight rise in litigation rates has occurred and attributes it to changing societal conditions. However, this increase has not broken new historical grounds. And most cases which did evolve into lawsuits were settled or processed without utilization of the full adjudication process. Galanter further identifies data from other industrial countries which demonstrate that the per capita litigation rate in the United States is not uniquely high.

68. Danzon, Patricia M. *The Frequency and Severity of Medical Malpractice Claims*. Santa Monica, Cal.: The Rand Corporation, 1982. 52 pp. Tables.

This report presents some empirical evidence on the contribution of various factors to the diversity in the frequency and severity of medical malpractice claims across states and over time. A simple theoretical model is used to structure the empirical analysis and to show how feedbacks and lags in claim disposition complicate measurement of effects on claim filings. Data on claims closed in 1970 and 1975-78 are analyzed, using pooled time-series cross-section techniques to allow for correlation over time. Main empirical findings include: Diversity and growth in claim frequency are partly the result of changes in medical services and would not be fully eliminated even if legal environments were uniform; the density of lawyers per capita does not significantly affect claim frequency when physician density is controlled; no-fault automobile law does not significantly affect claim frequency; claim frequency is not significantly related to the proportion of the population over sixty-five; pro-plaintiff changes in common law doctrines contributed significantly to the rapid growth in frequency and severity of medical malpractice claims in some states in the early 1970's; because of long lags in disposition, effects of the statute of limitations are reflected in changes in claim closures with a lag; of the post-1975 tort reforms, caps on awards and mandatory offset of collateral compensation appear to have had the greatest effects; after controlling for medical and legal factors, urbanization remains a highly significant determinant of claim frequency and severity; although some of the post-1975 tort reforms had an early effect on severity and contributed to narrowing the gap between the most and least litigious states, they cannot explain the reduction in malpractice claim frequency in 1976-77.

69. Jones, Thomas M. "An Empirical Examination of the Incidence of Shareholder Derivative and Class Action Lawsuits, 1971-1978". *Boston University Law Review* 60 (1980): 306-30. Tables.

The purpose behind this article was to provide answers to empirical questions relating to the incidence of shareholder suits in the corporate economy of the 1970's. A random sample of 190 public corporations was compiled, and the number of suits brought against, or on behalf of them, between 1971 and 1978 counted. The data were evaluated in terms of aggregate incidence, incidence differentials based on size, and time trends in incidence. Jones concludes that the "explosion" of shareholder litigation has been exaggerated. It is increasing, but not at a significant rate. The increase in shareholder litigation is only a small portion of the apparent increase in the number of suits brought against corporations.

70. Arthur Young & Company. *Revision of Class Damage Procedures: Empirical Studies*. Washington, D.C.: Federal Justice Research Program, 1979. Tables. 118 pp.

The four studies included here were initiated to provide better estimates of the impact and costs of revisions proposed by the Office for Improvements in the Administration of Justice concerning the federal procedure governing the class damage action. The proposed legislation required that United States Attorneys review all public penalty actions and assume, at their discretion,

those actions which they deem warrant assumption. The first study, "Evaluation of Certain Impacts of Draft Legislation Amending Rule 23(b)(3)," estimated the "worst case" incremental workload and incremental costs that would be experienced by United States Attorneys. It was estimated that the first-year cost would be \$15.25 million and increase by the same amount the next two years. The second study, "Resource Requirements in Department of Justice of Proposed Public Action," examined the potential impact of the proposed change on the staff resources of the Department of Justice. This impact is expressed in terms of the cost of the assumption by the department of antitrust, securities, and truth-in-lending cases where the per claimant damages are \$300 or less. The resulting "high side" cost was estimated at \$2.8 million per year. "Estimation of Escheat Funds: Proposed Public Action (H.R. 5103)" estimates the amount of funds which may escheat to the United States Treasury under the proposed legislation employing data obtained from attorneys who litigated class actions. Depending on the assumptions made, it was estimated that between \$10 million and \$75 million would escheat to the treasury each year.

71. Doyle, Joseph. "Comparing Court Productivity." *Judicature* 61 (1978): 416-21. Tables.

This article examines the weighted caseload system which certain states and the federal district courts have utilized. This system helps determine how many judges a particular jurisdiction requires by estimating the average time a court takes to finish its caseload. This figure is then divided by the annual average of judicial hours logged. The author criticizes this system for ignoring each court's individualized caseload disposition time in favor of a systemwide average, and proposes alternate statistical models which take individualized disposition time into account.

72. Dungworth, Terence, Jack Hausner, Richard Hildenbrand, and Gary Oleson. *Assessing the Feasibility of Caseload Weighting as a Method of Determining Judicial Workload*. Washington, D.C.: Federal Judicial Center, 1978. 135 pp.

This is a final report for a project established by the Federal Judicial Center to explore the utility and feasibility of using case weighting as a method of allocating judgeships to the federal district courts. The report discusses measurement approaches, examines weighting based on the 1969-1970 study, compares alternative weighting methods, and draws conclusions.

73. Goldman, Jerry, Richard L. Hooper, and Judy A. Mahaffey. "Caseload Forecasting Models for Federal District Courts." *Journal of Legal Studies* 5 (1976): 201-42.

This article describes the Federal Judicial Center's caseload forecasting models for federal district courts. Such models, if accurate, can reduce the time expended to acquire a new judge after identification of the need for an additional judge. The models' premises are that the volume of litigation directly relates to changes in social, political, economic, and demographic

activity. This article evaluates that premise by testing the accuracy of caseload forecasting with and without societal indicators. The data consist of case filing volumes in forty-two categories of civil and criminal cases, dating from 1950-1970. The authors concluded that forecasts of district court caseload are calculable through the use of the societal indicators.

74. Bertelsen, Bruce I., Mary S. Calfee, and Gerald W. Connor. "The Rule 23(b)(3) Class Action: An Empirical Study." *Georgetown Law Journal* 62 (1974): 1123-72. Tables.

This note responds to a 1972 American College of Trial Lawyers critique of Rule 23 class actions and attempts to supply more reliable quantitative data to determine if class actions place an unwarranted burden on federal courts. The first part comprehensively examines class actions filed in the United States District Court for the District of Columbia between July 1, 1966, and December 31, 1972. The second section involves a national survey based upon questionnaires completed by class action practitioners. Both the national and the District of Columbia studies indicated that some Rule 23(b)(3) class actions have manageability problems because of problems of administering notice and distributing damages. Since Rule 23 is designed to protect the interests of individual class members, it hinders class actions on behalf of consumers with meritorious claims too small to support individual suits, thus frustrating other valid ends of consumer class actions such as prevention of unjust enrichment and deterrence.

3. *Costs.*

75. Dertouzos, James N., Elaine Holland, and Patricia Ebener. *The Legal and Economic Consequences of Wrongful Termination*. Santa Monica, Cal.: The Rand Corporation, 1988. 73 pp. Tables.

This volume is the first in a series of reports on wrongful termination. It concentrates on changes in trial behavior, examining the direct legal costs and liabilities of wrongful termination. The authors analyzed 120 jury trials in California between 1980 and 1986 to determine systematic patterns in case characteristics and trial outcomes. The results reveal that "despite the uproar over wrongful termination litigation, the aggregate legal costs are really not very large." Annual trials in jurisdictions recognizing the covenant of good faith and fair dealing make up only 8.8 trials per million workers. With an average final payment of \$208,000 and \$81,000 in defense fees, the annual costs of jury trials sums to \$2.56 per worker. When one includes estimates of payments and legal fees for the 95 percent of all cases that settle without going to trial, the total expense per worker amounts to \$12.25. Most plaintiffs receive less than \$30,000 after post-trial reduction and legal fees. Appendices include the econometric results, data collection methods, and survey results of a wrongful discharge litigation questionnaire.

76. Kakalik, James S., and Nicholas M. Pace. *Costs and Compensation Paid in Tort Litigation*. Santa Monica, Cal.: The Rand Corporation, 1986. 157 pp.

Kakalik and Pace ask how much the current system of compensating people for injury costs and how much of the money spent ultimately reaches injured parties' pockets. This report presents the overall annual costs of the tort litigation system in 1985, the components of those costs, and the compensation awarded. Using published and unpublished information available from the insurance industry, data from surveys of lawsuits and claims, and information on the number of lawsuits terminated in 1985, it shows that about 37 percent of the costs of resolving such lawsuits was spent on the legal fees and expenses of both sides. Another 15 percent was attributable to the value of the time that plaintiffs and defendants spend on litigation. Only 2 percent was used to defray court costs. When all transaction costs were paid, plaintiffs retained about 46 percent of every dollar spent to compensate them for their injuries. This study does not judge the numbers, but lays a groundwork for those who ask questions of efficiency, value, and cost-effectiveness.

77. Levin, A. Leo, and Denise D. Colliers. "Containing the Cost of Litigation." *Rutgers Law Review* 37 (1985): 219-52. Tables.

This paper describes the dimensions of the problem of rising litigation costs and suggests how to contain these costs. The authors attribute the rise in costs to the increasing number of lawyers, the increasing amount of lawyer incomes, the increasing lengths and complexity of litigation (especially discovery), and other factors. It concludes by balancing the costs of a civil justice system against its benefits and suggests that a more efficient manner of dispute resolution may exist.

78. American Bar Association. *Attacking Litigation Costs and Delay: Project Reports and Research Findings*. Washington, D.C.: American Bar Association, 1984. 84 pp.

This book examines a variety of state and federal courts' projects for reduction of litigation costs or delay. These projects were undertaken in both trial and appellate courts. They include an economic litigation project in Kentucky, a trial court program in Vermont, a mediation program in Detroit, and caseload management in the District of Columbia. The final report analyzes the techniques which the studies used and, from the studies' conclusions, recommends methods for reducing cost and delay.

79. Kakalik, James S., Patricia A. Ebener, William L.F. Felstiner, Gus W. Haggstrom, and Michael G. Shanley. *Variation in Asbestos Litigation Compensation and Expenses*. Santa Monica, Cal.: The Rand Corporation, 1984. 91 pp. Figures. Tables. (Companion to *Costs of Asbestos Litigation* (entry 84).)

This report analyzes characteristics of individual asbestos-related injury claims that explain variation in compensation and expenses based on a detailed survey of plaintiff's attorneys, defendants, and insurers on a sample of claims closed between January 1980 and August 1982. The 513 closed claims in the survey included all 132 tried claims and a nationally

representative, random sample of 381 claims closed before trial. The study does not include government costs, expenses, and compensation in workers' compensation claims, or costs incurred in reorganization under chapter 11. The authors summarize the average characteristics of asbestos claims and discuss the factors that explained the level of compensation received, the likelihood of receiving no compensation, the likelihood of a trial, and the likelihood of receiving punitive damages. Factors that influenced the level of defense and plaintiff's litigation expenses are then discussed, followed by an examination of the ratio between litigation expense payments and compensation. The authors conclude that the heart of the asbestos litigation problem is its huge scale. Many lines of reform have been suggested. Any rational course of action, they maintain, must be based on facts such as those developed in this study.

80. Kritzer, Herbert M., Austin Sarat, David M. Trubek, Kristin Bumiller, and Elizabeth McNichol. "Understanding the Costs of Litigation: The Case of the Hourly-Fee Lawyer." *American Bar Foundation Research Journal* (1984): 559-604.

This article addresses the costs of litigation and ways to decrease these costs. Using Civil Litigation Research Project data from twelve federal and state courts in five federal judicial districts, the authors examined cost components and undertook a detailed analysis of the cost of services. In addition, they offered suggestions for decreasing overall litigation costs.

81. Chapper, Joy A., and Roger A. Hanson. "Cost Shifting in Maricopa County Superior Court: An Examination of Rule 37(a)(4)." *Justice System Journal* 8 (1983): 325-37.

This article explores the use of cost-shifting under Arizona's version of Federal Rules of Civil Procedure 37(a)(4), which allows cost-shifting in successful motions to compel discovery. The study found that judges imposed costs 20 to 30 percent of the time after oral motions and 50 percent of the time at movants' request, in Arizona's Maricopa County Superior Court. In addition, the study's results suggest that certain factors inhibit application or effectiveness of cost-shifting, including differing interpretations of the rule's language, small awards, and failure to pay costs imposed.

82. Chapper, Joy A., and Roger A. Hanson. "The Attorney Time Savings Litigant Cost-Savings Hypothesis: Does Time Equal Money?" *Justice System Journal* 8 (1983): 258-70.

This article examines the results of test data from pilot programs designed to reduce specific aspects of attorney time. Its ultimate goal was to determine whether a reduction in the time spent by attorneys on litigation is followed by a reduction in costs to litigants. The authors examined the use of telephone conferencing, limits on discovery, and expedited appeal procedures. Initial conclusions suggested that time savings from these programs were passed on as costs savings to clients although a one-to-one correspondence did not necessarily exist.

83. Greenwood, Michael J., Julie Horney, M.-Daniel Jacobovitch, Frances B. Lowenstein, and Russell R. Wheeler. *A Comparative Evaluation of Stenographic and Audiotape Methods for United States District Court Reporting*. Washington, D.C.: Federal Judicial Center, 1983. 222 pp. Tables.

This report presents the results of research undertaken under the mandate of section 401 of the Federal Courts Improvement Act of 1982. Section 401 was enacted to resolve controversy over the relative superiority of audiotape and stenographic court reporting, respectively, in the United States district court. The report describes and analyzes the results of a six-month study in which audio recording systems and stenographic court reporting were concurrently employed in twelve district courtrooms in ten circuits. It evaluates the performance of the audio recording system in terms of accuracy, timeliness of transcript delivery, facility of system use, and cost to the government. By comparing the results with stenographic reporting, it then concludes that the audio recording methods can provide an accurate record, at a lower cost and with less delay, than stenographic court reporting.

84. Kakalik, James, S., Patricia A. Ebener, William L.F. Felstiner, and Michael G. Shanley. *Costs of Asbestos Litigation*. Santa Monica, Cal.: The Rand Corporation, 1983. 40 pp. Tables. (Companion to Kakalik and co-authors, *Variation in Asbestos Litigation Compensation and Expenses* (entry 79).)

This report examines the money spent to resolve asbestos-related injury lawsuits: who pays it, who receives it, and for what purposes. Extensive and usually aggregated data were obtained from 17 of 22 major defendants approached, twelve of eighteen major insurers, and twenty-seven of 104 plaintiffs' lawyers. About \$1 billion in compensation and litigation expenses was spent on asbestos product liability litigation from the early 1970's, when the first claims were closed, through the end of 1982. Of that total, about one-third was provided by defendants and two-thirds by insurers. Of total compensation paid by defendants and insurers, 41 percent was used up by litigation expenses. The total costs to defendants and their insurers averaged about \$95,000 per closed claim. After deduction of plaintiff's litigation expenses, the plaintiff received an average of \$35,000. A subsequent report (entry 79), presents the results of a survey of a nationally representative sample of individual lawsuits.

85. Kakalik, James S., and Randy L. Ross. *Costs of the Civil Justice System: Court Expenditures for Various Types of Civil Cases*. Santa Monica, Cal.: The Rand Corporation, 1983. 125 pp. Tables. (Companion to Kakalik and Robyn, *Costs of the Civil Justice System: Court Expenditures for Processing Tort Cases* (entry 88).)

The Institute of Civil Justice initiated this study of the California Superior Court, Florida Circuit Court, Washington Superior Court, and the U.S. District Court. Its goal is to identify average and total government expenditures for resolution of civil lawsuits. These expenditures include those made at the federal, state, and local levels for civil case processing,

whether through settlement or full litigation. The Institute analyzes the data to compare costs at the federal and state court levels, define the incremental costs at each stage of litigation, determine the average government expenditure per judge, and make several other observations.

86. Peterson, Mark A. *New Tools for Reducing Civil Litigation Expenses*. Santa Monica, Cal.: The Rand Corporation, 1983. 40 pp. Tables.

This report proposes four analytical models for improving claim resolution efficiency by cutting claim-handling costs through use of a computer. The techniques aim to improve the quality and lower the cost of claim resolution by helping to inform the decisions to spend money in connection with pending claims. The report does not empirically test the models' effectiveness.

87. Trubek, David M., Austin Sarat, William L.F. Felstiner, Herbert M. Kritzer, and Joel B. Grossman. "The Costs of Ordinary Litigation." *University of California at Los Angeles Law Review* 31 (1983): 72-127.

This study uses data from the Civil Litigation Research Project to estimate the average time spent by attorneys in a civil lawsuit, identify what preparation attorneys generally make during such a lawsuit, and determine whether the average litigation costs are less than the plaintiff's ultimate reward. The research involved a random sample of civil cases from the federal district court and at least one state court in each of five judicial districts, as well as a population sample. It focused on standard tort and contract suits.

88. Kakalik, James S., and Abby E. Robyn. *Costs of the Civil Justice System: Court Expenditures for Processing Tort Cases*. Santa Monica, Cal.: The Rand Corporation, 1982. 91 pp. Tables. (Companion to Kakalik and Ross, *Costs of the Civil Justice System: Court Expenditures for Various Types of Civil Cases* (entry 85).)

This volume is the first of the Institute for Civil Justice's studies on the costs of the civil justice system. Two general research questions define the scope of these studies: What are the total costs of the system under various policies for various types of cases? Who pays how much and who benefits how much under various policies? This report deals with government expenditures for processing tort cases, drawing on available data from federal and state agencies. For California, Florida, and Washington (the only three states possessing the detailed data required) and the U.S. district court, the authors examined judge time per tort case, government expenditure per judge (\$261,000 to \$383,000 for the states and \$752,000 for the U.S. district court), government expenditure per tort case filed (for state courts \$331 to \$511, for the U.S. district court \$1026 to \$3378, depending on the type of tort case). The estimated nationwide expenditure in the 50 states for the estimated 661,000 tort cases filed in state courts of general jurisdiction in fiscal year 1980 was \$264 million. With 32,315 U.S. district court tort filings

in fiscal year 1980, the annual federal expenditure was estimated at \$56 million.

89. Dewees, Donald N., J. Robert, S. Prichard, and Michael J. Trebilcock. "An Economic Analysis of Cost and Fee Rules for Class Actions." *The Journal of Legal Studies* 10 (1981): 155-85. Tables.

Central to the debate over class actions in American and Anglo-Canadian jurisdictions is the issue of the appropriate incentives facing a prospective representative plaintiff and his or her lawyer. To isolate and measure the incentive effects of alternative cost rules, the authors analyze nine alternative cost rules that might be applied to class actions. For each cost rule, the minimum probability of success required to create a positive incentive to bring an action is calculated in several different hypothetical suits. These probabilities are then compared and measured against certain benchmark probability calculations. From these comparisons, a number of conclusions are drawn which highlight the deficiencies of the existing Anglo-Canadian rules, identify some potential problems inherent in some current United States rules, point out differences among alternative rules involving a contingency factor, and isolate some of the choices facing policymakers designing class action procedures. The authors reach "eight major conclusions." They do not, however, point to a single rule as being unambiguously superior. Much depends on what purposes one wishes to promote or discourage in class actions.

90. Miller, Arthur R. *Attorneys' Fees in Class Actions: A Report to the Federal Judicial Center*. Washington, D.C.: Federal Judicial Center, 1980. 430 pp.

This study examines the state of the law regarding class action attorneys' fee awards between 1978 and 1980. The study was performed in three stages: the reading of recent class action decisions involving fee matters, the study of documents from the fields of representative cases, and the collection of information from judges and attorneys through questionnaires. Miller concludes that the concept of basing class action attorneys' fees awards on time expended and normal hourly rates has gained wide acceptance in the federal courts and is working reasonably well. Time-rate avoids many of the problems of the traditional percentage-of-benefit approach, but is not without its own difficulties. Courts and attorneys face an increased evidentiary burden, and there is great concern over potential abuses and inconsistencies in application. The difficulties, however, are not as great as has sometimes been supposed. Most judges and attorneys surveyed still see the move toward a time-rate approach as desirable. "It is reasonable to expect that the system will stabilize, and the prospects . . . seem to justify optimism. . . ." (p. 384).

91. Arthur Young & Company. *Revision of Class Damage Procedures: Empirical Studies*. Washington, D.C.: United States Department of Justice, Nov. 1979. 118 pp. Tables. Appendices.

The Department of Justice proposed that legislation amending Rule 23(b)(3) of the Federal Rules of Civil Procedure be enacted by Congress. The proposed amendment provides for two types of class action suits: Public Penalty Actions and Class Compensatory Actions. Public Penalty Actions would be limited to situations in which individual plaintiffs have incurred \$300 or less in economic injury, and the legislation would provide for an incentive of up to \$10,000 for the plaintiff bringing the suit in which the class prevails.

Class actions instituted at the time of the study under Rule 23(b)(3) were litigated predominantly on behalf of the class by private attorneys. The proposed legislation, however, would require that U.S. Attorneys review all public penalty actions, and assume, at their discretion, those actions which they deem warrant assumption. The remainder would either be assigned to the appropriate State Attorney General or permitted to be litigated by the private attorney filing the action.

The purpose of this study was to provide estimates of the potential impact on the staff resources of the Office of the U.S. Attorney from an amendment of Rule 23(b)(3). A second objective was to provide an estimate of the percentage of all Rule 23(b)(3) actions that were brought by business entities. In addressing these two areas of interest, this report presents an analysis of several aspects of existing and anticipated conditions associated with the present and amended versions of Rule 23(b)(3).

92. Franklin, Marc A., Robert H. Chanin, and Irving Mark. "Accidents, Money, and the Law: A Study of the Economics of Personal Injury Litigation." *Columbia Law Review* 61 (1961): 1-39. Tables.

This older empirical study focuses on personal injury litigation in New York City. With court authorization, the project analyzed and compiled data from a random sample of 3000 statements filed in certain personal injury and wrongful death cases during 1957. Spot checks of 1959 information from the confidential records of several insurance companies, and numerous other sources, were used to check the 1957 results. The basic empirical data are used to provide insights into two important aspects of the tort system: the impact of the fault principle on the frequency and the size of recoveries, and the role of the attorney. The authors conclude that the then present tort system was "a part-recovery-most-of-the-time matter." In the absence of empirical knowledge of the competitive conditions among attorneys in New York City, the authors reach no conclusion about the reasonableness of attorney fees. The data are interesting but now quite dated.

4. *Disposition.*

93. Daniels, Stephen. "Continuity and Change in Patterns of Case Handling: A Case Study of Two Rural Counties." *Law & Society Review* 19 (1985): 381-420. Tables.

This article examines dispositions by trial courts in Illinois' Bond and Menard counties of both civil and criminal matters from 1870 through 1960.

The author studied over 9000 filed cases to determine whether a pattern of case treatment emerged. He found that approximately 90 percent of the cases filed did not evolve into a contested hearing or judgment. This pattern was not a new trend, but was instead consistent with past disposition of cases.

94. Kritzer, Herbert M., Joel B. Grossman, Elizabeth McNichol, David M. Trubek, and Austin Sarat. "Courts and Litigation Investment—Why Do Lawyers Spend More Time on Federal Cases?" *Justice System Journal* 9 (1984): 7-23.

This study explored multiple factors that might explain the extra time which the hourly fee lawyer, as documented by other research, devotes to federal court cases as compared to state court cases. Examining factors such as differences in procedural rules and rulebook standards of practice, the authors ultimately attributed the greater time spent to a combination of judicial expectations, norms of practice, and possibly attorney incentive.

95. Smith, Sandra, and Paul R.J. Connolly. "Caseflow Management and Backlog Reduction: An Examination of Vermont's Superior Court Program." *Vermont Law Review* 9 (1984): 247-63.

This article examines the Vermont Superior Court backlog reduction program implemented in two counties in 1981. The purpose of this program was to reduce the time between case filing and disposition from two years to one. Through efficient trial scheduling the courts' increased judicial productivity reduced the backlog. The courts increased the number of court days and number of trials set, enforced a strict continuance policy, and kept the program in place through a caseflow management system. After one year, the program resulted in a more current court docket in which cases were disposed of nearly ten months faster than they had been prior to the program's introduction. Litigation costs, however, were not reduced by this time savings.

96. Seron, Carroll. *Certifying Questions of State Law: Experience of Federal Judges*. Washington, D.C.: Federal Judicial Center, 1983. 41 pp. Tables.

This paper describes and analyzes the forty-nine responses of district and appellate judges regarding the procedure for certifying state law questions to state courts. In addition to their own personal observations, the judges weighted various factors in order of their importance in the decision to certify a question. Overall, the judges considered certification an advantageous procedure, effective both in resolving disputes which would otherwise require further litigation and in improving federal and state court relations.

97. Clark, David S. "Adjudication to Administration: A Statistical Analysis of Federal District Courts in the Twentieth Century." *Southern California Law Review* 55 (1981): 65-152. Tables.

In this article, the results of statistical analysis of the nature of caseloads, size of the judiciary, and average case processing times for key periods in the twentieth century suggest that a modern trend from adjudication to

administration has occurred in the federal district courts. The article also examines the forces that have led to this gradual transformation of the federal judiciary's tasks. It ultimately questions whether increased bureaucratization may alter the judiciary's independence and effectiveness as a nonpolitical institution and postulates that the increased emphasis on judicial efficiency may threaten the legitimacy of this institution.

98. Curran, William J. *How Lawyers Handle Medical Malpractice Cases: An Analysis of An Important Medicolegal Study*. Rockville, Md.: National Center for Health Service Research, 1977. 46 pp.

This study analyzes "The Medical Malpractice Legal System," a report prepared by Westat, Inc., for the Secretary's Commission on Medical Malpractice in 1973. The 1973 study, the first of its kind in the United States, surveyed 809 lawyers nationwide about their reasons for accepting or rejecting cases, the "contingent fee" system, settlement practices, outcome of litigation, and opinions about the jury system. The present report states that the largest single reason for rejection of claims, cited by lawyers 41 percent of the time, was "no perceived liability." The "economic worth of the case" was stated 10 percent of the time while "difficulty of proof" was cited by 5 percent of lawyers surveyed. A selective survey of 409 lawyers, known or believed to have been involved in malpractice litigation, showed that they rejected 71 percent of malpractice cases, a rate slightly lower than that shown in the national survey.

99. Heydebrand, William. "Context of Public Bureaucracies: An Organizational Analysis of Federal District Courts." *Law & Society Review* 11 (1977): 759-821.

This study reports on case dispositions in United States district courts. It employs a statistical analysis to illustrate the effect which various types of district court filings had upon the judiciary. It also confirms the increasing governmental presence in society, personified by an increase in governmental defendants and plaintiffs in civil litigation. A presentation of empirical data suggests that environmental pressures and conflicts are causing the evolution of the judiciary's role, as courts' definitions of tasks and allocation of resources occur in response to the environment around them.

IV

Trial

A. Pretrial

The traditional stages of a lawsuit are pleading, discovery, trial, and appeal. Pretrial therefore encompasses the pleading and discovery phases. However, there are many studies of aspects of litigation which occur before a trial commences, but which are not easily classified as pleading or as discovery. Furthermore, there are no studies on pleading per se, perhaps because of the advent of modern notice pleading. Therefore, this section on pretrial procedures is not divided into the traditional phases of pleading and

discovery. The studies dealing with pretrial have been divided into the following categories: diversity jurisdiction; discovery; motions; settlement; pretrial conference; and other aspects of pretrial. These categories have been arranged to represent, to some extent, the chronological progression of the pretrial process.

The studies on diversity jurisdiction are almost uniform in focus: What factors influence attorneys in deciding between federal and state courts when there is diversity of citizenship between the parties? These studies attempt to determine if local bias is an important factor in the choice of forum, since local bias is the historic justification for diversity jurisdiction. The problem with these studies is that they cannot measure actual local bias; rather, they examine whether attorneys perceive local bias. To that extent, the studies are not able to measure the truly relevant factor underlying diversity jurisdiction. In addition to the choice of forum studies, there is one study predicting the possible effects on state courts if, as is every so often proposed, diversity jurisdiction in federal courts were eliminated. Another study examines judicial attitudes toward diversity jurisdiction.

The studies on discovery are not as consistent in focus as are the diversity jurisdiction studies. Some are very broad, based upon surveys of many attorneys on all aspects of discovery. These studies are designed to uncover the perceived problems with the civil discovery system as a whole. Other studies are more narrow, focusing on the effects of local rules governing discovery and the relation of discovery costs to the amount in controversy.

Most of the studies in the motions category examine the use of particular motions, including motions for summary judgment and for sanctions. These studies are based primarily upon motions under the Federal Rules of Civil Procedure. In addition, there is an administrative study dealing with methods used by trial courts to schedule and rule on motions.

The settlement process is not technically a part of civil procedure. However, it is clearly the preeminent form of dispute resolution in the American civil litigation system. Therefore, studies of the settlement process merit inclusion in this bibliography. Since settlement commonly occurs prior to trial, these studies are included here in the section on pretrial procedure. Several studies focus on the judicial role in encouraging settlement; one actually develops a model using case characteristics to predict which cases will settle and which will go to trial. Another study examines the characteristics of attorneys who are effective negotiators.

The pretrial conference serves as a mechanism to ensure readiness for trial. As the studies show, the pretrial conference also helps to encourage settlement by moving cases along. Thus, a step in the process which facilitates the trial can actually eliminate the need for a trial. Studies examine the acceptance, functions, and uses of the pretrial conference. The most recent study of the pretrial conference was published in 1971. Since then, the pretrial conference has become widely accepted and used by courts. Perhaps the lack of more recent studies is a result of this widespread acceptance.

Finally, the section on other aspects of the pretrial process contains studies on case assignment methods, methods of pretrial case management, and the use of telephone conferencing in the courts. These subjects do not fit neatly into any of the above categories; therefore, this separate category has been set up to include miscellaneous matters associated with pretrial procedure.

1. *Diversity Jurisdiction.*

100. Perlstein, Jolanta J. "Lawyers' Strategies and Diversity Jurisdiction." *Law and Policy Quarterly* 3 (1981): 321-40. Tables. Appendix.

This study analyzes the factors that affect the choice of forum in cases with diversity of citizenship. The author developed questionnaires describing hypothetical cases with diverse citizenship. The questionnaires were divided into a control group and an experimental group. In the experimental group, the cases were identical to the control group except for an additional fact about the federal or state courts, such as the existence of local bias, relative delay in the courts, state adoption of the Federal Rules of Civil Procedure, or the relative quality of the judges. Both sets of questionnaires were sent to randomly selected attorneys in nine states. In each set of questionnaires, the attorneys were asked whether, in each hypothetical case, they would file the suit in state or federal court.

A statistical analysis of all of the controlled factors showed that the only one that was statistically significant was the relative congestion of the courts. Local bias, availability of the Federal Rules, and relative quality of the judges were not statistically significant factors. Although not supported by statistical analysis, the type of litigant (corporation or individual, plaintiff or defendant) also appeared to be an important factor affecting the choice of forum.

101. Bumiller, Kristin. *Choice of Forum in Diversity Cases: Analysis of a Survey and Implications for Reform*. Disputes Processing Research Program Working Paper 1980-3. Madison, Wis.: University of Wisconsin-Madison Law School, 1980. 33 pp. Tables. Reprinted in *Law & Society Review* 15 (1980-81): 749-74.

The author conducted a survey of attorneys in four federal judicial districts. The survey focused on three aspects of the attorneys' choice of forum in cases involving parties of diverse citizenship: perceived local bias; comparative efficiency and quality of state and federal courts; and familiarity with state and federal court practice. She found that the choice of forum was based primarily on the comparative efficiency and quality of the courts and on the relative familiarity of the attorneys with the practice in those courts. Local bias was a less significant factor, playing a greater role in rural areas than in urban areas.

102. Goldman, Jerry, and Kenneth S. Marks. "Diversity Jurisdiction and Local Bias: A Preliminary Empirical Inquiry." *Journal of Legal Studies* 9 (1980): 93-104. Tables.

The purpose of the study was to determine whether attorneys perceive a local bias against out-of-state clients in cases involving diversity of

citizenship. The authors sent questionnaires to 200 attorneys who had filed cases in the United States District Court for the Northern District of Illinois during 1976 and to 205 attorneys who had filed in Illinois state courts in 1976. The response rate was about 50 percent. The survey results showed that the primary factors for selecting federal courts in diversity cases were the superiority of federal judges and the less congested federal court calendars. Local bias was cited as a factor by 40 percent of the attorneys in federal courts and by 53 percent of the attorneys in state courts.

103. Flango, Victor E., and Nora F. Blair. "The Relative Impact of Diversity Cases on State Trial Courts." *State Court Journal* 2 (Summer 1978): 20-26. Tables. Appendix.

This article used data on state trial court caseloads and the number of diversity suits filed in the United States district courts to determine the impact upon state trial courts of eliminating diversity jurisdiction in federal courts. The purpose of the study was to determine whether some states' courts would bear disproportionately higher increases in caseload from an elimination of diversity jurisdiction. The study found that the elimination of diversity jurisdiction would result in some state courts' bearing a disproportionately high increase in caseload compared to other states.

104. Government Accounting Office. "Summary of Facts Developed on Federal Diversity Jurisdiction." In U.S. Congress. Senate Committee on the Judiciary. *Federal Diversity of Citizenship Jurisdiction: Hearings Before the Subcommittee on Improvements in Judicial Machinery of the Committee on the Judiciary*, 260-64. 95th Cong., 2d Sess., 1978.

The three purposes of this study were to determine the factors affecting the choice of forum in cases with diversity of citizenship, to assess the objectivity of state courts in diversity cases, and to analyze the ability of state courts to assume the diversity caseload handled by the federal courts. The study's results were based upon court records, secondary materials, and the opinions of twenty-four attorneys who had handled diversity cases. The main factors affecting choice of forum were a preference for federal judges, juries, or procedure; the relative congestion of calendars in state and federal courts; and geographical convenience. The data were inconclusive as to the objectivity of state courts in diversity cases and insufficient to analyze the ability of state courts to absorb the diversity caseload of federal courts.

105. Shapiro, David L. "Federal Diversity Jurisdiction: A Survey and a Proposal." *Harvard Law Review* 91 (1977): 317-55.

This study focused on judicial opinions of diversity jurisdiction. The authors sent questionnaires to all United States district court and court of appeals judges active in 1976; the response rate was almost 70 percent. The survey showed that a clear majority of the responding judges favored the abolition of diversity jurisdiction in federal courts, but that the percentage favoring abolition varied from region to region. The appellate judges spent

11.9 percent of their time on diversity cases, while trial court judges spent 21.8 percent of their time on diversity cases.

106. "The Choice between State and Federal Court in Diversity Cases in Virginia." *Virginia Law Review* 51 (1965): 178-97. Tables.

This student-written law review note focuses on the factors influencing the choice of forum in cases where there was diversity of citizenship. The author sent questionnaires regarding the factors influencing choice of forum to 1,100 randomly selected Virginia lawyers and received responses from 163. Local prejudice against out-of-state parties was cited by a majority of plaintiffs' attorneys as a factor. Other factors often cited were: (1) superior judges in federal court, although this varied by region of the state; (2) convenience, consisting of geographic location, congestion of dockets, and litigation costs; (3) more liberal discovery in federal courts; (4) availability in federal courts of third-party practice; and (5) higher awards from federal juries.

107. Summers, Marvin R. "Analysis of Factors that Influence Choice of Forum in Diversity Cases." *Iowa Law Review* 47 (1962): 933-40. Table.

The purpose of this study was to determine if local bias, the historical justification for diversity jurisdiction in federal courts, was a major factor in choice of forum in diversity cases. The author received eighty-two responses to questionnaires mailed to attorneys practicing in the United States District Courts for the Eastern and Western Districts of Wisconsin. The surveys showed that local bias was not a major factor in the choice of forum. The three factors most often mentioned were geographical convenience, broader discovery rules in federal courts, and higher awards given by federal juries.

2. *Discovery.*

108. Shapard, John E., and Carroll Seron. *Attorneys' Views of Local Rules Limiting Interrogatories*. Washington, D.C.: Federal Judicial Center, 1986. 31 pp. Tables. Appendices.

The authors surveyed practicing attorneys in twelve United States district courts which have local rules limiting the number of interrogatories that one party may serve on another without leave of the court to serve more. The survey showed that a majority of the attorneys favored the rules, but that they were split between preferring to keep the rules local and preferring to amend the Federal Rules of Civil Procedure to limit the number of interrogatories. However, the local rules did not seem to affect significantly the attorneys' use of interrogatories. Attorney comments indicated that some drawbacks exist, such as penalizing attorneys who draft careful, concise questions and forcing increased use of more expensive depositions.

109. Weller, Steven, John C. Ruhnka, and John A. Martin. "ELP Revisited: What Happened When Interrogatories Were Eliminated?" *The Judges' Journal* 21 (Summer 1982): 8-15, 44-46. Tables.

On January 1, 1978, the Los Angeles Municipal Court and the Los Angeles Superior Court, Southwest Division, implemented the Economical Litigation Pilot Program ("ELP"). ELP severely restricted discovery by eliminating interrogatories and limiting the availability of depositions. It also established time limits for cases proceeding under ELP and limited the number of pretrial motions which could be filed in those cases. Except for cases within the jurisdiction of the small claims court, most civil cases in which the amount in controversy was less than \$25,000 were handled through ELP.

The purpose of this study is to evaluate rigorously the successes and failures of ELP. The authors examined approximately 500 case files from 1976 (pre-ELP) and from 1978 (post-ELP) and interviewed court personnel. In addition, they sent questionnaires to all attorneys whose names appeared in the 1978 ELP case files sample; approximately 25 percent responded.

The study shows that ELP reduced both total case processing time and variability in case processing time. Furthermore, it did not affect the settlement rate of cases. Nevertheless, attorneys strongly disliked ELP, primarily because of the lack of discovery. Attorneys felt that the inability to discover relevant evidence impaired the quality of both settlements and trials. Finally, although attorneys' fees were lower in hourly rate cases, the prevalence of contingency fee arrangements limited the amount of cost savings attainable due to lower attorneys' fees.

110. Brazil, Wayne D. "Improving Judicial Controls over the Pretrial Development of Civil Actions: Model Rules for Case Management and Sanctions." *American Bar Foundation Research Journal* (1981): 873-965. Appendices.

The author interviewed 180 Chicago area attorneys about the civil discovery system. This article is the third of three articles reporting the results and recommendations of the study. The other two articles appear in *American Bar Foundation Research Journal* (1980): 217-51 (entry 112); 787-902 (entry 111). Based upon the data reported in the two prior articles, this article proposes rules to improve case management under Rule 16 of the Federal Rules of Civil Procedure (Pretrial Conferences; Scheduling; Management) and to improve the sanctions provisions under Rule 26 (General Provisions Governing Discovery).

111. Brazil, Wayne D. "Civil Discovery: Lawyers' Views of its Effectiveness, Its Principal Problems and Abuses." *American Bar Foundation Research Journal* 1980: 787-902. Tables. Appendices.

The author interviewed 180 Chicago area attorneys about the civil discovery system. This article reports the quantitative results of the interviews. It is the second of three articles reporting the results and recommendations of this study. The other two articles appear in *American Bar Foundation Research Journal*, 1980: 217-51 (entry 112); 1981: 873-965 (entry 110).

The surveys shed light on many aspects of the discovery system. Attorneys with favorable views of discovery tended to handle smaller cases, to

work in smaller law firms, to spend less time in federal courts, to represent primarily plaintiffs, and to have practiced longer. The attorneys felt that the discovery system did not often reveal all of the relevant information held by their opponents. In addition, the most common problems in the discovery system were (1) the negative impact, role, or attitudes of judges; (2) evasive responses, withholding of information, and noncompliance; (3) overdiscovery; (4) delay; (5) cost; and (6) harassment. The most common obstacles to discovery were evasive or incomplete responses and delay in responding; in large, complex cases, attorney-client privilege and other protections, such as the work product doctrine, were significant obstacles as well. Furthermore, tactical purposes appeared to play a large role in the use and timing of discovery devices. On the other hand, clients did not play a major role in the disclosure of information, in that they did not often put significant pressure on their attorneys to withhold properly discoverable information or to overdiscover their opponents. Finally, the surveys revealed that attorneys generally favor increased judicial involvement in discovery, especially in large cases, and increased use of sanctions for discovery abuse. Overall, attorneys are generally satisfied with both the scope of discovery and the scope of the attorney-client privilege.

112. Brazil, Wayne D. "Views from the Front Lines: Observations by Chicago Lawyers about the System of Civil Discovery." *American Bar Foundation Research Journal* 1980: 217-51.

The author interviewed 180 Chicago area attorneys on several aspects of the civil discovery system. This article reports the qualitative results of the interviews. It is the first in a series of three articles reporting the results and recommendations of this study. The other two articles appear in *American Bar Foundation Research Journal* 1980: 787-902 (entry 111); 1981: 873-965 (entry 110).

The authors found very different views of discovery based upon the type of cases that the attorneys handled. In small cases, discovery played a lesser role than in large cases. Discovery tools were used less often and less intensively. Discovery was more straightforward in small cases and less likely to have been governed by tactics, friction, evasion, or harassment. On the other hand, discovery consumed a substantial percentage of the resources devoted to a case in large cases. Tactical considerations played a greater role in large cases; and discovery was less likely in such cases to result in disclosure of all of the significant information held by opponents. Finally, large cases saw more frequent invocation of privilege and other protections, which resulted in more disputes over discovery.

113. Ebersole, Joseph L., and Barlow Burke. *Discovery Problems in Civil Cases*. Washington, D.C.: Federal Judicial Center, 1980. 122 pp. Tables.

The authors surveyed attorneys practicing in a United States district court to identify problems that they had experienced during discovery in cases in that court. The opposing counsel and judges in some of the problem cases were also interviewed. The results were used to analyze the factors which

affect discovery problems under the Federal Rules of Civil Procedure. The study found two major types of discovery problems: resistance to discovery and overdiscovery. Resistance problems appeared to be more easily cured through enforcement of, or changes to, existing rules than did overdiscovery problems. Furthermore, judicial intervention was more common in resistance problems. On the other hand, overdiscovery was more common in large, complex cases.

114. Cohn, Sherman L. "Federal Discovery: A Survey of Local Rules and Practices in View of Proposed Changes to the Federal Rules." *Minnesota Law Review* 63 (1979): 253-97.

The author examined the local discovery rules adopted by the United States district courts and sent questionnaires to the clerk of each district court regarding local discovery practices. The purpose of the study was to determine the measures taken to reduce the amount of judicial resources consumed by discovery, to expedite discovery, to prevent discovery abuse, and to improve enforcement against discovery abuse.

The study revealed that magistrates had been used to handle discovery disputes, although not extensively, in order to reduce the amount of judicial resources devoted to discovery. For the same purpose, the courts developed local rules requiring counsel for both sides to meet with each other to resolve discovery problems. Common methods for expediting discovery were time limits on discovery, early pretrial conferences, and allowing discovery to continue until a fixed event, such as a pretrial conference. The courts adopted measures to control discovery abuse: pretrial definition of the issues through pleadings or conferences, thus limiting the scope of discovery; restrictions on the number and scope of interrogatories; time limits on interrogatory responses; and rules creating a continuing duty to supplement answers to interrogatories. Local rules governing depositions had not been widely adopted. Only a few courts had adopted rules dealing with requests for production, requests for admissions, physical or mental examinations, filing requirements, or stronger enforcement measures and sanctions.

115. Connolly, Paul R.J., Edith A. Holleman, and Michael J. Kuhlman. *Judicial Controls and the Civil Litigative Process: Discovery*. Washington, D.C.: Federal Judicial Center, 1978. 126 pp. Tables.

The study examined several aspects of the discovery process in six United States district courts. It looked at the use of motions to compel discovery under Rule 37 of the Federal Rules of Civil Procedure (Failure to Make or Cooperate in Discovery: Sanctions), the frequency and types of discovery devices used, the number of discovery-related motions, and factors affecting the amount of discovery. In addition, the report analyzed the effects of judicial control over the discovery process on the time and amount of discovery and on total case processing time.

The study found initially that Rule 37 was ineffective at improving discovery time because, although discovery responses rarely were filed within thirty days, few motions to compel or motions for sanctions were filed. In

addition, there were few discovery requests in most cases. The most common types of discovery were depositions, followed by interrogatories and document requests. Significant predictors of the amount of discovery were the subject matter of the case, the number of parties involved, the presence of counterclaims and crossclaims, and the amount in controversy. Finally, the study's examination of judicial control of discovery found that judges using "strong control" over discovery had cases with shorter discovery times. In courts with "strong control environments," even judges using few controls had shorter discovery times. Overall, courts and judges with strong control over discovery tended also to use strong control over other pretrial stages, resulting in faster total case processing times. Significantly, the level of control did not appear to inhibit the amount of discovery nor did it increase the number of motions to compel. Rather, response time to discovery requests in strong control courts was quicker.

116. Lacy, F.R. "Discovery Costs in State Court Litigation." *Oregon Law Review* 57 (1978): 289-308. Tables. Appendices.

The study examined the relationship between the cost of discovery and the amount in controversy. The data came from cases in an Oregon state trial court in 1974. Attorneys from 125 cases on the docket were interviewed to determine the cost of discovery and the amount in controversy in each case. The study found that the cost of discovery generally increased with the amount in controversy, although individual cases varied.

3. *Motions.*

117. Cecil, Joe S., and C.R. Douglas. *Summary Judgment Practice in Three District Courts*. Washington, D.C.: Federal Judicial Center, 1987. 13 pp. Tables.

This study investigated the use of motions for summary judgment. The authors examined docket sheets for 600 cases in three United States district courts as well as statistical information from the United States Court of Appeals for the Second and Ninth Circuits. The study showed that, in 1986, motions for summary judgment were filed in approximately 16 percent of the civil cases in the courts studied, roughly unchanged from 1975. Defendants filed motions for summary judgment much more often than plaintiffs did, and summary judgment motions were especially common in cases involving multiple parties. Although the frequency of motions for summary judgment did not change between 1975 and 1986, the percentage of cases terminated by summary judgment declined by one half over the same period. Finally, the study found that between 13 and 17 percent of the granted motions for summary judgment were appealed, and that the rate of reversal in these cases approximated the reversal rate for all civil cases.

118. Levin, A. Leo, and Sylvan A. Sobel. "Achieving Balance in the Developing Law of Sanctions." *Catholic University Law Review* 36 (1987): 587-609.

The authors examine the application of the sanctions provisions of Rule 11 of the Federal Rules of Civil Procedure (Signing of Pleadings, Motions, and Other Papers; Sanctions) following the 1983 amendments to the Rule. Their thesis is that, despite concerns about extreme reactions, the courts are taking a balanced approach to the interpretation and application of the provisions of these amendments. Furthermore, they contend that the new and evolving "jurisprudence of sanctions" promises to provide some useful correctives to the litigation problems it addresses, while avoiding excesses that pose the risk of negative side effects. The authors describe emerging patterns, identifying situations in which the appellate courts have found sanctions to be clearly applicable and situations in which appellate courts have demonstrated restraint in applying Rule 11 to certain litigation practices. "[S]anctions will prove successful if they create a climate in which both the need for sanctions is drastically reduced and the standards of professional responsibility are understood and adhered to in a way that precludes the use of financial attrition as an accepted litigation tactic. . . . Achieving a sense of balance in the implementation of Rule 11 will, in itself, go far toward reducing the risk of excessive satellite litigation" (pp. 608-09).

119. Kassin, Saul M. *An Empirical Study of Rule 11 Sanctions*. Washington, D.C.: Federal Judicial Center, 1985. 81 pp. Tables. Appendices.

This study reported the results of questionnaires completed by 292 judges of the United States district courts. The judges read case summaries which raised questions under Rule 11 of the Federal Rules of Civil Procedure (Signing of Pleadings, Motions, and Other Papers; Sanctions). In their responses, the judges indicated whether there had been a Rule 11 violation and whether they would have granted a request for attorneys' fees. The study examined the 1983 amendment to Rule 11, which altered the standard for frivolousness from requiring subjective good faith to requiring a "reasonable inquiry" into the propriety of the pleading or motion and also imposed stronger enforcement mechanisms.

The study found that there was little consensus among the judges on whether an action was a violation of Rule 11. Furthermore, it was not clear whether judges were using the pre- or post-amendment standard in reaching their decisions. Judges also differed in their views of the purpose of Rule 11. A majority believed that the purpose of Rule 11 was deterrence, while the remainder were split evenly between punishment and compensation. Among the judges, there was a significant variation in the number of Rule 11 motions that they received and granted in their courts.

120. Conti, Samuel D., Larry L. Sipes, and David C. Steelman. *Continuances in Civil Cases at the Franklin County Court of Common Pleas in Columbus, Ohio: Reducing Trial Court Delay Project, Phase III*. North Andover, Mass.: National Center for State Courts, 1981. 87 pp. Tables. Appendix.

This study examined the relationship between the granting of continuances and the time to disposition of cases. The authors looked at all civil cases scheduled for hearing in February 1981 in the Franklin County,

Ohio, Court of Common Pleas. The study showed a moderate positive correlation between the granting of continuances and the time to disposition. There was no correlation between the strictness of a judge in granting continuances and the size of the judge's pending caseload. There was a relationship between the strictness of the judge and his or her success in disposing of cases within a statutory time guideline. Finally, in cases where there had been at least one continuance, disposition generally did not occur until after the date originally set for trial. In cases without continuances, disposition usually occurred prior to or on the original trial date.

121. Rodes, Robert E., Jr., Kenneth F. Ripple, and Carol Mooney. *Sanctions Imposable for Violations of the Federal Rules of Civil Procedure*. Washington, D.C.: Federal Judicial Center, 1981. 186 pp. Appendix.

The purpose of this report was to ascertain the status of sanctions for violations of the Federal Rules of Civil Procedure. The report focused on Rule 37 (Failure to Make or Cooperate in Discovery: Sanctions), Rule 41(b) (Involuntary Dismissal [of Actions]: Effect Thereof), and Rule 55 (Default). The authors surveyed case law, local rules, and secondary literature for examples of the use of sanctions for violations of these rules.

Courts appeared to be reluctant to impose sanctions under Rule 37. Rather, they preferred discovery and tended to order discovery even if a party was already failing to comply with a prior discovery order. Courts would only apply sanctions after considering the culpability of the offending party, the harm suffered by the requesting party, the purposes and effects of a sanction, and the extent to which the client would be punished for the misconduct of counsel.

Dismissal of cases under Rule 41 occurred in several situations: delay constituting failure to prosecute; refusal to proceed to trial; failure to appear for trial; failure to appear for a pretrial conference; failure to effect timely service of process; and failure to file an amended complaint or other document as ordered by the court. Since dismissal was the only remedy allowed under Rule 41(b), courts were reluctant to impose sanctions. Generally, a violation of the rule which counsel could satisfactorily explain did not result in dismissal.

Rule 55, which governs default judgments, operated similarly to Rule 41(b). Default could occur due to inaction by the defendant at any stage of the litigation. In most cases, though, a satisfactory explanation of the inaction by the defendant avoided a default judgment.

122. Connolly, Paul R.J., and Patricia A. Lombard. *Judicial Controls and the Civil Litigative Process: Motions*. Washington, D.C.: Federal Judicial Center, 1980. 76 pp. Appendices.

The study compares the handling of motions in six United States district courts with their time to disposition of cases. The authors classified the courts based on scheduling practices and on the amount of opinion drafting. Two courts used "motions-day" scheduling procedures, where the moving party scheduled oral proceedings when filing the motion. The other

four used "written submissions" procedures, where the judges scheduled oral proceedings using personal scheduling methods after receipt of opponents' briefs.

The study found that the amount of opinion drafting had a significant impact on time to disposition, but that the method used to schedule oral proceedings did not seem to matter. More important was the effectiveness of the implementation of the procedures adopted by the court. In written-submissions courts, the main factors affecting time to disposition were the local rules on deadlines for filing opposition briefs, the extent of adherence thereto, and the extent of opinion drafting. The amount of opinion drafting was also a significant factor in the time to disposition in motions-day courts.

123. McLauchlan, William P. "An Empirical Study of the Federal Summary Judgment Rule." *Journal of Legal Studies* 6 (1977): 427-59. Tables.

The purpose of this study was to analyze the effects of Rule 56 of the Federal Rules of Civil Procedure (Summary Judgment) by using empirical data. The data were drawn from two separate sets. The first set of data was a sample of 535 cases taken from all reported federal cases between 1938 and 1968 in which a motion for summary judgment had been made. The second set of data came from all cases filed in the United States District Court for the Northern District of Illinois, Eastern Division (Chicago), during the 1970 fiscal year.

The study of the reported cases found that motions for summary judgment were most common in statutory, contract, and tort cases. Approximately three-fourths of the motions were at least partially granted. The most common types of parties in summary judgment cases were individual plaintiffs and corporate defendants. The most common types of supporting materials were affidavits and pleadings. Although the rate of appeal in summary judgment cases was somewhat high, the rate of affirmance was not particularly high compared to other types of cases.

The data from the district court showed that motions for summary judgment were most common in contract cases, and that approximately the same percentage of motions were granted as in the reported cases sample. Unlike the reported cases, however, the "win ratio" for defendants moving for summary judgment was much higher than for moving plaintiffs. Finally, the study showed that cases in which there had been a motion for summary judgment had shorter times to disposition than cases which went to trial, even if the motion was denied.

4. *Settlement.*

124. Galanter, Marc. "The Quality of Settlements." *Journal of Dispute Resolution* 1988: 55-84.

In this essay, the author summarizes and evaluates the assertions of other authors that settlement is good. After discussing some methodological problems of comparing settlement to adjudication, he sets forth a "Catalog" of eleven arguments used by various proponents of settlement to show that

settlement is preferable to adjudication. After finding fault with each of the eleven arguments in the Catalog, the author concludes that settlement should be viewed as neither good nor bad. Rather, it is a process inextricably intertwined with adjudication. Therefore, the primary concern should be more than merely encouraging settlements; rather, it should be improving the quality of settlements and the settlement process.

125. Brazil, Wayne D. *Settling Civil Suits: Litigators' Views about Appropriate Roles and Effective Techniques for Federal Judges*. Chicago: American Bar Association, 1985. 169 pp. Tables. Appendices.

The purpose of this study was to determine what roles attorneys desired judges to play in the settlement process. Almost 1900 litigators in four United States district courts were surveyed. The survey showed that the attorneys believed that judicial intervention could significantly improve the likelihood of settlement. Furthermore, most attorneys favored active, as opposed to passive, intervention. Thus, the attorneys believed that the judges should have expressed their opinions on and analyses of the cases in their courts. Both the size of the attorney's firm and the legal culture to which the attorney was accustomed were factors affecting the likelihood that the attorney would view active judicial involvement favorably.

126. Melli, Marygold S., Howard S. Erlanger, and Elizabeth Chambliss. *The Process of Negotiation: An Exploratory Investigation in the Divorce Context*. Disputes Processing Research Center Working Paper 7-1. Madison, Wis.: Institute for Legal Studies, 1985. 58 pp.

This paper discusses the process of negotiation in divorce and its implications for public policy. A sample of 349 court files from Dane County, Wisconsin, in 1979 formed the basis for the quantitative analysis, while a sample of cases from summer 1982 in the same county was chosen on the basis of the parties' availability for interviews. The authors found that (1) negotiation is not viewed as an "alternative" means of dispute resolution; the parties expect their divorces to be resolved through a negotiated settlement rather than a trial; (2) the "shadow of the law" in a divorce may not be cast by the courts but by the negotiating parties; (3) settling disputes by negotiation may be a more complex process than that of adjudication; and (4) the dynamics of divorce negotiation and its relation to outcome suggests that, in a legal regime of no-fault divorce, the spouse who is not seeking to end the marriage may have an important bargaining tool through his or her reluctance to enter into an agreement.

127. Priest, George L., and Benjamin Klein. *The Selection of Disputes for Litigation*. Santa Monica, Cal.: The Rand Corporation, 1984. 55 pp. Tables. (Originally published in *Journal of Legal Studies* 13 (1984): 1-55. An earlier draft is also available as George L. Priest and Benjamin Klein, *The Selection of Disputes for Litigation*, Yale Law School Civil Liability Program Working Paper no. 2, New Haven, Conn.: Yale Law School, 1982.)

This study was designed to identify the factors that determine whether a dispute would be settled or litigated. The authors first proposed a model with numerous hypothesized factors, then they examined the model against empirical data available both from their own research and from other empirical work.

The model proposed that the determinants of settlement and litigation were economic, including the expected costs of favorable and adverse decisions, the parties' information on the likelihood of success at trial, and the direct costs of litigation and settlement. The model was based on the assumption that litigants form rational expectations of probable success. Therefore, the disputes which actually went to trial should have been neither random nor representative of all disputes. The empirical data showed support for this model; nevertheless, the authors believed that more research needed to be done, primarily in verifying independently the magnitude of other determinants of settlement or litigation.

128. Wall, James A., Jr., Dale E. Rude, and Lawrence F. Schiller. "Judicial Participation in Settlement." *Missouri Journal of Dispute Resolution* (1984): 25-44. Tables.

The purpose of this study was to examine the techniques judges use to promote settlement and the factors that determine when judges would intervene in the settlement process. Of the 1500 attorneys and judges who received questionnaires, 963 responded. At least 80 percent of the respondents reported that they had seen or used the following judicial techniques to encourage settlement: (1) talking with both attorneys together about settlement; (2) asking both attorneys to compromise; (3) meeting with attorneys in chambers for a settlement conference; (4) setting a settlement conference upon request; (5) calling a certain settlement amount reasonable; (6) directing the discussion to areas with the highest probability of settlement; and (7) telling the attorneys to focus on relevant issues.

In addition to the questionnaire, the authors conducted interviews with "several dozen" judges. The interviews showed that the following factors were most important in determining whether the judge would intervene in the settlement process: (1) the amount of time available to the judge; (2) the length of the judge's docket; (3) the amount of trial time required by the case; (4) the complexity of the case; and (5) the amount in controversy.

129. Shapard, John E. *The Influence of Rules Respecting Recovery of Attorneys' Fees on Settlement of Civil Cases*. Washington, D.C.: Federal Judicial Center, 1984. 72 pp. Tables.

The objective of this paper is to simplify the debate over attorney fees in one area where it is possible to compare the influence of attorney fee rules in an objective and comprehensive manner. For litigants who are not averse to taking financial risks and whose decisions whether to sue and whether to settle are based exclusively on the potential financial gains or losses presented by the litigation, the author clearly specifies how alternative attorney fee rules will influence those decisions. He undertakes a mathematical analysis of the

American rule, the English rule, the prevailing plaintiff rule, the contingent fee rule, and the offer-of-judgment rule. This paper challenges the assumption that settlement will occur whenever it is possible. It concludes that, for litigants who meet the standards set above, the offer-of-judgment rule appears likely to be a superior means of increasing the incidence of settlement and decreasing the expense of litigation, particularly in cases where the principal issue is the amount of damages.

130. Williams, Gerald R. "The Negotiating Patterns of Practicing Lawyers." In *Legal Negotiation and Settlement*, 15-46. St. Paul, Minn.: West Publishing Co., 1983. (A brief summary of this research is available in Gerald R. Williams, "Portraits of Effectiveness and Ineffectiveness in the Practicing Bar," in *A Lawyer's Handbook for Effective Negotiation and Settlement*, 9-14. Washington, D.C.: Department of Justice, 1981.)

The objective of this study was to determine the characteristics of effective and ineffective negotiators. Questionnaires were sent to attorneys in Phoenix and Denver asking about their most recent negotiations, and interviews were conducted with forty-five Denver attorneys about negotiation techniques. Finally, seven hypothetical cases were prepared so that researchers could watch actual attorneys during the negotiation process.

The study found that there were two distinct negotiating styles: cooperative and competitive. Effective cooperative negotiators sought to facilitate agreement, avoided the use of threats, accurately estimated the values of their cases, were sensitive to their clients' needs, and shared information with their opponents. On the other hand, effective competitive negotiators were dominating, arrogant, and uncooperative; used threats; refused to share information; and viewed negotiation as a game. The characteristics common to effective negotiators of both types were: They were perceived as being honest and ethical, their views of cases were realistic, they were well-prepared, they were creative and flexible, they maintained self-control, and they were able to read opponents well.

131. Danzon, Patricia M., and Lee A. Lillard. *Settlement Out of Court: The Disposition of Medical Malpractice Claims*. Santa Monica, Cal.: The Rand Corporation, 1982. 56 pp. Tables.

The main purpose of this paper is to present empirical estimates of a model of the disposition of claims through the courts. The model used here proposes that the decision to settle and size of settlement depend on the defendant's maximum offer relative to the plaintiff's minimum demand. The second purpose of the paper is to provide evidence relevant to the policy debate over tort reform. The empirical estimates, taken at face value, imply that the outcome of the malpractice system is far from random. Court awards are strongly related to economic loss. Out-of-court settlements are strongly influenced by the potential verdict should the case go to court. On average, cases settle for 74 percent of their potential verdict. This discrepancy is larger (smaller) the greater the litigation costs of the plaintiff (defense). The evidence overwhelmingly refutes the allegation that insurance companies can

be forced to pay out on any case, no matter how trivial, in order to avoid litigation costs. The data, from 1974 and 1976 studies, suggest that ceilings on awards, periodic payments, and elimination of the plaintiff's *ad damnum* significantly reduce awards, and reduce the probability and size of payment in settlement out of court. Limited evidence shows that the probability of deciding to go to verdict is higher if (1) the stakes are large and (2) the plaintiff's probability of winning is low. The skewed distribution of dollars among claimants appears to be attributable primarily to the extremely skewed distribution of compensable damages.

132. Danzon, Patricia M., and Lee A. Lillard. *The Resolution of Medical Malpractice Claims: Research Results and Policy Implications*. Santa Monica, Cal.: The Rand Corporation, 1982. 33 pp. (Companion to Patricia M. Danzon and Lee A. Lillard, *The Resolution of Medical Malpractice Claims: Modeling the Bargaining Process*. Santa Monica, Cal.: The Rand Corporation, 1982.)

This study applies behavioral modelling techniques to computerized data on almost 6000 medical malpractice claims closed in 1974 and 1976, providing plausible estimates of how these claims were bargained, whether the settlement amount was closer to the plaintiff's demand or to the defendant's offer, and what the verdict would have been if each case that was settled had instead been pressed to judgment. The authors find that court awards are strongly influenced by the extent of economic loss and by the law defining and sometimes limiting compensable damages and that, on average, paid settlements amounted to 74 percent of their "shadow verdicts." Compensation is probably not unfairly distributed, but instead is a reasonably accurate reflection of the concentration of injury severity and measurable economic damage. The cost of litigation does distort the process, but any reduction in the cost of litigation creates added incentive for both sides to proceed to trial. On the other hand, the fact that half of all claims are dropped with no payment refutes the popular belief that insurance companies pay out freely to be rid of small claims or unfounded nuisance claims. Dollar caps on awards, prohibition of specific dollar claims by the plaintiff, and authorization of installment payment of large awards appear to significantly reduce jury awards. Modification of the collateral source rule has apparently had a much weaker effect. Statutory limits on the contingent fees charged appear to have a moderately depressive effect on settlement amounts and on the number of cases going to verdict, while somewhat increasing the proportion of cases dropped.

133. Kritzer, Herbert M. "The Judge's Role in Pretrial Case Processing: Assessing the Need for Change." *Judicature* 66 (1982): 28-38. Tables.

This study focused on judicial activity designed to encourage settlement. Separate questionnaires were sent to judges and lawyers in five United States district courts asking for the frequency of use by judges of ten specific techniques to promote settlement. The survey showed that judges intervene in most cases, but that their intervention is not very intense. A

statistical analysis of the data showed that more intense intervention led to more frequent settlement, but the data were inconclusive as to the correlation between the intensity of intervention and total case processing time.

134. Wall, James A., Jr., and Lawrence F. Schiller. "Judicial Involvement in Pre-Trial Settlement: A Judge Is Not a Bump on a Log." *American Journal of Trial Advocacy* 6 (1982): 27-45. Tables. Appendix.

The objectives of this study were to determine the need for judicial participation in pretrial settlement, the extent of judicial participation in the settlement process, the settlement techniques used by judges, and the views of attorneys on these techniques. The authors sent questionnaires to 1000 randomly selected attorneys and received 360 responses.

The survey showed initially that attorneys believed that cases take too long to resolve. The study also found that judges actively participated in some manner in 34 percent of settlement proceedings. Twenty judicial techniques to encourage settlement had been observed by 64 percent or more of the attorneys, with the three most common being meeting with counsel in chambers for a settlement conference, talking together with both attorneys about settlement, and raising the settlement issue but no more. The most common techniques received the approval of the attorneys surveyed. However, the study did reveal ten fairly common judicial techniques to encourage settlement which at least 20 percent (and up to 65 percent) of the attorneys viewed as unethical.

135. Danzon, Patricia M. *The Disposition of Medical Malpractice Claims*. Santa Monica, Cal.: The Rand Corporation, 1980. 72 pp. Tables.

This report, prepared for the Health Care Financing Administration, United States Department of Health, Education, and Welfare, develops a model of the disposition of malpractice claims: the size of awards (at verdict and in out-of-court settlements), the probability that some positive payment is made to the plaintiff, and the propensity to settle or to litigate to verdict. The model assumes that the courts apply the legal standards of liability and damages. The litigants decide how much to spend and when to settle based upon their expectations of the payoff and the cost of litigating further. If these assumptions are correct, the disposition of claims is predicted to conform to some extent to, but also to depart systematically from, the legal standard of payment equal to damages if and only if negligence occurred. The model is used to structure the analysis of data from three surveys of malpractice claims, closed in 1970, 1974, and 1976. Estimates are presented of the effects on the disposition of claims of characteristics of the injury, the plaintiff, the defendants, and the state in which the injury occurred. The results are generally consistent with the legal standard and the economic model. "Perhaps the most important finding is that the disposition of claims conforms to some extent to the legal standard and departs from it in ways that are consistent with a simple model of rational behavior by the parties involved, subject to the constraints implied by the expected outcome in court and the costs of litigating." The more extreme criticisms, that the system is

random with respect to whether and how much payment is made, are “clearly unfounded.”

5. *Pretrial Conferences.*

136. Walker, William L., and John W. Thibaut. “An Experimental Examination of Pretrial Conference Techniques.” *Minnesota Law Review* 55 (1971): 1113-37. Tables.

This article reported the results of an experiment testing the effectiveness of various techniques available to judges in pretrial conferences. The experiment used law students acting as counsel for hypothetical opponents in a land partition dispute. The students first examined the facts of the case, and then went into a pretrial conference. Eight types of pretrial conferences were held so as to examine the following factors: the level of conflict between the parties, whether the judge identified the important issues during the conference, and whether the judge allowed settlement discussions as to each of the five hypothetical tracts separately or “wholistically.”

The experiment suggested treatment of the tracts as a whole group rather than as separate entities (the “wholistic” approach) led to more frequent and more equitable settlements. Furthermore, the wholistic approach resulted in each party receiving a higher total settlement value. The level of conflict between the parties was also important, with low-conflict cases more likely to settle. Finally, issue identification by the judge slightly increased the chance of settlement in low-conflict cases, but it reduced the likelihood of settlement in high- conflict cases.

137. Rosenberg, Maurice. *The Pretrial Conference and Effective Justice: A Controlled Test in Personal Injury Litigation*. New York: Columbia University Press, 1964. 249 pp. Tables. Appendices. Bibliography. Index.

This study focused on the effectiveness of pretrial conferences. A controlled experiment was designed and implemented in New Jersey trial courts from 1960 to 1962. The personal injury caseload was divided into three groups: cases without a pretrial conference; cases with a mandatory pretrial conference; and cases, initially assigned to the group without conferences, where counsel for at least one side requested a pretrial conference. Data were collected from court records, from special forms designed for the study, and from interviews with judges and attorneys.

The data showed that pretrial conferences improved the quality and fairness of the trials themselves, and that pretrial conferences increased the likelihood of settlement. However, pretrial conferences did not alter the frequency or outcome of appeals. Furthermore, pretrial conferences did not improve the overall efficiency of the court process. Finally, pretrial conferences had no real effect on the outcome of cases, except that plaintiffs’ recoveries were higher in cases with pretrial conferences. In addition to these findings, the author discussed the observations about pretrial conferences made by judges and by independent observers.

138. Probert, Walter. "A Survey of Ohio Pre-trial Practices and Achievements." *Western Reserve Law Review* 7 (1956): 428-35.

The purpose of this study was to examine the extent and effects of the pretrial conference in Ohio state trial courts. The author sent questionnaires to all of the judges of the Ohio Courts of Common Pleas. The questionnaires showed that there was wide use of the pretrial conference. About half of the judges required clients, as well as their attorneys, to be present at the conferences. The judges reported reasonable success in obtaining stipulations of fact and agreement on the legal issues at the pretrial conference. Most judges also used the pretrial conference to encourage settlement. Finally, the judges believed that most attorneys cooperated with the pretrial conference process.

139. Caplan, Oscar S. "Pre-trial System in the Municipal Court of Chicago." *Case and Comment* 16 (Feb. 1941): 17-21. Table.

The Municipal Court of Chicago had established a pretrial conference procedure for all cases. The conferences were held with separate pretrial judges. Caseload statistics showed that approximately 31 percent of the total caseload was disposed of directly by the pretrial conferences.

6. *Other Aspects of Pretrial.*

140. Kritzer, Herbert M. *Notifying Potential Claimants in Mass Tort Actions: The Dalkon Shield Case*. Disputes Processing Research Program Working Paper 8-5. Madison, Wis.: Institute for Legal Studies, University of Wisconsin, 1987. 23 pp.

Notifying interested parties of their right to file claims against alleged tortfeasors is a major issue in mass tort cases. Kritzer discusses some of the general issues involved in notification and reports on two surveys into how a large-scale public notification campaign worked in the Dalkon Shield litigation. The surveys, carried out by Gallup, suggest that the notification program served to activate a largely preexisting awareness of the alleged hazards of the Shield rather than educate the public to the existence of those hazards. The findings raise questions about how a similar public notification program might work if the level of public awareness was very low at the time of the campaign.

141. Hanson, Roger A., Lynae K.E. Olson, Kathy L. Shuart, and Marlene Thornton. "Telephone Hearings in Civil Trial Courts: What Do Attorneys Think?" *Judicature* 66 (1983): 408-19. Tables.

The first phase of this study focused on the potential uses for telephone conferencing in the civil litigation process. The authors surveyed 649 attorneys in Colorado and New Jersey about telephone conferencing. The survey showed that telephone conferencing was better suited to procedural matters such as trial settings and motions for continuances than to substantive matters such as motions to dismiss, motions for summary judgment, witness testimony, and appellate oral argument.

The second phase of the research examined attorneys' views on the telephone conferencing programs existing in Colorado and New Jersey. The study found that a significant majority of the attorneys surveyed were satisfied with the quality of the telephone hearings. Furthermore, telephone conferencing resulted in a substantial reduction in travel time and waiting time. However, the attorneys believed that, where one attorney participated by telephone while the other attorney was in chambers, the attorney in chambers was at an advantage. This perceived advantage did not reduce the attorneys' overall satisfaction with the telephone conferencing process, though.

This article arose out of the same research that produced Institute for Court Management and the American Bar Association Action Commission to Reduce Court Costs and Delay, *Evaluation of Telephone Conferencing in Civil and Criminal Court Cases*, 1983 (entry 142).

142. Institute for Court Management and the American Bar Association Action Commission to Reduce Court Costs and Delay. *Evaluation of Telephone Conferencing in Civil and Criminal Court Cases*. Denver: Institute for Court Management; Washington, D.C.: American Bar Association, 1983. 108 pp. Tables. Appendices. Reprinted as *Telephone Conferencing in Civil and Criminal Court Cases*, Washington, D.C.: United States Department of Justice, 1984.

This study examined the feasibility of telephone conferences in place of conferences, hearings, and other matters which traditionally took place at the courthouse. Trial courts in Colorado and New Jersey used telephones rather than in-court proceedings; and interviews were conducted with the attorneys, judges, and court staff involved with the experiment.

The study showed that the range of matters which could be handled over the phone rather than in court was very broad. Telephone conferencing resulted in reduced attorney travel and waiting time. Attorneys' fees were lower as a result, except where the attorneys charged contingency fees. Generally, attorneys and judges were satisfied with the quality and flexibility of telephone conferences. Court staff found no increased workload due to telephone conferences. The only problem was that careful attention was needed to integrate telephone conferencing into the existing procedural structure of the courts.

143. Meierhoefer, Barbara S. *Business by Phone in the Federal Courts*. Washington, D.C.: Federal Judicial Center, 1983. 22 pp. Appendices.

This survey focused on the use of telephone conferencing in federal courts. Thirteen judges in United States district courts were interviewed about their use of telephone conferencing. The interviews showed that the types of proceedings which were handled by telephone varied from judge to judge. Furthermore, telephone conferencing was most effective where there were few parties involved, exhibits were not involved, and the subject matter of the proceeding was not complex nor time-consuming. The procedures adopted by the judges to govern telephone conferencing tended to be

flexible. Overall, the judges thought that telephone conferencing was beneficial, in that it resulted in financial and time savings with no reduction in the quality of the proceedings.

144. Hazard, Geoffrey C., Jr., and Paul R. Rice. "Judicial Management of the Pretrial Process in Massive Litigation: Special Masters as Case Managers." *American Bar Foundation Research Journal* 1982: 375-418.

The authors served as special masters in the case of *United States v. American Telephone & Telegraph*. This article described their experience in that case and made recommendations based upon that experience. The authors found that three mechanisms that they had used were particularly helpful in managing the case: a guidelines procedure for handling claims of privilege, supervised negotiation for reaching stipulations, and an "informal" system of case management. In addition, the use of two special masters, which forced the masters to negotiate their disagreements on rulings, set the tone for better negotiations between the parties. Finally, the authors recommended the development of incentives for counsel to advance, rather than hinder, the case through the use of reciprocity and the reduction of risk and waste.

145. Ebener, Patricia A., Jane Wilson-Adler, Molly Selvin, and Michael S. Yesley. *Court Efforts to Reduce Pretrial Delay: A National Inventory*. Santa Monica, Cal.: The Rand Corporation, 1981. 117 pp. Tables. Appendices. Bibliography.

The purpose of this study was to provide a description of the methods being used in courts to reduce pretrial delay. The authors conducted telephone interviews with court officials, including court administrators, judges, attorneys, and program administrators, in all fifty state court systems and in forty municipal courts. The study found initially that procedures to improve pretrial case management had been widely adopted.

There were two groups of procedures in widespread use. The first group consisted of procedures to improve the actual management of the caseload. These techniques included efficient management of court resources to better meet caseload demand, simplified and streamlined procedures with greater court supervision to expedite the pretrial process, and the establishment of firm trial dates. The second group of procedures consisted of methods to divert cases from the courts to other forums. These diversionary techniques included judicial arbitration, mandatory screening of medical malpractice cases by independent panels, and the use of mechanisms to induce settlement.

146. Hanson, Roger A., Barry Mahoney, Paul Nejelski, and Kathy L. Shuart. "Lady Justice—Only a Phone Call Away." *The Judges' Journal* 20 (Spring 1981): 40-49, 57.

This article focused on judicial opinions about telephone conferencing. It arose from the same research that produced Institute for Court Management and the American Bar Association Action Commission to

Reduce Court Costs and Delay, *Evaluation of Telephone Conferencing in Civil and Criminal Court Cases*, 1983 (entry 142).

The authors interviewed judges in twenty courts using telephone conferencing. Telephone conferencing was being used in a wide variety of courts, both state and federal, trial and appellate. Furthermore, telephone conferences could cover a wide variety of matters, and the judges perceived no qualitative effect upon the proceedings due to use of the telephone except for time savings for the courts.

147. Inglis, Ernest A. "The New Method of Assigning Cases: An Interim Report." *Connecticut Bar Journal* 22 (1948): 333-39.

This article reported the results of a new (for 1948) method of assigning cases for trial that had been adopted by the Hartford County, Connecticut, Superior Court and Court of Common Pleas. The system employed four separate lists of cases at various stages of preparation for trial: the trial list, the reserve list, the ready list, and the assignment list. Based upon court records, the new assignment method appeared to have reduced the litigants' waiting time at the courthouse. It also appeared to have increased settlements; with improved caseload, more cases were brought closer to trial, setting the stage for settlement negotiations. Overall, the number of jury cases disposed of, either through settlement or through trial, increased substantially.

B. Jury Studies

The studies in this group are divided into five categories: (1) selection and composition, (2) size, (3) instructions, (4) verdicts and awards, and (5) performance. The purpose of many of these studies is to provide objective, empirical evidence of how the justice system's process uses the jury in order to enlighten debates about the viability of lay fact finders and about alleged extravagant damages awards.

The studies gathered here are those which employ empirical methodology and which bear on some procedural aspect of the jury's role and performance. Therefore, the many behavioral psychology studies, which investigate topics such as group decisionmaking, are not included. A distinction has been drawn between the process of using the jury and the mental process through which juries reach decisions. The distinction is often not a clear one; many studies overlap fields of interest and some human behavior questions certainly have an impact on the adjudicatory process. Nonetheless, the bibliographer has attempted to draw this line, including in the bibliography those studies deemed to be of interest to the proceduralist. Review of many of the jury performance studies included here will lead a researcher to some of the behavioral and psychological studies.

Annotations include the findings and conclusions of studies when it is possible to do so succinctly. However, no findings are reported here for studies in which conclusions are qualified by the nature of the investigation—complex, conditional, or too numerous to describe briefly. Annotations of

these studies attempt instead to inform the reader about the questions for which conclusions are offered and the general nature of the findings. As several scholars have pointed out, external conclusions drawn from any particular study might be debatable; the bibliographer has attempted to avoid debate and simply present objective information about the studies.

Jury selection and composition studies concern the process through which juries are formed. Some excellent investigations about creating a jury representative of a community cross section are not included because they approach the question from a theoretical, rather than empirical, perspective.

Many jury size studies were conducted during the 1970's in response to Supreme Court decisions permitting states and federal courts to alter the size of the traditional twelve-member panel. The Court's willingness to rely on empirical studies generated much interest in conducting them. Perhaps more importantly, during this period of focus on empiricism, several scholars examined how and to what extent the judiciary should use social science research in making decisions. Although discussion about the use of empirical evidence in court continues, the interest in jury size studies appears to have subsided by about 1980; smaller jury panels now seem to be an accepted notion within the adjudicatory process.

The related investigations of whether the jury's rule of decision should require a unanimous or merely majority verdict are included in the jury size section. Few of these studies have dealt with civil juries; most of the criminal jury rule of decision studies are not included.

The verdict and award section includes studies about the results from jury decisions, in which there appears to be much current interest. This section includes a wide range of topics, from size of awards to factors affecting the awards. The Rand Corporation's Institute for Civil Justice is a rich source of information on this subject.

The performance section includes studies on a variety of questions. Studies of factors affecting the jury decision process, such as demographics and preconceived attitudes, are included here. Investigations of the effects of presenting videotaped trials are in this section. Large scale works examining several jury questions, as well as some critical analyses and overviews of empirical jury studies, are also in this section.

In general, empirical study of juries presents some unique methodological problems. For example, since researchers cannot observe actual deliberations, they have devised several laboratory simulations, after the fact interviews, and other means to reconstruct what real juries do. Many of the methodologies are designed for criminal juries. The researchers offer some explanations for this preference, such as civil trial parties' desire for confidentiality. Other reasons perhaps involve the simpler guilty/not guilty criminal jury result and a perceived greater social science interest in criminal justice system results. Even though some of the criminal jury findings have external validity when applied to civil juries, there appears to be a need for more focus on civil juries when possible.

1. *Selection and Composition.*

148. Shapard, John E. *A Comparative Study of Jury Selection Systems*. Washington, D.C.: Federal Judicial Center, 1981. 45 pp. Tables. Appendix.

This study compares the effectiveness of four different juror selection systems up to the point when a pool of prospective jurors is produced at the courthouse. It is primarily concerned with clerical efficiency in sending a summons and qualification questionnaire to jurors. It also compares the different systems' effects on race and sex composition of jury pools.

The methodology consists of comparing selection systems in eight United States district courts. After constructing models of these systems, experimental summons and qualification questionnaires were mailed, some by first class and others by certified mail. Details of the various filtering systems were gathered and mathematical efficiency models were constructed.

In considering the effects of a particular selection system on race and sex composition of jury pools, the author finds that the system used might affect race and sex composition.

149. Zeisel, Hans, and Shari S. Diamond. "The Effect of Peremptory Challenges on Jury and Verdict: An Experiment in a Federal District Court." *Stanford Law Review* 30 (1978): 491-531. Tables.

This study attempts to measure the effect of peremptory juror challenges on case outcomes.

An experiment was conducted in twelve criminal trials, expressly not a probability sample, in the United States District Court for the Northern District of Illinois. The actual trials were conducted with real juries. Two experimental juries observed the trial from spectator seats. One was composed of jurors peremptorily challenged and removed from the actual jury, the other of randomly selected members of the venire. The shadow juries cast pre deliberation votes, held tape recorded deliberations, and reached final verdicts.

Analysis of data attempts to reconstruct what verdict would have been reached had there been no peremptory challenges, and compares this reconstruction to the actual jury's verdict. The authors calculate the shift in the probability of verdict resulting from use of peremptory challenges. Results are also compared with the judge's opined verdicts. This information is used to calculate an attorney performance index to measure how well attorneys exercised their peremptory challenges. These measurements vary widely.

The authors discuss several findings, some of which seek to assess how well voir dire peremptory challenges accomplish the function of eliminating biased jurors.

150. Coe, Kenneth. "Juror Utilization in Three Selected Oklahoma District Courts." *Oklahoma Law Review* 29 (1976): 65-109. Tables. Appendix.

Effective jury management produces savings for a judicial system as well as for members of the community summoned for jury duty and their employers. This study evaluates the administrative efficiency of jury utilization in three Oklahoma state trial level courts. It synthesizes results with previous studies in an effort to suggest improvements in any court's jury utilization.

The author gathered jury time management information from court personnel and records in district courts in three different counties during one jury term. Data from juror questionnaires were disregarded because they were inconsistent and often inaccurate. The study documents how a juror's time is spent, from summons to dismissal, and compares this with optimum use of time. The conclusion makes suggestions for future studies and notes that jurors generally displayed a positive, civil attitude toward their roles in the judicial process.

151. Stoever, William. "The Expendable Resource: Studies to Improve Juror Utilization." *Justice System Journal* 1 (Winter 1974): 39-53. Tables.

This study examines how juror time is spent and offers suggestions for improving efficiency in providing juries for trials. The Institute of Judicial Administration conducted the study in the United States District Courts for the Southern and Eastern Districts of New York during seven months in 1971. The author collected data on the number of jurors called for duty, number sent to a voir dire, and number selected as jurors.

After determining hour-by-hour usage of jurors, the author offers suggestions for improving juror usage. Suggestions relate to areas such as better planning for juror needs, pooling of jurors, planned reductions of jurors called, improving communication of juror needs, and reducing size of jury panels.

152. Levit, William H., Dorothy W. Nelson, Vaughn C. Ball, and Richard Chernick. "Expediting Voir Dire: An Empirical Study." *Southern California Law Review* 44 (1971): 916-95. Tables. Appendix.

This study seeks to determine how to save time in conducting voir dire examinations and still preserve the voir dire purpose of impaneling impartial juries. The study reports results of an experiment in the Los Angeles Superior Court which took place in 1969 and 1970. The experiment compares three methods of jury impanelment: the New York, federal, and state methods of voir dire. The New York method essentially allows attorneys to control the examinations without requiring a judge to be present.

Statistics collected show that the average New York voir dire consumed about 135 minutes. The federal method required about sixty-four minutes, and the state method took 111 minutes. The authors analyze and compare various advantages of these methods, indicating that the federal one, completely controlled by a judge, seems most efficient and effective in creating an impartial jury.

153. Zeisel, Hans. "Dr. Spock and the Case of the Vanishing Women Jurors." *University of Chicago Law Review* 37 (1969): 1-18. Tables.

This article reports results of a study of apparent sex discrimination in old federal jury selection procedures. It was conducted for the defense in a case in which the proportion of women in the jury venire for trial was 9 percent, all of whom were eliminated from the actual jury. The study assimilates statistical data about some of the jury venires in the United States District Court for the District of Massachusetts during the period 1966 to 1968. It calculates the probability of random occurrence of the particular venire for the Spock trial.

The author discusses the validity of proof by statistical inference. He uses this methodology to demonstrate the enhanced sex neutrality achieved by the revised federal jury selection procedures enacted by the Jury Selection and Service Act of 1968, Pub. Law No. 90 274, 82 Stat. 53.

154. Broeder, Dale W. "Voir Dire Examinations: An Empirical Study." *Southern California Law Review* 38 (1965): 503-28.

This study evolved from the University of Chicago Jury Project. Data are from observations of voir dire proceedings conducted for twenty-three trials in a United States district court in the late 1950's. After the trials, observers interviewed the lawyers and 225 jurors who participated. The author discusses the lawyers' attitudes and strategies and compares them with juror responses to determine whether lawyers used voir dire effectively to remove unfavorable jurors.

The author finds that voir dire was not an effective screening mechanism and that jurors often lied during the examination. He illustrates his findings with anecdotal reviews of the data. The author notes that, due to the small data sample, his findings are not generally applicable to all juries.

155. Summers, Marvin R. "A Comparative Study of the Qualifications of State and Federal Jurors." *Wisconsin Bar Bulletin* (October 1961): 35-42. Tables.

This report compares the qualifications of federal jurors in the Eastern District of Wisconsin with those of state jurors in Milwaukee County, Wisconsin. Data are from 400 questionnaires returned by federal and state jurors who served during a three-year period prior to 1961. The author compared the jurors' occupational levels, ages, amounts of formal education, number of years at their place of employment, sex, ownership of real estate, and amount of previous jury duty.

The comparison shows that skilled laborers predominate in both jury systems. There are no large variations in occupational levels, federal jurors are older than state jurors, state jurors have more formal education, and the difference in number of years at the same job is negligible. He notes no significant differences in qualifications after analyzing the standards used by lawyers who prefer federal juries.

2. *Size.*

156. Kaye, David. "And Then There Were Twelve: Statistical Reasoning, the Supreme Court, and the Size of the Jury." *California Law Review* 68 (1980): 1004-43. Tables.

This article approaches the problem of jury size with a statistical reasoning and probability theory methodology. Although not an empirical study, the author notes that the statistical findings are consistent with those of empirical research regarding the deleterious effects of reduced jury size.

157. Roper, Robert T. "Jury Size and Verdict Consistency: 'A Line has to be Drawn Somewhere'?" *Law & Society Review* 14 (1980): 977-95. Tables.

This study examines the effect of a jury's size on its verdict. It intends to respond to Supreme Court decisions regarding the constitutionality of statutes reducing the size of state court criminal juries. The study is based on simulated jury trials. The author notes reasons for using this quasi experimental approach, problems with it, and techniques to avoid such problems in simulated experiments. Although aimed at criminal juries, the author discusses many jury size studies relating to civil juries. The author offers suggestions for future empirical work attempting to identify what should be the "correct" number of jurors.

158. Sperlich, Peter W. "... And Then There Were Six: The Decline of the American Jury." *Judicature* 63 (1980): 263-79.

This essay discusses the Supreme Court's use of empirical evidence in formulating its decisions about jury structure. It provides an historical overview of the developing changes in civil and criminal juries respecting smaller jury panels and majority, rather than unanimous, verdicts. The author highlights the empirical nature of the jury questions and advocates a more competent use of sound empirical evidence when making social policy decisions.

159. Buckhout, Robert. "'All in Favor': Unanimous vs. Majority Verdicts in Jury Deliberations." *Social Action & the Law* 4 (Sept. 1977): 15-18. Table.

This article addresses the question whether altering the jury's rule of decision from a unanimous vote to a majority vote produces significant differences in verdicts. The article discusses research on this question and reevaluates data from an earlier study in which the author participated. Much of the research responds to decisions in *Johnson v. Louisiana*, 406 U.S. 813 (1971), and *Apodaca v. Oregon*, 406 U.S. 404 (1971), in which the Court upheld the constitutionality of majority verdicts in criminal trials.

The study in which the author participated focuses on criminal juries. The methodology of that study employs mock jurors who view a videotaped murder trial. The mock jurors using a majority rule returned three times as many convictions as those using a unanimous rule. The author's reevaluation of that study confirms the finding that the majority decision rule produces more verdicts, more compromise verdicts, and more convictions.

160. Saks, Michael J. *Jury Verdicts: The Role of Group Size and Social Decision Rule*. Lexington, Mass.: D.C. Heath and Co., 1977. 136 pp. Tables. Appendix.

This book investigates social science inquiries about jury behavior, focusing on how various group size and social decision rules affect the group decisionmaking process in juries. Social decision rule ("SDR") refers to the requirement for which members of a group, and how many, must agree to arrive at a group decision.

The book reports results of two experiments measuring the effects of varying group size and SDR. The experiments use six- and twelve-member juries and SDR's of unanimity and two-thirds quorum. One experiment involves an eight page hypothetical criminal trial transcript read by jurors comprised of undergraduate psychology students at Ohio State University. The other involves presentation of a videotaped staged burglary trial to former jurors from the Franklin County, Ohio, courts. Jurors cast pre-deliberation votes, participated in observed deliberations, and completed post-deliberation questionnaires.

The author finds "no significant differences in the verdicts rendered by" unanimous or quorum juries. He also indicates that smaller jury panels "would produce more acquittals" than larger panels.

161. Lempert, Richard O. "Uncovering 'Nondiscernible' Differences: Empirical Research and the Jury Size Cases." *Michigan Law Review* 73 (1975): 643-708.

The question whether the number of jurors on a jury affects the outcome of its decisions has generated several empirical studies. This article reviews several of those studies, conducted from 1958 to 1975, and evaluates them.

The author criticizes the methodologies used in many studies and identifies some inherent problems which often make the findings from jury size empirical research misleading. The author presents a probability theory analysis of the question and offers suggestions for future empirical methodologies.

162. Valenti, Angelo C., and Leslie L. Downing. "Differential Effects of Jury Size on Verdicts Following Deliberations as a Function of the Apparent Guilt of a Defendant." *Journal of Personality & Social Psychology* 32 (1975): 655-65.

This study uses a tape-recorded mock criminal trial presentation to experimental six- and twelve-member juries composed of undergraduate students at the University of Georgia. Some versions of the evidence presented are weighted in favor of a guilty verdict, others are weighted in favor of acquittal. Findings indicate that, in cases of high apparent guilt, smaller juries are substantially more likely to convict than are larger juries.

163. Diamond, Shari S. "A Jury Experiment Reanalyzed." *University of Michigan Journal of Law Reform* 7 (1974): 520-32. Tables.

This is a critique of the laboratory jury experiment reported by Kessler and cited in *Colgrove v. Battin*, 413 U.S. 149 (1973). The author critically analyzes the methodology used and identifies narrow findings warranted by the study. Asserting that the study supports no valid external conclusions about juries in general, this critique is intended to help future researchers avoid the methodological and analytical flaws of this laboratory study.

164. Zeisel, Hans, and Shari S. Diamond. " 'Convincing Empirical Evidence' on the Six Member Jury." *University of Chicago Law Review* 41 (1974): 281-95. Tables.

In *Colgrove v. Battin*, 413 U.S. 149 (1973), the Court cited four studies as empirical support for its finding that six member juries are constitutional for federal civil trials. These four studies were conducted after the Court sanctioned six member juries for state criminal trials in *Williams v. Florida*, 399 U.S. 78 (1970). This article critically analyzes each of the empirical studies on which *Colgrove* relied. The authors scrutinize the methodologies used, pointing out various flaws, in order to determine what can properly be concluded from them. They argue that courts should critically examine empirical studies, even through cross examining experts at trial, and rely on them only for findings properly supported by the studies' results.

The authors outline suggested methodologies for future empirical jury size studies using actual and experimental trials.

165. Bermant, Gordon, and Rob Coppock. "Outcomes of Six and Twelve Member Jury Trials: An Analysis of 128 Civil Cases in the State of Washington." *Washington Law Review* 48 (1973): 593-96.

This study attempts to provide empirical support for the proposition that there is no inherent difference in decisions rendered by six- and twelve-member juries.

The methodology compares outcomes of actual trials which used panels of different sizes. The scope includes outcomes of 128 trials of worker's compensation claims in Washington state courts during 1970. The authors draw conclusions based on the nearly identical percentages of prevailing parties for the panels studied.

166. Kessler, Joan B. "An Empirical Study of Six and Twelve Member Jury Decision Making Processes." *University of Michigan Journal of Law Reform* 6 (1973): 712-34.

This student note seeks to determine empirically the "degree to which the deliberative processes in civil cases of six and twelve member juries differ." It attempts to test the Supreme Court's finding of no discernible differences in results of different sized juries at the decisionmaking process level rather than at the decision result level.

The study tests hypotheses and the Court's legal proposition with a social scientist's methodology. The laboratory style methodology followed is to show a videotaped mock trial to different sized jury panels comprised of randomly selected undergraduate students. The author videotapes and

studies the subsequent deliberations. Briefly noting verdict results, the study concentrates on comparing the deliberative processes of the panels. A conclusion notes findings and their limitations.

167. Mills, Lawrence R. "Six Member and Twelve Member Juries: An Empirical Study of Trial Results." *University of Michigan Journal of Law Reform* 6 (1973): 671-711. Tables.

This student note seeks to determine whether there are significant differences between civil jury verdicts of six- and twelve-member juries. The study responds to the criticism of studies on which the United States Supreme Court relied in *Williams v. Florida*, 399 U.S. 78 (1970), in approving six-member state criminal juries.

The methodology employs actual trial results from one court system in which both twelve- and six-member civil juries were used. Inferences from this empirical data are drawn through statistical analysis. The twelve-member jury results are taken from a state court in Detroit, Michigan, during six months in 1969; six-member results are from the same court during six months in 1971. The study assesses its data sample and points out strengths and weaknesses in the methodology. Findings are offered as suggestive rather than conclusive.

168. Institute of Judicial Administration *A Comparison of Six and Twelve Member Civil Juries in New Jersey Superior and County Courts*. New York: The Institute of Judicial Administration, Inc., 1972. 58 pp.

The purpose of this study is to provide a sample of opinions and statistical data in order to "compare the conduct, timing, and outcomes of trials before six and twelve member juries." Data consist of questionnaires returned by judges, clerks, and lawyers participating in trials in eleven New Jersey counties during March and April 1972. Researchers also monitored trials and voir dire proceedings during this period. The study reports summary statistical findings and summaries of opinions. The study concludes that six-member juries save time without substantially affecting trial conduct or outcomes.

169. Zeisel, Hans. "... And Then There Were None: The Diminution of the Federal Jury." *University of Chicago Law Review* 38 (1971): 710-24. Tables.

This article analyzes the effects of reducing jury size to less than twelve members and of altering the unanimity requirement for verdicts. The author examines civil and criminal juries separately. The study's methodology combines probability and statistics analysis of hypothetical jury situations with empirical data extracted from surveys and questionnaires used in other studies. The focus is on comparing how well different sized juries perform the essential functions intended for the jury, particularly that of bringing perceptions of a community cross section to bear on the trial process. The author indicates that changes in jury size do in fact produce differences in the

adjudicatory process. He seeks to measure some of these differences so that accurately informed decisions on the proper size of a jury can be made.

3. *Instructions.*

170. Marcote, Paul. "The Jury Will Disregard . . ." *American Bar Association Journal* (November 1987): 34-35.

This news brief summarizes the findings from a study by Jonathan Casper presented at the ABA Annual Meeting in August 1987. The empirical study investigates what juries actually do when told to disregard inadmissible evidence. The experimental methodology includes showing different versions of videotaped closing arguments in a mock trial to 536 experimental jurors. After viewing the tapes and being instructed about disregarding evidence, the jurors assessed civil damages and completed questionnaires. Casper's study indicates that jurors fail to disregard the evidence.

171. Elwork, Amiram, James J. Alfni, and Bruce D. Sales. "Toward Understandable Jury Instructions." *Judicature* 65 (1982): 432-43.

This study investigates whether drafting standardized jury instructions can increase jury comprehension of its duties. It seeks to answer the question whether demonstrated low jury comprehension rates are due to incompetence of jurors, indicating that the jury as an institution should be abolished or limited, or to the incomprehensibility of the instructions.

The methodology involves showing edited videotapes of actual criminal trials to a representative sample of volunteer prospective jurors from Lincoln, Nebraska. The volunteers were selected by a procedure similar to the Nebraska federal court jury selection process. Different groups of jurors received different draftings of jury instructions. Subsequent interviews of jurors demonstrate that revised instructions significantly increase comprehension rates. The authors then seek to demonstrate the external validity of their laboratory experiment results. They also discuss whether their revised standardized instructions produce a level of comprehensibility sufficient for a just and fair jury decision.

172. Charrow, Robert P., and Veda R. Charrow. "Making Legal Language Understandable: A Psycholinguistic Study of Jury Instructions." *Colorado Law Review* 79 (1979): 1306-74. Tables.

This is an empirical study of the comprehensibility of standard jury instructions. It attempts to isolate the linguistic aspects of "legalese" that cause comprehension problems for jurors. Its methodology involves conducting two experiments. The first uses a paraphrase task, in which jurors listen to standard instructions and then orally paraphrase them, to determine which parts of the instructions are not understood. The second experiment repeats the paraphrase task with new jurors using instructions rewritten to eliminate problematic items. Jurors for the study were people called for jury duty in Prince Georges County, Maryland.

The analysis tests hypotheses about jury instructions and discusses comprehensibility of specific legal phrases, semantics, and grammar usage. The authors propose a methodology for isolating and correcting problematic legal language in order to increase comprehension in the intended audience.

173. Buchanan, Raymond W., Bert Pryor, D. Phillip Taylor, and David U. Strawn. "Legal Communication: An Investigation of Juror Comprehension of Pattern Instructions." *Communication Quarterly* 26 (Fall 1978): 31-35. Tables.

This study investigates juror comprehension of oral pattern instructions in criminal cases. The methodology employs 116 jury veniremen from Florida state courts in an experiment in which the treatment group viewed videotaped pattern instructions for the crime of breaking and entering with intent to commit a felony. The control group was not exposed to the pattern instructions. Both groups then took a comprehension test and the authors compared their scores. The comprehension tests were designed to measure how well jurors understood the application and definition of the crime and of legal concepts such as reasonable doubt, circumstantial evidence, presumption of innocence, and admissible evidence.

The analysis finds that the group exposed to pattern instructions scored significantly higher on comprehension tests. Further analysis seeks to identify what portions of the instructions were least understood.

174. Nieland, Robert G. "Assessing the Impact of Pattern Jury Instructions." *Judicature* 62 (1978): 185-94. Tables.

This student article investigates whether pattern jury instructions reduce court workloads at the trial and appellate levels. The author uses data from various surveys and from review of Illinois Supreme Court jury instruction decisions during the period 1964 to 1973. The article concludes that court workloads are reduced by use of pattern instructions.

175. Elwork, Amiram, Bruce D. Sales, and James J. Alfini. "Juridic Decisions: In Ignorance of the Law or in Light of It?" *Law and Human Behavior* 1 (1977): 163-89. Tables. Appendix.

This article reports results of two experiments designed to test whether pattern jury instructions are not understandable and cause arbitrary decisions in disregard of applicable law.

The first experiment demonstrates that rewriting pattern instructions to manipulate psycholinguistic variables can improve juror comprehension and memory of the instructions. Subjects for the experiment were undergraduate psychology students. A control group watched a videotape of a judge reading pattern instructions; the experimental group watched the same judge read rewritten instructions. A subsequent questionnaire tested the subjects' understanding and memory of the instructions. Analysis finds that the rewritten instructions were significantly easier to understand and remember.

The second experiment tests the external validity of findings in a trial setting. Volunteer jurors watched a videotaped reenactment of an automobile accident trial. Different versions of the tape presented instructions at the beginning of the trial, at the end, or at the beginning and end of the trial. Findings confirm that the rewritten instructions improve comprehension and memory, and that the pattern instructions are as effective as no instructions at all. Furthermore, the authors conclude that presenting instructions at the beginning and end of the trial achieves the highest level of understanding and memory.

176. Forston, Robert. "Sense and Non-Sense: Jury Trial Communication." *Brigham Young University Law Review* 1975: 601-37. Tables.

This article discusses problems in communication between trial participants and jurors and presents two related empirical studies. The first study analyzes three jury simulation techniques in order to assess their worth for studying jury deliberative decisionmaking processes. The second examines juror comprehension and application of instructions.

The jury instructions study investigates the percentage of the instructions that are retained by individual jurors and then the percentage that are retained by deliberating juries. Jury instructions from the Polk County District Court in Des Moines, Iowa, for a personal injury case and a murder case were read to different groups of 114 Polk County jurors. The jurors individually took a multiple choice retention test. Then the jurors were divided into groups and assigned the task of reaching unanimous group decisions on each of the questions in the same retention test. The deliberating juries scored ten to fourteen percentage points higher than the mean of the individual juror's test scores.

The author discusses other related jury instruction studies and proposes possible solutions for improving communication in jury trials.

4. *Verdicts and Awards.*

177. Hubbard, F. Patrick. "'Patterns' in Civil Jury Verdicts in the State Circuit Courts of South Carolina: 1976-1985." *South Carolina Law Review* 38 (1987): 699-754. Tables. Appendix.

This is a detailed presentation of patterns found in statistical data on civil jury verdicts in South Carolina state courts during the period 1976 to 1985. Data are taken from the South Carolina Civil Jury Verdict Research Project.

The methodology includes gathering data from civil case files and from South Carolina Court Administration statistics. The scope of the study attempts to include all civil jury verdicts in the state for the ten year period. The author describes and interprets the data in detail. He identifies litigation patterns in areas such as number of cases filed and size of verdict awards for six types of action: contracts, products liability, all tort cases, motor vehicle cases, medical malpractice, and premises liability. The study is intended to be

an objective source of reliable information about juries and the litigation system.

178. Peterson, Mark A. *Civil Juries in the 1980s: Trends in Jury Trials and Verdicts in California and Cook County, Illinois*. Santa Monica, Cal.: The Rand Corporation, 1987. 62 pp. Tables. Appendix.

This report updates and expands data from previous jury verdict studies produced in series. It compares trends in more depth, examining the effects of specific factors, such as race, sex, and perceived financial resources of parties, on jury verdicts. Data are expanded to include San Francisco and Cook County, Illinois, verdicts through 1984, as well as jury trials in the 1980's for all of California.

The report describes changes in trends for number of trials, types of trials, outcomes, and size of awards. It also compares data from different California jurisdictions. The author draws tentative conclusions explaining the findings here. These conclusions are to be tested in the future through multivariate statistical analyses.

179. Peterson, Mark A., Syam Sarma, and Michael G. Shanley. *Punitive Damages: Empirical Findings*. Santa Monica, Cal.: The Rand Corporation, 1987. 69 pp. Tables.

Using the database of civil jury trials assembled by the Institute for Civil Justice (covering all civil jury trials in Cook County, Illinois, and San Francisco County, California, from 1960 to 1984 and all civil jury trials throughout California from 1980 to 1984), this report examines the empirical bases for the debate over punitive damage awards. The authors conclude that two major changes have occurred in recent years. First, punitive damages in business/contract cases have become far more significant. Both routine and extraordinary awards were larger and given more frequently. Second, the largest punitive damage awards have increased greatly in size, sharply increasing both the average award and the total dollars awarded. Despite these changes, the report also found some stability: Punitive damages continued to be rarely assessed in personal injury cases, and most frequently assessed against defendants who were found to have intentionally harmed plaintiffs. In most of these cases the damages were modest.

180. Shanley, Michael G., and Mark A. Peterson. *Posttrial Adjustments to Jury Awards*. Santa Monica, Cal.: The Rand Corporation, 1987. 76 pp. Tables.

This study seeks to determine what happens to civil jury damage awards after trial. It intends to inform the tort reform debate by providing concrete evidence of how the current process handles "excessive" awards. The study addresses such post-trial actions as court-reduced awards, overturning jury awards, granting new trials, appellate reductions, and negotiated settlement for reduced amounts.

The study analyzes data from a stratified random sample of 880 civil cases tried between 1982 and 1984 in Cook County, Illinois, San Francisco

County, and a group of other California counties. A mail survey of plaintiffs' and defendants' lawyers supplied data about the final resolutions for the sampled cases.

Statistical analysis focuses on how jury awards compare with final payments, how final payments vary with award size, and how final results differ depending on case characteristics. Overall findings indicate that, for the sampled cases, defendants pay "an average proportion of 71 percent of the amount the jury originally awarded."

181. Broder, Ivy E. "Characteristics of Million Dollar Awards: Jury Verdicts and Final Disbursements." *Justice System Journal* 11 (1986): 349-59. Tables.

The author presents statistical data on a narrow, but much publicized, group of civil jury verdicts: those awarding over one million dollars in damages. Broder compares the awards with the amounts ultimately paid by defendants. Data are presented for various categories and national regions. An Association of Trial Lawyers of America survey provides the final disbursement figures. The scope includes nationwide verdicts of over one million dollars during 1984 and 1985. The information is intended to inform the "litigation explosion" debate with systematic evidence of the operation of the justice system in high stakes cases.

182. Daniels, Stephen, and Joanne Martin. "Jury Verdicts and the 'Crisis' in Civil Justice." *Justice System Journal* 11 (1986): 321-48. Tables.

Some justice system reform advocates assert that the apparent insurance premium crisis is a result of malfunctions in the court system caused in large part by burgeoning civil jury damage awards. This study intends to provide systematic evidence of actual jury awards to inform the debate over whether civil juries have run amok. The authors report findings from a survey of state verdicts for money damages during the 1980's in forty three counties in ten different states. Tables and discussion illustrate findings of plaintiff success rates, size of awards, and changes in these figures from 1981 to 1985. The authors interpret other civil jury verdict studies. The scope of this survey is much broader than that of most other those studies in order to avoid some of the perceived regional pitfalls of the other studies.

183. Wittman, Donald. "The Price of Negligence under Differing Liability Rules." *The Journal of Law & Economics* 29 (1986): 151-63.

Wittman develops hypotheses concerning the interrelationship of liability rules, jury decisionmaking, and litigant behavior and then tests these hypotheses using data from 582 civil cases involving rear-end automobile accidents in California during 1974-76. The evidence showed: (1) juries are influenced by objective criteria and changes in legal rules; (2) juries tend to award plaintiffs more when the defendant is a corporation; (3) juries partially apply comparative negligence even when negligence is the rule (but there is no evidence for the contrary possibility); and (4) bargaining by the plaintiff and the defendant reflects the anticipated behavior of the jury. Finally,

Wittman notes that this article not only tested hypotheses but also provided empirical estimates of the "price" that juries charge defendants for damage to the plaintiff and degree of culpability.

184. Peterson, Mark A., and Audrey Chin. *Deep Pockets, Empty Pockets: Who Wins in Cook County Jury Trials*. Santa Monica, Cal.: The Rand Corporation, 1985. 108 pp. Tables. Appendix.

Fourth in a series, this study examines success rates for various types of litigants in civil lawsuits. It seeks to determine how juries treat different types of litigants. The study analyzes data compiled from the *Cook County Jury Verdict Reporter* for over 9000 jury trials for the twenty year period 1959 to 1979. The report describes such litigant characteristics as individual or joint parties, race, sex, occupation, education, corporation, and government. The analysis compares liability issue success rates with these characteristics, taking account of the type of case and extent of injury claimed. The analysis also compares size of awards with these factors, identifying circumstances in which a "deep pocket" effect seems to occur.

The report finds "disparate outcomes for different types of litigants," and suggests that findings are consistent with generally perceived social attitudes.

185. Peterson, Mark A. *Compensation of Injuries: Civil Jury Verdicts in Cook County*. Santa Monica, Cal.: The Rand Corporation, 1984. 95 pp. Tables.

Third in a series, this study seeks to determine how jury verdicts compensate different varieties of plaintiffs' injuries. It analyzes trends and patterns observed in the first report, Peterson and Priest (1982) (entry 188), from which the data for this study are taken. The study reports statistical information on the type, number, and severity of physical injuries claimed in the cases studied. It describes and categorizes types of injuries and losses claimed, identifying changes in those claims over time. Through multiple regression analyses, it seeks to measure the effects of various factors on jury awards.

The author offers possible explanations for relationships found between jury awards and (1) the type and severity of physical injury, (2) the amount of special damages claimed, (3) the plaintiff's legal theory, and (4) the year in which the case is tried. Peterson estimates the jury's compensation for specific categories of injury and finds that the award is affected by the severity of the injury, including amount of disability, and the type of injury. Also, the amount of special damages affects the total award in a strong and consistent manner.

186. Carroll, Stephen J. *Jury Awards and Prejudgment Interest in Tort Cases*. Santa Monica, Cal.: The Rand Corporation, 1983. 47 pp. Tables. Appendix.

This note reports preliminary results of empirical research into the question whether civil juries render larger awards for longer delayed cases, implicitly awarding prejudgment interest.

Data are taken from all automobile accident injury cases reported in the *Cook County Jury Verdict Reporter* during the period 1960 to 1979. This database includes 1349 cases in federal, state, and municipal courts in Cook County, Illinois. The analysis controls for type and severity of injury in order to make valid comparisons of size of awards for similar injuries and different lengths of time between injury and judgment. Preliminary results indicate that juries implicitly award prejudgment interest.

187. Shanley, Michael G., and Mark A. Peterson. *Comparative Justice: Civil Jury Verdicts in San Francisco and Cook Counties, 1959-1980*. Santa Monica, Cal.: The Rand Corporation, 1983. 91 pp. Tables. Appendix.

Second in a series on jury verdicts, this report describes trends in civil jury decisions in San Francisco and compares them with previous findings about Cook County, Illinois, jury decisions. This report suggests hypotheses explaining the trends and comparisons but does not seek to test them; it is intended as the initial database for future analyses.

The authors gathered data from *Jury Verdicts Weekly*, the San Francisco area verdicts reporter, for the outcomes of 5300 civil jury trials in state and federal courts in San Francisco County between 1959 and 1980. Data were coded in computer readable form for statistical analyses. The statistical analyses "describe aggregate trends for all civil jury trials and for ten separate case types." Case categories include, among others, automobile accidents, common carrier liability, on the job injuries, professional malpractice, product liability, and contracts or business torts.

The study compares the types of trial, jury verdicts, liability and awards trends, and size of awards for different case types in San Francisco with those in Cook County. The effects of California's 1975 adoption of comparative negligence are measured and described.

188. Peterson, Mark A., and George L. Priest. *The Civil Jury: Trends in Trials and Verdicts, Cook County, Illinois, 1960-1979*. Santa Monica, Cal.: The Rand Corporation, 1982. 73 pp. Tables. Appendix.

First in a series, this study reports the results of statistical analysis of an extensive survey of civil jury verdicts. Providing a large database for future research, this study is intended to produce insights into the type and number of civil jury verdicts, size of awards, trends in verdicts, and bases of jury decisions.

The authors gathered data, and verified them with other sources, from the *Cook County Jury Verdict Reporter*, which reports verdicts, awards, information about parties and lawyers, and a description of issues in all civil cases tried in state or federal court in Cook County, Illinois. The report analyzes data from over 9000 trials between 1960 and 1979, including a random sample of 25 percent of all automobile accident cases and passengers'

complaints against common carriers and 100 percent of all other types of civil cases. The authors report that this is the largest empirical study of the civil jury system ever conducted.

From this source, the authors detail information about parties, settlement negotiations, types of action, and verdicts. The report and statistical analyses "describe aggregate trends for all civil jury trials and for eleven separate types of cases." Case categories include, for example, professional malpractice, product liability, worker injuries, contracts, business torts, and dramshop liability. The authors identify changes in caseload composition, plaintiff success rates, and sizes of awards. Future reports in the series will attempt to explain the trends identified here, examine the quality of jury decisions, and expand the analysis to other areas of the nation.

189. Schwartz, William B., and Neil K. Komesar. *Doctors, Damages and Deterrence: An Economic View of Medical Malpractice*. Santa Monica, Cal.: The Rand Corporation, 1978. 23 pp. Tables. Reprinted in *The New England Journal of Medicine*, June 8, 1978.

The authors argue that damages awarded in a malpractice suit must be viewed not only as compensating the victim, but also as deterring health-care providers from negligent behavior. Economic analysis of the malpractice system indicates that awards can send a signal to providers that informs them how much to invest in avoiding mishaps. The signal to physicians, however, as determined by the number of claims and the size of awards, appears insufficient for ideal deterrence. Further, the deterrence signal is attenuated because malpractice premiums are set for groups of physicians, not for individuals according to their record. The authors conclude that replacing the present tort system with a no-fault insurance scheme would not necessarily be cheaper, and might well abolish the deterrent signal or distort clinical decisionmaking.

5. *Performance.*

190. Bermant, Gordon, Joe S. Cecil, and E. Allan Lind. *Jury Service in Lengthy Civil Trials*. Washington, D.C.: Federal Judicial Center, 1987. 66 pp. Tables. Appendix.

This study explores how a lengthy jury trial in a federal civil case may affect the perceptions of those chosen to serve as jurors. The primary focus of the report is on the results of interviews with persons who served as jurors in federal civil trials. A separate assessment of the demographic characteristics of persons who served as jurors in lengthy civil trials is also presented. The responses and characteristics of jurors in lengthy trials are compared with those of jurors in similar trials of more typical duration.

The jurors in this study served in sixty federal civil trials in California, Illinois, New York, and Pennsylvania between July 1976 and June 1979. Data were collected from juror qualification questionnaires and telephone interviews. Only jurors serving in cases that had reached final resolution were included in the interviews.

The findings suggest that jurors in lengthy civil trials have a somewhat different experience from that of jurors in similar shorter trials. However, these differences are generally small in magnitude and of uncertain significance in assessing jurors' roles in lengthy trials. Although the burden on jurors in lengthy trials was much greater than in short trials, jurors in lengthy trials did not report significantly greater interference with their lives. An overwhelming majority of jurors in both long and short trials indicated that they would serve again.

191. MacCoun, Robert J. *Getting Inside the Black Box: Toward a Better Understanding of Civil Jury Behavior*. Santa Monica, Cal.: The Rand Corporation, 1987. 49 pp. Tables.

This note is a progress report on a continuing research effort aimed at the jury deliberation process. It discusses methods for studying jury behavior, summarizes previous findings, and outlines issues and methodologies for future empirical research. The author's work focuses on how juries produce outcomes in order to assess how well the jury performs its institutional functions.

As a relatively recent report, it provides a thorough overview of methodologies used to study juries, noting that direct observation of actual jury deliberations is generally statutorily prohibited. It summarizes studies of issues such as jury composition and demographics, jury size and rule of decision, juror comprehension, and group behavior.

192. Selvin, Molly, and Larry Picus. *The Debate over Jury Performance: Observations from a Recent Asbestos Case*. Santa Monica, Cal.: The Rand Corporation, 1987. 110 pp. Appendix.

This study is intended to provide empirical research into questions about the role and performance of juries in complex civil litigation, particularly in toxic substance tort litigation. It seeks to begin to determine what standards should be used to measure the "acceptability" of a civil jury verdict.

Methodology consists of observing an actual trial and interviewing the jurors about their deliberative process, how they reached a verdict and computed damages, and how well they recalled and understood evidence. The trial under study involved four claims, from among thirty consolidated claims, arising out of asbestos products liability injuries and deaths. Trial was in United States District Court for the Eastern District of Texas in October 1984. A three and one-half hour interview of the six jurors took place in December 1984. The authors present the results of interviews and compare them with observations from other studies of complex civil litigation.

193. Ford, Marilyn C. "The Role of Extralegal Factors in Jury Verdicts." *Justice System Journal* 11 (1986): 16-39.

Although not itself an empirical study, this article analyzes empirical jury decision process research. The author focuses on studies of factors that potentially bias jury verdicts, such as individual juror characteristics, trial

processes, and group dynamics. The article includes discussion of studies about voir dire and jury instructions, two procedures which the author finds can be used effectively to reduce or eliminate bias resulting from extralegal factors.

The author also discusses methodological problems with jury studies. She points out that problems such as simulated experiments, using college students as research subjects, and mode of trial presentation can impair the external validity of many studies.

194. Hans, Valerie P., and Neil Vidmar. *Judging the Jury*. New York: Plenum Press, 1986. 285 pp.

This book assembles and critically analyzes studies and current knowledge about the jury. It assimilates research and law for a broad general audience, seeking to determine how today's jury functions. The synthesis here is based on several sources, including original research on jury decisionmaking, social science research, scholarly literature, case law and statutes, and the historical development of the jury as an institution. Discussion ranges over issues such as jury size, unanimous or majority rule of decision, effects of variable factors on decisions, jury selection, and jury composition.

195. Hammitt, James K., Stephen J. Carroll, and Daniel A. Relles. *Tort Standards and Jury Decisions*. New Haven, Ct.: Center for Studies in Law, Economics, and Public Policy, Yale Law School, 1984. 18 pp. Tables.

This paper intends to provide information about jury behavior in order to enhance predictions of how juries will apply proposed reforms of procedural and substantive legal standards. The study focuses on three areas in which jury decisions differ from black-letter legal standards. These areas are prejudgment interest awards, larger awards against "deep pocket" defendants, and double discounted awards in comparative negligence cases. Part of the study finds that juries implicitly award prejudgment interest.

Data are taken from cases reported by jury verdict reporting services in Cook County (Chicago) and San Francisco from 1960 to 1979, and from a nationwide sample of closed automobile insurance claims involving jury verdicts. These are derived from two Rand Corporation studies, Peterson and Priest (1982) (entry 188), and Shanley and Peterson (1983) (entry 187).

196. Hastie, Reid, Steven D. Penrod, and Nancy Pennington. *Inside the Jury*. Cambridge, Mass.: Harvard University Press, 1983. 277 pp. Tables. Appendix.

This book reports results of an experimental study of several jury issues. The study examines questions about varying the jury decision rule, behavior during deliberations, and juror demographics. A review of other empirical trust courts when a powerful insurer is the "manager," because monopoly/monopsony-related issues a studies of juries is also presented.

The study is based on simulated mock jury deliberations conducted between 1976 and 1978. Volunteer jurors were chosen from Superior Court jury pools in three Massachusetts counties. Twelve-member jury panels viewed a videotaped reenactment of an actual murder trial. Jurors filled out questionnaires before and after participating in recorded deliberations.

Analysis focuses on the products, contents, and dynamics of jury deliberations. It also examines effects of juror backgrounds and demographics. The authors present a computer program model of jury behavior.

197. Hepburn, John R. "The Objective Reality of Evidence and the Utility of Systematic Jury Selection." *Law & Human Behavior* 4 (1980): 89-101. Tables.

This study is designed to measure the relationship between jurors' attitudes, perceived strength of evidence, and verdicts. Data are obtained from home interviews with 305 potential jurors in St. Louis County, Missouri. The author presented each interviewee with a hypothetical criminal case, received the verdict, and assessed his or her attitude and perception of strength of the evidence in the hypothetical case.

The author summarizes findings from social science studies of jury selection, jury demographic characteristics, and the effects of jurors' attitudes on their verdicts.

198. Mills, Carol J., and Wayne E. Bohannon. "Juror Characteristics: To What Extent Are They Related to Jury Verdicts?" *Judicature* 64 (1980): 22-31. Tables.

This study investigates the relationship among various demographic characteristics of jurors and their decisionmaking behavior. Data are from 197 juror responses to questionnaires mailed to randomly selected Baltimore jury panels and from court verdict records. The study analyzes relationships among various demographic variables through multiple regression analyses. Although data cover civil and criminal juries, regression equations are computed for only the criminal verdicts.

199. Robertson, Elizabeth M. *Juror Response to Prerecorded Videotape Trials*. Washington, D.C.: Center for Consumer Product Technology, National Bureau of Standards, 1979. 28 pp. Tables. Bibliography.

This report is an analysis of the responses to an attitudinal questionnaire returned by 278 jurors who participated in prerecorded videotaped civil trials ("PRVTT") conducted in Ohio during 1975 and 1976.

Prerecorded videotape trials, introduced in 1971, have been investigated with respect to constitutionality, behavioral factors, and the time, cost, and administrative efficiency involved in the process. Ohio was the first state to extend the use of videotape beyond the recording of depositions. Judge James L. McCrystal of Erie County, Ohio, has conducted a substantial number of PRVTT's in his court. He devised the questionnaire upon which this report is based to assess juror response to these trials.

A four-page form containing twenty-four questions was mailed to each member of a jury who had recently participated in a PRVTT presided over by Judge McCrystal. The results of the data analysis are simply descriptive of the jurors who returned the questionnaire and not of jurors in general (convenience sampling).

The majority of jurors who responded were very much in favor of PRVTT technique as presented in Erie and Trumbull County courts and would prefer PRVTT in a civil trial in which they were involved. There was no majority for either mode of presentation in a criminal trial. Since the responses analyzed represent a convenience study rather than random sampling, there is a possibility that only jurors with strong opinions on PRVTT bothered to return the questionnaires. Suggestions for further research are presented.

200. Davis, James H., Robert M. Bray, and Robert W. Holt. "The Empirical Study of Decision Processes in Juries: A Critical Review." In *Law, Justice, and the Individual in Society: Psychological and Legal Issues*, edited by Juen Louin Tapp and Felice J. Levine, 326-61. New York: Holt, Rinehart and Winston, 1977. Tables.

Not itself an empirical study, this review examines several types of empirical research of the jury, primarily studies which focus on behavior and mental decision processes. The authors categorize the studies according to whether they investigate individual jurors or juries as task-oriented groups. The authors also summarize applicable theories about jury behavior and analyze methodologies for jury research.

The article provides a synthesis of studies of issues such as demographic characteristics, judicial instructions, jury size, and decision rule. The list of studies reviewed is extensive; many of them are beyond the procedural scope of this bibliography.

201. Bermant, Gordon. "Critique—Data in Search of Theory in Search of Policy: Behavioral Responses to Videotape in the Courtroom." *Brigham Young University Law Review* 1975: 467-85.

This article critically analyzes several studies of prerecorded videotaped trials ("PRVTT's"). The author discusses PRVTT's in relation to several issues, including their effects on jurors. Criticism focuses on three studies reported in this symposium issue on "The Use of Videotape in the Courtroom."

202. Miller, Gerald R., David C. Bender, Frank Boster, B. Thomas Florence, Norman Fontes, John Hocking, and Henry Nicholson. "The Effects of Videotape Testimony in Jury Trials: Studies on Juror Decision Making, Information Retention, and Emotional Arousal." *Brigham Young University Law Review* 1975: 331-73. Tables.

This article reports results of three groups of studies intended to assess juror responses to viewing videotaped trials. The studies focus on individual jurors prior to group deliberations.

The first group of studies use data derived from a reenactment of an actual automobile injury case involving contributory negligence. Fifty-two jurors from the Genesee County Circuit Court of Flint, Michigan, watched the live trial while it was being taped. Forty-five jurors viewed the videotape one month later. Both sets of jurors completed questionnaires after viewing the trial. Findings indicate no statistically significant difference in juror's attributions of negligence between the two modes of presentation. Similarly, no difference is found for perceptions of attorney credibility or information retention. The study also finds no significant differences in these reactions among jurors exposed to varying amounts of inadmissible evidence.

The second group focuses on information retention. This group involves a videotaped reenactment of a contested will trial. These studies measure overall retention by jurors exposed to live, black-and-white video, and color video testimony. Analysis indicates greater retention of central information among jurors viewing black-and-white testimony. Some differences in retention are found for varying presentations of witnesses as strong, weak, or modal.

The third group investigates whether black-and-white or color video affects juror emotional arousal. The authors analyzed individual juror's Galvanic Skin Response ("GSR") physiological arousal data while the jurors viewed different versions of taped witness testimony in a personal injury case. Findings indicate greater arousal among jurors viewing black-and-white testimony.

203. Bermant, Gordon, Duncan Chappell, Geraldine T. Crockett, M.-Daniel Jacoubovitch, and Mary McGuire. "Juror Responses to Prerecorded Videotape Trial Presentations in California and Ohio." *Hastings Law Journal* 26 (1975): 975-98. Tables. Appendix.

This article presents results from two questionnaire surveys of jurors who participated in prerecorded videotaped trial presentations ("PRVTT's"). One PRVTT, involving a motor vehicle accident, was conducted in San Francisco in 1973. The other survey, in which Judge James L. McCrystal participated, involved surveys of eighty-three jurors who viewed fourteen land appropriation PRVTT's in Erie County, Ohio, in 1973. The authors tabulated responses to juror questionnaires and personally interviewed many of the jurors in an effort to evaluate juror reactions to the new technology.

Responses were generally favorable toward PRVTT's. Seventy-six percent of the Ohio jurors indicated that they would opt for a PRVTT in a civil case in which they were parties; only 43 percent would do so for a criminal case. The California jurors were nearly unanimous in rejecting PRVTT for a criminal case in which they were involved.

204. Williams, Gerald R., Larry C. Farmer, Rex E. Lee, Bert P. Cundick, Robert J. Howell, and C. Keith Rooker. "Juror Perceptions of Trial Testimony as a Function of the Method of Presentation: A Comparison of Live, Color Video, Black-and-White Video, Audio,

and Transcript Presentations." *Brigham Young University Law Review* 1975: 375-421. Tables. Appendix.

This study tests variance in juror reactions to the five different modes of evidence presentation mentioned in the sub-title. The methodology employs spontaneous presentation of a previously settled land condemnation dispute to panels of twenty-six to twenty-eight jurors selected from Utah County, Utah. The first trial presentation was live; subsequent presentations of the same trial used the different recorded media under study. Jurors completed questionnaires after viewing the presentations but did not deliberate.

Analysis examines items such as juror perceptions of trial participants, amount of preferred awards, and juror reactions to the alternative media presentations. Trial participants were rated according to a set of twenty-nine bipolar adjective scales yielding five factors: competency, honesty, friendliness, appearance, and objectivity. These measures were used to compare juror reactions.

Findings show significant differences in juror perceptions between live trial and media presentations. The authors note that further research is required to ascertain whether these differences affect the type and amount of jury awards. Recommendations for future research are offered.

205. Kalven, Harry, Jr., and Hans Zeisel. *The American Jury*. Boston: Little, Brown and Co., 1966. 559 pp. Tables. Bibliography.

This widely respected and often cited work forms an influential starting point for modern empirical studies of the jury. Although focusing on criminal juries, the issues, methodology, and findings discussed here have influenced much of the modern empirical research on both civil and criminal juries.

The book is based on a study of criminal jury trials in the United States during the mid 1950's. Data are gathered from questionnaires returned by 555 judges who presided over 3576 criminal jury trials conducted in 1954, 1955, and 1958. Research design includes questionnaires in which judges report jury decisions and how the judges would have decided the cases. Judges also describe the cases, parties, and counsel. The analysis of data focuses on the magnitude and direction of judge jury disagreement; the aggregate agreement rate is 75.4 percent. After measuring the disagreement patterns for specific crimes, the authors analyze potential explanations for the areas of judge jury disagreement.

The authors place reasons for disagreement in five categories, attempting to identify items that influence the jury's decision. These items include factors such as the evidence and how well it was understood, juror attitudes, human behavior, impact of counsel, impact of the judge, and impact of procedural controls on the jury. The study discusses many of the traditional problems with the role and functioning of the jury in our adjudicatory process. The study is intended to determine as much as possible about how the jury actually performs its functions. Numerous findings are discussed throughout; no systematic summary of conclusions is presented.

206. Broeder, Dale W. "The University of Chicago Jury Project." *Nebraska Law Review* 38 (1959): 744-61.

This article describes some of the tentative conclusions and findings of an extensive jury project research program. It describes several of the issues being researched and illustrates the experimental methodologies being used.

C. Judges

Few empirical studies of the judge's role and impact in civil procedure appear to have been conducted. However, judges' expanding role in the adjudicatory process seems to be generating some interest.

Most of the current studies are based on surveys of judges' opinions and descriptions of their tasks, perhaps indicating the nascent state of this area of empirical study. If this field grows in the manner in which the jury studies did, perhaps information from these surveys will help to formulate some empirical questions for which hypotheses can be tested.

Studies concerned with predicting outcomes of judges' decisions have been omitted. Although they often utilize empirical data, the analyses usually employ probability theory. These probability studies are not included here because they do not directly involve questions about civil procedure.

207. Wall, James A., Jr., and Dale E. Rude. "The Judge's Role in Settlement: Opinions from Missouri Judges and Attorneys." *Journal of Dispute Resolution* 1988: 163-73. Tables.

This study investigates the attitudes of judges and lawyers in Missouri toward the role judges should play in settlement negotiation. Data consist of responses to surveys sent to 450 state judges and 450 attorneys in Missouri. The authors compare Missouri attitudes with national attitudes expressed in survey responses from 650 state judges and 1100 attorneys around the nation.

Findings indicate that Missouri lawyers prefer a more active settlement role for judges than the judges do. National judges and lawyers also prefer a more active role than the Missouri judges do. The survey included a hypothetical products liability case and asked for selection of the preferred judicial settlement technique from a list of twenty alternatives. Again, the Missouri judges differed from the other three groups by being least likely to employ any of the techniques. Findings also indicate that case characteristics, such as amount of money at stake and expected trial time, had no effect on Missouri judges' and attorneys' preference for judicial involvement in settlement. Nationally, judges' and lawyers' preference for settlement increased as the size of the case decreased. The study also finds greater preference for judicial involvement among judges and lawyers in Missouri metropolitan areas than in non-metropolitan areas.

The authors offer explanations for the data, such as the fact that Missouri judges are older and that Missouri dockets are less congested than the national average.

208. Provine, D. Marie. *Settlement Strategies for Federal District Judges*. Washington, D.C.: Federal Judicial Center, 1986. 103 pp. Appendix.

Judges are becoming increasingly involved in the settlement process, especially since the 1983 amendment to Rule 16 of the Federal Rules of Civil Procedure, which now lists settlement among the topics for pretrial conferences. This study describes and analyzes techniques available to judges for guiding cases to resolution without trial. It is intended to provide information to judges about their options. Data about the efficiency of some particular settlement strategies are presented.

The study is based on interviews with twenty five district judges, results of a 1985 conference on the judicial role in settlement, and scholarly literature.

209. Seron, Carroll. *The Roles of Magistrates: Nine Case Studies*. Washington, D.C.: Federal Judicial Center, 1985. 149 pp. Tables. Appendix.

This report is an in-depth analysis of the varied uses of magistrates in nine selected United States district courts. It examines magistrates' roles in the context of court administration and case management. District courts were chosen based on size, geography, and use of magistrates. The author interviewed judges, magistrates, and lawyers. Data for rates of appeals of magistrate decisions were collected for the year 1982.

The analysis categorizes courts' approaches to management. It presents three distinct models of magistrate roles. The analysis indicates that use of magistrates contributes to conservation of judges' time.

210. Seron, Carroll. *The Roles of Magistrates in Federal District Courts*. Washington, D.C.: Federal Judicial Center, 1983. 103 pp. Tables. Appendix.

This report describes the responsibilities of magistrates in civil and criminal cases in eighty two United States district courts. The purpose is to provide a systematic description of the processes by which magistrates are used and the extent of authority they actually exercise.

Findings are from a questionnaire survey to which 191 full-time magistrates responded. Responses describe the extent to which magistrates perform statutorily permitted duties of making recommendations on dispositive motions, deciding non dispositive motions, acting as special masters, and conducting trials on consent of both parties. Responses also describe the various processes by which magistrates' tasks are assigned, and the type of tasks assigned.

211. Resnik, Judith A. "Managerial Judges." *Harvard Law Review* 96 (1982): 374-448.

This article presents a description and evaluation of the developing role of judges as "shepherds" who manage cases through our adjudicatory process. It focuses on the increasing involvement judges take in pre- and post-trial procedures, seeking to assess the impact of this expanded judicial role. Although not an empirical study, the author uses two hypothetical cases

to describe aspects of managerial judging. The description and evaluation are supported by various statistics. The author calls for a broad based investigation, including empirical research, of the role judges should have in the adjudicatory process. She defines some procedural questions requiring research.

212. Ryan, John P., Allan Ashman, Bruce D. Sales, and Sandra Shane-DuBow. *American Trial Judges: Their Work Styles and Performance*. New York: The Free Press, 1980. 295 pp. Tables. Index.

The purpose of this book is to describe the actual work performed by trial judges. It provides concrete data on the roles and tasks performed by judges, dividing judicial work into six categories for study: adjudication; administration; community relations; legal research; negotiation; and affiliation.

The study and analysis is based on a 1977 questionnaire survey of all general jurisdiction trial judges in the fifty states and the District of Columbia, to which 63 percent of the judges responded. Data are supplemented by the authors' observations of forty judges in eight states. Analysis proceeds from a social science research perspective.

213. Carp, Robert A., and Claude K. Rowland. "The Relationship Between Opinion Writing by Federal Trial Judges and the Termination Rates of the District Courts." *Justice System Journal* 5 (1979): 187-96. Table.

This study examines whether "the output of the average district judge's published opinions [is] inversely related to his case termination rate." The authors measured this relationship between 28,265 opinions published in the *Federal Supplement* from 1962 to 1975 and average case terminations per judge. Various regressions were performed to ascertain aggregate values. The authors correlated published opinions per judge with time and with mean case terminations per judge.

Data indicate that both published opinions and terminations per average judge increased during the thirteen-year period. Analysis shows that there is no aggregate nationwide relationship between opinions published and case termination rates. The author concludes that opinion writing in general does not interfere with overall productivity.

214. Grau, Charles W. *Judicial Rulemaking: Administration, Access and Accountability*. Chicago: American Judicature Society, 1978. 86 pp. Tables.

This book describes and discusses issues in the field of procedural rulemaking. It is a companion to the following entry, a compendium which describes rulemaking in the fifty states.

The author addresses rulemaking issues in several categories: substance, procedure, administration, and regulation of legal practice. Analysis explores the extent to which rulemaking authority is, or should be, vested in the judiciary or in other branches of government, such as the legislature. The author draws many conclusions based on data from the

states, indicating that a quasi-legislative rulemaking procedure probably permits suitable access and judicial accountability while maintaining a degree of centralization.

215. Korbakes, Chris A., James J. Alfini, and Charles W. Grau. *Judicial Rulemaking in the State Courts*. Chicago: American Judicature Society, 1978. 267 pp. Tables. Appendix.

This study presents results of a state by state survey of judicial rulemaking. The survey focuses on the extent to which each state's judiciary promulgates rules for procedure and court administration. Data are based on secondary research of state statutes, constitutions, and cases, supplemented by forty-eight responses to questionnaires mailed to the fifty state supreme courts.

For each state the survey reports information on the rulemaking authority, rulemaking process, notice and distribution requirements, legislative and other challenges to judicial rulemaking, and uses of the rulemaking power. Rulemaking is divided into twenty-eight areas, including civil procedure, appellate procedure, criminal procedure, admission to bar, and various aspects of judicial administration.

216. "Opening Pandora's Box: Asking Judges and Attorneys to React to the Videotape Trial." *Brigham Young University Law Review* 1975: 487-527. Tables. Appendix.

This article presents results of a questionnaire survey of judges' and lawyers' attitudes toward the use of videotaped trials. The survey targets the 630 district and appellate judges of the federal judiciary and 800 members of each of two lawyer associations, the Association of Trial Lawyers of America and the Defense Research Institute, Inc.

A summary of results shows that those surveyed react negatively to many aspects of videotaped trials. Also, responses indicate that many questions remain to be resolved before the litigation process can use videotaped testimony on a widespread basis.

217. Braithwaite, William T. *Who Judges the Judges? A Study of Procedures for Removal and Retirement*. Chicago: American Bar Foundation, 1971. 167 pp.

This monograph reports results of research aimed at "learning how in actual practice five selected jurisdictions deal with the problems of judicial incompetence, disability, and misconduct." It describes and compares procedures used for overseeing the proper functioning of judges in the adjudicatory process.

Methodology of the research, expressly not scientific, includes field studies in Missouri, New Jersey, New York, Illinois, and California. The author explores the various procedures used in these states and conducts case studies of particular instances of removal of judges. One goal of the work is to determine which procedures are most effective.

V

Alternative Dispute Resolution

While the applications of Alternative Dispute Resolution ("ADR") techniques remain in the early stages throughout the American court system, a great deal of research has taken place in an attempt to evaluate those programs already in place. The two most widespread current techniques are arbitration and mediation, and each has a section within this bibliography for research devoted to that topic. Many researchers have not limited their focus to one system, but choose to compare different techniques in one location or category of legal need. This research is described under the comparative methodology heading.

Of great interest to many researchers, however, is the research which has been excluded from this section. Consistent with the scope of this bibliography, research into criminal procedure has been excluded. Within ADR, issues of criminal procedure appear most notably within mediation research, where many neighborhood mediation systems focus on petty criminal and property violations. There is also extensive mediation literature dealing with handling of disputes between juvenile offenders and parents or guardians.

Within the ADR section, the definition of "empirical studies" was more closely drawn to exclude that literature dealing with theoretical models or past legal interpretations. There is a considerable amount of material within comparative methodology and less numerous examples within both mediation and arbitration dealing with dispute modeling and dispute definitions.

One last area which has been intentionally excluded lies mostly within the arbitration literature. Labor arbitration, which for over thirty years has existed in many respects apart from the judicial system, while still a form of alternative dispute resolution, has such an extensive body of research and discussion as to be a topic unto itself. In many other contexts, such as family law, the leading research has been included because these areas still remain within the general jurisdiction of the judiciary. Where the dispute processing mechanism is too far removed from the general confines of the judiciary, however, this research has been excluded. While in many instances the line drawing process is difficult, the volume of literature and a general understanding of alternative dispute resolution as an alternative to the courts often determine the result.

The following studies have been placed within their categories in rough chronological order, so that related studies can be noted after or near major works.

A. Comparative Studies

218. Esser, John. *The State of the Art in ADR Evaluation: We Don't Know What We Think and We Don't Think What We Know*. Madison, Wis.: Institute for Legal Studies, 1988. 90 pp.

This book attempts to identify, describe, and review the existing evaluative dispute resolution literature. Taking a step back from one area of research, one program, or one identified need, the author describes how researchers' evaluation methodology and framework dictate evaluative results, and further how these frameworks limit the true evaluative value of dispute processing studies.

Esser sets out on an historical review of research and research methodology, labeling the dominant structure that arose "the new formalism." The set of assumptions that comprise this structure, while inspiring useful scientific research and improved social policymaking, have not led to the intellectual coherence in evaluations technique both promised and predicted. In conclusion, the author calls for researchers of dispute processing processes to evaluate not only their data but their own framework of evaluation. Such a rethinking would greatly increase the value and breadth of dispute process research.

219. Tomasic, R., and Malcolm M. Feeley. *Neighborhood Justice Assessment of an Emerging Idea*. New York: Longman, 1982. 286 pp.

This collection of essays contains three sections: rationales, case studies, and assessment. With contributions from many of the leading names in ADR analysis and data from some of the largest empirical efforts, the book serves as an excellent introduction to the field of neighborhood justice.

While much of the book examines the neighborhood justice centers ("NJC"), a forum for criminal complaints, petty property, and family violence, many of the insights, critiques, and assessments are transferable to the development of civil alternatives. The greatest value of the collection lies in the assessment section, where new articles attempt to define "success" of the NJC program or distinguish rhetoric and reality in the workings of the NJC movement. Rationales contain several articles previously published, though of great interest, while case studies generally reflect data published independently by the authors, including Roehl and Cook, and Lynne Williams.

220. Singer, Linda R. "The Growth of Non-Judicial Dispute Resolution: Speculation on the Effects on Justice for the Poor and on the Role of Legal Services." *Clearinghouse Review* 13 (1980): 569-83.

The stated purposes of this article are twofold: to provide a basic level of information and analysis concerning the ability of alternative dispute resolution systems to achieve justice for poor litigants, and to clarify some of the benefits and drawbacks of alternative dispute resolution in general. The debate is based both on well-documented research literature and the author's own experience as part of the Center for Community Justice.

The article considers the techniques and objectives employed by a variety of ADR systems. The effect of ADR on litigants, especially poor litigants, as well as the significance of ADR systems, are thoroughly examined. The author avoids any conclusion as to the best type of ADR system. Rather, she focuses directly on the systems in existence, pointing out benefits,

drawbacks, and areas where more analysis and development of ADR is necessary.

221. Sipes, Larry L., and Dale A. Howard. *Medical Liability Review Panels in Arizona: An Evaluation*. San Francisco: National Center for State Courts, 1980. 84 pp. Tables. Appendices.

The authors examined the effects of the system established in Arizona to present all medical malpractice cases to review boards prior to trial. The study was based upon court records, insurance company information, interviews with participants in the review panel process, and questionnaires sent to judges, attorneys, and physicians.

The study found that the volume of medical malpractice cases had declined and the percentage of settlements in medical malpractice cases had increased since the adoption of the review panel system. However, there had been no change in either the frequency or amount of recoveries by plaintiffs. The time to disposition of medical malpractice cases had increased since the implementation of review panels. Finally, after the review panel process began, attorneys had to consider both the cost of going before the review panel and the effects at trial of either a favorable or adverse ruling by the panel in making decisions about the case, such as whether to accept the case, whether to settle, and the appropriate settlement value.

222. Landinsky, Jack, Stewart Macaulay, and Jill Anderson. *The Milwaukee Dispute Mapping Project: A Preliminary Report*. Madison, Wis.: Dispute Processing Research Program, 1979. 72 pp. Tables.

This study seeks to chart how disputes are generated, how they become viewed as justifiable, and how available processes resolve or fail to resolve these disputes. By focusing on one urban area, Milwaukee, the authors have been able to gather substantial information on a wide variety of structures already in place, ranging from conciliatory and informal (Better Business Bureau) to adjudicatory court-based methods. The operators within these structures, and the structures themselves, are the subject of the bulk of the study. The types of complaints handled by these units are also examined.

The authors conclude that a common brokerage function runs across many types of dispute forums, whether this function be performed by lawyers, government officials, or consumer advocates. The dispute forums see increased communication as their major resolution device. Finally, many of the forums exist for reasons outside of a need for dispute processing, rather focusing on informational, public relations, regulatory, and legitimization needs for their existence.

223. Johnson, Earl, Jr., and Elizabeth Schwartz. *Preliminary Analysis of Alternative Strategies for Processing Civil Disputes*. Washington, D.C.: National Institute of Law Enforcement and Criminal Justice, 1978. 88 pp.

This report attempts to identify and examine the principal methods employed as an effort to improve the processing of civil disputes. The

authors examine the underlying methods, rather than individual techniques, involved in alternative civil dispute processing. These fundamental strategies are identified as settlement incentive, automatic transfer, eligibility simplification, resource reduction, responsibility relocation, and cost redistribution. Each strategy is individually analyzed, using frequent descriptions of actual processes that utilize the strategy. While this well-documented study does not participate in any new empirical studies, it is a well-developed comparison of different strategies worthy of further study. Most importantly, the authors do not limit themselves to existing structures, but examine new possibilities which might be worthy of experimentation or exploration.

224. Elwork, Amiram, Bruce D. Sales, and James J. Alfini. "Juridic Decisions: In Ignorance of the Law or in Light of It?" *Law & Human Behavior* 1 (1977): 163-90.

One of the newest developments in the law, and one that has stirred great interest from the Chief Justice to neighborhood planners, is the alternative dispute resolution ("ADR") process. Originally mentioned as a method for decreasing court delays and costs, the processes have drawn increased attention and acclaim for the many unpredicted results ranging from increased litigant satisfaction to decreased post-dispute antagonism.

225. Johnson, Earl, Jr., Valerie Kantor, and Elizabeth Schwartz. *Outside the Courts: A Survey of Diversion Alternatives in Civil Cases*. Denver, Col.: National Center for State Courts, 1977. 107 pp.

This study is a comprehensive summary of different methods of diverting disputes from the courts. This overview serves as an excellent starting point for those interested in ADR. While not reflecting any new empirical research, this well-documented guide utilizes many of the then-current studies within the field.

The book looks at semi-automatic relief devices (no-fault auto insurance); independent administration of probate; no-fault divorce; court-annexed arbitration; and governmental or consumer ombudsmen. In each field, a representative program is analyzed. In many instances more than one program is examined.

The authors' extensive summary acknowledges that the use of dispute diversion techniques often conflicts with the goals of the judicial system. Yet many of the techniques address valid concerns of the judiciary, and each offers valuable solutions to the problems faced by litigants and courts nationwide. However, all of the systems available would not adequately address all of the judiciary's concerns.

226. McGillis, Daniel, and Joan Mullen. *Neighborhood Justice Center: An Analysis of Potential Models*. Washington, D.C.: United States Department of Justice, 1977. 173 pp. Tables. Appendices. Bibliography.

As part of the Justice Department's Neighborhood Justice Center ("NJC") Program, this report was prepared to review selected dispute

processing projects already in operation, study these projects in detail, and provide recommendations regarding possible models for the expansion of the Neighborhood Justice Center concept.

The authors selected six functioning dispute processing centers. The selection was based mainly on their range or variety of projects which might function as models for the NJC and recommendations by leaders in ADR processes. The six projects were located in Boston, Columbus, Miami, New York, Rochester, and San Francisco. The authors visited each site, and directly observed and interviewed a variety of involved parties. The centers also provided extensive management, personnel, and financial information in response to a project survey instrument.

The report is organized into three sections. The first section provides an overview of available ADR mechanisms, including recommendations for improvements of existing ADR processes. Mechanisms examined include self-help, negotiation, conciliation, mediation, arbitration, fact-finding, administrative procedures, and adjudication.

Utilizing the overview framework, the next section identifies twelve aspects of the structure and functions of the NJC and reviews the major issues which need to be considered in developing the NJC. The purpose of this discussion is to assist communities in making informed choices in planning and implementing a NJC, under the realization that needs vary with location.

Last, the report includes detailed reports on the history, organization, and functioning of the six projects under review. The report purposefully avoids conclusions as to the best methodology, but instead opts for a comprehensive study of available methods, distinguishing effective from ineffective programs, and attempting to discover the underlying reasons for a system's success or failure.

B. Mediation

227. Hartwell, Steven, and Gordon Bermant. *Alternative Dispute Resolution in a Bankruptcy Court: The Mediation Program in the Southern District of California*. Washington, D.C.: Federal Judicial Center, 1988. 65 pp. Tables. Appendices.

This report focuses on the use of mediation in a specific and specialized field of law—bankruptcy. The authors' goal was to present a balanced and objective representation of the California Southern Mediation Program. As a means of accomplishing that goal, the authors sought three independent sources of information. The first source included all relevant legal and administrative materials. Second, the authors, in the advantaged position of beginning their study prior to the start of the mediation program, interviewed most of the people with important roles in the program. Last, the authors surveyed and summarized the salient features of the case files for all cases sent to mediation between August 1986 and November 1987.

The study then spends the bulk of its efforts analyzing both the opinions of the participants, from judges, mediator, advocates, and

participants, and the “results” of the program. In both sections the authors thoroughly examine the variety of factors that influence both perceptions and results.

While many researchers might want to avoid specialized areas of the law as research topics, this report focuses on the mediation rather than the bankruptcy elements of the Southern California program. The conclusions offer valuable insights into the potential structures and uses of mediation as an ADR technique in a specialized area of the law.

228. Pearson, Jessica, and Nancy Thoennes. “Mediating and Litigating Custody Disputes: A Longitudinal Evaluation.” *Family Law Quarterly* 17 (1984): 497-524.

This analysis of mediation within a specific context, namely, resolving custody and visitation disputes, attempts a systematic exploration of long- and short-term consequences of using either traditional adversarial approaches or mediation. The main concern of the study is to provide answers to the practical questions of whether mediation works in this context and how it compares with adjudication.

The data for the study were collected as part of the Denver Custody Mediation Project, begun in March of 1979. Cases identified as applicable to the study were divided into an experimental group and a control group. Interviews with the individuals soon followed, supplemented by follow-up interviews and court docket data. The research continued over a thirty-month period.

Conclusions are drawn regarding both short-term and long-term effects of mediation versus adjudication. The authors also consider rival hypotheses as a method of challenging key outcome measures.

The conclusions are tentative at best. Although mediation produces differences in behavior and attitudes from those of adjudicated disputes, the patterns are far from definitive. This diffuseness may stem partially from the intensely personal nature of the dispute and the ramifications of settlements on the children. Finally, the authors conclude that the desirability of mediated settlements is undetermined by the study, and continued research is needed.

229. Levy, Robert J. “Comment on the Pearson-Thoennes Study and on Mediation.” *Family Law Quarterly* 17 (1984): 525-33.

This short article presents the author’s critique of the methodology and the conclusions of the Pearson-Theonnes study (entry 227).

230. Pearson, Jessica, and Nancy Thoennes. “Dialogue: A reply to Professor Levy’s Comment.” *Family Law Quarterly* 17 (1984): 535-38.

The authors of the original study respond to Levy’s critique.

231. Shuart, Kathy L. *The Wayne County Mediation Program in the Eastern District of Michigan*. Washington, D.C.: Federal Judicial Center, 1984. 22 pp. Appendices.

In response to growing court backlogs, many jurisdictions have implemented mediation programs as a method of ADR. This study aims to provide information on the background, operation, and performance of the mediation procedure adopted by the Eastern District of Michigan. The report is based on three separate studies performed between 1982 and 1984. All three studies included reviews of caseload information and interviews, with the most comprehensive review also including observations of mediation hearings. Of most interest to the authors is the mediation programs' effect on the court calendar and case dispositions and the participating attorneys' perceptions and attitudes toward the mediation procedure.

The author concludes the report with several observations on design, implementation and operation of the Eastern District Mediation Program, including topics such as planning, administration, and cooperative efforts of the bar and courts. Overall, she concludes that the dispute mediation procedure functions well both as a settlement mechanism and a case-management tool.

232. Shuart, Kathy L., Sandra Smith, and Michael D. Planet. "Settling Cases in Detroit: An Examination of Wayne County's Mediation Program." *Justice System Journal* 8 (1983): 307-24.

This is a preliminary report of data used in the report noted in entry 231.

233. Tegland, Karl. *Mediation in the Western District of Washington*. Washington, D.C.: Federal Judicial Center. 1984. 43 pp. Appendices.

In response to emergency conditions, judgeship vacancies, increased filings, and mandatory criminal trial prioritizing, the U.S. District Court for the Western District of Washington instituted a mediation procedure involving local attorneys for selected civil cases. This action, though viewed by the court as a stopgap measure, afforded the author an opportunity to gauge judicial and local bar reactions. The author also closely examines the local civil rule which created the program, and its subsequent amendments. The study data were collected mainly through interviews with judges and judicial clerks involved in the program. Local bar reactions were taken from a combination of interviews, bar meeting discussions, and several bar newsletter articles.

The study begins with a thorough examination of the local rule and how it functions. Administration of case selection and the role and selection of the mediators are examined, as are mediation techniques. The conclusions indicate that overall the mediation program is well-received while use of the program has fluctuated; it is not known if the program had any success in advancing settlement. The authors' conclusions also include a summary of issues other courts should consider when adopting mediation, issues such as case selection, mediator recruitment, and administration.

234. Cecil, Joe S., and Barbara S. Meierhoefer. "Report on the Mediation Program in the Eastern District of Michigan." Washington, D.C.: Federal Judicial Center, 1983. 22 pp.

This study surveys the reactions of judges in the U.S. District Court for the Eastern District of Michigan shortly after the implementation of a mediation program in that court. The report, while brief, examines other areas of the program ripe for study and thus functions as a good early attempt of understanding an operating mediation program.

The authors interviewed ten judges closely involved in the use of mediation in the Eastern District of Michigan, noting their uses of the program, its perceived effectiveness, the elements of the program which function either well or poorly, and other impressions of the judges on the use of mediation in the courts. The research is limited to judges' comments, and so is not a comprehensive examination. These comments, however, and the authors' conclusions, do shed light on mediation in the federal courts at a very early stage in its development.

235. Bahr, Stephen J. "Mediation Is the Answer." *Family Advocate* 3 (Spring 1981): 32-36.

Mediation has emerged as a new force in many family law procedures. This study sets out to discover how mediated and non-mediated divorce cases compare in terms of cost, fairness, and client satisfaction. While the study sample is small and, by the author's admission, the results are tentative, the study does add to the debate regarding mediation as an alternative to the adversary system.

The study was conducted in Fairfax, Virginia, in 1977 and 1978. Nearly eighty interviews, including a sample of those using private mediators and those using the traditional court process, took place. Questions focused on the divorce process and the three previously mentioned evaluative criteria.

Bahr's conclusion, while based on minimal data, does reflect the common understanding of many of the effects of mediation. Perceived fairness and litigant satisfaction show a strong bias for mediation. Litigant cost figures are more ambiguous, though mediated cases show a slightly lower cost on average. Overall, this study, though limited, is helpful for focusing the debate on the use of mediation in a specific area of the law, namely divorce. As the author acknowledges, additional empirical analysis is needed.

236. Zirkel, Perry A., and J. Gary Lutz. "Characteristics and Functions of Mediators: A Pilot Study." *Arbitration Journal* 36 (June, 1981): 15-20.

This study examines the personal perceptions of mediators concerning the nature and function of mediation. The study is limited to the field of public school teacher-school board disputes, but does shed light on the perceived effectiveness of mediation as a dispute settlement technique, and how the characteristics of the mediator influence outcome.

The scope of the study is limited to twenty-five cases of mediation handled by the Connecticut Department of Education in 1976.

Questionnaires were sent to mediators and all other parties seeking information regarding mediator characteristics and rating mediation session effectiveness.

The authors conclude that all parties generally agree on selected mediator characteristics, offering encouragement for easier selection of mediators deemed "fair" by all parties. Further, most parties agree on the effectiveness of mediation, though they often think it can be improved by increased cognitive and personal skills of mediators. While the study is limited by the narrow scope of the research, it represents a different concern for advocates of mediation as an ADR technique. Similar studies have taken place within the labor mediation-arbitration arena, with similar results.

237. Cook, Roger F., Janice A. Roehl, and David I. Sheppard. *Neighborhood Justice Centers Field Test: Final Evaluation Report*. Washington, D.C.: United States Department of Justice, 1980. 113 pp. Tables. Appendices.

Perhaps the longest organized ADR system in the country is operated by the Neighborhood Justice System. This comprehensive two-year study began several months prior to the establishment of the neighborhood justice centers ("NJC") and followed the progress of centers for the first fifteen months of their existence. The purpose of the study is to evaluate the characteristics of the centers as they actually function and the impact on both litigants and the courts.

Three NJC's were selected for the study—those in Atlanta, Kansas City, and Los Angeles. The researchers began the study by identifying the major goals of each center, which were prioritized by policymaking and implementing organizations involved in the development of the NJC system. Data collection, organized and monitored by on-site project staff, took place between March 1978 and May 1979. The data collection was achieved primarily through interviews with a wide range of officials and participants and supplemented by NJC data collection on caseload and disposition.

This well-organized, comprehensive report concludes that NJC's provide needed and effective alternative mechanisms for the resolution of minor disputes. Rather than limiting the assessment to generalizations, however, the authors also provide many observations and recommendations regarding the successes and failures of the NJC's examined.

C. Arbitration

238. Hensler, Deborah R. *What We Know and Don't Know About Court-Administered Arbitration*. Santa Monica, Cal.: The Rand Corporation, 1986. 8 pp.

This article summarizes the findings of both the Pittsburgh and California studies, entries 243 and 244, respectively.

239. Ebener, Patricia A., and Donna R. Betancourt. *Court-Annexed Arbitration: The National Picture*. Santa Monica, Cal.: The Rand Corporation, 1985. 17 pp. Tables. Appendices.

This survey, backed by considerable legislative and judicial material describing court-annexed arbitration programs, seeks to determine how many states had authorized such programs. The materials also include several observations and distinct features and techniques employed across the country in jurisdictions utilizing an arbitration program.

The study presents straightforward lists of states and federal jurisdictions actively engaged in or considering arbitration programs. Patterns of adoption, typical features of existing programs, and aspects of programs under consideration are also summarized. In general, the study is a valuable source for obtaining its promised "national picture" of the state of court-annexed arbitration.

240. Lazarus, Steven, John J. Bray, Jr., Larry L. Carter, Kent H. Colling, Bruce A. Geidt, Robert V. Holton, Jr., Phillip P. Matthews, and Gordon C. Williard. *Resolving Business Disputes: The Potential of Commercial Arbitration*. New York: American Management Association, 1965. 191 pp. Tables. Appendix.

One of the earliest studies of arbitration made the choice of sacrificing statistical depth for broad reach. Despite this decision, the studies presented offer some empirical insights into arbitration while offering a great deal of summation of the role of arbitration in the business, legal, and international communities. The judicial system gets limited attention, though it is surprising to note that concerns of court congestion and court delay predate the Burger Court.

The conclusions of the study indicate that lawyers and the law present the largest and most formidable obstacle to acceptance of arbitration as a dispute-processing mechanism. There is, however, hope for the future.

241. Hensler, Deborah, R. *Court-Annexed Arbitration in the State Trial Court System: Statement*. Santa Monica, Cal.: The Rand Corporation, 1984. 12 pp.

This statement references both the Pittsburgh and California studies. Topics addressed include the spread of court-annexed arbitration through the state court system; variations in design; effects on court congestion costs and delay; and effects on litigants.

242. Hensler, Deborah R. *Reforming the Civil Litigation Process: How Court Arbitration May Help*. Santa Monica, Cal.: The Rand Corporation, 1984. 10 pp.

This short statement is a summary of previous Rand Corporation literature regarding both the Pittsburgh and California studies.

243. Rolph, Elizabeth S. *Introducing Court-Annexed Arbitration: A Policymaker's Guide*. Santa Monica, Cal.: The Rand Corporation, 1984. 44 pp. Tables. Appendices.

This is a state-by-state summary of available processes, procedures, and requirements for the operation or design of a court-annexed arbitration program.

244. Rolph, Elizabeth S., and Deborah R. Hensler. "Court-Ordered Arbitration: The California Experience." Santa Monica, Cal.: The Rand Corporation, 1984. 18 pp.

This study sets out to produce a soundly based empirical study on the effects of a court-ordered arbitration program, noting that evaluations beyond anecdotal and casual impressions are necessary for deciding whether or not to continue or expand such programs. The authors use as their measure of study the stated goals of California's mandatory arbitration statute, including reduced delay, backlog, costs, and acceptance. The data gathered include aggregate caseload figures and interviews with judges, administrators, and arbitrators at six court sites chosen for their diversity of case characteristics. Within these six jurisdictions, involved attorneys and arbitrators were also interviewed.

The study addresses, in an orderly and well-documented fashion, several areas: the courts' increased ability to process cases rapidly, the courts' ability to save money, and individual case disposition speed. The study concludes that the California system is a modest success. It does point to several ways in which efficiency can be increased, however, and predicts that court-annexed arbitration could soon become a permanent part of the judicial landscape.

245. Adler, Jane W., Deborah R. Hensler, and Charles E. Nelson. *Simple Justice: How Litigants Fare in the Pittsburgh Court Arbitration Program*. Santa Monica, Cal.: The Rand Corporation, 1983. 152 pp. Tables. Appendices.

As a complement of the Rand Institute's study of arbitration in California, the Institute initiated a study of a second functioning arbitration system. This study, however, unlike its California counterpart, was centered on the program's effects on the litigants. The three areas of greatest interest were the program's ability to efficiently dispose of cases, the outcomes of the arbitration process, and litigant satisfaction with the program.

In order to determine answers to these concerns, the study examined a sample of more than 500 cases from the court records for 1980 and 1981, interviews with individual and institutional litigants, and interviews with court personnel, arbitrators, and attorneys who have participated in the arbitration program. As dictated by the stated concerns of the study, the report examines how the arbitration program functions, including caseload and litigant characteristics and the uses of arbitration in relation to these characteristics. Patterns of arbitration awards, litigant costs, and appeals outcome are also a subject of study. Finally, the authors address litigants views, determining levels of satisfaction, difference between individual and institutional litigants, and specific aspects of the program which contribute to dissatisfaction.

The conclusion drawn by the report are divided into determinations of what court-administered arbitration can and cannot do. Among the possibilities are greater speed with less cost and increased access to justice. Among those things beyond the reach of the arbitration program are an adequate appeal procedure, an inappropriateness for some civil disputes, and the ability to overcome limits placed upon a program by the local legal culture. This well-researched and thorough analysis offers a comprehensive view of the litigant perspective and adds greatly to the continuing debate on the merits of court-docketed arbitration.

246. Hensler, Deborah R., Jane W. Adler, and George J. Reist. *Court-Administered Arbitration: An Alternative for Consumer Dispute Resolution*. Santa Monica, Cal.: The Rand Corporation, 1983. 25 pp.

This is a preliminary report on the findings of the Rand Pittsburgh research noted in entry 244.

247. Kritzer, Herbert M., and Jill K. Anderson. "The Arbitration Alternative: A Comparative Analysis of Case Processing Time, Disposition Mode, and Cost in the American Arbitration Association and the Courts." *The Justice System Journal* 8 (1983): 6-19.

This narrowly focused article specifically addresses three aspects of the arbitration process as compared to traditional litigation. The pace of both methods of dispute processing, the costs involved, and the mode of termination are compared in order to properly analyze the ability of arbitration to act as a viable alternative to litigation.

The data for this study were collected by the Civil Litigation Research Project from the court records of more than 1500 cases in five federal district courts. The study also includes data from state courts within each district. Comparable (by case type) arbitration proceeding data were collected in all five districts from the files of the American Arbitration Association. Interviews with lawyers involved in the cases added additional data. The authors are careful to examine differences in data sources and their possible effect on outcomes.

The authors conclude through the examination of mode of termination, pace, and costs that arbitration in these respects presents a viable alternative to traditional litigation. The greatest benefit of arbitration lies in decreased processing time, although in many instances, processing remains substantial. In addition, arbitration stands a much greater probability of reaching a less costly disposition.

This short study examines specific areas of interest and, more important, compares an arbitration system to traditional litigation. Clearly, more comprehensive studies of this type are needed.

248. Lind, E. Allan, and John E. Shapard. *Evaluation of Court-Annexed Arbitration in Three Federal District Courts*. Washington, D.C.: Federal Judicial Center, 1983. 96 pp. Tables. Appendices.

This comprehensive study, resulting from the Pound Conference of 1976, focuses on the use of a compulsory nonbinding arbitration procedure in three federal district courts. These three courts, the Eastern District of Pennsylvania, the District of Connecticut, and the Northern District of California, began their programs in early 1975. The authors studied these programs for approximately two years, relying on interviews of participants, docket information, and statistical records maintained by the Administrative Office of the United States Courts.

The study set out to determine if court-ordered arbitration was able to decrease the time and expense required to dispose of civil litigation. Of specific concern to the study was the program effect on the quality of justice, litigation expense, and case duration. Extensive data were collected and are presented in a clearly structured and well-documented fashion.

The authors also clearly pronounce their final analysis and conclusions. Examined are types of cases, duration, settlement, incentives (both before and after the arbitration hearing), participants' reactions, and problems encountered. This report is one of the most comprehensive empirical studies of arbitration procedures.

249. Nejetski, Paul, and Andrew S. Zeldin. "Court-Annexed Arbitration in the Federal Courts: The Philadelphia Story." *Maryland Law Review* 42 (1983): 787-822. Tables.

This article synthesizes several available data collections in an attempt to examine the factors that led to the implementation of court annexed arbitration in the U.S. District Court for the Eastern District of Pennsylvania. The article also includes a brief history of court-annexed arbitration, a description of the characteristics of the programs, and an evaluation of the program's success in meeting the goals for which it was established.

The data for this article were gleaned from studies by E. Allan Lind and John Shapard (entry 248), M. Kunz's arbitration summary for the Eastern District of Pennsylvania, Management Statistics for United States courts, and other sources. The article analyzes the arbitration data in regard to arbitration's time, expense, and quality.

The authors conclude that court-annexed arbitration is the most effective of the then current court reform proposals. The positive aspects include settlement rates, increased speed, and decreased court dockets without a decrease in the quality of justice. The authors, in closing, advocate a national program of court-annexed arbitration.

250. Pierce, William N., and Pearl Taylor. *Civil Case Backlog Reduction: San Diego Superior Court*. Williamsburg, Va.: National Center for State Courts, 1982. 8 pp. Tables.

This report showed the results of two programs designed to reduce the backlog of civil cases in the San Diego Superior Court. The two programs were court-ordered arbitration and mandatory screening of certain cases by specially selected panels. After the first year these programs were in effect,

the civil caseload had decreased and the time for bringing a case to trial had declined by six months. The arbitration program had disposed of 42 percent of the cases it had received. Between 35 and 40 percent of the cases submitted for screening settled prior to the screening or soon thereafter.

251. Weller, Steven, John C. Ruhnka, and John A. Martin. "American Experiments for Reducing Civil Trial Costs and Delays." *Civil Justice Quarterly* 1 (1982): 151-74. Tables.

The purpose of this study is to rigorously examine and evaluate two compulsory arbitration procedures in use to determine their advantages and disadvantages: the Rochester, New York, Compulsory Arbitration Program and the California Economical Litigation Program.

Data from both programs were obtained through court records, personal interviews, and survey questionnaires. These data are examined with regard to case processing time, case disposition, and attorney assessments. The study is well-constructed, using control groups for comparison.

The authors conclude that both programs positively affect the costs and pace of civil litigation. They find, however, that the New York procedure is more accepted by the community and hence a more viable structure. The Rochester program shows that arbitration can function even with fairly substantial civil cases, beyond the small claims arena. The arbitration system is hampered by additional procedures intended to simplify the process. These additions, however, are counterproductive, as they reduce attorney familiarity and acceptance. Both programs, the authors note, have much to offer other courts examining the arbitration alternative.

252. Hensler, Deborah R., Albert J. Lipson, and Elizabeth S. Rolph. *Judicial Arbitration in California: The First Year*. Santa Monica, Cal.: The Rand Corporation, 1981. 120 pp. Tables.

This is a full summary of the survey results from the California Arbitration study conducted by the Rand Corporation (entry 244).

253. Bartolini, Anthony L., and Anthony L.V. Picciotti. "Compulsory Arbitration in Pennsylvania". *Villanova Law Review* 2 (1957): 529-42.

This article analyzes the scope, effect, application, and limitations of compulsory arbitration in Delaware and Montgomery Counties since its adoption in 1955. The program is limited to disputes under \$1000, although it functions separately from a small claims court. Data were collected from a survey of 130 practicing attorneys of the Delaware and Montgomery County Bars. The authors also conducted interviews with members of the judiciary. The article examines the compulsory arbitration program's acceptance by the bar. Reasons for acceptance and nonacceptance, as well as the perceived difficulties with the program, are discussed. The authors also examine other aspects of the program.

Overall, the authors conclude that the compulsory arbitration program is a success. The limitation of the program could be reduced as long as the

original purpose, the quick adjudication of small claims, is not forgotten. The authors see compulsory arbitration as an invaluable aid to the effective administration of justice in Pennsylvania. From this limited inquiry, that conclusion is well-drawn.

D. Summary Jury Trial

254. Posner, Richard A. *The Summary Jury Trial: Some Cautionary Observations*. New Haven, Conn.: Yale Law School Program in Civil Liability, 1985. 38 pp.

Judge Posner's reexamination of the summary jury trial technique is a careful and well-structured evaluation of one of ADR's most celebrated movements. Posner examines the assumptions underlying the perceived need for summary jury trial, the empirical effects of this alternative technique, its place within the legal framework, and its policy implications.

The empirical evidence upon which Judge Posner bases the evaluation under his second criterion (verification of the effects of summary jury trials) comes from court docket records and personal assumptions regarding trial times. Judge Posner stresses that the empirical study is crude, but it is valuable nonetheless. At worst, it points toward areas which need empirical analysis. At best, it deflates much of the expected "revolutionizing" fervor surrounding the summary jury trial, while offering a fair and frank discussion of its strengths and weaknesses.

255. Lambros, Thomas D. "The Summary Jury Trial and Other Alternative Methods of Dispute Resolution." *Federal Rules Decisions* 103 (1984): 461-518.

This report to the Judicial Conference of the United States outlines the origins of the summary jury trial while taking a limited look at the empirical evidence for the techniques assessment. Judge Lambros details the operation of summary jury trials in the U.S. District Court for the Northern District of Ohio from its inception up to January 1984.

Using court filing and disposition records, Lambros looks at case dispositions and costs and compares these costs with full jury trials. Lambros also points to other courts employing the summary jury trial technique. This short analysis is bolstered by extensive documentation of the procedure used in courts applying summary jury trials, as well as the comments of Judge Lambros, the originator of and jurist most experienced with the summary jury trial.

Judge Lambros concludes that summary jury trials present a cost-efficient time saving method for dispute resolution. More importantly, the summary jury trial is a "no lose" proposition for the courts, one that addresses many of the problems of greatest concern for the judiciary. He concludes by stating that greater exploration of this field is needed in order to enhance the quality of the administration of justice.

256. Jacoubovitch, M.-Daniel, and Carl M. Moore. *Summary Jury Trials in the Northern District of Ohio*. Washington, D.C.: Federal Judicial Center, 1982. 89 pp. Tables. Appendices.

One judge in the United States District Court for the Northern District of Ohio adopted the use of the summary jury trial in his court. The summary jury trial is a non-binding proceeding in which the attorneys for each party present the facts of their case to a six-member jury selected from the ordinary jury pool, and the jury gives a verdict. This report evaluated the effectiveness of the summary jury trial procedure. The authors surveyed the attorneys, jurors, and presiding magistrates involved in the thirty-seven cases assigned to summary jury trial between February 26, 1980, and October 6, 1980.

The survey showed that the use of summary jury trials resulted in settlement in a "substantial proportion" of cases. Furthermore, the assignment of cases to the summary jury trial process provided a greater inducement to pretrial settlement than did other procedures. Finally, summary jury trials allowed the use of magistrates in disposing of cases, thus conserving judicial time and resources.

VI

Small Claims Courts

The small claims court structure is perhaps the oldest organized attempt at alternative dispute resolution ("ADR") in the United States. Despite the recent attention to other avenues of ADR, the small claims courts remain a viable and popular route for dispute settlement. The extensive history of the working of the small claims courts has made possible a large amount of empirical research.

Within the empirical research on the workings of the small claims court, several dominant themes have developed to define different eras of researchers' focus. The first concern of empirical studies, dominant through the 1950's, was whether the small claims court was attracting and disposing of cases quickly and efficiently as a method of decreasing general jurisdiction court dockets. From the late 1950's to the early 1970's, the focus shifted to concerns regarding the small claims courts' ability to offer inexpensive forums to those parties most often underserved by the general jurisdiction courts. This era was also marked by a new interest in the fairness of the results, the domination of the small claims system by business concerns, and the lack of satisfaction for litigants.

The third era in empirical research on small claims courts has followed up on all of the main concerns of the first two eras, namely the effect of small claims courts on courts of general jurisdiction and the courts' fairness and availability to underrepresented groups. The third era is distinguished, however, by more exacting social science research methods and the new sense that the small claims court offers an excellent tool for the study of dispute resolution methodology. The rise of interest in new methods in ADR has thrown the small claims courts into the spotlight, because they offer a long

history of operation along with different attempts to alter the small claims courts in response to perceived needs and newly available resources.

It should be noted that many of the studies included under small claims involve techniques, such as arbitration and mediation, which are normally thought of within the ADR context. They are deserving of inclusion here, however, because the study of these techniques originated within the small claims court context, often with the purpose of determining their outside applications.

The following studies are presented in rough reverse chronological order so that related studies, restatements, reprints, or follow-up studies can be presented in proximity.

257. O'Barr, William M., and John M. Conley. "Litigant Satisfaction Versus Legal Adequacy in Small Claims Court Narratives." *Law & Society Review* 19 (1985): 661-701.

This study examines litigant narratives in small claims courts from two perspectives: the degree to which the small claims court atmosphere of informality provides greater satisfaction, and the problems this informality introduces into producing legally adequate accounts of claims.

The methodology consisted of using the transcriptions of fifty-five trials in two states and analyzing the speech and narratives with a group workshop technique. This linguistic analysis forms the basis for inferences of litigant satisfaction and magistrate reactions. The analysis also examines how magistrates shape litigants' narratives.

The authors' conclusions show that often litigant narratives without legal constraints fail to establish an adequate foundation upon which to decide issues. Litigant satisfaction is higher, but perhaps at the expense of developing the issues in a way that allows the court to enforce rights.

258. McEwen, Craig A., and Richard J. Maiman. "Mediation in Small Claims Court: Achieving Compliance through Consent." *Law & Society Review* 18 (1984): 11-49.

One of the most important aspects of the small claims court system is the potential for litigants to collect on judgments. This study seeks to find out what conditions of the small claims mediation process in Maine lead to different rates of compliance by litigants with settlements, mediations, and adjudications.

Choosing four Maine courts to examine, the researchers turned to interviews with litigants, observations of court and mediation sessions, and analysis of docket and state court mediation records. Between August 1979 and September 1980, more than 400 cases were sampled. A very high number of these litigants were contacted initially, as well as eighteen months later for compliance information.

The authors, through comprehensive statistical analysis, conclude that consent elements present in mediation are a powerful adjunct to command in securing compliance. Yet the mediated small claims process depends upon

many variables regarding the relative positions of the litigants, which may explain its failure to attract more extensive use.

259. Vidmar, Neil. "The Small Claims Court: A Reconceptualization of Disputes and an Empirical Investigation." *Law & Society Review* 18 (1984): 515-49.

This article attacks some of the conventional wisdom regarding the small claims process, primarily by focusing on the prior relation between plaintiff and defendant to determine the "winner." Prior researchers' suggestions of higher rates of compromise and compliance because of small claims structures are contradicted by a closer examination of results according to litigants and prior admitted liability.

Vidmar examined over 200 randomly selected disputes from the Middlesex, Ontario, small claims court between September 1981 and April 1982. Interviews, direct observations, and follow-ups four to six weeks after the case were the means of data collection. These data were supplemented by the court records. The author, through extensive analysis, puts forward some sharply different conclusions. Consumer issues dominate the small claims court docket. Defendants win the amount in controversy as often as plaintiffs, while repeat users fare no better than one-time court users. Finally, Vidmar contends that the degree of admitted liability prior to using the court strongly affects both outcome and process, an important factor in comparing dispute processing systems. The article concludes that it is possible that the previous criticisms of the small claims process may need to be reevaluated.

260. McEwen, Craig A., and Richard J. Maiman. "The Relative Significance of Dispute Forum and Dispute Characteristics for Outcome and Compliance." *Law & Society Review* 20 (1986): 437-47.

In response to Vidmar's 1984 article (entry 258), the authors reexamine both their data and Vidmar's and, while acknowledging the validity of Vidmar's observations regarding "admitted liability," reiterate their finding that forum (mediation or adjudication) remains an extremely important predictor of both case outcome and voluntary compliance.

261. Vidmar, Neil. "Assessing the Effects of Case Characteristics and Settlement Forum on Dispute Outcomes and Compliance." *Law & Society Review* 21 (1987): 155-74.

In a further response, Vidmar draws different conclusions from those of McEwen and Maiman with respect to the relative contributions of forum and case liability characteristics. He notes, however, that both sides of the debate agree that forum and case liability characteristics play a role in dispute outcomes and compliance. How these factors interact, however, is a question for further analysis.

262. Whitford, William C. *The Small Case Procedure of the United States Tax Court: A Small Claims Court That Works*. Madison, Wis.: Dispute Processing Research Program, 1984. 29 pp.

This working paper examines the functioning of the United States tax court's small case procedure. Of special interest is the examination of the dynamics of pro se litigation, the court atmosphere, and the ability of pro se litigants to function within a formal, yet somewhat relaxed, courtroom atmosphere. The author compares small case procedure with regular tax court procedures, most notably in regards to differences in cases decided fully for the government or the taxpayer, as well as the government rate of recovery in both procedures, then draws conclusions about the possible replication of this successful program outside of the limited jurisdiction of the tax courts. Settlement processes are also examined.

The study relies on data from the General Counsel's Office of the IRS and additional information gleaned from a limited random mail survey of 1,100 taxpayers who participated in the process between 1979 and 1982 in Milwaukee. The Chicago author also interviewed IRS and private attorneys about their experiences and includes personal observations from several case hearings.

This well-documented study closely examines a court procedure often recommended as a possible cure for general jurisdiction court overcrowding. The data support conclusions regarding the tax court, yet the transferability of this experience to other courts could require further study.

263. DeJong, William, Gail A. Goolkasian, and Daniel McGillis. *The Use of Mediation-Arbitration in Small Claims Disputes*. Washington, D.C.: National Institute of Justice, 1983. 138 pp. Tables. Appendices.

This study examines and then compares six small claims mediation/arbitration programs. As a guide to judges, administrators, and policymakers, the author compares the policies and procedures of the various programs and recommends best practices when they can be identified.

The authors observed small claims court ADR procedures in Maine, Florida, Georgia, New York, and California. Detailed reports for each program include court jurisdiction, pretrial and trial processes, collection along with specific information on the development staff, budget, operations, and impact of each procedure. The information was obtained through direct observation as well as other empirical literature. The report has excellent documentation and provides extensive information on program directors and other available sources.

The report's conclusions are in the form of recommendations regarding program options. These recommendations are soundly based on the examination of the six sites included, a review of other relevant literature, and discussion with key experts in the field. While this report is not a major comprehensive empirical study of its own, it represents an important synthesis of the literature with fresh observation on small claims ADR processes.

264. McEwen, Craig A., and Richard A. Maiman. "Small Claims Mediation in Maine: An Empirical Assessment." *Maine Law Review* 33 (1981): 237-68. Tables.

This study's major goal was comparing the processes of mediation and adjudication and their impact on litigants. The Maine small claims courts provide an excellent research source since they often include mediation as a preliminary step in small claims disputes, which additionally offer more voluminous and less complex issues to study.

The process used by the researchers evinces care in selection of the field of data. The researchers watched three mediation courts and three non-mediation courts over the course of late 1979 and 1980. Interviews of litigants, observations, docket information, and mediation reports form the bulk of the data collection techniques. The interview data, however, are most often relied upon for the analysis.

The analysis examines litigants' selection of mediation or adjudication, the outcomes of these selections, litigant satisfaction, and compliance. In this way the study examines many of the issues raised by other examinations of the small claims process. The study's conclusions, however, look mainly at the mediation process as a means of dispute resolution. The study has information to offer in both fields, especially as to litigants' satisfaction with fairness, compliance, and the effect of the process on litigants' continuing relationships.

265. Scobey, Richard. "The Big Problem of Small Claims: An Empirical Analysis of the Providence Small Claims Court." *Rhode Island Bar Journal* 27 (March 1980): 3-8.

The study sets out to determine if the Providence, Rhode Island, small claims court is fulfilling its mandate of "dispensing speedy and final justice between parties." Examining types of litigants, claims, and dispositions, the study concludes that consumers are often the defendants rather than the instigators of claims, contrary to normal assumptions about the value of a small claims forum. The study examines only one court, but does so to some depth. A systematic sampling of 400 cases over a three-year period forms the basis for the data. The conclusions are well-supported with citations, and the piece includes references to other examinations of the small claims process.

The author concludes that the court had lost its *raison d'être* by restricting consumer access, and had moved away from its original goal of being a functioning "poor man's court" in Rhode Island.

266. Stauber, Alvin. "Small Claims Courts in Florida: An Empirical Study." *Florida Bar Journal* 54 (1980): 130-38.

This empirical study examines one aspect of the small claims tribunal, namely, its usefulness as an outlet for consumer-initiated suits. The success of these consumer suits, the original justification for the establishment of small claims, shows that consumer litigants who avail themselves of the courts normally fare well. This study is based on a two-year (1975-1976) sample of consumer plaintiff cases. While constituting only 3 percent of the courts' total cases, the 450 cases serve as a viable sample to examine the types of cases represented. Amounts of claims, time spent, and collection difficulties are all examined.

The article states several conclusions about the role of small claims courts in Florida and examines legislative remedies considered at both the state and the federal level.

267. King, W.L. "Measuring the Scales: An Empirical Look at the Hawaiian Small Claims Courts." *Hawaii Bar Journal* 12 (Summer, 1976): 3-18.

The stated purpose of this study was to examine the Hawaii small claims court to trace judicial bias and to compare data gleaned from the Hawaii courts with studies from other small claims courts. The study examined all court dispositions over a two-year period, nearly 1200 cases. Case files, type of plaintiff, defendant claim types, and outcomes of various cases are fully examined and compared to other similar studies. The author utilizes extensive tables to make his data clear.

The conclusions consist of comparisons to similar studies and make many judgments on the effectiveness of past practices and of possible future actions seen as improvements. The article also contains a short and helpful summary of the data.

268. Ruhnka, John C. *Housing Justice in Small Claims Courts*. Williamsburg, Va.: National Center for State Courts, 1979. 140 pp. Tables. Appendices.

This study, utilizing data from an earlier National Center for State Courts ("NCSC") study, looks very specifically at the small claims court process and its capacity for dealing with landlord-tenant problems. Most practically, the report is aimed at gaining a greater understanding of landlord-tenant disputes, leading to reform in housing justice at the community level.

Ruhnka drew his data from the NCSC study, *Small Claims Courts: A National Examination* (entry 269). These data were reanalyzed, from court docket records, litigant questionnaires, and interviews, to study more closely the handling of landlord-tenant problems within the small claims courts, the outcomes, and the possible effects of the process on litigants. The study also compares landlord-tenant disputes with other types of small claims disputes and looks for procedural changes that could improve the resolution of these disputes. The study is intended as a possible source of comparison for other mechanisms or processes dealing with landlord-tenant disputes.

The author offers conclusions relating to the following: utilization of the small claims courts; litigant characteristics and satisfaction; settlements, defaults, and judgments; time and cost; and, finally, possible areas for improvement. As the author notes, many of the suggested improvements could carry over into other small claims court contexts, thereby decreasing costs while increasing benefits to litigants. The small claims process, intended as a flexible and informal system capable of adapting to current needs, has arrived at the point where change is both possible and necessary.

269. Eovaldi, Thomas L., and Peter R. Meyers. "Pro-Se Small Claims Court In Chicago: Justice for the Little Guy." *Northwestern University Law Review* 72 (1978): 947-1003.

The purposes of this study are stated very directly: to evaluate thoroughly the operation of the pro se small claims court in Chicago and determine its effectiveness. But the study also set out to investigate litigants' abilities to act pro se, their satisfaction with results, and the atmosphere present without lawyers.

Over a ten-week period, the researchers used observations, court files, interviews with court personnel, and questionnaires which contacted 10 percent of the court's litigants between 1972 (the inception) and 1974. The data include information about how litigants come into contact with the court, type of claim, court officers' roles, dispositions, and collections.

The study concludes that the new pro se courts, while a vast improvement over past small claims courts, failed to deliver the promised quick, inexpensive justice promised. The specific recommendations of this report focus mainly on procedural matters of access, delay, and the roles of the judiciary. The study does temper these remarks by concluding that the substantial improvements made by the court in removing obstacles should elicit praise from the legal community.

270. Ruhnka, John C., Steven Weller, and John A. Martin. *Small Claims Courts: A National Examination*. Williamsburg, Va.: National Center for State Courts, 1978. 238 pp. Tables. Appendix.

The purposes of this extensive study are twofold: to present a detailed picture of the small claims process's present health; and to address the major issue of reform for the small claims courts. To address these goals, the NCSC conducted a two-year study of fifteen small claims courts in fourteen states. The Center chose these courts for their variety of procedures and limitations, never intending to choose the "best" and "worst" courts for review. The study examined over 7,000 cases from these courts, backed up by questionnaires to individual litigants and extensive interviews with involved parties. The integrity of the process is closely examined and is one of the features which places this study in the "must read" category of small claims court research. The study is very comprehensive in examining those who use the courts, the time and cost to litigants, the use of attorneys, collection on judgments, and litigant response or satisfaction.

The authors arrive at many well-founded conclusions detailing the recommended reforms for the nation's small claims courts. While the system generally meets its goals of speedy and inexpensive justice better than previously thought, the process shows a need for change in areas such as broadening jurisdiction, increasing defendant assistance, limiting attorney participation, and reducing costs. In conclusion, the authors note that the small claims process should be in the forefront of resolving small disputes, as it has proven its capabilities at a cost below newer alternative processes. The full potential for small claims courts, they note, has yet to be achieved.

271. Roodhouse, Alan M. "Small Claims Court—What Should It Provide and How Well Does It Do So?" *California State Bar Journal* 51 (1976): 126-30, 164-67.

The author sets out to examine the validity of criticism heaped upon the small claims court process. Specifically, the author looks to charges that the courts have become "collection agencies" for business plaintiffs and that judicial direction is either lacking or unfair.

The author examined the small claims process of Palo Alto/Mountain View Municipal Court District in California. The 210 case sample, gathered from calendar year 1973, was primarily from case filing reports. Comparison with earlier empirical studies makes up the bulk of the analysis. Data for types of plaintiff, defendant, and dispositions are included.

The author's analysis of the data counters earlier reports that the small claims process is highly pro-business and finds it instead to be highly pro-plaintiff, noting, however, that in most cases the plaintiff is a business. It also questions the ability to analyze levels of fairness from case filing statistics. The role of the judge is also vindicated as a necessary result of the pro se process.

The conclusions of this study are only lightly based on the empirical data presented by the author. Its value, however, lies in the author's criticisms of previous studies' conclusions that also rely only tangentially on empirical data.

272. Sarat, Austin. "Alternatives in Dispute Processing: Litigation in a Small Claims Court." *Law & Society Review* 10 (1976): 339-75.

This narrowly focused study examines the choices made by litigants in a small claims court in New York City, relying on extensive surveys to look at the reasons certain litigants chose a course of action and the ways court structures and procedures influence these choices. Examining court records for 1974, the author sent out two separate surveys. The first was sent to parties in disputes which ended when neither party appeared. This survey examines litigants' reasons for nonappearance, litigants' previous experiences in litigation, and legal representation and its effects on choosing not to appear. This area of dispute management is often overlooked in other empirical studies. The second survey was of litigants who follow the process through adjudication or arbitration. Since litigants can choose either route, this choice is extensively examined to determine the reasons behind the litigants' action. Legal representation and outcome are also examined for possible influences. Last, the subsequent relation of the parties is examined for possible effects by choice of methodology.

This study is a thoughtful and statistically thorough examination of litigants' decisionmaking. The study does, however, offer insights into differences between adjudication and arbitration, and offers valuable discussion on litigants' methods for pursuing their disputes. As the author states, given the importance of disputes, even a somewhat flawed or incomplete understanding of such a complex activity may be worthwhile.

273. Haemmel, William G. "The North Carolina Small Claims Court: An Empirical Study." *Wake Forest Law Review* 9 (1975): 503-20.

How the small claims court is presently used by litigants is the subject of this study. The author also offers a number of suggested reforms to make the North Carolina small claims court a more efficient and open forum for all. Of special concern is how the small claims court has moved away from its original purpose of providing the average citizen with a speedy and inexpensive forum. The author conducted field studies in six North Carolina counties in early 1972, choosing areas with a variety of population characteristics. Limited telephone interviews with attorneys involved in small claims litigation supplemented the field studies. The study examined consumer knowledge of the small claims forum, quality of judges within the system, and access to the system.

The author concludes that the North Carolina small claims court has seen its best days. This conclusion and others presented by Haenmel are not well-supported by any data, and the study fails to present any comprehensive tabulation of the empirical studies' results. While the author does point out critical failures in the system's design, solid recommendations are left to others.

274. "The Ohio Small Claims Court: An Empirical Study." *Cincinnati Law Review* 42 (1973): 479-539.

This note sought to evaluate the performance of the Ohio small claims court as an efficient and effective forum for the individual. Further, the study attempted to determine community awareness of the court and the effectiveness of procedural safeguards established for consumers. The study intensively examined two small claims courts in Ohio. A systematic sampling from June 1, 1971, to May 31, 1972, enabled the author to choose 500 cases for review. Case files, party interviews, and attorney interviews were conducted for these cases, while additional questionnaires were sent to small claims court judges statewide.

The data collected were broken down by type of litigant, type of claims, disposition, and delay. Subjective information broadened the scope of the inquiry. Based on collected data, the author identifies several areas of concern. Among the concerns are: collection; role of counsel; and limitations on the value of jurisdictional claims. The author concludes that the Ohio small claims court is a qualified success. As in other studies, the courts are viewed as a viable and important frontline court, limited by problems of access and collections of judgments.

275. Steadman, John M., and Richard S. Rosenstein. "Small Claims Consumer Plaintiffs in the Philadelphia Municipal Court." *University of Pennsylvania Law Review* 121 (1973): 1309-61.

The Philadelphia municipal court small claims procedure is the subject of this study. Specifically, the study sets out to examine how the consumer plaintiff failed in his or her search for justice through the established court system. The study restricts its search to the Philadelphia system, examining the court records and utilizing plaintiff questionnaires. The researchers chose four separate months in 1971 for examination to restrict the scope,

eliminating all nonconsumer cases falling during that time. The researchers first looked to court records to identify categories of consumer cases, the nature of the defendants, damages sought, speed, and eventual disposition. This information was supplemented by questionnaires which sought information about plaintiffs' income, prelitigation efforts, use of attorneys, attitudes toward the court, and success rates of collection.

The study concludes that consumer plaintiffs in general have complaints about their inability to reach justice through the system as provided. This observation is tempered, however, by the conclusion that the court is a viable and significant avenue of redress for consumers and should widen its focus so that many others could avail themselves of the court.

276. "The Persecution and Intimidation of the Low-Income Litigant as Performed by the Small Claims Court in California." *Stanford Law Review* 21 (1968): 1657-84.

Do small claims courts serve the poor and do they have beneficial effects on good citizenship and loyalty? This goal of the small claims courts movement is examined in a rural setting in a 400-case sample of four rural courts in 1968, depending solely on filing and court docket data. This limited study makes comparisons to other studies, contrasting types of litigants, claims, and resolutions in both urban and rural court systems.

The study concludes that, although in many ways the small claims courts fulfill their goals, the benefits of efficiency do not justify what the author sees as the courts' wholesale denial of justice to low-income litigants, and the author suggests several reforms to remedy these inequities.

277. "The California Small Claims Court." *California Law Review* 52 (1964): 876-99.

The author sets out to fully examine the operation of a California small claims court, choosing the Oakland-Piedmont-Emeryville judicial district. The empirical data rely solely on court filing records from 1963, comprising a sample of 386 cases. The types of litigants, types of claims, the propensity for plaintiffs to file multiple claims simultaneously, and dispositions are examined.

The conclusions of the study lean heavily toward the nonconsumer plaintiff, establishing the idea that the small claims court was primarily a method of debt collection. The author concludes that several statutory procedures, including venue and monetary limitations, should be revised. Finally, on a prophetic note, the author concludes that studies of the small claims court process are desirable so that their operation might better bring justice to small causes.

278. Rosenberg, Maurice, and Myra Schubin. "Trial by Lawyer: Compulsory Arbitration of Small Claims in Philadelphia." *Harvard Law Review* 74 (1961): 448-72.

This article, relying on empirical evidence gathered independently as well as on previous reports, looks at the effect of compulsory arbitration of

small claims in Pennsylvania. The authors use these data to generalize the experience of compulsory arbitration as it would apply to courts of general jurisdiction, especially as a means of reducing judicial workload. The empirical data collection occurred mainly through the use of questionnaires sent to courts and members of the bar rather than to litigants. The waiting period for an arbitration hearing, the litigants' convenience, and fairness to the parties are reviewed. The major focus of the article, however, is the effect arbitration has on the courts themselves.

The article concludes that compulsory arbitration is an efficient means for the disposition of small claims and for the reduction of trial delay. As a means for reforming other courts, however, the article finds unsupported the contention that arbitration could reduce general jurisdiction courts' caseloads.

279. Clark, Charles E., and Richard D. O'Connell. "The Working of the Hartford Small Claims Court." *Connecticut Bar Journal* 3 (1929): 123-29.

Perhaps the first empirical analysis of the small claims process, this article's purpose is to examine, after only one and one-half years in existence, the types of cases brought, the courts' ability to dispense with cases, litigants' acceptance of the small claims process, and potential areas of abuse. Types of recoveries are also included. This short reexamination of court records offers insights into the origins of the small claims court movement, its critics' fears, and its ability to overcome initial obstacles.

VII

Appeals

This section on empirical studies in appellate courts covers a broad range rather thinly. The studies range over a period of fifty years and move from the Supreme Court of the United States to local experiments in procedural reform. All commentators may not regard every included study as truly empirical but the definition of "empirical" is not the question of the moment. Many of the materials cited below concern caseload burden and the time and cost of the appellate process, including questions of doctrine, structure, delay, administration, and innovation. Some of the more creative authors examine topics ranging from the analysis of oral arguments before the United States Supreme Court to a study comparing "legalese" and plain English and the effect of language on appellate judges. As with most academic study, the research is often the repository of the best available resources and statistics and researchers may face the choice of knowing a great deal about a small sample or less about a broader population. The call for additional research is common but necessary. While not exhaustive, the entries below provide a reasonable introduction to an interesting topic.

280. Benson, Robert W., and Joan B. Kessler. "Legalese v. Plain English: An Empirical Study of Persuasion and Credibility in Appellate Brief

Writing." *Loyola of Los Angeles Law Review* 20 (1987): 301-21. Tables. Appendices.

This article reports the first empirical research on the effectiveness of different prose styles in appellate briefs. Appellate judges and their research attorneys were asked to assess passages from briefs written in traditional legal prose or "legalese." Other judges and research attorneys in the same court were asked to assess the same passages rewritten in plain English. By statistically significant margins, respondents rated the passages in legalese to be substantively weaker and less persuasive than the plain English versions. Moreover, they inferred that the attorneys who wrote in legalese possessed less professional prestige than those who wrote in plain English.

281. Cooley, John W. "How Decisions are Made in the Appellate Courts." *The Judges' Journal* 26 (Spring 1987): 2-7, 44. Tables.

This brief article reports on a research project undertaken under the author's direction at Loyola University of Chicago School of Law. The principal objective was to collect and evaluate data to determine the extent to which the negotiation process permeated what is known as "appellate decisionmaking." The study concentrated on negotiation methods and techniques employed in seeking unanimity in an important case, the modes of communication utilized, whether and how a dissenter can cause the majority to modify its position, and whether the judges perceived themselves to be negotiating in this process. The research included a literature review, the administration of a survey questionnaire, and personal interviews with judges. The author concludes that negotiation plays a crucial role in how appellate panels reach decisions but that judges have much to learn about the problem-solving functions of negotiations.

282. Wasby, Stephen L. "The Study of Appellate Court Administration: The State of the Enterprise." *The Justice System Journal* 12 (1987): 119-42. Comments by Daniel J. Meador and Jerry Goldman.

Part I of this article examines and evaluates what we know about appellate courts—their doctrine, structure, caseload and delay, performance of judicial administrative tasks, and innovations in judicial administration. Part II deals with the question of whether appellate court administration should be treated separately from trial court administration; differences between the two levels of courts, their commonalities, and linkages between the two levels are examined.

283. Estreicher, Samuel, and John Sexton, *Redefining the Supreme Court's Role: A Theory of Managing the Federal Judicial Process*. New Haven: Yale University Press, 1986. 201 pp. Tables.

The authors attempt to test the assertion that the Supreme Court was not hearing the cases it should hear. First they developed a theory of the Court's role and how it should select cases for plenary consideration. Then the theory was applied to cases brought to the Court in a term in which a serious workload problem was alleged to exist. The results of the project

became the NYU Supreme Court Project conducted in conjunction with the editors of the *New York University Law Review*. The full project occupies 1253 pages in volume 59 of that journal. This book presents the findings in a more accessible manner with additional material exploring some of the broader implications of the study. The findings for the 1982 Term indicate that under the author's criteria a significant portion of the time and energies of the Supreme Court is being misdirected. The problem, they conclude, is one of unrealistic expectations, not docket capacity, and that it is senseless to talk about creating a new court to address the workload problem without developing a vision of what its workload should be.

284. Steelman, David C., and Jerry Goldman. "Preargument Settlement Conferences in State Appellate Courts." *State Court Journal* (April 1986): 4-13. Tables.

This article is based on the author's report for the National Center for State Courts titled *The Settlement Conference: Experimenting with Appellate Justice* (1986). It evaluates experimental programs begun in December 1978 (Connecticut), February 1979 (Rhode Island), and January 1980 (Pennsylvania), and the evaluators gathered data on case dispositions until January 1985. The study employed a randomized control-group design and, with the exception of certain categories deemed inappropriate, all civil appeals were randomly assigned to experimental and control groups. In sum, only one of the three settlement conference programs evaluated was regarded as a clear success. The differences among the three states in program design and outcome suggest some of the features of a successful settlement program.

285. Cecil, Joe S. *Administration of Justice in a Large Appellate Court: The Ninth Circuit Innovations Project*. Washington, D.C.: Federal Judicial Center, 1985. 167 pp. Tables.

In the early 1980's the U.S. Court of Appeals for the Ninth Circuit adopted a number of recommendations, collectively described as the "Innovations Project," which are the subject of this report. The report serves two purposes. First, it describes the innovations in detail, particularly the Submission-Without-Argument Program, the Prebriefing Conference Program, and the modifications in calendaring of oral arguments. Second, the report describes, where possible, the effect of the various innovations on case processing. Almost all the analyses compare the functioning of the Ninth Circuit before and after the adoption of the innovations. Information was gathered through personal interviews with the judges and staff of the Ninth Circuit, examination of documents and records compiled by the court, and analysis of data contained in the court's automated case record system. After the implementation of the Innovations Project, and despite a period of increasing case filings and reduced reliance on visiting judges, the Ninth Circuit was successful in eliminating its large backlog of cases awaiting submission. The median time from filing of the complete case record to disposition was reduced from 17.4 months in 1980 to 10.5 months in 1983. The most important factor leading to this improvement was the increase in

the number of active judges in the circuit, aided by increases in the productivity of individual judges.

286. Douglas, Charles G. "Innovative Appellate Court Processing: New Hampshire's Experience with Summary Affirmance." *Judicature* 69 (1985): 147-52. Tables.

This article briefly examines the commonly accepted responses to the problem of appellate overload and illustrates how one state developed and implemented a summary disposition procedure for appeals. The New Hampshire Supreme Court designed a differential treatment system that provided four possible "tracks" for an appeal: (1) declination or summary disposition; (2) a prehearing evaluation conference; (3) appeals submitted on briefs with no oral argument; and (4) the traditional appellate process. The authors conclude that by viewing the appellate process as a system, and looking at it in its entirety, the court was able to construct a revitalized mechanism for appellate review.

287. Resnik, Judith A. "Tiers." *Southern California Law Review* 57 (1984): 837-1035. Appendices.

Resnik first describes twelve valued features of procedure in the United States. The relative weights assigned to these features determine the makeup of procedural models and the structure for court decisionmaking. She then relates these elements to diverse models of procedure, discussing reasons for and against introducing complexity into procedure. Resnik concludes that a majority of the modern Supreme Court seeks finality, defers to the authority of first-tier decisionmakers, and is deeply concerned about resource conservation. This value preference stands in contrast to decisions of other eras.

288. Chapper, Joy A., and Roger A. Hanson. "Expedited Procedures for Appellate Courts: Evidence from California's Third District Court of Appeal." *Maryland Law Review* 42 (1983): 696-721. Tables.

An expedited appellate program for civil cases was introduced in California's Third District Court of Appeal in February 1981, based on two basic procedural changes: (1) a more limited brief, and (2) open-ended time for oral argument. Cases deemed suitable by the court for the new procedure were invited to enter the expedited program. The program was expected to provide time and cost savings to the court, counsel, and litigants. Evidence from the first year of implementation suggested that the procedure had produced four basic consequences: (1) The new method is feasible; (2) The length of time required to resolve cases was considerably less; (3) The attorneys view the program positively; and (4) Attorney time savings very likely translate into cost savings for litigants.

289. Hellman, Arthur D. "The Supreme Court, the National Law, and the Selection of Cases for the Plenary Docket." *University of Pittsburgh Law Review* 44 (1983): 521-634. Tables.

The purpose of this article is to shed light on what the Supreme Court is doing to meet the needs of the national law and how it selects, from among the thousands of cases brought before it, the few that it will hear and decide on the merits. Hellman examines the composition of the plenary docket from 1977 through 1979, when the Court issued a total of 416 plenary decisions. The article is divided into four sections: Civil Rights, Federalism and Separation of Powers, General Federal Law, and Jurisdiction and Procedure of the Federal Courts. Few generalizations are possible from the data, but the "episodic" nature of the Court's intervention stands out. Hellman concludes that the Court has been denying review in some possibly "certworthy" cases. The next step is to determine whether the Court's limited capacity for authoritative adjudication has significantly frustrated society's need for uniformity and predictability in the law.

290. Coleman, William T. "The Supreme Court of the United States: Managing Its Caseload to Achieve Its Constitutional Purposes." *Fordham Law Review* 52 (1983): 1-36. Tables.

This article discusses the Supreme Court's excessive workload, surveys solutions that have been proposed, and suggests an alternative that "may be more consistent with the Court's historic traditions and basic constitutional purposes." The proposed alternative consists of four interrelated reforms which would: (1) make the Court's appellate jurisdiction entirely discretionary except in certain rare instances; (2) resolve most inter-circuit conflicts without any Supreme Court involvement; (3) limit Supreme Court review to issues of fundamental national importance; and (4) reinvigorate the traditions of judicial restraint, disciplined opinion writing, and deferential collegiality.

291. Hellman, Arthur D. "Error Correction, Lawmaking, and the Supreme Court's Exercise of Discretionary Review." *University of Pittsburgh Law Review* 44 (1983): 795-877.

This article examines several aspects of the Supreme Court's work in the last three terms of the 1970's. Part I provides an overview of the Court's modes of doing business during that period. Part II discusses the various forms of summary disposition, with emphasis on those that can be deemed adjudications on the merits. Part III explores the effects of the vast increase in caseload on the Court's ability to carry out its responsibilities. Hellman concludes that although the Court devotes itself almost exclusively to interpretation of the federal Constitution and statutes, it remains, in important respects, a common law court. From his perspective, it is both unrealistic and unsound to pursue proposals for new court structures that would fragment or truncate the process through which precedents are articulated and elaborated, harmonized and distinguished. If one court of nine Justices is no longer adequate, the challenge will be to expand the national decisional capacity while preserving the genius of the common law tradition.

292. Rosenberg, Yale L. "Notes from the Underground: A Substantive Analysis of Summary Adjudication by the Burger Court." *Houston Law Review* 19 (1982): 607-93, 831-97.

Part I of this study of summary adjudication by the Burger Court begins by contrasting a statistical analysis of the cases with an impressionistic view of the vagaries and vicissitudes of the summary technique. It proceeds to a conceptual analysis of the summary decisions, examining the manner in which the Court misuses and improperly extends its precedents throughout summary rulings. Analysis includes the following categories: (1) precedent ruthlessly applied; (2) extension of parallel bodies of case law; (3) extensions of existing law; and (4) determination of issues explicitly left open.

Part II continues this conceptual analysis discussing the following topics: (1) beyond precedent—use of the summary technique to decide novel questions of law; (2) of parents, children, and sex—summary silence as a means of limiting constitutional rights; and (3) operation outreach—snatching up cases within the certiorari jurisdiction.

293. Farmer, Larry C. *Appeals Expediting Systems: An Evaluation of Second and Eighth Circuit Procedures*. Washington, D.C.: Federal Judicial Center, 1981. 87 pp. Tables.

The Second and Eighth Circuits of the U.S. Courts of Appeals developed management systems in an attempt to control and reduce the time required for the preparation of cases for submission. These circuits implemented central measures for the presubmission process, facilitated the efforts of attorneys practicing in their courts, and reduced judicial involvement in the administration of cases prior to submission. It appears that despite significant differences in the programs, both circuits generally have been successful in their efforts to take early management control of the presubmission case preparation process. It is less clear what impact their case management procedures have had on time factors. The Second and Eighth Circuits had in 1981 the first and second fastest disposition rates among all the federal appellate courts, but available data were not sufficient to attribute this result to the case management systems employed in the circuits. Controlled studies would be necessary to evaluate the ultimate impact of these systems.

294. Martin, John A., and Elizabeth A. Prescott. "The Magnitude and Sources of Delay in Ten State Appellate Courts." *The Justice System Journal* 6 (1981): 305-24. Tables.

This article represents findings from a comparative study of the problems of volume and delay in ten state appellate courts. It defines and documents the considerable variation in case processing time among the ten courts and explores the sources of some of that variation. The sources explored include differences in case volume, case types, rules regarding time standards, brief and opinion lengths, and time extension policies, as well as other aspects of court structure and organization. The article concludes that court organization and process are more important factors than is case

volume in creating case processing delay. It suggests that time standards should be uniformly applied court policies for regulating the performance of all participants in the appellate process. It stresses the general need for strict rule enforcement and affirmative case management, and outlines the components of a court improvement strategy designed to meet those needs.

295. Reynolds, William L., and William M. Richman. "An Evaluation of Limited Publication in the United States Courts of Appeals: The Price of Reform." *University of Chicago Law Review* 48 (1981): 573-631. Tables.

This article presents an empirical assessment of the workings of the publication plans of the eleven United States courts of appeals during the 1978-79 reporting year. It analyzes the publication plans and their effect on judicial productivity and responsibility. The article reviews the background of publication plans and analyzes the relation between the language of the plans and the publication rates of the several circuits. Next comes an empirical assessment of the costs and benefits of limited publication and a proposed Model Rule designed to realize the benefits of limited publication while avoiding some of its hazards. The authors conclude that limited publication produces swifter appellate justice, but that claimed benefits of savings of judicial time and effort are less clear. Concern over suppressed precedent does not seem justified, but a significant drawback to limited publication is its "pernicious effect" on judicial responsibility. In many circuits, large percentages of the unpublished opinions failed to satisfy even minimum standards.

296. Roper, Robert T., and Albert P. Melone. "Does Procedural Due Process Make a Difference?: A Study of Second Trials." *Judicature* 65 (1981): 136-41. Tables.

The research reported here asks if procedural rights, as mandated by appellate court remands, make a difference in the final outcomes of trial cases. After examining 1159 cases remanded to U.S. district courts during the fiscal years 1975-1979, the author's answer is "yes." After guilty verdicts at the first trials, over half of the cases were dismissed at second trials. It is clear that mistakes of a substantial nature are made. Regardless of their practical utility, the authors argue that rights may serve a legitimizing function for both the judiciary and the whole political system.

297. Flango, Victor E., and Nora F. Blair. "Creating An Intermediate Appellate Court: Does It Reduce the Caseload of a State's Highest Court?" *Judicature* 64 (1980): 74-84. Tables.

The objective of this study was to examine the effects of the creation of an intermediate state court on the caseload of the court of last resort. The authors conducted a comparative analysis of appellate court data from seven states: Arizona, Colorado, Kentucky, Maryland, New Mexico, Oregon, and Washington. They concluded that case filings and case processing time were reduced in the courts of last resort in the years immediately following the

establishment of intermediate appellate courts. At best, however, this was an interruption of the trend toward increasing caseload in the state courts of last resort. Unless other measures were taken, the caseload of the courts of last resort soon reached the same volume it would have reached if the intermediate court had not been created. Indeed, the establishment of an intermediate appellate court seemed to encourage more initial appeals. It is on the ground of increasing participation in the judicial system, not on the basis of reducing total case volume, that the institution of intermediate appellate courts should be justified.

298. Hudson, Michael J., and Cynthia L. Easterling. *The Appellate System in the North Carolina Court of Appeals*. North Andover, Mass.: National Center for State Courts, 1980. 125 pp. Appendices.

This volume is one of a series of technical assistance reports prepared as part of the National Center for State Courts' Appellate Justice Improvement Project. More a management than an empirical study, the authors conclude that, as of 1980, the North Carolina Court of Appeals was stretched near its limits. The report urged a variety of changes aimed at increasing the disposition of appeals without seriously disturbing the judges who were producing opinions at a very high rate and at expanding the jurisdiction and control of the court over the entire appellate process. The appendices include articles, forms, and guides on appellate practice and managing caseloads.

299. Osthus, Marlin O., revised by Mayo H. Stiegler. *State Intermediate Appellate Courts*. Chicago, Ill.: American Judicature Society, 1980. 50 pp. Tables. Appendices.

Osthus and Stiegler discuss the development of state intermediate appellate courts and argue that a state's appellate system should reflect the interest of the state in decreasing backlogs and in making the judicial process really accessible. The authors present arguments for and against establishment of intermediate appellate courts, discuss variations among such existing courts, and present a model two-tiered appellate system. The purpose of the model is to suggest basic problems that each two-tiered appellate system must confront, even though each state may attempt to deal with the problems in a unique way. The most basic consideration is the jurisdictional grant of the intermediate court. Generally, the court should have original jurisdiction only to issue writs ancillary to its appellate jurisdiction. The authors also argue that a single, state-wide court, rather than two district courts, is desirable. Two appendices outline the organization and procedure of existing intermediate appellate courts (ca. 1980).

300. Schuchman, Philip, and Alan Gelfand. "The Use of Local Rule 21 in the Fifth Circuit: Can Judges Select Cases of 'No Precedential Value'?" *Emory Law Journal* 29 (1980): 195-230. Tables.

This article examines a "small natural experiment" in legal history. For some twenty-eight months, only the United States Court of Appeals for the Fifth Circuit applied its Local Rule 21 to affirm, without written opinion, non-meritorious appeals of rulings and verdicts in civil cases. The purpose of this study was to evaluate some of the measurable effects of this procedure on appellate decisionmaking in the Fifth Circuit during that time. The hypothesis was that Fifth Circuit opinions written after the adoption of Rule 21 would constitute a more significant set of cases in terms of precedential value than opinions rendered prior to the time of the Rule's application. The method used to test this proposition involved examining the frequency of citations to several randomly selected samples of reported cases with opinions before and after Rule 21. The findings suggest that subsequent to the adoption of Rule 21, the Fifth Circuit judges did identify and cull unimportant appeals for affirmations without opinion, as gauged by changes in frequency of citations and other associated measures.

301. Botler, Jill P., M. Christine DeVita, Stephan J., Kallas, William J. Ruane, and Lucille L. Weisbrot. "Project: The Appellate Division of the Supreme Court of New York: An Empirical Study of Its Powers and Functions as an Intermediate State Court." *Fordham Law Review* 47 (1979): 929-1024. Tables.

The first parts of this study discuss the New York Appellate Division's broad review powers and how these present a potential for abuse and raise questions as to the court's efficiency. The empirical portion analyzes the effect of a wide range of variables on appellate decisionmaking in a random sample of cases decided by the First Department. The authors find that the effective performance of the court's screening function is indicated by the relatively low number of appeals filed despite the increasing caseload in the First Department. The high overall affirmance rate also indicates that many cases are screened out after a second appeal. The court's supervisory function does not appear to be a primary concern.

302. McFeeley, Neil D., and Richard J. Ault. "Supreme Court Oral Argument: An Exploratory Analysis." *Jurimetrics Journal* 20 (1979): 52-84. Tables.

In this study a methodological tool using the principles of content analysis was devised for the systematic analysis of Supreme Court oral argument. This device was then applied to a group of oral argument transcripts to discover whether Supreme Court Justices exhibited unique and identifiable behavior patterns during oral argument. Further, an effort was made to correlate oral argument behavior with voting. It was found that the Justices vary widely in their apparent attitude toward oral argument, and that they exhibit clear differences in style. The relationship between argument behavior and voting was more difficult to identify but certain limited patterns did emerge.

303. "The Minnesota Supreme Court Prehearing Conference: An Empirical Evaluation." *Minnesota Law Review* 63 (1979): 1221-57. Tables.

In 1976, the Minnesota Supreme Court introduced mandatory prehearing conferences in order to reduce litigation by encouraging parties to settle their disputes prior to an appellate hearing. This note examines how well the prehearing conference served that purpose in its first year of use. The note describes the conference procedures and discusses the controversy surrounding prehearing conferences at the appellate level. It then describes the empirical tests used before analyzing the results and making suggestions for the future of prehearing conferences. The author concludes that "there is no question that the Minnesota Supreme Court's prehearing conference experiment has been a success." During the experimental year, the overall rate of settlement was 12.7 percent higher than during the preceding year and the average time required to process a case was reduced from 405 to 382 days. Further findings "cast serious doubt upon the criticisms that prehearing conferences force litigants into unfavorable settlements, impose unfair expenses on certain parties, and cause a loss of respect for the appellate process. Moreover the study has produced evidence that judicial officers are more effective than non-judicial officers in encouraging settlement." Finally, the study recommends that the court should create some monitoring system for the conferences.

304. Goldman, Jerry. *The Appellate Settlement Conference: An Effective Procedural Reform?* Williamsburg, Va.: National Center for State Courts, 1978. Reprinted from the *State Court Journal*, Winter 1978. 9 pp. Tables.

Goldman describes several pre-appeal screening programs and summarizes key findings from a controlled experiment in the United States Court of Appeals for the Second Circuit. An ideal program should have both judge and staff participation, be implemented in a jurisdiction in which there is little attorney-to-attorney contact concerning informal resolution and issue modification, and be in a jurisdiction where a substantial portion of civil cases are appealed after trial. Goldman urges further research to determine if the pre-appeal conference is effective in reducing judge burden and improving the quality of appeals.

305. Goldman, Jerry. *An Evaluation of the Civil Appeals Management Plan: An Experiment in Judicial Administration*. Washington, D.C.: Federal Judicial Center, 1977. 122 pp. Tables. (An adaptation of this article appeared as "The Civil Appeals Management Plan: An Experiment in Appellate Procedural Reform." *Columbia Law Review* 78 (1978): 1209-40.)

This report analyzes the Civil Appeals Management Plan ("CAMP") as it was used in the United States Court of Appeals for the Second Circuit in the mid-1970's. The plan had two unique features: (1) the use of scheduling orders that the court issues in all civil appeals to notify counsel about the deadline for critical events and which permits the appeal to be dismissed for failure to comply with the order; and (2) the use of management conferences

in selected civil appeals. The goals of the plan were to eliminate appeals which otherwise would impose a burden on the judge, to improve the quality of appeals should they be decided by the court, and to expedite the appellate process. The evaluation was conducted as a controlled experiment in which appeals deemed eligible for CAMP procedures were randomly assigned to an experimental group or a control group. The results suggest suspending judgment on CAMP. The plan did not live up to early expectations, but neither did the evidence prove the CAMP idea ineffective. Further experimentation may yield more meaningful results.

306. Jacobson, Eino M., and Mary M. Schroeder. "Arizona's Experiment with Appellate Reform." *American Bar Association Journal* 63 (1977): 1226-31.

This experiment was conducted in Arizona in 1975 and 1976 in an effort to evaluate experimentally a new process that might retain the "virtues of expedited procedures" but would eliminate the "tendency toward depersonalization" and that might reduce counsel fees and transcript costs. The experiment utilized approximately seventy-five actual civil cases that had proceeded to judgment in the trial court. Three practicing lawyers not involved in the litigation assumed the role of appellate judges and heard oral argument from counsel for the parties very soon after the judgment. The procedures being tested departed from the traditional method of appellate review in several ways: no transcript; no formal briefs but only summary memoranda; the oral argument was informal and subject to no time limitations; and the proceeding took place within only a few weeks of the trial court's decision. Panelists filled out questionnaires about the experiment and reported a generally favorable response (67 percent thought the procedure desirable or highly desirable). The experiment was not intended to provide a scientifically reliable statistical basis for predicting the success of the procedure, but was intended to provide experience and to suggest possible avenues for future experimentation and reform.

307. Arizona Appellate Project Report. *Reducing the Time and Cost of the Appellate Process*. n.p.: Advisory Council on Appellate Justice, 1976. 30 pp. Tables.

During 1975 and 1976 nearly 300 lawyers in Phoenix and Tucson, Arizona, participated in an experiment to study whether an appellate court can decide cases quickly and fairly, soon after trial on the basis of skeletal written materials and without a transcript, but with full oral presentation by counsel. The major findings reflect that panels simulating an appellate court were able to decide a majority of cases with extended oral argument, an abbreviated record, and only limited memoranda of staff and counsel. The participants perceived the greatest disadvantage to be the lack of a transcript.

308. Goldman, Jerry. *Attitudes of United States Judges toward Limitation of Oral Argument and Opinion-Writing in the United States Court of Appeals*. Washington, D.C.: Federal Judicial Center, 1975. 67 pp. Tables.

The research division of the Federal Judicial Center surveyed the federal judiciary in 1974 to determine the attitudes of federal judges toward a variety of appellate practices. Thirty-six percent of all active and senior appellate judges and 29 percent of all active and senior district judges responded. Results are compared with an attitudinal survey of federal appellate practitioners toward the same practices. The survey found a majority of judges and lawyers in agreement on many matters relating to the proper use of practices limiting oral argument or curtailing written opinions. When faced with swelling dockets, lawyers would opt for more judges and courts; judges would not. The need to avoid delay is viewed by the bench as a stronger reason for curtailing procedures than it is by the bar. Substantial majorities of appellate and district judges viewed current criteria for limiting oral argument and opinion writing as acceptable. Only about a third of the attorneys concurred. Lawyers, however, were more frequently accepting of appellate procedures—including their truncation—in circuits where those procedures were in use. Familiarity with both the problems faced by federal appellate courts and the possible cures may engender more acceptance.

309. Carrington, Paul D. "United States Appeals in Civil Cases: A Field and Statistical Study." *Houston Law Review* 11 (1974): 1101-23. Tables.

The primary purpose of this study was to examine the behavior of the federal appellate courts in cases where the Justice Department is an appellant. In particular it was hoped that some gauge might be placed on the capacity of the intermediate courts to resolve questions that have proved troublesome in the administration of the national law. The data, however, are not very conclusive. The data can, however, be said to support, if not confirm, the following observations: (1) the bulk of government civil litigation is more prosaic than many experienced observers imagine; (2) United States civil appeals at the intermediate level can generally be divided into three roughly equal classes—novel substantive issues, substantive issues the United States has previously litigated, and issues that have little or no prospective significance; (3) the United States does not regard a decision of the United States Court of Appeals as authoritative in the traditional common law sense; (4) many of the issues that are troublesome in the administration of the national law and that are litigated in the lower federal courts do not reach the Supreme Court; and (5) direct and unresolved conflict is a rare phenomenon. For the most part, support for these assertions is derived from an analysis of 693 memoranda sent to the Solicitor General in 1971 and 1972.

310. Langner, James E., and Steven Flanders. *Comparative Report on Internal Operating Procedures of United States Courts of Appeals*. Washington, D.C.: Federal Judicial Center, 1973. Tables. 91 pp.

This Federal Judicial Center survey, undertaken at the request of the Circuit Chief Judges, surveys the internal operating procedures of the United States Courts of Appeals. The report consists of summary descriptions of the procedures which eleven courts apply to their cases, but does not evaluate these procedures for their comparative effectiveness. Topics of discussion

include case docketing, motions, calendars, oral argument, judicial conferences, and court resources.

311. *Report of the Study Group on the Caseload of the Supreme Court*. Washington, D.C.: Federal Judicial Center, 1972. 65 pp. Tables. (Text may also be found at *Federal Rules Decisions* 57 (1973): 573-628.

In the fall of 1971, the Chief Justice, as Chairman of the Federal Judicial Center, appointed a study group to study the caseload of the Supreme Court and to make such recommendations as its findings warranted. Over thirty-five years, the number of cases filed grew about fourfold, while the number of cases in which the court heard oral argument remained substantially constant. Two consequences are inferred: Issues that would have been decided on the merits a generation before are now passed over; and the consideration given to the cases actively decided on the merits is compromised by the pressures of "processing" the inflated docket of petitions and appeals. The authors argue that the pressures of the docket are incompatible with the appropriate fulfillment of the Supreme Court's historic and essential functions. To resolve the problem, the authors discuss possible jurisdictional, procedural, and internal changes. They recommend the establishment of a National Court of Appeals; the elimination of three-judge district courts and also of direct appeals in ICC and antitrust cases; the establishment of a nonjudicial body whose members would investigate and report on complaints of prisoners; increased staff support of the Court in the clerk's office and library; and improved secretarial facilities for the Justices and their law clerks.

312. Carrington, Paul D. "Crowded Dockets and the Courts of Appeals: The Threat to the Function of Review and the National Law." *Harvard Law Review* 82 (1969): 542-617.

This article examines the dimensions of the problem of congestion in the federal courts of appeals and considers various means of dealing with it. Parts I and II suggest that the federal appellate caseload is likely to continue to increase and that the resulting congestion poses a serious threat to the institutional role of the courts of appeals. Parts III and IV discuss some frequently suggested means for dealing with the problem by increasing the efficiency of the courts or by imposing restrictions on the right of appeal. Since these methods appear to be inadequate, incomplete, or undesirable, the only solution to the problem seems to be an increase in the number of appellate judgeships. Part V considers means of accommodating such an increase without impairment of the separate courts of appeals. It is concluded, however, that such devices for accommodation are defective, for they fail to meet the risks of harm to the stability of the national law which results from divergences among the circuits. Part VI therefore considers methods of restructuring the federal appellate system to obtain greater national harmony.

313. "Alabama Appellate Court Congestion: Observations and Suggestions from an Empirical Study." *Alabama Law Review* 21 (1968): 150-70. Tables.

At the time this comment was written the Alabama Supreme Court required more time to resolve appeals than virtually any other state court of last resort in the United States. After an appeal had been filed, briefs submitted, and oral argument delivered, as many as six years might elapse before an opinion was handed down. The use of temporary commissioners to eliminate the backlog, and the creation of Civil and Criminal Courts of Appeals to lessen the justices' workload, were proposed as the best means of meeting short- and long-range needs.

314. Johnson, Milton E., and Stanley E. Harper, Jr. "The Supreme Court: Time Charts and Group Decision." *University of Cincinnati Law Review* 31 (1962): 241-65.

Johnson and Harper offer a survey of the operating procedures of the Supreme Court and a review of the comments of critics and defenders of these operating procedures. This is not an empirical study in the contemporary sense of the term, but offers interesting insights on how Supreme Court Justices use their time and how they should use their time.

315. Brune, Herbert M., Jr., and John S. Strahorn, Jr. "The Court of Appeals of Maryland: A Five-Year Case Study." *Maryland Law Review* 4 (1940): 343-79. Tables. Maps.

This early study covers many facets of judicial administration in the Court of Appeals of Maryland for the period beginning January Term 1935 and going through the completion of the October Term 1939. At this time the Court of Appeals of Maryland was the only appellate court of the state. Discussion and tables are included for the following headings: Subject Matter Classifications; Types of Courts Appealed From; Comparative Records of Plaintiffs and Defendants; Affirmances and Reversals of Trial Judges; Multiple Judge Trial Courts; Volume of Business; Size of Court Settings; Dissents and Concurrences in the Result; Number of Opinions Written by the Judges; Length of Opinion; Filing Dates of Opinions; and Distribution of Appeals by Counties and Circuits. Resulting facts regarded as significant include the diversity of the problems presented; the high percentage of reversals in law and equity cases and between the comparative records of plaintiffs and defendants; the high percentage of attendance of the members of the court at its sessions; and the dispatch with which the court's business is taken up and concluded.

316. Wherry, William M. *A Study of the Organization of Litigation and of the Jury Trial in the Supreme Court of New York County*. Brattleboro, Vt.: Vermont Printing Co., 1931. 65 pp. Tables.

This older study presents an analysis of a small but representative group of cases covering the problems involved in jury trials in New York County. It deals with preliminary steps prior to the trial and steps subsequent

to the trial, as they bear upon the position of the trial itself in the administration of justice. Wherry used statutes he gathered, data collected by Justice Philip J. McCook of the New York Supreme Court, and "Judicial Statutes of the Work of the Supreme Court in the First Judicial Department." Among numerous conclusions and suggestions, Wherry notes that the part which a court or jury takes in the actual settlement and disposition of the cases is small in proportion to the part which lawyers perform and that not enough attention is given to the important part played by preliminary trials in the administration of justice, nor to the administrative function of the court. Many of the same issues faced in 1931 are being faced today. A reading of Wherry's work provides an interesting historical perspective.