Small Claims Courts

A National Examination

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By
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Preface

This book presents the findings from a detailed two-year examination of fifteen different small claims courts from across the nation. The purposes of this book are two. First, we have presented a detailed picture of the present state of health of this important institution in terms of its ability to provide citizens from all walks of life with quick, uncomplicated, inexpensive, and just resolution of smaller civil disputes, which can be used without the necessity of an attorney. Second, we have attempted to provide answers to important issues of small claims reform, such as whether to prohibit collection agencies from using small claims courts, and whether to prohibit attorneys at small claims trials.

A major focus of the study was on the effectiveness of the small claims process in serving the public. For the first time we are able to present detailed information about the citizens who use these courts, in terms of the actual time required to use small claims courts, hours lost from work, the costs incurred to win or defend a small claim, the use of attorney services, and the ability of litigants to collect small claims judgments. We also examined the problems encountered by average citizens in using these courts, and their opinions on the desirability of various changes in existing practices.

Our sample of fifteen courts from fourteen different states may not have included the "best" or the "worst" examples of these courts, and this was not our intention as there is presently no clear agreement as to which are the best or the worst. What we did was to select states which used a wide variety of small claims procedures, including differences in what constitutes a small claim, limits on who may or may not use these courts, limits on the use of attorneys at trial, and the extent of assistance provided to litigants in using the small claims process. Within these states individual courts were then selected for examination to include a broad range of city sizes and locations. While we cannot claim that this book presents a complete picture of every one of these courts, our findings do present a picture of the functioning and impact of the most important approaches to handling of small claims within a great variety of different settings. Our data also allow comparisons between individual courts and the different procedures used in those courts.

The small claims research reported here was conducted under the

auspices of the National Center for State Courts and was funded by a grant from the National Science Foundation. The vital support of both organizations is gratefully acknowledged. The National Advisory Committee on Small Claims, the advisory body to the study, provided periodic review and helpful advice for this research effort, and we would like to recognize its members: Professor Norman C. Amaker of Loyola University of Chicago Law School; Carl F. Bianchi, Administrative Director of the Courts for the State of Idaho; Dean W. Determan, Vice President of the Better Business Bureaus of the United States; Joseph R. Glancey, President Judge of the Philadelphia Municipal Court; Armand M. Jewell, Assistant Presiding Judge of the Los Angeles Municipal Court; Robert J. Klein, Senior Editor of *Money* magazine; Dr. Arthur F. Konopka of the Law, Science and Technology Program of the National Science Foundation and Program Manager for the study; Neil A. Riley, Judge of the Hennepin County Municipal Court; and Professor Austin Sarat of the Amherst College Department of Political Science.

A unique characteristic of our present day small claims process is the informality found in its pre-trial and trial procedures. Most states leave much of the detail as to how claims are filed, the in-court assistance provided to litigants, and the rules of evidence and procedures used at trial to the judicial discretion of individual courts. As a result it is not possible to get a clear picture of what happens in a given small claims court except by observing the courts in operation to see what they do or do not do. Individual trial judges vary widely in the exercise of their grant of authority to conduct small claims trials so as to do justice between the parties under the circumstances of specific cases, and again the only way to determine how small claims trials are actually conducted is to ask each judge and to observe that judge in action. We did this in each of the fifteen courts we studied and in Rochester, New York, the pre-test court. In each jurisdiction the judges, administrative, and clerical staff gave freely of their limited time to answer our questions, and to provide us with their insights as to what was working well and what was not working well in their courts. We found that many of the courts had developed new or different methods for making the small claims process more convenient to use, and these have been detailed in the text.

Many of the judges and administrative staff we interviewed had given long and careful thought to the problems of small claims courts and possible solutions. Their ideas were invaluable to us, and we would particularly like to acknowledge the assistance provided by the following individuals: Harry Salis, who assisted with the pre-test in the

Rochester, New York, Court; Administrative Judge Edward J. Thompson and Chief Clerk Phoenix Ingraham of the New York City Civil Court; Judge Sylvia Bacon of the Washington, D.C., Superior Court; James Farrar, Administrator of the Grand Rapids, Michigan, Court; Magistrate William P. Mahedy of Des Moines, Iowa; Omaha Municipal Court Judge Walter H. Cropper; Judge Arthur L. Rakestraw of Oklahoma City; Judge Joe B. Brown, Jr. of Dallas; and Judge Earl Warren, Jr. of the Sacramento Municipal Court. A number of other persons knowledgeable about the small claims process assisted us in reviewing the results of this study: Judge Robert Beresford of the San Jose, California, Municipal Court; Mark E. Budnitz of the National Consumer Law Center; and Edward B. McConnell and Barry Mahoney of the National Center for State Courts.

Two members of the project staff deserve special mention. John A. Martin was responsible for all of the computer work involved in the project, including the development of coding for all the data and statistical analysis. Finally, we owe a special thanks to our project secretary, Dianna E. Bock, whose efficiency and good humor made the work easier and more pleasant for the rest of us.

Significant effort was expended by the litigants in the fifteen target courts who took the time to reply in detail to our questionnaires about their experiences. Their input provided the data which we have used to assess the impact of small claims courts on citizens using this important part of our judicial system. This book does not provide all of the answers for small claims courts either now or for the future, for this forum is a dynamic process which can, and must, shift to adapt to changing needs. We believe, however, that the national picture which we have provided of this important forum offers a number of important findings and suggestions which can help in making this forum more effective and more convenient for the public to use.

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1.
The Setting

Small claims court is not a building or a courtroom but a special procedure, established by state statute or court rule, which simplifies the court process for a specified range of smaller civil disputes. In all states which have a special small claims procedure, the small claims court is a division or a part of an existing lower court of general jurisdiction, be it a justice of the peace court, county court, municipal court, or district court. The maximum dollar amount for a small claim varies widely from state to state, from $150 in Texas to $3,000 in Indiana. The most frequent maximum small claim limit is now around $500 but is shifting upward toward $750 and $1,000 as state legislatures raise claim limits to catch up with inflation.

Small claims courts in the United States originated in the first two decades of this century in response to a perception that the complex and technical regular civil procedure made it virtually impossible for wage earners and small businessmen to use the court system to collect wages or accounts which they were owed. The basic problem was perceived to be caused by cumbersome formal civil court procedures which resulted in unreasonable delay and expense, since a lawyer was a virtual necessity to enable litigants to find their way through the complex procedural requirements. The primary aims of early reform efforts were: 1) to reduce delay by simplifying pleadings and eliminating procedural steps, and 2) to reduce expense by reducing filing fees and, through simplifying the court process, eliminating the need for litigants to be represented by a lawyer.

While the adversary process was retained in the sense that each side to a dispute was responsible for presenting the arguments and facts in its favor, it was envisioned that the judge in a small claims proceeding would play an active role at trial, assisting litigants in bringing out relevant facts and clarifying the legal issues involved. Trial procedures and rules of evidence were to be "informal" and were left largely to the discretion of the trial judge. Generally a small claims judgment was still required to be according to the rules of substantive law, although in

some jurisdictions the small claims judge was directed in addition to do "substantial justice" between the parties.

The crux of the small claims procedure is informality and simplicity, in the sense that no paperwork is required beyond a brief initial factual statement, often only a sentence or two, initiating the action. Formal rules of trial procedure and rules of evidence are waived. Usually no formal answer is required of the defendant beyond appearing in court on the trial date to explain his side of the case. Using the standard of informal procedure as a measure, eight states still do not have a small claims court fn1 in that they have no special statutory provision for the adjudication of smaller civil cases using an informal procedure. Five states presently do not use small claims procedures outside of designated urban courts.[2]

Small claims are defined in state statutes as civil claims that can be satisfied by money damages below a specified dollar amount. Equitable or nonmoney relief usually is prohibited. In addition, several states expressly exclude libel and slander actions from small claims court on the theory that these actions are quasi-criminal and are too serious to entrust to an informal procedure.

The Goals of the Small Claims Process

Over the years a number of goals have been identified for the small claims process. Early reformers emphasized providing accessibility to the machinery of law for all classes--specifically accessibility to the working man and tradespeople. Since the primary problem with existing civil procedure was seen to be its complexity with resulting delay and expense, early goals were simplicity, speed, and low cost. By simplifying the process of adjudication, early reformers also hoped to maximize self-representation by litigants. Small claims decisions were intended to be "fair" in that judges were required to arrive at even-handed decisions by applying the regular substantive law to the facts of a case.

More recent reform efforts have emphasized that small claims courts should also be "effective" in the sense that litigants who are awarded judgments in small claims court should be able to subsequently collect these judgments.[3]

Drawing on these sources we would propose that a broad consensus exists that at least the following are important goals of the small claims process:

—Accessibiltiy

—Speed
—Low cost
—Simplicity
—Self-Representation
—Fairness
—Effectiveness

Diversity and Trends in Small Claims Procedure

Generally all small claims courts share the basic characteristics of informal adjudication set out in the preceeding section: most procedural steps and paperwork are eliminated, and informal rules of procedure and informal rules of evidence are used at trial. Small claims jurisdiction is almost always limited to a specified range of civil claims that can be satisfied in money damages. Beyond these common features, however, several other procedural features have evolved as different jurisdictions pursued different paths for moving closer to the goals of the small claims process.

In an effort to limit the use of the small claims process to individual claimants and businesses, seventeen states presently bar assignees or collection agencies from suing in small claims court.[4] New York in addition bars corporations and insurers, and Texas bars persons or entities who lend money at interest as a primary or secondary business. A more recent development, intended to reduce the impact of businesses which file hundreds of cases in small claims court, is the use of limits on the number of claims that any one individual or entity can file in small claims court within a specified period. Six states presently impose such filing limits by statute and several individual courts have imposed filing limits by court rule.[5] Claimants such as collection agencies who are excluded from suing in small claims court, or businesses who have reached their filing limit in small claims court, are still free to sue in the formal civil side of the court since the civil jurisdiction of the formal court duplicates the small claims jurisdiction.

To prevent the potentially unequal situation of a pro se litigant facing an attorney at trial, eight states do not permit litigants to be represented by an attorney at small claims trials.[6] Other legislative efforts to simplify, speed up, or reduce the expense of the small claims process include the elimination of jury trials in small claims proceedings (thirty-three states) and the elimination or restriction of appeals from small claims judgments.[7] Because of constitutional guarantees of the right to

counsel and the right to a jury trial in many states, most states which prohibit attorneys at small claims trials or which require the plaintiff to waive a jury trial by filing in a small claims court give the defendant the right to transfer the small claims proceeding to the formal civil side of the court if he wants a jury trial or wishes to be represented by an attorney. Another way around constitutional guarantees of counsel if attorneys are prohibited at trial is to provide for an appeal from the small claims judgment by a trial *de novo* in the regular civil court where attorneys are permitted.

Conciliation or arbitration procedures were provided as an alternative to a decision by a judge in a few of the early city small claims courts (including New York City, Philadelphia, Cleveland, and Minneapolis), but this practice has been gradually abandoned. Today only the New York City small claims courts offer litigants the choice of having their case decided by a small claims judge, or by a lawyer-arbitrator in a more private proceeding.

Another important development in the small claims process is using small claims court clerks to assist litigants in filing (such as filling out the complaint form) and to provide advice on what types of proof will be needed at trial, or when supporting witnesses may be required and how to subpoena them. Some courts presently permit court clerks to give even quasi-legal advice to litigants, such as how to determine the correct defendant, how to sue business defendants, and when possible double or triple damages may be claimed in security deposit or wage claims. The Harlem small claims court has provided paralegal "consumer advocates" since 1972 to assist litigants with filing and trial preparation, and several other New York City small claims courts provide volunteer attorneys in the intake section as "consumer counsel" to give evidentiary and legal advice on trial preparation. The Washington, D.C. small claims court participates in a student practice program with law schools in the area, and third-year law students in court assist litigants with trial preparation, settlement negotiations, and occasionally at trial as well.

While limitations on access to the small claims process (barring assignees and collection agencies), limitations on the use of attorneys at trial, and limits on the number of small claims that can be filed by any one party are still the exception rather than the rule, there appears to be a trend in this direction. In states recently enacting or amending their small claims procedures there have been the following changes. Colorado barred assignees, barred attorneys at trial, and imposed filing limits, although defendants can transfer the proceeding to the regular

civil docket if they want to be represented by a lawyer (1976). California had already barred attorneys and assignees, but additionally specified that no corporation or partnership could be represented by an attorney in small claims court unless all officers or partners were attorneys, required a pamphlet on small claims rules and procedures to be distributed to each litigant, and imposed a filing limit of six claims per day for any one party (1976). California also established three experimental small claims courts districts in urban areas which will provide evening and Saturday hearings and experiment with different informal procedures and neighborhood locations for hearings and with different methods for providing legal advice to litigants. Missouri already barred assignees, but added filing limits (1976). Montana established a small claims procedure which can be adopted at local option (none have yet) which barred assignees, and provides that no party may use an attorney at trial unless both sides have one (1975).

Another possible trend is the establishment of "consumer courts" within the structure of larger small claims systems. The Cook County (Illinois) Pro Se Court, established in 1973, differs from small claims courts in the rest of the state in that the claim limit is $300 instead of $1,000, lawyers are barred at trial, and corporations, partnerships and associations cannot file. Additionally, a law student is stationed in the intake section of the Pro Se Court to assist litigants with filing and trial preparation. While Kentucky will not have a statewide small claims system until 1978, the Jefferson County Consumer Court was established by court rule in 1974. While lawyers were permitted, jurisdiction was limited to claims under $500 involving consumer transactions, and access was limited to consumer plaintiffs. In addition, all consumer court claims were required to go through pre-trial mediation by the County Consumer Protection Office.

Problems with Small Claims Courts

Small claims courts have recently come under increasing criticism for failing to achieve their original goals. Some of this criticism is the outgrowth of a number of studies of individual small claims courts conducted since 1960, when the consumer justice movement sparked renewed interest in this institution.[8] The criticisms, derived from prior small claims studies, have included the following major points.

—Where business plaintiffs are permitted in small claims court they tend to dominate the caseload of these courts, and they usually sue

individual (non-business) defendants.
  —Plaintiffs almost always win and defendants almost always lose in small claims court (with the implication being that the process is somehow arrayed against defendants or the type of people who are often defendants).
  —Where lawyers are used at trial they are most often used by business plaintiffs against unrepresented individual defendants (which further disadvantages defendants).
—Small claims trials are often rushed, which tends to disadvantage inexperienced defendants.
—Many litigants, particularly unrepresented individuals and small businessmen, are unable to subsequently collect their small claims judgments.
—Many small claims can be factually or legally complex and they may not be adequately dealt with in an informal proceeding.
—Role conflict problems may arise when judges attempt to mediate or settle claims instead of deciding them outright.

Questions Investigated

As the preface indicates, the empirical study leading to this report had two major goals. Our first purpose was to determine how a wide variety of small claims courts across the country were doing in terms of providing the citizens who used those courts with quick, uncomplicated, inexpensive and even-handed resolution of smaller civil disputes without the need for the services of an attorney. Second, since we were able to examine a large number of small claims courts (and their litigants) on a cross-comparable basis, we hoped to be able to provide answers to questions facing judicial systems and state legislatures as to which of the wide variety of procedures and practices in small claims courts seemed to best serve the public which uses these courts. Where our data directly indicated answers, these answers have been provided. In some areas of controversy, such as whether attorneys should be permitted at small claims trials, the data from our court output analysis and litigant surveys were not such as to directly indicate an answer. However, where we felt that enough data or findings existed to reasonably support a given answer, we have provided suggested answers and indicated the basis for such answer.

As we explained in the preface it is important to recognize that this study does not provide all of the answers needed to enable the small

claims process to better serve the public. For example, our litigant survey focused exclusively on citizens who had been involved in a small claims case. While this focus provides valuable information on how different courts affect citizens using those courts, it did not reach those persons who had problems which could have been resolved in small claims court but who for one reason or another did not use this forum. Information on this population is critical for determining how accessible small claims courts are to citizens from all walks of life, and deserves massive and careful study. As indicated in our analysis of the responses of the litigants who returned our questionnaires, many more plaintiffs responded than did defendants, and those people responding were of higher income and better educated, on the whole, than the general population. Also, most defendants who responded had been involved in contested cases, and had appeared in court to argue their side of the case. We still do not know nearly enough about why almost one-half of all defendants in small claims actions never appear to defend a claim against them; we have only the perceptions of the judges and court staff. Thus important areas of the small claims process still need further study. We hope that the findings which we provide will not be considered as the whole answer or the final answer, but rather as important building blocks in the process of assembling enough information so that the best possible decisions can be made about the future form and role of small claims courts.

In structuring this national examination we tried to keep in mind questions that judicial systems and state legislatures might ask about different procedural practices that might be used to improve their own small claims systems. We have done our best to provide answers, to indicate "best" or "worst" practices, and to indicate tradeoffs that may exist when a particular procedure may make the task of the court or of a particular litigant or type of litigant easier, but may adversely affect others involved in the process. The major questions or areas of concern about the small claims process which we have addressed are these.

—Are limits on access to small claims courts a good idea, such as prohibiting collection agencies, or imposing filing limits?

—Is it a good idea to prohibit the use of attorneys at trial, and which litigants does this help or hurt?

—What does it actually cost litigants to use the small claims process, and are there ways of reducing these costs?

—Are evening or Saturday small claims sessions useful?

—What are specific problem areas in the present small claims process

for litigants?

—How much assistance should be given to litigants by court staff and how?

—How do different courts deal with case scheduling, or handling difficult cases, and have any good methods been developed for improving small claims functioning?

—How much of a problem is the collection of judgments for small claims litigants? Are there ways of improving this aspect of the process?

—Finally, several model small claims court acts are currently under development, including the Model Consumer Justice Act proposed by the Chamber of Commerce of the United States. Will the suggested procedures improve the present small claims systems, and perhaps more importantly is there a "package" or "model" solution which can solve all small claims courts problems?

Study Methodology

Since research funds were finite, we attempted to strike a balance between the goal of maximum depth and variety of data collected in each court and the goal of examining as many different courts as possible. At the outset we excluded from examination any court which had been examined in the past five years (such as Boston, Philadelphia, Detroit, Ann Arbor, Buffalo, and Cincinnati) since at least some data exist on the functioning of these courts. The exceptions to this rule were the Harlem, (New York) Small Claims Court, which was included since it is often mentioned as "the best" small claims court, and the Manhattan Small Claims Court to see if the two adjacent urban courts, one small, one large, differed in any significant respects. We also wanted to examine the use of optional in-court lawyer-arbitrators, who are presently provided only in the New York City courts. We used our fifty-state analysis of different small claims procedural variations (Appendix A) to identify fourteen states which provided for a special procedural practice or practices in their small claims system beyond using an informal procedure. These variations included different limits on access, banning or allowing lawyers at trial, various degrees of in-court assistance to litigants, filing limits, claim limits, the use of lawyer-arbitrators as an option to judicial decision, the use of lawyer-referees instead of judges, and limits on appeal. We then checked the quality of the small claims case records in twenty-five different cities in these states of interest,

since we needed names and addresses in order to question the litigants who had used these courts, and selected fifteen courts of varying city size and organizational structure for final analysis. Tables 1.1 and 1.2 present the different features of the fifteen courts examined.

Table 1.1
Features of Fifteen Courts Included in the Study

City	Pop. Of Area Served	No. of Filings (1975)	Claim Limit	Limits on Access
Bridgeport	306,245	9,615	$ 750	None
Harlem	1,539,233	1,843	1,000	No assignees, corporations, or insurers as plaintiff.
Manhattan	1,539,233	15,192	1,000	Same limitations as in Harlem.
Washington, D.C.	765,510	28,000 (est.)	750	None
Grand Rapids	197,649	950	300	Assignees and third party beneficiaries are barred as plaintiffs.
Minneapolis	960,080	27,117	500[1]	None
Des Moines	286,130	15,000 (est.)	1,000	None
Omaha	389,455	1,900	500	Assignees barred as plaintiffs; filing limits.
Sioux Falls	95,209	926	500	Assignees barred as plaintiffs; filing limits.
Oklahoma City	527,717	10,853	400[2]	Assignees and collection agencies barred as plaintiffs.

Table 1.1(*continued*)

City	Pop. of Area Served	No. of Filing (1975)	Claim Limit	Limits on Access
Dallas	1,327,695	746	150 ($200 wages)	No assignees, collection agencies, or person or entity lending money at interest.
Cheyenne	56,360	N/A	200	None
Spokane	287,487	1,816	300	None
Eugene	215,401	6,169	500	None
Sacramento	634,190	12,781	750	No assignees as plaintiff; filing limits.

[1]Raised to $1,000 March 23, 1976.
[2]Raised to $600 October 1, 1976.

Table 1.2
Features of Fifteen Courts Included in the Study: Role of Attorneys and Other Unique Features

City	Attorneys	Other Features
Bridgeport	Permitted at trial	One-judge court; clerk assistance very limited; no S/C appeal but transfer provisions.
Harlem	Permitted but if both represented, case is transferred to regular civil side	Lawyer-arbitrator available as option to judge decision; extensive paralegal assistance to litigant; bilingual intake staffing; a neighborhood court in a big city; exclusively evening sessions.

Table 1.2(*continued*)

City	Attorneys	Other Features
Manhattan	Permitted but if both represented, case is transferred to regular civil side	Same features as Harlem court except volunteer lawyer "consumer counsel" used to give litigants advice in case preparation; much higher caseload than Harlem; exclusively evening sessions.
Washington, D.C.	Permitted at trial	Very limited clerk assistance to litigants, but law students often available in court to assist litigants; extremely high volume court; one evening session per week.
Grand Rapids	Not permitted at trial	Extensive clerk assistance to litigants including evidentiary advice and naming correct defendant; no appeal from S/C/C but can transfer proceeding to regular civil court.
Minneapolis	Permitted at trial	Lawyer-referees used instead of judges; extensive clerk assistance to litigants including filling out all paper work for execution on judgment (collection); special dockets used for auto negligence and dry cleaning cases; very high volume court.
Des Moines	Permitted at trial	Extensive clerk assistance to litigants; FED (eviction) cases and landlord and tenant cases handled in S/C; very high S/C volume for size of city.
Omaha	Not permitted at trial	S/C filing limit 2 claims/week, 10/year; very low volume of filing for size of city, very limited clerk assistance to litigants.

Table 1.2(*continued*)

City	Attorneys	Other Features
Sioux Falls	Permitted at trial	Court clerk can screen claims by requiring claimant to collect the evidence, can reject insufficient claims; provides pre-trial assistance to litigants; filing limit 5 claims/month; no appeal from S/C judgment; one-judge court.
Oklahoma City	Permitted at trial	Losing parties can pay judgment or installment payments into court; appeal from S/C on writ of error to state court (very rare).
Dallas	Permitted at trial	One of 12 J.P. courts in large city, giving neighborhood court system; one judge court; judge will interview missing witnesses by phone.
Cheyenne	Permitted at trial	No separate files kept for S/C cases; J.P. court using S/C procedure in small city; clerks office emphasized phone advice to litigants, defendant can file answer by phone; flexible trial scheduling.
Spokane	Not permitted at trial except by consent of judge	Special docket for business plaintiffs and mass filers; low volume for size of city.
Eugene	Not permitted at trial except by consent of judge	Defendant must file answer; limited clerk assistance to litigants.
Sacramento	Not permitted at trial	S/C filing limit 6 claims/day, 12/week; FED (eviction) cases handled in S/C/C; interpreter available in court; telephoning of witnesses and site inspections by some judges.

Empirical data for the study came from three sources: 1) personal interviews with the judges who hear small claims cases and with the small claims clerks and administrative staff in the fifteen target jurisdictions, 2) data from case records for 500 small claims cases in each court, randomly sampled from all small claims cases in the last six months of 1975, and 3) responses to a four-page questionnaire sent to all individual plaintiffs and defendants identified in the 500-case sample in each court.

All data collection instruments, case record survey forms, litigant questionnaires, and judicial interview forms were pre-tested by a full scale (500-case) court record survey, litigant survey, and judicial interviews in the Rochester (New York) Small Claims Court and the results used to refine the survey instruments for the entire fifteen-jurisdiction survey.[9] Because some plaintiff and defendant questions were modified as a result of the pre-test, the Rochester data have not been included in the fifteen-court sample.

Personal interviews in each of the fifteen courts, guided by a standardized interview form, were used to gain information on specific court practices and staffing, the conduct of judges at trial, and the opinions of judges and other court personnel about the effectiveness of their procedures, the types of assistance provided to litigants, problems with the process, and suggestions for improving the small claims system. The paralegal Consumer Advocates in the Harlem court and Consumer Counsels in the Manhattan court were also interviewed on the same points.

Case data collected in each court included names and addresses of litigants, the type and amount of the claims, the elapsed time cases required, and the final disposition of cases. The case record data, which represent a sample of 7,218 cases in the fifteen courts, were used primarily as a foundation for our description of the small claims court caseloads and the types of litigants using each court--individuals, representatives of businesses, corporations, government agencies, and the like.

Questionnaires were mailed to all individual plaintiffs and defendants in the 500-case sample in each court, and a follow-up mailing was sent approximately four weeks later. Because our primary interest was in the ability of individuals to use the courts, questionnaires were not mailed to business or corporate users except for a small sample in each court. The Rochester pre-test had indicated that frequent business or corporate small claims users did not remember specific cases and generally would

not respond to our questionnaire.

The plaintiff and defendant questionnaires asked for details about the nature of the specific case, the use of attorneys, perceptions about the helpfulness of court intake personnel and the judge, perceptions about the ability of the respondent to understand the court process, specific problems he or she experienced, specific time and costs involved in pursuing the case, attitudes toward potential changes in the small claims system, and demographic data. Responses to the plaintiff questionnaires were obtained for 1,446 cases and responses to the defendant questionnaire for 593 cases.

Plaintiff response rates varied from a low 8 percent in Cheyenne, Wyoming, where we had difficulties locating plaintiffs, to a high of 44 percent in Sioux Falls, South Dakota. The plaintiff return rate for all of the jurisdictions combined was just over 30 percent.

Not surprisingly, defendant response rates were generally lower than the rates on the plaintiff questionnaire. Because of these relatively low response rates, we have used the defendant questionnaire results primarily for descriptive purposes and only in conjunction with more inclusive data from other sources.

Notes

[1]See Appendix A for a breakdown of small claims provisions for the fifty states. According to our analysis of applicable statutory provisions, as of January 1977 Arizona, Delaware, Louisiana, Mississippi, South Carolina, Tennessee, Virginia, and West Virginia had no statutory provisions for the specialized handling of small claims using informal procedures.

[2]Arkansas, Georgia, Kentucky, Montana, and New Mexico. Montana has a state enabling act (effective July 1, 1975) which gives each county the local option of establishing a small claims court as a part of the district court by county voter or district court initiative, but as of January 1977 no county had yet established a small claims court.

[3]See, for example, the proposed federal "Consumer Controversies Resolution Act," vs. Senate Bill 957 (1977) which would provide federal funding assistance to the states to improve their small claims courts, including the development of "effective means for ensuring that judgments awarded to aggrieved individuals are paid promptly" (at Sec. 7 (b)(6)(G)).

[4]States which presently bar assignees or collection agencies from suing in small claims court are: California, Colorado, Georgia (claims arising from commercial transactions), Idaho, Kansas, Michigan, Missouri, Montana, Nebraska, New Jersey, New York (also corporations and insurers), North Dakota, Oklahoma, Ohio, Texas (also no person or entity lending money at interest as a primary or secondary business), Utah and Washington (in District Courts). In addition to barring assignees, corporations, and insurers, the New York City Small Claims Court also bars associations and partnerships, corporations and associations; in Kentucky the Jefferson County Consumer Court bars assignees and all non-consumer plaintiffs; and in Illinois, the Cook County Pro Se Court bars assignees, partnerships, corporations and associations.

[5]California (six claims per day), Colorado (five claims per year), Kansas (five claims per year by the same party), Missouri (four claims in any twelve-month period), Nebraska (maximum of two claims per week, ten per year) and Ohio (six claims in a thirty-day period) impose filing limits by statute. In addition, Sioux Falls, South Dakota (five per month) imposes filing limits by court rule. There may be other individual courts that impose such limits.

[6]States which presently prohibit representation by an attorney in small claims court are: California, Colorado, Idaho, Kansas, Michigan, Nebraska, Oregon, and Washington. In Oregon and Washington an attorney may be used at trial only with the prior consent of the trial judge. This is rarely granted and is generally limited to incompetent or aged litigants, or to cases where a corporation officer is an attorney. Hawaii prohibits the use of attorneys in landlord and tenant security deposit claims. Attorneys are also barred in the Cook County, Illinois, Pro Se Court. Montana's new small claims statute provides that a party may have an attorney at trial only if both sides are represented by attorneys.

[7]Connecticut, Hawaii, Michigan, North Dakota, Oregon (in district courts) and South Dakota do not permit either side to appeal a small claims decision. New York City permits no appeal from the decision of an in-court arbitrator. Massachusetts, Oregon (justice courts), Rhode Island, Utah, and Washington limit appeal to the defendant only. Alaska, Georgia, Texas and Washington permit appeal only if the small claims judgment exceeds a designated amount (generally $50). In Washington, D.C., appeal is permitted only with leave of the appellate court on significant questions of law, and is rarely granted. New York permits appeal only on the limited ground that subtantial justice between the parties according to substantive rules of law was not done.

[8]For an excellent discussion of problems with our existing small claims system which have been identified in prior articles and empirical studies, see B. Yngvesson and P. Hennessey, "Small Claims, Complex Disputes: A Review of the Small Claims Literature," *Law and Society Review*, Vol. 9, No. 2 (Winter 1975). Our list of problems was drawn from that source.

[9]Information obtained in Rochester New York during the pre-test was analyzed and a portion of the findings published. See S. Weller, J. Ruhnka, and J. Martin "Success in Small Claims: Is a Lawyer Necessary?" *Judicature*, Volume 61, No. 4, October 1977.

2.
The Small Claims Judge

Since a key distinguishing characteristic of the small claims process is its informality and lack of rigid trial procedures, small claims trials are much more influenced by individual practices and attitudes of the trial judge than are formal civil trials. In small claims trials significant areas such as trial procedures, rules of evidence, the handling of attorneys, and assistance to *pro se* litigants are left up to the trial judge, and it is possible for a judge to shape the small claims trial to whatever form he believes best. In contrast to formal civil trials, we found that small claims trial procedures can vary widely, even within a given court, depending on the individual judge (or arbitrator) conducting the trial.

A major part of the project effort was thus devoted to interviewing the judges in each of the fifteen courts to elicit their views on the small claims process and their approach to various aspects of the small claims trial. We were able to interview nearly every judge who handled small claims cases in each of the fifteen courts, with the exception of the Manhattan (including Harlem) and Washington, D.C. courts, which had 120 and 44 judges, respectively, who rotated through small claims duty.

Judge Rotation

Since small claims court is not a separate "court" in the sense of a separate building, or courtroom, or facility, small claims judges are regular judges of the court in which the small claims process is located, be it a district court, municipal or city court, county court, justice of the peace or magistrate's court. If this "parent" court has more than one judge, the judges are usually rotated through terms of duty in each of the various functions of the court (criminal, formal civil, motion parts, small claims, and so on). The usual period of small claims duty is one week, so for a court with five to ten judges, judges spend from 10 to 20 percent of their time on small claims cases over the course of a year. The greater the number of judges and the larger a court's other functions, the less time judges will spend on small claims duties. In the Manhattan civil

court, for example, each judge sits in small claims court for one week about every eight months.

Most judges we interviewed felt that one week was about optimum for small claims duty as many felt that small claims trials were "harder" or "more of a strain on a judge" than criminal or regular civil cases. Invariably a judge starts a trial knowing nothing about the case. Usually *pro se* litigants are involved, and the judge has only about fifteen minutes to bring out the relevant facts, decide what law should apply, decide which side should prevail, and sort out what the damages or award should be. A Washington, D.C. judge described small claims trials as "adjudicative calisthenics," although he found small claims an interesting change from repetitious criminal duties because of the wider variety of situations and broader area of the law involved in small claims cases.

The Washington, D.C. court was an exception to the general practice of one-week trial terms in small claims court. Despite the fact that the court had forty-four judges of general jurisdiction and a small claims caseload of over 28,000 filings in 1975, only one judge at a time was assigned to handle this heavy volume for a full month at a stretch. Evening small claims session on Wednesdays, in addition to the usual day session, required the same judge to hear small claims cases from 9:00 a.m. in the morning to 10:00 p.m. at night or later on these days. Needless to say this judge assignment system made most of the District of Columbia judges blanch at the mention of small claims.

As we discuss in the section on trial scheduling in Chapter 6, there are better ways to assign small claims duties in high volume courts than to have one judge plow through a heavy caseload by himself. Using multiple trial parts for small claims cases, as was done in seven of the fifteen courts, enables litigants to be reached faster with less waiting and breaks up small claims trial duties into segments of a few hours each day for the judge.

Conduct of Trials and the Role of the Judge

In larger courts of general jurisdiction most judges spend only 10 percent, or less, of their time on small claims duties. This was true even in the one- or two-judge justice of the peace courts in Dallas and Cheyenne. Since the largest part of judges' duties, 80 to 90 percent or more, is spent on formal criminal or civil proceedings, pre-trial hearings, arraignments, and hearing motions, with attorneys present and the

judge in the role of an impartial referee, the shift to a more active investigatory role in small claims trials is difficult for many judges.

Pre-trial steps used in formal civil proceedings, such as detailed pleading and answers, pre-trial discovery, and pre-trial hearings and motions, serve to focus the legal issues, identify the applicable law, and muster the relevant factual evidence but are eliminated in small claims court. In order to simplify and speed up the process of getting to trial, the focusing and clarification of issues is left to be done at trial. This requires a more judicially active role at trial. Although ten of the fifteen courts we examined permitted attorneys to be used at small claims trials, in 30 to 75 percent of the cases in those courts (depending on the court) one or both litigants appeared at trial without an attorney. This means that even in courts which permit attorneys at trial, in a significant number of cases the judge will still have to assist the parties without an attorney to explain their side of the controversy and to identify the relevant facts in a case.

Although all of the judges we interviewed recognized that small claims required a more active judicial role, they divided almost evenly on whether they "liked" or "disliked" the activist role required of them in small claims trials. About half of the judges said they welcomed the opportunity to "wade in and get involved" in a trial. Several mentioned they felt the inquisitorial trial procedure used in small claims was much more efficient than rigid formal trial procedure in getting quickly to the heart of a dispute, since the judge had more control over the trial and could question litigants and witnesses to draw out relevant facts and clarify conflicting testimony. On the other hand roughly half of the judges we spoke to were troubled by having to "put on another hat" when they presided over small claims trials. While all the judges said they would assist *pro se* litigants in getting their side of the story told, they seemed to feel uneasy about not being "neutral," and several worried that if they got too involved in helping a litigant without an attorney they might lose their impartiality. Some judges admitted that in formal trial proceedings they had become dependent on attorneys to "run their side of the case," to lay out the relevant law, and to direct the judge to the correct area of resolution, and they said they missed this attorney assistance in small claims trials.

Typically small claims trials were conducted as follows. The judge would summarize the small claims complaint in his case file, identifying the plaintiff and defendant and describing the alleged cause of action and the amount claimed as damages. The plaintiff would then be asked if this

was correct in order to verify the complaint. The plaintiff would then be sworn and told to tell his story in his own words. Usually parties who were testifying would be directed to sit in a witness chair in front of the judge's bench or to stand in front of the bench, although in courts where the litigants sat at tables in front of the bench some judges asked the litigants to stand and testify at their table. Generally, the judges would not permit any interruptions or questions by the other side or by an attorney while a litigant was testifying, and would assist the testifying party in laying out the facts and would examine receipts or other documents which the plaintiff had brought to court. If the plaintiff brought any witnesses, these witnesses would then be sworn and would testify after the plaintiff. Finally the defendant would tell his story and present witnesses, if any. Some judges would then permit the plaintiff and defendant to cross-examine each other, or their witnesses. Most judges did not, but would let litigants ask a question which the judge would refine and direct to the other side.

The degree of judicial activism that we observed in small claims trials was usually reflected in the extent to which judges "controlled" the trial process on one hand or played a more passive role on the other. The more active judges, many of whom described their style as "inquisitorial" or "investigatory," would move from a brief review of the case to questioning the plaintiff to establish the necessary cause of action and proof of damages. They then shifted to questioning the defendant to clarify his side of the case and to bring out any defenses or any facts which would serve to mitigate or offset elements of damage established by the plaintiff. After an opportunity for questions by the litigants, these judges would then announce a decision, explaining how they arrived at the dollar amount of the award. Judges who used this inquisitorial approach justified it on the grounds that it speeded up trials by enabling the judge to skip over or to cut short rambling or extraneous testimony, and it took the burden off inexperienced litigants.

The more formal or passive judges also followed the "you tell your story, now you tell yours" format but would not lead the testimony and let the litigants proceed at their own pace in whatever order of presentation of evidence which they chose. Most, however, would ask questions of the litigants at key points in their testimony to clarify facts or identify elements of damage. Almost all of the judges we observed in trial made brief notes on a case during the trial, which almost always included calculations of the damages and sometimes included necessary elements of the cause of action alleged (if complex), the witnesses testifying, and the

relevant points they made.

Both the inquisitorial and more passive trial techniques seemed to work well in practice, although both have drawbacks if carried to an extreme. A few of the judges who favored the inquisitorial approach said that in a fair number of cases they "knew the right answer" shortly after a trial began and they would jump to the key points necessary to establish liability and damages. They would then give their decision, cutting the parties off from any further testimony, although they would answer questions about their decision. While these judges recognized that the parties might want to tell their story in greater detail, they did not feel it was right to keep other litigants waiting if further testimony was unnecessary in a case. The other extreme, which we observed in a few trials, was typified by a few judges who treated small claims trials much like a formal civil trial. The burden was left on each litigant to proceed with his or her case and these judges would not often intervene to move litigants on to new elements or facts which needed to be established. These same judges also tended to give attorneys (where present at trial) a freer hand in running their own case and in cross-examining the other side. As a consequence these trials tended to take longer and the parties often rambled in lengthy testimony on points not germane to the legal issues or to damages.

In fairness to both the more active and more passive judges, virtually every judge in both of these groups recognized a therapeutic function in small claims trials and said they often let litigants explain their side of the story long past the point where the judge had enough facts to decide the case, although they viewed fifteen or twenty minutes as an average time they had to keep in mind in hearing a case. In the Des Moines court one magistrate who allowed litigants more time at trial than other judges argued that "you owe every litigant a decent time to speak up, and to be satisfied. You owe it to them because it's their court." Another Des Moines judge said "the public expects a judge in small claims court, and they deserve a good one. People deserve an adequate time to be heard and an explanation of why the judge decided as he did." A judge in Omaha felt that "the key thing is to give every litigant a chance to say everything they want to say." He added, "it is important for a small claims judge to sit in judicial robes, and to give just as good justice as in any other court."

Some judges mentioned that they felt for many plaintiffs the real function of a small claims trial was not primarily the recovery of money damages, although that was always important, but rather it was a chance

to tell their story on their "day in court" before a real judge. In Spokane one judge was sure that small claims court averted several serious assaults and homicides each year, and felt small claims hearings helped to "clear the air" in festering disputes.

If the secret to the conduct of a good small claims trial could be summarized in a few words, most of the judges we interviewed seemed to think that the parties must be treated politely and fairly and that the judge must be a good listener. Many would make an effort to put the parties at ease and would reassure them with occasional words of encouragement during their testimony to keep them moving along to all the points they should touch on. A number of judges mentioned that they tried to make all litigants feel that they had accomplished something by coming to court, even if they lost, by thanking them after they testified and at the conclusion of the trial.

Burden of Proof and Rules of Evidence

All small claims courts are courts of law, in that the judge's decision is supposed to be determined by established rules of law. In most states equitable or nonmoney relief is not available in small claims court, such as restitution, recission, or injunction. The two exceptions to this rule are Alabama, which permits both equitable relief and defenses, and Nebraska, which permits equitable relief to disaffirm, avoid, or rescind contracts. In practice, however, as described in the section on judicial settlement efforts at trial in Chapter 7, many judges did give quasi-equitable relief in some small claims cases.

Most small claims judges we questioned said they applied the regular civil burden of proof in small claims trials. This so-called "preponderance of the evidence rule" means that the burden of going forward is first placed on the plaintiff to establish his cause of action by a preponderance of the evidence (sometimes described as 51 percent). Once the plaintiff does so, he has established a prima facie case and the burden of disproving it shifts to the defendant. If the defendant does not then produce evidence which reduces the plaintiff's level of proof to less than 51 percent, the plaintiff wins.

In explaining the preponderance of evidence rule to litigants, judges generally compared it to a set of balance scales. The plaintiff puts his proof on one side, and the defendant puts his proof on the other. If the plaintiff's side is heavier, the plaintiff wins. If the defandant's side is heavier, or if the scales are evenly balanced, the plaintiff loses. The

significant point to this is that small claims trials, from the standpoint of the decisional rule applied, are every bit as much a trial as are formal civil trials. If a plaintiff in small claims court cannot establish that he has a cause of action under law by 51 percent of the weight of the evidence, generally he gets nothing.

There were few exceptions to this rule. Some judges told us that they personally used a standard of "equity and fairness" in small claims court regardless of what the statute said. The general approach, however, was described by one of the lawyer-referees in the Minneapolis Conciliation Court who said, "I will try to give an unprepared plaintiff the benefit of the doubt, but if the defendant has evidence and the plaintiff does not, there is no way the plaintiff can win."

Although judges differed on the degree to which they would "split the difference" in small claims decisions, none said they would award any damages to a plaintiff unless he had clearly established the liability of the defendant and established that at least some damages were owed. Splitting the difference rarely existed in terms of balancing the equities in a case. Rather it reflected the scaling down of the amount of claimed damages to a level that could be proved, or, where the liability was clear but the amount of damages not precisely determinable, setting the damages at a level the judge felt was fair under the circumstances of the case.

As a number of prior empirical studies have pointed out, and as we found in the fifteen courts we studied, plaintiffs generally win in small claims court. We asked the judges why they thought this happened. Their unanimous answer was that plaintiffs generally won because they had good cases. They were able to show a legal cause of action and prove they had been damaged. The judges said they hardly ever saw what they felt was a knowingly fraudulent claim in small claims court.

We also asked what was the primary cause some plaintiffs lost. Surprisingly, most of the judges said plaintiffs rarely lost because of lack of proof of damages or missing evidence, since evidentiary defects could be remedied by granting a continuance at trial for the plaintiff to bring in missing evidence or witnesses or the judge could grant what he felt were fair damages if he believed the plaintiff. The losing cases, according to the judges, usually lacked a legal cause of action. Plaintiffs may have been wronged in some way, or felt they had been wronged, but the defendant was not liable under the law.

Usually small claims statutes specify that informal or relaxed evidentiary rules shall be used at trial. While most judges said they did use

relaxed evidentiary rules, differences did exist. More formal or passive judges, those who said they treated the small claims trial more like a formal civil trial, tended to report that they were stricter on evidentiary rules at trial. This sometimes took the form of not permitting a litigant to testify as to the amount of damages if paper proof was available, such as paid bills, receipts, or written estimates. A few of these judges said that they would sometimes enforce more formal rules of evidence if an attorney on the other side raised a technical evidentiary objection, such as the hearsay rule. In these cases most of these judges said they would explain to the testifying party what hearsay was and help him or her to tell what they knew without running afoul of this rule. A number of the courts had their own proof requirements for automobile damage claims, and would require two or three independent written estimates of damages, depending on the court.

In our sample of fifteen courts judges using more formal rules of evidence were in the minority. Most judges would let in any and all evidence so long as it seemed relevant to a case. Several judges believed that the key function of the judge at trial was to sort out the truth, and they believed it was easier to do this if as much evidence was available as possible. A judge in Spokane put it this way: "I let everything in, since it helps the truth to come out." Many judges felt demeanor evidence was important in small claims trials (how the litigants reacted while testifying), particularly if there was little hard proof, to assist them in determining who was telling the truth. A judge in the Oklahoma City court observed, "People sometimes lie quite a bit in small claims trials, but they have rationalized their situation so long that by the time they are in court, they believe their lies."

Attorneys in Small Claims Trials

Five of the courts we studied prohibited small claims litigants from being represented by attorneys at trial (Grand Rapids, Omaha, Spokane, Eugene, and Sacramento), while ten did not. In interviewing the small claims trial judges, we asked each judge whether attorneys should be permitted at trial, and asked the judges in courts permitting them how they handled trials where one or both sides was represented by an attorney.

Judges in the courts prohibiting attorneys at trial were almost unanimous in saying they would not want attorneys at small claims trials. Their general view was that attorneys would not add enough of value to the

process of arriving at a just decision to justify the additional time the trial would take and the added expense of attorneys to the litigant or litigants. A judge in the Omaha court summed up this position by stating, "small claims cases run better without lawyers, because the judge can get to the crux of the dispute more quickly." In addition, many judges felt laymen could understand the trial process more easily if lawyers were not present, since lawyers often used legal magic words--objecting, demurring, claiming hearsay, and so forth--which tended (either intentionally or inadvertently) to confuse nonlawyer litigants.

A Eugene small claims judge said "it is important to keep small claims as a *pro se* court, since if both sides have lawyers, you have a regular civil court." That judge was also against using law students in the intake section to give trial preparation advice to plaintiffs. "Who will advise the defendant?" he asked. "If you provide law students advisors for both sides (which is the only fair way), aren't you trying to make small claims into regular civil court?"

Not all judges in small claims courts which prohibited attorneys at trial felt this way. A judge in the Grand Rapids court said he would rather handle ten cases with attorneys than one small claims case without them. He believed that pro se litigants lied in about 90 percent of his small claims cases, and the lack of formal rules of evidence bothered him. He did believe, however, that small claims court was a "necessary evil," but said he personally did not like the activist role it forced upon him as judge.

In the ten courts which permitted attorneys at trial more disagreement existed over the need for, or value of, this feature. Several different positions could be distinguished among the judges we spoke to. The judges who enjoyed the more active judicial role possible in small claims trials generally did not want attorneys at trial because lawyers lengthened the trial process with very little benefit to the judge or litigants, and tended to confuse the process for pro se litigants.

A trial magistrate in the Des Moines court had kept detailed time records during one month in 1975 to verify the additional time required when attorneys were present in a trial. He found that, of the forty-seven trials he handled during that month, 36 percent involved no attorneys and required an average of thirty-nine minutes per trial, 23 percent involved one attorney and required thirty-eight minutes per trial, and the 41 percent with attorneys on both sides required an average of sixty minutes per trial. This judge observed that, in trials with pro se litigants on both sides, it often took longer for the litigants to tell their story

because of their inexperience, but they did not generally present opening statements or closing arguments, and no time was consumed with objections to testimony on grounds of irrelevancy or hearsay or by resistance to motions or objections. In trials with only one attorney, he reported that the attorneys would make opening statements, motions, objections, and generally insist on cross-examining the other side, but opposing laymen generally offered no resistance because of their lack of knowledge of law and trial procedure. In trials with attorneys on both sides, all of the tactical maneuvering mentioned above generally took place and, in addition, much more time was used for direct and cross-examination. In examining the small claims case files in the Des Moines court we discovered that some attorneys had even filed trial briefs and interrogatories in small claims cases. Some of the judges reported that lawyers did this to intimidate *pro se* opponents before trial. It should be pointed out that this judge took much longer to complete a small claims trial than most of the other judges which we interviewed.

The judges who felt more comfortable in the conventional role of impartial referee were usually more likely to express approval of the participation of attorneys at small claims trials. Some of this group pointed out that in automobile liability cases, for example, it was difficult for laymen to understand fairly complicated legal rules such as contributory negligence unless they had an attorney to assist them. Others felt that laymen coud do a fairly good job in presenting their cases, but often needed legal assistance in joining necessary or co-liable parties or in rounding up the necessary proof in more complicated cases.

Some judges felt attorneys often served a "hand-holding" function for litigants who were frightented by the court process or who had not been involved in a trial before. Several also believed that attorneys acted as a buffer between the often unrealistic expectations of litigants and the cold realities of the law. They felt attorneys prepared litigants for what they might reasonably expect to recover, or put them on notice that they had a weak claim, or defense, and might well lose.

Most significantly for defendants, early in our court visits several judges told us that the key thing a defendant needs, particularly a consumer defendant being sued by a purchaser or lender, is a legal or statutory defense. Examples of such defenses might include: that a required statutory notice of the right to rescind an installment purchase had not been given, or the required notice of the right to cure a lapse in installment payments, or that a consumer loan violated the requirements of the federal Fair Interest Labeling Act or state consumer credit protec-

tion act. In the absence of such a legal defense to liability, they argued, the liabiltiy and damages were usually clearcut since the defendant usually had to admit he had received the loan or the goods.

We became interested in this theory and asked every judge from that point on how often federal consumer protection provisions (such as the Consumer Product Safety Act, Consumer Credit Protection Act, "Truth-in-Lending," Fair Consumer Credit Billing Act, FTC regulations governing door-to-door sales, and the Magnuson-Moss Warranty Act) and state provisions such as the Uniform Consumer Credit Code (UCCC) were raised either affirmatively or as a defense in small claims trials. Surprisingly, very few of the judges said that consumer protection provisions ever came up in small claims court. While most judges had heard of these provisions, generally they were not familiar enough with them to check consumer transactions for compliance. They also mentioned that when one of these provisions was raised as a defense in a small claims case, it was usually an attorney who raised it, although this was rare also.

Upon further reflection, this surprising result should not be unexpected. First, the caseload of most district or municipal court judges who handle small claims is primarily criminal rather than civil. Secondly, most federal and state consumer protection legislation is keyed to "consumer" or nonbusiness transactions, and applies only to smaller dollar amount purchases or loans. It is thus less likely that these consumer protection provisions would arise in the regular civil caseload of these courts, where lawyers are present and larger amounts of money are involved. This situation leaves us with the result that consumer protection legislation is presently rarely raised, or applied, in the one forum, small claims court, where it could be expected to be most applicable owing to the unfamiliarity or inexperience of the judges and lawyers (where present) with these provisions. Obviously this is an area that needs redress and we offer some suggestions in our concluding recommendations.

A few of the courts where lawyers were permitted at trial tried to limit their impact in small claims court by court rule. In the New York City courts, if both sides in a small claims case have attorneys the case is transferred to the regular civil court docket. In Dallas, if an attorney files an answer in a small claims case it is pulled off the small claims calendar and is scheduled on a regular civil court trial day. The Dallas judge we interviewed justified this by saying that when an attorney files an answer in a small claims case, continuances (usually while the other side tries to

get an attorney) can require three to four months from filing, and that he would assist any *pro se* even in a regular civil trial. In Oklahoma a legislative effort to bar attorneys at small claims trials lost, but a fall-back position was enacted which limits attorney fees in default judgments to 10 percent of the judgment amount. This has discouraged attorneys from appearing in default cases.

One point often overlooked on the issue of attorney representation is that some state statutes presently require all corporations to be represented by an attorney in court. This was the case in the Washington, D.C. court, and it can place an added financial burden on the ability of small family businesses to either sue or defend in small claims courts. More usually corporations are permitted to appear by a duly authorized agent, manager, or officer or by an attorney. Some states which bar attorneys at trial go further (such as California) and do not permit a corporation to appear by an attorney unless all officers are attorneys. In this unlikely situation the other side is given the right to an attorney also, and if both sides have attorneys the case is transferred to the regular civil docket.

The ability to sue or defend in small claims court without an attorney can be important to the ability of many small businessmen to use the legal process. While we were observing arbitration trials in the Harlem court we spoke with an individual proprietor who ran a small restaurant equipment business. He said that he filed about fifteen small claims cases each year to help in collecting his overdue accounts. The filing fees for each case were $4.48 and he explained that the small claims complaint worked well as a dunning letter for overdue bills. Of the cases filed he estimated that about 50 percent settled before trial, and the other 50 percent tended to be defaults. He said he was generally able to collect about half of the default judgments by execution proceedings, but did not bother with execution if the defendant had moved or was out of business. The significant point, in his view, was that he used to have to pay an attorney $1,500 a year to pursue these overdue accounts and the attorney produced no better results than he was able to do on his own in small claims court.

By contrast, in the Washington, D.C. court we found two or three private attorneys always present in small claims court who were on retainer with corporations, businesses, and insurance companies to handle all of their cases which showed up in small claims court. As did the judge, they usually saw a case for the first time when the docket was called. If the other party appeared to contest a case the attorneys would

usually request a continuance to prepare a case for trial. In an effort to cut down on the delays resulting from this practice, the D.C. court established a rule that no one attorney can have more than 100 small claims cases listed on the trial docket for one day. If an attorney has more than 100 cases listed for trial on a given day, he must bring another attorney to court with him.

In the ten courts which did permit attorneys at small claims trials, most of the judges were troubled by the situation of a *pro se* litigant facing an attorney for the other side. While the vast majority of these judges said they would actively intervene in such a situation to assist the unrepresented party, in the trials that we observed this intervention usually took the form of limiting any efforts by an attorney to rattle a layman with objections to evidence or with sharp cross-examination techniques, rather than of acting as lawyer for the unrepresented litigant. Judges who handled small claims trials much like formal civil trials said they would generally let a lawyer "earn his fee," that is, they would let a lawyer present his side of a case and cross-examine the opposing party. Most, however, would intervene if lawyers began to use trial procedure or technical objections to evidence to badger the other side. The more activist judges, on the other hand, said they limited lawyers more severely. Some cut off legalistic trial tactics by sharply stating, "Counselor, this is small claims court!" Others, particularly those judges who like to control the trial proceedings from the bench, would not permit lawyers to take the initiative in presenting their side of the case. Instead, the judge would question the litigants and permit the lawyer to speak only after both parties had testified, and then only to add points of law or to suggest further questions or facts that the lawyer thought were relevant.

In the courts which allowed lawyers in small claims trials, one viewpoint emerged time and again from the trial judges: "Give us two attorneys or give us none!" This feeling seemed to have several roots. Since the bulk of the trial work of all these judges was formal criminal and civil trials or hearings, conducted with attorneys present, they were accustomed to the participation of lawyers. While some judges felt uncomfortable in the role of investigator or mediator required in small claims trials, they seemed to feel more at ease in this nontraditional judicial role when both sides were laymen. The situation of a lawyer, often the same lawyers who appeared before them in formal civil or criminal proceedings, facing a *pro se* litigant seemed to bring out maximum discomfort with their small claims role. On one hand they

could not give the lawyer a free hand to act like a "real" trial lawyer, and on the other they recognized that the unrepresented party needed help--help in presenting his case, as well as some protection against tactical maneuvering by the trial lawyer.

Some judges felt it was easier to be even-handed if they were doing the trial examination for both sides. One judge went further and said, "When one side is without an attorney, the natural tendency of a judge is to favor the underdog--and when the judge is acting as the lawyer for one side, as well as the judge, you can imagine the judge's client will not lose too often." A few judges even felt that a lawyer might be at a real disadvantage against a layman in a small claims trial. As one of these judges put it, "You have to remember that all judges are lawyers too, and their natural instinct is to oppose anyone making lawyer-like noises." In the courts where most judges severely limited lawyer participation at trial, the court clerks reported that attorneys for business litigants would often tell the business manager or agent what to say and then send the individual off to trial as a *pro se*, since they felt their chances were better that way.

Still other judges we spoke with felt the situation of a layman facing a lawyer was "inherently unfair" and they were not at all sure that they could fully even the balance. A judge in the Washington, D.C. court said, "When a judge is trying to act as a lawyer for a *pro se*, and to conduct the trial at the same time, it is easy to muff the *pro se's* case." That judge pointed out that a judge came into the case without knowing the facts or background of the dispute, and it was entirely possible for a judge to ask a wrong question or to lead a *pro se* into damaging admissions while attempting to act as an advocate for that side. For this reason she believed a judge attempting to act as attorney for an unrepresented litigant was probably not as effective as a law student, and that neither was as effective as an attorney.

This judge was also not at all sure that it would be a good idea to eliminate attorneys in small claims trials, unless the claim limit was cut back from $750 or the permissible subject matter jurisdiction was modified to eliminate cases such as product liability or medical or dental malpractice where identifying the correct cause of action and extensive evidence were often crucial to success. As she put it, "Our small claims adjudication is still the trial process, and the trial process to be used effectively requires specialists--trial attorneys. Therefore I do not believe we can eliminate the potential necessity for trial attorneys in small claims court, unless we eliminate the trial itself, and replace it with

compulsory arbitration or some other mechanism."

Difficult Cases

The use of the term "small claim" for a dispute which is to be resolved through a process of simplified litigation carries with it an implication that these disputes will be both factually and legally simple. This assumption is also reflected in the early literature on small claims courts. The judges we spoke to believed that factual or legal complexity was more a function of the type of case than the amount of damages involved. A loan repayment, for example, is generally a fairly simple matter to decide, both as to liability and the amount owed, whether the amount involved is $100 or $10,000. Multiple party automobile collision cases, on the other hand, tend to be more complex since liability may exist on both sides, and the cost to repair the damage or replacement costs may be open to more question.

One question we asked of all the judges was, "What type of small claims case seems to cause you the most difficulty, and why?" Their answers tended to fall into two categories: the type of case and the type of litigants who were involved. The judges most often rated home repair and construction cases, automobile and television repair cases, dry cleaning cases, dental and medical malpractice cases (which are increasingly appearing on small claims dockets as claim limits are increased), and landlord and tenant cases as "difficult." The judges generally did not feel these cases were difficult because the law in those areas was complex, but rather because proof in these types of cases was often difficult.

This does not mean that legally complex cases do not arise in small claims court. A number of the New York City small claims judges noted that they often handled legally complicated cases, including the Warsaw aircraft baggage convention, consumer fraud and intallment sales provisions, bailment cases, Security and Exchange Commission brokerage fee schedules, real estate commission cases, dental malpractice, and personal injury cases, among others. "Knowing the law" did not seem to pose much of a problem to most judges. If they had a general idea of the law they would muddle through as best they could, or they would hear all the evidence and reserve their opinion in order to check out relevant statutes or case law later.

In the view of most of the judges, getting at the facts was the crux of most small claims trials, and the most difficult cases were ones where

facts were unclear or the damages uncertain. One such type of case often mentioned was landlord and tenant disputes. Often when a tenant sued for return of his security deposit the landlord would counter-claim, alleging that the security deposit was used to clean, repaint, or repair damage done by the tenant. As one judge put it, "These cases tend to turn on questions like `how clean is clean?'" Since the apartment involved had usually been rerented by the time of trial, the tenant and judge were left in the position of not being able to verify the claimed repairs. Parenthetically, landlord counterclaims for repair of rented facilities were often singled out as "questionable" by many small claims judges. The difficulty, as they saw it, was that many landlords did not understand the concept of ordinary wear and tear which they should expect from renting an apartment.

Another type of small claims case where proof tends to be difficult is automobile or television repair, since the mechanic accused of the faulty repair is usually the only person in a position to explain what was wrong and what was done. The plaintiff only knows that it doesn't work. As the judge in Dallas put it, "The plaintiff is in the worst position in a repair case since he is suing an expert, and he is not an expert. A plaintiff can rarely get a mechanic to come to court to testify for him in a $150 repair case." Similar problems of proof were also mentioned in home repair cases, dry cleaning cases, and dental or medical malpractice claims.

A few of the jurisdictions we surveyed had brought some resources to bear on these difficult proof cases. The Minneapolis court scheduled all dry cleaning cases on a special "dry cleaning day" when an industry expert would come in to examine the garments and tell the referee whether the job was up to industry standards. Judges in other courts would occasionally send garments to the national Dry Cleaning Institute laboratory for a report on the cause of damage. In Sacramento one small claims judge said that if he was unsure about an automobile repair case he would ask the California Bureau of Automobile Repair to investigate the complaint. A small claims judge from Philadelphia told us about another new development which deserves close attention. In Philadelphia the automotive repair industry formed an Automotive Technical Assistance Panel (AUTOTAP), which provides an inspection service for consumers with automobile repair complaints. For an inspection charge of $5 the AUTOTAP service will check a car for work done incorrectly, work billed but not done, work charged for which did not affect the problem, and gross overcharging for a repair. Claimants on auto repair cases are referred by the small claims clerk to the AUTOTAP

service and all names of the garage or repair shop complained of are deleted from the complaint. AUTOTAP then examines the car and submits its findings. Many repair agencies have agreed to honor AUTOTAP findings and the AUTOTAP affidavit of inspection is admissible in a subsequent small claims proceeding if the complainant is unable to obtain satisfaction from the original repair shop.

Problems of proof were also said to be less difficult in jurisdictions where the statutes or case law placed more of the burden of proof on the provider of the service or repair. In Nebraska and Michigan, for example, the case law made all auto repair estimates binding, and with special repairs a contractor was held to warrant that his work would be satisfactory.

Most judges believed that "difficult proof" cases were not inherently unsuited for small claims adjudication, since these cases were just as difficult to decide in formal civil court. Their primary worry was that a *pro se* litigant would pursue such a claim in small claims court without getting at least some legal assistance in setting up the case and deciding what witnesses and types of proof were necessary. Particularly in courts providing no appeal (Connecticut, Michigan, South Dakota) or very limited appeal (Washington, D.C. and Oklahoma), it would be possible for an injured party to lose on a potentially good cause of action in small claims court because he was not sufficiently prepared, with no chance of salvaging the cause of action in a subsequent appeal. In such a case a number of judges said they would suggest to the plaintiff at trial that they would have to rule against him if they did not have any more proof, but that they would transfer the action to regular civil court if the plaintiff wanted to get a lawyer to help in setting up the necessary proof and preparing the case.

In second major category of cases that caused difficulties for small claims judges, the personalities of the litigants were the key factors in a dispute, or the dispute was centered in a conflict which was not necessarily synonomous with the particular legal dispute at issue. The example most often given for this type of dispute was "kids and pets" cases, although the judges pointed out that this sort of long-term personal dispute could crop up in repair cases, landlord and tenant cases, or others.

The judges had a number of theories about why these "personal conflict" cases caused so much difficulty. Some judges thought these types of cases were basically not well suited to the adjudicatory process. The adversary trial process, although modified somewhat in small

claims by the investigatorial role of the judge, tends to encourage each party to "fire off its best shot" at the other side, which often exacerbates the situation. Secondly, the judges felt that the disputants often seemed to be more interested in the public forum, the chance for their day in court, than the specific legal dispute at issue. Several reported that the best solution seemed to be to maintain order while giving each side an equal chance to fully air its side of the dispute, although some judges admitted that when these personality conflict cases cropped up, they just tried to decide the legal question and move on the the next case.

Finally, the remedies available in small claims court, generally limited to money damages for a specific incident, are sometimes not adequate for the effective resolution of a dispute. For example, if a complainant has his window broken by a neighbor's child, one of a long sequence of incidents, what he really wants is not a judgment for a few dollars to fix the window but some sort of restraining order on the neighbor and child or an injunction against any further harassment by them. Since this is pure equitable relief, it cannot usually be granted in a small claims proceedings, although some of the judges would informally tell such defendants that they were legally responsible for the actions of their child and instruct them to keep the child under control. Other judges pointed out that the specific legal dispute that ends up in court is not always the real source of controversy between the parties, so that resolving that one question will not end the underlying problem or fully satisfy the parties. For example, a long-standing dispute based on a continuing series of petty incidents may end up in court on only one specific incident, because only that one incident was actionable. These types of cases were described as "headaches" by most of the judges since it was often a struggle to hold the parties to the issue at question, to keep the proceeding from turning into a "shouting match," and at the same time to maintain their own composure and judicial decorum.

Judicial Attitudes Toward the Small Claims Process

The last major area that we questioned judges about was their views of the value of the small claims process and its function in the judicial system. As might be expected from the discomfort of some judges with the active role required of them, with the informal procedure, with assisting *pro se* litigants against an attorney, and with the greater judicial effort generally required in small claims trials, a substantial number of judges said they did not like small claims duty, at least as compared with

their formal civil or criminal duties. It is significant, however, that almost every judge also believed that it was absolutely essential that the judicial system include a simplified process that could be used by ordinary citizens for small cases. Judges were also virtually unanimous in pointing out that a litigant without a lawyer would be helpless in a formal civil court proceeding.

One criticism leveled by some judges at the small claims process was that a simplified and informal resolution could not adequately replace a classical formal trial with formal rules of procedure and evidence. Often it was the judges who looked back nostalgically on their days as trial attorneys who raised this point. To them, small claims trials seemed sloppy. A judge in the Omaha court said, "I was a trial attorney for twenty-five years, and it bugs me to see *pro ses* butchering a case with their trial tactics." In Grand Rapids one judge said, "I don't like the theory behind small claims court because it violates the God-given right to a trial by jury and the right to be represented by an attorney. I think it's unconstitutional."

Other judges complained that the informality and time pressure in small claims trials often forced them "to shoot from the hip." Several judges explained that while the small claims process was quick and informal, it also carried the full force of the law. They worried about litigants' rights, particularly defendants' rights, being lost in one-shot informal litigation, as in automobile negligence cases, when the defendant might not know enough to raise a valid defense such as comparative negligence. A very few judges felt that some disputes, such as neighborhood squabbles which the parties "would eventually forget," might better remain unlitigated. A judge in Spokane asked, "What good does it do to put a poor defendant through the court process if he is judgment-proof and there is no possibility of recovery at the collection end?"

A surprising number of judges in courts which barred collection agencies from from using small claims courts thought this policy was wrong. A Grand Rapids judge observed, "Our country is founded on the notion that people should pay their bills--but there is no need to run up a defendant's costs. Small claims court is cheaper, simpler, and the individual defendant has the advantages of a simplified process if he chooses to defend a claim or just wants to show up and ask for more time to pay." A Spokane judge said he thought some collection agencies sued in district court instead of small claims court because of their own greed. In a formal civil suit the collection agency generally gets a higher collection fee, and the service fee, attorney's fee (up to 50 percent of the

loan amount if provided in the loan note), and the higher filing costs are all added to the judgment. This can double the amount owed by the defendant in some cases. A Sacramento judge said if a defendant in a collection case appeared in small claims court and had a possible defense, the judge could help him to articulate it, whereas a layman would be helpless in formal civil court unless he had an attorney.

Some judges felt some changes in small claims provisions were threatening the basic nature of the simplified process. A judge in the Sacramento court said, "Our piecemeal approach to reform is destroying small claims court. Increases in the claim limits and legislation to provide paralegal assistance at trial are all tending to push small claims toward the formal adversary trial again. Small claims court should be an inexpensive, quick arbitration tribunal. We need to keep it simple and uncluttered. Many `new' small claims reform proposals seem to concentrate on the intake process, not resolution, and I am concerned that this trend could result in an injured party getting the run-around to three or four government agencies before they are permitted to go to small claims court and, in one shot, get the problem resolved."

A judge in Spokane complained that "smaller cities or towns are arbitrarily subjected to mechanisms developed to correct abuses in big urban centers which the smaller jurisdictions do not have." As an example he pointed to the current "liberal fad" to push collection agencies out of small claims court. "Just because some law professor reads that collection agencies are a problem in Chicago or somewhere, he wants to keep them out of all small claims courts." He pointed out that in Spokane they had a separate trial docket for mass filers, which ensured that these cases did not delay individual litigant cases and still gave individual defendants the assistance of the judge and the informal small claims procedure if they showed up to defend.

A potential objection to making it easier and cheaper to use small claims court is that frivolous or fraudulent claims might be encouraged. None of the judges we interviewed saw this as a problem. They observed that, while plaintiffs occasionally would bring suit over an incident or dispute where a sufficient legal cause of action did not exist for them to prevail at trial, they very rarely saw a small claims case that they considered to be entirely groundless or fraudulent. One New York City judge in speaking of the Harlem small claims court (where corporations are barred as plaintiffs) said, "The vast majority of the claims seem to be consumer claims of some sort, where the plaintiff is outraged--and rightfully so." He remarked that, in the Harlem court, "the people

really seem to get into the trial process and enjoy it. They seem to use the small claims process mainly to deal with the system, not to rip off the system. It seems to be very important to them to have small claims court to use to help them stand up against the system."

A final observation that a number of judges touched on was that the speed of the process made it more effective than the formal civil process in checking some types of consumer fraud. Several judges in the Sacramento court mentioned that repeated small claims suits had been instrumental in running several questionable sales operations out of town. By contrast, the judges said, suits in the regular civil process and the increased ability for defendants to stall and maneuver meant that civil suits could take two years or more to come to trial, by which time the damage to consumers would have been done.

The Importance of Good Judges

In conclusion, one point touched on tangentially requires emphasis: a good small claims court requires good judges. Because the entire fabric of trial procedure, including provisions for dealing with unprepared or inexperienced litigants, is left up to the judge, this individual plays a key role in achieving even-handed and just results, particularly where litigants of widely disparate backgrounds or abilities are involved. Our observation of large numbers of small claims trials left was no doubt in our minds that some judges did a better job in small claims trials than others. This observation was reinforced by litigant comments, both pro and con, about their trial judge in response to our survey question, "Do you think a person can get a fair trial in small claims court?"

We do not, however, support one solution which has been suggested for this problem, that of assigning judges who are "best" at small claims trials to that function full time. There are several difficulties with this approach. First, it was our subjective impression that most judges were able to achieve fair and even-handed results in small claims trials, even though their trial practices differed fairly widely. The most important qualities for small claims judges are likely to be more subtle qualities such as patience, sensitivity, and a desire to achieve a just result, rather than the amount of "control" which a judge exercises at trial. These qualities, it would seem to us, are equally necessary in the criminal and formal civil trial functions of these courts. It is our belief, consequently, that the emphasis should be on getting the best possible judges for these lower level trial courts, for judges who do a good job in the other

functions of these courts are likely to do a good job with small claims trials as well. Difficulties with the nontraditional role required of judges in small claims trials, the greater judicial effort often required in these hearings, and the existing lack of familiarity with consumer law provisions can be reduced through more evenly parceling out small claims trial duties, and providing more quickly accessible legal checklists for use at trial. Thus it seems to us that small claims courts will get good judges if our trial courts have good judges.

Summary of Findings

- In order to permit self-representation and to simplify and speed up the process of reaching trial, the small claims process eliminates the responsive pleadings and pre-trial evidentiary discovery of the formal civil process. This means the identification and focusing of relevant legal and evidentiary factors must take place at trial, often with unrepresented or inexperienced litigants, and in a limited amount of time, which requires an active role by the trial judge.
- Substantial numbers (although a minority) of judges performing small claims trial functions were uncomfortable with the inquisitorial or investigatory role required in small claims trials, although most recognized that unrepresented litigants needed their assistance in presenting their side of a case.
- Most small claims judges were uncomfortable in cases where an attorney faced a *pro se* litigant, and were worried about remaining impartial when they acted as attorney for the *pro se*.
- State requirements that corporations must appear in court by an attorney can result in added financial burdens for small businesses to sue or defend in small claims court.
- Almost all judges used the civil preponderance of the evidence rule in small claims trials, the plaintiff must establish the defendant's liability by at least 51 percent of the proof or he recovers nothing.
- "Splitting the difference" in small claims judgments usually reflects the scaling down of claimed damages to a level that can be proven. Awards are not made without a showing of liability.
- Some small claims cases can be factually or legally complex, since complexity tends to be a function of specific case situations rather than the amount of damages involved. Most judges reported that factually complex cases caused them the most difficulties.
- Most judges felt that some situations could arise in small claims cases

where *pro se* litigants needed attorney assistance to avoid losing on a potentially good claim or defense, and some would transfer these cases to the regular civil docket so that the litigants could retain an attorney to better prepare their case.

- Federal or state consumer protection requirements are rarely ever raised in small claims trials, because most judges and attorneys (where present) are not familiar with these requirements.
- Judges felt that the key requirement of a defendant is a legal defense to liability, yet consumer protection preconditions or defenses to liability are scarcely ever considered in small claims trials.
- Some judges felt that the adversary trial process was not well suited to resolution of interpersonal conflict cases since it tends to encourage each side to "fire off their best shot" rather than to mediate differences.
- A money judgment may not be the most effective remedy in all cases, and many judges would arrange informal equitable relief where it seemed to be the better solution.
- Because so much of the format and procedure of small claims trials is left to the discretion of the individual trial judge, to a very real extent the judge shapes the trial. This requires judges who care about achieving fair and even-handed results under often difficult conditions.

3.
The Litigants

Small claims courts are supposed to be "people's courts," accessible to people from all walks of life. The failure to better achieve this accessibility has been a major criticism leveled at these courts, both in prior studies of small claims courts and in the popular press. As we discussed in Chapter 1, critics have argued that small claims courts have become dominated by collection agencies and business users to the detriment of individual users, that individual defendants facing business plaintiffs are severely disadvantaged, that people from the lower socioeconomic levels are effectively excluded from the use of small claims courts altogether, and that where lawyers are permitted the process is skewed in favor of the represented party.

Although these criticisms have been based largely on impressionistic data from trial observation or on caseload data from individual courts, they have been widely accepted and have formed the basis for many proposals for reform. Our analysis of small claims case records and returns from plaintiff and defendant questionnaires in fifteen small courts across the country permitted us to undertake the first comparative analysis of who is using small claims courts and which court features either facilitate or hinder the ability of litigants to pursue a case successfully. Using these data we have weighed the above criticisms, identified the areas of the small claims process that presently hinder the desired accessibility to citizens from all levels of society, and suggested changes which we believe may assist small claims courts in better serving all areas of the public.

Individual and Business Plaintiffs in Small Claims Court

An implicit assumption exists in much of what has been written about small claims courts that the use of these courts by businesses is somehow fundamentally incompatible with their use by individuals.[1] It has been assumed by many that, at a minimum, collection agencies should be barred from small claims courts if these courts are to be available for use

by individuals. Our data show that no such incompatibility exists, and that reforms based on the assumption of such incompatibility are erroneous. To the contrary, we believe important reasons exist for permitting collection agencies and businesses to use small claims courts.

Our case records analysis does indicate a relationship between barring collection agencies and the percentage of individual and business plaintiffs using each court. Table 3.1 presents the data, with the "business" column including small businesses, collection agencies, and corporations. The six courts with the highest percentage of individual plaintiffs in their caseloads all prohibited collection agencies as plaintiffs. In all of the courts which permitted collection agencies, a majority of cases was filed by businesses.

The distribution of individual and business plaintiffs within the caseload of a court tells only part of the story, however. Case filings must be viewed in conjunction with the population of the community served by a court. When filings are viewed as a rate per thousand population, the data indicate that collection agency usage does produce an increased total caseload but does not lead to decreased individual or

Table 3.1
Type of Plaintiff

City	Individual		Business		Other	
	%	No.	%	No.	%	No.
Manhattan[1]	93	(451)	7	(35)	1	(1)
Harlem[1]	90	(447)	10	(47)	—	
Omaha[1]	75	(370)	25	(125)	—	
Spokane[1]	55	(272)	45	(288)	1	(2)
Sacramento[1]	46	(232)	43	(215)	11	(53)
Grand Rapids[1]	37	(177)	62	(299)	—	
Sioux Falls	37	(180)	62	(298)	1	(4)
Eugene	34	(101)	53	(157)	13	(37)
Minneapolis	29	(143)	70	(345)	1	(8)
Oklahoma City[1]	27	(134)	72	(364)	1	(2)
Des Moines	25	(84)	72	(242)	4	(12)
Washington, D.C.	20	(98)	80	(399)	1	(1)
Dallas[1]	20	(101)	80	(395)	—	
Bridgeport	19	(98)	80	(406)	1	(1)
Cheyenne	9	(38)	85	(372)	6	(26)

[1]Prohibits collection agencies.

consumer use. In fact, there was no relationship between prohibiting collection agencies and either individual or consumer case filing rates.

The individual use rates per thousand population for the different courts in the study are displayed in Table 3.2. These data show that the total filing rates for courts which permitted collection agencies was statistically significantly higher than the total filings rates for courts which prohibited collection agencies. In fact, with one exception, all of the courts which permit collection agencies had higher filing rates than any court which prohibited collection agencies. The exception was Sioux Falls, whose filing rate must be viewed in the light of the fact that it permits only five filings per month for any individual or business. We can thus expect that permitting collection agency or assignee use of small claims courts will lead to higher caseloads.

The individual filing rates per thousand population for each court are presented in Table 3.3. The data show that individual use rates of small claims court were actually slightly higher in cities which did permit collection agencies than in cities which did not. If collection agency use

Table 3.2
Comparative Small Claims Filing Rates

Court	Filings per 1,000 Population (1975)	Assignees Permitted
Des Moines	52.42	Yes
Washington, D.C.	36.58	Yes
Bridgeport	31.40	Yes
Eugene	28.64	Yes
Minneapolis	28.24	Yes
Oklahoma City	20.57	No
Sacramento	20.15	No
Manhattan (including Harlem)	11.06	No
Sioux Falls	9.73	Yes[1]
Spokane	6.31	No
Omaha	5.11	No
Grand Rapids	4.81	No
Dallas	N/A[2]	No
Cheyenne	N/A[3]	Yes

[1]Filing limit of five per month.

[2]This court was one of twelve justice of the peace courts, so its filings could not be extrapolated to the total filings for Dallas as a whole.

[3]No total caseload data were available.

of small claims courts did in fact limit the use of these courts by individuals, we would expect to see all of those courts with a "no" in the "assignees permitted" column at the top of the list. This was not the case. The courts with the first, third, fifth, sixth, and seventh highest individual usage rates permitted collection agencies. The high total filing rate for Des Moines, for example, included a large number of business cases but also included a large number of cases filed by individuals. We can thus conclude that the collection agency use of small claims courts does not reduce the use of those courts by individuals, and that arguments for barring collection agencies based on their effect on individual use rates are groundless.

Consumer plaintiff filing rates per thousand population are presented in Table 3.4. As with individual filing rates, there was no relationship between permitting collection agencies and consumer plaintiff filing rates. Four of the five cities with the highest consumer filing rates permitted collection agencies. Although consumer plaintiff filings were

Table 3.3
Individual Use Rates

City	Filings by Individuals per 1,000 Population (1975)	Assignees Permitted
Des Moines	13.11	Yes
Manhattan (including Harlem)	10.25	No
Eugene	9.74	Yes
Sacramento	9.27	No
Minneapolis	8.19	Yes
Washington, D.C.	7.31	Yes
Bridgeport	5.97	Yes
Oklahoma City	5.55	No
Omaha	3.83	No
Sioux Falls	3.60	Yes[1]
Spokane	3.47	No
Grand Rapids	1.78	No
Dallas	N/A[2]	No
Cheyenne	N/A[3]	Yes

[1]Filing limit of five per month.

[2]This court was one of twelve justice of the peace courts, so its filings could not be extrapolated to the total filings for Dallas as a whole.

[3]No total caseload data were available.

low for all cities, the variation in filing rates between cities cannot be explained by whether or not collection agencies were permitted. Thus it appears that collection agency use does not "chill" the consumer use of small claims court.

On the other hand, compelling reasons exist for the use of small claims courts by collection agencies. In all but two of the fifteen courts most small claims defendants were individuals (Table 3.5). If collection agencies are denied access to small claims court, it is probable that at least some of those claims would be filed in formal civil court, and most of the judges who were interviewed pointed out that it was virtually impossible for an individual to defend in regular civil court without an attorney. Individual defendants in collection cases in formal civil court would thus be denied the opportunity to defend inexpensively and would be forced to hire an attorney or face almost certain defeat. A civil court action can also involve much higher costs which are added to the amount the judgment debtor must pay.

Table 3.4
Consumer Case Filing Rates

City	Consumer Cases per 1,000 Population (1975)	Assignees Permitted
Manhattan (including Harlem)	2.61	No
Eugene	2.58	Yes
Des Moines	2.10	Yes
Washington, D.C.	1.46	Yes
Minneapolis	1.41	Yes
Sacramento	1.41	No
Omaha	1.18	No
Oklahoma City	1.03	No
Bridgeport	0.94	Yes
Spokane	0.63	Yes
Sioux Falls	0.59	Yes[1]
Grand Rapids	0.38	No
Dallas	N/ A[2]	No
Cheyenne	N/ A[3]	Yes

[1]Filing limit of five per month.

[2]This court was one of twelve justice of the peace courts, so its filings could not be extrapolated to the total filings for Dallas as a whole.

[3]No total caseload data were available.

Our data also contradict the widely held belief that businesses are inherently advantaged over individuals in using small claims courts. We did find that business plaintiffs won contested cases a much higher percentage of the time than did individual plaintiffs, and this result held regardless of the subject matter of the case (see Table 3.6). Care must be taken in interpreting these results, however, for it must be remembered that, in the perception of nearly all the judges, small claims plaintiffs usually won because they brought good legal claims. These results could thus indicate that businesses were more careful than individuals in bringing only stronger claims to court.

Table 3.5
Type of Defendant

City	Individual		Business		Other	
	%	No.	%	No.	%	No.
Harlem[1]	38	(188)	61	(302)	1	(4)
Manhattan[1]	48	(232)	50	(246)	2	(9)
Omaha[1]	62	(308)	37	(186)	1	(4)
Grand Rapids[1]	78	(370)	21	(103)	1	(2)
Minneapolis	79	(393)	21	(101)	1	(3)
Dallas[1]	80	(395)	20	(101)	—	
Oklahoma City[1]	81	(404)	19	(94)	—	
Sacramento[1]	82	(409)	17	(88)	1	(3)
Des Moines	83	(279)	17	(57)	1	(2)
Spokane[1]	85	(419)	14	(67)	1	(7)
Sioux Falls	85	(410)	14	(69)	1	(2)
Washington, D.C.	86	(430)	14	(69)	1	(2)
Eugene	87	(435)	13	(64)	1	(2)
Bridgeport	91	(459)	9	(43)	1	
Cheyenne	94	(413)	6	(25)	—	

[1]Collection agencies prohibited.

Table 3.6
Percentage of Plaintiffs Winning Their Case in Contested Cases by Type of Case and Type of Plaintiff

Type of Plaintiff	Consumer Buyer		Consumer Seller		Landlord-Tenant		Damages		Other		All	
	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.
Individual	62	(196)	75	(71)	81	(238)	73	(262)	67	(93)	72	(860)
Business	83	(12)	92	(506)	89	(53)	89	(9)	96	(103)	92	(683)

A better measure of the comparative abilities of businesses and individuals to use small claims court is the degree to which they were able to win the full amount claimed. Whereas the lack of a legal claim can often be determined by a judge at the beginning of a case, the amount of damages finally awarded is usually controlled by the quality of proof presented. When we look at the amount of award as a percentage of the original claim for those who won their cases, presented in Table 3.7, the differences between individuals and businesses disappear. We see that cases involving consumer plaintiffs, landlord and tenant matters, and damages show no advantage for business plaintiffs as compared with individual plaintiffs. Small claims judges all indicated that these three types of cases often involve difficult problems in the proof of damages, and businesses were no better able to meet those problems of proof than were indiviudals.

The data in Table 3.7 do not necessarily indicate that there was a great deal of "splitting the difference" in small claims court decisions; rather they indicate a disparity between the damages claimed and the damages actually proved in court in certain types of cases.

We may thus conclude that existing arguments for prohibiting business plaintiffs in small claims court are not supported by the facts. Collection agencies, where permitted to sue, do tend to greatly increase small claims caseload but do not appear to reduce or limit the use of these courts to individual plaintiffs. While businesses do tend to win more often, they do not seem to be inherently advantaged over individual litigants in proving their damages at trial. The primary effect that

Table 3.7
Award as Percentage of Claim[1] in Contested Cases by Type of Case and Type of Plaintiff

Type of Plaintiff	Consumer Plaintiff		Seller Plaintiff		Landlord-Tenant		Damages		Other	
	%	No.	%	No.	%	No.	%	No.	%	No.
Individual	68	(153)	85	(94)	71	(193)	79	(235)	81	(102)
Business or corporation	65	(52)	95	(476)	74	(58)	70	(61)	90	(126)

[1]"Award as percentage of claim" here and in all future tables is computed by averaging the percentage over the individual cases in each category of cases.

businesses seem to have on small claims courts—increased caseload—can be handled in ways that will be suggested later. There thus appears to be no inherent detriment to the individual usage by permitting business plaintiffs and collection agencies to use small claims courts as well.[2]

Some critics have argued that permitting, collection agencies or businesses to use the small claims process provides businesses with a cheap mechanism to enforce unconscionable sales made under bad credit laws. This criticism is misplaced. Defects in laws governing the use of credit should be directed to legislatures for correction rather than approached indirectly through enacting limits on access to one of the several courts which enforce those laws. Prohibiting businesses' use of small claims court carries with it a judgment that only individuals are deserving of inexpensive, effective justice, and runs counter to our basic constitutional standard of equal treatment for all.

Claim Amounts and Subject Matter of Small Claims Cases

Our case record data show that the higher the dollar claim limit in a given court the higher will be the average claim amount. In fact, as Table 3.8 indicates, the most frequent claim amount in all courts but one was equal to the claim limit. Suites in small claims court for damages equal to the claim limit often represent higher potential claim amounts that were reduced to fit within the small claims maximum jurisdictional amount. In these cases the plaintiff waives his right to sue for damages in excess of the small claims amount. All of the courts we studied permitted cutting down of larger claims to get into small claims court, with one partial exception. In Omaha about half of the judges told us that they would transfer cases to the regular civil docket where the damages proved by the plaintiff exceeded the small claims jurisdictional limit. States which increase their small claims jurisdictional limits, then, can expect to see a proportional increase in the size of claims filed in their small claims courts as a result.

The fact that significant numbers of plaintiffs seem willing to sue for less than their actual damages in order to use the faster, and less expensive, small claims process is an important measure of the need for these courts. If we assume that these plaintiffs are making a rational choice of the forum in which to sue, then we can infer that they believe they will get a fair hearing in small claims court with cost savings great enough to justify foregoing the possible additional damages recoverable in a formal civil court proceeding.

Table 3.8
Amount of Claim

City	Claim Limit	Average Claim	Most Frequent Claim
Dallas	$ 150	$95	$ 150
Cheyenne	200	104	15
Grand Rapids	300	165	300
Spokane	300	166	300
Oklahoma City	400[1]	187	400
Eugene	500	184	500
Minneapolis	500[2]	198	500
Sioux Falls	500	198	500
Omaha	500	246	500
Sacramento	500	261	500
Bridgeport	750	269	750
Washington, D.C.	750	320	750
Des Moines	1000	356	1000
Harlem	1000	401	1000
Manhattan	1000	402	1000

[1]Limit is now $600.
[2]Limit is now $1,000.

Table 3.9 summarizes the subject matter of small claims cases in the fifteen courts in our sample. While consumer cases were a very small percentage of the caseload in most courts, these results must be read in conjunction with Table 3.10, which shows the distribution of types of cases by type of plaintiff. Since nearly all of the consumer-buyer cases were brought by individuals, only courts with a high percentage of individual plaintiffs would be expected to show a high percentage of consumer-plaintiff cases.

A further caveat must also be made to these data. Consumer issues may also arise as a defense in collection cases, and at least some collection or business cases may involve potential consumer-plaintiffs who elected not to pay for faulty goods or services and be sued instead of suing affirmatively. Collection cases not involving defendants who made a conscious choice to be sued can also involve potential consumer defenses if the defendant or trial judge recognizes these defenses, or if pre-trial counselling enables defendants to raise these issues. Counselling for small claims defendants, provided either through the clerk's office or by paralegals or a consumer counsel attached to the court,

should include instructions on how to prepare for trial and advice on basic legal issues, including basic prerequisites for liability in most common consumer transactions. We will return to this area later, but the point can be made now that small claims courts can be potentially far more important to consumers than had heretofore been thought.

Table 3.9
Type of Litigation

City	Consumer Plaintiff		Seller Plaintiff		Property Damage		Landlord-Tenant		Other	
	%	No.	%	No.	%	No.	%	No.	%	No.
Harlem	29	(142)	11	(53)	25	(126)	17	(86)	16	(80)
Manhattan	23	(111)	24	(114)	17	(83)	10	(52)	25	(121)
Omaha	23	(113)	24	(115)	21	(102)	17	(81)	15	(74)
Spokane	10	(53)	44	(218)	17	(83)	14	(68)	14	(69)
Eugene	9	(28)	39	(115)	10	(32)	15	(43)	26	(76)
Grand Rapids	8	(38)	59	(281)	5	(24)	16	(81)	12	(50)
Sacramento	7	(34)	35	(161)	11	(50)	21	(122)	26	(125)
Sioux Falls	6	(33)	55	(265)	17	(84)	9	(46)	11	(52)
Oklahoma City	5	(23)	56	(269)	10	(47)	11	(56)	18	(87)
Minneapolis	5	(26)	53	(261)	9	(47)	13	(68)	18	(90)
Washington, D.C.	4	(20)	53	(261)	11	(54)	7	(35)	25	(126)
Des Moines	4	(14)	55	(175)	10	(32)	15	(47)	16	(51)
Bridgeport	3	(14)	73	(367)	6	(28)	3	(14)	15	(76)
Dallas	3	(16)	81	(398)	6	(27)	3	(13)	8	(36)
Cheyenne	1	(2)	86	(361)	2	(8)	5	(20)	6	(27)

Table 3.10
Type of Litigation by Type of Plaintiff

Type of Plaintiff	Consumer Buyer		Consumer Seller		Landlord-Tenant		Damages		Other		Totals	
	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.
Individual	22	(635)	14	(398)	21	(610)	26	(749)	16	(445)	100	2837
Business	1	(21)	78	(1777)	7	(157)	1	(23)	13	(293)	100	2271
Corporation	1	(8)	76	(1205)	2	(30)	2	(36)	20	(315)	100	1594
Interest		—		—		—	25	(1)	75	(3)	100	4
Government agency	1	(1)	20	(27)	7	(9)	11	(15)	61	(82)	100	134
Total	10	(665)	50	(3407)	12	(806)	12	(825)	17	(1138)	100	6840

The Identity of Individual Litigants

In Appendix B we discuss the degree to which the sample of litigants who returned our questionnaires could be considered representative of the entire sample of individual litigants in the courts that we studied. We found that the distribution of claim amounts in our plaintiff questionnaire returns closely approximated that of the individual litigants in the records survey, but that the plaintiff questionnaire sample had a much higher percentage of contested trials and a higher percentage of consumer-seller cases than did the entire sample of individual plaintiffs. We determined, then, that we could generalize from relationships that we found between variables within our plaintiff questionnaire sample, but that we could not generalize from the descriptive frequency distributions of our questionnaire data to the sample of plaintiffs as a whole. This means that while we cannot say, for example, that the demographic mix of our sample of plaintiffs accurately reflected the demographic mix of all individual plaintiffs using the courts that we studied, we can generalize from our findings as to the relationships between demographic variables and the success rates in court of the plaintiffs in our questionnaire sample.

Returns from the defendant questionnaires were too small to allow any generalization, but the defendant returns did yield large enough numbers to make certain findings worth reporting.

Tables 3.11, 3.12, 3.13, and 3.14 show the demographic mix of the litigants who returned our questionnaires. A majority of both the plaintiffs and defendants had some college education and an income in excess of $12,000. Only a small minority of both the plaintiffs and the defendants had less than a high school education or an income less than $4,000. The income and education of plaintiffs and defendants in our returns did not differ significantly in the fifteen-city sample viewed as a whole. While differences did exist from court to court, these differences displayed no particular pattern. The one court of particular interest was in Harlem, where the plaintiffs who returned our questionnaires had considerably less education and income than the defendants.

Overall the race of the plaintiffs who returned our questionnaires did not differ significantly from that of the defendants, as shown in Tables 3.15 and 3.16. While there were differences between individual cities, no systematic pattern emerged. Again the Harlem court was unique in that a minority of the plaintiffs who returned our questionnaires were white, while a substantial majority of the defendants were white. Table

3.17 presents the racial mix of the populations in the cities we studied. When the racial mix of the litigants who returned our questionnaires is compared to that of the general population in the area served by each court, again no clear pattern emerges.

Overall we see that the small claims litigants who responded to our questionnaire were predominately well educated and middle income, with a fairly representative racial mix. Again we should point out that these data do not necessarily represent the mix of the population of litigants who use the courts, and especially the population of defendants.

Table 3.11
Education of Plaintiffs

City	Grade 11 or Less		High School Diploma		1-3 Years College		4 or More Years College	
	%	No.	%	No.	%	No.	%	No.
Bridgeport	14	(8)	17	(10)	25	(15)	44	(26)
Harlem	22	(24)	26	(28)	33	(36)	20	(22)
Manhattan	7	(10)	9	(13)	28	(40)	56	(79)
Washington, D.C.	5	(2)	20	(8)	20	(8)	48	(19)
Grand Rapids	4	(4)	27	(29)	33	(35)	36	(39)
Minneapolis	4	(4)	17	(18)	32	(37)	44	(46)
Des Moines		—	31	(18)	29	(17)	40	(23)
Omaha	11	(19)	31	(52)	30	(50)	28	(47)
Sioux Falls	7	(9)	35	(46)	31	(40)	27	(35)
Oklahoma City	7	(4)	18	(11)	37	(22)	37	(22)
Dallas	16	(6)	21	(8)	39	(15)	24	(9)
Cheyenne	6	(1)	31	(5)	19	(3)	44	(7)
Spokane	15	(18)	33	(40)	28	(34)	25	(30)
Eugene	10	(8)	20	(16)	30	(25)	40	(33)
Sacramento	10	(14)	23	(34)	32	(47)	35	(50)
All cities	9	(131)	24	(336)	31	(424)	35	(487)

Table 3.12
Education of Defendants

City	Grade 11 or Less		High School Diploma		1-3 Years College		4 or More Years College	
	%	No.	%	No.	%	No.	%	No.
Bridgeport	35	(9)	11	(3)	46	(12)	8	(2)
Harlem	6	(2)	17	(6)	34	(12)	43	(15)
Manhattan	4	(2)	14	(8)	31	(17)	51	(28)
Washington, D.C.	17	(3)	39	(7)	22	(4)	22	(4)
Grand Rapids	20	(10)	29	(15)	31	(16)	20	(10)
Minneapolis	16	(7)	16	(7)	29	(13)	39	(17)
Des Moines	3	(1)	38	(11)	28	(8)	31	(9)
Omaha	8	(7)	36	(33)	30	(27)	26	(24)
Sioux Falls	11	(6)	37	(20)	35	(19)	17	(9)
Oklahoma City	7	(1)	7	(1)	40	(6)	47	(7)
Dallas	9	(2)	23	(5)	27	(6)	41	(9)
Cheyenne	N/A		N/A		N/A		N/A	
Spokane	11	(6)	27	(14)	36	(19)	25	(13)
Eugene	15	(6)	42	(17)	30	(12)	12	(5)
Sacramento	15	(7)	27	(13)	35	(17)	23	(11)
All cities	12	(69)	28	(160)	33	(188)	27	(156)

Table 3.13
Family Income of Plaintiffs

City	$0-3,999		$4-11,999		$12-19,999		$20,000+	
	%	No.	%	No.	%	No.	%	No.
Bridgeport	5	(2)	19	(8)	25	(11)	52	(23)
Harlem	13	(8)	35	(21)	37	(22)	15	(9)
Manhattan	6	(7)	23	(25)	25	(28)	46	(51)
Washington, D.C.	7	(2)	14	(4)	31	(9)	48	(14)
Grand Rapids	5	(5)	24	(22)	40	(36)	31	(28)
Minneapolis	4	(3)	20	(16)	31	(25)	46	(37)
Des Moines	—		36	(14)	21	(8)	44	(17)
Omaha	4	(5)	36	(48)	33	(44)	26	(35)
Sioux Falls	5	(5)	21	(21)	39	(39)	33	(32)
Oklahoma City	9	(4)	35	(15)	21	(9)	35	(15)
Dallas	8	(2)	40	(10)	24	(6)	28	(7)
Cheyenne	—		23	(3)	38	(5)	38	(5)
Spokane	15	(15)	23	(23)	36	(35)	25	(24)
Eugene	9	(6)	25	(16)	29	(19)	37	(24)
Sacramento	9	(10)	27	(31)	27	(31)	37	(43)
All cities	7	(74)	27	(277)	31	(327)	35	(361)

Table 3.14
Family Income of Defendants

City	$0-3,999		$4-11,999		$12-19,999		$20,000+	
	%	No.	%	No.	%	No.	%	No.
Bridgeport	10	(2)	32	(6)	32	(6)	26	(5)
Harlem	4	(1)	16	(4)	32	(8)	48	(12)
Manhattan	5	(2)	20	(8)	20	(8)	55	(22)
Washington, D.C.	9	(1)	38	(4)	27	(3)	27	(3)
Grand Rapids	14	(5)	23	(8)	28	(10)	34	(12)
Minneapolis	8	(3)	19	(7)	42	(15)	31	(11)
Des Moines	6	(1)	34	(7)	19	(3)	31	(5)
Omaha	3	(2)	17	(11)	34	(22)	45	(29)
Sioux Falls	5	(2)	27	(11)	42	(17)	25	(10)
Oklahoma City	17	(2)	58	(7)	25	(3)	—	
Dallas	15	(2)	23	(3)	23	(3)	38	(5)
Cheyenne	—		—		—		—	
Spokane	7	(4)	34	(14)	27	(11)	29	(12)
Eugene	3	(1)	50	(15)	27	(8)	20	(6)
Sacramento	11	(4)	28	(10)	11	(4)	28	(10)
All cities	8	(32)	27	(115)	31	(129)	34	(142)

Table 3.15
Race of Plaintiffs

City	White		Black		Hispanic		Other	
	%	No.	%	No.	%	No.	%	No.
Bridgeport	90	(52)	2	(1)	2	(1)	6	(4)
Harlem	35	(36)	36	(37)	13	(14)	16	(17)
Manhattan	88	(124)	5	(7)	2	(3)	5	(7)
Washington, D.C.	55	(21)	37	(14)	8	(3)	—	
Grand Rapids	87	(100)	6	(7)	2	(2)	5	(5)
Minneapolis	87	(100)	4	(5)	2	(2)	7	(8)
Des Moines	98	(62)	2	(1)	—		—	
Omaha	87	(144)	10	(17)	3	(5)	—	
Sioux Falls	96	(126)	4	(5)	—		—	
Oklahoma City	93	(56)	3	(2)	3	(2)	—	
Dallas	80	(31)	8	(3)	13	(5)	—	
Cheyenne	100	(16)	—		—		—	
Spokane	93	(112)	5	(6)	—		2	(3)
Eugene	94	(76)	4	(3)	1	(1)	1	(1)
Sacramento	86	(121)	7	(10)	3	(4)	4	(5)
All cities	85	(1177)	9	(118)	3	(42)	4	(50)

Table 3.16
Race of Defendants

City	White		Black		Hispanic		Other	
	%	No.	%	No.	%	No.	%	No.
Bridgeport	69	(18)	23	(6)	8	(2)	—	
Harlem	71	(24)	15	(5)	15	(5)	—	
Manhattan	89	(49)	7	(4)	2	(1)	2	(1)
Washington, D.C.	28	(5)	50	(9)	22	(4)	—	
Grand Rapids	92	(47)	8	(4)	—		—	
Minneapolis	95	(41)	2	(1)	—		2	(1)
Des Moines	91	(20)	9	(2)	—		—	
Omaha	86	(79)	9	(8)	2	(2)	3	(3)
Sioux Falls	100	(54)	—		—		—	
Oklahoma City	56	(9)	25	(4)	6	(1)	13	(2)
Dallas	77	(17)	18	(4)	—		4	(1)
Cheyenne	N/A		N/A		N/A		N/A	
Spokane	98	(50)	—		—		2	(1)
Eugene	98	(40)	—		—		2	(1)
Sacramento	79	(37)	8	(4)	6	(3)	6	(3)
All cities	86	(490)	9	(51)	3	(18)	2	(13)

Table 3.17
Racial Breakdown of Total Population by Percentage

City	White	Black	Hispanic	Other
Bridgeport	82	16	1	1
Harlem	—	—	—	—
Manhattan	71	25	N/A	4
Washington, D.C.	28	71	—	1
Grand Rapids	87	11	1	1
Minneapolis	97	2	N/A	1
Des Moines	96	4	N/A	—
Omaha	90	9	N/A	1
Sioux Falls	99	—	N/A	1
Oklahoma City	88	10	N/A	2
Dallas	83	17	N/A	—
Cheyenne	97	3	N/A	1
Spokane	98	1	N/A	1
Eugene	98	—	N/A	2
Sacramento	90	6	N/A	4

Who Wins and Who Loses in Small Claims Court

One measure of the degree to which small claims courts are accessible to people from all walks of life is the ability of different demographic groups to win in small claims court. If we find that lower income or lower educated litigants are less successful than their wealthier or better educated counterparts, we can assume that the existing process is in some way slanted against the former or toward the latter. We thus investigated the effect of income, race, and education on the ability of plaintiffs to win in small claims court. fn3 Differences in winning and losing may also be a function of the use of attorneys, and we also investigated who used attorneys, for what, and the effect of attorney use on the ability of plantiffs to win in small claims court. Data on the use of attorneys by defendants are also reported, although those results cannot safely be generalized to the entire population of defendants.

In interpreting these litigant data two limitations should be understood. First, we cannot tell who is not using small claims courts or why not. The results of a random telephone survey of the general population, including both potential and actual small claim litigants in the Rochester (New York) pre-test jurisdiction, indicated that meaningful responses were not possible without a major personal interview survey that was well beyond the resources of the study. Second, an understanding of why plaintiffs win or lose in small claims court helps in interpreting the following data. The small claims judges felt, almost unanimously, that the quality of a claim and the quality of the evidence produced to support it were the two most important determinants of whether plaintiffs won at trial. Thus the ability to understand one's legal rights and the ability to produce legally sufficient proof at trial are both important measures of a plaintiff's ability to understand the small claims process, and in a sense both measure ability to use this process effectively. We have also attempted to separate the understanding of legal rights from an understanding of how to prove a claim. To do this, for those plaintiffs who won their cases we used a separate measure in addition to winning and losing. That measure is the award as a percentage of the original amount claimed, which is used as a measure of the quality of proof presented at trial. We have limited the following analysis to contested cases, as the handling of defaults was so variable that we cannot be sure to what extent either the claim or the quality of proof was tested by a judge.

The ability of plaintiffs to win at trial in contested cases showed no relationship to education, income, or race. Tables 3.18, 3.19, and 3.20

present the results. Less well educated, lower income and black plaintiffs did as well as higher educated, higher income and white plaintiffs. The small claims courts in our study could be used successfully by by plaintiffs from all levels of society.

Table 3.18
Win/Lose at Contested Trial by Plaintiff's Level of Education

Education	Plaintiff Won at Trial		Plaintiff Lost at Trial		Totals	
	%	No.	%	No.	%	No.
11 years or less	87	(75)	13	(11)	100	(86)
High school diploma	82	(182)	18	(140)	100	(222)
1-3 years college	87	(253)	13	(38)	100	(291)
4 or more years college	86	(306)	14	(48)	100	(354)

Table 3.19
Win/Lose at Contested Trial by Plaintiff's Family Income

Income	Plaintiff Won at Trial		Plaintiff Lost at Trial		Totals	
	%	No.	%	No.	%	No.
$0-3,999	87	(45)	13	(7)	100	(52)
4,000-7,999	78	(56)	22	(16)	100	(72)
8,000-11,999	87	(100)	13	(15)	100	(115)
12,000-15,999	87	(108)	13	(16)	100	(124)
16,000-19,999	91	(98)	9	(10)	100	(108)
20,000 and above	86	(232)	14	(37)	100	(269)

Table 3.20
Win/Lose at Contested Trial by Race of Plaintiff

Race	Plaintiff Won at Trial		Plaintiff Lost at Trial		Totals	
	%	No.	%	No.	%	No.
White	87	(726)	13	(113)	100	(839)
Black	81	(52)	19	(12)	100	(64)
Hispanic	86	(30)	14	(5)	100	(35)
Other	83	(25)	17	(5)	100	(30)

The same situation existed when the amount of the small claims award was examined as a percentage of the original claim amount, with one notable exception. Tables 3.21 and 3.22 indicate no relationship between the award as a percentage of claim and either education or income. Table 3.23 shows the same result held with respect to race with the exception of Hispanic litigants. Their considerably lower award as a percentage of claim may indicate language problems in preparing and presenting their cases, although all of the courts that dealt with Spanish-speaking litigants had interpreters available to aid these litigants at trial.

Table 3.21
Award as a Percentage of Claim[1]
by Plaintiff Level of Education

Education	Mean Award as % of Claim	
	%	No.
11 years or less	87	(64)
High school diploma	89	(155)
1-3 years college	88	(204)
4 or more years college	89	(273)

[1]"Award as percentage of claim" is computed by averaging the percentages over the individual cases in each category of cases.

Table 3.22
Award as a Percentage of Claim by Plaintiff Family Income

Income	Mean Award as % of Claim	
	%	No.
$0-3,999	86	(37)
4,000-7,999	79	(50)
8,000-11,999	86	(83)
12,000-15,999	91	(97)
16,000-19,999	92	(85)
20,000 and above	91	(204)

These interpreters, however, were usually merely translators and little trial preparation advice or assistance was available in Spanish. We cannot be sure from our data just how important the language problem was, but these results should serve as a cautionary note to courts with Spanish-speaking litigants that this group needs bilingual pre-trial assistance as well.

Table 3.23
Award as a Percentage of Claim by Plaintiff Race

Race	Mean Award as % of Claim	
	%	No.
White	89	(624)
Black	90	(42)
Hispanic	63	(36)
Other	92	(27)

The Effect of Attorneys on Trial Outcomes

The lack of relationship between race, education, and income and either the ability to win in small claims court or award as a percentage of claim, coupled with the opinion of the judges that winning rests primarily on the quality of the claim and the evidence produced to support it, led us to look at mechanisms through which claims could be screened and quality of evidence evaluated. It is reasonable to expect that plaintiffs who sue only on strong claims with ample proof will win more often than plaintiffs who file on any claim without evaluating either the legal sufficiency or available proof of the claim. The plaintiff and defendant questionnaires investigated two such mechanisms: the assistance of an attorney and the assistance of the court clerk with filing and trial preparation. As a measure of the extent to which parties perceive attorneys to be necessary in pursuing their cases, we looked at plaintiffs and defendants who contacted attorneys about their case. Second, we looked at the effect of attorneys on victory rates and on award as a percentage of claim. We were particularly interested in whether there were differences along demographic lines in the abilities of litigants to

handle themselves without an attorney and, if certain demographic groups were found to be disadvantaged, whether attorneys could overcome that disadvantage.

We found that a significant percentage of both the plaintiffs (19 to 67 percent) and defendants (29 to 61 percent) in our sample had contacted attorneys about their claim, even in cities where no attorneys were permitted at trial. Overall the defendants in our sample reported a slightly higher tendency to consult an attorney than the plaintiffs. Table 3.24 presents the results. It is clear that a great many individual plaintiffs and defendants felt they needed professional legal help in pursuing or defending their cases despite the ideal of self-representation in small claims court. This desire for legal advice is further supported by data presented in Chapter 6, which show that both plaintiffs and defendants strongly favored the supplying of pre-trial advice by the court and did not favor the prohibition of attorneys in small claims court.

Table 3.24
Percentage of Plaintiffs and Defendants Who Consulted an Attorney

City	Plaintiff		Defendant	
	%	No.	%	No.
Bridgeport	67	(43)	38	(10)
Harlem	31	(35)	29	(10)
Manhattan	36	(52)	58	(33)
Washington, D.C.	44	(17)	53	(10)
Grand Rapids[1]	18	(21)	31	(16)
Minneapolis	27	(32)	36	(16)
Des Moines	58	(40)	52	(12)
Omaha[1]	37	(60)	40	(38)
Sioux Falls	34	(45)	51	(27)
Oklahoma City	44	(27)	61	(11)
Dallas	19	(7)	46	(10)
Cheyenne	28	(5)	N/A	
Spokane[1]	34	(42)	29	(15)
Eugene[1]	22	(19)	32	(13)
Sacramento[1]	25	(36)	35	(17)
All cities	34		41	

[1]No attorney permitted at trial.

The type of advice or service which the plaintiffs received from attorneys varied greatly from city to city, as indicated in Table 3.25. In eleven courts the most frequent service supplied by an attorney was advice to a plaintiff on how to file a claim himself. In only four courts (Bridgeport, Washington, D.C., Des Moines, and Cheyenne) were a majority of the plaintiffs who consulted an attorney represented by an attorney at trial. To a lesser extent plaintiffs also received attorney advice on how to prepare for trial. In Washington, D.C. and Des Moines a majority of plaintiffs reported that they had to hire an attorney to try to collect their small claims judgment, and in eleven of the fifteen courts more than 10 percent of plaintiffs needed an attorney to help with collection.

Our data do not indicate a significant relationship between the use of attorneys by plaintiffs and their education, income, or race. Tables 3.26, 3.27, and 3.28 present the results. We found a similar lack of relationship for the defendants in our sample, as shown in Tables 3.29, 3.30,

Table 3.25
Attorney Services to Plaintiffs

City	Would Not Handle Suit		Advised How to Sue		Advised How to Prepare for Trial		Represented in Court		Helped Collect Judgment		Total No.
	%	No.	%	No.	%	No.	%	No.	%	No.	
Bridgeport	16	(7)	46	(20)	37	(16)	55	(24)	41	(18)	43
Harlem	11	(4)	45	(16)	14	(5)	14	(5)	8	(3)	35
Manhattan	28	(15)	75	(39)	28	(15)	11	(6)	13	(7)	52
Washington, D.C.	0		27	(3)	72	(8)	92	(12)	77	(10)	13
Grand Rapids[1]	19	(4)	90	(19)	4	(1)	0		4	(1)	21
Minneapolis	3	(1)	53	(17)	31	(10)	25	(8)	18	(6)	32
Des Moines	7	(3)	55	(22)	57	(23)	65	(26)	55	(22)	40
Omaha[1]	11	(7)	78	(47)	21	(13)	3	(2)	15	(9)	60
Sioux Falls	13	(6)	66	(30)	15	(7)	24	(11)	17	(8)	45
Oklahoma City	14	(4)	51	(14)	40	(11)	37	(10)	29	(8)	27
Dallas	29	(2)	71	(5)	0		0		14	(1)	7
Cheyenne	0		20	(1)	80	(4)	60	(3)	20	(1)	5
Spokane[1]	23	(10)	71	(30)	14	(16)	2	(1)	21	(9)	42
Eugene[1]	15	(3)	84	(16)	10	(2)	0		10	(2)	19
Sacramento[1]	25	(9)	80	(29)	19	(7)	2	(1)	0		3

[1]Attorneys prohibited at trial.

and 3.31. However, a relationship did exist between the use of attorneys and the amount of the claim for both the plaintiffs and defendants in our sample. The higher the amount of the claim that was being sued on or defended against, the more often attorneys were consulted. Tables 3.32 and 3.33 present the results. Small claims litigants are thus perceiving an increasing need for attorneys as the importance of their cases increases. Further, defendants perceived more need for an attorney for a given claim amount than did plaintiffs, probably because they had more to lose. Clearly, then, despite the ideal of self-representation in small claims court, a sizable percentage of both plaintiffs and defendants, especially those with cases involving claims of over $400, view small claims cases as important enough to require the services of an attorney in order to protect their interests.

We would expect plaintiffs who received advice from an attorney to have been advised by the attorney as to whether they had a legal claim or cause of action worth pursuing in court, and that most of those who were advised that their case was groundless or weak would not incur the cost of filing in small claims court. That is, of plaintiffs filing a small claim, we would expect that those who had consulted a lawyer would be more likely to have a valid legal claim and win more than those who did not. Similarly, we would expect plaintiffs who had consulted a lawyer and received advice on how to prepare for trial, or who were represented by an attorney at trial, to present better proof at trial and win higher awards as a percentage of claim than those who did not receive this attorney advice or representation.

Table 3.26
Plaintiff Use of Attorney by Level of Education

	11 Years or Less		High School Diploma		1-3 Yrs College		4 or More Yrs College	
	%	No.	%	No.	%	No.	%	No.
No attorney	83	(90)	82	(227)	80	(279)	79	(334)
Attorney advice only	9	(10)	10	(29)	12	(43)	12	(49)
Attorney service (trial)	7	(8)	8	(21)	8	(29)	9	(39)
Totals	100	(108)	100	(277)	100	(351)	100	(422)

Table 3.27
Plaintiff Use of Attorney by
Family Income Level

	$0-3,999		4-11,999		12-19,999		20,000+	
	%	No.	%	No.	%	No.	%	No.
No attorney	85	(57)	80	(187)	80	(220)	79	(242)
Attorney advice only	9	(6)	11	(27)	11	(31)	11	(34)
Attorney service (trial)	6	(4)	8	(20)	8	(22)	10	(30)
Totals	100	(67)	100	(234)	100	(273)	100	(306)

Table 3.28
Plaintiff Use of Attorney by
Race of Plaintiff

	White		Black		Hispanic		Other	
	%	No.	%	No.	%	No.	%	No.
No attorney	80	(790)	84	(78)	82	(46)	83	(34)
Attorney advice only	12	(116)	10	(9)	7	(4)	2	(1)
Attorney service (trial)	9	(85)	6	(6)	11	(6)	15	(6)
Totals	100	(991)	100	(93)	100	(56)	100	(41)

Table 3.29
Defendant Use of Attorney by
Level of Education

	11 Years or Less		High School Diploma		1-3 Yrs College		4 or More Years College	
	%	No.	%	No.	%	No.	%	No.
No attorney	83	(49)	75	(110)	74	(110)	71	(94)
Attorney advice only	7	(4)	16	(23)	12	(18)	10	(13)
Attorney service (trial)	10	(6)	9	(13)	14	(21)	19	(25)
Totals	100	(59)	100	(146)	100	(149)	100	(132)

Table 3.30
Defendant Use of Attorney by
Family Income Level

	$0-3,999		4-11,999		12-19,999		20,000+	
	%	No.	%	No.	%	No.	%	No.
No attorney	63	(19)	82	(80)	71	(82)	66	(72)
Attorney advice only	17	(5)	9	(9)	12	(14)	16	(17)
Attorney service (trial)	20	(6)	8	(8)	17	(20)	18	(20)
Totals	100	(30)	100	(97)	100	(116)	100	(109)

Table 3.31
Defendant Use of Attorney by
Race of Defendant

	White		Black		Hispanic		Other	
	%	No.	%	No.	%	No.	%	No.
No attorney	74	(310)	83	(34)	75	(12)	70	(7)
Attorney advice only	12	(52)	12	(5)	6	(1)	—	
Attorney service (trial)	14	(57)	5	(2)	19	(3)	30	(3)
Totals	100	(419)	100	(41)	100	(16)	100	(10)

Table 3.32
Plaintiff Use of Attorney by
Amount of Claim

	Up to $99		$100-199		$200-299		$300-399		$400+	
	%	No.	%	No.	%	No.	%	No.	%	No.
No attorney	85	(251)	83	(258)	80	(172)	76	(84)	68	(150)
Attorney advice	10	(28)	11	(35)	11	(24)	13	(15)	14	(32)
Attorney service (trial)	4	(13)	6	(19)	8	(18)	11	(12)	17	(38)
Totals	100	(291)	100	(312)	100	(214)	100	(111)	100	(220)

Table 3.33
Defendant Use of Attorney
by Amount of Claim

	$1-99		$100-199		$200-299		$300-399		$400+	
	%	No.	%	No.	%	No.	%	No.	%	No.
No attorney	83	(126)	77	(84)	70	(50)	65	(28)	63	(72)
Attorney advice	10	(16)	11	(12)	14	(10)	14	(6)	12	(14)
Attorney service (trial)	7	(10)	12	(13)	15	(11)	21	(9)	25	(29)
Totals	100	(152)	100	(109)	100	(71)	100	(43)	100	(115)

Our data show that plaintiffs who received advice on how to prepare for trial or who were represented in court by an attorney did win a higher percentage of the time. However, plaintiffs who were told how to handle the case themselves won less often than plaintiffs who received no attorney advice. The higher victory rates we found for plaintiffs who received advice on how to prepare for trial or who were represented at trial by an attorney were not statistically significantly better than the victory rates for plaintiffs who did not receive such attorney advice or service. Table 3.34 presents the results. While the plaintiffs in our sample did not favor prohibiting attorneys at trial, they tended to win almost as often without them.

This lack of impact from attorney services is even more striking when we look at awards as a percentage of claim, shown in Table 3.35. We see that the average award as a percentage of claim for all contested trials was higher than that for any category of attorney service or advice to plaintiffs. Attorney services, then, apparently did not improve the quality of proof brought to trial.

We have seen, then, that neither demographic factors nor the use of attorneys, when analyzed separately, has much effect on plaintiff victory rates or the amount of award as a percentage of claim for winning plaintiffs. When the effects of demographic variables and the use of attorneys are combined, the above findings continue to hold, with one interesting modification. Tables 3.36, 3.37, and 3.38 show that income, education, and race were not related to the ability of a plaintiff to win without an attorney, and indicate that self-representation in small claims court is presently equally effective for litigants from all strata of society. Table 3.36 shows, however, that for plaintiffs represented by an attor-

ney at trial, the better educated won more often than their less educated counterparts. Perhaps this means that better educated plaintiffs were able to pick better lawyers. Whether or not this is true, these findings indicate that lawyers do not improve the chances of less educated litigants in using small claims courts, as they apparently do for more educated litigants.

Table 3.34
Win/Lose by Attorney Service to Plaintiffs in Contested Trials

Attorney Service	Plaintiff Won at Trial		Plaintiff Lost at Trial		Total	
	%	No.	%	No.	%	No.
Lawyer told plaintiff he would not handle case	81	(39)	19	(9)	100	(48)
Lawyer told plaintiff how to handle the case himself	80	(173)	20	(43)	100	(216)
Lawyer helped plaintiff prepare for trial	88	(76)	12	(10)	100	(86)
Lawyer represented plaintiff in court	93	(78)	7	(6)	100	(84)
All contested trials	86	(845)	14	(138)	100	(983)

Table 3.35
Award as a Percentage of Claim by Types of Attorney Service

Attorney Service	Mean Award as % of Claim	
	%	No.
Lawyer told plaintiff he would not handle the case	82	(36)
Lawyer told plaintiff how to handle the case himself	81	(157)
Lawyer helped plaintiff to prepare for trial	84	(67)
Lawyer represented plaintiff in court	88	(67)
All contested trials	89	(724)

Table 3.36
Plaintiff Use of Attorney and Level of Education:
Percentage Winning in Contested Trials

	11 Years or Less		High School Diploma		1-3 Yrs College		4 or More Yrs College	
	%	No.	%	No.	%	No.	%	No.
No attorney	88	(57)	85	(150)	87	(189)	87	(239)
Attorney advice only	80	(5)	82	(22)	93	(31)	67	(37)
Attorney service (trial)	83	(6)	87	(15)	92	(24)	100	(31)

Table 3.37
Plaintiff Use of Attorney and Family Income Level
Percentage Winning Case in Contested Trials

	$0-3,999		4-11,999		12-19,999		20,000+	
	%	No.	%	No.	%	No.	%	No.
No attorney	85	(41)	83	(126)	93	(149)	86	(179)
Attorney advice only	75	(4)	83	(18)	77	(26)	80	(30)
Attorney Service (trial)	100	(4)	100	(16)	94	(17)	91	(23)

Table 3.38
Plaintiff Use of Attorney and Race of Plaintiff:
Percentage Winning Case in Contested Trials

	White		Black		Hispanic		Other	
	%	No.	%	No.	%	No.	%	No.
No attorney	88	(564)	80	(41)	76	(25)	89	(18)
Attorney advice only	80	(87)	75	(4)	66	(3)	0	
Attorney service (trial)	94	(65)	100	(6)	80	(5)	100	(3)

This result holds only for representation by an attorney at trial. For plaintiffs who received advice only from an attorney, the relationship disappears and no systematic pattern emerges.

The same results hold for the combined effects of demographics and the use of attorneys on award as a percentage of claim for winning plaintiffs, as presented in Tables 3.39, 3.40, and 3.41. Again we found no relationships between demographics and award as a percentage of claim for plaintiffs with no attorney, with the exception of the Hispanic group which did slightly worse under all circumstances. Similarly, there was no relationship between award as a percentage of claim and demographics for those plaintiffs who received only attorney advice, but higher educated plaintiffs did receive higher awards as a percentage of claim than their lower educated counterparts when represented by an attorney at trial. This same result held for income. Higher income plaintiffs received higher awards as a percentage of claim than their lower income counterparts when represented by an attorney at trial. Plaintiffs in the lowest education and income groups, moreover, received considerably higher awards as a percentage of claim without an attorney than with an attorney.

These results indicate that, while permitting attorneys at trial tends to benefit the higher educated and higher income litigants, all socioeconomic groups were equal in their abilities to pursue a case without an attorney. This finding alone, however, does not provide a justification for barring attorneys at trial. If it is desirable to balance the relative abilities of different types of plaintiffs to win in small claims court, we must ask whether the best way to move toward this balance is to increase the abilities of the disadvantaged or to decrease the abilities of the advantaged.

Table 3.39
Plaintiff Award as a Percentage of Claim by Attorney Service and Education

	11 Years or Less		High School Diploma		1-3 Yrs College		4 or More Yrs College	
	%	No.	%	No.	%	No.	%	No.
No attorney	89	(53)	88	(128)	86	(139)	88	(201)
Attorney advice only	81	(4)	83	(12)	80	(31)	84	(37)
Attorney service (trial)	74	(5)	87	(10)	89	(19)	92	(28)

The most important balance is that between the relative abilities of the plaintiff and defendant in a given lawsuit. Tables 3.42 and 3.43 show that there was a significant difference in the victory rates of represented and unrepresented defendants. We see that plaintiffs facing an unrepresented defendant won about as often with or without an attorney, and won about as often when facing a represented defendant if the plaintiff has an attorney also.[4] Plaintiffs with an attorney at trial, moreover, received higher awards as a percentage of claim when facing unrepresented defendants than plaintiffs without attorneys. On the other hand, represented defendants won considerably more often than their unrepresented counterparts when facing a plaintiff who either had no attorney or received advice only from an attorney. Represented defendants also did considerably better than their unrepresented counterparts in their ability to reduce the plaintiff's awarded damages as a percentage of claim in those cases where the plaintiff prevailed, and this held regardless of whether the plaintiff was represented at trial.

These results may indicate a selection process whereby the defendants with the stronger cases or better defenses more often sought attorney help in defending those cases. If this is so, those defendants may have been able to do equally well without an attorney. A more likely explana-

Table 3.40
Plaintiff Award as a Percentage of Claim
by Plaintiff's Family Income and Attorney Service

	$0-3,999		4-11,999		12-19,999		20,000+	
	%	No.	%	No.	%	No.	%	No.
No attorney	87	(27)	82	(94)	91	(133)	92	(163)
Attorney advice only	85	(3)	81	(7)	88	(8)	91	(12)
Attorney service (trial)	78	(2)	77	(15)	92	(14)	91	(20)

Table 3.41
Plaintiff Award as a Percentage of Claim
by Race and Attorney Service

	White		Black		Hispanic		Other	
	%	No.	%	No.	%	No.	%	No.
No attorney	88	(489)	91	(31)	65	(23)	90	(18)
Attorney advice only	86	(101)	75	(3)	69	(3)	0	
Attorney service (trial)	89	(54)	90	(4)	47	(3)	100	(4)

tion, however, is that the assistance of an attorney at trial is, at present, far more important to defendants than to plaintiffs. There are several possible reasons for this situation. First, as is detailed in Chapter 5, small claims courts are increasingly providing fairly extensive assistance to litigants in trial preparation. However, because this assistance is presently provided in connection with filing a claim and because defendants do not usually come in to court (if at all) until the day of trial, this increased in-court assistance tends to benefit only plaintiffs and to tip the balance of knowledge about trial preparation in favor of plaintiffs.

Second, it will be remembered from Chapter 2 that small claims judges said that when plaintiffs lost it was usually because they lacked a good legal cause of action. The reverse side of this coin holds equally true for defendants. To win a defendant needs one of two things: to show that the plaintiff does not have a valid legal claim, or, more importantly (since the trial judge should be able to spot an invalid cause of action), to establish legal defenses to the plaintiff's claim. As we pointed out, a number of trial judges said that they were not very familiar with new federal and state consumer protection legislation and that affirmative defenses based on those laws were not often raised at trial unless raised by an attorney. As a consequence, it is likely that some possible defenses to the defendant's liability would not be raised at trial unless raised by an attorney for the defendant.

Table 3.42
Win/Lose in Contested Cases by Attorney for Both Sides

Defendant had	Plaintiff had					
	No attorney		Advice Only		At Trial	
No attorney	91%	(435)[1]	87%	(55)	92%	(27)
Attorney at trial	68%	(103)	58%	(19)	87%	(31)

[1]Entries are percentages of plaintiffs winning.

Table 3.43
Award as a Percentage of Claim by Attorneys for Both Sides

Defendant had	Plaintiff had					
	No Attorney		Advice Only		at Trial	
No attorney	80%	(482)	79%	(66)	92%	(27)
Attorney at trial	58%	(141)	45%	(28)	66%	(31)

Several prior studies have pointed to additional possible reasons for difficulties experienced by unrepresented defendants. Instances of judicial indifference or aloofness have been reported which can work against inexperienced defendants who do not have adequate knowledge to raise possible defenses such as fraudulent or voidable contracts.[5] Evidence also exists that in some small claims proceedings insufficient time is given to litigants to fully air their grievances or to explain their cases, and this may tend to cut particularly against unrepresented defendants if possible defenses to liability can be raised only through explaining the background of the transaction in detail.[6]

These results have led us to two conclusions. First, attorneys probably should be permitted at trial in small claims court. This would seem necessary to preserve the balance between plaintiffs and defendants, at least until courts are able to provide better trial preparation assistance to defendants which benefits them to the same extent as the assistance provided to plaintiffs. Merely prohibiting attorneys for both sides at trial does not appear to be the answer, as our data show that unrepresented plaintiffs did just about as well as did represented plaintiffs against unrepresented defendants.

There are important costs, however, to a small claims system in permitting attorneys and we would add to our recommendation that these associated costs of permitting attorneys at trial be reduced as much as possible.[7] As indicated in Chapter 2, most small claims judges perceived that the presence of attorneys at trial increased both the formality and average length of trials. Careful judicial control of the participation of attorneys at trial along the lines outlined in Chapter 2 will be necessary.

One prior small claims study, by T. McFadgen, recommended that lawyers be prohibited at small claims trials unless it was determined at a pre-trial conference that a lawyer was necessary. If that determination was made, that study recommended that both sides be represented.[8] There are several problems with this approach. First, requiring all litigants to go through a pre-trial conference will put many litigants through an unnecessary additional hurdle prior to having their cases resolved. Second, requiring both sides to be represented in all cases where attorney participation is thought to be necessary assumes that in some cases representation will be available free of charge, which may not be feasible in many courts. Finally, the decision as to whether a dispute requires an attorney is placed with the pre-trial hearing officer rather than on the parties themselves. In at least one of the situations

where the McFadgen scheme would require attorneys, that of a power imbalance between litigants, we feel that the litigant himself and not the pre-trial hearing officer should be able to make that determination.

Another problem with permitting attorneys in small claims court is that some court personnel presently give attorneys special considerations that are not provided to unrepresented litigants, such as calling all cases with attorneys first. While this practice does reduce the lawyer time required for participation in a small claims trial and thus may reduce the cost of such representation or increase the willingness of lawyers to participate in small claims trials, especially those who presently do so without charging a fee, it does not comport well with our basic notions of equal treatment for all litigants.

Finally, in Chapter 4 we show that attorney's fees, where incurred, greatly increased the costs to the litigants of pursuing a small claims case. This leads us to our second recommendation. Court-provided assistance, with special emphasis on actively reaching out to defendants to provide trial preparation advice, should be available in small claims courts. In this way, even if attorneys are permitted at trial, the necessity for such representation could be reduced for most cases. This would enable small claims courts to move toward the goal of inexpensive litigation without unfairly disadvantaging those litigants that felt they could not represent themselves.

Court-Provided Advice to Litigants

The small claims intake clerk is the other primary source of advice for plaintiffs. We asked plaintiffs whether they believed that the court clerk had tried to be helpful to them. The results are reported in Table 3.44. We were surprised to find that a sizable percentage of plaintiffs reported that the small claims clerk was helpful, even in those courts where the clerks themselves told us that they actually gave very little advice.

There was a strong association between winning and losing at contested trials and perceptions by the plaintiffs of the helpfulness of the small claims clerk, as indicated in Table 3.45. These results must be viewed with caution, however, for perceptions of helpfulness may be a function of winning or losing rather than winning or losing being a function of the helpfulness of the clerk.

Table 3.44
Did Plaintiff Believe Small Claims Clerk Tried to be Helpful?

City	Perceived as Helpful		Perceived as Not Helpful	
	%	No.	%	No.
Bridgeport	73	(41)	27	(15)
Harlem	83	(85)	18	(18)
Manhattan	63	(79)	37	(47)
Washington, D.C.	64	(23)	36	(13)
Grand Rapids	81	(85)	19	(20)
Minneapolis	70	(75)	30	(32)
Des Moines	75	(41)	25	(14)
Omaha	63	(99)	37	(58)
Sioux Falls	79	(92)	21	(25)
Oklahoma City	64	(37)	36	(21)
Dallas	79	(30)	21	(8)
Cheyenne	80	(12)	20	(3)
Spokane	67	(76)	33	(38)
Eugene	83	(64)	17	(13)
Sacramento	70	(91)	30	(38)
All cities	72	(930)	28	(363)

Table 3.45
Win/Lose by Clerk Help to Plaintiff in Contested Trials

Clerk Perceived as	Plaintiff Won at Trial		Plaintiff Lost at Trial		Totals	
	%	No.	%	No.	%	No.
Helpful	93	(618)	7	(45)	100	(663)
Not helpful	69	(170)	31	(78)	100	(248)

Litigant Satisfaction with their Small Claims Experience

As a general measure of how well the small claims courts in our sample were doing in serving the citizens using those courts, we asked both plaintiffs and defendants whether they were satisfied with their experiences in small claims court. Tables 3.46 and 3.47 present the results, broken down by those winning or losing. There was a strong relationship between satisfaction and winning the case for both plaintiffs and defendants. The vast majority of winning plaintiffs and defendants reported that they were satisfied with their experiences in small claims court, whereas the vast majority of losing plaintiffs and defendants reported that they were not satisfied with their experiences in small claims court. Nevertheless, a moderate number of plaintiffs and defendants who won their cases were not satisfied with their experiences in small claims court, and a moderate number of plaintiffs and defendants who lost their cases were satisfied with their experiences.

Table 3.46
Plaintiff Satisfaction with Small Claims Court Experience by Winning and Losing

Satisfied	Won at Trial		Won Default		Settled		Dropped Case		Lost at Trial	
	%	No.	%	No.	%	No.	%	No.	%	No.
Yes	80	(645)	61	(34)	87	(170)	38	(30)	16	(21)
No	20	(163)	39	(22)	13	(25)	62	(48)	84	(111)
Totals	100	(808)	100	(56)	100	(195)	100	(78)	100	(132)

Table 3.47
Defendant Satisfaction with Experiences in Small Claims Court by Winning and Losing

Satisfied	Lost at Trial		Lost by Default		Settled		Won by Default		Won at Trial	
	%	No.	%	No.	%	No.	%	No.	%	No.
Yes	32	(80)	35	(7)	62	(30)	82	(9)	83	(134)
No	68	(172)	65	(13)	38	(18)	18	(2)	17	(28)
Totals	100	(252)	100	(20)	100	(48)	100	(11)	100	(162)

A number of the judges that were interviewed perceived that one important function of attorneys at trial was to act as a buffer between the court and the parties, both to assure that the expectations of the parties were realistic and to explain the outcome of the case. If this perception is correct, we would expect that plaintiffs and defendants who had attorneys would show satisfaction levels higher than those of their unrepresented counterparts. Tables 3.48 and 3.49 show that this was not the case. Plaintiffs and defendants who were represented by an attorney at trial, both winning and losing, showed lower levels of satisfaction than their unrepresented counterparts, possibly because the additional cost of an attorney reduced their recovery or added to their loss.

Table 3.48
Plaintiff Satisfaction by Use of Attorney

	Won at Trial		Lost at Trial		Won by Default		Lost Dropped Case	
	%	No.	%	No.	%	No.	%	No.
No attorney	81	(551)	20	(82)	57	(40)	46	(58)
Attorney advice only	78	(72)	5	(19)	60	(5)	20	(5)
Attorney service (trial)	74	(68)	25	(4)	67	(3)	0	(1)

Table 3.49
Defendant Satisfaction by Use of Attorney

	Won at Trial		Lost at Trial		Won by Default		Lost by Default	
	%	No.	%	No.	%	No.	%	No.
No attorney	88	(105)	33	(150)	75	(8)	31	(13)
Attorney advice only	79	(19)	29	(28)	100	(1)	—	
Attorney service (trial)	65	(23)	26	(31)	100	(1)	100	(1)

At least some of the variation in degree of satisfaction for winning plaintiffs can be explained by the ability of the plaintiff to subsequently collect their small claims judgment. Tables 3.50 and 3.51 present these results. Plaintiffs who collected nothing reported higher levels of dissatisfaction than plaintiffs who collected at least part of their judgment. Also plaintiffs who collected less than 40 percent of their award reported higher levels of dissatisfaction than those who collected more than 40 percent of their award.

Table 3.50
Plaintiff Satisfaction with Small Claims Court Experience by Collection vs. Non-Collection

	Satisfied		Not Satisfied	
	%	No.	%	No.
Plaintiff won and collected at least a portion of claim	85	(551)	15	(87)
Plaintiff won but did not collect	60	(148)	40	(99)

Table 3.51
Plaintiff Satisfaction with Small Claims Court Experience by Percentage of Judgment Collected

	Percentage of Judgment Collected									
	1-20		21-40		41-60		61-80		81-100	
	%	No.	%	No.	%	No.	%	No.	%	No.
Satisfied	64	(7)	65	(11)	85	(17)	82	(9)	87	(430)
Not satisfied	36	(4)	35	(6)	15	(3)	18	(2)	12	(61)

Overview

At the outset of this chapter we noted that small claims courts are supposed to be accessible to citizens from all walks of life, and we listed four criticisms raised in prior literature with respect to the failure to better achieve that accessibility. We return now to those criticisms, assessing first the extent to which they hold true and second, to the extent problems exist, what can be done to correct them.

First, we found that permitting collection agencies to use small claims courts does not lead to reduced use by indiviudal litigants. We also found out that while "consumer" plaintiff cases were low in all courts, consumer issues probably exist in many collection cases. We recommended, then, that all potential plaintiffs--collection, business, and individual--be allowed to use small claims courts and that advice on trial preparation and possible consumer defenses be actively provided by the court to all defendants.

We found that businesses are not inherently advantaged over individuals in using small claims courts, especially in their ability to develop proof of damages in more difficult cases. Problems of proof experienced by both individual and business plaintiffs, however, lead us to recommend that more extensive trial preparation assistance be provided by courts.

We found that plaintiffs from all levels of society were equally able to represent themselves in using small claims court, although better educated and higher income plaintiffs were able to make somewhat better use of attorneys. Better court-provided assistance on trial preparation could help to smooth out this disparity.

Finally, we found that the small claims process, as presently constituted, does seem to work to the disadvantage of unrepresented defendants, in that potential defenses may not be raised. This led us to conclude that lawyers probably should not be barred at small claims trials if more consistent policies of limiting lawyer participation at trial are adopted. In addition we concluded that the courts must actively reach out to defendants to provide them with assistance in trial preparation, since an imbalance exists in the present system in this area. There was a perceived need on the part of many litigants for the assistance of an attorney, and we feel that laymen who perceive that need should not be denied the right to be represented by an attorney. On the other hand, we believe that more effective trial preparation assistance which actually reaches both plaintiffs and defendants could help to make attorneys

unnecessary in many more cases than at present.

Summary of Findings and Recommendations

Findings

- Permitting collection agencies or mass filers to use small claims courts results in increased caseloads, but does not reduce individual or consumer usage of these courts.
- Defendants in collection agency and business cases are almost always individuals. Forcing these cases out of small claims court into formal civil court removes the possibility of these individual defendants defending *pro se*, and can greatly increase their costs.
- While business plaintiffs tended to win more often than individual plaintiffs, it was probably because on the whole they had better proof of both liability and damages. In cases where liability and damages were not clearcut, business plaintiffs did no better than individual plaintiffs.
- Although consumer plaintiff cases do not presently constitute a large proportion of small claims caseloads, issues can arise in many other types of cases where individuals are sued, or refuse to pay rather than sue affirmatively.
- The ability of individual litigants to win in small claims court did not vary by education, income, or race, except for Hispanic litigants, which may indicate that more bilingual litigant trial preparation assistance is needed.
- Significant percentages of both plaintiffs (19 to 67 percent) and defendants (29 to 61 percent) contacted an attorney for advice or services on their small claims case, even in jurisdictions where litigants were not permitted to use an attorney at trial. This indicates that many individuals felt they needed professional legal assistance in pursuing or defending their cases, particularly where higher claim amounts were involved, despite the ideal of self-representation in small claims court.
- Plaintiffs receiving attorney advice or representation did not do significantly better at trial than plaintiffs not using attorney advice or assistance, but unrepresented defendants did significantly worse at trial than defendants with attorneys. This result may reflect the fact that court-provided trial preparation assistance presently benefits plaintiffs almost exclusively, or that defendants require legal assistance in identifying and raising defenses to liability.

Recommendations

- Collection agencies and corporations should be permitted to use small claims courts where individual defendants in these cases will have a chance to defend without an attorney or at lower cost than in formal civil court.
- Because some litigants, particularly defendants, need professional legal assistance to pursue or defend small claims, legal representation under judicial supervision should be available at small claims trials, at least until such time as court-provided trial preparation assistance is able to benefit defendants to the same extent that it benefits plaintiffs.

Notes

[1]See B. Yngvesson and P. Hennessey, "Small Claims, Complex Disputes: A Review of the Small Claims Literature," *Law and Society* Review 9 (Winter, 1975): 236.

[2]The prior literature split on this point. See Yngvesson and Hennessey, p. 267. One study favoring allowing collection agencies to sue in small claims court also recommended that separate dockets be used for collection cases. We agree. See Chapter 6 *infra*, and National Institute for Consumer Justice, *Staff Studies for Small Claims* Courts (Boston: National Institute for Consumer Justice, 1972).

[3]The only prior study to present data on this point did not discuss the data in the text of the study. See E. Hollingsworth, W.B. Feldman and D.C. Clark, "The Ohio Small Claims Court: An Empirical Study," *Cincinnati Law Review* 42 (1973):469.

[4]A similar finding was reported by J.P. Jones, "Practical Results of Court Reforms: The Politics of Small Claims Court," unpublished paper cited in Yngvesson and Hennessey. Our findings differ from Jones' in one important respect. Jones found that represented plaintiffs facing unrepresented defendants won more often than unrepresented plaintiffs facing unrepresented defendants. We found that unrepresented and represented plaintiffs did equally well when facing an unrepresented defendant.

[5]B. Moulton, "The Persecution and Intimidation of the Low Income Litigant as Performed by the Small Claims Court of California," *Stanford Law Review* 21 (1969): 1657; J.M. Steadman and R.S. Rosenstein, "Small Claims' Consumer Plaintiffs in the Philadelphia Municipal Court: An Empirical Study," *University of Pennsylvania Law Review* 121 (1973):1308; and Hollingsworth et al.

[6]T. McFadgen, "Dispute-Resolution in the Small Claims Context: Adjudication, Arbitration, or Mediation?" (LL.M. thesis, Harvard University Law School) and citations in Yngvesson and Hennessey, p. 251.

[7]For additional discussion see National Institute for Consumer Justice, *Staff Studies for Small Claims* Courts (Boston: National Institute for Consumer Justice, 1972), pp. 201-219, and McFadgen, pp. 140-1.

[8]McFadgen, p. 150.

4.
The Cost of a Small Claims Case2

One important goal of the small claims process is to provide an inexpensive mechanism for resolving disputes. Our plaintiff and defendant questionnaires investigated in detail the costs of being involved in a small claims case, asking the respondents to list the components of their total cost in categories which included attorney's fees, witness fees, lost wages, and other costs. These data enable us to show how well small claims courts are doing in providing inexpensive dispute resolution, and in addition permit us to pinpoint important areas of cost to litigants.

Since taxpayers support the court systems of this nation, we were also interested in finding out how much a typical small claims case costs the taxpayers in terms of judicial and court staff salaries and other administrative expenses. We were able to obtain data on the cost of the small claims process to the court from two of the jurisdictions which we studied. While there is no reason that small claims courts should pay their own way in terms of fees charged to use this service, since this requirement is not imposed on other portions of the civil or criminal process, we believe that it is important to see how well small claims courts are doing in this regard. This information can help us judge whether costs to the taxpayers are low enough in terms of results achieved to justify more resources being allocated to small claims courts. Also, the taxpayer cost data can to provide a means of comparing the cost-effectiveness of small claims courts with alternative dispute resolution mechanisms which could handle this type of case.

The Cost of a Small Claims Case to the Litigants

Our data show that on the whole small claims courts are relatively inexpensive for litigants to use. A majority of both plaintiffs and defendants in our sample spent less than $25 on their small claims cases. Tables 4.1 and 4.2 presents the distribution of the costs of a small claims case, city by city, for both plaintiffs and defendants. Despite the low average cost of a small claims case, some plaintiffs and defendants spent

in excess of $100 on their cases. Clearly, then, improvement is needed in reducing the costs associated with some cases.

Of particular interest to small claims reform is the cost to a party of pursuing a contested case through trial. This measures the potential cost which a plaintiff or defendant faces if the other party contests the case, and thus is the primary measure of the extent to which small claims courts are "inexpensive" in producing a resolution of the dispute. We thus focused our analysis on the costs of pursuing a contested small claims case for both plaintiffs and defendants. This analysis helps explain what pushed the costs so high for some litigants and provides guidance for efforts to help small claims courts better achieve the goal of inexpensive resolutions.

Tables 4.3, 4.4, 4.5, and 4.6 present the results of our analysis of the components of cost for plaintiffs and defendants. We presented these data to highlight two important results with regard to litigant costs. First, we found that attorney's fees were an important component of cost where attorneys were used, but that at the same time significant numbers

Table 4.1
Distribution of Cost of Pursuing Case to Plaintiffs

City	$0-25		$26-100		$101+	
	%	No.	%	No.	%	No.
Bridgeport	68	(36)	17	(9)	15	(8)
Harlem	80	(57)	14	(10)	7	(5)
Manhattan	65	(71)	19	(21)	16	(17)
Washington, D.C.	55	(15)	31	(8)	12	(3)
Grand Rapids	67	(50)	28	(21)	4	(3)
Minneapolis	69	(53)	18	(14)	13	(10)
Des Moines	51	(22)	30	(13)	18	(8)
Omaha	65	(79)	25	(30)	11	(13)
Sioux Falls	82	(76)	16	(15)	2	(2)
Oklahoma City	51	(17)	18	(6)	30	(10)
Dallas	72	(18)	20	(5)	8	(2)
Cheyenne	62	(8)	38	(5)	—	
Spokane	59	(55)	33	(31)	7	(7)
Eugene	73	(45)	21	(13)	7	(4)
Sacramento	57	(61)	37	(39)	8	(8)
All cities	66	(663)	23	(240)	11	(100)

of both plaintiffs and defendants reported that they received advice or services from an attorney at no cost. In all the tables we thus separated those who paid for attorney services from those who did not. Second, we found that lost wages were an important component of total costs whether or not plaintiffs or defendants received advice from an attorney, but at the same time significant numbers of plaintiffs and defendants reported that they did not lose any wages. We thus separated those who reported lost wages from those who did not.

Separating litigants who received free attorney services from those who paid for attorney services, and litigants who reported lost wages from those who did not, was done for important analytical reasons. The real effect of legal fees on the costs to a litigant of pursuing a small claims case can be judged only by looking at those litigants who had to pay for these services. Since we are interested in the potential total costs which a litigant must face in making the decision to pursue or defend a small claims case, those potential costs must take into account the possible use of, and effect of having to pay for, an attorney. For the same reason, people who reported lost wages were separated from those who

Table 4.2
Distribution of Cost of Case to Defendants

City	$0-25		$26-100		$101+	
	%	No.	%	No.	%	No.
Bridgeport	31	(4)	54	(7)	15	(2)
Harlem	79	(19)	13	(3)	8	(2)
Manhattan	54	(24)	16	(7)	29	(13)
Washington, D.C.	43	(6)	36	(5)	21	(3)
Grand Rapids	63	(24)	24	(9)	13	(5)
Minneapolis	47	(16)	38	(13)	15	(5)
Des Moines	69	(9)	8	(1)	23	(3)
Omaha	57	(36)	29	(18)	14	(9)
Sioux Falls	71	(27)	21	(8)	8	(3)
Oklahoma City	69	(9)	8	(1)	23	(3)
Dallas	18	(3)	47	(8)	35	(6)
Cheyenne						
Spokane	57	(21)	35	(13)	8	(3)
Eugene	52	(16)	35	(11)	13	(4)
Sacramento	42	(14)	27	(9)	30	(10)
All cities	55	(228)	27	(113)	17	(71)

did not, since it is important to know how much additional cost a litigant might expect to incur if he or she must incur lost wages or income by taking time off from work.

The fact that many attorneys charged nothing for their services in a small claims case may reflect a judgment on the part of at least some of these attorneys that the size or nature of the dispute did not require their full services or that the cost of their services was not justified by the claim amount involved. Be that as it may, a vast majority of the attorneys who gave advice only did not charge for that advice, but a majority of the attorneys who actually provided some service to a litigant did charge for their services. The most frequent use of an attorney reported by both plaintiffs and defendants was receiving advice at no charge, while the next most frequent use reported by both was receiving some attorney service and paying a fee for it.

Where attorneys did charge fees for small claims cases, those fees were an important component of the total cost to the litigants. The average cost of retaining an attorney who provided some service was quite high in light of the claim amounts involved, around $94 for plaintiffs and $146 for defendants. Even where attorneys charged for just giving advice these fees were also an important component of cost. The effect on total costs of attorney's fees, where incurred, was similar for both the plaintiff and defendants in our sample, and thus reform measures for reducing the need for attorney services in small claims cases should be aimed at both plaintiff and defendants.

Lost wages, where reported, were also an important component of cost for both plaintiffs and defendants. Leaving aside the small number of plaintiffs and defendants who received attorney services at no cost, we found that litigants who received either advice or services from a fee-charging attorney and reported lost wages reported slightly higher lost wages than those who did not receive such advice or services. Attorney help then does not seem to reduce the loss of income resulting from missing work to pursue a small claims case.

One important measure of the real cost of the case to a person involved in a small claims action is the total cost as a percentage of claim amount, since that ratio helps us judge whether the decision to pursue a case is economically justified. At the very least, if plaintiffs stand to incur costs of as much or more than they could win, then the small claims court does not serve its purpose, at least for those cases. Tables 4.7 and 4.8 present total costs as a percentage of the claim amount for plaintiffs and defendants broken down by use of attorneys and by lost wages. These data

show that where no lost wages were reported and no attorney's fees were incurred the costs as a percentage of the claim amount were very low. However, where attorney's fees were reported these cost percentages are significantly higher even if no lost wages were incurred, and where lost wages were reported the costs are higher even if no attorney's fees were incurred. Of particular note is the very high cost as a percentage of claim for those litigants who reported both lost wages and attorney's fees.

Table 4.3
Cost to the Plaintiff of a Contested Small Claims Case for Plaintiffs Who Reported That They Had Not Lost Wages

Representation	Average Components of Cost					
	Ave. Cost	Total No.	Atty Fees	Witness Fees	Lost Wages	Other
No attorney	$ 15.08	(500)	$ 0	$3.27	$0	$8.26
Advice at no cost	9.70	(64)	0	3.47	0	5.79
Advice fee charged	35.66	(3)	31.66	0	0	4.00
Service at trial, no cost	2.50	(14)	0	.71	0	1.78
Service at trial, fee charged	105.83	(36)	91.89	5.40	0	7.22

Table 4.4
Cost to the Plaintiff of a Contested Small Claims Case for Plaintiffs Who Reported That They Had Lost Wages

Representation	Average Components of Cost					
	Ave. Cost	Total No.	Atty Fees	Witness Fees	Lost Wages	Other
No attorney	$ 76.93	(201)	$0	$ 3.54	$ 65.14	$ 6.55
Advice at no cost	72.82	(28)	0	4.64	67.84	9.25
Advice, fee charged	213.00	(5)	65.40	4.83	93.80	42.00
Service at trial, no cost	17.75	(4)	0	0	17.75	0
Service at trial, fee charged	222.63	(11)	102.63	2.72	113.63	3.63

Table 4.5
Cost to the Defendant of a Contested
Small Claims Case for Defendants
Who Reported That They Had Not Lost Wages

Representation	Average Components of Cost					
	Ave. Cost	Total No.	Atty Fees	Witness Fees	Lost Wages	Other
No attorney	$ 19.44	(150)	$0	$ 9.36	$0	$ 9.65
Advice at no cost	15.82	(23)	0	0	0	15.16
Advice, fee charged	163.33	(3)	35.00	16.66	0	111.66
Service at trial, no cost	33.33	(12)	0	0	0	33.33
Service at trial, fee charged	171.46	(28)	137.76	13.10	0	33.07

Table 4.6
Cost to the Defendant of a Contested
Small Claims Case for Defendants
Who Reported That They Had Lost Wages

Representation	Average Components of Cost					
	Ave. Cost	Total No.	Atty Fees	Witness Fees	Lost Wages	Other
No attorney	$113.83	(108)	$0	$11.28	$100.21	$3.52
Advice at no cost	60.27	(18)	0	1.05	55.84	2.44
Advice, fee charged	230.00	(3)	103.33	0	126.66	0
Service at trial, no cost	227.00	(4)	0	18.75	205.00	3.25
Service at trial, fee charged	348.25	(6)	183.58	6.33	150.00	8.33

Table 4.7
Cost to Plaintiff as a Percentage of Claim:
Lost Wages vs. No Lost Wages

Representation	Lost Wages		No Lost Wages	
	%	No.	%	No.
No attorney	29	(117)	6	(473)
Attorney advice only: No fee	21	(24)	4	(64)
Attorney advice: Fee charged	20	(4)	14	(3)
Attorney service (trial): No fee	20	(4)	0.07	(11)
Attorney service (trial): Fee charged	46	(9)	23	(32)

These same results hold for the cost as a percentage of award for winning plaintiffs as presented in Table 4.9. Plaintiffs who reported no lost wages and paid no attorney's fees had very low costs as a percentage of their award. Those reporting lost wages or attorney's fees had higher costs, while those reporting both lost wages and attorney's fees had costs that averaged half of their award.

These findings on the costs have important implications for small claims reform. Where no attorney's fees or lost wages are incurred these courts are presently doing extremely well in meeting the goal of inexpensive litigation. Where litigants incur attorney's fees, or lost wages as a result of small claims action, these courts are not doing nearly as well. Litigants reporting either or both of these costs face total costs of anywhere from $60 to almost $350 to pursue their cases, and these costs must be considered especially significant since a litigant can incur these

Table 4.8
Cost to Defendant as a Percentage of Claim:
Lost Wages vs. No Lost Wages

Representation	Lost Wages		No Lost Wages	
	%	No.	%	No.
No attorney	31	(8)	8	(146)
Attorney advice only: No fee	33	(17)	4	(23)
Attorney advice only: Fee charged	23	(1)	88	(1)
Attorney service (trial): No fee	19	(3)	8	(12)
Attorney service (trial): Fee charged	53	(6)	32	(25)

Table 4.9
Cost to Plaintiffs as a Percentage of Claim Award:
Lost Wages vs. No Lost Wages

Representation	Lost Wages		No Lost Wages	
	%	No.	%	No.
No attorney	23	(155)	5	(445)
Attorney advice only: No fee	16	(22)	3	(61)
Attorney advice: Fee charged	20	(4)	14	(3)
Attorney service (trial): No fee	26	(4)	1	(11)
Attorney service (trial): Fees charged	50	(6)	25	(31)

costs and still lose his case. The risk of incurring such high costs could certainly affect a litigant's decision whether or not to pursue or to defend a small claims case.

It is a reasonable assumption that the bulk of lost wages reported primarily result from having to go to court to appear for trial. The reduction of waiting time on trial day should thus be an important target for reducing the costs to litigants in pursuing a small claims case. Trial scheduling to reduce litigant waiting time would be one way of reducing these costs, as will be discussed in a Chapter 5. Evening small claims sessions would also provide another means of reducing lost wages for many litigants.

The other major component of cost, attorney's fees, can be reduced in several ways. First, attorneys could be barred at trial, although we have previously expressed our reservations about this course of action. Second, and we believe more desirably, increased court-provided assistance in trial preparation to both plaintiff and defendant could make the services of an attorney even prior to trial less necessary. Procedures can be developed to make attorney assistance less necessary in any part of the small claims process, including filing, the trial, and collection. Better court-provided pre-trial advice and devices available to the judges at trial can help compensate for poor pre-trial preparation by unrepresented litigants. We have seen that a sizable number of small claims litigants do go to an attorney, and that the percentage going to an attorney increases as the claim increases. Many litigants thus perceive the need for attorney services, but where these attorneys' services must be paid for the goal of inexpensive litigation is not well met. We feel that, while litigants or potential litigants should be able to go to an attorney if they wish, the system should be improved so that they do not feel compelled to use an attorney for most cases and will not suffer an unfair result if they do not.

The Cost of a Small Claims Case to the Public

We also attempted to determine what the costs of a small claims case were to judicial systems, in taxpayer dollars. We suspected that judicial system costs for small claims cases were quite low because the small claims function is only one of several functions such as criminal, formal civil, and traffic in most courts handling small claims cases. As a result, the courtroom, judges, and other fixed costs are allocable largely to the other functions of the court which require more court space and staff

time. Generally the only court staff specifically earmarked for small claims duty are the small claims intake clerk or clerks and possibly one or more file clerks.

This flexible or multiple-purpose use of judges, courtrooms, and administrative staff made it virtually impossible in most courts to separate out the operating costs specifically attributable to small claims, since most do not break out budget items in sufficient detail or record data on judge hours or courtroom hours devoted to small claims functions. Only two courts, Minneapolis and Sacramento, had sufficiently detailed data to enable us to make a rough calculation. We present these data here, but the reader should view the information with appropriate caution, as the costs can only be roughly approximated.

In Minneapolis (Hennepin County) the lawyer-referees who hear small claims cases are paid $75 per hearing day, so judicial (referee) costs may be calculated exactly. The 1976 figures for the Hennepin County Conciliation Court (including the downtown Minneapolis court and four outlying suburban conciliation courts in the county) were as follows:

Lawyer-referee salaries	$ 30,900
Small claims court staff salaries and fringe	194,100
Operating costs attributable to small claims function (intake, courtrooms, utilities)	39,000
1976 total small claims court costs	$264,000

Of this total cost, the salaries of the lawyer-referees represent most of the cost of trying a case, while the small claims court staff salaries and fringe and the operating costs represent primarily costs of processing new filings and keeping the records. We thus allocated the $233,100 in clerical salaries and space costs as the costs incurred by the system by having cases filed, and the $30,900 in referee salaries as the additional costs incurred by the system for adjudicating those cases which reached the trial stage.

Dividing the $233,100 cost allocated to processing small claims filings by the 1975 caseload (the last complete year data we were able to obtain) produces the following costs:

27,117 filings	= $8.60/ filing
less	1.87 filing fees per case ($2 mail charge)
net cost per small claim filing	$6.73

To calculate the additional 1975 cost incurred by the system to adjudicate the cases which ultimately reach the trial stage, we divided the total contested trials and defaults (since individual plaintiffs are required to prove default cases before a referee) into the total salaries paid to the referees: 11,856 contested trials and defaults = $2.61 additional cost per adjudication.

It should be pointed out that the use in the Minneapolis court of lawyer-referees instead of judges to hear small claims cases and defaults may reduce the cost per adjudicated case below that of courts where higher salaried judges are used. Although the referee salary of $75/day times 240 working days produces an annual salary of $18,000, making these annual referee costs consistent with municipal court judge salaries in all but large urban states, this cost does not take into account the additional fringe benefits costs incurred with full-time judges.

In California the Judicial Conference used weighted caseload figures developed through an analysis of judicial and court staff time spent on various municipal court functions in fifteen of the seventy-seven municipal court districts in the state. This analysis determined that municipal court judges spent 6.7 percent of their time on small claims matters and municipal court clerical staff spent 7.6 percent on their time on small claims functions. Using 7.2 percent as an average (since clerical costs exceed judge costs) this weighted caseload average for small claims functions was applied to the Sacramento municipal court budget. First the 1976 total budget of $3.6 million was reduced by $700,000 (removing legal services, jury costs, court reporters, and transcribers, which are not used in small claims) leaving a 1976 municipal court net cost of $2.9 million. Taking 7.2 percent of this net cost yields $208,800 attributable to the small claims function. If the $2 filing fee revenue (not including certified mail service) is subtracted (12,781 filings x $2.00 = $25,562), we obtain a net small claims cost of $183,238.

The California municipal court judges were paid $45,235 annually in 1976. If we add 30 percent fringe to those salaries to cover estimated insurance, pension, and vacation costs, we get a total annual cost of $58,805.50 per judge. Taking 6.7 percent of this figure yields $3,939.97 as the cost to that court system of each judge's small claims duty. As there are nine judges on the Sacramento municipal court, we get a total cost for the judges' small claims duties of $35,460.

Using the same analysis used for the Hennepin County court example, we obtain the following results: Cost allocated to filings, $147,778; cost allocated to trials, $35,460. The total small claims filings in 1975 were

12,781. of which 6,084 went to trial. This yields the following costs: Cost per small claims filings, $11.56; additional cost per trial, $5.83. Part of the higher cost per disposition we found in Sacramento can be explained by the fact that California municipal court judges are paid $45,235 annually as compared with a $18,000 cost (on an annual basis) of the lawyer-referee used to hear small claims cases in Minneapolis.

While small claims costs for these two courts could be subject to further refinement, and should be done for a larger number of different courts, they give fairly solid evidence that the cost to taxpayers of small claims resolutions is inexpensive, ranging from below $15 per resolution to a probable maximum of $20, depending on the judicial costs, staff costs, and caseload of a given court.

One additional factor should be kept in mind. The fact that a small claim is filed may often result in settlement of the dispute or payment of a claim before the scheduled trial date. To the extent that this happens, this is also a resolution produced by using the small claims process. In those cases then, the small claims process produces a resolution for just the cost of processing the filing. As a comparison, the 4A (Arbitration As An Alternative) dispute resolution program in Rochester, New York, which mediates quasi-criminal disputes and some small civil disputes, reported a total cost of $40 to $45 per case, of which $25 was the arbitrator's fee.

Summary of Findings and Recommendations

Findings

- The costs of pursuing or defending a small claim was under $25 for a majority of litigants, but these costs increased significantly where fee-charging attorneys were used or wages were lost by going to court.
- Small claims costs for plaintiffs and defendants incurring both attorneys fees and lost wages averaged half of the claim amount.
- Taxpayer costs of small claims courts is very low compared to other areas of the judicial process and range from below $15 per resolution to a probable maximum of $20 per resolution.

Recommendations

- Litigant costs can be reduced by more effective trial scheduling methods or evening trial sessions to reduce time lost from work, and more extensive court-provided trial preparation assistance can help to reduce the need for attorney services.

- Increased taxpayer costs for improving small claims court convenience and fairness to the public should be viewed in the context of the present very low cost of this forum to the taxpayer.

5.
Steps Before Trial

The next three chapters deal with how various courts structure the process of pursuing a small claim, from locating the court and filing a claim, through the trial, and ending with procedures for collecting a judgment and recording satisfaction. For convenience we have divided this process into chapters dealing with the steps before trial, the operations dealing with the trial itself, and the procedures available after the trial for appeal of small claims decisions and collection of judgments. Finally, in our litigant survey we asked litigants in the fifteen courts about particular steps in the process which caused them problems, and asked their opinions on the desirability of a series of proposals for small claims reform. These litigant viewpoints appear in Chapter 8.

The fifteen courts we examined had differing procedures for various steps in this process and, because of the lack of specificity in most small claims enabling legislation, had broad latitude to experiment with different methods of carrying out a particular step in the process. This flexibility in the small claims process is both a strength and a weakness of our present system in that it provides opportunity for a court, a court administrator or an individual judge to make as much, or as little, of their small claims court as their interest and resources dictate.

Few courts will intentionally use a procedure that is just plain bad. A specific court procedure is a product of particular attitudes or needs in a jurisdiction or a vestige of earlier procedures, or it exists in a certain form because that form is dictated by other procedures or policies either earlier or later in the case process. Procedures used in a given court tend to have their own internal logic, dictated by that court's own way of doing things, its own perceived needs, its particular constitutional, statutory, budgetary, or other constraints, or a combination of these factors. As a result it is difficult to examine a given court and determine whether a particular practice is "good" or "bad," since that particular solution will usually make sense within the context of the other interrelated procedures used in the court and the external limitations under which it operates. This is the great advantage of closely examining the

operations of a large number of courts carrying out the same functions, for the data gathered help show more precisely the utility or disutility of specific solutions. In specific courts particular practices are often justified on the basis of specifc local conditions, and without a broader frame of reference there is often no way of judging whether this necessary relationship exists.

As an example, in the first court that we examined--Rochester, New York--small claims decisions were not announced at trial. This practice was justified on the grounds that to do so would cause disruptions in court from disappointed litigants. While we felt that general principles of openness and fairness should militate in favor of announcing trial verdicts in open court, we had at that point no way of judging the potential for courtroom disruption that this practice avoided. However, after examining the Grand Rapids, Des Moines, Omaha, and Eugene courts, and seven others in our sample that did routinely announce small claims judgments, and comparing demographics, case mixes, and other factors, we are able to state that the justification given for this practice appears groundless.

As we pushed further into different courts and examined particular practices again and again in different situations we also began to discover interrelationships between procedures that might not be obvious if only one court was examined. For example, one unique feature of small claims courts is that the judge can order a judgment amount to be paid in installments if the judgment debtor cannot afford to pay it in a lump sum. We routinely asked all of the judges whether they ever ordered installment payments and recorded this information. It was not until we were able to look at comparative data for a number of jurisdictions that we noticed that courts in which judgments were announced at trial routinely provided for installment payments, while courts where judgments were not announced at trial did so rarely. A linkage between announcing verdicts in court and installment payments became clear. An installment order is not granted unless the losing side requests it, and in some jurisdictions the winning side must agree to it as well. If the parties do not know who won or lost, or the amount of the damages the judge has awarded, while they are in court, there is no way they can request, or agree to, an installment order. This means that where verdicts are not announced at trial a defendant must admit he owes the claim at trial, without knowing whether the judge would have ruled for or against him, in order to request an installment order. The only other alternative is—after receiving notice of a judgment by mail—to appear by motion in

court to request an order to pay in installments. At a minimum this required another trip to court by the defendant, and may require the plaintiff to appear again as well if his consent to an installment order is required. An awareness of this interrelationship or linkage adds further factors which should be taken into consideration if a court is deciding whether to adopt or abandon a policy of not announcing small claims judgments at trial.

At each step in the small claims process, we describe from the standpoint of the comparative practices in the fifteen courts the usual way of doing things and, of the available methods presently used, the "best" way if one particular approach seems to offer significant advantages. In each such instance these advantages are enumerated. We have also described those cases where alternatives exist that seem equally good, or where we had insufficient data to make a choice between alternatives. Finally, we have pointed out instances where a particular practice seemed particularly disadvantageous to the public users of a court.

In attempting to distinguish "better" from "worse" practices in the operations of a small claims court, some frame of reference or standard of evaluation is needed. Traditionally, court studies have used internal standards such as efficiency or cost effectiveness. This leads to choices between competing based on evaluative standards, such as "which procedure will enable the most case resolutions per hour of judge time?" or "how can court staff duties be allocated so as to process the most cases per man per day effectively?" or, "will a projected change enable increased output with no increase in cost?"

While the underlying purpose of the entire judicial system is to serve the public, this basic purpose is nowhere spelled out so clearly, or carried out so directly as in the case of small claims court. Accordingly, our frame of reference in analyzing various procedures in the operation of these courts has been the impact on the public users of these courts, the plaintiffs and defendants, and the persons with smaller disputes for whom the small claims process was designed. In weighing the impact of alternative procedures we have asked questions such as: Does this approach tend to assist or to hinder accessibility to people with disputes? Does it speed up the process or delay it? Does it add expense for litigants, or reduce expense? Is an added step an unnecessary complication, or does it add fairness? Does a particular procedure tend to assist or to hinder self-representation, or other goals of the process?

This brings up an important point which deserves emphasis. Adminis-

trative convenience can and does often conflict with user convenience. In plain words, many practices of various courts which exist because it is easier that way, or because it has always been done that way, make it more difficult for members of the public to use the small claims process. Where these conflicts exist we have identified them. Where these practices have been justified on the basis of increased internal operating efficiency we have examined these claims as well. It is worth repeating that small claims court is the one area of the judicial process that is most closely tied, in its origins, development, and reform, to serving the public. While internal operating efficiency is never unimportant, since the public's tax dollars support our judicial systems, we believe that small claims court is one area of the judicial process where effectiveness in serving the public should be given the higher priority. Where conflicts between internal efficiency and public convenience exist we have attempted to array the various factors on each side so that choices between these competing goals can be intellectually made.

We have called this chapter "steps before the trial" rather than "the pre-trial process" to avoid confusion with that great body of required and optional pleadings, answers, motions, and discovery practices which is used in formal civil litigation and which is known as pre-trial practice. Indeed, in formal civil litigation the pre-trial part of a case can consume a great deal of the litigant and attorney time and expense on a case before the case ever reaches trial. In small claims court, by contrast, most of the steps accomplished by the formal pre-trial process are eliminated, or are shifted over to the trial itself. We examine here the steps which remain.

Finding the Court

To use a court, the public must first find that court. In both our plaintiff and defendant questionnaires we asked how the party found out about small claims court. The responses to this open-ended question were coded into thirteen different categories; Table 5.1 presents the results. Twenty-seven percent of the respondents indicated that they already knew about the small claims court before the case we questioned them about arose, in many cases because they had used the court before, or they could not remember where they first found out about the court and indicated "general knowledge." Of the remaining 73 percent who did indicate the source of their knowledge the four most important sources were: personal contacts (friends or relatives); a private attorney;

public service information about small claims court in newspapers or other mass media; and finding our through coworkers or other contacts on their job. Of these four most important sources, roughly half were word-of-mouth referrals from friends or coworkers, about 30 percent were told about small claims court by the attorney they consulted about their claim, and 20 percent saw a mention of the court in a newspaper article or on a television or radio spot.

These findings are of significance for judicial systems or public interest groups who want to let the public know about the availability of small claims courts. First, word-of-mouth referral was most important, as might be expected, and it was not surprising that many attorneys who were contacted about a claim suggested the small claims court. What was surprising was that so many litigants indicated they heard of small claims court through the mass media, since only a few of the courts (Harlem, Manhattan, Washington, D.C., Omaha, and Sacramento) in this fifteen-court total indicated that there had been public interest spots in their small claims courts. Obviously, then, this source of public information still has great untapped potential. Small claims court information provided on the job or through employment counselors or credit agencies would also seem to offer potential. We were also surprised that 122 respondents indicated they had heard of small claims court in

Table 5.1
How Litigants Found Out about Small Claims Court

Source of Information	%	No.
Prior experience or general knowledge	26	(310)
Personal contacts (friends or relations)	17	(200)
Private attorney	17	(197)
Public notice or mass media	12	(141)
Colleagues or employment-related contacts	10	(122)
Schools	5	(60)
Court referral	3	(40)
Non-public agency referral (interest group)	2	(26)
Insurance agent	2	(23)
Law enforcement referral (sheriff, police)	2	(19)
Other public agency referral	1	(12)
Legal aid office	1	(12)
Private doctors	0.2	(2)
Totals	100	(1,164)

school, since only Sacramento had a policy of hosting tours of high school students in its court and explaining the small claims process to them. This device for early consumer education deserves wider use.

We were puzzled that so few respondents indicated that they were referred by other branches of a court, law enforcement or other public agencies, or legal aid offices, since we would expect many disputants who ended up in small claims court to have sought assistance from these agencies first. We have no way of knowing how many people sought help from these sources first and could have used the small claims court but were not told about it. The very small percentages who indicated referral from these sources, however, lead us to believe that a worthwhile effort might be undertaken to provide some educational lectures for the personnel of these agencies on the types of disputes which can be handled by small claims court, some general information on how to file a small claim, and some handouts on the small claims court to give to persons whom they refer.

Once a dispute arises many people who have heard of the small claims court need to know where the court is and what is required to file a claim. A common response is to look in the phone book under "S" for "small claims court." We did exactly that in each of the fifteen cities we visited. The results were not encouraging. In only two of the cities would this procedure yield a phone number (and address) for the small claims court. In five of the cities a citizen with a problem had to be an expert in the judicial structure of his state to locate the small claims court. In Bridgeport, Connecticut, for example, one would have to know that the state court of general jurisdiction is called the Court of Common Pleas, look up that listing, call the Court of Common Pleas and ask for the Small Claims Clerk. This complexity is inexcusable, since it takes little effort (and no expense) to get a separate small claims listing. The exemplary court was the Hennepin County (Minneapolis) Conciliation Court. This court was separately listed under "conciliation court" (even though it is a division of the municipal court), and was separately listed in the most frequently called numbers section in the front of the telephone directory--along with the police, fire department, and so forth.

Upon reaching each court we played the part of a first-time litigant to see how difficult it was to reach the small claims intake section and a clerk who could give assistance. Here the key is in-court signs, information booths, and the like. Again, Hennepin County was a standout. The Conciliation Court is located on an upper floor of the new multistory

Government Center and could be potentially difficult to locate. However, in the public lobby prominent signs indicated the floor and room numbers for Conciliation Court filings and the courtrooms that were used for small claims trials. In addition, information booklets about the small claims court were available both in the public lobby at the information booth (in plain sight) and at the Conciliation Court intake desk.

The Omaha small claims court was also located in a beautiful new civic center. However, in contrast to Hennepin County, Omaha had no "small claims court" listing in the phone book and no signs in the building lobby or on the building directory, and it took five minutes of determined effort blundering down unmarked corridors and pushing through unmarked doors to find the small claims intake section. This might well be four minutes more than a nervous first-time claimant might be willing to spend looking for the court. When we inquired why there was not a small claims sign in the public lobby we were told, "First, it would diminish the architectural perfection of the building, and secondly, it is not the business of the court to encourage litigation." The sign situation in the other thirteen courts ranged between these two extremes. To repeat, signs are a simple detail but a very important one for the public.

We also checked all courtrooms that were used for small claims trials, in light of criticisms of "second class justice" in the small claims literature. We were surprised; in all of the courts but one, small claims sat in the very best type of courtroom available. These courtrooms ranged from opulent to good, and were the same facilities used for formal civil and criminal litigation. The glaring exception was the Washington, D.C. small claims facility. Located in a shoddy leased facility, it was crowded, noisy, and confusing, resembling a high school cafeteria more than a courtroom. The judge was perched behind a table on a raised wood platform at the front of the room, and the traffic noise rumbling up from the street was so great on occasions that neither we nor the judge could hear what the litigants were saying. This did look like second class justice. Lawyers popped out of doors at the side of this large room and cut between the judge and the litigants with impunity to whisper to the clerk or to paw through the case files. New courtroom facilities were under construction at the time we visted the D.C. court, so the situation was expected to be remedied in the near future.

When we interviewed judges about the small claims trial, a number of them mentioned the importance of "decorum" and of the "trappings of justice" in preserving order and in lending dignity to small claims

proceedings. While we do not pretend to be space planning experts, the smaller courtrooms seemed to work better; they were quieter and less intimidating, and they held fewer people who were waiting for their trial. The sight of 150 increasingly irritated waiting litigants and witnesses arrayed before us judge in the D.C. court produced an atmosphere of tension and time pressure which seemed to affect both the judge and the litigants standing before him.

Most of our fifteen courts were downtown courts. They were the primary (or only) small claims court in their city or county and were located in center city in the county, district, or municipal court building. The only two neighborhood courts were in Dallas and in Harlem. Dallas is served by twelve separate justice of the peace courts (which handle small claims) located in different areas of the city, and Harlem by a court located at 121st Street on the east side of Manhattan which serves the section of that borough above 86th Street. From the standpoint of the size of the populations served, however, a number of the smaller city small claims courts such as Cheyenne or Sioux Falls seemed to be no less neighborhood than the Harlem or Dallas courts.

Traditionally, courts have not paid much attention to the convenience of the public which uses them. Courts just exist, and it is up to the public to seek them out. The Des Moines court is illustrative. The small claims court (and municipal court), was located in a clean but aging structure across the river from downtown. The first floor of this building is a police station, and the small claims intake office and courtrooms are located on the second floor. The court location is not on a major public transit route and the only convenient place to park is in a row of metered (one-hour maximum) spaces in front of the police station. Since any average wait for trial in the court is likely to exceed one hour we could imagine the added discomfort of the litigants visualizing their car being ticketed by the policemen below. The court clerk said that all a litigant had to do was to take his parking ticket to a judge and explain he was waiting for trial, and it would be dismissed, but we wondered how many litigants knew to do this.

In Cheyenne, Oklahoma City, Spokane, Washington, D.C., Bridgeport, Manhattan, and Harlem, litigants or witnesses arriving by car had to park on the street or find a commercial parking lot. Happily, some of the courts provided public parking right at court, either in a garage below the court building itself or in an adjoining lot. So long as the private vehicle is a significant means of reaching court for many litigants this convenience factor should be taken into account in any

new, relocated, or redesigned court facility, together with access to public transportation.

In-Court Assistance to Litigants

In the conventional civil court process several important steps in initiating a law suit are generally left to private counsel: advising on whether a dispute is worth pursuing in court, filing the papers initiating the action, and identifying and mustering both evidence and witnesses necessary to prove (or to defend) a claim. Small claims court is presently unique in that it is the only area of the judicial system in which it is assumed that a significant number of people will attempt to pursue a claim themselves, and in which the judicial system recognizes an obligation to assist litigants. In each court we spent substantial time observing the assistance provided to litigants by the court in order to assess the scope, quality, and usefulness of this assistance.

Small claims courts are organized administratively around the small claims clerk's office. This office is responsible for taking new filings of small claims cases, keeping track of service of notice of the claim on the defendant, maintaining a case file for each claim filed, scheduling cases for trial, recording judgments, recording satisfaction (payment) of judgments, and handling some of the initial steps in the process of collecting judgments. In some courts a clerk will also sit in the courtroom with a judge at trial to call the calendar of cases, pass the case files to the judge as each case is called, and record the judgments. In a few courts (described later) court clerks also issue default judgments. Clerk's office staffing can range from one individual to a dozen or more, depending on the volume of cases that a particular court handles.

The clerk's office in each small claims court we examined provided some assistance to litigants in the form of information about how to file a claim, how to serve the complaint on the defendant, the costs of filing, how long it would take to reach trial, evidence needed for trial, and collection of judgments. Providing information and assistance within the court process is not unique, for court clerks have been providing this service to attorneys since the beginning of our justice system. Any attorney who is unsure about a particular step in the procedural paperwork of litigation can rely on the court clerk to provide advice on time limits for filing, necessary forms, information on who must be served and by when, and so forth. Thus the advice to litigants provided in small claims court is unique only in that it is provided to non-lawyers as well as

to lawyers, and that it may extend in some cases to advice on legal or evidentiary aspects of preparing a case which have traditionally been under the exclusive purview of lawyers.

Table 5.2 lists the general types of assistance provided to litigants in each of the fifteen courts. Twelve courts provided a short information sheet or pamphlet on the small claims process. This information ranged from a one-page mimeographed sheet (Bridgeport) to New York City's nineteen-page booklet, which included brief sections on the history and development of the small claims court, addresses and phone numbers of small claims offices, a sample claim form and a sample stipulation of settlement, information on choosing between a trial before a judge and a binding arbitration, information on subpoenaing witnesses, and one page of definitions of legal terms. The New York City pamphlet, however, gave no information on the type of evidence or proof needed for particular types of claims.

Table 5.2
In-Court Assistance to Litigants

City	Information Sheet or Pamphlet	Clerk Advice on Forms	Clerk Fills Out Claim	Clerk on Necessary Evidence	Clerk Legal Advice
Bridgeport[1]	Yes	Yes	—	—	—
Harlem	Yes[1]	Yes	Yes	Yes	Consumer advocates
Manhattan	Yes[1]	Yes	Yes	Yes	Consumer counsel
Washington, D.C.	Yes	Yes	—	—	—
Grand Rapids	Yes[1]	Yes	Yes	Yes	Yes
Minneapolis	Yes	Yes	Yes	Yes	Yes
Des Moines	Yes	Yes	Yes	Yes	—
Omaha	Yes	Yes	—	—	—
Sioux Falls	No	Yes	Yes	Yes	Yes
Oklahoma City	No	Yes	Yes	Yes	—
Dallas	Yes[1]	Yes	Yes	Yes	—
Cheyenne	No	Yes	—	Yes	—
Spokane	Yes[1]	Yes	Yes	Yes	Yes
Eugene	Yes	Yes	Yes	Yes	—
Sacramento	Yes	Yes	Yes	—	—

[1]Covers advice to plaintiff only.

In each court we examined, the clerk or clerks who provided assistance to litigants reported that the key trouble spots for prospective plaintiffs were naming the correct defendant, finding the address for serving the defendant, and knowing what type of proof they needed to bring to trial to prove their particular type of claim. These aspects of assistance to litigants are discussed in more detail below, but none of these troublesome areas was covered very well, if at all, in any of the information sheets or pamphlets provided to litigants. It seems to us that the most useful information sheet for plaintiffs should include information they should know, or might forget, before the trial date: the phone number and when to call to check whether service was made on the defendant, what to do if mail service did not work, how to check the trial date and time, and what specific types of proof are needed for specific types of cases (e.g., if an automobile damage claim, bring two independent estimates; if an automobile repair claim, bring the mechanic who had to redo the faulty repair). This sheet need not be longer than about three pages. In fact, more elaborate pamphlets seem undesirable on several counts. First, they are difficult to update to reflect changes in the law (such as increased claim limits)--and courts tend to use outdated booklets until supplies are used up. Second, we noticed that the more elaborate the booklet, the more hesitant the court staff was to hand it out. In both New York City and Dallas, which had fairly elaborate information booklets, these materials were not displayed or given to litigants unless the litigants knew enough to ask for one specifically.

Table 5.2 also describes clerk advice on how to fill out a small claims complaint or claim form. In most courts a single claim form was used for all small claims cases, although the Minneapolis and Washington, D.C. courts used more specialized forms. Minneapolis had four different claim forms (general claim, auto damage claim, goods sold or services rendered, and replevin of property) although the format was basically unchanged except for the title of the claim. Washington, D.C. used eleven specialized forms (e.g., auto accident, one defendant; auto accident, two defendants (owned by no. 1, driven by no. 2); auto accident while parked; return of deposit paid for merchandise; return of tenant's security deposit; etc.) This specialization of claim forms is intended to assist in structuring the plaintiff's case. In the case of an auto accident where the driver was not the car owner, for example, it ensures that the plaintiff names both the driver and car owner in case there is a subsequent question of who is liable. While this may be useful in a high-volume court where clerks have inadequate time to sit down with

claimants and explain what type of evidence they will need to prove their claim, personal instruction would probably be far more useful to most litigants.

In all but four courts (Bridgeport, Washington, D.C., Omaha, and Cheyenne) small claims clerks as a regular practice fill out the claim form for litigants after inquiring about their claim. This service was formerly routinely provided in Washington, D.C. but was abandoned when the caseload overran the capability of the small claims intake staff to provide this service. Now, after a few initial questions, a claimant is given a sample claim form corresponding to his problem area which is filled in with a hypothetical case to use as a model. Litigants may return to ask further questions of the clerk. This service was not provided in Bridgeport and Omaha because the judges (and through them the clerks) had been pressured by local lawyers and the bar into viewing the filling out of any form for a litigant as the unauthorized practice of law by the clerks.

The next important area for litigants is evidentiary advice--advice on the kinds and quantities of proof needed to prove a particular kind of case. This is vitally important to litigants to prevent them from appearing at trial unprepared. In a security deposit case, for example, a plaintiff tenant would be told to bring a copy of his lease, the cancelled check for his security deposit, a copy of the written notice of termination of his lease, and his request for return of his deposit (where a precondition for penalty damages). Proof required for certain types of cases varied from court to court. In automobile damage cases, for example, some courts required two repair estimates, some required three, and the New York City courts required a bill for repair of the damage marked "paid." Some courts would accept a written statement by a third party as to a faulty automobile repair while others required the mechanic to appear in person to testify. Advice on evidence included explaining to claimants how to subpoena a witness if the witness needed an excuse to be absent from work to attend the hearing.

The last category in Table 5.2, legal advice, generally included information as to who should be named as defendant, where to find the defendant's proper name and address for service, and the right to request penalty damages in security deposit or wage claims where provided by law. As indicated earlier, the clerks said that identifying the correct defendant was often a problem, as for example where the seller of a product was not the store owner, or a rental agent was not the owner of an apartment building. Despite the fact that this problem constantly

recurred, none of the courts had developed a satisfactory solution. Where corporate defendants were sued often, such as large retail stores, the phone company, or others, the clerks usually knew the correct defendant and the correct agent for service. If they were unsure, however, the plaintiff would be told to check the state business license office, county clerk's office, or city business license directory. None of the small claims intake sections had the necessary directory available for plaintiffs to use.

As Table 5.2 indicates, only six of the fifteen courts would permit court clerks to give this sort of minimal legal advice to litigants. Part of this resistance seemed to be due to the judges' worry about being accused of promoting the unauthorized practice of law by the clerks, but a number of judges were concerned that the clerks might give incorrect or misleading advice. Part of this problem is due to the staffing pattern in most small claims clerks' offices. Generally there is a chief clerk who is in charge of the office and a number of file clerks whose primary duties involve filing papers. With few exceptions the chief clerks we interviewed were very knowledgeable about the small claims process and had picked up a fair amount of legal training, either formally or on the job. When they were busy, in court with the judge, calling the calendar or otherwise, intake duties were often handled by whoever happened to be free at the time, whether or not that clerk knew the correct advice needed for filing. The best staffing pattern seemed to be that used in the Sacramento court. Two of the small claims clerical staff of six specialized in intake and had been thoroughly familiarized with how to identify the correct defendant, locating the proper agent for service, and so forth. Since there were two intake specialists, the filing window was always covered by someone who knew the correct filing advice.

Having clerical staff handle small claims intake duties as well as regular civil, traffic, or other filings did not seem to work well for small claims litigants. In courts where these multiple clerical duties existed (such as Dallas, Eugene, and Cheyenne) we observed clerks leaving small claims litigants to wait on attorneys filing other cases. This is a good example of the conflict between administrative efficiency and public convenience mentioned earlier. Assigning multiple intake duties may maximize filings per court clerk but it is very difficult for intake clerks to answer questions for a first-time *pro se* litigant with lawyers banging on the window with papers they want filed. Providing first class in-court assistance to laymen requires patience, training, and the undivided attention of the staff--in other words, specialization.

Two interesting variants for providing assistance to litigants existed in the Harlem and Manhattan courts. The Harlem Small Claims Court was established in 1969 as a satellite of the Manhattan court, and federal Model Cities funding was used to provide five consumer advocates to assist the largely minority population with filing advice and trial preparation. Aside from this feature its operation is identical to the larger Manhattan court. Federal funding cutbacks have since reduced the number of consumer advocates to three (in 1976), but two of the three were bilingual and the supervising consumer advocate was an attorney. These consumer advocates did not supplement the court clerical staff, for regular small claims intake staff existed in the Harlem court. However, telephone requests for information and questions on trial preparation or defense (in both English and Spanish) were referred to the consumer advocates. While the consumer advocates were not permitted to appear at trial with litigants, the bilingual advocates did serve as interpreters at trial as needed.

The Harlem supplemental staffing presently exists only because of federal funding support. However, the administrative judge of the New York City Civil (and small claims) Courts instituted a program using volunteer attorneys to spend several hours a week in the intake section of their borough small claims court as consumer counsel, providing advice on filing and trial preparation to litigants. While the program started well in 1975, with fairly good coverage during daytime hours in all five boroughs, it was reported to us that the initial enthusiasm of the volunteer attorneys has waned, to the extent that consumer counsel coverage is spotty or nonexistent in the boroughs outside of Manhattan. In Manhattan we observed gaps of four hours or more when a scheduled attorney missed a tour of duty in the small claims intake section.

Acting as consumer counsel in small claims intake is not as glamorous or interesting as serving as an arbitrator in small claims trials. Whereas a volunteer lawyer-arbitrator gets to act as judge (and his decisions are not appealable), a consumer counsel faces the difficult and often tedious task of helping *pro se* litigants state the correct cause of action, correct defendant, and correct address for service on the defendant, as well as explaining the evidentiary requirements for a particular type of case. Several of the consumer counsels we interviewed reported that they would sometimes try to settle a case over the telephone if the other side had an attorney, by discussing the case and citing the relevant statutes (as, for example, in return of security deposit cases). They would not do this, however, if the other side was not represented by an attorney.

The contrast between the full-time salaried consumer advocates in the Harlem court and the part-time volunteer consumer counsel in the Manhattan court illustrates an important point about providing supplemental legal or paralegal assistance to small claims litigants. Paid staff works better than volunteer staff. While the consumer counsel were as helpful as the consumer advocates when they were there, the intermittent periods of their coverage did not provide any continuity. For example, a litigant who went to court in the morning to file and who called back in the afternoon with a question would have to explain the entire case all over again to the new consumer counsel. While consumer counsel were if anything more knowledgeable about the law than the consumer advocates, they did not seem to have accumulated as extensive a background in practical information needed for filing, such as who is the agent for service for the public utilities company. In addition, there was no assurance that they could assist a Spanish-speaking litigant, while an interpreter was always on duty in the Harlem court.

From a purely subjective standpoint the Harlem court seemed to work very well. During the day when the court was open for filing and for assisting litigants the chief clerk was on duty as were one or two other clerical staff members and two or three consumer advocates. This was a much larger intake staff in relation to caseload (Harlem had 1,843 filings in 1975) than any other court we examined. No litigant seemed to be rushed and telephone inquiries were answered promptly. On Thursday evenings the trials also seemed to work well. The judge liked the duty, the lawyer-arbitrator liked it, the court staff liked it, and the litigants waiting for trial seemed to feel they were getting fair treatment. The staff was extensive and helpful. For example, on trial night the following personnel were present on the court:

—the small claims judge
—three lawyer-arbitrators
—a court reporter for the judge
—a court interpreter for the judge
—two consumer advocates (one acted as an interpreter for the arbitrators, the other assigned litigants)
—The small claims clerk
—a uniformed court officer, who called the calendar and maintained order

The trials (and arbitrators) seemed to run smoothly because the staff was helpful, competent and extensive, but staffing of this extent does not come cheaply.

One other aspect of legal advice to litigants deserves mention: case screening, or giving litigants some idea of whether they had a good cause of action. As a general rule court clerks were hesitant to discourage filings even if they felt they were clearly groundless, because of the unauthorized practice of law problem. The exceptions to this were the consumer advocates and consumer counsel in the Harlem and Manhattan courts, who reported they were often blunt in telling litigants that they had a weak case or no case. One interesting statutory wrinkle exists in South Dakota, where the court clerk is empowered to screen claims for evidentiary sufficiency and to reject for filing those claims found to be insufficient. A litigant turned down by the clerk then has to go to the judge for permission to file. The Sioux Falls clerk reported that in practice he rarely rejected claims, but he did insist that claimants produce the necessary documentation (such as estimates, copies of leases, cancelled checks) before he would fill out a claim for them. It was his view that it was far better to put claimants to a little more trouble at the outset than to let them file an insufficiently documented claim that could result in a wasted filing fee and lost time for both sides later on if the claim was rejected owing to insufficient evidence.

Adequacy of In-Court Assistance to Litigants

Table 5.2 shows that some courts provided much more assistance to litigants than did others. Washington, D.C., Bridgeport, Omaha, and Cheyenne provided the least, Washington, D.C. because of understaffing and very high volume and the other three because of what seemed to be an inordinate concern over the unauthorized practice of law problem. Where a court is specifically organized to serve laymen it seems to us that at a minimum court staff should be able to provide basic and competent assistance in naming and serving the proper defendant and in identifying the types of evidence that will be required at trial for proof of different types of cases. One way around concerns about clerks giving advice would be to provide salaried or volunteer attorneys in the intake section, as was done in the Harlem and Manhattan courts.

Legal Advice for Defendants

The better small claims intake offices (Harlem, Manhattan, Grand Rapids, Minneapolis, Sioux Falls, and Spokane) were quite good--for plaintiffs. The lack of adequate information on trial preparation for

defendants was a glaring omission in all of the fifteen courts we examined. Indeed, much of the small claims process seems to be subtly tilted against defendants, beginning with the complaint form. A typical small claims summons and complaint form (Oklahoma) addresses the defendant as shown in Figure 5.1.

Figure 5.1
Order

The people of the State of Oklahoma, to the within-named defendant: You are hereby directed to appear and answer the foregoing claim and to have with you all books, papers and witnesses needed by you to establish your defense to said claim.

This matter shall be heard at the Oklahoma County Court House, 321 Park Avenue, in Oklahoma City, Oklahoma County, State of Oklahoma, at the hour of _____ o'clock of the _____ day of _____, 19____, or *at the same time and place seven (7) days after service hereof, whichever is the later*. And you are further notified that in case you do not so appear judgment will be given against you as follows: for the amount of said claim as it is stated in said affidavit, or for possession of the personal property described in said affidavit.

And, in addition, for costs of the action (including attorney fees where provided by law), including costs of service of the order.

To a defendant who has not been involved in the judicial process, this fairly typical complaint language could well give the impression that the plaintiff's claim has already been accepted by the court, particularly since every complaint threatens defendants with what will happen if they do not appear: "judgment will be given against you;" "costs of the action;" "attorneys fees where provided by law;" "costs of service of the order." In short the effect of a typical complaint is not neutral: it is antidefendant. This is at odds with what the law is, for in civil actions (including small claims) the legal burden of going forward is entirely on the plaintiff. He must establish a *prima facie* case or be non-suited. Only when, or if, the plaintiff has established a *prima facie* cause of action by a preponderance of the evidence does the burden shift to the defendant to disprove it or raise some other defense. Also, in no court except Sioux Falls was there any pre-trial mustering of proof, which means the complaint is usually grounded only on the unsubstantiated word of the plaintiff. This would seem to be another important reason for making the language of the complaint as neutral as possible. Typically there is no

mention of the defendant's right to appear if he is unsure whether he owes the claim, or believes that he owes it but needs more time to pay. There is also usually no mention of the defendant's right to contact the court clerk for assistance and no phone number is given where he can call for information.

A more even-handed notice to defendants (from the Omaha Court) is illustrated in Figure 5.2.

Figure 5.2
Notice to Defendant

This claim has been filed against you. You must appear before this Court on _____ at Two p.m., at Courtroom No. 6, Main Floor. If you do not appear, a judgment may be entered against you. Costs of this action also may be charged against you. You should read the information on the back of this claim and notice. If you have any questions about the procedure, you may contact the Clerk of the Court in person at Omaha-Douglas Civic Center, 1819 Farnam, or by telephone at 444-5424.

This complaint form used in Omaha has several desirable features: the language is fairly neutral; additional information the defendant might need to know is listed on the back of the complaint; and, perhaps most importantly, defendants are given a person, a specific address, and a telephone number to call if they have questions. Another important point would be to clearly indicate that a defendant has a right, even if he owes or may owe a claim, to appear and request more time to pay or an installment order.

A major problem in assisting defendants with trial preparation and advice on counterclaims is that defendants generally do not appear in court until the trial day. Thus, the existing court mechanisms which have evolved to assist plaintiffs when they come to court to file a claim are of no use to defendants unless they make a special trip to court before trial to talk to the court clerk. The Cheyenne court was having a rubber stamp made which would imprint the following message on the defendant's copy of the complaint: "If you wish to defend this claim or have any questions, call the small claims court clerk at (listing telephone number)." A number of courts reported that increasingly they were getting calls from defendants for information. In only six courts was any written information provided for defendants, and this was usually in the form of subsections of pamphlets describing how to file a claim oriented

primarily to plaintiffs. The best practice seemed to be to put information for the defendant on the back of the defendant's copy of the complaint, as was done in Omaha and Washington, D.C., or to send a separate information sheet to defendants with their copy of the complaint, as was done in Eugene.

If lawyers are to be made unnecessary in most small claims trials, litigants need some resource to assist them in preparing to prosecute or to defend a claim. At the present time the best available public agency for providing this assistance seems to be the small claims courts themselves, as they are only agency with the obligation and the funding and staff specialization to provide this service. This is not to say that more detailed legal advice (particularly in malpractice cases or in identifying consumer law claims or defenses) will not be needed in some cases, which might be better provided by private attorneys, legal clinics, legal aid offices, or state attorney general's offices. A number of comments were made on our litigant questionnaires, however, that legal aid offices are not presently providing much assistance to small claims litigants.

One aspect of increased court-provided assistance to small claims litigants needs immediate attention. Courts must assume an obligation to actively reach out to provide effective assistance to defendants. The present practice of structuring court-provided assistance as a person to person service provided with the filing of a complaint has produced the result that this service primarily benefits plaintiffs and does not reach defendants. The effect of this assistance, then, is to add to the existing psychological bias of the system against defendants an imbalance in their preparedness for trial. Thus in increasing court-provided assistance to litigants, some basic restructuring of this assistance is needed so as not to further imbalance the process against defendants. As indicated above, some steps in this direction should include more even-handed and nonthreatening complaints, notice of a defendant's right to appear to question a claim or to request more time to pay, the name, address and telephone number of the court office to contact for assistance, and, on the back of the complaint or in a separate notice, basic information on how to defend a claim. Since most defendants do not presently make a special trip to court before the trial day, the emphasis might best be on telephone assistance to defendants or, in more complex cases, a pre-trial hearing before a legal officer which could be used to check that each side was aware of what types of proof would be required in that particular case.

A number of judges we interviewed recognized that a serious gap

existed with respect to court assistance to defendants. Several opposed the idea of stationing law students in the small claims intake section to assist with case preparation, on the grounds that it would tend to imbalance trial preparation in favor of plaintiffs even more than at present. A Spokane judge suggested the idea of a preliminary hearing before an ombudsman or lawyer to assist in setting cases, weeding out the weak cases, and making sure that the litigants understood the evidence and witnesses they would require for trial. This idea, however, would require at least three court appearances for plaintiffs by the time they got to trial, and two appearances for defendants. Its benefit to litigants would have to be weighed against the added complexity.

Several of the volunteer consumer counsels interviewed in the Manhattan court said that they felt litigants, particularly in complex consumer claims, often needed more than one-time legal advice and many really needed representation at trial. They pointed out, however, that legal aid offices were understaffed and could not handle small claims trials. They also felt that more extensive assistance was needed by elderly small claims users, since it often took them longer to tell their story and the court clerks did not have time to listen. One of the Harlem consumer advocates said that often after he had prepared a litigant for trial he would find that the litigant had forgotten all of the careful preparation by trial time and his case would fall apart. Since consumer advocates are not permitted to appear at trial with litigants, he suggested stationing a paid legal aid attorney in small claims trials to assist *pro se* parties if necessary. In Omaha the small claims rules authorized a standby counsel for *pro se* defendants who are unable to represent themselves effectively or to understand the claim to be ruled on by the judge, but this position had never been filled.

A last aspect in the question of how best to provide assistance to litigants deserves mention--the need for more public education on the requirements of the legal process. Several judges mentioned that businesses seemed to win more often on consumer claims because their cases were usually carefully documented. Businesses had all of the necessary sales slips, installment contracts, required notices, and so forth. Poor people, on the other hand, often do not know the importance of saving their paper work on consumer purchases and throw away their copies of sales slips, receipts for payments, security deposit receipts, and so on, so that they do not have necessary proof to pursue, or to defend, a consumer claim. Thus legal assistance before trial, or even at trial, is not the entire answer for the poor.

Service of Process

Serving a copy of the plaintiff's claim on the defendant was handled by a number of methods in the fifteen courts examined:

Bridgeport	Certified mail or private process server
Harlem	Registered mail, marshal, or private
Manhattan	Registered mail, marshal, or private
Washington, D.C.	Certified mail, marshal, or private
Grand Rapids	Certified mail or court officer
Minneapolis	1st class mail or private
Des Moines	Certified mail, sheriff, or private
Omaha	Certified mail, or court constable
Sioux Falls	Certified mail, sheriff, or private
Dallas	Personal by sheriff
Cheyenne	Personal by sheriff
Spokane	Certified mail, sheriff, or private
Eugene	Personal by sheriff
Sacramento	Certified mail, or court marshal

Service by mail, usually certified or registered mail, was used most often, with the option of personal service (handing the complaint to the defendant) by a sheriff, marshal, or a private process server if the defendant was not located by mail service. The advantage of mail service is its lower cost ($1.50 as compared with $2 to $10 for personal service by a sheriff or marshal). With certified or registered mail the postman is supposed to deliver the envelope containing the claim to the specific defendant named and have him sign for it. In a number of jurisdictions it is considered valid service if the defendant is handed the envelope even though he may refuse to accept it, and the claim can proceed to a default judgment. An increasing problem, compounded by cut-backs in postal staff and deliveries, is that some postmen will let anyone at an address sign for a certified letter, which is not good service if the defendant does not sign (or refuse to accept the letter) personally. Because of this problem, California no longer considers a refusal to accept service by certified mail as valid service, since it can no longer be assured that the post office reached the correct defendant when the certified letter was refused. While personal service by a sheriff or court officer is more expensive, it better ensures that the defendant did in fact

receive notice of the claim. Private service, either by a process server or other individual, was provided as an alternative in several courts. This type of service has been criticized as subject to possible abuse through "sewer service" tactics (filling out the affidavit saying the defendant was served, but throwing the summons and complaint in the sewer without serving them), but this was not raised as a problem in any of the courts we examined.

The importance of valid service cannot be emphasized enough, for if a defendant does not receive notice of a small claim against him and a default judgment is entered, the defendant may not find out about it until much later when the plaintiff attempts to attach his bank account or property, or the defendant discovers his credit rating has been ruined by having an unsatisfied judgment on his record. This type of error can be difficult to catch, as for example where court clerks are permitted to hand out default judgments without checking that the proper defendant did in fact receive service, and can be very difficult to reverse once a judgment is entered. A number of judges in various courts complained to us that the small claims case files they received for trial or for awarding default judgments were often disorganized, with the receipt for mail service often missing, or they could not decipher the handwriting on the return receipt form to determine whether the named defendant had actually been served.

Because of these potential problems with mail service, a number of court clerks said they suggested to litigants that mail service be used only for business or government agency defendants, and that personal service be used for all individual defendants. When mail service is used the return receipt is returned to the court and the plaintiff must then either call the court clerk to find out whether service was obtained in his case or wait until the scheduled trial day to find out. If mail service is not successful, the plaintiff can then try personal service by the sheriff or marshal. While solutions to problems with mail service are beyond the scope of this report, the possibilities for a serious miscarriage of justice are obvious. These could be reduced by repealing all existing rules that a refusal to accept a mail summons is good service, at least until such time as the postal service can assure that the proper defendant refused to sign a receipt. In addition, no default judgment should be granted unless a proper notice of service appears in the file and the judge is satisfied that the defendant did in fact sign the receipt. In all questionable cases personal service by a sheriff, marshal, or court officer in the defendant should be required.

Trial Scheduling

Usually when a plaintiff files a small claims complaint a trial date is set and appears on the complaint. This trial date is generally two to four weeks from filing to permit time for mail service on the defendant as well as some time for the defendant to prepare for trial. One exception to this practice was the Dallas court, where the defendant's copy of the claim ordered him to "appear Monday next after ten days from the date of service." This is very confusing since no date of service is listed on the summons. If the defendant is mistaken about the date and does not appear on the answer date, a default is entered against him (and the judge is none too lenient about reopening default judgments). Apparently the defendant is expected to call the clerk's office and verify the appearance date, but no phone number is listed on the summons. The sheriff does notify the plaintiff when service was made so the plaintiff, at least, will know when to appear in court, but the defendant is left in the dark.

The other exception was Eugene. No trial date was indicated on the summons there either. The defendant had ten days from the date of service to file a written answer to the claim, and if he did not and service was good the court clerk entered a default judgment against him on the eleventh day from service. If the defendant filed an answer the trial was scheduled thirty days from the answer date and the court notified the plaintiff and defendant of the trial date.

Table 5.3 indicates the six courts in our sample where the defendant in a small claims action was required to file an answer (a denial) of the plaintiff's claim. This practice of requiring the defendant to file a pre-trial answer to a small claim seems to be a vestige of the responsive pleadings used in regular civil court. Fortunately, all of the courts except Eugene would waive the answer requirement if the defendant did show up on the appearance day or trial day and denied the claim. The only justification for requiring an answer by the defendant before trial is that it enables the court to know in advance of the trial day exactly which cases will be contested. Theoretically, judges can then be scheduled for small claims trial duties on that day according to expected numbers of trials, if more than one judge is available for small claims duties in that court. This precision in scheduling of judge trial time is of course lost if despite the answer requirement a defendant can still appear on the trial day and contest the claim without defaulting. On balance it would seem that any administrative convenience to the court in requiring a pre-trial answer by defendants is clearly outweighed by the added complexity the

answer requirement adds for a defendant and the possibility of an unknown default by a defendant who does not understand this requirement.

Table 5.3 also indicates what happened on the first court appearance by the defendant in each of the fifteen courts. Usually it was the trial day, except in Des Moines, Dallas, and Cheyenne, where the first appearance is an "answer day." In those courts if the defendant has not filed a written denial or denied the claim by telephone, he must appear to deny the claim or he is in default. The plaintiff, however, need not appear. If the defendant does appear, the court clerk sets a trial date. As with the answer requirement, any added administrative convenience to the court seems to be outweighed by the added inconvenience of a wasted court appearance to defendants. A trial date should be clearly indicated on all summons and complaints, leaving adequate time for service, and both parties should be required to appear on that date for trial.

Table 5.3
Pre-Trial Requirements Imposed on Defendants

City	Answer Req. By Defendant	First Court Appearance of Defendant
Bridgeport	Yes; written, phone or appear	Trial day
Harlem	No	Trial day
Manhattan	No	Trial day
Washington, D.C.	No	Trial day
Grand Rapids	No	Trial day
Minneapolis	No	Trial day
Des Moines	Yes; file answer or appear	No trial; schedule trial date
Omaha	No	Trial day
Sioux Falls	Yes; written, phone or appear	Trial day
Oklahoma City	No	Trial day
Dallas	Yes; written, phone or appear	No trial; trial next day
Cheyenne	Yes; written, phone or appear	No trial; schedule trial day
Spokane	No	Trial day
Eugene	Yes; within 10 days of filing	Trial day
Sacramento	No	Trial day

Table 5.4 indicates the median elapsed days from the filing of a small claims case to disposition in the fifteen courts, derived from the 500-case sample in each court. This includes only those cases where service was made. Where no pre-trial or at-trial continuances were granted this elapsed time to trial ranged from a low of nine days in Spokane to a high of forty-eight days in Minneapolis, and the fifteen-court average was twenty-five days. In Spokane the trial date is generally set two weeks from the filing date, while in Minneapolis the trial date is set six to nine weeks from filing to give the parties time to talk and to possibly settle the case. Many of the judges we interviewed said that it was their observation that most small claims litigants had not talked to each other before meeting in court, and that once the claim was filed many plaintiffs became determined to let the court decide it. Accordingly, in light of the desirability of a speedy small claims process, it would seem to be a good idea to set the trial date no more than two to three weeks from filing so that resolution of a claim follows without any unnecessary delay.

Pre-Trial Continuances

Pre-trial continuances are a court-approved delay or postponement of a scheduled trial date. In every court each litigant had the right, after a claim was filed, to request one continuance of the trial date if, for example, he found he had to be out of town on the trial date, was in the hospital, and so forth. Usually the court clerk is authorized to grant one continuance to each side, but any further requests have to be approved by a judge. Most judges, as is discussed later, would also grant continuances at trial if one side needed additional time to bring in missing evidence or a necessary witness. As Table 5.4 indicates, continuances granted either before trial or at trial tended to double the elapsed time required to resolve a case. Several of the courts (Grand Rapids, Omaha, Oklahoma City, and Sacramento) were quite strict on granting continuances before trial and required the party requesting a continuance to make a showing of need. During the period of our study of the New York City small claims courts, the chief clerk was also in the process of more severely limiting pre-trial continuances in order to reduce the average time required for claims to reach trial.

Counterclaims

One other pre-trial procedure should be mentioned at this point, the

right of the defendant to file a counterclaim in response to the plaintiff's claim for damages. The fifteen courts varied on the point of whether a counterclaim had to be sent to the plaintiff in advance of the trial, or whether it could be raised for the first time at trial as follows:

Counterclaim Must be Filed in Advance of Trial	Counterclaim May Be Raised at Trial
Minneapolis: 5 days before hearing	Bridgeport
Omaha: 2 days before trial	Harlem
Sioux Falls: 2 days before trial	Manhattan
Oklahoma City: 2 days before trial	Washington, D.C.
Cheyenne: Before trial	Grand Rapids
Eugene: Within 10 days of filing	Des Moines
Sacramento: 2 days before trial	Dallas
	Spokane

Conflicting considerations operate in counterclaim procedures. On the one hand, the practice of permitting defendants to raise a counterclaim for the first time at trial reduces the chance that a defendant will lose the opportunity to file an off-set to a plaintiff's claim or to file a

Table 5.4
Elapsed Days from Filing of a Small Claim to Disposition

	Days Elapsed if	
City	No Continuance Granted	One or More Continuances Granted
Bridgeport	33	46
Harlem	23	45
Manhattan	33	59
Washington, D.C.	13	48
Grand Rapids	21	No continuances in data
Minneapolis	48	68
Des Moines	38	60
Omaha	19	33
Sioux Falls	27	45
Oklahoma City	21	29
Dallas	20	107
Cheyenne	14	22
Spokane	9	24
Eugene	22	47
Sacramento	28	45
Fifteen-court average	25 days	47 days

claim for related damages to be resolved in the same proceeding, either because he was not aware of his right to do so or because he missed the time requirement. This practice of allowing a counterclaim to be raised at trial also eliminates a pre-trial procedural requirement. On the other hand, raising a counterclaim for the first time at trial may catch a plaintiff unprepared to defend against the counterclaim. Several judges in a number of courts noted that in tenant security deposit cases a landlord would often appear at trial with a counterclaim for damages to the apartment and produce a sheaf of rug cleaning and painting bills as evidence. This usually caught tenants off guard as they had no way of verifying that the expenses were for repairing their apartment, or that any repairs had actually been made, and often the tenant was unprepared with proof that the premises had been left in good order. Most courts which permit counterclaims to be raised for the first time at trial will grant the plaintiff a continuance if he needs to get additional evidence or witnesses to defend against a counterclaim.

In all of the courts we examined, except Cheyenne and Washington, D.C., a counterclaim in excess of the statutory small claims dollar limit results in transfer of the case to the regular civil docket, where attorneys are needed. Several judges pointed out that the device of excess counterclaims was sometimes used to intimidate plaintiffs from pursuing a claim, since in the regular civil process they would need an attorney to continue, and even if they won the attorney's fees could eat up most of their recovery. Some judges, if an excess counterclaim required new proof, would give the defendant the choice of reducing the counterclaim to the small claims jurisdictional amount or bringing a separate suit in civil court. In Cheyenne and Washington, D.C., a counterclaim to a small claims case remains in small claims court and is tried under informal rules even if it exceeds the small claims limit. This would seem to be a good practice in that it eliminates the opportunity of using an excess counterclaim to shift a plaintiff's suit into more expensive and more formal proceedings.

Summary of Findings and Recommendations

Findings

- Many present small claims practices were developed to assist internal court operating efficiency with little or no thought given to their often adverse impact on the convenience of the public using the courts, or their potential for causing possible injustice to some litigants.

- The lack of clear listings in telephone directories or the absence of informational signs in municipal or court buildings makes it difficult for the public to find or contact some small claims courts.
- In filing a claim, plaintiffs presently receive inadequate assistance in determining the correct defendant and the defendant's address for service of the complaint, and finding out what type of proof will be required at trial for particular types of claims.
- Small claims clerical staff need specialized knowledge about filing and service requirements and evidentiary requirements for particular types of actions in order to effectively assist litigants. Multiple nonsmall claims duties seem to interfere with clerical staff abilities to assist small claims litigants.
- Full-time clerical or paralegal assistance to litigants seems to work better than volunteer systems in assuring adequate coverage.
- Judicial concern over unauthorized practice of law by court clerks hinders effective clerical pre-trial assistance to litigants in some courts.
- Most small claims courts provide fairly extensive trial preparation advice to litigants, but because this assistance is structured in the intake and filing process it tends to presently benefit plaintiffs almost exclusively.
- The effect of the language used in most small claims summonses and complaints is not neutral but is antidefendant. Most complaints do not inform defendants of their right to appear to question a transaction or claim, their right to request an installment judgment if they need more time to pay a claim, or the availability of small claims clerical or other assistance in answering questions or preparing for trial.
- Providing more extensive in-court trial preparation assistance to small claims litigants without restructuring this assistance so that it is equally accessible to defendants will tend to further imbalance the existing small claims process against defendants.
- Getting good service of a complaint on a defendant was the problem most reported by plaintiffs. In many courts almost one-half of the small claims filings never reach trial because of the lack of good service.
- Mail service is not always effective in ensuring that the named defendant actually receives (or refuses to accept) a complaint. In any doubtful case, secondary personal service should be used.
- In some courts default judgments were issued without proper proof that the defendant was served.

- Some small claims courts require the defendant to make a pre-trial answer appearance in order to avoid default. This requirement can result in a wasted trip to court by the defendant or unintentional defaults.
- Some complaint forms do not clearly indicate a specific date and time for trial, which can cause unintentional defaults.
- Small claims courts are speedy; the average time from filing of the claim to trial was twenty-five days in the fifteen courts examined.
- Pre-trial continuances should be limited to cases of demonstrated need, for where granted they tend to double the elapsed time to trial.
- Scheduling trials further than a few weeks from filing to give the parties more time to settle the dispute out of court does not seem to work. In the absence of external pressure to settle, litigants do not generally try to settle once a case is filed.
- A few defendants use the device of filing a counterclaim in excess of the small claims jurisdictional amount to intimidate plaintiffs or to shift the proceeding to formal civil court where the plaintiff will need a lawyer and his costs will be higher.

Recommendations

- Small claims courts should be separately listed under "small claims courts" and in the most frequently called numbers section of the telephone directory, not just as a branch of a regular civil court which the public may not know how to find.
- Court facilities should have clearly marked signs (bilingual if appropriate) indicating directions to the small claims intake office and courtrooms.
- Intake sections should have business license directories available to assist plaintiffs in identifying the name and address for service of business defendants.
- Small claims clerks should receive some specialized paralegal training in providing trial preparation advice and assistance to litigants and staffing should be arranged so that this assistance is readily available during office hours.
- Complaint forms should be even-handed in their language, clearly indicate a date and time of trail, and inform the defendant of his right to appear to question a transaction or claim, his right to request an installment order, the availability of court-provided assistance with trial preparation, and a phone number to call.
- Court-provided assistance to small claims litigants should be restruc-

tured so that it is equally accessible to defendants. This could include basic information on the back of the complaint or a supplementary informative sheet setting out the types of evidence which can be used to defend various types of claims, phone numbers for the small claims office or other informational source (such as legal aid or volunteer bar programs), and organizing small claims staff to provide telephone assistance to defendants.

- It must be recognized that court-provided litigant assistance cannot meet all litigant needs. Public education on the importance of saving documentation of consumer, housing and loan transactions, repair estimates, and warranty materials is needed. Some litigants will also need legal assistance beyond basic trial preparation advice, particularly in complex cases.
- No default judgment should ever be issued without proof of proper service. Personal service by court officers answerable to the court should be required in all questionable cases.
- All pre-trial answer requirements should be eliminated in small claims cases.
- Excessive counterclaims should not shift a case out of small claims court except upon judicial review and order.

6.
The Trial

This chapter will turn to the trial day itself. It will discuss the scheduling of cases on trial day, the use of weekend or evening hours and special trial dockets and the actual conduct of small claims trials.

Scheduling of Cases on Trial Day

While case scheduling would seem to be a fairly simple matter, the particular method used can have a great impact on the litigants who are to appear for trial. Table 6.1 shows how the fifteen courts scheduled their small claims cases on trial day and Table 6.2 indicates the length of trial intervals for which cases were scheduled. In the Washington, D.C. court, for example, all small claims cases were scheduled for trial at 9:00 a.m. Obviously it was impossible to try all of the cases at that hour as there were often 300 to 400 cases listed for trial on a given day, but it was done because it is more convenient for the court clerk to get all of the defaults (cases where the defendant did not appear) out of the way at one time. At 9:00 a.m. the clerk in the District of Columbia court called the calendar, reading off the names of the parties on all cases listed for trial on that day where a notation appeared on the list that service has been made in that case. When a case was called, if the defendant was not present the clerk granted default judgments on all claims where the exact amount of damages was proven by documentation in the claim file (such as a signed note or unpaid bill). If the damages claimed were open to some question (such as a faulty repair or an automobile negligence claim), those default cases had to go before the judge who heard testimony and evidence on damages before setting a judgment amount.

The District of Columbia small claims court clerk estimated that, of an average of 300 cases listed for trial on a given day, roughly half were not ready for trial because no service had been made on the defendant. Of the 150 cases where service had been made, approximately ninety were defaults and sixty would be contested. Of these sixty contested cases, fewer than half would require full trials and others would work

out settlements in court either while waiting for trial (at the urging of the judges) or at trial. It required quite a bit of time for the court clerk and judge to process ninety default cases, and the judge generally would ask the parties waiting for contested cases to try to settle the cases during the waiting time while the defaults were being processed. Litigants were told that if they wanted a trial before the judge they would have to wait until their cases were called later in the day. After the defaults were completed the judge began hearing the contested cases. While the court clerk tried to give waiting litigants a rough idea of when their case will come up, sometimes extensive waiting was involved. Cases not reached for trial by 5:00 p.m. when court was adjourned were continued over to the next day for trial and moved to the head of the trial list. On Wednesdays an evening session was held in addition to the regular day session, and cases scheduled for the day could be listed for trial in the evening session if the parties agreed.

Table 6.1
Scheduling of Small Claims Trials

City	Schedule
Bridgeport	Mon./9:30 a.m.; trials run all day
Harlem	Thurs./6:30 p.m. until finished
Manhattan	Mon., Tues., Wed., Fri.,/6:30-10:00 p.m.
Washington, D.C.	Mon.-Fri./9:00 a.m.-5:00 p.m.; Wed./6:00-10:00 p.m.
Grand Rapids	Wed./10 cases scheduled every half-hour from 1:30 p.m.
Minneapolis	Mon.-Fri./9:15 a.m., 10:30 a.m., 2:00 p.m., 3:00 p.m.
Des Moines	Mon.-Fri./9:00 a.m., 10:00 a.m., 1:30 p.m.
Omaha	Mon.-Fri/2:00 p.m. until finished
Sioux Falls	Thurs./1:30 p.m. at 45-minute intervals
Oklahoma City	Thurs./9:00 a.m.; trials run all day
Dallas	Mon./10:00 a.m., Tues./10:00 a.m., 11:00 a.m., 2:00 and 3:00 p.m.
Cheyenne	Calendar call Mon.-Fri. 10:00 a.m., trials scheduled at convenience of defendant
Spokane	Mon./9:00 a.m., 1:30 p.m., Wed./1:30 p.m., Fri./9:00 a.m.
Eugene	Mon./9:00 a.m. (collection agencies), 10:00 a.m. (non-collection agencies)
Sacramento	Mon.-Fri./8:30 a.m.; try to end at 10:00 a.m.

A better method of scheduling cases on trial day is to schedule a number of cases for a time certain. In Sioux Falls, for example, small claims cases were scheduled at 1:30 p.m. and at forty-five minute intervals thereafter. Each plaintiff and defendant was notified by the court before trial day of the time he should appear on trial day—1:30, 2:15, 3:00, and so on. Since the court clerk had a rough idea of which types of cases would be defaults (a business account owed by an individual defendant, for example) and what percent of cases were likely to be defaults, he scheduled the probable defaults plus one or two probable contested cases for 1:30 p.m. and spread the remaining probable contested cases out over as many additional forty-five minute trial intervals as were necessary, at a ratio of three contested trials per forty-five minute interval. This method greatly reduced the time litigants had to wait in court for their case to be heard. Trials were also scheduled at specific intervals in the Grand Rapids, Minneapolis, Des Moines, Dallas, Spokane, and Eugene courts.

Table 6.2
Scheduling of Cases on Trial Day

City	No. of Calendar Calls	Length of Scheduled Trial Intervals	No. of S/C Trial Parts Operating
Bridgeport	1	All day	1 judge
Harlem	1 (eve.)	3 ½ hours	1 judge; 1-3 arbitrators
Manhattan	1 (eve.)	3 ½ hours	1 judge; 3 or more arbitrators
Washington, D.C.	1	All day	1 judge
Grand Rapids	1 or more	½ hour	1 judge
Minneapolis	4	1 hour	1-2 lawyer/referees
Des Moines	3	1 hour	4-6 judges
Omaha	1	3 hours	1 judge
Sioux Falls	1 or more	¾ hour	1 judge
Oklahoma City	1	All day	3-4 judges
Dallas	4	1 hour	1 judge
Cheyenne	1	1 hour	1 judge
Spokane	2	3 hours	1 judge
Eugene	2	2 hours	3 judges
Sacramento	1	1 ½ hours	4-6 judges

Trial scheduling is another example of the tension between administrative efficiency and public convenience. Having only one calendar call and letting the litigants wait all day maximizes the efficient use of judge time, since as soon as one case is finished another trial can begin at once without any "down time" for the judge. However, the price paid is greatly increased waiting for the litigants. Advance scheduling of trials at specific intervals, on the other hand, reduces the time litigants must wait on trial day, but may result in inactive periods for a judge if sufficient contested cases have not been scheduled to fill each trial interval.

As Table 6.2 indicates, some of the larger courts tried to reduce waiting time for litigants on trial day by operating two or more trial parts at one time in order to finish up the small claims earlier in the day. Des Moines, for example, not only scheduled cases for trial at 9:00 a.m., 10:00 a.m., and 1:30 p.m. on each day, but also operated four to six small claims trial parts as needed for the estimated caseload on a given day. Sacramento used perhaps the best system for reducing litigant waiting time during working hours, by calling all cases at 8:30 a.m. and operating four to six small claims trial parts simultaneously so that all litigants could be reached quickly. In Sacramento the number of trial parts scheduled was based on the projected contested cases for a given day, with the target of completing all trials by 10:00 a.m. Sacramento also separated out all defaults to a separate trial part so that litigants in contested cases did not have to wait around while the default judgments were handled.

The Harlem and Manhattan small claims courts had also developed a good system for reducing time lost from work by litigants. In those two courts, as in all New York City small claims courts, all trials were scheduled for 6:30 p.m. Litigants were given their choice of a trial before a judge or binding arbitration before a lawyer-arbitrator. In each court a judge handled small claims trials, supplemented by one to three lawyer-arbitrators in Harlem and three or more arbitrators in Manhattan. "Proving-up" of liability and damages in default cases was handled by the lawyer-arbitrators between their trial duties, enabling the judge to concentrate exclusively on contested cases for those litigants who wanted a trial before a judge. Because of these adjudicative resources mustered for trial, generally all trials were able to be completed by 10:00 p.m. or sooner in Harlem and Manhattan. The worst situation for litigants was in the Washington, D.C. court where only one judge was assigned (from a forty-four judge court) to handle one of the largest

small claims caseloads in any court in the country and with no provision for additional back-up trial parts.

One other practice requires mention at this point, and that is moving cases where lawyers are involved to the front of the trial list so that they are reached before cases involving *pro se* litigants. Despite the fact that we had heard that this was a fairly common practice in some rural country or justice of the peace courts, of the fifteen courts we surveyed only the Minneapolis court did this. Interestingly, the administrative judge of that court told us (and we have every reason to believe, in good faith) that this was not done. The lawyer-referees who heard cases in that court, however, reported that attorney cases were always first on the trial list. When questioned about this, the court clerk reported that he did shift attorney cases to the top of the trial list, since the attorneys often had other court appearances scheduled on the same day and could not afford to wait. According to the clerk this practice had been followed for as long as he could remember, and he had never been specifically ordered not to do it. While as indicated earlier this trial scheduling practice can reduce attorney time spent on small claims cases and thus perhaps attorney cost to litigants in those cases, it can also give the impression to litigants (whether true or not) that they will receive second-class treatment unless they can afford to have an attorney to represent them.

Evening and Weekend Small Claims Trials

Only three of the fifteen courts that were studied used evening small claims trial sessions. In Manhattan and Harlem all small claims trials were scheduled from 6:30 p.m. until 10:00 p.m. and in Washington, D.C., an evening session was provided on Wednesdays from 6:00 p.m. to 10:00 p.m. In Washington, D.C. small claims trials could also be scheduled on Saturdays, with the consent of both parties and the consent of the court, and the trials were sandwiched in between juvenile cases and criminal arraignments. Evening sessions were requested much more frequently than the Saturday session in Washington. The Grand Rapids court had experimented with an evening session for a six-week period, but reported that there was not much call for it, and the Eugene court was contemplating an evening session during our visit.

As is noted later, both the plaintiffs and the defendants in the fifteen courts ranked evening sessions as their second priority among six proposed features for small claims reform. One possible explanation for the reported lack of interest in evening sessions in Grand Rapids is that

only the plaintiffs were asked whether they wanted the trial scheduled in the evening, and more plaintiffs (than defendants) are business users who would just as soon handle their small claims during business hours. Another factor is that in Grand Rapids the judges and court clerks staffing the evening session were not given compensatory time off and not only disliked the added evening duty, but may not have encouraged litigants to use it. By contrast, in New York City judges and small claims staff are given compensatory time off for staffing the evening sessions, and they were very positive about the practice of evening sessions.

Specialized Trial Dockets for Collection and Default Cases

Many of the more recent small claims reforms, such as barring assignees, collection agencies, or corporations, or imposing filing limits, have as their purpose the preservation of the small claims process for individual (i.e., noncollection, noncorporate, non-big) users. The rationale behind this purpose seems to have several aspects. One concern is that frequent users may push out individual users of these courts. As Chapter 3 indicated, we found this was not true. Individual usage per 100,000 population was just as high or in some cases slightly higher in those courts that permitted everyone to use the small claims process as it was in the courts that barred collection agencies, corporations, or insurers, or imposed filing limits. Additionally, since most mass filers have completed all the necessary paper work before coming to court to file, they tend not to require as much clerk time or to cut into the availability of in-court assistance to individual litigants in proportion to the number of their filings.

A moralistic tone which we have heard stated as "the court system should not be a party to efforts of businesses to collect bills owed them by poor people" sometimes seems to underly the effort to impose limitations on access to small claims courts. It should be noted, however, that the early authors of the small claims concept in the United States, far from intending the small claims process to be restricted exclusively to use by the poor, specifically contemplated an inexpensive, fast, and informal process that could be used by small businesses, tradespeople, and wage earners to collect amounts owed them. One factor must be reemphasized--that the judges we spoke to were virtually unanimous in pointing out that individual defendants appearing *pro se* to oppose a business claim were virtually helpless in the other alternative to small claims court, the formal civil court, without an attorney.

One other aspect of the concern about business use of the small claims court deserves comment. A few of the knowledgeable individuals who helped us plan this study were of the opinion that heavy business use of small claims courts could "chill" individual use or potential individual use of these courts in another way. They feared that an individual who had been sued in small claims court a number of times by merchants on unpaid bills, or landlords, might well perceive the small claims court as an instrument of these business users, and because of this perception not think of using the court himself when a situation arose when he felt he had a grievance against the same or another business, landlord, or individual. The data from our litigant questionnaires do not shed much light on this concern, but it does seem reasonable that this result could happen in the case of at least some defendants. It is also likely, however, that some individual defendants would not distinguish being sued in the past in small claims court from being sued in the past in regular civil court, so that forcing business users into regular civil court instead of small claims court is not likely to prevent or reduce distrust of the small claims court. To the extent that this problem exists the solution would seem to lie in assistance by neighborhood consumer counseling groups, and particularly word of mouth recommendations by persons who have used the small claims court sucessfully, to reassure former defendants that they can get even-handed treatment if they bring a suit in small claims court.

Leaving this larger question aside, once an individual is in court awaiting trial it is reasonable to expect that his self-assurance is not increased by having to sit through a succession of default judgments. Since a large proportion of defaults are in favor of business users and are quickly concluded, it could well give the impression that the court favors businesses. The common practice of hearing default cases first does in fact favor plaintiffs in those cases from the standpoint of the time they must spend in court, since default plaintiffs are accommodated first while the litigants in contested cases must wait. Our analysis of a random sample of 5,324 cases from the fifteen courts indicated that 44 percent of small claims cases were defaults, so we are talking about a significant proportion of the caseload. As is indicated later on in this chapter, we believe that it is important for every default case to be subjected to careful scrutiny by a judge or arbitrator as to proper service on the proper defendant and proof of liability and damages before a judgment is issued. Since even-handedness or fairness is an important goal of the small claims process, we believe that all cases should be

handled in the numerical order of their docket numbers, not favoring default plaintiffs or cases where attorneys are present over contested cases or cases involving laymen.

A possible solution to the impact of mass-filer cases had been developed in a number of courts by scheduling specific types of cases on separate dockets, either to reduce the impact of these cases on individuals waiting for trial or to bring more expertise to bear on a group of related cases. Manhattan, Harlem, and Sacramento separated default cases from the contested cases and tried them separately (by lawyer-arbitrators in New York and by a separate judge in Sacramento). In this way the contested cases could be reached for trial at once, and litigants did not have to wait while judges attended to the proving-up of defaults. In both Minneapolis and Eugene, collection agency cases were scheduled separately, and mass-filer business cases were separately scheduled in Spokane and Sacramento. This approach seems to be a better alternative than barring assignees or business plaintiffs or imposing filing limits in small claims court, since *pro se* defendants appearing in these cases have much more of a chance under the informal small claims procedure than they would in formal civil court, the costs added to the judgment are lower, and defendants can request to pay a judgment in installments only in small claims court.

Other Specialized Trial Dockets

Another innovation was "dry cleaning day" in Minneapolis. Dry cleaning cases occur fairly often in small claims courts and are often difficult for judges to handle, since judges lack expertise on what caused the damage and the reasonable value of damaged garments. In Minneapolis all dry cleaning cases were scheduled on one trial day at three-month intervals. The dry cleaning industry provided an expert, who examined each garment and informed the referee as to whether the job was up to industry standards. One lawyer-referee reported that this expert seemed to be fairly impartial and ruled against the dry cleaners as often as not. Federal regulations on the depreciation of different types of garments were then applied to the purchase price to arrive at the value of damaged clothing.

Minneapolis also scheduled all automobile negligence and repair cases for afternoon calendar calls in order to give litigants more time to bring in the witnesses often required in these cases, but no special expertise was provided. That court was also in the process of establishing a

separate trial docket for landlord-tenant cases, which would be handled by one or more regular judges instead of the lawyer-referees which handled the rest of the small claims caseload. This special "housing calendar" was planned because landlord-tenant legislation tends to be fairly complex and provides for punitive damages in some circumstances. Because the lawyer-referees generally served only a few times a month, and were not always familiar with applicable landlord-tenant statutory provisions, they had reached inconsistent judgments in several of these cases. Accordingly, the Minneapolis court wanted to improve the quality of decisions in this area by having one or more judges specialize in it.

The Effect of Appearance and Nonappearance

Table 6.3 illustrates the result if the plaintiff or defendant fails to appear on trial day, or if both do not appear. In all of the courts if the plaintiff appeared but the defendant did not, a default judgment was entered against the defendant. If on the other hand the defendant appeared but the plaintiff did not, in only four courts (Bridgeport, Des Moines, Eugene, and Sacramento) could the defendant win by putting on proof and getting a judgment in his favor. In all of the other courts the plaintiff's case was dismissed without prejudice; the plaintiff could still file again on the same claim. A small claim which has not been dismissed with prejudice can also still damage the credit rating of a defendant, and if the plaintiff refiles, the defendant must again come to court or be in default.

If neither side appeared on trial day, the general practice was to dismiss the case without prejudice. In four courts (Bridgeport, Des Moines, Dallas, and Cheyenne), however, a default judgment would be entered against the defendant by the court clerk even though neither side appeared. A potential danger with this procedure is that the litigants may not have appeared because they settled the claim before trial. Since it is presently the obligation of the plaintiff to notify the court if he has been paid, and as procedures for this tend to be very slipshod, it is possible for the clerk to issue a full default judgment on a claim that has already been settled or which has been partially paid. In Bridgeport and Des Moines, where neither side appeared default judgments were entered only on claims where there was a bill or other supporting documentation in the file. Des Moines also required that the plaintiff request a default judgment, to guard against defaults inadvertently being entered where a case

had been settled before trial. In Dallas and Cheyenne, however, default judgments were issued on the complaint alone, the theory being that the complaint is a sworn affidavit which should be an adequate safeguard.

The goal of even-handedness and fairness should require, we believe, that the small claims procedure make no greater demands of one side than of the other. If a plaintiff is permitted to win without the defendant being present, defendants should be given the chance to put on proof and receive judgments in their favor if the plaintiff is not present. The same standard of even-handedness would also seem to dictate that no party to a dispute could receive a judgment in his favor if he had not attended the

Table 6.3
Effect of Failure to Appear at Trial

City	Plaintiff Appears; Defendant Does Not[1]	Defendant Appears; Plaintiff Does Not[1]	Neither Side Appears[1]
Bridgeport	D defaults	Judgment for D. if puts on proof	D defaults if proof on file
Harlem	D defaults	Dismissal W/O/P[1]	Dismissal W/O/P
Manhattan	D defaults	Dismissal W/O/P	Dismissal W/O/P
Washington, D.C.	D defaults	Dismissal W/O/P	Dismissal W/O/P
Grand Rapids	D defaults	Dismissal W/O/P	Dismissal W/O/P
Minneapolis	D defaults	Dismissal W/O/P	Dismissal W/O/P
Des Moines	D defaults	Judgment for D, unless P has proof on file	D defaults if proof on file
Omaha	D defaults	Dismissal W/O/P	Dismissal W/O/P
Sioux Falls	D defaults	Dismissal W/O/P	Dismissal W/O/P
Oklahoma City	D defaults	Dismissal W/O/P	Dismissal W/O/P
Dallas	D defaults	Dismissal W/O/P	D defaults
Cheyenne	D defaults	Dismissal W/O/P	D defaults
Spokane	D defaults	Dismissal W/O/P unless D puts on proof	Dismissal W/O/P
Eugene	D defaults	Judgment for D, if puts on proof	Dismissal W/O/P
Sacramento	D defaults	Judgment for D, if puts on proof	Dismissal W/O/P

[1]P, plaintiff; D, defendant.
[2]W/O/P: without prejudice, plaintiff can refile the claim.

adjudication. Adequate proof, including proof that the defendant was properly served, proof of liability, and proof of damages should be required to be presented before a judge in every case before any judgment, including a default, is awarded by a court.

Default Judgments

Table 6.4 sets out the proof required before a default judgment would be granted in each of the fifteen courts. The procedure with the best safeguards for defendants is to treat a default situation like a contested trial and require the plaintiff to prove both the liability of the defendant and that the damages claimed are accurate or reasonable. This procedure is followed in most small claims courts, but most of the court's attention is focused on ascertaining that the damages requested are accurate or not unjustified. Generally, not as much attention is paid to establishing liability in defaults as in contested cases. The implication seems to be that, because the defendant did not appear to contest a case, it can be taken to indicate that he does not contest his liability for the claim.

While this assumption may be valid in some defaults, or even most default cases, the danger always exists that a defendant either did not receive notice of the claim against him, or did, but forgot or misconstrued the trial date. (As indicated earlier not all courts indicated a trial date on the defendant's copy of the summons and complaint, and some complaints were confusing as to exactly when the defendant should appear for trial.) In order to give defendants a chance to correct an unwarranted or inadvertent default, all of the courts had some provision for reopening default judgments. In Cheyenne and Omaha, after the calendar call defendants were given an extra hour to appear before a default would be entered. In addition, in most courts defaulting defendants were given a grace period in which they could move to reopen or set aside a default on a showing of good cause why they were not able to appear on the trial date (Minneapolis, 10 days or six months if no service; Spokane, 20 days or one year if no service or fraud; Omaha, 30 days; Eugene, 60 days). In Grand Rapids, defendants could come to court after a default and either file a motion for rehearing or request that the default judgment be paid in installments. While this would stop any subsequent garnishment of their wages, it would not prevent garnishment of a bank account.

While none of the fifteen courts reported many cases of default defendants alleging that they had never been served with notice of a

claim against them, this can be a very serious problem if it does occur. If a defendant does not receive notice of a claim, he will usually have no idea that he has an unsatisfied judgment listed on his record until he tries to obtain credit, or the judgment creditor garnishes his bank account or wages. At this point it can be both difficult and costly to undo the damage done by the improper judgment. A significant number of small claims case folders which we examined did not include a return receipt showing service on the defendant, or the writing was so illegible that a judge or clerk would not be able to determine whether the correct defendant had accepted service. While this is not as much of a problem in contested cases if the correct defendant does appear to defend a claim, no default judgment should ever be granted unless it is clear that the named defendant is the correct defendant, and that he did receive proper notice of the claim.

Of our sample of fifteen courts, Sacramento seemed to have the best system for handling defaults. First, all defaults were separately tried before a designated judge so that they would not slow up the trial of contested cases. Second, California law required the proving up of all defaults, including checking for proper service, ascertaining the defendant's liability, and checking to see that only permissible damages were

Table 6.4
Proof Required for a Default Judgment

City	Proof
Bridgeport	Documentation required in case file
Harlem	Proof before arbitrator
Manhattan	Proof before arbitrator
Wahington, D.C.	Proof before judge
Grand Rapids	Proof before judge
Minneapolis	Proof before referee (except for collection agency with attorney)
Des Moines	Documentation required in file
Omaha	Proof before judge
Sioux Falls	Proof before judge
Oklahoma City	Proof before judge
Dallas	None
Cheyenne	None
Spokane	Proof before judge
Eugene	None
Sacramento	Proof before judge

claimed. The judge handling defaults also handled all motions to reopen defaults which provided some monitoring of claims of improper service or fraudulent claims.

In most of the courts collection agencies and business claims were not scrutinized as closely as individual claims, since business claims tend to be supported by documentation establishing *prima facie* liability, such as signed sales slips or purchase agreements, and the claimed damages are usually exact damages specified by the contract. One problem with the concept of *prima facie* liability is that it usually glosses over all questions of whether federal or state consumer protection requirements or preconditions to liability were met, or whether the underlying transaction was fair, although this is a problem in contested cases as well if the defendant does not raise these specific defenses to liability. Additional problems can arise in default cases filed by individuals since *prima facie* liability may not be clear-cut ("the defendant said he would repair my roof") and the damages may be unliquidated ("I paid him $500 for the job and he didn't finish it"). Judges also reported that inexperienced plaintiffs often added nonallowable items of damage to their claims, such as lost wages to appear in court, mileage to the court, and so forth.

Table 6.5, showing award as a percentage of the claim for contested cases versus default judgments, indicates that both individual plaintiffs and business and corporate plaintiffs received a higher percentage of their claims on default judgments than on a judgment awarded after a contested trial. In part, this may be due to the fact that defendants may default more often, the stronger the case is against them. In other words, default cases may on the average have been more clear-cut both as to liability and damages than contested cases. Another explanation, however, is that defaults were generally not examined as carefully as contested cases (and not at all in three of the courts) and so unproven damages were not reduced as often as in contested cases.

We also found that business and corporate plaintiffs received a slightly greater percentage of their claim on default judgments than did individual plaintiffs. Again two possible factors may be operating here. Generally, business cases are more carefully documented (with bills owing, installment sales contracts, and the like) than are individual claims, but also many courts do not scrutinize business claims as carefully as they do individual claims before granting defaults.

The worst practice, from the standpoint of possible injustice to the defendant, is to grant a default judgment on the plaintiff's claim without requiring supporting documentation of either liability or damages. In

Dallas, one of the three courts where this is done, the judge admitted that he felt uneasy about this practice even though it was fully authorized by statute. A number of judges in courts where proving-up of defaults before a judge was required said they disliked default judgments and would "fly speck" the papers to see that every necessary technical requirement had been met. Occasionally this process would catch the fact that someone other than the defendant had signed the receipt of service, and that the action was therefore invalid. Since the effect of a default judgment is every bit as onerous as that of a carefully considered judgment handed down after a contested trial (and may be worse if there was improper service which goes undetected by the court), justice requires that default judgments be given equally careful consideration before they are imposed by a court.

Dealing with Evidentiary Defects at Trial

Since small claims court is one area of our judicial system that was specifically designed so that it could be used without an attorney, it is reasonable to expect that many small claims litigants will do so. As indicated earlier several features have been incorporated into the small claims process to assist laymen with pursuing or defending small claims. Establishing (or defending against) a legal cause of action is assisted by

Table 6.5
Award as a Percentage of Claim:
Contested Cases versus Default Judgments[1]

Type of Case	Individual Plaintiffs				Business/Corporate Plaintiffs			
	Contested		Default		Contested		Default	
	%	No.	%	No.	%	No.	%	No.
Consumer as plaintiff	68	(153)	94	(84)	65	(52)	100	(6)
Seller as plaintiff	85	(94)	98	(89)	95	(476)	99	(1216)
Landlord-tenant	71	(193)	94	(93)	74	(58)	97	(48)
Damages	79	(235)	93	(97)	70	(61)	96	(16)
Other	81	(102)	98	(63)	90	(126)	99	(260)

[1] Average of fifteen courts (3,522 cases).

the elimination of responsive pleadings and is left to the trial itself where the litigants can be assisted by a trial judge playing an active role in drawing out facts necessary to establish a legal cause of action, or defense. Pre-trial discovery has also been eliminated and pre-trial clerical assistance and instructional materials are used to inform litigants of the various types of evidence typically needed to prove liability and damages in different types of cases. At trial formal evidentiary rules are relaxed and the trial judge is given broad discretion to assist litigants in laying out their side of the dispute. Given the variability in the quality of pre-trial clerical advice and instructional materials (particularly the present lack of effective assistance to defendants) and the variations in the prior small claims or legal experience of litigants, it can reasonably be expected that a number of litigants will reach the trial stage before they discover that they are missing a particular piece of evidence (or supporting witness) necessary either to prove their claim or to establish a defense.

Since small claims judges are given broad statutory powers to deal with problems of this sort, a number of different judicial responses to this situation have developed. Table 6.6 indicates three of the methods which various courts (or in some cases individual judges) have developed for dealing with evidentiary defects at trial. The most common remedy is to grant a continuance at trial (reschedule the trial to a later date) to give the side which is missing a key piece of evidence or supporting witness a chance to bring in the necessary proof. Since granting a continuance at trial in effect gives a plaintiff a second chance at proving what would otherwise be a losing case, or a defendant a second chance at establishing a defense or a set off to damages, most judges would not grant a continuance at trial unless pivotal evidence was missing and it appeared that it was available. As Table 6.6 indicates, most judges in nine of the fifteen courts would grant continuances at trial in these situations.

Of the six courts that did not generally grant continuances at trial three (Harlem, Manhattan, and Minneapolis) primarily used lawyer-arbitrators or lawyer-referees who did not handle small claims trials on a regular (weekly or longer) basis. This staffing system meant that it was usually not possible for the arbitrator or referee who heard the first part of a continued case to hear the rescheduled portion, and so continued cases had to be completely repeated before a new judge, arbitrator, or referee. Because of this problem, in those courts using continuances at trial most judges would try to reschedule their continued cases within

their own term of small claims trial duty. The Omaha court in fact had a rule that original trial judge must keep all of his continued cases even if his two-week small claims duty cycle had ended. We believe that this is a good practice.

Some judges in granting continuances would weigh the fact of whether the other side was losing wages by appearing in court, and a few tried to minimize the time lost to litigants in reappearing for trial by rescheduling continued cases in their chambers at a time certain, or on the same day if possible. Some judges would also grant at trial continuances for *pro se* litigants, but not for collection agencies or mass filers. As a judge in Eugene put it, "they should know what to bring to trial." Still others felt "a case had to be worth it" (i.e., substantial damages claimed) and the party lacking the evidence or witnesses had to have good reasons why they were not in court.

In Grand Rapids, Omaha, and Oklahoma City the judges split on whether they would grant continuances at trial. Generally those judges who were most resistant to granting continuances tended to treat small claims trials more like regular civil trials and, as in civil trials, viewed the trial day as "D day." That meant that litigants had to come fully

Table 6.6
Dealing with Evidentiary Defects at Trial

City	Continuances at Trial for Additional Evidence	Phoning Witnesses	Evidentiary Inspections by Judge
Bridgeport	Yes	No	Yes
Harlem	Very rare	No	No
Manhattan	Very rare	No	No
Washington, D.C.	Yes	No	No
Grand Rapids	Some judges	No	Some judges
Minneapolis	Very rare	No	No
Des Moines	Yes	No	No
Omaha	Some judges	No	Some judges
Sioux Falls	Yes	No	No
Oklahoma City	Some judges	No	Some judges
Dallas	Yes	Yes	Yes
Cheyenne	Yes	No	Yes
Spokane	Yes	Some judges	Some judges
Eugene	Yes	Yes	Some judges
Sacramento	Yes	Some judges	Yes

prepared for trial or run the risk of losing if they were not. A judge in Omaha said he thought that in about 75 percent of the requests for continuances the missing evidence did not exist and the request was a stalling maneuver. It is important to realize that many inexperienced litigants do not know enough to ask for a continuance when they discover that a supporting witness or other evidence is needed, and if a trial judge is not sensitive to this possibility the litigants could lose an otherwise good claim or defense.

Quite a few judges handled missing witness situation by letting litigants testify to what their supporting witness would have said if they were present, so long as that "hearsay" testimony was not disputed by direct testimony. In four courts (Dallas, Spokane, Eugene, and Sacramento) at least some of the judges would telephone missing witnesses from court to verify a litigant's story. Because of due process considerations this was generally done only in the case of a disinterested witness not related to either side, and both sides had to agree to it. The judge in Dallas would put both litigants on a conference call with the out-of-court witness so that they could question the witness if they wished. While some judges we questioned about this practice were aghast at the informality of it, a surprising number said they felt it could be useful in some circumstances, but that the idea had never occurred to them.

In five of the courts some of the judges reported they would go to the parking lot to verify automobile damage or to inspect paint jobs if estimates were lacking. A few also reported that they had visited vacated apartments to verify the damages claimed in tenant security deposit cases, if they suspected fraud by a landlord, and one sent his court baliff to check out damages. During one trial that we observed in the Harlem court a plaintiff and his neighbors carried an entire set of sofa and chairs into court to substantiate a claim that the merchandise was improperly upholstered.

Judicial Participation in Settlement at Trial

The question of encouraging settlement at trial provoked intense disagreement among small claims judges as to their proper role. Two aspects of settlement must be distinguished: one is pushing the litigants to agree on a settlement between themselves as an alternative to a trial and a judicial decision; the other is assisting the litigants to work out a settlement at trial, which can often take the form of equitable (nonmoney

damages) relief. In both cases the settlement is then adopted as the judicial decision. Neither of these aspects of settlement was contemplated in the design of small claims courts and both have originated in that broad area of discretion in trial procedures left to judges. Both, however, can have a significant impact on litigants.

As Table 6.7 indicates, judges in the fifteen courts split widely on the question of whether they should push litigants to try to settle before trial. Each side of this question had outspoken advocates. A formula speech seems to exist which is used to push litigants to settle before trial: "You are the people who are involved in this case and you know the facts much better than I do. Since you know the facts, you should try and work out a fair settlement which you both can agree on. As judge I do not know the real facts and I must make a decision as I see it based on your testimony. This decision could go against either one of you, and might seem unfair to both of you, so it is best if you can work out an agreement between yourselves that you both think is fair." There is merit to this argument. A Manhattan judge guesses that 100 percent of settled cases are col-

Table 6.7
Pushing Litigants to Settle

City	Pushing by Judges
Bridgeport	None beyond initial speech after calendar call urging parties to talk it over
Harlem	Both judges and lawyer-arbitrator push settlement before and at trial (court policy)
Manhattan	Both judges and lawyer-arbitrator push settlement before and at trial (court policy)
Washington, D.C.	Majority of judges do at outset only
Grand Rapids	2 judges do, 3 do not
Minneapolis	Most lawyer-referees do not
Des Moines	3 judges do, 3 do not
Omaha	4 judges do, 4 do not
Sioux Falls	Does not believe in pushing settlement
Oklahoma City	Initial suggestion to settle, then decide the case
Dallas	J.P. strongly encourages settlement
Cheyenne	Generally not
Spokane	One will, 4 will not
Eugene	One judge will if parties are close to agreement, 4 will not
Sacramento	4 judges do, 5 do not

lected, but only about 40 percent of contested cases. Our analysis of litigant responses on whether they were able to subsequently collect their judgment indicated than in settled cases, 98.4 percent of the plaintiffs reported that they collected at least some (in most cases, all) of their judgment. However, the judge was low on his estimate of the number of contested cases that were able to collect their judgments since 76.5 percent of our sample were able to collect at least some of their judgment in Manhattan.

Although a District of Columbia judge argued that "a poor settlement is better than a good lawsuit," judges who opposed pushing settlement felt that it was unfair to litigants who were in court precisely because they could not agree between themselves on a settlement, and wanted an impartial judge to decide their dispute. There was also concern that by urging litigants to settle, judges might give the impression to a *pro se* litigant facing a business or attorney that the court approved of whatever offer the more experienced side made. A few judges felt that about half of all *pro se* litigants did not understand what was going on in court, beyond telling their own story, and they felt that this group had no informed basis for agreeing to a settlement, particularly if legal issues were involved. In short, they did not believe it was fair to push unequal litigants to settle before trial.

A District of Columbia judge observed that "a strange face seems to facilitate a decision." By this she meant that litigants who were deadlocked when they reached court generally needed an impartial third party not involved in the dispute to get the case off dead center and to get the litigants talking. This judge brought her law clerk to small claims court with her, and announced the availability of the law clerk and the third-year law students stationed in the court to assist litigants in working out a possible settlement. If only one of the litigants had a lawyer, several of the District of Columbia judges said they would ask a third-year law student to represent the *pro se* party in pre-trial settlement efforts.

As indicated in Table 6.7, most of the courts had no uniform policy on encouraging litigants to settle before trial; some judges would and some would not, depending on their individual views. A policy of pushing pre-trial settlements did exist in the Manhattan and Harlem courts and seemed to exist in the District of Columbia court as well, since most of the judges interviewed there reported that when the calendar was called, they would tell litigants that if they did not settle their case they would have to wait, and their case would be scheduled for trial later in the day.

Most judges who reported that they urged litigants to settle at the outset of a trial said they would proceed to try a case to its conclusion if the parties reported they could not settle. A few would again suggest that the parties might want to settle at the end of a trial after all the evidence had been heard, but would not suggest a specific amount. One District of Columbia judge would sometimes send the parties off to a jury room after the evidence was heard if a case was very close. In contrast to the judges who usually never mentioned a specific dollar figure as a possible settlement, many of the lawyer-arbitrators in Harlem and Manhattan reported that they would actively assist litigants during trial in trying to reach a fair figure. They justified this practice by pointing out that *pro se* litigants usually needed help in reaching a fair settlement amount, and they argued that if both sides could agree on a figure during trial they were more likely to be satisfied with the judgment.

This second aspect of settlement, assisting litigants in working out a fair settlement at trial, is much closer to the mediation model favored by some early small claims reformers than to the adversary process where the judge plays a passive role. In many cases we found that settlements worked out in small claims trials often amounted to equitable relief. This usually happened when a money judgment for one side or the other would not resolve the problem, or was not the most efficient means of resolving a dispute. A recurring example was a television repair shop suing a customer for an unpaid repair bill. The defense was that the repair was no good, and that the defendant had not paid because the set had not been fixed. In these cases some judges would ask the defendant if he would agree to pay if the set was taken back and repaired to his satisfaction. They would then ask the plaintiff if he would redo the repair. If the parties agreed the judge would continue the case for a specified period of time, for example ten days, and instruct the defendant to call him and tell him if the repair was redone to his satisfaction, and the plaintiff to notify him that he had been paid. The action would then be dismissed when the agreement was carried out. The judges (and arbitrators) who used this sort of informal equitable relief reported that it usually worked well, since it enabled them to fit the remedy to the dispute. It was also more efficient; the repairman got paid and the consumer got his television fixed.

This fairly common practice of assisting litigants to work out fair settlements during trial seems to be a healthy development in a process which is presently limited to only one remedy, money judgments. The practice of pushing litigants to settle before trial, on the other hand,

contains a number of inherent dangers for inexperienced litigants, detailed earlier. Since a fundamental goal of the small claims process is fairness or even-handedness, it seems to us that if a dispute seems ripe for settlement, a judge has the obligation not only to assist the litigants in reaching a settlement but to actively participate in this process to ensure that the settlement reached is fair to both sides. Because small claims courts are designed to be used both by experienced business users and inexperienced individuals or small businesses who press or defend a claim without the assistance of an attorney, it is inevitable that litigants will often be unequal in the experience and knowledge needed to arrive at a settlement that is fair to them. Inequality among litigants is inherent in the small claims process, and that is why the small claims judge is empowered to play an active role at trial and procedural and evidentiary rules are informal; once litigants reach the trial stage, that process can maximize the chances of reaching a fair and even-handed decision despite their inequalities. A court of course has no authority to ensure that out-of-court settlements reached before trial are fair. Once the litigants come to court for a decision, however, that court does have the authority (and we believe the obligation) to see to it that a fair result is reached, be it by settlement or a trial verdict. Accordingly, we believe these factors argue strongly against pushing inexperienced litigants to settle without active judicial participation in that process or judicial review of the results to ensure that the settlement reached is fair to both sides.

Alternatives to the Use of Judges at Trial

Three of the fifteen courts we studied used lawyers instead of judges to try small claims cases. Minneapolis used lawyer-referees for all small claims trials, and the New York City Courts provided litigants with the option of having their case heard by a regular judge, or by an in-court arbitrator. In New York it was necessary for both sides to agree to have their case heard by a lawyer-arbitrator since there was no appeal provided from the decision of an arbitrator. The clerk's statement to the litigants awaiting trial in the New York City courts explained that the arbitrators "possess the qualification of a judge of this court to hear this case." It was our subjective impression after sitting in on a number of trials in both the Manhattan and Harlem courts that the lawyer-arbitrators if anything possessed better practical qualifications than did the judges for handling certain types of cases.

All of the lawyer-arbitrators were active attorneys who volunteered their services, and tended to be single practitioners or from small firms rather than from large Wall Street law firms. Since a large bulk of these small practitioners' daily work was involved in settlement negotiations with individuals and small businesses, they seemed to be able to get on the same wavelength with litigants more easily than did the judges, and litigants seemed to be more at ease with them than with the judges. This may have been due in part to the more private setting of the arbitration hearings since they were usually held in a jury waiting room or small conference room in the court and not in a formal courtroom. The arbitrators also seemed to have a better feel for determining reasonable damages in different types of cases than did the judges, since they often handled similar claims in their own practice and had a better idea of what it cost for a body and fender repair, or to get a sofa reupholstered, or knew who to ask if they were unsure.

The lawyer-arbitrators we observed in action in the Harlem and Manhattan courts also seemed to be particularly skilled in working out settlements between litigants that both sides could agree to. In part, this seemed to be due to the fact that they were not subject to the passive or neutral role model that seemed to constrain many of the judges from more actively participating in settlement negotiations at trial. The arbitrators dressed in suits, not robes, and viewed their role primarily as negotiators, not judges. In part, the arbitrators seemed to be more skilled in settlement negotiations than did the judges, since these arbitrators did it constantly in their day to day legal practice. While most judges were hesitant to suggest a specific dollar figure at trial to see if the parties could agree, the arbitrators would wade right in, after the evidence was heard, to get both sides moving. "Do you think $650 is enough to get the furniture reupholstered?" to the plaintiff; "how much did you charge for the last sofa reupholstering job you did?" to the defendant. Although New York had a policy of not announcing small claims decisions in court, most arbitrators we observed would tell the litigants what their decision was if the parties had not been able to agree on a judgment amount.

There has been some suggestion in prior articles that arbitrators tend to split the difference in verdicts more often than do judges. We found this to be true. For Manhattan and Harlem combined, judges' awards were 94 percent of the claim amount, while arbitrators' awards were 83 percent of the claim amount. One possible factor explaining these differing results is the differing concepts of burden of proof applied by

the judges and arbitrators. The New York small claims procedure specified that "substantial justice is to be done between the parties according to substantive rules of law." All of the New York City judges interviewed generally said they used a regular civil burden of proof in small claims cases and a civil decisional rule; that is the plaintiff had to establish the defendant's liability by 51 percent of the evidence or he got nothing. The arbitrators we spoke to, on the other hand, seemed to feel that "substantial justice" meant that if a litigant could demonstrate that he had been damaged by the other side, to any significant degree, he should recover something. Another factor operating in arbitration, as pointed out in a prior empirical study of the choice of arbitration versus judicial decision in the Manhattan court, fn1 is that the litigants who choose arbitration may be more predisposed to settle at the outset, and settlement almost always involves some scaling down or compromise on the claim amount.

We also looked to see whether litigants with particular types of cases tended to choose arbitration over a trial before a judge, and Table 6.8 presents the results. Over the five major categories of small claims cases (consumer-plaintiff, seller-plaintiff, landlord-tenant, damages, and others) we found that all tended to choose arbitration in approximately equal proportions, although litigants in Manhattan chose arbitration in 90 percent of all cases while those in Harlem chose arbitration in only 31 percent of all cases, possibly because arbitration was not pushed quite as

Table 6.8
Percentage of Different Types of Cases Heard by Arbitrators in Manhattan and Harlem

	Percentage Heard in	
Type of Case	Manhattan	Harlem
Consumer plaintiff	86	25
Seller Plaintiff	92	26
Landlord-tenant	85	34
Damages	88	47
Other	95	22
Percentage of total trials and defaults heard by arbitrators	90	31

hard in Harlem because of the lower caseload for trials.

While technically there is no review from the decision of an arbitrator in New York City small claims court, in fact an arbitration decision will be reopened if a gross miscarriage of justice or fraud is alleged to the court. The chief clerk of the New York City courts spends a lot of time in small claims trial sessions checking up on arbitrators and court personnel, and brings every complaint to the administrative judge for investigation to be sure that no problems go unchecked. One such incident deserves telling, as it casts this review process in a more human light.

In New York City courts the small claims judgment is filled in by the arbitrator on a card set after trial. One copy goes to the court records, the second is mailed to the plaintiff, and the third is mailed to the defendant. Since carbon paper is between the cards, the same information appears on all three judgment cards. As the incident was related to us, apparently one arbitrator in the Harlem court was so outraged by testimony about a landlord's efforts to gouge an elderly tenant that he wrote "Judgment for Plaintiff (tenant) for $225" on all three cards. He then pulled off the defendant's copy and added on it "and judgments are going to continue to go against slum landlords like you in small claims court so long as you continue to mistreat tenants!" When the landlord brought this language to the attention of the administrative judge, all hell broke loose. The facts of the case were reviewed to be sure that the judgment was fair (it was), and the arbitrator received a severe reprimand and warning. In addition to the internal monitoring of all complaints and the spot checking of trials and arbitration hearings described above, three or four compulsory seminars are held each year for all New York City lawyer-arbitrators to keep them up-dated on new consumer law developments and to discuss techniques for dealing with various problems that arise at trial.

The different system of using lawyer-referees in place of judges for small claims hearings in Minneapolis deserves mention, since both Colorado and Connecticut have adopted a similar lawyer-referee system for some small claims courts. As far as we could determine the Minneapolis lawyer-referees functioned exactly as did regular judges. They dressed in judicial robes, sat behind a judge's bench, and (although introduced by the clerk at the outset as "referee") were perceived as a regular judge by most litigants. They also had been instructed by the court to apply a regular civil burden of proof, and those we interviewed reported that they did so. As a result the referees we observed did not become as actively involved in assisting litigants to work out a settle-

ment at trial as did the New York City arbitrators and they tended to give more all or nothing judgments. Because of these factors, the only advantage we could see to the lawyer-referee system, at least as it was used in Minneapolis, was that the referees cost less ($75/day each) to use for handling small claims trial duties than would adding additional municipal court judges.

A significant disadvantage of using lawyer-arbitrators or lawyer-referees rather than regular judges to hear small claims cases is that arbitrators or referees generally only serve from one day a week to one day a month, as compared with judges who generally are assigned to small claims duty either full-time (for one-judge courts) or for periods of at least a week or more (for multijudge courts). When a continuance is required at trial for a party to bring in missing evidence or a necessary witness, most judges will try to reschedule the trial within their small claims trial term, or in their chambers if their trial term will have ended by that point. In this way the trial need not be repeated, beyond considering the missing proof, and can be quickly concluded. The infrequent scheduling of lawyer-arbitrators or lawyer-referees makes such rescheduling impossible in most cases, and the entire trial must be repeated before the new trier of fact, which requires more time of both the litigants and the court. As a result the courts using lawyers instead of judges to hear small claims cases (Manhattan, Harlem, and Minneapolis) instructed the lawyers to grant continuances at trial only on a very strong showing that the missing evidence would decide the outcome, a very difficult decision at best. Limiting continuances at trial tends to disadvantage inexperienced litigants, so this is an important factor to keep in mind when considering using lawyers instead of judges for small claims trials.

The infrequent scheduling of arbitrators and referees also limits their ability to arrange informal equitable relief of the type described in the preceeding section, where a case is continued for the parties to carry out the terms of the agreement and the judge dismisses the case upon notification that the parties have performed as required. While some lawyer-referees and arbitrators reported that they did arrange equitable relief of the type where one party was required to do one thing and the other to do another, they generally dismissed the case without prejudice so that the plaintiff could refile if the agreement fell through. While this arrangement can work, it is not as effective in assuring compliance as holding the case open until the judge is notified that both sides have carried out the settlement agreement.

Trial Verdicts and Installment Payment of Judgments

A unique feature of small claims courts which is not found in regular civil courts is that an installment order can be granted which permits payment of a judgment to be spread out in amounts which the judgment debtor can afford. An installment order also prevents the judgment creditor from using supplementary proceedings such as garnishing the debtor's salary or bank account or attaching his personal property to collect the judgment so long as the installment payments are made on schedule. While an installment order sounds like something a judgment creditor would not like, since it further lengthens a payment which is usually already overdue, this is in fact not the case. According to the judges, most business plaintiffs preferred installment orders, for they recognized that it was often their only chance of being paid anything by low income or execution-proof defendants. The nation was in the midst of a severe economic recession when our case sample was taken (December 1975-June 1976) and a judge in Grand Rapids mentioned that his city had been particularly hard-hit. It was that judge's feeling that if he did not arrange installment payments for almost all low income or unemployed defendants, the chances of plaintiffs in these cases recovering anything was very slight.

Installment payment of judgments was possible in all of the fifteen courts surveyed, but as Table 6.9 indicates, not all the judges in those courts would grant installment orders. Four of the courts (Bridgeport, Harlem, Manhattan, and Minneapolis) posed special problems for arranging installment payments since as a general rule the decisions were not announced to litigants at the conclusion of a trial. Litigants were notified who won, and how much, by postcard several days later. As we indicated in the discussion of linkages between various procedures at the beginning of Chapter 5, if the defendant (or plaintiff in case of a counterclaim) does not know whether he lost, or how much he owes, while he is still before the judge, there is no way he can request more time to pay. To avoid subsequent garnishment or attachment procedures a losing party in these courts would have to make another trip back to court, try to get a hearing before the same judge that handled his case, and request an installment order. Not many defendants can be expected to know enough to do this without specific notice of this right, and many may not be in a mood to do this a week after the trial. The other alternative (which again assumes that a defendant knows of the availability of installment orders) is for the defendant to admit that he

owes a claim at trial and request time to pay prior to hearing the judge's decision on the case.

Apparently this latter situation does happen fairly often. A Grand Rapids judge estimated that 60 to 75 percent of all individual defendants admitted that they owed a claim at trial, but said they needed more time to pay. In Eugene, a judge who handled the collection agency calendar reported that 80 percent of the defendants who appeared at trial admitted those claims but wanted to arrange different payment terms, while only about 20 percent contested the claim. Even if we assume that these figures are not atypical, there are serious due process problems inherent in a practice of withholding the important remedy of an installment order from litigants unless they admit they owe a claim in advance of knowing whether the judge has ruled that they are liable, and if so for how much. A procedure which pushes litigants to admit liability in advance of knowing the judge's decision also carries with it the possibility of waiving potential defenses in consumer credit cases by admitting liability.

Table 6.9
Trial Verdicts and Installment Payment of Judges

City	Trial Decision Announced in Court?	Installment Payment of Judgments Provided?
Bridgeport	No	If D admits claim and requests
Harlem	No	If D admits claim and requests
Manhattan	No	If D admits claim and requests
Washington, D.C.	Yes	Yes
Grand Rapids	Yes	Yes
Minneapolis	No	If D admits claim and requests
Des Moines	Yes	Yes
Omaha	Yes	Rarely—leave it up to P's to arrange between selves
Sioux Falls	Yes	Yes
Oklahoma City	Yes	If parties agree
Dallas	Yes	If parties agree
Cheyenne	Yes	Yes
Spokane	Yes	No
Eugene	Yes	If parties agree
Sacramento	Yes	Yes

In Oklahoma City, Dallas, and Eugene, installment orders were granted only if both sides agreed to it. While it was reported to us that most plaintiffs would agree if the defendant requested time to pay, this requirement does not seem to make much sense in the context of the purpose of installment orders. The purpose, as we see it, is to stay the harsh impact of collection procedures (such as garnishing wages or bank accounts, or liens on real estate) on those judgment debtors who cannot pay in a lump sum without being pushed to the brink of financial ruin. This equitable provision is clearly intended to assist judgment debtors and should be within the discretion of the trial judge to grant if he feels the circumstances warrant it. We do not think the judgment creditor should be able to decide whether this remedy should be granted. The significant question is whether the judgment debtor needs this equitable relief.

This determination of need is generally handled very informally. If the defendant indicates that he needs time to pay, the judge will ask him how much he can pay a week. Unless the other side objects that the defendant has enough money in the bank to pay in full now, generally a judge will accept a defendant's estimate of how much he can manage to pay. One Spokane judge said he would not order installment payments because he was not sure defendants would give true information on their ability to pay. Other judges observed that if a defendant did not intend to pay he would probably not have come to court at all, and they were willing to take a defendant's word on their ability to pay. The city of Eugene had a nonprofit Consumer Counseling Service which helped debtors figure out debt repayment schedules and family budgets, and judges who felt that they had inadequate information on a defendant's ability to pay a judgment could refer the plaintiff and defendant to the counseling service to figure out an installment order schedule. Similar services of this type might help to overcome judicial concerns about receiving accurate information such as that which we found in Spokane.

Since installment judgments are not used in regular civil court, a few of the judges felt uncomfortable with installment orders because they were not proper. In the Spokane Court another judge we interviewed said she would not grant an installment judgment because it "would modify the terms of a pre-existing valid contract." This view, however, was rare.

Announcing trial verdicts in open court at the conclusion of a small claims trial has other important functions in addition to facilitating

arranging payment terms in court. It lends an appearance of fairness to the process and helps to reassure litigants that no one improperly influenced the judge to change his mind after trial. It also provides an opportunity for a judge to give a quick explanation of his decision if it is requested, or if he sees that a litigant does not understand why a decision went against him. This can be important to litigants' understanding of, and satisfaction with, the small claims process and can help them to avoid repeating the same mistake. In landlord and tenant cases, for example, judges reported that tenants commonly believed they did not have to pay their last month's rent, thinking that their security deposit (which is usually one month's rent) was intended for this purpose. This of course is not correct, since in most jurisdictions tenants are obligated to pay all rent due under the lease terms, but can at the end of their term request the return of their security deposit less a reasonable charge for any damage they caused beyond ordinary wear and tear. Thus if a landlord sues a tenant for the last month's rent due and is awarded a judgment for the rent plus some or all of the tenant's security deposit for claimed damages, it is highly unlikely that a tenant will feel that the result is fair unless the law is explained to him. This will always be a problem with using postcard decisions several days after a trial. If the tenant does not understand what happened in the first case, he is likely to end up in court again with the same problem in the future. This can cause dissatisfaction with the judicial system and needless additional costs to the litigants and the court system.

The official reason given by those courts which did not announce decisions at trial was that such announcements could provoke dissappointed litigants to violence, either in court or in the halls after the trial. While this could clearly be a valid consideration in a few cases, those courts which regularly announced decisions at trial reported very few problems. The real reasons behind the practice, according to a number of judges who followed it, was that it relieved judges of any obligation to explain their decision, and gave them a chance to change their minds later. Judges said it also meant that they did not have to tell the losing side that they did not believe its story. Since every judge has the right to reserve his decision in any case where he needs to check the law further, or where he feels violence may result if he announced his decision in open court, there seems to be no justification for imposing the considerable disadvantages of not knowing a decision, not being able to request an explanation, and not being able to request an installment order, on all litigants because of the potential for problems in a

very few cases. Finally, it seems to us that if a judge has not considered his verdict carefully enough so that he is able to give a quick explanation of the reasons for this decision in open court, he has not fulfilled his obligation to the litigants.

Summary of Findings and Recommendations

Findings

- Litigant waiting time on trial day was reduced in courts which scheduled cases for trial at specific intervals or which used multiple small claims trial parts to reach contested cases earlier in the day.
- Some courts used separate trial dockets for default and collection agency cases so that this caseload would not hold up trial of contested cases.
- Specialized trial dockets for dry cleaning, housing, or automobile repair cases can provide an opportunity to bring more expertise to bear on specific types of cases.
- Evening small claims trial sessions were popular with both litigants and court staff in the two courts which used them exclusively, and are favored by litigants over Saturday trial sessions.
- In all courts when the plaintiff appears but the defendant does not, the plaintiff receives a default judgment. However, when the defendant appears but the plaintiff does not, in most courts the defendant cannot put on proof and request a dismissal with prejudice.
- In a few courts, default judgments will issue even when neither litigant appears, and several courts issued default judgments without requiring proof of service, proof of the defendant's liability, or proof of damages.
- Continuances at trial may be necessary to enable inexperienced litigants to bring missing evidence or witnesses necessary to establish an otherwise valid claim or defense. While most courts and judges would grant such continuances, some had policies of not granting continuances, which could cut against inexperienced litigants.
- Some judges had developed other methods of dealing with missing evidence or witnesses, including accepting uncontested hearsay testimony, telephoning neutral witnesses from court, and making site inspections.
- Pushing unequal litigants to reach a settlement in court without any judicial supervision of the process or review of the results can disadvantage inexperienced or unrepresented parties. Judicial participation

or mediation of settlement efforts such as provided by the lawyer-arbitrators in the New York City courts seems to be a better approach to ensure that settlements are fair to both sides.

- Some small claims courts did not announce decisions at trial, but notified litigants by mail a week later. This practice interferes with the defendant's right to request installment payments of the judgment, and may result in litigants repeating mistakes based on legal misconceptions because they were unable to request an explanation of the reasons for the decision.

Recommendations

- Cases should be scheduled on trial day at specific time periods during the day to reduce litigant waiting time. Separate trial dockets for default and collection agency cases can enable contested cases to be reached for trial with less waiting. In multijudge courts, multiple small claims trial parts will enable trials to be completed earlier in the day.
- Evening small claims trial sessions should be provided as they can reduce the time lost from work by litigants.
- Defendants should be given the chance to put on proof and to receive a dismissal with prejudice in cases where the plaintiff does not appear for trial.
- All default judgments should be required to be proved up before a judge or judicial officer, including proof of proper service, proof of liability, and proof of damages.
- Continuances at trial should be provided for *pro se* litigants who have a valid claim of defense but for some missing evidence or witness which it appears they can produce. To reduce delay, continuances should be scheduled within a short period of time or on the same day, if possible before the same judge that heard the case initially.
- Once litigants bring a dispute to trial, the court has an obligation to assist the litigants in reaching a fair and even-handed result whether by settlement or judicial decision. Judicial or court-provided mediation or arbitration participation in in-court settlement efforts and judicial review of in-court settlements should be used rather than pushing unequal litigants to settle on their own.
- All small claims decisions, absent special circumstances, should be announced at trial to enable litigants to request an installment payment

of judgment if needed, and to enable them to receive a brief explanation of the reasons for the decisions if requested.

Notes

[1]Sarat, Austin, "Alternatives in Dispute Processing: Litigation in a Small Claims Court," *Law and Society Review*, 10 (1976): 339.

7.
The Post-Trial Process

Important aspects of the small claims process remain after a judgment is entered: appeal, collection, recording satisfaction of judgment, and closing out inactive cases. While this post-trial part of the process is not very visible, it can be extremely important to many litigants, as we shall indicate below. It is also the least reformed area in the small claims process and several aspects require long overdue attention.

Appeal and Transfer

Every state that provides for specialized small claims courts generally provides some means for a defendant to have the small claims case tried in a different (formal) civil forum, either by transfer out of small claims court or by appeal of the small claims trial verdict. Although transfer occurs after filing of a small claim and before trial, while appeal occurs only after a judgment is entered, we will discuss appeal and transfer provisions together, because they are closely related. Transfer and appeal both produce the same result: the small claims action is transferred to a formal civil court for trial (in the case of transfer), retrial (in the case of appeal by trial *de novo*), or review (in the case of appeal on the record).

Of transfer it may well be asked why, if it is possible to get a quick, inexpensive and fair trial in small claims court, the defendant should be given the option of transferring a claim filed in small claims court to formal civil court, which is slow, requires lawyers, and as a result is expensive? There are two reasons. First, many state constitutions presently still guarantee a right to a trial by jury in all cases, or the right to be represented by counsel, or both. Since most state small claims statutes abolish the right to a jury trial in small claims proceedings, and several abolish or limit the right to be represented by counsel at trial, some means must be found for meeting these constitutional requirements. The constitutional remedy of transfer out of small claims works as follows. The plaintiff elected to sue in small claims court (since as indicated

earlier almost every state provides concurrent formal civil jurisdiction with small claims jurisdiction so the plaintiff had the initial choice of forums) and thereby waived his right to a jury trial or right to counsel or both. The defendant, however, is in small claims court at the behest of the plaintiff and has not waived his right to a jury trial or counsel. Accordingly, the defendant should be given the option of shifting the proceeding to a forum where he can request a jury trial, or be represented by counsel at trial.

An alternative solution, appeal by trial *de novo*, works as follows. If the defendant has to go through with the small claims trial, and does not like the result, he should be able to repeat the entire trial in a formal civil court where he can request a jury trial or use an attorney at trial. In the very few challenges to the small claims procedure on state constitutional grounds, these remedies of transfer or appeal by trial *de novo* have been held to meet these constitutional requirements (see *Prudential Insurance Co. of America v. Small Claims Court of the City and County of San Francisco*, 76 Cal. App. 2d 465, 173 P.2d 38).

The second reason for transfer and appeal provisions dates back to the days when the small claims procedure was usually provided in the lowest level local court, be it a justice of the peace court or magistrates court. Since most of the J.P.s or magistrates were not law-trained and were popularly elected, the possibility existed for judicial bias in resident versus nonresident cases, or decisions contrary to the law or the weight of the evidence. Accordingly, it was reasoned that if a local resident was suing an out-of-town merchant, for example, the merchant should be given the chance to get the case into county court where at least all the judges were law-trained, or in the alternative if he felt the small claims verdict was unfair, he should be able to request a new trial in a county or district court.

This latter reason does not carry as much weight today, since many state court systems have unified their trial systems. This process involves the abolishing of local J.P. or magistrates courts, centralization of these functions in district trial courts, which usually have jurisdiction over one or more counties, and upgrading of judicial qualifications and training requirements. Today only eleven of the forty-two states which we defined as having a specialized small claims procedure use this procedure in J.P. or magistrates courts, and periodic judicial training requirements for J.P.s and magistrates, as well as law-trained J.P.s and magistrates, are becoming more common.

While state constitutional requirements of right to jury or right to

counsel must still be observed, there is an increasing realization that it may not be reasonable to apply them in smaller civil cases. Several states, for example, have limited the right to jury trials in civil cases. It is important to distinguish the need to meet state constitutional requirements from the need for review of legally incorrect or grossly unjust small claims judgments. If a state constitution guarantees the right to a jury trial or the right to counsel in all cases, short of amending the state constitution the only way to meet these requirements is to permit the defendant to either transfer or appeal his case to a forum where he can avail himself of a jury or representation by counsel at trial. This means a formal civil court trial in the case of transfer, or a trial *de novo* in formal civil court on appeal. If, on the other hand, the only concern is to provide a remedy for legally incorrect or grossly unjust small claims judgments the more efficient option of appellate review can be used.

Of the two methods for meeting constitutional requirements, transfer and appeal by trial *de novo*, the latter seems less objectionable. While both can be used by an experienced defendant to raise the ante for an inexperienced plaintiff beyond the point where he feels the suit is worth the complexity or expense, it is probably easier to discourage a plaintiff from pursuing a valid claim by transferring the case to formal civil court at the outset than by appealing the judgment after the plaintiff has won in small claims court. One attorney whom we interviewed in Connecticut told us quite frankly that when he was retained to defend a suit in small claims court his first step was to request a transfer to formal civil court where the plaintiff would need a lawyer. He said this step was usually enough to discourage most plaintiffs from continuing with a claim.

Permitting appeal of small claims judgments by trial *de novo* also presents similar opportunities for subverting the small claims process, since it requires the entire trial to be repeated, requires an attorney, and is costly and time-consuming. A judge in the Sacramento court observed that appeal by trial *de novo* was used by insurance companies and corporate defendants "to get two bites at the apple." He stated, "When they are asked to pay a claim they sit back and refuse to pay. The injured plaintiff then sues them in small claims court. If the defendant wins, in California, the plaintiff cannot appeal the small claims judgment. If the defendant loses in small claims court they can get a full new trial on appeal in the Superior Court, using their attorneys." In practice transfers and appeals from small claims courts are not large in number. Sacramento, for example, had only 267 transfers and appeals out of 12,781 small claims filings in 1975. However, any procedure which

offers the potential of being used to discourage plaintiffs with valid claims should be viewed with extreme caution.

Table 7.1 presents the transfer and appeal provisions in the fifteen courts we studied. Ten of the courts provided for transfer and eleven provided for appeal, some providing both. In six of the courts the defendant had to request a jury trial in order to get the case transferred to the formal civil court but was generally permitted to drop the jury request once the case was transferred. In only one court, Bridgeport, was the defendant required to allege a good defense prior to requesting a transfer. In the New York City courts all cases with attorneys on both sides were automatically transferred to regular civil court docket for trial, and in both New York City and Washington, D.C., judges had the authority to transfer complex cases to regular civil court on their own initiative.

Of the courts providing for appeal of small claims judgments, in five appeal was by trial *de novo* and in six appeal was by appellate review of the small claims trial record. New York City courts provided for appeal only from judge decisions and not from lawyer-arbitrator judgments. Appeal on the record is more efficient than a trial *de novo* (assuming the trial record is an accurate reflection of the small claims trial proceeding), since the entire trial does not have to be repeated, using litigant, witness, and court time, and the expense of an appeal is likely to be much lower. A higher court review of the trial record also serves a better monitoring or corrective function than does trial *de novo*, for the reviewing court examines the trial procedure used, the actions of the trial judge and the facts of the case to determine whether the applicable law was correctly applied. In a trial *de novo*, on the other hand, the small claims trial is usually ignored whether it was correct or incorrect, litigants can (and do) change their stories, and the entire trial is repeated in a different court usually with each side using attorneys. Trial *de novo* appeals thus provide little direct feedback to small claims judges on their performance in a questioned case, although they can perhaps provide some guidance on their application of the law to a specific area.

Appellate review of small claims judgments requires a record to review. This can pose problems, since many small claims courts are not presently courts of record and thus no stenographic transcript or tape recording is kept of trial proceedings, although we found that most judges made bench notes at small claims trials in which they indicated who testified, the relevant testimony, claims and defenses raised, and the proof and set-offs that existed on the question of damages. Of the

fifteen courts we examined, only five kept a record of small claims trials beyond judges' or clerks' notes. Both Harlem and Manhattan used a regular court reporter for all claims trials before a judge, but no record was kept of arbitrator hearings. Washington, D.C., used an audio tape-recording system, but the acoustics of the courtroom were so poor that most tapes were unintelligible and judges had to reconstruct a summary trial record for appeal from their bench notes. Omaha had an excellent audio tape system and good acoustics, but since their appeal was by trial *de novo*, the tape was kept only for the protection of the judges in case questions of improper conduct were alleged on the appeal.

The justice of the peace court in Cheyenne had developed what appeared to be an excellent trial record and appeal system for a low

Table 7.1
Appeal and Transfer Provisions

City	Transfer to Regular Civil Side Before Trial at Request of Defendant	Appeal
Bridgeport	Yes	No
Harlem	Yes (for jury request)	Yes, from judge decision only on record
Manhattan	Yes (for jury request)	Yes, from judge decision only, on record
Washington, D.C.	Yes (for jury request if over $20)	Yes, on record with leave of appellate court
Grand Rapids[1]	Yes	No
Minneapolis	No	Yes, *de novo*
Des Moines	No	Yes, on record
Omaha[1]	Yes	Yes, *de novo* with record as evidence
Sioux Falls	Yes (for jury request)	No
Oklahoma City	Yes	Yes, on record
Dallas	Yes (for jury request)	Yes, de novo if judgment over $20
Cheyenne	No	Yes, on record and *de novo* if judge deems necessary
Spokane[1]	No	Yes, D only, *de novo*, if judgment over $100
Eugene[1]	Yes (for jury request)	No
Sacramento[1]	No	Yes, D only, *de novo*

[1]No attorney permitted at trial.

volume court. Microphones for the judge and for the party or witness testifying fed into a cassette tape recorder. For each trial a new cassette was used and a label with the name of the parties was placed on it for identification, with the trial date. At the expiration of the statutory period of appeal, the cassettes were reused for new trials. Although the Wyoming statute provided for small claims appeal by trial *de novo* in the district court, if a party appealed a small claims case the cassette recording of the trial was sent to the district court. The reviewing court listened to the recording of the trial, checked the pleadings and summons, the list of witnesses testifying, and any exhibits. If the district court felt the trial and decision was sound, the parties and court were notified. If they found problems, then a trial *de novo* was granted. Thus litigants did not have to appear for the initial review, and no lawyers were required in most appeals. Providing this sort of quick initial review either as a substitute for, or precondition to, a trial *de novo* seems to have much to recommend it.

A number of the courts in our sample tried to limit or discourage appeals in various ways. In Spokane and Dallas a judgment was appealable only if it exceeded $100 or $20, respectively. Most states also required the appealing party to post an appeal bond as a precondition to appeal in the amount of the judgment plus court costs. Appeal in Washington, D.C. was discretionary with the reviewing court on a writ of certiorari, and was granted infrequently. Out of about sixty appeals of small claims judgments filed in 1975, only ten were granted. California limited appeal to defendants. Four of the courts did not provide for any appeal of small claims judgments, but each of them gave the defendant the option of transferring the case to regular civil court (where that judgment could be appealed). The theory was that if the defendant did not accept his chance to transfer, he waived his right to subsequently appeal. This seems to be an inappropriate point at which to require an inexperienced defendant to waive all appeal rights.

Good arguments exist for limiting appeal from small claims court. Some element of finality is necessary if the major purposes of the process are to be achieved. If transfer or appeal provisions can be used to transform a quick, inexpensive, and informal process into a lengthy, complicated, and expensive proceeding, at the whim of one party, at some point unfairness sets in. Transfer in particular seems subject to abuse and should not be available except on certification of the trial court that important or complex questions of law or fact are involved which cannot be adequately or fairly resolved in a small claims proceeding.

New York City established a personal appearance part in regular civil court, which uses informal rules for all transferred small claims cases where one side (or both) does not have a lawyer. This may help *pro se* plaintiffs, but if this is going to be allowed why permit transfer at all? The worst situation (as in Omaha) is to provide an absolute right to transfer and a right of appeal by trial *de novo*. There is no need for both.

We do believe that higher court review should be provided of small claims judgments for both sides. This is particularly important to ensure that new consumer protection laws (such as the Magnuson-Moss Warranty Act, Consumer Product Safety Act, and Consumer Protection Act) which can be expected to affect many small claims cases, are interpreted and applied correctly. And, of course, there should always be a remedy for judgments which are just plain unfair or which are not supported by the evidence. One possibility, suggested by the report of the ABA Section of Judicial Administration back in 1938, would be to establish a dollar limit above which an appeal could be taken as of right, and below which review was discretionary with the reviewing court on a showing that an important question of law is involved. It is important, however, to make the appeal quick and inexpensive, which means it should be a review of the trial record rather than a trial *de novo* whenever possible. It is also important for courts themselves to follow up litigant complaints by internal review of the clerical assistance provided to litigants, and the quality of their small claims hearings.

Collection of Judgments

A claim is not resolved until the judgment resolving the dispute has been enforced. Since small claims judgments are usually money damages, these judgments are enforced by collecting the money. Typically, however, collection is the part of the small claims process that courts are least interested in. Many judges believed that the job of the court ended once they had pronounced their judgment. In contrast to the criminal side of the judicial system, where independent or court-linked probation and corrections agencies monitor cases after judgment to see that the judgment is enforced, the civil side of the court (including small claims) leaves the responsibility of collecting judgments to the winning party. Problems of collecting small claims judgments have attracted some public interest. We saw a number of statements that most small claims plaintiffs never get paid, and estimates of unpaid judgments in small claims court that ranged from 40 to 60 percent.

A structural problem inherent in the collection process is that it is presently fragmented. No one agency is responsible for all of the elements of collection. At the outset, some small claims courts do not have the statutory authority to provide remedies for judgment creditors in collecting a judgment. This was true in Minneapolis and Spokane, for example, and it meant that judgment creditors had to transfer their small claims judgments to the regular civil court, register them there, and use the collection remedies provided by that court. This adds additional steps (and fees) to the collection process. Next, courts issue the orders that are used in attempting to collect judgments (writs of garnishment and writs of attachment) but they do not enforce them. This is done by sheriffs or marshals, who are executive branch employees, and courts have no administrative control over them. Keeping track of payments and notifying the court of payment of a judgment is usually left to the judgment creditor, and again courts presently exercise very little control over this process. The final variable in the process is the judgment debtor. Once he or she has left the court (if appearing at all), court jurisdiction over the party ends unless the judgment creditor initiates a complex procedure of requesting an order from the court to summon the debtor into court for an examination of his or her assets. This is invariably a formal proceeding, may require additional intercourt transfers and filing fees, and generally requires the assistance of attorneys. An examination of assets order is enforced by the contempt powers of the court through executive branch officers.

The fragmentation and complexity of the existing apparatus for collecting judgments forces many small claims judgment creditors to go to an attorney for assistance in collecting a judgment. These additional costs, if required, can largely undercut the relatively low costs involved in winning the judgment. The distance a judgment creditor could get through the collection process without the assistance of an attorney varied from court to court. Most small claims instructional materials are silent on collection and inexperienced litigants generally have no idea of what to do if they are not paid. Indeed, several judges told us that winning litigants often asked why they were not paid right in court, and did not realize that they could not demand payment until the statutory appeal period (if any) had expired. Once sufficient time has elapsed for a litigant to realize that the losing party is not going to pay voluntarily, many contact the small claims clerk and ask what they can do to compel payment. In some courts the small claims clerks were quite helpful. In Grand Rapids, Eugene, Washington, D.C., Dallas, and Minneapolis the

clerks would fill out writs of attachment for *pro se* judgment creditors and help them to get the writ to a sheriff for service on the debtor's bank or employer. In Omaha all judgment creditors were given a one-page summary of time periods affecting collection, legal remedies, and steps they could take to collect, but the clerks provided no assistance. Several judges there were worried that the court may be laying itself open to a damage suit by an aggrieved judgment creditor claiming the clerk advised him to follow a remedy without advising him of the consequences of wrongful execution or garnishment. In courts where the small claims judgment had to be transferred to the regular civil court for collection remedies, the small claims clerks would assist with the transfer, but the judgment creditor then had to deal with a different clerk in a different court.

Further pitfalls await a judgment creditor trying to use collection remedies. The most common first step is to use a writ of garnishment to have the judgment taken out of the debtor's bank account (if any) or deducted in installments (over the federally exempt amount) from the debtor's wages (if any). However, to do this the creditor must know where the debtor's bank or employer is. In some courts a writ of garnishment only serves to freeze the debtor's assets in the hands of a third-party holder, and a writ of attachment must then be used to transfer these assets to the judgment creditor. If this first step fails, for all intents and purposes a judgment creditor is out of luck, because further remedies get much more complicated.

Further steps include trying to attach the debtors' personal property (car, t.v., personal effects, and so on). This can be risky; the property may not belong to the debtor, other creditors may have secured interests in the property, or the property may be statutorily protected or exempt from attachment under state law (such as a vehicle needed to get to work or tools used in a trade). Because of these problems most sheriffs or marshals will not attempt to attach personal property unless the creditor specifies the exact items to be attached and posts an attachment bond of $1,000 or more in case there are other valid ownership interests in the property. In addition, since most sheriffs receive a flat statutory fee for attachment which goes to the city, they tend to not try very hard to locate a debtor's personal property and will not get into a shoving match with the debtor or anyone else if ownership of the property is contested. In most states, if the judgment was on an automobile negligence claim, the creditor is given some leverage to collect the judgment by way of the debtor's driver's license. In these states an auto liability judgment left

unpaid for thirty to sixty days (depending on the state) the creditor can notify the Department of Motor Vehicles, who will then suspend the debtor's license until notified that the judgment is paid. In some states a further handle exists in that if the small claims judgment is filed in superior court, it becomes a judgment lien on all of the debtor's real property in that county until the statute of limitations expires on the judgment (generally six years). If within that period any of the debtor's real property (real estate) is sold, the judgment lien must be paid off before the debtor can receive any proceeds of the sale. Since a judgment lien will cloud the title to real estate until paid, it may act as a prod to real estate-owning debtors to pay a small claims judgment—if they know that the lien attaches to their property.

If a judgment creditor does not know the extent or location of a debtor's assets, he can request an examination of assets by the court. Since this procedure requires the debtor to appear in court under pain of contempt and swear to the exact amount and location of all of his assets, it requires several due process protections. Examination of assets are almost always held in formal civil court, and attorneys are required. This procedure can be fraught with potential dangers for the debtor, for in many states if statutorily protected exemptions from attachment are not claimed by the debtor at that point, they are deemed waived.

This recitation of collection remedies, and we have glossed over some of the procedural technicalities, gives some idea of why collection can be such a problem if the losing side refuses to pay. Add to this the fact that if a judgment debtor moves out of the jurisdiction, or is judgment-proof (has no unprotected assets which can be attached and no salary or is on public assistance), there is nothing the judgment creditor can do, and the dimensions of the collection problem become apparent. The administrative judge of the New York City Civil Court in a letter to the authors provided a rough analysis of unpaid judgments in the New York City Small Claims Courts as follows: "Approximately one-third of the uncollected judgments are uncollectable because of the impropriety of the defendant (moves, or transfers or hides assets); another one-third are uncollectable because the defendants have no funds; and the third segment consists of cheats or people who mulct the general public. That latter segment is the one upon whom all guns are trained."

Our litigant questionnaire data confirmed that collection of small claims judgments was a significant problem in the fifteen courts we examined, particularly in the case of default judgments. Table 7.2 indicates the percentage of plaintiffs responding in each court who were

able to collect something on their small claims judgments, separated into judgments resulting from contested trials and default judgments. Collecting "something," in practice, means collecting all of the judgment, for the median amount collected (if anything was collected) was 100 percent for contested judgments and 99 percent for default judgments. It can be seen that in most of the courts, two-thirds to three-fourths of the respondents were able to collect judgments resulting from contested trials, while only one-fourth to one-half were able to collect on default judgments. We also analyzed the ability to collect by the type of defendant and Table 7.3 presents these results. It can be seen that corporate and business defendants paid judgments against them in a higher percentage of cases than did individual defendants, particularly in the case of default judgments. Why is the collection rate so poor for default judgments? We suspect it is because that group consists largely of the defendants who do not intend to pay or who cannot pay, and therefore do not appear at trial to contest the claim.

It has been said that it is possible to get a judgment in small claims court without an attorney, but impossible to collect it without one. As Table 7.4 indicates, we found this to be true only for default judgments.

Table 7.2
Collection

City	Contested Trials		Defaults	
	%	No.	%	No.
Bridgeport	68	(25)	33	(6)
Harlem	58	(45)	40	(5)
Manhattan	76.5	(68)	–[1]	
Washington, D.C.	53	(15)	–[1]	
Grand Rapids	82	(71)	33	(6)
Minneapolis	60	(63)	25	(8)
Des Moines	84	(25)	25	(4)
Omaha	77	(96)	50	(4)
Sioux Falls	76	(66)	–[1]	
Oklahoma City	65	(26)	–[1]	
Dallas	37.5	(16)	–[1]	
Cheyenne	67	(9)	–[1]	
Spokane	66	(59)	50	(4)
Eugene	60	(38)	60	(5)
Sacramento	67	(98)	–[1]	

[1]Returns too low for reliable analysis.

For default judgments, plaintiffs using an attorney for collection were able to collect in 60 percent of the cases, as compared to 34 percent for plaintiffs without an attorney. Finally, Table 7.5 shows that, in all types of cases, plaintiffs collecting any part of this judgment tended to collect all of it.

These questionnaire results indicate that while problems with collection may not be as serious as some critics have indicated, significant numbers of small claims judgments are not presently paid, particularly in default cases. How then can the collection of small claims judgments be improved? It is important to begin with a realistic assessment of how much improvement can be expected. Problems caused by judgment

Table 7.3
Collection by Type of Defendant

Type of Defendant	Contested Trials		Defaults	
	%	No.	%	No.
Individuals	65.5	(536)	25	(32)
Corporations	86	(71)	50	(4)
Businesses	81	(109)	73	(11)

Table 7.4
Percentage of Plaintiffs Collecting at Least a Portion of Their Judgment: Attorney vs. No Attorney

	Contested Trials		Defaults	
	%	No.	%	No.
Plaintiff had attorney	72	(53)	60	(5)
Plaintiff had no attorney	71	(605)	34	(41)

Table 7.5
Plaintiff Collection: Amount Collected as Percent of Award for Those who Collected at Least a Portion of their Award

	Contested Trial				Default			
	Mean	Median	Mode	N	Mean	Median	Mode	N
No attorney	93%	100%	100%	(388)	76%	99%	100%	(11)
Attorney	93%	100%	100%	(38)	100%	100%	100%	(3)

debtors who move out of the jurisdiction, who "disappear," or who cannot pay, are beyond the power of the judicial system to control. Remedies for those problems lie in the area of establishing controls over the extension of consumer credit, and in the area of law enforcement. We would guess that no more than 90 percent of contested judgments and 50 to 60 percent of default judgments could realistically be expected to be collected using existing collection remedies owing to the inherent problems indicated above. The direction for improvement, then, would seem to lie in the area of simplicity and unifying existing collection remedies so that they can be utilized without the assistance of an attorney wherever feasible, and making collection remedies less expensive and more feasible for the average litigant to use. This should help to reduce the incidence of unpaid judgments resulting from cases where the judgment debtor was not able to use any collection remedies whatsoever because of ignorance of these procedures, their complexity or their expense.

The first step should be to furnish an information sheet to all plaintiffs (or defendants with counterclaims) setting forth the applicable time periods for various collection remedies, describing the remedies, and where the party can go for assistance. This should also specify the type of specific information needed to collect, such as the name of the defendant's bank and his employer. Unless information about the defendant's assets is given voluntarily, or emerges at trial, once the defendant leaves the court the plaintiff's chances of finding out this information diminish radically. It may also help to notify defendants at judgment of the possible consequences of a failure to pay, such as garnishment of the bank account or wages, loss of their driver's license (if applicable) or a judgment lien on their real estate, and to suggest an installment order if they cannot pay within the time allotted before collection remedies can be used.

Many defendants do not realize that the plaintiff's court costs (filing fees and witness fees) are added to the judgment amount and pay only the amount of damages announced in court. This can result in a lien on their real estate for the unpaid court costs and a ruined credit rating. The exact amount should be given to each judgment debtor in court and in writing. Losing parties should also be required to pay all judgments directly into court. This may help to take some of the sting out of the loser having to pay the winner directly, or may add some aura of judicial authority to the responsibility to pay. It would also enable courts to monitor unpaid small claims judgments and could avoid some of the

potentially serious problems that can result if a judgment is paid but the court is not notified.

A more radical further step (contained in the proposed model Small Claims Act by the U.S. Chamber of Commerce) fn1 would be for the judge, after judgment and while the parties are still under oath, to arrange a judgment satisfaction plan and enter a provisional writ of execution. The clerk would then secure a listing and description of the defendant's assets in case subsequent attachment becomes necessary to collect the judgment. Upon notice from the plaintiff that the judgment had not been paid within the agreed time period, the court would dispatch a salaried court official to execute the writ of attachment for the plaintiff. This procedure has much to recommend it, since it would involve the authority of the court in enforcing payment, would secure the information about the defendant's assets without the necessity of further proceedings (assuming the defendant tells the truth), and would shift the burden of attachment to the court if the defendant failed to pay. Using a salaried court official to serve writs of attachment would also give courts much needed control over this end of the collection process and would cost defendants less, since marshals or private collection agents take a percentage of the amount collected as a fee which is added to the judgment amount.

Such a system may contain potential problems, however. Due process problems may exist in compelling a defendant to reveal his assets while he still has a statutory right to appeal the judgment. Courts would also have to take the responsibility for assisting the defendant in identifying those assets that were exempt from attachment. If these problems could be resolved, such a system would enable attachment at much less effort to the plaintiff and less expense to both the plaintiff and defendant. It would, however, place small claims courts squarely in the midst of the collection process--a nontraditional function for the judicial system—and it would require more court staff, more court bookkeeping, and more taxpayer expense. It would also not solve the problem of collecting default judgments.

Several small claims courts are trying different methods of improving collection. The District of Columbia court has provided for an oral examination of assets immediately after trial if the prevailing party requests it. A judge in the Cook County Chicago Pro Se Court reported that to encourage payment after trial he hands each party an envelope addressed to him. The defendant is told to pay the judgment into court, and the plaintiff is told to notify the court if he is paid directly. We were

told that this procedure had resulted in some reduction in unpaid contested judgments in that court. Another approach is to establish a public service agency to assist judgment creditors with collection. A Small Claims Action Center established in Manhattan in 1977 by a public interest research group provides attorney-supervised paralegals to assist small claims judgment creditors with attachment, garnishment and information subpoenas. All of the above approaches are worthy of consideration in other jurisdictions.

Recording Satisfaction of Judgment

As alluded to earlier, ensuring that payments of small claims judgments are accurately recorded in court records is vitally important to judgment debtors, for unpaid judgments can produce serious secondary consequences including loss of a driver's license, attachment or garnishment, and liens on real estate owned by the debtor. In addition, since in most courts commercial credit rating agencies check the judgments files daily, any judgment not marked paid will adversely affect a judgment debtor's credit rating. Many of these problems are due to the present practice of encouraging defendants to pay the plaintiff directly, and courts do not emphasize or enforce the plaintiff's duty to notify the court when payment is received. As a result many judgments which have been settled or paid are not properly recorded in small claims court records. Because payment notations on small claims court judgment records are presently incomplete, most courts have no clear idea of the extent of problems with unsatisfied judgments. To get the collection rates for the fifteen courts in this study we had to ask the plaintiffs directly, since accurate collection information was not available in any of the court records.

In all the courts in our sample, if a party was paid directly by the other side either before trial or after judgment he was supposed to notify the court that he had been paid. In no court was the defendant able to record payment on his own, without going through an additional appearance before a judge and proving that payment was received by the plainitff. This is an extremely sloppy procedure. In Sacramento and Spokane plaintiffs were not even given or sent a notice of satisfaction to return to court if they were paid. How can a plaintiff file a form he does not have?

About two-thirds of the courts we examined would permit defendants to pay judgments into court, which would then record the payments. However, this practice was not encouraged because of the additional

bookkeeping and paperwork required of the court staff. In addition, most of these courts would allow only full payment to be made into court, not partial payments or installment payments. Since legal interest of about 6 percent runs on the unpaid balance in judgment amounts or installment orders, the accounting required can get quite complicated.

Different procedures were used for paying judgments into court. Generally a judgment debtor could give or send the court clerk a check made out to the plaintiff, or pay cash to the court which would then issue a check to the judgment creditor. In both cases the judgment would then be marked paid. One problem with accepting checks payable to judgment creditors is that if a check subsequently bounces, the creditor has to notify the clerk to rescind the satisfaction before he can proceed with attachment or garnishment.

The best system seemed to be that used in the Hennepin County Conciliation Court and in the Eugene court. There, judgment debtors were actually encouraged to pay the court to ensure that payment was accurately recorded. Checks were made payable to the court and the clerks would wait ten days for the check to clear and then issue a court check to the judgment creditor. The Minneapolis, Eugene, and Spokane courts would also accept installment payments, although the clerks grumbled about the extra bookkeeping involved.

The worst situation with respect to satisfaction existed in Bridgeport. That court had no provision for defendants to pay judgments into court to ensure that they were recorded, and no procedure for defendants to use to prove payment if the plaintiff failed to notify the court. The best a defendant could do was to file an affidavit of payment and have it entered into the court record, although this did not change the official status of the judgment as unsatisfied. At least in the other courts if a plaintiff failed to notify the court of payment, the defendant could appear with the cancelled check and request that satisfaction be recorded.

In Des Moines the clerk's office automatically notified the Department of Motor Vehicles of all unpaid automobile liability judgments thirty days after judgment was entered. Also in Des Moines after ninety days all cases where neither side appeared were entered as default judgments without the knowledge of either party. Thirty days later all unpaid automobile liability judgments in those cases were also automatically reported to the Department of Motor Vehicles, which revoked the defendant's driver's license. As a result in Des Moines, if a defendant settled with the plaintiff before trial, and the court was not notified by the

plaintiff, four or five months later the defendant received a motor vehicle notification that his license was revoked. Both automatic default policies where neither side appears at trial and automatic notification policies seem very unwise in view of their potential for producing serious problems of this type.

The solution to most existing problems with accurately recording satisfaction would be to require judgment debtors to pay all small claims judgments, including installment orders, to the court. After the checks cleared (where personal checks were used) a court check would then be sent to the judgment creditor. In this way payment would be accurately recorded in all cases, and defendants could be notified of errors in payment (such as not including court costs) that otherwise can cause serious problems. Such a procedure might also assist collection of judgments by interposing the court between the parties in the payment procedure, and judgment debtors might be less likely to issue a bad check to the court. In the case of a bad check the plaintiff would be permitted to proceed with collection remedies. In the alternative, in the case of persistent offenders, the bad checks could be turned over to the district attorney's office for prosecution.

While a system of direct payment to the court would place an added administrative burden on courts, the additional bookkeeping and expense would seem to be justified in light of the serious problems for injustice which exists in the present systems. Under such a system courts would also have an accurate indication of the extent of unpaid judgments and of who the persistent offenders were. This would enable notification of the attorney general, relevant business licensing offices, or the housing authority as appropriate in cases of continuing abuse. One related point deserves mention. Generally, commercial credit rating agencies check new small claims filings each day and a claim filed against a defendant damages his credit rating. Since court satisfaction records are presently incomplete, credit agencies do not pay much attention to them or remove paid judgments from credit files unless a judgment debtor knows of it and complains. Accurate judgment files would give a better basis for liability of credit agencies if paid judgments were not promptly removed from their credit records.

Disposing of Inactive Cases

Permitting inactive small claims cases to remain listed in court files indefinitely can cause a number of problems. A small claim listed in the

court records can ruin a credit rating even if no service was made on the defendant or neither side appeared for trial because the case was settled. Some of the courts we exmained would pull all inactive cases at the end of a specified time period (Dallas, ninety days; Eugene, one year; Bridgeport, two years) and dismiss them without prejudice. This meant a plaintiff could still refile if he later found where to serve the defendant. We would suggest all nonservice cases or cases where neither side appeared at trial be dismissed (without prejudice) ninety days from filing, and that the dismissal be clearly indicated in the case file for credit agencies.

Summary of Findings and Recommendations

Findings

- Almost all small claims courts provide methods to transfer a small claims case to formal civil court, or to retry the case in formal civil court by an appeal trial *de novo*. Both transfer and trial *de novo* can be used by defendants to discourage plaintiffs by shifting the case to a forum where lawyers are needed, the delay to trial is much longer, and the plaintiff's expenses will be much higher.
- Collection of judgment is usually not mentioned at the trial at all unless a defendant requests an installment order. Once a judgment debtor leaves the court, the plaintiff's chances of finding out the extent and location of the debtor's assets for subsequent collection actions diminish radically.
- The existing process for using the legal process to enforce small claims judgments is fragmented between small claims court, regular civil court, and executive branch sheriffs and marshals, and is too complex for many litigants to use without the assistance of an attorney. The existing collection process is also ineffective unless judgment debtors can be located and have assets or wages which can be attached.
- Across the fifteen courts examined, two-thirds to three-fourths of the contested judgments were paid or able to be collected, while only one-fourth to one-half of the default judgments were paid or collected. About 72 percent of the plaintiffs were able to collect some or all of their judgment after a contested trial, whether or not they used an attorney, while in default cases 60 percent of the plaintiffs using an attorney were able to collect some or all of their judgment but only 34 percent of those not using an attorney were able to collect.

- The procedures used by many courts to record payment of small claims judgments is slipshod and can result in injustice to defendants who have paid their judgment when payment is not recorded.
- In some courts inactive small claims cases (no service on the defendant or neither side appeared at trial) can remain on the court files for years where they can ruin a defendant's credit rating even though he may be unaware a suit was ever filed against him.

Recommendations

- Appeal by trial *de novo* in regular civil court is probably preferable to pre-trial transfer if either procedure is necessary to meet constitutional requirements.
- Transfer to formal civil court should be limited to cases where the small claims court certified that important or complex questions of law or fact are involved which cannot be adequately or fairly resolved in a small claims proceeding.
- Courts can assist plaintiffs with collection in contested cases by examining defendants for assets and arranging payment plans immediately after trial. Other steps to assist with collection can include unified and simplified collection procedures, court assistance to litigants in initiating collection procedures, and having court officers execute garnishment and attachment orders under judicial supervision.
- All small claims judgments (including installment judgments) should be paid into court to assure accurate recording of payment.
- Inactive small claims cases (no service or neither side appeared) should be automatically dismissed without prejudice ninety days from filing.

Notes

[1]*See* Section 8.2 (Collection) of the Model Consumer Justice Act (A Proposed Model Small Claims Act for State Legislatures), published by the Chamber of Commerce of the United States, 1615 H Street, N.W., Washington, D.C. 20062 (1977).

8.
Litigant Problems and Opinions

Our mail survey questionnaire asked both plaintiffs and defendants what problems they encountered in small claims court and whether they thought certain reforms were desirable or undesirable. This chapter presents and discusses results of those questions.

Litigant Problems with Small Claims Court

The questionnaire asked plaintiffs and defendants whether they had any problems in the following areas.

—Learning their legal rights
—Finding the court
—Filling out the forms in court (defendants were asked whether they had problems understanding the complaint)
—Serving the complaint on the person they wanted to sue (plaintiffs only)
—Learning what evidence or witnesses were necessary to prove their case

Litigants were also asked to provide details if they indicated problems in any of these areas.

The percentages of plaintiffs responding in each court who indicated problems in an area and the totals for all plaintiffs responding in the fifteen courts are displayed in Table 8.1. It surprised us that getting good service on the defendant was the number one problem in the fifteen-court total, until we remembered that court clerks in several of the cities had indicated that up to half of all small claims cases filed never went any further because of lack of service. It is interesting to examine the variation among the various cities on this problem area. Plaintiffs in Oklahoma City, Washington, D.C., Des Moines, and Cheyenne indicated the most trouble with service on the defendant, while plaintiffs in Omaha and Minneapolis indicated the least. There seems to be no particular correlation between city size and difficulty in serving defendants; plaintiffs in Harlem and Manhattan reported fewer problems than

did plaintiffs in a number of smaller cities. Nor does it seem possible to hypothesize an explanation based on the transient population of the different cities, for there seemed to be no pattern as between the growing cities versus the stable or declining cities. There also seemed to be no systematic relationship between the method of service used by a court and the incidence of plaintiffs reporting problems with service. In Dallas and Cheyenne only personal service on the defendant by the sheriff was used in contrast to registered or certified mail service used in most courts. While personal service by a court officer or sheriff is generally believed to be more effective in locating a defendant than mail service, in both cities the percentage of plaintiffs reporting problems with service was slightly higher than the fifteen-court average of 24 percent.

The second- and third-ranked problems for plaintiffs were finding out what their legal rights were and learning what witnesses or evidence was necessary to prove their case. Again, we found no direct relationship

Table 8.1
Problem Areas for Plaintiffs

City	(Percentage of Total Plaintiffs Responding Who Indicated Problem Area) in									
	Legal Rights		Locating Court		Court Forms		Serving Complaint		Witnesses or Evidence	
	%	No.	%	No.	%	No.	%	No.	%	No.
Bridgeport	19	(11)	9	(5)	12	(7)	33	(19)	4	(2)
Harlem	17	(18)	9	(9)	7	(7)	26	(27)	16	(16)
Manhattan	21	(27)	1	(1)	10	(13)	30	(39)	21	(27)
Washington, D.C.	20	(8)	3	(1)	3	(1)	44	(17)	17	(6)
Grand Rapids	21	(22)	12	(12)	14	(15)	21	(22)	21	(21)
Minneapolis	16	(18)	1	(1)	7	(8)	13	(14)	14	(15)
Des Moines	27	(17)	14	(9)	16	(10)	39	(25)	9	(5)
Omaha	19	(29)	5	(7)	5	(8)	9	(14)	22	(31)
Sioux Falls	18	(22)	3	(4)	3	(3)	13	(16)	11	(13)
Oklahoma City	25	(15)	3	(2)	16	(9)	54	(33)	26	(14)
Dallas	11	(4)	3	(1)	3	(1)	24	(8)	11	(4)
Cheyenne	13	(2)	7	(1)	19	(3)	38	(6)	17	(3)
Spokane	25	(28)	2	(2)	7	(8)	31	(36)	24	(25)
Eugene	20	(15)	3	(2)	8	(6)	30	(24)	11	(7)
Sacramento	18	(25)	4	(6)	5	(6)	32	(43)	14	(18)
All cities	18		5		7		24		13	

between specific procedures used in a given court and the incidence of reported problems. For example, no pre-filing legal advice was provided to plaintiffs in Bridgeport, Washington, D.C., Des Moines, Omaha, Oklahoma City, Dallas, Cheyenne, Eugene or Sacramento (see Table 5.2 in Chapter 5). Yet of these nine courts, only Des Moines and Oklahama City plaintiffs reported a significantly higher incidence of problems with learning their legal rights than the fifteen-court average. While it was our subjective impression that the filing advice provided by the court clerks in Omaha and Cheyenne was probably the poorest of the fifteen courts studied, Omaha plaintiffs reported only slightly more problems with learning their legal rights (19 percent) than the fifteen-court average (18 percent) and only 13 percent of the Cheyenne plaintiffs reported problems with legal rights, the lowest reported. Evidently there are a number of factors at work which can affect litigants' perceptions of problem areas beyond the clerical assistance provided in court. These other factors could include: the availability of private legal advice, legal aid, or other free legal advice; the incidence of cases which the plaintiffs believed hinged primarily on facts rather than legal rights; the perceived helpfulness of the judge or the activism of the judge at trial; and so forth.

The third-ranking problem area for plaintiffs, knowing what witnesses or evidence were necessary to bring to trial, showed a similar lack of correlation with the extent of pre-trial advice. Harlem, Sacramento and Sioux Falls probably provided the best evidentiary advice, and yet plaintiffs in these courts reported approximately as many problems in this area as the average for all fifteen cities. Bridgeport, on the other hand, provided very little evidentiary advice at filing, and yet only 4 percent of the plaintiffs responding from that city indicated problems in that area. A possible overriding factor is the policy of the judges in granting (or not granting) continuances at trial when a litigant has not brought the required documentation or witnesses to trial. Since this remedy can prevent a plaintiff from being non-suited even if the evidentiary advice he received at filing was inadequate for his case or he forgot the instructions by the time of trial, it may be able to compensate for poor pre-trial evidentiary advice. In this regard it is interesting to note that the courts with the most liberal continuance policies at trial (Bridgeport, Washington, D.C., Des Moines, Sioux Falls, Dallas, Cheyenne, Eugene, and Sacramento) had the lowest reported incidence of evidentiary problems, even though they varied widely on the extent and quality of evidentiary advice provided at filing for plaintiffs.

This latter result illustrates a key point about the small claims process which cannot be overemphasized, the importance of using judges who care about litigants, who will assist litigants in developing their case at trial, and who will reschedule or rehear a case if they feel a litigant would have a good claim (or defense) but for a missing witness or document. We have indicated that the small claims process differs from the regular civil process in that formal pre-trial procedures used to focus the legal issues and to identify the applicable evidence in a case (such as responsive pleadings and pre-trial discovery) have been omitted and these issues are left to be worked out at trial. While institutionalized assistance to litigants such as extensive trial preparation advice and the use of consumer advocates can assist in legal and evidentiary preparation for trial, a very important role still rests with the trial judge. Active and flexible assistance to litigants in developing cases at trial will still be necessary for many litigants, and cannot be completely replaced, at this point at least, by institutionalized pre-trial assistance.

Of the plaintiffs responding from the fifteen courts, 373 gave specific comments about problems they had experienced. These comments are separately coded and organized in Table 8.2 and we see that the relative rankings of these problem areas remained the same; problems serving the complaint, problems learning their legal rights, and evidentiary problems were still most vexing to plaintiffs. This breakdown of specific problem areas can be used, however, to identify those areas over which courts have control, and can improve, as distinguished from those problems beyond the reach of the court. With those problems indicated in locating a court, for example, courts cannot do much about litigants receiving erroneous information from the general public, but they certainly can see to it that small claims courts are clearly listed (with address) under "S" in the white pages, and under the "most called numbers" section in the beginning of the phone book. Prominent signs (bilingual if necessary) can be placed in court lobbies and in the courtrooms used for small claims trials to direct litigants to the small claims intake clerk or to the trial parts. Most of the specific problems indicated with court paperwork can be remedied by forms redesign, clear instructional materials, and clerical assistance to litigants in filling out the necessary forms.

In trying to serve the defendant, fifty plaintiffs reported that they could not locate the defendant, and thirty-one reported that the defendant refused to accept the summons. While some aspects of defendant behavior are beyond court control, courts can certainly take steps to

Table 8.2
Specific Problem Areas Indicated by Plaintiffs

Problem Area	Response	
	%	No.
Learning legal rights		
Plaintiff lacked basic information about what his legal rights were		(75)
No assistance by court		(16)
Received erroneous advice		(4)
Totals	25	(95)
Locating court		
Plaintiff received erroneous directions		(1)
Confusion among various parts of court		(4)
Courtroom poorly worked		(5)
Court could not be located by phone		(4)
Totals	4	(14)
Problems with court forms		
Forms did not include clear instructions		(10)
Court personnel uncooperative in assisting with filling out forms		(9)
Court staff gave erroneous advice		(4)
Plaintiff could not understand forms		(13)
Totals	10	(36)
Problems serving complaint		
Lacked information about complaint serving procedure		(10)
Poor court cooperation in serving complaint		(24)
Problems determing the correct defendant		(14)
Problems locating the defendant		(50)
Defendant refused to accept the summons		(31)
Totals	35	(129)
Evidentiary problems		
Insufficient information about what to bring to trial		(77)
Poor court advice on necessary evidence		(13)
Witness would not appear		(7)
Could not locate necessary witness		(2)
Totals	27	(99)
Total plaintiffs writing in specific problems	100	(373)

provide better information about serving a complaint, and furnish more assistance in determining the correct defendant or identifying addresses and agents for service on corporations and businesses. In only three courts (Grand Rapids, Omaha, and Sacramento) was personal service on a defendant by a court officer available if mail service failed. Personal service might be improved if more courts used their own employees for personal since a number of court clerks reported that sheriffs or marshals used in some jurisdictions for personal service often made no further attempt to locate a defendant if the defendant was not at home when they called or the address given was incorrect. Since sheriffs and marshals are executive branch employees, courts have no effective check on their performance if it is slipshod.

Litigant concerns with legal and evidentiary problems present a mixture of factors both within and outside of court control. Any reasonable amount of in-court legal advice cannot be expected to overcome a litigant's lack of knowledge about complex legal problems or to, in all cases, rectify pre-existing misconceptions about the law or erroneous advice furnished by others--at least not without turning the small claims intake section into a legal clinic. In-court assistance cannot provide for the legal education or reeducation of litigants, and legal aid, legal clinics, and the private bar must become involved. Similarly, in-court assistance cannot be expected to locate all missing witnesses. Reasonably high quality in-court assistance should, however, be able to answer most common questions about basic legal rights which litigants need to know in order to file or defend a claim, furnish assistance in identifying and locating the correct defendant, and detail the types of evidence generally needed to prove certain types of cases with some specificity. If intake staff do not know the answer to a litigant question they should say so, and litigants should be referred to legal aid, legal clinics, lawyer referral service, consumer assistance offices and other resources which can answer that question. The more specific and accurate such additional referrals are, the more help they will be to litigants.

Table 8.3 shows defendant responses when asked if they experienced problems with legal rights, locating the court, understanding the complaint, and getting the necessary evidence or witnesses for their defense. Evidentiary and legal problems were the most prevalent, with 19 percent and 18 percent of the defendants checking these areas respectively. For defendants the third-ranking problem was understanding the summons and complaint served on them. Open-ended defendant comments about

specific problems were coded and categorized as was done with the plaintiff responses, and Table 8.4 indicates the results. These specific complaints about defendants' experiences in small claims court focused most heavily on evidentiary problems (44 percent) and problems in learning their legal rights (37 percent), a higher percentage for both categories than for the plaintiffs.

This concentration of defendant problems is understandable, for we hope that our description of in-court assistance provided to small claims litigants made it clear that the defendant is at present the forgotten man in small claims process. Since typical small claims complaint forms do not encourage the defendant to telephone or visit the clerk's office for assistance, and some complaints do not even clearly indicate what that trial date is, it is not surprising that few defendants visit or telephone the court for assistance before trial and that a majority do not even appear for trial.

Table 8.3
Problem Areas for Defendants

City	Percentage of Total Defendants Responding Who Indicated Problem Area							
	Legal Rights		Locating Court		Understanding Complaint		Witnesses or Evidence	
	%	No.	%	No.	%	No.	%	No.
Bridgeport	15	(4)	8		8	(2)	11	(3)
Harlem	14	(5)		—	19	(7)		—
Manhattan	15	(9)	5	(3)	7	(4)	17	(10)
Washington, D.C.	21	(4)	5	(1)	26	(5)	16	(3)
Grand Rapids	25	(13)	6	(3)	12	(6)	23	(12)
Minneapolis	16	(7)	2	(1)	9	(4)	22	(10)
Des Moines	29	(7)		—	8	(2)	25	(6)
Omaha	15	(14)	3	(3)	15	(14)	16	(15)
Sioux Falls	7	(4)	4	(2)	4	(2)	24	(13)
Oklahoma City	22	(4)	22	(4)	22	(4)	28	(5)
Dallas	22	(5)	9	(2)	9	(2)	22	(5)
Cheyenne								
Spokane	27	(12)	5	(2)	18	(8)	29	(13)
Eugene	24	(11)		—	12	(5)	21	(9)
Sacramento	22	(10)	8	(4)	10	(5)	20	(10)
All cities	18	(109)	4	(25)	12	(10)	19	(114)

As in the case of specific plaintiff problems, some defendant problems are largely beyond the control of the court and some are not, with one important difference. Courts can do relatively more to solve defendant problems, because they do so little for defendants now. An important first step would be the redesign of complaint forms: to make them more even-handed in their language; to specify exactly what is required of a defendant, where and when; to provide basic information about a defendant's right to question a claim or damages, to ask questions, or to request more time to pay; and to indicate the availability of

Table 8.4
Specific Problem Areas Indicated by Defendants

Problem Area	Response %	Response No.
Problems with the complaint		
Summons provides no specific information about what defendant should do		(8)
Defendant could not understand complaint		(5)
Totals	10	(13)
Learning legal rights		
Defendant lacked basic information about legal rights or merits of case		(37)
Lacked court cooperation		(3)
Received erroneous advice		(2)
Law was complex		(4)
Totals	37	(46)
Locating the court		
Defendant was directed to wrong place		(1)
Court system is spread out		(3)
Did not know where court was		(6)
Totals	8	(10)
Evidentiary problems		
Lacked information on what to bring to court		(39)
Lacked court cooperation		(6)
Received erroneous advice		(3)
Could not find witness		(7)
Totals	44	(55)
Total defendants writing-in specific problems	100	(124)

in-court assistance when questioning or opposing a claim, a telephone number to call and a person to ask for. A concise instruction sheet for defendants specifying how to file a counterclaim, what types of evidence and witnesses are required to defend different types of cases, how to subpoena a witness, and indicating sources of assistance for legal questions should be included with each complaint. These steps, plus a reorganization of court intake staff to provide more assistance to defendants by telephone, should make substantial headway toward addressing the range of problems indicated by defendants.

Some of the steps courts can take to alleviate litigant problems would not be expensive (redesigning complaint forms, better instructional materials, accessible phone listings for small claims court, or prominent in-court signs, for example). Training, upgrading, or augmenting clerical or paralegal staff to provide better pre-trial assistance to litigants will cost more. It is important to keep in mind, however, that the taxpayer cost of the small claims process is presently very low compared to just about any other area of the judicial process. Since a very basic goal, perhaps *the* basic goal, of the small claims process is to enable self-representation, and small claims court is presently about the only point in our justice system where an average citizen can afford to seek redress for a claim which does not involve a large amount of money, the additional funding required to move closer to effective and fair self-representation for most plaintiffs and defendants should be able to command public and judicial support.

Judicial systems are, like most other organizations, subject to organizational inertia. The idea of providing fairly extensive pre-trial legal and evidentiary advice to litigants, let alone actively promoting pre-trial assistance for defendants, is still relatively new. Many judges and court staff seem at present to consciously or unconsciously encourage the use of attorneys. Many court systems seem presently to be unaware of or to tolerate conditions in their small claims courts (such as confusing complaints, or minimal pre-trial assistance to litigants) which they know, or should know, will push many litigants to seek the assistance of an attorney. The possibility of small claims cases which involve complicated questions of legal liability will always exist, and at least some litigants will always require professional legal assistance. However, given an active and reasonably well-informed trial judge, referee or arbitrator, reasonable amounts of court-provided pre-trial legal and evidentiary advice should enable the vast majority of small claims litigants to represent themselves at trial and to receive an even-handed

and fair decision without the court having to become a full-scale legal clinic. Resources such as the Manhattan consumer counsel or stationing a legal aid attorney in court could provide some help with more difficult cases. Judicial systems must realize that the in-court assistance required in small claims court differs from the rest of the civil process because some important goals of the small claims process are different.

Litigant Opinions on Desired Court Features

We were interested in what people who had used the small claims court felt about the desirability or undesirability of various reform proposals which have been suggested to improve these courts. The question asked of litigants read as follows:

The following are different features of small claims courts across the country. Which of these features would you like to see in an ideal small claims court? Check whether you think each is desirable or not desirable. If you have no opinion on a particular feature, check "no opinion."

	Desirable	Not Desirable	No Opinion
a. Court open in evenings	( )	( )	( )
b. Court open on weekends	( )	( )	( )
c. An office of the small claims court located in your neighborhood	( )	( )	( )
d. People available in court to advise you whether you have a case worth filing	( )	( )	( )
e. No lawyers permitted at trial	( )	( )	( )
f. Trials held in informal surroundings around a table and in private	( )	( )	( )

Litigants were not asked about the desirability of barring assignees from claims judgments court, filing limits, or limiting appeal from small claims judgments because we believed these areas might be beyond their expertise.

Plaintiff opinions are presented in Table 8.5 and defendant opinions in Table 8.6. For each court, using mean scores, features were ranked from 1 to 6. These rankings are relative and consequently a ranking of 4, 5, or 6 does not mean that respondents found the feature undesirable or unimportant. Rankings of 4, 5, or 6 are merely an indication that the respondents believed these features were not as desirable as the items ranked 1 or 2.

The most highly ranked features for both plaintiffs and defendants were: 1) pre-trial advisors, 2) evening hours, and 3) trials held in informal surroundings and in private. There was less enthusiasm for neighborhood small claims offices, having the court open on weekends, or prohibiting lawyers at trial.

While there were some variations in rankings in the different cities, the high choice of "people available in court to advise you whether you have a case worth filing" was remarkably uniform for both plaintiffs and defendants in all fifteen jurisdictions.

It was interesting to see that respondents in the five courts which barred attorneys at trial (Grand Rapids, Omaha, Spokane, Eugene, and Sacramento) did not favor of prohibiting attorneys at trial more than the respondents in the ten courts permitting attorneys.

The idea of neighborhood small claims office did not receive a high priority ranking except in Dallas, which already had such a system by way of twelve justice of the peace courts (which handle small claims) located in various areas of the city, and by defendants in Washington,

Table 8.5
Plaintiffs' Rank Order of Court Features

City	Court Open Evenings	Court Open Weekends	Neigh-borhood Office	Pre-Trial Advisors	No Lawyers at Trial	Informal Sur-roundings
Bridgeport	4	6	3	2	5	1
Harlem	2	5	3	1	6	4
Manhattan	1	5	4	2	6	3
Washington, D.C.	2	5	4	1	6	3
Grand Rapids	2	6	5	1	4	3
Minneapolis	2	6	3	1	5	4
Des Moines	4	5	3	1	6	2
Omaha	2	4	6	1	5	3
Sioux Falls	3	6	4	1	5	2
Oklahoma City	2	4	3	1	6	5
Dallas	4	3	1	2	5	6
Cheyenne	2	4	6	1	5	3
Spokane	2	6	4	1	3	5
Eugene	3	5	6	1	4	2
Sacramento	2	5	4	1	3	6
All cities	2	5	4	1	6	3

D.C. While having the court open weekends also was not generally a highly ranked feature, even in Washington, D.C., where Saturday small claims trials are possible if both sides request it, evening small claims sessions received strong support in all fifteen cities.

One last result which should be of interest to judicial systems was the fairly strong support for the idea of holding small claims trials in more informal and private surroundings. This result ran counter to the perceptions of the judges we interviewed, for a number believed that most litigants wanted their day in court, which included a formal courtroom, the American flag, and a judge in robes behind a high bench. Apparently, the trappings of justice are more popular with judges than with litigants, and courts should give serious thought to providing for more private and informal surroundings for small claims trials at the option of the litigants, for example in a jury room or conference room located near the courtroom. In the design of new court facilities it might also be useful to think in terms of providing some smaller and less intimidating courtrooms for small claims trials.

Table 8.6
Defendant's Rank Order of Court Features

City	Court Open Evening	Court Open Weekends	Neighborhood Office	Advisors Available	No Lawyers Permitted	Informal Surroundings
Bridgeport	3	6	4	1	5	2
Harlem	3	5	3	1	6	2
Manhattan	1	5	4	2	6	3
Washington, D.C.	2	4	2	1	5	4
Grand Rapids	2	4	5	1	6	3
Minneapolis	2	6	4	1	5	3
Des Moines	3	4	6	1	5	2
Omaha	3	6	5	1	4	2
Sioux Falls	3	6	5	1	4	2
Oklahoma City	2	5	4	1	6	3
Dallas	4	5	2	1	6	3
Spokane	2	4	6	1	5	3
Eugene	2	5	6	1	4	3
Sacramento	2	5	4	1	6	3
All cities	2	4	5	1	6	3

Summary of Findings

Findings

- The most often reported problems for plaintiffs were getting good service of their complaint on the defendant, learning their legal rights (whether they had a valid claim), and finding out what evidence or witnesses would be necessary at trial to establish liability and damages.
- The most often reported problems for defendants were learning what evidence was necessary to defend against a claim, learning their legal rights (defenses to liability), and understanding the claim served and what they had to do to respond to it.
- Potential changes in small claims courts which both plaintiffs and defendants favored most were having pre-trial advisors available in court to assist with trial preparation, holding evening small claims sessions, and holding trials in more informal and private surroundings. There was less support for the idea of neighborhood small claims offices, having the court open weekends, or prohibiting lawyers at small claims trials.

9.
Recommendations and Final Considerations

Small claims courts were developed to provide quick, inexpensive, even-handed and effective resolution of smaller civil claims--a forum which could be used by an average citizen without the need for an attorney. The purpose of this study was to assess how well small claims courts are doing in meeting those goals, to indicate areas needing improvement, and where possible to point out directions for reform. Throughout our examination of the functioning of a national sample of fifteen courts we have presented data assessing the performance of these courts and have indicated which practices or procedures seemed to work the best in meeting the goals of this process. This chapter summarizes those assessments and recommendations and presents some additional considerations which we believe are relevant to small claims reform efforts.

The Performance of the Small Claims Courts in the Sample

Overall we found that the small claims courts we examined were meeting the goals of speedy and inexpensive justice far better than the previous literature on these courts led us to expect. At the same time, we found important deficiencies that we believe must be addressed if small claims courts are to maximize their usefulness to the public.

On the positive side, we found that small claims courts were able to resolve disputes quickly, especially if no pre-trial continuances were involved. It was rare that a case took more than six weeks from filing to resolution in any of the courts we studied. The costs of using the small claims process were generally quite low relative to the size of the claims involved, and most litigants reported costs of less than $25 to pursue their cases. We found that permitting collection agencies to use the small claims court did not hinder the use of these courts by individuals and provided a better forum for individual defendants involved in those cases. Most courts in our sample were helpful to inexperienced plaintiffs

and would assist them with filing a claim and provide information on the types of proof they should bring to trial. Most litigants that we surveyed did not use attorneys in small claims trials, and we found that the plaintiffs were able to do as well in contested trials whether or not they were represented by an attorney at trial. This result held regardless of differences in race, income, or education. The vast majority of the judges that we interviewed and observed in action would actively assist inexperienced litigants and used the flexibility provided by the small claims process to try to ensure even-handed and fair results. Finally, in almost every court in our national sample, we found that the court, or individual judges or clerks, had developed useful solutions to some of the problems in the small claims process which made using that process less burdensome to litigants, or which assisted self-representation. The broad flexibility which exists in the process was being used to try different approaches to moving closer to the goals of the small claims process.

On the negative side, we found that the costs of using small claims courts became substantial where fee-charging attorneys were used or where lost wages were reported, and particularly when both lost wages and attorneys' fees were involved. These factors increase the risk of pursuing a small claim and decrease the potential rewards of winning that case. We found that there was a tendency on the part of both plaintiffs and defendants to go to an attorney with larger claims, indicating a belief on the part of litigants that attorneys are still necessary in small claims court as the claim becomes more important to them. In contrast to the ability of plaintiffs to do as well without an attorney as with one, we found that defendants without attorneys at trial were not able to do as well as the defendants with attorneys. We found that cases where a consumer actively pursues his rights as a plaintiff made up a very small percentage of all courts in our sample, and we believe that many consumers presently end up as defendants in small claims courts.

We found that very little pre-trial assistance or information is presently provided to defendants and we believe the complaint process could well produce the impression that the judicial system favored the plaintiff. We also found that when only one side appears at trial, the defendant often does not get the same chance as the plaintiff to prevail. We also found that some small claims judges did not play the active role at trial required by the process, and that this could disadvantage inexperienced litigants, particularly if they were confronting an attorney. We found a variety of specific procedures used in some courts which

could result in additional burdens (or in some cases outright injustice) to persons using those small claims courts. Finally, we found that significant numbers of small claims litigants were unable to collect their small claims judgments, particularly in default cases.

Before moving to solutions it is important to pause to reemphasize several limitations that were discussed in connection with improving assistance to litigants, problems with service of process, problems with collection, and the analysis of problems reported by litigants in our sample. First, many of the existing problems in small claims courts are the result of factors which lie outside the control of the court, and solutions also lie elsewhere--as for example with defendants who do not pay small claims judgments because they have no money to pay. Second, if the court can affect a problem area we must ask what can we realistically expect the court to do, what the costs would be, and whether the court or someone else should provide this remedy. On the collection of judgments, for example, we believe more court involvement in collection and increased post-trial assistance to judgment creditors can increase the number of small claims judgments which are collected to perhaps 90 percent of contested judgments and 60 percent or so of default judgments. It is not realistic to expect that increased court involvement can achieve 100 percent collection so long as many defendants are judgment-proof. Solutions there lie in the area of stringent credit extension laws, income maintenance policies, law enforcement and business regulation, and are questions for legislatures to decide. It was indicated that many poor litigants are disadvantaged in proving or defending against a small claim because they do not save the necessary sales slips, payment receipts, warranty cards, and so forth. By the time they end up in court, increased paralegal assistance cannot do much to remedy this problem. The solution here lies with increased public education on the importance of saving paperwork from important consumer transactions. But should the court be responsible for running a public legal education effort, should the court do it in conjunction with other groups, or could other agencies do it most effectively? The Harlem consumer advocates told us that despite their careful preparation of low income or inexperienced plaintiffs for trial, they found that some plaintiffs forgot their advice by the time of the trial, did not bring the required proof, or fell apart at trial. This type of litigant needs assistance at trial by a law-trained person. But should this resource be administratively part of the small claims court, legal aid, or some other independent agency?

Summary of Major Recommendations

In analyzing the small claims pre-trial, trial, and post-trial process we found specific practices which seemed to work the best in maximizing accessibility to and even-handed treatment of litigants, or best served to reduce the time, number of appearances or cost to litigants, or served to reduce the possibility of injustice. We are not going to repeat each of those practices here. The important question is: are these procedures feasible? Our answer is yes; almost all of them are being used in one or more of the courts in our national sample right now. While we believe that significant improvements in the usefulness of small claims courts to the public could be achieved by combining the best practices which are now in use, in several areas it is our belief that present practices are inadequate and that new approaches will have to be developed. The series of recommendations which follows indicates what we feel to be the most important areas needing attention and some suggested directions for improvement.

Small Claims Courts Should Be Open to Everyone

We found that contrary to the reasoning behind the growing trend to exclude collection agencies or business plaintiffs from using small claims courts, such use does not hinder individual use. While collection agency or business use does result in increased small claims caseloads, the impact of these cases on individual litigants can be minimized by separately scheduling collection agency, mass filer, or default cases. Although many individual defendants default in business or collection agency cases, pushing these cases into regular civil court only increases the costs to defendants, makes *pro se* defense difficult or impossible, and removes the exclusive small claims remedy of installment orders for defendants who need more time to pay. While pre-trial assistance to defendants is presently inadequate in small claims court, none is provided in regular civil court. This leads to our next recommendation.

Defendants Need More Assistance

A number of courts now provide fairly extensive pre-trial assistance to plaintiffs, help with filing claims, and help with legal and evidentiary information needed to file the claim or to prepare for trial. While defendants are not excluded from this in-court assistance, it is presently

structured to assist litigants who are physically present in the intake section. Since the small claims summons which a defendant receives is often one-sided in its language and usually offers no information about how to contest a claim or the availability of court-provided assistance in preparing for trial, very few defendants ever come to court before trial. Improving trial preparation advice for plainitffs without making this assistance equally useful to defendants runs the risk of further imbalancing the small claims process against defendants.

We found most judges feel that small claims plaintiffs rarely bring suit unless they genuinely believe they are in the right. Judges may thus find themselves inadvertantly leaning toward plaintiffs at trial. Potential consumer defenses were rarely raised in small claims cases, perhaps because many judges were unfamiliar with federal and state consumer protection legislation. It was not surprising then that plaintiffs without attorneys were able to do as well as those with attorneys, while defendants were not.

About half of all small claims cases presently end up as default judgments. Defendants for one reason or another feel it is not worth going to court to contest the claim. We found that in some courts default judgments were granted without clear proof that the defendant had been notified of the claim or adequate proof of the defendant's liability or the damages. Better safeguards were suggested for this area.

We believe that defendants need to be actively advised of their rights and the assistance available to help them. This assistance should include the use of even-handed complaints, which include information sheets indicating how to prepare for trial and the types of proof which can be used to defend different types of claims. The complaint sent to the defendant should also encourage defendants to telephone or visit the court clerk if they need help with or have questions about the trial. The right to request installment payments of a judgment should be clearly indicated, and defendants should be encouraged to appear at trial even if they think they owe some or all of the claim, if they want to question a transaction and claimed damages that they do not understand. A more active judicial role in checking basic consumer law requirements in default cases at trial is also needed.

Limiting Attorney Participation at Trial

Our data indicated that using a fee-charging attorney greatly increased the costs of a small claims case to litigants, and we found that the

presence of attorneys at trial tended to significantly increase the time necessary to complete trials. We also found that many judges were uncomfortable about their role in assisting *pro se* litigants against an attorney; some were afraid that they tended to overreact and some seemed to underreact. Because of the importance of attorney representation to defendant success rates, however, and the possibility of complex cases which may benefit from attorney involvement, we cannot recommend a complete prohibition of attorneys at trial. We suggest instead that better in-court legal and evidentiary advice on trial preparation, and active judicial intervention at trial to assist litigants with presenting their cases and raising legal issues, could make attorneys unnecessary at trial in the great majority of small claims cases.

Where attorneys are used at trial, we feel, as is presently the case in many courts, that their participation should be limited to presenting additional legal or evidentiary points at the end of a case, and that questioning of witnesses should be conducted by the judge. This could retain the benefits of attorney participation in more complex cases, while avoiding the potential for an attorney to harass an opposing layman or witness.

Reducing Costs to Litigants

Filing fees make up only a very small percentage of the costs to the litigants to pursue a small claims case. We found that the most important costs to litigants, where incurred, were attorney's fees and lost wages. We discussed above means for reducing the need for attorneys. Lost wages can be reduced in two ways: reducing the amount of time a party must spend in court and providing after-work hours for a party to go to court.

There are a number of ways in which the time litigants spend in court can be minimized. Efficient trial scheduling, with trials scheduled at specific small intervals, can reduce waiting time for the litigants. To avoid wasted appearances for defendants, the return date on the complaint should be the trial date. Continuances during a trial can be reduced by better pre-trial assistance to litigants, but where granted the trial should be rescheduled on the same day if possible or at a specified hour as soon as possible after that day.

A substantial percentage of the litigants that we surveyed indicated that they would like to see small claims courts open in the evening. Yet only three courts in our sample, Harlem, Manhattan, and Washington,

D.C., provided any evening hours. If evening trial scheduling is offered as an option, both parties should be given that option.

Other costs that can be reduced are the costs involved when an attorney is needed to collect a judgment. This leads us to our next recommendation.

More Court Involvement with Collection of Judgments

Our data show two things with regard to the ability of a small claims litigant to collect his judgment: the collection of judgments after contested trials for most litigants was not as great a problem as had previously been expected; however, collection of default judgments was a major problem. For those litigants who were unable to collect, the small claims court was not an effective dispute resolution mechanism. In addition, for those who had to use an attorney for collection, the costs of the process were increased.

Although some problems with collection are beyond the power of courts to control, we believe that if courts become more actively involved in collection, collection can be substantially improved in a significant number of cases. We suggested that judgment payment plans be established immediately after trial, that the defendant be examined as to his assets while still under oath, and that attachment writs be provisionally entered at that point in case the judgment debtor does not subsequently pay. This would remove the burden of proceeding with collection remedies from the prevailing party. We suggested that attachment be performed by a court officer so that courts can have more control over this aspect of the collection process, although if attachment fails, there is presently not much anyone can do. In addition, we strongly recommend that all small claims judgments be required to be paid into court, including installment payments, to avoid potentially serious problems that can result if payments are not accurately indicated on the judgment records.

Judges Need More Help with Consumer Law Cases

Most of the judges that we interviewed were not up to date on new developments in federal and state consumer protection laws and had insufficient time to undertake legal research for small claims cases. We recommend that periodic training be provided for judges on new legal developments relevant to small claims cases, and that small claims

benchbooks be prepared, organized by case subject matter areas, which set forth applicable requirements in a checklist format for use both at trial and in checking over default cases. This would help judges to keep abreast of relevant consumer law and could assist in alerting them to consumer law requirements at trial. We also suggest that a central consumer law research office be established in each state, where judges can call for answers or legal research on new or unfamiliar consumer law questions.

In cases with complex legal or factual issues, such as medical malpractice cases, judges should be given the discretion to transfer a case to the regular civil court for a full trial with attorneys. As an alternative, a judge should be able to request that a full record be kept of the small claims trial for possible use on appeal. Careful monitoring of these cases should be undertaken by the court to assure that judges are not transferring cases in order to avoid difficult trials and to learn which cases the judges feel are unsuited for small claims treatment.

This summary of recommendations is not meant to be exhaustive. It does, however, represent what we believe to be the most important areas for small claims reform.

Some Final Considerations

A number of the present problems that we have identified with small claims courts and the failure of previous reform efforts to recognize or correct those problems can be traced in part to the failure to take into consideration two factors which tend to militate against efforts at small claims court reform. First, changes which are made to improve the administrative efficiency of courts do not necessarily increase the convenience to the public who use small claims courts. Second, attempts to apply a single operational mode to all small claims courts may not be effective due to the great variety of structures, needs, and limitations under which these courts presently operate.

This study has described several instances of procedures used in courts to increase their administrative efficiency which have worked to make those courts more difficult for individuals to use. Included in a list of such procedures would be the following:

— Making the first appearance date for defendants an answer date increases the burden of the defendants and can result in inadvertent defaults.
— Scheduling all trials for a single court call in the morning greatly

increases the average time most litigants must wait for trial.

— In courts where judges are rotated through small claims duty, cases continued at trial are often heard by what judge is on small claims duty when the case comes back for completion. This requires more trial time for the litigants, as the entire trial must be repeated before the new judge.

— Evening trial sessions are rarely offered owing to the administrative costs of keeping court facilities open and staffed at night. Yet a great many of the litgants that we surveyed indicated that they would like to see the small claims courts open in the evenings.

— Many small claims courts would not accept payment of judgments to the court, owing to the increased bookkeeping required. Yet paying to or through the court is the only way that the defendant can be assured that his payment of judgment is recorded.

We do not claim that administrative efficiency must always conflict with public convenience. For example, knowing in advance what cases will be contested could help a court in properly scheduling cases for trial and could ease the burden both on the judges and litigants by minimizing the gaps in a judge's trial time and by minimizing the wait for trial. The answer requirements used by some of the courts in our sample, unfortunately, did neither. The point we wish to emphasize is that administrative efficiency cannot be the sole criterion for judging small claims reforms. The impact that these procedures have on persons using the courts must be a major consideration.

Some difficulties with improving small claims courts result from a focus on developing a single procedure, or a set of "model" procedures, which will solve all small claims problems in all courts. If nothing else, this national survey illustrates the extreme diversity in procedures which presently exist, as well as the great amount of flexibility still inherent in the process. This flexibility provides room for individual experimentation and innovation, and for local courts to adapt to local needs. As we travelled among the courts in out national sample, we found that judges and court personnel were invariably eager to learn of new ideas or solutions to problems which other jurisdictions had developed. Not all of these solutions are interchangeable, since each court operates under different financial, attitudinal, and constitutional restraints. We believe, however, that significant national gains can be achieved by continuing this process of cross-fertilization of new ideas.

A major strength of the small claims process is that it is a dynamic process which has the ability to adapt to user needs more easily than

many other areas in the judicial process, and we do not believe that a single model should be imposed on that process. If problems are identified, and if the impact of the various practices is examined from the standpoint of whether they move the courts closer to or further from the basic goals of the process, we believe, as one judge put it, "the cream will rise to the top."

There is presently a great deal of effort being put into developing other means of resolving small disputes. Yet this study has shown that the courts already have a mechanism for resolving small disputes that is working very well for many litigants at a cost to the public below that projected for the alternative programs. While the search for alternative means of resolving small disputes may indeed result in developing new useful forums for that purpose, we would caution that small claims courts not be ignored. Small claims courts have not yet fully achieved all of their goals and many courts need more careful attention, but we believe they provide a good forum for resolving a broad range of smaller disputes.

Appendices

Appendix A
Key Statutory Variations of Small Claims Courts by State

State	Type of Court	Procedure (Latest Amendment)	Claim Limit	Informal Procedure?	Assignees?	Lawyers?	In-Court Arbi-tration?	Appeals	Special Provisions
Alabama	S/C div. of dist. ct.	Stat. 1977	$500	Yes	Yes	Yes	No	De novo/ cir. ct. bond req.	Equitable relief and defenses permitted; no jury trial
Alaska	S/C procd. in dist. ct.	Stat. 1959	$1,000	Yes	Yes	Yes	No	P or D if over $50; on record	No libel or slander; either side may request jury trial; Ct. may order new trial on appeal at its discretion
Arizona	Justice courts	Stat.	$999.99	No	Yes	Yes	No	P or D if over $20, de novo to super. ct. bond req.	No S/C system yet; Superior Ct. rules apply; jury trial for either side
Arkansas	Municipal & justice courts	Rule 1973	$300 ($100 if personal	Yes	Yes	Yes	No	P or D to cir. ct., bond req.	S/C Div. of Boone Co. Cir. Ct. estb. by local rule 1973; $500 claim limit, no assignees, no lawyers, no jury trials, P or D may appeal to Sup. Ct.

State	Type of Court	Procedure (Latest Amendment)	Claim Limit	Informal Procedure?	Assignees?	Lawyers?	In-Court Arbi-tration?	Appeals	Special Provisions
California	S/C part of municipal or justice courts	Stat. 1976	$750	Yes	No	No	No	D only, de novo; bond req.	No corp. or P/S can be rep. by attny. unless *all* officers are attnys; no jury trials; D waives appeal if requests affirmative relief
Colorado	S/C div. of county court	Stat. 1976	$500	Yes	No	No	No	P or D to county ct. on record	No libel or slander, FED, injunctive relief or replevin; S/C action transferred to Co. Ct. if D requests attny; filing limit 5 cases/P/year
Connecticut	S/C prod. in ct. of common pleas	Stat. 1976	$750	Yes	Yes	Yes	No	None	No libel or slander; P waives jury, D can request transfer to reg. civil ct. for jury trial; lawyer-referees will be used for S/C trials in some courts beginning 1977

Delaware	J.P. cts.	Stat.	$1.500	Yes	Yes	Yes	No	P or D, de novo	No S/C system yet; P waives jury, D can transfer to Ct. of Common Pleas for jury trial
District of Columbia	S/C div. superior court	Fed. stat. 1963	$750	Yes	Yes	Yes	Yes	P or D, at discr. of Supr. Ct. No bond	Either side may request law student to assist in settlement negotiations; excess counterclaim does not result in transfer; request for jury results in transfer; judge can use installment payment of judgments; one evening session/week
Florida	S/C div. county ct.	Rule 1973	$2,500 (attny. req. if over $1,500)	Yes	Yes	Yes	No	P or D	All defaults must be proved up; jury trial available in S/C/C for both sides

State	Type of Court	Procedure (Latest Amendment)	Claim Limit	Informal Procedure?	Assignees?	Lawyers?	In-Court Arbi-tration?	Appeals	Special Provisions
Georgia	J.P. cts. (S/C div. in county ct. in 45 out of 159 counties)	S/C by Rule 1952	$200 in J.P. Ct. $300 in S/C/C	Yes in S/C No in J.P.	Yes	Yes	No	J.P. both sides de novo; S/C both sides to app. div. of county ct.	Cannot use S/C for commercial transac-tion claims (OK in J.P. ct.); jury trial available for either side
Hawaii	S/C div. of dist. court	Stat. 1970	$300	Yes	Yes	Yes	No	None	Attorneys not permit-ted at trial in security deposit cases; court clerks can help litig-ants file papers; either side can transfer for jury trial
Idaho	S/C div. of magist. div. of dist. cts.	Stat. 1976	$500	Yes	No	No	No	Yes; bond req.	No jury trial in S/C/C
Illinois	S/C div./ cir. ct.	Stat. 1968	$1,000	Yes	Yes	Yes	No	P or D on record	Jury trial for either side in S/C, for D only in Pro-Se Ct.

	Cook Co. Pro-Se	1973	$300 Ct.	Yes	No	No	No		Pro-Se Ct. also bars partnerships, corps. and associations as P
Indiana	S/C docket superior cir. and co. ct., S/C/C in Marion Co.	Stat. 1976	$3,000	Yes	Yes	Yes	No	Limit to Q's of law, to Ct./App. bond req.	P waives jury, D may transfer for jury; Ct. rules req. one evening session/week
Iowa	S/C procd. in dist. ct.	Stat. 1973	$1,000	Yes	Yes	Yes	No	On record (judge's notes); bond req.	No jury either side; clerks assist litigants judge can arrange installment payments
Kansas	S/C procd. in co. cts.	Stat. 1973	$300	Yes	No	No	No	Trial de novo; no bond req.	Filing limit 5 claims in same Ct./yr.; no jury either side; no transfer because of excessive counterclaim
Kentucky	S/C div. dist. ct.	Stat. 1978	$500	Yes	No	Yes	No	On record either side	No state-wide S/C/C until 1/2/78; D can transfer; filing limit 25/yr.

State	Type of Court	Procedure (Latest Amendment)	Claim Limit	Informal Procedure?	Assignees?	Lawyers?	In-Court Arbi-tration?	Appeals	Special Provisions
	Jefferson Co. con. sumer ct.	Rule 1974	$500	Yes	No	Yes	No		Consumer Ct. permits consumer P's only; no jury trial in consumer ct.; pre-trial mediation req. in consumer court
Louisiana	S/C div. of city courts	Stat. 1977	$300 $25 for city ct.	Yes	Yes	Yes	Yes	None (P/T) transfer only	S/C sys. to begin in 1978; can grant equitable relief except injunctions or restraining orders; att.-arbs. avail. at option of parties
Maine	S/C procd. dist. cts.	Stat. 1954	$800	Yes	Yes	Yes	No	Trial de novo; bond req.	No jury trial either side
Maryland	Informal proceedings dist. ct.	Rule 1976	$500	Yes	Yes	Yes	No	Trial de novo; bond req.	No formal pleadings permitted for the informal procedure

Massachusetts	S/C procd. /dist. ct. & Boston muni. ct.	Stat. 1960	$400	Yes	Yes	Yes	No	D only, de novo; bond req.	Unless both sides have attny., limited to infor. only; no libel or slander; no jury trial in S/C/C
Michigan	S/C div. dist. ct.	Stat. 1968	$300	Yes	No	No	No	None	Attnys. permitted in Detroit S/C/C; no jury; either side may transfer to Dist. Ct. for jury trial
Minnesota	Conciliation ct. in muni. and co. ct.	Stat. 1975	$1,000 $500 in Minn. St. Paul	Yes	Yes	No	No	De novo both side bond req.	Attnys. permitted in Minneapolis/St. Paul; participation at trial can be limited by judge no jury trial in S/C
Mississippi	J.P. ct.	Stat.	$500	Yes	Yes	Yes	No	De novo, both sides bond req.	Not a S/C system; jury trial available for both sides
Missouri	S/C docket magistr. cts.	Stat. 1976	$500	Yes	No	Yes	No	De novo; bond req.	Filing limit 4 claims in 12 mo. period; no jury trial

State	Type of Court	Procedure (Latest Amendment)	Claim Limit	Informal Procedure?	Assignees?	Lawyers?	In-Court Arbi-tration?	Appeals	Special Provisions
Montana	S/C part in dist. ct. ct. (local option)	Stat. 1975	$1,500	Yes	No	Yes	Yes	De novo; no bond req.	S/C option not adopted in any Dist. yet; no party may use attny. at trial unless both sides have attny.; P waives jury; excess counterclaim does not result in transfer
Nebraska	S/C div. muni. or co. cts.	Stat. 1972	$500	Yes	No	No	No	De novo; bond req.	Filing limit 2 claims/ week, 10/yr.; equitable relief avail. to disaffirm, avoid or rescind contracts; no jury, but D may transfer for jury
Nevada	S/C procd. justice cts.	Stat.	$300	Yes	Yes	Yes	No	Both side de novo; bond req.	No garnishment or attachment on S/C judgments; Ct. clerks can assist in drafting claims; no jury in S/C

New Hampshire	S/C procd. dist. cts. and muni. cts.	Stat.	$500	Yes	Yes	Yes	No	Limited/ Q's of law; no bond req.	No libel or slander in S/C; no jury trials
New Jersey	S/C div. dist. ct. or co. ct.	Stat.	$500	Yes	No	Yes	No	Both sides de novo	No jury in S/C, D can transfer for jury trial
New Mexico	Magistr. cts.	Stat.	$2,000	No	Yes	Yes	No	Limited/ Q's of law	Only one S/C/C in state; P waives jury, D may transfer for jury
	S/C/C in Albuquerque	Stat.	$2,000	Yes	Yes	Yes	No	Both sides de novo	
New York	S/C div./ NYC civil ct., dist. co. & city cts.	Stat. 1975	$1,000	Yes	No	Yes	No	Limited/ substantial injustice	Corporations & insurers also barred; arbitration option in NYC S/C/C,s; no appeal from arbitration; paralegal assistance in NYC S/C/C
North Carolina	S/C procd. /dist. ct.	Stat. 1968	$500	No	Yes	Yes	No	Both sides de novo; bond req.	Simplified pleadings, but reg. dist. ct. procd. rules; P waives jury, D may transfer

State	Type of Court	Procedure (Latest Amendment)	Claim Limit	Informal Procedure?	Assignees?	Lawyers?	In-Court Arbitration?	Appeals	Special Provisions
North Dakota	S/C procd. /co. ct., justice ct.	Stat. 1971	$200/ justice ct. $500/ co. ct.	Yes	No	Yes	No	None	S/C can cancel contract for fraud, misrepresentation; P waives jury, D may transfer; no garnishment or attachment
Ohio	S/C div. co. & muni. cts.	Stat. 1967	$300	Yes	No	Yes	No	Both sides on record bond req.	Indiv. cts. may estb. voluntary conciliation by rule; filing limit 6 claims/mo.; S/C may use attorney-referee; P waives jury, D may transfer
Oklahoma	S/C procd. /dist. ct.	Stat. 1976	$600	Yes	No	Yes	No	Both sides on record bond req.	Ct. clerks may assist litigants; no libel or slander in S/C; jury trial for either side

Oregon	S/C dept. /dist. & justice cts.	Stat. 1971	$500	Yes	Yes	No	No	None from Justice Ct.; D only from dist. ct.; bond req.	Attnys. may appear only by consent of judge; P waives jury D can transfer for jury
Pennsylvania	J.P	Stat.	$1,000	No	Yes	Yes	No	Both sides de novo;	No statewide S/C/C until 1977
	Phila. S/C/C	Rule 1969	$1,000	Yes	Yes	Yes	No	Both sides de novo	P waives jury, D can transfer for jury
Rhode Island	S/C procd. /dist. ct.	Stat.	$300	Yes	Yes	Yes	No	D only, on record	No jury trial in S/C
South Carolina	Magistr. court	Stat.	$200-$3,000	Yes	Yes	Yes	No	Both sides de novo	No state-wide S/C/C; jury trial available for either side
South Dakota	S/C procd. /magistr. cts.	Stat. 1977	$1,000 No L&S	No	Yes	Yes	No	None	Reg. civil rules, some judges use informal procedure; P waives jury, D can transfer; Ct. clerk can screen claims and give advice

State	Type of Court	Procedure (Latest Amendment)	Claim Limit	Informal Procedure?	Assignees?	Lawyers?	In-Court Arbi-tration?	Appeals	Special Provisions
Tennessee see	J.P. or Gen. Sessions	Stat.	$3,000	No	Yes	Yes	No	Both sides de novo; bond req.	No S/C procedure, some judges use informal rules; no jury
Texas	S/C part /J.P. ct.	Stat. 1953	$150 $200 if wages	Yes	No	Yes	No	De novo if over $20	No assignees, collection agencies or person or entity lending money at interest as primary or secondary business; jury available in S/C
Utah	S/C dept. /City & J.P. cts.	Stat. 1951	$200	Yes	No	Yes	No	D only, de novo; bond req.	Ct. clerks can assist in preparation of claims no jury trial in S/C
Vermont	S/C procd. /dist. ct.	Stat.	$250 No L&S	Yes	Yes	Yes	No	Both sides on record no bond	P waives jury, D can request jury
Virginia	Gen. dist. ct.	Stat.	$5,000	Yes	Yes	Yes	No	Both sides de novo if over $20; bond	No S/C procedure; no jury trial, D can transfer for jury if over $500

Washington	S/C dept. /dist. ct. & justice cts.	Stat.	$300	Yes	No	No	No	D only, if exceeds $100; bond req.	Assignees permitted in Justice Cts. only; Attorney permitted at trial only by consent of judge; no jury in S/C
West Virginia	Magistr. cts.	Stat. 1976	$1,500	No	Yes	Yes	No	Both sides de novo; bond req.	No S/C procedure; removal to Cir. Ct. for jury trial
Wisconsin	S/C procd. /co. ct.	Stat.	$500	Yes	Yes	Yes	No	De novo	Jury trial for either side
Wyoming	S/C procd. /J.P. & co. ct.	Stat.	$200	Yes	Yes	Yes	No	Both sides on record bond req.	Ct. clerks can assist litigants; jury trial available for either side

Appendix B
The Representativeness of Empirical Data in the Study

When drawing conclusions from empirical data used in the study, it is important that the reader have a good understanding of what types of populations the various samples represent and consequently what types of generalizations can safely be made.

The random sample case record data were drawn in such a fashion and are adequate to ensure a completely representative sample in terms of probability theory. By randomly selecting a large number of cases, the data from our sample of 7,218 cases provide an accurate and reliable reflection of the entire caseload of the fifteen courts examined in the study. Consequently, we are confident that findings based on our analysis of these data--description of the types of litigants using small claims courts, claim types, and amount of claims, etc.--provide an accurate picture of the entire small claims court population in each of the jurisdictions.

We cannot with the same degree of confidence make a similar assumption of representativeness for either the plaintiff or defendant questionnaire samples, but rather must qualify what is and is not represented in these samples. Since we were primarily interested in the experiences and opinions of individual plaintiffs and defendants in small claims courts, both the plaintiff and defendant samples are based on responses to questionnaires mailed almost exclusively to individual rather than business or corporate court users. Mailing questionnaires only to individual plaintiffs and defendants introduced a systematic sampling bias which by definition excluded a substantial portion of the total small claims court caseload.

In an effort to determine how accurately our plaintiff and defendant questionnaire data represented the entire population of individuals using those courts at that point in time, we compared the questionnaire data with the individual plaintiff and defendant data from the random case record sample along analytically significant dimensions. The results of this comparison are represented in Tables B-1 through B-7. Table B-1 indicates that default cases were underrepresented and contested cases were overrepresented in our plaintiff questionnaire returns. Table B-2 shows that consumer-seller cases were overrepresented in our plaintiff questionnaires and Table B-3 that the distribution of the amount of claim in the plaintiff questionnaire sample was an accurate representation of

the court caseloads. From Table B-4 we can see that plaintiffs facing individual defendants were overrepresented in our questionnaire returns while plaintiffs facing business defendants were underrepresented.

The plaintiff questionnaire data, then, are generalizable primarily to the population of individual plaintiffs, in contested cases. The sample did have large enough numbers to assure that relationships between

Table B-1
Case Outcome

Result for Plaintiff	Court Record Survey				Plaintiff Questionnaire	
	Entire Sample		Individual Plaintiffs Only			
	%	No.	%	No.	%	No.
Won trial	45	(2,394)	57	(1,193)	78	(1,079)
Won default	44	(2,351)	23	(485)	4	(57)
Lost trial	6	(331)	12	(261)	11	(146)
Lost default or dropped	5	(248)	8	(168)	7	(96)
Totals	100	(5,324)	100	(2,107)	100	(1,378)

[1]The difference between the total N = 7218 and the N = 5324 is due to cases settled, cases for which the outcome was not decided, and cases for which the date on outcome was missing on the records.

Table B-2
Plaintiffs' Types of Claim

Claim	Entire Sample		Court Records[1]		Plaintiff Questionnaire	
	%	No.	%	No.	%	No.
Consumer buyer	10	(688)	22	(635)	17	(217)
Consumer seller	50	(3,414)	14	(398)	34	(438)
Landlord-tenant	12	(808)	21	(610)	19	(248)
Damages	12	(827)	26	(749)	19	(240)
Other	16	(1,140)	16	(445)	11	(140)
Totals	100	(6,877)[2]	100	(2,837)	100	(1,283)

[1]Individual plaintiffs only

[2]The lower N is due to cases for which the data on type of claim could not be obtained from the court records.

variables within the sample are statistically meaningful.

Tables B-5, B-6, and B-7 reveal that the defendant questionnaire returns were small relative to the actual numbers of defendants and underrepresented consumer-seller cases and defendants facing business and corporate plaintiffs. The sample did, however, closely approximate the distribution of claim amounts in the court record survey. The

Table B-3
Plaintiffs' Amounts of Claim

Amount	Court Records[1]		Plaintiff Questionnaire	
	%	No.	%	No.
$ 0-50	9	(251)	8	(115)
51-100	17	(484)	15	(211)
151-150	13	(377)	14	(195)
151-200	11	(311)	12	(164)
201-250	8	(235)	8	(112)
251-300	9	(260)	11	(153)
301-350	4	(122)	4	(51)
351-400	5	(156)	6	(87)
401-450	3	(94)	3	(38)
451+	20	(592)	17	(237)
Totals	100	(2,882)	100	(1,363)

[1]Individual plaintiffs only.

Table B-4
Types of Defendant

Defendant	Court Records[1]		Plaintiff Questionnaire	
	%	No.	%	No.
Individual	61	(1,787)	72	(1,018)
Business	29	(853)	16	(222)
Corporation	8	(245)	11	(159)
Government agency	1	(27)	1	(8)
Interest group	1	(7)	0	(0)
Totals	100	(2,919)	100	(1,407)

[1]Individual plaintiffs only.

defendant returns are not large enough to assure meaningful statistical relationships within the sample and cannot be viewed as representative of either the entire defendant population or any subset of that population. We thus made more limited use of these defendant questionnaire data.

Table B-5
Defendants' Types of Claim

Claim	Court Records[1]		Defendant Questionnaire	
	%	No.	%	No.
Consumer buyer	3	(158)	22	(115)
Consumer seller	56	(2,905)	19	(101)
Landlord-tenant	12	(618)	20	(108)
Damages	12	(633)	19.5	(104)
Other	17	(915)	19.5	(104)
Totals	100	(5,229)	100	(532)

[1]Individual defendants only.

Table B-6
Types of Plaintiff in Case

Plaintiff	Court Record[1]		Defendant Questionnaire	
	%	No.	%	No.
Individual	33	(1,787)	71	(411)
Business	37	(1,977)	22	(124)
Corporation	27	(1,434)	6	(35)
Government agency	2	(134)	1	(5)
Interest group	1	(8)	0	(0)
Totals	100	(5,340)	100	(575)

[1]Individual defendant only.

Table B-7
Defendants' Amounts of Claim

Amount	Court Records[1]		Defendant Questionnaire	
	%	No.	%	No.
$ 1-50	16	(866)	12	(67)
51-100	20	(1,075)	19	(110)
101-150	16	(900)	11	(62)
151-200	10	(538)	11	(66)
201-250	7	(402)	6	(36)
251-300	8	(414)	9	(55)
301-350	4	(209)	5	(29)
351-400	5	(251)	4	(22)
401-450	3	(140)	2	(12)
451+	12	(661)	21	(119)
Totals	100	(5,456)	100	(578)

[1]Individual defendants only.