

## REVIEW SECTION Of Note

Julie E. Artis, "Judging the Best Interests of the Child: Judges' Accounts of the Tender Years Doctrine," 38 *Law and Society Review* 769-786 (2004).

This article is an examination of judges' handling of child custody cases under a statute that is gender neutral but under which judges continue to use the "tender years" doctrine, which leads to a preference that mothers have custody of children. The author analyzes themes in the accounts told by twenty-five Indiana judges who decided child custody cases and variations in those accounts; effects of the judges' gender, age, and political party are examined; and there is a separate analysis of whether a subset of nine judges reach case dispositions congruent with their accounts.

**SLW**

Ruth Ann Strickland, *Restorative Justice*. New York: Peter Lang Publishing, 2004. 143 pp.

This short book is a useful primer on restorative justice, which the author, using Braithwaite, defines as "a series of processes designed to repair the harm that a criminal offense inflicts on victims, offenders, and communities" (p. 1) in which the parties with a stake work together to repair harm and prevent future harm. Problem-solving courts are one of several general practices discussed. Strickland looks at restorative justice in terms of the involvement of, and effects on, defendants, victims, the courtroom workgroup (police, prosecutors, defense attorneys, and judges), the community, and corrections. Problem-solving courts get particular attention in discussion of judges. **SLW**

Brian J. Ostrom and Roger A. Hanson, *Efficiency, Timeliness, and Quality: A New Perspective from Nine State Criminal Trial Courts*. Williamsburg, VA: National Center for State Courts, 1999. 202 pp.

In a study that uses and contributes to the notion of "local legal culture," Ostrom and Hanson sought to explore the relationship between timeliness and quality of case processing. For the former, they used the time taken to resolve cases, measured as the number of days from indictment or bindover to final resolution, and the latter, drawn from Trial Court Performance Standard 3.3 (Equality, Fairness, Integrity), is basically the amount of attention paid to a case. They examined 400 sampled cases from

1994 from each of nine criminal trial court systems in moderately large cities of varying sizes—Albuquerque; Birmingham, Alabama; Cincinnati; Oakland, California; and Portland, Oregon, as well as Austin, Grand Rapids, Hackensack, and Sacramento—and looked both at individual court systems and at 3,500 individual cases. They also wanted to know whether caseload characteristics, management strategies, and resources affected the timeliness-quality relationship, and, as perceptions are at the heart of “local legal culture,” both prosecutors and criminal defense attorneys were interviewed for their perceptions, particularly of appropriate case-processing time.

Criminal cases, Ostrom and Hanson found, many of which were drug related, were similar across jurisdictions; most were resolved by guilty pleas, so trials were rare. Most importantly, a strong relationship between timeliness and quality was found; the authors observe that “timeliness in felony case processing occurs in contexts that also are conducive to the achievement of case process quality” (p. xi). While systems vary in the speed with which they treat all cases, all systems treat more complex cases more thoroughly relative to other cases. That is, in all courts, the more complex, serious, and difficult cases take more time, but “in the more expeditious courts,” which are characterized by more efficient work orientations among both prosecutors and defense attorneys, “the work gets done within tighter time frames” (p. xi). While prosecutors and defense attorneys are adversarial to the same extent in all courts, there are differences between more and less expeditious courts in “views toward resources, management, and the competency of their opponents” (p. xii); in the more expeditious courts, attorneys see their opponents as more competent and attorneys are less likely to see resource shortages despite caseloads comparable to those in other courts.

The monograph contains an Abstract and Executive Summary; a basic text of 113 pages; a brief discussion of the research methods used; and more than 40 pages of overviews of the individual research sites. *SLW*

Thomas E. Willging, Laural L. Hooper, Marie Leary, Dean Mileitch, Robert Timothy Reagan, and John Shapard. *Special Masters' Incidence and Activity*. Washington, DC: Federal Judicial Center, 2000. 125 pp.

The Federal Judicial Center (FJC) produced this detailed report on the appointment of special masters and conducted the underlying study in response to a proposal to amend Rule 53 of the Rules of Civil Procedure. That proposal, pending since 1994, would allow more latitude in the appointment of special masters for pre- and posttrial activities. The FJC study is a two-stage analysis; in the first, the frequency with which special masters are appointed to court cases, the types of duties they perform, and the complexity of the cases they handle were examined. The second stage entailed interviews of court clerks, judges, and special masters themselves. Both analyses are thorough, and the report and findings are compelling. For example, this study reveals that

the use of special masters to perform pre- and posttrial activities has been very limited, and in fact, has been limited to complex court cases. Analysis of both quantitative and survey data indicates both a need and a desire on the part of court administrators and judges to allow special masters to perform duties beyond “holding evidentiary hearings” (p. 1). In addition to its interest for court administrators, this study is also of general interest because it reflects the elasticity of bureaucratic rules when those rules are vague or silent and the need and desire to “stretch” the rules are exercised. *JAE*