Fordham Urban Law Journal

Volume 21 | Number 2 Article 4

1994

Peace, Wealth, Happiness, and Small Claim Courts: A Case Study

Arthur Bestf

Deborah Zalesne

Kathleen Bridges

Kathryn Chenoweth

PEACE, WEALTH, HAPPINESS, AND SMALL CLAIM COURTS: A CASE STUDY

Arthur Best† and Deborah Zalesne‡
with Kathleen Bridges, Kathryn Chenoweth,** Lisa Fine,****
*Jonathan L. Miller,**** and Kimberly White******

I. Introduction

Proponents of the establishment of small claims courts in the early 1900's and modern theorists of the alternative dispute resolution movement have all believed that a society ought to have accessible and effective mechanisms for asserting legal rights.[1] Some believe that social disorder can be avoided if people perceive the availability of civil justice.[2] Economists assume that wealth will be maximized through social efficiency where there is honest and reliable enforcement of promises between buyers and sellers.[3] Thus, peace, wealth, and (presumably) happiness depend on, or will be increased by, the existence of reliable and well used dispute han-

† Associate Dean for Academic Affairs and Professor of Law at the University of Denver College of Law; A.B. 1966, Columbia College; J.D. 1969, University of Pennsylvania Law School. This project was supported by a grant from the Hughes Research Fund of the University of Denver College of Law. Professor David W. Barnes generously assisted in calculating the summary statistics from the data; any errors, of course, remain the responsibility of the authors.

‡ Attorney at law, Pendleton & Sabian, P.C., Denver, Colorado; B.A. 1988, Williams College; J.D. 1992, University of Denver College of Law.

* J.D. 1993, University of Denver College of Law.

** J.D. 1993, University of Denver College of Law.

*** J.D. 1993, University of Denver College of Law.

**** J.D. expected 1994, University of Denver College of Law.

***** J.D. 1993, University of Denver College of Law.

1. *See generally* Roscoe Pound, *Administration of Justice in the Modern City*, 26 HARV. L. REV. 302 (1913) (advocating heightened accessibility of courts to promote social justice); Suzanne Elwell & Christopher D. Carlson, *Contemporary Studies Project: The Iowa Small Claims Court: An Empirical Analysis*, 75 IOWA L. REV. 433, 434 (1990) (same).

2. *See generally* DAVID CAPLOVITZ, THE POOR PAY MORE 15:1, 15:4(a)(1) (1963).

3. *See* DAVID W. BARNES & LYNN A. STOUT, THE ECONOMICS OF CONTRACT LAW 21 (1992) ("Contract law spells out when and how the legal system will intervene in the contracting process to reduce bargaining costs and to promote the efficient allocation of resources"); ANTHONY T. KRONMAN & RICHARD A. POSNER, THE ECONOMICS OF CONTRACT LAW 1-2 (1979) ("The fundamental economic principle with which we begin is that if voluntary exchanges are permitted - if, in other words, a market is allowed to operate - resources will gravitate toward their most valuable uses.").

dling institutions. Stated in less inflated terms, a small claims court that functions well might serve three purposes: (1) fair resolution of civil disputes; (2) deterrence of violent self-help by disputants; and (3) identification of recurring social problems that might be proper subjects for legislative or administrative action.

Governments across the country have responded explicitly and implicitly to these ideas by establishing small claims courts as an addition to the stock of dispute resolution modes.[4] These courts are usually described as especially valuable because they do not require a grievant either to have or to obtain legal expertise.[5]

This Article presents empirical data on the operation of the small claims court in the city of Denver.[6] The study underlying this Article evaluated the court in terms of (1) users' reactions, (2) the correctness of outcomes (recognizing that a determination of the underlying truth may be impossible), (3) the correctness of procedures (allowing for the informality that has been characterized as essential for their operation), and (4) the effective power of the court in terms of enforcement of results.

The study shows that small claims courts may be paradigmatic of governmental responses to social problems. They do some good work and some bad work; people's impressions of the work they do may be significantly skewed; no one knows how helpful their existence is to the entire group of people whose welfare they are intended to improve; and it is hard to determine whether the individuals they actually do serve are better off for having been able to use their processes.

This study answers two fundamental questions about small claims courts: (1) Who usually wins? (2) Do victors collect their judgments? The rate of victory for plaintiffs who file claims and appear in court is eighty-five percent. Of winning plaintiffs, fifty-five percent never collect any part of their judgments. Overall, among victorious plaintiffs, the judgment amounts collected equal thirty-one percent of the total amounts awarded. Thus, as has been the pattern in other small claims courts studied,[7] the operation of

4. JOHN C. RUHNKA & STEVEN WELLER, SMALL CLAIMS COURTS: A NATIONAL EXAMINATION 201-13, app. A (1978).

5. *See* ARTHUR BEST, WHEN CONSUMERS COMPLAIN ch. 10 (1981) (history and typical performance of small claims courts for treatment of consumer disputes); Barbara Yngvesson & Patricia Hennessey, *Small Claims, Complex Disputes: A Review of the Small Claims Literature*, 9 LAW & SOC. REV. 219 (1975).

6. There is only one small claims court in the city of Denver.

7. *See, e.g.*, Archibald S. Alexander, *Small Claims Courts in Montana: A Statistical Study*, 44 MONT. L. REV. 227 (1983); William G. Haemmel, *The North Carolina*

the court must be viewed in the context of overwhelming advantage to plaintiffs at the trial stage and of significant disadvantage to plaintiffs after trial. A system where plaintiffs almost always win may be subject to a critique of pro-plaintiff bias, or its record may only reflect that due to the difficulty of pursuing legal relief, most of the plaintiffs who sue actually present legitimate claims. With regard to judgment collection, two issues are clear. If the chance of collecting money awards is very small, the operation of the court may not be a sensible allocation of societal resources. Also, given the small prospect of judgment collection, it is likely that plaintiffs are not adequately aware of the likelihood that in-court victory will not lead to satisfaction of a judgment.

The small claims court presents a central irony: winning is easy but collecting is difficult. Some might suggest we abolish small claims courts entirely. This Article proposes instead that we direct more funds to small claims courts or reorganize them so that they might operate more effectively. The continuing existence of small claims courts nationally through several generations of experience suggests that they have wide support and accomplish a variety of functions. Many people who use them as plaintiffs would probably support their continued existence. Perhaps the threat of legal action through small claims courts helps some individuals resolve disputes that would otherwise not be resolved. And certainly, the idea that a "people's court" should exist is popular among legislators.[8]

This Article explores these issues, and some empirical data related to them. Part II explains Colorado's small claims court history and legislative background. Part III discusses the court's current operation. Part IV develops a critique of the court's current status. This Article concludes by proposing legislative action to improve the efficacy and usefulness of the Colorado small claims court.

Small Claims Court - An Empirical Study, 9 WAKE FOREST L. REV. 503 (1973); Carl R. Pagter et. al, Comment, *The California Small Claims Court*, 52 CAL. L. REV. 876 (1964); Robert J. Hollingsworth et. al, Note, *The Ohio Small Claims Court: An Empirical Study*, 42 U. CIN. L. REV. 469 (1973).

8. *See* Yngvesson & Hennessey, *supra* note 5; RUHNKA & WELLER, *supra* note 4, at 201-13.

II. Colorado Small Claims Court History and Legislative Enactments

The Colorado small claims court was established in 1976, with the legislative intention of providing inexpensive, simple, and speedy justice to the average person.[9] The county court system existing prior to 1976 was intended to be simplified,[10] but apparently failed to benefit disputants having small claims.[11] A New York Times survey conducted in the early 1970's used Denver's county court as an example of a system ineffective for individual plaintiffs.[12] The survey stated that 70% of the cases filed in Denver's county court system were filed by collection agencies, and 25% were filed by landlords.[13] That meant that only 5% of the 50,000 annual cases were filed by individuals.[14] The Colorado legislature hoped to create a forum for people who did not usually use the court system and to provide a means for resolving minor day-to-day problems.[15]

At the time Colorado created its small claims courts, many other states had already done so, and a great deal of scholarly study had been directed toward such courts.[16] This background contributed to the Colorado approach, although the state's statute was an original work and not an adaptation of another state's law.[17]

In the United States, small claims courts originated in the early 1900's as a response to the inadequacies of the existing judicial structure.[18] The civil court procedures at that time were becoming too complex for wage earners and business people with small

9. 1976 Colo. Sess. Laws 517 (current version at COLO. REV. STAT. §§ 13-6-401 to 13-6-416 (1987 & Supp. 1993)).

10. *Committee Hearings on S.B. 52 Before the Senate Committee on Judiciary* (Feb. 9, 1976) (audio tapes on file at the Colorado State Archives) [hereinafter *1976 Hearings*].

11. *Id.*

12. *Id.* (statement of Barry Goldstein, Colorado Bar Association).

13. *See id.*

14. *Id.*

15. *1976 Hearings*, *supra* note 10.

16. *See* William G. Haemmel, *The North Carolina Small Claims Court — An Empirical Study*, 9 WAKE FOREST L. REV. 503 (1973); Michael H. Minton & Jon E. Steffenson, *Small Claims Courts: A Survey and Analysis*, 55 JUDICATURE 324 (1972); John M. Steadman & Richard S. Rosenstein, *"Small Claims" Consumer Plaintiffs in the Philadelphia Municipal Court: An Empirical Study*, 121 U. PA. L. REV. 1309 (1973); Carl R. Pagter et al., Comment, *The California Small Claims Court*, 52 CAL. L. REV. 876 (1964); Robert J. Hollingsworth et al., Note, *The Ohio Small Claims Court: An Empirical Study*, 42 U. CIN. L. REV. 469 (1973).

17. *See generally 1976 Hearings*, *supra* note 10.

18. The first small claims court in the United States was established in Cleveland, Ohio, in 1913. *See* Elwell & Carlson, *supra* note 1, at 434 n.3.

claims.[19] Cumbersome formal court procedures resulted in unreasonable delay and expense, and made it virtually impossible for litigants to use the court system to collect on small debts without the use of an attorney.[20] The courthouse doors were closed to many people because of the costs of litigation.[21]

Criticisms of the judicial system usually focused on the expense and delay of litigation.[22] Critics emphasized the undue costs and fees "arising from widespread appeals and retrials for technical procedural errors exacerbated by the multiplicity of unified courts . . . ."[23] Often, the cost of the suit literally exceeded the amount at issue.[24] In addition, commentators criticized the unduly restricted role of the magistrate.[25] Due to the magistrate's passive role as a referee, many felt the magistrate was prevented from acting swiftly and fairly.[26] Critics also faulted the performance of the magistrates and attorneys.[27] Magistrates were accused of being driven by political motivation and were chastised for being slow in writing opinions, while lawyers were criticized for encouraging litigation where matters could easily have been settled out of court.[28]

Small claims courts were intended to solve these problems by providing greater access to the court system for the average citizen.[29] They were to achieve that goal through simplified procedures, cost reductions, the elimination or discouragement of attorneys, limitations on appeals, and a grant of procedural discretion to magistrates.[30]

The initial response to the introduction of small claims courts was generally favorable and enthusiastic.[31] Over the years, small claims courts have experienced tremendous growth; 34 states and the District of Columbia had some type of small claims tribunal by

19. *See id.* at 434.

20. *Id.*

21. *See generally* Eric H. Steele, *The Historical Context of Small Claims Courts*, 1981 AM. B. FOUND. RES. J. 293.

22. *Id.*

23. *Id.* at 322.

24. *Id.*

25. *Id.* at 324.

26. Steele, *supra* note 21, at 324.

27. *Id.* at 325.

28. *Id.*

29. *See* Roscoe Pound, *The Administration of Justice in the Modern City*, 26 HARV. L. REV. 302, 315 (1913).

30. *See id.* at 315-19; Steele, *supra* note 21, at 330-37; Yngvesson & Hennessey, *supra* note 5, at 223-24.

31. Elwell & Carlson, *supra* note 1, at 439.

1959.[32] By the 1960's, the original goals of speed and low cost had been achieved to some degree, but small claims courts were subject to intensive study and harsh criticism for their failure to fully achieve their intended goals.[33] Normal court hours were inconvenient for the average working person, and lack of knowledge and experience served as a barrier to access for potential claimants.[34] Furthermore, poor litigants in many instances were exploited, rather than given an opportunity for redress.[35] It was more likely that a poor litigant would be defending an action rather than bringing one in a small claims court.[36] Heavy use by businesses crowded the docket, and small claims courts were often characterized as collection agencies.[37] In contrast, others argued that successful plaintiffs were often unable to collect their judgments.[38] Close scrutiny and criticism of small claims courts in the 1960's prompted some states to institute small claims systems and others to reform their existing systems.[39]

Colorado's legislative response may be seen in the context of that wave of reform. The Colorado statute's legislative declaration sets forth the rationale and purpose behind the small claims court, outlining the need for such a court, the types of people meant to benefit from it, and how the court should work.[40] The basic goals of the small claims court were to encourage use of the court system by the average lay person and to render that use more efficient and less expensive.[41] The legislature declared that the technical rules of procedure and evidence should not apply, and that the personnel implementing and conducting the procedures should be "trained and equipped to assist anyone with a small claim in a friendly, efficient, and courteous manner . . . ."[42] In short, the small claims

32. *Id.* at 439. For a listing of those states and a review of the legislation, see INST. OF JUDICIAL ADMIN., SMALL CLAIMS COURTS IN THE UNITED STATES 1 (Supp. 1959).

33. *See* Kosmin, *The Small Claims Court Dilemma*, 13 HOUS. L. REV. 934, 945 (1976).

34. *Id.*

35. *See* Beatrice A. Moulton, Note, *The Persecution and Intimidation of the Low Income Litigant as Performed by the Small Claims Court in California*, 21 STAN. L. REV. 1657, 1662-64 (1969).

36. *See id.* at 1659-60.

37. *See* Yngvesson & Hennessey, *supra* note 5, at 236.

38. *See* RUHNKA & WELLER, *supra* note 4, at 161-69.

39. *See id.*

40. 1976 Colo. Sess. Laws 517 (current version at COLO. REV. STAT. § 13-6-401 (1987)).

41. *Id.*

42. COLO. REV. STAT. § 13-6-401 (1987).

court was to be "a court for the people."[43] The drafters anticipated that, for a small fee, people could resolve their disputes in a trial lasting about twenty minutes.[44]

A. Filing Fees

The drafters of the Colorado statute used the figures from a study by the Colorado Bar Association to determine the fee for filing a small claim.[45] The committee discussed the fee in great detail, attempting to balance the tremendous cost of the new court system[46] with the interests of users.[47] Several committee members thought that people would be so grateful to have this service available that they would not mind bearing the entire cost.[48] One committee member stated that "it is an appropriate use of our tax dollars to provide this service to the people."[49] The committee realized that a claim might be so small that a person would not file it if the cost were ten dollars rather than five.[50] It was suggested that an eight dollar fee per plaintiff would not keep anyone out of court unless they were indigent, in which case the fee could be waived.[51] After some discussion, the committee agreed that eight dollars was the maximum amount that could be charged while still maintaining the function and purpose of the court.[52] An eight dollar fee was ultimately imposed[53] "for the purpose that we want people to use the court systems."[54]

Since 1976 the fee has been raised several times. In 1990, the legislature decided that the docket fee for actions filed in the small claims court should "reflect the range of the monetary jurisdic-

43. *1976 Hearings*, *supra* note 10.

44. *Id.*

45. *Id.*

46. Before the enactment of the Colorado statute, the Colorado Bar Association researched other states' small claims procedures. In 1976, Harry Lawson, state court administrator, outlined a cost estimate for the implementation of Senate Bill 52, based on the studies of other states' small claims courts. *Id.* (statement of Harry Lawson, state court administrator). The Colorado study estimated that the total cost of a small claims court in Colorado for the first nine months would be $101,356. *Id.*

47. *Id.*

48. *Id.*

49. *Id.*

50. For example, one committee member discussed the possibility of someone bringing suit against a cleaner who ruined a sweater worth only twenty dollars. *Id.*

51. *Id.*

52. *Id.*

53. 1976 Colo. Sess. Laws 520 (current version at COLO. REV. STAT. § 13-32-101(1)(c)(II) (Supp. 1993)). A defendant in an action filed in a small claims court was to pay a fee of four dollars. *Id.*

54. *1976 Hearings*, *supra* note 10 (statement of unidentified committee member).

tional limit established for such actions . . . ."[55] The legislature explained that the purpose of varying the fees was to "promote access to the courts and reflect appropriate contributions from litigants using the court system based on the money judgment sought in an action."[56] As a result, the docket fees now vary according to the money judgment sought.[57]

B. Jurisdictional Limit

When the Colorado small claims court statute was enacted in 1976, the drafters spent much time deciding the appropriate maximum "amount in controversy."[58] Steve Weller of the National Center for State Courts offered data concerning other small claims courts.[59] He explained that despite maximum claims ranging from $100 in Georgia to $2500 in Florida courts, the highest *average* claim of any state was only $303.[60] Weller noted that people were not bringing higher claims even when they were permitted to do so.[61]

Using these figures, the legislature decided on a $500 limit in Colorado,[62] the most common limit at that time around the country.[63] Barry Goldstein of the Colorado Bar Association explained that "[$500] is a good break off point because usually an attorney can not adequately represent a party for less than this amount of money," and a $500 limit "will handle the majority of consumer type actions which could occur."[64] The drafters noted that the limit must continue to keep pace with inflation,[65] which it has done fairly

55. COLO. REV. STAT. § 13-32-101(1)(c)(II) (Supp. 1993).

56. *Id.*

57. *Id.* § 13-32-101(1)(c)(II)(A)-(C). For example, when the money judgment sought is five hundred dollars or less, a plaintiff shall pay a fee of eight dollars, and a defendant shall pay a fee of four dollars; when the money judgment sought exceeds five hundred dollars and is no more than two thousand dollars, a plaintiff shall pay a fee of sixteen dollars, and a defendant shall pay a fee of eleven dollars; when the money judgment sought exceeds two thousand dollars and is no more than three thousand five hundred dollars, a plaintiff shall pay a fee of twenty-five dollars, and a defendant shall pay a fee of twenty-one dollars. *Id.*

58. *See 1976 Hearings*, *supra* note 10.

59. *Id.* (statement of Steve Weller, National Center for State Courts).

60. For example, in Washington, D.C., the maximum claim allowed was $750, but the average claim was less than half that amount at $337. Likewise, although the limit was $1000 in Iowa, the average claim in that state was only $303.

61. *1976 Hearings*, *supra* note 10.

62. 1976 Colo. Sess. Laws 518.

63. *1976 Hearings*, *supra* note 10 (statement of Barry Goldstein, Colorado Bar Association).

64. *Id.*

65. *Id.*

well. Since 1976, the jurisdictional limit has been raised four times.[66]

C. Magistrates[67]

County court magistrates are Colorado judicial department employees. They are appointed by, and serve at the pleasure of, the chief magistrate of the particular judicial district.[68] In Denver, the magistrate is appointed by, and serves at the pleasure of, the presiding magistrate of the county court, and is an employee of the City and County of Denver.[69] Magistrates are subject to dismissal for cause by the chief magistrate, with no right of appeal.[70] A magistrate may be a full-time or a part-time employee.[71] There is no residency requirement.[72] Also, a magistrate is not precluded from private practice.[73] All magistrates in small claims courts must be

66. *See* 1981 Colo. Sess. Laws 879; 1987 Colo. Sess. Laws 544; 1988 Colo. Sess. Laws 601; 1990 Colo. Sess. Laws 855 (current version at COLO. REV. STAT. § 13-6-403 (Supp. 1993)).

In 1990, with Senate Bill 150, the jurisdictional amount was amended with some controversy. Senator Considine emphasized that an important goal of the bill was to expand the jurisdiction of small claims courts and county courts in order to "increase the options for low-cost dispute resolution without having to hire a lawyer." He recommended effectuating this goal through an increase in the maximum amount in controversy from $2,000 to $10,000. He argued that a $10,000 claim should be allowed in the small claims court, not because $10,000 is a small claim, but rather because "it is an option available to a person who is willing to contest that matter without having to hire a lawyer." During the debates, concerns were expressed that increasing the amount five-fold would "crowd out the little guy with the little claim" thereby changing the type of claimants and claims in that court. That concern eventually won out, as the limit was raised only to $3500.

67. In 1991, the legislature changed the title of court referee to court magistrate throughout the statute. *See* COLO. REV. STAT. §§ 13-6-405, 13-6-406, 13-6-409, 13-6-410 (Supp. 1991). Representative Foster explained that the change was requested by referees who did not feel the title "referee" actually reflected their level of responsibility. *Committee Hearings on S.B. 144 Before the House Judiciary Committee* (Feb. 21, 1991) (statement of Representative Foster, bill sponsor) (audio tapes on file at the Colorado State Archives).

68. COLO. REV. STAT. § 13-6-405(1) (Supp. 1991).

69. Since Denver county court is funded by the City and County of Denver, the hiring of magistrates is governed by the ordinances and charter of the City and County of Denver. Every other employee in the Colorado judicial system is hired under the personnel rules of the supreme court as provided by statute since they are funded by the state.

70. *Id.*

71. Because the statute does not specify that a magistrate must be a full-time employee, it is assumed that a magistrate can also work part time. *See* COLO. REV. STAT. § 13-6-405 (Supp. 1993).

72. *See id.*

73. *Id.*

licensed attorneys, and they exercise the same powers as judges in other courts.[74]

Small claims trials are influenced by the individual practices of the trial magistrate to a much greater extent than formal trials. Given the broad grant of discretion,[75] the magistrate's attitudes and opinions play an important role in the procedure. Judge Horan expressed his concern during the committee debates that, especially when the case load got heavy, magistrates might become more concerned with the opinions and philosophies of the presiding magistrate than with the issues at trial.[76] He urged that the magistrates' latitude, which was intended to be broad, was unnecessarily limited by a system that required a chief magistrate to supervise the other magistrates and to coordinate the administration of the courts.[77] He recommended that magistrates be appointed independently.[78] Although all agreed that Judge Horan's concern was valid,[79] the existing proposal was not altered.

D. Who Can Sue?

Studies show that one of the major problems of small claims courts in other states is their use as a collection agency.[80] The concept of a "people's court" rules out the idea of collection agency involvement; "only the person with whom the debt is involved may appear."[81] Allowing otherwise would "clog the docket" and "discourage claims by individuals."[82] Accordingly, the statute bars assignees and collection agencies from suing in small claims court.[83] According to the legislative history, "the purpose of this provision is to allow only the real party to a transaction to participate in processing a claim or defending a claim."[84]

The statute also sets forth that "no plaintiff may file more than two claims per month, eighteen claims per year, in the small claims

74. COLO. REV. STAT. § 13-6-405(3) (Supp. 1993).
75. *Id.*
76. *See 1976 Hearings*, *supra* note 10 (statement of Judge Horan).
77. *Id.*
78. *Id.*
79. *Id.*
80. *Id.* (statement of Bob Arnoff, student, University of Denver College of Law).
81. *See id.* (statement of Barry Goldstein, Colorado Bar Association).
82. *Id.*
83. 1976 Colo. Sess. Laws 517, 519 (current version at COLO. REV. STAT. § 13-6-407(1) (Supp. 1993)).
84. *1976 Hearings*, *supra* note 10 (statement of unidentified committee member).

court of any county."[85] This provision is intended to "make sure that no one party or group abuses the use of the court to the detriment of other parties."[86] The one exception to this limitation is the result of a legislative amendment that allows the filing of thirty claims per month by governmental agencies seeking recovery for student loan defaults.[87]

E. Time of Hearing

Section 13-6-401 states that hearings "should be conducted at times convenient to the persons using them, including evening and Saturday sessions."[88] The drafters discussed this provision in the legislative history, urging that the statute was meant for the benefit of the people of the State of Colorado, not for the convenience of the magistrates or clerks.[89] All present agreed that magistrates could, and should, modify their schedules in order to accommodate working people using the small claims court.[90]

Despite the clear representations of the legislature that such hours would be desirable, nowhere in the statute are evening or weekend sessions mandated. Section 13-6-406 requires only that the small claims court "conduct hearings at such times as the judge or magistrate may determine or as the supreme court may order."[91] Barry Goldstein explained that "the purpose [of Section 13-6-406] is to allow flexibility for scheduling hearings."[92] Goldstein emphasized that "as set forth in the legislative declaration, this is to be a people's type court and when necessary, court sessions should be held in evenings or Saturdays so that these people who have small claims will not have to be docked from work or take time off in order to process a claim."[93]

85. 1976 Colo. Sess. Laws 517, 520 (current version at COLO. REV. STAT. § 13-6-411(1) (Supp. 1993)).

86. *1976 Hearings*, *supra* note 10 (statement of unidentified committee member).

87. 1983 Colo. Sess. Laws 792 (current version at COLO. REV. STAT. § 13-6-411 (Supp. 1993)).

88. 1976 Colo. Sess. Laws 517 (current version at COLO. REV. STAT. § 13-6-401 (1987)).

89. *1976 Hearings*, *supra* note 10.

90. *Id.*

91. COLO. REV. STAT. § 13-6-406 (1987 & Supp. 1993). Rule 511 of the Colorado Rules of Civil Procedure does require, however, that "at least one weekend session and at least one evening session shall be scheduled, or available to be scheduled, for trials in each small claims court each month." COLO. R. CIV. PRO. 511.

92. *1976 Hearings*, *supra* note 10 (statement of Barry Goldstein, Colorado Bar Association).

93. *Id.*

F. Attorneys

The question of whether an attorney should be involved in a small claims proceeding sparked some interesting discussion among the committee members.[94] Although lawyers can provide valuable assistance to litigants unfamiliar with the legal process and can help to clearly define complex legal issues, the legislature decided that the costs of such assistance outweighed the benefits.[95] As a result, attorneys are not permitted in the Colorado small claims court unless they are suing or being sued, or acting as a full-time employee of a partnership or corporation involved in the case.[96] If an attorney appears, then the other party may also have an attorney.[97]

The goal behind this rule was to allow the average lay person to merely tell his or her story, without the burden of objections and technical rules of procedure and evidence.[98] It was thought that this would encourage immediate dispute resolution and prevent procedural technicalities from overpowering the interest of achieving justice.[99] As one drafter suggested, "the no attorney concept is critical because people are afraid of lawyers."[100] Given the legislature's objective of encouraging use of the court system, such barriers would clearly be undesirable.[101]

---

94. *Id.*

95. *Id.* (statement of unidentified committee member).

96. COLO. REV. STAT. § 13-6-407(2) (Supp. 1993).

97. COLO. REV. STAT. § 13-6-407(3) (Supp. 1991).

98. *1976 Hearings*, *supra* note 10.

99. *Id.*

100. *Id.*

101. The decision to exclude attorneys is consistent with many other states' small claims procedure. *See, e.g.*, ARIZ. REV. STAT. ANN. § 22-512(B)(6) (1990) (lawyer prohibited from appearing or taking part in small claim); IDAHO CODE § 1-2308 (1990 & Supp. 1993) (attorney may not participate in prosecution or defense of small claims litigation); KAN. STAT. ANN. § 61-2707(a) (1983 & Supp. 1987) (no representation by an attorney prior to judgment); MICH. COMP. LAWS § 600.8408(1) (1987 & Supp. 1988) (attorney may not take part except on own behalf); NEB. REV. STAT. § 25-2803(2) (1989) (no party may be represented by an attorney); OR. REV. STAT. § 55.090 (1988) (no attorney may appear except on own behalf). Most commentators agree that having to consult a lawyer in connection with a small claim is contrary to the purposes of small claims courts. *See generally* RUHNKA & WELLER, *supra* note 4, at 193-94 (presence of lawyer lengthened trial); Kosmin, *supra* note 33 ("[O]ne of the principles behind the small claims court movement was to provide an inexpensive, speedy forum for resolving disputes where lawyers would not be needed.").

III. The Court's Current Operation

A. Research Design

To begin the study, the researchers gathered empirical data by reading court files and observing actual small claims court proceedings.[102] The plan was to develop data on a fairly large number of cases, while being sensitive to the limitations that the volunteer-based research design would entail. It was understood at the outset that quantitative results would be suggestive only, because a wide variety of factors made it impossible to establish a truly random sample of cases in either the file- or observation-based portions of the research.

The project's file segment consisted of an examination of 160 files drawn at random from a 10,000 file sampling dated from 1987 to 1991.[103] From the files, we extracted certain data, including the nature of the case, the magistrate, the dollar amount in controversy, and, where appropriate, the type of payment. We recorded the information from each individual file onto a data sheet. Upon completion of the 160 data sheets, we coded the data and entered it into a program for computer analysis. The coding process involved

102. There is a long tradition of empirical study of small claims courts. Among the past significant studies are: Archibald S. Alexander, *Small Claims Courts in Montana: A Statistical Study*, 44 MONT. L. REV. 227 (1983); James G. Frierson, *Let's Abolish Small Claims Courts*, 16 JUDGES' J. 18 (Fall 1977); Bruce J. Graham & John R. Snortum, *Small Claims Court: Where the Little Man Has His Day*, 60 JUDICATURE 260 (1977); William G. Haemmel, *The North Carolina Small Claims Court—An Empirical Study*, 9 WAKE FOREST L. REV. 503 (1973); William L. King II, *Measuring the Scales: An Empirical Look at the Hawaii Small Claims Court*, 12 HAW. B.J. 3 (Summer 1976); Michael H. Minton & Jon E. Steffenson, *Small Claims Courts: A Survey and Analysis*, 55 JUDICATURE 324 (1972); Robert E. Muir, *The Hawaii Small Claims Court: An Empirical Study*, 12 HAW. B.J. 19 (Summer 1976); Elizabeth Purdum, *Examining the Claims of Small Claims Court: A Florida Case Study*, 65 JUDICATURE 25 (1981); Alvin Stauber, *Small Claims Courts in Florida: An Empirical Study*, 54 FLA. B.J. 130 (1980); John M. Steadman & Richard S. Rosenstein, *"Small Claims" Consumer Plaintiffs in the Philadelphia Municipal Court: An Empirical Study*, 121 U. PA. L. REV. 1309 (1973); Neil Vidmar, *The Small Claims Court: A Reconceptualization of Disputes and an Empirical Investigation*, 18 LAW & SOC'Y REV. 515 (1984); Robert J. Hollingsworth et al., Note, *The Ohio Small Claims Court: An Empirical Study*, 42 U. CIN. L. REV. 469 (1973); Carl R. Pagter et. al, Comment, *The California Small Claims Court*, 52 CAL. L. REV. 876 (1964).

103. The filing system in the Denver Small Claims Court is primitive. Files on cases where a judgment has not been paid or where there has been no trial are considered "active." These are housed within the main division of the Small Claims Court Office so that the clerks and the public may access them. The files for cases in which there has been full payment of a judgment, or where no payment was due because of settlement, discharge or a defendant's victory were treated as "satisfied." These files are stored in a separate storage area. These files are still accessible, but are more difficult to obtain than those which are active.

formulating categories for the information contained in the data sheets.[104]

The methodology for the court observation portion of the research was informal. Several researchers—our "court observers"—watched sixty trials and discussed them with litigants, following an interview guide.[105] The court observers recorded both their own observations and the replies to the interview questions. The basis for selecting cases for observation was partly to avoid concentrating on any single magistrate or any particular time or day of the week; however, time limitations prevented the achievement of true randomness. During the data collection phase of the study, the court observers held approximately ten group meetings to discuss the cases they had observed and to assist the file analysts to become familiar with the small claims court process. Two researchers studied the written records of the court observations; their goal was to identify patterns and illustrative examples of issues that were seen originally in this study or were known to have been of concern in past small claims court research.

B. Characteristics of Litigants

There was an enormous range of age, race, and socio-economic status among the litigants who were observed. The study revealed that middle-aged, middle-income Whites dominated the courtroom. The appearance by indigents in small claims court was *de minimis*. Men and women filed claims in equal proportion. Women sued other women a little more frequently than they sued men. Men, however, filed claims against other men in overwhelming proportions to the claims they filed against women. Individuals filed the majority of the claims, suing other individuals a little more

104. Although the files were selected at random, there were no controls over seasons of the year in which selected cases might have been filed, and there was no effort to determine whether the selected cases were equivalent in major characteristics to cases filed at other times. For this reason, the statistics generated from these data are presented as suggestive and qualitative only, rather than as explicitly representative of the precise numbers presented.

105. Interviewers used the following standard format:

1. Could you tell me what happened, so I can make sure I have good notes?
2. How did you hear about Small Claims Court?
3. How did you get ready for court?
4. What did you think of how it went?
5. What did you do with (defendant/plaintiff) before you got to court? (try to find out whether parties used other means of dispute resolution)
6. What other experiences have you had with small claims court?

frequently than they sued businesses. The number of claims filed by businesses against individuals was relatively low compared to the number of claims filed by businesses against other businesses.

The in-court observations showed that an overwhelming majority of the cases involved Whites filing their claims against other Whites. No African-American observed had filed a suit against a White, and only a few suits were filed by Whites against African-Americans. Asians and Hispanics filed suits against Whites in the same proportions as Whites filed against them. There were no suits by Asians against other Asians, and no suits by Asians against a race other than White. Hispanics filed suit only against other Hispanics or Whites. Although middle-aged litigants dominated the courtroom, younger plaintiffs appeared frequently and filed suit against individuals of various ages in equal numbers. There were a few cases filed by individuals who appeared to be over the age of sixty-five.

These impressionistic findings seem to suggest that non-minority litigants occupy a disproportionate share of the court's resources.[106] That impression may be false, however, because it does not reflect any data on the rates with which other demographic groups encounter problems of the types suitable for treatment in the court. The in-court observations do show that a diverse population of litigants has familiarity with the court, in the roles of plaintiff and defendant.

The majority of litigants observed were aware of small claims court prior to involvement in their disputes. They learned of small claims court through general knowledge, by way of friends and family who had previously used the forum, or through the media. A relatively small portion of litigants was unaware of small claims court prior to involvement in a dispute, and learned about the court via contacts with other governmental entities, such as the State Labor Relations Board.

A portion of the litigants had used small claims court before. This group was diverse. Repeat use is not exclusively accounted for by business litigants; some members of the general public also use the forum repeatedly.[107] Most repeat litigants had previous

106. According to the 1990 Census, 61.4% of the population of Denver is white.

107. The study revealed that repeat claimants were generally aware of the statute restricting use to two claims per month and eleven claims per year. The statute was not abused by any claim filed in the trials observed as part of this study. Whether the statute is abused, whether repeat use is administratively monitored, and whether the restriction is enforced are issues beyond the scope of this study.

judgments awarded in their favor, and had succeeded in judgment collection. One repeat litigant interviewed, however, has never prevailed, and has never been satisfied with the magistrate's ruling. She continues, however, to use the forum to resolve disputes.[108]

The study showed that word-of-mouth information among communities of court users is an important factor in a person's decision to use the court. Although repeated use of the court is an atypical pattern, a future study might find value in obtaining information from the small group of frequent users. The methods in which they have used the court and found satisfaction with its functioning might be transferable to other litigants through educational programs or through the redesign of procedures to emphasize aspects that have been satisfactory.

C. Results of Trial

1. Plaintiff Victory is the Norm

In a comparison of nine Denver Small Claims Court magistrates, the least pro-plaintiff magistrate ruled in favor of the plaintiff 80% of the time, whereas the most pro-plaintiff found for the plaintiff 94% of the time. The overall rate of plaintiff victory for all magistrates, in cases where the plaintiff appeared for trial, was 85%.[109]

Among the cases examined, there were a few in which the defendant won. Given the probability of a plaintiff victory, these cases were anomalous. One such case involved a $500 breach of contract claim regarding the purchase of a house. The plaintiff had signed an offer of purchase after another bidder backed out. He believed that the house would be his, based on representations by the seller. Therefore, he incurred expenses related to the purchase: inspection, contracting, and credit report fees. The contract, however, was never signed by the seller defendant. Until signed by the seller, the instrument was only an offer. Because there was no contract in this instance, dismissal was appropriate.

A second case involved a claim and a counterclaim, both of which were dismissed. The plaintiff sought the return of a $600 security deposit balance on retail space. The defendant's attorney returned $400 to plaintiff with an accompanying letter stating "in full satisfaction." The plaintiff demanded the additional $200 be-

108. References such as this are from the records of statements made to our court observers.

109. These statistics are consistent with findings of similar studies of small claims courts. *See, e.g.*, Elwell & Carlson, *supra* note 1, at 507; Yngvesson & Hennessey, *supra* note 5, at 246.

cause the space was not ready when needed. The counterclaim was for one month's rent. The space remained vacant because plaintiff failed to occupy the premises. The counterclaim was dismissed because there was no signed lease agreement. The original claim was dismissed because plaintiff had previously accepted a $400 check marked "in full satisfaction." Again, there was a legal basis on which to dismiss this case. However, other facts may have played a role in this decision. The plaintiff had a strong German accent and did not present a clear statement of the facts. Her presentation was vague and disjointed. These factors may have affected the judgment.

Another case in which plaintiff's claim was dismissed is worthy of note. The case involved a claim for unpaid wages. The plaintiff claimed he was paid less than the amount agreed to in a verbal contract for payment of a certain hourly wage, but he was unclear about the dates he had worked. The defendant disputed the amount owed under the verbal agreement and paid the plaintiff a lesser amount. The magistrate admonished the plaintiff for being ill-prepared and for not presenting direct physical evidence. Because the plaintiff did not prove his case by a preponderance of the evidence, the claim was dismissed. The magistrate clearly acted within legal parameters in deciding this issue. However, the plaintiff apparently lost this case more because he failed to present a cohesive, substantiated argument than because of the relative merit of his position.

A final case that was dismissed involved a realtor and a mortgage broker with directly conflicting testimony. The plaintiff offered physical evidence in a cavalier, inconsistent manner, and with multiple qualifications. The case was dismissed because it was not proved by a preponderance of the evidence. If the plaintiff had been more precise and had appeared more sincere in her presentation, judgment might have been awarded in her favor.

The dismissal of these cases reveals the significance that magistrates sometimes place on well-organized, cohesive, and substantiated testimony. In some of these instances, the quality of advocacy seemingly expected may be beyond the reach of a lay-person. Nonetheless, these defendant victory cases are significant, because they are the only indications that a typically pro-plaintiff institution will sometimes produce results in favor of defendants.

2. Amount Awarded

The amount of judgment awarded is a product of many different elements of a small claims court trial, including the magistrate presiding over the case, the nature of the case, and the care given by the plaintiff to the presentation of the case. Table 1 illustrates the average amount of judgment awarded, if any, by three magistrates, without regard to the nature of the case.[110] Table 1 also shows the average award as a percentage of the claim.

Table 1: Average Percentage of Claim Awarded, by Magistrate*

	Magistrate One	Magistrate Two	Magistrate Three
Average Amount of Claim	$627.50	$1084.20	$734.16
Average Amount of Judgment	$590.90	$811.74	$612.29
Average Percentage Amount Demanded	94.17%	74.87%	83.4%

* The figures in this table are drawn from the following number of cases: Magistrate One - 33; Magistrate Two - 38; Magistrate Three - 10.

a. The Magistrate

The claims in the observed cases ranged from $110 to $3500—the maximum limit allowed in small claims court.[111] There is no minimum limit on the amount for any claim.[112] The average judgment for all magistrates was $671.25; however, the awards varied among magistrates, and the percentages of award granted varied dramatically. Magistrate One, on the average, awarded $590.90;

110. References to Magistrates "One," "Two," and "Three" refer to particular individual magistrates. Because the statistical reports are qualitatively reliable but not precisely reliable in a quantitative sense, it was thought that identifying the magistrates by name would be inappropriate. Where references are made to these magistrates in connection with in-court observations, it was again considered proper to identify them by number rather than name, since the cases observed in the study are only a small fraction of the cases over which they preside, and because those cases were not selected at random.

Data were collected on cases heard by a large number of magistrates. For only three magistrates the number of cases in the sample was large enough to make it sensible to report percentage results.

111. COLO. REV. STAT. § 13-6-403 (Supp. 1993).

112. The claims are limited in a practical sense, however. Since the cost of filing claims is eight dollars, and since other costs are imposed on plaintiff's time and resources, it is unlikely that claims under ten dollars will be brought.

Magistrate Two awarded $811.73; and Magistrate Three awarded $612.29.

Generally, plaintiffs received over 84% of the amount they requested; therefore in the Denver Small Claims Court, there is a positive correlation between a high demand and a high award. For instance, Magistrate One, on the average, awarded over 94% of the amount demanded; Magistrate Two awarded 75%; Magistrate Three awarded 83%. These figures indicate that the identity of the magistrate can greatly influence the judgment, often by as much as 20%. Furthermore, plaintiffs are likely to receive an award between $550 and $820.

In comparing the dollar amount awarded to the percentage of the amount demanded, it is apparent that plaintiffs in different courtrooms, in the cases studied, requested varying monetary awards. Even though Magistrate Two only awarded 75% of the amount demanded, his awards were higher than those of the other magistrates. Therefore, although Magistrates One and Three awarded lesser dollar amounts, they were more prone to award the actual amount demanded. A plaintiff can be more confident of receiving the amount sought with Magistrates One and Three.

b. The Nature of the Case

As illustrated in Table 2, the nature of the case also affects the amount of the judgment. The cases arising in the Denver Small Claims Court were distilled into six categories: (1) failure to pay rent; (2) failure to return security deposit; (3) failure to adequately perform services; (4) failure to adequately pay for services;[113] (5) failure to adequately compensate for damages; and (6) other. In cases where the claim was based upon a failure to pay rent, the average judgment was $370.40. Suits based on failure to return security deposit had an average judgment of $118.67. In service oriented cases, judgments were almost identical whether cases were brought for failure to adequately perform or for failure to pay for services. The average judgment in a failed performance case was $374.20, while the average judgment in cases dealing with failure to adequately pay for services was $378.07. Cases addressing a failure to adequately compensate for damage had an average judgment of $323.29.

113. Forty-five percent of the observed plaintiffs filed claims for failure to adequately pay for services.

The amount awarded, as a percentage of the amount demanded, was usually high. There was just a slight discrepancy between the different categories of cases. In cases for failure to pay for services, the plaintiffs received 93.4% of what they demanded from the defendants. However, plaintiffs suing for failure to adequately perform services received only 64.7% of the amount that they demanded. This category represented the lowest return on the amount demanded. In failure-to-pay-rent and failure-to-return-security-deposit cases, plaintiffs received 73.4% and 81.5%, of the amount demanded, respectively. Finally, plaintiffs attempting to gain compensation for damages received 89% of the amount that they demanded.

Although the judgment amounts for failure to pay for services and for failure to perform services were very similar, the plaintiffs in each of these categories demanded significantly different amounts. In both categories, plaintiffs received approximately $370, but this figure represents 93% of the amount demanded in failure-to-pay cases and 64% in failure-to-perform categories. Thus, the plaintiffs in failure-to-perform cases typically requested higher monetary amounts.

Table 2: Average Amount of Judgment, by Type of Claim

Nature of the Case	Failure to Pay Rent	Failure to Return Security Deposit	Failure to Adequately Perform Service	Failure to Adequately Pay for Service	Failure to Compensate for Damages	Other
Average Demand	$504.60	$145.60	$578.36	$404.78	$363.25	
Average Amoung of Judgment	$370.40	$118.67	$374.20	$378.06	$323.29	$478.82
Average Percentage of Demand	73.4%	81.5%	64.7%	93.4%	89%	

c. The Care of Presentation

The care given to presentation of a case also appears to influence the magistrate's decision, although in the trials observed, the amount of a claim did not seem to influence the care in presentation. One plaintiff brought a $110 claim, suing her former em-

ployer for back wages on a breach of contract theory. Prior to suing, she sought assistance from the Colorado State Board of Employment. At trial, she presented time cards, wage stubs, and a self-prepared record of events to support her claim. Her presentation was forthright and organized, even though her claim was minimal. The defendant, a chiropractor, was distant throughout the proceeding. He brought little evidence, and was less prepared, haughty, and indifferent. This matter could have gone either way. The care of presentation appeared to influence the magistrate, who awarded judgment to plaintiff.

At the opposite end of the spectrum was a plaintiff whose claim exceeded $3,000. This plaintiff showed no diligence in preparation for court, although convinced before trial that he would prevail. The case involved an artist who had a contract to produce 20,000 promotional maps. Because the plaintiff was not satisfied with the work done on the first project, the defendant offered the plaintiff a $200 discount on the job and a 20% discount on the next two orders received from the plaintiff. At the end of this first project, the plaintiff owed the defendant $962.

The plaintiff was completely satisfied with the second job. However, he alleged that the defendant lost the original art work, which was needed to produce quarterly updates of the map. As a result of the loss, plaintiff reproduced the original. He claimed that the reproduction took him 104 hours at $30 per hour, totalling $3,100. Defendant claimed that he had not lost the art work, but rather had held it to induce plaintiff's payment for the first project; had plaintiff paid the balance, defendant would have delivered the original, thereby avoiding the necessity of the reproduction.

The contract clearly granted the defendant a property right in his art work, pending payment. Because plaintiff had not paid the balance of $962, defendant was within legal bounds to hold the art work. The magistrate ruled that the condition precedent to conversion never occurred. Therefore, judgment was granted to defendant. Although this claim was highly detailed and involved a sizable amount, the plaintiff was poorly organized. He brought no evidence, such as bids, contracts, or dates, to support his claim. He continually interrupted the magistrate and appeared impatient throughout the trial. This claim was very important to the plaintiff, who takes his work very seriously. Had he applied zeal to his case presentation, judgment might have been granted in his favor.

Many litigants whose claims involved relatively small amounts of money presented their cases with painstaking accuracy, using pre-

cise dates and times, and offering a variety of physical evidence. Others with larger claims often spoke without notes and offered no physical evidence. There was no pattern in which the amount of a claim seemed to be related to the litigant's care of presentation. There was evidence, however, that magistrates responded to carefully presented arguments.

D. Comprehension of Verdict and Procedure

Although a substantial majority of litigants said they understood the magistrate's decision, most of them did not know what to do immediately upon leaving the courtroom. A common misconception is that after judgment is granted, the prevailing party will be paid immediately. The study revealed one party who paid immediately post-trial and two parties who prepared payment schedules together before leaving the courthouse. Two others promised to have a check waiting later that day. The remainder of the parties left the courtroom with no plan for collection.

Some of the confusion stems from truncated, confusing instructions from the magistrates. After a magistrate's ruling, the losing party is instructed either to pay the judgment before leaving the courthouse or to complete a set of interrogatories, which is then provided. Sometimes the magistrate tells the losing party that the interrogatories must be completed before the party leaves the courthouse. Other times the magistrate gives the losing party a few days to complete the forms. No apparent pattern or reason underlies this inconsistency. Most of the time, the magistrate tells the losing party that he or she will be held in contempt of court unless the interrogatories are completed.

The interrogatories consist of three pages of questions. There are twenty-six questions to answer. The questions request personal, employment, and financial information. Included are questions regarding ownership of property, recording information from deeds to property, creditors' names, account numbers and balances, payment of wages, health insurance, other money judgments, state and federal income tax refunds, held securities, vehicles and livestock or crops owned, and other personalty owned. The last item is a request for the party's most recent federal income tax return.

The interrogatories are intimidating and time-consuming to complete. Perhaps for this reason, parties often choose not to complete the forms. The parties observed often felt frustrated and scared by the form's questions. Although three or four clerks are generally

available to assist parties in completing the form if asked, sometimes the parties were too frightened or unwilling to approach the counter. Usually the parties were not equipped with all of the necessary information to complete the form, such as deed recording information, prior tax return refund information, and account numbers.

The intimidating and confusing procedure leads to at least three possibilities. First, perhaps the parties completing the form will have no difficulty because many of the questions are inapplicable. Second, perhaps the complexity of the form will encourage a party to pay the judgment on the spot to avoid the forms altogether; this seems unlikely, however, because a party who does not complete the form is not required to pay on the spot, and because, most of the time, the parties do not come to court prepared to pay a judgment. Third, perhaps the defendant will not understand the form and will omit information that would be necessary to collect the judgment.

If completed, the interrogatories provide useful financial and employment information to the party who is owed money. At that point, the long road to judgment collection has just begun.

E. Judgment Collection

Perhaps the single greatest problem associated with small claims courts involves collection of judgments.[114] The Denver Small Claims Court is no exception. The collection procedure is typically confusing, difficult, and disconcerting to litigants. Even the court-provided information refers to collection as "complicated" and recommends contacting an attorney.[115] The brochure outlines methods of collection such as demanding payment, garnishing wages, and obtaining liens against real estate. Parties are warned against attempting collection procedures without legal advice unless they are absolutely sure about what they are doing.

Overall, plaintiffs in this study collected only 31% of the amounts awarded; 55% of plaintiffs collected no part of their judgments. At a greater level of specificity, the percentage that the plaintiff actually collects can depend on the magistrate. As illus-

114. *See* RUHNKA & WELLER, *supra* note 4, at 161-69 ("The existing process for using the legal process to enforce small claims judgments is fragmented . . . and is too complex for many litigants to use without the assistance of an attorney.") *Id.* at 172; Elwell & Carlson, *supra* note 1, at 450.

115. All who file a complaint receive the brochure, "How to Use the Colorado Small Claims Court." It begins by saying "the small claims court is an informal court that you can use to file lawsuits for up to $3,500, without an attorney."

trated in Table 3, the percentage collected varied from about 18% to 39% depending on which magistrate was presiding. For instance Magistrate Three awarded $612, on the average, but the collection percentage was only 18%; therefore, the plaintiffs actually received an average of only $110.16. Magistrate One, however, awarded $590, and the collection rate was 30%; therefore, plaintiffs received $177. In essence, the dollar amount awarded appears higher when the percentage collected is not considered. Although Magistrate Three consistently awarded a higher dollar amount, the plaintiffs actually collected less. It is important to note that although there are clear discrepancies among the different magistrates in the amount actually collected, the magistrates all have a low overall rate of collection.

Table 3: Average Percentage of Judgment Collected, by Magistrate

	Magistrate One	Magistrate Two	Magistrate Three
Average Percentage of Judgment Collected	29.70%	38.91%	18.48%

The type of payment also varied among the different magistrates. According to the court files, parties in Denver Small Claims Court actions tender payment in several forms, including no payment (which includes settlement), full payment, and garnishment. With all magistrates, between 60% and 63% of the parties made no payment whatsoever. There were greater discrepancies in the full payment and garnishment categories. In Magistrate One's courtroom, 6.6% of the parties made a full payment either at the time of judgment or at some point thereafter. By contrast, in Magistrate Two's courtroom, 13.5% tendered full payment. None of the parties in Magistrate Three's courtroom made a full payment.

Perhaps the most effective means of collection is through the garnishment process, in which the court gains direct access to the defendant's bank account or employment check, so that at scheduled intervals, payment may be drawn directly from these accounts. The garnished wages go directly to the court, which delivers the payment to the payee. Compared to the other collection methods, large numbers of plaintiffs receive at least some degree of compensation. Problems arise, however, when a garnishee moves or changes employment, making the collection process convoluted and precluding completion of payment. Unfortunately, due to a

congested docket and lack of resources, the Denver Small Claims Court does little to correct this problem, and plaintiffs often go uncompensated.

The use of the garnishment process varies among magistrates. Thirty-three percent of Magistrate One's cases were dealt with through garnishment. However, in Magistrate Two's courtroom, only 23.7% went to garnishment. Magistrate Three, who utilizes the system the most, sent 40% through the garnishment process. Because the garnishment process appears to be the most successful method of redressing plaintiffs' injuries, this type of payment should be refined and utilized more.

The complexity of the existing apparatus for collection in Denver forces many small claims judgment creditors to go to an attorney for assistance in collecting a judgment. These additional costs can severely undercut the otherwise low cost of winning the judgment. In response to similar problems, many states have implemented more unique external collection methods designed to deter judgment debtors from failing to satisfy their debts. For example, in Kansas, the court may hold the judgment debtor in contempt for failure to provide financial information requested by the court upon failure to pay judgment,[116] and in New York, a defendant with three small claims judgments against him may have to pay treble damages if the judgment is not paid within thirty days.[117] In Ohio, any party who willfully fails to comply with an order of the court can be cited for contempt by the small claims court,[118] and in Washington, nonpayment of a small claims judgment within twenty days permits the court to increase judgment by a certain amount.[119]

F. Appeals

In the span of three years ending in 1991, only 126 appeals—about one percent of the number of cases tried[120]—were filed with the Denver County Small Claims Court. This study examined each of those appeals. The study does not reveal whether the small number of appeals resulted from inadequate information being

116. KAN. STAT. ANN. § 61-2707(b) (Supp. 1992).
117. N.Y. CITY CIVIL COURT ACT § 1812 (Consol. 1981).
118. OHIO REV. CODE ANN. § 1925.13 (Page 1983 & Supp. 1992).
119. WASH. REV. CODE § 12.40.105 (1993).
120. Telephone interview with Kathy Ellerbee, Supervisor, Denver County Court Civil Records Division (Dec. 21, 1992). Ms. Ellerbee stated that the approximate annual numbers of small claims court cases and small claims court appeals are approximately 4,500 and 50, respectively. Since 1992, the rate of appeals has gone up to approximately two percent. *Id.*

conveyed to the losing party or whether parties decided that the appeal process was not worth pursuing.

It is likely that the small number of appeals resulted, at least in part, from losing parties' general lack of awareness of the right to appeal. At the end of most trials, the magistrate tells the losing party that he or she may file an appeal.[121] Magistrates rarely explain the appeal process, however, and they do not always inform the losing party that all appeals must be filed within fifteen days of judgment.[122] In order to appeal a case in Denver, the dissatisfied party must post a $70 bond as well as the amount of the judgment, if any, found against the party.[123] This sum may dissuade a losing party from filing an appeal. The losing party must choose between paying the cost of an appeal or perhaps not paying at all.

Appeals of small claims judgments are heard by district judges.[124] The appeals may be prepared *pro se* or by an attorney.[125] In the cases reviewed for this study, some appeals appeared to have been technically prepared—they used legal terminology—while others were handwritten or typed on the party's letterhead stationery. Once an appeal is filed, the appellee has the option to respond or allow the transcript to speak for itself.[126]

While appeals are rare, so much more so are reversals. Approximately 92% of small claims court appeals result in affirmance. Only eight cases in the years studied involved a reversal, remand, or vacating of a judgment.[127] Because only a minuscule proportion of cases are appealed, and because there is an overwhelming pattern of affirmance in appealed cases, the magistrates' decisions are essentially final.

The rarity of reversal suggests that errors less severe may occur without occasioning appellate scrutiny. For example, in one case, the losing party claimed that the small claims court referee personally insulted her and the defendant, that he did not listen to the evidence and consider it in an impartial, unbiased manner, and that he dismissed her case due to a prejudicial state of mind and due to

121. All provisions of law and rules concerning appeals from the county court apply to small claims appeals. COLO. REV. STAT. § 13-6-410 (Supp. 1993).

122. *See* COLO. REV. STAT. § 13-6-311 (Supp. 1991).

123. *Id.*

124. *Id.* § 13-6-310(1) (1987).

125. *Id.* § 13-6-410 (Supp. 1993).

126. *Id.* § 13-6-311(4) (Supp. 1991).

127. In the 34 small claims court appeals of 1989, 31 resulted in affirmance, two in remand and one was vacated. In the records available from 1990, 33 of 35 appeals resulted in affirmance, one judgment was remanded and one vacated. The percentages for 1991 were identical to those of 1989, with 91% resulting in affirmance.

his personal summation of the low character of the defendant and due to personal judgments made of the plaintiff. The appellate court held that the proceedings were improperly conducted. The court found that despite the relaxed application of the rules associated with small claims courts and the authority of magistrates to act quickly and candidly, these proceedings were conducted in an unsatisfactory manner.

This opinion addresses the great shortcoming of small claims courts: justice is not only rough, but it may occur outside of any other corrective structure. Here, had the plaintiff not written to a chief magistrate, no one in authority would have known that injustice had occurred. While this situation may be likened to appeals processes in other court systems, the parties in small claims court rarely have legal advisors to explain the benefits of, and procedures for, appealing the judgment.

In a few highly unusual cases in which appeals were taken, the trial court had granted the prevailing plaintiffs more than they had demanded. One plaintiff claimed $255 and received $1,055; another demanded $1,262 and received $1,728. It is not surprising that a defendant would appeal adversity of this dimension. However, due to the requirement of posting the judgment in order to appeal, the initial judgment was always paid in these cases.

IV. Critique of Current Operation

A. Sources of Delay

In cases studied by in-court observation, factors that might be thought of as "technicalities" by law-trained individuals seemed to cause delay and confusion in a number of instances. Many litigants brought claims to recover personal property or to have action taken against someone, despite the inability of the court to grant such relief.[128] Two such cases involved plaintiffs who demanded

128. All who file a complaint receive the brochure, "How to Use the Colorado Small Claims Court." It states that "small claims court may be used for money debts, personal injury claims, or property damages up to $3,500, or for canceling, avoiding, or getting out of a contract when the amount involved does not exceed $3,500." The brochure, however, is unclear. It does not state that the court can only grant money verdicts.

COLO. REV. STAT. § 13-6-403(2) explicitly states that the small claims court shall have no jurisdiction over the following matters:

(a) Those matters excluded from county court jurisdiction under § 13-6-105(1);

(b) Actions involving claims of defamation by libel or slander;

(c) Actions of forcible entry, forcible detainer, or unlawful detainer;

that their landlords return personal property. Another case involved a plaintiff who wanted a garage lessee's belongings removed from the garage for failure to pay rent. The forum failed these plaintiffs on all three counts. It was neither speedy nor informal; the plaintiffs were delayed because of a misunderstanding of the function of small claims courts, and resolution of their claims required a lawsuit in a more formal court. Furthermore, it was not inexpensive; these plaintiffs wasted the cost of the filing fees by filing claims in a court which could not hear them.

Delay is also caused by uncertainty regarding jurisdiction. One magistrate was uncertain whether Denver or Adams County had personal jurisdiction over the defendant. Because the magistrate did not want to interfere with Adams County's authority, the magistrate suggested that the plaintiff return to Adams County to determine personal jurisdiction. A properly operating monitoring system would have discovered this apparently flawed complaint before time and money were spent by the court and the plaintiff in preparing the case for trial.

There were also several instances in which the resolution of plaintiffs' dispute was delayed because the plaintiffs sued the wrong parties. These cases were dismissed. One such case involved a plaintiff suing a car-repair shop for $2,000 in damages resulting from an improperly installed, rebuilt car engine. The magistrate ruled that plaintiff had not proved by a preponderance of the evidence that defendant was at fault. Because the warranty obligation on the rebuilt engine was the responsibility of the California corporation that sold the engine to the defendant, the plaintiff was left to figure out how to sue a California corporation.

Another case involved a homeowner whose claim was against a realtor. The plaintiff had purchased a home with an FHA mortgage. The FHA inspection required the seller to repair freeze damage in the house. The sales contract contained a clause requiring that the repair of water damage be completed before closing. The repairs were delayed, and the plaintiff sought reimbursement for one month's rent that he incurred as a result of the delay. The

---

(d) Actions in replevin;
(e) Actions for specific performance;
(f) Actions brought or defended on behalf of a class;
(g) Actions requesting or involving prejudgment remedies;
(h) Actions involving injunctive relief;
(i) Traffic violations and other criminal matters;
(j) Awards of body executions.

COLO. REV. STAT. § 13-6-403(2) (1987).

magistrate informed the plaintiff that he was suing the wrong party. The realtor was only the agent for the seller, and the plaintiff should have sued the seller.

Multiple cases were placed in suspension because the corporate defendants filed for bankruptcy after the claim was initiated. When the plaintiffs appeared in court, they were told that the cases could not be heard because of the pending bankruptcy actions. The plaintiffs were not made aware in advance. They appeared in court ready to try their cases, only to be told to go home.

Another source of delay was the late notice of counterclaims. One case involved a couple who was not served with a counterclaim until they arrived at the courthouse for trial. The magistrate gave them the option of having the case heard that day or postponing the trial until they had time to prepare their defense to the counterclaim. They chose to take the additional time to prepare.

Providing some kind of counseling function, or some other source of paralegal advice, would forestall some of the delay and confusion seen in this pattern of cases.

B. Costs of Trial

For most litigants, the main cost of participating in small claims court proceedings is the loss of time, often involving a loss of wages or other earnings. Some of the observed cases included more extensive investments by litigants. The potential for extra expense to a plaintiff is higher when a defendant's conduct is the subject of a criminal trial. A California plaintiff's case illustrates this problem. While visiting Denver, the plaintiff observed the defendant beating a woman. In trying to help, he was beaten too. The city entered criminal charges of aggravated assault against the defendant. The plaintiff filed a civil action for his medical expenses and scheduled his suit to commence after the criminal trial. He then returned to his home in California. The criminal trial was continued, but no one communicated this information to the plaintiff. At his expense, he flew to Denver for the civil trial. At the trial, the magistrate asserted the defendant's Fifth Amendment rights not to testify in a civil action when a criminal matter is pending. The plaintiff scheduled a second trial, returned home, and flew to Denver again after the criminal matter was resolved. Because the defendant had been found guilty, the plaintiff prevailed in small claims court. He believes strongly that small claims court empowers individuals to bring their own claims and to not rely on an expensive legal system. He said he brought the claim not just to save

money but to have control over what was said at trial. His attempt to save money was thwarted by an inefficient system that failed to inform him of the criminal trial's continuance.

C. Judicial Styles

1. Personal Approaches to Similar Situations

Variation of judicial styles is undoubtedly common from one courtroom to another, but such variation may be more significant to litigants in small claims court than in other courts. This is because a small claims magistrate has a greater role in the outcome of cases than other presiding officials have. Because litigants are not represented by lawyers, the system intentionally excludes a primary mechanism for correcting judicial errors at trial. Also, because appeals are less likely in small claims court and almost always lead to affirmance, they are not a realistic control of judicial conduct. Furthermore, unpredictable conduct among magistrates may nullify the preparation of the litigants. Litigants often rely on word of mouth on how to proceed in small claims court. If such a litigant comes before a magistrate with a markedly different style than expected, then such advice will not be effective.

The Denver magistrates' judicial styles have been markedly different in similar situations. Magistrate One generally adhered closely to the rules, often appearing harsh and abrasive. In one particularly compelling trial, that abrasiveness had an unfortunate effect on the trial. The plaintiff was a street person who had failed to pay for rent for two nights in a motel. The motel confiscated her belongings, which included sheets, a sleeping bag, clothing, and a radio. She sued to regain her belongings, and the motel counterclaimed for the rent. The court granted an extension so plaintiff could answer the counterclaim. After the extension, the plaintiff appeared with no answer. She reiterated that she wanted her belongings back. The magistrate reprimanded her for submitting no answer. She said that she tried to pay the motel but they claimed they did not understand English. When she reiterated her plea, the magistrate told her the court had no jurisdiction to return her personal property and only had the power to grant its value. She began to list her personal items and, with the help of a friend, to ascertain value. The magistrate hammered questions at her for which she did not have answers. She did not know how old her sleeping bag was or the quality of the filling. After a few interchanges, she left the court in tears in the middle of her testi-

mony. She wanted her things, not their value. Despite two trips to the court she felt the process was unsuccessful.

The magistrate then heard defendant motel's story. The motel admitted keeping the items to induce the payment of rent. They acknowledged that plaintiff had returned, demanding her things and offering to pay one night's rent. The magistrate found that defendant was unlawfully withholding plaintiff's property. He entered judgment in favor of plaintiff for the amount of the incomplete list to which she had testified, but the plaintiff had left the courtroom and did not hear this judgment.

By contrast, in the courtroom of Magistrate Two, rules are perhaps too relaxed. This magistrate allowed parties to interrupt each other. Parties even interrupted during his rulings. He addressed the situation of a plaintiff asking for personal property, not money, differently than Magistrate One's response. Plaintiff, a carpet layer, sued his employer for back wages and a carpet that he had negligently installed, for which money had been deducted from his pay. (Another installer had already removed the carpet and installed the correct one). The plaintiff claimed that he paid for his mistake and was entitled to the carpet. The magistrate agreed. He asked where the carpet was. No one knew. Had the carpet's location been known, he would have granted plaintiff's request. Because it wasn't available, the magistrate awarded its value.

The magistrate was wrong to consider the return of property as a remedy. The court's jurisdiction is limited, and the statute specifically excludes replevin from the court's powers.[129] The magistrate's gentler manner, however, may have allowed the plaintiff to see the righteousness of his claim.

In situations where evidence is directly contradictory, judicial styles vary. Magistrate Three dismissed a case because there was no proof by a preponderance of the evidence. The plaintiff had hired a mortgage broker to search for a better financing package than the one she had. When one was not available, she sought the return of her money. The broker argued that he was hired to find her the best deal, and he spent her money on a survey and application fee thinking he already had her approval. The parties presented no other evidence, and the magistrate dismissed the claim.

Yet, in a case of similar circumstances, the same magistrate continued a trial. A vehicle hit the plaintiff's car, and its driver then

129. COLO. REV. STAT. § 13-6-403 (Supp. 1993); *see supra* note 128.

drove it from the scene of the accident. The plaintiff's brother heard the crash and recorded the departing car's license number. The plaintiff called the police and the defendant's car was impounded. The only evidence presented by the plaintiff was that a detective told him that the paint and damage matched on the two vehicles. The plaintiff brought no witnesses or physical evidence to trial. The magistrate continued the trial for thirty days. He instructed the plaintiff to subpoena the detective and to provide police and insurance reports so he would have some basis for a fair ruling. He refused to rule against the defendant without more evidence.

These cases are possible to distinguish. In the latter case physical evidence was available though it was not presented at trial. In the former case, credibility became an issue because no other evidence was presented. Nonetheless, from an observer's perspective, both cases seemed to present similarly appropriate circumstances in which to allow a party additional time to collect evidence that could be brought to trial.

Magistrate One's style, when oral testimony is contradictory, is different. In a trial involving wages owed, the plaintiff and defendant presented different stories. Magistrate One found for the plaintiff. On the record he said, "Testimony is contradictory, therefore upon observation of the demeanor of the parties, I must hold that defendant is the more reliable witness." This is a common response for Magistrate One and does not necessarily comport with the standard of proof required in civil cases.

Some parties react negatively to a public statement of their unreliability. One plaintiff said that she felt the purpose of the court should be to resolve issues, not to hurl insults at parties. She also stated that she will not use small claims court again. Such a reaction to judicial conduct is antithetical to the purpose of the court.

Magistrate Four has a courteous manner in trials. Once, when the defendant slated for the eight o'clock docket had not arrived, the magistrate allowed him fifteen minutes to appear and went on to the next case. Furthermore, although it is common for *pro se* litigants to present information not pertinent to the trial, Magistrate Four was able to interrupt with precise questions that did not embarrass them, but provided a focus.

2. *Varying Applications of Evidentiary Rules*

The brochure available from the clerk of the court, entitled *How to Use the Colorado Small Claims Court*, instructs litigants to bring

receipts, documents, estimates, pictures, or other means of proving their claims. Although technical rules of evidence do not apply in a small claims court proceeding,[130] this study's court observations revealed that rules of evidence were selectively enforced.

Many parties did not bring evidence, despite instructions in the brochure. This was a substantial reason why litigants did not prevail. The system, however, allows magistrates some latitude in rendering decisions.

Magistrates exercise a wide variety of what might be called judicial notice. One plaintiff, claiming negligent car repair, brought in a part that he claimed had not been changed when he paid for a tune-up on his car. The magistrate ascertained that the part was sufficiently worn and should have been changed. He allowed plaintiff the value of having the part changed. Afterward, the plaintiff admitted his surprise at the magistrate's fact-finding abilities.

As explained earlier, Magistrate One used the demeanor of the parties to reach a decision. The case was over a wage dispute, and neither side had presented sufficient evidence. The magistrate found that the defendant's demeanor was more believable. On that basis he dismissed the case. Had the plaintiff been the more believable party, it is possible that the magistrate would have decided in his favor.

Another plaintiff sought the value of a ring she had left with a jeweler for repair. The jeweler had lost the ring and had sent the plaintiff two substitute rings and a note admitting the loss. The plaintiff did not bring the jeweler's note to court; however, she was allowed to disclose its contents to the court. The court's leniency in this case may have been because the defendant did not appear at trial and the plaintiff was a default winner.

In another trial, the plaintiffs sought the return of their security deposit. The defendant lessor had withheld the deposit, claiming that the tenants did not give sufficient notice of terminating the lease. The defendant also counterclaimed for cleanup costs and stove replacement. As evidence of the lease, the tenants offered the contract. The lessor failed to bring receipts to prove the costs claimed. The magistrate denied the counterclaims based on a lack of evidence.

130. COLO. REV. STAT. § 13-6-401 (1987) ("Procedures for the inexpensive, speedy, and informal resolution of small claims in a forum where the rules of substantive law apply, but the rules of procedure and pleading and the technical rules of evidence do not apply, are desirable.").

In another case the plaintiff had loaned his towing boom to the defendants, who intended to start a tow truck business. While the defendants were in possession of the boom, it disappeared. Shortly thereafter, the defendants spotted the boom being driven on the road, and they asked that driver for proof of ownership. The driver produced a bill of sale from another party. The defendants told police and were informed that only the boom's owner could file a complaint. Defendants asked the plaintiff to file a complaint, but the plaintiff sued defendants instead. He sought $1500—the value of the boom five years ago when it was new. He presented a bill of sale. The defendants argued that the boom was only worth half of its original value, but they had no evidence. Judgment was entered against the defendants for $1500 even though the proof of value was five years old.

In this relaxed evidentiary atmosphere, the system is without some of the natural checks that rules of evidence provide in the advocacy process. The potential for abuse is high, and a danger exists that a decision may be based on a magistrate's personal feelings instead of on rules of law. A trial exhibiting this tendency involved a suit against a roofing company. The plaintiff hired the defendant to repair damage caused by a hailstorm. He sued the company, relating a series of delays and a failed inspection. At trial, the magistrate began questioning the homeowner about the amount of insurance reimbursement he had received for the storm damage. Although no physical evidence was before the court on these matters, the magistrate based his decision in part on the fact that the plaintiff had made money as a result of the storm. The decision reflected the magistrate's personal feelings. The insurance recovery was raised in the magistrate's decision, based on evidence not before the court. The issue was arguably irrelevant; however, the parties were not given an opportunity to respond to the magistrate's ruling.

Litigants often attempt to relate statements made by third parties who are not present in court. In these situations Magistrate Four would raise his hand to stop the talking and say, "You may bring in that person as a witness, or you may bring in a letter he wrote you, but unless you use those methods, I cannot listen to your interpretation of what he said." This contrasts with another magistrate's response, "I don't want to hear what he said."

In one observed case, the magistrate did not allow a traffic accident victim to state what a person on the sidewalk had said immediately after the accident about the cause of the accident.

Colorado's evidence rules would characterize this testimony as within the hearsay exception for "present sense impression" statements and would allow its admission.[131] Understandably, the litigant's lack of legal knowledge precluded any discussion of whether that exception could sensibly be applied.

3. *Varying Applications of Procedural Rules*

Researchers observed varying applications of the rules of venue and service of process. For venue to be proper, the party being sued must, at the time the claim is filed, either live, be regularly employed, or have a business office in the county where the claim is filed.[132] One case that was dismissed for improper venue involved a traffic accident in Boulder in which a Boulder resident caused damaged to a Denver resident's car. It was dismissed because defendant had no relationship with Denver.

The service-of-process statute provides that defendants shall be notified of the small claims court action "either by certified mail, return receipt requested, or by personal service of process, as provided by the rules of procedure for the small claims court."[133]

Plaintiffs often forgot to bring proof of service. When this happened, the magistrate usually sent the party to obtain a copy. Improper service was grounds for dismissal in one trial where an improper party was served. In another trial, however, the defendant argued that he had insufficient time to subpoena witnesses, because he had only recently learned of the trial. His brother, who does not live with him, had accepted service and neglected to tell him. Because the defendant had not raised this issue before trial, the magistrate concluded he had waived an improper service defense. In contrast, one magistrate never made an observed finding of proper or improper venue or service.

This selective enforcement of statutory requirements seems unjust, particularly when it takes place in a context that is virtually immune from appellate scrutiny.

V. Conclusion

The image of the Denver Small Claims Court obtained through the informal observations and the quantitative records analysis in this study shows a pattern consistent with other small claims court

131. COLO. R. EVID. 803(1).
132. Colo. R. SMALL CLAIMS COURT 519.
133. COLO. REV. STAT. § 13-6-415 (1987 & Supp. 1993).

studies: a wide range of user satisfaction, a wide range of judicial styles, and varied degrees of rigor and accuracy in application of procedural and substantive law. This process leads to frequent plaintiff victories, followed up with only slight success by plaintiffs in judgment collection.

Particularly because appellate review does not seem to be a realistic source of quality control, disparate approaches to outcome-controlling issues pose certain problems. Significant differences among magistrates were observed in connection with evidence issues, such as the requirement of documentary evidence or the restrictions on hearsay. Magistrates also differed in their treatment of cases where litigants were not adequately prepared, and in their recourse to the garnishment method of judgment collection.

Differences in judicial style are unavoidable in all court systems, but where appellate review—the usual control on judicial performance—is virtually nonexistent, those differences suggest a need for substitute measures that might increase the proportion of accurately rendered evidentiary and substantive decisions.

The obstacles plaintiffs face in collecting judgments should be reduced as much as possible. The study reveals that the garnishment process is best suited to producing payment of judgments. That evidence should reinforce the possible trend towards emphasis of the garnishment process by current magistrates. At the very least, the difficulties associated with collection should be explained to individuals who are considering whether to use the court as a medium of redress.

To some extent, the small claims court procedure continues to be difficult for litigants to understand. The court might provide counselors who could explain the plain meaning of terms used by magistrates in rendering judgments. Also, providing some source of preliminary information about the requirements of various causes of action and the details of jurisdictional requirements would be extremely helpful to both plaintiffs and defendants.

This study does not definitively answer the ultimate question related to a modern urban small claims court—would we miss it if it were gone? Certainly, many litigants are satisfied with the treatment they receive. The study cannot show how individuals would react to the elimination of a governmental resource that is fairly well known and may be perceived as an avenue to just resolution of disputes. It is safe to assume that the court's positive factors would be strengthened with additional resources, such as better support for magistrates, provision of counselors to explain and fa-

cilitate the court's workings, and a more effective role for appellate review in the overall system.

Without considering the context of competing demands for governmental funds, it seems clear to the authors that allocating such additional resources would provide genuine benefits to small claims users, and that improving the effectiveness of small claims courts ought to be treated as a significant priority. The symbolic promise offered by an element of the justice system such as a small claims court should be matched by the reality of its performance. The Denver Small Claims Court, as is true for most courts of its type, shows some significant discrepancies between the promise and the reality. Closing that gap would serve litigants well and would benefit society in general by increasing in some small measure the match between governmental goals and governmental performance.