CHAPTER I

Perfecting the Administration of Justice

The law aims at justice, but it works through people organized in certain social relations. It is not enough to adopt the right moral principles; they can be undone by mistakes in the organization of adjudication. The wisest laws are worthless if litigation is delayed or confused.

When one private person complains against another, each can quote on his behalf the society's principles. The practical problem is to decide which of the competing claims fits the law's definitions of rights, injuries, liabilities, and remedies. Every society must adopt some system of making these decisions. One method empowers an individual or tribunal both to investigate the situation and to make the judgment. The parties present their competing claims, but the adjudicator bears the principal burden of asking questions, calling witnesses, and gathering evidence. Investigators and witnesses are responsible to the court and not to the competing parties.

In contrast to this "inquisitorial" model, a society might resolve its private disputes through an "adversarial" set of relations. A tribunal is organized as an umpire to hear and judge competing claims. Each party in the conflict announces its position about the pertinent law and the facts of the dispute; each presents the most favorable witnesses, evidence, and arguments that it can amass, within the limits of relevance and propriety; each demonstrates to the court the weaknesses in the adversary's presentation. The tribunal depends entirely or predominantly on the factual arguments, witnesses, and evidence introduced by the parties; the tribunal is the expert in the pertinent law and, on the basis of the competing positions, decides who is right under the law and who deserves retribution. The adversarial model has long been used in American civil litigation, and how certain administrative procedures relate to the adversary system generally is the subject of this book.[1]

1. On the historical development of the adversary system in Anglo-American law and on adversarial elements in those European traditions based on different presuppositions, see Robert Wyness Millar, "The Formative Principles of Civil Procedure," 18 *Illinois Law Review* 1–36 (1923). For the convenience of readers unaccustomed

Assumptions and Aims of the Adversary System

▶ *After rival and biased presentations, prepared independently by the interested parties, the "true" law and facts are found by a third actor, called "judge."*

The adversary system is supposed to have certain strengths that ensure just outcomes for litigants.[2] It assumes that rival claims can best be judged only if each side's position is stated most clearly and is argued most thoroughly. No single advocate can perform equally well for several rivals, and therefore the adversary system assigns each party the full responsibility and opportunity to present its own arguments and proof. No single investigator can both expound and criticize a partisan position with equal and maximum skill and vigor; the adversary system gives each party the full responsibility and opportunity to reveal defects in the rival's arguments and proofs.

The adversary system distinguishes between the roles of advocate and judge because, it is assumed, one inhibits performance of the other. If the decision-maker on the law and facts also develops the partisans' presentations, his early hypotheses about the merits will likely affect the vigor and direction of his investigations of each party's positions, and possibly one or both sides' cases will be developed contrary to the full truth and contrary to the legitimate interests of the parties. The system ensures that the trier of facts will hear all the arguments and proofs of the side he does not favor, and it ensures that a full presentation will not be foreclosed during the late stages of the case. By separating the partisan advocate from the judge of the law and facts, the adversary system tries to ensure that the decision-maker suspends judgment until all the arguments and proofs have

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to legal publications, the footnotes in this book will present more information about authors, journals, and publishers than is customary in legal citations. But a few elements of legal style will be used when referring to journals. The number immediately before the name of the journal is the volume; the number immediately after is the first page of the article. A reference like 18 *Illinois Law Review* 1, 14 means that the cited article begins on page 1 of Volume 18 of the journal, but the particular point mentioned in my text appears on page 14.

2. Descriptions and justification of the adversary system appear in Charles P. Curtis, *It's Your Law* (Cambridge: Harvard University Press, 1954), pp. 1–41; "Professional Responsibility: Report of the Joint Conference," 44 *American Bar Association Journal* 1159–1162 (1958); Lon L. Fuller, "The Adversary System" (Washington: The Voice of America Forum Lectures, Lecture Series Number 3, 1961); Jerome Michael and Mortimer J. Adler, "The Trial of an Issue of Fact," 34 *Columbia Law Review* 1224–1306, 1462–1493 (1934).

been presented. In addition, by separating the roles of advocate and trier of facts, the system prevents involvement in partisan arguments and in rebuttals from biasing the decisions of the court. The adversary system assumes that public respect for the courts is necessary and depends on judicial neutrality; the system of judgment itself would lose the respect of the society or of certain social classes if too many decisions were thought to be biased because of a systematic involvement of the trier of facts in the views of a particular class of litigants.

The adversary system assumes that hard work is essential if the case is to be properly prepared and adequately presented. Although the court needs maximum knowledge of the facts, its investigative resources and energies are limited. The adversary system places the burden on the parties, and the competitive relationship motivates each to find all the law and facts.[3] Maximum information is secured without the state having to bear all the costs; the work and expense of preparing the case are borne by the partisans themselves, who alone may be interested in the case and who alone profit from the outcome.

Professor Edmund Morgan sums up how the system is supposed to work:

> If it were to operate perfectly, both parties would have the same opportunities and capacities for investigation, including the resources to finance them, equal facilities for producing all the discoverable materials, equal good or bad fortune with reference to availability of witnesses and preservation of evidence, and equal persuasive skill in the presentation of evidence and argument. The case is rare where there is even approximate equality in these respects, and there is no practical method of providing it. But there can be no question that the system ought to enable each litigant in advance to know the exact area of dispute and to have access to all available data, so that he may be aware in just what particulars he and his adversary disagree, that he may investigate and

3. According to the theory of the Anglo-American adversary system, the parties bring the facts before the judge, who is fully conversant with the law. But one could imagine an adversary system in which party presentation plays an important role in helping the court to find legal precedents or to think through rival legal theories. In practice, the briefs of the parties in American courts sometimes instruct judges on the law as well as on the facts. "The judges do not always know well and fully the precedents of their own court. Instead of judging the briefs and arguments by the law known to them beforehand, they look up 'the law' after the briefs are in, and confine themselves to the boundaries of the briefs. The opinions often give the strong impression of being discoveries by the judges—discoveries, that is, of what *they* never knew before." John Henry Wigmore, *A Treatise on the Anglo-American System of Evidence in Trials at Common Law* (Boston: 3rd ed.; Little, Brown and Company, 1940), Vol. I, p. 244 [hereinafter cited as Wigmore, *Evidence*].

determine the pertinency and value of any materials favorable or unfavorable to his contention, and that he may consider the reliability of the persons willing or compellable to testify. Until he knows what state or states of fact the trier may find, he cannot prepare upon the substantive law. Until he knows what evidence is likely to be available for or against him, he cannot prepare to meet or interpose objections under the complex rules governing competency of witnesses, privileges of parties and witnesses, and the admissibility of unprivileged relevant evidence.[4]

Pathologies of the Adversary System

▶ *Since the parties in a fight seek victory rather than truth for its own sake, their presentations may confuse rather than help the court.*

Every social institution is designed for worthy aims but functions imperfectly. Persons deviate from proper performance of their roles. The system directs people in unexpected ways. Consequences occur that were neither foreseen nor desired by the institution's advocates. Like other social institutions, the adversarial method of resolving civil disputes can have certain undesirable effects upon the litigants and upon society.[5]

A case is supposed to bring all the facts before the court, so that it can decide where truth and justice lie. But the parties may present such diverging and yet convincing versions of the facts and each side may so skillfully resist the attacks of the adversary that the court cannot easily decide. The parties may have spoken and thought so unclearly during the original agreements or the crucial events were so fleeting in everyone's memory that the adversarial exchange before the court results in casting doubts on all the competing versions of the facts rather than simply demolishing error and triumphantly bringing forth a single truthful record. Bafflement may be produced by adversarial competition in technical fields in which, instead of a single set of expert judgments, the parties offer contradictory expert testimony. Although each lawyer may privately know the defects in his client's case and although the two lawyers might even agree, they may be so bound by the competitive pressures of the adversary

4. Edmund Morgan, *Some Problems of Proof Under the Anglo-American System of Litigation* (New York: Columbia University Press, 1956), pp. 34–35.

5. Criticisms of the practical operation of the adversary system appear in Jerome Frank, *Courts on Trial* (Princeton: Princeton University Press, 1950), esp. Chap. VI; Sidney Post Simpson, "The Problem of Trial," in Alison Reppy (ed.), *David Dudley Field: Centenary Essays* (New York: New York University School of Law, 1949), pp. 141–163.

system and by the demands of their clients that they can make only the most partisan presentations in court.

Partisanship may lead to intentional distortion. If the stakes are great and victory depends on a convincing presentation, one side might be tempted to fabricate evidence and testimony. In theory, cross-examination and counterproof are available under the adversary system, but the opponent may not be ready, particularly if the evidence or testimony is presented unexpectedly during a short trial.

In theory, the adversary system motivates both sides to get all the facts. But the partisans are not required to present all the facts to the court; in practice, each side is motivated to introduce only the evidence and witnesses that buttress its own case. While the trier of facts wishes to know everything that is pertinent, a partisan who discovers harmful information is motivated to conceal it from the adversary and from the court.

The adversary system assumes that the court will concentrate entirely upon the law and pertinent facts and that the parties will argue only in ways that will assist the court in judging the merits. But an adversarial situation tempts each side to impress the court—and particularly a jury of laymen unfamiliar with law and the case—by means of forensic tactics and irrelevant information. Each side is particularly eager to introduce witnesses, evidence, questions, or motions that surprise and confuse the other. In a short trial, the effect may be spectacular and decisive.

The adversary system results in full presentation of rival claims if both sides enjoy equal skill and resources. But finding and presenting the facts may be complicated and expensive. A litigant with a just claim or a just defense may lose if his purse is too small to hire numerous investigators and adroit advocates. The court's own resources are too limited to find the facts in the society beyond the law library, and thus usually it cannot obtain information missed by a litigant. Even if he learns about witnesses and evidence that are crucial to the case, the judge may define the court's role in the adversary system very strictly, and he may not add to the record created by the parties.

An adversary system delegates many decisions about the course of litigation to the parties and to their lawyers. It is they who decide whether to file or withdraw suits, settle or go to trial, and perform other acts that carry the litigation through successive stages. Courts may be reluctant to speed litigation through such drastic sanctions as dismissals. The flow of litigation may operate at the convenience of the individual lawyers and clients, but it may move with periodic fluctuations and large backlogs that hamper the total system.

Reforms of the Adversary System

▶ *Reformers try to preserve the advantages of partisanship, while adding methods to enable the court to decide justly.*

From its start, the adversary system incorporated a few safeguards against abuses by partisans seeking victory at the expense of truth and justice. Oaths and judicial penalties are supposed to prevent perjury and bribery. Rules of evidence enforced by lawyers' objections and judges' decisions have aimed at orderly presentations and at the exclusion of irrelevant and confusing evidence.

As some of the undesired consequences of the adversary system became more evident and troublesome during the nineteenth and twentieth centuries in the United States, administrative reforms were proposed. They have improved rather than transformed the adversarial method of conducting civil cases.[6]

Some of the reforms are designed to simplify procedure and enable the court to reach the merits of the case. The pleadings—that is, the complaint by the plaintiff and the response by the defendants—have been made shorter and more clear. Formal defects in the pleadings and in each party's activities during early stages of the case less often lead to dismissals and default judgments. Other procedural motions and objections are less often allowed to terminate a case before the merits are considered or contrary to the outcome implied by the evidence. Standing committees have been appointed to detect trouble in court procedure and to modernize the rules.

Other reforms have been directed at the personnel and organization of the courts. Better methods of selecting judges and jurors have been adopted. Courts have been consolidated, streamlined, and given larger staffs. Judges have been made more independent by better pay and by a reduction of political influence. Special tribunals have been created to handle cases not satisfactorily handled in an adversarial spirit.

6. Summaries of the defects in civil litigation, descriptions of recent reforms, and proposals for further changes appear in Arthur T. Vanderbilt, *Minimum Standards of Judicial Administration* (New York: Law Center of New York University, 1949); Arthur Vanderbilt, *The Challenge of Law Reform* (Princeton: Princeton University Press, 1955); Shelden D. Elliott, *Improving Our Courts* (New York: Oceana Publications, 1959); Bernard Botein and Murray A. Gordon, *The Trial of the Future* (New York: Simon and Schuster, 1963); Charles D. Breitel, "The Quandary in Litigation," 25 *Missouri Law Review* 225–238 (1960).

Some reforms have been designed to speed litigation and encourage settlements. Many jurisdictions routinely conduct pretrial conferences as judicially sponsored sites for negotiating settlements or as a means of organizing a trial efficiently in advance. Regular reviews of the calendar identify and terminate cases characterized by long inaction or by excessive postponements. Separate verdicts on liability and damages have been suggested, so that trials can be shortened if the defense wins on the issue of liability.

Aims of Discovery

▶ *Each side was given new opportunities to learn facts from the other, and great improvements were anticipated throughout the system.*

Among the most fundamental and most promising reforms of the adversary system in modern times has been the expansion of pretrial discovery. "Discovery" refers to a set of methods enabling one side to get information from the other between the dates the case is filed and is tried. With "depositions," testimony is taken under oath from the opposite party—that is, from the other lawyer's client—or from witnesses who are not parties in the case. One side can send a list of questions ("interrogatories") to the other and can request written answers under oath. One side can inspect documents, objects, and places in the possession of the other. If a party's physical or mental condition is at issue, the adversary can secure a court order authorizing a particular physician to perform a physical or mental examination, and the adversary can introduce the report in evidence at trial during that doctor's testimony. One side can send "requests for admission" to the other, asking the latter to admit certain facts or to admit genuineness of documents otherwise requiring proof at trial.

Before its wide adoption by federal and state courts, discovery was expected to remedy defects in the adversary system in many ways. Above all, the advocates of discovery believed that secrecy and entrapment had become so embedded in the adversarial confrontation that injustices were too common. Each side performed its own investigations, kept control over its own findings, and tried to surprise the opponent at trial. Inconvenient truths would be hidden from the adversary and from the court. The outcome of the trial might be decided by tactical skill and not by painstaking examination of the complete facts. Pretrial settlements might be negotiated not on the balance of rights but on the basis of the

facts each side would present to magnify his own position. In his famous address in 1906 that keynoted the reform movement in civil procedure during the twentieth century, Roscoe Pound said:

> The sporting theory of justice, the "instinct of giving the game fair play," as Professor Wigmore has put it, is so rooted in the profession in America that most of us take it for a fundamental legal tenet. . . . The idea that procedure must of necessity be wholly contentious disfigures our judicial administration at every point. It leads the most conscientious judge to feel that he is merely to decide the contest, as counsel present it, according to the rules of the game, not to search independently for truth and justice. It leads counsel to forget that they are officers of the court and to deal with the rules of law and procedure exactly as the professional football coach with the rules of the sport. It leads to exertion to "get error into the record" rather than to dispose of the controversy finally and upon its merits. It turns witnesses, and especially expert witnesses, into partisans pure and simple. It leads to sensational cross-examinations "to affect credit," which have made the witness stand "the slaughter house of reputations." It prevents the trial court from restraining the bullying of witnesses and creates a general dislike, if not fear, of the witness function which impairs the administration of justice. It keeps alive the unfortunate exchequer rule, dead in the country of its origin, according to which errors in the admission or rejection of evidence are presumed to be prejudicial and hence demand a new trial. It grants new trials because by inability to procure a bill of exceptions a party has lost the chance to play another inning in the game of justice. It creates vested rights in errors of procedure, of the benefit whereof parties are not to be deprived. The inquiry is not, what do substantive law and justice require? Instead, the inquiry is, have the rules of the game been carried out strictly? If any material infraction is discovered, just as the football rules put back the offending team five or ten or fifteen yards, as the case may be, our supporting theory of justice awards new trials, or reverses judgments, or sustains demurrers in the interest of regular play.[7]

7. Roscoe Pound, "The Causes of Popular Dissatisfaction with the Administration of Justice," 40 *American Law Review* 729, 738–739 (1906). A few years before, the young Pound was a commissioner for the Supreme Court of Nebraska. In an opinion justifying the introduction of a deposition into evidence over the objections of the adversary who had taken it, Pound said:

> The common law originally was very strict in confining each party to his own means of proof, and, as it has been expressed, regarded a trial as a cock-fight, wherein he won whose advocate was the gamest bird with the longest spurs. But we have come to take a more liberal view and have done away with most of those features of trials which gave rise to that reproach. [*Ulrich* v. *McConaughey*, 63 Neb. 10, 20 (1901).]

How the reform movement implemented Pound's speech is described in Austin W. Scott, "Pound's Influence on Civil Procedure," 78 *Harvard Law Review*, 1568–1577 (1965).

The distinguished proceduralist who drafted the discovery rules in the Federal Rules of Civil Procedure explained how discovery would eliminate many of these defects.

> It is probable that no procedural process offers greater opportunities for increasing the efficiency of the administration of justice than that of discovery before trial. Much of the delay in the preparation of a case, most of the lost effort in the course of the trial, and a large part of the uncertainty in the outcome, result from the want of information on the part of litigants and their counsel as to the real nature of the respective claims and the facts upon which they rest.
>
> False and fictitious causes and defenses thrive under a system of concealment and secrecy in the preliminary stages of litigation followed by surprise and confusion at the trial. Under such a system the merits of controversies are imperfectly understood by the parties, are inadequately presented to the courts, and too often fail to exert a controlling influence upon the final judgment.[8]

Discovery was expected to improve the quality of trial in ways other than the reduction of trickery and surprise. The amount of relevant evidence would increase. Issues would be defined more clearly in the lawyers' minds in preparation for trial, the trial would be focused more clearly, less irrelevant evidence would be introduced, and fewer unnecessary witnesses would be called. Certain issues could be eliminated from the trial, if discovery led both sides to agree on those facts. Because the testimony of parties and witnesses would be recorded at an early stage in the litigation and since all relevant documents would be known, testimony at trial would be marred by fewer fabrications and lapses of memory. Public respect for the trial process would be raised and the burden on the appellate courts would be reduced. Since the quality of trials would increase and reversible errors would diminish, the number of appeals would decline.

Besides converting trials and pretrial negotiations into more sober and more orderly searches for the truth, discovery was expected to reduce the number of trials and thus relieve the burden on the courts. If the full truth would soon be revealed, fewer sham suits would be filed. If the adversaries and the court knew the facts before trial, the court could render more summary judgments. If both sides knew the full truth and each other's strengths and weaknesses, they would settle the case and avoid the costs and uncertainties of trial. If both sides knew all the facts, law-

8. Edson R. Sunderland, Foreword to George Ragland, Jr., *Discovery Before Trial* (Chicago: Callaghan & Company, 1932), p. iii. An excellent summary of the goals of modern procedural reform and the central role of pretrial discovery appears in Professor Sunderland's article "Improving the Administration of Justice," 167 *Annals of the American Academy of Political and Social Science* 60–83 (1933).

yers and clients would be more satisfied with the settlement terms and would carry out the agreement willingly.

Neither before nor after the adoption of discovery by federal and state courts has approval been unanimous. Critics have feared that discovery would diminish the advantages of the adversary system and would introduce its own undesirable effects. The adversary system assumes that each side will work hard and will prepare its own case, but one side might exert little effort and might build its case from information secured by the other. Plaintiffs might file vaguely pleaded and unjustified suits and might build up their claims by fishing in their adversaries' files; defendants might deny the plaintiffs' justified claims in the hope that deposing plaintiffs and sending them interrogatories would reveal that the plaintiffs' proofs are insufficient. Perjury would increase, since the party and his witnesses could tailor their testimony in the light of the substantive and impeaching evidence discovered from the adversary. Discovery could work to the advantage of the large defendant over the small: the costs of so much pretrial activity would be too high for the less affluent litigants; wealthy parties (notably some defendants) could create excessive costs for their smaller adversaries by such tactics as sending numerous and complicated interrogatories, conducting depositions in places far from the adversary's home and his lawyer's office, deposing many of the adversary's officers and employees at length, and prolonging the discovery procedures by means of dilatory court motions and late responses.[9]

A New Approach to Learning Legal Truth

▶ *New methods of learning truth are needed by policy-makers when evaluating the system, as well as by courts when deciding each case.*

Every judicial system must have ways of bringing before the parties and court the truths that would decide a particular case on its merits. The adversary system has its customary methods for learning about the legal principles that govern classes of cases and for learning about the case at issue.

9. Early predictions about the probable gains and disadvantages of discovery were published in many places. Two of the best summaries are Edson R. Sunderland, "Scope and Method of Discovery Before Trial," 42 *Yale Law Journal* 863–877 (1933); "Tactical Use and Abuse of Depositions Under the Federal Rules," 59 *ibid.* 118–138 (1949). Today, whenever the modernization of discovery is recommended in a state, the advocates predict that the same benefits will assuredly occur. For example, Claude B. Cross and Philip M. Cronin, "Pre-Trial Oral Depositions," 1 *Boston Bar Journal* 19–22 (1957).

The general principles are laid down by authorities after listening to debate. The controlling authorities are persons with official decision-making power, such as legislatures or the highest courts. Helpful expressions of guiding principles may come from persons whose persuasive authority rests in the recognition by Bench and Bar of their outstanding judgment, such as the opinions of some judges, treatises, the reports of committees of the legal profession, or articles by respected persons. If no legislature or court has issued a controlling statement of the guiding principles, the premise must be discovered by searching and codification; judicial opinions and commentaries are distilled in the hope of finding a thread that is consistent throughout and that coincides with the higher principles of justice in the system.[10] If the existing cases and commentaries offer no settled rule, the adversaries themselves press upon the court not only their versions of the facts in that case but their conceptions of the legal premises that should guide disposition of the case. In such an unsettled area, the adversaries do not merely urge the court to adopt whatever well-defined but competing legal principles can apply to the facts most advantageously to themselves, but their arguments and mutual criticisms help the court develop new and more clear principles of law for that class of cases.

The adversary system's method of investigating the facts of a case is conditioned by the system's ultimate aim of exploring disputes thoroughly, enabling all parties to present their claims in their own words, and settling the disputes decisively without violence. It is not a method well suited for objective investigation of numerous events; the single case at issue is examined in depth and generalizations about classes of cases usually are not deemed relevant. Truth for purposes of the case in process is whatever appears in the record; if one side's investigation has not been completed by a particular stage, the adversary and the court may not allow the litigation to be prolonged or the record to be reopened. The adversarial situation encourages competing and self-interested versions of the truth, although, of course, the two sides can agree on issues and facts

10. The guiding principles are not invariant and the actual decision-making is not entirely deductive. The rules are continually restated by courts, in order to fit both new and prior cases. See Edward H. Levi, *An Introduction to Legal Reasoning* (Chicago: The University of Chicago Press, 1949). Often judges do not decide the case according to a single guiding premise that unambiguously covers that set of facts, but they decide on a sensible disposition of the case, select the guiding principle that would bring about this outcome, and interpret the facts of the case so that the appropriate legal premise operates. See Karl Llewellyn, *The Bramble Bush* (New York: Oceana Publications, 1960), Chaps. 3–6 *passim;* and Julius Stone, *Legal System and Lawyers' Reasoning* (Stanford: Stanford University Press, 1964), pp. 59–60 and Chap. 7.

for quick settlement. Adversarial contention surrounds formal hearings; at trial each side presents its own testimony and documents and can rebut the adversary's presentation, either by criticism or by offering contradictory evidence. The court decides by accepting one side's version of the essential facts plus any agreed facts and by applying those general legal premises that fit this type of case.

Because of its principal functions in the exploration and solution of disputes, the adversary system's methods of investigation and presentation are not perfect instruments for learning the full truth of the case.[11] And these techniques obviously are even more inadequate for learning how the judicial system works in practice. We need to know whether certain problems are common or rare, and the opinion of a respected court or leader of the Bar is no substitute for the facts. An adversarial confrontation between the critics and admirers of discovery would not be helpful, since each side would make guesses about the facts fitting its preconceptions. We need to know the circumstances under which events and problems do and do not occur, and this kind of conditional reasoning about facts is not common in traditional judicial investigation.

Knowledge about the judicial system requires a disinterested gathering of evidence, without preconceptions about the merits of any existing procedure or proposal. Because the facts are proportions of cases that show certain characteristics or that occur under diverse circumstances, evidence must be obtained from many cases throughout the system. This book demonstrates how such knowledge about the judicial system can be gathered and organized; it reports one of the first extensive uses of sample surveys about the administration of civil justice.[12] Self-administered questionnaires and interviews were answered by lawyers for plaintiffs and defendants in a national sample of private federal civil cases. Evidence about all cases was aggregated, and our generalizations about the system consist of frequency distributions, contingencies, and other statistical relationships involving the characteristics of the lawyers, cases, and courts. One purpose of this book is to demonstrate methods that lawyers can use in the future to learn about themselves, about classes of litigants, and about society generally.

11. Henry M. Hart and John T. McNaughton, "Evidence and Inference in the Law," in Daniel Lerner (ed.), *Evidence and Inference* (Glencoe, Ill.: The Free Press, 1959), pp. 53–55.

12. For other uses of surveys by interview or questionnaire in research about the administration of criminal justice, in research about the legal profession, and in evidence at trial, see Hans Zeisel, "The Law," in Paul F. Lazarsfeld *et al.* (eds.), *The Uses of Sociology* (New York: Basic Books, 1967); and Hans Zeisel, "The Uniqueness of Survey Evidence," 45 *Cornell Law Quarterly* 322–346 (1960).