Figure 7.1  Predicted Death Sentence Rates for Penalty Trial Cases, 1983 to 1991

Source: Baldus 1991a, fig. 2.
Notes: The cases are sorted down the page by the predicted probability of a death sentence. The length of the line for each case represents 95 percent confidence limits for each prediction.
others leave it up to the discretion of the interested lawyer to seek out and resolve any potential conflicts that might arise. In the former firms, it takes days or weeks to complete a conflicts check and begin work on a case, while in the latter, it often takes seconds. Meanwhile, the ostriches, their heads buried in the sand, are entirely oblivious to the whole scene.

Figure 9.1 depicts the distribution of these intelligence systems through which firms in the sample identify potential conflicts of interest. As noted earlier, one encounters few ostriches or elephants dotting the terrain, and not many more herds of elephants, relying on their collective memories and collegial interactions alone to ferret out conflicts of interest. Together, these methods—or lack thereof—(represented in the three darkest shades) are found in about 15 percent of the firms. Roughly six out of ten firms situate their intelligence process in archival sources (the striped segments on the figure), often supplemented by institutional memories shared among colleagues. These firms are split fairly evenly between those that scan specialized conflicts databases (28 percent) and those that examine paper records, index cards, client lists, or computer records created for other purposes (31 percent). Finally, a little more than a quarter of the firms conduct a form of cybersurveillance (the dots), not quite half of them adopting the more elaborate technoblitz techniques.
cated databases over paper or general records. Not surprisingly, medium-size firms are also more likely than smaller ones to use collegial methods to supplement their memories in identifying conflicts of interest, since an elephant's ability to know the activities of the rest of the herd is strained as the herd grows. On average, firms that solicit collegial input as a supplement to other intelligence methods (memory, archives, or cybersurveillance) have almost fifty more lawyers than those that do not (the median difference is ten lawyers).

Given the strong correlation between firm size and intelligence method—which would be even higher if the sample was large enough to sort firms into more homogeneous size categories—there is not much variance left to explain. However, one can tease out a few crude variables that account for some of the noise in figure 9.2. The diversity of practice, for example, affects whether medium or large firms develop cybersurveillance methods or rely instead on data archives or collegial interaction to ferret out conflicts of interest. As firms diversify, colleagues may know less about the others' business, because those with disparate expertise interact infrequently, necessitating more comprehensive methods to stay apprised of the interests served by partners in the firm. More significant, diversification spawns ongoing relationships with clients because the firm is now staffed to service more of their legal needs. With individual clients,
malpractice carriers. Indeed, after a few dozen interviews, I could usually guess whether a firm was insured by ALAS by the way my informant described the firm’s conflict-of-interest procedures.

Figure 9.3 provides empirical support for my intuitions. The figure differentiates the intelligence models adopted by ALAS and non-ALAS firms, controlling for firm size. Since firms must have at least thirty-five lawyers to join ALAS, the figure includes data only for larger firms. Insurance carrier clearly exerts a significant effect. For all three size categories, 25 percent more of the ALAS firms adopt technoblitze methods (black bars) than their counterparts with different malpractice insurance. And for firms of fewer than 250 lawyers, the combined proportion of high- and low-technology cybersurveillance (black and gray bars) is more than double that of non-ALAS firms. Moreover, the type of insurance carrier accounts for many of the outliers on figure 9.2. Three-fifths of the moderate-size firms pursuing cybersurveillance are ALAS members.

Figure 9.3  Intelligence Model and Insurance

![Intelligence Model and Insurance Diagram]

- Records
- Database
- Cybersurveillance
- Technoblitze