

ALASKA LEGISLATURE COMMITTEE FILES 1965-1966 80/2

3429 HJUD SB 377/HB 532 (FILE 5: REPORTS & CASE LAW)

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A Preliminary Examination  
of Available Civil and Criminal  
Trend Data in State Trial Courts  
for 1978, 1981, and 1984

Produced by.  
Court Statistics and Information Management Project  
National Center for State Courts  
300 Newport Avenue  
Williamsburg, VA. 23187-8798

April 1986

NOTE: The following tables are excerpts from a larger volume to be published later this Spring 1986 called, State Court Caseload Statistics: Annual Report, 1984.

# WILLIAMS BURG, VA

National Center for State Courts • 300 Newport Avenue • Williamsburg, Virginia 23187-8798

For release: 6:00 p.m.  
Monday, April 21, 1986,

Contact: Robert T. Roper  
(804) 253-2000

Study reveals no  
litigation explosion  
in state courts

WILLIAMSBURG, VA--"Careful examination of current available trial court data relating to tort, contract, real property rights and small claims cases, from a representative group of state courts, provides no evidence to support the existence of a national 'litigation explosion' in state trial courts during the 1981-84 time period," according to Dr. Robert Roper, director of the Court Statistics and Information Management (CSIM) project of the National Center for State Courts.

Twenty states, which include 29 limited and general jurisdiction statewide court systems, reported reliable and comparable tort, contract, and real property rights statistics on the number of lawsuits filed for the years 1978, 1981, and 1984. The data revealed a 14 percent increase in filings for 1978-81, and a 4 percent decrease in 1981-84.

Small claims suits might best measure the inclination of Americans to sue because of easy accessibility, relatively inexpensive cost, and prospects for a quick resolution. Twenty-nine limited and general jurisdiction statewide court systems in 25 states were chosen for analysis due to their reliable and comparable small claims statistics. Small claims filings increased 18 percent in 1978-81, but decreased 6 percent in 1981-84.

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In the area of torts alone, which is a subset of civil filings, total filings increased slightly in both the 1978-81 and the 1981-84 periods. However, all of the three states that reported significant increases during 1981-84 also reported the largest increases in population (Alaska, California, and Hawaii). During 1981-84, tort filings increased 7 percent while population increased 4 percent. For the entire period 1978-84, total tort filings increased 9 percent, but the population also increased by 8 percent.

The data provide a basis for the following observations:

- o An upward trend in litigation in any one period is not necessarily attributable to an increase in the tendency of the average American to sue, but may indicate a simple increase in the number of average Americans.
- o There may have been significant increases in civil filings which peaked around 1981; however, civil filings (defined as tort, contract and real property right cases) decreased slightly during the 1981-84 period. In fact, in state courts that reported data for the 1981-84 time periods, there were decreases in the total number of civil filings.

According to Dr. Roper, several reasons could account for the downward trend in litigation. Insurance companies and attorneys may increasingly find it in their interest to settle conflicts before the cases ever reach the courts. Also, people may be deterred from filing suits at all because of widespread reports about the cost of litigation, and the prospect of civil suits taking years before disposition.

The often cited litigation explosion thus appears to be exaggerated with respect to the total number of civil filings during the period of 1981-84. The source of the perception that there is a litigation explosion may be founded in a changing mix of civil cases, increased complexity of the cases being filed, and widespread media reports of enormous awards in relatively few civil cases.

Complete supporting data will be available later this spring from the Williamsburg-based National Center for State Courts, in a volume entitled "State Court Caseload Statistics, 1984."

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Published annually since 1975 (with the exception of 1982 and 1983) the state court caseload statistics series was developed by the Center's CSIM project in cooperation with the Conference of State Court Administrators. Work on the 1984 volume was completely funded by the National Center for State Courts; however, previous work on this project was funded by the Bureau of Justice Statistics. These reports are designed to collect, compile, analyze, and disseminate comparable state court caseload statistics; they are based on data provided by the state court administrators' offices and the offices of the state appellate court clerks. The series presents a methodology for reporting caseload statistics, nationwide current caseloads, as well as trends useful in future court planning.

The National Center's basic mission is to help courts better serve both litigants and the general public. Courts at all levels are involved in one or more of the Center's projects, which range from research aimed at reducing delay in the litigation process to work conducted by the Center's regional offices on such subjects as automation of court operations and personnel administration. Emphasis is given to the training of court managers and presiding judges through the National Center's Institute for Court Management. In addition, the National Center serves as a clearinghouse for information on state courts. Besides its headquarters in Williamsburg, the Center maintains offices in North Andover, Mass., San Francisco, Denver, Arlington, Va., and Washington, D.C.

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## Part II. Trends

Questions about the "litigation explosion" in the state trial courts are among those most frequently received by CSJM Project staff. Part II of this 1984 Annual Report is a preliminary effort to shed some light on the question, "Is there a 'litigation explosion' in the state trial courts?"

### Dates chosen for trend data.

The years 1981 and 1984 were chosen as two of the data points for these tables because the State Trial Court Jurisdiction Guide for Statistical Reporting was first applied to the 1981 trial court data, and the 1984 data is the most recent available. Since those two years represent a three-year interval, an earlier three-year interval was needed to bring balance to the trend line. Therefore, the first point chosen was 1978.

### Case types selected for analysis

When talking of a "litigation explosion," most people reference an increased propensity, in the mindset of individuals, to sue for damages and punitive awards. Some of the CSJM case types that address this issue are tort, contract, and real property rights cases. In addition, small claims procedures are easily accessible, relatively inexpensive to file in and work within, and provide a comparatively speedier disposition of justice, and therefore, are a more interesting measure of the public's propensity to litigate.

Additionally, these case categories were chosen because they have, over the years, been reported separately, by many courts, without having any other minor case types included in their totals. The same is not true of other case categories, such as domestic relations, where subcategories are often reported with juvenile cases, miscellaneous, or special civil proceedings.

Criminal cases do not reflect on the "litigation explosion" as it is defined above, however, felonies are included in these trend data to provide a more complete picture of the courts' workloads over time.

The first table presents the general picture by displaying data for the combined category of tort, contract, and real property rights cases. This table is followed by a table for small claims. The final two civil tables break down the general table into one for tort, and one for contract cases. There were insufficient data for the seven year period to justify compilation of a table for real property rights cases. The final table evaluates trend data for felony cases.

### Population as an indicator of caseload changes.

Earlier volumes in this Annual Report series have documented that the single best predictor of civil filings in state courts is the total state population. Total population explained over 90% of the variance in civil filings among the state courts. Therefore, the percentage increase in state population has been included in these tables for all three time periods--1978-1981, 1981-1984, and 1978-1984 in order to explain, at

the outset, what kind of case filing increases might be anticipated as a result of changes in the state populations.

At this point, it is not possible to accurately predict what percentage increase in filings one would expect for every percent increase in the population. Therefore, for purposes of this Report, a rough one to one relationship has been assumed, i.e., for every percent increase in population, a one percent increase in filings would be expected.

### Courts included in the tables

Some state courts do not appear in these tables for a variety of reasons: they do not report statewide data at all, they do not provide sufficient detail to identify the case types reported in these tables, they have changed reporting categories over time, and finally, the jurisdiction and organization of some courts have changed so dramatically between 1978-84 that their data were not comparable. Therefore, the courts displayed on the following tables do not include complete nationwide data; however, they are representative of general jurisdiction courts in this country, and are adequate for addressing the issue of whether there is a litigation explosion. For example, Table 33, on small claims, has statewide data from 33 states, from across all geographical regions, and from large and small states. Although Tables 32 and 36 do not have as much complete state data as does Table 33, the data are more often than not from general jurisdiction courts. Since these are the courts most likely to hear the serious cases, these courts complement the small claims data found in Table 33.

### Summary statistics presented on the facesheets.

Three summary measures. Each of Tables 32-36 display the number of filings for the years 1978, 1981 and 1984, and the percent changes in total state populations and filings for each of the three time periods 1978-81, 1981-84 and 1978-84. The accompanying facesheet for each table summarizes the data presented in each table using the following three measures: (1) the aggregate data contained in the table for those courts that reported complete data for each of the three years; (2) a summary description of how many courts experienced increased or decreased filings for the two periods 1978-1981 and 1981-1984; and (3) a chart which identifies patterns of change, and specifically lists the court within each pattern.

Patterns across time. the "up-up" and "up-down" patterns. There are two basic patterns that can be used to test crudely whether there continues to be a "litigation explosion." The first group represents those courts whose filings increased during the 1978-81 period, and continued to rise during the 1981-84 period (i.e., and "up-up" pattern). This "up-up" pattern alone, however, does not represent prima facie evidence of a "litigation explosion." This "up-up" category must be separated into three components: (3-a) courts whose upward increases in both time periods were at approximately the same rate of increase and whose increases significantly exceeded the rate of increases in

the total population; (3-b) courts whose filings increased, during 1981-84, at a rate significantly less than the rate they were increasing at during 1978-81--which indicates a slowing of any upward trend that might have occurred during earlier years; and (3-c) courts whose filings increased significantly during the period 1978-81, but whose filings increased at a rate which approximated or was less than the rate at which the population increased during 1981-84. The last component (i.e., 3-c), represents courts where there is not a "litigation explosion," because filings did not increase at a rate equal to or significantly different from population increases. Therefore, the only "up-up" pattern which may indicate unusual increases in filings is a "3-a"--where court filings increased significantly over both periods.

The second major group of courts, which run counter to the "up-up" pattern, are those courts which exhibited significant increases in filings during 1978-81, but whose filings actually decreased during the 1981-84 period (i.e., an "up-down" pattern). Courts that fall into this category are clearly "over the hump," and no longer experiencing increases in the number of civil suits.

Other miscellaneous patterns appear sporadically throughout the tables. These can clearly be identified as either supportive, or not supportive of the claim of a "litigation explosion." For example, some courts may not have experienced any significant change in filings for both time periods. On the other hand, filings in some courts went down during the 1978-81 period, and have increased significantly during the latter period. These situations will be discussed as they occur in each of the tables.

#### Limitations on the data

The data presented on the following tables are the most accurate, reliable, and comprehensive data yet brought to bear on the question of whether there is a "litigation explosion" in the state courts. This is a preliminary look at the topic, however, and the reader should consider the following caveats when evaluating the analysis--none of which are thought to affect general conclusions that can be drawn from these tables: although the data are representative from all the states, they do not include all of the courts and states in the country; due to limited resources, Project staff were unable to complete the trend table for the missing years or identify all jurisdictional changes in those courts over time; the data are only as current as 1984 and changes may have occurred during 1985; the data do not include many other civil case types which may have included different trends during that time period (e.g., divorce, support/custody, adoption, estate, civil appeals, and miscellaneous civil cases); and the findings are restricted to the state courts only.

#### General findings and explanations

A careful examination of available data relating to tort, contract, real property rights,

and small claims cases from a representative group of state courts provides no evidence to support the often cited existence of a national "litigation explosion" in the state trial courts during the 1981-84 time period.

There are some state courts that have experienced significant increases in the case types described throughout this section, but the impact of that finding is reduced when one realizes that these are the courts in states that have also experienced significant increases in their total populations. Changes in the number of these filings are not attributable to an increase in the propensity of the average American to sue, but rather to a simple increase in the numbers of average Americans.

The findings, however, can be extended one further step. Not only is the evidence missing to indicate a significant national increase in filings above the increase in population, but a clear pattern emerges which generally supports the "up-down" model described earlier. In a significant number of state courts, selected civil filings have decreased between the period 1981-1984 (see the individual tables for specific details).

It may be that there was a litigation explosion that peaked around 1981. The evidence from these charts tends to support that observation. There were significant increases in filings between 1978-81, far exceeding the increases in population. In fact, the increases were so large during 1978-81, that despite the decreases that occurred during 1981-84, the percentage changes from 1978-84 are still showing moderate increases.

The often cited myth of a continuing upward trend of civil lawsuits in the state courts could result from several factors: (1) intensive media focus on the enormous size of the awards in a few selected and well publicized civil cases; and (2) increased workload in the courts, not caused by an increase in the rate of civil lawsuits, but by more complex cases, and perhaps fewer resources available to the courts to handle expected increases in filings which results in larger backlogs.

Additionally, there are a variety of potential explanations for the leveling off or decreases in civil suits: (1) The public's attitude toward lawsuits may be changing. People may be deterred from filing as a result of concerns about costs and civil litigation that is likely to take years--except for the more serious cases, it may not be worth the effort; (2) For years people speculated that greater numbers of laws resulted in increased litigation to interpret those laws--this testing of new legislation and judicial rules may have run its course; and (3) Finally, insurance companies and attorneys may be increasing their efficiency in settling conflict before cases reach the courts. Whatever the explanation, there is no evidence to support the notion of a nationwide increase in lawsuits in the state trial courts between 1981-84.

TABLE 32: Trend data for state courts that specifically reported tort, contract, and real property rights case filings for 1978, 1981, and 1984.

Courts included in this table.

For inclusion in this table, a court must have reported an identifiable tort, contract, and real property rights caseload, separate from all other civil cases, in at least two of the three target years. Five states reported tort, contract, and real property rights cases for all the courts which had jurisdiction over tort, contract and real property rights cases in those states. A total of 37 statewide courts, in 25 states, reported data. Of the 37 courts, 12 were general jurisdiction courts.

Comparison of aggregated filings over time.

The following data are from the 29 courts in 20 states that reported comparable data for all three reporting years. These figures can be found on the bottom line of Table 32.

The increase in tort, contract, and real property rights filings between 1978-81 was 14%, while the population for the states reporting these data increased by 3%. Between 1981-84, the population continued to grow another 3%, but the new filings decreased by 4%. These aggregate figures provide preliminary evidence for the existence of the "up-down" pattern discussed earlier in this section.

Comparison of courts whose filings increased or decreased during each of the time periods.

The following chart displays the number of courts whose tort, contract, and real property rights filings have increased or decreased during the two time periods:

	1978-81	1981-84
Filings increased significantly more than the population:	19	7
No significant difference between the change in population and filings:	5	3
Filings did not increase measurably during this period:	0	3
Filings increased at a rate slower than the population:	0	2
Filings decreased during this period:	5	22
Comparable data were not available for the period:	8	0

The "up-down" pattern described in the introduction to this section is illustrated in the above chart. Most of the courts reporting tort, contract, and real property rights cases during 1978-81 experienced significant increases in their filings. During the 1981-84 period, however, the pattern reversed itself--the majority of courts reported decreases in filings of these case types. Less than twenty-five percent of the courts reporting tort, contract, and real property rights cases during 1981-84

experienced increases in their filings at a rate significantly higher than increases in their populations. These patterns are more firmly established in the following chart.

The chart above displays how all of the courts which reported data during either of the two periods fit into specific categories. The following chart links the filing patterns of specific courts across the two time periods to test, more specifically, the various patterns identified earlier.

Comparison of patterns among the courts.

The following chart expands on the previous one by listing and categorizing courts by the patterns they followed. These patterns are explained in the introduction to this section (i.e., Part II). These are the patterns for those 29 courts in 20 states that reported comparable data for all three years. The (G) or (L) after each court indicates whether it is a general or limited jurisdiction court:

- "Up-up" Pattern (no caveats): Civil Court of NYC (L)
- "Down-up" Pattern (no caveats): Alaska Superior Court (G)  
New Mexico Magistrate Court (L)  
Oregon Justice Court (L)
- "Up-up" Pattern (change in '81-'84 filings was less than '78-'81 increase in filings): Nebraska County Court (L)
- "Up-up" Pattern (change in '81-'84 population exceeds or approximates change in '81-'84 filings): Hawaii Circuit Court (G)  
Hawaii District Court (L)  
Delaware Justice of the Peace (L)
- "Up-no significant change": Delaware Court of Common Pleas (L)
- "No significant change - no significant change": Delaware Superior Court (G)
- "Up-down" Pattern: Alabama District Court (G)  
Arkansas Chancery and Probate Court (G)  
Colorado District Court (G)  
Colorado County Court (L)  
Indiana County Court (L)  
Indiana Municipal Court of Marion County (L)  
Kentucky District Court (L)  
Maine District Court (L)  
North Carolina Superior Court (G)  
North Carolina District Court (L)  
Ohio Municipal Court (L)  
Ohio County Court (L)

TABLE 32: Trend data for state courts that specifically reported tort, contract, and real property rights case filings for 1978, 1981, and 1984. (continued)

	<p>Pennsylvania District Justice Court (L)  Tennessee Circuit Court and Chancery (L)</p>	<p>filings have continued to increase significantly more than the population over the two time periods studied in this Report. Three additional courts followed the "down-up" pattern with significant increases reported during 1981-84. Another four courts experienced increases in filings between 1981-84, but the increases were either less than or not significantly different from population increases during that same time period, or the increases were less than the increases reported during the 1978-81 period. The remaining 18 courts showed no evidence of a "litigation explosion" during 1981-84, and 17 of those courts experienced a decrease in filings during that period.</p>
8. "No significant change-down":	<p>Oregon District Court (L)  Rhode Island District Court (L)  Washington Superior Court (G)</p>	
9. "Down-down" Pattern:	<p>District of Columbia Superior Court (G)  Colorado Water Court (G)</p>	

Of the courts studied in Table 32, the Civil Court of New York City is the only court whose

TABLE 32: Trend data for state courts that specifically reported tort, contract, and real property rights case filings for 1978, 1981, and 1984.

State and court title	Juris- diction	Filings			Percent change 1978-1981		Percent change 1981-1984		Percent change 1978-1984	
		1978	1981	1984	popu- lation	Filings	popu- lation	Filings	popu- lation	Filings
<b>COMPLETE STATE DATA.</b>										
Exclusive court jurisdiction:										
District of Columbia:										
Superior Court .....	G	121,931	108,426	96,975	-6%	-11%	-1%	-11%	-7%	-20%
Kansas:										
District Court .....	G	NC	54,005	57,140	--	--	2%	6%	--	--
Not exclusive court jurisdiction:										
Colorado (STATE TOTAL)										
District Court .....	G	79,480	105,028	99,205	7%	32%	7%	-6%	14%	25%
Water Court .....	G	22,561	36,168	32,032	7%	60%	7%	-12%	14%	42%
County Court .....	L	2,868	2,321	1,688	7%	-19%	7%	-23%	14%	-41%
Hawaii (STATE TOTAL)		54,051	66,539	65,485	7%	23%	7%	-2%	14%	21%
Circuit Court .....	G	12,204 <sup>i</sup>	17,379 <sup>i</sup>	17,960 <sup>i</sup>	6%	42% <sup>i</sup>	6%	3% <sup>i</sup>	12%	47% <sup>i</sup>
District Court .....	L	2,786 <sup>i</sup>	3,830 <sup>i</sup>	3,992 <sup>i</sup>	6%	37% <sup>i</sup>	6%	4% <sup>i</sup>	12%	43% <sup>i</sup>
North Carolina:		9,418	13,549	13,968	6%	44%	6%	3%	12%	48%
Superior Court .....	G	54,738	65,856	58,118	4%	20%	4%	-12%	7%	6%
District Court .....	L	11,541	13,756	12,482	4%	19%	4%	-9%	7%	8%
Alabama:		43,197	52,100	45,636	4%	21%	4%	-12%	7%	6%
<b>INCOMPLETE STATE DATA:</b>										
Alabama:										
District Court .....	L	40,130	55,818	51,805	2%	39%	2%	-7%	4%	29%
Alaska:										
Superior Court .....	G	2,683	2,312	3,107	3%	-14%	21%	34%	25%	16%
Arkansas:										
Chancery and Probate Court .....	G	6,642	7,545	5,151	2%	14%	2%	-32%	5%	-22%
Delaware:										
Superior Court .....	G	2,457	2,522	2,520	0%	3%	3%	0%	3%	3%
Court of Common Pleas	L	2,898	3,740	3,755	0%	29%	3%	0%	3%	30%
Justice of the Peace	L	15,844	20,028	20,806	0%	26%	3%	4%	3%	31%
Indiana:										
Municipal Court Marion County .....	L	8,901	14,364	10,131	0%	61%	1%	-29%	1%	14%
County Court .....	L	3,550 <sup>i</sup>	5,573 <sup>i</sup>	3,664 <sup>i</sup>	0%	57% <sup>i</sup>	1%	-34% <sup>i</sup>	1%	3% <sup>i</sup>
Kentucky:										
District Court .....	L	48,808	57,627	56,359	1%	18%	2%	-2%	3%	15%
Maine:										
District Court .....	L	17,751 <sup>i</sup>	20,072	16,146	2%	13% <sup>i</sup>	2%	-20%	4%	-9% <sup>i</sup>
Minnesota:										
County Court .....	L	NC	28,014	21,582	--	--	2%	-22%	--	--
Montana:										
District Court .....	G	NC	7,764	6,492	--	--	4%	-16%	--	--
Nebraska:										
County Court .....	L	9,236	11,128	13,027	1%	20%	2%	7%	3%	41%
Municipal Court .....	L	NC	17,781	17,712	--	--	2%	0%	--	--
New Hampshire:										
District Court .....	L	NC	10,382	9,815	--	--	4%	-5%	--	--
New Mexico:										
Magistrate Court .....	L	14,276	14,117	18,308	3%	-1%	7%	30%	14%	28%
Bernalillo County Metropolitan Court ..	L	NC	8,290	9,744	--	--	7%	18%	--	--
New York:										
Civil Court of New York City .....	L	130,131	151,159	195,163	-1%	16%	1%	29%	0%	50%
Court of Claims .....	L	NC	1,330	1,678	--	--	1%	26%	--	--
Ohio:										
Municipal Court .....	L	241,951 <sup>i</sup>	250,068 <sup>i</sup>	221,523 <sup>i</sup>	0%	7% <sup>i</sup>	0%	-15% <sup>i</sup>	0%	-6% <sup>i</sup>
County Court .....	L	5,854 <sup>i</sup>	11,302 <sup>i</sup>	9,542 <sup>i</sup>	0%	93% <sup>i</sup>	0%	-16% <sup>i</sup>	0%	63% <sup>i</sup>

TABLE 32: Trend data for state courts that specifically reported tort, contract, and real property rights case filings for 1978, 1981, and 1984. (continued)

State and court title	Juris- diction	Filings			Percent change 1978-1981		Percent change 1981-1984		Percent change 1978-1984	
		1978	1981	1984	Popu- lation	Filings	Popu- lation	Filings	Popu- lation	Filings
INCOMPLETE STATE DATA (continued):										
Oregon:										
District Court	L	31,600	33,862	24,518	6%	7%	1%	-28%	7%	-22%
Justice Court	L	1,102 <sup>1</sup>	942 <sup>1</sup>	1,336 <sup>1</sup>	6%	-15% <sup>1</sup>	1%	42% <sup>1</sup>	7%	21% <sup>1</sup>
Pennsylvania:										
District Justice Court	L	163,556	188,199 <sup>d</sup>	183,143	0%	15%	0%	-3% <sup>d</sup>	0%	12%
Rhode Island:										
District Court	L	22,394	23,689	18,759	0%	6%	1%	-21%	1%	-16%
Tennessee:										
Circuit Court and Chancery Court	G	20,561	23,442	21,505	3%	14%	2%	-8%	6%	7%
Texas:										
District Court	G	NC	68,451	85,873	--	--	8%	25%	--	--
Washington:										
Superior Court	G	32,029	34,922	33,140	9%	9%	3%	-5%	12%	3%
Totals for 29 courts in 20 states reporting comparabl data for all three years										
		1,090,707	1,239,120	1,185,666	3%	14%	3%	-4%	5%	9%

G = General jurisdiction court  
 L = Limited jurisdiction court  
 NC = Data are not comparable with other years.  
 d = The number of dispositions was the only data  
 element provided that year.  
 -- = Data element is not applicable.

<sup>1</sup>Data are not complete:  
 Hawaii-Circuit Court--Data do not include  
 "unreported cases."  
 Indiana--County Court--Data do not include  
 "other" cases or "redocketed civil" cases.

Maine--District Court--Due to implementation  
 of a new reporting system, data are missing  
 from two locations.  
 Maryland--Circuit Court--Data do not include  
 "unreported cases."  
 Ohio--Municipal Court and County Court--Data  
 do not include cases classified as  
 miscellaneous civil.  
 Oregon--Justice Court--Not all courts  
 reported data.

TABLE 33: Trend data for state courts that specifically reported small claims case filings for 1978, 1981, and 1984.

Courts included in this table:

For inclusion in this table, a court must have reported an identifiable small claims caseload, separate from all other civil cases, in at least two of the three targeted years. Twenty-nine states reported small claims cases for all the courts which had jurisdiction over small claims cases in those states. A total of 39 statewide courts, in 33 states, reported data. Of the 39 courts, 11 were general jurisdiction courts.

Comparison of aggregated filings over time:

The following data are from the 29 courts, in 25 states, that reported comparable data for all three reporting years. These figures can be found on the bottom line of Table 33.

The increase in small claims filings between 1978-81 was 18%, as the population for that same period rose only 2%. The period between 1981-84 again provides a different picture. During this second period, the population continued to increase at a rate of 2% for those states reporting these data, yet small claims filings decreased by 6%. These aggregate figures tend to support the "up-down" pattern discussed in the introduction to this section.

Comparison of courts whose filings increased or decreased during each of the time periods.

The following chart displays the number of courts whose small claims filings have increased or decreased during the two time periods:

	1978-81	1981-84
Filings increased significantly more than the population:	21	6
No significant difference between the changes in population and filings:	6	10
Filings did not increase measurably during this period:	0	1
Filings increased at a rate slower than the population:	0	1
Filings decreased during this period:	3	19
Comparable data were not available for the period:	9	2

During the period 1978-81, the majority of courts experienced significant increases in small claims filings; however, that pattern was reversed during the following three years when most of the courts reporting data experienced decreases in small claims filings. Small claims data fit the "up-down" pattern described in the introduction to this section of the Annual Report.

The chart above displays how all of the courts which reported data during either of the

two periods fit into specific categories. The following chart links the filing patterns of specific courts across the two time periods to test, more explicitly, the various patterns identified earlier.

Comparison of patterns among the courts.

The following chart expands on the previous one by listing and categorizing courts by the patterns they follow. These are the patterns for those 29 courts, in 25 states, that reported comparable data for all three years:

- "Up-up" Pattern (no caveats): North Dakota County Court (L)  
Rhode Island District Court (L)
- "No significant change-up": New Jersey Superior Court (G)
- "Up-up" Pattern: (change in '81-'84 filings was less than '78-'81 increase in filings): Colorado County Court (L)  
Hawaii District Court (L)  
Illinois Circuit Court (G)  
Maine District Court (L)  
Missouri Circuit Court (G)  
Vermont District Court (L)
- "Up-up" Pattern (change in '81-'84 population exceeds or approximates change in '81-'84 filings): Alaska District Court (L)  
New Hampshire District Court (L)
- "Down-up" Pattern (Change in '81-'84 population exceeds or approximates change in '81-'84 filings): District of Columbia Superior Court (G)  
New York District Court and City Court (L)
- "No significant change - No significant change": Idaho District Court (L)  
Ohio Municipal Court (L)
- "Up-down" Pattern: California Municipal Court (L)  
Indiana Superior Court and Circuit Court (G)  
Indian County Court (L)  
Kansas District Court (G)  
Kentucky District Court (L)  
Nebraska County Court (L)  
New Hampshire Municipal Court (L)  
North Carolina District Court (L)  
Ohio County Court (L)

TABLE 33: Trend data for state courts that specifically reported small claims case filings for 1978, 1981, and 1984. (continued)

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Oregon District Court (L)	during both 1978-81 and 1981-84. In addition, the New Jersey Super' Court experienced a significant increase during 1981-84. Ten other courts also reported increases in their small claims filings, but the increases were either significantly less than the earlier increase during 1978-81, or were less than or approximated the population change for that same period which would indicate no "litigation explosion" at all. Eleven courts fit the "up-down" pattern, and another three courts also experienced decreases in small claims filings during 1981-84.
Pennsylvania-Philadelphia Municipal Court (L)	
8. "No significant change-down":	
California Justice Court (L)	
Iowa District Court (G)	
9. "Down-down" Pattern:	
Alabama District Court (L)	

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Only two courts had significant and continuous increases in small claims filings

TABLE 33: Trend data for state courts that specifically reported small claims case filings for 1978, 1981, and 1984.

State and court title	Jurisdiction	Filings			Percent change 1978-1981		Percent change 1981-1984		Percent change 1978-1984	
		1978	1981	1984	Popu- lation	Filings	Popu- lation	Filings	Popu- lation	Filings
<b>COMPLETE STATE DATA:</b>										
<b>Exclusive court jurisdiction:</b>										
Alabama:										
District Court	L	95,928	91,550	76,694	2%	-5%	2%	-16%	4%	-20%
Alaska:										
District Court	L	7,948 <sup>1</sup>	10,143 <sup>1</sup>	10,735 <sup>1</sup>	3%	28% <sup>1</sup>	21%	6% <sup>1</sup>	25%	35% <sup>1</sup>
Colorado:										
County Court	L	10,294	13,683	16,460	7%	33%	7%	20%	14%	60%
Connecticut:										
Superior Court	G	NC	90,447	73,096	--	--	1%	-19%	--	--
District of Columbia:										
Superior Court	G	32,797	24,490	25,323	-6%	-25%	-1%	3%	-7%	-23%
Florida:										
County Court	L	NC	172,208	163,171	--	--	8%	-5%	--	--
Hawaii:										
District Court	L	1,313	3,355	5,388	6%	156%	6%	61%	12%	310%
Idaho:										
District Court	L	13,504	14,217	14,174	5%	5%	4%	0%	10%	5%
Illinois:										
Circuit Court	G	175,454	205,055	217,641	0%	17%	0%	6%	1%	24%
Iowa:										
District Court	G	72,054	75,258	71,666	-1%	4%	0%	-5%	0%	-1%
Kansas:										
District Court	G	10,670	14,707	14,229	2%	38%	2%	-3%	5%	33%
Kentucky:										
District Court	L	27,585	34,550	28,525	1%	25%	2%	-17%	3%	3%
Maine:										
District Court	L	14,350	21,653	22,718	2%	47%	2%	8%	4%	58%
Minnesota:										
County Court	L	NC	99,420	90,271	--	--	2%	-9%	--	--
Missouri:										
Circuit Court	G	11,745	15,110	19,106	1%	37%	1%	19%	3%	63%
New Jersey:										
Superior Court	G	40,535	42,012	51,137	1%	4%	1%	22%	2%	26%
North Carolina:										
District Court	L	171,612	226,604	194,321	4%	32%	4%	-14%	7%	13%
North Dakota:										
County Court	L	5,396	6,446	8,523	1%	19%	4%	32%	5%	58%
Oklahoma:										
District Court	G	77,798	NC	85,181	--	--	--	--	13%	9%
Pennsylvania:										
Philadelphia Municipal Court	L	26,043	29,328	16,253	0%	13%	0%	-10%	0%	1%
Rhode Island:										
District Court	L	6,802	8,383	12,087	0%	23%	1%	44%	1%	78%
South Dakota:										
Circuit Court	G	NC	17,999	19,259	--	--	4%	7%	--	--
Vermont:										
District Court	L	6,252	7,978	8,952	4%	28%	3%	12%	6%	43%
Washington:										
District Court	L	21,456	26,706	NC	9%	24%	--	--	--	--
Wisconsin:										
Circuit Court	G	NC	173,220	168,563	--	--	1%	-3%	--	--
<b>Not exclusive court jurisdiction:</b>										
California (STATE TOTAL)		453,662	561,908	512,804	6%	24%	6%	-9%	12%	13%
Justice Court	L	32,128	35,477	30,225	6%	10%	6%	-15%	12%	-6%
Municipal Court	L	421,534	526,431	482,579	6%	25%	6%	-8%	12%	14%

TABLE 33: Trend data for state courts that specifically reported small claims case filings for 1978, 1981, and 1984. (continued)

State and court title	Jurisdiction	Filings			Percent change 1978-1981		Percent change 1981-1984		Percent change 1978-1984	
		1978	1981	1984	Popu- lation	Filings	Popu- lation	Filings	Popu- lation	Filings
Indiana: (STATE TOTAL)	NC	172,013 <sup>1</sup>	156,705 <sup>1</sup>		--	--	1%	-9% <sup>1</sup>	--	--
Superior Court and Circuit Court ...G		29,682 <sup>1</sup>	44,593 <sup>1</sup>	35,042 <sup>1</sup>	0%	50% <sup>1</sup>	1%	-21% <sup>1</sup>	1%	18% <sup>1</sup>
Small Claims Court of Marion County ....L	NC	49,899	54,380		--	--	1%	9%	--	--
County Court .....L		66,011 <sup>1</sup>	77,521 <sup>1</sup>	67,283 <sup>1</sup>	0%	17% <sup>1</sup>	1%	-13% <sup>1</sup>	1%	2% <sup>1</sup>
New Hampshire (STATE TOTAL)		22,816	28,246	29,513	5%	24%	4%	4%	9%	29%
District Court .....L		22,114	27,408	28,993	5%	24%	4%	6%	9%	31%
Municipal Court .....L		702	838	520	5%	19%	4%	-38%	9%	-26%
Ohio (STATE TOTAL)		90,615	94,324	93,817	0%	4%	0%	-1%	0%	4%
Municipal Court .....L		77,671	80,254	82,155	0%	3%	0%	2%	0%	6%
County Court .....L		12,944	14,070	11,662	0%	9%	0%	-1%	0%	-10%
INCOMPLETE STATE DATA:										
Nebraska:										
County Court .....L		10,033	12,561	11,613	1%	25%	2%	-8%	3%	16%
New York:										
Civil Court of NYC ...L	NC	59,728	52,065		--	--	1%	-15%	--	--
District Court and City Court .....L		44,176	43,822	47,897	-1%	-1%	1%	9%	0%	8%
Oregon:										
District Court .....L		43,422	54,457	37,548	6%	25%	1%	-31%	7%	-14%
Utah:										
Circuit Court .....L	NC	27,888	31,467		--	--	9%	13%	--	--
Totals for 29 courts in 25 states reporting comparable data for all three years: 1,490,699 1,762,364 1,659,439 2% 18% 2% -6% 4% 11%										

G = General jurisdiction court  
L = Limited jurisdiction court  
NC = Data are not comparable with other years  
-- = Data element is not applicable

Indiana--Superior Court and Circuit Court, County Court--Data do not include cases classified as "other."

<sup>1</sup>Data are incomplete:  
Alaska--District Court--Data do not include cases from low volume courts.

TABLE 34: Trend data for state courts that specifically reported tort case filings for 1978, 1981, and 1984.

Courts included in this table:

For inclusion in this table, a court must have reported an identifiable tort caseload, separate from all other civil cases, in at least two of the three targeted years. Five states reported tort filings for all the courts which had jurisdiction over torts in those states. A total of 21 statewide courts, in 17 states, reported data. Of the 21 courts, 17 were general jurisdiction courts.

Comparison of aggregated filings over time:

The following data are from the 17 courts in 13 states that reported comparable data for all three reporting years. These figures can be found on the bottom line of Table 34.

The increase in tort case filings between 1978-81 was only 2%, while the population for those states grew 4% during the same time period. Between 1981-84 the population grew another 4% while tort filings increased by 7%. For the entire period 1978-84 total tort filings increased 9%, however, the population also increased by 8%. This is the one case type, of those studied in this section, where the aggregate number of cases increased over both time periods evaluated. This does not qualify as a "litigation explosion", however, since the population increased at approximately the same rate as did the tort filings.

Comparison of courts whose filings increased or decreased during each of the time periods.

The following chart displays the number of courts whose tort filings have increased or decreased during the two time periods:

	1978-81	1981-84
Filings increased significantly more than the population:	8	5
No significant difference between the changes in population and filings:	5	5
Filings increased at a rate slower than the population:	1	1
Filings decreased during this period:	5	8
Comparable data were not available for the period:	2	2

Although the aggregate filings increased somewhat over the years studied in Table 34, the above chart indicates that tort filings increased significantly in less than half of the courts reporting data in this table. During the period 1981-84, only one-third of the courts reporting data had a significant increase in tort filings--more courts experienced decreases than significant increases in tort filings during 1981-84. The chart above displays how all of the courts which reported data during either of the two periods fit into specific categories. The following chart links the filing patterns of

specific courts across the two time periods. To test more explicitly, the various patterns identified earlier.

Comparison of patterns among the courts.

The following chart expands on the previous chart by listing and categorizing courts by the patterns they followed. These patterns are explained in the introduction to this section (i.e., Part II). These are the patterns for those 17 courts that reported comparable data for all three years. The (G) and (L) after each court indicates whether it is a general or limited jurisdiction court.

- "Down-up" Pattern (no caveats): Alaska Superior Court (G)  
California Superior Court (G)  
Florida Circuit Court (G)
- "Up-up" Pattern: (change in '81-'84 filings was less than '78-'81 increase in filings): Hawaii Circuit Court (G)  
Washington Superior Court (G)
- "Up-up" Pattern (change in '81-'84 population exceeds or approximates change in '81-'84 filings): Alaska District Court (L)
- "Down-up" Pattern (Change in '81-'84 population exceeds or approximates change in '81-'84 filings): North Dakota District Court (G)
- "No significant change - no significant change": Ohio Court of Common Pleas (G)  
Maine Superior Court (G)
- "Up-down" Pattern: Colorado District Court (G)  
Hawaii District Court (L)  
Kansas District Court (G)  
New York Supreme Court and County Court (G)  
Ohio County Court (L)  
Ohio Municipal Court (L)  
Tennessee Circuit Court and Chancery Court (G)
- "No significant change-down": Idaho District Court (G)

Of the courts reporting comparable data for all three years, none experienced significant increases during both 1978-81 and 1981-84. Three additional courts reported decreases during the first period but significant increases in the 1981-84 period. These three courts, however, are in states that also experienced some of the

TABLE 34: Trend data for state courts that specifically reported tort case filings for 1978, 1981, and 1984. (continued)

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largest increases in population (i.e., Alaska, California, and Hawaii).

The largest numerical increase in tort filings between 1981-84 is in the California Superior Court (i.e., an increase of over 16,000 cases). This increase, almost single handedly, accounts for the entire increase in the aggregate figures between 1981-84. Between the years 1978-84 however, the increase in the rate of filings was 12%, but was matched by a 12% increase in the population.

In addition to the fact that most states which have large increases in filings also have the largest increases in population, and therefore do not qualify as being especially litigious, another eight courts reported decreases in filings, and two other state courts reported no significant change in their filings over both periods studied. Although tort filings do not fit the "up-down" pattern as strongly as do other case types, neither do they provide any evidence of an increased propensity of the American public to sue.

TABLE 34: Trend data for state courts that specifically reported tort case filings for 1976, 1981, and 1984.

State and court title	Jurisdiction	Filings			Percent change 1978-1981		Percent change 1981-1984		Percent change 1978-1984	
		1978	1981	1984	Population	Filings	Population	Filings	Population	Filings
<b>COMPLETE STATE DATA:</b>										
<b>Exclusive court jurisdiction:</b>										
Kansas--District Court ..G		3,249	4,517	4,033	2%	39%	2%	-11%	5%	24%
Idaho--District Court ...G		1,728 <sup>i</sup>	1,744 <sup>i</sup>	1,729 <sup>i</sup>	5%	1%	4%	-1%	10%	0%
<b>Not exclusive court jurisdiction:</b>										
Alaska (STATE TOTAL)		1,356 <sup>i</sup>	1,428 <sup>i</sup>	1,885 <sup>i</sup>	3%	6%	21%	31%	25%	39%
Superior Court .. ....G		921	886	1,305	3%	-4%	21%	47%	25%	42%
District Court .. ....L		435 <sup>i</sup>	552 <sup>i</sup>	580 <sup>i</sup>	3%	27%	21%	5%	25%	33%
Hawaii (STATE TOTAL)		2,032 <sup>i</sup>	2,505 <sup>i</sup>	2,304 <sup>i</sup>	6%	23%	6%	-8%	12%	13%
Circuit Court .. ....G		1,155 <sup>i</sup>	1,468 <sup>i</sup>	1,611 <sup>i</sup>	6%	27%	6%	10%	12%	39%
District Court .. ....L		877	1,037	693	6%	18%	6%	-33%	12%	-21%
Ohio (STATE TOTAL)		39,645	41,603	36,171	0%	5%	0%	-13%	0%	-9%
Court of Common Pleas G		21,587	21,906	22,149	0%	1%	0%	1%	0%	3%
County Court .. ....L		127	705	519	0%	455%	0%	-26%	0%	309%
Municipal Court .. ....L		17,931	18,992	13,503	0%	6%	0%	-29%	0%	-25%
<b>INCOMPLETE STATE DATA:</b>										
California:										
Superior Court .. ....G		86,729	80,970	97,068	6%	-7%	6%	20%	12%	12%
Colorado:										
District Court and Denver Superior Court .. ....G		3,481	5,089	4,199	7%	46%	7%	-17%	14%	21%
Florida:										
Circuit Court .. ....G		21,761 <sup>i</sup>	21,063 <sup>i</sup>	26,815 <sup>i</sup>	12%	-3%	8%	27%	20%	23%
Maine:										
Superior Court .. ....G		1,803	1,914	2,083	2%	6%	2%	9%	4%	16%
Maryland:										
Circuit Court .. ....G		7,902 <sup>i</sup>	8,125 <sup>i</sup>	NC	1%	3%	--	--	--	--
Montana:										
District Court .. ....G		NC	1,465	1,519	--	--	4%	4%	--	--
New York:										
Supreme Court and County Court .. ....G		35,684	39,234	37,847	-1%	10%	1%	-4%	0%	6%
North Dakota:										
District Court .. ....G		732	516	550	1%	-30%	4%	7%	5%	-25%
Tennessee:										
Circuit Court, Chancery Court (Law and Equity Court in 1978 and 1981) .. ....G		10,457	12,046	11,775	3%	15%	2%	-2%	6%	13%
Texas:										
District Court .. ....G		NC	28,698	34,224	--	--	8%	19%	--	--
Utah:										
District Court .. ....G		872	775	NC	11%	-11%	--	--	--	--
Washington:										
Superior Court .. ....G		6,882	7,919	8,997	9%	15%	3%	14%	12%	31%
Totals for 17 courts in 13 states reporting comparable data for all three years		215,539	220,556	235,456	4%	2%	4%	7%	8%	9%

G = General jurisdiction court  
 L = Limited jurisdiction court  
 NC = Data are not comparable with other years  
 -- = Data elements are inapplicable

<sup>i</sup>Data are incomplete:  
 Alaska--District Court--Data do not include low volume courts.

Florida--Circuit Court--Data do not include professional tort cases.  
 Hawaii--Circuit Court--Some tort cases are included in transfers.  
 Idaho--District Court--Some torts are included in the unclassified category.  
 Maryland--Circuit Court--Data do not include "unreported cases."

TABLE 35: Trend data for state courts that specifically reported contract case filings for 1978, 1981, and 1984.

Courts included in this table:

For inclusion in this table, a court must have reported an identifiable contract caseload, separate from all other civil cases, in at least two of the three targeted years. Two of the states reported contract filings for all the courts which had jurisdiction over contract cases in those states. A total of 15 statewide courts, in 13 states, reported data. Of the 15 courts, 11 were general jurisdiction courts.

Comparison of aggregated filings over time:

The following data are from the 11 courts in 10 states that reported comparable data for all three reporting years. These figures can be found on the bottom line of Table 35.

The increase in contract case filings between 1978-81 was 14%, while the population for those states grew 5% during the same period. Between 1981-84, the population grew another 4%, however, new contract filings decreased by 15%--a clear reversal in the earlier trend of caseload expansion. For the entire period 1978-84, total contract filings decreased 4% while the population increased 9%. These aggregate data support the "up-down" pattern for contract filings.

Comparison of courts whose filings increased or decreased during each of the time periods.

The following chart displays the number of courts whose contract filings have increased or decreased during the two time periods:

	1978-81	1981-84
Filings increased significantly more than the population:	7	2
No significant difference between change in population and filings:	1	1
Filings increased at a rate slower than the population:	1	2
Filings decreased during this period:	2	10
Comparable data were not available for the period:	4	0

Once again, the "up-down" pattern materializes. Most of the courts studied during the 1978-81 period experienced significant

increases in filings, while this trend reversed itself during the period 1981-84 when most courts experienced decreases in their filings of contract cases. The Florida Circuit Court and the Texas District Court were the two courts that experienced significant increases in their case filings, yet they also recorded the largest increases in population for those courts that reported data during 1981-84. The chart above displays how all of the courts which reported data during either of the two periods fit into specific categories. The following chart links the filing patterns of specific courts across the two time periods to test, more specifically, the various patterns identified earlier.

Comparison of patterns among the courts.

The following chart expands on the previous one by listing and categorizing courts by the patterns they followed. These patterns are explained in the introduction to this section (i.e., Part II). These are the patterns for those 11 courts that reported comparable data for all three years. The (G) or (L) after each court indicates whether it is a general or limited jurisdiction court:

1. "Up-up" Pattern  
(no caveats): Florida Circuit Court (G)
2. "Up-up" Pattern  
(change in '81-'84 population exceeds or approximates change in '81-'84 filings): Hawaii Circuit Court (G)  
Hawaii District Court (L)
3. "Up-down" Pattern:  
Colorado District Court (G)  
Maine Superior Court (G)  
North Dakota District Court (G)  
Ohio County Court (L)  
Ohio Municipal Court (L)  
Tennessee Circuit Court and Chancery Court (G)
4. "Down-down" Pattern:  
Arkansas Court of Common Pleas (L)  
Washington Superior Court (G)

The Florida Circuit Court is the only court that can lay claim to a large increase in contract filings. Courts in 8 other states followed the down trend after 1981.

TABLE 35: Trend data for state courts that specifically reported contract case filings for 1978, 1981, and 1984.

State and court title	Jurisdiction	Filings			Percent change 1978-1981		Percent change 1981-1984		Percent change 1978-1984		
		1978	1981	1984	popu- lation	Filings	popu- lation	Filings	popu- lation	Filings	
<b>COMPLETE STATE DATA:</b>											
Exclusive court jurisdiction:											
Kansas:											
District Court	.....G	NC	39,175	41,982	--	--	2%	7%	--	--	
Not exclusive court jurisdiction:											
Hawaii (STATE TOTAL)			9,175 <sup>i</sup>	13,460 <sup>i</sup>	14,055 <sup>i</sup>	6%	47% <sup>i</sup>	6%	4% <sup>i</sup>	12%	53% <sup>i</sup>
Circuit Court	.....G		1,434 <sup>i</sup>	2,047 <sup>i</sup>	2,131 <sup>i</sup>	6%	43% <sup>i</sup>	6%	4% <sup>i</sup>	12%	49% <sup>i</sup>
District Court	.....L		7,741	11,413	11,924	6%	47%	6%	4%	12%	54%
<b>INCOMPLETE STATE DATA:</b>											
Arkansas:											
Court of Common Pleas	L		377 <sup>i</sup>	300	102	2%	-20% <sup>i</sup>	2%	-66%	5%	-73% <sup>i</sup>
Colorado:											
District Court	.....G		14,147	22,395	15,270	7%	58%	7%	-32%	14%	8%
Florida:											
Circuit Court	.....G		27,005	29,677	38,650	12%	10%	8%	30%	20%	43%
Idaho:											
Superior Court	.....G		1,318	1,456	1,103	2%	10%	2%	-24%	4%	16%
Maryland:											
Circuit Court	.....G	NC	6,576 <sup>i</sup>	5,496 <sup>i</sup>		--	--	2%	-16% <sup>i</sup>	--	--
Montana:											
District Court	.....G	NC	5,860	4,420		--	--	4%	-25%	--	--
North Dakota:											
District Court	.....G		3,095	4,412	4,062	1%	43%	4%	-8%	5%	31%
Ohio:											
Municipal Court	.....L		171,166 <sup>i</sup>	187,657 <sup>i</sup>	149,330 <sup>i</sup>	0%	10% <sup>i</sup>	0%	-20% <sup>i</sup>	0%	-13% <sup>i</sup>
County Court	.....L		3,648 <sup>i</sup>	7,749 <sup>i</sup>	5,740 <sup>i</sup>	0%	112% <sup>i</sup>	0%	-26% <sup>i</sup>	0%	57% <sup>i</sup>
Tennessee:											
Circuit Court, and Chancery Court	.....G		7,327	8,830	7,582	3%	21%	2%	-14%	6%	3%
Texas:											
District Court	.....G	NC	38,902	51,152		--	--	8%	31%	--	--
Washington:											
Superior Court	.....G		21,679	18,748	13,891	9%	-14%	3%	-26%	12%	-36%
<b>Totals for 11 courts in 10 states reporting comparable data for all three years</b>											
			258,937	294,684	249,787	5%	14%	4%	-15%	9%	-4%

G = General jurisdiction court  
 L = Limited jurisdiction court  
 NC = Data are not comparable with other years.  
 -- = Data elements are inapplicable.

<sup>i</sup>Data are incomplete:  
 Arkansas--Court of Common Pleas--One county  
 reported no data in 1978.

Hawaii--Circuit Court--Some cases are  
 included in transfers.  
 Maryland--Circuit Court--Data do not include  
 some "unreported cases."  
 Ohio--Municipal Court and County Court--Some  
 contract cases are included in  
 miscellaneous civil cases.

TABLE 36: Trend data for state courts that specifically reported triable felony case filings for 1978, 1981, and 1984.

Courts included in this table:

For inclusion in this table, a court must have reported an identifiable triable felony caseload, separate from all other criminal cases, in at least two of the three targeted years. A total of 28 statewide courts in 28 states reported data. All of these courts are general jurisdiction courts.

Comparison of aggregated filings over time:

The following data are from the 24 courts in 24 states that reported comparable data for all three reporting years. These figures can be found on the bottom line of Table 36.

The increase in triable felony cases between 1976-81 was 28%, while the population for the states reporting these data increased by 3%. Between 1981-84, the population continued to grow another 3%, and new triable felony filings increased by 7%. The pattern for these aggregate filings evidence a considerable slowing of the filing pattern during 1981-84. In fact, during the 1981-84 period, triable felony case filings did not increase at a rate significantly greater than the rate at which the population increased.

Comparison of courts whose filings increased or decreased during each of the time periods.

The following chart displays the number of courts whose triable felony filings have increased or decreased during the two time periods:

	1978-81	1981-84
Filings increased significantly more than the population:	22	8
No significant difference between the changes in population and filings:	0	6
Filings did not increase measureably during this period:	0	1
Filings increased at a rate slower than the population:	0	2
Filings decreased during this period:	2	11
Comparable data were not available for the period:	4	0

Approximately three-fourths of those courts reporting triable felony filings between 1978-81 experienced significant increases in their caseloads. This tendency for increased filings, however, was greatly diminished during 1981-84 when almost twice as many courts reported decreases in their felony filings as courts who reported filing increases significantly greater than population increases. This observation is more clearly illustrated in the following chart.

The chart above displays how all of the courts which reported data during either of the

two periods fit into specific categories. The following chart links the filing patterns of specific courts across the two time periods to test, more specifically, the various patterns identified earlier.

Comparison of patterns among the courts.

The following chart expands on the previous one by listing and categorizing courts by the patterns they follow. These patterns are explained in the introduction to this section (i.e., Part II). These are the patterns for those 24 courts in 24 states that reported comparable data for all three years.

1. "Up-up" Pattern (no caveats): Alaska Superior Court  
District of Columbia Superior Court  
New Jersey Superior Court
2. "Down-up" Pattern (no caveats): Minnesota District Court
3. "Up-up" Pattern: (change in '81-'84 filings was less than '78-'81 increase in filings): Arkansas Circuit Court  
Hawaii Circuit Court  
Illinois Circuit Court  
New York Supreme Court and County Court
4. "Up-up" Pattern (change in '81-'84 population exceeds or approximates change in '81-'84 filings): Arizona Superior Court  
California Superior Court  
Colorado District Court  
Idaho District Court  
North Dakota District Court  
Virginia Circuit Court  
Washington Superior Court
5. "Up-down" Pattern: Georgia Superior Court  
Kansas District Court  
Maine Superior Court  
North Carolina Superior Court  
Ohio Court of Common Pleas  
Oregon Circuit Court  
Rhode Island Superior Court  
Wyoming District Court
6. "Down-down" Pattern: Wisconsin Circuit Court

Of the 24 statewide courts reporting data in Table 36, only four experienced increases in filings that continued to increase significantly more than the population. The number of triable felony filings decreased during the period 1981-84 in nine of the statewide courts reported

TABLE 36: Trend data for state courts that specifically reported triable felony case filings for 1978, 1981, and 1984. (continued)

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in this table. As is the case with torts, it appears as though the rate of increases in felony filings has decreased. Additionally, downward trends were experienced in a large number of statewide courts. This trend in felony cases,

may be a function of changes in a variety of variables ranging from: the actual crime rate, the rate of reported crime, the police clearance rate, state criminal law, and prosecuting rates.

TABLE 36: Trend data for state courts that specifically reported triable felony case filings for 1978, 1981, and 1984.

State and court title	Filings			Percent change 1978-1981		Percent change 1981-1984		Percent change 1978-1984	
	1978	1981	1984	Popu- lation	Filings	Popu- lation	Filings	Popu- lation	Filings
Alaska: Superior Court .....	778	1,194	1,846	3%	53%	21%	55%	25%	137%
Arizona: Superior Court .....	10,390 <sup>i</sup>	14,357 <sup>i</sup>	15,360 <sup>i</sup>	11%	38% <sup>i</sup>	9%	7% <sup>i</sup>	21%	48% <sup>i</sup>
Arkansas: Circuit Court .....	8,997 <sup>j</sup>	14,565 <sup>j</sup>	17,993 <sup>j</sup>	2%	62% <sup>j</sup>	2%	23% <sup>j</sup>	5%	100% <sup>j</sup>
California: Superior Court .....	55,369 <sup>j</sup>	64,993 <sup>j</sup>	74,412 <sup>j</sup>	6%	17% <sup>j</sup>	6%	14% <sup>j</sup>	12%	34% <sup>j</sup>
Colorado: District Court .....	10,604	13,868	14,783	7%	31%	7%	7%	14%	39%
District of Columbia: Superior Court .....	3,415	4,283	6,035	-6%	25%	-1%	41%	-7%	77%
Georgia: Superior Court .....	26,293	37,338	33,725	5%	42%	5%	-10%	10%	28%
Hawaii: Circuit Court .....	1,729 <sup>i</sup>	2,291 <sup>i</sup>	2,655 <sup>i</sup>	6%	33% <sup>i</sup>	6%	16% <sup>i</sup>	12%	54% <sup>i</sup>
Idaho: District Court .....	2,845	3,302	3,649	5%	16%	4%	11%	10%	28%
Illinois: Circuit Court .....	34,260 <sup>j</sup>	41,795 <sup>j</sup>	46,107 <sup>j</sup>	0%	22% <sup>j</sup>	0%	10% <sup>j</sup>	1%	35% <sup>j</sup>
Iowa: District Court .....	NC	8,166 <sup>j</sup>	7,658 <sup>j</sup>	--	--	0%	-6% <sup>j</sup>	--	--
Kansas: District Court .....	10,303	12,121	11,397	2%	18%	2%	-6%	5%	11%
Maine: Superior Court .....	2,790 <sup>j</sup>	3,281 <sup>j</sup>	3,189 <sup>j</sup>	2%	18% <sup>j</sup>	2%	-3% <sup>j</sup>	4%	14% <sup>j</sup>
Minnesota: District Court .....	10,678	10,155	12,162	2%	-5%	2%	20%	4%	14%
New Hampshire: Superior Court .....	NC	3,652	3,813	--	--	4%	4%	--	--
New Jersey: Superior Court .....	24,311	29,101	37,135	1%	20%	1%	28%	2%	53%
New York: Supreme Court-County Court .....	21,506 <sup>j</sup>	41,587 <sup>j</sup>	49,191 <sup>j</sup>	-1%	32% <sup>j</sup>	1%	18% <sup>j</sup>	0%	56% <sup>j</sup>
North Carolina: Superior Court .....	30,576	42,792	42,160	4%	40%	4%	-1%	7%	38%
North Dakota: District Court .....	916	1,233	1,284	1%	35%	4%	4%	5%	40%
Ohio: Court of Common Pleas ....	31,575	41,076	37,073	0%	30%	0%	-10%	0%	17%
Oregon: Circuit Court .....	16,097	20,198	19,913	6%	25%	1%	-1%	7%	24%
Rhode Island: Superior Court .....	2,396	4,576	4,232	0%	91%	1%	-8%	1%	77%
South Dakota: Circuit Court .....	NC	2,654	2,606	--	--	3%	-2%	--	--
Texas: District Court .....	NC	82,872	87,249	--	--	8%	5%	--	--
Virginia: Circuit Court .....	24,554	40,444	42,642	3%	38%	4%	5%	7%	45%
Washington: Superior Court .....	11,168	15,442	15,432	9%	38%	3%	0%	12%	38%
Wisconsin: Circuit Court .....	15,855 <sup>j</sup>	14,601 <sup>j</sup>	13,607 <sup>j</sup>	2%	-8% <sup>j</sup>	1%	-7% <sup>j</sup>	3%	-14% <sup>j</sup>
Wyoming: District Court .....	1,404	1,772	1,462	14%	26%	4%	-17%	19%	4%

TABLE 36: Trend data for state courts that specifically reported triable felony case filings for 1978, 1981, and 1984. (continued)

State and court title	Filings			Percent change 1978-1981		Percent change 1981-1984		Percent change 1978-1984	
	1978	1981	1984	popu- lation	Filings	popu- lation	Filings	popu- lation	Filings
Totals for 24 courts in 24 states reporting comparable data for all three years	373,609	476,361	507,444	3%	28%	3%	7%	6%	36%

Note: All of the courts listed above are general jurisdiction courts.

NC = Data are not comparable with other years.

-- = Data element is not applicable.

<sup>i</sup>Data are incomplete:

Arizona--Some felonies are included in an unclassified category.

Hawaii--Felony figures do not include reopened prior cases included in the unclassified civil category.

<sup>j</sup>Explanation of data included in the category:

Arkansas--Felony figures include DWI/DUI cases.

California--Felony figures include DWI/DUI cases.

Illinois--Felony caseload data include preliminary hearings from courts "downstate."

Iowa--Felony cases include third offense DWI/DUI cases in 1981 and 1984.

Maine--Felony figures include classes A, B, and C.

New York--Felony figures include DWI/DUI cases.

Wisconsin--Felony figures include limited felony cases.

A Preliminary Examination  
of Available Civil and Criminal  
Trend Data in State Trial Courts  
for 1978, 1981, and 1984

Produced by:  
Court Statistics and Information Management Project  
National Center for State Courts  
300 Newport Avenue  
Williamsburg, VA. 23187-8798

April 1986

NOTE: The following tables are excerpts from a larger volume to be published later this Spring 1986 called, State Court Caseload Statistics: Annual Report, 1984.

For release: 6:00 p.m.  
Monday, April 21, 1986,

Contact: Robert T. Roper  
(804) 253-2000

Study reveals no  
litigation explosion  
in state courts

WILLIAMSBURG, VA--"Careful examination of current available trial court data relating to tort, contract, real property rights and small claims cases, from a representative group of state courts, provides no evidence to support the existence of a national 'litigation explosion' in state trial courts during the 1981-84 time period," according to Dr. Robert Roper, director of the Court Statistics and Information Management (CSIM) project of the National Center for State Courts.

Twenty states, which include 29 limited and general jurisdiction statewide court systems, reported reliable and comparable tort, contract, and real property rights statistics on the number of lawsuits filed for the years 1978, 1981, and 1984. The data revealed a 14 percent increase in filings for 1978-81, and a 4 percent decrease in 1981-84.

Small claims suits might best measure the inclination of Americans to sue because of easy accessibility, relatively inexpensive cost, and prospects for a quick resolution. Twenty-nine limited and general jurisdiction statewide court systems in 25 states were chosen for analysis due to their reliable and comparable small claims statistics. Small claims filings increased 18 percent in 1978-81, but decreased 6 percent in 1981-84.

-MORE-

In the area of torts alone, which is a subset of civil filings, total filings increased slightly in both the 1978-81 and the 1981-84 periods. However, all of the three states that reported significant increases during 1981-84 also reported the largest increases in population (Alaska, California, and Hawaii). During 1981-84, tort filings increased 7 percent while population increased 4 percent. For the entire period 1978-84, total tort filings increased 9 percent, but the population also increased by 8 percent.

The data provide a basis for the following observations:

- o An upward trend in litigation in any one period is not necessarily attributable to an increase in the tendency of the average American to sue, but may indicate a simple increase in the number of average Americans.
- o There may have been significant increases in civil filings which peaked around 1981; however, civil filings (defined as tort, contract and real property right cases) decreased slightly during the 1981-84 period. In fact, in state courts that reported data for the 1981-84 time periods, there were decreases in the total number of civil filings.

According to Dr. Roper, several reasons could account for the downward trend in litigation. Insurance companies and attorneys may increasingly find it in their interest to settle conflicts before the cases ever reach the courts. Also, people may be deterred from filing suits at all because of widespread reports about the cost of litigation, and the prospect of civil suits taking years before disposition.

The often cited litigation explosion thus appears to be exaggerated with respect to the total number of civil filings during the period of 1981-84. The source of the perception that there is a litigation explosion may be founded in a changing mix of civil cases, increased complexity of the cases being filed, and widespread media reports of enormous awards in relatively few civil cases.

Complete supporting data will be available later this spring from the Williamsburg-based National Center for State Courts, in a volume entitled "State Court Caseload Statistics, 1984."

\* \* \* \* \*

Published annually since 1975 (with the exception of 1982 and 1983) the state court caseload statistics series was developed by the Center's CSIM project in cooperation with the Conference of State Court Administrators. Work on the 1984 volume was completely funded by the National Center for State Courts; however, previous work on this project was funded by the Bureau of Justice Statistics. These reports are designed to collect, compile, analyze, and disseminate comparable state court caseload statistics; they are based on data provided by the state court administrators' offices and the offices of the state appellate court clerks. The series presents a methodology for reporting caseload statistics, nationwide current caseloads, as well as trends useful in future court planning.

The National Center's basic mission is to help courts better serve both litigants and the general public. Courts at all levels are involved in one or more of the Center's projects, which range from research aimed at reducing delay in the litigation process to work conducted by the Center's regional offices on such subjects as automation of court operations and personnel administration. Emphasis is given to the training of court managers and presiding judges through the National Center's Institute for Court Management. In addition, the National Center serves as a clearinghouse for information on state courts. Besides its headquarters in Williamsburg, the Center maintains offices in North Andover, Mass., San Francisco, Denver, Arlington, Va., and Washington, D.C.

4/14/86-rtr

## Part II. Trends

Questions about the "litigation explosion" in the state trial courts are among those most frequently received by CSIM Project staff. Part II of this 1984 Annual Report is a preliminary effort to shed some light on the question, "Is there a 'litigation explosion' in the state trial courts?"

### Dates chosen for trend data.

The years 1981 and 1984 were chosen as two of the data points for these tables because the State Trial Court Jurisdiction Guide for Statistical Reporting was first applied to the 1981 trial court data, and the 1984 data is the most recent available. Since those two years represent a three-year interval, an earlier three-year interval was needed to bring balance to the trend line. Therefore, the first point chosen was 1978.

### Case types selected for analysis.

When talking of a "litigation explosion," most people reference an increased propensity, in the mindset of individuals, to sue for damages and punitive awards. Some of the CSIM case types that address this issue are tort, contract, and real property rights cases. In addition, small claims procedures are easily accessible, relatively inexpensive to file in and work within, and provide a comparatively speedier disposition of justice, and therefore, are a more interesting measure of the public's propensity to litigate.

Additionally, these case categories were chosen because they have, over the years, been reported separately, by many courts, without having any other minor case types included in their totals. The same is not true of other case categories, such as domestic relations, where subcategories are often reported with juvenile cases, miscellaneous, or special civil proceedings.

Criminal cases do not reflect on the "litigation explosion" as it is defined above, however, felonies are included in these trend data to provide a more complete picture of the courts' workloads over time.

The first table presents the general picture by displaying data for the combined category of tort, contract, and real property rights cases. This table is followed by a table for small claims. The final two civil tables break down the general table into one for tort, and one for contract cases. There were insufficient data, over the seven year period to justify compilation of a table for real property rights cases. The final table evaluates trend data for felony cases.

### Population as an indicator of caseload changes.

Earlier volumes in this Annual Report series have documented that the single best predictor of civil filings in state courts is the total state population. Total population explained over 90% of the variance in civil filings among the state courts. Therefore, the percentage increase in state population has been included in these tables for all three time periods--1978-1981, 1981-1984, and 1978-1984 in order to explain, at

the outset, what kind of case filing increases might be anticipated as a result of changes in the state populations.

At this point, it is not possible to accurately predict what percentage increase in filings one would expect for every percent increase in the population. Therefore, for purposes of this Report, a rough one to one relationship has been assumed, i.e., for every percent increase in population, a one percent increase in filings would be expected.

### Courts included in the tables

Some state courts do not appear in these tables for a variety of reasons: they do not report statewide data at all, they do not provide sufficient detail to identify the case types reported in these tables, they have changed reporting categories over time, and finally, the jurisdiction and organization of some courts have changed so dramatically between 1978-84 that their data were not comparable. Therefore, the courts displayed on the following tables do not include complete nationwide data; however, they are representative of general jurisdiction courts in this country, and are adequate for addressing the issue of whether there is a litigation explosion. For example, Table 33, on small claims, has statewide data from 33 states from across all geographical regions, and from large and small states. Although Tables 32 and 34-36 do not have as much complete state data as does Table 33, the data are more often than not from general jurisdiction courts. Since these are the courts most likely to hear the serious cases, these courts complement the small claims data found in Table 33.

### Summary statistics presented on the facesheets.

Three summary measures. Each of Tables 32-36 display the number of filings for the years 1978, 1981 and 1984, and the percent changes in total state populations and filings for each of the three time periods 1978-81, 1981-84 and 1978-84. The accompanying facesheet for each table summarizes the data presented in each table using the following three measures: (1) the aggregate data contained in the table for those courts that reported complete data for each of the three years; (2) a summary description of how many courts experienced increases or decreased filings for the two periods 1978-1981 and 1981-1984; and (3) a chart which identifies patterns of change, and specifically lists the courts within each pattern.

Patterns across time, the "up-up" and "up-down" patterns. There are two basic patterns that can be used to test crudely whether there continues to be a "litigation explosion." The first group represents those courts whose filings increased during the 1978-81 period, and continued to rise during the 1981-84 period (i.e., an "up-up" pattern). This "up-up" pattern alone, however, does not represent prima facie evidence of a "litigation explosion." This "up-up" category must be separated into three components: (3-a) courts whose upward increases in both time periods were at approximately the same rate of increase and whose increases significantly exceeded the rate of increases in

the total population; (3-b) courts whose filings increased, during 1981-84, at a rate significantly less than the rate they were increasing at during 1978-81--which indicates a slowing of any upward trend that might have occurred during earlier years; and (3-c) courts whose filings increased significantly during the period 1978-81, but whose filings increased at a rate which approximated or was less than the rate at which the population increased during 1981-84. The last component (i.e., 3-c), represents courts where there is not a "litigation explosion," because filings did not increase at a rate equal to or significantly different from population increases. Therefore, the only "up-up" pattern which may indicate unusual increases in filings is a "3-a"--where court filings increased significantly over both periods.

The second major group of courts, which run counter to the "up-up" pattern, are those courts which exhibited significant increases in filings during 1978-81, but whose filings actually decreased during the 1981-84 period (i.e., an "up-down" pattern). Courts that fall into this category are clearly "over the hump," and no longer experiencing increases in the number of civil suits.

Other miscellaneous patterns appear sporadically throughout the tables. These can clearly be identified as either supportive, or not supportive of the claim to a "litigation explosion." For example, some courts may not have experienced any significant change in filings for both time periods. On the other hand, filings in some courts went down during the 1978-81 period, and have increased significantly during the latter period. These situations will be discussed as they occur in each of the tables.

#### Limitations on the data

The data presented on the following tables are the most accurate, reliable, and comprehensive data yet brought to bear on the question of whether there is a "litigation explosion" in the state courts. This is a preliminary look at the topic, however, and the reader should consider the following caveats when evaluating the analysis--none of which are thought to affect general conclusions that can be drawn from these tables: although the data are representative from all the states, they do not include all of the courts and states in the country; due to limited resources, Project staff were unable to complete the trend table for the missing years or identify all jurisdictional changes in those courts over time; the data are only as current as 1984 and changes may have occurred during 1985; the data do not include many other civil case types which may have included different trends during that time period (e.g., divorce, support/custody, adoption, estate, civil appeals, and miscellaneous civil cases); and the findings are restricted to the state courts only.

#### General findings and explanations

A careful examination of available data relating to tort, contract, real property rights,

and small claims cases from a representative group of state courts provides no evidence to support the often cited existence of a national "litigation explosion" in the state trial courts during the 1981-84 time period.

There are some state courts that have experienced significant increases in the case types described throughout this section, but the impact of that finding is reduced when one realizes that these are the courts in states that have also experienced significant increases in their total populations. Changes in the number of these filings are not attributable to an increase in the propensity of the average American to sue, but rather to a simple increase in the numbers of average Americans.

The findings, however, can be extended one further step. Not only is the evidence missing to indicate a significant national increase in filings above the increase in population, but a clear pattern emerges which generally supports the "up-down" model described earlier. In a significant number of state courts, selected civil filings have decreased between the period 1981-1984 (see the individual tables for specific details).

It may be that there was a litigation explosion that peaked around 1981. The evidence from these charts tends to support that observation. There were significant increases in filings between 1978-81, far exceeding the increases in population. In fact, the increases were so large during 1978-81, that despite the decreases that occurred during 1981-84, the percentage changes from 1978-84 are still showing moderate increases.

The often cited myth of a continuing upward trend of civil lawsuits in the state courts could result from several factors: (1) intensive media focus on the enormous size of the awards in a few selected and well publicized civil cases; and (2) increased workload in the courts, not caused by an increase in the rate of civil lawsuits, but by more complex cases, and perhaps fewer resources available to the courts to handle expected increases in filings which results in larger backlogs.

Additionally, there are a variety of potential explanations for the leveling off or decreases in civil suits: (1) The public's attitude toward lawsuits may be changing. People may be deterred from filing as a result of concerns about costs and civil litigation that is likely to take years--except for the more serious cases, it may not be worth the effort; (2) For years people speculated that greater numbers of laws resulted in increased litigation to interpret those laws--this testing of new legislation and judicial rules may have run its course; and (3) Finally, insurance companies and attorneys may be increasing their efficiency in settling conflict before cases reach the courts. Whatever the explanation, there is no evidence to support the notion of a nationwide increase in lawsuits in the state trial courts between 1981-84.

TABLE 32: Trend data for state courts that specifically reported tort, contract, and real property rights case filings for 1978, 1981, and 1984.

Courts included in this table.

For inclusion in this table, a court must have reported an identifiable tort, contract, and real property rights caseload, separate from all other civil cases, in at least two of the three target years. Five states reported tort, contract, and real property rights cases for all the courts which had jurisdiction over tort, contract and real property rights cases in those states. A total of 37 statewide courts, in 25 states, reported data. Of the 37 courts, 12 were general jurisdiction courts.

Comparison of aggregated filings over time.

The following data are from the 29 courts in 20 states that reported comparable data for all three reporting years. These figures can be found on the bottom line of Table 32.

The increase in tort, contract, and real property rights filings between 1978-81 was 14%, while the population for the states reporting these data increased by 3%. Between 1981-84, the population continued to grow another 3%, but the new filings decreased by 7%. These aggregate figures provide preliminary evidence for the existence of the "up-down" pattern discussed earlier in this section.

Comparison of courts whose filings increased or decreased during each of the time periods.

The following chart displays the number of courts whose tort, contract, and real property rights filings have increased or decreased during the two time periods:

	1978-81	1981-84
Filings increased significantly more than the population:	19	7
No significant difference between the change in population and filings:	5	3
Filings did not increase measurably during this period:	0	3
Filings increased at a rate slower than the population:	0	2
Filings decreased during this period:	5	22
Comparable data were not available for the period:	8	0

The "up-down" pattern described in the introduction to this section is illustrated in the above chart. Most of the courts reporting tort, contract, and real property rights cases during 1978-81 experienced significant increases in their filings. During a 1981-84 period, however, the pattern reversed itself--the majority of courts reported decreases in filings of these case types. Less than twenty-five percent of the courts reporting tort, contract, and real property rights cases during 1981-84

experienced increases in their filings at a rate significantly higher than increases in their populations. These patterns are more firmly established in the following chart.

The chart above displays how all of the courts which reported data during either of the two periods fit into specific categories. The following chart links the filing patterns of specific courts across the two time periods to test, more specifically, the various patterns identified earlier.

Comparison of patterns among the courts.

The following chart expands on the previous one by listing and categorizing courts by the patterns they followed. These patterns are explained in the introduction to this section (i.e., Part II). These are the patterns for those 29 courts in 20 states that reported comparable data for all three years. The (G) or (L) after each court indicates whether it is a general or limited jurisdiction court:

- "Up-up" Pattern (no caveats): Civil Court of NYC (L)
- "Down-up" Pattern (no caveats): Alaska Superior Court (G)  
New Mexico Magistrate Court (L)  
Oregon Justice Court (L)
- "Up-up" Pattern (change in '81-'84 filings was less than '78-'81 increase in filings): Nebraska County Court (L)
- "Up-up" Pattern (change in '81-'84 population exceeds or approximates change in '81-'84 filings): Hawaii Circuit Court (G)  
Hawaii District Court (L)  
Delaware Justice of the Peace (L)
- "Up-no significant change": Delaware Court of Common Pleas (L)
- "No significant change - no significant change": Delaware Superior Court (G)
- "Up-down" Pattern: Alabama District Court (G)  
Arkansas Chancery and Probate Court (G)  
Colorado District Court (G)  
Colorado County Court (L)  
Indiana County Court (L)  
Indiana Municipal Court of Marion County (L)  
Kentucky District Court (L)  
Maine District Court (L)  
North Carolina Superior Court (G)  
North Carolina District Court (L)  
Ohio Municipal Court (L)  
Ohio County Court (L)

TABLE 32: Trend data for state courts that specifically reported tort, contract, and real property rights case filings for 1978, 1981, and 1984. (continued)

	Pennsylvania District Justice Court (L) Tennessee Circuit Court and Chancery (L)	<p>filings have continued to increase significantly more than the population over the two time periods studied in this Report. Three additional courts followed the "down-up" pattern with significant increases reported during 1981-84. Another four courts experienced increases in filings between 1981-84, but the increases were either less than or not significantly different from population increases during that same time period, or the increases were less than the increases reported during the 1978-81 period. The remaining 18 courts showed no evidence of a "litigation explosion" during 1981-84, and 17 of those courts experienced a decrease in filings during that period.</p>
8. "No significant change-down":	Oregon District Court (L) Rhode Island District Court (L) Washington Superior Court (G)	
9. "Down-down" Pattern:	District of Columbia Superior Court (G) Colorado Water Court (G)	

Of the courts studied in Table 32, the Civil Court of New York City is the only court whose

TABLE 32: Trend data for state courts that specifically reported tort, contract, and real property rights case filings for 1978, 1981, and 1984.

State and court title	Jurisdiction	Filings			Percent change 1978-1981		Percent change 1981-1984		Percent change 1978-1984	
		1978	1981	1984	Popu- lation	Filings	Popu- lation	Filings	Popu- lation	Filings
<b>COMPLETE STATE DATA:</b>										
Exclusive court jurisdiction:										
District of Columbia:										
Superior Court	G	121,931	108,426	96,975	-6%	-11%	-1%	-11%	-7%	-20%
Kansas:										
District Court	G	NC	54,005	57,140	--	--	2%	6%	--	--
Not exclusive court jurisdiction:										
Colorado (STATE TOTAL)										
District Court	G	79,480	105,028	99,205	7%	32%	7%	-6%	14%	25%
Water Court	G	22,561	36,168	32,032	7%	60%	7%	-12%	14%	42%
County Court	L	2,868	2,321	1,688	7%	-19%	7%	-23%	14%	-41%
Hawaii (STATE TOTAL)										
Circuit Court	G	54,051	66,539	65,485	7%	23%	7%	2%	14%	21%
District Court	L	12,204 <sup>i</sup>	17,379 <sup>i</sup>	17,960 <sup>i</sup>	6%	42% <sup>i</sup>	6%	3% <sup>i</sup>	12%	47% <sup>i</sup>
North Carolina:										
Superior Court	G	2,786 <sup>i</sup>	3,830 <sup>i</sup>	3,992 <sup>i</sup>	6%	37% <sup>i</sup>	6%	4% <sup>i</sup>	12%	43% <sup>i</sup>
District Court	L	9,418	13,549	13,968	6%	44%	6%	3%	12%	48%
INCOMPLETE STATE DATA:										
Alabama:										
District Court	L	54,738	65,856	58,118	4%	20%	4%	-12%	7%	6%
Alaska:										
Superior Court	G	11,541	13,756	12,482	4%	19%	4%	-9%	7%	8%
Arkansas:										
Chancery and Probate Court	G	43,197	52,100	45,636	4%	21%	4%	-12%	7%	6%
Delaware:										
Superior Court	G	40,130	55,818	51,805	2%	39%	2%	-7%	4%	29%
Court of Common Pleas	L	2,683	2,312	3,107	3%	-14%	21%	34%	25%	16%
Indiana:										
Municipal Court Marion County	L	6,642	7,545	5,151	2%	14%	2%	-32%	5%	-22%
County Court	L	2,457	2,522	2,520	0%	3%	3%	0%	3%	3%
Kentucky:										
District Court	L	2,898	3,740	3,755	0%	29%	3%	0%	3%	30%
Maine:										
District Court	L	15,844	20,028	20,806	0%	26%	3%	4%	3%	31%
Minnesota:										
County Court	L	8,901	14,364	10,131	0%	61%	1%	-29%	1%	14%
Montana:										
District Court	G	3,550 <sup>i</sup>	5,573 <sup>i</sup>	3,664 <sup>i</sup>	0%	57% <sup>i</sup>	1%	-34% <sup>i</sup>	1%	3% <sup>i</sup>
Nebraska:										
County Court	L	48,808	57,627	50,359	1%	18%	2%	-2%	3%	15%
Municipal Court	L	17,751 <sup>i</sup>	20,072	16,146	2%	13% <sup>i</sup>	2%	-20%	4%	-9% <sup>i</sup>
New Hampshire:										
District Court	L	NC	28,014	21,582	--	--	2%	-23%	--	--
New Mexico:										
Magistrate Court	L	NC	7,764	6,492	--	--	4%	-16%	--	--
Bernalillo County Metropolitan Court	L	9,236	11,128	12,027	1%	20%	2%	1%	3%	41%
New York:										
Civil Court of New York City	L	NC	17,781	17,712	--	--	2%	0%	--	--
Court of Claims	L	241,951 <sup>i</sup>	260,068 <sup>i</sup>	221,523 <sup>i</sup>	0%	7% <sup>i</sup>	0%	-15% <sup>i</sup>	0%	-8% <sup>i</sup>
Ohio:										
Municipal Court	L	5,854 <sup>i</sup>	11,302 <sup>i</sup>	9,542 <sup>i</sup>	0%	93% <sup>i</sup>	0%	-16% <sup>i</sup>	0%	63% <sup>i</sup>

TABLE 32: Trend data for state courts that specifically reported tort, contract, and real property rights case filings for 1978, 1981, and 1984. (continued)

State and court title	Jurisdiction	Filings			Percent change 1978-1981		Percent change 1981-1984		Percent change 1978-1984	
		1978	1981	1984	Popu-lation	Filings	Popu-lation	Filings	Popu-lation	Filings
INCOMPLETE STATE DATA (continued):										
Oregon:										
District Court	L	31,600	33,862	24,518	6%	7% <sup>1</sup>	1%	-28%	7%	-22%
Justice Court	L	1,102 <sup>1</sup>	942 <sup>1</sup>	1,336 <sup>1</sup>	6%	-15% <sup>1</sup>	1%	42% <sup>1</sup>	7%	21% <sup>1</sup>
Pennsylvania:										
District Justice Court	L	163,556	188,199 <sup>d</sup>	183,143	0%	15%	0%	-3% <sup>d</sup>	0%	12%
Rhode Island:										
District Court	L	22,394	23,689	18,759	0%	6%	1%	-21%	1%	-16%
Tennessee:										
Circuit Court and Chancery Court	G	20,561	23,442	21,505	3%	14%	2%	-8%	6%	5%
Texas:										
District Court	G	NC	68,451	85,873	--	.	8%	25%	--	--
Washington:										
Superior Court	G	32,029	34,922	33,140	9%	9%	3%	-5%	12%	3%
Totals for 29 courts in 20 states reporting comparable data for all three years		1,090,707	1,239,120	1,185,666	3%	14%	3%	-4%	5%	9%

G = General jurisdiction court  
 L = Limited jurisdiction court  
 NC = Data are not comparable with other years.  
 d = The number of dispositions was the only data element provided that year.  
 -- = Data element is not applicable.

<sup>1</sup>Data are not complete:  
 Hawaii--Circuit Court--Data do not include "unreported cases."  
 Indiana--County Court--Data do not include "other" cases or "redocketed civil" cases.

Maine--District Court--Due to implementation of a new reporting system, data are missing from two locations.  
 Maryland--Circuit Court--Data do not include "unreported cases."  
 Ohio--Municipal Court and County Court--Data do not include cases classified as miscellaneous civil.  
 Oregon--Justice Court--Not all courts reported data.

TABLE 33: Trend data for state courts that specifically reported small claims case filings for 1978, 1981, and 1984.

Courts included in this table:

For inclusion in this table, a court must have reported an identifiable small claims caseload, separate from all other civil cases, in at least two of the three targeted years. Twenty-nine states reported small claims cases for all the courts which had jurisdiction over small claims cases in those states. A total of 39 statewide courts, in 33 states, reported data. Of the 39 courts, 11 were general jurisdiction courts.

Comparison of aggregated filings over time:

The following data are from the 29 courts, in 25 states, that reported comparable data for all three reporting years. These figures can be found on the bottom line of Table 33.

The increase in small claims filings between 1978-81 was 18%, as the population for that same period rose only 2%. The period between 1981-84 again provides a different picture. During this second period, the population continued to increase at a rate of 2% for those states reporting these data, yet small claims filings decreased by 6%. These aggregate figures tend to support the "up-down" pattern discussed in the introduction to this section.

Comparison of courts whose filings increased or decreased during each of the time periods.

The following chart displays the number of courts whose small claims filings have increased or decreased during the two time periods:

	1978-81	1981-84
Filings increased significantly more than the population:	21	6
No significant difference between the changes in population and filings:	6	10
Filings did not increase measurably during this period:	0	1
Filings increased at a rate slower than the population:	0	1
Filings decreased during this period:	3	19
Comparable data were not available for the period:	9	2

During the period 1978-81, the majority of courts experienced significant increases in small claims filings; however, that pattern was reversed during the following three years when most of the courts reporting data experienced decreases in small claims filings. Small claims data fit the "up-down" pattern described in the introduction to this section of the Annual Report.

The chart above displays how all of the courts which reported data during either of the

two periods fit into specific categories. The following chart links the filing patterns of specific courts across the two time periods to test, more explicitly, the various patterns identified earlier.

Comparison of patterns among the courts.

The following chart expands on the previous one by listing and categorizing courts by the patterns they follow. These are the patterns for those 29 courts, in 25 states, that reported comparable data for all three years:

- "Up-up" Pattern (no caveats): North Dakota County Court (L)  
Rhode Island District Court (L)
- "No significant change-up": New Jersey Superior Court (G)
- "Up-up" Pattern: (change in '81-'84 filings was less than '78-'81 increase in filings): Colorado County Court (L)  
Hawaii District Court (L)  
Illinois Circuit Court (G)  
Maine District Court (L)  
Missouri Circuit Court (G)  
Vermont District Court (L)
- "Up-up" Pattern (change in '81-'84 population exceeds or approximates change in '81-'84 filings): Alaska District Court (L)  
New Hampshire District Court (L)
- "Down-up" Pattern (Change in '81-'84 population exceeds or approximates change in '81-'84 filings): District of Columbia Superior Court (G)  
New York District Court and City Court (L)
- "No significant change - No significant change": Idaho District Court (L)  
Ohio Municipal Court (L)
- "Up-down" Pattern: California Municipal Court (L)  
Indiana Superior Court and Circuit Court (G)  
Indiana County Court (L)  
Kansas District Court (G)  
Kentucky District Court (L)  
Nebraska County Court (L)  
New Hampshire Municipal Court (L)  
North Carolina District Court (L)  
Ohio County Court (L)

TABLE 33: Trend data for state courts that specifically reported small claims case filings for 1978, 1981, and 1984. (continued)

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Oregon District Court (L) Pennsylvania-Philadelphia Municipal Court (L)	
8. "No significant change-down": California Justice Court (L) Iowa District Court (G)	
9. "Down-down" Pattern: Alabama District Court (L)	

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during both 1978-81 and 1981-84. In addition, the New Jersey Superior Court experienced a significant increase during 1981-84. Ten other courts also reported increases in their small claims filings, but the increases were either significantly less than the earlier increase during 1978-81, or were less than or approximated the population change for that same period which would indicate no "litigation explosion" at all. Eleven courts fit the "up-down" pattern, and another three courts also experienced decreases in small claims filings during 1981-84.

Only two courts had significant and continuous increases in small claims filings

TABLE 33: Trend data for state courts that specifically reported small claims case filings for 1978, 1981, and 1984.

State and court title	Jurisdiction	Filings			Percent change 1978-1981		Percent change 1981-1984		Percent change 1978-1984	
		1978	1981	1984	Population	Filings	Population	Filings	Population	Filings
<b>COMPLETE STATE DATA:</b>										
<b>Exclusive court jurisdiction:</b>										
Alabama:										
District Court	L	95,928	91,550	76,694	2%	-5%	2%	-16%	4%	-20%
Alaska:										
District Court	L	7,948 <sup>1</sup>	10,143 <sup>1</sup>	10,735 <sup>1</sup>	3%	28% <sup>1</sup>	21%	6% <sup>1</sup>	25%	35% <sup>1</sup>
Colorado:										
County Court	L	10,294	13,683	16,460	7%	33%	7%	20%	14%	60%
Connecticut:										
Superior Court	G	NC	90,447	73,096	--	--	1%	-19%	--	--
District of Columbia:										
Superior Court	G	32,797	24,490	25,323	-6%	-25%	-1%	3%	-7%	-23%
Florida:										
County Court	L	NC	172,208	163,171	--	--	8%	-5%	--	--
Hawaii:										
District Court	L	1,313	3,355	5,388	6%	156%	6%	61%	12%	310%
Idaho:										
District Court	L	13,504	14,217	14,174	5%	5%	4%	0%	10%	5%
Illinois:										
Circuit Court	G	175,454	205,055	217,641	0%	17%	0%	6%	1%	24%
Iowa:										
District Court	G	72,054	75,258	71,666	-1%	4%	0%	-5%	0%	-1%
Kansas:										
District Court	G	10,670	14,707	14,229	2%	38%	2%	-3%	5%	33%
Kentucky:										
District Court	L	27,585	34,550	28,525	1%	25%	2%	-17%	3%	3%
Maine:										
District Court	L	14,350	21,063	22,718	2%	47%	2%	8%	4%	58%
Minnesota:										
County Court	L	NC	99,420	90,271	--	--	2%	-9%	--	--
Missouri:										
Circuit Court	G	11,745	16,110	19,106	1%	37%	1%	19%	3%	63%
New Jersey:										
Superior Court	G	40,535	42,012	51,137	1%	4%	1%	22%	2%	26%
North Carolina:										
District Court	L	171,612	226,604	194,321	4%	32%	4%	-14%	7%	13%
North Dakota:										
County Court	L	5,396	6,446	9,523	1%	19%	4%	32%	5%	58%
Oklahoma:										
District Court	G	77,790	NC	85,181	--	--	--	--	13%	9%
Pennsylvania:										
Philadelphia Municipal Court	L	26,043	29,328	26,253	0%	13%	0%	-10%	0%	1%
Rhode Island:										
District Court	L	6,802	8,383	12,087	0%	23%	1%	44%	1%	78%
South Dakota:										
Circuit Court	G	NC	17,999	19,259	--	--	4%	7%	--	--
Vermont:										
District Court	L	6,252	7,978	8,952	4%	28%	3%	12%	6%	43%
Washington:										
District Court	L	21,456	26,706	NC	9%	24%	--	--	--	--
Wisconsin:										
Circuit Court	G	NC	173,220	168,563	--	--	1%	-3%	--	--
<b>Not exclusive court jurisdiction:</b>										
California (STATE TOTAL)		453,662	561,908	512,804	6%	24%	6%	-9%	12%	13%
Justice Court	L	32,128	35,477	30,225	6%	10%	6%	-15%	12%	-6%
Municipal Court	L	421,534	526,431	482,579	6%	25%	6%	-8%	12%	14%

TABLE 33: Trend data for state courts that specifically reported small claims case filings for 1978, 1981, and 1984. (continued)

State and court title	Jurisdiction	Filings			Percent change 1978-1981		Percent change 1981-1984		Percent change 1978-1984	
		1978	1981	1984	Popu- lation	Filings	Popu- lation	Filings	Popu- lation	Filings
Indiana: (STATE TOTAL)	NC	172,013 <sup>1</sup>	156,705 <sup>1</sup>		--	--	1%	-9% <sup>1</sup>	--	--
Superior Court and Circuit Court ...G		29,682 <sup>1</sup>	44,593 <sup>1</sup>	35,042 <sup>1</sup>	0%	50% <sup>1</sup>	1%	-21% <sup>1</sup>	1%	18% <sup>1</sup>
Small Claims Court of Marion County ....L	NC	19,899	54,380		--	--	1%	9%	--	--
County Court .....L		66,011 <sup>1</sup>	77,521 <sup>1</sup>	67,283 <sup>1</sup>	0%	17% <sup>1</sup>	1%	-13% <sup>1</sup>	1%	2% <sup>1</sup>
New Hampshire (STATE TOTAL)		22,816	28,246	29,513	5%	24%	4%	4%	9%	29%
District Court .....L		22,114	27,408	28,993	5%	24%	4%	6%	9%	31%
Municipal Court .....L		702	838	520	5%	19%	4%	-38%	9%	-26%
Ohio (STATE TOTAL)		90,615	94,324	93,817	0%	4%	0%	-1%	0%	4%
Municipal Court .....L		77,671	80,254	82,155	0%	3%	0%	2%	0%	6%
County Court .....L		12,944	14,070	11,662	0%	9%	0%	-1%	0%	-10%
INCOMPLETE STATE DATA:										
Nebraska:										
County Court .....L		10,033	12,561	11,613	1%	25%	2%	-8%	3%	16%
New York:										
Civil Court of NYC ...L	NC	59,728	52,065		--	--	1%	-15%	--	--
District Court and City Court .....L		44,176	43,822	47,887	-1%	-1%	1%	9%	0%	8%
Oregon:										
District Court .....L		43,422	54,457	37,548	6%	25%	1%	-31%	7%	-14%
Utah:										
Circuit Court .....L	NC	27,888	31,467		--	--	9%	13%	--	--
Totals for 29 courts in 25 states reporting comparable data for all three years: 1,490,699 1,762,364 1,659,439 2% 18% 2% -6% 4% 11%										

G = General jurisdiction court  
 L = Limited jurisdiction court  
 NC = Data are not comparable with other years  
 -- = Data element is not applicable

Indiana--Superior Court and Circuit Court, County Court--Data do not include cases classified as "other."

<sup>1</sup>Data are incomplete:  
 Alaska--District Court--Data do not include cases from low volume courts.

TABLE 34: Trend data for state courts that specifically reported tort case filings for 1978, 1981, and 1984.

Courts included in this table:

For inclusion in this table, a court must have reported an identifiable tort caseload, separate from all other civil cases, in at least two of the three targeted years. Five states reported tort filings for all the courts which had jurisdiction over torts in those states. A total of 21 statewide courts, in 17 states, reported data. Of the 21 courts, 17 were general jurisdiction courts.

Comparison of aggregated filings over time:

The following data are from the 17 courts in 13 states that reported comparable data for all three reporting years. These figures can be found on the bottom line of Table 34.

The increase in tort case filings between 1978-81 was only 2%, while the population for those states grew 4% during the same time period. Between 1981-84 the population grew another 4% while tort filings increased by 7%. For the entire period 1978-84 total tort filings increased 9%, however, the population also increased by 8%. This is the one case type, of those studied in this section, where the aggregate number of cases increased over both time periods evaluated. This does not qualify as a "litigation explosion", however, since the population increased at approximately the same rate as did the tort filings.

Comparison of courts whose filings increased or decreased during each of the time periods.

The following chart displays the number of courts whose tort filings have increased or decreased during the two time periods:

	1978-81	1981-84
Filings increased significantly more than the population:	8	5
No significant difference between the changes in population and filings:	5	5
Filings increased at a rate slower than the population:	1	1
Filings decreased during this period:	5	8
Comparable data were not available for the period:	2	2

Although the aggregate filings increased somewhat over the years studied in Table 34, the above chart indicates that tort filings increased significantly in less than half of the courts reporting data in this table. During the period 1981-84, only one-third of the courts reporting data had a significant increase in tort filings--more courts experienced decreases than significant increases in tort filings during 1981-84. The chart above displays how all of the courts which reported data during either of the two periods fit into specific categories. The following chart links the filing patterns of

specific courts across the two time periods, to test more explicitly, the various patterns identified earlier.

Comparison of patterns among the courts.

The following chart expands on the previous chart by listing and categorizing courts by the patterns they followed. These patterns are explained in the introduction to this section (i.e., Part II). These are the patterns for those 17 courts that reported comparable data for all three years. The (G) and (L) after each court indicates whether it is a general or limited jurisdiction court.

- "Down-up" Pattern (no caveats): Alaska Superior Court (G)  
California Superior Court (G)  
Florida Circuit Court (G)
- "Up-up" Pattern: (change in '81-'84 filings was less than '78-'81 increase in filings): Hawaii Circuit Court (G)  
Washington Superior Court (G)
- "Up-up" Pattern (change in '81-'84 population exceeds or approximates change in '81-'84 filings): Alaska District Court (L)
- "Down-up" Pattern (Change in '81-'84 population exceeds or approximates change in '81-'84 filings): North Dakota District Court (G)
- "No significant change - no significant change": Ohio Court of Common Pleas (G)  
Maine Superior Court (G)
- "Up-down" Pattern: Colorado District Court (G)  
Hawaii District Court (L)  
Kansas District Court (G)  
New York Supreme Court and County Court (G)  
Ohio County Court (L)  
Ohio Municipal Court (L)  
Tennessee Circuit Court and Chancery Court (G)
- "No significant change-down": Idaho District Court (G)

Of the courts reporting comparable data for all three years, none experienced significant increases during both 1978-81 and 1981-84. Three additional courts reported decreases during the first period but significant increases in the 1981-84 period. These three courts, however, are in states that also experienced some of the

TABLE 34: Trend data for state courts that specifically reported tort case filings for 1978, 1981, and 1984. (continued)

largest increases in population (i.e., Alaska, California, and Hawaii).

The largest numerical increase in tort filings between 1981-84 is in the California Superior Court (i.e., an increase of over 16,000 cases). This increase, almost single handedly, accounts for the entire increase in the aggregate figures between 1981-84. Between the years 1978-84 however, the increase in the rate of filings was 12%, but was matched by a 12% increase in the population.

In addition to the fact that most states which have large increases in filings also have the largest increases in population, and therefore do not qualify as being especially litigious, another eight courts reported decreases in filings, and two other state courts reported no significant change in their filings over both periods studied. Although tort filings do not fit the "up-down" pattern as strongly as do other case types, neither do they provide any evidence of an increased propensity of the American public to sue.

TABLE 34: Trend data for state courts that specifically reported tort case filings for 1978, 1981, and 1984.

State and court title	Jurisdiction	Filings			Percent change 1978-1981		Percent change 1981-1984		Percent change 1978-1984	
		1978	1981	1984	Population	Filings	Population	Filings	Population	Filings
<b>COMPLETE STATE DATA:</b>										
<b>Exclusive court jurisdiction:</b>										
Kansas--District Court ..G		3,249	4,517	4,033	2%	39%	2%	-11%	5%	24%
Idaho--District Court ...G		1,728 <sup>f</sup>	1,744 <sup>f</sup>	1,729 <sup>f</sup>	5%	1% <sup>f</sup>	4%	-1% <sup>f</sup>	10%	0% <sup>f</sup>
<b>Not exclusive court jurisdiction:</b>										
Alaska (STATE TOTAL)		1,356 <sup>f</sup>	1,428 <sup>f</sup>	1,885 <sup>f</sup>	3%	6% <sup>f</sup>	21%	31% <sup>f</sup>	25%	39% <sup>f</sup>
Superior Court .....G		921	886	1,305	3%	-4%	21%	47%	25%	42%
District Court .....L		435 <sup>f</sup>	552 <sup>f</sup>	580 <sup>f</sup>	3%	27% <sup>f</sup>	21%	5% <sup>f</sup>	25%	33% <sup>f</sup>
Hawaii (STATE TOTAL)		2,032 <sup>f</sup>	2,505 <sup>f</sup>	2,304 <sup>f</sup>	6%	23% <sup>f</sup>	6%	-6% <sup>f</sup>	12%	13% <sup>f</sup>
Circuit Court .....G		1,155 <sup>f</sup>	1,468 <sup>f</sup>	1,611 <sup>f</sup>	6%	27% <sup>f</sup>	5%	10% <sup>f</sup>	12%	39% <sup>f</sup>
District Court .....L		877	1,037	693	6%	18%	6%	-33%	12%	-21%
Ohio (STATE TOTAL)		39,645	41,603	36,171	0%	5%	0%	-13%	0%	-9%
Court of Common Pleas G		21,587	21,906	22,149	0%	1%	0%	1%	0%	3%
County Court .....L		127	705	519	0%	455%	0%	-26%	0%	309%
Municipal Court .....L		17,931	18,992	13,503	0%	6%	0%	-29%	0%	-25%
<b>INCOMPLETE STATE DATA:</b>										
California:										
Superior Court .....G		86,729	80,970	97,068	6%	-7%	5%	20%	12%	12%
Colorado:										
District Court and Denver Superior Court .....G		3,481	5,089	4,199	7%	46%	7%	-17%	14%	21%
Florida:										
Circuit Court .....G		21,761 <sup>f</sup>	21,063 <sup>f</sup>	26,815 <sup>f</sup>	12%	-3% <sup>f</sup>	8%	27% <sup>f</sup>	20%	23% <sup>f</sup>
Maine:										
Superior Court .....G		1,803	1,914	2,083	2%	6%	2%	9%	4%	16%
Maryland:										
Circuit Court .....G		7,902 <sup>f</sup>	8,135 <sup>f</sup>	NC	1%	3% <sup>f</sup>	--	--	--	--
Montana:										
District Court .....G		NC	1,465	1,519	--	--	4%	4%	--	--
New York:										
Supreme Court and County Court .....G		35,684	39,234	37,847	-1%	10%	1%	-4%	0%	6%
North Dakota:										
District Court .....G		732	516	550	1%	-30%	4%	7%	5%	-25%
Tennessee:										
Circuit Court, Chancery Court (Law and Equity Court in 1978 and 1981) .....G		10,457	12,046	11,775	3%	15%	2%	-2%	6%	7%
Texas:										
District Court .....G		NC	28,698	34,224	--	--	8%	19%	--	--
Utah:										
District Court .....G		872	775	NC	11%	-11%	--	--	--	--
Washington:										
Superior Court .....G		6,882	7,919	8,997	9%	15%	3%	14%	12%	31%
Totals for 17 courts in 13 states reporting comparable data for all three years		215,539	220,558	235,456	4%	2%	4%	7%	8%	9%

G = General jurisdiction court  
 L = Limited jurisdiction court  
 NC = Data are not comparable with other years  
 -- = Data elements are inapplicable

<sup>f</sup>Data are incomplete:  
 Alaska--District Court--Data do not include low volume courts.

Florida--Circuit Court--Data do not include professional tort cases.  
 Hawaii--Circuit Court--Some tort cases are included in transfers.  
 Idaho--District Court--Some torts are included in the unclassified category.  
 Maryland--Circuit Court--Data do not include "unreported cases."

TABLE 35: Trend data for state courts that specifically reported contract case filings for 1978, 1981, and 1984.

Courts included in this table:

For inclusion in this table, a court must have reported an identifiable contract caseload, separate from all other civil cases, in at least two of the three targeted years. Two of the states reported contract filings for all the courts which had jurisdiction over contract cases in those states. A total of 15 statewide courts, in 13 states, reported data. Of the 15 courts, 11 were general jurisdiction courts.

Comparison of aggregated filings over time:

The following data are from the 11 courts in 10 states that reported comparable data for all three reporting years. These figures can be found on the bottom line of Table 35.

The increase in contract case filings between 1978-81 was 14%, while the population for those states grew 5% during the same period. Between 1981-84, the population grew another 4%, however, new contract filings decreased by 15%--a clear reversal in the earlier trend of caseload expansion. For the entire period 1978-84, total contract filings decreased 4% while the population increased 9%. These aggregate data support the "up-down" pattern for contract filings.

Comparison of courts whose filings increased or decreased during each of the time periods.

The following chart displays the number of courts whose contract filings have increased or decreased during the two time periods:

	1978-81	1981-84
Filings increased significantly more than the population:	7	2
No significant difference between change in population and filings:	1	1
Filings increased at a rate slower than the population:	1	2
Filings decreased during this period:	2	10
Comparable data were not available for the period:	4	0

Once again, the "up-down" pattern materializes. Most of the courts studied during the 1978-81 period experienced significant

increases in filings, while this trend reversed itself during the period 1981-84 when most courts experienced decreases in their filings of contract cases. The Florida Circuit Court and the Texas District Court were the two courts that experienced significant increases in their caseload filings, yet they also recorded the largest increases in population for those courts that reported data during 1981-84. The chart above displays how all of the courts which reported data during either of the two periods fit into specific categories. The following chart links the filing patterns of specific courts across the two time periods to test, more specifically, the various patterns identified earlier.

Comparison of patterns among the courts.

The following chart expands on the previous one by listing and categorizing courts by the patterns they followed. These patterns are explained in the introduction to this section (i.e., Part II). These are the patterns for those 11 courts that reported comparable data for all three years. The (G) or (L) after each court indicates whether it is a general or limited jurisdiction court:

- "Up-up" Pattern (no caveats): Florida Circuit Court (G)
- "Up-up" Pattern (change in '81-'84 population exceeds or approximates change in '81-'84 filings): Hawaii Circuit Court (G)  
Hawaii District Court (L)
- "Up-down" Pattern:  
Colorado District Court (G)  
Maine Superior Court (G)  
North Dakota District Court (G)  
Ohio County Court (L)  
Ohio Municipal Court (L)  
Tennessee Circuit Court and Chancery Court (G)
- "Down-down" Pattern:  
Arkansas Court of Common Pleas (L)  
Washington Superior Court (G)

The Florida Circuit Court is the only court that can lay claim to a large increase in contract filings. Courts in 3 other states followed the down trend after 1981.

TABLE 35: Trend data for state courts that specifically reported contract case filings for 1978, 1981, and 1984.

State and court title	Jurisdiction	Filings			Percent change 1978-1981		Percent change 1981-1984		Percent change 1978-1984		
		1978	1981	1984	Popu- lation	Filings	Popu- lation	Filings	Popu- lation	Filings	
<b>COMPLETE STATE DATA:</b>											
Exclusive court jurisdiction:											
Kansas:											
District Court	.....G	NC	39,175	41,982	--	--	2%	7%	--	--	
Not exclusive court jurisdiction:											
Hawaii (STATE TOTAL)											
Circuit Court	.....G		9,175 <sup>i</sup>	13,460 <sup>i</sup>	14,055 <sup>i</sup>	6%	47% <sup>i</sup>	6%	4% <sup>i</sup>	12%	53% <sup>i</sup>
District Court	.....L		1,434 <sup>i</sup>	2,047 <sup>i</sup>	2,131 <sup>i</sup>	6%	43% <sup>i</sup>	6%	4% <sup>i</sup>	12%	49% <sup>i</sup>
			7,741	11,413	11,924	6%	47%	6%	4%	12%	54%
<b>INCOMPLETE STATE DATA:</b>											
Arkansas:											
Court of Common Pleas	L		377 <sup>i</sup>	300	102	2%	-20% <sup>i</sup>	2%	-66%	5%	-73% <sup>i</sup>
Colorado:											
District Court	.....G		14,147	22,395	15,270	7%	58%	7%	-32%	14%	8%
Florida:											
Circuit Court	.....G		27,005	29,677	38,650	12%	10%	8%	30%	20%	43%
Maine:											
Superior Court	.....G		1,318	1,456	1,103	2%	10%	2%	-24%	4%	16%
Maryland:											
Circuit Court	.....G	NC	6,576 <sup>i</sup>	5,496 <sup>i</sup>		--	--	2%	-16% <sup>i</sup>	--	--
Montana:											
District Court	.....G	NC	5,860	4,420		--	--	4%	-25%	--	--
North Dakota:											
District Court	.....G		3,095	4,412	4,062	1%	43%	4%	-8%	5%	31%
Ohio:											
Municipal Court	.....L		171,166 <sup>i</sup>	187,657 <sup>i</sup>	149,332 <sup>i</sup>	0%	10% <sup>i</sup>	0%	-20% <sup>i</sup>	0%	-13% <sup>i</sup>
County Court	.....L		3,648 <sup>i</sup>	7,749 <sup>i</sup>	5,740 <sup>i</sup>	0%	112% <sup>i</sup>	0%	-26% <sup>i</sup>	0%	57% <sup>i</sup>
Tennessee:											
Circuit Court, and Chancery Court	.....G		7,327	8,830	7,582	3%	21%	2%	-14%	6%	3%
Texas:											
District Court	.....G	NC	38,902	51,152		--	--	8%	31%	--	--
Washington:											
Superior Court	.....G		21,679	18,748	13,691	9%	-14%	3%	-26%	12%	-36%
<b>Totals for 11 courts in 10 states reporting comparable data for all three years</b>											
			258,937	294,684	249,787	5%	14%	4%	-15%	9%	-4%

G = General jurisdiction court  
 L = Limited jurisdiction court  
 NC = Data are not comparable with other years.  
 -- = Data elements are inapplicable.

<sup>i</sup>Data are incomplete:  
 Arkansas--Court of Common Pleas--One county reported no data in 1978.

Hawaii--Circuit Court--Some cases are included in transfers.  
 Maryland--Circuit Court--Data do not include some "unreported cases."  
 Ohio--Municipal Court and County Court--Some contract cases are included in miscellaneous civil cases.

TABLE 36: Trend data for state courts that specifically reported triable felony case filings for 1978, 1981, and 1984.

Courts included in this table:

For inclusion in this table, a court must have reported an identifiable triable felony caseload, separate from all other criminal cases, in at least two of the three targeted years. A total of 28 statewide courts in 28 states reported data. All of these courts are general jurisdiction courts.

Comparison of aggregated filings over time:

The following data are from the 24 courts in 24 states that reported comparable data for all three reporting years. These figures can be found on the bottom line of Table 36.

The increase in triable felony cases between 1978-81 was 28%, while the population for the states reporting these data increased by 3%. Between 1981-84, the population continued to grow another 3%, and new triable felony filings increased by 7%. The pattern for these aggregate filings evidence a considerable slowing of the filing pattern during 1981-84. In fact, during the 1981-84 period, triable felony case filings did not increase at a rate significantly greater than the rate at which the population increased.

Comparison of courts whose filings increased or decreased during each of the time periods.

The following chart displays the number of courts whose triable felony filings have increased or decreased during the two time periods:

	1978-81	1981-84
Filings increased significantly more than the population:	22	8
No significant difference between the changes in population and filings:	0	6
Filings did not increase measurably during this period:	0	1
Filings increased at a rate slower than the population:	0	2
Filings decreased during this period:	2	11
Comparable data were not available for the period:	4	0

Approximately three-fourths of those courts reporting triable felony filings between 1978-81 experienced significant increases in their caseloads. This tendency for increased filings, however, was greatly diminished during 1981-84 when almost twice as many courts reported decreases in their felony filings as courts who reported filing increases significantly greater than population increases. This observation is more clearly illustrated in the following chart.

The chart above displays how all of the courts which reported data during either of the

two periods fit into specific categories. The following chart links the filing patterns of specific courts across the two time periods to test, more specifically, the various patterns identified earlier.

Comparison of patterns among the courts.

The following chart expands on the previous one by listing and categorizing courts by the patterns they follow. These patterns are explained in the introduction to this section (i.e., Part II). These are the patterns for those 24 courts in 24 states that reported comparable data for all three years.

1. "Up-up" Pattern (no caveats): Alaska Superior Court  
District of Columbia Superior Court  
New Jersey Superior Court
2. "Down-up" Pattern (no caveats): Minnesota District Court
3. "Up-up" Pattern: (change in '81-'84 filings was less than '78-'81 increase in filings): Arkansas Circuit Court  
Hawaii Circuit Court  
Illinois Circuit Court  
New York Supreme Court and County Court
4. "Up-up" Pattern (change in '81-'84 population exceeds or approximates change in '81-'84 filings): Arizona Superior Court  
California Superior Court  
Colorado District Court  
Idaho District Court  
North Dakota District Court  
Virginia Circuit Court  
Washington Superior Court
5. "Up-down" Pattern: Georgia Superior Court  
Kansas District Court  
Maine Superior Court  
North Carolina Superior Court  
Ohio Court of Common Pleas  
Oregon Circuit Court  
Rhode Island Superior Court  
Wyoming District Court
6. "Down-down" Pattern: Wisconsin Circuit Court

Of the 24 statewide courts reporting data in Table 36, only four experienced increases in filings that continued to increase significantly more than the population. The number of triable felony filings decreased during the period 1981-84 in nine of the statewide courts reported

TABLE 36: Trend data for state courts that specifically reported triable felony case filings for 1978, 1981, and 1984. (continued)

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in this table. As is the case with torts, it appears as though the rate of increases in felony filings has decreased. Additionally, downward trends were experienced in a large number of statewide courts. This trend in felony cases,

may be a function of changes in a variety of variables ranging from: the actual crime rate, the rate of reported crime, the police clearance rate, state criminal law, and prosecuting rates.

TABLE 36: Trend data for state courts that specifically reported triable felony case filings for 1978, 1981, and 1984.

State and court title	Filings			Percent change 1978-1981		Percent change 1981-1984		Percent change 1978-1984	
	1978	1981	1984	Popu- lation	Filings	Popu- lation	Filings	Popu- lation	Filings
Alaska:									
Superior Court .....	778	1,194	1,846	3%	53%	21%	55%	25%	137%
Arizona:									
Superior Court .....	10,390 <sup>f</sup>	14,357 <sup>f</sup>	15,360 <sup>f</sup>	11%	38% <sup>f</sup>	9%	7% <sup>f</sup>	21%	48% <sup>f</sup>
Arkansas:									
Circuit Court .....	8,997 <sup>J</sup>	14,565 <sup>J</sup>	17,993 <sup>J</sup>	2%	62% <sup>J</sup>	2%	23% <sup>J</sup>	5%	100% <sup>J</sup>
California:									
Superior Court .....	55,369 <sup>J</sup>	64,993 <sup>J</sup>	74,412 <sup>J</sup>	6%	17% <sup>J</sup>	6%	14% <sup>J</sup>	12%	34% <sup>J</sup>
Colorado:									
District Court .....	10,604	13,868	14,783	7%	31%	7%	7%	14%	39%
District of Columbia:									
Superior Court .....	3,415	4,283	6,035	-6%	25%	-1%	41%	-7%	77%
Georgia:									
Superior Court .....	26,293	37,338	33,725	5%	42%	5%	-10%	10%	28%
Hawaii:									
Circuit Court .....	1,729 <sup>f</sup>	2,291 <sup>f</sup>	2,655 <sup>f</sup>	6%	33% <sup>f</sup>	6%	16% <sup>f</sup>	12%	54% <sup>f</sup>
Idaho:									
District Court .....	2,845	3,302	3,649	5%	16%	4%	11%	10%	28%
Illinois:									
Circuit Court .....	34,260 <sup>J</sup>	41,795 <sup>J</sup>	46,107 <sup>J</sup>	0%	22% <sup>J</sup>	0%	10% <sup>J</sup>	1%	35% <sup>J</sup>
Iowa:									
District Court .....	NC	8,166 <sup>J</sup>	7,658 <sup>J</sup>	--	--	0%	-6% <sup>J</sup>	--	--
Kansas:									
District Court .....	10,303	12,121	11,397	2%	18%	2%	-6%	1%	11%
Maine:									
Superior Court .....	2,790 <sup>J</sup>	3,281 <sup>J</sup>	3,189 <sup>J</sup>	2%	18% <sup>J</sup>	2%	-3% <sup>J</sup>	4%	14% <sup>J</sup>
Minnesota:									
District Court .....	10,678	10,155	12,162	2%	-5%	2%	20%	4%	14%
New Hampshire:									
Superior Court .....	NC	3,652	3,813	--	--	4%	4%	--	--
New Jersey:									
Superior Court .....	24,311	29,101	37,135	1%	20%	1%	28%	2%	53%
New York:									
Supreme Court-County Court .....	21,506 <sup>J</sup>	41,587 <sup>J</sup>	49,191 <sup>J</sup>	-1%	32% <sup>J</sup>	1%	18% <sup>J</sup>	0%	56% <sup>J</sup>
North Carolina:									
Superior Court .....	30,576	42,792	42,160	4%	40%	4%	-1%	7%	36%
North Dakota:									
District Court .....	916	1,233	1,284	1%	35%	4%	4%	5%	40%
Ohio:									
Court of Common Pleas ....	31,575	41,076	37,073	0%	30%	0%	-10%	0%	17%
Oregon:									
Circuit Court .....	16,097	20,198	19,913	6%	25%	1%	-1%	7%	24%
Rhode Island:									
Superior Court .....	2,396	4,576	4,232	0%	91%	1%	-8%	1%	77%
South Dakota:									
Circuit Court .....	NC	2,654	2,606	--	--	3%	-2%	--	--
Texas:									
District Court .....	NC	32,872	87,249	--	--	8%	5%	--	--
Virginia:									
Circuit Court .....	29,354	40,444	42,642	3%	38%	4%	5%	7%	45%
Washington:									
Superior Court .....	11,168	15,442	15,432	9%	38%	3%	0%	12%	38%
Wisconsin:									
Circuit Court .....	15,855 <sup>J</sup>	14,601 <sup>J</sup>	13,607 <sup>J</sup>	2%	-8% <sup>J</sup>	1%	-7% <sup>J</sup>	3%	-14% <sup>J</sup>
Wyoming:									
District Court .....	1,404	1,772	1,462	14%	26%	4%	-17%	19%	4%

TABLE 36: Trend data for state courts that specifically reported triable felony case filings for 1978, 1981, and 1984. (continued)

State and court title	Filings			Percent change 1978-1981		Percent change 1981-1984		Percent change 1978-1984	
	1978	1981	1984	Popu- lation	Filings	Popu- lation	Filings	Popu- lation	Filings
Totals for 24 courts in 24 states reporting comparable data for all three years	373,609	476,361	507,444	3%	28%	3%	7%	6%	36%

Note: All of the courts listed above are general jurisdiction courts.

NC = Data are not comparable with other years.

-- = Data element is not applicable.

†Data are incomplete:

Arizona--Some felonies are included in an unclassified category.

Hawaii--Felony figures do not include reopened prior cases included in the unclassified civil category.

‡Explanation of data included in the category:

Arkansas--Felony figures include DWI/DUI cases.

California--Felony figures include DWI/DUI cases.

Illinois--Felony caseload data include preliminary hearings from courts "downstate."

Iowa--Felony cases include third offense DWI/DUI cases in 1981 and 1984.

Maine--Felony figures include classes A, B, and C.

New York--Felony figures include DWI/DUI cases.

Wisconsin--Felony figures include limited felony cases.

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ALASKA BAR  
ASSOCIATION

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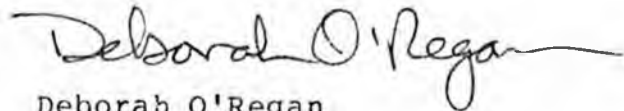
April 15, 1986

Representative M. Mike Miller  
Alaska State Legislature  
Pouch V (MS 3100)  
Juneau, AK 99811

Dear Representative Miller:

The Board of Governors of the Alaska Bar Association would like you to have a copy of the transcript of the "Hearings on Liability Insurance and Personal Injury Law," held on March 22, 1986, which was sponsored by the Board.

Sincerely,



Deborah O'Regan  
Executive Director

vu

Enclosure

HEARINGS ON LIABILITY INSURANCE  
AND PERSONAL INJURY LAW

MARCH 22, 1986

Sponsored by the Board of Governors  
of the Alaska Bar Association

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1       SPEAKER:       HARRY BRANSON  
2       I'd like to welcome you all to what I hope will be an enlightening  
3       program on the subject of casualty insurance, the casualty  
4       insurance market today, and the casualty insurance rates.  
5       There's apparently, if you read the newspapers, or magazines,  
6       watch television, there's been a lot of publicity in the last  
7       year or so about the cost of insurance and about a subject  
8       called tort reform and we're here to talk about those things.  
9       Just this morning I picked up a copy of the latest Time  
10      Magazine, it has on it the headline "Sorry America Your  
11      Insurance Has Been Cancelled." That's a very dramatic headline  
12      in a major newsmagazine in this country. The story that follows  
13      the headline is not as dramatic and perhaps a little more  
14      balanced. We hope that the program today will be even more  
15      balanced. We've invited some of the more knowledgeable people  
16      in the community to talk to us about the so-called crisis in the  
17      insurance industry today and the crisis in the tort reform  
18      movement, and they'll be addressing I believe among other things  
19      the situation that brings us here today and that's the  
20      skyrocketing rates and property and casualty insurance coverage  
21      for business, professional people and government within the past  
22      few years. In addition to the skyrocketing rates we're going to  
23      be looking at the reduced or unavailable coverage, the most  
24      extreme statement about which I had just read to you "Sorry  
25      America your insurance has been cancelled." There are a couple  
26      of theories floating around about how all this happened. One is

1 that the insurance companies with double digit inflation and a  
2 very high interest return a couple of years ago, back when we  
3 were able to get something like a sixteen percent return on  
4 investments, went out and competed very vigorously for premiums  
5 sold a lot of policies at premium rates that were competitive  
6 and perhaps lower than they should have been. After the  
7 interest rates went down the reinsurance market, particularly  
8 the London insurance market, began looking at the situation and  
9 starting pulling back on reinsurance. As a result rates have  
10 been going up at what the people who have to buy insurance I  
11 think in this audience and elsewhere would say are alarming to  
12 cover what may be simply a market condition and a situation tha  
13 involves a judgment about where interest rates were going to go  
14 a couple of years ago. That's one explanation. Another one is  
15 that there has been a steady increase of litigation, that jurie  
16 have been awarding higher and higher verdicts, and defense cost  
17 and fees and plaintiff costs and fees have been going up. The  
18 awards have necessitated, made it necessary for insurance  
19 companies to raise their rates to cover not only the increased  
20 risk in the future, but also just to cover the cost of paying  
21 these policies. These are some of the theories. One group  
22 nationwide is not a single group and every state in the Union  
23 that I'm aware of there are tort reform movements, or tort  
24 reform committees. People who have to pay these insurance  
25 premiums have been getting together and they've organized and  
26 they are approaching legislatures asking them to change the

1 laws, asking them to change the basic tort law in the United  
2 States and some legislatures are doing that. Some are  
3 considering these laws, modifications in our laws. Some of them  
4 are radical, some of them are not, some of them are perhaps  
5 necessary. All of this is being done I believe, in the hope  
6 that it will reduce our insurance rates. We are facing a  
7 situation with municipalities, professionals, businesses, where  
8 you either may find yourself in a situation where you can't  
9 afford the insurance or where the insurance that is available to  
10 you, or that there isn't any at all or you can't afford. Of  
11 course the result of that is the public that isn't protected.  
12 If we can't have this kind of insurance, we can't have this kind  
13 of coverage. Then people are going to find themselves in  
14 situations where they go to court for redress for harms that  
15 they have suffered and there isn't going to be any money to pay  
16 them. The tort reform movement has come up with some proposed  
17 solutions for this problem that I assume they believe will lower  
18 insurance rates among other things. Some of these reforms  
19 include eliminating or reducing certain kinds of awards. There  
20 are caps or limits being suggested on pain and suffering awards  
21 in personal injury cases. There is talk of eliminating punitive  
22 damages or directing monies from punitive damages to the state  
23 rather than to the plaintiff in an injury case. There's a  
24 requirement that's being asked for in legislation that payments  
25 be made on a periodic basis rather than a lump sum basis.  
26 There's talk of lowering or limiting contingent fee agreements

1 between plaintiffs' attorneys and their clients and also talk of  
2 limiting or eliminating in whole or in part attorneys' awards  
3 for fees from the courts. In some cases there is talk of  
4 lowering statute of limitations, and also I'm aware of, at least  
5 in Alaska, that there's some interest in eliminating wrongful  
6 death actions in the case of children or people who don't have  
7 dependents. There are other answers that have been proposed,  
8 not by I think as organized not organized groups, as much as  
9 individuals that talk about increased state and federal  
10 regulation of the insurance industry, publishing information  
11 about rates so that people can understand not only rates but  
12 what it cost the insurance companies, actually cost them, to  
13 provide insurance to the public, asking for greater  
14 accountability from the insurance industry. As I said, in order  
15 to shed some light on this crisis, we've asked some of the best  
16 people we know to come forward and talk to us. These are  
17 knowledgeable and I believe reasonable people who are more  
18 interested I hope in shedding light than heat on this subject, I  
19 know there's a lot of heat, there's a lot of feeling about it. I  
20 think anytime you look at an insurance bill and find that your  
21 insurance rates have doubled and tripled you're going to be  
22 pretty upset about it. I notice in the audience there are  
23 buttons on some of the people that are sitting out there that  
24 say "Tort Reform Now" and I assume they feel passionately about  
25 this subject. We can always use more information and in that  
26 light the Board of Governors of the Alaska Bar Association has

1 put together this program. As president of the Association I  
2 have the task of moderating. The speakers are going to be first  
3 of all Dr. David McGuire, the president of the Alaska Medical  
4 Association, a prominent Anchorage surgeon. He will be followed  
5 by Eric T. Sanders of the law firm of Young and Sanders and I  
6 promised Eric that I would tell you that he is a prominent  
7 plaintiffs' attorney in Anchorage; Keith Brown of Hagans, Brown  
8 & Gibbs, a defense attorney; Sandra Kay Saville, of Kay,  
9 Saville, Coffey, Hopwood & Schmidt, who primarily I believe, in  
10 her experience has done plaintiffs' work, she had done some  
11 defense work; Richard L. Block, former insurance commissioner  
12 for the State of Alaska, admitted to the practice of law in  
13 Alaska and California, president of the Alaska National  
14 Insurance Company; and Robert M. Libbey of Libbey, Suddock and  
15 Hart, who is president of the Alaska Academy of Trial Lawyers.  
16 Each one of these people will have 15 minutes approximately to  
17 give you a presentation on the subject and after they have  
18 finished they will answer questions from the Board of Governors  
19 of the Alaska Bar Association. I would like at this time to  
20 introduce the members of the Board of Governors that are going  
21 to question the speakers. To my immediate left, far left, is  
22 Judith Bazeley, from Anchorage, Alaska, an attorney in Anchorage  
23 in private practice. Next to her is Larry Weeks from Juneau,  
24 Alaska. Larry is a former District Attorney in Anchorage, and  
25 he is now in private practice in Juneau. Mike Thompson of  
26 Ketchikan, Alaska, in private practice of law there. Gail Roy

1 Fraties, District Attorney, Anchorage, Alaska. Going again to  
2 the far right, we have two public members of the board that are  
3 present today. The first is Jan Ackerman on the far right. Jan  
4 is from Fairbanks, Alaska. Next to Jan is Andonia Harrison,  
5 public member from Anchorage. Next to her is Stanley Ditus,  
6 attorney in private practice in Anchorage, Alaska. Next to  
7 Stanley is seated Ralph Beistline. Ralph is going to be the  
8 next president of the Alaska Bar Association. He is  
9 president-elect, and Bob Wagstaff is seated immediately next to  
10 the camera. Bob is in private practice in Anchorage, Alaska.  
11 These are the members of the Board of Governors. I am their  
12 president, my name is Harry Branson. At this time I would like  
13 to turn the lectern over to Dr. David McGuire who will be our  
14 first speaker.

15 SPEAKER: DR. DAVID MCGUIRE

16 Good Morning. Thank you to the Board of Governors for the  
17 opportunity to speak to you about this issue. For those in the  
18 audience who will no doubt not agree with me, my name is David,  
19 not Daniel, this is the Bar, not the Lions Club. I'd like to  
20 tell you about some history that has happened in the state of  
21 Alaska, and make some observations about that history, and point  
22 out to you that I think it is not a unique history and that  
23 there are lessons that we can learn from that history and apply  
24 to other areas of our community. There's I think little doubt  
25 that there's a problem with insurance, and so, I think we don't

1 need to spend too much time convincing ourselves that indeed  
2 there is a problem and we need to do something about. The  
3 question then, as Mr. Branson has said, is this a problem  
4 related to the insurance companies, or is this the problem  
5 related to the tort system, or is it a problem related to the  
6 tort feasons, or all those negligent people out there that are  
7 doing bad things to everybody, or is it a combination of the  
8 above. Well, let me make some observations. In 1975, and let  
9 me hasten to say that even though I am a physician, I am also a  
10 citizen, and even though I talk about examples that have  
11 occurred in medicine, I don't mean to single medicine out. I  
12 don't think that the problems that the doctors or the hospitals  
13 have faced are any different than the problems that the rest of  
14 you are facing now. The difference is that it started ten years  
15 ago, and now the same thing that was happening to us ten years  
16 ago is now happening to lots of people across the board. It's  
17 no longer sufficient to say that the reason that there's a  
18 malpractice crisis is because the doctors are such crummy  
19 surgeons and do such terrible things, because that doesn't  
20 really explain why the day cares can't get insurance, and why  
21 the municipalities can't get insurance and so on. So, please  
22 take this in the context that I'm reporting to you a history  
23 that I think occurred earlier than than the present history, but  
24 I don't think the problems are any different, and I think that  
25 the observations are parallel and are useful. In 1975 we  
26 couldn't get insurance at any price, no one would sell it to

1 us. We were told that the problem was the insurance companies  
2 and they were ripping everybody off and that that's where we  
3 ought go to look to point the finger. We were also told that if  
4 we weren't such greedy, avaricious, arrogant people who did such  
5 terrible things we wouldn't get sued so much. And we said well,  
6 as a matter of fact, we don't know the answer to either one of  
7 those questions. We went down to Juneau and we asked for three  
8 basic things. We asked for a panel to review the malpractice  
9 cases so that we could learn more about who does and who doesn't  
10 do malpractice and what it really means. We asked for some  
11 mechanism of insurance because we didn't have any, and we asked  
12 for tort reform. We got the first two. We got a screening  
13 panel that now screens most if not all malpractice cases. We've  
14 learned a great deal from that screening panel. It's going to  
15 disappoint some of you to know that the numbers of doctors that  
16 are sued for malpractice are not necessarily the worst doctors.  
17 Some of the best doctors who are in the prime of their field,  
18 are who are well thought of, are being sued because they are  
19 doing dangerous problems. We then asked for an insurance  
20 mechanism, we got it, its called MICA, and it's important to  
21 hear the history of what has happened. Medical Insurance  
22 Corporation of Alaska was founded with a loan from the State and  
23 the concept was that the doctors would insure themselves, and  
24 the doctors would see to it that they reviewed themselves, and  
25 if they did that we would get away from the evil insurance  
26 company and the outrageous profits they were getting from us.

1 Well, it seemed to work for a while. Matter of fact it seemed  
2 to work pretty good. Rates indeed did stablize for awhile.  
3 MICA, I think, has done an excellent job. They did risk  
4 management, the Commissioner of insurance reviewed rates, sat on  
5 the Board with them, told them how much they should charge and  
6 why, and they did pretty much exactly what he said. They didn't  
7 do any speculative investments, they didn't do predatory  
8 pricing, they didn't do speculation and all these other things  
9 that the insurance companies are accused of doing. Their goal  
10 was to provide insurance to the doctors that would recompense  
11 the patient who was injured by negligenc activity. Well what  
12 happened? Everything went along find until this year, then  
13 problems began to arise. At first the problem was that MICA  
14 couldn't get reinsurance, and so everybody said, well, the  
15 problem is the reinsurance companies again are behind this whole  
16 deal and and they're running things up. Well, so in December  
17 MICA said well look, what we are going to do is go ahead and do  
18 this without reinsurance but then their actuary said in order to  
19 do that they had to double the rate this year, and they had to  
20 decrease the coverage to one fourth, which meant that the  
21 maximum level that could be obtained was \$500,000 and it meant  
22 that the rate was doubled. Now \$500,000 in these days and age  
23 if you're delivering babies is probably not enough insurance,  
24 but never mind that for a moment. In February they were able to  
25 obtain reinsurance. But the cost of that reinsurance now  
26 increased the premium to 140 to 170 percent. Now it seems to me

1 clear that the cost of the basic insurance with MICA was double  
2 and the premium was or the coverage was reduced to one fourth  
3 and the cost of the reinsurance with Lords of London was the 40  
4 to the 70 percent above it. Now what does that mean to the  
5 doctors and the people in the State of Alaska? Well it means  
6 that in Dillingham, here's a little number to work through,  
7 there are 75 babies delivered every year in Dillingham. That's  
8 because that's all the pregnant women there are. Doctors can't  
9 work any faster, okay? There's five doctors delivering. If you  
10 divide 5 into 75 you come out with 15. Now the way MICA  
11 structures the premium goes like this, if you are doing general  
12 practice work, cuts and bruises and broken bones, you pay X. If  
13 you're doing deliveries you pay X plus Y. Y very nearly equals  
14 X. If you divide the number of babies that are delivered by the  
15 price per baby that is delivered, it came out to \$500 before the  
16 premium entries for MICA. Now remember that this is the company  
17 that's nonprofit state regulated and all that kind of thing,  
18 okay? So now when you double the rate then it goes up to a  
19 \$1000 if you add the 40 and the 70 percent, you can do the  
20 math. Well, \$1200 or so is what they are charging for a  
21 delivery in Dillingham. So what the doctors in Homer now are  
22 doing, is they have no insurance, and the doctors in Cordova  
23 have no insurance, and these are not the avaricious Anchorage  
24 surgeons that are ripping everybody off, okay, these are the  
25 practitioners out there in Homer that are trying to deliver  
26 babies cause the ladies don't want to come to Anchorage or can't

1 get out. Well, so for those that say that the whole thing is  
2 the insurance mechanism, then there must be an explanation of  
3 what happened to MICA and why it went that way. If you pay 1  
4 million dollars to one baby who is born with a birth problem,  
5 you have to do 10,000 deliveries without another problem. 1,000  
6 - 10,000, alot. So we've said that we think there's a problem  
7 more than just the insurance companies and what is it? Well  
8 we've taken a look at the tort system and how it's come to be.  
9 There have been significant changes in the tort system and those  
10 have occurred in the last 20 years or 25. We've gone from a  
11 system of contributory negligence to now one of strict liability  
12 in the case of products, and there's even some reason to believe  
13 that strict liability will soon be applied to professionals.  
14 That means that anything that goes wrong has to be compensated  
15 regardless if you were negligent, regardless if you were at  
16 fault. There's a long delay in the system. It takes two to  
17 five years or longer to get through the system. It's  
18 expensive. Even if you win it's expensive. And if you win, if  
19 you are judged innocent by the court, you still have to pay the  
20 cost of your defense and there's no where to go get it from.  
21 With this insurance company we've begun to see where the dollars  
22 go a little bit, and from MICE, which is another organization  
23 very similar to MICA, we know that one-third of all the dollars  
24 that are spent in premiums go to defense, one-third goes to the  
25 plaintiff's bar and one-third goes to the patient or the victim  
26 that's been injured. Now at the very least ladies and

1 gentlemen, that's an insufficient system. Workman's comp is  
2 able to produce a much more efficient system that's at least 70  
3 to 80 percent effective. So if we can't do anything else we  
4 ought to be able to do something to increase the efficiency of  
5 the situation. Now someone has said well, we're going to  
6 restructure the tort system or we want to get rid of the tort  
7 system or we want to make everybody immune from lawsuit. That's  
8 not true at all. The court system has undergone change and we  
9 think that the change was not in the right direction and we'd  
10 like to bring it back to what it was. We'd like to bring it  
11 back so that if you are negligent yourself and contribute to  
12 your injury, that there's some observation of that negligence.  
13 We'd like to bring it back so that if you are at fault you ought  
14 to pay, but if you're not at fault you shouldn't pay just  
15 because you have the money. So, we've proposed a series of  
16 things that we think would do this. Now some people say it's  
17 radical, well I don't think it's radical. Some people say that  
18 we're trying to put this on the back of the victim. I don't  
19 think so, and I'd like to take to some time to explain it to you  
20 if I may. We went to California first because California was  
21 the only state that had a comprehensive package of tort reform  
22 proposals that were upheld and allowed to become law. Many  
23 other states passed many other legislation, but they did it  
24 piecemeal. Somebody testified that Iowa did tort reform and that  
25 it didn't work, but if you look at what Iowa did, it isn't tort  
26 reform, it's one or two piecemeal little things that were passed

1 and were not very effective. It's not a surprise. California  
2 laws all of you I'm sure know, was upheld by the California  
3 Supreme Court, split decision 4 to 3. It was then appealed to  
4 the U.S. Supreme Court and allowed to stand and I do understand  
5 the difference. The points in the California law, non-economic  
6 damages. Now when people say we want to cap awards, please be  
7 sure that you understand that what we're saying is we are not  
8 capping economic awards, we are capping pain and suffering  
9 awards and what's the rationale? You see we have a situation  
10 where in my view we have the fortunate, unfortunate few. If you  
11 have something terrible happen to you, you may or may not be  
12 compensated for it depending on who was around at the time it  
13 happened. If there was a driller or a trucker or somebody that  
14 has insurance and you have a terrible injury you're apt to get  
15 paid very well. If you happen to be walking down the street  
16 when the bank robber or the criminal or burglar came out and  
17 shot you, you are just as paralyzed but you are not going to get  
18 a million dollars for your pain and suffering. So there's an  
19 inequity there. Furthermore, I spend a lot of my days looking  
20 at pain and suffering and I don't know how to measure it, I  
21 don't know how to compensate for it and I'm persuaded that  
22 there's so much pain and suffering in this world that I don't  
23 think there's enough money to give everybody \$500,000 or  
24 whatever it is for it, so we've said look, what we have is a  
25 mechanism of reparation for injuries, in the end this is  
26 society's money that we're talking about, this is a consumer

1 issue. The dollars that go to pay these premiums don't come  
2 from the tortfeasor anymore if they ever did, they come from the  
3 person who uses the goods and services. The price of goods and  
4 services goes up everytime the liability goes up or else the  
5 person goes without insurance, that's what happens. So we're  
6 talking about society's resources and how to allocate them, and  
7 we don't think its wrong to say that look, for this entity that  
8 we can't measure, we're going to pay-up to this amount, but no  
9 more because we can't afford it. Now, the economic losses  
10 should be compensated for completely. But they should be proven  
11 and demonstrable and they should be compensated for in a fashion  
12 which they would otherwise have occurred. The way we do it  
13 now. If you're hurt age 35 you've got to go to 65, 30 years.  
14 30 years times \$30,000, \$900,000 and it's paid in a lump sum.  
15 The interest alone on that is three times greater than the  
16 actual economic loss per year. Furthermore, those awards are  
17 tax free. Now you don't even get a lump sum from the New York  
18 lottery. Why should we have lump sum awards here, it doesn't  
19 make sense, it's very expensive and we have good evidence that  
20 it doesn't always do what it was intended to do. Many, how  
21 many, well, we're doing further research. Many of these awards  
22 five years later the victim doesn't have any money. They still  
23 are just as paralyzed, they still have all the problems they had  
24 before, but they don't have any money. We proposed structured  
25 settlements with periodic payments. If you lose \$30,000 you  
26 should get \$30,000, you should get a \$2500 a month, you should

1 get it tax free. There should be an escalator to compensate for  
2 increasing costs of living, etc. And you can put together this  
3 that then assures the victim that they'll have the money. Its  
4 there when they need it, and you can do it at something like one  
5 half to one third to the cost of society or if you want to say,  
6 to the insurance company, but go back to my example of MICA.  
7 Now I don't think that that's unfair to the victim, it  
8 compensates them reasonably and if we do things like t' , we'll  
9 keep our insurance mechanism alive and if we don't we're going  
10 to have people out there that are bare, that don't have any  
11 insurance and then what do you do with your 10 million dollar  
12 judgment. You can pay for the wall or make confetti, there's no  
13 money to support it. We've talked about collateral sources. We  
14 want to talk about collateral sources because we view these  
15 resources as society's. If you buy health insurance it's not an  
16 investment that you're making, you are joining a pool and the  
17 benefit is that more people are going to be healthy that year  
18 than are sick, that's the only reason it works. Now when you  
19 are sick, yes, you get compensated, but when you are sick and  
20 injured and then you sue somebody and you get compensated here  
21 and you get compensated here, to me its double dipping. You are  
22 taking your sources from both sides of the fence. Okay, so the  
23 person spent money to obtain this and they should be  
24 compensated. You bet, here's what we ought to do. For all the  
25 dollars that they spent for the health insurance or whatever  
26 other coverage that they spent, let's give them back that part

1 of the award, and then let's bar subrogation by any of those  
2 insurance companies that pay the benefit. You can't take it  
3 away here and then let the insurance company come over here and  
4 sue the victim for it. Those are reasonable things and remember  
5 I'm talking about society's resources. I'm not talking about  
6 the tortfeasor, and I'm not talking about the insurance company  
7 because then the bottom line, that's where it is, and I think  
8 I've given you again the example of MICA. Joint and several  
9 liability is a problem, it's a problem for everybody,  
10 particularly the municipalities. It didn't use to be that way.  
11 It used to be that if you were contributorily negligent you were  
12 barred from recovery and I would agree that that's not right, if  
13 you're one percent at fault and you don't get anything that  
14 doesn't make any sense. It should be comparative and if you're  
15 at fault you ought to pay, but just because you exist and have a  
16 pocket and happen to be in the vicinity of something that occurs  
17 is not a reason that you should be forced to pay. When the  
18 municipalities are one percent at fault and they have to pay the  
19 entire judgment, ladies and gentlemen, who pays that judgment?  
20 It's the taxpayers, that's where the money comes from. Right now  
21 many of those municipalities don't have insurance companies  
22 anymore so you can't say that it's the insurance company that's  
23 ripping it off. When they pay a judgment it's going to go right  
24 back to the taxpayer. Now, I think it's reasonable that the  
25 fault ought to have a relationship to whether or not you pay.  
26 Punitive damages, punitive damages are intended to deter conduct

1 that society doesn't want. Three-fourths to two-thirds of all  
2 the medical malpractice suits right now contain a clause to  
3 punitive damages. Now no matter how much you don't like  
4 doctors, and I understand that, do you really believe that three  
5 out of four of the doctors went out there deliberately intending  
6 to harm their patients, and the attorneys tell me that we don't  
7 get any recovery from punitive damages and so I ask myself well  
8 how come they're always in there then. What good are they if  
9 you don't get any money and if they don't seem to do it, well,  
10 here's what happens. Punitive damages are not insurable and so  
11 the attorney comes to the person at fault or the defendant and  
12 said look, you know, if you lose under this punitive damage  
13 issue, you got a real problem because you're going to have to  
14 make up for it out of your pocket, the insurance company is not  
15 going to pay for it. So what you really ought to do, is you  
16 ought to think about talking to your insurance company about  
17 settling this quickly for the maximum policy limits. Now, I  
18 don't argue that there should be punishment, but I argue that  
19 it's the State that has the right to punish, not individuals who  
20 on their own decide that something needs to be punished. So  
21 we've said if really punitive damages do a good thing for the  
22 State, then let's help everybody be altruistic, and what we'll  
23 do is we'll give all the proceeds from that lottery activity  
24 back to the state and they can use it to help pay for all those  
25 other people out there that don't get compensated. One of the  
26 prominent PI attorneys in town said that he couldn't afford to

1 take a case unless there's at least \$100,000 on the table.  
2 Well, yet we have the situation in which the contingent fee is  
3 supposed to allow those people who are indigent to pursue their  
4 litigation, but it sounds like what he's saying is that unless  
5 you got a \$100,000 at stake folks, I don't want to deal with  
6 you. Well we've said that we ought to have arbitration. We've  
7 said that it would be a lot quicker, it would be more efficient,  
8 it would be better for the victim if sums in question of less  
9 than \$100,000 make it 25, make it 50, make it some number that's  
10 meaningful, were first arbitrated. That would avoid the expense  
11 of jury trials, all the filings, all the rest and you can get it  
12 done much more efficiently. Now, to be sure that there's a  
13 safety valve, there should be an opportunity to appeal from the  
14 arbitration. If someone is unfairly treated or believes  
15 themselves to be so, they ought to have a jury trial. But  
16 listen to this, when someone is accused in our society, they  
17 have to defend themselves, and it's a punishment even if you're  
18 innocent, cause you've got to pay for the defense. So there  
19 should be some thing that makes the appeal responsible. So if  
20 the arbitration award or if the jury award is not materially  
21 different than the arbitration award, how about if the person  
22 who appealed has to pay the expense both to society and the  
23 other individual. That's not unfair, that's not barring the  
24 right to trial, it's saying if you really believe you've got a  
25 bad deal, we've got a mechanism to deal with it, but you have to  
26 understand you must use it responsibly, you can't just paper the

1 walls with a word processor and \$50 bucks and sue everybody.  
2 Well, don't let me run away with myself here. Rule 82 in the  
3 contingent fee. Now I understand that I've not met a single  
4 attorney in my life who believes that the contingent fee should  
5 be anything but what it is. But let me pose some questions to  
6 you. If you don't like the sliding scale that we have now, if  
7 you look at Rule 82 the way its set up by the court, there's a  
8 sliding scale, it's in there, so you have sliding scales for  
9 some things already, how come we can't have them for some other  
10 things. If an attorney takes this thing to arbitration and if  
11 the award is made in three weeks, or two months, should we give  
12 him forty percent of the \$100,000? Does that seem reasonable?  
13 It settled cases where from the time of the event until the time  
14 of the payment by the insurance company, less than 90 days have  
15 elapsed. Is it reasonable that any human being is paid a  
16 million bucks for their services? Can we afford it? I don't  
17 think so, apparently not, apparently people are going bare. I  
18 know of at least one attorney in town who owns a bar and he has  
19 no coverage on the bar. So you know there's a prominent  
20 attorney in Miami, who's one of the top PI guys, and he can't  
21 get insurance anymore. Now we haven't said that we have all the  
22 answers, we said we think that there needs to be a look at the  
23 statute of limitations, why? Well, if you know what claims made  
24 is, then you understand the need for statute of limitations.  
25 Let me just take a minute more to tell you about claims made.  
26 We're used to buying occurrence insurance. That means that if

1 you buy it and something happens and you're sued 10 years down  
2 the road you're covered. Well the problem is that the statute  
3 of limitations allows action from the date of discovery or  
4 reasonable discovery, not from the date of occurrence, so that  
5 in the case of an infant that's 21 or 23 or whatever it turns  
6 out to be. The insurance companies don't have a mechanism of  
7 predicting how much to charge for that period of time, so what  
8 they've done is very ingenious. If it's good for them, it's  
9 terrible for the rest of us. What they've said is look, here's  
10 how it's going to work. You have to be insured when it happens  
11 and you have to be insured when you get sued. Now, let me just  
12 take you through that for a minute and then I'll quit. If you  
13 pay one thousand this year and you get coverage, next year you  
14 pay two thousand you say I'm concerned the cost is going up,  
15 next year you pay ten thousand, you say now I'm really concerne  
16 but there's not no other choice and you pay it. Let's look at  
17 what happens in the fourth year. They come to you and they say  
18 its going to be \$20,000 grand. These are not, I mean these are  
19 not unreal numbers, this is reality, its happening. So you say  
20 well I can't pay it. Okay, here's what happens, if you don't  
21 pay it and you get sued in year four for what you did in year  
22 one, two or three, you're not covered, and your \$13,000 that yo  
23 put over here in the insurance company is zip, gone, you get  
24 nothing from it. So then they say well you can make a tail.  
25 You can buy a tail at the average cost of one and half times  
26 what it was that you paid already. Then if you get sued in yea

1 four for what you did in one, two, three, you're in good shape,  
2 you're covered. The problem is you're not covered in year  
3 four. It goes on from there. You can't change companies. Once  
4 you decide to go with the company on claims made, you've got  
5 married and you didn't know about it, and it takes alot to get  
6 divorced. Now, furthermore, this is going to happen not just to  
7 professionals who allegedly can afford it, it's going to happen  
8 to everybody across the board because the insurance companies  
9 can't predict what the liability is down the road, so leave the  
10 statute of limitations the way it is to the legislatures. If  
11 that's what you want, everybody to be on is claims made  
12 insurance rate. That's what going to happen, but I don't think  
13 it's unreasonable to say, other states have done this. We have  
14 statute of limitations on other kinds of activity, including  
15 some criminal activity. I think we can change it so that it was  
16 reasonable, made insurance predictable and still didn't  
17 disenfranchise the individual who may have an action. Well, we  
18 obviously need a lot of help. This is a problem. This is not a  
19 problem that one special interest group is bringing to you. The  
20 citizens coalition is not just doctors, its not just dentists,  
21 and its not just hospitals, it's daycares and nurseries and  
22 truckers and air taxis and municipalities and right down the  
23 road, so our legal system needs some addressing, and we need  
24 some help addressing it, and thank you for the opportunity to  
25 talk to you.

1       SPEAKER:   ERIC T. SANDERS  
2       Mr. Branson and all the members of the Board of Governors, than  
3       you very much for giving us the opportunity to give some insigh  
4       on what we consider to be a problem in the insurance industry  
5       and touch on also some of the problems in the Alaska civil  
6       justice system.  Before I start, I'd like to just say I  
7       appreciate very much Dr. McGuire taking time out from his busy  
8       practice to give us his insights on the problems we're facing.  
9       I know he has devoted a lot of time and I appreciate that, and  
10      appreciate other people that are attending this today trying to  
11      get some insights on the problems and possible resolutions to  
12      those problems.  Dr. McGuire didn't talk about the lawyers as  
13      being citizens.  We're citizens too, and we pay insurance rates  
14      and I can only speak for myself that my insurance rates have  
15      gone up over a 1000 percent in two years, so I'm equally  
16      concerned about the insurance crisis and I have a personal stak  
17      in what's happening in the insurance industry.  And I'm curious  
18      as to why it is that my insurance rates have gone up that much  
19      in two years.  And that's basically why we're here and why the  
20      people in the audience are here is because I think they feel th  
21      same pinch that there's is a problem getting insurance, they're  
22      concerned about the increase in cost of insurance.  Alaska  
23      citizens are being told that the solution to this problem is to  
24      change the civil justice system.  I attended a legislative  
25      hearing about a month ago, which many prominent people testifie  
26      and many of the people that testified were so-called experts in

1 the insurance industry, people that have been running insurance  
2 programs in California and other parts of the country and the  
3 State legislators wanted hear their views on why we are where we  
4 are. One of the people that spoke was a gentlemen by the name  
5 of Robert Hunter, who was the former federal insurance  
6 administrator under the Ford and Carter administrations. Mr.  
7 Hunter had some very interesting observations to make. One, he  
8 said that despite any changes are made, if no changes are made  
9 or significant changes are made this crisis, this present  
10 insurance crisis will be over in 18 months. So that if there is  
11 absolutely no changes in the civil justice system, the  
12 increasing insurance rates, and the problems arising from that  
13 would be over. One of the legislators was so astounded by that  
14 comment that he asked the insurance reform people, the people  
15 that were speaking on behalf of the tort changes, if that was  
16 true and the answer was, yes, that is true, it's going to be  
17 over in 18 months, even if you do nothing. And that was a  
18 shocking answer and it didn't come from an attorney, it didn't  
19 come from somebody who's got a vested interest in changing, it  
20 came from somebody that was speaking on behalf of making these  
21 changes in the civil justice system. One of the insurance  
22 experts speaking on behalf of making changes in the tort system  
23 was also asked if we make every change that you're proposing  
24 here, will insurance rates go down, will they go down in the  
25 next six months, or the next year, because my constituents are  
26 having problems with insurance today, and I need to know if we

1 make these changes, is there going to be a dramatic decrease in  
2 insurance rates, or is there going to be a leveling off. Again  
3 keep in mind that this is somebody that is speaking on behalf o  
4 the insurance industry, and that representative said, it will b  
5 seven to ten years before we know whether there will be any  
6 effect at all on rates. We don't know, but we should do  
7 something. And I tell you that if it's going to take between  
8 seven and ten years to find out whether are these dramatic  
9 changes they're proposing are going to have an effect on our  
10 insurance rates, and I think we need to be very careful about  
11 making some dramatic changes in the civil justice system, and  
12 again, the legislators were quite surprised to find out that  
13 we're looking at 1995 or 1996 before we know if in fact these  
14 changes have an impact. The fact is, if all the proposals for  
15 changing the tort system were passed by the Alaska legislature  
16 today, insurance rates will not go down and then your future,  
17 and I think that's why the people in this audience are  
18 concerned, and that's why people throughout the State of Alaska  
19 are concerned, they want to know what is going to happen to  
20 their insurance rates now, and what's going to happen in the  
21 next six months or year, because they're being squeezed now and  
22 a solution that has an impact maybe in ten years is not what  
23 they're interested in. So I think it's important to distinguis  
24 if we're going to make changes in the civil justice system,  
25 let's make changes because the civil justice system needs to be  
26 changed, not because its going to have an immediate impact on

1 our insurance rates. I think there does need to be some changes  
2 in the civil justice system. Some people disagree with me.  
3 They say we like it just the way it is. Some people say it  
4 needs to be overhauled completely. I think there does need to  
5 be some changes. I question whether or not they have to be as  
6 drastic as Dr. McGuire would propose. I think there are some  
7 very good proposals in the legislation that is now before the  
8 legislature, and one of them Dr. McGuire touched on at some  
9 length, and that is mandatory arbitration. I think that it's  
10 fair to say based on statistics we've been given, that about 90  
11 to 95 percent of all claims that are brought within the Alaska  
12 justice system, the Alaska court system, are claims less than  
13 \$50,000, and I think it's fair to assume that a certain  
14 percentage of claims are never brought to the justice system,  
15 only if they cannot be resolved with the insurance company  
16 itself, does it end up in the court system. So, maybe it's 98  
17 percent of all injury claims involved damages less than  
18 \$50,000. If that's the case, we're talking about a significant,  
19 a vast majority of cases that can be handled more efficiently.  
20 The civil justice system does a very poor job in my mind of  
21 dealing with these small claims. A small case takes as much  
22 time to get through our system as a million dollar case. A  
23 million dollar case may be that one in a thousand, or one in ten  
24 thousand case and for that the court system may be more  
25 efficient, but for the smaller case it's absolutely absurd that  
26 we should have to wait three years to get to the point where a

1 jury can determine whether or not the claim is worth \$50,000 or  
2 \$12,000 or nothing, and so I agree wholeheartedly with Dr.  
3 McGuire that these cases should be funneled into an alternative  
4 resolution system. It's my opinion that the time would be cut  
5 dramatically. It's my opinion that the costs to the insurance  
6 companies would be reduced substantially. Right now any law  
7 suit for \$30,000, it takes three years to process. You can  
8 fairly well assume that if the insurance defense fees are not  
9 \$10,000 they may be more, because as Dr. McGuire said a third of  
10 the ultimate award is paid to defense costs. That's  
11 inefficient. That's not the way it should be. These claims  
12 should be resolved promptly and I think they can be promptly  
13 resolved efficiently through the arbitration system. So I just  
14 want to make it clear that although Dr. McGuire and I don't  
15 agree on everything, we wholeheartedly agree with each other on  
16 that point. There are some changes in the bill and I'm not  
17 going to address everything that Dr. McGuire said, but there are  
18 some things that he said that I do not disagree with him on, and  
19 I don't think they're a good idea. The bill that is now being  
20 considered both by the Senate and by the House, basically does  
21 away with punitive damages. It's kind of a cute trick to say  
22 well, let's just give all the damages to the State because let's  
23 face it, litigation is not fun, people don't engage in  
24 litigation for the sheer thrill of it, and nobody is going to  
25 pursue a punitive damages claim if they don't feel there's  
26 something in it for them, and none of you there, and certainly

1 myself would say, yeah, I'm going to engage in three or four  
2 years of intense litigation and waste my time and my energy and  
3 my money so that if I prevail, all of the fruits of my labors go  
4 to the State of Alaska. The fact is that if we propose that,  
5 and it's passed forget punitive damages, it's not going to be  
6 there. Punitive damages has very little if anything to do with  
7 the increase in insurance rates. Virtually all insurance  
8 companies exclude punitive damages in the policies they write,  
9 they say we will not award punitive damages. So that has  
10 nothing to do with insurance rates. They simply write it out of  
11 a risk that they cover. There is a real reason why insurance  
12 companies want to put an end to punitive damages, and that is  
13 that there is a body of law out there that says if insurance  
14 companies engage in bad faith handling of claims, then they may  
15 be liable for punitive damages. This is a book by an author  
16 named John McCarthy and its entitled "Punitive Damages in Bad  
17 Faith Cases." Its a book of hundreds of pages of cases in which  
18 insurance companies have engaged in bad faith practices, denying  
19 claims to people, refusing to defend people that have been sued,  
20 delaying payments, refusing to make payments they're obligated  
21 to pay. Now if you have a claim in which an insurance company,  
22 and again, this can be your own insurance company, it's not  
23 simply somebody that it's insuring somebody you're suing, your  
24 own insurance company refusing to defend you wrongfully, or  
25 refuses to make a reasonable settlement on your behalf, and  
26 forces you, the defendant to be dragged through the court system

1 for three or four years, and then maybe get hit with a judgment  
2 in excess of your insurance policy, solely because the insurance  
3 company said our practice is for the time being, we need more  
4 money, we're not going to pay any claims, we're going to fight  
5 these things to the end and if you're the insured and you end up  
6 getting stuck because of that policy, what's your recourse? You  
7 have the right to go against your insurance company. I think  
8 that's extremely reasonable, if the insurance company has  
9 engaged in bad faith. We're not talking about insurance  
10 companies that handle claims reasonably. Bad faith practices by  
11 insurance companies. Now if an insurance company refuses to pay  
12 your reasonable claim for \$5,000, pay the plaintiff on your  
13 behalf \$5,000, and you get dragged through the court system for  
14 years on end, and you end up having to pay more than that \$5,000  
15 policy you may have, what's your recourse? Well you have the  
16 recourse to pay the money out of your own pocket to the  
17 claimant, and then you have the right to go after your insurance  
18 company because they put you in that position. Well if the  
19 damages are a few thousand dollars or \$10,000, obviously there's  
20 not much incentive there, if that's all the insurance company  
21 has to do is pay your actual damages and if they have to pay  
22 punitive damages, to kind of punish them to make them realize  
23 they can't get away with these kinds of bad practices, they're  
24 going to think twice about engaging in bad faith, and that's  
25 really the purpose of punitive damages. It's not, this bill is  
26 intended to get rid of punitive damages because insurance

1 companies don't like the idea of having to pay extra if they  
2 engage in bad faith. So, as far as I'm concerned, since  
3 punitive damages can be excluded on liability policies, the sole  
4 purpose of this legislation is to protect insurance companies  
5 engaging in bad faith from having to pay punitive damages  
6 themselves. Again, that book is full of cases, hundreds and  
7 hundreds of cases where insurance companies have engaged in bad  
8 faith. Obviously the vast majority of insurance companies, and  
9 the vast majority of claims are handled in good faith. They're  
10 properly handled, they're fairly handled, people are satisfied  
11 with the representation they've got by their insurance company,  
12 and so punitive damages are rarely awarded, but there are  
13 instances where it is appropriate, and that's why it's there.  
14 To me, its like the saying that locks keep honest people honest,  
15 and I think insurance companies by and large are honest and  
16 ethical, but punitive damages keep insurance companies honest,  
17 and the honest one's don't have to worry about punitive  
18 damages. The one's that aren't honest, do have to worry about  
19 punitive damages, and I would refer interested people to a book  
20 by Andrew Tobias called the "Invisible Bankers" and that's how  
21 he refers to insurance companies as invisible bankers, and he  
22 cites in there a number of instances in which insurance  
23 companies engage in these outrageous practices of bad faith and  
24 I think that if anybody took the time to read some of those  
25 examples they would wholeheartedly agree that the insurance  
26 company did deserve to be punished. So it's my opinion that

1 there is a justification for keeping punitive damages. It's not  
2 because they are paid on liability claims. In my experience  
3 there are maybe two or three punitive damages awards that have  
4 been given in Alaska, none of them involving doctors, there's  
5 not a doctor in this State that has ever paid one dime in  
6 punitive damages that I'm aware of. The other thing I'd like to  
7 touch on that he, that Dr. McGuire addressed is the idea of  
8 making these periodic payments rather than a lump sum. This is  
9 somewhat complicated, but basically what the insurance companies  
10 want to do is rather than paying a lump sum award they want to  
11 pay it out over a period of time. And this would result in a  
12 tremendous windfall for the insurance companies and it's made,  
13 it's the one part of the proposals pushed by the tort change  
14 people that is really the most outrageous in my opinion. Dr.  
15 McGuire referred to the million dollar lottery, is, is not a  
16 million dollars, well that's true. If you look at what those  
17 lotteries do, they say, you won a million dollars, but we will  
18 pay it to you, \$20,000 a year for the next 50 years. In the  
19 meantime, they invest the money that this person supposedly won,  
20 and by the time they pay that \$20,000 payment that year 50, the  
21 present value of that is about \$50, or \$1000, it's not much, so  
22 they're not paying a million dollars, they're paying a million  
23 dollars over 50 years, which today's value is about one tenth of  
24 that, and that's really what they're intending to do here. The  
25 insurance industries want to make periodic payments so they can  
26 ultimately pay less and an example of that is, is, think back