

# PRETRIAL LITIGATION

---

Law, Policy & Practice  
Fifth Edition

---

R. Lawrence Dessem

**WEST**<sup>®</sup>

**PRETRIAL  
LITIGATION  
LAW, POLICY AND PRACTICE  
Fifth Edition**

■ ■ ■

By  
**R. Lawrence Dessem**

*Dean and Professor of Law  
University of Mississippi*



**AMERICAN CASEBOOK SERIES®**

**WEST®**

A Thomson Reuters business

Thomson Reuters created this publication to provide you with accurate and authoritative information concerning the subject matter covered. However, this publication was not necessarily prepared by persons licensed to practice law in a particular jurisdiction. Thomson Reuters does not render legal or other professional advice, and this publication is not a substitute for the advice of an attorney. If you require legal or other expert advice, you should seek the services of a competent attorney or other professional.

*American Casebook Series* is a trademark registered in the U.S. Patent and Trademark Office.

COPYRIGHT © 1991, 1996 WEST PUBLISHING CO.

© West, a Thomson business, 2001, 2007

© 2011 Thomson Reuters

610 Opperman Drive  
St. Paul, MN 55123  
1-800-313-9378

Printed in the United States of America

**ISBN:** 978-0-314-23791-0

# **WEST'S LAW SCHOOL ADVISORY BOARD**

---

## **JESSE H. CHOPER**

Professor of Law and Dean Emeritus,  
University of California, Berkeley

## **JOSHUA DRESSLER**

Professor of Law, Michael E. Moritz College of Law,  
The Ohio State University

## **YALE KAMISAR**

Professor of Law, University of San Diego  
Professor of Law Emeritus, University of Michigan

## **MARY KAY KANE**

Professor of Law, Chancellor and Dean Emeritus,  
University of California,  
Hastings College of the Law

## **LARRY D. KRAMER**

Dean and Professor of Law, Stanford Law School

## **JONATHAN R. MACEY**

Professor of Law, Yale Law School

## **ARTHUR R. MILLER**

University Professor, New York University  
Formerly Bruce Bromley Professor of Law, Harvard University

## **GRANT S. NELSON**

Professor of Law, Pepperdine University  
Professor of Law Emeritus, University of California, Los Angeles

## **A. BENJAMIN SPENCER**

Professor of Law,  
Washington & Lee University School of Law

## **JAMES J. WHITE**

Professor of Law, University of Michigan



The first edition was dedicated

**To Beth**

The book's second edition was dedicated

**To My Parents**

The book's third edition was dedicated

**To Judge William K. Thomas**

The book's fourth edition was dedicated

**To My Children: Matthew, Lindsay and Emily**

This fifth edition is dedicated

**To the lawyers and judges who work to make  
Equal Justice Under Law a reality for us all.**

# PREFACE

---

Despite popular misconceptions perpetuated by television and the movies, practicing attorneys spend very little of their time in the courtroom. Nevertheless, to the extent that law schools have attempted to teach lawyering skills, they traditionally have focused on courtroom skills involved in trial and appellate advocacy. Because most legal textbooks contain reported judicial opinions, law students have further reason to believe, incorrectly, that most cases end in trial.

One of my reasons for writing this book originally was to correct such misperceptions. In the twenty years since the publication of the book's first edition, great attention has been paid to the civil pretrial process. Congress, the judiciary, the bar, and legal scholars have focused on the pretrial process and offered various suggestions for reforming that process. These developments, especially the 1993 and 2000 amendments to the Federal Rules of Civil Procedure, were incorporated in the second and third editions of the book, while the book's fourth edition considered the 2006 amendments to the Federal Rules concerning electronic discovery. This fifth edition incorporates the many significant developments over the last four years, including the further evolution of electronic discovery law and practice, the refashioning of pleading pursuant to the Supreme Court's decisions in *Bell Atlantic Corp. v. Twombly* and *Iqbal v. Ashcroft*, and the 2010 Rules amendments concerning expert witnesses and summary judgment.

Rather than focus on the trial of civil actions, this text systematically considers the civil pretrial process. The text explores pretrial activities such as interviewing clients and witnesses, drafting pleadings, drafting and responding to discovery requests, preparing and responding to motions, and negotiating settlements. Of necessity, the text considers both the formal and informal lawyering that occurs prior to trial. So that students can better understand the pretrial process and the interrelationships among the various aspects of that process, the book includes many exercises that place students in simulated settings similar to those that they will encounter as practicing lawyers.

A course in pretrial litigation provides excellent opportunities for employing teaching techniques other than the Socratic and lecture formats traditionally used in American legal education. This text can be used in small classes, either with or without the writing and simulation exercises contained in each chapter. However, because of its mix of cases, textual material, forms, and problems, the book effectively can be used in a larger class by a professor utilizing more traditional teaching methods. The first four editions of the book were used successfully in upper-level pretrial litigation courses, in more comprehensive civil procedure offerings, and in legal writing courses.

Multiple exercises have been included to give the professor maximum flexibility in using the book. In most chapters, one or more exercises can be discussed in class while another exercise can be assigned for independent student work. Included are exercises that students can perform with one another outside of class or that students, professors, or attorneys can perform during classroom sessions.

Many of the exercises in this book are based upon a single, complex civil case. The major advantages of drawing exercises from a single case are that (1) students can concentrate on the procedural aspects of the pretrial process, rather than upon the differing fact patterns and governing law that inevitably will be raised by different cases, and (2) if the class is taught in a problem or workshop fashion, students can better see how decisions made early in the pretrial process can affect, and limit, later choices in that same case.

The civil action chosen as the basis for many of this text's problems, *Prince v. The Pittston Company*, Civil Action 3052 (S.D.W.V. filed Sept. 3, 1972), was brought by and on behalf of several hundred individuals injured or killed by the 1972 collapse of a mining dam in Logan County, West Virginia. This litigation was chronicled by plaintiffs' attorney Gerald Stern in *The Buffalo Creek Disaster*, and it has been written about by others as well. The use of supplemental materials, particularly Stern's book, should enhance students' understanding of many of the factual exercises contained in the text. However, the text is self-contained and does not presuppose the reading of any outside materials.

Much of a lawyer's work in the pretrial process occurs outside the presence of the court and, sometimes, outside the presence of other lawyers. It therefore is particularly important that students receive a strong foundation in the ethics of pretrial litigation. Accordingly, each chapter of this text explicitly raises ethical concerns that arise during the pretrial process.

The procedural law underlying this text is that which is set forth in the Federal Rules of Civil Procedure. Local rules of court are cited throughout the text to illustrate some of the practice alternatives that can be decreed by courts or adopted by counsel. In citing to these local rules, I have not specifically designated them as the civil (as opposed to criminal or general) local rules of the federal district court in question. No text in pretrial litigation could do justice to its subject without a consideration of how law is practiced, as opposed to how the drafters of the Federal Rules envisioned that it would be practiced. For this reason, I also have integrated into the text illustrative pleadings, motions, and practice forms.

Much can be learned about pretrial litigation, and about legal practice generally, by examining case studies of lawyers and judges at work. This book includes excerpts from other books describing how law is actually practiced. These excerpts include nonfiction accounts of alleged document destruction in the *Berkey v. Kodak* litigation, Judge Jack Weinstein's efforts to settle the *Agent Orange* class actions, the pretrial investigation by a court-appointed lawyer that led to freedom for Clarence Earl Gideon, and an excerpt from

*Anatomy of a Murder* that raises important issues concerning the ethics of interviewing.

There are increasing numbers of quality CDs, videotapes and other supplemental aids that can enhance a course in pretrial litigation and give students a sense of what a deposition or a motion hearing actually looks like in practice. These supplemental materials easily can be integrated into a pretrial litigation course taught from this text. Supplemental materials that I have used in my own course, as well as other teaching suggestions, are contained in the Teacher's Manual written in connection with this book.

Because so many cases are resolved by the parties short of trial, a text in pretrial litigation is a natural place in which to discuss alternative dispute resolution. The text contains a final chapter devoted to this subject, and throughout the book students are asked to consider whether formal adjudicatory resolution of various disputes is in the best interests of the persons involved.

Case and statute citations, as well as footnotes, have been omitted from documents reprinted in the text without so indicating. The footnotes in the motion for a protective order reprinted in Chapter 10 have been designated by asterisks rather than by the numerals that were used in the original motion. While I have not added the first names of the authors of the many law review articles that I have cited, I have identified the authors of student work where possible.

A truly scientific method was used to determine the gender of the attorneys, clients and judges referred to in this book. I flipped a coin. As a result of that coin flip, the text generally refers to attorneys as females and judges and clients as males.

As I tell the students in my own classes, I welcome any thoughts, criticism, or suggestions concerning this text. I hope that it is as useful a teaching device for others as it has been for me.

R. LAWRENCE DESSEM

Columbia, Missouri  
March 1, 2011

## ACKNOWLEDGEMENTS

---

Writing a book makes you realize the debt that you owe to other people. Any author should thank the parents, friends, teachers and others who have nurtured and taught him over the years, and I do so now. I also must thank those who taught me about the practice of law: Judge William K. Thomas, my friends in the General Counsel's Office of the National Education Association, and, especially, my former colleagues and continuing friends in the Federal Programs Branch of the Civil Division of the United States Department of Justice.

I owe a special debt to my former colleagues at the University of Tennessee College of Law for all that they taught me about law teaching, legal education, and life. Dean Richard Wirtz was especially supportive of the first two editions of this book, as were Deans John Sebert and Marilyn Yarbrough in connection with the book's first edition. I also thank Professor Lawrence Grosberg, who has graciously shared with me and others Buffalo Creek litigation documents and his experiences using the Buffalo Creek factual scenario in classroom exercises.

My family is worthy of special mention. I could not have written any of the editions of this book without the help of my wife Beth, who is a gifted teacher, inspirational leader, and valued friend. She read the first edition of this book in draft untold times and always offered valuable commentary (including pithy comments such as "This is why some people hate lawyers!"). My three children have been very supportive, and I thank Matthew ("the advocate"), Lindsay ("the investigator"), and Emily ("the settlement judge"). They continue to teach me about the many things in life that are more important than pretrial litigation.

I have been blessed with outstanding research assistance in connection with all five editions of this book. Daniel Graves, Josh Scott, and Allyson Walker made invaluable contributions to this fifth edition, just as Jessica Gunder, Whitney Pile, Kathy Birkhofer, Cullen Sheppard, Rhonda Wilcox, Ann-Riley Caldwell and Patricia Nicely did a superb job on the book's first four editions. Their many hours of hard work on this project have improved both the style and substance of this text.

Among those who have been of special assistance in the preparation of the book's fifth edition are Judy Tayloe and Robin Nichols in my own office and Randy Diamond, Cindy Bassett, John Dethman, Needra Jackson, Steve Lambson, Cindy Shearrer and their colleagues within the Law Library of the University of Missouri School of Law. John Dethman was particularly resourceful in tracking down material for this edition on very short order. Debbie Manly, Patsy Tye, and the librarians and staff of the Mercer University School of Law and Patricia Hurd, LaVaun Browder, Jacqueline Bonvin, and



the librarians and staff of the University of Tennessee College of Law provided invaluable help with the earlier editions of the text. Both the students in my own pretrial litigation classes and those who have taught pretrial litigation at the University of Tennessee have been quite helpful with their suggestions, especially Judges Robert Murrian and Thomas Phillips.

Finally, I thank those who have permitted me to reprint excerpts from the following articles and books:

American Bar Association, “ ‘ . . . In the Spirit of Public Service:’ A Blueprint for the Rekindling of Lawyer Professionalism,” 112 F.R.D. 243 (2006), Copyright 2006 © by the American Bar Association. Reprinted with permission. This information or any portion thereof may not be copied or disseminated in any form or by any means or stored in an electronic database or retrieval system without the express written consent of the American Bar Association.

American Bar Association, *Model Rules of Professional Conduct*, 2010 Edition. Copyright © 2010 by the American Bar Association. Reprinted with permission. Copies of the ABA *Model Rules of Professional Conduct* are available from Service Center, American Bar Association, 321 North Clark Street, Chicago, IL 60654, 1-800-285-2221. This information or any portion thereof may not be copied or disseminated in any form or by any means or stored in an electronic database or retrieval system without the express written consent of the American Bar Association.

American Bar Association, *Formal Ethics Opinions 94-389 and 93-379*. Copyright © 1994 and 1993 by the American Bar Association. Reprinted with permission. Copies of the ABA Formal Ethics Opinions are available from the Service Center, American Bar Association, 321 North Clark Street, Chicago, IL 60654, 1-800-285-2221.

American Bar Association, *Civil Discovery Standards* (2004). Copyright 2004 © by the American Bar Association. Reprinted with permission. This information or any portion thereof may not be copied or disseminated in any form or by any means or stored in an electronic database or retrieval system without the express written consent of the American Bar Association.

American Bar Association, *Principles for Juries and Jury Trials*, Principle 13(H) (2005). Copyright 2005 © by the American Bar Association. Reprinted with permission. This information or any portion thereof may not be copied or disseminated in any form or by any means or stored in an electronic database or retrieval system without the express written consent of the American Bar Association.

American Law Institute, *Proceedings* (1984). Copyright © 1985 by The American Law Institute. Reprinted with the permission of The American Law Institute.

- Association of the Bar of the City of New York, *Lectures on Legal Topics* (1926). Copyright © 1926 by the Association of the Bar of the City of New York.
- Barber, “California Taxes Punitive Damage Awards,” *Litigation News*, September 2005, at 5. © 2005 by the American Bar Association. Reprinted with permission. All rights reserved. This information or any portion thereof may not be copied or disseminated in any form or by any means stored in an electronic database or retrieval system without the express written consent of the American Bar Association.
- Beckerman, “Confronting Civil Discovery’s Fatal Flaws,” 84 *Minn. L. Rev.* 505 (2000).
- Bell et al., “Automatic Disclosure in Discovery—The Rush to Reform,” originally published at 27 *Ga. L. Rev.* 1 (1992) and reprinted with permission.
- Belli, “Pre-Trial: Aid to the New Advocacy,” 43 *Cornell L. Q.* 34 (1957). Copyright © 1957 by Cornell University and Fred B. Rothman & Co. All rights reserved.
- Bender’s Forms of Discovery* (2009). Reprinted from *Benders Forms of Discovery*, “Animals,” No. 4, with permission. Copyright 2009 Matthew Bender & Co., Inc., a member of the LexisNexis Group. All rights reserved.
- Bench-Bar Proposal to Revise Civil Procedure Rule 11*, 137 F.R.D. 159 (1991). Reprinted with permission of West Group.
- Bernstein, “Understanding the Limits of Court-Connected ADR: A Critique of Federal Court-Annexed Arbitration Programs,” 141 *U. Pa. L. Rev.* 2169 (1993). Copyright © 1993 by the University of Pennsylvania Law Review.
- D. Binder & S. Price, *Legal Interviewing and Counseling: A Client-Centered Approach* (1977). Reprinted with permission of West Group.
- Brazil, “Civil Discovery: How Bad Are the Problems?,” *A.B.A.J.*, April 1981, at 450. Reprinted by permission of the *ABA Journal*.
- Brazil, “Civil Discovery: Lawyers’ Views of Its Effectiveness, Its Principal Problems and Abuses,” 1980 *Am. B. Found. Res. J.* 787. Copyright © 1980 by the American Bar Foundation.
- Brazil, “The Adversary Character of Civil Discovery: A Critique and Proposals for Change,” 31 *Vand. L. Rev.* 1295 (1978). Copyright © 1978 by the Vanderbilt Law Review.
- Brazil, “Views from the Front Lines: Observations by Chicago Lawyers About the System of Civil Discovery,” 1980 *Am. B. Found. Res. J.* 217. Copyright © 1980 by the American Bar Foundation.
- W. Brazil, *Settling Civil Suits* (1985). Copyright © 1985 by the American Bar Association. Reprinted by permission of the American Bar Association.
- Bronsteen, “Against Summary Judgment,” 75 *Geo. Wash. L. Rev.* 522, 551 (2007).
- Buchmeyer, “Discovery Abuse and the Time Out Rule,” *Tex. B. J.* Feb. 1983. Copyright © 1983 by Jerry Buchmeyer and the Texas Bar Journal.

- Buchmeyer, "How to Use a Deposition at Trial," *Tex. B. J.* April 1995. Copyright © 1995 by Jerry Buchmeyer and the Texas Bar Journal.
- Burbank, "Vanishing Trials and Summary Judgment in Federal Civil Cases: Drifting Toward Bethlehem or Gomorrah?," *J. Emp. Legal Studies* 591, 620 (2004).
- Burger, "Agenda for 2000 A.D.—A Need for Systematic Anticipation," 70 F.R.D. 83 (1976). Copyright © 1976 by West Group.
- Chayes, "The Role of the Judge in Public Law Litigation," 89 *Harv. L. Rev.* 1281 (1976).
- Childress, "A New Era for Summary Judgments: Recent Shifts at the Supreme Court," 116 F.R.D. 183 (1987). Copyright © 1987 by Steven Alan Childress and West Group.
- Clark, "To an Understanding Use of Pretrial," 29 F.R.D. 454 (1961). Copyright © 1961 by West Group.
- R. Cochran & T. Collet, *Cases and Materials on the Legal Profession* 173 (2d ed 2003).
- Coleman, "The *Celotex* Initial Burden Standard and Opportunity to 'Revivify' Rule 56," 32 *S. Ill. U.L.J.* 295, 320–321 (2008).
- Commercial and Federal Litigation Section, New York State Bar Association, *Report on Discovery Under Rule 26(b)(1)*, 127 F.R.D. 625 (1990). Reprinted with permission from 127 F.R.D. 625, copyright © 1989, 1990 by the Commercial and Federal Litigation Section, New York State Bar Association and West Group.
- Committee to the Judicial Conference for the District of Columbia, "Pretrial Procedure," 1 F.R.D. 759 (1941). Copyright © 1941 by West Group.
- Cooper, "Simplified Rules of Civil Procedure?," 100 *Mich. L. Rev.* 1794 (2002).
- Crist, "The E–Brief: Legal Writing for an Online World," 33 *N.M. L. Rev.* 49 (2003).
- Davis, "The Argument of an Appeal," *A.B.A.J.*, Dec. 1940, at 895. Reprinted by permission of the *ABA Journal*.
- Dayton, "Case Management in the Eastern District of Virginia," 26 *U.S.F. L. Rev.* 445 (1992). Reprinted with permission of the University of San Francisco Law Review.
- Dayton, "The Myth of Alternative Dispute Resolution in the Federal Courts," 76 *Iowa L. Rev.* 889 (1991), reprinted with permission.
- Dixon & Gill, *Changes in the Standards for Admitting Expert Evidence in Federal Civil Cases Since the Daubert Decision* xiii (RAND Institute for Civil Justice 2001). Copyright 2001 by the RAND Corporation.
- Drummond, "The Electronic Courthouse," *Litigation News*, Volume 23, 1998. © 1998 by the American Bar Association. Reprinted with permission. All rights reserved. This information or any portion thereof may not be copied or disseminated in any form or by any means stored in an electronic database or retrieval system without the express written consent of the American Bar Association.

- Drummond, "Michigan Legislation Creates First Virtual Courtroom," *Litigation News*, Volume 27, No. 3, March 2002. © 2002 by the American Bar Association. Reprinted with permission. All rights reserved. This information or any portion thereof may not be copied or disseminated in any form or by any means stored in an electronic database or retrieval system without the express written consent of the American Bar Association.
- Ehrenbard, "Cutting Discovery Costs Through Interrogatories and Document Requests," *Litigation*, Volume 1, No. 2, Spring 1975. © 1975 by the American Bar Association. Reprinted with permission. All rights reserved. This information or any portion thereof may not be copied or disseminated in any form or by any means stored in an electronic database or retrieval system without the express written consent of the American Bar Association.
- Elliott, "Managerial Judging and the Evolution of Procedure," 53 *U. Chi. L. Rev.* 306 (1986). Copyright © 1986 by the University of Chicago Law Review.
- Fairman, "The Myth of Notice Pleading," 45 *Ariz. L. Rev.* 987 (2003). Copyright 2003 by Arizona Board of Regents and Christopher Fairman. Reprinted with permission of the author and publisher.
- Fiss, "Against Settlement," 93 *Yale L. J.* 1073 (1984). Reprinted by permission of The Yale Law Journal Company and Fred B. Rothman & Company from The Yale Law Journal, Vol. 93, pp. 1073–1090.
- J. Flanagan, *Pleadings, Motions and Papers from the Buffalo Creek Case* (1986). Copyright © 1986 by James F. Flanagan.
- Flynn & Finkelstein, "A Primer on 'E-vide-n.c.e.,'" *Litigation*, Volume 28, No. 2, Winter 2002. © 2002 by the American Bar Association. Reprinted with permission. All rights reserved. This information or any portion thereof may not be copied or disseminated in any form or by any means stored in an electronic database or retrieval system without the express written consent of the American Bar Association.
- J. Foonberg, *How to Start and Build a Law Practice* (4th ed. 1999). Copyright © 1999 by Jay G. Foonberg.
- J. Frank, *Courts on Trial: Myth and Reality in American Justice* (1949). Copyright © 1949 by Jerome Frank; copyright © renewed 1976 by Princeton University Press.
- Frankel, "The Adversary Judge," 64 *Tex. L. Rev.* 465 (1976). Published originally in 64 *Tex. L. Rev.* 465–87 (1976). Copyright © 1976 by the Texas Law Review Association. Reprinted by permission.
- Friedman, Note, "An Analysis of Settlement," 22 *Stan. L. Rev.* 67 (1969). Copyright © 1969 by the Board of Trustees of the Leland Stanford Junior University and Fred B. Rothman & Co.
- Galanter, "Reading the Landscape of Disputes: What We Know and Don't Know (and Think We Know) About Our Allegedly Contentious and Litigious Society," 31 *UCLA L. Rev.* 4 (1983). Originally published in 31

- UCLA L. Rev.* 4, copyright © 1983, The Regents of the University of California. All rights reserved.
- Goldberg, “Playing Hardball,” *A.B.A.J.*, July 1, 1987, at 48. Reprinted by permission, © 1987. The *ABA Journal* is published by the American Bar Association.
- J. Goulden, *The Superlawyers* (1971). Copyright © 1971, 1999 by Joseph C. Goulden. Reprinted by permission of Brandt & Hochman Literary Agents, Inc.
- Grady, “Trial Lawyers, Litigators and Clients’ Costs,” *Litigation*, Volume 4, No. 3, Spring 1978. © 1978 by the American Bar Association. Reprinted with permission. All rights reserved. This information or any portion thereof may not be copied or disseminated in any form or by any means stored in an electronic database or retrieval system without the express written consent of the American Bar Association.
- Hazard, “From Whom No Secrets Are Hid,” 76 *Texas L. Rev.* 1665 (1998).
- G. Hazard & W. Hodes, *The Law of Lawyering* (2d ed. 1990). Reprinted by permission of Panel Publishers, a division of Aspen Publishers, Inc., 36 W. 44th Street, Suite 1316, New York, New York 10036. Copyright 1990 by Panel Publishers.
- K. Hegland, *Introduction to the Study and Practice of Law in a Nutshell* (4th ed. 2003). Copyright © 2003 by West Group.
- Helland & Tabarrok, “Contingency Fees, Settlement Delay, and Low-Quality Litigation: Empirical Evidence from Two Datasets,” 19 *J. L. Econ. & Org.* 517, 517 (2003).
- Honeyman & Schneider, “Catching up with the Major-General: The Need for a ‘Canon in Negotiation,’ ” 87 *Marq. L. Rev.* 637 (2004).
- Jackson, “Tribute to Country Lawyers: A Review,” *A.B.A.J.*, March 1944, at 136. Reprinted by permission, © 1944. The *ABA Journal* is published by the American Bar Association.
- F. James et al., *Civil Procedure* (5th ed. 2001).
- Joseph, “Rule Traps,” *Litigation*, Volume 30, No. 1, Fall 2003. © 2003 by the American Bar Association. Reprinted with permission. All rights reserved. This information or any portion thereof may not be copied or disseminated in any form or by any means stored in an electronic database or retrieval system without the express written consent of the American Bar Association.
- Kakalik et al., “Discovery Management: Further Analysis of the Civil Justice Reform Act Evaluation Data,” 39 *B.C. L. Rev.* 613 (1998). Copyright © 1998 by the *Boston College Law Review*.
- J. Kakalik et al., *Just, Speedy and Inexpensive? An Evaluation of Judicial Case Management Under the Civil Justice Reform Act* (Rand Institute for Civil Justice 1996). Copyright © 1996 by the RAND Corporation.



- Katzenbach, "Modern Discovery: Remarks from the Defense Bar," 57 *St. John's L. Rev.* 732 (1983). Copyright © 1983 by the St. John's Law Review.
- Kaufman, "Fast-Track Courts with Part-Time Judges," *Litigation*, Volume 9, No. 1, Fall 1982. © 1982 by the American Bar Association. Reprinted with Permission. All rights reserved. This information or any portion thereof may not be copied or disseminated in any form or by any means stored in an electronic database or retrieval system without the express written consent of the American Bar Association.
- Keeton, "The Function of Local Rules and The Tension with Uniformity," 50 *U. Pitt. L. Rev.* 853 (1989).
- Klenk, "Using and Abusing Interrogatories," *Litigation*, Volume 11, No. 2, Winter 1985. © 1985 by the American Bar Association. Reprinted with permission. All rights reserved. This information or any portion thereof may not be copied or disseminated in any form or by any means stored in an electronic database or retrieval system without the express written consent of the American Bar Association.
- Kramer, "Viewing Rule 11 as a Tool to Improve Professional Responsibility," 75 *Minn. L. Rev.* 793 (1991). Copyright © 1991 by the University of Minnesota Law Review.
- Krupansky, "The Federal Rules are Alive and Well," *Litigation*, Volume 4, No. 1, Fall 1977. © 1977 by the American Bar Association. Reprinted with permission. All rights reserved. This information or any portion thereof may not be copied or disseminated in any form or by any means stored in an electronic database or retrieval system without the express written consent of the American Bar Association.
- Lerman, "Scenes from a Law Firm," 50 *Rutgers L. Rev.* 2153 (1998). Copyright © 1998 by the Rutgers Law Review.
- A. Lewis, *Gideon's Trumpet* (1964). From *Gideon's Trumpet* by Anthony Lewis, copyright © 1964 and renewed 1992 by Anthony Lewis. Used by permission of Random House, Inc.
- Luban, "Settlements and the Erosion of the Public Realm," 83 *Geo. L. J.* 2619 (1995). Reprinted with permission of the publisher, *Georgetown Law Journal* © 1995.
- E. Lind et al., *The Perception of Justice* (1989). Copyright © 1989 by The Rand Corporation.
- Marcotte, "Corporations Cut Legal Costs," *A.B.A.J.*, February 1989, at 22. Reprinted by permission, © 1989. The *ABA Journal* is published by the American Bar Association.
- Marcus, "Discovery Containment Redux," 39 *B.C. L. Rev.* 747, 771 (1998).
- Mason, "The Most Forgettable Deposition I Ever Took," *Litigation*, Volume 8, No. 3, Spring 1982. © 1982 by the American Bar Association. Reprinted with permission. All rights reserved. This information or any portion thereof may not be copied or disseminated in any form or by any means

- stored in an electronic database or retrieval system without the express written consent of the American Bar Association.
- McCormick on Evidence* (J. Strong ed. 5th ed. 2000). Copyright © 2000 by West Group.
- McElhaney, "Fault Lines" *A.B.A.J.*, October 2001. Reprinted by permission, © 2001. The *ABA Journal* is published by the American Bar Association.
- McElhaney, "Information Investigation," *Litigation*, Volume 8, No. 3, Spring 1982. © 1982 by the American Bar Association. Reprinted with permission. All rights reserved. This information or any portion thereof may not be copied or disseminated in any form or by any means stored in an electronic database or retrieval system without the express written consent of the American Bar Association.
- McThenia & Shaffer, "For Reconciliation," 94 *Yale L. J.* 1660 (1985). Reprinted by permission of The Yale Law Journal Company and Fred B. Rothman & Company from The Yale Law Journal, Vol. 94, pp. 1660–1668.
- Miller, "The Adversary System: Dinosaur or Phoenix," 69 *Minn. L. Rev.* 1 (1984). Copyright © 1984 by Arthur R. Miller and the University of Minnesota Law Review.
- Miller, "The Pretrial Rush to Judgment: Are the 'Litigation Explosion,' 'Liability Crisis,' and Efficiency Cliches Eroding our Day in Court and Jury Trial Commitments?," 78 *N.Y.U. L. Rev.* 982 (2003).
- Miller & Griffin, "Computer Databases: Forced Production versus Shared Enterprise," *Litigation*, Volume 23, No. 4, Summer 1997, at 40. Copyright © 1997, American Bar Association. Reprinted by permission of the American Bar Association.
- Mollica, "Federal Summary Judgment at High Tide," 84 *Marq. L. Rev.* 141 (2000). Copyright © 2000 by the Marquette Law Review.
- Niemeyer, "Here We Go Again: Are the Federal Discovery Rules Really in Need of Amendment?," 39 *B.C. L. Rev.* 517 (1998). Copyright © 1998 by the Boston College Law Review.
- Note, "The Emerging Deterrence Orientation in the Imposition of Discovery Sanctions," 91 *Harv. L. Rev.* 1033 (1978). Copyright © 1978 by the Harvard Law Review Association.
- Parness, "Improving Judicial Settlement Conferences," 39 *U. C. Davis L. Rev.* 1891 (2006). Reprinted by permission of The Regents of the University of California. All rights reserved.
- Peckham, "The Federal Judge as a Case Manager: The New Role in Guiding a Case from Filing to Disposition," 69 *Cal. L. Rev.* 770 (1981). Copyright © 1981 by the California Law Review, Inc. Reprinted by permission.
- T. Petzinger, Jr., *Oil and Honor* (1987). Reprinted with permission of Beard Books, Washington, D.C., from *Oil and Honor* by Thomas Petzinger, Jr. Copyright © 1999 by Beard Books.

- Pope, "Controlling the Paper Avalanche," *Litigation*, Volume 7, No. 3, Spring 1981. © 1981 by the American Bar Association. Reprinted with permission. All rights reserved. This information or any portion thereof may not be copied or disseminated in any form or by any means stored in an electronic database or retrieval system without the express written consent of the American Bar Association.
- R. Pound, *The Causes of Popular Dissatisfaction with the Administration of Justice*, 35 F.R.D. 273 (1964). Copyright © 1964 by West Group.
- Posner, "The Summary Jury Trial and Other Methods of Alternative Dispute Resolution: Some Cautionary Observations," 35 *U. Chi. L. Rev.* 366 (1986).
- Judith Resnik, "Managerial Judges," 96 *Harv. L. Rev.* 374 (1982). Copyright © 1982 by the Harvard Law Review Association.
- Richey, "Rule 16: A Survey and Some Considerations for the Bench and Bar," 126 F.R.D. 599 (1989). Copyright © 1989 by Charles R. Richey and West Group.
- Rosenberg, "Changes Ahead in Federal Pretrial Discovery," 45 F.R.D. 481 (1968). Copyright © 1968 by West Group.
- Rowe, "A Square Peg in a Round Hole?," 69 *Tenn. L. Rev.* 13 (2001). Copyright by permission of author and the Tennessee Law Review Association, Inc.
- Rowe, "Authorized Managerialism Under the Federal Rules—and the Extent of Convergence with Civil–Law Judging," 36 *Sw. U.L. Rev.* 191, 193 (2007).
- Rubin & Will, "Some Suggestions Concerning the Judge's Role in Structuring Settlement Negotiations," 75 F.R.D. 227 (1976). Copyright © 1976 by West Group.
- Sayler, "Rambo Litigation: Why Hardball Tactics Don't Work," *A.B.A.J.*, March 1, 1988, at 79. Reprinted by permission, © 1988. The *ABA Journal* is published by the American Bar Association.
- P. Schuck, *Agent Orange on Trial: Mass Toxic Disasters in the Courts* (1986). Reprinted by permission of the publisher from *Agent Orange on Trial: Mass Toxic Disasters in the Courts*, Enlarged Edition, by Peter H. Schuck, pp. 143–147, 149–166, 171, 223, 259–260, Cambridge, Mass.: The Belknap Press of Harvard University Press, copyright © 1986, 1987 by Marcey Schuck, Trustee.
- Schwarzer, "Guidelines for Discovery, Motion Practice and Trial," 117 F.R.D. 273 (1987). Copyright © 1987 by West Group.
- Section of Litigation, American Bar Association, *Report of the Special Committee for the Study of Discovery Abuse* (1977). Copyright © 1977, American Bar Association. Reprinted by permission of the American Bar Association.
- Shaffer, "Negotiation Ethics: A Report to Cartaphila," *Litigation*, Volume 7, No. 2, Winter 1981. © 1981 by the American Bar Association. Reprinted with permission. All rights reserved. This information or any portion