Summary Jury Trials in the Northern District of Ohio

A Report to the
Federal Judicial Center

SUMMARY JURY TRIALS IN THE NORTHERN DISTRICT OF OHIO

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EXECUTIVE SUMMARY

The purpose of the summary jury trial is to facilitate pretrial termination of cases in which the significant bar to settlement is disagreement between the attorneys or parties regarding a jury's likely findings on liability or damages in the case.

Summary jury trial is presided over by a judge or magistrate of the district court. A ten-member jury venire is presented to counsel for consideration. Counsel are provided with a short character profile of each juror and then given two challenges to arrive at a final six-member jury for the proceeding. Each attorney is given one hour to describe to the jury his party's view of the circumstances of the action. After counsel's presentations, the presiding judge or magistrate delivers to the jury a brief statement of the applicable law, and the jury retires to deliberate. Juries are encouraged to return a consensus verdict, but they may return a special report that anonymously lists the view of each juror as to liability and damages. After the verdict or special report has been returned, counsel meet with the presiding judge or magistrate to discuss the verdict and to establish a timetable for settlement negotiations. Evidentiary and procedural rules are few and flexible.

The first summary jury trial was held on March 5, 1980, in the courtroom of District Judge Thomas D. Lambros, who originated the procedure. Thirty-seven cases were assigned to summary jury trial between February 26, 1980, and October 6, 1980. The majority were personal injury cases.

The Federal Judicial Center charged the authors to analyze the summary jury trial procedure and to document the views and concerns of participants in summary jury trials. The authors observed a number of summary jury trials, reviewed court records, and interviewed or surveyed those who had been involved with cases assigned to summary jury trial, including jurors, counsel, the jury clerk, Judge Lambros, and the two magistrates who presided over the bulk of the summary jury trials in the study.

This report provides an inventory of all cases assigned to summary jury trial through October 6, 1980, and describes attorneys' perceptions of summary jury trial (including attorneys whose cases were assigned to summary jury trial but settled before the actual

proceedings; attorneys whose cases settled after summary jury trial; and attorneys whose cases went through summary jury trial but went on to full trial because summary jury trial did not result in settlement). The report also discusses the views and observations of others who participated in the proceedings: the jurors, the hearing officers, and the jury clerk.

The report concludes that

- The presentation of cases at summary jury trial results in settlement in a substantial proportion of instances
- Assignment of cases to summary jury trial creates a greater impetus for pretrial settlement than does assignment to other pretrial proceedings
- Summary jury trial enables the participation of magistrates in the disposition of cases that would otherwise occupy the time of federal judges.

The report makes the following recommendations:

- The use of the summary jury trial procedure should continue
- A fairly narrow "profile" of cases suitable for routine assignment to summary jury trial should be formulated: Only single defendant/single plaintiff cases should be included, and cases in which the truthfulness of an individual witness's testimony plays a central role should be excluded
- Guidelines for assessing the completeness of discovery should be established
- The Center should encourage implementation of summary jury trial in other districts, particularly in districts that employ magistrates
- The Center should implement a set of procedures to track all cases assigned to summary jury trial.

I. INTRODUCTION: THE SUMMARY JURY TRIAL

The summary jury trial is a half-day proceeding in which attorneys for opposing parties are given one hour each to summarize their cases before a six-member jury. Unless the parties in the case agree prior to the summary jury trial to be bound by the jury's verdict, the verdict is purely advisory. In addition, the summary jury trial in no way affects the parties' right to a full trial de novo on the merits.

The purpose of the summary jury trial is to facilitate pretrial termination of cases in which the significant bar to settlement is disagreement between the attorneys or parties regarding a jury's likely findings on liability or damages in the case. The procedure is currently in use in the United States District Court for the Northern District of Ohio.

The first summary jury trial was held on March 5, 1980, in the courtroom of District Judge Thomas D. Lambros, who originated the procedure. Notices assigning thirty-seven cases to summary jury trial were mailed between February 26, 1980, and October 6, 1980, in the Northern District of Ohio. The majority were personal injury cases.

The bases in law for the new procedure, as set forth in Judge Lambros's "Handbook and Rules of the Court for Summary Jury Trial Proceedings" (see appendix A), are judges' pretrial powers under rule 16 of the Federal Rules of Civil Procedure and the court's inherent power to manage its docket.

Description of the Proceeding

The summary jury trial is presided over by a judge or magistrate of the district court. Unless the parties in the case have been excused from the proceeding, they appear with counsel in court. The presence of a court reporter at the summary jury trial is optional.

A ten-member jury venire is presented to counsel for consideration. Counsel are provided with a short character profile of each juror (see appendix B). The profile is completed by the jurors indi-

vidually and includes the juror's name and occupation; the name and occupation of the juror's spouse; the names and ages of the juror's children; the juror's previous knowledge of any parties or counsel in the case or of the nature of the case; and any adverse attitudes the juror has toward the nature of the action. Each attorney is given two challenges to arrive at a final six-member jury for the proceeding.

Each attorney is given one hour to describe to the jury his party's view of the circumstances of the action. The time allotment for the attorney's presentation may be modified in multiparty cases, however, so that presentations can be offered by more than one attorney. In addition, the counsel for the plaintiff may reserve a portion of the hour for a statement of refutation; this statement follows the presentation of the counsel for the defendant.

Evidentiary and procedural rules, as set forth in Judge Lambros's "Rules of Procedure for Summary Trial Pretrial Procedure" (see appendix C), are few and flexible. Counsel may adduce exhibits for the jury and may describe the testimony of witnesses, but only short passages of depositions may be read aloud. Furthermore, no witness's testimony may be referred to unless the reference is based on the product of a discovery procedure; on a written, sworn statement of the witness; or in the absence of these, on a sworn affidavit of counsel that the witness would not sign an affidavit, that the witness would be called in the event of a full trial, and that counsel has been told firsthand the substance of the witness's proposed testimony.

These evidentiary rules have been relaxed in practice by the two magistrates who presided over the bulk of the summary jury trials reported on in this study. Affidavits have not been required in instances in which it could reasonably be assumed that testimony presented at summary jury trial would, indeed, be presented at full trial.

After the attorneys' presentations, the presiding judge or magistrate delivers to the jury a brief statement of the applicable law, and the jury retires to deliberate. Although the jury is encouraged to return a consensus verdict on the case, it may return a special report that anonymously lists each juror's findings on liability and damages (see appendix D). In complex cases, jurors may be called upon to make rulings on separate issues. After the verdict or special report has been returned, counsel meet with the presiding judge or magistrate to discuss the verdict and to establish a timetable for settlement negotiations.

Judge Lambros's Rationale for Creating the Summary Jury Trial

Judge Lambros has presented the rationale for the creation of the summary jury trial in some detail in an article written for submission to the *Cleveland-Marshall Law Review*.[1] Briefly, Judge Lambros describes the summary jury trial as complementing existing pretrial settlement procedures. He asserts that the summary jury trial has, however, a number of advantages over the other procedures.

Two of these advantages are based on the participation of jurors in the procedure. First, in cases in which disagreement between parties or attorneys regarding a jury's likely verdict on liability or damages is a significant bar to settlement, the summary jury trial provides the only opportunity, short of full trial, for parties or counsel to reach an agreement.

Second, unlike other pretrial settlement procedures courts depend on to reduce their backlogs, the summary jury trial, as described by Judge Lambros, allows the "lay public to participate in the efficient disposition of the court's business and still provide[s] a means by which the federal courts can feasibly accommodate cases before them."[2]

Assignment of Cases to Summary Jury Trial

Inasmuch as Judge Lambros views the summary jury trial as a very flexible procedure, he has not specified a hard-and-fast set of criteria for gauging the suitability of particular cases for assignment to summary jury trial.

In general, Judge Lambros has stated that summary jury trial is suitable for any case, complex or not, that would normally go before a jury and for which discovery has been completed and all other pretrial procedures have been exhausted. He believes that certain cases that conform to this broad description should not be assigned to summary jury trial, however. According to Judge Lambros, a case should not be assigned to summary jury trial if (a) the case is likely to set precedent (rather than simply require the application of existing law); (b) a government office or agency is a party in the case; or (c) the credibility of a witness is a critical issue in the resolution of the dispute.

1. Lambros & Shunk, *The Summary Jury Trial*, 29 Clev.-Mar. L. Rev. 43 (1980).
2. *Id.* at 45.

II. DESCRIPTION OF THE STUDY

The Federal Judicial Center charged us to describe the summary jury trial procedure and to document the perceptions and concerns of various kinds of participants in summary jury trials. The findings reported in chapter three are the product of an observation of a selected number of summary jury trials and a survey of persons involved in those trials to elicit their perceptions of the procedure.

Specific information about cases assigned to summary jury trial was obtained by reviewing court records, surveying jurors and counsel (by interview or questionnaire) who had been involved in cases assigned to summary jury trial, and interviewing the jury clerk, Judge Lambros, and the two magistrates who presided over the bulk of the summary jury trials.

Copies of the questionnaires and interview schedules used in this study are presented in appendix E. Survey responses are discussed in detail in chapter three.

Cases Included in the Study

A list of the summary jury trial cases included in the study, as well as pertinent information about them, is presented in appendix F. The first cases assigned to summary jury trial had been pretried by Judge Lambros shortly before their assignment to summary jury trial. Summary jury trial of these cases was presided over by the judge. Although some cases continued to be assigned to summary jury trial in this manner over the period covered in the study, most of the cases reported on here were assigned using a second procedure.

These cases, some of which had been filed as early as 1975, were identified by Judge Lambros as potentially suitable for summary jury trial. Judge Lambros examined the cases in light of his general criteria for determining suitability for summary jury trial. Cases that appeared to conform to the guidelines were assigned to either Magistrate Jack Streepy or Magistrate David Perelman for pretrial hearing. Cases that were not settled at pretrial went on to summary jury trial, which was presided over by one of the magistrates.

Information about all cases assigned to summary jury trial from February 26, 1980, through October 6, 1980, was collected and analyzed. The results of the analysis are presented in chapter three.

Survey of Summary Jury Trial Participants

Three groups of attorneys were surveyed (by telephone interview or questionnaire) for the study: attorneys whose cases were assigned to summary jury trial but settled before the actual proceedings; attorneys whose cases settled after summary jury trial; and attorneys whose cases went through summary jury trial but then went on to trial de novo because the summary jury trial did not result in settlement.

Jurors who had participated in summary jury trial proceedings were surveyed by mail.

The two magistrates who presided over the bulk of cases assigned to summary jury trial prior to and during the study period were interviewed regarding their perceptions of the cases they heard and the motivation and performance of attorneys who argued cases before them at summary jury trial.

The Cleveland federal courthouse jury clerk was interviewed for the study in order to identify some of the effects of summary jury trial on the use and assignment of jurors.

III. FINDINGS AND DISCUSSION

Profile and Status of Cases Assigned to Summary Jury Trial

Thirty-seven cases were assigned to summary jury trial between February 26, 1980, and October 6, 1980 (see table 1). Of these cases, thirty-four were personal injury tort actions. As of January 31, 1981, thirty of the cases had settled, six were in various stages of post-summary jury trial negotiation, and one was set for full trial.

Eleven of the thirty-seven cases settled without going through summary jury trial. The other twenty-six cases went through summary jury trial proceedings; five were heard by Judge Lambros, ten were heard by Magistrate Perelman, and eleven were heard by Magistrate Streepy.

A demand for a full trial was the result in five of the twenty-six cases that went through summary jury trial (two of the five settled before the trial date). Fifteen settled after summary jury trial without calls for trial de novo. In none of these cases had parties agreed to be bound by the summary jury trial outcome. Thus, all summary jury trial verdicts in cases discussed in this report were purely advisory.

The settlement rate of the cases assigned to summary jury trial could not be determined because at the time of this study, six cases were in post-summary jury trial negotiation, and one case was awaiting full trial. A tentative conclusion is that summary jury trial worked well in settling cases that might have gone on to full trials had they not been assigned to such a procedure.

Thirty (81 percent) of the thirty-seven cases under consideration in this study had settled by the time this report was written. Eleven (30 percent) of these cases settled before summary jury trial; fifteen (41 percent) settled after summary jury trial without requests for full trial. Of the five cases for which demands for full trial resulted, two (5 percent) settled before the trial date, two (5 percent) settled through trial (one during trial and one as an outcome of full trial), and one is awaiting trial.

TABLE 1
Status of Cases Assigned to Summary Jury Trial (SJT)

Case Number	Nature of Suit	Date SJT Notice Sent	Settled: Pre-SJT	Settled: Post-SJT	Outcome
C75-988	330	3/13		X	
C75-1014	360	3/7		X	
C75-1113	365		X		
C76-79Y	330	3/13	X		
C76-98Y	360	7/2		X	
C76-102Y	440	9/15		X	
C76-109Y	365	5/24		X	
C76-127Y	350	3/10		X	
C76-159Y	355	3/13		X	
C76-217Y	195	6/16		X	
C77-15Y	330	9/2		X	
C77-28	*	3/27		X	
C77-58Y	330	3/12			Settled without trial
C77-96Y	360	3/7	X		
C77-133Y	350	4/7			Settled without trial
C77-161Y	355	3/25	X		
C77-224Y	350	6/9			Pending
78-67Y	190	9/24			Pending
C78-81Y	330	6/9		X	
C78-94Y	350	3/11			Went through trial
C78-1162	320	6/12	X		
78-1174Y	360	6/19		X	
C78-1608Y	365	2/26		X	
C78-1625	340	6/12	X		
C78-1701	330	6/12	X		
C79-565	340	6/9			Pending
C79-593Y	340	6/12	X		
C79-653	350	6/18			Settled during trial
C79-772	330	6/10	X		
C79-773	360	6/12			Trial pending
C79-839	360	6/27	X		
C79-921	350	3/3		X	
C79-1135	350	6/12	X		
C79-1236	360	6/12		X	
C79-1307	330	6/10			Pending
C79-1694Y	330	6/9			Pending
80-338	350	10/6			Pending

NOTE: The cases listed were assigned to SJT between Feb. 26 and Oct. 6, 1980. The table shows their status as of Jan. 31, 1981.
*This case was a personal injury suit.

Of the thirty-seven cases studied, then, twenty-eight (76 percent) had settled by the time this report was written, without full-trial proceedings having been set into motion. Of the twenty-six cases

that went through summary jury trial proceedings, seventeen (65 percent) had settled without full-trial proceedings having been set into motion.

These preliminary figures provide a very conservative estimate of the settlement rate of the cases assigned to summary jury trial. Because it is unlikely that all six cases now in various stages of post-summary jury trial negotiation will go through full trial, and because it is possible that the one case now awaiting trial will settle before trial, the ultimate settlement rate for these cases will probably be higher than 76 percent.

Views of Attorneys Whose Cases Settled after Summary Jury Trial

At the end of November 1980, questionnaires that solicited opinions and observations about summary jury trial were mailed to thirty-seven attorneys who had participated, as counsel for the plaintiff or the defendant, in summary jury trials that resulted in settlements. The three-page questionnaire asked for information about the particular cases attorneys had participated in, as well as general evaluations of the procedure. Attorneys were sent one questionnaire for each summary jury trial they had taken part in. Although most attorneys had participated in only one such trial, some had participated in two, and one attorney had participated in three.

Eighteen completed questionnaires were returned by sixteen attorneys (six for plaintiffs and ten for defendants); thus the total response rate for the survey was 43 percent. A second mailing of questionnaires during the second week of December 1980 to attorneys who had not responded did not yield any additional returns. One plaintiff's attorney and one defendant's attorney who responded to the survey had each participated in two summary jury trials; therefore, the final sample comprised seven attorneys for the plaintiff and eleven attorneys for the defendant.

The questionnaire (see appendix E) asked attorneys:

- To rate the extent to which summary jury trial provided a good or poor opportunity to present all of the evidence and arguments favoring their side of the case
- To rate the rapidity of resolution of the case they argued, compared with what they would have expected if the case had been assigned immediately to full trial

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- To describe the role that summary jury trial played in the termination of the case
- Whether they thought a full trial would have yielded a different outcome
- To compare the time and effort the case required of them with what they would have expected had the case not been assigned to summary jury trial
- Whether the case required more or less of their client's time than it would have if it had not been assigned to summary jury trial
- Whether they thought the difference between the charge to jurors that concluded the summary jury trial and the charge that would have concluded a full-trial presentation of the same case had any effect on the outcome
- Whether, in retrospect, they would have preferred that the case had been assigned immediately to full trial rather than to summary jury trial
- Whether their client had commented on the summary jury trial procedure, and if so, what the nature of those comments was
- Whether they would like to use summary jury trial again
- Their general opinion of summary jury trial.

The results of the analysis of the returned questionnaires are presented in table 2. The majority of attorneys, regardless of the party they represented, expressed satisfaction with the opportunity summary jury trial provided them to present the evidence and arguments favoring their side of the case. Plaintiffs' attorneys expressed greater satisfaction on this dimension than defendants' attorneys did, however. Of the plaintiffs' attorneys who responded to the survey, 72 percent rated the opportunity to present their cases as "very good"; 14 percent rated it as "adequate." Of the defendants' attorneys who responded, 18 percent rated the opportunity to present their cases as "very good"; 36 percent rated it as "adequate."

These reports contrast sharply with the views expressed by plaintiffs' attorneys whose cases did not settle through summary jury trial but went on to full trial (see "Views of Attorneys Whose Cases Went On to Full Trial" *infra*).

The majority of plaintiffs' and defendants' attorneys who responded to the survey indicated that assignment to summary jury trial resulted in more rapid resolution of their cases than they would have expected had their cases been assigned immediately to full trial. Again, summary jury trial was evaluated more favorably on this dimension by counsel for the plaintiff than by counsel for the defendant. Seventy-two percent of the plaintiffs' attorneys responded that the resolution of their cases was "much more rapid"; 28 percent said that it was "somewhat more rapid." Of the defendants' attorneys, 46 percent said that the resolution of their cases was "much more rapid"; 9 percent said that it was "somewhat more rapid."

Responses of counsel for both sides to an open-ended question that asked the attorneys to describe the role that summary jury trial played in the resolution of their cases indicated that summary jury trial was indeed serving some of the functions Judge Lambros hoped it would serve.

Among the responses of plaintiffs' attorneys to this question were the following:

> It was very effective in bringing the parties together from a standpoint of bringing home to the defendants the potential exposure of the case.
>
> The jury verdict reflected a disposition of the case that, although not binding, could be duplicated upon full trial, and the parties settled accordingly.
>
> Shocked insurance people into realization that potential was high, as I had projected in settlement discussions.

Responses of attorneys for defendants included the following:

> Made the plaintiff more realistic in terms of liability issues and dollar value.
>
> The summary jury trial "aired" the evidence. It gave plaintiff "his day in court." It permitted both sides to hear the evidence contrary to its point of view.
>
> Sharpened the perception of the defendant as to exposure; lessened the plaintiff's demands.

None of the plaintiffs' attorneys predicted that a full trial of the same case would have yielded an outcome that differed from that of the summary jury trial. Of the three attorneys for the defendant who predicted that full trial would have yielded a different outcome, only one said he thought he would have been more success-

TABLE 2
Views of Summary Jury Trial Given by Attorneys Whose Cases Settled after Summary Jury Trial

To what extent did the summary jury trial provide you with a good or poor opportunity to present all of the evidence and arguments favoring your side of the case?

Attorneys	Very Good	Adequate	Inadequate	Very Poor
Plaintiffs' (n = 7)	5 72%	1 14%	1 14%	0 0%
Defendants' (n = 11)	2 18%	4 36%	3 28%	2 18%

Compared to what you would have expected of this case if it had been assigned immediately to full trial, do you feel that the summary jury trial resulted in a more or less rapid resolution of this case?

Attorneys	Much More	Somewhat More	About the Same	Somewhat Less	Much Less	Don't Know
Plaintiffs' (n = 7)	5 72%	2 28%	0 0%	0 0%	0 0%	0 0%
Defendants' (n = 11)	5 46%	1 9%	4 36%	1 9%	0 0%	0 0%

Do you think that the difference between the charge to jurors that concluded the summary jury trial presentation and the charge that would have concluded a full-trial presentation of the same case had any effect on the outcome of the summary jury trial?

Attorneys	Yes	No	Don't Know
Plaintiffs' (n = 7)	1 14%	3 43%	3 43%
Defendants' (n = 11)	5 46%	4 36%	2 18%

In retrospect, would you have preferred that the case be assigned immediately to full trial rather than to summary jury trial?

Attorneys	Yes	No	Don't Know
Plaintiffs' (n = 7)	0 0%	6 86%	1 14%
Defendants' (n = 11)	5 46%	5 46%	1 8%

Would you like to use summary jury trial again?

Attorneys	Yes	No
Plaintiffs' (n = 7)	7 100%	0 0%
Defendants' (n = 11)	9 82%	2 18%

TABLE 2 (Continued)

Would a full trial have yielded a different outcome?

Attorneys	Yes	No	Don't Know
Plaintiffs' (n = 7)	0 0%	3 43%	4 57%
Defendants' (n = 11)	3 28%	4 36%	4 36%

Do you feel that this case required more or less of your own time and effort than it would have if it had not been assigned to summary jury trial?

Attorneys	Much More	Somewhat More	About the Same	Somewhat Less	Much Less	Don't Know
Plaintiffs' (n = 7)	1 14%	2 29%	1 14%	1 14%	2 29%	0 0%
Defendants' (n = 11)	1 9%	3 27%	0 0%	2 18%	5 46%	0 0%

Do you feel that this case required more or less of your client's time than it would have if it had not been assigned to summary jury trial?

Attorneys	Much More	Somewhat More	About the Same	Somewhat Less	Much Less	Don't Know
Plaintiffs' (n = 7)	0 0%	0 0%	0 0%	3 43%	4 57%	0 0%
Defendants' (n = 11)	1 9%	1 9%	3 28%	0 0%	6 54%	0 0%

ful in a full trial; the other two predicted different outcomes because of the complexity of their particular cases.

Attorneys' estimates of the time and effort the cases required of them, compared with what they would have expected had the cases not been assigned to summary jury trial, varied widely. Comments accompanying the responses indicated that this dispersion in estimates was related to different bases of comparison and that preparation for summary jury trial was considered somewhat less time-consuming than preparation for full trial but more time-consuming than preparation for pretrial hearing.

Evaluations of the demands on client time imposed by assignment of cases to summary jury trial were more clear-cut. A majority of plaintiffs' attorneys (57 percent) and defendants' attorneys (54 percent) estimated that assignment of their cases to summary jury trial had required "much less" of their clients' time than the cases would have required if they had not been so assigned.

With regard to the effect the abbreviated charge to jurors that concluded the summary jury trial had on the outcome of the case, a majority of plaintiffs' attorneys (86 percent) and defendants' attorneys (54 percent) thought there was no effect or did not know whether there was any effect.

The five attorneys for the defendant who indicated that the abbreviated charge to jurors did affect the outcome of the case attributed this effect to the complexity of the case they were arguing and the oversimplification and loss of meaning of the charge resulting from the brief summary jury trial presentation.

Although none of the plaintiffs' attorneys indicated that, in retrospect, they would have preferred that the case had been assigned immediately to full trial rather than to summary jury trial, almost half (46 percent) of the defendants' attorneys said they would have preferred such an assignment. Comments accompanying this response from defendants' attorneys included the following:

> I would have preferred that the case be assigned for trial within a reasonable time following the filing of the case.
>
> Obviously the case was settled, but if it did not I would have given plaintiff all the evidence I possessed and my view of the law. He should have been much more prepared the second time around.
>
> I abhor the concept. While it worked to settle this particular case, I don't believe it should be used extensively.

All the plaintiffs' attorneys who responded to the survey indicated that they would like to use summary jury trial again; most of the defendants' attorneys (82 percent) said they would like to use it again. All these affirmative responses were qualified, however.

Comments accompanying responses to the question concerning the attorneys' willingness to use the summary jury trial procedure again and responses to an open-ended item that solicited attorneys' general opinions of summary jury trial indicated that the majority of attorneys who responded believe that summary jury trial is appropriate for a narrow range of cases. Many attorneys said they would like to have some say in whether or not particular cases are assigned to summary jury trial.

Attorneys' comments included the following:

> Although I fully support the concept of a summary jury trial both for the purposes of aiding settlements and educating attorneys as to both the strengths and weaknesses of their case, I feel it should be restricted to relatively simple claims. . . . It is my opinion that, although discrimination claims can be presented effectively

> with the format, in the future, I should be extremely hesitant to use it for any claims other than those involving a single plaintiff.
>
> If I had control over case flow, I would only send admitted liability cases to the summary procedure. Perhaps I would also send disputed liability cases with *very* simple legal issues.
>
> It is appropriate only to limited kinds of cases such as where parties are few (i.e., only one plaintiff and one or two defendants), and, therefore, there are few attorney presentations to the jury. Also it should be limited to cases where the issues can be briefly presented to the summary trial jury without testimony which is excluded in this type of proceeding. Also, obviously issues of law cannot be presented, and these proceedings should be confined to issues of fact and the summary trial juries should be permitted to determine and apportion damage claims.
>
> In complex cases I feel it has no virtue; in simple cases where the issue is essentially one of damages, it has merit.
>
> It can be a good tool but many problems exist. These include admissibility of evidence, excessive "jury" awards which make settlement more difficult, lack of cross-examination, etc.

Thus, most of the attorneys whose cases settled after summary jury trial (a) were satisfied with the opportunity summary jury trial provided them to present evidence and arguments, (b) said that the assignment of their cases to summary jury trial resulted in more rapid resolution of the cases than assignment to full trial would have, and (c) indicated a willingness to use summary jury trial again.

Views of Attorneys Whose Cases Settled before Summary Jury Trial

In an effort to compare the impetus for settlement provided by assignment of a case to summary jury trial and that provided by assignment of a case to other federal court procedures (i.e., pretrial hearing, full trial), we surveyed a group of attorneys whose cases were assigned to summary jury trial but settled before the actual proceeding.

Eleven attorneys (six for plaintiffs and five for defendants) were interviewed by telephone during the first half of December 1980. The attorneys were asked (see appendix E):

- Whether assignment to summary jury trial resulted in a more or less rapid resolution of the case, compared with what they

would have expected if the case had been assigned immediately to full trial

- Whether the case had required more or less of their own time and effort than it would have if it had not been assigned to summary jury trial
- Whether the case had required more or less of their client's time than it would have if it had not been assigned to summary jury trial
- Whether they had any comments they wanted to make about summary jury trial.

The results of the analysis of interview responses are presented in table 3.

In response to the first three questions of the interview, which pertained to the impact of assignment to summary jury trial on the speed of resolution of the case and the amount of time required of the attorney and the client, the majority of both plaintiffs' attorneys (66 percent) and defendants' attorneys (60 percent) said that assignment to summary jury trial, per se, had no effect on those aspects of the case.

Those attorneys who stated that assignment to summary jury trial resulted in more rapid resolution of their cases said that they could not have been assigned to a full trial as quickly as they were assigned to a summary jury trial.

Those attorneys who said that assignment of their cases to summary jury trial had required more of their time and effort than the cases would have required had they not been so assigned were comparing their preparation with what would have been required in preparation for pretrial hearings. One attorney said that he would have been happier if the court had simply called for a pretrial hearing.

Perceived differences in demands on client time resulting from assignment of cases to summary jury trial hinged, in two instances, on clients' not having to be prepared for summary jury trial. One defendant's attorney who said that assignment of his case to summary jury trial required "somewhat more" of his client's time than would have been the case if such an assignment had not been made explained that the assignment necessitated his gathering from his client information that he would not otherwise have had to gather.

Although few of the attorneys in this group made substantive comments in response to the interview's final open-ended question about the summary jury trial, those who did echoed some of the concerns expressed by attorneys whose cases went on to full trial

TABLE 3
Views of Summary Jury Trial Given by Attorneys Whose Cases Settled before Summary Jury Trial

Compared to what you would have expected of this case if it had been assigned immediately to full trial, do you feel that assignment to summary jury trial resulted in a more or less rapid resolution of this case?

Attorneys	Much More	Somewhat More	About the Same	Somewhat Less	Much Less	Don't Know
Plaintiffs' (n = 6)	1 17%	0 0%	4 66%	0 0%	0 0%	1 17%
Defendants' (n = 5)	1 20%	1 20%	3 60%	0 0%	0 0%	0 0%

Do you feel that this case required more or less of your own time and effort than it would have if it had not been assigned to summary jury trial?

Attorneys	Much More	Somewhat More	About the Same	Somewhat Less	Much Less	Don't Know
Plaintiffs' (n = 6)	1 17%	1 17%	3 50%	1 17%	0 0%	0 0%
Defendants' (n = 5)	1 20%	0 0%	3 60%	0 0%	1 20%	0 0%

Do you feel that this case required more or less of your client's time than it would have if it had not been assigned to summary jury trial?

Attorneys	Much More	Somewhat More	About the Same	Somewhat Less	Much Less	Don't Know
Plaintiffs' (n = 6)	0 0%	0 0%	5 83%	1 17%	0 0%	0 0%
Defendants' (n = 5)	0 0%	1 20%	3 60%	0 0%	1 20%	0 0%

after summary jury trial. Following are the comments of two attorneys for the plaintiff:

> Summary jury trial works against the plaintiff. You can't present witnesses for pain and suffering in personal injury cases. Jurors can't assess witness credibility. The plaintiff is in a no-win situation. I wish they'd scrap the whole thing.

> I can't see how any plaintiff can win. It's got all the time drawbacks of a trial without the benefit of witnesses and cross-examination. How can you determine the credibility of a witness? If they want the law and the witnesses, they should ask for a brief.

With regard to the impetus summary jury trial provides for case settlement, one plaintiff's attorney said, "For simple cases, it's probably the same [as assignment to full trial]; for difficult cases, there probably is not as much pressure to settle if the assignment is to summary jury trial."

Views of Attorneys Whose Cases Went On to Full Trial

Plaintiffs' and defendants' attorneys who participated in three cases that completed summary jury trial but went on to full trial because summary jury trial did not result in settlement were interviewed by telephone during the first half of December 1980. In the interviews attorneys were asked (see appendix E):

- To what extent the summary jury trial provided them with a good or poor opportunity to present all of the evidence and arguments favoring their side of the case
- How much of their time and effort the case required, compared with what it would have required if it had not been assigned to summary jury trial
- How much of their client's time the case had required, compared with what it would have required if it had not been assigned to summary jury trial
- Whether the difference between the charge to jurors that concluded the summary jury trial presentation and the charge that would have concluded a full-trial presentation of the same case had any effect on the outcome of the summary jury trial
- Why the summary jury trial outcome had not resulted in settlement of the case
- Whether their client had commented on the summary jury trial procedure, and if so, what the nature of those comments was
- Whether they would like to use summary jury trial again
- Their general opinion of summary jury trial.

A tabulation of the interview responses is presented in table 4. Regarding the extent to which summary jury trial provided them with a good or poor opportunity to present all of the evidence and arguments favoring their side of the case, two attorneys for the de-

TABLE 4
Views of Summary Jury Trial Given by Attorneys Whose Cases Went on to Full Trial

To what extent did the summary jury trial provide you with a good or poor opportunity to present all of the evidence and arguments favoring your side of the case?

Attorneys	Very Good	Adequate	Inadequate	Very Poor
Plaintiffs' (n = 3)	0	1	0	2
Defendants' (n = 3)	2	1	0	0

Do you feel that this case has required more or less of your own time and effort than it would have if it had not been assigned to summary jury trial?

Attorneys	Much More	Somewhat More	About the Same	Somewhat Less	Much Less
Plaintiffs' (n = 3)	0	2	1	0	0
Defendants' (n = 3)	1	2	0	0	0

Do you feel that this case has required more or less of your client's time than it would have if it had not been assigned to summary jury trial?

Attorneys	Much More	Somewhat More	About the Same	Somewhat Less	Much Less
Plaintiffs' (n = 3)	1	2	0	0	0
Defendants' (n = 3)	0	2	1	0	0

Do you think that the difference between the charge to jurors that concluded the summary jury trial presentation and the charge that would have concluded a full-trial presentation of the same case had any effect on the outcome of the summary jury trial?

Attorneys	Yes	No	Don't Know
Plaintiffs' (n = 3)	0	1	2
Defendants' (n = 3)	1	2	0

Would you like to use summary jury trial again?

Attorneys	Yes	No
Plaintiffs' (n = 3)	0	3
Defendants' (n = 3)	3	0

fendant considered the proceeding "very good," and two attorneys for the plaintiff considered the proceeding "very poor." The two other attorneys, one for the plaintiff and one for the defendant, rated their proceedings "adequate." The plaintiff's attorney qualified his response, saying that it pertained only to testimony and to the fact that the jurors had no opportunity to observe witnesses and evaluate their credibility.

Because their cases went on to full trial, attorneys in this group agreed that assignment of their cases to summary jury trial had required more time and effort of them and their clients than the cases would have required had they not been so assigned. The one attorney for the defendant who said the case had required "about the same" amount of his client's time had succeeded in having his client excused from appearing at the summary jury trial.

Five of the six attorneys interviewed either said that the difference between the charge made to jurors in the summary jury trial and the charge that would have concluded a full-trial presentation had no effect on the summary jury trial outcome or said that they did not know whether it had any effect. The one defendant's attorney who said that the charge did have an effect on the summary jury trial outcome had already been through the full trial of the case, in which there was a directed verdict on liability.

The responses of attorneys to the question that asked whether they would like to use summary jury trial again were neatly polarized: The plaintiffs' attorneys were unanimously opposed and the defendants' attorneys unanimously willing. This polarization is easily understandable in light of the summary jury trial outcomes alone. All three cases in this group involved personal injury claims. In the summary jury trials, juries found no liability in two of the cases and awarded $850 in the third case (plaintiff's demand in the latter case was for $60,000). Two of the cases had completed full trial at the time of the interviews. The plaintiff who had been awarded $850 at summary jury trial was awarded $25,000 at full trial. One of the cases in which the summary jury trial verdict was "no liability" settled for $9,000 during the plaintiff's presentation at full trial.

It should be noted, however, that in the latter case, the plaintiff's attorney said that because of a misunderstanding between himself and the magistrate presiding over the summary jury trial, he was not permitted to present testimony at the summary jury trial that, at full trial, resulted in settlement of the case.

Two of the three attorneys for the plaintiff interviewed said that the summary jury trial systematically works to the advantage of defendants.

Jurors' Views of Summary Jury Trial

In mid-November 1980, questionnaires that solicited opinions and observations about summary jury trial were mailed to eighty-eight jurors who had served at summary jury trials. Of those questionnaires, four were returned by the post office as undeliverable, and forty-six (55 percent of the delivered questionnaires) were filled out by jurors, returned, and analyzed.

The one-page questionnaire (see appendix E) asked jurors:

- Whether they thought there was any difference between summary jury trial and full trial, and if so, to describe the difference
- For comments about summary jury trial
- Whether they thought there was any difference in understandability between summary jury trial and full trial
- Whether they had ever served at full trials and, if so, at how many.

The results of the analysis of the two multiple-choice questions used in the survey are presented in table 5. Almost three-quarters of the respondents (74 percent) answered "yes" to the question, "Do you think there is any difference between the summary jury trial and full trial?"

Responses to the question that solicited comments about summary jury trial demonstrate that the jurors had a good grasp of some of the differences between summary jury trial and full trial:

> No witnesses to testify.
>
> Done in shorter period of time. Don't have to come back next day.
>
> Each attorney has the chance to present his side of the case without going through the process of presenting witnesses.
>
> No witnesses; time limit hearing the case and time limit for jury deliberations; if a unanimous decision is not possible, jurors fill out individual form giving individual opinion.

With regard to the relative understandability of summary jury trial, almost half the respondents (48 percent) indicated that there was no difference (22 percent) or that they did not know whether there was a difference (26 percent). Over one-third of the respondents (35 percent) indicated that full trial was more understandable.

TABLE 5
Jurors' Perceptions of the Differences between Summary Jury Trial (SJT) and Full Trial*

Do you think there is any difference between the summary jury trial and full trial?

Yes	No	Don't Know
34	3	9
74%	6%	20%

Do you think there is any difference in understandability between summary jury trial and full trial?

Full Trial Much More Understandable	Full Trial Somewhat More Understandable	No Difference
10	6	10
22%	13%	22%
SJT Somewhat More Understandable	**SJT Much More Understandable**	**Don't Know**
5	3	12
11%	6%	26%

*Forty-six jurors responded to the questions.

Less than one-fifth of the respondents (17 percent) indicated that summary jury trial was more understandable.

Some of the jurors' responses to the open-ended question that solicited comments about the summary jury trial pertain to this perceived difference in understandability:

> It is hard to listen to someone for one hour who does not make everything clear or . . . is not a good speaker.
>
> Too much presented in too short a time.
>
> All depended on the presentations of two lawyers—no witnesses, no cross-examination, no arguments. Too much seemed left unsaid and not enough facts made absolutely clear.
>
> You really do not hear enough of the evidence.
>
> The summary jury trial left much to the imagination, whereas the regular jury trial gave a clearer picture through visual contact with the persons involved.

Many responses to this item, however, expressed an appreciation of the ends that summary jury trial is intended to serve and indicated that summary jury trial is perceived as a reasonable procedure to use toward those ends:

> I feel the summary jury trial would weed out a lot of cases that take up the court's time and would also save people money.
>
> Can see potential time savings to all concerned.
>
> Probably saves money involved in a long trial.

It is impossible to determine, however, the extent to which these perceptions occurred to the respondents spontaneously; some jurors' opinions about summary jury trial may have been influenced by the informal contact between Judge Lambros or the magistrates and a few of the juror panels. One juror wrote the following response to the open-ended query:

> After my summary jury trial was over, the judge came to the jury room to tell us how the summary jury trial originated and to answer any questions we had—also to solicit our comments. As a jury, we felt just as obligated to come to a fair and truthful verdict—and, I suspect, were able to reach that verdict faster and fairer because it was not absolutely binding. I believe the summary jury trial is an excellent tool, especially in getting certain types of cases cleared from the court docket.

Some jurors' comments about summary jury trial paralleled opinions elicited from many attorneys in the study—namely, summary jury trial may work better for some cases than for others, and suitability for assignment to summary jury trial may decrease with increasing complexity of the case to be tried.

Judge Lambros informed us that some of his colleagues on the bench had been excusing jurors who had served at summary jury trials from serving at subsequent full trials because the judges believed that serving at summary jury trials might affect the jurors' judgments at the full trial. Therefore, to determine whether previous trial experience affected jurors' perceptions of the differences between summary jury trial and full trial, the questionnaire responses of jurors with previous full-trial experience and those of jurors without such experience were sorted for separate analysis (see table 6).

This separation does not directly address the host of concerns that may have instructed the decision of Judge Lambros's colleagues to eliminate jurors who served at summary jury trials from subsequent full-trial service. However, it does provide some insight into the question whether experienced and unexperienced jurors

TABLE 6
Experienced and Unexperienced Jurors' Perceptions of the Differences between Summary Jury Trial (SJT) and Full Trial (FT)

Do you think there is any difference between the summary jury trial and full trial?

Jurors	Yes	No	Don't Know
With trial experience*	18 86%	2 10%	1 4%
With no trial experience	16 64%	1 4%	8 32%

Do you think there is any difference in understandability between summary jury trial and full trial?

Jurors	FT Much More Understandable	FT Somewhat More Understandable	No Difference
With trial experience*	7 33%	4 19%	3 14%
With no trial experience	3 12%	2 8%	7 28%

Jurors	SJT Somewhat More Understandable	SJT Much More Understandable	Don't Know
With trial experience*	3 14%	2 10%	2 10%
With no trial experience	2 8%	1 4%	10 40%

*Some respondents who reported previous full-trial experience specified that the experience was on grand juries. Because no provision for such experience was made on the questionnaire and because other jurors who indicated previous experience may have served only on grand juries, grand jury experience and full-trial experience were treated as a single category. (The number of experienced jurors was 21, the number of unexperienced jurors, 25.)

have diverse perceptions of the differences between full trial and summary jury trial.

Differences between the two groups of jurors—those with and those without full-trial experience—emerged in the analysis of responses to the question, "Do you think there is any difference between the summary jury trial and full trial?" The proportion of jurors with full-trial experience who thought there was a difference (86 percent) was larger than the proportion of jurors without full-trial experience who thought there was a difference (64 percent).

More pronounced differences between these two groups of jurors were found in the analysis of responses to the questionnaire item that asked jurors whether they thought there was any difference in understandability between summary jury trial and full trial. While a majority of jurors without full-trial experience (68 percent) indicated that there was no difference (28 percent) or that they did not know if there was a difference (40 percent), a majority of jurors with full-trial experience (52 percent) rated full trials "more understandable" (33 percent "much more understandable"; 19 percent "somewhat more understandable").

In response to the open-ended items on the juror questionnaire, jurors with full-trial experience commented more on the things that were "missing" from summary jury trial, as compared with full trial, than did jurors without such experience.

Magistrates' Views of Summary Jury Trial

Magistrates Perelman and Streepy, who presided over twenty-one of the twenty-six cases that went through summary jury trial proceedings, were interviewed several times in the course of the study. For seven of the cases, the magistrates were interviewed immediately following the summary jury trial. For the remaining cases, the magistrates were interviewed at one sitting. The magistrates' observations regarding eighteen summary jury trials over which they had presided were elicited through in-person interviews, using a standard interview schedule to enable analysis across cases. The magistrates were asked (see appendix E):

- For an estimate of how long the case would have taken in a full trial
- Whether the attorneys were as well-prepared and earnest in the presentation of the case as the magistrates would expect attorneys at trial to be
- Whether it appeared that counsel for either or both parties were motivated in the summary jury trial by tactical considerations in anticipation of further litigation
- Whether it appeared that counsel for either or both parties were motivated in the summary jury trial by a desire to resolve the dispute by summary jury trial
- For a judgment, on a seven-point bipolar scale, of the performance of attorneys (for both parties) in the case.

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The outcomes of the analysis of the magistrates' responses are presented in table 7. Of the thirty-six attorneys evaluated on presentation (eighteen for plaintiffs, eighteen for defendants), the magistrates indicated that twenty-five (69 percent) were as well-prepared and earnest as they would expect attorneys at trial to be. Overall, the magistrates rated more defendants' attorneys as well-prepared and earnest (83 percent) than they did plaintiffs' attorneys (55 percent).

According to the magistrates, a minority (17 percent) of the attorneys whose presentations they heard were motivated in the summary jury trial by tactical considerations in anticipation of further litigation. The magistrates' perceptions of such motivation, however, were slightly more frequent in their evaluation of plaintiffs' attorneys (22 percent) than in their evaluation of defendants' attorneys (11 percent).

The magistrates evaluated a majority (72 percent) of the attorneys they heard as motivated by a desire to resolve the dispute by summary jury trial. This evaluation, however, was applied to a larger proportion of defendants' attorneys (89 percent) than plaintiffs' attorneys (61 percent).

Overall, the magistrates gave favorable ratings to the attorneys' performances at summary jury trial. The magistrates rated attorneys' performances using a seven-point bipolar scale (1="first-rate, about as good a job as could have been done"; 7="very poor"). The average rating for all attorney presentations was 2.58 (roughly midway between "very good" and "good"). The average rating for defendants' attorneys (2.11; closer to "very good" than to "good"), however, was higher than that for plaintiffs' attorneys (3.06; closer to "adequate, but no better" than to "good").

The evaluations of attorneys' conduct at summary jury trial generally indicated that the magistrates believed that most of the attorneys took the summary jury trial seriously, using the procedure to pursue resolution of their cases (rather than as an opportunity to gain tactical advantage at subsequent full trial) and presenting their cases well.

Analysis of the magistrates' observations indicates that defendants' attorneys were more frequently viewed as well-prepared and motivated by a desire to resolve their cases by summary jury trial than were plaintiffs' attorneys. Moreover, ratings of presentations by defendants' attorneys were higher than ratings of presentations by plaintiffs' attorneys.

Both magistrates speculated that the difference between the motivation of plaintiffs' attorneys and that of defendants' attorneys might have been due in part to differences in their fee bases. Be-

TABLE 7
Magistrates' Evaluations of Attorneys' Motivation and Performance

Summary Jury Trial

Counsel	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
Were counsel for both parties as well-prepared and earnest in the presentation of their cases as you would expect attorneys at trial to be?																		
Plaintiffs'	no	yes	yes	yes	yes	no	yes	yes	no	no	yes	no	no	no	yes	yes	no	yes
Defendants'	yes	yes	yes	yes	yes	no	yes	no	yes	yes	yes	yes	yes	yes	yes	yes	no	yes
Did it appear to you that counsel for either or both parties were motivated in the summary jury trial by tactical considerations in anticipation of further litigation?																		
Plaintiffs'	no	no	no	no	no	no	no	no	yes	*	yes	no	yes	yes	no	no	no	no
Defendants'	no	no	no	no	no	no	yes	no	no	no	yes	no	no	no	no	no	no	no
Did it appear to you that counsel for either or both parties were motivated in the summary jury trial by a desire to resolve the dispute by summary jury trial?																		
Plaintiffs'	yes	yes	*	yes	yes	yes	yes	yes	no	*	yes	no	no	no	yes	yes	no	yes
Defendants'	yes	yes	*	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	no	yes
What is your judgment of the lawyers' performance in this case (1 = first-rate; 7 = very poor)?																		
Plaintiffs'[1]	3	1	2	1	3	2	1	4	6	6	1	4	7	5	2	1	3	3
Defendants'[2]	2	1	2	1	2	2	2	3	3	2	2	2	3	2	2	2	3	2

NOTE: Cases have been assigned arbitrary numbers to protect the anonymity of the magistrates' evaluations.
*Indicates a "don't know" response.
[1]The mean of this row is 3.06.
[2]The mean of this row is 2.11.

cause the fees of plaintiffs' attorneys are based on settlements, and because the novelty of the summary jury trial and the nonbinding nature of summary jury trial verdicts do not provide plaintiffs' attorneys with a basis for confidence regarding settlement of the case through the procedure, resistance of these attorneys to the proceeding is understandable.

Nevertheless, the generally high ratings given all attorneys by the magistrates, and the substantial proportion of cases in the study that were settled by summary jury trial, argue against extreme concern about the observed differences in the motivation and performance of the two types of attorneys.

During the course of the interviews the magistrates were asked for their evaluations of the summary jury trial proceeding and their perceptions of its effects on the conduct of their office. The magistrates were confident about the usefulness of the procedure in the settlement of cases. Both magistrates believed that attorneys' exposure to the magistrates through this procedure would be beneficial in fostering the attorneys' willingness to have them preside over full-trial proceedings. The magistrates also indicated that their experience in summary jury trial proceedings provided good practice for full-trial work.

Jury Clerk's Observations about Summary Jury Trial

In an effort to identify some of the effects of summary jury trial on the use and assignment of jurors, we interviewed Maria Bennett, jury clerk at the Cleveland federal courthouse, in early February 1981.

In response to a request from one of the judges that no jurors with summary jury trial experience be assigned to juror panels in his court, Bennett established a separate summary jury trial juror pool.

Some jurors are assigned to the summary jury trial pool by random draw from the population of jurors who would otherwise be assigned to the regular pool. Other jurors, whose time commitments might otherwise bar them from regular jury duty, are assigned to the summary jury trial pool because of the brevity and predictability of the length of summary jury trial duty. Bennett stated that because this second kind of juror would otherwise have been excused entirely from any jury duty, the establishment of the summary jury trial juror pool has enabled increased use of jurors.

"Most jurors like the shorter duty," Bennett reported, "but would like to serve on both kinds of trials." This observation was

corroborated by one of the jurors in the summary jury trial survey, who wrote, "Being 'stuck' on the summary jury trial, since we weren't chosen for regular trial after that experience, made many of us very unhappy." This juror was, however, aware of the "merits [of summary jury trial] in that it does cut down court time and costs and many abide by the summary jury trial decision."

Bennett said that establishment of the summary jury trial juror pool has not resulted in much extra work for her office. Indeed, she said that summary jury trial has saved her office work in that this procedure does not pose the kinds of day-of-trial settlement and change-of-plea problems often posed by regular trials. She speculated that the use of summary jury trial might, therefore, work to increase the district's overall juror utilization record.

IV. CONCLUSIONS AND RECOMMENDATIONS

Despite the objections to, and complaints about, summary jury trial expressed by some attorneys contacted in this study, it is clear that the procedure does serve the purposes Judge Lambros intended. Presentation of cases at summary jury trial results in settlement in a substantial proportion of instances. In the opinion of a number of the attorneys surveyed, assignment of cases to summary jury trial creates a greater impetus toward pretrial settlement than does assignment to other pretrial proceedings. Summary jury trial also enables magistrates to participate in the disposition of cases that would otherwise occupy the time of judges.

We believe that use of the procedure should continue. Some modifications in its use and conduct, however, are suggested by the outcomes of the study.

A majority of attorneys who offered opinions about the summary jury trial commented on its novelty as well as its procedure and content. Attorneys' negative comments about summary jury trial were primarily based on their resistance to preparing for an unfamiliar proceeding, rather than on their actual perceptions of the proceeding itself. Some such comments came from attorneys who had worked on cases that had been assigned to summary jury trial but had settled prior to the proceeding. Inasmuch as some of these attorneys had not even participated in a summary jury trial, their unfavorable views of the procedure appeared to be based primarily on its novelty rather than its content.

Several attorneys who responded to the survey said that their cases simply had not been ready for summary jury trial and that they had needed more time to prepare. In some instances this resulted in continuation of the summary jury trial. In others it resulted in dissatisfaction with the proceeding or its outcome.

Given the importance of tradition and precedent in the legal profession, it is reasonable to assume that the novelty of any new procedure would be sufficient cause for negative opinions. Resistance to innovation may also compound substantive criticism of the content of any new legal procedure. Therefore, the merits of a particular innovation may best be revealed by initially applying the inno-

vation to situations in which it has been shown to be most effective, to situations in which participants believe it may be most effective, or to situations in which the consequences of failure are minimized.

Thus, although Judge Lambros is justifiably pleased with the success of summary jury trial thus far and is understandably enthusiastic about applying the procedure to a wider range of cases than it has been applied to thus far, there is a strong argument to be made for conservative application of the procedure until it builds up a longer history of success and becomes more familiar to the bench.

We recommend that a fairly narrow profile of cases suitable for routine assignment to summary jury trial be formulated. Despite the partial success of summary jury trial in multiparty suits, we suggest that the profile typically include only single defendant/single plaintiff cases. We also suggest that counsel in summary jury trials be routinely ordered to submit proposed jury instructions to the court and opposing counsel, to mark and exchange copies of all proposed exhibits, and to inform the court of their objections to any proposed exhibits. Magistrate Streepy is already using such an order in the Northern District of Ohio (see appendix G).

Cases in which the truthfulness of an individual witness's testimony plays a central role should be excluded from summary jury trial proceedings. In addition, guidelines for assessing the completeness of discovery should be established.

Although the proposed profile would only describe cases suitable for routine assignment, it should not be completely restrictive; wider application of the procedure should not be discouraged. Most of the attorneys who indicated that they would be willing to use summary jury trial again stipulated that they would want to be consulted regarding its appropriateness for specific cases. For cases that do not conform to the standards for routine assignment, consultation with counsel regarding the cases' suitability for summary jury trial could well work to increase the rate of settlement of these cases following summary jury trial.

Some of the uncertainties expressed by attorneys about preparation for summary jury trial might be reduced or eliminated by revising Judge Lambros's "Handbook and Rules of the Court for Summary Jury Trial Proceedings" (see appendix A). The formulation of procedural guidelines for the presentation of arguments at summary jury trial and emphasis on the similarity between attorneys' preparation for summary jury trial and preparation for full trial might reduce some of the existing resistance to the procedure.

Beyond its effect on summary jury trials in Judge Lambros's court, implementation of these suggestions should work to facilitate the introduction of the summary jury trial procedure into other districts. It is probably not premature to suggest such an introduction. Although some attorneys contacted in the study said that it was primarily their respect for Judge Lambros that prompted them to suspend their skepticism about the procedure before they participated in it, a number of these attorneys said that they came out of the summary jury trial convinced of its intrinsic value in certain cases. Because the bulk of cases were handled by the magistrates, most of the attorneys who expressed willingness to use summary jury trial again did so without having been influenced by a judge's enthusiasm for the procedure.

The Center, then, might well encourage implementation of summary jury trial in other districts, particularly in districts that employ magistrates.

Evaluation of the long-term effects of summary jury trial on caseload management is beyond the scope of this study. Such long-term evaluation would best be conducted by the Center. Many of the cases observed in this study were relatively old; future evaluations of the summary jury trial should include observations of the impact of summary jury trial on recently filed cases so that attorneys' resentment about the delays in assignment to full trial does not bias their perceptions of summary jury trial.

Although evaluation of summary jury trial using more rigorous methods—for example, random assignment of cases to either summary jury trial or traditional procedures—is possible, we do not believe that such an approach is a good idea. Given the numerous dimensions on which cases may vary, it would simply take too long to build up adequate samples to satisfy the requirements of statistical analysis. Also, such an approach would hinder ongoing refinement in summary jury trial procedures because .the evaluation could not allow for changes in the procedure without jeopardizing the validity of the findings.

We suggest, rather, that the Center initiate a set of tracking procedures to be applied to all cases assigned to summary jury trial. Instruments could be devised to ascertain the time spent on each summary jury trial by court personnel and the costs associated with jurors' participation in the procedure. Cases that did not settle after summary jury trial could be tracked through full trial to determine whether, as suggested by some plaintiffs' attorneys, summary jury trial favors the defense.

APPENDIX A

Judge Lambros's Handbook and Rules of the Court for Summary Jury Trial Proceedings

Handbook and Rules of the Court for Summary Jury Trial Proceedings

I. Introduction

> The third important element of pretrial hearings is arriving at settlements. This possibility should be explored in every instance. While the pretrial judge may not, and should not, exert pressure to induce litigants to settle their cases, he can properly perform the function of a mediator or conciliator, and thereby in many instances assist in leading the parties to an agreement. [Report of the Committee on Pretrial Procedure to the Judicial Conference for the District of Columbia. 4 F.R.Serv., L.R. 47, p. 1015.]

There is a certain class of cases where the only bar to settlement among parties is the uncertainty of the perception of liability and damages by the members of a lay jury. These cases involve issues, like that of "the reasonable man" in negligence litigation, where no amount of jurisprudential refinement and clarification of the laws can aid in resolution of the case. In these cases, settlement negotiations must often involve an analysis of similar jury trials within the experience of counsel and the trial judge as to the findings of liability and damage. In this way, parties grope toward some notion of a likely award figure upon which to base and begin their negotiations.

More often than not, however, this comparison of past trial experience is in vain, and even an agreement on the facts and summary judgment on the liability issue only results in a slightly shorter trial on the issue of damages. I have for some time felt frustration over the need for trial in such cases where neither side wishes litigation and would be willing to consider reasonable settlement and to negotiate in good faith if only some sense of the lay perception of the case could be attained. I suspect that, in this regard, counsel's legal training is a disadvantage because knowledge of the law precludes an ability to see a case as would a lay jury.

In this type of case, I wish to give counsel a chance to sound a lay jury on its perception of liability and damage without affecting the parties' rights to a full trial on the merits and without a large investment of time or money. The summary trial provides a "no-risk" method by which counsel may obtain the perception of six jurors of the merits of their case in the course of a half-day pro-

ceeding so as to give parties a reliable basis upon which to build a just and acceptable settlement.

This proceeding *in no way affects* the parties' right to a full trial de novo on the merits. If one or both parties feel the result of the jurors' deliberations is grossly inequitable, the entire matter can be forgotten. Intelligent counsel, however, will readily recognize the value of the proceeding as a predictive tool, and will utilize it to obtain just results for their client at minimum expense.

II. Brief Description of the Proceeding

Stated most simply, summary jury trial is the presentation by counsel to a jury of their views of the case and the jury's decision based on such presentations. It is an amalgam of opening and closing arguments with an overview of the trial proofs. No testimony is taken from sworn witnesses. Counsel may restate the anticipated testimony of trial witnesses and are free to adduce exhibits for the jury. Because of the non-binding nature of the proceedings, evidentiary and procedural rules are few and flexible, and tactical maneuvering is kept to a minimum.

The summary jury trial proceeding itself is normally concluded in half a day, and will rarely extend beyond a full day. The proceeding may be presided over by either a district court judge or a magistrate upon assignment by the judge.

In order for any real benefit to be derived, it is essential that counsel have their case in a state of trial readiness when called for summary jury trial. Therefore, normally a pretrial conference will be held shortly before, particularly in those cases assigned to a magistrate. In all cases, unless excused by order of court, counsel are expected to submit requests for jury instructions and a memorandum of law on any novel issues presented by the case no later than three working days before the trial date.

At the summary jury trial attendance by the client or a client representative is expected. If appearance will work a hardship, leave must be sought by way of motion to excuse such attendance.

A jury venire of a sufficient number to provide a jury of six will be called. Counsel are provided with a short profile of each juror, stating:

1. juror's name and occupation.
2. juror's marital status.
3. juror's spouse's name and occupation.
4. names and ages of juror's children.
5. previous knowledge of the juror of any parties, counsel or the nature of the case.

6. adverse attitudes of the juror (if any) to the nature of the action.

The judge or magistrate interrogates the full panel. Counsel are permitted to exercise challenges--in a two-party action two apiece, with adjustment in case of multiple plaintiffs or defendants. The first six jurors seated after the challenges constitute the panel.

Counsel are usually given one hour each for their presentations, although adjustments are made for multiple parties which may extend the total beyond two hours. Plaintiff is permitted to reserve a limited time for rebuttal, and it is expected that such time will be used for true rebuttal. If a plaintiff "sandbags" the defendant by holding back on a critical element of the case, the defendant can be granted response time.

In making their statements to the jury, counsel are limited to presenting representations as to evidence which would be admissible at trial. While counsel are permitted to mingle representations of fact with argument, considerations of responsibility and restraint must be observed. Counsel may only present factual representations supportable by reference to discovery materials, including depositions, stipulations, signed statements of witnesses, or other documents, or by a professional representation that counsel personally spoke with the witness and is repeating what the witness stated. Statements, reports and depositions may be read from, but not at undue length.

Physical evidence, including documents, may be exhibited during a presentation and submitted for the jury's consideration during deliberations. Such exhibits are not marked, and at the end of the hearing are returned to the party tendering them.

By virtue of the nature of summary jury trial, objections are not encouraged. However, should counsel overstep the bounds of propriety as to a material aspect of the case, an objection will be received and, if well-taken, the jury admonished.

At the conclusion of the presentations the jury is given an abbreviated charge, and retires for its deliberations. The jury is given the option of returning a consensus verdict, or a special verdict anonymously listing the opinion of each juror as to liability and damages. The jury is encouraged to return a consensus verdict, and given ample time to reach such an agreement. The special verdict, however, does afford counsel some insights as to lay perceptions of the case and may suggest an equitable basis for settlement.

Summary jury trial is generally not recorded. Counsel may, if they wish, arrange for the attendance of a court reporter.

If the action is not resolved by counsel at or immediately following the trial proceeding, a pretrial is held before the court shortly thereafter to discuss settlement. It is anticipated that cases not disposed of through summary jury trial will be called for trial on the merits within 30 to 60 days of the summary hearing.

This outline of procedures is reflective of the terms of an order transmitted herewith which controls this action for purposes of all summary jury trial proceedings.

III. Basis of the Procedure

This procedure is new, but it is squarely grounded in the Federal Rules of Civil Procedure, both in spirit and technicality.

Remembering that the Rules are to be construed "to secure the just, speedy, and inexpensive determination of every action" [Rule 1, F.R.C.P.], I view this procedure as within a court's pretrial powers [Rule 16(6), F.R.C.P.] and inherent power to control its docket.

Pretrial procedures were born in Detroit in 1932, at a time when the state circuit court was far behind in its docket. Without enabling legislation and on its own initiative, the court set up a mandatory pretrial procedure system. When it became obvious that the pretrial concept was effective in speeding and streamlining cases, the movement spread to Cleveland, Boston and other areas, and was eventually adopted into the Federal Rules. *See,* Laws and Stockman, Pretrial Conference (ABA Jud. Admin. Monograph, Series A, No. 4) 4; Comment, 33 Ill. L. Rev. 699 (1939).

As now embodied in Rule 16 of the Federal Rules of Civil Procedure, the pretrial device remains an open-ended tool for processing cases that gives the court wide discretion. As the Seventh Circuit explained in *O'Malley v. Chrysler Corp.,* 160 F.2d 35, at 36:

> The Federal Rules of Civil Procedure, Rules 34-36, 28 U.S.C.A. following section 723c, provide not only for discovery but for pretrial conference. (Rule 16.) Under these rules we think the Court has the wide discretion and power to advance the cause and simplify the procedure before the cause is presented to the jury. The District Court had the power to issue such orders as in the exercise of its sound discretion would advance and simplify the cause before trial. . . . [T]he order made in the instant case was such an order. It was only a step in the orderly procedure of the case. The District Court was exercising its pretrial powers. It would, in our opinion, have had the *power* to make the order it made irrespective of the Federal Rules of Civil Procedure.

O'Malley has been repeatedly confirmed by later courts (*see, e.g., Tracor, Inc. v. Premco Instruments, Inc.,* 395 F.2d 849 (5th Cir. 1968); *Buffington v. Wood,* 351 F.2d 292 (3d Cir. 1965)), and the only real limitation placed on a court's power under Rule 16 appears to be when the court's action would adversely prejudice a party's position or would compel counsel to adopt one line of trial strategy over another (*see, Identiseal Corporation of Wisconsin v. Positive Identification Systems, Inc.,* 560 F.2d 298 (7th Cir. 1977)). Neither of these two latter considerations is present in the summary trial procedure.

Use of summary trial procedures is necessary in certain cases because it provides one bit of information vital to a proper "sifting of issues and evidence . . . with the view of simplifying, shortening and possibly avoiding a trial" (3 Moore's Federal Practice, ¶16.02)—lay perception of the value of the claimed damages. Time and again, I have seen amicable settlement discussion frustrated merely because counsel and judge had no way of determining a proper figure upon which to build discussions. Often in such a case, a plaintiff will recover in settlement agreement an amount based on the ability of his counsel at forceful and cunning horse-trading; more often, parties are forced to expend thousands of dollars toward a lengthy trial that might have been avoided by a simple three-hour summary jury trial procedure. I am certain that the new procedure will aid in achieving more just settlements and in easing the docket load of the federal courts.

Although the specific procedure is new to the federal system, the idea behind it is familiar from Rule 39(c)—the advisory jury. Admittedly, that Rule provides for an advisory jury only in cases not triable as of right by jury. The clear purpose behind the Rule, however, is to give the court and the parties the opportunity to utilize a jury's particular expertise and perceptions when a case demands those special abilities.

In the summary trial, the court is similarly calling upon jurors to provide their peculiar expertise in a situation where that expertise is vital but not provided for by the present civil procedure practice.

As with every new procedure, the summary trial's success and acceptance or failure and rejection depend largely upon the cooperation of the bar. If counsel use this new tool to expedite cases and aid in settlement, it will be an important new step in the jurisprudential evolution of the federal courts. If the procedure is manipulated by unscrupulous counsel to delay justice and frustrate the court, it will not achieve its purpose. I ask your help in implementing and refining this procedure.

373-124 O - 82 - 4

IV. Conclusion

Once again, I urge counsel's support in making this new procedural undertaking work and in providing me with suggestions for the improvement of the procedure in the future.

Thomas D. Lambros
United States District Judge

Dated: .....

APPENDIX B

Juror Profile Form

Juror Profile Form

To the Juror

You have been selected to take part in a new experiment being conducted by Judge Lambros called a "summary trial." The Judge's clerk will explain the details of the procedure to you before trial, but, briefly, it is a summarized presentation of a case upon which you will be expected to decide the issues within one day. Your verdict will be an advisory opinion to aid in the resolution of the case.

To assist the Court in impaneling a summary jury, you are requested to answer the following questions. Your responses to these questions and such additional questions which may be asked of you by the Court will be helpful in the selection of an impartial summary jury.

At the conclusion of the proceedings, your comments and suggestions will be solicited.

Questions:

1. Name.

2. Occupation and place of employment. (If retired, add your former occupation and place of employment.)

3. Are you married or single?

4. Your spouse's name.

5. Spouse's occupation and place of employment. (If retired, add the former occupation and place of employment.)

6. Your children's names and ages.

7. Do you know any of the parties or their counsel? If so, specifically state who.

8. Are you in any way personally connected with the facts of this case or do you have personal knowledge of this case? If so, state how.

9. Is there anything you can think of that would bias your opinion so that you would be unable to give a fair and just consideration to the merits of this case? If so, state what.

.....
Your signature

APPENDIX C

Judge Lambros's Rules of Procedure for Summary Trial Pretrial Procedure

United States District Court for the Northern District of Ohio (Eastern Division)

In Re:

Rules of Procedure
For Summary Trial
Pretrial Procedure **Order**
(As amended 1/12/81)

Lambros, District Judge

1. This order is entered pursuant to Rule 16 of the Federal Rules of Civil Procedure and the inherent power of the Court to control the docket.

2. This action is designated as one for summary jury trial proceedings to be conducted by the Court or a Magistrate of this District upon assignment from the Court. If assigned to a Magistrate, the Magistrate is authorized to exercise the same authority which the Court may exercise.

3. The action shall be in trial readiness when called for summary jury trial, with an expectation of trial on the merits within 30-60 days thereafter if not otherwise disposed of.

4. This action shall be heard before a six-member jury, to be selected from a venire specially summoned for that purpose. Counsel will be permitted challenges to the venire—normally two challenges apiece. Counsel will be assisted in the exercise of challenges by a brief voir dire examination to be conducted by the presiding judicial officer and by juror profile forms.

5. Unless excused by order of court, no later than three working days before the date set for hearing counsel shall submit requests for jury instructions and briefs on any novel issues of law presented.

6. Unless excused by order of court, clients or client representatives shall be in attendance at the summary jury trial.

7. All evidence shall be presented through the attorneys for the parties, who may incorporate arguments on such evidence in their presentations. Only evidence that would be admissible at trial upon the merits may be presented. Counsel may only present factual representations supportable by reference to discovery materials, to a signed statement of a witness, to a stipulation, or to a document

or by a professional representation that counsel personally spoke with the witness and is repeating what the witness stated. Statements, reports and depositions may be read from, but not at undue length. Physical exhibits, including documents, may be exhibited during a presentation and submitted for the jury's consideration.

8. Prior to trial counsel shall confer with regard to physical exhibits, including documents and reports, and reach such agreement as is possible as to the use of such exhibits.

9. Objections will be received if in the course of a presentation counsel goes beyond the limits of propriety in presenting statements as to evidence or argument thereon.

10. After counsel's presentations the jury will be given an abbreviated charge on the applicable law.

11. The jury may return either a consensus verdict or a special verdict consisting of an anonymous statement of each juror's findings on liability and/or damages (each known as the jury's advisory opinion). The jury will be encouraged to return a consensus verdict.

12. Unless specifically ordered by the Court, the proceedings will not be recorded. Counsel may, if so desired, arrange for a court reporter.

13. Counsel may stipulate that a consensus verdict by the jury will be deemed a final determination on the merits and that judgment be entered thereon by the Court, or may stipulate to any other use of the verdict that will aid in the resolution of the case.

14. These rules shall be construed to secure the just, speedy and inexpensive conclusion of the summary jury trial procedure.

It Is So Ordered.

.....
Thomas D. Lambros
United States District Judge

Dated: .....

APPENDIX D

Jurors' Advisory Opinion Forms

Jurors' Advisory Opinion

We, the Jury, have reached the following consensus:

The issue of liability having already been determined in favor of plaintiff(s) against defendant(s), we, the Jury, find that defendant(s) is/are liable in the amount of $ ..... .

We, the Jury, being unable to arrive at a unanimous decision on the amount of liability, make the following anonymous, individual findings:

1. Defendant is liable in the amount of $ ..... .
2. Defendant is liable in the amount of $ ..... .
3. Defendant is liable in the amount of $ ..... .
4. Defendant is liable in the amount of $ ..... .
5. Defendant is liable in the amount of $ ..... .
6. Defendant is liable in the amount of $ ..... .

.....
Foreperson

Appendix D

Jurors' Advisory Opinion

Case No. .....

We, the Jury, have reached the following consensus:
We, the Jury, find defendant
..... not liable.
..... liable, in the amount of ..... .
..... liable, but we are not able to reach a unanimous decision as to the amount.

We, the Jury, being unable to reach a unanimous decision, submit our anonymous, individual findings as follows:

1. ..... not liable.
..... liable, in the amount of ..... .

2. ..... not liable.
..... liable, in the amount of ..... .

3. ..... not liable.
..... liable, in the amount of ..... .

4. ..... not liable.
..... liable, in the amount of ..... ,

5. ..... not liable.
..... liable, in the amount of ..... .

6. ..... not liable.
..... liable, in the amount of ..... .

.....
Foreperson

APPENDIX E

Questionnaires and Interview Schedules Used in the Study

Cover Letters and Questionnaire Sent to Attorneys Whose Cases Settled after Summary Jury Trial

373-124 O - 82 - 5

November 25, 1980

Dear Attorney:

Summary jury trial procedures in the Northern District of Ohio are currently being studied for the Federal Judicial Center.

We have written to you to solicit your impressions of the summary jury trial proceeding(s) in which you recently participated,* and your overall impressions of the summary jury trial procedure.

As you know, the procedure is new. Its improvement, alteration, retention or elimination is dependent upon accurate information from those who have participated in it.

Please answer the questions on the enclosed questionnaire as frankly and as honestly as you can. Please do *not* put your name on the questionnaire. We have replaced personal identification with a coded number known only to Carl Moore and M.-Daniel Jacoubovitch, two researchers at Kent State University who are conducting this study for the Federal Judicial Center. At a later stage of this study, even this coded number will be dropped. At no time will your individual response be tied to your name, nor will individual identification be available to any other person. Your anonymity is guaranteed so that you may respond to the questions as freely as possible.

If you have any comments about summary jury trial above and beyond your responses to items on the questionnaire, please write them on the back of the questionnaire, or on separate sheets.

Please complete the questionnaire by December 5, and return it to us in the enclosed postage-paid envelope.

If you have any questions or concerns about the enclosed materials or the overall study, please do not hesitate to call us at Kent State University. Carl Moore can be reached at (216) 672-2659; M.-Daniel Jacoubovitch at (216) 672-2572.

We thank you for your kind consideration and assistance.

Sincerely,

Carl M. Moore

M.-Daniel Jacoubovitch

*If you did not present the case(s) identified on the following sheets at summary jury trial, please route these materials to the attorney(s) who did.

Appendix E

Federal Judicial Center Summary Jury Trial Study—Attorney Questionnaire

Case Name: .....
Case Number: .....
Attorney Identification Number: .....

To what extent did the summary jury trial provide you with a good or poor opportunity to present all of the evidence and arguments favoring your side of the case?

..... very good
..... adequate
..... inadequate
..... very poor

Compared to what you would have expected of this case if it had been assigned immediately to full trial, do you feel that the summary jury trial resulted in a more or less rapid resolution of this case?

..... much more rapid
..... somewhat more rapid
..... about the same
..... somewhat less rapid
..... much less rapid
..... don't know

Please explain:

Please describe the role that the summary jury trial played in the termination of this case.

Would a full trial have yielded a different outcome?

..... yes
..... no
..... don't know

Please explain:

Do you feel that this case required more or less of *your own time and effort* than it would have if it had *not* been assigned to summary jury trial?

..... much more
..... somewhat more

..... about the same
..... somewhat less
..... much less
..... don't know

Please explain:

Do you feel that this case required more or less of *your client's time* than it would have if it had *not* been assigned to summary jury trial?

..... much more
..... somewhat more
..... about the same
..... somewhat less
..... much less
..... don't know

Please explain:

Do you think that the difference between the charge to jurors that concluded the summary jury trial presentation and the charge that would have concluded a full-trial presentation of the same case had any effect on the outcome of the summary jury trial?

..... yes
..... no
..... don't know

Please explain:

In retrospect, would you have *preferred that the case be assigned immediately to full trial rather than to summary jury trial*?

..... yes
..... no
..... don't know

Please explain:

Has your client commented on the summary jury trial procedure?

..... yes
..... no

What was the nature of the comments?

Would you like to use summary jury trial again?

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..... yes
..... no

Please explain:

What is your general opinion of summary jury trial?

Please complete this questionnaire and return it to us in the accompanying postage-paid envelope by December 5.

THANK YOU

December 10, 1980

Dear Attorney:

About ten (10) days ago we wrote to you in order to solicit your impressions of the summary jury trial proceeding(s) in which you participated, and your overall impressions of the summary jury trial. If you have already returned the questionnaire, thank you very much. If not, please complete the enclosed questionnaire. We have enclosed a postage-paid envelope for your convenience.

Thank you for your attention to this matter.

Sincerely,

Carl M. Moore

M.-Daniel Jacoubovitch

Interview Schedule Used in Telephone Survey of Attorneys Whose Cases Settled before Summary Jury Trial

Federal Judicial Center Summary Jury Trial Study—Attorney Questionnaire

Case Name: .....
Case Number: .....
Attorney's Name: .....

Attorney for: ..... plaintiff ..... defendant

Compared to what you would have expected of this case if it had been assigned immediately to full trial, do you feel that assignment to summary jury trial resulted in a more or less rapid resolution of this case?

..... much more rapid
..... somewhat more rapid
..... about the same
..... somewhat less rapid
..... much less rapid
..... don't know

Please explain:

Do you feel that this case required more or less of *your own time and effort* than it would have if it had *not* been assigned to summary jury trial?

..... much more
..... somewhat more
..... about the same
..... somewhat less
..... much less
..... don't know

Please explain:

Do you feel that this case required more or less of *your client's time* than it would have if it had *not* been assigned to summary jury trial?

..... much more
..... somewhat more
..... about the same

..... somewhat less
..... much less
..... don't know

Please explain:

Do you have any comments you wish to make about summary jury trial?

Interview Schedule Used in Telephone Survey of Attorneys Whose Cases Went On to Full Trial

Federal Judicial Center Summary Jury Trial Study—Attorney Questionnaire

Case Name: .....
Case Number: .....
Attorney's Name: .....

Attorney for: ..... plaintiff ..... defendant

To what extent did the summary jury trial provide you with a good or poor opportunity to present all of the evidence and arguments favoring your side of the case?

..... very good
..... adequate
..... inadequate
..... very poor

Do you feel that this case has required more or less of *your own time and effort* than it would have if it had *not* been assigned to summary jury trial?

..... much more
..... somewhat more
..... about the same
..... somewhat less
..... much less
..... don't know

Please explain:

Do you feel that this case has required more or less of *your client's time* than it would have if it had *not* been assigned to summary jury trial?

..... much more
..... somewhat more
..... about the same
..... somewhat less
..... much less
..... don't know

Please explain:

Do you think that the difference between the charge to jurors that concluded the summary jury trial presentation and the charge that would have concluded a full-trial presentation of the same case had any effect on the outcome of the summary jury trial?

..... yes
..... no
..... don't know

Please explain:

Why has the summary jury trial *not* resulted in settlement of this case?

Has your client commented on the summary jury trial procedure?

..... yes
..... no

What was the nature of the comments?

Would you like to use summary jury trial again?

..... yes
..... no

Please explain:

What is your general opinion of summary jury trial?

THANK YOU

Cover Letter and Questionnaire Sent to Jurors Who Participated in Summary Jury Trials

November 14, 1980

Dear Citizen:

Recently you were called upon to perform one of the most time-honored and cherished duties of any citizen of a democracy—serving as a juror.

As a juror you participated in a new trial procedure that has recently been introduced in the Northern District of Ohio—the summary jury trial.

We would like to call upon your kindness to assist us in a study of this new legal procedure. Attached to this letter is a questionnaire attempting to assess your reaction to the summary jury trial(s) for which you served as a juror.

As you know, the procedure is new. Its improvement, alteration, retention or elimination is dependent upon accurate information from those who have participated in it.

Please do *not* put your name on the questionnaire. We have replaced personal identification with a coded number known only to Carl Moore and M.-Daniel Jacoubovitch, two researchers at Kent State University who are conducting this study for the Federal Judicial Center. At a later stage of this study, even this coded number will be dropped. At no time will your individual response be tied to your name, nor will individual identification be available to any other person.

We have taken these precautions not because any question in the questionnaire is embarrassing or personal, but rather to help you feel perfectly at ease so that you can respond openly and honestly. Please feel free to make additional comments about any particular question or about your experience as a juror in general; these comments would be most helpful.

Please complete the questionnaire by November 24, and return it to us in the enclosed postage-paid envelope. Your assistance in this study will contribute to the progress and improvement of the American legal system.

If you have any questions or concerns about the enclosed materials or the overall study, please do not hesitate to call us at Kent

State University. Carl Moore can be reached at (216) 672-2659; M.-Daniel Jacoubovitch at (216) 672-2572.

We thank you for your kind consideration and assistance.

Sincerely,

Carl M. Moore

M.-Daniel Jacoubovitch

Federal Judicial Center Summary Jury Trial Study—Juror Questionnaire

Juror Identification Number: .....

During your period of jury service you served on at least one summary jury trial. The summary jury trial was the proceeding during which attorneys for opposing parties were given one hour each to *summarize* their cases before a six-member jury.

Do you think there is any difference between the summary jury trial and full trial? (please check one answer)

..... yes
..... no
..... don't know

If you answered "yes," what is (or are) the difference(s)?

Do you have any comments you wish to make about the summary jury trial?

Do you think there is any difference in understandability between summary jury trial (SJT) and full trial?

..... full trial much more understandable
..... full trial somewhat more understandable
..... no difference
..... SJT somewhat more understandable
..... SJT much more understandable
..... don't know

In addition to serving on the summary jury trial, have you ever served as a juror for a full trial?

..... yes
..... no
..... don't know

If you answered "yes," how many full-trial juries have you served on? .....

Please complete this questionnaire and return it to us in the accompanying postage-paid envelope by November 24.

THANK YOU

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Schedule Used in Interview of Magistrates Who Heard Summary Jury Trial Cases

Federal Judicial Center Summary Jury Trial Study—Magistrate Questionnaire

Hearing Officer: .....
Number: .....
Case Name: .....

How long would this case have taken in a full trial?

Were counsel for both parties as well-prepared and earnest in the presentation of their cases as you would expect attorneys at trial to be?

plaintiff's counsel:
..... yes
..... no

defendant's counsel:
..... yes
..... no

Did it appear to you that counsel for either or both parties were motivated in the summary jury trial by:

tactical considerations in anticipation of further litigation?

plaintiff's counsel:
..... yes
..... no
..... don't know

defendant's counsel:
..... yes
..... no
..... don't know

a desire to resolve the dispute by summary jury trial?

plaintiff's counsel:
..... yes
..... no
..... don't know

defendant's counsel:

..... yes
..... no
..... don't know

Which of the following statements best describes your judgment of the plaintiff's lawyer's performance in this case?

..... first-rate, about as good a job as could have been done
..... very good
..... good
..... adequate, but no better
..... not quite adequate
..... poor
..... very poor

Which of the following statements best describes your judgment of the defendant's lawyer's performance in this case?

..... first-rate, about as good a job as could have been done
..... very good
..... good
..... adequate, but no better
..... not quite adequate
..... poor
..... very poor

Comments about the case:

APPENDIX F

List of Summary Jury Trial Cases Included in the Study

Case Number	Case Title	Pre-SJT Demand	Pre-SJT Offer	SJT Notice Date*	SJT Hearing Date*	Presiding Officer	SJT Verdict Unanimous	SJT Verdict Individual
C75-988	Perkins v. B&O R.R. Co.	$ 50,000	$ 1,000	3/13	4/01	L		X
C75-1014	Wrick v. Norfolk & Western	15,000	0	3/07	3/26	L	X	
C75-1113	Ross v. Schmid Labs, Inc.			3/13				
C76-79Y	Salman v. Conrail	150,000	0					
C76-98Y	Whittington v. N.J. Zinc	30,000		7/02	9/08	S		
C76-102Y	Morris v. Republic Steel	220,000	20,000-25,000	9/15	10/01	L	X	
C76-109Y	Marks v. Emeny	250,000	30,000	5/24	7/09	S	X	
C76-127Y	Yeager v. Scott	300,000	100,000	3/10	4/10	S	X	
C76-159Y	Leone v. Floyd	90,000	60,000	3/13	4/22	S	X	
C76-217Y	Adgor v. Mellon Stuart	175,000	**	6/16	7/22	P	X	
C77-15Y	Simstad v. P&LE R.R.	175,000	25,000	9/02	9/29	S		
C77-28	Page v. Smith	50,000	2,500		3/27	L		X
C77-58Y	Silva v. Penn Central	500,000	less than 100,000	3/12	4/09	P	X	
C77-96Y	Massi v. Penn Central	50,000	0	3/07				
C77-133Y	Klause v. Shebeck	25,000	4,500	4/07	4/21	S	X	
C77-161Y	Leport v. Crawford			3/25				
C77-224Y	Gould v. Time, D.C.	560,000	0	6/09	6/19	S	X	
78-67Y	Norada Aluminum v. Jeffries Trucking Jones v. P&LE R.R. et al.			9/24	11/24	S		
C78-81Y	Telishak v. Burlinski	100,000	40,000	6/09	7/03	P	X	
C78-94Y		60,000	12,000	3/11	4/11	P	X	
C78-1162	Green v. Dowdell	70,000	0	6/12				
78-1174Y	Denson v. Brocker	600,000	0	6/09	9/04	P		X
C78-1608Y	Miller v. Riddell	100,000	60,000+ 1,500 costs	2/26	3/05	L	X	
C78-1625	McGuire v. Columbia Trans.				6/09			
C78-1701	Howard v. Conrail	61,500	0	6/12				
C79-565	Nasir v. Bay Shipping	800,000		6/09	9/09	P	X	
C79-593Y	Zoellers v. Wellsville Terms	10,000	5,000	6/12				
C79-653	Logan v. O'Neil			6/18	7/10	S		
C79-772	Orseno v. Lake Terminal	150,000		6/10				
C79-773	Johnson v. Pringle Transit	200,000	10,000	6/12	7/02	P	X	
C79-839	Poczik v. Seashore Lanes	15,000	1,000	6/27				
C79-921	Jones v. Ingram	27,500	17,500	3/03	4/02	P	X	
C79-1135	Klingshirn v. Mullins	750,000	0	6/12				
C79-1236	Welsh v. Cuyahoga Comm. Hosp.	25,000	12,500	6/12	7/22	P	X	
C79-1307	Eyerman v. P&LE R.R.	200,000	0	6/10	9/22	S	X	
C79-1694Y	Unkel v. Conrail	15,000	1,000-1,500	6/09	8/01	S	X	
80-338	Koney v. Oligler	35,000	5,000	10/06	12/16	P	X	

NOTE: Blanks in the data columns indicate either that the data were not retrievable or that the event did not occur.

*All notices were sent and hearings held in 1980.

**Defendants couldn't agree on offer.

APPENDIX G

Sample Order to Counsel Concerning Jury Instructions and Exhibits

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United States District Court for the Northern District of Ohio (Eastern Division)

Joan M. Ross, et al.,
Plaintiffs
-v-
Schmid Laboratories, Inc., etc.,
Defendant
Streepy, Mag.

Case No. C75-1113
Judge Thomas D. Lambros

Order

With reference to the summary jury trial scheduled for July 23, 1980, the parties shall, on or before July 16, 1980:

(1) Submit proposed jury instructions to the court and counsel; and

(2) Mark and exchange copies of all proposed exhibits they plan to offer at said trial, and inform the court whether they object to any proposed exhibit, setting forth reasons in support thereof. Failure to exchange a proposed exhibit shall constitute valid grounds for objection to its admission. Failure to file an objection to any exchanged proposed exhibit shall constitute a waiver of any objection thereto.

It Is So Ordered.

.....
Jack B. Streepy
United States Magistrate

Dated: .....

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U.S. GOVERNMENT PRINTING OFFICE: 1982 O - 373-124

THE FEDERAL JUDICIAL CENTER

The Federal Judicial Center is the research, development, and training arm of the federal judicial system. It was established by Congress in 1967 (28 U.S.C. §§ 620-629), on the recommendation of the Judicial Conference of the United States.

By statute, the Chief Justice of the United States is chairman of the Center's Board, which also includes the Director of the Administrative Office of the United States Courts and six judges elected by the Judicial Conference.

The Center's **Continuing Education and Training Division** conducts seminars, workshops, and short courses for all third-branch personnel. These programs range from orientation seminars for judges to on-site management training for supporting personnel.

The **Research Division** undertakes empirical and exploratory research on federal judicial processes, court management, and sentencing and its consequences, usually at the request of the Judicial Conference and its committees, the courts themselves, or other groups in the federal court system.

The **Innovations and Systems Development Division** designs and helps the courts implement new technologies, generally under the mantle of Courtran II—a multipurpose, computerized court and case management system developed by the division.

The **Inter-Judicial Affairs and Information Services Division** maintains liaison with state and foreign judges and judicial organizations. The Center's library, which specializes in judicial administration, is located within this division.

The Center's main facility is the historic Dolley Madison House, located on Lafayette Square in Washington, D.C.

Copies of Center publications can be obtained from the Center's Information Services office, 1520 H Street, N.W., Washington, D.C. 20005; the telephone number is 202/633-6365.

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