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"I WANT MY STORY TOLD": AN ANTHROPOLOGICAL ANALYSIS OF
MALPRACTICE PLAINTIFFS' DISCOURSE

Rice University

Ph.D. 1986

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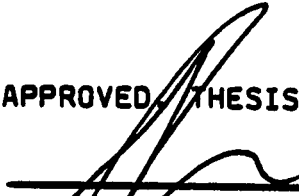
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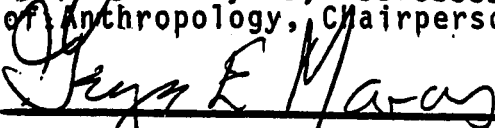
A THESIS SUBMITTED
IN PARTIAL FULFILLMENT OF THE
REQUIREMENTS FOR THE DEGREE

Doctor of Philosophy

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ABSTRACT

"I WANT MY STORY TOLD": AN ANTHROPOLOGICAL ANALYSIS OF MALPRACTICE PLAINTIFFS' DISCOURSE

MINDI MILLER

This research presents propositional patterns of discourse used by plaintiffs in constructing meaningful accounts of their malpractice lawsuits. The United States of America is the only country where large numbers of medical malpractice lawsuits are filed each year. Defense attorneys and health care providers blame patients for the high incidence of malpractice. Given this stereotype of the "suit-prone" patient, it is no wonder that plaintiffs' accounts have been neglected. The purpose of this study is to understand how plaintiffs view the circumstances that led them to sue, and to contribute to our understanding of medical malpractice litigation by documenting information from the consumers' point of view. It is, after all, patients who contact lawyers, and we need to know why they pursue litigation. Excerpts from interview texts answer such questions as: How do plaintiffs explain their choice and use of medical and legal resources? What sociocultural factors influenced plaintiffs' decisions to pursue medical malpractice litigation?

This research consists of qualitative data collected through extensive interviews with fifty-two plaintiffs, mostly residents of Texas. Interviews were tape-recorded,

transcribed and analyzed by manual and computer-based processing of verbal data. The study uses methods of discourse analysis derived from anthropology, linguistics, sociology and psychology.

Study results indicate that research subjects did not view themselves as "typical" suit-prone individuals. A recurrent theme found in narratives was the quest for information about what had caused the disasters that eventually catapulted them into litigation. The litigation process was a means for making sense of their experiences. During litigation, plaintiffs often learned that defendant care-givers were named in multiple lawsuits and were involved in falsifying medical records. They also encountered such issues as the "conspiracy of silence" that sometimes confounded their quest for expert testimony. Plaintiffs also expressed hopes that their lawsuits would prevent damage from occurring to someone else. Justice, altruism, meaning, and retribution, in varying propositions, are the leitmotifs of plaintiff accounts. Only the latter has any connection with the stereotype of "suit-proneness."

"I WANT MY STORY TOLD": AN ANTHROPOLOGICAL ANALYSIS OF
MALPRACTICE PLAINTIFFS' DISCOURSE

Dedication

To my parents, Thirza B. and Raymond V. Miller

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Many individuals have contributed directly or indirectly to the completion of this dissertation. Special thanks are given to the following people:

Tribute belongs to the attorneys who referred their clients to me and to the fifty-two plaintiffs who willingly participated in my research. These plaintiffs shared their time and very private perceptions with me. Without their stories, this research could not have been done.

I owe my committee members unlimited appreciation. Members of my committee provided recommendations and understanding beyond their academic duties. Dissertation chairperson and academic advisor Stephen A. Tyler provided invaluable leadership, information, encouragement and faith in my ability throughout my doctoral education. Janet M. Schreiber served as a role model, research advisor and friend, and while recognizing my strengths, directed me to areas of needed professional growth. George E. Marcus contributed his expertise and direction during the formation and completion of this research. Elizabeth Long gave advice during the initial interviews and refinement of my research results.

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TABLE OF CONTENTS

Abstract	iii
Dedication	v
Acknowledgments.	vi
Table of Contents.	ix
Chapter One: Introduction	1
Purpose for Studying Plaintiffs' Perceptions.	2
Problem Statement, Objective and Significance	3
Research Framework.	4
Chapter Two: Literature Review.	10
Malpractice History: Negligence and Liability.	10
Growth of American Malpractice.	16
Plaintiff-Related Literature.	32
Chapter Three: Methodology.	43
Study Design.	43
Sample Characteristics.	48
Techniques of Analysis.	53
Chapter Four: Narratives.	57
Plaintiff Descriptions.	58
Suit-Prone Labels	66
Quest for Information	74
Chapter Five: Discourse Topics and Narrative Points	81
Rhetorical Themes	81
Metaphorical Accounts	91
Quest for Meaning	101
Chapter Six: Discussion: The Rhetoric of Rationality	111
Encoding the Experiences.	111
Commonplace Knowledge	116
Stereotypes and Statements in Contrast.	123
Chapter Seven: Conclusion	133
Study Results	133
Research Implications	137
Summary	140
Appendices	144
Bibliography	155

Upon concluding an interview, the plaintiff stated:

Doctors write books that laymen don't understand and
lawyers write books that laymen don't understand.
Maybe you can write something that everyone will
understand.

Chapter I

INTRODUCTION

Doctors are incompetent and greedy, lawyers are greedy and tricky, and malpractice litigants are greedy malingerers. This triangulation of perspectives is the set of social stereotypes that fuels malpractice litigation in America. Medical malpractice litigation in the United States has grown beyond "crisis" levels, and has shown signs of becoming a permanent aspect of society. Only in the United States has such a marked increase in medical malpractice lawsuits occurred (Belli, 1983; Secretary's Commission on Medical Malpractice, 1973). Research into this phenomenon has been conducted predominately from the standpoint of medical and legal communities and has led to stereotypic characterizations of those who sue. Plaintiffs have been labeled as "money-hungry," "neurotic," and "suit-prone."

Previous research has largely ignored the viewpoints of those individuals who decided to pursue a lawsuit. Plaintiffs' perceptions of alleged health care malpractice have not been studied, though authors have speculated on the causes and prevention of medical malpractice lawsuits. Press (1984) wrote that:

Books, articles, workshops, and symposia share the assumption that claims can be prevented, or payout minimized, through mechanical means - that is, via a reduction of medical error or an improvement in documentation. Unfortunately, this assumption has little empirical basis....Little research has been directed

specifically to the operation of patients' perceptions and attitudes in the decision to seek a claim (p. 53, 54).

Purpose for Studying Plaintiffs' Perceptions

The purpose for studying plaintiffs' views is not to stereotype them but to describe and to analyze their accounts of their experiences. Given the lack of empirical research, stereotyping is understandable, though it is misleading and creates myths which preclude effective intervention and solutions to costly lawsuits. For instance, if the dominant plaintiff motive is not monetary but a desire to seek justice or to expose incompetent health care providers, governmental policy directed toward alternate compensation for injuries may fail to reduce lawsuits. As Press (1984) has noted:

The cause and continuation of the malpractice crisis cannot result solely from errors by hospitals and physicians, waiting time in emergency rooms, interior decoration, or the legal profession. Rather, patients are perceiving more events and outcomes as negative or claimable....Incidents must be transformed into lawsuits, and this transformation is a socio-emotional process, not necessarily a medical or legal one (p.53, 54).

Medical malpractice litigation occurs when a patient employs an attorney to file a lawsuit against a physician, hospital or other health care provider. The patient alleges that substandard health care was provided and that injury resulted. The high incidence of lawsuits has changed medical systems, legal communities, insurance companies, governmental agencies, and many other groups nationally.

A major contribution of anthropology has been to study the inter-relatedness of various institutions within society and to show how they influence and reflect each other and the individuals who use them (Krader, 1966). Medical malpractice litigation involves, as never before, the institutions of medicine, government and law. Societal trends such as government regulation of medicine and insurance costs have been influenced by lawsuits. Although medical and legal theories of malpractice have been developed, core information on issues perceived by the individuals who filed medical malpractice lawsuits has not been collected.

Problem Statement

How do plaintiffs interpret and use their medical and legal experiences? What sociocultural factors are identified in plaintiffs' discourse as facilitating or impeding medical malpractice lawsuits?

Objective

The general objective of this study is to assemble data on plaintiffs' perceptions of malpractice. The principal focus of this investigation is the identification of propositional patterns and contextual meanings in the speech of plaintiffs. Research was undertaken in order to:

- 1) expand knowledge concerning sociocultural regularities in plaintiffs' viewpoints which affect or perpetuate medical malpractice litigation; and
- 2) uncover associations between psychosocial and cultural variables and litigation trends which have not, to date, been apparent in the literature.

Research Significance

This research was designed to contribute to the understanding of how beliefs and values influence the decision of individuals to pursue medical malpractice lawsuits. Discourse analysis of recurrent propositions related to litigation experiences provides a means for examining social standards, expectations, and ideal patterns found within American social organization. Plaintiff perceptions furnish relevant data for governmental policy makers, behavioral scientists, and organizations involved in malpractice issues and litigation. Results of this study provide a theoretical basis for future research into changes in plaintiff decision-making.

Research Framework

This research is an anthropological study addressing the interaction among plaintiffs' propositions, beliefs, values, and behaviors. Plaintiffs are decision-makers who elect to pursue litigation. The focus of this research is directed toward ways in which plaintiffs describe their experiences and how they explain their actions.

The primary method of research involved in-depth interviewing. As described by Pelto and Pelto (1978), the intent of interviewing is to identify: 1) categories of meanings, 2) belief and value systems, and 3) explanations and causes of behavior. Interviewing and discourse analysis provide the vehicle for discovering propositional patterns

and related meanings.

Several researchers have developed techniques of data collection and discourse analysis (e.g., Keehan & Schiefelin, 1976; Longacre, 1983; Pelto & Pelto, 1978; Saville-Troike, 1982; Stubbs, 1983). Goodenough (1957) suggested that propositions and sequential properties of discourse provide data for interpretations of societal realities. Frake (1964) and Metzger and Williams (1966) utilized question and answer techniques for eliciting responses related to specific topics. Good (1981) and Quinn (1982) analyzed propositional statements and identified common patterns and metaphorical meanings as related to culturally shared understandings or knowledge. Metaphors and networks of meanings can be discovered by analyzing descriptions of experiences and feelings. A thorough discourse analysis is necessary before accurate conclusions may be drawn from what is said and what is actually meant.

Lakoff and Johnson (1980) maintain that the concepts which govern thought and behavior are largely metaphorical. Metaphors provide a means for studying words and actions and their relationships to sociocultural beliefs and values. Tyler (1978) suggested that propositions, paragraphs, and entire discourses are structured by underlying schemata that:

deals with what exists, what it is made of, what it does and is for, and how it relates to other existents (p. 240).

A major purpose of descriptive research is to identify systems of symbolic meanings that shape social reality and personal experience. Anthropological research is characterized by the use of ethnographic notions, rather than experimental hypotheses. Experimental researchers begin their studies with specific hypotheses, while anthropologists begin their investigations with a collection of possibilities. A problem statement is formed without predetermined outcomes, since such aspects as belief systems and societal values cannot be conjectured before the investigation. Anthropological research programs are guided by general heuristic maxims and the idea of emergent structure.

Working hypotheses are not developed from theory, but emerge during the research process (Glaser and Strauss, 1967; McCall, 1969). Working hypotheses are informed "hunches" which function as frameworks for investigation, rather than as predictors of research outcomes. In this study for example, litigious stereotypes provide a framework for comparing plaintiff discourse with the literature written about plaintiffs. Plaintiff perspectives then generate theories about lawsuit motivations. Sociocultural and historical factors are considered parts of the phenomenon being studied, rather than factors which must be limited, matched and controlled.

Ethnographic research is the systematic collection and analysis of data for the purpose of developing a theory of

cultural behavior (Spradley, 1979). An ethnographic interview is both a research methodology and a written report of the research. (Whiting, Child, and Lambert, 1966; Marcus, 1980). Ethnographies are used in such fields as medical and legal anthropology to examine aspects of health and law. The information obtained by ethnographic research relates aspects of health and law to society and culture as a whole. According to Collier (1975) "legal processes are social processes. Law is an aspect of ongoing social life" (p. 121). Herein lies the unique contribution of anthropology. Interpretations, generalizations, and predictions related to changing malpractice litigation patterns can be made by concentrating on plaintiffs' discourse.

Qualitative research techniques are needed to uncover the complexities and discover the variables which affect medical and legal systems. The United States is a complex society, and studying the values and choices of those who sue their health care providers is a complicated task. Ethnographic research provides information for understanding the perceptions of those who use their medical and legal systems that would not be decipherable if tightly controlled study designs were used. Ethnographies provide a means for identifying cultural rules of human behavior. Spradley and McCurdy (1972) argued that cultural rules form social behavior. Ethnographic text analysis can be used to study the rules and choices individuals make in such areas as

health care and dispute settlement. The collection and analysis of discourse data may be used to explain how people understand what they do and what they say about their knowledge, beliefs, values and choices of litigation behavior.

Discourse analysis provides a method for collecting, analyzing and discussing research results. The nature of discourse obviates the use of preconceived conceptual frameworks for organizing points of reference. Traditionally, conceptual models have been employed to place content within a certain context. Quantitative research designs control variables by using specific conceptual frameworks. This qualitative research centers on the speaker's point of reference. Discourse analysis was used to locate propositional patterns and underlying meanings in plaintiff accounts. Brown and Yule (1983) wrote:

The analysis of discourse is, necessarily, the analysis of language in use. As such, it cannot be restricted to the description of linguistic forms independent of the purposes or functions which those forms are designed to serve in human affairs...That function which language serves in the expression of 'content' (is) described as transactional, and that function involved in expressing social relations and personal attitudes (is) described as interactional (p. 1).

The focus of this study was to collect "thick description" that identified plaintiffs' interactions and transactions related to their medical malpractice experiences. Transactional components were reviewed during analysis of perceived malpractice events. Interaction com-

ponents were examined during analysis of personal viewpoints and social context of plaintiff experiences.

For this research, the method of discourse analysis is deliberately eclectic. There are many ways of doing discourse analysis and no single method is universally useful. Each yields a different insight and each is more or less restricted to certain contexts of discourse. Propositional analysis for example, tends to focus on cognitive content and is relatively silent about how a discourse hangs together or about the way speakers and hearers know what is being said. Direct text analysis, on the other hand, treats the text as an accomplished fact and fails to take into account how humans make sense of the discourse. Both of these approaches neglect the dialogical aspect of discourse. A combination of methods for analyzing discourse is needed for achieving perspectival understanding.

This chapter reviewed the purpose, significance and framework for this research. Chapter two presents an overview of literature related to medical malpractice litigation. Conceptual frameworks vary between individual and professional groups. The conceptual frameworks found in the literature presented in chapter two will be compared and contrasted with plaintiffs' discourse in the chapters that follow.

Chapter II

LITERATURE REVIEW

Recent attention to medical malpractice issues in professional literature has facilitated myths about the growth of malpractice lawsuits and the litigiousness of those who sue. The medical malpractice problem has developed as a problem through an evolutionary process unique to the United States. Contrary to current health care literature, medical malpractice litigation is not a recent phenomenon. History helps to explain the current social context of professional liability issues. By looking at a variety of sources over time, malpractice litigation can be placed within a relevant context for analyzing plaintiffs' viewpoints.

This chapter concentrates on three areas in the published literature: 1) the development of professional negligence and liability laws; 2) the growth of malpractice litigation in the United States, and 3) plaintiff characteristics and stereotypes. Previous studies have not focused on the accounts of plaintiffs. Since there is a dearth of research about the perceptions of plaintiffs, this chapter summarizes literature on medical malpractice and reviews articles that speculate about plaintiff motivations.

Malpractice History: Negligence and Liability

The Law of medical malpractice has a surprisingly lengthy history. Following is a chronological summary of the written laws of malpractice. This presentation shows

that malpractice litigation is not a new concept. Throughout time, there have been aggrieved patients who have sought redress through their legal systems.

Wagner (1981) stated that the first legal laws on medical malpractice were recorded in 1700 B.C., in Ancient Babylon. Kramer and Kramer (1983) cited a passage from the Code of Hammurabi:

If the surgeon has made a deep incision in the body of a free man and has caused the man's death, or has opened the carbuncle in the eye and so destroys the man's eye, they shall cut off his forehead (2 Babylon Law, 218, 81, 1955).

Modern Tort Law has a similar purpose with the Roman Laws of Emperor Justinian. These laws, entitled the Corpus Juris Civilis of Justinian, were completed in A.D. 534. They included the compilation of rules that had been developed over thirteen centuries. Dean Wright, as translated by Kolbert (1979), stated that:

The purpose of the law of torts is to adjust these losses and to afford compensation for injuries sustained by one person as the result of the conduct of another....The study of the law of torts is, therefore, a study of the extent to which the law will shift the losses sustained in modern society from the person affected to the shoulder of him who caused the loss, or more realistically in many fields, to the insurance companies who are increasingly covering the many risks involved in the conduct of business and individual activities (p. 65).

Except for the statement about insurance, Wright's view could have been given by a Roman jurist. The purpose of tort law has remained constant throughout history: Injured parties deserve compensation and careless parties should be

punished or penalized.

The next written accounts of medical malpractice are found in English literature. Post (1972) wrote that:

The medieval English medical practitioner, like his fellows in every age, was vulnerable to accusations of negligence. The least fortunate, or perhaps the most negligent, might find themselves liable to public prosecution (p. 296).

The first documented medical malpractice trial was recorded in England in 1374. A surgeon was sued for alleged mistreatment of a wound. The plaintiff lost the case, though the court announced that the plaintiff would have won if the evidence had shown that the surgeon used less than due care (Stetler, 1957). Later, in 1395, a jury found William Leeche guilty of taking fees without curing the patient (Putnam, 1938).

In 1533, the Carolina, the criminal laws of Augsburg, Germany, under King Charles V, required that malpractice be judged by experts, i.e., professional medical people (Wagner, 1981). Since this time, literature has debated whether professional liability should be judged by professional peers or by a jury of lay people.

The history of medical malpractice law demonstrates that professional accountability is as old a concept as law itself. The origin of tort law is one issue of medical malpractice. Another developmental aspect concerns the increased use of tort litigation by plaintiffs. Authors have suggested that the evolution of American (i.e., United

States) tort laws have facilitated the growth of malpractice lawsuits. White (1980) examined the growth of present day tort law and concluded that:

In an age where standardless legal subjects were considered unacceptably chaotic, it was fitting that torts should define itself through the development of some central theory of tortious conduct, which was converted into a standard of liability. The fact that the theory that was developed happened to be negligence was fortuitous in the sense that negligence was congenial to a distinctive intellectual attitude of the late nineteenth century (p.231).

If negligence had not remained the central theme of tort liability, then history suggests that another form of liability would have been developed. Values of professional accountability and liability have remained constant. Abel (1982) analyzed the history of tort law and stated that:

Tort law is not a coherent body of doctrine that can logically be deduced from fundamental principles. Tort law prescribed remedies for wrongs or injuries whether or not inflicted intentionally....Contemporary tort law is intimately related to the rise of capitalism, as both cause and effect. Tort law under capitalism equates money with labor, possessions, care, emotional and physical integrity, and ultimately love (p.185, 186).

White suggested that public opinions about negligence influenced the growth of malpractice lawsuits, while Able asserted that capitalistic values promoted tort law. Both authors assumed that negligence and compensation developed as new concepts within modern day tort law. The party found to be liable, for either intentional or unintentional acts, must pay monetary compensation to the injured person. These authors suggested that the growth of tort litigation was

related to new concepts of unintentional liability.

The concept of liability for unintentional acts does not appear to be a new interpretation of law. The Code of Hammurabi, the Carolina, and the Corpus Juris Civilis of Justinian do not distinguish between intentional and unintentional negligence. United States law is primarily grounded in English law that evolved between 1066 and 1776 (Prosser, Wade and Schwartz, 1976). During the eleventh through thirteenth centuries, an unintentional act could not give rise to liability. In the fourteenth century, the concept of "suits on the case" developed in English common law. Such suits were created to redress wrongs based upon reckless or careless acts that were unintentional and therefore not otherwise subject to suit.

Historical Relevance:

There have been numerous theories about the rise of malpractice lawsuits in the United States. The causes behind the increased use of litigation cannot be narrowed to changes in the law. Prosser, Wade and Schwartz (1976) wrote that historians have differed in their accounts of malpractice litigation. Historically, there has been gradual acceptance of moral standards that served as a basis for liability. The concept of negligence was first applied to individuals of public callings, such as innkeepers, surgeons, and black-smiths, when their services were below the expected standard. Throughout history, litigation has

been used in various forms and geographic locations to judge professional accountability and to compensate injured parties.

When reviewing the history of English and American tort law, changes in negligence issues are found. Looking at the broader historical picture, liability concepts have remained fairly constant. The juxtaposition of negligence and capitalism was overstated by Abel, in the light of tort history. In the past, compensation meant giving services, material goods, or even a forearm. Today, concepts of labor, possessions and physical integrity are translated into monetary awards. Capitalism, more accurately stated, has served as the value system and framework for determining compensation.

History has shown that concepts of liability have remained constant. Malpractice lawsuits have continued throughout time, and liability has been placed on the individuals who were thought to be responsible for poor health care outcomes. A cause and effect relationship between changes in the law and the rise or fall of malpractice claims cannot be argued. In fact, recent changes in tort law, such as decreasing the statute of limitations, have not decreased the number of malpractice claims. Societal issues are too complex to claim that changing an aspect of the law will change malpractice litigation.

Professional negligence and liability standards existed

as early as Ancient Babylon. Injured parties have received compensation for professional actions since the beginning of written history. This fact is enlightening, considering the present-day assumption that plaintiffs and chister lawyers have recently created tort litigation. Changes in tort law, e.g., intentional versus unintentional harm, did not affect societal standards guiding professional liability. History is congruent with recent changes in tort law that attempt to decrease the number of lawsuits. Variations in tort litigation have not changed societal views that those harmed deserve compensation. Historically, those with specialized skills must perform competently, or pay a price.

This section of the literature review placed malpractice litigation within its historical perspective. The next section concentrates on the growth of medical malpractice in the United States.

Growth of American Malpractice

Statements about lawsuits and plaintiffs are found in the early volumes of The Journal of the American Medical Association (JAMA), beginning in 1883. For example, a plaintiff claimed that an abscess resulted from an improperly applied truss. Another case contained allegations that a patient hemorrhaged to death because of surgical negligence. A few plaintiffs filed lawsuits claiming that broken bones had been incorrectly set. In 1891, a JAMA

editorial stated that:

The great importance of the decision to the profession (to obtain insurance) we take it, is its emphasis of the doctrine that a mistake in diagnosis or an error in treatment is not sufficient to uphold a suit for malpractice. We are all human and must and do make mistakes in diagnosis, and in treatment. The complicated and incomplete data upon which physicians must base their judgments, make mistakes inevitable. No one but the charlatan is always right. But for negligence and lack of average skill, we may justly be held responsible, for these are errors which it is within the power of every qualified practitioner to avoid (Malpractice Editorial, p.194).

This early editorial suggests that mistakes are inevitable, due to complicated and incomplete health data. If this editorial has merit, then the complicated and fragmented health care data collected by today's care-givers further augment the risk of errors.

Early JAMA articles have similarities to recent articles written about medical malpractice. Journals of the past and present describe plaintiffs as opportunists rather than victims of negligence. Dr. Detwiler (1897) wrote that:

The success that has attended the efforts of designing patients in furnishing suits of malpractice to intriguing attorneys upon the more opulent of our profession, leads us in self-defense to propose a plan today for our protection. The physician from the nature of his work is isolated, more amenable to the attacks of this class of robbing parasites than any of the learned professions (p. 30).

This statement describes patients as "designing" and attorneys as "robbing parasites". Another article written by Morton (1893) pictured plaintiffs as money-hungry people and juries as sympathizers for plaintiffs.

The most evident feature in these patients is a psycho-

logical one, arising from the prospect of receiving damages from a railway corporation by simple and easy means. The fact that courts and juries are popularly believed to sympathize with the plaintiff in these trials, and the corporation defendant is popularly presumed to be guilty until proved to be innocent, has an undoubted effect in stimulating such litigation ... I believe that I am correct in stating that more or less exaggeration is present in nearly every case of railway injury. In the attempt to impress the court and excite the sympathy of the jury, very frequently the person claiming to be injured will go close to the border of imposition, even when he justly claims compensation for actual injuries (p. 521).

The review of American medical journals shows that malpractice plaintiffs have a lengthy history of being stereotyped as greedy.

Litigation as Problematic:

Looking at the literature, it appears as though medical malpractice litigation has been a problem for health care providers for some time. Yet, there are conflicting dates cited as the beginning of the medical malpractice lawsuit problem. For example, literature from the American Medical Association (AMA) in the nineteen seventies reported that medical malpractice lawsuits were growing to crisis levels. As previously discussed, articles also appeared in the eighteen seventies, over a hundred years ago, stating that a remedy was needed for malpractice lawsuits. The nineteen thirties has been cited as the decade when the number of medical malpractice lawsuits began rising. This time period approximates the birth of modern medicine and increasingly sophisticated technology (Wagner, 1981; White, 1980). According to a 1984 AMA report, lawsuit rates rose sig-

nificantly until World War II. Malpractice suits declined during the War, and then increased afterwards (AMA Report, 1984).

Articles rarely identified the plaintiff as a victim of negligence. Hartman (1943) described hospital liability issues and was one of the few authors who addressed the plaintiff as someone deserving of compensation:

The problem of hospital malpractice insurance from the point of view of hospitals is essentially the administrative one of determining whether hospitals should bear the malpractice risk or whether they should transfer it to some agency more able to bear it efficiently and economically....The injured patient, of course, wishes to be compensated for his injury, and most hospitals on their part are sufficiently public-minded to wish to make fair redress for injuries sustained in receiving care....The problems evolving from hospital malpractice claims are not of particularly recent date, but their exceptional growth in importance during the last ten or fifteen years is correlative with the increasing importance both economically and socially of the hospital as a community institution (p. 5, 6).

When this statement was written, most hospitals had not been held liable for malpractice claims, because of legal immunities for charitable institutions. Hospitals can now be sued for injuries sustained during hospitalization. Hartman made the following observations. First, malpractice claims were growing. Second, there was a relationship between hospital and societal changes and malpractice redress. Third, malpractice victims were entitled to compensation. These viewpoints are not often found in health care journals.

The literature of the early and mid-twentieth century

demonstrates that medical malpractice lawsuits, though not a new concept, received more attention from health care providers as claims increased. Following is an overview of selected medical and legal literature that discusses malpractice issues from the mid-nineteen hundreds to the present.

In the fifties, several articles quoted medical malpractice lawsuit statistics. For example, in 1951, the AMA reported that between 1930 and 1940 malpractice claims increased 1,000 percent. It was estimated that suits in metropolitan areas had increased 250 to 350 percent in the decade preceding 1955 (Cusumano, 1962; Morris, 1957). Newsweek reported in 1955 that 5,000 malpractice cases were being tried yearly and that thousands of others were settled out of court.

Cusumano (1962) summarized the following lawsuit statistics. In 1957, the AMA analyzed all appellate malpractice cases from January, 1947 through June, 1956. The Association estimated that only one out of 100 malpractice lawsuits reached an appellate court. There were 266 appellate cases during the study period, suggesting that there were a total of 26,600 lawsuits filed during that time. In 1958, JAMA stated that a claim or suit had been made or brought against one out of every seven living AMA members. The Saturday Evening Post in 1959 reported that in New York and Washington, D.C., one out of every five doctors

had been sued for malpractice, and in California the ratio was one in four.

The AMA described malpractice litigation as a definite occupational hazard for physicians. In 1962, the Defense Research Institute, Inc. (DRI), compiled a monograph which addressed the AMA concerns about malpractice litigation. The DRI is an organization sponsored by the insurance industry with the stated purposes of promoting improvements in the administration of justice and enhancing the service of the legal profession to the public. This institute listed factors associated with litigation trends, such as the increasing coverage of malpractice lawsuits by the media, changes in the medical profession leading to impersonalized health care, and rising cost of malpractice insurance premiums due to increasing numbers of lawsuits (DRI, pp. 4-15).

In 1969, the Subcommittee on Executive Reorganization (SER) submitted to the Committee on Government Operations, United States Senate, a study entitled: "Medical Malpractice: the Patient versus the Physician." This study stated that there were few statistics and no basic literature concerning malpractice litigation. Their information was obtained through correspondence and interviews with the Department of Health, Education and Welfare, attorneys, insurance companies, and health care provider associations. The subcommittee concluded that:

- 1) growing numbers of malpractice lawsuits were being filed, especially in certain areas of the country;
- 2) larger settlements and judgments (monies awarded) were occurring in malpractice lawsuits;
- 3) the majority of medical malpractice suits were justifiable, resulting from negligence or harm caused by health care providers;
- 4) larger settlements and judgments triggered more publicity, promoting more litigation throughout the United States;
- 5) higher health care costs were resulting from:
 - a) higher insurance costs being passed from physician to patients;
 - b) physician ordering of excessive diagnostic tests, hoping to minimize malpractice potential;
 - c) the "lion's share" of litigation costs going to the legal community; and
- 6) the malpractice situation was becoming a national crisis (SER, 1969, pp. 1-2).

The Subcommittee's conclusion that the majority of lawsuits were justifiable has been largely ignored in the literature written by health care providers. Stereotypes of negligent doctors or nurses are not evident in medical literature, though assumptions about plaintiffs and attorneys who file the lawsuits are frequently described.

President Nixon in 1971 directed the Secretary of Health, Education and Welfare to create a Commission on Medical Malpractice (SCMM), to gather information and make recommendations. The SCMM completed a study on the knowledge and attitudes of Americans toward medical malpractice. Data were collected from 1,017 household heads

and spouses in hour-long interviews, using a survey questionnaire. Demographically, the sample was representative of 1970 census distributions. The results of this research showed that few respondents were well informed about medical malpractice issues, such as the average litigation time period and attorney's fees (SCMM, 1973, p. 658).

According to the SCMM study, approximately two-fifths of the respondents reported that either they, or a member of their families, had had a negative or poor medical care experience. Only eight percent of these respondents stated that they considered contacting a lawyer, and less than four percent actually contacted and spoke with an attorney about their negative experiences. The number of those who actually filed lawsuits is unknown. This SCMM finding has not been cited often in medical literature or used by health care authors when addressing plaintiff characteristics.

Though the format of the SCMM questionnaire did not permit in-depth discussion with respondents about their experiences, the Commission did suggest that:

- 1) the higher the social status, or the greater social distance between the patient and the physician, the more negative incidences were reported;
- 2) blacks were more likely to seek legal advice than non-blacks;
- 3) the severity of damages or injury was correlated with seeking legal advice; and
- 4) those who had been exposed to the legal system through previous litigation were more likely to speak with an

attorney following a negative medical experience.

This study demonstrated a relationship between patients' knowledge and attitudes and the incidence of litigation. It also demonstrated that the malpractice phenomenon has grown and changed rapidly over the last few years.

Doherty and Haven (1977) reported different trends in malpractice plaintiff demographic characteristics. They found that Caucausians were more likely to sue than non-Caucausians, more Jews than Protestants, more white-collar than blue-collar, more retired and unemployed than employed, and more older patients than younger patients filed claims. Further research into sociodemographic variables is needed before generalizations can be made.

Warren and Merritt (1976) compiled A Legislator's Guide to the Medical Malpractice Issue, devoted largely to economic and insurance issues. Wolfe (in Warren and Merritt, 1976) described the malpractice dilemma as a symptom of the American Health Care Crisis. He stated that there has been a public rebellion against health care providers which included:

- 1) a clamor for national health insurance;
- 2) class action suits against hospitals for failing to serve the public;
- 3) an increase in product liability suits against drug and device companies;
- 4) more organized protection against infiniatly rising costs; and
- 5) a significant increase in the overall magnitude of mal-

practice suits against doctors and hospitals (p. 73).

The Institute of Medicine (IOM) of the National Academy of Sciences reported data from a two year study of medical injury compensation. They concluded that tort law, as applied to medical injury, would probably remain an important part of compensation for medically induced harm in the United States. They also concluded that compensation from malpractice insurance claims for injuries arising out of treatment relates to American value judgments concerning responsibilities of health care providers for adverse outcomes (IOM, 1978, p. 67).

The IOM findings differ from those of earlier reports. For example, Addison and Baylis (1972) had stated that solutions for American malpractice controversies might be found in countries having Anglo-Saxon legal systems but a low incidence of malpractice litigation. Health care providers in Great Britain do not carry malpractice insurance, because such small numbers of malpractice lawsuits are filed there. Several factors may contribute to the prevention of British medical tort litigation. For instance, the unsuccessful party in a lawsuit is usually ordered to pay the legal costs of the successful party, and attorneys in Great Britain are forbidden to collect a percentage of the monies awarded. Bernstein (1972) suggested that even countries like New Zealand, with different legal systems, could serve as a guide for reducing

medical tort litigation. The New Zealand system permits an injured party to claim no-fault benefits and compensation. If medical injury occurs, the patient receives a scheduled payment. A review board examines the issues of accountability, and recommendations are made for preventing future injuries. The British and New Zealand health care systems do not appear to be conducive to malpractice litigation, though such an assumption ignores the issue of values which the IOM study strongly implicated. Further research is needed into aspects of public policy, insurance systems, accountability and quality of health care providers, value judgments of consumers, and the legal rights and duties of all involved (IOM, 1978, p. 65-71).

Articles and books written in the seventies and eighties are filled with theories about malpractice litigation. For example, Allen (1976) identified three determinants of the medical malpractice problem:

- 1) a scientific and physician omnipotence;
- 2) a something-for-nothing mentality; and
- 3) the medical profession's conspiracy of silence, i.e., the unwritten understanding that physicians do not testify against physicians.

Harney (1972) criticized physicians for sticking together and suggested that instead of covering over negligent acts, medicine should "do away with plaintiffs' lawyers by eliminating plaintiffs as victims of poor medical practice" (p. 709). Several authors (Spencer 1974a, 1974b; Knapp, 1980;

Jacques, 1983; Slawson, 1984) presented a different theory. They suggested that a good rapport between doctors and patients would wipe out the largest percentage of malpractice claims. Lieberman (1981) stated that "the cause of malpractice lies below the surface of a litigant's complaint that someone erred" (p. 90). One major factor facilitating lawsuits concerns the bureaucratic complexity of health care and the subsequent dehumanization of patients. Another contributing factor is the sophistication of medicine. Mistakes are easier to make and the consequences more serious.

Professional Viewpoints:

Medical authors and defense attorneys usually claim that malpractice litigation is a social crisis, while plaintiff attorneys suggest that it maintains the social order. For instance, Barber (1983) and Schwartz (1985) stated that tort laws and plaintiffs' attorneys erode our democracy. Other authors such as Warshafsky (1982) and Derbyshire (1984a, 1984b) wrote that lawsuits serve as helpful tools for upgrading the professions and can be used for fact-gathering and disciplining incompetent practitioners.

Lambert (1983) in "Law in the Future, Tort Laws: 2003," theorized that panic among doctors, because of unavailable or canceled insurance policies and soaring insurance premium rates, has ended. Legislative reforms occurred in most states where laws were passed to reduce the number and

effects of malpractice litigation. The medical malpractice "crisis was really a rip-off of medical practitioners by their own insurance carriers in an unholy quest for excessive profits" (p. 93). Societal and legal changes have affected, and probably will continue to affect, litigation; however, a decrease in the number of lawsuits does not seem likely.

Belli (1983) argued that "America is a litigious society and must be recognized as such" (p. 38). He suggested that Americans concentrate on building more courtrooms and appointing more judges. Insurance companies prefer drawn out litigation and are in no hurry to settle cases or pay damages, since their reserve funds are meanwhile invested and earning profits. Belli stated that the answer is in better court systems that would decrease legal fees and encourage appropriate insurance settlements, rather than allowing litigation to continue for several years. The long duration of litigation profits only defense attorneys who are working for defendant care-givers or their insurance companies.

Belli also argued that current litigation trends provide appropriate means for establishing and maintaining quality among professionals. Veterinarians, dentists, architects, accountants, etc., must conduct themselves according to the requisite standard of care, or face malpractice law-suits. Belli predicted that litigation rates will con-

tinue to rise and involve a larger group of professionals. Miller (1984) wrote that litigation trends have placed nurses in a position of greater liability. Over the last few years, more nurses have been named as defendants in malpractice lawsuits.

If litigation patterns persist, more and more individuals will become involved in lawsuits. St. Paul and Marine Insurance Company reported a rise in malpractice claims from 1,538 in 1970 to over 5,000 claims in 1975 (U.S. News and World Report, 1975). In 1972, the number of California claims over \$50,000 was 28, compared to 61 claims filed during 1979 (Insurance Corporation of America, 1980).

Literature agrees that there are growing numbers of malpractice claims and larger numbers of professionals involved in lawsuits. Disagreement occurs over the effect of this trend on medicine and on society as a whole. Concerning the medical profession, authors such as Charles, Wilbert and Kennedy (1984) reported that physicians who had been sued experienced anger, tension and major depression or adjustment disorders. Bernstein (1983) however, found that malpractice lawsuits had been overstated and that harm to defendant doctors had been exaggerated. The effects on the defendant's reputation or practice attributed to the malpractice lawsuit were short-lived, usually only a few weeks or months. Physicians involved in only one lawsuit did not have difficulty acquiring liability insurance. Physicians

who had received adverse publicity thought that this publicity elicited sympathy for them and worked to their advantage. No defendant reported a reduction of hospital privileges or loss of professional licensure because of a lawsuit.

Londrigan (1985) stated that the problem of malpractice litigation is generally overstated. In 1975, the insurance industry withdrew a large number of medical liability policies and started the so-called malpractice crisis. Insurance companies discontinued policies in some states but continued writing policies in other states. This decision was a business choice to increase profits. Baldwin (1985) described the malpractice crisis as an insurance industry hoax. By creating a phony crisis, predicted future claims could be inflated, and insurance premiums could be increased. Malpractice insurance companies could maintain huge reserves, contest all claims, and accumulate vast profits. If malpractice litigation could be curbed by legal statutes in the future, the insurance companies would reap a large windfall, as reserves for claims would be converted to profits. This is already occurring in Indiana.

An editorial in the Texas State Bar Report (1985) suggested that Americans are now filing three times as many claims as they did a decade ago. Twenty out of every 100 physicians have been sued, whereas in 1979, only 12 out of 100 had been a defendant in a lawsuit. Another insurance

crisis was predicted, if the incidence of lawsuits continues to rise.

On the other hand, Blodgett (1985) wrote that the Association of Trial Lawyers of America (ATLA), a professional association of plaintiff tort lawyers, reported that there is no malpractice crisis, nor will there be one in the future. ATLA reported that on the average, doctors pay less than three percent of their annual income on malpractice insurance.

The AMA stated that more than ninety percent of malpractice lawsuits are invalid, while the American Bar Association (ABA) reported the opposite finding. Depending upon one's professional affiliation, malpractice lawsuits are caused by bad or greedy doctors, or lawyers, or plaintiffs, or insurance companies, or the media. Lieberman (1985) wrote:

(Lawsuits) still give us pause when we try to pin down the reasons for their prominence in our culture. Many hot headed explanations have been given: greed, power, ego, superabundance of lawyers, fee arrangements, ideological judges. But on closer inspection, these dissolve. American life is too complex and confusing to tie up with so neat and narrow a set of causes. The recent desire to explain the oft-cited explosion of lawsuits suggest the prevailing belief that something is wrong. But the premise that there is a crisis in the American legal system may itself be seriously flawed (p. 86).

Friedman (1985) studied the explosion of American lawsuits and concluded that there are underlying societal values and social expectations that influence changes in the number and timing of claims. These demands on the legal

system promote responses from our legal institutions that are congruent with the popular consciousness. The radical growth of lawsuits is a reflection of our culture. There is a general expectation of recompense, and individuals within our culture strive to obtain justice and the "just cause" that is valued within everyday life.

Literature suggests that numerous factors influenced the rising numbers of health care grievances. The social context surrounding malpractice litigation remains complex. Societal values have dictated that professional care-givers be held liable for their actions. Paradoxically, health care providers must be held accountable, yet the individuals who report professional negligence are stereotyped as greedy, designing and suit-happy.

Plaintiff-Related Literature

The remainder of this chapter discusses plaintiff-related literature. This literature provides a framework for comparing plaintiff statements obtained from ethnographic interviews with the literature on malpractice plaintiffs. It is the basis for comparing what has been said about plaintiffs with what plaintiffs said. This literature generally assigns "fault" to the plaintiff. Plaintiffs are described as money-hungry, emotionally disturbed, hostile, dishonest, demanding, etc. Following is a summary of literature that centers on malpractice plaintiffs.

Medical literature with "plaintiffs' views" identified in titles usually describe ways health care providers may prevent lawsuits, rather than addressing plaintiffs' viewpoints. Legal literature summarizes plaintiff opinions from attorney observations, rather than from research data. There is a paucity of data from actual plaintiffs that describes their perceptions and motivations. Computerized medical, psychosocial and legal literature searches reveal "plaintiff" titles in the context of suit-prone patients, secondary gain and compensation syndromes, pertinent landmark cases, and recognition of meritorious cases. This literature does not focus on the actual plaintiffs per se but addresses monetary motivation factors, psychiatric disorders and law cases or procedures which have set precedents for future malpractice litigations.

Physicians and health-related groups such as nurses and veterinarians focus on preventing lawsuit involvement and on describing lawsuit trends. Titles of articles are often misleading. For instance, the article "Why do patients sue?: The Pathologic Anatomy of Medical Malpractice Claims" categorized lawsuits by diagnoses, e.g., obstetrical or orthopedic, rather than analyzing why plaintiffs were suing (Hirsh, 1978). Their reasons for contacting a lawyer were not addressed.

Though the word "plaintiff" appears in articles written by attorneys, that literature describes the preparation and

strategies for litigating malpractice cases or refers to landmark cases which cause changes in the law. Like medical literature, legal literature is largely devoid of plaintiffs' perceptions and values. An example of a typical article found in professional legal periodicals is: "Plaintiffs' New Hurdles: The Expanding Role of the Medical Malpractice Screening Tribunal" (Ossyra, 1983). The hurdle described in the article concerns unsettled areas of Massachusetts malpractice law, rather than plaintiffs' views concerning some kind of legal hurdle.

Terminology addressing compensation neurosis reveals early literature that discusses psychosocial motivations for receiving monetary compensation for injuries (Bleuler, 1924; Pokorney & Moore, 1953). Woodyard (1982) defined compensation syndromes as injury or disease conditions and symptoms which persist when patients believe there is hope of financial compensation. Settlement of legal cases usually encourages the remission of symptoms and the return to work. Gorman (1982) defined malingering, or goldbricking, as a false and fraudulent simulation or exaggeration of physical or mental disease or defect, performed in order to obtain money. Lloyd (1980) defined accident neurosis and malingering as severe subjective complaints after minor injuries, which resist treatment until compensation claims are settled. Functional and factitious ailments are often grouped together in these unsympathetically written arti-

cles.

Symptoms of compensation neurosis are described in British and Australian literature, although these countries do not have large volumes of tort litigation. Their social welfare policies have been identified as facilitating the desire to remain disabled and receive payment (Moore, 1982). Associations between malingering persons and malpractice plaintiffs' attitudes are unknown. Since litigation in the United States has typically required several months or years before settlement or trial, fraudulent or unconscious malingering seems unlikely. However, Epps (1978) suggested that the "whiplash" victim almost always sues the driver of the other car. Neck collars remain in place and symptoms persist until settlement or trial occurs. Epps described secondary gain as a factor of treatment outcome and suggested that some orthopedic patients imitate or exaggerate illness or injury with conscious intent to deceive others.

Suit-Prone Stereotype:

Beginning in the sixties, the "suit-prone" label referred to patients stereotyped as those with emotional problems or having a strong desire for monetary compensation. Bernzweig (1969a) stated that one kind of patient was more likely to sue for malpractice when something went wrong than any other kind of patient. These suit-prone patients were dissatisfied with all areas of their lives and could be described as emotionally upset. In another article,

Bernzweig (1969b) observed that plaintiffs were angry and sought revenge against their health care providers. The suit-prone patient, stated Bernzweig, exhibited a child-like faith in medical science and had dependent, emotionally insecure and uncooperative personality traits. Bernzweig (1985), nearly twenty years later, was still declaring his conviction that suit-prone patients are immature. He wrote that dependency, reluctance to cooperate, hostility and unrealistic expectations are personality traits of suit-prone persons.

Balliett (1972) suggested that health care providers should learn to recognize suit-happy patients. These individuals were described as over-concerned about money matters, openly critical of health care they received in the past, and had an unrealistic expectation of medical cures. Litigious people may take detailed notes, seek unnecessary second opinions, and doctor-shop. They are hostile and unhappy individuals. On the other hand, friendly patients, according to Schwartz (1972), are not likely to sue over an unjust claim.

Ritchey (1979) conducted a study to describe physicians' perceptions of suit-prone patients. Suit-prone individuals were perceived as young, blue collar workers with at least a high school education. These patients were thought to act as though physicians owed them health care,

and they expected something for nothing. Physicians also perceived that insurance claimants were suit-prone. Patients who were labeled as doctor shoppers were also considered to be suit-prone (Kasteler, Kane, Olsen and Thetford, 1976). Ritchey (1980, 1981) suggested that physicians allowed their perceptions of suit-proneness to guide their care and behavior toward these patients. Patients viewed as lawsuit-happy received diagnostic and medical care that might otherwise be unnecessary.

Ginsberg (1983) described warning signals given by suit-prone patients. Health care providers should be aware of patients who:

- 1) flattered or criticized the care-giver;
- 2) complained about the cost of care;
- 3) expressed dislike about needing health care; and
- 4) were overly cooperative, authoritarian, subservient, hostile, or demanding.

Ginsberg noted that suit-prone patients were like coming attractions in that they gave advance warning and cast their shadows before the event.

Other Suit-Prone Motivations:

Not all articles blamed the patients so overtly. Some authors identified cultural and emotional factors that might contribute to the decision to sue. For example, Bianco (1980), from his experience as a plaintiffs' attorney, placed responsibility for lawsuit-prone situations on health care providers. Factors facilitating patients' legal actions included lack of communication between patients and

care-givers, patients' disappointment in treatment results, and beliefs that health professionals were motivated by monetary enrichment rather than by humanitarian reasons. Horsley (1979) further suggested that patients' relatives encouraged lawsuits when care-givers failed to communicate with family members.

In the same vein, Lander (1978a) described objective elements of malpractice grievances, such as injuries or unsuccessful treatments, and subjective elements, such as anger or feelings of disappointment. Lander (1978b) stated that injury alone was not enough to cause of lawsuit.

Without anger, an act as hostile as a lawsuit, particularly against as well-established an authority figure as a physician, is impossible to contemplate. Thus while for legal purposes medical malpractice represents the intersection of patient injury and physician negligence, for social purposes a malpractice claim represents the intersection of patient injury and patient anger (p. 91).

Glasser and Pelto (1980) suggested that the complex problems of malpractice relate to a societal myth about curing. Medical technology is viewed as perfect, and poor outcomes are perceived as somebody's mistake. The high incidence of medical malpractice lawsuits reflects public anger toward health institutions and professionals. That anger is influenced by the power and arrogance of physicians. Litigation is the only available recourse for the lay public to express their anger.

Authors have suggested that suit-proneness derives from emotional status. Reingold (1984) maintained that client

motivations influence lawsuit outcomes. Such motives as revenge, anger and wishing to change the medical profession are poor reasons for suing. Reingold wrote that clients who verbalize that they do not care about the money probably do not have good malpractice cases. He gave no reasons to support his view that there was a relationship between money desires and potentially good cases. Other authors have stated that motivations related to such emotions as anger and altruism dominate plaintiffs' viewpoints. For example, Jacobs (1983) described plaintiffs as victims seeking revenge after an incident.

After the medical malpractice has been committed, and the patient recognizes that there is a problem, many of them turn to medical textbooks. Quite often they formulate their own theories, based on their reading and conversations with medical personnel. Not only do they become fixated on their point of view, but quite often that is the only thing they can think about, day and night. They are driven by contemplation of the abuse of their bodies and a consuming desire to get even. Some patients come to believe that their doctors intentionally injured them (p. 57).

A few consumer studies have focused on general attitudes about malpractice. Brown (1980) randomly surveyed 997 residents in Arizona. Respondents cited greedy people, doctors' mistakes and greedy lawyers as the top three reasons why patients sued their doctors. McDowell and Willaims (1983) sampled 400 respondents in Georgia and found that 43 percent felt that medical malpractice lawsuits were usually justified; 46 percent thought plaintiffs were looking for an easy way to make money, and 11 percent were

not sure.

Since actual plaintiffs have not written about malpractice issues, the current literature is biased toward the experience and impressions of health care and legal experts. No doubt an article entitled the "suit-prone lawyer," or the "compensation neurotic physician" would describe malpractice issues from a different conceptual framework. An example of the bias toward professional viewpoints can be seen in a commercial enterprise which operates a computer service to record plaintiff names. A lawyer computerized ten years of Chicago court claims and reports and sells this information to doctors. Physicians can find out quickly whether or not a prospective patient has ever been involved in a lawsuit. The founder of this business claims that during a three month period in Detroit, 35 percent of all malpractice plaintiffs had been plaintiffs in previous civil actions. Carpenter (1985) observed that "patients might like to buy a printout of their own--detailing the doctor's litigation history!" (p. 15).

Another source of litigation information is the news media. The news media have addressed various medical, legal and governmental issues of malpractice and have occasionally interviewed plaintiffs who received large monetary settlements or judgments. Media sources have reflected medical and legal viewpoints and societal trends, such as the Chicago business, but have not provided detailed data for

analyzing plaintiff motivations.

Apart from the literature already reviewed, there is another source of information relevant to litigation issues. Social scientists have addressed sociocultural factors pertaining to grievances. Anthropologists have been particularly interested in how individuals perceive their cultures and why they choose certain solutions to problems. Laura Nader's research is especially pertinent to this study, because of her anthropological background and her focus on individual grievances. In No Access to Law: Alternative to the American Judicial System (1980), Dr. Nader analyzed complaint letters sent to her brother Ralph Nader, and she described perceptions of problems as identified by those voicing complaints. The most common area of complaints found in medically related letters involved physicians. Twenty-nine letters described doctors as incompetent, unconcerned about their patients, unethical, and too motivated by profit goals (Nader, 1980, p. 126). Eighteen letters related to complaints involving hospitals, and a few other letters described inadequate conditions of institutions for the retarded and the elderly. It is unknown if any of the individuals writing about alleged malpractice ever consulted an attorney.

Nader (1980, p. 131) stated that ten percent of the letters voiced concern about inadequate financial assistance for needy and senior citizens. Twenty percent of the health

care letters complained about the expense of treatment and supplies. Errors in hospital billing and inappropriate techniques of bill collection were identified as a source of frustration. The complaint letters depicted physical, emotional and financial stress perceived by recent health care consumers.

Except for the literature summarized above, research has not been directed toward the viewpoints of those with grievances. Suit-prone and suit-happy characteristics have been used to describe the individuals who take their grievances to lawyers. Litigious labels perpetuate paradoxes between values of compensation, professional accountability, and stereotypes about plaintiffs. Stereotyping plaintiffs is understandable given our complex society and the lack of research into plaintiff perceptions.

In summary, medical malpractice litigation has had a lengthy history. The growing rate of malpractice claims thus reflects an increased use of litigation, rather than a major change in legal principles. Numerous articles and books theorize about the causes of malpractice lawsuits, but only a few focused on the perceptions and thoughts of plaintiffs. We cannot adequately theorize about the causes of malpractice claims until we study plaintiffs' perceptions. Health care consumers are the individuals who decide to sue. The next chapter describes the methods used to provide some preliminary information on plaintiff perceptions.

Chapter III

METHODOLOGY

Ethnographic research focuses on a particular phenomenon in a specific social setting (Saville-Troike, 1982; Stubbs, 1983). This chapter outlines the methods used in this ethnographic study. It discusses study design, sampling, lawsuit typology and techniques of analysis.

Study Design

The research proposal was submitted to and approved by the Committee for the Protection of Human Subjects at the university where the researcher was a student, and at the university where a faculty appointment was held by the researcher.

Convenience sampling was the method chosen for conducting this research. The researcher met plaintiff attorneys by attending legal conferences and through social networking. Plaintiff attorneys known by acquaintance in Houston, Texas were approached and asked if they would refer medical malpractice clients to the researcher for interviews. Initially, six attorneys were approached and agreed to explain the nature of the research to one or more of their clients. At the completion of the study, twelve attorneys had referred clients. All attorneys who were asked to participate referred at least one client. One attorney of the twelve learned of the research and asked if he could refer two clients. The researcher contacted all

clients who agreed to participate in this study and were referred by their attorneys. Two of these clients were not interviewed. One stated that she has having a difficult recovery following surgery, and the other did not keep the interview appointment. (See appendix A.) Written consent was obtained during the initial subject-investigator meeting. (See appendix B.)

Following the sequence as given above, face to face interviews were conducted from September, 1984 through May, 1985. Because large numbers of malpractice lawsuits are filed in Houston each year, there was an adequate population of plaintiff subjects. A total of fifty interviews were to be conducted for the purpose of this research, since ethnographic interviews produce lengthy transcripts. The sample was initially limited to fifty for this reason, but two plaintiffs were referred after interviews on fifty subjects had been completed. These referrals were included in the research, resulting in a total sample of fifty-two. More subjects would have prolonged the analysis and would probably not have yielded different results.

Respondents were asked to complete a demographic form so that data from interviews could be associated with major demographic variables, e.g., age, ethnic identity and income. (See appendix C.) Plaintiff characteristics will be described later in this chapter.

Respondents were asked to relate their experiences in

their own words. If plaintiffs did not spontaneously address the following variables, directed questions were used to elicit:

1. previous experiences with medical and legal professionals;
2. expectations of the litigation process and outcome;
3. factors leading them to seek legal advice; and
4. past, present and possible future choices for lawsuit involvement. (See appendix D.)

A written journal of interview impressions was kept so that non-verbal data and information received off-tape could be noted for further comparison and analysis. Tape transcriptionists were trained to code for long pauses, repeated syllables or words, and other data suggesting hidden or non-verbal meanings. Identifiers were erased from the tapes or deleted from the data at the time of transcription. A computer and word processing software package were used for coding and recording interviews, as described in the techniques of analysis section of this chapter.

Two of the initial six referring attorneys found clients through a telephone Yellow Page service. These lawyers scheduled client visits one or two mornings a week, and provided a conference room for interviews with plaintiffs who wished to participate in this study. Twenty-nine of the plaintiff respondents were referred from the Yellow Page service. Thirteen clients came from large, well known plaintiff firms. The remaining ten were referred from

attorneys in private practice.

Attorneys volunteered several personal reasons for referring certain clients, beyond the stated purpose of the research. Reasons included:

- 1) some clients were more articulate than others;
- 2) clients needed to talk about their situation for emotional reasons;
- 3) their cases were exceptionally interesting;
- 4) more information might be obtained from the client during the interview; and
- 5) the interview would help prepare the client for deposition or trial.

Some attorneys may have had hidden agendas for referring certain clients rather than others, but these reasons will never be known. All respondents received copies of their interview transcripts, and if requested by the plaintiffs, a copy was given to their attorneys.

There was an unplanned division between 29 Yellow Page clients and 23 clients from established plaintiff attorneys. The latter attorneys reported that their clients are usually referred by other attorneys. People often contacted attorneys they knew through their businesses, friends or families, and these attorneys referred the clients to the established malpractice attorneys. In other words, clients were screened by lawyers before they are referred to the established plaintiff firms. A well-known plaintiffs' attorney stated that his clients were "the cream of the crop". His law firm only accepted "good" cases and refused to take

cases thought to be unfounded or worthless. By contrast, clients who found their attorneys through the lawyer referral service were described by the lawyers as "everyday people, like any one of us, thumbing through the Yellow Pages for help" and as "people who walked off the street."

Random sampling of clients was not possible or attempted for this study. As Glaser and Strauss (1967) described, sampling that focuses on a particular group of people with specific characteristics can reveal rich data about a given phenomenon and can generate fruitful theoretical work. In malpractice cases, plaintiffs seek redress for alleged medical malpractice incidents. Their viewpoints provide valuable data for this study. The subjects' narrative descriptions of finding an attorney and their reasons for participating in this research delineate perceptions that had not been heretofore collected. Previous research has not recorded or analyzed propositions of plaintiffs. That is the purpose for interviewing these informants.

Information obtained from a convenience sampling of plaintiffs may not yield "correct" data about such things as legal techniques or medical procedures. The focus of this research is not to determine truth from falsehood, but to document viewpoints as expressed by plaintiffs. Study results may admittedly be exploratory. This research will provide a missing dimension about plaintiffs. It will compare the experiences of a group of plaintiffs, and it

will document ways they perceive and tell their stories. This study provides a baseline for theory development and future research findings.

Sample Characteristics

The sampling for this research may be biased, due to the strict protocol followed for contacting potential subjects. Variables used by attorneys for referring clients are largely unknown. There may be a diverse sampling between law firm and Yellow Page clients, though admittedly that possibility is speculative. The possibility of a sample bias is acknowledged.

To give some notion of the nature of this sample, a summary of the respondents sociodemographic data is given. Information is also related about the type of injury alleged and the approximate stage of litigation the plaintiff was in when the interview was conducted. Both of these categories of information are background to the analysis of narratives.

Research participants were asked to complete a demographic form after their taped interviews were concluded. Based upon their comments, descriptions of the study population follow.

Sociodemographics:

There were thirty-four female and eighteen male participants. The mean age of the respondents was 36.2 years. Ages ranged from 18 to 61 years. Actual plaintiffs could be as young as a newborn baby. This research focused

on individuals who contacted an attorney and filed a lawsuit and does not include demographic data on all plaintiffs, such as infants, who were parties to a lawsuit. There were sixteen respondents between the ages of 18 and 28, fourteen between 30 and 39, fifteen between 40 and 49, and seven between the ages of 51 to 61 years.

Research participants had difficulty distinguishing race from ethnic origin, and ethnic identity more accurately describes their responses. Thirty-three plaintiffs were Anglo-American, seven were Black Americans, eight were Mexican-Americans, three were Asian-Americans, and one was a Western European alien.

Twenty-one plaintiffs stated their religion as Catholic, and nineteen listed Protestant affiliations. Six reported other religious affiliations, such as Moslem, Hindu and Jewish. Six other respondents wrote "none" for religion.

In terms of educational background, there were two plaintiffs with graduate degrees, seventeen with a two-year or four-year college degree, and twelve with some college credits. Nine reported finishing high school or an equivalency exam, ten dropped out of high school, and two participants did not state their educational background.

There were three major occupational categories. Twelve respondents were employed in clerical and sales jobs, ten were vocationally trained or in skilled manual work, and ten

others were homemakers. There was a wide variation between the remaining respondents. Seven were self-employed and either worked out of their homes, in small shops, or in a large family or partnership business. Five plaintiffs were in professional jobs that required a specific college degree. Three held jobs as unskilled laborers. Two other plaintiff respondents worked in administrative capacities, two were unemployed, and one left that question blank on the demographic form.

The reported annual income of these plaintiffs ranged from none, because they were waiting for disability or unemployment payments, to over \$100,000. Three individuals stated they had incomes over \$50,000 and four others reported incomes over \$40,000. Twenty-five respondents stated they had incomes between \$20,000 and 36,000. Seven other plaintiffs listed incomes over \$15,000 and six others stated they received over \$10,000 a year. Two individuals were unemployed and five others did not give income information.

English was the language spoken in the household except for one Vietnamese-speaking and two Spanish-speaking homes. The average number of people in the household was three, ranging from one to six.

The last category on the demographic form related to plaintiff residences over the last decade. Approximately half of the respondents had lived in Texas, mostly in the

Houston area, and the others had moved from several areas throughout the United States. The mobility of the sample group appears to be congruent with other regions of this country.

There are contrasts between the above selected plaintiff characteristics and those mentioned in the previous chapter. For example, the SCMM report (1973) suggested that Blacks were more likely to seek legal advice than non-Blacks. Doherty and Haven (1977) found in their sample that more Jews than Protestants and more older, retired or unemployed than younger and employed individuals filed claims. It is difficult evaluating demographic trends, due to variables relating to convenience sampling. There may be demographic factors that correlate with personality variables of those who are willing to discuss their lawsuit experiences. That does not explain, though, why insurance records of claimants also show wide demographic variation. Characteristics of plaintiffs may not be as predictable as some authors have suggested.

Lawsuit Typology:

The final part of this section summarizes lawsuit variables relating to the age of the lawsuit at the time of the interview and the category of the alleged malpractice. A typology of cases is helpful for comparing plaintiff statements about their cases. The point of litigation is defined for this research as either being a new, middle or old

lawsuit. New cases included clients whose attorneys had sent for medical records or had filed a lawsuit within a year. Once the plaintiff experienced a deposition or had employed an attorney for over a year, the case was labeled as a middle suit. Old lawsuits were over four years of age or had been settled or tried.

These definitions are not standard legal guidelines. Due to the complexity of the litigation process and the limited spontaneous lawsuit details found in some transcripts, the cases in this research were labeled using the above definitions. There were thirty-two new, eighteen middle, and six old lawsuits. Most of the new lawsuits came from the Yellow Pages attorney referral service, though these attorneys also referred some middle and old lawsuit clients to the research. A few new clients also were referred to the research from law firms, though the majority of middle and old cases came from these firms. This typology of cases provides a framework for analyzing plaintiff narratives within a temporal sequence and for comparing narrative points and discourse topics.

The type of alleged malpractice fell into two main groups: 1) perceived surgical negligence that resulted in deformity or death; and 2) perceived medical mistreatment that caused health impairment or death. Plaintiffs' accounts of harm were serious, often amplified with medical records, pictures, or personal demonstration of the

deformity or bad outcome. With research respondents and their cases described, the next section describes the methods used for analyzing the transcripts.

Techniques of Analysis

Qualitative research designs require that analysis evolve during the collection and examination of the data. The techniques used for analyzing descriptive information must be flexible, to allow for discovery of categories as data are retrieved and compared (Brent, 1984; Charmaz, 1983; Gerson, 1984; Sproull & Sproull, 1982).

Following the tape recording of plaintiff interviews, typists transcribed the verbal text using a word-processing software package. Transcripts were stored on computer disks. A few transcripts were mistakenly typed using incompatible software, and these transcripts were optically scanned and changed to readable format.

The interview transcripts were printed and copied. One copy remained intact, and a second copy was used to mark and label statements. The conduction of interviews, and this initial manual review of the interviews gave the researcher first-hand exposure to the written data. Categories from the interview guide, such as reasons for suing, were identified and marked in the transcripts. Other propositional trends emerged and were cut and pasted together. This manual review of the transcripts located recurrent themes or points expressed by plaintiffs.

Next, a Compaq computer, MS-DOS Edlin (text editor) and Lotus Symphony search commands were used to identify certain words and text strings. All transcripts were computer-scanned for variables and key words, such as "money", "justice" and "anger". Such words were either suggested by the literature or discovered through manual review of the interview transcripts. Similar statements were printed together and compared with the transcripts that had been cut and grouped manually.

Using the computer text editor, transcripts were scanned, to enhance identification of metaphors and analogies. As Tyler (1978) noted, there are patterns of speech used to express relations between certain propositions. The computer text editor located propositional schemata more easily and accurately than was achievable by manual means alone.

The methods used for identifying meaning in qualitative research involves locating broad conceptual categories that can be compared to specific incidents. Recurrent themes and categories of propositions can be used as a framework for deriving theories and knowledge from the data. This grounded theory approach compares categorical statements and develops a whole picture about an occurrence (Charmaz, 1983; Garfinkel, 1967; Glaser, 1978). The computer-assisted retrieval of statements provided a means for examining individual statements in comparison to other statements and also

displayed them within the context of the discourse. The computer text editor automatically numbered the transcript lines, so retrieval of data was easily performed. Meaningful segments were identified, placed in categorical sets, and marked within the interview text.

As described, part of the analysis for this research consisted of scanning for certain words and variables. Another methodological approach analyzed plaintiff narratives. Plaintiffs described the health care situation that led to their decision to seek legal counsel. Plaintiffs' stories underlined certain events and stressed relevant details as perceived by them. Labov (1972) and Prince (1982) suggested that a narrative serves as a function of its context. In this study, plaintiffs reviewed the problematic and relevant details surrounding their experiences. Entire interviews could be defined as narrative texts, so for the purpose of analysis, descriptive narratives consisting of health care events were examined for meaningful configurations. These narratives usually appeared at the beginning of each interview, followed by explanations of plaintiffs' beliefs and feelings.

Another aspect of analysis examined discourse topics and located narrative points within the text. Brown and Yule (1983) suggested that lengthy recordings be divided into topical sections. Hockett (1958) described differences between comments and topics. Topical categories are

announced by the speaker, and then discussed. Since the design of this research encouraged spontaneous description, topics were often hidden within the interview texts. Topical abstracts at the beginning of the interviews were scarce, probably due to the research format. By the time the interview commenced, the purpose of the conversation was clear. Computer text editor functions marked recurrent words, which helped to locate abstract statements which led into topical discussions within the interview texts. Narrative points were most readily found later in the interviews. At the conclusion of the interviews, most respondents spontaneously reiterated the key points, as they perceived them. Walcutt (1977) wrote that closure of a narrative text is found when there is a repetition of the point or a statement made that evaluated the point. Once these points were identified in the transcripts, they were compared to previously marked words and statements. New categories were developed, and interpretations were made.

In summary, the interview transcripts were analyzed in several different ways. Words were removed from the text, placed back in context, compared with other statements, and again reviewed as a whole. The sequence of analysis was cyclical. The next two chapters present the research results obtained from this analysis.

Chapter IV

NARRATIVES

Plaintiffs organized their accounts by means of two different modes of discourse: narrative order and topical structures. This chapter discusses their use of narration. It contains a discussion of plaintiffs' opening statements, descriptions of social context, and quests for information.

Analysis of plaintiff statements began with the identification of standard categories of rhetoric within the interview transcripts. What appeared to be story narratives were found at the beginning of the interviews. Using Rumelhart's (1975) and Thorndyke's (1977) notion of story schemata, categories such as setting and episode were examined, but plaintiff statements could not be categorized into such neatly ordered content groups.

Because the story grammar approach did not work for analyzing these transcripts, the macro-structure method developed by van Dijk (1979) was used. Macro-structures are based on real life situations. Macro-models allow speakers to generalize, remove and create new information about their major points or ideas. Plaintiff informants often used such a macro-model of discourse to argue their viewpoints, but plaintiffs were not simply telling stories. They used a combination of rhetorical discourse that could be classified as narrative, descriptive and evaluative. They exemplified Kinneavy's (1971) claim that:

No theory of modes of discourse ever pretends that modes do not overlap. In actuality, it is impossible to have pure narration, description, evaluation, or classification.

Plaintiff Descriptions

Although modes of discourse overlap, there is usually a dominant mode. Plaintiffs' opening comments were predominantly narrative, with macro-structures that allowed for causal sequencing or chaining of concepts that connected underlying meanings.

Opening Statements:

The following examples typify how plaintiffs began their narratives.

E1: I'd taken my grandchildren home with me to baby-sit them. and ah--my little grandson, he came into the room and said, "Grandma, something's happening and I didn't do it." So, I went in there and the bedroom was on fire, the bed, everything. I tried to put it out... (Several paragraphs of description about the fire.) I got my grand-kids out, and that's how I got so burned...I went to the emergency room. (Several paragraphs about the experience in the emergency room.) I knew I should not have been sent home. Why in the world would they have sent me home with such burns... That's what happened...I ended-up in the hospital with an infection. I had lost too much water, and was really in bad shape.

E2: It was, ah--was it a Wednesday? Wednesday she was having ah--pains. She ah--she felt that she was in labor...So, we called the clinic. (Several sentences about getting to the hospital.) Once we got there, I think it was about an hour and a half before they examined her. They said she had a bladder infection, and they said that the pains were coming from it being swollen-up around her bladder...(A few sentences about going back home.) I guess it was about one-fifteen in the morning and I felt the bed moving, you know, she was jumping, getting out of the bed. She thought she had to urinate. And ah, she went to the bathroom and, ah--she had labor there in the rest room... and she had the baby there, he fell in the toilet,...there was

blood on the floor...(Several pages of description about calling the ambulance.)...This never should have happened. She should have been kept in the hospital...Maybe they could have saved the baby...

Differences and similarities between the above opening statements are readily apparent. The first excerpt shows how the plaintiff described the fire that caused the injury. Later in the interview the plaintiff discussed her daughter's role in getting her admitted to the hospital and encouraging her to seek legal counsel. The second example shows how the plaintiff sequenced the incident around the day and time of the experience. Both excerpts imply that the patients should have been kept in the hospital. Both narrative accounts later described how hospital admission probably would have prevented the poor outcome .

Discourse Modes:

Narrative points and discourse topics may be confused with narrative descriptions given by plaintiffs at the beginning of their interviews. Narrative discourse modes are different from discourse topic and narrative point categories. Plaintiffs' beginning narratives gave overviews of events, responsible persons or institutions, and characteristics of those involved in the experience. Discourse topics and points usually followed narrative descriptions. Informants used discourse topics and narrative points to reiterate their beliefs and evaluate their feelings about their perceived malpractice experiences. The following informant statement is repre-

sentative of plaintiffs' views about their poor health care outcome. Near the end of the interview, when asked if there were other thoughts he would like to share about his experience, he replied:

E3: To be perfectly honest with you, I'd just as soon have my arm back like it was, than have any kind of settlement or anything else. I have always been fairly active, all my life. I've been a (worker using hands) for about 12 or 13 years. It's all I have ever done, and --uh-- it's totally changed my life and everything I do nowadays. Not a day goes by that I don't think about the things I can't do anymore.

The statement "I'd just as soon have my arm back like it was," is a narrative point used at the end of the interview by the plaintiff to emphasize his view that money was not the major issue.

To reiterate the difference between narrative descriptions and topical points, narratives were identifiable by their usual placement at the beginning of interviews and because their descriptions addressed the who, what, when and where variables of plaintiff experiences. Discussion of how and why questions typify categories of discourse topics and narrative points as given by informants. Plaintiffs' use of topics and points will be analyzed in the next chapter. This section examines concepts central to the decision for legal action, as identified by plaintiffs in their opening statements and narratives.

Narrative Descriptions:

Since plaintiff descriptions might identify certain cases, the following diagnoses, pronouns and other

identifiers within the examples were altered to assure informant anonymity. As stated in the research design section, interviews began with a request that plaintiffs describe the circumstances surrounding their alleged malpractice situations. Typical opening statements began as stories, such as "It all began when I went to the doctor because of my bunion...", or "This whole thing started back in June when I was hospitalized for a minor problem...", or "I was seven months pregnant and started to bleed, so I called the doctor, and..." The story overviews varied in length and detail from a short paragraph to several pages of narrative description. Information was usually given, without need for directed questioning, about who was allegedly injured, what was done incorrectly, and in what kind of environment the perceived negligence occurred.

Narrative accounts describe events and circumstances within a time sequence. Narratives provide relevant information about a particular situation or phenomenon. Research interviews with malpractice plaintiffs recorded narratives that summarized plaintiffs' perceptions about alleged malpractice incidents. Prince (1982) wrote that:

I may find an account of what happened very important, but you may not, which explains why senders of narrative messages often take pains to underline certain events as remarkable or important or crucial to foreground certain details rather than others, to establish a hierarchy of relevance (p. 160).

Spontaneous narrative descriptions were used by plaintiff informants to explain and to justify their

viewpoints. The focus of this information was either on the actions of health care providers or on the observations and actions of the plaintiff. Two typical examples of plaintiffs' opening statements follow.

E4: From the surgery -- uh -- I had gone in to have the surgery done. I was having discomfort, yes, obviously, but what threw me into the doctor's office was -- uh -- an article in the paper, a full article on this type of surgery, as well as a talk show (about the surgery). Anyway, so I went in. I rang up for an appointment. Uh -- I was seen by (doctor), and of course he's a typical showman. You know, the pea in the shell. And, like I say, I jest about it. I -- upon meeting him, he gave me a very assertive, cocky, holier-than-thou, I know better than God attitude.... After the surgery I had pain and telephoned the doctor and said that I had an infection. He said that it was highly impossible because it was too soon after the surgery for there to be an infection. He ignored my telephone call, and sure enough, I had an infection.

E5: Well, -- uh -- in March of last year she experienced some burning, so after a couple of days she went to the doctor and had it checked, and -- uh -- she started having headaches, real bad headaches. So we went to see the doctor, and -- uh -- they, first of all, they put her on valium and said it was nothing but tension headaches. And then -- uh -- he referred her to a neurologist. Well, the CAT scan showed quite a bit of damage. She was placed in the hospital in traction, and approximately one week later they decided to go ahead with surgery because the traction seemed to have made it worse instead of better. After surgery, the doctor came out and said they found a tumor near the spinal column and that whenever he was taking a piece for biopsy he had accidentally cut the artery. He said that there was no malignancy and that she would be fine. There was nothing to worry about. She was not fine after surgery. Her eyes were shifted to the left, and her speech was slurred.

These narratives described the order of events differently. Both plaintiffs had surgery. One plaintiff mentions the surgery first, and then describes the events leading to the surgery. The other informant began with the symptoms. Both

narratives provided a sequence of temporal events, though these events were placed at different points within the narrative. Like these examples, other interview narratives varied in complexity and sequential order.

The ordering and presentation of temporal events is a purpose of narration (Schiffrin, 1981). Other purposes include providing descriptive information and evaluative information (Labov and Fanshel, 1977). Plaintiff narratives showed that information given about events was more significant than the order in which events were presented. For instance, the previous examples showed that parts of narratives were emphasized for conveying central messages. The first example described the arrogant personality of the doctor, who ignored the plaintiff's suggestion of an infection. The second example described the doctor's disbelieving attitude that the problem was more than a tension headache.

Descriptions of Care-Givers:

The literature on lawsuit prevention suggests that care-givers develop caring attitudes and build more rapport with their patients. Authors assume a cause-and-effect relationship between poor bedside manners and lawsuits. There may be a relationship between health care provider attitudes and poor health care outcomes. There also may be a relationship between perceptions of arrogance and the desire to sue. Simultaneous occurrences, however, may not

involve a direct cause-and-effect relationship. Subjects in this research commented on the personalities of health care providers, but they did not present care-giver personalities as the cause of the lawsuit. Plaintiffs either disliked care-giver attitudes and their bedside manners or stated that the care-givers were nice enough, albeit incompetent. Representative accounts of care-giver attitudes from plaintiff accounts follow.

- E6: I was seeing Dr. (name) for a female problem. Well, let me tell you what this man said to me on three different occasions. He told me that all I needed was a good man. Not only were his comments insulting, but he was wrong. It turned out I had cancer, and he didn't catch it. (Meaning the doctor did not diagnose cancer.)
- E7: Ah -- you know -- he (the doctor) wasn't real nice. He didn't say I'm sorry or anything, even though the other doctor said they had made a mistake in surgery.
- E8: If they (the hospital) didn't know what to do or could not handle the emergency, I feel like they should have called in somebody or sent her (the daughter) somewhere else. The nurses were very kind to us. They knew she was getting worse.
- E9: He, you know, I guess - uh - I mean the doctor thought he was helping me I guess. Well, one of the first things that I could think of was that he should have told me the truth. He had lied to me throughout the entire time I was in the hospital.
- E10: I didn't like the doctor's beside manner. He was rough when he took the tube out of my stomach, he ripped the dressings off my wound without being careful, and he was always yelling at the nurses.
- E11: The unpleasant circumstance was that -- uh-- instead of having gone through -- uh -- relationship with the doctor that showed he was interested in the baby, I felt like, after I got my head on straight, about two months after the baby was born, that he had indeed been neglectful of the infant; that he had not checked him out at all, even though I had had such bizarre symptoms

during my pregnancy.

E12: The doctor made a mistake and he cost a life. I should feel sorry for him, but he never showed any remorse. I personally would feel better if he would say that he was sorry that it happened.

These accounts reveal variation in plaintiff perceptions of care-giver attitudes. Caring and noncaring actions were described as part of each scenario, though they were not identified as factors influencing the decision to sue. As stated by Prince (1982), accounts vary in the way they underline certain events. In medically related literature, emphasis is placed on the importance of good bedside manners for avoiding medical malpractice lawsuits. Plaintiff narratives did not support this assumption. Informants analyzed care-giver attitudes of sincerity and humanism, and these attitudes were placed within the context of the perceived harm. Looking at the last example, lack of remorse was a related issue, though not given as the motivating factor for pursuing legal action.

Continuing with attitudinal issues, verbal responses and actions of care-givers were perceived by some informants as inappropriate and incompetent.

E13: The doctor saw us in the hall that morning and said the surgery went well and she's doing fine. The nurse put her hand on his shoulder and told the doctor that I was Mrs. (name) and that he was fixing to do surgery on my husband. He said, "Oh I see," and just floated on by me. Well, we (the family) went on and we remarked among ourselves that that was kind-of strange --uh-- that probably he does so many people a day he doesn't even realize who he's talking to out in the halls, so we kind-of discounted that and went on. Later we realized that he wasn't paying enough attention to what

he was doing. He was as careless in surgery as he was in the hallways.

Informants described ways in which they tried to make sense of incongruent or irrational health care experiences. The above example shows how a plaintiff rationalized her experience, at the time, and again in retrospect. At first, it did not make sense that the doctor had forgotten who she was. She used her every-day experiences to interpret the doctors confusion; doctors see many people during the course of the day, and therefore it was logical that he could confuse two families. Later, when there was a poor health care outcome, she remembered the hallway encounter and changed her interpretation; the doctor's strange hallway remarks then proved that he was a careless person.

Every-day experiences and commonplace knowledge were used by plaintiffs for making sense of their experiences. One trend that emerged from the narratives was the use of litigious labels by plaintiffs. Suit-prone labels were a part of their commonplace knowledge. Throughout the narratives, plaintiffs gave propositions about what kind of person they were and why they were pursuing a lawsuit. The next section summarizes how plaintiffs used suit-prone labels to describe their circumstances.

Suit-Prone Labels

In their narratives, plaintiffs described the malpractice incident and their initial response to the outcome. There is a fine line between narrative description

and narrative points. Money issues, for example, were addressed by plaintiffs both in their narratives and later during their topical discussions. This discussion centers on the statements made by plaintiffs as they described the circumstances surrounding the alleged malpractice occurrence.

Self-Descriptions:

Plaintiffs' spontaneous descriptions demonstrate a commonplace knowledge or stereotype about those who sue. These stereotypes existed in the minds of plaintiffs, and with their narratives they tried to prove that litigious stereotypes did not apply to them. For instance, statements were given that discounted monetary motivations.

E14: Most people, when they go into a lawsuit, they think of money, but that has not been what I have thought about. I want to know if they done her wrong. If they could have done more to have helped her.

E15: When I got home Tuesday evening, I was in the lawyer's office the next morning. Uh, I guess, I don't know what this is all about, (meaning the research interview) but I guess, if you want the truth or whatever I guess I've always been the type of person, --uh-- when I first got a lawyer, it --uh-- the money, it didn't cross my mind. I wanted to know why my father was dead.

E16: I can't really recall ever reading about a legitimate malpractice suit. They all, from what I remember, seemed to be these ridiculous phoney-baloney type suits. Oh, my God, this woman's trying to get two million dollars just because her belly button surgery turned out wrong. This is ridiculous. That was my -- my view of medical malpractice....I really didn't want to become involved in a lawsuit, but we really didn't have another alternative. We wanted justice to be done.

E17: A newspaper reporter contacted me and in the beginning

I was really excited about it because I wanted the story told. Then I was misquoted and they just took other parts of my quote out, and put the doctor's quote in, and they didn't ask me what the counter-thought was here. And that made us look like money-hungry, horrible people.

The above narrative excerpts are representative of the interview sampling. Plaintiff narratives addressed money issues in two major ways: 1) it was discussed within the context of non-deserving plaintiff stereotypes, or 2) it was used to symbolize justice, rather than blood money. Notions of justice will be further analyzed in the next chapter. Money factors and motivations of justice were often juxtaposed. The following examples demonstrate typical informant views on monetary compensation.

E18: I'm the type that --uh-- I take a good long time to think about something. And at the time, I didn't know if suing someone was a good thing to do. And even now, I still feel like a lot of people, you know, look down on me for that (suing), you know. They say, well, you know, well, that's like making money off your -- your dead -- your dead son, you know. But I don't know what other way to get back at them. My son's death could have been prevented.

E19: I never really paid much attention to it (medical malpractice lawsuits) because I never thought I could bring myself to do something to hurt somebody else like this. I'm not wanting to hurt anybody, but I feel like they hurt me, and it's not fair for them to go on their merry way and not have to pay for my pain and loss.

E20: While our son was alive, our primary drive was to provide for him; medically, financially, whatever was going to be required. Now that he's gone --uh-- I don't care if we ever collect a nickel from the doctor, because it does us no good. We don't, you know, that's blood money, I mean we don't need that. We're continuing this lawsuit because the system needs to change. The court judgment proves that the doctor was grossly negligent.

E21: They (my attorneys) wanted to negotiate at least a \$5,000.000 settlement. I said no - no, no, no, no, nosiree. If I go to trial and that jury gives me ten dollars, than that's what they feel that I deserve on hearing this case, and that's what I want, exactly what they feel will satisfy the crime, so to speak.

E22: I really don't want to keep all this anger inside me for four years; and I want it over with; and if they settle for any determined amount of money, all they're doing is saying "Yes", he did wrong...(Sentence unclear on tape.) I'm not going to be a millionaire out of this --uh-- which doesn't matter, it truly doesn't. It won't bring my husband back. So it really doesn't matter.

A discussion of money values was one way plaintiffs described their moral characters. In their narratives, informants also used their life experiences to negate lawsuit-prone tendencies. The following four excerpts show how plaintiffs described their viewpoints associated with the decision to sue.

E23: It (a lawsuit) was just something I wasn't raised up with. You know, I came from a family of hard-working people that, --uh-- my dad was superintendent of a plumbing company and he worked by his hands, and my husband's father worked in the orange groves in another state, so our families didn't believe in getting something for nothing. That's not why we finally decided to sue. This doctor should not be allowed to continue practicing.

E24: I had a car accident one time and a man had been drinking, and he rammed his car into my car. I then rammed into a bus, so my car was like an accordion. I still have an arthritic spine from it, but I didn't sue. You know, he paid for the car and my doctor bills, and that's all I felt like was necessary. But the recent harm caused by my doctor's carelessness is a different matter altogether.

E25: I don't think that I'm hysterical or illogical, and I don't think, unless there was some --uh-- unless I had a good reason I would have sued. That is one question that I asked my friend. I said that I did not want to go off in a tangent. Did she (my friend) really think

that what I was seeing was honestly unfair. Did she really think that there was fault. She said that if it had been her husband, she would have sued already. So I was very careful to try and proceed deliberately and logically, and not just out of an emotional reaction --uh-- cause I don't like that. I don't respect that in people.

E26: I didn't believe in suing, and if I can regress to 1980, I had abdominal surgery and the surgeon --uh-- nicked my intestine and after I went home there was so much pain that I was rushed back into the hospital. I had an abscess that burst and -- I had peritonitis and was in the hospital three months and in out of a coma for two weeks. And yet my husband and I were so thankful that I was alive that a lawsuit never even entered into our thoughts. I, of course, have been raised to believe you don't sue your brother, and --uh-- being a Christian, and so I talked with my minister about my daughter's recent injury.

The last two examples mention involvement of other individuals in the decision to sue. A trend of other people encouraging legal action emerged early in the research.

Informal Referral:

Forty-eight of the fifty-two plaintiffs interviewed, reported that someone else first mentioned contacting an attorney. Articles in the previous literature review chapter describe the characteristics of suit-prone patients. Is it possible that individuals are suit-prone if they had not been contemplating or planning to pursue legal redress? Suggestions by others to sue are depicted in the following examples.

E27: My daughter was finally transferred to another hospital. The administrator of the hospital told us that we should sue the doctor that screwed up my child's leg. And I said, "you know, I have never sued anybody in my life. And he said, "well, by God, this is one time you should."

- E28: I was at a dental appointment, and discussed my problem with him, since my health condition was effecting the fit of my dentures. My dentist gave me the name and number of a lawyer and told me I should call him immediately.
- E29: So, in talking --uh-- in talking to my parents, my sisters and brothers, they suggested that we start checking with an attorney.
- E30: Something seemed wrong, so I asked the nurse what was going on. She told me about the medication error, and this nurse said that she was telling me this because I had a right to know, but she said "don't ever mention my name to anyone."
- E31: She wasn't even thinking about the lawsuit or anything like that, when my cousin-in-law mentioned it.
- E32: He was so worried about (the patient) that he didn't have time to think about anything else. Well, then my aunt took over and called an attorney.
- E33: Some neighbors were at the house when we got home, and they wanted to know what we were going to do. We were too upset --uh-- and they said it was time to get some legal advice.
- E34: And there was a social worker there, and, and that social worker, when everybody was gone, --uh-- when most of the visitors left, she started to ask them questions about the baby, and she came about and told her, advised them to get an attorney.
- E35: One of the nurses left a book on the window ledge in the hospital room. When I asked her if I could keep it, she said it was meant for me. I think she was trying to tell me that a mistake had been made.
- E36: We live in a small town, and the funeral director told me that the cause of death was different than I was told. He suggested I get a lawyer.
- E37: One of the people I work with asked me what I was going to do. "Are you going to sue?" and I said no. He then said, "Well, you should!"
- E38: My mother was angry and said "Sue him," but I was too tired and upset then. Later I decided that she was right.

The above examples show that factors other than litigious-

ness influenced plaintiff decisions. Social context is important to the understanding of plaintiff actions.

Social Context:

Social structure and social context provide a framework for determining consequences of actions. Plaintiffs did not report any preconceived plans for litigation. These informants told of the useful statements made by others. Plaintiffs described their unpleasant circumstances, and they showed how their experiences fit within the social context.

The social context provides needed background for determining changes in expectations and ideal patterns. For example, plaintiffs were acting in response to unexpected health care outcomes. Plaintiffs' statements discussed unscheduled events and unanticipated communication with others. Informants described their search for available resources and their need to compare these possibilities with their past experiences. Plaintiffs did not picture themselves as individuals searching for errors. They were decision-makers who were weighing their alternatives within the social context, so the best possible outcome could be obtained.

Suit-prone labels imply litigiousness and propensity towards suing. Plaintiffs described themselves as not the kind of person who would pursue a medical malpractice lawsuit. Narrative accounts reviewed the steps in seeking

legal redress, and the first step usually involved receiving advice from others.

Causal Links:

The work of Schank (1975a, 1975b) is helpful when reviewing narrative macro-structures and analyzing how informants tie together their episodes. Episodic sequences are used to organize information and place experiences into memory. Everyday experiences and commonplace knowledge about the world provides a means for processing unfamiliar information and new experiences. Causal chains help to connect and identify crucial information. Causal links are found within plaintiffs' narratives. The examples given in this chapter demonstrate how causal chains are used to organize episodic sequences.

Schank described an "enable causation link" as a chain that occurs when a certain state or situation provides the background necessary for an action to occur (1975b, p.241). The narrative excerpt about a hospital that could not handle an emergency describes a situation where optimal care was unavailable. If the emergency center had been a well-equipped city hospital, the lack of action could not have been associated with the background information. In other words, inadequate technology was linked to the poor outcome. The hospital was unable to handle the emergency; therefore the patient should have been transferred.

A "result causation link" occurs when an action or

event causes a change (Schank, 1975b, p. 241). This type of chaining was used frequently by plaintiffs to reconstruct and represent their experiences. "The doctor made a mistake and he cost a life." Health care literature uses result causation links to relate a cause-and-effect relationship between poor bedside manners and the incidence of lawsuits. From the conceptual framework of care-givers, it makes sense that a bad rapport event could cause a lawsuit action. What should be noted here is that plaintiffs did not use rapport as a part of their cause-and-effect arguments.

Two other types of causal links were used by plaintiffs during their interviews to reconstruct their experiences. Schank described an "initiation causation link" as a chain that exists when an action or event causes other thoughts to occur. A "reason causation link" occurs when new thoughts provide reasons for actions (1975b, p. 242). These two causal chains will be discussed in chapter five. The next section summarizes the need for more information as described by plaintiffs in their narratives.

Quest for Information

A common thread running throughout plaintiffs' narratives was a desire for more knowledge about their perceived health care mishap. This quest for information fits into the "what" category of the who, what, when and where descriptions given by informants. Plaintiffs often stated that they did not fully understand what happened to

cause the poor health care outcome. The need for more information was given as a major reason for seeking legal recourse. How, what and why issues are not easily separated. For the sake of analysis, chapter five will examine how plaintiffs interpreted their experiences and why they chose to sue, i.e., what they hoped to accomplish.

The following excerpt typifies the quest for information as the missing "what happened" component of plaintiff experiences. Research respondents expressed a need to know the possible causes of their poor health care outcomes.

E39: The doctors didn't want us to understand it (the daughters' coma after surgery). Really, our attorneys, they were the ones that actually helped us understand. They explained the terminology, set out the entire scenario: this is what we think happened, and it made perfect sense to us.

Attorneys were able to answer their clients' questions or were able to obtain the medical records for their clients perusal.

The Need to Know:

Informants identified three types of situations when information proved unsatisfactory. These included times when: 1) information should have been voluntarily given to the patients and their families, even if they did not ask questions; 2) information was requested, but not given by the care-givers; and 3) information was given, but not believed. The following accounts exemplify the first category of dissatisfaction.

E40: I just got the impression that the other doctors, just, they were just so busy or in such a hurry that they couldn't be bothered to explain. And I really felt that they should have explained to me exactly what was wrong with my son. I really should have been told why he was admitted, or given a report, or shown something. I really think they were evading me.

E41: You know, he never really explained to me what the medications were and what they should do. And he never told me you should take this with that, or shouldn't take these two medicines together. I mean, he just gave it to me, and I took it. You know, nobody, not even the pharmacist, ever told me I shouldn't take so much medicine together.

E42: We should have been given adequate information, so we could have made a decision. We were rendered powerless. I was placed in the hospital, and treatment instigated, before we could find out that we had that right to refuse treatment.

Plaintiffs asserted that they had a right to receive information about their care or the care of their spouses and children. Care-givers also were perceived as having a duty to volunteer information. When information was not spontaneously provided, plaintiffs said that they requested answers to their questions. They became angry when they felt their questions had been ignored.

E43: And at that time I was asking when I could speak to his doctor to find out what was the possibility of brain damage. Cause, that was the first thing that came to my mind. But, then nobody answered my question, and I became very upset.

E44: They went to ICU and they were all running around. I knew she was in trouble, and I just kept asking them, "what is happening?" And nobody would tell me anything. Nobody would give me an answer.

E45: I got on the phone and called the doctor, but she could not talk with us then. We called about three or four times and left messages, but we weren't able to talk to her until almost noon the next day, and even then she never really answered our questions.

According to their narratives, plaintiffs' quest for information continued until they received acceptable answers. Plaintiffs interpreted care-giver responses as either believable, outright lies, or lies of omission. Informants interpreted unbelievable responses as follows.

E46: Now, we were told the first three weeks that, after the incident was that, --uh-- that "She's coming around, she's improving, and everything looks good." But we figured, there's something really, really wrong here. Before we lose any information or any situation, we've got to get to an attorney and check this out.

E47: They said everything went O.K. with the surgery, but I don't accept that. You don't become a vegetable for no reason. Something had to go wrong. That's what I can never get through my head. There's got to be a reason for everything. Anything has a reason or purpose. And they wouldn't even speculate on the possible cause.

E48: It was my anger over not being told the truth. I repeatedly asked the doctors what's going on, but they made-up some story about everything being normal. They patted me on the back and said "Don't worry about it -- uh -- let us be the doctors, --uh-- calm down, or whatever." You know, that's what angers me the most.

Informants did not always separate their quest for information into the three types of situations described above. They described a combination of insufficient and disbelieved information given them during their health care experiences. When analyzing narratives, these three categories emerged. Another trend relating to the quest for information was the piecing together of misinformation. For example, one plaintiff misunderstood or did not receive an explanation for a CAT scan (computerized axial tomogram) and speculated incorrectly about its purpose. The poor health

care outcome was related to the CAT scan. Reasons were given by plaintiffs that helped explain poor health care outcome, even though these explanations may not have been founded on accepted medical knowledge. The reasons and explanations made sense to the informants, and their statements were believable, given the lack of information perceived by the informants. The quest for information and the need for rational reasons for a poor outcome was a recurrent theme throughout the narratives.

Explanatory Model:

Such quests for information are congruent with Kleinman's (1980) explanatory model (EM) framework. In this model, people use etiology or cause, pathophysiology, treatment, symptoms, and course of an illness as major explanatory categories. This model was particularly helpful in identifying areas of plaintiff quests. If plaintiffs could not make sense of these five areas, they sought information that would help them rationally piece together their health care scenario.

A typical example of the EM model used by plaintiffs follows. An informant described her problem as too much pain and bleeding during her menstrual periods. Her doctor attributed these symptoms to uterine fibroid tumors. The plaintiff stated that she knew these fibroids were causing

irritation inside her, and she thought that the doctor could scrape them out during surgery.

E49: Well, I, first of all, I felt like I had been tricked. I felt like I wasn't told everything that I should have been told. I signed a contract agreement for a possible total hysterectomy in case I started to bleed to death in surgery. I think the doctor knew all along he was going to take my uterus. I wasn't bleeding too much in surgery. Why did he do this? Was it because he wanted to get money for the surgery?

All five EM categories were addressed by the informant. She did not understand why her treatment was so drastic, and she speculated that the additional surgery would have given the doctor more money.

Plaintiff accounts described questions that remained unanswered and questions for which plaintiffs found answers. There were fewer unanswered questions in middle and older lawsuits. Informants stated that their attorneys found reasons for their poor outcomes or that the plaintiffs found answers when they reviewed their medical records. The following excerpt is a typical closing narrative statement preceding discussions of discourse topics. This plaintiff questioned her doctor and refused to believe that everything was alright. She learned about the medical aspects of her condition after the poor outcome. The paradox of scientific knowledge and inadequate care was identified.

E50: I kept telling the doctor that I was hurting. I gained a lot of weight. My blood pressure was up. I was telling him things like I was wearing a size larger shoe, and my wedding rings were hurting my fingers. I didn't know how dangerous preeclampsia was. I didn't even know what it was, or that it could be prevented. But something was wrong, and I knew it, even if the

doctor wasn't listening. With all the modern ah -- technology they have now, I knew something wasn't right, and I started figuring it out too late to help my baby.

The quest for information was a recurrent theme in plaintiffs' narratives, and it was offered as a major reason for obtaining legal counsel. Information-seeking statements often prefaced discourse topics and narrative points. The next chapter analyzes these topics and points used by plaintiffs to interpret their experiences.

In summary, plaintiff informants used causal links to describe their perceptions of malpractice events and circumstances. They analyzed care-giver attitudes in the context of their situations and used their commonplace knowledge of litigious stereotypes to show why they were not typical, suit-prone plaintiffs. Narrative accounts reflected the social context of alleged medical mishaps. Plaintiffs listed the advice of others and inadequate information as factors influencing their decisions to sue.

Chapter V

DISCOURSE TOPICS AND NARRATIVE POINTS

Interview transcriptions were analyzed by examining two major forms of discourse. Narratives, as discussed in the previous chapter, were used by plaintiffs to describe the circumstances surrounding their perceived malpractice incident. During the analysis of narratives, propositional trends emerged that showed how plaintiffs used suit-prone labels to explain their experiences. In their narratives, plaintiffs also expressed the need for more health care data. They thought they needed more information before their stories would be complete. The second area of discourse analysis focused on the points made by plaintiffs during the remainder of their interviews. Discourse topics and narrative points were content pieces that plaintiffs used to describe causal relationships between their experiences and their beliefs and actions. These topics and points interrelated factors perceived by plaintiffs as important. This chapter analyzes these discourse topics and narrative points in terms of rhetorical themes, metaphorical devices and other recurrent patterns of content in plaintiffs' quest for meaning.

Rhetorical Themes

Written transcripts of communication are texts pregnant with topics and rhetorical themes (Cannell and Kahn, 1968). Plaintiffs introduced topical propositions and reiterated

points throughout their interview texts that stressed certain events over other events. The kinds of topics and points emphasized by plaintiffs can be identified by examining their rhetoric themes. As Perelman (1982) wrote:

...Without doubt, to create presence it is useful to insist at length upon certain elements; in prolonging the attention given them, their presence in the consciousness of the audience is increased. Only by dwelling upon a subject does one create the desired emotions (p. 37).

Plaintiffs' rhetoric can be seen through their use of repetition and detail. They amplified their ideas and values by giving rational justifications for their feelings and actions. Plaintiffs used their arguments as models for comparing analogies and metaphors that helped them present their viewpoints.

Seven recurrent arguments or rhetorical themes were found in the interview texts. They related to the:

- 1) knowledge of medical record falsification by care-givers;
- 2) knowledge of care-givers' involvement in multiple law-suits;
- 3) fear of future health care;
- 4) fear of the courtroom experience;
- 5) need for expert witnesses;
- 6) desire for justice; and
- 7) desire for good to come from their bad experiences.

The last three topics will be discussed later in this chapter. The matter of expert witnesses will be discussed in the metaphor section. Justice and altruistic motivations

will be examined in the metaphor and quest for meaning sections of this chapter.

One function of discourse, as stated by Webber, Joshi and Sag (1981), is to provide the audience or listener with a summary of the underlying situation. When something happens, a piece of discourse is matched with responding information to make a point (De Beaugrande, 1980; Klein-Andreu, 1983). The first category, as stated above, locates recurrent arguments about the alteration of medical records by care-givers. In this case, the underlying situation was the alleged malpractice. The issue of falsifying records was the piece of discourse that was matched with the proposition that care-givers were wrong-doers.

Alteration of Records:

Plaintiffs discourse showed that there was more to the "underlying" situation than the act of malpractice. Falsifying records, for example, symbolized wrong-doing for plaintiffs. Plaintiffs reported that they learned about record alterations during the process of litigating. Informants stated that they were surprised and disgusted upon learning that their health care records had been changed. Plaintiffs used this information to argue that their care-givers had been wrong, or otherwise they would not have needed to alter the records.

In health care literature, authors have suggested that care-givers refrain from altering medical records. This

advice is given within the context of preventing malpractice litigation. There may be a tendency to engage in retrospective charting, when there is a bad outcome or when a plaintiff's attorney places the care-giver on notice that a lawsuit is forthcoming. Perhaps there is a stronger case for the plaintiff when tampering with records can be proved. Plaintiffs did not view altered records as the cause of their lawsuit. Record changing was part of the scenario, and often discovered after the lawsuit was filed, as seen in the following examples.

E51: Dr. (name) went back and wrote in on Wednesday, and it's written in a different ink and everything, so they can verify that he had done it.

E52: Our family doctor wrote "Patient Critical." Then later, --uh-- let's see, what did he write? I can't remember what he wrote. Anyway (my attorney) asked him in court that day. He said "When do you consider it necessary to put a patient in Intensive Care?" He said, "When they are critical." He (attorney) pulled out the chart. They (the law firm) did such a beautiful job. They had everything in life size --you know-- so everybody could read. He pulled it out and there it was, blown up, this big "Patient Critical." He said, "You went back and wrote that in later, didn't you Dr. (name)?" The doctor then admitted that he did that.

E53: They changed the records, and it's not that we don't have the documents to back it up. When I say they changed records, --uh-- you want to see them? That's where it is, all scratched out. They filled out the back of the recovery room records, heart beat, blood pressure. She never made it there. They precharted! Well, now I mean come on, guys, here's the proof.

E54: The nurses notes were a mess. I cannot believe they crossed this out, and added that, and just tried real hard to make it all come out looking right.

E55: You know, --uh--, well, the original notes don't look too bad, but my attorney has an old xerox machine that didn't copy over the erased part too well. Ha, they got

caught red-handed.

E56: Later on we found out they changed the medical records. They must have gone crazy, all running back to their offices, dictating tapes, scratching out medicines, and submitting new things about what was happening. Now, that tells you something, doesn't it?

The topic of medical record alteration was used by plaintiffs to make the point that their care-givers were incompetent and tried to hide their errors. Defendant doctors had been "caught" changing the records, and plaintiffs emphasized such actions as evidence that the doctors were dishonest. Dishonesty was somehow related to carelessness and negligence.

Care-Giver Litigation History:

The subject of multiple lawsuits was also used to reaffirm the proposition that the care-givers were wrongdoers, and to stress additional points about the carelessness and incompetency of the health care providers. The following examples show how different plaintiffs initiated the topic of medical mishaps caused by the defendant care-giver. Informants volunteered that their lawyers, friends, neighbors and other acquaintances told them about these incidents. Plaintiffs' malpractice events were matched with this information, and their retrospective thinking was presented by using points about multiple mishaps.

E57: This person has a reputation for being a jerk. --uh-- You know, I learned from my lawyer that this guy has 26 malpractice suits against him right now. Isn't that something?

E58: I know one woman that he did. Uh--and she had problems afterwards, and she was going to sue him, but she knew of us, and since I met her, after she had all these thoughts, and she told me this personally. But she realized that because our lawsuit was so tremendous, there would be nothing there for her to gain. Then recently, I heard -- uh -- he put two women in Intensive Care, I don't know how, but he ended up doing that. And one of them wanted to sue, and I told her to contact my lawyer.

E59: Well, while my wife was gathering information for the lawsuit, she talked to another lady whose husband, the doctor had operated on, and he had accidentally cut his spinal cord.

E60: --uh--and there's just, I mean, I've found too many people that have said, "Yes, I know somebody who has had surgery with this doctor, and they're all messed up now." But, what I'm getting at is, this same doctor, I've heard too many things about his errors.

E61: It happened, almost immediately after he died, people started telling me, this was not the only harm that this hospital was causing. I heard one story right after another about all the malpractice that was occurring in this place. I even felt more distraught, because here these people were telling me about these other cases after the fact. Why didn't we hear about these awful things earlier, so we would have known not to go to this place?

Plaintiff informants employed the topics of other malpractice incidents and altered records to reiterate their points about their cases. An initiation causation link is identified within the topical propositions. Schank (1975b) stated that initiation causation occurs when "any act or state change causes an individual to think about that or any other event" (p. 242). When informants described events surrounding their legal action, it reminded them or caused them to recall other events, such as multiple lawsuits against the defendant care-giver. For example, a doctor

writing the words "patient critical" on the chart after the patient had died initiated the informant's thoughts about her courtroom experience and the "beautiful job" the law firm had done on the case. Causal sequences served to explain viewpoints and to build convincing arguments that justified the emotional reactions described by these plaintiffs.

Emotional Reactions:

Informants discussed their emotional reactions by organizing their thoughts around their experiences. Recurrent points were found throughout the interview texts relating to future health care needs. There were two types of responses concerning the need for health care following the alleged malpractice event. One related to receiving health care and the fear that another mishap could occur. The other was an expressed feeling that filing a lawsuit caused undesirable responses toward plaintiffs and their families by other health care providers. Excerpts follow that address future health care fears.

E62: When she started thinking about all the trouble she went through, she got really scared. She doesn't want to go back to the hospital now, --uh-- any hospital. She has suffered so. She has suffering for such a long time. She must have corrective surgery, but she is afraid to have it done. She is afraid another mistake could happen.

E63: I'm terrified to go to a doctor. I won't take my kids to a doctor. I'm afraid if, if one of them really got hurt badly in an accident, I'd wait too long to get help.

E64: I would have to say, I would take all measures not to

go to another doctor. And I will say one thing. I have another existing problem, and I just put up with it rather than go back to doctors because of this (the perceived medical mishap). I'm not trying to sound like a pansy, because I'm really a tough old girl. But under the circumstances, I, --uh-- think you understand.

E65: After this happened, none of us sought any medical attention. We were too scared. We didn't even go to the dentist to get our teeth cleaned.

E66: Just recently, you know, after going through everything that I've gone through....And then, looking back, at the treatment I did get. And --uh-- now I don't know if I can trust a doctor again.

The causal link exhibited during discussions of future health care fears is a reason causation chain. Reason causation links were used to connect mental decisions with physical effects. Plaintiffs thought about their previous feelings and experiences, which made them decide to avoid health care providers. The stated reasons were attributed to fear. Informants stated that their fears were understandable, given their prior poor health care.

Concepts of prevention were discussed, while making points about future care. Informants identified preventive measures they would take in the future, and they outlined preventive steps as guidelines for others.

E67: They're not going to do it (the negligent care during hospitalization) to me again. I'd know how to go about it. If one of them, a member of my immediate family, ever goes in the hospital, I will get a private room, and I will stay there with them. I will never, I mean, if I re-marry and my wife, and if I have any children, my children, they will never be in the room alone, because a lot of the help in these hospitals, I mean you got incompetent people there. It's not nice to say, but it's because they're trying to cut-down on costs. They're trying to save money. I know hospital

bills are high, but where is the drawing line between human life and money?

E68: What is it? Hind sight is twenty-twenty. I don't even go to the doctor any more. I know that this is just stupid. I know I'll have to. My message to the general public is: Do not have surgery unless you absolutely have to, and you better get a board-certified surgeon, and have an anesthesiologist who is board-certified. And you better question. You better insist. You better have those doctors so scared that they're going to do everything perfectly. And question, question, question. I think that is the only preventive medicine you could use to try to insure you will come through it with a clean bill of health.

Another reaction described by plaintiffs was a paranoid feeling that care-givers responded differently to patients who were involved in a lawsuit.

E69: After the lawsuit was filed, I got the feeling that other people looked at us with hostility, anger, and distance. Uh--You get the feeling that they look at you through another set of eyes. If they know, and I'm thinking specifically about an orthopedist and my gynecologist. Those two know that I am in the process of litigation, and that I have found both of them to be defensive, and a little hostile. And I'm not really, I don't think it's quite fair that they put the label of trouble-maker on you, because you protest when a wrong has been done. Uh-- where, if something happened to their car and they go talk to the mechanic, the shoe would be on the other foot, and everything would be very, very, kosher.

E70: When we filed the lawsuit, we asked a lot of questions. What's going to happen to my children if they get sick? What kind of attention will they be able to get? Will they have to change their names? You have crazy thoughts like this. I have wondered what would happen if no one wants to take care of them because they think we might sue them too.

E71: You know, I kept thinking, the nurses are acting real strange toward us. They seemed to be avoiding us. --uh-- You know, I think there's a rumor going around that if you talk to a lawyer, you suddenly become like a contagious disease.

E72: I'm not making this up. I couldn't get a doctor to see

my son after the attorneys asked for his records. Everyone in the doctor's office, hospital, and it seemed like the entire city, knew we were going to sue. The doctor made up some story about changing his practice to only seeing certain types of disorders, so he wanted us to get another doctor to take over our son's care. We weren't suing him! Still, everyone got real persnickety.

Health care literature describes plaintiffs as litigious individuals who become involved in multiple lawsuits. Informants may have based their perceptions upon commonplace knowledge about individuals who sue. Some expressed disbelief and dissatisfaction with the treatment they received, once their lawsuit became known. Causal links were identified between their health care experiences, or what could have happened, and the filing of a lawsuit.

Plaintiffs referred to their courtroom fears at various times throughout their interviews. The time context of courtroom topics depended upon whether the lawsuit was a new, middle or old case. Irrespective of the time context, two points were made. First, courtroom experiences were known to be traumatic. Defense attorneys were expected to ask difficult questions and to present misleading information. Second, even though plaintiffs disliked the courtroom, they went through the experience, or were going to go through it, because it was the right thing to do.

E73: I didn't want to have to go to court. I didn't want to face it. I didn't want to discuss my problem in public. No, no, I didn't want to face it. I didn't want to think about it. I didn't want to hear about it. I didn't want to discuss it. I wanted to forget about my grief as quickly as I could. Now I'm ready to go to court and let the jury decide the verdict. I'm

ready to get it over with.

E74: I didn't want to sue because I didn't want to have to go to court. I didn't want to have to go through all of that. But, ah, now it doesn't, it isn't bothering me. Now, I, ah, probably wouldn't mind going at all, if it comes to that. When I finally decided that we were going to sue this man, I knew if I had to go to court, I could tell them what he had done to me.

E75: It was real difficult at first, thinking that we would have to tell every little thing in court. It's strange, we were most scared about going to court. We spent so much time worrying about it and preparing for it. And then, thankfully, we settled out of court and we didn't have to put ourselves through that.

E76: Going to court is going to be tiresome, and they will try to slander her on the other side. I dread having to get on any witness stand, and, not that I have anything to hide. It's just pressure. I get so nervous that I'm always afraid I'm going to say the wrong thing. But these people must be shown that they can't get away with what they did to her, and I'll get on any witness stand and do my best to let them know how it is.

E77: I found the whole courtroom thing upsetting. Very unnerving, but I found when I had to defend my children, I could almost turn my emotions off and be icy cold, and completely intellectual about my approach to it.

The courtroom atmosphere and the emotional stress of being on the witness stand are part of our shared cultural knowledge about the litigation process. Plaintiffs used this knowledge to show that they overcame their fears in order to achieve justice.

Metaphorical Accounts

Metaphors and analogies are apparent in examples already given in chapters four and five. This section analyzes the use of metaphors, analogies and parabolic accounts to present information. Metaphorical statements

were used in topical descriptions to make narrative points.

Tourangeau (1982) wrote that metaphors have been topics of investigation since the days of Aristotle. Metaphors play a role in conceptualization, by providing a way for describing experiences and feelings. Differences between metaphors and similes, analogies and parables have been addressed by several authors (Brown, 1965; Embler, 1966; Gentner, 1982; Lakoff & Johnson, 1980; Levin, 1977; Perelman, 1982). Analysis for this research does not dwell upon distinctions between the above categories. Plaintiff accounts will be reviewed in their broadest sense, since separating metaphorical categories, as done in literary theory, provides little help with identifying underlying meanings in this research data.

Plaintiffs used metaphors and analogies to describe their viewpoints. Following is a summary of word exchanges and situational overviews used to support narrative points. Computer analysis was helpful for this section. Propositional schemata, as described by Tyler (1978), served as a model for scanning and identifying metaphors. The MS-DOS Edlin command was used to highlight propositional expressions, e.g., "is like", "as if" and "is similar to".

Metaphors were used by plaintiffs to provide descriptive information and to make points about the seriousness of past or present health problems. The metaphorical descriptions in the narratives were usually

brief and did not lead to discourse topics. Examples of these metaphors follow.

E78: It's as though I have a spike from a railroad just jammed up my foot. I mean, we're talking pain. And I can take a lot of it, but this is just, --uh--it's affecting my whole life.

E79: I didn't really - I - it was kind of like a pimple under the skin, in my description. I was having it taken care of before it came out and did some real damage.

E80: My daughter's skin would roll up. Her skin is like rubbing mine right now.

E81: When we realized that he would not get any better, it was like somebody pulled the plug on my life, you know, on all of us.

These examples show how metaphors were used to highlight narrative descriptions. The next section demonstrates plaintiff's use of metaphors to exemplify their points.

Care-Giver Actions:

Informants used metaphorical accounts to discuss alteration of medical records and their need for expert witnesses. The major thematic is "conspire and cover up." Occasionally these two topics were addressed simultaneously, along with points about justice.

E82: I am told over and over again that it's not uncommon for documents to be doctored, or to vanish completely, or you know. I'm just appalled. I mean, who else under our system of justice has that much leeway to, you know, --uh-- rally his forces and protect himself, if you will. You or I would not have that kind of an option, but under the law, they get a six week warning period before the lawsuit can be filed.

E83: Doctors that were on the periphery of the case and weren't involved with the operation were changing records and modifying this and that, and lying. Whatever it took to protect the doctors. It's like all

of a sudden the Indians attacked, fold, you know, roll up the wagons and let's get all the doctors in here, to do whatever we have to do to protect against the aggressors. That's the interesting thing.

The metaphorical statement of "doctoring" the records is similar to the phraseology of "doctoring a recipe". This means that the original thing was manipulated or altered. In excerpt #82, the doctor "doctored" the documents. The symbolism of the word "doctored" merits investigation beyond the scope of this research.

Different metaphorical accounts described actions of physician groups after a medical mishap or after filing of a lawsuit. Like the above examples, metaphors of team-work were used to stress the viewpoint that physicians protected each other.

E84: I think the --uh-- the key thing through it all wasn't just one doctor that was at fault that was doing this. It was the society of doctors that was doing it. They all band together there at the hospital.

E85: The other doctor tried to cover up for him and told me the artery just started bleeding. I knew better than this. They must think if two doctors say the same thing, then it becomes a fact!

E86: We could not get expert testimony. I'm telling you, these doctors have the best union in the world.

E87: If you really want to put a label on it, it's a conspiracy. I don't think that they have a right to cover up for one another, and they do it every day, and it's wrong. I think that something has got to be done. There's too many people who have to place their lives in the hands of medical providers. And we have no assurance at all that we're going to walk back out of the hospital for something minor, and it's because doctors don't have to be careful. Doctors should be prosecuted just like anyone else.

E88: It's virtually impossible to find one doctor that is willing to testify against another one. They will all say everything off the record, but when you really need them, they don't want to get involved. It's like a family where blood suddenly becomes thicker than water.

E89: Now people (pause), there is a fraternity out there. If you were the plaintiff, you could not find a doctor to testify for you. This is the system. You just better hope this never happens to you, because the doctors will not come to your defense. They will only defend their own.

E90: If you subpoena them (doctors) to go to court, they'll kill you with their testimonies. They don't want to be involved. You're making a big mistake if you take them and make them go to court. It's impossible to sue for malpractice. The laws that, that govern malpractice are set up strictly for the medical provider. The individual hasn't got a hell's, a snowball's chance in hell. How any of them ever make it to trial is beyond me.

Law journals and literature that focus on tort litigation address difficulties in finding medical witnesses to testify on behalf of malpractice plaintiffs. Research informants discussed this problem within the context of new information received during their lawsuit experiences. Terms relating to conspiracy may have been learned from their lawyers, since a "conspiracy of silence" by medical doctors is perceived by tort attorneys, and addressed in their journals, as a problem. The metaphors of fraternity and union were used spontaneously by plaintiffs during their interviews to describe the expert witness situation.

Metaphors were used by plaintiffs to reiterate points about their experiences. Metaphorical terms were used to emphasize certain points over other points. Continuing with the topic of physician group support, the following examples

show how informants highlighted their viewpoints.

E91: An incident like my husband's, I would think would pull the man's sheet, his license to practice. It doesn't. It just goes on and on and on. Well, how many does it take to get his sheet pulled? Two, three, four? Do we measure that by the number of human lives the man has sacrificed? Uh--that, that to me is the real issue behind this: The fraternity will not police itself. That's what's so disgusting.

E92: Doctors need some kind of quality control. They need to be watched. Teachers are told what to do, and if they don't do it, they're fired. Why aren't doctors fired?

E93: It's been a nightmare. As far as I'm concerned, we have a whole town of quacks and charlatans. They're greedy and can only see dollar signs. A medical license is nothing but a license to kill right now. I really don't see the checks and balances in place to protect the customer.

The first example emphasized that doctors are not policing themselves. Metaphors such as "sheet", "human sacrifice" and "fraternity" highlighted this point. The second example used a combination of metaphor and analogy. "Quality control" was used in the same context as "policing" was used in the first example. An analogous point was made between teachers and doctors. The third example used the terms "nightmare", "quacks", "charlatans", and "license to kill" to stress the seriousness of the situation.

Metaphors were often derived from work situations. Everyday experiences were used to develop metaphors. Business-related terms and analogies were the most common form for metaphorical accounts related by plaintiffs during their interviews. The following excerpts are representative of these spontaneous accounts.

- E94: I remember telling the doctor, "Hey, don't forget about the thickness of the saw blade, that's all I ask you." I figured orthopedic surgery was just like cutting wood. You know, like a carpenter has to make sure that he's got it all figured out, the thickness of the blade has to be figured out, so the wood won't turn out too short.
- E95: Unfortunately, my husband was really wrong. When I informed him the doctor wasn't giving him good care, he just said, "He's not going to tell me how to exterminate for bugs, and I'm not going to tell him how to doctor. (Tape unclear.) He must know what he's doing."
- E96: Hospitals need to act more like a business. They need to learn to help people and take care of them. That's what we're paying them for.
- E97: It's really very simple. People pay for a service. I think the service should be rendered to the best of their abilities. That's what we do. I had two unnecessary surgeries. I just don't like the way they did their business.
- E98: I felt like he should share the discomfort that I have. I mean, if he came in to buy something from me, and I sold him something under false pretenses, then he would, in all cases, in my eyes, be due his money back, or the right to have another option to buy something else. Unfortunately, in this case, it just didn't work out that way.
- E99: To make a mistake when you're an accountant and you cost the company ten thousand bucks or so, that's one thing. To make it and have it cost someone's life, that's a totally different thing. Instead of practicing medicine, it's become the business of medicine. Let's go out and line our pockets, and so what if we no longer practice the Hippocratic oath!

The last example uses business metaphors to stress a couple of different points. First, mistakes that sacrifice human life are more important issues than mistakes involving money. The second point asserts that medicine has become the business of making money, rather than saving lives.

Metaphorical Schemata:

Lakoff and Johnson (1980) discussed emergent metaphorical concepts based upon life experiences. Causation concepts and metaphors were described by these authors as basic ways individuals organize their worlds. Direct manipulation was described as a prototype that yields naturally occurring properties. In order to make sense of certain events, plaintiffs used a causation model to organize their understanding. Reason causation, as specified by Schank (1975b), can be applied with emergent metaphorical concepts for analyzing plaintiffs' accounts. Informants used metaphors to reason and to make sense of changing events. When there was a perceived change in the attitudes and cooperation of care-givers or attorneys, plaintiffs reasoned that some form of manipulation had caused the change. Informants reported that pay-offs and kick-backs prevented grievances and lawsuits from progressing.

E100: I still say there was a kick-back somewhere. I don't know who paid who, but one day the hospital was real compliant, and the next day they wouldn't budge an inch.

E101: I went to a lawyer that started to investigate my case. This was before I filed the lawsuit with Mr. (lawyer's name). This first guy didn't act right. I think the hospital paid him off. I actually believe this. I'm entitled to my opinion.

E102: There are cases where people are paid under the table to keep their mouths shut. Why people don't challenge that, I don't know. It's like human life isn't worth anything.

Plaintiffs' desire for revenge was a recurrent theme throughout these interview texts. Perceived malpractice events were compared with known information and life experiences, such as those derived from the media. Parabolic descriptions were most prominent during discussions of anger and injustice, as shown in the following examples.

E103: There was a real, and there still is, --uh--a very, very strong feeling of, --uh--, the Charles Bronson type of revenge. You go out, it's very simple. It's a matter, you go out, you buy a gun, you go down and you blow the guy away. You know, the old west type of justice. Unfortunately, if you do that, you go to jail. This feeling, it's pure anger and revenge. He has gone on with his life. Nothing has changed in his life. Our family continues to suffer, and the only satisfaction is to think about blowing the guy away. Winning our lawsuit hasn't corrected the harm that has occurred.

E104: I am a victim. I would like to go for the jugular right now. I have so much vengeance in my heart. It's like I've been raped. I've been demoralized, you know. My whole body image has changed. Recently, there was a T.V. special on about victims. It's as if I am one of the characters in that movie. I am a victim, full of revenge, and ready to go undercover to get even.

Metaphorical statements were identified through manual techniques and then compared with computer-assisted groupings. Once these accounts were grouped together, representative samples could be chosen. While scanning for metaphors, it became apparent that propositional schemata were used in a number of different contexts. Within the fifty-two interview texts, the words "kind-of" appeared 612 times. "Like" was found 1,034 times, and "sort-of" was used only 15 times. Ten of those 15 times was during the same

interview. The words "as though" were only identified 11 times. Considering the number of propositional schemata, there were very few metaphors matched with the schemata. Samples of metaphorical schemata used without metaphors follows.

E105: I tried all the normal kinds of things, like drinking more water...

E106: It felt kind of strange. I didn't realize what was happening at the time...

E107: He was not that kind of person...

E108: When I looked in on her, she was just kind of dozing off...

E109: I slid down the wall. I just kind of lost my strength or something...

E110: I've had a healthy full-term pregnancy with my daughter, so I knew what it was like being pregnant.

These examples show how metaphorical schemata were used in discourse, apart from metaphors. Metaphors also were given without propositional prefaces. In other words, plaintiffs used propositional schemata and metaphors in two ways: with each other and alone in a different context and form.

This section demonstrated that metaphorical accounts play a role in the formation and expression of topical points. Plaintiff informants chose certain metaphors to highlight their experiences and feelings. In the next section, summary statements within the texts will be reviewed. Topics and points were connected by plaintiffs in a macro-structure model of discourse, and used to address meaning.

Quest for Meaning

The quest for meaning seen in plaintiffs' discourse resembles the need for meaning described by Frankl (1984). Individuals who experience traumatic episodes attempt to weave these painful threads "into a firm pattern of meaning and responsibility" (p.9). The quest for information, as discussed in chapter four, relates to what happened and how it happened, while the quest for meaning refers to why it happened and to ways for coping with it. Reasons given for pursuing litigation helped to explain malpractice episodes and place meaning on them. Concepts of right-and-wrong, justice, and good-coming-from-bad were addressed during reiteration of narrative and topical points. These points were placed within the context of meaning. Overviews related to meaning often were found in the summary and closing statements given by plaintiff informants. Consider the following example.

Ell1: It isn't right. There should not be a doctor out there playing God. There should not be a man that thinks that he can make all the decisions without asking someone else for an opinion. That he should take one X-ray and call in a radiologist to confirm his findings without my asking him to or (husand) asking him to. --uh--I feel like I've been robbed of part of my life...I want this man's license revoked. My lawyer says it won't happen from my suit, 'cause it takes more than this...It (the lawsuit) may not do the trick, but it will help. Maybe he'll decide after this to retire. He needs to before he hurts someone else.

The word "should" is a key word used by the plaintiff in this example to signify right-from-wrong. Metaphorical statements were used to emphasize the seriousness of the

perceived harm, e.g., "I've been robbed", and to highlight the desired outcome, e.g., "it will help". The notion of good-coming-from-bad relates to the perceived mishap (the bad factor) resulting in a lawsuit that could prevent the doctor from hurting someone else (the good factor).

Symbolic Meaning:

Goldschmidt (1977) wrote that "when humans developed culture, they created a second world, a world of perceptions and meanings" (p. 12). The use of language necessitates the organization of perceptions and the development of relationships among events. Symbols are used to express perceptions and to create a dual world: "the world of actuality and the world of meaning" (p.13). Belief systems are used to interpret experiences and to place meaning on them. Symbolic meaning provides a frame of reference for judging right from wrong. The quest for meaning identified in plaintiffs' accounts shows how belief systems were used to place significance on their experiences.

Justice was used frequently as a term or concept to signify meaning. Justice provided a framework for arguing that wrong had been committed and to place guilt and responsibility where they belonged. By concentrating on justice and reiterating points about what was right, plaintiffs found a purpose for their feelings and actions. Punishment and court awards were aspects of justice and restitution.

El12: Who's to decide whether I'm just a trouble-maker or whether I have a legitimate complaint. And so finally my husband said, "You have to do what your conscience tells you, and you're not being vindictive. A wrong was committed and you are just trying to see that some kind of restitution is made, whatever form that would take." Punishment to him in a fine? Maybe. I don't know what they do to doctors. Um, heaven forbid if they take his license away (sarcastic tone). I don't know, but whatever comes out of it, perhaps it should be fair. He didn't do a good job. Who tells these guys they don't do a good job? The patient? They don't listen to patients. Their nurses? Evidently they don't listen to nurses unless they want to. The public media? Who tells them? They're very powerful, and this annoys me.

El13: Justice. That's one of the things that, when you look at this, --uh--we of course are extremely emotional in that we want justice. We want the people responsible hung. That's what I'm looking for, you know. I think that's the main thing. Justice. I just don't want this to happen again. We just want some justice done, I think, because, --ah-- it could happen just as easily to anyone else, and it probably does happen. We are pursuing it, we want to pursue this thing to accomplish, --ah--to redress a wrong.

The above examples are similar to those given previously. Plaintiffs drew upon their narrative points and discourse topics to discuss their quest for meaning. Concepts of justice and points already made about compensation, prevention and punishment were placed within the context of meaning.

El14: I believe that something punitive has to be done to someone who does something obviously wrong. If I really screw-up on my job, I'm going to be fired. If I'm a physician, you can't fire me. The only thing you can do to me, essentially, is to damage me by a lawsuit.

El15: At first we thought, "we don't know how to go about suing, and we don't know if it would do any good." You know, and I'll be honest with you, I did set out to get the money. Not for the actual money, you understand, but just for the fact that he'll think twice before

being so careless again.

Ell6: I want to fight it (the lawsuit). I want to win it. I don't care if they don't give me a nickel. I just want to win so these laws can be changed. I want everything changed as a result of this. I want nurses to have more ability. I want hospitals to feel freer to care for patients. I want doctors to be forced to take more responsibility for their patients.

Informants used the word "justify" in the sense of absolving or redressing a wrong. In the metaphor section, the analogy of Charles Bronson provided a way to exemplify the need for retribution. Justice in the sense of vengeance was described by plaintiffs as a purpose for pursuing litigation.

Ell7: I remember telling my attorney that I needed to justify her death. I wanted everyone to know the harm that was done. Mr. (name) told me that day, "You're going to play a part one of these days, a very big part in doing so," but he said, "right now the best we can do is to --uh--the publicity for him and the monetary settlement." I said, "Well, the monetary thing, I -- I don't care about that. I don't want any money." Well, that was then. The longer you see this, the longer you work with one of these things, the more you realize that unfortunately our society has created this (money) as the ultimate end. It's the only way to hurt, or the only way to justify is in the pocketbook, and that's a terrible way. But, it's your only recourse.

Ell8: I want to accomplish something besides money. I want to justify my husband's death.

The word "justify" was used by plaintiffs to resolve, or at least conclude, their malpractice experiences and stories. A death could be "justified" if the negligence was acknowledged by the court. Litigation was a mechanism for placing meaning or purpose into the poor health care outcome.

Meaning of Altruism:

Another method used for placing meaning into perceived malpractice events was described by one informant as a crusade. An altruistic motivation concerning the welfare of other patients was the most frequently cited topic lending meaning to malpractice experiences. Metaphors were used to emphasize a desire to prevent further negligence. Summary statements are lengthy, in order to keep them in context. It is easier to identify strands of meaning when paragraphs and topical discussions are left intact.

El19: I feel like that I was raised believing that a doctor could tell you to stand on your head and you'd stand on your head. There were no questions asked, and they are to be revered, and so you believe what they say, and I'm sure that I'm not the only one that believed that way, and there's other people out there that might be killed, and if this can stop one person --(plaintiff crying.)--I'm to the point that I wish this was all over with. It's become a crusade. I want others to know what can happen to them.

El20: He's going to be a vegetable for the rest of his life. All the worry that he was going to die is behind us, you know. But the scary part is just knowing that he's (the surgeon) still over there. He's still operating on people. And then I look at my kids, you know, and one person, (name given), told me, "Maybe you should drop the suit. You have your children to think about and their futures. At least now (patient) is able to get Workman's Comp., you've still got the business going, and you're not in any big financial trouble or anything. Maybe you should just drop it. You have children to think of." I am thinking of my children! I'm thinking about everyone's children! They are, they've gone through this, and right now there's nothing to say that it couldn't happen to them too. Something has got to be done to change the system!

These two examples show how informants used a crusade-type viewpoint to express their need for doing something to

prevent future harm or to change the system which allows incompetent care-givers to remain in practice. Previous commonplace knowledge concerning revered doctors was described in the first example, e.g., doctors advice must be followed.

The next two excerpts demonstrate the use of metaphors to stress the seriousness of negligent health care practitioners. The metaphorical statement of "win, lose or draw" places emphasis upon having others warned of the possible harm. Warning others of danger is a major point used by plaintiffs for giving meaning to their experiences.

E121: And, I know that not all doctors are negligent. I know that some of them really care and really get involved with their patients, and they wouldn't want anything to happen to their patients. This one, (pause) I don't believe that of him for a second. I think he's a butcher and I think he should be stopped before he has a chance to do it to more people. But I really don't think that this suit is going to do that. But at least maybe it will make it a little more public. Maybe more people will find out about it and stay away from him before he does do it to somebody else. If there's any way possible I would like to have every form of media there, right there in the courtroom watching. Win, lose, or draw, I would like for everybody to know what happened, you know, because I think that people have a right to know before they place their lives in his hands.

E122: I want everybody to know about it (my lawsuit). I want to say, "Hay, you had better watch out when you go to this doctor. Better yet, don't go to him. He was sued twice last year, and where there's smoke, there's fire." And ah, therefore, that's it. I just, ah, I firmly believe that the man did a very shotty job, and I think that he injured my child. And ah, this is my own way, means of striking back in any manner, attempting to right a wrong.

Plaintiffs went into great detail to explain their need

to share their experiences. They described a need to do something that would facilitate their stories being told to others.

E123: I heard from my friend that my case was discussed at a meeting in the hospital. I'm pleased about it. I wish I could have been there to tell them in person what happened. I want the case used. I would be delighted to know that it's used as a, as an example. The more who know about it, --uh-- perhaps it (the malpractice) won't happen again.

E124: One of the main reasons we go on with the suit is so others will learn of it. We will continue with it just on the hopes that maybe it'll get enough publicity so that people will know, "Don't go to this man. He can do something to hurt you." I've been tempted so many times to load (patient) in the car, take him over there, park him on the sidewalk, and everytime somebody pulls up, tell them, "Wait a minute, come here. Look, this is what you could be getting yourself into. Please turn around and run before it happens to you." My lawyer tells me a must not do this. I'd be willing to hand out literature if others would please just not go there. You know, I have stood in that office when there was standing room only. I know (patient) is not the first to be hurt, and I know he won't be the last unless somebody does something.

Coping With the Outcome:

Frankl (1984) asserted that a major avenue for arriving at meaning in life is the doing of a deed. Forty-four of the fifty-two plaintiffs in this research spontaneously mentioned the prevention of similar negligence as a factor influencing their decision to sue. They viewed their poor outcomes as preventable, and they thought a change in the care-givers' professional actions was needed. Plaintiffs discussed their decisions to sue as a way, or deed, to help others. Informants hoped that their lawsuits would promote a change in the care-giver's methods of practice, and thus

prevent outhier mishaps. The lawsuit deed was used to arrive at meaning, i.e., benefitting the welfare of others. Statements about prevention were reiterated throughout the summary comments of plaintiffs.

E125: I must let that doctor know, next time he's going to examine someone, be more careful.

E126: I have to let them know they were wrong. If there's nothing done about it, who's next? Who's next for the same medical treatment?

E127: I hope that it (the lawsuit) will make her open her eyes and see what she's really doing. Make her take a closer look at what she's doing. I really hope that's what happens.

E128: Maybe it won't happen to somebody else. I think that's what really started my lawsuit. I was scared that his negligence would kill somebody, like it almost killed me.

E129: Believe it or not, I'm not really worried about the money. I just want to have the satisfaction of knowing this guy's going to open his eyes and see what he's doing to other people. He's there to help people, not harm them.

E130: I don't think that they're (doctors) as responsible as they should be for their own actions. I think something really needs to be done about it, and I'm trying. One person can't do it, but at least I can start something. If I scream loud and long enough, maybe somebody will sit up and take notice and help.

E131: You know, anything that comes out of it (the lawsuit) is not going to bring my baby back. And, --uh-- you know, nothing will take the place of it. But anyway, maybe what is found out generally, or whatever may take place, may help some other woman and baby.

Informants discussed their quest for meaning by trying to draw something good from their bad experiences. Plaintiffs stated outright that they needed to find something good, and they gave specific examples of the good

they hoped to accomplish.

E132: There are too many dead laws on the books today, and that's why I want to fight this. I want to know that his death changed something with the law's effect. I don't know exactly how to explain it, but to me, here is a case now, under these circumstances, at least make some good come out of this bad situation. You have to look for something good, because if you don't, you couldn't stand living with the bad. You just couldn't do it. And that's really why I have pursued it this far.

E133: I think that I had decided to keep going because I feel like, I've got to find some good out of this wrong. I've got to right the wrong, and this is the only way I know to do it. This is all I know to do. I cannot bring her back. I cannot erect a memorial in her honor. That would not mean anything to anybody but us, so this is the only way that I can try to make what happened come out right, is for, for her death to be worth something. I, I don't know if that makes any sense, but that's what I mean. That's what I feel.

E134: I want them to recall the vaccine, or use the safer vaccine. It was even on T.V. The drug companies choose not to put the safer one out, --ah-- and they showed the two kinds of vaccine, the one that causes problems and the one that wouldn't cause any problem. But they said, --ah-- they, the drug companies, just choose to ignore it. I want them to use the safer drug, even if it does cost them more money to produce it. No child should have to suffer the side effect that mine suffered.

Plaintiffs stated that they wanted their stories told.

Informants remarked that they knew that other people might consider them greedy or undesirable in some way because they were suing, but plaintiffs still wanted to share their viewpoints. The last two examples show how respondents in this research placed sharing of their experiences within the context of meaning.

E135: I would like for my story to be told. I would like to go and share it in medical institutions, nursing schools, doctors offices, and anywhere that I could

tell it. I would like to tell it because I think that it may encouraged someone else to sue. Yes, I know some might think that's awful. But others must sue before anything can really change. I mean, I have won. I have won this case. There's nothing left for me to win because the jury said I was right, and the court of appeals said I was right. But I don't see where anything has really changed.

E136: I'm suing alright. I only wish there was something more that I could do, or say, or change in that hospital to where it will help others in the same situation.

Plaintiffs in this sample, irrespective of the lawsuit typology, emphasized that they wanted their malpractice experiences told to others. They wished that they could do more to change individual care-giver actions and our health care delivery system in general.

In summary, this chapter described plaintiffs' use of discourse topics and narrative points to present rhetorical themes. Metaphors served as a language tool for making points about the seriousness of the alleged malpractice. Plaintiffs placed significance in their experiences by telling how they hoped to save others from health care negligence. Chapters four and five presented direct quotations and summarized interview data. Chapter six will contrast propositional themes with the literature and will discuss this information within the context of representation.

Chapter VI

DISCUSSION: THE RHETORIC OF RATIONALITY

This chapter addresses how plaintiffs encode their experiences and use their commonplace knowledge to tell their stories. Plaintiffs' discourse is compared and contrasted with malpractice literature. Interview texts were reviewed by means of a macro-structure model of discourse, and by locating process-oriented information in the form of discourse topics and narrative points. Moore (1978) wrote that ethnographic research uses process to:

describe series of events that recur again and again...
and to describe the kinds of circumstances that lead to
certain results (p. 42).

By examining plaintiffs' interview texts, their values, beliefs, expectations, and other shared propositional attitudes can be identified. Following is a discussion of informant descriptions of events and interpretations of malpractice results.

Encoding the Experiences

Encoding in this discussion concerns the changing of experiences into messages. Plaintiffs used the process of reporting events to give messages about their beliefs and actions. Verbal techniques, e.g., causal chains and metaphors, were used by informants to organize their experiences and summarize their messages.

Chapters four and five presented recurrent messages given by plaintiffs, such as the point that others should be

protected from malpractice. Meaning relates to the encoding process employed by informants. Plaintiffs used meaning to place purpose into their experiences. There is an additional definition of meaning that implies the interpretation and explanation of experiences. From an anthropological perspective, meaning connotes judgments about cultural values. In this case, what did plaintiffs' discourse represent, in terms of their values and messages?

Rationality:

Desires and beliefs serve as directives for actions. Hollis and Lukes (1982) stated that "interpretation must proceed from within and is bound up with some concept of rationality" (p. 1). The process used by plaintiffs to encode their experiences involved concepts of rationality. Plaintiffs' beliefs were contingent on their circumstances. The medical mishap became the relative reality of plaintiffs. Plaintiffs searched for causes of their misfortune, as seen in the quest for information section, and they furnished reasons for the mishap. Rationality concepts, as used by plaintiffs, pertained to the dichotomies of right and wrong, good and bad, and fair and unfair. When something is good, right or fair this means that it is rational to want it. Goodness as rationality explains why certain courses of action are perceived as desirable. Justice as rationality means that principles of fairness exist. Rawls (1971) wrote that:

To have a complaint against the conduct and beliefs of others, we must show that their actions injured us, or that the institutions that authorize what they do treat us unjustly (p. 450).

Plaintiffs used their rhetoric to convert their experiences into rational meanings. Consider the example of care-givers who altered medical records. This information was used to argue that health care providers were trying to hide something and therefore that their actions were wrong and their moral characters bad. Informants concluded that they were in the right, or on the right side of the lawsuit. Plaintiffs decided that they had been treated unjustly and that the dishonest conduct of their health care providers proved as much.

The existence of multiple lawsuits against a care-giver is another example of the use of rationality to encode experiences. According to plaintiff accounts, frequent mishaps showed that organized medicine was allowing repeated injuries to occur. Informants reasoned that the value of human life and well-being was being ignored by the very institution whose stated purpose is optimal health care.

Perelman (1982) wrote:

By what processes do we reason about values?...One cannot arrive at clear conclusions concerning justice, or (how) any other value is distinguished from its opposite, without understanding how cases (or points) are made for and against that value (p. vii).

Plaintiffs spontaneously gave reasons for their viewpoints and perceptions. The process of encoding malpractice experiences included a self-examination of the reasons

applied to certain points. For instance, informants described fears related to their future health care needs. Plaintiffs supported their comments with rationale and reassessed their reasons, when points were reiterated about avoiding professional treatment.

Rationality was used to make points about the value of wellness. Excerpt #111 stated that it was not right for a doctor to play God and that individual practitioners should not act alone, without the benefit of a specialist's opinion. This plaintiff was making the point the the doctor was wrong. His actions were not right, and his neglect resulted in unfair harm.

Making Points:

When plaintiffs discussed altruistic reasons for pursuing litigation, they were making points about the "right thing to do." Health care injury and harm were bad concepts, especially if perceived as preventable. The good-coming-from-bad experience was keeping someone else from having a bad health care outcome. The actions of the care-giver might otherwise injure someone else, and societal institutions were not preventing such unjust treatment from occurring. Plaintiffs emphasized the importance of their complaints by giving rationality to their crusades against bad practitioners.

Another major mechanism plaintiffs used to encode malpractice experiences was the attention given to

paradoxes. Resolving a paradox is a process (Cargile, 1979). Plaintiffs reviewed the care they received and determined that it was not in accordance with their beliefs and expectations about health care.

Two paradoxes can be seen in excerpt #4. A plaintiff became aware of the physician's practice through a newspaper article and television program about the surgery. When a health care practice is reported in the media, assuming the report is good, the outcome is expected to be favorable. This plaintiff's poor outcome went against her common sense expectation. The second paradox relates to the physician's response. Health care providers are supposed to identify infections. Even though the patient stated that she thought she had an infection, that physician discounted her comments. The physician was expected to know that an infection was likely, yet he failed to acknowledge that possibility.

Recurrent paradoxical statements involving the expertise of care-givers can be identified throughout the interview transcripts. Example #50 shows that the patient stated that she was hurting and gaining excessive weight, but the doctor did not respond. She did not know the medical terminology at the time, though she felt that her doctor was not paying enough attention to her problems. After her pregnancy, she discovered that preeclampsia is a dangerous condition. The paradox in this example involves

the doctor's lack of concern, as well as the fact that modern technology exists, yet it was not used to save her baby.

Example #11 shows that the mother expected the doctor to show interest in the baby, but instead he was neglectful. In example #13, the wife expected the doctor to know who she was, yet he confused his patients' families. These paradoxes demonstrate that plaintiffs had a common sense understanding of what should have happened, and when it did not occur, the process of resolving the paradox was initiated.

Care-givers were supposed to explain health care outcomes. When adequate information was not given to the patients and their families, they attempted to solve the paradox by getting the information in some other way. Excerpt #39 explains that the plaintiff's lawyers were the people who explained the medical terminology and described the health care scenario and mishaps so that they made sense to the parents.

Paradoxes provided a means for encoding malpractice experiences. Other paradoxes can be identified in the following sections of this chapter.

Commonplace Knowledge

Plaintiffs' propositional statements demonstrated an understanding of mutual or shared common knowledge. Authors such as Clark and Marshal, 1981; Lewis, 1969; and Schiffer,

1972, described the use of shared knowledge in organizing thoughts. Plaintiff informants arranged their perceived malpractice events, based upon their commonplace knowledge of the world, and used this organization to make sense out of their experiences. Coulter (1980) wrote that:

Real intentions, real motives, real thoughts and real understandings are social phenomena through and through....The real problems of description and explanation of human action and interaction are not psychological or mentalistic in nature, but arise due to the occasionality, defeasability, and normative negotiability of substantive descriptions of actions and substantive explanations of those actions.... (Mental categories) can themselves be treated in terms of the mechanisms of social-reality production and sense-assembly in everyday, practical, common sense affairs (p. 6, 34).

Plaintiffs used their common sense and commonplace knowledge to validate and justify their perceptions of what happened to them. Commonplace knowledge provided a means for making sense of malpractice events, so the experiences could be changed into messages. Informant descriptions demonstrated a basic knowledge about the health care and legal systems in the United States. This understanding stemmed from their past experiences and media exposure.

Knowledge of modern-day technology was applied by plaintiffs to derive messages about the unused or misused technology in their health care experiences. Their statements showed that they expected to have a lay person's understanding of medical terminology and jargon. They also expected to receive information and explanations pertinent to their situations.

Plaintiffs discussed their courtroom expectations or experiences. There was a shared cultural knowledge about the way defense lawyers treat plaintiffs. The points made by informants related to the proposition that courtroom events are traumatic. Plaintiffs with pending cases expected the trial to be tiresome and embarrassing, and those who had been to court reported that it was unnerving and upsetting. During the process of reporting feelings about the courtroom, plaintiffs presented messages about the points they were making. Discussion of the courtroom provided a way for encoding the perceived malpractice experience. Messages varied among plaintiffs, and included one or more of the following: 1) the need to understand what happened; 2) the meaning of justice through the verdict; 3) receiving monetary compensation that symbolized care-giver wrongdoing; 4) telling their stories for the benefit of others; and 5) making the care-giver go through litigation, as the only socially acceptable form of revenge.

The process of encoding and describing malpractice experiences involved examination and application of paradoxes, metaphors, causal chaining of events, and commonplace knowledge. Following is a summary of stereotypes related to commonplace knowledge in plaintiffs' discourse. After this discussion, plaintiffs' propositions will be compared with written and verbal statements made about malpractice plaintiffs.

Use of Stereotypes:

Medical malpractice plaintiffs stated that they were not the kind of people who normally sue. Plaintiff stereotypes represent commonplace knowledge about those who pursue litigation. Tyler (1978) wrote that:

We all engage in stereotyping, for it relieves us of the burden of confronting every individual instance as a unique particular. We are all adept at "He's the kind of person who...." Here we are expressing a relation between a type as an idealized paragon and a token which approximates to it....The general idea is that there is a loosely confederated collection of types, each having a grouping of satellite tokens. The tokens are ordered relative to their degree of approximation to the type. The type functions as a standard of comparison (p. 275).

Informants used stereotypes about plaintiffs to make points about themselves. Greed and unfit moral characters were used as tokens. Informants emphasized that they were not interested in the money. They were pursuing litigation because of principle, and they stressed their moral characters by describing their business ethics and religious beliefs. A central message given by informants was that they did not fit the plaintiff paradigm. They said they were not the kind of person who thought about quick money. Informants said they would never consider involvement in a fraudulent lawsuit, much less initiate a case that could be interpreted as " phoney," or pursued for blood money.

Paradoxes are found during informants' discussions of litigious stereotypes. Informants did not believe in suing, yet they were suing. They used their past experiences for

encoding their malpractice events and decisions to sue. Examples of prior unlitigated accidents and health care mishaps were given to support their argument that they were not litigious. The present malpractice situation was somehow different from previous experiences. This difference often centered on the preventability and significance of the poor health care outcome. Messages were given about the seriousness of the malpractice and that others must be protected from such harm.

Metaphors were used to address paradoxes that evolved from the malpractice experiences. Metaphors provided a way to interpret the situation. As Lakoff and Johnson (1980) noted, metaphors govern thoughts, and they express commonplace meanings. Consider excerpt #98. Medicine is supposed to save lives, yet it has become for some the business of making money at the expense of human life. The message given by this informant concerned the seriousness of a care-giver's mistake. An accountant may cost a company a large sum of money, but the cost of a life is a different matter.

Another example of commonplace knowledge relates to the parabolic accounts given by informants to encode their feelings. Example #103 described lust for revenge similar to that often depicted in the roles played by the movie star Charles Bronson. It should be noted that commonplace knowledge does not necessarily refer to a universal

understanding of a concept. (The issue of universality is beyond the scope of this research.) The "Bronson" example is commonplace, because anyone in the United States who reads newspaper movie advertisements or watches movies and television previews understands the symbolism behind the Charles Bronson image.

The encoding process of plaintiffs involved the use of commonplace knowledge to express meaning. The application of meaning was twofold: it referred to the interpretation of malpractice events and to the significance of the experience.

Methods of Persuasion:

Van Dijk (1977) stated that events are selected and points developed according to individual standards. Sequences become wholes as discourse content is organized. The representation of discourse topics relates to rhetoric, the oldest form of text analysis (Corbett, 1971). The traditional view of rhetoric related to public oration, and later developed as a theory for present day persuasive discourse (Cantor, 1982; de Beaugrande & Dresser, 1981; Kinneavy, 1971).

Kinneavy (1971) applied Aristotelian structures of rhetoric to currently used methods of persuasion. An ethical argument is used by speakers to represent their own characters. The speech or topic itself conveys good moral and ethical traits. Informants in this research used this

form of rhetoric to show that, even though they were plaintiffs, they had good will and good moral characters.

Another technique of persuasion concerns a pathetic (i.e., emotional) argument. Such emotions as anger, fear and indignation were used by plaintiffs to give persuasive messages about their viewpoints. This form of rhetoric framed their discourse topics and provided a vehicle for emphasizing the seriousness of perceived errors.

Lastly, the argument of logic is used to induce a belief that the rhetoric is rational. Plaintiffs used metaphors and paradoxes to stress points or to highlight opposite points about their experiences. Informants used their commonplace knowledge to present logical arguments about their decision to sue.

Plaintiffs' propositions were grouped for comparison and analyzed for meanings. The analysis of this research data demonstrates a circular process of interpretation. As Tyler (1978) stated:

Understanding a text is a circular process in which we presuppose that the text is a whole composed of a hierarchy of parts or topics, and that construing the parts constitutes the whole. This reciprocal relation between part and whole is the hermeneutical circle. The details of a text are recognized as details only if a whole text is presupposed, and conversely, the whole must consist of those details (p. 378).

Linge (in Gadamer, 1976) discussed the use of hermeneutics for interpreting texts. Understanding a conversation or written text involves placing the situation within the life-context. Interpreting the context of a

phenomenon requires a basic knowledge of past and present events. The history of malpractice litigation relates to the evolution of litigious stereotypes. The last section of this discussion compares informant statements with stereotypes about plaintiffs.

Stereotypes and Statements in Contrast

Health care and legal literature portray stereotypic images of those who sue. Stereotypes are not only central processes in cognition, they are also used to express cultural attitudes.

Stewart, Powell and Chetwynd (1979) wrote that there is a commonplace definition of stereotyping that implies erroneous labeling and non-adaptive modes of perception. Stereotypes reflect cultural beliefs about a person or situation. Lippmann (1922) wrote that:

In the great blooming, buzzing confusion of the outer world we pick out what our culture has already defined for us, and we tend to perceive that which we have picked out in the form stereotyped for us by our culture (p. 55).

Through everyday experiences, stereotypes are built from pieces of information and assimilated by the cultural group. Beliefs are represented in stereotypes, and these beliefs influence the continuation or change in stereotypic perceptions (Hamilton, 1981). Individuals organize their worlds by incorporating the public opinions of their cultural group.

Statements of Others:

The ethnographic journal kept by the researcher recorded propositional statements made by health care and legal professionals while this research was being formulated and conducted. Examples of plaintiff attorney comments follow:

- 1) Just ask me about plaintiffs. You don't have to waste your time trying to get the information from them.
- 2) They (plaintiffs) are really angry because of the in-human treatment they received from their doctors.
- 3) If more doctors said "I'm sorry", I'd have fewer clients.
- 4) They (plaintiffs) are suing because really devastating things have happened to them or their families, even death.

There are similarities between what these lawyers said and what plaintiffs said about themselves during the research interview. Plaintiffs verbalized anger about the poor health care outcome. In chapter two, authors Lander (1978a) and Glasser and Pelto (1980) suggested anger as a motivation for pursuing litigation. The concept of lack of remorse by care-givers was mentioned in plaintiffs' narratives. As stated earlier, informants did not place remorse within a cause-and-effect relationship. The care-givers attitude was part of the scenario but was not given as the motivation for pursuing litigation. The degree of emphasis devoted to remorse suggests that it plays a role in the malpractice situation. Bedside manners and personality issues are addressed in medical

and legal literature, and they were noted in the ethnographic journal and research transcripts.

The seriousness of the poor outcome was highlighted in plaintiff reports. Examples of gross negligence and harm are not prevalent in health care literature, though legal journals discuss the plaintiffs' role in policing care-givers and preventing negligence.

A few comments from plaintiff attorneys were of a different nature. These remarks were atypical, in that most plaintiffs' attorneys were sympathetic towards their client's viewpoints:

- 1) All my clients always lie to me at first.
- 2) These people are the scum of the earth. They don't work; they have nothing better to do than to go from lawyer to lawyer, seeing if someone won't get them a quick buck...I'm really careful so they won't turn around and sue me!

The first example describes the attorney's belief that all malpractice clients lie. The lawyer who made the comment later remarked that these people were probably "stretching the truth" to persuade his firm to take their cases. In other words, they may have made the points they thought the lawyers wanted to hear. Another explanation may relate to plaintiffs' quest for information. Because of their limited knowledge, the clients may not have purposefully misrepresented the facts. The second attorney comment echoes the conceptual framework found in health care literature. Perhaps such a statement pertains

to a commonplace stereotype about litigiousness.

Following are representative comments given by health care professionals:

- 1) Those litigious people (medical malpractice plaintiffs), why do you want to study them?
- 2) You are talking with plaintiffs? Aren't you afraid you'll get sued?
- 3) I'll tell you why people are suing, they want the money!
- 4) People become involved in lawsuits because of all those shyster lawyers out there.

These health care provider comments reveal stereotypic plaintiff characteristics: they are litigious, they are suing for money, and they might even sue you if you talk with them. The last example stereotypes lawyers as shysters, which is a commonplace term meaning the dishonest practice of law.

Concepts of Greed and Anger:

Greed and "money-hungry" labels are prevalent in health care literature concerning malpractice suits and plaintiffs. These characteristics were mentioned by the research respondents as plaintiff traits, though they did not believe such labels applied to them. Hostility was another factor mentioned by Bernzweig (1985), Ginsberg (1983) and Lander (1978a). Feelings of hostility, anger and revenge were noted by plaintiffs, as described in the "Bronson" example. Plaintiffs stated that lack of information made them angry, and they became hostile when

their health care outcome was poor.

Concepts like anger were described differently by plaintiffs than they were in the literature. For example, plaintiffs mentioned they became angry when they received a bill or insurance form related to the health care they perceived as flawed. They used this event to emphasize the paradoxes and to give messages. The literature describes the angry nature of those who sue. However, plaintiffs encoded these experiences to mean that care-givers were practicing their profession without morals, ethics or common sense. A serious mistake had occurred, yet the care-giver only seemed interested in financial reimbursement. The bill or insurance form was not presented as the cause of the lawsuit. Like the example of care-giver attitudes, these events were used by plaintiffs to reiterate and justify their viewpoints.

Reingold (1984), a plaintiffs' attorney, discussed differences between good and bad malpractice cases. As stated in chapter two, he thought that anger, revenge and wishing to change the medical profession were poor client motivations. Informants in this research stressed these very points. The emphasis plaintiffs gave to their anger may be related to an aspect of the normal grief cycle (Kubler-Ross, 1969, 1974, 1983). Anger is one of the stages of grief that occurs when there is a loss of bodily function, a decrease in body image, or death of a loved

one (Mawson, Marks, Ramm & Stern, 1981; Morgan, 1984; O'Connor, 1985; Rando, 1985; Schiff, 1977).

Stereotypes Compared:

In example #104, the plaintiff felt herself to be a victim. She described her anger and desire for revenge and related it to a television special that depicted the revenge of victims. Balliett (1972) wrote that suit-happy people are hostile and unhappy people. They are over-concerned with money, overly critical and unrealistic. They take detailed notes about their health care.. Plaintiffs did not describe themselves as critical or unrealistic. Three plaintiffs commented that they took notes about their malpractice incident. Two stated that their attorneys suggested they write down everything they could remember, and the other informant thought it would be good idea, just in case things became worse. The plaintiffs in this sample did not describe themselves as detailed note-takers.

Balliett also stated that suit-prone individuals sought second opinions and doctor-shopped unnecessarily. When plaintiffs discussed second opinions and doctor-shopping behaviors, it was in the context of wishing they had done so earlier. Ginsbery (1983) stated that warning signals from litigious individuals included their expressed dislike for needing care and their demanding natures. Plaintiffs remarked that they were fearful of

needing and undergoing future health care, though they did not mention a dislike or fear of health care before the alleged malpractice.

Ginsberg (1983) also suggested that suit-prone people are overly cooperative and subservient or authoritarian and demanding. Plaintiffs' propositions did not exhibit these traits. Informants stated that since their malpractice experience they ask more questions and are more demanding about their health care.

Relatives of patients were considered suit-prone by Horsley (1979). Plaintiffs reported that others had first mentioned contacting an attorney. Family members were included in this group, though non-relatives also encouraged litigation. Health care providers were among those who suggested legal recourse. A paradox is apparent in this finding. Health care providers have been the most prolific in documenting plaintiff stereotypes in their literature, yet other members of this professional group told patients to obtain legal counsel.

Fundamental techniques of rhetoric can be identified in plaintiff-related literature. Care-givers have used such techniques as pathetic argument in their literature addressing malpractice. For example, health care providers described their anger at plaintiffs for naming them as defendants, and they placed emphasis on the grounds or motivational factors facilitating plaintiff actions.

Suit-prone stereotypes were argued from the common sense perspective and bias of the care-givers. Litigious labels provided rational reasons for the large numbers of malpractice lawsuits.

A review of plaintiffs' comments shows incongruity between their propositions and the stereotypes about them. Medical malpractice plaintiffs in this study did not view themselves as greedy or litigious. Suit-prone stereotypes have been used by care-givers to represent a model of typical plaintiff characteristics, while plaintiffs have used these stereotypes as a paragon of what does not exist. Both health care authors and plaintiffs have used rhetoric to present their viewpoints.

The literature presented in Chapter two has been contrasted with the study results. In this final section, a summary of plaintiff information given in Chapters three and four will be related to those results.

Sociodemographic Comparisons:

The sociodemographic characteristics of the research participants showed a wide variation of ages and educational background. Although sentence structure and grammar varied, specific content related to a certain age group or educational preparation group could not be identified. Participants with diverse incomes showed no propositional differences during their discussion of monetary compensation. Occupational categories were more

easily identified because of job-related metaphors used to describe the health care circumstances. Plaintiff informants used their social context to describe and analyze their poor health care outcomes. Although specific examples varied, the propositional trends, e.g., the quest for information and the quest for meaning, were the same irrespective, of demographic background.

The selection of plaintiffs that developed between major law firms and the referral system was examined for differences between the groups. Established law firms may limit their practice to cases that appear meritorious and have a high probability of large monetary compensation. The referral system provided a sampling of individuals whose cases had not yet been screened according to such criteria. Differences in plaintiff accounts could not be identified between these two groups. Law firms provided more cases that had been settled or tried, while the referral system provided more new cases. Information given by the two groups was similar, though the timing of experiences varied. For instance, courtroom fears were discussed within either an anticipatory or a retrospective context, depending upon time context of individual cases. No differences were noted in the propositional patterns of plaintiffs involved in new, middle or older lawsuits.

The importance of the social context becomes apparent when comparing plaintiff background information with the

research results. Although personal backgrounds varied, plaintiffs described their medical malpractice occurrences as unanticipated events. They used their social context to examine their health care experiences, and then they decided to seek legal recourse.

In summary, plaintiffs stated they were angry about their poor health care outcomes. These informants perceived that negligence and carelessness were the causes of their harm. Plaintiffs' rhetoric demonstrated a desire for justice, and a need to have their stories told.

Chapter VII

CONCLUSION

I want to know if they done her wrong....I wanted to know why my father was dead....We wanted justice to be done....I don't know what other way to get back at them....We're continuing this lawsuit because the system needs to change....If they settle for any determined amount of money, all they're doing is saying "Yes", he did wrong....Money won't bring my husband back....This doctor should not be allowed to continue practicing....I want the story told.

The fifty-two plaintiffs in this study did not consider themselves suit-happy, even though they were pursuing litigation. These respondents used a commonplace knowledge about plaintiff stereotypes to prove that they were not typical money-hungry people. Their poor health care outcomes were perceived by them as serious and preventable. Litigation was the vehicle for making sense of their disastrous experiences. By pursuing a lawsuit, points could be made that justified the outcome and delineated worthy motivations behind their lawsuit actions. Plaintiffs in this sample were suing because of the principle of the thing: the carelessness of health care-givers needed to be documented. They wanted their stories told so that others may be saved from similar harm.

Study Results

Several recurrent themes were identified in the discourse of the study respondents. Opening statements summarized events by using causal chaining of concepts. There was variation in the way informants described their

circumstances, showing that content was structured according to individual perceptions and social context. Following is a summary of the narrative trends that emerged during the data collection and analysis.

First, plaintiffs did not view themselves as the kind of person who normally becomes involved in a lawsuit. None of the fifty-two informants reported past litigation experience. These results are directly opposed to findings cited in health care literature. Plaintiff informants suggested that they had a larger purpose for suing than the usual money-hungry motivations of others who sue. Plaintiffs were using a litigation process to resolve their health care misfortunes. Forty-eight plaintiffs stated that they were not the individuals who first encouraged legal action. This finding suggests that most plaintiffs may not be inclined or prone to sue.

Next, a strong desire for more information about the perceived malpractice event was given as a major reason for bringing a lawsuit. Bad therapeutic outcomes promoted retrospective thinking. The quest for information was a factor used by plaintiffs to explain their decision to sue. The poor health care event was placed within the social context. Plaintiffs tried to make sense of their experiences, and they built theories about their medical treatment. Plaintiffs believed that care-givers kept information from them, and in their dismay they attempted to

understand what actually happened that caused the poor health care outcome.

Lastly, plaintiffs did not postulate a cause-and-effect relationship between bad rapport and litigation behavior, as stressed in health care literature. Care-giver attitudes were noted by patients and their families and assessed as part of the social context. Confrontations with care-givers were placed within the scope of the experience. The behavior of care-givers, such as a poor bedside manner, was part of the total event. No cause-and-effect relationship was perceived between care-giver personality traits and the plaintiff's decision to sue. Such behaviors were only significant within the context of the malpractice events.

Discourse topics and narrative points were reiterated throughout the body of the interview texts. These rhetorical themes highlighted important issues, as identified by plaintiffs. Major points stated by plaintiffs are summarized below.

Plaintiffs characterized health care providers as careless and often morally wrong. Many care-givers were involved in multiple lawsuits, altered health care records to cover mistakes, and protected each other by withholding expert testimony. They felt they were treated like trouble-makers by care-givers after a lawsuit was filed. They avoided receiving health care after the incident, mostly because they feared another mishap could occur.

Plaintiffs hoped that some good would come out of their experiences. They wanted careless providers punished and other patients saved from malpractice. Plaintiffs reported fears over courtroom experiences, though they coped with these emotional traumas so that justice could be pursued.

Plaintiffs interpreted their experiences differently than has been depicted in the literature. They were aware that stereotypes existed about litigious people, and they used rationality and rhetoric to prove that suit-prone labels did not apply to them.

Respondents in this study used commonplace knowledge to give messages about perceived health care errors that caused serious harm. They used persuasive argumentation to verbalize anger over the preventability of their mishaps and the unfairness of the result.

The paradoxes found in plaintiffs' discourse relate to sociocultural regularities about malpractice litigation. In plaintiffs' views, medical care is more scientifically advanced than at any time in history, yet preventable mistakes occur. Health care professional organizations have goals for optimal care, yet there is concern about lack of regulations for malpractice. Stereotypes label plaintiffs as greedy, demanding, amoral and passive-aggressive, yet plaintiffs perceived that these characteristics describe negligent care-givers. These psychosocial and cultural variables as identified and used by plaintiffs have not been

addressed in the literature.

Tort law reform has made litigation more difficult for plaintiffs, as for example, the written notice to health care providers required before suit can be filed. Plaintiffs view such legal restrictions as evidence that unfair laws favor care-givers. The social and historical milieu has discouraged litigious behaviors, yet plaintiffs stated they wanted to do more and wished society provided other avenues for making points about medical malpractice.

Research Implications

The variables surrounding plaintiff stereotypes formed working hypotheses for this research. Distinctions emerged between plaintiff characteristics in the literature and those delineated by plaintiffs about themselves. Variables in the literature (e.g., money) were addressed within a different context by plaintiffs. Money was applied as a symbol for compensating wrong-doing, rather than the stereotype of greed. Plaintiffs used suit-prone labels to make points about their experiences. Litigious stereotypes were used to show a dichotomous relationship between stereotypes and the perceived malpractice reality. When preventable harm occurred, litigious behavior represented a struggle for justice, rather than an attempt for easy money.

Plaintiffs argued that health care professionals failed to police themselves. They noted situations where the helping professions protected their own members by refusing

to provide truthful expert testimony or by changing the medical records.

Those who pursue medical malpractice lawsuits are not searching for a dispute or an error prior to the harm. After a harmful therapeutic result occurred, individuals other than plaintiffs suggested obtaining legal counsel. Based on this research, it is clear that other individuals were assessing the health care situation and making recommendations for legal action. More research is needed into this informal referral process.

Further systematic research is also needed on patients' expectations of health care outcomes. The health care literature suggests that good health care outcomes are expected because of the high success rate of medical and surgical treatment. Plaintiffs argued that their health problems were preventable and due to professional negligence. More descriptive research into plaintiffs' viewpoints could perhaps determine whether they are angry over their poor results alone, or because of what seemed to them as carelessness and callousness.

The health care literaturew argued that extraneous circumstances such as poor bedside manners, or receiving a substantial medical bill were the straws that broke the camel's back and brought patients to a decision to sue. Research respondents reported these factors only as part of the whole scenario of negligence, but further research is

needed that examines what other factors motivate plaintiffs to initiate malpractice lawsuits.

The stereotypes of angry and vengeful litigants were well documented in health care literature. Plaintiffs in this sample referred to their desire for justice, and they gave their experiences meaning by assuming altruistic motives. They hoped to protect others from similar harm by exposing incompetent care-givers. More information is needed concerning plaintiffs' reasons for their anger, revenge and willingness to pursue litigation, but it is evident that what is anger and vengeance to one side is a righteous, altruistic quest for justice to the other.

Some plaintiffs may have benefitted emotionally by telling their stories during the research interviews. Therapeutic interviewing was not the focus of this study, although plaintiffs reported that they needed to let others know about their experiences. On the other hand, there may have been respondents who experienced additional emotional upset by describing their perceived misfortune. Further research may identify benefits of therapeutic discourse for some individuals with health care grievances.

Qualitative research results provide grounded theories for quantitative study designs. Plaintiffs' discourse topics noted in this research suggest areas where further empirical research is needed. For example, more data are needed to determine the incidence of multiple lawsuit

involvement, both for plaintiffs and care-givers. Thorough demographic data are needed before trends in socioeconomic variables can be identified. Further research using specific hypotheses is recommended. Variables derived from this research, such as plaintiff definitions of compensation and justice, may be used to form research questions for future studies.

This research has implications for the social systems that set malpractice litigation policies and laws. From a policy-making standpoint, it is important to understand the beliefs and values that influence litigation behaviors. If plaintiffs' underlying motivations center on issues of justice and preventing harm, as this research suggests, rather than on greed, then malpractice lawsuit prevention must center on health care providers, and not on plaintiffs.

This study was limited by its convenience sampling. Another study using a broader sampling would document more viewpoints held by those who allege malpractice. Research is recommended that contrasts the accounts of those who decided against pursuing legal action with those who chose to litigate. This comparative methodology would yield beneficial results related to decision-making factors.

Summary

Health care literature has described plaintiffs as greedy, hostile, neurotic, untrusting, dishonest, and demanding, to name but a few of the adjectives connoting

litigiousness. These stereotypes have become commonplace in our society. Malpractice plaintiffs compared themselves to these stereotypes, to show that their circumstances made them different from the usual plaintiff. The results of this research suggest that stereotypical suit-prone characteristics may not exemplify plaintiffs. The same stereotypes were used by plaintiffs as a basis for comparing and contrasting their motives for meaning and justice.

The terms suit-prone and litigious imply a tendency to engage in or encourage disputes and lawsuits. Plaintiffs did not view themselves as the type of person that desires litigation. In fact, they were not generally the individuals who first mentioned suing.

Plaintiffs stated that bad therapeutic outcomes promoted retrospective thinking. They perceived that information was kept from them, and they had a strong desire to understand the health care experience. Plaintiffs thought they received conflicting statements or rationalizations from care-givers who were trying to legitimize their errors. Plaintiffs' propositions described crusading motives for protecting other patients from malpractice harm.

A paradox exists between recent statutes governing malpractice litigation and the rise of malpractice claims. It has become increasingly more difficult for plaintiffs to litigate, e.g., statutes of limitation, yet there is a steady increase in the number of lawsuits being filed.

Results of this study suggest that further regulations enacted to decrease plaintiff claims may prove ineffective. Plaintiffs in this sample wanted to prove their points, and they did not stray from this purpose, even when cases had been pending for several years.

In the scope of medical malpractice, plaintiffs have not been ignored, but they have been misrepresented. The news media have focused on multimillion dollar lawsuits, while the medical and legal communities have cited conflicting statistics. Though the incidence of malpractice suits continues to rise, authors are not sure whether or not these claims are justified. Some lawyers and plaintiffs say that professional carelessness is to blame, while some doctors and insurance companies blame the greed of plaintiffs and attorneys. Until this research, debates in the media and literature have ignored the viewpoints of plaintiffs.

After reviewing the results of this study, one might argue that plaintiff stereotypes are correct. For example, plaintiffs verbalized their anger, hostility and desire for monetary compensation. One might also wonder if their accounts are not self-justifications of their litigiousness. Plaintiffs may not have expressed their true feelings, since they may not have wished to portray themselves in a bad light. There is a paradox between these two notions of suit-proneness and self-justification. The ex-

plicit descriptions of vengeance and other plaintiff stereotypes portrayed an image contrary to a self-justification theory. Plaintiffs stressed the seriousness of their poor health care outcomes by using commonplace plaintiff stereotypes, e.g., they wanted the money because it symbolized that the care-givers were in the wrong. If these plaintiffs had been concerned with self-justification, they probably would have avoided the money issue altogether. Further research may continue to unveil the severe harm that motivates some plaintiffs to carry their torches of grievance indefinitely.

In the United States of America, legal action has become the only socially acceptable recourse for professional negligence. Subjects in this study perceived that their health care injury was preventable and was due to negligence. They sought legal redress through the courts and stated that they wished they could do more to prevent the tragedy and injustice of health care negligence.

APPENDIX A

ATTORNEY GUIDE

Attorneys, or their designated employees are asked to describe the nature of this research to clients as follows:

A graduate student named Mindi Miller is doing research for her doctoral dissertation in Anthropology at Rice University. Her study looks at the experiences of people like yourself who are involved in lawsuits. She would like to interview you and ask you questions about the circumstances surrounding your lawsuit. Are you willing to talk with her about participating in this research? If so, may I give her your name and telephone number (or address, etc.) so that she can contact you? How would you prefer to be contacted?

Attorneys will sign the referral form that documents the clients willingness to be contacted and the attorneys knowledge that information about clients' cases will be discussed during the interviews.

INITIAL CONTACT

Most of the initial contacts between the subjects and the researcher will involve telephone conversations unless clients prefer another means of contact. During initial contact, whether in person, by telephone or letter, the researcher will describe the nature of her study:

Your attorney said you might be interested in participating in my research. Your opinions would be very helpful for this study. I would like to talk with you about your experiences related to your claim. I will combine what you say with what other people involved in lawsuits have said, in order to discover what kinds of things you have in common. I will ask you questions about the reasons why you decided to sue. The interview will be tape recorded, and it will take approximately one hour.

If the client is interested in participating, then a meeting time and place will be determined. If the initial contact

is in person, then the procedure for the first meeting might continue at that time.

FIRST MEETING

After an introduction, the subject consent form will be explained. (See consent form, appendix B.) The consent form describes the research purpose. It will be explained that permission is needed for conducting and tape recording the interview, and that tape recording is quicker than taking written notes. A copy of the transcript will be sent to the client. If the client agrees to participate and signs the consent form, a copy of this signed consent will be given to the subject.

RICE UNIVERSITY

147

P. O. BOX 1892
HOUSTON, TEXAS
77251

Department of Anthropology

Dissertation Research: An Anthropological Analysis of Malpractice Plaintiffs' Propositional Patterns and Related Meanings.

ATTORNEY REFERRAL FORM

The following client has verbally consented to be contacted for possible participation in the above mentioned research. The client has been told that the interview will involve a discussion about the choice to sue, and the feelings related to the medical malpractice lawsuit. If this client agrees to participate and is interviewed, a copy of the interview transcript will be given to the client.

Name of Client_____

Telephone Number_____

or Means of Contact_____

Attorney Signature_____

c: Client
Client File

APPENDIX B

RICE UNIVERSITY

149

P. O. BOX 1892
HOUSTON, TEXAS
77251

DEPARTMENT OF ANTHROPOLOGY

Doctoral Dissertation Research: An Anthropological Analysis of Malpractice Plaintiffs' Propositional Patterns and Related Meanings.

Dear Participant:

You are being asked to participate in my Ph.D. dissertation study of persons who are involved in lawsuits. There are practically no studies which focus on people like yourself who have chosen to pursue legal action. Your opinions will be combined with those of others so that plaintiff viewpoints may be better understood. Your interview will take approximately one hour to complete, and with your permission it will be tape recorded so that note-taking will not slow the discussion. You are free to choose not to answer any question during the interview. Your identity will be kept secret. Your name will not be recorded, published, or given to any individual, business, or institution. Coding procedures will be used to destroy your identity, thereby protecting your anonymity. A copy of your interview will be sent to you. You also may request and receive a copy of the research results. Thank you for your time and consideration.

Sincerely,



Mindi Miller
Principal Investigator
Telephone (713) 792-7889
(713) 852-1387

Participant Informed Consent:

I have been informed of the nature of the research for which I am being interviewed and tape recorded, and I voluntarily participate. I know that I may withdraw consent and discontinue participation in this study at any time. I understand that there are no risks or benefits of this study to me. I give full permission to Mindi Miller to use, reproduce, or publish my interview for any educational, research, or scholarly purpose, in the interest of anthropology and other related disciplines. I understand that there is a possibility that a defense attorney could find out about this interview and try to obtain a copy of it. All of my questions regarding participation have been answered now, and I am free to ask questions about this research at any time.

I have read and understand this consent form.

Participant: _____

Interviewer: _____

c: Participant

This research study has been reviewed and approved by the Committee for the Protection of Human Subjects at Rice University (713-527-4820) and at The University of Texas Health Science Center at Houston (713-792-5048). Contact the committees if you have questions regarding your rights.

APPENDIX C

DEMOGRAPHIC FORM

Please fill in the blanks. Do not place your name on this form.

Age: _____

Sex: _____

Occupation: _____

Religion: _____

Race: _____

Ethnic Origin: _____

Marital Status: _____

Number of Children: _____

Number of People in Household: _____

Annual Household Income: _____

Primary Language Used in Household: _____

Last Completed Year of School: _____

List Places You Have Lived Over the Last Ten Years:

APPENDIX D

INTERVIEW GUIDE

Interview questions are open-ended to encourage spontaneous discussion. Research respondents are asked to tell their experiences in their own words. The following interview guide lists question samples and rationale for eliciting responses, if subjects do not provide this information in their discourse.

Question Example

Would you describe the circumstances surrounding your situation?

Rationale

Questions will center on general viewpoints of plaintiffs and how they tell their circumstances.

Question Examples

What steps did you take to contact with your attorney?

When, during what point, did you decide to talk with an attorney?

Rationale

Questions will relate to how the lawsuit was pursued.

Question Examples

Are there individuals who have been with you during your lawsuit experiences?

How do you think your family members or friends feel about the lawsuit?

Rationale

Questions will relate to individuals involved in the

decision to sue.

Question Examples

Before your lawsuit, had you seen or read anything about medical malpractice lawsuits?

Have you ever been involved or known anyone involved in a medical malpractice lawsuit?

Rationale

Questions will center on previous knowledge about malpractice lawsuits.

Question Example

What kinds of things have you learned about the medical and legal system?

Rationale

Questions will elicit health care and legal experiences.

Question Examples

How do you feel about your experiences?

What kinds of things have you learned from your experiences?

What kinds of things would you like to change?

Rationale

Questions will center on eliciting current feelings.

Question Example

In one statement, why did you sue?

Rationale

Questions will aim at identifying recurrent themes in plaintiffs' discourse.

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