The second factor calls attention to the measures by which prejudice may be averted or lessened. The ''shaping of relief'' is a familiar expedient to this end. See, e.g., the award of money damages in lieu of specific relief where the latter might affect an absentee adversely. *Ward v. Deavers*, 203 F.2d 72 (D.C.Cir. 1953); *Miller & Lux, Inc. v. Nickel*, 141 F.Supp. 41 (N.D.Calif. 1956). On the use of ''protective provisions,'' see *Roos v. Texas Co.*, supra; *Atwood v. Rhode Island Hosp. Trust Co.*, 275 Fed. 513, 519 (1st Cir. 1921), cert. denied, 257 U.S. 661 (1922); cf. *Stumpf v. Fidelity Gas Co.*, 294 F.2d 886 (9th Cir. 1961); and the general statement in *National Licorice Co. v. Labor Board*, 309 U.S. 350, 363 (1940).

Sometimes the party is himself able to take measures to avoid prejudice. Thus a defendant faced with a prospect of a second suit by an absentee may be in a position to bring the latter into the action by defensive interpleader. See *Hudson v. Newell*, 172 F.2d 848, 852 mod., 176 F.2d 546 (5th Cir. 1949); *Gauss v. Kirk*, 198 F.2d 83, 86 (D.C.Cir. 1952); *Abel v. Brayton Flying Service, Inc.*, 248 F.2d 713, 716 (5th Cir. 1957) (suggestion of possibility of counterclaim under Rule 13(h)); cf. *Parker Rust-Proof Co. v. Western Union Tel. Co.*, 105 F.2d 976 (2d Cir. 1939) cert. denied, 308 U.S. 597 (1939). See also the absentee may sometimes be able to avert prejudice to himself by voluntarily appearing in the action or intervening on an ancillary basis. See *Developments in the Law*, supra, 71 Harv.L.Rev. at 882; Annot., *Intervention or Subsequent Joinder of Parties as Affecting Jurisdiction of Federal Court Based on Diversity of Citizenship*, 134 A.L.R. 335 (1941); *Johnson v. Middleton*, 175 F.2d 535 (7th Cir. 1949); *Kentucky Nat. Gas Corp. v. Duggins*, 165 F.2d 1011 (6th Cir. 1948); *McComb v. McCormack*, 159 F.2d 219 (5th Cir. 1947). The court should consider whether this, in turn, would impose undue hardship on the absentee. (For the possibility of the court's informing an absentee of the pendency of the action, see comment under subdivision (c) below.)

The third factor—whether an ''adequate'' judgment can be rendered in the absence of a given person—calls attention to the extent of the relief that can be accorded among the parties joined. It meshes with the other factors, especially the ''shaping of relief'' mentioned under the second factor. Cf. *Kroese v. General Steel Castings Corp.*, 179 F.2d 760 (3d Cir. 1949), cert. denied, 339 U.S. 983 (1950).

The fourth factor, looking to the practical effects of a dismissal, indicates that the court should consider whether there is any assurance that the plaintiff, if dismissed, could sue effectively in another forum where better joinder would be possible. See *Fitzgerald v. Haynes*, 241 F.2d 417, 420 (3d Cir. 1957); *Fouke v. Schenewerk*, 197 F.2d 234, 236 (5th Cir. 1952); cf. *Warfield v. Marks*, 190 F.2d 178 (5th Cir. 1951).

The subdivision uses the word ''indispensable'' only in a conclusory sense, that is, a person is ''regarded as indispensable'' when he cannot be made a party and, upon consideration of the factors above mention, it is determined that in his absence it would be preferable to dismiss the action, rather than to retain it.

A person may be added as a party at any stage of the action on motion or on the court's initiative (see Rule 21); and a motion to dismiss, on the ground that a person has not been joined and justice requires that the action should not proceed in his absence, may be made as late as the trial on the merits (see Rule 12(h)(2), as amended; cf. Rule 12(b)(7), as amended). However, when the moving party is seeking dismissal in order to protect himself against a later suit by the absent person (subdivision (a)(2)(ii)), and is not seeking vicariously to protect the absent person against a prejudicial judgment (subdivision (a)(2)(i)), his undue delay in making the motion can properly be counted against him as a reason for denying the motion. A joinder question should be decided with reasonable promptness, but decision may properly be deferred if adequate information is not available at the time. Thus the relationship of an absent person to the action, and the practical effects of an adjudication upon him and others, may not be sufficiently revealed at the pleading stage; in such a case it would be appropriate to defer decision until the action was further advanced. Cf. Rule 12(d).

The amended rule makes no special provision for the problem arising in suits against subordinate Federal officials where it has often been set up as a defense that some superior officer must be joined. Frequently this defense has been accompanied by or intermingled with defenses of sovereign community or lack of consent of the United States to suit. So far as the issue of joinder can be isolated from the rest, the new subdivision seems better adapted to handle it than the predecessor provision. See the discussion in *Johnson v. Kirkland*, 290 F.2d 440, 446–47 (5th Cir. 1961) (stressing the practical orientation of the decisions); *Shaughnessy v. Pedreiro*, 349 U.S. 48, 54 (1955). Recent legislation, P.L. 87–748, 76 Stat. 744, approved October 5, 1962, adding §§ 1361, 1391(e) to Title 28, U.S.C., vests original jurisdiction in the District Courts over actions in the nature of mandamus to compel officials of the United States to perform their legal duties, and extends the range of service of process and liberalizes venue in these actions. If, then, it is found that a particular official should be joined in the action, the legislation will make it easy to bring him in.

Subdivision (c) parallels the predecessor subdivision (c) of Rule 19. In some situations it may be desirable to advise a person who has not been joined of the fact that the action is pending, and in particular cases the court in its discretion may itself convey this information by directing a letter or other informal notice to the absentee.

Subdivision (d) repeats the exception contained in the first clause of the predecessor subdivision (a).

NOTES OF ADVISORY COMMITTEE ON RULES—1987 AMENDMENT

The amendments are technical. No substantive change is intended.

COMMITTEE NOTES ON RULES—2007 AMENDMENT

The language of Rule 19 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Former Rule 19(b) described the conclusion that an action should be dismissed for inability to join a Rule 19(a) party by carrying forward traditional terminology: ''the absent person being thus regarded as indispensable.'' ''Indispensable'' was used only to express a conclusion reached by applying the tests of Rule 19(b). It has been discarded as redundant.

Rule 20. Permissive Joinder of Parties

(a) PERSONS WHO MAY JOIN OR BE JOINED.

(1) *Plaintiffs.* Persons may join in one action as plaintiffs if:

(A) they assert any right to relief jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and

(B) any question of law or fact common to all plaintiffs will arise in the action.

(2) *Defendants.* Persons—as well as a vessel, cargo, or other property subject to admiralty process in rem—may be joined in one action as defendants if:

(A) any right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and

(B) any question of law or fact common to all defendants will arise in the action.

(3) *Extent of Relief.* Neither a plaintiff nor a defendant need be interested in obtaining or

defending against all the relief demanded. The court may grant judgment to one or more plaintiffs according to their rights, and against one or more defendants according to their liabilities.

(b) PROTECTIVE MEASURES. The court may issue orders—including an order for separate trials—to protect a party against embarrassment, delay, expense, or other prejudice that arises from including a person against whom the party asserts no claim and who asserts no claim against the party.

(As amended Feb. 28, 1966, eff. July 1, 1966; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 30, 2007, eff. Dec. 1, 2007.)

NOTES OF ADVISORY COMMITTEE ON RULES—1937

The provisions for joinder here stated are in substance the provisions found in England, California, Illinois, New Jersey, and New York. They represent only a moderate expansion of the present federal equity practice to cover both law and equity actions.

With this rule compare also [former] Equity Rules 26 (Joinder of Causes of Action), 37 (Parties Generally—Intervention), 40 (Nominal Parties), and 42 (Joint and Several Demands).

The provisions of this rule for the joinder of parties are subject to Rule 82 (Jurisdiction and Venue Unaffected).

Note to Subdivision (a). The first sentence is derived from *English Rules Under the Judicature Act* (The Annual Practice, 1937) O. 16, r. 1. Compare Calif.Code Civ.Proc. (Deering, 1937) §§378, 379a; Ill.Rev.Stat. (1937) ch. 110, §§147–148; N.J.Comp.Stat. (2 Cum.Supp., 1911–1924), N.Y.C.P.A. (1937) §§209, 211. The second sentence is derived from *English Rules Under the Judicature Act* (he Annual Practice, 1937) O. 16, r. 4. The third sentence is derived from O. 16, r. 5, and the fourth from O. 16, r.r. 1 and 4.

Note to Subdivision (b). This is derived from *English Rules Under the Judicature Act* (The Annual Practice, 1937) O. 16, r.r. 1 and 5.

NOTES OF ADVISORY COMMITTEE ON RULES—1966 AMENDMENT

See the amendment of Rule 18(a) and the Advisory Committee's Note thereto. It has been thought that a lack of clarity in the antecedent of the word ''them,'' as it appeared in two places in Rule 20(a), contributed to the view, taken by some courts, that this rule limited the joinder of claims in certain situations of permissive party joinder. Although the amendment of Rule 18(a) should make clear that this view is untenable, it has been considered advisable to amend Rule 20(a) to eliminate any ambiguity. See 2 Barron & Holtzoff, *Federal Practice & Procedure* 202 (Wright Ed. 1961).

A basic purpose of unification of admiralty and civil procedure is to reduce barriers to joinder; hence the reference to ''any vessel,'' etc.

NOTES OF ADVISORY COMMITTEE ON RULES—1987 AMENDMENT

The amendments are technical. No substantive change is intended.

COMMITTEE NOTES ON RULES—2007 AMENDMENT

The language of Rule 20 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Rule 21. Misjoinder and Nonjoinder of Parties

Misjoinder of parties is not a ground for dismissing an action. On motion or on its own, the court may at any time, on just terms, add or drop a party. The court may also sever any claim against a party.

(As amended Apr. 30, 2007, eff. Dec. 1, 2007.)

NOTES OF ADVISORY COMMITTEE ON RULES—1937

See *English Rules Under the Judicature Act* (The Annual Practice, 1937) O. 16, r. 11. See also [former] Equity Rules 43 (Defect of Parties—Resisting Objection) and 44 (Defect of Parties—Tardy Objection).

For separate trials see Rules 13(i) (Counterclaims and Cross-Claims: Separate Trials; Separate Judgments), 20(b) (Permissive Joinder of Parties: Separate Trials), and 42(b) (Separate Trials, generally) and the note to the latter rule.

COMMITTEE NOTES ON RULES—2007 AMENDMENT

The language of Rule 21 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Rule 22. Interpleader

(a) GROUNDS.

(1) *By a Plaintiff*. Persons with claims that may expose a plaintiff to double or multiple liability may be joined as defendants and required to interplead. Joinder for interpleader is proper even though:

(A) the claims of the several claimants, or the titles on which their claims depend, lack a common origin or are adverse and independent rather than identical; or

(B) the plaintiff denies liability in whole or in part to any or all of the claimants.

(2) *By a Defendant*. A defendant exposed to similar liability may seek interpleader through a crossclaim or counterclaim.

(b) RELATION TO OTHER RULES AND STATUTES. This rule supplements—and does not limit—the joinder of parties allowed by Rule 20. The remedy this rule provides is in addition to—and does not supersede or limit—the remedy provided by 28 U.S.C. §§1335, 1397, and 2361. An action under those statutes must be conducted under these rules.

(As amended Dec. 29, 1948, eff. Oct. 20, 1949; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 30, 2007, eff. Dec. 1, 2007.)

NOTES OF ADVISORY COMMITTEE ON RULES—1937

The first paragraph provides for interpleader relief along the newer and more liberal lines of joinder in the alternative. It avoids the confusion and restrictions that developed around actions of strict interpleader and actions in the nature of interpleader. Compare *John Hancock Mutual Life Insurance Co. v. Kegan et al.*, (D.C.Md., 1938) [22 F.Supp. 326]. It does not change the rules on service of process, jurisdiction, and venue, as established by judicial decision.

The second paragraph allows an action to be brought under the recent interpleader statute when applicable. By this paragraph all remedies under the statute are continued, but the manner of obtaining them is in accordance with these rules. For temporary restraining orders and preliminary injunctions under this statute, see Rule 65(e).

This rule substantially continues such statutory provisions as U.S.C., Title 38, §445 [now 1984] (Actions on claims; jurisdiction; parties; procedure; limitation; witnesses; definitions) (actions upon veterans' contracts of insurance with the United States), providing for inter-