From the Editors

This special issue on dispute processing and civil litigation emerges from the collaboration of two enterprises—the *Review* and the Civil Litigation Research Project (CLRP). The *Review*, a leading journal in its field, is dedicated to publishing the best of law and society scholarship. CLRP, a federally funded research project, was created to design and implement a survey of litigation costs and strategies, and to establish a broad data base for research on dispute processing by other scholars.

The prevailing orientation of the *Review*, and its common practice, is to publish the best manuscripts from among the hundreds submitted to it each year. Peer review is the norm. Each submitted manuscript is considered on its own merits, without regard to its relationship to others; the final decision on publication, of course, is made by the editor. Guided by outside (and anonymous) reviews, and by the judgment of editorial colleagues, the editor allocates the scarce pages of the journal.

From time to time, however, the *Review* has published special issues on topics of particular importance: most recently an issue on plea bargaining (Vol. 13:2), another devoted to commissioned surveys of sociolegal research (Vol. 14:3), and a third devoted substantially to describing sociolegal research in other countries (Vol. 12:4). A special issue on psychology and law is planned for Volume 17:1. Sometimes special issues are funded externally; they are offered to our membership over and above the regular complement of pages. In other instances, they result merely from an editor's decision that a certain topic is worthy of special attention. Of the four special issues just mentioned, the first two were externally funded, the latter two were (are) not.

The processing of articles for a special issue may also differ from the norm. Most such articles are solicited or commissioned. The peer review process may be attenuated. This is justified by the benefits of an occasional special issue—benefits which accrue from a systematic and integrated focus on a particular subject.

This special issue on dispute processing and civil litigation is very much a hybrid. It includes articles commissioned especially for the issue but which were also reviewed by an

anonymous outside reader; it contains three specially solicited comments on some of the commissioned articles; and it includes four articles which came through the regular reviewing process and were included because of their timely relevance. These special arrangements were dictated by several considerations. *First*, the commissioned articles all came from a single research project, and the special issue editor, David Trubek, is the director of that project. Indeed, the primary funding of the special issue, by a grant from the Federal Justice Research Program of the United States Department of Justice, was obtained for the purpose of sharing with the discipline some of the ideas and preliminary findings of the Civil Litigation Research Project. *Second*, the editor of the *Review* is co-principal investigator of CLRP, creating the appearance of a conflict of interest. *Third*, as the CLRP research commenced, and preparations for this special issue began, it became clear that a wider focus was in order. Other scholars were making interesting and important contributions to the dispute processing literature. The decision was made, then, to create an "open" section, using regular nonsubsidized pages, for topical contributions to the subject of the special issue. Eventually the issue grew so large that it became a "combined" issue, Volume 15:3-4.

This hybrid approach did not create the best of all possible worlds, but it did meet the conflict of interest problem; more important, it provided a "one-shot" opportunity to make available to our readers *some* of the best and certainly most provocative writing on an important research issue. It is neither the first word nor the last on dispute processing, but it marks our progress in the development of theory and the collection and analysis of data about the processing of disputes. That progress, as we shall see, has been considerable.

As it has finally taken shape, the special issue is divided into three parts. Part One consists of a comment by Maurice Rosenberg on the need for an augmented program of sociolegal research, and a survey of the literature on the role of courts in the United States by Willard Hurst. When we invited Rosenberg to contribute to this special issue he was Assistant Attorney General in the Office for Improvements in the Administration of Justice in the United States Department of Justice. He and his predecessor, Professor Daniel Meador, along with Charles Wellford and Harry Scarr, had been instrumental in developing and funding an empirical sociolegal research program under the auspices of the Justice

Department. When the article was drafted, it reflected a tone of optimism that such a program was well underway and had a bright future. CLRP was the largest, but by no means the only, project under the OIAJ umbrella. Political events abruptly ended this optimism, however. As Rosenberg's article *now* reveals, OIAJ was abolished and a number of its projects were either terminated or, as in the case of CLRP, transferred to the jurisdiction of other funding agencies. CLRP is now under the auspices of the National Institute of Justice. No member of the OIAJ staff who worked with us remains connected to the project.

Hurst's article was originally commissioned by another OIAJ enterprise, a study group known as the Council on the Role of Courts. Professor Hurst was asked to write a background paper which updated the chapter on the role of courts in his classic book, *The Growth of American Law* (1950). But it is also the perfect substantive introduction to this special issue, and we are pleased to be able to present it here.

The articles in Part Two come from three sources: those written by members of the core CLRP staff (Trubek, Felstiner, Kritzer, Sarat, Miller) reporting some early data but primarily discussing theoretical and methodological issues; those commissioned by CLRP as working papers to guide its research (Johnson, Gollop-Marquardt, and Coates-Penrod); and three comments on the CLRP papers (Lempert, Kidder, FitzGerald-Dickins). These articles, taken as a whole, mark the emergence of the dispute focus as a perspective for studying the civil justice system. They address the question of how and why this focus was chosen, its problems, and its consequences for research. This part helps create and furthers a continuing dialogue on a fundamental issue. And it reveals the possibilities of an interdisciplinary perspective on civil justice. Of course there is little here—as elsewhere—that is *truly* interdisciplinary. Rather it reflects a convergence of disciplinary perspectives which come close to establishing a common dialogue, if not an agreed-upon framework for research: what Trubek (p. 500) calls "other-discipline-directed" studies.

Part Three consists of four articles bearing on the subject of civil justice, which were accepted for publication through the normal review process. The Mather-Yngvesson article should be read along with the Felstiner-Abel-Sarat piece; the latter explores the identification of grievances and their transformation into disputes, while the former focuses

primarily on the transformation of disputes in a variety of institutional contexts. McIntosh's article extends the data base for those studying the incidence of litigation and the dispute resolving role of courts, while Bumiller addresses a perennial issue of civil justice reform: whether or not diversity of citizenship cases should be excluded from the federal courts. Silbey's article offers a fascinating institutional perspective on what happens to consumer grievances when they hit the bureaucratic fan.

To conserve space, all of the references for the articles in this issue appear in a consolidated list, beginning on page 883. The list, though not systematic, must come close to being an exhaustive bibliography of recent dispute processing research.

These articles raise a number of questions for the research agenda. The need for further discussion of what the important issues are and what should be studied is obvious. There is little agreement on what a dispute is, how data about disputes can be obtained, and perhaps most important, whether disputes should be studied at all. The CLRP papers alone identify many things we do not know about disputes, and only a few that we do. Miller and Sarat (p. 525), for example, tell us more about what *does not* explain the emergence of grievances and their transformation into disputes than what does. Felstiner *et al.* (p. 631) provide a fascinating tour through the "naming, blaming, and claiming" stages of disputing—none of which CLRP was able to study directly. Mather and Yngvesson (p. 775) give additional insights into the transformation process, but how do we study it empirically? Coates and Penrod (p. 655) make a compelling case for sensitivity to social-psychological variables, and attribution theory in particular, but can these concerns be built into a retrospective study of disputes? If not, then could they be tested in a panel study, a research technique which raises a whole new set of epistemological and ethical issues?

Beyond these problems there are issues of the very nature of the enterprise of social research in general, and sociolegal studies in particular, which emerge in several of the papers. Kidder (p. 717) raises basic questions about the presuppositions of empirical inquiry and the potential for bias in studies of disputing. Lempert (p. 707) is concerned that we have looked too closely at the micro-level, and ignored macro-level issues raised by various "critical" schools of legal sociology.

This issue is a milestone in the development of research on civil litigation and dispute processing. It demonstrates the scope and vitality of the field, the range of disciplinary perspectives that can be brought to bear on these phenomena, and the wealth of methodological approaches available to study them. Disputes have been the object of scholarly attention for a long time, but the papers in this issue suggest that the enterprise has become more systematic, cross-disciplinary, and empirical. At the same time, this issue deals as much with what has not been done as with what results have been achieved. The CLRP papers are largely drawn from that Project's preliminary conceptual and methodological explorations: almost none of the data collected are presented here since the body of data is just now being analyzed. Many of the essays critique existing approaches or outline new possibilities. Hope is expressed that the perspectives of various disciplines can illuminate issues and contribute to policy debate. Few of the papers, however, directly address any of the institutional issues now debated by lawyers and policymakers. There is no research from other countries, even though major disputes studies are underway in several parts of the world. There is much work to do before the suggested agenda is realized.

While this issue points up the promise and possibilities of the field of civil justice research, the future of this field is clouded. Supported and encouraged by the availability of governmental funding, the field has developed methods of inquiry that are costly to employ, and has constructed bodies of data that require expensive forms of analysis. Just as this work has begun, we confront a precipitous decline in governmental interest and funding. If new sources of funding are not found, the field could find itself unable to realize the fruits of years of prior work. Our common research agenda, therefore, must include not only ways to think about disputes and methods to study them, but also ways to support the scholarly enterprise that has been put in motion.

Joel B. Grossman, Editor
David M. Trubek, Special Issue Editor

https://doi.org/10.1017/S0023921600032321 Published online by Cambridge University Press

ACKNOWLEDGEMENTS

An enterprise of this magnitude is necessarily the work of many hands. In addition to the contributing authors, we would like to express our appreciation to the following past and present members of the CLRP staff: Jill Anderson, Kristin Bumiller, Betsy Ginsberg, Laura Guy, Judith Hansen, Jeanette Holz, Stephen McDougal, Elizabeth McNichol, Barbara Ranes, Rick Schroeder, and Lynne Williams. Our thanks also to Edith Wilimovsky, Amy Kritzer, Pamela Solberg, and Rob Sikorski of the *Review*.

JBG
DMT