STUDYING DISPUTES: LEARNING FROM THE CLRP EXPERIENCE

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This paper describes the data collection strategy of the Civil Litigation Research Project. It discusses many of the practical problems of choosing and implementing the research design and assesses the results of the data collection effort.

I. INTRODUCTION

The Civil Litigation Research Project (CLRP) evolved as a study of dispute processing in the United States, with a major focus on the role of courts. CLRP is not a study of everything that courts do or of the whole range of dispute processing. Rather it is concerned largely with the intersection of courts and dispute processing. It seeks to answer these questions: how do courts fit within the larger dispute processing system? How do courts compare to alternatives that deal with comparable disputes? What do courts do well in this regard? What do they do poorly? What does it cost to process disputes in court? How do you explain these costs? How do such costs compare to the costs incurred in other dispute processing institutions?

These questions are only suggestive. They are generated from a functional perspective on courts and dispute processing which we have come to call the "courts in context" approach. This framework seeks to identify alternatives to the courts; it recognizes that courts are not limited to adjudication, but serve a variety of functions in dispute processing, such as mediation and conciliation. It also recognizes that alternative fora may serve equivalent functions. The contextual framework provides additional coherence to the analysis of disputes processed

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outside formal institutions by directing attention to "bilateral" dispute processing (i.e., direct or indirect negotiation outside of any third-party framework); such noninstitutional dispute processing is an alternative "path" by which a disputant can seek redress of grievances.

The concern of this paper is how to translate the courts-in-context framework into actual empirical research—specifically, how to design and organize an appropriate data collection strategy. The discussion below is divided into four sections. The first presents a typology of the various approaches that could be used to collect data on dispute processing behavior. The second section describes CLRP's synthesis of the various approaches. Section three considers some of the practical problems encountered in actually implementing that data collection design. Finally, section four discusses our actual field experience.

II. A TYPOLOGY OF APPROACHES

One can identify three basic approaches for collecting data about dispute processing. Each approach selects a different fundamental unit for sampling—the case, the institution, or the participant. The case approach selects as its sampling unit the "case." One or more cases are selected for study, and data are then collected about those cases. For *practical* purposes, a "dispute" and a "case" are more or less synonymous; while one can make conceptual distinctions between the two (several "cases," in the court sense, can arise from a single "dispute," or a single "case" might arise from several "disputes"), I will treat them as the same. The data collected might include information on the basis of the case (i.e., the issues in the dispute), the attitudes and behavior of the participants in the dispute as related to the specific case, and the response of any dispute processing institutions to which the dispute was taken. The key feature of the case approach is that all of the data relate directly or indirectly to understanding what happened in a specific case (or sample of cases). The case focus is the most fully developed of the three approaches, because it is the traditional approach of anthropologists who were the pioneers in the study of dispute processing (see Kritzer *et al.*, 1981). The primary limitation of the case approach is that it is very difficult to obtain relatively complete information for a large number of cases.

The institutional approach examines dispute processing institutions *as* institutions. It involves selecting a set of

institutions for intensive examination and then attempting to understand how different institutions process disputes. This approach focuses on explaining the workings and/or effect of an institution by observing it in action, interviewing its staff and its users, and examining its records (e.g. Jacob, 1969; Hannigan, 1977; Palen, 1979; Sarat, 1976; Mansfield, 1978). This approach has the advantage of providing an in-depth view of the activities and workings of the institution(s) but the disadvantage of not getting a full picture of the disputes which are grist for the institution's mill.

The participant approach involves studying actual and potential disputants, including individuals, groups, organizations, and government, as well as representatives of disputants (e.g., lawyers). This approach usually entails surveys of dispute participants (e.g., Best and Andreasen, 1977; Rosenthal, 1974; Curran, 1977) in which respondents are asked about their disputing experience, both generally and in specific cases. Such studies have been used to explain the level of demand for disputing resources, the nature of actual dispute processing decisions (Rosenthal, 1974; Sarat, 1976), and the frequency of actual disputing experience. A major problem with studies of this type is that they tend to focus on only one type of participant, on participants involved in specific types of disputes, or on particular dispute processing institutions. Because of this narrow focus, studies of participants have yielded only relatively narrow generalizations.

The limits of each of these approaches suggests the utility of a mixed strategy to study dispute processing in the United States. The dispute processing role of the courts could be studied through intensive examination of a sample of cases from one or more courts. Bilateral dispute processing could be investigated through a survey of the general population and, since organizations are such frequent litigators in the courts, of organizations as well. Non-court third parties could be examined through a sample of their cases as well as by studying the personnel and processes of such organizations.[1]

A mixed approach, however, presents serious analytic problems. For comparisons to have validity, there must be a common denominator. On what basis can we compare disputes

[1] The Civil Litigation Research Project was initiated through a Request for Proposal (RFP) issued by the Office for Improvements in the Administration of Justice. That original RFP called on the researcher to use a mixed design of the type described above. The final study design differed from the vision of the original RFP; this section discusses many of the considerations that led to the design modifications.

processed through the courts with cases which are brought to the American Arbitration Association? Even more difficult, how can we compare any kind of institutionally processed cases with those resolved bilaterally or with, at most, minimal and informal third-party intervention?

The best and most accessible common denominator is the "case." Our rationale for this selection is straightforward. Information about a case can be collected regardless of whether that case went to court, went to an alternative third party, or was handled "bilaterally," and regardless of whether the participants were individuals, organizations, or governmental units. The information based upon a set of cases can then be used to compare institutions to one another, to compare individuals as disputants to organizations as disputants, or to compare cases of one type to cases of another type.

There are two ways of generating a case-focused data set. Ideally, it would begin with a series of case studies, in the anthropological tradition. Any existing case file (institutional records produced by the case) would be examined; all of the disputants and all of the lawyers representing them on both sides of the case would be interviewed. But this ideal cannot be achieved. First, if one were in fact following the anthropological tradition, one would want to interview not only the direct participants but also indirect participants (e.g., family members of the actual disputants), witnesses to the precipitating event(s), observers of the disputing process, and third-party participants in the disputing process (e.g., the judge, arbitrator, or mediator). The design could be extended somewhat, but it would always remain substantially incomplete. Second, the size of the sample would make it highly improbable that all, or even a large percentage of, case participants could be interviewed. For example, if one assumes a very high response rate of 80 percent and a norm of four participants in each case, there is a probability of only 41 percent of talking to all the participants in any case. If we assume, more realistically, that there are five participants to be interviewed, and the response rate is only 70 percent, then all the participants would be interviewed in only 17 percent of the cases. It is thus more realistic to stipulate that the "case" is both the sampling unit and the response unit—a common denominator but nothing more.[2]

[2] This approach can create one technical problem if more than one participant in a particular dispute is interviewed: respondents are not selected

III. DESIGNING A SAMPLE FOR A CASE-FOCUSED DATA SET: A COMBINED APPROACH

The sample of cases to be included in a case-focused data set must be designed to permit both institutional comparisons and comparisons among the various types of participants. In the survey researcher's ideal world, all disputes would have to be registered with a central disputes registry, which would include information on the substance of the dispute, the nature of the disputants, and the way the dispute was handled (i.e., what dispute processing institutions were used). With such a registry, it would be a simple process to design and select a sample that was stratified in such a way as to facilitate the specific interests of the researcher. A real-world sampling strategy should aim toward approximating this ideal.

The first step in designing such a sampling scheme is to identify the principal dimensions of stratification and the specific categories within each dimension. Two principal lines of stratification are the type of disputant and type of dispute processing institution. One possible set of categories for disputants has already been suggested: individuals, unorganized groups, organizations, and governments. To this list one might add "classes" (e.g., classes of individuals as seen in class actions). Assuming only four pure types, there are ten possible configurations of opposing parties (e.g., individual *versus* individual, individual *versus* organization, etc.). To simplify this, the categories can be collapsed into individuals (all situations in which individuals are acting in their capacities as private persons) and organizations (all formal organizations and governmental entities, plus situations where individuals are acting in a business or professional capacity). This produces three types of disputant configurations: individual *versus* individual, individual *versus* organization (and *vice versa*), and organization *versus* organization (including government). The second dimension, type of institution, can be categorized in many different ways. For our purposes, the following three categories were used: courts, non-court third parties ("alternative" institutions), and no use of third parties (bilateral dispute processing).

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independently of one another. Most statistical procedures require an assumption of "independent random sampling," and this assumption will be violated if "respondent" is used as the unit of statistical analysis. This problem must be considered on an analysis-by-analysis basis, since it may not arise in many specific analyses; where it does arise, the technically correct solution is to select randomly one respondent from each case where there were multiple respondents.

Let us consider the design of an actual data collection strategy using the two dimensions discussed above. Combining the first two dimensions yields the three-by-three matrix shown in Figure 1; the key problem of sample design is to insure that there are sufficient numbers of observations in each cell to permit intra-cell and cross-cell analyses. Assuming that only a small fraction of disputes ever go to court, a procedure which based its sample of cases upon a survey of the population would fail to turn up sufficient numbers of court cases to permit comparisons across dispute processing fora; furthermore a survey of the population would not readily turn up disputes between organizations. In theory, one could start with a sample of disputes from institutional records to fill the latter two columns of Figure 1, and then use the participants in those disputes to create a "snowball" sample (Leege and Francis, 1974: 120) of bilateral disputes. The problem with this approach is that the disputes in such a snowball sample would not permit generalizations to all bilateral disputes, because they would involve only disputants who had also used third parties and would likely overlook many kinds of disputes that tend to occur only among persons or organizations who never sought the intervention of third parties.

Figure 1. Sample Stratification Matrix

Configuration of Parties	Dispute Processing Mechanism: Col. 1 Bilateral	Col. 2 Court	Col. 3 Other Third Party
Individual *v.* Individual	A	B	C
Individual *v.* Organization (or Government)	D	E	F
Organization *v.* Organization	G	H	I

CLRP devised a mixed sampling procedure to meet these problems. We sampled from the institutional records of both courts and alternatives to obtain cases in cells B, C, E, F, H, and I of Figure 1. To obtain cases for cells A and D (plus some

additional cases for cells B, C, E, and F), we contacted households (using random-digit dialing techniques) to screen for disputing experience, selecting one dispute from households reporting recent disputing experience. Last, to obtain disputes falling in cell G, we again used a random-digit dialing technique to contact and screen organizations, selecting one dispute from each organization reporting recent eligible disputes.[3]

IV. LEARNING FROM DOING: THE PRACTICAL PROBLEMS OF IMPLEMENTING THE COMBINED APPROACH

There is a substantial gap between theory and its implementation; CLRP's experience is no exception. In this section I will describe a number of the more important issues of research strategy which confronted us, and explain the decisions we made. Problems which arose during our actual field experience with the design will be considered in the next section.

The issues, or problems, can be divided into five groups: what to focus the study upon, which cases to explicitly include or exclude, where to carry out the study, how particular cases should be identified for inclusion in our samples, and who to interview using what kind of survey instrument.

The previous section outlined the combined *case*-focused approach, but did not deal with the fundamental issue of a case of *what*. Clearly, we are interested in "dispute" cases; a dispute case is simultaneously more than a court case (it includes disputes that never go to court or aspects of a dispute that do not get aired in court) and less than a court case (many court cases are not disputes [see Zemans, 1980; Engel, 1980]). Thus, in order to implement our approach, we had first to define exactly what we meant by a dispute. This is dealt with in some detail elsewhere in this issue (Miller and Sarat, p. 525),

[3] One technical problem created by this sample design is that it constitutes a "multi-frame sample"; that is, different sampling frames are used to obtain various subsets of the overall sample. As long as analyses are confined to comparisons across strata and to comparisons within strata, the multi-frame sample does not raise problems. However, if analyses are to be carried out, which involved collapsing across strata, and particularly if the various relationships one is interested in looking at vary across strata (i.e., an analysis of discrimination cases across all "institutions"), then the multi-frame sample may produce misleading results. In order to combine the various samples, it is technically necessary to weight the observations from each sample to correspond with the relative frequency of responses in the various strata. To do this, one must have information on that relative frequency. We sought to obtain some crude information that could be used for weighting, though to date we have not implemented any weighting scheme for the main survey. This remains a weakness of the survey design we used.

but it would be useful to recount our definition of a dispute here in order to establish a context for the rest of the discussion. We conceptualized a dispute as a social relationship created when someone (an individual, a group, or an organization) has a grievance, makes a claim, and has that claim rejected. A grievance is a belief in entitlement to a resource which someone else can grant or deny. A claim is a demand or request for the resource in question made to a person or organization with the ability (at least in the mind of the claimant) to accept or deny the claim. The first definite reaction to a claim can be acceptance, rejection, or a compromise offer. Delay construed by the claimant as resistance can be considered to be a rejection. An explicit rejection of a claim unambiguously establishes a dispute relationship by defining conflicting claims to the same resource. A compromise offer is a partial rejection of the claim, initiating negotiation and so a dispute. Finally, a claim which is formally accepted but then not fulfilled also results in a dispute. In summary, once a claim is received by a person empowered to grant the claim, only its immediate acceptance prevents some degree of disputing, and then only if the claimant encounters no difficulty in collecting on the claim.

As an example, imagine that one has purchased a toaster which delivers only totally blackened toast. At this point, the purchaser has a *grievance*. The purchase can do one of two things: return to the seller and make a *claim* ("the *$#%!!!!! toaster does not work, I want my money back/I want a new toaster"), or throw the toaster away (perhaps resolving never to return to the establishment where the toaster was purchased). If the latter course of action is taken, a dispute has not occurred; if the former action is taken, a dispute may or may not occur depending upon the response of the seller. If the seller responds to the claim by replacing the toaster or refunding the purchase price, no dispute exists. If, on the other hand, the seller rejects the claim ("the toaster does not work because you threw it across the room") a dispute now exists.

Because of the specific interests of the research, the focus of the study was further narrowed in two ways. First, we chose to look only at *civil legal* disputes; that is, disputes that *could* potentially be decided in a civil court, or that a disputant believed could be taken to a civil court (even if only for tactical reasons). Second, we chose to include only what we call "middle-range disputes," which we arbitrarily defined to include disputes with monetary claims in excess of $1,000 or a

substantial nonmonetary issue (e.g., race or sex discrimination). Theoretically the civil justice system is concerned with disputes ranging from the absolutely trivial (e.g., the penny scale that swallows your penny but fails to give you the bad—or if you are unusually lucky—the good news) to the absolutely mammoth (e.g., *United States versus IBM*). The level of stakes is clearly associated with the mode of dispute processing used; modest claims, such as those involving routine consumer purchases (see Ladinsky and Susmilch, 1980), will distribute the use of dispute processing institutions in a very different way than will larger disputes such as those arising out of major consumer purchases or accidents. In order to insure a modicum of comparability among the disputes in our study, we excluded consideration of disputes of a very modest size that were unlikely to go to court and most likely to be handled in small claims court if they did go to court.[4]

One final, major decision relates to the "what" aspects of the focus of the study. All of the decisions outlined above could be applied to a study of either ongoing disputes or terminated disputes. There are advantages and disadvantages associated with each type. With terminated disputes, the researcher is going to encounter the recall problems inherent in any kind of retrospective study: the respondents' memories will be clouded by the passage of time and distorted by subsequent events; the latter problem is particularly true of more subjective information (e.g., stakes), and less true regarding such objective phenomena as concrete events. Recall is less of a problem for ongoing disputes looked at through a *panel* study, in which respondents are contacted repeatedly over a period of time. However, in a panel study the researcher must confront a different set of problems that are less evident in the study of terminated disputes: reactivity (contact with the study might influence disputing behavior), access (people are likely to be much less willing to discuss an ongoing dispute than one that is over and done with), ethics (should the researcher contact both parties to an ongoing dispute where there is the chance, albeit slight, that the researcher might directly or indirectly provide information about one side to the other side), and time (since the processing of a particular dispute can go on for years). If we had been given a free hand

[4] As the term "middle range" suggests, we also excluded extremely large cases, defined as those cases with a court record of sufficient bulk or complexity to be beyond our resources to code. Overall, 37 cases were excluded from our sample as too large.

to choose between these two approaches, it is unclear what we would have decided. In any event, our decision was dictated by our contract: we had to look at terminated disputes.[5]

Once we had come to a conclusion regarding *what* constituted an appropriate case, we had to deal with the issue of *which* type of dispute cases to include or exclude. As this statement of the question suggests, there are two basic strategies for deciding which type of dispute cases to include: inclusive and exclusive. In the inclusive approach, one identifies specific types of cases to be included in the study; cases not falling into the categories designated for inclusion are not included in the study. The alternate approach is to identify types of cases to be excluded from a general sample, and to exclude only cases falling into those categories.

We adopted the exclusive approach, primarily for practical reasons. We estimated that the categories of cases we would want to consider if we adopted an inclusive approach would constitute approximately 80 percent of the cases on the docket of a court of general jurisdiction; furthermore, in order to categorize the cases, it would be necessary to devote substantial time to a preliminary examination of the court records. On the other hand, we felt that we could efficiently identify face characteristics of cases to be excluded and thus avoid devoting substantial resources to those cases.[6] We specifically decided to exclude divorce cases unless there was a dispute over property (valued at $1,000 or more) or a dispute regarding child custody, uncontested collections cases, uncontested probate cases, bankruptcy cases, government *versus* government cases, judicial review of administrative decisions unless the court review took the form of a trial *de novo*, labor law cases arising out of grievance administration of the type normally covered by collective bargaining agreements, and quasi-criminal matters (prisoner petitions, deportation proceedings, and NARA cases).[7]

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[5] At one point we were planning to do a small-scale panel study to supplement our larger retrospective study; this panel study was ultimately dropped for budgetary reasons.

[6] Our field staff developed a decision tree that was easily applied to each individual case. Before releasing a case for interviewing, we did additional screening using the coded material. An additional 10 percent of the cases was excluded for a variety of reasons, such as indications that the case was probably refiled in another court or because the case in our sample was a small part of a much larger case in another court.

[7] A more detailed discussion for the rationale for each of these categories can be found in the survey clearance documents that we prepared for the Office of Management and Budget. These documents are available from the author.

The *where* question presented two issues.[8] First, we had to decide whether the study should be carried out using a national sample or with a series of more localized samples. There is no obvious way to identify a national sampling frame for either state court cases or alternative third-party cases (though one could use information collected by the Administrative Office of the United States Courts to draw a national sample of terminated federal cases). Furthermore, if the research were to involve examination of institutional records, a national sample would require an unrealistic travel budget for research staff. Once it was determined that we would work with several local samples, we had to decide which local units to use. Our contract dictated the use of five federal judicial districts as the geographic units (which made sense, given that the federal court was to be one major source of cases) but left open the question of which specific districts were to be included.

We ultimately chose the following five federal judicial districts as our research sites: Eastern Pennsylvania, South Carolina, Eastern Wisconsin, New Mexico, and Central California. In choosing these districts, we considered a number of factors:

(a) geographic distribution
(b) demographic characteristics (urban-rural, racial compostion, population, median family income, etc.)
(c) economic characteristics of the district (nature of primary economic activity—commercial, manufacturing, or agricultural—and degree of economic growth)
(d) court characteristics (federal: per-judge caseload, federal court case mix; state court organization: unified or multitiered, nature of rules of civil procedure, arbitration requirements)
(e) research administration (ease of recruiting case coders, access to senior project personnel).

Obviously, many of these characteristics are interrelated, and, given the need to select only five districts, we had to use some dimensions as primary criteria. At the same time, we wanted to insure that we had a fair amount of variation along the other criteria. We chose two large urban districts, two small urban districts, and one predominantly rural district, with no two districts coming from the same region of the country.[9] The districts we chose provided substantial variation on all of the dimensions we identified as important. These variations are shown in Table 1.

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[8] The answer to the first question was dictated by the terms of our contract.

[9] We eliminated from consideration districts without a major law school located in the city where terminated case records for federal cases were maintained, since we needed to recruit law students as case coders.

Table 1. Characteristics of the Five Districts

Characteristic	National Average	Central California	New Mexico	Eastern Penn.	South Carolina	Eastern Wisc.
Population 1975 (in 1,000's)	2,367	10,759	1,144	5,092	2,816	2,831
Population change, 1970-1975	6.4%	3.9%	12.5%	−0.5%	8.7%	2.3%
Net Migration 1970-1975	2.5%	−0.5%	5.8%	−2.6%	3.4%	−0.2%
Population 1970 (in 1,000's)	2,250	10,343	1,016	5,112	2,591	2,768
Population growth, 1960-1970	11.1%	29.3%	6.8%	7.7%	8.7%	12.2%
Black population, 1970 (in 1,000's)	246	838	18	767	788	119
Population of Spanish heritage 1970 (in 1,000's)	—	1,768	407	nil	nil	nil
Urban Population 1970 (in 1,000's)	1,652	9,990	711	4,287	1,232	2,128
Median yrs. of education, 1970	11.0	12.4	11.1	11.7	9.8	11.6
Median household income, 1970	$7,945	$10,283	$6,790	$10,506	$6,909	$9,194
Number of farms over 10 acres, 1969	28,534	8,568	10,563	12,845	37,080	34,648
Percentage of land area in farms	45.4%	25.1%	60.2%	42.0%	36.1%	53.6%
Percent of labor force in blue collar occupation	44.7%	43.9%	27.4%	53.1%	58.8%	54.3%
State Court Organization	—	Multi-tiered	Unified	Overlapping Multitiered	Multi-tiered	Unified
State court use of FRCP	—	no	yes	no	no	yes
Compulsory arbitration in state court	—	no (thru 1978)	no	yes	no	no
Number of Federal judges, 1975	—	16	3	19	5	3
Federal caseload/judge, weighted 1975 total	400	414	385	242	520	383
civil only	293	270	264	193	402	282
Federal court efficiency, median disposition time, 1978 civil cases (in months) all cases	10	6	7	9	7	11
with no court action	6	6	4	5	5	7
During, or after pretrial, but before trial	17	16	10	13	12	21

Within each district chosen, we drew cases from the federal district court, one or two state courts of general jurisdiction, and three alternative dispute processing institutions. In each district we sampled from the court in the city in which the federal court was seated (Milwaukee, Philadelphia, Los Angeles, Albuquerque, and Columbia); in Eastern Pennsylvania and Eastern Wisconsin we also sampled from a court in an outlying county (Chester County, Pennsylvania, and Dodge County, Wisconsin). The alternative institutions were identified by project staff members who visited each site and made extensive contacts with persons knowledgeable about local dispute processing. Typically, even with substantial effort, we were barely able to find enough institutions that met our criterion and were willing to grant us access. In the end, we sampled eleven institutions; the American Arbitration Association was used as a source in all

five districts, and we identified two additional institutions in each district.[10]

The *how* issues deal with the practical problems of drawing samples and identifying disputes. Our universe consisted of all nonexcluded cases in which processing was terminated during calendar year 1978. For some institutions it was an easy matter to identify the population of terminated cases by using the institutions' own computerized information systems or in the case of several of the smaller courts by using the printed records maintained by the court staff. However, for several of the largest courts (e.g., the Philadelphia Court of Common Pleas and the Los Angeles County Superior Court) there was no usable computerized information identifying cases terminated in 1978; furthermore, the caseload of those courts was so large it was impractical to manually compile a list of terminated cases. For all of the institutions where we encountered this problem, we adopted a sampling scheme that attempted to match the "aging profile" of the population of cases terminated in 1978. The "aging profile" was defined for our purposes as the proportion of the cases terminated in 1978

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[10] We defined alternatives as "institutions or facilities that provide dispute processing services, including hearings, other than as a required step in litigation that has already been initiated."

Institutions or facilities is meant to include the American Arbitration Association, industry-organized arbitration, marriage counseling services, government administrative agencies, trade associations' consumer action panels, union review boards, and similar bodies that regularly provide dispute processing services. It is meant to exclude ad hoc mediation and arbitration. Ad hoc services are excluded because they are not, from a reform perspective, feasible alternatives to litigation: they cannot easily be provided or fostered by government.

Services including hearings is meant to exclude intermediaries such as officeholders, media action lines, and those government agencies that do not provide the opportunity for disputants to hear each others' arguments directly. These intermediaries were excluded because, given the limits to our research, it made sense to explore alternatives that employ due process approximately equivalent to that used by courts.

Other than already initiated litigation includes services that may terminate disputes, even though they may not be a complete substitute for litigation (administrative hearings).

Other than a required step includes cases in court where the disputants volunteer to use an in-court alternative (arbitration), but excluded that same service where it is involuntary. In the latter case the service is viewed as a step in litigation rather than an alternative to it.

The specific institutions sampled, in addition to the American Arbitration Association, were the Equal Rights Division of the Wisconsin Department of Industry, Labor and Human Relations, the Green Bay Zoning Board of Appeals, the Green Bay Planning Commission, the Philadelphia Board of View, the Philadelphia Commission on Human Relations, the Occupational Safety and Health Division of the South Carolina Department of Labor, the County Court Arbitration Program administered under the South Carolina Automobile Reparation Reform Act, the Construction Industries Division of the Commerce and Industry Department of New Mexico, the Employment Services Division of the Human Services Department of New Mexico, the Better Business Bureau of Los Angeles and Orange Counties, the Contractors' State Licensing Board of the California Department of Consumer Affairs.

that were filed in 1978, and in each of the preceding years. The specific procedure used was a form of cluster sampling.[11] As far as we have been able to determine, this procedure worked fairly well and provided us with an approximated random sample of cases terminated in 1978.[12]

In order to identify bilateral disputes involving individuals, we used a household screening survey. Households were selected through random-digit dialing (see Waksberg, 1978, for a description of the particular sampling technique used). Once we had contacted a household, we had to determine whether or not that household had had a dispute of the type that we wanted to include in our study. For purposes of the screening survey, we inquired about disputes that occurred during "the last three years." Since the screening survey was conducted in January 1980, this covered 1977 through 1979, deviating somewhat from the "terminated in 1978" rule (we felt it would have been impractical to narrow the time focus to "terminated during 1978," because the concept of terminated would probably not be clear to our respondents and because memories would probably not permit them to narrow the time frame to such a specific period). There are two general ways in which we could have determined whether or not a household had been involved in an eligible dispute: either we could have

[11] The specifics of the method used are as follows. For each of the institutions in which we encountered this problem, cases were entered into the institutions' record keeping systems (i.e., the docket books) by date of filing; our goal, on the other hand, was to obtain a sample of cases *terminated* during 1978 (even though the cases may have been filed five or more years prior to 1978). The sample of terminated cases had to be drawn in such a way that the proportions of the cases in the sample that were filed in each year starting with 1978 and going back through time approximated the corresponding proportions in the population of 1978 terminated cases; however, the courts that did not have lists of cases terminated in 1978 also had no information on what we came to call the "aging profile" (i.e., the proportion filed in each prior year) of terminated cases. In order to draw samples in these institutions, we first had to construct aging profiles. We did this by taking a sample of five to eight docket books for the years 1970 through 1978 (the sample of docket books for each year contained about 2000 cases), and counting the number of cases listed in each docket book that were terminated in 1978. From this information we created an estimated aging profile. We then used this information to construct a cluster sample in the following way. We counted the number of docket books covering each year that we decided to include based upon the aging profile (we omitted years with virtually no cases terminated in 1978, typically 1970 through 1972 or 1973), and identified the starting and ending docket numbers in each book. We then randomly selected a docket book with the probability of selection for a docket book based upon the aging profile. For each docket book sampled, we randomly generated a cluster of five case numbers from the docket book; these five case numbers served as random start points for a search for cases terminated in 1978.

[12] The one problem that we know occurred with this approach was an under-representation of "old" cases in Los Angeles. For some reason, our search points generally failed to turn up cases filed in 1973 or 1974. In retrospect, we probably should have formally stratified the sample by year filed, and then generated sufficient points for each year's strata.

asked directly, using open-ended questions, whether they had been involved in a dispute (perhaps attempting to define what we meant by "dispute"), or we could have obtained detailed information about a number of common problems that could have led to a dispute, and then used that detailed information to determine whether or not the household had been involved in an eligible dispute. We opted for the latter approach even though, as we recognized, the closed approach would tend to focus the responses toward what we had identified *a priori* as problems that led to disputes. Nevertheless, our judgment was that this approach had fewer problems and a greater likelihood of success. We did seek to compensate for the "narrowing" problem by including an open-ended probe at the end of the problem list. About 9.2 percent of the households contacted reported one or more eligible disputes from these households. We selected one dispute from each to include in our dispute sample.[13]

The most novel aspect of our data collection approach was the identification of disputes between organizations that were handled bilaterally. The organizational screening survey raised a number of important methodological issues: how to construct a sampling frame of organizations in a large geographic area; how to select a respondent within a contacted organization; and, having reached a respondent, how to select a single specific dispute for detailed examination (assuming more than one dispute). We decided to use random-digit dialing as the mechanism for selecting a sample of organizations; "organization" was operationalized as a business-use telephone (for purposes of this specific aspect of the study, governmental entities were excluded).[14] Once we had reached an organization, we had to select a respondent. We sought out respondents in the following order of preference: a member of the legal office staff; someone who routinely handled disputes for the organization; the manager, director, or owner. In the case of small organizations, interviewers were instructed to ask

[13] We devised a set of rules to choose among eligible disputes for households reporting two or more disputes.

[14] This technique has the property of weighting the probability of inclusion proportional to the number of telephone lines going into an organization; in effect, larger organizations were more likely to be included in the sample than were small, one-line organizations. We saw this as a desirable property for a sampling technique applied to organizations. In order to minimize the cost of the random-digit dialing operation, we drew upon phone numbers that we had identified as likely business numbers during the household screening survey, supplemented by other phone numbers identified as business phones during the random-digit dial surveys in our geographic areas.

for the manager, director, or owner.[15] As for selecting the specific dispute, respondents were asked to identify the most recently terminated dispute with which he or she was generally familiar; by selecting the most recent dispute we should have produced a random selection effect. In our organizational survey we decided to use a more open-ended approach in detecting eligible disputes. This decision was necessary to keep the cost of the survey to a minimum (and thus keep the interviews as short as possible), but it also reflected our judgment that the respondents we would reach during the survey would be more sophisticated than the respondents contacted in the household screener. Finally, the time frame used by the organizational screener was the twelve months prior to the interview (experiments with longer periods indicated that there was little increase in the number of disputes found if a time frame of two or three years were used).

The last issue, the *who* problem, concerned the actual interviewing process. Were we doing one single survey of dispute participants (lawyers, individuals, and organizations) or a series of separate surveys? The kind of information we were seeking was essentially the same for all participants: costs information (in terms of time and money), stakes and goals, major dispute processing decisions (e.g., if, when, and where to file the cases), information about relationships among dispute participants (between disputants, between lawyers and clients, and between lawyers), participant experiences, resources and capacity, negotiations and settlement, and subjective evaluations of the dispute processing experience. We knew initially that we would have to design at least two survey instruments: one for disputants and one for lawyers.[16] As we developed the survey instruments, we realized that we would have to conduct four separate surveys: lawyers (other than those directly employed by government), individual disputants, organizational disputants, and government lawyers. Even though we were seeking the same type of *basic*

[15] Because of the nature of organizational responsibilities and modern telephone systems, initial calls often produced referrals to someone at a different phone number; we accepted this as part of the process of dealing with organizations. In cases where we were referred to offices outside the area that we had initially called, we asked our eventual respondent to identify a dispute in the original geographic area.

[16] One reason for this was that in the early stages of the study we thought it would be necessary to employ lawyers as interviewers in order to secure the cooperation of lawyer respondents. Pretests (and later experience) demonstrated that this was not necessary.

information, it was necessary to ask different types of questions of our different respondent groups. Our questions about stakes (i.e., what was at issue in the case) and negotiations were essentially the same for all four instruments, but our questions concerning "capacity" (i.e., resources, experience, skill, etc.) were entirely different. Each of the survey instruments was 120 to 150 pages in length and required an average of one hour on the telephone to complete.[17]

One major operational question concerned the level of coordination among the surveys.[18] An early view saw a great deal of coordination. A staff person would be assigned to each case in the sample, and that person would coordinate all the interviewing associated with the case. It would be the case coordinator's responsibility to review each interview and seek to fill in missing information. That type of detailed coordination proved to be impractical, given time and financial constraints. In the end, the four surveys functioned as more or less separate operations. We did establish a "tracking" system that made it possible to use one interview to obtain information on names and addresses of the other potential interviewees to be fed back into the system, but that was the only feasible coordination.

V. LEARNING FROM HAVING DONE: THE SUCCESSES AND FAILURES OF THE COMBINED APPROACH

What happened when we actually implemented this data collection strategy? A total of 1649 cases were sampled from 12 courts, and 508 cases were taken from 11 alternative dispute processing institutions. The organizational and individual screening surveys provided 194 and 562 disputes, respectively.[19] Thus, the initial overall sample included 2912 cases. All of these cases were reviewed on the basis of information obtained from institutional records. Some cases were excluded on account of complexity, lack of an actual dispute, missing files,

[17] There were a variety of ambiguous situations where two of the survey instruments could be used (e.g., should an inside lawyer be interviewed with the lawyer instrument or the organizational instrument). We adopted a set of rules to resolve these ambiguities.

[18] Another operational question was whether to conduct the interviews in person or by telephone. Cost considerations in the end dictated telephone interviews. We were warned by several survey experts that we would have tremendous difficulty with the telephone medium given the length of our interviews. As best as we can tell, the medium did not generate these problems. We had few broken-off interviews, and a refusal rate within the range we had expected.

[19] The numbers of screening interviews conducted were 1508 and 5148 for the organizational and household surveys, respectively.

etc. The review process left 2721 cases; of these, an additional 90 cases were dropped from the data collection effort for financial reasons.[20] In the end, we sought to collect information from participants in 2631 disputes.[21]

The first obvious question concerns response rates. Unfortunately, we cannot compute any overall response rate for the surveys, since interviews with one respondent could lead to new potential respondents (previously unidentified disputants or lawyers); we do not have any way of knowing the number of potential interview targets. However, I can report on our ability to collect information about the fundamental case unit, since the number of cases was fixed by the sampling design. In addition, we will describe the problems that we met in contacting and interviewing dispute participants.

One of the most remarkable aspects of our experience was the generally high level of cooperation we received from the participants we sought to interview, particularly from the lawyers (cf. Danet *et al.*, 1980). Only 17.4 percent of the 3168 private lawyers we contacted refused to be interviewed, and only 1.3 percent of the 316 government lawyers refused. The refusal rates for the disputants we contacted was somewhat higher: 24.1 percent for individuals (n = 1166) and 24.6 percent for organizations (n = 1254). Small numbers of potential respondents claimed to have no memory of the dispute (or to have no access to their file for the case). Because of the length of the interviews (about one hour on average), respondents involved in more than one dispute in our sample were asked to go through the entire interview only once; abbreviated interviews were carried out for the other cases. This problem was most common for lawyers; about one-quarter of the completed lawyer interviews were of the abbreviated version; for organizational disputants, only 4 percent of the interviews were abbreviated for this reason.

We anticipated, and encountered, another problem that led to abbreviated interviews for two types of respondents. For both private and public (governmental) organizations, we expected that either many cases would be handled through routinized procedures or that we would be unable to locate any

[20] In order to control costs, we organized the surveys to release batches of cases into the interviewing pool. In the end, we found that we were exhausting our survey budget and decided *not* to release the last batch of cases.

[21] For reasons of expertise and practicality, we subcontracted the major survey operation, including much of the instrument preparation and pretesting, to an experienced survey organization, Mathematica Policy Research, of Princeton, N.J. The only survey that we actually conducted "in house" was the organizational screening survey.

person in the organization that worked on or recalled the particular case. For these situations, we tried to obtain some information about the *typical* case of the general type in our sample. About 26.6 percent of the completed organization interviews and 35.8 percent of the completed government interviews were of this kind.

Our major obstacle was locating disputants. Obviously, we had little trouble finding respondents whom we had initially identified through screening surveys. However, we found that most of these respondents either would not, or could not, identify a potential respondent on the other side of the case. For the individuals from the household screener, the opposing party was frequently a large, diffuse organization, and the respondent never knew or could not recall the specific person inside the organization who had been contacted. Many times, particularly in cases from the organizational screener, the respondent did not want us to contact the opposing party, either because of a fear that such a contact might cause further problems or because of a desire not to "inflict us" upon the other side.

For disputes identified through institutional records, we encountered a different type of problem. The primary contact that many third-party institutions have with disputants is indirect, through the disputants' lawyers. The institutional files typically have good locating information for the lawyers, but often have no information at all concerning the disputants. Thus, while we located 98 percent of the lawyers identified as potential respondents, we found ourselves able to locate only about 45 percent of the individual disputants and 80 percent of the organizational disputants involved in cases sampled through institutional records. Efforts to use the lawyers we contacted to aid us in locating the disputants were only minimally successful. Often the lawyers' information was out of date; by the time we conducted the interviews the cases were typically several years old.

In spite of these problems, we succeeded in completing 3873 interviews with dispute participants (as well as the 6656 screening interviews). These 3873 interviews covered 2011 disputes. We estimate that in only about 5 percent of these disputes did we collect data from all of the direct dispute participants, and in half of these cases at least one of the interviews was abbreviated in form. For 867 disputes we were

able to interview at least one participant from each side of the dispute.[22]

In some ways our surveys were successful, in others disappointing. In general, we found that our long, complex interview schedules worked well in capturing the information we were seeking. At the same time, early analyses seem to indicate that we did not need to allow for the level of complexity our questionnaires were designed to handle.[23] For example, we allowed for fairly complex negotiations involving three or more exchanges of offers and demands, but few of our cases involved this much negotiating activity.

We also did not anticipate the magnitude of the problem of tracking down disputants, particularly individual disputants. We were disappointed by our inability to find and interview a large portion of individual disputants. Similarly, while we expected to have some problem identifying an organizational spokesperson to interview about a given case, we did not expect to encounter the problem in a quarter of our cases; whether this problem reflected the lack of institutional memory or problems with the way we approached organizations, we cannot yet determine. Thus, there are two serious problems that any future surveys of the type carried out by CLRP will have to confront: (1) how to locate the actual litigants, and (2) how to identify appropriate organizational representatives.[24]

VI. CONCLUSION

If we were now to start CLRP all over again, given what we have learned over the past three years about collecting dispute processing data through survey methods, we would do many things differently. More important, however, is the fact that we would do most things the same way. Overall, the basic design worked well: we identified a wide range of disputes that covered all of the "boxes" in Figure 1, and we were able to contact one or more participants in 76.4 percent of the disputes

[22] One extremely interesting question for the sociology of law is the relationship between disputants and their lawyers; we estimate that included within our data set are about 600 lawyer-client pairs; 370 involve "long" interviews for both the disputant and the lawyer.

[23] As is always the case, we realize after looking at our data that we failed to ask some questions we should have asked, and that we should have asked some questions in a different way.

[24] We used two techniques for identifying organizational spokespersons (or, in Project jargon, K.O.D's, key organization decisionmakers): simply calling into an organization and asking whom one would talk to about a particular problem, and asking outside lawyers for the name of their contact person at the organization.

we sampled. On the other hand, to the extent that we wanted to contact as many of the dispute participants as possible, we were less successful; we probably contacted considerably less than half of the participants.

There is a difference between the ideal comprehensive study of dispute processing, and what one can do in practice. The survey methodology imposes substantial constraints; it cannot be used as a substitute for the anthropological technique of direct observation. On the other hand, the survey methodology allows one to look at a much broader range of phenomena at one time than is possible through direct observation; there really is nothing comparable to the anthropologist sitting in the village square for a large, urban environment like Los Angeles, or even Columbia, South Carolina.[25]

In the previous section, I summarized some of our experiences in implementing a large-scale survey design. Some of the response rate problems we encountered might be reduced in a future study, but it is likely that any national survey of the type we attempted will have similar difficulties. To some degree these problems may be unique to a study of court cases, but we suspect they are inherent in any large-scale study of a complex phenomenon. We are not aware of any other large-scale studies that attempted to conduct a set of interrelated surveys about a topic approaching the complexity of dispute processing. CLRP has been pushing at the limits of the survey methodology; modest expectations are in order.

Despite these qualifications, it seems clear that the survey methodology, particularly telephone surveys, can be used to study complex phenomena. We were especially pleased with our success in contacting and interviewing lawyers. Lawyers commonly transact business on the telephone and are comfortable with the medium. One might have much more difficulty with the telephone medium in a study of physicians, since medicine is much more a face-to-face profession.

Even though our experience with the survey method was generally positive, we recognize that other methods (observation, panel studies, etc.) may be required for empirical studies of many aspects of dispute processing. For example, we realized early in our work that it would be difficult to carry

[25] The "sitting in the village square" technique can be used to study microcosms of the large urban environment (see Felstiner and Williams, 1978; Buckle and Thomas-Buckle, 1981), but such studies look only at a very limited (though perhaps frequent) aspect of the disputing universe.

out an elaborate economic analysis of dispute decision making with the retrospective design we were using. Such an analysis would have required estimates of the probabilities of various possible outcomes. We recognized that it would have been impossible to get valid estimates of such outcomes through recall questions, since recall would be thoroughly contaminated by events that had occurred after the formulation of the probability assessments (assuming that such assessments were in fact ever made). Similarly, the CLRP paper in this volume on dispute transformation (Felstiner *et al.*, 1981) is in no small part an outgrowth of our frustration at not being able to look at the transformation process through the retrospective survey method.

What all this tells us is quite clear: survey methodology is a powerful tool to study dispute processing, but it is not fully adequate. Similarly, no single project, even one the size of the Civil Litigation Research Project, can be definitive. CLRP, and the data we have generated, represent an important point in the evolution of dispute processing research. Since we know that we will only be able to systematically analyze a small portion of the data we have generated, a major (and perhaps the primary) legacy of CLRP will be in the data we have collected, data that will ultimately be available to the scholarly community to explore and exploit.

For references cited in this article, see p. 883.