Research Note

STUDYING STRATEGIC LAWSUITS AGAINST PUBLIC PARTICIPATION: MIXING QUANTITATIVE AND QUALITATIVE APPROACHES

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The Petition Clause of the First Amendment protects any peaceful, legal attempt to promote or discourage governmental action at all governmental levels and all governmental branches. This paper describes our examination of SLAPP (strategic lawsuits against public participation) cases where citizens who contact the government are sued by the interests they oppose. We present the findings of a legal document analysis and summarize ongoing research to understand the social dynamic processes and extralegal outcomes of SLAPPs. The purposeful blend of qualitative and quantitative methods is highlighted as an appropriate approach for answering micro- and macrosociological questions involved in these cross-institutional disputes.

I. INTRODUCTION

This research explores the social, legal, and political impacts of multimillion dollar lawsuits filed against citizens or groups for advocating a viewpoint on a public issue in a government decisional process (Pring, 1985). Such public participation or citizen involvement in governance is an axiom of representative democracies, encouraged by a variety of legal and cultural norms and specifically protected by the Petition Clause of the First Amendment to the United States Constitution.[1] Yet a growing body of civil-damage lawsuits filed against such political participants by their opponents are threats to an active polity. While labeled as ordinary, apolitical, judicial claims, they are clearly reactions

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[1] The Petition Clause guarantees "the right of the people . . . to petition the Government for a redress of grievances" (U.S. CONST. amend. I).

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against past or anticipated opposition on political issues. Definitionally, litigation of this type claims injury from *citizen contact with a government official, agency, or the electorate on a substantive issue of public significance.* Thus, the courts are being called upon (and in some measure quite successfully) by filers to sanction presumptively constitutionally protected activity by targets. We have termed this political-legal phenomenon SLAPPs (strategic lawsuits against public participation).

Our study empirically tests for the first time the prevailing political and judicial assumptions that SLAPPs "chill," or deter, citizen participation.[2] In addition, the research provides a unique opportunity to analyze the structural interpenetration of the political and legal institutions involved in the disputes. The investigation thus integrates microsociological questions about the experiential world of disputants and their advisers with macrosociological questions concerning the structural consequences for political participation in a democracy. (For recent discussions of linking micro and macro levels of sociological analysis, see Alexander *et al.*, 1987; Collins, 1981; Knorr-Cetina and Cicourel, 1981.)

Our research to date suggests that SLAPPs: (1) are more than simple cases of dispute transformation (Felstiner *et al.*, 1980–81; Mather and Yngvesson, 1980–81); (2) use the courts to reprivatize and thus contain public grievances (Cain and Kulcsar, 1981–82); and thus (3) are unexplored examples of the use of law as an instrument of political power (Trubek, 1980–81; Kairys, 1982; Turk, 1976).

An inquiry that combines micro- and macrosocial questions ideally blends qualitative and quantitative approaches to research (Reichardt and Cook, 1979). In this note, we describe briefly such a research strategy. To do this we: (1) outline our past exploratory research, (2) summarize the findings of our analysis of legal documents in one hundred cases, and (3) describe our next multiphased research effort, supported by the National Science Foun-

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[2] That the judicial system assumes this type of litigation effectively "chills" public participation is evident in the language of judicial opinions. As the Supreme Court recently stated:

> A lawsuit no doubt may be used . . . as a powerful instrument of coercion or retaliation. . . . Regardless of how unmeritorious the . . . suit is, the [defendant] will most likely have to retain counsel and incur substantial legal expenses to defend against it. . . . Furthermore . . . the chilling effect . . . upon a [defendant's] willingness to engage in protected activity is multiplied where the complaint seeks damages in addition to injunctive relief (*Bill Johnson's Restaurants* v. *NLRB*, 461 U.S. 731, 740–41 (1983)).

One state supreme court was even more extreme in stating this presumption:

> [W]e shudder to think of the chill . . . were we to allow this lawsuit to proceed. The costs to society in terms of the threat to our liberty and freedom is beyond calculation. . . . To prohibit robust debate on these questions would deprive society of the benefit of its collective thinking and . . . destroy the free exchange of ideas which is the adhesive of our democracy (*Webb* v. *Fury*, 282 S.E.2d 28, 43 (W.Va. 1981)).

dation. We close by raising substantive questions that will guide the scholarship.

II. RESEARCH TO DATE: STRATEGY AND FINDINGS

A. *Defining the Phenomenon*

The initial puzzlement that led to this study was noticing the increasing incidence of the naming of environmental protection advocates and organizations as defendants in large civil damage cases (Michigan Law Review, 1975). This led to two seminars at the University of Denver supported by the Hughes Research and Development Fund, one on related legal issues and one on qualitative pilot studies of selected SLAPPs. Significant commonalities emerged, among them that the suits were focused on political speech, a form of advocacy historically viewed as the core activity to be protected by the Constitution's Petition Clause (Meiklejohn, 1979; Gunther, 1985: 972ff.).

We developed a four-pronged operational definition to capture the phenomenon under scrutiny. To be a SLAPP, a case must be:

1. a civil claim for money damages,
2. filed against *nongovernmental individuals and organizations*,[3]
3. based on *advocacy before a government branch official or the electorate*, and,
4. on a *substantive issue*[4] *of some public or societal significance*.[5]

This definition reflects the contemporary view of the behavior protected by the Petition Clause. Today, the right to petition has expanded far beyond its literal language of "petitions," "redress," or "grievances." The advocacy it covers includes *any peaceful, legal attempt to promote or discourage governmental action* (Stanford Law Review, 1984: 1244) *at all governmental levels and all governmental branches, including the electorate* (Library of Congress, 1973: 1031–32).

Disputes that meet these four criteria range from parents sued for complaining to the board of education about unsafe school buses to a grandmother sued for her city hall crusade against video game parlors to members of the Beverly Hills League of Women

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[3] Government officials are also protected by the Petition Clause. Their exclusion from the present study is based on their different and more diverse legal protections, legal-financial resources, social supports, expectations, and impacts as well as the need for research parsimony.

[4] By a focus on "issue" politics, we mean to exclude only campaigns for the election of individuals to public office, a fertile but distinct area for litigation.

[5] While the Petition Clause also protects the self-interested, even venal, seeker of private advantage (Stanford Law Review, 1984), our concern is specifically with the effect of litigation on issues of a broader, more common public interest.

Voters sued for an election campaign against a zoning change. SLAPPs were filed against people who lodged government complaints about police brutality, attorney malpractice, and industrial polluters, including a citizen sued for writing to the president of the United States to oppose a political appointment; consumer-complainants sued by their public utilities; women's rights, antinuclear, and environmental activists sued by local and state governments for their protests; and homeowners sued by a real estate developer who wanted to show them that "there is a price to signing a referendum petition."

B. Legal Document Analysis and Findings

By coding the information contained in the legal documents[6] related to one hundred SLAPPs[7] filed across the United States and in the District of Columbia,[8] we explored the legal statistics of these disputes. We found the cases to have the following characteristics (for a full discussion and statistical analysis, see Canan and Pring, 1988):

1. The forms of public participation that triggered the SLAPPs covered the political advocacy spectrum. A small minority involved the circulation of an actual petition for signatures. More common target actions were filing litigation, making formal government protests, reporting violations of law, testifying (even appearing) at public hearings, and submitting written opinions. Boycotts and demonstrations also triggered lawsuits, although less frequently.

2. The political concerns leading to SLAPPs ran the gamut of public interest issues, including zoning, land use, taxation, civil liberties, environmental protection, public education, animal wel-

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[6] Key documents—that is, the complaint, answer, motions and briefs for dismissal, summary judgment or demurrer, and court rulings, if any—were used to complete a 9-page code sheet describing the parties, issues, claims, and substantive and procedural history of the litigation. In-depth interviews with parties and counsel were pursued in several cases to assist in developing and refining the coding instrument.

[7] We obtained the cases from four sources: (1) the systematic perusal of a small random sample of six trial courts' records for 1983; (2) a mail survey of 975 public interest groups; (3) computer searches of legal literature; and (4) "outreach" publications and presentations. Cases found through traditional legal research avenues differed from those found through the other methods in two relevant respects: (1) the former tended to last almost two years longer, and (2) they were more likely to invoke the Petition Clause (74% versus 63%). These differences are undoubtedly due in part to these cases having endured through at least one reported judicial opinion and having been obtained through legal searches keyed on the subject, Petition Clause.

[8] Qualifying cases occurred in 48 counties in 26 states and the District of Columbia. Comparing these counties with the average for all 3,137 counties in the United States, the lawsuit locations were more urban, more densely populated, wealthier, and had slightly more mobile populations. On the political involvement indicator of percent of eligible voters voting in the last presidential election, there was little difference.

fare, health and safety, and the accountability of professionals and public officials. Metropolitan land development issues were by far the most frequent stimuli, with environmental and civil rights issues following in frequency.

3. Of the 772 targets named as defendants in these 100 cases, most acted as individuals, typically addressing the government/electorate as interested citizens, family members (e.g., parents), or members of voluntary organizations. While the majority were unexperienced politically, a substantial percentage were experienced advocates.

4. The 397 filers in these one hundred cases were overwhelmingly individuals acting on economic or occupational interests. Frequent filers were real estate developers, property owners, police officers, alleged polluters, public utilities, and state or local governments.

5. Both filers and targets represented all shades of political views, from radical and leftist-liberal to centrist to conservative and ultraconservative.

6. Both filers and targets were overwhelmingly local in their orientation, that is, lacking state, regional, or national affiliation.

7. Nearly half of the political actions in these SLAPPs were taken before local governments rather than at the state or national levels.

8. Six legal claims were the recurrent bases of the SLAPPs. Most frequent were defamation (libel/slander), business torts, and judicial process abuse; the next most common were conspiracy, civil rights, and nuisance.

9. Lawsuit claims did not correspond to the original public controversy (e.g., zoning or civil rights), but recharacterized the controversy in language that effectively assured court acceptance (e.g., libel or interference with economic advantage). In other words, the filers successfully enlisted judicial power against activities protected by the Petition Clause by rephrasing a facet of the public-political dialectic in private-legal terms.[9]

10. The relief sought ranged from $10,000 to $100,000,000, averaging $7,400,000. Injunctive and declaratory relief were rarely requested and even more rarely pursued.

11. Ultimately, final legal judgments favored targets in four-fifths of the disposed cases, but not before the passage of considerable time (an average of 32 months) and the involvement of a number of court levels.

12. Legal factors (e.g., type of damage claims, number of claims, amount and type of relief requested, duration, or number of appeals) could not adequately explain the legal outcomes of these cases. The structural characteristics we were able to infer

[9] Compare Mather and Yngvesson (1980–81) on rephrasing injury claims for specific audiences.

from the documents (e.g., number in party, geographic scope, or organizational strength) appeared no more promising. Targets' invocation of the Petition Clause did have an effect, however, a finding that points to the need for courts and parties to distinguish Petition Clause activity from unprotected tortious behavior.

Potential extralegal outcomes, such as the costs of lawsuit defense, other monetary losses, the personal costs of psychological trauma and of undermined belief in political participation, the ripple effect on other citizens' political involvement, and the diversion of resources from the original issue in dispute, were not captured in the legal documents. However, interviews, telephone calls, and correspondence with involved parties as well as background information collected during the law and sociology seminars at the University of Denver lead us to anticipate that such extra-legal outcomes are especially influential in SLAPPs.

C. Summary: What We Know and What We Don't Know

Through this quantitative analysis of documentary data (Canan and Pring, 1988), we presently know the "who, what, when, and where" of the social status and legal relationships between and among the disputing parties (Starr and Yngvesson, 1975; Abel, 1979; Galanter, 1974), the substantive contents of the disputes (Nader, 1980), and the strictly legal outcomes of the cases.

What we do *not* yet have is a clear understanding of the *social dynamic process* of SLAPPs nor their *extralegal outcomes*. By social dynamic process, we mean: (1) dispute-process factors per se (e.g., options, choices regarding grievances, arenas, and claims); (2) intraparty social factors (e.g., roles, motivations, attitudes, and perceptions); and (3) the social interactions (relationships) between and among the participants and their advisors. We do not know, for instance, how participants' aims, objectives, and choices were articulated over time (Felstiner, *et al.*, 1980–81; Merry and Silbey, 1984). Nor do we know how social-psychological variables influenced the perceptions and choices of grievances and claims or the selection of arenas (Coates and Penrod, 1980–81; Mather and Yngvesson, 1980–81). Extralegal outcomes include those effects on political, social, family, personal, economic, and financial relationships that are seldom found in legal documents.

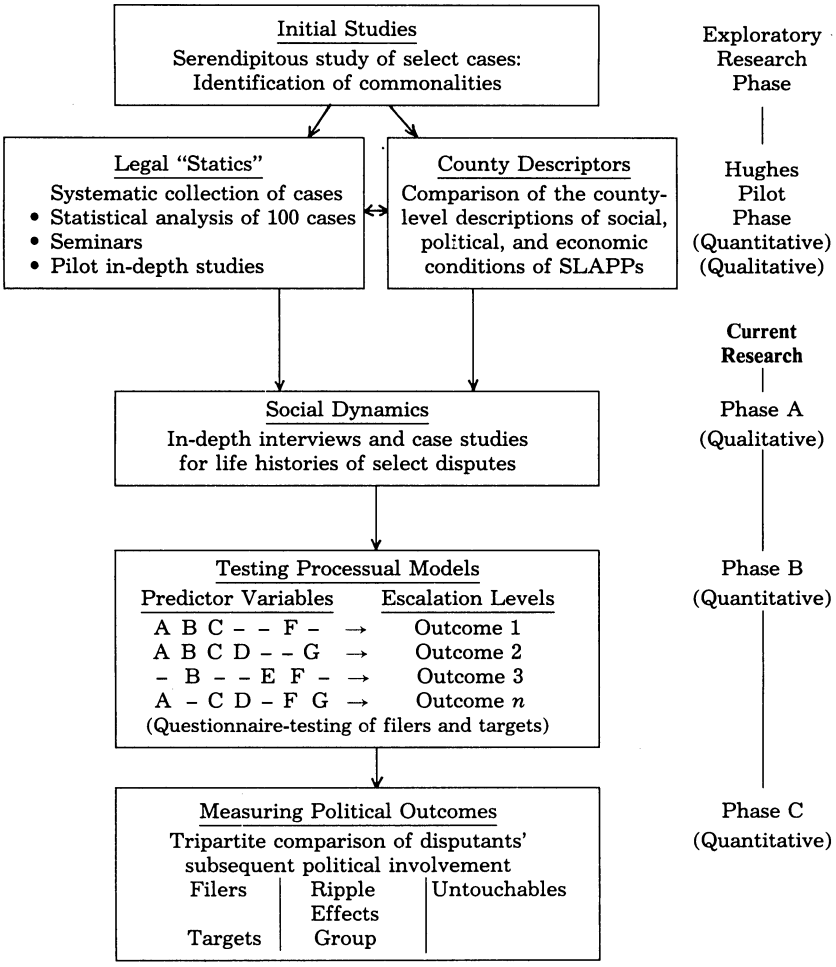
III. ONGOING RESEARCH

To address these challenging lacunae in our understanding of SLAPPs and their sociopolitical outcomes, we now turn to a three-phased extension of this work. Figure 1 presents the chronology of the research plan.

A. Qualitative Case Studies

The present inquiry, sponsored by the National Science Foun-

Figure 1. Research Progression.



dation, begins with in-depth qualitative interviews of participants in six to eight SLAPPs (Phase A in Figure 1). Phase A will produce case studies of the life history of a range of these disputes, capturing their dynamic social processes and outcomes. Previous quantitative research allows us to select cases that provide a cross-section of the sociopolitical issues in conflict, typical petition behaviors, types of communities, duration, party characteristics, data prospects, and dispositional status.

B. Quantitative Processual Models

From these in-depth interviews we will construct a series of interconnected processual models that predict various outcomes by levels of escalation or deescalation (Phase B in Figure 1). In the section of the figure labeled "Testing Processual Models," the

blank, independent variables indicate that we anticipate different predictors will be influential at different levels.

In Phase B we will quantitatively test the processual models by administering a standardized questionnaire to filers and targets randomly selected from one hundred SLAPPs whose legal statics are already known.

C. *Quantitative Measurement of Political Outcomes*

In the final phase, we will use a quasi-experimental design in measuring the impact of the SLAPP experience on subsequent political participation (Phase C in Figure 1). The political outcomes reported by participants in Phase B will be compared to the political involvement of two groups representing variation in political activity and lawsuit involvement.

IV. DISCUSSION

We believe that combining quantitative and qualitative methods to interpret this complex phenomenon allows us to build on the strong features of both approaches. Case studies and cross-sectional data are complementary sources that enrich the capability of each methodology. By combining methodological approaches and phasing the research enterprise, we can design improvements in each subsequent phase that build upon variety in method and levels of analysis. In this way both research questions and researchers grow increasingly sophisticated, knowledge about the appropriate informants is increased, and the ability to evaluate and understand responses is enhanced.

The conceptual rewards of this approach have already been substantial. For instance, knowledge derived from the qualitative and quantitative work to date has revealed some surprises and shaken a few of our (and possibly others') assumptions about SLAPPs. For example, the local individual nature of both filers and targets described above shakes the "Goliath versus David" assumption, the political spectrum represented on both sides shakes the "tool of conservatives against liberals" notion, and the fact that the vast majority of targets ultimately wins (legally, anyway) forces us to examine the nature of the "chilling" factors and outcomes more rigorously.

Additionally, by going beyond the documentary analysis we have refined our understanding of political outcomes. We had assumed, based on the prevailing judicial assumptions and evidence in legal documents, that targets would find the SLAPP experience intimidating, a negative sanction that would result in their being "chilled" and apolitical today. Thus, we hypothesized that they would be relatively quiescent when compared to two other groups of active citizens: those who were politically involved with the targets but were not named in the subsequent lawsuits (the "Rip-

ple Effects group" in Figure 1) and those who were politically active but have never heard of such lawsuits against citizen petitioners (the "Untouchables" in Figure 1).

Many of the targets were in fact as we had predicted. However, interview data show concrete instances of the reverse situation in which the SLAPPs had actually spurred the targets' political activities (e.g., increasing their organizational membership, going to law school to become better equipped for future political involvement, and successfully running for local political office). Thus, we have interestingly already found interview-based evidence to challenge the prevailing "chill" hypothesis, at least as an absolute.

V. CONCLUSION

We anticipate that this research will contribute to a number of interrelated micro- and macrosociological questions, including:

1. What empirical support exists for various social-psychological factors in the emergence and life history of disputes (e.g., attribution, equity, and frustration-aggression)?
2. How do perceptions of the issues at stake, the assessment of personal resources, and the assumptions made about the normative structure of judicial as compared to political arenas merge to influence decision making about conflict options?
3. Is the judicial assumption of the "chilling" effect of lawsuits on political participation supported under scientific scrutiny?
4. How must dispute-transformational analysis be extended in order to look explicitly at the interpenetration of political and legal institutions?
5. How can litigants' assumptions of institutional differentiation (Luhmann, 1982) be squared with theories that see more overlap than distinction between politics and law (Kairys, 1982)?

We believe that our study has a greater chance answering these scholarly and policy questions because the research design intentionally mixes quantitative and qualitative approaches. We hope that the answers provided by this mix will better inform the significant macro- and microscopic social issues involved in cross-institutional disputes.

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