

# Grievances, Claims, and Disputes: Assessing the Adversary Culture

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## INTRODUCTION

What is the origin of disputing? How do disputes develop? At what rate are different problems transformed into disputes? These questions are rarely addressed (but see Felstiner *et al.*, 1981), despite the centrality of the study of disputes in the sociology of law and the growing body of empirical work about the disputing process (Abel, 1980: 813). The emphasis of the dispute processing perspective has been on the linkage between law and legal institutions and a broader array of dispute processing mechanisms. But this perspective has limited our understanding of disputing as a social process.

Disputes begin as *grievances*. A grievance is an individual's belief that he or she (or a group or organization) is entitled to a resource which someone else may grant or deny. People respond to such beliefs in various ways. They may, for example, choose to "lump it" so as to avoid potential conflict

(Felstiner, 1974). They may redefine the problem and redirect blame elsewhere. They may register a *claim* to communicate their sense of entitlement to the most proximate source of redress, the party perceived to be responsible. As Nader and Todd (1978: 14) suggest,

The grievance or preconflict stage refers to a circumstance or condition which one person...perceives to be unjust, and the grounds for resentment or complaint.... The grievance situation...may erupt into conflict, or it may wane. The path it will take is usually up to the offended party. His grievance may be escalated by confrontation; or escalation may be avoided by curtailing further social interaction....

Consumers, for example, make claims when they ask retailers to repair or replace defective goods. Claims can be rejected, accepted, or they can result in a compromise offer.

If the other party accepts the claim in full and actually delivers the resource in question in a routine manner ("Yes, we'll repair your new car; just bring it in"), there is no dispute. Outright rejection of a claim ("The car was not defective; it broke down because of your misuse") establishes an unambiguous dispute; there are now two (or more)

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parties with conflicting claims to the same resource. A compromise offer ("We'll supply the parts if you will pay for the labor") is a partial rejection of the claim, which initiates negotiation, however brief, and thus constitutes a dispute. A delayed reaction by the claimee construed by the claimant as resistance is considered to be a rejection of the claim. Encountering difficulty in obtaining satisfaction of an ostensibly accepted claim also creates a dispute. *A dispute exists when a claim based on a grievance is rejected either in whole or in part.* It becomes a civil legal dispute when it involves rights or resources which could be granted or denied by a court.

#### DISPUTING AND THE ADVERSARY SOCIETY

The manner and rate at which disputes are generated is sometimes taken as an indicator of societal "health." This view is most characteristic of the work of historians writing after World War II (see particularly Hofstadter, 1948; Hartz, 1955). They presented a picture of American society as a stable balance between conflict and calm, a society in which all disputes were resolved within a framework of consensus. Some may question the validity of that picture as a description of *any* period in American life (see Potter, 1971; Bell, 1976), but the experience of the last two decades has certainly undermined both the social basis upon which the balance of conflict and calm may have existed...and its viability as an ideology or a system of legitimizing beliefs.... We increasingly hear the voices of those who perceive and fear the growth of an "adversary society" (e.g., Rehnquist, 1978), a society of assertive, aggressive, rights-conscious, litigious people ready and eager to challenge

each other and those in authority (see Huntington, 1975; Nisbet, 1975; Kristol, 1979). Images of our allegedly unprecedented assertiveness, of the ingenious ways which we have found to fight each other, flow through the popular culture, from *New Yorker* cartoons about children threatening to sue their parents for forcing them to drink their milk to palimony suits against celebrities.

There is, of course, another view of contemporary American society, a view which suggests that we are, in fact, relatively uncontentious and even passive (see Steele, 1977: 675; Sarat, 1977: 448-454; Nader and Serber, 1976). Americans are said to be reluctant to admit that their lives are troubled and conditioned to accept circumstances and treatment which are far from ideal.... Since our institutions respond slowly, inefficiently, and reluctantly, we learn not to complain, not to pursue our grievances or claim our rights. Even when we do, we find that appropriate institutions do not exist (Nader, 1980). As our society becomes ever more complex and expansive, it becomes easier to avoid conflict or to ignore it merely by moving on (Felstiner, 1974). People unable or unwilling to assert their rights or defend their interests may be easily victimized by self-interested organizations seeking to perpetuate a social and economic status quo (Nader and Serber, 1976). Proponents of this view typically question the adequacy of existing political, social, and economic arrangements to achieve justice.

It is ultimately both an empirical question and a matter of definition as to whether ours is a society of rights consciousness and conflict, or one of acquiescence and equilibrium. Arguments about the level and consequences of conflict in American society, to the extent that they are based on data at all, are often rooted in comparative analyses (e.g. Ehrmann, 1976) or cyclical interpreta-

tions of history (Potter, 1971). But there is another approach which might be employed to describe and assess levels of conflict in the United States. Lempert (1978: 98, 135) has suggested that the occurrence of particular types of conflict can be measured against a pre-established baseline. The baseline might be a measure of the number of transactions of a particular type, the number which result in injury, or the number which result in grievances and the making of claims. For example, the level of conflict about the quality of medical care might be measured by comparing the quantity of medical service—e.g., visits to doctors—to the amount of conflict generated by such services—e.g., the number of medical malpractice suits. Malpractice suits might also be compared to some measure of medical ineptitude such as rates of unnecessary or unsuccessful surgery. The baseline approach seeks to identify the realization of a social condition—e.g., conflict-against its potential.

We employ such an approach to describe and analyze the generation of disputes in American society. This paper presents a conceptual map of the process of dispute generation and develops empirical estimates of the incidence of grievances, claims, and disputes. . . . The data are neither fully comprehensive<sup>1</sup> nor the most appropriate for testing the adversary society argument, but

<sup>1</sup> To forestall misinterpretation of the data obtained from our Household Screening Survey, it is appropriate to set forth clearly and openly what is not claimed or intended. The survey *does not constitute a definitive estimate of households' incidence rates of all grievances, claims, and disputes*, for at least the following reasons:

\* The role of the survey in the CLRP's research design was to identify civil legal disputes which could be processed bilaterally and which involved a household member acting as a private individual in a nonbusiness capacity. (These disputes were the subject of lengthy followup interviews, which were also administered to

they are relevant to, and illustrative of, the central themes in that argument.

## SAMPLE AND METHODOLOGY

Data for this article are derived from a telephone survey of households conducted as part of the Civil Litigation Research Project. . . . That project was designed to explore the contribution of courts to civil dispute processing and to describe and explain patterns of investment in disputing and dispute processing. The survey was administered in January, 1980, to approximately 1,000 randomly selected households in each of five federal judicial districts: South Carolina, Eastern Pennsylvania, Eastern Wisconsin, New Mexico, and Central California.

The survey sought to identify the occurrence in the general population of civil disputes of the type that might be brought to the courts or nonjudicial alternatives. Our approach was to focus on three stages of the

other disputants sampled from court records and nonjudicial third-party institutions.) Therefore, the survey did not cover a definitive list of possible problem areas for individuals and ignored the problems of groups, organizations, or other collectivities. Restricting our focus to civil legal disputes eliminated many kinds of troublesome experiences. Intra-household conflicts were ignored; few such conflicts (at least at the present time) are resolved by the courts. Problems with business or rental property, difficulties in collecting fees for professional services, and problems encountered on behalf of businesses, professions, or organizations generally, were excluded by the restriction to private, non-business problems.

<sup>b</sup> Disputes in which courts *must* play some role, such as suits for divorce or estate settlements, were excluded because they could not be bilateral disputes.

<sup>c</sup> The survey was conducted in five judicial districts. Even though these districts were chosen for their geographic and demographic diversity, they are not a random sample of the nation.

<sup>d</sup> Additional biases include ignoring households and individuals without telephones and relying on one person to report the experiences of all in the household.

disputing process: grievances, claims, and disputes. In the grievance stage an injurious experience is perceived as a problem, and some other party is blamed for it. While recognition of problems and attribution of causes are in theory separate activities, we are unable, because of our retrospective research design, to treat them as such. Respondents were asked whether anyone in their household had experienced one or more of a long list of problems within the past three years and, if so, about how that problem was handled. Where possible the interviewer tried to establish whether a household was significantly *at risk* of a particular type of grievance? In addition, for most problems they were asked whether that problem involved \$1,000 or more. This threshold served as an operational definition of the kind of "middle-range" disputes which were the exclusive preoccupation of the Civil Litigation Research Project.

About 40 percent of households sampled reported at least one grievance for which the time frame and amount at issue criteria were met. Those who reported a grievance were asked whether they had sought redress from the allegedly offending party, indicating that the claims stage had been reached. Finally, we inquired about the result of that claim. Did the parties reach an agreement? If so, was there any difficulty involved? An unre-

solved claim or one resolved only after initial resistance was overcome was recorded as a dispute.

Supplementary questions sought information about the timing, nature, and results of reported disputes. Respondents were also asked whether either side had used a lawyer or had sought assistance from some other third party. They were asked if they had any prior relationship with the opposing party and, if so, whether that relationship had been changed by the dispute.

## DESCRIBING THE STRUCTURE OF CONFLICT: GRIEVING, CLAIMING, AND DISPUTING

### Grieving

Disputes emerge out of grievances. Consequently we look first to the incidence of grievances to establish the baseline potential for disputes. There is, however, a conceptual problem. Grievances are composed of concrete events or circumstances which are relatively objective, but they are also composed of subjective perceptions, definitions, and beliefs that an event or circumstance is unwarranted or inappropriate.... Individuals may react differently to the same experience. One buyer of a defective good may find it unacceptable and remediable; another may regard the bad purchase as "inevitable" and "lump it" or write it off to experience. According to our definition, the first individual has a grievance; the second does not. Grievance rates reflect both the occurrence of certain events and a willingness by the participants to label those events in a particular way. Care must be taken to avoid confusion between the expressed rate of grievances among our survey respondents (as well as the claims and dispute rates which flow from it) and the degree of injury which they may be said to have suffered.

<sup>2</sup> Households differ in both degree and type of exposure to risks of grievances, depending upon the amount and the kinds of interaction they have with the outside world. People who do not rent, for example, cannot have landlord-tenant problems: they are not in a relationship from which such problems could arise. The more a person drives a car, the higher the risk of an auto accident, all else being equal. We ascertained the following kinds of risks: owning real property, owning a home built within the last five years, holding a mortgage, having recent home repair work, renting a home or apartment, being divorced, and owning property jointly with someone outside the household.

The survey began by asking about the occurrence of 33 types of problems. These have been aggregated into nine general categories. . . . The first line in Table 1 shows the percentage of households reporting grievances of each type.<sup>3</sup> Slightly over 40 percent of the households in our sample had some middle-range grievance within the three-year period surveyed; approximately 20 percent reported two or more different grievances. We cannot say whether this number is high or low, since there is no baseline of potential grievance-generating events or relationships against which to compare that number. However, two things can be said. First, experiencing significant grievances is by no means a rare or unusual event. Smaller grievances no doubt occur more often, larger ones less frequently. Second, the incidence of middle-range grievances provides a substantial potential for conflict.

The range of reported grievance experience varies considerably. On the low end, 6.7 percent of the households surveyed reported a grievance arising out of the payment or collection of debts, while 17.1 percent of the households which rented had experienced grievances in dealing with land-

lords. The range and distribution of grievances reported in Table 2 is quite similar to what has been found in other studies, both in the United States and abroad (cf. Cunan, 1977; Sykes, 1969; Abel-Smith et al., 1973; Cass and Sackville, 1975). Grievances involving racial, sexual, age, or other discrimination in employment, education, or housing were reported by 14 percent of the households. It is likely that the level of discrimination grievances has risen in recent years as a result of increased public awareness and sensitivity to this type of problem, although we cannot confirm this with longitudinal data. At the same time, public attention to the problem of discrimination may have produced a decline in instances of discriminatory behavior. Here again we recognize the problematic relationship between experience and perception in the generation of grievances and the evaluation of grievance rates.<sup>4</sup>

### Claiming

Given the perception that some event or circumstance is unacceptable and remediable, we can ask how assertive those who experience grievances are in seeking a remedy. Possible responses, as previously mentioned, range from avoidance (Felstiner,

<sup>3</sup> The household was the aggrieved party in most cases for several reasons. Fully twenty-two of the thirty-three specific problems for which we probed were household grievances by their nature; eight could involve a grievance both of and against the household; and three involved grievances against the household. This apparent bias largely reflects our focus on disputes arising from members acting in a private non-business capacity. It also reflects our methodological expectation that seems to have been accurate. For example, 2.8 percent of the households reported some property damage or personal injury other than auto accidents "through the fault of someone else" which involved over 51,000. In contrast, only 0.5 percent reported that a household member had "been accused of injuring anyone or of damaging someone else's property, either accidentally or on purpose."

<sup>4</sup> One reason for this relatively high grievance rate may be that the survey was careful to remind respondents both of a number of potentially illegal discriminatory grounds ("...race, sex, age, handicaps, union membership") and of discriminatory actions ("Have you or anyone in your household been denied a job or promotion or lost a job because of discrimination? ...had any problems with working conditions or harassment, or being paid less?...had any other employment problem because of discrimination? ...any problem with discrimination in schooling or education? ...in buying or renting housing? ...any other problems of discrimination because of race, sex, age or anything else?").

**TABLE 1**  
**Grievances, Claims, and Outcomes: Rates by Type of Problem.**

	All Grievances	Torts	Consumer	Debt	Discrimination	Property	Government	Post-Divorce	Landlord
Grievances <sup>a</sup> (Percent of Households)	41.6% (5147)	15.6% (5147)	6.9% (5147)	6.7% (5147)	14.0% (5147)	7.2% (3786) <sup>e</sup>	9.1% (5147)	10.9% (1238) <sup>f</sup>	7.1% (2233) <sup>g</sup>
Claims (Percent of Terminated Grievances)	71.6 (2491)	85.7 (559)	87.3 (303)	94.8 (151)	29.4 (595)	79.9 (193)	84.9 (240)	87.9 (51)	87.2 (307)
Disputes:									
(Percent of Claims)									
a. No Agreement	32.0	2.8	37.1	23.9	56.0	32.1	40.7	37.7	55.0
b. Agreement After	30.8	20.9	37.9	60.8	15.5	21.8	41.4	49.3	26.7
c. Dispute	82.8 (1766)	23.5 (487)	75.0 (263)	84.5 (142)	73.5 (174)	53.9 (154)	82.1 (203)	87.0 (45)	81.7 (267)
Lawyer Used <sup>d</sup> (Percent of Disputes)	23.0 (1100)	57.9 (107)	20.3 (187)	19.2 (120)	13.3 (128)	19.0 (84)	12.3 (183)	76.9 (39)	14.7 (218)
Court Filing <sup>d</sup> (Percent of Disputes)	11.2 (1062)	16.7 (167)	3.0 (197)	7.6 (119)	3.9 (128)	13.4 (82)	11.9 (159)	59.0 (39)	7.3 (218)
Success of Claims (Percent of Claims)									
a. No Agreement (0)	32.0	2.8	37.1	23.9	56.0	32.1	40.7	37.7	55.0
b. Compromise (1)	34.2	85.4	15.2	23.5	11.3	9.7	16.3	35.5	10.3
c. Obtained Whole Claim (2)	33.8	11.9	47.7	52.6	30.7	58.3	41.0	26.8	34.8
d. Success Scale Mean <sup>e</sup>	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
	1.02 (1762)	1.09 (479)	1.11 (266)	1.29 (142)	0.73 (174)	1.26 (154)	1.00 (203)	0.89 (45)	0.80 (267)

<sup>a</sup> Observations were weighted by the population of each judicial district so that the five samples could be combined. Weights were calculated to preserve the actual number of observations. Numbers in parentheses are the total upon which the reported proportions are based. The miscellaneous "other" category (see Appendix 1) is included in the "all grievances" column but omitted as a separate item from this and subsequent tables (3.5 percent of households reported an "other" grievance).

<sup>b</sup> Proportions are of households reporting one or more grievances of each type.

<sup>c</sup> These are proportions and numbers of households at risk. Households at risk of property problems are those owning their own home, apartment, or land within the three-year period (73.8 percent of all households). Households at risk of postdivorce problems were the 24.0 percent of all households which had a divorced member. The 44.2 percent of households which rented within the three years were at risk of landlord problems.

<sup>d</sup> The number in these rows differ slightly due to missing data.

<sup>e</sup> The success of claims was scaled 0, 1, or 2: 0 if no agreement was reached, 1 if the agreement was a compromise, and 2 if the entire claim was met.

1974), through repair without direct confrontation, registering a claim, to a demand for monetary compensation. Unless a claim is made, a dispute cannot occur. Other responses, such as avoidance, may be accompanied by feelings of bitterness or resentment which could lead to later conflict.

The second line of Table 1 shows that claiming is a frequent response to middle-range grievances. Apart from discrimination problems, there is considerable uniformity in behavior across problem types. The range of claiming fluctuates between 79.9 percent (real property) and 94.6 percent (debts). While most of the problems are substantial, . . . there is, nevertheless, considerable variation between problem types in stakes, situations, and the configuration of the parties. This variation makes the uniformly high claiming rates all the more significant.

The one exception to this pattern is found among discrimination grievants, of whom only 29.4 percent made a claim. This finding is not entirely surprising. Curran reports virtually the same proportion of job discrimination grievants "taking some action" (1977: 137). There are several explanations for this anomaly. First, it may be that remedies for discrimination are less available and accessible than those for other types of problems. The evidence is mixed. Remedial devices such as equal opportunity commissions are not recent developments. . . . Indeed, a review of specialized nonjudicial dispute processing agencies in the five geographic areas covered by our survey found that for discrimination problems there are "many alternatives available with low access costs" . . . . The assertion that a lack of available mechanisms for processing rejected claims may explain many cases where grievances are lumped or endured (Nader, 1980) is challenged by this finding. But, availability is not accessibility;

just because mechanisms exist does not mean that they are, in fact, attractive to, or usable by, people seeking redress. This seems especially true in the discrimination area where available mechanisms have been found to be inefficient and ineffective (Crowe, 1978).

Perhaps people do not make claims unless they feel confident that something can be done should the claim be accepted. Perhaps a lack of assertiveness has more to do with the substance of the problem itself. In discrimination situations it seems easier for those who believe that they have been unfairly denied a job or home just to keep on looking. Securing a job or home is likely to be much more pressing and important than filing a claim for something which is made undesirable by the very act that generates the grievance. "I need a job, and who would want to work there anyway" would not be an inexplicable response. For this reason, the survey asked whether discrimination grievants who made no claim had nonetheless registered a complaint without asking for anything, and we found that an additional 26.6 percent had done so.

Furthermore, there may be some stigma attached to the grievance itself or to the act of assertion. Victims, for example, may blame themselves for the unfair treatment. In discrimination grievances, especially, victory may turn into defeat. Those who are assertive, even if vindicated, are branded as troublemakers. Furthermore, grievants may be uncertain about the fit between their own perceptions and definitions of grievances and those embodied in statutes or otherwise recognized in their community. Indeed, both the law and popular expectations in this area of relatively new rights appear unsettled. Many who experience discrimination problems are, as a result, uncertain whether their grievance constitutes a sustainable claim.

Whatever the explanation for the low

claiming rate for discrimination problems, what remains striking in our data is uniformity, not variation. Our data indicate the existence of a widespread readiness to seek redress of substantial injuries. Contrary to what some believe, Americans are assertive when the stakes are substantial-able and willing to seek redress from wrongdoers.

### The Incidence of Disputes

When a claim is made, the allegedly offending party may accept responsibility and accede to the demand for redress. If this happens there is no dispute. Claims are made and promptly satisfied. But resistance may be engendered, responsibility denied. Even if responsibility is accepted, unacceptable levels of redress may be offered. Resistance to accepting responsibility or providing redress establishes adversarial interests.

Table 1 reveals that among the 1768 claims made by respondents experiencing grievances almost two-thirds (62.6 percent) were rejected or resisted and thus resulted in disputes. These disputed claims are almost equally divided between those which were completely rejected and produced no agreement—42 percent of all claims (Table 1, Row 3a)—and those in which initial resistance gave way to some agreement about responsibility and remedy—30.6 percent (Row 3b). The dispute rate of 62.6 percent is subject to many interpretations. We do not have trend data. (Indeed, to our knowledge, ours is the first attempt to collect and report data of this kind.) It seems, however, safe to say that among middle range grievances, adversarial relations result in a substantial majority of situations in which claims are made. Whether this is too high or too low, conducive to a healthy social life or deleterious in and of itself, we leave for others to decide.

While problem-specific variation is some-

what greater in disputing than in claiming, here again we are struck by the patterned uniformity among six of the eight problems. Putting aside torts and property matters, the incidence of disputing varied only from a low of 73 percent in discrimination claims to a high of 87 percent in those arising in response to postdivorce problems, with over 80 percent of claims to landlords, former spouses, debtors, creditors, or government agencies leading to disputes. Tort claims are least likely to be contested. This reflects, we believe, a highly institutionalized and routinized system of remedies provided by insurance companies, and the well-established customary and legal principles governing behavior in this area.

### The Role of Lawyers and Courts

The language of rights and remedies is preeminently the language of law. One might logically ask where, in all of this, the law and legal institutions play a role. There is relatively little empirical work on the role of lawyers and courts in disputing (see Curran, 1977; Mayhew and Reiss, 1969; Friedman and Percival, 1976; Sarat and Grossman, 1975; McIntosh, 1981). An assessment of the role of law, legal institutions, and legal services in the development of, or response to, conflict requires us to confront the problem of baselines. We agree with Lempert's (1978: 95) comments about the methodology needed for evaluating the dispute resolution role of courts, and would extend his suggestion to the role of lawyers as well.

A fundamental problem is to develop a measure of judicial involvement in community dispute settlement that can vary over time. . . . For most purposes, the base should relate to the number of occasions on which the court might be asked to settle disputes.

The ideal base is probably the number of cognizable disputes arising within a court's jurisdiction. At any point in time, the degree to which a court is functioning as a community dispute settler could be measured by the percentage of such disputes brought to it for resolution. Unfortunately, information on disputes that are not officially processed is seldom available over time.

Our survey covers only one point in time, but we are able to estimate the rates at which lawyers and courts are used in relation to the number of reported disputes in our sample. Thus we can provide an empirical estimate of the rate of direct participation of lawyers and courts in these middle-range disputes.<sup>5</sup>

Examining Table 1 (Row 4), we find that relatively few disputants use a lawyer's services at all. Lawyers were used by less than one-fourth of those engaged in the disputes we studied. There are, however, two significant exceptions to the pattern. The role of lawyers is much more pronounced in post-divorce and tort problems. . . . In the former, the involvement of lawyers is a function of the fact that many of these problems, e.g., adjustment in visitation arrangements or in alimony, *require* court action. In the latter, the contingent fee system facilitates and encourages lawyer use.

Few disputants (11.2 percent) report taking their dispute to court. Excluding post-divorce disputes, where court action is often required, that number is approximately 9 percent. These findings do not mean that courts or lawyers play a trivial role in middle-range disputes. Claims are made,

<sup>5</sup> We recognize, of course, that lawyers and courts do more than process such disputes; much of their activity is administrative or aimed at dispute prevention. We also recognize that the role of lawyers and courts may be very different in small or large disputes than it is in the area of middle-range disputes. Nevertheless, our data provide a first, albeit tentative and limited, overview of their role in those disputes.

avoided, or processed at least in part according to each party's understanding of its own legal position and that of its opponent: that understanding reflects both the advice that lawyers provide and the rights and remedies which courts have in the past recognized or imposed. . . .

### The Success of Claims

Overall, 68 percent of those who made a claim eventually obtained part or all of what they originally sought. This is roughly comparable to the results of previous research. . . . Those who claim may do so because they are confident their claims are justified. Indeed, the modal pattern among middle-range grievances is for claims to be made, disputes to result, and agreements to be reached. Claimants who reached an agreement after some difficulty—d so had disputes—were more successful than claimants reporting no difficulty reaching an agreement. Fully two-thirds (66.1 percent) of the first group obtained their whole claim, while only a little over one-third (39.7 percent) of the second got all they asked for. Conflicts, disputes, and difficulties are often engendered by the desire for, and are necessary in order to obtain, complete satisfaction.

Some important specific variations do, of course, show up in the results of claims. Virtually no tort claimants (26 percent) were unable to reach an agreement, but note that, of the 97.3 percent of tort claimants recovering something, very few, obtained all of their original claim. One might expect tort claims to be inflated for negotiating purposes, an expectation reinforced by the low proportion reporting any difficulty reaching an agreement. This pattern also suggests an acceptance by claimants of insurance companies' valuations of damage, perhaps reflecting a reluctance to dispute with such organizations.

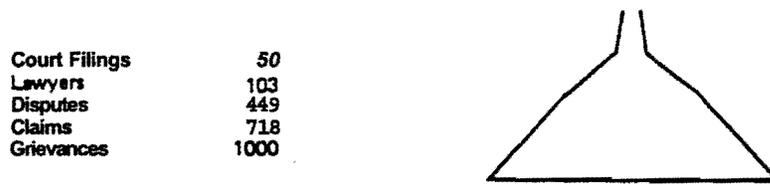


FIGURE 1A. A Dispute Pyramid: The General Pattern (No. per 1000 Grievances)

	<u>Tort</u>	<u>Discrimination</u>	<u>Post-Divorce</u>
Court Filings	38	8	451
Lawyers	116	29	588
Disputes	201	216	765
Claims	857	294	879
Grievances	1000	1000	1000

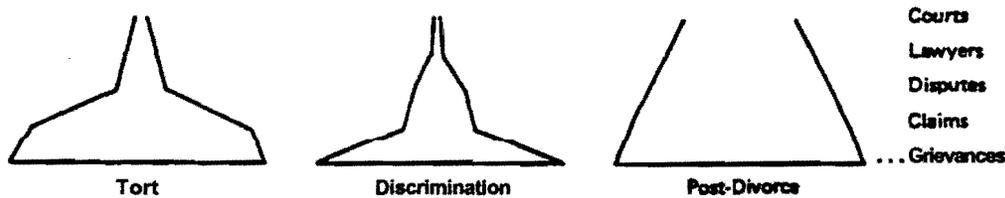


FIGURE 1B. Dispute Pyramids: Three Deviant Patterns (No. per 1000 Grievances)

While most tort claims resulted in a compromise agreement, other claims were much more likely to have all-or-nothing outcomes. To some extent this reflects the nature of many problems. For example, property disputes involving permission to build are not amenable to compromise. Some opposing parties were unlikely to offer anything: more than half of all discrimination (58.0 percent) and tenant (55.0 percent) claimants failed to obtain any redress at all. Such claimants are apparently in a particularly weak bargaining position and also may lack effective recourse to any third-party remedy system. We shall take up this point again.

**Summary**

We can visualize the process of dispute generation through the metaphor of a pyramid (see Figure 1A). At the base are grie-

vances, and the width of the pyramid shows the proportions that make the successive transitions to claims, disputes, lawyer use, and litigation. Figure 1B presents three contrasting patterns—the disputing pyramids for torts, post-divorce, and discrimination grievances.

Torts show a clear pattern. Most of those with grievances make claims (85.7 percent), and most claims are not formally resisted (76.5 percent result in immediate agreement). As a result, disputes are relatively rare (23.5 percent of claims). Where they occur, however, lawyers are available, accessible, and are, in fact, often employed (57.9 percent). Moreover, the same can be said for the employment of courts (at least in comparison with other problems). The overall picture is of a remedy system that minimizes formal conflict but uses the courts when necessary in those relatively rare cases in which conflict is unavoidable.

The pattern for discrimination grievances is quite different. Seven of ten grievants make no claim for redress. Those who do are very likely to have their claim resisted, and most claimants receive nothing. Only a little more than one in ten disputants is aided by a lawyer, and only four in a hundred disputes lead to litigation. The impression is one of perceived rights which are rarely fully asserted. When they are, they are strongly resisted and pursued without much assistance from lawyers or courts. Of course, we do not know how many of these or any other grievances would be found meritorious in a court of law. Nonetheless, as perceived grievances, they are a source of underlying tension and potential social conflict.

Postdivorce problems engender high rates of grievances, claims, and disputes, and are characterized by frequent use of lawyers and courts. As a result, almost half of all grievances lead to court involvement. While the court's activity in many, possibly most, of these cases is more administrative than adjudicative, this is, at least formally, the most disputatious and litigious grievance type we have measured.

Dispute pyramids could be drawn for the other types of problems, but they would all be quite similar: high rates of claims (80 to 95 percent of grievances), high rates of disputes (75 to 85 percent of claims), fairly low proportions using a lawyer (10 to 20 percent of disputants), and low litigation rates (3 to 5 percent of disputants). Indeed, the most striking finding in these descriptive data is again the general uniformity of rates at each stage of the disputing process across very different types of middle-range grievances.

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