2009

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JOURNAL OF MANAGERIAL ISSUES
Vol. XXI Number 4 Winter 2009: 552-579

A Transformational Model of Legal-Claiming*†

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Few areas of conflict in organizations are as potentially disruptive and costly as legal claims by employees. Approximately 21,000 lawsuits involving employment issues were filed in federal courts alone during 2000 (USC, 2001). Of these, approximately 70% involved employment discrimination lawsuits (SHRM, 2000). Even this number represents the tip of a vaster iceberg. Legal-claiming represents a much broader series of actions than court appearances. For example, discrimination lawsuits, of which there were 364 in 2002 (EEOC, 2003), do not represent the total number of discrimination charges filed. Discrimination charges, of which there were 84,442 in 2002, involve the formal written request to a government entity for intervention. For purposes of this article, we use the definition of "legal-claim" given by Goldman (2003) to define discrimination charges--a complaint by an aggrieved employee to a governmental entity for the purpose of seeking a remedy provided by law.

Researchers have only recently begun to investigate legal-claiming behavior (e.g., Goldman, 2001; Lind *et al.*, 2000; Groth *et al.*, 2002). Much of this research focuses on organizational justice as a predictor of legal-claiming (Goldman, 2001; Lind *et al.*, 2000). In addition to organizational justice, other theories

*We wish to thank the northeastern office of the EEOC for their help in collecting this data and Jessica Bagger, Ryan O. Murphy, and two anonymous reviewers for their insightful comments on earlier drafts of this article.

†This paper previously appeared in Vol. 16, No. 4 (Winter 1990): 417-441.

(e.g., attribution theory, Groth *et al.*, 2002; social information processing theory, Goldman, 2001) also have been offered as alternatives to explain legal-claiming. Despite the success of these models in describing specific aspects of legal-claiming, current research is hampered by the prevailing paradigm that views legal-claiming as a static phenomenon, with little emphasis on how these disputes develop over time (for an exception, see Lind *et al.*, 2000). A dynamic perspective suggests that, among other things, the numerous theories proposed as alternatives to explain legal-claiming are, in fact, not competitive alternatives but appropriate explanations for specific temporal periods in an extended and unfolding conflict process.

In the present article we propose a model of legal-claiming that recognizes the dynamic quality of the conflict leading up to the legal-claim. This perspective focuses on how conflicts change over time and how various theories of organizational behavior may explain events at different temporal stages leading up to legal-claiming. We frame these stages using the transformational perspective of disputing proposed by Felstiner, Abel, and Sarat (1980-1981). The transformational perspective focuses on the changing nature of disputes over time and, in particular, argues that disputes—including legal claims—go through three stages (which Felstiner *et al.* label "naming," "blaming," and "claiming") that lead to the final stage, "disputing." The nature of the conflict changes as it progresses between each stage, and we focus on the transformations between each of Felstiner *et al.*'s dispute process stages.

This article focuses on discrimination claims since they represent the largest category of legal-claims filed by employees against employing organizations (Goldman, 2003). For organizations, responding to these employment discrimination charges is costly, time-consuming, and disruptive, regardless of the litigation outcome. Furthermore, the problems associated with the filing of discrimination charges may erode organizational commitment and job satisfaction (Bies and Tyler, 1993) and harm the organization's reputation (Walsh, 1997). Additionally, outcomes resulting from discrimination claims may encourage government interference in the structuring of business practices. For example, in 1997, Texaco announced a $176 million settlement in a race discrimination lawsuit, including a detailed plan to diversify the workforce, that was in response to a consumer boycott and plans for a stock divestiture (*Washington Post*, Dec. 19, 1996). Finally, there are ethical concerns: discrimination violates prevailing moral and ethical standards. For these reasons, understanding why employees file claims of discrimination is of practical concern.

There has been relatively little research in the area of organizational behavior as to the causes of employment discrimination claims. This is puzzling, given the enormity of the problem to organizations. The answer may lie in the unusual difficulty of obtaining data directly from claimants. Since formal discrimination claims are typically viewed as the first step in litigation, claimants--either through personal choice or by following attorney instruction--are generally reluctant to talk about their reasons for claim-filing. In addition,

the possibility that claimants may yet return to their former employers can also have a "chilling effect" on their willingness to discuss their cases. For these reasons, individual-level data have only infrequently been available to researchers.

The effect of this data restriction is that much of the analysis of this area has been of macro-level trends done by economists (e.g., Siegelman, 1991). Whereas this research has greatly aided our ability to predict trends as to when and in what circumstances employment discrimination lawsuits are likely to increase at a societal level, it has been less helpful in explaining why individual employees actually file such claims (Donohue and Siegelman, 1991). Much more in-depth, micro-level empirical analysis is required to answer this question (e.g., Barry and Shapiro, 2000; Olson-Buchanan, 1997).

However, an individual-level theoretical framework of the dispute process does exist, which could help guide researchers in addressing this hole in existing claiming research. The sociolegal approach of Felstiner *et al.* (1980-1981) emphasizes the transformation of dispute behavior at the individual level: naming, where a person identifies a particular experience as injurious or harmful–the "perceived injurious experience"; blaming, involving attributions of causation of the harm to some person or organization; and claiming, in which a person seeks compensatory remedies by voicing the grievance to the person or entity believed to be responsible. A claim enters the disputing stage when it is rejected in whole or in part; this rejection need not be explicit, but may be a delay that the claimant construes as resistance. Felstiner *et al.* note that perceived injurious experiences, grievances, and disputes are "subjective, unstable, reactive, complicated, and incomplete" (1980-1981: 637).

The purpose of this article is to propose a "transformational" model of employee discrimination legal disputes that extends Felstiner *et al.*'s (1980-1981) framework of naming, blaming, claiming, and disputing. We focus on the transitions between each of these stages, or the transformational stages. As part of this model, we pay particular attention to relevant literatures and related concepts such as self-categorization theory, attribution theory, social accounts, organizational justice, conflict escalation, and social-information processing theory. The theme of this article is change. Specifically, our interest is in the transformation of the events that give rise to a legal dispute over time. It is a theoretical article that is constructed and illustrated using qualitative data and existing research and which has practical implications for managers.

In the following section, we discuss the theoretical basis for this article. This model is illustrated in Figure I, and outlined below. In describing each stage of the model, related psychological theories and concepts are discussed to explain how an event transforms into a dispute. After this we review an exploratory, qualitative study that supports the transformational nature of disputes and offer related propositions. The article concludes with managerial and research-related implications, as well as suggestions for future research.

THEORETICAL BACKGROUND

Overview of Transformational Model of Disputes

Felstiner *et al.* (1980-1981) outlined a model of the transformation of disputes that dominates sociolegal (e.g., Kritzer *et al.*, 1991) and justice research (e.g., Bies and Tyler, 1993; Lind, 1997). This model assumes that "disputes are . . . social constructs . . . [that] exist only in the minds of the disputants" (Felstiner *et al.*, 1980-1981: 632-633). Felstiner *et al.* argued that perception and interpretation are crucial in determining whether an injury is "transformed" into a dispute. The focus of this transformational view of disputes is the idea that disputes are not "things," occurring at specific points in time, but can be better understood as "processes," developing over time. The key, Felstiner *et al.* argue, is to study the "conditions under which injuries are perceived or go unnoticed and how people respond to the experience of injustice and conflict" (1980-1981: 632). Felstiner *et al.* did not specifically focus on legal-disputes in their model; however, researchers have applied portions of it to legal-claiming (e.g., Lind *et al.*, 2000).

In the mind of the perceiver, disputes proceed through a labyrinthine course; each turn presents an individual with an abundance of sociological, psychological, organizational, economic, and institutional choices. The primary implication of the transformational perspective of disputes is that "how an individual psychologically transforms an injurious experience into a legal claim may be the central theoretical question to be answered in building a model of why employees do or do not go to court" (Bies and Tyler, 1993: 353). In a sense, the significance of an event cannot be judged by the event itself, but by the movement of the event through time. Questions remain, however, as to **how** injuries are transformed from a perceived injurious experience to naming to blaming to claiming and, finally, to disputing. We propose a model that incorporates various theories and factors that likely influence the transformation of the event between each of these stages.

Injurious Experience to Naming: Self-categorization Theory. An event occurs, an individual feels negative emotion, and the event is perceived as injurious. Felstiner *et al.* (1980-1981) term such experiences perceived injurious experiences. In an attempt to understand the effect associated with the experience, individuals look to their backgrounds and past experiences and draw from their present abilities (cf. Weiss and Cropanzano, 1996). These factors have a large influence on how a person will perceive and categorize events (Bandura, 1986).

One important piece of information that affects the transformation of the event from a perceived injurious experience to "naming" involves how similar employees have been treated in comparison to others and, in particular, the majority. If the employee is to name the event as discrimination, he or she must perceive not merely that he or she has been treated badly but also differently.

In other words, individuals name the situation in one of two ways: as a mere unfavorable event or as a particular type of unfavorable event, one involving discrimination.

Self-categorization theory provides an explanation for how employees come to name an event as discrimination. It suggests that strong group-identities tend to act as cognitive schemas (Fiske, 1995), guiding perceptions of incoming events. Stated differently, a strong identity turns group membership into a conceptual prism through which events are perceived. Relative to their weak group-identity counterparts, those individuals with strong group identities are more likely to interpret an event through the lens of their group membership (Turner *et al.*, 1987; Turner and Oakes, 1989). For this reason, strong group identification raises the likelihood that an event will be construed as an act of discrimination, rather than simply as an unfortunate event. Consequently, individuals with strong group-identities are more likely than those with weak identities to attribute a harm to group membership.

Notice that this mechanism has a subtle but important implication. When a worker has a strong group-identity, the same injury is likely to be seen as more serious than when a worker has a weak identity. This process may not be intuitively obvious, so it is worth a closer look. Consider an injury that is inflicted on an individual as a result of group membership. Notice that *everyone in the group is at risk* for similar injuries. In addition, since strong group identities are unlikely to change, the wronged individual is at risk of additional harm sometime in the future. Now consider an injury that is inflicted on an individual out of personal dislike or animosity. While such events can be quite painful, they are particularistic. Other members of one's group are less likely to be impacted. In addition, the wronged individual might well be able to alleviate future harm by exiting the relationship. In other words, when someone has a weak group-identity there is likely to be a readily available (and potentially effective) retreat option. When someone has a strong group-identity, retreat may mean abandoning one's comrades to a similar fate and, in addition, may still fail to deter future acts of discrimination.

Naming to Blaming: Attribution Theory and Social Accounts. Naming provides focus for the dispute process detailed by Felstiner *et al.* (1980-1981). If an event is named as discrimination, it transforms into a violation with moral undertones, compelling individuals to lay blame for the violation. In such cases a person often transforms a perceived injurious experience into a grievance. To do this, a person must attribute the injury to the fault of someone or something else from whom a remedy is expected (for a more complete discussion of these points, see Cropanzano *et al.*, 2003; Folger and Cropanzano, 2001; Folger *et al.*, 2005). The inclusion of fault within the definition of grievance limits the concept to injuries viewed as both violations of norms and remediable. This definition takes the grievant's perspective: the injured person must feel wronged and believe that something should be done in response to the injury. To summarize, a grievance must identify someone or something as the cause of

the harm and must be accompanied by a sense of injury (Felstiner *et al.*, 1980-1981). In contrast, when a grievance is named as an unfavorable event (but not as discrimination), an individual is less likely to lay blame for the violation because of the absence of fault. In such cases, the odds of the individual progressing to the blaming stage may be substantially reduced. Two theories may affect this transformational stage: attribution theory and social accounts.

Attribution theory relates to the transition between naming and blaming because it predicts which events will be classified as mere unfortunate events and which will be termed grievances. Attribution theory (Weiner, 1979, 1985) provides a conceptual connection between a person's injuries and his or her response by identifying the source of the injury. It states that individuals make causal attributions about others' behaviors, which aids them in the formation of a response. When an individual receives an unfavorable outcome and perceives others' intentions as high in blameworthiness, the individual is likely to assign blame for the event (Shaver, 1985; Gilbert, 1995).

Though an important process, the fact that individuals make attributions is, in and of itself, insufficient to move the process from naming to blaming. The more fundamental issue is that attributions are not completely objective; they contain certain systematic biases (Gilbert, 1995). Among these is the "self-serving" (Greenberg *et al.*, 1982) or "egocentric" (Ross and Sicoly, 1979) bias. Research has demonstrated a well-established tendency for perceivers to take credit for positive events and to blame the situation (or other people) when things go wrong (Breckler *et al.*, 1991; Taylor, 1989). Indeed, these self-serving attributional predilections have been manifested in many different domains, including teamwork (Johnston, 1967), schoolwork (Arkin and Maruyama, 1979), gambling (Gilovich, 1983) and sports (Grove *et al.*, 1991). The self-serving bias exists in work settings as well. For example, when an individual experiences workplace injuries, he or she tends to blame external factors more frequently than internal factors (Au *et al.*, 2001; Groth *et al.*, 2002; Prussia *et al.*, 1993). This attributional tendency suggests that when something goes wrong, workers are less likely to take personal ownership and more likely to blame someone else.

While all accounts of attribution theory emphasize that employees are apt to externalize blame for a negative event it is also important to ascertain which external agent is more likely to be held accountable. In this regard, Sheppard, Lewicki, and Minton (1992) are careful to distinguish between workers blaming their supervisors and workers blaming their employing organization as a whole. Sheppard and his colleagues observe that employees tend *not* to blame systems, unless they have significant compelling evidence to do so. Sheppard *et al.* argue that people tend to view "established" systems as fair, and reason that if they receive some unfavorable outcome, it must be due to the actor who caused the injustice. This person is often the boss. For this reason, we anticipate that individuals pursuing claims will be more likely to hold their direct supervisor responsible and less likely to hold their employing organization responsible.

Research by McFarlin and Sweeney (1992) supports this proposition.

The social accounts provided by blamed parties influence the extent to which the event is perceived as a grievance and the supervisor (or organization) is blamed and, therefore, the likelihood that an individual will proceed from naming to blaming. Social accounts, or explanations, have been shown to mitigate feelings including injustice and disapproval, depending on the type and adequacy of explanation offered (Shapiro, 1991). When social accounts are provided, they alter the way that an individual perceives an event. When given the "right" social account, individuals classify an event as unfortunate rather than as a grievance.

Blaming to Claiming: Organizational Justice Research. When blaming occurs and an individual perceives another person (e.g., supervisor, co-worker) or the organization as responsible for the grievance, he or she may make an internal claim regarding the grievance. Felstiner *et al.* define "claiming" as occurring when "someone with a grievance voices it to the person or entity believed to be responsible and asks for some remedy" (1980-1981: 635). As such, a "claim" involves an intraorganizational protest. The likelihood that an individual will transition from blaming another to claiming is influenced by the individual's perceptions of process and outcome unfairness.

Organizational justice theories emphasize perceptions of fairness. Although the number of types of justice vary (e.g., Colquitt, 2001), at least two types of justice have been found to be significant predictors of legal-claiming in organizations (Goldman, 2001; Sheppard *et al.*, 1992): (1) distributive justice (Adams, 1965), which relates to the fairness of outcomes received and (2) procedural justice (Thibaut and Walker, 1975; Lind and Tyler, 1988), which focuses on the fairness of the procedures used to arrive at outcomes.

Distributive injustice leads individuals to seek restoration of perceived inequity (Walster *et al.*, 1978). For example, distributive injustice is related to a number of "antisocial" behaviors in organizations (Giacalone and Greenberg, 1997), such as employee theft (Greenberg, 1990), sabotage (Giacalone *et al.*, 1997), and legal-claiming (Lind, 1997) that may be used to restore equity. Procedural injustice may also cause employees to claim, but for different reasons than distributive injustice. Several arguments have been made as to why procedural justice matters to employees. Among the most compelling are: (1) employees value procedural justice as a social norm so that violation of it implies violation of important normative standards (Cropanzano *et al.*, 2003) and (2) the "voice effect," which argues that employees value the opportunity to have their opinions heard in the organization (Folger, 1977; Shapiro, 1993). A sizeable number of studies report that procedures providing disputing parties an opportunity to voice their opinions are seen as fairer (e.g., Lind *et al.*, 1990). As a result, violation of these procedures causes employees to retaliate against the source of the procedural injustice (Goldman, 2001).

Claiming to Disputing: Conflict Escalation and Social Information Processing Theory. It is certainly true that, at times, injustice can be a strong

motivator of behavior (Bies and Tripp, 2001; Bies *et al.*, 1997). However, this is not always so (Mark and Folger, 1984). In many instances individuals seem to tolerate unfairness without taking overt action (Martin, 1986). One key to understanding this hesitancy to act can come from a close examination of Felstiner *et al.*'s (1980-1981; see also Hensler *et al.*, 1991) disputing stage.

Generally speaking, commentators have often discussed the leap from claiming to disputing as if it occurred in one fell swoop. In fact, legal disputes are difficult and stressful processes, fraught with risks and sacrifice even for successful claimants. Even individuals who see their claims as meritorious are often hesitant to incur the costs and hazards of seeking a remedy. Consequently, conflicts tend to escalate gradually, starting small and – if the underlying problem is not addressed – growing worse over time (Coates and Penrod, 1980-81; Glasl, 1982). For this reason, we anticipate that wronged employees will take their initial steps into disputes only tentatively, by emphasizing low-cost, "in-house" dispute resolution procedures (for reviews, see Lewin, 1987; Ury *et al.*, 1988). Legal claims should generally follow failed attempts at internal resolution.

Legal claims also generally follow individuals' interactions with other people. Social information processing (SIP) theory proposes that work attitudes and behaviors are largely the result of processing information from the social environment rather than individual predisposition (Salancik and Pfeffer, 1978). Consistent with this, existing research indicates that encouragement or discouragement from friends, family, co-workers or management affects the likelihood that an individual will actually make a formal legal claim that is external to the organization (Goldman, 2001). Indeed, the actions of third parties have frequently been mentioned as a factor motivating individuals to pursue a claim or as a reason for them to "over-perceive" a conflict (Nord and Doherty, 1994). Frequently, it is someone other than the claimant who conceives of the idea of making a protest (Lind, 1997). For example, May and Stengel (1990) in a study of 240 dissatisfied patients found that those who sued their doctors had significant support from relatives, friends, or lawyers.

SIP theory is particularly useful in understanding how employees respond to ambiguous events in the workplace. In these circumstances, the worker is likely to use social information to better understand the ambiguous events. When events are unambiguous, the worker does not need others to help him or her interpret events. The transformation between claiming and disputing is influenced by SIP theory to the extent that the individual relates his or her experience in the claiming stage to co-workers and friends.

Summary and Conclusion. To review, prior to entering into the disputing stage, the injurious experience evolves, passing through stages that may include naming, blaming, claiming, and disputing. The event occurs prior to the naming stage. Using self-categorization theory, the person identifies the nature of the experience by labeling the experience: "Was this experience injurious or harmful?" If "yes," and the injury is named as a grievance, the

individual typically seeks to lay blame for the event. The transformation from naming to blaming stages involves both attribution theory and social accounts. Attribution theory-related processes help the individual to distinguish whether the experience was injurious or grievous in nature. Social accounts may mitigate the nature of the harm by providing an explanation that leads the individual to view the event as injurious. Individuals who perceive the event as grievous and lay blame external to themselves often make an intra-organizational claim. The transition between blaming and claiming is affected by organizational justice. Individuals perceiving the event as fair generally do not enter the claiming phase. However, individuals perceiving unfairness generally do enter into the claiming phase. The nature of the outcome of the intra-organizational claim made in the claiming phase influences whether the individual transforms from claiming to disputing. If the individual perceives the claiming stage as successful he or she most likely will not enter into the disputing stage. In cases where the individual does not perceive the claiming stage as successful, he or she is likely to evaluate the probable success of transforming the claim into a dispute. This evaluation involves processes described in two literatures: conflict escalation and social information processing theory.

This transformation process is based on Felstiner *et al.*'s (1980-1981) original theoretical model; however, to date, empirical investigation of the individual-level claiming behavior described in the model is sparse. In the following section, we use an exploratory investigation of individual-level discrimination legal-claiming behavior to support our proposed transformational extension of Felstiner *et al.*'s theoretical model, and to offer related propositions for future empirical research.

METHOD

Overview

This study focused on individuals who had initiated the process of filing a "claim" with the Equal Employment Opportunity Commission (EEOC), the federal agency charged by law with overseeing all federal discrimination claims about work situations determined to involve potential employment discrimination. The formal filing of a charge of discrimination with the EEOC is often referred to as a "claim," although this should not be confused with Felstiner *et al.*'s (1980-1981) term of the same name. Felstiner *et al.*'s "claim" refers to an intra-organizational claim. In their terms, the extra-organizational EEOC claim should be thought of as a "dispute." This point in the disputing process was chosen based on conversations with employers and lawyers in this field and because it represents the first point in time during discrimination disputes that employees seek official extra-organizational support for their position. Historically, about 20%-25% of claims filed with the EEOC eventually

result in complaints filed in federal court (personal communication, Noel Bosco, Administrative Office of the U.S. Courts, Nov. 12, 1996).

Procedure

Gaining Cooperation of the EEOC. Prior to granting access to interview claimants, the EEOC wanted evidence that the interview questions had some basis in practice as well as theory. Consequently, the cooperation of six attorneys in the northeastern United States who specialize in equal employment opportunity (EEO) litigation was solicited. Only one attorney agreed to cooperate with the study, and the other lawyers indicated that their reluctance to cooperate was because of the risk that information collected may be obtained by opposing parties during the discovery process should the discrimination claims result in lawsuits. Because the research interview information is not covered by attorney-client privilege, the referring attorney reviewed the extensive informed consent clause and all interview questions used. All respondents were informed of and agreed to the consent clause prior to being interviewed. The referring attorney was present during interviews for which impending legal action posed particular concerns and gained ownership of all interview audiotapes post transcription.

Individuals that perceived employment discrimination and contacted the attorney were referred to the researchers. These individuals were potential and actual clients of the attorney. The initial set of questions for the main study was generated over a seven-month period from these 17 interviews, from a review of the literature in organizational behavior, and from conversations with colleagues and attorneys who specialize in EEO litigation. Based on the interviews, questions were developed that covered three primary areas: (1) informed consent conditions, (2) demographic data (11 questions), and (3) factors influencing respondents' motivations to speak with the attorney (32 questions). Questions included in the last section focused on incidents that prompted respondents to consider consulting an attorney, complaints made to individuals in the organization, why respondents spoke with an attorney when they did (and why they had not seen an attorney earlier), factors that would influence respondents to proceed with or drop further legal action, and what remedies respondents were seeking. All study questions are available upon request from the first author.

Main Study. A commissioner of the EEOC was contacted at its national headquarters in Washington, DC, where the results of the interviews were presented to him. The Commissioner assisted in securing the cooperation of a northeastern district office of the EEOC where the actual intake of cases occurs. Researchers first had to sign confidentiality agreements, and were then granted access to claimants who contacted the District Office to make appointments to discuss their case with EEOC intake officials. Prior to respondents being interviewed by EEOC officials, we were allowed to contact and interview them at the District Office. All respondents were asked the same set of revised interview

questions that were the product of the initial development of questions, with further follow-up questions.

Sample

The sample consisted of 42 individuals who had contacted the District Office regarding work situations the individual thought involved employment discrimination. Of these individuals, 38 (90%) agreed to participate in the study. Respondents were 61% female, 53% black and 47% white and were, on average, 35 years old. One sample z-tests for proportions consistently yielded nonsignificant findings, indicating that our sample is representative of the population of EEOC claimants (population statistics obtained from EEOC, 1999). (For the following data, we report rounded percentages of respondent job category and current job status and typical organizational industry.) The respondents were employed as technical support (21%), law enforcement/security (18%), skilled tradepersons (16%), unskilled labor (16%), medical-related staff (11%), administrative support (8%), and miscellaneous (8%). At the time of the interviews, nine (24%) were still working with the same company, 28 (74%) were no longer with the same company, and the current status of one respondent was unclear (3%). Thirteen (34%) respondents were unemployed at the time of the interview. The organizations involved reflected typical organizational industries of EEOC cases: state and municipal governments (18%), entertainment-related (16%), health-related (16%), retail (11%), non-professional services (11%), wholesale (8%), professional offices (8%), telecommunications (8%), and government (3%) (EEOC, 1999). Whereas we sought individuals in the disputing stage of Felstiner *et al.*'s (1980-1981) claiming model, there is one important limitation of this sample: current results alone do not directly allow for identification of individuals that do not progress from claiming to disputing.

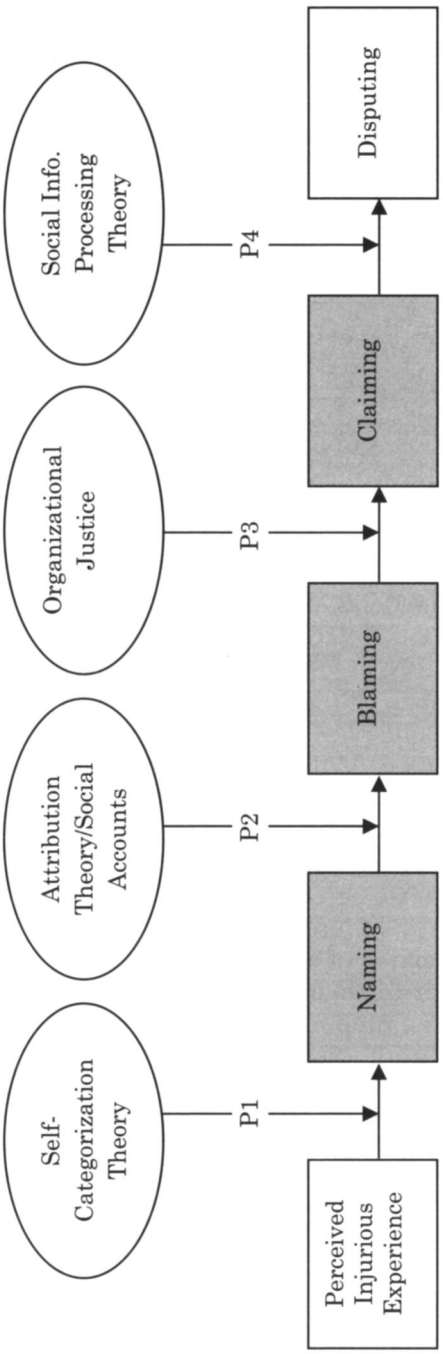
All 38 respondents were interviewed during a three-month period. The interviews occurred immediately prior to respondents being interviewed by staff members of the District Office. No one other than respondents and members of the research team sat in on the interviews. The interviews lasted approximately 55 minutes each and were audiotaped and transcribed to ensure accuracy. Transcripts averaged 44 double-spaced pages. Respondents' names were deleted from the transcripts to ensure confidentiality. In addition, archival data were reviewed, including copies of documents filed with the EEOC, correspondence associated with the claim, and related documents such as performance appraisals. Follow-up interviews were conducted as needed to clarify particular points.

Data Analysis

We carefully reviewed the interview transcripts to generate detailed chronologies for each respondent. These chronologies summarized respondent information as a timeline. The next analysis phase involved developing and refining key points for which to search in the interview responses. Using the interview questions and chronological information, we generated matrices to summarize respondent information. This resulted in 23 matrices, with each matrix having subcategories of information (mean of 2.6 subcategories; range from zero to 11 subcategories). The information summarized by the matrices included: demographic information, respondents' perceived injuries, the time at which respondents viewed the "injury" as involving "discrimination," who respondents blamed for the problem, whether respondents made a claim with the organization, termed an "intra-organizational protest," respondents' perceived violations of procedural justice (i.e., neutrality, trust in benevolence, and status recognition), both prior and subsequent, to the intra-organizational protest, respondents' perceived violations of distributive justice, both prior and subsequent, to the intra-organizational protest, formal and informal grievance procedures used, the time at which respondents first considered contacting the EEOC, respondents' desired remedies such as personal financial or group remedies, respondents' concerns about retaliation, and the role of others, including attorneys, in respondents' decisions to go to the EEOC.

Every member of the research team read all interviews. Each line of the transcribed interview was given a unique number to facilitate analysis and documentation of the interview information. We documented matrix summaries using transcript line numbers and double-checked information across all members of the research team. In generating themes and categorizing responses, no information was used unless at least three of the four members of the research team agreed to its inclusion as an appropriate example of the category. The procedure yielded quantitative summaries of the qualitative data, which permitted us to identify potential relationships. These quantitative summaries, taken in conjunction with respondents' chronologies and a judgment about key themes, support the propositions discussed in the next section and depicted in Figure I. Note that different theories link different boxes in the model to illustrate for the reader the relationships. The ovals in this model should not be interpreted as moderator effects, but as the theoretical links explained in this article.

Figure I
A Transformational Model of Legal-Claiming



RESULTS AND DISCUSSION

Descriptive Data

A breakdown of the protected classes claimed by respondents yielded the following distribution of discrimination claims: 36% race (including one reverse discrimination), 28% sex, 18% ADA, 16% age, and 3% pregnancy. This compares to the following percentages for claims received by the EEOC during 2002: 35% race, 30% sex, 19% ADA, 24% age, 25% Title VII, and 1% pregnancy (EEOC, 2003). Percentages exceed 100% because individuals often claim in more than one category at a time. Again, one sample z-tests for proportions yielded consistently non-significant findings, indicating that the percentage of each type of claim made in our sample is consistent with percentages obtained from the population of EEOC claimants. We also examined the employer actions that prompted respondents to contact the EEOC. The terms or conditions of employment that had been affected included termination or forced retirement (58%), being passed over for promotion (11%), demotion or other undesired changes in job duties (5%), and some other aspect of employment (26%, e.g., unfair criticism by supervisor, bad references).

Propositions

Using the qualitative data described and existing empirical work previously reviewed, we propose the transformational model of legal-claiming depicted in Figure I. Each transformational stage of the model is discussed below and specific propositions are given for the transformational process between each set of stages.

Injurious Experience to Naming: Self-categorization Theory. Felstiner *et al.* note that "naming," though "hard to study empirically . . . may be the critical transformation; the level and kind of disputing in a society may turn more on what is initially perceived as an injury than on any later decision. . . ." (1980-1981: 635). An overly broad understanding of what constitutes illegal discrimination may be a factor in the transformation of an injurious experience to "naming" because it leads many cases to be named incorrectly as discrimination. Interestingly, one-third (13 of 38) of respondents reported cases that lacked legal merit even assuming all facts alleged by the respondent are true. The closest comparable category that the EEOC compiles is "Not on the Merits--Administrative Closure." In this sample, such cases are best described as "Boss Doesn't Like Me" (BDLM). For fiscal 2002, BDLM cases amounted to approximately 32% of those reported during intake. These reflect cases where an injury is "named" but in which the perception of harm is inaccurate. Lind (1997) notes that these would correspond to Type I errors in statistical inference. An example of BDLM discrimination involved a black woman who went to the EEOC to complain about treatment from her black female supervisor: "I

don't think it's fair for me to lose my job because [the supervisor] doesn't like me, because she has an attitude with me." Another example involved a white woman who filed a complaint against her white, male supervisor: "I don't know if it's really termed 'discrimination'. . . I feel like he didn't listen to me . . . it's more personality with [the supervisor]." These cases, even when named as discrimination, do not state a case for which legal relief is available and are often filtered out during the EEOC case investigation. However, BDLM cases impose significant burdens upon organizational resources (e.g., time, money) and, therefore, understanding them is important.

Self-categorization theory (Turner *et al.*, 1987) provides an explanation for why such a large number of BDLM cases are filed. This theory states that when individuals define themselves in terms of salient group characteristics (e.g., race, gender, religion), there is a perceptual emphasis on intra-group similarities and inter-group differences. At work, employees who share salient group characteristics (e.g., race, gender) stereotype themselves and group members. As shared social identity becomes salient, each individual's self-perception tends to become depersonalized. Therefore, individuals tend to define and see themselves less as unique individuals and more as interchangeable representatives of some shared social category. As a result, workers who identify strongly with their groups may perceive an injury as less of an individual harm and more as a harm to themselves as a group member. If this group is a legally protected group, individuals may perceive an injurious experience as discrimination. Individuals with strong group identities often develop an acute sense of similarity with in-group members and perceived differences with out-group members (Crocker and Major, 1989). For example, one respondent (a black male) observed that "white people can't understand what being black in an organization like this is like." Individuals tend to look for confirming information and ignore disconfirming information. Therefore, when the event occurs, they are likely to look for information supporting a relationship between the event and their group status. This leads to the following proposition:

> *Proposition 1:* Employees who strongly identify with their legally protected group membership at work are more likely to file claims with the EEOC that are non-meritorious (i.e., do not conform to the legal definition of discrimination) than employees who less strongly identify with their group membership.

In addition to the BDLM cases, approximately two-thirds of claims did relate to legally recognized groups of individuals. Self-categorization theory also plays a role in these cases. Individuals who identify more with an in-group that is legally protected are more likely to view a perceived injurious experience as discrimination than those that do not identify as closely with a protected group. As expected, the group of individuals that classify their experience as unfavorable, but not as discrimination, were not represented in the participant

group that filed claims at the EEOC.

Naming to Blaming: Attribution Theory. All respondents perceived themselves as having suffered an injurious experience and named it as discrimination. This is illustrated by a white male who blamed his white, female supervisor for age discrimination: "[I am asking that the] police department look into her conduct and they make the appropriate decision as to whether they feel she is fit to be in the position that she is in." Consequently, the next question is whom do employees attribute "blame" to for this experience?

Consistent with the theoretical work of Sheppard *et al.* (1992) and the empirical findings of McFarlin and Sweeney (1992), we found that respondents were twice as likely to blame their direct supervisors for their injury as to blame the organization (25 v. 13). A typical response was given by a white female blaming her white, male supervisor: "I feel good about the company as a whole . . . I think [my manager] acted in an irresponsible way and if he continues to act like that it could be detrimental to the company." Based on comments like this one and the work of McFarlin and Sweeney (1992) and Sheppard *et al.* (1992), we propose the following:

> *Proposition 2a:* Employees who file discrimination claims against their organizations are more likely to blame their direct supervisor for their perceived injury than they are to blame their organization.

Notably, the irony of blaming the supervisor and claiming against the organization did not escape a number of the respondents. For example, a black male noted: "if you go to court . . . the person that caused the discrimination is not held accountable." Where the organization was blamed, it was most often because the organization failed to "right the wrong" (as one respondent noted) caused by the supervisors.

The present data do not speak directly to social accounts, presumably because individuals that received adequate social accounts for the perceived injurious event did not enter into the disputing stage. Nevertheless, there is very extensive literature attesting the efficacy of social accounts in reducing perceptions of injustice (for reviews, see Bies, 1987; Bobocel *et al.*, 1997; Sitkin and Bies, 1993). Given this sizable body of prior research, our model would be conspicuously incomplete if we did not acknowledge the important role of social accounts. Therefore, we offer the following proposition as an objective for future research:

> *Proposition 2b*: Employees will be less likely to blame their direct supervisor or organization for the perceived injury if they receive a social account for the event from their direct supervisor.

Because all participants were in the disputing stage, their accounts also offered evidence for the transformation of the dispute from blaming to claiming.

Blaming to Claiming: Organizational Justice. Interview questions asked directly about the role of organizational justice in the dispute process. These questions focused on overall perceptions of distributive or procedural fairness for the entire organization (e.g., McFarlin and Sweeney, 1992). Overall, 95% (36 of 38) of respondents reported experiencing generalized procedural injustice in their organizations, while 84% (32 of 38) reported experiencing generalized distributive injustice. When respondents were asked questions about organizational justice with respect to the transformation of the dispute between blaming and claiming, the results were more revealing. Procedural justice (89%, 34 of 38) and distributive justice (76%, 29 of 38) were of relatively equal importance to respondents prior to the intra-organizational protest; however, subsequent to this protest, procedural justice (72%; 23 of 32) became relatively more important to claimants than distributive justice (31%; 10 of 32). Table 1 presents a listing of representative comments of respondents both prior and subsequent to the intra-organizational protest, with respect to both procedural and distributive justice.

This finding is consistent with previous work. Edelman *et al.* (1993) interviewed organizational representatives who attempted to resolve discrimination complaints. They found that these complaint handlers emphasized the importance of both procedural and distributive justice. However, they reserved special attention for procedural fairness factors such as voice.

The notion of "voice" has received much attention in the justice literature (e.g., Sheppard *et al.*, 1992). Greenberg and Folger suggest "voice is a shorthand for the variety of ways that subordinates in an organization communicate their interests [to management]" (1983: 242). In this regard, it is worth noting that 26% (10 of 38) of current respondents reported that they received no reply at all when they made an intra-organizational protest, meaning that they lacked voice. Typical of these cases was a woman who complained to her direct supervisor who just "stared blankly at her" and later to personnel who "didn't return her phone call." She explained the reason for filing at the EEOC, as she "had no where else to go." Presumably she felt she had been treated procedurally unfairly in the claiming stage. The role of procedural and distributive justice perceptions in claiming leads to the following proposition:

> *Proposition 3:* Prior to the intra-organizational protest, employees who file claims with the EEOC perceive the initial injury as resulting from both procedural and distributive injustice.

Claiming to Disputing: Conflict Escalation and Social Information Processing Theory. As we discussed earlier, models of conflict escalation, including our own transformational model, view conflict behavior as a series of choices made by the claimant (e.g., Nord and Doherty, 1994). Our model posits that an employee's complaining or protesting within the organization may precede protests

Table 1
Perceptions of Justice Prior to and After Intra-organizational Protest
(for a Representative Group of Respondents)

	Prior to intra-organizational protest:		After intra-organizational protest:	
Respondent	**Procedural Justice**	**Distributive Justice**	**Procedural Justice**	**Distributive Justice**
MT	"I was on the verge of a nervous breakdown and [my supervisor] didn't care."	No problem evident	"I just needed to talk to somebody [and no one would listen]."	No problem evident
SB	"[Female supervisor] is biased against men and a liar."	Thought he was more qualified than white man who got the job.	"Offended" because he had not classified his protest as a "race issue," but management did.	No problem evident
JS	Felt treated without respect or dignity.	No problem evident	Feels supervisors lied about her.	Failed to discipline co-workers for similar activities, but disciplined her.

Table 1 (continued)
Perceptions of Justice Prior to and After Intra-organizational Protest
(for a Representative Group of Respondents)

	Prior to intra-organizational protest:		Prior to intra-organizational protest:	
Respondent	**Procedural Justice**	**Distributive Justice**	**Procedural Justice**	**Distributive Justice**
DB	"Treated like a fifth-class citizen."	White woman received job benefits which he [as a black male] did not.	"I know that you're not always going to win in life, but they treated me so badly [when I complained] that I had to find somewhere else to complain."	No problem evident
RM	No problem evident	People younger than her received more lenient treatment.	Personnel department did not get back to her when they promised; then said they were "too busy."	No problem evident
DC	Management "lied" to her, was "biased," and "broke promises."	He was unfairly terminated and replaced by a white person (respondent is black).	Felt as if his "problem was not big enough for [management] to get involved with, so they kept throwing me back...like I was a small fish that ...wasn't worth their time...."	No problem evident

outside the organization. Yet there has been little empirical investigation of the sequence of those protests. The present data tend to support these ideas.

In this study, 84% (32 of 38) of respondents made an intra-organizational protest prior to making a protest outside the organization (extra-organizational protest). An intra-organizational protest was deemed to occur if the respondent complained either informally (e.g., through direct supervisor) or formally (e.g., through chief executive officer or grievance committee) to someone who had power to remedy the injury. Several respondents spoke to this series of protests, some of which are mandated by organizational policy. For example, a white male claiming against the police department where the associated union mandates intra-organizational claiming prior to extra-organizational claiming said "[w]e have to go through certain stages and . . . the first step is you have to have a meeting with the immediate supervisors—their immediate supervisors—and then if I'm not satisfied with their decision I have to go to the labor board." This is evidence that employees do try to stay within the organization before going outside. These data are strongly consistent with the notion that conflict escalates gradually and that at least sometimes Felstiner *et al.*'s (1980-1981) stages do not occur in a sequential manner. In this situation, naming occurs after claiming. Indeed, only 33% (8 of 24) of respondents identified their injury as "discrimination." The balance (16 of 24) noted that they had not thought in terms of "discrimination" until after the (unsuccessful) intra-organizational protest. Perhaps the unsuccessful protest caused the employees to recast the harm in terms of discrimination.

Recall that Social Information Processing (SIP) (Salancik and Pfeffer, 1978) offers an important contribution to the disputing stage by arguing that individuals seek social information in an attempt to understand these events. Few events are so difficult as when an individual is trying to determine whether certain injuries warrant the filing of a legal claim (Goldman, 2001). Here, 55% (21 of 38) of respondents identified at least one third-party who encouraged them to make an extra-organizational protest. Eight of these involved an attorney who referred the respondents to the EEOC to "see if they had a case." Another eight involved non-work friends and relatives. In addition, of those employees who could state precisely when they perceived their injury to involve "discrimination," 54% (13 of 24) specifically said that the dominant reason why they relabeled the injury was because of specific suggestions by relatives, friends, or attorneys. One, a white female complaining about treatment from a white male boss, stated that it was her husband who prompted her to make a legal claim: "[m]y husband is a police officer and that's how we ended up talking with a lawyer." Such responses related to social support lead to the following proposition:

Proposition 4: Employees who file claims with the EEOC are encouraged to do so by relatives, friends, or lawyers.

These propositions are based on our proposed model of the transformational process of legal claiming and are derived from qualitative responses of individuals filing discrimination claims at the EEOC. They relate to each transformational stage, including from the perceived injurious experience to naming, naming to blaming, blaming to claiming, and claiming to disputing.

CONCLUSIONS

Legal-claims have proven to be a potential trap for the unwary organization; they can be costly, time-consuming, and disruptive. Although this behavior is of great interest to practitioners and academics, research has been hampered by a static mindset that views legal-claims at only one point in time. The proposed model and propositions overcome this restriction because they include a model of legal-claiming behavior and a number of propositions to aid in developing this area of knowledge.

Theoretical and Practical Implications

The transformation of a perceived injurious experience to a filed employee discrimination claim (the disputing stage) has a number of theoretical and practical implications. On a theoretical level, the model and supporting qualitative research discussed in this article indicate that legal claims should not be treated as one-time events, but should be conceptualized over time. We have done this by proposing a model that shows legal claims as they progress through Felstiner *et al.*'s (1980-1981) stages. Our model is transformational in nature– we believe that legal claims do not involve several discrete events, but involve the transformation of an injury over time. To better show the transformational nature of legal claims, we have focused on the transition between Felstiner *et al.*'s stages rather than on the stages themselves, although both require further research if we are to fully understand legal discrimination claims.

A second, important theoretical implication of our model relates to the different theoretical mechanisms that may be more or less important at different stages in the transformation of an injury to the disputing stage. As we originally noted, existing research shows that several theories used independently have been shown to be important in the legal claiming process, including organizational justice (Goldman, 2001; Lind *et al.*, 2000), attribution theory (Groth *et al.*, 2002), and social information processing theory (Goldman, 2001). We propose that all of these theories play a role in the transformation of an injurious event, but at different stages of the transformational process. Therefore, we include these and other theories in our model and encourage researchers to focus on the additive effects of these theories in future research.

On a practical level, a deeper understanding of what motivates employees to make these claims may help organizations avoid them. For example, to

the extent that organizations can provide social accounts for seemingly unfair events, employees may be less likely to seek someone to blame for the event.

For those employees that do seek someone to blame, organizations should be cognizant that most individuals will lay blame external to themselves and usually on their supervisor specifically. Understanding individuals tendency to focus on the supervisor will allow organizations to use social accounts to their advantage. For example, it should benefit the organization to direct blame away from the immediate supervisor by clearly explaining procedure and outcome origins. More generally, individuals' tendency to lay blame externally means that organizations may benefit from implementing internal dispute resolution procedures that promote discourse at the individual level. For example, company-sponsored mediation between the employee and the blamed individual may be helpful.

However, probably the most important practical implication of this model involves the transformation of the dispute from the claiming to the disputing stage of employee legal claims. As discussed, most employees claim internally before entering the disputing stage and claiming externally with the EEOC. Respondents that fail to claim internally primarily give two reasons for doing so: they feel the organization will not address these concerns at all; or, that they will be inadequately addressed. Implementation of internal dispute resolution procedures is paramount to keeping claims from becoming disputes (Lewin, 1987; Ury *et al.,* 1988). Historically, such procedures have included internal mediation or arbitration of claims by a neutral source, usually human resource personnel. To take advantage of such internal dispute resolution procedures, organizations should take care to maintain elements of organizational fairness within these procedures. For example, these procedures should allow for employee voice. Additionally, emphasizing additional facets of organizational justice such as respectful interpersonal treatment of the employee and providing the employee with directed, relevant information in a timely manner may encourage employee perceptions of internal dispute resolution fairness.

Limitations

Although the primary purpose of this study is to generate theory and propositions, the proposed model relies on the data gathered for this study and certain limitations related to these data should be addressed. One limitation of the qualitative study reported includes the use of claimants at only one EEOC district office. We paid special attention to the extent to which our respondents matched average respondents filing at the EEOC in terms of occupation, industry, and type of claim filed. However, it is possible that our sample is not representative of what might be obtained at other district offices, so generalizations from these data specifically should be made with caution. Future research might seek to include respondents at multiple EEOC district

offices in various parts of the United States for a more representative sample of all claimants.

The qualitative results reported also should be read in light of a common limitation in disputing literature–it relies on retrospective data by claimants. This type of research may involve distortion in recall as the respondent is asked about motives and events that may be shaped by subsequent behavior (Felstiner *et al.*, 1980-1981). We attempted to mitigate this problem by: (1) speaking to respondents contemporaneously with their arrival at the EEOC (and prior to speaking to any representatives of that office), (2) getting archival information, whenever possible, to verify articulated motives and events, and (3) using a free report method of questioning that allowed respondents to say they did not remember in response to questions (Miller *et al.*, 1997). We believe that these efforts and the fact that these events are of great importance to the respondent (Ericsson and Simon, 1984) make the retrospective data more reliable. Nevertheless, future studies should attempt to study these disputes as they develop within organizations and prior to filing with government agencies, since individuals may re-interpret events in a more favorable manner because of the legal implications.

In addition to these study-related limitations, there are also limitations to our theoretical model. We have included what we believe to be supported, logical theories that explain the transformation of the event between dispute stages; however, this group of theories is not exhaustive. Other theories may account for additional aspects of the transformation, or alternate theories related to those we used may better explain transformation stages. For example, it is possible that Knapp *et al.*'s (1997) 2 x 2 typology of responses to sexual harassment may provide additional insight into conditions under which claiming occurs. We strongly encourage future research to look into the role of such theories in the context of our model.

Despite these limitations we believe the current model of discrimination legal-claiming offered and the related propositions provide a strong basis for future research in the area. We encourage researchers to build on this longitudinal, transformational model.

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