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Naming, blaming, claiming: an interview with Bill Felstiner, Rick Abel, and Austin Sarat

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Abstract
One of the most cited and influential socio-legal articles is Felstiner, Abel and Sarat’s ‘The Emergence and Transformation of Disputes: Naming, Blaming, Claiming …’ from 1981. Forty years later the notions and framework of the article are still highly relevant. We convened Felstiner, Abel and Sarat for an interview about the background of their article, its reception, and how they view the recent refocus on institutions with respect to the rule of law. The interview follows three narratives. First, it explores the social relation between the authors and the academic and political context from which the article emerged. Second, it addresses questions about societal impact of research. Third, the interview points to ways in which we, today, attempt to create access to official channels for problem solving and conflict resolution as well as to new technologies affecting the infrastructure of naming, blaming, and claiming with respect to justiciable problems.
1 INTRODUCTION

Forty years ago, Bill Felstiner, Rick Abel, and Austin Sarat published one of the most influential articles within socio-legal studies – namely, ‘The Emergence and Transformation of Disputes: Naming, Blaming, Claiming …’. The importance of this article can be illustrated by the fact that it is one of the five most-cited Law & Society Review articles, it is commonly regarded as ‘truly seminal research’, and it received the Lasting Contribution Award from the American Political Science Association’s Law and Courts section in 2011.

It is impossible to briefly summarize the events that make up Felstiner’s, Abel’s, and Sarat’s academic careers, as they are three of the most important figures within socio-legal studies through their pathbreaking empirical and theoretical contributions to the study of law. Each has been affiliated with several universities and research groups and received numerous prizes and awards. Their continual effort to develop and support the Law & Society Association (LSA) has been extraordinary. Both Abel and Sarat have served as President of the LSA and Abel has been Editor of the Law & Society Review. Felstiner co-chaired the first joint international conference of the LSA and the Research Committee on Sociology of Law in Amsterdam and later served as Academic Director of the International Institute for Sociology of Law in Oñati. The ‘Naming, Blaming, Claiming’ article took shape as part of the Civil Litigation Research Project (CLRP) funded by the United States (US) Department of Justice

4 The Lasting Contribution Award is given annually for a book or journal article, at least ten years old, that has made a lasting impression on the field of law and courts.
Felstiner served as co-Principal Investigator, Sarat was also part of the senior staff, and Abel was Senior Research Consultant.

Despite many similarities, their academic pathways before and after writing the ‘Naming, Blaming, Claiming’ article have been divergent. Felstiner had years of experience at the US Agency for International Development (USAID) before becoming Associate Dean of Yale Law School. He taught Law at the University of California Los Angeles (UCLA) and Sociology at the University of California Santa Barbara (UCSB). He had research appointments at the University of Southern California (USC) during which he took part in the CLRP and wrote the ‘Naming, Blaming, Claiming’ article. He then worked at the RAND Corporation before becoming Director of the American Bar Foundation. He was Professor in the Law and Society Program at UCSB from 1992 to 1999 and Distinguished Research Professor at Cardiff University Law School from 1995 to 2005. He founded the Chad Relief Foundation in 2007.

Abel and Sarat have taught at UCLA and Amherst College respectively since the mid-1970s. Before writing the ‘Naming, Blaming, Claiming’ article, Abel practiced with the New Haven Legal Assistance Association, studied African Law and Legal Anthropology in London, and spent a year in Kenya studying Customary Law. In 1974, he received his PhD from the School of Oriental and African Studies at the University of London. He was one of the founding

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5 D. M. Trubek et al., _Civil Litigation Research Project: Final Report, Volume I Studying the Civil Litigation Process: The CLRP Experience_ (1983). As a result of substantial criticism of the US civil justice system for being inaccessible, costly, and inefficient, the Office for Improvements in the Administration of Justice (OIAJ) was created to develop and improve the civil and criminal justice system (see for example S. Austin, ‘The Role of Courts and the Logic of Court Reform: Notes on the Justice Department’s Approach to Improving Justice’ (1981) _Judicature_ 300). The focus on the rising costs of civil litigation and the need for justice system research stimulated the creation of the CLRP, which was founded by the OIAJ in 1979 in response to a call from the Federal Justice Research Program of the US Department of Justice. The CLRP was based at the University of Wisconsin–Madison Law School, but its research team came from multiple institutions and represented many different academic disciplines, including political science, sociology, economics, and psychology. Besides Felstiner and Sarat, senior staff included of Joel B. Grossman, Herbert M. Kritzer, and project director David M. Trubek. The ambition was to generate a large open-access database on dispute processing and litigation for both theoretical and policy purposes.
members of the Critical Legal Studies Movement (CLS). Today, he is Emeritus Professor at UCLA.

Unlike Felstiner and Abel, who began by studying Law, Sarat received his PhD in Political Science from the University of Wisconsin–Madison in 1973 and a JD from Yale Law School in 1988. Shortly before joining the CLRP and writing the ‘Naming, Blaming, Claiming’ article, he worked at the US Department of Justice Office for Improvements in the Administration of Justice. Today, he is Professor and Associate Dean at Amherst College.

‘The Emergence and Transformation of Disputes: Naming, Blaming, Claiming …’ was published in a Special Issue of the Law & Society Review on ‘Dispute Processing and Civil Litigation’, which encouraged socio-legal scholars to examine legal cases as social constructs and to study the pre-dispute phase, during which potentially justiciable problems may develop into legal cases. Felstiner, Abel, and Sarat provided a framework that consisted of three stages for studying the emergence and transformation of disputes. The first (naming) occurs when a wronged party realizes that a problem exists and transforms his/her unperceived injurious experience (unPIE) into a perceived injurious experience (PIE). The second transformation (blaming) takes place when the wronged party holds another party responsible for the injury, and the third transformation (claiming) transpires when the wronged party turns to the blamed party and seeks some remedy. A claim may transform into a dispute if the blamed party rejects it. Felstiner, Abel, and Sarat stress that the naming phase, however hard to study empirically, is crucial for the dispute transformation.

Felstiner, Abel, and Sarat’s article was part of an increasing number of legal anthropological and socio-legal studies that theoretically and empirically explored dispute

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7 Felstiner et al., op. cit., n. 1, p. 635.
processes as social constructs with reference to historical and social contexts. The shift from the abstract and theoretical study of formal law and theoretical and empirical study of legal institutions towards analysing dispute processes within their historical and social contexts allowed researchers to focus on how legal and social categories and everyday practices mirror broader social structures, revealing that the majority of potential legal issues are never transformed into legal disputes. In the literature, this is called the ‘iceberg problem’.

We were fortunate to convene Felstiner, Abel, and Sarat to discuss the background of their 40-year-old article, its impact, and how they view the recent refocus on institutions with respect to the rule of law. The interview follows three implicit and explicit narratives. First, it explores the social relation between the authors and the academic and political context from which the ‘Naming, Blaming, Claiming’ article emerged. That narrative suffuses the interview on different levels. Second, the interview addresses questions about the purposes and limitations of research in relation to social impact and how a 40-year-old article that did not have an immediate impact has come to influence a wide range of research areas and may have a long-term legacy for the study of law and society. Third, the interview points to ways in which we, today, attempt to create access to official channels for problem solving and conflict resolution as well as to new technologies affecting the infrastructure of naming, blaming, and claiming with respect to justiciable problems.

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10 The interview was conducted on 5 March 2021 via Teams. The transcription has been edited in a manner that maintains the informal style of the conversation. References to work mentioned during the interview or suggestions for further reading have been added in collaboration with the interviewees.
2 INTERVIEW

The first question concerns your empirical background and theoretical inspiration. Your article was part of the great the CLRP, which constructed a large disputes-focused database, and you had all conducted empirical socio-legal studies before. Can you tell us about the empirical data you based your naming, blaming, claiming framework on and the theoretical positions you came from and how they inspired your work?

Sarat: I want to answer your question by starting in a different place. As I remember it, the work was motivated by the belief that there were many just claims that were meritorious but were not making their way to the legal system. I think the CLRP was greatly motivated by the idea of what I would call blockages or barriers to people’s articulation of their meritorious grievances. The first and easiest set of blockages to look at was what I would describe as institutional. All the courts were hard to get into. They were expensive. What the naming, blaming, claiming framework did was to move the examination of blockage away from institutions and into culture. At the same time, we were influenced by the development of criminal victimization surveys. If you move from the Federal Bureau of Investigation (FBI) uniform crime reports to criminal victimization surveys, you get an entirely different view of the world of criminal victimization. What the naming, blaming, claiming concepts did was to offer a theoretical framework for the development of a kind of civil victimization survey. I wrote an article with Richard Miller as part of the CLRP that contributed empirically in

11 Trubek et al., op. cit., n. 5.
developing the naming, blaming, claiming framework. Theoretically, I think we were influenced by anthropology. Again, Bill and Rick had long before the development of the naming, blaming, claiming framework looked at law and development and other kinds of bottom-up research. In those days, the bottom-up approach was a big thing.

I want to add that when I look back 40 years, there are amazing things that have happened that I think alter the way in which one might think about the naming, blaming, claiming processes. The most important is the development of social media. There is a whole world that didn’t exist in those days for articulating grievances. I think now social media should play an important part in the ways in which we think about naming, blaming, and claiming.

Felstiner: From my standpoint, there was a period during the CLRP when Austin and I lived together in Madison in Malcolm Feeley’s house. We had a lot of time in the evenings and weekends when we weren’t working on the CLRP. We spent time together and we reviewed a lot of things that were going on in our own lives. We would, for example, talk about different kinds of continuing disagreement we would be having with somebody, maybe somebody in our family, and we noticed that the perspective that we had on the disagreement changed over time depending upon whom we talked to, who they had talked to, and other kinds of circumstances. What that led to, at least in my mind, was this whole notion of the transformation of disputes. These disagreements could start at one place, concern one issue involving a certain set of people, and then change over time as new people were introduced or new circumstances were faced.

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13 Miller and Sarat, op. cit., n. 9.
Abel: I’m going to go through a series of influences on my thought. Bill is too modest. He
did not reference his own article called ‘Influences of Social Organization on Dispute
Processing’, which also inspired us along with Albert Hirschman, an American economist,
who wrote an influential book called *Exit, Voice, and Loyalty*. I want to concur with Austin:
there was a genealogy that began with the criminal justice system because there was much
more money and interest in criminal justice than civil justice. I wasn’t aware of the
victimization studies, but when I edited the *Law & Society Review*, we published an article by
Erhard Blankenburg called ‘The Selectivity of Legal Sanctions: An Empirical Investigation of
Shoplifting’, in which researchers shoplifted goods from supermarkets in Germany and then
watched to see whether they were apprehended by store employees or customers and what
happened to them; and in most cases, nothing happened. This was again an example of what
they called the ‘dark figure’ [of crime] in American sociology and criminology. Then we also
published in the *Law & Society Review* several other articles: one about the Newspaper
Ombudsman and consumer complaints, and another article about consumer response to
unsatisfactory purchases.

During this period, empirical literature emerged on the phenomenon of
grievances. It focused on not-yet-articulated grievances and the articulation of grievances in
the civil domain. I want to relate that to several other literatures and political movements.
Access to justice was very much on the horizon, partly because the Office of Economic
Opportunity [OEO] Legal Services Program had been founded in 1965 and then expanded
into the Legal Services Corporation in 1974, and there was a great deal of interest in trying to

14 Felstiner, op. cit., n. 8.
18 Best & Andreasen, op. cit., n. 9.
figure out what these organizations should be doing. That spawned the American Bar
Foundation’s study of the legal needs of the public;¹⁹ and again, that was an example of going
out and asking people ‘What were your problems and what did you do about your problems
at that point?’ That was a major, carefully done empirical study and that was also being done
in the Netherlands.²⁰ Another interesting paper was John Griffiths’ vitriolic article in the
British Journal of Law and Society, which basically says there is no such thing as a legal
problem – legal problems are entirely social constructs.²¹

Three other things before I stop. First about the political domain, because the
second wave of feminism was roughly about this period – 1960s, early 1970s – and one of its
foci was consciousness raising. So groups of women would get together and they would talk
about things that they had never talked about before, and they would discover all these
grievances out there, and then they could bring them into consciousness by talking about
them in a collective fashion. It was also done in the Black Consciousness Movement. So
Black Power in the US also came of age during this moment. It was also happening in South
Africa with the Black Power Movement, which was a Black Consciousness Movement and,
of course, we see that today in the Black Lives Matter and #MeToo movements.

That was the political dimension of it, and then there is the academic aspect.
Dave Trubek brought me to Madison for a long weekend and that’s when I talked to Bill and
discussed the article. I wasn’t a regular member of the CLRP, but I had a long background in
legal anthropology. Legal anthropology, with the work of Max Gluckman, Paul Bohannan,
Laura Nader, and Philip Gulliver, was all about how to find the controversies within
communities and see how they evolved. That can be traced back to an even earlier book by
Karl Llewellyn, who was a founder of legal realism in the US, and Adamson Hoebel called

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This was a review of the book cited in Note 19.
The Cheyenne Way,\textsuperscript{22} which was an attempt to bring legal anthropology to Native Americans. These things go back to the 1930s and 1940s. They have a long history.

Finally, and this is my last point, at the Centre for Socio-Legal Studies at Oxford University, Donald Harris and his group of colleagues were working on claiming in the civil domain, especially around accidents, so they began examining people who had suffered incapacity as a result of a traumatic event, and they wanted to see whether they made claims. They wrote a very influential book\textsuperscript{23} that I reviewed.\textsuperscript{24} I’ll finish with this because the important point that was made was that despite the reputation that Americans were litigious people, in fact the claims rate was the same as in the United Kingdom, and it was very low. It was roughly one out of ten suffering serious disability who made a legal claim.\textsuperscript{25}

You all have a thorough knowledge of the literature and have contributed significantly to the socio-legal field. How did your collaboration take place and how did your interdisciplinary approaches affect your collaboration in developing the naming, blaming, claiming framework? In Volume 1 of the CLRP Final Report,\textsuperscript{26} it is mentioned that Abel moved the language from ‘dispute resolution’ to ‘dispute processing’. How did this new way of articulating and studying disputing emerge?

\textbf{Abel: }I came into the project when it was already fairly advanced. In that long article I wrote for the \textit{Law & Society Review}, I wanted to emphasize dispute processing.\textsuperscript{27} I was simply building on the work of my legal anthropological predecessors, but I wanted to use the word

\textsuperscript{22} K. N. Llewellyn and E. A. Hoebel, \textit{The Cheyenne Way: Conflict and Case Law in Primitive Jurisprudence} (1941).
\textsuperscript{23} D. Harris et al., \textit{Compensation and Support for Illness and Injury} (1984).
\textsuperscript{26} Trubek et al., op. cit., n. 5.
\textsuperscript{27} Abel, op. cit., n. 8.
‘processing’ rather than ‘resolution’ because I didn’t think that ‘resolution’ captured the fact that people weren’t necessarily resolving disputes, they just went on to the next stage of the dispute, which was typically an endless process. So that was why I used that phrase. And as you know, I had studied primary courts in Kenya\(^{28}\) and was trying to understand how those disputes were processed in Kenya similarly to or differently from what I knew about civil procedure in the US.

**Felstiner:** This is a significant part of that first article that I wrote about the social organization of dispute processing,\(^{29}\) and the point essentially is that there are disputes, but many don’t get resolved, and in many cases that’s not even the point to begin with. Therefore, I guess, we then adopted the neutral term of ‘processing’ rather than ‘resolving’.

**Sarat:** Let me say something about discipline. You asked about interdisciplinarity, and again Bill and Rick may have a different view on this, but I don’t recall participating in the CLRP or interacting with Bill and Rick from a disciplinary point of view. I’m a political scientist, this is my contribution. My dissertation, written at the University of Wisconsin-Madison, was on why people obey the law. It was a survey study. I published my dissertation called ‘Courts and Conflict Resolution’.\(^{30}\)

So I’m going to kind of pick up on what Bill and Rick were saying. We were all participants in the law and society movement. And I think ‘Naming, Blaming, Claiming’ is a law and society article. It isn’t the article of a political scientist and a couple of legal academics coming together. Nobody in political science at the time was doing anything like


\(^{29}\) Felstiner, op. cit., n. 8.

that. What we did when developing the naming, blaming, claiming framework was something new; it just wasn’t there. I think the *Law & Society Review* was at the time really influenced by legal anthropology, like Rick was describing. And the idea that we had to go out and find legal life beyond the institutions was not common for political scientists. Would you believe a law professor would have come up with the idea of PIEs and unPIEs? You know, much of academic life is coming up with memorable slogans because people are not going to remember what you say. I think that the ‘Naming, Blaming, Claiming’ probably is in the top ten articles when it comes to snappy slogans and things.

Regarding PIEs and unPIEs, we were also really interested in the normative dimension about unPIEs; it obviously contains the view that this unPIE ought to be perceived. So there was a kind of normative spin to the work that wasn’t fully articulated, and again both Rick and Bill named it with reference to this kind of access to justice where people needed to get justice that they were not able to get. They needed to be able to articulate grievances that they were not able to articulate. But I think that’s really a law and society kind of move rather than the move of different disciplines coming together.

**Abel:** I fully agree, and indeed for me the strength and the compelling nature of the LSA and the movement in the US is precisely that when you meet somebody at an LSA meeting the name tag does not say ‘anthropologist’, ‘political scientist’, or ‘psychologist’ and there’s no real sense that you are coming from that discipline. It could be a weakness as well as a strength – it could be American pragmatism, atheoretical pragmatism. The extreme at the other end of the spectrum is the French approach, where you start with the theory and not with a concrete social problem.

Then, finally, on Austin’s point about the normative part, which I think is absolutely essential. In a sense, we were dealing with the Marxist concept of false
consciousness: that people had needs they weren’t aware of. They had to be made aware of their needs, and then the revolution would come and everything would be good. I mean, nobody articulated it in those terms, and I certainly had not read Marx at the time we were writing this, but looking back retrospectively, I think there is a clear connection with Marxism. That idea is very poorly developed in Marxism. I mean, you really can’t make good sense theoretically out of the idea of false consciousness.

Sarat: Let me just add one other thing, and again Rick and Bill may not agree with this. In the CLRP, there were different camps. One camp was what I would call ‘the camp of methodological rigour’. And there was an awful lot of investment in the CLRP’s design and methodology – the appropriateness of the methodology. The design and that was all terrific.

There was another camp that I’m going to associate myself with – I don’t know whether Rick or Bill would want to be associated with this – and that was a kind of methodological eclecticism, which is a simple way of saying that method did not really bothered me and I didn’t think about it very much. And we were accused here of advocating a methodology that was called at the time ‘soaking and poking’. And that, I think, is part of the naming, blaming, claiming framework. There wasn’t a methodology informing this; how would we actually go about figuring out what PIE and unPIE is? What there was, was a lot of methodological eclecticism and the desire to introduce dynamism into dispute resolution studies. Bill described it right. We would sit there and talk about how things did or didn’t change in a family dispute. That seemed to be lacking, and I believe that by freeing ourselves – I should say myself – from worrying too much about method and technique, we were able to come up with a framework in which we offered ideas without worrying about how you would operationalize the concepts, or how you would measure them. I think there were others in the CLRP who would never have made that move, precisely because they would have been
worried about methods and operationalization. ‘Soaking and poking’, by the way, has been a
great career.

Your article is among the five most-cited Law & Society Review articles, it is considered
‘truly seminal research’, and it received the Lasting Contribution Award from the American
Political Science Association’s Law and Courts section in 2011 – in other words, the article
has been very well received in academia. We conducted a literature review of 572 relevant
studies that used or referred to ‘Naming, Blaming, and Claiming’ in various ways.31 It shows
that the framework has been adopted in a wide range of disciplines, such as general
sociology, political science, organization studies, criminology, penology, management, and
communication studies, and included in many research areas, such as social movements and
activism, legal consciousness, different kinds of workplace studies involving mobilization of
labour rights, harassment in the workplace, and employment diversity – in other words,
gender, race, and ethnicity. Volume I of the CLRP Final Report and your ‘Naming, Blaming,
Claiming’ article also stress that the range of disputing is as broad as the range of social
behaviour and social interaction. But what are your reflections on the breadth of the
concepts and the diverse use of the framework? What are its strengths and weaknesses?

Felstiner: It was also the notion of transformation, about going from one sort of form to
another, which of course led to the studies that Austin and I did about divorce lawyers and
eventually 15 years later to the book about the relationship between divorce lawyers and their
clients.32 That work initially was focusing on this relatively narrowly. It had a narrow concept
of transformation. When we actually got inside the lawyers’ offices and recorded and got

31 A. Olesen and O. Hammerslev, ‘Den komplekse før-retlige fase: Transformationen fra et socialt problem til
32 A. Sarat and W. L. F. Felstiner, Divorce Lawyers and Their Clients: Power and Meaning in the Legal Process
(1997).
thousands of pages of transcripts of what went on between lawyers and their clients, I think the transformation idea sort of fell by the wayside and we found other sort of more trenchant and interesting issues to focus on.

But I tell you, I’m listening to you and I’m frankly astounded and of course in a way pleased. I mean, that little article we wrote didn’t have any empirical focus, it was not in any dramatic way theoretical, and I don’t think any of us initially thought it to be any kind of major piece of work. It was a nice idea from my point of view. It was mostly Austin and Rick’s idea. I happened to have the time, so I wrote the first draft. So almost inappropriately my name appears first and then it would seem to have taken on a life of its own. And a few minutes ago, I would have had no idea that it would prove to be useful in such a wide range of environments.

Abel: I have two thoughts about that. One is its brevity, which is its virtue; as someone who writes 800-page books, which nobody reads, I know all about that. Obviously, the fact that it was very short made a big difference, and the fact that it was not demanding, it was commonsensical, it was written in ordinary language. So I think all of that is crucially important, though there was no empirical data. But I do remember one anecdote. And as Austin and Bill know, I always move from anecdote to anecdote. The anecdote was a woman who had been stopped for a traffic violation in Chicago, and she had been strip searched. There was no reason to strip search her, but the Chicago police did that. And she went public with the event, and then other women said ‘That happened to me too. I didn’t have to submit to that. Something was wrong with that.’ And here was transformation happening before our eyes. For me, that was very powerful. And that was what I had in mind.

I would add something that has been implicit in everything that’s been said today, but I want to make it explicit, which is legal pluralism. So this was also the moment
when we in Western societies and in particular in the US were made to realize and to embrace the fact that all legal systems are pluralistic. We knew this about Third World countries, and of course that’s what I studied in Kenya. And that’s what anthropologists looked at generally. But now we realized that it was true everywhere, and if there were plural legal institutions, then this transformation was going to be happening all the time as disputes moved across a variety of institutional contexts.

Sarat: If I can just add and go back to what you asked before: the naming, blaming, claiming framework did not have a disciplinary home. It’s been easily adaptable. In other words, it didn’t come out of political science, it didn’t really come out of legal academics. It was influenced by, as Rick says, legal colours in anthropology, and a part of the utility, or the adaptability, of the concepts is because they don’t have a disciplinary home. And what did we offer? We offered a conceptual framework, that’s all, so you can find PIEs in organizations, you can find them in hospitals, and you can find them in our dealings with the police. So I think it was precisely the absence of the disciplinary claim. There was an article published in the same issue of the *Law & Society Review* by Lynn Mather and Barbara Yngvesson.\(^{33}\) I thought it was a terrific article. And I’m going to make something up, which is probably not true, but I think that article was more disciplinary, coming out of the anthropology, while our article didn’t have a disciplinary home, it was eclectic. It just caught the moment in which people were trying to think in new ways about the dispute resolution framework and the movement to dispute processing and transformation and the ‘dark figures’, to use Rick’s phrase.

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\(^{33}\) Mather and Yngvesson, op. cit., n. 9.
Abel: Let me again add one thing, which is – I should probably go back and look at the dates – that this was roughly contemporaneous with the Jimmy Carter presidency [1977–1981]. Carter headed an initiative to introduce alternative dispute resolution [ADR] into the US, which was very much influenced and inspired by the legal anthropological literature, so there was a brief flurry of interest and money available for research into institutionalized ADR in the US.

Felstiner: Let me add that before we got involved in the CLRP, I had a grant from the Department of Justice to study mediation as an alternative to criminal prosecution, and I had done that in Dorchester, Massachusetts, in the working-class suburb of Boston. And I think I wrote a monograph that was published by the government, and I think that probably was available at the time we started the CLRP. And I have that background doing field work that focused on the notion that there are different ways that you can handle the same problem, even if you’re in the government. And there was this new emphasis on informal ways.

Let us move the conversation to an issue you touched upon briefly – namely, how the framework inspired your later work. You already said it was the transformative part that led you to the project about divorce lawyers and their clients. But according to our reading, you don’t use the naming, blaming, claiming concepts. So what influence did the framework have on your later work?

Felstiner: We used the transformation notion and the fact that we came up with this kind of formulation, but we didn’t have a particular critical base for it as the cornerstone of our funding applications to the National Science Foundation for the divorce lawyers study. But the study went on for a very long time, in part because both of us began to do different things,
and also because a lot of divorce cases took a long time. It took time to find the cases and then the cases themselves took a long time. In the evolution of that work, the transformation perspective began to take second place, and then maybe, perhaps come close to disappearing.

Sarat: This is really a wonderful thing that you’ve done to get the three of us together, because between the three of us we have different recollections. I’m going to add another: the naming, blaming, claiming framework did not play a central role in the organization of my work going forward. So that’s just the answer.

You are absolutely right that when we started the divorce lawyers project, it was all about the idea that divorce lawyers were transforming disputes. We interviewed the lawyer and interviewed the client, but we weren’t tracking in real time. We asked questions like ‘What do you think about the judge in your case?’ We would listen to the conversation between lawyers and clients and then we didn’t post measures in others, we didn’t have a kind of before and after design. And the interviews that we did were not designed to track the transformation in a systematic way. I think that the transformation idea got jettisoned when we tried to write the book. We had a bear of a time figuring out how we were going to organize the book. The book had very little to do with the transformation framework. I think we began with transformation, but by the time we wrestled the book to the ground, that framework had really gone and we adopted this idea that these were meaning-making activities as opposed to meaning-transforming activities.

Abel: Being a reader of the book, I read it quite differently, actually. The way I read it was that you began the book to address the claim that lawyers were troublemakers, that lawyers created problems. They got their clients to do bad things to the adversary, they were pitbulls, they were people who were highly aggressive. And then when I read the book, I saw they
were the reality principle. The client would say ‘I hate my husband’, ‘I hate my wife’, ‘I want to get them’, ‘I want to do this’, and the lawyer would say ‘You are never going to get satisfaction. Back off – none of this is going to happen.’ So that’s transformation.

**Sarat:** It is transformation and it’s also accurate, but we didn’t carry forward the naming, blaming, claiming framework for the book.

*The CLRP was funded as part of a larger effort to improve the civil and criminal justice systems in the US. The CLRP’s mission was to generate basic data on the justice system, and data to inform policy-relevant research. What are your reflections on the social impact of the project? Could you mention any lasting effects of the project, including your naming, blaming, claiming framework?*

**Abel:** It’s a very interesting question – I want to hear what Bill and Austin have to say about it. To me as an American academic, it’s utterly meaningless because I have never had any interaction with our government at any level. Federal, state, local – nobody is interested in my ideas. Nobody reads my work. Nobody would ever imagine bringing me onto an advisory board or asking me to comment on something. I am totally estranged from my government. And I think that’s very different from Denmark.

**Sarat:** We’re talking about two different things here. One is the CLRP and the other is the ‘Naming, Blaming, Claiming’ article. So the CLRP was all about policy impact. It was funded by the Department of Justice to provide this basic data. What happened in the discovery process? How was the litigation process working? What were the costs of
litigation? That’s where it began. So what effect did it have? Well, I’ll just say for myself—it’s hard to say what the impact was of the CLRP on policy in the US.

First of all, by the time the project was done, we had a Republican administration. And the impetus for the CLRP began in something that was then called the Office for Improvements in the Administration of Justice in the Department of Justice. That was a Jimmy Carter and Griffin Bell—who was then Attorney General—idea, and the idea was that the Department of Justice of the US should do more than prosecute. It should be like a Ministry of Justice. It should take responsibility for the improvement of the justice system. They created something called the Federal Justice Research Program, which is to say they created a pot of money to fund researchers to do things, to try to help them improve access to justice. So by the time there was work cut out, we were well into the 1980s and in the Reagan administration and all those improvements of justice were long gone from the world of public policy.

In 1988, together with Susan Silbey, I wrote an article called ‘The Pull of the Policy Audience’.34 It was a criticism of policy-oriented law and society work. So not even a decade after the CLRP was done, I was selling my policy stock and was, indeed, arguing that law and society work should be freed from the idea of an impact on policy (narrowly conceived) issues, and we were much more interested in things like structural change and reorganization of institutions than we were in things like ‘What would the cost of discovery in Philadelphia be?’ Maybe Bill or Rick have a more sanguine view of the impact of the CLRP? I don’t. I can’t say that it had a major policy impact in the US.

Felstiner: I think I’ve come to the same conclusion of the absence of any kind of government attention to our work. I adopted a somewhat similar view of the connection between research

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and change. I wrote a relatively short paper on the disconnect between all the work I have done and the social consequences of it and I have incorporated it in a chapter of a book I’ve been writing about my life.

**Abel:** Just yet another contemporaneous, roughly contemporaneous intellectual development was CLS, which I was involved in. I was actually never a central player, but I was involved from the beginning to the end, and CLS was a repudiation of any conceivable policy relevance because it was basically a repudiation of the notion that law could perform any useful role at all. I never quite bought into that, but the fact that it was going on at the same time may be relevant.

*In your article, you stress that access to justice efforts will only give additional advantages to those who have already transformed their experiences into disputes. Forty years after publication, the United Nations (UN) Global Goals promote the rule of law at national and international levels and equal access to justice for all. A similar institutional approach may be identified in the European Union’s infrastructure on access to justice, which focuses on designing principles assisting the legal profession to take cases to court and to organize independent and strong courts. It is interesting that the focus is still on the institutional organization and professional infrastructure, but – as we read it – the focus is not on citizens’ unPIEs or PIEs and the pre-dispute phase in general. Do you have any reflections on the importance of the pre-dispute phase when the UN Global Goals, among others, focus on providing access to justice for all and building effective, accountable, and inclusive institutions at all levels?*
Sarat: I think fixing the top of the pyramid is easier than fixing the bottom: investing resources in legal services and in training, making sure that lawyers are available for a wide range of clients, making sure that lawyers are sensitive to the needs of a wide range of clients. That is a difficult project in and of itself, but that is a lot easier than addressing the question of why it is that people put up with so much injustice. Why is it that people live with the grievances and don’t articulate them? Why is it that social institutions are structured in such a way that the conditions of everyday life are not perceived to be injurious?

I don’t know much about the UN Global Goals. But it seems to me that the access to justice conversation is a good conversation, but in some way the wrong conversation. And maybe I’m in my juvenile radicalism phase, but it does seem to me that it’s a very different conversation to say ‘How are we arranging social institutions?’ I want to go back to where I started and say that it’s very, very interesting that you can mobilize hundreds of thousands of people to denounce Dr Seuss, which is happening in the US, but you can’t mobilize hundreds of thousands of people to protest the poor conditions in which millions of people work in the US. So to the extent that our article directs people to focus below the disputing pyramid and to think about why it is that disputes are not articulated, that injuries are not even perceived to be injuries, I think that opens up a much more difficult, much more ambitious, and frankly much more important agenda for political thinking than does the access to justice agenda.

Abel: OK, let me follow on, Austin, because I think actually this may be the most important point of our entire conversation. Using the iceberg notion, when you go down further and further, you enter a domain that is inextricably normative. And because it’s normative, it’s political, and because it’s political, it’s tendentious and dangerous. So it’s fine to say

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35 Miller and Sarat, op. cit., n. 9.
‘Everybody should have a lawyer for their divorce or for their criminal defence’, but it’s very threatening to say ‘Everybody should be made aware they have demands’. That’s the dangerous thing, and that is not kosher. It’s not permissible, it’s political. If you want protection for your activity, you have to call it legal. If it becomes political, it’s unprotected. You’re never going to get government money for it, and you’re going to be challenged.

When I went to Jackson, Mississippi in the summer of 1965 after I graduated law school, I was very marginally associated with civil rights lawyering and we were called Northern agitators and ‘tennis-shoe wearers’ – I don’t know why ‘tennis-shoe wearers’. We were told ‘Our nigras are very happy. It’s just you people who make the trouble, right – they are very content.’ That is the image, the troublemaker image. That’s what we wanted to make central in the naming, blaming, claiming framework because it was the naming point that was the most important and the most amorphous, but also the most dangerous.

Sarat: That’s a good point. Can I just say one other thing, which is not directly responsive, but Bill gestured in this direction? You’re asking what I would describe as a whole variety of, as we used to say, heavy questions. About policy, impact, and intellectual influences. I’m prepared to play along with that.

Yet one dimension of the work that you haven’t yet asked us about, but Bill gestured to it, was what I would describe as the domain of affect. That’s a fancy way to say it was fun. And, I mean, that is central. Living with Bill, that was fun. And we had a lot of fun putting together the naming, blaming, claiming framework. Bill is one of the most interesting people I’ve ever met and fun to be around. Always wanted things to be fun even when they were very serious. Rick is one of the most important figures in the American law and society movement of all times and one of the smartest and most well-read people I know. I don’t want to bury the fun part of this, I don’t want to bury the pleasure of the collaboration. We
did not have the aim of writing an article for the *Law & Society Review* or something; the idea takes entirely over your imagination and fills you with a sense of ‘my God’. You’re doing something even though the ambition at the beginning was kind of modest. If you want to understand the background of the naming, blaming, claiming framework, you need to pay attention to the domain of affect. And part of the most important thing that came out of the naming, blaming, claiming project was a long-term collaboration with Bill Felstiner.

**Felstiner:** Yeah, I think Austin’s right. There’s no way that I would have stuck with any one project and any one colleague for 15 years unless I had a lot of fun. Our time together in Madison – it was not just fun, it was riotous. It was really great, and it went on for many years. The better part of the ‘Naming, Blaming, Claiming’ article has been the associations with Austin and Rick. This morning has been an amazing experience – learning or relearning so much by listening to Austin and Rick – and I thank you very much for that.

**Abel:** I fully agree. That’s a good note to end on.