POLITICAL CLAIMS, LEGAL DERAILMENT, AND THE CONTEXT OF DISPUTES

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This article is about claims manipulation and the influence of context on the careers and outcomes of disputes. We explore eleven cases in which civil tort action was used when citizen opponents petitioned the government (lawsuits called SLAPPs or "strategic lawsuits against public participation"). Rather than being totally contingent on interactional and situational factors, these disputes followed two general trajectories of transformation, depending on whether they arose from an "internal" or "external" setting. Disputes initially tied to a broad cultural or political claims base were transformed into more narrow and concrete claims. Yet the original political claims of the lawsuit targets were less likely derailed.

I. INTRODUCTION

In any dispute, claims for redress can be presented in multiple versions, and over time these may be transposed depending on language, audience, forum, procedural requirements, and the like (see Mather and Yngvesson, 1980–81). Thus, tracing the survival of a single claim requires knowing about the chameleon-like character of claims and recognizing changes in their shape, size, and color. While some claims may be altered capriciously, many are intentionally manipulated, reflecting the cleverness, subtlety, and creativity of disputants in pursuit of the viable claim (see Spector and Kitsuse, 1977; Schneider, 1985). This article is about patterns in claims manipulation and the influence of a dispute's contextual environment on the claims transformation process. It responds to

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the call of a decade ago for research on the careers of disputes that acknowledges the social setting in which disputes are embedded (Felstiner *et al.,* 1980–81; Mather and Yngvesson, 1980–81; Kidder, 1980–81).

In a recent study of conflicts in which both sides intentionally manipulated the claims made in political and legal arenas, we recorded the disputants' tenacious, inventive efforts to keep claims alive. One side, private citizens or groups, attempted to mobilize a governmental agency to redress an injury, to enforce an existing regulation, or to investigate an alleged wrongdoing. These citizens contacted the government about issues large and small, but all their communications with the government were protected political behavior, guaranteed by the petition clause of the First Amendment of the U.S. Constitution.[1] A governmental response to the citizens' claims was often waylaid when their opponents filed a civil damage suit, claiming injury had been caused by the government contact. These lawsuits, called SLAPPs (for "Strategic Lawsuits Against Public Participation"), usually claimed that defamation, abuse of process, interference with economic advantage, or other intentional harm had been the result of the citizen efforts to influence the government (Canan and Pring, 1988a, 1988b).

The controversies which stimulated the hundreds of SLAPPs we studied arose from five sources: (1) conflicts over power and authority; (2) value conflicts over cultural beliefs, norms, or mores; (3) economic interests; (4) factual disagreements regarding technical issues and data; and (5) antagonisms, namely, interpersonal and group feuds (see Coleman, 1957, and Amy, 1987, for comparable taxonomies). Transformations occurred when a dispute based on one source of conflict was rephrased in terms of a new claim based on a different source. So, for example, an economic claim regarding condominium parking spots could be collectivized by a factual

[1] "The right of the people . . . to petition the Government for a redress of grievances" (U.S. Const. art I) is intentionally housed with the cognate rights of free speech, press, and assembly "as interrelated components of the public's exercise of its sovereign authority" (*Smith v. McDonald,* 1985). Yet, it is far older than and, at least in part, a progenitor of its more famous cousins, supporting "a plausible claim for it as the 'original right' " (Smith, 1971: 2–3). The historical roots of the petition right run deep. It can be traced as far back as the tenth-century Andover Code of Edgar the Peaceful (*ibid.,* pp. 12–13, 45). It occasioned the Magna Carta in 1215 (Stephenson and Marcham, 1972: 125) and became fixed in English law in the seventeenth century (Dumbauld, 1979: 168). It was asserted in the American colonies a decade before the Revolution (Schwartz, 1971: 265) and appeared in eight state constitutions even before its 1791 addition by amendment to the U.S. Constitution (see Canan and Pring, 1986).

The contemporary view of the behavior protected by the petition clause extends its coverage far beyond its literal language of "petition," "redress," or "grievances." The advocacy it covers includes any peaceful, legal attempt to promote or discourage governmental action at all governmental levels and all governmental branches, including the electorate (see *Stanford Law Review,* 1984; Library of Congress, 1973).

counterclaim of building code violations, or a value claim like one for environmental protection could be transformed into a factual claim of discrepancies in demographic data. Or disputants might simply add a claims base of antagonism.

Such serial transformations or creative admixtures of claims occurred in sequences, following two primary trajectories. Along one trajectory, claims got larger, more comprehensive, and more symbolic. Claims taking the second trajectory became narrower, more simplistic, and more concrete. What differences characterized the disputes that took an expansionist direction as compared with those in which claims became more specific and concrete? One important difference arose from the relationship between the dispute and its social context. By social context we mean the setting of the dispute, including both the original basis for the controversy and the initial range of parties, issues, and institutions involved. To anticipate our conclusions here, we suggest that contextual factors influence both the trajectory of claims and their vulnerability to derailment by litigation. That is, larger social struggles are less likely to be thrown by a strategic lawsuit; in narrower conflicts, however, lawsuit targets may succumb when they cannot draw support from a larger social context for the battle.

We first explore transformative processes, discussing eleven cases in which civil tort action was eventually used in response to citizen opponents' petitioning of the government.[2] We then examine the relationship between social contexts and patterns of claims management, focusing on four of the eleven SLAPPs to provide examples of disputes arising from "internal" and "external" contextual settings.

By an internal setting we mean one in which the particular "facts" that are the basis for the injury—those that escalate into a dispute—circumscribe the dispute itself. The facts in contention

[2] These cases are part of the Political Litigation Project, an ongoing study at the University of Denver. The research has combined quantitative and qualitative approaches to understanding the SLAPP phenomenon in 241 cases. The SLAPPs were obtained from four sources: (1) a sample of six trial courts' records for 1983; (2) a mail survey of 975 public interest organizations, (3) legal literature searches keyed on the petition clause, and (4) referrals following popular publications, presentations, and journalistic reports. These SLAPPs, filed across the country between 1958 and 1989 and which are no longer in the judicial system, may not be statistically representative of the population of such cases, since the universe is virtually unknowable. In studying 241 SLAPPs we studied key legal documents: the complaint, answer, motions/briefs for dismissal, summary judgment, or demurrer, and court rulings, if any. We designed a nine-page coding sheet to record information about the participants, issues, claims, and the substantive and procedural history of the litigation. Complementing this quantitative, documentary analysis were in-depth qualitative cases studies of eleven cases chosen to represent the breadth of issues, types of communities, and party diversity that were noticeable among the first one hundred cases scrutinized. For these case studies we interviewed ninety-three participants (filers, targets, agents, observers), making verbatim transcripts of the one- to five-hour interviews. Our conclusions in this article are primarily based on the information obtained in the personal interviews.

appear as relatively straightforward questions of who gets what, and the dispute covers interests that are particular to the disputants. Both the specific claims made and the way they are managed are only minimally influenced by social processes outside the fight or external to the dispute participants.

In contrast, externally situated conflicts spring from a richer social milieu, a previously existing struggle. Here dispute "facts" get developed, often by influential outsiders, as expedient examples of a larger phenomenon, often a long-standing clash in values or persistent structural disparities. In these instances, the social world outside the particular dispute is visibly coupled to the struggle at hand. The SLAPPs we use in this article to depict an "external" setting were born of national political debates concerning environmentalism versus development and the role of religion in public schools. The two cases illustrating internally situated conflicts began without reference to any larger political controversy.

As we shall see, while claims in externally set disputes became narrowly rephrased as the controversy progressed, their rich external context saved the political claims from being legally derailed. The external context appeared to support the autonomy of the dispute's political nature. This meant that externally set disputes were not as vulnerable to typical (and intended) outcomes of oppositional rephrasing tactics.

II. CLAIMS MANAGEMENT: CYCLES AND CHAINS

Our inquiry builds on the typology of transforming an injury into a claim, a pattern of naming something as injurious, identifying an agent to blame, and then making a claim for redress (Felstiner *et al.,* 1980–81). In the broadest sense, SLAPPs represent three separate sequences of naming, blaming, and claiming. In the first sequence, an individual or a group of citizens identifies an issue as injurious, attributes blame to an offending party, policy, or institution, and then makes a governmental claim for change. Then other parties, perceiving that their interests (often economic) stand to be harmed if the citizen complaint goes unchallenged, react by naming something different as offensive: some aspect of the previous claim made by the citizens. Blaming the citizens for making the claim, they file lawsuits (SLAPPs) for civil damages, using legal damage claims like defamation, interference with economic advantage, or conspiracy. A final broad cycle of naming, blaming, and claiming can occur when the targets of the lawsuit expose the legal claim as a bogus use of the courts to deny citizenship rights, and seek protection under the petition clause of the First Amendment.[3]

[3] A fourth cycle of naming, blaming, and claiming can occur when original targets SLAPP back, filing legal damage claims for malicious prosecution and violation of constitutionally protected political behavior. This article is confined to the transformations in the original SLAPP.

In this article, we use sequences of naming, blaming, and claiming to identify transformations. A transformative cycle occurs when the dispute would end (e.g., be settled, dropped, or dismissed) unless another round of naming was initiated. While numerous instances of naming, blaming, and claiming stages occurred over the life of these eleven disputes, claims did not always progress in a linear fashion with, for example, naming preceding blaming. Instead, claims appeared in repeating, overlapping, often ricocheting sequences of naming, blaming, and claiming. While "something" had to be perceived as injurious, the something could be nebulous, and it could follow, not precede, the identification of a blameworthy agent ("If he's involved, there's something wrong"). At other times, parties shopped for efficacious "names" and "blames" AFTER they had articulated a claim ("Somebody ought to pay for the delay I incurred from all this !%#>@!! citizen participation").

Likewise, transformation cycles were not uniformly linear. Sometimes the transformation generated a string of sequences that resembled a laid out necklace, where each successive claim was directly linked to its predecessor, and a new claim replaced the earlier one ("If the Board doesn't hear us on general pollution levels, we'll go for counts on particulant ratios as an issue"). But at other times the cycles appeared in an almost mosaic fashion, overlapping, or proceeding simultaneously ("They said we said she was a witch. I think we should go back to a parent's right to monitor her child's educational experience"). The nature of the transformative sequences themselves often appeared to be influenced by a combination of interactional (reactional) and situational factors as opposed to higher order structural constraints.

Claims did tend to change systematically over time, becoming either more concrete or more symbolic. In the eleven disputes summarized in Table 1, there were between two and thirteen sequences of naming, blaming, and claiming. The cases are presented according to the narrowness and concrete character of the dispute's initial claim. Thus, *DWB* and *Cole,* at the top of the table, began over large issues: environmental protection and the long-standing struggle of fundamentalist parents against secular humanism in the public schools. At the bottom of the table, *Anchorage Joint Venture (AJV),* a dispute that began over blocked apartment views and parking spots, shows the most narrowly constricted initial claim. In between, but on the lower half of the table, are several land development disputes (*Einarsen, Warembourg,* and *Walters*) that also began with relatively narrow initial claims.

Both claims transformation and the ability of a lawsuit to derail an issue may be contingent on the nature of the dispute's contextual setting. Table 1 shows three points in the claims transfor-

Table 1. Claims Transformation in Eleven Disputes

		Claims Transformation Sequence			Formal Claims		Outcomes		
	Case Name	Early Claim	Midpoint Claim	End Claim	Petitioned Claim	SLAPP Claim	SLAPP Winner	Political Winner	Is the Conflict Over?
EXTERNAL CONTEXT	*DWB*	Environmental protection	Conservation	No water treatment plant	Inadequate environmental impact statement	Arbitrary opposition to adequacy of EIS; "existing controversies"	Mediated settlement[a]	Split[b]	No
	Cole	Secular humanism	"Occult" practices in public education	Stop teacher's behavior	Specific incidents of offensive teaching	Defamation	Filer[c]	Target	No
	Carter	Sexual discrimination & harassment	Sexist promotion practices on Air Force base	Don't vote for Rep. Ray	Employer failed to promote employee	Defamation; conspiracy; invasion of privacy; violation of Privacy Act of 1974; abuse of process; interference with employment relations	Split	Targets	No
	POME	Environmental protection	No high density development	Make developers pay fees to school district	Commission exceeded jurisdiction	Abuse of process; conspiracy; economic damage; delay	Targets	Filer	No
	ABH	Local unwanted land use	Neighborhood integrity	Deny zoning variance	Used wrong terms for zoning change	Violation of constitutional rights	Targets	Targets	No
	Einarsen	No office development or shopping center; NIMBY	Zoning enforcement	County growth policy	Referendum	Filed protest petition; due process; equal protection; privileges & immunities; conspiracy	Targets	Targets	Yes
	Warembourg	Taxpayers' cost for annexation	Good development planning	Moratorium on growth	Referendum	Due process; equal protection; privileges & immunities; conspiracy	Targets	Targets	Yes
	Walters	Negative aspects of proposed development	Developer's financial capability & technical competence	Revise county development plan	Commission exceeded jurisdiction	Defamation	Unknown[d]	Filer	Yes
	Welter	Hurt boy	Police brutality	Racial discrimination	Investigation by police commission	Defamation	Target	Filer	Yes
INTERNAL CONTEXT	*IREA*	Raising electricity rates & manager's salary	Ineffective board of directors	Corporate democracy	Recall petition for board	Abuse of process; defamation	Unknown[d]	Filer	Yes
	AJV	Blocked apartment views & parking spots	Building code variances	Zoning regulation	Excessive town board discretion	Abuse of process; interference with economic advantage; nuisance	Targets	Filer	Yes

SOURCE: Political Litigation Project, University of Denver Department of Sociology and College of Law.

NOTE: *Definitions:* "SLAPP"—strategic lawsuit against public participation; "filer"—the party filing the SLAPP suit or counterclaim; "target"—the party named in a SLAPP suit or counterclaim.

a The Denver Water Board case ended in a mediated settlement; thus it would be misleading to record the last official judicial finding, which favored the filers, as a legal victory for that party.

b The results of the mediated settlement were permission to build the water treatment plant and the incorporation of conservation in DWB operating procedures and in subsequent policymaking processes.

c The remaining targets dropped the appeal when their insurance company agreed to settle with the teacher for an undisclosed amount.

d This case was settled out of court, but one condition of the settlement was that its terms be kept secret.

mation sequence: the claim's subsequent formal appearance as a political petition to the government, the legal injury then claimed by the SLAPP filer, and the outcomes in legal and political arenas. As the sequences of claims transformation reveal, it is significant that claims made in cases in the top half of the table get narrower and more concrete before they take on their formal appearance as a government petition. In contrast, claims in the cases on the lower half of the table hardly appear political at the early phase of their careers; over time, however, they get larger, more symbolic, less tied to the facts of the initial conflict, and relatively politicized.

Table 1 also shows that there are five cases in which the struggle is not over, regardless of whether the specific battle has been won or lost. ("We have settled. . . . It doesn't make it right, [however,] because, you see, this is still an ongoing issue.") These five unsettled cases began with a broader initial claims base than the other six cases. Because the initial claims base is an integral part of the contextual setting of a dispute, we now focus on its implications for the viability of claims.

III. THE CONTEXT OF A DISPUTE

SLAPPs, by definition, are efforts to transform claims made in a public, political arena into legal claims in order to reduce or eliminate their potential damage. The petition clause protects all efforts to influence governmental processes and thus, for our purposes, defines political behavior. But the initial claims in these cases vary in their pre-petitioning form and social significance. Especially for understanding claims transformations and outcomes, we need to investigate the history of these disputes to distinguish between struggles that are political with a capital "P" and acts of government contact that began over issues with less overt connection to the larger political fabric.[4] This brings us to the question of the nature of the extralegal setting of the disputes.

We can conceive of disputes closely linked to a large, rich external history and those that are not. External dispute contexts are broadly set, encompassing social, intellectual, and cultural phenomena. Internal dispute contexts are restrictive, staying within the particular events/sources/matters/issues of a specific occurrence per se. In a dispute over highly charged, long-standing social rifts, based, for example, on differences in basic values, the influ-

[4] We do not want to fall into the functionalist trap of determining which conflicts are "good" and which are dysfunctional for society. Our notion of significance is not tied to normative criteria. Rather we posit ideal differences in the degree of "politicalness" in the genesis of a dispute. We are also aware of the cultural (and political!) determinants of definitions of politicalness. Thus the neighbor-neighbor dispute about fence repair could easily be a cover for racial prejudice. Rosa Parks's deciding not to sit at the back of the bus is hardly an insignificant political act. The point is that one needs to appreciate the context of a dispute to make a more informed assessment.

ential contextual environment would be external to the dispute itself. One gets the sense that the script has already been written, and only the identities of the particular actors need to be added. To exploit its symbolic value, influential outsiders may seize such conflicts; if they didn't, the conflict might otherwise dwindle due to apathy or inaction (some version of "lumping it"). In disputes originating in external settings, outsiders help direct dispute transformation and outcomes.

A larger, external context is hardly discernible in cases in which conflict arises from a particular offensive incident (specific "perceived injurious experiences" according to Felstiner *et al.*, 1980–81); where one injured party may not know other similarly injured parties; where the personality and style of the parties themselves appear critical; and where economic interests are the typical stakes. We call these cases internally contextual: The particulars of the case itself keep the dispute alive and dictate its form and outcomes.

How, then, does the type of context affect the way in which claims are manipulated? And what is the connection between dispute context and vulnerability to derailment in political legal disputes? To explore the influence of context on dispute transformation and claims derailment, we turn to four cases that began in Colorado between 1976 and 1984. For the present analysis, we rely primarily on the reported experiences of forty-three people who were involved in the disputes in various capacities, as filers, targets, agents, supporters, or outside observers.[5] The original controversies pitted environmentalists against growth proponents over a water development plan (the Denver Water Board case—*DWB*), right-wing fundamentalist parents against a teacher over the control of public education (the *Cole* case), consumer-owners versus management in a struggle over utility company governance (the Intermountain Rural Electric Association case—*IREA*), and the builder of a twelve-unit condominium and neighbors who opposed it (the Anchorage Joint Venture case—*AJV*).

A. "External" Dispute Context

Two SLAPPs that provide examples of an external context—the *Denver Water Board (DWB)* case and the *Cole* case—rest within a larger, existing value-based rift in the community. The *DWB* dispute is set within a lengthy national struggle to address the environmental costs of major construction projects. Over the twenty years preceding this dispute, environmentalists had battled "the growth machine" (Logan and Molotch, 1987) and by 1969 had gotten significant legislation passed (NEPA, the National Environ-

[5] The analysis of verbatim transcripts of the one- to five-hour face-to-face interviews was facilitated by the use of the Ethnograph computer program (Seidel, 1988).

mental Policy Act of 1969) that established the Environmental Protection Agency (EPA). Both the environmentalists and the water board officials in this case described themselves as "professionals doing their jobs." The disputants took predictable positions, scripted by their professional roles, and dispute transformations were managed, often from offices elsewhere (e.g., Washington, DC). The other contextually external case, *Cole,* began in Northglenn, a northern suburb of Denver, and revolved around Jan Cole, a sixth-grade teacher, and a few parents whose children were her pupils. Its context is the struggle between religious fundamentalism and conservative politics, on the one hand, and a secular vision of the state, on the other: Public education is the battleground. In *Cole,* the people writing the scripts for the disputants were professionals who never officially joined as litigants. Instead, long-standing opponents—fundamentalist religious leaders and teachers union officials—acted through the parents and the classroom teacher as they directed the battle over religion in public education.

1. The Denver Water Board Case: External Context. The activist culture of the early 1970s sets the relevant external context for the *DWB* SLAPP, a dispute over a proposed Foothills Water Treatment Plant at the base of the Rocky Mountains. During the early and mid-1970s when this dispute was emerging, a new environmental consciousness was being promoted and institutionalized in American culture by a broad coalition of voluntary associations. Endangered species, pollution, the energy crises, and the "economics of scarcity" were among the unsettling concepts forcing Americans to reexamine their established views toward the environment.

After the peak of environmentalist mobilization from 1968 to 1970, the nation reacted with protective self-reliance to the energy crises of 1973–74. During this ambivalent period, the Foothills Treatment Plant emerged in Denver water politics as the focus for the conflict between the new ecological world view and the old assumptions that favored unrestrained growth. Indeed the proposal was part of a plan established in 1952, whose first phase of implementation took place fifteen years later in April 1967 when the Denver Water Department applied for, and obtained, an easement for the use of federal lands to construct the plant. By 1976 when the easement was up for renewal, the political context had changed and the request for renewal triggered a dispute.

The newly institutionalized environmental movement, taking advantage of the National Environmental Policy Act of 1969 (NEPA), mounted an offensive against the growth coalition (see Schnaiberg, 1980: 105–20; Logan and Molotch, 1987). The growth coalition, essentially an alliance of capitalist business interests and their political representatives, espoused a simple theory of growth: The expansion of production and consumption will lead to in-

creased income and employment, state revenue, and improved general welfare. For them, expansionism is assumed to be a universal goal and not a political or ideological choice. Growth is taken to be natural and necessary, and the simple moral imperative is that if something is economically feasible, it should be done. The negative consequences of doing so—wasted resources, pollution, social impacts—are simply "externalized." This world view of progress through growth remained relatively unchallenged until the 1960s.

The environmental movement represents an alternative set of value commitments which questions the desirability of continuous growth. A central tenet of environmentalism is conservation—the antithesis of unrestrained growth. Although the opponents of Foothills attacked the project with a range of specific objections to the probable secondary impacts of the project (e.g., urban sprawl, air pollution, and damage to historic sites and wildlife habitats), their unifying theme was the conservation ethic. The fundamental disagreement over Foothills rested on this point. Come what may, the DWB was determined to pursue expansion of Denver's water supply system and never seriously entertained the alternative of a water conservation program, the environmentalists' preferred alternative, over the proposal for the water treatment plant.

Alan Merson, the regional administrator of the Environmental Protection Agency who found himself to be the focus of attacks by the *Denver Post* and groups supporting Foothills, compared the "pro-growth mentality" to his own view of the matter:

> [T]here was this certain mentality that the mining industry—all of the people who were associated with extractive industries, um, and that included the water lobby because they were part and parcel of what I guess you would call pro-growth—but, really, it was a view of land and resources as commodities rather than a what I hope is a more rational environmentally sound perspective. . . .[6] One is the society that recognizes limits and the other is the society that doesn't. . . .[7] I feel pretty strongly that the conservation ethic . . . is the only livable one on a limited planet.[8]

By the mid-1970s NEPA required that federal agencies fully disclose anticipated impacts in an Environmental Impact Statement (EIS) prior to the implementation of any environmentally significant project requiring federal action. The EIS process incorporated a public review process. This process provided the vehicle for citizen petitioning in the DWB dispute.

2. The Denver Water Board Case: Transformations. In February 1976, during public hearings held on the preliminary draft EIS, a group of environmentalists, both individually and in their organi-

[6] Telephone interview with Alan Merson by Laurie Larson, Denver, CO, 1988, lines 406–16.

[7] *Ibid.*, lines 1060–62.

[8] *Ibid.*, lines 1071–74.

zational capacities, opposed the project for its embodiment of the pro-growth policies of the Denver Water Board. They called for a more responsible decisionmaking process and a policy that adequately addressed water conservation as an alternative to the construction of the water treatment plant. DWB objected to the indecisiveness of the public review process, so they turned to the courts. As Public Information Officer Reutz told us:

> I guess it was simply when the frustration level got to a certain point, that it became apparent that there wasn't a federal bureaucrat around who was willing to take the initiative to do something with the permits for Foothills. And the thrust of the suit simply, our suit, was to say, "Do your job! Either issue or deny the permits, but for God's sake, don't sit there forever like bureaucrats twiddling your thumbs."[9]

Denver Water Board first sued numerous government officials they considered instrumental in causing the delay in getting their permit.[10] Then they amended the legal complaint to include the environmentalists for their opposition.[11] The case was eventually settled out of court in February 1979 through mediation initiated by U.S. Congressman (now Senator) Tim Wirth.

The case demonstrates how a dispute can be transformed from a symbolic struggle to a fight over concrete issues. Two processes were involved: the first followed from the nature of the opposing claims, and the second from third-party intervention.

The first process centered on the vulnerability of the environmentalists' claims. The early objections were largely symbolic and nonspecific. This allowed the proponents to level charges against the environmentalists that the opposition was "based on myth, a good deal of emotion, and very little fact."[12] DWB and its supporters, on the other hand, could back their arguments in favor of Foothills with professional reports and authoritative "facts."

Characterizing the environmentalists as uninformed and un-

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[9] Interview with Ed Reutz by Laurie Larson, Denver, CO, 1988, lines 326–38.

[10] Even though the petition clause protects the political behavior of government officials, we have eliminated them from our operational definition of SLAPP "targets" because of the additional resources that governmental officials have to call on as well as their assumption of "official vulnerability."

[11] For the *DWB* case study, the following people were interviewed at length: Ed Reutz (public relations official for the Denver Board of Water Commissioners), Jack Ross (DWB attorney), Robert Weaver and Toni Worchester (individual citizen defendants and representatives of the Water Users Alliance), Alan Merson (Regional Administrator for the Environmental Protection Agency), Lawrence Reno (Colorado Rivers Council attorney), Daniel Luecke (Director, Environmental Defense Fund), and John Bermingham (attorney for American Rivers Council, Environmental Policy Center, Colorado Open Space Council, Concerned Citizens for Upper South Platte and CWWA, Inc.) We also reviewed the extensive news coverage found in local, state, regional and national publications. See also Burgess (1983) for an excellent chronology of events and analysis of the mediation portion of the dispute.

[12] Interview with Reutz, lines 359–61 (cited in note 9).

reasonable troublemakers, DWB and its supporters were able to undermine the legitimacy of the environmentalists' claims. DWB produced statements such as the following, contained in a letter to the U.S. Army Corps of Engineers:

> The "true fact" of the matter is that opponents of Foothills are using this as a tool to advance their political philosophies; political philosophies which are not held by those whom the people have elected to public office. (Burgess 1983, Document 20)

In reaction to such attacks, the environmentalists were compelled to alter their approach and address the technical specifics of the Foothills project, such as the water use projections and engineering reports used in the draft EIS to justify the project. A member of the core of opposition, John Bermingham, demonstrated this change in tactics at the 1977 public hearings. In a thoroughly prepared presentation, Bermingham contested, point by point, the facts and figures used to justify Foothills. On the basis of purely technical shortcomings, Bermingham concluded: "The draft EIS gives so distorted a picture of the facts relating to [Denver Water Department] resources, facility capabilities, and potential shortages that a new draft must be circulated and another public hearing held before the EIS may be legally finalized" (U.S. Department of the Interior, 1978: Index 42).

This shift from symbolic claims to specific, technical arguments was accompanied by an emphasis on conservation measures as a viable alternative to the DWB's plans for expansion. A letter from the Environmental Defense Fund presented at the 1977 hearings shows how the environmentalists' arguments for conservation measures were backed by technical rather than rhetorical arguments:

> The DWB, solely to foster its own expansions, has consistently resisted the enactment of any effective conservation measures. Yet, their own data indicate that with adequate conservation measures and without the Foothills project, the present treatment capacity would support a population of 2.4 million which is more than double the population served by their system. (*ibid.*, Index #30)

A second reason for the shift from symbolic and general to concrete and specific was the mediation process initiated by Representative Wirth. Prior to his intervention, the parties were polarized and hostile. Burgess (1983: 192) states: "Each side accused the other of incompetence or malfeasance, both in speeches and in letters." Faced with a complex and emotionally charged conflict, Wirth endeavored to "segmentalize" the dispute by restricting the number of parties involved in the mediation and by identifying the resolvable issues. He also ensured that the public was aware of the negotiations by effectively using the media. According to Burgess (1983: 192), the process of

> forcing the disputing parties to interact frequently helped to break down much of the previous hostility and distrust among the parties. . . . As a result, the letters written to and from the Corps were all exceedingly polite, although the differences of opinion were stated strongly. Further, any accusations were made about facts, not about personalities or the competence of the individuals involved.

The mediated settlement left no legal winners and split the pie on expanding the water treatment capacity. It called for DWB to pay the defendants $52,500 "to defray the professional fees, expenses and out-of-pocket costs incurred" in defending themselves against this SLAPP. It also called for conservation to be incorporated into DWB planning, required that DWB admit it had violated the environmentalists' constitutional rights by suing them, and established a citizens' advisory committee to be created for any future environmental controversies. It permitted the treatment plant to be built but on a reduced scale. All participants had viewed the treatment plant as a precursor to a huge dam project known as Two Forks. By 1988 it looked as if the conservation thrust forced upon DWB had been forgotten and that Two Forks Dam would be built. But in 1989 the Bush administration vetoed the project.[13] Delay had obviously worked in favor of the environmentalist position.

3. The Cole Case: External Context. In *Cole,* fundamentalist parents challenged an elementary school teacher for what they described as her "occult-based" teaching practices. The teacher, Ms. Cole, in turn, sued them for defamation. The dispute has its roots in the overt antagonism between fundamentalist sects and secular humanism that began in the religious revival of the 1950s. This revival was in part a reaction against John Dewey's (*A Common Faith,* 1934) and his followers' radical vision of a public religion which would substitute the ideal of democracy for the concept of God. In short, the Dewey school suggested a godless national religion which would retain ritual and ceremony but would dispense with the supernatural and transcendent elements of traditional religion.

The basic tension in American culture between schismatic church religion and the advocates of a public or civil religion has its origin in the founding fathers of the American republic. Major figures such as Jefferson and Adams promoted the idea of an "enlightened deism," and as early as 1749 Franklin proposed a "publick religion" which could serve as a unifying faith for the new re-

[13] According to *Denver Post* Senior Editor Bill Hornby (1989), the Environmental Protection Agency's agent in Atlanta, Lee A. DeHihns, III, noted that the environmental impact statement for Two Forks Dam had covered four other water projects that were, in his words, "less environmentally damaging" than the big Two Forks Dam, and "consequently" Two Forks's compliance with the National Clean Water Act was questionable.

public. This was an effort to separate the basis of morality from the divisiveness and particularism of sectarian religion and create new social bonds centering on national identity.

The progressive separation of formal religion from the polity and schools in Supreme Court decisions through 1970 and a consequent consolidation of civil religion represents the differentiation of two religious functions. They are what Marty (1987) identifies as the "saving" and "ordering" aspects of religion. The saving function pertains to the private, other-worldly concerns of the individual for salvation, while the ordering function serves the need for collective sentiments, meanings, and guides for conduct in this world. The tendency of the state to appropriate from the religious sphere the ordering, social bonding qualities of religion, while eschewing the particularism of transcendence and salvation, forms the basis for civil religion.

Unlike the radical version of the Dewey school, moderate forms of civil religion (e.g., Bellah, 1967; Bellah and Hammond, 1980; Bellah *et al.*, 1985, 1987) call for a differentiated civil religion built around national symbols and ceremonies, alongside rather than in place of traditional, schismatic religion. But because the state has to some extent taken over a traditional function of religion, an ambivalent and uncertain relationship between church and state exists.

In a very real sense, the current form of American fundamentalism represents an effort to reappropriate the ordering function from the state by crossing the political boundary and attempting to legislate morality. Fundamentalism, "whatever its historic voice, today overtly seeks to be a social phenomenon with political dimensions" (Marty, 1987: 293). This intrusion into the political realm is aimed at reestablishing and asserting the former unity of collective morality with individual salvation. This has formed an institutional line of confrontation between the particularism of the fundamentalists and the universalism of the state.

4. The Cole Case: Transformations. During the first few days of the 1984 school year, one of the children in Ms. Cole's sixth-grade class came home describing classroom activities of the day. A few days later her parents, Mr. and Mrs. Lehman, had a conference with the principal and Ms. Cole during which they complained that Ms. Cole had required the students to focus on a light bulb, engage in meditation and relaxation techniques, and sit in a circle and confess their wrongdoings.

> I think the Lehmans were very clear even when they were talking to Ms. Cole and the principal, Mr. Huckins, as to what they meant by their concerns, like occult. The Lehmans are very genuine, sincere, conservatively religious persons. Certain of the teaching practices of Ms. Cole that they objected to, one of them was an exercise in

> the class where the teacher would have students lie down on the floor and close their eyes while quiet music was being played. They were asked to . . . imagine that they were going down an elevator or down some stairs into the inner room of their mind, and to create this room in their own mind, and to place a television screen in the room, and picture your mother's face on it. This educational technique . . . to very conservative religious persons . . . [was perceived as] similar to entering a hypnotic state. And that was a concern of the Lehmans' because very conservative religious persons oftentimes object to hypnosis, feeling that it is something that they should not participate in themselves, and that they would not want their daughter to participate in.[14]

Ms. Cole denied the accusations, saying that they were exaggerations. The next day the Lehmans withdrew their daughter from the school and placed her in a parochial school.

Another parent, Sandy Montoya, also became concerned with her daughter's description of Cole's class. A staff member at New Life Fellowship Church helped her meet the Lehmans, which led to an organized attempt to challenge Cole's teaching practices. The parents wrote letters to school board officials, and an investigation into the matter was conducted by the school's Policy Council Subcommittee on Controversial Issues. In June 1985 the subcommittee concluded that there was no proof regarding the parents' claims and suggested that in the future the teacher obtain parental consent before engaging in controversial teaching practices. Then in September 1985 Ms. Cole, backed by the Colorado Education Association (CEA), filed a lawsuit against the parents for defamation of character.[15] The political claims in the Cole case were value-based. The parents' religious ideology provided the basis for their opposition to Cole's teaching practices. Likewise, Cole's ideals were also expressed from a value-oriented position. The participants' values are best described by Cole's attorney when he discussed courtroom strategy:

> In terms of strategy, the only other thing that I would mention is that I had a sense, and the court had a sense, and defense counsel I think had a sense, that this was a case which had the potential to become something of a circus. That, given free reign to ALL the parties' desires, the Lehmans and Montoya would have had a variety of theological, evangelical oddballs testifying, and Jan [Cole]

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[14] Interview with Marlene Gresh by Laurie Larson, Denver, CO, 1988, lines 426–62.

[15] For the *Cole* case study, the following people were interviewed at length: Jan Cole (the teacher who filed the lawsuit), William P. Bethke (Cole's attorney), Robert R. Huckins (the principal at Cole's school, Riverdale Elementary), Arlene Lehman, William Lehman, and Sandy K. Montoya (parents who were sued), Marlene Gresh (attorney to the defendants), and Bill Jack (of CALEB, a national youth ministry). We also reviewed newspaper coverage in the *Denver Post,* the *Rocky Mountain News,* and *Up the Creek.*

> would have come up with a cast, equally large, made up of people involved in holistic health and touch for health and all of her own personal concerns and personal areas of study about health, and we would have just had a zoo.[16]

Although the parents' claims were very general (as expressed by Mrs. Lehman when she stated, "I would not have liked to see it [the teaching methods] in the schools *at all*"), they made the claims more viable by addressing one particular teacher in one particular school. Jan Cole's attorney explains the parents' use of this case to set an example:

> I came in at the point where the parents were, in my opinion, and they deny this, they say it's not true, but my perception would be that they had a sense that Jan was vulnerable and that they could try to get her fired. And they wanted to prove that they could get a teacher fired. And that was, I think, a main goal, became a main goal.[17]

However, when the dispute entered the legal arena, it was no longer a dispute over values, but had been derailed by a legal claim of defamation, and the targets were forced to address the legal claim while placing the original political claim on hold. Marlene Gresh, co-counsel for the target parents, was aware of the strategic advantage of the possible legal derailment. As she explained, there was "also the concern that we [did] not want to turn a very straightforward defamation action into religious issues. We felt that it was important for the Lehmans that their clearest defense, and their best defense was under the law of defamation."[18]

The people in this dispute were continually educated about the ideologies of the other side. The CEA provided Jan Cole with information about "the political activity of the far right in Colorado and other places." Likewise, the parents were fed information about "New Age" practices and Eastern religion. One of the parents explained:

> I felt, and it was my own opinion, but it was with investigation of reading different books, and talking to different people, and watching a video movie, that some of the teaching methods that she was using in school, on my daughter, who was twelve years old at that time, I felt that these methods were in the basis of the occult. . . .[19] During the meantime then, we are educating ourselves so . . . that we had something to base our feelings on. So we were educating ourselves. One of the things was "The Gods of the New Age" [a video tape provided by a conservative religious group]. And then eventually, through a series of events, we did meet Bill Jack of the CALEB Campaign,

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[16] Interview with William P. Bethke by Laurie Larson, Denver, CO, 1988, lines 1139–56.

[17] *Ibid.*, lines 835–48.

[18] Interview with Gresh, lines 360–67 (cited in note 14).

[19] Interview with Sandy Montoya by Laurie Larson, Northglenn, CO, 1988, 222–30.

> Kathleen Hayes, who then, at that time, was working with Samantha Smith, who gave us more information, more books to read. And so we kind of knew what we were up against.[20]

Both sides in this dispute were guided by people who saw the outcome of the dispute as having consequences for more than just the direct participants. Each side was influenced by more powerful figures of authority, lending the dispute the characteristics of a battle between repeat players (Galanter, 1974). One of the parents' advisors, Bill Jack, headed the Colorado chapter of the CALEB campaign, a "Christian youth ministry, which assists parents, teachers, and students who want to share their faith legally, effectively and diligently in the field of education, especially in the area of public education." As the opposing attorney noted:

> And I don't think we should underestimate the extent to which the parents were influenced by their own religious advisors, even though we know very little about what was said, because they all disclaim having in fact been influenced, but you know, my impression from their behavior at trial, um, was that as to certain issues, settlement may well have been one of them, their lawyers kind of took the back seat to the pastors and the advisors of a religious nature.[21]

On the other side the teachers union gave Jan Cole video tapes on fundamentalist politics to help her design strategies to handle the scrutiny of fundamentalist parents. The CEA's involvement in "turning this into" a case of academic freedom was noted by the parents' attorney: "I feel that the CEA was strongly behind Ms. Cole. That the CEA was . . . they turned this into an issue of academic freedom and that a teacher should have the freedom to do what they want to do in the classroom."[22]

Three days after the case went to trial, the jury found for Cole against all three parents. The parents appealed, and a settlement was reached with Mrs. Montoya (via her insurance company and over her protests) for $10,000. The Lehmans initially appealed the judgment; their insurance company later settled out of court, agreeing to drop the appeal for a staggered payment of an undisclosed amount. Ms. Cole continues teaching in Northglenn, and the religious Right continues to monitor teachers' classroom practices. In this case the opposition of the religious Right to the academic liberal practices may have become more polite, but it is quite vigorous and active. It may be that because the confrontation in the Cole case was "staged," that is, because it was orchestrated by external constituencies, the opposition was not chilled, but was simply unsuccessful in the specific dispute.[23]

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[20] *Ibid.*, lines 814–28.

[21] Interview with Bethke, lines 958–70 (cited in note 16).

[22] Interview with Gresh, lines 977–83 (cited in note 14).

[23] We are grateful to William P. Bethke for this insight as to the political outcome of this particular symbolic conflict.

B. "Internal" Dispute Context

The two cases arising in an internal context are *IREA,* a lawsuit that followed a challenge to the management of a rural electric cooperative, and *AJV,* a frustrated builder's effort to recover financial losses he felt were due to the delays caused by citizen opposition to his building proposal. Unlike the preexisting large, symbolic value clashes which drove the *DWB* and *Cole* cases, individual temperament and specific property and money interests combined to escalate the disputes in *IREA* and *AJV* to very heated and costly contests.

1. The Intermountain Rural Electric Association (IREA) Case: Internal "Facts" and Transformations. In December 1981 Intermountain Rural Electric Association (IREA) member-owners saw their rates increase by 185 percent because of a management decision to switch power source suppliers.[24] An ad hoc group called Concerned Members of IREA arose, and in the following twenty-four months numerous accusations were exchanged between this group and the board of directors and manager of IREA. IREA's general manager Stanley Lewandowski saw the rate increases as the initial spark of the dispute:

> All of a sudden their [consumers'] rate is going up 87 [*sic*] percent and they don't know you [IREA], and they don't know your company because you have never been around, you have never communicated, and have never been involved. They don't know anything about you and then somebody says, "Well the reason it [the rate] is going up is because those people are crooks."[25]

Adding fuel to the fire, Lewandowski's salary had been doubled and board members were personally benefiting from low- or no-interest loans from IREA. Consumers sought to alter the board membership.

The consumer group actively campaigned and was able to place two of its candidates on the board. Then, in January 1984, Concerned Members began a petition drive to recall the entire board of directors (excluding their candidates) in an effort to control management. Sufficient signatures were collected and presented to the secretary of the IREA board of directors. After a two-month wait, a public notice from the board was released stat-

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[24] For the *IREA* case study, the following people were interviewed at length: Stanley Lewandowski (IREA General Manager), Herman McCutcheon and Sol Zlochower (IREA board members), Tom Evans (Concerned Members of IREA), Bruce Featherstone, Kevin O'Brien, and Scott Bauer (attorneys for Concerned Members of IREA), David Miller (American Civil Liberties Union of Colorado). We also reviewed the news coverage found in the local papers, the *Gazette Telegraph* and the Douglas County *News-Press.*

[25] Interview with Stanley Lewandowski by Gloria Berndt (now Gloria Satterfield, coauthor of this article), Sedalia, CO, 1988, lines 708–17.

ing that the recall petitions had been rejected "due to lack of cause in recall."

Concerned Members filed suit asking the court for declaratory and injunctive relief; they wanted the court to tell IREA that there must be an election and that "corporate democracy" was at stake.[26] In response, IREA filed a counterclaim (the SLAPP) for abuse of process and libel, praying for $600,000 from each of the plaintiffs. IREA's Lewandowski insisted that his counterclaims were also based on the pursuit of a symbolic goal, the right to sue:

> The reason for pursuing that lawsuit was not with the intention of pursuing it to get it overturned and then to go to a lengthy trial on the other thing, it was to get the legal matter, do we have a right to sue? You know, I am a director on various organizations and I would like to know whether I have got a right to sue or not. When I become a director do I automatically lose what I think are some of my constitutional rights? So that is an issue.[27]

For the next four years the same parties swapped lawsuits (ten in all) as they disputed fact after fact and claim after claim. The SLAPP itself bounced between the district court and the Colorado Supreme Court three times, before going to the court of appeals. IREA's legal expenses, ironically, were paid by consumers, who were also their opponents. In contrast to the early 1980s when Concerned Members was able to mobilize community support and get frequent coverage in a local newspaper, by the time of the settlement in 1988, both sides were beleaguered, and the targets were hesitant to take further action. The targets' attorney noted: "My guess is that the whole process was so time consuming, so burdensome, so emotionally burdensome on people, that the effect has been, that a lot of the vocal concern has been muted."[28] The settlement provided that neither the parties nor their attorneys would reveal the details of the lawsuit settlement to any third party. Politically, however, the SLAPP seems to have had a favorable outcome for the company. When asked whether the dispute had any effect on IREA, one target commented: "No, they [IREA] are happily going around, they quieted down the opposition and no one is willing to speak up now. They won. And in my opinion, the abuses are still there."[29]

IREA is an excellent example of a dispute with an internally based context that begins with an argument over interest-based facts, moves toward more symbolic issues, and distracts attention from the claim of more effective representation on the board of di-

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[26] Interview with Bruce A. Featherstone by Gloria Berndt (now Gloria Satterfield), Denver, CO, 1988, lines 179–85.

[27] Interview with Lewandowski, lines 2197–2210 (cited in note 25).

[28] Interview with Featherstone, lines 458–63 (cited in note 26).

[29] Interview with Tom Evans by Gloria Berndt (now Gloria Satterfield), Parker, CO, 1988, lines 538–45.

rectors. Here, individual consumer-owners, disgruntled with a sharp increase in electric rates, in time coalesced and developed a strategy to elect new board members who would be more representative of their views. However, the political claim of representation was replaced with a more symbolic call for corporate democracy and a claim that constitutional rights had been violated, while the issue of rate increases was set aside, if not washed away. For the filers of the SLAPP, the countersuit[30] filed to "quiet dissidents" became a matter of a board of directors' constitutional right to sue.

Unlike cases arising in external contexts in which participants may rally around a symbolically based stance, cases with internally based contexts achieve cohesion through adjusting and adding new charges and "facts." The *IREA* case became more polarized each time one side found more ammunition. Likewise, whenever the opposition successfully deflected a round of charges, the group's cohesion was undermined. Ultimately the SLAPP filers defeated the political claim, even though they lost the strategic lawsuit.

2. The Anchorage Joint Venture (AJV) Case: Internal "Facts" and Transformations. The *AJV* dispute was a confrontation between an inexperienced land developer and angry residents of two adjacent properties on Dillon Reservoir in Dillon, Colorado, about an hour and a half's drive into the Rocky Mountains from Denver. During the 1960s the Lederman brothers developed two lakefront condominiums, Anchorage East (AE) and Anchorage West (AW). Between the two properties was an oddly shaped area of land that became the basis of future controversy in the lawsuit *Anchorage Joint Venture v. Anchorage Condominium Association et al.*[31]

The Anchorage condos were second homes for affluent Denverites who wanted to enjoy summer sailing on the reservoir and winter skiing at major ski resorts nearby. Most owners assumed that the property between the condos was destined for development as a restaurant, a clubhouse, or a boating service facil-

[30] The petition clause protects as a form of political speech the invocation of the judicial branch to influence governmental policy or behavior. In these cases, the countersuit claiming injury from the lawsuit is a SLAPP.

[31] For the *AJV* case study, the following people were interviewed at length: C. H. "Chuck" Ruwart (AJV partner and lawsuit filer), Alan Clausen and Milton Meyers (Ruwart's attorneys), Richard J. Frank (Ruwart's architect), Bill Simms (Ruwart's real estate agent), James Walker, John Del Mar, Arnold Cook, and Bruce Waddle (board members of the Anchorage Condominium Association and SLAPP targets), Richard Bayer (attorney for SLAPP targets), Crady Davis and Otto Butterly (citizens who spoke out at public hearings but were not named in the lawsuit), Joseph Hoffart and Dave Collard (trustees, Town of Dillon in 1979; Hoffart was also interviewed for his role on Dillon's Planning and Zoning Board in 1980; Collard was interviewed as well for his role on Dillon's Planning and Zoning Board in 1979), Anna Lenahan (Dillon administrative assistant), Jim Hayes (Board of Adjustments, Town of Dillon in 1979). We also reviewed the local newspaper coverage in Dillon, Colorado.

ity. Instead it was sold to a Denver auto dealer, C. H. Ruwart, Jr., who was also an owner of a unit in the original development and president of the Anchorage West Condominium Association. Ruwart proposed to build twelve units on the irregular lot, a plan that was considered overly ambitious, even by his own architect.

> Chuck [Ruwart] insisted on, which some developers do, they want the maximum use of the ground. Get as much compaction, as much for the area, it's just money sense. . . . If we would have gone with six units, there would have been no opposition. If we would have gone with nine units, there might not have been any opposition.[32]

High unit density meant blocked views for the existing condos, a loss of open space between the buildings, and limited access to the lakefront for most owners.

The ambitious proposal, coupled with the irregularity of the parcel, required that Ruwart obtain many building variances. In the pursuit of these permits, Ruwart ran into opposition from his neighbors in the two condo owners' associations. They cited numerous problems including a lack of adequate sewage, inadequate parking, a controversy over the ownership of twelve parking spots claimed by Ruwart, easement disputes, and drainage problems. Their joint opposition united Ruwart's opponents, and they agreed to share the costs of legal representation. As one target remarked, "This issue brought us together. We know each other pretty well now. We were fighting a common enemy."[33] Another explained that their concerns got broader as time passed:

> Uh, when we first started our opposition to their development, it was really to protect our parking stalls. We didn't want, you know, them spilling over you know, you, we'd have no control over it . . . . Uh as we looked more and more at what they proposed to build . . . we became more concerned with . . . aesthetics.[34]

Their common aim was to reduce the number of units to be built, as target Waddle explains:

> We thought that we could stop the project and make him go down [in the number of condo units]. We thought that he had space there for about six or eight units. And we really thought that we could force him to have it redesigned and get adequate parking and adequate landscaping and proper setback from the lake. We never dreamed that he'd get this through.[35]

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[32] Interview with Richard Frank by Gloria Berndt (now Gloria Satterfield), Denver, CO, 1988, lines 129–41.

[33] Interview with John Del Mar by Alise Baldwin, Denver, CO, 1988, lines 400–402.

[34] Interview with Crady Davis by Penelope Canan, Denver, CO, 1988, lines 435–46.

[35] Interview with Bruce Waddle by Alise Baldwin, Platteville, CO, 1988, lines 939–50.

Ruwart's plan bounced back and forth between the city's board of trustees and its Planning and Zoning (P&Z) Committee several times before the required variances were granted. In 1980 the two homeowners groups filed suit in Summit County District Court asking the court to review the actions taken by the Board of Adjustment in granting these variances. As the homeowners' attorney explained:

> Our decision to file [the legal challenge to the town board's granting of the variances] was that there was no evidence supporting in our view the granting of the variances . . . a complete and total misuse of the property. And there had to be a standard . . . . some evidence presented or a substantial amount of evidence that tended to support the Board [decision] . . . . And there was no reason to grant these variances. These people completely and totally violated our rights and we were very upset about it.[36]

The lawsuit was dismissed for failure to include AJV as an "indispensable party," a legal error admitted by the homeowners' attorney. The homeowners made additional complaints at subsequent meetings before the board of trustees and the P&Z Committee, but permission was granted to begin construction.

Ruwart moved to divide his opposition, arranged a settlement with Anchorage West to help him with the parking space problem, and agreed to "let them out of the problem."[37] But Anchorage East remained an unfriendly party, and Ruwart filed a $1.6 million SLAPP against AE claiming abuse of process, interference with business opportunity, private nuisance, and trespass. His reasons for filing the SLAPP were twofold: an effort to prevent their continued opposition ("I think we were trying to head them off at the pass")[38] and to recoup financial losses due to the previous delay:

> [We filed the SLAPP] because we felt if there was any damages or loss on this thing, they were responsible for this delay, which we had already spent about $75,000 or $80,000 in the length of time fighting this thing [in legal fees] and the cost of the courts and the City and everything else we put money into. And the cost of the interest on the money while we were waiting.[39]

A year and a half later, in April 1982, the district court ruled in favor of the defendants on the basis of the petition clause of the First Amendment. The judgment was affirmed by the court of appeals, and certiorari was denied by the Colorado Supreme Court, agreeing with the targets' attorney that "their [Ruwart's] lawsuit [the SLAPP] was unconstitutional . . . they had the right, any citi-

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[36] Interview with Richard Bayer by Gloria Berndt (now Gloria Satterfield), Denver, CO, 1988, lines 485–504.

[37] Interview with Charles Ruwart, Jr., by George W. Pring, Denver, CO, 1988, lines 2063–64.

[38] *Ibid.*, lines 2099–2101.

[39] *Ibid.*, lines 2749–61.

zen has the right, to petition the court for review of the democratic boards."[40]

Yet because the homeowners had failed to include indispensable parties when they filed their complaint, arguably a legal technicality in their request for judicial review, the town's granting of authority to build was never addressed, and Ruwart got his many variances to build all twelve units. So, despite all the hoopla and delays, the AJV project was built and later marketed as Anchorage-on-the-Lake. The result was that SLAPP filer Ruwart won the original political issue. As target Bruce Waddle reports:

> And it just doesn't seem fair at all that they could get, that Chuck Ruwart could get all these, uh, oh, what do you call them? . . . oh, deviations from the [building] code, you know. Why should he be allowed to block off public access to [the lake]? We've all been told that . . . you know, that public access would never be blocked by any development in there. All of a sudden he puts up a unit that goes out to the water . . . . [he] got away with murder on this thing.[41]

In the end, because of a change in the economic climate, additional attorneys' fees, increasing construction costs, and interest on loans accruing throughout the delay, Ruwart's finances were in dire straits. The bank foreclosed on unsold units and Ruwart was bankrupted.

AJV is particularly remarkable for the important role that personality, temperament, and personal style played in escalating the dispute. Words like "aggressive," "belligerent,"[42] "spite[ful],"[43] "greedy,"[44] "bullheaded,"[45] "cocky,"[46] and "revengeful"[47] were used to describe developer Ruwart, whose "middle name is lawsuit."[48] One opponent said: "Ruwart is a very determined individual and I think he would get involved in litigation without a great deal of concern about the situation. He was in the automobile dealership business and he has been involved in a lot of litigation."[49] Another opponent remembered Ruwart's behavior as offensive:

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[40] Interview with Bayer, lines 717–19, 734–37 (cited in note 36).

[41] Interview with Waddle, lines 414–26 (cited in note 35).

[42] Interview with Frank, lines 368–69 (cited in note 32).

[43] Interview with James Walker by Simon Krauss, Denver, CO, 1988, line 714.

[44] Interview with Del Mar, line 201 (cited in note 33).

[45] Interview with Bayer, line 220 (cited in note 36).

[46] Interview with Waddle, line 293 (cited in note 35).

[47] Interview with Anna Lenahan by Alise Baldwin, Berthoud, CO, 1988, lines 2113–16.

[48] Interview with Frank, lines 374–75 (cited in note 32).

[49] Interview with Otto Butterly by Simon Krauss, Denver, CO, 1988, lines 1073–80.

> The way it turned out, everybody kind of went against Chuck Ruwart because of the way he acted . . . kind of arrogant. He made up his own mind that he was going to [build twelve units]. He stepped on people's toes . . . wouldn't compromise . . . called [people names] . . . very, very uncouth . . . people became perturbed by Ruwart.[50]

Ruwart in turn maintained that a few individuals, jealous that they hadn't bought and developed the property themselves, were the ringleaders. According to Ruwart, they were outspoken agitators,

> people that really stirred the pot and kept the thing boiling. Out of the 96 units, there were probably . . . you can count 10 people that really stirred the thing up and kept it going. The rest weren't interested . . . until Anchorage East stirred them up, and then the war started.[51]

Outside observers confirmed the importance of personality in the AJV "war," describing it as a fight with "a lot of personal animosity . . . [among] scrappy people . . . looking for a fight";[52] a "personality clashing among adamant, strong, and independent" people of the older generation;[53] and a situation in which "when you get those kinds of personalities together, you are going to have a battle brewing, you know."[54]

Many people we interviewed commented that the *AJV* dispute ended without winners, that everybody lost. Some opponents found justice in Ruwart's eventual bankruptcy.

C. *Discussion*

DWB and *Cole* provide examples in which multiple versions of the same claim are constructed in response to concerns over claim viability. Environmental protection may become "no water treatment plant" or "growth is bad" or "failure to submit dredging permit requests by the deadline" depending on strategic evaluation. The fundamentalists' concern over secular humanism on the national level surfaced in the *Cole* dispute as a response to the alleged injury from "occult" practices in the classroom and eventually evolved into efforts to stop Ms. Cole's relaxation exercises for her pupils.

The internality or externality of the context of these disputes helped to distinguish among processes of claims transformation. The two examples of disputes with external contexts began with claims that were rooted in value clashes in contrast to the economic and property interests that formed the basis of claims in the

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[50] Interview with Walker, lines 451–75 (cited in note 43).

[51] Interview with Ruwart, lines 2544–50 (cited in note 37).

[52] Interview with William Simms by Gloria Berndt, Dillon, CO, 1988, lines 231–34, 1210–11.

[53] Interview with Lenahan, lines 1793–1802 (cited in note 47).

[54] Interview with Simms, lines 296–304 (cited in note 52).

two disputes with "internal" contexts. For the two disputes rooted in an external context, claims narrowed from the symbolic to the concrete; in contrast, the two disputes embedded in their own internal context expanded their focus.

Table 1 shows that claims became either more concrete or more symbolic, depending on the original character of the claims. The *DWB* case, for example, began as a fight between environmental protection and progress-through-growth interests; it became a dispute over the adequacy of an environmental impact statement's figures and the number of per capita gallons of water that could be conserved. In comparison, the *IREA* case became more symbolic as it went from outrage over electric rate increases and salary increases for the electric company manager to a dispute over consumer rights, corporate democracy, and the constitutional right to sue. At the very least, *AJV* went from parking spaces, setbacks, lake access, landscaping, and unit density to aesthetics, regulatory discretion, and citizen petitioning.

When we examine the identity and interaction among disputants, we find that the relationships between disputing parties may reflect existing cleavages or they may emerge as the dispute develops. New disputants may enter an ongoing dispute and alter the relative differences in the status and experience of the parties. In the disputes with an external context, internal cohesion was likely to be manipulated and imposed from the outside. In the internal type, participants created their own bonds that grew out of increased awareness of similar injury and sharing dispute experiences. In these cases, the participants were more likely to use agents rather than be used by outsiders (see Table 2).[55] So while disputants on both sides take measures to maintain group commitment to the claims as they are altered and to the solidarity within the group, outsiders can be very influential in building internal cohesion as well as in building bridges to the larger setting.

Congressional representatives (first U.S. Representative Pat Schroeder and then Tim Wirth) pushed hard for mediation in the *DWB* case, an example of elite intervention when the stakes are too high to permit a binary (judicial) outcome.[56] And while three parents were the only named defendants in the *Cole* case, they were assisted by the pastor and active members of the New Life

[55] All but one of the SLAPPs examined here were filed by repeat players, and the single-one-shot filer (Carter) was a civil servant who may have estimated that his supervisory position and its military culture gave an advantage against McDowell. Except for the two cases at the extreme of the external context dimension, most targets were one-shotters. In two cases, *Adult Blind Home* and *Walters v. Linhoff,* some targets had experiences in other arenas (political and occupational, respectively) that made them a bit "tougher" to begin with, even though their litigation experience was admittedly limited.

[56] See Nader and Todd (1978) for an exploration of the intervention of elites in conflicts where the outcomes have implications for maintaining the existing social fabric.

Table 2. Dispute Context, Interactional Processes, Outsiders, and Relationships in Four Disputes

Dispute Context		Internal Cohesion Mechanism	Influential Outsiders	Basis and Type of Relationships (RP or OS)
EXTERNAL	*DWB*	Professional networking Polarizing accusations	EPA Media U.S. congressional delegation	Existing enemies find representatives RP v. RP
	Cole	Networking Books Gatherings Video tapes Sermons	(National youth ministry), Bible, pastor, his wife (Teachers union)	Existing enemies find representatives RP v. RP represented by OS v. OS[a]
INTERNAL	*IREA*	Listing "particulars" Phone calls Aggregating gripes	None—agents: attorneys	Managers and consumers became enemies RP v. OS
	AJV	Meetings Share expenses Activate neighbors	None—agents: attorneys Architect	Neighbors became enemies RP v. OS

SOURCE: Political Litigation Project, University of Denver Sociology Department and College of Law.

NOTE: *Definitions:* "RP"—repeat player; "OS"—one-shotter, the terms used by Galanter (1974) to describe the varied litigation experience of disputants.

[a] This dispute began with religiously fundamentalist parents complaining about a teacher's classroom practices. Later a national youth ministry bolstered the parents and the teachers union backed the teacher (filer). At this point the contest became one between repeat players. Had these silent organizational participants (never named as parties in lawsuit) not entered the dispute, we doubt that a SLAPP would have been filed.

Fellowship Church and by Bill Jack, the state director of the CALEB Campaign. Cole's jury award and the subsequent appeal settlement may look like personal vindication, but such outsiders as insurance companies, religious advisers, and the teachers union were active in arranging the terms of the outcome.

IV. IMPLICATIONS FOR DERAILMENT

The fourth and fifth columns in Table 1 list the viable claim used to petition the government and the legal injury claimed by the opposing side in the SLAPP lawsuit. After the citizen's government petition has been recast as a tortious claim, it may then be retransformed by the claim of a political-legal right to petition the government for redress of grievances. Indeed, the petition clause was raised in all but one of the cases presented here.[57]

[57] In *ABH* the targets did not want to use the petition clause precisely be-

A petition clause defense is a powerful response to the SLAPP. But a victory in the lawsuit designed to silence opposition is hardly a victory from the target's viewpoint. On the other hand, losing a lawsuit that silenced the opposition is not necessarily a loss from the SLAPP filer's viewpoint. The key question is whether the political claims of the citizen petitioners were derailed by the litigation tactic, whatever the outcome of the suit itself.

The typical outcome of a SLAPP is derailment: The targets usually abandon their political claims, mostly because of the cost of defending themselves against a SLAPP (financial and personal toll of litigation, individual stress and anxiety, organizational demise, and erosion of confidence in American political and legal institutions). And while they may win legally, it is a hollow victory for SLAPP targets if the SLAPP results in loss of the issue at stake in their government petition.

In Table 1 we see that the two SLAPPs not connected to external public environments were more easily derailed: In both *IREA* and *AJV* the lawsuit filers enjoyed political victory. In contrast, the higher visibility afforded by a stronger connection to the social world external to the dispute may explain the compromised, political settlement in *DWB* and the targets' political win in the *Cole* case. In both cases we see that the extent to which an audience outside the dispute becomes involved in the dispute affects the success of the intended derailment.

V. CONCLUSION

Sociolegal studies have been dominated by a "dispute processing paradigm" (Merry and Silbey, 1984) that has emphasized the rational and objective bases of disputing behavior. This paradigm conceived disputes in narrow terms as legally circumscribed and relatively predictable events unfolding in a linear fashion. Nearly a decade ago, a new transformative perspective of disputing behavior appeared (Felstiner *et al.*, 1980–81; Mather and Yngvesson, 1980–81), one that urged understanding the volatile, subjective, and contextual nature of the disputing process. This perspective held that legal disputes are social constructions and may be dramatically altered through expansion and narrowing.

While the transformative perspective is more faithful to the realities of disputing behavior, it has largely failed to deliver on its promising beginnings. Some basic problems are that the line between narrowing and expanding is conceptually ambiguous, and the potential factors involved in dispute transformations are numerous and interact in complex ways. From this perspective, the very phenomenon under study is erratic, constantly changing, and

cause of their assumption of its efficacy. They were afraid that losing their day in court would bring on a sure loss on the political issue at stake.

often deceptive. As a result, it seemed that the only safe theoretical prediction we could offer was that "it all depends."

We have learned that the narrowing and expanding of claims is certainly an important tool in the arsenal of inventive claims management. Public claims are met with counterclaims, and these recurring sequences of claims making are characteristic of strategic lawsuits against public participation. We have examined empirically a category of disputes that illustrates how individual disputes have careers that reflect the disputing context in which they were initially embedded. In these SLAPPs, there is a tug-of-war between political and legal arenas. More specifically, we point out the central importance of external contexts in the process of claims management and the constraints or opportunities they pose in the creative efforts of outside parties to rescue a political issue from being derailed after it has been pulled into the courts.

Because official claims and dispute resolution processes often conceal the nature of conflict, intensive interviewing such as we have undertaken is helpful to uncover general patterns of claims management. We emphasize the unstable and chameleon-like nature of these disputes; but rather than finding the dispute to be totally contingent on interactional and situational factors, we found a general pattern of dispute transformation. Disputes that were initially tied to a broad cultural or political claims base were later transformed into more narrow and concrete claims. The political claims of the targets in these strategic lawsuits tended to be less vulnerable to derailment. On the other hand, disputes beginning with a narrow claims base were expanded to become more symbolic and collective, but the targets' original claims were more vulnerable to legal derailment.

As our cases demonstrate, strategic lawsuits are cultural and political events that take place within a larger social context. We have focused on the social context of the process of claims management as central to the transformation perspective of disputing behavior. Claims management is a highly contingent process because it reflects the tactical maneuvering, inventiveness, and tenacity of human beings in conflict. External contexts pose constraints on such efforts aimed at derailing political claims.

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