A RELATIONAL APPROACH TO TELEVISED SMALL CLAIMS COURTS: THE CONSTRUCTION OF FUNCTIONAL IDENTITIES

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This paper will argue that individuals who participate in televised small claims courts use relational approaches to construct their arguments. In particular, it will claim that they access cultural conceptions of relationships to co-construct functional identities of participants that are then used in the judge's decision about who did what to whom. Participants co-construct these functional identities by using processes such as categorization and indexing. In this way, participants in the courtroom access larger social structures in the process of constructing relational arguments.

INTRODUCTION

It is often argued that lay people analyze their legal problems in two different ways (Conley & O'Barr, 1990). There are the litigants who are essentially "rule oriented". They "evaluate problem in terms of neutral principles whose application transcends differences in personal and social status. . . . They emphasize these principles rather than such issues of individual need or social worth." And there are litigants who are essentially "relationally oriented". They "predicate rights and responsibilities on a broad notion of social interdependence rather than on the application of rules." (Conley & O'Barr, 1990, ix). Conley and O'Barr further argue that although litigants may argue their cases in a manner that reveals a mix of these two strategies, individual litigants will display an overall tendency toward one strategy or the other that reveals the litigant's ideologies about the law. For example, relational oriented litigants "espouse an ideology of enablement which holds that the law is an instrument of vindication with a broad mandate to right wrongs"; and rule-oriented litigants espouse "an ideology of limitation which considers the law to be a limited-purpose institution, existing to provide clearly defined remedies for people whose problems fit into certain narrow categories" (p. 173). Conley and O'Barr argue that gender, class, and race are "deeply entangled with the knowledge of and ability to use the rule-oriented discourse that is the official approach of the law" and that a relation orientation is more typical of "those who have not been socialized into the centers of power in our society" (p. 173).

While Conley and O'Barr make a distinction between the types of approaches that lay people make in relation to the problems they take to court, Sally Merry takes a slightly different approach. She argues that people's legal ideology results in certain types of issues being brought before the court. Merry has argued that "Looking at the problems which people bring to court provides . . . some insight into situations which people see as fitting within the purview of the law" (Merry, 1990, p. 3). In examining small claims cases, she argues that the plaintiffs involved "do not think in terms of specific doctrines or rules but instead think in terms of fundamental rights of property, autonomy, and parental authority" (p. 38). So while Conley and O'Barr argue that lay people's ideology of the law results in different approaches to arguing cases, Merry argues that lay people's ideology of the law results in different types of cases being brought to court. Merry divides the types of problems brought before the court into three major types: neighborhood problems, marital problems, and parent/child problems. While Merry found three major types of problems brought before the small claims courts in her study, the data in the

present analysis suggest that televised small claims courts typically hear a much more limited range of cases.

MATERIALS AND DATA

The data analyzed in this paper are taken from televised small claims court cases. They come from a corpus that includes five one-half hour episodes of *Judge Judy*, five one-half hour episodes of *Judge Joe Brown*, and two one-half hour episodes of *Divorce Court.* Each of these episodes consists of one or two cases for a total of 19 cases. These programs were videotaped, the videotape was transferred to audio tape, and four one-half hour and four 15-minute cases were transcribed[1].

The data from the cases considered here have no examples of parent/child problems and no examples of neighborhood problems. Perhaps this is due to the types of cases that are most appropriate to the nature of televised courts. Of the 19 cases examined, 17 involved friends, girlfriends/boyfriends, wives/husbands or some other family relationship. Only two involved people who had no personal relationships, and both of these cases involved male plaintiffs and male defendants. The first involved a case of road rage, and the second an argument over business rights. In general, the cases examined in this study then, are more like the cases Merry examines under her category of marriage problems. In this category, Merry found that of the 18 plaintiffs she observed, 14 were women for a total of 78 percent. In the 19 cases I examine, 16 out of 19 plaintiffs were women for a total of 84 percent. In those cases involving only friend or family relationships, 16 out of 17 cases were brought by female plaintiffs for a total of 94 percent. While the plaintiffs are predominantly female, the defendants are predominantly male. Again examining only the cases involving friend or family relationships, the defendants included six females and 11 males, representing 65 percent of the defendants. See Table 1.

Table 1. Litigants, Relationships and Judges' Decisions in Televised Small Claims Courts

Judge		Plaint.	Def.	Relationship	Decision
Judge Sheindlin	9/28	F	M	ex-girlfriend/boyfriend	Defendant ordered to return possessions
Countersuit					Defendant ordered to pay $12.50 phone bill
Judge Sheindlin	9/28	F	F	mother and son's ex-fiancé	Defendant ordered to reimburse credit charge
Judge Sheindlin	9/29	F	F	friends at same workplace	Defendant ordered to pay $1,000
Judge Sheindlin	9/29	M	M	strangers	Defendant ordered to pay medical costs
Judge Sheindlin	9/30	F	M	ex-girlfriend/boyfriend	Defendant ordered to pay $2,500
Judge Sheindlin	10/1	F	F	friend/babysitter	Defendant ordered to pay $100
Judge Sheindlin	10/1	F	M	ex-girlfriend/boyfriend	Defendant ordered to pay $3,500
Judge Sheindlin	10/2	M	M	business associates	Case Dismissed
Judge Sheindlin	10/2	F	M	estranged wife/husband	Defendant ordered to pay $4,000
Judge Brown	9/28	F	M	ex-girlfriend/boyfriend	Defendant ordered to repay loan
Judge Brown	9/28	M	F	ex-boyfriend/girlfriend	Defendant ordered to repay lost wages
Judge Brown	9/29	F	M	ex-wife/husband	Defendant ordered to pay $1
Judge Brown	9/30	F	M	estranged wife/husband	Defendant ordered to pay $5,000
Judge Brown	9/30	F	F	sister/sister	Defendant ordered to repay defaulted loan
Judge Brown	10/1	F	M	ex-wife/husband	Defendant ordered to pay $3,708.16
Judge Brown	10/21	F	F	woman and ex-boyfriend's	Defendant ordered return personal items
Countersuit				sister	Defendant ordered to pay 1/3 storage fees
Judge Brown	10/2	F	M	ex-girlfriend/boyfriend	Defendant ordered to pay credit card balance
Judge Ephraim	9/22	F	M	estranged wife/husband	Defendant ordered to pay $50
Judge Ephraim	9/23	F	M	estranged wife/husband	Defendant ordered to make duplicate photos
TOTALS		16F	6F		
		3M	13M		
		84% F	8%M		95% of Decisions in favor of Plaintiffs

In cases involving partners, women brought 11 out of the 12 cases for a total of 92 percent of the cases. This predominance of female plaintiffs in courts of this type is not limited

to U.S. courts. Susan F. Hirsch has shown that when disputes relating to marriage and divorce are brought before Islamic Kadhi's courts, women brought 108 out of the 125 cases for a total of 86 percent (1998, p. 12).

DISCUSSION

Relations of power and gender have been discussed in cases of this type. For example, Hirsch has argued that "stories of domestic conflict are told differently by Swahili men and women" (p. 5). She also points out that "women lose very few cases" (p. 127). While the issue of how gender or particular identities are constructed through testimony will be discussed in greater detail in this paper, the fact that women are losing few cases seems to be a point of common ground between the Kadhi's courts and the televised small claims courts examined in this paper. In the 21 verdicts (this includes the verdicts of the two countersuits) 20 of the 21 cases were found in favor of the plaintiff. Since 92 percent of the girlfriend/boyfriend and wife/husband cases were brought by women and all of these women received decisions in their favor, it seems clear that in the cases of this type, women also "lose very few cases".

It has been argued that litigants who present their testimonies using a rules-based orientation are more likely to gain successful outcomes (Conley & O'Barr, 1990). The cases examined in this paper, however, indicate that while there are many occasions when judges ask for, receive, and base decisions upon rules-oriented evidence, a great deal of the discussion and the resulting court decisions seem to center around cultural definitions of interpersonal relationships and cultural definitions of the corresponding responsibility inherent in these relationships. Merry has argued that "the language in which these problems are talked about within as well as outside the courts is the language of social relationships, not of the law" (1990, p. 37).

In making this point, I am not arguing that the paradigm between rules-oriented and relationship-oriented individuals that Conley and O'Barr have argued for is in error. Instead of arguing that individuals are rules-oriented or relationship-oriented, what I am proposing is that the approach that individuals take to different cases reflects different cultural perceptions of the relationships involved in the cases. This type of an approach would predict, for example, that an individual involved in a case related to business might access a different dispute approach than that individual would use when involved in a case related to the behaviors of his or her child. In the first instance, the linguistic discourse chosen might be more rules-oriented if the individual perceives the specific type of business relationship to be defined by legal regulations such as contract law. In the second instance, the discourse might be more relationship-oriented with claims about parental and child responsibilities as they are conceptualized by particular cultures. In Susan Philips' (1994) discussion of the Tongan brother-sister relationship as it relates to magistrates' decisions, she points out that "sisters fare better than wives." A seemingly simplistic point to draw from this observation is that relationship-oriented arguments about the husband-wife relationship or the brother-sister relationship in Tonga are significantly different, for example, from relationship-oriented arguments in the Islamic culture examined by Hirsch or those in United States culture as examined by Merry, Conley and O'Barr, or this study.

What is not simplistic about this point, however, is the manner in which these relationships articulate within the culture in question. Philips refers to Powles' (1990) argument that in Tonga, "English values were encoded in law in ways that undermined Tongan custom" (p. 73). Where "conventionally, the sister had the right to take things within her brother's

purview and that of his children, as we would say 'without asking,'" this was "outlawed in the Code in 1862 and continues to be specifically outlawed in the written law in force today" (p. 73). Despite legislation that would seem to downgrade the importance of this relationship within Tongan culture, Philips points out that "the brother-sister relationship is held up as a positive model for general social comportment in many criminal cases in the magistrate's court in Tonga" (p. 74). Not only is this relationship still part of the evaluative structure seen in magistrate's court, but this relationship is also relevant to relationships other than the sibling brother-sister relationship. "The respect between brother and sister is extended by both to patrilaterally and matrilaterally related cousins up to several times removed" (p. 75). Philips further points out that in cases related to the use of bad language, which is culturally taboo in the copresence of brothers and sisters, "there is the invocation of just the possibility of the copresence of a relative, which usually means people classified as in a brother-sister relationship . . ." (p. 82). She argues that "in some sense the possible as well as actual copresence of brothers and sisters operates as an icon and a metonym for relations in public in general" (p. 82).

So while the intervention of English concepts of family is evident in the legal code itself, the cultural concepts of the brother-sister relationship still articulate with other aspects of the law and are used in what Conley and O'Barr would call a relation-oriented approach to taking a legal stance. Yet, as Philips has also pointed out, there is "a great deal of ideological diversity that is part of relations of domination and subordination" (p. 60). The brother-sister relationship is not homogeneous as it articulates within Tongan culture and in particular as it articulates with the law.

My proposal then, that the approach that individuals take to different cases reflects different cultural perceptions of the relationships involved, while closer to claims that I would ultimately like to make in this paper, is still not sufficient. This statement does suggest that discussions of legal systems and cross-cultural comparisons of legal systems must account for culturally specific perceptions of relationship, but like most cross-cultural work in legal systems, it does not address several important concepts.

First, it does not address the interplay between the law and the state in the construction and maintenance of conceptions of relationships. The proposal as its stands, for example, does not address the reality that the British government articulated with the legal system to co-construct particular legal definitions of the Tongan brother-sister relationship. Second, it also does not address the role of a court within a particular legal system. It does not account, for example, for the reality of how Islamic Kadhi's courts articulate with the larger secular legal system in which they are embedded. Third, the proposal does not address the idea that the event of a court case is itself a site for the construction and reconstruction of these familial relationships. And fourth, the proposal does not provide mechanisms by which the individuals participating in a court case access cultural knowledge of relationships in their co-construction and co-reconstruction of the relationships evoked in their arguments.

It is this last point that I will address first using examples for the televised small claims court cases transcribed for this study. Conley and O'Barr (1990) argue that "the law generally requires a plaintiff to show an injurious *action,* the defendant as *agent,* and the plaintiff as the *acted upon*, as well as a causal link between the action of the agent and the harm the plaintiff has suffered" (p. 48). They argue that in informal court cases, plaintiffs often avoid dealing with this. In the court cases in this data set, a similar pattern emerges. Quite often the judge becomes involved in negotiating responsibility with the litigants. Conley and O'Barr report that in some of

the cases they studied, "the judge plays a far more active role in eliciting and directing testimony, with the resulting account of the events in question emerging as a complex product of the dialogue between judge and witness" (p. 49). Conley and O'Barr, then, discuss testimony as the co-construction of an event.

I will argue that the co-construction of this court event includes the co-construction of the action, the co-construction of the defendant, and the co-construction of the plaintiff. I will also argue that the outcome of the case is partially dependent upon these co-constructions. Individuals participating in a court case access cultural knowledge of relationships in their co-construction of these court events, and it is these co-reconstructions of the relationships evoked that help determine the "injurious action", the "agent", and the "acted upon". More precisely, what I will argue is that plaintiffs, defendants, and judges use language-based mechanisms for accessing and co-constructing "functional identities" of individuals and events which can then be appropriately translated into the legal concepts "injurious action", "agent", and "acted upon"[2].

For lack of a better term, I will use "functional identity" to discuss the roles/characters/identities that are co-constructed in the testimonies of these lower level courts. I do not want to use any one of the terms "roles", "characters", or "identities" because the "functional identities" that are being created often access multiple roles and cultural characters simultaneously. On one level, this is because there are multiple participants in the co-construction--a judge, a plaintiff, a defendant, and perhaps other witnesses--and each of these participants is presenting a slightly different "story" with slightly different "characters", if you will, of the event(s) in question. On a second level, this is because each individual participant can also be constructing a functional identity that consists of an individual who is filling multiple roles. The individual may be constructed, for example, as "a bad boyfriend", "an abuser", "an immoral character", and "an irresponsible adult"--all at the same time. I am avoiding the simple term "identity" because I do not think that the functional identities that are constructed in court cases, even those self-constructed by the participant in question, reflect the self-perceived and self-constructed identities of the individuals in question. They are not the typical "identity", if there is such a thing, constructed by the participants as part of their own self-awareness or cultural projection. For example, a man may refer to a woman as a "cat killer" and that is certainly not constructing the "identity", in its usual meaning, of that individual. I am choosing the term "functional" to highlight the concept that the "identities" are being framed in the context of a court case and serve, to some extent, the goal of winning the case. So the "functional identity" that the plaintiff is trying to construct of the defendant serves in opposition to the "functional identity" the defendant is trying to construct of him/herself.

The question that remains is how these functional identities are co-constructed. Although there are multiple devices that are used simultaneously to co-construct identities, two that will be discussed in relation to the televised court data are "categorization" and "indexing".

Harvey Sacks argued that some activities are "category bound" (Sacks, 1992). He stated that there are "sets of norms . . . that can operate to provide for how it is that you observe some set of activities, and see them not merely as correctly characterized by you, but as some activity correctly occurring" (p. 253). Categorization, then, consists of a set of culturally appropriate norms that an individual in that culture can use to categorize an event as happening. For example, included in this set of norms is the norm that "mommies ought to soothe their crying babies". He points out that this "is not simply . . . a maxim of good behavior for mommies, but that one can use it to see who it is that's doing something which it can characterize" (p. 253). In other words, if a crying baby is observed and a woman is observed picking up the baby, the set of cultural

norms that determine mother/baby relationships can be used to make the assumption that what is happening is that the mother of the baby is picking it up. This is so much the case that "you can see her as the mommy of that baby without in the first instance knowing that she's either a mommy or, in fact, the mommy of that baby" (p. 253). He argues that "what seems to happen is that for activities that are category-bound what one sees when one sees a pair, a triplicate, a single person doing one of them, is that they are the person who properly does that" (p. 253). It is important to notice that it is in relation to norms regulating *activities* that Sacks claims appropriate categories can be selected for individuals. So, for example, if there is a cultural norm that says that a husband should care for his sick wife, a man seen caring for his sick wife would be seen as a husband.

A second device that court participants have at their access for co-constructing functional identities is indexing. In "Indexing Gender" Elinor Ochs argues that there is a "constitutive relation between language and gender" and by this she means "that one or more linguistic features may index social meanings (e.g. stances, social acts, social activities), which in turn helps to constitute gender meanings" (1992, p. 341). She argues that "the relation between language and gender is mediated and constituted through a web of socially organized pragmatic meanings" (pp. 341-342) and that the knowledge of how language relates to gender "entails tacit understanding of (1) how particular linguistic forms can be used to perform particular pragmatic work . . . and (2) norms, preferences, and expectations regarding the distribution of this work *vis-`a- vis* particular social identities of speakers, referents, and addresses" (p. 342).

While it may not be necessary to draw a fine line between categorization and indexing, what is important is that there are culturally based mechanisms that can be accessed by court participants during testimony to co-construct ideas of past events and their participants.

Consider the following case as an example of this process. The plaintiff, Pam Goldgart, sued her ex-boyfriend Steven Robison for kicking her out of his house after three weeks of living together. She claimed that he had kept her clothing and other belongings. Judge Judy Sheindlin found in favor of the plaintiff and ordered that Robison return her goods to her. In Robison's countersuit, he sued Goldgart for rent, reimbursement of the phone bill, and for putting his cat to sleep. In the following excerpts of the transcripts, I will focus on the negotiation between the judge, Goldgart, and Robison concerning how the action of the cat's death was negotiated and the consequences that this negotiation had for Robison's construction of his functional identity as a "responsible male who innocently suffered the loss of his cat".

Although the typical format of the televised court case is for plaintiffs to present their side of the case and then for defendants to present theirs, countersuits do not seem to follow this pattern. For example, in a countersuit handled by Judge Joe Brown, he allows both suits to be discussed simultaneously. In this case, Judge Judy Sheindlin allows Golgart, the defendant in the countersuit, to present her side of the case first. Golgart begins by explaining that although she was allergic to the cat, she moved in anyway.

In this segment, Golgart is categorizing her own behavior as belonging to a set of cultural behaviors consistent with concepts of romance and a woman's responsibility to sacrifice for her man. She is also beginning the process of constructing herself as a woman who is ill. This has categorizational consequences for Robison since there are social norms (in sickness and in health) relating to the concept that spouses, and by extension boyfriends, should take care of their partners.

189	Pamela Golgart	OK that's one of the reasons I brought my daughter. um.
190		We moved in.
191		I knew that he had the cat.
192		That he was attached to the cat.
193		That the children were attached to the cat.
194		I didn't tell him that I was allergic to cats.
195		I thought "Pam, maybe it's a mind over matter type of thing.
196		You can deal with it."
197		I thought was in love with the man.
198		I was willing to deal with anything that came along with him.

If Robison is portrayed in this activity, then he will be categorized as a "responsible boyfriend" or, since social norms also carry moral indices, as a "good boyfriend". As Julia Kristeva (1996) has pointed out, however, "To create characters, one must know how *to be one of them* and how *not to be one of them*" (p. 161). Similarly it may be possible to argue that a failure to fulfill a categorized role could result in an individual being categorized as *not* belonging in that category. If Golgart can portray Robison as *not* caring for her according to the social norm, then she can create a functional identity of an "irresponsible or bad boyfriend".

A similar strategy of categorizing for illness is used by the plaintiff, Kimberly Avery, in a case from *Divorce Court.* In this case, however, the "irresponsible husband" is co-constructed by the judge and the plaintiff.

12	Judge Ephraim	Good day ladies and gentlemen this is the matter of Kimberly Avery versus Shawn Avery and I'm advised after a very short marriage of less than two years Ms. Avery you're fed up and you're ready to call it quits
13	Kimberly Avery	Um hmm
14	Judge Ephraim	Want to tell me why?
15	Kimberly Avery	Because within the last year he has- uhm cheated s- several times
16	Judge Ephraim	Ms Ms Avery let me ask you this You're pregnant
17	Kimberly Avery	Yes
18	Judge Ephraim	What's your medical condition
19	Kimberly Avery	MS but [right now
20	Judge Ephraim	[Multiple Sclerosis?
21	Kimberly Avery	Yes, but-
22	Judge Ephraim	And how long have you been suffering with this,
23	Kimberly Avery	Uhm three- I found out like six months after we got pregnant
24	Judge Ephraim	Three months after THIS child that you're carrying now?
25	Kimberly Avery	I mean after we got married, I'm sorry
26	Judge Ephraim	Six months after marriage,
27	Kimberly Avery	Uh huh
28	Judge Ephraim	And. how many children do you have?
29	Kimberly Avery	Two:, and one on the way
30	Judge Ephraim	So you've given birth to two children with MS
31	Kimberly Avery	Yes
32	Judge Ephraim	And a third child on the way
33	Kimberly Avery	Yes I've been doing [fine
34	Judge Ephraim	[My you're remarkable
35	Kimberly Avery	Thank you

In this sequence, Kimberly Avery is clearly being co-constructed as "remarkable". As in the case above, part of the functional identity being constructed is that of an ill woman in need of

care. In this case, however, that identity is enhanced by the concepts of her motherhood and pregnancy. Here, then, is a pregnant mother who is ill and in need of care. Through the process of categorization, the responsibilities of her estranged husband are also being co-constructed. If he cannot show that he has taken care of her appropriately, he will be seen as an "irresponsible husband".

In court, concepts of irresponsibility function as part of the definition of the "actor" who, by his lack of appropriate care, can be seen as the agent of the harm the plaintiff has suffered. One method of constructing or co-constructing a functional identity of a defendant, then, is to create a functional identity for the plaintiff that can then be used to categorize the defendant.

Since in the interactional pattern of these courts, defendants speak after plaintiffs, plaintiffs have a clear advantage in constructing or co-constructing with the judge the initial functional identity of the defendant. And this may be one reason for the high rate of success of the plaintiffs in these cases. This does not mean, however, that defendants passively accept the functional identities that have been created for them.

During their testimony, defendants pursue various methods to try to establish a different, or sometimes modified, definition of their already-under-construction functional identities. Moves to create and re-create functional identities are not simple. They can be negotiated over multiple turns, and they can consist of multiple co-constructions of different facets of the functional identity being co-constructed by the participants.

In the case in which the cat is put to sleep, the plaintiff Golgart, by creating her own functional identity, has categorized her ex-boyfriend Robison as an uncaring, irresponsible boyfriend. In his turn of talk, however, he tries to establish the concept that he cared for the plaintiff and the cat. The consequence of this would be the creation of the functional identity of a responsible boyfriend and cat owner. Considering the adversarial nature of the U.S. legal system it seems clear that co-construction of identity will not necessarily be a cooperative one. As Anne Graffam Walker (1982) has pointed out, a trial is actually "a narrative-in-pair, in which two versions of reality conflict, each version hoping for ratification as true" (p. 1). In the case above where it is clear that the judge and the plaintiff are co-constructing the plaintiff as "remarkable", the cooperative nature of the co-construction is obvious. In the example below, however, while co-construction is taking place in the sense that multiple constructions will result in a final construction as revealed in the judges decision, co-construction is *not* a co-operative process. Consider, for example, the evolution of the concept of what Robison said could be done with the cat in the following sequences.

201	Pamela Golgart	He came in the living room one day.
202		The allergies had taken over my eyes and they were teary.
203		He asked me what I was cry:ing about..
204		I said "I have to be very honest with you. I'm allergic to cats.."
205		He said **"then the cat has to go. "**
206		About a week went by nothing happened with the cat.
207		He said- I said **"Steve I have to do something about the cat."**
208		This is when I was completely stuffed up
209		So he said **"fine. do whatever you have to do as far as the cat."**
210		I called the animal control..
211		The woman I spoke to had basically reassured me as far they di- not putting
212		the animals to sleep.

213		I never would have agreed to do what I did if I had know the animal would
214		have been put to sleep..
215		And this is what I found out from him a few days later that the cat had been
216		killed..
217		I didn't know that..
218		I would not have done that..
219		I called to animal control.
220		They said they would come and get the cat. which they did.
221	Judge Judy	Did you tell him you were doing that?
222	Pamela Golgart	The night before he said.. **"Let's do what we have to do with the cat**
223		**tomorrow"**
224	Judge Judy	^Let's. le:t's. let's is a contraction for "let us"
225	Pamela Golgart	Right...
226	Judge Judy	So that's your first mistake.
227		It's his cat let him take care of it=
228	Pamela Golgart	Right. right.
229	Judge Judy	So did you tell him that "I'm calling animal control"..
230		Or you just figured that by his statement **"let us take care of it"**..
231		that .. he was giving you carte blanche to do [whatever you want to do with
232		it
233	Pamela Golgart	[Yes. that's basically what-=
234	Judge Judy	So you didn't tell him..what you were doing
235	Pamela Golgart	The night before we had discussed it.
236		He said **"let's do whatever we have to do tomorrow to take care of the**
237		**cat"**...(2)
238	Judge Judy	I said- my question to you is.
239		You didn't say "I'm calling a:nimal control"
240	Pamela Golgart	No. he was not home
241		He was out for a job interview at the time.
242		At that particular time that I called..
243	Judge Judy	Now let's hear your version of the cat.
244	Steven Robison	That cat was my children's cat.
245		I- well. I did not tell her to take it to the pound
246		We did not discuss it the night before.
247	Judge Judy	No. OK.. well let's talk about...
247	Steven Robison	I- I said [we need..
249	Judge Judy	[Mr. Robison=
250	Steven Robison	**"We need to find.. a place for the cat."**
251	Judge Judy	So you did have discussions about the cat [because of her allergies]
252	Steven Robison	[yes ma-]
253		Yes ma'am
254	Judge Judy	and her allergies weren't getting any better
255		
256	Steven Robison	right
257	Judge Judy	And at that point you.. anticipated that you were going to be together I
258		assume.
259	Steven Robison	Right
260	Judge Judy	The night before you say you had no discussion
261		And your only discussion with her was.
262		**"We're gonna have to find something to do with the cat"**
263	Steven Robison	Right. but not..take it to the pound.
264		No way.
265	Judge Judy	OK what did you say to her about the cat?
266	Steven Robison	I said that **"yes we need to find a place for it to live"..ado- adopt..**

267	Judge Judy	OK well that's pretty much what she says.
268		She says that she had no idea that they were going to euthanize this cat..
269		And she thought that they were gonna find it a ho:me..
270		What happened when you came home and found the cat not there [tell me]
271		exa:ctly

One of the elements that can be discussed in relation to this sequence of turns is that any one turn accomplishes multiple tasks. Each turn can be polysemous in that multiple meanings and multiple social norms, or hegemonic ideologies, are being indexed simultaneously (Philips 1998). This is exemplified in Golgart's first turn. In lines 203 and 204 she is reinstantiating her functional identity as an ill woman by framing the discussion about the cat in relation to her allergies: "I said . . . 'I'm allergic to cats...' He said 'then the cat has to go.'" Golgart could be seen at this point representing Robison as responsive to her needs, but in the next line, she reconstructs him as nonresponsive to her: "About a week went by nothing happened with the cat." Another conversation is reported: "I said 'Steve I have to do something about the cat.' . . . So he said 'Fine. do whatever you have to do as far as the cat.'" This conversation is again framed in relation to her difficulties with her allergies. Golgart is constructing Robison, here, as if he were abdicating his responsibility for the cat. This is another facet in her construction of him as irresponsible.

In line 221, the judge asks Golgart if she informed Robison of what she intended to do with the cat. With this question, the judge is simultaneously asking a yes/no question, and accessing cultural norms that a girlfriend should communicate with a boyfriend. If Golgart answers "no", she is cooperating in a co-construction of herself as an irresponsible girlfriend. If she answers "yes", she is simultaneously accepting some of the responsibility for the decision, and because this question can be seen as the first turn of a possible blame sequence, she leaves herself open to blame (Atkinson & Drew, 1979; Pomerantz, 1978). She opts out of answering "yes" or "no" by answering the question with a further claim about what Robison has said.

221	Judge Judy	Did you tell him you were doing that?
222	Pamela Golgart	The night before he said.. "Let's do what we have to do with the cat
223		tomorrow"

In this answer then, Golgart can be seen as resisting the judge's construction of her. In one sense, she obscures her answer by not answering in the appropriate yes/no form, and in another sense she mitigates the responsibility by her inclusion of "let's" and "we". Philips (1998) has argued that in the guilty pleas she observed, three kinds of resistance occurred: denial, obscurity, and mitigation (p. 93). The judge's next reconstruction of this sentence (line 230) shows that Golgart's resistance has been successful. The judge has accepted the concept of "us" as responsible. As Philips has also pointed out, " . . . resistance really *does* have an impact on the judges" (p. 113). In the next instantiation of the reported speech, the short form of "let us take care of it" has expanded to resemble the longer form seen in line 222 with the addition of the word "whatever": "Let's do whatever we have to do tomorrow to take care of the cat". So the initial reported speech event, "Then the cat has to go", is co-constructed into "Let's do whatever we have to do tomorrow to take care of the cat" *before* Robison gets to testify.

Other than including the words "we" and "the cat", it is clear that his first attempt to co-construct his reported speech--"We need to find a place for the cat"--is very different from the co-constructed statement that he is trying to change; it is difficult to label this turn as resistance.

It involves neither denial, obscurity, nor mitigation. Philips does not make the claim that these are the only three types of resistance possible for defendants, and I am not making that claim here. But it is possible that this reformulation is not a form of resistance. Phillis Morrow (1996) has pointed out that for some cultures, the concept of restricting agents to two choices, compliance or resistance, cannot account for behavior in interactions. Robison is accessing a kind of agency that is more powerful than resistance to the co-construction allows. He is not in a sense "restating" and consequently participating in the co-construction of his original statement. He is indexing a powerful stance that allows him to make a statement to *replace* the one under construction. "We need to find a place for the cat." In a sense, this may be seen not as resistance to the co-construction but as resistance to the authority of the judge and plaintiff to co-construct his statement. Support for this claim comes later when he begins to use formal language "on the fifth day" as opposed to the judge's use of "day five" and co-ops the judge's use of the formal term "euthenize", which he continues to use even when the judge returns to less formal terms. If formal language is one aspect of "powerful language" (O'Barr, 1982), then this use of formal language supports the claim that Robison is indexing hegemonic ideologies about power in the formulation of his testimony. Robison is not entirely successful in this strategy. His attempt at replacement has very little effect on the next stage of the co-construction as seen in the judge's next restatement, "We're gonna have to find something to do with the cat". The "whatever we have to do" has been downgraded to "find something to do". Robison's attempt to index a powerful position appears to have been deflected by the judge as a simple next move in the co-construction. His next restatement (line 266) "I said that 'yes we need to find a place for it to live..ado- adopt..' is immediately co-constructed by the judge as supporting Golgart's claims: "OK well that's pretty much what she says. She says that she had no idea that they were going to euthanize this cat. And she thought that they were gonna find it a home". Since the judge is the most powerful participant in co-constructions of this type, it is not surprising that her closing remarks should now reflect that an attempt was made to find the cat a home. In line 366 she states "You tried to find an alternative home", but since this sentence is a restatement of a co-construction that gives credit for this idea to Golgart, it does not categorize Robison as responsible, and in the final decision he is not categorized as powerful or responsible. "So I think your countersuit is a lot of baloney" the judge says as she awards him $12.00 for the phone bill.

The judgment in this case was partially based on Robison's co-constructed functional identity as an irresponsible cat owner and boyfriend. And this was premised on his responsibility to care for his girlfriend because she was ill. During the testimony, general cultural assumptions of responsibilities that accompany age were also accessed. In lines 307-313 the judge uses questions about Robison's age to categorize him as an adult who is not acting in accordance with cultural concepts of a responsible adult.

307	Judge Judy	[Where- Where did you fin-]
308		Don't tell me you called Jen-
309		How old are you?
310		How old are you?
311	Steven Robison	Forty one
312	Judge Judy	What are you calling her for?...
313		Take care of your own business...

In this case, no legal claims were made; the decision is based on generally held cultural assumptions about responsibilities due to an ill partner and the responsibility due to age. The

culturally hegemonic concept that age is related to responsibility is used in at least one-third of cases examined in this study. Typically, questions about age implicitly or explicitly access cultural concepts of responsibility and consequently categorize the individual being questioned as belonging to a responsible category. In a case in which Vanessa Cannon asked her sister to co-sign for a car and then refused to make the payments, Judge Brown makes this categorization explicit.

33	Judge Joe Brown	How old are you?
34	Vanessa Cannon	How old am I?
35	Judge Joe Brown	Yes, ma'am.
36	Vanessa Cannon	I'm 43.
37	Judge Joe Brown	Forty-three.
38	Vanessa Cannon	Uh hm.
39	Judge Joe Brown	Don't you know better now that you've got to deal with your
40		obligations and responsibilities?

So far, this discussion has focused on the cultural concepts of responsibilities to partners and the responsibilities that are acquired with age. Many other concepts are being accessed simultaneously. It is also clear that different cultures would access a different culturally appropriate set of concepts that are in turn affected by larger social structures.

In the United States, the focus on personal relationships and on maturity could be due to hegemonic beliefs held in our culture as they are informed, in particular, by religious attitudes toward moral responsibilities and development (Gramsci 1997; Philips 1993). It seems clear that in these court cases, at least, general cultural Judeo-Christian beliefs about responsibility to family and personal moral growth are the basis for the ultimate court decisions. As Gramsci has pointed out, "The Law is the repressive and negative aspect of the entire positive, civilizing activity undertaken by the state" (p. 247). And as Philips has added to this argument, "*Factuality*, a concept heavily influenced by scientific ideology, and *truth*, a concept heavily influenced by Christian notions of moral worth, become inextricably linked in evidence law, so linked that it is difficult for Americans to disentangle them when thinking about legal cases" (p. 249).

Mechanisms such as categorization and indexing can be used to discuss how constructions in a courtroom access larger social structures as well as how they construct arguments relationally. The idea that individuals approach their arguments in the court system based on how relationships are culturally defined, however, does not go far enough. Further work needs to be done to show how participants, particularly judges and lawyers, access concepts related to the role of a court within a particular legal system as well as access concepts related to the role of that legal system in relationship to the state.

NOTES

1. As with any form of entextualization, it is clear that the transcription renders events in a very different form than the actual videotaped court events. It is also important to note that these working transcripts are very different from typical court transcripts.
2. I am by no means claiming that "agent" and "acted upon" are the only two possible legal roles that must be established in order for a verdict to be found. I think that there are a multiplicity of cultural roles that can be established in reference to different types of crimes and trials and that these roles can be translated into a range of legal definitions appropriate to individual crimes. It is claimed, for instance, that there are "victimless crimes" and hence, one would assume, no one who has been "acted upon". For this discussion, however, I will maintain this simple paradigm.

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