LAY EXPECTATIONS OF THE CIVIL JUSTICE SYSTEM

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In this paper we present results from a study of small claims litigants' expectations about the civil justice system. Interviews with plaintiffs at the time they file their cases reveal that many people come to court with profound misunderstandings about the authority of civil courts as well as the procedural and evidentiary burdens that the civil justice system imposes. These findings, based on the empirical investigation of litigants' beliefs about and understandings of civil justice, complement experimental studies of procedural justice conducted over the past two decades. We find that litigants are at least as concerned with issues of process as they are with the substantive questions that make up their cases. Yet litigants' preconceptions of procedure are frequently at variance with what the law requires and what will happen in the legal process. Such differences suggest that litigants' expectations and understandings deserve attention in the study of their attitudes toward the legal process.

I. BACKGROUND AND PURPOSE

In their landmark study of procedural justice, Thibaut and Walker (1975) argued that the process used in resolving a dispute strongly influences the disputants' level of satisfaction with the resolution. In a series of laboratory experiments, they showed that disputants' judgments about procedural fairness have an effect on the satisfaction that transcends the outcome of disputes or the likelihood that particular procedures will be advantageous to individual disputants. Their work ultimately led many researchers concerned with fairness and consumer satisfaction to reevaluate the traditional focus on the fairness of outcomes ("distributive fairness") and to concentrate instead on the significance of procedure.

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Thibaut and Walker's theory of procedural justice has spawned a large and growing literature.[1] A number of researchers have confirmed the basic procedural justice hypothesis with studies of such diverse subjects as criminal defendants (Casper and Tyler, 1986; Landis and Goodstein, 1986), parties to alternative dispute resolution proceedings (Adler *et al.*, 1983), citizens dealing with the police (Tyler and Folger, 1980), citizens evaluating the government benefits they receive against the taxes they pay (Tyler and Caine, 1981; Tyler, Rasinski, and Spodick, 1985), and workers evaluating their employers' decision-making procedures (e.g., Alexander and Ruderman, in press). Much current procedural justice research focuses on why procedural fairness is so important. Thibaut and Walker originally hypothesized that litigants prefer adversary procedures to inquisitorial ones because the former allow the litigants to maintain control over the process of presenting evidence. They later argued (Thibaut and Walker, 1978) that such process control is important to litigants because they see it as promoting equitable, if not necessarily favorable, outcomes. Subsequent researchers have suggested that litigants value process control because they view it as either a means of controlling outcome (Brett and Goldberg, 1983) or a guarantee of the opportunity for self-expression (Tyler, Rasinski, and McGraw, 1985). More recent work has concerned itself with the psychological processes that occasion preference for one procedure over another.

Both the work of Thibaut and Walker and the diverse research it has inspired share the goal of theoretical development through laboratory experimentation designed to explicate structural and/or psychological determinants of litigants' preferences. We have been greatly influenced by this body of work, but our disciplinary background leads us to ask somewhat different questions about procedural justice and the contexts in which it works. As anthropologists we ask about the ethnographic reality of process concerns for everyday litigants who encounter the civil justice system in practical as opposed to laboratory situations. We would have perhaps never formulated such questions without the stimulus of the insights that have come from laboratory research on procedural justice. In turn, we hope that an ethnographic understanding of lay expectations and concerns will make its way into the experimental research effort.

In addition to its relation to the study of procedural justice, the investigation of litigant perceptions of justice is significant in its own right, because it offers an opportunity to understand the theories of law that litigants themselves hold. Felsteiner and Sarat (1986) have demonstrated that the examination of the dialogue between lawyers and their clients in divorce cases can reveal

[1] For a comprehensive review of this literature, see Lind and Tyler, in press.

the theories that lawyers use to transform their clients' problems into legally sufficient claims that articulate with the law. Our investigation of the talk of small claims litigants reveals an equally interesting set of insights into the legal process, since the theories of both legal professionals and lay persons interact in the functioning of the legal system.

We interviewed small claims plaintiffs before and after the trial of their cases. Despite the diversity of the plaintiffs' backgrounds and claims, three themes run consistently through their comments. First, litigants are deeply concerned with legal process. By contrast, they seem to have little concern with substance. They tend to view the facts at issue as straightforward and assume that they will be readily understood by the court.

Second, litigants fail to appreciate the purely adversarial nature of civil litigation. In reality, civil litigants (with the aid of a lawyer in more formal courts) must conceive their own case, assemble their own evidence, find and prepare their own witnesses, and present their own case in court, with a passive judicial system providing little assistance. The criminal justice system, by contrast, has an important inquisitorial component: A victim or complaining witness goes to the police, who investigate; if a defendant is charged, the prosecution is in the hands of the authorities, with the victim often acting as a passive observer. As the texts we analyze indicate, many of the litigants in our study come to civil court with a model of procedure more appropriate to the criminal justice system. Moreover, at this point in the process most litigants have little or no awareness that they will encounter—and thus be required to overcome—another substantially different perspective or version of their case.

The third pervasive theme is the misapprehension of the remedial authority of the civil courts. The civil system can compensate but rarely punishes, whereas the criminal system punishes but rarely compensates. Thus, the civil system has no practical authority over an impecunious defendant. Our data indicate, however, that this basic distinction is lost on many litigants, some of whom base their very decision to go to small claims court on an overestimation of the remedial power of civil courts.

II. METHODS

The data on which this analysis is based were collected as a part of a comparative study of small claims courts in Colorado, North Carolina, and Pennsylvania. The overall objective of the larger study is to understand lay versus legal concepts of basic issues such as evidence, procedure, proof, causality, blame, and responsibility.

The study began with interviews of plaintiffs conducted imme-

diately after they filed their complaints at the courthouse.[2] Our purpose was to gain some understanding of the perceptions, attitudes, and assumptions that litigants bring to the system. For the present analysis, we draw on data from forty-five cases processed in Denver during the summer of 1986. Two law students (one male, one female), who had been trained in open-ended interview techniques conducted the interviews. With as little prompting as possible and a lot of active listening, they spoke with plaintiffs for periods ranging from five minutes to one-half hour. The question at the heart of each interview was: "What is your case about?" The interviewers had a loose agenda of topics covering evidence, procedure, and case facts that they raised in the interview if they were not first brought up by the litigants. The litigants talked about the details of their cases, often providing successive and elaborated versions of "what happened" as the interviews developed. In addition, they talked about their general views of the legal system, of what they had to prove in court, and of what they would use as evidence.

Of the forty-five cases we studied, twenty-eight went forward to trial or other final disposition,[3] usually within a month of our first interview. About a month after most of the cases had gone to court, we attempted to locate all forty-five plaintiffs for follow-up interviews; we were able to interview nineteen. We questioned them about their overall reaction to the small claims system and, more specifically, about the extent to which their experiences had met their expectations, and their satisfaction with both the process and the result.

The analysis of these data consisted of transcribing the interviews and listening repeatedly to the tapes. The authors, along with the research assistants who conducted the interviews, noted issues of relevance to the project and discussed them in workshops.[4] In our effort to comb the data for what we could learn about the issues of interest to us, we also learned about other matters that we had not specifically intended to research. The two

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[2] Comparable pretrial interviews of defendants have not proved feasible. Despite our theoretical interest in defendants at the pretrial stage, we have had limited success in interviewing them. We suspect that this is due in large part to their dismay and general unhappiness with their status as defendants.

[3] By "other final disposition" we mean entry of a default judgment if either of the parties failed to appear or settlement of the case. In most of the remaining 17 cases, the plaintiff failed to obtain service of process on the defendant, resulting in withdrawal of the complaint or dismissal without prejudice.

[4] We owe a debt to the conversation analysis approach to the study of verbal behavior for what it has taught us about the significance and utility of the fine-grained analysis of speech (Atkinson and Heritage, 1984; Atkinson and Drew, 1979). Our work has been greatly influenced by its methods. However, our goals are different in that we are concerned with the analysis of legal institutions and their functions rather than with the explanation of linguistic interaction per se.

such issues we discuss in this paper—the blurring of the civil/criminal distinction and the views of litigants on inquisitorial versus adversarial procedures—emerged as topics of interest *because the litigants themselves* made us aware of their concerns about these matters through their talk.

The data and analyses reported in this paper are qualitative in nature. An important first step in understanding lay versus legal conceptions of the law is listening to how litigants talk and comparing this to the institutional requirements for how they *should* talk. To the extent that quantification of such complex data would ever be feasible, it is not appropriate even to consider quantification until we have a better understanding of the issues that concern litigants and what they say about them.[5]

We will focus on five cases that illustrate particularly well the range of views expressed by our forty-five subjects on the distinction between civil and criminal law and the nature of the adversary system.[6] The case method has served legal anthropologists at least since Malinowski (1926) used it in his analyses of Trobriand law, and has been widely used by such influential figures as Llewellyn and Hoebel (1941) and Gluckman (1955) as well as more recent legal anthropologists. As in the studies cited, we use the case method to understand how a system works by looking at the details of many specific cases. This approach is particularly useful because it allows us to focus on each case from the perspective of its participants.

III. DATA AND ANALYSIS

We will examine the five illustrative cases to determine what they show about lay perceptions of law and legal procedure. For each case, we present a summary of the facts and include relevant excerpts from the interviews.

Case 1: "$100 Worth of Drunk." The plaintiff, Edward Atkin, is a businessman in his twenties. He owns a large motorcycle that, on the night in question, was parked at the curb

[5] We cite as instructive models for this type of qualitative analysis the research of Felsteiner and Sarat (1986) and our own previous work on small claims narratives (O'Barr and Conley, 1985).

[6] In the pretrial interviews, 33 of the 45 plaintiffs made comments relevant to the civil/criminal distinction; 9 of the 33 demonstrated what we judged to be a fundamental misunderstanding of the distinction. Forty-one of the 45 plaintiffs discussed trial procedures, and 10 of them seriously misperceived the adversarial nature of civil justice. Although admittedly sketchy, these figures are noteworthy in two respects. First, we were impressed by the extent to which lay litigants had thought about procedural issues. Second, we were struck by the number of litigants who seriously misunderstood (at least in our subjective judgment) two concepts that are fundamental to our legal system. While we would not presume to draw any statistical conclusions from the latter observation, we note it as a matter of concern and a possible subject for future research.

outside his house. The defendant is an otherwise unidentified woman. Atkin was awakened late at night by his neighbor, who told him that a woman had just "dumped" the motorcycle. According to the neighbor's account, which was based largely on reconstruction and inference, a battered and obviously drunk woman appeared at his door looking for help in finding her own motorcycle. She apparently had just fallen off her bike, which skidded off down the street while she tumbled away in the opposite direction. The neighbor looked up and down the street, and the only motorcycle he saw was Atkin's, which he pointed out to the woman. The neighbor then either saw or heard Atkin's bike fall, and went to his house to tell him. When Atkin went out into the street, the woman was gone, but her bike was lying in the street. Apparently assuming that she would return in the morning, he went back to bed.

The next morning, Atkin waited for the woman for some time, and then called the police to report the accident. His understanding was that the police then "picked her up." In any event, some time thereafter she came to his house to discuss the accident. The details are unclear, but it appears that Atkin took the bike to a repair shop. An initial assessment revealed that the forks were bent, in addition to minor damages to the blinkers and gas tank. The repair estimate for the forks alone was $100, and the woman paid Atkin that amount. According to Atkin, she gave him a receipt for that amount (perhaps she tendered a receipt that he signed and returned). However, while repairing the forks, the shop discovered more extensive structural damage, which would cost several hundred dollars to repair. At this point, the woman—with whom Atkin apparently was in regular communication—balked. Her "attitude," according to Atkin, was that she "couldn't have been more than $100 worth of drunk." When she refused to accept responsibility for the additional damage, Atkin sued, seeking the cost of the repairs to the frame as well as the cost of fixing the blinkers and gas tank, which he had been prepared to forget at the time of the $100 agreement. On the trial date, he went to court with his wife and three witnesses—his neighbor, a mechanic, and a friend who could testify about the bike's condition. The woman did not appear. In a five-minute proceeding, he and the friend testified, and the judge gave him a default judgment. Later, the woman applied to the court for relief from the default judgment. Atkin had to appear at another hearing, at which the judge confirmed the original judgment. When interviewed after the trial, Atkin was in the process of collecting the judgment by garnishing the woman's paycheck.

Edward Atkin is a middle-class businessman. Additionally, he has had experience with small claims court. On one prior occasion,

he filed a complaint, the sheriff served the papers, and the defendant accepted responsibility and settled. Atkin's conduct during the present dispute and his interview comments suggest that his background and this previous small claims experience have led him to a reasonably accurate understanding of the civil justice system.

Consider first his conduct. After hearing the story of the drunken woman from his neighbor, his immediate objective was to "talk to her and see if she wanted to settle everything out of court."[7] Toward this end, he left a note on her abandoned bike and waited on his front porch the next morning to see if she would appear. His first thought was compensation, a civil remedy; appropriately, he did not call the police, but waited to see if a settlement was possible.

When the woman did not appear, he finally called the police. He believes (the source of his belief is unclear) that "the police went to her house, picked her up, and cited her for reckless driving." In any event, about a month later she finally appeared, and the parties began negotiating. The negotiations broke down over the extent of the damage for which the woman would assume responsibility, and Atkin filed a small claims action. Significantly, throughout the negotiation, he never spoke to the police—indeed, when the interviewer raised the topic, he responded that he might call them the next day, since he had not spoken with them for months. The most obvious interpretation of this course of conduct is that his objective was compensation rather than punishment, and that he understands that one can achieve compensation through either direct negotiation or the civil justice system. Accordingly, he used the police for the limited purpose of flushing out the wrongdoer, and then dealt with her himself. When he was unable to achieve his objective, he went not to the police but to the civil courts.

Atkin's conduct also reflects a general understanding of the burden placed on him by the adversarial system. On the trial date, he appeared in court with three witnesses and "all these receipts and all my stuff." After he obtained a default judgment, he took the initiative and garnished the woman's paycheck.

Atkin's stated understanding of the nature of civil justice is consistent with his conduct. In Text 1A, drawn from the pretrial interview, after dismissing (perhaps erroneously) the idea of pursuing the woman's insurance company, he describes clearly the alternatives of instigating a criminal prosecution and seeking a civil remedy:

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[7] Directly quoted passages drawn from this and other interviews are indicated.

Text 1A[8]

Q_2:	Does she have insurance that would cover it?
Q:	What about um . . . ?
Atkin:	What kind of insurance?
Q_2:	Well, don't for bikes you have to have something like — insurance?
Atkin:	Well, she didn't really hit it with her bike though.
Q_2:	Oh, I see.
Atkin:	See, she got off it.
Q_2:	That's right, yeah, that makes sense.
Atkin:	She got off. It's, it's, it's, uh . . .
Q:	I'd try and make a claim. [*In a joking manner:*] I'd, I'd roll the other bike under it, you know. I'd . . .
All:	[*laughter*]
Atkin:	No, but all I could do, you know, is cite her for, uh, destruction of personal property . . .
Q:	Yeah.
Q_2:	Yeah.
Atkin:	. . . and, what I'm doing now.
Q_2:	Yeah.

On the basis of this evidence, one might well conclude that Atkin has a thorough and accurate understanding of the role of the civil justice system. One might further conclude that his understanding is quite predictable, given his business background and prior legal experience. There is additional evidence, however, that suggests that the proper interpretation is somewhat more complicated. Near the end of the pretrial interview, he talks about his plans for trying the case:

Text 1B

Q:	. . . Do you have it mapped out, have you practiced in front of the mirror, you know, how

[8] Except where otherwise noted, the texts are drawn from pre-trial interviews. To make the texts accessible to as wide an audience as possible, we have not used special transcribing conventions such as those used by linguists and conversation analysts. We believe, following Ochs (1979), that the act of transcribing is a statement about the theoretical significance of the data. Because we are focusing on the sociolegal issues involved and not on the interaction patterns per se, we believe we are justified in electing to use a straightforward set of conventions that do not bring in issues that we do not intend to discuss. Moreover, as anyone who has worked with transcripts knows, there is never a totally complete transcript. There are always other issues to be noticed, such as prosody, rate, pauses, overlapping, accent, and even nonverbal features when videotapes as opposed to audiotapes are available. In the texts, Q and Q_2 refer respectively to the male and female interviewers.

	you're gonna handle the court case, or, you know, pictures and drawings or [*laughter*]?
Atkin:	Well, no.
Q:	Today we saw one [*a case*] with a diagram and a model truck . . .
Atkin:	[*laughter*] Did you?
Q:	. . . demonstrating how an accident could not have possibly happened.
Atkin:	[*laughter*] No, well, I don't. I don't, you know. I'm not totally unprepared, but I haven't rehearsed either. You know I've got uh, I'm gonna have my neighbor come in.
Q_2:	Uh huh.
Atkin:	And he can tell his story. Uh, I'm gonna have the mechanic come in; he can tell his story. You know, can this actually happen by a bike being tipped over. He can tell them that it can happen.
Q_2:	Right.
Atkin:	Which obvious—, obviously it can happen.
Q_2:	Did he know your bike before? I mean . . .
Atkin:	No, I've got a friend, that's the best I can do as far as that goes, I've got a friend coming in that, uh, knows the bike was in min—, mint condition.
Q_2:	Right.
Atkin:	So I don't know what more I can do, much else I can do, you know.
Q:	Yeah.
Q_2:	If you get that, that's, you know, that's a lot.
Atkin:	And then I'll just ask, answer the referee's questions or judge's questions or whatever.
Q:	Yeah.
Atkin:	I dunno. What can I rehearse?

These remarks suggest that in spite of his background and experience, Atkin has brought to this case some mistaken assumptions about the burden the civil justice system will place on him to produce evidence and prove facts. With the trial a week away, he has not prepared his own testimony, relying instead on an anticipated interrogation by the judge to elicit the facts—a rare occurrence in the small claims courts we have observed. Moreover, he seems not to consider seriously the possibility that the defendant will present a vigorous case of her own, saying, "I don't see how I can go wrong unless she does skip town." (There is in fact a number of plausible defenses she might have presented, including denying that her actions caused the damage to the bike and con-

tending that their $100 arrangement was a final settlement.) Additionally, the interviewers met the neighbor shortly after talking to Atkin and learned that he had not yet contacted this critical witness to insure his appearance and confirm the content of his testimony. Thus, even this relatively sophisticated litigant seems to view the civil court as more active and inquisitorial than it is in reality and to underestimate his own role in prosecuting his case. We cannot assess the effect of this misunderstanding since Atkin won his case by default.

Case 2: "The Thirteen-Hour Day." The plaintiff, Harvey Johnson, is a middle-aged man. The defendant owns a lawn care business. Johnson agreed to work for the defendant cutting lawns. The defendant agreed to pay him $35 per day, which Johnson assumed referred to an eight-hour work day. The first day, the defendant picked him up early in the morning, drove him from house to house, and brought him home at the end of a thirteen-hour day. He paid Johnson $35. The next day, they started early in the morning and worked nine hours. At that point, Johnson said he refused to work until eight at night again, and the man responded, "We're gonna be here as late as we were yesterday." Johnson quit on the spot and demanded to be paid for his hours, but the defendant refused. Johnson took the bus home from the house where they were working.

Johnson then went to the State Labor Board. According to Johnson, they advised him that he was entitled to be paid an hourly wage for all the time he had worked, with time-and-a-half for any hours in excess of eight in a given day. They also told him that they could not collect his money for him, so he should go to small claims court. In filing his suit, he has made detailed calculations of the amount owed him. He began by dividing eight into $35 to get an hourly rate of $4.38. He is claiming two eight-hour days at this rate, plus six hours overtime (five the first day, one the second) at time-and-a-half, for a total of $111.62 (the arithmetic appears to be off by about a dollar). The court records show that Johnson was unable to get service, and dropped the case. We were unable to locate him for a post-trial interview.

The evidence from Case 2 is quite different from what we observed in Case 1. The plaintiff, Johnson, seems to have a profound misunderstanding of the adversarial nature of civil justice and to have experienced dissatisfaction from the very first time the system frustrated his expectations. As the interview progresses, he reveals that his expectations may be derived from his previous dealings with the law. The different legal experiences of Johnson and Edward Atkin, the plaintiff in Case 1, may explain the differ-

ent attitudes and expectations that they bring to small claims court.

As Johnson states in Text 2A, he has brought the case because of a failure on the part of "the state," which "couldn't catch up with" the defendant and told Johnson to try small claims court. In so doing, the State Labor Board was effectively admitting that its inquisitorial undertaking had failed and suggesting that Johnson try his luck with the adversarial system.

Text 2A

Johnson:	I went by and asked him for my money a few days later. He said that he didn't owe me anything. So, I've been watching uh, Judge Wapner.
Q:	[*laughter*]
Johnson:	He said, "If you have a case . . ."
Q:	"The People's Court?"
Johnson:	Yeah, "People's Court." And uh, so I decided to bring him to court. Well, I took him to the state but the state can't catch up with him. He keeps his equipment in one place and he lives in another place.
Q:	Uh huh.
Johnson:	And it's hard to catch up, the state couldn't catch up with him 'cause they told me to bring it to sm—, small claims court. But the problem that I think I'm going to have is serving the papers, serving him.

Although he had learned something about small claims court from watching "The People's Court" on television, Johnson was unpleasantly surprised by the litigant-driven, adversarial process he confronted. In particular, his responsibility for serving the summons on the elusive defendant runs contrary to his view of how "the law" should function:

Text 2B

Johnson:	And, well, I probably know several guys that I could get to go around and just catch him, and give him the papers, but, uh, it's all left up to me.
Q:	Right.

Johnson: And um, I thought the law was supposed to be, you know, if you have a case against someone, hey, I think the law, the deputy sheriff should be able anytime up until midnight, anytime, to serve papers.[9]

The reason for Johnson's dissatisfaction with the passive system is itself interesting. As he acknowledges in Text 2B, he knows "several guys" who might be able to find the defendant. Nonetheless, he states in Text 2C that he is reluctant to see the defendant until the court date, for he wants their ultimate confrontation to be mediated by the state:

Text 2C

Johnson: . . . I'll just have to get someone early in the morning or late at night and just wait on him . . .
Q: Yeah.
Johnson: . . . to serve the papers. That's the problem, that's the thing I don't like. See, I don't want, I don't want—he know what I'm doing to him. See, I don't want to have the, I, I don't want to be seeing him until court.

In Text 2D, Johnson discloses the source of his reluctance to confront the defendant—his bad feelings toward him—and makes the point that this is the only grievance he has thus far with the small claims process:

Text 2D

Johnson: And I, I don't, I don't, that's, the only thing that I don't like about the courts to start with, is serving him the papers.
Q: Have you ever uh . . .
Johnson: See, I don't, I don't feel good towards him at all.

In some respects, Johnson's expectations reflect a model of the small claims process that would be more appropriate for the criminal system. He believes that "the law" should seek out and serve the defendant while the plaintiff remains anonymously in the background until the trial. Later in the interview, he suggests the source of these expectations:

[9] In Denver, the county sheriffs will serve summonses, but they work only during regular business hours. Litigants wanting to sue persons not available during these hours must find a disinterested party to make service on their behalf.

Text 2E

Q:	Have you ever uh, you know, gone to a court before like that?
Johnson:	No, not to claims, not to small claims, not suing anybody.
Q:	Uh huh.
Johnson:	When I've ever been to court, I've always been behind the gun in the courtroom, DUIs, disturbing, and things like that, I've always been behind the gun.

Thus, even though Johnson has been influenced to some extent by "The People's Court," his only previous personal experience with the legal system has been as a criminal defendant. He has probably seen the active, inquisitorial arm of "the law" at work. He expects the same when he is the complaining party, and is dissatisfied with the civil justice system when it fails to perform up to his expectations. Since Johnson was ultimately forced to drop his case because of a feature of the system he has specifically complained about (lack of assistance in serving process), it is regrettable that we were unable to question him again about his reactions. Had his case gone to trial, it also would have been interesting to see whether he experienced similar dissatisfaction with such other manifestations of the adversarial system as the burden to produce evidence and to present an affirmative case.[10]

Case 3: "Harassment at the Grocery Store." Plaintiff Lorna Terry, a young woman, sued the owner of a grocery store where she had worked for several days. The owner fired her (this is Terry's version—she said that the owner claims that she quit) and then refused to give her a paycheck. She went to the Colorado Labor Board, where she obtained a "demand notice" calling on the owner to pay her immediately or face a penalty of ten extra days' pay. She served a copy of the notice on the owner, but he still refused to pay her. On the advice of the Labor Board, she filed suit for the overdue pay plus the penalty. Late in the pretrial interview, Terry volunteered that "there's more to this story than what I'm tellin' you, it's a lot more." She then mentioned unspecified "harassments" as well as problems with bill collectors in the store. She believed that the store was on the

[10] At one point in the interview, Johnson hinted that he had considered some of these matters. He raised the issue of having to prove that he had done the work and suggested that he might contact some of the homeowners to "see if I can get just one of them to verify that I did [work]." It is unclear, however, what he meant by "verify." Would he arrange for them to come to court, or get written statements, or simply tell them to stand by for a phone call from the judge? The last possibility is not far-fetched, as we have seen a number of litigants suggest in court that the judge should call someone for additional evidence.

verge of bankruptcy, even though the owner had money in other companies. She was confident that she would get paid, however, since her claim was "registered in the court already." Terry appeared for the trial with her father and her friend Charles, but the defendant did not show up. After a brief informal discussion with the judge, she was awarded a default judgment for $43.85, which she understands to represent ten percent of the amount she claimed. In a posttrial interview, she expressed complete satisfaction with the outcome and the small claims process.

Lorna Terry, the plaintiff, has no apparent prior experience with the law. Nonetheless, she has some accurate ideas about the legal system. For example, she is aware of the principle that a judgment gives its holder priority over many other creditors if the defendant goes bankrupt:

Text 3A

Terry: If he goes bankrupt, I'm still gettin' mine. 'Cause I have mine's registered in court, already. Either way he goes, I'm gettin' mine's. Now I, I feel for the people that's still workin' for him and then try to file after he bankrupts. They don't get nothin'.

Like many other litigants, however, she attributes to the civil court far more power than it actually has. In Text 3B, she considers the question of what will happen if the defendant fails to appear for trial:

Text 3B

Q: I'll be interested to see what that guy's gonna say if he shows up.

Terry: Oh, he, he, no he's gonna show up. Like [*the clerk*] told me, he's got to show up . . .

Q: Uh huh.

Terry: . . . if he's served, he's got to show up.

Q: Uh huh.

Q_2: And if he doesn't, like . . .

[*inaudible*]

Terry: . . . if he doesn't, better, okay, I will win like this [*indicating paper*] says.

Charles: We'll have a warrant out for his arrest if he doesn't show up.

Q_2: Well, you can just get the money, I guess, you know.

Terry: Okay, it says, "If you do not appear justi—," um, excuse me. "If you do not appear judgment will be made against you for the amount of the plaintiff's claim plus costs of this suit."

In Terry's view, "he's got to show up"; if he does not, she claims two consequences will ensue. First, perhaps informed by the summons that she later quotes, she concludes that "I will win. . . ." Second, according to her companion, the defendant will find "a warrant out for his arrest." The first point is accurate in the limited sense that the court will issue a default judgment—a piece of paper—against an absent defendant. The second point is patently inaccurate, of course, which suggests that Terry did not mean "win" in the limited technical sense but had something more final and meaningful in mind. It is tempting to speculate that her slip in reading from the summons form ("If you do not appear justi—") is more than inadvertent and in fact reflects her view of the court's authority.

The evidence in Text 3C (from the pretrial interview) is consistent with this interpretation. Here Terry expresses her belief that if the defendant fails to appear for trial, "the government" will compensate her, and the defendant will be left to deal with the government—surely something he will want to avoid:

Text 3C

Terry: Yeah, and then he don't want the government to pay me 'cause he has to pay the government and if he pay the government, he's through. When he don't pay the government, he's through.

Once again, her view seems to be that the civil justice system is an omnipotent, self-directed authority that will recognize the justice of her cause and do whatever is necessary to protect her position.

In an objective sense, the court failed to meet Terry's expectations when it awarded her only $43.85. However, she made it clear in the posttrial interview that she sees considerable value in the outcome. From a purely economic perspective, she recognizes that her victory was insignificant: "If I got to chase him down just for $43, I don't want to." Nonetheless, maintaining her original belief in the power of the system and the documents it generates, she views the judgment as money in the bank: "Now if I needed that $43, I'll take it to him." Moreover, perhaps motivated by the same belief, she concludes that she has achieved something even more important: "Yeah, it came out great . . . . At least he know he can't run over nobody else." Throughout the interview, she reiterated that her experience had been a positive one—thanks to the judge's sense of humor, the trial was "really funny"—and that she was satisfied with the system and would use it again. Thus, the

very misconceptions about the system that set her up for possible disappointment ultimately shielded her from it by leading her to overestimate the practical and legal significance of what she had accomplished. Terry's reactions also demonstrate the fallacy of assessing the adequacy of the judicial system solely in rational, economic terms.

Case 4: "The Former Friends." The plaintiffs, Mr. and Mrs. Winner, are a couple in their twenties. They sued "some old friends" who failed to repay a loan. The story is unclear, but it appears that the defendants have a recent history of moving around the country, living with friends and borrowing money. They were living in Arkansas until the Winners suggested that they would help them find jobs if they moved to Denver. The defendants came and lived with the Winners until, as they put it, "We kicked them out. . . . We starved them to death." Then Mr. Winner inherited some money, and he and his wife lent or gave the defendants $390. After a couple of months passed without repayment, the Winners prepared some type of loan document that the defendants signed, although they admitted while signing that they could not repay the money. The document apparently required the defendants to make a $50 payment by June 17. On June 24, having heard nothing from the defendants, the Winners sued. They sought the $390, plus $110 for their expenses in bringing the suit. According to Mr. Winner, the purpose of claiming the additional damages was to "make it hurt." The defendants did not appear for trial, and the Winners received a default judgment for $400. Although they located the defendants, they were unable to collect their money. The Winners thought the trial itself was fair and were pleased that they had damaged the defendants' credit rating, but concluded that the whole small claims process was "a waste of our time." In particular, they felt that "there should be some way that the city or the court or somebody should be able to get our money for us."

The Winners claim to have considerable knowledge of the small claims process, derived largely from watching "The People's Court."[11]

Text 4A

Q_2: . . . How'd you know to do, do small claims? How'd you think of it?

[11] We have been struck by the litigants' repeated references to "The People's Court." While we initially joked about the "Wapner factor," we now suspect that the television program is a significant factor in many litigants' decisions to go to small claims courts and an important influence on the way they prepare their cases.

Mrs. Winner: I don't know. We just told them, you know, if they didn't pay us, we'd take them to court.
Q_2: Uh huh.
Mrs. Winner: We watch Judge Wapner on TV.
Q_2: Oh yeah. People, a lot of people find out about, you know, small claims, you know, through that.
Mr. Winner: Yeah.
Q_2: 'Cause if not, you really wouldn't know where, what to do, I guess.
Mrs. Winner: That's right, that's right. And we wouldn't know to, um, you know, charge them for lost wages and stuff. . . .

The plaintiffs are also aware of the significance the law attaches to written contracts, particularly those sworn to before a notary. Thus, when their exfriends failed to repay the loan, the Winners made them sign a sworn document and advised them of the potential legal consequences of continued failure to repay:

Text 4B

Mr. Winner: They're some old friends of ours. And it took them a couple of months to finally make payment arrangements with us so I wrote up a contract and they signed it in front of a notary and everything, to pay me $50 a month and, uh, by the 17th of this month and they haven't done so.
Q_2: Uh huh.
Mr. Winner: And I told them I'd take them to court, no hesitations. And they've done this . . .
Q_2: Sure.
Mr. Winner: . . . they've done this to people before.

As is evident from Text 4C, however, the Winners are aware that the defendants simply do not have the money they owe (recall that the defendants so admitted when they signed the loan document):

Text 4C

Mrs. Winner: She didn't think we would do it, I don't think.
Q_2: Oh yeah? So, um, do you think she, they have it?
Mrs. Winner: No.
Mr. Winner: They don't have it.
Q_2: Yeah, so . . .
Mrs. Winner: They're gonna have to go to court, ah ha ha.

The obvious question is why these plaintiffs, sophisticated in

some respects about law and procedure, are wasting time and money on the pursuit of debtors who will be unable to pay a judgment ("judgment-proof" defendants, in lawyers' jargon). Text 4C provides one clue. Mrs. Winner says, in a mocking tone, "They're gonna have to go to court, ah ha ha," suggesting that she and her husband may intend to punish the defendants with the inconvenience and humiliation of a court appearance. Later in the pretrial interview, however, the Winners provide evidence for a different interpretation:

Text 4D

Mr. Winner:	You know, I figured I can go up for $390 but I'm losing time from work. I gotta pay these fees and . . .
Q_2:	Sure.
Mrs. Winner:	. . . gas to get down here and everything else.
Q_2:	Yeah, yeah.
Mr. Winner:	I'm gonna make it hurt.
Q_2:	Mmhm.
Mrs. Winner:	[*laughter*]
Mr. Winner:	Feels good.
Q_2:	Yeah. Well, I understand. Probably can use some money.
Mr. Winner:	Yeah, we sure could.

In Text 4D Mr. Winner says, in reference to his inflated damage calculations, "I'm gonna make it hurt." The clear implication is that the increased damages will inflict more pain on the defendants, although they lack the resources to pay even the $390 loan. Mrs. Winner then concludes the interview by responding to the statement that they "probably can use some money" with "yeah, we sure could," suggesting some measure of economic motivation in bringing the case.

To the extent that the Winners' motivation is indeed economic, it rests on an erroneous assumption about the power of a civil court. In fact, the court merely furnishes a piece of paper called a judgment, and then provides a mechanism for the successful plaintiff to collect it against the assets of a defendant who will not pay voluntarily. If the defendant refuses to pay and has no unencumbered property that can be sold off, the plaintiff is out of luck. The Winners seem to assume, however, that the court will somehow force the defendants to produce money they do not have or perhaps will punish them for their penury. They thus attribute to the court some of the power of the American criminal system or of some hypothetical inquisition.

The Winners' erroneous expectations contribute to their ultimate dissatisfaction with the process. In a posttrial interview, Mrs. Winner described the trial itself as being "real fair" and "real easy

with them not being there," and she did not complain about the amount of the judgment. However, she became increasingly vitriolic when discussing her belief that "the court should be able to go after them." She progressed from stating that "we're pretty unhappy with the overall system" to "it just stinks," observing that her husband "was pretty pissed off about the whole thing." It is significant that for these litigants, dissatisfaction has arisen not because they "lost" in a normative sense nor because the system failed to perform up to its capabilities, but because it lacked capabilities that they had erroneously attributed to it.

Case 5: "The Man on the Street." The plaintiff, James Parker, is a middle-aged man. He is suing a landlord who locked him out of his apartment and seized his personal possessions, all because Parker owed $35. At the time of the interview, he had been living on the street for two weeks. He went to the police immediately after the eviction, but they told him they could not get involved because it was a civil matter. He is seeking recovery of his possessions as well as damages for being forced to live on the street. The police told him that the landlord has a reputation for doing this, and Parker has decided that he will pursue the suit even if the landlord returns his possessions and lets him back in, because "somebody's got to take a stand against him." Parker's name does not appear in the court records, indicating that he never completed the process of filing his complaint. We were unable to locate him for a follow-up interview.

This case is particularly interesting. The plaintiff, James Parker, is a street person in fact and appearance. On this basis alone, one might predict that he would be particularly susceptible to the misconceptions about civil justice that the other four plaintiffs share to a greater or lesser extent. In reality, however, his understanding of the nature and respective roles of the civil and criminal systems is remarkably accurate.

In Text 5A, which is taken from the beginning of the interview, Parker expresses confidence in his legal acumen:

Text 5A

Q:	So how did you, you know, how did you hear to uh, come on down here?
Parker:	Uh, well, I have some basic knowledge of law. I know I have rights.
Q_2*:*	Sure, sure.
Parker:	You can't lock people outside their apartments . . .
Q_2*:*	Right.
Parker:	. . . because they owe you $35.

Immediately thereafter he makes two specific points that seem to justify this self-confidence. First, he acknowledges that the court will decide whether he really owes the $35 in allegedly overdue rent, and that the decision could go against him, notwithstanding the rectitude of his position. Second, he suggests that if the landlord broke the law by locking him out, he may be entitled to damages, which will be somehow related to the two weeks he has been on the street:

Text 5B

Parker:	I'm willing to pay that [$35], but I refuse to pay it until such time 'til we bring it into court. And if he's due that $35, the judge will tell me to pay him that $35.
Q:	Yeah.
Parker:	But, due to the fact he's in violation of the law and I've been living on the streets for two weeks, common sense tells me that he owes me, eh heh, quite a bit as a matter of fact.

Parker thus recognizes two important legal principles: that the outcomes of legal disputes do not always comport with one's sense of natural justice, and that civil courts must usually reduce human problems to matters of dollars and cents.

Later in the interview, he displays an appreciation for the division of responsibility between the civil and criminal systems:

Text 5C

Q_2:	. . . Have you ever seen him, like dealt with him?
Parker:	No, I, after he locked me out the police informed me that there is nothing they could do about it because of some, well, it's a civil matter . . .
Q:	Sure.
Parker:	. . . and they are not gonna get involved with that, but they'll, they're aware of the situation.
Q_2:	Okay.
Q:	Yeah.
Parker:	And, uh, apparently he has a reputation for doing this.
[*eight lines of detail omitted*]	
Q:	They didn't know about the small claims court?
Parker:	No, um, you can't expect law enforcement officers to know the law.
All:	[*laughter*]

When the landlord locked him out, Parker went to the police, although he understood when they told him there was nothing

they could do "because it's a civil matter."[12] Then, despite getting no advice from the laughably ignorant police officers, he determined that the civil small claims court was the place to seek relief.

Some contrary evidence is found in Text 5D. After hearing that his court date is likely to be several weeks away, Parker expresses his belief that the landlord will be forced to return his property sometime sooner.

Text 5D

Q:	. . . I don't, you know, I think, you know, my impression of what we were seeing yesterday [is] that I think it [Parker's court date] would be a matter, you know, of four, five weeks.
Parker:	Yeah.
Q:	I mean, it's like, you know, it's not like huge . . .
Q_2:	It's pretty fast considering, but, you know . . .
Q:	. . . but it's not like days, so, uh . . .
Parker:	Yeah.
Q:	So, uh . . .
Parker:	Well, before the court action, that may be true, but, uh, I still think that, uh, he's required to return my personal property before four or five weeks.

Parker's last statement contrasts with his earlier recognition that it will be up to the judge at trial to decide whether he owes the $35 and is entitled to damages for the landlord's violation of the law. Here he implies that some legal authority, presumably acting on its own initiative, will come forward and compel the landlord to return his property even before the judge has acted. The uncertain basis of his faith is suggested by the lack of a responsible agent in the phrase, "I still think . . . he's required. . . ."

It is also instructive to note these areas in which Parker is unwilling to trust his own legal expertise. In Text 5E, taken from the beginning of the interview, he raises two specific questions concerning the timing of the service and the scheduling of the hearing. Near the end of the interview, he says, with reference to the complaint form, "I'm gonna try to find a lawyer to help me fill these out properly."

Text 5E

Parker:	I was telling the lady outside [the assistant clerk] that I have a lot of questions, because I'm going into this [legal action] blindly.

[12] An interesting question is why it is relevant to him that the police are "aware of the situation," if they are powerless to help him. Perhaps he retains some faith in the power of the police to intervene even in a civil matter.

Q:	Sure.
Parker:	Of course, there's a $9 filing fee.
Q:	Yeah.
Parker:	Okay, and I need to . . .
Q:	They've got that in the big letters.
Parker:	Yeah. They make sure you understand that. I need to find out once this summons is filed, how long will it be before it's served to the landlord, which is one question I got.
Q:	Uh huh.
Parker:	Another question is after you serve the summons, how long before the court date will be established for him to appear in court?

All of Parker's expressed concerns relate to court procedure. He does not ask the interviewers any questions about the substance of the case or the landlord's possible defenses, nor does he suggest that he will need a lawyer's help on such issues. Thus, his remark about "going into this blindly" seems to refer only to procedural details; he appears to trust his "basic knowledge of law" on those larger issues that will determine the outcome of the case. The interesting question is why his legal sophistication does not extend to an appreciation of the difficulties he may encounter in proving his case. The answer may lie in his failure to comprehend the ramifications of an adversary system; in particular, even though Parker understands that lawyers are sometimes necessary, he does not think he will need one to win his case because it has not occurred to him that the landlord will present his own, very different interpretations of the facts and the law. In Parker's view, facts are facts and law is law; he does not appreciate that in an adversary system, facts and law are what the parties make of them.

James Parker is in some respects the most complex of the five plaintiffs we have analyzed. Although a street person, he understands the distinction between civil and criminal law and the functions of civil courts. Despite this understanding, however, he has a vague faith in the power of the court to go beyond its procedural limitations and do what justice requires. Additionally, while concerned about the perils of procedural error, he seems oblivious to the complexities of proving a case, perhaps because he misperceives the adversarial process. Once again, the recurrent themes are the overestimation of the power and initiative of the civil court and the underestimation of the individual litigant's burden in the adversary system.

IV. CONCLUSION

As these five cases illustrate, our ethnographic study of small claims litigants reveals that lay people come to court with expectations about the civil justice system that vary substantially. Three issues are particularly prominent in our interview data. First, many litigants do not seem to comprehend the burden that the adversary system imposes on them. Their comments indicate that they are unprepared to deal with such specific issues as their obligation to locate the defendant, to find and prepare the witnesses, and to make an affirmative presentation. Second, several litigants expressed a serious misunderstanding of the remedial power of the civil courts, believing that the government would pay them if the defendant failed to appear or would somehow "punish" a defendant who could not pay a judgment. Third, these misunderstandings may contribute to litigant dissatisfaction with the small claims process. Sometimes, as in the case of the Winners, the system's failure to live up to an unrealistic expectation may be a direct source of dissatisfaction. However, the Terry case suggests that similar misunderstandings may prevent some litigants from realizing that the system has failed them.

The unifying theme in the interview data is an overestimation of the power and initiative of the civil court. Litigants often see the court as an inquisitorial authority that will recognize the justice of their position and find and punish the wrongdoer, rather than as a largely passive tribunal that renders judgment on the basis of the facts brought before it. Many litigants thus come to the civil court with a model of justice that better fits the criminal system. Understandably, the one plaintiff who had experience with the criminal system had such a model; however, each of the litigants we considered—and numerous other litigants that they represent—shared similar misunderstandings to some extent, irrespective of legal experience or business background.

We do not claim, of course, to have made a statistical showing of a pervasive misconception of the role of civil justice. We do believe, however, that the recurrence of this theme in the unstructured comments of litigants from diverse backgrounds is striking and significant in two important respects.

First, our findings suggest some new issues that complement the general understandings of process that have emerged from nearly two decades of social psychological investigations of procedural justice. Specifically, we find that process is at least as important in the minds of litigants as the substantive issues in their cases. We also find that lay conceptions of process are at variance, often considerable variance, with the realities of the legal process as it is practiced in many small claims courts. We would hope that researchers who focus on procedure would consider the potential

relevance to their theoretical agenda of the assumptions and folk beliefs that lay people bring to the legal process.

Second, the observation of a discontinuity between lay culture and a powerful institution such as the law is significant in its own right. Traditionally, legal scholarship has examined legal issues from the perspective of those who make and practice law. More recently, social scientists, including procedural justice researchers, have begun to focus on the reactions and attitudes of consumers of justice. Even this research, however, poses questions that the law has defined as important. Accordingly, it assumes, at least implicitly, that lay and legally trained people think about disputes in similar ways. In our present research, we have been repeatedly reminded of the importance of examining legal issues from the perspective of the consumer. In addition to the findings reported here, we have learned, for example, that lay people have ideas about causation, proof, and the structure of adequate accounts that differ markedly from those of the law (O'Barr and Conley, 1985; Conley and O'Barr, forthcoming). This accumulating evidence of fundamental differences in reasoning and communication between lay and legal cultures should be of interest to those who study the cultural background of law as well as those who seek to reform the legal process.

Our findings also make a larger point about the role of ethnography in social science research about legal problems.[13] In the design of experimental studies, some issues can be identified a priori. However, as we learned in our initial studies of law and language (Conley *et al.*, 1978; O'Barr, 1982), other issues, less obvious but equally important, emerge only after lengthy observation of the system being studied. Thus, just as ethnographers should enlist the aid of quantitative specialists before making claims about the frequency or distribution of the behavior they observe, those who do quantitative analysis should acknowledge the role of open-ended ethnographic observation in identifying issues worthy of study.

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[13] The usefulness of combining ethnographic and experimental techniques in legal research is discussed in O'Barr and Lind (1981).

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