"Your honor, it was like this...": Narrative Discourse in Small Claims Court[1]

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Small claims court is not a building or a courtroom, but a special procedure, established by each state, which simplifies the court process for a specified range of civil disputes involving relatively small amounts of money[2] (Ruhnka 1978: 1). The intent of the small claims process is to provide the parties involved (litigants) with an opportunity for a low cost, speedy means of settling a dispute. Litigants (plaintiff and defendant) in small claims court may represent themselves in a semi-formal setting where the normal legal rules for the presentation of evidence have been simplified.

In small claims court the burden of proof is first placed on the plaintiff (the person initiating the complaint). This means that the plaintiff must first establish the case for bringing about legal action by providing evidence supporting his/her claim. Once the plaintiff does so, s/he has established a *prima facie* case and the burden of disproving it shifts to the defendant. If the defendant does not then produce evidence which reduces the plaintiff's level of proof to less than 51%, the plaintiff wins (Ruhnka 1978: 22).

Danet (1980) organizes the legal dispute in the court setting into three broad stages: claim - counteraction - outcome. During the "claiming" stage the plaintiff puts forth a claim in the form of an accusation or challenge. Evidence and facts are then brought forth to try and substantiate the claim. The next stage is that of "counteraction". In this stage the defendant has an opportunity to respond to the accusation made against him/her. Evidence and testimony are presented by the defendant to "counteract" the claim raised by the plaintiff.

The "outcome" is the final stage. At this point the conflict is resolved with the judge making a decision or determination of action.

Recent studies of language and law (Conley et. al. 1978; Erickson et. al 1978; Lind et. al. 1979; O'Barr 1985) have examined the speech styles of attorneys and witnesses in trial settings. These studies have looked at aspects of trial language such as the effects of "powerful" and "powerless" speech styles in courtroom testimony, conversational versus interrogational styles in trial testimony and the kinds of narratives given by witnesses in courtroom testimony.

The small claims court setting presents a different aspect of courtroom testimony. Since the litigants in the cases analyzed for this study are generally not represented by a lawyer, their testimony becomes a direct interaction with the judge characterized as partly interrogation by the judge and partly self-constructed narrative. The litigants, not trained in "legalese", are encouraged to use "plain English" (Danet 1980) rather than legal "cant" (Phillips 1982); they are advised before the trial begins to give the facts of their case clearly, present pertinent documents and witnesses and "stay calm" (City of Philadelphia, Small Claims Court Brochure 1981).

In light of the advice litigants receive about their testimony the purpose of this study is to look at the linguistic strategies that litigants use to present the evidence and testimony that will establish their case. Danet (1980) suggests that three frequent strategies used by attorneys in presenting arguments are rhetorical questions, manipulation of audience identification (frequent use of inclusive we) and repetition (where stress is placed on critical points). The question, then, is whether litigants use linguistic strategies similar to those used by lawyers in the presentation of their claims.

Method

For this study an analysis was done of six videotaped case proceedings of the television show "The People's Court". This particular show is a replication of small claims court proceedings in California. The parties involved are actual litigants whose cases are pending in a California municipal court; they have been given the option of having their dispute settled on television. The judge is a retired judge of the state of California who tries these cases based on California law.

In analyzing the tape recordings and transcripts of these cases there were three specific questions asked with regard to the litigants' performance in a small claims court. These research questions included:

(1) What do litigants consider to be essential elements for supporting evidence?
(2) How do litigants present the evidence in order to provide what they consider to be a persuasive argument?
(3) How effective were the arguments in light of the judge's ultimate decision?

Table 1 lists pertinent information about the six cases selected for analysis.

TABLE 1

Complaint	Trial Time	Amount Suing For	Amount Received	Decision For
1. Improper reupholstery of furniture	14.6 min.	$897.75	$ 0.00	Defendant
2. Money for housecleaning	9.9 min.	$209.00	$104.50	Plaintiff
3. Money for stolen wood	6.3 min.	$ 25.00	$ 25.00	Plaintiff
4. Money for replacing broken patio door	6.0 min.	$ 130.20	$ 130.00	Plaintiff
5. Money for replacing broken china	6.0 min.	$303.74	$ 0.00	Defendant
6. Reimbursement for medical expenses from dog bite	6.0 min.	$1500.00	$ 274.00	Plaintiff

Results

First, in looking at what the litigants considered to be essential elements for supporting evidence, three types emerged. These were documents, witnesses and physical evidence. With respect to the category of documents, litigants provided receipts to verify dollar amounts that were either billed, paid or received for work or other services performed; these receipts included a cancelled check, a hospital bill, estimates of replacement costs for damaged property and repair bills. Another form of documentation which surfaced in

Case #2 was a written statement from a witnessing party unable to appear in court. To be valid, though, such a statement must always be signed by the witness and notarized.

Witnesses were a second form of support used for the purposes of a) providing an eyewitness account of what transpired; b) verifying some segment of the litigant's testimony; or c) providing moral support while the litigant presented his/her testimony.

The third type of evidence used was physical evidence. Sometimes the item in question was brought into the courtroom to show the judge what and where the problem was. Examples of this occurred in Cases 1 and 5 where the plaintiffs brought in items to show to the judge (Case 1: sofa cushions; Case 5: china fragments). Sometimes that physical evidence was part of the person, as in Case 6; the man showed the courtroom the marks in his right arm which resulted from the dog bite he received. When an item was too large to bring into the courtroom, yet the litigant felt the need to show some kind of physical evidence, photographs were frequently used. Photographs were also used to provide additional information which may have been difficult to explain. In five out of the six cases studied, photographs were used to help clarify some aspect of the testimony, thereby providing additional information.

O'Barr (1985) suggests that the frequent occurrence of these three elements hints at the litigants' notion of "legal adequacy"--that which constitutes sufficiently convincing evidence to prove one's claims. These features of the testimony suggest that the litigant believes:

1) that written records carry more weight or are more powerful pieces of evidence than verbally reported recollections;

2) that the words of others speak more forcefully than his/her own paraphrases and interpretations; and

3) that physical evidence "speaks for itself" and gives visual substantiation and/or clarification of points which might be difficult to describe.

The second major question asked in this study concerned how litigants presented their evidence in what they considered to be a persuasive argument supporting their claims. Unlike the extended narratives presented in O'Barr's 1985 research, the narratives in this study were more fragmented. One reason for this fragmentation was the judge's active involvement in eliciting and directing the testimony in each case, as illustrated by the following excerpt from Case 5:

J: Are they your children?
W: (daughter of defendant) My children.
J: You live there too?
W: Right.
J: You have custody of the children?
W: Right.
J: On what basis are you suing the grandmother?
P: Because she is the legal owner of the property.
J: Well, what did she do that was negligent?
P: Well, I believe/
J: /O.k., in layman's language, what did she do that was wrong?
P: I asked her on several occasions to please keep the noise level down.....

O'Barr (1985) explains that this type of behavior by the judge often occurs in an effort to provide legal structure and explicit assessment of blame that is often lacking in many litigants' narrative accounts. A further explanation of the

judge's questioning style may be that the cases in this study had to be heard within the thirty-minute time limit imposed upon this television show by the station's programming schedule. This reason is further supported by the relatively short amount of time required to try each case (see Table 1). Ruhnka (1978: 18), in his national study of hearings in small claims court, found that most cases were fifteen to twenty minutes in length.

Although the narratives given as testimony by the litigants were relatively fragmented, they showed similar characteristics to the extended narratives in the courtroom described by O'Barr (1985). The first characteristic of the narratives was that the litigant typically commenced it with a chronological explanation of the claim. The following excerpt shows this:

(e.g. Case 5) J=judge, P=plaintiff
J: You've been sworn. I have read your complaint, ma'am. You're claiming that the defendant damaged your property?
P: Yes, sir.
J: All right, uh, how did she do this?
P: Um, on the morning of Saturday, December 7th, I was sitting in my living room watching television at approximately 11:00, and there was a loud noise originating from Mrs. Griggs' apartment and suddenly, the shelf hanging on my living room wall just fell off. On one side, one side fell down...

It is interesting to note that in the chronological presentation above the litigant does not directly answer the judge's question. This type of organization in court testimony is similar to the storyteller's tendency to commence a tale by indicating time and place, thus setting the stage for the action to follow (Wolfson 1982).

Two other interesting aspects of the small claims court narrative are the perspective or point-of-view from which it is told and the dramatic performance of the narrative. It was found that the perspective of the story

shifted frequently. Sometimes the incident leading to the dispute was described from the vantage point of the narrator and other times from that of the other members involved. The following example from Case 1 illustrates this:

> D: Uh, uh, I also wanted to say, her husband told, her and her husband told me that I said I would replace all new casters. For what I charged her, I said it couldn't have been. She said, "You said you'd fix it." So I got it back, I fixed it. When I looked up this receipt, she, they both said, "It's on the receipt." It, there's nothing about putting new casters on there. Well, he told me, that's the only reason I put new casters on there was because he's the one that said, "Helen, she's right, that, you did put [it down]".

Insight into why these narratives contain multiple points of view comes from three sources. First, these multiple points of view may be due to a narrator's natural tendency to tell stories from many vantage points (O'Barr 1985). As listeners are taken from scene to scene, the listener hears the relevant parties speak, which in turn may give inductive information about the motives and thoughts of those parties involved in the action.

O'Barr turns to the work of Wolfson (1982) to posit a further explanation for this shift in perspective; Wolfson suggests that the shifting of perspective serves to highlight the story and hold the listener's attention. With regard to the assuming of various "voices" in the narrative (as seen in the above excerpt from Case 1), Hymes (1981) reports that in many cultures, this dramatic element in storytelling is considered to be an important feature of persuasive narratives. This may in fact be a strong reason why litigants do assume the voices of the parties involved. The effort to report what was actually said may be done to portray not only the other parties' thoughts and feelings, but to emphasize their attitude and state of mind at that point.

A third characteristic of the narrative testimony is the use of what O'Barr (1985) calls "turn preservation techniques". Once a narrative has begun, the narrator uses preservation techniques which allow him/her to continue speaking until s/he is either interrupted or has said what s/he had wanted to say. O'Barr (1985) found in his research the frequent use of what he calls the connective "and", rising intonation and an apparent request for acknowledgement and understanding. In the cases which I observed the connective "and" was frequently used (e.g. Case 4):

J: Let me hear from somebody who was there.
P: I'm her son and uh, I was just there, I was told not to come into work the next day. And, I was at home and he, Mike, called me up demanding some money from me for, cause he missed the concert and spent some of his own money. So he came over to my house and my friend told him to leave without, ya know, any money, and when he left he turned around and came back and yelled that we, I was dead and then he kicked my window in 'n shattered it.

Other techniques used were hedges (uh, um, O.K.) and not relinquishing the floor when interrupted by another party (see Case 1):[3]

D: No, the bigger one is on the sofa. It's a seven and a half foot sofa. [What ? a the]
P: [XXXXXXXXXX]uh, I have pictures right here, Helen, showing/
D: /You, you you had 'em mixed like that [when I went down there]..
P: [No, well this is, this is not]...

In moving from textual characteristics present in the narratives to what litigants considered essential elements for supporting evidence, we gain additional insights into the composition of narrative testimonies. O'Barr (1985) in some of his recent work on courtroom narratives tells us that recent studies

in the area of small claims narratives reveals that litigants indulge in a variety of everyday storytelling practices that would be forbidden in most formal courts. In his study of formal courts, he lists nine constraints that are imposed upon witnesses in this setting.[4] Native speaker intuition suggests that each of these forbidden practices is common, if not essential, in everyday narrative. This more relaxed and simplified court procedure then provides litigants the opportunity to present their opinion in a relatively unfettered way. Although the presentation of testimony is more relaxed, there are still constraints present in this situation. One constraint is that the plaintiff, the defendant and witnesses are not allowed to give testimony about something which they do not know first-hand. The knowledge should be first-hand and visually obtained by the person who relates it (e.g. Case 2). This constraint is known as the "hearsay" rule. The following exchange demonstrates this constraint:

P: I'd like to add a few details to this case if I may.
J: What details can you add since [you weren't there?]
P: [Uh, I can], I was there, after the work was done....I have some letters here, character references for people, from people, from people that [we've worked for]/
J: /[That's not gonna], that's not gonna help, sir.

A second constraint focuses on discussions of settlement that have occurred outside the courtroom. The judge is only concerned with the testimony relevant to the claim being made. Discussions of settlement are not admissible. In this example from Case 2 the plaintiff has just described a settlement discussed outside the courtroom. The following excerpt is the judge's response:

J: You're telling me, you're telling me that the case should have been settled and I agree with you, but it wasn't, therefore I'm gonna have to make a determination. Discussions of settlement are not admissible.

A third constraint focuses on the giving of "irrelevant" testimony, or the giving of testimony which has no real bearing on the case, as seen in this excerpt from Case 5. In this scene the witness was trying to show that loud noises from the neighboring apartment (which the plaintiff claimed caused her shelf supporting her china to fall) were part of a "normal pattern of disturbances":

W: ...However, um last semester, when Lisa was going to college, I companion sat her 12-year-old daughter, Rachel, and constantly, I sat there for four hours and the noise level was tremendous. And I would go next door and [they would bang and slam]/
J: / [uh, xxx, completely, completely] irrelevant.

The judge struck this testimony because it had no direct bearing on the present lawsuit. Frequently the witnesses' presentation of opinions and conclusions in the course of their testimony is also considered irrelevant because the law recognizes only concrete descriptive testimony about the situation.

The next major topics of study were how litigants' testimony conflicted with the notion of legal adequacy and how their testimony failed. In analyzing these issues we once again look at the composition of facts in the narrative. One major problem is that sometimes litigants give testimony as if the facts speak for themselves. O'Barr (1985) characterizes this as an inductive approach to presenting evidence. In Case 5 the plaintiff presented testimony which tried to show that, because the defendant owned the adjoining property and that was

where the noise came from, she was therefore liable for the damages. As stated by the judge in his decision the plaintiff was unable to prove her claim:

> J: ...Number two, you haven't proven any negligence as far as the grandmother is concerned. All you've said is that she's the owner and therefore, if something happened in her apartment, she must be liable, and there's no such law that I know of. My judgement is for the defendant.

This type of inductive approach conflicts with the deductive form of reasoning which is familiar to lawyers and legal decision-makers. A lawyer typically begins with an opening statement that posits an hypothesis about who is the guilty party. The evidence is then generally organized around testing that hypothesis, and the case concludes with an argument that demonstrates the validity of the hypothesis (O'Barr 1985). The litigant, in using an inductive approach, leaves the evaluation of the narration and the assessment of blame and degree of responsibility up to the judge.

The second problem which litigants face in delivering their testimony is that they often give the facts from a highly personal point of view, which makes sifting out the relevant points difficult or impossible. An example of this occurred in Case 3, where the woman gave a completely emotional defense on behalf of her daughter who is the defendant in the case; her testimony contained no concrete evidence.

J: What do you want to tell me young lady?
D: (Old woman): Beg your pardon?
J: I said, what do you want to tell me, young lady?
D: Uh, just what my daughter's telling you. I saw it all.
J: What did you see?
D: He told her he wanted that wood for himself, for Christmas. ....it really belonged to Inglewood, that wood.
J: What proof do you have of that?
D: I don't have any proof. I just figured it's Inglewood's (city in California), that's all.
J: There's no countersuit that he, uh, uh, abused her or did something (wrong).
D: [also]
J: Pardon?
D: Excuse me, your honor. Also, in the building, there's not a person speaks well of him. He's one of the worst janitors, uh, managers or whatever you call them that I've ever had and I've lived there over ten years.
J: That has nothing to do with whether the wood is his and she paid, agreed to pay for it.

The third and most crucial area where litigants' testimony appeared to fail was in showing what O'Barr (1985) characterizes as agent, action and patient. The agent is the one responsible or the person at fault. The action is what actually occurred or what was done. The patient is the recipient of the action. Frequently the litigant fails to attribute blame directly and unambiguously or leaves out one of these important elements in reporting the claim. This link is important for the legal process to be fulfilled. The legal adequacy of the litigants' testimony can be surmised from the six cases observed in the decision and explanation given by the judge at the end of the case; here the judge tries to help the litigants understand the basis of his decision. Consider this explanation to the plaintiff by the judge from Case 4:

J: The plaintiff, having uh, brought this lawsuit, she has the burden of proving by a preponderance of the evidence that the defendant kicked that window in. Uh, the plaintiff has two witnesses....And as against these two witnesses, we have your testimony. Uh, you were angry. You came back. You still hadn't gotten your money. And you, and your testimony is you slipped in some water which apparently, according to the other witnesses was not there. Uh, and you broke the window. It sounds to me, that the way the glass was shattered, it was, it was probably kicked in rather than slipping and falling into it. But, at any rate, the plaintiff, to me, has overwhelmingly met the burden of proof. Judgement for the plaintiff for $130.20.

Conclusion

The simplified legal procedures in small claims court and the narrative freedom given to litigants in that setting appear to be a mixed blessing (O'Barr 1985). On one hand, litigants are allowed to present narrative-style testimony in representing themselves in a judicial process which has simplified the normal rules of legal evidence. On the other hand, though, litigants are still operating in a court of law where there must be assessment of blame with sufficient information to support the claims made. In allowing for unstructured narratives, the court also allows for inadequacy of legal blame. Litigants may be quite unaware of the restrictions which are still present even in the small claims court. This type of research serves to point out that litigants need more information and need to be educated with respect to the rules of behavior and evidence which are followed in this important setting. If small claims court really is to be a people's court, then people need to be advised about how to operate in such a system.

1This paper was written for Dr. Teresa Pica's course entitled "Language in the Professions".

[2] The maximum sum allowed as a settlement in small claims court varies from city to city and state to state.

[3] Transcription conventions used are the following:

XXX	speech was inaudible, unintelligible
D: [ ] P: [ ]	overlaps of the two speakers' turns
/	interruption
.....	irrelevant material

[4] The following constraints are imposed upon witnesses in most formal courts in America:

1. A witness may not usually repeat what other persons have said about the events being reported.

2. A witness may not speculate about how the situations or events being reported may have appeared to other people or from other perspectives.

3. A witness may not usually comment on his or her reactions to, or feelings and beliefs about, events being reported.

4. In responding to a question, a witness may not usually digress from the subject of the question to introduce information that he or she believes critical as a preface or qualification.

5. A witness may not normally incorporate into his or her account any suppositions about the state of mind of the persons involved in the events being reported.

6. Value judgements and opinions by lay witnesses are generally disfavored.

7. Emphasis through repetition of information is restricted.

8. Substantive information may not be conveyed through gestures alone.

9. A witness is generally forbidden to make observations about the questions asked or comment on the process of testifying itself.

From O'Barr (1985)

Conley, J. M., W. M. O'Barr & E.A. Lind. (1978). Presentation style in the courtroom. Duke Law Journal 2: 1375-1399.

Danet, B. (1980). Language in the legal process. Law and Society Review 14 (3): 445-564.

Erickson, B., E.A. Lind, B. C. Johnson & W.M. O'Barr. (1978). Speech style and impression formation in a court setting: The effects of "powerful" and "powerless" speech. Journal of Experimental Social Psychology 14: 266-279.

Hymes, D. (1981). "In vain I tried to tell you": Essays in Native American ethnopoetics. Philadelphia: University of Pennsylvania Press.

Lind, E. A., B. Erickson, J. Conley & W. M. O'Barr. (1979). Social attributes and conversational style in trial testimony. Journal of Personality and Social Psychology 36 (12): 1558-1567.

Lind, E.A., & W. M. O'Barr (1979). The social significance of speech in the courtroom. In Language and social psychology, H. Giles & R. St. Clair, (eds.). Oxford: Basil Blackwell. 66-87.

O'Barr, W.M. (1985). Litigant satisfaction vs. legal adequacy in small claims court narratives. Law and Society Review 19 (4): 623-659.

Phillips, S.U. (1982). The language socialization of lawyers: Acquiring the "cant". In Doing the ethnography of schooling, G. Spindler, (ed.). New York: Holt, Rinehart and Winston. 176-209.

Ruhnka, J.C. & S. Weller. (1978). Small claims courts: A national examination. National Center for State Courts: Williamsburg, Virginia.

Wolfson, N. (1982). CHP: The conversational historical present in American English narrative. Dordrecht, The Netherlands: Foris Publishers.