

## ABSTRACT

NODAR, LEAH MICHELLE. "We are Just Talking About One Car": Legal and Lay Linguistic Practice in Civil Forfeiture Hearings. (Under the direction of Drs. Walt Wolfram and April Fernandes).

Drawing on the complementary perspectives of the courtroom workgroup and the community of practice, I argue that the institution of law is created and recreated in the everyday practices, and particularly linguistic practices, of the people whose regular work is doing law. The jointly shared assumptions of the courtroom workgroup undergird courtroom negotiations and structure courtroom outcomes. Especially, the courtroom workgroup has a shared implicit ideology of justice that is technical and procedural, and thus efficient and manageable as a daily routine, but which may be at odds with the lay person's broader, more philosophical ideology of justice (Conley and O'Barr 1990, Merry 1990).

I investigate workgroup assumptions by comparing the discourse of civil forfeiture hearings where claimants represent themselves to those where claimants are represented by lawyers, with attention to the points that lay claimants emphasize but that the courtroom workgroup considers irrelevant. Civil forfeiture hearings are unusual proceedings in that they are against property rather than persons; because property does not have the right to a lawyer, there is a mix of represented and unrepresented claimants, allowing a direct comparison of legal and lay responses to the State's case. Using the transcripts of five civil forfeiture hearings from the Mobile County Circuit Court, Alabama, I first conduct a network analysis of the discourse, mapping out the ability of each speaker to report the speech and action of themselves and others across the hearing. This suggests that legal and lay discourse differs in four broad ways: in the number and type of outside actors discussed; in the use of generics and hypotheticals; in the amount of discussion of the police versus of the claimants themselves; and in the tendency of

claimants to advocate for themselves either far more or far less than lawyers advocate for their clients. I then conduct a qualitative analysis following Wortham and Reyes (2015), adding nuance to these general differences. Officers' opening narratives are focused on police procedure, suggesting an understanding of and orientation to the assumptions of the courtroom workgroup. Officers often use a depersonalized, non-evaluative register that attributes actions to the group as a whole and positions them as neutral professionals. Lay claimants discuss more specific people, and particularly discuss police officers as individuals. Lawyers rarely contest the officers' version of events, but argue instead that the narration of these events does not meet a technical legal standard. Characterization of the police thus emerges as a particular point of difference in legal and lay discourse; the courtroom workgroup largely assumes officers to be interchangeable and neutral, while lay responses emphasize particular officers and imply motives for police actions that go beyond their professional roles.

“We are Just Talking About One Car”: Legal and Lay Linguistic Practice in Civil Forfeiture Hearings

by  
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## **BIOGRAPHY**

Leah Nodar's first foray into critical linguistics came at the age of six, when learning her ABCs. The kindergarten teacher explained that vowels can be spoken alone, but consonants require a vowel to be pronounced. To which Leah raised her hand and responded, "Mmmmm??"

She remains incorrigible.

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## TABLE OF CONTENTS

LIST OF TABLES .....	vi
LIST OF FIGURES .....	vii
1. INTRODUCTION .....	1
2. BACKGROUND .....	5
2.1. The Courtroom Workgroup.....	5
2.2. The Courtroom Workgroup as Community of Practice .....	8
2.3. The Legal Construction of Reality .....	12
2.4. Civil Forfeiture.....	15
3. THE DATA.....	19
3.1. Data Overview.....	19
3.2. Limitations of Transcripts .....	22
4. METHODS .....	26
4.1. Discourse Analysis and Sociolegal Categories .....	26
4.2. Quantitative Methods .....	29
4.3. Qualitative Methods .....	33
5. RESULTS .....	36
5.1. Holistic Network Analyses.....	36
5.1.1. Holistic Analyses Overview .....	36
5.1.2. Hearing A .....	37
5.1.3. Hearing B.....	38
5.1.4. Hearing C.....	40
5.1.5. Hearing D .....	42
5.1.6. Hearing E.....	43
5.2. Egocentric Network Analyses .....	45
5.3. Network Analysis Discussion .....	47
5.4. Qualitative Analysis .....	49
5.4.1. Direct Examination of Officers .....	49
5.4.2. The Lay Response .....	54
5.4.3. The Lawyerly Response .....	58

5.5. Qualitative Analysis Discussion.....	61
6. CONCLUSION.....	63
REFERENCES .....	67
APPENDIX.....	70
APPENDIX: CONSOLIDATED ASSET TRACKING SYSTEM (CATS) DATABASE .....	71

## LIST OF TABLES

Table 1: Judgments of Civil Forfeiture Cases in Mobile County Circuit Court, 2012-2017.....	20
Table 2: Key Actors in Five Civil Forfeiture Hearings .....	22
Table 3: Adjacency Matrix for Hearing E .....	31
Table 4: Descriptive Characteristics of Hearing Networks .....	36
Table 5: Egocentric Characteristics of Claimants and their Lawyers.....	45



## LIST OF FIGURES

Figure 1: Network Visualization of Hearing A.....	38
Figure 2: Network Visualization of Hearing B.....	40
Figure 3: Network Visualization of Hearing C.....	41
Figure 4: Network Visualization of Hearing D.....	43
Figure 5: Network Visualization of Hearing E.....	44

## 1. INTRODUCTION

Ms. Dillard stands before Judge Gorman on a bright and sunny Alabama afternoon. Her car has been seized by the police as instrumental to a drug transaction, because her son allegedly stored drugs in it. She is representing herself with vigor, and has called her daughter as a witness. Earlier, an officer described the series of events that led to this hearing, and mentioned the actual taking of the car very briefly, with no specifics: “It was towed and taken to the impound yard” (D 12:7).<sup>1</sup> For Dillard, however, the exact way the car was taken is of major importance:

DILLARD: The Buick towed away – Did they drive it or what?

WITNESS N: On the wrecker.

DILLARD: They did a wrecker?

WITNESS N: Uh-huh.

DILLARD: So, if they used a wrecker to tow my Buick, couldn't they have done one to tow the Mazda and the other car?

WITNESS N: Yes.

(D 26:22-27:3)

It matters to Dillard because only her car was taken, despite several cars being in the area, some of which belonged to people who were actually arrested for drug crimes. Taking her Buick, while leaving the other cars where they were, flouts her idea of justice. The judge, however, ultimately sides with the officer on this point:

DILLARD: It shows prejudice that they would single out my car and wouldn't take the other car. If drugs were found in the car --

GORMAN: Are you saying -- Would you still be here today if they had seized the other two cars?

DILLARD: No. I still would be here.

GORMAN: Okay. That is what I want you to focus on, that issue, because those other cars really aren't an issue today.

(D 42:7-15)

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<sup>1</sup> Citations from case transcripts are given as [hearing] [page]:[line], with hearings from A to E.

In this instance a deep divide exists between what the judge believes is relevant and what Dillard believes is relevant, and the judge's idea of relevance largely matches that of the police officer witness and the State attorney. That is, the judge, officers, and lawyers have shared assumptions about what matters for this case, and implicit ideologies about what counts as fairness, as prejudice, and as justice. If Dillard were not a vocal presence in the room, it is highly unlikely that any of these everyday courtroom participants would bring up the cars that were not towed, or that it would occur to them as mattering for these proceedings. It is these assumptions, shared between lawyers, judges, and officers but conflicting with those of the lay person, that I seek to uncover here through close analysis of five civil forfeiture hearings. Civil forfeiture hearings are unusual in that there is a mix of represented and unrepresented claimants, allowing for a more direct comparison of legal and lay discourse than is possible in most types of cases.<sup>2</sup> In this comparison, I attend to points that lay people emphasize, but lawyers do not – that is, the things that go unsaid if the only people speaking in the courtroom are legal professionals. These assumptions matter, because cases where claimants or defendants can speak up are rare; generally, it is in the speech of the lawyers, judges, and to a lesser extent officers that the outcome of a case is negotiated. For the average instance of a lay person involved in a given case, the way the courtroom participants think about and negotiate the law *is* the law.

This paper draws on concepts, theories, and methodologies from sociology and sociolinguistics to analyze the way that law is produced on an everyday basis in courtroom speech -- law in interaction. The jurisprudential view of law as a set of rules applied by lawyers and judges is the view that largely permeates American society. Here, however, I take law to be no more than the everyday practices of doing law, with particular attention to linguistic practices.

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<sup>2</sup> For example, a defendant representing themselves in a criminal case is generally a sign that something has gone amiss.

The “law on the books” is a key resource for structuring these everyday practices, but the “law in action,” and its material consequences, is found in the concrete negotiations of application to individual cases. The courtroom workgroup perspective (Eisenstein and Jacob 1977) emphasizes the relationships between the most common courtroom participants, those people whose daily work is the production of law, i.e. the judge, prosecutor, and defense attorney. A complimentary concept from sociolinguistics, the community of practice (Eckert 2000), draws attention to how this negotiation of meaning takes place in language. The latter approach is often used in considering how social or demographic categories, such as race or class, are created through an accumulation of practices and meaning negotiations about those practices; here I apply this instead to an institution, the law.

I investigate the assumptions and unspoken norms of the courtroom workgroup, and how these relate to implicit legal ideologies of justice and fairness. To do this, I compare workgroup cases to cases where claimants represent themselves, without the help of a lawyer. The cases used are civil forfeiture, because in these proceedings both represented and unrepresented claimants occur; most types of cases lean heavily one way or the other, e.g. criminal cases almost always have represented defendants. I use five transcripts of civil forfeiture proceedings from the Mobile County Circuit Court. I focus on the everyday discourse practices of the courtroom, and specifically on how actions are reported: reporting actions and, based on those actions, characterizing people is a key practice in the mundane activity of doing law. In a network analysis, I first ask whether there are clear differences in reporting in lay and legal speech, and then where those differences lie. I find that differences do exist in (1) the use of generic and hypothetical people; (2) the number and type of actors besides the people in the courtroom whose action is reported; (3) the proportion of focus on the claimants and on the police; and (4)

the proportion of reporting about the claimant that comes from the claimant and their allies versus the State and its witnesses. I use these four points to organize a qualitative discourse analysis following Wortham and Reyes (2015).

In Section 2, I draw on sociological and sociolinguistic literature to form the theoretical background. I discuss two key concepts, the “courtroom workgroup” from sociology of law and the “community of practice” from sociolinguistics, the ways in which these complement each other, and the perspective I draw from them and bring to courtroom discourse. I then review other studies of legal and lay discourse in the courtroom, and the distinctions they suggest exist. Finally, I give an overview of civil forfeiture, with attention to why this unusual proceeding serves as a particularly useful place for comparison of legal and lay discourse. In Section 3, I discuss the general patterns of civil forfeiture hearings in the Mobile County Circuit Court, the five specific transcripts I use in the following analyses, and the limitations inherent in the use of legally-prepared transcripts. Section 4 reviews the discourse concepts used to structure both the network analysis and the qualitative discourse analysis, and outlines those two methodologies. Section 5 presents the results of these analyses, in terms of what distinctions exist between legal and lay claimants’ courtroom discourse. In Section 6 I conclude with the implications of these distinctions for the shared assumptions of the courtroom workgroup, and therefore for the concrete practice of law in interaction.

## 2. BACKGROUND

### 2.1. *The Courtroom Workgroup*

The definitions of law used by scholars in sociology of law are almost as numerous and varied as the scholars themselves (see e.g. Kidder 1982). Early definitions were based on “law on the books,” that is, the written law, tending to implicitly accept the law’s own estimation of its features and importance. This remains the domain of lawyers and jurisprudential scholars, but sociolegal studies have moved to a more complex and critical view of “law in action.” This view focuses on law’s social reproduction: the understandings that people have of law and the actions that people take that have legal repercussions, regardless of how close they are to official versions (Stryker 2007). For example, a “law on the books” view stresses the importance of the parking rules and regulations handbook; a “law in action” view notes that, when you’re parking, the handbook holds less sway than whether a nearby officer is pointing you towards the spot or shooing you away (Kidder 1982).

One obvious place where legal actions occur is the courtroom. In this paper, I draw on the organizational perspective of courtroom law known as the “courtroom workgroup,” laid out in Eisenstein and Jacob (1977). As befits a perspective under the “law in action” umbrella, this view gives analytic precedence not to what the written law says, but to the actual, concrete outcomes of courtroom cases. “Workgroup norms establish the routine of the court, reduce uncertainty, and minimize the risk to those involved... This emergent routine and the norms which comprise it must be viewed as ‘law in action’... Law in action describes how the workgroup translates and actually uses the written law daily” (Lipetz 1980:51). The courtroom workgroup view is an organizational perspective, seeking to understand how courtroom outcomes occur by centering the key court figures involved as *people*, and specifically as

organized people who come together to work every day in stable, institutionally-defined relationships. In this view, court outcomes stem from the patterns of interactions, (re)produced on a daily basis, that take place in these ongoing relationships (Eisenstein and Jacob 1977). Law as an institution is made up of these everyday practices, but the origins of many are lost to time, creating a veneer of ahistorical reality (see Haney-Lopez 2006). Institutional practices structure discourse, sometimes explicitly by requiring or disallowing certain topics or types of speech, such as hearsay, and sometimes more subtly by normalizing certain discourses and leaving them uncontested (see Galanter 1974). The kinds of evidence and kinds of language seen as acceptable or unacceptable are rooted in previous cases and recreated in each new case, reconstituting what is seen as necessary or unnecessary for a just outcome. These shared, unspoken norms implicitly establish a legal ideology of justice.

The three main actors in a courtroom workgroup are the judge, the prosecutor, and the defense.<sup>3</sup> These three roles are defined by the institution, and are understood by all members. Even if an individual prosecutor is new to the group, the role is not new, and other workgroup members can act towards the role as they get to know the person. Each workgroup member has their own regular, repeated tasks that involve regular, repeated interactions with the others, which creates stability (Eisenstein and Jacob 1977). Police officers can function as peripheral members of this group, since they interact regularly with the prosecutors and are the most common State's witnesses. Expert witnesses that regularly appear may also be peripheral members. Defendants, however, are not: "[t]he defendant is notably absent from most interactions of courtroom workgroups, assuming the role of a very interested spectator with a front row seat" (Eisenstein and Jacob 1977:23). Witnesses specific to a single case would also

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<sup>3</sup> Actors with smaller roles include the clerk, the court reporter, the bailiff, etc.

not be workgroup members, nor would lay claimants in civil forfeiture cases. Courtroom workgroup members are able to gain advantages as they grow accustomed to courtroom practices and come to understand (and likely share) courtroom assumptions. Defendants, however, are largely powerless against these practices, rather than able to use them; what they can say, and what will be listened to, is outside their control. The courtroom workgroup perspective focuses on the complex interplay between key members, but also recognizes the defendant as disadvantaged.

The workgroup members have shared goals, and, even more important, a shared perspective and understanding of how to achieve those goals. Eisenstein and Jacob argue that the four basic shared goals of a courtroom workgroup are to deal with the caseload efficiently; to maintain group cohesion; to reduce uncertainty in the process; and to dispense justice (1977:25). What exactly that means for each role can vary (a judge's justice involves neutrality, while the other two involve partiality), but all members know how the others approach these goals, and each relies on the others to achieve them, creating interdependence across the workgroup (Eisenstein and Jacob 1977). Lipetz (1980), however, contends that "justice" is not a priority on equal footing with the others: "Court personnel come to court daily to do their work, to manage their caseloads, to process defendants, to dispose of cases, and not specifically to dispense justice. Workers quickly demystify their jobs in order to reduce risk and uncertainty so that they may manage their work in some efficient and effective manner" (47). That is, the overall implicit concept within the courtroom workgroup of what counts as "justice" tends to shift away from how a lay person would conceive it, downplaying it as a philosophical concept and moving instead towards something more efficient and manageable.



Several studies have explored this difference. In Conley and O’Barr (1990), the authors studied unrepresented litigants in small-claims cases, and found that these litigants had a “common sense” view of justice that was bound up in human relationships and was often confounded by the rules-based verdicts of the courtroom. Some litigants who legally won came away unhappy, and some who legally lost were pleased to have had their story heard, even if they came away with an adverse verdict. Engle Merry (1990) similarly studies lay litigants and finds that their definition of and desire for “justice” may be at cross-purposes with legal goals. Conversely, Mertz (1996) discusses the law school classroom as a place where students’ instinctive responses to cases as stories are broken down and replaced with the ability to “think like a lawyer,” reading with a technical perspective. Research regularly finds that lay speech, generally when called as a witness, is tightly controlled to fit within the technical requirements of the legal system (Drew 1990, Eades 2010).

This can create a frustration among lay participants in legal cases. Defendants are not usually able to bring in their own ideology of justice or pursue their own goals in the courtroom. In most cases, defendant speech is carefully controlled, with little opportunity to challenge prevailing courtroom workgroup assumptions even if they are recognized as such. In July of 2018, one court case gained national attention in a dramatic illustration of this power dynamic. A criminal defendant ignored several orders from the judge for silence, talking over the lawyers and the judge himself in an attempt to get across information that he felt was important and was not being heard. In response, the judge ordered his mouth duct taped shut (Reid 2018).

## *2.2. The Courtroom Workgroup as Community of Practice*

Eisenstein and Jacob (1977) originally applied the courtroom workgroup perspective to courtroom outcomes in three major cities, looking at the ways that different policies and

practices brought different people into regular contact with each other and thereby created different everyday routines for managing cases. Later scholars have continued this work in investigating how different legal cultures affect implementation of the death penalty (Gould and Leon 2017); how new policies change workgroup practices (Harris and Jesilow 2000); which workgroup members wield greater power in various types of legal settings (Rudes and Portillo 2012); the effect of defense counsel on juvenile case outcomes (Burruss 2001); and how familiarity within a workgroup affects the likelihood of a plea bargain (Metcalf 2016), among many others.

These studies shed light on the ways that the interaction of the courtroom workgroup shapes courtroom dynamics and outcomes. However, many of these studies atomize courtroom workgroup interactions to discrete, singular events, which serve as data points (Rudes and Portillo 2012 is a notable exception). They tend to be “ beholden to the idea that it is entities that come first and relations among them only subsequently” (Emirbayer 1997), as opposed to foregrounding the relations themselves. This can background or obscure the way that law functions as an everyday practice, done through language. The first chapter of Eisenstein and Jacob (1977) culminated in the key insight that the courtroom workgroup decisions are not automatic outcomes of an assembly-line process, but based on the shared workgroup understanding: “[w]orkgroup members must interact with one another to reach a decision” (1977:38). But this interaction itself remains largely unexplored.

To redirect attention to the importance of the interaction itself, I draw here on the sociolinguistic concept of the “community of practice” (Eckert 2000). Earlier sociolinguistic studies had correlated linguistic variables<sup>4</sup> with broad social demographic categories such as age,

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<sup>4</sup> A linguistic variable is an element of language with more than one variant, or option for its production. For example, whether the first vowel in “coffee” is pronounced like in “cot” or like

race, and gender -- categories whose reality and importance were largely assumed. Eckert, on the other hand, popularized the use of “communities of practice” as a starting point for research, drawing attention to the face-to-face interactions of smaller groups. A community of practice is a group of people small enough to all mutually engage with each other that comes together regularly with some common purpose (Meyerhoff 2002). Language is just one symbolic aspect of presentation and interaction, and many other things can be meaning-markers within a community of practice -- fashion, physical spaces used, regular activities, etc. As they become meaningful to the group and associated with the group by outsiders, the various aspects of style build on each other to form coherent identities for both the group and the individuals that make it up; they are “the practices that people attend to in working out their meaning in the community” (Eckert 2000:28). Within the community of practice, the social meaning of particular linguistic variables can be negotiated, and the choice of one variant over another is then an agentive act of identity construction. Rock climbing clubs, metal bands, breakbulk shipping logistics managers, and graduate student cohorts are communities of practice – as are courtroom workgroups.

The community of practice perspective emphasizes the specific, face-to-face interactions wherein group members negotiate the meanings of shared symbols, accept or contest their own identities as part of the group, and form the routines and habits of their everyday lives (Meyerhoff 2002). It also emphasizes that much of this negotiation and routinization is accomplished through language; much of our daily practice is linguistic practice.

This is as true for law as for any other set of practices. A courtroom has its own daily practices, symbols, and routines -- its own places where meaning is negotiated and contested in

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in “caw,” or whether multiple negation (“I don’t have no”) is used (as opposed to “I don’t have any”). Language can vary at many different levels, but these first-wave studies were largely concerned with phonetics (pronunciation) and grammar.

mundane as well as dramatic ways. The lawyers, judges, clerks, bailiffs, and court reporters make up a community of practice, with an additional rotating cast of witnesses, defendants, jury members, claimants, and so forth. Continuity in courtroom outcomes is rooted in the continuity of a shared understanding of the meaning of the law among courtroom workgroup members. Tracing the patterns of discourse across a single trial is like tracing a web of lines across a flat surface. Across multiple trials we can see which lines the courtroom workgroup traces over and over, becoming grooves that encourage everyday legal practice to travel along particular channels. Rather than law in action, we have law in interaction.

The community of practice perspective, then, serves to refocus the attention of courtroom workgroup studies to the interaction itself, and foregrounds the potential of detailed linguistic analysis as a way of approaching that interaction. The courtroom workgroup perspective, in its turn, introduces a new possibility to the community of practice in terms of *what* linguistic practices can and do constitute. Community of practice scholars regularly approach social categories as a construction of human interaction: "...it is the collections of types of communities of practice at different places in society that ultimately constitute the assemblage of practice that is viewed as class culture, ethnic culture, gender practice, etc." (Eckert 2000:27). Class, gender, and so on are no longer seen as objective realities, but as the creations of the everyday practices of the people that make up (in both senses) those categories. The courtroom workgroup perspective adds the possibility of going beyond identity categories and approaching organizations and institutions as created through everyday practice – even an institution as seemingly external as law.

### *2.3. The Legal Construction of Reality*

What, then, is the everyday linguistic practice that makes up law in interaction? Within the courtroom workgroup, meaning negotiation is often overt and explicit – contesting what it means to “possess” an object, for example, and whether a particular person and object fit that general meaning, is courtroom bread and butter. This negotiation has material consequences that extend beyond the courthouse walls. Eckert (2000) argues that social categories large and small are built from the practices of the people who constitute that category’s members, and at the same time, the same practices for group members create individual identities. In an analogous fashion, when the legal institution ratifies a particular person as accurately fitting within a legal category, the person’s identity is re-created, but the category is re-created as well. For example, Daly (1994), in a review of 397 cases, finds a wide variety of specific actions lumped together as examples of particular crimes. Even in assaults with similar injuries and weaponry, Daly finds that some “assaults” are notably more serious than others. The court decision that a person has committed an assault not only defines the person but (re)defines what it means to commit an assault at all. Such a process of redefinition has drastically changed the meaning of some crimes, such as rape, over time (Ehrlich 1998). At any given moment, however, all courtroom workgroup members treat “assault” and other crimes as extant, outside categories, and work with what they consider to be a shared definition. Merry (1986) makes a similar argument about the fluid nature of rights: “[d]efinitions of legal rights in social relationships are constructed by litigants and court officials as they deal with day to day problems in court” (266). And Haney-Lopez (2006) argues that court-created categories affect broader society: the legal definitions of racial categories such as “white” show the same endless reconstruction as definitions of “assault” or “rights,” but the power of the courts creates a veneer of ahistoricity, such that not only

courtroom workgroup members but American citizens generally take them as natural and meaningful. Categories that the court is not simply codifying but constructing have this very construction elided, and are instead treated as pre-existing objects: “[t]he truly curious... is not the typological sophistry of the courts, but our own certainty regarding the obvious validity of the recently fabricated” (2006:39).

This naturalization makes these categories difficult to escape or think beyond, once they have taken root. Particularly for members of the courtroom workgroup, shared understandings of what counts as evidence is the foundation for what is seen as a just outcome. And in the highly restricted situation of the courtroom, where lay participants are tightly constrained, challenges to these assumptions are few and far between.

Whatever makes up the courtroom workgroup’s shared understanding, whatever is not contested, whatever is seen as an extant reality, *is* the law as far as that workgroup is concerned, and affects the outcomes of the cases in that courtroom. The question is then: what meanings do courtroom workgroup members *not* contest, but hold as a shared assumption? What is taken for granted by both sides of the adversarial relationship? What do courtroom workgroup members see as “obviously” important or essential, and what as “obviously” irrelevant?

This is not a straightforward problem to approach, in that it is difficult to investigate what exactly *isn't* found somewhere. As noted above, many studies exist analyzing courtroom language across a variety of case types and from many angles, and these regularly suggest important differences in legal and lay assumptions about and use of law. However, they are not generally able to compare legal and lay language directly, but focus on one or the other. In general, those that include prominent lay speakers do not include the courtroom workgroup, and vice versa. Conley and O’Barr (1990) and Merry (1990) base their conclusions on small claims

courts, where any legal representation is a rarity and the only courtroom workgroup member consistently present is the judge. Arbitration and mediation studies (e.g. Silbey and Merry 1986) may involve none of the traditional courtroom workgroup members at all, except peripherally. Conversely, studies of criminal courts frequently note the lengths lawyers will take to control and minimize the speech of their lay clients, often removing it entirely (Drew 1990, Eades 2010). It is rare for a criminal defendant to represent themselves, and these cases are unreliable as guides to broad legal/lay differences, as the people who choose to proceed without a lawyer likely have something in common, such as greater distrust for lawyers than average (see Goldschmidt and Stemen 2015:100). In small-claims courts both parties may have a “common sense” lay approach to law, and in criminal courts both parties are lawyers; while broad generalizations can be compared, these studies do not allow for direct contrast in the linguistic practice of the courtroom workgroup and of those outside it.

To combat this problem, I here contrast the linguistic practices found in very similar cases, some dealt with by the courtroom workgroup alone and some involving lay people who argue their own cases and in so doing contest and draw attention to points that are normally assumed. It is an unusual type of case that makes this direct comparison possible: civil forfeiture hearings. Lay claimants representing themselves in civil forfeiture hearings make for a rare opportunity to see what happens when average people have a degree of control in the courtroom and are able to pursue their own goals, and to compare this disruption to the courtroom workgroup’s usual proceedings, throwing the assumptions and ideologies that are usually implicit into relief.

## 2.4. Civil Forfeiture

Civil forfeiture is an unusual and controversial legal practice, where police seize property such as cars and money that are alleged to have a connection to a drug crime (money being the proceeds of drug sales, for example). These cases are made *in rem*, meaning against the property itself rather than the owner, leading to such unusual trial names as *United States v. 200 Acres of Land* or *United States v. One Men's Rolex Pearl Watch*. This was a rarely-used section of Admiralty Law for most of American history, but it was greatly expanded during the War on Drugs (Stahl 1992). The rationale was that officers would be able to undermine drug rings even when the person at the top could not be found, by seizing not only contraband but the finances, cars, and other objects that keep the operation running. However, nationally from 2012 to 2016, 41% of civil and administrative forfeitures were worth less than a thousand dollars, and 68% were worth less than ten thousand dollars (CATS 2017).<sup>5</sup> Police departments in most states are able to keep some or all of the proceeds of forfeitures as funds. Critics argue that this creates a profit motive for police, who are alleged to seize objects based on their value rather than criminal conduct (Carpenter et al. 2015).

The owner of the property also does not have the right to counsel, because the cases are against property rather than people, and property does not have rights. This point is particularly controversial, with many advocacy groups across the political spectrum arguing that it creates an unfair obstacle for people trying to reclaim property (Carpenter et al. 2015, ACLU n.d.). These groups usually focus on the bureaucratic difficulties that unrepresented claimants face and how

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<sup>5</sup> The Consolidated Asset Tracking System (CATS) is the Department of Justice's public record of forfeitures, including criminal, civil, and administrative. Administrative forfeitures are discussed momentarily. The methods I followed in using the CATS database are given in the appendix.



the intricacy of legal bureaucracy can prove overwhelming. Some claimants do have lawyers; if the forfeiture was connected to criminal charges, the defense attorney representing them in their criminal case may also cover the related civil forfeiture case. Many forfeitures, however, are not accompanied by a criminal charge, or the public defender does not cover them, and these claimants must pay for a lawyer, pursue their cases themselves, or give up. The last is by far the most common. People are particularly likely to give up when the value of the property is less than the cost of an attorney (Stillman 2013).

Thus, unlike the small-claims studies above, where lay people chose to seek out the law, in forfeiture cases the law comes to the claimants; and unlike the criminal cases, some people are represented, and some are not. The cases are relatively uniform, and allow for comparison of how lawyers and unrepresented claimants respond to the State's case. Because the cases are directed against the property, the owners must insert themselves as claimants into the proceedings (Jensen and Gerber 1996). If no claimant steps forward, the property is administratively forfeited, meaning courts are not involved at all (Dery 2012), and claimants that do initiate civil proceedings rarely succeed. Nationally between 2012 and 2016, 11.71% of the assets that were civilly or administratively forfeited were ultimately returned to their owners (CATS 2017). Proponents argue that this indicates that the property taken is so clearly guilty that owners consider contesting the forfeiture to be "pointless," and that civil forfeiture is therefore working well (Cassella 1997); critics say that the hurdles placed before citizens often keep them from even attempting to win back their property (Cheh 1991).

Most of the academic research on civil forfeiture comes from one of two places: legal arguments about constitutionality, and quantitative work on broad forfeiture trends. The legal scholars have argued, among other things, that the value of property forfeited could or should be

counted as a punishment, which would make the Fifth and Eighth Amendments relevant, and that the low burden of proof activates the Fourth Amendment; in practice, the Supreme Court has ruled against these arguments (Cheh 1991). The quantitative sociological work has discussed such points as where people are targeted (Helms and Constanza 2009) and what kinds of property are seized (Warchol 1996), finding that trends follow local patterns of inequality.

To my knowledge there is one piece of qualitative academic work in this area, an ethnography by Miller and Selva (1994). In this study one of the authors served as a confidential informant for the police, who did not know he was conducting research. He found a strong influence of the profit motive in the department's handling of cases, to the extent of choosing to pursue a man who sold small amounts of marijuana occasionally, but who had a fully paid-off car, over a more serious full-time dealer whose car had a lien. There are notable parallels here to the Dillard case described in the introduction, where Dillard's (functional) car was seized despite her son being the alleged culprit, while inoperative cars belonging to people who were arrested for drug crimes were not seized. The role of a potential profit motive in Dillard's discourse and idea of justice will be returned to later.

The language evidence used for this study is drawn from five transcripts of civil forfeiture hearings in the Mobile County Circuit Court. Alabama is a "black box" of civil forfeiture -- there are next to no requirements for keeping track of what is seized, from who, or where it goes. The Southern Poverty Law Center (SPLC) describes the situation as follows:

Alabama's law allows law enforcement agencies... to keep the property itself or 100 percent of the proceeds from its sale after merely proving to a court that the property or its proceeds were – more likely than not – used in, or derived from, criminal activity. [...] The agencies that confiscate the property aren't required to track their actions or disclose any information related to forfeitures.

(Tucker 2017)

The Institute for Justice, a libertarian law firm often ideologically opposed to the SPLC, agrees with them on this point. They rate Alabama a “D-” for its creation of a civil forfeiture profit motive and its poor transparency (Carpenter et al. 2015). What few records exist do not usually make their way to the public eye. Drawing on transcripts from Alabama, then, has the benefit of bringing some light to hidden procedures.

### 3. THE DATA

#### 3.1. Data Overview

To find these five Mobile County Circuit Court civil forfeiture cases, I first went through Alacourt, the Alabama State Judicial Information System (Unified Judicial System n.d.), and found all civil cases in the Mobile County Circuit Court where the State was listed as the plaintiff<sup>6</sup> from 1 January 2012 to 31 December 2017. January 2012 was chosen as the starting point because, barring unusual circumstances, court reporters do not keep records of civil cases for longer than five years. I first removed any cases that were not forfeitures.<sup>7</sup> There were a total of 1,353 civil forfeiture cases, of which 1,305 have been decided as of 6 January 2019, leaving 48 still active. A summary of the judgments in the cases is given in Table 1.

The accuracy of this information is questionable, however. I divided up the cases designated as having a bench verdict by the judge listed, and went to the court reporters for each of those judges. For Judge Gorman, fourteen cases were listed as having bench verdicts. Reviewing her files, however, the court reporter found that a hearing had been held in only two, which suggests that the 124 total cases designated as bench verdicts in Alacourt may be a drastic overestimate. Furthermore, of those two, one was listed in Alacourt as a win for the state and the other for the pro se claimant. On receiving and reviewing the transcripts, however, both cases were won by the pro se claimants. That said, the basic pattern of this table is so clear that it

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<sup>6</sup> In terms of the “law on the books,” in a civil forfeiture case the State and any other claimants are considered to be on equal footing, all simply “claimants” of the property. In the Alabama public records, however, civil forfeiture cases are styled in a way similar to criminal cases, with the State as the plaintiff (prosecution) and other claimants as defendants. Some court reporters I spoke with were careful with this distinction; others casually referred to lay claimants as “defendants.” I display this information in terms consistent with the rest of this paper, for clarity, but e.g. what I have listed as “Judgment for State” is given in Alacourt as “Judgment for Plaintiff.”

<sup>7</sup> There were 82 such cases, mostly condemnations and quo warranto claims.

would take an enormous amount of error to counter the two main takeaways: most cases do not make it to a hearing, and most cases are won by the State.

*Table 1: Judgments of Civil Forfeiture Cases in Mobile County Circuit Court, 2012-2017*

Court Action	Judgment for State	Judgment for (non-State) Claimant	Judgment for Miscellaneous (Both) <sup>8</sup>	<b>Total</b>
Bench Verdict <sup>9</sup>	86	11	46	<b>143</b>
Default	633	2	27	<b>662</b>
Other <sup>10</sup>	269	16	212	<b>497</b>
<b>Total</b>	<b>988</b>	<b>29</b>	<b>285</b>	<b>1302</b>

The five hearings that my transcripts come from showcase some elements of the courtroom workgroup, in that there are only two judges and two state attorneys. Reviewing the Alacourt records, I found this was not unusual: attorney Iredell represented the State in *every* civil forfeiture case in 2017. The lay claimants’ side, however, is different every time. Two

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<sup>8</sup> “Miscellaneous” usually means that there were multiple items seized, and in the hearing some were forfeited to the State and others were returned to the claimant. In three cases the Alacourt records either had different judgments (other than State, non-State claimant, or both), or the judgment was not listed, leaving the total at 1,302.

<sup>9</sup> Technically, a “verdict” is only delivered by a jury. A bench trial, meaning a trial where the judge serves as the trier of fact and there is no jury present, ends with a “finding.” As far as I can tell, no civil forfeiture case in the Mobile County Circuit Court 2012-17 went before a jury. Because “verdict” is better-known and the distinction is not material to this paper, I use “verdict” throughout. This is also the language used in Alacourt.

<sup>10</sup> “Other” court actions include summary judgments, dismissals with or without prejudice, and settlement.

involve lawyers, while three claimants represent themselves. The configuration of actors in each hearing is summarized in Table 2 (the names are pseudonyms<sup>11</sup>).

The transcripts I ultimately obtained were a convenience sample, and due largely to the generosity of the two court reporters who were willing to go through my list and find the few cases that actually did have a hearing. Being additionally constrained by my budget, in selecting transcripts I chose to maximize the number of cases I could get while balancing represented and unrepresented claimants. All of the cases discussed here involve the claimant winning at least some of the seized items back. As noted above, nationally, only 11.71% of assets civilly or administratively forfeited between 2012 and 2016 were returned to their owner(s), and for Alabama that number is 8.08% (CATS 2017). While this makes these hearings outliers as civil forfeiture cases, my goal in this work is not to draw conclusions about civil forfeiture *per se*, but about the differences in legal and lay courtroom linguistic practices, for which it is more important to have transcripts of sufficient length for analysis. The State wins that make up the majority of Mobile's civil forfeiture cases are often brief in the extreme, usually to the point of not having a transcript available at all.

Four of the cases are standard civil forfeiture claims, where the claimant argues that the property is not guilty. The fifth, Hearing D, is an innocent owner claim, as described in the introduction to this paper. Innocent owner claims are a common subtype of civil forfeiture claims where the claimant agrees that the property was seized for some connection to an illegal action, but argues that this action was done by someone else and that he or she did not know about it; in this case, that Dillard did not know her son was using her truck to store drugs.

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<sup>11</sup> I have anonymized the data, although since the hearing transcripts are public records this is not strictly necessary. It seems worthwhile to protect the claimants from casual identification, however, and I can think of no reason *not* to anonymize them (except that one participant has a highly amusing name that I'm sorry not to share).

*Table 2: Key Actors in Five Civil Forfeiture Hearings*

<b>Hearing</b>	<b>Judge</b>	<b>State Attorney</b>	<b>Lay Claimant</b>	<b>Counsel</b>
A	Gorman	Iredell	Ashe	--
B	Hargett	Iredell	Bashford	--
C	Hargett	Jensen	Clark	Lenoir
D	Gorman	Iredell	Dillard	--
E	Hargett	Jensen	Everett, Fenton	Kildaire

### *3.2. Limitations of Transcripts*

There are limitations inherent in using a transcript prepared by a court reporter for academic and particularly linguistic analysis. They are created with a different goal in mind, and reflect the needs of the legal institution (Eades 1996). The Mobile County Circuit Court unfortunately does not allow members of the public to purchase courtroom audio,<sup>12</sup> only transcripts. As noted above, I reorganized and reformatted the transcripts to reflect my purposes, but I drew on the legal document. In following sections, I generally treat the transcript data as an unproblematic reflection of the speech in the court proceedings, referring e.g. to the “immediate context” of the language as the hearing itself, as if I had direct rather than mediated access to the spoken data. This is in order to make the work readable, and the remainder of this section is intended as a caveat and qualification to such writing.

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<sup>12</sup> In fact, they seemed to find the request rather suspicious.

The choices transcribers make matter for later interpretation (Bucholtz 2000). Legal transcripts are created by court reporters following particular practices based on their usual purpose: for the participants in an appeal to use in constructing and evaluating arguments based on the lower-court trial. This and what follows is not meant as a criticism of the specific court reporters who prepared the transcripts I used; indeed, I am greatly indebted to them. Rather, in light of the point that no transcript can be neutral, this is a consideration of the ways in which a well-prepared legal transcript reflects its origins as a product of a legal institution, and how some of the choices made in order to produce a transcript appropriate for legal use work at cross-purposes to the goals of the analyst.

First, the transcript uses official designations of when speech events begin and end. In the hectic pace of district court, one hearing may run into the next, and boundaries can blur. The legal transcripts are also divided into sections, marked typographically. Some of these events, such as direct examination, involve a clear shift in participants and their roles that previous researchers have found useful for linguistic study, but not all events correspond well. Within a direct examination, for example, if the judge speaks or is addressed this is always distinctly separated in the legal transcripts, but might be part of the same event for the researcher.

Second, the legal transcript reflects legal concepts of what speech and actions are important or valid. In Hearing D, claimant Dillard brought two witnesses, who were seated in the public benches. Early in the hearing, they reacted to the proceedings, calling out support for the claimant. This is simplified in the legal transcript to “(Spectator speaking out.)” (D 4:25). The unsanctioned voices, then, are removed entirely (compare Eades 1996). The use of speaker tags also reflects and constructs how the speakers are viewed by the legal system. The judge’s turns, for example, are always preceded by “THE COURT:” rather than (as another possibility) by his



name, a choice which highlights him as an impersonal authority and reminds the reader at every turn of the broader justice system he represents. These two issues were at least partially addressed in my reworking of the transcripts.

A third issue, though, is more difficult. There is a complete lack of prosodic markers and other information that would be standard in a linguistic transcript. This is a problem in itself, in that interpretation may be simply off, particularly with no indication of any pauses shorter than a recess. It creates a second problem in that members of the courtroom workgroup will be aware of transcription practices and may orient to them (Komter 2013), while lay claimants are highly unlikely to do so. Thus lay claimants are more likely to have turns that may “look bad” on the page but were mitigated or suggested a different interpretation in context. At a smaller level, legal transcripts may “clean up” speech by removing false starts, fillers, and repairs, areas which Fairclough (1989) argues draw attention to points where the usual common-sense has for some reason broken down, and which he suggests as points of particular interest. I did request that the court reporters not do this with the transcripts they prepared for me.

Finally, there is the simple danger of mistakes and unintelligibles. Without a recording to compare, there is no way to check the accuracy of a transcription or attempt to decipher a mumbled word. Recent research by Jones and Kalbfeld (2019) suggests that court reporters (predominantly white and middle-class) are more likely to make mistakes when transcribing the speech of lower-class or non-white defendants. Similarly, speech marked “unintelligible” by a court reporter may be understandable to an analyst with more experience in language varieties. More generally, previous research suggests that broad social categories, such as race and gender, have an effect on language use and social positioning (see e.g. Rickford and King 2016). While I recognize the potential importance, specific data on race and gender is not given in the Alacourt

records, and can only be intermittently recognized in the transcripts. I instead focus on local identity categories, particularly those defined by the legal institution, as what participants are orienting to (see Bucholtz and Hall 2005).

A researcher using legal transcripts, then, must be particularly careful. Analysis that hinges on single words, particularly discourse markers, are unwise, and the lack of information on intonation and pauses makes any conclusions contingent. My analysis deals with larger patterns of discourse, which are less susceptible to distortion through these kinds of error, but it remains pivotal to keep in mind the fact that the transcript is a product of the legal institution, and in a study focused on the courtroom workgroup's assumptions, to recognize and resist aspects that encourage naturalizing and taking on the legal institutional perspective myself.

## 4. METHODS

### 4.1. Discourse Analysis and Sociolegal Categories

I use concepts from discourse analysis to investigate, quantitatively and qualitatively, the ways speakers report the actions of themselves and others, and how these reports vary in a group with and without laypeople. The communities of practice approach draws attention to these small differences in an attempt “to specify the manner in which the particular becomes or relates to the general or universal” (Meyerhoff 2002: 543), meaning here the ways that a single conversation or hearing contributes to the overall creation of sociolegal categories and placement of people in those categories. This hinges on the ability to control the portrayal of the past actions of people, including oneself, so as to construct a social positioning in the present.

A *speech situation* is a bounded scenario, within which the participants have several discrete *speech events*. The legal institution makes these divisions officially, with the hearing as a whole being the speech situation and the speech events being e.g. a direct examination, a cross examination, or a closing argument. The speech event in turn can be divided into the *narrating event*, where the participants are speaking, and the *narrated content*<sup>13</sup> of their talk. This draws on ideas from Goffman (1974) about the various participant roles a person takes on when speaking. Three of the most important are an *interlocutor*, making sure the current conversation is going smoothly; a *narrator*, sharing the content; and a *character*, taking on the voices of figures within the narrative, often including a past version of the speaker.

Wortham and Reyes (2015) argue that the key distinction discourse analysts need to attend to is that of the narrated versus narrating events. The narrating event is the ongoing

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<sup>13</sup> Following Wortham and Reyes (2015), I use “narrated content” rather than the more specific “narrated event” to maintain the narrated/narrating distinction even when the object of discussion is not a “narrative” as such.

discussion itself, e.g. the State lawyer examining a witness; when the participants actively manage the narrating event, they are speaking in an interlocutor role. The narrated content is the (past) events under discussion, e.g. an officer seizing a car; when participants describe these events, they take on the role of narrator and often of characters. Both the narrating event and the narrated content receive high scrutiny in the courtroom, with many rules about what characterizations and linguistic forms are acceptable, and unusually explicit descriptions of the ongoing narrating event (e.g. “Judge, at this time, I’m going to object. I think she’s going to try to get in some kind of expert testimony...” (E 20:24-21:1) or “Is that a question? You can’t argue with her” (D 17:16-17)).

The narrating event and narrated content are intertwined in discourse, and the way one person portrays another as a character in the narrated content influences *social positioning* in the narrating event where the discourse is taking place. For example, characterizing a person as a liar in the narrated content can position them as an untrustworthy witness in the current narrating event. The *reported speech* or *reported action* is the speech or action of any figure in the narrated content. Reporting speech and action in the narrated content is closely tied to the positions that people are placed in in the narrating event; “the characterization of narrated characters and event is one of the most important resources that people use to accomplish social acts in discursive interaction” (Wortham and Reyes 2015:4). Figures in the narrated event are evaluated, and the present interlocutors are thereby positioned; that is, people position themselves and others in the immediate social space through the characterizations they give in narrated events. When reporting a person’s speech or action, the speaker also evaluates them: “[d]escribing someone else’s speech or action provides a powerful opportunity to... characterize them in the narrated event, and speakers often do this in ways that have implications for evaluation, positioning, and

social action in the narrating event” (2015:41). This holds when the character is the speaker themselves, and the ability to report one’s own actions and thus maintain some control over one’s own characterization in the narrated event and positioning in the narrating event can be a powerful tool. Another way that participants, including the speaker, are positioned is by connecting them to groups, for example characterizing someone as a member of a gang or a police unit. The use of groups allows for *homogenization*, painting all members of a group as the same. Though often considered an example of othering, Jaworski and Coupland (2005) note that homogenization can also be used for positive representation of one’s own group, a point that is important for this study.

These characterizations and positionings have higher stakes in the courtroom than elsewhere -- in a court case, someone wins. The judge either agrees that the reporting of speech and action in the narrated content creates a valid social positioning in the narrating event, or does not. This choice is ratified by the legal institution, with material consequences; in civil forfeiture cases, the property is either forfeited or returned. If reporting speech and action is a key everyday practice of discourse, then reporting in a way that will be accepted by the judge is a key vector of legal power.

Wortham and Reyes (2015) refer to discursive connections and repeated patterns over time as the *pathway* between discrete speech events, drawing attention to the ways that one speech event can serve as *context* for another. *Signs*, in this methodology, are specific linguistic forms used to evaluate narrated content and/or position an individual. *Configurations of signs* are mutually reinforcing, working together to support an interpretation of an event or positioning of a person. *Presuppositions* are ideas that are not explicitly expressed, but that are necessary inferences on the parts of participants to understand the ongoing speech event. Over time,

especially as particular courtroom workgroup members come together again and again, these presuppositions can become shared assumptions. Positionings that are encouraged or even assumed by the courtroom workgroup are a key element of law in interaction.

Beyond Wortham and Reyes (2015), two additional concepts are important here. One is that of *implicature*. Implicature is additional meaning beyond the literal content of words, that is, the meanings that are implied. These range from specific words implied by the context of a sentence to suggested but not stated motives behind someone's actions (Grice 1975). *Registers* are bundles of linguistic features seen as connected to each other and to particular social groups (Agha 2005).

#### 4.2. *Quantitative Methods*

Discourse analysis tends towards interpretive, qualitative methodologies, but I believe quantitative techniques also offer fruitful ways of approaching discourse, forcing the researcher to thoroughly consider what the data actually contains before (potentially) moving forward with interpretation. More sophisticated analytic concepts, such as social emblems (Agha 2005) or members' resources (Fairclough 1989) depend on a thorough understanding of the local context of the speech and are inherently open to debate. Formal linguistic features are more straightforward, though their social meaning may well be disputed. Starting with a quantitative foundation, then, is valuable in itself for understanding the patterns and distribution of discourse, and creates a more solid foundation for later interpretation. In particular, it reduces the chances of simply finding what I expect to find. Mapping the entirety of the courtroom discourse for each transcript onto networks serves two goals. First, rather than working from the assumption that the legal/lay differences in discourse suggested by previous research exist, I use network analysis

measures to see if such a difference is visible when comparing these transcripts. I compare who talks about whom; who is talked about by whom; and who is able to control their own characterization, i.e., the extent to which different actors are able to report their own speech and action rather than being reported on by others. Second, these measures then suggest legal/lay differences that matter across the entire hearing, rather than possibly focusing disproportionately on smaller segments that stand out to me in reviewing the transcripts qualitatively.

The five transcripts were first divided into utterances. Most utterances are equivalent to a clause, though fragments, interjections, and other discrete subclause phrases were coded as their own utterances. Longer sentences with multiple clauses were split at natural clause boundaries when there was a change in the actor or the action. (“I was talking and he was laughing” would be coded as two utterances, but “We were talking and laughing” would be one.) This method was used because sentences as such are a formality of written speech, rather than spoken, and without the prosodic information found in an audio recording I could not use intonation as a guide. Rather than searching out reported speech and action, it is more accurate to say that I then removed turns that were not reported speech or action. That is, for each turn I asked, “In the narrated event, is there speech? Is there action?” and coded accordingly.

Each utterance was hand-coded for the speaker; for whether it contained a report of speech or action; and if so, then for the reported actor. “Actor” was defined as the semantic agent of the sentence (the “doer” of the action) rather than the grammatical subject. These two often overlap, but in constructions such as the passive, where the two are separate, the agent was coded. In addition, passive and similar constructions were coded for whether the semantic agent was directly stated or only implied (the difference between “he was arrested” and “he was arrested by Officer Jones”).

Turns removed as not including reported speech or action included lists of objects (“There was marijuana”), details of addresses and jurisdictions, layout of rooms, description of certificates, clarification of ownership, attributed qualities such as colors, listing of documents as exhibits, and similar. These are important for the cases from a legal perspective, but do not involve reported action. Because of the specific focus on reports of speech and action here, places where narrated characters took on other semantic roles, such as experiencer, were also removed.

*Table 3: Adjacency Matrix for Hearing E*

	Everett	Fenton	Kildaire	Hargett	Jensen	OFF. V	Unspec. Police	DFS	Unspec. Court	Generic
Everett	0	0	0	0	0	0	0	0	0	0
Fenton	0	1	0	0	0	0	0	0	0	0
Kildaire	13	9	73	4	30	25	14	1	6	5
Hargett	8	9	9	57	22	11	7	0	0	0
Jensen	26	12	4	7	48	43	20	3	2	0
Officer V	30	18	1	1	0	36	42	6	0	0
Unspecified Police	0	0	0	0	0	0	0	0	0	0
DFS	0	0	0	0	0	0	0	0	0	0
Unspecified Court	0	0	0	0	0	0	0	0	0	0
Generic	0	0	0	0	0	0	0	0	0	0

The quantity of utterances from each speaker to each reportee was then inserted into an adjacency matrix. The adjacency matrix from Hearing E, where there are two claimants, is reproduced in Table 3 as an example.<sup>14</sup> Here, the state’s witness Officer V reported his own

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<sup>14</sup> The matrices for the other hearings and the R script for this and for the following analyses are available upon request.



speech or action in 36 utterances, the speech or action of Claimant Everett in 30 utterances, and that of Claimant Fenton in 18 utterances; in contrast, Everett did not report at all, and Fenton reported a single action, her own. Based on the five hearing matrices, five networks were produced, creating visualizations of the discourse patterns in each hearing. The quantity of utterances was used as the edge weight (line thickness) of the connections between people, that is, of the directional reporting ties.

I then analyze these networks in two ways. The first is a holistic description of each of the hearings and their basic network characteristics. In the second, I compare *egocentric actor prominence measures* for claimants and lawyers (Luke 2015). An egocentric measure looks at the utterances to and from an individual actor, rather than at the network as a whole. *Actor prominence* refers to the importance of a particular actor in a network, and in this dataset refers particularly to the ability to control the discourse, to the extent that they are able to report on and evaluate the speech and actions of themselves and others, rather than having their speech and actions characterized by other people. The measures used here are outdegree, indegree, proportion of indegree to outdegree, betweenness centrality, self-determination, and same-side determination. *Outdegree* refers to the number of other actors in the network that a single person reports on, e.g. that Officer V reports the speech and action of seven people, while Everett reports none. *Indegree* is the number of other actors that report on a single person, e.g. that both Officer V and Everett have four people who report their speech and action. The *proportion* of the two suggests the extent to which an actor is able to characterize others versus being characterized by others, i.e., the amount of control each actor has of characterization in the discourse. Officer V is one of the four people who reports on Officer V; Everett is not one of the four people who reports on Everett. The above patterns are quantified both in the number of other actors reporting

and being reported on and in the number of total utterances. *Betweenness centrality* measures the extent to which an actor serves as a bottleneck, that is, as the only person reporting on certain other actors. *Self-determination* is the amount of reporting about an actor from that same actor, and *same-side determination* is the amount of reporting about an actor from that actor and other actors on the same “side” (i.e. for represented claimants, talk from that claimant and their lawyer). Using these measures, I compare the actor prominence of the lay claimants (representing themselves) to that of the claimants represented by a lawyer and to that of the lawyers representing claimants. I look at whether any clear legal/lay differences in reporting speech and action are visible in the networks, and if so, where they lie.

#### 4.3. *Qualitative Methods*

I follow the network analysis with a more traditional qualitative discourse analysis, adapting my methodology from Wortham and Reyes (2015). If the network analysis suggests broad trends in legal/lay discourse differences, the qualitative analysis allows for more nuanced and detailed consideration of these differences, the presuppositions that they suggest are shared by the courtroom workgroup, and thus their importance for the concrete practice of law in interaction.

Wortham and Reyes (2015) focuses on the construction of pathways across speech events, meaning systematic links that create more durable social positioning for participants over time. Their method is based on field research that involves the same group of participants over a period of a year, and they focus on the ways that one speech event becomes context for the next, and the identities of the participants become stable within the group: “...across a series of linked events participants signal particular typifications and position others in ways that become

familiar and robustly established” (21). A sign set up in a dozen previous conversations needs little explanation to be used again, and can eventually become a presupposition. For my analysis, a key point is that while speech events early in a hearing serve as context for later speech events in that same hearing, they only serve as context for later hearings for the members of the courtroom workgroup. For workgroup members, these linguistic practices are iterative; for claimants, they are singular.

Wortham and Reyes suggest a five-step process for analyzing a single speech event, and an analogous five-step process for analyzing a pathway. For a single speech event, the first step is to map the narrated content and narrating event; the next three, which are iterative and intertwined, are to select, configure, and construe linguistic forms that serve as signs; and the last is to identify the positioning or other social action that takes place in the narrating event. For a pathway, the first step is to map linked speech events and the narrated and narrating content within each; the next three steps are to select, configure, and construe signs in cross-event configurations; and finally to identify the social processes that occur across the events.

Because of the recurring nature of the speech situations in my data, I look at pathways within each hearing, but also at repeated patterns across different hearings. I first consider each hearing’s first witness, then look at pathways/linked events both laterally, i.e. how that speech event was responded to by others in the same hearing, and vertically, i.e. how the opening witness statements across different hearings involve repeated patterns of signs with similar attempted positionings. I also analyze these vertical parallels in the later speech events across different hearings.

None of the transcripts I have begin with opening statements. They all begin with a formal announcement of the beginning of the hearing, and then may deal with small introductory

matters (a specific listing of the items seized or a question about discovery, for example) before the hearing proper. The first major speech event in each hearing is the direct examination of a police officer witness by the State. This is a direct result of the rules of forfeiture as a legal practice in this court<sup>15</sup>: the State always goes first, and because the seizure itself is done by officers, it is difficult to imagine a scenario where an officer would not be the first witness called. Thus, in all of these hearings, the first rendition of the narrative of the hearing is set by a co-constructed narrative between the State attorney and a police officer. The institutional rules create a mundane, everyday practice where the State and officer's narrative are primary, and the claimant's is a response.

The first step of the qualitative analysis, then, is explicating the narrated content of these opening direct examinations. I went through the process of selecting, configuring, and construing signs for each examination, starting (as Wortham and Reyes suggest) with linguistic forms that connect the narrating and narrated events, such as pronouns, deictics, and verbs of speaking and with reporting of speech and action of the figures within narrated content, with particular attention to the reports on and characterizations of people participating in the trial. I then consider linked events within the same hearing, looking at the speech event(s) controlled by the claimant's side (e.g. a counter-narrative or an examination of their own witness). With this conception of the signs and pathways within each hearing, I compare them across the hearings to look for similar patterns, and specifically whether the patterns suggested by the network analysis are supported by qualitative discourse analysis.

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<sup>15</sup> In these cases, the onus was on the State to prove (at the "reasonable satisfaction" standard) that the property was subject to forfeiture. Laws in some areas put the burden of proof on the claimant to show that the property is not subject to forfeiture. In these cases, I am not sure who would begin in a hearing. I hope to find some of these variations when I expand my research to more cities.

## 5. RESULTS

### 5.1. Holistic Network Analyses

#### 5.1.1. Holistic Analyses Overview

In these network visualizations, the size of each node (actor) is based on the proportion of total reporting that is about that actor, i.e., the importance of that actor to the discourse. Edge (line) thickness indicates the amount of reporting of one actor by another. Color indicates whether actors are members of the courtroom workgroup, with blue for core workgroup members (the judge, prosecutor, and claimant’s counsel), light blue for peripheral members (officers, court workers, and the Department of Forensic Sciences), and green for non-members (the lay claimants, lay witnesses, friends, neighbors, and other people relevant to only a single hearing). Labels in capital letters indicate that an actor is present in the courtroom. The values of edge width are logged for readability, and node size is logged twice. The network characteristics discussed below are summarized in Table 4.

*Table 4: Descriptive Characteristics of Hearing Networks*

<b>Hearing</b>	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>
<b>Total Reported Actors</b>	17	10	12	19	10
<b>Actors in the Courtroom</b>	6	6	5	6	6
<b>Edges</b>	37	23	24	50	29
<b>Total Density</b>	0.14	0.26	0.18	0.15	0.32
<b>Density of Courtroom Actors</b>	0.56	0.53	0.64	0.61	0.67
<b>Reciprocity</b>	0.79	0.53	0.73	0.75	0.58
<b>Transitivity</b>	0.6	0.79	0.6	0.67	0.84

### 5.1.2. *Hearing A*

Hearing A involves a case where Ashe, the claimant, was walking around an apartment complex and one of the residents called the police. When they arrived, they searched Ashe's vehicle and found a small amount of marijuana and a bag containing several thousand dollars in cash, which they seized as drug proceeds. Ashe maintained that the marijuana was a gift and that the money was from his legitimate retail business, and the judge ruled in his favor, returning all of the money. Claimant Ashe represents himself before Judge Gorman, with the State represented by Iredell. Ashe is able to do a great deal of reporting in this hearing, and in particular is able to report his own past speech and actions 187 times; the prosecutor, Iredell, reports Ashe's actions less than half as many times. There are six actors in the courtroom, and they discuss the actions of an additional eleven people, for a total of seventeen reported actors. There are thirty-seven edges, that is, report directions (there are hundreds of individual reports, but thirty-seven connections from one speaker to one reported actor). The density, or total edges compared to the number of possible connections between nodes, is 0.14. The reciprocity, measuring how often a report from one person to another is matched by a report in the opposite direction, is 0.79. The transitivity of the network is 0.60, this being a measure of how often two people both connected to a third person are also connected to each other; for example, if Gorman reports the actions of Ashe and also of the Attorney Iredell, the high transitivity score suggests that there is likely to be a tie between Ashe and Iredell as well (as indeed there is). The high transitivity and reciprocity scores suggest that the discourse in this hearing is tightly interwoven. Two of the speakers are fairly marginal (the court reporter and an officer who speaks briefly as a second, corroborating witness), but of the 16 possible reporting directions between the four main

speakers, 14 are taken. The density within this small subgroup is then drastically higher, at 0.88. The density for all six actors in the courtroom is 0.56.

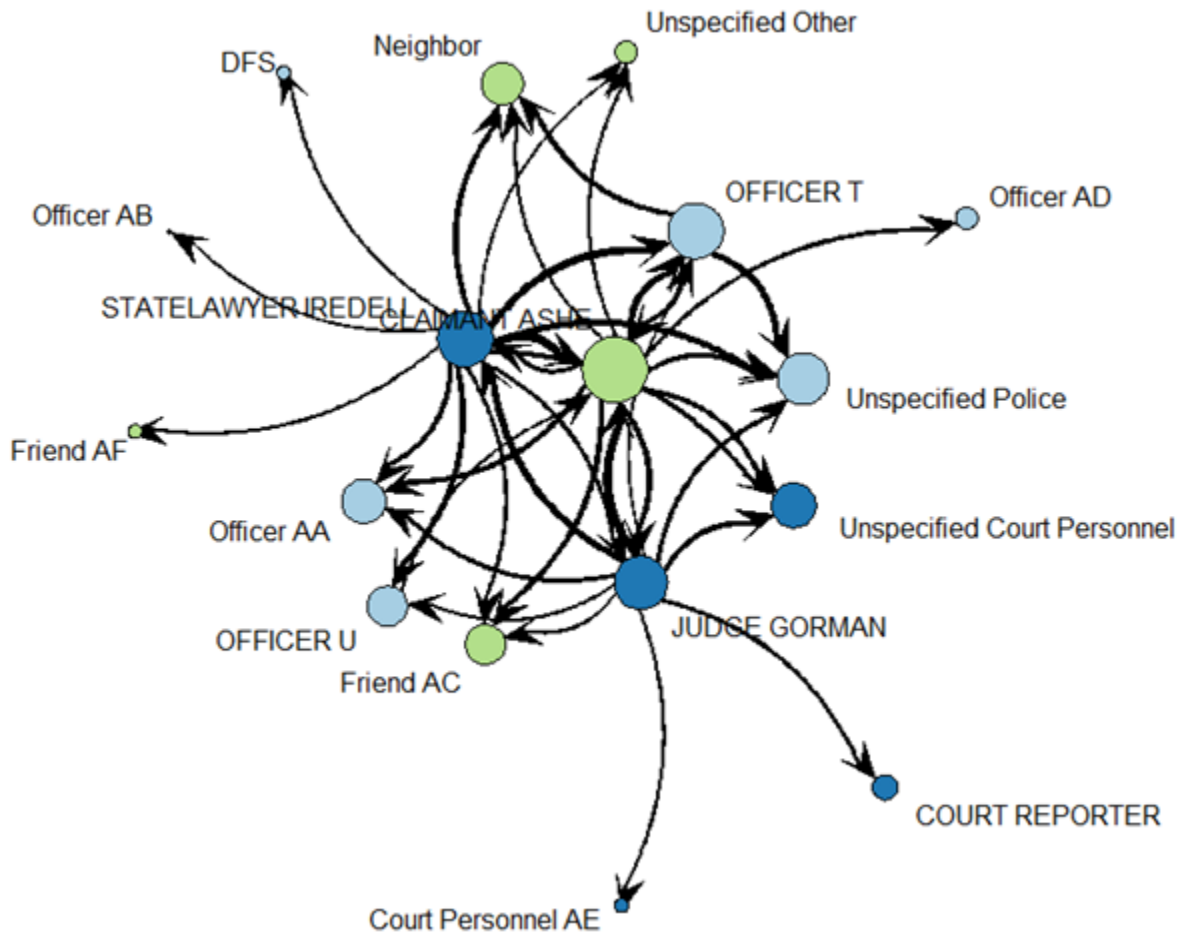


Figure 1: Network Visualization of Hearing A

### 5.1.3. Hearing B

In Hearing B, several officers search the house of claimant Bashford, and seize several weapons that they find near large amounts of drugs and drug paraphernalia. The judge reads Bashford’s statement to the effect that the guns are used for hunting, and returns one to him,

allowing the seizure of the others. Claimant Bashford represents himself before Judge Hargett, with the State represented by Iredell. There are six courtroom actors and four additional reported actors, for a total of ten nodes. There are twenty-three edges, the density is 0.26, the reciprocity is 0.53, and the transitivity is 0.79. The notably lower reciprocity score is because Bashford, unlike Ashe, does not report at all, and indeed barely speaks, while every other actor in the courtroom does report on Bashford. However, far more of the overall reporting is about the police officers involved in the case. The higher density is due to the smaller number of total nodes, and particularly the smaller number of reported actors outside the courtroom. Notably, the four outside actors discussed are all members or peripheral members of the courtroom workgroup (other police officers, court workers, and scientists at the Department of Forensic Sciences [DFS]). This contrasts sharply with hearing A, where the actions of the residents of the area where Ashe was arrested, Ashe's friends, and other non-workgroup people are discussed.



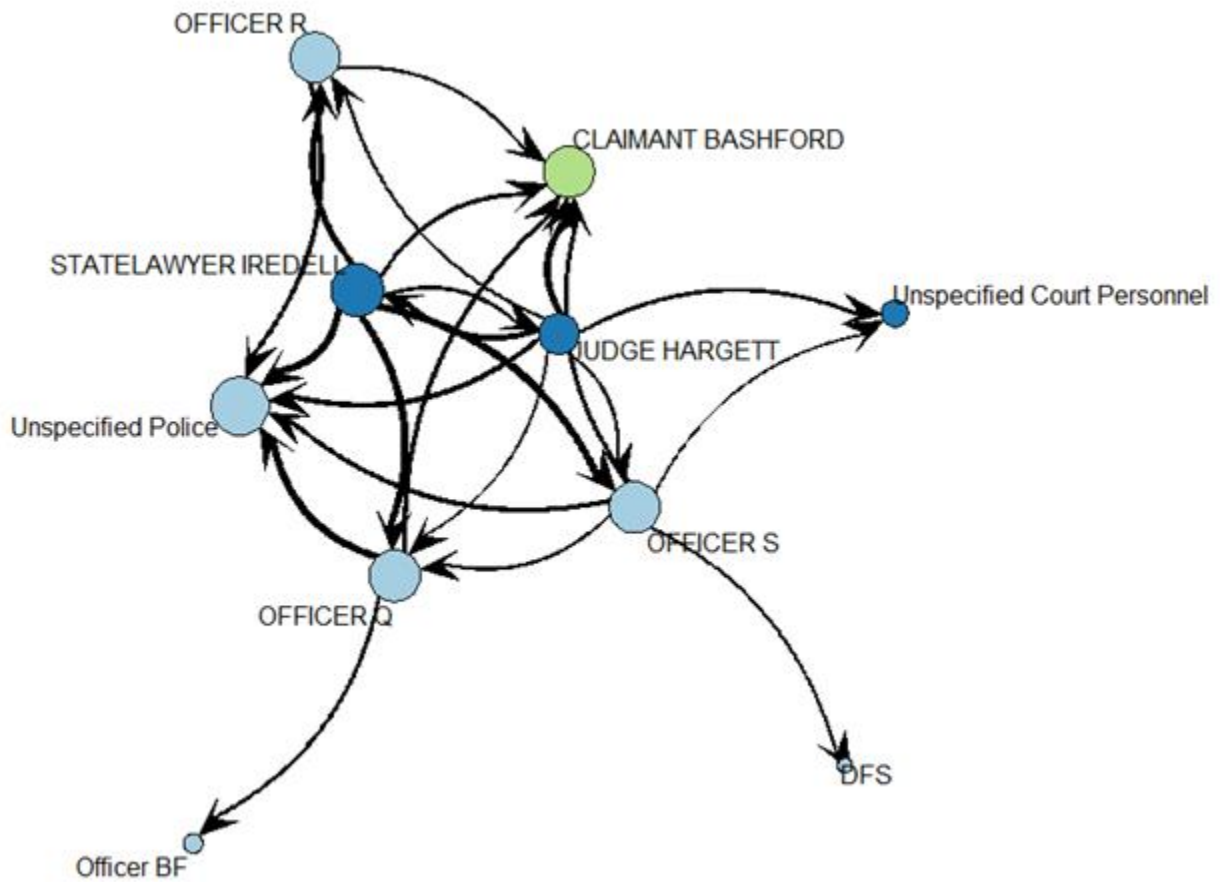


Figure 2: Network Visualization of Hearing B

#### 5.1.4. Hearing C

In hearing C, claimant Clark was not present at his house when police officers executed a search warrant. A handful of pills were found in the center compartment of his car, which was seized. Clark’s lawyer argues that there is not enough evidence of a connection between the pills and Clark, and the judge agrees. Clark is represented by Lenoir before Judge Hargett, with the State represented by Jensen. There are five actors in the courtroom and twelve total reported actors. There are 24 edges, for an overall density of 0.18 and a density within courtroom actors

of 0.64. The reciprocity is 0.73, and the transitivity is 0.60. Like Bashford, Clark does not do any reporting of himself or others at all. Unlike the previous two cases, however, in this one the other actors also do very little reporting about Clark, as he was not there during the seizure, which is why the reciprocity remains high. Instead, the narrative is about the actions of the police officers. Outside reportees include both workgroup and non-workgroup people, and this case is the first to include extended discussion of the actions of a generic or unknown person, as a hypothetical counterpoint to the actions reported in the case. The lawyer Lenoir also goes into a lengthy narrative reporting on the actions of his own son, again as a part of a hypothetical counterexample.

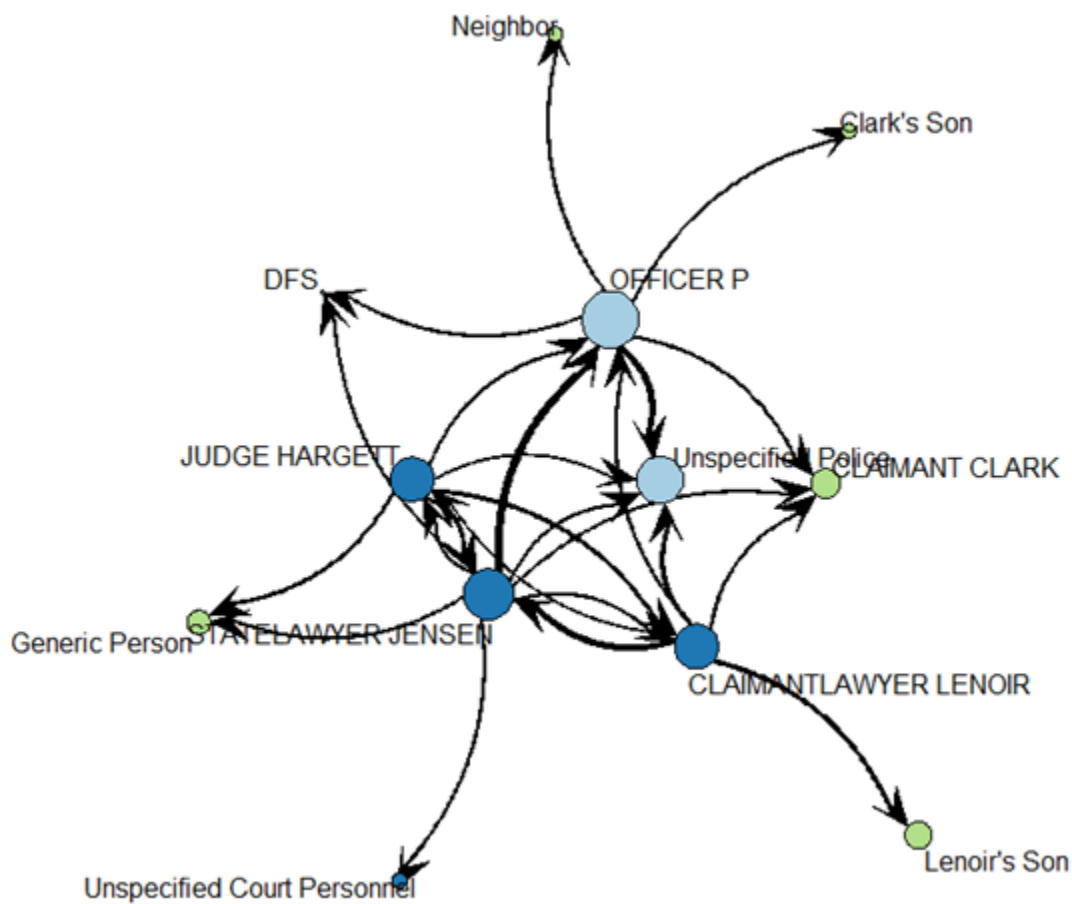


Figure 3: Network Visualization of Hearing C

### *5.1.5. Hearing D*

Hearing D is the hearing that has been described previously, where Dillard's son allegedly stored drugs in her car, and the car was therefore seized. Dillard argues that the police took her car but not other cars of people arrested for similar crimes. This argument is not taken up, but Dillard's car is ultimately returned, based on the judge's finding that she was not unduly careless in letting her son borrow her car. In hearing D, Dillard represents herself before Judge Gorman, with the State represented by Iredell. Like Claimant Ashe above, Dillard does a great deal of reporting of both herself and others, and she also brings in two witnesses of her own, her brother and daughter, who also report on themselves and others. There are six speakers in the courtroom and a total of nineteen reported actors. There are fifty edges in this network, but as with Ashe above there are so many reported actors that the density remains low, at 0.15. The density within the subgroup of actors in the courtroom is much higher, at 0.61. The reciprocity is 0.75 and the transitivity is 0.67. Also similar to Ashe, there are a wide variety of non-workgroup people as reported actors, including friends, neighbors, and family members of Dillard. There is again the use of a generic person, though in this case it is by Dillard.

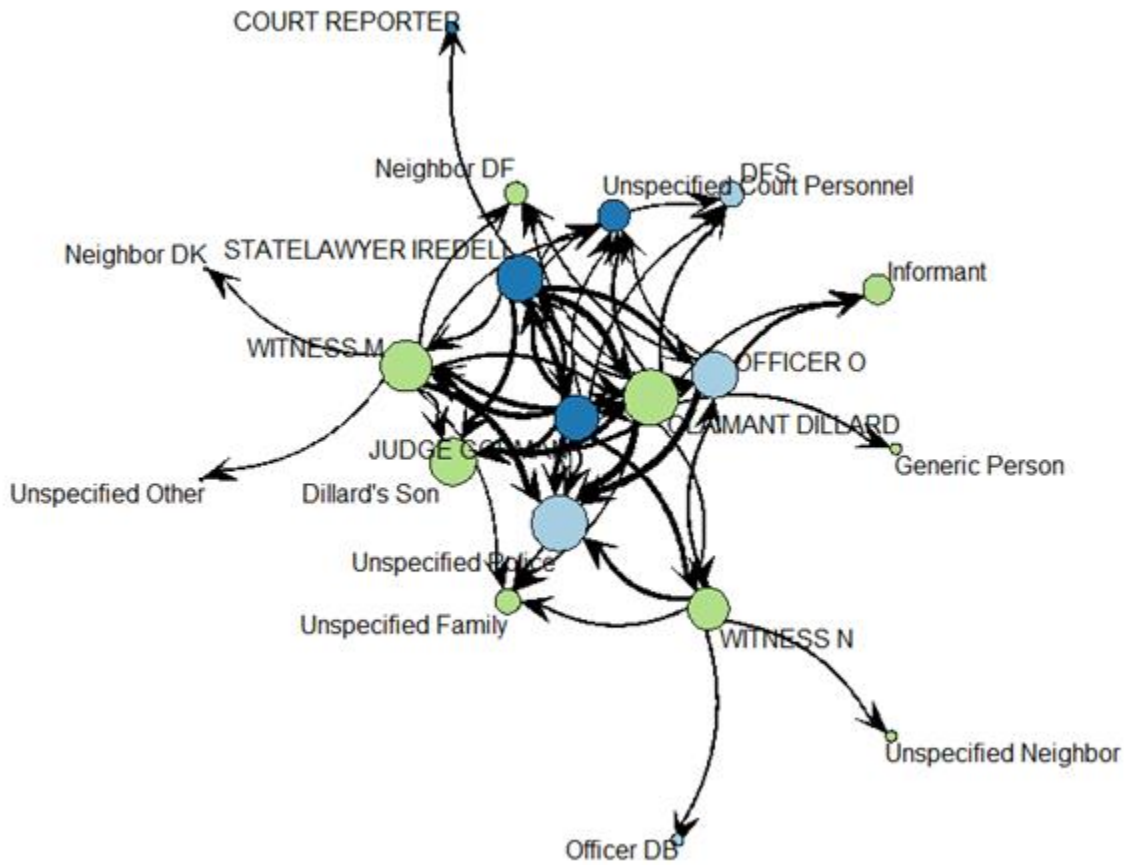


Figure 4: Network Visualization of Hearing D

### 5.1.6. Hearing E

Hearing E involves two claimants, Everett and Fenton. Police searched their house and found a great deal of marijuana in the attic, and seized cash, jewelry, and three cars. Similar to hearing C, the lawyer here argues that there is not enough evidence connecting the drugs to the items seized, and the judge agrees. One of the cars is forfeited, and the other items are returned to the claimants. Everett and Fenton are represented by the lawyer Kildaire before Judge Hargett, with the State represented by Jensen. There are six actors in the courtroom and a total of ten

reported actors. There are 29 edges, for the highest density in the hearings, both overall at 0.32 and within the subgroup of courtroom actors at 0.67. The transitivity is high, at 0.84. The reciprocity is low, however, at 0.58, because as with Bashford the two claimants do not report on anyone, but are themselves reported on by all four of the other actors in the room. As in both Bashford and Clark, there are more reports about the speech and action of the police than either claimant. Once again the outside reportees are officers, court personnel, and DFS, as well as a generic person, but no one else from entirely outside the courtroom workgroup.

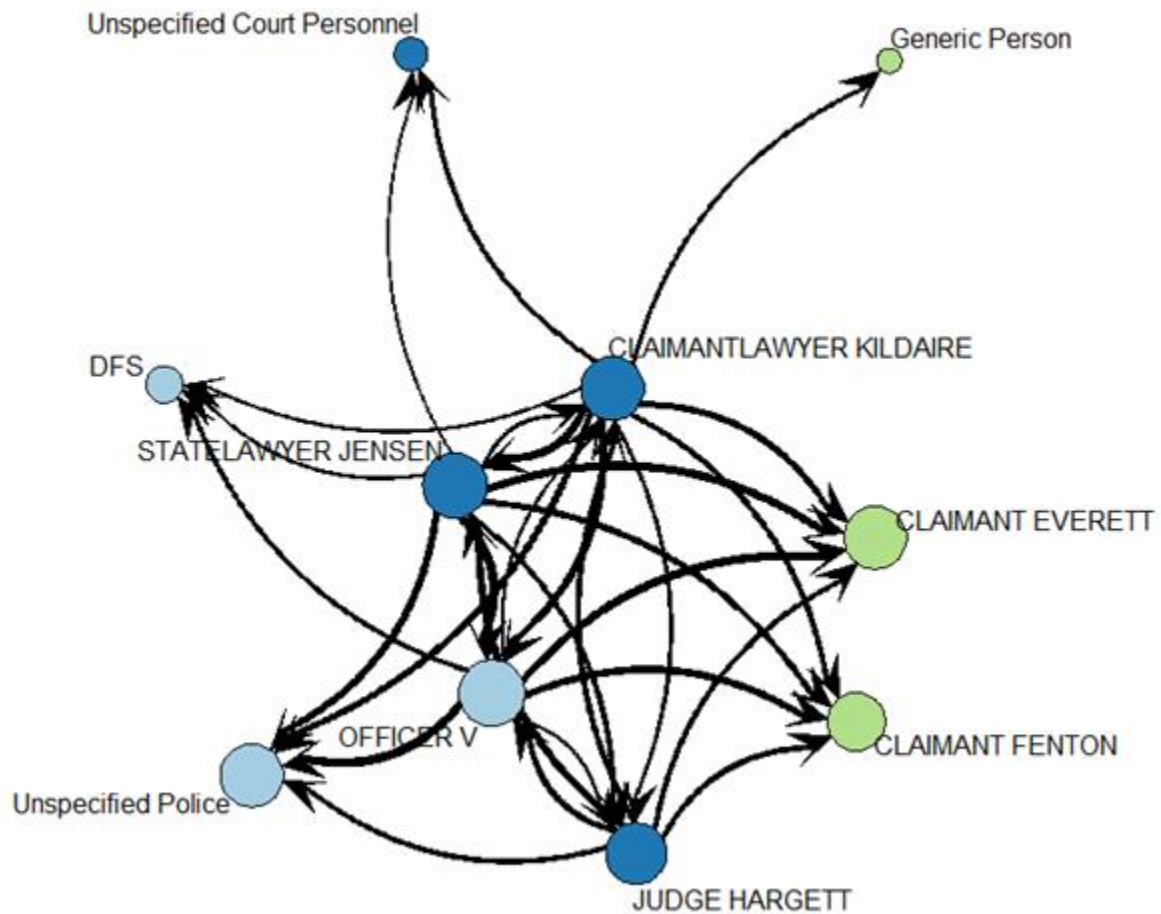


Figure 5: Network Visualization of Hearing E

## 5.2. Egocentric Network Analyses

The previous section looked at the characteristics of each network as a whole. In this section, measures of actor prominence are discussed for the claimants and their lawyers as individuals. These measures are summarized in Table 4.

*Table 5: Egocentric Characteristics of Claimants and their Lawyers*

<b>Hearing</b>	A	B	C	C	D	E	E	E
<b>Actor</b>	Ashe	Bashford	Clark	Lenoir	Dillard	Everett	Fenton	Kildaire
<b>Role</b>	Claimant	Claimant	Claimant	Lawyer	Claimant	Claimant	Claimant	Lawyer
<b>Indegree by Actor</b>	4	5	3	2	3	4	4	3
<b>Outdegree by Actor</b>	10	0	0	6	13	0	0	9
<b>Proportion Outdegree/Indegree by Actor</b>	2.5	0	0	3	4.33	0	0	3
<b>Indegree by Utterance</b>	139	33	7	6	79	77	49	14
<b>Outdegree by Utterance</b>	79	0	0	33	120	0	0	107
<b>Proportion Outdegree/Indegree by Utterance</b>	0.57	0	0	5.5	1.52	0	0	7.64
<b>Betweenness</b>	30.83	0	0	2.33	15.5	0	0	5.33
<b>Self-Determination</b>	0.57	0	0	0.68	0.52	0	0.02	0.84
<b>Same-Side Determination</b>	0.57	0	0.43	--	0.55	0.17	0.2	--

There are three claimants representing themselves, Ashe, Bashford, and Dillard. There are three claimants represented by lawyers, Clark, Everett, and Fenton (the latter two are both in hearing E). The two lawyers are Kildaire and Lenoir. In terms of the measures reported here, however, these actors never split into these groupings; generally, Bashford is more similar to a represented claimant, and Ashe and Dillard are more similar to lawyers, though the final measure, same-side determination, adds a layer of complexity to this interpretation.

Bashford and the represented claimants are similar for a clear reason: they speak little or not at all. Between the four of them, there is a single report of action, from Fenton about herself. Clark as noted above, is not reported on very often in his hearing; the other three all have high utterance indegree, but zero outdegree either by actor or by utterance. Bashford and the represented claimants are entirely passive.

Ashe and Dillard, then, are more similar to the lawyers by default because they take an active role in the proceedings. All four introduce reports and actors, and report on between double and quintuple the number of actors that report on them. Ashe and Dillard have much higher betweenness centrality than the two lawyers, meaning that they report on more new actors that no one else discusses (and that they therefore are the only ones characterizing in the discourse). As noted above, in hearings B, C, and E the reported actors outside the courtroom are mostly the small handful that come up in all the hearings -- other police officers, court personnel, and DFS scientists. In hearings A and D a much wider variety of people are discussed, many introduced by the two claimants.

Measuring indegree and outdegree by utterance, rather than actor, delineates some differences between Ashe and Dillard on the one hand and Lenoir and Kildaire on the other. The lawyers' indegree by utterance is very small, that is, there are few reports on the speech or

actions of these two lawyers. Ashe and Dillard, on the other hand, have both high indegree and high outdegree. The overall proportion of outdegree to indegree is therefore much higher for the lawyers. Lenoir actually has an outdegree of only 33 utterances, less than half of Ashe's, but his indegree is far smaller at 6 utterances, for a proportion of 5.5. Ashe's 79 reports out are more than balanced by 139 reports in, for a proportion of 0.57. Ashe and Dillard's indegree measures are similar to those of Bashford, Everett, and Fenton.

The low levels of reporting on the lawyers by others means that they have the highest level of self-determination, that is, the proportion of reports on their actions that come from themselves. 84% of the reports of Kildaire's speech and action, for example, come from Kildaire. Ashe and Dillard have self-determination proportions of 57% and 52%, respectively. With the exception of Fenton's single self-report, the other four claimants have no self-determination.

The same-side determination metric measures the proportion of reporting about a claimant that comes from someone on the same "team." Reports from the two lawyers are included in the score for the claimants they represent, and reports from Dillard's witnesses are included in hers. This leads to an interesting split. The three claimants representing themselves are at either end of the spectrum; Bashford has no same-side determination at all, while Ashe and Dillard have more than half of the reporting on themselves from their side. The three represented claimants are between these two, with Everett and Fenton at about a fifth same-side determined, and Clark at 43%.

### *5.3. Network Analysis Discussion*

The idea that there are differences in legal and lay approaches to law is supported by the network analysis. Two of the lay claimants take an active role in the proceedings, including



reporting on the speech and action of themselves and others. They discuss more actors and in particular more people from outside the courtroom workgroup, such as neighbors and family, supporting the idea of a lay tendency towards seeing more specific people and relationships as being relevant to their cases (Conley and O’Barr 1990). In cases where the courtroom workgroup dominates, including Bashford, there are fewer outside actors and the outside actors that are reported are often also members of the legal bureaucracy, themselves members or peripheral members of the courtroom workgroup. This suggests a routinized assumption of the courtroom workgroup – people filling roles in the same handful of institutions are taken across hearings as authoritative and relevant. Three hearings also discuss the actions of generic or hypothetical people. In the network analysis, though, it is only clear that lay claimants use generics in some of the hearings, and workgroup members in others, not whether the legal and lay use of the generic differs. This is returned to in the qualitative analysis.

In general, the lay claimants seem to act either in a way similar to the lawyers (active Ashe and Dillard) or similar to the represented claimants (passive Bashford). The same-side determination metric, however, suggests that they may be more extreme versions of either side; that is, the active lay claimants do more to tell their own narrative than the lawyers do for the claimants they represent, but the passive claimant’s narrative is told only by his adversaries and the judge, not by any advocate. In general, the near-silence of Bashford, Clark, Everett, and Fenton supports the reading that it normally is solely the assumptions and negotiations of the courtroom workgroup that guide the outcome of a case, as they do not bring in their own evidence or perspective at all. Ashe and Dillard’s active participation is disruptive to these norms, and resists and contests courtroom assumptions, bringing in their own goals and ideologies of justice. When these claimants are able to take power in the courtroom, they have a

great deal to say – which makes Bashford’s silence all the more striking, a point returned to below.

The proportion of report indegree to report outdegree by utterance highlights a difference between the active lay claimants and the lawyers: the lay claimants’ reports of themselves are countered by reports from the prosecutor and police witnesses, while the claimants’ lawyers are rarely reported on. There may be more discussion of the claimants at all when they represent themselves; in the other three hearings, the focus of the reporting is often on how the police acted and their procedure, rather than what the claimant allegedly did. The claimant can in fact come across as surprisingly irrelevant, especially in hearing C. This implies that the ideology of justice underlying this courtroom is along the lines suggested in Mertz (1996): a technical, efficient justice that is closely tied to following the steps of procedure accurately, rather than a broad ideology of justice bound to human relations and notions of fairness.

To summarize, the four broad trends that the network analysis suggests distinguish legal and lay discourse are: the number and type of outside actors discussed; the use of generics and hypotheticals; the lay claimants as likely to advocate for themselves either far more or far less than lawyers; and the amount of focus on the claimants as opposed to the police.

#### *5.4. Qualitative Analysis*

##### *5.4.1. Direct Examination of Officers*

I look first at the opening direct examinations: in all five hearings this is of a police officer witness by the State, covering many of the same topics. They all begin with the officer’s name and department, a group membership classification that also establishes qualifications and authority to speak. Some then move to backstory, establishing the legal grounds for their arrival at a particular place, while others move directly to that arrival. In all but one case they then

narrate seeing the claimant, reading the Miranda rights, and talking to the claimant. They search the house or vehicle, find at least one item of contraband, and then seize that and other items, including cash and/or the vehicle itself. The suspected contraband is usually sent to the Department of Forensic Sciences (DFS) for testing and returns with a certificate showing the presence of illegal drugs. The endings of the officers' narratives vary, two finishing with a list of charges people were arrested for, one with a note that no further action was taken, and two ending without a clear conclusion point, stopping before the arrests or seizures are complete.

Some narrated content is emphasized and discussed in detail in all of these speech events. In particular, the location of objects (from drugs to cars to a headboard) is always carefully detailed, as is the relative location of objects to each other. The Certificate of Analysis from DFS is also described in detail in the cases where one is present.

Other content is often elided, sometimes because they are associated with a specific term of police jargon and referred to only briefly with that term. Three of the five officers, for example, use the term "make entry" when discussing their arrival. Only one goes into what this means in this particular instance in detail: "When we first arrived at the residence, we were doing a – basically, we didn't want to knock the door down, so we basically knocked. We knocked probably for about five minutes. Nobody ever responded" (C 6:2-6). Another uses the term alone, though the context here suggests that "make an entry" is equivalent to simply "drove": "We make an entry into the parking lot area" (A 6:16). The third gives even fewer specifics about what the term means in this situation, and this is a case where a SWAT team is present:

OFFICER V: Well, when we first arrived at the location, the Mobile County SWAT team was assigned to make entry into the house.

JENSEN: And was that done?

OFFICER V: It was.

(E 6:20-24)

This could mean something similar to the knocking in C, or could mean they broke the door down; the specifics are elided and not returned to elsewhere in the hearing. Other events have similar terminology, such as “Mirandizing” for reading the Miranda rights to a suspect or “impounding” for seizing a car. This formulaic language is not contested, pointing to the officers’ semi-membership in the courtroom workgroup.

In fact, this terminology serves as an important element of an overall officer register that is depersonalized and non-evaluative, and that is accepted or even expected by the courtroom workgroup. One key point from the network analysis that these opening narratives tie into is that sections dominated by the courtroom workgroup are dominated by discussions of the police, rather than the claimants. While this largely holds, reviewing these narratives in more detail shows that even though there is a great deal of talk about police, there is relatively little about individual police officers. This may also be relevant to the greater lay claimant reference to specific outside actors. In particular, officers largely avoid reporting on other officers as individuals, and almost never characterize their actions with emotional or explicitly evaluative language. The avoidance of reporting is achieved by removing a specific agent from an action, done in three main ways.

The first way is the use of “we.” A wide variety of actions are attributed to the group, including actions that are likely done by an individual, as in “we knocked” above. This is common in narration of searches, with phrasing like “We actually searched the vehicles on the outside of the residence, and we had located two small bags of marijuana...” (E 11:5-7). The individual officers who found specific items are irrelevant, and actions are attributed to the group.

The second is the use of passive constructions. In “[the claimants] was moved to the living room area” (E 7:20-21) it was presumably a police officer that did the moving, and similarly for “The subject in question was observed” (A 6:18-19). The officers are working from a report written at the time of the forfeiture, which was usually at least a year before the hearing. For small or routine actions, the specific officer taking the action may be long forgotten.

The police jargon, as mentioned, forms the third way. The Miranda rights, for example, are a speech event in themselves, but when referred to only as “[we] read him his Miranda rights” (C 7:18) the specific words and actions are removed. Even in one case where the officer discussed the Miranda rights in more detail, specific dialogue is not reconstructed: “Whenever I Mirandized them, I asked them did they understand their rights. They acknowledged that they understood their rights” (E 8:1-3).

The claimants do get more detailed reporting and occasionally even explicit characterization, as in “[he was] running from window to window, kind of like he was trying to get out the back door” (E 7:2-4). Even here, though, evaluation is rare, and verbs of speaking are usually formal, such as “The C.I. [confidential informant] advised me...” (D 9:3). The few instances when they are more explicit matter greatly for positioning:

At one point when I was talking to Ms. Fenton, she had said that she had \$6,000... inside the residence which she believed was in the master bedroom. After we didn't locate that money [...] [s]he told me that her money was in her vehicle. We had already searched that vehicle again and nothing was found. But she insisted that she wanted to locate that money... So I accompanied her to her vehicle and she opened up the driver's door and reached underneath the dashboard, underneath the steering column and pulled out \$1,800 of U.S. currency. [...] Ms. Fenton, once she had retrieved the money... She actually counted it out in front of me.  
(E 11:19-20:6)

Fenton's specific actions are reported here, and she is evaluated as acting oddly. This evaluation begins in the first line, when Fenton is implied to have brought up the topic of her

money out of nowhere. She then “insisted” on finding it, despite the officers having given up, found it herself, and “actually counted it out” with the officer, where “actually” strongly suggests that her actions are unusual.

This is not the only way these events could be narrated, and following Fairclough (1989) I suggest a hypothetical second way to tell the story: officers routinely ask suspects if they have large amounts of cash. Fenton responded to such questions positively, and when officers later said they could not find her money, she thought it might be lost or stolen and wanted to find it. I do not claim that this is necessarily the most accurate story, or the story that Fenton would tell; there are many other possible interpretations of these actions. Rather, I bring up this contrast to highlight that the narration that the officer gives, where Fenton is evaluated as acting oddly, makes sense only with a particular presupposition: that the officers will take any money they find.

The attention to detail that the officers show when describing item locations shows an orientation to legal institutional goals, in that proximity to contraband may be accepted as evidence of a connection befitting seizure. At the very least, physical distance may be seen as evidence that the two lack a connection, as in this statement from Judge Hargett: “I haven’t heard anything other than money was located in a car which did not contain drugs” (E 39:25-40:4). Giving detailed information about item locations, qualifications, and certificates can be seen as a preemptive defense against certain arguments or lines of questioning from the other side. That is, officers are aware enough of, or share enough in, courtroom workgroup assumptions to have strong guesses about what does and does not need to be prepared, what will or will not be seen as important or questioned, and by implication, what matters for a just outcome.

The avoidance of reporting has a strong effect of homogenization of the officers. This homogenization serves to subsume and depersonalize individual officers within the group, removing emotional or other “outside” influences on actions and creating the presupposition that all officer actions are taken entirely based on their professional roles as officers. In contrast, claimants’ speech and action are more often reported specifically, and the described actions are evaluated as showing culpability. The rarity of specific evaluation may give it more strength when it does occur. The attempted positioning in these opening direct examinations is then unsurprising: officers attempt to position themselves as neutrally acting out a professional role, and the claimants as guilty. This suggests an orientation to a legal ideology of justice that is technical and procedural; justice as following steps correctly (Lipetz 1980). Officer understanding of courtroom practices and power dynamics shows that they share in, or at least understand, workgroup assumptions. That is, the officers know what is and isn’t allowed in the courtroom, and what the lawyers and judges will take seriously as evidence. More surprising, the workgroup acceptance of police reporting choices suggests that workgroup members share in, or at least understand, police assumptions about what evidence and what actions matter.

#### *5.4.2. The Lay Response*

In the network analysis, one takeaway was that the lay claimants seem to do either far less or far more to advocate for themselves than a lawyer does. This is borne out in the qualitative analysis. In hearing B, claimant Bashford takes a total of seven turns, all of which are either “No,” “Yes, sir” or “No, sir” in response to a direct question from the judge. Ashe and Dillard, however, are active participants in their respective hearings.

Bashford is before Judge Hargett, while the other two pro se claimants, who take more initiative in their defenses, are before Judge Gorman. This suggests that Gorman may be more invested in pro se participation than Hargett. Hargett focuses more on procedure, and spends many of his turns discussing relevant case law, which Gorman does not do. Judge Hargett is, in Conley and O’Barr’s (1990) terms, a proceduralist judge, leaning heavily on bureaucratic rules and discouraging speech that does not fit these rules precisely; Gorman is a more substantive-oriented judge, encouraging the lay claimant and her witnesses to tell their story, and he intervenes in the lay-claimant-controlled speech events fairly often, requesting clarification and making sure various topics are covered (see Conley and O’Barr 1990:85-105 on variation in how judges see their roles). Comparing so few cases, I cannot make a conclusion as to how much of a role the difference in judge makes to the difference in claimant participation, but it could easily be relevant. Previous research has found that lawyers tightly control the speech of their witnesses (Drew 1990); this suggests that when a claimant is not represented, a proceduralist judge may take on a similar controlling role, while a substantive-oriented judge may allow the courtroom power dynamics to shift. Further transcripts, and particularly a transcript of a hearing with a represented claimant before Judge Gorman, would help to tease this difference out.

Ashe and Dillard retell several of the same events as the police officers, with emphasis and detail in different places, and add certain events of their own. Some of the events that they discuss in detail are those that were elided in the State’s narrative through the use of police jargon and their explicitly non-evaluative register. The example from the Dillard case that opened this paper is a key illustration. The officer moves quickly past the actual seizure of the car in question: “It was towed and taken to the impound yard” (D 12:7). Dillard, on the other hand, makes this one of the key points in the narrative she constructs with her witness:



DILLARD: The Buick towed away – Did they drive it or what?

WITNESS N: On the wrecker.

DILLARD: They did a wrecker?

WITNESS N: Uh-huh.

DILLARD: So, if they used a wrecker to tow my Buick, couldn't they have done one to tow the Mazda and the other car?

WITNESS N: Yes.

(D 26:22-27:3)

Dillard also here uses a hypothetical scenario, noting concrete actions that the police could have taken in the narrated events and contesting their neutral positioning by suggesting that their failure to do so was unjust. She creates an implicature of the profit motive behind the police decision to take her car:

DILLARD: How many cars did they tow?

WITNESS M: They only towed your car, sister.

DILLARD: How many other cars were in the yard?

WITNESS M: There were three other cars in the yard.

DILLARD: The other car that they found belonged to DF.

WITNESS M: Uh huh.

DILLARD: That he got drugs in it. Did they tow that car?

WITNESS M: No, they did not tow that car.

DILLARD: Did they tow the car that had drugs in the gas tank?

WITNESS M: No, they did not tow that car.

DILLARD: So, who all was arrested that day?

WITNESS M: Me, DA, and DF.

DILLARD: So, they didn't tow DF's car?

WITNESS M: No.

DILLARD: No drugs were in it?

WITNESS M: No. He got out of jail and went back to his car and it was still in my same yard.

(D 33:21-34:12)

As discussed earlier, this argument is ultimately shut down by Judge Gorman, strongly implying very different ideologies of justice for these two participants. It also suggests one kind of evidence that might be brought up more often if courtroom power dynamics more regularly allowed lay speech: evidence about police fairness, or lack thereof. In this case, a profit motive behind police actions isn't seen as impossible – simply as irrelevant.

These quotes also convey a further important nuance to the idea that the actions of the police are narrated more often than those of the claimants. In the claimant narratives, the discussions of police actions are quite different, and reporting police action can serve as an additional way to advocate for oneself. It also ties to the idea that claimants discuss individuals more frequently: they regularly separate out individual police officers when describing their speech and actions. The lay claimants resist the positioning of officers as neutral professionals, and discuss them in ways that go beyond that role -- in effect, as people. At one point, when a lay witness reports the actions of an officer, the judge attempts to reposition her within her professional role, and the witness resists, emphasizing community relationships (Conley and O'Barr 1990):

WITNESS N: [...] So, I ended up asking her –

GORMAN: Asking who?

WITNESS N: KiKi.

GORMAN: Officer O.

WITNESS N: That's what they call her. They call her KiKi.

(D 25:5-11)

Dillard and Ashe are clearly not part of the iterative courtroom workgroup practice, and their discourse is disruptive, bringing in what is from the workgroup perspective surprising reasoning. In Ashe's case, reporting Officer AA as an individual is used to bring up a new, and very human, possibility for why his items were seized. Unfortunately, Officer AA himself did not testify, so the two narratives cannot be directly compared, but another officer describes the scene this way:

[Ashe] was continuing to ask how long this was going to take. We were doing our best to explain to him the circumstances. But as far as the investigative portion that have been – those responsibilities have been taken on by the investigators that came on the scene.

(A 10:3-7)

This is similar to the other narrated content from officers described above. The evaluation is subtle, in “continuing” suggesting that the claimant is being an annoyance and the officers acting professionally, “doing [their] best.” The dialogue is summarized rather than reconstructed, and police speech is attributed to “we.” In contrast, Ashe’s narration of this event involves reconstructed dialogue, specific actors, and explicit evaluation:

Officer AA approached me. He asked me – Which I believe myself is why we are having this problem now. After I sat in the car for five hours and not know what is going on, knowing I didn’t break into somebody’s house or something. Then the narcotics division comes out of nowhere. I was kind of upset. I had some words with Mr. AA. They weren’t nice. [...] I pretty much said, “If you are a detective, you can actually like look it up on the State of Florida that I own my own business and pay my taxes.” [...] He was like, “Well, I hope that’s true because you are going to have a problem getting your money back.”  
(A 28:13-29:6)

While he puts some of the blame on himself, suggesting that in his exasperation he spoke rudely to Officer AA, like Dillard Ashe creates an implicature of an unprofessional motive behind police actions: that the seizure was then Officer AA’s retaliation for his rudeness. Ashe thus advocates for himself not only in describing his own speech and action (in that he suggests his rudeness was justified by the officers’ treatment of him) but in describing that of specific officers. Both Dillard and Ashe use their narratives to contest the narrated content of the State’s witnesses’ talk, and in both cases their own ideas of what is relevant to justice centrally involve criticizing the police.

#### *5.4.3. The Lawyerly Response*

The two cases where claimants are represented by lawyers notably do not have this focus on contesting the narration or evaluation of the same events that the officers narrated, on what

police did, and especially on why. The officer's evaluation of Fenton in hearing E as acting oddly, for example, is not contested by her lawyer. Instead, the lawyers introduce two new topics: the law and the officer's speech event. The lay claimants rarely referred to the actual speech event of the officer testifying in the courtroom. In contrast, the lawyers make the previous speech event not just context but content in their own talk. The events-as-testimony are then compared to the legal standard. That is, the lawyers in these two cases attempt to show a gap between the testimony and what counts under the law as "reasonably satisfied," rather than arguing for a different version of the events themselves. There is frequent reference to speech that did not happen, as in "...there was no testimony as to how much [marijuana there was] except for the words he used were personal use" (E 34:11-13) or "There's been no testimony that the vehicle was used to transport any drugs at any time during any period of time" (E 34:23-25). This takes the discussion to an even more abstract level and tends to less explicit reporting of the claimants' speech and action; as with the officers, the lawyer register is non-emotional. Instead, as suggested by the network analysis, the officers' speech and actions are more often reported. Something not clear in the network analysis, though, is that the State attorney's previous speech is often reported as well, and the State attorney and the officers are often reported on jointly: "[t]hey have proved they executed a search warrant... but they haven't – that's all they've proven" (C 11:7-10). The use of "they" emphasizes the co-constructed nature of the testimony, and (probably purposefully) leaves ambiguous whether "they" haven't proven something because the events did not occur or because they were not discussed. As with the officers, justice is seen as following the steps correctly, but the lawyers focus on the steps taken in the courtroom, rather than those occurring in the events leading to the hearing. That is, it is not just a question of what steps are taken, but how they are presented.

The use of hypotheticals is also notably different in the lawyers' speech. While Dillard's hypothetical above is used to suggest actions the police could have taken in the narrated event, and to thereby question their discretion and contest their neutrality, the lawyers' hypotheticals are more abstract. In hearing C, the lawyer shares a lengthy anecdote about himself and his son (one of the few outside actors referenced by a lawyer, and entirely separate from the events that lead to the forfeiture). He positions himself and his son as indisputably innocent, and argues that the logic the State attorney uses to make her case would make them culpable as well; this is characterized as absurd. "If I had been stopped by myself driving my car, according to [the State lawyer], not only could they arrest me, they could also take my car" (C 13:22-25). This type of hypothetical, suggesting scenarios that did not happen and asking whether they would or would not fit within a legal definition, is a common element of the lawyers' speech.

The qualitative analysis also adds some nuance as to how and why the network analysis suggested that lawyers occupy a middle ground in advocating for their clients, with lay claimants doing either far more or far less advocacy. The lay claimants' responses and use of reporting create a competing narrative to that of the officers. The police are characterized as individuals and as acting outside of their professional role, with attention to their emotions. They are positioned as unjust and as having motives outside neutral police interest in seizing the items. Criticism of police practices is central to the lay discourse. The claimants position themselves as victims of prejudice or of an unjust officer, and as innocent of any criminal wrong-doing. This is not what the lawyers do. The lawyers do not create a competing narrative, do not resist the officers' homogenization of their own group, and do not contest the police characterizations of the claimants or themselves. Instead, they accept the narrative but argue that it does not meet the legal standard for the burden of proof. These choices contrast a rule-bound, technical legal

ideology of justice (Conley and O'Barr 1990, Mertz 1996) with the lay claimants' broader, more humanized ideology (Conley and O'Barr 1990, Merry 1990). Language use, and particularly the contrasting ways that certain events are elided or described in detail, are tied to the participants' understanding of and membership in the courtroom workgroup.

### *5.5. Qualitative Analysis Discussion*

The network analysis suggested four areas for further investigation as key differences between legal and lay approaches to the courtroom: the use of generics and hypotheticals; whether the discussion focused on the claimants or the police; the inclusion of additional outside actors; and whether lay claimants, when they do advocate for themselves, do so to a greater extent than lawyers advocate for their claimants. All four of these points do seem to be handled differently by people from and not from the courtroom workgroup, and the ways that they are handled by each group interact with each other to make for entirely different overall narratives. Lay claimants use hypotheticals to contest the officers' neutral self-positioning; spend more time reporting their own speech and action; discuss more specific people, notably including specific police officers; and contest the narrated events of the police officers' testimony. This focus on a particular ideology of justice as bound up in fairness, and on evaluating and repositioning the police, may not be seen as relevant to the judge, who has the power to decide what is relevant and what is not. In the Dillard case, the lay claimant does win, but not because of her argument about the injustice of the police officers taking her car. Dillard develops that argument throughout the hearing, but it is ultimately dismissed by the judge, to whom the potential police profit motive is not relevant for determining whether her car was taken justly. He curtails

discussion of the context of overall police behavior towards the participants: “We are just talking about one car” (D 31:19-20).

Lawyers representing claimants, on the other hand, do comparatively little reporting of their claimants’ speech and action, and less still of outside actors relevant to the narrated events. Instead, they report on the previous narrating event of the officers’ testimony, and their use of hypotheticals is also tied to technical understandings, as is encouraged by the rules of the courtroom and an overall technical, procedural ideology of justice that contrasts with lay claimants’ broader notions. To put it another way, the lawyers are arguing that their clients are not guilty; the lay claimants are arguing that they are innocent.

## 6. CONCLUSION

In this project, I compared legal and lay reporting of speech and action in the unusual setting of civil forfeiture cases, where they are more directly comparable than in most types of court cases. Both the network analysis and the qualitative discourse analysis reaffirm prior research that indicates major differences in the way courtroom workgroup members and people who do not know the courtroom approach their cases and tell their stories. I return, then, to the concept of law that opened this work: *law in interaction*. Rather than viewing law as some far-off, objective set of rules, I argued that “the law” in any courtroom at a particular moment *is* the understanding of law shared by the people in that courtroom at that moment as negotiated in language. For the courtroom workgroup, those people who meet every day to enact law together, this shared understanding is fairly stable and allows for efficient, regular work. What, then, do the legal/lay differences outlined above suggest is assumed by the Mobile County Circuit Court courtroom workgroup? What *is* the law, in terms of the shared understanding of that workgroup? And what is not?

I see two key points. The first is the treatment of the police. In the legal discussions, *what* the police do matters, but *how* they do it does not. In their own speech, officers homogenize themselves as neutral instruments of the state, and this is not contested by claimants’ lawyers. Police officers are taken as interchangeable, rather than as individual people, in stark contrast to the lay claimants’ discussions of specific officers, their motives, their emotions, and their relationships to and interactions with civilians. Perhaps in consequence, police discretion is deferred to; in hearing D, whether officers treated all people accused of the same crime in the same way is ultimately dismissed as irrelevant.

The use of a non-evaluative police register by officers, and its acceptance by the lawyers and judge, is an illustration of this shared assumption, and reflects the status of the police as



peripheral members of the courtroom workgroup. The use of “Mirandize,” for example, implies a reciprocal relationship between the police and the courtroom workgroup proper. The use by police indicates that they are aware of and acting in accordance with case law requiring suspects to be made aware of certain rights. The acceptance of this term and its uptake by the judge and lawyers means that whatever individual actions are summarized within it are assumed to measure up to this law. This is reminiscent of Edelman et al.’s (2011) concept of legal endogeneity. In that paper, they find that businesses are able to create their own interpretations of what it means to comply with anti-discrimination laws, and as these businesses present their interpretations over and over they are eventually recognized and ultimately deferred to by judges. That is, these businesses that return to court many times not only learn what styles of reporting are more likely to be accepted, but as they become peripheral members of the community of practice they are also able to construct meaning and themselves influence what is seen as institutionally acceptable.

Here, a legal requirement (the reading of the Miranda rights) was imposed on officers, who have over time created their own standards for what this reading means and what kind of comprehension is necessary; this has become an area where police standards are deferred to, and in these transcripts the statement “I Mirandized him” goes uncontested as part of the shared language, without particular attention to what that specific officer did, much less felt. As a group, then, police officers are important enough players in the courtroom workgroup to influence its joint construction of meaning, in a way that erases their individuality. The positioning they present for themselves, that of neutral professionals whose actions are based solely in neutral, professional concerns, is largely accepted or even presupposed by the courtroom workgroup -- and strikingly not accepted by lay claimants.

The second major assumption of the courtroom workgroup not shared by lay claimants is that the *way* the narrative is told matters immensely. This is seen in how the lawyers' response focuses on the previous narrating event, analyzing the giving of testimony rather than its narrated content. If a lawyer can make a claim that the State has not met its burden of proof, then according to the rules of the institution that is the obvious claim to make, rather than ignoring that and putting on an active defense that contests the officer's narration. The goal of these lawyers is to win the case, and arguing that the person is not guilty in a technical, legal sense is the most efficient way to do so. Lawyers are far more likely to win than unrepresented claimants, specifically because they do not try to prove innocence, but to prove lack of guilt (Mertz 1996). The lay claimants, in contrast, set out to prove that they are innocent; they too seek to win the case, but they aim for a larger vindication.

Having no right to counsel in civil forfeiture cases disadvantages claimants by forcing them to navigate legal bureaucracy alone. Those with a lawyer have an ally within the courtroom workgroup, familiar with the shared assumptions and able to work within them. However, the defenses put on by Ashe and Dillard suggest a counter to this well-known point, in that these two claimants do more to argue for themselves and their overall innocence than the lawyers do for the claimants they represent. They also are able to disrupt courtroom norms in pursuit of their own goals, which emphatically involve criticizing the police, contesting the assumption of police neutrality in courtroom workgroup discourse. They are not, however, able to make these criticisms stick; they can bring them up, but cannot force the workgroup to accept them as relevant. That is, they are ultimately not able to draw on the court to condemn the officers and police practices that put them in these situations in the first place. Dillard gets her car back, but the judge notes it has been in storage for two years and may no longer run. Ashe gets his money

back, but is in trouble with the IRS because he did not have it when taxes were due. All five of these claimants technically won their cases, to the extent that at least some of their seized items were returned. Whether or not they received justice, however, is a matter of perspective.

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## APPENDIX

## **APPENDIX: CONSOLIDATED ASSET TRACKING SYSTEM (CATS) DATABASE**

The Consolidated Asset Tracking System (CATS) is a series of databases tracking forfeited assets across police departments, federal agencies, courtrooms, and beyond. Some of this information is available to the public through the Department of Justice’s Asset Forfeiture Program website, <https://www.justice.gov/afp/freedom-information-act>. Many forfeitures are redacted from this database for various reasons (e.g. ongoing investigation), and it is unclear what proportion of the total forfeitures these redacted forfeitures constitute.

To get the descriptive statistics used in this work, I drew on the information in the ASSET\_T and DISPOSAL\_T files, these being descriptions of forfeited assets and information on how assets were disposed of, respectively. Starting with the ASSET\_T file, observations were kept only if they were located in the United States (CTRY\_CD); were civil or administrative (rather than e.g. criminal) forfeiture (FO\_TYP); and were seized from 2012 to 2016 inclusive (SZ\_DT). 2017 was not included as the data for that year was incomplete as of March 9, 2019. Asset values were then calculated using ASSET\_VAL\_AT\_SZ.

The DISPOSAL\_T file includes information on the final resting place of forfeited assets: if they were sold, destroyed, etc. I removed all assets except those with DSPN\_TYP value of 08, “returned,” and DSPN\_SUBTYP value of A, “to owner.” The asset identification number was used to mark any assets from the first ASSET\_T data subset that had been returned. This resulted in some duplication, as some assets (such as cash) could be returned to more than one owner; I removed these duplicated values and all percentages given are in terms of assets.

R script is available upon request.