ISSA Proceedings 2002 – Differential Argument Construction: Examination Of Attorney And Pro Se Arguments In The Restraining Order Courtroom

1. Introduction

This essay compares the argument styles of pro se parties (those who represent themselves) and parties represented by attorneys in a Restraining Order courtroom in Denver, Colorado, USA. We were interested in examining the extent of differences and similarities in argumentation and their implications upon questions of allocation of justice, the maintenance of a monopoly on court argument held by lawyers in the United States and, especially, the extent to which arguments by lawyers may systematically distort client narratives. Data was gathered in two years of ethnographic observation in the Restraining Order courtroom, as well as twenty-seven qualitative interviews and an examination of one dozen Permanent Restraining Order hearing transcripts. Types of representation and styles of argumentation are discussed regarding how they influence perceptions and outcomes in the courtroom.

A brief overview of the Restraining Order process is needed to understand the context in which this communication occurs. The Restraining Order courtroom is a dedicated specialized court for survivors of domestic violence to obtain Restraining Orders against perpetrators of violence. An applicant (or plaintiff) is asking the court to order the defendant to have "no contact" with her[i]. The no-contact order may be accompanied by orders to vacate shared housing, for custody of children and for visitation. This is a two-step legal procedure in which the plaintiff must come to court two times. The first day in court is referred to as the Temporary Restraining Order. This first day in court the plaintiff is most often the only party present.

The plaintiff returns to court in approximately two weeks for her Permanent Restraining Order hearing at which time the defendant has a right to be present

to either agree or disagree with a Permanent Restraining Order (PRO) being placed against him. If the defendant disagrees with having a PRO placed on him, then the case will go to hearing that morning. Permanent is, as it sounds, forever. Although this is a civil complaint, if the defendant violates a "no contact" Restraining Order issued by the court then he is liable for criminal charges.

Parties (plaintiffs and defendants) can represent themselves at these hearings or hire attorneys to represent them, but no person other than an attorney may represent them or help them in presenting their cases. The great majority of plaintiffs represent themselves in court. Those few who do have lawyers are nearly always represented by legal aid programs. Defendants are more likely to be represented by attorneys that they have hired.

We conclude that there were few differences in content presented between attorneys and the unrepresented. However, the style of presentation and, especially, the fact that one other than the party in interest is making the arguments may affect outcomes in the courtroom. In particular, when an argument is made by a representative on behalf of a party, it may be given greater credence, while similar arguments made by the party may actually detract from her credibility by playing into a judge's preexisting conceptions about the situation of violence in the home.

2. Pro Se Plaintiffs

Most of these women are terrified of the defendant and find facing the defendant particularly difficult, especially when they have to disclose incidents of how he abused her. For example, one plaintiff describes:

Well, to begin with I was nervous. I couldn't sleep because I knew he was going to be there. I was-I couldn't sleep, all I kept thinking was, what if he's outside, what if something happens in court...It was nerve wracking. I was very nervous, especially when I opened that door and he's sitting right there – looking at me – like, "oh man, you're gonna get it." It was very scary, it was scary...I didn't like that experience at all. I still think, I can still see him. There's times I close my eyes and I can still see him just sitting there looking at me.

Nerves are mentioned as something that influences how pro se women plaintiffs present their cases, especially when they conduct their own cross-examination of the defendant. Fear is evoked when put face-to-face in the same room as the defendant. As one plaintiff mentions,

It was difficult for me to go first because I wasn't totally prepared as to what was

procedure. Yeah, the procedure, what was going to happen, what I really needed to present in my case...so I lost my train of thought, so that hurt me too I think...I was-I was nervous – I was internally shaking and I don't, so it's hard to represent yourself when you're nervous like that.

In addition to fear of seeing and confronting the defendant at the Permanent Restraining Order hearing, pro se plaintiffs often are not fully prepared to take on all of the tasks of an attorney. Pro se plaintiffs are often not prepared to go to hearing that second day in court because they get inundated with information their first day in court at the Temporary Restraining Order hearing and often cannot remember everything that was briefly explained by court representatives. This lack of preparation manifests in ways that are detrimental to plaintiffs' cases; for example, women often don't bring witnesses or other key evidence such as taped telephone conversations, hospital and police reports. Also because of nerves and fear women sometimes forget to convey key issues in their testimonies and cross-examinations. As one plaintiff explains,

I also didn't feel like I had an opportunity to make a clear guideline of visitation with my children...I don't really think I had an opportunity to say why I didn't, or conditions about visitation, because he tends to manipulate me through them, so I wanted some kind of condition, and all of a sudden my time was up. And I wanted to speak, but I didn't know how to address that.

Another problematic area for pro se plaintiffs is trouble framing stories in ways that judges deem appropriate and acceptable. Some problems include court representatives perceiving women as being too emotional, women described as talking in a circular fashion versus a linear format, women talking about violence in general terms versus specific incidents, and women having trouble communicating about the violence in their lives that may not be readily understood by courtroom representatives such as judges who have different contexts and worldviews.

Women may frame their arguments in general terms instead of citing specific cases of violence. For example, women often talk about how, "he's a bad man," or "he's very violent," without offering examples as evidence to back up their claims. This may hurt their cases because judges are often looking for specific, linear stories that involve a scenario like, "on the night of June 10th, 2002 about 2am the defendant broke into my house and held a knife to my throat threatening to kill me and my kids woke up and saw the whole thing." One judge describes how

male defendants may present their cases differently than female plaintiffs, "When you're talking about time frames, for example, when you ask, 'when did that happen?' a man's liable to sit there and tell, 'well it happened on December 22, 1998,' or something like that, whereas a woman is more apt perhaps to relate to an event, 'well I was pregnant at the time with my second child.' So that's where they're coming from to begin with in terms of the way they tell their story."

In fact, another related problem is that women will often downplay the violence they experienced when first put on the stand and questioned about it. For instance, they often lead with, "well he called me bad names like "slut" and "whore." Or they will talk about how he makes harassing phone calls and shows up at her house uninvited. Court representatives offer different theories on why this may occur including embarrassment, fear of angering the defendant, intimidation by the courtroom environment, high stress, as well as being ill-received the first time women told stories of violence to an official like a police officer. A court advocate also indicates how "saving face" may also be an issue for women in framing their stories that court might not take into consideration and that may indicate why women downplay relationship violence when the perpetrator is present.

Sometimes if you don't give an indication that you are scared – they're not going to give you a Restraining Order. And I saw that happen in Judge Z's courtroom, where she was asked, 'well, are you scared of him?' 'No, I'm not scared of him!' Because if she said she's scared of him, number 1) it's a victory for him, and number 2) it makes her look like a punk – in her own eyes and maybe in her peers' eyes. Um, especially to the man who has beaten her up on many occasions, who has threatened to take her kids. So, yeah, she's scared of him, she just wasn't going to say it in those words. She's going to say it in other ways.

Unfortunately, women who do not frame their arguments and stories in ways judges expect may be denied protection. This is an area where attorneys (or others) may be able to act as translators between the court and the plaintiff so that they can mutually understand one another (Amsterdam and Bruner, 2000), which as Shotter (1993) asserts is quite difficult because mutual understanding happens rarely if at all.

Plaintiffs' stories are often not well received by the court when described in the ordinary way that they usually tell stories. Judges will often cut off a woman's testimony (Ross, 1996) in court, especially if she begins talking about things that the judge thinks is irrelevant as far as evidence needed to issue the Restraining

Order. This problem is identified by many Restraining Order participants as women presenting their cases in a circular manner and judges expecting a linear account. The following excerpt from a county court judge details this problem:

The biggest thing I see...is women tend to be pretty confused in their testimony, sounding often doubtful...but I try to think what it would be like to be knocked down or thrown against a wall...And all those maybes frequently enter the testimony. There are comparatively few maybes in the defendant's testimony – very rare to hear him unsure of the story line. Um and so the fact finder is sitting there and saying, well here we have the linear, calm story that makes sense. Then I have this confused, emotional mess, and I want to be comfortable with my decision. 'Well, I've got oceans of reasonable doubt, man!' Now I mean I don't feel comfortable telling women, 'okay so first your story, memorize a linear account, eliminate all doubt'...But the two biggest things I see is that difference, and the fact that what's important to her story is going to be episodic, and one thing is going to remind her of another thing which happened a few months ago and then she's going to want to talk about it...The truth is I don't know what to do about that.

In addition to expecting women plaintiffs to construct a linear account of abuse in their intimate relationships, women are expected to deliver these stories in unemotional ways.

The women are also emotional and that makes a lot of decision-makers extremely uncomfortable. And again I can observe it without being sure what to do about it...There is real fear of women out of control, there is real anger that you can't tell the story without making me feel bad. We like our victims un-angry; we white knights like to rescue damsels in distress, not damsels who are pissed off. (County Court Judge)

So a woman who is getting up there telling her own story...one problem with that is it comes off as less truthful to a judge, who is again, who looks at it from this epistemological construction that a truthful story is one that's internally consistent and chronological and has no gaps and is the same every time she tells them and that's just not the way people tell stories, um when they're telling their own stories...And a lot of times they say it in ways that make the judge feel uncomfortable and that hurts them. They say it with a lot of emotion or with all the fear and dread that they really experience and judges can't handle that, they'd much rather just hear a calm and sort of distant explication of their story...

(Attorney)

The above comments reify appropriate norms of communication messages (Berger & Luckmann, 1966) that are "un-angry" and unemotional which explains some of the difficulties court representatives have in understanding plaintiffs' daily praxis (Bruner & Amsterdam, 2000; Lopez, 1992). This inability to understand plaintiffs has silencing functions since women can't talk about their reality from their own points of views, but instead are expected to have the agency (Giddens, 1984) to frame stories in ways that resonate with judges' life experience and worldviews.

The next area that makes it difficult for women to frame their arguments revolves around issues of different contexts that women and court representatives have. As one attorney describes, "all communication requires context…that sort of unspoken context of all languages…and the judges are usually coming at their decision or come from a background of different cultures from the people in the courtroom…I think it distorts communication…It definitely influences outcomes…" These different contexts can create difficulties regarding differing perceptions of violence and differing views of importance regarding socio-economic issues such as money. The following examples illustrate some contextual differences that can be obstacles in pro se women constructing their arguments and presenting their cases:

People have ideas about acceptable levels of violence and so sometimes what she speaks about is that he was too violent this time and it's very hard to convey that reality. Well sure he slapped me, but he had his hands around my throat this time and our kid was there. It is very hard to take in that reality and hard not to leap to she didn't mind being hit that much. And if she didn't mind, why should I mind, statute or no statute…she might not be very clear how very different than how peaceful my life is and that is a very peculiar statement…it may be the best approach to say, "you know this may be hard for you to understand, but I can handle some stuff, but this was too far. (County Court Judge)

People confuse different things to be in court and there I think of class again – I'm not sure what to tell people but comparatively often, not surprisingly if you're poor, property discussion may be perceived as a worse thing than being hit. It's harder to get a new car than free health care at DG perhaps. And then that strikes people as, 'oh god all she's talking about is the car,' how serious can she be?…for the very poor and the very rich things have disproportionate importance. And it

takes a lot to admit it by a judge. (County Court Judge)

Plaintiffs have many difficulties in framing their stories in ways that judges and other court personnel would find believable such difficulties include differing worldviews and contexts, different storytelling styles, and differing knowledge of normative legal procedures. As Jerome Bruner notes, Law's demand that witnesses speak nothing but the truth violates the law of language that demands coherent and never merely true stories (Amsterdam & Bruner, 2000, p. 110). A further constraint in arguing cases in Restraining Order court for women plaintiffs involve issues of culture. "Like one girl – the Spanish-speaking girl I remember – couldn't concentrate – I don't think she could understand what 'threat' meant" (Plaintiff). Cultural differences is another contextual issue that makes understanding difficult. As well some cultural norms are antithetical to courtroom procedures such as disclosing 'private family matters' in a public courtroom.

Hispanic women in general don't feel as comfortable doing the very uncomfortable- playing the uncomfortable role of having to disclose what happened in the family. So for various ethnic groups it gets more difficult to communicate what had happened so I think that plays a part in able to obtain a Restraining Order if people are unwilling to or unable to impart information that the legal system requires. (Attorney)

Plaintiffs are being asked to construct stories and make arguments that are often in conflict with cultural norms of privacy and gender rules. This conflict could result in women not receiving protection from the state if they are unable to frame arguments the ways the state requires. Another problematic area in non-English speaking women's presentation is having to disclose intimate partner violence to men outside of the family, quite often white males in power such as interpreters, attorneys, and judges. This too can affect what is disclosed and influence outcomes.

Because women plaintiffs are often overwhelmed by intricate court procedures there are court advocates present from a non-profit agency Project Safeguard who will answer questions for women-in-crisis and help guide them through the Restraining Order process, but not represent them as would an attorney. Advocates can play a key role in making court a less daunting and unfamiliar process for women.

I just really appreciate the advocates being there – people walking you through it. That would have been awful if I was standing up there and not known that I could ask those questions, and not knowing how to ask them or what questions to ask... (Plaintiff)

Because judges listen for stock stories of violence that fit into neat categories of what does or does not warrant a Restraining Order, plaintiffs' knowledge of types of questions to ask defendants during cross-examination has the potential to elicit evidence that may also increase chances of receiving a Restraining Order. The advocates sometimes share a list of questions for pro se plaintiffs to ask during cross-examination, questions like: can you tell me what you are like when you are angry? Have you ever been to domestic violence classes? What's our children's doctors or teachers' names? In our experience, women who have these objective questions to ask, in addition to particular ones unique to the violent relationship, appear to be able to better argue their cases and win in court.

Another way plaintiffs and defendants argue cases is to evoke social identity roles such as wife/mother and husband/father. As mentioned previously, plaintiffs often describe things in general terms such as on a continuum of good to bad. So often in Restraining Order court we hear a lot of "he said/she said" type of arguments in which she claims she's a good mom and he's a bad dad and vice versa as part of elevating one's own credibility and trying to damage the credibility of the opposing party. The following hearing excerpt aptly represents how pro se plaintiffs and defendants use familial and religious identifications to argue their cases in Restraining Order court.

Plaintiff: *My oldest one, he was about six. My little one, she was about three. I was pregnant. He used to hit me and try to choke me, being very jealous, very possessive; he didn't let me go to work, didn't let me go to school. I was a slave for many years to him...The kids used to come back crying because he hit the other one with a belt in front of the little one...He's not a good father.*

Defendant: *My wife has lied many times before the court. This is not the first Restraining Order; it's been seven or eight times. I work at a church. I'm a pastor of a church...I've tried to live well with her, but she's abusive. She needs mental health. She's very emotional and nervous. The day of the problem I was returning from a pastor's meeting. I tried to give her a kiss and she was mad. Her mother has a very strong and bad influence over her...She began to argue and I told her to be quiet and she began to insult me, to push me, and she grabbed my right arm*

*and scratched me and quite a bit of blood came out...I have tried to reconcile with her because of my children and also because I'm a Christian***[ii]**.

In the above excerpts we see displays of constructed and contested identifications in the interactants' testimonies. For example, the plaintiff avows her identification as a mother who has been abused, and ascribes an abusive identification to the defendant as someone who beats a pregnant woman as well as his kids. The defendant contests these identifications in a number of ways. He ascribes an identification to his wife as a liar, trying to undermine her testimony as credible; he also claims she's mentally incompetent as well as abusive. While ascribing negative identifications to his wife, the defendant tries to elevate his own credibility by invoking his role as a pastor, a Christian, and a caring father – staying with his abusive wife for the sake of the children.

When both the plaintiff and defendant are pro se there appears to be more of a level playing field than when one of them has an attorney. When both parties are pro se judges may lean in favor of the male who constructs a story in ways judges prefer.

3. Pro Se Defendants

Defendants as well as plaintiffs utilize role identifications on a good/bad continuum as evidence for their arguments. However, as mentioned previously by judges and others, defendants' testimonies are much more likely to be linear versus circular and thus in accord with judges' expectations of a creditable story.

So you know unless he's a real thug, and most guys aren't real thugs, he will have put together a story that protects his ego, and it will probably be linear, and it will involve issues of being in control, not being angry, wanting to help her, wanting to keep her safe from herself, wanting to keep him safe from herself, wanting to keep the kids safe from herself. (County Court Judge)

Defendants tend to deny that they are abusive and often, as a tactic, claim that they are the abused ones.

The guy is much more likely to deny the obvious. And even though it often works he's very likely to be there saying, "no, I wasn't angry, I'm not angry at all. Nope, nope it was all her, I was in control." Or my favorite, "if I was that out of control I would have really hurt her, she can't be telling the truth..." (County Court Judge)

Also a defendant will often claim that he only responded to her physically abusive

acts towards him by pushing her away. As Zorza (1998) argues, abusers often rely on false myths and folk knowledge about domestic violence survivors (e.g., women are mentally ill, women lie about the abuse, and women cause the abuse), and the abusers testify that their partners embody these myths to gain sympathy from court officials who may believe in the myths themselves. In the hearing transcripts we consulted, it also appears that defendants will frequently argue that the plaintiff is an adulteress, lazy, and and/or a user of drugs or alcohol as an attempt to undermine her credibility and/or as a justification of why he hit her/stalked her.

4. Attorney for Plaintiff

Having an attorney is seen by many women and court representatives as helpful in part because as one attorney asserts, "the attorneys know what the judge is looking for." Attorneys may also act as protectors as one plaintiff describes, "it felt good for a change to have a big, strong person beside me – powerful and I needed that." Attorneys also know the processes and procedures that pro se plaintiffs do not and can be a sounding board for women to tell their full stories that would not be acceptable to judges.

The attorney can say, you tell me the story, but what we need to tell the judge is when we get to the following...And that gives her an opportunity to tell her story, but to impart the knowledge that the judge needs to know...and if an attorney can say, "but did he do anything to physically harm you?" Then she can say, "well, yes, there was the time he picked up a fireplace poker and hit me with it," but he really hurt my feelings when he insulted my mother – there are some lines that should not be crossed and that's one of them.

Consequently, the security of having an attorney has the potential to allow space for women to tell full stories and prepare women to focus on the specific acts of violence – stories or catch phrases that will be rewarded with protective orders. Judges also like to communicate with attorneys because it is easier for them to talk with someone who speaks the same legal language, "well you've got more of the head approach so it becomes a little easier for me to communicate where we are going" (County Court Judge). Because lawyers and judges share a common speech genre (Bakhtin, 1986) of legal etiquette and jargon then they are much more likely to reach some sort of mutual understanding than plaintiffs would, particularly if they have similar worldviews and contexts that would facilitate understanding. Attorneys have the ability to bridge the gap between plaintiffs and

judges by translating women's narratives into stock stories that judges are prepared to hear. However they may do so at the cost of reinforcing those established stock stories and thus occluding a portion of women's experience (Giddens, 1984).

5. Attorney for Defendant
When attorneys are present it is mostly defendants who have them due, in part, to financial isolation of a woman in an abusive relationship. Consequently, defendants often have more resources to hire attorneys, and "there aren't many women who come into court on domestic violence cases that have attorneys, there's few of them" (County Court Judge). Defendants' attorneys' argument style is typically aggressive.

What you often see and this is interesting to me as a family law type, is women hiring family law – legal aid or private attorneys. Where the men or the respondents tend to hire criminal lawyers to represent them, even though this isn't a criminal hearing. The criminal lawyer ones take the form of bears, they're the ones that are on the attack. Family law types tend to try and work together to settle things, but criminal layers are much more trying to cut the party down. (Attorney)

There are several forms of attorney aggression including harassing and intimidating women before and during court sessions.

His lawyer kept coming up to me and telling me that I was supposedly lying about him hitting me that I shouldn't get the Permanent Restraining Order on him…And he kept telling me that I was supposedly lying about him hitting me that he had never hit me and that there's no way I could pull this off. That's what he kept telling me. (Plaintiff)

They will try to talk her out of it and that's what I – what I have seen mostly with every attorney – when she doesn't have an attorney, but he does…or trying to scare her into um vacating the order by saying, "well, we're going to bring up your doing drugs" or…so they use a lot of intimidation tactics. (Advocate)

Another form of defendant attorney aggression is shaming and blaming women in cross-examination.

And then to be cross-examined too, and have someone say, "no you didn't – you're

weak, stupid, defensive, ah why didn't you leave before?" It is blaming, it is putting the fingers all back on you and saying, "oh you're complaining, you had another choice you could have left earlier." (Plaintiff)

Butler & Bowe (1996) explain that shaming and blaming survivors of domestic violence often take the form of casting blame on women for the abuse they suffered. "American patriarchal society has relieved men of much of the responsibility for their abusive acts while blaming victims and sometimes condoning abuse (Locke & Richman, 1999, p. 2). Defendant attorneys often minimize women's fears via blaming and shaming and outright denial that the abuse occurred.

I've seen many, many women the majority of times, walk out without Restraining Orders when they didn't have attorneys and the defendants did. But, what ends up happening there is – whether the attorney intends it or not – it acts as another level of intimidation for the plaintiff. Um, the defendant most certainly means it to be that. (Advocate)

The presence of an attorney for the defendant can also intimidate the judge, "I think that judges are very aware of…dotting their "i's" and crossing their "t's" when an attorney is present" (Advocate). In addition to intimidating judges, we have seen where attorneys for the defendant will use manipulative tactics to align with the judge by saying things like, "your honor, we shouldn't allow this Restraining Order to be made permanent because…" or "I know plaintiff is not aware of court procedures, but…"

6. Discussion
Plaintiffs and defendants use many similar argument styles in presenting their cases in the Restraining Order court such as positive self-avowals regarding social identification roles like good: wife, mother, dad, and father as well as negative other-ascriptions such as bad: wife, mother, dad, and father. However, defendants are described as having more credibility than plaintiffs due to relying more on chronologically –ordered, linear story lines, rather than the circular context-laden emotional appeals that plaintiffs often exhibit. Defendant attorneys will often utilize this disparate gender story structure to the defendant's advantage. Instead of claiming these characterizations blatantly as plaintiffs and defendants do, attorneys tend to infer these by asking questions that will prompt answers describing stories that paint these pictures for the judge. For example, in one

hearing the attorney asked a series of questions about how the defendant procured citizenship for his wife and her daughter, thus the inference was that he is a good husband and provider and the judge attributed these positive characterizations to the defendant in his findings. Consequently, plaintiffs, defendants, and attorneys all use ethical appeals in their legal arguments.

However, few attorneys are knowledgeable about Restraining Order laws and successful argument styles in this court, and fewer still make direct appeals based on legal doctrine or frame presentations with any apparent eye on narrative theory. Nevertheless attorney outcomes were more likely to be favorable.

One primary advantage in having an attorney argue for you in this particular court is that she can be a physical and mental buffer between the plaintiff and the defendant or his attorney. This is an imperative aspect because there is much verbal and nonverbal intimidation occurring against historically battered women. As one attorney noted, "but when he gets to cross-examine her he can sort of utilize the resources of the state to reenact the abuse."

Finally, it appears that having a third party such as an attorney would elevate one's case due to having a person outside of the relationship believe your side and advocate on your behalf. So having a somewhat neutral person like an attorney can boost the ethos or credibility of a pro se party because the appearance of sponsorship by a third party may lend credence, because a third party can make claims that would sound boasting, evasive, or half crazy coming from a litigant. Finally there may be value in blanching these cases of some of their emotional content by means of agent representation; forcing judges to directly confront the emotions of battering situations often hurts women's cases perhaps because of avoidance strategies or cognitive dissonance on the part of the judge (O'Keefe, 2002).

However, some courtroom participants argue that what attorneys do is not related to their training or does not require a limited-entry monopoly such as provided by a law degree and bar admittance.

I have seen women with lawyers where the lawyer basically, I don't think, did anymore for her than she could have done for herself. She basically had a pretty good case and he just stood up and spoke for her. When clients are pro se the major difference is that they're speaking on behalf of their own selves. And when there is an attorney there somebody else is speaking on their behalf – somebody who is well versed in the language of the court (Advocate).

Indeed, some attorneys argue that the omnipresent court advocates who often spend more time in Restraining Order court than do some attorneys would do just as good a job representing women plaintiffs in this court.

I think maybe what we need to do is make Project Safeguard a party in the action...And so Project Safeguard could go on the record – and that's all that the attorneys do – they just explain to the court what the petitioner is having difficulty explaining. So that's a role that advocates could easily fill. (Attorney)

I think the one suggestion I have for your study is to open up the lawyers' monopoly...there's no reason why advocates can't represent women, other than lawyers maintain a stranglehold on representation for no good reason other than to make lots of money off of it...There's lots of women and the best ones I suspect would be people who were victims and got Restraining Orders and could actually speak on other women's behalf. And the Project Safeguard people are doing 90% of that now they're just not allowed to stand before the judge and make the arguments and there's no reason to bar them from doing that. So that would be my suggestion. (Attorney)
(See also Bezdec, 1992)

7. Conclusion and Implications
Legal systems operate principally to settle disputes, enforce societal prescriptions and allow for appearance, at least, of public input into societal decision-making. In popular conception, legal systems also serve as forums for truth finding and the allocation of justice. In the latter two matters at least, a significant drag on the Restraining Order courtroom is differential in access to legal services.
We find that this differential is likely to result in systematically more favorable outcomes for represented parties; in this case the overwhelmingly male perpetrators of domestic violence.
Where we expected to find vast disparities in argument styles between lawyers and unrepresented parties, instead we found lawyers making similar appeals in a (slightly) different voice. Attorneys have potential to change participant stories and court understandings of the world by using poetics and rhetoric to recreate client life situations in terms a court can understand. (See Soloman, 1954). Under present conditions this result is rarely realized and courts receive distorted visions of the world as one side of this debate disproportionately makes its case through an agent representative.
Lawyers failed to effectively make appeals to legal rules of evidence or to frame

stories in terms of legal doctrines. Lawyers made little apparent use of advances in narrative theory (Burns 1999). They used sweeping generalities, reprehensible personality and guilt by association appeals with similar frequency, as did pro se litigants.

The difference in outcomes for attorney- made appeals suggests that there is value in the dynamic of an agent making an appeal on behalf of another (Aristotle in Soloman, Ed. 1954), not least because the agent can make the appeal without reinforcing negative stock stories that judges hold about the battering situation: excuse-making and failure to take responsibility on the part of the male; overly emotional and mentally unstable exaggeration on the part of the female. Attorneys may also enact social connectivity with judges as part of a rarified elite accorded monopoly power over access to justice. As such attorney effects may suffer composition effects: the same advantages may not be apparent as more are represented. Loosening the monopoly offers the promise of fuller mutual understanding among courts, people, and society.

Nevertheless our recommendation is that, in the restraining order courtroom at least the lawyer's monopoly should be relaxed (cf. Bezdec 1992). Lay advocates could offer the same advantages of agent representation while lessening the impact of disparate access to justice owing to attorneys' exclusive hold. In the context of the Restraining Order courtroom, institutions affect interactions in ways that may limit women's knowledge, ability to tell their stories, and the likelihood that court personnel will define them as credible and worthy of Restraining Orders.

NOTES
[i] In this essay the authors refer to plaintiffs as women and defendants as men. This assumption is consistent with literature that asserts the majority of people who are battered are women, and those who batter are more often men (National Coalition Against Domestic Violence, 1997).
[ii] Permanent Restraining Order hearing number 1 of 12. Transcripts on file with the author. Transcripts requested and transcribed from the Court Transcriber, Denver County Court, Denver, CO, USA.

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ISSA Proceedings 2002 – Arguments Of Victims: A Case Study Of The Timothy McVeigh Trial

When the sun arose over Oklahoma City on April 19, 1995, occupants and nearby residents of the Alfred P. Murrah Federal Building experienced the horror of a bomb blast that killed 168 and injured 500 members of their community. Following a lengthy trial, the jury convicted Timothy McVeigh of the bombing. After hearing thirty-

eight victims testify about the impact of the bombing on their lives and that of their loved ones, the jury sentenced McVeigh to death. The victim's arguments, called victim impact statements (VIS), convinced jurors that McVeigh should receive the death penalty rather than life imprisonment. Federal legal authorities executed McVeigh on June 11, 2001. This essay:

1. explains the origin and history of victims' arguments in the courts in the United States,

2. describes this type of argumentation as a distinct genre of legal discourse by using Mikhail Bakhtin's explanations of content, stylistics, and speech plans, and

3. discusses the implications of the study for research about legal argument.

1. Origin and History of Victims' Arguments

Victim impact statements are a unique genre of legal argumentation. The use of victims' arguments in the McVeigh trial evolved as part of a two-decade struggle for victims' rights in the United States (McDonald, 1976; Carrington & Nicholson, 1984; Roland, 1989). This struggle began in the late 1970s and achieved legislative success with the 1982 *Victim and Witness Protection Act.* Temporary setbacks in victims' rights took place when the U.S. Supreme Court ruled in *Booth v. Maryland* (1987) and *South Carolina v. Gathers* (1989) that victims' impact testimony was unduly prejudicial to jurors because it could not be refuted by the defense and because defendants generally did not know who their victims were when they committed their crimes. In 1991 the victims' rights movement gained new momentum when both of these decisions were overturned in *Payne v. Tennessee*. Even more voice was given to victims in 1994 through *The Violent Crime Control and Law Enforcement Act* which permitted both the use of the death penalty and VIS in federal trials.*U.S. v. Timothy James McVeigh* (1997) was the one of first federal capital cases to be tried under this statute.

Victims (often with the assistance of attorneys) justify the death penalty for a defendant because of the suffering they have experienced as a result of a crime. Some VIS are presented to the judge in the form of written arguments; others are read to jurors by a court official. Still others are both written and presented orally to the judge and jurors. In general, victims state their names, describe economic losses or physical injuries, identify changes in their physical or psychological well being, and/or explain the general effects of an offense (Schneider, 1992). The arguments from victims provide evidence about "any harm, including financial, social, psychological and physical harm, done to or loss suffered" by a victim at the hands of the accused (*Victim and Witness Protection Act*, 1982, 32).

Additionally, the arguments provide the witnesses with two kinds of witnessing; they give eyewitness testimony to the effects of a crime, and they also allow victims to bear witness to the grief and emotional hardships that cannot be seen (Oliver, 2001, 16). In other words, the arguments have both an outer voice that addresses a jury and an inner voice that gives agency to their subjective experiences and allows them to work through their grief. VIS are personal accounts of the harm suffered by victims that "particularizes" experience and "invites empathic concern" in ways that other legal arguments do not. The witnessing of the victims offers a silenced minority the opportunity to relate their grief in the guise of an argumentative form. In ways similar to literary genres, victim impact arguments are generative bundles of borrowed and reconstituted prosaic (everyday) utterances that speakers socially construct to express their intentions in specific contexts (Bakhtin, 1986). Genres eventually achieve relative stability, but they are never completely replicable or "never perfectly designed," because the speakers who create them "make do with the resources they have at hand." Additionally, genres have unpredictable qualities that develop from "unforeseen byproducts" in "unexpected ways" (Morson & Emerson, 1990, 45). The lack of replicability and predictability of genres outlined by Bakhtin (1986) applies to legal discourse since each trial results from similar indictments litigated by different participants in courts operated under diverse rules and procedures.

Even though some in the legal community promote this kind of testimony, many others question its use. For example, Talbert (1988) claims the emotional content of VIS has the potential to inflame the jury and to upset the legal norm of treating similar crimes with similar sentences (210). Clark and Block (1992) also object to the use of VIS because this kind of argumentation can lead to personalized and arbitrary sentences, the victims "are unintended or unknown" by the offender (49), and the sentencing process creates a "mini-trial" in which irrefutable evidence is presented by the government (50). In the McVeigh trial, judges and attorneys agreed that the VIS should contain limited emotional content, describe the victims' pain and suffering, be presented in an objective manner, and prove the aggravating factors alleged by the government. Aggravating circumstances are justifications for the death penalty. Specifically, prosecutors argued that McVeigh caused the 269 deaths and hundreds of injuries after planning and premeditating the bombing and that he killed federal law enforcement officers through his criminal actions. From the perspective of the law, the goal of the impact statements was to promote moral reasoning among jurors based on

weighing the evidence about aggravating factors, such as premeditation, intent, viciousness, and lack of remorse, against mitigating factors, such as a difficult upbringing that may have led the defendant to commit the crime. The family of the defendant did not persuade the jury that legitmate mitigating factors led to McVeigh's crime.

2. The Genre of Victim Impact Arguments

Victims created the content of their testimony by piecing together conversations and recollections from their everyday experiences. Bakhtin (1986) refers to these fragments of everyday conversation as "the prosaic." More specifically, Morson and Emerson (1990) conclude, "The everyday is a sphere of constant activity. The source of all social change and individual creativity, the prosaic is truly interesting and the ordinary is what is interesting" (23). This prosaic discourse consists of fragments that the speakers have heard from others. When speakers piece together these fragments in ways that achieve their goals in a particular speech situation, they create new genres. Specifically Bakhtin (1986) concludes that genres result from speakers combining the prosaic informal speech of greetings, conversations, vocalized memories, and expressions of feeling with the formal utterances of reports, speeches, and letters. Similarly, the VIS presented at the McVeigh trial combined the informal utterances from victims' conversations and experiences with formal utterances they had learned from the media and other public speakers. In this way, the victims in the McVeigh trial reconstituted ordinary discourse to achieve their extraordinary goal of promoting the death penalty. In the McVeigh trial, the victims appropriated and then reconstituted various kinds of prosaic utterances. One cluster of VIS came from the parents of children who died in the daycare center at the Murrah Federal Building. One mother, Sharon Coyne, spoke about the death of her baby on the day of the bombing. Prosecutor Hartzler asked questions to structure this victim's narrative. Coyne began by establishing the circumstances and background, and then she quickly moved to her recollections of her deceased child. As she presented her statements of grief, Coyne borrowed descriptions and images from previous contexts:

Hartzler: It's true that you had a daughter... And her name was Jaci Rae?... And can you tell the jury a little bit about Jaci?

Coyne: Jaci – Jaci was (sic) blue eyes, big blue eyes, blond hair. Well, she had very, very little hair. Beautiful smile. She just – she didn't have but two teeth. She waited kind of late to cut teeth. She was a serious ham. She loved to be in front of

the camera… And she never knew a stranger. I think that the most distinguishing characteristic about Jaci was her unconditional love for me. . . . She loved to cuddle.

(*U.S. v. Timothy James McVeigh*, 1997, June 5; all subsequent victim impact statements come from the trial transcripts and are cited by date).

The prosecutor followed Coyne's descriptive recollection by projecting photographs of Jaci Rae with her family on huge screens for jurors to see. Coyne's testimony appropriated words and phrases from everyday information that a mother tells her friends and family about her child:

Hartzler: How old was Jaci in April of 1995?

Coyne: Jaci was 14 months.

H: Could she talk?

C: She could. She said "Momma" and "Dada." We were working very, very, very hard on "Grandpa and Grandma"…

H: Could she walk?

C: She could; she'd been walking for about four months. I think if she had her way, she would have been running; but I was very overprotective. And she basically walked the straight and narrow, always on flat surfaces. And usually, if we got to anything difficult, I always picked her up…

Coyne concluded with explanations of the death of her child and the suffering it caused her, reporting dates, times, and personal physical and psychological effects. The testimony continued:

H: And I know that you were at work that morning, and you heard and felt the explosion… I want you, if you will now Miss Coyne, to tell the jury what impact Jaci's death had on you and your family.

C: There's a lot of different things, different aspects. There's one physical aspect, which, as you know, my hair is falling out, my teeth (are) chipped off. I have a horrible memory loss when things get pretty stressful, but that's really nothing compared to constantly missing her… And I think in the end, by the time they finally told us that they found her body, it had been seven days, and I was just so incredibly thankful that they found her at all; and I felt lucky that I got to hold her wrapped in a beautiful receiving blanket made by my friend, Joyce. And that's the last thing that I held (1997, June 5).

Coyne's testimony imported descriptive imagery, conversational phrases from her child, and factual reports from her past family experiences into the content of her

argument. With the help of the attorney's questions, she restructured and reconstituted this content to achieve the purpose of VIS. Not only did she recreate the content, Coyne added a distinctive style using the words of her child so that her argument had multiple authors. She presented oral testimony that reflected her inner suffering. She also gave the dead baby a "voice within" her own voice, a process Bakhtin (1986) calls "echoing" (88). The echoing of the baby's words had a dual persuasive effect. First, it allowed jurors to imagine the personality and the innocence of the baby as a victim. Second, it permitted the mother to use a double voice, showing the physical suffering of her baby and the subjectivity of her own psychological pain.

In addition to the borrowing of prosaic utterances, themes, stylistics, and speech plans illuminate the distinctive properties of this argumentative legal genre. Bakhtin (1986) explains:

Thematic content, style, and compositional structures (speech plans) are inseparably linked to the whole of the utterance and are equally determined by the specific natures of the particular sphere of communication. Each separate utterance is individual, of course, but each sphere in which language is used develops its own relatively stable type of these utterances. These we may call speech genres. (60)

Any new genre, according to Bakhtin (1986), combines simple utterances into more complex ones. When complex utterances subsume simple ones, a new genre evolves. In this case, speakers recreate a new discourse from borrowed audiences by adopting different themes, adding new stylistics, and implementing speech plans. This kind of argument permits the victims to "work through" their grief by explaining it in subjective terms to others.

Themes. Speakers create themes that respond to the needs of a particular context. In the McVeigh trial, the victims used common themes and made similar claims about their experiences. The predominant themes of the victims' arguments in the McVeigh trial were the physical devastation caused by the bombing and the pain and suffering of the survivors. Prosecutors chose different types of victims to emphasize the three themes. Seven rescue workers emphasized the devastation theme. Two medical observers identified victims and gave technical data about their injuries. Three survivors described their injuries and recovery, and two videotapes graphically portrayed injuries to children. All other arguments came from relatives of those who died.

Themes differed according to speakers' experiences. Themes about the personal consequences of their loved one's death provided common content in the testimony of the relatives of the deceased. For example, Sonia Diane Leonard, wife of a deceased secret service agent, claimed, "I feel my heart looks like that building. It has a huge hole that can never be mended" (1997, June 4). Pam Whicher, wife of deceased Secret Service Agent Alan Whicher, lamented, "It is a little bit like learning to live without your arm. You still do what you do, but everything is changed" (1997, June 5). Each person used prosaic metaphors to bear witness to their personal suffering.

Rescue workers highlighted the devastation in their arguments. This testimony pointed to the extent and the brutality of the crime, an aggravating factor that justifies the death penalty. For example, Allan Prokop, a police officer, described the street scene immediately after the bombing:

There were people running from the building toward us injured, very bloody, crying, and screaming... There were people standing in the windows screaming for help... There were wires sparking inside, a real thick and heavy dust, a cloud. It was strangely quiet, except for the moans and cries from inside of the building (1997, June 5).

The other most poignant themes of physical harm and suffering came from victims who survived the bombing and continued to live with negative physical and psychological effects. For example, Clifford Gayle, an employee of Housing and Urban Development, described his injuries in this way: "The left side of my face was crushed. It had a hole in... the skull – in the membrane between the skull and the brain. I had glass and concrete in my neck here, just barely missed an artery and a vein. My eye was hanging out, cut in five pieces" (1997, June 5). Other victims talked about fractures, collapsed lungs, long hospitalization, and reconstructive surgery. The VIS allowed them to speak the unspeakable.

Victims particularized their pain and suffering and, in doing so, recreated the bomb scene, put a face on the victims, and allowed jurors to hear, feel, and see the human impact of the bombing. Even a year after the trial ended, juror Vera Chubb recalled, "I needed to hear those people. I needed to touch them. I needed to hug them." Fighting back tears, she told reporters, "I knew it was going to be a hard day, but I didn't think this hard" (Romono, 1998, June 13, A1). Unlike most trial testimony, the victims' arguments provided facts, symbolize the affect, and thereby created strong emotional bonds between victims and jurors. According to

Bakhtin (1996), the completion of a message occurs when the audience acts on the themes. The McVeigh victims finalized their theme twice, once at the sentencing hearing when the jurors stated that McVeigh should receive the death penalty and again a year after the trial when jurors met and greeted the victims. The victims' arguments created logical and affective connections with jurors that allowed their themes to justify the death penalty.

Stylistics. In addition to the themes, a second component of victims' arguments is what Bakhtin (1981) calls "stylistics," the language and tone of a discourse. Speakers choose words from earlier contexts and from other people in their immediate or past history. The style of any speaker is an accumulation of the "thinking and the language of other people (living and dead) whose ideas and words are part of the store of ideas in the language-user's head" (259). In the McVeigh trial, the victims chose words from everyday conversations, words of grief likely expressed or heard by them during the mourning process, phrases they heard from medical personnel, and language that they borrowed from stories in the media. The exact origins of the language cannot always be determined, but the process of appropriating words from others characterizes how genres are generally formed (Bakhtin, 1981, 242-59). Since the trial occurred two years after the bombing, victims had read and heard many different utterances about the tragedy and therefore could, and probably did, borrow from that content. The victims used a tone that conveyed both their personal experience and public emotions about the bombing. The tone creates "an imprint of individuality" (Morson & Emerson, 1990, 134) because it expresses the emotional and evaluative attitudes of speakers, accentuates the speaker's personal experience, and achieves a 'stylistic aura' " (139). Many of the victims accentuated their content by echoing the emotions they experienced privately and by restating the feelings conveyed by those who observed the experience from the outside. This echoing of personal and public sentiments and the direct expressions of the victims' own experience constitute "the verbal vestments" of the discourse (Bakhtin, 1986, 88). In this trial, victims borrowed some of their style, both language and tone, from interpersonal conversations, feature stories in the media, and their knowledge of the appropriate speech content of eulogies and tributes.

Many of the victims imported the language and conveyed a tone characteristic of interpersonal conversations that name personal characteristics of others, refer to social routines, and make disclosures that give information about personal

relationships (Ratcliffe & Hudson, 1988, 1-2). Sonia Leonard adopted this style when she referred to a work routine, identified personal characteristics, and disclosed information about her relationship with her husband:

I remember the Saturday before the bombing, he and I were working in the backyard and took a break for lunch, and I was stupidly complaining about what I thought had been a hard week–the week before. And what he said to me was, "Everything is attitude, attitude, attitude. And if you approach anything with the right attitude, it will be easier. And I've clung to those words the last two years, and they've helped a lot" (1997, June 4).

Leonard not only borrowed the interpersonal language from her previous experience, but she also adopted the "verbal vestments" of her husband's objective and rational tone.

Other victims reported observations as if they were feature stories borrowed from the news media. A feature is a human interest story in which journalists establish a setting, character, action, and a moral as they report their observations about an event (Garrison, 1990, 349-55). In contrast to a news story, a feature conveys the subjective interpretations of the reporter and engages the sentiment of the reader. This type of style characterized part of Officer Don Browning's story about an incident at the bombsite:

A man and his little girl approached us and, of course, they were talking to us and they came up; and the father was thanking us for being there. The little girl was wearing a guardian angel pin on her blouse. She was probably five or six years old; and at that moment, I couldn't really understand what she was saying... And eventually her father helped me understand that she was saying the angel was a pin that she was wearing for her friends and that she was due to arrive at the daycare center at the Murrah Building at approximately 11:00 (on the day of the bombing). And we all gave her a little hug and told her how glad we were that she was okay. And she asked me if she could pet my dog. And she grabbed "Gunny" around his neck and hugged him close... and told him, "Mr. Police Dog, will you find my friends?"

Browning instantiated the qualities of a feature story; that is, he subjectively interpreted this experience to establish human interest for the courtroom audience, echoed the words of the little girl, and highlighted the child's uplifting character and hopeful dialogue as it had taken place in the tragic setting of the bombing rescue.

Other victims borrowed a eulogistic form that names the deceased persons' achievements, stresses their positive traits, uses stories to illustrate how they lived life, and conveys an attitude of respect toward the deceased (Ehninger, Gronbeck, McKerrow & Monroe, 1982, 363). An illustration of the eulogistic content appeared in the argument of Glenn Cetyl when he incorporated a letter written by his ten-year-old son Clint about his deceased mother:

I miss my mom. We used to go for walks. She would read to me. We would go to Wal-Mart. Sometimes at school maybe a kid will bring something up – and he was talking about show and tell – something new that he got and someone would ask him or her where they got it. And they usually say, 'My mom got it,' and that makes me sad. After the bomb, everyone went to my aunt's house, and my grandma took me to the zoo – my cousin and I to the zoo. While we were at the zoo, I bought my mom a ring. I bought it for whenever they found her. Sometimes at school around the holidays, I will still make my mom Mothers' Day and Valentine's cards like the other kids (do) (1997, June 6).

The statement names the positive experiences Clint had with his mother, echoes what his classmates sat about their mothers, indicates how the victim lived her life, and expresses personal sorrow and lamentation. The effect of this touching tribute evidenced the facts of the child's grief as well as the voice of his psychological suffering.

The tone of victims' arguments at the McVeigh trial varied with speakers' choices of phrases and content. For example, when victims spoke about the productive lives of those killed, their tone was cheerful and positive. When they recollected events that typified their family members' traits, they used tones of humor, happiness, as well as sadness and longing. When victims stated the impact that the bombing had on them, they expressed a somber and sometimes angry tone. Some survivors and relatives of victims expressed hopefulness and the intent to get on with their own lives, and others related their experiences with personal depression and emphasized that their lives were forever changed by the effects of the bombing.

The stylistics of the McVeigh's victims provided an emotional imprint on jurors about the loss, pain, and suffering of the victims. The style often switched from objective reports of the victim's background and experiences to subjective accounts of their relationships with victims. The style also changed from factual and causal sequences that detailed events and actions to reflective and subjective

accounts of those facts that pointed to personal suffering. Even though the attorneys encouraged victims to provide only factual reports, the language and tone of the speakers created sympathy and often evoked tears from jurors. Because the content necessarily focused on the victims, the style never was dispassionate. The stylistic component of the VIS achieved the goal outlined by the majority opinion in *Payne v. Tennessee* (1991); that is, the testimony of victims should encourage empathy and allow the victims to have a voice in the legal system. In this case the victims seemed not so much to gain empathy as to "perform" their testimony in a way that they brought a voice to unspeakable experiences. Oliver (2001) calls this process "witnessing," a process of "testifying to both something you have seen with your own eyes and something that you cannot see" (86). The witnessing created a style for the victims' arguments that clearly energized and emotionalized the content with verbal vestments that contained the signature of personal victimage.

Speech Plans. Speakers promote their themes and convey their style through what Bakhtin (1986) calls "speech plans" or compositional features. He explains that speakers create genres according to
1. the topic about which they are speaking,
2. the "addressees" to whom they are speaking, and
3. the expectations of how they will be understood (p. xvii).
Attorneys affected the composition of the victims' arguments in the McVeigh trial through three different kinds of questions that allowed victims to identify themselves, describe how deaths or injuries occurred, and state how the bombing incident adversely affected their lives.

The trial audience for the VIS was complex. Even though the jury seemed to be the primary audience, the goal of the victims' arguments was take into account human moral standards. Bakhtin describes audiences as "addressees." He notes that addressees are a composite of several different interpretive perspectives. One type of addressee was the speaker that uses his or her discourse to express and inner voice and to reflect personally on the content and themes presented in the speech. The victims' themes and evidence recalled the facts of the crime and reflected on the impact the crime has had on their lives. The second type of addressee is the audience that decides or acts upon the discourse. In this case, the post-trial remarks of jurors to the press indicated they believed and acted as the victims wanted. A third type, the "superaddressee," consists of an ideal

audience possessing the knowledge and the insight to understand the meanings the speaker sought to convey (Morson & Emerson, 1990, 135). In this case, victims viewed the superaddressee as a moral authority that shared their belief in the guilt of McVeigh, desired his punishment, and accepted death as a moral solution for the crime.

VIS are a unique genre of trial argumentation that involves testimony about what victims "have seen with their own eyes," the horror created by the crime, and "bearing witness to something that cannot be seen," the subjective experience of their suffering (Oliver, 2001, 18). Effective victims' arguments, in ways similar to other speech genres, create self reflection, induce action from designated decision makers, and seek morally grounded actions. The victims in this trial created speech plans in several stages. First, they formulated their statements by conversations with self, answering questions about what should be said, how it should be phrased, and what moral conclusions should be drawn. Next, victims made additional adjustments creating themes and choosing a style to accommodate the expectations of attorneys and the judge and to dialogue with the jurors about the meaning of their suffering. The legal rules permitted victims to create arguments within specific parameters of weighing aggravating and mitigating circumstances and of engaging in moral reasoning. Finally, the victims designed their statements for a superaddressee, an omniscient judge, who understood their sorrow and suffering perfectly and agreed about how justice should be done. In this way, the victim's conception of the addressees likely affected their ability to perform this legal genre of victim impact arguments.

Survivor Susan Urbach's arguments conveyed different themes and styles and showed that she was speaking to all of the audiences described above. At the time of the bombing, Urbach worked as the regional director of the Oklahoma Small Business Development Center, located in the Journal Record Building across the street from the Murrah Federal Building. Prosecutor Beth Wilkinson conducted the examination, asking Urbach to recollect the day of the bombing.
Wilkinson: Tell us what happened to you at 9:02 on April 19.
Urbach: Well, at 9:02 I was standing in the doorway of my office. The appointment was running late, and we were kind of making bets on whether or not he'd actually show... And the woman who was... going to be doing the seminar was standing next to me... And another of my staff members was in the office...
W: Did you feel the explosion?...

U: And the building just shook so badly that you couldn't even stand. And at that point in time, I started feeling things fall on me. I had a very, very large blow to the head that hurt, and rubble – things were falling on me. The concrete wall fell on me, and the window exploded into my back and then the ceiling came crashing down all over me...

W: Were you able to dig yourself out of the rubble eventually?

U: Yes. I got some very unusual strength to be able to dig myself up out of the rubble, and we didn't stop to look at anything. I mean we just immediately headed for the door...

W: And on what side of your face were you wounded?

U: Everything was on the left side. There is like a half swastika kind of wound that started underneath the eye and goes down to my laugh line, several large lacerations that went from like my ear to my chin. My ear was totally cut in half all the way through the cartilage... (1997, June 5).

The testimony began with prosaic descriptions of office work presented in a conversational tone, but proceeded next to a feature-story-like description of the physical effort of digging herself out of rubble and then to the graphic imagery of personal suffering – lacerations and swastika-like cuts. Her remarks mixed the formal terminology she had heard from medical practitioners with personal and informal language characteristic of interpersonal conversations. She addressed her attorney by identifying her profession and the location of her job to the bombsite. Her testimony about what she saw and what she could not see adopted the point of view, language, and tone of a victim.

For example, the last segment of Urbach's testimony conveyed the moral meaning she had attached to her experience. She reflected through a kind of inner speech about the personal meaning of her experience and established ideals for her external addressees about how other victims should perceive their scars and healing:

W: And how do you feel about your scar today on your face?

U: Well, it's my badge of honor.

W: What do you mean "badge of honor"?

U: Well, to me you see, a scar – and any scar, tells a story. And the story it tells is... a story of a wounding and healing that goes along with that wounding. And the more deeply you're wounded, the more healing that must come your way, that you must experience for that wound to close up and for you to get your scar. I

mean, you don't get your scar unless you've been wounded and you have been healed. And I've got my scar.

W: So you're proud of your scar.

U: Yes (1997, June 5).

Urbach's speech plan showed how she used self reflection and an inner voice to understand her pain, persuaded jurors about the horror of the bombing, and addressed an ideal audience who righteously could judge her suffering. Unlike some of the other victims, Urbach provided an explicit moral interpretation and an idealized understanding of her experience. The style of victims' statements, in ways similar to other argumentative discourse, depends on the knowledge and verbal sophistication of the speaker.Victims with high levels of knowledge and education, credentials Urbach had, likely expressed their victimage with more complex and reflective content than victims without such training. Nonetheless, all of the victims' arguments borrowed some utterances, themes,and stylistics from others in order to formulate their own discourses.

3. Implications

Victim impact statements are a distinct genre of courtroom argument. The victims' arguments in the McVeigh case evolved first from the social movement for victim's rights, became part of specific legal statutes and opinions, and finally entered into the immediate legal and personal situations of the trial participants. The type of legal argument provides a double sense of testifying about what the victims observed and what others could not observe. To constitute this genre of legal argument, victims appropriated utterances from other contexts to achieve a specific goal. They developed their arguments by formulating their themes and style after a reflective dialogue with self; then they adjusted their testimony to the rules and expectations of their legal audience of the judge, attorneys, and jurors; and finally, they reflectively and subjectively interpreted their experiences in the terms of morality and justice accepted by the ideal audience of the superaddressee. At the same time, these complicated speech plans made vivid and factual contrasts between how the victims lived before the bombing and their present lives. This kind of argument contains facts and causal explanations dressed in the verbal vestments of suffering and hope in order to facilitate the moral reasoning of the jurors about the death penalty and to provide a voice for the victims. Even though legal standards try to preclude passion and feeling, the testimony of the victims necessarily is subjective and evokes affective responses

because the victims carefully borrow themes and stylistics and create speech plans that allow them to witness through both an outer voice of objective fact reporting and an inner voice of subjective reflection. This study highlights the difficulty of moral reasoning in death penalty cases.Victims' rights advocates view the use of impact statements in the McVeigh trial as proof of the success of the movement. In contrast, some legal scholars (Bandes, 1996) continue to see victims' statements as a controversial type of formal legal argument because the emotional features have the potential to trump the factual and logical argumentation. This essay takes the position that victims' arguments are persuasive because they allow arguers to give witness to the seen and the unseen, combine logical and emotional proof, and express multiple personal and social voices through the borrowing and reconstituting of themes and stylistics and the adoption of innovative speech plans that appeal to jurors' assumptions about justice and morality.

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ISSA Proceedings 2002 – Metaphor And Argument In: Ernesto Che Guevara's "Socialism And The New Man In Cuba"

It is difficult to overstate the symbolic significance of Ernesto "Che" Guevara in Latin America. One may doubt Fidel Castro's eulogistic characterization of him as the "model of a human being who does not belong to our time but to the future," "one without a single stain on his conduct" (quoted in Anderson, 1997, 741). After all, Che died a martyr for the ideals of the Cuban Revolution, and the coincidence of Castro's personal and political interests with Che's canonization may be taken as

an indictment of his motives in such statements. Less easily dismissed, however, is the astonishing extent of Che's influence outside of Cuba. Rivaled only, perhaps, by José Martí, Che has become emblematic of socialist revolution, guerilla warfare, and lived commitment to political ideals. His fame is by no means limited to Latin America: A survey of U.S. university students taken the year after his death found Che to be the figure with whom most identified, more so than with any North American political figure or other media personality (A special kind of rebellion, 1969, 70-71). Around the same period, when students in Paris took over their dormitory in a social protest, they named the building "Che Guevara" for the same reason, Julio Cortázar (1969) would later write, "that leads thirst to water or man to woman" (94). Nor has this influence diminished with time. Biographer Jon Anderson (1997) writes of his surprise at discovering the veneration lent Guevara in contemporary contexts ranging from Burma and El Salvador to the Western Sahara and Muslim Afghanistan (xiv). Indeed, this and other indications confirm Mary-Alice Water's (1994) opinion that Che's socialist perspectives and lessons regarding political power have acquired an even greater relevance in the years since his death.

This essay considers the lasting achievement of Che's (1965) essay, "Socialism and the New Man in Cuba" (Socialismo y El Hombre Nuevo en Cuba). Widely regarded as his most famous work (e.g., Anderson, 1997, 636; Castaneda, 1997, 304), the essay advances Guevara's conception of revolutionary ideology and the role of the individual. Following its publication in March of 1965, it was to become the central text of the international politics of the revolutionary left in the sixties (Taibo, n.d., 510), and its central figure, the "New Man," would achieve lasting recognition as a Marxist political ideal. In this essay we argue that the success of the essay in significant measure is owing to the rhetorical virtuosity with which Guevara combined abstract political theory and familiar conceptual metaphor. We will demonstrate through a careful reading of the text that an epistolic framework enabled the articulation of three major metaphorical systems: Journey, Construction, and Oppression. These metaphors function within the text not as simple heuristics or explanatory aids, but as literal instantiations of Guevara's political theory. In what follows, we will consider not only the metaphors and their function, but also the ethical implications of such argument by analogy.

1. The Essay and Its Context

The broad outlines of Che Guevara's life provide an essential backdrop to understanding the essay. Born Ernesto Guevara de la Serna in 1928 to wealthy Argentine parents, Che spent his youth between Rosario, Buenos Aires, and Alta Gracia, Argentina. At the age of 20, he entered the University of Buenos Aires in pursuit of a medical degree. He interrupted his studies two years later to make a solo trip 4,000 miles throughout northern Argentina on a moped, followed by a journey undertaken with a companion around the entire South American continent. After graduating from medical school in 1953, Guevara conducted a second trip during which he became convinced of the need for radical political reform. He joined Fidel Castro the following year in Mexico and began training for an invasion of Cuba. The only foreigner in the group, Guevara was initially included because of his medical skills and developing friendship with Castro. However, "El Medico" quickly achieved respect for his revolutionary ideals and was named head of personnel at the training camp in Chalco, Mexico prior to the invasion. In 1959, following three years of guerilla warfare and the successful overthrow of Dictator Fulgencio Batista, Guevara served in a series of roles in the newly-established revolutionary government, including director of the national bank, minister of industry, and Cuban ambassador. In 1965 he left Cuba to incite socialist reform abroad, and participated in armed struggle in the African Congo. Upon returning to Cuba, he determined to organize a series of guerilla factions throughout Latin America. He was captured and executed near the town of Vallegrande in Bolivia in 1967 at the age of 39.

"Socialism and the New Man in Cuba" was written during Guevara's travels through Africa early in 1965. The work took the form of a letter addressed to his friend and compañero Carlos Quijano, the editor of the Uruguayan weekly *Marcha*. In it, Guevara meditated on the tension between theory and praxis, and argued for a series of propositions. Using Cuba as exemplar, he developed first a narrative of social development in which an individual leader – namely, Fidel Castro – initiated revolutionary consciousness. This consciousness led to guerilla struggle in which a vanguard mobilized, engaged in armed conflict, and served as a catalyst for expanding socialist commitment. From this first "heroic" period emerged the model of the "man of the future," a revolutionary totally committed to the cause, capable of "exceptional deeds of valor and sacrifice" (198), and defined by that agency and commitment. The relationship between leaders and followers in a socialist system was described to be one of "dialectical unity" (200), and contrasted with the mass exploitation by leaders in capitalistic systems.

Turning from the Cuban narrative, Che next considered the nature of individual in relation to the state. Sustaining the individual, referred to as the "New Man," and his revolutionary commitment in daily life and ordinary affairs represented one of the fundamental challenges for socialism. The New Man was always in the making, Guevara argued, "since the process [that creates him] goes forward hand in hand with the development of new economic forms" (203). This process was based in direct education and an ongoing commitment to action. Advancement was linked to conscious engagement in revolutionary change and willing participation in production. In sum, the New Man was educated to "total consciousness as a social being" for the "reconquering" of human nature, thus achieving the capacity to fulfill all aspects of social duty (205-206).

In the final portion of the essay, Che attended to the risks of socialism, noting the dangers of dogmatic extremes, "cold" scholasticism, and "blunted" revolutionary zeal (212). These dangers, and the inevitable sacrifices en route to achieving social freedom, he argued, were justified by the social and individual achievement of the New Man. The essay concluded with a series of axioms drawn from the completed argument: Socialists are more complete and freer than capitalists; the process of achieving socialism is well under way; the costs of achievement are familiar and welcome; the New Man is constantly remade in the process of social transformation; the individual plays a vital role in mobilizing the masses; the vanguard, the Party, represents the "best among the good"; youth are the promise and hope of socialism. He ended the work with the familiar charge, *"patria o muerte"*! (Homeland or death!) (214).

The nature and success of Che's arguments become apparent when we examine his essay in light of its epistolary structure, its dependence on testimonial narrative and the metaphoric conceptions that establish Che's position on socialist revolution. It is to that examination that we now turn.

2. Metaphoric Analysis

We assume what Kenneth Burke has termed a dramatic approach to language, assuming that language is a part of symbolic action as it "necessarily directs the attention into some channels rather than others" (Burke, 1968, 45). As a form of symbolic action, language is at once a reflection, selection, and deflection of reality (Burke, 1968, 45). In the act of naming, all language selects a portion of the thing to be described, a boundary that limits that which is named and in its selectivity it deflects the reader/hearer from other possibilities. As such, language

serves as a frame or terministic screen, focusing our attention, masking certain things, highlighting others, and suggesting, precisely because it is not neutral, a program of action.

Metaphors extend the linguistic potential of definition as they assert a new perspective, and expand the concept of definition. "Indeed, the metaphor always has about it precisely this revealing of hitherto unsuspected connectives which we may note in the progressions of a dream. It appeals by exemplifying relationships between objects which our customary rational vocabulary has ignored" (Burke, 1965, 90). In this fashion, the construct offers us perspective by incongruity and argument by analogy as it asks us, in Lakoff and Johnson's (1980) terms, to "understand and experience one kind of thing in terms of another" (5). The danger inherent in this process is literalization, wherein the analogous similarity becomes an identification, a perceived inherent characteristic. Instead of analogy, literalized metaphors assume the role of proof and reify the suasory interests of those who use the terms. They constrain our conceptual imagination because the metaphor is no longer a figure but a taken-for-granted as accurate description or framework for interpretation. What begins as a linguistic figure becomes ingrained thought and incipient action.

Literalized metaphor, in Burke's conception, becomes the motive for particular action. When an argument for socialist revolution literalizes capitalism as an oppressive master and the worker as indentured, then freedom is only possible when the capitalist system is overthrown. In literalizing the relationship of bondage between an economic system and those who work in the system, the metaphor hides any aspects of capitalist enterprise even those which may be positive by supporting economic development and its subsequent rewards. Literalized metaphors highlight those analogous characteristics that further the claim and hide other characteristics which might challenge the assertion.

2.1 The Epistolary Metaphor

The essay's frame as correspondence evokes an epistolary function. The familiar salutation, "Dear compañero," establishes an intimate tone at the outset. This tone is strengthened by an apology for the lateness of the letter and reference to a promise made to write, and by the use of the familiar voice. In addressing subsequent topics such as the bureaucratization of the revolution, art and education, and the critique of capitalism, Guevara stressed the informality of his arguments by calling them "notes" and by emphasizing that they had been written "in the course of [a] trip through Africa" (197). Although he acknowledged that

his theme of socialism and man in Cuba "may be of interest to Uruguayan readers" (197), the work retains the intimate tone of one friend addressing another.

This frame poses a choice for the reader: The work may be read as an objective text, a private letter written from one person to another. From this perspective, the essay is of little interest aside from the voyeuristic glimpse into Guevara's life that it provides. Alternatively, the reader may assume the perspective of the friend to whom the work is addressed, and so metaphorically treat the letter as one's own. The work clearly privileges the second of these options by providing attractive tokens of warmth and familiarity with virtually no specific references to the particulars of the relationship that might serve as jarring reminders that the reader is, in fact, a stranger to Guevara.

For the reader, certain expectations are borne from the epistolary structure, since a letter expresses a desire of talking to an absent being, and provides us with the illusion of being able to communicate, to dialogue. In her study on epistolary fictions, Linda S. Kauffman asserts that "epistolary texts combine elements usually regarded as opposites: discourse and narrative, spontaneity and calculation" (26). Guevara was thus able to employ a series of strategies that are usually separated because of their contradictory nature; his essay brings forth all of these rhetorical devices and puts them at the service of his argument in defense of socialism.

Che frames his letter as a narrative, "[l]et me begin by broadly sketching the history of our revolutionary struggle before and after the taking of power" (197). Cuba becomes the scene for his narrative, the New Man is the protagonist, and the initial plot a disaster story that was turned around when the revolution put its trust in the New Man, when "the triumph or failure of the mission entrusted to him depended on his capacity for action" (198). Guevara traces two moments in the emergence of socialist struggle: on one front the guerrillas serve as a vanguard for a journey from alienation and subjugation to liberation; a second and more important moment takes place with the awakening of "the still sleeping mass" (198) and its transformation into the New Man.

In this narrative he resourcefully employs several epistolary strategies; he seduces the readers by the lure of becoming the New Man of the future who will fulfill the potential of "a dual existence as a unique being and as a member of society" (201). The seductiveness of this promise lies in the fact that humankind has its destiny in its own hands while at the same time its most altruistic feelings

are awakened. Because this man is an "unfinished product" for the seduction to be effective we have "to compete fiercely with the past" (201) and consciously divest ourselves of an outmoded and destructive way of seeing the individual in relation to society; only then do we break "the chains of alienation" (205). He consistently throughout his essay points out capitalism as an opiate that "lulls the masses, since they see themselves as being oppressed by an evil against which it is impossible to struggle" (203).

Once the reader has been seduced by the image of the New Man one must be persuaded into action. Although Che is exposing his opinion and attacking a capitalist position frontally, he is not defending his position because he is writing for a sympathetic audience, a friend who shares his convictions. Formal support and citation are unnecessary, even inappropriate, in a letter between friends; so Guevara avoids the obligation to provide the sort of grounding for his argument that would be required in other contexts.

In place of the need for such formal grounding, the epistolary framework asserts the credibility of testimonial. Che's facility with the genre is clear by this point in time. He had kept careful journals of his travels throughout Latin America as a young man, and later rewrote these into a testimonial travelogue. This habit would be continued in his *Bolivian Diary*, a clear example of the so called *literatura de campaña* (Battlefield Literature), a forerunner of the testimonial genre. In such work he takes the role of not only a witness but also an actor, a comandante who has actively constructed socialism in Cuba and who after his tour through Africa feels the urgency of solidarity, of presenting a united front against imperialism, and of the need for a New Man now more than ever. Thus, he stands for the collective memory and identity of revolution. These characteristics definitely echo George Yúdice's definition of testimonial literature as:

An *authentic* narrative, told by a *witness* who is *moved* to *narrate* by the *urgency* of a situation (e.g., war, oppression, revolution, etc.). Emphasizing *popular oral discourse*, the witness portrays his or her own *experience* as a *representative* of a *collective memory* and *identity. Truth* is summoned in the cause of *denouncing* a present situation of exploitation and or oppression or *exorcising* and *setting aright* official history (Gugelberger and Kearney, 1991, 4).

By employing an epistolary metaphor and testimonial qualities, Guevara develops arguments without the need for formal proof, advanced as by a friend, and dictated by his personal experience. Within this framework, a series of additional metaphorical perspectives are subsequently enacted.

2.2 The Journey Metaphor

It is perhaps not a coincidence that Che chooses to make extensive use of the metaphor of a voyage/trip to symbolize his quest for revolution while "in the course of [his] trip to Africa" (196). The man who loves to travel as his *Motorcycle Diaries* show, and believes in taking the revolution wherever he goes finds in the journey metaphor its most appropriate expression. The journey metaphor is part of a literary tradition based on the quest. Che seems to reinforce this imagery and as the chivalric men before him sets off on his journey. At the end of this trip, however, is not the heavenly damsel of courtly love but the New Man waiting, eager to construct a new society. Another source for this imagery might well be his own guerilla background. That is, Che relies on the imagery of movement, of laying down the path, of being a vanguard or leader to the New Man and socialism. What we see in common with these images is the importance of leadership, of the knight or guerrilla actively seeking to fulfill a dream; there is no space for passivity, because the New Man must be built (202), must be completed (201). As part of this strong commitment, this vision for change, incentives are important to mobilize the masses (202).

In the first half of the speech, Che conceptualizes the revolution as a journey in which capitalism and oppression lie behind the travelers in the wrong turns and blind alleys; socialism and freedom lie ahead. The move away from capitalism is the beginning of the journey: "There remains a long way to go" that will not be an easy journey; "the temptation is very great to follow the beaten track of material interest" (202). If Cuba and other nations try to follow the capitalist path, to use the remnants of capitalism they will be led into "a blind alley. And you wind up there after having traveled a long distance with many crossroads, and it is hard to figure out just where you took the wrong turn" (202). The road to socialist success will lead to rewards: "[t]he prize is the new society in which men will have different characteristics: the society of communist human beings" (204). But Guevara warns his readers that the journey is "beset with perils" and that although the "reward is seen in the distance; the way is lonely" (201). Uneducated individuals "take the solitary road" and have a "tendency to walk separate from the masses accompanying them" (203); those who are educated into the value of socialism understand their role as the "motor" of society. The masses recognize that the "road is long and full of difficulties. At times we lose our way and must turn back" (204). But Guevara metaphorically holds out the promise of a better life if the journey is completed.

The challenge in this road trip is to discover the right pace for conducting the journey. Che writes "At times we go too fast and separate ourselves from the masses. Sometimes we go too slow and feel the hot breath of those treading at our heels" (204); but always advocates moving ahead, "clearing the way" (204) and advancing rapidly. The task for the emerging socialist nations is to find the right road, the one cleared by the vanguard group, and "not wander from the path" (213) if they want to "create the man of the 21st century" (209) and flesh out the "skeleton of our complete freedom" (213), which the socialist revolution has already formed. Cuba is the case study, the ground for envisioning the proper road, the rejected paths and destinations and the ultimate destination, a place of individual freedom and integration.

Movement, struggle, initiative are key words Che uses to depict the process of constructing a new society. Through incentives that must be both moral and material, education will be the means of raising the consciousness that will become the motor of society (204). Movement as the metaphor that captures the shift from the old to the new is pervasive throughout the imagery of the road and travel. Although he uses all of these metaphors of movement and energy, Che realizes that this activity to promote real change must go through its "institutionalization as a harmonious set of channels, steps, restraints and well-oiled mechanisms that facilitate the advance" (204). It is at this point that he introduces the element of leadership or what he calls the vanguard, those individuals who "have their eyes fixed on the future and its reward" (204), and who are part and parcel of the masses and "walk in unity" (204) with them. The vanguard is made up of the individuals who perceive clearly the values of socialism, which are only partially understood by the masses. Furthermore, these are the individuals who lead by example, whose ideology is advanced, whose sacrifices enable the masses to see the path clearly.

2.3 The Construction Metaphor
Since Guevara acknowledges that, even in the case of Cuba, the "institutionalization of the revolution has not been achieved" (205), the predominance of a journey metaphor turns into a construction metaphor, emphasizing the need for building the socialist society at the end of the road. It is in enacting the socialist journey that both the New Man and the envisioned society are built. The New Man can be "built without any of the old vestiges" (210) from "malleable clay" (210); and this "basic clay of our work is the youth" (213). Che's passion and belief in youth stems directly from one of his intellectual

heroes, the Cuban Jose Martí. Martí in his well known essay, "Our America" presents a plan for ideological and cultural independence for the region based on an original education of the future generations. Che also is aware of the reproductive nature of education as it certainly reinforces the values and attitudes of society. Thus a socialist education would be based on the idea of preparing young people to live and serve their society and to become a conscious ideological instrument at the service of socialism. Thus, this education to be truly socialist must promote change. Undoubtedly these ideas fueled the much successful 1961 Cuban literacy campaign which not only succeeded because of its Marxist foundations but because it was based on " a spontaneous response to the experience of teaching and learning" (Mtonga 4). Some like Kozol even argue that it was through the experience of this campaign that Cubans were transformed into communists.

Continuing with the construction metaphor, for Che there are "two pillars of the construction of socialism: the education of the new man and the development of technology" (207). This latter pillar, technology, lays the "basic foundation" (207) while educating the New Man creates a "superstructure" (207) that will topple the "complicated scaffolding" (207) of capitalism. Che's argument is that socialism requires both "new material foundations" and "build[ing] the new man" (202) through education, hard work, and sacrifice, despite the "difficulties of construction" (210).

2.4 The Oppression Metaphor
We have, throughout this essay, referred to Guevara's characterization of the New Man who can be shaped in the process of socialism and who actively shapes him/herself. This ideal person is contrasted with the oppressed individual, an argument that relies on a cluster of metaphors evoking bondage. Capitalism is personified as a slave master who controls via "a pitiless law" which is "blind" and "invisible" to the masses, yet serves as an "umbilical cord, the law of value" which "acts upon all aspects of one's life, shaping its course and history" (200). Capitalism is imaged as exploitative; as a system that "weakens the combativity of the masses in imperialist countries" (201) and the masses in this argument are depicted as seeing "themselves as being oppressed by an end against which it is impossible to struggle" (203). Capitalism turns the masses "into a docile servant" (207). Its technology, although necessary to socialism as well, is envisioned as a machine that subdues anyone who rebels against the capitalist ideology and except for a few whose "exceptional talents" allow them to "create their own

work" the masses "become shamefaced hirelings or are crushed" (207).

The dialectic between oppressor and oppressed is an idea that is pervasive throughout the essay. Che clearly identifies the capitalist system as responsible for indenturing the masses. He uses a series of zoomorphic metaphors to describe the animalistic condition of humankind; he even refers to those who rejected the revolution and abandoned the island as having been "completely housebroken" (208). People under capitalism are like sheep (199) because they do not think, are like wolves (201) because they are competing against each other in a selfish and individualistic manner, and are like monkeys "performing pirouettes" (208) for individual honors. All of these metaphors reflect the sickness of the system and confirm the dehumanization, the lack of awareness fostered by capitalism, and the loneliness resulting from the commodification of the human being. The system, however, continues to entice people who have lost their consciousness and have believed the myth of the self-made man and the idea that people who behave will be rewarded in the next world. It is precisely this idea which liberation ideology would address as one of their main concerns in their choice for the poor.

Given the oppressiveness of the existing system, what does Che see as the key to breaking the chains of oppression? For the masses to reject capitalism and then recognize and embrace socialism they must go through a process of education. As Paulo Freire argues in his *Pedagogy of the Oppressed*, it is through education that they realize the duality between being and seeming to be. The internalization of a way of life that is assumed as the only possible one (Che claims that the laws of capitalism "are invisible to ordinary people" (200)) leads the 'seeming to be' person to the understanding that to be less oppressed means to become an oppressor. This explains, according to Guevara, how the working class lost its internationalism as they became accomplices in the exploitation of the dependent countries. Hope to change this situation comes from the New Man, who is the one who rises above, is not afraid of embracing his true self and of being free; freedom comes with becoming a vanguard of the revolution. As Che points out, the New Man is no longer concerned about "how many kilograms of meat one has to eat, nor of how many times a year someone can go to the beach, nor how many pretty things from abroad you might be able to buy with present-day wages" (211). The New Man is freed internally and externally from these burdens because with socialism he feels "more complete, with much more internal richness and much more responsibility" (211). The metaphors of master and slave that characterize Che's depiction of capitalism and education and liberation that

characterize socialism and its New Man are literalized in his essay. Che seeks the concrete, the black and white world that these images connote.

3. Consequences of Literalized Metaphors

In promoting his ideas, and in practicing propaganda, Che creates analogies that he perceives as holding inherent values. Even the most pedestrian metaphors are used to educate the reader – to establish the conceptual frame for the Uruguayan readers – and to convince them that socialism and the New Man are the way of life. The first metaphor that he literalizes is the metaphor of the oppressor and the oppressed, the slave and the master. His strategy to persuade his readers and to awaken the conceptual imagination is borne from embracing the non-neutrality of language. Guevara nurtures in his metaphors a concreteness of meaning that stems directly from experience. Since socialism by default is the obvious route to take, it is very likely that his contemporary readers of *Marcha* were easily convinced of his arguments and sided with his vision of capitalism as a dehumanizing system with little to offer the masses. Guevara succeeds in diminishing the distance between language and reality, making a powerful and unmediated call for change to his readers. The power of hindsight allows us to admire his strong idealism and desire for revolution.

Yet, there is a key problem with his argument. For the 21st century reader it is a strain to accept these literalized metaphors that act as master narratives which polarize reality so neatly between desired/undesired, good/bad, socialism/capitalism. Although we can see in Cuba today a community that is strong and where the interest of the people is primary, they have still needed some material incentives since the individual's selfishness has not necessarily been obliterated by socialism. However, there are many examples in which solidarity and altruism have played key roles in the dissemination of socialist belief. For example, Cuba's continuous aid in moments of emergency to other nations (Nicaragua after the earthquake, Honduras after the hurricane), or their eagerness to help out with medical aid or education either by providing technological support or know-how to poorer countries reflects altruism. Thus, in some ways Cuba has become a vanguard in Latin America although the individuals in its society have had to continuously grapple with this issue. Che warns us several times that the process toward socialism is a lengthy and slow one, but perhaps he did not realize how slow or lengthy it could really be. Furthermore, he did not take into consideration other kinds of diplomatic, economic, cultural, or historic problems that would influence and hinder the

development of the New Man.

For Guevara the New Man is a reality and he invests him with a series of values: he will be a leader of the vanguard, he will be guided by true revolutionary love, he will be responsible and more complete, and will inspire by his example. Yet the New Man can not come to fruition until socialism has taken place and socialism can not come to fruition without the New Man. As a true Marxist-Leninist, Che believes the Party will mediate between socialism and the New Man. Although he recognizes that the Party can have its faults, as for example, when in March 1962 due to sectarian policy there was a "decline in collective enthusiasm" (199). Also, the Party must keep a fine-tuned balance of not converting the mass into a flock of sheep because it follows its leaders blindly. What would happen if the leader of the party would not follow the people's aspirations? Because of his experience, Che believes that Fidel is a strong and good leader who mediates between the mass and the individual, seeking "a dialectical unity" (200). He defines a good leader very much as the Cuban people define him today; that is, the leader is followed not as a result of a temporary event or because there is a cult of personality, which inspires ideas that "live only so long as the individual who inspires them" (200), but because he has fused himself with the people. Che says, "Fidel and the mass […] vibrate together" (200). The New Man depends on all of these factors coalescing to nurture him. As with socialism, the effect of literalizing the New Man metaphor leaves the reader with few options and engages us in change: either we embrace socialism and the New Man or we are doomed to a system that is corrupted, sick, and can only ensure our slavery.

4. Conclusion
Che writes from experience and because he played such an important role in the Cuban Revolution his words were received with respect, love and admiration. When he writes about his faith in the New Man and he supports his statements about the Party, the vanguard, and socialism with his testimonial of the Cuban revolution, his Montevidean readership was very likely to unquestioningly read and accept his letter. We could say that the power of testimony supports his discourse and that the epistolary structure of his statements shapes his message in a reader-friendly simple manner, reaching out to a public and actively persuading them into action with his beliefs. But to the contemporary reader the literalized metaphor is a major hurdle. We read in a critical manner because of our historical and cultural context and hindsight. We question the existence of the

and of the possibility of creating a system in which revolutionary love would be the sole impulse driving human actions, especially since we know that the Cuban Revolution has been faced with the problem of incentives and because the New Man is still a project in the making. Although as rhetoricians the literalization of metaphors bothers us, for Che it was a very natural step in his proselytizing discourse to employ such metaphors. He probably saw the constructions of literalized metaphors as weapons that by creating a polarized world and turning reality into two camps, us and them, would engage people in change. Che's zeal stems from his own context, one in which there is no middle ground since the revolution was at stake together with the revolutionary movements in the developing countries in Africa and Latin America.

It is interesting after reading Che's essays that their impetus is timeless. He still awakens in us the desire for a better world in which humankind will be able to display and pursue its full potential. It is outdated, however, when we analyze his rhetorical strategies. He pursues narratives that are clearly defined; he dislikes gray areas and prefers the clarity marked by a final goal, a revolutionary society. Although he acknowledges the difficulty of reaching the goal, of the dialectical movement marked by success and defeat, he also openly embraces the fact that "in a revolution one wins or dies" (1994, 71).

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ISSA Proceedings 1998 – Reconstruction Games: Assessing The Resources For Managing Collective Argumentation In Groupware Technology

Advances in new information technology has brought computerization to bear on practices of argumentation in organizations thus providing a range of new alternatives for improved handling of disputes and decisions (Aakhus, 1997; Baecker, Grudin, Buxton, and Greenburg, 1995; Ngyemyama and Lyytinen, 1997; Nunamaker, Dennis, Valacich, Vogel, and George, 1991; Poole and DeSanctis, 1992). Many of these technologies, called "groupware," are systems explicitly designed to intervene on discourse and manage it by supplying resources that help communicators overcome obstacles to resolving or managing their disputes and decisions. In designing and deploying groupware, members of the industry practice "normative pragmatics" (van Eemeren, Grootendorst, Jackson, and Jacobs, 1993) since they grapple with the problem of reconciling normative and descriptive insights about disputing and decision- making in order to effectively manage it. In particular, they must deal with a critical puzzle for argumentation theory and practice (and for groupware design). That is, how to develop procedures that further the resolution of a dispute while remaining acceptable to the discussants and that apply to all speech acts performed in order resolve the dispute (van Eemeren & Grootendorst, 1984, p. 17).

The purpose here is to show how practical solutions to this analytic puzzle found in groupware reveal implicit theories of argument reconstruction. Implicit theories yet to receive descriptive or critical attention. This is accomplished by conceptualizing groupware products as models of "reconstruction games" that when implemented constitute particular forms of talk through which parties address a dispute or decision.

1. Groupware

Groupware products are designed for a wide range of human activity that involves argument relevant activities such as scheduling, strategic planning, design, group-writing, and negotiation. Groupware is defined by Peter and Trudy Johnson-Lenz as "intentional group processes and procedures to achieve specific purposes plus software tools designed to support and facilitate the group's work" (Hiltz and Turoff, 1992, p. 69). The enduring novelty of groupware lies in (1) the capacity of the tools to allow large groups of people to come together across time and geographic location and in (2) how the nature of the medium might solve standard problems of collaborative decision-making such as information sharing, cooperative action, authority, and errors of collective judgement (Johansen, 1988;

Sproull & Keisler, 1991; Turoff & Hiltz, 1978).

Advances in networked computing are leading to a proliferation of groupware products that are increasingly difficult for users, designers, and researchers to classify, assess, and choose. Indeed, what are groupware products supposed to do? It is generally understood that groupware aids decision relevant communication (DeSanctis & Gallupe, 1987). Yet, existing approaches for classifying and assessing groupware do not adequately address the communicative purposes of groupware design. For instance, the most common way proposed to understand groupware is in terms of how the tool supports interaction across time and geographic location (Johansen, 1988). The trade literature, moreover, focuses on the technical compatibility of groupware products within existing technological infrastructures (Price Waterhouse, 1997).

An alternative way to understand groupware proposed here is to conceptualize it as a tool for constructing particular contexts of argumentative discourse. To develop this perspective, groupware products will be distinguished in terms of their model for reconstructing a dispute or decision into argumentative discourse. It is first necessary, however, to outline the complexities of common circumstances for which groupware products are designed and implemented and then to conceptualize groupware in terms of resources for constructing forums of argumentation.

2. Managing Disagreement

The decision-making circumstances for which groupware products are designed and implemented involve small to large groups of participants engaging in activities such as strategic planning, design, negotiation, and policy-making. Deliberation is a key purpose of these activities since the activity involves determining a prudent course of action more than, say, establishing the truth or falsity of any particular claim (Walton, 1992). Deliberation is a socially and intellectually complex activities for at least three reasons.

First, the complexity of deliberative activities occur because collective choices must be made under conditions where it is difficult to know what the consequences of any particular choice will be or whether current preferences for what counts as a good choice will hold in the future (March, 1979; March, 1994). Indeed, arguing about consequences as a way of determining what-to-do is a feature of deliberative discourse (Walton, 1992).

Second, deliberation becomes "wicked" when there are numerous participants who variably leave and enter the decision-making and when there is no definitive

statement of the problem itself (Conklin & Weil, 1998; March and Olsen, 1979; Meader & Weick, 1993; Shum, MacLean, Bellotti, & Hammond, 1997). A great deal of argumentation in deliberative circumstances is over what is and is not arguable and who can and can not make arguments.

Third, deliberation depends on plausible reasoning where participants make and grant assumptions for the sake of moving the discussion forward (Kyburg, 1991; Walton, 1992). This means that conclusions and chains of arguments are based on defeasible reasons that change when better knowledge becomes available, thus shifting the grounds for accepted conclusions and lines of argument. How it is possible for decision-making to successfully go forward, despite the uncertainty of claims, incomplete knowledge, goal ambiguity, and instability in preferences, depends on the capacity of the participants to manage the "disagreement space" around a dispute or decision and to construct viable standpoints to pursue in developing a prudent course of collective action.

A disagreement space is the "structured set of opportunities for argument" defined by the "indefinitely large and complex set of beliefs, wants, and intentions" that interactional partners can reconstruct from what has been said or project in saying something (van Eemeren et al., 1993, p. 95). How "disagreement space" is reconstructed is critical to how a dispute or decision is collectively pursued. A dispute or decision, for instance, can escalate beyond the control of the participants or de-escalate to the point of no interaction depending on how the participants reconstruct opportunities for argument from the pragmatic circumstances of the dispute or decision (van Eemeren et al., 1993; Jacobs and Jackson, 1992; Jacobs, Jackson, Stearns, & Hall, 1991). What a resolution to a dispute or decision is, what is learned by the participants, and what is established as grounds for future action, depends on how disagreements relative to a dispute or decision are handled. It is quite useful then to see groupware in terms of what argumentative resources it supplies for participants to reconstruct a dispute or decision into a manageable disagreement space on which collective argumentation proceeds.

3. Reconstruction Games
Attention has only recently turned to understanding how groupware is constitutive of communicative activity like argumentation (Meader & Weick, 1993; Ngyemyama and Lyytinen, 1997; Orlikowsiki, 1992; Poole and DeSanctis, 1992).

In particular, how groupware helps parties to a dispute or decision understand and shape the decision or dispute in which they are engaged is only beginning to be understood (Aakhus, 1997).

Groupware products can be usefully conceptualized as special instances of rules of argumentative conduct for reconstructing disputes and decisions into particular forms of argumentative dialogue. Groupware products are "designs for discourse" because they reconcile normative and descriptive assumptions about argumentative discourse (Aakhus, Madison, & Jackson, 1996). Groupware represents a set of design choices made about how participant expressions, beliefs, sentiments, and habits ought to be transformed into a particular type of disagreement space and thus opportunities to pursue the resolution or management of a dispute or decision. The affordances of a groupware product design invites parties to treat disputes and decisions as particular kinds of argumentative activity by supplying means to distribute turns and allocate types of turns and means to elaborate and extinguish lines of collective reasoning.

Moreover, the tools set up preferences for the type of argumentative roles available to the participants relative to what is said and what is projected and inferred from what is said. The activity which participants orchestrate via the groupware produces the grounds for further activity and outlines a framework of participation for that provides a "working consensus" for engaging in the dispute or decision (Goffman, 1959; Goffman, 1981). A framework from which the reasonableness of individual and collective activity is judged and sanctioned (Heritage, 1984). Groupware is not a dialogue game in Walton's (1992) sense but the materials and practical theory for reconstructing the context of a dispute or decision into various forms of argumentative activity.

The design features of groupware products idealize particular forms of argumentative activity that make some moves for solving a dispute or decision more reasonable than others. Reasonableness depends not only on the content of a contribution but on the form and timing of the move relative to the activity. How a decision is made or dispute resolved is as important as what is concluded. What counts as rational is located in the procedures for formulating contributions, taking-turns, and assessing contributions. The complexity of the deliberative circumstances where groupware is implemented makes the form of the activity taken to handle a dispute or decision a special warrant for the rationality of collective action and conclusions generated through the activity. How does

groupware contribute to the resolution and management of disputes and decisions?

First, groupware supplies categories and procedures that, for instance, enable parties to organize standpoints, elaborate and extinguish lines of argument over a standpoint, and manage impasse to foster progress. The groupware product provides answers and routines for organizing talk. Second, groupware products have a systemic rationality (March, 1988) that explains how to organize interaction as well as justify the reasonableness of the outcomes of activity based on the groupware design. Groupware products not only supply material resources for shaping a disagreement space but a rationale for shaping it in particular ways. This will be illustrated by describing classes of reconstruction games modeled in groupware products.

Three classes of reconstruction games have been identified thus far in groupware products. These are summarized in *Table 1* relative to the purpose of the game, its basic model for orchestrating interaction, and its systemic rationality. Purpose refers to the aim of reconstructing a dispute or decision. Orchestration refers to how relevant argumentative activity is structured. Systemic rationality refers to how argumentative activity warrants the outcome of the activity.

Table 1 Reconstruction Games

Reconstruction Game	Purpose	Orchestration	Systemic Rationality
Issue Networking	Form a web of issues and relevant positions on issues	Clash of claims	Self-correction of claims and lines of argument
Funneling	Consensus Formation	Flow of argumentation toward an acceptable conclusion	Activity establishes commitment to put proposals into action
Repertoire	Create a knowledge base for action	Pooling and refining expertise	The best available expertise competes to answer questions posed by those who need an answer

4. Issue Networking

"Issue-Networking" is one type of reconstruction modeled in groupware that is closely aligned with the critical discussion model of pragma-dialectics. This model idealizes participation in argumentation as a series of moves by participants to identify and connect issues while developing pro and con standpoints relative to any issue.

Progress towards a resolution is a matter of optimizing disagreement through the clash of claims. The groupware tools help participants orchestrate their interaction by providing structures intended to optimize the clash of claims so that lines of argumentation unfold to reveal areas of agreement and disagreement, unarticulated issues, and relevant relationships among issues. These groupware products supply means for participants to label their turns as a particular type of contribution to a decision or dispute and to indicate whether a participant is making a new contribution or responding to previous turns. By participating in the mode prescribed by the groupware tool, the groupware

product can create a representation of the interaction as argumentation. Through the groupware tool the participants can see how their interaction unfolds as lines of argumentation, how particular turns contribute to a line of argument, and how a context of issues and claims forms around conclusions from the unfolding clash of claims in a discussion.

Groupware products that reflect the issue-networking model are found in web-based conferencing systems such as HyperNews and OpenMeeting. These systems supply basic turn types for participants to take up in dealing with a decision or dispute.

HyperNews, produced at the National Center for Supercomputing Applications, allows participants to indicate whether their contribution to the discussion is a new idea, an agreement, a disagreement, a clarification, or relevant documentation (HyperNews, 1998; LaLiberte & Woolley, 1997; LaLiberte, 1997). OpenMeeting, produced at Massachusetts Institute of Technology and used in U.S. government's National Performance Review, provides additional labels for actions taken and alternative proposals (Hurwitz & Mallery, 1998). The participants can identify the type of action they take in contributing to the decision or dispute while the groupware creates a record of the argument as a network of issues. The labeling and outlining provide means for coordinating lines of disagreement and keeping the line of argument taken up relevant.

Questmap is part of a commercially available groupware product made by the Softbicycle Company that is a good example of a tool for orchestrating discourse as an issue-networking game (QuestMap, 1998). It is similar, in principle, to OpenMeeting and HyperNews but is tailored to both synchronous and asynchronous meetings. QuestMap, in addition, uses a graphical representation of discourse as argument and it is based on the IBIS model of capturing design rationales (Conklin, 1998; Conklin & Weil, 1997; Yankemovic & Conklin, 1990). The materials for orchestrating talk into argumentation are as follows. The primary screen that each user views produces a graphical representation of the dispute or decision that provides the fundamental turn types in QuestMap. Turn are identified with icons that mark issues as question marks, arguments as lightbulbs, and reasons as a plus or minus sign indicating pro or con.

Through the screen, the participants can "click" on any icon representing part of the developing argumentation in order for the participant to add or extend issues, arguments, or reasons. The fundamental turn types that are made available to

participants through QuestMap include posing a question, posing an idea that is an answer to the question, and posing pro or con positions to ideas offered by others. It is expected that a question, or issue, must be stated as a real question, not one that presupposes its own answer, and that an idea is an assertion that can be argued (Conklin, 1998).

There can be an unlimited number of ideas in response to a question. For each idea, participants can present a pro or con argument. These basic turn-types built into the software increase participant opportunities to expand the argumentation around a choice. QuestMap also allows participants to signal that a decision has been made on an issue and allows participants to signal that they accept an assertion without contributing further to the discussion.

Groupware products that enable participants to reconstruct their decision or dispute as a network of issues reflect commitments to critical discussion, such as outlined by pragma-dialectics, since participation is not limited in terms of raising doubts and new issues. Issue-networking style groupware focus participation on the development of discussion threads for the benefit of the group and the individuals. The tools emphasize opening up lines of argumentation as opposed to closing or limiting lines of argumentation. The tools maximize opportunities for participants to develop issues and scrutinize the claims of others. Exploration of the disagreement space is not limited since all claims can be challenged, the clash of claims is open to the scrutiny of the participants, and any participant can contribute to the development of a line of argument.

Moreover, the resolution of any issue is a product of exhausting lines of argument around the issue. The rationality of issue-networking style groupware is vested in two levels of scrutiny. First, all participants can contribute to and examine the micro-exchange of assertions in response to an issue because these types of tools attempt to focus clash and the development of lines of argumentation. The pursuit of issues and claims, however, is left to the control of the participants developing issues and scrutinizing what others have said. Second, the macro development of the issue network is open to correction as new facts, knowledge, interpretations, and circumstances emerge because these tools allow participants to examine the rationale behind an existing conclusion when that conclusion becomes part of another decision. The product of the micro exchange is an emergent collective representation of the dispute or decision space that forms improved grounds for current and future individual and collective action.

These tools treat disputes and decisions as contexts for individual and collective

learning since the tools emphasize the capacity of individuals to explore and develop better positions on issues more than settling an issue by closing discussion on it. Issue-networking tools warrant conclusions reached and actions taken because issue-networking, in principle, aims to reconstruct argumentative activity that exhausts the production and critique of claims made to resolve issues in a dispute or decision.

The general design of issue-networking tools emphasizes the exploration of issues and the capacity to adjust lines of argument before and after decisions. These strengths reveal two areas for developing and implementing the models of reconstruction in these types of tools. These two weaknesses stem from the fact that scrutiny over argumentation and the development of an issue network is left to the common sense and tastes of the participants. First, the argumentative interaction in these settings is subject to drift (March & Olsen, 1976).

This means, for instance, that argumentative attention and activity may develop lines of argument that draw attention to features of the dispute or decision that are later found to be irrelevant or irresolvable. It also means that the mode of decision-making misses the point of what people are trying to argue such as when argument over face and identity is treated as a digression rather than material to the multiple goals involved in resolution of a choice (see van Eemeren et al., 1994 and Jacobs et al., 1991).

Issue-networking tools provide categories and procedures for treating discussion as a clash of claims but no categories and procedures to draw participant attention to sources of micro-level digression and macro-level drift in the development of the issue network. Certainly, some sort of fallacy recognition would be useful. How to do this is a complex matter since the design of the groupware must remain elegant. The OpenMeeting system, for instance, provides for a moderator role where particular people screen the quality and relevance of a contribution before it is made available to the rest of the participants. There is also the possibility that participants could be assigned particular roles such as critic or evaluator to help foster discussion (Sillance, 1994). Another approach is to focus on the types of turns people take rather than assigning particular roles. This leads to the other area for development of issue-networking tools.

Second, labeling how a turn contributes to an argumentative discussion is roblematic. Assuming that labeling a speech act is a valid means to signal argumentative intent and to create interactional coherence, then the types of labels offered matter a great deal. The issue, claim, and pro/con labels are

obviously just one avenue for construing argumentative interaction. There could be other arrays of choices for labeling that indicate, for instance, whether a participant is attacking grounds or warrants. Moreover, participant might be allowed to tag other comments as a type of fallacy to check and to build repertoires of practical reasoning problems. Offering more labels for turn taking, however, seems to overcomplicate the technology and may be an inadequate assumption about how communicators interpret messages. An alternative is available in POLIS which is a groupware tool to support on-line learning (POLIS, 1996). Some POLIS tools require participants to formulate a stance relative to an expert opinion or popularly held opinion. Thus, the procedures for turn-taking presuppose clash and provide the grounds against which to argue. Such an approach makes it possible for participants to engage taken for granted assumptions developing in the issue network without taking on the burden of appropriately labeling their action.

"Funneling" is another type of reconstruction modeled in groupware. These groupware tools help parties to a decision or dispute orchestrate their interaction by providing structures that solve problems collectives encounter in making progress toward a conclusion, such as participant willingness to disclose new ideas or to evaluate the ideas of others (Nunamaker et al., 1991). Groupware that models a funneling reconstruction game provides means for participants to orchestrate their interaction so their joint activity manufactures a consensus that settles their decision or dispute. Decisions and disputes are reconstructed through the tools as a sequence of collective activities that successively narrow a dispute or decision toward the most acceptable conclusion. Argumentation is idealized as a means for formulating a proposal that the collective is willing to back. The funneling game departs from the critical discussion ideal modeled in pragma-dialectics due to its emphasis on settlement but shares a commitment to viewing argumentation as a preferred sequence of activities that in turn prefer particular speech acts.

The groupware products that most typically reflect a funneling model are group decision support systems (GDSS). GDSS are traditionally deployed in meeting room settings but more recently GDSS style groupware products have debuted as web-based tools. GDSS tools provide an interface that outlines how parties should exchange messages when handling their dispute or decision (Aakhus, 1997a). Screens generally function as a means to capture messages, to access and

retrieve stored messages, or to manufacture new messages. Each GDSS varies in how these functions are performed but typically each GDSS has at least one tool enabling participants to orchestrate their interaction into activities focused on gathering intelligence, design alternative courses of action, and evaluate and choose a course of action. Because GDSS design treats argumentation as a sequence of activities that encourage collective opinion to converge on a conclusion, the specific tools offered in GDSS systems are usefully arrayed along the phases of sequential decision-making models. Table 1 uses Simon's (1960) decision processing model to display the tools available in some GDSS groupware products. The rows show tools from GDSS products relative to phases in the sequential model. GDSS tools can obviously be used for a variety of functions but are entered into this table in terms of the tools primary purpose.

Each category in Table 2 displays various GDSS tools for orchestrating a dispute or decision. Reconstruction modeled in GDSS differs from issue-networking in that the GDSS does not highlight the micro-clash of claims. Instead, GDSS focus on managing the flow and transition of argumentation from one phase to the next, channeling interaction towards settlement. GDSS tools orient toward collecting and managing expressions of opinions and then manufacturing individual comments into a collective statement (Aakhus, 1997b). The clash of individual claims becomes important when it draws out more opinions for the group to collectively sort and evaluate.

First, tools for gathering intelligence, such as "brainstorming" tools, focus on capturing participant comments by encouraging participants to say whatever is on their mind so that no possible idea is left out. Intelligence gathering tools collect all ideas participants have about a topic or issue into a massive pool of messages. These messages provide the materials on which the group will construct its decision. After using these tools, the dispute or decision is, in a sense, contained in the pool of messages the participants generate, as is the solution. The relevant next activity is to search and order the pool of messages to find the solution.

Second, tools for designing and creating alternatives, such as, "organizer" or "categorizer" allow participants to breakdown the pool of messages into representative, mutually exclusive categories.

These categorizing tools enable participants to reduce the mass of messages and thus organize a collective search for an answer to the decision or dispute. Once the pool of messages is categorized, the participants can organize and assess the

categories or create categories of categories to aid their search for an answer. Categorizing is a form of critique of what is said since categorizing puts a particular order to contributed messages.

Third, tools for evaluating alternatives, such as "prioritize" and "rank," provide means for participants to jointly critique and foster progress toward a conclusion. The tools typically allow participants to compare and assess across categories of messages in order to determine which categories are better or worse. The voting tools are means to represent the underlying attitudes of the group. Some voting tools, such as in GroupSystems, report levels of consensus among the individual rankings or ratings of the participants. Vote results and consensus measures enable participants to formulate the collective will and point to more and less obvious lines of action. The voting tools might be used; for example, to identify which categories participants will give more attention in a discussion or to choose an alternative.

The rationality of groupware products that enable participants to reconstruct their decision or dispute as a funneling game is found in how the tools enable the manufacturing of both collective opinion and collective will. GDSS tools enable parties to orchestrate their interaction in a way to find the most acceptable proposal or solution for a decision or dispute. The funneling game enables participants to balance demands for efficiency, wide-spread participation, and collective reflection. Participation proceeds by jointly constructing a pool of messages, jointly organizing and reducing the pool of messages, and finally jointly developing criteria and evaluating messages and categories using those criteria.

Table 2 GDSS by Sequential Decision-Making Phase				
	Meeting Works by Enterprise Solutions, Inc.	Group Systems by Ventana Corporation	Council by CoVision , Inc .	k.net by Mlingo
Intelligence: Define problem and develop solution criteria	Generate	Electronic brainstorming, Groupwriter	First thoughts, big questions	Brainwriting
Design: Organize knowledge and create alternatives	Organize	Categorizer, Topic commenter	Rough cut 1, Priorities	Idea inventory , Idea splitter, Idea funnel, Categorize

Table 2 GDSS by Sequential Decision-Making Phase

The emphasis on formulating consensus is quite visible in how the style of the tools orients the argumentative work of the participants on constructing the boundaries for argument in their dispute or decision. The clash of claims is not part of the structure of the tools. Instead, the boundaries constructed through joint construction of a message pool, categories, and criteria outline a set of commitments for explaining and justifying future action, especially in the face of

doubts or threats. Voting, for instance, is a means for displaying collective sentiment toward an action. Measurements of consensus do not justify the merits of a claim or proposal as much as allow a group to scrutinize its collective will to do or believe something.

The strength of groupware modeling a funneling game is its capacity to manage the flow of argumentative activity and foster movement toward a collective conclusion. This capacity rests in important ways on how the tools separate individual arguers from the claims and critiques they offer and a focus on producing meta-information to represent decision-making.

First, the tools separate the arguer from claim so that the claim stands as an idea of its own for the examination of others. Treating messages as units of information that can be stripped from sequences of activity and transferred to other categories or activities compounds this separation.

While separating arguments from arguers relieves interaction from some causes of conflict escalation, a potential consequence is that reconstruction through these tools orchestrates practical argument as a search for the truth of assertions while missing other relevant modes of organization around rights, obligations, and interests. Furthermore, the principle of separation may appear to contribute to the search for true assertions, while the methods of reconstruction actually treat argument as an ironic form of information management where decision-making progress is based solely on the perceived value of gathering and organizing information (Aakhus, 1997).

Second, argumentation progress is based on creating meta-representations of what the group has said. Reducing a mass of messages entails a loss of information value so what is gained and lost in reduction is critical. Categorizing allows for easier management and navigation through the mass of messages but those gains do not mean that issues in the decision or dispute are resolved or clarified. Voting summarizes opinions but it is not a means of creating a clash of competing claims. It is a means for representing the willingness to believe or act on some claim. GDSS tools carry the capacity to create more abstract, high level views of a dispute or decision while glossing over the details.

6. Reputation

Experts-exchange (1998) is a novel form of groupware that points to a potentially new category of reconstruction game that allows participants to orchestrate their interaction as a form of expert inquiry. Experts-exchange allows participants to

create a space where users can pose and answer questions and sort out the best questions and best answers. This particular groupware product idealizes argumentation as advice giving through questions and answers while giving the non-expert leverage to hold candidate experts accountable.

The groupware product provides the following structures for interaction. People seeking advice can pose questions to candidate experts but in order to participate the question-asker must be willing to award points for the best answer. It costs to ask questions, so there is incentive for the question asker to ask good questions. Candidate respondents can earn the points offered by the asker if they supply the best answer as judged by the question-asker. It is through the continued participation in this activity, participants can collectively, though individually figure out how to take action to solve problems. The model of argumentation links knowledge and action at two levels. At the micro level the asker gets answers to questions. The answers are formulated by knowledgeable people and tailored to the specific question. At the global level, a number of collective benefits accrue from the micro exchange of questions and answers. First, a pool of experts develops based on their ability to successfully answer questions. Second, pool of assessed and rated answers to questions develops. Third, there is a general selectivity of question asking since there is cost to asking questions.

The reputation game modeled in experts-exchange is novel because it does not rest scrutiny over argumentation in pro-con exchange nor as a series of activities leading to a collective conclusion. Instead, it treats argumentation as the growth of knowledge relevant to taking action. The economy of interaction on which it is based connects the micro exchange of question and answers with the growth of collective knowledge about problems and issues. By putting reputations at stake, action in argumentative activity is focused on determining who provides the best answers to the questions people have about what action to take. The rationality of the system is vested in keeping individuals tied to their contributions so that people do not become separated from their ideas. Scrutiny over argumentation is based in the way an expert's answer must be accountable to the question asker. The ability to build a reputation as an expert depends on how well a candidate expert formulates an answer that solves the posed problem and that can be understood by the question asker. The structure of activity transfers the burden of translating expertise for non-experts to the expert since the competition lies in providing answers not in questioners forming a queue behind the most notorious expert.

7. Conclusion

This paper prepares the ground for further investigation of how models of argumentation and rationality are institutionalized in procedures, practices, and practical theories of technology, organization, and professional practice. What we see in groupware products are "reconstruction games" for orchestrating disputes and decisions into particular forms of argumentative activity. As such, groupware products are instantiations of practical theories about how argumentation can be used to manage disputes and decisions. These theories reconcile descriptions about how argument works and how it ought to work in practical circumstances. Choosing among groupware products or designing a groupware product, then, is a choice about what counts as good argumentative activity to handle decision or disputes as much as it is a choice about the technical feasibility of a product. We are only beginning to understand how to assess argumentative practice when the assumptions behind theoretical ideals do not hold (Aakhus, 1995a; 1995b; van Eemeren et al., 1993).

The need to assess groupware, and other means for constructing communication forums, points to the further need to refine argumentation theory to cope with orchestration practices and the systemic rationality of communication forums. There is a need to theorize the role of "procedural heuristics." That is, how models of argumentation are selected and put into play by individuals and organizations, how those models transform ordinary modes of disputing and decision-making into new modes, and how the models have consequences for collective action and knowledge.

The preceding description of groupware as models for reconstructing argumentative discourse, for instance, suggests the existence of a significant population of argumentation models that lie somewhere between theoretical and naïve models of argumentation. We see in the design of groupware products how the product focuses on making deliberative discourse possible while leaving the substance of critique and resolution of claims to the common sense of the participants. Certainly, this helps keep the procedures usable and less invasive for users but generally neglects how computing tools might enhance collective reasoning beyond simply breaking down the barriers of expression. For instance, there is little in the way of procedures that allow for specialized roles or the tagging and collecting of decision biases and fallacies in collective reasoning (see Sillance, 1994). Whether and how to include such procedures, however, points to the multiple levels of assessment required in developing argumentative

procedures and constructing forums for managing argument. The next steps should consider how argumentative models articulate with social contexts and how types of argumentative activity are forms of collective identity. The validity of a set of procedures depends on whether it works and whether people use it as intended.

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ISSA Proceedings 1998 – Satisfying The Argumentative Requirements For Self Advocacy

1. Introduction

Recent advances in treatments for individuals with a Human Immunodeficiency Virus (HIV) infection or Acquired Immune Deficiency Syndrome (AIDS) have generated hope for renewed life for many who believed they would die prematurely from the disease, but have also created much confusion and uncertainty for those individuals and their physicians (Brashers, Neidig, Cardillo, Dobbs, Russell, & Haas, in press). Treatments are not equally effective for all individuals, the long-term efficacy and safety of many drugs are unknown, antiviral drugs and treatments can be used in many different combinations, and the selection of some drugs can lead to difficult lifestyle accommodations (e.g., drug regimens with large numbers of pills taken each day, rigid eating schedules, and uncontrollable patterns of diarrhea and nausea). These and many other factors must be considered when making decisions about treatment options.

Many individuals with HIV or AIDS have taken to educating themselves about treatments, reading scientific reports and engaging in activities such as journal clubs and discussion groups, so that they may make informed treatment decisions (Brashers, Haas, Klingle, & Neidig, 1998). These activities provide the basis for patients to argue for preferred treatments in discussions with their physicians. Yet, despite their increased knowledge about treatment options, many patients have difficulties in the process of advocating for themselves.

Why is advocating for oneself problematic? Argumentation often is seen as a circumstance which calls for objective reasoning. Individuals who need to promote their own interests (i.e., self-advocacy) in what might be taken as an argumentative context (e.g., requests for medications or treatments from a physician, letters of application for employment, or other requests for actions that benefit the advocate) often appear too interested in the outcome to remain sufficiently objective. Self-advocacy is a form of argumentation which can create unique requirements, including how to promote one's self-interest while providing evidence and reasoning will be free from personal biases.

The requirements for self-advocacy argumentation are a function of norms and circumstances that vary across situations. In this paper, we explore the argumentative requirements of self-advocacy in the context of individuals with a Human Immunodeficiency Virus (HIV) infection or Acquired Immune Deficiency Syndrome (AIDS) and their interactions with health care providers. Literature on activism and self-advocacy will be reviewed as background. Data from a larger project on AIDS activism and self-advocacy is used to examine specific argumentative strategies reported by individuals to promote their interests in interactions with health care workers. The analysis will be used to explore claims about the unique argumentative burdens of self-advocacy, as well as to demonstrate how supporting self-advocacy claims may lead to perceptions of fallacious moves in the discussion (e.g., playing on the opponent's compassion or providing a personal guarantee of the correctness of the claim, see van Eemeren & Grootendorst, 1992).

2. AIDS Activism and Self-Advocacy
Despite repeated calls for establishing greater equality in the physician-patient relationship (see Ballard-Reisch, 1990; Frederickson, 1993; Hyde, 1987; Ratzan, 1993), research indicates that the typical physician-patient interaction is one in which the physician is dominant and the patient is submissive. After reviewing the literature on physician-patient communication, Brashers et al. (1998: 10) argue that:
The asymmetrical position of authority afforded physicians is a process that is both encouraged and sustained by behaviors of physician and patient. On one hand, although patients often desire to participate more in health-care interactions (perhaps to become more participative in decisions made about their health care), frequently they do not assert this desire. On the other hand,

physicians are trained and often conduct the medical interview in a way that discourages, rather than encourages, patient input.

In addition to understanding the physician-patient relationship as imbalanced, most researchers of physician-patient communication assume compliance-gaining and persuasion efforts move in one direction. The physician is thought to be the persuader and the patient is the one to be the target. Physicians often are charged with getting people to do things they will not want to do (or might not naturally do) -modifying diet, exercising, stopping smoking or drinking, or taking medications. Even within most "participative" decision-making models (e.g., see Ballard-Reisch, 1990), the patient's role is perceived to be twofold:
a. providing information about their personal circumstances and
b. accepting or rejecting treatments from among a set of alternatives supplied by the physician.

In practice, physicians often enact the role of persuader by adopting an authoritarian or a paternalistic style of communication. In addition to that, the patient, as the persuadee, often is thought to have social and psychological barriers to action, such as bad habits (e.g., smoking or drinking) or difficult life circumstances (e.g., inadequate income or psychological disturbances).
One group of individuals that has been particularly aggressive in challenging this "traditional" medical model of health care is comprised of AIDS activists, who have targeted changes at the social, political, and individual levels. Their targets have included changes in drug testing procedures, elimination of discriminatory policies, promotion of health care availability. Activists use a combination of symbolic protest strategies (e.g., marches and demonstrations) and persuasive efforts (e.g., meetings with high level governmental officials) to affect these changes. These collective practices have helped to shape a community of individuals infected with HIV, along with their friends, families, and colleagues. Fabj and Sobnosky (1995) contend that:
AIDS activism demonstrates that the strategies of redefinition and translation provide activists with the authority and the tools to publicize issues surrounding AIDS. As well as enlarging the scope of discussion in the public sphere, these strategies are important for the AIDS community, in that they allow people with AIDS to take control of the discourse surrounding the disease, and thus to define themselves as a community.
Brashers et al. (1998) argue that AIDS activists' communication behaviors at a

collective level (political or social activism) mirror communication behaviors at the individual level (personal self-advocacy). While collective-level activism is aimed at changing policies and institutions, individual self-advocacy aims at reforming interactional patterns to provide optimal care for persons living with HIV or AIDS. For example, the ACT UP chapter in Paris proposes that a:

First general conclusion in the fight against the epidemic is accompanied by a whole new way of looking at certain givens: [for example], calling into question the medical authorities and the doctor/patient relationship. Fighting AIDS is about teaching AIDS patients to regain the upper hand and establish a dialogue with doctors as equals, to give them a chance to choose their treatments and decide their own future. (see Brashers et al., 1998)

Because these behaviors are a challenge to traditional power structures in health care, they have the potential to alter physician-patient communication patterns. In their analysis of collective activism and individual self-advocacy, Brashers et al. (1998) found that some patients reported that their physicians responded positively to their attempts at self-advocacy, whereas some patients reported negative reactions from their physicians. Positive responses included efforts at "partnership building" and explicit recognition of the patient's contributions to the decision-making process. Negative responses to attempts at self-advocacy were characterized by downward spirals, in which physicians responded to the assertive behaviors of patients by engaging in controlling behaviors, which often frustrated patients and led them to increase their assertiveness, which influenced the physician's behavior, and so on.

Other findings indicate the activists and those with a self-advocacy orientation have unique behavioral and psychological characteristics. In a separate report, Brashers, Haas, and Neidig (in press) found that activists were more likely to report that they educate themselves about HIV illness and its treatments, behave more assertively in health-care interactions, and are more willing to be mindfully nonadherent than were nonactivist persons living with HIV/AIDS or the members of the general population. In addition, patient self-advocacy was correlated positively with Desire for Control, Desire for Autonomy in Health Care, and Preference for Involvement and Information in Health Care and correlated negatively with External Locus of Control (i.e., when individuals believe that circumstances are under the control of external forces, they are less likely to be self advocates), suggesting that those high in self-advocacy behaviors share a

more general psychosocial orientation toward issues of control. Brashers, Haas, and Neidig (1996) also demonstrated that, in comparison to nonactivists, activists:
a. used more problem-focused coping strategies,
b. used fewer emotion-focused strategies,
c. were more likely to communicate with their physician, and
d. were more likely to perceive communication with their physician as rewarding. Brashers, Haas, and Neidig (1998) found that activist and those with higher scores on self-advocacy reported familiarity with more information sources.

3. Argumentative Requirements of Self-Advocacy in the Physician-Patient Context
Self-advocacy is a unique form of critical discussion which includes features of argumentation, as well as requests and possibly other types of speech acts. People engaged in self-advocacy must address two levels of argumentation. At the first level, the facts of the case must be established ("Is the medication safe and effective?" "Are there side effects that could make taking the medication difficult or impossible?" Can the patient make the lifestyle changes needed to take the medication?"). These are the normal expectations of pro-argumentation: the speaker must establish the grounds for accepting a standpoint.
At a second level, the self advocacy requires that the patient address the circumstances of the argument ("Is the patient competent to make a decision about treatments?" "Are political concerns preventing a fair and accurate representation of the data?"). These second level requirements of self-advocacy can be derived from an idealization of discussion procedures.

Van Eemeren, Grootendorst, Jackson, and Jacobs (1993) provide an ideal model of critical discussion (or argumentation) for "reconstructing argumentative discourse" which includes "higher-order conditions" needed to achieve resolution. *First-order conditions* form the basis for resolution-oriented discussion and include rules of the discussion (e.g., "Parties must not prevent each other from advancing standpoints or casting doubt on standpoints;" see van Eemeren and Grootendorst, 1992: 208).
Second-order conditions correspond, roughly, to the psychological makeup of the arguer" (van Eemeren et al., 1993: 32). Second-order conditions include conditions such that the participants:
a. are disinterested in the outcome (i.e., willing to change positions),
b. are able to offer valid reasoning and to account for multiple lines of argument, and

c. are skilled and competent in the subject matter under discussion.

Third order conditions "stress the importance of political ideals such as nonviolence, freedom of speech, and intellectual Pluralism as well as practical constraints and resources for empowering critical discussion" (van Eemeren et al., 1993: 33).

Realizing these higher-order conditions in actual practice are difficult (van Eemeren et al., 1993). In the physician-patient interactions, social and personal barriers to normative discussion exist. Physicians and patients may have motivations other than resolution seeking (e.g., maintaining or challenging existing power structures). Patients who are motivated to persuade their physicians about some treatment are not likely to be "disinterested" in the outcome, particularly if they come to the interaction with a personal decision made. Patients may lack the "expertise" (or be perceived to lack the expertise) in the subject matter (i.e., medicine, virology, etc.) needed to debate issues. Patients may feel pressured to reach a decision quickly due to the severity of the consequences of not finding an effective treatment. Physician-patient relationships often are asymmetrical in power, time constraints of the medical interview can decrease the patient's ability to develop arguments, and patients may choose to discontinue relationships with their physicians rather than continue debate.

Rising from these deviations from the ideal model of critical discussion, several requirements for patient self-advocacy seem reasonable. *That is, the deviations from the ideal provide a starting point for examining the unique argumentative requirements of patient self-advocacy.* If there are real (or imagined) violations of the ideal model, discussants need to deal with them explicitly. For example, self-advocating patients must establish self-interest without appearing selfish. By this, we mean that the patient needs to be willing to develop arguments that advance a position other than "desire" (i.e., "I want this medication" is insufficient argumentation). Although some claim that all behavior is self-interested (Elster, 1990), some interests obviously are more self-serving than others. Self-advocacy also requires establishing sufficient competence to advance a position. Competence includes expertise in the subject matter, ability to argue effectively , and mental competence (e.g., freedom from emotional duress). Finally, self-advocacy may require "impartiality." Evidence may need to be externally verifiable, to prevent the patient from being perceived as his or her own witness.

In the following sections, a study of individuals living with HIV or AIDS is

described as an initial attempt to verify and extend these predictions.

4. Method

Data were collected from an open-ended question included in a survey of 174 adults with HIV or AIDS. Participants were obtained from two AIDS service organizations ($n = 33$), ten AIDS activist organizations from throughout the United States ($n = 31$), and an AIDS clinical trials unit at a large midwestern teaching hospital ($n = 11O$). Participants in this sample self-identified as being HIV-positive ($n = 79$, 45.4%) or as having AIDS ($n = 92$, 52.9%). (Percents do not add to 100 due to missing data.) The mean time since diagnosis was 57 months (range = 1 month to 156 months, $sd = 40.59$ months). The sample was composed of 155 males (89. 1 %) and 16 females (9.2%). Of those, 30 reported membership in an AIDS activist organization (17.2%) and 68 described themselves as "an AIDS activist" (39.1 %). All participants were asked to read and to respond to a brief scenario. The scenario stated: You recently heard of a new treatment that is not widely available. The treatment is still experimental, but you would like to obtain more information about it.

Participants then were asked to list all of the information sources they could imagine that they might use and to rate those on the likelihood that they would actually use that source of information. These data were analyzed for a previous paper. After participants completed the listing of information sources, additional instructions were given:

Based on the situation described on the previous page, please imagine that you have obtained information on the treatment and found that it was available on a limited basis if your physician recommends it. Now you would like to have your physician prescribe it for you. In the past, your physician has been reluctant to try new medications or therapies. What would you say to your physician to convince him or her to prescribe the treatment for you?

Results of this portion of the survey were analyzed for the present study. Themes which represented argumentative strategies were extracted from the data. These themes, along with concrete examples of the strategies, are presented in the following section.

5. Results and Discussion

Analysis of the open-ended responses led to ten general themes of self-advocacy strategies for persons living with HIV or AIDS, when they attempt to persuade a physician to prescribe an experimental treatment. These themes were:

a. establish facts,

b. establish expertise,

c. make conditional threats,

d. establish obligation,

e. describe other benefits,

f. accept responsibility,

g. describe severity of consequences,

h. establish self-interest,

i. promise to exercise caution, and

j. elicit counterarguments.

Together, these themes function to preserve the norms of ideal discussion and to persuade the physician to prescribe the medications. Clusters of themes indicate that rights, responsibilities, and expertise are important to the self-advocacy of patients with HIV or AIDS. Each theme and corresponding strategies are described in brief below.

Establish Facts. A primary task represented in the data was to establish the facts of the case. Establishing facts addresses the first level of argumentation by justifying the standpoint (i.e., building a case for the claim). Participants reported that they would share information and arguments that they had discovered as part of their "fact finding" (e.g., reading journals, talking to others with the disease).

As shown in Example (1), participants described a general strategy of sharing evidence to establish the facts:

1. "I would offer all available information on the drug to my physician and ask that he recommend it for me."

Establish Expertise. A second strategy noted in the participants' responses was the explicit acknowledgment of the patients' expertise. A major barrier to effective discussion in a technical field such as medicine is the need to comprehend and apply complex subject matter. Often patients are not prepared to discuss the technical details
of their care. Participants thus saw the need to establish expertise explicitly. An example of a comment from our participants intended to establish expertise is given in (2).

2. "I would let my physician know that I have taken the time to research the treatment."

In some instances, such as Example (3), participants suggested that they would present the text of the material (i.e., they would bring in the research articles and other evidence for the physician to examine).

3. "I would show him the information that I had received, so he could examine it. I would say, 'This treatment has recently been brought to my attention. I'd like for you to look over this article, and tell me what you know about this treatment, because I'm interested in trying it out.'"
This is perhaps a strategy designed to enhance the credibility of the information. It demonstrates that the validity of evidence is not subject to the memory of the patient and that it is derived from qualified experts.

Make Conditional Threats. Many of the responses of the participants contained conditional threats. These acts function to warn the physician that the patient will seek treatment elsewhere if the request is not granted. Examples of conditional threats in the data from individuals with HIV or AIDS include:
4. "If you don't [prescribe the medication], I'll go somewhere else!!"
5. "I'm going to insist that you enroll me in this treatment. If you cannot in good conscience do so, I understand, but I will find another physician who will."
6. "I will change doctors to somebody who will prescribe it."
These conditional threats were used in combination with other strategies that established the importance of prescribing the medication. It also was interesting to note that a number of participants said that they would change physicians without even making the request given the physician's past reluctance to try new therapies, as was suggested in the scenario.

Establish Obligation. Participants also reported the strategy of establishing that the physician had an obligation to the patient because of the "commercial" nature of the relationship. Examples of this strategy included:
7. "I hire my doctor to provide services for me. If they want to remain my employee they will read on my disease."
8. "You are working for, paid by, employed by, me."
Establishing obligation may be a strategy designed to diminish the effects of power and authority usually ascribed to the physician. One patient said he would preface his statement with "I hate to pull rank on you," which reverses the typical pattern of domination in the interaction.

Describe Other Benefits. This strategy involves acknowledging the altruistic

potential of using experimental medications. Examples of this strategy include:

9. "There would be benefits to your practice."

10. "Even if the medication doesn't help me, it might help someone else."

11. "It is better to have tried than not to have tried at all. My life should be used to help prolong the lives of others in the future. This is the importance of experimental drugs."

Altruism demonstrates that the patient is not motivated solely by self-interest, which may help establish justification for engaging in critical discussion. Altruistic motivation may seem to shift the argument from self-advocacy to more objective discussion.

Accept Responsibility. Participants also felt the need to accept responsibility for the consequences of the decision. Uncertainty surrounds the use of experimental treatments because of a lack of information on their safety and side effects (see Brashers, Neidig, Cardillo, Dobbs, Russell, & Haas, in press), which means that the decision must be made based on probabilistic thinking. Because issues like "long term safety and efficacy" cannot be resolved as part of the discussion, participants must address the concerns.

12. "I understand the benefits and the risks."

13. "I am willing to take responsibility for the outcome."

14. "I realize that experimental treatments are no guarantee and may be harmful, rather than the desired effect, but I am willing to take responsibility for my health care."

15. "If the treatment has a negative effect on my health, I am ready for this and hold myself responsible (not the physician) for the effects."

Accepting responsibility also increases the meaning of participation of the patient – emphasizing that the patient is ultimately responsible for his or her own well-being.

Describe Severity of Consequences. Another strategy for persuading the physician to prescribe medications was to argue for the severity of the consequences for the patient. Some individuals have tried other medications with no success. Individuals with a terminal illness may prefer experimental therapy over inaction.

16. "Dr. Smith, this is a matter of life and death. I don't have other choices at this point and I am prepared to take the risk if this new therapy can help slow down the progression of this disease – I'm going to die anyway without this medication,

so why not take a chance?"

17. "I think I have the right to choose experimental treatments because of my prognosis."

Establish Self-Interest. Despite the need to establish that they were not solely motivated by self-interest, some participants used the strategy of establishing self-interest as a reason for prescribing the medication. This strategy often was invoked with notions of "rights," as in Example (18).

18. "Dear Doctor, I want to try this new treatment! It is my decision and my body. I think I should have the right to decide what treatments I want to try experimentally."

Promise to Exercise Caution. To alleviate fears of unknown consequences, participants used the strategy of promising to monitor their progress with their medications.

19. "I might argue that, since I monitor my own health closely and try to stick to my treatment regimens, I would be a good candidate to obtain information about the effectiveness of this treatment."

As shown in Examples 20 and 21, this strategy also can be used to invite participation of the physician, which serves to acknowledge the control of the physician, and invites continued participation on his or her part.

20. "I would tell him I would like to have it prescribed, and that I'm willing to take the responsibility for the treatment, with his monitoring it."

21. "I am willing to take responsibility for this treatment with you monitoring the progress."

This strategy may indicate a willingness to continue discussion, and reverse the decision to take the medication if new information becomes available (e.g., if safety issues arise).

Elicit Counterarguments. Participants also noted the need to elicit counterarguments from the physician. This provided the patient with the ability to examine the arguments of the physician and to refute or respond to them. It also can serve to acknowledge the legitimacy of the physician's objections. Examples of this strategy include:

22. "First I would want to know why he would be so reluctant to prescribe the medication in the first place."

23. "I would explain my reasons for wanting to try the medication. I would listen

to the doctor's reasons for not wanting to try the medication."
This strategy seems to encourage the physician to advance and defend standpoints, and thus encourages further critical discussion.

6. Conclusion
This study advances our understanding of self-advocacy in the physician-patient context. Self-advocacy is a form of argumentation which is guided in part by social conventions, has unique argumentative requirements, and requires explicit attention to the standards of ideal discussion. People engaged in self-advocacy must address two levels of argumentation: the facts of the case must be established and circumstances of the argument must be addressed. Advocating for oneself may include demonstrating sufficient expertise to engage in technical debate, and negotiating when an issue may seem to be an intractable disagreement given the personal interests of at least one party in the discussion (see van Eemeren et al., 1993).

It is evident from this study that some individuals do give explicit attention to the requirements of self-advocacy. Participants dealt with issues of self-advocacy by invoking notions of rights, responsibilities, and expertise. For example, several participants detailed plans to demonstrate their expertise about medical issues. Elsewhere, Brashers and Jackson (1991) argued that AIDS activists penetrated the technical sphere by developing expertise in areas in which they might be thought to be nonexpert (e.g., virology and experimental methodology). Fabj and Sobnosky (1995: 182) contend that AIDS activists "blur the lines between the private, public, and technical spheres." The strategy of developing the competence needed to engage in public and technical debate may be used at the individual level to advocate for oneself with a physician.

Some strategies noted in this study, however, actually serve to move a discussion further from the ideal model. Asserting self-interest may serve to forestall discussion, and thus may violate rules of critical discussion (e.g., preventing others from advancing standpoints). Describing the severity of consequences may be a method for preventing an opponent from casting doubt on a standpoint. Other strategies, such as establishing obligation, simply may serve to reverse the power structure without regard to the effects of the strategy on the discussion.

To date, self-advocacy research predominately has focused on developmentally disabled or profoundly handicapped populations. These may be populations in which fear of "being taken advantage of" is great and the need to assert independence is valued. However, social and cultural barriers to self-advocacy

exist in the general population, as well as in populations with chronic or life-threatening illnesses. These natural barriers cause deviations from the ideal model which must be accounted for in practice. As Janoff-Bulman and Wade (1996: 144) argue, "there are costs associated with advocating for the self" When patients are more participative, or do attempt persuasive efforts of their own, often it meets with negative results. Cerling (1989: 94) cites a study published in the American Journal of Medicine, in which "it was found that when an individual patient refused any particular medical treatment, the patient's very refusal was seen as evidence of the patient's incompetence to make a decision." Patients may be less likely to violate norms of asymmetrical power distribution because of the force of those norms within society. As noted by Brashers et al. (1998), one participant in this study remarked: Sometimes I feel a little shy – do not want to make them [physicians] feel stupid or lacking information. I usually try to let them know that I respect them and follow their instructions, let them feel that they are in charge.

Future research should further develop and elaborate the strategies seen here into more general implications for analysis of message design. For example, the themes we developed here might help us to determine logics of message design. In O'Keefe's theory of message design logics, an expressive logic "reflects a view of communication as a process of expressing and receiving encoded thoughts and feelings" without particular attention to "the service of achieving effects" (O'Keefe & McCornack, 1987: 71). Expressions of self-interest may be diagnostic of an expressive design logic in the situation of patient self-advocacy. Conventional design logic "is based on a view of communication as game played cooperatively, according to socially conventional rules and procedures" (O'Keefe & McCornack, 1987: 71). Contingent threats, because of their emphasis on the consequence of rule violations may represent conventional strategies. Finally, rhetorical design logics reflect "a view of communication as the creation and negotiation of social selves and situations" where "meaning is a matter of social negotiation" (O'Keefe & McCornack, 1987: 72). Because of their sensitivity to context and negotiation of self, promising caution and eliciting counterarguments may be rhetorically-oriented. Although these distinctions are preliminary, future research that more clearly illuminates these links will provide valuable insight into the nature of self-advocacy.

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ISSA Proceedings 1998 – Argument Theory And The Rhetorical Practices Of The North American 'Central America Movement'

1. Introduction

They loved us when we stood in front of the Galleria and sang "El Salvador's another Viet Nam" to the tune of "Walking in a Winter Wonderland." But the situation in El Salvador was different from Viet Nam, and we knew that the equation was an oversimplification. But we also knew that we needed something that would get the public's attention, something that would help them connect with an issue on which we wanted to change American policy.

"We" here is the group of people who made up the Central America Movement, and most, specifically, the Pledge of Resistance, in Louisville, Kentucky. The goal of that group, and of the movement in general, was to end U.S. government support for repressive right-wing governments in Central America and to end the support of the Reagan administration for the Contras who sought to overthrow the Sandinista government in Nicaragua. The Movement sought to influence policy entirely through democratic means, entirely by using the resources always open to citizens in a democracy: the formation of public opinion and the persuasion of senators and representatives who would be voting on aid bills. Cutting off funding for Reagan administration initiatives was the best procedural way to disable the administration's policy. The only "illegalities" in which the Movement as I know it engaged were acts of very public – the more public the better – civil disobedience. Throughout the 1980s, the issue of Central America policy never became a "determining" one; that is, it was never an issue on which the majority of Americans based their votes and thus one on which the administration was loath to be at odds with a segment of the electorate. The task of the Central America Movement in North America, therefore, was to try to bring the issue before the public, to persuade the public to oppose administration policy, and to persuade legislators to vote against funding requests.

The success of the Central America movement is difficult to judge. Across the nation, individual senators and representatives came to oppose Contra Aid, and finally the flow of aid was stopped. The Iran-Contra scandal was an embarrassment to the Reagan administration but, to the general disappointment of the Central America Movement, did not precipitate a national revaluation of U.S. Central America policy. Church groups in the North America formed twinning relationships with congregations in Central America, and speaking tours brought activists from the region to audiences all across North America, increasing awareness of the region and familiarity with its issues as seen from a perspective different from that of the administration. It is generally accepted that regimes in Central America are more democratic than was the case in the 1980s. Reconciliation commissions in El Salvador and Guatamala have worked to move those countries beyond armed left/right conflict. Elections in winter of 1990 removed the Sandinista Party from power in Nicaragua and replaced it with a coalition government preferred by the U.S. government. In short, from the perspective of the Central America Movement generally, the news is mixed. It can point to many successes but cannot claim overall to have made Central America

policy a key interest of American voters nor to have created popular and legislative support for American policies that would favor the poor or more widely distribute education and health care opportunities among the population in Central America. Contra aid has ended, but a principle of self-determination for the nations of that region has not been enshrined in American foreign policy or American popular opinion.

In looking back at the Central America Movement of the 1980s and attempting an assessment of its rhetoric, we must acknowledge that public and legislative sentiment were strongly influenced by historical events such as the breaking of the Iran-contra scandal and the revelation of atrocities like the mass murders of civilians, the murder of four American churchwomen, and the killing of the Jesuits at the University of Central America in 1990; also by the nationalization of the San Antonio sugar plantation by the Sandinista government and the protest against that government's economic policy by the women of the Eastern Market in Managua. Events like these never entirely "spoke for themselves," however. As soon as they were reported, everyone with a stake in the Central America debate rushed to offer interpretations. The "rhetorical sphere" of the Central America Movement was therefore quite large. Well-known writers and intellectuals wrote about the region: Joan Didion's *Salvador* and Salman Rushdie's *The Jaguar Smile: A Nicaraguan Journey* were particularly successful in bringing some attention to the issue. But such "professional" analyses as these were always quite separate from the activities of the Movement, and it is only the latter that I will be discussing in this paper.

I was a participant in that Movement from 1986 through the early 1990s, and I am proud of that association. My project in this paper is to analyze the argumentation of the Movement and to reflect, in the context of argument theory, on the rhetorical difficulties such movements confront. I am NOT assuming that everyone in the audience shares my political perspective on Central America; I am assuming that the issues raised here are not specific to this particular political movement but rather that they are likely to arise at any intersection of argumentation theory and political commitment.

I am aware that in the U.S. there are two nearly separate scholarly conversations going on at this time about argument: one in English and one in Communication. They are separate not only because of the accidents of university history but also because one takes place within the framework of the Humanities and one within

the Social Sciences. The conversation about argument within the field of English is characterized by a focus on texts, the interpretation of texts, the construction of speakers and readers within texts. The Social Sciences conversation, I glean, is more willing to look empirically at the social effects of arguments. The latter is also, I see, more willing to consider the possibility that argument may not avail much in a particular situation (Willard 1989: 4). Within English and Humanities, however, discussions of argument always proceed without much skepticism. This faith in the power of argument may be attributed, I suspect, to the fact that English departments are charged with teaching Freshman Composition to all new University students, and the course includes instruction in the making of and evaluating of arguments. Perhaps we are simply unwilling to entertain the possibility that something that takes so much of our professional energy and provides so much of our institutional raison d'etre may be powerless in certain situations. Let me say at the outset of this paper that I work within the conversation of English and have drawn on its assumptions, its bibliography, and its methods in writing this paper, but the topic has also led me into the Communications, Social Science literature to a limited degree, seeking to understand the social consequences of certain rhetorical choices.

2. Framing the debate

The rhetorical task of the Central America Movement was greatly complicated by the fact that the American electorate as a whole never made Central America policy a voting issue. American troops were not being conscripted to fight there, though National Guard units were being sent in as advisers for short periods of time. In Nancy Fraser's terms, the movement never achieved the status of a "subaltern counterpublic," perhaps because participants were not seeking to change the way they themselves were viewed or treated (Fraser 1992: 107). American public life seems to accord some measure of respect to subaltern groups that speak from the subject position of "victim" and demand change. Voices from such subject positions often succeed in creating a public issue. The right of the Movement to speak for the poor in Central America was never obvious or unchallenged, and therein lay one more difficulty in bringing the issue to the fore.

The need to rouse public sentiment pushed the Movement to argument by historical analogy: our national sense of what we must do derives in large part from our interpretation of the present moment as being like some other in our past. We will apply the lessons of history. In the 1990s, the U.S. government's

decisions about the level of engagement in Bosnia were defended with the argument that Bosnia would become another Viet Nam, an unwinnable bloodletting in which we should not get involved; opponents of that policy argued that Bosnia was instead like Europe in the late 1930s, when appeasement and non-involvement proved disastrous. So, the first rhetorical struggle of the Central America Movement in the 1980s was to frame the public understanding of events in that region as analogous to Viet Nam, in opposition to the Reagan administration's efforts to evoke World War II and even the American Revolutionary War (Reagan famously referred to the Nicaraguan Contras as "the moral equivalent of our founding fathers").

Analogy with Viet Nam was effective in getting public attention: one could hardly ask for a more painful national experience to reference. Those who opposed that war thought it a moral and personal disaster; those who supported it thought it a military disaster, fraught with political betrayal. No one wanted to relive it. For sheer aversiveness, one could not ask for a stronger analogy. And the Movement felt pushed to employ it to counter the administration analogies with glorious moments in the past. But the Movement never entirely embraced the Viet Nam analogy. There was considerable debate about its use within the Movement, and it was employed sporadically, not systematically. Resistance to its use sprang from the conviction that it was simply a false analogy. El Salvador was not another Viet Nam. If the temptation of generals is always to be fighting the last war, the need to frame a political debate by historical analogy tempts rhetoricians to do the same, to find an historical analogy that will serve politically, even if the fit is not good.

As the 1980s wore on, it became increasingly clear that the Viet Nam analogy was not apt: U.S. policy in El Salvador would never cause upheaval in the lives of North Americans. Further, the Movement became increasingly convinced that the situation in Central America generally was better described as Low Intensity Warfare. Michael T. Klare and Peter Kornbluh's book by that title, published in 1989, argued that the Reagan administration had learned the lessons of Viet Nam very well indeed and had deliberately developed near -invisible strategies for undermining the Sandinista government in Nicaragua: economic sabotage, paramilitary action, psychological warfare (Klare and Kornbluh 1989: 8).

Convincing the American public that low-intensity warfare was real and was being waged by the Reagan administration against Nicaragua became a goal of at least some segments of the Movement, running counter to the logic of the Viet Nam

analogy. But, as the goal became educating the American people about low-intensity warfare, convincing them that something new was being waged in Central America, there was no historical analogy available to draw on in framing the debate. Reference to Viet Nam gained attention, but many believed that it falsified the message of the Movement; low-intensity warfare, however, was largely unknown, pushed no emotional buttons, and garnered little attention.

3. Strategy and ethos

Gaining the attention of the American people was a constant serious problem for the Movement. Unlike other social movements of the last two centuries, it lacked any visible victims and kept slipping into invisibility. It was not so much "Which side are you on?" as "What IS going on?" Leafleting was one way to get the word out. Local groups did generally rely heavily on leafleting, but they discovered that late twentieth-century America has reorganized its social geography in such a way as to make leafleting much more difficult than it was even thirty years ago. The shopping mall has replaced the downtown shopping district; malls are privately owned. Once, groups could leaflet in front of major stores and in the town square. Now, one must have the permission of the corporate owners of malls to do the same; it is generally not forthcoming. Once, groups could leaflet people entering stores and public buildings. Now, people leave public space in their cars, driving unto private property. One cannot give a leaflet to a moving car, and putting leaflets on parked cars in private lots is a clandestine operation.

Should the Movement engage in such clandestine operations? Doing so generally seemed a necessity. How else to break through the silence? How else to bring the issue into the public's field of vision? How else to say "People's lives are being ruined; a great injustice is taking place; something must be done to stop it!" If one is morally impelled to speak, then one is morally impelled to speak to be heard. Civil disobedience was a common strategy of the Movement, particularly of a group called the Pledge of Resistance, whose members signed a pledge to engage in non-violent civil disobedience, even to the point of being arrested, if the United States invaded Nicaragua. Movement groups staged sit-ins in Congressional offices and in public venues, and some participants were arrested and tried, protesting aid going to the Contras. This tactic is informally credited with having raised the profile of the issue and persuaded some Congressional representatives to oppose Contra aid.

But what of the truly clandestine? What of tactics designed to force the public to

confront the issue: guerrilla theatre, for example? A black van pulls up among the lunchtime crowd in the business district; masked men grab movement participants who have been planted in the crowd and hustle them into the van; then more movement participants walk through the crowd handing out a leaflet that begins, "This is an everyday occurrence in San Salvador." What of bannering, of suspending a banner from a highway overpass, denouncing the Death-Squad Government of El Salvador or demanding an end to Contra aid? What of three blood-stained mannequins left by the sides of highways with a sign saying that Death Squads that day dumped the bodies of three Salvadoran citizens by the highway leading from the capital, and giving the names of the dead?

Such tactics certainly succeeded in breaking through the barrier of invisibility, at least for those American citizens who witnessed them first-hand. The willingness of newspaper, TV, and radio to cover such events varied from city to city. Generally, the larger cities gave more coverage, while smaller-city media were more likely to ignore them. What effect did such clandestine "arguments" have on the perceived ethos of the movement, in the eyes of the public in general? The answer to that, based on reports of participants themselves, seems also to vary with the size of the city and the local political culture. When in 1992, for example, thousands of San Franciscans shut down the Golden Gate Bridge to protest the Gulf War, the action seems not to have generated noticeable resentment on the part of the citizenry as a whole. In Cincinnati, a heartland city of about half a million people, a similar action by the Teachers' Union, dramatizing the urgent need for a school-funding levy, backfired badly and sparked an outpouring of hostility toward the union and toward the levy. So it was with the Central America actions: San Francisans and Chicagoans seem generally to have accepted the actions as legitimate political expressions. In Louisville, Kentucky, a heartland city in the upper south, highway bannering sparked a torrent of abuse and ridicule from morning radio disk jockeys. It would seem impossible, therefore, to judge whether such tactics, such argument moves, are or are not effective in absolute terms. Their meaning seems to vary with the speech-act context, as they are read differently in different local political cultures. This lesson would seem of interest not only to argument theorists who want to see argument always within the frame of the speech-act but also to political groups which fund a national office to coordinate activities, often calling for a national "day of action"; they would be well advised to remember that the persuasive power of an action can vary greatly from city to city.

Looking more closely at the difference in interpretation, we can note that the ethos of the movement seems to have been constructed differently in different locations. Larger cities, especially coastal ones, seem to have regarded clandestine actions as an expected part of the political vocabulary. But in smaller, heartland cities, clandestine action seems to have constructed the Movement as an "Other," an oppositional group with whom many citizens were reluctant to identify. Any anonymous disruption of the norm, carried out under cover of darkness, marked the group as set apart from the mass of the citizenry, if only by its clandestine planning: Movement people were in on the planning; the secret was kept from others. This construct set the Movement apart, created an Us and a Them, and created an ethical gulf that was difficult to breach. At local demonstrations of our group, I cannot remember ever seeing anyone in attendance who was not known to at least one member of the group. It seems a measure of our separateness from the community that we never attracted strangers.

Ironically, such clandestine actions as street theatre and bannering were often the ones that most energized the group itself. Oppositional ACTION seemed to have an inherent appeal, and the ethical self-representation as outlaw had a positive appeal. In addition, there was for many a felt sense of moral imperative to separate oneself in a public way from Reagan administration policy, "to withdraw consent," as it was often termed. Holly Near, the folk-singer and activist, summed up the motivation of many Movement participants when she wrote the line, "No more genocide in my name." ("No More Genocide": *Journeys*, Redwood Records, 1984). Thus the impetus to separate oneself from the mass of the American citizenry among whom Ronald Reagan was dauntingly popular further served the ethical construction of the Movement as Other.

One element of postmodern argument theory tells us that ethos is the critical element in argumentation, as belief in rational argument erodes (Willard 1989: 4-10). In the absence of societal consensus in which to ground claims and reasons, the ethical standing of the speaker becomes the determining factor in the outcome of argumentation. Ethical self-representation becomes a matter of great political importance. Along with the issues already discussed in that regard, we should again consider the role of historical analogy in the construction of political ethos.

Twentieth-century American political and social history are haunted by the specters of foreign subversives and witch-hunts. Fear of Communist subversion in

particular has created a public distrust of clandestine political groups and some suspicion of any organized political interest group (Dietrich 1996: 170-190). One's credibility as a citizen speaking on any issue is complicated if not compromised if one is believed to be speaking the "party line" of an organized group, from the National Organization for Women to the Christian Right. Conversely, political groups revealed to have been targeted for monitoring by governmental agencies often invoke the historical precedent of the McCarthy-era witch-hunts, which are widely perceived as having victimized innocent citizens and violated civil liberties. When it was revealed that an agent of the Federal Bureau of Investigation had infiltrated a local group of Central American activists in Philadelphia, that agency justified its action by asserting that it had reason to believe that the group was planning illegal activity – raising the familiar specter of the subversive cell. The Movement group, always noted as having included members of Catholic religious communities, protested that its civil rights were violated and that the FBI was engaging in a witch-hunt. The same argument dynamic was repeated when members of a Movement group, called Sanctuary, in Texas, including members of religious communities, were arrested for helping Central Americans come to and remain in the United States illegally. The government pointed up the illegality of their activity and its secret and conspiratorial nature; the group responded with moral arguments about the necessity to save the refugees and with outrage that the government had infiltrated their group. Once again, the ethical high ground was the object, and historical analogy was a prime strategy for attaining it.

4. Creating dissensus

If the guerrilla tactics of the Movement raised public awareness of the issue, they were still limited in their ability to create a dissensus that could lead to political action. If the Movement succeeded in making the public suspicious of administration Central America policy, it still had to make that public informed and articulate enough to withdraw their consent by urging their congressional representatives to vote against contra aid, by speaking in public fora, by writing letters, raising the subject with friends, etc. So the Movement recognized a need to provide explicit arguments – claims and reasons.

In 1987, leading up to a vote on renewal of Contra aid in the fall Congressional session, the Pledge of Resistance waged a campaign it named "Stop the Lies." The newsprint paper it sent to members of the Pledge also included a tear-sheet for new signers of the Pledge to fill out and return; thus the intended audience seems

to have been Movement members and non-members. It featured a text box on the front page, with the following content: "They lied about trading arms for hostages. They lied about diverting the money to the Contras. In fact, almost everything they've told us about Central America is a lie. Some of the lies are simple and bald-faced. Like the repeated denial of illegal U.S. funding of the Contras. And some of the lies are big and complex. Like the lie that the U.S. is promoting democracy in Central America. Or that our government is seeking a negotiated peace. These lies fuel the escalating war in Central America – just as they did during Vietnam. To stop the war, we must first stop the lies." The paper then lists seven lies and arguments in support of the thesis that they are indeed lies:

#1 The War in Central America is Not Another Vietnam;
#2 The U.S. has Sought a Peaceful Solution in Central America;
#3 U.S. Economic Aid helps the Poor in Central America;
#4 U.S. Policy in Central America is a Response to a Soviet Threat;
#5 U.S. Actions in Central America are Legal;
#6 U.S. Policy is Improving Human Rights in Central America;
#7 U.S. Actions in Central America Promote Democracy.

The analogy with Viet Nam is, of course, prominently asserted here, and supported with data about the number of military advisors sent to the region and with quotations from administration officials that do not foreclose the possibility of invasion. No reason is given for not wanting to repeat the experience of Viet Nam – none need be. Implicit are the moral and pragmatic concerns that always attend a discussion of that conflict. Reasons given in support of the other six assertions explicitly mix the moral and the pragmatic and construct a reader who believes the following:

– peace in Central America is desirable;
– conditions for the poor must be improved;
– respect for human rights must be strengthened;
– democracy in the region must be restored;
– power should move from military and oligarchic elites to the people;
– the United States should respect decisions of the World Court even when they contravene its perceived self-interest; the U.S. has no moral or strategic interest in opposing leftist movements in Central America or no right or responsibility to intervene.

This profile described the beliefs of a minority during the 1980s. The "Stop the

Lies" paper supported its assertions about each of the lies with data (such as numbers of civilians killed in Central America since 1979) and with quotations from government sources ("David MacMichael, former CIA analyst responsible for proving that Nicaragua was arming the Salvadoran rebels: 'There has not been a verified report of arms moving from Nicaragua to El Salvador since April, 1981'.") Data and quotations are footnoted to credible sources like *Time* magazine*, The New York Times, Americas Watch*, and the *Wall Street Journal*, though one does note the absence of engagement with any opposing claims or evidence.

In sum, the "Stop the Lies" publication reinforces a binary choice between a "they" who have lied to "us" and the victimized "us" who have been so deceived. The subject position of duped victim is not one that people rush to occupy. It offers evidence that leftist movements in Central America are not an extension of Soviet threat to America, but it does not engage the deeper American skepticism about leftist movements in general.

5. The epistemology of oppositional movements

Any discussion of argument and the Central America Movement should engage the question of why that movement was taken off guard by historical events that did not support its interpretation of the dynamic in that region, events such as the La Penca bombing and, most importantly, the electoral defeat of the Sandinista government in the winter of 1990. It may take comfort in the fact that the *New York Times* was similarly surprised by this latter event, having assessed the chances of the UNO coalition at slim to none. But Central America Movement groups derived much of their rationale and their ethical stature from the belief that they had a "true picture" of the situation in Central America, that they had sources of information in religious and health workers, church and union groups, and individual friends who could provide accurate information that the *New York Times* would not print because of its politics, that the Reagan administration would actively suppress. Groups like Witness for Peace existed to arrange for North Americans to travel to Central America and see first-hand what things were like, to talk to a cross-section of citizens. It would probably be fair to say that part of what constituted a Movement group as a group was its belief in its epistemological advantage. Skeptical of mainstream reporting, Movement participants relied on the group for information and interpretation.

If what bound a Movement group together as a group was a set of political commitments and shared oppositional interpretation of events, then any questioning of those commitments or interpretations might be destructive of the

group as group (Ice 1987). Such a dynamic renders certain things unspeakable; the group cannot entertain some possibilities without courting its destruction as a group. I have no reason to think that anyone voiced doubt about a Sandinista electoral victory and was silenced; I simply pose the question of whether the possibility of a Sandinista loss was rendered unthinkable by the Movement because considering the possibility opened up to reconsideration so many assumptions that had brought participants together into a movement.

In the 1980's – coeval with the Central America Movement – the rhetorician Peter Elbow was urging professors of Composition and Rhetoric to teach their students the "believing game" and the "doubting game" (Elbow 1986). In the former, a reader reads a text and tries to think of all the ways in which its assertions can be true – one tries to believe. But that exercise, according to Elbow, should be followed by the "doubting game," in which the reader reads the very same text and tries to think of all possible objections that can be made to its assertions. It would seem to have been a healthy exercise for Movement groups to have formally structured into their group process a version of the "doubting game," creating a "free space" in which to speculate aloud about the possibility that their information or interpretation might be wrong. Professors of Composition and Rhetoric were not absent from the Central America Movement. In fact, the professional association Conference on College Composition and Communication had a Central America Caucus that met at its annual convention and might communicate between meetings. Why did the pedagogical technique so widely known among this group never enter Movement practice? Put another way, why did our professional knowledge not affect our political practice? Why was our way of arguing unaffected by what we taught about argumentation? I think that the answer to that question is probably complex, including a reluctance of professors to claim an expertise that would give them additional authority in the Movement groups and, perhaps, also the traditional barrier within the discipline of English that prevents our considering the social effects of argumentation as part of our professional horizon. It is this barrier that Ellen Cushman in her article "The Rhetorician as Agent of Social Change" urges us to break down: she writes, "I am asking for a deeper consideration of the civic purpose of our positions in the academy, of what we do with our knowledge, for whom and by what means. I am asking for a shift in our critical focus away from our own navels… " (Cushman 1996: 12).

6. Conclusion

The Central America Movement in the 1980s provided a means for many North Americans to express and act on their moral and political commitments to a just peace in the region. It provided a counterweight to Reagan administration pronunciations and made Central America policy an issue in the United States. It mobilized public protest against Contra aid and mobilized thousands of people who pledged to engage in non-violent civil disobedience if the U.S. invaded Nicaragua. It did not succeed in becoming a mass movement or in stopping Contra aid until the end of the decade. In its attempt to persuade the American public, the Movement was caught between the need to gain attention with brief, emotionally charged slogans and the desire to convince the American people of complex processes (illegal arms transactions; low-intensity warfare). Ingrained in American political argumentation is the use of historical analogy to promote an interpretation of present events and a future course of action. Such analogies may be necessary, but they do not well serve explication of new historical situations and processes, and they can constrain the thinking of political groups so that they are "always fighting the previous war," using tactics that worked in a previous historical situation but are no longer as effective. Tactics like guerrilla theatre succeeded in gaining public attention but varied in their effectiveness from one locale to another. The ethical self-representation of Movement groups was always problematic because participants were not protesting their own oppression; unable to occupy the subject position of "victim," participants lacked a readily definable warrant for their actions.

The long shadow of history provides interpretive frameworks for political groups, their actions, and their treatment by the government; the Central America Movement was thus associated with Communist subversive groups, and it protested government infiltration as a witch-hunt. When the Movement provided claims and reasons, it appealed to morality and to pragmatism and constructed a reader who was committed to fairness, legality, and the good of the whole population in Central America, but it did not engage the American public's inherent distrust of any faction termed "leftist." Unlike the anti-war movement of the 1960s, the Central America Movement was largely unable to break through that barrier because there existed no counter-balancing threat to the American public, such as conscription and American combat deaths had been.

Finally, a sense of epistemological privilege which was common among Movement groups made it difficult for them to foresee events which their interpretations of events did not predict (e.g., the Sandinista electoral loss). The maintenance of

solidarity within groups worked against skepticism about information that came through movement channels. Although pedagogical techniques for encouraging healthy dissensus were widely known among professors of Rhetoric and Composition at the time, these did not make their way into Movement practice.

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