MAKING LAW AT THE DOORWAY: THE CLERK, THE COURT, AND THE CONSTRUCTION OF COMMUNITY IN A NEW ENGLAND TOWN

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This paper analyzes the politics of disputing in complaint hearings held by the court clerk in a district criminal court in Massachusetts. By examining struggles over the meaning of local conflicts, it suggests the implications of detailed studies of dispute processing for our understanding of how systems of legal and social meanings are constituted and reproduced. The paper argues that the work of the court, the roles played by court officials, and the meaning of law and of community at particular moments in time are shaped in the interaction of court staff with local citizens. At the same time, it argues that these interactions are constrained by culturally and historically embedded relations of class, ethnicity, and power. Thus the paper suggests how the practice of complaint hearings both reproduces and transforms systemic inequalities and oppositions, and points to the importance of interactive rather than dichotomizing approaches for studying the interconnection and interpenetration of law with society.

Cultural identity is inseparable from limits, it is always a boundary phenomenon and its order is always constructed around the figures of its territorial edge (Stalleybrass and White, 1986: 200).

The [court] clerk is like a watchdog (Assistant clerk magistrate, Jefferson County Court).

I. INTRODUCTION

This paper describes the negotiation of meaning in neighbor and family conflicts brought to a western Massachusetts criminal court. The process used to handle these conflicts, known as a

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"show cause" or "complaint" hearing, marks the earliest phase of the criminal procedure in cases in which there has been no arrest.[1] This is one of the least visible of court processes since complaint hearings are private and occur prior to the formal issuance of a criminal charge. They are conducted by the court clerk, who has the discretionary power either to allow a complaint application and issue a criminal charge or to deny it and handle the matter "informally" in the hearing itself. Thus in local conflicts the clerk acts both as "gatekeeper," keeping what is "not legal" out of the court proper, and as a peacemaker. The clerk's position at the court also allows him to play what one clerk defined as a local "watchdog" role, controlling "problem" people and "brainless" behavior in the communities in the court's jurisdiction.

My analysis focuses on the way exchanges between clerk and citizens produce legal and moral frameworks that justify a decision to handle a case in a particular way. The clerk plays a dominant role by controlling the language in which issues are framed, the range of evidence presented, and the sequence of presentation. He silences some interpretations and privileges others, constructing the official definition of what constitutes order and disorder in the lives of local citizens. But the definition of events during a hearing is also shaped by these working, middle, and lower class people, using this arena with varying degrees of sophistication to structure the political and moral contours of their families and neighborhoods. Thus it is through interaction between the clerk and citizens that court and community are mutually shaped.

Empirical literature provides a familiar portrait of courts as bounded and set apart, a domain of specialists controlled by an elite, or forums of "rough justice" with their own subculture and behavioral routines, distant from the practices and values of those who are judged there (Emerson, 1969; Abel, 1973; Robertson, 1974; Eisenstein and Jacob, 1977; Mather, 1979). This representation of a distant and, for ordinary people, impenetrable legal system is mirrored in theory that explains the role of modern law in terms of its control and imposition "from above" in the stratified settings of the industrialized world (Unger, 1976; Black, 1976; Cain and Hunt, 1979). At the same time, ethnographic study of conflict management "from below" suggests a more complex portrayal of law and of courts in shaping and reflecting local practices and understandings (Engel, 1984; Merry, 1985; Yngvesson, 1985a; Greenhouse, 1987). These studies point to what Sugarman (1983: 2) describes as the "complex, semi-autonomous coexistence" of state law with local processes and to the interpenetration of our most fundamental

[1] The district court is the entry point to the court system for virtually all criminal offenses tried in Massachusetts. District courts have original jurisdiction over all misdemeanors except libel, over local ordinances and bylaws, and over felonies punishable by up to 2½ years in a house of correction (MASS. GEN. LAWS ANN. ch. 218, § 26, 30, 35A: 55 (West 1979)).

cultural assumptions with legal ones (Thompson, 1978; Gordon, 1984).

Studies of police, of lower court judges, and of other local officials involved in the administration of justice (Bittner, 1969, 1974; Feeley, 1979; Harrington, 1985; Wilson, 1970) suggest that these actors play a key role in pulling the court into processes that maintain local order, since they keep a peace defined in local terms but imposed from without by officials of the state. In this paper, I argue that it is through the interaction of criminal justice officials with local citizens that "the practical meaning of law" (Bourdieu, 1987: 217) is shaped and that patterns of dominance in court and community are reproduced and occasionally challenged.

My analysis draws on an understanding of law and of the state that is grounded in the theory of practice (Bourdieu, 1977, 1987; Taylor, 1985; Skocpol, 1987). For Bourdieu (1987: 217) the meaning of law is determined in "the confrontation between different bodies . . . moved by divergent special interests," while for Skocpol (1987: 26) the state is "not just a set of formal offices, but . . . sets of relationships among all who participated in some identifiable interaction connected with state actions."[2] In earlier work I have examined this interaction, focusing on how the meaning of events and relationships is negotiated during the disputing process, and the implications of this for the reproduction and transformation of social order (Mather and Yngvesson, 1980–1981).

This framework provides the context for my analysis of complaint hearings. In particular I examine the delicate balance of coercion and complicity, conflict and cooperation that secures the clerk's dominance in shaping citizen complaints, and which is central to an explanation of the exercise of power in this arena.[3] It is dependent on the legal construction of the clerk as both of the law and "not legal," a transitional figure linking court and community; it also hinges on the construction of the hearings as occurring "out of court" in a transitional *space* that allows the clerk and citizens to participate in producing the law while reproducing patterns of dominance at the courthouse and beyond. In this way I argue that the construction of "court" and "community" are part of the same moment and that complaint hearings reproduce the paradox at the

[2] Skocpol's definition borrows from Taylor's work. I came on both through a paper by Monkkonen (1987: 7), which points to the relevance of this approach for an understanding of the place of local trial courts in state theory. Monkkonen (ibid., p. 18) argues that the activities of trial courts *are* the state.

[3] Lukes (1974: 31) notes that "the central interest of studying power relations [is] . . . an interest in the (attempted or successful) securing of people's compliance by overcoming or averting their opposition." This may involve persuading in the face of obvious conflict; or it may involve silencing potential issues, or underscoring others through particular institutional practices or by invoking shared cultural assumptions. These ways of structuring bias may be the intended consequence of individual choice but are as likely to result from tacit and unquestioned cultural understandings and social practices (ibid., pp. 21–22).

heart of modern law: that it is "characterized by an independence achieved in and through dependence" (Bourdieu, 1987: 225). It is neither "from above" nor "from below" but simultaneously separate and immanent, imposed and participatory.[4] Thus this article seeks to build upon and go beyond the dichotomizing that has been inherent in previous literatures about this process.[5]

II. THE COURT IN JEFFERSON COUNTY

The Jefferson County District Court is located in Riverside, Massachusetts, a town of 20,000 and the county seat. Its jurisdiction includes the town of Riverside and eighteen other villages and towns ranging in size from 200 to 8,000 people. The courthouse, an imposing red brick building with white columns, sits at a major intersection just beyond the town center, which separates the town's elite residential neighborhood from its business district to the south and divides the "transitional" and slum areas that spread out to the east and west around the former sites of two of the town's major industries.

Like other district courts in Massachusetts, this one is closely tied to the communities it serves.[6] Most of its personnel are residents of Riverside, and many were raised there.[7] Court staff are

[4] Bourdieu (1987: 239) defines symbolic power as power that is exercised "through the complicity of those who are dominated by it." Similarly, in explaining the reproduction of dominance and subordination Ignatieff (1983: 202–206) and Ortner (1984: 157) discuss the importance of "diffuse, enduring solidarity" and of other ties experienced as reciprocal and uncoercive. See also Hunt's (1982) discussion of the consent/coercion dichotomy in liberal and Marxist analyses of law. He argues for a conception of law "not reducible to a choice between opposites or a fluctuation between them" (ibid., p. 95).

[5] This paper is based on the quantitative analysis of 618 cases filed with the clerk of the Jefferson County District Court in Riverside, Massachusetts, between June 1 and December 31, 1982, and on seven months of observations and interviews at the court and in the two communities that used the court most heavily. Quotations were taken from these interviews. At the court, I observed over 200 complaint hearings and followed complaints that were issued through other stages of the court process. In addition, I observed filing procedures and informal exchanges about complaints; interviewed judges, attorneys, clerks, and probation staff; and spoke with the parties to complaints when possible. In the community ethnography, I followed 43 cases back into the neighborhoods where they began, speaking with participants and other residents. I also interviewed police, local attorneys, a schoolteacher, 2 newspaper reporters, social workers, a housing bureau official, a landlord, a community organizer, housewives, blue collar workers, and businessmen. I regularly read the county newspaper, *The Riverside Record*, and attended meetings of the Board of Selectmen, where many local problems are debated.

[6] The courts' local roots give them their traditional identity as "people's courts" (McDermott, 1983: 23). At the same time, district courts comprise one department of the Massachusetts trial court system, centrally regulated and funded and under the administration of a chief administrative justice in Boston. Tension between the court's role as both a state institution and a local forum is basic to its identity (Hartog, 1976; Auerbach, 1983; McDermott, 1983; Bing and Rosenfeld, 1970; Robertson, 1974: xvii–xxix).

[7] Both judges are Riverside natives; and the assistant clerk, the clerical staff in the clerk's office, and all but 1 of the 5 staff in the probation office are either longtime residents or natives.

connected to the business and professional communities in Riverside by ties of kinship, school attendance, and membership in social clubs. Today, as in the past, its presiding and other regular justices are prominent citizens, known for their strong community orientation. The present presiding justice grew up in a working class neighborhood in the town, served on the legislature, and was a member of one of the town's prominent law firms before he became a judge. The other regular judge and the assistant clerk at the court grew up on what they describe as "the other side of the tracks" in Riverside. The judge became a partner in a local law firm and has served on the board of one of Riverside's major financial institutions. The assistant clerk served as a town policeman for twenty-one years, and in consequence not only knows a broad range of residents but also continues to have close ties with the police department. One of the assistants in the clerk's office is the daughter of a former Riverside police chief. The head clerk, born in a neighboring town, is one of the few "outsiders" at the court, a term he used to describe both himself and a black Riverside resident recently hired to work in the clerk's office.

Court staff share concerns expressed by others in Riverside and articulated on a daily basis in the county paper regarding the changing face of the town in the past decade or two as represented by loitering youth, runaway teen-age women, and more serious juvenile crime; vacant buildings left as the major employers moved to other regions; and neighborhoods where there is "nothing that pulls people together." An imagined community of people who "go where they belong," avoiding the need to confront different life ways, is perceived as being threatened by "scum" moving in from nearby cities. In the downtown area, transients and other "undesirables" roam the streets, a reminder of the proximity of nearby Milltown, whose "downstreet" neighborhood epitomizes the disintegration of community and defines chaos for the working class residents of Riverside.

While citizens have a variety of means for handling people and behavior that are defined as appropriate for public complaint,[8] they turn to the police and ultimately to the court for more authoritative intervention. The police, familiar figures in all but the most elite neighborhoods of the county, are typically called first, but they rarely make an arrest or file a complaint with the court.

[8] Analysis of hearing data indicated that complaints brought to the courthouse are also dealt with in other forums, although typically in different forms: at town meetings, in appeals to the Board of Selectmen, or in complaints to other town committees (such as the Planning Board); in calls about child abuse to the Department of Social Services or the Massachusetts Society for Prevention of Cruelty to Children; in complaints to the Board of Health, the Housing Department, or the Fire Department; and in letters to the Jefferson County newspaper.

Only when repeated calls to the police have failed to resolve a problem do people turn to the court themselves.[9]

III. "GARBAGE" CASES AND THE LEGAL CONSTRUCTION OF THE CLERK AS NONLEGAL

If we arbitrarily granted all the complaints, we'd have a whole bunch of garbage (Assistant clerk, Jefferson County Court).

The clerk's office, where citizens and police must apply for issuance of a criminal complaint, is located just inside the doorway to the courthouse and marks the entry point to the court system for all nonarrest cases in the county. Private citizens filed 294 applications for issuance of a criminal charge with the clerk between June and December 1982. During this period, police brought 324 additional applications in response to citizen complaints.[10] Citizen complaints are loosely termed "garbage" at this court and others[11] as an implicit contrast to "serious" complaints brought by the police. A "garbage case" describes a conflict that is "everyday," a "shoving match in which somebody threw the first punch," "kids pushing kids," or a "lovers' quarrel." Initial sifting of these complaints in the field by police, who call them "kidstuff," points to their subsequent definition as "garbage" at the court. Court staff describe them as "private" matters that require a referee, a sounding board, or advice, but do not view them as appropriate for a criminal charge. The presiding judge describes them as "little problems" in which people need "to be heard" so they "don't take it into their own hands if they can't resolve them." The assistant clerk simply says, "A lot of it is, people want to come to the courthouse. That keeps things out of court. They need a third party and they don't have one available." The outcome of hearings on "garbage" cases confirms their representation by court staff as nonlegal matters.[12] By contrast to the complaints filed by police,

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[9] This statement is based on information from 110 hearings on complaints brought by private citizens. Of these, 81 had involved at least 1 (and in some up to 10) calls to the police before they were brought by a citizen to the clerk.

[10] The 618 complaints filed by both citizens and police constitute all complaints filed with the clerk between June 1 and December 31, 1982, except for 50 nonsupport complaints filed by the Department of Public Welfare and 67 fuel tax complaints filed by the police. I excluded these from my analysis because they typically involve routine decisions by the clerk and because the issues of complaint definition on which my project focused were minimal. The total non-motor-vehicle criminal caseload of the court was 1,500 complaints for fiscal 1982. Of these, 341 entered through an application filed with the clerk.

[11] See Harrington (1985: 144–49) for a discussion of the handling of "garbage" in other misdemeanor courts.

[12] Police and citizen complaints differ in other significant ways. Unlike the latter, which typically involve intimates, friends, and acquaintances, those brought by the police are more likely to involve conflict between strangers (85% of those brought by individuals involved intimates, while 15% involved strangers; 75% of those brought by police involved strangers, while 25% in-

which are issued in 82 percent of the cases, citizen complaints tend to be dismissed by the clerk or withdrawn by the complainant; only a third become formal criminal charges in court.[13]

The clerk's role at the court is defined by his involvement with citizen complaints. As an official who deals with cases that are "not really law," he becomes, and is officially defined as, "not really legal" (McBarnet, 1981), a lay magistrate who is urged to act as a mediator and to "refrain from initiating criminal proceedings where the conflict can be fairly resolved by something less" (Committee on Standards, 1975: 3:00). In keeping with this, the clerk is instructed to base decisions on "practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act" (ibid., 3:08). At the same time, the hearings are officially represented as a mechanism for enforcing the law, for determining "whether it appears that a crime has been committed" (MASS. GEN. LAWS ANN. ch. 276, § 22 (West 1979)) and whether there is "reasonable belief that the accused committed the crime in question" (Committee on Standards, 1975: 3:17). The hearings are also described as a form of due process that protects the persons against whom a complaint is sought by permitting them "an opportunity to be heard personally or by counsel" prior to issuance of a criminal charge (MASS. GEN. LAWS ANN. ch. 218, § 35A: 55 (West, 1979)).

The flexible official construction of the clerk's role as both law enforcer and peacemaker allows for wide leeway in how individual clerks choose to conduct a hearing. Styles of the clerks I observed ranged from distanced and formal decision making in a triallike atmosphere to forms of participatory decision making in which disputants were actively involved in constructing a solution to a case to informal, but unilateral decision making by the clerk. Variation in style is affected somewhat by the style of the court and its local (as versus more professional) orientation; but the style of a hearing is shaped as well by the identities of the participants and their response to one another.[14] Thus while some clerks

volved intimates). Police complaints are more likely to involve property offense (63% were property offenses, 18% were offenses against the person, 19% were victimless); the citizen complaints, by contrast, typically involve an assault on a friend or intimate (35% were property offenses, 61% were offenses against the person, 4% were victimless).

[13] Of citizen complaints, 96 (33%) were allowed, 92 (31%) were denied, and 71 (24%) were withdrawn; 34 (12%) were classified as "other." Withdrawal by a complainant and denial by the clerk are sometimes hard to distinguish. Almost half of the 71 withdrawals (48%) occurred during or after the hearing; in the hearings I observed, many of these resulted from efforts by the clerk to mediate a conflict. Of police complaints, 245 (82%) were issued, 34 (11%) were denied, and 9 (3%) were withdrawn; 12 (4%) were classified as "other."

[14] During 15 months of research on this and a similar project at an eastern Massachusetts court, I observed 5 different clerks. My observations suggested that style of the court significantly affects the leeway of clerks in conducting hearings (Yngvesson, 1985a).

were more comfortable with distanced decision making and others sought consensus, the style of proceedings and the construction of events in a case were shaped by the particular combination of participants, the knowledge that separated or linked them, and the implications of this for the exercise of power in a hearing. Which clerk, parties, and other professionals participated in a hearing affected the discourse used, the distribution and patterning of talk, the structuring of social space, and ultimately the meanings imposed on events.

At the Jefferson County Court, the styles of the two clerks differ markedly.[15] The head clerk, a man in his mid-thirties, is restrained and formal in both the hearings and his relations with colleagues and others who come to the clerk's office for assistance. With a graduate degree in education from the state university, he has more formal education than others in the office, but he is not legally trained. In hearings he carefully attends to correct procedure, relating his decisions to legal definitions and statutory sources and preferring to take cases under advisement rather than announcing a controversial decision during the hearing itself. Thus in an assault complaint in which an attorney argued for issuance because there had been unpermitted touching, the head clerk denied the complaint a week later, after consulting the Massachusetts General Laws, on the grounds that criminal assault requires intent to cause physical harm, "not simply touching with intent." In another complaint of assault and battery, brought by a woman against a neighbor for stepping on her daughter's toes, the head clerk argued that issuance was inappropriate on the grounds that "I don't believe this comes to an assault. Assault and battery has to be an intentional striking, a threat to do bodily harm and the means to carry it out. Battery is striking with intent to do bodily harm."

The head clerk's control over the hearing is intimately tied to the implied control of the court setting and to the threat inherent in bringing a criminal charge. While he does not hesitate to address problems of neighborhood relations and family structure during a hearing, he carefully keeps these "local" matters separate from the determination of probable cause. Thus it is the head clerk, more than his assistant, who stands for what is most "legal" about the complaint procedure at this court.

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[15] While the style of the clerks differs, there is no significant difference between them in patterns of issuance. Of 507 hearings in which the identity of the clerk could be established, 273 were conducted by the assistant clerk and 234 by the head clerk. The assistant clerk allowed 60% (165) and denied 23% (62) of the complaints he handled; 17% (44) were withdrawn or unknown. Corresponding figures for the head clerk are 68% (159) allowed, 18% (43) denied, and 14% (32) withdrawn or unknown. For complaints filed by private citizens only, figures for the assistant clerk are 37% (46) allowed, 37% (47) denied, and 26% (33) withdrawn or unknown. The head clerk allowed 37% (37), denied 33% (33), and 29% (29) were withdrawn or unknown.

The assistant clerk, a man in his late fifties, presents quite a different image, and it is primarily through him that the interdependence of court and community is played out in hearings on citizen complaints. A native of Riverside and a town policeman for twenty-one years before becoming a clerk, he is familiar to many of the parties who approach the court with complaints (he estimates that he knows at least 50% of them), and is known to colleagues and the community by his nickname. The middle class complainant who comes to him because "he used to bust me when I was a teenager," the alcoholic who has faced him on repeated complaints of disturbing the peace, and the transient who lumbers regularly into the courthouse or a church coffee hour demanding advice and reassurance, all accept his judgment and counsel; indeed, the assistant clerk describes his efforts to handle many local conflicts not as judgments but as "little sermons," and he is successful in using these to forge a consensus among participants in a hearing.

His manner in hearings combines wry humor with a down-to-earth, no-nonsense approach, which allows him to cut through the complexities of relationship and intense emotions the proceedings may evoke. He never hesitates to interrupt, to call, "Time!" when things seem to be getting out of hand, or to order people to pay attention to what is going on. Unlike the head clerk, who relies on legal technicalities to control proceedings, the assistant clerk uses his knowledge of local communities and his personal authority to structure the hearings in ways that suit his own ends. Through skillfully timed questions, some of which probe beyond the events described in a complaint, he controls the range and sequence of information presented. Using what Santos (1977: 14) terms "rhetorical reasoning," he draws on familiar imagery and everyday analogies to frame the behavior of participants as "brainless," "like children," or appropriate "in the ghetto." In this way he constructs common sense interpretations of events. For example, in a case involving a charge of property destruction (damage to a "Big-Wheel" toy) by the father of an eight-year-old against a fourteen-year-old living on an adjacent street, the assistant clerk directed his attention to the father:

Clerk:	He's a bit young to be playing with a fourteen-year-old.
Father:	He's not out of my sight for long.
Clerk:	If you're at 134 [Mayfield Street] and he's over there on Pine Street, he's out of your sight. The wrong guy comes cruisin' along, he's gonna be goin' for a ride. There's not much evidence to issue a complaint. . . .

In this case, the clerk's familiarity with the neighborhood where

the conflict took place made it possible for him to transform a complaint against one person into a "moral lapse" on the part of the complainant. He denied this complaint on probable cause grounds, but implicitly supported his denial by reprimanding the complainant for his failure in adequately supervising his child.

In another case, a neighborhood fight in which parents and children in several families were involved, he concluded with a "little sermon," saying,

> We have a case where the adults have to start acting like adults here. Probably, there's been a lot of discussion about these problems in front of the kids. Then the kids think they have to take up the fight for their parents. If there's a problem between the families, don't talk about it in front of them, so they don't think they have to take up the sword for you. Generally, if the parents don't get involved, the kids can settle these things themselves.

Use of technical language by a complainant may elicit more formal definitions from the assistant clerk as well. For example, in a complaint described as "threat to commit a crime, to wit murder," brought by a young man against his former girl friend's father, the assistant clerk argued that the incident was not criminal because there was no "intent." For intent to be present,

> he [the father] would have had to take positive action, like chasing you out of his yard with a hammer or something. That would be an attempt. . . . Threat to commit a crime *is* a crime and it *isn't* a crime. It comes under a set of statutes where the judges are charged with keeping the peace. Then they may have to put a surety on someone to keep the peace. It could be a threat to commit an assault and battery; and it could be a threat to commit murder. From what I've heard, the proper disposition here would be to just continue this case under the condition that he doesn't have anything to do with you and you don't have anything to do with him.

In this case, as in others, the clerk drew on implicit cultural stereotypes: that a "threat" to kill is not a crime in the context of a heated exchange involving intimates, and that physical abuse is "discipline" if it is carried out by parents on children. These stereotypes were contrasted with legal definitions to justify denial. At other times, actions framed in legally grounded arguments about rights were redefined in a discourse of shared responsibility to construct images of everyday expectations and of mundane "trouble" (Emerson, 1969: 83–100).

While the head clerk seems uneasy with the tension between claims of rights and assertions of customary moral obligation that complaint hearings constantly evoke, the assistant clerk skillfully manipulates this, saying that this "middle area between them is where I want to stay. Sometimes I'll move as far as possible to one side or the other in order to accomplish what I need to." His deci-

sions are made during the hearing and sometimes evoke open anger in the courtroom or provoke renewed arguing or fighting in the hall or the parking lot. He seems relatively undisturbed by this and remarks philosophically that some cases "will never be solved." Nevertheless, he does not discourage people from bringing complaints, and it is through cases such as these that the limits of law are shaped and the contours of a moral community surrounding the courthouse etched.

A key feature of the assistant clerk's skill is the "personalized and far-reaching control" (Bittner, 1969: 183) that he established as a former policeman. Like a policeman, his intimate acquaintance with local persons, places, and histories (Bittner, 1974: 32) enables him to situate particular conflicts in particular settings and suggest solutions that reflect local expectations. In this way he avoids an overtly coercive role while defining local conflicts in terms of his own concerns about levels of risk in an area and the implications of this for public order. Thus his handling of the complaint process subtly blends consensus with coercion, merging imperceptibly into what Bourdieu (1977: 191–192) terms "disguised domination," the "gentle, invisible form of violence which is never recognized as such, and is not so much undergone as chosen." The assistant clerk's practice thus represents the delicate balance between law as imposed and law as shared at this court.

I shall next discuss the handling of "garbage" cases, focusing on struggles over issuance and on strategies used by the clerks to control the development of a case. These include the construction of a hearing as a formal legal event, the manipulation and control of silence (determining what can and cannot be said, and at what times), and the interweaving of distinct discourses to control the meaning of persons and relationships.[16] In this way the clerks construct imageries of order and of relationship that make "common sense" and justify a decision to handle a complaint in a particular way.

IV. CONSTRUCTING THE COMMUNITY AT THE COURTHOUSE

The bourgeois subject continuously defined and redefined itself through the exclusion of what it marked out as "low"—as dirty, repulsive, noisy, contaminating. Yet that very act of exclusion was constitutive of its identity (Stalleybrass and White, 1986: 191).

[16] Foucault (1980: 100) argues that "we must not imagine a world of discourse divided between accepted discourse and excluded discourse, or between the dominant discourse and the dominated one; but as a multiplicity of discursive elements that can come into play in various strategies" (see also ibid., p. 27). Schattschneider (1960: 71) describes this as the "mobilization of bias" by organizing some issues "into" politics "while others are organized out." See also Lukes (1974: 24) and Mather and Yngvesson (1980–1981).

[D]ifferent strategies for resolving conflict convey different ways of imagining the self, and these different forms of self-definition suggest different ways of perceiving connection with others (Gilligan, 1986: 243).

The hearings I discuss in this section involve problems of neighborhood life style and family order in three Jefferson County neighborhoods. These make up over a third (95 cases or 37%)[17] of citizen complaints and include the most stereotyped "garbage" cases brought to the clerk. They involve conflicts about noisy motorcycles and fighting children, burned pies and ruined clothes, overgrown trees and borrowed rings, matters termed "ridiculous" and "brainless" by the clerks. At filing they are transformed into complaints of "assault and battery," "threats," and "disturbing the peace" and become vehicles for talking about legal rights and local morality, joining the language of law with the "common sense" of custom to shape notions of the good neighbor, the bad daughter, and the dutiful parent and to construct different images of the self in relationship. By pulling the court into the most mundane areas of daily life, these hearings become forums for constructing the separateness of law while transforming the courthouse into an arena for "thinking the community," for constituting what the local community is and who is not of it, even as they involve the local community in defining the place of law.

The clerks generally try to resolve these matters without issuing a complaint. They are constrained, however, by the capacity of complainants and others, whose position in the local community and knowledge of the law empower them to manipulate the complaint procedure to achieve their own goals. In the forty-seven neighbor and family complaints I observed, previous experience with the court system, ongoing connections with court staff, and ties to the professional and business community in Riverside were factors affecting capacity; these cases also suggested a tentative relationship between class and the capacity of users. As members of the local community, the clerks too may use issuance as a tool for controlling particular conflicts and those involved in them.

I shall explain negotiations over issuance in the context of cultural assumptions shared by court staff and other local officials about "normal trouble" in particular settings or relationships and of contemporary political and cultural issues in Riverside and the county as a whole. Quantitative analysis suggests that the relationship of the parties is of some significance in affecting the decision to issue, and that family problems with runaway teenagers are of particular concern to the court, while neighbor cases are more typically dismissed. But analysis of the hearings indicates that even

[17] Of the 51 neighbor complaints and 44 family complaints that were brought to the clerk between June 1 and December 31, 1982, I observed hearings on 31 neighbor complaints and 16 family complaints.

conflicts that are understood as "kidstuff" by the court staff may be constructed as serious problems of public order through the exchanges of the clerk with other participants in the proceedings.[18] To explore these issues, I present four extended cases, drawing on eighteen of the thirty-one hearings that I observed involving neighborhood conflicts and on two of the sixteen that I observed on family conflicts.

A. *Forging a Compromise: The Good Neighbor and the Ethic of Responsibility*

I begin with a hearing that illustrates the dynamic in neighbor complaints where the clerk successfully mediated the positions of the parties prior to dismissing the case.[19] The complaint, which involved a conflict over neighborhood noise, is similar to others in which a localized nuisance (the children of "scum from Eastville," motorcycles, or a barking dog) became a vehicle for discussing changing ways of life in Riverside and surrounding towns. The clerk approached these problems by framing them in terms of interconnected lives and the need to be responsive to neighbors ("What you do *is* other people's business, because it affects them"). Complainants and attorneys, by contrast, discussed them in terms of rights and competing claims of self and other ("He's got the right to use the property for his business, and Jack's got a right to live there in peace"). These differing constructions of events suggest two conceptions of responsibility, reflecting what Gilligan (1986: 239) has described as "different images of the self-in-relationship." In the one construction, "neighbor" implies a dynamic relationship in which each person's world is transformed by the presence of the other; in the second, the identity of each party is protected in a discourse of rights that maintains the equality and separateness of each individual.

The complainants in these conflicts were inexperienced and only used the courthouse as a last resort.[20] Once there, they did

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[18] Of the 44 family complaints taken to the clerk, 19 (44%) were issued; only 10 (19%) of the 51 neighbor complaints were issued. The overall issuance rate for citizen complaints was 33% (96) of 293 complaints. In a multiple regression analysis designed to predict outcomes from a list of variables that included charge, agent (police or individual), and relationship, the most significant predictor was agent ($b = .499695$; $p < .0001$); the second best predictor was relationship ($b = .145433$; $p < .01$). Specifically, cases were more likely to be issued if they were brought by the police or if the parties were family or strangers rather than acquaintances, lovers, or neighbors.

[19] In 26 of the 31 hearings on neighborhood conflicts I observed, the clerks sought a compromise as a basis for withdrawal or for denying the complaint.

[20] The complainants with the least "capacity" (in terms of experience and connections) in my sample were working class parties such as those in the case discussed immediately below. Of the neighbor hearings I observed, 13 involved working class parties, and in only 2 of these (both involving the same participants) were the parties experienced court users. Class of participants was determined by matching addresses with information from the 1980 census as well

not press for issuance but looked to the clerk for assistance in resolving their conflict. As one complainant said, she was there because she hoped that "if [the defendant's] father and the police couldn't make him behave . . . the courthouse people could." The presence of a lawyer did not change this pattern. In the hearing discussed below, for example, the lawyer for the complainant joined with the clerk in defining conditions for compromise rather than pressing for issuance.[21] Thus the clerk was given broad scope in these conflicts and drew on his knowledge of local life and his skill in constructing an imagery of interdependence to resolve them. But as I will suggest, the use of this imagery was most successful when participants were relatively powerless and less adept in mobilizing a discourse of rights to frame their position.

1. Case 1: "The Noisy Motorcycles." This complaint was brought from a neighborhood to the east of Riverside where several small businesses and some larger ones are gradually replacing a region of farmland and farm stands. A few private residences are interspersed with a dress shop, a restaurant, an auction gallery, a foreign car company, and a motorcycle business. The complaint, for "assault" and "disturbing the peace," was brought by a sixty-year-old working class man against his neighbor, the owner of the motorcycle business. The businessman allowed clients to test run motorcycles behind his shop, and he also allowed his son to ride there after school and on weekends. His neighbor was bothered by the noise, and during the eighteen months since the shop had opened had complained to the businessman, had called the police on numerous occasions, and had also gone to the town meeting to complain; none of these efforts, however, had resolved the matter. Finally, after a call to the police one Saturday, the officer suggested the complainant go to the court clerk.

The assistant clerk opened the hearing with the following statement:

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as from observational and interview data. The tentative relationship between class and experience that I suggest is supported in other work (Merry and Silbey, 1984).

[21] Quantitative data on the effect of representation by an attorney on outcome suggest that this is a more general pattern. In 57 cases brought by private citizens that involved attorneys, the pattern of issuances was significantly *lower* when an attorney represented either the complainant or the defendant (but not both) than if neither or both were represented. Of 170 complaints in which no attorney was present, 37% (63) were allowed, 54% (92) were denied or withdrawn, and 9% (15) were unknown. Of 23 complaints in which both were represented, 39% (9) were allowed, 57% (13) were denied or withdrawn, and 4% (1) was unknown. Of 22 complaints in which the defendant alone was represented, 27% (6) were allowed and 73% (16) were denied or withdrawn. Of 12 complaints in which the complainant alone was represented, 25% (3) were allowed and 75% (9) were denied or withdrawn. While these figures are too small to be conclusive, the results suggest an alliance between clerk and attorney when only one party is represented, as in the case discussed below.

> For the record, this is a "show cause" hearing scheduled on behalf of ———, on a complaint application by ———, alleging assault and battery and disturbing the peace. This is not a trial; it is not a minitrial. You will not be found guilty or not guilty. I do not have to have evidence beyond a reasonable doubt: Just evidence enough to make a reasonable person believe that you *could* have done it. You do have a right to have an attorney. I cannot, at this stage, appoint an attorney for you, but you may obtain one at your own expense. Would you like time to obtain counsel? . . . Do you have any questions? First I'll hear from ——— [the complainant], and then you ——— [the defendant] will have a chance to tell your story.

This introduction, repeated at all the hearings I attended, establishes the official quality of the proceedings while underscoring their nonlegal character. It also establishes the clerk's role as decision maker. While the hearings are represented as nonlegal, they are held in the juvenile courtroom, which is smaller and more intimate than the regular courtroom but arranged so that the clerk sits at a raised bench, with the parties facing him at a table below. Proceedings are recorded, and the clerk is in control, directing questions to each of the parties in turn so that he can elicit the type and sequence of information he wants and exclude what he defines as inappropriate. The style of the hearings typifies that described by Atkinson and Drew (1979)[22] for courtroom examination:

Clerk [to complainant]:	Where do you reside? Where's your property in relation to his?
Complainant:	It's right next door.
Clerk:	Is that your home?
Complainant:	Yes.
Clerk:	What happened?
Complainant:	It started on Saturday.
Clerk:	What time of day?
Complainant:	In the afternoon. . . . I just kept hearing that awful noise of motorcycles. He's going around and around the track and it just got on my nerves. . . . I walked over and I said, "Andy, I'd like to talk to you." And he poked me in the chest. So I called the police. I asked the police about it, and they told me to fill out a complaint for assault and battery.
Clerk:	What time of day do they ride out there?
Complainant:	All day long.
Clerk:	Where's this track?
Complainant:	Right behind my house.

[22] Atkinson and Drew (1979: 61–62) describe courtroom examination as involving fixed "turn order" and an organization of turns into question-and-answer pairs.

Lawyer for the complainant: How long has this been going on?

Complainant: About a year or so. . . . If they see me in my garden, they go right by. If I'm not there, they come right in.

Clerk [to defendant]: Andy, what do you have to say?

Defendant: For the past eighteen months, I've been running my business there. We use the field behind the building to test the motorcycles. He's complained eight or ten times. Much of the time it's other people who get on to the property through the railroad tracks. If people come onto my property by way of the railroad tracks, they are trespassing on my property as well as the railroad's. If people are on my property when I'm not there, what can I do about it? It's a commercially zoned piece of property. He brought a complaint to the town meeting, and all they did was tell me to cooperate. We never run a motorcycle more than five or ten minutes at a time.

Clerk: Do you have your land posted where they come off the tracks?

Defendant: Yes. Not only that, but they have a fence. . . . I have a friend whose father's high up in the railroad. He's going to check about the railroad fencing it off.

Clerk: If it came to that point, would you have any objection to fencing in the property?

Defendant: I don't see why *I* should have to go to the expense.

Clerk: It may seem like a burden to you, but you say you've been there eighteen months?
[to complainant]: How long have you lived there?

Complainant: Six or seven years.

Clerk: See, when he moved there, he didn't have any problems with noise. More of us have had problems in Plainfield with kids racing up and down the road with trail bikes.

Lawyer: We just hoped perhaps something could be worked out. We realize that he has a right to do testing and that his kid has a right to ride there. He's got the right to use the property for his business, and Jack's got a right to live there in peace.

Clerk: I could issue a complaint for disturbing the peace. But as far as him poking you in the chest with his finger—he wasn't really threatening you bodily harm.

Complainant: He poked me! I'm not lying!

Clerk: But you weren't hurt. There was no hospitalization, and you weren't really threatened. So that's not the problem. The problem is the other people that come on the property.

Defendant: I still feel like *I'm* the one being picked on. It's *my* property!

Clerk: There's a limit to things you can do on your property.

Defendant: Where I live in Sayre, I have a nice home in farm country. When they harvest tobacco, there's three generators going all night long. But what am I going to do about it? Complain that they're disturbing the peace?

Clerk: But that's the way of life in Sayre. You could move down to New York City and there'd be nothing you could do about the noise either. He was living there quietly before the motorcycle shop moved in.

Defendant: I'm just going to continue doing what I can do. There has to be some proof that it's noisy.

Clerk: You know, people with a swimming pool *have* to fence it in. There are limits to what is safe and legal, even on your own property.

In this hearing the clerk used procedural formality to control the development of the case, while drawing on his knowledge of the neighborhood and of criminal law to construct events in a particular way. He rejected the notion that poking constituted assault, thus setting the limits of court intervention in the case, although he indicated that he could issue a complaint for disturbing the peace. He supported this, however, not in a discourse of rights but by portraying a "way of life" that both the businessman and the older resident were creating. The noise was excessive because it was occurring in an area where the "way of life" had been "quiet" until the motorcycle shop moved in. But as he noted later, "It's a tough thing. He's trying to run a business down there, and his neighbors are all upset because of the noise." While the lawyer for the complainant argued that the rights-claim of the businessman to "continue doing what I can do" on his own property was balanced by the rights of residents in the neighborhood to "live there in peace," underscoring the equality of the parties, the clerk emphasized their interdependence, phrasing his arguments

as "little sermons" (or what Schorske [1981: 69], in quite a different context, has referred to as "integrating myths"):

> The only thing I can say is you've got to learn to be considerate of your neighbors. You've got to live with them. . . . It's not that simple. . . . That reminds me of a story. All these people were in a lifeboat, and one guy's huddled down there in a corner, and he won't have anything to do with anybody. All of the time he was saying, "It's none of your business what I'm doing," but he was steadily digging a hole in the bottom.

This construction justified a solution in which each made changes in life style in response to the presence of the other. With issuance as an implied threat, the businessman agreed to investigate the fencing of his land so that only those with his permission could ride there, and he was to restrict motorcycle riding to fifteen minutes at a time. The complainant had to tolerate some noise because of the presence of the motorcycle business next-door. By defining the issue in this case as one of neighbors-in-relationship rather than as one of rights, the clerk's proposed solution required a transformation in the world of each because of the boundary they shared.[23]

This type of solution, which Gilligan (1986: 242) has termed "inclusive" rather than "fair," was characteristic of the assistant clerk, who frequently lamented that today there are "all these people wandering around with all these rights." It tacitly recognized that while "way of life" is shaped by tradition, it is constantly changed by the arrival of new neighbors. While the clerk's solution limited the place of the criminal procedure in the construction of neighborhood life, his participation actively involved the courthouse in what Bourdieu (1987: 234) has called "the practical activity of worldmaking." The complainant's inexperience also contributed to the way this complaint was handled, since he emphasized what the clerk perceived as a "frivolous" assault charge and did not follow through on the clerk's suggestion that the nuisance complaint could be issued. He had come to the courthouse for assistance, and once there allowed the clerk and the attorney to shape the meaning of this case and the way in which the courthouse was used to influence it.

B. "Getting Rid of Someone Legally": Community Politics and the Ethic of Rights

Unlike the last case, in which the clerk underscored the interconnection of the parties and sought a compromise, hearings in the next case, "The Expanding Tree," developed as straightforward

[23] I draw explicitly here on Gilligan's (1986: 242–243) analysis of four-year-olds working out a solution to a conflict over whether they should play a game of pirates or next-door neighbors. The solution incorporated both into a game about the pirate who lived next-door.

proceedings for determining probable cause. Like "The Noisy Motorcycles," this case was related to problems of neighborhood life style and was brought to the clerk as a charge of disturbing the peace. But here the identity of the parties, their greater sophistication in mobilizing the law, and the broader political meaning of the case in the town defined the clerk's role quite differently and shaped the imagery in which this case was framed at various legal levels.

There were no sermons about shared responsibilities in "The Expanding Tree," although everyone involved with the case agreed that it was specifically about "the end of a driveway" and more generally about the presence of "these kind of people" next-door to an established Riverside family. The criminal complaint served as a vehicle for pursuing these problems, which were defined by a political and economic conflict that had polarized Riverside for years, following an exodus of major industry in the 1970s and 1980s. This conflict split its more conservative citizens, who worried about the "quality of life" in the town, from those that advocated "progress": a new form of town government, new and alternative forms of business, and by implication the "alternative" ways of life that might accompany these.[24] The relationship of "The Expanding Tree" to this broader conflict transformed the role of the clerk from mediator of a "garbage" quarrel between neighbors to an advocate for one side in an issue that epitomized the struggle between old and new in the town.

1. Case 2: "The Expanding Tree." The case involved a dispute between two families in a "transitional" neighborhood over a right of way straddling the boundary of their land. A large maple tree had grown into the right of way, forcing one of the parties to trespass slightly on the land of the other when it was used.[25] The families involved were an older man of Italian descent and his siblings (the Busonis), who had lived in the neighborhood all their lives. The man was a retired civil engineer, and his parents had purchased their house in 1917. The other family, a couple with three children (the Smiths), had moved into the house next-door to the Busonis four years previously.[26]

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[24] Discussion of these issues in a politicized rhetoric that spoke of "anti-reform forces" and of opposition to "constructive change" dominated editorials and other articles in *The Riverside Record*, during my research (February 8, 1983: 8 (col. 1); April 5, 1983: 1 (cols. 2–4); November 22, 1983: 10 (col. 1)).

[25] The land in question was small, involving a triangle 18 inches at its widest and 6 feet long.

[26] I consider both families to be middle class in occupation and demeanor. Census data on the neighborhood presents extremes of income and considerable diversity of occupation, reflecting its transitional character. Middle class complainants were unusual in the neighbor and family cases I observed (there were only 2), but this case suggests some of the ways that middle class status (which here is combined with modest political and economic prominence) may affect the handling of a complaint.

The contrast in the houses of the two families was striking. The Busonis' house was an unremarkable white-frame structure, the property neat and well maintained. The Smiths' house, by contrast, was dominated by a turret, had been painted in unusual colors, and was surrounded by a tall fence hung with extraordinary masks. The Smiths, who describe themselves as "former hippies," were coowners of a small craft store in town. In addition, Rick Smith was vice chairman of the local merchants' association and chair of a citizens' committee to oversee the spending of a federal block grant for downtown renovation. He was an active supporter of efforts to encourage greater economic development in Riverside.

The Busonis objected to having the Smiths as neighbors, and according to the Smiths had begun various forms of harassment to drive them out as soon as they moved there: shouting at them or their friends if they "blocked" the driveway; complaining to the building inspector about the Smiths' swimming pool; and protesting to the town planning board, to a Massachusetts state senator, and to the Department of Housing and Urban Development in Washington that Rick Smith was misusing funds from the federal grant. The Smiths were equally determined to stay in the neighborhood but chose to make life as miserable as possible for the older family, parking cars in the right of way so the Busonis could not get by, putting up a "spite fence" between the two properties,[27] and finally erecting a granite hitching post on the contested triangle of land so that it was impossible for the Busonis to use it. One night this occasioned a public confrontation in the driveway involving Rick Smith and a friend on one side and several Busoni siblings on the other. Rick Smith described it as follows:

> They had picks and shovels. I sat on the post, four of them dug around me, and I pushed it back in. They were leveling abuse at me. The next night I shipped my wife and kids out and we got feeling drunk and nasty. I've refused violent confrontation all along because he's trying to provoke that. We put the post back in again, they came and dug it out, and we sat back and called them words I'd never heard before. Then we dug a hole. Then his lawyer called and asked if there wasn't some way we could work it out—which is what we wanted.

Smith explained that "for years I've been trying to find a legal way to get rid of this guy," but that he had been "over a barrel" until he read the deed and discovered that Busoni was illegally trespassing on his land. He erected the post, he said, to force Busoni to initiate legal proceedings, and this strategy was successful. Busoni filed a suit in the superior court, requesting an injunc-

[27] Perin (1977: 105–106) discusses the use of spite fences in neighbor conflicts. In this case, the Smiths bought used plaster casts made by plastic surgeons for facial reconstructions, painted them, and hung them on a fence erected between their land and the Busonis'.

tion that would prevent the Smiths from using the triangular piece of land and force them to remove the granite post. In addition, a friend of the Smiths, and subsequently Rita Smith, brought criminal complaints against Busoni for disturbing the peace to the court clerk. Rick Smith had known the clerk since he was a teenager, when the clerk, who was then a policeman, "used to bust me." The Smiths were also known to other court staff, including the presiding judge, through their involvement in political and other town activities.

The first of the complaints, brought by the Smiths' friend when Busoni yelled at her for parking in the driveway and then followed her in his car as she drove away, was (in the words of the assistant clerk) "issued technically" but dismissed after six months when no more trouble was reported by the woman. A second complaint was filed some months later against Busoni by Rita Smith, who claimed he followed her and her children in his car when she was driving to a nearby beach. The assistant clerk again heard this complaint, and devoted the hearing to a detailed reconstruction of the sequence of events. He asked Rita Smith about the route she had taken, questioned the children carefully as to whether they had seen Busoni following them, and checked to be sure Rita Smith had identified Busoni correctly:

Clerk: When you drove in [at the beach] did you look at Mr. Busoni?

Rita Smith: Yes. I looked at him and said, "You've had it now." And he took off.

Clerk: When you turned around and came back out, you caught up with him?

Rita Smith: Yes, he was driving slowly.

Clerk: What you're saying is that he made a U-turn and ended up following you?

Rita Smith: I had the green. He got the red, but I saw the signal which indicated he was going over the bridge.

Busoni denied that he had been following Rita Smith, and he explained that all of this was "the result of a driveway suit." The clerk responded, "I'm sure it's a dispute about the end of the driveway. I don't think Mrs. Smith would dispute that and you wouldn't dispute that. The whole thing is the result of that." Nevertheless, the clerk concluded, "As far as this hearing is concerned, I believe there is probable cause to have a complaint issued. You'll have to go to court." Busoni's sister, who attended the hearing with him, objected to the clerk's decision:

Sister: Then it's her word against ours?

Clerk: I guess it is.

Sister: Should we have had a lawyer, sir? I'm really terribly concerned . . .

Clerk: This is not a trial. We don't have to have evidence beyond a reasonable doubt. I don't have to explain this to you. . . . But you both started at the same time. . . .

Busoni: Right.

Clerk: Going in the same direction. . . .

Busoni: No.

Sister: One doesn't have the right to go up the street? How can my brother go and hear her yelling?

Clerk: No, she said her kids yelled at her.

Sister: How should my brother hear this? You're establishing he heard this?

At this point the exchange between the Busonis and the clerk was becoming heated and the clerk called, "Time!"

Sister: So whoever puts in this complaint is likely to have the complaint issued?

Clerk: Not exactly. It's kind of a one-sided hearing. Like a grand jury—only I'm the grand jury.

In conducting this hearing, the assistant clerk assisted Rita Smith in developing an argument for probable cause through his detailed questions while allowing Busoni to present an incoherent, rambling account of his actions. When the Busonis objected to the outcome, he asserted his authority as decision maker by drawing on a legal analogy to describe the hearings and his role. This strategy silenced the Busonis, and the imagery suggested one of the poles of meaning in terms of which the clerk's practice is constructed. In cases with other participants, hearings became "little chats" with the assistant clerk as counselor, rather than legal proceedings with the clerk as jury.

A week after this complaint was heard by the clerk, the superior court considered the suit filed by Busoni for a temporary injunction against the Smiths. Busoni was represented in the case by a prominent local attorney. The Smiths represented themselves, but they were assisted in preparing their defense by the court librarian, by a friend who was a local attorney, and by experience Rita Smith had gained when she helped her ex-husband through law school. They were also supported in pursuing this case, as they were during the complaint hearing, by advice and reassurance from the assistant clerk.

In the superior court, the case was even more narrowly defined by the judge, who stated that "the only thing at issue is a triangular piece of land." The Smiths argued that by installing the post they were "exercising our rights of property in the only legal way we knew," not blockading the driveway. Busoni's attorney argued that the triangular piece of land no longer belonged to the Smiths because a maple tree had grown in the driveway, forcing the Busonis and their tenants to use this land for several years.

Thus, he concluded, the Busonis were entitled by right of adverse possession. The judge ruled in favor of the Busonis. In her conclusions, the judge noted that "this is a neighborhood dispute, and in general the court is not the place for these problems. But if they get to the point where this one is, it is best to come to court with them." She also asked the Busonis to be "considerate" in their use of the triangle, thus alluding to an imagery of neighborhood that was eclipsed in this conflict yet had played such a dominant role in those discussed above.

Shortly after the injunction hearing, Busoni was arraigned in district court on the criminal charges brought by Rita Smith. This charge was ultimately "continued without a finding" for a year, with a view to dismissal if there was no more trouble. But Busoni's appearance as a defendant in criminal court was reported in the local newspaper, and constituted a public sanction for his behavior. The outcome of the injunction hearing was also covered by the news media, which described it as a case about "cutting down a tree." Rick Smith was quoted as saying that "whoever wrote the right of way should be shot" and that their objective in the conflict was to prevent their property from being eroded by the roots of the maple tree and by the cars that drove to the Busoni house. In a written response a friend of Busoni suggested that

> perhaps one reason [the right-of-way] . . . was written as such is to be protected from these kind of people. . . . Surely a man's home is his castle, but let me ask you as a taxpayer, would you want to live like that? Take a look and see what land is being eroded. . . . Is this the way to repay a family who has lived in the same spot for almost seventy years?

This letter identified the fundamental social and cultural issues surrounding this case, which were not found in the legal discourse that shaped it in court. It was a case about protection from "these kind of people," about the erosion of the community by alien life styles, and about the dangers this posed to families who have "lived in the same spot for almost seventy years." It was also a case about the social and cultural space separating Riverside's newer businesses and their owners from its more established merchants and professionals. The arena for the conflict was not simply a transitional neighborhood or the courthouse but downtown Riverside, where a number of alternative shops with "a flavor of their own," such as the Book Swap Cafe, a video arcade, a record shop, the Scorpion Karate Academy, craft shops such as that owned by the Smiths, and a natural food store, have been established in recent years. Community bulletin boards post notices "for upcoming protest marches, yoga lessons, tractors for sale, people looking for apartments." While some reports in the newspaper endorse these efforts to reconstruct the life and image of River-

side's business district, others voice concerns about some of the businesses and the kinds of people who frequent them.[28]

The meaning of the conflict between the Smiths and the Busonis over "The Expanding Tree" was shaped by this broader debate, and particularly by Rick Smith's prominence in town affairs. The complaint hearing, and the criminal court appearance by Busoni that followed, were arenas in which this conflict was waged, and its outcome there was surely influenced by the connection of this case to local fears and hopes about the changing face of the town. As in "Noisy Motorcycles," however, its main significance was less in its outcome than in its use as a "text" through which the changing identity of the town and its residents could be constructed at the courthouse.

C. *Bringing the Neighborhood to the Courthouse: Controlling "Garbage People" in Milltown*

The next case, "The Bad Neighborhood," involves fifteen complaints of neighborhood fighting brought to the courthouse from "downstreet" Milltown, a six-block, densely populated area of mixed tenement and row housing on Riverside's eastern boundary. As in "The Expanding Tree," the interpretation of incidents in "The Bad Neighborhood" was influenced by local social and economic change, in this case the construction of a low-income housing complex and a possible shift in the ethnic identity of the area. These fears transformed complaint hearings into neighborhood battlegrounds, pointing once again to the political and cultural complexity of the interpersonal conflicts brought to the clerk and its effects on the way a case is handled. Unlike the previous cases, however, this one reveals the different meanings of the same conflict for various participants and suggests the diversity of stances taken by the clerks over a series of hearings. In this case, as in "Noisy Motorcycles," arguments about neighborhood life style were used to shape understandings about behavior and to justify the clerk's suggestion that complaints be "held at the 'show cause' level" rather than issued as criminal charges. But as complainants continued to come from the same area, the clerks' roles became more aggressive, and ultimately two complaints were issued because of pressure brought by those involved. In this sense it illustrates, in quite a different way than the last case, the power of local audiences in shaping the meaning and outcome of a complaint and in affecting the role played by the clerk. In "The Expanding Tree," it was the social embeddedness of middle class parties to the case that structured the clerk's approach; in "The Bad Neighborhood," experienced and persistent low-income court "regulars"

[28] This discussion is based on information in *The Riverside Record* (July 9, 1983: 1 (col. 1); July 29, 1983: 12 (col. 2); August 15, 1983: 10 (col. 1); October 13, 1983: 12 (col. 1)).

adapted the hearing process to their own political ends, and pushed the clerk into action that would support these.[29] At the same time, the clerks used hearings on "The Bad Neighborhood" to construct their own vision of order in the "good neighborhoods" of middle class Riverside and to underscore the boundaries between the "way of life" there and the social "chaos" of the bad neighborhood next-door.

Finally, this case once again points to the ways in which different models of relationship and social order inform the arguments and outcome in complaint hearings. Unlike "Noisy Motorcycles," in which the imagery of neighborhood as overlapping ways of life framed a compromise, in "The Bad Neighborhood," interconnectedness was defined as "chaos," and efforts by complainants to define neighborhood conflicts in terms of "rights" were dismissed as irrelevant. Rather, court staff reshaped "vicious" actions as "normal" behavior in a chaotic environment, and issued complaints only when this behavior threatened to spill over into the more bounded spheres of middle class living in Riverside.

1. Case 3: "The Bad Neighborhood." The fifteen complaints in this case were linked in complex ways. There were charges and countercharges, which reflected shifting ties of enmity and friendship between complainants and defendants; several complaints were brought by individuals on different blocks against the same defendants. Of the fifteen complaints, I observed eight as they were heard. All dealt with neighborhood fights, most of which were concentrated on two streets described as "bad" by participants: Middle and Fitch streets. They focused on incidents involving children: Children ruining each other's clothes, setting fires, hitting each other, destroying each other's toys, chasing each other with knives, or pushing each other into buildings or trees. In addition, there were incidents of adults hitting children and of parents fighting with each other. The police were called first, but advised complainants to go directly to the clerk. They described the incidents as "kidstuff" that required a "referee," a job suitable for the clerk but not for them. The fights occurred, according to the police, because of "the psychology of the people." The clerks in turn described the complainants as "brainless," as having "no moral

[29] Between June 1 and December 31, 1982, 26 neighborhood cases were brought to the clerk from Milltown, and I observed 16 of the complaint hearings on these. The "downstreet" area from which the cases came is characterized by low incomes (mean income $14,549); multiple-family, renter-occupied housing (62% of the housing occupied by renters, 43% of the population in units of 3 or more), and a high percentage of households on public assistance (22% of 747 households) (Census of Population and Housing, 1980). This area also makes heavy use of police and the court. The number of complaints filed with the clerk per capita from Milltown during the research period was 2.8% (130 complaints from a Milltown population of 4,711); the corresponding number from Riverside was 1.4% (262 complaints from a Riverside population of 18,436).

sense," and as acting "like children." Fighting, I was told, is a "way of life" in Milltown; the job of the clerk and the police was to contain this.

Other agencies were involved in "containing" Milltown people in various ways. All of the people involved in neighborhood fights were also monitored by social workers through "C & P" or "CHINS" orders brought to oversee the behavior of children or the ability of the family to care for children.[30] In this area, according to social workers, home situations are "unstable," family boundaries are permeable,[31] and children are subject to neglect or abuse. The involvement of Milltown complainants in the social service network is significant in explaining the perceptions and actions of court staff and other local officials in handling these cases. Like the outpatients "of no known address" who wander Milltown's streets and appear repeatedly in the police station and the court, Milltown parents and children also were perceived as needing the intervention and supervision that social services and the court could provide.

The roles assumed by the two clerks in handling these Milltown complaints evolved over the course of several months from a more straightforward "gatekeeping" role in which issues of social order were addressed to a more aggressive role in monitoring and challenging "downstreet" morality. During the earliest hearings, both clerks defined the fights as everyday behavior. In one complaint brought by the mother of eight-year-old Petra against a ten-year-old for "willful destruction of property," the head clerk argued against issuing the application "since what is involved is two girls here swapping clothes."[32] A complaint brought two weeks later by the same woman for assault and threats by another child on her daughter was heard by the assistant clerk, who again defined the actions as acceptable behavior among children:

Clerk: Petra, do you want to tell me what happened?
Petra: We went to school before they. They were waiting at the corner. Marie tried to slice Jane's head off. I got pushed into a tree and hit my head.

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30 "C & P" (Care and Protection) or "CHINS" (Child in Need of Supervision) are terms used by social service and court personnel to describe court orders through which families are placed under the supervision of the Department of Social Services so that social workers can monitor the children. "C & P" suggests that the principal problem lies with the family, while a "CHINS" order is brought to control a rebellious or otherwise hard-to-control child. Both result in family supervision by a state agency.

31 One social worker noted, "You go to one home and there is another person we are also dealing with. They know what's going on; they are in each other's homes."

32 This complaint was subsequently issued when the complainant returned after 2 weeks to say that the agreement to pay for the damaged clothing had not been complied with.

Clerk: You were going to school at the time?
Petra: Unhuh.
Clerk: How old are you?
Petra: Eight.
Clerk: She pushed your head against a tree?
Petra: She pushed *me*!
Clerk: She said she was going to slice the other girl's head off. Did you believe her?
Petra: Yes, because she had a jackknife.

The mother of the accused child did not deny the accusation but explained that the incident occurred because

> Middle Street is a bad street. It's a violent street. Children on that street are apt to be violent. I don't know what it is. When I lived on Main Street I didn't have these problems. Ask any Milltown police officer, and he'll say Middle Street is a bad street.

Like other hearings, this one was quite formal. The assistant clerk directed the questioning, focusing on the details of events and underscoring the "official" logic of complaint hearings: that events (acts) determine outcome and that the aim of the hearing is to determine probable cause. Finally, he agreed that the complaint was justified:

> Technically, I can issue it. [But he asked,] Would you be satisfied if we issued it technically but hold it at the "show cause" level? It's not a real vicious thing, it doesn't appear. We won't have another hearing but we'd issue it if there was more trouble. Kids push kids. [And he counseled,] One thing parents should be sure they don't do is discuss their problems in front of their kids. The kids watch TV, they want to protect the parents, they take up your fight, and first thing you know kids eight or ten or so are fighting and their fathers are slugging it out.

Here the clerk used familiar imagery ("Kids push kids") and the suggestion that the root of the problem lay in the quality of parenting to ground his decision that the complaint should not go to court. He conceded, however, that it could be "issued technically," implying that matters such as these belonged at the courthouse.[33] In this way he kept the matter out of court but within his control. He encouraged complainants to use the courthouse as a forum in which particular "common sense" assumptions about life in "downstreet" Milltown were articulated and reinforced: that violence there was "normal trouble" and that it could be tolerated by the court as long as it was sufficiently contained. The mother's

[33] This form of disposition was used in 20% of the complaints filed by citizens; it almost always led to dismissal. Of 184 denials in citizen complaints, 37 were "held at the 'show cause' level," "issued technically," or "continued for a few months to see if there is any more trouble." Continuances of this kind lasted from 3 months to a year. Of the continuances I observed, only 1 (see n. 32 above) was later issued.

suggestion that the neighborhood, and not the children, were "bad" drew on this same logic, one implicitly shared by the clerk and others. What "went without saying" for all participants in these hearings was that in "bad" neighborhoods, "vicious" behavior is not "vicious" but "normal" exchange, and that the clerk's role was that of keeping people in line through sermons and the monitoring implied by "holding" a case at the "show cause" level. The hearing reinforced these assumptions about the order of things in Milltown and the courthouse's role in maintaining that particular order. The clerk simultaneously shaped and supported a legal complaint. He also constructed a solution that drew on meanings that were "known" by all and thus made "common sense." But the issue that brought complainants to court (efforts by new homeowners to change the "bad" neighborhood to a "good" one) was not resolved, and the same people reappeared at the courthouse door.

Later complaints involved homeowners using the court as a weapon in ongoing fights with renters or other "undesirable" residents next-door. Some of these were phrased as boundary disputes; others were brought to the clerk as assault cases. In all of them, the complaint procedure was used by Milltown residents to voice concerns about the social and moral order of their neighborhood. As one complainant, who had bought a house on Fitch Street four years previously, said about the Hispanic neighbors who had just moved in,

> We own our own home, and when you have a house, and there's kids next door setting fires! . . . They say it's because we're prejudiced. It ain't that! If it was white kids setting fires, we'd feel the same way. . . . She complains that my kids call her kids "niggers." [But] there's one "nigger" that means "color" . . . then there's another "nigger" that means "people that lie and steal and cheat." That's the true meaning of the word! They can claim it's discrimination, because they're colored.

The head clerk conducted three of the hearings involving ethnic and other issues of social identity on Fitch Street. The immediate participants in these complaints were five adults and six children: a Hispanic woman and her four children, a man of Polish ancestry and his wife and their two children, and a man and woman of English ancestry. The Hispanic and Polish families were renters in the same building; the family of English descent owned the house next-door. In two of the hearings, the English family had brought the Polish family to court; in a third one, the Polish and English families were allied against the Hispanic woman.

This series of complaints illustrates how the meaning of events develops through several related hearings and points to the role of participants, and especially an organized and vocal audience (Mather and Yngvesson, 1980–1981), in shaping the way meaning is construed. At one hearing, the courtroom was filled with residents

who had been involved as either participants or witnesses to a fight involving the Polish and English families. They testified to assaults by the women against each other and to threats by the Polish man against the English woman. An effort by one complainant to frame these problems in terms of property rights simply elicited a comment from the clerk that "rights of way often cause problems between neighbors."

The clerk dismissed these complaints, which he later described as "frivolous" problems involving "poor people, both monetarily and intellectually." But at a hearing involving the same parties and others four months later, his approach shifted. This conflict involved accusations against the child of the Hispanic woman for chasing other children with a knife; cross-complaints of assault by the adults; and a complaint by the Hispanic woman that one of the adult men threatened to "crush her face." The police once again described this conflict as "kidstuff." The clerk as usual conducted it formally, asking for details of who was struck, receiving witness testimony, and attempting to restrict the range of information presented:

Hispanic woman: How far back should I start?
Clerk: I think we should restrict it as narrowly as possible. . . . If you want to start at the beginning of the day, . . . what precipitated the incident?

In spite of the clerk's efforts to narrow the conflict through repeated comments that certain information had "nothing to do with the complaint," testimony aired a range of concerns about the Hispanic woman's behavior, her ways of minding her children, her job, and her children's behavior. Finally, the clerk turned off the tape recorder and said:

Clerk: I'm going to go off the record here. What are you folks going to do about this problem with the children?
Hispanic woman: I'm moving! Because of the area, because of the people who live here!
Polish complainant: My children are getting abused too! It seems to be the neighborhood. Even the school says our neighborhood is bad.
Hispanic woman: She doesn't control her daughter. She sticks out her tongue at us, sticks up her middle finger. . . . She calls us spics and niggers.

Clerk: You know, if this goes to court, none of the peripheral issues—about noise, disturbances, disagreements—are going to be admitted into evidence.

Hispanic woman: Nobody's going to do anything to just leave me alone? We can't even go outside without them calling us spics and niggers!

After listening to this exchange, the clerk admonished the parties to "begin acting like adults and not like children," but he decided to issue two of the complaints. He noted later that this series of events had gone beyond an ordinary neighborhood quarrel and "needed a more formal setting." The extent of the fighting and the presence of knives concerned him, and he added that "the people involved lack a sense of right and wrong and of conforming to neighborhood standards. Their behavior possibly would not be tolerated even in Eastfield or New York." Social workers involved with participants through "C & P" or "CHINS" orders, who had attended the hearings at the request of the complainants, also agreed that the fighting in the neighborhood was getting out of hand and was preventing children from attending school because of concerns about violence.

The final phase of this conflict involved an exchange between the Hispanic woman and the Polish man in the corridor of the courthouse after one of the hearings. As a result of the exchange, the Polish man filed a complaint application against her for "threats," accusing her of coming at him with sticks. The hearing on this application was conducted by the assistant clerk, and included the Polish man and his wife and the Hispanic woman. This hearing, like others, was carried out as an examination. But unlike others, the clerk assumed a far more aggressive role as it evolved:

Clerk: What were you afraid for?

Polish man: Because my wife got me on "A & B" [assault and battery], and I just got off probation.

Clerk: You don't understand what I'm saying.

Polish man: I was afraid because she [the Hispanic woman] knows karate.

Clerk: [with a half-smile and considerable skepticism] Was she in a karate stance? You weren't afraid she was going to hurt you. You were afraid you were going to violate your probation by hitting her.

Polish man: I was afraid she was going to knock the shit out of me and I couldn't hit back. She's hit me a few times in the house and I had to take it.

Clerk: You don't look like you could be pushed around.

Wife of Polish man: She made the threat when she had the sticks.
Clerk: My only concern is to have this stop. I'm sure that's what you all want.
Wife of Polish man: I want justice done.
Polish man: I want it so a female can't beat up on a guy and get away with it.
Wife of Polish man: [shouting] If I hadn't gone between those two there would have been a fight because she was furious!
Clerk: You mean you stopped *him* from fighting.

In contrast to the head clerk's earlier approach to this Milltown conflict (issuing complaints so that the court could act as a moral monitor), the assistant clerk denied the application, but used the hearing to challenge fundamental "myths" around which social relations in Milltown are played out: assumptions about strong women and weak men ("I was afraid she was going to knock the shit out of me and I couldn't hit back"); about powerful "spics" and weak whites ("I was afraid because she knows karate"); and about the rational and moral superiority of local whites over foreign "niggers." (Clerk: "I'm not going to argue about this. The two of you if you have any brains will stay away from each other.") The assistant clerk not only challenged these myths but also in effect "disintegrated" (Eco, 1979: 80) the imagery used by the disputants and substituted his own middle class meanings for theirs: that men are more powerful than women ("You don't look like you could be pushed around") and that people who become involved in fights of this kind are brainless and irrational.[34] The extent to which this hearing threw into relief the fundamental incompatibility of the life style and values of the middle class clerk from Riverside with those of the lower class residents of Milltown was dramatically stated in the fury with which the wife of the Polish complainant left the courtroom, spitting on the floor and screaming her frustration at the clerk, drawing the attention of everyone in the immediate area.

The intensity of hostility that emerged in this hearing is in part explained by a broader controversy in the "downstreet" area regarding a new apartment complex. A meeting between towns-

[34] Eco (1979: 79ff.) discusses the coexistence of superimposed semantic fields in contexts of cultural pluralism and the diverse possibilities open to a language user in these situations for coupling a particular "sign vehicle" with a particular meaning. He notes the rapidity with which a semantic field can disintegrate and restructure itself into a new field in these situations. See also Bourdieu's (1977: 40, 170–171) discussion of the political significance of official, "authorized" meanings and the objectification (legitimation) of particular versions of reality through the imposition of these.

people and selectmen aired concerns that the new project, which was federally subsidized, would be "filled with a lot of Puerto Ricans." Anxiety about this issue was repeatedly expressed in interviews with "downstreet" residents, and complaint hearings served as another, more authoritative setting where these concerns were given voice, with the neighborhood itself appearing at the courthouse to fight its battles with outsiders. As in earlier hearings, this conflict was not "about" children or the assaults, threats, malicious destruction, and trespassing charges filed with the clerk. Rather it dealt with the struggles of "downstreet" residents to define appropriate boundaries for their neighborhood, boundaries that would keep out people *they* defined as dangerous.[35] They achieved some limited success in this, since the Hispanic woman and her family moved from Milltown shortly after the last hearing described here.

For the clerks and other local officials, the hearings provided an opportunity to keep an eye on the disorder characterizing Milltown life, to take action when it threatened to get out of hand, and to highlight dramatically the boundaries between this way of life and their own. Milltown complaints were perceived as "kidstuff," and complainants were described as acting "like children." Their perceived similarity to children defined Milltown people as polluting and as potentially threatening to the orderly life of its more "rational" middle class neighbor.[36] At the courthouse, Riverside people not only monitored Milltown "kidstuff" but also defined their own identity by contrast to the "brainlessness" next-door. It is worth noting, however, that confrontations with the "otherness" of Milltown took place in a setting where accounts, and people, "don't count," thus reproducing not only the definition of Milltown people as "garbage" but also the role of the clerk and complaint hearings as the appropriate means for containing this.

D. Private Conflict, Public Danger: Controlling Teenage Runaways

In concluding this section, I shall briefly discuss the use of the complaint procedure for handling problems involving runaway or abusive teenage women.[37] These hearings provided some of the most intense struggles over definition and issuance, struggles in

[35] There were 12 black and no Hispanic residents out of a population of 1,648 in this part of Milltown in 1980. Dominant ethnic groups in this area are Polish (17%), French (14%), English (10%), and Irish (6%) (Census of Population and Housing, 1980).

[36] Perin (1977: 114, 120) notes that children "are a dangerous category par excellence," and like other transitional social categories "should be collected together, for spreading such anomalies in space (and in social time) will be disturbing to social safety."

[37] In my sample, 12 complaints were related to runaway teenagers. All but 1 (brought by a runaway against her foster parents) were issued by the clerk.

which local attorneys challenged the definitions proposed by the clerk and the court. All involved acts that in other contexts would be constructed as "kidstuff"—swapping, shoving, or "nothing real vicious"—yet all were issued as charges of assault, larceny, or malicious destruction by the clerks, who encouraged social workers and others to bring such complaints. In some it was the clerk, and not the complainant, who pressed for issuance.

1. **Case 4: "The Stolen Rings."** One such case was brought by a Milltown woman alleging the theft of three rings by a fifteen-year-old Riverside teenage girl who had been living with her. She also complained of damage to her apartment by the teenager and her boyfriend, who was also living there. Discussion during the hearing revealed the alleged theft to be a case of "borrowed" rings. Another Milltown woman, an experienced court user who had accompanied the teenager to the hearing, argued that the rings "were lent, not stolen. The two of them used to exchange jewelry all the time! It was just that she had forgotten!" She also urged the complainant to drop the charge: "Why make everybody keep coming back to court, when ——— [the boyfriend] says he'll pay you? You'll get the same thing, and the kids won't end up with a record and having to come in for probation every week!" But a friend of the complainant urged her *not* to withdraw the complaint, reminding her of the damage that had been caused, and describing for the clerk the teenager's sexual behavior, which she defined as promiscuous: "The next thing you know ——— [the boyfriend] will be wanting to make it with the little girl across the street." The complainant decided against pressing formal charges, on the understanding that the teenager would return the rings and pay for the damages. But the clerk, who had determined early in the hearing that the teenager was unsupervised by a parent and was living openly with her boyfriend at the complainant's house, was reluctant to dismiss this case. The hearing continued into the hall and eventually into the clerk's office as he sought to persuade the complainant to change her mind about dropping the charge, saying,

> If you withdraw the complaint, you won't be able to come back in and have it issued later. Your only option would be small claims. . . . And it will be expensive for you to file a small claims case, and the judge can't or usually won't order them to pay you if they don't have a job. Or he might order them to pay over a six-month period. Even then, it's hard to collect. . . . I'm not trying to dissuade you.

In spite of his efforts, the complaint was withdrawn. The complainant changed her mind, however, and returned two days later; the clerk agreed to issue the complaint, although he had said earlier that he could not do so. At the arraignment hearing, a $500

bail was set, and in spite of the efforts of a court-appointed attorney to have this reduced, the teenager was sent to a detention center pending trial.[38]

Events surrounding the bail hearing and subsequent hearings were tense, with emotional exchanges between the prosecutor and the attorney representing the young woman. One of the judges who heard the case responded to the attorney's suggestion that the defendant was "effectively an emancipated minor" by shouting, "Well, you can argue until you're blue in the face, but I'm not going to let a fifteen-year-old girl go out and roam the streets, living with some twenty-three-year-old kid with no job!"

This case was finally settled informally, and the teenager moved in with her sister in Riverside. But it illustrates well the collaboration between clerk, other court staff, social workers, and private citizens in sketching particular images of danger in Riverside. The teenager in this complaint was both "endangered" (Donzelot, 1979: 109) and "endangering" (Perin, 1977: 120). Identified not by a police arrest procedure but by a member of the community, the clerk determined that her health, safety, and morality were at risk. Equally important to the way this case was handled, however, were assumptions about the risk she posed to the community at large, related to what Perin (ibid., p. 119) has called the fear of "out-of-bounds sexuality."

Donzelot's (1979: 112) suggestion that juvenile law occupies a "pivotal position . . . between an agency that sanctions offenses (the retributive justice of ordinary law) and a composite group of agencies that distribute norms" could be applied equally well to the role of clerk's hearings in these cases. Social workers were eager to control the women involved in these complaints, but their efforts to do so were hindered by the rebelliousness of the teenagers as well as by the constraints of Department of Social Service (DSS) policy. In a complaint and cross-complaint for assault and battery brought by a foster mother against her foster daughter and by the daughter against her foster parents, the clerk had to decide whether the daughter's action of grabbing her foster mother in a neck hold and the foster father's action of dragging the girl along a sidewalk constituted probable causes for criminal complaints. At the hearing on the teenager's complaint, her attorney argued that the actions of the foster parents were criminal:

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[38] Emerson (1969: 89) discusses the handling of teenage runaways at another Massachusetts court, and notes the assumption by court staff that running away is an indication of more serious "trouble," particularly in the form of sexual activity: "The severity of the probable 'trouble' in the judge's mind is indicated by his handling of the case, i.e. holding the girls in detention and ordering psychiatric study. (Girls, except state wards, are very rarely held in detention.)"

Lawyer: I think this complaint should be issued. . . . Mr. D——— did say he dragged her and Mrs. D——— said she had her hand on ——— [the complainant's] hair and arm. Any touching can be assault and battery—any touching done with intent.

Clerk: But they didn't cause her physical harm.

Lawyer: But it was touching with intent. . . . There was intent in the touching.

Clerk: What should they have done?

Lawyer: Call DSS. If it were permissible to use physical force [Mrs. D———] should anticipate a response, and she shouldn't have filed charges.

The clerk denied this complaint on the grounds that the foster father's actions constituted appropriate discipline, illustrating the use of the hearing for transforming what DSS policy defined as "unprivileged touching" into acceptable behavior by a parent.[39] By contrast, the complaint by the foster mother against the daughter was issued over the counter *without* a hearing, demonstrating the use of the complaint procedure to transform grabbing into a crime.

V. CONCLUSION

My goal has been to point to some of the more subtle ways in which law and society come together by discussing the practice of a "marginal" official in the lowest echelon of our legal system, the criminal courts. Occupying a role that lacks even the requirement of legal training, the clerk is a lay magistrate, assigned to hear cases too trivial for the court proper and defined by the seriousness of the cases he handles. Citizens and police must apply to the clerk for issuance of a criminal complaint when an allegedly criminal act has occurred but there has been no arrest. While the court views police cases as legitimate problems of public order, citizen complaints are defined by trial court policy as "minor" matters, domestic and interpersonal conflicts that call more on the court's "sense of the community . . . than on the adjudication of facts and the application of abstract principles of law" (Committee on Juries of Six, 1984: 74). Clerks themselves describe these conflicts as "garbage cases" that do not belong in court. It is their job, like that of the police and prosecutor in trial courts elsewhere, to protect the legal system from such matters.

But I argue that to classify such complaints as "garbage" and to view the clerk as simply a gatekeeper who dismisses (and may informally resolve) "private" conflicts is to disregard the uses of the complaint procedure for maintaining a moral order that the

[39] The social worker who attended this hearing had said to the clerk beforehand that "it's hard. We've told them [the foster parents] that they *may not touch* the kids. . . ."

courthouse itself represents. Prominently placed at the cultural and political center of New England towns, the courthouse seems to stand guard. In Riverside, as elsewhere, it recalls a colonial republican tradition in which virtuous, public-spirited citizens keep watch, protecting the "community of visible saints" from corrupt forces within and beyond its boundaries.[40] Like magistrates in seventeenth- and eighteenth-century Massachusetts, staff in district courts today are intimately linked to communities surrounding the courthouse and use their legal roles as vehicles for local governance (Hartog, 1976). Thus citizens are encouraged to bring "private" quarrels to the courthouse, where charges of assault, threats, or disturbing the peace are used to structure neighborhood political confrontations and influence their outcome.

The clerks used two distinct images of order and relationship to develop the meaning of events in a complaint and to argue for issuance or denial. One image portrayed order as based on the interconnections of neighbors and on shared meanings emerging from a customary way of life. The other represented order as based on balanced claims between individuals whose relationship is defined by rights to property, privacy, and to live in peace. The clerks used assumptions about customary life style to distinguish "normal trouble" from potential crime in particular areas, linking acts with relational contexts to justify a particular definition of events or a decision about issuance. By controlling the discourses in which these definitions are framed, the clerks serve as key operators effecting the transformation of "kidstuff" into crime or vice versa. The hearings thus become arenas where particular notions of order and rights are articulated and reinforced: concepts of the good neighbor, the responsible parent, or the brainless "downstreet" person; ideas about vicious and everyday behavior; and beliefs about the kinds of settings where brainlessness, threats, and other behavior that "lacks moral sense" are tolerated by the court.

The clerk describes his role in handling "garbage" as that of a "watchdog." But my analysis suggests that while he is the dominant figure in the hearings, his power is contingent, dependent not only on his authority as a legal official but also on his knowledge of, stature in, and connections to the local community, and his rhetorical skill in using these to define conflicts in particular ways. Paradoxically, then, the clerk is most powerful when he is most connected, and this explains why it is the assistant, rather than the

[40] The role of lower court officials and especially of the clerk is reminiscent of that described by Gordon (1985: 15-16) for nineteenth-century American lawyers, who as a "practical intelligentsia" sought to provide the "moral glue" holding an increasingly commercial society together. Similarly, the lay clerks in today's criminal court infuse the business of law (its everyday practice) with a moral dimension, structuring cases to conform with their own notion of the "good moral order" and tempering what they view as the self-interested pursuit of "rights" by the parties appearing before them.

head clerk, who is the key figure in complaint hearings at the Jefferson County court.[41]

While these connections are empowering for the clerk, they also constrain him in subtle ways. This constraint is central to the politics of issuance in complaint hearings and underlies the tension between imposition and sharing that is their most characteristic feature. Fundamental to this tension is an ambiguity in the meaning and implications of "knowledge" as both empowering and subjecting. The one who "knows" has "a practical understanding of or thorough experience with" and is thus more powerful, but "to know" is also "to be subjected to" and thus in a sense "controlled by."[42] The clerk's local knowledge empowers him, but also, although to a lesser degree, empowers those through whom he comes to define a situation as needing more formal court intervention. This is revealed at times (as in "The Expanding Tree") without any overt struggle during the hearing itself, emerging rather as a tacit understanding that is the outcome of interactions in other arenas. At other times (as in "The Bad Neighborhood" or "The Stolen Rings") the struggle is explicit and is shaped by the experience and persistence of knowledgeable court regulars, who construct particular situations as "serious" or "trivial" and use the law to accomplish interpersonal and political goals of their own. This struggle does not in any obvious way alter the structure of power in the hearings, at the courthouse, or in the society surrounding it. But it both reflects and contributes to the tension that underlies the structure of power and suggests some of the "points of resistance" (Foucault, 1980: 96) through which challenges to relations of power emerge.

From this perspective, the boundaries that separate "serious" from "garbage" matters, public from private, or law from community at one point in time and that are objectified in statistics about issuance are seen to be shifting and "live" (Mensch, 1982), suggesting the socially constructed nature of these categories and their dependence on particular relations of dominance and subordination at particular historical periods. The practice of the court clerk, located in a space that "connect[s], by separation, classes and discourses" (Stalleybrass and White, 1986: 194), reveals this contin-

[41] This is reminiscent of Hay's (1975: 49) discussion of the relationship of eighteenth-century English gentry to those they ruled. Hay notes the importance of the personification of authority and of the use of mercy by paternalistic justices of the peace to create a "spirit of consent and submission" among the governed.

[42] *American Heritage Dictionary*, 1978, s.v. "know." See also Keller's (1985: 115) discussion of knowledge as being *both* about power and "being in touch," and Benjamin's (1988) discussion of relationships of "mutual influence" where each partner is both mover and moved. Benjamin in particular, who grounds her analysis in Hegel's understanding of recognition as the core of relationships of domination, is attentive to the fragile balance in relationships of mutual influence and the ease with which they are transformed into relationships of domination.

gency in negotiations that contributes to the construction of the court as well as of the community it is intended to protect. In a setting that is literally at the doorway to the courthouse, the hearings both underscore and set in question the differences between "real law" that belongs in court and "garbage" that belongs in the community; they also point to the permeability of the boundaries between "brainless" people whose chaotic lives require the monitoring of the courthouse and the more "rational" and bounded spheres of middle class life style that the courthouse was established to uphold. In a system that is constructed around the tension between an imposed law and one that is constituted from within, the clerk acts as a kind of "good" khadi (Weber, 1967: 350–356), fashioning the law into an instrument for the use of particular local communities to construct themselves and impose their order on others in the jurisdiction of the courthouse.

REFERENCES

ABEL, R. L. (1973) "A Comparative Theory of Dispute Institutions in Society," 8 *Law & Society Review* 217.

ATKINSON, J. M., and P. DREW (1979) *Order in Court*. Atlantic Highlands, NJ: Humanities.

AUERBACH, J. (1983) *Justice Without Law*. New York: Oxford.

BENJAMIN, J. (1988) *The Bonds of Love*. New York: Pantheon.

BING, S., and S. ROSENFELD (1970) *The Quality of Justice in the Lower Criminal Courts of Metropolitan Boston*. Boston: Lawyers Committee on Civil Rights.

BITTNER, E. (1974) "Florence Nightingale in Pursuit of Willie Sutton: A Theory of the Police," in H. Jacob (ed.), *The Potential for Reform in Criminal Justice*. London: Sage.

——— (1969) "The Police on Skid-Row: A Study of Peace Keeping," in R. Quinney (ed.), *Crime and Justice in Society*. Boston: Little, Brown.

BLACK, D. (1976) *The Behavior of Law*. New York: Academic.

BOURDIEU, P. (1987) "The Force of Law: Toward a Sociology of the Juridical Field," 38 *Hastings Law Journal* 201.

——— (1977) *Outline of a Theory of Practice*. Cambridge: Cambridge University Press.

CAIN, M., and A. HUNT (1979) *Marx and Engels on Law*. London: Academic.

CENSUS OF POPULATION AND HOUSING (1980) *Summary Tape File 3*. Boston: State Data Center.

COMMITTEE ON JURIES OF SIX (1984) *Report*. Boston: District Court Department.

COMMITTEE ON STANDARDS (1975) *Standards of Complaint Procedure*. Boston: District Court Department.

DONZELOT, J. (1979) *The Policing of Families*. New York: Pantheon.

ECO, U. (1979) *A Theory of Semiotics*. Bloomington: Indiana Press.

EISENSTEIN, J., and H. JACOB (1977) *Felony Justice*. Boston: Little, Brown.

EMERSON, R. M. (1969) *Judging Delinquents*. Chicago: Aldine.

ENGEL, D. M. (1984) "The Oven Bird's Song: Insiders, Outsiders, and Personal Injuries in an American Community," 18 *Law & Society Review* 101.

FEELEY, M. (1979) *The Process Is the Punishment*. New York: Russell Sage.

FOUCAULT, M. (1980) *The History of Sexuality*, Vol. 1. New York: Vintage.

GILLIGAN, C. (1986) "Re-Mapping the Moral Domain: New Images of the Self in Relationship," in T. Heller *et al.* (eds.), *Reconsidering Individualism: Autonomy, Individuality and the Self in Western Thought*. Stanford: Stanford University Press.

GORDON, R. W. (1985) "Lawyers as the American Aristocracy." Unpublished. Oliver Wendel Holmes Lectures, delivered at Harvard Law School, February 20–21.

——— (1984) "Critical Legal Histories," 36 *Stanford Law Review* 57.

GREENHOUSE, C. (1987) "Courts and Community: The View from Hopewell." Presented at a faculty seminar, Cornell Law School, Ithaca.

HARRINGTON, C. B. (1985) *Shadow Justice: The Ideology and Institutionalization of Alternatives to Court*. Westport, CT: Greenwood Press.

HARTOG, H. (1976) "The Public Law of a County Court: Judicial Government in Eighteenth Century Massachusetts," 20 *American Journal of Legal History* 282.

HAY, D. (1975) "Property, Authority and the Criminal Law," in D. Hay *et al.* (eds.), *Albion's Fatal Tree*. New York: Pantheon.

HUNT, A. (1982) "Dichotomy and Contradiction in the Sociology of Law," in P. Beirne and R. Quinney (eds.), *Marxism and Law*. New York: Wiley.

IGNATIEFF, M. (1983) "State, Civil Society and Total Institution: A Critique of Recent Social Histories of Punishment," in D. Sugarman (ed.), *Legality, Ideology and the State*. London: Academic.

KELLER, E. F. (1985) *Reflections on Gender and Science*. New Haven: Yale.

LUKES, S. (1974) *Power: A Radical View*. London: Macmillan.

McBARNET, D. (1981) "Magistrates' Courts and the Ideology of Justice," 8 *British Journal of Law and Society* 181.

McDERMOTT, K. (1983) "The Development of the District Courts of the Commonwealth of Massachusetts, 1821–1920." Unpublished.

MATHER, L. M. (1979) *Plea Bargaining or Trial? The Process of Criminal Case Disposition*. Lexington: Lexington Books.

MATHER, L., and B. YNGVESSON (1980–1981) "Language, Audience and the Transformation of Disputes," 15 *Law & Society Review* 775.

MENSCH, E. (1982) "The History of Mainstream Legal Thought," in D. Kairys (ed.), *The Politics of Law*. New York: Pantheon.

MERRY, S. E. (1985) "Law and Justice Among Working Class Americans: Ideology as Culture," 9 *Legal Studies Forum* 59.

MERRY, S. E., and S. SILBEY (1984) "What Do Plaintiffs Want? Reexamining the Concept of Dispute," 9 *The Justice System Journal* 151.

MONKKONEN, E. H. (1987) "Criminals, Voters, Courts, and Constitutions: The American State from the Bottom up." Presented at the Conference on Longitudinal Study of Trial Courts, Buffalo (August 21).

ORTNER, S. (1984) "Theory in Anthropology Since the Sixties," 26 *Comparative Studies in Society and History* 126.

PERIN, C. (1977) *Everything in Its Place: Social Order and Land Use in America*. Princeton: Princeton University Press.

ROBERTSON, J. A. (ed.) (1974) *Rough Justice*. Boston: Little, Brown.

SANTOS, B. (1977) "The Law of the Oppressed: The Construction and Reproduction of Legality in Pasargada," 12 *Law & Society Review* 5.

SCHATTSCHNEIDER, E. E. (1960) *The Semi-Sovereign People*. New York: Holt, Rinehart, and Winston.

SCHORSKE, C. E. (1981) *Fin-de-Siècle Vienna: Politics and Culture*. New York: Vintage.

SKOCPOL, T. (1987) "Social History and Historical Sociology: Contrasts and Complementarities," 11 *Social Science History* 17.

STALLEYBRASS, P., and A. WHITE (1986) *The Politics and Poetics of Transgression*. Ithaca: Cornell.

SUGARMAN, D. (1983) "Introduction and Overview," in D. Sugarman (ed.), *Legality, Ideology and the State*. London: Academic.

TAYLOR, W. B. (1985) "Between Global Process and Local Knowledge: An Inquiry into Early Latin American Social History, 1500–1900," in O. Zunz (ed.), *Reliving the Past: The Worlds of Social History*. Chapel Hill: University of North Carolina Press.

THOMPSON, E. P. (1978) "The Poverty of Theory," in *the Poverty of Theory and Other Essays*. New York: Monthly Review Press.

UNGER, R. M. (1976) *Law in Modern Society*. New York: Free Press.

WEBER, M. (1967) *Law in Economy and Society*, ed. Max Rheinstein. New York: Simon and Schuster.

YNGVESSON, B. (1985a) "Legal Ideology and Community Justice in the Clerk's Office," 9 *Legal Studies Forum* 71.
——— (1985b) "Re-examining Continuing Relations and the Law," 3 *Wisconsin Law Review* 623.

STATUTE CITED

MASS. GEN. LAWS ANN. ch. 218, § 26, 30, 35A: 55; ch. 276, § 22 (West 1979).