

# LAW AND SOCIAL RELATIONS: VOCABULARIES OF MOTIVE IN LAWYER/CLIENT INTERACTION

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Drawing on C. Wright Mills' analysis of vocabularies of motive, this paper examines the ways lawyers and clients interpret and give meaning to the social behavior involved in the legal process of divorce. Based on observation of 115 law office conferences, the paper describes discussions between lawyers and clients concerning marriage failure, problems in the legal process, and planning strategy. It shows how lawyers and clients bring different agendas and views of the social world to these conversations. Those differences are considered part of the context for understanding the way professional authority is exercised and resisted. Clients reconstruct the past and explain their own behavior as well as the actions of their spouses. Lawyers avoid being drawn into that reconstruction. Their interpretive work explains the way the divorce process works and how it shapes the actions of divorcing spouses. The paper analyzes the predicaments created by these interpretations of reality and the consequences that flow from them.

## I. INTRODUCTION

C. Wright Mills (1940: 910) noted long ago the centrality and significance of what he called "motive mongering" in human interaction. By "motive mongering" Mills meant the frequency with which individuals impute motives in the effort to construct shared interpretations of action: ". . . motives are the terms with which interpretation of conduct by social actors proceeds" (1940: 904; see also Weber, 1947: 98-99). For Mills (1940: 904) examination of what he labeled "vocabularies of motive" linked the study of linguistic behavior with social structure; it related the attribution of motives to the interests, patterns of power and social positions that give rise to particular ways of talking about social relations and ex-

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plaining human action.<sup>1</sup> Mills (1940: 908) believed that a close study of the interpretation and understanding of action is important because such interpretations and understandings are “. . . significant determinants of conduct.”

Mills was particularly interested in the development of vocabularies of motive in different social situations. The creation of a vocabulary of motive was, in his view, a social act; thus “. . . different situations have different vocabularies of motive appropriate to their respective behaviors” (Mills, 1940: 906). For Mills, an important part of the task of the sociologist is to investigate particular groups or situations to uncover the vocabulary of motives that a group makes available to its members or that particular situations seem to legitimate.

While Mills called attention to the strong connection between interpretive activities and social structure, he tended to ignore the processes of interaction through which vocabularies of motive emerge. Thus his perspective seems somewhat mechanistic and deterministic.<sup>2</sup> Others, however, have focused on the ways in which meanings emerge in social life (see, for example, Berger and Luckman, 1966; Goffman, 1959; Scheff, 1966). Most often those who study that process describe it as one of negotiation (Scheff, 1966: 128).

Social interactions are treated as a process of exchange in which participants create shared understandings and interpretations through a series of proposals and counterproposals, sometimes explicit but most often implicit in their interaction. Thus the vocabulary of motive that a group legitimates is itself the result of a group process. Furthermore, the idea of negotiating reality suggests that social interaction requires agreement and closure. Those who use that idea argue that while social interaction may be conflictual and associated with inequalities of power, it generally proceeds until a shared agreement is reached (see Scheff, 1966; Sudnow, 1965).<sup>3</sup> Others, however, suggest that vocabularies of mo-

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<sup>1</sup> Mills's discussion of the linkage of linguistic behavior with interests, power, and position suggests a concern for the study of ideology. While Mills did not use that term, it is clear that he shared with theorists of ideology (see Sumner, 1979; Larrain, 1979; Hunt, 1985) a concern with the ways in which ideas inform and reflect relations of power.

<sup>2</sup> The interpretation of action implicit in the use of vocabularies of motive is itself one part of the activity of building, maintaining, or changing social relations. In this sense it might be said that employing particular vocabularies of motive makes possible the construction of particular social institutions or that social institutions can be formed only where common vocabularies of motive exist or where there is sufficient sharing of culture that such vocabularies can be quickly constructed.

<sup>3</sup> Mills himself recognized that social conflict often revolved around questions of what would constitute a proper explanation or interpretation of action. Thus he noted (1940: 910)

A labor leader says he performs a certain act because he wants to get higher standards of living for the workers. A businessman says that this is rationalization, or a lie; that it is really because he wants more

tive may be imposed without anything that could remotely be labeled a negotiation process (see Foucault, 1977) or that social interaction can proceed without agreement on interpretation, meaning or vocabularies of motive (see, for example, Mishler, 1985). In this view, social interaction involves a series of continuing struggles between different ways of seeing the world, and interaction is more open and incomplete than is sometimes captured by images of a negotiated reality (Yngvesson, 1985b).

This paper examines vocabularies of motive in the interactions of lawyers and clients. We have chosen to focus on these interactions because they are increasingly recognized as important in giving content to a wide variety of legal phenomena (see Felstiner, Abel, and Sarat, 1981; Cain, 1979; Macaulay, 1979, 1984; Blumberg, 1967; Mann, 1985; Hosticka, 1979; Rosenthal, 1974). Some scholars now argue that lawyer/client interaction is a critical site for the creation of "law in action," that "backstage" (Goffman, 1959) discourse provides a better understanding of what law really is than the official productions of legislation and judicial decisions. Thus Shapiro (1981: 1201) asserts that ". . . law is not what judges say in the reports but what lawyers say—to one another and to clients—in their offices. . . ."

Shapiro's argument suggests that law exists in, and ought to be examined as part of, specific social relationships with particular histories and patterns of interaction and power. But law is not just occasionally relevant to society. Rather it is an important component of many transactions and events comprising social life (see Sarat and Silbey, 1988). And law not only lives in social practices, it is a specific type of social practice. From this perspective, lawyer/client interaction is a social relationship that is important not only as a context for the study of law, but as an example of social construction and legal operation under conditions of unequal power generated by unequal knowledge and experience. In addition, the interplay of vocabularies of motive provides one component of the working ideology of the lawyer's office, one field in which to study the negotiation or imposition of a common view of the social world or the persistence of conflicting perspectives.

Investigation of the way lawyers and clients use vocabularies of motive requires attention to norms and orientations of ordinary citizens and legal professionals. Clients bring to their interactions with lawyers what Schutz (1962) called a "natural attitude" or an "attitude of everyday life." In this attitude the way the world appears is accepted as the way the world really is. The self is per-

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money for himself from the workers. A radical says a college professor will not engage in radical movements because he is afraid for his job. . . . The college professor says it is because he just likes to find out how things work. What is reason for one man is rationalization for another. The variable is the accepted vocabulary of motives, the ultimates of discourse, of each man's . . . group. . . .

ceived to be at the center of society and events are interpreted in terms of their impact on the self. Lawyers, on the other hand, might be expected to think of motives and actions in what Habermas (1970: 65) called "rational-purposive" terms in which technical rules and a problem-solving orientation are more important than emotional reactions and justifications of self. In the combination and confrontation of these views, law is given social meaning, and it, in turn, provides new perspectives on social relations and social behavior.

The construction of vocabularies of motive in lawyers' offices connects ideas, beliefs, experiences, and interests. As lawyers and clients together define how people behave and explain why they behave as they do, as they try to make sense of life events, they give shape and content to such behavior and events. What lawyers tell their clients about social relations, how they respond to client questions concerning the behavior of other people, structures, at least in part, the way in which clients "experience and perceive their relations with others" (Hunt, 1985: 15). At the same time, client interpretations and assessments of social relations channel the efforts of lawyers to carry out their professional tasks and to control the instrumental aspects of their interaction with clients. Thus maintaining their own interpretive scheme, or using a different vocabulary of motive, is one way in which clients can resist the exercise of professional power.

This paper parallels a distinctive movement in legal scholarship in which doctrine is analyzed to identify the world views that it reflects (Unger, 1975) and to describe the way it gives meaning to the social relations of liberal society (Kelman, 1987). Thus, critical scholars have investigated the nature of legal consciousness reflected in legal doctrine and the way that such ideas about the law provide a foundation for the social world (Kennedy, 1980; Gabel, 1980; Klare, 1981; Gordon, 1982; Freeman, 1978). For those who engage in the critique of legal thought, the ideas encoded in legal doctrine ". . . can be said to 'constitute' society. . . ." (Trubek, 1984: 589).

Because critical scholarship has in effect equated law and society, it has abstracted the meaning making power of law from the social relations in which such power is exercised. Others, however, have studied the images of social life favored by law in concrete social relations and particular social practices. Recent work on dispute handling in lower courts has, for example, described the images of social relations that are produced by actors in those settings.<sup>4</sup> Silbey and Merry (1986: 5) argue that proceedings in lower

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<sup>4</sup> Other research relevant to our own (Bennett and Feldman (1981); Sudnow (1965); Maynard (1984); O'Barr and Conley (1985)) has not explicitly focused on the vocabularies of motive produced in legal settings. It has, however, illuminated the way meanings are constructed in those settings and the way that the construction of meaning shapes action.

courts involve "active struggles over the construction of social meanings" as participants attempt to explain the behavior of those in trouble. Power in these settings is a function of the ability of different actors to determine what counts as an acceptable account, explanation, or interpretation of social behavior.

Yngvesson (1985a; 1987) has described the interaction between court and community in one small Massachusetts town in similar terms. She has examined interactions between complainants and court clerks in show-cause hearings. Her research describes the way social relationships are portrayed in those hearings and the struggle between complainants and clerks over the interpretations given to the behavior and conditions that occasion those proceedings. Thus the hearings provide ". . . arenas where law is used to shape community. . ." (1987: 4). As clerks and complainants discuss the events and behavior involved in legal disputes, clerks seek to influence complainants' understandings of behavior by constructing "images of the virtuous citizen, the good neighbor, the responsible parent, the responsive and obedient child" (1987: 5). Yngvesson argues that clerks "draw on their knowledge of the local community and on middle class values, understandings that were held out as ideals to those before . . . (them), to . . . mobilize consent for . . . agreement(s) that . . . (keep matters) out of court but within . . . (their) control" (1987: 24-25). She shows how meaning making activity in the court serves the interest of particular segments of the community and of the legal officials whose interpretations come to dominate the proceedings. A vocabulary of motive is produced in this setting that is recognizable, and acceptable, to particular segments of the community. In the end, this vocabulary serves to protect the court from extended involvement in what court officials believe to be minor neighborhood disputes while simultaneously advancing their interest in a particular version of order.

## II. THE DATA

Our research extends the form of analysis provided by Silbey and Merry and Yngvesson to the lawyer's office. We examine conversations between lawyers and clients for the vocabularies of motive and images of social relations that they contain. In the research on which this paper is based we develop an ethnographic account of lawyer/client interaction in divorce cases. We chose divorce cases because we believed that concern among many divorce lawyers about their role would mean that field research in this area would encounter less resistance than in other areas of legal practice (see Danet, Hoffman, and Kermish, 1980).

We observed cases over a period of thirty-three months in two sites, one in Massachusetts and one in California. This effort consisted in following one side of forty divorce cases, ideally from the

first lawyer/client interview until the divorce was final. We followed those cases by observing and tape recording lawyer/client sessions, attending court and mediation hearings and trials, and interviewing both lawyers and clients about those events. One hundred fifteen lawyer/client conferences were tape recorded. (For a more complete description of the research strategy see Sarat and Felstiner, 1986: 94–99).

Characterization and interpretation of the divorcing couple's behavior occurs throughout the conversations between lawyers and clients.<sup>5</sup> Generally such characterizations and interpretations have no clear narrative structure and rarely are they explicitly acknowledged by the listener. While they sometimes emerge when lawyers ask clients to explain their or their spouse's conduct, or when clients ask lawyers to explain the spouse's actions, more often such characterizations and interpretations are embedded in discussions of other subjects. They seem, for the most part, to emerge ad hoc, to be introduced out of context or to take the form of editorial commentary. Sometimes such commentary occurs in the context of wide-ranging discussions concerning the failure of the marriage, and sometimes it emerges from more focused discussions of particular events. Parts of these conversations arise from efforts by clients to explain their behavior, and parts from efforts to predict the spouse's behavior.

Lawyer and client sometimes negotiate agreed interpretations of behavior. Agreement is more often reached when the discussion of motive concerns behavior during the divorce than when the focus is on behavior during the marriage. Moreover, in general, lawyers are more likely to secure "acceptance" of their interpretations than are clients. Clients focus their interpretive energy in efforts to construct an explanation of the past and of their marriage's failure. Lawyers avoid responding to these interpretations because they do not consider that who did what to whom in the marriage is relevant to the legal task of dissolving it. In this domain clients largely talk past their lawyers,<sup>6</sup> and interpretive activity proceeds without the generation and ratification of a shared understanding of reality. Lawyers are rarely derailed from their effort to focus on the business of securing the legal divorce and negotiating agreements about property and children.

The interaction changes when interpretive activity moves to the present and future and to behavior involved in the legal process; lawyers become more active in constructing vocabularies of

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<sup>5</sup> This paper analyzes conversations concerning lay people only. In a subsequent paper we will describe lawyer/client discourse concerning lawyers, judges and other legal actors.

<sup>6</sup> This tendency of lawyers to talk past their clients or to ignore their clients' central concerns has been noted by Hosticka (1979), Macaulay (1979), Griffiths (1986), and Sarat and Felstiner (1986). It limits the extent to which, in the realm of vocabularies of motive, lawyers act as important agents of transformation (Felstiner *et al.*, 1981).

motive when interpretive activity is linked to the rational-purposive goals of legal work. In this domain lawyers are able to mobilize their experience, expertise, and authority in support of their own vocabulary of motive and to use that vocabulary, in turn, to reinforce their authority. Because decisions must be made that directly affect their lives, clients must respond to lawyer interpretations even though they have little experience, expertise, or authority in the legal process. The usual result is closure on an interpretation of behavior embodying the lawyer's vocabulary of motive.<sup>7</sup>

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<sup>7</sup> The construction and interpretation of motives within these narratives generally proceeds at two levels, one "geographic" and the other evaluative. Lawyer and client generally try to locate particular action or events in some social space; that is, they try to identify the source of those actions and events. Their attribution of motivation involves arguments concerning the causes of behavior and decisions about whether it originates from within the personality and character of the actor or is a response to external circumstances.

This inside/outside way of describing interpretations and explanations of the actions of others is suggested by attribution theory in social psychology (see Heider, 1958; Nisbett and Ross, 1980; Kelley and Michela, 1980). Attribution theorists argue that in the construction of vocabularies of motive the first task is (Ross, 1977: 175),

... causal judgment: (here) the observer seeks to identify the cause . . . to which some particular effect may most reasonably be attributed. The second task is social inference: the observer of an episode forms inferences about the attributes of relevant entities, that is, either the dispositions of actors or the properties of situations to which those actors have responded.

But the efforts of lawyers and clients to understand the geography of motivation requires further inquiry into two aspects of the conduct under scrutiny. First, there is the question whether the conduct is distinctive; that is, whether it is directed solely at a particular person, is limited to a particular instance or whether the action recurs in different circumstances and is, therefore, consistent. Second, there is the question of whether the behavior in question is widely shared or typical of the way most people behave (attribution theorists call this the dimension of consensus). Where an action, behavior or event is common in the behavioral repertoire of an actor but is believed to be relatively uncommon in the population, people generally attribute that behavior to the personal dispositions or character of the actor; on the other hand, where it is unusual for an actor to behave in a particular way and where most people do not act that way most of the time, people generally locate the source of the action outside the actor in circumstances or context (see Coates and Penrod, 1981). Thus the geographic dimension of the vocabularies of motive found in lawyer/client interaction theoretically involves an intricate judgmental process in which lawyers and clients behave as "intuitive psychologists" (Ross, 1977). However, the stability of lawyer and client attributions in divorce and the instrumental origins that we report in this paper suggest a less complicated psychological process.

The second dimension of the vocabularies of motive that we find in lawyer/client conversations is evaluative. The question is whether, from the perspective of the interpreting agent, the behavior produced by a person or circumstance is socially desirable. The two dimensions are, however, not completely independent; internal attributions are generally associated with blame while explanations of behavior in situational terms tend to be exculpatory.

### III. THE DOMAIN OF THE PAST: EXPLAINING THE FAILED MARRIAGE

Much of the conversation between lawyer and client in divorce cases involves a reconstruction of the past in the form of descriptions of the behavior of the parties within the marriage. Lawyers are regularly confronted with clients insistent on providing some account (see Scott and Lyman, 1968) of why their marriage failed. In these accounts clients focus on the character and personality dispositions of their spouse and emphasize their spouse's most objectionable traits and personal defects. As Vaughan (1986: 28–29) observes, this focus emerges early in the process of “uncoupling” and continues throughout it. While a few clients have little to say about what occurred during the marriage, most of those we observed devote considerable time to that activity,<sup>8</sup> generally on their own initiative and in the face of an unresponsive lawyer.<sup>9</sup> In so doing they stress personal and intentional explanations of their spouse's behavior (see Coates and Penrod, 1981: 664).

Clients' stories concerning the breakup of the marriage generally begin with a description of some disturbing spousal behavior and locate the source of that behavior *within* the allegedly offending actor. For example, a forty-year-old mother of three children in Massachusetts told her lawyer that her marriage failed because:

*Client:* There was harassment and verbal degradation. No interest at all in my furthering my education. None whatsoever. Sexual harassment. If there was ever any time when I did not want or need sex, I was subject to, you know, these long verbal whiplashings. Then the Bible would be put out on the counter with passages underlined as to what a poor wife I was. Just constant harassment from him.

*Lawyer:* Mm uh.

*Client:* There was . . . what I was remembering the other day, and I had forgotten. When he undertook to lecturing me and I'd say, “I don't want to hear this. I don't have time right now,” I could lock myself in the bathroom

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<sup>8</sup> Such accounts are, of course, not totally legally irrelevant. In Massachusetts they remain legally relevant under the fault option as well as in terms of the state's equitable distribution scheme for dividing marital property. Moreover, in both Massachusetts and California the conduct of the spouse may play an important part in custody disputes. Yet we observed that the culture of no-fault seems to be widespread among lawyers. Even in these areas, lawyers tend to avoid participating in their clients' narratives of blame and fault.

<sup>9</sup> A similar tendency has been noted by Griffiths (1986: 152) in his study of Dutch lawyers. Griffiths says that “Clients often want to unburden themselves of the emotional and social side of their divorce and most lawyers listen patiently to this . . . they emphasize their role as lawyer not so much by cutting off the flow of legally irrelevant communication as by reacting to it with little more than social platitudes.”



and he would break in. And I was just to listen, whether I wanted to or not. And he would lecture me for hours. Literally hours. . . . There was no escaping him, short of getting in a car and driving away. But then he would stand outside in the driveway and yell, anyhow. *The man was not well* (emphasis added).

*Lawyer:* Okay. Now how about any courses you took?

This lawyer does not respond to his client's attribution of blame or characterization of her husband; no negotiation of reality occurs. The "okay" seems to reflect the end of his patience with her description, and he abruptly changes the subject.

Another client explained the failure of his short and stormy marriage to a woman much younger than himself by focusing on the habitual untruthfulness of his spouse. In the midst of a discussion about the wife's previous testimony in court, the client said that he did not believe it and explained that the marriage ended

*Client:* After she lied to me about the death of her parents in a car-train accident. Okay? And after she lied to me about where she went to school. And after she lied to me about the fact that she was the only child. . . . She's lived a secretive life, as far as I'm concerned, all this time. . . .

*Lawyer:* Hmm.

*Client:* So everything she told me about her background was a lie. I can't believe anything she says. I mean, it would be news to me if she says anything truthful while I'm sitting there in the courtroom. It would be news to me. I couldn't verify it for you. Because all this time I have been under the impression that she had no parents, no siblings, that she was a graduate of Radcliffe College. I mean, I had no reason. . . . When you marry somebody, you don't check these things out. You know, call Radcliffe and find out if somebody. . . . She gave me an alias for her maiden name. Collins is the one that she said in the. . . . She gave me an alias. She gave me a French name. She said her parents were French Canadian. . . .

*Lawyer:* Hmm.

*Client:* It was . . . we won't get any more information from her.

*Lawyer:* The only real way to find out anything would be to hire a private detective.

This lawyer appears to accept the client's characterization of his spouse while avoiding, as most lawyers do, comment on the reasons for the marriage breakup. He focuses on the problem of how to get information about her present circumstances and finances.

On a few occasions lawyers did participate in the construction of accounts about the failed marriage. In each instance they joined with, and reinforced, the view that the failure of the marriage

should not be blamed on their client. As one California lawyer put it when his client openly expressed some willingness to accept responsibility for the failure of the marriage:

*Lawyer:* . . . If there was a failure I just don't think it is fair to attribute it to anything you have done. I mean you walked a country mile to try to make it work out well. You were married to a person who has any number of problems.

*Client:* Well, I will have to . . . I know that . . . but . . . confronting the alternatives as they presently exist—that's a very difficult thing . . . there seems much about this situation that I've got to do but I don't like to do. But I don't see any other way out. I guess this is when it gets tough.

*Lawyer:* All right.

This lawyer, like the few others who play blame the spouse, does so to support his client's decision to continue to seek a divorce in the face of her own growing ambivalence.

The instrumental character of lawyers' participation in such reconstructions of the past is further illustrated in the following exchange between a female lawyer and her fifty-year-old, poorly-educated, female client.

*Client:* He keeps saying . . . he'd like to get it together.

*Lawyer:* But Bob really hasn't changed his behavior. You see what you are telling me about the pattern of living . . . is what you told me about the pattern of living during your marriage. . . . And that kind of thing. It's the same way it's been throughout the marriage. He could probably live with this a great deal longer than you could. You have to own up to that, Carolyn. You made a decision when you came to me a while ago that that's not how you want it. So it's . . . I don't think you should keep saying to me that if he wanted to get it together you would. Because if I understand what you said to me way back then . . . that's not the way you want to live. And he could live like this indefinitely. I guarantee you that. I don't see any strain on him. The only strain that Bob is now enduring is the possibility that you are going to go through with this divorce. But his lifestyle hasn't changed . . . he's got you in the same position he had you in throughout the marriage. And that is not going to change unless we go through the divorce. The moment that you ever showed him a glimmer or a possibility that you were going to be a free woman in your own words . . . that's when he initiated a divorce. He just can't deal with that. You have to accept that. Your relationship is going to be the way your marriage always was . . . or

you're going to have to go through a divorce and have the kinds of things you want. And that's the bottom line.

*Client:* I mean . . . I'm willing to sacrifice myself . . . to live in hell, more or less, for the kids . . . but that's not right either. . . .

The client's reference to living in "hell" suggests that she accepts the lawyer's characterization. Yet, as her case progressed, such exchanges of doubt and reassurance occurred frequently. When lawyers use the language of blame it is to remind clients why the divorce is either desirable or inevitable and ought to be pursued, an end result in which they have an obvious interest.

When discussion turns to the client's conduct in, or reasons for leaving, the marriage, the vocabulary of motive and style of explanation change dramatically. In interpreting their own actions clients shift from explanations based on personal dispositions and character traits to circumstances and situations. They emphasize their innocence, vulnerability, and injury. They suggest that any undesirable conduct on their part was the product of provocation or duress. The meanings they attach to their own behavior are consistent with their attempt to blame their spouses and to present their own actions as reasonable and justifiable responses to circumstances not of their making. Lawyers do not generally challenge their client's attempts at exculpation, nor do they validate them.

An example of such a client self-portrait is provided in the following exchange:

*Lawyer:* You know that she's really pushing to get this divorce going.

*Client:* I know she doesn't want to have any connection to me. She hates to even have me there to say hello. . . .

*Lawyer:* That will calm down eventually. . . .

*Client:* Well, what makes me mad is that I'm the injured party. She's acting like I am running out on her.

*Lawyer:* She's hurting a little bit . . . and she thinks that if it gets into court the pain is going to stop.

This dialogue is unusual only in the directness with which the client asserts that he "is the injured party." Claims of this type are tacit in many cases even when the client initiates the divorce (see Griffiths, 1986: 154).

Clients also portray themselves as victims to excuse their own marital misconduct. In the following exchange, taken from a Massachusetts case in which a deeply religious woman was asked by her lawyer to explain why she physically assaulted her husband, the client focuses on her husband's provocative actions rather than her own anger.

*Client:* They're going to bring up the time that I physically attacked him. Can we beat them to the punch and get that in so I can explain why I attacked him?

*Lawyer:* Is that where you attacked him with the loaf of bread?

*Client:* No. . . . This time. . . . Remember that day when I had the tubal ligation?

*Lawyer:* Give me that whole story again.

*Client:* Okay, I had gone in to have a tubal ligation.

*Lawyer:* Yeah. I know that he got very upset, but I don't remember all of the circumstances afterwards.

*Client:* He found out about it from my girl friend, subjected her to a severe tongue lashing, accused her of helping me. . . . You know. Called me all kinds of filthy names. I was obviously having a tubal ligation so that I could go out and, you know, run around and sleep around.

*Lawyer:* Yeah. . . . It's probably hearsay. You know? They're probably going to object to it, all that stuff you just said . . . about his conversation with your friend, and everything else. That's hearsay. Okay?

*Client:* And then on the Saturday morning, which was several days afterwards, because I went in on a Wednesday. . . . Thursday. Wednesday. I was getting ready to go grocery shopping, and he. . . . We got into an argument about something, and then he started calling me dirty names. And something. . . .

*Lawyer:* Like what?

*Client:* Oh, what was it? He called me "filth." That was the word that got me. "Filth." And something just went "boing." "Boing." My spring came undone. And I just. . . . I attacked him. I just went for him for maybe five minutes, yelled and screamed and kicked and slapped and scratched and did whatever I could. I wasn't even aware at the time that I was doing it. I didn't even realize I was the one screaming. It was Lottie who told me later that I was the one who was screaming. But I just lost it. He made me so angry. His reaction to this was so. . . . It was so senseless. The reason I had it done was because I wanted it done while I was covered by health insurance. I knew we were. . . . A divorce was coming up. And I knew I wouldn't have the health insurance any more. And to have it done under the insurance did not cost me anything. Because I didn't want to get pregnant again.

*Lawyer:* I don't know if I want to bring it up first, because if we bring it up then they have to bring it up and what if they had chosen not to. . . .

The client interprets her own misbehavior as a kind of temporary insanity and goes on, as if she has internalized the need to justify her decision to undergo the tubal ligation, to explain how that decision was itself a product of external circumstances. The lawyer's response is to remind his client of evidentiary problems and to suggest that it may be better not to bring up her attack on her husband. He focuses on the tactical problem while ignoring everything that his client said concerning the reasons for the attack and her characterizations of her own behavior.

A few lawyers do not ignore such characterizations and, instead, validate the client's interpretation. This occurs in the following California case in which the client explained her decision to seek a divorce and described why her husband had hired a "tough" lawyer,

*Client:* I think that's exactly what happened. It's very hard for him. He can't make a decision. He needs to be pushed into it. He would never have left if I didn't throw him out. Never. He would have gone on, because life was very comfortable for him. I mean, it was just fine, and he was totally amazed that I would do it. He didn't know I was discontent. After I go through this whole spiel about how I felt and what I thought, his answer to me was, I didn't know you were discontent. My world was coming down around my ears, and that was his choice of words, because he couldn't, he really sees himself as a wonderful person. He does. You know, kind and he sees himself as this wonderful person.

*Lawyer:* Some of us like to have an opinion of ourselves. At least some of the time.

*Client:* Well, you see, I made him this wonderful person. I told him how wonderful he was, while I was hiding behind this thing I built up for myself—this smiling, gentle lady—when I was seething, until I couldn't bear it anymore.

*Lawyer:* So you helped create this Frankenstein.

*Client:* Of course . . . but now he's got someone else to tell him how wonderful he is.

*Lawyer:* Well, why not keep a good thing going? Just change the . . .

This client, like many others, attaches the conversation about the failed marriage to another discussion (the husband's choice of lawyer). Her lawyer, unlike most others we observed, joins in the conversation about the failed marriage and accepts her interpretation. Together they create the "Frankenstein" portrait of the self-indulgent, spoiled husband, and in so doing reach tacit agreement on the client's self-portrait as a long-suffering martyr.

Throughout their meetings with their lawyers the question of

marriage failure remains very much alive in the minds of clients. They talk about the marriage in terms of guilt (their spouse's) and innocence (their own). This pattern is as observable in California where there is a pure no-fault system as it is in Massachusetts where fault and no-fault options exist side by side. Even though law reform makes such questions legally irrelevant, clients continue to think in fault terms and to attribute blame to their spouse. Clients use a vocabulary of personal responsibility to interpret the failed marriage, and they seem to want their lawyers to accept and use a similar vocabulary.<sup>10</sup> Most lawyers resist by avoiding discussion of who did what to whom during the marriage. They focus, when they are confronted with such an issue, on questions of tactics in the legal process of divorce. Client and lawyer are like performer and bored, but dutiful, audience—the lawyer will not interrupt the aria, but she will not applaud much either for fear of an encore. Lawyers generally join with, and validate, the client's vocabulary of blame only to reassure wavering clients of the correctness of their decision to secure a divorce.

#### IV. THE DOMAIN OF THE PRESENT: EXPLAINING PROBLEMS AND JUSTIFYING DEMANDS IN THE LEGAL PROCESS OF DIVORCE

A somewhat different pattern emerges when discussion shifts to the legal process and present problems. Yet, the vocabulary of blame continues to play a prominent part in client thinking. Problems in negotiations are regularly interpreted by clients as originating in their spouse's blameworthy conduct and character. Lawyers, however, are much more active participants in these conversations and are frequently quite direct in challenging client characterizations and explanations. Take, for example, the following discussion of whether a college professor with several children would be willing to transfer title to one of the family motor vehicles to a client who had temporary custody of their children.

*Lawyer:* Have you discussed any more about getting rid of the van and getting yourself another vehicle?

*Client:* Yes, I did. I talked it over with him, and asked if he would be willing to release the van if I were to find a car.

*Lawyer:* Yeah.

*Client:* And he said, if he thought it was . . . I don't remember the wording now, but a fair deal, or a decent deal, or

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<sup>10</sup> Weitzman (1985: 24–25) reports that “. . . many men and women were dismayed to learn that (under a no-fault system) no one cared about who was ‘responsible’ for the divorce.” What this means is that attorneys are often in the difficult position of having to educate their clients about the new legal norms. However, she reports that while many lawyers point out that questions of fault aren't relevant in court, many “. . . ‘still allow clients to discuss these matters because it is a safety valve. . . .’” (1985: 25).

something. And I said, "Well, why should you. . . . If I'm going to be making the car payments, what does it have to do with you? All I want from you is to release the van." He still wants that control.

*Lawyer:* He's looking at everything as dollar signs for him . . . pretty typical reaction. . . . He's going to be defensive on all those things. Have you been looking for vehicles?

The client's emphasis on "still" wanting control suggests that the husband's reluctance to transfer title is continuous with his behavior during the marriage. Her lawyer, on the other hand, suggests that his behavior was "typical" of people during divorce, and, in so doing, resists his client's attribution of her husband's behavior to some flaw in his character. However, rather than trying to reach a shared position on why the husband refuses to shift title, the lawyer changes the subject to what his client is going to do about transportation for herself.

Similar patterns occurred in many other cases. In one a young man provides the following explanation of why he and his spouse have been unable to reach a negotiated agreement.

*Lawyer:* What would happen if the two of you sat down and started talking?

*Client:* Well, you know, anytime we've ever had discussions, the discussions always turn into arguments, is basically what it boils down to. And, you know, there are a number of other things besides the getting a job issue that I feel are, you know, inequitable in our relationship. And though she might. . . . You know, on the rare occasion that she actually listens, she's not a good listener. When she actually listens and senses that she'd better change her ways, that may last for a week or something before it's back to the same old thing. And she's tied up with her hobbies and hoping all. . . . You know, it's like. . . . We were really broke this winter, and I tried to discuss it with her. She said I should go see a financial counselor. She one evening said, "Well, when I get my inheritance I should share that with you." And I said, "Well, that would help." But then she'd just start ranting and raving, as if I had the nerve to consider that any of her inheritance would be mine. So she doesn't mean it when. . . . If she does ever make a concession. And it's very temporary and fleeting.

*Lawyer:* Maybe she'd make a stronger commitment to . . . a counselor that can listen to your two points of view. . . .

Reaching an agreement is, in the client's view, impossible because his wife rarely listens and never lives up to the concessions she makes. The client locates cause in character and uses a language of fault and blame. Other clients provide comparable explanations

for the unwillingness of their former spouse to divide personal property reasonably or to assume responsibility for their own post-divorce financial well being. However, this lawyer, and most others, resists the characterological explanation and suggests that the problem is circumstantial. For him, the negotiation issue is not a matter of blame but is rather a problem of finding the right vehicle to facilitate communication.

In a few instances, however, lawyers do endorse their clients' analyses of personality as they talk about particular problems in the divorce process. For example, one California client inquired about his lawyer's view of the fairness of their offer of spousal support, and the lawyer responded by reminding him of his wife's "aggressive and dominant tendencies,"

*Lawyer:* On a long-term basis we are talking about a woman who is a gifted artist, who is certainly commercially acceptable in the sense that she can go out and sell a substantial number of paintings. . . . She can earn income at a desirable profession of hers. . . .

*Client:* I think she told me today she was going to work. That she had to go to work. So I presume it was that.

*Lawyer:* That's up in the air at the moment as to whether she's going to continue to wait tables or not.

*Client:* Yeah.

*Lawyer:* Apparently she found out how little she's earning by doing that. . . . It's a desperate maneuver on her part. I have the feeling that she is—as aggressive and dominant as she tries to become . . . is really getting uptight.

*Client:* Well, she always gets very paranoid about financial matters.

Another lawyer answered his client's question about the lack of a response to their longstanding offer concerning the division of marital property as follows:

*Lawyer:* I hear that she (the spouse's lawyer) doesn't communicate with her much at all. It is hard to get a hold of her. She doesn't respond to letters; she doesn't answer letters and she changes her position all the time.

*Client:* Yeah. Really. I lived with it for a long time. I know.

*Lawyer:* Yeah, see what's fascinating is that people don't change their basic behavior patterns once they begin a divorce. They really don't. They really don't.

This lawyer's insistence on the continuity and stability of "basic behavior patterns" is unusual: most lawyers rely almost exclusively on situational explanations. But whatever the attribution, lawyers speculate about social behavior only when it appears relevant to legal activity.

When they do engage in such speculation, lawyers often de-



ploy a stage theory to interpret and explain why the opposing spouse behaves as she does during the divorce. They suggest that most divorces produce intransigence and hostility at the beginning, followed by a period of emotional confusion and then a gradual return to rationality. They emphasize the importance of understanding problems in light of the different behavior and moods associated with each stage. As one Massachusetts lawyer suggested in answering her client's question about why his wife got so upset when he purchased some new clothes,

*Lawyer:* You are in the stage of divorce where she is promised and she thinks she can deliver . . . you on to the street with one pair of jockey shorts . . . nothing else . . . that's the stage you're in.

*Client:* I think that's what she thinks.

*Lawyer:* Yes . . . everyone thinks that in the beginning. I almost get worried when a person comes in and says . . . my wife has just said that she's going to give me everything. I think it's normal for her to say . . . I'll leave you on Main Street bare-assed . . . when they don't do that then I know the normal process isn't happening. It won't happen.

*Client:* Okay.

In her explanation she describes the behavior of the spouse as common, as reflecting what "everyone thinks," and she links that behavior explicitly to the stages of a "normal process."

In other cases lawyers were somewhat less explicit in establishing such linkages. Many use rhetoric such as that employed by the following lawyer to describe the opposing spouse's position on custody as a reaction to the beginning of the divorce process itself.

*Lawyer:* Is it likely that the two of you would disagree on anything . . . in terms of your relationship with your kids. . . .

*Client:* . . . No, I don't think so.

*Lawyer:* I think what you have, parents who have been relatively, consistently agreeable in regard to their kids and then they first get into a divorce situation. Sometimes unfortunately they can get their heels stuck in cement on something that just doesn't, it doesn't compute in view of their past experience. I mean all of a sudden they can't agree about anything when they've always agreed.

Clients, unlike their lawyers, employ circumstantial explanations selectively; in discussions of the divorce process they use such explanations to justify their own claims to particular assets or a particular division of property. Such an explanation is provided by a young, working-class female who was seeking a share of the eq-

uity in a house that her husband had constructed and in which she refused to live. Her lawyer asked her whether she had made any contribution to the construction of the house and she responded,

*Client:* I was working nights at the Hideout, regularly from 6 to 1 at night, and I just had Gail, and so I'd go home. I didn't want to get up in the morning and build a house. It was winter. Who wants to build a house in the middle of winter, December, January.

*Lawyer:* I just wanted to know whether there was anything to what he said about your never wanting to build the house.

*Client:* Well, no, I didn't really, I wanted the house, but I didn't want the house at my mother-in-law's—next door.

*Lawyer:* So that's what made you. . . .

*Client:* Oh yeah, it didn't really. . . .

*Lawyer:* Less involved with the project.

*Client:* Plus he wasn't building the house that I wanted him to. He was just building this little house, and I wanted a bigger house. It was just a little house, no garage, you know what I mean, so it was like, yeah, it was nice, he was building a house, but it was no—because it was going to be next to my mother-in-law. At the time my mother-in-law didn't even like, didn't even speak to me, and I'm going to live next door.

*Lawyer:* Self preservation. . . .

The client's explanation for her refusal to contribute has several dimensions. First she talks about her work and her need to stay home with the children. Next she focuses on the fact that the house was being built next to her in-laws. Then she briefly suggests that the house was not to her liking before returning to its proximity to her husband's relatives. In this, as in other cases, the client explains and justifies her behavior largely by reference to circumstances beyond her control. Client and lawyer construct a mutually acceptable circumstantial explanation for what seems, initially, to be an unjustifiable negotiating position. The structure of their dialogue reflects a movement toward closure on an explanation that the lawyer accepts as legally defensible and strategically useful.

In talking about the legal process as well as about failed marriages clients frame a narrative of fault, blame, and excuse. The behavior of the spouse during the divorce process is portrayed as the product of permanent character traits and personality dispositions. Yet, when their own conduct is at issue, client self-portraits emphasize circumstance, situation or the provocations and injuries inflicted by the spouse. (Similar inconsistencies have been noted in other contexts by Fincham, 1985; Jones and Davis, 1965; Kelley, 1967.)

Lawyers take a more active role in constructing interpretations of problems in the legal process of divorce and justifications for client demands than when the client talks about the failure of their marriage. Where the reality to be negotiated focuses on the present and is relevant to the task at hand rather than on marital history, lawyers tend to join with, rather than ignore, their clients in constructing interpretations. Yet they rarely embrace a vocabulary that attributes action to fixed character traits or speaks in terms of fault and blame. Instead, they emphasize circumstantial factors in explaining the conduct of the spouse as well as that of the client.

#### V. THE DOMAIN OF THE FUTURE: GIVING ADVICE, PLANNING STRATEGY

Lawyers are most actively engaged in constructing vocabularies of motive when advising their clients about the strategy and tactics of the legal process itself. In so doing they signal clients that people in the throes of a divorce are vulnerable to stress and emotion. They suggest that clients ought to be suspicious of their own judgment and, by implying that such judgment is likely to be unreliable, lawyers suggest the importance of depending on them for sound guidance (Sarat and Felstiner, 1986).

The warning that divorce clouds judgment provides the backdrop for many discussions of strategy and tactics. In one California case, the lawyer alerted his well-educated client to the danger that her emotions might get in the way of a satisfactory property settlement and advised her of the need to bring them under control.

*Lawyer:* I mean, people have a very, very hard time of separating whatever it is—so I think for shorthand, we call it the emotional aspect of the case—from the financial aspect of the case. But if there is going to be a settlement, that's kind of what has to happen, or the emotional aspect of the case gets resolved and then the financial thing becomes a matter of dollars and cents and the client decides, I'm tired and I don't want to fight over the last \$500 or the last \$100. . . .

*Client:* I mean, I don't want to fight and I do want to fight, right? That's exactly what it comes down to.

*Lawyer:* Yea, you're ambiguous.

*Client:* Oh, boy, am I ever. And I have to live with it.

*Lawyer:* That's right. I'd say the ambiguity goes even deeper than the issue of fighting and not fighting. It's how. . . . The ambiguity is what Irene talked about and that is—it's the real hard one—it's terminating the entire relationship. You do and you don't, and the termination. . . . I mean, you're angry; you're pissed off. You've said that.

And are you ready to call a halt to the anger and I'm not so sure that that's humanly possible. Can your rational mind say, okay, Jane, there has been enough anger expended on this; it is time to get on with your life. If you are able to do that, great. But I don't know.

*Client:* Well, obviously some of me is and some of me isn't.

While in this case the divorce and the emotions associated with it seem to be fueling the client's desire to fight, in many other cases lawyers caution their clients against being too trusting, too ready to make concessions or too impatient. They warn clients that the divorce process is long and tiring; they caution against the failing courage that springs from the need to make hard choices (see Kressel, 1985). Clients, eager to blame their spouses for problems in the marriage and for difficulties encountered in the divorce process, end up worrying about being too tough or unfair; many are overcome with second thoughts. In response, lawyers interpret those reactions as a natural, and frequent, reaction during a divorce.

Lawyers compare their clients' feelings or actions with what is "common" or with what they have seen in other cases. In this way lawyers employ a vocabulary of motive based on some idea of "normal divorce" (cf. Sudnow, 1965). In the following exchange concerning the difficulty of actually filing for divorce, the lawyer constructs such a norm through a variety of rhetorical devices.

*Client:* I think he's exhausted and I think he understands that there is no hope. He kept on saying to me, "you don't want me anymore, do you. . . ." I said . . . "that's not what I am saying. I'm saying we are better off separated. . . ."

*Lawyer:* Yeah. I think it's, I may be wrong, but I suspect it's a very hard thing for you to file this petition. It's been a very hard thing for you to file this petition and I think it may be still difficult. Even when you are the one who wants the dissolution, sometimes it's really really hard to do that. I know. I have another client who has been separated for a couple of years and it's coming down now where it's a matter of actually getting the divorce and he's been the one who separated, his wife has been hysterical about the divorce, but he wanted it and now when it's coming down to the time he tells me, I feel so bad about this. And it's very natural. I mean people feel that way. But I think that you are going to be spinning your wheels with this until you decide, until you feel comfortable that you really want to file the petition and do it.

*Client:* See I don't want him in my life, but filing the petition to

me is just something that I think is gross, I don't know why.

*Lawyer:* I can tell that. . . .

*Client:* It's just not. . . .

*Lawyer:* That you have been really having a hard time doing that.

This lawyer validates his client's expression of difficulty but moves quickly from a focus on *this* client's difficulty to the general level; he locates her feelings in a general statement "sometimes it's really really hard to do that." The client is assured that her reactions fit a typical pattern, one that the lawyer has seen before. In describing her hesitancy as a reaction to making what seems like an irrevocable decision, the lawyer displays confidence in his own interpretation. "I know" he says, and he bases his knowledge on a comparison of this client's feelings with those of another of his clients. He uses the term "natural" and folk wisdom, ". . . people feel that way," to establish both his expertise in understanding her reactions and the extent to which those reactions arise out of the divorce process itself. After a long time spent figuring out how to have the papers served in the least upsetting way, the divorce petition was filed.

A similar focus on the divorce itself as an explanation for behavior and a similar use of the rhetoric of comparison and generalization in constructing particular explanations occurs as lawyers advise their clients about offers and demands concerning property, support, and child custody. In the following case a relatively inexperienced woman lawyer urges her client to ask for more support than the client feels is appropriate and explains that the client's reticence arises from guilt feelings which many "women feel" during the divorce.

*Lawyer:* You've got, and it's going to be up to you whether you think it will really hurt him or that he will be really impoverished by this or something and that he can't make it, but don't forget he's going to be left with a \$50,000 house when it's all over.

*Client:* I know.

*Lawyer:* Or more. And what are you going to do. You'll have freedom. A lot of women feel that way at the time and they say, so what, you know. Do you feel guilty? Do you?

*Client:* I feel bad for him, I feel sorry that I hurt him or whatever, you know. You know and I don't want to screw up my . . . and I'm sick of fighting.

*Lawyer:* How old are you?

*Client:* Thirty-two.

*Lawyer:* You have 40, 50, 60 years to say, "Gee whiz, why didn't I want to screw him?"

*Client:* Yeah, I know . . . let's just get it over with.

This lawyer argues that the client's feelings though temporary are, nonetheless, extremely consequential and suggests that if her client acts on those feelings she will, in the long run, regret it. The client, in turn, accepts the lawyer's explanation for her reluctance to bargain and acquiesces in the lawyer's strategic advice.

Another example of talk concerning short-term feelings and their long-term consequences occurred in a California case in which support was again the subject of discussion.

*Lawyer:* Well, taking spousal support out of the house payment is not being dishonest. You know, the main person we have to protect is you, because. . . .

*Client:* I know. (laughs)

*Lawyer:* You know, as I have told you, whatever you take out of this marriage has got to last you the rest of your life. Prince Charming just has not been known, you know, to come along and sweep up my clients.

*Client:* There's a lot of frogs out there, though.

*Lawyer:* A lot of toads, even more than frogs. Not only that, but if they sweep you up and take you to the castle it's because they want you to sweep it up. So you can't count on him coming along and saying, "Oh, you need money you sweet little darling. Let me help you."

*Client:* Right.

*Lawyer:* You know, "Let me make your house payment for you." You know, "Let me pay off your house so you have it free and clear." They just are not beating the bushes out there.

*Client:* I don't know how you work that out, you know. I mean, how do we. . . .

*Lawyer:* Hold out a little bit longer and don't just agree to, you know, giving him Grandma's undershorts and everything else, simply to get rid of him and be done with it.

*Client:* Well, I'm a pushover. (laughs)

*Lawyer:* At this point I've got a lot of people like you coming in here signing things I can't believe.

*Client:* I've been a pushover all my life. That's my whole problem.

*Lawyer:* Yes. And you have to toughen up and realize you're number one, now.

*Client:* I'm trying. I'm trying. (laughs)

*Lawyer:* Well, I mean if you stop and think, the rest of your life's out there.

*Client:* I know. I've really tried to be nice about it, you know.

*Lawyer:* Yeah. But you can only be nice so far. We've got to take care of you the rest of your life. And too many people have. . . . You know. "Too soon old and too late smart."

And they have lived to regret the fact that they wanted to get along with their ex-husband. If getting along with him means you live at poverty level and he lives on easy street, how long are you going to get along with him anyway, before you start resenting it?

*Client:* Not very long, I'm afraid. I'm afraid that's very true.

*Lawyer:* Right. Right. So in order to get along. . . . And he's going to resent it to some extent, but he's also going to, you know, respect the fact that you did stick up for your rights.

*Client:* Yeah.

*Lawyer:* He ain't going to like it.

*Client:* Oh no.

*Lawyer:* But because the two of you, if you don't get along with him because he's got too much and you don't have anything and you've got sufficient and he's having to give you a little of it. . . .

*Client:* Well, the sufficient.

*Lawyer:* That's what we need.

*Client:* Okay, I'll go back . . . and tell him. This ought to ruin his whole Christmas.

In this case the lawyer emphasizes the consequences of the client's decision by repeated use of the phrase "the rest of your life." She interprets the client's feelings by referring to the experience of her "clients" in relation to "Prince Charming" and suggests that *this* client's willingness to give in just to "get rid" of her husband is similar to "a lot of people like you." She, like many other lawyers, employs folk wisdom ("Too soon old, and too late smart") to interpret her client's actions and to suggest more appropriate ways of behaving. In so doing she mobilizes interpretations from Schutz's (1962) "attitude of everyday life" to support her own rational purposive objectives. Here as elsewhere the lawyer is able to "sell" both her interpretation and her advice. Closure is reached; a successful negotiation of reality is consummated.

The tendency of lawyers to interpret client objectives as short-sighted, to urge them not to act on the basis of those desires, and to emphasize their legal experience as a source of expertise is further illustrated in discussions of visitation and child custody.

*Lawyer:* The biggest mistake anybody can make in these situations in the initial stages is saying we'll let it go. That is the completely wrong idea and the reason it's wrong is that there has to be some kind of a pattern set up so that everybody gets comfortable with it. You can't get your life settled if you never know if [the] kids are going to be home or not. You know, it would really wreak havoc with you, and the same thing goes for the kids, they almost know they can push you around at that point. . . . I

would say if we're going to go that way we should definitely state what nights they're going to stay with Mark and what nights they're going to stay with you and really set up a detailed program. Otherwise, it's just going to be havoc. . . .

*Client:* It seems so hopeless to do that.

*Lawyer:* No it's not. I prefer to have very strict rules set up. I've seen too many cases where they say the visitation parent can come anytime they want and so on. That does not work out well.

*Client:* I will not get into that. . . . I'm not going to have a piece of paper saying my kids can be with me Monday, Wednesday, Friday and with . . . Tuesday, Thursday, Saturday. . . . If John wants to spend the night he'll call, Mark will say sure and he'll come and pick him up . . . like last night he stopped by the house . . . I don't mind. . . .

*Lawyer:* I've had a case, several cases, where the visitation parent would just show up anytime and where it was up to the custodial parent [and] she would just say I don't think this is an appropriate time. One time the guy showed up at 10 o'clock in the evening. We're talking about children around 10 years old. She was saying I just don't think this is an appropriate time. He was saying well I have reasonable visitation which means anytime, and they wind up back in court. Whereas if they had had a structured program, he would know when he could be there and not be there, etc. And the other reason, visitation gives her the discretion but that's the way most, most often happens, that's why I favor, in the beginning, that kind of a program, not everybody wants it. As I said I'm not gonna tell you that you have to take that, that's just my viewpoint. What I see is problems that can crop up and why we have those kinds of agreements.

*Client:* I want them to be with him whenever they want to . . . if they decide they don't want to go with him I want them to go up to him and say I don't want to go with you dad. I don't think he would. . . .

*Lawyer:* Well, just consider what I've said. Stop and think about it. Sit down in your living room or whatever and strongly consider what I've said and then give me your decision . . . be logical about it, objective about it . . . and . . . I've seen people spend a lot of money trying to figure out what is reasonable visitation.

A later conversation about custody between this same lawyer and client replays similar concerns:



*Client:* I don't want to get involved in all these little nitty gritties. . . . I can't do it. I'm not up to it yet.

*Lawyer:* I disagree with you on the fact that . . . I think you are playing with a real bomb. If you were to do it afterwards. . . . Let's say you gave custody to Mark of John and Max and Joel without having those little nitty gritties as you say worked out. I think you would be in a very poor position, because the person who has physical custody of the kids you know has the ace in the hole. And what I don't want to see is . . . I don't want to see you behind the ball. I want to be sure that if a situation comes up that would hurt you, hopefully you've covered that and we've resolved that, so that you don't have to go back into court. Because it is really. . . . If he got . . . you know he would leave in the middle of the night, you know, with the kids. And you could say "Well, I trust this guy" and everything else. See if you guys could really trust one another, or were really getting along, we wouldn't be sitting in front of Judge Sokol for this.

Throughout these conversations the lawyer portrays the client's reluctance to get involved in negotiating specific legal agreements as a misplaced reaction to the divorce process itself, as a mistake commonly made "in these situations." He refers to the divorce as "a very dangerous time period." He invokes his experience in "too many cases," and he describes another case, in which the client's unwillingness to be specific created "havoc," as a tactic to get her to reconsider. The client is urged to be "logical" and "objective." Through this advice the lawyer indicates that the client's expressed desires are neither logical nor objective and that client behavior during divorce is emotional and irrational. This lawyer ends by cautioning his client about an inclination to trust her husband that the lawyer himself attributes to her; he tries to frighten her out of this posture by conjuring up an image of the husband sneaking off in the night with the children. In the end she agrees that she can not really trust her husband, that she has to be careful about her own desire to get things over with and that they should go with "what we had approached them with originally. Me in the house with custody of the kids."

The focus on the temporary emotionalism that surrounds divorce is a continuing theme as lawyers give tactical advice to clients.<sup>11</sup> In one Massachusetts case, an experienced male lawyer focuses on the transient nature of hard feelings in a discussion with an older woman client whose husband has filed for a divorce after a long marriage.

<sup>11</sup> The issue of client emotion and how it influences the legal process of divorce has, in other research, been found to be a major concern of divorce lawyers. See O'Gorman (1963); Griffiths (1986); Erlanger *et al.*, (1987); Kressel *et al.*, (1983); Sarat and Felstiner (1986).

- Client:* I think maybe it is just because of the way he's been I'm just on my guard all the time . . . everything I do.
- Lawyer:* Don't be. He's angry, probably paying more than he thought he's going to pay.
- Client:* Considering. . . .
- Lawyer:* Yeah. He was telling you how things were going to be before and he was wrong. Just don't let him get to you. Very often what happens after some time and the emotional aspects drop out you wind up having a better relationship than you had.
- Client:* I don't really feel that we're going to be friends again but I feel that we should at least be able to be civilized with one another.
- Lawyer:* You really can't. So many people that just are ready to go for the throat and after some years . . . they start remembering the better times. . . .
- Client:* My feeling now is that's over . . . time to just go on.
- Lawyer:* You just can't find rationality though. Emotions get involved with that . . . no matter who he is . . . it just takes time.

This lawyer argues that his client's desire for a civilized relationship with her spouse cannot be attained during the divorce. Such a goal may only be realized after the divorce is over and "the emotional aspects drop out." He, like most of the other lawyers we observed, compares the emotionalism of divorce with a rationality that is put aside during that process.

This juxtaposition of emotion and rationality, this image of the divorce process itself as leading people to act in ways that they would not otherwise act, is prevalent as lawyer and client make decisions concerning the timing and substance of offers, demands and proposed agreements. One Massachusetts lawyer, for example, advised her client to postpone trying to reach an agreement with his wife because,

She's too caught up in her own anger to really think straight. I wouldn't want to come up with an agreement now . . . that six months from now she's going to go on and try to modify. I'd rather have her settle down again and on the basis of rationality work something out.

And, a California lawyer suggests that an offer must be timed to coincide with one of the wife's emotional peaks.

*Lawyer:* Now, let me tell you what's coming up in the next two months. We've got the holidays coming up. Okay? And oftentimes you find people having tough times dealing with divorce cases around the holidays. My sense is we ought to get on it quickly, so that she isn't sitting there at her Thanksgiving table. . . . All of a sudden, even families who have had terrible times become the Wal-

tons at Thanksgiving, and everybody is a little bit . . . I mean, holidays are classically depressing, even if you have your entire family.

*Client:* I agree.

*Lawyer:* So what I'm saying is, I think we ought to get on it, and get an offer over there, so that she has it long before Thanksgiving. . . . In other words, you want her to receive this offer at a time when she feels the best she's going to feel about you. Okay? If she gets it at a time that she feels the worst she's going to feel about you, I don't care what's on the piece of paper, she's going to reject it.

*Client:* I'll do what I can.

This lawyer makes explicit the link between the explanation of behavior and the services that lawyers can provide. Interpreting behavior as responsive to circumstances and, therefore, contingent rather than rooted in intractable personality dispositions, lawyers suggest that their own sense of timing may be decisive. In so doing they increase the apparent value of the service they provide. As this same lawyer put it,

Your problems are pretty much accounting problems, not legal problems. The problems that you and I deal with are the psychological packaging of this thing, so it doesn't get your wife off chart.

Unlike clients who shift vocabularies when they move from their spouses' to their own behavior, lawyers deploy situational explanations in most contexts. They consistently use the effect of the divorce itself to explain behavior. In this way they construct an image of human behavior as adaptive and adaptable; they suggest that strategic thinking is as important in the realm of social behavior as it is in the planning and execution of legal maneuvers.

## VI. CONCLUSION

Close examination of lawyers' vocabularies of motive reveals that they overwhelmingly interpret conduct in situational or circumstantial terms. They rely on those explanations as they interpret their clients', their clients' spouses', and their own actions.<sup>12</sup> Clients, on the other hand, attribute quite different meanings to social conduct. While they describe their own behavior in situa-

<sup>12</sup> The consistency with which lawyers interpret conduct in situational terms extends to their characterizations of their own conduct. Lawyers regularly explain what they can and cannot do in a case as well as the results of their decisions (both favorable and unfavorable) in light of circumstances allegedly beyond their control. The vocabulary lawyers use to explain their own conduct portrays them as experienced and well intentioned, but limited by the client's finances, the behavior and actions of opposing lawyers and the dispositions and idiosyncracies of judges (for a more complete exploration see Sarat and Felstiner, 1985).

tional terms, they use dispositional or character terms to describe their spouses.

The vocabularies of motive used by clients in divorce cases excuse and justify their conduct and place blame for the failure of their marriage, as well as for problems in the legal process of divorce, squarely on their spouses. Client interpretations of behavior may save face and evoke sympathy. For most clients the divorce lawyer is a stranger whose loyalty cannot automatically be assumed and must to some extent be earned. By projecting blame on their spouses, clients work to reinforce that loyalty, to penetrate the objectivity and reduce the social distance built into the traditional professional relationship. Their vocabulary serves to add sympathy to fees as a basis on which their lawyers' energies can be commanded. The emphasis on fault and blame thus has an instrumental function in lawyer/client relations as well as providing psychological distance from a failed marriage and contentious divorce proceedings.

This emphasis poses an awkward choice for lawyers. If they were to join with clients in the project of reconstructing the marriage failure and the moral standing of spouses, they would be dragged into a domain that is, in principle, irrelevant to no-fault divorce, wastes their time, and is in fact beyond their expertise. On the other hand, if they directly challenge client characterizations, or dismiss them as legally irrelevant, they risk alienating their clients or deepening client mistrust. Thus, most of the time lawyers remain silent in the face of client attacks on their spouses. They refuse to explore the past and to participate in the construction of a shared version of the social history of the marriage. When they do interpret behavior they limit themselves to conduct that is directly relevant to the legal process of divorce, and they stress circumstances and situations that produce common responses rather than intentions or dispositions unique to particular individuals. In this way they deflect what is, for many clients, a strong desire to achieve some moral vindication, even in a no-fault world (Merry and Silbey, 1984). As Griffiths (1986: 155) argues,

This contrast suggests that lawyers and clients are in effect largely occupied with two different divorces: lawyers with a legal divorce, clients with a social and emotional divorce. The lawyers orient themselves toward legal norms and institutional practices, the clients toward the social norms of their environment. Clients go to lawyers because it is otherwise impossible to secure a divorce, not because they want to invoke the legal system as a regulatory and conflict-resolving institution. That the law concerns itself with the substance of their relationship is an adventitious circumstance for most divorcing couples. . . .<sup>13</sup>

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<sup>13</sup> This characterization somewhat overstates our American data. Nevertheless, clients frequently want more social support and less legal emphasis than lawyers provide.

Lawyers and clients in our sample did negotiate about the meaning of the spouse's behavior during the divorce and its effects on strategies and tactics. In this domain the asymmetry in power between lawyers and clients is most apparent. By limiting interpretive activity to their area of expertise, lawyers are able to explain the social world through the lenses of the legal process. They are able to structure conversation to fit their rational-purposive ideology and to limit the impact of their clients' egocentric views of social life.

Just as the reliance of lawyers on situational explanations and their emphasis on the divorce itself as the most relevant situation in explaining behavior validates their implicit claim to expertise and authority, the focus on divorce and its explanatory power brings more of the client's social world within the lawyer's claim to competence. Lawyers can have little insight into the dispositions or character of people with whom they have had little contact; legal training provides no readily recognizable psychological expertise (see Simon, 1980). However, knowledge of the divorce process and experience in dealing with people as they experience it is precisely what divorce lawyers are supposed to be able to provide. Lawyers' explanations put a premium on their own strategic judgment, and on deft manipulation of the legal process to minimize the effect on the divorce of the negative behavioral consequences often associated with marriage failure. Thus, the lawyer's construction of meaning justifies his authority and invites client dependence (Sarat and Felstiner, 1986; also Kressel, 1985).

At the same time, lawyers' refusal to engage with client efforts to give meaning to the past is not without consequences. It often means that clients end up dissatisfied with lawyers who they believe do not understand or empathize with them. Furthermore, the legal construction of social relations may go far in explaining how contentious and difficult the settlement process becomes (see Erlanger *et al.*, 1987; MacDougall, 1984; Mnookin, 1984). Because agreements often require continuing exchanges between the spouses, whether any proposed agreement has a reasonable chance of working, perhaps even whether it can be negotiated at all, depends on the way the divorcing parties view each other. Thus lawyers' reactions to client vocabularies of motive have a direct effect on disposition prospects and consequences. If the lawyer does not challenge client attributions of fault and blame, unexamined, uncontradicted characterizations may make it more difficult to persuade clients to rely on future promises of the spouse whose allegedly hostile prior behavior remains salient.<sup>14</sup> Our data suggest

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<sup>14</sup> This analysis of the vocabulary of motive also points out the contradictions built into the ideological structure of no-fault divorce. In a fault system the personalities and behavior of the spouses are always a major concern in the case. The lawyer gathers information concerning these issues, primarily from his client. As any other lawyer preparing a case, he must check and test

lawyers believe that behavior is more influenced by situation than by personality. However, to insist on that belief in the face of their clients' more personalistic construction of social relations may threaten their relationship; yet to ignore it may threaten their ability to help secure a negotiated or stable outcome.

The vocabularies of motive used in lawyer/client interaction in divorce respond to the distinctive characteristics of that social relationship. Lawyers deploy the resources of professional position; they emphasize their experience and the expertise that experience provides as they try to limit involvement in the client's social world. While this limitation gives power to lawyers' interpretations of the social world, it cannot guarantee acquiescent clients. By repeatedly expanding the conversational agenda, clients resist their lawyers' efforts to limit the scope of social life rel-

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the information his client provides by cross-examining the client. He cannot uncritically accept the social world of the client or ignore his client's characterizations of the behavior of the spouse. Such cross-examination may or may not alter or defuse inflamed or exaggerated characterizations (see O'Gorman, 1963; chap. 6), but it at least avoids implicit acceptance or approval of the client's fault finding. By making tests of client characterizations an important part of the lawyer's role in divorce, fault, paradoxically, may have facilitated negotiations. In the no-fault world settlements may be complicated precisely because the lawyer has no incentive or need to challenge client imputations of motive and their associated fault finding (Erlanger *et al.*, 1987). The no-fault client may enter negotiations never having had anyone challenge their characterizations of the culpability of the spouse and may end up being asked to make a deal, or reach a compromise, with someone who is portrayed, throughout the legal process, as hostile or greedy or unreliable.

For no-fault divorce to work at a psychological level, the client ultimately must be persuaded that a fifty-fifty property split is emotionally fair, or they will resent the outcome. A client whose evaluation of her spouse is negative and untested will have difficulty achieving this perspective, and the more the lawyer ignores the client's characterization, the less likely the client will reconcile herself to the justice of the inevitable outcome.

In other words, lawyer acquiescence in the separation of the emotional and legal divorce is encouraged by no-fault. Lawyers avoid coming to terms with client constructions of the social world and limit their own commentary to those aspects of the divorce that are definitely part of the legal process. Because lawyers generally have little expertise in helping clients to examine or reframe their experience critically, or in helping them to understand, perhaps even empathize with, their spouse's perspective, they capitalize on the opportunity to put that world beyond their professional responsibilities. In so doing, in confining themselves to the vocabulary of motives seemingly appropriate to the world of no-fault divorce, the legal construction of social relations tends to undermine its psychosocial foundations. No-fault has not stripped the divorce situation of allegations of spousal inequity and, like it or not, it has not removed lawyers from the battle over morality in marriage.

The full rhetorical effect of a switch from fault to no-fault divorce is even more complicated. In a fault system, the lawyer's first task was to identify the positive and negative dimensions of the behavior of both spouses. Although lawyers were concerned with the reality value of client characterizations of their own and their spouse's behavior and inclined to take action to get a dispassionate fix on such recitals, they also had the tactical objective of learning to paint the spouse's behavior in as poor a light as possible. Whether the end result of that process was more or less consistent with reasonable negotiations than the situation in no-fault where the lawyer neither restrains his client's hostility nor himself is obligated to manufacture a dismal picture of the opposing side is problematic.

evant to their interaction. They manipulate attributions of blame and victimization to counter professional authority and claims to expertise on which lawyers rely. Thus, in divorce as elsewhere, law, and the images of social life with which it is associated, is deeply embedded in a conflicted and unequal social relationship.

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