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THE NONCOOPERATIVE PRAGMATICS OF ARGUING

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The latest generation of scholarship within the loose interdisciplinary movement of argumentation studies has increasingly come to recognize that its primary object of inquiry must be a speech activity. Instead of taking an argument to be merely a linguistic encoding of what is essentially a cognitive move from premise to conclusion, this new approach has insisted that such premise/conclusion units are always uttered by someone, to someone, in some circumstances, and that (to borrow Austin's resonant assertion) this "total speech act in the total speech situation is the *only actual* phenomenon which, in the last resort, we are engaged in elucidating" (1962, 148).

Argumentation studies, in short, has taken a pragmatic turn. And this new turn offers an opportunity for what will undoubtedly be many mutually fertile exchanges between the argumentation and the linguistic pragmatics communities. In this paper, I will focus on one such area of potential cross-pollination. As I will lay out in first section, argumentation theorists have recently begun drawing on Grice's Cooperative Principle to support a conception of arguing as a cooperative activity. But (as I note in second section) there seems to be something odd about conceiving arguers--especially arguers in forensic settings--as cooperating with each other. I therefore propose (in the third section) to discover what principles, cooperative or otherwise, forensic arguers (specifically, the advocates in the O.J. Simpson criminal trial) are in fact relying on by examining the implicatures they actually argue to the jury. In the fourth section, I proceed to examine the corpus, eliciting the maxims (or presumptions) the advocates deploy when they argue what conclusions can be drawn from the way their adversaries have presented their case. These presumptions turn out to be much more varied than a Gricean view would have predicted. I conclude in the final section that both the argumentation and the pragmatics communities ought to abandon the model of arguing as a cooperative activity. We either need to reform the Cooperative Principle into a noncooperative Principle of Zeal, or, which is perhaps better, abandon the attempt to specify any universal framework for conversational implicature and instead ask how arguers, and other speakers, so design what they say as to generate the presumptions governing the uptake of their utterances.

1. The reception of the Cooperative Principle within argumentation studies

The pragmatic turn within argumentation studies has opened the question of what the pragmatic properties of arguments are, and how we should account for them. Among the babel of replies, one theme has emerged as dominant. Arguing, it is said, should be modelled as an essentially *cooperative* process, one in which the parties share a joint goal of (for example) rationally resolving a difference of opinion, inquiring into the truth of a matter, or exploring some subject. Often, this joint activity is conceived of specifically as a dialogue; thus the prominence in recent argumentation studies of dialogic or *dialectical* models of the argumentative transaction, represented by the works of Freeman (1991), van Eemeren et al. (1993), Johnson (2000) and Walton (1998).

Not surprisingly, many of those holding that arguing is a cooperative activity have turned to Paul Grice's Cooperative Principle ("CP") and its associated maxims (1989) for support. At times, the reference to the CP occurs as part of a justification for a cooperative view of arguing generally. Grice famously claimed that ordinarily each participant in a conversation recognizes "a common purpose or set of purposes, or at least a mutually accepted direction" which in part regulates their activities. All participants are therefore presumed to be observing the CP:

> *Cooperative Principle.* Make your conversational contribution such as is required, at the stage at which it occurs, by the accepted purpose or direction of the talk exchange in which you are engaged. (1989, 26)

Since argumentative transactions are a subset of talk exchanges generally, the CP clearly ought to apply to them. As a recent work from the pragma-dialectical school has put it, the CP "can be specialized to the task of analyzing argumentative discourse by adding a purpose overlay"--that is, by specifying that the single "accepted purpose" of an argumentative discussion is "*to resolve a disagreement*" (van Eemeren et al., 1993, 11; see similarly 49, 170). Trudy Govier has taken a similar line, applying the general CP to argumentative discourse with the specification that "argumentative discourse has the purpose of rational, considered, reflective, and mutual persuasion" (1987, 156). And Douglas Walton has invoked the authority of the CP to the same effect. Although he believes that there are multiple shared goals defining different sorts of argumentative dialogues, in each dialogue the arguers are bound by the CP to collaborate in achieving just that shared goal (1998, 64, 254).

In addition to these basic endorsements, some authors have deployed the CP to solve something like one of the problems Grice was himself grappling with. We know that when we try to evaluate the arguments that occur in actual practice, we are forced to "transform," "standardize" or "reconstruct" them. Commonly, for example, we have the feeling that the arguer has left out some key premises. The question that has puzzled argumentation theorists is: what licenses (and thus restricts) this sort of reconstruction? Why, for example, can't we "reconstruct" the argument "charitably," to include a massive amount of additional material, if that's what it would take to make the argument a better one? Or why don't we just leave it as is--manifestly weak? Several authors have proposed that we treat "missing premises" essentially as implicatures. Govier (1987) in particular has suggested that the principles of argument reconstruction can be deduced directly from the CP as applied to argumentative transactions. The pragma-dialecticians have likewise proposed that the many "missing premises" have gone missing because the speaker wants to comply with a variant of the Manner sub-maxim #3, "be brief" (1992, chap. 6), allowing them to be reconstructed back in by auditors applying the maxim.

2. Arguing is cooperative?!

Many people, I suspect, would be surprised to be told that their arguments were really cooperative activities. As Lakoff and Johnson (1980) pointed out, in English at least ARGUMENT is metaphorically closely bound to WAR. Thus one *wins* or *loses* an argument; claims and evidence are *attacked*, after some *maneuvering* found *indefensible*, and then *shot down*. This adversarial conception finds confirmation in the attitudes we ordinarily express about interpersonal arguing. Pamela and William Benoit have found that argumentative interactions are characterized by opposition, confrontation and negative feelings--that they are in sum "competitive rather than cooperative events" (1990, 60). Deborah Tannen's successful book on *The argument culture* (1998) can be seen as an instantiation of this view; throughout, she takes arguing to be a form of quarelling.

These commonplace suspicions about the noncooperativeness of arguing are explicitly legitimated for at least one sort of argumentative activity. Aristotle originally defined forensic rhetoric as that occurring in the context of an accusation and defense, establishing what happened in order to achieve justice (*Rhetoric*, 1.3); we can take the interactions within the criminal courtroom as paradigmatic of this sort of discourse. And it seems clear that forensic arguers--especially the accused--are legitimately noncooperative. For example: at least in Anglo-American legal systems, the accused need not cooperate with the process against her by answering questions at all; she cannot be "compelled in any criminal case to be a witness" against herself (U.S. Const., Amend. 5). If she does testify, she may without penalty attempt to evade. As U.S. Supreme Court Chief Justice Burger noted, "it should come as no surprise" that a participant in a judicial proceeding may have "something to conceal and consciously tries to do so." But it is the "responsibility of the [opposing] lawyer," *not* of the witness, to repair this evasion. "If a witness evades, it is the lawyer's responsibility to recognize the evasion and to bring the witness back to the mark, to flush out the whole truth with the tools of adversary examination" (*Bronston v. U.S.*, 1973, 359).

It thus seems apparent that in the folk theory of forensic arguing, arguers will, and indeed should, be truthful, but not particularly helpful--to borrow President Clinton's immortal words (Kuntz, 1998, 371). And the apparent sophistication and generality of this folk theory presents at least serious challenge to the cooperative models of arguing. Are the folk wrong about their own argumentative practice? Is it the case, as Peter Tiersma has argued (1990), that the Supreme Court ought to be enforcing the Gricean maxims? That, as Steven Pinker remarked of Clinton's phrase, "the very nature of human language makes [this noncooperative] goal impossible" (1998, A17)?

Previous investigations of the pragmatics of forensic discourse have already provided some evidence confirming the folk theory of noncooperation. Stephen Levinson has found that "systematic and avowed non-cooperation" is expected in adversarial courtroom cross-examinations, with the maxim of Quantity in particular "in abeyance" (1983, 121; see also 1979). Sandra Harris has likewise found that in police interrogations of suspects, "the maxims of Quality and Quantity [are] suspended," (1995, 127), with neither side committed to helping meet each other's informational needs. Because of the vivid differences in power between the state and the accused, "only at the most abstract level," she concludes, "is it conceivable to regard 'Cooperation' as a presumptive universal principle of human interaction" (131) in this context.

These studies, while they suggest that in forensic discourse the CP does not apply, do not specify any alternative pragmatic frame. In this essay, I propose to extend the work of Levinson and Harris and put the folk theory on a sounder footing by demonstrating not only the *absence* of the CP and associated maxims in one corpus of forensic discourse, but the *presence* of diverse, numerous, and strikingly non-cooperative alternatives. To do this, I will need a way of eliciting from their discourse the pragmatic principles arguers are using; to that methodological question I now turn.

3. Methodology

To say that arguing is a cooperative activity might suggest many features of argumentative discourse and thus many approaches to the investigation of these features. But when Grice's CP is invoked, something more specific is being asserted. The CP and its dependent maxims are an attempt to account for the way that more can be communicated by an utterance than is said--that is, for the *implicatures* of an utterance. To displace the CP, what will be needed is some evidence that participants in a given talk exchange are not using it in making and uptaking implicatures.

I will employ the following implicature schema, a simplification and generalization of Grice's (1989, 30-1).

1. A speaker, in saying that p, has apparently acted out of accordance with the operative presumptions regarding how speakers should act.
2. Under the circumstances, the speaker would be acting in accordance with the operative presumptions if q is the case.
3. Therefore, q is implicated.

For the argumentation theorists who adopt Grice, the "operative presumptions" are of course the CP and the maxims that depend upon it. This view predicts that arguers will presume that speakers are contributing as much information as needed to further the current direction of the talk exchange, no more than is needed, and so on.

How then can we determine what participants in a talk exchange take to be the implicatures of their utterances? One of Grice's stray remarks suggests an approach to this question. Conversational implicatures are generally submerged: they are "intuitively" reconstructed by auditors, and only implicit in

the discourse or situation. But, as Grice notes, to count as a conversational implicature, "the intuition [must be] replaceable by an argument" (1989, 31). This is the case on the cognitive level, in that the participants in a talk exchange must be capable of *working out* the implicature. But it also should be the case within the discourse itself. Participants should be able, if necessary or useful, to explain what they are doing: to make the implicatures metadiscursively explicit.

Such explicitization may take two forms. First, a speaker may directly avow the standards against which her utterance may be assessed; she may *tell* her audience what to presume about what she will be doing. Second, a speaker may directly argue the implicatures that arise from her own and others' discourse. She asserts that an utterance is in some respect odd or unexpected, and points to the implicature as the factor that will explain the oddity and make the utterance expectable. From such an argued implicature, we should be able to reconstruct the speaker's view of the operative presumptions about how speakers should act, the presumptions which form the background against which their actual activity is said to be odd and the implicatures licensed to re-normalize it. Essentially, we will be reasoning *backwards*. Whereas an auditor trying to find an implicature reasons from #1 and #2 in the implicature schema to #3, we will be moving from the asserted oddity (#1) and the explicitly drawn implicature (#3) to reconstruct the background presumptions (relied upon in #1 and #2).

In the following section, I review explicit avowals and argued implicatures drawn from a particular corpus: the closing arguments from the 1995 criminal murder trial of Orenthal James Simpson. This discourse was selected because it provided a large quantity (approximately 22 hours) of arguing from highly skilled--or at least expensive--forensic advocates; further, it was readily available and will be familiar to most U.S. readers. I have identified close to 200 avowals or argued implicatures in this material; I selected for inclusion here only representative samples of the most explicit, where the advocate's reasoning is most readily reconstructible. I group the discussion around Grice's own terms--Quality, Quantity and Manner. Unfortunately, in the transcript as released online (Simpson Trial, 1995) there are no page and line numbers. I therefore cite to the closing arguments by identifying the advocate and the speech (first or second). The speeches were dated as follows: 26 Sept. 1995: Clark 1, Darden 1; 27 Sept.: Darden 1 (cont.), Cochran 1; 28 Sept.: Cochran 1 (cont.), Scheck, Cochran 2; 29 Sept.: Darden 2, Clark 2.

4. Presumptions explicitly employed in the Simpson trial corpus

4.1. *Manner #3*

Grice posited several submaxims "under the category of Manner, . . . relating not . . . to what is said but, rather, to *how* what is said is to be said" (1989, 27). The third among them is the presumption, in Grice's paradoxical formulation, that the advocate will "be brief (avoid unnecessary prolixity)." This presumption is one that the advocates explicitly avow to the jurors, repeatedly either promising to get their talk over with or apologizing for failing to, or both:

(1) They asked me to do the summation Marcia Clark just did but I told them no, it's too long, I am not the kind of person who likes to talk that long. And Marcia isn't, either, but she had to. (Darden 1)
(2) Finally, I apologize to you for the length that this journey has taken. (Cochran 1)

The advocates give two justifications for the need for speech, which suggests that we are in fact dealing with two separate presumptions here. The advocate in (1) traces the presumption back to his own needs, both his personal disposition towards brevity and, as he says elsewhere, the fact that "I would rather be somewhere else" (Darden 1). Brevity is also something the advocates owe the jurors, who have already invested an exceptional amount of time in the case and who therefore would also like to be elsewhere:

(3) You know, I can't keep you here forever. Apparently this sequestration thing is a real drag, right? And you would like to end this experience, and I can understand that. (Darden 1)

So we can conclude that the advocates endorse a pair of more or less parallel presumptions something like the following:

Brevity/advocate. Presume that the advocate will minimize her own time investment.
Brevity/jurors. Presume that the advocate will minimize the jurors' time investment.

So much for the explicit avowals. In terms of argued implicatures, the advocates do not actually accuse each other of failures of Brevity; perhaps each was conscious of his or her own lapses in this area. They do offer explanations of their own apparent failure, however. In some cases, they blame the other side for really wasting the time. More commonly, the advocates claim that their prolixity is a result of a clash between the presumptions of Brevity and some other presumption about how they should be acting:

(4) But, you know, when you are seeking justice, there are no shortcuts. If you were to trade places with either side, you would want someone who would fight hard for you and vigorously, especially if it was a person who had maintained their innocence from the very beginning of the proceedings. Some of you, in voir dire, talked about that, that you have been involved in other cases where you felt the lawyers didn't stand up. Well, I certainly hope that in this case, on both sides, you felt the lawyers did their best to represent their respective positions. And we will continue, I'm sure, to do that. So that, although I apologize for the length of the trial, I hope and I trust that you will understand that in a journey toward justice there is no shortcut. (Cochran 1)

Thus according to the advocate, the admitted failure of Brevity implicates that the amount of material is necessary for the advocate to make his case. This suggests the existence of a Quantity presumption, under which the advocate is expected to do everything required (for some purpose). We will return to this possibility in the section on Quantity #1.

4.2. *Quality*

Grice proposed a super-maxim of Quality divided into two specific maxims:

Grice-Quality #1. Do not say what you believe to be false.
Grice-Quality #2. Do not say that for which you lack adequate evidence.

The first of these is strikingly *not* active in the courtroom setting. Quite the contrary: Anglo-American procedure prohibits advocates from "vouching" for, i.e., making evident their own belief or disbelief in, any matter. At one point in the trial, one of the advocates skirted dangerously close to making her own beliefs about an important issue explicit. Her statement was immediately interrupted by one of her adversaries, who objected to the improper vouching; after being cautioned by the judge, she reframed her remarks to, as she put it, "say no more 'I's'" (Clark 2). So we may take as a first Quantity maxim in courtroom settings:

Nonvouching. Presume that the advocate will not make explicit what she herself believes.

Jurors should thus not expect sincerity from the advocates. But this is only part of the matter; advocates in addition avow quite detailed ideas of what qualities the jury should presume their discourse will display or not display. Consider:

(5) I don't ask you to take my word for anything. That's why we presented evidence. That's why we call witnesses. If it isn't in the record or it doesn't make sense to you as a logical inference from what you've heard, reject it. I don't care who says it, reject it. But do the same for the defense. (Clark 1)

Evident in these statements first of all is the advocates' own expectation that the jurors should not believe anything they are saying, just because they are saying it, which I will call somewhat clumsily:

Nonpersuasion. Presume that the advocate will not expect the jurors to believe what she says, just because she says it.

This Quality presumption seems directly related to the rule against vouching; the advocate, as a hired gun, cannot really ask the jurors to trust her personally. Instead, she tells the juror only to expect her to show them the "logical" inferences which can be drawn from the evidence. The contours of this presumption of "reasonable inferences" can be determined more exactly by looking to the implicatures the advocates argue when the presumption is apparently not met. For example, after the prosecution made a point about the suspicious contents of Simpson's golf bag, the defense argues:

(6) Well, if you're a golfer, isn't it reasonable to assume there's golf balls in there? If you put that in your golf bag, I mean, what's the big deal? Because they gotta try to theorize and try to explain everything, which they can't explain. They weren't

there. They rushed to judgment and it leads to this kind of wild speculation. You have to do that when you don't have a case. (Cochran 1)

In this and similar instances, the advocate argues that when their adversaries present an (allegedly) poor quality argument or "speculation," what should be inferred is that they had no better arguments for their "case," "theory" or "explanation." If this is the implicature that is required to bring the adversaries' activities back into compliance with the presumptions, then it must be that the presumption is not of a reasonable argument *simpliciter*, but more specifically a reasonable argument *for their side*. This is a stance one advocate avows:

(7) In this case, we have been advocates. We have fought hard, I hope, but it's not personal. What is personal in this case, what is personal, is our zeal and our desire that our client be acquitted. It's not personal against these prosecutors. (Cochran 2)

So we can reconstruct another presumption of Quality:

Zealous Argument. Presume that the advocate will make the best case she can for her position.

Consider, finally, the last presumption avowed in (5) above. The advocates there undertake to draw premises for their arguments exclusively from the "evidence," the "witnesses" and "what is in the record." This presumption, corresponding roughly to Grice's Quality #2, arises from an obligation imposed on advocates in the courtroom. Under Anglo-American court procedure, advocates as "officers of the court" are bound by their "oath" (Cochran 1) not to mention facts not in the record and not to misstate those that are. So we have:

Nonreference. Presume that the advocate will not refer to any facts not put in evidence at the trial.
Nonmistatement. Presume that the advocate will not misstate any facts put in evidence at the trial.

These presumptions will be immediately enforced by the judge, as when one advocate was required to take back what she had said after her adversary demonstrated that she had stated facts contrary to the evidence (Clark 2). These presumptions thus appear to be, as Grice himself noted of his Quality #1, on a different level than some of the others. The advocates, further, do not attempt even to explain any possible violations of Nonmistatement by citing a clash with another maxim. For example:

(8) And if you think that something I have said has been a misstatement, believe me, I'm not trying to, I'm trying to be very, very accurate here. But in case--everybody makes mistakes--in case I make a mistake, have the record read back. (Clark 1)

Here the advocates promise that their own possible misstatements of evidence will not be designed features of their discourse at all, implicating anything; instead, they will simply be unintentional but inevitable mistakes, from which no inferences should be drawn.

4.3. *Quantity #1*

Grice phrased his first Quantity maxim in this way:

Grice-Quantity #1. Make your contribution as informative as is required (for the current purposes of the exchange).

The advocates make no explicit avowals of any presumption along these lines, although one does comment that in fact the case has up to now been litigated "exhaustively" (Clark 1). Instead, the contours of Quantity in the courtroom can be derived from what is in this corpus by far the most frequently argued implicature: what could be called "the case of the missing evidence." The basic argued implicature runs as follows: One's adversaries could be expected to provide such and such evidence for such and such a claim. But they did not. It can be inferred, therefore, that they could not provide such evidence--perhaps because the claim is false, or perhaps because the evidence would have damaged their case.

In what circumstances, then, can advocates argue that some evidence is in fact required, and thus that when it is not introduced, it can be counted "missing"? The defense seems to have the easiest time here, as they can argue that the prosecution has the institutionally assigned burden of proof to show the accused's guilt, as for example:

(9) Now, they are the prosecutors. They are the ones who have the burden. In the history of man, not to the contrary, nobody around here can remember any time that the coroner who did the autopsy, the actual autopsies on these bodies, wasn't called by these prosecutors. Why do you think that was? They didn't call the coroner. . . . But they didn't call Dr. Golden. Why not? Why is that? Why are we left to speculate about that? They didn't like his testimony. He couldn't help them is the more logical and reasonable inference, isn't it? (Cochran 1)

The defense, by contrast, does not have any institutionally assigned burden of proof; and so they argue when the "missing evidence" argument is made against them, that there can be no legitimate expectation that they will say anything.

(10) And while I am talking about the constitution, think with me a moment, how many times I heard my lawyers, adversaries, say the defense didn't prove, the defense didn't do this, the defense didn't do that. Remember, back in voir dire, what did the judge tell us? Judge Ito said the defense could sit here and do absolutely nothing. One of you is from Missouri, and he reminded you--who is from Missouri here? Said to the prosecution, you show us. We didn't do that, but we don't have an obligation, as you will see, and you have heard from the jury instruction, and at the end I will show you some others. We don't have to do anything. We don't have to prove anything. (Cochran 1)

The prosecution, however, had several ways of establishing "missingness" beyond the institutionally imposed burden of proof, and their arguments here suggest two further Quantity presumptions. Consider:

(11) But let me tell you something, when the defense began the defense case--well, not the defense case--but when Mr. Cochran did his opening statement, he told you about a witness he intended to call. And this witness seemed to be a pretty important witness and would seem to be given the evidence that you've heard in this case. He told you about a woman named Dr. Lenore Walker. (Darden 1)

(12) They [the defense] could have shown you proof that the Bundy blood drops [relied on by us, the prosecutors] were contaminated, not the mere possibility, no, I am talking about evidence that gives you a reason to conclude that that happened, and that they never could do. And they could have done it if it were true, but they didn't. And not one expert they brought in on the DNA did even one test on the blood evidence, the evidence that we have that proves to you that the defendant committed these murders, not one, with all those experts you saw. And the reason for that, ladies and gentlemen, is that it isn't true. (Clark 1)

Even if the adversaries not have an assigned burden of proof, an advocate can argue that they voluntarily undertook one when they committed to calling a certain witness; this is the reasoning elaborately developed in the argument excerpted in (11). Alternatively, the advocate can claim that the evidence is relevant to an issue that could win the case for the defense. Thus the prosecution suggests in (12) that the defense, in order to win, needs to create a reasonable doubt. If some obvious possibility for raising reasonable doubt exists--here, by establishing that the prosecution's blood evidence was contaminated--then the prosecution argues that the defenses will presumably take it.

In sum: these "missing evidence" argued implicatures suggest the following four Quantity presumptions:

> *Sufficient evidence/burden of proof.* Presume that the advocate will introduce as much of the evidence available to her as is required for her meet her burden of proof.
> *Sufficient evidence/undertaken.* Presume that the advocate will introduce as much of the evidence available to her as is required for her to prove what she has undertaken to prove.
> *Sufficient evidence/winning.* Presume that the advocate will introduce as much of the evidence available to her as is required for her to prove claims that will win her the case.

These four Quantity presumptions are presumptions regarding the quantity of *evidence*; there are some indications in the corpus that there are similar presumptions regarding the quantity of *arguments* which will be made from the evidence. For example, the failure to reply to an argument is argued to implicate the lack of ability to reply:

(13) And I heard lawyers yesterday talk briefly about domestic violence and just slough it off, just slough it off to the side like it didn't mean anything. That is because they can't touch it and they can't deal with it. (Darden 2)

Or again, an advocate in several cases suggests that the adversaries are suspiciously trying to "back away" (Cochran 1) from arguments they had implicitly undertaken by putting on a witness--the perjured and racist cop

Fuhrman. In a similar hint, the adversaries are portrayed as trying to wiggle out of their own commitment to the time at which the murder occurred:

(14) It was interesting, wasn't it, because first he stood up and started talking about the time line being at 10:15 and then he said, "Well, they didn't prove anything, but, golly, well, it may have been as late as 10:30." That's interesting, isn't it? Never heard that before. You look back and see what Ms. Clark promised you a year ago, 10:15, 10:15 was all they talked about and they were going to use. Because of the incompetence of this investigation, the wail of a dog, that's what we've been relegated to in this case because of this very, very poor investigation. (Cochran 1)

Although in these cases the conclusions--probably, that all Fuhrman's testimony, and any conjecture about the time of the murder, are both false--are not actually specified, these "enthymematically" argued implicatures begin to evidence at least one further Quantity presumption relating to the amount of argument:

> *Argument sufficiency/undertaken.* Presume that the advocate will make as many arguments as will help her prove what she has undertaken to prove.

4.4. *Quantity #2*

Grice's second Quantity maxim runs as follows:

> *Grice-Quantity* #2. Do not make your contribution more informative than is required [viz., for "the current purposes of the exchange"].

In the Simpson trial corpus, the claim that the adversaries have introduced too much evidence or too many arguments is much less frequent than the claim of "missing evidence," but it is present. The defense, for example, argued thus:

(15) As I started to say before, perhaps the single most defining moment in this trial is the day they thought they would conduct this experiment on these gloves. They had this big build-up with Mr. Rubin, who had been out of the business for five, six, seven, eight years. He had been in marketing even when he was there. But they were going to try to demonstrate to you that these were the killer's gloves and these gloves that fit Mr. Simpson. You don't need any photographs to understand this. I suppose that vision is indelibly imprinted in each and every one of your minds of how Mr. Simpson walked over here and stood before you and you saw four simple words, the gloves didn't fit. And all their strategy started changing after that. Rubin was called back here more than all their witnesses, four times, all together. Rubin testified more than the investigating officers in this case, because their case from that day forward was slipping away from them and they knew it and they could never, ever recapture it. We may all live to be 100 years old, and I hope we do, but you will always remember that those gloves, when Darden asked him to try them on, didn't fit. They know they didn't fit, and no matter what they do, they can't make them fit. They can talk about latex gloves, doesn't make any difference. They can talk about shrinkage, but we did something better, even better [viz, present expert tests to show that theses gloves don't shrink]. Do anything to try to get away from that tactical mistake showing you the gloves didn't fit. Spend all that time and the gloves still don't fit. (Cochran 1)

Here, the prosecution's (alleged) excess is in part one of over-information, as they try to provide evidence that would explain away the gloves' not fitting. But the defense also portrays an excess efforts generally, referring to the "big build-up," the repeated re-examinations, the length of time spent. The advocate argues that the apparent excess can be explained away as necessary for the adversary to salvage its case. This example suggest a Quantity presumption related to the earlier Brevity/advocate presumption, something along the lines of:

> *Necessity.* Presume that the advocate will be no introduce no more evidence and expend no more effort or resources than is required for her to win the case.

5. If not cooperation, what?

Three general conclusions about the presumptions in use at the Simpson trial seem in order. The range of implicatures in this corpus suggests first of all that the "pragmatic turn" in argumentation studies noted at the beginning of this paper is indeed well justified. Many of argued implicatures are based on inferential flaws in an advocate's case, such as weak arguments or failures of proof. The pragmatic consequences of committing these flaws, though, go beyond their cognitive effects. A "missing witness," for example, cognitively speaking simply adds nothing to the advocate's case. But pragmatically, as we have seen, it implicates that the witness would have said something damaging to the case, and thus that the case is actually weaker. Again, a weak argument may add a bit of cognitive force to a case, or at least not detract. But when an advocate presents a poor argument, she pragmatically implicates that she has nothing better to say, but has to say something, and therefore that her entire case is no stronger than this argument. From the evidence of the Simpson corpus, it is obvious that the jurors are expected to be considering two irreducible dimensions of an advocate's case: both the *cognitive* force of the *arguments* made and the *pragmatic* force of the *making* of them. Argumentation theory must do likewise.

Secondly, however, the "pragmatic turn" needs to take a new direction. The Simpson trial implicatures tend to confirm the folk theory of arguing: cooperation is only part of what is happening. Instead, the advocates clearly expect jurors to presume that each of them is out to *win*, and to interpret their arguments in light of this presumption.

It should also be obvious, finally, that even such noncooperative presumptions permit implicatures to be drawn. Systematically "opting out" of cooperation (if that is the right way to put it) does not put a stop to the auditors' drawing of inferences about the speaker's behavior, although the inferences licensed may be quite different from those that cooperative presumptions would support.

Given the theoretical interest of the noncooperative pragmatics of arguing, can anything be done by way of generalizing or straightening up the rather miscellaneous list of presumptions found to be in use in the Simpson trial? One approach would be to follow Grice and look for one or more revised universal

principles governing conversational implicature--crowning a new king, in other words, having displaced the CP from its throne. Adopting this approach, we might pick up the theme of "zeal" that emerged in several of the Simpson trial presumptions. The advocate, we saw, is presumed to be oriented not to "the accepted purpose or direction of the talk exchange" (Grice, 1989, 26), but rather to her own purpose, which is to win the case. In this way, we might parallel Horn (1984) and formulate a pair of basic principles:

> *Zeal.* Presume that the speaker will say as much as she can in order to achieve her goals.
> *Economy.* Presume that the speaker will say no more than she must in order to achieve her goals.

The first principle is a lower bound: the speaker will do everything sufficient (Quality and Quantity) to win. The second principle is an upper bound: the speaker will do no more than necessary to win.

Still, the diversity of presumptions found to be in use in the Simpson trial may give us reason to be wary of finding new (or relocating the "real" old) fundamental principles governing all talk exchanges. Zeal is indeed one prominent theme; but advocates also admit that they have responsibilities to the jury (Brevity, Sufficient evidence/jury) and to the court system as a whole (Nonreference, Nonmisstatement, Nonvouching). Instead of insisting on a single and universal system of presumptions, why not take such diversity as the norm? Far from being some sort of special case, forensic discourse with its varied and only partially cooperative presumptions seems to resemble many other ordinary talk exchanges: gossip and bullshit sessions, where the presumption of adequate evidence is openly abandoned; pretend play, where sincerity is not a norm; brainstorming sessions, where the requirements of both relevance and quality are waived; and at least some ceremonial oratory, where brevity is not presumed.

If, as I believe, such diversity of presumptions is the norm, then we should stop looking for foundational presumptions like the CP that will govern all talk exchanges. Instead, the vital question becomes: how do participants in a given talk exchange come to recognize the presumptions that are applicable to them? At least part of the answer must be that participants so design their discourse as to *generate* these presumptions. In the "design" view, one of the most remarkable features of much of the prior work on implicature is its dependence on adjacency pairs, where the first utterance generates the context for the second. In particular, the first utterance is often a *request* (e.g.,for information) as in several of Grice's examples:

(32) A: Where does C live?
B: Somewhere in the South of France. (1989, 32)

We might see the request as generating the presumption that the requestee will *respond*--that is, that what she does will be relevant to the request, quantitatively sufficient for the request, qualitatively suitable for the request, and so on through all the original Gricean maxims. Similarly, in the "design" view, at least some of the presumptions operative in the Simpson trial may be explained as

having been generated by the original *accusation* levelled by the accuser against the accused (Kauffeld, 1998).

If this is true, then what we need is not a new account of some universal pragmatic principles, but an account of how speech acts can generate the presumptions that participants will use to interpret the discourse that follows. I believe that the work of my colleague on this panel, Fred Kauffeld, sketches the outlines of how this might be done; but I leave that topic for another time.

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