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Exploring Court Hearings - towards a research design for a Comparative Ethnography on "witnessing in court"

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Interim Report for DFG Emmy-Noether project Sche-631 Pilot study from January 2001 to June 2002

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Preface

By writing this report, I became aware of my broader sociological interest built up in my ethnographic work. During my PhD-research on the asylum seeking process, I happened to be fascinated by particular social situations; situations that turn out to be incomprehensible on their own, because they are crossed by stretched activities and robust objects.

On the outset, the inquiries reported here are dealing again with a certain social situation: this time, the court hearing. It was Foucault’s discussion of ‘what a statement is’ (1972), that added something to this self-understanding. Similar to Foucault, I refuse to reduce statements to grammatical sentences, or to an exchange of turns in a conversation. Moreover, statements should neither just be treated as logical propositions, speech acts nor as components of a dramaturgical script. Beyond such well-established ‘solutions’, I found myself asking rather basic questions: What methods are useful to study “witnessing in court”? Where should the analysis start? How are activities (and situations) connected? This interim report documents first steps to answer these questions.

Facing such open questions, the intended comparison between four legal systems gains an extra rationale. Together with contrasting four truth regimes in court, the team research will open up a range of differently shaped ‘statements’. This might cause further problematisation turning against other methodical convictions that instruct us how to deal with statements (unfortunately uttered in social situations that cannot be understood from within). At this point, sociology as well as linguistics might learn lessons from the bewilderment caused by the multiplicity of criminal trial systems and their courts.

Several people at Lancaster University encouraged me with their interest. Their ‘irritating’ questions, comments and ideas helped me to understand better what my work is about. I would like to thank the following persons in particular: Jeannette Pols, Estrid Sorensen, Dixi Henriksen, Vera Menegon, Tiago Moreira, Kevin Turner, John Law, Lucy Suchman and Ian Bryan. Next to other friends ‘at home’, I want to thank Prof. Stefan Hirschauer who is in many respects to blame for my sociological curiosity. Last but not least, I want to show gratitude to the law firm’s chief and his busy criminal lawyers, who helped me a lot with their patience, trust and humour.

Introduction

"The accused having 'held up his hand', and the jury having solemnly sworn to hearken to the evidence, and 'to well and truly try, and due deliverance make', etc., the witness for the prosecution climbs into the box, which was like a pulpit, and before he has time to look around and see where the voice comes from, he is examined as follows by the prosecuting counsel:

'I think you were walking up Ludgate Hill on Thursday, 25th, about half past two in the afternoon, and suddenly felt a tug at your pocket and missed your handkerchief, which the constable now produces. Is that it?'

'Yes, sir.'

'I suppose you have nothing to ask him?' says the judge. 'Next witness.'

Constable stands up.

'Were you following the prosecutor on this occasion when he was robbed on Ludgate Hill? And did you see the prisoner put his hand into the prosecutor's pocket and take the handkerchief out of it?'

'Yes, sir.'

Judge to prisoner: 'Nothing to say, I suppose?' Then to the jury: 'Gentlemen, I suppose you have no doubt? I have none.'

Jury: 'Guilty, my lord', as though to oblige his lordship.

Judge to prisoner: 'Jones, we have met before – we shall not meet again for some time – seven years transportation. Next case.'

Time: two minutes fifty-three seconds."

This Crown Court Hearing is reported in the Memoirs of Sir Henry Hawkins (Lord Brampton). "Hawkins was called to the bar in 1843, and the events he described must have occurred soon afterwards when he was attending Old Bailey trials. The prisoner Jones, accused of picking pockets, pleaded 'not guilty'." (Jackson 1967: 145) In the short story, we meet some familiar protagonists: judge, defendant, prosecutor, witnesses and jury. Only the Defence Counsel is missing. Also unusual is the Prosecutor's double role being called as witness at the same time. The trial happens quickly, partly because of the judge's interventions. The evidence remains totally unquestioned. Two partial, but apparently 'credible', and highly reputable witnesses (Police and Prosecutor) approve the conviction's version. Thus, the jury gives its verdict within minutes. The jurors do not even leave the Courtroom to debate the case.

Although most aspects are well known to people familiar with criminal trials, the hearing as a whole seems bizarre. In fact, Hawkin's 160-year-old report shows exactly how hearings must not take place from a modern point of view. The verdict seems unjust not because we could be sure that the defendant did not do it, but because of tremendous procedural misconduct. The statements are accepted uncritically; not a single defence witness is called and the defence as a whole is excluded from public consideration. Obviously, the evidence presented by the prosecution is overpowering. Nowadays, even non-professionals would be outraged by the obvious lack of balance and fairness. Lawyers of course would give a host of technical reasons why such a procedure is 'gratefully' impossible these days.

The following pilot study is about "law in action" (Travers 1997) in criminal trials. The main interest sounds simple: What is going on in court hearings? How are they best investigated? The aim of the project at the outset was an analytical "*Micro-Sociology of Court hearings"*. Analytical here is understood as the ability to recognise and conceptualise the social production of hearings, their configuration and assemblage; and all these without taking the hearings' character, frame and efficiency for granted.

To develop a practicable research design, the report begins with deconstructing a dominant and undoubtedly useful tool for investigating court hearings: the ethnomethodological Conversation Analysis (CA). I show how CA frames (different sorts of) practice without

tackling this framing itself as an empirical question. In contrast to such standardised and single-sited analysis, I stretch the importance of “doing ethnography” to initiate the empirical study.

The subsequent three chapters can be read as independent pilot-studies. I try out several perspectives and methods to assemble, to confront and to analyse pre-trial and trial data. Despite the multiple viewpoints, the hearing remains the focus of the investigation. However, what are the three empirical analyses about? They circumscribe the (conditions of) witnessing in court in several ways.

Firstly, I trace the social careers of different – more or less successful – legal arguments, documented in the pre-trial correspondence and meant to be imported into court by witness statements. Some arguments fail on early stages, while others make it even into the summons of the barrister addressing the jury.

The second analysis is about one - more or less immutable - story, travelling through a whole proceeding. On its way to court, the story plays different roles. Initially, it is successful in supporting the author’s interests. Later, the story does even turn against its author, threatens her position and loses all impact on the actual defence. I use the case of the alibi-story, to discuss the dialectics of mobilising and undermining legal arguments.

Thirdly, the analysis focuses on the interaction order in court in the light of misconduct. Every statement, no matter its content, needs to be translated into the language of court and the hearing’s standards and “epistemological decorum” (Shapin 1994). On the one hand, standards facilitate ‘realistic’ expectations on the conditions of self-expression. They are used to produce statements in advance. On the other hand, standards or formats of self-expression are able to perplex or even damage the witnessing ‘on stage’.

In all these analyses, statements appear in the light of their very own history. Through this historiographic view, at least English Crown Court hearings become observable as junctions of *rehearsed* arguments, *processed* accounts, *directed* performance and *coded* perception. The debate in court is pre-specified and therefore focussed. Furthermore, the social situation of the hearing is opened and expanded through the circulation and the nexus of references.

1. Conceptualising Criminal Court Hearings

The project outlined here is split into two phases: The first phase (2 years) aims to develop a research programme with usable methods, tools and concepts. The main phase (4 years) contributes to a comparative ethnography. A team of four researchers (me included), experienced in Conversation Analysis (CA), Discourse Analysis (DA) and Ethnography, will examine court hearings in different countries. The team will be confronted with different judicial traditions and legal cultures, often explained in legal theory as the difference between the *adversarial and the inquisitorial* system.

“The criminal justice system of England and Wales, in common with our jurisdictions which have evolved within the ‘Anglo-Saxon’ or ‘common law’ tradition, is often categorised as ‘adversarial’. This is in contrast to the so-called ‘inquisitorial’ system based on the ‘Continental’ or ‘civil law’ tradition. In this context, the term ‘adversarial’ is usually taken to mean the system which has the judge as an umpire who leaves the presentation of the case to the parties (prosecution and defence) on each side. These separately prepare their case and call, examine and cross-examine their witnesses. The term ‘inquisitorial’ describes the systems where judges may supervise the pre-trial preparation of the evidence by the police and, more important, play a major part in the presentation of the evidence at trial. The judge in ‘inquisitorial’ systems typically calls and examines the defendant and the witnesses while the lawyers for the prosecution and the defence ask supplementary questions.” (Royal Commission on Criminal Justice 1993a: 3)

The microanalysis should show not only how such systematic features are mixed within criminal justice systems, but how they matter in practical terms as well. We can ask, if and how *legal culture* is materialised in legal practice.

It would appear to be obvious where researchers should find relevant data concerning criminal trials: in Criminal Courts where the hearings take place. In this mode, a number of

studies have been carried out, mainly within Ethnomethodology and CA (for both see Travers/Manzo 1997), furthermore in Symbolic Interactionism, Speech Act Theory, and Discourse Analysis. The Court is a prominent field for sociological as well as social-psychological, and linguistic studies. It is used as a crystallisation point for social norms and constraints, rituals and traditions. Here central sociological issues can be witnessed and analysed 'live on stage'.

The openness of the place makes it a research-friendly field compared to other 'hidden' events in the Justice System (police interviews, solicitor-client-conferences, the jury sitting, or complainant-prosecutor-meetings). The court hearing is as visible as a play in theatre: one can sit on the higher ranks to gain an overview of the scene or in the first ranks to set eyes on the main characters sweating and stumbling.

However, once engaging in the practical fieldwork, to get access to Crown Court hearings - generally the second instance above the (lowest) Magistrates Court1 - seemed to me not easy.

My access to the Crown Court hearings could be described according to an array of passages. First, there is the control by security guards checking my bags and pockets. The safety check should ensure that no 'arms' or 'threats' enter Court. Apart from that, nobody asked for any further explanations. I could just go and watch the Hearing from the public gallery. I came and went without contacting any of the staff within the court-team2. Sometimes I only stayed for one single trial. Sometimes I witnessed a whole set of sentence hearings. Besides, I seemed to be the only 'general interested': other visitors were relatives or friends.3

Some difficulties occurred, when I first took out my notepad and started to write down fieldnotes. I was about to leave after a good deal of observation, when the usher came after me. "You can not take notes just like that", she grumbled. "You should ask the Clerk first!" I apologised for my misconduct and introduced myself as a German sociologist. She led me to the clerk in charge of the today's hearings.

My next post became the "press bench", next to the shorthand writer, opposite the counsels, and with the jury behind me. The clerk suggested that I should sit there, I could take notes like those journalists, who come occasionally for trials of "public interest" (matters like unlawfully receiving social welfare, dealing with drugs, committing a sexual offence). Some defendants really saw me as a journalist, which caused some harsh reaction (and nearly one attack outside the Courthouse, because one convict thought I was about to take a photo of him).

A couple of visits later, my attendance was corrected again. This time it was neither my behaviour nor my position, but my appearance. One judge asked his clerk, who told the shorthand writer (who actually operated the tape-recorder), that my outfit was not appropriate. The judge would appreciate it, if I could wear a jacket. "A suit would be better!" the polite court assistant told me. One week later, I got myself a suit similar to those the staff members were wearing: dark and elegant, showing respect towards the institution. The usher was very pleased, when she saw me in my new outfit. The suit transformed me somehow into a quasi member of the apparatus. I even got a locker in Court to keep my suit for the next day of attendance.

Another discussion emerged, when I asked for a different spot to observe from. From the press bench, I could not see the Jury, which was unfortunate regarding my research interest. The clerk claimed: "The jurors don't do anything special. They are just sitting there watching. Some making notes, that's all." "Like puppets", I was teasing, which provoked a serious protest by the shorthand-writer: "You should not insult our highest legal institute!" My request was unsuccessful. Each role has its fixed position in Court. There was no bench available for me. All seats are reserved either for the defence, the prosecution, or the probation service. At least, that was what the clerk told me. The only way to catch a view of the Jury was to take a seat on the public gallery again. However, the back position would have been (too) far away from the legal talk between the professionals.

My early fieldwork in different Criminal Courts and law firms fostered the impression that social scientists should not expect too much insight from just visiting court hearings. The encounters are probably less informative than one would expect.

In the following, I recall how for court hearings such questions like “what is the unit?” and “where is the field?” occurred. I discuss CA of court hearings first. For CA, the unit of the hearing is the talk-in-interaction.

1.1. Opening the Hearing: How does CA imagine the social situation of the hearing?

Earlier works in CA define a couple of aspects, in which conversation could vary. A central distinction, causing some main concerns, dealt with the formality and the informality of talk. For court hearings, Atkinson/Drew (1979) examined the turn-taking organisation as a solution for the problem of size. (In court, there are indeed different parties and many participants involved.) Generally, the authors claim that *multiparty conversation* tends to be formal. In order to show how attention in Court is raised Atkinson/Drew refer not just to verbal utterances, but also to bodily expressions. Apart from “spoken-spoken-pairs”, they include “unspoken-spoken, unspoken-unspoken, or spoken-unspoken” pairs.

Their analysis of opening sequences can show the benefits and problems of such a widened perspective. The authors add the bracketed passages to the *original* transcript (Atkinson/Drew 1979: 89):

(Some people standing, some walking around, some sitting; several conversations going on)

CO Be upstanding in Court for Her Majesty’s Coroner

(The sitters stand, the walkers and some standers walk a few paces before standing still. CO stands still; everyone stops talking)

(Coroners enters and sits down)

(Everyone else except CO sits down)

(CO walks to where W is sitting) 30 sec

CO (Inaudible utterance)

(W stands up and walks with CO to witness box, which enters and stands still) 5 secs

CO Take the book in your right hand and read from the card

(witness takes book)

CO

W That’s it

I swear by Almighty God that the evidence I shall give shall be the truth, the whole truth and nothing but the truth.

(W gives book to CO)

Clerk Thank you. Could you just keep your voice up please

(CO sits down; W remains standing)

(Coroner examines papers in front of him) 12 sec

C Now your name is Alfred James Smith

W Yes.

C Press operator in a sheet metal works.

W Yes.

C And live at 33, Rose Hill Drive, Seatown.

W Yes

C On (date) you came to Localtown General Hospital and identified the body lying there as that of your mother.

W Yes

C

W

C From which she became a patient at the (name of mental hospital) here. She enjoyed good health apart from minor ailments until 1968.

Yes. Then what happened?

She had an upset with my dad and she took some pills…

Atkinson and Drew are aware of the problems caused by opening CA for new channels of communication. Carefully, they modify the way of transcribing. In brackets, they attach a small selection of 'body-talk'. Visual signifiers enter the transcript as *physical movements*. Bodies do "stand up", or "stand still". The authors add such manoeuvres to explain following utterances ("W takes book"). Other "unspoken turns" should be read as completing sequences ("everyone stops talking"). The body movements fill the gaps, which would otherwise remain open. They *make* sense.

Atkinson/Drew try to cut down the added bits on short *objective* sketches. Nevertheless, CA is facing a manifest problem here: the fillings can not be ascribed as *naturalistic* data picked up by a tape-recorder. In the brackets, the reader meets a strong author who is normally hidden within CA behind a technical apparatus. However, the main problem is not about representation or objectivism. The issue raised here is about the identification of turn-pairs and their sequentiality. The attached description is *interpretative* in the way that they identify and complete pairs. To do so, Atkinson/Drew select specific unspoken *contributions*: those (1) who can be seen as necessary for establishing the Hearing "for all" and those (2) who confirm that turns are taken as a request for attention.

> "While various groups of people within the courtroom may initially be engaged in separate conversations, there is (…) an expectation that something will have to happen to bring about the transition to a situation where everyone can orient to the same sequence of utterance turns, and there is also a predicted time when this might be expected to occur (i.e. the time set for the inquest). Thus, there is a prospective readiness to hear any utterance, which could be interpreted as a first of the transition, as being indeed the first such utterance. Into this situation is delivered an utterance which is clearly hearable as having been recipiently designed for everyone (rather than just for the one or two others a person might be talking to at the time)." (Atkinson/Drew 1979: 92)

Atkinson/Drew present the Court hearing as a centred situation accessible for all those present. Participation is locally constituted and accomplished through turn-by-turn activities. Thanks the Coroner's announcement, all parties pay full attention to the one 'centred' happening. The lawyers as well as the witnesses find a cleared floor ready to take the legitimated speaker. The trial takes place within this local public as soon as the initiation is fully realised.

What does that mean conceptually? The programme of (orthodox) CA is highly focused in order to reconstruct "talk in action" from within. For CA, single utterances gain social meaning only within the situated turn-by-turn order. Meaning is not pre-fixed according to literal definition but locally accomplished and negotiated. Meaning is relational and temporal. Thus, the entity of analysis is not a single statement (like in hermeneutics), but locally managed *sequences* of combined turns, the talk-in-interaction rather than single activities or speech acts.

CA's radical immanence can discipline the researcher's understanding of the tape or better: his reading of the transcript.4[I] Only what is shown in the data is approved to enter his/her analysis. This is true even for the 'unavoidable variables' like gender, race, class, or age – in

traditional sociology generally acknowledged as highly-effectual behind the actors' backs. Ethnomethodology transforms theoretical presumptions into empirical questions. How is gender, class or 'the judge' done at this very moment?

CA concentrates on the ethnomethods of talk, producing the grounds for social meaning and co-operation. Ethnomethods create the common surface, accountable for all those who take part in the interaction.

The "central recommendation is that activities whereby members produce and manage settings of organised everyday affairs are identical with members' procedures for making those settings 'account-able'. The ' reflexive' or 'incarnate' character of accounting practices and accounts makes up the crux of that recommendation. When I speak of accountable my interests are directed to such matters as the following. I mean observable-and-reportable, i.e. available to members as situated practices of looking-and-telling." (Garfinkel 1967: 1)

Social meaning is a local and practical accomplishment. This way of understanding social life explains why CA just sticks to the surface of court hearings in order to explain *what is going on in court*. The analysis is forced to stay within the examined interchange-system, because everything that matters must become apparent – both for members and for the researcher – in the *here and now* of the situation.

Like all methods, CA rests on a couple of assumptions concerning its object. Its concept of the social situation is necessarily exclusive and limited. CA's concept of the turn taking system is most consistent and convincing when the following conditions are fulfilled:

(1) The main inter-activity within the situation refers to *conversation or talk*.

(2) Communication is essentially carried out via *audible utterances*.

(3) Communication takes place between those present *here and now*.

(4) The speaker is able to confirm/correct the others' understanding *straight away*.

(5) Meaning and order is locally produced *collectively* through *co-operation*.

(6) Meaning is public and as such congruent with the '*lowest common multiple'*.

Pure CA is based on a forceful combination of empiricism, immanence, and sequentiality. However, its methodology involves strong empirical presumptions about social practice. Here are some questions regarding the agenda of pure CA, which might lead to some caution regarding its universal use (whatever the social situation is):

- Are the beginnings and endings of encounters easy to identify?5 CA matches with centred situations. Does CA work for de-centred and overlapping encounters as well?
- Atkinson/Drew highlight that the "medium of communication in which the barriers to perception occur" (Goffman 1959: 109), is not necessarily talk. It could be body talk, written correspondence, or electronic communication. According to these media, the time-space-expansion of communication can vary drastically. Does CA succeed when several media are in use all at the same time?
- The addressed recipient can be personally known, imagined within a fixed role, or just seen as *the public*. Recipients can be co-present, bystanding6, or absent and future. They can be known or unknown, abstract or concrete. Does CA succeed under circumstances where feed back is usually not given directly after the utterance?
- Social exchange is based on a minimum of co-operation.7 Nevertheless, practice includes varieties of competitive strategies. The resulting knowledge-inequalities are probably as essential for the accomplishment and stabilising of social order (both on a local or translocal level) as shared knowledge. However, to what extent does CA need to presuppose knowledge shared by all participants?

The attempt of using CA for the analysis of court hearings leaves us with some open empirical issues. Should we bracket out all the phenomena that do not fit into the model of closed interaction-systems, based on collaboration, equality and co-presence?

1.2. Where is the field? What is the unit?

Ethnography might help at this point, because it does not impose one frame on the observed occurrence. Moreover, ethnography's main concern is to find suitable spatial scopes and timely spans for the *practice* and its *field* in question. Before I give some closer impression of 'my field', I will explain this understanding of Ethnography as a field-and-method-generating enterprise:

(a) The data produced by means of fieldwork and its assessment should give an idea of the focal points, the tension and intensities of the field. The observation apparatus developed throughout the circular research should become increasingly sensitive. The framework of methods and concepts should provide saturated answers to the question: "What is it all about?" or the more detailed question: *What is mainly done here, how is it done and what is done through this (way of) doing?8* In chasing answers, Ethnography produces more mysteries at the outset than solutions.

(b) The demand of sensitivity evokes debates in modern Social Sciences. In the late sixties, Blumer criticised realism and the standardised methods of hypothesis testing in a similar way. Methods and procedures *"employed in each part of the act of scientific inquiry should and must be assessed in terms of whether they respect the nature of the empirical world under study – whether what they signify or imply to be the nature of the empirical world is actually the case."* (1969: 27-8). The naturalistic position formulated by Blumer caused the tendency towards holistic, standalone description of (sub-) cultures.

(c) Ethnomethodology can be understood as a shift against this kind of self-reliance. Autonomous cultural description is re-opened through reflexivity and sociological/linguistic formalism. Ethnomethodology insists that *researcher and natives* share the same basic methods of interpretation. (In fact, the clear distinction disappears within ethnomethodology.) Furthermore, it highlights the fact that analysed occurrences share general features with other events and processes. Goffman's critique against CA can be understood as inspired by the naturalistic rejection of standardised (single framed) analysis, unimpressed by the specificity of (multi-framed) practice.

(d) The researcher's framework is not self-evident. It causes far-reaching consequences. Before introducing a framework, the researcher should develop a sense of "what is going on". Consequently, Ethnography demands a circulative research process. With a "grand tour" (Spradley 1980) the researcher gains some first idea of dimensions and connections. Towards the circulative research process, observations should be and can be adjusted and focussed. The ethnographer alternates between being *there* and being *home*, between fieldwork ('immersing in the field') and data-analysis ('distancing from the field'). Through alternation between 'in and out', the ethnographer tries to correct initial misunderstandings, to fill information gaps, to find out what matters and to focus on these central issues.

(e) The framing-question "what/where is the field?" is widely underestimated within the ethnographers' community as well. Ethnographers normally reflect on where they should go *within* the field, whom they should use as an informant *about* the field, or which typical events they should witness. The shape of the field shifts together with the strategies of collecting, interpreting and analysing data, or better to say: through these practices, it is imagined what and how the field is. The way one describes classes at school, battles in a war, or hearings in court particularly create the very entity of *it*. However, within its circulative research process Ethnography offers a technique (of slowness9 and reflection) to re-frame the field of practice. The researcher's framing should be based on empirical insights as well as on theoretical imagination. Both are means as well as ambitions of research-design processes.

(f) Consequently, research projects are hard to define beforehand, unless they can be built up on a foundation of former research (in the same field of knowledge). The shifts within the naming of this project remind me of the same nexus of framing-difficulties and provisional solutions.

The proposal for the funding was titled: "Court hearings and its micro-sociology". Later the field and its borders shifted to "the pre-trial and the work done by lawyers". Then, I tried to draw the connection between both: "The Organisation of Performance and Perception in the

courtroom", which opens the account for the knowledge work taken out beforehand. Later (Jan. 2002), I decided to focus the inquiry on the "social career of defendant's statement in Court". These days (June 2002), "the sociologics of witnessing in criminal courts" should offer an instructive frame for comparison.

The different titles imply boundaries of *the* research field, search strategies, distinctions between important and unimportant data, ideas about driving forces, and limits of the researcher's interests.

(g) In Sociology, we find some competing strategies of framing. Students can choose between (world) society, (sub) system, network10, organisation, (sub) culture, discourse, social situation, interaction, conversation and so on.11 Ethnography normally leaves the first two out, in order to gain a closer connection between field, data and its encoding. Micro-Sociology mainly focuses on the last four, whilst the remaining four middle range concepts are often used as "social context" of encounters. However, instead of answering the question of the unit categorically, it might be necessary to consider intertwined frames and "multi-sided fields" (Marcus 1998).

(h) The demand of getting in touch with the field has implications for the projected results. The level of generalisation should not overwhelm the modes of orientation used by those who need to find their way through the complexity of practice. Many results given in research about court hearings (within CA or critical discourse analysis) often remain uninterested towards the local content and concerns.

One example: The fact that the participants make the hearing possible by sticking to the norms of participation (when to stand up, to keep quite, to start talking and so on) is indeed important, when we want to know how trials are accomplished. Any (valid) contribution to the trial needs to be configured according to the 'mystical standards' of the legal system, its "language game" (Wittgenstein). However, the efforts made by participants in order to achieve good results cannot be explained just through conformity. An analysis interested in the practical relevancies should include the matter of the hearing, the production and distribution of knowledge and the ways of showing one's own case in a favourable light.

Formal reformulation often falls below the applied skills and knowledge that are indispensable in coping with the demands of practical involvement. It is obviously not the job of ethnographers to become *better* police officers, lawyers, or judges. However, the student of court hearings should not erase the impact, status and use of *expert knowledge* achieved as embodied competency through an array of practical involvement.12

(i) The research design sets up methods, which should accentuate the dominant practices in the field. The aim is not an overview, but an intuition on significance and tension. Therefore, the researcher should explore the participants' methods of saving and expanding their capability of beneficial re-action and self-expression, facing unavoidable uncertainties, puzzlement, and dilemmas. Once more: to achieve formal participation (as witness, defendant, or Counsel) is necessary, but not sufficient for the parties fighting their cases with the means and within the limits set up in court.

(j) In this respect, reflexivity could mean the effort of being aware of misleading reductionism that often goes together with the repetitive use of standardised methods (either in the quantitative or in the qualitative paradigm). They never fit, because they presuppose what should be examined: how practice is shaped and driven. Court hearings can be reduced neither to conversation, scripts, texts or narration, nor to dominance or discursive violence. At least, we can examine "moments of talk" plus the shifting frames of talk:

> "For although it is easy to select for study a stretch of talk that exhibits the properties of a nicely bounded social encounter (and even easier to assume that any selected occasion of talk derives from such a unit), there are apparently lots of moments of talk that cannot be so located. And there are lots of encounters so intertwined with other encounters as to weaken the claim of any of them to autonomy. So I think one must return to a cross-sectional analysing, to examining *moments* of talk, but now bearing in mind that any broad labelling of what one is looking at – such as ‚conversation', ‚talk', ‚discourse' – is very premature. The question of substantive unit is one that will

> eventually have to be addressed, even though analysis may have to begin by blithely plucking out a moment's talk to talk about, and blithely using labels that might not apply to the whole course of conversation." (Goffman 1981a: 131)

(k) The lack of the encounter's autonomy, the connection between series of encounters, and the retrospective/prospective orientation of communication complicate the framing of utterances. The centre of activity itself is shifting from one moment to the other within the course of action. Thus, to create and use the right analytical frame remains a problem throughout the analysis. Apparently, this is a reciprocal process. The researcher's impressions of the situation's characteristics rely on the chosen framework. One pragmatic way to deal with this vicious circle might be the avoidance of early commitments. Outcomes are treated as provisional, mainly leading to new (better) questions. In accordance with this hesitation, unpredictable search movements in and out the field replace the academic norm of well-defined research stages.

(l) As a disorderly search-engine, ethnography might enrich the sociological imagination of "how society is possible". As a micro-sociologist, I can start with smaller problems: How are court hearings possible? How are they built up? What connections are drawn throughout the hearing?

1.3. First Impression of 'the field'

At the beginning of 2001, I started visiting hearings in the Crown Court and Magistrates Court. My aim was to become familiar with the event. Thus, I visited as many hearings as possible (on up to 4 full days a week). I made notes of my observation partly, initially restricted by my limited understanding of spoken English. Thus, they concentrated on 'strange' rituals, wigs, costumes, postures and sequences. After a while, I got into the rhythm of the trials, especially in the Crown Court. The court appeared as standardising apparatus13 re-configuring locale (Knorr) or dispositive (Foucault), transforming all kind of deeds and incidents into similar forms of debate.

Interestingly, I could follow the debates within *my* Crown Court much easier than in the Magistrates. The Crown Court-procedure was slower. It appeared to me plainly ordered, probably because the whole course was explained various times to the jury. In contrast, the events in the Magistrates Court were confusing, at least in the early stages of my inquiry. Hearings were interrupted, the staff managed several matters at the same time, while "the users" (defence, prosecution) were negotiating the basis of the plea or the adjournment of trial.

In the Crown Court, I witnessed ordered and successive phases, to be recognised by sets of markers. It appears as a strictly fixed sequence of activities, repeated for each trial. Here are some cornerstones according to my early observation:

All those present rise after the usher announces the judge ("Upstanding Court!"). Twelve jury members are chosen by lottery out of twenty summoned citizens. The clerk replaces the members, who admit or claim to know one of the involved participants (lawyers, complainant, defendant and/or the announced witnesses). Before starting the debate, each member of the jury has to stand up and read out the jury oath loudly. The trial starts with the Crown's case. The prosecution explains its duty in terms of "burden of proof" and "standard of proof" to the jury before presenting the accusation. (I found out later that these are pre-defined duties and not individual moves.) Subsequently, the prosecution calls its witnesses one after the other. The defence barrister starts cross-examining the 'hostile witness' directly after the prosecutor had his/her last question. The same happens later when the defence case and witnesses are presented. Now the prosecution undertakes the cross-examination directly after the defence barrister finished interviewing his/her called witness. Each party (first the Crown, second the Defence Lawyer) addresses the jury with the closing speech after the evidence is on hand. The trial is closed by the judge's summing-up. Now it is up to the jury to "decide the facts".

The activities in court are fit into a strict formal order. Who speaks when to whom is generally pre-given and unquestioned. In the centre of the court's machinery, we find a methodology and reality-concept of immediacy. All what the decision-makers (the jury) know about the occurrences in question ought to derive just from the witness statements given (and

witnessed) in court. Giving evidence means in practical terms: individuals (persons or things) allegedly witnessing the scene of the accused deed or any of its coming or going signs which are questioned in front of the jury. The jury-members themselves are witnessing the interrogation 'live on stage'. All witness statements are given in two separated formats. Firstly, as responses to 'friendly' questions, asked by one's own barrister. Secondly, as responses to 'hostile' questions, asked by the other's barrister. The competitive two-party-scheme governs the whole way of 'reality work' done in Crown Courts.

According to the concept of immediacy and the central role of witnessing, its seems reasonable to suspect that the researcher finds - just like the jury-members - sufficient insight into 'what is it all about' by observing the scene. In fact, everything is clearly presented to the jury through highlighting, repetition and explanation. Following this line of argumentation, the researcher could stick to the embodied presentation to find out 'what is going on' and 'how the participants are doing court hearings'. However, there was another aspect of the hearings' reality that drew my attention. While the interrogation and speeches are taking place, there is a lot of paperwork going on. On every stage of the court's reality-work, documents are involved. The protagonists refer to documents routinely within the ongoing "talk-in-action":

(1) Prosecutor [to defendant] "The Protocol says, that you have been in Chilly Club till three. Is that right? [To the Jury, while waving with a paper] This is a transcript of the interview at the police station. The content is fully confirmed by the defendant." Defendant: "I can't remember." Prosecutor: "But you told that to the police."

(2) Prosecutor [to his witness, a police officer] "Please, could you take a look in your notes. All that is about one and a half years ago. I am sure, you managed a lot of arrests since then, so the reading might be helpful." Police officer: "Thank you." [Enfolds a sheet of paper and put it in front of himself.]

For me as a witness of the scene the 'imported' documents hint to a reality behind, or better, before the trial. Something is already done and prepared. In the two episodes documents are used in noticeably different ways for their *own* and for *hostile* witnesses: (1) The current statement is confronted with a former statement, given on another stage within the judicial process, but present through its written representation.14 (2) The prosecutor invites his witnesses to read out the brought notes in order to "re-fresh the memory".15 Statements given by friendly witnesses appear as re-plays of something that is already conceptualised. Questions asked by the Counsel seem not surprising to the witness. The same is true for the witness' answers, received by the Counsel.

> "It is commonplace amongst barristers that questions should never be asked to which the barrister does not already know the answer. What speech act then is performed by the posing of such questions? They may be invitations to (friendly) witnesses to tell their story, or challenges to hostile witnesses, or even assertions of fact." (Jackson 1995: 53)

Admitting that, one should examine the character of situated utterances. To what extent can a loudly read witness statement – based like a "lecture" (Goffman 1981c) on a pre-formulated paper - be regarded as locally co-produced? To what extent are statements pre-fixed and therefore repeated? Do we need to know the content of documents in order to capture the dynamics of the hearing? The Crown Court episodes caused these further questions. Utterances were transmitting the impression of being prepared and guided, which does not really fit the above mentioned methodology of immediacy (or does it?). The papers and files brought to court play different parts. Many remain silent. Few were lent a voice. Some guide the reception and others are even attacked explicitly.

Utterances in court are obviously not all just of an oral nature: they have their own history as text. As Lynch/Bogen argue, utterances refer retrospectively and prospectively to an "inter-textual field", materialised and represented by (bureaucratic, historiographic) files plus the ongoing documentation during trial.16[The same impression caused my decision to leave the courts behind. Instead of watching defence and prosecution enacting documents I had no access to, I decided to concentrate the research on precisely these texts and the processes of composing them. Participant observation in a law firm seemed to be the right way to get access to the text-work and case-production-process.

In the literature, one find some reports on the difficulties in getting access to law firms, and here especially to solicitor-client-interaction (see Danet/Hoffman/Kermish 1980). Through my own experience, I neither can confirm nor refute it. In spring 2001, I was about to send a letter to several law firms, recommended by acquaintances from the Crown Court, when one good friend mentioned her partner's firm. Evidently, that made the access much easier for me. I talked to other defence lawyers, who assured that "some of your fieldwork" would not have been a problem anyway.

What struck me during the first phase of fieldwork in the law firm was the dominance of paper work, interrupted occasionally by conferences with clients or colleagues. So far, this is just the case for the solicitor in charge of Crown Court cases. The situation for the colleague working on cases within the Magistrates Court was different. She rushed from talk to talk and trial to trial in order to manage the incoming cases. For her, concentrated office work on a file was luxury. Most preparation needed to be done on the way to court or in the middle of hearings. In the majority of routine cases (like shop lifting or speeding) the solicitor met the client directly before trial.

The solicitor in charge of the Magistrates Court used the short interviews to scribble some notes on her pad as a kind of guide or line of argument for her later speech. Her information about the prosecution footed typically on the official indictment, added by a hand-written protocol of the police interview. Her level of information as duty solicitor17 was even lower. In the Magistrates Court, procedure and trial tend to be identical, a good reason to choose CA to gain some detailed understanding of how hearings are carried out here. However, it should be CA of both: the client-solicitor talk (and/or the prosecutor's preparation with the police) plus the subsequent court hearing. Such research would focus on the "explicative transaction"18 as the participants' skills to relate to the former consultation with solicitor *and* the requirements of the trial.

For Crown Court cases, preparation is much more elaborate. An expanded period of pre-trial enables the solicitor to unfold a compound information network and to create a promising case with strategies and a set of trumps to play out in court.

According to the "Renumeration under the General Criminal Contract", preparation includes "taking instructions, interviewing witnesses, ascertaining the prosecution case, advising on plea and mode of trial, preparing and perusing documents, dealing with letters and telephone calls which are not routine, preparing for advocacy, instructing Counsel and expert witnesses, conferences, consultations, view and work done in connection with advice on appeal or case stated."

The solicitor composes and dictates letters nearly all day: to the CPS, to probable witnesses, to the firm's clients, to the Court 's listing office, the Counsel's Clerk and so forth. By writing letters, he is doing many crucial things, like asking for information, chasing outstanding responses or channelling received information onwards. Apart from his work as a case-editor, the solicitor meets new clients for initial interviews (on "what really happened!"), or talks to those whose case is soon on trial. He calms them down, explains the following procedure, or informs about the achievable outcome according to possible pleas.

1.4. Towards "Applied Conversation Analysis"

I close this methodical prologue with some remarks on how limitations of "pure CA" are partly overcome in "applied CA"19. To do so, I refer to empirical studies that modify aspects of the talk-in-interaction concept. They transform "parameters that conversation allows to vary" (Sacks et al., 1978: 46f.), concerning participation, reception and the media. I leave the decision whether "applied CA" is still placed within the agenda of *conversational analysis* to the reader. It might be appropriate to replace the notion by c*ommunicational analysis* to cover the whole range of phenomena and to transfer the presupposition of conversation as the prototype of any communication into an empirical issue. At stake are more than just technical debates on the limits and potentials of methods. At stake are also conceptional problems around the "micro-macro-link". The question is whether the micro-sociology is capable of addressing wider theoretical issues like the micro-foundation of society and expanded organisational or procedural relations.

(1) Considering various media and data of interaction: Like any other pre-given qualities, the participants' knowledge or pre-produced texts become relevant for CA only when they are explicated in the situation. But what does it mean *to be explicated* in practical terms? As in Goffman's work on social encounters, applied CA includes and combines several media of communication. The work of Atkinson and Drew is one careful step in this direction. They develop a sequential analysis of "said and unsaid turns" (1979) in multi-party settings. A comparable expansion can be found in an analysis of interaction "with hands, eyes, faces and bodies, but not with ears" (McIllvenny 1995: 132) amongst deaf. In other words, while telephone calls may be well represented by audio recordings (e.g. Zimmerman 1992: 418-469), face-to-face-interaction apparently requires different materials. Lynch and Bogen develop the analysis of social situations in another direction. Here, the audible and visible is complemented by the readable:

The testimony at the Iran-contra hearings "was an instance of speech generated within a dense literary field20. The dialogues between interrogators and witnesses were officially set up as part of a fact-finding investigation in which the joint House and Senate committees were charged with producing a written report summarising the hundreds of hours of testimony. The archive of notebooks surrounding the interrogators and witnesses were filled with copies of memos, printouts of electronic mail messages, telegrams, diary entries, letters, and transcripts of earlier testimonies. The records were used in the course of the testimony, and the testimony was spoken for the record." (1996: 207)

Ethnomethodological *workplace studies* analyse the parallel use of various channels and media to organise effective collaboration. One example is the research on airline operations rooms considered as "a communication centre" (see Brun-Cottan 1990; Goodwin 1996; Suchman 1996). Another example is the analysis of London Underground control rooms and the coordination of its inhabitants (Heath/Luff 1996). According to these studies, communication does not only connect inter-actors, but also users and (interfaces of) programmed machines (Suchman 1987). In recent times, there emerged some growing demand for CA and Ethnography of communication in the field of software-development. The user's writing-process and the computer's response are analysed as "human-machine-interaction" (Suchman). For all these studies, the expansion of the explicated is transmitted through the composition of new data. Suchman for example

> "(…) invited couples of novice users to carry out certain complicated copying tasks, on the basis of the 'instructions' provided by the machine. These trials were video taped and analysed using special kind of transcripts. These were organized in four columns, two for the users and two for the machine. The first column contained the talk between the users, under the heading 'not available to the machine', while the second recorded their actions on the machine as 'Available to the machine'. The machine columns were similarly divided: the first, 'Available to the users', mentioning the displays provided for the users' information; and the second, 'Design rationale', explicating the 'reasoning' that was implemented in the design of the machine." (ten Have 1999: 192f.)

What is regarded as explicated is itself a methodical composition that makes the practice of interpretation accessible and transmittable for social research. In Suchman's study, the sphere of relevance (or the explicated) is extended to programmes, built into the machine. In the same way, documents (of former testimonies) imported into the courtroom can be seen as 'inter-actants' revealing evidence that demands attention. Although discreet, they need to be taken into account and addressed by witnesses and lawyers.

(2) Considering different kinds of participation: The following transcript (Lynch/Bogen) shows the extension, in which a cross-examination was dominated by written guidance. "The book" can be described as participating, a non-human deeply involved in the interaction system. In relation to the text, the defendant could be described as loudspeaker21 just reading out what is written in the paper. In fact, the defendant is engaged in a dialogue with his notes, which helps him to respond successfully tricky questions asked by the prosecution. The notes are introduced as the written outcome of the client-lawyer preparation for the trial.

Liman: … On the 21st you did, in fact, discuss with Admiral Poindexter the problem of the diversion. Is that so? I´ll tell you – you´re looking at a book there. What is the book, sir?

North: The book is made up of notes that I have made in trying to prepare with counsel for this hearing.

Liman: And –

North: It includes

Sullivan: Don´t tell him what it includes.

Liman: Well, I think if a witness is looking at something that, I as counsel, am entitled to see what he´s refreshing his recollection on.

Sullivan: I think you´re wrong. That´s a product of lawyers working with clients.

Liman: And you think that a witness is entitled to read something and that we´re not entitled to see what he is reading?

Sullivan: He is entitled to use his notes and to preserve the attorney/client privilege. Everything in that book is a product of the attorney/client and work product privilege, Mr Liman. And you know that.

Liman: Are you able to relay you conversation with Admiral Poindexter on the 21st about the diversion without looking at the book?

Sullivan: That´s none of your business either. You just ask him questions.

Lynch and Bogen use examples like the given to show the role of documents and memory in court. Interestingly enough, they do not use the documents themselves, only the voicing by their 'loudspeakers'. CA is obviously expanded again: described are the roles, documents play in court. As such, we can illustrate their status as participants taken into account by the others no matter if they are read out or not. They might participate insofar co-present inter-actors know them *and* refer to them (in one way or the other). Professionals, like defence lawyers, have their own practical theories about who participates; about the (relevant) audience22; about the useful channels of communication; about decisive moments in the trial or virulent, but unmentioned information. In this way, concepts like participation or recipient-design are differently enacted and observable.

(3) Considering prespecification: New kinds of data lead applied CA to re-think prespecification. Orthodox CA regards *natural* conversation as being unplanned, unspecified, and locally ordered. Other forms of talk are considered as transformations of this prototype.23 From these stable grounds, CA offers a contrast folio for the study of interviews, emergency calls, or court hearings. Although the main difference is considered in terms of pre-specification, CA insists accurately that courses of interaction stay to some extent contingent. It cannot be fully determined.

> "If certain stable forms appear to emerge to recur in talk, they should be understood as an orderliness wrested by the participants from interactional contingency, rather than as automatic products of standardized plans. Form, one might say, is *also* the distillate of action and interaction, *not only* (my emphasis, TS) its blueprint. If that is so, then the description of forms of behavior, forms of discourse … has to include interaction among their constitutive domains, and not just as the stage on which scripts written in the mind are played out." (Schegloff 1982: 73)

CA understands plans, scripts, or other forms of pre-specification mainly as a structuralist attack on the micro-sociological paradigm (social situations as self-driven, powerful and closed entities). Therefore, pre-specification enters pure CA only indirectly. On the one hand, pre-specification is declared to other participants, just to mark the situated talk as being different from 'normality'. On the other hand, CA reveals plans as being "unrealistic". Several analyses highlight discrepancies between plan and praxis: for instance between standardised survey-scripts and survey interviewing (Schaeffer 1991, Maynard-Schaeffer 1997, Houtkoop-Steenstra 1995). Pre-specification within CA is either treated as not pre-given, but simply

performed, or as something pre-given but not (fully) implemented. These evasive manoeuvres might be overcome by considering scripts or plans as productive means *and* practical challenges for situated activities.24

(4) Considering the openness of event: In applied CA, we find a number of studies dealing with the openness of the situation in different respects. We find studies on radio talk (Goffman 1981b), TV-interviews (Heritage 1985; Greatbatch 1986; Clayman 1991) or televised court hearings (Lynch/Bogen 1996). Pollner (1979) shows how defendants in traffic courts study the order of the previous trials. They observe how their predecessors are treated (and sentenced). By doing so, defendants copy the "interaction order" (Goffman) and apply it for their own case. Pollner identifies

> "(…) several indication that defendants monitored and analysed the ongoing setting and formulated locally established sequences and significances that were employed explicitly and implicitly as the grounds of further action in the setting. There are, for example, direct references to proceeding cases, as when, for example, the second of two consecutive defendants arraigned on charges of failing to appear in court prefaces his explanation with, 'know you're going to do to me what you did to him'. Somewhat more subtle instances occur when defendants abstract the explicated order and actually use it as the basis for some current action." (1979: 237)

Pollner characterises the court hearings as an "ongoing setting", used by the participants for "explicate transaction". They produce the accountability of order while observing and following the example of the forerunners.25 The anticipation of later events during the hearing seems to me elemental as well. Participants try to enact plans and strategies. They seek to foretell forthcoming events and use scenarios to guide their ongoing decision-making. Such prospection works to some extent like a self-fulfilling prophecy. Activities are made foreseeable and assessable through "expectations and expectations of expectations" (Luhmann 1995: 303f.). Activities are stabilised via written procedural rules and rituals, professionalisation and fixed memberships. Procedures are open on the one hand, while surprise should be abolished on the other hand. Undeniably, this outline by no means provides an adequate explanation of how court hearings are practically embedded into wider processes.26 Facing the practice of court hearings, there remains a strong demand for further expansions of CA, especially in terms of supplementary orderings, multi-framing, or overlapping and discontinuous sequentialities, all routinely handled throughout the course(s) of inter-action.

The expansions within applied CA refer to methodological problems, occurring when CA is confronted with 'wired phenomena': like deafness, copy machines, legal documents, or TV-cameras. The shown expansions are diverse and analytically not integrated. The way of adding additional frames of reference (the intertextual field, the ongoing setting, or the wider public) has one aim in common: context is treated as an enacted side of the setting, not as an external constraint or limitation. In my view, each expansion reminds of the need for ethnographically informed framing. The frame of reference enacted by the 'participants' is not stable and singular. It changes from moment to moment, together with the situation's components and their respective position. That is why conceptualising the court hearing as conversation or as one (late) stage in a procedure makes a huge difference for both, the participants and the researcher. It changes what counts as the situation's contribution, its participants, its audience, its sequentiality and the currently required recipient-design.

This is an empirical challenge not just for the analysis of court hearings, but for the micro-sociological agenda in general. I claim that even *natural* conversation depends on multiple sequential orders and connections. Participants are used for instance to utilise markers known only by those participants who were already involved in former encounters or episodes. Present utterances might be designed not only for the current talk but according to the demands of trans-situational "social relationships" (Weber).27 In this way, I understand conversation not only as the exchange of turns, but as integrated in other exchanges: of goods, money, gifts, decisions, legal arguments, or power.28 In this respect, the *unspecified non-historic conversation* appears as out of the ordinary - probably symptomatic for the post-modern condition, present at "non-places" (Auge).

Pure CA might fully understand the anonymous talk between ‘strangers’. However, an encounter of ‘old fellows’ usually includes intimate clues towards the past and future of the relationship. Not all co-present participants are clued-up with ‘hidden’ implication. They might not even know that there is something *tricky* to understand. Interestingly, polite *insiders* provide straight away some sort of background to *outsiders.* CA could observe the way people are introduced. However, the extra information is unfortunately rarely given to an ‘unfocussed, unbiased and uninterested’ tape-recorder.

Social processes build up background knowledge and the expectation that it is shared by those already involved. The knowledge remains unsaid, exchanged and absorbed by former encounters. In order to grasp what is going between the insiders, a researcher ought to consider the wider sequentiality in which the event is embedded. How do they refer to former events? How do they accumulate ‘shared experiences’?

In these respects, face-to-face interaction amongst associates or acquaintances contributes analogously to separate exchange systems: social processes and events. Correspondingly, I understand utterances within hearings as (at least) double-framed.29 They are not only designed for purposes of talk-in-interaction. Utterances contribute to the present event *and* the extensive legal proceeding. Through the analysis of criminal trials, I would like to add this move to the already mentioned expansions of CA.

In the following, I demonstrate a *transitive analysis* of court hearings, I try to include the preparation of this event, narrated within files and accomplished through correspondence, meetings and telephone calls.

Lynch/Bogen’s description of the testimony in court implies such analysis: “Among other generative aspects of interrogation, the testimony links itself *retrospectively* to earlier testimony, and it is used *prospectively* to establish the evidential significance of later testimony. Accordingly, the production and corroboration of testimony at any given moment involve the reflexive iteration of prior testimony and the anticipation of later testimony.” (1996: 208)

In referring to Sartre work on method (1963) Denzin uses analogous terminology (“progressive-regressive method”), but with a (too) strong emphasis on the subject as such: “The progressive-regressive method seeks to situate and understand a particular class of subjects within a given historical moment. Progressively, the method looks forward to the conclusion of a set of acts or actions undertaken by a subject (…). Regressively, the method works back in time to the historical, cultural, and biographical conditions that moved the subject to take or to experience the actions being studied.” (2001: 41)

What I try to do here is best understood as a version of - in time/space - expanded CA. It is not an application of a pre-given, standardised method (with set relevances, like in Denzin’s attempt to define fixed variables of interactivities) but a way of following the specific retro/prospection of inter- *or*/*and* trans-activities (with *its* own involvements). The combined process- and event-analysis should be capable to follow the social career30 of witness statements carrying (some) legal arguments through the pre-trial into the hearing. As scripts, the legal statements deal with the already established indictment, face already given evidence and prepare the upcoming trial.31

The scripted statements are full of strategies, pre-decisions and cautions. They are like adapters or mediators linking knowledge work and event. The following explorative analysis of solicitor’s case preparation should enable the student of criminal trials to refer (like the activities do) to both: the process of case production *and* the dynamics within the social encounter in court. Thus, I analyse “utterance-design” (Button et al. 1995: 197) in accordance with two main reciprocities: local face-to-face interaction *and* translocal communication-processes.

Endnotes

1 “After a decision has been made to prosecute there are various stages that have to be gone through before an eventual conviction or acquittal. Criminal cases are dealt with in either magistrates’ courts or the Crown Court. Nearly all start in the magistrates’ court, and before a full trial or hearing the magistrates may have to decide whether or not the accused is to be held in custody while awaiting trial. In some cases the accused has to decide whether to have the case heard by magistrates or before a judge and jury.” (Davies/Croall/Tyrer 1995: 150)

2 “The court staff and users attached to the Court formed a relatively small and stable population. (…) They would meet day after day after day in conditions of intimacy and interdependence, and it was inevitable that they appeared to stand fixed and familiar against the larger tide of anonymous counsel, police officers, and public that swirled all around them each day.” (Rock 1993: 184 f) Later, I became for three months a provisional member of the second circle.

3 Once, an American judge was visiting the Court. Together with “the researcher from Germany”, he was officially welcomed by the practising judge. This acknowledgement improved my position a lot.

4 “My research is about conversation in only this incidental way, that conversation is something that we can get the actual happenings of on tape … If you can’t deal with the actual details of actual events then you can’t have a science of social life.” (Sacks, LC 2: 26)

5 In one report on an American court, dealing with traffic cases (dangerous driving, driving under influence of alcohol etc), the following picture was drawn: “The intensive action was not limited to the courtroom as it was in the Finnish court. In front of the courtroom entrance, public defenders counselled defendants in small cubicles, and this went on even while the court was in session.” (Engestroem 1998: 207)

6 In one case, the Barrister explains the “nature of the offence” several times on a sentencing hearing, although the judge is fully aware of the reduced basis of the guilty plea. He tried to persuade the present chair of the committee, who decided about the employment of the convicted. In Goffman’s terminology: one “bystander” becomes the “target of the speech”. The Barrister hopes, that he will spread the explanation to those, which do not turn up in Court, but will have an important impact on the client’s future.

7 There are different intensities of co-operation. Luhmann highlights in his work on (legal, political, and law-making) proceeding the importance of collaboration within institutions like the Court or the Parliament. Localised functionaries behave more carefully because they need to deal with the same individuals in the future. Deals or compromises could be negotiated beyond the boundaries of a single matter. Rules of conduct and behavioural patterns change over longer periods within these systems of collaboration. In this way, decisions on one occasion might cause problems and disadvantages for following encounters.

8 There are numerous ways of asking HOW-questions. ANT-researchers typically ask, how such an activity is possible at all (within a network of attached actants). Ethnomethodologists ask, how collectives are doing what they are doing (accountable for members through collaborative sense making). Goffman could be better described as asking open WHAT-questions: What is going on here? What is it all about? The answer is thickened through additional questions: How do I know that? How can that be known by some and not by others?

9 According to Silverman, slowness (next to clarity, smallness, and being non-romantic) is a central demand in “Sack’s Aesthetic for Social Research” (Silverman 1998: 180). Does CA go too fast when deciding for conversation as *the* significant frame?

10 To talk about networks seems to be less risky, because the notion is indecisive and open. Networks are characterised as unlimited. They retain fluid and shifting boundaries. However, links between elements within an endless network cannot explain, how activities are carried

out. Inter-activities are only possible (within networks), via temporarily detachment *and* attachment. Activity (or practice?) is about the capability to attach and detach, to focus and to ignore, to highlight and to select according to operative schemes within time and space.

11 See my discussion of several metaphors 'on practice' in the conclusions.

12 This research attitude is well described by Goffman. "Once students of social life begin to understand the number of constraints and ends governing each of an individual's acts on every occasion and moment of execution, it becomes natural to shift from considering social practices to considering social competencies. In this way, presumably, appropriate respect can be paid for all the things an individual is managing to do, with or without awareness, on purpose or in effect, when he performs (in the sense of executes) an ordinary act". (1981b: 198)

13 "Trials were done to formula. The logic of accusation and defence under the adversary system required such a strict sequence of standardised events that a trial at Wood Green could have taken place at any other Crown Court centre in England and Wales (once counsel remarked to a court clerk: 'The trouble is when you're in court, you can't remember whether you're in Southwark or Wood Greens'). Tight prescriptions ordered how charges were to be put and answered, a case would be made, and a defence would be presented." (Rock 1993: 28)

14 I will describe the role of the document later as "silent witness", causing/demanding specific efforts of translation. As a fixed version of the incident in question, they become a criterion and measurement for situated statements.

15 The trajectory of a statement in court might be opposite to the one designated within e.g. the German asylum seeking proceeding. Asylum hearings aim to produce official protocols from spontaneous utterances, created just within the examination (Scheffer 1998). Similar to police-interviews or to cross-examinations in court, memorising through reading is expelled as a sign of incredibility.

16 In one chapter, Boden/Lynch inquire what they call (following Garfinkel's notion of "the documentary method of interpretation") the „Documentary Method of Interrogation". By analysing the transcribed videotapes of the Iran-Contra-Hearings, they came across practices of reading and co-reading of documents. The distinction of oral and written language appeared as being blurred. They found different ways of using documents in the course of interrogation: „The citation of prior testimony in present testimony was one way in which speech was intertwined with text. Another, perhaps more obvious way in which writing entered into the conduct of the hearings was through the introduction of documentary exhibits." (1996: 209)

17 "Duty solicitors are required to provide advice on a wide range of criminal matters with no opportunity for any preparation in advance; they need a detailed knowledge of the working of the court, with the ability to form good working relationships with the court staff, and they must be able to balance the defendant's desire to 'get it over with' with the need to ensure that sufficient time has been allocated to consider all the issues." (Cownie/Bradney 1996: 293; see Johnston 1992: 11f.)

18 By using this term, Pollner (1979) points out how participants observe former occurrences in order to adopt precedent conduct for present purposes. The subsequent hearing is pre-structured by such active experiencing. Pollner argues that the way some defendants are contributing to the hearing is only understandable through the speaker's transfer of former episodes.

19 "In 'pure CA', the focus is on the local practices of turn-taking, sequential organisation, etc., in and for themselves, while in 'applied CA' attention shifts to the tensions between those local practices and any 'larger structures' in which these are embedded, such as institutional rules, instructions, accounting obligations, etc." (Paul ten Have 1999: 189) Instead of being pure, a lot of CA seems methodically 'dirty'. Much empirical work in this field adds deductively all kind of pre-given norms or categories.

20 According to Bogen/Lynch, this (public) field includes “at least the following: the televised hearings; recorded excerpts and written transcripts; the committee’s final report, including the minority report; media commentaries and other journalistic and scholarly reports, documents used as exhibits: PROFS Notes, North’s notebook entries, CIA logs, White House records, transcripts of tape-recorded meetings, memos; representations, reproductions, and redacted (systematically censored) excerpts of particular documents and masses of documents reproduced in photographs, shown on camera, and exhibited in testimony; a photograph of North standing next to a stack of paper, shown on camera by Sullivan to demonstrate the mass of committee documents; a slide show presented by North, without a projector, for the ostensible purpose of demonstrating the presentation he showed to potential donors to the contra “cause”; telegrams sent to North and displayed by his side during the last few days of his testimony; Poll results and testimonials presented by the media each day as the hearings proceeded.” (1996: 201 f.)

21 Goffman is de-centring and varying the notion of the participant: “In fact the term ‘speaker’ is very troublesome. It can be shown to have variable and separable functions (…) In the case of a lecture, one person can be identified as the talking machine, the thing that sound comes out of, the ‘animator’. Typically in lectures, that person is also seen as having ‘authored’ the text, that is, as having formulated and scripted the statements that get made. And he is seen as the ‘principal’, namely, someone who believes personally in what is being said and takes the position that implied in the remarks.” (Goffman 1981: 167)

22 Drew (1992) offers some applied CA on the role of the jury in cross-examination in court. Drew shows how speakers are referring to the jury as the “overhearing audience”, while managing the cross-examination: “However, the talk between attorney and witness in examination is, of course, designed to be heard, understood, and assessed by a group of nonspeaking overhearers, the jury. Whilst they do not ordinarily participate, at least verbally, in the interaction between attorney and witness, they are required to make a decision on the basis of what they have heard during a trial.” (475)

23 “The linear array is one which one polar type (which conversation instances) involves ‘one turn at a time allocation’; that is, the use of local allocational means, and the other pole (which debates instance) involves ‘preallocation of all turns,’ and medial types (which meetings instance) involve various mixes of pre-allocational and local allocational means. (…) For it appears likely that conversation should be considered the basic form of speech-exchange system, with other systems on the array representing a variety of transformations on conversation’s turn-taking system to achieve other types of turn-taking systems.” (Sacks et al., 1978: 46f.) This framework is commented by Lynch/Bogen: „As Sacks, Schegloff, and Jefferson describe it, conversational turn-taking is an ‚economy‘, organised by a ‚machinery‘, whose operations are general in scope, subsuming all forms of interaction in which talk is ordered by turns, and in which one party speaks at a time. According to their model, conversation is organised in a much more fluid, and less ‚pre-specified‘ way, than other systems of talk: rights to talk or remain silent, the content of what a speaker can say, the length of time the speakers can talk, all are not determined in advance for conversation, but instead are allowed to vary, and are managed locally. These facts distinguish conversations from meetings, debates, interrogations, and other formal or institutionalised speech situations.” (1996: 284)

24 The relation of plans and practice is an empirical one. Plans can be resources, like Suchman (1987) emphasises. Plans can be problems in the way they demand extra attention by its user. Plans can be means of producing accountability in the way they document the fact that they were available to the user. With the double perspective on preparation and trial, I would like to show how the solicitor’s instruction for barrister fundamentally changes the barrister’s subject-position in the hearing. Rather than being assisted by the documents, he is forced to refer to them. The written instructions demand attention or even quotation additionally to all the other counterparts.

25 Pollner gives among others the following examples:

(1) J: All right. You gonna have a lawyer in this case?

D: Well, no sir I'm not and I'll plead guilty on it."

(2) J: Joseph …uh…Halsworth? Yes sir?

D: I'm waiting for the question.

J: How do you plead?

D: Not guilty, your honor.

26 Collett recommends the analysis of succession and transitivity as two interrelated forms of sequentiality: "*Succession* concerns the relations between one type of event and its sequitor or sequitors. Here one can either examine how one type of event leads on to another or the way in which one kind of event leads on to another or the way in which one kind of event leads on to various other kinds of event. Either way, one is simply exploring one step in a sequence, or what in certain contexts is referred to as a first-order transition. By contrast, *transitivity* is concerned with the relations that obtain within strings of events. Here one would examine the way in which one kind of event leads on to various other kinds of event, and how these in turn lead on to other kinds of event, and so on. If studies of succession look at one step in the sequence, then studies of transitivity looks at several steps in the sequence of events." (1989: 228)

27 See for example Elias/Scotson (1965) on the significance of pub talks for the local community and its social divisions or Bergman's work on gossip (1987) and its relevance for social inclusion/exclusion. Durkheim's analyses of rituals and the creation of "social bounds" (1969) point in this direction as well.

28 This critique of "pure CA" is best understood as a sociological turn. In general, social exchange systems make use of different mediums and codes over different timely/spatial zones among different amounts of members: "Money is a vehicle of establishing relations between individuals who may be very widely separated indeed from one another in time and space. What is interesting and important here is not just the relation between co-presence and 'transcontextual' interaction, but the relation between presence and absence in the structuring of social life." (Giddens 1987: 136)

29 Lynch/Bogen present a good example for this kind of multi-framed analysis. See the following example: "'North: …No, the short answer is no. I think the chronologies had already started to be changed. I think my initial input from Mr. McFarlane predates this. Nields: Well, let's check that against the record. I'd like you to turn to Exhibit 19. Do you have that in front of you?' Note the complexity of the intertextual field made relevant through this exchange. At least three 'chronologies' are at issue: one of them that North prepared, another that reflected McFarlane's input, and both of which are placed by North's testimony within a calendrical order of chronology construction." (1996: 209)

30 Goffman uses the notion of career in the following way: "The perspective of natural history is taken: unique outcomes are neglected in favour of such changes over time as are basic and common to the members of a social category, although occurring independently to each of them. Such a career is not a thing that can be brilliant or disappointing; it can no more be a success than a failure. (…) One value of the concept is its two-sidedness. One side is linked to internal matters held dearly and closely, such as image of self and felt identity; the other side concerns official position, jural relations and style of life and is part of a publicly accessible institutional complex. The concept of career, then, allows one to move back and forth between the personal and the public, between the self and its significant society, without having to rely overly for data upon what the person says he thinks he imagines himself to be." (1961: 119) In contrast to Goffman and to the more neutral notion of trajectory, we consider career as an array of steps (forward) to be taken by any argument in order to enter the trial and to benefit the own case.

31 Within orthodox CA that might be seen as 'another bad example' within a whole array of studies, which claim „that the ‚reality' of any situation is available for discovery and documentation by probing behind 'the appearances'. (…) Similarly, a fundamental idea in the research methodology which has been heralded as providing the key to such areas of social

life, namely ethnography or participant observation, is that data should be collected from many different parts of the particular organisation at some sort of balance between the diverse and often conflicting versions of reality claimed to be oriented to by the subjects involved.“ (Atkinson/Drew 1976: 2) There are two problems with their critique: Firstly, you need an idea about the unit of the observed social life to decide what is “behind the appearances”. Secondly, the participants themselves mobilise different types of resources. Why should we leave out all that only because CA is specialised in tape recordings?