Chapter 12. Order in Court: Talk-in-interaction in the judicial process

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Abstract

We begin by reviewing the landmark conversation analytic study of courtroom interaction, *Order in Court: The Organisation of Verbal Interaction in Judicial Settings* (1979), in which Atkinson and Drew first explored the differences between the turn-taking systems for ordinary social conversation, and for courtroom interactions. The pre-allocated and more restricted turn-taking system in courts is characterized by turns in which one party (lawyers) asks questions, to which the other party (witnesses, defendants) responds with answers. These – questions and answers – are only minimally represent what each party is doing, because of course in their questions and answers each is doing much more besides, such as accusing, alleging, 'questioning' (as in doubting), defending, justifying, denying and so forth. Atkinson and Drew focused primarily on the actions each party conducts through their questions and answers in courtroom examination and cross-examination. In this review we outline the key themes in *Order in Court*, of turn-taking, (lines of) questioning, social actions, strategy and the micro-analysis of power. We review also some of the shortcomings of this groundbreaking study, including a rather limited exploration of question design, and the fact that much of the data were not recorded – in no cases were video recordings available for what is, after all, a form of face-to-face embodied interaction. We then outline some of the subsequent published research that has developed out of the action-oriented perspective in *Order in Court*, research that has similarly focused on the sequential patterns to be found in courtroom interaction – and indeed also in other forms of legal questioning such as police questioning of suspects, and in lawyers' interviews with clients.

Introduction

In this chapter, we highlight the principal themes in the study of courtroom interaction which Drew co-authored, *Order in Court* (1979); we then give an overview of the subsequent research into judicial interactions, research conducted largely from or informed by a conversation analytic perspective. The scholarly environment in which *Order in Court* was published 40 years ago was so different from that of today that it might be useful to recall how it came to be written. Atkinson and Drew had been working individually on interactions in rather different quasi-judicial settings, Atkinson on UK coroners' courts investigating the circumstances and causes of sudden deaths, and Drew on a judicial Tribunal of Enquiry into the violent events in Northern Ireland beginning in 1968, an enquiry chaired by Lord Justice Scarman. We were much influenced by the emerging paradigm and methodology of Conversation Analysis (CA), at the time when, to begin with, there were only six publications in CA, including the famous turn-taking paper by Sacks, Schegloff and Jefferson (1974), which subsequently became the most frequently cited paper in *Language*, the preeminent journal in linguistics, outranking in that respect any of Chomsky's paper published in the same journal. Sacks et al. proposed a turn-taking system for mundane, informal social conversation; however, the interactions that we were investigating were anything but mundane, and could hardly be regarded as conversation – they were characterized by formal exchanges of questions and answers, in which participants' contributions were constrained in various ways, for instance by rules of procedure and rules of evidence. We were, therefore, each attempting to apply the perspective and methodology of CA to an interactional form – judicial/legal questioning – for which CA seemed almost by definition not to be suited. If Sacks et al (1974) was a 'simplest systematics' for informal conversation, how might that be applicable to the analysis of interaction in judicial interactions?

The key to resolving this puzzle was twofold. First came the understanding that the turn-taking system in courtroom examination was a restricted form of the turn-taking system explicated by Sacks et al., as will be explained in a moment. Sacks et al. were setting out a turn-taking system for casual interaction; Atkinson and Drew were exploring the differences between the structures of speech in formal court hearings, from those in casual social conversation – in effect a comparative exercise which others subsequently developed more successfully and more generatively (For an overview of subsequent research into e.g. news interviews, legal, and medical interactions, see Heritage and Clayman 2010). Second, Sacks had been explicit from the beginning that he was enquiring into and attempting to develop a

science of social action; talk as such was not his primary focus – he investigated talk, and talk-in-interaction, as being a vehicle for social actions. Because talk could be recorded, replayed and thereby 'observed' repeatedly, and in detail, it provided him and his colleagues with material with which to investigate social action. The insight that examination in courts represents a restricted form of the turn-taking system as set out in Sacks et al., and the focus of CA on social action, were the underpinnings of the studies in *Order in Court*.

Key themes in *Order in Court*

In retrospect, *Order in Court* represented a more radical innovation than applying the methodology of CA to judicial hearings; Atkinson and Drew were taking the first steps in developing a programmatic statement of the application of CA to studying *institutional* interactions in general. A more formal and comprehensive programmatic statement of this application of CA took a further decade to evolve. In *Talk at Work: Language Use in Institutional and Work-Place Settings*, Drew and Heritage (1992) set out the key conceptual themes in applying CA's methodology – originally developed for the study of mundane, informal social interaction - equally to less mundane, more formal interactions in institutional settings such as medical interactions (CA research into medical consultations of many kinds has become especially prominent in the past 20 years), media news interviews, calls to the emergency services, classroom interaction and many more (see especially Heritage and Clayman 2010). But *Order in Court* began the exploration of quite general dimensions or aspects of institutional interactions, aspects that were novel to researchers then, but which remain key themes underpinning the analysis of judicial and indeed all institutional interactions. These included the turn-taking system for judicial hearings, the nature of questioning in courtroom examination, the social actions conducted in such interactions, and strategy in interactions (and the connection between strategy and 'power').

The pre-allocated turn-taking system for courtroom interaction: Sacks et al. (1974) had proposed a model of turn-taking in ordinary (social) conversation that was locally managed. That is to say, the order in which people speak, what they say, the type of turn, and the content of turns are not fixed; nor is the length of time each person speaks. These matters are all locally managed on a moment-to-moment basis, through procedures and practices by which participants 'negotiate' who speaks next, what they say, and how long they take or are given to say it. This is no place to review the extraordinarily rich and compelling research

into the technical complexities of turn-taking, including overlap onset, next speaker allocation, turn construction units, incremental additions to turns and so forth (see Clift 2016). The key to understanding how judicial and other institutional interactions 'work' is that they are characterized by similarly restricted turn-taking systems. For instance, in direct or cross-examination in court, the order in which participants speak is, first, the lawyer (counsel, attorney), followed by the witness or defendant; what each says is fixed – questions and answers, respectively; the 'content' of what they say can be restricted (e.g. by rules of evidence, judges' decisions about admissibility etc.); and how long they speak can be subject to restrictions (again, by judges' interventions) (Atkinson and Drew 1979, ch.2). In short, whereas turn-taking in ordinary social interaction is locally managed by the participants themselves, through orderly but locally contingent practices, the turn-taking system for judicial hearings - as for so many other institutional interactions – is one characterized by a restricted *pre-allocated* turn-taking system, according to procedures that are mobilized somewhat externally (i.e. lying outside the control of the principals).

Questioning: A principal way in which the turn-taking system in courts in pre-allocated is that the turn types are fixed, i.e. that attorneys/counsel ask *questions* and witnesses/defendants *answer* those questions. This rather obvious but nonetheless under-researched aspect of the examination of evidence in courts led to an initial exploration of how questioning is conducted and how questions are constructed in judicial examination, including: techniques of questioning; how questions build on (accept or confirm) prior answers, or whether they doubt or 'question' prior answers; how a line of questioning can be built, and so on. Questioning in this and other settings has since become a significant focus of enquiry, much of which helps to further illuminate how the precise construction of questions can impact the interactional character or 'force' of questions (e.g. on negatively constructed questions, see Heritage 2002; see also the chapter by Ehrlich, this volume).

It might be helpful to illustrate briefly a key point made in the paragraph above, that questions may be designed either to accept, confirm and build upon a prior answer; or alternatively not to accept, to doubt the prior answer. Here first is an example from direct examination, in which the attorney's questioning is essentially co-operative; his questions to the defendant are in a trial for accessory to murder.

(1) [Murder Trial: direct examination of the defendant]

1 DC: As you: went from the ca:::r up the cement wa::lk to the
2 front door. (0.3) (d') you know whether you were obse:rved
3 or did you hear anyone call out?
4 (0.3)
5 D: No no-one call'd me.
6 (0.5)
7 DC: And you (0.5) went in the front (door) ( )? And up the
8 stai:rs? Can you descri:be how you wen'up the stai:rs?
9 D: Mh I ^ra:n up.
10 (1.0)
11 DC: Now tell< (.) his honour an' the ju:ry exactly what you
12 di:d (.) at the time you got (up) to:: (.) the
13 doo:r that was the: (.) entrance door 'nto (.) uh: Ezra
14 MacClean's room.
15 (1.0)
16 D: (I go 'i- I ra:n up the) stairs (n'hhah wuz) bangin' on
17 the doo:r an' I said Ezra it's Dot .hh I got sump'n
18 impot'nt to tell you.
19 (1.0)
20 DC: An:d (.) what was that something that th'tche wannid to tell.
21 D: .mth That'e wuz (comin') with the gu:n (.) (.pt) try to
22 leave,do sump'n. Get awa:y,
23 (1.5)
24 DC: An:d (.) after you knocked on the doo:r, . . .

It is clear that each of the defense attorney's questions in this excerpt, in lines 7-8, 11-14, 20 and 24, is designed to fully accept and then build upon the defendant's prior answer; in short, the attorney's questions endorse the defendant's answers (this is true also of his question in lines 1-3, though the prior answer by the defendant, in which she testifies that she went up the walkway to the front door of the victim's apartment, are not shown). Contrast that with the subsequent cross-examination of the same defendant by the District Attorney (prosecuting). The background to the charge is that the defendant's boyfriend (Larry) shot dead a friend after an altercation a few hours earlier, during which the friend/victim stabbed and wounded Larry. It is alleged that Larry then drove with the defendant back to their apartment, collected a shotgun, drove back to the victim's apartment where, the prosecution claims, the defendant went on ahead to persuade the victim to open his door, thereby gaining access for Larry.

(2) [Murder trial: cross-examination by the District Attorney]

1 DA: And you had strong feelings over Larry at that time?
2 D: Yes (.) I was his girlfriend at the time.
3 DA: You were upset because he was stabbed?
4 D: I wasn't upset.
5 DA: You weren't upset? You were happy?
6 D: No.

7 DA: You had no feelings at all about the wound that he had.
8 D: I was concerned about what was going on.
9 DA: Did you feel sad that he was wounded?
10 D: I don't know.
11 DA: You don't know how you felt? I mean you could have
12 been happy?
13 D: No.
14 DA: You know you didn't feel happy.
15 D: I gue::ss.
16 DA: But you don't know if you felt sad or not?
17 D: I felt ba:d some. ((D's voice breaks))
18 DA: You felt ba:d some. You do remember.
19 D: Yes, I felt bad some.
20 DA: You remember that.

And so it went on. By contrast with the defense attorney's questions in direct examination, in example 1, in which questioning was cooperative, and each question accepted tacitly or overtly (by repeating something of the witness's prior answer), here in cross-examination in example 2 the prosecuting District Attorney's questioning is hostile, as is evident in the way questions are designed to challenge or even undermine the prior answer (e.g. D: "I don't know", DA: "You don't know how you felt?", D: "I wasn't upset", DA: "You weren't upset, You were happy?"). There examples illustrate the different styles of questions managed through the design of questions, and indeed the *strategic* design of questions (see below).

Social actions: From our account of the restricted, pre-allocated turn-taking system for courtroom examination, it is clear that whether or not lawyers' turns are constructed as interrogatives – they may, for instance, be constructed linguistically in declarative forms - they should be and are required normatively to be 'questions' to the witness; likewise, witnesses should answer, and hence witnesses' turns should be *recognisable as* 'answers' to the question asked. However, Atkinson and Drew showed in *Order in Court* that 'questions' and 'answers' were only minimal characterisations of participants' respective turns at talk. 'Questions' and 'answers' were only the means, the vehicles, for other social actions – the kind of actions that constitute and are the core of the business or 'work' (in the ethnomethodological sense) of courtroom interactions. Such actions include, on the one hand, the questioner accusing, blaming, challenging, encouraging, 'questioning' in the sense of doubting (e.g. the veracity of evidence), objecting and so forth; and on the other hand, witnesses and defendants defending, justifying, denying, rebutting, persuading and describing (events and incidents etc.). Here are examples of a counsel (C) for a judicial inquiry,

accusing the witness, a senior police officer called as a witness, of not taking sufficiently firm action to quell a "mob" attacking Catholics.

(3) [From *Order in Court*, 1979, ch.4]

1	C:	What I am suggesting to you is that you had information
2		or means of information that this mob had burned and
3		petrol bombed Catholic property and Catholic people.
4	W:	No.
5	C:	And that was rather a polite way to address them or
6		to address the command for orders as to how they were to
7		be dealt with.
8	W:	No, that is not so.

In example 4, we see the prosecution witness (W), who is the alleged victim in a trial for rape, answer questions *defensively*, implicitly rebutting the implications of the defence attorney's prior questions.

(4) [From Drew 1992, Rape trial]

1	A:	Well yuh had some uh (p) (.) uh fairly lengthy
2		conversations with thu defendant uh: did'n you?
3		(0.7)
4	A:	On that evening uv February fourteenth?
5		(1.0)
6	W:	We:ll we were all talkin.
7		(0.8)
8	A:	Well you kne:w. at that ti:me. that the
9		defendant was. in:terested (.) in you (.)
10		did'n you?
11		(1.3)
12	W:	He: asked me how I'(d) bin: en
13		(1.1)
14	W:	J- just stuff like that

Her answers in lines 4 and 12/14 are designed to counter the implication that she and the defendant had any close or intimate conversations (*a deux*) on the evening in question, as a result of which they had come to some understanding. In this respect they are defensive. Such actions as we see here, accusations and defences, are at the core of what each side is doing, or attempting to do in courtroom (cross)-examination, and are explored especially in chapters 4 and 5 in *Order in Court*. Whilst these actions are necessarily packaged in the design of 'questions' and 'answers', nevertheless 'questions' and 'answers' are only the 'wrapping' in which accusing, challenging, defending and so on are conducted. A key insight in *Order in Court* is that turns are designed to attend to their sequential position as questions

or answers (i.e. to exhibit their character as one of those utterance types), whilst simultaneously accomplishing or performing the other actions in those turns (Atkinson and Drew 1979: 68-76). Hence, such action sequences as accusing-defending/justifying are interactionally and locally co-ordinated - unlike the broad parameters of the pre-allocated management of turns in examination as questions or answers.

Those explorations of the construction and sequential management of action, of accusations, justifications, challenges, defences and the like were very much informed by the work of Austin (1962) on performatives and Searle on speech acts (Searle 1969), indeed by the ordinary language philosophers who had convincingly demonstrated that language delivers action. That is perhaps the key insight informing CA's perspective on (legal) language-in-interaction, and the starting point in *Order in Court*; that language delivers action is as vital to scientific analysis and to understanding inter-action now, as it was then.

Strategy and the micro-analysis of 'power': As noted in *Order in Court* (particularly in chapter 2), being the questioner puts the lawyer/attorney/counsel in the position of being able to control the agenda of the interaction. Furthermore, by 'renewing' this control with each subsequent question - which in effect responds to the witness's prior answer and can indicate a stance towards that answer - the questioner/attorney can construct a line of questioning leading towards an objective, a summary or conclusion the implications of which, in cross-examination at least, can undermine the witness's account, impugn them or compromise their evidence. The witness or defendant can of course attempt to thwart where they anticipate the attorney is leading, to thwart the lawyer's perceived objective (see e.g. the witness's defensive turn designs in examples 4 above and 5 below). But questions are regularly or even generally constructed in such a way as to damage or undermine an opposing witness's testimony, whichever way the witness answers.

The significance of showing how attorneys manage to construct lines of questioning was twofold; first, in identifying a line of questioning we are able to detach the questioner's project from the sequences through which that project is advanced. Levinson summarized this as follows:

> . . . we need to be able to distinguish projects as courses of action from the sequences that may embody them. A clear example of this can be found in courtroom interaction . . . , where examination is conducted by means of question-answer sequences.

> Completely different courses of action are likely to be found in examination-in-chief, where the council for a client interrogates the client or his witness to extract a presentation favorable to their case, compared to cross-examination, where the other side's council interrogates the witness in order, for example to make a charge stick, or to show the witness is unreliable . . . . Exclusively in the latter case, questions may become the medium for sustained accusation (Atkinson & Drew, 1979), and the witness typically designs answers to resist this project. (Levinson 2013: 121)

The second point of significance is that this view of a line of questioning or a questioner's project offered a radically different and new perspective on 'power' in interaction. The attorney's power was invested in their control over the agenda of the interaction, which by virtue of the restricted turn-taking system, and their consequent ability to develop a line of questioning, enabled them to draw evidence to a conclusion by summarizing the evidence-so-far in such a way as to compromise the witness's evidence. The force and novelty of this way of conceptualizing power was acknowledged in reviews of *Order in Court*; in effect, Atkinson and Drew were deconstructing the acknowledged power of attorneys and other legal professionals, by showing that this power resided in the interactional resources at their disposal, and the affordances associated with questions, and witnesses' answers to questions – particularly to bring (pieces of) evidence together in ways that might be damaging to witnesses or defendants in cross-examination.

This processual account of the questioner's power was considerably developed by, among others, Woodbury (1984) in her taxonomy of the 'control' exercised by different question forms (an approach utilized by Ehrlich, this volume), and in a subsequent paper on contested evidence in a rape trial (Drew 1992), demonstrating that attorneys can construct *contrasts* that arise out of a line of questioning, contrasts which implicate inconsistencies in a witness's evidence, and thereby highlight the unreliability of that evidence. An example will help to illustrate both the data used in CA and the 'power of summarizing' that attorneys have as a resource that enables them to draw conclusions from a line of questioning that is damaging to the witness. The witness in excerpt 5 is the alleged rape victim being cross-examined by the defense attorney.

(5) [From Drew 1992, Rape trial]

1	Att:	An' at tha:t <u>ti:me</u> (0.3) he: asked ya to go
2		ou:t with yu (0.4) isn't that c'rect

3		(2.1)
4	Wit:	Yea h
5	Att:	With h<u>i</u>m. (.) izzn'at so?
6		(2.6)
7	Wit:	Ah don't remember
8		(1.4)
9	Att:	W'l <u>di</u>dn:'e: a:sk you if uh: (.) on that night
10		that uh::: (.) he <u>w</u>anted you to be his <u>gi</u>:rl
11		(0.5)
12	Att:	Didn'e ask you that?
13		(2.5)
14	Wit:	I d<u>on</u>'t re<u>mem</u>ber what he said to me that night.
15		(1.2)
16	Att:	Well yuh had some uh (p) (.) uh fairly lengthy
17		conversations with thu defendant uh: did'n you?
18		(0.7)
19	Att:	On that evening of February fourteenth?
20		(1.0)
21	Wit:	We:ll we were all talkin'.
22		(0.8)
23	Att:	Well y<u>ou</u> kne:w. at that ti:me. that the
24		defendant was. <u>in</u>:terested (.) in <u>y</u>ou (.)
25		did'n you?
26		(1.3)
27	Wit:	<u>He:</u> asked me how I'(d) bi<u>n:</u> en
28		(1.1)
29	Wit:	J- just stuff like that
30	Att:	Just asked yuh <u>how</u> (0.5) yud <u>bi:n</u> (0.3) but
31		he kissed yuh good<u>nigh:t</u>. (0.5) izzat righ:t.=
32	Wit:	=Yeah=he asked me if he <u>c</u>ould?
33		(1.4)
34	Att:	He asked if he <u>could</u>?
35		(0.4)
36	Wit:	Uh hmm=
37	Att:	=Kiss you goodnigh:t
38		(1.0)
39	Att:	An you said: (.) oh <u>k</u>ay (0.6) izzat right?
40	Wit:	Uh hmm
41		(2.0)
42	Att:	And is it your testi<u>mony</u> he only kissed yuh
43		('t) <u>onc</u>e?
44		(0.4)
45	Wit:	Uh hmm
46		(6.5)
47	Att:	Now (.) subsequent to this...

The attorney builds or develops a line of questioning, culminating in the damaging contrast between the way in which the defendant greeted the witness (*just asked me how I'd been*, i.e. a greeting between acquaintances but not close or intimate friends), and their considerably more intimate manner of parting (*he kissed you goodnight*) (lines 30/31). Two aspects of this sequence are striking; first, the witness evidently attempts to deflect or obstruct the direction

in which she can see these questions leading; second, she attempts to deflect the damaging implication in the contrast – implying that something must have taken place during the evening to put them on a more intimate footing – by explaining that he asked for permission to kiss her (*he asked me if he could*, line 32), the formality of which aims to counter that implication. However, her attempt only results in a win-win for the attorney, reflected in the attorney's extended and repetitive highlighting of her answer (in lines 34, 37, and 39; for a detailed analysis see Drew 1992).

This is a particularly vivid illustration of the development of a line of questioning; from the beginning of this excerpt, the attorney is attempting to establish that the witness and defendant came to some kind of 'understanding' on an evening (14th February, Valentines' Day) when they met before the alleged rape. As well as shedding new light on the exercise of (micro) power in courtroom examination, our explication of a *line of questioning* in examination – especially the *prospective management of an accusation* (Atkinson and Drew 1979, chapter 4:112-117) provided an analytic account of *strategy* in courtroom interaction. Until this point we in Conversation Analysis had been wary of attributing 'strategy' to speakers'/participants'/ conduct, largely on the ground that 'strategy' generally refers to a cognitive state, some intention on the speaker's part. By a 'line of questioning' we had recast 'strategy' as an observable attribute of speakers' conduct, and of the way in which one question-answer sequence provided the building block for the next, culminating in a damaging summary (in example 1, a contrast) (see also Drew 1990 for further development of these themes).

Limitations of *Order in Court*

In summarizing some of the principal themes in *Order in Court*, something of its novelty, and strengths have been highlighted. In retrospect, the focus on social action – for instance, on accusing, defending, justifying – stands out as a key theme. Nevertheless, there were significant limitations to our enquiries at that point. Atkinson and Drew were, for instance, studying only quasi-judicial hearings; neither of us had access to recordings of actual (criminal) court trials, until subsequently the late Brenda Danet, of the Hebrew University of Jerusalem, generously allowed access to her recordings of US criminal trials. The legal settings that were explored in *Order in Court* were coroners' courts and judicial tribunals of enquiry as proxy for courtroom interactions. Another limitation is that whilst

Atkinson had recordings of hearings in coroners' courts, Drew did not have recordings of the tribunal of enquiry which was the focus of many of the empirical chapters – only official transcripts of the daily hearings of the inquiry were available. A corollary is that there were no video recordings of any of these data, which is a significant drawback. Whilst there may be other limitations to the studies in *Order in Court*, one that is particularly striking, perhaps in retrospect, is that whilst questioning was at the heart of the pre-allocated turn-taking system for courtroom examination, Atkinson and Drew did not investigate in any detail *question design*. We were content to characterize attorneys' turns as being questions, without considering or analyzing the specific linguistic form of questions. For example, each of the examining attorney's questions in lines 1-2, 5, 9-10, 12, 16-17 and 23-25 in example 1 are negative constructions, achieved either by *didn't you* prefaces or by negative tag questions (e.g. *didn't you* or *isn't that so* in turn final position). Heritage (2002) has since shown that negative interrogatives are in fact treated as assertions, rather than (genuinely) questioning; they are hostile, more pressing, and thereby put more pressure on the witness to agree to evidence that might compromise her position. There has been more research subsequently that reveals the interactional 'work' that different linguistic designs or formats of questioning achieve (for an overview see Heritage and Clayman 2010). One might also consider as a limitation of our study that courtroom trial interactions were treated as independent of other parts of the criminal/judicial process, such as police questioning of the suspect; these other constituent stages in the judicial process have been the focus of much subsequent research (see, for example Haworth, this volume).

Recent developments in research into social interaction in judicial settings

Order in Court has built a platform for subsequent research on language and the judicial process. Although other studies in the field were published shortly after (e.g. O'Barr 1982), Atkinson and Drew's focus on social action and sequence organization offered a unique alternative to understand talk-in-interaction in legal settings. As we have mentioned here, the insight that 'questions' and 'answers' were only the vehicles for mobilizing the core activities, such as accusing, denying, justifying, was crucial. Accusations are not only present in the official charges brought forward by the prosecution. They can also be implied in the questions asked by the judges. Analysing interactions in Dutch criminal courts, Komter (1994) demonstrated that these questions generate different types of defense depending on whether they are oriented to the facts of what happened, or to a defendant's moral stance

towards their conduct (e.g. by putting themselves in the position of the victims, as when asked "Have you ever stopped to think how those ladies would react to that?"). In either case, though, defendants face the same dilemma, given that they need to be cooperative without compromising their defense. A solution to this problem is reached through the use of a range of communicative practices such as eliding the agency of actions and offering selective admissions, selective memory and alternative descriptions (Komter 1994).

Several other studies have expanded our understanding of the management of accusations and defenses in courtrooms (Galatolo and Drew 2006; Hobbs 2003; Matoesian 1993) while others have explored the ways in which questioning can be designed to impugn or compromise evidence, and character, in judicial interactions besides those in open court. For instance, in his investigation into plea bargaining in misdemeanour cases in the US, Maynard (1984) identified sequences through which one party presents a position and the other responds to that, thereby bargaining over a disposition that is acceptable to both parties (prosecution and defense). According to Maynard, such sequences constitute the environment in which various features of plea bargaining are produced, such as 'exchange', compromise', 'disagreement', etc. In findings that parallel those by Atkinson and Drew, Maynard demonstrated that these features of bargaining are products of the sequential organisation of talk in that context rather than being an outcome of external influences, e.g. asymmetries of power between the state and the accused.

The key to subsequent work by other (CA) scholars in judicial legal settings is that research has developed further in directions that overcome some of the limitations outlined in the previous section. Although police and judicial settings are separate entities with their own properties and dynamics, they are connected by the references to and invocations of, for instance, the suspect's statement when questioned by the police. This connection is explored by Komter (2019), whose research demonstrates how talk in police interrogation is transformed into a written record (see also Rock, this volume), and is then turned into an official piece of evidence, and how this report is invoked and mobilised by legal professionals in the courtroom trial. By following cases from police interrogation through to trial, she was able to develop a more complete picture of the 'career' of the suspect's statement in the Dutch legal system and revealed the "*decontextualisation* of the real-time, lived experience of the interaction in the police interrogation and its *recontextualisations* as the fixed material reality of the text of the police report and as resource for the professionals' performance of their institutional tasks" (Komter 2019: 179).

In England and Wales, before being questioned in a courtroom, defendants often meet with lawyers to discuss their strategy and build their defence. Halldorsdottir (2006) showed how law, codes and guidelines are invoked in these encounters. She demonstrated how the orientation to legal standards and materials reveals the practical projects participants are advancing, and that these projects comprised a series of actions that fit with the lawyer's objective to build a feasible and cogent defence, while nevertheless advising the client about the potential outcomes of the trial.

At the time *Order in Court* was published, audio recordings of judicial proceedings were very difficult to access, and video cameras were hardly ever used inside courtrooms. However, in the last four decades, there has been a transformation in the transparency of judicial processes, including courtroom hearings, in several legal systems internationally, where trials and judicial hearings have started being filmed as part of the court procedure. The implementation of new technologies provides researchers with an unprecedented opportunity to access visual material in the judicial context. In addition to this, conversation analysis is rapidly moving towards the use of video data to study the interplay of talk and bodily conduct and examine how material resources feature in the production of social actions. Johnson argues convincingly that "A multimodal analysis acknowledges the combined spoken and gestural turn as a continuous stretch of communication, rather than speech fragmented by silence" (Johnson 2020: 357). A glimpse into any judicial context reveals that participants - lawyers, judges, witnesses, defendants – are all involved in much more than 'talking'; they gaze at each other, use hand gestures and engage with objects, as Johnson demonstrates in the context of police interviews with suspects. In a similar vein, Matoesian (2013; see also Matoesian and Gilbert, this volume) pointed out that one cannot have a complete understanding of legal practices by looking solely at speech; one has to examine the multimodal coordination of activities. Matoesian showed, for example, that several interactional tasks are accomplished employing material objects. Mobilising these objects constitutes a central resource in legal settings, especially trials. A good example is how inconsistency and credibility are interactionally constructed through the combination of talk, written reports, bodily movement, gaze, audio recordings and material objects. According to him, "material conduct integrates with language and other multimodal resources to 'grab attention' in an interdiscursive escalation of narrative suspense and incremental amplification of evidential intrigue" (Matoesian 2013: 635). For instance, objects such as photos can play a significant role in the construction of persuasive legal oratory, as persuasion does not rely only on the oral dimension of language. In judicial trials, the

temporal synchronisation of speech, gaze and gesture operates as an attempt to instruct the overhearing audience about the relevance of the material objects (Gilbert and Matoesian 2016). The importance of a multi-modal approach to legal/judicial interactions goes well beyond research into courtroom interactions; as was mentioned, Johnson has adopted a multimodal approach to the analysis of police questioning of suspects, enabling her to demonstrate that police officers' gestural accompaniments in animating suspects' evidence can work subtly to transform that evidence, for example from what a witness proposed as a defensive action into an offensive one, thereby shifting blame from the victim (in the suspect's version) to the suspect (in the police officer's version). Johnson suggests that "A transcription that records only speech and silence (You say you made a grab for the knife (1.0). Are you saying you were (2.0) ss- stabbed with the knife (1.0) or are you saying you (0.5) grabbed the knife↓?") therefore fails to acknowledge the major communicative weight that is carried by the gestural layer. The silences are used to enact grabbing and stabbing actions with a knife and to confront the suspect with his own action" (Johnson 2020: 379).

In addition to video recordings of legal proceedings, we have seen in the last decade the introduction of videoconference technologies in judicial settings; videoconferencing (e.g. in which defendants appear and are questioned via a video link from the facility in which they are being held) can reduce the costs of transporting defendants from prisons to courts. This system has a dramatic impact on the work led by judges, as it introduces additional tasks and creates new competence requirements for legal professionals, which increases the pressure on their usual routines for managing court proceedings (Verdier and Licoppe 2011).

We have highlighted the novel but exploratory character of *Order in Court* and some of the associated shortcomings of the research represented in that study. Amongst these limitations was the unusual nature of the court hearings. Despite these limitations, *Order in Court* has remained influential in studies of social interaction in judicial settings over the past forty years. The key insights generated by the original research, focusing on social action in particular, have been further investigated in ways that perhaps remedy the shortcomings of that early work. Research has now been done in civil and criminal courts, from both adversarial and inquisitorial systems, and much of the more recent work is based on actual audio or video recordings of interactions.

Future directions

CA research in judicial settings has expanded considerably since the publication of *Order in Court*, but it remains relatively small in comparison to conversation analytic studies in other settings, e.g. medical interactions. Since its beginning, CA has contributed to various debates on legal practices. It has done so by, among other things, showing the fundamental character of language use in talk-in-interaction in judicial proceedings, and how legal professionals employ 'questioning' in the construction of a case, including their strategies for supporting or undermining a witness's evidence.

Looking toward further developments in the field, one can say that despite what has been achieved in the last forty years, there are many aspects of the judicial process that remain to be explored. The increasing use of new technologies in judicial settings calls for investigation of how these new tools play a role in participants' activities in different legal contexts. As justice systems in several countries are gradually implementing video recordings as part their court proceedings, new possibilities for research emerge. So far most of the work done on multimodal analysis in judicial settings has been based on dramatic or high-profile cases which are made publicly available (e.g. on TV; see e.g. Rickford and King 2016). Although understanding these cases is certainly relevant, we should consider investigating the more mundane lower tariff cases, representing as they do the vast majority of legal work that is so significant to the fabric of law-in-action in our societies.

Another potential development in CA studies in judicial settings is related to the reflexivity of legal concepts in action, e.g. causation and intentionality. In courtrooms, both legal professionals and lay people orient to a legal vocabulary and legal standards of evidence and proof that are established in legislation, statutes, case law and rules of evidence. At the same time, this vocabulary is constantly constructed and reshaped through these interactions. Considering this reflexive feature of social interaction, future CA research should investigate the practices involved in transforming lay narratives and accounts into legally relevant material (Ferraz de Almeida 2018)

Order in Court has also laid the groundwork for investigating police practices, particularly police questioning (David, Rawls and Trainum 2017; Kidwell 2009; Komter 2003) and the interactional construction of written records (Komter 2019; Van Charldorp 2014; Haworth, this volume). However, the legal restrictions for collecting audio or video data from courtroom proceedings have limited the advancement of longitudinal studies and the creation of a CA agenda which would integrate the various phases of the judicial process,

e.g. from police interrogations/interviews through to trials. This agenda would allow us to comprehend the interconnections between a multitude of actions, activities, and practices employed by professionals and lay people across several institutional contexts in which language and legality play an important role, including emergency calls, traffic stops, police interviews with suspects and victims, and courtroom hearings and examinations. By looking at materials from the different stages of the legal process, in various legal systems, CA would be able to produce a more detailed yet holistic understanding of the judicial arena and show how the array of practices that constitute law-in-action are profoundly interconnected.

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