Lawyers' Work in the Menendez Brothers' Murder Trial

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This research addresses the interactional work by which lawyers interrogate witnesses at trial. In particular, the study examines some videotaped segments of interrogation interchange in the first Menendez brothers' murder trial and analyzes lawyer's work in attempting the impeachment of an adverse witness. The paper finds a lived orderliness of the courtroom that resides in the locally organized material detail of real-time interrogation interchange and practices.

INTRODUCTION

This study presents some materials from the first Menendez brothers' murder trial. In this research, I am trying to find a way of studying and describing a particular domain of phenomena which is the lived orderliness of everyday activities, in this case of trial lawyer's work. Significant promise for locating this orderliness is demonstrated in the ground-breaking studies and findings of ethnomethodology and conversational analysis (Garfinkel, 1967; Garfinkel and Sacks, 1970; Sacks, Schegloff, and Jefferson, 1974; Sacks, 1992; Heritage and Drew, 1992).

I want to propose that there is the possibility of discovering a courtroom order that resides nowhere else than in the practically organized and locally witnessable detail of real-time interrogation interchange between lawyers and witnesses in court. That means that we want to examine legal interaction and courtroom interrogation as phenomena of interest in their own right, starting with their everyday appearances. We will try to specify some of what is essential about the work in its own terms, rather than beginning with an *a priori* sociological concept and using it as a resource with which to describe the phenomena in terms of topics of conventional sociological significance.

For example, we could describe the generalized roles of the lawyer and witness in court in terms of power imbalances or attempt to evaluate lawyer competency and performance. These have traditionally been the focus of conventional sociological analyses of legal settings. However, classic sociological methods and conventional analytic approaches, whatever their bent, have largely ignored the profound orderliness of everyday activities as members

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know them by formulating this orderliness in the abstract analytic terms of something else.

In contrast, I am out to explain courtroom interrogation in terms of its own material content—that is, before it is transformed into some conventional rendering. I want to direct our attention to the contingent features and local work of courtroom participants in getting through just this real worldly course of questioning this particular witness, right here, right now, in just this courtroom, with just this judge and jury.

The focus of this talk is on some instances of lawyers' work in the Menendez brothers' murder trial. Specifically, we will be looking at lawyers doing work at trial in an attempt to impeach a witness who is testifying on cross examination. That is, the lawyer is trying to show the jury that the testifying witness, at least with respect to some particular point of impeachment, cannot be believed.[1] What I noticed at first glance is that, whether it be the cross examination work we will be exploring today, or writing an appellate brief, or arguing a matter in law and motion, etc., lawyers' work is never done in general, in theory, in principle or in the abstract. Instead, it is always directed to the particular legal problem just then confronting the attorney. That means that for the cross examiner, cross examination always concerns just this issue, relating to just this testimony or pending question, within just this course of questioning, directed to just this witness, with just this specific relationship to the parties, within just this litigation. For trial counsel, such work in large measure is done spontaneously and improvisationally, "on his feet," without relief or time out to think. And, it is work not done in general, but unavoidably *in detail.*

It is apparent in looking at trial work by lawyers that, characteristically, it does *not* occur smoothly and rarely happens without impediment. Indeed, adversaries routinely interpose a variety of obstacles in the way of what the opposing side is trying to accomplish. Cross examination exchanges between counsel and an adverse witness provide a perspicuous setting in which to get a clear view of the practical problems and obstacles encountered by lawyers at work.

For this reason, I looked at lawyers doing cross examinations. That is, I looked at counsel interrogating witnesses who were first called by the other side—these are witnesses who typically are *not* inclined to cooperate with the examiner because they are for some reason adverse to his client or case, or because they want to establish a view of the evidence which opposes that endorsed by the examiner, ETC.[2] These are often witnesses who are recognizable as evasive, biased, inconsistent, antagonistic, refusing to concede the obvious, exaggerating, ETC.

The data analyzed in this study comes from televised coverage provided by a local cable station of the first Menendez brothers' murder trial which took place in Los Angeles criminal court from July 20, 1993 through December 15, 1993.

The episodes presented in this article were specifically selected as significant because they provoked understanding of the tactics used in cross examination.

The Menendez brothers were charged with first degree murder in connection with the August 1989 shotgun killings of their parents, Jose Menendez (a wealthy entertainment executive) and his wife, Kitty Menendez. At the time of the killings, which occurred in the family's posh Beverly Hills home, Lyle Menendez was 21 years old and Eric Menendez was 18 years old. Prior to trial, the defendants had confessed to committing parricide, but contended that the homicides were justified because they were acting in self defense following years of physical and emotional abuse by both of their parents and sexual abuse by their father.

In view of the sensational facts of this trial, a word of caution is in order. As Emanuel Schegloff warns, "[t]here is a danger in dealing with dramatic material...'[I]nteresting' very often means vernacularly, and not technically, interesting [and] it may be felt that dramatic occurrences cannot be understood by reference to mundane considerations" (Schegloff, 1988-9, pp. 216-217). This paper endeavors to examine two episodes from the "'special' event" of the first Menendez brothers' murder trial through "mundane-colored glasses" and tries "to turn a topically transient occurrence into a source of longer lasting analytic resources" (Ibid., p. 218).

THE EPISODES

The first of the two episodes I will discuss I have called "Do I have personal knowledge of any such cases?" This cross examination is somewhat unique because it involves the testimony of a lawyer who has been called as a legal expert witness by the defense. That is, he is a legal expert witness retained by the defense, which has already called him on direct examination to testify on their behalf.[3]

It is interesting in the practice of law that one thing you immediately notice about almost any adverse expert witness is that they are distinctly problematic and uncooperative witnesses on cross examination. Such experts have absolutely no difficulty in answering any question posed to them by the side which pays them and calls them to testify on direct examination. Indeed, during direct examination they may give every question a favorable spin and even answer a not-so-great question in a way which makes it look good. However, when the opposing side begins its cross examination, these experts suddenly have an extreme amount of trouble making any sense at all out of what is being asked by even the simplest question. Apparently, their expertise includes the interactional ability to *not* facilitate the questioning or assist the cross examiner in any way.

Episode One: "Do I Have Personal Knowledge of Any Such Cases?"[4]

P = the prosecutor
D = the defense counsel
W = the witness
J = the judge

P: Now you're aware of the fact, are you not, that there are published opINions (.3) in books such as the one that the judge showed you (.8) where (1.0) defendants use a child abuse defense in order to justify their actions in a homicide case. (.4)
Are you aware of that?
(1.0) ((W looks to judge))
D: Yur honor I'm gonna object this is beyond the scope.
(1.0)
J: Overruled.
W: Do I have personal knowledge of of any such cases or do I believe such cases exist.
P: Well
(.3)
W: or do I think it would be possible that such a case (.3) Could exist?
P: Well (3.0) ((laughter from courtroom; W smiles)) Do you think it's pa-((laughter from courtroom and P)) hah -do you thing it's pa-no do you KNow that such cases exist?
(2.2)
W: I don't have personal knowledge of any such case no.

What we see in this first episode is a witness who is simply not going to straightforwardly answer the question which is posed to him. But, not only that. We noted that this witness is a legal expert witness, i.e., a lawyer, and as a lawyer, he has been trained to monitor ongoing interrogations by opposing counsel so as to be able to recognize and display how a particular question is somehow technically faulted through valid and defensible legal objections. Thus, we see this witness as not only reluctant to assist the examiner in any way (as with most adverse experts), but we also see that he is willing to use the full resources of his technical legal expertise to jump all over a question and throw every possible legal obstacle in the way of the questioner before he will proceed to answer. The witness challenges the examiner to be more legally precise in her questioning and we are thereby led by the witness to find multiple ambiguities in the examiner's question, which at a first non-technical hearing were not all that apparent or obvious.

A little background information to set up this episode is in order. At this point in the trial, another witness, defendant Lyle Menendez's former girlfriend, has already testified (harmfully to the defense) that while Lyle was in jail, he asked her to go to the law library and copy certain published legal cases for him. The former girlfriend further testified that when she looked at the legal opinions Lyle asked her to copy, she noticed that they all involved defendants who "got off" of a murder charge after asserting a child abuse defense. The damaging inference of this testimony was that Lyle was working on fabricating a child abuse defense in order to "get off" in this case. The legal expert in the above episode has been called by the defense on direct examination to refute this inference. Specifically, the witness has been called to attest to the fact that if indeed the defendants in those cases had "gotten off" (that is, been acquitted of

murder at trial) then there would be *no* published appellate opinion on the case since the bar of double jeopardy would have applied and there could have been no appeal. (The State cannot appeal if it loses a criminal prosecution and only appellate decisions result in published opinions).

In Episode One, the question is asked of the defense legal expert witness, "You are aware of the fact, are you not, that there are published cases where defendants use a child abuse defense to justify their actions in a homicide case?..." There is about a one second pause during which the witness looks to the judge, perhaps suggesting that the question implicates his impending intervention. An objection is then made by Eric Menendez's defense counsel, perhaps prompted by the witness' delay, that the question is "beyond the scope" of direct examination. For our purposes, however, it only matters that the judge overrules the objection to the pending question. So, at this point it appears that the witness must answer the question.

I have called this episode "Do I have personal knowledge of any such cases?" because what happens next is that the witness does *not* answer the question, but instead asks this and other questions in response.[5] That is, the witness questions the question being asked. Of course, in failing to promptly and directly answer the question as posed, the witness renders the examiner's question to be problematic.[6]

The witness' response articulates how he believes the question to be legally improper as ambiguous by showing it to be susceptible to at least three alternative interpretations. The witness responds, "Do I have personal knowledge of any such cases or do I believe such cases exist...or do I think it would be possible that such a case Could exist?" It is notable that, by his response, the witness demonstrates the material grounds and validity for his own "objection" to the question, namely that it is vague and ambiguous.

The response of the witness to the question specifies counsel's inquiry as one regarding the witness' "awareness." That is, whether the witness' awareness is based on his "personal" knowledge of such cases or because he "believes" they exist or because he "thinks it possible" that such a case "could" exist. One may wonder whether the distinctions suggested by the purported ambiguity are of any real significance—after all, what difference would it make to a jury how the witness is aware of such cases if he is in fact aware of them? Moreover, at least according to the examiner's question, the witness was just shown such a case by the judge, which "fact" is left unaddressed by the witness whose response does not contest that aspect of the examiner's question.

The real import of the asserted ambiguity may be in its effect as a challenge to the precision of the examining attorney's question. In other words, if the cross examining attorney thinks she is going to get a straight answer out of this expert witness, she has now been put on notice that she is not, unless she asks a very precise question. The interactionally achieved insertion sequence likely occurs more as a real-time demonstration of the "hostility" of the witness, rather than because the witness does not understand or is unable to answer the

purportedly ambiguous question as posed. This proposal is supported by the structure of the response itself which includes a belated third ground to support that the question is ambiguous, "Or, do I think it would be possible that such a case could exist?"

Examining counsel appears to concede that the witness has effectively parried her question. There is a lack of immediate uptake by the interrogating attorney which is marked on the video record by a smile from the witness. Laughter is heard from the courtroom and the prosecutor joins a bit in the laughter. The prosecutor then hesitatingly rephrases her question and indeed twice appears to have opted for the witness' third alternative, "do I think its possible that such a case could exist?" as follows:

> "Well (3.0) ((laughter from the courtroom; W smiles)) Do you think it's pa- ((laughter from courtroom and P)) hah -do you think it's pa-..."

The witness' response has thus demonstrated the question to be ambiguous and forced the examining counsel to rephrase it. In effect, the examiner's ultimate rephrasing of the initial question ("...do you KNow that such cases exist?") turns out to be not substantially different from her original "objectionable" phrasing ("you're aware...that there are published opINions").

After a notable silence, the witness repeats the frame of his previous "clarification" of the initially faulted question and responds, "I don't have personal knowledge of any such case no."

The second episode we will view today I have named "I don't recall the exact date." I gave the episode this name because it involves some substantial waffling by the witness about a crucial time when she claims she had a conversation with defendant Eric Menendez.

A little background about this episode is required. The episode calls into question testimony given by the former girlfriend of defendant Lyle Menendez, the same witness whose testimony was the subject of the expert witness cross examination in the preceding episode. The questioning concerns a conversation the witness stated she had with Eric Menendez, long before the parents' killings, about a hairpiece that his older brother Lyle wore. The line of cross examination challenges the witness' direct testimony to the effect that she had discussed Lyle's hairpiece with Eric months before the homicides. If true, this would prove that Eric knew about his brother's hairpiece long before the time he testified he first learned about it. In other words, the current witness' testimony indicates that Eric lied when he testified that he did not know about his brothers' hairpiece until just prior to the parents' killings and that learning about the hairpiece when he did was a triggering event in the series of events which he testified immediately led up to the killings. The defense version of the facts was that when Eric Menendez saw his mother Kitty pull the toupee off the head of his brother Lyle days before the killings, his sudden awareness of his brother's vulnerability and embarrassment freed Eric to confess to Lyle his own "dirty

secret" that their father Jose Menendez had been sexually abusing him for the past twelve years.

Because Eric Menendez already testified that he did not know about his brother's hairpiece until just a few days before his parents' killings, the former girlfriend's account of when the purported conversation with Eric about the hairpiece occurred is central to Eric's credibility and hence to the believability of the entire defense case. Obviously, if in fact Eric Menendez already knew about his brother Lyle's hairpiece long before he claimed he first learned about it, his account about how and why the homicides happened would be substantially undermined.

A series of questions concerning when the alleged conversation between the witness and Eric took place thus become the focus of this cross examination of the now adverse former girlfriend and are critical if Eric's attorney is to discredit the adverse witness. It is quite notable that in response to the attorney's several questions regarding when the alleged conversation occurred, the witness repeatedly answers, "I don't recall the *exact* date." With this response in hand, the lawyer's task is thus posed.

Episode Two: "I Don't Recall the Exact Date"

P = the prosecutor
D = the defense counsel
W = the witness
J = the judge

D: Now tell me about this time where you claim to have had this conversation with Eric Menendez. When did you get to the house on what day of the week?
(2.5)
W: It was a long time ago I do not (.3) remember (.5) the exact Dates.
D: Well you ha- you don't even remember the month, is that right (2.0) Is that right?
W: I am I told you I do not remember the exact dates of when I I visited the Menendez' many times. I' was very [long time ago.
D: [WE're only talking about this one time Ms. Pisarcik and is it Your testimony now that you don't remember the MONth (.3) that you were there.
(3.0)
W: It is my testimony that I (.8) y' know don't remember the exact date.
D: I'm not asking you for the exact date. D' ya know the difference between an exact date such as (.3) November twenty-third nineteen ninety three and the MONTh, such as (.2) NOVEMber.
W: Yes.
P: Objection [argumentative move to strike.
D: [Okay
J: Overruled.
D: Do you remember the MONTH
W: I remember approximately the time (.2) I was out there.
D: Oka:y, let's try that. What's your approximate time now
W: Well as I sss- when I stated yesterday it could have been in the spring, it could have been A-uh (.2) I: don't know? January, February, March, April,
D: May? June? July? August.
W: No it was not that late.
((slight laughter in courtroom))
(.5)

D: So it uh c' could've been anywhere from January through April, is that what you're saying?
W: It could have been.
D: Well haven't we already demonstrated that it couldn't have been March or April, the spring.
W: Y = (.3) Yes ((you have))
P: =objection argumentative your honor calls for a conclusion.
J: Sustained, the answer is stricken
D: Are you SATisfied that it couldn't have been (.2) the spring now.
P: Same objection your honor.
J: Overruled.
W: I don't know,
(3.0)
D: So tell me what you were doing on the day that you say you had this conversation with Eric Menendez. (.8) What were you doing?
W: I was talking to Eric.
D: Before-eh the whole day?
W: H'huh I don't remember
D: Did you wake up talking to Eric?
W: No I did not=
D: =Did you go to Slee:p talking to Eric?=
P: =Objection argumentative.
J: Overruled.
(1.2)
W: No,
D: And what'd ya do the rest of the Day.
W: I'h don't re:call, it was a long time ago.
D: Okay You don't have to tell us it was a long time ago each time we can count. Why [don't you just tell me
P: [((Excuse me)) Your honor I move to strike counsel's comment.
J: Ahright the ans-er the remark is stricken just ask another question please.
D: Why don't you tell me what you did (.3) at other times on that same day.
W: I don't. (.5) Remember.
D: What were you DOing (.2) in ERic's (.3) room (.3) that day.
W: I was not In Eric's room,
D: Where were you.
W: I was in the doorway
D: And what were you doing in the Doorway to [Eric's room.
W: [I sstopped by to say Hi:, I was (.5) in the house and stopped by to say hi,
D: [Why were you in the house.
W: [to Eric
(1.0)
I was visiting.
D: Wa-when you visited did you always stay inside the house.
W: Well I had to sle:ep somewhere.
D: You didn't SLee:p inside the house you slept in the guesthouse, isn't that true.
W: True:,
D: You slept in the guesthouse with LY:le.
W: Correct.
D: So you weren't in the house 'cuz you were sleeping, is that correct?
W: We:uh I was invited into the Menendez home[to spend time.
D: [Did someone invite you into the house just before you had this conversation with Eric?
(4.0)

The examiner's line of questioning in this episode is designed to call into doubt the precision and reliability of the witness' memory as to when the alleged conversation occurred and to thereby challenge the witness' credibility and the veracity of her claim that she in fact had the conversation which is impugning of Eric's credibility. The examining lawyer here first tries to establish when the alleged conversation with Eric Menendez occurred. The witness might prefer that her "I don't recall" answers would serve to preclude further inquiry and terminate the line of questioning on this matter (cf. Drew, 1992).

However, the efficacious examiner in this episode does not let that happen. Instead, counsel persists with her line of questioning so as to evoke from the witness a whole series of things that the witness "does not recall" about the alleged conversation and the circumstances surrounding it. Thus, rather than the witness' "I don't recall" response serving to block further inquiry, through the work of the competent lawyer it actually becomes a vehicle for the examiner to advance the defense position and to display the witness to be unbelievable because of all the things that she "does not recall."

In this episode, counsel does not allow the witness any leeway to slightly reinterpret the questions or to answer them in any loose kind of way. For example, when the examiner asks the witness "the Month" when the alleged conversation occurred, the witness repeatedly responds that she "doesn't remember the exact date." But counsel will not let the witness answer the question on her own terms and insists instead, "I'm not asking you for an EXACT date. Do you know the difference between an exact date, such as November 23rd, 1993 and the MONTH, such as NOVEMBER?"

Following this, the witness concedes a bit and says "I remember the approximate time I was out there." Counsel then adopts the witness' own phraseology, playing off of what is at hand to earmark the uncertainty of the testimony with a somewhat argumentative "Ok, let's try that. What's your approximate time now?" The witness responds, "I don't know. January, February, March, April." It is through the use of the temporal reference "now" that the lawyer implies that the witness' present testimony may be different from an earlier account and thus that it may not be credible. Counsel then magnifies the witness' uncertainty in what we might describe to be a hearably mimicking and mocking tempo with, "May? June? July? August."

Relatedly, after the witness fails to provide the date when she arrived at the Menendez house, counsel then queries, "Well you don't even remember the month, is that right?" When the witness fails to respond to this query after a couple of seconds, counsel insists on a response by repeating her tag question, "Is that right?"

To paraphrase the phenomenologist Maurice Merleau-Ponty, "the truth withstands unending exploration" (Merleau-Ponty, 1962, p. 324). Adversatively, counsel in this data tries to show that this witness' story cannot withstand exploration. Over the course of the interchange, counsel demonstrates that not only does the witness not recall the exact date of the conversation, but

also that she does not even know what month or the time of year it happened, what she did the rest of that day, what she was doing inside the house at the time, or any of the other pertinent circumstances surrounding the alleged conversation. Ultimately, the examiner shows that the only thing the witness in fact "does recall" is that little fragment of conversation which impugns Eric Menendez' credibility.

This episode is an excellent example of an aggressive cross examination. It has been said that trial is a contact sport and counsel here does not hesitate to make an open show of disbelief of the witness' statements or of her hostility toward the witness. In this regard, do not think for a minute, that trial lawyers go into court and comport themselves in strict compliance with the rules and procedures of court and that they will not get up and do what they know they should not be doing. Rather, what you often find instead is actually at the opposite extreme: attorneys going into court, knowing absolutely what the court rules are, knowing just where the lines of proper courtroom conduct are drawn, and yet crossing those lines with all kinds of adversarial intent, so as to feel out the opponent, the witness, or the judge and learn just how much they can get away with in advocating their case. This suggests that the student of lawyers' work cannot look solely to the formal evidentiary rules or court procedures to tell them what makes for an effective lawyer in court.

In particular, the attorney in this episode uses the line of questioning to publicly attack both the credibility and reputation of the witness with some severe mudslinging. The examining attorney is already aware that the Menendez home also includes a guest house, which is where Lyle Menendez lived at the time of the relevant events and where the witness stayed when she visited the Menendez home. It is likely that the adversarial usefulness of this fact is being held in reserve by the cross examiner, who has been waiting for the opportunity to introduce it into evidence in a manner that maximizes its effectiveness.

The opportunity begins to arise when the witness states that she was "in the house" and is developed by counsel who asks, "why were you in the house." After the witness' response, "I was visiting," counsel asks, " . . . did you always stay inside the house." In her next response, the witness in effect walks directly into counsel's trap" "W: Well I had to SLee:p somewhere."

In springing the trap, counsel simultaneously throws into question both the morality and credibility of the witness in the exchange which follows:

D: You didn't SLee:p inside the house you slept in the guesthouse, isn't that true.
W: True:,
D: You slept in the guesthouse with LY:le.
W: Correct.

IMPLICATIONS AND CONCLUSIONS

What you find when you look at lawyers' work in court is that the problems presented to counsel by different adverse testimony are often similar in nature and that likewise the ways counsel have of dealing with a particular adverse witness can often be used in dealing with other opposing witnesses, even though the topic of interrogation is always different; the particular witness, counsel and parties are distinct; and the case issues, circumstances and specific content of the examination interchange is always varied and unique.

That is to say, the kind of tasks posed for the lawyer by the adverse testimony and the structure of the lawyer's work in dealing with it is still in many ways similar—You have a witness that is not going to give you anything helpful to your case unless you absolutely pry it out of them; they are claiming not to recall or not to understand even your simplest question; they are reinterpreting the question so as to specifically not provide the details that you are obviously seeking, ETC. And these are recurrent problems which become recognizable for lawyers and which set recognizable tasks for attorneys who are trying to competently do their work in any actual case.

Of course, no two days or even two moments in court are ever exactly alike. Even if counsel prepares his questions the night before, he never knows in advance just what answers he will get, what lines of inquiry he will need to stay on, take another crack at and further pursue with the witness. He also never knows beforehand just what objections his questions will evoke; or how the judge will rule on them; or how he may need to rework a question so it is no longer objectionable; ETC.

But, despite the unpredictability and uniqueness of courtroom events and the spontaneity of lawyers' work in court, there are times when you notice, 'Gee, this witness is like that other evasive witness or that the lawyer's work in this episode is like counsel's work in that other episode.' That is to say, they have an affinity to one another.

Such findings are not based on what the analyst disengagedly bestows or imposes upon the exchange. Rather, you make those kinds of observations "on your feet" based on the way that the interchange observably happens in detail; that is, it has those orderly features in how it unfolds. This suggests a lived orderliness of the courtroom that resides in the locally organized material detail of real-time interrogation interchange and lawyers' practices.

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NOTES

[1] The term 'impeachment' as used by lawyers is an irremediable member's gloss. Even among lawyers, there is no uniform meaning of impeachment. Most broadly, it has been defined to mean "the adducing of proof that a witness is unworthy of belief," (Black's Law Dictionary, p. 887). There are certain standard bases for impeaching the credibility of a witness in court, such as by challenging the witness' ability to perceive, remember or recount the matter about which s/he testifies or by establishing the existence of contradictory evidence or bias, interest or other motive to testify untruthfully (California Evidence Code, section 780). Furthermore, a witness who is willfully false in one portion of his testimony may be disbelieved in the whole of his/her testimony (*Book of Approved Jury Instruction (BAJI)*, 2.22).

[2] This usage of "ETC." is borrowed from Garfinkel's discussions of the "et cetera" problem (see e.g., Garfinkel, 1967).

[3] Direct examination is the first examination of a witness on the merits by the party on whose behalf s/he is called (Black's Law Dictionary, Fourth Edition). Its purpose is to elicit facts relevant to establishing the elements of the parties' claims or defenses in the litigation. The testimony elicited on direct examination is regularly edited and selectively presented to highlight, slant or exaggerate helpful facts and accounts, while at the same time minimizing, qualifying, explaining away or omitting harmful facts and accounts.

[4] The notations in the transcripts use the conventions developed by Gail Jefferson (1984). The principal symbols used are:

(.4) Numbers in parentheses indicate the occurrence and duration of pauses in tenths of a second.

[Marks the point at which overlapping talk begins.

] Marks the point at which overlapping talk ends.

= Notes the end of one utterance and the start of the next with no gap or overlap.

- Indicates the point at which a word is cut off.

(( )) Double parentheses indicate the transcriber's descriptions.
<u>do</u>ing Indicates some form of emphasis by means of pitch.
MONTH Capital letters are used to indicate that an utterance or part of an utterance is produced with louder amplitude than the surrounding talk.
slee::p Colons indicate a stretch of the immediately prior sound.
.,? punctuations note falling, continuing, and rising intonation, respectively.

[5] Participants regularly orient to producing adjacently paired utterances such that upon the occurrence of the first pair part (here a question), a particular second pair part (here, an answer) becomes relevant in the next turn (cf. Schegloff, 1972).

[6] In resisting the cross examiner's questioning at this point, the expert witness uses an insertion sequence, but modifies the features of such sequences as routinely produced in ordinary conversation. The witness' inserted question initiates a repair which indicates something problematic about the interrogator's preceding question (cf. Sacks et al., 1977). The witness' response following the examiner's first pair part question requests clarification of the purportedly ambiguous question prior to producing the projected second pair part answer in reply. The witness' request for clarification itself "inserts" a second adjacency pair in which the clarification question is the first pair part and the examiner's "response" (i.e., her reformulated question) constitutes the second pair part. Upon completion of the insertion sequence, the second pair part answer to the examiner's original question again becomes relevant in the witness' next turn. However, unlike in ordinary conversation, once the insertion sequence has been responded to by the examiner reformulating her original question, no "answer" to the lawyer's original first pair part question will be forthcoming from the witness. Instead, it is incumbent upon the witness to answer the question as reformulated. For the seminal treatment of insertion sequences, see Schegloff, 1980. On the use of insertion sequences in the courtroom context, see Atkinson and Drew, 1979. I am grateful to Andrew Roth for his helpful suggestions on this point.

REFERENCES

Atkinson, J. M. & Drew, P. (1979). *Order in court: The organization of verbal interaction in judicial settings.* London: MacMillan.

Atkinson, J.M. & Heritage, J. (Eds.) (1984). *Structures of social action: Studies in conversational analysis.* Cambridge: Cambridge University Press.

Book of Approved Jury Instruction (BAJI), California jury instructions (civil), (6th edition). (1977). St. Paul, MN: West Publishing.

Black's Law Dictionary (1969). St. Paul, MN: West Publishing.

Drew, P. (1992). Contested evidence in courtroom cross-examination: The case of a trial for rape. In J. Heritage & P. Drew (Eds.), *Talk at work* (pp. 470-520). Cambridge: Cambridge University Press.

Garfinkel, H. (1967). *Studies in ethnomethodology.* Englewood Cliffs, NJ: Prentice-Hall.

Garfinkel, H. & Sacks, H. (1970). On formal structures of practical actions. In J.C. McKinney & E.A. Tiryakian, (Eds.), *Theoretical sociology* (pp. 338-66). New York: Appleton Century Crofts.

Heritage, J. & Drew, P (Eds.). (1992). *Talk at work.* Cambridge and New York: Cambridge University Press.

Jefferson, G. (1984). Transcription conventions. In Atkinson, J.M. & Heritage, J. (Eds.), *Structures of social action: Studies in conversational analysis* (pp.ix-xvi). Cambridge: Cambridge University Press.

Merleau-Ponty, M. (1962). *The phenomenology of perception*, Colin Smith (trans.). London: Routledge and Kegan Paul.

Sacks, H. (1992). *Lectures on conversation, (1964-1972), 2 vols.*, G. Jefferson, (Ed.). Oxford: Blackwell.

Sacks, H., Schegloff, E., & Jefferson, G. (1974). A simplest systematics for the organization of turn taking in conversation. *Language, 50*, 696-735.

Sacks, H., Schegloff, E., & Jefferson, G. (1977). The preference for self-correction in the organization of repair in conversation. *Language, 53*, 361-382.

Schegloff, E. (1972). Notes of a conversational practice: Formulating place. In D. Sudnow, (Ed.), *Studies in social interaction* (pp. 75-119). New York: Free Press.

Schegloff, E. (1980). Preliminaries to preliminaries: Can I ask you a question? *Sociological Inquiry 50*, 104-52.

Schegloff, E. (1988-9). From Interview to Confrontation: Observations on the Bush-Rather Encounter. *Research on Language and Social Interaction 22*, 215-240.