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MATERIALITIES OF LEGAL PROCEEDINGS

ABSTRACT. The author explores materialities as pre-established and co-producing features of criminal proceedings. This is done by discussing courtrooms, files and stories in relation to English Crown Court hearings. The three materialities gain significance in the course of the court hearing, but do not derive from it. They exceed the course of talk-in-court. Once the hearing started, the pre-established materialities can be referred to but not simply modified. Materialities, in this line, provide stability and guidance for the hearing. They facilitate, purify and condense it. However, their temporal separation causes problems for those who run the show. Materialities can be employed but not fully integrated. Unwelcome parts do, at times, disturb, disrupt and complicate the current dealings.

"State problems and solve them in terms of time rather than of space".[1]

1. Introduction

Some time ago, I found myself in a tricky situation. I was reading "my" abstract prepared some months ago for a talk on an upcoming conference. Especially the ambition to work out the "materiality of legal discourse" seemed to me now rather ambitious. How could 'that author' promise such findings? How could I keep this promise that seemed obvious to me while writing the abstract?

The following investigation stems from such a confrontational situation not unfamiliar to academic scholars. The situation of giving a lively talk (c), while sticking to a prepared paper (b) on the basis of an announced abstract (a), I figured, refers itself nicely to the issue treated here: the assorted materialities (a/b) of talk in court (c). Such a building up may teach something about what Goffman called "planned situations" and the methods and resources necessary to

[1] G. Deleuze, *Bergsonism* (New York: Zone Books, 1991).

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realise them[2]. The inquiry[3] is informed by ethnography and semiotics insofar they bridge process and event, formation and articulation.[4] The following endeavour is, in this manner, critical towards 'spatial' approaches that map out discursive fields while not accounting for their becoming.[5]

The planned situations I focus on here are Crown Court hearings in England.[6] In Crown Courts, juries decide in the light of two competing cases whether the defendant is "guilty beyond reasonable doubt". The following transcript covers a sentencing hearing. The

[2] This query belongs to "law in action" studies. See M. Travers and J.F. Manzo (eds), *Law in Action. Ethnomethodological and Conversation Analytic Approaches to Law (*Aldershot: Dartmouth/Ashgate, 1997). These studies ask for "the methods by which legal settings and situations such as a call to the police, police interrogations and courts and trials are socially organised" (S. Hester and P. Eglin, *A Sociology of Crime* (London and New York: Routledge, 1992), 17). This movement refers back to Garfinkel's studies of work: "Briefly, he argued that sociologists who study the various arts and sciences of practical action typically investigate social aspects of, for instance, music, without addressing how musicians manage to play music together. Similarly, when they investigate activities in the legal professions, sociologists tend to describe various 'social' influences on the growth and development of legal institutions while taking for granted that lawyers write briefs, present cases, interrogate witnesses, and engage in legal reasoning." (M. Lynch, *Scientific Practice and Ordinary Action. Ethnomethodology and Social Studies of Science* (Cambridge University Press, 1993), 114).

[3] This article is written as conceptual piece for a bigger research at the FU Berlin comparing the practicalities of defence representation in four different jurisdictions (US, UK, Germany, Italy). See for further information, www.law-in-action.org.

[4] I refer to the use of semiotics in discourse analysis as presented in W. Keane, "Semiotics and the Social Analysis of Material Things", *Language & Communication* 23 (2003), 409–425 or J. Carter, "Telling Times: History, Emplotment, and Truth", *History and Theory* 42 (February 2003), 1–27. A useful combination of ethnography and semiotics (Peirce) is presented by W. Keane, *Signs of Recognition. Powers and Hazards of Representation in an Indonesian Society* (Berkeley, Los Angeles, London: University of California Press, 1997). See as well P. Manning, *Semiotics and Fieldwork* (Newbury Park: Sage, 1987).

[5] Goodrich combines spatial and temporal facets by studying "text in its textual types, its models of exposition and production (…) and, further, the space of its stagings (mises en scéne) and its syntax, which is not just the articulation of its signifiers and its references to being or to truth but also the disposition of its procedures and everything invested in them" (P. Goodrich, *Languages of Law: From Logics of Memory to Nomadic Masks* (London: Weidenfeld & Nicolson, 1990), 114).

[6] For an overview see R.M. Jackson, *The Machinery of Justice in England* (Cambridge: Cambridge University Press, 1940) 1967).

judge is asked to sentence Mr Blue, who at this occasion pleads guilty to the offence of "indecent assault":

Clerk:	Are you Tim Blue?
Mr Blue:	I am.
Clerk:	Please sit down.
Mr Doubt:	Your honour I defend Mr Blue.
Judge:	Yes, Mr Doubt.
Mr Doubt:	My learned friend Mr Hunt represents the prosecution. Your honour this defendant pleaded not guilty to the single count of indecent assault. That plea was entered on the 19th July. Can I ask that he be re-arraigned, please?
Judge:	Yes, certainly.
Clerk:	Tim Blue, you are charged on this indictment with indecent assault. The particulars of the offence being that on the 3rd day of March 2000 you indecently assaulted Kim Baker, a female person. Do you plead guilty or not guilty?
Defendant:	Guilty.
Clerk:	Guilty, thank you. Can you sit down?
Mr Hunt:	Yes, your honour my learned friend's made it plain to me that that plea is entered on a basis of the defendant's interview, it's really page 5 of the interview.
Judge:	Yes, let me just have a look at that.
Mr Hunt:	At 24.08 just above that time where the defendant agrees that he cuddled up to the complainant and touched her breasts inside her clothing when she was saying "You better to." That encapsulates the conduct.
Judge:	The basis —.
Mr Hunt:	— the conduct.
Judge:	— of the plea.
Mr Hunt:	Yes.

The brief hearing joins components that were apparently not produced within the hearing. The barristers, comparable to academics when giving a paper, draw on pre-established entities. The "particulars of the offence" for instance were specified during a meeting with defence and prosecution shortly before the hearing.

Comparably to Durkheim's definition of "social facts" – outdoing psychological will powers[7] – I suggest that materialities of discourse exceed face-to-face interaction. Durkheim's indicator for social facts is modified accordingly: materialities are out of reach for direct interaction. This definition has some advantages for empirical studies. It does not carry the common spatial connotations. It does not presume a fixed shape and essence. It avoids the connotation of touch, weight, or distribution. Materialities are rather defined relationally. They appear and work as 'material' for the focal setting (the situated hearing) due to their different mode and rhythm of becoming: the drafting of texts, the compiling of files, or the training of bodies. Thanks to their separation from the course of conversation, they turn into the hearing's co-producers.

How can a micro-sociologist conceptualise events as drawn together out of different substances? How can one accept pre-established entities while at the same time appreciating the event's dynamics? Doesn't materialism lead straight to structuralism?[8] At stake seem the interrelations of proximity and historicity, of contingency and pre-configuration, of local production and trans-local products. I claim that legal proceedings can be appropriately analysed only with reference to the multi-temporal conditions under which they unfold.

[7] "Social facts" represent "ways of acting, thinking and feeling which possess the remarkable property of existing outside the consciousness of the individual. Not only are these types of behaviour and thinking external to the individual, but they are endued with a compelling and coercive power by virtue of which, whether he wishes it or not, they impose themselves upon him" (E. Durkheim, *The Rules of Sociological Method. And Selected Texts on Sociology and its Method* (London and Basingstoke: The Macmillan Press Ltd., 1982), 51). They resemble 'objective' constraints, norms and structures, open to scientific observation.

[8] Answers should avoid the two "equally powerful dissatisfactions: when social scientists concentrate on what could be called the micro level, that is face to face interactions, local sites, they quickly realize that many of elements necessary to make sense of the situation are already in place or are coming from far away (…) This is why so much work has been dedicated to notions such as society, norms, values (…) all terms that aim at designating what gives shape to micro interaction. But then, once this new level has been reached, a second type of dissatisfaction begins. Social scientists now feel that something is missing, that the abstraction of terms (…) seems too great, and that one needs to reconnect, through an opposite move, back to the flesh-and-blood local situations" (B. Latour, "On Recalling ANT", in J. Law and J. Hassard, (eds), *Actor Network Theory and After*, (Oxford: Blackwell Publishers, 1999a), 16f.)

2. Encountering Materialities of Discourse

The suggested discourse-analysis aims for two analytical motions that are elsewhere held apart. On the one hand it accounts for the product of discursive activities (how materials are put together). On the other hand it accounts for the involvement of materials into the course-of-discourse (how materials shape activities).[9] By linking these constructivist and materialist queries, I hope to gain new insights into the relations of process and event, pre-trial and trial, preparation and enactment.

As the reader may find out shortly, the double perspective does not lead to a dialectical or dualist approach. Instead of contrasting differences in kind (action-structure), the double perspective emphasises differences in degree of relatively solid and fluid, self-governed and adaptable entities.[10] Process and event are multiply linked due to these assorted co-producing-products. Owing to the fact that production and consumption are separated in time, the links happen to be temporary and partial.[11]

In the following, I am going to explicate this abstract framework in line with the abovementioned sentencing hearing. What could resemble materialities for this brief event? Two definitions shall control empirical observability: (a) the entity is essential part of the event; (b) it is productive outside the event; (c) it is produced before the event. What elements are concurrently involved and pre-established, employed and self-contained? In the following, I introduce three – out of a whole lot (from gazes or gestures to law books or costumes) of relatively ephemeral or lasting - entities that are valuable for English Crown Court proceedings: naming courtrooms (1.1.), files (1.2.) and stories (1.3.).

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[9] Keane's use of the term "trajectory" denotes the same two-fold: "By trajectory I mean to stress two dimensions of motion, that by which objects circulate through people's activities and that by which activities produce objects, relations, or events that can enter into new orders of activity." (W. Keane, *supra n.* 4, 67).

[10] G. Deleuze, *supra n.* 1.

[11] This separation is often ignored in social constructivism. The construction is either imagined as one instance of pure creation or as one integrated process creating all its parts. The fact, however, that something is involved in a construction process does not mean that it is itself constructed in the *same* process. See for the distinction of production and consumption, De Certeau, *The Practice of Everyday-Life* (Berkeley, Los Angeles, London: University of California Press, 1988).

2.1. *Courtrooms*

The hearing took place around mid of 2002. It lasted no longer than ten minutes. Shortly before it commenced, two guards accompanied the defendant (without handcuffs like they sometimes do) to the dock. The barristers arrived together after having enjoyed a quick instant coffee in the "counsel's lounge" (located just behind the public gallery). They climbed down the stairs, still absorbed by their prior chatter. They took their seats at the two ends of the front bench and awaited the judge who just retired from another sentencing hearing. (There were five or six this morning, plus several applications regarding bail and dates.)

Everybody else, to keep it short, was in place for the impending dealings: defendant, barristers, public and clerk, only the usher strolled around to ready the setting. "Rising court", the usher suddenly growled. All those present in the room got quickly on their feet. From barrister down to defendant or court reporter, everybody expressed, as it is said, respect to judge and court. It was this very moment of the judge entering when the old assistant next to the clerk instigated the tape-recording.

After a brief exchange between clerk and defendant (to settle his personal identity), the hearing speeded up. The defence barrister got on his feed to ask the judge whether the former plea could be altered. To do so, the barrister had to await the judge's go-ahead, conveyed via brief eye-contact. (There may be a moment, when the barrister is about to rise to show his aspiration. At this very moment – neither fully on his feet nor on the bench – he could still withdraw and sit back.)

The judge was happy to accept a new plea. The clerk then repeated the questions already asked weeks ago: "guilty or not guilty?" Now the defendant had to rise from his seat. He received the question silently and responded without any further advice: "Guilty!"

How is it possible that even the ethnographer – as alien (German) and layperson (sociologist) – could follow the hearing?[12] I identified the legal roles, the competing parties, the represented cases and the relevant audience. It is to a good deal, I assume, the court's spatial ordering – the positioning of bodies, voices and gazes – that makes the hearing accessible. The arrangements guide the performances as well as their reception.

In order to appreciate this effect as material, one shall reflect on the way the spatial device can be observed prior to the session. In this line, it seems important, to distinguish specificity and generality of Crown Courts. Specificity appears via comparison, here of an old and a new court:

During my fieldwork, I regularly visited two courthouses. One originated from the 14th century and served as criminal and civil court over centuries. Architecture and furniture survived centuries. Local historians told me how trials were conducted

[12] Between 2001 and 2004, I spend about 50 days in English Crown Courts and Magistrates Courts. On top, I shadowed solicitors and barristers during their work days over several months. I thank "my lawyers" for their exceptional openness and support.

in Victorian times, how the gallery was filled with "plebs" and the benches next to the judge with the prosperous ladies. The jury was chosen from the honourable, credible and male citizens.[13] Outside court, the death penalty (mostly hanging) took place as public spectacle sometimes witnessed by several thousands people.

The other court looked utterly different. It is hosted in a functional building form the eighties. The entrance area reminds of an airport. Bodies are checked by uniformed security staff. Trials are announced on screens like the arrivals/departures of flights. In the courts the atmosphere is business-like. White walls, light furniture, no decoration – the rooms evoke efficacy rather than greatness.

The old court seems to accentuate the extraordinary spectacle while easily overpowering the ones staged.[14] The new court, in contrast, highlights the efficient treatment of the case-load. The staged counsels and witnesses – despite wig and oath – appear as rather ordinary. The different effects conveyed by the courts are manifest and diffuse at the same time.

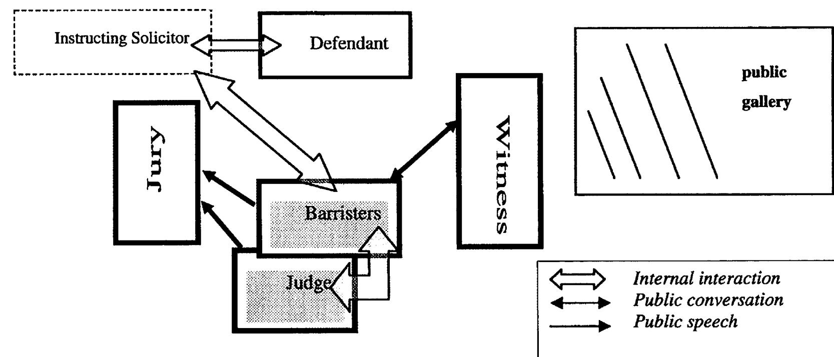
What are common features that make a Crown Court a Crown Court? The court is, I propose, a discourse automat arranging the staging of cases in a standardised way. The arrangements define what can be legitimately expected and, in this line, provide the grounds to anticipate and prepare cases in advance.[15] The arrangement may be well illustrated in a simplistic model:

The court resembles an order of relational discourse-positions: in case of a trial, the witness is placed opposite the evidence-assessing jury; the judge, in any case, is located opposite the defendant;

[13] There are striking similarities to public experiments in early Natural Sciences. See S. Shapin and S. Schaffer, *Leviathan and the Air-pump* (Princeton, NJ: Princeton University Press, 1985) and S. Shapin, *A Social History of Truth. Civility and Science in Seventeenth-century England* (Chicago: The University of Chicago Press, 1994).

[14] Later I came across reports on the new Crown Court in Manchester that apparently does not fulfill its functions. The building, it was claimed by those working in it, "does not work". They criticised the slow security checks, the lack of conference rooms and storage space for files, the tiny library and the uncomfortable barrister's lounge. See *The Guardian*, 30th June 2004.

[15] Exemplary effects of the courts' standardisation are well described in the short story "Rumpole and the Showfolk". "What are we doing to our clients?" Rumpole rhetorically asks his fellow barristers. "Seeing they wear ties, and hats, keep their hands out of their pockets, keep their voices up, call the judge 'my lord'. Generally, behave like grocers at the funeral. Whoever they may be." (J. Mortimer, *The Best of Rumpole* (London: Penguin Books, 1993), 81).



defending and prosecuting barrister sit or stand right in front of the judge[16]; the whole scenery is overlooked by the seated public. The two barristers uniformed with grey wigs and black robes – ritually covering individuality and, thus, 'bias' – represent the "inner circle" of the Crown Court[17].

The court appears as moral space governed by observable traffic rules[18]. Some of these rules: Witnesses e.g. do not talk to the jury directly. They answer the barristers' friendly or hostile questions by turning to judge and jury. The defendant is not only placed far away from his barrister but as well outside the turn-exchange.[19] From the defendant's bench, one shall not address the court at all. The jury is supposed to receive the cases solely from inside court: from witness-examinations, the barristers' closing speeches and the judge's summary. In the diagram, fat-lined boxes display these official

[16] "In the United States, it is accepted in most jurisdictions that the well of the courtroom is within the lawyers' control and lawyers are permitted to walk around that area rather freely. Sometimes they may go over to the jury box to make a point to them or sometimes to a spot distant from or close to a witness for dramatic effects." (W.T. Pizzi, *"Trials Without Truth. Why Our System of Criminal Trials has become an Expensive Failure and What We Need to do to Rebuild it"* (New York and London: New York University Press, 1999), 126). Such behaviour would not comply with English Crown Courts.

[17] P. Rock, *The Social World of an English Crown Court. Witness and Professionals in the Crown Court Centre at Wooden Green* (Oxford: Clarendon Press, 1993).

[18] See J.M. Atkinson and P. Drew, "Order in Court: The Organisation of Verbal Interaction", *Judicial Settings* (London: The Macmillan Press, 1979).

[19] In the 18th century, defendants were still expected to defend themselves. See for the historical rise of professional counsels and the degradation of the defendant, J.H. Langbein, *The Origins of Adversary Criminal Trial* (Oxford: Oxford University Press, 2003).

participants. With solely one of them missing, a trial hearing would not take place. The broken lines show the additional participants. They are regarded as quiet/invisible suppliers of case-information. They work 'in the shade' of the public spectacle.

The spatial ordering is itself not a topic during trial. It is usually co-enacted as factual and proper (like football teams co-enact the football-pitch as the legitimate ground or TV-interviewees the news-format while giving the interview). The discursive ordering is delegated to the materiality of the courtroom.[20] The court is neither a passive discourse container nor simply the effect of the situated discourse-in-action. It may be adequately described as a bundle of co-producing forces:

- The courtroom displays the centre of attention of the hearing: the addressing of the overhearing jury (as "judges of the facts") and/or judge (as "judge of the law").
- The spatial ordering co-constitutes and identifies significant others: the speaking representatives, the instructing/represented party and the listening/judging recipients.
- The positioning of voices does signify their weight, such as being in the stand (witness), on the dock (defendant) or on the bench (judge). It dramatises the words spoken, links them to authorships and transforms their usability.
- The hearing is freed of meta-discursive concerns regarding the appropriateness of the standards for the actual matter at hand. Only exceptionally and under certain conditions, the arrangement is re-adjusted.[21]

Standardisation and neutrality refer to spatial pre-arrangements: everything is put into place prior to the event. My point here is rather trivial: during the trial, the clerk would not carry around tables, count the jurors' chairs or build a balustrade to separate public

[20] See for Italian courts where video-recording was introduced, G.F. Lanzara and G. Patriotta, "Technology and the Courtroom: An Inquiry into Knowledge Making in Organizations", *Journal of Management Studies* 38 (2001), 944–971. One could speak here of a crisis of material delegation.

[21] The barristers may take off their wigs to demonstrate informality. This step can be suggested when a young person is involved as offender or witness. Video-links may be used to examine vulnerable witnesses, etc.

gallery and legal arena. The court is set for the hearing to start and for the protagonists to take their roles.

Standardisation carries vast implications for the concept of justice. Standardisation seems unproblematic when presented as equal treatment. It seems problematic when linked to discriminating effects. In this line, feminist critiques demand more sensitivity for 'exceptional' cases.[22] Such sensitivity, however, creates new problems. It presumes in parts what is meant to be open to doubt. Standardisation, in contrast, allows the court's detachment from the proceedings. It remains in place no matter its course or outcome and is, thus, available for others to come. The frequent legal reforms – mostly aiming for more fairness and efficacy – face the tension between standardisation and discrimination. How, reformers ask, could courts be more case-sensitive without undermining the proceedings autonomy? For now, I provide a fairly general conclusion. The openness of the day in court hinges on stabilities built around it. The pre-arrangements relief the current dealings and reduce what is at issue.

2.2. *Files*

The courtroom is apparently just one co-producing materiality amongst others. In Tim Blue's sentencing hearing, for instance, records were at hand at different sites in court. The barristers e.g. kept their briefs in reaching distance on the desk. On the side, they kept folders holding copies of the relevant "evidence" in the case. On the back benches, assistants kept ready the comprehensive case-files. I came across hearings that would not start without the files being present.

Some utterances in court directly derive from the files. See for instance the reference to "page 5" in Tim Blue's sentencing hearing. The prosecuting barrister actualised a portion of a police-interview given by the defendant months before the hearing.

The counsel referred to "page 5" in order to precise the basis of the plea. He did so without reading out the relevant pages of the police-interview. The filed protocol did the delivery. The protocol became, during pre-trial, the focal object for the competing case-representation. As an object it was manipulated in various ways: sliced, measured, counted – and acknowledged. The question of what really happened was

[22] See S. Lees, *Carnal Knowledge. Rape on Trial Lees* (London: Penguin Group, 1996). A. Konradi, "Too Little too Late: Prosecutors' Pre-Court Preparation of Rape Survivors", *Law and Social Inquiry* 22/1 winter (1997), 1–54. Lee, 2001.

translated into page-numbers: is the defendant guilty up to page 4 or 5 or even 6 or 7? The binary code of guilty/not-guilty turned into degrees of guilt.

Parties regularly agree on contested and agreed issues (somehow realising the score of the contest) in advance. The mapping out of the legal debate demonstrates a crucial function for legal proceedings: the co-construction of common grounds.

The file is, more generally, the site where points are mobilised for the day in court. Here, arguments are developed, potentials assessed, weaknesses identified. They are guided stepwise into the light of the legal discourse. More generally, they are qualified, tuned and tested for the later utilisation. Via file-work, the case is composed as a workable and resisting unit. Where is the best site to study this important work in detail? It is the law firm, where solicitors meet clients, colleagues and informants. More often though, they meet case-files and work with them on paper. The record grows in the frequency of these human-file-encounters.

Due to their focus on file-work, lawyers' workplaces seem stereotypical. They seem like supplements of a massive bureaucracy. Knowing one, it seems, means knowing them all. Let's take the files: whatever case they hold, they offer the same three fractions: (1) the prosecution-bundle containing the disclosed evidence against the client; (2) the journal of case-work including dated correspondence, diary notes and file notes; (3) the defence bundle with the collected and drafted statements. It is this orderliness that invites inferences such as this one from Latour's Laboratory Study on judges' workplaces:

"The question of homogeneity and heterogeneity between texts and things marks a contrast, which would strike even the most inattentive visitor. One can climb from the cellars of the Palais Royal, in which linear kilometres of archives lie in hibernation; to the attics which house the offices of the commissaire du government and the documentation service, without finding any real difference between the objects that are essential to each branch of the work of the Conseil: files, more files, nothing but files, to which one should add cupboards, tables and chairs – which differ in price, depending on the rank of the employee – varying numbers of books, and, last but not least, a profusion of elastic bands, paper clips, folders, and rubber stamps. (…) But in the laboratory no room looks like any other, because the differentiation of space is effected by the distribution of the machines which allow the competences of the physiologist, the neurophysiologist, the molecular biologist (…) therefore, the nature of the Conseil does not depend on its equipment, but on the homogeneity of the world of files that are kept, ordered, archived, and processed, and upon the homogeneity of a staff that is renewed, maintained and disciplined." (2003: 3f.)

Are legal files appropriately characterised as bureaucratic? Defence files for Crown Court proceedings resemble, I state differently, creative and resourceful logbooks. They remind of scrapbooks chronically filled with bits and pieces: drafted stories, memos on rumours, newspaper articles, photographs, to-do lists etc. Files initiate inventive brainstorming as well as systematic legal service. File–solicitor interaction encloses tinkering, detailed drafting and constant administration. To make a long story short: once the ethnographer draws closer to the files, alleged homogeneity turns into multiplicity (of writing/reading acts), impersonal bureaucracy into creative (legal) engineering, passive recording into absorbing "mobilisation".[23] The files are, after all, marked by tense and moving projects of representation.

What do we learn from Latour's detachment? How shall we encounter materiality to avoid it? (1) The features of things are located on different levels. Files, for instance, are black boxes that 'look' similar. They reveal what they do and undo via their becoming in time. This might be different to the inventory of laboratories exposing "anything you wished to know about the nature of the place"[24] (Latour, 2003: 4). In both cases, however, observation hinges on the observer's ability to position the object in a dynamic assemblage. (2) Latour, apparently, was used to laboratories and their inhabitants. In the judges' offices, his learnt eye encountered something unfamiliar: a 'class of things' that involves specificities in other ways. He, nonetheless, used familiar schemes to specify them.

To grasp the files' vigour, one shall encounter them "in action". This view refers to Ethnomethodological Workplace Studies and the real-time analysis of "human–machine communication"[25]. The files' involvement can be spotted in file solicitor interaction. File-work is about 'bringing the file in order' and 'doing what the file calls for'. File-work is routine-work, which does not mean that every file is consulted on a daily basis. At the beginning, files are consulted in

[23] T. Scheffer, "The Duality of Mobilisation. Following the Rise and Fall of an Alibi-story on its Way to Court", *Journal for the Theory of Social Behaviour* 33/3, September (2003), 313–347.

[24] B. Latour, "Scientific Objects and Legal Objectivity – Portrait of the Conseil d'Etat as Laboratory", in A. Pottage (ed), *Making Persons and Things* (Cambridge University Press, 2003), 4.

[25] See L. Suchman, *Plans and Situated Actions. The Problem of Human–Machine-Communication* (Cambridge, New York, Melbourne: Cambridge University Press, 1987).

loose rhythms, while closer to the day in court work-intervals cut short. The file allows, as time-binding-device[26], extended interruption and continuation.

The file can be touched on as partial transcript of defence work, open to sequential analysis somewhat similar to the ones prepared for conversation analysis. In the case of Tim Blue, one is able to distillate the following chain of inscriptions in regard to the recruitment of witnesses for the defence:

On the 14th September, the solicitor met the "probable witnesses". The assessment for the record does not sound cheering: "Both cannot believe the allegations. They will give evidence about the morning after the alleged incident. Warning of making false statement on oath."

On the 23rd September, a Diary Note reminded the solicitor to draft the two statements. In a letter to client 6 days later the solicitor ensured that "the witness statements are readily drafted". One the same day, he sent the typed versions to the "two witness".

On the 3rd October, one witness wrote back: "I do not agree with everything in it!" The hearing was meant to take place in just 8 days.

The hearing was adjourned several times: at this point from the 12th October to the 19th October. On the 12th October, client, barrister and one representative from the law firm met for "a conference". One day before, the solicitor talked to the client on the telephone. He concluded in a file note: "Client confirms that witnesses know about the trial date." Furthermore: "At the conference, we will decide which of the defence witnesses we want to call to the Hearing next week and Richard (the solicitor) will contact them." Another practical problem occurred: "Client says that two witnesses might have problems to attend. One has a new Job in a supermarket."

On the 17th October, Richard dictated for the file: "Preparing amendments to statements" The same day, he wrote to the two witnesses: "Please sign and date the typed version." In a file note, he added: "On the next (tomorrow's) conference, we will decide who of the two should attend court." Due to the pending hearing, he faxed the two statements to the Barrister right away.

Before the hearing, the solicitor invests a lot of work to present witnesses to speak for the case. The file keeps track of these investments. Why is this? Why is the file such a rich source and how does this characterise its materiality? I want to give some 'good reasons for good legal records'[27]. The reasons explicate the file's practical status,

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[26] Luhmann explains the specificity of legal discourse accordingly: "Every communication binds time by defining the system-state from which the next communication has to continue." (N. Luhmann, Niklas, "Die Funktion des Rechts", *Das Recht der Gesellschaft* (Frankfurt a. M.: Suhrkamp, 1995), 126.

[27] See H. Garfinkel, "Good Reasons for Bad Clinic Records", in *Studies in Ethnomethodology* (Englewood Cliffs, NJ: Prentice-Hall, 1967).

its capacity for "time-space distanciation"[28] and, based on this, its usability for the analysis of legal proceedings:

- Mobilisation: Mobilisation means to identify points that may become important in due course and to make them ready at hand for the day in court. The file is full of singularised claims[29] – and the solicitor's efforts to keep an overview, to foster them, gather support for them, and by doing so, to compose a strong case. The points to be made in court pass arrays of tests in order to avoid damaging surprise[30].
- *Accounting*: The firm's solicitors are expected to book-keep their work (in 6 minutes-units). The telephone conversations, file-study, written letters, read correspondence, drafting of statements etc. is quantified and justified (as necessary work to do). Accordingly, one finds bits and pieces of evidence no matter their stage: offhand rumours, careless presumptions or wishful thinking. After trial, all work units are tot up to a single figure showing the firm's case-related costs.
- Continuation: The file shows what is done so far and what needs to be done next. Inscriptions formed on one occasion become prescriptions for the next and so forth. Filed inscriptions provide the grounds for coming file-work. The solicitor by referring to the file as medium and object gets increasingly entangled in a web of filed commitments. This orientation is necessary due to the many cases under construction and the intervals of case-work. The documentation of open/completed tasks, moreover, shall reduce flaws and their fatal effects on case and client.
- *Division of labour*: Due to relatively long chains of delegation – from client, to solicitor, to barrister – Crown Court cases need to be communicated several times. Thus, one finds piles of correspondence and instructions – all meant to exchange valuable information and to integrate the growing ensemble. The file

[28] See A. Giddens, "Time and Social Organisation", in *Social Theory and Modern Sociology* (Cambridge: Polity Press, 1987), 140–165. For an overview see B. Adams, "Industrial Time and Power", in *Time & Social Theory* (Cambridge: Polity Press, 1994), 104–127.

[29] File-notes often display raw material to be mobilised such as the following: "Complainant was suffering from a sexually transmitted disease. Client says he would not have risked trying to have sex (...) Complainant was out clubbing between the date of the alleged incident and the date that our client was arrested which of course was about a four-week period. (...) He said that he believes she now has a new boyfriend. She has left Crime-town and now lives in Court-village."

[30] T. Scheffer, *supra* n. 23.

facilitates, furthermore, the diversification of "participation roles" within the ensemble.[31] It shall supply the information necessary to take the role in open court.

- *Organised memory*: The circulation of case-information relies on the file's completeness. Everything that enters the file is supposed to remain in it. As a result, it swells with each file-work session. The file as archive does not forget.[32] It reports regardless on the client's early optimism and the solicitor's encouragement, on the successful as well as failed inquiries, or keeps the several drafts of statements that never made it to court.[33]

Similar to the courtroom, the file appears as pre-configured materiality in relation to the hearing. The matters on trial are sorted and composed prior to it. They can be interpreted, raised or even read out in court. The file, compared to the talk-in-court, resides in another time-space. This separation, I suggest, make the file a useful co-producer of the court hearing.

2.3. *Stories*

The story of "what really happened that night at the defendant's house" seems inseparable from the file's inscriptions. Or more generally: every word seems bound to the media delivering it. Despite the common distinction of medium and content,[34] how could stories count as materiality in their own right?

The clue may lie in the story's numerous appearances. Foucault, for instance, values the statement as material entity because it outlasts a number of involvements. These involvements trigger the statement's weight and efficacy:

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[31] E. Goffman, "Footing", in *Forms of Talk* (Philadelphia: University Pennsylvania Press, 1979). Goffman's distinction of animator, author and principal is well explained by Keane: "An example familiar to Americans is the division among press secretary, speech writer, and president" (W. Keane, *Signs of Recognition. Powers and Hazards of Representation in an Indonesian Society* (Berkeley, Los Angeles, London: University of California Press, 1997), 139) – a division of labour, one may add, that depends on elaborated preparation.

[32] See M. Lynch, "Archives in formation: Privileged Spaces, Popular Archives and Paper Trails", *History of the Human Sciences* 12/2 (1999), 65–87.

[33] T. Scheffer, "Die Karriere rechtswirksamer Argumente. Ansatzpunkte einer historiographischen Diskursanalyse der Gerichtsverhandlung", *Zeitschrift für Rechtssoziologie* 24 Heft 2 (2003), 151–181.

[34] See H.U. Gumbrecht and K.L. Pfeiffer, *Die Materialität der Kommunikation* (Frankfurt a. M.: Suhrkamp, 1988).

"Instead of being something said once and for all – and lost in the past like the result of a battle, a geological catastrophe, or the death of a king – the statement, as it emerges in its materiality, appears with a status, enters various networks and various fields of use, is subjected to transferences of modifications, is integrated into operations and strategies in which its identity is maintained or effaced. Thus the statement circulates, is used, disappears, allows or prevents the realization of a desire, serves or resists various interests, participates in challenge and struggle, and becomes a theme of appropriation or rivalry".[35]

The materiality of our story may arise accordingly. It has been employed several times during the pre-trial: in the police-interview, the primary disclosure, the defence statement, the brief to counsel, the barrister's notes, the plea bargaining etc. Every employment triggers the story's re-appearance and modification, and hence, continuation and imposition.[36] The story's role in court was stimulated and restricted by these micro-historical layers. The barristers announced "page 5" as 'what the case is' and by doing so, called (just) the following part as basis for the ensuing sentencing:

BLUE	… JUST SNOGGED WITH HER, JUST PLAYED WITH HER BREASTS, AS FAR AS I KNOW THAT' ALL I DID, THEN I GOT UP AND SHE SAID YOU HAD BETTER GO AND I JUST APOLOGISED, I JUST SAID SORRY, I SAID YOU WONT SAY OWT TO JANE WILL YOU
DC	So you'd started kissing with her, did she resist that?
BLUE	SHE DID AT FIRST AND THEN SHE JUST RELAXED AFTERWARDS
DC	Is that because you told her to relax?
BLUE	NO I DIDN'T SAY, CAN'T REMEMBER SAYING THAT
DC	Right so you've been kissing with her and she's told you to go and you've carried on kissing with her, was that with consent or without?

[35] M. Foucault, *The Archaeology of Knowledge and the Discourse of Language* (London: Tavistock, 1972), 118.

[36] "What (…) I call iterability is at once that which tends to attain plenitude and that which bars access to it. Through the possibility of repeating every mark as the same it makes way for an idealization that seems to deliver the full presence of ideal objects … but this repeatability itself ensures that the full presence of a singularity thus repeated comports in itself the reference to something else, thus rending the full presence that it nevertheless announces. This is why iteration is not simply repetition." J. Derrida, *Limited Inc*. (Evanston IL: Northwestern University Press, 1988), 129.

BLUE	WITHOUT I SHOULD THINK – ALL I CAN DO IS REMEMBER JUST CUDDLING UP TO HER AND JUST TOUCHING HER BREASTS
DC	Is this outside her clothing or inside her pyjamas?
BLUE	INSIDE I THINK
DC	And what was she saying while you were doing this?
BLUE	SHE JUST SAID YOU HAD BETTER GO

One can grasp the full significance of this reduction only in the light of the earlier versions. How much is cut off here? How much remains unsaid? What is the price the parties pay for the deal? Answering these queries, I state, is not feasible without including the story's career.[37]

The story of what happened during that night emerged early at the police-station. The complainant narrated – or better co-narrated together with the police officers – how Tim Blue entered the bedroom, how he started kissing and stroking her, how he went even further and made her "doing things". Finally, she managed to get rid of him, of the one she trusted, of her good old father-friend. The story unfolded dialogically in a question–answer play. Round by round the co-narration moved further into the territory of guilt and shame. The result: a storyline that resists careless revision, capable to incorporate vast details (or to shrink to a plot), and anchored by spatiotemporal 'facts'.[38]

[37] The analyses of discursive careers can be found in E. Goffman, *Asylums: Essays on the Social Situation of Mental Patients and Other Inmates* (New York: Doubleday, 1961); I. Koptytoff, "The Cultural Biography of Things: Commodification as Process" in A. Appadurai, (ed.) The Social Life of Things: Commodities in Cultural Perspective (Cambridge: Cambridge University, 1986), 64–91; A. Cambrosio, C. Limoges and D. Pronovest, "Representing Biotechnology: An Ethnography of Quebec Science Policy", *Social Studies of Science* 20/2 May (1990), 195–227; M. Goodwin, *He-said-She-said: Talk as Social Organisation among Black Children* (Bloomington and Indianapolis: Indiana University Press, 1990); H. Doering and S. Hirschauer, "Die Biographie der Dinge. Eine Ethnographie musealer Repräsentation, in K. Amann and S. Hirschauer (eds.) *Die* Befremdung *der eigenen Kultur. Zur ethnographischen Herausforderung soziologischer Empirie* (Frankfurt a. M.: Suhrkamp, 1997); A. Meehan, "The Organizational Career of Gang Statistics: The Politics of Policing Gangs", *Sociological Quarterly* 41/3 (summer 2000), 337–370.

[38] Lynch and Bogen explain the significance of these anchors: "The binding force of the accusatory narrative operates on at least two fronts: the various references to dates, places, and activities hang together in a coherent narrative, while at the same time the references implicate and bind [the accused interviewee, T.S.] to the scene as constituted by those particulars." (M. Lynch and D. Bogen, David, *The Spectacle of History – Speech, Text, and Memory at the Iran-Contra Hearings* (Durham, NC: Duke University Press, 1996), 171). The relevancy of such signs for historical accounts is explored in J. Carter, *supra* n. 4.

The story re-appears in the police-interview with the accused. The interviewers use it to confront the suspect with the story's progression. The questions lead Tim Blue through the account to provoke incriminating responses exploitable in due course:

BLUE	…ALL I CAN DO IS REMEMBER JUST CUDDLING UP TO HER AND JUST TOUCHING HER BREASTS
DC	Is this outside her clothing or inside her pyjamas?
BLUE	INSIDE I THINK
DC	… She then says that you undid your trouser zip and your belt?
BLUE	NO – I CAN'T REMEMBER DOING THAT
DC	And that you then took hold of her left wrist and pulled her hand and put it down your trousers and inside your underpants and made her touch your erect penis?
BLUE	NO – I CAN'T REMEMBER DOING THAT
DC	And you then put your hand down her shorts and began to touch her vaginal area, do you remember that?
BLUE	NO, NO.

Unfortunately for the defence the confrontational interrogation worked out. The interviewee and later client did not abandon the invoked claims. He simply "cannot remember". Instead of offering a counter-narrative, Blue just left gaps for imaginaries and 'common sense' to step in. From this point onwards, the victim's story became the hegemonic account.[39]

The hegemonic story circulated among the opponents. It became designated as prosecution-case. The defence focussed on delimiting its inferences: 'He did not go that far! He stopped earlier…!' The story reappeared accordingly within the defence ensemble:

The solicitor wrote to barrister in the instructions: "Our client's interview with the police does contain some admissions of kissing and touching. Our client does state that there was a point when complainant resisted his advances and yet those advances continued. He, of course, denies all other allegations made by the complainant. […] If the Crown [prosecution, T.S.] insist that any guilty plea has to be on the basis of their evidence as it is at the moment then we do not think our client can plead guilty, as he does not accept all of the allegations that have been made."

The defence statement disclosed the following version:

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[39] See P. Ewick, "Subversive Stories and hegemonic tales: Toward a Sociology of Narrative", *Law & Society Review* 29 (1995), 197–226.

"The Defendant put his arm around the Complainant and began to kiss her. The Defendant admits that there was contact between the Complainant and himself at this time and the Complainant was not obeying to this resisting the Defendant's advances at this time. The Complainant was clearly giving her implied consent to this. When the Complainant indicated that she no longer consented to this, the Defendant stopped immediately and he left the Complainant's bedroom...."

The solicitor, in the following weeks of pre-trial, tried to attack the story's allies, to cut off its social support. He, in addition, tried to strengthen his client's credibility. Tim Blue's "I cannot remember" had to be replaced by something more substantial for the jury. The hegemonic story occupied the discursive space for any 'version' to come and caused some hard thinking on the site of the defence.

In case of a jury trial, the story would have directed the questions and answers in the friendly examination. The prosecution would have led the 'victim' through the plot ensuring that an analogous account reached the jury. The defence would have tried to delimit the story's implications. During the cross-examination, the story's versions would have provided a good deal of details to raise doubts. But then, there were the client's admissions and weak excuses. They seemed harder to fight than the victim's subjective recall. But what then made the complainant hesitate to trial the indecent assault in open court? The complainant, I speculate, avoided the deconstructive questions by the defence meant to multiply details and, by doing so, trigger confusion. She did not wish, as she told her barrister, to expose "all these things" in public. To make a complicated deliberation short: the defence feared the bad start while the prosecution feared the compulsory orality in court.

What happened after the Crown's Counsel announced the reduced basis of the guilty plea? The story 'of what happened' was cut down to "page 5". However, the full story – once in the world – was not that easy to delimit. Tim Blue, very soon after the hearing, became confronted with the full version and its moral implications. This time the story appeared in the local newspaper and caused trouble – or better extra-judicial punishment - by his employer and neighbours.

"Tim Blue, 52, who had worked for the past 23 years at [...] 'misread the signals' from a 26-year-old woman. One night at the [...] after the woman had gone to bed, Blue appeared at her bedside, carrying drinks, said prosecutor Mr Hunt. Blue began talking to her and then touched her breasts over the clothing and inside, Mr Hunt added. 'He kissed her, telling her to relax and enjoy it. Afterwards, he said he was sorry.' Blue told the police he had been 'totally stupid'."

How can this brief reconstruction contribute to the materiality-claim? Is the story really another pre-established co-producer of the hearing?

The story's career did pass several sites including a series of police-interviews, the client–solicitor consultation, the defence statement, the brief to counsel, the conference with counsel, the plea bargaining, the sentencing hearing and so forth. Its multi-sited becoming and the different roles it played on the way illustrate striking similarities to the aforementioned materialities: the story was put together prior to the hearing; it outlasted several events; it grounded and informed the hearing; it survived the hearing. Similar to file and courtroom, the story resides in expanded time and space.

The case-story, understood in this way as materiality, holds properties that comfort the legal proceeding. Whenever referred to, the story did not only induce relevancies to the event, but pre-configured follow ups for events to come. The story became an identifiable entity passing several "obligatory passage points".[40] As adaptable continuation it allowed breaks and ruptures; as integrated framework it delimited future choices; as arrangement of spatial and temporal signs it enacted some 'out-there-ness'.[41]

Two more specifications may help to grasp the story's materiality. First, the story is well understood as decentred and multiple object that is, according to John Law, 'more than one and less than many'.[42] The story, accordingly, includes all references: quotes ("She then said 'you …") and agreement ("Yes, this is right."), assessments ("So what you are saying then is that she was lying …") and comments ("I don't know!"), inducements ("This would fit to her version …?") and denials ("I never said this."). A de-centred object is,

[40] M. Callon, "Some Elements of a Sociology of Translation: Domestication of the Scallops and the Fishermen of Saint Brieuc Bay", in *Power, Action and Belief: A New Sociology of Knowledge?* (Sociological Review Monograph, No. 32), J. Law (ed) (London: Routledge and K. Paul, 1986), 196–223.

[41] The latter function is vital for historical accounts. Carter argues that the event itself offers temporal signs to be re-arranged in historical accounts. See E. Carter, *supra*, n. 4. Carter's concept contributes to the concept of materiality since it identifies pre-produced co-producers for story-telling and history-writing. Carter, however, seems to underestimate the specificity of his example: negotiating and signing a remarkable bill of sale. Countless other events are routinely or purposefully accomplished without reference to any dates or hours – no anchors that would facilitate later reconstruction.

[42] An "object such as an aircraft – an 'individual' and 'specific' aircraft – comes in different versions. It has no single centre. It is multiple. And yet these various versions also interfere with one another and shuffle themselves together to a make a single aircraft. They make what I will call singularities, or singular objects out of their multiplicity. In short, they make objects that cohere." (J. Law, *Aircraft Stories. Decentring the Object of Technoscience* (Durham and London: Duke University Press, 2002), 2).

according to Law, extended by each reference to its imagined identity. This identity forces as well as allows narrators to leave out, thicken or modify the story and, by doing so, to decentre it even further. As a consequence, the story appears in a longer time-line as breathing in and out: it takes in and leaves out details (how long they knew each other; why at all he walked up to her room; what she wore; what they drank; what they were talking about etc.). It is one and it is many.

The metaphor of de-centred objects leads to intriguing mappings of appearances and their relations. The story comes into view as distributed and spread. It clearly exceeds the single moments of its surfacing. The metaphor, however, lacks sharpness when it comes to the story's temporality, its sequential unfolding and legal value. First, the many versions and cross-references do not come into being all at the same time. Versions and references are not just intertwined but necessarily precede each other. They come about in a trans-sequential order. Second, not all re-appearances and cross-references – entering the researcher's "pin-board"[43] – are selected as relevant and usable version. Some leave their marks and add to the story while others remain ephemeral. They, while not being memorised, leave the decentred case-story untouched. Both aspects – sequentiality and selection – can add to the understanding of the story's relevancy. The story as materiality accommodates, what one could call, the fact-finding-engine of criminal proceedings: the multiplication of versions in order to back or undermine situated performances.[44]

Situated narration in court cannot ignore the decentred story that was accumulated during pre-trial. Only exceptionally novel accounts 'surprise' the court – and cause some crises – without having been already checked, exchanged and commented on. There is always

[43] Law's metaphor of the "pin-board" shows this preference for spatial connections. The pin-board, alike the network, does not allow to reveal the sequentiality of the story's enfolding. It does not facilitate to trace the building up of versions and references (on the basis of previous appearances). *Infra*, at 2.

[44] See especially M. Lynch and D. Bogen, *The Spectacle of History – Speech, Text, and Memory at the Iran-Contra Hearings* (Durham, NC: Duke University Press, 1996). For micro-sociological approaches see P. Drew, "Contested Evidence in Courtroom Cross-examination: The Case of a Trial for Rape", in P. Drew and J. Heritage (eds), *Talk at work. Interaction in institutional settings* (Cambridge: Cambridge University Press, 1992), 470–521; W.D. Darrough, "When Versions Collide: Police and the Dialectics of Accountability", *Urban Life* 7/3 (1978), 379–403; S. Harris, "Fragmented Narratives and Multiple Tellers: Witness and Defendant Accounts in Trials", *Discourse Studies* 3/1 (2001), 53–74.

already a prior version laying out 'what one should say' and 'what better remains unsaid'. Multiplication, in this line, offers some means to control and reinforce an account. It offers numerous criteria to question and challenge it. The iterated story becomes rule for its successors and source for its critiques. Accordingly, witness in Crown Court have good reasons to hesitate when being asked 'what happened' (even if she/he was the only one at the scene of the crime), because every reply is assessed in the light of the already told. The fact-finding engine, fed by the story's several versions, creates communicable confirmation, modification or contradiction – and good reasons for the jury to agree or disagree.

3. Conclusion

At this point, I would like to return to the starting-point: the conceptualisation of materialities of criminal proceedings. How can courtrooms, files and stories count as materialities? All three, I propose, exceed, facilitate and orientate the course-of-interaction: the court as discourse automat, the scriptural economy of files and the iterated story as truth-finding engine. They are pre-produced and co-producers.

How do the materialities differ? The three, I argue, vary in the way they can be observed already before the hearing. They, furthermore, vary in terms of their becoming and function. This synopsis may provide some overview and grounds for conclusive reflections:

	Observable as	Procedure is	Duration analogue to	Mode of production	Rhythm
Court	stable	standardised	Institution	Rituals	Day-to-day
File	accumulative	directed	Casework	Inscriptions	Accelerated
Story	spread	grounded	Social career	Reference	infrequent

The synopsis illustrates relative properties instead of fixed attributes. The materialities appear as being pre-established only from the point of view of the hearing: the courtroom with its standardised speech-positions, the file as the site of creative/systematic investments or the story with its intertwined/sequential versions. But careful: the entities seem immutable in the light of the hearing's proximity. From another perspective, e.g. of an historian investigating the rise and fall of jury-trials, the seemingly solid compositions turn into dynamic

becomings. The same is true for file or story. What reaches the court as fixed bundle appears as contingent progression in a historiography of case-work. All three materialities are in fact relative becomings with their own speed, duration, drift and rhythm.[45] The materialities correspond to unique time zones that shape the ways in which they expand and shrink, appear and vanish.[46] Materiality, hence, is a relative state appreciable from a certain focal time-zone.

Time zones can be observed according to the attention and care necessary to keep things going. A talk, for instance, needs to be attended by co-present participants according to the grammar of participation.[47] After short periods of mutual silence a conversation is likely to break down. The need for re-productive care is different compared to our three materialities. The story, for instance, is rather nomadic. It endures thanks to no more than sporadic references. To gain legal impact, however, the story needs to pass "obligatory passage points". The Crown Court is formed in rather "longue durées" (Braudel) generally referred to as legal tradition or culture. It is exercised in – but not immediately dependent on – the everyday of 'sitting courts'. The court remains unimpressed by the matter at hand, which makes it available for those to came. Frequently, a single standard turns into the subject matter of a legal reform or higher jurisdiction. And the file? It is gathered over months of intervallic file–solicitor interaction. The attendance rate accelerates closer to the 'day in court'. The three materialities reveal, as Deleuze puts it, "other durations that beat to other rhythms".[48] They reside in separate time zones.

What does the co-existence of materialities mean for legal practice? How is this relevant for the analysis of legal discourse? Court,

[45] One could employ a whole range of music-terminology such as tempo, bar, beat, time or rest. One may as well turn towards concepts developed in physics such as half-life (defined as the "constant time period required for the disintegration of half of the atoms in a sample of some specific radioactive substance") or biology such as rhythmicity in order to represent different materialities. See for an overview, B. Adam, *Time & Social Theory* (Cambridge: Polity Press, 1994).

[46] The picture is more confusing than the one painted by dualist approaches. Anthony Giddens e.g., distinguishes linear time and reversal time. Linear time refers to life histories of humans and institutions, while reversal time is reserved for the realm of structure, reproduced by the routines of day-to-day-life. See A. Giddens, "Time, Space and Regionalisation", in *The Constitution of Society. Outline of the Theory of Structuration* (Cambridge: Polity Press, 1984).

[47] H. Sacks, "*Lectures on Conversation*" in G. Jefferson (ed), Vol. 2 (Oxford: Blackwell, 1992).

[48] G. Deleuze, *supra* 1, 78.

file and story (together with other components), as I tried to demonstrate, co-produce the hearing. The hearing as it is (cumulative, anticipated and condensed) would not be feasible by means of direct interaction only. The three materialities add a sense of stability, historicity and expectancy. They fix past events, specify possible futures and steady expectations. Materialities allow a temporal division of labour.

Court, file and story do not simply serve the production of hearings. They are not just functional components, supplementing the otherwise limited direct interaction. The co-producers do, as well, disrupt, distract and trouble the hearing. The story's versions, for instance, jeopardise any testimony in court no matter its truthfulness; the court does not provide room for the 'full story'; and all the filed information the hearing cannot be fully anticipated by instructions and scripts etc. Materialities, even though indispensable components, turn out to be imprecise, lacking and fuzzy when it comes to the situated utilisation. They trigger secondary problems of orchestration – and explain the ensembles' dependency on experienced in-court-lawyers.[49]

The materialities do not quite fit to the course-of-discourse. They comprise wanted and unwanted qualities, helpful and troublesome aspects, while there is, as Keane makes clear, "in practice (…) no way entirely to eliminate that factor of co-presence or what we might call 'bundling'".[50] Materialities are, in this humanist view, device and challenge, prop and troublemaker.[51] Materiality, thus, means this as well: one cannot consume a thing, without taking in unwelcome parts that are inseparably intertwined.

Interestingly, the fieldwork shows several methods and artefacts to tackle, what one could call, the problem of disharmonies. In the light

[49] See J. Langbein, *The Origins of Adversary Criminal Trial* (Oxford University Press, 2003). Langbein traces the rise of the defence barrister in Crown Court trials. For centuries, it was on the defendant to represent his/her case.

[50] W. Keane, *supra* n. 4, at 414.

[51] "Much of everyday life has this character of coping with material agency, agency that comes at us from outside the human realm and that cannot be reduced to anything within that realm" (A. Pickering, *The Mangle of Practice* (Chicago: University of Chicago Press, 1995), 6). For Pickering, praxis resembles a "dance of agency, seen asymmetrically from the human end, thus takes the form of a dialectic of resistance and accommodation, where resistance denotes the failure to achieve an intended capture of agency in practice, and accommodation an active human strategy of response to resistance, which can include revisions of goals and intentions (…)" (*Infra*, at 22). In our framework, strategies can be treated as materialities (from inside the human realm) comprising resistances and accommodation.

of the above analysis some components appear as intermediaries or coupling devices: the barrister as experienced in-court performer shall harmonise discourse automat and instructed case; the brief as summary shall harmonise complex file and concise hearing; the drafted statement shall harmonise the decentred story and the single testimony; or, last but not least, the barrister's own notes shall harmonise brief, examination and final speech. The artefacts point, next to the members' inventiveness, towards challenges that occur when different materialities get involved. They exemplify the competent efforts to link various pre-trial investments and the day in court.

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