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## *Courses of Mobilisation: Writing Systematic Micro-Histories on Legal Discourse*

THOMAS SCHEFFER

Mobilize:

- 1 *a)* to make mobile, or movable *b)* to put into motion, circulation, or use
- 2 to bring into readiness for immediate active service in war
- 3 to organise (people, resources, etc) for active service or use in any emergency, drive, etc.
- 4 to become organised and ready, as for war

**I**NSIDE THE OFFICES, paper-workers produce and combine documents. Their desks are covered with paper: with files, bundles and briefs. And the production goes on. Solicitors dictate notes, secretaries type letters, and the legal clerks compile sets of evidence. It is exactly through these paper-trails that things are set into motion for the day in court. In other words: statements, arguments, narratives and their human carriers are mobilised to make a case.

The ordinary case-work seems to a large extent a face-to-file interaction. The mounting dossier indicates what needs to be drafted, collected, posted *next*. It gives the ‘full picture’ as well as the missing links. At this site of the legal machinery, the socio-legal ethnographer faces, however fascinated by courtroom dramas, a writing culture.

Legal mobilisation, however, includes face-to-face work: people need to stand and speak out for the case in court. They need to articulate the written, to stage it, to bring it across to an audience. The day in court requires an ensemble set to co-enact the matter ‘here and now’. The case, therefore, involves a whole bond of players, props and materials. The socio-legal ethnographer deals, however infected by ‘archive fever’ (Derrida), with an impressive performative culture.

And there is more: the interplay, the competition, the terror of failure. At least two social projects and individual ambitions are at odds here, putting the respective other under pressure and tension. The cases unfold, and are

elaborated in the contest between defence and prosecution, both ready to challenge, weaken and undermine the opponent's case in front of a deadly quiet jury. The socio-legal ethnographer faces, however fascinated by the means, formats and methods of case-construction, a contingent and risky power-game. Competitive mobilisation.

What can sociologists learn from legal proceedings and the ways that they are conducted? And how can they organise this learning? In the following, I suggest a number of methods and frames that can be used to reveal what happens in legal practice or, to be more precise, the craft required to present a criminal case.<sup>1</sup> The methods are designed to stress the temporal and sequential features of legal work. They link what is commonly held apart: pre-trial and trial,<sup>2</sup> preparation and event, text and talk, evidence and law.<sup>3</sup> By doing so, they introduce the socio-dynamics of legal proceedings and the ways the defendant's or witness' view is translated into legally-relevant arguments.

How can one address these different sites and materialities<sup>4</sup> of legal discourse empirically? This paper proposes a sequential analysis of mobilisation that is capable of connecting what usually remains separated. The concept

<sup>1</sup> These were employed in a research-project titled 'Comparative Micro-Sociology of Legal Proceedings', funded by the German DFG. This has enabled four fieldworkers—Kati Hannken-Illjes (Germany), Alex Kozin (US), Livia Holden (Italy), plus the author (UK)—to conduct case-studies. The chapter presented here stems from the author's two year pilot-study. See [www.law-in-action.de](http://www.law-in-action.de).

<sup>2</sup> D McBarnet, 'Pre-trial Procedures and the Construction of Conviction' in P Carlen, (ed), *The Sociology of Law* (Keele, Sociological Review Monograph 23, 1976) provides one of the few early socio-legal studies concentrating on the pre-trial. She notes that 'interactionist detail cannot provide a total explanation [!] of the processes of conviction. In the first place, it understates the structural influences of the legal system's rules, checks and definitions on the construction of reality. In the second place, it underplays how much the events and information observed in court have been shaped long before the stage of public trial is reached' (175); my exclamation mark. Despite her short-cuts in describing the structures within which lawyers work, I take McBarnet's critique seriously. The interactionist problem is, indeed, that there is no concept for the procedure and the role of the pre-products accumulated over a period of time. It is, however, no solution just to ascribe agency to 'the law'. McBarnet cannot show *how* the law gets enrolled in criminal pre-trials and trials. She does not provide a praxeology showing how 'the law' co-produces social situations. For studies of legal preparation, see also A Sarat and W Felstiner, *Divorce lawyers and their clients* (London, OUP, 1995); and A Konradi, 'Too little Too Late: Prosecutors' Pre-Court Preparation of Rape Survivors' (1997) 22 *Law and Social Inquiry*; M Travers, *The Reality of Law: Work and Talk in a Firm of Criminal Lawyers* (Aldershot, Dartmouth, 1997) analyses how lawyer-client relations evolved during meetings before trial.

<sup>3</sup> There is, of course, a large amount of research on the relationship between text and talk. For an overview, see M Mulkay, 'Conversations and Texts' (1986) 9 *Human Studies*; or D Smith, 'Textually Mediated Social Organization' (1985) 99 *International Social Science Journal*. See also the author's study on the entanglements of text and talk in the German asylum procedure, T Scheffer, *Asylgewährung. Eine ethnographische Analyse des deutschen Asylverfahrens* (Stuttgart, Lucius&Lucius, 1999).

<sup>4</sup> See T Scheffer, 'Materialities of Legal Proceedings' in (2004) 26 *International Journal for the Semiotics of Law*.

of mobilisation allows us to see the 'open' phases before conflicts are settled. It can address the legal groundwork in a case and the difficulties of actualising this in court.

#### A. DE-CENTRELING SOCIAL SITUATIONS

Goffman's question of 'what goes on here?' is at the heart of micro-sociological research. Many sociolegal scholars started with similar curiosity: What goes on in court? What is all the paper-work about? What happens in client-barrister conferences? Interpretative approaches argue that 'what goes on' is hard to pinpoint since the participants do not attribute the same meaning to what took place. By focussing on mobilisation, 'what goes on' appears in a different light. It does not come into sight by interpreting utterances *within* the focal situation, but by weighing them in the course of preceding and succeeding situations.

As a micro-sociologist, one can distinguish between closed and open interaction systems.<sup>5</sup> Closed ones rely greatly on the elements that come about during their course, while open systems are greatly dependent on and shaped by pre-fabricated entities. Micro-sociologists seem rather occupied with closed systems like face-to-face interaction. They have less to say about open systems and the ways in which they hinge on and contribute to extended projects such as political campaigns, research processes or legal case-work.<sup>6</sup>

The nature of interaction analysis changes fundamentally when one addresses this wider context. It moves closer to what participants are confronted with and achieve in each new situation. The participants of Crown Court hearings, for instance, are confronted with statements and interviews they have given at earlier stages of the case.<sup>7</sup> They rely on these prior statements ('materialities') when constructing their court-performances. In this way, the counsels and witnesses in court resemble 'consumers'<sup>8</sup>: they pick up, mix and modify legal 'products' in the course of their inventive manoeuvres. Actors, in this view, turn out to be creative and tactical, rather than passively responding to each new situation. This relation of products and

<sup>5</sup> See T Scheffer, 'Jenseits der Konversation. Zur Konzeptualisierung von Asylanörungen anhand der ethnographischen Analyse ihrer Eröffnung' in (1998) 24 *Schweizerische Zeitschrift für Soziologie*.

<sup>6</sup> See for an overview M Travers and J Manzo, (eds), *Law in Action: Ethnomethodological and Conversation Analytical Approaches to Law* (Aldershot, Ashgate, 1997).

<sup>7</sup> See T Scheffer, 'Materialities of Legal Proceedings' (2004) 17 *International Journal for Semiotics of Law*. The position developed here refers back to Foucault's concept of the statement in M Foucault, *The Archaeology of Knowledge and the Discourse of Language* (London, Tavistock, 1972).

<sup>8</sup> M de Certeau, *The Practice of Everyday Life* (Berkeley, CA, University of California Press, 1984).

their consumption might equally characterise participants in court hearings: they rely on products and use them for all practical purposes. Not everything that surfaces and gains meaning in the social situation is created within its course.

A similar, but more categorical version of this can be found in Luhmann's distinction of different communicative layers or modes. For Luhmann, it is misleading to regard legal proceedings as consisting of just face-to-face interaction.<sup>9</sup> Through closed interaction-systems any wider spatiotemporal effects could not be reached. Luhmann argues generally that nowadays 'the gap between interaction and society has become unbridgeably wide and deep. (...) At no other time has it been less possible to view the societal system as composed of interactions and to consider adequate theories that conceive society as "commerce", exchange, dance, contract, chain, theatre, or discourse'.<sup>10</sup>

At this point, one can discuss further consequences of the suggested move. Decentred situations not only demand new frames of meaning, but also challenge the heuristics connected to the scheme of closed interaction-systems. These heuristics are systematically spelled out in ethnomethodological Conversation Analysis (CA). CA considers everything—roles, sex, gender, formality etc—as being locally and sequentially accomplished by co-present participants. By analysing turn-by-turn exchanges in ordinary and institutional conversation, CA aims to 'preserve the details of local order production "over its course" for the analyst'<sup>11</sup> and provides a useful 'way of seeing'.

The heuristic of proximity triggers further effects: it disciplines the researcher. It binds the analysis to empirical data and encourages reflection on what we normally take for granted. The radical localism in CA challenges the manner in which most social scientists make uncontrolled inferences from their data. As Garfinkel has argued, what matters should be *observable* in situ within the 'phenomenal field'.<sup>12</sup> Accordingly, no structural,

<sup>9</sup> N Luhmann, *Social Systems* (Stanford, CA, Stanford University Press, 1995):

'Writing and printing make it possible to withdraw from interaction systems and nevertheless to communicate with far-reaching societal consequences. By deciding to use the communicative form of writing, one can reach more addressees over longer periods of time, but this decision suggests that one withdraw from interaction, if it does not force one to do so. The differentiation of this mode of communication from interactional nexuses has more than quantitative significance: it enables a mode of working that could not be attained within interaction and thereby an augmentation of the difference between society and interaction to which the societal system and interactional systems can orient themselves' p 427.

<sup>10</sup> *Ibid*, p 430.

<sup>11</sup> A Rawls, 'Editor's Introduction' in H Garfinkel, (ed), *Ethnomethodology's Program: Working Out Durkheim's Aphorism* (Lanham, Rowman & Littlefield, 2002) 6.

<sup>12</sup> 'It is Garfinkel's primary commitment that meaningful social orders do not, cannot, occur at a conceptual level. They must be empirically witnessable, and the analyst must preserve these witnessable aspects of practice'; in A Rawls, *ibid*, p 8.

allegedly omnipresent variable can be just taken for granted as significant for the business at hand (not even the three classics: class, gender and race). Everything that matters is taken up in the turn-by-turn processing of meaning. It takes place on the (observable) surface of social interaction.

The heuristic underlying the analysis of mobilisation, while agreeing with some essential features of ethnomethodology (such as observability, sequentiality, interactivity), differs in some respects concerning the unit of analysis. Firstly, it questions the frame of analysis (closed interaction systems) and therefore the status of proximity and localism. By asking *what goes on* the analysis of mobilisation includes 'necessary' pre-products and their circulation across time and space. Secondly, by tracing statements or narratives through projects of representation one does not presuppose whether they succeed or fail or how far they make it. They are, for vast periods, unfinished and contingent entities, not ready yet to be fully exposed to the focal discourse. Thirdly, this kind of analysis transgresses as well as links several sites of case work, such as the police station, the law firm and the court itself.

#### B. PARTIAL ACCESS

Addressing this wider context creates several methodological problems. To give one example: the complete legal case-work is impossible to record. The work of mobilisation is, to a large extent momentary, short-lived and passing. Given the multi-sitedness of mobilisation, the ethnographer can only get in touch with a small portion of the work. The contributions by the client, for instance, remain hidden while the lawyer's part seems well-documented and, therefore, prominent in the analysis.

Tracing mobilisation has to cope with what Marcus calls, a 'multi-sited field'.<sup>13</sup> Casework takes place at the client's home, in the law firm's offices, and right outside the courtroom. It takes place as well in barristers' chambers and the interview rooms at court. The mobilisation of cases takes place via correspondence, telephone talks and frequent meetings. While tracing statements on their way to court, one can get lost in the intertextuality of legal discourse.

Fortunately, it is not just researchers who are confronted by such problems. The lawyers have to deal with the sheer complexity of unfolding proceedings as part of their everyday work. Despite the piles of incoming calls, letters or documents, they need to ensure that no important details, no potential trump card, no official deadlines are left out. They try to keep

<sup>13</sup> G Marcus, *Ethnography through Thick and Thin* (Princeton, NJ, Princeton University Press, 1998).

track of the circulating statements through check lists, sketches or diagrams.<sup>14</sup> Solicitors try to control the statement's career: its weight for the case; its distribution inside and outside the defence ensemble. The lawyers' management of complexity turns out to be a focal issue for the study of mobilisation.

Statements need to be delivered right on time and presented in standardised but nonetheless shifting and tricky circumstances.<sup>15</sup> The duality of courtroom-performance<sup>16</sup> and case-preparation generates certain modes of planning (loose, flexible, multi-optional scripts) on the one hand and a whole range of speech/writing acts. Case-delivery and case-preparation are not at all appropriately grasped as homogenous writing and talking.<sup>17</sup> They are better captured as hybrid forms (as written speech and spoken texts) supporting, exercising and anticipating one another.

Facing these entanglements, one gets the impression that preparation *and* enactment, pre-trial *and* trial, plan *and* event have been wrongly kept apart. Both sides are better understood as co-constituting facets that cannot be reduced to one another. Preparation, in this view, appears not only as helpful investment prior to the case-delivery, but as well as source for of the event's complexity. The defendant, for instance, is prepared for and at the same time confronted by prepared opponents. To take the floor 'here and now' means for her/him to address an intertextual field (of prior statements, statements by others, one's own testimony and the others' testimonies) that easily turns into a minefield full of mobilised trumps *and* traps.

### C. FOCUSED HISTORIOGRAPHY

How can one investigate extended and multi-sited projects? One way is to focus on its focal products 'in the making': the statements, pieces of evidence, and line of defence. From this perspective, I approach *becomings* as

<sup>14</sup> L. Suchman, 'Making a Case: "Knowledge" and "Routine" Work in Document Production' in P. Luff, J. Hindmarsh and C. Heath, (eds), *Workplace Studies: Recovering Work Practice and Informing System Design* (Cambridge, CUP, 2000).

<sup>15</sup> 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, CUP, 1992) 470; and S. Harris, 'Fragmented Narratives and Multiple Tellers: Witness and Defendant Accounts in Trials' (2001) 3 *Discourse Studies*.

<sup>16</sup> 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, CUP, 1992) 470; and S. Harris, 'Fragmented Narratives and Multiple Tellers: Witness and Defendant Accounts in Trials' (2001) 3 *Discourse Studies*.

<sup>17</sup> See D. Zimmerman, 'Record-Keeping and the Intake Process in a Public Welfare Agency' in S. Wheeler, (ed), *On Record: Files and Dossiers in American Life* (New York, NY, Russell Sage, 1969).

concrete/mobilised singularities rather than as abstract/dispersed collectives<sup>18</sup>: the mobilisation of an alibi<sup>19</sup> for instance. This analysis of mobilisation tracks down single features that travel through situations and are marked by their various involvements.<sup>20</sup> Through mobilisation, becomings gain weight, impact, force—and join together to configure new events.

This focus on becomings is meant to sharpen how ‘law-in-action’<sup>21</sup> proceeds at a local level—but complements this with an appreciation of its translocal entanglements.<sup>22</sup> At this point, I would like to recommend a kind of manual to guide the investigation of legal mobilisation. The manual will emphasise methodical implications of the perspective and how it translates into a series of research activities:

- (1) *The expert’s presentation of the case*: In my research on English criminal proceedings, the solicitor’s introduction of single cases—initiated by ‘What are you working on right now?’—was a useful starting point. My informants provided brief and pointed stories of ‘what the case is about’. This account often focused on a key incident that was understood differently by the prosecution and defence. The solicitor’s presentation was usually divided into a factual and a legal section. He or she described ‘what happened’ and ‘some technicalities’ that were relevant to the casework at that point in time. It is important to note when exactly this narration occurred in the legal process.
- (2) *Selecting single issues*: These often quite brief and concentrated narratives convey what my solicitors call, the ‘heart of the case’ or the ‘crucial point’. From the solicitor’s point of view, this is what one uses to determine ‘now’ whether this is a winning or losing case, or a case that should or should not go to court. The ‘heart of the case’ may well be a medical attestation,

<sup>18</sup> G Deleuze and F Guatarri, *A Thousand Plateaus: Capitalism and Schizophrenia* (London, Athlone, 1988).

<sup>19</sup> T Scheffer, ‘The Duality of Mobilisation: Following the Rise and Fall of an Alibi-story on its Way to Court’ (2003) 33 *Journal for the Theory of Social Behaviour*.

<sup>20</sup> This is similar to Latour’s concept of immutable mobiles. For the legal context see B Latour, ‘Scientific Objects and Legal Objectivity—Portrait of the Conseil d’Etat as Laboratory’ in A Pottage, (ed), *Making Persons and Things* (Cambridge, CUP, 2004).

<sup>21</sup> M Travers and JF Manzo, (eds), *Law in Action: Ethnomethodological and Conversation Analytic Approaches to Law* (Aldershot, Ashgate, 1997).

<sup>22</sup> A rich line of reference to approach becomings is provided by the laboratory studies in Science and Technology Studies (STS) examining work/research processes. See especially B Latour, *Science in Action: How to Follow Scientists and Engineers through Society* (Cambridge, MA, Harvard University Press, 1987) B Latour, *Pandora’s Hope: Essay on the Reality of Science Studies* (Cambridge, MA, Harvard University Press, 1999); and B Latour and S Woolgar, *Laboratory Life: Social Construction of Scientific Facts* (New York, NY, Sage, 1979). By opening the black boxes of scientific practice ethnographers face the assembly of things and people. They turn back to the uncompleted bits and pieces in order to unfasten the complex, knotty, multifaceted nature of the later tidied, orderly and black-boxed ‘facts’.



the eye-witness' identification of the perpetrator, or a psychological report on the accused' liability. It may be something seemingly minor that the researcher could fail to notice when studying the file on her own. To different extents, the heart of the case will possibly attract the attention of both parties, the prosecution and defence. This, again, depends on the stage of the matter: in the final stages, certain circumstances are presented as having dictated the case right from the beginning; during preliminary investigations, in contrast, certain foci are presented that may entirely vanish from the agenda in due course.

- (3) *Tracing issues through paper trails:* How can one trace issues through the files on their way to court? It is important here to identify when an issue is initially recorded (which does not mean that one gets to its origin) and how. Is it in an official letter, an internal memo, in one of the solicitor's to-do-lists or 'just' in a scribbled—not even filed—memo?

The counter-accusation: In a burglary case, I found the first entry of the 'self-harmer'-hypothesis in a file note on a telephone-conversation that the solicitor conducted with the co-accused partner of the client. During this telephone conversation, the young woman mentioned a talk with a neighbour. The neighbour made allegations about the complainant. She might have inflicted the reported/photographed injuries (deep cuts under her left eye) on herself. The co-accused was advised to inform her solicitor right away and to instruct him to take a statement from this neighbour. This piece of information, she added in the note, seems 'really important'.

From this point, the issue can be followed all through the file. Does it occur again? Where is it mentioned again and how? How is the issue fostered from one entry to the next? Every single file-entry is to be noted!

- (4) *Activities related to the schedule of the proceeding:* I gained a better overview of an issue's 'social career'<sup>23</sup> by placing it in the time-line of the proceeding in question. The date of the charge, of the indictment, of the Plea and Direction Hearing, of the deadlines for disclosure or the trial hearing provide vital context-

<sup>23</sup> This metaphor is used in a wide range of studies. See, for example, A Cambrosio, C Limoges and D Pronovest, 'Representing Biotechnology: An Ethnography of Quebec Science Policy' in (1990) 20 *Social Studies of Science*; H Doering and S Hirschauer, 'Die Biographie der Dinge: Eine Ethnographie musealer Repräsentation' in K Amann and S Hirschauer, (ed), *Die Befremdung der eigenen Kultur: Zur Ethnographischen Herausforderung Soziologischer Empirie* (Frankfurt aM, Suhrkamp, 1997); and I Kopytoff, 'The cultural biography of things: commodification as process' in A Appadurai, (ed), *The Social Life of Things: Commodities in Cultural Perspective* (Cambridge, CUP, 1986).

tual orientation. When, relative to these stages in a case, does the issue arise? This background helps the researcher to get an idea of how arguments are channelled, adjusted and stimulated in the course of a case.

*Time for preparation:* The Pre-Direction Hearing took place two weeks ago. Today the matter is listed for an application by the defence asking for the full disclosure of the medical notes, reporting the medical history of the complainant. The prosecuting barrister applies for another adjournment: ‘The medical report can be served within a month’s time, my Lord’. The Counsel for the defence complains about the further delay and then accepts. In fact, nobody is really upset about the extra three weeks until the trial hearing—obviously apart from the defendant who is awaiting the trial in custody. Still, the defence has got plenty to do until the day in court. The account in the defence statement, for instance, was still not backed by any additional witness.

- (5) *Reconstructive interviews:* How something becomes a key issue is not just a matter of file-analysis. The trusted researcher regularly faces instances of case- and file-work. Sometimes the issue to track down is a topic in a solicitor-client meeting or a conference with barrister (and whatever pre-trial meetings there are in other jurisdictions). Interviews with caseworkers are also useful: one could call these interviews as well biographical, although they do not deal with the biography of the interviewee but with the biography of a statement or narrative. The researcher can ask those involved about how a point did come about and was worked out before the trial.
- (6) *Data-sheets:* In order to trace the career of a becoming through the course of the pre-trial procedure, I put the following information together. In the aforementioned case of burglary, my log entry took the following shape:

| Date    | Participants             | Incident                  | Content  | Function for case  |
|---------|--------------------------|---------------------------|--|--|
| 12/6/03 | Solicitor—<br>co-accused | Telephone<br>conversation | Neighbour<br>claims that<br>'victim' is<br>self-harmer | New line of<br>argument<br>+<br>-<br>potential evi-<br>dence for the<br>defence-case |

The log: The ‘becoming’ in this case can be described as the ‘self-harmer statement’. Its trajectory commences with a telephone conversation, in which the co-accused mentions a rumour regarding her neighbour (the potential witness) and what he once claimed on the accuser (‘Self-harmer’). According to this potential statement, she could have injured herself as she allegedly did several times before. It takes a lot more case-work (and entries) until the neighbour is enrolled as witness and until his statement is available as element of the defence. The rumour, for instance, needs to be documented in order to involve others. At a later point, it needs to be authorized or connected to an actor and his/her social credit. In court, the statement needs a human voice in order to be staged in front of a jury. The career of this witness statement was traced through the whole case file and the related encounters. Each mentioning or reference triggered new entries in the data-sheet. The sheet, therefore, gathered together the traces left by the casework. The traces represent, as well as perform, this ‘becoming’ and the activities necessary to fully mobilise it.

#### D. FORMALISING COURSES OF MOBILISATION

Tracing mobilisation will not lead to singularised stories. As in the example above, the recruitment of witnesses can easily be put side by side with the recruitments in other cases. Such perspective across single cases requires some kind of formalisation. Here are some formal themes one can find in the logs which make possible further inquiries into the spatio-temporal characteristics of mobilisation.

*Involvement and circulation:* Who gets involved the course of mobilisation? How, for instance, is a statement distributed within the defence ensemble before it is disclosed to the prosecution?<sup>24</sup> Who is excluded from the exchange? By following the log entries, one encounters a sequence of different circles: from one-to-one consultation to complex divisions of labour.

*Rhythm and frequencies:* How fast do statements circulate? What is the frequency of exchange in relation to the procedural stages? These queries led the researcher to examine pauses and clusters of case-work. They hint at lawyer’s decisions on how to allocate and prioritise work. They reveal what participants might experience as the routine or thrilling phases of a legal case.

<sup>24</sup> As I noticed during my fieldwork in a law firm, the defence fosters its narratives and legal arguments throughout the pre-trial in a protected environment. Here, they collect valuable points, draw them together as one coherent case, pre-test the outcomes and repair the remaining weak links. The opponent is left out from the exchange of not yet presentable pre-products: first ideas, gossip, blueprints and tactics.

*Social Careers:* The 'becoming' has a social career in terms of its rise (and perhaps fall) and its growing (or shrinking) weight and impact. Applying this insight, the researcher can identify several stages of acknowledgement and status attribution: from when it was just an item of gossip, to a hopeful line of enquiry, up to a vital component of the case in court. Most careers, however, are brief: statements stay on the level of 'just ideas', neither fixed nor disputed.

*The transformations of statements:* Throughout the course of preparation, the ways in which statements are delivered change. Statements are not just written and spoken, but whispered, drafted and read out. These shifts keep statements flexible and adjustable to local purposes. They also trigger the 'returns and turns'<sup>25</sup> of voices together with risks of incoherence. Statements are contingent in that it is hard to account for all their future applications. Representational projects are under threat especially by 'impulsive' statements, which explains why lawyers insist on drafting statements before they turn into public speech.

*The unsaid:* At the end of rather successful careers, the analyst might become aware of statements that were on the one hand carefully chosen to represent the case in court, but on the other hand did not make it to the witness box. This might call for some ethnographic interviewing about the concrete circumstances, and those who took the decision not to use this 'ready' piece of evidence in court.

*Micro-functionalism:* Each entry can be re-specified as solution for certain problems that occur during mobilisation. A completed log, read in this way, implies inventive queries for related projects of mobilisation. Does the problem that is worked on during mobilisation A occur in mobilisation B? If so, how is it solved (differently) in both cases?

The analysis of courses of mobilisation provides some potentials for a cross-comparative perspective. Crucial here is the hypothesis generating inventiveness of the researcher. Beyond case-related story-telling, there is the need to create analytical devices that open up the micro-perspective. The data logs suggested above are just a starting point on the way to formalisation and generalisation.<sup>26</sup> It remains the most challenging task to change from the single-case perspective to a cross-case or even cross-cultural perspective.

<sup>25</sup> De Certeau, 1984, above, n 8, at 156.

<sup>26</sup> See as well the three-dimensional maps invented by time-geographers and discussed in Giddens' theory of structuration.

## E. THE SPECIFICITY OF THE DATA-BASE

These methodical instructions are, unfortunately, not without problems. They were developed for an English context—and based, therefore, on the body of data produced by this particular legal discourse. It is already clear that documented case-work varies considerably according to the level of court-systems (in this case, there were big differences between files for cases heard in the Magistrates' and Crown Courts). It also seems unlikely that another court-system will provide the same kind of inscriptions and files. This appears, from a comparative point of view, highly problematic. A study that looks at another legal setting will have to develop its own data-sheets and ways of completing them. There is no such thing as a standard method for all legal proceedings.

Mobilisation refers to an inscription apparatus that produces specifically formatted statements, such as the records in a case-file. It is worth asking why the English defence file provided such a 'rich resource' for the purpose of tracing mobilisation? How did the researcher's purpose meet with the lawyers' determination to organise, order, document, and report her/his ongoing case-work? Are there, to modify Garfinkel's study of record-keeping in hospitals, any 'good reasons for *good legal records*'?<sup>27</sup> A few observations can be made about defence files in Crown Court cases:

*Accounting:* In the defence file, the solicitor in charge of the case employs a standardised system of book-keeping to ensure the accounting of the law firm's expenses and the granting and calculation of legal aid. According to this system, solicitors are asked to document all casework that takes longer than six minutes. These units—of telephoning, reading and writing letters, perusing the file and drafting statements—are recorded and later quantified for billing purposes. For this reason, one finds also work documented that does not lead anywhere: such as investigating offhand rumours or dirty gossip, or making careless presumptions in an early assessment.

*Time-management:* The lawyer in charge uses the file to reconstruct *what* is done so far and *what* needs to be done in the near future. Work that needs to be done is prompted by solicitors' diary notes, printed out and delivered every morning by the secretary. (The solicitor relies on these probably more than on his or her own memory.) The file's order and transparency are supposed to guarantee that the lawyer meets the many expectations, deadlines and duties that go along with defending a Crown Court case.

<sup>27</sup> H Garfinkel, "Good" Organisational Reasons for "Bad" Clinic Records' in H Garfinkel, (ed), *Studies in Ethnomethodology* (Englewood-Cliffs, NJ, Prentice-Hall, 1967) 186.

*Accumulation:* The file is the object and source of casework. It secures, organises and pays out earlier investments. Day-to-day casework is principally about 'keeping the file in order' and 'doing what the file asks for (or requires)'. Before the trial, defence work largely takes place as interaction between the file and solicitor indicating the further transactions to be taken (with the client, witnesses, barrister and CPS). From this, strings of correspondence come together in the solicitor's office, the ensemble's centre of collaboration. They build up the case's archive guiding the next decisions to take.

*Division of labour:* Crown Court cases are handed over by the solicitor to a barrister, hired and instructed by the law firm to represent the defence in court. The barrister receives the main information for court through the 'brief to Counsel'. The division of labour (between solicitor and barrister) creates more transparency of the case related tactics, inquiries and decisions. The legal file is, in many ways, a semi-public object, very different from the ethnographer's field-notes. It is assembled and kept for a whole team conducting the case-work and accounting for it.

*Will to completeness:* 'Incompleteness' was a usual complaint or problem made about files, although they seemed to me—when compared to my own notes and narratives—amazingly comprehensive. However, solicitors are never fully satisfied. They complain: 'Where is the response to our letter?', 'Why is the statement still not signed?', 'When do I need to finish this brief?' Files are constantly accused of being 'incomplete' and therefore 'bad', which stimulates further work on the case.

The specificities of the data base raise a more general (methodological as well as political) problem that has been described by Star and Strauss as 'hidden work'.<sup>28</sup> There is a lot 'private' work done by clients, witnesses or their peers that, due to the files' system of accountability, never finds its way into the legal records. This 'undocumented' work may entail his or her illegal 'threatening and intimidating of the others' witnesses', his/her worries and fears, some private inquiries or how witnesses learn details by heart. The researcher may find glimpses of this hidden work in the all-too apparent tensions, concerns and fears raised during a legal case, and in the 'emotional' work of taking risks, overcoming worries, staying cool or restraining rage and anger. From the files, one can only imagine what it means for the client to get involved in the legal process:

Clusters and tension: Shortly before trials, one can witness the rising tension even amongst the professionals: a tighter schedule, an increasing

<sup>28</sup> S Star and A Strauss, 'Layers of Silence, Arenas of Voice: The Ecology of Visible and Invisible Work' in (1999) 8 *Computer Supported Cooperative Work*.

assiduousness, an escalating busyness, a higher rate of correspondence, meetings and telephone consultations. Workdays become breathless before the 'day of reckoning'. My own lists to fill in the circulation of messages show clusters before and during the days in court. The same 'clustering' of activities and tension might be true for defendants. They are unable to sleep the night before, because of the hard work of recalling their testimony. They have been told by their lawyers: 'Make sure you remember all of it! Do not confuse the dates!' In this way, the client is increasingly captured by the details of his or her own case.<sup>29</sup>

Performances in court are, hence, not just in danger of, in legal and technical terms, being badly prepared, but of being thwarted by, so to speak, the 'human factor'. In these ways, mobilisation hinges on partially unknown, mysterious qualities of allies, lying beyond the realm of the documented file. The achievements depend on aspects that are forcefully kept out, excluded, denied or rejected. In this way, legal work relies on 'hidden' dependencies and alliances, which can sometimes become 'weak links' of mobilisation, and undermine a carefully prepared case.

#### F. SOME CONCLUSIONS

*Tracing mobilisation* is by no means a new approach in social science or discourse analysis. Many of the ideas presented here stem from the empirical work done in interactionist ethnography, ethnomethodology and Actor Network Theory. Here, I would like to finish with some observations on the significance of this research methodology for socio-legal studies. How can it profit from this perspective?

The proposed research design, first of all, implies a critical reflection on socio-legal studies and its dominant research foci. How is it that either talk or text, either the drama in court or the rules of the books occupied socio-legal attention?<sup>30</sup> Does one, in the text-book manner, need to declare the primacy of either oral or written language in legal discourse? The analysis of mobilisation allows one to transcend these debates.

Despite the affinities with workplace studies, ethnomethodology, and Actor Network Theory, the analysis of mobilisation is not identical to these

<sup>29</sup> This resembles Luhmann's observations on the increasing entanglement of the accused in the legal procedure and the rules that go with it. He or she buys, one might say, into the game and builds up a specific procedural history full of self-made decisions, victories and losses for which she/he will be held to account. See N Luhmann, *Legitimation durch Verfahren* (Frankfurt aM, Suhrkamp, 1989).

<sup>30</sup> See J Conley and W O'Barr, *Just Words. Law, Language and Power* (Chicago, IL, University of Chicago Press, 1998). For the active role of texts in a legal setting see M Lynch and D Bogen, *The Spectacle of History—Speech, Text, and Memory at the Iran-Contra Hearings* (Durham, NC, Duke University Press, 1996).

fields of research. Tracing mobilisation does not directly aim to grasp the social organisation of the law firm, the solicitor's workplace, or the legal apparatus. It, moreover, focuses neither solely on local events, nor on the institutional talk. But what then does it offer? As I understand it, tracing mobilisation makes accessible representational projects in their socio-material course. The course includes various sites and layers of social praxis such as accumulative file-work, extended correspondence, or relatively self-driven events. This multi-sitedness directs the formation of legal discourse, and the involvement of subjects and objects.

As a micro-sociologist, I was firstly interested in how court hearings are interactively accomplished. This ethnomethodological query opened up 'regular' legal practice as contingent craftwork. It, furthermore, opened up the formation of (public) legal discourses in time: court hearings are achieved due to a temporal and personal division of labour; they are pre-configured but only partially predictable. One can go even further, stating that trials rest on the simultaneity of assorted temporalities and stabilities/flexibilities: from CA's turn-taking-machinery, to the pre-established narratives, to the accumulative files, to the court's manuals and the law codes. The analysis of mobilisation teaches about conditions of participation and involvement, and how voices are tuned on the way.

The temporal sensitivity of the proposed research design will contribute to a better understanding of the practical relation of pre-trial and trial, preparation and performance<sup>31</sup> in different jurisdictions. Mobilisation informs socio-legal studies about the diverse statuses of adversarial or inquisitorial, and lower or higher courts within projects of representation. Used in this way, the analysis of mobilisation provides useful frames, data and analytical tools for grounded socio-legal comparison.

<sup>31</sup> Preparation continues during the hearing. For example, the barrister takes notes that help in preparing the upcoming cross-examination or closing speech.



