TEMPORAL DENSITY IN COURTROOM INTERACTION: CONSTRAINTS ON THE RECOVERY OF PAST EVENTS IN LEGAL DISCOURSE

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Data for the present study were drawn from an ongoing investigation of a murder trial, naturalistically observed throughout a six-month period, including pretrial hearings, and grounded in the microanalytic, turn-by-turn analysis of a courtroom transcript exceeding 1,000 pages. Attention is given to how courtroom interaction may be understood as a temporally organized and constrained social activity. Guided by formal legal procedures, lawyers and witnesses collaborate by time-traveling into past times and places, through present interrogation and testimony, for future deliberation and sentencing. These temporal and spatial shifts are similar to more casual conversations, yet also unique due to the restrictions imposed on questioning and storifying practices. An examination of these comparisons leads not only to an enhanced understanding of the communicative functions and language devices used to time-travel within the judicial system, but also reveals the inherent tensions involved as the temporally dense past is transformed from a knowledge resource into the predominant topic of the present. A closer inspection of the past-present interface suggests that present ambiguities of natural language often confound the distinction between factual and perceived versions of past realities.

C OURTROOM interaction is a temporally dense achievement. Past, present, and future realities are socially organized in several unique ways. In order to disclose and examine obvious as well as more ambiguous features of the *past* involving an alleged criminal activity, lawyers interrogate and witnesses testify to produce the bulk of *present* communication. The rendering of *future* jury verdicts and sentencing decisions by the court, each occurring in its present allotted time within the sequence of trial proceedings, nevertheless reflect how visions were constructed and conclusions were drawn from observed courtroom interactional attempts to reconstruct the reality of past, typically unobserved, settings and circumstances.

Toward an understanding of how this communicative work gets done, we have been examining the temporal organization of everyday casual conversations (Beach, 1983; Beach & Japp, 1983). Our initial concerns rested with how speakers and hearers routinely reference past, present, and future issues, objects, events, and episodes in the process of negotiating understandings. This process of cycling among time dimensions has been labeled conversational *time-traveling,* and the communicative method used to time-travel has been termed *storifying.* It is our contention that present, here-and-now interaction is meaningful only in relation to the past and future and that storifying is the language vehicle through which interactants time-travel as they make points, reveal opinions, plan actions, and report ordinary experiences.

Since storifying language can do no more than sketch out selected features of past experiences and future expectations, time-traveling participants must constantly work with unspoken or tacit time-reference presuppositions. Thus, such normal occurrences as reconstructions of the past provide for the possibility of asking

questions regarding not only how private and shared knowledge regulates speakerhearer coherence-be they reminiscing buddies or courtroom participants-but also how such reconstructions are meaningfully constituted in diverse social settings.

As the present study focuses on courtroom interaction as a temporally organized and constrained social activity, it is useful to notice how courtrooms are governed by a variety of formal legal procedures. These procedures guide and direct how lawyers prompt witnesses to time-travel into the past for present sense-making and future deliberation and sentencing. It will be argued that courtroom time-traveling is similar to more casual conversations, yet also unique owing to the restrictions imposed on questioning and storifying practices. An examination of these comparisons leads not only to a more precise understanding of the functions and devices of time-traveling within the judicial system, but also to the inherent tensions involved as the past is transformed from an unspoken knowledge resource into the predominant explicit topic of the present. This orientation begins to locate the interface of communication and law within situated time-traveling actions. By describing and explaining how natural language is used as a traveling mechanism, courtroom interaction can eventually be boiled down to a series of formal structures mirroring the temporal uniqueness of such an ordinary yet complex social setting. Findings of this sort possess both theoretical and practical significance, as discussed in the conclusion of this study.

NATURALISTIC OBSERVATION: BACKGROUND AND METHOD

Data for the present study were drawn from an ongoing investigation of a murder trial, naturalistically observed throughout a six-month period, including pretrial. During this six-month period, the author made repeated observations of proceedings within the courtroom as well as in the hallways before and after proceedings and during breaks. These observations afforded the opportunity of taking notes, monitoring the defendant's and a variety of witnesses' behaviors, and speaking with individuals either directly involved with the proceedings or observing for other reasons (e.g., reporters from local newspapers). Discussions were also held with lawyers and judges about trial developments, although these individuals were careful not to discuss particular issues or strategies that might endanger their roles within the case.

Although most murder trials involve some degree of mystique and intrigue, this trial was particularly interesting for several reasons. First, the setting of the murder was a licensed boarding and custodial foster-care home. The approximately 200 residents of this home had been released either from state institutions for the mentally ill or placed in the home by families who felt the resident was psychiatrically disabled. The defendant in this case, a 53-year-old male, had been released from six different mental institutions in the past 12 years. Although diagnoses of his mental stability varied, several experts tended to agree that he displayed schizophrenic tendencies and had a seizure disorder. He lived with three other residents in an apartment in the boarding home. Before May 19, 1980, the defendant had been involved in several arguments with a female roommate over television viewing habits. These arguments spiraled to the point that he fatally stabbed his roommate.

Second, the guilt of the defendant in this case was never in doubt, since two witnesses directly observed the stabbing sequence. Regardless of his mental instability, the defendant was found guilty of first degree murder and sentenced to life imprisonment. This case is currently under appeal.

The data presented in this study are drawn from the microanalytic examination of a courtroom transcript exceeding 1,000 pages. Availability of the turn-by-turn, transcribed organization of lawyer/witness/judge interaction allows for a close inspection of how formal legal processes are themselves a breed of conversational involvement. The discourse segments extracted from the courtroom transcript are intended as supporting evidence for this assumption.

Readers might usefully be instructed to notice, first, how transcribed segments can be identified by paying careful attention to microtemporal references *within* single utterances and turns-at-talk. Questions can then be raised as to the kinds of interactional work being performed by simple past (e.g., "was," "did," "were"), present (e.g., "is," "now," "let's"), and future terms (e.g., "going to," "will be") and how these terms function as guideposts for determining the time domain focused upon by a speaker at a given point in time. Second, these noticings can next be expanded *across* multiple turns-at-talk, and here we see that collaborative timetraveling leads to shifts within and across levels of time throughout interrogation and testimony. It then becomes possible to identify the various functions of past, present, and future time

references as essential ingredients in the judicial process and to focus upon the temporal density and chronological thickness of past (reconstructed) events and actions.

THE ROLE OF STORIES IN REALITY RECONSTRUCTION

Within the proposed framework, social reality in the courtroom both structures and is structured by the monitoring of temporal "shifts" as the past is reborn into the interactional present. However, a more general interest in courtroom interaction has been motivated by a corpus of fairly recent research efforts (Atkinson, 1979; Atkinson & Drew, 1979; Bennett, 1968, 1979; Lynch, 1982; Maynard, 1982; Nofsinger, 1983; O'Barr, 1982; Pollner, 1979). These studies share a commitment to the study of natural language in legal settings. Especially relevant to the present investigation is Bennett and Feldman's (1981), *Reconstructing Reality in the Courtroom*. In their work the complexity of courtroom interaction is boiled down to a series of manageable observations about storytelling practices embedded within a framework within which the production of "justice"-frequently viewed as an ivory-tower, bias-free process-is grounded in everyday knowledge and discourse structures. The very possibility of courtroom interaction making sense to jurors and witnesses, basically untrained in legal procedures yet competent in the use and interpretation of natural language, motivated Bennett and Feldman to search for "some implicit framework of social judgment that people bring into the courtroom from everyday life" (1981, p. 3). This search has led to the recognition that trials are organized around the telling of stories by witnesses, induced by lawyers' questioning maneuvers, to accomplish reality reconstruction.

From Bennett and Feldman we begin to see that stories possess at least three functional and interwoven properties. First, stories are viewed as narrative structures, meaningful because they offer focused descriptions of circumstances having some bearing on an alleged illegal activity. Second, as capsulized versions of reality, stories function to "pick up an incident and set it down in another social context" (1981, p. 46). In other words, stories symbolically represent those spatial and temporal features monitored by the witness at a given point in time and space. Finally, stories are communication techniques or devices for revealing interpretations about specific settings and/or characters, thus providing connections between
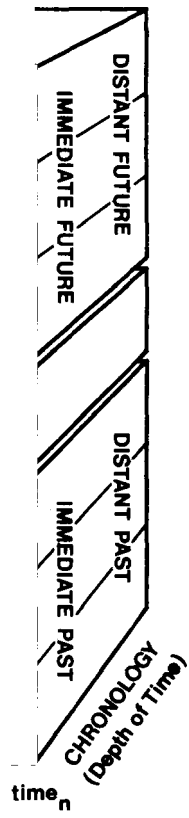
possible motives, time frames, and plots. As Bennett and Feldman note:

Stories are systematic means of storing, bringing up to date, rearranging, comparing, testing, and interpreting available information about social behavior. As witnesses deliver testimony bearing on an alleged illegal behavior, a juror operates much like someone reading a detective novel or watching a mystery movie replete with multiple points of view, subplots, time lapses, missing information and
ambiguous clues. (1981, p. 5)

Bennett and Feldman have constructed a heuristic foundation upon which further studies of communication, time, and social reality might be based. A general theory of courtroom communication benefits from the study of how lawyers and witnesses create interpretive and developmental (i.e., chronological) contexts for purposes of understanding the "factual truth" of people's past experiences of places, objects, and events. Moreover, the importance of "the story" as the basic method for establishing time frames (beginnings and endings) surrounding a past experience, and for helping to situate disorienting time lapses within a coherent framework or plot, are pragmatically useful insights explaining courtroom communication.

A Move toward Storifying as Time-Traveling

To expand such a theory, however, further exploration is needed into the complexity of time and space as multilayered, communicative phenomena in the

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DISTANT FUTURE

IMMEDIATE FUTURE

DISTANT PAST

IMMEDIATE PAST

CHRONOLOGY
(Depth of Time)

time_n

F3. IMPOSSIBLE FUTURE Fictions, Fantasies

F2. IMPROBABLE FUTURE Projections

FI. PROBABLE FUTURE Plans, Goals

PRESENT REALITY The Here-and-Now

I

P1. FACTUAL PAST   History

P2. PERCEIVED PAST   Reconstructions, Events-As-Interpreted

P3. FICTITIOUS PAST   Fictions, Fantasies

TEMPORAL DURATION (Turn-Taking Sequence)

FIGURE 1. TIME-TRAVELING

courtroom. Figure 1 visually depicts time-traveling and provides an alternative framework for understanding the reconstruction of past experiences via present courtroom interaction (Beach & Japp, 1983, p. 878). Within the three-dimensional time-traveling model, *temporal duration* might refer to a specific segment of interaction or an entire court proceeding as lawyers and witnesses time-travel together. The *chronology* dimension symbolizes the extent to which interactants penetrate the past or future, or possibly focus upon the immediate present. Throughout an interrogation, for example, a lawyer might request information about a witness's childhood, move to his or her current employment, and then shift back to the scene of an alleged illegal activity. Such temporal movement occurs across several interrelated *levels of time.* All social interaction occurs within the present (Bergson, 1965; Heritage & Watson, 1979; Mead, 1932; Sharron, 1982). Yet it is possible to travel into past or future, as follows: P1 is factual and may be documented (e.g., date and specific location of an observed crime); P2 is interpretive and thus vulnerable to multiple points of view (e.g., psychiatrists' evaluations of a defendant's earlier state-of-mind); P3 is grounded in fantasy (e.g., "What might or could have occurred, but didn't"). As a temporal counterpart, it is seen that F1 represents realistic plans and goals, F2 improbable plans and goals (e.g., "What we could but probably won't do"), and F3 fantasized activities that, for all practical purposes, will not be attempted and/or cannot be accomplished.

To describe how coherence and understanding are attained as lawyers prompt witnesses to time-travel via storifying, it is useful to view each utterance or utterance cluster as *a context space* (Reichman, 1978). Throughout interrogation and testimony, the degree of coherence is a result of integrating active context spaces. A shift in time reference and/or topic, for example, symbolizes a set of explicit or implicit instructions for the hearer(s): Set aside all utterances relevant to the present topic (or level of time); I wish to focus upon a past, present, or future context space (Reichman, 1978, p. 289). As these shifts occur within the courtroom, the active context space functions to set up and orient interactants to features (issues, events, episodes, objects) regarding an alleged illegal activity.

It is thus common for lawyers to rely on questions as devices for building context spaces within which time domains may be situated, as in (1):

(1) DE:P-Prosecution Witness #1, p. 5.'
   Q: Does that photograph fairly and accurately show her appearance much as she was just immediately prior to May 19,1980?
   A: Yes, I'd say so.

Similarly, questions may orient witnesses to specific spatial arrangements of past places and objects:

(2) DE:P-Prosecution Witness #1, p. 11.
   Q: Do you remember where in the kitchen you kept these items?
   A: If I remember right-I haven't been up there for a long time-but if I remember right, it was in the big kitchen drawer on the left-hand side of the sink.

It is also normal for lawyers to *preface* their time-traveling questions:

(3) DE:P-Prosecution Witness #6, p. 218.
   Q: Now, I'd like to take you to the day of May 19, 1980. Do you recall whether or not you were working there at 2445 R Street on that day?
   A: Yes, I was.

just as the switching of time references and topics is ordinary:

(4) CE:D-Prosecution Witness #8, p. 293.
   Q: Was the door open when you went out? A: I couldn't say for sure, sir.
   Q: Before you went out of the room, did you hear any commotion outside?

A: No, sir.
Q: Have you ever been to a doctor about your hearing?
A: No, sir.

Examples (1)-(4) only begin to evidence how reality reconstruction is a collaborative process of time-traveling through a wide variety of context spaces. In most simple terms, as lawyers call each witness to the stand, the same general invitation is offered: Let's travel through time and space together.

Compared with time-traveling in other face-to-face encounters, courtroom interaction may be described as interactionally constrained by qualitatively different types of temporal restrictions (see Atkinson & Drew, 1979). In this light, lawyers' invitations to witnesses might best be interpreted as orders or commands, since witnesses may be found in contempt of court if they fail to appear or do not behave appropriately in the courtroom setting. That which constitutes "appropriate" conduct, however, is open to interpretation in many courtroom situations. For example, within the trial under investigation, the defendant would rock back and forth in his chair at an accelerated pace, ask with a loud voice for cigarettes and coffee, and at times even stand and declare that he needed to go to the bathroom "in a hurry." These behaviors were tolerated with only minor scoffings from the judge and the defendant's attorney.

A brief examination of courtroom constraints is necessary to enhance our understanding of the temporal organization of legal discourse.

INTERACTIONAL/TEMPORAL CONSTRAINTS

Formal legal procedures may be understood as a priori rules intended to ensure the likelihood that cases will be handled both efficiently and fairly (see Atkinson & Drew, 1979; O'Barr, 1982, pp. 118-119). These procedures are evident in the sequential organization of legal discourse, influencing the temporal flow of questions and answers, and the resulting kinds of social realities defining the interactional context. As a "speech exchange system" (Sacks, Schegloff & Jefferson, 1974), the courtroom is predominantly organized around question-answer sequences. Following Sacks et al.'s discussion of the chaining rule, it is seen that such structures as adjacency pairs (e.g., question-answer, request-grant, invitation-acceptance) function in such a way that first pair parts often obligate and set up second pair parts (Beach & Dunning, 1982; Jackson & Jacobs, 1980). Within the courtroom, lawyers' questions are prompts for witnesses' reconstructions as speaker turns are overwhelmingly distributed in alternate fashions. The sequential ordering of these turns is relatively fixed (even to the point where if a witness asks a question, court reporters tend to "label" such utterances as answers). However, the forms and contents of questions and reconstructions vary considerably (Philips, in press). But how does such a turn-taking system compare with other storytelling contexts?

One useful strategy is briefly to contrast the speech production in the courtroom with doctor-patient medical encounters. Drawing upon the work of Sacks et al., Frankel (in press) examines how medical interviews fall somewhere between the

structural organization of casual conversation and ceremony. Conversation is "ceremonial" to the extent that turn order, length, size, and content are *pre-specified* and thus constrain not only *what is* said but *how* the speaking is practically accomplished. Wedding ceremonies exemplify highly structured, pre-specified rituals. Frankel's evidence strongly suggests that medical interviews, however, are restricted by client/patient dispreference for initiating queries. Similarly, West (1983) discovered that "of the 773 questions identified in 21 medical exchanges between patients and family practitioners, only 9% were initiated by patients" (p. 98). It is apparent, therefore, that the constituent features of current interviewing practices in medical settings "create a type of deference structure" as patients disclose problems and illnesses (Frankel, p. 6).

A similar deference structure exists in the courtroom, yet the courtroom appears more restricted and ceremonial than medical (or most other) interview settings. Questions are the expected speech act to be used by lawyers as they gather information and seek to maximize persuasion toward their version of a past reality. And witnesses are expected to respond to lawyers' queries by disclosing their knowledge. Although witnesses do at times use questions to seek clarification and to request permission to elaborate portions of a story, their questioning privileges are minimal just as lawyers are

not obligated to provide substantive answers. Moreover, witnesses are not allowed to time-travel spontaneously into their own realm(s) of past experience (O'Barr, 1982, pp. 76-81), unless such storifying falls within an "acceptable" (legally correct) realm of response to a lawyer's question. The presence of a jury necessitates a careful, systematic, and gradual development of past stories and plots. To allow such spontaneous storifying would be to relinquish control of particular features of past realities in line with prosecution and defense arguments. Since the success of a courtroom argument is dependent upon creating and maintaining control of preferred versions of past realities, courtrooms are inherently *adversarial* communication systems. It is thus crucial that lawyers exert desired control in order to better construct their version of a structurally complete and believable story.

Because courtroom stories are constructed in a step-by-step fashion, lawyers' questions frequently obligate a yes or no answer by the witness. Danet (1980) has suggested that yes-no questions tend to be more coercive than a variety of "wh" questions (who, what, when, where, why, which, how) and also impose more structure on the range of alternative witness responses. As Philips (in press) notes, the interdependence of questions and answers is apparent in the frequency and degree to which questions bear resemblance to the utterances following them. Lawyers overwhelmingly maintain control by building on each answer as a set-up for the following question and, conversely, by using questions to restrict each following utterance. Yet, as Atkinson and Drew (1979) have observed, witnesses may also set up lawyers by pre-noticing (see Beach & Dunning, 1982) an allocation of blame by a lawyer, resulting in justifications, excuses, and the answering of questions through vague and indirect language by the witness.

As a method of story production, however, this interlocking of utterances only remotely resembles storytelling practices in casual conversations. **In** everyday noncourtroom settings, there is a tendency for the teller to maintain more control by engaging in such practices as prefacing and projecting the telling before its occurrence, employing various strategies to begin (enter) and terminate (exit) a telling, and by spontaneously offering a telling as a result of being triggered by a

given word, phrase, or indirect thought (Jefferson, 1978; Ryave, 1978; Sacks, 1970-72, 1978). It is also normal for recipients of the telling to interrupt spontaneously, seek clarification, or collaborate by offering their own related telling as stories are chained or clustered across an interactional sequence. Furthermore, more casual conversations tend to be replete with often detailed excursions into the future, whereas the future has a limited role in legal discourse (as discussed more fully in the following section). These possibilities are not generally available to witnesses as they are being interrogated by lawyers.

Nor is it possible, in most cases, for witnesses to include in their testimony information obtained from other individuals. Though it is exceedingly normal in casual conversation to reconstruct past events by relying on others' statements or tellings (often the basis of gossip and rumor, for example), such practices in the courtroom are deemed *hearsay* and thus become subject to objection. Example (5) illustrates such an instance:

(5) CE:D-Prosecution Witness #6, p. 257.
    Q: And what did you do with him?
    A: We took him to the _____ General Hospital.
    Q: And how long did he stay there?
   A: He stayed very briefly. They sent him back home, and then they subsequently called us and said that they'd
     PA: Your Honor, excuse me, I'd object to anything that they said as being hearsay. COURT: Yes, anything they
   said would be hearsay. A: Well, he had to be taken back again.

     COURT: What? You're not supposed to answer that. The answer is stricken. The jury is instructed to disregard it.

Objections (e.g., hearsay, foundation, relevancy, admissability of evidence) are strategic methods that further constrain witnesses' testimony. They may be used to raise questions for jurors about the given competency of a witness, the chronology of events associated with a past time or setting, or even the sense in which a story segment is believable and accurate. Bennett and Feldman observe:

Objections are ways of confusing or casting doubt upon evidence that is otherwise clearly defined and reliable. They are probably the most effective tactic to cloud evidence that is defined by competent witnesses who are sure of their testimony. Objections have the potential to affect judgments about evidence and the underlying story structure of the case. (1981, p. 134)

Owing to the constraints of the courtroom context on witnesses' testimony, jurors must constantly seek to understand the restrictions and coherence of prosecution and defense "stories." This is difficult and

frustrating work. And it should come as no surprise that witnesses often report that their "full" story never emerged during testimony (O'Barr, 1982, p. 114). Lawyers often focus only on isolated fragments of larger scenarios before dismissing the witness from testimony. Numerous features of past experiences, therefore, remain tacit and unaccounted for throughout the trial-many of which *could* be crucial to a more precise grasp of the interpretations and behaviors surrounding a possible crime. For these reasons and more, "cases are little more than highly stylized dramatizations of reality.... In almost any trial there is the uneasy possibility that neither case captures the subtle reality of the incident" (Bennett & Feldman, 1981, p. 93).

To summarize, courtroom time-traveling is constrained not only because lawyers tend to control interrogation and testimony by pre-specifying appropriate next answers in their questions, but also because witnesses do not typically initiate,

administer, or maintain control of their own stories. The result is a kind of deference structure whereby gaining access to certain versions of past stories is crucial to the success of lawyers' present arguments.

The time-traveling orientation developed herein requires that attention be given to two additional temporal concerns: (1) the functions performed and devices used to travel into past, present, and future time domains throughout trial proceedings; and (2) how the difficulty of retrieving past realities is evident within the often vague and ambiguous discourse of trials. We now turn to these final two issues.

FUNCTIONS AND DEVICES OF FUTURE, PRESENT, AND PAST

The communicative functions performed by past, present, and future time references, in and through the language devices used to structure courtroom interaction, vary from time-travel in conversations examined thus far. **In** everyday casual storifying, for example, we have discovered that it is exceedingly normal for speakers and hearers to travel into the future for such reasons as coordinating plans, evaluating goals, revealing expectations, and even collaborating on fantasized topics to entertain and establish relational bonds. Within the trial being investigated, however, future references appear to serve a comparatively minimal role since these freedoms are constrained. As Table 1 indicates, future time references constitute only two percent (186 utterances) of the entire interaction (9,500 utterances).

Of the seven proposed levels of time in Figure 1, it was discovered that there were no references to the fictitious past (P3) and only several references to the improbable and impossible future (F2 and F3) throughout the entire trial. Rather, temporal movements occurred predominantly within the factual (P1) and perceived (P2) past with intermittent present (here-and-now) formulations. As discussed in a following section, the bulk of past reconstructions is embedded within interdependent future and present context spaces.

Note also that past, present, and future actions are not mutually exclusive phenomena, as apparent within several subsequent trial segments (see Examples, 7, 8, 11, 15). The courtroom is similar to more casual conversations in this regard, namely, the tendency for speakers to time-travel both *across* and *within* turns-at talk (Beach & Japp, 1983, pp. 875-877). Part of the temporal complexity of courtroom interaction rests with the fact that both single utterances and longer turn-taking sequences function to orient participants to various times and places (i.e., context spaces). A closer look at judges' instructions, for example, suggests that judges may display present and future concerns while instructing witnesses about appropriate conduct and/or reminding jurors of their commitments and future responsibilities.

TABLE 1
APPROXIMATE PERCENTAGE OF INTERACTION OCCURRING WITHIN
THREE TIME DOMAINS

	Number of Utterances	Percentage of Interaction*
Past	8640	91%
Present	674	7%
Future	186	2%
Total	9500	100%

*Rounded to nearest percentile

Similarly, a witness may travel across various layers of time in responding to a lawyer's question.

Future

The major functions of future references involve *procedural* and *instructive (i.e.,* forecasting) sequences of action. Lawyers' opening statements, for example, forecast for the jury and court what they intend to prove in representing the plaintiff and/or defendant, whereas judges instruct jurors regarding the disclosed facts of the case and the laws pertaining to the case before upcoming jury deliberation. A different form of instruction was given to the jury immediately before each courtroom recess:

(6) Court, p. 647.
> COURT: Think about that discipline that's so important to be a good juror. Don't discuss the case among yourselves or with anyone else, nor permit anyone to discuss the case with you in your presence. Continue to keep an open mind. You may be excused now until 9:00 Monday morning.

At times, lawyers would also request witnesses to perform certain upcoming actions, which would lead witnesses to formulate a present observation and/or grant the requested action:

(7) DE:P-Prosecution Witness #4, p. 136.
> Q: Could you point out where he's sitting and describe what he's wearing?
> A: Well, he's sitting right in front of me, over there by Mr. D_____. He's wearing a brown leather coat and green slacks.

(8) DE:P-Prosecution Witness #1, p. 39.
> Q: And you mentioned the toaster. I'm going to hand you now a black pencil. Would you place a circle around the toaster?
> A: (Witness complies.)

Although infrequent, references to the improbable and impossible future (F2 and F3) proved useful in understanding the defendant, a mentally disturbed individual, in ways that clearly reveal his delusions about the future. A total of five such references were uttered by the defendant, two of which are:

(9) Discussion held in chambers, pp. 470-471.
> DEF: Could you spare coffee?
> COURT: I can spare it; it's not that. I've been buying you cigarettes out of my own pocket. DEF: Out of your own pocket?
> You said it was funds you were provided for that. COURT: They were out of my pocket.
> DEF: Thank you, Your Honor. I appreciate that. I'm going to be a minister. COURT: We've got to get this trial
> out of the way before you can be a minister. DEF: And get married, have a good time.
> COURT: M_____ , let's calm down.
> DEF: Okay, Now, I'm calmed now.

(10) CE:P-Defense Witness #7, p. 654.
> Q: Would you say you're a pretty religious person?
> A: Yes, sir, I want to be a minister and give half of my money to the poor people. If you seen them poor people and them children starving to death and being killed, you'd want to help them, too.

Present

Formulations of the present generally served *monitoring* and *maintenance* functions. Lawyers' objections and the judge's ruling were oriented to here-and-now

interaction, but only in reference to past occurrences:

(11) DE:D-Defense Witness #3, p. 603.

Q: And what did Mr. S_____ say to the congregation on that occasion? P: Your Honor, I'd object on foundation. COURT: Yes, sustained. Let's back up and fix it in time and place.

Judges would also take an active role by maintaining order through bench discussions:

(12) DE:P-Prosecution Witness #1, p. 16.
COURT: Let's hold it just a moment, please.
P: May we approach the bench?
COURT: Yes, counsel may approach the bench. (Whereupon counsel for the parties approached the bench, and an off-the-record discussion was held, in low tones, between the Court and Counsel.)

Judges would, in addition, take an active role by interrupting witnesses and requesting that they abide by specific courtroom procedures:

(13) DE:D-Defense Witness #7, p. 647.
P: Your Honor, I'd object to the hearsay portions of that answer and ask that they be stricken. DEF: Well, it's the truth.
COURT: Just a minute, M_____. Okay, the hearsay portions, that is, what the people have said, there is an objection to that, and that objection has to be sustained, M_____ . And, as to what the doctors have said or you say the doctors have said, the jury is instructed to disregard that. Now, the way we proceed is if you'll let your attorney ask a question and then answer that, listen carefully
and then answer that question. Can you concentrate and try to do that, M_____ ? DEF: Yeah.

Focus can also be drawn to the present status of witnesses' lives and affairs. For example, such information as "present address' is frequently and intentionally placed on the court record for purely pragmatic reasons such as providing the court with an address for sending payment (e.g., expert witnesses). The recurring device for attaining such information consists of questions prompting a yes or no answer:

(14) CE:D-Prosecution Witness #1, p. 20.
Q: Now, is the place you're living presently, 2430 Q Street, also owned by M_____ 0 _____ A: Yes.

Past

As noted throughout this study, all past references serve *a reconstruction* function and constitute 91% (8,640 utterances) of the total interaction. Lawyers would utilize a variety of yes-no, "wh" (who, what, when, where, why, how), and clarification questions to retrieve past information. Reconstruction questioning sequences were organized through both fragmented, brief answers:

(15) DE:P-Prosecution Witness #4, p. 139.
Q: How was Mr. S_____ acting when he went through the line that day?
A: Very agitated.
Q
: And what do you mean by that?
A: Well, he's nervous. He's a very nervous person, but he was just very agitated that day and very upset, angry.
Q: Did it appear to you that he knew who you were?
A: Yes.

TABLE 2

SUMMARY OF TIME-TRAVELING FUNCTIONS AND DEVICES

Temporal Reference	Communicative Functions	
1. Future	a. Procedural/Instructive	a.
(2% = 186 utterances)	b. Performance of an Action	
	c. Delusions	
		b.
		c.
	Language Devices	
Lawyers' opening statements		
judges' instructions to lawyers, witnesses, and jury members Requests		
Projections/Fantasies		
2. Present	a. Monitoring and Maintenance Formulations	a. Lawyers' objections Bench discussions Judges' instructions to lawyers, witnesses and jury members
(7% = 674 utterances)		
3. Past	a. Reconstruction	a. Yes-No, "Wh" (Who, What, When, Where, Why, How) and clarification questions Fragmented/Narrative answers
(91 %n = 8640 utterances)		

and more elaborated narrative responses by witnesses:

(16) DE:P-Prosecution Witness #11, pp. 382-383.
    Q: And you're pointing to that for the jury's benefit right now?
    A: Right here, and the clavicle or the collarbone is the bone in the upper portion of the chest, and
       the injury went behind the collarbone ... (Witness continues to elaborate on a stab wound for
       30 additional transcribed lines of testimony.)

In summary, courtroom interactants travel into the future, present, and past to accomplish specific communicative functions through a variety of language devices. These functions and devices are summarized in Table 2. However, questions remain as to how and why past reconstructions are potentially ambiguous and complex actions.

TEMPORAL DENSITY OF THE PAST

The past is comprised of a plethora of context spaces and is thus a temporally "thick" (see Geertz, 1973, pp. 8-10) domain, especially in the sense that the past is multi-layered and replete with intricate details which can only be glossed through witnesses' reconstructions. To reconstruct the past is, in a sense, an attempt to relive its moments and experiences; i.e., to recapture both the mundane and dramatic instances of human perception, choice, and action as best possible to serve justice. For witnesses possessing diverse knowledge, movement into the past is a "recycling back into" or a refraining of what once was or appeared to be a real lived-through experience. Though the past is often far removed in time and space, its impact on the present can nevertheless be immediate and even haunting:

(17) CE:P-Defense Witness #7, p. 660.
    Q: Did you see P _____ ?
    A: Yeah, she was out on the balcony.
    Q: Is there any way to get down from that balcony except going through the living room? A: No. I didn't mean to kill P
    _____ ; I'm sorry I did and regret it. Q: You're sorry now, aren't you?
    A: Always was sorry and regret it. If I had my way, I would have never killed her. I'm not a murderer. I'm not capable of that.
       The devil made me do it.

For lawyers who have researched the background of a case and repeatedly examined facts and stories, there is often little choice but to rely on what others have

told them about the past. This information is then applied to formulate a general case strategy as well

as specific (topical and temporal) questioning tactics. At some point, lawyers must experience for the first time certain details that others may or may not have experienced in past times and places. Such is the firsthand experience of trial lawyers: to evaluate and integrate others' storified experiences for purposes of re-creating knowledge and action as part of the present courtroom experience. The jurors are the carefully selected audience whose task is to deliberate over others' meta-level experiences, while the judge ideally administrates experiences within the interactional process by striving to ensure integrity through "fair and impartial" treatments for plaintiffs and defendants. Questions beyond the scope of this study might be raised, therefore, as to the extent to which highly qualified judges, lawyers, and witnesses utilize the gift of discernment: In what ways do they possess the ability to separate fact from fiction, deception from honesty in a search for past truths encapsulated within the present uncertainties of face-to-face interaction?

Tensions between Factual and Perceived Past

The necessary reliance upon natural language often confounds the distinction between factual and perceived versions of past realities (see P1 /P2 in Figure 1). Here it is seen that lawyers manage courtroom identity through questions frequently stated in unambiguous or overly certain terms-as though they are dealing with historical facts *not* susceptible to doubt, vagueness, multiple interpretations or points of view. Witnesses' responses to these questions, however, often indicate uncertainty about even the most basic of past events, as in (18):

(18) DE:P-Prosecution Witness #1, p. 3.
    Q: Do you remember when you lived there?
    A: Well, I don't exactly remember when we moved in, but couple of years.

Example (18) suggests that witnesses' memories vary, as do their abilities to reconstruct details of past events. As Kvale (1971, p. 143) has noted, "the meaning of the past may change in the new context of the present." In everyday interaction, face-to-face encounters are often fraught with vagueness and ambiguity in *real time,* as are individuals' recollections of even simple events and objects. Thus, it should come as no surprise that courtroom reconstructions of initially vague or troubling events-often several years removed from actual occurrence to the date of trial-are also potentially problematic.

Any given question by a lawyer can trigger the recall of a series of feelings and events, directly experienced by a witness, in a given time and place. Yet as lawyers attempt to disambiguate and concretize these experiences, even by asking simple or basic questions, witnesses may nevertheless provide rather ambiguous answers. Consider the following trial segment, wherein the lawyer's "when" question moved into a context space that was filled with emotionally aggressive memories for the witness:

(19) CE:D-Prosecution Witness #1, p. 27.
    Q: When did you tell him that?
    A: I don't exactly remember, but I told him, once I said just-well, I got a little hot under my collar, which I don't do very often, but I warned him, I told him you'd better back off. Because when my temper goes, sometimes I-well, I'm like anybody else, I say things I don't mean.

It is also the case that lawyers can focus upon a single past behavior, somewhat

isolated and removed from the actual sequence in which it occurred, and request that the witness make rather difficult subjective assessments about another's conduct. In the following segment, it would be advantageous for the defense if the prosecution's witness would evaluate the defendant as "unusual." Here again the ambiguous nature of such evaluations can be observed, even to the point where the witness voices disagreement with the lawyer:

(20) CE:D-Prosecution Witness #5, pp. 186-187.
    Q: He just said, just made the single statement, I'm going to stop taking medication?
    A: No, I can't say that's all he said, but that's all that I can remember him saying. It seemed like an unusual thing to say.

Q: And he was acting unusual that day?

A: Well, it's hard for me to say that, because that's the first time I saw him; as I said, this is kind of an unusual thing for a person to say, and that's why I remember it.

Q: You said it's hard for you to say whether he was acting usual or unusual that day?

A: No, no, I said I really didn't observe him before that, and when I said the word unusual, I said that seemed like a rather unusual thing to say, and I remember it, but, no, I wouldn't say that there was anything unusual about his behavior other than it seemed that there was something worrying him.

Prompting witnesses to provide unambiguous accounts is often like "nailing jelly to the wall": a lawyer may gain the preferred response momentarily, but then it slips away into ambiguous territory.

Examples (18)-(20) only begin to indicate the communicative work involved as lawyers move toward situating a past event so as to minimize ambiguity for future jurors' deliberations. Much longer sequences have been identified in the transcript where numerous questions are asked to clarify or to expand on a past event, and numerous responses are provided expressing not only doubt and uncertainty but also witnesses' misunderstandings and disagreements with the lawyer. Moreover, especially during cross-examinations and rebuttals, lawyers purposely attempt to *create* ambiguity by transforming the mere reporting of a past event into nothing more than a product of the witnesses' idiosyncratic biases and perceptions (i.e., a move from P1 to P2 and/or P3 in Figure 1). As noted earlier, casting doubt upon the credibility of a witness is a typical courtroom strategy. In short, to begin to understand the complex and varied nature of courtroom strategies, it is useful to focus upon the inevitable tensions between the factual and perceived status of reconstructed events.

Chronological Thickness

The past is comprised of *distant* past events-e.g., a 53-year-old witness's description of his childhood experiences-and *immediate* past events-e.g., references to testimony rendered earlier in the day or even to preceding utterances-as indicated in Figure 1. Because the past has occurred in a series of sequential activities, it can be observed that the past-when reconstructed in the courtroom also contains past, present, and future counterparts. For example, as a lawyer travels back into time with a witness, he or she may legitimately ask questions about the witness's involvement earlier in the day, during the actual moment of the alleged criminal activity, and several minutes/hours after the crime had been committed. Similarly, a lawyer might inquire as to when the witness first met the defendant and his or her relationship with the defendant immediately prior to trial proceedings. The temporal past might thus be visually depicted as possessing both *depth* and

sequential ordering as follows:

Distant_____ Immediate

Past   Past

    Past-in-Past   Present-in-Past   Future-in-Past
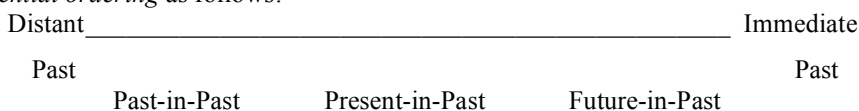
The past is temporally dense, at least in part, due to the sequential connections among past, present, and future events and their reconstructed sense in present interrogation and testimony. Moreover, time-traveling varies across witnesses and the particular phase of a trial proceeding. Within the trial investigated for the present study, several witnesses were interrogated about events immediately before, during, and after the stabbing. Questions were asked about what *had* occurred, how a given witness was feeling at a particular *present* moment in time, and whether or not they had *imagined* that the defendant could possibly stab someone at some future date. The bulk of the testimony provided by these witnesses concerned a one- to two-hour span of time (or even less). In fact, the actual stabbing sequence-involving the defendant's retrieval of a butcher knife from the kitchen drawer, walking to the balcony to stab the victim repeatedly, and walking back into the apartment-as reconstructed by witnesses who observed the balcony scene from a distance, lasted only one to two minutes. Compare this duration of past real time with the hundreds of hours spent by lawyers and witnesses, before and during the trial, attempting a detailed reconstruction of these unfortunate actions.

In contrast, other witnesses were questioned about more disparate chronological events. For example, the following segment was drawn from a psychiatrist's testimony, called by the defense, regarding the defendant's tendency to display paranoid schizophrenic tendencies:

(21) CET-Defense Witness #5, pp. 568-569.

Q: Now, Mr. S _____ told you in that initial interview he'd been charged with murder? A: Yes, sir.

Q: And that he stabbed a woman on May 19, 1980?

A: Yes, sir.

Q: He told you that he got a butcher knife?

A: Yes, sir.

Q: I believe in your direct testimony you testified that he retrieved that butcher knife from a drawer, is that correct?

A: I think he told me that, but not the first interview. I think that was the second or third, yes, sir.

Within this brief segment it is seen that several time dimensions are referenced: (a) an initial interview, (b) May 19, 1980, (c) direct testimony. An elaborated chronology of *only* the prosecution's cross-examination of this psychiatrist reveals the following referenced dates (see Figure 2).

As is evident in Figure 2, it is common for lawyers to jump back and forth in time. Such time shifting creates complex story connections, subplots, and plots that are frequently problematic for jury members to follow, comprehend, and remember. Even though lawyers may explicitly preface a time-shift (e.g., "Let me take you back to May 19, 1980....") and explicitly situate temporal and spatial features (e.g., "At the very moment when you were standing outside looking up at the balcony...."), the complexity of integrating different witnesses' accounts remains problematic to courtroom staff and jurors alike. The chronological thickness of the past itself adds to16 COMMUNICATION MONOGRAPHS

the constraint of reality reconstruction, not to mention those tensions arising between factual and perceived events.

CONCLUSION

To the extent that courtroom interaction is viewed as temporally organized and interactionally produced, it becomes possible to understand how time-traveling is an

November January-May May 19 1979   1980   1980
June 6 1980
June 11 1980

August 27 1981

March 7 1982

DISTANT   IMMEDIATE

PAST   PAST

Problems began 7 mos. prior to murder
Further problems, ea, name calling

MJRDER

First psych. interview

Second psych. interview
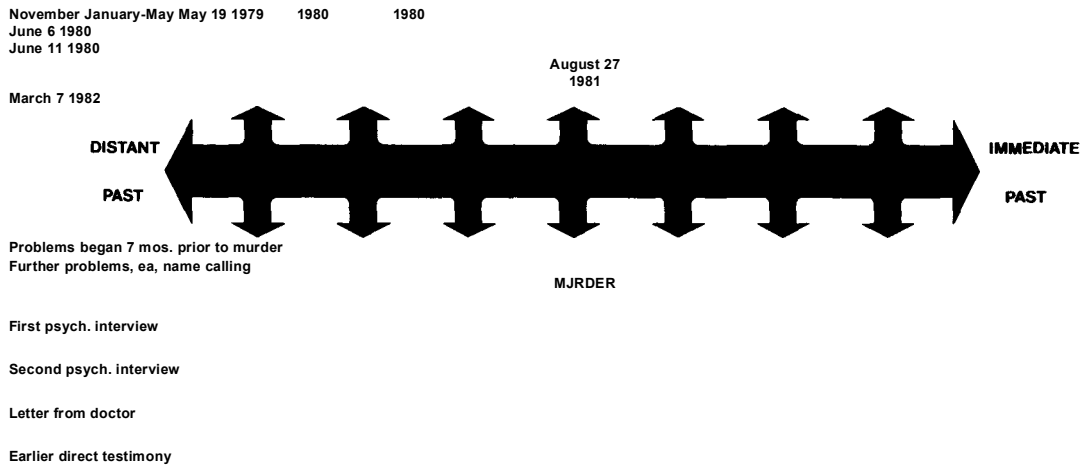
Letter from doctor

Earlier direct testimony

FIGURE 2

TIME-TRAVELING PARAMETERS

essential ingredient within the judicial system. The foundational purpose of interrogation and testimony is to recover details of past events for present sensemaking, and this would not be possible if participants refused or were unable to rely on natural language to travel through time and space together. It is in this sense that communication and law interface; communication is the major vehicle for doing law, while the law provides a set of practical and moral reasons for communicating about alleged illegal activities.

The courtroom is only one of several arenas in which legal work is accomplished, yet because it is generally accessible to social scientists and the public at large, it is a rich setting for observing trial procedures. The present study was grounded in such observations and complemented with transcripts produced by the court reporter. Although these transcripts proved invaluable for asking and answering basic questions about the constraints and density of courtroom time-traveling, they should be critically compared to transcripts generated from audio and video recordings by discourse analysts. As Atkinson and

Drew (1979) suggest, transcripts produced by court reporters do not include such natural language phenomena as voice intonation or rate, durations of hesitations and pauses, junctures of overlapped and/or interrupted speech, and other features that could prove meaningful when studying the micro-order of courtroom discourse. Valuable insights may simply be shortcircuited when relying upon court reporters' transcripts. Thus, an integral part of studying courtroom interaction is inquiring about the access and availability of audio and video recordings, as well as the inevitable tradeoffs of utilizing one form of data in lieu of another.

As greater attention is paid to courtroom interaction within the proposed temporal framework, it is increasingly obvious that lawyers' and witnesses' tactics and strategies have a major impact on time-traveling dynamics and the legal accomplishment of justice. Ongoing research is extending the data base of the present study to several trial transcripts in order to describe and explain these tactics and strategies.

Particular attention is being given to the kinds of control witnesses can attain over (and in unison with) interrogating lawyers, since witnesses are too often stereotyped as powerless and passive courtroom participants.

It is common knowledge that while communication theory and training are severely limited in law school curricula, legal practitioners are relying on communication researchers to gain an increased sensitivity to verbal and nonverbal dimensions of social interaction. It is believed that in addition to the theoretical contribution of the present study, there are numerous practical applications involving how courtroom participants might become more competent in observing and using language-temporally and spatially-to interrogate, testify, and deliberate over reality reconstructions. Current work with practicing lawyers seeking to enhance professional performance not only supports this position, but also provides mounting evidence that naturalistic observations of everyday settings can be recycled back to those observed as a means for promoting constructive growth and change.

NOTES

'The following abbreviations are employed for each discourse segment: D for Defense, P for Prosecution, COURT for Judge, DE for Direct Examination, CE for Cross Examination, and RD for Redirect Examination. Page numbers (e.g., p.5 in Example 1) reflect courtroom transcription page numbers.

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