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Editorial

Quoting from the case file: How intertextual practices shape discourse at various stages in the legal trajectory

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ABSTRACT

Criminal trial hearings are communicative events that are densely intertextually structured. In the course of a trial hearing, written documents such as police records of statements made by suspects, witnesses and experts are extensively referred to, quoted, paraphrased, summarized and recontextualized. In fact, such drawing upon the (written documents in) the case file is inevitable, as demonstrating (or invalidating) the defendant's criminal liability crucially depends on the transformation of discourses produced at previous stages of the trial into lawful evidence. Detailed analyses of the various discursive processes through which intertextual links with the case file are established are thus essential for understanding exactly how trial participants negotiate versions of events with specific legal implications. In this special issue we bring together a collection of papers that deal with such intertextual practices in different legal settings.

1. Intertextuality in the legal process

The intertextual practices that connect a trial hearing to the various discourses produced in preparation for the trial are complex and multilayered. A first complicating element is the fact that the institutional aims of the various legal actors are not the same. Different participants at the trial will establish differing intertextual connections depending on their professional role. Prosecutors aim to demonstrate the defendant's liability while lawyers aim to minimize it; judges have their own specific role in establishing "the truth", depending on the legal system in question. Second, criminal hearings do not come out of the blue; rather, they represent one step in a bureaucratically organized chain of events. This, too, has its impact on the specific form quoting practices in the courtroom take.

This last point deserves some further clarification. Criminal adjudication can be characterized as a process of gradual discursive transformation: Throughout the successive stages of the trial (e.g. investigation by the police, the prosecutor's decision to take the case to court, the hearing), professional legal actors are working together (or, depending on the specific stage, *against* one another) to assign the "facts" which the defendant is tried for (situated conduct that is inextricably tied to the specifics of the setting in which the facts were committed and is thus deeply "local") to one of the abstract categories of criminal law (Matoesian, 2001; Dupret, 2011; see also Maynard and Wilson, 1980). The trial hearing represents a crucial stage in this gradual transformation, because the proposed legal categorization of the defendant's conduct becomes a binding legal reality only after the defendant has the opportunity to publicly defend him/herself against the accusation (and after the applicability of the relevant category of criminal law has been endorsed by the judge in the verdict).

The above already affords us a first glimpse of the complexity of the network of intertextual relationships that are played out in the courtroom by the various participants. On the one hand, demonstrating (or invalidating) criminal liability always involves a form of reconstruction of the facts of the case, including the defendant's linguistic conduct at the time of the facts. In this sense, the relationship between the hearing and the facts that are being discussed very much resembles the classic distinction between *reporting* and *reported* event: the hearing is a discursive arena where remote speech events are recounted.

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On the other hand, however, deciding the applicability of the proposed legal category would be impossible without the written records that contain an officially certified version of the facts of the case. These documents consist primarily of police records of statements by suspects, witnesses and experts, and are collected in the case file. These are the discourses produced in preparation for the trial which are extensively referred to, quoted, paraphrased, summarized or otherwise recontextualized in the course of the trial (in order to be accepted by the court as lawful evidence). This obviously complicates the relationship between the reporting and reported event postulated earlier: In reporting what the defendant allegedly said or did in the course of the incident for which he or she has to stand trial, the prosecutor, defense attorneys and other trial participants are *not directly quoting* the reported event itself, but are instead relying on *third parties' reports* of that event.

Importantly, these third-party reports that are cited in the course of the hearing have a life of their own, a "natural history of discourse" (Silverstein and Urban, 1996) that accrues as they move from one context to another in the progression of the trial. In this sense, these texts indeed "travel," as the title of a recent edited volume (Heffer et al., 2013) suggests: They gradually proceed through the successive contexts (interrogation, compiling the indictment, the trial hearing, the verdict) which together make up the textual "trajectory" (Blommaert, 2005) characteristic of criminal adjudication. However, the notion of texts as entities "travelling" through the legal space ought also to be taken with a grain of salt. Earlier research extensively demonstrated the illusory character of the idea that documents moving along the legal chain are stable objects that have a fixed character. The assumption that a document quoted in court is a stable entity "hides the diachronic instability of the discourse from which text emerged" (Rock et al., 2013: 3). Throughout the various nodes of the legal-bureaucratic trajectory of a text, discourses are continually appropriated by new legal actors who subject them to "de-" and "recontextualization" (Bauman and Briggs, 1990), as they insert these discourses in their new textual environment—a process that goes hand in hand with subtle transformations that may nevertheless have strong legal consequences and that are open to strategic manipulation (for some particularly vivid examples, consider Matoesian, 2001; Ehrlich, 2007; Haket, 2007).

The current special issue further elaborates this dual theme—the hearing as an intertextual event, that is in turn part of an ongoing process of textual transformation. It brings together a number of papers that all deal with quoting and associated intertextual practices as they come about in legal settings. Some of them were presented at the panel "Quoting from the case file" organized at the XIth IPrA conference in Manchester (3–8 July, 2011), while others originated in the context of the research project "Intertextuality in judicial settings" at the VU University in Amsterdam, the Netherlands (NWO project number 360-70-240). Together, the different papers offer a broad picture of quoting practices in various legal settings, spanning different countries with diverse legal systems. They also document different key moments within the course of the criminal trial, which draws further attention to the bureaucratic requirements and contextual contingencies by which reporting practices are shaped.

2. Different legal settings

In this special issue we have aimed to bring together papers that analyze intertextual practices in different legal settings and different legal systems. There is one paper, by Van Charldorp, that focuses on the very beginnings of the intertextual chain. While the other contributions describe how quoting and associated intertextual practices transform written text into talk, van Charldorp's takes exactly the opposite route. Her analyses of police interrogations of petty crime suspects document how the officers in charge of the interrogation transform talk into written documents, which will later be used as evidence in court. Her paper describes the context in which the documents are produced that the quoting parties later rely on in court, and as such it forms an essential counterpart to the other papers that analyze how these documents are quoted higher up in the chain.

The other authors who contributed to this issue specifically address the discursive processes by which interactions on prior occasions are imported into the discourse of courtrooms, although in different legal settings. One contribution documents a particularly vivid instance of intertextuality in an adversarial setting. Johnson's paper draws its data from the much publicized Harold Shipman trial, which lasted 51 days and resulted in the conviction of the British general practitioner on the count of the assassination of fifteen patients. In her analysis, she documents how the judge, at the end of the trial, summarizes the evidence for the jury; in doing so, he juxtaposes oral testimony that was presented to the court in the course of the hearing with reenactments in court of transcripts of police interviews.

The papers by Van der Houwen and Sneijder, Maryns, and D'hondt document practices of quoting in a continental, mixed inquisitorial–adversarial legal system (the Netherlands and Belgium, respectively). Van der Houwen and Sneijder, and also D'hondt, present data from courts where criminal cases are adjudicated by professional judges, where there are only sporadic in person examination of witnesses in court, and the judge, prosecutor, attorney and other professional trial participants rely almost exclusively on written documents produced prior to the hearing, in the course of the criminal investigation. Maryns' paper, however, describes the intertextual construction of insanity in a murder case that appeared before a Belgian Assize Court trial. Here, the entire investigation is orally reenacted before the eyes of the jury.

Licoppe's contribution stands apart, as his paper tackles a legal setting that is strictly speaking not a trial and represents a recent innovation in the French legal system: "future dangerousness assessment hearings" in which a panel of experts, presided over by a judge, must determine whether an inmate who committed a violent crime poses a risk of recidivism or whether he or she should be allowed to return to society. Consequently, the documents that participants in these hearings quote from are not police reports, but expert testimony that was commissioned by the committee responsible for these