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From text to talk in criminal court: Prosecuting, defending, and examining the evidence

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ABSTRACT

In this article we analyze how prosecutors, lawyers and judges refer to the case file. Because witnesses are rarely heard again in Dutch criminal court, understanding how their written voices are re-animated in court is of importance. Lawyers and prosecutors select quotations and introduce these in a written (to be spoken) statement and control the sequential embedding. Judges introduce quotations while examining the evidence; the introduction of quotations is hence contingent on the developing interaction with the suspect. We examine one trial and show how referrals to the case file by the different professionals are selected to construct versions of the events and how their sequential embedding contributes to achieving these different versions in pursuit of their respective institutional aims.

1. Introduction

In Dutch criminal trials, the case file plays an important role. Because witnesses are rarely heard again, written statements are used to represent their position and version of events. The *immediacy principle*, which states that access to the accounts of parties involved should be as direct as possible, has, therefore, been weakened in the Netherlands (Tak, 2008).[1] The Dutch court system is inquisitorial in nature which means that the judge has an active role during the proceedings; not only prosecution and defense lawyers quote from the case file, but so does the judge. All three parties have different institutional roles, however, and, therefore, can be expected to pursue different institutional aims. The prosecuting officer, has brought the case to trial and will, in principle, argue that the suspect is guilty of the charges. Defense lawyers, on the other hand, have as their institutional task to defend their client and will argue for a version of events that is least incriminating for their client. Not only the selection of quotations contribute to their constructions of reality, but so does the way these quotations are preceded or followed by evaluations of either prosecutor or defense lawyer. Judges, lastly, are to be impartial; their task is to examine and eventually weigh the evidence.

Quotations in judicial contexts have been examined from a conversation analytic perspective before. Maynard (1984) found that attorneys and defenders in plea bargaining frequently change footings in order to adopt alignments with or against other involved parties such as witnesses, defendants, but also institutions and the court. He notes that defense

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[1] Tak (2008, p. 101) notes that "Although the Code of Criminal Procedure embodies the immediacy principle requiring the direct presentation of evidence by witnesses and by experts during the court trial, witnesses as a rule are not questioned, since the Supreme Court ruled that hearsay evidence may be used instead. The immediacy principle as laid down in the case law of the Supreme Court has been seriously watered down. In fact, criminal court sessions to a large extent concern the written statements of witnesses filed by the police or the investigating judge. These written statements may be used as evidence provided that these have been discussed in court."

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attorneys use quotations from their clients' statements and present their clients as the authors of a position, which provides the attorney the position to 'strategically align with or against that position'. For instance, the attorney can assess the truth value of the quoted position in the next sequential position.

In earlier studies we examined how defense and prosecution lawyers (Sneijder, 2011) and judges (van der Houwen, 2013, in press) sequentially embed quotations from the case file. Sneijder (2011) found that prosecutors and lawyers embed direct reported speech in a rhetorical structure consisting of three main components. As a whole, this rhetorical structure is used to frame the words of the suspect in such a way that they are either undermined or confirmed *or* that they enact the attitude of the suspect during trial. In the introductive part to the direct reported speech (pre-quote), the quotation or its source (the suspect) is first evaluated or introduced as an illustration of a certain attitude. The quotation itself illustrates the evaluative comment from the prior turn by the embedding of voice quality or prosody, or merely by its selection. Finally, the third position (post-quote) is used to evaluate the quoted statement in several ways and close the three part structure, in order to proceed the narrative. These findings are comparable to those of Matoesian (1993) who examined how defense lawyers interpret and classify rape in a way that normalizes the victim's experience of what happened, in the adversarial setting of cross-examination. More specifically with respect to reported speech, Matoesian states that this discursive strategy provides the current moment of speech with the suggestion of objectivity, authority and persuasiveness (Matoesian, 2000).

In some cases, the quotations mainly function as illustrations of a particular framing of the events or the attitude of the suspect in the first position. The evaluation in third position then confirms the interpretation projected by framing and quotation. In other cases, the quotation and the action in the subsequent position work together to support a position that was formulated in the pre-quotation position. Furthermore, the pre-quotation position and the quotation itself support a conclusion given in the post-quotation position.

The sequential embedding of direct reports in the discourse of judges is somewhat different. How judges report from the case file during the trial has, to our knowledge, received little scholarly attention (but see Johnson this volume for how judges quote when summarizing the evidence for the jury). In adversarial systems judges do not examine the witnesses and hence do not quote from the case file the same way judges do in inquisitorial systems. Unlike the statements by the prosecution and defense lawyers and the reading of judgments, the discourse of judges in Dutch criminal trials when examining the evidence is dialogical and contingent on the developing interaction. It is in the interaction with the suspect that the judge leafs through the case file and reads from it (van der Houwen, 2013). The dialogical embedding means that direct reports are, in part, prompted by and contingent on the interaction while it is being co-constructed by the participants. Judges, however, do not enter the proceedings without advance knowledge, and are well prepared to quickly find the relevant passages they would want to read out loud. Judges, after all, must base their verdict on documents and information that have been dealt with during the proceedings (section 301:4 code of criminal procedure).[2] They do not have to read all documents out loud but generally limit themselves to summarizing and verifying the contents of the case file (Malsch and Nijboer, 2005, p. 32).

When and how documents are invoked, however, may also depend on the interactional contributions by the suspect. In van der Houwen (2013) it was found, that reading quotations tend to come in the following three sequential slots: (1) After answers that are treated as 'insufficient' (e.g. when the suspect answers the question partially; when the suspect evades answering the question; when the suspect gives a version of events that differs from other documented versions); (2) After another direct report: licensing the judge to continue reading from the case file; (3) After the suspect confesses or admits (i.e. the various parties involved agree about what happened), which underlines the importance of the written version.

In sum, we find that the sequential embedding of quotes by prosecutor and lawyers comes in monological discourse, in the sense that it is discourse that has been written up to be spoken, and in a rhetorical structure consisting of three parts. When judges introduce quotes when examining the evidence, the sequential organization depends on the dialogical nature of the judge's discourse when interacting with the suspect. Furthermore, these quotes are embedded in a discourse oriented at fact finding and putting the evidence 'on record' (van der Houwen, 2013) rather than persuasion, as is the case with prosecutors and lawyers.

While in these previous studies we examined all criminal cases in our corpus and identified patterns in quoting practices, in this study, we take a single case and illustrate how the respective professionals draw upon the case file. We examine which fragments they select and how these fragments are embedded into their discourse. More importantly, we illustrate how both the selection of certain quotations and their sequential embedding contribute to the construction of multiple versions of the criminal event. Specifically, we will look at how the same element of a case (in our case whether or not the suspect used a knife) is reconstructed in court by the different parties. By focusing on a single case we aim to show how one charge against the suspect (and the various sub-elements to the charge) is dealt with, supported or refuted by the judge, prosecutor and defense lawyer while they refer to and quote from the various documents from the case file.

[2] Section 301:4 code of criminal procedure:Chargeable to the suspect, no attention will be paid to documents that have not been read out loud or of which the short content has not been stated conform section 3. (Ten bezware van de verdachte wordt geen acht geslagen op stukken, die niet zijn voorgelezen of waarvan de korte inhoud niet overeenkomstig het derde lid is meegedeeld.)