ORDER IN COURT: THE ORGANISATION OF VERBAL INTERACTION IN JUDICIAL SETTINGS. By J. Maxwell Atkinson and Paul Drew. New Jersey: Humanities Press, 1979. Pp. viii, 275. Price \$37.50.

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Recently, social scientists have made significant progress in understanding the use of language in social situations. Research has been done on language use in elementary school classrooms, psychotherapy sessions, interviews, and service encounters, to mention only a few examples.¹ Contributions have come not only from linguists, as might be expected, but also from anthropologists, psychologists, sociologists, and others. This growing research is part of the well-established interdisciplinary field known as sociolinguistics that is concerned generally with the role of language in society.

This burgeoning interest in language usage has led researchers in the area of sociology known as ethnomethodology² to begin to study verbal interaction in courtroom settings.³ Because ethno-

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¹ See, e.g., W. LABOV & D. FANSHIEL, THERAPEUTIC DISCOURSE: PSYCHOTHERAPY AS CONVERSATION (1977); McHoul, *The Organization of Turns at Formal Talk in the Classroom*, 7 LANGUAGE IN SOC'Y 183 (1978); Merritt, *On Questions Following Questions in Service Encounters*, 5 LANGUAGE IN SOC'Y 315 (1976); Wolfson, *Speech Events and Natural Speech: Some Implications for Sociolinguistic Methodology*, 5 LANGUAGE IN SOC'Y 189 (1976).

² Ethnomethodology diverges from traditional sociology in emphasizing how a particular social order is perceived and managed by those participating in it, rather than attempting to deduce rational principles explaining and predicting why certain events occur. Unlike traditional sociology, ethnomethodology relies on, rather than discredits, the descriptions of social processes by those most affected by them. Consequently, its research methods frequently approach those participant observation strategies employed by anthropologists. For a more detailed explanation than this necessarily abbreviated description, see J. ATKINSON & P. DREW, ORDER IN COURT 18-33 (1979); H. GARFINKEL, STUDIES IN ETHNOMETHODOLOGY (1967).

³ Atkinson and Drew also note that

law, or at least jurisprudence, has not remained isolated from this growing interest in language use, the major contribution of H.L.A. Hart (especially [*The Concept of Law*]) having been to update jurisprudence by locating it within the tradition of ordinary language philosophy. But law and philosophy are disciplines without a tradition of empirical research and, even though these recent developments can be read as proposing the study of speech practices as one way forward . . . , jurisprudence appears to have responded in more predictable ways to the insights of Hart,

methodologists have made the major contributions to the the study of everyday conversation, the most informal and complex form of language usage, it should be of more than passing interest that preliminary results of ethnomethodological studies of court hearings have become available in J. Maxwell Atkinson and Paul Drew's book, *Order in Court*.

The aim of the research reported by Atkinson and Drew, as they point out in their initial chapter, differs significantly from previous studies of language behavior in the courtroom. It is not assumed in this research that the language used in court facilitates legal decisionmaking because it is more specific and standardized than the language of everyday conversation.⁴ Nor is it assumed that courtroom language is an esoteric code poorly understood by persons subjected to legal procedures and therefore used by judicial and court officials to coerce and manipulate them.⁵ Atkinson and Drew argue that to make either of these assumptions is to presuppose what has never been carefully studied—how verbal interaction is actually organized in courtroom settings and how this kind of language use relates to language use in conversation. They argue that whether courtroom language facilitates or disguises what takes place in court hearings will remain only a matter of opinion until it has been determined empirically just exactly how language usage in the courtroom is organized.⁶

The aim of Atkinson and Drew's research is to elucidate this organization of verbal interaction in court hearings. Their intent is not simply to characterize properties of the language used in legal proceedings, such as the frequency with which attorneys use certain words or grammatical constructions in questioning witnesses and defendants;⁷ rather, their interest is in the actions and order that are achieved in court hearings by participants through their verbal behavior. In the judicial setting, many crucial actions are accomplished and coordinated through talk: jurors are sworn in, witnesses testify, attorneys state objections to questions of opposing counsel, judges instruct juries, and defendants are pronounced guilty or innocent. The focus of attention in this research is not simply

preferring to remain faithful to its traditional abstract interest in the nature of rules, rights, [and] obligations.

J. ATKINSON & P. DREW, *supra* note 2, at 5 (footnote and citation omitted).

⁴ *Id.* 7-8.

⁵ *Id.* 13.

⁶ *Id.* 14-18.

⁷ Simplistic and generally uninteresting research of this type has also been done. See, e.g., Conley, O'Barr & Lind, *The Power of Language: Presentational Style in the Courtroom*, 1978 DUKE L. REV. 1375.

on what people say when they talk in court, but on what they do when they talk in court.⁸

As a body, the rules of legal "conversation" demarcate and dignify a judicial event. They "ensure the reasonable safety of the decisions of the courts, by aiding the collection of relevant and impartial evidence and the assessment of its validity."⁹ Unquestionably, these rules are as effective in identifying a situation as "judicial" as are the physical attributes of a courtroom.

Yet one need look only as far as administrative agency proceedings to be reminded that lawyers sometimes employ rules of verbal exchange that more closely approximate rules of ordinary talk than courtroom rules. A set of relaxed verbal rules was implemented because the functions and goals of such agencies are perceived differently than are those of traditional courts. The question may then be asked whether all the rules of courtroom exchange are necessary to achieve the goals—perceived or real—of the judicial process. The type of research begun by this book may aid in the identification of those features of the judicial process that contribute little, or not at all, to the attainment of the goals of that process. Such a study should at least shed light on the simultaneously maligned and praised phenomenon of courtroom language. Atkinson and Drew confront the notion, urged by many lawyers and some laypeople, that language in court is of necessity formal and technical, as well as the challenge, offered by many laypeople and some lawyers, that such language is unnecessary and alienating.¹⁰

Although neither contradictory assumption—that language used in court either facilitates or disguises what is being done—has yet been systematically verified, the correlative assumption that contrasts courtroom talk and conversation is not at all inappropriate

⁸ This point has been thoroughly explored by ordinary language philosophers in their studies of speech act pragmatics; the seminal impetus for this line of research was provided by J. AUSTIN, *HOW TO DO THINGS WITH WORDS* (1962).

⁹ J. ATKINSON & P. DREW, *supra* note 2, at 34.

¹⁰ The authors quote the words of Henry W. Taft (brother of the Chief Justice and a prominent lawyer):

Counsel and court find it necessary through examination and instruction to induce a witness to abandon for an hour or two his habitual method of thought and expression, and conform to the rigid ceremonialism of court procedure. It is not strange that frequently truthful witnesses are . . . misunderstood, that they react nervously in such a way as to create the impression that they are either evading or intentionally falsifying.

Id. 236 (quoting H. TAFT, *WITNESSES IN COURT* (1934), *quoted in* J. FRANK, *COURTS ON TRIAL* 81 (1949)).

The authors also describe attempts to "humanize" the settings of Swedish courts to make them less intimidating for participants and "as much like seminars as possible." *Id.* 233 (footnote omitted).

or misdirected. Indeed, as Atkinson and Drew demonstrate, a contrastive investigation of verbal interaction in conversation and in court hearings can aid in characterizing the organization of language usage in judicial settings. As mentioned at the outset, conversation is the best understood form of speech exchange, thanks largely to the efforts of a group of investigators who have developed "conversational analysis" as a special research topic within the field of ethnomethodology.¹¹ Atkinson and Drew follow the suggestion of conversational analysts that, because conversation is the most basic speech exchange system, other speech exchange systems should be studied in comparison with conversation. Atkinson and Drew use conversational analysis to study the organization of both direct and cross-examination of witnesses, the types of courtroom speech exchange most extensively analyzed in their book. This review aims to convey something of the nature of Atkinson and Drew's studies of examination. It begins with a brief sketch of the organization of conversation and then considers several aspects of the organization of examination in enough detail to illustrate both the interest and significance of Atkinson and Drew's research.

ORGANIZATION OF CONVERSATION

Participants in conversation engage in talk in an orderly fashion. They take turns at talking organized in terms of the following simple set of rules:

(1) For any turn, at the initial transition-relevance place (the point at which the unit of talk—word, phrase, clause, or sentence—is completed):

(a) The current speaker may select the next speaker, who thereby becomes the only person with the right and the duty to take the next turn. If this happens, a turn transfer is effected.

(b) If the current speaker does not select the next speaker, then another party may select himself or herself to be the

¹¹ See Sacks, Schegloff & Jefferson, *A Simplest Systematics for the Organization of Turn-Taking for Conversation*, 50 *LANGUAGE* 696 (1974); Sacks, *An Initial Investigation of the Usability of Conversational Data for Doing Sociology*, in *STUDIES IN SOCIAL INTERACTION* 31 (D. Sudnow ed. 1972); Sacks, *On the Analyzability of Stories by Children*, in *DIRECTIONS IN SOCIOLINGUISTICS* 325 (J. Gumperz & D. Hymes eds. 1972) [hereinafter cited as *Analyzability of Stories*]; Schegloff & Sacks, *Opening Up Closings*, 8 *SEMIOTICA* 289 (1973); Schegloff, *Sequencing in Conversational Openings*, in *DIRECTIONS IN SOCIOLINGUISTICS* 346 (J. Gumperz & D. Hymes eds. 1972); Schegloff, *Notes on a Conversational Practice: Formulating Place*, in *STUDIES IN SOCIAL INTERACTION* 75 (D. Sudnow ed. 1972) [hereinafter cited as *Conversational Practice*].

next speaker by being the first person to start an utterance at the transition place. If this happens, a turn transfer is effected.

(c) If the current speaker does not select the next speaker and there is no self-selection, then the current speaker may continue. If this happens, a turn transfer is not effected.

(2) When a turn transfer does not occur and the current speaker continues, the above rule set reapplies at successive transition-relevance places until a turn transfer does occur.¹²

Conversations, accomplished in accord with this turn-taking system, have several important characteristics.¹³ First, an obvious characteristic of conversational interactions is that one party talks at a time. Although this may not be surprising, it is nontrivial because it need not be the case (and is not the case in other speech exchange systems) that single speakers talk in single turns and that examples of more than one speaker talking simultaneously occur almost exclusively at transition-relevance places. Second, the size of turns is not fixed—some are filled with only a word; others with a phrase, a clause, or a sentence. Further, the length of a conversation is not determined in advance; rather, participants must close conversations by applying special closing procedures.¹⁴ Fourth, the number of participants in a conversation varies: two participants are, of course, a minimum; as the number of participants increases to four or more, the tendency is for the conversation to fission into two or more conversations. Fifth, the order of turns is locally managed—one turn is allocated at a time and there are options at each transition point. Finally, the content of a turn (what is said and done) is not specified beforehand (as it is in debates, for example, where the pro and con sides are preallocated turns for rebuttal and counterrebuttal).

Notwithstanding this last characteristic, what may be done in some turns is constrained by “adjacency pairs.” These are paired utterances that are used to accomplish paired actions. When a first pair part (for example, a greeting or a question) is produced by a first speaker, a second pair part (a return greeting or an answer) is expected from a second speaker and, when it is produced, dis-

¹² Sacks, Schegloff & Jefferson, *supra* note 11, at 704.

¹³ *Id.* 706-15.

¹⁴ Closing procedures are described in Schegloff & Sacks, *supra* note 11, *passim*.

plays his or her understanding of the first speaker's utterance. In using the option of the turn-taking system to select the next speaker, a current speaker can produce the first part of an adjacency pair and thereby not only control who gets the next turn, but also what he or she will do in that turn.

This is illustrated in the following extract from a transcript of an actual exchange (equal signs signify no perceivable break between the two utterances):

C: Andrew do you want to raise any other=

A: =Nothing special thank you no¹⁵

In his turn, *C* uses an address term ("Andrew") and he asks a question ("do you want to raise any other="). The address term is used to specify who is selected to take the next turn, and the question is used to get an answer from this selected next speaker. Other means than address terms can be used to indicate the next speaker, including indexical pronouns, nodding, gazing, or pointing at the selected party, and features of content or context that imply who should or should not respond. Additionally, other first parts of adjacency pairs can control what the selected speaker should do in his or her turn. For example, a greeting can be used to elicit a return greeting, an offer to obtain an acceptance or a rejection, a summons to elicit an acknowledgment, and a request to obtain a granting or a rejection, to name only a few. Thus, when adjacency pair organization is used in selecting the next speaker, the current speaker does not simply allot the next turn to a particular party; he or she also specifies the action that that selected party should perform in the turn.

In the exchange just cited, *A* responds in his turn with an answer ("Nothing special thank you no"). This shows that he recognizes that *C*'s utterance was intended as a question. The use by a first speaker of the first part of an adjacency pair sets up the expectation that the second speaker will produce the second part of the same adjacency pair and in so doing will display his recognition and understanding of the first speaker's intention. This relationship between the two parts of an adjacency pair is known as "conditional relevance": *A*'s answer does not merely occur subsequent to *C*'s question; rather, *C*'s question provides for the relevance of *A*'s answer, and *A*'s answer is produced and heard as a response to *C*'s question.

¹⁵ J. ATKINSON & P. DREW, *supra* note 2, at 47.

The following excerpt also illustrates conditional relevance (the bracket marks the point at which the second speaker's utterance overlaps the first speaker's utterance):

B: Why don't you come and see me some [times
 A: [I would like to¹⁶

The second speaker's utterance, which begins even before the first speaker has finished talking, is produced and heard as an acceptance ("I would like to"). This is because *B*'s utterance ("Why don't you come and see me sometimes") is an invitation, and not really a question asking "why?" *A*'s acceptance displays an understanding that *B*'s utterance is an invitation because invitation and acceptance/rejection are an adjacency pair: an invitation provides for the relevance of an acceptance (or a rejection), and an acceptance is produced and heard as a response to an invitation. Only if *B*'s utterance were understood as a question would it be relevant for *A* to produce an answer, perhaps explaining or giving a reason why he or she does not go to see *B* (for example, "I don't come and see you because . . .").

This example also illustrates another important characteristic of utterances in conversational turns. A sentence that is literally interrogative, declarative, or imperative may be used to accomplish actions other than asking questions, making statements, or issuing commands. *B*'s utterance, though it has the grammatical structure of an interrogative sentence, is not used to ask a question, but instead is meant to indirectly issue an invitation. That in verbal exchanges one action may be done—and be understood to be done—by way of another action is crucial to an understanding of courtroom examination as a speech exchange system. This point is discussed below.¹⁷

Conditional relevance is particularly apparent in cases in which second parts of adjacency pairs are not produced. A second part that does not follow a first part is not merely omitted; because it is conditionally relevant on the completion of the first part, it is "officially" or "noticeably" absent. The omission of a second part is a significant event, which can be interpreted as reticence, shyness, evasiveness, embarrassment, or hostility; it is a failure, a matter that can be the subject of complaint by the first speaker or other

¹⁶ *Id.* 50.

¹⁷ The most important recent philosophical work involving actions done by indirection is Searle, *Indirect Speech Acts*, in 3 SYNTAX AND SEMANTICS: SPEECH ACTS 59 (P. Cole & J. Morgan eds. 1975).

participants. This is evident in a conversation reported to have occurred among two adult women and the six year-old son and ten year-old daughter of one of the women. The children enter the scene and the following exchange takes place.

Woman: Hi.

Boy: Hi.

Woman: Hi, Annie.

Mother: Annie, don't you hear someone say hello to you?

Woman: Oh, that's okay, she smiled hello.

Mother: You know you're supposed to greet someone, don't you?

Annie: [Hangs head] Hello.¹⁸

When Annie does not respond to the woman's greeting ("Hi, Annie"), her silence is treated as the official absence of a return greeting and is interpreted as the result of shyness or awkwardness; Annie's mother complains about this failure, the woman offers an excuse for it, her mother tells her how to rectify it, and finally, with hanging head, Annie does so by producing the tardy return greeting.

Although first and second parts (when second parts are produced) generally occur in immediately juxtaposed turns, in one type of sequencing a second part does not occur in the immediately succeeding turn and yet is not heard as officially absent. This happens when "insertion sequences" occur between first and second parts. Insertion sequences may be produced in question and answer sequencing in conversation and, significantly, in courtroom examination, as will be described subsequently. In conversation, a question-answer pair may be inserted between the first and second parts of another question-answer pair, as in this example:

A: Are you coming tonight?

B: Can I bring a guest?

A: Sure.

B: I'll be there.¹⁹

Here the sequence of turns is not Q-A-Q-A, as is the case when second parts occur immediately following first parts, but rather Q-Q-A-A. In this latter sequence, the first question and last answer comprise an adjacency pair, as do the question and answer that

¹⁸ *Analyzability of Stories*, *supra* note 11, at 341.

¹⁹ *Conversational Practice*, *supra* note 11, at 78.

occur between them. This may be represented as $Q_1-Q_2-A_2-A_1$. Q_2 ("Can I bring a guest?") and A_2 ("Sure.") are an insertion sequence.

Not just any pair can occur as an insertion sequence. An inserted pair must follow from and relate to Q_1 and provide for the occurrence of A_1 . It must be "remedial" in the sense that Q_2 asks for a clarification, correction, or repetition of Q_1 and A_2 provides this requested addition. When the insertion sequence is completed (and the remedial work has thereby been accomplished), the conditional relevance of A_1 , which was established by Q_1 , remains in effect. A_1 will, therefore, either be produced or will be heard as officially absent. That relations of conditional relevance between the parts of adjacency pairs are maintained when they are separated by insertion sequences is further documented by conversational exchanges that contain multiple insertions, that is, sequences inserted within sequences that are inserted within sequences, etc. A sequence of this type, which may be represented as $Q_1-Q_2-Q_3-Q_4-A_4-A_3-A_2-A_1$, occurs in the following exchange:

A: Are you coming tonight?

B: Can I bring a friend?

A: Male or female?

B: What difference does that make?

A: An issue of balance.

B: Female.

A: Sure.

B: I'll be there.²⁰

Much more could be said about the organization of conversation, but this sketch should provide a sufficient basis for proceeding with a discussion of the organization of courtroom examination.

ORGANIZATION OF EXAMINATION

Talk in examination shares a number of the characteristics specified above for talk in conversation. Single speakers take single turns and there is a minimum of overlap, which occurs only at transition relevance places. Turn transfers are effected through "current speaker selects next" and "self selection" techniques. The size of turns in an examination is not fixed and the length of an examination is not specified in advance. Finally, the content of the talk that fills a turn is not predetermined though, as will be seen, it is constrained by adjacency pair organization.

²⁰ *Id.* 79.

The turn-taking system for examination differs from the system for conversation in two important respects. First, questions and answers are the only types of turns that can occur. And second, they are preallocated, in that only examining parties have the right to ask questions and only examined parties have the obligation to answer them. In question and answer sequencing generally, a speaker who asks a question not only establishes the relevance of an answer from the person to whom the question is addressed, but he also reserves for himself the right to self-select the turn following the answer. Because this self-selected turn can be used to ask another question, which in turn requires another answer, question-answer pairs can be chained to produce lengthy Q-A-Q-A-Q-A . . . sequences.²¹ Examination is thus a two-party speech exchange system: talk is ordered as a sequence of question and answer turns that are preallocated to examining and examined parties, respectively.

Examining counsel and examined witnesses are not, of course, the only persons who talk during an examination. Judges occasionally self-select and ask a witness a question. When they do, they temporarily take counsel's place as examining party; their question is thus not heard as an interruption. On the other hand, opposing counsel regularly break into the two-party exchanges of counsel and witness to state objections; these utterances are heard as interruptions. Objection sequences, which are unique to and distinctive features of examination, are interruptions in the sense that they alter the Q-A-Q-A sequencing of counsel and witness, but they are not violations of the turn-taking organization of examination. They are specialized insertion sequences, which are initiated by a third party, opposing counsel. Such an objection, which is

ness; *f* = judge; and *OC* = opposing counsel. Numbers in parentheses note the length, in seconds, of pauses. Dots within parentheses signify pauses of less than a tenth of a second. Colons signify a lengthening of the sound they follow. Words in parentheses were not clearly audible. Italics represent stressed sounds.)

tion. An objection sequence occurs in the following except from a tape recorded examination. (Abbreviations for speakers in this and all other examination extracts are: *C* = counsel; *W* = witness; *J* = judge; and *OC* = opposing counsel. Numbers in parentheses note the length, in seconds, of pauses. Dots within parentheses signify pauses of less than a tenth of a second. Colons signify a lengthening of the sound they follow. Words in parentheses were not clearly audible. Italics represent stressed sounds.)

²¹ *Analyzability of Stories*, *supra* note 11, at 343.

- C: A:nd did you live with anyone?
 W: Yes I did.
 C: A:nd (.) whom did you live (with)?
 W: Ezra Maclean.
 C: n who is Ezra Maclean?
 (2.2)
 OC: [(je)
 W: [The man I live with
 OC: I object to that question.
 J: Well (.) er:h I think that uh . . .²²

In this example, opposing counsel initially attempts to state an objection following counsel's question ("n who is Ezra Maclean?"), but does not actually state it until after the witness's answer ("The man I live with"). This points up the fact that objection sequences can be initiated following both questions and answers. As selected next speaker, the judge, after stalling presumably for time to decide on his ruling, uses his turn to sustain or overrule the objection and, thereby, complete this objection sequence.

Objection sequences, therefore, are specialized insertion sequences initiated during question-answer sequences in examination in order to remedy legally defined difficulties. What is especially interesting about objection sequences is that, though they are one of the few types of exchanges in an examination in which procedural or evidentiary rules are the focus of concern, they seldom include any explicit reference to these rules. As is the case in the sequence just cited, attorneys most often state objections without mentioning the procedural rule that they are invoking ("I object to that question"). Atkinson and Drew suggest two reasons why objections are generally stated in this way. First, by not explicitly revealing the grounds for their objections, lawyers avoid exposing any possible errors in their legal reasoning to public criticism. Second, at the same time, by not stating grounds, the judge is left free to base his ruling on whatever grounds for an objection seem to him most pertinent. The authors do not suggest that legal rules of procedure therefore explain less about what happens at trial than would a study of the turn-taking organization of examination. Rather, their point is that *all* activities that are accomplished in examination, including the application of procedural rules, are accomplished through question and answer turns that are preallocated by the turn-taking system of examination.²³

²² J. ATKINSON & P. DREW, *supra* note 2, at 63-64.

²³ *Id.* 209-16.

As pointed out in the discussion of conversation, questions and answers may be used to accomplish indirectly many different actions. Recall this conversational excerpt, which was cited above:

B: Why don't you come and see me some times

A: I would like to

Although ostensibly a question-answer sequence, this utterance pair is actually an invitation-acceptance sequence. In examination, the accomplishment of all actions is constrained by the question and answer turn-taking system. Accusations, denials, justifications, excuses, challenges, and rebuttals are only a few of the actions that are accomplished in question and answer turns.

An excerpt from an American rape trial in which a challenge-rebuttal sequence²⁴ is managed in a sequence of questions and answers can serve to illustrate the indirect accomplishment of activities in examination. This example is chosen for the sake of brevity; Atkinson and Drew give much more extensive treatment to accusation-denial/excuse/justification sequences, but the management of these actions is too complex for brief summary here.

C: And during that entire evening (.) Miss Lebrette (.) its your testimony (2.3) that there was: (0.9) no indication as far as you could tell that the defendant had been drinking.

W: No
(3.1)

C: No Miss Lebrette (1.2) when you were interviewed by the police sometimes later—sometime later that evening (1.1) didn't you tell the police that the defendant had been drinking (.) (did you tell them that)

W: No I told them that
there was a cooler in the car and that I never opened it.²⁴

In the first question-answer sequence, counsel challenges the witness by presenting and receiving confirmation of information, which he then indicates in his next question is contradicted by other information. That the witness hears this second question as a challenge and not merely as a question about her police interview is suggested by the fact that her answer is a rebuttal—the second part of a challenge-rebuttal adjacency pair. She attempts to rebut counsel's challenge by showing that no real discrepancy exists between her testimony and her police statement: she maintains that she

²⁴ *Id.* 69-72.

never told the police the defendant had been drinking, only that there was a cooler in the car. Her reply not only answers counsel's question but also, more importantly, rebuts his challenge. Both the challenge and the rebuttal in this sequence are effected indirectly in question and answer turns. As Atkinson and Drew put it, challenges and rebuttals, like all actions in examination, are "packaged" as questions and answers.

It is evident, then, that the turn-taking organization of examination operates as a constraint that forces participants to perform their actions indirectly in the guise of questions and answers. In addition, it is a constraint that participants in examination use as a resource in managing their actions. Two examples of counsel's use of this resource are contained in the following excerpt, which continues the preceding excerpt.

W: No I told them there was a cooler in the car and that
I never opened it=

C: =The answer er: may the (balance) be here stricken
your honour and the answer is *no*

J: The answer is *no*
(5.1)

C: We- wz you:r testimony (.) as far as you can conclude
(.) the defendant had not been drinking (.) (right)

W: [Right

C: n you never told the police that the defendant had
been drinking
(0.6)

W: I told them about the cooler

C: You never told the police the defendant had been
dri nking ()

W: [No ²⁵

In his first turn in this excerpt, counsel uses the question-answer sequential organization of examination as the basis for lodging a complaint about the witness's preceding utterance. On the grounds that the witness should use her turn to provide an answer to his question and nothing more, he asks the judge to strike all of her reply except her negative answer to his question ("The answer er: may the (balance) be here stricken and the answer is *no*"). In effect, counsel here uses the turn-taking organization to constrain what the witness can do in her turn, maintaining that the parts of her utterance that are designed as a rebuttal to his own challenge should

²⁵ *Id.* 72-73.

not be allowed because they are not conditionally relevant parts of an answer to his question. The judge concurs with counsel's argument ("The answer is no").

Counsel also invokes the turn-taking organization in his last turn in this extract. In this instance, his complaint is not that the witness has done more than answer his question; rather, it is that she has not answered his question—that her reply is "nonresponsive." By repeating the question he asked in his immediately preceding turn ("You never told the police the defendant had been drinking"), counsel implies that the witness's reply to this question does not count as an answer. Because an answer is officially absent, counsel repeats his question in a second attempt to elicit an answer, the production of which is needed to complete the question-answer adjacency pair sequencing initiated by his question. Again, counsel uses the turn-taking organization of examination to restrict what the witness is permitted to do in her turn.

In addition to using the turn-taking organization as a resource in indirectly managing actions in examination, participants also use it in conveying unstated implications. Counsel, for example, by allowing a long pause to occur after a witness's answer, can imply that special significance attaches to the answer. He can do this because his question turns and the witness's answer turns are pre-allocated. Counsel's use of this implicational strategy is apparent in another extract drawn from the same rape trial from which the two preceding extracts were taken:

C: You were out in the woods with the defendant at this point isn't that so?
(1.0)

W: Yeah.
(7.0)

C: And the defendant (.) took (.) the ca:r (1.0) and backed it (1.0) into some trees didn'te?
(0.5)

W: Mm [hm.

C: [underneath some trees (1.5) Now Miss Lebrette this time did you make any mention about turning around?

W: No.
(11.0)

C: An it was at this point that you say that the defendant . . .²⁶

The seven second pause following the witness's positive answer to counsel's first question and the eleven second pause following her negative answer to counsel's third question both imply that the witness's motives for her participation in the events in question were not as innocent as she represented. Implications such as these may be inferred by participants, particularly juries, because turns are preallocated in the organization of examination: counsel asks questions, witnesses produce answers in turns after questions, and turns after answers revert to counsel. It is because this next question turn is preallocated to counsel that gaps between the end of an answer and the beginning of counsel's next question are produced and heard as counsel's pauses. In this way, the turn-taking organization provides counsel with a means of making unspoken comments on the answers of witnesses. These implicational comments can be conveyed because turns are preallocated in the organization of examination. Participants in conversation cannot use pauses to convey such implications because their turns are not preallocated; participants who delay starting a turn in conversation are likely to lose the turn to faster starting participants.

PRACTICAL IMPLICATIONS

As mentioned at the outset, Atkinson and Drew take the position that not enough is known about the organization of verbal interaction in court for proponents of radical reforms to argue that court procedures should be changed because they mystify and coerce participants, or for traditionalists to argue that procedures should not be changed because they facilitate the decision-making tasks of the court. In their final chapter, the authors return to this issue and discuss several practical implications of the research described in the body of their book.²⁷ Although they qualify their remarks as only tentative hints or suggestions because of the preliminary nature of this research, their recommendations nonetheless appear to be noteworthy and of considerable potential importance.

Proposals for change and for no change, Atkinson and Drew argue, are not likely to be realistic unless they take into account basic features of the organization of courtroom interaction. Radical proposals urging change in "unpleasant" or "undesirable" practices that are bewildering, intimidating, or oppressive to participants (for example, the placing of judges behind an imposing

²⁷ *Id.* 217-32.

raised bench and witnesses in the witness box) may underestimate the importance of these practices in the accomplishment of court business. The continuous monitoring of courtroom activities by all participants requires that speakers be categorized as counsel, witness, and the rest, and the placement of participants in specific locations in the courtroom may contribute significantly to this feature of the organization of court hearings. Conservative recommendations against changes in present practices (for example, the wearing of gowns, or the use of a gavel or other paraphernalia) may overestimate the importance of these practices in the organization of courtroom interaction. Special attire and paraphernalia may be totally redundant and unnecessary means of categorizing participants, inasmuch as their identification is also indicated by their locations in the courtroom.

Atkinson and Drew suggest that, in addition to being framed in terms of the general organizational requirements for interaction in multi-party courtroom settings, proposals either to change or to perpetuate court procedures should also recognize that there is an inevitable interrelationship between the organization of communicative activity and the conveyance of moral implications. What people say and how they say it is always subject to interpretation by listeners, who infer implications that may or may not have been intended by the speaker. As just described, counsel sometimes pause for several seconds after a witness's turn. Other court participants interpret these pauses as implying a positive or negative evaluation of the witness's answer—that he or she is telling the truth and being cooperative or lying and being evasive. It could be that a reform measure might be proposed to eliminate lengthy counsel pauses on the ground that, like hearsay evidence and accounts of past convictions, these pauses are prejudicial to the defendant's case and, therefore, inadmissible in examination. Because, however, the implicational force of counsel pauses derives from the preallocation of question-answer turns in the organization of examination, the only way these implications could be eliminated from examination would be by replacing question-answer sequencing with another type of sequential organization. Such an alternative organizational arrangement for examination would not necessarily be an improvement, however. It might or might not operate as effectively as preallocated question-answer turns in managing the accomplishment of courtroom interactional tasks. And even if it should be as efficient as the question-answer system, this new organization—like all organizations of communicative activity

—would also allow for the production of utterances that are open to moral assessment.

The practical implications of Atkinson and Drew's recommendations are profound, to say the least. It is no small matter to suggest that proposals for changing or perpetuating court procedures should be evaluated not only in terms of how adequately they deal with the basic organizational requirements of courtroom interaction, but also in terms of how carefully they consider the different moral implications that are communicated on the basis of alternative turn-taking organizations. How verbal interaction is organized and how moral implications are conveyed in the courtroom are topics that have not received much research attention and that are not yet well understood. Atkinson and Drew's book, which is devoted primarily to courtroom data analyses, many of which are much more subtle and complex than the examples recounted here, is a pioneering contribution to this area of research. It breaks important new ground and points the way for further study. It can only be hoped that the fundamental research reorientation recommended by Atkinson and Drew will provide guidance for a great deal of future research, and that this research eventually will provide a sound basis for framing proposals for and against alterations in courtroom procedures.

BERNARD G. SEGAL

The editors of the University of Pennsylvania Law Review take great pleasure in dedicating this issue to Bernard G. Segal of the Class of 1931, the first time this honor has been conferred on a practicing attorney. Throughout his distinguished legal career—from his tenure as Case Editor of Volume 79 of the Law Review to his current position as Chairman of the law firm of Schnader, Harrison, Segal & Lewis—Mr. Segal has demonstrated an unprecedented dedication and commitment to the legal community and to the Law School. The remarks of the distinguished contributors to this dedication reflect the great respect that Mr. Segal's accomplishments have inspired in his friends and colleagues.