

THE WITNESS IN COURT:
PROBLEMS OF DEMEANOR IN THE
COURTROOM SETTING

by

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Abstract

The concern of this thesis is to discover some of the basic principles which structure interaction in the courtroom. The data on which the analysis is based consists of material collected by observation in the Magistrates' Courts. Various "rules" which structure social interaction in general are examined as to their relevance to courtroom interaction and problems related to the presentation of self of lay participants in court.

It is first proposed that various of these "rules" are subject to violation in the courtroom. These violations facilitate the purposes of the court in that they make it possible for witnesses' arguments to be examined exhaustively. The effects of these violations on witnesses demeanor, considering the specific setting of the court, are described and analysed.

Following this, the attributes of "proper demeanor", defined as demeanor acceptable to other

participants, for lay witnesses in the courtroom are isolated and examples given of witnesses who failed to show these attributes during their appearances in court. An analysis is presented of the process of categorization of these witnesses as unfit interactants by professional courtroom participants, and the consequences of these categorizations for the witnesses. Those who failed to show "proper demeanor" are contrasted with witnesses whose appearances in court were more successful.

Finally, the kinds of explanations and arguments which are put forward as part of the presentation of self by lay participants in court are examined with particular reference to whether or not they are seen as appropriate by lay and professional participants.

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CHAPTER 1

INTRODUCTION

This study arises out of a general interest in the structure of social interaction and, in particular, the structure of interaction in the courtroom in relation to the problem of demeanor. It seeks through an analysis of the situation of the lay participant during the conduct of a trial, to show the various factors of the courtroom situation and the adversary system which influence how each lay participant behaves during his appearance in Court and how this is interpreted by and influences the responses of the rest of the actors present.

The data on which the analysis is based was collected over a period of three months in the Vancouver Magistrates' Courts.

The theoretical framework of the study depends to a certain extent on the work of Alfred Schutz, who was concerned with the search for the basic principals of social interaction in general.

2.

One of Schutz' chief contributions was his work on the attributes of common sense knowledge and the importance of "thinking as usual" to the members of a particular culture.¹ Thinking as usual may be defined as the system of knowledge which a member of a culture acquires by virtue of his membership. Schutz' concept has some important ingredients:

"the system of knowledge thus acquired (through cultural membership) incoherent, inconsistent and only partially clear as it is takes on for the members of the in-group the appearance of a sufficient coherence, clarity and consistency to give anybody a reasonable chance of understanding and being understood. Any member born within the group accepts the ready made standardized scheme of the cultural pattern handed down to him by ancestors, teachers and authority as an unquestioned and unquestionable guide in all the situations that normally occur within the social world."²

Thus Schutz³ stressed the unquestioned and unquestionable aspects, which could be defined as the normative aspects, of "thinking as usual". I take it that members of our particular culture have some

kind of recipe drawn from "thinking as usual" which will govern their actions, verbal and otherwise, in a social situation and that one such situation is an appearance in court. Such an appearance, however, may be defined not simply as a part of ordinary social interaction but as part of the particular series of events which take place in court and may be termed the judicial process. Interaction in court is structured not simply by the "thinking as usual" which governs social situations in general but also the "thinking as usual" of actors whose work setting is the courtroom.

Like Schutz, Erving Goffman and Harold Garfinkel have been concerned with the investigation of the basic principles of social interaction in social situations in general. They have also been concerned with the principles which structure interaction in particular social settings. Garfinkel has proposed that members of a particular culture share "background expectancies" which allow members

of the same culture to make similar sense of what goes on within that culture.⁴ "Common understandings" are socially sanctioned grounds of inference which members of the culture share about ways in which social interaction may be interpreted.⁵ Members of specific cultural settings share additional common understandings about matters relevant to that particular setting.⁶ Both Goffman and Garfinkel have stressed the normative aspect of common understandings. Goffman refers to the unspoken rules of interaction and observes that, "Infraction (of these rules) characteristically leads to feelings of uneasiness and negative social sanctions".⁷ Garfinkel undertook a series of "experiments" to demonstrate the reaction of members of our culture to break downs of common understandings and in doing so was able to isolate some of their properties.⁸ He refers to the "enforceable character" of common understandings.

"common understandings consist of
the enforceable character of

action in compliance with the expectations of life as a morality. Common sense knowledge of the facts of social life for the members of society is institutionalized knowledge of the real world." 9

I take it that Garfinkel is referring, here, to the same phenomenon, that is, the likelihood of breakdown of expectations producing negative social sanctions, as that to which Goffman was referring in the passage cited in the previous paragraph.

Garfinkel distinguishes between common understandings as product which he defines as, "shared agreement on substantive matters that what is said will be made out in accordance with methods that need not be specified",¹⁰ and common understandings as process, defined as "various methods whereby something the person says or does is recognized to accord with a rule".¹¹ Normally this process of not specified; it is taken for granted as part of what every competent member of a particular culture or cultural setting knows. Following Garfinkel, it may be observed that one of the properties of common

discourse is that members of our culture engaged in conversations which are characteristically "short hand" versions of the unspoken process of inference, interpretation and use of assumption which goes on between interactants.

This study is concerned in part with the process aspect of common understandings, whereby an action, including a verbal action, is seen to accord with a rule recognized by members to be in operation in a particular setting. It is hoped to make clear the processes involved in the operation of common understandings in the courtroom, and to show how they structure the interaction in that setting. "What is understood" by courtroom actors is reported in the analysis together with examples of interaction drawn from the trials which were observed. In the sections of the study where examples of interaction are analysed, the utterances of the participants are set out on the left hand side of the page and a commentary on the interaction on the right hand side

of the page. This method of presenting data is analogous to that used in the reporting of a problem which Garfinkel set some of his students. They were asked to report "common conversations" together with what was understood by interactants involved in the conversations.¹² In reporting this study Garfinkel suggested:

"That one not read the right hand column as corresponding contents of the left, and that the students' task of explaining what the conversationalists talked about did not involve them in elaborating the contents of what the conversationalists said. (He suggested) instead that their written explanations consisted of their attempts to instruct (him) in how to use what the parties said as a method for seeing what the conversationalists said."¹³

My commentary on the courtroom data is an attempt to describe what appeared to be the "inner temporal course of interpretive work"¹⁴ in Garfinkel's terms which took place during the appearances and trials I observed in the Magistrates' Court. My claim of being able to make sense of the interaction

is based on my position as a member of the same general culture as the lay interactants in court. My particular interest, however, is to make specific the aspects of common understandings of our common culture which are not normally specified by interactants in everyday social situations, or as Garfinkel puts it "that need be specified only on special occasions." 15

With regard to common understandings shared by professional courtroom actors and specific to the courtroom setting, some familiarity was gained by reading, talking with lawyers (although this was not done on a systematic basis) and interviews and conversations with the magistrate following each session of data collection. In all about thirty hours of tape recordings were collected in court. It is on these recordings, together with notes on non-verbal action taken during the observation periods, that the bulk of the analysis rests.¹⁶

The data is intended to show that members of our common culture are able to understand each other and make similar inferences and similar sense of what is not explicitly stated during interaction. It also shows, however, a different degree of sophistication on the part of lay and professional actors in the courtroom in recognizing that a certain action accords with a rule in operation in the setting. In other words certain common understandings specific to the courtroom setting were not shared by lay interactants. One important difference between lay and professional actors was that, whereas lay witnesses frequently took for granted that the processes of unspoken common understandings inherent in the general culture would obtain in the courtroom setting, it seemed to be the aim of lawyers and professional courtroom actors generally to make the implicit explicit, as part of the process of finding out "what really happened" about a set of events. Frequently witnesses were pressed to be more specific when they expected "socially sanctioned

grounds of inference" to be in operation. Similarly, witnesses were not always aware of the subtleties of the judicial process and the adversary system. A witness, for instance, might not see the importance of a certain statement which was crucial to the case as interpreted by the professional actors. Or the significance of certain techniques, for example, those of cross-examination, might be different depending on whether the interactant was lay or professional. Thus, a witness may interpret part of a cross-examination as an unreasonably hostile attack on himself while professional participants interpreted this as simply part of cross-examination.

Courtroom Interaction and the Demeanor of Witnesses

The focus of this study is on the problem of demeanor in the courtroom as it relates to the management of impressions by lay interactants. The term "demeanor" is used to denote certain aspects of the interactant which Goffman has examined using the concepts of "face", "line" and "demeanor".¹⁷

Goffman distinguishes between "face", "the positive social value a person effectively claims for himself"¹⁸ and line, "The pattern of verbal and non-verbal acts by which he expresses his view of the situation and through this his evaluation of the participants, particularly himself."¹⁹ He proposes that an interactant must maintain proper demeanor (defined as demeanor which is acceptable to the other interactants) in order to be able to claim face. Goffman's term demeanor involves, "attributes derived from interpretations others make of the way in which the individual handles himself during social intercourse."²⁰ It is typically conveyed through deportment, dress and bearing.

These aspects of the management of impressions by an individual involved in social situations will be subsumed under the term demeanor in this study. This is meant to include the impression others receive and the assessment they make of the physical attributes and the verbal line which witnesses present in court.

It is maintained that various factors of the situation in the Magistrate's Court structure the interaction and make the presentation and maintenance of demeanor problematic. On the most general level the fact of a trial taking place and the institutionalized adversary system prescribes a certain procedure which is part of the common understandings of professional actors and presumably of some at any rate of the lay participants. The purpose of the court is to determine, within acceptable limits of probability, the "truth" about a particular set of events and to judge a man guilty or not guilty. Evidence is produced about the events and the judge makes a decision. In a criminal case the Crown and the accused represent opposing sides. Each presents his case and each is able to call witnesses. As Weinstein states, under the adversary system, "the side which calls a witness is placed in the position of vouching for the witness and the opponant assumes the burden of attacking his credibility".²¹ The witness presents

his evidence and the opposing side has the right of cross-examination, which has been described as "a hostile attempt to shake the witness' testimony".²²

The decision of the court must be made on the basis of interaction in the courtroom which includes the evidence of witnesses on both sides about the events in question. On occasions one or both sides will try to bolster their case by producing a piece of physical evidence in the form of an exhibit. Since this is all the judge has, it follows that his opinion of whether or not the witness is telling the truth is particularly germane to his making the decision in the case. Thus the evaluation of a witness' demeanor is crucial to his credibility. Considering the adversary system which sanctions this hostile attempt to shake testimony, it can be seen that the management of impressions for lay interactants in the courtroom is particularly problematic. The lay interactant (hereinafter the term "witness" will be used as a general term for

lay interactant. It is meant to include the accused, defendant, complainant or witness. The more specific terms will be used when they are necessary to make the analysis clearer) must present himself in a certain fashion and take care to meet threats to his demeanor when they occur.

Goffman has been concerned to isolate certain rules of interaction as being those to which participants adhere in conversations during encounters and in ordinary social situations. Those relating to the presentation of self are of particular relevance here.²³ It is proposed that the rules which Goffman has defined as structuring everyday interaction, in particular those which serve to uphold the presentation of self and to maintain the line and demeanor of the interactant, are subject to infraction in the courtroom. It is maintained that these infractions facilitate the purposes of the court in that the court is enabled to enquire extensively into the witness' argument, and assess

his demeanor during this enquiry. Such enquiries are ordinarily proscribed during social interaction by the operation of rules of avoidance and trust.

These rules will be examined as to their relevance to demeanor in the courtroom in Chapter II. Chapter II includes an examination of methods by which the witness' demeanor is "tested" during cross-examination and witnesses reactions to these experiences. An analysis of what constitutes "proper demeanor" in court is undertaken in Chapter III. Chapter IV is an exploration of lay and professional common understandings about the presentation of demeanor by the witness.

FOOTNOTES: CHAPTER I

1. See Alfred Schutz "The Stranger", Collected Papers, Volume II, Maurice Natanson (Ed.) Martinius Nijhoff: The Hague, 1962.
2. Op. cit p. 95
3. The "unquestioned" aspects of Schutz' "thinking as usual" are similar to the "taken for granted" aspects of Garfinkel's concept of "common understandings".
4. Harold Garfinkel "Studies of the Routine Grounds of Everyday Activities", Studies in Ethnomethodology, Prentice Hall, Englewood Cliffs, New Jersey, 1967.
5. Loc. cit.
6. See Garfinkel's work on the Los Angeles Suicide Prevention Centre etc. reported in "What is Ethnomethodology", Studies in Ethnomethodology, p. 11 ff.
7. Erving Goffman, "The Nature of Deference and Demeanor:", Interaction Ritual, Doubleday and Company, Garden City, N.Y. 1967.
8. Garfinkel, Studies of the Routine Grounds of Everyday Activities, pp. 35 - 76.
9. Ibid, p. 53
10. Garfinkel, What is Ethnomethodology, p. 24

11. Loc. cit.
12. Garfinkel, Studies of the Routine Grounds of Everyday Activities, p. 36.
13. Garfinkel, What is Ethnomethodology, p. 27
14. Op. cit. p. 525
15. Garfinkel, Remarks on Ethnomethodology, M.S.S., U.C.L.A., 1965.
16. During the data collection I took the role of non-participant observer in the courtroom. As far as I could judge my presence had no appreciable effect on the interaction. Since the court is open to the public I simply joined the other observers who are normally present in a Magistrate's court. My tape recorder was placed next to the Official Court tape recorder, with the magistrate's permission. It was operated by the Court Reporter. I was able to take notes from the benches provided for the public without, apparently, disrupting the interaction in any way.
17. See Erving Goffman, "Facework" and "Deference and Demeanor", Interaction Ritual, pp. 5 - 46 and 47 - 96.
18. Goffman, Facework, p. 5.
19. Loc. cit.

20. Goffman, Deference and Demeanor; p. 78.
21. Jack B. Weinstein "The Law's Attempt to Obtain Useful Testimony!" Journal of Social Issues;; Volume 13, No. 2 1957; p. 7.
22. Loc. cit.
23. Goffman, Facework and Deference and Demeanor passim.

CHAPTER II

SOME PRINCIPLES OF COURTROOM INTERACTION

Chapter I discussed the various aspects of the courtroom situation which structure interaction between the participants. On a general level it was proposed that the courtroom situation, including the various interests of the participants and the adversary system which sanctions a hostile attempt to shake testimony, structures the interaction. On a less general level, it is proposed that some of the principles of interaction put forward by Goffman, together with some attributes of common discourse pointed out by Garfinkel, are relevant to the actual utterances produced during a trial.

A common thread which runs through social interaction in general and is related to the actual utterances produced in Court, is Garfinkel's concept of "common understandings", discussed in Chapter I. The statement that interactants "take for granted that what is said will be made out in accordance with

methods that need not be specified",¹ appears to be particularly relevant to courtroom interaction. It was observed that witnesses usually expressed themselves in terms similar to those used in everyday interaction; making the assumption that professional actors will make the inferences, understand the implications, and accept the assumptions which are culturally sanctioned as inherent in their discourse. These common cultural expectations, however, are frequently violated in the courtroom. The court does not take for granted that what is said is being made out in accordance with certain common understandings. It seems to be the task of lawyers examining their own witnesses or cross-examining those of the other side to make the implicit explicit. Thus, the "elliptical talk" or "loose talk" typical of everyday interaction is often not sufficiently explicit for the courtroom. This is one aspect of courtroom interaction which will be examined in the analysis.

Goffman proposed that there are two types

of "rules" which structure social interaction in general and serve particularly to maintain interactants "demeanor". That is, avoidance rituals and presentation rituals.² The principle of a voidance (rules regarding keeping distance), its implications in everyday interaction and its operation in courtroom interaction is particularly relevant to this study. Goffman proposes that rules of avoidance help to maintain both "face" and "demeanor".³ The principle of trust (my term) is one which Goffman relates to the maintenance of face.⁴ (Note: in this thesis Goffman's "line" "face" and "demeanor" are subsumed under the term "demeanor" which includes verbal line or argument SEE CHAPTER I).

This chapter examines some specific propositions drawn from Goffman's work in relation to the maintenance of demeanor. It provides instances of infractions of these propositions which were observed in the courtroom and the reactions of witnesses when faced with them. It is suggested

that these infractions facilitate the purpose of the court and are sanctioned by the adversary system and the necessity in court for witnesses to provide explanations for their involvement in the case. They are part of the background expectancies of the courtroom. This is at variance with the assumption that those involved in ordinary interaction are expected to adhere to these principles.

It would be misleading to imply, however, that infractions of these principles never occur during every day social interaction. The rules of avoidance may be disregarded; embarrassing and humiliating moments are sometimes precipitated by social actors; and tactless questions may be asked. By the very fact, however, that such matters are normatively proscribed, infraction is likely to have certain marked effects on the interactant whose demeanor is threatened.

The person who finds himself in such a situation, "in wrong face" in Goffman's terms⁵,

experiences "lack of judgmental support".⁶ Goffman proposed that "felt lack of judgmental support (from an encounter) may take him aback, confuse him and momentarily incapacitate him as an interactant".⁷ Such instances by the nature of the situation are frequent in the courtroom. Some witnesses, especially some defendants, apparently feel themselves to be in wrong face throughout their appearance in court. This in spite of the legal definition that they are technically innocent until proved guilty. The most frequent instances, however, of felt lack of judgmental support may be observed when rules of avoidance and trust are broken.

In focusing on the witness' reactions to infractions of normatively prescribed rules of everyday social interaction, a distinction made by Goffman is helpful. Regarding the attributes of "situated activity", he makes the distinction between "merely situated activity", "activity which may occur in situations but not of situations characteristically occurring at other times outside situations",⁸ and the

"situational" aspect of situated activity; "the parts that could not occur outside situations being intrinsically dependent on the conditions that prevail therein".⁹

It is maintained that it is useful to make this distinction in analysing courtroom interaction. There are certain aspects of witnesses demeanor, for instance, certain reactions he may have to situations in which he finds himself, which are attributable to the fact that he is in court. For example, a person whose personal life is inquired into may be surprised and possibly shocked that "personal questions" are asked of him by a lawyer but he may also be afraid that certain aspects of his personal life may be revealed which will materially effect the case. This is likely to have consequences for his demeanor. The situational aspects of utterances will be pointed out in the analysis. Examples will be arranged within the framework of a discussion of the relevance of the principles of trust and avoidance to courtroom interaction. The propositions themselves are drawn

from Goffman's Face work and Deference and Demeanor.¹⁰

THE PRINCIPLE OF TRUST

Goffman maintains that an interactant's line during social encounters is not inquired into. It is accepted on trust, "a state where everyone temporarily accepts everyone else's line is established"¹¹. An interactant is accepted as a bone fide participant on the basis of his visible attributes. Furthermore, "on the basis of a few known attributes he is given the responsibility of possessing a vast number of others"¹²

The principle of trust as put forward by Goffman is explicitly and deliberately violated in the courtroom, in regard to witnesses' lines. For example, a defendant pleading not guilty is expected by the court to put forward an explanation and argument, possibly to bring witnesses; in short, to present a case in order to back up his plea. A witness for either side in a trial is likely to be subjected to an intense examination and cross-examination and his credibility

is judged by professional participants partly on his reactions to this experience. For instance, if a witness' evidence is contradictory or he seems confused during cross-examination, this may affect his credibility for the court. A credible witness' verbal line will be consistent with the demeanor of a truthful man which he is trying to present to the court.

Since the witness' line is not accepted on trust, he must make positive efforts to make his demeanor acceptable to the court. Chapter IV is concerned with the efforts made by witnesses and their lawyers on their behalf, to present themselves as "properly demeaned" and put forward an acceptable verbal line in the absence of his principle of trust. This Chapter, Chapter II, is concerned with explicit violations of the principle of trust during cross-examination, with particular emphasis on witnesses reactions to these violations:

Cross-examination is the institutionalized means whereby lawyers "test" the verbal line of

witnesses. This testing sometimes amounts to or may be interpreted by the witness as a hostile personal attack and has consequences for demeanor. It became apparent during the period of observation that lawyers have a fairly consistent repertoire of methods whereby they attack the witnesses demeanor, via his credibility. It may be inferred that if a witness feels his credibility is being questioned, he will experience some lack of judgmental support. Witnesses during cross-examination frequently exhibit the classic reactions to felt lack of judgmental support as outlined by Goffman and quoted above.

The examples taken from cross-examination will show some of the methods used by lawyers to test the witnesses demeanor in terms of his credibility, reactions to these methods and steps taken by witnesses to meet these threats to demeanor.

Example 1 is taken from the cross-examination of a passenger in a car which was involved in an accident. It shows the refusal of the defence lawyer

to accept what the crown witness says "on trust". By repeated detailed questions he was able to throw doubt on her evidence by raising the inference that she was not aware of all that was going on at the time. The analysis on the right hand side of the page should show how this inference was created. The witness, from her reactions; apparently experienced lack of judgmental support during cross-examination. The lawyers questions show that he was concerned with the "ingredients of the charge". His client was charged with, "failing to yield the right of way" so that an important question is who has the right of way. It seems that lay interactants are not always aware of these aspects of the case and sometimes misinterpret the lawyer's concern. In this cross-examination, however, the witness became aware of the importance of her evidence about where the other car was at the time of the impact.

EXAMPLE 1

DEFENCE LAWYER: Now, as you "entering the inter-
were entering the intersection section" shows that

were you and the driver
of your car having a
conversation?

the lawyer was concerned
with the issue of "prior
entry" which was an
important aspect of the case.

WITNESS: I was speaking
to her at the time but
she was paying attention
to her driving.

The witness inferred that the
lawyer was implying that the
driver would have been
distracted from her driving
if she was involved in a
conversation. She admitted
that she and the driver were
having a conversation but
agreed with the lawyer in
terms most advantageous for
the driver. That is, "I was
speaking to her". She also
attempted to forestall any
imputation of the driver's
concentration by adding that
she was paying attention to
her driving. The witness

gave the impression of being overanxious to defend the driver; raising the inference that she was biased.

DEFENCE LAWYER: Well, The Lawyer refocused the what were you paying interaction on what the attention to while you witness was doing. were talking to her. Were you looking at her then?

WITNESS: I couldn't say. The witness tried to sidestep the question by giving a vague answer.

DEFENCE LAWYER: Well for The lawyer's question implied you to know that she that he could not accept the was paying attention to witness' statement that the her driving you have to driver was paying attention be looking at her face without knowing how the witness while you were talking knew this. to her, wouldn't you?

WITNESS: Well I would say so but I was also trying to get my seat belt done up too, so, er, as far as being particular, I couldn't.

The witness admitted that she was doing other things besides talking to the driver, in an attempt to excuse her inability to be particular.

The defence lawyer continued to question the witness about where the driver was looking at the time of the impact.

WITNESS: Well she wasn't looking at me, she wasn't looking at me, I know that.

The witness was flustered by the lawyer's insistence. She sounded surprised and upset that her evidence should be subjected to such intense examination. She showed the fact that she was upset by repeating herself. Her tone of voice showed that she thought the lawyer was being unreasonable, in demanding more accuracy.

DEFENCE LAWYER: Well, I suggest that the only reason you know that, is if you were paying attention to where she was looking.

The lawyer tried to insist that the witness tell where she herself was looking. He apparently was trying to raise the inference that if she were paying attention to the driver she could not have seen other car.

WITNESS: Well, this I know, she was looking ahead.

The witness seemed to be aware of the inference the lawyer was trying to raise. She tried to state blankly that she was looking ahead without being more specific. Her tone of voice was insistent with more emphasis than might be used in everyday interaction. She apparently was experiencing lack of judgmental support and answered the lawyer with hostility.

DEFENCE LAWYER: And you say that because you were looking at her face, weren't you?

The lawyer was apparently more interested in the issue of prior entry than whether the driver of the car was concentrating on her driving.

WITNESS: Well, I said, I can't be exact now, I know that I saw the car and I know she was looking ahead but if it needs to be particularly exact I can't right now.

The witness again reiterated the two points which she saw as the important parts of her evidence; she saw the car and the driver was looking ahead. She was unable or unwilling to be more specific. She could not provide the evidence for which the lawyer was asking to support her assertion.

By repeated questions and insistence that the witness be specific the lawyer reduced this part of the witness' evidence to two blank assertions. He tried to imply that these assertions were not sufficient for the

court to infer that the witness knew what she was talking about. Whether or not the court accepted her evidence or thought it reasonable that she should simply "know" these things is not relevant here. What is relevant, is that the example shows an instance of violation of the principle of trust which normally holds in social interaction, by a professional courtroom actor; and how this created problems for a witness which had consequences for her demeanor as a witness who knew what she was talking about.

Example 2 shows another typical violation of the principle of trust which occurs in cross-examination. The witness was for the defence; a by-stander at the scene of an accident. The prosecutor tried to make the witness be more accurate and specific in his account of the events he said he saw. His line was subject to detailed examination. The example points to the different standards of certainty entertained by lay and professional actors in the courtroom situation.

EXAMPLE 2

The witness was giving evidence as to what the driver of the car said after the accident.

PROSECUTOR: Sir, did you
at any time before the
collision see the car
that was travelling
north?

WITNESS: No; I didn't.

PROSECUTOR: You didn't
see the car,

The inference was that, if
that were the case, the
witness could not have known
very much about the accident.

WITNESS: No.

The witness' agreement
established the point that
he had not seen the car
before the accident, more
certainly in the mind of the
court.

PROSECUTOR: I see, and she said she just glanced away.

The Prosecutor's tone of voice for "I see" implied that the fact that the witness did not see the car was a serious admission. He quoted the witness' previous statement, apparently, to show that the statement was vague and subject to several interpretations. This was highlighted by the use of the pronoun "she".

WITNESS: Yes.

PROSECUTOR: And how do you know that it was the driver of the car that said that?

The implication was that the court needed more evidence than the inference made by the witness at the scene of the accident, since he had not actually seen the girl driving the car.

WITNESS: There was really no reason to doubt it because the passenger was still there and the driver of the car identified herself to me as the owner.

The witness made the mistake of showing that he assumed the owner to be the driver. He implied that it was possible to make the inference, given the situation. Presumably he meant that the passenger was still in the passenger seat but he neglected to point this out specifically.

PROSECUTOR: As the owner.

The prosecutor picked up the inference and emphasized it for the court. He implied that although it might have been "obvious" to the witness that the owner was also the driver of the car, he had no truly objective evidence on which to base his assumption.

WITNESS: She had just purchased the car recently and she was deploring the fact that it had to ...

The witness trailed off. These observations did not establish the fact that the owner of the car was driving it at the time of the accident. The witness apparently realized this after he had started to give these details about what she said.

PROSECUTOR: I see and were you able to say anything else about what she mentioned when she said she just glanced away. Did she expand that in any way?

The prosecutor let the inference rest that the witness did in fact not know she was the driver of the car. He further implied that the mere statement "she just glanced away" was not sufficient for the court.

WITNESS: Actually she was just sort of in a ...

The witness trailed off having tried to draw on common cultural understandings.

of how people behave when they have been in an accident.

PROSECUTOR: She just made that broad statement.

Prosecutor again implied that the broad statement was not detailed enough for the court.

WITNESS: She just, er, I didn't question her or anything I just went up to ...

The witness trailed off. He was apparently puzzled and upset by the Prosecutor's attempts to make him look vague. The witness apparently realized how vague he sounded and this was not going to help his argument.

PROSECUTOR: Yes?

The Prosecutor implied that nothing the witness could say would make very much difference to the fact that he did not know very much

about the accident.

WITNESS: (continued) ... The witness took refuge in
I just went to look to the plea that he was an
see if anybody got hurt. innocent by-stander. The
implication of this
observation was "Why am I
subjected to this when I
was only trying to help".

PROSECUTOR: I see. No
further questions.

The example shows how the imposition of clarity and
specificity may attack the credibility of a witness.
The witness made inferences typical of those made in
everyday interaction but these were not acceptable to
the Prosecutor. The witness interpreted the fact
that his line was not accepted on trust as a instance of
lack of judgmental support. He was puzzled and upset
by the Prosecutor's attempts to make him look vague.

Example 3 is another example of a witness' line being thoroughly tested during cross-examination. In this case the witness was a man charged with impaired driving. Unlike the two previous examples which showed chiefly witnesses reactions to requests for more specificity and clarity. The accused's reactions in example 3 seems to be bound up with the fact that he could not remember what happened on the night he was arrested. Thus he used phrases commonly used in everyday social situations, not simply because these are the ones he was used to but also to cover up his inability to remember. His reactions showed a considerable confusion and concern, and are doubtless related to the possibly damaging facts of the case. That is, if his memory about the night he was arrested was poor the court might make the inference that he was impaired. This is the situational aspect to this excerpt of interaction.

This example is also of interest because the prosecutor asked questions of the accused in a hostile

tone of voice, apparently conveying considerable lack of judgmental support

EXAMPLE 3

<p>PROSECUTOR: In relation to the physical test that were performed when did you sign these pieces of paper?</p>	<p>This is an extension of the prosecutor's previous questions about the sequence of events on the night the accused was arrested including request for the exact time at which certain events occurred. The accused had used inexact answers to the prosecutor's questions and seemed to be unsure as to the detailed answers the prosecutor expected him to give.</p>
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<p>ACCUSED: It was quite a while after.</p>	<p>The prosecutor had already indicated to the accused that the exact time of events</p>
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in question was essential.

At this point in the cross-examination it looked as if the accused was taking refuge in the kinds of loose talk used in everyday interaction in order to cover up the fact that the night of his arrest was not clear in his mind.

MAGISTRATE: Quite a while after the physical?

The magistrate indicated that this reply was too vague.

ACCUSED: It was in between the physical and the, er, impairment of, er, the breathilizer test.

The accused tried to be more specific he seemed hesitant and upset (shown by stammering) over this particular request. He gave the appearance of not being sure.

PROSECUTOR: I refer you to Exhibit 2 Mr. B. Do you recognize that document?

The prosecutor asked the question in an accusatory tone of voice, communicating lack of judgmental support.

The witness was confronted directly with a piece of paper that he had signed.

ACCUSED: Yes, sir.

PROSECUTOR: What if I said to you that you signed these documents at about 10:15 in the morning of the same day? What would you say to that Mr. B.?

The confrontation was made specific by the prosecutor, He asked this question in a hostile tone of voice and confronted the witness with the fact that he knew the exact time at which the document was signed and this proved that the witness' previous answers were wrong, and created the inference that he was in fact impaired, at that time.

ACCUSED: 10:15?

The accused realized the enormity of his position. He tried to stall for time by

simply repeating part of the evidence with which he had been confronted.

PROSECUTOR: (pause) ... long after you were charged!

The prosecutor's voice was contemptuous. He immediately turned away from the accused, creating the impression that he no longer considered the accused worthy of attention since his credibility as a reliable witness had been thoroughly shaken.

ACCUSED: I ... how long are you ... er ... you have me there because I wouldn't be able to tell.

The accused was confused and upset and momentarily incapacitated by the prosecutor's confrontation. He stammered and stalled before attempting to produce an excuse that he would not be able to tell the time.

The accused's reactions in this example were, I suggest, related to a number of factors. First, his unease and confusion at being asked to be absolutely specific about time (more specific than an actor in everyday interaction is expected to be). Secondly, he was concerned to cover up the fact that he did remember very little about the night of his arrest. The dismantling of his demeanor as a reliable witness was accomplished by hostile expressions on the part of the prosecutor, repeated implications that the witness did not know what he was talking about, and eventually a confrontation of the witness with a piece of physical evidence which showed that his memory was quite faulty.

The first three examples of this chapter have been concerned to show that witness' verbal lines are not accepted on trust in the courtroom. Witness' reactions are related to their unease at the infractions of rules of everyday interaction, and situational concerns relating to their appearance in court. The next section deals with violations of the principals of avoidance and includes further

examples of the effects of situational concerns on the demeanor of witnesses.

THE PRINCIPAL OF AVOIDANCE

Goffman defined avoidance rituals as "those forms of deference which lead the actor to keep at a distance from the recipient and not violate what Simmel has called "the ideal sphere" that lies around the recipient"¹³ The rituals involve both physical and verbal avoidance. As part of verbal avoidance he proposes that "in our society rules regarding keeping ones distance are multitudinous and strong."¹⁴ References or questions about aspects of personal life are carefully avoided.

This proposition is particularly subject to infraction in the courtroom. Inquiries into personal life are frequently made if they are to be considered relevant to the purpose of the court. The lawyer on the witnesses own side may inquire into his personal life to provide some explanation for his appearance in

court. Such an inquiry may be undertaken by a lawyer as part of his strategy in establishing a certain demeanor for the defendant. To create the inference, for instance, that considering his personal life, he is not the kind of person likely to have done such a thing or that having been judged guilty there were extenuating circumstances which might persuade the judge to impose a lighter sentence than he otherwise might have done. The opposing side may make inquiries into a witness' personal life in order to show that he is not the kind of person likely to tell the truth. These inquiries are likely to have consequences for demeanor (especially if the witness sees what the lawyer is about).

Goffman has delineated more specifically matters which participants avoid in keeping verbal distance in the following proposition "an important focus of deferential avoidance consists in the verbal care that actors are obliged to exercise so as not to bring in to discussion matters that might be painful, embarrassing, or humiliating to the recipient."¹⁵

These matters may be aspects of personal life which have these attributes or painful situations in which the recipient was involved.

Embarrassment may have to be faced in court and matters are often discussed which may be painful or humiliating to the witness. Again, as pointed out under the general proposition, such matters may be discussed by either the witness' own side or the opposing side. Two of the three examples, in this section, however, are taken from cross-examinations so that it may be seen how such matters are used by cross-examining lawyers to throw doubt on the witness' evidence. In cross-examination the witness' embarrassment may be the signal for extensive probes by the lawyer since he may conclude that the witness is trying to hide something. In some instances witness' embarrassment may be the result of a fear that damaging facts will be disclosed which will effect the case. These additional situational aspects of the discussion of painful embarrassing or humiliating matters will be considered in the analysis.

Example 4 is an excerpt from a cross-examination during which a matter apparently painful, embarrassing and humiliating for the witness was discussed. The witness, the complainant in a case of assault, was questioned about whether or not he was mentally ill. The Defence Counsel apparently sought to establish that the complainant was an unstable person likely to pick a fight which would throw doubt on the charge of assault brought against his man. The witness' reactions to these questions about personal matters may be seen as showing embarrassment and humiliation together with considerable unease that these matters should be brought out in court. The witness apparently saw these inquiries as a threat to his demeanor as a wronged man, the victim of an unprovoked assault.

EXAMPLE 4

DEFENCE LAWYER: (following	In asking whether the
a series of loud	complainant was an out-patient
aggressive and apparently	of a mental hospital the
hostile questions about	lawyer asked a personal

the assault). Now, is it true that you are an out-patient of the Crease Clinic?

question of the kind normally avoided in everyday interaction. It can be inferred that such a question would cause the witness pain and embarrassment, whether or not it was true, that he was a mental patient or had been. If the lawyer could establish that the complainant was still an out-patient then the court might draw the inference that he was unstable and possibly mental ill.

WITNESS: (paused and muttered). What do you mean, Crease Clinic?

The witness apparently saw this question as a threat to his demeanor. He tried to imply that he did not know what the defence counsel was talking about. He interpreted this reference to his

personal life as situationally embarrassing.

DEFENCE LAWYER: Have you ever been to Crease Clinic?

The lawyer did not accept the implication that the witness did not know what the lawyer was talking about.

WITNESS: (paused looked obstinate and stony).
When?

The witness was temporarily incapacitated he tried again to avoid the lawyer's question by asking him a question.

LAWYER: Have you ever been there?

The lawyer simply repeated the question. He gave the witness no chance to avoid providing embarrassing details of his personal life.

WITNESS: I have been there for different, I have been there eleven years ago, not now.

Witness sounded angry and upset he implied that although he had been a patient in the mental hospital his

illness was no longer relevant and especially not to this case. He started to say that he had been there (i.e. the clinic) at different times but ended by emphasizing the fact that he was there a number of years previously.

DEFENCE COUNSEL: Well is it not true that you have had a mental disorder.

The lawyer tried to counter the fact that the witness was a patient 11 years previously by implying that a mental disorder may be permanent. That is, it is probably still relevant.

WITNESS: I asked the doctor and he said "NO there nothing wrong with you.

The witness denied the inference raised by the lawyer.

DEFENCE COUNSEL: So 11 years ago you were in

The lawyer ignored the witness' denial. He

Crease Clinic. reiterated the witness' admission that he had been a patient so that it was established in the minds of the court.

The witness in Example 4 tried to block the lawyer's questions about a painful episode in his life. He was apparently aware of the situational relevance of these questions to the case, and his anger and humiliation was compounded by these concerns.

Example 5 is an extract from the cross-examination of the wife of the complainant in Example 4. This example is interesting from the point of view of the varied techniques used by the lawyer in cross-examination. Aspects of the witness' personal life were inquired into and matters were discussed which were painful, embarrassing and humiliating to her, but at the same time the defence counsel used techniques such as changing the topic of examination abruptly and asking questions in a loud and hostile tone of voice, to inquire into the witness' testimony.

During the course of the cross-examination the witness made an admission which was damaging to the crown's case (she was a Crown witness). The example is given however chiefly to show the effects of the violation of principles of avoidance on the demeanor of the witness. The lawyer was asking the witness what she knew of the accused.

DEFENCE COUNSEL: (using
a gentle tone of voice).
Well, has he always been
a gentleman to you?

WITNESS: I never talked
to him.

LAWYER: You never
talked with him?

The lawyer's tone of voice
indicated that he doubted
whether this could be true.

WITNESS: No.

LAWYER: You never
talked to him on
Robson?

The lawyer spoke rapidly,
raised his voice so that his

question sounded like an accusation.

WITNESS: No, I didn't.

The answer had a quality of retort. Shows that the witness was angry at the accusation,

LAWYER: (ignoring the retort). Telling him you are on the brink of suicide?

WITNESS: No.

The witness' tone of voice conveyed that she was upset and humiliated.

LAWYER: That you were afraid of your husband?

WITNESS: No.

The questions and answers followed one another, in rapid succession, the entire interaction had speeded up. Apparent anger on the part

of the lawyer was met by apparent anger and puzzlement on the part of the witness. The witness' puzzlement implied that these accusations and suggestions certainly did not fit the facts.

LAWYER: You didn't say that he blamed you for his son's blindness?

WITNESS: Who sir?

The witness sounded shocked and angry at this reference to her son's handicap;

LAWYER: Did you tell Mr. W. this?

WITNESS: No.

LAWYER: Did you tell him you would knock on the ceiling if you needed help?

WITNESS: I did not

The witness' reply was emphasized, indicating anger and shock. Her answers communicated a sense of outrage presumably that these accusations should be made at all, also that they should be made in court since they were relevant to the kind of man her husband was. This as mentioned in Example 4 was very relevant to the case, since an unstable and unreasonable man would be more likely to provoke an assault.

LAWYER: Has your husband got mental illness?

The lawyer suddenly changed topic. Such a change of topic is unusual in everyday interaction when efforts are usually made to show

that the new topic is appropos
the previous one to provide
some kind of a bridge passage,
so that the change will not
seem abrupt, e.g. by the way,
incidentally, and so forth.
The witness seemed to be
thrown off balance by the
abrupt change of topic. 16

WITNESS: Yes.

The witness was apparently
thrown off balance by the
abrupt change of topic so
that she made no attempt to
soften the fact that her
husband had mental illness.

LAWYER: When was he in
Crease Clinic last?

The lawyer made the
assumption that her husband
was in Crease Clinic. He
gave the impression that he
already knew something about
the alleged mental illness.

WITNESS: 10 years ago.

The witness spoke very softly
her tone was emotional.
Having made the witness angry
in the previous section of
examination, the lawyer upset
her by referring to her
husband's mental illness.

LAWYER: Now, is he an
outpatient at the moment,
being treated?

As in the previous section
the lawyer's pace of questioning
was very fast. His tone was
loud and somewhat bullying.

WITNESS: No, sir.

The witness kept her answers
short. She seemed intent on
not revealing more than she
had to.

LAWYER: Well were you
staying in Suite No. 2
were you living there?

This is yet another abrupt
change of topic.

WITNESS: No, I was
babysitting.

This gave a reasonable
explanation for her presence

in Suite No. 2. She denied the lawyer's inferences she was living apart from her husband.

LAWYER: Did you hear your husband yelling "I'll fix him, I'll fix him, in the hall.

This is yet another change of topic, without any bridge passage.

WITNESS: He wasn't yelling at him he was yelling at me.

LAWYER: Well, what was he yelling at you?

WITNESS: When anything goes wrong, he yells at me.

The witness was apparently confused and upset by the previous part of the cross-examination and thought the lawyer was referring to her everyday relationship with her husband, whereas

he was in fact referring to the night when the alleged assault took place. The witness had apparently made the admission that her husband was an unpredictable angry man in that he habitually yelled when things went wrong. This apparently was the kind of admission, for which the lawyer had hoped when referring to the husband's mental illness previously.

LAWYER: (moderating his tone and speaking gently). I see. Well are you afraid of this yelling?

The lawyer immediately picked up the inference, softened his tone and spoke gently, apparently hoping to draw the witness out.

WITNESS: Well, I had Dr. G. examine him and he

said he is not a
dangerous man.

LAWYER: And you had no
fear of him?

WITNESS: No sir.

LAWYER: You had no fear
of your husband?

The lawyer repeated the
question to emphasise the
point of her denial to the
court.

WITNESS: Dr. G. said he
is not a dangerous man.

The witness simply repeated
her assertion, the inference
being that since he was not a
dangerous man there was no
reason to be afraid of him.
At this point the witness'
tone was somewhat desperate.

LAWYER: Well why did
you ask Dr. G: if he
was a dangerous man if

This was said in an
accusatory tone of voice as
if the lawyer felt his

you weren't afraid? point had been proved.

The example shows how the demeanor of the witness was affected by reference to painful, embarrassing and humiliating matters. The lawyer apparently hoped to show that the complainant was unstable by inquiring into his alleged mental illness. The lawyer's other techniques of examination, his accusations that the wife was afraid, his hostile tone of voice, his abrupt change of topic and his fast pace of asking questions, seemed to add to her confusion and perplexity. The witness was extremely upset by the inquiries into the personal matters and made a fortuitous (for the defence counsel) admission that her husband always yelled at her when things went wrong. From this the lawyer inferred that she must be afraid of her husband. While his direct line of inquiry about her husband's mental illness was blocked by the witness he was able to make the point about her relationship with her husband following her damaging (to the Crown's case) admission. The witness in this instance seemed to be aware of the situational relevance of her

relationship with her husband.

In Chapter 2 I have set out to show that the principles of trust and avoidance which normally obtain on social interaction are subject to infraction in the courtroom. It was pointed out that these infractions occur as part of the judicial process and are apparently institutionalized as part of common understandings of courtroom interactants. It should be noted, however, that although they may be part of the background expectancies of the professional courtroom actor, lay witnesses may not be so prepared. The analysis of the examples presented in this chapter show that the reactions of the witnesses to these violations. I also tried to show the influence of the situational aspect of courtroom interaction from the demeanor of witnesses.

FOOTNOTES: CHAPTER 11

1. Garfinkel, What is Ethnomethodology, p. 24
2. See Goffman, The Nature of Deference and Demeanor.
3. For the "avoidance process" as one kind of face-work see Goffman, On Face Work p. 15 f.f. For "Avoidance rituals" as a form of deference see Goffman, Deference and Demeanor p. 62 f.f.
4. The principle of trust which usually holds in social situations is inferred from the following quotations from Goffman's Face Work. In social situations in general "a state where everyone temporarily accepts everyone else's line is established" (p. 17) and "on the basis of a few known attributes he is given the responsibility of possessing a vast number of others" (p. 7).
5. Op. cit p. 8
6. Loc. cit
7. Loc. cit
8. Erving Goffman, Behaviour in Public Places, Free Press, Glencoe, Illinois, 1963, p. 22.
9. Loc. cit.

10. In Goffman, Interaction Ritual.
11. Goffman, Facework, p. 17.
12. Op. cit p. 7
13. Goffman, Deference and Demeanor, p. 62.
14. Op. cit p. 65
15. Loc. cit
16. Roy Turner, has observed that, "Transitions are needed, apparently, in order to bring about topic changes and in our society we seem to have no lack of expressions which do the job of according the other his conversational rights, while enabling us to exercise our own. I have in mind such things as "by the way", "that reminds me", "speaking of so and so", etc." "Problems in the Study of Interaction". Paper read at the Pacific Sociological Association Meeting at Vancouver, April 66 p. 8.

CHAPTER 111

DEMEANOR IN THE COURTROOM

Chapter 111 has two major concerns. The first is to delineate the attributes of "acceptable demeanor" of witnesses in court and the second to show the processes whereby professional courtroom actors "categorize" lay interactants in terms of demeanor.

Chapter 11 showed that the witnesses' demeanor during his appearance in court is problematic in that it is not protected by the rules of social interaction which normally hold during encounters. Governed by the unique needs of the Court (the institutionalized judicial process) the witness' demeanor including his verbal "line" is subject to a thorough examination. It is tested and tried. It may undergo cross-examination. It follows that certain general principles about demeanor acceptable to the Court are capable of isolation. The question of what is acceptable to the court may be partly answered by the observation and analysis of instances of unacceptable demeanor in terms of the court's reaction to them and similarly of

instances of apparently acceptable demeanor.

It is proposed that demeanor in the courtroom is subject to expectations of society in general about what is "proper", together with other expectations specific to the courtroom setting. An appearance in court may be seen as one of the general class of "fateful events" to which Goffman refers.¹ During such events actors are expected to exhibit certain major forms of character that bear on the management of fateful events. These are attributes of "moral character" as defined by our society: courage; gameness; integrity; gallantry and composure, which includes self-control and self-possession, both physical and emotional.²

The attributes most relevant to an appearance in court are integrity, with particular emphasis on honesty and composure.³ It seemed essential in the courtroom that lay witnesses have the attributes of composure, self-possession and especially emotional self-control.

Examples will be given of failures to maintain composure which incurred the overt disapproval of the court. This reaction was usually expressed by the magistrate in the form of sanctions of the witnesses' behaviour which culminated on occasion in the physical removal of the witness from the courtroom. Some instances of considerable lack of composure were observed, however, which incurred no direct sanctions, for instance, extreme nervousness. These and their bearing on the expectations of society in general that a person who is the focus of a fateful event ought to be composed will be examined in some detail later in the chapter.

It can be seen that the attribute of integrity is crucial for a witness appearing in court, especially for the accused, since it is likely to bear on the decision in the case. In the trials observed the magistrate usually referred to his assessment of the integrity of the accused in his Reasons for Judgment. One further important attribute which was expected of witnesses was that of showing respect to

the court. Several occasions were observed when witnesses were sanctioned for not showing "proper respect". Showing respect could be subsumed under Goffman's Attribute of Moral Character, composure, but it will be considered separately here because of its central importance. Some estimation of its importance can be made from the observation that a lack of respect for the court may be defined as "contempt" and treated as a criminal charge. Examples will be presented of witnesses who neglected to show proper respect and were overtly sanctioned by the court. The three attributes of composure, integrity and showing respect have been treated separately but, in the event, sanctioned witnesses sometimes lacked composure, failed to show respect for the court and were judged to lack integrity. Their general demeanor was unacceptable. It is maintained that a considerable variety of behaviour may be subsumed under these somewhat general attributes proposed by Goffman as being part of "moral character". The examples will be examined in some detail in terms of the infractions of these three main prescriptions of moral character

and in terms of general demeanor. The analysis is intended to show what constitutes lack of respect, loss of composure, etc. in the courtroom. In contrast, examples will be presented of apparently acceptable demeanor, their acceptability inferred from the reactions of the court. This course will furnish some specific examples of witnesses engaged in the management of a particular type of the general class of "fateful events" together with examples of witnesses who failed in their attempted management.

The assessment of demeanor in terms of these attributes of moral character seems to be an important part of the "categorization" of witnesses by professional actors. The analysis of responses to witnesses, by other courtroom participants, should help to make this process clear.

Garfinkel has referred to the process of categorization as part of the "taken for granted" aspect of common understanding shared by the members of a particular setting. The ability to categorize is learned during socialization into the setting. He

points out:-

"With respect to the problematic character of practical actions and to the practical adequacy of their inquiries, members take for granted that a member must at the outset 'know' the setting in which he is to operate if his practices are to serve as measures to bring particular locative features of these settings to recognizable account".⁴

Categorization in the courtroom takes various forms. An accused must be categorized as guilty or not guilty. A witness may be categorized as confused, lying, and so on. Witnesses may be judged fit or unfit courtroom interactants. Categorization by the court is usually expressed by the magistrate who acts as a decision maker. He may refuse to hear a witness who has been categorized as an unfit interactant and from the interaction it may be clear that the process of categorization has involved some assessment of the witnesses demeanor.

Other members of the courtroom setting categorize witnesses. For example, during the adjournment of the trial of a man charged with breaking

and entering, in discussing the accused's evidence, some policemen and court officials described him as a "smoothie" and obviously guilty. Although these people had no direct influence on the decision of the court, the man was found guilty. I suggest that these members of the courtroom setting and socialized into the setting share common understandings with the magistrate about the categorization of lay interactants.

Examples will be presented together with a) an analysis of witness demeanor in terms of the relevant attributes of moral character and b) an analysis of the process of categorization of witnesses by professional interactants. The first set of examples includes part of the appearance of two witnesses who failed completely in their management of the fateful event in which they were involved, in that they were categorized as unfit interactants, and removed from the courtroom.

It is proposed that one of the criteria by which professional interactants judge a witness' fitness to remain in court is the degree to which witnesses attend to the "conventions of interaction",

both those appropriate to everyday interaction and those specific to the courtroom. By conventions of interaction I mean the process whereby interactants provide one of a certain class of utterance which as a part of common understandings is expected by other interactants at a particular point in the interaction. For example, the expected sequence of question and answer in the courtroom: as a general rule professional interactants ask the questions and lay interactants supply the answers. At certain points explanations may be called for, at others excuses may be presented which are seen as relevant by lay interactants but irrelevant by professional actors.⁵ Thus, "talking out of turn" in court, for instance, a witness asking questions of the magistrate, may be seen as sanctionable behaviour by professional interactants. It may be construed as showing lack of respect for the court. A further factor in the categorization of lay interactants is their response to sanction by professional actors. Failure to respond is likely to provide more evidence that the witness should be removed from the courtroom.

The analysis of the examples will also be directed to witnesses attention to those conventions of interaction.

EXAMPLE 1

A complainant in an assault charge was being questioned by the court. There was no lawyer for the defence. The complainant seemed unsteady as she walked into the courtroom. She answered the questions in a loud and belligerent tone of voice. Her speech was slurred.

MAGISTRATE: Are you the complainant in this matter?

COMPLAINANT: Yes, I am.

PROSECUTOR: I just wonder if she is in any condition to address the court Your Worship.

The prosecutor was addressing the Magistrate. He apparently used aspects of the witness' general physical demeanor, her walking unsteadily and

peering about her, as evidence from which he concluded that she was an unfit interactant. The prosecutor wondering about her being "in any condition" to address the court implied that there was a "proper" condition for a witness appearing in court.

MAGISTRATE: (addressing the prosecutor) I want to get the information.

The Magistrate indicated that he was willing at that point to overlook the improper condition to which the prosecutor was referring in order to get the relevant information on the matter. It would seem that in some circumstances witnesses may be allowed to appear in an equivocal condition, for instance, when this

consideration is overridden by the necessity of "getting information".

COMPLAINANT: I wasn't drinking, I'm sorry I do not drink, I'm just crippled up. Since when do you call all crippled people drunk?

The complainant stumbled over her words. She interrupted the magistrate when he was talking to the prosecutor. She talked out of turn since she had not been addressed in this matter. The usual sequence of verbal interaction in court is for the lay interactant to speak only when he has been asked a question or "given the floor". The witness' interruption constituted lack of respect for the court. Further, she inferred from the Prosecutor's remark that he

meant she was drunk; She made an inference, which was improper and offered an excuse "I'm just crippled up" before she had been accused, again out of turn. The conventions of everyday interaction preclude the offering of an excuse before it is called for. She further complicated her appearance by demanding why the prosecutor called all crippled people drunk, an improper question since the layman is not expected to ask questions of professional actors. The question may be construed as disrespectful; especially since it was asked in a loud, demanding tone of voice. The witness showed

a failure to adapt to the
courtroom situation;

MAGISTRATE: Well, I'm
going to remand you in
custody until tomorrow
morning ... as a...

The complainant's disregard
for the conventions of
interaction was so flagrant
that the magistrate decided at
this juncture, relatively
early in the witness'
appearance, that the complainant
was an unfit courtroom
interactant. Apparently her
"condition" as interpreted
after her previous utterance
over-rode his concern for
getting the information.
That the magistrate considered
her appearance to be a serious
breach of what is proper in
court may be inferred from the
fact that he remanded her in
custody.

COMPLAINANT: (breaking
in). In custody! I
have to get doctor care.

The witness again talked out
of turn. She was being
addressed by the magistrate
but she interrupted him,
showing lack of control and
objected to his decision,
showing lack of respect.
The complainant attempted to
provide an adequate excuse
"I have to get doctor care"
for not being remanded.
Medical excuses are
characteristically "good"
excuses in everyday life.
They frequently "get you
off".

MAGISTRATE" (finishing)
As a material witness.

COMPLAINANT: I'll be
here - but I would
like to go now. I

would like to cancel
that bail please.

The complainant tried to establish herself as a responsible person by telling the magistrate that she would be in court the following day. She tried to ignore the interaction which had intervened between her first appearance in court when she had refused to continue bail for the accused. Her reference to wanting to cancel the bail may be seen as a reminder to the court that she was the accused's bondswoman, in order to re-establish herself as a person of power. She made an abortive attempt to exercise that power by trying to cancel the bail.

MAGISTRATE" I'm quite
sure you will na'an.

This may be interpreted as a dry reference to the fact

that, since she would be in custody, there would be no doubt that the complainant would be in court the following day.

PROSECUTOR: Go with the The accused was led out of
policewoman please. the courtroom by a policewoman.

The witness in Example 1 exhibited demeanor totally unacceptable to the court. She was categorized as an unfit interactant. The example shows the kind of actions which may be construed by the court as lack of respect. Actions such as interrupting the magistrate, addressing the prosecutor when the complainant had not been addressed, offering excuses inappropriately; in short, disregarding the conventions of courtroom and everyday interaction. The witness lacked physical and emotional self-control in that she staggered and her tone of voice was loud and belligerent.

Example 11 is another instance of a witness whose demeanor was unacceptable to the court. The accused in this case was categorized as an unfit

interactant, again because she was drunk, although this categorization was not made until her second appearance on the same day, following an adjournment. The magistrate's questions give some indication of the process of categorization. The witness plunged ahead in the interaction without waiting for the formal procedure of the court to be gone through, thus showing a lack of respect for the court; her manner in court was belligerent, she repeated herself and trailed off without finishing sentences which was construed as a lack of composure. She paid more attention to the conventions of interaction, however, than the witness in the previous example. It is this, I would suggest, which was the chief factor in the delay in the court's categorization of her as an unfit interactant.

EXAMPLE 11

PROSECUTOR: Charge of
vagrancy A for trial
this morning, Your Worship.

MAGISTRATE: (to witness)
Do you want to go ahead
now?

WITNESS: I'm not guilty because I have got permission. I've got witnesses here.

This was a point in the interaction when a direct answer to the magistrate's question was called for. The magistrate had not asked for the defendant's plea, that is guilty or not guilty but whether she wanted her case to be heard. The defendant disregarded court procedure. If she had wanted to go ahead the charge should have been read and her plea heard. This may be seen as lack of respect for the court.

MAGISTRATE: You've got witnesses in court?

The magistrate accepted the witness' change of subject. He may have had defined her disregard for procedure as ignorance.

WITNESS: Yeah, right out,
o ... , over there
(pointing)

WITNESS: Yeah, I am not
guilty because because
furthermore I have
permission to ...

The witness exhibited lack of
composure in pointing but
gave an appropriate answer
to the magistrate's question.

The witness continued to
ignore proper procedure.
She showed lack of emotional
self-control in insisting
that she was not guilty.
Her insistence gave the
impression that she thought
the court might not recognize
her claim. This can be
seen as showing lack of
respect for the court. Her
hurried attempt to give an
explanation of why she was
not guilty was uncalled for
at this juncture.

MAGISTRATE: You haven't
been drinking this
morning have you?

The accused's lack of
respect and attempt to
give an uncalled for

explanation apparently made the Magistrate suspect that she had been drinking.

WITNESS: No, I haven't Sir, but this gits me,

The witness gave an appropriate reply to the magistrate's question and offered an excuse for her insistence. This is, "this gits me", implying that if one is angry one might be forgiven for being carried away. In this utterance she paid attention to the conventions of interaction. By calling the magistrate, Sir, she showed respect for the court.

MAGISTRATE: You don't look very good now and I noticed you came into court smoking ...

The magistrate indicated that there were other factors which ought to be explained. (There were notices displayed outside the courtroom that smoking was not allowed).

<p>WITNESS: (started to speak before the magistrate had finished his sentence). Yeah, because I'm doing everything ... yeah, I realize that but I'm too nervous.</p>	<p>The witness provided the excuse for which the magistrate asked by implication. She gave a plausible exalanation considering the courtroom's situation, that is, that she was nervous. Although she interrupted the magistrate, her reply was of the appropriate class.</p>
--	---

<p>MAGISTRATE: Why did you do that?</p>	<p>The magistrate disregarded the fact that the witness had interrupted him, by repeating the question. He did not sanction her.</p>
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<p>WITNESS: Nervous</p>	<p>The witness repeated her excuse.</p>
-------------------------	---

<p>MAGISTRATE: And you say you're not under the influence of alcohol or drugs?</p>	<p>The magistrate asked again whether she was intoxicated. He asked, in fact, for a denial of the inference he had apparently drawn from her demeanor.</p>
--	--

WITNESS: No, Sir.

The witness replied to his question with an appropriate answer.

The magistrate apparently accepted the witness' explanation that she was nervous and went on to question her about a date upon which she was sentenced previously. The witness could not remember and the case was stood down until the details had been determined by the prosector. After the break the witness returned to court. She was staggering and swaying as she stood in front of the magistrate.

MAGISTRATE: Just. Are you sure you're alright? Would you mind determining whether this girl has been drinking (to a police officer)?

The magistrate decided at this point that the witness was an unfit interactant, after all. He seemed to be influenced by the accused's physical demeanor which confirmed the impression he had had of her before,

WOMAN POLICE OFFICER: She's The Police Officer bent down been drinking Your Worship and put her face close to the

witness' face.. Apparently to
smell the witness' breath.

This was an interesting example
of the "violation of personal
space" referred to by Goffman
(Deference and Demeanor).

Apparently, if a witness is
suspected of being an unfit
interactant his personal space
in the physical sense becomes
violable.

MAGISTRATE: Yes, I'm
going to remand your case
until tomorrow. No
bail. I'm not
satisfied that you are
at all capable of
handling yourself today
in a case of this
nature. Tomorrow the
trial. Thank you
Officer.

WITNESS: (being led out to the cells). Just a minute!

The witness was hustled out unceremoniously. Having been classified as an unfit courtroom interactant. Other courtroom actors were able to hold her by the arms and remove her from the courtroom.

An interesting comparison may be made between this example (Example 11) and the previous one (Example 1) and some rather subtle differences discerned. Although the second witness exhibited some of the same attributes of demeanor as the first witness, the magistrate did not finally categorize her as an unfit interactant until after the adjournment. Some differences between the two were that, whereas the second witness was able to recognize an appropriate point in the interaction when an excuse could be presented, the first offered an uncalled for excuse and berated the prosecutor, showing lack of respect for the court. The first witness interrupted the magistrate and disregarded the conventions of

interaction in the courtroom. Although the second witness disregarded courtroom procedure this may have been construed as ignorance on her part by the magistrate. She was still able to show some respect for the court. The attributes of the second witness' demeanor which eventually led the magistrate to have her removed from the court seemed to have been her lack of physical self-control after the adjournment, which compounded his earlier observations that "she didn't look very good" and she came into court smoking.

EXAMPLE 111

This example shows a circumstance under which a witness exhibiting some of the same attributes as the witness cited above, was not questioned about her fitness to appear in court. She was apparently defined as nervous and the definition was not equivocal. During her appearance the witness had a limited command of speech. She appeared stupified. She stammered and apparently had difficulty remembering the circumstances about which she was testifying. However, her speech was not slurred, her tone was not belligerent and she stuck

tanaciously to the point. Further, she did not stagger when she came into the courtroom. Thus, she exhibited considerable lack of composure but showed respect for the court throughout her appearance. Her nervousness was apparently inferred by the court since the prosecutor adapted his examining technique (she was a crown witness) so that she was able to give her evidence and be of some use to him. One factor in the categorization of this witness as being "just nervous", I would suggest, was her attention to the conventions of interaction. This is shown in the part of her evidence analysed below.

The witness was called and entered the courtroom in a very hesitant manner. She was shown into the witness box by the court officer and stood peering about her uncertainly, blinking her eyes rapidly and clasping her hands tightly behind her back. The witness was sworn in and asked her name and address.

PROSECUTOR: (very business-like and efficient).	The prosecutor spoke very hurriedly. It might be
Now direct your attention	surmised that the first

specifically to
 between 8 o'clock in
 the evening of October
 the 16th and 12:30 in
 the morning of October
 the 17th - what do you
 recall if anything at
 that time?

part of the utterance was a
 relatively unusual turn of
 phrase for lay interactants.
 That is, "now direct your
 attention specifically".

WITNESS: (silence)

This was an instance of a "spot"
 in the interaction which ought
 to have been filled by an answer.
 The witness did not give one.

PROSECUTOR: Did anything
 happen at that time?

The prosecutor rephrased part
 of the question in simpler terms.
 The process of interpretation
 involved in this section of the
 interaction, I would suggest,
 may be described thus:
 following an inappropriate
 response to a verbal action
 (here, silence in answer to a

question) other interactants review the reason for the inappropriate response. Thus failure to answer in court may be due to various factors, for example, wilful refusal to answer, lack of understanding of the question, incapacity due to impairment or incapacity due to nervousness etc. In this example the witness' physical demeanor - blinking of her eyes, clasping her hands etc. was defined as nervousness. Further, her manner to the court showed respect in that she did not speak out of turn and her tone of voice was well modulated.

WITNESS: I'm sorry, The witness still could not
could you repeat that? answer the question but
comprehended that her failure

should be recognized in some fashion. She offered an apology and asked for the question to be repeated. The inference being that she did not understand.

<p>PROSECUTOR: Well, I'll rephrase the question, Your Worship. I refer to Exhibit 7 - do you recognize this article?</p>	<p>The prosecutor adapted his examining technique again. The witness was still categorized as "just nervous".</p>
--	---

<p>WITNESS: Yes.</p>	<p>The witness provided an appropriate answer to the prosecutor's question.</p>
----------------------	---

The examination continued and the witness exhibited signs of tension and nervousness throughout the entire appearance. The witness in this example was categorized by the court as a person exhibiting demeanor proper to lay witnesses appearing in court. Although she lacked composure she incurred no overt sanctions.

The court apparently defined her failure to fill certain spots as due to an acceptable reason. That is, nervousness. She was also cognizant of the conventions of interaction. The prosecutor continued to examine in spite of the difficulties she obviously had understanding him and rephrased his questions to try to elicit the information he needed from her. It seems that some lack of composure is acceptable to the court if it is occasioned by nervousness rather than intoxication.

The next set of two examples shows occasions on which witnesses lost composure. They failed to show the prescribed attributes of moral character. They lost emotional and physical self-control, but they were not categorized as unfit interactants and were allowed to continue their evidence.

EXAMPLE IV

The witness, a defendant, is describing his arrest while being examined by his own lawyer.

WITNESS: They took me down town and it wasn't until the next day that I found out what they did do. They took the wedding ring right off my wife's finger for one, they took the ring, they took everything in the house.

This was a highly emotional plea of sympathy. The witness had lost his self-control. At this point he seemed about to sob. This was a classic example of failure to exhibit moral character.

LAWYER: (cutting in). Now let's stick to the point Mr. M. Now carry on from there.

The lawyer (a professional interactant) apparently realized that this emotional tone would not appeal to the court. Although the situation was stressful and the matters he had to deal with were upsetting, it was evidently part of the court's expectations, that he not lose control. The lawyer tried to direct his client to show more

self-control by mildly
sanctioning him i.e. "let's
stick to the point Mr. M."

WITNESS: (ignoring The witness did not react to
lawyer's caution) God! the lawyer's warning that his
And the next thing you loss of control would be seen
know I've been charged as "improper" demeanor by the
and they told me that court. He continued to give
there was a series of his evidence in a tearful tone
burglaries and I was the of voice sounding upset and
one and I could see it speaking rapidly. He implied
from the beginning I was,that he was completely helpless
under the circumstances, and by implication blameless.
set up as a perfect "There was nothing I could have
patsy for those two chaps,done about it". He suggested
as well as the police. that he was merely a victim of
There was nothing I some unscrupulous people.
could have done about
it.

MAGISTRATE: (following The magistrate dryly admonished
a further question and the witness for his lack of

answer by the lawyer control by referring to his
and the witness). I getting back into the spell
was lost from that point of things.
on when Mr. M. got back
into the spell of
things.

Thus, the witness was sanctioned for lack of emotional
self-control in the courtroom; having to refer to his
arrest was too much for him. This was not
interpreted by the court, however, as an instance of
reasonable loss of control, although it was not serious
enough for him to be categorized as an unfit interactant.

EXAMPLE V

Example V is an analysis of part of the appearance in
court of a witness who showed a lack of respect for the
court and a lack of composure. He lost emotional and
physical self-control during his evidence. Although he
was not deemed an unfit interactant, he was categorized
as a witness exhibiting sanctionable behaviour.

Examination by the defence counsel of a

person charged with assault causing bodily harm.

LAWYER: Did you ever have
a conversation with Mr.
X? (the person who was
alleged to have been
assaulted).

WITNESS: Yes.

This was an appropriate
answer to the question.

DEFENCE COUNSEL: Yes?

Apparently, the answer was not
sufficient for the Court.
The lawyer encouraged him to
continue.

WITNESS: The
conversation was about,
I brought my garbage
down eight days before
Christmas. The moment
he saw me before the
furnace he stood up
before the furnace and
shouted at me with

The witness lost both
emotional and physical self-
control in that his tone of
voice was dramatic, he was
shouting and waving his arms.
He was carried away by having
to talk about his previous
dealings with the complainant.

outstretched hands. I
am an outlaw; I'm fed
up with you, W., I don't
take this nonsense any
more. You are
endangering the whole
public here. (Witness
was shouting,
jesticulating and
dramatizing).

LAWYER: Well, what, what
... (trying to stem the
flow).

The lawyer tried to interrupt
the accused. Apparently to
stop the accused providing
further evidence of lack of
moral character through loss
of physical and emotional
self-control.

MAGISTRATE: Well, now.
We're not acting a play,
will you just give your
evidence here.

The magistrate indicated that
the witness' behaviour was
not acceptable to the court.
His lack of composure was

sanctionable and showed a lack of respect for the court.

WITNESS: Yes, indeed. The witness accepted the (he looked crestfallen). sanction and modified his behaviour thereafter. Here, it is of interest that the witness modified his behaviour after he was sanctioned for his lack of moral character. He, like the witness in Example IV, was not categorized as an unfit interactant as a result of his behaviour.

The following two examples contrast a totally unsuccessful demeanor during a court appearance and a highly successful one in terms of the reaction of the court to the witness' behaviour.

EXAMPLE VI

The Defendant was brought in from the cells. He strode across the courtroom looking very sure of himself.

MAGISTRATE: Do you know
what you're charged
with Mr. S., Common
Assault?

<p>DEFENDANT (replying in an exasperated tone of voice). I think so. It's been that way eight times, nine times.</p>	<p>The witness, while attending partially to the conventions of interaction, provided more information than was called for and implied that he was exasperated by the proceedings. His exasperation showed lack of respect for the court.</p>
--	---

<p>MAGISTRATE: Well, I'm not concerned with your record.</p>	<p>The magistrate construed this confidence as a reference to the witness' record. This may be seen as a sanction on the witness' lack of respect.</p>
--	--

<p>DEFENDANT: Mr. H. may I ask you one thing? Look ...</p>	<p>The Defendant's tone was confiding. He tried to talk to the magistrate on a man to</p>
--	---

man basis and disregarded courtroom procedure. He tried to create the inference that he was equal to the magistrate, an inappropriate demeanor for a witness. In court the witness is in a subordinate position to the magistrate. Further, he asked the magistrate a question. Again, this was inappropriate according to the conventions of courtroom interaction.

MAGISTRATE: (interrupting) The magistrate tried to Firstly, you know what direct the accused's attention the charge means, do to correct courtroom procedure you? Have you decided indicating that the witness' what to do with the question was inappropriate. charge? Do you want an adjournment for some reason?

DEFENDANT: I would like The witness ignored the

to ask you something
if I may.

magistrate's question. He
tried to bring in his own
subject matter. The
conventions of courtroom
interaction demand that
magistrate's questions be
answered. Witnesses are not in
a position to choose their own
topic of conversation.

MAGISTRATE: Yes?

The magistrate was visibly
annoyed. This may be
interpreted as a non-verbal
sanction on the accused's
behaviour.

DEFENDANT: (again his
manner implied that he
was addressing the
magistrate man to man).
You see she's my common
law wife. She's
charged me with assault

The defendant tried to pass the
matter off as a result of the
vagaries of his wife in
charging him and then putting
up bail. He established he
was a landlord, however, by
inference, a man of substance.

eight or nine times.	This explanation was
I've one assault charge	extraneous to the magistrate's
pending now which I'm on	concern of whether the defendant
bail for and she has	wanted the matter to go forward
put up the bail,	at this time. The accused's
\$2,000.00, and she	explanation was uncalled for.
tries to ... now last	The magistrate continued
night she was in a bad	questioning the defendant.
humour and I had one of	It became apparent that the
the tenants order a	defendant could not remember
taxi over to the	the date of his previous
Psychiatric ward at the	appearance nor the name of
hospital ... (the	his lawyer. He gave the
defendant continued).	appearance of being confused.
	He eventually remembered these
	things and continued the story
	of the alleged assault. This
	was followed by a discussion
	of bail on the previous case
	which was put by his common
	law wife.

MAGISTRATE: No, no, I'm	The demeanor the defendant
not going to set any bail	wanted to present was at

until tomorrow morning.
You will remain in
custody. Now, you can
phone your lawyer at his
office if you wish.

variance with the impression
the court received of him.
He had annoyed the magistrate
by insisting on giving an
explanation at an
inappropriate time and by not
showing respect for the court.
He had disregarded the
conventions of courtroom
interaction. In fact the
magistrate was sanctioning
the witness for his
inappropriate behaviour by
not granting bail.

DEFENDANT: You mean
there's no bail!

The witness objected to the
decision.

MAGISTRATE: No bail
until tomorrow morning.

DEFENDANT: Then I am to
lose my business again.
I operate a business.

The accused provided an
explanation for his objection
and a reason for his implicit

request that the magistrate
reconsider.

MAGISTRATE: Alright. I'll The magistrate apparently
set bail for \$500.00 accepted this as a bona fide
cash or property. reason for granting bail. The
sum was relatively low
compared to the previous bail.

PROSECUTOR: Here's the
complainant now, Your
Worship.

DEFENDANT: Here's the Witness again talked out of
Complainant. Will you turn, showing lack of respect
continue my bail, for the court by disregarding
Jessie? the conventions of courtroom
interaction. The magistrate
or prosecutor is supposed to
initiate interaction..

COMPLAINANT: No, I
won't.

<p>DEFENDANT: You cancel that bail? You take my money and steal my property!</p>	<p>The defendant began to lose composure.. He shouted and waved his arms. Since he was an experienced courtroom interactant it was reasonable for the court to expect that he would attend to the conventions.</p>
--	--

<p>POLICEMAN: (attempting to remove him). Come on, now.</p>	<p>The professional actor (the policeman) categorized the defendant as an unfit interactant. His loss of control was sufficient to lead to his removal from the courtroom.</p>
---	--

<p>DEFENDANT: (continuing) ... and give it to the nigger that you live with. You have taken my whole life away. You stole everything I ever had and give it</p>	<p>The defendant continued to shout and refer to personal matters which were extraneous to the concern of the court. He showed lack of respect by conducting a public quarrel with his common law wife,</p>
---	---

111.

to the nigger ... sufficient to warrant his
(the defendant was being hustled out of the
hustled out to the courtroom.
cells).

This example shows that there are instances of loss of control in court when the witness is not impaired but is still categorized as an unfit interactant.

The witness' appearance started out with him being confident of his position but ended with him being hustled out ignominiously to the cells. Mr. S. tried to present himself as a reasonably dignified person, a victim of the vagaries of his wife's behaviour, a person who could talk to the magistrate man to man and explain the circumstances of the charge. However, he failed to show proper respect for the court, the previous charges he mentioned were interpreted as a record and his behaviour was interpreted as unacceptable by the magistrate who cut off his attempts to explain. Mr. S., however, was able to establish that was a landlord, by inference a man of substance. He did not attend to the conventions of courtroom

interaction. His efforts to present himself as a person exhibiting proper demeanor was spoiled by the fact that he could not remember the date of his last court appearance or his lawyer's name. The impression given by Mr. S. was so bad that bail was not set until he pleaded special circumstances, that is, he had a business to look after. When his wife arrived his demeanor became so unacceptable to the court, that he was hurriedly removed from the courtroom by a policeman. To sum up the defendant's attitude to the court, his lack of respect, the subject matter of his utterances, his inattention to the conventions of courtroom interaction and, towards the end of his appearance, his total demeanor, including loss of physical and emotional self-control, was unacceptable to the Court.

Example VII is taken from the appearance of a man charged with causing a disturbance in a public place.. His demeanor throughout his appearance was respectful and dignified. He handled the fateful event in an entirely acceptable manner, presenting himself as a man who found himself in these circumstances by accident and although he pleaded

guilty he was somewhat perplexed by the whole thing. Throughout his appearance the defendant attended to the conventions of interaction. When explanations were called for by the magistrate they were given. His answers were appropriate to the subject matter of the questions.

PROSECUTOR: The defendant punched one of the other youths causing him to enter into a scuffle. He resisted efforts to get him to alight from the paddy wagon, Your Worship and had to be forcibly removed.

MAGISTRATE: Is that correct Mr. T.?

The Magistrate's utterance created a "spot" for an answer.

DEFENDANT: Not in all respects, Sir.

The defendant gave an appropriate answer. His reply was reasonable, his tone

respectful. He admitted that the report was partly right but gave himself room for repairing his demeanor. He had already admitted that he had broken the law when he pleaded guilty but by calling the magistrate Sir he showed the court proper respect.

MAGISTRATE: Is there anything you would like to say about the circumstances? The magistrate called for an explanation of the circumstances.

DEFENDANT: There was, uh, nobody hit. The witness began to qualify the police report but in a modest, respectful tone of voice. The inference was that his conduct was not as bad as it sounded.

MAGISTRATE: Didn't you punch or push someone? The magistrate asked the witness to make his objection

more specific. He drew the witness' attention to the fact that punching or pushing could be described as hit.

DEFENDANT: Well, there The inference here was that a was some pushing, yes, push was not as bad as a hit. but there was no hitting or anything.

MAGISTRATE: Not a punch? The magistrate, apparently, expected absolute clarity from the witness regarding the differences between punching and hitting.

DEFENDANT: No, just The contradiction of the report pushing and, uh, was offered diffidently, in a resisting, uh, quiet respectful tone of voice. resisting coming out of The inference the witness the paddy wagon. I hoped the court would make was never resisted, I just that he only did what anyone asked them if they would do with any integrity. would let me walk in by

myself, I mean otherwise
I wouldn't have.

The defendant went on to answer the magistrate's questions about the circumstances quietly and respectfully in well modulated tones, having regard to the subject matter of the questions. That is, the answers were relevant. He continued to attend to the conventions of social interaction in general.

MAGISTRATE: Were these
people that you knew,
this night or this
morning?

DEFENDANT: No, I was
under the influence of
alcohol and kind of
queazy anyway but I
don't know the fellow
I was talking to at all.

The witness provided an appropriate answer to the question. He admitted that he had been drinking, giving the impression that if he was willing to be honest about that, he was probably telling the truth about the rest.

MAGISTRATE: You were
drinking?

DEFENDANT: Yes.

MAGISTRATE: You were
drunk?

The magistrate pointed out the
difference between drinking and
being drunk. He implied that
being drunk would be worse
than having been drinking.

DEFENDANT: No.

The defendant reiterated that
it wasn't as bad as it sounded.
He gave the impression that
although he might drink he
knew when to stop.

MAGISTRATE: Well, suspend
sentence.

In this example the witness retained his
composure throughout his appearance. He gave the
impression of a man of integrity and showed the court
proper respect. Further, he attended to the
conventions of courtroom and social interaction in

general. The magistrate accepted his submission that the incident was not a serious one, that he had not in effect committed a second offence by being drunk in a public place; and categorized him as a person who did not "normally" commit offences.

Chapter three has set out to examine the relevance of the attributes of moral character as exhibited by persons involved in fateful events in the courtroom setting. It has been suggested that the three attributes, composure, integrity and respect are expected of lay witnesses and that a failure to show these attributes affects the categorization of witnesses by professional interactants. Instances were analysed where witnesses who were categorized as unfit interactants, having broken the prescriptions regarding demeanor, were removed from the court. The "fateful event" was more successfully managed by those who showed the attributes of moral character.

A further dimension of demeanor was examined, that of having regard to the conventions of interaction. It was shown that the conventions were attended to in

varying degrees by the witnesses in the examples and that disregard was sanctionable according to how the court perceived the reasons for the witnesses ignoring these conventions. Sanctions were administered and lay interactants were categorized, partly accordingly to their attention to these conventions of interaction.

FOOTNOTES: CHAPTER III

1. A fateful event may be defined as one in which activity for the participants is "problematic and consequential". It is maintained that an appearance in court has these attributes for lay participants. See Erving Goffman "Where the Action Is", Interaction Ritual, p. 164.
2. Op. cit p. 222
3. With respect to integrity, witnesses are asked to swear that they will tell the truth and nothing but the truth. They are put on oath. The question of what constitutes "the truth" is not one to which this study is addressed, although the argument could be made that for the court the truth is the relevant truth which may be differently defined by lay and professional actors.
4. Harold Garfinkel, Studies in Ethnomethodology, Page 8
5. c.f. Kenneth Pike's concepts of "spot" and "class" in terms of verbal behaviour. "All behaviour (including verbal behaviour) contains significant spots at which behaviour occurrences may be found ... items appropriate to a spot constitute a class". K.L. Pike "Towards a Theory of the Structure of Human Behaviour" in Dell Hymes (Ed.) Language in Culture and Society, Harper and Row, New York, 1964.

CHAPTER IV

PRESENTATION OF DEMEANOR

Chapter III showed the importance of a witness displaying the attributes of "moral character" during his appearance in court. The attributes of moral character, however, are not the only aspects of acceptable demeanor in the courtroom setting which may be inquired into. Purely physical demeanor may be considered together with the verbal line of the witness. The witness "line" may be defined as "the account which he gives of himself and his relevance to the allegedly criminal act which is the concern of the court". This is somewhat different from Goffman's definition of "line" quoted in Chapter I.¹

With respect to the physical attributes of a witness, he may be at some disadvantage during the interaction in that having spent the night in the cells, he comes into the courtroom looking disheveled and untidy. He may be accompanied by a policeman. Another factor may be that persons involved in criminal trials are frequently from a low socio-economic strata and show by their dress and deportment their differences

in these terms from the professional courtroom actors who usually come from higher socio-economic strata. Although these factors may be disregarded by professional actors, the witness, himself, may feel at a disadvantage.

As to a witness' verbal line, it was pointed out in Chapter II that this is not accepted on trust. The adversary system allows the witness to give his account of the case and his account may be subject to detailed examination and cross-examination. Again, if he is an accused he starts at a disadvantage. He does not, as Goffman has pointed out is the case in social encounters, have "proper demeanor" ascribed to him.² In legal terms the accused is innocent until proved guilty, nevertheless, he enters the interaction with the demeanor of "the kind of person who is charged with criminal offences" ascribed to him. The witness, therefore, especially if he is an accused person, is forced to make positive efforts to present himself as a properly demeaned member of society. This is, one who does not commit crimes, or if he is pleading guilty, one who was inadvertantly involved and "won't do it again".

It is maintained that a witness who is not an accused is concerned to present himself as a truthful person who knows what he is talking about.

Chapter IV will examine some of the common understandings which witnesses share about the kinds of positive verbal actions which are likely to establish them as properly demeaned members of the setting and of society in general. Although lay witnesses are not socialized members of the setting in the sense suggested in Chapter III they do possess some understandings, apparently common to members of society in general, about management of appearances in court with respect to their verbal line. These presumably have been gleaned from various sources, for instance, newspapers, books or television, the experiences of friends in court, or for some, their own previous experiences.

The examples and analysis for this section of the Chapter will concentrate on the problem of the accused, since this is the most equivocal situation for establishing "proper demeanor". The accused's

verbal line is crucial in the court's concern with whether or not he committed the crime. The accused's line or argument may include a number of excuses. If he is pleading guilty, he usually presents an excuse or a justification for his acts. If he is pleading not guilty, he is likely to present an explanation of why he has been charged or of the apparent facts of the case. Austin has pointed out that the principles of apology and excuse are essential mechanisms facilitating the smooth functioning of social activities with regard to everyday interaction.⁴ The offering of excuses is almost an habitual response of an offender who wishes to defend himself in order to avoid sanction for behaviour that he feels may be displeasing to others in the situation. The offering of excuses may be seen as a technique enshrined in the common understandings of members about such situations. In everyday activities excuses have the power to exempt actors from the consequences of their actions, although they may vary in their acceptability. Austin states "it is characteristic of excuses to be 'unacceptable' given, I suppose, almost any excuse, there will be cases of such

kind or of such gravity that "we will not accept it"⁵

In the courts, apologies and excuses do not have the power to exempt an offender from sanction. The court procedure allows the accused to plead guilty or not guilty. If the case is proved beyond a reasonable doubt, then excuses are not relevant to the establishment of guilt, although they may be relevant for sentencing. The only acceptable line which will lead to an accused being categorized as "not guilty" is one that raises a reasonable doubt that he did not commit the offence, or that no offence was committed.⁶ An accused is not always aware that these are part of the rules of court, thus, although he pleads guilty, he may then try to excuse himself. Whether he pleads guilty or not guilty, especially to a lesser offence, excuses and explanations which he presents to the court may be defined as being seen as sufficient by the accused, in that he perceives them as being sufficient to exempt him from sanctions. In the event, the accused's notion of sufficiency may be different from that of the court.⁷

EXAMPLE I

Example I shows a case in which the accused admitted that he was guilty of making an illegal turn but tried to argue that he should be excused since first of all he was a doctor on his way to deliver a speech at a meeting; he was preoccupied with the speech and hurrying in order not to be late. Furthermore, he explained his failure to see a sign by the fact that the intersection was unfamiliar to him and his vision was obscured by rain and a large truck in front of his car.

Thus, although he pleaded guilty his "line" was that he had a series of excuses for his actions and he was not the kind of person who "normally" did such a thing. He was only guilty due to the special circumstances. He presented these excuses as sufficient to explain why he made an illegal turn. He seemed to expect the courts to "understand", perhaps there was an element of "doctors don't break the law deliberately", in his explanation. He was virtually invoking the doctrine of "mens rea", no guilty intent, by implying that he did not mean to do

it. In law, the argument of "no guilty intent" is not relevant to a minor traffic infraction. By stating that he was preoccupied with his speech, the witness seemed to be drawing on cultural stereo-types of "those about to deliver a speech". The example shows that this was an occasion when the offering of an excuse was seen as appropriate by the lay interactant but inappropriate by the court. The accused was categorized as guilty because he pleaded guilty. It is significant that the magistrate in this case explained to the defendant that if he committed the act there was no relevant excuse even though the witness himself thought there was.

EXAMPLE II

In the following example the defendant, who was alleged to have committed a traffic infraction by speeding, pleaded not guilty. His explanation of his involvement in the charge was that he had been unjustly accused. He denied the evidence of the police officer. The defendant presented himself as a properly demeaned member of society; he argued that he was a good driver and good drivers do not commit traffic offences. Since

he was a good driver he could not accept the evidence of the police officer. He stated, "I was surprised and just to prove it to myself I actually went 44 m.p.h. and I was sure that was much faster than what I was going when I was charged". The interesting factor here is that the man who saw himself as unjustly accused found this to be sufficient reason for deliberately breaking the law in order to test 44 m.p.h. against his previous speed. This is not logically consistent with his claim that he never broke the law. The accused saw this argument as sufficient to avoid sanction. He failed to appreciate that he needed some objective evidence to put before the court to back up his surprise and his opinion about the speed at which he was going, "I was sure that was much faster", since his evidence contradicted evidence of the police officer who measured his speed with a speedometer. The defendant's argument that good drivers do not break the law seems to be at variance with common cultural expectations about traffic infractions, which are, I would submit, nearer to "it's alright if you don't get caught" or "everybody does it". The witness' line was not accepted by the court.

These first two examples were taken from the Traffic Court which deals with relatively minor offences. They show witnesses who presented excuses, justifications and explanations in an effort to present themselves as properly demeaned members of society. They were not represented by lawyers. In many cases, and certainly those of a serious nature, the accused is represented by a lawyer and has an ally in the presentation of his line. Furthermore, other witnesses may be brought by the defence to bolster the line of the accused.

Example III consists of an analysis of the argument of an accused who was charged with impaired driving and the methods which his lawyer used to help him present the demeanor proper to a law abiding member of society. In the case for the Crown the evidence was given that the accused was driving a car while his ability to drive was impaired by alcohol. After he had drawn into the curb he backed up and hit a police car. When questioned by the police he was staggering

and his breath smelled of alcohol. He did not do well on impairment tests and the breathalyzer reading showed an alcohol content high enough to cause impairment.

The defence counsel guided the examination in chief, the method whereby the defence counsel helps the accused present his line, with great care in order to answer each "damaging fact" in the Crown's case. His strategy was to provide an alternative explanation for the facts that the accused was staggering, that he hit a police car, etc. The aim was to show that the accused's behaviour which led the police to infer that he was impaired could equally well lead to other inferences. He attempted to establish that the accused had drunk some beer but was not impaired. The lawyer asked details about the band at the Legion where the accused had been drinking to show that his memory was clear and he was capable of observing clearly at the time. Secondly, that he did not see the police car when he was backing up, thirdly, that he had a back condition which made him stagger. With respect to the tests for impairment, the lawyer attempted to establish that if one were not familiar with the tests

it would be difficult to do them well. Secondly, that the breathalyzer reading would differ according to which technique one used in blowing into it.

It is not proposed to analyze the entire examination-in-chief but to present one section to show the technique whereby the lawyer carefully drew out the information he wanted from his client, in order to answer the case for the Crown and help his client establish acceptable demeanor.

EXAMPLE III

<p>DEFENCE LAWYER: Now, you've heard the evidence of the constable, er. two of the constables, er, that you swayed and had difficulty in turning the line and that your balance was poor. Can you explain this?</p>	<p>The lawyer reiterated the evidence presented by the Crown in some detail, presumably to focus the attention of the accused and the court on this particular part of it. He called for an explanation of the "damaging facts": These were some of the main points of the crown's case. On the</p>
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face of it they would seem to create the inference that the accused was drunk.

WITNESS: Yes, Sir.

This is another example of the kind of "elliptical talk" used in everyday interaction.

LAWYER: How?

The lawyer asked for an explanation as part of his concern to make the implicit, explicit.

WITNESS: I'm under chiropractor treatment for a couple of slipped discs and I'm supposed to wear a 3/8ths inch shoe lift and at the time I didn't have one.

The accused apparently perceived this statement as sufficient for the court to infer that he would stagger etc. if he were not wearing a shoe lift, although he did not state directly how the lack of the shoe lift affected his balance.

LAWYER: Er, does this
have any effect on
whether or not you get
tired?

The lawyer indicated that the
accused's statement was not
sufficient for the court,
although in ordinary
interaction a participant is
entitled to expect others to
understand the implications of
such an explanation.

WITNESS: Yes, Sir.

Again the accused seemed
inclined to leave it at that.

DEFENCE LAWYER: Well,
what effect?

The lawyer had to prompt him
to provide more detail.

WITNESS: Well ... Well
er, I get tired and I
droop and er put more
pressure on my right
leg to ... (witness
trailed off).

DEFENCE LAWYER: (finishing
for him). Compensate?

WITNESS: Compensate. The inference here was that
when the witness was tired and
put more pressure on his right
leg to compensate he might look
as if he was staggering because
he was drunk.

The lawyer went on to elicit the fact that on the night in question the accused was tired because he had been walking a great deal. This completed the section of the examination on physical demeanor. The lawyer apparently saw the evidence as sufficient for the court to draw the inference that the accused was not staggering because he was drunk but because he was tired and ought to have been wearing a shoe lift. That is, he provided an alternative explanation for the accused's behaviour to the inference made by the police. It should be noted that the lawyer's notion of sufficiency called for more detail than that of the witness, since the lawyer had to ask strategic questions to get the witness to provide enough for the court. The examination continued.

LAWYER: Do you have
the lift with you now?

WITNESS: Yes, Sir.

LAWYER: Is it in your
shoe?

WITNESS: Yes, Sir.

<p>LAWYER: May I see it, please? (The lawyer took the shoe lift from the accused and displayed it to the court.)</p>	<p>The lawyer, apparently, saw the production of a piece of physical evidence as verifying the accused's justification for his physical demeanor at the time of his arrest. The assertion of the existence of the shoe lift by the accused himself was not sufficient for the court.</p>
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<p>LAWYER: Now is this the lift to which you were referring?</p>	<p>The lawyer saw it as necessary to identify this shoe lift as <u>the</u> shoe lift.</p>
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WITNESS: Yes, Sir.

DEFENCE LAWYER: Your
Worship, I don't want
to put this in as an
exhibit. I just
wanted Your Worship to
see the existence and
also my friend to see
the existence of the
lift.

This example shows a presentation of demeanor which was
a joint effort between the defence lawyer and his
client. The lawyer pointed out aspects of the accused's
behaviour which ought to be explained, in this case the
accused's physical demeanor at the time of his arrest.
The lawyer helped the witness to put forward an argument
which covered every aspect of the behaviour to be
explained and provided an alternative to the police
interpretation of his behaviour. He guided the accused
through the examination-in-chief and carefully answered
each point raised by the Crown. Explanations were
provided for apparently incriminating evidence. The
argument was virtually that the accused was not impaired.

therefore, no crime had been committed. Things were not what they seemed.

The next section of this Chapter will provide analyses of further instances of lawyer's aiding their witnesses. These are not all examples taken from the evidence of defendants since it is of interest to see various methods lawyers use to protect and aid any witnesses for their own side, that is, protecting their presentation and aiding in the maintenance of demeanor.

It may be necessary during an examination-in-chief for a lawyer to help his witness manage embarrassing or upsetting disclosures. In this event, an attempt is usually made to make it appear that the witness is understandably embarrassed or upset, considering the circumstances. For example, at the beginning of the complainant's testimony in a rape case, her lawyer (the Crown Counsel) tried to have the courtroom cleared of spectators, since he expected her to be embarrassed and upset by the proceedings as would befit a young girl in such circumstances.

In cross-examination, when the witness is being

questioned by the opposing side, the lawyer has various methods of protecting his own witness' demeanor, including his verbal line when this is being threatened. One such method is to interrupt the opposing lawyer's examination of his witness when he sees his witness beginning to flounder. A rule of evidence may be invoked to keep out damaging facts which the witness might admit during cross-examination. A lawyer may interrupt, however, when the witness is confused or about to break down. Confusion or breakdown may put his credibility in issue. If a witness is confused he is unlikely to be able to tell the truth about a particular set of events since his memory cannot be trusted.

Example V shows an instance of a defence lawyer who cut into a cross-examination being conducted by the prosecutor. To interpret the accused's apparent confusion to the court. Such an interruption may serve to protect the witness from exhibiting improper demeanor or compounding his already confused demeanor. The witness was being questioned about whether he saw the other car before the accident. He was charged with

failing to yield the right of way.

EXAMPLE V

<p>WITNESS: No, no, I didn't see any cars moving.</p>	<p>The witness answered in a confident tone of voice.</p>
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<p>PROSECUTOR: Surely you don't deny that she was in fact there?</p>	<p>The prosecutor implied by his tone of voice and his "surely you don't ..." that the witness was being unreasonable.</p>
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<p>WITNESS: I know she was there, she hit me.</p>	<p>This is another example of elipitical talk, which is an essential feature of everyday interaction, getting a witness into trouble in court. In the second utterance the witness stated that he had no doubt that the other car was there although he did not see her. The inference was that it is possible to</p>
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look and not see what was there.
This is a state of affairs
which is accepted as a common
occurrence in everyday
interaction. Compare, for
instance, the normally
acceptable excuse "I didn't
see her" which, given the
fact that it is a reply to
"why didn't you say hello?",
contains the implicit
acceptance of the fact that she
was there.

PROSECUTOR: I see, so	The prosecutor seemed to be
what you in fact saw,	trying to make the witness
wasn't really what was	look foolish and confused.
there.	

WITNESS: Well, I don't	The witness was uncertain of
know how you ... (trails	how to answer the prosecutor
off).	and trailed off without
	finishing his sentence. He

was apparently confused by the fact that the prosecutor had not made the inference about the distinction between looking and seeing.

DEFENCE COUNSEL: (cutting Defence counsel saw the in). I am afraid we witness' confusion. He cut in didn't follow that to protect the witness' question. demeanor and his verbal line. That is, the account he was giving of himself. The use of "we" seemed to be a gesture of solidity.

PROSECUTOR: (addressing This particular utterance seemed the defence counsel) to have been designed to confuse Well, she was there and the witness even more. It he said he didn't see reiterates the fact that the her there. So, if he prosecutor was not willing to looked and didn't see make the distinction between her, he didn't see looking and seeing. what he thought he saw.

WITNESS: Well, I saw... The witness was still confused.

DEFENCE COUNSEL: (cutting in) He's still lost. here, apparently to stop the witness' attempt to respond to the particularly confusing observation by the prosecutor. Confusion on the part of the witness could effect his credibility.

This example shows an instance of a lawyer cutting into a cross-examination apparently to give the witness some time to think and to protect him from appearing confused and foolish, which might affect the credibility of his line. The following example is of similar nature. It is taken from the cross-examination of the man charged with impaired driving. The prosecutor pressed the witness, repeatedly asking him if he was sure of his point, apparently in order to create a doubt in the courtroom participants' minds about whether the witness really was sure. The defence counsel cut in to modify the effects of the prosecutor's rapid, dogged questioning and possibly to remind the witness that

there was someone on his side.

EXAMPLE VI

The witness was being questioned about the time at which he did certain things on the night he was arrested.

<p>PROSECUTOR: What time do you think you performed the breathalyzer test?</p>	<p>It was important in this case that the accused have a clear recollection of time since if his memory was clear this would create the inference that he was not impaired at the time of his arrest. His recollection of time was used as a major reference point in the Crown's case.</p>
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<p>WITNESS: Er, that was in the early part of the morning.</p>	<p>Witness' reply indicated a period of time rather than the exact time. This is the kind of term often used in everyday interaction</p>
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when referring to time. It is allied to the answer "soon", or "sometime ago", as a reply to "when?"

PROSECUTOR: (with irritation) What time?

The prosecutor indicated that "loose talk" was not acceptable, and that a clearer recollection of time was needed to get the witness off the charge.

WITNESS: I couldn't say, Sir.

The witness indicated that he was unable to be more specific. His reply still seemed reasonable to him but he added, Sir, to show that he was a respectful person.

PROSECUTOR: Do you have any idea?

The phrase "any idea" is nearer to phrases used in everyday interaction. "Some idea" might be more acceptable

than "none at all".

WITNESS: No, I wouldn't, The witness indicated that he
Sir. could not be more specific.

PROSECUTOR: None! Do The prosecutor implied that "no
you know what time it idea at all" of the time
was when you went out created the inference that the
to your car? witness was impaired. He
apparently decided to test the
accused's memory further.

WITNESS: Yes, Sir. The witness sounded confident.

PROSECUTOR: What time? The prosecutor indicated that
the exact time was called for.

WITNESS: Er, when I went The witness showed signs of
to the car it was just, being nervous and confused.
er, just before twelve. But "just before twelve" is
more specific than the terms
he used previously.

PROSECUTOR: Just before The prosecutor repeated what
twelve. the witness had said, possibly

to commit the witness to that particular time.

PROSECUTOR: You're quite Asking the witness whether he sure of that now? is sure, creates the inference that he might not be.

DEFENCE LAWYER: (cutting This appears to have been a into the cross- somewhat desperate move by the examination). Pardon defence lawyer since only one me, which, I wonder car had been referred to. The if my friend could lawyer may have seen this as clarify which car? essential since the witness had made a poor showing when previously pressed for details about time i.e. he had admitted that he had no recollection of the time he had taken the breathalyzer test. I suggest the lawyer interrupted in order to give the witness time to think and to compose himself.

<p>PROSECUTOR: (with impatience) When you went to move your car from one side of the road to the other, what time was that?</p>	<p>The prosecutor was forced to rephrase his question, in fact to be more specific. The defence counsel had in fact asked for "courtroom talk", more specificity, from the prosecutor.</p>
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<p>WITNESS: Well, I left the er well, it would be around twelve, a little after twelve, I didn't pay too much attention because I had just come in.</p>	<p>The witness had changed his mind about the time. Now it was "around twelve, a little after twelve" instead of just before twelve. These are all terms normally acceptable in everyday interaction. In case these were not specific enough, the witness offered an excuse for not paying attention: he had just come in. He saw this as providing sufficient reason for not remembering time exactly.</p>
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A further method used by lawyers in aiding witnesses in the maintenance of verbal line is the re-examination. During this, a lawyer may attempt to repair the demeanor of his witness which has suffered during cross-examination by re-examining him on a point on which he sounded confused.

In Example VII a lawyer re-examined his witness on the question of the speed at which he was travelling at the time he was involved in a collision. During the cross-examination the witness had referred to a "walking pace of about 15 m.p.h."

EXAMPLE VII

LAWYER: Yes. Now what	The lawyer established the
was your speed from the	point that the defendant could
time you decreased to	have decreased speed after he
15 miles until the time	was travelling at 15 m.p.h.
you were involved in	
the collision?	

WITNESS: I was; I braked	The witness seemed somewhat
and stopped before I was,	confused, he tried to reiterate

before the centre line, the fact that the collision was so it was unavoidable. unavoidable, an observation which was irrelevant at this particular juncture.

DEFENCE LAWYER: You "A walking pace" is another referred in your evidence example of "loose talk" used earlier to a walking in everyday interaction. pace in connection Again, this is not specific with the intersection. enough given the background What did you mean by expectancies of the courtroom. that? The issue of speed was crucial since the case was concerned with the question of blame for an accident. The inference would be that if the defendant had been driving too fast then he would more likely to have been to blame for the accident.

WITNESS: Well that's. I The defendant was unable to was proceeding just at produce a more specific normal walking pace. description of his speed.

He virtually appealed to common cultural understandings about the term "walking pace".

DEFENCE LAWYER: Thank you.

The defence lawyer in his first question created the inference that 15 m.p.h. was too fast, for a walking pace. He made a distinction that was not made in cross-examination between the point at which the accused decreased 15 m.p.h. and the point at which the collision took place. Thus the witness was able to say that he decreased even more in speed before the collision.

Chapter IV has shown that lay witnesses in the courtroom setting are concerned to present themselves as properly demeaned persons. They present excuses, justifications and explanations for their involvement in the case. It was suggested that the offering of

excuses is the habitual response of an offender involved in everyday interaction. Such devices for avoiding sanction, however, are frequently defined as irrelevant to the issue of guilt by professional courtroom members, frequently to the perplexity of lay participants. The second part of the chapter showed the structuring of interaction which occurs by virtue of the fact that each side in the trial has an advocate (if the defence is represented by a lawyer). In these circumstances, the witness has an ally in his presentation of proper demeanor. Some methods which are part of the background expectancies of professional actors in the courtroom about ways in which lawyers may help witnesses in this matter were examined, together with several methods which are used to protect witnesses from threats to demeanor.

FOOTNOTES: CHAPTER IV

1. Goffman; Facework, p. 5
2. See Chapter II on the principle of trust.
3. Page 72 f.f. regarding categorization by professional interactants.
4. J.L. Austin, "A Plea for Excuses", in V.C. Chappell (Ed.) Ordinary Language, Prentice Hall, Englewood Cliffs, N.J. 1964.
5. Op. cit. p. 56
6. In serious criminal cases the argument of "mens rea" or guilty intent may be relevant. It is not relevant in minor offences.
7. It should be noted that excuses are sometimes put forward with an air of desperation. The accused apparently hopes that the excuse will prove sufficient. This does not mean that an accused perceives that an excuse may not be relevant, but that, as in everyday life, he perceives there are good excuses and bad excuses.

CHAPTER V

CONCLUSIONS

This thesis has attempted to discover and describe some of the basic rules which structure interaction in the courtroom. I have suggested that two analytically distinct sets of background expectancies have their effect on what the participants say to each other and expect of each other. These are, first, the background expectancies which lay participants bring to the courtroom setting and which are part of the common understandings of our culture in general and, second, the background expectancies which are specific to the setting itself and are shared by professional participants. The background expectancies which participants have about what happens to a witness during his appearance in court have been my concern in this study.

The operation of these two distinct sets of common understandings may lead to different interpretations of what is going on in court by lay and professional interactants. I presented data which showed that a layman may be surprised, confused and upset by infractions of the unspoken rules which ordinarily

hold in everyday interaction but which often do not hold in the courtroom. Lawyers frequently indicated, for instance, that the kind of "elipitical talk" which is commonly used in everyday interaction by participants who rely on inferences and interpretations for a more complete understanding of what is being said, was not specific enough for the court. It seemed to be the task of lawyers to make the implicit, explicit, before evidence became of value to the decision maker.

Some of the rules of proscription, specifically those of avoidance and trust, which Goffman proposes structure everyday interaction,¹ are deliberately violated in the courtroom and background expectancies of professional and lay interactants about the operation of these rules were often at variance. I have suggested that these violations have added significance considering the situational aspects of the courtroom.² For instance, many witnesses apparently realized that matters raised through a normally proscribed inquiry into their personal life might affect their credibility and through this the case itself.

Considering the situational aspects of the court, witnesses made positive efforts to present themselves as properly demeaned. The attributes of "proper demeanor" which, as it seemed to me, were expected of witnesses by professional participants were set out in Chapter III. The data showed the kind of behaviour which is sanctioned in court and the process of categorization of witnesses by professional interactants as "unfit", "sanctionable", etc. It was proposed that a witness who failed to show the relevant attributes of moral character, together with a failure to observe the conventions of interaction was likely to be removed from the courtroom.

Chapter IV was concerned with excuses and arguments which witnesses used in an attempt to explain the actions which had brought them to court. Although excuses and justifications are an habitual response of an offender who wishes to avoid sanction in everyday life, it was shown that these common understandings which laymen bring to court are not always seen as relevant in that setting. These responses of laymen to their appearance in court were

contrasted with some of the methods which lawyers use in helping their clients and witnesses for their "side" to present "proper demeanor" in court. It was shown that lawyers structure examinations and cross-examinations to answer the ingredients of the charge. Laymen were not always aware of these aspects of their evidence.

In attempting to describe the structure of interaction in the courtroom, in regard particularly to the lay witnesses appearing in court, it appeared that the situational aspects of the setting, the "fatefulness" in Goffman's terms,³ of the witness' situation were important factors in influencing how the witness presented and maintained his demeanor. Most witnesses seemed to have an awareness of this fatefulness although they were differentially able to deal with its implications.

FOOTNOTES: CHAPTER V

1. See Chapter II
2. See footnote 8. , Chapter II
3. See footnote 1 , Chapter III

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