

Defending through disaffiliation:

The vicissitudes of alignment and footing in Belgian criminal hearings

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Abstract: Drawing on Goffman's notion of footing, I demonstrate how the discursive creation of a legal reality is mediated by the complex interplay of alignments the attorney assumes toward (1) the client, (2) the judge and other trial participants, and (3) written documents produced during preceding trial stages. These footing patterns differ in the way they include or exclude the attorney and other trial participants in the phenomenal field of the discourse. However, they also draw attention to the network of intertextual relationships that connect the hearing and the time of the facts. This decomposition of the situated practice of "representing the client" into a complex of alternating footing patterns thus also contributes to understanding the intertextual structuring of courtroom discourse. (criminal hearings; intertextuality; alignment; footing; reported speech)

1. Introduction¹

Criminal hearings are densely intertextually structured: A cursory glance through the literature suffices for noticing that the discursive transformation of situated conduct into punishable facts is extensively mediated by situated practices of quoting, summarizing, referring to or otherwise incorporating various written documents produced during earlier stages of the trial (see, e.g., Matoesian, 2001, the various contributions in Conley et al., 2013, and also the introduction to this issue). This paper specifically zooms in on the role defense lawyers play in the intertextual constitution of criminal hearings. I therefore will investigate in detail the ways in which a defense lawyer in a Belgian first-instance criminal hearing "deconstructs" the case against his client. In presenting to the court a version of the facts that demonstrates the inapplicability of the legal category proposed by the prosecution, he adopts various strategies for incorporating discourses produced on earlier occasions, either during the course of the pretrial investigation or during preparatory meetings he had with the client.

¹ Earlier versions of this paper were presented at Rhetoric in Society 3 (Antwerp, Belgium, January 26-28, 2011) and at the DiO Summer School "Discourses of Expertise" (Antwerp, Belgium, August 27-30, 2012), in addition to the panel at the 2011 International Pragmatics Conference in Manchester from which papers for this issue were drawn.

A pivotal position among these intertextual practices is occupied by what Goffman (1981) identified as *footing*, which refers to the question on whose behalf the speaker (here, the defense attorney) is producing his/her discourse. Footing in this setting is particularly important because of the intrinsic tension defense attorneys face in speaking on behalf of their client. On the one hand, the defendant qualifies as the “principal” of the discourse (the one whose position is attested to according to Goffman’s model of speakership, cf. *infra*), because, from a legal standpoint, he/she is the one who authorizes the attorney to act on his/her behalf. On the other hand, acting on the defendant’s behalf often involves taking an argumentative line of which the defendant himself/herself cannot be the source, because as a rule defendants do not have the required legal and argumentative expertise for constructing and presenting a legal perspective on their case.

Importantly, this tension is not an outsider’s construct but something that legal actors themselves are acutely aware of. Thus, statements to the extent that a lawyer’s vocation is “to lend a voice to the voiceless” (as the prominent Flemish criminal defense attorney Piet Van Eeckhaut is fond of reminding the public, see e.g. his statements in Vanderstraeten, 2011: 24) point strongly in the direction of the first understanding of the client-attorney relationship, which relegates the role of principal of the defense plea unequivocally to the defendant. In addition, that Article 190 of the Belgian Code of Criminal Procedure (which specifies the order in which the parties to a trial take the floor) cursorily mentions the defendant and the lawyer as alternative occupants of the same slot implicitly qualifies the client-attorney relationship as based on a logic of substitution (where the attorney indeed addresses the court “on behalf of” the defendant).² However, the deontological code for lawyers (e.g., Boydens, 2007) explicitly specifies the attorney’s task as comprising the double duty of “representing” and “advising,” for which the attorney is required to assume an impartial stance toward the client’s case. This standpoint is also reflected in the often-quoted saying that the attorney is “the first judge” of the client’s case. The ultimate consequence of this requirement of impartiality, still according to Boydens (2007), is that defense attorneys are deontologically prohibited from pleading cases in which they are personally involved (either as defendant or victim), as this would render such impartial advice logically impossible. Needless to say,

² Article 440 additionally stipulates that lawyers must be registered at the Bar and hold the monopoly of pleading in court, but Article 758 makes an exception for defendants who appear personally before the judge to plead their own case.

according to these views the attorney's role clearly encompasses more than merely acting as a mouthpiece for the defendant.

The argument developed in this paper is that this tension implicit in the client-attorney relationship should not be seen as an impediment to successful pleading in court; instead, this tension constitutes an interactional resource that adept defense attorneys may skillfully exploit in presenting their client's case to the court. Looking at it from this angle, it quickly becomes clear that this tension forms part of a much broader interactional phenomenon. Examined under the magnifying glass of a minute analysis of real courtroom practice, the seemingly monolithic activity of "representing one's client" can be unpacked as a delicate interplay of alternating *footing patterns* and as an incrementally unfolding complex of continually shifting *interactional alignments*, each of which reflexively inscribes itself in a distinct way in the courtroom context. At the first level, these multiple alignments can be differentiated based on the extent to which other parties to the trial are allowed to emerge (or "become visible") as co-entities/co-participants in the "phenomenal field" of the discourse—I use *phenomenal field* here in a non-technical sense, to refer to the ensemble of objects and people (including the behaviors and other relevant characteristics associated with them) that together constitute the (presumably inter)subjective reality in which a discourse inscribes itself. Through footing and the phenomenal fields they project, the attorney first "acts out" a relationship with the client whose case the attorney is pleading (as will be shown below, this may occasionally even assume the shape of an apparent disaffiliation with the client, thus the title of this paper; see D'hondt, 2010 for a comparable case). Equally important, however, are the stances the attorney in doing so assumes toward (a) the court and the other legal actors present at the hearing (and occasionally even the public, cf., D'hondt, 2009a: 817ff) and (b) the ensemble of written documents, produced during the preceding trial stages, that makes up the "case file" around which the hearing is organized (cf. Komter, 2013). Projected intertextual relationships thus form a major ingredient of attorneys' interactional alignments, and the footing patterns described as follows inevitably also position the attorney vis-à-vis the written documents that form the connection between the hearing and the facts the defendant is being tried for.

These "phenomenal" analyses of the courtroom context are in turn predicated upon a set of shared understandings of the legal setting. Of particular significance here is the way the participants orient to the mixed "inquisitorial-accusatorial" character of Belgian criminal trial hearings (and the implications for the participation status of the different trial participants, about which more below). At this second level of interactional organization, shifting footing allows attorneys to navigate the *interactional dilemma* (Komter, 1998) between "not being

found guilty” and “participating in the search for the truth.” This, then, directly relates to the practical question with which we set off our discussion, viz. whether the defense should present itself as a mouthpiece for the client or as an impartial advisor.

A third issue that permanently looms in the background once the issue of interactional (dis)alignments is raised is the way in which these alignments are interwoven with assumptions of “normality.” For an attorney, (dis)aligning oneself with the client often also entails positioning that client toward what common sense finds “acceptable.” The function of footing, like that of many other intertextual resources, is thus “to anticipate shared common knowledge and shuffle particular ideas and subjectivities into the legal space” (Maryns, 2013: 109): It allows the defense attorney to tacitly take on board everyday concepts like “normality” and “culture” (D’hondt, 2010), or “insanity” (Maryns, this issue) that from a legal perspective are not clearly demarcated but may nevertheless be vital for alleviating guilt.

2. The legal setting: Belgian first-instance criminal hearings

The data examined in this paper were collected during ethnographic fieldwork carried out in 2002-2003 in two first-instance criminal courts in the Flemish-speaking part of Belgium, in the context of a government-sponsored field research project on intercultural communication in Belgian courtrooms (for the full field report, see D’hondt et al., 2004; D’hondt, 2009a). First-instance courts represent the middle tier of the Belgian criminal justice system. Responsible for adjudicating crimes punishable with a maximum prison sentence of five years, these courts are situated in between police courts (which deal with misdemeanors, mainly traffic violations) and the Assize Court (where serious crimes and felonies are tried before a citizen jury). The verdicts of first-instance courts can be subjected to a more in-depth review by the Court of Appeal.

Apart from Assize Court trials, in which the entire criminal investigation is orally re-enacted in front of the jury, the Belgian justice system can overwhelmingly be qualified as an “audit model” of criminal adjudication (as Anderson, 1999 observed regarding the Dutch legal system). Due to the heavy caseload of most first-instance courts, live interrogations of the defendant, witnesses and experts are kept to a strict minimum. The main part of the hearing therefore is almost completely taken up by the closing statement given by the prosecutor (who takes the floor immediately after the judge identifies the defendant, which is usually accompanied by a summary interrogation) and the defense plea, occasionally followed by one or more rounds in which the prosecutor and the defense attorney respond to each other’s statements. In the majority of cases, the “examination in court” thus is restricted to a

review by the professional trial participants of the written documents based on which the defendant is being sent to court.

The backbone of these first-instance trials, it follows, is formed by the case file, the material repository of the written records documenting the criminal investigation that preceded the trial. The case file at the minimum consists of the official police records of the facts, usually supplemented with police records of the interrogation(s) of the defendant(s) and possibly of additional witness statements. The decision to initiate such a criminal investigation is made by the prosecutor's office, either based on a police record of a possible criminal offense or after a formal complaint is made by a citizen.³ Every step in the ensuing investigation must be documented in writing. If the prosecutor's office concludes that it has enough evidence that a sufficiently grave violation of the law has indeed been committed, the prosecutor may decide to send the case to the court.⁴

The case file has a strong material presence in the courtroom. Judges and prosecutors usually have a pile of files stacked in front of them arranged in the order they will be dealt with by the court, while attorneys carry the files of their clients in their briefcases and take them out when their client's hearing starts.⁵ All parties to the trial frequently quote from the file and the written documents it contains. The way these documents are written down deserves special mention here. The Belgian legal system does not make provisions for audio- or video-recording police interrogations.⁶ The dialogical format of the original interrogation is

³ In the case of a serious offense, or if the inquiry necessitates a violation of the defendant's constitutional freedoms (custody, a home search, etc.), the prosecutor's office assigns an examining magistrate to the case to direct the investigation. The latter is in principle impartial and is legally obliged to search for guilt-implicative elements as well as for proof acquitting the defendant. If the case is sufficiently clear from the onset, the prosecutor's office may also decide to send the case to court based solely on the police record of the offense.

⁴ Other options include dismissing the case or proposing an out-of-court settlement.

⁵ See Komter (2013: 135) for a similar observation on Dutch criminal trials.

⁶ An exception is made for underage victims (and witnesses) of serious violent crimes. Since 2001, prosecutors and examining magistrates can order the videotaping of their interrogation. The footage may later be used as evidence, to spare them the traumatizing experience of having to testify in court. No comparable legal framework exists for videotaping adults' interrogations, though prosecutors occasionally instruct it for adult offenders who are judged psychologically unstable, repeatedly alter their statements, or previously accused the police of

in the process of writing thus reduced to a monological statement (cf. Komter 2013). This “writing up” of the interrogation in a monological fashion is oriented toward the record’s future use in the legal-bureaucratic process, but obscures the contextual conditions under which the record is produced. This is consistently overlooked, however, by the attorneys, judges and prosecutors who, quoting from these written police records, display a strong tendency to “reconstruct orality from [...] textual files” (Maryns, 2013: 120). In their trial performance, they routinely enact dialogue based on documents from which all traces of dialogicity have been erased.

One final element that must be considered is the mixed “accusatorial-inquisitorial” character of Belgian criminal adjudication. The criminal investigation that precedes the hearing represents the “accusatorial” stage of the trial.⁷ Here, the prosecutor’s office, through the various acts of inquiry ordered (to be carried out by the police), builds a case against the defendant. The investigation is secret, and the defendant has no opportunity to defend himself/herself against the accusation being assembled against him/her. The hearing itself, in contrast, is mixed “accusatorial-inquisitorial.” The hearing represents the public part of the trial, in which the defendant is given the opportunity to respond to the accusations and answer the prosecution. In this sense, the hearing qualifies as accusatorial. The ultimate arbiter of the validity of the accusations (and the applicability of the “legal qualification” proposed by the prosecution), however, is the judge; if the judge finds the defendant guilty, he/she also metes out the penalty. This particular participation format (which is also typical of Dutch criminal hearings, cf. Komter, 1994) is responsible for the judge’s “double involvement” in the trial. As the legal actor who ultimately decides the validity of the charges, the judge plays the leading part in the truth-finding process. This, then, represents the “inquisitorial” aspect of the

mistreatment. Footing of such interrogations has been entered as evidence in Assize Court trials, but it is customary that interrogators also provide a written report. This report is a summary of the interrogation and not a literal transcription. As one police instructor remarked, “Writing out the interrogation (in literal form) would be irresponsible” (Van Bockstael 2009, my translation). This second form of videotaping is still very much a novel phenomenon, and the overwhelming majority of interrogations of adult offenders are still “written down” in the conventional way.

⁷ The term “accusatorial” is endogenous to the Belgian legal tradition. I shall therefore keep using it throughout this paper, instead of the more common “adversarial,” which is customary in the Anglo-Saxon legal tradition.

hearing. One consequence of this distribution of responsibilities is that the judge is the only trial participant allowed to interact directly with the defendant; direct examination of the defendant (by his/her own attorney) and cross-examination (by the prosecutor or one of the opposing parties) is not permitted. A second upshot of the judge's central role as truth-finder is that attorneys are less subjected to restrictions on pleading than in a purely accusatorial system: Since the role of the judge is no longer confined to overseeing the correct implementation of the various rules of evidence, attorneys enjoy considerably greater freedom in furnishing proof to sustain their version of the events. Judges themselves occasionally allude to their double role during the course of the hearing. Thus, a judge may be heard using a phrase such as "please remember that the task of this court is not solely to mete out punishment but also to uncover the truth," to urge a defendant to collaborate with the court.

3. Intertextuality, alignment and footing

The notion of *footing* is particularly useful for identifying the various alignments characteristic of defense discourse. When talking about footing, I specifically refer to the lamination of participant roles Goffman proposed in his (1981) article of the same title, i.e., the speaker's projected involvement in his/her own discourse, either as its "animator," "author," "principal," or as a combination. The ensemble of participant statuses discernible in a stretch of discourse constitutes the participation framework for that particular segment. Importantly, footings and projected participation frameworks are not static but fluctuate as the plea proceeds. A key point of entry for unraveling these footing shifts is the attorney's selection of deictics (in particular the 1st p. sing. and pl.), which solicit a redressal operation on the part of the other participants (Watson, 1987) and require them to analyze the environment of the deictic in terms of figure and ground (Hanks, 1992).

The limitations of this approach are obvious. C. Goodwin (2007), for example, sharply contrasts this "monological" notion of footing (as a phenomenal field projected in a single stretch of discourse, in this case (segments of) the defense plea) with "dialogically" negotiated *interactive* footing, i.e., the continually updated ensemble of participants' displayed orientations to what is going on (and, related to that, to the corresponding forms of conduct the participants expect from their co-participants). These two interpretations of footing represent phenomena of a fundamentally different order. Still, the barrier between them is not completely impermeable, as the "monological" narrative representation of absent parties' voices may come to have a bearing on the ongoing organization of dialogue (and may in turn be acted upon, and critically re-analyzed, by a co-participant in a subsequent speaking slot, cf.

D'hondt, 2009b for an example from a judicial setting). M. Goodwin's (1990) analyses of quarrels among African-American pre-teen girls describe in great detail how reports of offensive statements by absent speakers can provide a template for present speakers' participation in the reporting event. In courtrooms as well, narrative representations of a remote speech event, and footing practices in general, may occasionally supply trial participants with tacit instructions for making sense of the reporting event (cf. Wortham, 2003; see D'hondt, 2010 for examples from a judicial setting).

The interactional impact of such footing shifts is most patent in defenses based on the "othering" (Riggins, 1997) of the defendant; that is, when the attorney admits that the client is guilty but urges the court to consider his/her personal background (cultural, social, medical, etc.) in sentencing. In an earlier analysis of the defense plea for a Turkish immigrant accused of stabbing an in-law (D'hondt, 2010), I demonstrate that such defenses typically depend on transforming the defendant into *the object of expert discourses*, in this particular case expertise that is "anthropological." Anthropological expertise here is to be understood in a rather naïve sense, as "knowledge of the defendant's exotic habits and customs" (that is, the mores of the "ethnic" collectivity which he/she belongs to) that will assist the court in appreciating why he acted the way he did. In defense pleas based on such anthropological "othering" of the defendant, as in the case of the Turkish immigrant, usually the attorney himself/herself informally takes up the role of anthropological expert, in doing so availing the role of principal for himself/herself. However, this is not always the case. For the "pathologization" (i.e., the "medical othering") of a defendant, for example, the defense usually hires a psychiatrist or other academically certified expert, whose report the attorney later refers to in the plea (Maryns, 2008).

The following case represents a variation on such an "othering" defense, as the expert discourse here is substituted with a discourse of enigma. The attorney declares himself ignorant about the way the defendant takes up his role as caretaker, and accounts for his lack of knowledge in terms of the chauvinist character of his cultural environment.

An adolescent of Turkish origin is summoned before the judge because he violated the conditions of his probation. In an exceptionally short closing statement, he is characterized by the prosecutor as a repeat offender who systematically dodges the terms of his probation—"*today with the excuse that he had to take care of his handicapped little sister!*" The defense attorney replies that his client has a difficult temperament and suffers from poor communication skills. Nevertheless, he managed

to find a job and started compensating the victim. Finally, the attorney confirms his client's claim that he looks after his little sister: "*About his little sister, well, it IS a bit of a macho culture. We don't know how he handles it. He doesn't dare to talk about it openly, but he IS nevertheless doing it.*" (edited field notes, D'hondt et al., 2004: 80)

As in other defenses based on the "othering" of the defendant, the attorney here emerges as the principal behind the proclaimed incomprehension. What these various "othering" defenses have in common is an emergent parallelism between the footing constellation by which the defense attorney's discourse indexically anchors itself in the ongoing speech event and the denotational content of the plea (see Mertz, 1996 for a comparable phenomenon, also from a judicial setting). As a result, the defense plea is temporarily transformed into an *embodied enactment* of the plea's content. Through footing the attorney, no longer content with referentially "providing information" about the case, "acts out" the presumed cultural boundary separating the defendant from the other participants in the trial, including the attorney who is speaking on the defendant's behalf (D'hondt, 2010). In this sense, these footing practices represent an instance of what Matoesian (2005) refers to as an *indexical iconicity* of discourse: They do not so much "index" the defendant's otherness, but provide an "iconic" illustration of that otherness, a behavioral part-and-parcel of the phenomenon it calls into being.

Importantly, the attorney and the client are not the sole courtroom participants who feature in the phenomenal field evoked by the plea. In projecting such a cultural boundary (or, in other cases, a social or "medical" boundary), this footing pattern concurrently proposes a complex of associated interactional alignments toward the court and the other parties present at the hearing. In the case of the Turkish adolescent who violated the conditions of his probation, for example, incomprehension about how the defendant manages to look after his handicapped sister co-aligns the defense attorney and the court, both eager to find out what happened ("we don't know how he handles it"), vis-à-vis the defendant and the way he navigates his alien cultural environment. In doing so, these alignments provide an "institutional" analysis of courtroom proceedings: In adopting the role of "supplying expert information" to the judge, the attorney-acting-as-principal openly embraces the criminal hearing's inquisitorial character. As the attorney assumes the role of "cultural mediator" trying to reconcile the life world of the court with that of the client, the court (and, at a more remote level, the audience) is furthermore oriented to as a "beacon of normality." Occasionally, attorneys even draw explicit comparisons between their clients' cultural

framework and what “we” (presumably referring to the others who are co-present at the trial) find acceptable.

The case examined in this paper demonstrates that such delicate footing shifts, some of which apparently contradict the idea that the lawyer “lends a voice to the voiceless,” are not limited to cases in which the defense pleads guilty, but feature equally prominently in pleas where the defense denies the charges. In not-guilty pleas as well, it will be shown, the seemingly unitary character of “representing one’s client” proves untenable and turns out to be a cover for a complex conglomerate of alternating footing patterns and associated alignments vis-à-vis the client and the court.

Importantly, the defense attorney’s alignments also extend along the axis constituted by the legal-bureaucratic trajectory of the trial, as the task of representing the client frequently implies taking up a particular position toward written records produced at previous trial stages. Of particular significance here is the question to what extent the case file (as a repository of the various documents produced during these previous stages), and the officers who compiled the official record of the facts, the prosecutor who interpreted these records, etc., feature as distinct entities in the phenomenal field drawn up by the defense attorney’s discourse (D’hondt, 2009b). In defending the client, the attorney thus not only aligns himself/herself vis-à-vis the various other participants co-present at the hearing but also projects an image of himself/herself as intensely occupied with the intertextual layering of the speech event.

4. A police intervention on New Year’s Eve

The following excerpts are taken from a hearing involving four adolescents arrested on New Year’s Eve outside a discotheque in a small town. The incident started when a customer of Moroccan origin wanted to leave the disco but did not get his identity card back from the doormen (which he had left at the entrance in order to be allowed to enter). Two police officers on patrol in the neighborhood intervened but failed to calm down the impatient crowd at the entrance. The officers called for reinforcements, who arrested the owner of the identity card and two people picked from the crowd. At this stage, the fourth defendant enters the picture: a visitor from a nearby town who had come to celebrate New Year’s Eve in the company of one of the arrested bystanders but had lost sight of his friend when the commotion started. Suddenly realizing that his companion had been handcuffed, the fourth defendant approached one of the officers present at the scene. In response, he was bitten by a police dog and was arrested along with the three others. According to the prosecutor, the

fourth defendant had tried to interfere with the arrest and used contemptuous language. According to the defense, he had only asked where his friend was being taken and requested if he could accompany them to the police station. The plea for this fourth defendant will be examined below. Other parts of the trial are analyzed in D'hondt (2009a) and (2009b).

Two months after the incident, the four arrested were summoned before a first-instance court. The hearing, which lasted a little over an hour, started with the judge's interrogation of the four defendants and of an eyewitness, after which the prosecutor gave her closing statement. The four defendants were each represented by an attorney, except the owner of the stolen identity card who attended the hearing without counsel. The attorney of the fourth defendant was the last to assume the floor. He spoke for about 12 minutes. The hearing was tape-recorded with the informed consent of all parties present. The language of the proceedings is Flemish (as the Belgian variety of Dutch is customarily—incorrectly, according to purists—referred to), but an English translation has been provided.

5. Relaying vs. interpreting the facts

The first part of the plea consists of an alternation of two different footing patterns, each of which entails a distinct orientation to the courtroom setting. The footing shifts are marked with arrows.

- 001 ik dank u mijnheer de voorzitter mevrouw de
I thank you, Mr. President, Madame
002 (vertegenwoordiger van de) procureur des konings,
the royal prosecutor's representative,
003 (0.5) eh (.) mijnheer de voorzitter ik moet eerlijk zeggen
(0.5) eh (.) Mr. President I must admit
004 ik ben wat geschokt door het eh rekvisitoor
I am a bit shocked by the closing statement
005 van mevrouw de procureur des konings,
of Madame Prosecutor,
006 eh (.) zelfs nu- afgezien van (het feit
eh (.) even if- apart from the (fact
007 >dat we hier al dan niet) de feiten betwisten,
that we) reject the charges,
008 (.) maar voor wat zich er daar heeft voorgedaan met mijnheer ((client)),

(.) but for what happened there with Mr. ((client)),
009 daar een gevangenisstraf voor vragen van zes maanden
to demand a prison sentence of six months for that
010 weliswaar voorwaa:rdelijk,
even if only suspended,
011 eh d*it* l*ij*:kt mij (0.5) eh b*ij*na
eh this seems to me (0.5) eh almost
012 eh als u mij t*oe*staat het woord te gebruiken,
eh if you allow me to use the word,
013 ==absurd.
absurd.
014 (.) eh wat de gevolgen daarvan zouden kunnen zijn
(.) eh the possible consequences it might have
015 rekening houdend en in verhouding
taking into consideration and in comparison to
016 met wat er zich al ↑ZOU: hebben: voor:gedaan,
what perhaps may have occurred,
017 ik denk dat er daar geen e:nkele verhouding meer is,
I think there is no longer even a remote sense of proportion,
018 maar alleen maar een wanverhouding.
only disproportion.
→ 019 >mijnheer de ↑voorzitter mevrouw de procureur
Mr. President, Madame Prosecutor
020 heeft ook gezegd dat we moeten eigenlijk leren-
also said that in fact we should learn-
021 dat mensen moeten leren<
that people should learn
022 (0.5) dat wanneer dat het eigenlijk gaat over plezier te maken,
(0.5) that when it comes to enjoying oneself,
023 dat ze dan geen HERRIE moeten maken. °eh°
that one should not cause havoc. eh
024 (0.5) ze verwijst dan eigenlijk (0.5) naar een e*e*:rste fa:se,
(0.5) she is referring then in fact (0.5) to a first phase
025 waarbij we toch (.) aan uw rechtbank benadrukken,

- concerning which we insist to your court,
- 026 dat bij de eerste fa:se mijn client
that as far as that first phase is concerned my client
- 027 geen e::nkel o:genblik BE↑TRO:KKEN IS HE
was never in any way implicated in it huh
- 028 dieje mens is da caf- is- is- die: dancing (daar) of wat het ook is,
the guy entered that café- ent- ent- the disco (there) or whatever it may be,
- 029 binnengegaan ↑met inderdaad >de enige bedoeling
indeed with the sole intention
- 030 om zich te AMUSEREN.
of having a good time.
- 031 >daarvoor zijn ze ook afgekomen,
that's the reason they came,
- 032 ze zijn met drie afgekomen, of met- ja, met drie,
they came with three people, or with- yes, with three people,
- 033 ==nie met de twee ((defendants 1 and 2)),
not with the two ((defendants 1 and 2)),
- 034 maar onder hun gedrie (.) om zich alleen te amuse:ren.
but the three of them (.) only to have a good time.
- 035 en ik zou bijna zeggen,
and I would almost say,
- 036 (.) daarover kan zelfs >niet de ↑minste twijfel over bestaan,
(.) about this there cannot even be the tiniest bit of doubt,
- 037 want u weet wanneer mijn cliënt binnen was,
because you know that when my client was inside,
- 038 dat er geen enkel probleem was,
there were no problems at all,
- 039 en die heeft alleen maar vastgesteld
and he simply noted
- 040 (.) dat op een bepaald ogenblik >dat zijn vriend niet volgde.<
(.) that at a certain point his friend was no longer following.

Lines 003 to 018 are characteristic of the first footing pattern that recurs throughout the plea, which may be characterized as *assessing the facts of the case*. Two elements in particular

constitute this pattern. First, the segment in question resolutely appoints the attorney himself as its principal. In summarizing the position of the defense and responding to the sentence demanded by the prosecutor, the attorney projects a phenomenal field in which his own persona assumes the role of an “independent assessor” who autonomously evaluates the facts of the case and calibrates the accusations against the evidence. This autonomy vis-à-vis the client is communicated by the personal indignation and puzzlement he expresses over the presumed disproportionality of the sentence demanded by the prosecutor (immediately after saluting the judge and the prosecutor, lines 003 and 004) and by the use of the evidential construction *het lijkt me* “it seems to me” (line 011). The extreme case formulation *absurd* in line 013, for which he first apologizes in line 012, further elaborates this display of personal involvement.

Importantly, the other participants in the trial assume an equally prominent position in the phenomenal field conjured up by the segment. They include the prosecutor, the judge, and—in other episodes where a similar footing pattern is deployed—the public and even the case file. In this sense, this segment of the plea is explicitly attuned to the hybrid inquisitorial-accusatorial nature of Belgian criminal hearings as outlined in the second section. The attorney presents his discourse as a response to the accusations by the prosecutor; however, the primary addressee is not the prosecutor but the judge, who is the ultimate arbiter of the validity of the accusations. As Komter (1994) points out, the participants’ orientation to this particular participation framework sets accusations in judicial contexts apart from those in mundane settings.

From line 019 onward, however, we witness a gradual shift to a different footing pattern, as the attorney moves from *assessing* to *relaying* the facts of the case. In lines 020 to 023, the attorney produces an indirect quote (cf. the complementizer *dat* “that” in lines 020, 021, 022 and 023) of the “moralizing” statement with which the prosecutor concluded her closing statement (“people should learn that that when it comes to enjoying oneself, that one should not cause havoc”). The attorney subsequently uses this quote as a platform for moving into a client-sanctioned account of the facts and setting up that account-to-come as antagonistic to the prosecutor’s version of what happened. In lines 024 to 027, he argues that the prosecutor’s moral lesson (the validity of which he does not question) applies only to the “first phase” of the incident in which his client was not involved. The attorney still addresses the court (*uw rechtbank* “your court” in line 025), but does so under the guise of an inclusive “we” (*we [...] benadrukken* “we [...] insist,” *ibid.*) that explicitly makes room for the client as (at least) the (co-)principal of the discourse. This, together with the “relational”

characterization of the defendant as “my client” in line 026, is the last appearance of the attorney as an independent persona in the phenomenal field of the discourse. Starting at line 029, the attorney portrays himself as merely “animating” and “authoring” an account of the events that night at the disco that is *authorized by the client* (who now becomes the principal of the story)—which is also why this footing pattern is referred to here as “relaying” (not “narrating”) the facts of the case. The attorney, the judge and the prosecutor have by now disappeared from sight. The client is referred to in the third person (*dieje mens* “the guy,” line 028), but the spatiotemporal frame of the narrative and its internal development presumably mirror his activities on the evening of the arrest. The incidents at the disco that triggered the police intervention are not mentioned, and his three co-defendants appear only in the narrative the moment they enter the client’s field of awareness. The account also discloses information that belongs to a “territory of knowledge” (Heritage, 2012) to which only the client has access: his intentions and state of mind before the incident (thus rebutting the prosecutor’s suggestion that they came to the town with the specific intention of picking a fight).⁸ That the attorney effectively relegates the role of principal to the client is demonstrated by the brief display of uncertainty in lines 032 and 033. The attorney’s aborted self-correction “behaviorally” draws attention to his own persona (because the attorney is personally accountable for the resulting disfluency), but does so in a way that is fully consistent with the overarching footing pattern: The attorney is publicly checking the accuracy of his own “relaying” of the facts of the case.

At the level of speech production, these changes are accompanied by a shift to a more agitated delivery (vowel stretching, increased loudness, abrupt changes in pitch and tempo), which starts in line 027 during the last segments of the preface to the client-sanctioned account. The attorney simultaneously adopts a more colloquial speech style, evidenced, e.g., by the substandard form of the masculine definite article (*dieje* in line 028), the elision of the word-final alveolar stop (*nie* “not” in line 033) and the occurrence of particles such as *HE* (again, already in line 027). Switching to an agitated delivery and adopting a casual speech style constitute behavioral displays of emotional agitation. The question who exactly qualifies as the “owner” of these emotions is hard to answer unambiguously; as the animator and author of the discourse, the attorney is obviously the prime candidate, but his display of

⁸ The impact of epistemic asymmetries on the organization of interaction has been widely documented in CA scholarship. For a recent overview, see Heritage (2012). Consider Licoppe (this issue) for another instance of the relevance of such asymmetries in judicial settings.

agitation may equally well be iconic of the client's indignation over what happened to him. In any case, however, this display of agitation is highly instrumental in marking the segment in question as primarily oriented to the accusatorial aspect of the courtroom setting. The preface in lines 019 to 027 had already marked the upcoming account as antagonistic to the preceding statement by the prosecutor. The attorney's display of agitation, then, also singles out the imbalance of her account and the inveracity of the accusations as its "object."

The two footing patterns that we have come across thus far can be contrasted as follows:

		Assessing the facts of the case	Relaying the facts of the case
content of the phenomenal field	participation status attorney	principal (in addition to animator + author)	solely animator + author (principal = client)
	other entities (related to hearing/reporting event) in the phenomenal field of the discourse	prosecutor, judge (case file)	None
	the hearing	orientation to hybrid inquisitorial-accusatorial character	unreservedly oriented to accusatorial dimension

The client-sanctioned version of the facts produced under the aegis of the "relaying" footing pattern serves as the backbone for the plea. The temporal progression of the client's account supplies the plea its emerging structure and specifies opportunities for shifting to the first pattern: Depending on the specific episode the narrative arrives at, the attorney is called in (and makes a reappearance as principal) to "assess" the veracity of the client's account. This happens for the first time in lines 035 to 038. Having arrived at a point where the client's version of events contains a statement of his state of mind before the incident (a "private" psychological phenomenon that is vulnerable to accusations of insincerity), the attorney produces a "personal" endorsement of his client's good faith (lines 035 and 036). Together with the attorney, other elements of the courtroom setting also suddenly re-emerge as objects of attention and of co-alignment. In lines 037/8, the attorney reasserts his client's non-violent attitude under the form of an assumption about the judge's cognitive state (*want u weet* "because you know," line 037), presumably based on information the judge gathered from the

case file (which makes its first appearance here, albeit only implicitly). The judge is addressed here in his inquisitorial role of truth-finder, and the attorney is ostensibly “assisting” the judge in this task. The “assessing” intermezzo ends in line 038, when the client-sanctioned account is resumed with a description of the client’s discovery that the police were handcuffing his companion. Note that the attorney produces an endorsement of the client’s state of mind immediately before the incident based on elements documented in the case file. Elsewhere, however, the attorney also produces assessments of the reasonableness of his client’s conduct based on presumably shared conceptions of normality. He does so, for example, to demonstrate that the latter’s attempts to make contact with the arresting officers were not meant to be aggressive: “I would think that as you’re together with friends [...] that in fact you show some concern” (lines 048 to 052, not reproduced here; see also D’hondt (2009a: 815ff; 2009b: 269) for similar normalization strategies).

The above strongly suggests that the alternation of these two footing patterns is regulated by a neat division of labor. The attorney steps forward as “assessor” who assists the judge in his role of truth-finder whenever the account authorized by the client needs independent corroboration, but contents himself with the roles of animator and author when the client-sanctioned account apparently speaks for itself. In this sense, the vanishing of the attorney entails certification of the client’s account as self-evident and not in need of independent corroboration. Whether the plea orients to the inquisitorial-accusatorial nature of the courtroom setting or whether the plea responds to the charges in a purely accusatorial fashion thus appears regulated primarily by “functional” considerations. If independent corroboration of the client’s version is needed, the plea projects a phenomenal field in which the attorney emerges as assistant truth-finder, in a setting where the prosecution is recognized as the source of the investigation and the judge is cast as an independent arbiter. For the other segments of the plea, however, when the narrative of the events logically progresses and the incontrovertibility of the defendant’s account may be taken for granted, the defense attorney casts himself as uncompromisingly acting out the voice of the client, who cries out his innocence without considering the inquisitorial technicalities of the setting.

The one exception to this pattern is when the attorney “jumps in” as principal to explicitly disaffiliate himself from the client’s account and officially declares himself unable to vouch for its veracity. This happens at line 081, when the client-sanctioned account approaches its *denouement*, right before the police dog attacks:

070 maar in elk geval die mannen gaan naar daar,

but in any case the guys go over there,
 071 gaan naar de combi, en wat doet mijn cliënt,
 go to the police van, and what does my client do,
 072 die vraa:gt uit pu:re bezorgdheid (x)
 he asks out of pure concern
 073 (0.5) eh v- (.) voor wat er met zijne kameraad gaat gebeuren.
 (0.5) eh fo- (.) after what is going to happen to his friend.
 074 (.) en hij gaat dus naar daar.
 (.) and so he goes over there.
 075 (.) en op dat ogenblik vraagt hij
 (.) and at that moment he asks
 ((4 lines omitted))
 080 vraagt hem dus >WAT DAT ER GAAT GEBEUREN.
 asks him what is going to happen.
 → 081 (1) en dat kan nu ZIJ:N he mijnheer de voorzitter,
 (1) and now it may indeed be the case huh Mr. President,
 082 ik d- denk- ik ben daar- daar we waren niet bij,
 I th- think- I wasn't- we weren't present there,
 083 >in elk geval is hij op dat ogenblik
 in any case did he at that time
 084 bij mijnheer ((police officer #1)) (gekomen),
 arrive near ((police officer #1)),
 085 >en het kan misschien zijn dat op dat ogenblik
 and it may be the case that at that time
 086 door de gespannenheid en niet wetend wat is er hier gebeurd
 because of the tension and not knowing what happened here
 087 dat de man dat dus misschien <wat minder vriendelijk
 that the guy therefore perhaps may have asked this
 088 zou (.) ↑kunnen (.) ge↓vraagd hebben> he?
 in a somewhat less polite manner huh?
 089 maar ondertussen, politiemensen moeten toch ook weten
 but on the other hand, police officers are also supposed to know
 090 (.) in welke context (.) dat ze optreden, en zo verder,
 (.) in what context exactly (.) they are operating, and so on,

→ 091 <maar wat ge↑beurt er daar dan?>
 but what happens then?
 ((the attorney recounts how his client was bitten by the police dog and
 subsequently arrested))

In admitting to the court that he cannot tell for sure whether his client addressed the officer in command of the dog politely, the attorney gives the impression of letting the inquisitorial aspect take precedence over the accusatorial. On the face of it, he is no longer “backing up” his client, but instead is openly siding with the court, whose task is to find out what happened. This is evidenced, e.g., by the attorney’s self-repair in line 081: The fact that he substitutes, after a brief hesitation, the first person singular *ik* “I” with the plural *we* “we” presents his ignorance on this point as something that inescapably connects him to the court and to the other parties present. However, this apparent disaffiliation in turn assists the attorney in presenting a favorable picture of the client, as the segment in which the attorney refuses to vouch for him admits guilt only on a minor point that is furthermore excusable given the circumstances. If the client indeed addressed the officer in a slightly less civil way, this was most likely caused by his confusion upon seeing his friend arrested. It should certainly not indicate a premeditated plan to cause havoc.

6. Engaging with the case file

The moment the narrative reaches its most crucial phase (the arrest of the client), two new footing patterns can be discerned that henceforth alternate with the “relaying” of the account sanctioned by the client. In line 102 below, the attorney switches to a pattern that may be characterized as “engaging with the case file.” In line 105, this engagement with the case file is temporarily suspended, but it is again resumed in line 113.

102 (1) en dus als we dieje mijnheer (.) ((police officer #1)) mogen gebr-
 (1) and so if we may believe this Mr. (.) ((police officer #1))-
 103 eh mogen geloven,
 eh may believe him;
 104 maar dat wordt hier dus be↑twi:st door mijn cliënt,
 but this is disputed by my client,
 → 105 >ik gaan u zeggen mijnheer de voorzitter, °(en-) u moet mij niet geloven
 I’m going to tell you Mr. President, (and) you don’t have to believe me

106 maar om in dezelfde terminologie of in dezelfde context te blijven,
but to stick to the same terminology or to the same context,

107 mijnheer ((client)) dieje is bij mij gekomen <als ne ge↑sla:gen ho:nd he,>^o
Mr. ((client)) came to me like a dog who just got a beating huh,

108 (1.5) want (.) dus (.) dieje (.) wist (.) dus (.) werkelijk-
(1.5) because (.) well (.) he (.) really (.) well (.) didn't-

109 dieje zegt maar wat is er met mij ↑gebeu::rd,
he says but what happened to me,

110 (.) ik ko:m dus naar ↑((stad waar accident plaatsvond)),
so I come to ((town where the incident took place)),

111 ik ga daar naar ne kame↑raa:d,
I go visit a friend there,

112 (.) ik wordt daar tot- ik wordt daar dus <keihard gebe::ten,>
(.) I am bitten to- I am bitten extremely severely,

→ 113 want dus volgens dieje man
because according to that individual

114 blijktbaar is hij daar dus <tot ↑drie: maa:l toe he>
apparently he was bitten three times huh

115 diejen ((police officer #1)) ZEGT OP EEN BEPAALD OGENBLIK,
that guy ((police officer #1)) says at a certain point,

116 >T'WAS ZO ERG NIET,
it wasn't that bad

117 DEN EERSTE KEER IS HIJ ER NIET ↑DOO:RGEGAAN.
the first time he didn't have his teeth sunk into him,

118 (.) 'K HAD HEM NOG OP TIJD ↑LOS,
(.) I had him loosen up in time,

119 DEN ↑DERDE KEER DAN HEEFT HEM ER WEL ↓IN GEZETEN.<
the third time he indeed had a good bite.

120 (1) DA ↑ZEGT HEM DUS HE.
(1) that's what he says huh.

121 da zegt dieje IN ZIJN VERKLARING,
that's what he says in his statement,

→ 122 ==dan moet ge ne keer nadenken
then you should consider

- 123 over welke bedreiging dat het daar dan ↑gaa:t,
what kinds of threats exactly we are talking about,
- 124 want op een bepaald ogenblik mijnheer de voorzitter,
because at a certain point in time Mr. President,
- 125 wordt uwe MENS (.) dus niet gewapend
your guy (.) unarmed
- 126 die in het slechtste geval zich wat verbaal uit,
who in the worst case only verbally expresses himself,
- 127 die wordt daar dan door vier mensen over↑meesterd.
is suddenly pounded by four people.
- 128 (1) de camio↑nette ingegooïd.
(1) thrown into the police van.

As the material record of the previous stages of the trial and the official repository of the statements by the officers who reported the incident, the case file functions as an element of constraint for the prosecution and the defense alike. To validate/disqualify the proposed transformation of “acts” into punishable “facts,” each side selects from the multiplicity of voices documented in the file those elements that sustain its own version of what happened and discredit that of their opponent. In lines 035 to 038, the case file has already made a passing appearance, as the attorney tacitly assumed the judge was familiar with it. From line 102 onward, however, the case file is no longer tacitly oriented to but occupies a focal position in the phenomenal field of the discourse. The attorney now casts himself as a legal expert who skillfully enters into interaction with the voices from the file, assessing their relative quality and pitting them against one another—either through summarizing, indirectly quoting or literally “animating” them. Footing here acquires a “layered” quality: in quoting other parties’ discourse, the attorney temporarily renounces the role of principal (for the quoted segment), but he nevertheless remains the “overarching” principal for the overarching discursive activity (i.e., contemplating the various statements’ relative salience).

Thus, in line 102 the attorney produces a preface to a quote of a statement by one of the arresting officers, all the while demonstrating serious doubts concerning its veracity (which he presents as shared by the other participants, evidenced by the first person plural *we* in line 102). This is followed by an interjected assertion that his client rejects the officer’s version (line 104). In itself, these few lines already project a complex phenomenal field, as the attorney first prepares his audience for the voice of an absent party (whose discourse is

available to the trial participants in written form), and then reports the position of his client toward that voice.

In line 105, however, the engagement with the case file is suspended before the projected quote is actually delivered. The suspension lasts until line 112. The content of the insertion will be dealt with in the next section.

In lines 113 to 121, the attorney resumes his role of interactant with the case file. In the fragment that preceded, he had animated a direct quote of an utterance his client made during a preparatory meeting (lines 109 to 112, cf. the discussion in the next section) that strongly underscored the discrepancy between the nonviolent demeanor of the defendant and the unnecessarily brutal police response. This emerging sense of discrepancy is in turn backed up by another direct quote, in lines 116 to 119, from the formal statement by the officer who handled the dog that attacked the defendant.

The quote in lines 116 to 119 harbors particularly complex interactional work. First, the attorney-acting-as-principal of the overarching activity becomes the locus of a set of particularly strong emotions: His amazement over the disproportionality of the police response expounded in the opening segment of the plea is now supplemented by an even stronger display of astonishment at the official police record of the facts. The attorney's primary vehicle for demonstrating this astonishment is the colloquial, light-hearted tone of the quote and the casual tone of the officer's description of what happened: *'t was zo erg niet* ("it wasn't that bad") in line 116 en *erin zitten* (literarily "get inside," here idiomatically translated as "to have a good bite") in line 119. It is doubtful that the officer actually used these descriptions or that they constitute a faithful rendition of what he wrote down in his statement. For the attorney, however, the attractiveness of directly quoting the officer lies not so much in the epistemological claim to truthfulness it reflexively instantiates but in the opportunities it creates for complementing the referential content of his words with indexical meaning. The practice of "performing" the quoted materials allows him to set up a conspicuous double contrast between the officer's statement and (1) the formal character of the legal-bureaucratic setting (in particular the fact that an official record of the statement is being prepared for later use in court) and (2) the severity of the excessive use of force against the client. The casual tone of the report, and the web of stylistic contrasts the report instantiates, thus indexes a twofold form of presumptuousness on the part of the officer. First, it suggests that the officer is unaware of, or maybe even expressly inconsiderate of, the offensive nature of his language in relationship to the topic and context. Second, the content and tone of the officer's statement may in turn be considered iconic of his lack of consideration in using force against members

of the public and of his failure to treat them with due respect. One element left unsaid by the attorney is that the prosecutor overlooked the outrageous tone of the police record in compiling the indictment. In other cases, attorneys occasionally do question the prosecutor's interpretation of the case file (cf. D'hondt, 2009b: 268ff).

The direct quote is followed, in line 120, by a one-second pause and an emphatic assertion that what has just been said has indeed been culled from the officer's statement, which is repeated in line 121. At line 122, however, the discourse again shifts to the "interpreting the case file" footing pattern that we came across earlier. The attorney continues producing discourse that projects himself as an independent character fully in charge of what he is saying, but instead of engaging with the officer's voice he now evaluates his client's conduct in view of a legal category ("threats") that would have legitimated the officer's violent response. The judge again enters into sight as the addressed recipient of the discourse (in line 124), and the use of the highly unidiomatic *uwe mens* (litt. "your human being") further underscores the attorney's orientation to the judge's point of view.

The "engaging with the case file" footing pattern documented in this section shares with the previous one ("interpreting the facts") its orientation to the mixed inquisitorial-accusatorial character of criminal hearings. The main difference, however, is that this new pattern explicitly orients itself to the intertextual character of the speech event: It creatively exploits the fact that the legal-bureaucratic trajectory the quoted materials go through involves multiple agencies (see also Licoppe, this volume). This orientation to the mediated character of the quoted text is exceptional and reflects the specificity of the institutional setting. Linguistic anthropological treatments of reported speech (such as Bauman and Briggs, 1992) routinely describe direct quotes as entailing the *minimization* of the intertextual gap between the reporting and the reported event (e.g., through preserving the original deictics). According to Maryns (2013), for example, the process of orally reenacting a pretrial dialogue in Belgian Assize courts systematically obscures the textual link between the original pretrial dialogue and its subsequent reenactment in court: the written record of that dialogue as it was compiled by the police. These ostensibly "transparent" reenactments thus "conceal the indirect, mediated, and therefore inevitably creative nature of the legal-bureaucratic textual trajectories these discourses actually have gone through" (2013: 120). In the case at hand, precisely the opposite appears to be the case. Here, the attorney's performance of the police officer's statement (and the indexical meanings it projects) specifically draws attention to the institutional process of compiling a textual document of that statement (i.e., the "writing up" of the police record) and to the fact this that document was produced as part of a legal-

bureaucratic textual trajectory (i.e., the fact that it was “written up” to be used as evidence in court). As I demonstrated elsewhere (D’hondt, 2009b), the attorney’s quoting of official police records often specifically suggests that their content may have been manipulated with an eye on their subsequent use by actors higher up in the judicial chain. In this particular case, where it is suggested that the reporting officer acted carelessly and flouted the expectations imposed by the record’s subsequent use, attention is drawn to the legal-bureaucratic context of the quoted discourse in a roundabout way, through the oddly colloquial tone of the quoted materials and their lively delivery.

Such an ironic, overstated delivery is certainly not the only means available for drawing attention to the mediating role of the reporting officers and the circumstances under which the record was compiled. In the following excerpt (reproduced from D’hondt, 2009b: 271), the attorney of the first defendant (the owner of the stolen identity card) questions the veracity of the arresting officers’ claim that her client verbally abused them after he had been taken into custody. She does so by animating the alleged insults with an accelerated, flat intonation contour that suggests that she is reading from a text (lines 41 to 43 below):

- 40 (.) nu mijn cliënt zou dan hebben geroepen naar de verbalisanten
- 41 ((reading)) ik krijg u wel zenne vuile flik en ge gaat nog afzien,
- 42 ((reading)) wat is er manneke,=
- 43 =((reading)) wat gaat ge doen
- 44 maar het is wel een feit dat niemand anders
- 45 (.) die uitlatingen heeft gehoord.

Translation:

- 40 (.) now my client is assumed to have shouted to the officers who took
the statements
- 41 ((reading)) I’ll get you you dirty cop you’re gonna suffer,
- 42 ((reading)) what’s wrong little man,=
- 43 =((reading)) what’re you gonna do
- 44 but it is a fact that nobody else
- 45 (.) heard these utterances.

Prosodically accentuating that one is reading aloud from a written source suggests a lack of involvement on the speaker’s part, which contrasts sharply with the minimization of interactional distance between the reporting and reported events that Bauman and Briggs

(1992) take to be characteristic of direct reported speech. In this particular setting, however, the flat intonation contour and the stark contrast it evokes can be interpreted as a metapragmatic cue that the attorney's animation of the insults uttered by her client is in fact a re-quote: The attorney behaviorally demonstrates that she is reading aloud from a police record, in which these insults are put in the mouth of her client. Through her ostensibly non-endorsing delivery, the attorney thus indicates that she is "re-animating" a third party's animation of something her client presumably said, in doing so succinctly suggesting that this third party's description of the incident is biased and insincere (cf. D'hondt, 2009b: 271).

7. Reporting preparatory meetings with the client

Let us now turn to lines 105 to 112, in which the "engaging with the case file" footing pattern is temporarily suspended. The suspension appears triggered by the content of line 104 (the fact that the client disputes the yet-to-be-delivered quote), and the accelerated delivery of lines 105 to 112 further accentuate the disjunctive character of the segment that is "squeezed in between." For as long as the suspension lasts, yet another footing pattern is adopted. In this case, too, the attorney assumes the role of principal and emerges as an independent character. Unlike in the previous part, however, here he exploits an intertextual resource that he, as attorney, enjoys exclusive access to: reports of private meetings he had with the client in preparation for the trial (cf. D'hondt, 2010: 85ff). The interactional significance of these reports of preparatory meetings lies in the fact that they contain detailed descriptions of how the attorney and the client behaved during the course of this remote speech event, which in turn provide clues instructing listeners how to make sense of the current encounter:

the "remote" discourse reported in the attorney's account of the preparatory encounter comes to structure the reporting event, as the indexical meanings made available by that discourse provide a template for making sense of the trial hearing. The relationships and voices that are enacted by the attorney in the plea [...] come to organize the ongoing relations among courtroom participants on the occasion of speech [...]. (D'hondt, 2010: 75-6, see also Mertz, 1996; Wortham, 2003)

These reports contribute to the structuring of the current speech event in two ways. First, the delivery characteristics of the reported discourse constitute a non-denotational resource for providing information about the client. Thus, the sluggish delivery of the client's report of the incident in lines 109 to 112, combined with their redundancy as far as purely "denotational"

information value is concerned, suggest bewilderment and incomprehension and emphasize how grimly he copes with what happened to him. In this way, they instruct the court how they should perceive the person appearing in front of them. Again, footing here acquires a “layered” quality. The attorney appears as an independent character in charge of his own discourse, but for the quote itself, he officially “animates” only the content of his client’s words. However, to the extent that the client’s words demonstrate the validity of the attorney’s colorful characterization of the latter in the preface to the quote (*als ne ge↑sla:gen ho:nd he*, “like a dog who just got a beating” in line 107), they simultaneously buttress his status as principal for the episode in its entirety, as a privileged observer of the defendant’s verbal performance who (autonomously!) decided to “transmit” it to the court to achieve a particular communicative effect.

That the quote itself is preceded by such a colorful (and extremely colloquial) metaphorical description of how the client first came to visit the attorney at his office is not insignificant either. In addition to detailing his client’s communicative conduct when he first came to see him, the attorney here is also sharing his own private response to the client’s display of emotions with the court and to the public, in this case respect for the sincerity of his apparent trauma. This, then, represents the second way in which reports of preparatory meetings iconically contribute to the structuring of the hearing. The reports allow attorneys, in addition to acting out before the court how the client behaved toward them, to provide information about their own appreciation of the client’s performance (in some cases, they even act out their own response, cf. D’hondt, 2010: 85ff). In this way, they can demonstrate a personal “moral” interest in pursuing the case, thus refuting the perception that they are merely a “hired gun” in the service of the client, offering their services to whoever is prepared to pay for them. Reports of preparatory meetings thus constitute an attorney’s resource for attending to an interactional dilemma that is reversely related to the one faced by judges, who must continually maneuver between accepting the defendant’s words as sincere or treating them as the product of calculation (Komter, 1998): By demonstrating moral indignation, attorneys foreground their commitment to the truth and to the trial’s inquisitorial aspect over their partisan interest in achieving an outcome favorable to the client (its accusatorial aspect). This is confirmed, in line 105, by the attorney’s pretended lack of personal interest in convincing the judge of the authenticity of what he is saying.

8. Footing: attorneys vs. prosecutors

The analysis demonstrated how, once we turn to the details of actual courtroom practice, the seemingly unitary activity of “representing one’s client” breaks down into a conglomerate of alternating footing patterns, each projecting a different configuration of participants and a distinct analysis of the institutional character of the hearing (referred to in the table below as the “content of the phenomenal field”) and a specific analysis of the relative salience of the inquisitorial and accusatorial aspects of the tasks carried out in a courtroom. At least four different footing patterns could be distinguished. The table in section 5 must thus be complemented as follows:

		Assessing the facts of the case	Relaying the facts of the case	Engaging with the case file	Reporting prep meetings with client
content of phenomenal field	participation status attorney	principal*	solely animator + author (principal = client)	principal (for quoted segments solely anim. + author)	principal (for quoted segments solely anim. + author)
	other entities (related to hearing/reporting event) in the phenomenal field of the discourse	prosecutor, judge (case file)	None	officers who drafted the official police record (prosecutor, judge)	the client (whose demeanor in court is focalized by report of prep meeting)
	the hearing	orientation to hybrid (inquisitorial-accusatorial) character	unreservedly oriented to accusatorial dimension	orientation to hybrid character highlighting the hearing’s intertextual character	unreservedly oriented to inquisitorial dimension

* Also presupposes the roles of animator and author

Each footing pattern inscribes itself in a very specific way in the network of intertextual connections that run between the hearing and the events that lead to the accusations against the defendants. The footing patterns also differ in the way they include or exclude the attorney and the other parties co-present at the hearing in the phenomenal field of the discourse. Because of this, shifting between these patterns enables attorneys to continually recalibrate their relationship to their client and the president of the court. In this way, they can alleviate the tension between collaborating with the judge in the search for truth and siding with the

defendant in rebutting the charges—a “dilemma” much akin to the ones described in Komter (1998).

To what extent can this exercise be repeated for accusations? Which are the footing patterns and alignments that prosecutors orient to in their closing statements? This question is all the more pertinent in view of the legal stipulation that the Prosecutor’s Office is “One and Indivisible,” which entails, among other things, that the individual magistrates representing it do not speak in their own name.⁹

An earlier analysis of data from the same trial (D’hondt, 2009b) demonstrated that the footing patterns and alignments in the prosecutor’s statement are at first sight remarkably similar. Thus, at certain points the prosecutor chooses to simply “relay the facts,” solely claiming the statuses of animator and author but renouncing that of principal. Occasionally, she also projects herself as the principal of the discourse, either through “assessing the facts” or through “engaging with the case file.” In both cases, she apparently flouts the legal requirement of Indivisibility. There is, for obvious reasons, no equivalent for the attorney’s reporting of preparatory meetings with the client. This intertextual resource is the exclusive prerogative of the defense, as the prosecution builds its case solely on what is documented in the file.

However, upon closer examination, subtle differences emerge in the ways these footing patterns inscribe themselves in the network of intertextual relations that connect the facts and the hearing, which in turn has major implications for the phenomenal field projected by the discourse and the way the speaker (in this case, the prosecutor) is positioned within that field. Recall that the attorney’s “relaying of the facts” unequivocally appointed the defendant as its principal, who is offering his version of the facts in response to the prosecutor’s accusations. This accusatorial dimension is much less outspoken, however, when the prosecutor adopts this footing pattern. The prosecutor’s “relaying of the facts” does not appoint an individual principal, but instead presents the closing statement as a presumably

⁹ According to the Belgian Code of Criminal Procedure, the Prosecutor’s Office is a single hierarchically structured body (“One and Indivisible”), and lower-ranking magistrates are obligated to take orders from their hierarchical superiors. Nevertheless, its officers enjoy individual leeway. Once the hearing has started, each is expected to follow his/her conscience in requisitioning the application of the criminal code. The injunction that they must follow the directions of their superiors holds only for written instructions issued before the case is sent to court (Van den Wyngaert 2006: 566).

neutral transmission of the incident for which the defendants are sent to court. This neutrality assumes the format of an account of the intervention “through police eyes”: The prosecutor provides a description of the arrest as a systematic alternation of “objective” assessments of the situation and “appropriate” responses, which tacitly qualifies the arrest as “good” police work and objectivizes the arresting officers’ assessments of the defendants’ conduct as requiring no further interpretation (D’hondt, 2009b: 256ff). The resulting invisibility of the case file (and, reflexively related to that, the disappearance of the prosecutor as the interpreter of the file) seems to implicate *the absence of individual agency* in making sense of the file and compiling the indictment. This impossibility of singling out an individual accuser is in turn consistent with the legal requirement of indivisibility and the injunction to represent Society. In this way, the footing pattern in question thus at once (1) brands the charges “transparent” and (2) underscores the institutional quality of the prosecutor’s intervention.

In a similar vein, the emergence of the prosecutor as an independent character in the phenomenal field of the discourse in those segments where she is “interpreting the case file” or “assessing the facts” upon further examination turns out much less at odds with the legal requirement of indivisibility. The prosecutor appoints herself principal only at those stages when she *anticipates criticism* of her interpretations or assessments. Her displays of individual agency are thus meant to forestall attempts by the defense to unmake the case against the defendant. They provide opportunities for publicly demonstrating her strict commitment to institutional requirements and for showing that she is carrying out the task institutionally entrusted to her with due care. Here, too, the prosecutor’s central preoccupation is to maintain the institutionality of her intervention, even if it occasionally creates the impression that she is contravening the legal injunction of Indivisibility. As is the case with the prosecutor’s “relaying of the facts,” the footing pattern adopted here may superficially appear similar to its counterpart in defense work, but the phenomenal field the footing pattern indexes and the displays of agency contained are specifically tied to the position the trial participant occupies within the bureaucratically imposed framework in which she has to operate.

9. Conclusion

This paper started by noting that defense attorneys face an intrinsic tension in speaking on behalf of their client. They receive instructions from the client and may appear to act as their mouthpiece, but they are also the ones who develop a legal perspective on the case (and in that capacity, they are expected to provide independent advice). This tension should not

necessarily be taken as problematic, however. In this paper, I took it as a lead for demonstrating that upon closer examination, the apparently uncomplicated activity of “representing the client” breaks down into a delicate conglomerate of alternating footing patterns: (1) relaying the facts of the case, (2) interpreting the facts, (3) engaging with the case file, and (4) reporting preparatory meetings with the client. The remainder of the paper demonstrated that each pattern projects its own phenomenal field, and inscribes itself in its own typical way in the bureaucratically imposed participation framework characteristic of criminal hearings.

The four footing patterns that we came across differ, first, to the extent to which they include the attorney, and/or the other participants to the trial, as autonomous entities in the phenomenal field of the discourse. One consequence, particularly advantageous for attorneys, is that juggling between the various patterns allows them to continually recalibrate the relationship to their client and to the president of the court. This may in turn help them to alleviate the tension between collaborating with the judge in the search for truth and siding with the defendant in rebutting the charges. As the title indicated, this subtle interplay of alignments and perspectives may occasionally lead to what initially looks like an acute disaffiliation from the client. Usually, however, these endeavors by the attorney to side with the court are delicately fine-tuned to the overall target of presenting a favorable picture of the client, one that maximally downgrades his criminal responsibility.

Each pattern also inscribes itself in a very specific way in the network of intertextual relationships between the facts the defendants are tried for and the hearing. In this way, the analysis of footing patterns pursued here allows us to situate the notion of reported speech within the broader framework of intertextual options available to trial participants. For one thing (and much like in any other judiciary setting), the legal-bureaucratic trajectory the quoted materials go through involves multiple agencies. As we saw in our discussion of the third footing pattern (in which the attorney “engages with the case file”), this in turn creates opportunities for attorneys to draw attention to the mediated character of the quoted materials, in doing so maximizing the intertextual gap between the facts and the hearing—which may come in handy, for example, to subtly question the veracity of a police report.

Overall, the analysis once more demonstrates the delicate context-sensitivity of courtroom talk (in the “double-edged” sense of Heritage, 1984: 242, as simultaneously context-shaped and context-renewing). The brief comparison, near the end of the paper, with the footing patterns adopted by the prosecutor in her closing statement (taken from the same case) illustrated how these alignments, phenomenal fields and concurrent intertextual

projections ultimately derive their sense from the bureaucratically imposed participation framework laid down in the protocol. The way these alignments and projections creatively play out as the course unfolds, in contrast, constitutes the maneuvering space vis-à-vis that protocol that legal actors creatively exploit in addressing the court.

References

- Boydens, E., 2007. De onafhankelijkheid van de advocaat.
<http://www.advoring.be/content/buba/3-buba-onafhankelijkheid_e-boydens.pdf>, accessed May 27, 2010.
- Briggs, C., Bauman, R., 1992. Genre, intertextuality, and social power. *Journal of Linguistic Anthropology* 2, 131-172.
- Heffer, C., Rock, F., & Conley, J. (Eds.), 2013. *Legal-Lay Communication: Textual Travels in the Law*. Oxford: Oxford University Press.
- Heritage, J., 1984. *Garfinkel and Ethnomethodology*. Oxford: Polity Press.
- D'hondt, S., 2009a. Others on trial: The construction of cultural otherness in Belgian first instance criminal hearings. *Journal of Pragmatics* 41 (4), 806-828.
- D'hondt, S., 2009b. Good cops, bad cops: Intertextuality, agency and structure in criminal trial discourse. *Research on Language and Social Interaction* 42 (3), 249-275.
- D'hondt, S., 2010. The cultural defense as courtroom drama: The enactment of identity, sameness and difference in criminal trial discourse. *Law & Social Inquiry* 35 (1), 67-98.
- D'hondt, S., Beyens, K., Machiels, B., Meeuwis, M., Blommaert, J., Verschueren, J., 2004. *Interculturele communicatie in rechtbanken*. Brussels: Politeia.
- Goffman, E., 1981. Footing. In: *Forms of Talk*. Oxford: Blackwell, pp. 124-159.
- Goodwin, C., 2007. Interactive footing. In: Holt, E., Clift, R. (Eds.), *Reporting Talk: Reported Speech in Interaction*. Cambridge: Cambridge University Press, pp. 16-46.
- Goodwin, M. H., 1990. *He-Said-She-Said: Talk as Social Organization among Black Children*. Bloomington: Indiana University Press.
- Hanks, W., 1992. The indexical ground of deictic reference. In: Duranti, A., Goodwin, C. (Eds.), *Rethinking Context: Language as an Interactive Phenomenon*. Cambridge: Cambridge University Press, pp. 43-76.
- Heritage, J., 2012. The epistemic engine: Sequence organization and territories of knowledge. *Research on Language and Social Interaction* 45 (1), 30-52.
- Komter, M. L., 1994. Accusations and defenses in courtroom interaction. *Discourse and Society* 5, 165-187.

- Komter, M. L., 1998. *Dilemmas in the Court Room: A Study of Trials of Violent Crime in The Netherlands*. Hillsdale, NJ: Lawrence Erlbaum.
- Komter, M. L., 2013. Travels of a Suspect's Statement. In: Heffer, C., Rock, F., Conley, J. (Eds.), *Legal-Lay Communication: Textual Travels in the Law*. Oxford: Oxford University Press, pp. 126-146.
- Lynch, M., 1997. Preliminary notes on judges' work: The judge as a constituent of courtroom "hearings". In: Travers, M., Manzo, J. (Eds.), *Law in Action: Ethnomethodological and Conversation Analytic Approaches to Law*. London: Dartmouth, pp. 99-136.
- Maryns, K., 2008. *Social Diversity in Judicial Argumentation*. Eindrapport NOI-O4. Unpublished research report, University of Antwerp.
- Maryns, K., 2013. 'Theatricals' in the courtroom: The intertextual construction of legal cases. In: Heffer, C., Rock, F., Conley, J. (Eds.), *Legal-Lay Communication: Textual Travels in the Law*. Oxford: Oxford University Press, pp. 107-125.
- Matoesian, G., 2001. *Law and the Language of Identity: Discourse in the William Kennedy Smith Rape Trial*. Oxford: Oxford University Press.
- Matoesian, G., 2005. Nailing down an answer: Participations of power in trial talk. *Discourse Studies* 7, 733-759.
- Mertz, E., 1996. Recontextualization as socialization: Text and pragmatics in the law school classroom. In: Silverstein, M., Urban, G. (Eds.), *Natural Histories of Discourse*. Chicago: University of Chicago Press, pp. 229-249.
- Riggins, S. H., 1997. The rhetoric of othering. In: Riggins, S.H. (Ed.), *The Language and Politics of Exclusion: Others in discourse*. London: Sage, pp. 1-30.
- Van Bockstael, M., 2009. Videoverhoor van volwassenen. Lecture at the Leuven Instituut voor Criminologie (LINC), KU Leuven, April 23.
<http://www.law.kuleuven.be/linc/studiedagen/Politieverhoor/Videoverhoor_Marc_Bocstaele.pdf>, accessed November 12, 2013.
- Van den Wyngaert, C., 2006. *Strafrecht, strafprocesrecht & internationaal strafrecht: In hoofdlijnen* (6th edition). Antwerp: Maklu.
- Vanderstraeten, M., 2011. *Het geweten van onze strafpleiters*. Antwerp: Linkeroever Uitgevers.
- Watson, R., 1987. Interdisciplinary considerations in the analysis of pro-terms. In: Button, G., Lee, J. R. E. (Eds.), *Talk and Social Organization*. Clevedon: Multilingual Matters, pp. 261-289.

Wortham, S., 2003. Accomplishing identity in participant-denoting discourse. *Journal of Linguistic Anthropology* 13, 1-22.