TUULA-RIITTA VÄLIKOSKI

The Criminal Trial as a Speech Communication Situation

ACADEMIC DISSERTATION
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Justice must not only be done. It must also undoubtly and manifestly be seen to be done
(the European Court of Human Rights)

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"*Go and find out*" were the instructions from professor of speech communication, Aino Sallinen, in 1989, when I began the research of speech communication in the Finnish courtroom context. At that time, Finnish trials were using an 'oral but entered into records -system', where the oral/verbal interaction in the proceedings consisted mainly of reading out written documents. The orally presented material was often still re-recorded in the files, dictated by the chairman. After 1989, many rapid changes in the court proceedings took place, and the role of oral communication in trials was completely redefined.

As a researcher, I have had the rare opportunity to conduct empirical research at a time when the surroundings of the research subject have been almost continuously defining their relationship with the research subject itself. I have also had the opportunity to implement the results from my research at its various stages on education by working as one of the speech communication instructors at the Ministry of Justice and later at the Office of the Prosecutor General.

None of these opportunities would have been realized without the right and fluent connections:

My research of Finnish courtroom communication was initiated by the belief of the rector of the University of Jyväskylä, professor of speech communication, Aino Sallinen. The Head of Education at the Ministry of Justice, Jorma Hirvonen, also thought the subject of my research was educationally interesting, and the courses in speech communication (now in their 10th year) were really needed. The project manager, Kirsi-Marja Varjokorpi, in the Institute for Extension Studies at the University of Tampere took care of organizing the aforementioned courses, and my colleague, senior lecturer Kaj Syrjänen accepted me as a co-instructor.

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The final content and form of my work, however, are a result of the thorough and precise instructions from my reviewers, Professor Lisa Perry of Mankato State University, Minnesota and Professor Jukka Kemppinen, University of Technology in Helsinki. Their comments were not only scientifically enlightened, but also delivered a message of genuine caring for the appearance of my work. My humblest thanks to both of you.

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Without the excellent work of publications secretary Sirpa Randell this thesis would have encountered serious publication problems. Mrs. Randell knew just how to overcome these. I thank her. The publication is also supported by The Scientific Foundation of The City of Tampere.

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My mother, Leena Murtomäki, has always not only supported and discussed my research with me, but also helped in many practical ways. My heartfelt thanks to you all.

I also wish to thank all my friends, who have kept me going by continuously asking about the current stage of my thesis.

The last step of my thesis was the fine-tuning of its language, English. A great help in this was Mrs. Virginia Mattila from the Language Centre of the University of Tampere. She is not only truly competent in the English language, but also unbelieveable in understanding courtroom communication. Her office set the stage for many interesting discussions about the essentials of courtroom communication. I believe that she really knows what is the meaning of her sincere help to me. Thank you.

This project has been more than a great scientific challenge and a dissertation for me – it has been a way of life.

Linnainmaa, Tampere
February 2004

Tiivistelmä

Yksilö ja järjestelmä kohtaavat oikeussalissa. Yksilön toimet ovat vaikuttaneet siihen, että oikeusprosessi on järjestelmässä käynnistynyt. Oikeuden istunto on osa oikeudellista järjestelmää ja interaktionistisen näkemyksen mukaisesti järjestelmä tulee todeksi siihen kuuluvien keskinäisessä vuorovaikutuksessa. Tätä jatkuvaa ja samanaikaista vuorovaikutusta voidaan havainnoida viestinnän avulla.

Vaikka suomalaista alioikeuden toimintaa oli pitkään kehitetty, vasta Euroopan Unioniin yhdistymisen myötä se sai toimintaohjeekseen suullisuuden, välittömyyden ja keskittämisen periaatteet. Suullisuuden periaate kielsi pelkän asiakirjojen lukemisen ja nimesi oikeudenkäyntiaineistoksi vain suullisesti esitetyn informaation. Suullisuuden periaate oli myös suora väline istunnon havainnollisuuteen ja selkeyteen, mikä mahdollisti Euroopan ihmisoikeuksiin kirjatun istuntotoiminnan arvioimisen myös ulkoapäin. Kyseiset toiminnan ohjeet auttavat toteuttamaan oikeuden tarkoitusta, *oikeudenmukaista oikeudenkäyntiä*.

Tämä tutkimus käsittelee rikosasian istuntokäsittelyä puheviestintätilanteena alioikeudessa ja on ensimmäinen puheviestinnän tutkimus suomalaisessa oikeussaliympäristössä. Tilanne määrittyy sen tarkoituksen, osallistujien välisten suhteiden ja ympäristön välisenä yhdistelmänä. Tilanteeseen kuuluu paitsi ulkoapäin havaittavissa olevia tekijöitä, myös osallistujien tilanteesta luomia käsityksiä.

Tässä työssä selvitetään yhden kokijan, syyttäjän, käsityksiä istunnosta puheviestintätilanteena. Tilannetta jäsennetään paitsi oikeudellisena järjestelmänä, myös osapuolien välisenä relaationa interpersonaalisten teorioiden avulla.

Tutkimusote on kvalitatiivinen ja menetelmänä ns. triangulaatio, jolloin tutkimusmenetelmiä ja aineistoja on useita. Ensimmäinen aineisto on rikosasioiden istuntokäsittelyjen observointi, joka tehtiin vuosien 1997–2001 aikana satunnaisesti valituista istunnoista. Toinen aineisto muodostuu syyttäjille vuonna 2000 tehdystä lomakekyselystä. Saatuja tuloksia analysoitiin ja tulkittiin paitsi puheviestinnän myös istunnon suullisuutta säätelevien lakitekstien perusteella, joko suoraan tai välillisesti.

Puheviestintätilanteen tarkoitus käynnistää siihen osallistuvien välisen viestinnän tietyssä ympäristössä. Rikosasian istuntokäsittelyn tarkoituksena on saada perusteltu

lopputulos asiassa ja päätyä tähän oikeudenmukaisessa oikeudenkäynnissä. Perustellun lopputuloksen arviointi vaatii oikeudellista asiantuntemusta, mutta viestintäprosessi on myös maallikon arvioitavissa. Oikeudenmukaisen oikeudenkäynnin toiminnalliset kriteerit yhdenvertaisuudesta ja objektiivisuudesta välittyivät tutkitussa aineistossa hyvin, sen sijaan asioiden yhteinen ymmärtäminen varmistettiin vain harvoin.

Henkilöiden välisiä suhteita kuvattaessa niissä oletetaan näkyvän emotionaalista virittäytymistä, intiimiyttä ja samanlaisuutta, välittömyyttä ja toisista pitämistä sekä dominanssi-alistuvuutta. Nämä oletukset näkyivät viestinnän havainnollistamissa suhteissa myös oikeussalissa. Erityistä suhteille oikeussalissa sen sijaan on niiden asiantuntija-maallikkoasetelma sekä suhteen julkisuus ja institutionaalisuus: suhteita ei välttämättä olisi ilman kyseistä oikeusprosessia kyseisessä järjestelmässä. Erityistä suhteille oikeussalissa on myös eri roolien mukanaan tuoma asymmetrisyys. Tämä ilmeni yhteisen tilannemäärittelyn puuttumisena: tilaisuuden tarkoitus lausuttiin ääneen harvoin, asioiden ymmärrystä ei osallistujilta juuri varmistettu, eikä toiminnan etenemisestä kerrottu. Toiminnan ympäristö jäi maallikoille siten tilanteessa vieraaksi.

Todistajakuulustelussa sen sijaan toiminnan eteneminen ja esitettävien kysymysten luonteen funktio asian selvittämisessä kerrottiin ennen varsinaista kuulustelua. Tämä toiminta helpotti todistajien epävarmuutta kyseisessä tilanteessa ja teki asian selvittämisestä luontevan. Todistajien epävarmuutta tilanteessa vähensi myös kuuntelemisen osoittaminen, mikä näkyi siinä, että esitetyt kysymykset pohjautuivat kuultuun informaatioon.

Suhteen asymmetria tuli näkyviin myös siinä, että sekä syyte että lopputulos olivat ilmiasultaan oikeudellista terminologiaa ja ne usein luettiin ääneen. Kyseinen informaatio on kuitenkin maallikko-osapuolen olennaista ymmärtää.

Arkielämän sosiaalisiin suhteisiin ei salissa pyritä, mutta toimivat viestintäsuhteet ovat tutkimukseen kuuluvien syyttäjien tavoitteena.

Lain määräämä toiminnan havainnollisuus ja selkeys tuli hyvin esiin. Seuraavaan vaiheeseen ei edetty, ennen kuin edellinen vaihe oli käsitelty. Siirtymäkysymyksenä oli usein puheenjohtajan esittämä *haluatteko vielä sanoa jotakin* -kysymys. Selkeyden vaikutelma välittyi toiminnan kokonaisuutta seuraavalle observoijalle hyvin, mutta asianosaiselle ei vaiheita erikseen esitelty. Havainnolliseksi voi kuitenkin arvioida vasta ymmärtämänsä.

Syyttäjän käsitys istuntokäsittelystä puheviestintätilanteena oli melko puhujakeskeinen. Kyseistä tulkintaa vahvisti heidän käsityksensä siitä, että tilanteen onnistuminen riippui puhujasta ja että loppupuheenvuoro koettiin vaikeaksi monologiluonteensa pe-

rusteella. Syyttäjät ilmoittivat kiinnittävänsä paljon huomiota nonverbaalisiin tekijöihin oikeussaliviestinnässä, odottavansa puheenjohtajalta jämäkkää istunnon johtamista ja ignoroivansa lähes täysin lautamiehet salissa.

Rikosasian istuntokäsittely puheviestintätilanteena on selkeärajainen ihmisten välisen toiminnan ympäristö. Toimintaa säätelee oikeudellinen järjestelmä, joka välittyy sekä juridisten asiantuntijoiden puheenvuoroissa että puheenjohtajan säätelemässä vuorovaikutuksessa. Säätelyn perustana on puheenjohtajan käsitykset järjestelmästä, hänen jatkuva tilannearviointinsa ja tämän pohjalta syntynyt tulkinta järjestelmää vastaavasta vuorovaikutuksesta. Puheenjohtajan johdolla kukin istuntokäsittely sisältää siihen osallistuvien vuorovaikutuksen, ja on havaittavissa olevaa oikeussaliviestintää. Näin oikeussaliviestintä toisaalta kehittyy oikeudellisen toiminnan järjestelmästä, toisaalta luo järjestelmää todeksi ja on siten väline kuvaan koko järjestelmästä sinänsä.

Lienee selvää, että lähisuhteiden kaltaisiin sosiaalisiin suhteisiin pyrkiminen ei istuntokäsittelyssä ole tarpeen ja institutionaalisuus suhteissa näkyy; vahvistivathan puheenjohtajan ja syyttäjän roolit kuvaa siitä, että abstrakti oikeudellinen järjestelmä hoiti asian käsittelemisen. Jos viestintä kuitenkin ymmärretään jatkuvaksi ja samanaikaiseksi vuorovaikutukseksi henkilöiden välillä, niin viestintäsuhteet käynnistyvät henkilöiden kohdatessa ja päättyvät heidän poistuessaan yhteisestä ympäristöstä.

Yksittäisellä puheenvuorolla on myös useita seurauksia. Kysymyksien esittäminen on esimerkiksi väline kerätä haluttua informaatiota, mutta kysymyksien esittämisen tapa on väline vaikuttaa yhteiseen ilmapiiriin. Vaikutelmia tehdään puolin ja toisin siitä, mitä sanotaan, mutta myös siitä, mitä jätetään sanomatta. Näin viestintäsuhde ei pääty, vaikka yksittäisten asiantuntijatehtävien hoito päättyy. Toimivat viestintäsuhteet helpottavat istuntokäsittelyn tarkoituksen hoitamista, mutta vahvistavat myös kuvaa toimivasta istuntokäsittelystä oikeudellisen järjestelmän osana sinänsä.

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1 Introduction

Finland's European Union membership in 1995 occasioned numerous changes to the country's legislation. One of the most socially significant changes was that cases at law came to be handled under the principles of orality, immediacy and concentration.

The principle of *orality* means only that proceedings material that has been introduced orally can be accepted when the verdict is given. The principle of orality prohibits material to be read aloud and the verdict is based solely on the orally presented information in a trial (see Criminal Procedure Act = CrPA 11.7.1997/689, Chapter 11: 2 §.) These reforms came into effect in a precise order so that trials of civil cases changed first, in 1993, then trials of criminal cases in 1997 and Courts of Appeal changed their trials last, in 1998. *Immediacy* means the composition of the court must not change during the proceedings. The principle of *concentration* means that the judicial process has to be uninterrupted (Government Bill = GB 95/82/preamble).

The principles of immediacy and concentration are the principles behind all judicial action in criminal trials. The principle of orality requires that action be observable and, one of the basic principles concerning human rights in court.

Not only has the principle of orality made the operating environment a challenging one for those participating, but also an interesting field for research. In fact, there has been no previous research in this branch of science on trials in the Finnish courts.

The principle of orality means that speech must be used for achieving various goals in a trial. Those goals are presented in communication between different parties. The communication in a courtroom thus has an instrumental value for its presenters, but it can also to be understood as an outcome achieved by the parties through interaction.

Speech can be broadly understood to mean both the verbal, linguistic and the nonverbal elements of a message, such as gestures, facial expressions, movements, clothing and voice (see Burgoon, Buller & Woodall 1996). Speech can be mediated

between people in an environment with a specific goal. Communication in a face-to-face situation is simultaneous and continues as long as the people are present (i.a. Fisher 1978, Watzlavick, Beavin & Jackson 1967). The people can select, organize and control their verbal messages, while the nonverbal elements of communication are more difficult to organize and control. The person does not necessarily know what type of nonverbal messages she or he is sending nor is she or he aware of the nonverbal clues being noticed or headed at all by recipient (Burgoon, Buller, Floyd & Grandpre 1996). A clue does not entail the same type of conscious intention on the part of the person as *a message* can be defined to entail (Watzlavick, Beavin & Jackson 1967).

The speech communication research literature often combines the conceptual pair *efficiency* and *appropriateness* (i.a. Valkonen & Mikkola 2000). The concepts describe the content and relation components (Hart & Burks 1972) of the message and the mode of its presentation i.e. how effective the content of the message is and how appropriately it is presented.

In this work the concept of *appropriateness* is seen to cover both meanings. Courtroom communication can hardly be appropriate without efficient content nor can presentation be purposeful without efficient content. This assumption is justified based on received facts (see entitlement *notorious** in CJP 48/571, Chapter 17: 3 §).

Courtroom communication can be broadly understood to be purposeful when:

a. the *factual aims* of the court session derived from different enactments can be carried out through communication. Factual aims include a definite and permanent judgment. The definiteness of a judgment comes from a formally correct and reasoned judgment. The permanence of a judgment, on the other hand, can possibly be seen when an appeal against that judgment is made to the Courts of Appeal or to the Supreme Court and the judgment is upheld,

b. enforcement of the *functional aims,* which consolidate a correct and permanent judgment, of the court session derived from different enactments can be carried out by communication. Functional aims are; the thorough and objective conduct and interpretation of the matter, equal treatment of both parties and other principles of legal protection and

c. a functional aim can be defined by the different parties to be a purposeful result, in other words, a relevant result *created by communication achieved in a way seen to be appropriate.*

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* a fact that is notorious or known to the court *ex officio* need not be proven

This thesis is concerned with the two last mentioned elements of purposefulness.

Subjective experience is often the basis for defining some action, solution or situation to be purposeful. The evaluation of purposefulness is more neutral compared to the evaluation of the right and wrong or the good or bad execution of some action, solution or situation. Nevertheless, defining purposefulness from the outside, as a researcher, is always descriptive and ideally objective and the one who experiences it can only define a subjective experience. In addition, the experiencer's evaluations of the purposefulness of the same speech communication event may be different (see i.a. Hewes & Planalp 1987, Petty & Cacioppo 1986). Even the mere observations of the same social situation may also be different for different individuals (Burgoon, Buller, Floyd & Grandpre 1996. See also Greene 1984). It might therefore prove to be impossible to find and describe the communicational features of a situation that is simultaneous and purposeful *to all* its experiencers.

Instead, a purposeful *action,* which is created in interaction between people and which becomes observable through their communication, can be also justified from outside, as a researcher making observations resting on reasoning and sufficient restraints. In this case, any interpretation made by a researcher not familiar with legal science is already limited.

However, analyzing the perceived purposefulness has the same hazards as the analysis of any phenomenon perceived from the outside compared to actual experiencing it (cf. critique of Valkonen and Mikkola in Valo 1995). Observed purposefulness can also be constrained by the knowledge of the desired purposefulness, which can be traced, for example, to the different regulations and instructions concerning the matter.

Before evaluating the appropriateness of the action it is necessary to ascertain the nature of that action.

People create action through interaction with other people and communication makes their action observable. Communication needs people sending and receiving both verbal and nonverbal messages with certain goals in a certain environment. According to Miller, Cody and McLaughlin (1994) people when fulfilling their purposes in an environment are performing a situation.

In this research the speech communication situation is a criminal trial. A speech communication situation is an abstract phenomenon, which this work analyzes and defines not only by using the observations and analysis of the researcher of the judi-

cial enactments regulating the actions in the situation but also by using the insights of the person experiencing the situation.

Because this research is the first speech communication study in a courtroom context in Finland, the research is a qualitative study. This method is eminently suitable for research for which the data is gathered from a little studied environment (Eskola & Suoranta 1998). The focus is on the phenomenon, that is, on the communication in a criminal trial. The phenomenon is studied as it is revealed through interpretations to the consciousness of the researcher and the person experiencing it in the situation. In this work, a human refers to both the researcher as the observer and analyser of the studied phenomenon and to the individual performing intentional acts based on her or his own constructions. The method of research in question is particularly suitable for studying social reality (Perttula 1995: 60. See also Eskola & Suoranta 1998), which is here reflected by the communication in the courtroom (cf. Mead 1934).

The concept of a trial as such is an event including certain material acts and the end of it is the verdict. Its product, however, *justice in the case*, is an abstract concept, a relative phenomenon and it is realized by the people directed to do so (cf. Hirvonen 2000). The analysis of the phenomenon has been the challenge of research in several branches of science, such as philosophy, sociology and legal science (i.a. Aristotle in Ross 1963, Hirvonen 2000, Ervasti 1999).

The communicational nature of criminal trials can be structured (see Figure 1) on the one hand on a *macro level* by studying the visibility of the *structural-functional* duties assigned to it by different enactments and, on the other hand, they can be structured on *a micro level* as the *interpersonal relation* between the contextual parties.

This research draws a map of the kind of communicative features that are written into different enactments (see e.g. CrPA 97/689) and how the communication describing judicial actions in the courtroom has been observed and experienced.

This research is based on both the written material as well as on the analysis and interpretation of the written material about what has been observed and experienced. As the results are analyzed the interpretations will be refined to become conclusions justifying the vision of an appropriate communication in a courtroom.

This work does *not*, apart from a few references, study *the change of communication* in current criminal trials and the sessions preceding the recent law.

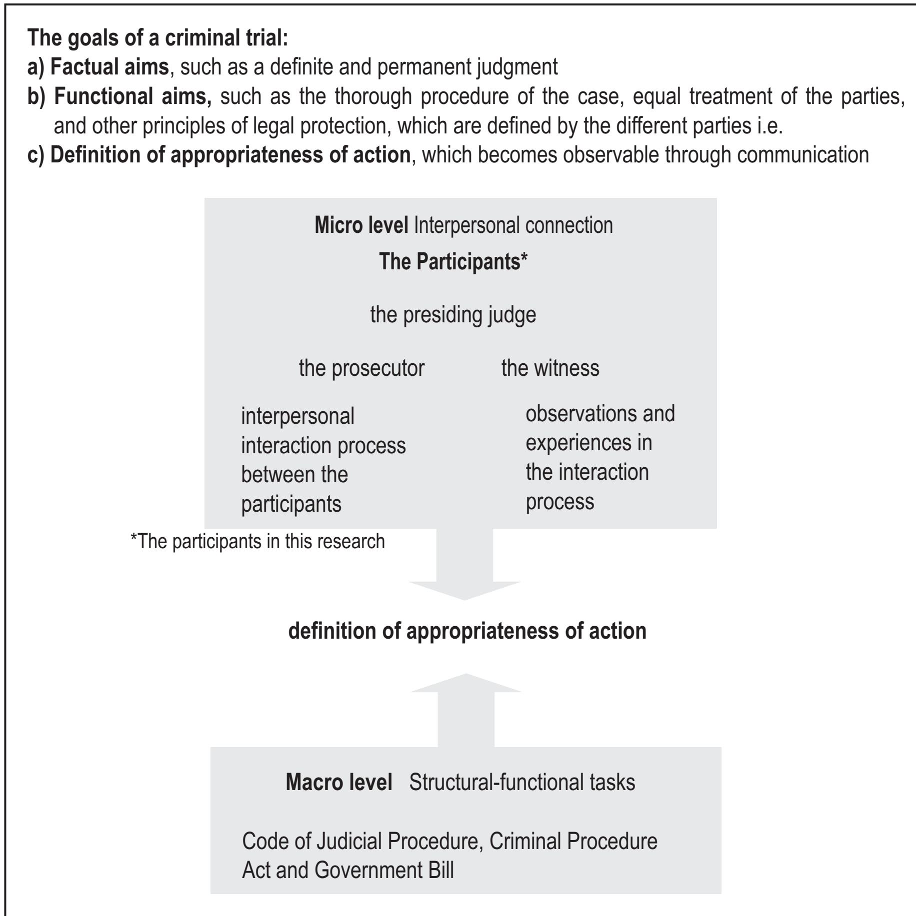

FIGURE 1. Communication in a courtroom and the levels of its analysis

Using research material comprising two separate corpora outlines the phenomenon called a criminal trial as a speech communication situation. One corpus is the observation material of criminal trials gathered in the period 1997–2001 and the other corpus is the questionnaire to the prosecutors implemented 2000.

In this research, the concepts 'human' and 'individual' are used as synonyms. Both terms are used to refer to human beings, but the term 'individual' also refers to one single person performing some specific act. The concept of 'party' means someone participating in a trial, an individual or a human with a private or public

interest in the matter, such as the prosecutor, the plaintiff or the accused. The concept 'participant' is conversely any physical person in general, individual or party taking part in the criminal trial in special. Thus, a participant cannot be a community or a public body, but it can, for example, be the witness.

A criminal *trial* stands for the courtroom action taken as a part of the judicial proceedings. The concept of judicial proceedings has a wider meaning than a trial, also entailing actions taken outside the courtroom, that is, actions related to the preparation of the matter as well as to the implementation of judgments (CrPA 97/689, Chapters 5–11).

The structure of the research

The concrete environment for the realization of the phenomenon, in other words, the structure and the abstract environment of a criminal trial with its operational principles is first presented. In addition, the same chapter creates the theoretical framework for the action under examination and the communication manifesting the action. The frame of reference in question is also the source for the research questions. (Chapters 2.1, 2.3–2.4.)

Chapter Two (2.2) presents a review of the literature. Chapter Three (3) presents the empirical part of the study and Chapter Four (4) the answers to the research questions. The results are reported in this chapter as such, but are evaluated in Chapter Five (5) using the frame of reference and the earlier studies described in Chapter two (2). The same chapter also includes an evaluation of the way the results were achieved, an answer to the last research question of the work and presents some issues for further studies. Chapter Six (6) presents a synthesis of the content of the research.

2 Framework of the Study

2.1 The Finnish criminal trial and its governing principles

Structure

In the courtroom all action is governed by multiple sets of regulations and principles. The Criminal Procedure Act (CrPA 97/689) provides a framework for the action whereas the Code of Judicial Procedure (= CJP 60/362) provides clear instructions, such as

1. *the chairperson* of the court shall ensure the maintenance of order in a hearing. For this purpose she shall interrupt improper statements and admonish everyone behaving in a disturbing or improper manner. If the orders of the chairperson are not followed, the recalcitrant person shall be removed from the courtroom* (CJP 60/362, Chapter 14: 6 §),
2. *the questioning of the witness shall be begun by the party who has called the witness, unless the court otherwise orders. The witness shall present a continuous account of the facts on her or his own initiative and, where necessary, with the aid of questions put to her or him* (CJP 98/690, Chapter 17: 33 §),
3. *the court shall see to that the hearing of the case proceeds in a lucid and orderly manner* (CJP 93/595, Chapter 6: 2a;1 moment) and
4. *the court shall see to that the case is throughly dealt with and that impertinent matters are excluded from the case. If the statement of a party is unclear or incomplete, the court shall*

* the term presiding judge is used synonymously to the term chairman or chairperson in this study

> *put the necessary questions to her or him in order to have a clear view of the contentious issues* (CJP 93/595, Chapter 6: 2a; 2 moment).

A matter becomes a criminal case when the alledged act is committed against the Criminal Law and when a public prosecutor is furthering the interests of the state, as well as the injured party, in a hearing (Criminal Law = CrL 16.8.1996/626).

Judicial proceeding in criminal cases in Finland is based upon the decision to prosecute as a result of pre-trial investigation (the Law of Pre-Trial Investigation 30.4.1987/449). After the decision to prosecute, the parties to the judicial proceeding are summoned to appear in court. The trial proceeds as a hearing in court and ends when a verdict in the matter is given.

The action in the process of the hearing in a criminal case is based upon the 14th Chapter of the Code of Judicial Procedure (CJP 60/362) i.e. upon written regulations which not all the parties involved may know. The presiding judge of the court does know the regulations and interprets them according to her or his own understanding. The prosecutor and her or his counseling attorneys are aware of the legal background of the hearing. Therefore the experts, under the presiding judge, produce visible court proceedings by their action. Their action is not separate from other judicial action but connected to the action of all the parties, including the members of the jury, called the lay judges. All these different forms of action together with the reciprocal action between the parties becomes visible in the courtroom and can be seen in practice as the courtroom proceedings.

Structurally, the hearing of a criminal case is based upon a pre-trial investigation which is nowadays led by the prosecutor (cf. The Law of Pre-Trial Investigation 87/449). The *Prosecutor* is a state official whose task it is to see to it that the proper statutory sanction is attached to a criminal act. She or he is the person who decides whether the legal conditions have been fulfilled during the pre-trial investigation to warrant a legal action in the matter. If such legal conditions have indeed been fulfilled the prosecutor brings an action in the matter and the judicial process in the case begins. The parties are summoned to appear in court and as soon as the date of the hearing has been set the parties meet in the courtroom for the hearing. The prosecutor is also the person who, ex officio, takes care of the investigation of the alledged act, the alledged crime, in court. The duties of the prosecutor are based upon the Code of Judicial Procedure, Role of the Prosecutor (11.3.1997/199), in addition to the previously described regulations.

The hearing *begins* by removing possible obstacles. The most common obstacles are the absence of one of the parties. At the beginning of the hearing the presiding judge notes the previously mentioned absences and their consequences. If the hearing is ready to start, the presiding judge checks and confirms the identity and other background information of each party present.

The hearing proper begins with *opening statements* when the prosecutor states her or his claims of the summoning application. She or he also states the possible claims of the injured party (CrPA 97/689, Chapter 5: 9 §). The *injured party* is the person who is a plaintiff in the case and who has a personal interest in pursuing it. She or he may be a victim of some specific crime. The prosecutor states the claims and a description of the alledged act, i.e. the prosecutor's version of the act in question. If the injured party is present she or he has a chance to state her or his own claims making brief substantiations for them.

After this the presiding judge grants the defendant a chance to address the court to present her or his views of the prosecutor's claims. *The defendant* is the person who is alledged to have committed the crime in question in the hearing. The defendant can plead either guilty or not guilty to the accusation with her or his own arguments. *Counsel* is the person who counsels one of the parties in court, and is usually a professional lawyer. The plea is the defendant's response to the act alledged by the prosecutor and it does not necessarily contain any legal evaluation of the act itself.

The next stage is a so-called *description of the matter*. This phase begins with an address made by the prosecutor in which she or he describes the matter. The description of the matter can be a freely structured oral description about the events and circumstances that have lead to commiting the alledged act. According to the current proceedings the prosecutor *cannot* refer to accounts from the pre-trial investigation records. The aspects of the case that may be to the defendant's advantage must also be brought up. The description is directed to the court. This means that the jury must taken into account. *The jury*, the lay judges, three laypersons, represent the control of society and have been selected to serve as the jury for a four year period of time by the local authorities. The jury is led by the presiding judge and they decide the matter with the presiding judge. They are not given any material concerning the case beforehand, but they have to form an opinion based solely on the hearing (cf. the District Court Act 28.6.1993/581: 6 §).

The prosecutor initiates the giving of evidence in the courtroom, presents the themes of testimony, and explains the legal precedents as well as the applicable judi-

cial instructions. The prosecutor may also state the possible *alternative charges*. At this stage of the process the framework for the proper description of the case, as well as for the questions of facts and legality are created. In addition the relevant aspects for giving testimony are clarified.

At this stage the prosecutor can also state the possible *optional demands for punishment*, but they can also be stated during the closing arguments. The plaintiff acts here in a similar manner, but especially if she or he wishes to deviate from the prosecutor's charge. The claimant also states the damages requested. The defendant acts in a similar manner, from her or his own point of view, possibly through her or his counsel.

The next stage is *the testimony*, in which written evidence is admissable. The written evidence has to be orally explained. First the claimants are heard in order to prove the evidence, which is followed by other testimony. When the claimant is giving evidence, her or his story can be told uninterruptedly. According to the quality of the subject matter in the case this testimony is conducted by the presiding judge or the prosecutor. At the end, all the parties can cross-examine the claimant, and supplementary and leading questions are allowed (cf. CJP 98/690, Chapter 17:33; 5). The defendant is treated in a similar manner to the claimants.

The testimony is based upon the testimony themes i.e. the facts that have been introduced in the summons and that have been proven or attempted to be proven true in the testimony. In the questioning of the witnesses the claimants are the leaders of the discussion. The main examination is conducted by the named claimant. The opposing party conducts the cross-examination.

At the very end of the hearing *the closing arguments* are presented, in which the adequacy and the reliability of the evidence are evaluated together with judicial questions i.e. how the law ought to be applied in the case. Both parties present their closing statements as the closing argument. *The discussion of the consequences* is included in the closing arguments, as well as the compensation for damages. Witnesses are asked about possible expenses. *The judicial proceeding of the case ends* when a judgment is given and announced in the hearing.

Even though there is no express regulation, the hearing of a criminal case is to be divided into two parts: first the guilt is discussed, and after that the consequence (GB 95/82/preamble).

In criminal cases the district court is competent (cf. CJP 91/1052, Chapter 2) when it has a presiding judge if the matter to be judged carries no other sentence than a fine or a maximum of one year and six months imprisonment. Otherwise the dis-

trict court has jurisdiction when it has a chairperson and three lay judges. The latter combination is used in all the observed criminal hearings in the present study.

Principles regulating a criminal hearing

The judicial proceedings in a criminal case are oral, immediate and concentrated. Oral means that only the kind of criminal proceedings material that has been introduced orally can be accepted when the verdict is being made. Immediacy means that only members of the court who have been in court throughout the hearing can participate in deciding the case. If the members of the jury change, a new hearing must be arranged. Concentration means that the judicial process has to be uninterrupted. When the proceedings are postponed for more than the time limits prescribed in the law, a new proceeding has to be conducted (GB 95/82/preamble).

According to *the accusatory method, the way of bringing the charges,* the claimants are on one side with the prosecutor and on the other is the defendant of the criminal case. The charge of the prosecutor as well as the claims made by the claimant restrict the court's investigatory power and the court can only pass sentence on the act of which the defendant in the criminal matter has been accused. The task of the prosecutor is to obtain evidence and to introduce the adequate evidence in court (GB 95/82/preamble).

Organizing the judicial proceedings to meet the demands of the accusatory method is also important because this way the court can objectively, without interfering in the process of investigating the matter, render a judgment. Therefore the chance of making a decision based upon false facts is diminished, and in criminal cases the opposing party of the defendant is not, in addition to the prosecutor, the court itself (GB 95/82/preamble. See also Virolainen 1998).

Organizing the proceedings to be oral, immediate and concentrated has been intended to ensure a certain, fast and cheap trial. The proceedings should usually be conducted in such a way that the case is solved after one hearing. In the hearing all evidence is accepted and the hearing is oral. The record from the pre-trial investigation is not material for the hearing as such, in fact testimony in it can be used as evidence in the hearing only in special instances laid down in the law. The members of the court cannot be changed during the hearing (GB 95/82/preamble). The

principles of orality, immediacy and concentration all serve the principle of justice in court, which means the solving of the case based on the facts as well as efficient and economic (purposeful) proceedings.

The analogy between the judicial terminology and communication terminology, such as content and relation component in messages, is obvious and it also justifies the previously presented supposition, including both terms in the courtroom communication context, namely the concept of appropriateness.

Judicial action is also guided by different types of principles that have been derived from other regulations. An example of these is the principle that all treatment has to be equal (the Finnish Constitution 19/94, Chapter 2: 5§).

Action in the hearings of criminal cases is in the present study outlined as being governed by the previously presented regulations.

2.2 The rationale

The science of speech communication is an eclectic science and has common theories, methods and research interests with other sciences (Littlejohn 1999:22). Thus a precise definition of its field could be problematic. If a researcher in Finland is taking a speech communication perspective to her or his research, she or he is interested in oral interaction between people with different goals in a certain situation and context. That interaction becomes observable through both verbal and nonverbal communication between the people involved.

If the perspective of the science at hand is mentioned, one can conclude that speech communication research in a legal context is done mainly in the United States. Some related sciences to speech communication according to Puro (1996:12) include linguistics, psychology, sociology and social psychology, and they also have gathered research material in the courtroom context. There are so few speech communication studies on the courtroom context in Finland and in Europe in general that this thesis will introduce some findings made in these related sciences, too.

2.2.1 Introduction to the field of courtroom communication and its research

Court hearings have been a context for public speaking for a long time. Speeches have been made to defend the rights of servants when a society has become more democratic, and speeches have been used to argue for the justness of a verdict (Corax and Tisias c. 400 B.C. in Kakkuri-Knuutila 1991: 25. Hirvonen 2000). In the year 462 B.C. the Athenian judicial system was reconstructed and as a result the interest in the means of assuring and persuading by one's speech arose (Kennedy 1963: 28–29). After 462 B.C. the rights of the judges were limited to preliminary research, and a new jury which consisted of 201 men was appointed to replace the official judges. In the name of the new and improved spirit of democracy the trial could not be held by an outsider, which meant that the claimants themselves had to present the accusations and responses (Kakkuri-Knuutila 1991: 26–27).

The early literature which dealt with the studying and learning of the art of speaking often had connections with court trial situations. According to Aristotle this was due to the fact that the judicial process allowed an opportunity to use persuasive means, especially by trying to affect the listeners' emotions. This in turn was possible because the people acting as judges were lay judges who did not know the law well (Kakkuri-Knuutila 1991: 28).

The connection between law and communication continued to the Roman era. In the Roman empire a remarkable writer of the art of speaking as well as a remarkable rhetorics was Cicero (106-43 B.C. in Kakkuri-Knuutila 1991: 36). Quintilianus also taught judicial rhetoric (Wuorenrinne 1976: 36).

After those times, in Europe, too, the teaching of the art of rhetoric might have been related to legal surroundings. In Russia the teaching of rhetoric consisted of political, judicial and war related rhetoric. According to A.F. Kon (1844–1927), who created a model of a judicial speech, it had to have a clear content and be formulated in such a way as to be unequivocal (Kärkkäinen 1994).

It could also be argued that the courtroom has been both historically and even today a context or setting for speeches whose purposes have not only been connected with the case at hand but also with other action and persuasion in society in general (cf. Dawson 1968, Kemppinen 1992).

The court session as setting for people's activity has interested researchers of various disciplines in addition to speech communication science. Sociologists have studied the connection between different types of crimes and societal changes and crimes of which people have been convicted and types of sentences (Ervasti 1997, Pihlaja 1995, Utriainen 1989). Forensic psychologists have been especially interested the psychology of giving testimony (Foley 1993, Haapasalo 1994, 2000, Lahti 1991, Loftus 1991, Shuy 1993, Stephenson 1992). Forensic psychologists have expressed their concern about the witnesses' opportunities to recount of their experiences and observations in their own words (Molotch & Boden 1985), and how calmly and uninterruptedly they are allowed to speak (Haapasalo 1994, Foley 1993, Loftus 1991), or how their understanding of the case is ensured (Drew 1985). Linguists have examined the structures of legal language, its vocabulary, and conversational organization (Caesar-Wolf 1984, Danet 1990, Gibbons 1994).

The types of questions lawyers have asked the witnesses have been categorized and analyzed. In these studies it has been observed that the types of questions as well as the powerfulness of language varies in the hearing according to whether the lawyer is asking questions of the witnesses about her or his own party or on the other party (Knappenberger 1989, Rieke & Stutman 1990. Cf. also Sunwolf 2000).

The directions given by the judge to the members of the jury in order to make a decision have also been investigated. The researchers have concluded that the instructions that were more profound than those usually given by the judge helped and clarified the decision making of the jury immensely (Pryor, Strawn, Buchanan & Meeske 1979). Contemporary researchers have gone further in their conclusions by showing that the judge guides the members of the jury to decide the matter the way she or he wants (Levine 1992, Olson & Olson 1994).

International law and society research examines courts' actions from multiple perspectives. This research includes examining citizens' opportunities to receive justice, and different options for solving civil cases. It also includes examining the success of different claimants, like businesses or private citizens in trials, the formation of civil cases and their development into civil matters in court, citizens trust in the judicial system, and courts and disputes as a part of legal culture and its change (Ervasti 1999).

From the point of view of speech communication, courtroom research has mainly been done in the United States. The European research is very scarce and the extent of it depends largely on the definition between sociolinguistic and speech communi-

cation studies. One of the main reasons for the lack of European speech communication research might be the fact that most European legal systems are based upon so-called written law. It is a Germanic-Roman system which is based upon written judicial regulations, in which, until the present day, the process itself has been largely based upon the different types of records and the interaction between different parties has been written, not oral (Klami 1990, Lager 1994).

In former trials in 'written law' countries the only party orally presenting speeches was the defendant's attorney. In order to explain how to do the job, books that are based upon the writers' own practical expertise in legal matters, like acting as a lawyer, have been written (Napley 1983, Sherr 1993). A short study of the speech communication skills of a Finnish lawyer from the viewpoint of a lay judge was conducted from the perspective of speech communication (Välikoski 1989).

2.2.2 Judicial discourse

Judicial discourse became a popular target of research by American linguistics in the middle of the 1970s. In the 1970s the National Science Foundation started its Law and Social Science Program, which was aimed at investigating the trial practises in American courtrooms as well as the clarity of the instructions given to the jury. Studies on the power of language and language strategies also have their origins in the courtroom context (O'Barr 1982). Other studies concerning the comprehension of judicial language, especially from the viewpoint of a lay judge began in the United Kingdom (Danet 1990: 537) and continuing the studies of comprehensibility of trials for laymen started in the United States.

The research of judicial discourse from both linguistic and sociological points of view developed in the 1980s, especially in Sweden (Aronsson 1991, Aronsson, Jönsson & Linell 1987. Cf. Finland: Karstinen 1998), West-Germany (Caesar-Wolf 1984, Reitemeier 1985) and Israel (Danet 1985). The researchers concluded that language was the core element in human action and that the use of this element was especially critical in courtroom contexts, where the work of the judges and lawyers was both symbolic and abstract. It was the job of the judges to give a concrete form to abstract things, such as law and justice, with their choices of words (Danet 1985). Judicial language was perceived to consist of special vocabulary and long, complex sentences

as well as an extensive use of passive forms (Danet 1980, Gunnarsson 1984). Thus the judicial discourse hardly served its purpose of concretizing abstract justice.

Swedish researchers have observed a difference between the spoken and the written forms of the same courtroom information (Jönsson 1988). One of the results was the finding that when a witness described her or his observation at length the written short form of the story would differ from the spoken statement quite extensively. This observation is supported by the Finnish investigations (Karstinen 1998). Sociolinguists found the judicial practises and the demands of formal language to actually be a threat to the witness's freedom to tell her or his views in her or his own words (Molotch & Boden 1985). Drew (1985: 136) examined the discrepancies in accounts between the different parties during a witness hearing, and proved the clarification of misunderstandings of the witness to be inadequate. The problematic situation of witness accounts in their own words has also been examined by witness psychologists (Foley 1993, Haapasalo 1994, 2000, Loftus 1991), who conclude that the recollection of previous actions could be guided by certain types of questions at certain points in the hearing.

Aronsson, Jönsson and Linell (1987: 99–115) investigated judicial discourses especially from the point of view of language accommodation. They wrote that the judicial parties changed and accommodated their language at the different stages of the hearing. Lawyers accommodated their language to meet the defendant's language during the interrogation stage, whereas during the presentation of the plea their language was far from the defendant's language. Aronsson, Jönsson and Linell also concluded that first offenders wanted to use informal language throughout the hearing, whereas second- or third-time offenders preferred formal language as well as a speedy and official proceeding with the subject matter.

2.2.3 Argumentation research

The phenomena of courtroom communication have been a subject of systematic speech communication research since the 1950s in the United States. This plethora of speech communication research is partly due to the current common law judicial system. One distinctive feature of this system is that on a general level the matter of

guilt in each case is decided by an appointed jury*. Each case is appointed its own jury, which reflects the demographic features of the state. They are selected according to their capabilities to act and to think objectively. This selection process is called *voir dire* and it is a part of every trial. Its aim is to find a fair and impartial jury. (Reinard & Arsenault 2000.)

The members of the jury do not receive any information about the matter before the case, but they are to make their decisions based solely upon what they hear and see in the courtroom. The main function of courtroom communication in general, thus, is to persuade. The lawyers representing the different parties seek to influence the members of the jury with their speech in order to get the point of view they are presenting to sound credible (Rieke & Stutman 1990).

One way to study courtroom communication and especially the phenomena of persuasion is to study argumentation. How is the abstract concept of argumentation rendered concrete in a trial? O'Keefe provides two ways to look at argument. One way is when argumentation has been investigated as an independent entity where the argument is an utterance which aims at affecting the attitudes, beliefs, values and behavior of the listeners (O'Keefe 1982). When the term is defined in such a way it can be seen in the context of a courtroom as an entity in the closing arguments of the different parties. It consists of previously presented evidence and it is a summary with a conclusion directed at the members of the jury.

The other way of examining argumentation is to break down the concept of argument into the argumentative speech act itself (Keough 1987, O'Keefe 1988). The argument is delivered to the audience via the argumentative speech act, *the making of argument*, and it demands some sort of interaction. In the courtroom, argumentation which demands interaction can be seen when the parties are making arguments to each other, when they add their own information to the opposing counsel's counter-information heard previously.

A third way of examining argument is provided by Hample (1985: 267–285). Here, argument is an inner process of a person where either the person making the argument recognizes the utterance as an independent entity, or refutes the argument and therefore engages in an interactive argumentation process. One can, of course, ask whether the second and the third way of defining arguments have only a concep-

* defendants have an option for a jury trial. In civil cases jury trials are common but there are also bench trials

tual difference, because an argument that is understood to be an independent entity was also directed to some specific person (i.e. it was there to serve some specific purpose), and its aim was to exert influence.

Studying argumentation in a legal context has been connected with the work of Perelman and Toulmin, whose models are basic conceptions in argumentation theory in general (Golden & Makau 1982: 157–178, Trapp & Benoit 1987: 417–430).

2.2.4 Studies on a speaker's credibility and interaction between parties in court

Besides studying argumentation as a tool for persuasion, one can study the components of persuasion as such.

One component of persuasion is the speaker's credibility. The researchers of courtroom communication have been interested in the criteria of credibility in the different parties in general, but especially in the decision making of the juries. The ability to create verbal evidence is connected with the impression of reliability a person gives. Juries have been shown to find only little special presentation of evidence in the spoken evidentiary information. They also analyzed only to a limited extent the type or the strength of verbal evidence being discussed (Reinard 1988, Rieke & Stutman 1990, Spiecker & Worthington 2002). The members of the jury still appeared to separate utterances such as *what if* and *even if* from the information. Such utterances are used by lawyers to create a reality similar to the claimant she or he is representing (Sunwolf 2000). The nonverbal credibility of the lawyers has also been seen to be important outside the courtroom as well, i.e. when they meet their clients in their offices (Gilstrap & Russ 2000).

The members of the jury paid more attention to the nonverbal communication of the lawyers than to the verbal information they imparted. The observations made on this communication affects the behavior of the members of the jury throughout the whole judicial process (Barge, Schlueter & Pritchard 1989, Pettus 1990). The members of the jury also paid attention to the nonverbal communication of other judicial parties in court (Badzinski & Pettus 1994, Foley 1993. Cf. also Burgoon & Le Poire 1999). Objects of attention included the witness's gender, race, posture, movements,

gaze, voice, general attractiveness or occupation. These things correlate with the impression of credibility the person made (Hans & Sweigart 1993, Philips 1990).

The quality of voice and the rate of speech of the lawyer or of the witness were among the significant factors in forming a positive reliability impression. According to the results gathered by Scherer, Koivumäki and Rosenthal (1972) a low speaking voice and a calm rate correlated with forming a reliable impression of the speaker (Scherer, Koivumäki & Rosenthal 1972). The results are supported by Finnish research on the quality of speaking voice, even though they conducted in different communicative contexts*.

Another nonverbal feature in speeches is pauses in presentation. The judicial parties interpreted the pauses in speech in various different ways. The party who had summoned the witness interpreted the pauses to mean the witness's pondering and concentrated speaking. The other party interpreted that when pausing, the witness was hesitating and uncertain (Aronsson 1991: 5).

Some linguistic features of courtroom communication increased the credibility of the speaker, too. In addition to nonverbal features, the language used in the courtroom reflects the power dimensions of the parties (O'Barr 1982) and the impressions produced of the parties is linked to the language they used (Hosman & Wright, II 1987: 173–188). Earlier the same researchers (Hosman & Wright, II 1983: 137–152) also examined the connections between language, gender, and impression produced. The use of language and the impression it gave to the members of the jury were important features of the credibility of witnesses (Lisko 1992).

A Finnish survey of lawyers' communication skills from the point of view of the lay judges (Välikoski 1989) showed that the members of the jury paid attention to the lawyer's behavior in general, as well as structural, linguistic aspects and to the speech technique. Important speech communication skills for lawyers according to the Finnish lay judges were the subject's relativity, making grounded arguments, and interaction skills during the witness hearing. These effects were even greater according to the women on the jury (cf. Hans & Sweigart 1993).

Only few speech communication studies have investigated the interaction between different parties in a courtroom context. Ross (1982) investigated the interaction between the injured party and the defendant during the different stages of the hearing using the interaction analysis model developed by Bales (1950). Knappenberger de-

* the context of these studies was newsreading (Laukkanen 1995, Valo 1994).

veloped this model further and examined the interaction between the presiding judge and all the different parties in the courtroom and especially the chairperson's way of regulating this interaction (Knappenberger 1988). Even though it was a qualitative study, Knappenberger stated hypotheses between the presiding judge's way of regulating the interaction and the decision made. According to Knappenberger (1988) the judges seemed to accept objections presented by the parties if the objections supported the judges' own views of the conclusion of the case.

Courtroom interaction was also the subject of the first Finnish speech communication study (Välikoski 1996). It discussed the communicative behavior of the chairperson as well as the regulating of interaction in the courtroom. The results discussed the judicial principles and their fulfillment in her or his behavior. The effects of a fair trial on courtroom communication have been examined in the United States since the 1990s (Blanck 1993: 1119–1181, Blanck 1996).

Some research has also introduced courtroom interaction from the perspective of interpersonal communication, both that of the witness (Välikoski 2000, cf. Loftus 1991) and the victim (Myers 2000, cf. Haapasalo 2000). The results confirmed that in the courtroom a layman witness not only pays attention to the affective parts of courtroom interaction, but also experiences them as the sort of features that create a wholesome feeling of contentment.

More recent studies have broadened the scope of communication research and have looked at communication not only as a tool for achieving some person's individual purposes but also as a tool for peoples's mutual benefit. This could also be the case in a courtroom. The treatment of the claimants in the courtroom appears to be important in committing to the result (Conley & O'Barr 1998, Haavisto 2000, Komter 1994, Lind, MacCoun, Ebener, Felstiner, Hensler, Resnik & Tyler 1990). Individuals who believed they had been given a fair trial and understood the outcome were likely to have a better commitment than without such a feeling of having been treated fairly (Haavisto 2001, Messmer 1997). Similar conclusions were drawn when Finnish trials in civil cases were examined and a concept of experienced feeling of fairness was created: the logic of attaining impartial and trustworthy proceedings seems to have changed and the importance of informal communication in producing trust has been recognized (Haavisto 2002: 294).

Comments

Nonverbal behavior, like gestures and voices, between the judicial parties has been examined without giving much thought to the problems of distinguishing between nonverbal and verbal behavior (Valo 1995). The observations made by the members of the jury as well as their decision-making have been described (Hans & Sveigart 1993). This has often been investigated in set conditions in which students simulated real members of the jury (Feild & Barnett 1978, Miller, Fontes, Boster & Sunnafrank 1983). More recent studies have concentrated on real jury contexts (Sunwolf 2000).

Judicial discourse (Danet 1985, Drew 1985), speaker's credibility and other communicative characteristics of the parties (Badzinski & Pettus 1994), adaptation of the language used (Aronsson 1991, Aronsson, Jönsson & Linell 1987), or ways of arguing (Keough 1987, O'Keefe 1988, Rieke & Stuttman 1990) have been investigated. Argumentation has been connected with the models of Perelman and Toulmin, who did indeed study legal argumentation but mainly in written documents (Golden & Makau 1982: 157–178, Trapp & Benoit 1987: 417–430).

Only a few of the previously mentioned studies have themselves described courtroom communication as an interpersonal relation between the different parties. The physical environment of communication, the courtroom, is nevertheless described as a series of systematic and consequent stages of speech that are either independent entities (O'Keefe 1982), or as stages during which some kind of sharing occurs between the parties (Hample 1985, Keough 1987). Researchers have investigated *communication itself* (cf. Puro 1996) that simply *exists* between the parties in the courtroom. Communication has practically been taken for granted without examining and analyzing its distinctive features or the relationships developing between the different parties in the courtroom and possible changes in these over time (cf. Coupland, Giles & Wiemann 1991).

The theories used have been theories of activity, theories of discourse, message production, speech accommodation and theories of persuasion and argumentation. In more recent studies, group communication theories, like structuration theory and theories of interaction have been applied. Theories of interpersonal communication are very rare in courtroom communication studies.

This study

The purpose of this study is to add to the knowledge in the field of speech communication in the courtroom context. The present study is a basic speech communication study investigating the interaction between different parties in a special context. This interaction becomes observable through communication.

Communication is seen in this study as a continuous (Watzlavick, Beavin & Jackson 1967), simultaneous (Fisher 1978), interpersonal (Bouchner 1984, 1989, Fisher 1978) relation between people, which is paralleled in their action. The supporting points of such a conceptualization are 1. at least two (2) communicators intentionally meeting each other 2. as subjects and objects 3. whose action is constructed on the perspectives of both and from both. In an interpersonal episode each communicator is both a knower and an object of knowledge, a tactic and an object of the other person's tactics, an attributor and an object of the other person's attributions, a codifier and a person to whom the code refers (Bouchner 1984: 336).

This interpersonal relation lives in situations and forms action consisting of the emotional state of the people, their perceptions of themselves and others (Hewes & Planalp 1987, Petty & Cacioppo 1986), their expectations of relationships in the given context (Werner & Baxter 1994), and the aim and context according to which they define the situation (Miller, Cody & McLaughlin 1994) and add this definition to their earlier cognitive constructions. The definition of the situation in turn creates a background to the interaction between the parties (Greene & Geddes 1993, Pearce & Cronen 1980) which is demonstrated as their communication choices (Laing 1967).

The aim of the interpersonal communication in a courtroom context is to develop an action which is seen and interpreted as a fair proceeding (fair trial). The theories of interpersonal communication add to the mutual understanding of that relation. (See Figure 2.)

Communication choices refer to the intentional verbal and nonverbal solutions achieved by the participants in their action. These are, for instance, the decision to give a speech as well as the decision not to participate in the discussion (cf. speech communication skills, Lehtonen 1994). Communication choices include both a decision to act and the act itself. The success of these choices can be seen in the further interaction between the participants. These choices form the participants' communicative competence (see Spitzberg & Cupach 1984).

Action (Engeström 1987, March 1996)
• the prevailing cognition (Greene 1984, Petty & Cacioppo 1986)
as well as
• the definition of situation (Hewes & Planalp 1987, Miller, Cody & McLaughlin 1994)
and interpretations of these situations

Communication choices (Laing 1967)
• verbal/nonverbal communication (Burgoon, Buller & Woodall 1996)
• i.e. messages with content and relation components (Hart & Burks 1972)
• the different functions of speeches e.g. persuation

Interaction
• expectations
• relationships (Werner & Baxter 1994)
• interpersonal relation (Bouchner 1984)

Communication choices (Laing 1967)
• verbal/nonverbal communication (Burgoon, Buller & Woodall 1996)
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Action (Engeström 1987, March 1996)
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as well as
• the definition of situation (Hewes & Planalp 1987, Miller, Cody & McLaughlin 1994)
and interpretations of these situations

Courtroom communication is simultaneous and continuous (Fisher 1978, Watzlavick, Beavin & Jackson 1967)

Courtroom communication is
a) the **result** of the previous and
b) the **means** to make a legal system come true

The structure of the system is legitimated in the law that is interpreted by the chairperson during the hearing. The system has both a **factual** as well as a **functional** aim. (GB 95/82, CJP69/323, CrPA 97/689)

FIGURE 2. The research interest and its theoretical sources

2.3 The criminal trial and the theoretical frames of speech communication

Courtroom communication refers to the interaction of the parties performed by speaking in a courtroom environment. Communication is the observable form of action and it is created through interaction between the participants.

Functional approach

According to the *functional approach* (i.a. Giddens 1976) social structures are real and their actions and tasks can be observed. Action is legitimated through communication and one tries to understand it by looking at the tasks that can be realized in interaction through communication (March 1996). Action in social structures has different organized phases and a change in one phase causes a change in another phase. The phases of action may be created by the organization itself, such as the problem-solving method of one organizational group, or they may imposed in by official regulations. The phases are commonly created in interaction between the people involved.

Trials also have different tasks and phases of action which are accomplished through communication. These tasks and phases in a Finnish criminal trial include an *opening statement*, in which communication serves to define and describe the trial, *a statement*, in which the subject is redefined, evaluated and considered and *a closing statement*, in which communication serves to present the parties' viewpoints on the matter for judgment. Thus, the function of communication in different stages is mainly to produce and receive information and to try exert influence.

The structure also includes many rituals as to how matters are handled. These rituals include both verbally and nonverbally observable communication. Verbal acts are needed in the first ritual when the presiding judge checks the personal identity of the participants, or the impartiality of the witnesses. Swearing the oath on the Bible or the official affirmation of a witness is a ritual involving both verbal and nonverbal acts. This repeated structure is one tool to add to the credibility of the action and then to strengthen the significance of a situation (Kemppinen 1992).

The functional approach believes in the stability and synchrony of time, and the focus of action is on unintentional consequences rather than on the goal-oriented consequences of action.

The courtroom is an environment which is not entered by accident or by surprise. Consequently, it is reasonable to assume that the communication of the different parties is fairly goal-oriented and planned. The different parties with their representatives try to act in a focused manner. *Everyone* in the courtroom observes their actions. The current task, clarifying that of the prosecutor, has the goal of facilitating the court in evaluating the evidence more thoroughly. The court, which is represented by the presiding judge, does not have to take part in the examination of the witnesses (but may, if she or he wants to). Thus, the chairperson can focus on following the trial and on evaluating the evidence observed. The lay judges also evaluate the evidence. They all have the ability to observe, process and interpret the communication of different parties and perhaps to determine the unintentional consequences of the action. Those consequences may be nonverbal, unintentional clues revealing the truth, which is what the trial seeks to establish.

Courtroom communication produces information which is evaluated through interpretation. Information includes observation and selection, which means the processing of information which is interpreted, and used as a basis for drawing conclusions which depend on the attitudes and prior knowledge of whoever is processing the data (see Greene 1984). Information created in this way can be said to be based both on subjective observations and to be relative in nature.

Information and knowledge are related to one another in such a way that the recipient notes the information which she or he consumes as meaningful and which she or he is able to attach to previous scheme structures. In a trial the mental structures of legal professionals also include legal knowledge of the matter into which they integrate observations of all the action. Laymen, however, do not possess such knowledge.

Subsequently, in the mind of the person, the information is transformed into knowledge. Schemes guide the way in which she or he perceives and sees the world (Salminen 2001: 65. Cf. also Perttula 1995). Human knowledge, especially knowledge related to social reality, is subjective, consisting of the observations, conclusions and mental structures of individuals. The knowledge is also related to its environment.

Here the environment of knowledge is a formal system which explains this social reality. The problem is how to transmit subjective experiences to others and how to make them mutual. No fact is by nature universally objective and similar, on the contrary, the transformation of the subjective into the objective is a result of communication (Salminen 2001: 67). General acceptance is the criterion for truth (Junnola & Juuti 1997).

In a criminal trial one of the aims of the action and functions of the communication is to derive objective solutions from subjective experiences.

Observing and evaluating unintentional action and in particular nonverbal communication is emphasized when the truthfulness or falsity of the information presented is considered. Based on received facts (termed *notorious* in CJP 48/571, Chapter 17: 3§) it can be assumed that criminal trials are a functional environment for the discovering of information, in which truthfulness is notably relative. Deception research to clarify this issue assumes that the results reveal something about human interaction in general (Seiter 1997:253 and i.a. Miller & Read 1991).

Structural-functional approach

The researchers of the functional approach also believe that different phenomena are independent realities, symbolized only by language. In other words, language represents something that already exists. *The structural-functional* view was consolidated mainly by the sociolinguistic researcher Danet (1980, 1985, 1990), who wrote that language and the language choices made in the courtroom give concrete form to abstract action: *"the abstract term of 'justice' becomes a concrete thing through language"* (Danet 1985). The researcher saw communication not as simultaneous transmission of messages, but as a sequence of signs.

In a courtroom, language must be taken as part of a greater communication whole not in isolation from its context. Conclusions are made on the basis of information heard and not only interpreted information; a task which can be almost impossible to perform objectively as the previous discussion notes (Hewes & Planalp 1987, Petty & Cacioppo 1986). Nevertheless, sometimes the task is very simple. For example, if the defendant responds to the question *"was it so?"* by saying, *"yes it was"*, the affirmative intention of the defendant becomes evident in the language. If it is thought that

language represents some existing truth and that in this case the affirmative answer is the truth, then the truth is here and it is easy to perceive. Thus, the language and the message conveyed are the same and therefore true. The same verbal information may yield interpretations reinforcing the untruth if the other communicative signs of the respondent provide other clues. The accuracy of observations and the appropriateness of the analysis of all communication form the foundation for truth evaluations. The observers must know how to predict and reduce uncertainty in this interdependence, which will create their material for arriving at a verdict (cf. Berger & Calabrese 1975: 100–101).

The consequences of unintentional actions must also be watched to see whether all utterances are true from the viewpoint of the matter and if the individual in question presents the message truthfully. In this case, what is observed is nonverbal communication, such as the way in which the message was uttered, with what volume, with or without eye contact and what kind of gestures and movements. However, what should be mainly interpreted in a courtroom is the information heard, since it can be verified and checked from an audiotape afterwards, if necessary. Nonverbal stimuli or clues cannot be recorded as material for stating the reason, although these may be important points in assessing the credibility of the message (Smith & Malandro 1985), or they may be the only points which a jury of laymen is capable of interpreting (Välikoski 1989).

Language must represent reality and the symbol system of language must represent matters well. Consequently, terms must be accurate and specific. It is possible that the matters described form a very clear sign system if conclusions are justified only on the basis of heard language.

Other factors are also included in human interaction. Understanding the comprehensive nature of the speech communication process may also arouse suspicions in all concerned of the functionality of the sign system in question concerning the knowledge it produces of courtroom information and the complex, incomprehensible solutions based thereon. Then again, some studies on courtroom communication have researched the nonverbal communication of different legal parties (Middleton 1981) without contemplating the problem of separating verbal and nonverbal elements in communication from each other (see Valo 1995). The problematic nature of this matter was also acknowledged at one time by the opponents of the radical change to oral proceedings in Finland (views criticized e.g. by Virolainen in 1989. Cf. also Klami 1990).

Central to the previously described structural-functional way of analysing human interaction are the different theories of language and discourse (Buttny 1985, Ellis & Donohue 1995, Jacobs 1985, Mandelbaum 1989) and the system theory for analysing action (von Bertalanffy 1972, Shannon & Weaver 1949). The structuration theory illustrating group communication also represents the functional theories (Giddens 1976, Poole, Seibold & McPhee 1986). According to structuration theory, human action is a process of producing and reproducing different social systems (cf. Giddens 1976). In this system, the rules, norms and different roles guide this action and people present renew these rules, norms and roles by their own actions.

Legal actions in a courtroom are intertwined with the socio-legal system, which can be examined by using system theory to look at the ways in which certain phases in the procedure and, in particular, how the speeches used by the parties reinforms the system. However, this system is realised *only* by the participants present *at the time* in their predefined task roles and this is the action analyzed by structuration theory.

Even though the reform of the system in Finland as well as the transition from written to oral proceedings is based on *a legal change,* it also reforms the social reality of the system. Moreover, those roles that are partly used for the realization of the system under the former rules, namely those of a prosecutor and thus also of a presiding judge, have been reformed. The former rules of procedure are still effective principles of legal protection.

Functional theories address the process itself, in other words, how a result is achieved. Even though results have often illustrated the effectiveness of action (cf. Trosa 1994), research had proved that the action itself also has a connection to the commitment to the result (Haavisto 2001, Messmer 1997).

The previous views analyze communication in the courtroom as a whole, as the *means* of analysis of the action between all the parties. Observed as a means of analysis, communication renders part of the judicial system, the abstract justice, visible and particular.

Interactionist approach

According to *the interactionist approach* (i.a. Blumer 1969, Mead 1934) institutions do exist and they can be examined through the interactions between their partici-

pants. Meanings are not something that can be transferred objectively, since they are produced in the interaction between people. Social structures are not determinants but products, which makes the search and realization of abstract justice visible. Thus, abstract justice can be seen and defined by the ways in which its participants interact with each other during a hearing.

Interaction is a way of making action visible through communication. Action is a series of cognitive, mental, cultural and physiological performances (cf. March 1996). The series is operationalized by communication, which in this case is seen to include both verbal and the nonverbal elements. Interaction between individuals is action illustrated by communication. This action is based on the participants' previous cognitions, immediate perceptions of situations and the interpretations made thereon. The resulting action can be illustrated from the communication between participants. Based on the foregoing, the abstract concept of *justice* also assumes a visible form through the human interaction in a courtroom and, thus, abstract justice is made concrete by communication. Consequently, for example, the principle "**Oikeudenmukainen oikeuden istunto" = fair trial** (see the Finnish Constitution 17.7.1919/94, Chapter 2: 5 §) is realized through the *action* between the parties. Whole action is a reciprocal, dynamic process between the parties that is represented by courtroom communication. (Engeström 1987, Mead 1934, Miller, Cody & McLaughlin 1994). The presiding judge is the main person defining this process.

Engeström (1987) continued the previously described notion of Mead (1934) about organizations and institutions being not complete products but the results of individuals' actions with each other. Mead uses the term *interaction* to describe the connection between individuals whereas Engeström uses the term *activity* (on the definitions of Engeström see Haavisto 1997: 11). Engeström defines human action to be the link between the individual and society and creates a special model of an operational system. The system comprises a subject or actor, and an object, in other words, the goal of action and the tools for achieving the goal. Action does not take place in a vacuum and therefore needs an environment, a community, consisting of other actors. Moreover, action also needs to have rules and shared communal division of labor to achieve the goal (Engeström 1987).

This research further develops the earlier explication to a continuum in which action and interaction are combined by communication. Communication symbolizes and describes social reality and the actions of the communicators in it (cf. to symbolic interactionism and e.g. Goffman 1974). The action system of Engeström

can be compared to the system of interaction which is made visible by the *communication* between individuals in interaction. This system also has senders and receivers (actors/communicators) and rules and regulations for their actions, which are defined, strengthened and renewed in interaction in an environment by communication. Thus, communication is both the means to accomplish the goal and the result of action (cf. Poole, Seibold & McPhee 1986).

Miller, Cody and McLaughlin (1994: 186) stress *situation* as the background for the behavior of people in interaction. Different situations can be defined with the help of their meaning, the participants and the relationships between them, and the environment. Action is in relation to the individual's social construct, which are based on previous cognitions, emotional state, preferences, expectations of the relationship and the situation, which is the defining of the situation (March 1996: 285). This all means that defining the situation, one's construct, is the basis of an individual action which then becomes observable through her or his communication. When the definitions become clear, alterations in communication may also be developed, the goal of which is, for example, an appropriate action in a situation. The appropriate definitions of a situation are also a part of developing the action. It must be remembered, however, that the same situations can also be defined in different ways due to the definer's personal characteristics (Petty & Cacioppo 1986).

The way in which somebody acts, in other words, what can be detected from her or his verbal and nonverbal communication, is only partly determined by that individual's traits. Situational factors are also constructions of the *self* of a person in that particular situation. These include, for example, how one perceives one's own actions in the situation or how important it is deemed to succeed in that situation. The stance is based on modern interactionism (see i.a. Endler 1982, Endler & Edwards 1978), in which

a. overt behavior is seen as an action developed by the continuous feedback system between a human and a situation,
b. the human is seen as a goal-oriented contributor in the interaction process,
c. cognitive factors are important determinants of behavior and
d. the situation together with the psycho-social meanings created by a person are the main determinants of behavior (cf. Miller, Cody & McLaughlin 1994: 162).

The bases for the communication choices of the people in the situation are their definitions of the situation along with the previous cognitions of the person (Laing 1967). Those communication choices become observable as actions. Cognition is here seen to include not only information processing itself, but also the situational goals of the communicator resulting from the processing (Greene 1984).

The concept of *situation* was defined (Argyle 1981: 30) to be the sum of the features of the human behavioral system and the sum was the duration of a social interaction. Goffman (1961) used the term social situation to “refer to the full spatial environment anywhere within which an entering person becomes a member of the gathering that is (or does then become) present. Situations begin when mutual monitoring occurs and lapse when the next to last person has left” (Goffman 1961: 144).

The previous depictions can be examined critically by considering them on the one hand as rather static in relation to the duration of the situation and on the other hand as rather concrete in relation to the minimum number of the members. Moreover, they do not accurately describe the changing and dynamic nature of the concept of situation. The concept of situation may include both observable features, such as the numbers of participants in a physical environment, and mental features, such as the sharing of meanings of the participants in that space (see Figure 3).

The persons may have interacted together even before the common situation under examination has physically started. The connection to the situation has been created when the persons have abstractly prepared themselves by setting goals and strategies for the forthcoming situation. This has been the case with the people meeting each other physically in a courtroom, too. They may have prepared themselves mentally for that particular situation. However, the physical encounter in the situation does create a certain duration for the situation, in other words, the situation has a beginning, the arrival of the individuals, and an end as the individuals leave.

The concept of situation has also been defined as a space in which to affect someone’s behavior (Pervin 1978). In this case, the concept entails three factors: those present at the time, scene of the action and actions required. Thus, the situation was determined by the participants’ relations, which were affected by the emotional state of the participants (Biggers & Masterson 1983), in a given environment, performing given task (meaning). The view emphasizing interaction therefore sees action operationalized by communication being simultaneous and continuous between communicators (Fisher 1978, Clevenger Jr. 1991).

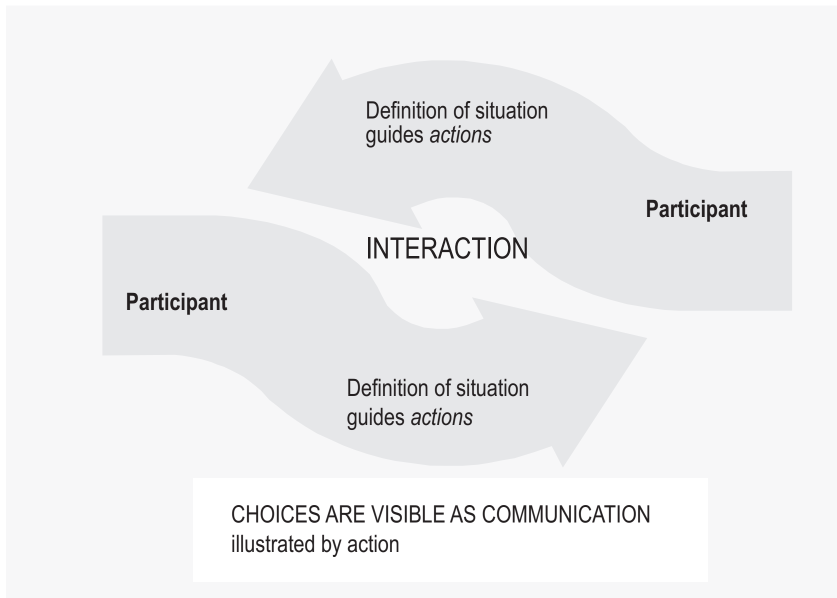

FIGURE 3. Action, interaction and communication

The view in question is also the basis for the definition of a situation in the present study.

Purpose and meaning

The purpose of a courtroom situation is to solve an individual problem between persons or persons and the state in such a way that the solution is *permanent* and *valid* (CJP, Chapter 24: 3§ and CrPA, Chapter 11: 4§). In order to achieve this purpose, matters must be handled so that the general legal protection procedures are followed i.e. meaning of a fair trial.

To achieve the purpose, action in the courtroom has a specific structure, or format, which is repeated in the same way regardless of the nature of the matter.

The structures of criminal trials in the Finnish district court were changed so that the means for their realization now emphasize oral interaction and communication.

Environment and context

A certain structural factor is also attached to the probable difference in the participants' definition of the situation. The factor is that the courtroom is the environment of *concrete action* and the physical form of *abstract justice* unfamiliar to the lay participants.

According to the views of different participants, the problem of courtroom communication is its many levels (Knappenberger 1988). The objective of verbal interaction is to function as the concrete manifestation of the abstract court, which is when the all-governing law in individual cases acquires a context for corresponding to the phenomenon (Caesar-Wolf 1984, Danet 1985). Courtroom communication includes both verbal and nonverbal elements, or information, and this must always somehow be transformed into unambiguous written form (Aronsson 1991, Karstinen 1998). The investigation of the case and the evidence given by the witnesses' are presided over by experts, who are assumed to know the rules of the system. They strive to elicit answers to their question "*what happened?*", answers that can be appropriately accommodated within a certain section of law (Aronsson in Coupland, Giles & Wiemann 1991: 217).

What also characterizes courtroom communication is that the communication of all the parties, in addition to solving an individual problem, is also set in a broader context. The communication of professionals, moreover, the prosecutor's and the lawyers' communication serves to achieve the goals of the parties they represent, and the presiding judge's communication ensures, among other things, a fair trial. The communication that makes a case clearer is created in an environment and context where the decision-makers on the matter are also present. The decision-makers observe and evaluate the action as a whole and the communication that expresses it in the courtroom. Out of the material they have observed, they pick and organize in their minds the crucial information for solving the problem. This picture created of the information of events is based on the oral speech used in a courtroom. The picture may alter if all the utterances made are viewed as a whole from outside not as individual utterences from the perspective of a party to the action (Hewes & Planalp 1987, Petty & Cacioppo 1986).

The participants and their relationships

Relationships between the people involved are one background factor in defining the common situation. Relationships are also a product of interaction (cf. Puro 1996). With the help of communication which is the observable form of interaction, interaction is also a tool for sustaining relationships and taking care of them. Relationships are the core of interpersonal communication. *A relation* tells that some factors are connected to each other, and the relationship between persons is formed from the expectations that the persons have of communication with each other, based on the interaction between them.

The system which controls and circumscribes the relations between the people is one explanation for those relations between people. The legal and judicial system assigns precise roles and norms for those people who make this system observable through their communication. This is especially the case with professionals like the judge and the prosecutor. Those people are *in* the governmental legal system. Other professionals, attorneys, are included in the legal system too, but as officers outside the governmental system. Other people in the courtroom are lay citizens.

The approach of *relational communication theory* (Watzlavick, Beavin & Jackson 1967) presents five basic rules about communication. According to the first rule, a person is always communicating. If the interaction is seen as simultaneous and continuous, as a happening with verbal and nonverbal elements (Fisher 1978), then a person is always communicating, even without acknowledged intention, and thus affects the interaction. If the concepts *interaction* and *communication*, according to Fisher (1978) (also see Watzlavick, Beavin & Jackson 1967), are understood as meaning the same, or synonymous, then the relationships can also be loosely interpreted as existing without any special expectations as to whether the persons *are just* in interaction with each other. This is when one can talk about interaction or communication relationships.

Another basic rule is that in every conversation, even a short one, the messages conveyed have both a content and a relation component (cf. Hart & Burks 1972). In an interaction, emotional arousal, seeking intimacy, even liking and mutual dominance-submissiveness between the people also occurs (cf. Burgoon & Hale 1984). The same researchers also found that interaction is organized into rational and logical

parts between the communicators. The parts of interaction, such as sentences, are not understandable when they are separate, individual expressions.

The fourth basic rule depicts a person as using both digital and analogical codes. Digital codes are words, sentences and phrases. Most nonverbal codes are analogical.

The communicators may, according to the fifth rule, reply in the same or in a different way to each other's messages. When the communicators act in the same way, the relationship is symmetric. The relationship is complementary when the difference is at its maximum.

Millar and Rogers (1976) were interested in the complementarity in a relationship, and especially in how power and control were expressed. They not only studied the individual messages of the parties, but also the linking of consecutive messages to each other and how they could be examined for, for example, dominance in a relationship.

Burgoon and Hale (1984) continued the development of the dimensions of relational communication, and found 12 features common to all relationships. The features were further defined, and four relational communication dimensions were found which, according to the researcher, exist in *every* relationship:

emotional arousal, composure and formality

intimacy and similarity

immediacy – liking

dominance – submission.

In interaction people form a communication relationship, possibly leading to a personal relationship demanding another kind of mutual commitment (Fitzpatrick 1988, Rawlins 1992).

The assumptions of relational communication about a relationship are:

1. the relationships always have to be connected to communication
2. the nature of the relationship is defined by the communication that the participants have between each other
3. the nature of the relationship is determined more implicitly than explicitly
4. relationships develop in time as a process of contact between the participants

5. relationships are dynamic, not static (Werner & Baxter 1994).

Courtroom communication can also be examined as an *interpersonal relation between the different parties*. One interpersonal relation exists between a prosecutor and the different parties. Their relation is public and institutionalized. Public means that it possible for everyone in a trial to make observations concerning their relation. Institutionalized means that a prosecutor represents an institution, a legal system and the different parties represent the ordinary people, citizens. It is because of the system that they have to start their interpersonal relation. The relations are created by interaction between different parties and are observable through interpersonal communication. It is the interpersonal communication which verifies the judicial system.

The Finnish judicial system is interested in the opinions of the parties involved. There is a principle concerning the action in a trial which states that it should be clear and observable (GB 95/82/preamble). That is, the process in a trial must be understood. If the process is one part of the whole judicial system and communication is the tool to make this process clear and observable and if the relation between different parties is interpersonal, the knowledge of interpersonal communication will clearly also interest the whole judicial system. Such interpersonal relations are accounted for in interpersonal communication theories.

The central *theories of interpersonal communication* describe and analyze communication between people in fairly informal environments. Thus a courtroom is an almost paradoxical environment of communication to study the visibility of the previous theories. The parties do not communicate with each other voluntarily, the action is public and prearranged, and no open and confidential relations, which are considered a basic criterious for appropriate relations, can be assumed to underly the communication or its goal, even based on received facts.

The parties are in court either for a short time or, in solving economic crimes or violent crimes, for a longer period of time. The principle of the immediacy of proceedings (see GB 95/82/preamble) guarantees that the officials, namely the chairperson i.e. the presiding judge and the prosecutor, remain the same throughout the trial, likewise the lay judges.

For many laymen, being in a courtroom must be an awkward situation, which can be assumed to induce a negative emotional state. For example, a layman can be assumed to experience performance anxiety (see e.g. witnesses Välikoski 2000) and uncertainty (Bradac 2001) regarding both the task and the situation.

Uncertainty reduction theory is based on the studies presented by Berger and Calabrese (1975). The original idea of the theory was to describe first encounters. This is realized in a courtroom, since at least some of the people there meet each other for the first time. The researchers state that when people meet each other an important goal for the possible future development of the relationship is to reduce the uncertainty in the situation. According to them, uncertainty is a negative emotion, which is why people want to dispose of it.

People in a trial are not creating relationships for the future but they will need good relationships to work together and to arrive at proper solutions to the problems. Good relationships will increase mutual understanding, too (Mikkola 2000). Mutual understanding is one goal for a Finnish legal procedure (GB 95/82/preamble).

How does the communication between a prosecutor and a witness illustrate the mutually beneficial relationship, then? After all, their common interest is to produce grounded and profound information for decision-making and the responsibility for elucidating the matter (the burden of proof) rests with the prosecutor. Can courtroom communication be illustrated and analyzed with exchange theory (Thibaut & Kelley 1959)?

The heart of the theory is that relationships between people develop if the relationships are perceived by the people to be rewarding. The resources used for communication and the benefits received from it must be in balance, and if this is not the case, communication may not occur. Refusing to communicate cannot in this case mean severing the contact by leaving the space; what is meant is verbal refusal to communicate demonstrated in the courtroom by not talking.

Exchange theory is a theory of interpersonal communication, but it has also been applied to group and organizational communication (Puro 1996).

The participants also make intentional self-disclosure usually only after the relationship has developed and when they have open and reliable relations (Altman & Taylor 1973). Nonverbal self-disclosure takes place continuously (Watzlavick, Beavin & Jackson 1967).

In a courtroom, both the plaintiffs and the witnesses may even need to recount some very intimate things about themselves in public. For example, in solving a drug-related crime it has been stated that in interrogations officials receive information about the interpersonal relationships and intimate affairs of the couples suspected of the crime (Kinnunen 1996: 92). What type of a speech communication situation has been made of telling about oneself?

A Government Bill (= GB 95/82/preamble) states that a criminal trial must be a clear and observable unity, which will also help the layman present in court to understand the issue and its proceedings. Common understanding in interpersonal relations can be also looked at from the point of view of the conversational maxims presented by Grice (1975). The main idea of the theory is that to understand each other individuals will have to obey a certain cooperative principle. Thus, in order to understand others, people must *try* to understand each other. According to Grice (1975), the cooperative principle is followed in four different manners. The first of these is the maxim of quantity, which means the limited amount of information received. In addition to the quantity maxim there is a maxim of quality, which stands for honest, genuine and true presented information. The third maxim is the maxim of relevancy and the last is the maxim of manner. What Grice (1975) means by this is that when people try to cooperate the utterances must be clearly outlined. Can examples describing the quest for understanding be found in the conversations taking place in a courtroom?

There is also a group of people accomplishing actions in a trial and their actions can be observed from the point of view of a group communication. Courtroom communication is also group communication, in which a communication situation has a beginning and an ending. The goal of a group communication situation is to analyze, clarify and solve the problem between the participants. Everybody takes part in the process of analyzing and solving by producing information for decision-making. However, those solving the problem, the decision-makers, are outside the problem. Courtroom communication describes a process in a group that ends with a problem solved. How a process is experienced also has a connection to committing to the result (cf. i.a. Hirokawa 1990, Messmer 1997). Thus it is important to analyze the process in a trial as a group communication, too.

This dissertation studies and creates a picture of the phenomenon of communication in a courtroom, more specifically, a criminal trial as a speech communication situation. To increase knowledge of this abstract phenomenon a faithful picture must be created not only the situation itself, but the backgrounds of people making this phenomenon concrete must also be analyzed and explained. Therefore theories of interpersonal communication or Grice's maxims are invoked to make conversations understable. Those theories help to understand people's behavior in this situation.

To enlarge the picture of the phenomenon, the phenomenon is not only outlined by using the observations and conclusions of the researcher, but also by using the constructions (cf. Delia 1987) of the people present and creating the phenomenon.

Conflicts between parties are addressed and solved in a courtroom. In fact, the parties' views on the conflict are what initiate the whole criminal trial. In this work, it is justified to exclude various conflict theories (Sillars, Coletti, Parry & Rogers 1982) from the analysis on the basis of the idea of an action built on a conflict and an action solving the conflict in a rather limited equal manner.

2.4 The research questions

The speech communication situation created in a courtroom can be assumed to have various definitions provided by the participants. This thesis will introduce the definition of an observer, the researcher and the definition of one experiencer, the prosecutor. The main research question clarifies the following:

> *What are the specific characteristics of a criminal trial in a district court as a speech communication situation?* (research question 1).

This is when the question *what are the relations pertaining between participants as demonstrated through communication?* (research question 1.1), is also studied.

The relationships observed can be analyzed and defined on the basis of courtroom communication and the speech therein. This is when one must, of course, remember that the language when used merely as a source for observation reflects only *a part* of the communication between the participants. Therefore, the interpretations made from the language must be assessed from this point of view (Burgoon & Hale 1988). On the discussion that consisting of speech, an analysis is conducted regarding the relationship between the participants and the power, dominance, control, liking each other, intimacy and emotional arousal (see depicters of a relationship Werner & Baxter 1994) expressed in it. The observed relationships also depict the different roles, status and the norms and rules applied by the participants (Hirokawa 1990).

Besides the fact that the relationships are defined by structural-behavioral research methods, in this research the object of interest is also how a hearing is defined

through the people experiencing it as a speech communication situation. In addition to the observed relationships, the *experienced* relationships are also studied. In the background of the parties' relationships are their expectations of this relationship. The clearest expectations the parties have in a courtroom concern *the case*, which is to reach a formally right and tenable solution in the matter. Individual expectations are probably also connected with the matter, which is when the solution is expected to be the one that was hoped for. But only one solution is produced in the case.

There may also be expectations regarding the courtroom *actions*, which may come true despite the outcome of the matter, therefore being remarkable progress in committing to the matter (Conley & O'Barr 1998, Engeström, Haavisto & Pihlaja 1992, Haavisto 2001, Messmer 1997). The action is expressed in the interaction between the parties, which is observable through the communication. In this research the expectations attached to it are mapped out. This is when the study focuses on the expectations of relation, treatment and speech communication skills between the different parties. The information in question is also described in an attempt to identify appropriate courtroom communication.

The next research question is:

> *What kind of expectations do the participants have of the communication relationship in the situation in question?* (research question 1.2).

The answers to the research questions formulated will illustrate the Finnish criminal trial as a speech communication situation. The results permit the conclusion that the speech communication situation in question may be, both defined and named. The literature on speech communication has defined the action in a courtroom mostly as *a public speaking* occasion, with the focus on the lawyers' communication skills and, more generally, the ability to speak convincingly (cf. Monroe & Ehninger 1994), or then on the arguments of different parties (Keough 1987). The study of different chains of debate and justification have also been interrelated with the judicial environment (Golden & Makau 1982, Smith & Malandro 1985, 1988). These studies have introduced courtroom communication as a tool for an individual's persuasive goals.

The action in a courtroom also consists of the communication of a group. Group communication is a search for common meanings of shared information, and it is also a way to define, analyze and evaluate possible errors in thinking. Group com-

munication may also be a way of achieving a common understanding of a case. Common understanding is one purpose of the new orally presented Finnish criminal trial (GB 95/82/preamble). Group communication in a courtroom, however, cannot be expected to be such a functional group communication (Gouran, Hirokawa, Julian & Leatham 1993), where the actions in communication define the group's accomplishments, the results, *directly*, and where the participants, at least in theory, have an equal chance to determine the final outcome in conversation.

The definers of the outcome in a courtroom *do not*, except for the presiding judge, *really orally take part* in bringing about the outcome. All those who are present in the group communication situation still *affect* the result, if the communication is understood as simultaneous and continuous interaction among the parties and also as an event that includes the nonverbal elements (Fisher 1978, Watzlavick, Beavin & Jackson 1967). The literature on speech communication (Redmond 2001) defines conversation as a progressive series of speeches, in which a few people take part. With the help of these speeches, one produces and evaluates the information that is shared together.

In courtroom communication, are there any conversational features that could be found by observing the speech and its functions? Are Grice's maxims to be found in the conversation? Frymier & Houser (2000: 208) argue that *all* of the interaction that has been expressed by the communication between people is negotiating and problem solving. What it is like to define and address a problem, when the problem solvers do not really participate in it verbally? In the handling of a criminal case, during the witness hearing, can an interview, debate or a negotiation come into being between the parties? The next research question defines the following:

> *What speech communication situation could a criminal trial be called?* (research question 1.3).

In addition to the concrete environment, the courtroom communication is situated in and is also defined by the abstract environment, which is the matter-of-fact and functional goals set by the environment it should reflect, strengthen or overthrow.

One of the cornerstones of action for a Finnish district court judge is the Code of Judicial Procedure (CJP 60/362) and the directions it gives about the proceedings of the session and how it should be handled. The law specifies the presiding judge's duties, but in her or his role the judge puts it into practice. In the background of these

choices are the judge's definitions and conceptions of the trial as a communicative situation.

The law on criminal trials (CrPA 97/689) directly regulates the handling of a criminal case. Help in interpreting the spirit or intention of the law is found in the Government Bill statements on the reasons (= preamble 95/82), which lead to the making of the law. The section on the statements on the reasons expresses the intention of the law. If it says in the Criminal Procedure Act that *"it is the task of the court to see to it that the case is dealt with in a coherent and orderly manner" (*CrPA 97/689, Chapter 6: 5§*)* then it has been noted down in the statements in the law regarding the reasons that it means *"leading the court in such a way that the hearing of the case will be a clear and observable whole"* (GB 95/82/preamble). The target for the foregoing is the public present at a criminal trial. Each member of the public has a different interest and a different ability to follow and evaluate the clarity and the graphic and concrete nature of the session.

In terms of speech communication what is meant is action that is cognitively clear (see Sallinen-Kuparinen 1986 on this concept) and understandable. The next research question (1.4) develops from this context:

> *How does courtroom communication reflect the abstract context of the action, that is, the matter-of-fact objectives provided by the judicial texts,* such as a valid and competent solution of the case or the thorough and equal hearing of the case or objective action?

In the depictions of an oral procedure on a judicial level communicative ways to reach the previously depicted objective level of clear and thorough handling have been evinced various regulations state the possibilities of courtroom communication to reach varying objectives.

To provide the background for research questions 1.3 and 1.4, the text of the statements on the reasons in the trial in criminal cases (CrPA 97/689) and justification of the Government Bill (GB 95/82/preamble) have been analyzed and interpreted. Out of these statements on the reasons, the information in the nature of oral communication has been chosen. An attempt was made to find the legislator's idea about what the hearing of a criminal case the district court is like in a communicative sense. This, according to the legislator, is when one approaches meaningful courtroom communication.

As stated in the introduction section, the desired expediency does not necessarily correlate with the observed and experienced expediency. The observed and experienced courtroom communications are outlined by the theories of interpersonal communication. The final research question of the work is mainly speculative in nature and it seeks to combine characteristics of the observed, experienced and desired courtroom communication.

On the basis of the detailed study of the criminal hearing as a speech communication situation (see Figure 4) it can be illustrated, defined and named. As a result there is, besides an understanding in the matter (Eskola-Suoranta 1998), also an option to use the information of definitions in situations for appropriate action in a situation. Appropriate action becomes observable through a suitable communication. The final research question is: "*What is appropriate courtroom communication like?*" (research question 2).

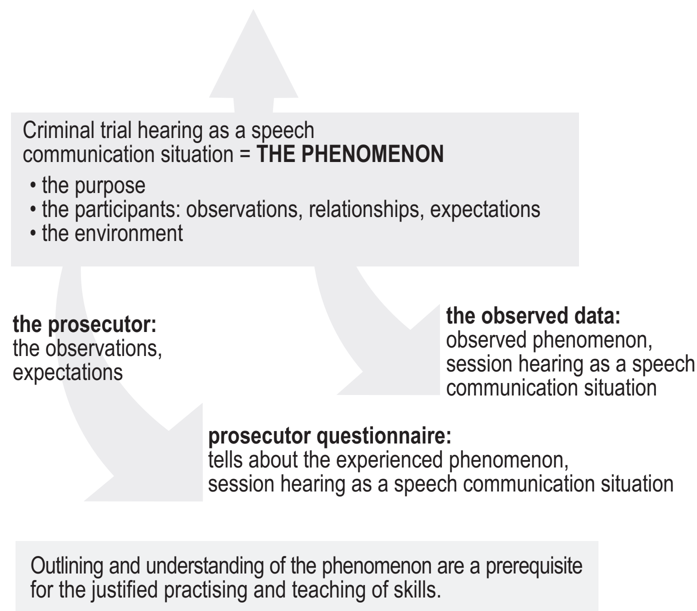

FIGURE 4. Background of the phenomenon studied

3 Implementation of the Research and Research Material

The research in question is one of the first Finnish speech communication studies in a courtroom context. The basic idea is the approach of symbolic interaction (Mead 1934), seen here as the interaction process between the participants having disparate goals yet seeking to create a common action, which becomes observable through their communication.

3.1 Observing criminal hearings

The phenomenon of a criminal hearing as a speech communication situation (research question 1) is outlined on the basis of the research material observed first. The material was compiled between the end of 1997 (the reform came into existence on 1 October 1997) and the beginning of 2001 in a Central-Finnish district court from observing hearings of criminal cases. The data includes thirty-three criminal hearings of which fourteen also include evidence given by witnesses. The duration of the sessions varied from fifteen minutes to two and a half hours. The cases included all types of crimes from issues of life and health, violation of domestic peace, substance abuse, unlawful distilling of alcohol, smuggling, drunken driving, fraud and theft.

The observational material was compiled from the speech of different parties and marked down as heard in the sessions. A speech is defined as continuous uninterrupted speaking aloud by one person, possibly including one or more sentences. The speech was written in the order of occurence, so that material from each session formed a record of events. The immediate compiling of notes was viewed here as more meaningful than tape-recording, because for tape recording permission is needed from the presiding judge at each session. The observer making the notes by

hand was moreover unnoticed in the courtroom, which enabled the observation of the phenomenon to be as real as possible. The ecological validity of the observations is, thus, at least average (cf. Karstinen 1998: 183).

This method was also seen as adequate, because only the speeches *heard* in the research were of interest. Of the nonverbal communication in the courtroom, only individual, clearly verifiable observations, were noted, for example "*everybody was sitting down*", "*only the witness was standing*", or "*the presiding judge wielded his gavel*".

The observation was done by the author with the exception of eight occasions, for which another observer took over. This individual had been throughly trained in the technique used, and had practised in the same court in her own time. She first familiarized herself with the author's methods, thus complete uniformity of notation was ensured (cf. the used method by Isotalus 1996). The observations marked down with the pen and paper method have previously been tested in Finnish courtroom communication research (Välikoski 1996).

When analyzing the material, so-called soft analysis methods (Eskola & Suoranta 1998) were used. The stages of the sessions were analyzed in such a way that one could see the progress of the hearing and the quality and number of the speeches used. The grouping of the phases was based on the legislation (CrPA 97/89, Chapter 6: 7§). In the analysis of the material the primary interest was on the content, i.e. *what was said. To whom* and *when* people were talking in the courtroom was also investigated. The phase in the courtroom procedure emerged clearly from the speeches. Speeches were not classified by function using, for example, Interaction Process Analysis (= IPA. Bales 1950). The were two reasons for not using this analysis method: first, the functions of speeches were so closely related to the speaker's role as a presiding judge, a prosecutor or a defendant's attorney. Second, the results achieved using IPA would have been so trite as to yield nothing new for the purposes of the present study; knowledge of the prescribed phases renders this superfluous.

A hearing of a district court in its entirety is in the nature of a process composed of various functional phases, and among these the speeches serve different purposes.

In this work, the functional stages were not only grouped and named, but effort was put into analyzing and researching some stages such as the giving of evidence by witnesses as a process. The grouping of the character of the cases heard i.e. crime type was made only after the content analysis.

The hearings observed were analyzed so that an image and format, both as a whole speech communication situation and as a process including different function-

al stages emerged. As a speech communication situation, the beginning, other stages and ending of the sessions i.e. the structure of the procedure were analyzed.

The analysis of the beginning was justified by the fact that there the interaction between parties began in the actual situation under observation, and the interaction was also a tool here to create and uphold different relations with the help of communication. The beginning also functioned as the basis for a real time definition of the situation in question, even though the participants had previously been in contact with each other (cf. Endler 1982, Miller, Cody & McLaughlin 1994). The beginning started a process and included the first stages of the action. The parties' immediate impressions of the starting of the interaction and the atmosphere it created were also related to the speech communication situations that were found successful (Haavisto 2000, Messmer 1997).

The beginning of the part of the proceedings was seen to end with the phase in which the charge was described (description of the matter).

Analysis of the progress was justified in order to gain an impression of the interaction throughout the course of the hearing. This progress became observable through the speeches of the presiding judge (CJP 69/323) as the presiding judge on the basis of her or his own definition either initiated or concluded each phase and the entire proceedings. The description of the progress also revealed other functional phases and also what was established by means of the speeches under the guidance of the presiding judge. The analysis of the process was aided by the speeches which permitted the observation of confrontation and approach.

Analysing the ending was justified in that it could be seen how the interaction in the courtroom ended and how the presiding judge declared the situation concluded. In the ending, the closing arguments of different parties were also included; the argumentation of the closing arguments were analyzed only as an example. The method used is not accurate enough to study the argumentation. The closing phase of the proceedings also indicated the factual end result, that is, what was decided and on what grounds. Analyzing the justifications also gave information in addition to the *factual* end result, but also as one illustrator of *the functional* end result of how thoroughly the matter was heard. A total of 16 judgments was heard in the research material.

The structure of the procedure or stages of action in which the beginning and the ending were also included, comprised the entire communication system occuring in the courtroom. When desribing the system, it is possible to explain the whole path of

the action. Focusing on that system of which the speeches form part serves to render events comprehensible. System theory tries to find explanations for the communicative events beyond the observable outer structures (cf. von Bertalanffy 1972, Puro 1996: 17). The speeches used to illustrate the progress also served to enable the breakdown of the activity in the courtroom from the functional-structural perspective.

The previous targets of analysis were reached on the basis of the speech heard, whose number and purpose were listed in order of occurrence, while the quality was also loosely analyzed. However, the speeches were not specially grouped qualitatively or divided into classes. Instead, they were reported to illustrate the phenomenon in question. The basic idea of the analysis was that the abstract truth materialized through the communication that happened through the interaction between the persons present in the courtroom. The communication in this matter was realized in the speeches.

The section reported was selected by the present author. The text examples in the study illustrate either entire phases of the proceedings or then parts thereof. Few individual examples of speeches are used in the study given the problems inherent in removing individual utterances from the context (cf. Burgoon & Hale 1988). The material included also gives answers to another question subordinate to the main research question:

> *What are the relations pertaining between participants as demonstrated through communication?* (research question 1.1).

Illustrating the observed communication relationships only on the basis of observed oral information is nevertheless problematic (Burgoon & Hale 1984, Werner & Baxter 1994), also, there is always some nonverbal communication involved in the relationships. Because of this, the research question at hand (1.1) is also answered with the help of other methods used in the study.

3.2 The prosecutors' questionnaire

The hearing as a speech communication situation is also organized through its participants. As one active participant, the prosecutor was chosen, because it is justified to clarify the views of prosecutors in their new duties. In the previous system the main task of the prosecutor was to read the charges aloud and compile the closing argument. In the actual hearing the prosecutor could speak only a few times (Välikoski 1996). The prosecutor now participates in all phases of the proceedings, including the phase when the charge is described. The prosecutor represents the injured party, but she or he is also a state official.

The prosecutor's communication expectations have not been mapped out before in Finnish speech communication research. A subordinate research question (1.2) is: *What kind of expectations do the participants have of the communication relationship in the given situation?* Communication relationship was defined before, and the expectations of the situation were divided into the participants' expectations of the relationship in general, treatment (cf. Bazermann, Lewicki & Sheppard 1991) and also certain actvities which were fulfilled by speech communication. Answers to these questions illustrated the respondents' understanding not only of their own actions, but also the relationships between the participants. Environmental expectations were ascertained here by finding out participants' conceptions of a fair trial. The views in question also illustrated the meaning of the situation. Expectations of the speech communication skills indirectly pointed out something about the existing, but also appropriate communication. Out of the individual definitions of the situation developed both the real action (cf. Laing 1967) and the expectations of the competence needed in the situation (Stamp 1999: 538).

The questions in the questionnaire are based on the prosecutor's duties and research question 1.2. (see form in Appendix 2). The questions were open-ended or were based on a semantic differential (Snider & Osgood 1969). In situations there is always variation in the action. Nevertheless the questionnaire elicited the summary views of the respondents on average, i.e. the phases in general. The responses to the open-ended questions were grouped for purposes of content analysis (Eskola & Suoranta 1998) into different classes and the frequencies and percentages calculated. The aggregate frequency of the findings naturally does not correlate with the number of

people who answered the questions, because the respondent may also have reported several observations.

Out of the characteristic options that were based on the semantic differential (Snider & Osgood 1969), tables were drawn up presenting the frequencies and mean values of the respondents' choices. The background information on respondents included sex, age, prosecution experience (in years), date and place of graduation and size and location of the prosecutor's office by administrative province.

The form was pre-tested on 12 randomly selected prosecutors, who did not complete the final questionnaire.

The first part of the questionnaire concerned the respondents' expectations of the interaction relation between different parties in the courtroom, how they paid attention to different verbal and nonverbal elements, and preparing for the session especially as a speech communication situation in general (items 1–3). The purpose of this was to clarify one party's, the prosecutor's, assessment of the situation (Miller, Cody & McLaughlin 1994). The previous questions studied the relationships between the parties. The observations made in a situation, as well as how one prepares for the situation, or how one perceives one's *own* action (items 6c and 11) give the respondents' cognitive assessment of the situation. The prosecutors conceptions of a fair trial were also recorded (item 4), because they illustrated the meaning and the purpose of the situation, which is how abstract law, justice, is shown in action. The portrayals of a fair trial were previously compared to the views expressed by the witnesses (Välikoski 2000).

The prosecutors also described their expectations of the actions of a presiding judge, which was formed into a question about the way they presided over a trial (item 9), and they also defined the ideal respondent to their questions (item 10). If it is understood that recording the expectation was based on depicting such action which does not yet exist, then the answers to the questions at hand indirectly shed light on both the characteristics of the experienced and the desired courtroom communication (research question 2).

The prosecutor's expectations of the oral procedure itself illustrate the answers in the research material to questions 3, 5b, 6c, 7b, 9 and 10 in the questionnaire. Expectations regarding the atmosphere (5b) and the discussion (7b) were compared to the prosecutors' views of the current situation (5a and 7a). Their observations, views and preparations for the session as a speech communication situation, which is their assessment of the situation (Miller, Cody & McLaughlin 1994), illustrated the

answers to the questions 1, 2, 5a, 6a, 6c, 7a, 8 and 11. The respondents' answers to questions 6d and 4, 6b and 11 illustrated the crucial oral communication skills and purposefulness of the action.

The questionnaire was sent by mail to 100 randomly chosen prosecutors, of whom almost all had taken part in the Professional Communication and Expressive Skills training course ordered by the Office of the Prosecutor General. Permission to implement the questionnaire was granted by the Office of the Prosecutor General.

It was decided to use a questionnaire and send it by mail because the aim was to map out the respondents' views briefly and relatively straightforwardly. The nature of the questions presented, that is, mainly character options based on the semantic differential (Snider & Osgood 1969) and open-ended questions, was also something that supported choosing a questionnaire as one way of collecting data in this research. An interview was not considered necessary here, because most of the respondents had participated in the previous training, so the matters presented in the questionnaire were considered to be familiar to them. In addition, the questionnaire material was only part of the research data.

The answers of the prosecutors were compared to the answers of the other participants, the witnesses. These had been already mapped out before (Välikoski 2000). Comparison is possible in those parts of the questionnaire where the question used was identical (see item 5), or nearly identical (see item 11), to those presented to the witnesses.Witnesses illustrate here the layman view. Giving evidence in court is a potential duty of every citizen.

The views of the witnesses were mapped out with an interview conducted in a certain district court in Central-Finland in April 1999. The witnesses were called in various criminal cases, and their sex and witness experience, i.e. how many times they had given evidence in court, were gathered as background information. Interviews were conducted with 64 witnesses selected randomly as they arrived at the district court. Participation was voluntary. The witnesses were interviewed right before going in to court, and immediately after they came out. This research was published in the Speech Communication and Voice Research Department publications, University of Tampere, reports, 1/2000.

The first research question clarified a criminal trial as a speech communication situation. On the basis of the material analyzed one can draw conclusions about the nature of the situation and also find an answer to another research question, which is:

What speech communication situation could a criminal trial be called? (research question 1.3).

3.3 Statutes selected

The criminal hearing as a speech communication situation is also analyzed and organized on the basis of the legal texts that illustrate communicational features in the session in question.

From the text of the Government Bill (GB 95/82/preamble) that stipulates the intention of the law, and from the text of the Criminal Procedure Act (CrPA 97/689) that governs a session of a criminal trial, those parts were chosen which were understood as containing information relating to verbal communication. The accompanying interpretation was justified by choosing those texts which contain both information that illustrates verbality explicitly, such as the direct prohibition of reading the material (CrPA 97/689, Chapter 5: 10§), and text information that illustrates the collateral function of verbal communication, such as the principles of legal protection included in the Code of Judicial Procedure (CJP 69/323). The previous law texts create a picture of the hearing as the kind of speech communication situation interpreted when it is *the desired* situation.

The selected law texts are: the sections of the Criminal Procedure Act (97/689), 5 Chapter, 10 §, 3 moment: "*at the preparatory hearing, a party must not read out or hand in a written statement to the court nor otherwise make her or his case in writing*"* and the 4 moment: "*However, the party may read out her or his claim, direct references to case-law, textbooks and documents containing such technical and numerical data that they are difficult to understand merely on the basis of an oral statement. In addition, the party may resort to written notes as memory aids*", 17 § "*A charge that has been brought shall not be altered. However, the prosecutor may extend a charge against the same defendant to cover another act, if the court considers this appropriate in view of the available evidence and other circumstances*".

The desired speech communication situation includes the presiding judge's speeches, whose function is, on the one hand, to keep *functional* order, as in Chapter

* parts *italicised* are referred to in this study

Six, Section Five and its first moment: "*It is the task of the court to see to it that the case is dealt with in a coherent and orderly manner. The court may also order that a separate part of the case or a procedural issue is to be dealt with separately or that some other derogation from the procedure provided in article 7 is made*", and, on the other hand, upholding *contextual* order, as can be inferred from the second moment of the previous section: "*The court is also to see to it that the case is dealt with in an appropriate manner and that no irrelevant issues are brought into it. The court is to put questions to the parties so as to remove the unclarities and shortcomings of their statements*". According to the same Section, 3 moment: "*The injured party in a criminal case shall keep to the truth when making a statement on the circumstances which she or he is invoking in the matter, when commenting the statements of the opposing party and when answering the questions put to her or him*". According to the same chapter Section 6, 1 moment: "*The main hearing is to be conducted orally. A party must not read out aloud or hand in to the court a written statement, nor otherwise make a case in writing*", 2 moment: "*However, the party may read out her or his claim, direct references to case-law, textbooks and documents containing such technical and numerical data that they are difficult to understand merely on the basis of an oral statement. In addition, the party may resort to written notes as memory aids*". The same Chapter 7 § illustrates the proceeding in the hearing consisting of certain stages and their prescribed order. Chapter 7 illustrates the hearing of a criminal case prosecuted by the injured party alone. This chapter also includes the previous sections where, on the one hand, reading is prohibited (14 § 1 mom.), and, on the other hand, reading is allowed (14 § 2 mom.). According to the same Chapter 15 §, the court must summarize the injured parties' claims and their grounds before concluding the preparation. Some time must also be allowed for the injured party to state her or his opinion of the summary (2 moment).

The same law, Chapter 10, addresses voting (Sections 1–4), and in Chapter 11 the court's decision. Chapter 11, 2 § legitimates the motive of courtroom communication, that is: "*Only the trial materials that have been referred to in the main hearing are to be taken into account in the judgment. If a new main hearing has been arranged in the case, only the trial materials referred to in that hearing are to be taken into account in the judgment. However, also the trial materials referred to in the supplementation of the main hearing under Chapter 6, Section 13 may be taken into account in the judgment*". The demand for the justification of the verdict is also found in this Chapter, 4 §. Some help in interpreting the sections in question in the previous law is found in the Government Bill statements of the reasons (95/82/preamble).

From the Code of Judicial Procedure the present author has picked the information that guides the oral hearing of the case for the hearing of the witnesses and for the chairman's actions in general.

Research question's 1.4:

> *How does courtroom communication reflect the abstract context of the action, that is, the matter-of-fact objectives provided by the judicial texts?*

This question is answered in the research material, which includes both the observational material and the material from the questionnaire.

The aim of the previous research question is to map out *what kind* of abstract goals the depicted courtroom communication *reflects*, but by analyzing the entire material one can also gain an impression about *how* the presiding judge leading the trial proceedings illustrates these statutes in the courtroom and *makes* them *real* in action.

Final research question

The final research question is answered by combining the results from the outline of the observed, experienced and desired speech communication situation, which means that the data as a whole functions as the research material. On the basis of the understanding the phenomenon (Perttula 1995) the vision of appropriate courtroom communication is created in the situation at hand. *What is appropriate courtroom communication like?* (research question 2). The objective and the methods of the research are illustrated by the diagram below (Diagram 1).

Criminal hearing as a speech communication situation	
What is asked?	**With what is it answered?**
What kind of speech communication situation?	
• observed	observational
• experienced	material/ questionnaire
• desired	selected law text
What speech communication situation?	
• discussion, negotiation, debate, interview	observational material/questionnaire
The visibility of the law text?	observational material/questionnaire selected law text
Appropriate courtroom communication?	research material

DIAGRAM 1. The goal of the research and the methods

4 Results

4.1 The criminal hearing as a speech communication situation

The results are presented for each research question by analyzing not only the material especially related to the question at hand, but also by touching upon the total corpus in general.

For the main reply to the first research question:

What are the specific characteristics of a criminal trial in a district court as a speech communication situation? (research question 1), the material was compiled from 33 criminal cases observed between the years 1997 and 2001. The hearings were chosen randomly, but the purpose was to include examples of all types of crime in the research.

The proportions in the selected cases correspond to the proportion of types of crimes heard in the courts in general (cf. Official Statistics in Finland/Court Statistics 2000). Crimes against life and health, for example, batterings, appeared most. In nearly half of the sessions observed (14 cases), witnesses were present. In the hearings, a woman acted as presiding judge 14 times, a man 19 times, and the prosecutor was a woman 9 times, and a man 24 times.

The duration of hearings varied from 15 minutes to 150 minutes, and the criminal cases to be handled represented all types of crime. Out of the observational material, the greatest part were crimes against life and health (11), mostly batterings. The second largest number of crimes were against property (8) and drunken driving (8) crimes. 3 traffic violations were observed and also 3 intoxicant and narcotic substance abuse crimes. The parties to the assault and property crimes were, in addition to the prosecutor, one or more injured parties and one or more defendants. In the hearings

of other types of crime, the complainants were the prosecutor and one or more injured parties. Witnesses were involved in 14 of the hearings, and most of them were summoned to appear in court by the prosecutor.

The other material for the first research question was compiled from the questionnaires sent to the prosecutors by mail. The questionnaire was sent in fall 2000 to nearly a third of all Finnish prosecutors (the total number is 270 prosecutors), which means 96 persons. Since 58 prosecutors replied, the response rate was over 60 %. Of the people who replied, 41 were men and 16 were women. One of the prosecutors did not report any gender. One third of the respondents were aged either over 50 years, or less than 35 years. Their work experience was either over 15 years (21 persons), or 2–5 years. The prosecutors represented five administrative districts (provinces) in Finland and most of them had graduated in law from the University of Helsinki (38 persons) either during the years 1976–1980 (12 persons), or years 1991–1995 (20 persons) (Table 1).

Nearly all of the respondents had attended a course entitled Professional Communication and Expressive Skills commissioned by the Office of the Prosecutor General. The time between the course experience and answering the questionnaire varied from 2 years to a few months. When interpreting the results of the data, one must remember that the questionnaire responses might be quite representative when compared to the complete sample (270) of Finnish prosecutors, because the respondents had taken part in a course that offered a perspective on speech communication.

The questionnaires were answered thoroughly and the open-ended questions were answered at great length. In the whole data there were only a few observations missing. The answers to the open-ended questions were grouped content analytically (Eskola & Suoranta 1998) into different classes, and from these frequencies and percentages were calculated. The classes were created out of the data itself. Tables were composed on the basis of the semantic differentials (Snider & Osgood 1969) to show the frequencies and the mean values.

TABLE 1. Background variables in frequencies and percentages in the prosecutor questionnaire

Age in years	Number	%	Prosecutor's Experience	Number	%
Less than 35	14	24	Less than 2	2	3
36–40	11	19	2–5	18	31
41–45	9	16	6–10	8	14
46–50	8	14	11–15	9	16
Over 50	16	28	Over 15	21	36
Total	58	100	Total	58	100
Graduation Year	**Number**	**%**	**Size of prosecutor's Office (as persons)**	**Number**	
1966–70	3	5	1–2	21	37
1971–75	7	12	3–5	11	19
1976–80	12	21	6–10	9	16
1981–85	5	9	11–20	9	16
1986–90	9	16	Over 20	7	12
1991–95	20	34	Total	57	100
1996–2000	2	3			
Total	58	100			
University	**Number**	**%**	**Location of prosecutor's office**		**%**
Helsinki	38	66	South Finland		42
Turku	10	17	West Finland		33
Rovaniemi	10	17	East Finland		11
Total	58	100	Oulu		7
			Lapland		7
			Åland (Ahvenanmaa)		0

4.1.1 The observed phenomenon

There were a lot of speech in the criminal hearings, because a great deal of speeches was used, in total 4000 (3893). The number was increased by the fact that in about half of the hearings at least one witness was present. The total duration of the sessions was about 40 hours (36 hours 50 minutes). About 100 speeches per hour were used.

The procedure in criminal cases (CrPA 97/689) became valid in the year when the gathering of observational material began, October 1997.

The types of crime, the number of them and the duration of cases with their speeches included are presented in Table 2.**

TABLE 2. Types of crime, duration of hearing, speeches made

Property crimes (fraud, theft)
Out of 8 cases, 2 were presided over by women and 6 by men. In 3 cases out of 8 prosecutors were female, and 5 were male.

Hearing code	Number of speeches	Duration of hearing (in minutes)
O1	53	45
O2*	522	120
O3	182	90
O4*	131	120
O5	23	60
O6	79	75
O7	99	15
O8*	201	130
= 8	**= 1290**	**= 655 min. (10 h 55 min.)**

*In the hearing, a witness present (total 3 witnesses)

** observational material has also been presented in Appendix 1

Crimes against life and health (including batterings)
Out of 11 cases, 5 were presided over by women and 6 by men. In 3 cases out of 11 prosecutors were female, and 8 were male.

Hearing code	Number of speeches	Duration of hearing (in minutes)
P0*	303	125
P1	168	90
P2	58	30
P3*	127	150
P4*	182	135
P5*	258	155
P6	148	50
P7	67	30
P8*	79	15
P9*	73	30
P10*	224	45
= 11	**= 1687**	**= 855 min. (14 h 15 min.)**

*witnesses present in the hearing (total 7)

Drunken driving
Out of 8 cases, 3 were presided over by women and 5 by men. In 3 cases out of 8 prosecutors were female, and 5 were male.

Hearing code	Number of speeches	Duration of hearing (in minutes)
R1	38	20
R2	23	60
R3	30	15
R4	52	30
R5*	99	40
R6	15	15
R7	30	20
R8	29	15
= 8	**= 316**	**= 215 min. (3 h 35 min.)**

*witnesses present in the hearing (total 1)

Traffic violations (including endangerment)
Out of 3 cases, 2 were presided over by women and 1 by men. In 0 cases out of 3 prosecutors were female, and 3 were male.

Hearing code	Number of speeches	Duration of hearing (in minutes)
L1	39	15
L2	24	40
L3*	191	90
= 3	**= 254**	**=145 min. (2 h 25 min.)**

*witnesses present in the hearing (total 1)

Substance abuse crimes
Out of 3 cases, 2 were presided over by women and 1 by men. In 0 cases out of 3 prosecutors were female, and 3 were male.

Hearing code	Number of speeches	Duration of hearing (in minutes)
H1*	206	150
H2	96	150
H3	44	40
= 3	**= 346**	**=340 min. (5 h 40 min.)**

*witnesses present in the hearing (total 1)

4.1.2 The procedure stages and the functions of speeches before the stage of witness hearing

The stages of procedure were based on the order that was found and illustrated in the law of the Criminal Procedure Act (CrPA 97/689, Chapter 6: 7§), and were distinguished into clearly observable stages when the presiding judge was leading the trial. The hearings *began* almost identically, even though it was a question of hearings of different types of crimes and hearings lead by different chairmen. The chairman in the court, the presiding judge, was the one who began the verbal interaction. At first, the chairman ascertained the presence of the parties and their personal background information. She or he also clarified if there were any obstacles to hearing the case

brought. The chairmen spoke relatively loud and looked briefly at the person who was talked about at any given information. Despite a few exceptions, the chairmen addressed the persons formally. The function of the addresses presented by the presiding judge was to open the trial and initiate the interaction between the participants. The chairman and the various parties took part mechanically in turns in this starting conversation of the trial. The speeches of the presiding judge were questions mapping out the information that were mentioned before and the answers to them were factual information.

Only a few chairmen (chairmen = cm. R1/cm 1 and O1/cm 1) stated right at the beginning of the hearing what the subject matter of the case was. This happened, for example, in the following crime of property case (O1):

> "The subject matter is the robbery which took place on x.x.xxxx in to the R kiosk in x. The defendant had threatened the salesperson with violence against a person." (O1/cm 1)

The chairman could also present the subject matter in the following way:

> "You do know why you have been summoned to appear on this occasion?" (R1/cm 1)

At the beginning stage of the hearings the chairmen used more addresses than the other participants. They also often had more speeches than any other individual party in the hearings under this study (see Table in Appendix 1).

The few addresses that had information on besides the participants and their backgrounds, and also the situation itself and the situation at hand, were some chairmen's greetings and mentions about starting the trial, such as:

> "Good morning. Let's begin again then." (P5/cm 1)
>
> "Good day to you all. Let's begin." (L3/cm 1)

A few chairmen did not only begin the trial by saying some greetings, but giving also instructions about how to behave and move around in the courtroom, such as:

> "Good day all. Please be kind and sit behind that table over there." (P2/cm 1)
>
> "Sit in to that front desk." (R5/cm 1)
>
> "Good morning. There is your seat. We have a custom here to sit during the session." (P0/cm 1)

The directions were given to the lay parties to the hearing and to their possible counsels. In addition to the concrete directions illustrated before, the material studied did not show any signs of making the understanding of the abstract action, the proceeding of a judicial hearing, any easier. At the beginnings of the hearings, the chairmen only rarely used addresses that could have been interpreted as clarifying the definition of the situation or illustrating the proceeding of the action. The reason of the trial was also stated, as illustrated before, rarely aloud. One speech related to the proceeding of the action was, in any case, the following:

> "About the hearing procedure that much that the prosecutor will begin. After this, defendant A can present his own opinion of the matter and after that, defendant B can respond to A's address. Then the prosecutor will present the matter more closely." (L3/cm2)

The shared definition of the situation, such as stating the reason for the hearing and the way it is going to be handled, were almost completely missing and the trial jumped straight into the case.

The chairman did not really pose any other questions besides direct ones. Only a few chairmen evaluated the answers they heard while giving the background information on the different parties. One presiding judge nevertheless gave information relating to these things, as one can see from the following:

> "And what is that job?" (R7/cm 9)
>
> "I'm a tiler and I work around the city of X." (R7/F = defendant 7)
>
> "Well, do you work with the firm's materials or with the client's?" (R7/cm 10)
>
> "With the firm's." (R7/F8)
>
> "The client's materials are there, while the firm's materials must be brought over there." (R7/cm 11)
>
> "Yeah." (R7/F9)
>
> "I know this because I'm getting some tiling done for myself at the moment." (R7/cm 12)
>
> "Oh." (R7/F10)
>
> "And what does the prosecutor say?" (R7/cm 13)

This dialogue was close to a structured conversation, the proceeding of which was determined by the chairman, but to the contents of which both of the speakers gave some information about themselves. The alternation of subjects that is detectable from the reciprocal communication seemed here immediate and natural between the parties serving to keep up the relationship with the features of a daily conversation even. The additional question of the presiding judge about moving the tiles also seemed logical, because later on the possible driving ban sentence and its effects on the exercise of the defendant's profession. What was in question was an admitted drunken driving offence, and the defendant did not have a previous criminal record.

The defendants, for their part, could use speeches at the beginning stage, which, in addition to the questions, developed in to a short dialogue. The function of the conversation was conveying information. But, as a result, the nature of the conversation also seemed to change. The following example at the attached beginning of a hearing of a crime of property case illustrates this previously mentioned (O6):

> "Is the personal information correct and is there an address, defendant Q?" (O6/cm 10)
>
> "The information is correct and the address is Xstreet 10." (Q4)
>
> "And there aren't any dependents and no income either?" (O6/cm 11)
>
> "Well, no." (Q5)
>
> "The last entry in the criminal record is from the year 1998. Are there any others?" (O6/cm 12)
>
> "There have been some. On Valentine's Day at least, and in March." (Q6)
>
> "This must be looked up from the record on the 23rd of March. You got three months." (O6/cm 13)
>
> "No, I got more on Valentine's Day as well." (Q7)
>
> "Where were you convicted?" (O6/cm 14)
>
> "Here." (Q8)
>
> "Do you remember which department you were at?" (O6/cm 15)
>
> "I think it was 24. I guess not. I don't know. The judge was somebody XX. I'm not that familiar with this." (Q9)
>
> "We must look it up." (O6/cm 16)

The hearing was thus initiated by clarifying possible obstacles and whether it was possible to begin. The chairman checked and confirmed the participants' personal information and other backgrounds as previously illustrated (= STAGE 1). Backgrounds also include previous crimes. Prior crimes are sometimes in considered before issuing a new sentence. It may happen that there is no new sentence. Checking the criminal record is therefore always done meticulously. The courts have on-line access to the register in Finland.

In stage 1, the purpose for the function and the communication that depicted it was mainly to define and individualize the situation in question and begin the hearing. Also, the function of the individual speeches was to limit and compress the area of the information of the case in question. The main definer of the stage was the presiding judge, and she or he seemed, as was illustrated before, only rarely to do it so that the situation could be interpreted as *mutually* defined.

In the data studied, one move from stage 1 to stage 2; thus, the chairman only gave the floor to the prosecutor, for example, in the manner:

> "Well then and then the prosecutor." (R5/cm 4),
>
> "So, we can begin, prosecutor, if you please." (L3/cm 3) and
>
> "The prosecutor is given the floor first." (P5/cm 5).

Two of the chairmen also gave the reason for the hearing and defined publicly the situation here, in between the stages:

> "Well then. I'm sure everybody approximately knows the subject of the hearing?" (O3/cm 6) and
>
> "So there is a matter at issue here, what kind of case. Prosecutor, if you please." (H3/cm 6).

The actual hearing began with an *opening statement, discussion*, which is when the prosecutor's duty was to present her or his demand of the summons, that is, the claims and the depiction of the act. This duty was performed with addresses by reading the charge aloud.

The charge was presented and its grounds reported more closely in the next stage, called description of the matter.

The depictions of the charges can be, for example, as follows:

> "I demand for X a sentence for drunken driving (the claim). He had 0.47mg of alcohol in the breathalizer test (depiction of the act). As an additional punishment, a demand for a ban on driving." (R6/prosecutor 1 = pr1) or

> "As proof, there is the injured party's illustration of what happened and also the statement about the processing of substances in the human body given by the National Health Science Institute. Regarding safety in traffic, the car started moving and hit the parapet of the bridge. The driver had been negligent when he set out driving in the condition in question. Because all this has caused threat to traffic safety, I propose the defendant be banned from driving." (H3/pr1).

The depiction of the act became clear from the first part of the charge in the expression *the drugged driver hit the parapet*, and the claims in the expression at the end: *the defendant to a ban on driving*. A short justification of the charge was the injured party's illustration and the statement given by the National Health Science Institute.

With two execptions, the charges in the observing material were read out loud straight from the indictment.

In the opening statement the area of the trial was defined according to the series of events which was the object of the trial. If the injured party was present in person, the claims they made and short justifications for those claims were also heard. The prosecutor represents the official, criminal judicial part of the case and the defendant the personal part, thus the defendant usually even comments questions of law. In a way, they are on the same side of the matter. The prosecutor's duty is also to take note of the defendant's viewpoint. Taking care of this duty in question is illustrated in the addresses that they perform and also in their reporting stage, description of the matter (stage 3), as well as in their closing argument (stage 5).

After hearing the charge, the chairman gave the floor to the defendant, who presented a rejoinder to the view presented by the prosecutor (= STAGE 2).

An exception of the depicted procedure appeared to be made by only one chairman. This chairman ensured the understanding of a defendant concerning the matter for the part of the charge already presented. This presiding judge asked the defendant immediately after reading the charges:

> "Did you understand the contents of the charge?" (R1/cm 5)

After the injured party's positive response, the chairman continued:

> "Do the charges hold in your opinion?" (R1/cm 6)

Only after this did the defendant's rejoinder to the charges continue. The chairman acted in a similar manner in all the hearings he held under this observational material.

In stage 2, the relevant matter was the substance i.e. the presentation of the messages. The message must include information which is accurate, exact, and understandable (cf. GB 95/82/preamble). This is when one must have an answer to the question *what* has happened and *what* is claimed. The purpose of this particular stage is a shared understanding of what has happened. The main responsibility for the action is still with the chairman. But, in point of fact, the prosecutor's information begins the real contextual hearing. The function of prosecutors' speech is, besides talking themselves and sending their own messages also to guide, and to set the limits to future discussion. This, naturally, is realized then if the defendant denies the information heard. If this does not happen, they will proceed directly to the stage of reporting the charge, a description of the matter, after hearing the charge.

The following stage is the so-called *description of the matter* (= STAGE 3). This stage began with the prosecutor's speech, in which her or his duty is to describe the matter. This might be a freely worded chain of events depicted in the speaker's own words, and a description of the circumstances leading to the act in question. According to the new procedure, the prosecutor must not refer to the reports in the record of the pre-trial investigation. In this description, they must also bring out all of the elements that are beneficial to the accused.

This can happen, for example, in the following way (H3):

> "Q has partly due to this (narcotic substance) and partly to this (loss of control) gone off of the road, and the suspect has been taken to X health center where the following substances were found present in blood tests: (list of substances). Then there is also the central criminal police's lab report and the medical statement. A stimulant naturally affecting the central nervous system or a paralyzing substance depending on the individual. The substance will cause either a euphoric or tranquilized state. Because of the situation in his life the suspect has taken the substances in question and set off driving. For this reason, he went off the road threby compromising traffic safety. This is proven to have occured by the statements mentioned and the testimony of Q. I leave to the court's consideration what the sentence will be. On the one hand, Q has knowingly taken the substance. And on the other hand, the future situation of life was what is was, and the driving distance wasn't long either." (H3/pr4)

The previous prosecutor reported what had happened in his own words, like most of the other prosecutors in the material under study. The address also had information that sought to understand the viewpoint of the defendant, and information that considered the life situation.

The description was addressed to the court, which also include lay judges who do not get any preview material of the cases to be heard. In the description part of the charge, the prosecutor described the content of the charge quite informally by clarifying the judicial, formal information as day-to-day information. In connection with presenting the charge, the claims of punishment were also presented as before. The charge and the demand for punishment are illustrated by the following description (L3):

> "I demand for the defendant a conviction for endangering traffic on the basis of Criminal Code chapter 23 article 1 Road Traffic Law article 3, first moment, and Road Traffic Law article 18 while he was driving a car x owned by XX. Defendant A has, in his negligence neglected to exercise the caution demanded by the circumstances to avoid danger and harm and neglected the responsibility be sure of the fact that overtaking does not cause any danger. But, when passing the line of cars he crashed his car with its right front corner into defendant B's car front. And, by acting so, he has caused danger to others' safety." (L3/pr1)

> "In addition, I demand for defendant B a sentence for endangering traffic on the basis of Criminal Law chapter 23 article 1 Road Traffic Law article 3 first moment, and Road Traffic Law article 21 while he was driving car x, which he owns. Defendant B has neglected to exercise care and caution, to avoid danger and harm, and neglected his responsibility to be sure that overtaking does not cause any danger." (L3/pr2)

In this example, the prosecutor's address consisted of presenting the end result of the action to presenting the action; that is, he described the claim for punishment, why it was claimed (the law had been broken), and on which grounds it was claimed (the traffic accident). This is how they justified the information that was to follow and created the basis for their argumentation.

In the stage of description of the matter, claims and judicial justifications were omitted from the prosecutor's information and they mainly depicted what had happened as follows (L3):

> "At the time of the crash, x.x.xxxx around 21.00, it had been about minus one degree below zero and the road had been bare and wet. The traffic accident happened in a built-up area near a crossroads after an ice hockey match on X Street. The traffic had stopped and the first car in the line had its emergency blinkers on. Defendant B had been third in line and began overtaking from the left. Defendant A had already started to leave the line by an on-coming traffic lane and now crashed into defendant B. What was in question was a collision and for the case, it's irrelevant who crashed into whom." (L3/pr6)

After this, the presiding judge started the discussion about what happened. The defendant was also allowed to give his understanding of the matter, either personally or through counsel. The conversation can be guided by the chairman or the prosecutor, which means that the prosecutor can directly ask for the defendant's understanding of the matter as it was in the case of the previous example, the prosecutor immediately continued by asking both defendants in turns:

> "Now tell me in your own words about what happened in the situation." (L3/pr7)

The chairman continued in the following example:

> "Can the prosecutor say more about this collision?" (R4/cm 7)
>
> "The collision has happened around 6 a.m. on the corner of X Street breaking two traffic signs. After this, the other drivers called for the police and an ambulance." (R4/pr2)
>
> "Well, do you wish to explain why this happened or present something in your defense?" (R4/cm 8)
>
> "There is no explanation, I don't know how this happened." (R4/defendant 6)
>
> "This just happened? Have you previously had similar incidents?" (R4/cm 9)
>
> "Well, no." (R4/defendant 7)

The function of the stage 3 action and the communication expressing it was for the different parties to define and outline the subject matter of the case in the hearing, and to confirm the importance of the message presented and of its truthfulness.

Direct verbal interaction between the participants began at this point. After this, they started to clarify and create a picture of what happened with the help of speeches

in turns, when the picture of what happened was both the object and result of the courtroom communication.

The description part and taking of evidence, witness hearing, (stages 3 and 4) formed the discussion of the hearing, understood as a discussion, the addresses were used by various participants in turns, the function of which was to gather information by asking questions and producing information so presenting the prerequisites for the judgment, for example with individual speeches.

The chairman controlled the interaction in the discussion, which became observable through the communication. The order of the speeches in the hearing of witnesses can still vary without the intervention of the chairman.

The charge was transformed into simpler terms. After which, the chairman immediately elicited the parties' opinion of the charge by letting them state something of what happened, as shown in the next example. In the example, the parties operate without counsel (P10):

> "And the prosecutor presents the charge." (P10/cm 7)
>
> "I demand a punishment for illegal threat and pursuit with a chainsaw in X province. The other charge is about possession of a sharp knife in a public place." (P10/pr1)
>
> "Are there any claims for compensation?" (P10/cm 8)
>
> "No, there is none." (P10/injured party = X3)
>
> "And Q, did you act in the way the prosecutor depicted?"(P10/cm 9)
>
> "Well, yeah." (P10/defendant = Q3)
>
> "A punishment for illegal threat has been demanded. Is the charge correct?" (P10/cm 10)
>
> "I think it is." (P10/Q4)
>
> "The next item is the possession of a sharp weapon. Have you such a weapon?" (P10/cm 11)
>
> "I think so." (P10/Q5)
>
> "So the charge is correct?" (P10/cm 12)
>
> "Yeah." (P10/Q6)
>
> "And the prosecutor will describe the episode." (P10/cm 13)

> "Defendant Q chased the injured party X with it, they had a chainsaw, an axe, and an air pistol. Armed this way, they threatened to cut off the injured party X's head." (P10/pr2)

> "The meaning here is to hear both parties." (P10/pr3)

The charges were thus presented, and the different parties were allowed to tell their own understanding of it. After this, the prosecutor, one more time, described what had happened. Next, the chairman gave the defendant the opportunity to speak (P10):

> "Do you, defendant Q, have something to say?" (P10/cm 14)

And when there were no response, the chairman immediately continued:

> "You will still be heard." (P10/cm 15)

4.1.3 Taking of evidence i.e. witness hearing

The purpose of the action was the stage of taking of evidence (= STAGE 4), to prove that the allegations were true (CJP 60/363, Chapter 17). The function of the communication is to produce reliable and convincing information for the processing of the recipients in support of the truth. The convincing information is not compiled only from each party's own message. There is also material to observe and process in real time; thus, as a result, there was an introduction of new content into the message. The final content of the message is combined from of interactive part or the result of it, brought by the questions and answers.

This stage was handled with speeches where the parties presented their views of what happened, either in such a way that they as parties were heard in order to produce enough evidence or then the parties were represented by witnesses they had called. Both methods can be used during the same hearing.

Whether the parties concerned were heard in order to take evidence, the discussion immediately continued. The prosecutor and the presiding judge could pose questions to different parties, and also the parties or their counsels to each other.

The injured party started as the previously depicted examples continuance shows. There are no direct regulations in the Criminal Procedure Act (97/689) concerning

the real action of the prosecutor during hearing of witnesses. But it is clear from the Code of Judicial Procedure (CJP 48/571, Chapter 17: 32–33 §), that the witness must be allowed to present a continuous account of the facts on her or his own initiative and that leading questions are only allowed in a specific kind of examination of witnesses (CJP 48/571, Chapter 17: 33 § (98/690; 5 mom.).

In the task in question, the prosecutor seemed to begin by using speeches which contained, for example, a direct question to which one could reply freely and widely (see P 10/pr4). At this stage, the process began directly from the matter. After this, the prosecutor's questions were compiled so that in the question sentence, first there was a desription of what happened in chronological order, which was then followed by a real question (cf. P10/pr5–9):

> "Should we first hear injured party X?" (P10/cm 16)
>
> "I would ask you to tell what happened." (P10/pr4)
>
> "Nothing really had to time to happen when I started running." (P20/injured party = X4)
>
> "You had gone into a restaurant. Did the doorman come and warn you?" (P10/pr5)
>
> "Yeah, I didn't make it further than the front hall." (P10/X5)
>
> "Was it the doorman that said that defendant Q had weapons with him?" (P10/pr6)
>
> "I guess so." (P10/X6)
>
> "Did the doorman also tell you that defendant Q had threatened to kill you?" (P10/pr7)
>
> "No." (P10/X7)
>
> "But you still started running, why is that?" (P10/pr8)
>
> "Why would I stay and see if the chainsaw was on?" (P10/X8)
>
> "So you were afraid that injured person Q might do something?" (P10/pr9)
>
> "Well, yeah because…" (P10/X9)

The former discussion was, in the nature of ascertaining the defendant's observations; including at one point, the defendant's understanding and presumption which would be interpreted affective:

> "Why would I stay and see if the chainsaw was on?" (P10/X8)

The discussion proceeded as a question-answer type dialogue. The content was still a narrative of what happened, and the prosecutor also agreed his interpretations of the defendant's state of fear (P10/pr9). After the following answer, the prosecutor realized the assumption, which was based on what was heard. What was heard did not, evidently, correspond to the truth according to the prosecutor, because he presented the following admonishment (P10/pr10):

> "You should speak the truth here." (P10/pr10)

After hearing an answer that was based on forgetfulness

> "I can't remember." (P10/X10)

the prosecutor started to ascertain the functioning of the defendant's memory and not his observations concerning the real case itself (P10/pr11–12):

> "You said in the pre-trial investigation that you were afraid. Did you remember things better in the pre-trial investigation than now?" (P10/pr11)
>
> "Well, I was so drunk." (P10/plaintiff = X11)
>
> "The police did not write like this unsolicited. Is this correct?" (P10/pr12)
>
> "I guess it is, if it says so. I was drunk for months after that." (P10/X12)

After this, the prosecutor, again, ascertained what happened with questions after the introduction based on chronological order (P10/pr13–14). The following questions clarified the motives of the respondent concerning what happened like this:

> "Where is all this coming from? You ran away. Did you hear that the chainsaw was on?" (P10/pr13)
>
> "It made a noise." (P10/X13)
>
> "So you stated in the pre-trial investigation." (P10/pr14)
>
> "Well, it's there. I guess it is so." (P10/X14)
>
> "So, where is this all coming from? Did you have any fights?" (P10/pr15)
>
> "No. I guess it was because of the phone call. The bitch said that I had called…" (P10/X15)

"Did you have a reason to be afraid?" (P10/pr16)

"I guess in that hangover, I imagined something." (P10/X16)

"But, you still ran away." (P10/pr17)

"Well, yeah." (P10/X17)

After establishing the motives, they returned to what happened by asking direct questions with one exception (P10/pr22).

"What kind of a distance did you have?" (P10/pr18)

"Some 20 meters." (P10defendant =Q5)

" X will answer." (P10/pr19)

"I don't know." (P10/injured party =X18)

"How far did you run?" (P10/pr20)

"About 30 meters." (P10/X19)

"Did you see defendant Q?" (P10/pr21)

"I hid." (P10/X20)

"So, is that all that you can tell us?" (P10/pr22)

"Yeah." (P10/X21)

"Ok." (P10/pr23)

Also, the injured party had the chance to give his understanding of what he heard in the defendant's story:

"Do you, defendant Q, have something that you want to ask injured party X?" (P10/cm 17)

"No." (P10defendant =Q6)

The chairman next ascertained the injured party's loss of earnings:

"Will you have any loss of earnings?" (P10/cm 18)

"No." (P10/injured party =X22)

After hearing the injured party, they moved to clarify the defendant's understanding of what happened. The chairman started this hearing, and they gave the defendant a

chance to tell and describe in his own words what happened. Two messages including different information was now created the material for the decision-making.

The prosecutor then continued with the defendant by ascertaining what happened after an order given by the presiding judge.

> "Well, then, we will next hear the defendant's understanding of how things happened. The prosecutor will then clarify it again." (P10/cm 19)

The defendant described the happenings in informal language in his own words, after which the prosecutor asked more specific questions:

> "X called and threatened to kill me. In the morning, I go to the bar and wait. Before that, I got the saw from the truck. Then, I heard that X then came to the bar, and I ran after him. After that, I turned the saw off, and I went to work. There is nothing much more to it." (P10defendant =Q7)
>
> "When you went to the pub in the morning, did you have your weapons with you?" (P10/pr 24)
>
> "They were with me. When X didn't show up, I went to work." (P10/Q8)
>
> "So, you went away for a while, and you came back?" (P10/pr25)
>
> "Yeah." (P10/Q9)

Here, also, the prosecutor asked direct questions; except one, which was based on the prosecutor's assumption of normal action:

> "Why do you go to the pub with these sorts of weapons? It's not really normal." (P10/pr26)
>
> "Well, no, it's not." (P10/Q10)

Straightening out the case the discussion continued as a question-answer type discussion:

> "The doorman took the pistol away. Where were the other guns?" (P10/pr27)
>
> "In the car." (P10/Q11)
>
> "How long were you in that pub." (P10/pr28)
>
> "Half an hour." (P10/Q12)
>
> "How soon did you come back." (P10/pr29)
>
> "About an hour and a half." (P10/Q13)

"Was you gear left in the car?" (P10/pr30)

"Yeah." (P10/Q14)

"Did you talk with the doorman about X?" (P10/pr31)

"I asked if X had been around." (P10/Q15)

"Have you talked about cutting his head off?" (P10/pr32)

"Well, I wouldn't in that way." (P10/Q16)

"You have mentioned in the pre-trial investigation that X had threatened you, and you had threatened X. Is that correct?" (P10/pr33)

"Yes." (P10/Q17)

"Then, you saw that X was coming to the pub." (P10/pr34)

"My mate said that X is coming…I took the saw out of the truck." (P10/Q18)

"Did you take anything else except the saw out of the truck?" (P10/pr35)

"No. I just started running after him." (P10/Q19)

"How far away were you?" (P10/pr36)

"40 meters." (P10/Q20)

"Was the air pistol with you?" (P10/pr37)

"I guess that it was in my pocket." (P10/Q21)

"But the axe was left in the car." (P10/pr38)

"Yes." (P10/Q22)

"How far did you run?" (P10/pr39)

"50 meters." (P10/Q23)

"Did you see X?" (P10/pr40)

"Yes." (P10/Q24)

"You shouted something after him. Do you remember what?" (P10/pr41)

"I shout stop, let's talk." (P10/Q25)

"Did you mean to scare him? Was that the idea?" (P10/pr42)

"Well, yeah. It was just so crazy." (P10/Q26)

"But, there were no intentions of harming?" (P10/pr43)

"Not the least bit." (P10/Q27)

"And, that is all?" (P10/pr44)

"Yeah." (P10/Q28)

The prosecutor showed that he was listening, because the questions were based on the information that was heard (see P 10/pr37). He also was responding to the situation by making questions which contained an assumption of what happened, as questions 30, 38, 42, and 43 show. When a question showed that the assumption of the prosecutor was right, he could also elicit a very short response like *"yes."*

Also, the injured party was allowed to pose questions to the defendant. But, in this case there were no questions.

The party concerned, for example the defendant, can, in the sense of producing evidence, also respond to the chairman's questions by himself such as the following severe drunken driving example (R1) showed:

> "The charge is correct, but I would like to explain that much that I will tell you about my situation in my life. I just had a divorce, and I was with my mate. I had a big argument with my ex-wife about the kids. So, we have two kids. I thought, where was my life going? I was really alone and depressed. I couldn't really talk to anybody. I first went to the doctor, and then to the crisis center. I talked there for a really long time. My best friend just died in England, when some drunken driver hit him. I'm really sorry. This is the biggest mistake in my life. This (drunken driving) has now effected my life so much." (R1/defendant 5)
>
> "Do you need car in your work?" (R1/cm 7)
>
> "Yeah. I work as a teacher and a musician. I need my car in my work. That (possible ban of driving) is really destroying my work a lot now." (R1/defendant 6)

Before starting the actual witness hearing the chairperson in the court should ask the witness her or his name, age, occupation and place of residence. Each witness shall, on her or his own choice, either take the oath of a witness or give the affirmation of a witness. However, a witness who does not have a religious affiliation shall give an affirmation (CJP, Chapter 17: (48/571):29 §). In this study, too the presiding judges asked the witness to stand during the oath or affirmation. Because of the legal procedure (CrPA 97/689) the presiding judge is obliged to remind the witness about the responsibility of an oath or a affirmation. This act may be fulfilled in this way:

> "Remember the oath injunction and speak the absolute truth. You have been named here as a witness called by the prosecutor." (O3/cm 42)

After the oath or the affirmation, the presiding judge may also give instructions for the witness hearing, as in the following:

> "You should state here, now, only those observations which you have personally experienced and seen, and not mention those things which the injured party may have told you. You will relate only those things that you have seen yourself." (P4/cm 26)

The former discussion not only showed that the chairman gave pure information on witnessing, but that he was also having doubts about the witnesses' ability to distinguish between the information she or he had *heard* and the information she or he had *seen*.

At the stage of taking the evidence, witness hearing, is more likely compared to the other stages that the conversation also includes spontaneous information, and that there are also overlapping speeches. The witness hearing followed the stage of the description of the matter, and the party whose witness was in question started the discussion. In the observational data, the same party presented all questions one after the next. Then the other party continued doing the same.

In the case described (P10), the witness was the restaurant doorman called by the prosecutor, so the prosecutor asked his questions first. The purpose of the questions was to find out what happened in the restaurant:

> "You have been a doorman in pub ZZZ." (P10/pr 45)
>
> "I wasn't a doorman, but I was attending to customers at that time. Defendant Q came having a chainsaw and an axe with him. The air pistol was in his pocket. I took it away. He took into the car the saw and the axe." (P10/witness 4)
>
> "How long was Q in the pub?" (P10/pr46)
>
> "About half an hour."(P10/witness 5)
>
> "Was the chainsaw and the axe with him?" (P10/pr47)
>
> "He took them to the car." (P10/witness 6)
>
> "Where were they before that?" (P10/pr48)
>
> "On the table." (P10/witness 7)

> "Were there any other customers?" (P10/pr49)
>
> "Yes." (P10/witness 8)
>
> "And it was you who noticed the air pistol?" (P10/pr50)
>
> "Yes." (P10/witness 9)
>
> "What did he talk about to attact your attention?" (P10/pr51)
>
> "He was looking for X." (P10/witness 10)
>
> "Do you remember what he said?" (P10/pr52)
>
> "He asked if X had been around." (P10/witness 11)
>
> "Did he make threats in relation to X?" (P10/pr53)
>
> "He said something." (P10/witness 12)
>
> "Was there anything else?" (P10/pr54)
>
> "Well, no." (P10/witness 13)

The prosecutor's duty is also to clarify a witness' connection to what happened in an alleged crime. In this case (P10) he took care of this by starting the examination of the witness by establishing the witness' physical connection to the alleged crime by first asking about the witness' occupation and place of work (P10/pr45). After this, direct and short questions followed, with which the witness' own observations were ascertained. The following questions asked by the prosecutor, map opinions of the witness:

> "In the pre-trial investigation you have stated that Q made threats about somebody's head falling off. What was your response to this?" (P10/pr55)
>
> "I don't know." (P10/witness 14)
>
> "What happened after this?" (P10/pr56)
>
> "X came, and I said to go away. X went, and Q went after him." (P10/witness 15)

The next questions outlined the restaurant discussion between the witness and the injured party (P10/pr57–58). The arrival of the chainsaw, the axe, and the pistol, and the running of the parties were elicited by the prosecutor's questions 59–62. The prosecutor obviously confirmed the trustworthiness of the story. The object of the trustworthiness was both the injured party's own story and the witness' story.

"How come you have said that the chainsaw was in one hand and the pistol was in the other? Could it be possible that you remember incorrectly?" (P10/pr63)

"I guess it's possible." (P10/witness 21)

"Was Q in the bar all the time?" (P10/pr64)

"Yes." (P10/witness 22)

"But, he himself said that he was at work from time to time." (P10/pr65)

"I don't remember it that way." (P10/witness 23)

"Whether or not he was in the bar all the time is irrelevant. What is relevant now is if he had the air pistol with him. But, that is if the saw was running." (P10/pr66)

"I heard the sound of it." (P10/witness 24)

Next, in a discussion they reverted to the connection of the chainsaw to the running (P10/pr68–74). The witness was no longer asked for mere observations, but for his impressions and his attitude toward what happened. Also, a confirmation to the prosecutor's assumptions was made like this:

"What did the situation look like? How did you act?" (P10/pr77)

"First, I thought it was a joke." (P10/witness 31)

"But, when Q went to pick up the chainsaw, what did it feel like to you as an outsider?" (P10/pr78)

"It wasn't a game any more, not at all." (P10/witness 32)

"So the situation was threatening, even though it was not directed towards you." (P10/pr79)

"Yeah." (P10/witness 33)

"At the moment when Q came back, did you see X there?" (P10/pr80)

"No." (P10/witness 34)

"How heated was Q when he was making the threats? Was he in an excited state of mind?" (P10/pr81)

"Yes, he was excited." (P10/witness 35)

The prosecutor ended the depositions of this witness by asking "*is that all*?" (P10/pr82) and, after getting a positive response, he ended the discussion. To both parties,

the chairman offered the opportunity to present questions to the witness. But, this opportunity was not used. Finally, the chairman enguired about the witness' loss of earnings (P10/cm 29). After concluding that *they had provided evidence in the case* (P10/cm 30), he gave the closing argument to the prosecutor. Before that, the prosecutor still wanted to pose one question to the parties involved.

> "I would ask what sort of relationship have the parties involved had before this." (P10/pr85)

and after getting a response from which it was clear that the parties had known each other for twenty years and that they had been friends, the prosecutor held his final speech as a closing argument.

Almost all presiding judges asked the witness and the public to stand during the witness' oath or affirmation, even though in the data studied they regularly sat throughout the entire procedure.

4.1.4 The closing arguments

The hearing of the case in the courtroom ended with the closing arguments by both parties, that is the closing statements (= STAGE 5). In the previous case, they ended up in the closing arguments right after taking of evidence and the prosecutor presented the arguments first.

The function of the closing arguments by different parties is to assess and justify evidence given under oath, the adequacy and reliability of their own information, and that of the other parties (especially the prosecutor). The reliability and adequacy of the information were assessed especially with reference to the evidence and bringing out the judicial questions. In the closing arguments the claim made is created in the presentation of the case i.e. the charge with its reporting parts, to be true on the basis of the argumentation produced in the hearing and the argumentation processed from it (cf. CrPA 97/698, Chapter 6: 7§).

The closing arguments may be individual entities or also complemented discussion-wise as the following example illustrates (P10):

> "Let's start from the easy end, which is possession of a sharp weapon in a public place. That is proven to be clear. As to the unlawful threat, I consider that

> Q has clearly made a threat. From X's behavior, it can also be concluded when he ran away, that obviously he had reason to be afraid. Q admitted frightening. As to the sentence, oh yes, the defendant does not have a criminal record. Is that true?" (P10/pr87)
>
> "Yes." (P10/Q30)
>
> "This is such an act that a sentence of a fine is not enough. Nevertheless, it has come out that the parties concerned are old acquaintances and friends. So, let's leave it for the court to decide whether or not a mere punishment by fine is enough." (P10/pr 88)

The prosecutor's closing argument was built in the previous case of both his own information and the immediate information specified on the basis of specific questions. It was not a continuous monologue, but it included a short discussion.

The parties in the courtroom worked without counsel, so the chairman asked them both if they had anything to say as a closing argument: "*what do you wish to say*?" (P10/cm 34) Neither of them had anything to add, so the chairman cleared the courtroom for the consideration of the decision.

The prosecutor's closing argument may also be short, and an argument including only the final words, at the beginning of which they list the evidence as grounds for what happened, and then continue the presentation of the sentence proposed with its justifications. The following exemplifies the method (R5):

> "I see on the basis of the witness statements presented and the technical evidence, that they have proven X's guilt of severe drunken driving and endangering of traffic. I demand a probationary sentence, because there is no previous criminal record." (R5/pr30)

The prosecutor is the one to hold the closing argument first, and after this the defendant. The order in question makes it possible for the defendant, if she or he wishes base their speeches on the factual information heard. However, the prosecutor, who makes the first speech, can base his information only on assumptions of what the defendant's closing arguments will include. What is meant here by factual information is information presented aloud, and thus offered to be publicly and jointly processed. The following crime against property (O3, where the defendant had additionally resisted the police) examples illustrate this:

> "The charge will be substantiated here. K and L have been consorting together in the theft. K admits it, and L denies it. L claims she came into the shop in her own clothes. A testified she had not seen that the woman brought her own sweatsuit. A, who gave evidence, testified that L's suit had the mark of a security device with a hole. L is not telling or does not want to tell the truth, and did not want to hear the woman (the witness) and the woman (K) had not started to defend her in the shop. Also, these matters, among other irrelevant things, confirm the impression that L is guilty. The liability to pay compensation is shared with K. As regards damage, it is deemed clear that L pulled herself away and resisted the police. The orders of the police are being put in accordance with L. In the acute situation, L deliberately tried to flee the scene, thus obstructing authority. This, too, is deemed to be proven.
>
> Still a bit about the charge, I consider it theft, because the act was premeditated and they equipped themselves with cutters and they destroyed more property than they took. And, as for the second item, I will say that the police had not been informed about the fetching of the prescription, which in the situation in question was an obstruction. Sentence according to this." (O3/pr69)

The prosecutor in question then illustrated what happened again, and defined the nature of the actions by notifying his understanding of the name of the act (*theft*). The description of the character was based on the information gathered from the witnesses' stories. No end solution to the situation, which is sentences proposed, was reached here because the possible different interpretation of the character of the actions also affected sentences to be received from the actions. The language that the prosecutor used was, inconsistent and even ungrammatical.

The closing argument of a defendants counsel was based on the information heard before (O3):

> "We wish to deny item one of the charge. L had put her own clothes on. The witness could not say whether or not the woman had something with her when she came into the shop. The witness also did not remember what other things the woman had with her. If it was a crime, then it was petty larceny. L would have shouted to the woman in the car about the prescriptions, and that's why she took off fast. It is a clear misunderstanding. The meaning was not to obstruct an official in the discharge of his duties. So, L did not deliberately try to cause any harm. I consider that items one and two of the charge should be dismissed." (O3/counsel 41)

The language the defendant's counsel used was mainly informal language, though it had some formal language in it such as "*obstruct an official in the discharge of his duties*". The defendant rather answered the questions the prosecutor presented whether the prosecutor's claims are interpreted as open questions. The structure of the speech also repeated the content order used by the prosecutor. Here, too, the counsel defined what had happened and he named the incident *petty larceny*. The characterization of what happened with its naming is the foundation of the result, in this case the sentence, the considering of which began immediately after the closing arguments. The function of the closing arguments was to argumentatively summarize and gather the information presented and heard in the courtroom to support the view they represent. Their contents included both the material prepared and planned on the basis of the pre-trial investigation, and the spontaneous material that was based on the stages of the previously illustrated hearing. The object to be influenced was the court, which included a professional presiding judge and lay judges. At this point, the problematic issues such as the targeting of the message, choosing and outlining the contents can be seen as quite challenging for a group of heterogeneous listeners, because they prepare to decide the outcome immediately after this.

The decision making material is only the courtroom information (CrPA 97/689, Chapter 11: 2 §). (The discussion that includes the closing arguments, also includes a *consequence discussion*.) The end result, which is the judgment in the case, was made only by court members alone without any public and parties' presence.

4.1.5 The verdict

The hearing of the case ends in the verdict and declaring it (=STAGE 6). The decision was a judgment and it was announced and argued by the court's chairman. Stage 6 included speeches of the presiding judge, the goal of which was to inform and justifiably assure different parties of the legitimacy of the end result. The prosecutor's and the defendant's counsel's following closing arguments and the presentation of the chairman's decision in a case of assault and battery (P4) showed the presented connection:

> "I consider that there is ample evidence that the defendant was struck and battered. The police arrived on the scene immediately. The police officers on the

> scene noted a swelling around A's eye. A supplied a photograph to the police, where the bruise is to be seen. A had gone to see the doctor after three days, and the doctor had verified the same thing. There is no dispute about this. The witness who was struck stated this in the police interrogation, and the story was correct. Witness number two's story is acceptable, even though the court of first instance concluded that there was no external evidence. A has stated that he knows witness number two promised to be a witness. In my mind I consider that there is enough evidence of a battery, taking all things into consideration." (P4/pr70)

This prosecutor based his argumentation on material that was external to him, verifiable by all parties, namely the photograph, the doctor's statement and the witness' evidence. Nevertheless, the prosecutor also verbalized expressions that were related to the information that was in connection to them, such as "*I consider*" and "*in my mind I consider*".

The closing argument of defendant's counsel in the same case was as follows:

> "As I have previously stated, the witness has told how everything got started. The defendant had no fit of hysterics. On the basis of the stories presented, one can draw the following conclusions in such a way that either A or V started the use of force. There is no clear proof. The whole situation began when A started using forceful measures in connection with the request for them to leave, which is when A took V by the throat and pulled his hair. If there is a dispute about showing one's identification it may not lead to using violence. The use of force cannot be justified in this way. V used self-defense, i.e. the story is unconvincing, when one speaks about credibility and logicality. In my opinion V's story seems much more logical than A's or T's. What also undermines A's credibility is how he does not remember such matters that have previously happened in restaurants. When you take into consideration from V's points of view that he got into that kind of situation, the attitude to the client when being removed from the restaurant cannot be like this. And nobody has to submit to such a thing, but they have a right to defend themselves. If the customer's removal from the premises is handled like this in this city, it cannot be right. A does not own the restaurant and so has no right to demand compensation. Nor has it been proven if any bill was left unpaid or not. I consider that there is not enough evidence for V to be convicted. He did nothing to A with the intention of battering and assault. I have nothing further to state." (P4/defendant's counsel 10)

The counsel expressed his understanding of the case and took a stand in the case "*cannot be like this*". He also evaluated the manner in which customers were treated in the city in question. The court considered the end result and the chairman presented the following as the judgment:

> "The court has made a unanimous decision. The district court considers that V is guilty of assault and battery. V has denied the charges and the claims for compensation. V has admitted having resisted inappropriate and unresonable removal from the restaurant in a situation where they had inquired some help from V because an alleged harassment, reported by their woman friend perpetrated in the back of the restaurant. In this situation, A had grasped V by the throat, according to V, and as a result of this V might have swung A in the eye in order to defend himself. V has denied hitting with the intention of battery, but only in self-defense.
>
> A has reported in court asking V for identification papers, to which A refused. At this point, V had grabbed with both hands a corner of a restaurant booth, and had not let go of it even though he was asked to. After this, V had started to resist A, during which a struggle had broken out between them. According to A there had been no injuries caused at that initial stage. According to A, it was only at that point that V had broken loose and stood up while A was hunched down on the ground on top of M's boyfriend, which is when V punched A in the eye. Also witness T, whose story has actually been quite unsure because the witness mostly did not remember the train of events, has stated that V had punched A. A's story about the hitting is backed up by the medical statement concerning A, and the story told by T2, who had already been heard in the pre-trial investigation and who subsequently died. According to witness T2's testimony, the situation in question caused quite a disruption in the restaurant. The restaurant's personnel have the right to take action in order to maintain order, and therefore they have the right to remove the customer who is causing the commotion.
>
> It has not been disproven that it was self-defense situation as far as the defendant is concerned. If it were this kind of situation, the defendant would have been justified in striking A in order to protect him. On these grounds, the district court considers that it has been proven that V physically assaulted A in the eye that is swollen in the situation referred to in the charge. Otherwise, it remains unclear if V intentionally, by scratching or kicking, assaulted A physically. On the basis of general life experience, an injury caused with violence causes the victim pain and soreness. The district court estimates, X marks as a reasonable compensation for pain and suffering. It remains unclear that this would have caused loss of earnings to A.

> It also remains unclear that closing the restaurant caused losses to A, because the restaurant in question is, according to witness T's notification, owned by him. The injured party's compensation claims in other respects must so be dismissed. The compensation claims otherwise…
>
> Anyone who is dissatisfied with the judgment can apply for a reversal by appealing to the court of appeal within XX days of the judgment." (P4/cm 36)

The structure of the decision is composed of an illustration of the situation, evaluation of *all evidence* taken and the conclusions following from it, and their justifications. The main reasons were: *The court has made a unanimous decision and general life experience.*

The solution itself was argumented as *"the district court has establised something proven or not proven"*. The apparent form of the solution was standard and written.

4.2 Experienced phenomenon

The courtroom activity observed as a speech communication situation was described in the previous chapter. The purpose of the survey among the prosecutors was to discover how the courtroom activity as a speech communication situation was *experienced*. Questions 1, 2, 5a, 7a, 8 and 11 (see Appendix 2) aimed at eliciting the respondents' observations, ideas and their preparation for the hearing as a speech communication situation. How respondents prepared themselves for a certain situation also clarified how they perceived their role in the situation and how they evaluated and defined the situation for themselves. Our way of communicating is formed, inter alia, by our perception of the relationships with other communicators. One factor used in defining the situation is the relationships between the participants (Laing 1967, Miller, Cody & McLaughlin 1994). The prosecutors were first asked to describe how they prepared themselves for the hearing as a speech communication situation (question 1).

All the respondents made observations concerning this question. The responses of the prosecutors were divided into three categories. The first category included the prosecutors' descriptions of taking other parties into consideration while preparing themselves for the hearing. The second category contained the respondents' descrip-

tions of preparing themselves for the subject matter. The examples in the third category clarified how the prosecutors prepared themselves for the courtroom environment as well as acting in it.

Several respondents (17) gave examples for every category. However, most of them concentrated on explaining how they prepared themselves for the subject matter (53 mentions, Table 3). The descriptions included:

> "I prepare for the case." (DA*2),
>
> "I get ready by thinking about the oral part of the case." (DA3),
>
> "I recall the relevant issues of the case and prepare the framework for the case." (DA5) or
>
> "I go through the stages of the procedure in advance, and with bigger and more complex cases I try to write down as much as I can for the presentation of the matter and the closing arguments. I also write down questions, or at least think about them beforehand." (DA8).

Some prosecutors gave examples of preparing themselves both for the case and for the different parties involved in it, such as:

> "I act as a prosecutor mainly in cases of economic crimes, so I have to be prepared to simplify quite complex schemes for the hearers, who – at least in principle – do not know the case in advance. I use transparencies and figures, but the main emphasis is naturally on my own speech." (DA4)

TABLE 3. Gender and mentions of preparing for the hearing as a speech communication situation

Mentions	male	female	total
Parties	12	5	17
Matter	**39**	**14**	**53**
Environment	20	7	27
Total	71	26	97

* DA = district attorney

Only a few respondents gave examples of taking the other parties into consideration already when preparing themselves for the hearing (17 mentions, see Table 3). The responses included:

> "I take the chairperson, the parties and their possible counsels into consideration." (DA3) or

> "I find out who will be heard in the case and think about questions to ask that person." (DA42).

Some responses also included mentions of the witnesses' presence in addition to describing how the respondents prepared themselves for the case:

> "I prepare the presentation of the case as well as the closing argument to have an effective content and a structure. For the taking of evidence, especially with witnesses, I prepare the questions in advance." (DA18) or

> "I think in advance about what I'm going to say when I'm presenting the case, and in what order, what questions I'm going to ask the witnesses and parties and, if possible, the content and the order of the closing statement." (DA40).

Above, the preparation for the case was seen in terms of considering not only the content (what) in advance, but also the structure and the analysis (in which order).

The respondents prepared themselves for the environment by *"dressing properly"* (DA2), *"speaking loudly"* (DA7) and by *"being prepared to use audiovisual equipment"* (DA3).

Two prosecutors described their preparation for the situation as a whole. Their description included the case, the parties and the environment. The examples did not, however, describe their normal preparation, since both of them included a mention of the special nature of the case:

> "When preparing for more difficult and complex cases, I go through the so-called "presentation" of the subject matter out loud or in my head, for example, on the day before the trial. I also prepare myself by creating an imaginary situation, such as questioning a witness, and I present questions to the witnesses, perhaps also for the defendants and the plaintiffs, as if we were already in court, a kind of rehearsal, that is. With that kind of cases I also draw up a memorandum for myself beforehand of the relevant aspects I have to consider in the oral communication of the case. Examining the substance of the case is also a part of preparing myself for the hearing as a communicative situation.

> It is easier to speak when you know the case adequately enough in advance." (DA1) and
>
> "I read through the papers beforehand, in order to recall the matter and to be able to present it and to hear the parties and the witnesses. With bigger cases, I briefly write down the order of events on paper and prepare the questions." (DA36).

Two of the prosecutors mentioned that they did not prepare themselves for the hearing at all. One of them stated, *"Nowadays, there is no time to prepare myself for the hearing, not juridically, not by recalling things, nor in any other way."* The same respondent continued, however that *"You just wear neat clothes in the courtroom and flip through your papers!"* (DA6). The other prosecutor even wondered about the question: *"I don't prepare myself at all. What is a speech communication situation?"* (DA32).

There were some prosecutors whose responses showed that they analyzed the hearing particularly as a communicative situation, such as:

> "I try to manage without papers. Going through your papers interferes with the sending and the receiving of messages." (DA24) or
>
> "I get to know the case, so that the certainty to communicate and the correct content of the case grow together with my self-confidence. I dress accordingly to be more convincing. I have a good rest before the hearing, so I don't get tired during the long day." (DA28).

The connection between knowing the subject matter and the communication certainty (see also Pörhölä 1995) is seen already in the descriptions above, but it was also mentioned separately and as being the only basis for the preparation: *"I make sure that I manage the subject matter so I won't have to pay attention to the communication."* (DA14) or *"When you manage the subject matter, the communication situation is natural."* (DA25). One respondent also mentioned the consequence that results from the above-mentioned connection: *"I get to know the subject matter of the cases well enough, so I don't have to waste my energy and concentration on that. This way I can fully concentrate on what exactly is going on in the courtroom during the hearing."* (DA56).

There were no apparent differences in the male and the female prosecutors' descriptions of preparing themselves for the hearing as a speech communication situation (cf. Table 3). 41 men and 16 women responded to the survey.

Next, the prosecutors were asked to describe what they paid attention to when they were acting in the courtroom (question 2 in a questionnaire, Appendix 2). They were asked to list both verbal and nonverbal elements they paid attention to.

The definition of the situation is not only described by how one prepares for the situation (Laing 1967), but also by what one perceives in the actual situation (Greene 1984, Petty & Cacioppo 1986). It was assumed that the respondents were familiar with the vocabulary in the questionnaire, since most of them (41 prosecutors) had attended the Professional Communication and Expressive Skills training course for prosecutors. All prosecutors answered this question and there were no missing observations.

The responses were categorized into four groups: mentions concerning 1) the content or the clarity of the speech, 2) eye contact and moving in the courtroom, 3) language and 4) voice and clothing. The mentions of the content and the language are seen as verbal elements, whereas the mentions of eye contact and moving around the courtroom, voice and clothing are nonverbal (see the categorization of Burgoon, Buller & Woodall 1996).

The data shows that the prosecutors pay attention to nonverbal elements in the courtroom. There were more mentions of eye contact between different parties, moving and voice than of anything else (84 out of 137 mentions, see Table 4). All the female prosecutors had especially mentioned voice (16 persons/16 mentions) and most of them also mentioned eye contact (16 persons/13 mentions). The voice was mentioned in the following examples: *"The tone and the strength of the voice."* (DA1), *"Voice trembling and showing fear".* (DA13) and *"Stresses and mumbling and raising your voice."* (DA24). Some respondents identified whose voice they paid attention to: *"The quiet voices of the witnesses."* (DA31) and *"The witnesses' voices especially when taking an oath or affirmation, as well as the chairperson's voice."* (DA45).

Paying attention to eye contact was described:

> "I observe the eye contact between the different parties, or the lack of it. I pay special attention to the eye contact with the counsel during the prosecutor's questions." (DA3),
>
> "The chairperson's and the lay persons' expressions to the defendant's statements." (DA26) and
>
> "The eye contact between the different parties during the examination in order to give evidence." (DA31).

In addition to mentioning the language (27 mentions), the prosecutors also identified the content of the message as a verbal element to which they paid attention. When mentioning the content, they described: *"How clear and truthful the message is."* (DA5) and *"What the person giving evidence answers. Individual words or sincere replies."* (DA56). The language used in the courtroom was perceived as both: *"I pay special attention to the words and adverbs, such as perhaps, in my opinion, too, just."* (DA16) and *"I pay attention to their choices of words."* (DA39). It was also seen as a way of using language: *"I don't like the way the chairperson addresses the parties by their first name."* (DA47).

There were only few individual observations concerning gestures and facial expressions: *"I notice blushing."* (DA13), as well as *"Being under the influence of alcohol."* (DA4), *"Fear, uncertainty and overacting."* (DA10), *"The parties being nervous."* (DA49) and *"Everybody being nervous, rude and tired as the hearing was prolonged."* (DA6). There was also one mention of the atmosphere in the courtroom as well as of the identity of the lay judge and the counsels as the target of attention. One respondent mentioned, *"What is **not said** is also important. Especially in the hearing of a witness, I pay attention to the certainty or the uncertainty of the witness."* (DA48). Two prosecutors stated that they do not pay attention to anything. One of them said, *"You don't really think about that. The only thing I think about is that my own message is clear and understandable."* (DA11).

Question 7 in the questionnaire related to the direct definition of the courtroom activity as a speech communication situation. The prosecutors were asked to describe the hearing as a conversational situation in general and also to define an ideal discussion (questions 7a and 7b, Appendix 2).

TABLE 4. Gender and mentions of the target of attention

Mentions	male	female	total
Clarity of content	19	7	26
Eye contact and moving	**27**	**13**	**40**
Language	20	7	27
Voice	**28**	**16**	**44**
Total	94	43	137

Most of the mentions (23) were related to how rigid and official the situations were. This was reflected in the discussions during those situations. The discussion seemed to consist of monologues performed in turns: "*It depends on the case. Most of the time the discussion is, nonetheless, an exchange of arguments between the prosecutor and the attorneys during which the others keep silent unless they are asked something.*" (DA5). One prosecutor suggested that the official nature of the discussion and the successive use of addresses might be an obstacle to the lay persons' understanding: "*The discussions are often very formal, so the parties may have difficulties in understanding the proceeding of the case.*" (DA23). Some prosecutors even doubted the functionality of the new conversational procedure and the responsibility of the chairperson:

> "From the prosecutor's point of view, the discussions are problem-based, but directed. They are problematic if the chairperson doesn't know what he is doing. The whole situation will get out of hand and, for example the defendants will ignore their counsels and start talking beside the point. And often the counsels take the discussion in the wrong direction on purpose. That is frustrating." (DA4) and

> "The conversations are formal and stiff. Besides, the new criminal process is dangerously stupid when directed by an unyielding chairperson." (DA21).

Two respondents stated that the discussions in the courtroom were already natural and relaxed. One prosecutor pondered the term 'discussion': *"The term 'discussion' is not necessarily the most appropriate. It is often a case of simply giving statements in turns. It is possible, however, that the comments to the other parties' statements are not expressed until the closing arguments.*" (DA36).

Approximately a third (21) of the respondents described an ideal discussion. Others either omitted the description (19 responses) or it was stated that there were no special wishes (18 responses). Two respondents even questioned whether there really was a need for discussion: *"I am not there for discussion.*" (DA34) and *"The discussions are, in fact, a waste of time because in criminal cases that's when the truth is forgotten and a wrong decision is made.*" (DA37).

Several descriptions of an ideal discussion included an adjective relating to the quality of the discussion: "*the discussions should be honest*" (DA16), "*open and explicit*" (DA26), "*factual*" (DA22) and "*to the point*" (DA39). There were also more specific descriptions that included some practical instructions, such as:

> "The discussions should follow normal and socially accepted manners of behavior." (DA1),
>
> "Interfering with others and inappropriateness should not be allowed." (DA6),
>
> "Discussions where everybody speaks in their turn, but freely, so that the meaning of each word is not considered too much." (DA20),
>
> "Concise and logical handling, not too long speeches." (DA36) and
>
> "The discussions should include compressed arguments, and redundancy should be avoided." (DA39).

Some respondents stated that in their desired discussion the atmosphere was closely linked to the activity in the courtroom:

> "The discussions should be vigorous so that they stay relevant. On the other hand, they should be free so that everybody can say what they have to say freely, and without tension. Factual, and such that everybody feels that they have been heard in their own case." (DA30),
>
> "I would like the procedure to be vigorously directed and matter being discussed to be clear. In certain cases, as well as, for example, with young people the discussion could flow more freely. On the other hand, the criminal process has a goal, and it is not the purpose to discuss everything, such as all the other problems that the young defendant may have." (DA40) and
>
> "The discussions should be directed and stick to the point, but in such a way that no one is left without having a chance to say whatever they feel was relevant." (DA47).

The analysis of a difficult speech communication situation also illustrated the observer's understanding of courtroom activity as a speech communication situation. In general, difficulties in communication can hardly be analyzed and described, if the analyzer does not have at least some understanding of communication in general.

The prosecutors evaluated the closing argument to be the most difficult stage of the procedure with respect to communication (see question 8, Appendix 2). This was mentioned in 27 responses (Table 5). Some respondents mentioned more stages, but even these responses included the closing argument.

The following table illustrates the categorization of the different stages in the procedure.

TABLE 5. Gender and mentions of difficult stages in the trial with respect to communication

Mentions	male	female	total
Presenting the case	13	3	16
Witnesses hearing	11	7	18
Closing argument	**20**	**7**	**27**
None	1	0	1
Total	45	17	62

Almost half of the female prosecutors mentioned both the closing argument and the examination of a witness as a difficult communication situation, whereas only a fourth of the male prosecutors reported the hearing of a witness to be difficult. One male prosecutor stated that he did not find any stage particularly difficult. Presenting the case and the questioning of a witness were seen as almost equally difficult with respect to communication.

Many reasons were given for why the closing argument was felt to be particularly difficult. The respondents mentioned that the difficulties were mostly due to the speaker and the subject matter:

> "Creating the final statement is more difficult than anything else. With big cases it is impossible to jot down notes while carrying on with the examination without a counsel. There is no necessary basis for creating a thorough closing statement." (DA5),

> "Oral closing statement. It is difficult to present everything logically because often by that time you are already tired." (DA6) and

> "The closing argument is difficult. In order to remember all the necessary aspects you have to rely on your notes, and this disturbs the performance." (DA26).

On the other hand, the difficulties were seen to be related either to the listener, such as the assumption that *"no one's really interested in it any more*" (DA3) and *"the part in the closing argument where the evidence is evaluated. There you often have to say, not in so many words that the defendant is lying*" (DA27) or to the situation: *"the closing argument is difficult. You have to present it right after the handling, orally, before being able to digest everything you have heard*" (DA8).

Some prosecutors viewed witness testimony as a difficult communication situation, because

> "The parties may sometimes have difficulties in expressing the case simply enough." (DA23),
>
> "Questioning the defendant in order to elicit the evidence can be difficult, because this is often the strongest proof for the charge, and it requires specific accuracy with the facts from the prosecutor." (DA31) and
>
> "Questioning a hostile or tense witness is difficult. You seem to run out of questions, if the person answers simply 'yes' or 'no', or pretends not to have understood the question." (DA42).

Presenting the charge and describing the matter were seen as difficult because *"in the beginning you don't know anything about what the opposing party will introduce. You are forced to start out blindfolded"* (DA11). The beginning and the description of the matter are nonetheless seen as important stages of the hearing, because *"you should be able to bring out everything that is relevant in the presentation of the matter but at the same time keep it brief so that it can be remembered"* (DA10) and *"that's when you should sell the case to the court, so it is important to make sure that the message is received"* (DA53). Some respondents felt that the presentation of the charge was made even more difficult by the fact that "*the indictment is a formal text that everybody has already read or heard somewhere*" (DA16).

4.3 Purpose, environment and participants in the situation

4.3.1 Purpose and meaning

In the observational data, a presiding judge rarely defined the purpose of the situation aloud in the above-mentioned manner. There were only few trials where the chairperson stated the purpose of the hearing out loud. In these trials it was often assumed that the purpose was already known, as became evident from the above examples.

Instead, the matter at hand in the situation was included in the indictment that the prosecutor presented after the hearing had begun. The abstract meaning of the situation, i.e. seeking and dispensing justice, was not stated out loud. The conclusion of the activity, i.e. the factual purpose, was rarely reasoned out loud. The conclusion was announced immediately after the oral procedure, but often the decision was read out loud. Of all the hearings observed, only 16 also included the concluding stage of the hearing, but the grounds given for the judgment, i.e. how and why the judgment was arrived at, were explained out loud only in eight of the cases.

The present study supported the results of handling the functional purpose in a trial, i.e. an equal hearing of different parties that was also found in previous research (Välikoski 1996).

The survey also aimed at discovering how the respondents viewed the purpose of the situation. They were asked to describe a criterion for a fair trial (question 4, Appendix 2). Most of the responses included descriptions of impartial activity and hearing what the different parties had to say (Table 6). In addition to this, the responses were divided into categories, such as proclaiming the rights of the parties, information of the grounds for the charge, ensuring the understanding of different parties, conveying the feeling of listening as well as giving grounds for the judgment.

TABLE 6. Gender and mentions of the criteria for a fair trial

Mentions	male	female	total
Impartial	**27**	**13**	**40**
Rights of different parties	5	3	8
Information on the grounds of the charge	5	2	7
Ensuring understanding of different parties	7	5	12
Questioning	**26**	**11**	**37**
Feeling of being listened to	14	8	22
Grounds for the judgment	7	2	9
Total	91	44	135

Clearly over half of the respondents mentioned impartiality and questioning the different parties, which can be interpreted as actions confirming the meaning of the situation. These criteria for a trial are directly based on the law (CJP 69/323 and CrPA 97/689). Examples can be seen in the following:

> "A trial has to be public, oral, equal, and it has to listen to and respect the parties." (DA2) and
>
> "Independent and impartial courts, the publicity of the criminal court, the grounds for the convictions, the right to appeal, the right to legal aid and to choose a counsel, a possibility for a free trial, the publicity of the hearing (with the exception of e.g. sexual offences), the right to be heard." (DA42).

Almost all the women mentioned both categories (16 women responded to the questionnaire).

Half of the women also mentioned questioning different parties. *"Each party should know what is going on in the courtroom as well as understand what is being said and what the prosecutor demands and is saying. Everyone should also be given a hearing and allowed to say what they have to say whenever it is their turn to speak."* (DA13) and *"the court has to show that they are listening and that they have a genuine interest in the matter"* (DA18) are examples of listening, but also of ensuring the understanding of different parties, which was mentioned 12 times in the questionnaire.

Some respondents mentioned proclaiming the rights of different parties and giving information on the grounds for the charge (15 mentions). These were described for example in the following: *"visibly publicising the rights of different parties"* (DA8) and *"discussing the grounds for the charge and questions arising from it"* (DA11). The criteria for a fair trial consist of both general principles, as was seen in the descriptions DA2 and DA42 above, and of the chairperson's or the prosecutor's task. The following description functions as a summary of a concrete activity that was based on the existing principles:

> "The parties should have exact knowledge of what the defendant is accused of. Everyone has to present their evidence on time, as well as to be able to say what they have to say. The process should progress explicitly, the judgment should be justified, and the parties should have a feeling that they are being listened to." (DA40).

The communication in the courtroom was clearly based on the above-mentioned principles.

The prosecutors' conceptions of a fair trial were also supported in the witnesses' evaluations (Välikoski 2000). The equal treatment of the parties, if it means giving an equal opportunity to participate, in the way the presiding judge verbally regulated the interaction between the parties in the courtroom. However, there were no signs of ensuring the understanding of different parties in the chairpersons' actions. Instead, they ensured their own understanding in several ways. (Välikoski 1996.)

4.3.2 Environment and context

Observation of the courtroom communication showed that speeches made by a presiding judge rarely included descriptions of the physical environment or the abstract context of the activity in the courtroom. There were only few observed trials where the chairperson told the parties how to move to their right places in the courtroom, or gave some background information concerning the courtroom environment:

> "Your age is being asked...that's what we do in the courtroom." (O3) and
>
> "We usually don't allow little children in the courtroom." (P8).

The nature of the atmosphere related to and formed in the environment of a courtroom (see also Falcione, Sussman & Herden 1987, Jones & James 1979) describes the abstract context of the activity. This was clarified in question five in the questionnaire (question 5a, Appendix 2). The respondents were given a continuum of four options of which they marked the one that best described their impression of the atmosphere in general. The options included pairs of adjectives that were placed on a continuum of seven classes according to a semantic differential (Snider & Osgood 1969). The same pairs of adjectives were also used in the witness interviews made in a former study (Välikoski 2000).

The atmosphere was generally more relaxed than tense, more open than closed, fairly reserved and formal. In addition to this, the prosecutors seem to agree strongly in their estimations, since the standard deviation was very small (Table 7a).

As can be seen in Table 7a, the most frequently used estimate for the first two options was 5 (on a scale 7–1), whereas the latter option was placed third or fourth on the scale.

The prosecutors' estimates fall in the middle of the scale, and the extremes of the scale were rarely chosen. Two respondents however, felt, that the atmosphere in the courtroom was very open; three respondents felt it was very formal and five prosecutors evaluated it to be very reserved. Almost seventy per cent (61% and 69%) of the respondents felt that the atmosphere was more relaxed and open than tense and closed. 40% of the prosecutors evaluated the atmosphere to be fairly confidential, and 65% felt it was fairly formal.

TABLE 7a. The atmosphere in the courtroom in general

Atmosphere	no. of responses	mean	median	st.deviation
Relaxed (7-) Tense (1)	57	4.67	5.00	1.15
Open (7-) Closed (1)	58	4.88	5.00	1.14
Reserved (1-) Confidential (7)	57	3.84	4.00	1.51
Formal (1-) Informal (7)	57	3.11	3.00	1.11

TABLE 7b. Atmosphere in the courtroom in general

Atmosphere	scale, numbers and percentages							
	no. of responses	7	6	5	4	3	2	1
Relaxed (7-) Tense (1)	57	0	16/28	19/33	11/19	9/16	2/4	0
Open (7-) Closed (1)	58	2/3	16/28	24/41	6/10	9/16	1/2	0
Reserved (1-) Confidential (7)	57	0	8/14	15/26	10/18	13/23	6/11	5/9
Formal (1-) Informal (7)	57	0	2/4	4/7	11/19	24/42	13/23	3/5

As can be seen from the table above, the prosecutors were asked to evaluate the general atmosphere in the courtroom on a given continuum scale of options. In addition, they were also asked to verbally describe their ideal atmosphere. Eight prosecutors reported that they did not want any changes in the current atmosphere: *"it is good the way it is"* (DA6). Most of the responses included mentions of the open and relaxed nature of the atmosphere (31 mentions) and, on the other hand, of the formality of the situation and the clarity of the stages in the procedure (32 mentions). Almost all the female prosecutors mentioned the formally clear structure in a procedure. (Table 7c.)

The data was divided into categories, as in the following Table (Table 7c).

TABLE 7c. Gender and mentions of an ideal atmosphere

Mentions	male	female	total
Equal	3	2	5
Open and relaxed	**21**	**10**	**31**
Formal and clear-structured	**17**	**15**	**32**
Change is not desired	6	2	8
Total	47	29	76

The following descriptions clarify the above-mentioned categories:

> "I wish that the atmosphere were more relaxed and open than it often is. However, a certain formality and official style should not be forgotten. On the other hand, in some situations the chairperson allows the process to be too informal with interruptions and wearing hats." (DA1) and

> "Relaxed and open, but in such a way that the formal required structure is followed, because it guarantees for its part that the case will be processed properly. The process is always somewhat formal, and it also makes the situation safe. If it is too informal, in other words if we don't proceed in normal order, the atmosphere becomes distressed." (DA40).

Taking the parties into consideration and the presiding judge's responsibility for the atmosphere were reflected in the following description of the atmosphere:

"The atmosphere depends largely on the chairperson, which is why it varies quite a bit to begin with. A certain amount of formality is required to safequard the authority of the court, but on the other hand, an adequate amount of relaxedness and openness is also required to make the parties feel comfortable. The parties should also feel that their case is important to the court, too." (DA30).

The following practical instruction for realizing the same matter was given for the chairperson: *"The chairpersons could more often explain the order of proceeding already at the beginning of the hearing. It could make the atmosphere more relaxed on some occasions."* (DA42).

One prosecutor felt that the atmosphere did not have any connection to the interaction between persons in the courtroom, but that it was always connected to the case: "*to this I have to answer that the desired (atmosphere) does not much matter, because the nature of the cases varies a great deal and a big drug case cannot relax the atmosphere and make it very open, no matter what you do*" (DA4).

The environment for the activity was also created with the participants involved (see e.g. Jones & James 1979). One essential factor in the courtroom activity is the chairperson, the presiding judge of the court. There were several mentions of how the chairperson was expected to lead the hearing (see question 9, Appendix 2). Most of the respondents expected the leading to be fluent, without unnecessary interruptions, and also to proceed in a systematic and firm manner (Table 8). Almost all of the respondents mentioned maintaining order in the courtroom. Other ways of leading were categorized into emphasizing equality and ensuring the understanding of different parties.

TABLE 8. Gender and mentions of the expectations concerning the chairperson's manner of leading

Mentions	male	female	total
Maintaining order	**37**	**15**	**52**
Ensuring fluent activity in the courtroom	**30**	**8**	**38**
Emphasizing equality	19	2	21
Ensuring the understanding of different parties	6	7	13
Total	92	32	124

Almost half of the female respondents (max. 16) mentioned ensuring the understanding of different parties as one of the chairperson's expected ways of leading, whereas only one seventh of men (max. 41) mentioned it. Often other ways of leading were expected alongside ensuring the understanding:

> "The leading should include clarifying questions posed to the parties, as well as guaranteeing that all the parties understand what is said. The chairpersons themselves should also ask if they don't understand something. Separating disputed matters from undisputed. Keeping the process strictly to the point and stopping digression." (DA24) and
>
> "The leading should be explicit. Everyone has to know what is going on. In addition to this, the leading should not be intrusive. The chairperson must not interrupt anybody or, for example, ask the witnesses questions while others are questioning them. He must also be friendly and take the laymen into account." (DA40).

Maintaining order and ensuring fluent activity in the courtroom were described in the following:

> "Assertiveness. Indicating and clearly distinguishing between different stages clearly from each other. Predictability. Leaving room for the prosecutor's accusatory action (= active prosecutor/passive chairperson as an arbitrator)." (DA3) and
>
> "The chairperson maintains discipline, makes sure that everybody keeps to the point. Lets the prosecutors get on with their work, and doesn't want to be the star (=cf. accusatory action)." (DA20).

The above examples also emphasized the prosecutors' role as an active arbitrator in the case. In addition, however, the respondents expected a different activity from the chairperson, such as:

> "The chairperson shouldn't interfere in the middle of the prosecutor's speech. The judges and the lay judges should, however, pose questions, if they don't understand something. The prosecutor doesn't always know how to emphasize the facts that are strange or unclear for them." (DA21) and
>
> "The leading should be such that the chairperson doesn't sit like some pharaoh. The chairperson should pose questions and lead when necessary. He shouldn't let the prosecutor fall over something that could have been avoided by a simple question." (DA32).

The following example has already moved to describing the leading in practise as opposed to the expected systematic and fluent leading described above: *"The leading should be assertive; it should indicate explicitly which stage of the procedure is in progress. The leading shouldn't be too authoritarian, but not too lax either. More compliance and more addressing the way of communicating in the beginning, and if these measures cause the discipline to be lost, the chairperson should react to the disturbing factors promptly and convincingly."* (DA1).

Impartiality in leading was described, for example, in the following: *"the leading should be equal, leading and advisory"* (DA23) and *"explicit and assertive presiding. Directing the process impartially so that it appears impartial"* (DA54).

"Nowadays the chairperson doesn't seem to preside over the court, but just lets it go on its own. The discussion should be restricted to the matter at hand. Everyone should be required to be polite, or at least, appropriate behavior" (DA9), is an example of what kind of presiding seemed to be possible in the new procedure.

In conclusion, the respondents expected more that the chairperson would preside over the formal and functional activity in the courtroom, such as maintaining order and ensuring smooth action in the courtroom (52 mentions in Table 8), and less that the chairperson would control the factual activity, like the content of the case, for example required a coherent structure in order to ensure the understanding of the different parties (13 mentions in Table 8).

The prosecutors were asked to evaluate their own actions in the courtrooms (see question 11, Appendix 2). The evaluation was realized using pairs of adjective based on semantic differentials (Snider & Osgood 1969). The continuum was divided into seven classes, so that the positive end yielded seven points and the negative end yielded one point. The closer the mean value of the evaluated action was to seven, the more positive that action had been evaluated (Table 9).

All the respondents evaluated their own activity. Only one observation was missing and thus only concerned three pairs out of the seven described in the table above.

The prosecutors evaluated their own activity to be relatively positive; high mean values were evenly spread over all the given options. The evaluations concerning the capacity for concentration were especially positive: the mean value is 5.6 and a large number of respondents seemed to agree on it (st. deviation 1.08). In addition to this, the median is 6.0, which means that the most common placing on the "focused–absent" -continuum was 6.

TABLE 9. Prosecutors' evaluation of their activity

Variable	no. of responses	mean	med.	st.deviation	lower quartile	upper quartile
Official – unofficial	58	**3.24**	**3.0**	1.23	2.0	4.0
Friendly – unfriendly	58	**5.03**	**5.0**	1.04	4.25	6.0
Participant centered–authoritarian	57	4.79	5.0	1.10	4.0	5.0
Explicit – implicit	58	5.19	5.0	1.21	5.0	6.0
Kind – aggressive	58	4.50	5.0	0.88	4.0	5.0
Thorough – fragmentary	57	5.49	6.0	1.07	5.0	6.0
Focused – absent	57	5.60	6.0	1.08	5.0	6.0

The median of the continuum "official – unofficial" is 3, so the most common placing on this continuum is on three. Furthermore, it should be noted that 'unofficial' was placed at the positive end of the continuum. Thus, the mean 3.24 reveals that the prosecutors evaluated their activity to be quite official.

The prosecutors also evaluated their activity to be fairly friendly (mean 5.03) and even kind (mean 4.50). The most common position given to these evaluations was 5 (median). Furthermore, the respondents agreed very strongly on their kindness, which is indicated by the standard deviation (0.88).

4.3.3 Participants

Observed relationships

The communicative situation is formed by the purpose of the activity and the environment, but also by the participants in the situation (Athay & Darley 1981). Without participants there is no environment. The participants also manifest the meaning

of the situation by their activity as well as the communication manifesting it. As was stated before, the relationships form the core of interpersonal interaction. Relationships are both the result of and the background to any interaction between people.

In the courtroom the interaction is created between parties, and it requires both subjective and cognitive processing by the different parties. The interaction is seen through their communication. According to Fisher (1978), interaction is, however, almost synonymous with the concept of communication. Watzlavick, Beavin and Jackson (1967) state that no one can avoid communicating. According to these interpretations, it is not necessary to actively process the interaction between people; it is enough that people are only present in the same physical environment. Communication relationships are then observable results of that interaction.

The researcher's conclusions on the relationships observed in the data revealed only a small behaviorist part of these relationships. Furthermore, it should be noted that observing only verbal interaction and separating individual speeches from the context do not justify conclusions regarding the relationships between different parties in the courtroom in general (cf. critique against conclusions based solely on language observations and Burgoon & Hale 1988). In order to broaden the interpretations and an understanding of them, the present study also takes an introspective look at the relationships.

The relationships between the parties are observable through communication and the observable relationships start when the parties meet at the beginning of the criminal hearing. The relationships as such may already have been started when the parties got to know that the case would be tried in court. For the defendants this may have happened even earlier, if they knew that what they did is criminal in the eyes of the law.

The relationships between the parties are not voluntary in the courtroom environment. Even individuals who are not directly involved in the case can be summoned to appear in court on the under the law (CrPA 97/689, Chapter 17: 20 §), so even they do not necessarily appear in the court of their own free will.

The observational data indicated that the nature of the relationships between the parties was mechanical and formal. The relationships were also the results of the legal system, which became observable through the communication in court. These relationships can even be evaluated in public. Criminal trials are always public, unless the presiding judge decides otherwise based on the nature of the case at hand (Law of Publicity of Trials 21.12.84/945: 3 §). The relationships being mechanical refers to

the fact that verbal participation in a situation seemed to have a certain order, which recurred almost identically regardless of the case, the participants or the chairperson at hand. The recurring order also made the relationships formal; knowing the prescribed order enabled participants to anticipate the procedure, and there seemed to be only few exceptions in the order in which the hearing proceeded.

One feature was related to the *dimension of formality* (cf. Burgoon & Hale 1984). One recurrence of the situation was the ritual of taking an oath, or the affirmation before a witness gave evidence. This formality also confirmed one part of the legal system, which became observable through the communication in question.

Another description related to the dimension of formality in relationships was that the nature of the situation was apparently assumed to be known by everybody. There were only few cases where the exact meaning of the situation, as well as how it would proceed, were given as information for all at the beginning of the hearing. Everybody except for the lay members in court, like the litigant parties or the public, knew these procedures and other formalities. However, at least in theory, the assumptions do not become common knowledge until they are verbalized out loud (cf. Salminen 2001 and the basic meaning in communication of *sharing* thoughts).

The above-described phenomenon can be seen as illustrating not only the asymmetric relationships between the participants, but also the manifestation of power in the relationships. The possible uncertainties of the purpose, as well as of the procedure, at the very beginning of the hearing do not increase mutual understanding of the case at hand or how it is handled between the parties.

The asymmetry in the relationships is also illustrated by the fact that one participant has the power to determine not only the content and the length of the speeches made, but also the willingness and the timing of participation, such as talking. Voluntary, spontaneous action was thus limited.

The presiding judges, then, not only decided the order of taking the floor by granting permission to speak, but also defined the topics, *"prosecutor, read the indictment, if you please"* (R5/cm4), and the length of the speech: *"well, that's enough of the social order in Iran"* (P5/cm51).

Permission to speak in the courtroom had to be obtained, if one wanted to have one's information included in the consideration of the decision (cf. CrPA 97/689, Chapter 11: 2 §). Only few cases that could be interpreted as the parties taking the floor without substantial function were observed. The following examples of the prosecutors' speech illustrate this aspect: *"Your Honour, I have no questions at this*

stage" (P7/pr12) and *"no questions"* (O6/pr17). The data included no examples of lawyers using similar addresses as in the examples above. Almost all the occasions when permission to speak was granted were used and filled with information. They will not be evaluated further here.

The observational data also revealed features of the *dimension of dominance* in the relationships, as well as of the distance between the participants. The oath was taken by witnesses who were not directly involved in the case, and the oath was accepted by the presiding judge who, with one exception also reminded the witnesses of the consequences of breaking an oath in all the trials observed. The solemn, recurring ritual implied this power and the status of the presiding judge and also emphasized the different positions of the participants in the situation itself.

The presiding judge represented the legal system, which also gave her or him authority to act as mentioned: *"before the witness testifies, the chairperson of the court shall remind her or him of the duty to be truthful and, if an oath or affirmation has been administered, of its importance"* (CJP 48/571, Chapter 17: 31§), so the action of the presiding judge was explained by the legal system itself.

According to the law, the presiding judge is obliged to direct the discussions in the courtroom by regulating the content of the messages and ensuring that the discussions keep to the point. This can be done, for example, by *"interrupting improper statements and admonishing everyone behaving in a disturbing or improper manner"* (cf.CJP 60/362, Chapter 14: 6§). The role requires assertive communication in order to be realized, and when this is successful, it reinforces the central status of the chairperson in the situation.

In the hearing the speeches of the presiding judge (e.g. P5/cm51) indicated dominance and control in the relationships (cf. Sillars, Coletti, Parry & Rogers 1982), which can also be seen in the ritual of taking an oath. The chairperson also granted the different parties permission to speak and could also interrupt the discussion between the parties. There were only few trials in the observational material where the chairperson used sanction speeches or made interruptions and returned the discussion to the point. This result concerning the communicative choices of a presiding judge is also supported by earlier results (Välikoski 1996).

In addition to the previous examples, the dominance in the relationships was also shown in the discussion between the defendant and the presiding judge immediately after the proclamation of judgment (P1):

> "What do you think L (the defendant)?" (P1/cm89)
>
> "Okay, if it (community service) doesn't disturb my studies too much." (P1/defendant18)
>
> "The basic rule here is that there can be only one or two paroles, and not more. If you miss community service two times, you'll be sent to prison. Don't bother coming here complaining, if you haven't been there. You must take responsibility." (P1/cm90)

The speeches of a presiding judge also illustrated the distance (cf. Brown & Levinson 1978) between the participants, because the form of her or his speeches was often formal and included information that can be seen as emphasizing the triviality and the strangeness of the situation to the others, like: *"here in the courtroom we have a habit of..."* (O3/cm17). Only two chairpersons used addresses that can be seen as including information about themselves, which is regarded as a sign of intimacy and closeness (cf. Altman & Taylor 1973). One told about the tiling that was done at her home (R7) and the other indicated having the same first name as the defendant: *"we both have been blessed with that name..."* (P8/cm51). Furthermore, the chairpersons did not analyze the information given aloud in the courtroom, unless the above-mentioned interruptions are interpreted as feedback of not keeping to the point.

There were only few hearings where the presiding judge addressed the court with information aiming at the triviality or familiarity of the situation. Such dimensions of an *intimacy and similarity* in relationships became true when one presiding judge noticed that one of the witnesses had brought two little children into court:

> "We usually don't allow little children in the courtroom." (P8/cm24)
>
> "Oh." (P8/witnessA2)
>
> "But you can stay, if you promise to be good. We won't be talking about very bad things here." (P8/cm25)

The same dialogue can also be interpreted as distance between the participants. It can be seen above that the chairperson gave information that, on one hand, distanced the participants due to the specific nature of the courtroom environment, where *"little children do not belong".* On the other hand it brought the participants closer, although with conditions *"the children can stay, as long as...".* The expression concerning the quality and nature of the information, *"not very bad things"*, was a rather exceptional evaluation of the nature of the discussion in the data studied.

The same chairperson also asked after the hearing was over: *"well, what did you think, girls? Wasn't it alright? Or was it boring?"* (P8/cm30).

In addition to the previous example, the information concerning a caring function, even empathy, in relationships could be detected in the case where the presiding judge guided the young defendant after the hearing by saying: *"get your act together, and finish your school education"* (R1/cm8), or where the chairperson stated, when the defendant regretted the restraining order: *"I hope you get your life in order"* (P7/cm21). This type of speech, however, was rare in the data observed.

The presiding judges did not encourage the parties to communicate in the present study, which is a result similar to former research on the Finnish courtroom context (Välikoski 1996). Each party had thus, in any case, a chance to address the court immediately before moving to the next stage in the procedure, as can be seen in the following examples: *"do you have more questions K. (the defendant)?"* (R5/cm16) and *"do you have more questions, prosecutor?"* (O3/cm23).

There are different *roles* in a criminal procedure, which become apparent through observing the relationships between the participants involved. One participant in the relationship, the presiding judge in the courtroom, has the role of being responsible for the external realization of the activity, whereas the other participants mainly produce the content. The chairperson can, nonetheless, also affect the content production by defining the real time relevance of the content by posing questions and directing and interrupting speeches. In addition, he also has the opportunity to define the long-term relevance of the content produced by his judgment made together with the lay judges. The role of a chairperson as the manager of the external control places him in a special position in the decision-making, because he both influences the information himself and observes the action emerging through communication. He also absorbs and processes the information he thus receives and translates it into common knowledge (cf. Salminen 2001) which eventually results as a solid and definite decision, the judgment.

The prosecutors' role is to examine the case from their own as well as the other party's point of view. In addition, they aim at convincing the court of the rightfulness of their view. The prosecutors examined the case by posing questions to the witnesses in the witness hearing. The convincing material of the prosecutors' communicative competence was compiled from the information gathered through the questions asked in the courtroom. They were processed during the case together with the clos-

ing arguments that were prepared partly in advance (cf. competence researchers e.g. Spitzberg & Cupach 1984).

The role of counseling lawyers is almost identical with that of the prosecutors, but they only have to produce information to reinforce their view (cf. the Law of Lawyers 58/496).

The prosecutors and the lawyers used more colloquial language than the chairpersons. On the other hand, they did not address the court with information about themselves at all.

When a witness was giving evidence the prosecutors did not only pose direct questions, but they also presented assumptions, which were confirmed by a possible affirmative answer. The questions of the prosecutors also aimed at clarifying the respondents' perceptions: *"how far did you run?"* (P10/pr39), *"did he return again?"* (P1/pr16) and *"how did you know that the bottles were stolen?"* (P1/pr14). They also wanted to ascertain the respondents' opinions: *"in your opinion, how close friends were X and Y?"* (P10/pr55).

As stated earlier, some of the prosecutors conveyed such information in their speech that could be interpreted as aiming at understanding the defendant's life. The counsels' speeches did not include such information.

The indictment was, nonetheless, read out aloud, so the case at hand was not simplified until the charge was described. The hearing had often lasted for at least 15 minutes before this.

One important role in criminal proceedings is that of the witness. Giving testimony is a civil obligation that cannot be declined. The relationships observed in the giving of evidence between a presiding judge and a witness seemed not to be as dominant as the relationships between the chairperson and other participants. The dimension of intimacy and similarity in the relationships were verified particularly in this relationship as reported earlier.

The participants in the courtroom also differed in their roles, being either experts or laymen. The participants who had legal education were seen as experts, whereas other participants were laypersons, the lay judges included. The defendant as well as the plaintiff, however, can be seen as experts in the content of events.

Experienced relationships

The present study also approaches the concept of relationship in an introspective way, from the viewpoint of one party, the prosecutor. What expectations does the prosecutor have concerning the interaction between the different parties in the courtroom? (Research question 1.2)

Questions 3, 5b, 6c, 7b, 9 and 10 in the questionnaire (Appendix 2) illustrated the prosecutors' expectations concerning the interaction in the courtroom. These were elicited both by direct questions (question 3) and by ascertaining their expectations concerning atmosphere (question 5b) and discussion (question 7b). These expectations were also compared with the perceptions of the present situation (5a and 7a). The evaluations and expectations concerning atmosphere (5a and 5b), discussion (7a and 7b) and the chairpersons' manner of leading (9) also gave information used for the interpretation of the prosecutors' definition of the trial as a speech communication situation (research question 1).

The prosecutors did not want the interaction between the parties to be particularly special in the courtroom (question 3). Of all the respondents (58), 23 had written that they *"do not want any particular relationship between the parties*". The descriptions given here were divided quite evenly to illustrate either the affective features of relationships, such as the natural, unreserved and fluent nature of the relationship, or the cognitive features, such as *"the activity would be understandable and explicit".* Some responses included both features: *"understandable, natural and polite"* (DA22).

Three prosecutors mentioned that they were pleased with the present interaction: *"it is pretty much the way it should be. The chairperson should not interfere too much with the interrogations"* (DA3).

Two respondents stated a clear purpose for the interaction between the parties. One wanted *"the relationship to be clearly dominated by the prosecutor"* (DA9) and the other replied, *"the question is stupid. We do not aim at interaction in the courtroom; we aim at controlling the situation. It can be compared to warfare, although in a more civilized manner"* (DA48).

Of all the individual mentions, most (8 mentions) were concerned about the fact that the interaction relationship between the parties should not inhibit understanding. The interaction should be:

> "Understandable for the parties." (DA6),

> "I want the interaction to be understandable. Sometimes I present the message in a concealed manner, clinging for example to the content of some paragraph in the law. The attention should be directed promptly to disputed questions, not to digression." (DA18),
>
> "First everyone should understand what is going on. The prosecutor's job is to explain this when presenting the case. I want to have such a relationship with the defendant that he understands the following matter: the prosecutor's job is to bring him to account for a criminal act, nothing else." (DA21),
>
> "The interaction should be such that the parties know in all the stages of the case what is expected of them, in order to prevent unnecessary disturbances from occurring." (DA31) and
>
> "Such that everybody would understand what the others mean. It should be based on facts, and not be too aggressive. Kind and such that everybody gets to say what they have to say, but do not speak beside the point or otherwise for nothing." (DA40).

One prosecutor described an ideal interaction as follows:

> "I would like the relationship to be safe and secure, but yet to preserve the formal and official nature. Such that the hearing wouldn't be legalized harassment of the parties. The matters should be handled properly, avoiding inappropriate ways of influencing: arrogance, interrupting communication or disturbing it otherwise, degrading or humiliating others." (DA1).

The interpretation of the results was challenged by the fact that the question alone was quite ambiguous. How have the respondents understood the concept of interaction or communication relationship? Or the more common concept of relationships, which was used to illustrate the actual question? How many respondents had analyzed only the concept of relationship in the question, which had connotations of the social relationships and closeness, even intimacy, of the relationship?

The task of the prosecutor is a classic example of the profession, which is not seen to include a close relationship between the expert and the layman (cf. Tuomiranta 2002). As described above, the relationships are, nonetheless, the results of interaction or maintained by it, and on the basis of these, the layperson formed his conception of contentment when facing by the experts (see Juholin 1999, Peltola 1999, Pincus 1986).

Of individual mentions, the most reported mention was that the interaction relationship between the parties should not inhibit understanding. When these wishes were realized, they increased the layperson's contentment with the relationship with an expert (see Engeström, Haavisto & Pihlaja 1992, Haavisto 2001, Välikoski 2000). The witnesses also reported that they did not see their role in the courtroom to be such that social relationships were necessary (Haapasalo 1994, Välikoski 2000). Instead, they took the view that natural and open *communication relationships* made the activity fluent and even trivial, so that the task of being a witness was easy to realize (Välikoski 2000).

Taking care of the relationships

The prosecutors who responded to the questionnaire reported that they usually paid attention to the way different parties were treated in the courtroom (question 6a, Appendix 2). This result was gathered from 53 responses. There were 3 missing observations and three male prosecutors reported that they did not pay any attention at all to the treatment of the different parties in the courtroom.

Next the respondents were asked to describe how they themselves took the different parties into account in the courtroom (question 6b, Appendix 2).

Presiding judge

The prosecutors took the presiding judge into consideration by addressing them as *"your honour"* or *"sir".* The respondents attempted to establish eye contact with the chairpersons, and knowing their habits formed the basis for consideration: *"You must know the person's habits. You shouldn't be on bad terms with the chairperson"* (DA3) and *"I don't state the obvious, it only takes too much time. I try to take the chairperson's way of working into consideration when speaking"* (DA20).

There was also one mention of an opposite way of considering the chairperson when speaking: *"I don't pay any special attention. I always try to behave so that my behavior is not dependent on who the chairperson is"* (DA21).

A few respondents also considered the chairperson to be clearly a target of influencing, who in that case had to be considered when speaking: *"I direct my arguments to the court, which the chairperson represents. He's the one I have to try to convince of the grounds for the charge"* (DA5). Influencing was even more explicit in the following descriptions:

> "I sell my product to him." (DA16) and

> "He is sold the prosecutor's view of the case, of which criminal act is in question and on what grounds." (DA56).

Lay judges in the court

The prosecutors did not report actually considering the lay judges when speaking: *"I hardly remember their presence, although I should"* (DA8) and *"I pay no attention to the lay judges at all"* (DA37). One respondent even stated that he did not consider them at all, *"because the prosecutor is not in direct interaction with the lay judges"* (DA32). There were almost 50 (total 59) similar responses.

Some of the respondents stated, however, that they considered the lay judges nonverbally *"by trying to convey through eye contact that my presentation is directed at them as well"* (DA4), verbally *"by providing the layman judges with speech they can understand and by avoiding legal terms"* (DA7) as well as using both elements: *"by taking breaks during the closing argument and by stressing clearly some important aspects that they have to understand"* (DA42).

The lay judges were also considered when the connection with the chairperson was unclear:

> "If I don't succeed with the chairperson, I try to sell my product at least to the lay judges." (DA16),

> "We often try cases from areas that the chairpersons are not familiar with. Sometimes I direct my speech directly and especially to the jury, when I want them to pay attention to a certain matter. I expect that it is also conveyed to the chairperson in the negotiation." (DA21) and

> "I definitely address them, if the chairperson just draws in her or his papers. They are usually interested in the prosecutor's speech." (DA3).

Injured parties

Only 15 prosecutors out of all 58 wrote specific descriptions of taking the injured parties into consideration when speaking in the courtroom. The others reported that they do not pay any special attention to them, or they had not answered at all to this question (7 respondents). The injured parties were mainly considered nonverbally: *"I look at them"* (DA4) and *"I try to show sympathy and support by smiling and nodding to them"* (DA9). The role of the injured party was also seen as the basis of co-operation: *"I aim at getting them onto the same team. I understand the plaintiffs if they have complicacies"* (DA3) and *"I aim at winning them over as much as I can and try to relax them"* (DA16). The co-operation in considering the injured party could not, however, go too far, because *"the injured parties sometimes think that the prosecutor is their counsel. I try to communicate to them that the prosecutor is bound by law and that she or he can't be behind all kinds of demands"* (DA21).

The purpose of considering the injured party was mentioned in two responses. On the one hand, *"I try to listen to them, because they give valuable help in gathering the facts"* (DA56) and, on the other hand, *"I have to make them see that the prosecutor regards their case with appropriate seriousness"* (DA57). There were, however, no specific descriptions of the tools to reach these goals.

Defendants

A defendant is a potential offender. The prosecutors did not, thus, provide examples of sympathy or alleviating the situation when describing their ways of considering the defendants in their speech during the trial. Only two prosecutors stated that they considered the defendant *"with polite and respectful manner, such as I would anybody else"* (DA2) and *"by creating an unreserved atmosphere and kind of acting as a friend"* (DA16). One prosecutor reported *"I avoid the excessive use of legal terminology, when the defendant is alone in court"* (DA42).

The prosecutors attempted mainly to be manner-of-fact and strict with the defendants *"obviously avoiding unnecessary provocation and embarrassment and concentrating on the subject matter"* (DA4 and DA18).

Some of the prosecutors also considered the defendants with an educational attitude, such as: *"the prosecutors should behave in a way that the defendant understands their job as well as what he is being charged with and why"* (DA21) or *"I have to make the defendant understand why he was charged in the first place"* (DA57).

Witnesses

The task of the witness was inherent in the ways that the prosecutors took the witnesses into consideration in their speech. The witness has no interest in the case at hand and thus he is an outsider to the events. In addition, the witness is in the courtroom only to give testimony. This was also evident in the descriptions of the prosecutors. Most respondents tended to focus their attention on the witness by relaxing and alleviating the atmosphere (12 mentions), by creating a safe atmosphere for the testimony (8 mentions) and by being polite (6 mentions). Practical tools for showing their concern were: addressing the witness by name (DA4), polite greeting and ensuring that the witness knows the subject-matter (DA6), starting with easy and simple questions (DA27 and DA36), recalling what had happened together with the witness (DA16) and thanking the witness at the end (DA36).

Some respondents mentioned that the prosecutors could, in their speech, show understanding to the witness in that *"it is very unpleasant to be a witness"* (DA8) and *"we are dealing with a person who has to appear in court because someone else has made a mess"* (DA57). According to one of the respondents, it should be remembered that *"you don't question the witness too harshly and aggressively, that you don't pressure the witness more than the defendant"* (DA21).

One response included a mention of the nature of the co-operation between the prosecutor and the witness. This was said to be the function of consideration: "*with the help of witnesses the prosecutor gathers information on what has happened. They are, however, often scared and confused, which means that, for starters, I must aid them to get rid of their fears and to understand the matter and their own importance in the handling of it*" (DA56).

The responses above describe how the prosecutors considered different parties in their speech in the courtroom. The results from the questionnaire as a whole analyze the prosecutors' own perceptions, either indirectly or directly, concerning their role in

the hearing. In addition, however, the present study aimed at discovering the prosecutors' own wishes as to how she or he would like other parties to take her or him into consideration in their speeches (question 6a, Appendix 2).

Nearly all the respondents had different expectations, because only 8 male prosecutors commented that they did not want to be paid any attention during courtroom communication (Table 10). One of them even announced, *"the matter was irrelevant to the prosecutor's tasks"* (DA37).

The following table presents the categorization of the wishes of the prosecutors.

TABLE 10. Gender and considering the prosecutor in the speech

Mentions	male	female	total
No wishes	8	0	8
Personality vs. task	**26**	**12**	**38**
Voice and content	6	3	9
Evaluation of the charge	4	4	8
Total	44	19	63

Most comments concerned clearly the fact that different parties should be able to make a distinction between the task of the prosecutor and the personality of the prosecutor. This can be seen in the following descriptions:

> "I would not like to hear picking or sarcasm addressed to me personally." (DA3),
>
> "The defendants think too often that the prosecutor is a wicked or mean person." (DA16),
>
> "No such criticism that is addressed negatively to the prosecutor's appearance." (DA31) and
>
> "Attention should be focused on the subject matter, not the person presenting it." (DA55).

The prosecutors wished that all parties would speak loudly and clearly, together with the wish that all parties should *"express clearly at which points the prosecutor is wrong"* (DA21).

The role of a prosecutor as a part of the judicial institution and the legal system was inherent in some of the wishes, as can be seen in the following examples:

> "I wish that the prosecutor were seen as one of the parties in the trial, who is treated accordingly, not too much as a special party in the trial." (DA1),
>
> "I don't have any specific wishes, because I represent the institution. Naturally everyone should have good manners." (DA4) or
>
> "It's desirable that people present their views of the matter and not the persons and that what, for example, the prosecutor has already stated would not be repeated unnecessarily. It would also be desirable that people listened to what the prosecutor says and do not distort what has been said." (DA36).

The expectations of the prosecutors concerning the interaction in the courtroom were also illustrated by their estimations of the importance of some activities that described the courtroom communication. The same estimations also clarified the courtroom activity as a communicative situation (research question 1) as well as the appropriate communication in it (research question 2).

The list of activities (question 6d, Appendix 2) was based on the literature from both speech communication and procedural law.

The expectations concerning the criteria for an ideal respondent (question 10, Appendix 2) revealed both the prosecutors' expectations in the matter as well as their conceptions of the communicative situation.

The study in question shows that the prosecutors estimated *ensuring the understanding of the plaintiffs* as one of the most important activities. This activity took the first two positions in the 8-scale continuum (Table 11a), i.e. 42 percent of all responses to the question. The activity that was estimated to be the most important took first place on the 8-point continuum, and the least important took eighth place. In the mean value, first place counted for 8 points, and eighth place was worth one point.

Similarly, 42 percent of the respondents put the importance of *presenting logical and systematic questions* in second and third place on the continuum. 40 percent of the choices were given to *showing an interest in the plaintiff's speech*, which put it in places 5 and 6 on the continuum. According to the prosecutors, the least important activities were *influencing the decision-makers with speech* and *relieving the parties' tension* (24% and 20% of choices). On the other hand, 30% of the respondents ranked *influ-*

encing the decision-makers with speech as the most important activity (first and second places). Only four prosecutors put *allow the party in question to say all he wanted* in the most important places (1 and 2). Otherwise the choices were distributed quite evenly among all the options; all of the activities were, thus, deemed in general important. This conclusion is also supported by Table 11b.

The first three activities were placed at least third, and none of them was evaluated lower than fifth. The mean values of these options were also high, although there were some deviations in the choices. All the activities were, then, considered very important. The prosecutors agreed most on options 3, 4 and 5, because these choices had very little standard deviation. The least important was quite unanimously option four (st. deviation 1.93), i.e. *"offering a sufficient amount of time for answering"*; the mean value was 3.74, and on average it was ranked sixth (median 3.0). The prosecutors' estimations showed quite a wide standard deviation, which means that all the activities described in the options were also put in first place. This was also true as far as option four (Table 11b) was considered.

There were no apparent differences in the choices between male and female prosecutors.

The prosecutors were also given a chance to define an ideal respondent to their questions (question 10, Appendix 2). An ideal respondent could be a witness, a defendant or a plaintiff, the common feature being that they answered the questions put to them by prosecutors. The question was apparently relevant, because all the responses included some mentions of criteria. The mentions were clearly divided into two groups. The first group included mentions of the content of the responses, and the second group included mentions of the manner of answering. The ideal content included objective information, which was based on the respondent's own and accurate observations without any conclusions. This kind of information was included in:

> "Honest observations of how the events have occurred." (DA2),
>
> "Direct answers to the questions, as well as independently evaluating the sources of error." (DA3) and
>
> "Articulate information. States clearly what he knows of the matter, does not jump around or cover up the reason for not remembering by using quotations" (DA14).

TABLE 11a. Frequencies, percentages and mean values of the order of importance of the chosen activities

Activity	influencing the decision-making with speech	relieving the parties' tension by speech	allowing the party in question to say all that she or he wanted	showing interest in the plaintiff's speech	offering a sufficient amount of time for answering	presenting logical/ systematic questions	ensuring one's own understanding	ensuring the plaintiff's understanding
Mean	4.41	3.94	3.85	3.96	3.74	5.28	5.39	5.41
Total	54	54	54	54	54	54	54	54
1	9/17	8/15	2/4	3/6	1/2	6/11	13/24	12/22
2	7/13	4/7	2/4	4/7	7/13	11/20	8/15	11/20
3	4/7	5/9	9/17	6/11	2/4	12/22	10/19	6/11
4	7/13	4/7	10/19	5/9	7/13	8/15	4/7	9/17
5	7/13	4/7	8/15	11/20	9/17	4/7	7/13	3/6
6	3/6	8/15	5/9	11/20	13/24	8/15	3/6	4/7
7	4/7	10/19	9/17	10/19	8/15	3/6	5/9	5/9
8	13/24	11/20	9/17	4/7	7/13	2/4	4/7	4/7

TABLE 11b. Parameters for the options

Variables	no. of responses	mean	med.	st.deviation	lower quartile	upper quartile
Option 1	54	**5.41**	**6.0**	2.29	**4.0**	7.0
Option 2	54	**5.39**	**6.0**	2.29	**4.0**	7.0
Option 3	54	**5.28**	**6.0**	**1.95**	**4.0**	7.0
Option 4	54	**3.74**	3.0	**1.93**	2.0	5.0
Option 5	54	3.96	4.0	**1.94**	2.25	5.0
Option 6	54	3.85	4.0	2.02	2.0	5.0
Option 7	54	3.94	3.0	2.51	2.0	6.0
Option 8	54	4.41	4.5	2.60	2.0	7.0

NOTE: the closer the mean value is to eight (8), the more important the activity (options 1–8) has been estimated (positions 1–8).

The ideal manner of the respondent's answering could be "*logical, and not too wordy*" (DA1), "*honest, even when being imperfect*" (DA6), "*not thinking what and how to tell, but answering the questions*" (DA9) and "*calm and peaceful*" (DA41). Only one description included a mention of the respondent's use of voice: "*answers in a clear and loud voice*" (DA23).

Some prosecutors required not only relevant and accurate content presented appropriately from the ideal respondent, but also that the respondents showed they had understood the question. This can be seen in the following examples:

> "An ideal respondent is clear, who understands the essence of the question and replies directly to that." (DA5),
>
> "Understands the question, and that his observations are in question and states clearly what he remembers and what not, and wants to tell the truth." (DA8),
>
> "Doesn't attempt to mislead answering or to act as if he doesn't understand the questions." (DA15) and

"Doesn't argue that he doesn't understand the question." (DA18).

Three prosecutors indicated the occupation or education of the respondent to be a prerequisite for ideal answering, such as "*the worst is an engineer. It's hard to say what the ideal is. The clearest and the most reliable witness is a police officer*" (DA29), "*generally the police are accurate observers*" (DA34) and "*perhaps another lawyer who knows what the trial is about and who isn't nervous and who has not got too many preconceptions of the conclusion of the case*" (DA4).

One prosecutor indicated a connection between the witness' emotions and answering: "*the witness should also have an interest in settling the case. If this is not the case, it is difficult to have a proper testimony from them. When the witness understands and feels this, the rest happens by itself. The others are good observers but bad reporters. With questions the prosecutor can compensate other defects but not unwillingness*" (DA21). The same phenomenon could also have been described in the following example: "*an ideal witness is someone who reacts at least somehow, and doesn't just stand there*" (DA58).

4.4 The criminal trial in theoretical frames

The part of the research reported in the previous chapter has already created a picture of the criminal hearing as a communicative situation. The purpose of the next chapter is to make this picture clearer with the perspective of relational and interpersonal theories.

The criminal hearing in the district court is a physically limited situation, which has a clear beginning and end. Different parties, however, have been dealing with the situation already before the physical arrangement: some as professionals, and others as clients. This background also affects their definition of the situation itself (Miller, Cody & McLaughlin 1994) and gives an explanation for their relationships.

The purpose of the hearing, i.e. solving a problem between the participants in a justified and adequate way, was rarely expressed explicitly in the criminal hearing. The observed material showed that the purpose was stated only a few times at the beginning of the hearing, and that common definitions of the situation, or ensuring the assumptions related to it, were rarely given. The task and the purpose of giving testimony were mentioned more often. In addition to the concrete instructions for

acting, such as "*sit down there at the front desk*" (R5/cm1), there were no attempts to facilitate the understanding of the abstract activity, the procedure of a legal system.

The purpose of the hearing was not announced until the presentation of the charge. The parties had often been at least 15 minutes in the courtroom before that.

Indirectly the purpose of the trial i.e. the meaning of the situation was shown, for example, in how the presiding judges gave the floor equally to different parties and let the witness talk without interruptions almost all the time. In addition, when moving from one stage to another, the chairperson ascertained the parties' desire to say more. The actions of the presiding judge described the previously illustrated equal treatment of the parties. This is indicated in the law (the Finnish Constitution, Chapter 2: 5 §) as one of the criteria for a fair trial. It was also one of the findings in the survey among the prosecutors as well as in the witness interviews (Välikoski 2000: 32–33). Another criterion for the fairness of the trial was related to the similarity of the procedures in the trial. The proceedings of the hearing followed a similar framework, but there was variation in the individual stages of the hearing as was mentioned above.

Only a legal expert can evaluate the factual purpose, i.e. a valid and firm judgment as the conclusion of the hearing, in the research data. The factual purpose was noticeable both in the courtroom activity, and in the courtroom communication illustrating the activity, because the judgment was often announced aloud and instructions for appeal were given. The grounds for the judgment were included in the information read aloud, although it was of the type "*the district court finds that it has been substantiated today*". The randomly selected research data, however, included only 16 trials where the announcement of the judgment was heard. The information read aloud was then at the beginning of the hearing, such as reading the indictment, as well as at the end, such as announcing the judgment. *Both stages illustrated the purpose of the hearing, the meaning of the situation* and the information presented was directed especially to the lay parties. Any shortcomings in the information in question complicated the transfer of the case to the knowledge of the layperson (cf. Salminen 2001), and did not, thus, promote mutual understanding in situation. There were only a few trials where the chairperson ensured the understanding of the defendant after announcing the judgment.

All the expectations in relational communication concerning *relationships* (Werner & Baxter 1994) were met in the criminal hearing. The presiding judge, the defendant and the counseling attorney were working in the courtroom, and, thus, their relation to the situation can be interpreted as common and continuous. The other

parties may relate to the situation as something unfamiliar and unique. The tasks and the executive power were different for each participant. Some researchers have, indeed, studied how power is manifest in courtroom activity. Messmer (1997) states that the judge controls the interaction in German trials. Different parties have few opportunities to influence the procedure and the function of their speech is mainly to produce information (Conley & O'Barr 1998).

Finnish hearings are different insofar as one of the tasks of the prosecutor is to take responsibility for the activity at certain stages in the procedure. The power is, thus, distributed, although legal experts continue to have operational, functional, power. Generally, however, both the plaintiffs as well as the defendants are subjected to the presiding judge with regard to functional and factual power. Operationally and functionally they are in a subordinate position because they have only limited opportunities for spontaneous communication in the courtroom. Factually they are subject to the chairperson in that the chairperson also has the power to define and evaluate the veracity of the stories presented in their case.

The system, the structure of the entire judicial actions, granted the power in question; thus, it also explained the communication that was observed in the courtroom (see systematic approach and e.g. Eloranta 1980, Puro 1996:17).

In addition to the content of the conclusion, the legitimacy power was constantly present, for example, in the chairperson's right to *fine a person who disturbs the proceedings, does not obey the court or its chairperson, otherwise offends the dignity of the court or uses an insulting or derogatory manner of speech in the courtroom* (CJP 60/362, Chapter 14: 7§). There were no examples of this in the observational data in this research.

The chairperson's functional and operational power of definition over the situation was apparent in the research data, and it was also what the prosecutors expected from the chairperson's manner of leading proceedings.

The backgrounds of the different parties described above were also related to the relationships between the participants. This is a starting point, but the real-time courtroom communication turned the relationships into observable communication relationships. Previous research has shown that habitual offenders wanted (Aronsson, Jönsson & Linell 1987) a formal and quick trial. They did not require any specific relationships. The witnesses, on the other hand, wanted to have smooth and natural communication relationships in the courtroom (Haapasalo 1994, Välikoski 2000). Lind, MacCoun, Ebener, Felstiner, Hensler, Resnik & Tyler (1990) and Engeström,

Haavisto & Pihlaja (1992) state that the atmosphere in the courtroom and the treatment of parties are relevant to the degree to which the parties are committed to the judgment. People seemed more willing to accept results which had been arrived at with a procedure that was seen as fair (Haavisto 2000, Tyler 1990).

Furthermore, the prosecutors did not expect any social relationships between the parties. They wanted openness and naturalness in the otherwise formal atmosphere, and female prosecutors especially mentioned the connection between the atmosphere and the laypersons' understanding of the case.

Altman and Taylor developed *social penetration theory* in the 1970's, which argued that the birth of social relationships and their development were based on open and confidential communicative situations between people. The theory indicated that the better a certain formality, or a reserved stage in the communication was penetrated, the easier it was to form lasting social relationships. There was a correlation between the depth of the social relationships and the confidentiality and personality of topics in a discussion covered in the communicative situations (cf. Puro 1996: 33).

It is justified to assume that there are *no* attempts to form social relationships in the courtroom. The focus of the theory mentioned, however, was illustrated almost paradoxically in the courtroom communication situation. The topics of discussion were very intimate and personal, but they were related only to one party's life. The other party communicated verbally in order to produce information about the subject matter, such as about himself, whereas the function of the other party's communication was to receive, process and use that information to draw conclusions. In addition, the topics were discussed in public, and they were mandatory because someone had decided that the discussions ought to take place. The following examples illustrate the personal nature or intimacy of the topics; the persons answering the questions were defendants accused of various types of assault and abuse:

> "I didn't assault H, I love her very much." (P7/defendant4),
>
> "I can't do without medicine..." (R1/defendant6) or
>
> "There they were, in the woodshed with their trousers down. My wife and X (=plaintiff) and I doubt they were just taking a piss at the same time..." (P6/defendant27).

The activity described is required by the legal system, but it was manifest in the real-time interaction between the particular parties.

The discussions conducted in the courtroom also illustrated *a theory of exchange* (Thibaut & Kelley 1959). A researcher, who is an outsider to the situation, cannot observe the utility of the relationship or experience the rewarding nature of the communication, but he can analyze the visibility of the phenomenon. The visibility could be seen, for example, when the parties were examined in order to produce evidence. This type of discussion was illustrated in the case (P10), where the parties did not seem to feel the relationships to be very useful or the communication rewarding, following Thibaut and Kelley's (1959) theory. In this example, the defendant had the opportunity to ask questions about the story of an injured party:

> "Do you, defendant Q, have something that you want to ask from injured party X?" (P10/cm 17)
>
> "No." (P10defendant =Q6)

The defendant did not use the opportunity offered to pose his own questions and the presiding judge ended the discussion.

Some prosecutors did not use their opportunity to pose questions, like: *"Your Honour, I have no questions at this stage"* (P7/pr12) or *"no questions"* (O6/pr17).

Being silent is a non-verbal act and it is hard to draw any justified conclusions from it. The theory of exchange finds the communication to be successful when the relationships are felt to be rewarding and useful. The theory does not underline very clearly that the situation might also be the reverse. If communication is not useful and rewarding between participants, the relationships cannot be very good either. If they are not felt to be such, the participants often decline to communicate.

Refusing to communicate verbally in the courtroom does not, however, seem very rational, since the judgment is based solely on verbal information (CrPA 97/689, Chapter 11: 2§). On the other hand, if the relationship is found to be useless, following Thibaut and Kelley's (1959) reasoning, one can leave the relationship. But in a trial required by the judicial system, no one, not even the presiding judge, is allowed to leave the relationship by stepping out of the courtroom in the middle of the hearing. The chairperson can propose an adjourment in the hearing, but the above-mentioned reasons cannot necessarily be evinced as a reason for it.

The discussions in the courtroom also included participants who had not been involved in the events. They took part in the discussion as outsiders to the matter, but also as being committed to address it in meta-discussion. In addition, they intro-

duced hardly any information about themselves into the conversation and, thus, did not generate an interactive or substantial verbal dialogue.

According to the survey among the prosecutors, as well as the earlier interviews with the witnesses (Välikoski 2000), the discussion and interaction in the courtroom were expected to be open, although the social relationships between the participants were not particularly open. *Communicative relationships differ from social relationships.*

Relationships exist in a certain environment. The atmosphere of this environment is also connected to the relationships and vice versa (cf. Werner & Baxter 1994). Both the prosecutors and the witnesses (Välikoski 2000) evaluated the atmosphere in the courtroom to be more relaxed than tense and distressed and more open than closed. The witnesses especially reported the atmosphere in the courtroom to be open (Välikoski 2000: 34) so, according to Altman and Taylor (1973), they also had an opportunity to create socially open relationships in the courtroom. The witnesses reported the atmosphere to be both reserved and confidential almost equally often (Välikoski 2000: 34). The prosecutors evaluated the atmosphere to be more reserved than the witnesses did. When comparing these results, one has to keep in mind that the witnesses observed the atmosphere in only one part of the hearing, whereas the prosecutors tended to evaluate the atmosphere in general. The witnesses also described their first impressions and the prosecutors reported their general view.

When placed in strange situations, people tend to increase the predictability of both their own and other participants' actions by *decreasing uncertainty* (Berger & Calabrese 1975). Hence, the beginning of the situation, i.e. the beginning of the communication relationship, is particularly significant for the participants involved. How participants act at the beginning of the situation, i.e. what they say, can be seen as increasing certainty towards predicting how they will continue acting (Berger & Calabrese 1975, Puro 1996).

In the courtroom the unfamiliar activities and procedure alone can be seen as increasing uncertainty for the laypersons, such as the litigant parties. The situation becomes even more uncertain when the explanatory information is lacking. Substantial uncertainty, i.e. lacking of legal knowledge, develops as such for a layperson. One can conclude that in a trial a layperson suffers from ignorance of legal substance as well as uncertainty about the legal procedure (see Bradac 2001).

According to the same theory (Berger & Calabrese 1975), especially in the entry phase of the communication relationship, the participants searched for explicit fac-

tual information on each other, such as where they were from, what their family was like, or what their interests were.

The above-mentioned information was also discovered in the trial, although it concerned only one party. The information became public, and providing it was not voluntary. The natural development at the beginning of the communication relationship became public and mandatory in the formal courtroom. The laypersons may suffer from *tension or even stage fright* in such situations (cf. Pörhölä 1995). This might even be increased by the oath or affirmation obliging him to speak the truth taken before a witness gave evidence.

After the oath or affirmation by the witness, the presiding judge may also give instructions regarding the testimony itself, as can be seen in the following:

> "You should tell us only what you have personally experienced and seen, not what the injured party may have told you. Just state the facts that you yourself have seen." (P4/cm26).

By giving the above information the chairperson can both decrease and increase tension. The obligation of the oath, and deviating from it, may even be interpreted as a threat. The layperson may not know that the speech mentioned is a routine speech by a presiding judge and she or he only is doing his duty. The Code of Judicial Procedure (CJP 48/571, Chapter 17: 31§) states, that " *the chairperson of the court shall remind him of the duty to be truthful and, if an oath or affirmation has been administered, of its importance*". The chairperson may also explain his actions and also the procedure, thereby diminishing the uncertainty related to the situation. By explaining the procedure, the chairperson also influences the common definition of the situation.

While a witness is giving evidence either the chairperson, or the prosecutor might remind the witness of the meaning of the oath, such as *"You should tell the truth here"* (L4/DA10). The uncertainty of the situation, the assumption of the existence of 'untruth', was confirmed in the following discussion between the prosecutor and the plaintiff (P10):

> "You said in the pre-trial investigation that you were afraid. Did you remember things better in the pre-trial investigation than now?" (P10/pr11)
>
> "Well, I was so drunk." (P10/plaintiff = X11)
>
> "The police did not write like this unsolicited. Is this correct?" (P10/pr12)
>
> "I guess it is, if it says so. I was drunk for months after that." (P10/X12)

The dialogue produced an affirmative answer from the plaintiff.

Uncertainty among the participants can be decreased by showing that they have been listened to (Berger & Calabrese 1975). In the case described above (P10) the prosecutor and the defendant continued the conversation:

> "You shouted something after him. Do you remember what?" (P10/pr41)
>
> "I shout stop, let's talk." (P10/Q25)
>
> "Did you mean to scare him? Was that the idea?" (P10/pr42)
>
> "Well, yeah. It was just so crazy." (P10/Q26)
>
> "But, there were no intentions of harming?" (P10/pr43)
>
> "Not the least bit." (P10/Q27)
>
> "And, that is all?" (P10/pr44)
>
> "Yeah." (P10/Q28)

The prosecutor showed that he was listening to the defendant, because all his questions were based on the information given by the defendant (see P10/pr37). He may have even attempted to facilitate answering by asking questions which already included an assumption of the happened, such as can be seen in questions 38, 42 and 43.

Uncertainty among the participants might also be dispelled by the fact that there were several similar activities at different stages in a trial. If anybody only could observe he could see that the presiding judges gave the floor equally to different parties and let the witness talk without interruptions almost always. In addition, when moving from one stage to another, the chairperson ascertained the parties' desire to say more.

There were only few trials where the court was addressed with information on the participants and their backgrounds as well as of the moment in question. Such trials included, for example, some chairpersons greeting the parties, and announcing the beginning of the hearing. One chairperson also delivered information about himself, "*I know this because my own home is being tiled at the moment*" (R7/cm12).

The above is an example of reciprocity and of self-disclosure.

The previously mentioned theory of Altman and Taylor (1975) includes the concept of *self-disclosure*, which is a kind of indicator used to evaluate social relationships (Puro 1996: 34). Self-disclosure brings reciprocity to the relationship, which in its

turn can be seen as decreasing the uncertainty between the participants in the relationship (cf. Bradac 2001).

What was described above is significant in order to have fluent and natural relationships. Mentioning tiling is not necessarily very confidential information, but it was an example of communication that was substantially reciprocal, and as such, it was rare.

One presiding judge seemed to form an exception to all the activities described earlier. This particular chairperson already ensured the defendant's understanding of the charge itself. He asked the defendant immediately after the indictment of the charge: *"did you understand the content of the charge?"* (R1/cm5). After receiving an affirmative answer from the defendant, he continued: *"is the charge accurate?"* (R1/cm7). Only after this did the trial proceed with the defense. This presiding judge was observed to behave in similar manner in all the hearings he led.

The courtroom as a concrete *environment* for the activity, and as a physical manifestation *abstract* justice was unfamiliar to the laypersons. The research data shows that they received very little information to explain the proceedings. The parties were also in different positions regarding the environment.

The above descriptions of the events indicated the structural phases in the hearing (how the case was handled in different stages), as well as how the different parties participated in creating these phases. The form and amount of verbal communication and its functions were different at different stages. The descriptions also showed that different parties had a chance to speak and express their opinions of the case at hand during all the stages of the hearing.

The function of the communication described was to create a picture of the system that included the above in its structure. One basis of the structure is the possibility in the regulation of being heard and influencing one's own case (cf. Finnish Constitution 19/94, CJP 60/362).

The *theory of systems*, included in the functional approaches (e.g. von Bertalanffy 1972), introduces the concepts of independence and interdependence of system parts, hierarchy and closed interaction in the system. These concepts were clearly illustrated in the analysis of the hearings.

The activity in the courtroom represented a somewhat limited system as such, but it was initiated due to the criminal offences committed in society and it had influence on and transfer to the systems that were external to it, i.e. legislation as well as other socio-cultural systems.

System theory also analyzes the communication between the parts of the system as consecutive activity. The activity manifested itself in the communication, which composed the speeches made by the various participants.

In the courtroom those speeches were presented at different stages consecutively. Each stage of the hearing is an independent and clearly limited whole, which is, however, fairly difficult to understand as such (cf. dependence). The stages became understandable as they together formed the system of the hearing, which was, then, manifest as observable courtroom communication in the interaction between the parties. The clear limits of the stages were indicated by being started and concluded with an announcement by a chairperson, which functioned as a cue to either start or end the interaction between the parties. The next stage was not entered into until the previous stage was concluded, for example, the chairperson stating, *"did you have anything else to say?".* This question is also an example of the possibility mentioned to participate in the realization of the stage.

The functions of the different stages were also confirmed when the representatives of legal science addressed the court.

The hierarchy of the system, on the other hand, was manifest in the fact that the court was addressed with the chairperson's permission, in succession and in turns. The system also included different rituals, such as taking an oath or affirmation before a witness gave testimony. The hierarchical nature of the system was also emphasized in the fact that the oath, or the affirmation, was received *with* an authorization from the system, as well as *by* the representative of the system, the chairperson.

The system was also illustrated by the exceptions in the otherwise colloquial activity, namely the indictment of the charge, which began the processing of the case and the judgment and concluded the processing of the case. Both of these were written and read out loud.

The interaction between the parties produced the communication described above, which, on the one hand, was developed from the system of legal activity, and on the other hand, also realized it. The purpose of the chairpersons' and the prosecutors' existing roles described earlier as well as of the instructions, the rules, was to create an impression that it is the system that judges, not arbitrary individuals.

4.5 Naming the speech communication situation

After describing the phenomenon communication in a courtroom it can be named.

Different participants form the communicative situation in the courtroom and the nature of the activity is to settle the assumed problem with the help of a method defined outside the activity. The activity, thus, seems to consist of *problem-solving discussion* between various people (Gouran, Hirokawa, Julian & Leatham 1993). It is, however, a conversation with limited participation, where the problem is defined, specified, limited and addressed by the different parties to the problem. The communication in the courtroom as a whole, then, aims at influencing the problem solving. This interpretation is also strengthened by the law (CrPA 97/689), which allows only information presented orally in the courtroom as trial material. This conclusion is further supported in the legislation in the description of the different methods of oral influence, such as *the continuous account of the facts on one's own initiative* in the giving of evidence. One party to the hearing, the prosecutor, did not, however, see a successful completion of this action as a very essential skill to have in problem solving (Table 11a). In addition, there were only a few responses in the prosecutor survey in this study where the respondents identified influencing and affecting the decision-makers with speech as one of their tasks.

The problem solvers are so-called "third parties" with respect to the problem (cf. the concept from the media, e.g. Rubin 1993), who, based on what they observe, hear and interpret the information in the courtroom, define the problem and also find a solution to it. One problem solver, the chairperson, also had legitimate authority (CJP 60/362) to influence or interfere verbally in the settling of the case. The other problem solvers, namely the lay judges (cf. members of the jury), lacked this type of authority. The lay judges' influence on the handling of the case was mainly nonverbal. If communication is understood as simultaneous interaction (Clevenger, Jr. 1991, Fisher 1978), then it can be stated that the lay judges' nonverbal communication is present in the situation (Watzlavick, Beavin & Jackson 1967. Cf. also Werner & Baxter 1994). Thus, it also influences the whole process. The witnesses also are known to pay attention to the lay judges' nonverbal communication (Välikoski 2000).

Activity in the courtroom is also seen as a group communication process, the structure of which is predetermined (CrPA 97/689). The stages of the activity in the process can be seen as sub-processes. The realization of these sub-processes was de-

fined and structured by the presiding judge, whose role was to direct the activity, as well as to be responsible for it, together with the participants in the group in question (cf. structuration in e.g. Poole, Seibold & McPhee 1986). Certain stages, such as the giving of evidence by witnesses, also included stages that were related to the relationships between the participants. These stages can be: the initial stage of the situation with the *creation* of a communication relationship, where the nature of the questions in relation was to *maintain* the relationship, and perhaps to establish the connection to the *desired understanding*. During the testimony, the parties, however, hardly ever attempted to *create together* a plan of action for the examination, to evaluate and define the problem, or to consider the criteria for the conclusion (cf. Hirokawa 1990). Instead, the different parties attempted to influence the conclusion by presenting reasoned proposals for solving the problem. The communication as a whole in the courtroom was, then, argumentation between different parties concerning their proposals for a solution.

Several proposals were presented for a solution. The problem was solved by outsiders with the powers invested in them. It is, thus, group communication, where the structure of the judicial activity (CrPA 97/689) set the goals for the activity and indicated partly predetermined sanctions, clear roles and norms for the participants to achieve the goals.

The criminal hearing concentrated on describing and ascertaining what had happened, i.e. the alleged offence. The definitions were divergent, and the prosecutors' as well as the injured parties' definition differed from that of the defendant. The purpose of the trial was to discover which of the definitions was more truthful. The judgment was based on this definition.

Thus, the speech communication situation can even be defined as a *negotiation* between the parties aimed at discovering what has happened (see the definition of negotiation in Bazerman, Lewicki & Sheppard 1991). The parties may also create a joint picture of the events with the help of arguments and reasons, and counterarguments and reasons. The strength and the significance of these arguments and reasons are, however, assessed by third parties, who do not participate verbally in the negotiation, the chairperson excluded, and who aim at objectivity in their decision.

The following assault offence (P1) illustrates the differences in how the train of events is defined. The assault offence also included other offences that were discussed:

> "I demand the defendants also be convicted of larceny. They (two defendants) stole 24 bottles of beer and 24 bottles of other beverages. I demand N be convicted of being an accomplice." (P1/pr3)
>
> "Good. The Z -shop claims compensation for 24 bottles of beer and 24 bottles of other beverages. And how do you plead?" (P1/cm4)
>
> "Well. The charges for larceny are denied. The technique indicates petty larceny, because the beer crates were carried out, which is common in petty larceny, and the sum is also fairly small, less than four hundred." (P1/counsel1)

The case proceeded with the examination of the parties, and, in the middle of the hearing, the following conversation took place:

> "I'd like to comment on this title. The defendants went to the shop with intent to steal. A has told us that J and L (the defendants) did not even have any money. K, who is not present at the moment, stated in the pre-trial investigation and it is apparent in his record, that the act was premeditated. Yes, and in any case, with no money, it must have been premeditated." (P1/pr19)
>
> "Larceny, then. And what about J?"(P1/cm13)
>
> "Yes, Your Honour. Petty larceny in this case, too. In addition to what I have said earlier, I state that drawing the line between larceny and petty larceny is not always that clear. When the technique is this and the value of the stolen goods is small, the act is considered petty larceny. All larcenies demand premeditation to some extent. My client is, nonetheless, liable to compensate." (P1/counsel3)

In the above example, the parties defined what had happened and negotiated on *the nature of* the events. Indicating premeditation seemed to be a central factor in order to determine the conclusion. The negotiation on the nature of the events also seemed justified, since the conclusion was based on this. The parties negotiating over the meanings of the concepts of larceny and petty larceny were different compared to the negotiations for example on the meanings of the concepts of murder and manslaughter. A clear and unambiguous negotiation on the concepts, on the other hand, was expected, when the question of drunken driving was discussed. The crime mentioned is based on physiological and clinical evidence, and the different definitions could be interpreted directly from the limits in the level of alcohol in the blood prescribed in the law.

To define the criminal hearing by stages, it could be stated that it began with a *dialogue*, where the function of the chairperson's speeches was to both initiate interaction between the parties and to establish the parties' relation to the matter at hand. The chairperson posed questions according to a particular order of proceeding to all the parties, and the nature of their responses made it possible to initiate interaction to process the particular criminal case. The next stage included a *monologue* by the prosecutor, where he presented the arguments and created the basis for his following argumentations. The opposing party performed the same actions after the prosecutor.

The next stages i.e. the description of the matter and the testimony, can be defined as *discussions* in the courtroom. The discussions included two or more persons interacting with each other to define, alter and evaluate the content component of their messages. The relation component was present throughout their messages. The discussions might include speeches that were both prepared as well as spontaneously delivered. Here the discussion also included spontaneous information and participating in it was freer than in other stages.

The formal ritual of swearing an oath or affirmation began the process of hearing the witness, where different parties took turns at posing questions to the witnesses. The witness was asked about what had happened. Here *interviewing* refers mainly to a content and matter interview (e.g. Redmond 2001), where the interview was the interviewer's tool for eliciting information from the respondent on a particular issue. The examination was realized as an individual interview when the interviewee was either the injured party or the defendant, and the purpose of the interview was to produce evidence.

The questions in this interview were mainly direct, but they also contained an introduction. The introduction part in question was often based on the information heard.

The interview might also include *debate* and doubt about the strength of the opposing party's arguments. This was the case particularly between the lawyer and the defendant, as can be seen in the following example. Here the hearing concerned a property offence (O8). The defendant's counsel posed questions to the prosecutor's witness:

> "You followed the events on the monitor. When did she join the company?" (O8/counsel 11)

"Quite at the beginning of the fitting, I guess." (O8/witness12)

"You said, "you guess". You don't remember too well, do you?" (O8/counsel12)

"I guess so." (O8/witness13)

"Did she bring anything with her, when she joined the company?" (O8/counsel13)

"I don't know. It was a while ago." (O8/witness14)

"How well did you see what was going on on the monitor?" (O8/counsel14)

"Pretty well." (O8/witness15)

"What did L (the defendant) do, when K was in the fitting room?"(O8/counsel15)

"She was standing there, not much." (O8/witness16)

"When you were observing the situation, how well did you see everything on the monitor?" (O8/counsel16)

"I'm sure I saw well enough." (O8/witness16)

"You just said that you were sure. Are you sure?" (O8/counsel17)

"Yes." (O8/witness17)

"Yet you can't say if she had anything with her when the other woman arrived?" (O8/counsel18)

"Well, not exactly." (O8/witness18)

"Was the monitor black and white or color?" (O8/counsel19)

"Black and white." (O8/witness19)

"Can you zoom with it?" (O8/counsel20)

"Yes." (O8/witness20)

"Well did you?" (O8/counsel21)

It seems that the counsel aimed at raising a doubt of the witness' ability to observe. If he succeeded the witness' actual observations were also questioned, and, thus, the observations provided weak grounds for the prosecutor's arguments. The same example also illustrated dominance and the counsel's assertive style of communicating (cf. Norton 1983) in the relational communication.

Argumentations in a debate are *independent entities* (see O'Keefe 1984) between the parties, whereas in negotiations, the argumentations may lead to a joint conclusion and be based on interaction (*interactive process* Hample 1988). Here, the *argumentation* is seen as a process where the arguments are presented, substantiated, confirmed and re-evaluated.

The following description is an example of the above:

> "You said in the pre-trial investigation that you were afraid. Did you remember things better in the pre-trial investigation than now?" (P10/pr11)
>
> "Well, I was so drunk." (P10/plaintiff = X11)
>
> "The police did not write like this unsolicited. Is this correct?" (P10/pr12)
>
> "I guess it is, if it says so. I was drunk for months after that." (P10/X12)

The above example is almost the only observation that can be seen as a real-time argumentation in the observational material.

The criminal hearing cannot, due to its nature, be negotiation, because the conclusion is not a bilaterally negotiated solution. Here, negotiations refer to a speech communication situation in which the participants *have equal opportunities* to affect the conclusion through communication, based on their own interests. Instead, the legal system that controls the hearing provides the participants with an equal *situation*. In principle, both parties have equal chances to affect the conclusion, but their communication is controlled. The decision is made by external decision-makers who evaluate the competence of the interests. The chairperson and the lay judges may negotiate, but the situation in the courtroom is not a negotiation.

After the previously mentioned dynamic and verbally interactive stage, the closing arguments presented by the different parties form a synthesis of the information heard and the information presented. They are, however, independent monologues, where the original argument was presented in a revised form, and it was also re-evaluated on the basis of the courtroom information.

The activity in the courtroom between the parties can be called a speech communication situation in a group, which often includes public monologues as a part of an institutional discussion. The monologues are presented by intermediaries, directed to the third party and aimed at convincing others.

Further, the courtroom communication can be defined as a public and institutional argumentation taking place between different parties, and providing the decision-makers with two proposals for the possible conclusion (Figure 5).

MONOLOGUE 1 **MONOLOGUE 2** **QUESTION – ANSWER** **-DISCUSSION**	parties' information and obstacles to processing the case	stage 1
MONOLOGUES	stating the claim/ defence • proposals 1 and 2 and the groundings for argumentation	stage 2
DIALOGUE, DISCUSSION	description of the matter/ testimony • interview • debate • negotiation	stages 3 and 4
MONOLOGUES	closing arguments 1 and 2 and justified, evaluated and re-evaluated proposals	stage 5
MONOLOGUE	justified conclusion/ judgment	stage 6

Discussion in a courtroom can be seen as an argumentation, a definition, an alteration and suggestions for solving a problem. A solution to the problem, then includes a justified proposal with conclusions and consequences in the subject-matter.

FIGURE 5. *Stages of the criminal hearing and different communicative situations*

4.6 Statutes selected concerning communication in criminal trials

Explicit statutes governing courtroom communication

The Code of Judicial Procedure states that "*the witness shall present a continuous account of the facts on his own initiative*" (CJP 98/690, Chapter 17:33; 1) and "*questions that owing to their wording, form or manner lead to a reply of a given sort shall not be allowed, except in questioning referred to in 2. and 3. moments for the purpose of ascertaining the correspondence of the testimony and the true state of affairs. The court shall disallow manifestly irrelevant, confusing and otherwise inappropriate questions*" (CJP 98/690, Chapter 17: 33; 5).

These tasks were functionally completed when the chairperson encouraged the witness to give voluntary and uninterrupted communication, and interrupted the communication when information of the kind mentioned above was presented.

The present study showed that all this was indeed done. The witnesses were allowed to speak in peace and there were only a few interruptions in their speeches. The situation remained the same even if the chairperson or the prosecutor asked the questions. However, the prosecutors did not consider giving enough time for the answers (Table 11a) a particularly important activity in the courtroom.

The giving of testimony often began with an open and direct question, such as: "*what happened?*". The function of this question was to reveal the witness' understanding of the happened based on her or his own observations. Ascertaining what had happened began as openly as possible. The first questions were similar, even if the respondent was an outsider witness or the party concerned, and the purpose was to produce evidence.

The survey among the prosecutors showed that several prosecutors wanted to make the answering initially easier for a witness: "*by recalling the happened together*" (DA28).

If the witness was wordy, the following question was based on the information heard, as can be seen in the following episode:

"So, the first one to go to the fitting room was K and L followed her?" (O2/pr26)

"Yes. K had more clothes to try on and her trolley was full." (O2/witnessA5)

"And where was the shopping trolley? With her in the fitting room all the time?" (O2/pr27)

"No, the trolley was left outside behind the curtain." (O2/witnessA6)

"Did she have a lot of clothes with her, if the trolley was left outside?"(O2/pr28)

"Yes." (O2/witnessA7)

"What kind of clothes did you see them taking to the fitting room?" (O2/pr29)

If the witness gave short answers, one or two-word sentences, those presenting the questions, the chairpersons and the prosecutors, seemed to provide some information of the happened at the beginning of the question:

"And this took place around midnight?" (P4/pr3)

"Around that, yes." (P4/witness3)

"And after this you had to dismiss all the clients. Is that true?" (P4/pr4)

"Yes." (P4/witness4)

"A bit more of the beginning of the situation. When X told you that there was some man there, you went see for yourself. Did you then turn on the lights in the hall and show him that there was nobody there?" (P4/pr5)

"That's correct. But we both went to the hall." (P4/witness5)

"So you looked there together?" (P4/pr6)

"Yes." (P4/witness6)

Asking a question by providing an introduction to the beginning of the question may also have shortened the answers. If the person asking questions assumed correctly, then it could be answered simply by saying *"yes".* The method used here may, on the one hand, be a consequence of, or, on the other hand, a reason for the briefness of the witness' information.

The interviews with the witnesses (Välikoski 2000) also aimed at examining the task of giving evidence and, for example, the actual process of answering the

questions. The results gathered from the interviews supported the above-mentioned interpretation of the fact that the witness were allowed to speak without interruption, they felt they were mainly listened to, and the answers were paid attention to. The witnesses reported that the questions presented to them had clear and relevant contents and were fairly easy to answer.

Instead, the questions were not seen to be very open (Välikoski 2000: 37). The respondents indicated in their descriptions that being a witness in a testimony was fairly easy and relaxed:

> "There was enough time given for answering, no rushing at all.",
>
> "There never was any hurry to answer." or
>
> "There was always time for the witness to speak." (Välikoski 2000: 36–58).

The example in the observational material (P4) concerning the introductory part of information prior to the actual question may also be interpreted as making answering easier; the interviews with the witnesses also indicated that the chairpersons and the prosecutors were seen as even facilitating answering: *"the chairperson helped me to collect my thoughts"* (ibid.).

The same method may also be seen as showing that the person answering the questions was being listened to, provided that the introductory part of information of the question was based on the information heard in the courtroom.

" Questions that owing to their wording, form or manner lead to a reply of a given sort shall not be allowed, except in questioning referred to in 2. and 3. moments for the purpose of ascertaining the correspondence of the testimony and the true state of affairs. The court shall disallow manifestly irrelevant, confusing and otherwise inappropriate questions" (CJP 98/690, Chapter 17: 33; 5) serves as a norm in controlling the quality of speeches made and heard. The prerequisite for carrying out this task was, naturally that the presiding judge knew what kind of information equalled the quality in question. The chairperson had the power to define the quality of a single question. Irrelevant questions could also be noted by the laypersons, but observing leading questions was more problematic. A leading question is a question in which the quantity and the quality of the answering are limited in that the answer reinforces to some extent the intentions of the person presenting the question. However, leading questions are at times allowed, for example, in the cross-examination of the witnesses (CJP 98/690, Chapter 17: 33; 5).

The nature of an *inappropriate question*, on the other hand, was primarily based on the chairperson's own interpretation of the quality of the content. The presiding judge was, then, to interrupt the testimony if the quality of the questions was inappropriate.

The observational material included only a few trials where the chairperson interrupted the giving of testimony. The research, which was intended to show how the observed communication of the presiding judge controlled the interaction between parties, also showed that the chairpersons hardly ever interrupted any information or any speeches (Välikoski 1996).

Interruptions in the testimony for the above-mentioned reasons were also rare in the present observational material. Only during a few hearings did the chairperson interrupt the procedure because of the quality of the information heard. This occurred in the following assault offence (P5), where the parties represented different countries and cultures:

> "And then counsel X (the counsel A of the injured party)." (P5/cm50)
>
> "Yes, Your Honour. The social system in question almost equals religion..." (P5/counsel2)
>
> "Well, that's enough of the social order in Iran." (P5/cm51)
>
> "Your Honour, the religion and the social order are essential factors here, they explain the actions..." (P5/counsel3)
>
> "Okay. Now I have to interrupt here. We are concerned with the breaking of the restraining order, and on the other hand, the petition for an extended restraining order. Let's just consider the facts as the main thing, and the others on the side. I note that the discussion is already on the fringes, and if this is done, it should be done in a more concentrated way. No more details. If we keep doing this way, we'll be here next week." (P5/cm52)

The above example showed that the presiding judge did not only interrupt counsel's information but also presented the possible consequences if there was no change in the activity. The counsel did not present leading questions, but the chairperson obviously viewed them as inappropriate.

The interruptions by the chairperson in the data observed were mainly related to controlling the interaction and managing the situation, such as: *"let X himself tell us what happened"* (H1/cm7). In these cases, it was a question of a speech that had been granted, but during which other parties spoke at the same time in the courtroom.

The address may also be interrupted by someone other than the chairperson (P6):

> "The prosecutor will present the case." (P6/cm38)
>
> "M.P. has called several dozen times..." (P6/pr2)
>
> "Yes, but, none of them were to disturb..." (P6/defendant7)
>
> "Excuse me, do not interrupt. I'd like to summarize it. I'd like to hear XX, YY and ZZ. I won't be producing any external evidence." (P6/pr3)
>
> "Okay. M.P. Now it's time for you to tell." (P6/cm39)

In the above example, the presiding judge did not interrupt the discussion, but let the parties handle the situation between themselves and only controlled the interaction after that action. Otherwise, it was very exceptional in the data observed that the parties handled a situation amongst themselves.

A quarter of all the respondents in the witness interviews (Välikoski 2000: 41) reported that parties attempted to influence them with speech. When asked to clarify, they explained that both the prosecutor and the counsels of the different parties had caused the impression in question. The impression resulted from the following experiences:

> "Both the prosecutor and the counsels tried to bluff, and put words in my mouth. The prosecutor ignored some of the facts that were found already in the pre-trial investigation and compared my statements with the conversation I had with him earlier. In my opinion, I stated the same things in both cases.",
>
> "The prosecutor wanted me to confirm her viewpoints. I had not, however, made the observations in question.",
>
> "The opposing party's lawyer tried to get a particular answer to a particular question.",
>
> "The opposing party's lawyer presented some questions that aimed at shaking my testimony." and
>
> "In one thing that I have no exact knowledge of. It was asked several times. As if they did not believe that I didn't know more about it." (Välikoski 2000: 36–58).

The interviewers did not mention what the actions of the presiding judge were.

Other parts in the law that refer to the direct task of verbal communication in the courtroom are the following: the Criminal Procedure Act (97/689), Chapter 5: 10; 3 (*"the party must not read out or hand in a written statement to the court nor otherwise make her or his case in writing"*) and moment 4 (*"however, the party may read out her or his claim, direct references to case-law, textbooks and documents containing such technical and numerical data that they are difficult to understand merely on the basis of an oral statement..."*).

The present observational material included trials where the indictment was read out. There were only a few prosecutors who acted otherwise. Some of the prosecutors who had participated in the survey also considered that it was not appropriate to read the charges, because *"one could get some ideas from the courtroom atmosphere when reading the charges"* (DA7) or *"the charge has to be sold to the listeners right at the beginning"* (DA53), which actions became more difficult when reading out statements.

The closing arguments were not read out, which, according to the prosecutor survey, may have been a partial reason for the closing arguments being, communication-wise, one of the most difficult stages in the hearing.

When the observed data also included the judgment as a conclusion to the case, it was often read out together with the reasons for the judgment.

The questioning of a witness was the most interactive part of the trial procedure, where reading the material was seen as particularly difficult. This was based on the fact that concentrating on reading while listening to other information and observing the situation in general was distracting.

In principle, reading was prohibited, because pre-trial investigation records were not allowed to be read in the court unless they included some particular information on a particular field, such as exact numbers or statistics (ibid. Chapter 5: 10; 4).

The task of verbal communication was described indirectly in section 17 in the above law: *"a charge that has been brought shall not be altered. However, the prosecutor may extend a charge against the same defendant to cover another act, if the court considers this appropriate in view of the available evidence and other circumstances"* (CrPA 97/689, Chapter 17: 1).

The changes in the charge were based on the changed nature of the situation. This action is of interest when we start to examine the stages of the hearing at which this action occurred, and also the argumentation on which the alteration of the charge is based. If the discussion in the procedure indicated that the method described above was appropriate and the charges could be extended, then it can be seen as an argu-

mentation event as described by Sillars, Burgstraf, Yost & Zietlane (1992). Here, the argumentation presented was evaluated, confirmed, debatted and re-evaluated (cf. also Keough 1988). The result of this process was a new argument, a newly defined charge. An alternative charge can also be presented already when reading the indictment and describing the charge, at which time the prosecutor in a way reserves a right to change his argument based on the evidence produced after the presentation. The prosecutor can also present the alternative charges beforehand and leave the case to be considered by the court without clearly binding himself to the definition of a charge.

The material observed showed that the charge remained the same in almost all the cases. In one homicide case (P0) the prosecutor left certain parts of the charge open and reserved the right to amend it if a particular description of the alledged act was found to be true. The prosecutor obviously stuck to his previous charge, because he used the expression *"if the court finds against my understanding"* (P0/pr121). The prosecutor presented an alternative charge in this case after the presiding judge had passed the stage of description the matter and the defendant's counsel had presented his defence:

> "Due to the engagement of the charge, it could be worth preferring an alternative charge, which considers this aggravated robbery. In that case, it could be called aggravated assault and larceny. If the court finds, against my understanding, that it is not an aggravated robbery, I shall demand X be convicted of aggravated assault and larceny. The content of these demands is exactly the same as in aggravated robbery, and it probably isn't necessary to justify it any more. An aggravated robbery could, of course, be divided into these two criminal acts, but for clarity's sake, I wish to present them like this. The charge of aggravated involuntary manslaughter remains the same." (P0/pr111)

Immediately after the above, the presiding judge allowed the defense counsel to reply: *"does X's counsel wish to comment on the alternative charge?".* The counsel reported that it was more accurate *"it is closer to what X has done than the original charge"* (P0/counsel72). After that discussion the hearing proceeded with the testimony. The prosecutor based the arguments in his closing statement on both the alternative charge as well as on the original charge; he let the court consider which charge was more justified based on the information heard in the courtroom, and thus, formed the basis for the sentence.

The demands for clear and observable activity in a trial

The demand for the clarity of actions (GB 95/82) was based on the expression in the Criminal Procedure Act (CrPA 97/689, Chapter 6: 5; 1) *"it is the task of the court to see to it that the case is dealt with in a coherent and orderly manner"*. It has been written in the grounds of the law in question that this should be done with a clear and observable action in a trial (GB 95/82/preamble).

How and by whom are the clarity and the observable or illustrative nature of the criminal hearing defined and evaluated?

The chairperson's own understanding of the above is inherent in his communicative behavior and the control of the interaction (cf. Greene 1984, Laing 1967). The presiding judge chooses and coordinates the information heard to be such that it forms a clear and illustrative whole. The clarity is also a core criterion for comprehensible information.

When the present law was in the preparatory stage (see GB 95/82/preamble and the publication of the law preparation department of the Ministry of Justice 1993), whether the lay judges and even the lay persons in the court should be able to understand the case at hand, as well as the procedure in a trial was discussed.

Understanding is a subjective and cognitive process that is based on interaction in human relations. It can, however, be assumed that understanding becomes easier if the entity that is meant to be understood is clear and illustrative (cf. Frymier & Houser 2000, Kreps & Massimilla 2000, Strauman & Johnson 1998). According to Eisenberg (1984): *"clarity is not an attribute of a message. It is a relational variable which arises through a combination between a sender, a message and a receiver factors"*.

All the parties in the court can define the clarity and the observable nature of the hearing. However, the legal substance *per se* may hinder the laypersons' understanding. Although it is artificial to separate the content and the form of the information (e.g. Aristotle in Ross 1963), the clarity of the hearing is, nonetheless, one feature describing the activity which laypersons can also evaluate.

A clear and illustrative processing of the case may help to understand the procedure itself. Clarity refers to the visibility of the different stages in the procedure and understanding them becomes a joint and simultaneous experience (cf. Eisenberg 1984).

The data observed showed that the criminal hearing included clear stages of proceeding. The procedures were almost identical regardless of the chairperson, or the case at hand. Experts can, even without the indication of the presiding judge, identify the different stages. This was also possible for the researcher. The researcher was thus an outsider to the situation and it was an opportunity for her to comprehend the procedure as a whole. The lay party present in and related to the situation may not necessarily be able to detect and evaluate the stages of the procedure (cf. e.g. Greene 1984). In the data observed, some chairpersons clarified the purpose of the hearing:

> "We'll go briefly through the demands of the defendant and the injured party. After this, we'll go through them more profoundly." (P2/cm3)

Some presiding judges also indicated how the case was processed in each stage:

> "First the matter is presented by the prosecutor, then the others." (P2/cm6)

or how the testimony was to proceed:

> "You'll be asked questions and we want you to answer them according to your observations and memory." (P4/cm27)

These were examples to show how presiding judges define the situation and to enable simultaneous understanding of the procedure for all the parties. The illustrative nature of the procedure referred to the visibility and clarity of the activity so that after understanding it, its appropriateness could also be evaluated.

The illustrative nature of the activity was altered if there were any remarkable changes in the proceeding of the activity. One change arose from the need to maintain order. According to Chapter 6, section 5; 1 in the Criminal Procedure Act (97/689) *"Is it the task of the court to see to it that the case is dealt with in a coherent and orderly manner…"*. The court consists of the presiding judge and lay judges. In the data observed, the lay judges did not make speeches in court, and this is the common practice during the procedure. Thus, it cannot be stated that they interfered verbally in the formal processing of the case. The presiding judges, on the other hand, used several addresses that interfered with the processing of the case, as has been evident in the material so far. The meaning of that statement is to control the formal activity, the procedure in the trial.

Information that illustrated maintaining order can be interpreted as speeches where the chairperson gave the floor to the other parties and saw that it was used in the given order. There were only a few addresses where the chairperson aimed at interrupting the verbal interaction between the parties based on the above-mentioned formal grounds. Only a few addresses can be interpreted as illustrating interfering with the order of procedure, such as *"let X speak now. Wait for your turn"* (P6/cm46) and *"let's settle this case first and then move to the civil claim"* (L2/cm4). The latter example did not illustrate only the procedural order of the case at hand (*let's settle ... first)*, but also the substantial order (*criminal claim before civil claim)*.

There were apparently variations on this, because the prosecutors througout Finland who responded to the survey quite often expected the chairperson's manner of leading to include the above (Appendix 2, question 9 in the questionnaire). The manner of leading was also expected to be systematic and fluent with no unnecessary interruptions.

Only a few speeches in the observational material showed the chairperson directly considering the order of the procedure, as was illustrated in the examples above (P5 and P6).

Implicit statutes concerning courtroom communication

The present study supported the previous results concerning the objectivity of the action, the equal treatment of the parties and the profound settling of the case (cf. Välikoski 1996). These actions are based on the Finnish Constitution (19/94) and became observable actions through courtroom communication in interaction between participants controlled by a presiding judge. The above examples that illustrate action in the courtroom are here used as evidence.

5 Discussion

The picture of the action in a criminal court emerging from the research data corresponded very closely to the picture emerging from the regulations governing proceedings in court.

The results illustrated above aimed at drawing a picture of the phenomenon of the criminal trials as a speech communication situation. The phenomenon was analyzed in the light of the regulations prescribed in law, that is, the bases provided from outside the phenomenon. Furthermore, the speech communication situation was analyzed by examining the conceptions of the prosecutor experiencer present at each court hearing. The data observed was analyzed also as such, which illustrated courtroom communication as one of the contexts of human communication.

The methods described were used in order to give a many-sided picture of the phenomenon examined. Transforming the information collected into knowledge (cf. Salminen 2001) resulted not only in a better understanding of the phenomenon, but also made appropriate speech communication possible in the courtroom situation.

The method of triangulation was used in the study, which meant that the data on the subject of study were gathered in various ways. The method used was observation of criminal trials. The results of the observations were analyzed both as such and through specific judicial regulations (e.g. CJP 69/323, CrPA 97/689, GB 95/82/ preamble and the Finnish Constitution 19/94, Chapter 2: 5§). In order also to gather introspective data on the subject of the study, prosecutors were asked to complete a questionnaire.

5.1 The method used

Observation

The observation method was successful. The data was recorded with pen and paper, which was a method that had already been tested in the courtroom context (Välikoski 1996), and due to which the researcher blended in well with others present at public court hearings. The data were gathered in natural situations, due to which the observations can be seen to be ecologically valid (cf. Karstinen 1998: 183). These factors ensured that the phenomenon observed was authentically represented, which added to the reliability of the results (cf. Eskola & Suoranta 1998). The random choice further reinforced the representativeness of the data. The randomly selected criminal cases represented well the cases handled yearly by Finnish district courts (see Official Statistics in Finland/Court Statistics 2000). However, it must be conceded that due to pure chance the cases collected may not have included material in which the principle of orality was illustrated particularly well or poorly. The results of this thesis are, however, limited to the present data.

The authenticity of the phenomenon examined is one of the criteria for evaluating the reliability of results produced by qualitative means (cf. Lincoln & Cuba 1985). However, Atkinson, Heath and Chenail (1991), consider the concept of reliability to be problematic in the evaluation of results produced by qualitative research. According to them, the evaluation of the reliability of results pertains to those who make use of a particular study.

The speeches by the different parties were recorded in the order they appeared in the hearings and in the form that they were heard. This method was considered sufficient, since the data consisted solely of orally communicated verbal information.

However, I gathered the observations by myself alone. Because of this, the accuracy of the observations is highly subjective, and it was not possible to compare observations with those of other observers. Increasing the number of observers does not, however, necessarily correlate with the quality of observations, since the accuracy of observations may fluctuate in itself (cf. Greene 1984, Hewes & Planalp 1987). Naturally, it would be possible to count the numerical reliabilities between the observers' observations, which would help trace a correlation between observations. In

the present study, I could not adopt this method by myself. This shortcoming was compensated by approaching the data qualitatively and by also using other data collection methods (cf. Lincoln & Cuba 1985).

The credibility of a qualitative study increases if the researcher is familiar with the subject of the study (cf. Haarakangas 1997: 53). In the present study, the observations were gathered, recorded and analyzed by myself without judicial expert knowledge of the subject in question, which, naturally, was a shortcoming in the study. However, a researcher who is not an expert can well be seen as one of the laypersons in the court, who, according to the Government Bill for the Criminal Procedure Act (GB 95/82), should also be able to understand what is being said in the courtroom.

The observations were gathered over a long period of time, and the margin of error caused by the fact that there was only one observer remained, thus, constant throughout the data. Furthermore, the observations were gathered from one district court only, albeit from its different departments and from hearings involving various presiding judges and prosecutors.

The data observed was analyzed qualitatively and the hearings were analyzed in categories according to their stages. The speeches, for their part, were not categorized into certain goups; they were reported as such in order to illustrate the phenomenon studied. The starting point for the analysis was the realization and reproduction of abstract justice in the communication between the different parties in the courtroom. Communication was operationalized in the present study in the speeches uttered.

While the categorization of speeches can bring exactness to the analysis, it also entails the danger of the speeches being individuated from their situations (cf. Burgoon & Hale 1988). Furthermore, instead of exploring individual speeches as such, the present study focused on successions of speeches as being indicative of different stages in the hearing procedure. Describing the communication merely on the basis of orally communicated verbal information proved, however, difficult. This was because certain factors in communication, such as the participants' relationships with each other, are implicit rather than explicit (Werner & Baxter 1994). To take account of this, other data collection methods were also used.

The questionnaire

The data for ascertaining the prosecutors' conceptions were gathered by mailed questionnaires. The method of using questionnaires and mailing them was chosen in order to gather concise and relatively unambiguous data on the respondents' conceptions. The questionnaire consisted mainly of various options based on the semantic differential (Snider & Osgood 1969), where the respondents were asked to evaluate the characteristics shown, and of open-ended questions. The nature of the questions asked confirmed the suitability of the questionnaire for its purpose.

A pilot test of the questionnaire was carried out with 12 prosecutors who had attended a course entitled Professional Communication and Expressive Skills. Changes were made to the questionnaire after the pilot test as regards the order of the questions and the wording of statements that the respondents were to place in order of importance (question 6d, Appendix 2).

The pilot test ensured that there were no verbally unclear points, and that the questions asked were understandable and the content of the questionnaire logical.

The reliability of the results was reinforced by the fact that the respondents were thorough in their answers: in the whole data, there were only few missing answers. The thorough nature of the answers appeared in the long and elaborate answers to the open-ended questions, which made it possible to use the answers not only as data for individual questions but also as data in the other observation categories.

However, the questionnaire was composed by me, due to which the answering was limited to the questions posed. Furthermore, in the task where the respondents were asked to describe their own professional activity (question 11, Appendix 2), some of the adjective pairs may have produced predictable answers. For instance, the respondents were asked to rate their professional behavior on a scale between focused and absent (Appendix 2). On the other hand, using the semantic differential, which showed the determination behind the choices, was a better solution than using dichotomous choice.

The questions in the questionnaire were based on the task of the prosecutor (CJP/Role of the prosecutor 97/199) and on their different expectations of a trial as a speech communication situation. The answers to the questions at the beginning of the questionnaire (questions 1–3, Appendix 2) illustrated the prosecutors' conceptions of the hearing as a speech communication situation, that is, their ways

of defining situations. These questions traced how the prosecutors expect themselves to act and communicate with different parties in trials, what verbal and nonverbal elements in communication they pay attention to, and how they prepare for hearings as speech communication situations. The ability to define situations forms the basis for a prosecutor's professional activity and for her or his communicative choices (Laing 1967, cf. also March 1996). The prosecutors' conceptions of the principles of a fair trial were also ascertained (question 4, Appendix 2) and compared with those of the witnesses, which had been ascertained previously (Välikoski 2000). In this way, information was gathered to show how the prosecutors view the purpose of the trial, the meaning of the situation.

The purpose of the questionnaire was not to describe the nature of certain specific hearings, due to which the respondents were asked to describe their courtroom activity *in general*. Gathering information in this way proved, difficult, because of the summative nature of the answers. It was, however, possible to compare the results to each other.

I also wanted to explore the prosecutors' impressions of the atmosphere in the hearings, the treatment of the different parties, and on the discussion in general (questions 5–8, Appendix 2). Furthermore, the prosecutors were asked to describe their expectations of the presiding judges's way of handling a hearing (question 9, Appendix 2) and to describe an ideal communicative respondent for their questions (question 10, Appendix 2).

When the witnesses were interviewed (Välikoski 2000), feedback on the prosecutor's activity was given immediately after each hearing. The prosecutors' activity was also of interest in the present study, due to which they were asked to evaluate their own professional activity on a general level (question 11, Appendix 2) on the scale of the semantic differential (Snider & Osgood 1969).

Qualitatively analyzing the data gathered by questionnaire was problematic, since not even the open-ended questions ensured that the respondents' conceptions were adequately conveyed. The content and the level of elaboration of the answers may have caused possible misinterpretations of the respondents' conceptions. In the present study the respondents were, in general, relatively elaborate in their answers.

In order to maintain the versatility of the data, it was categorized qualitatively (Eskola & Suoranta 1998) and tabulated, and, furthermore, direct quotations from it were presented in the text. The frequencies of the observations within the different categories are not, however, absolute, because each open question may have produced

answers for a number of categories. The categories were created on the basis of the data.

The results on the background variables were reported separately, with the exception of gender, which was reported together with the actual results. This was because the subject group was relatively homogenous except for their gender. Furthermore, the number of the respondents was statistically so small that crosstabulating the data with other background variables besides gender would not have produced additional information for the results.

The reliability of the results was also reinforced by the moderately high number of answers provided on a percentage basis. Although 58 gathered answers was numerically modest, the number was relatively high given that it represented almost a quarter of all the prosecutors working in Finland (the total number was 270 prosecutors in 2000). Furthermore, a larger number of answers does not necessarily increase the variation in the contents of the answers; even now, the 58 prosecutors answered the questions relatively similarly to each other, as could be seen in the tabulated standard deviations of the answers.

However, the answers may have given an excessively positive picture of the prosecutors' communicative orientations, because nearly all of the respondents had attended the training course entitled Professional Communication and Expressive Skills. Because of the course, it was also assumed in the questionnaire that the respondents were familiar with the terminology of speech communication as a science.

Direct comparison of data gathered from questionnaires with those gathered via observation was impossible due to the different natures of the data. Still, the results gathered by the questionnaire on how the prosecutors perceive a trial as a speech communication situation emerged relatively well in the observation data and vice versa (see the use of various different methods, in Pohjola 1994: 185). This added to the reliability of the overall results of this study.

The statutes selected

The statutes cited were chosen by me. The deduction that the chosen statutes describe communicative tasks was justified by the Government Bill (GB 95/82/preamble) in which communication terminology was explicitly used to describe the orality required

in hearings. Although the present study focused on examining how the statutes of law concerning direct communicative tasks are manifest in court hearings (CrPA 97/689), the study also investigated how communication is manifest indirectly in the realisation of the principles of legal protection. The law does not always include direct descriptions of how the principles of legal protection can be achieved by means of communication. This is the case with the equal treatment of parties and objective proceeding. Yet these principles are operationalized via communication.

5.2 Review of the results

5.2.1 The criminal trial as a speech communication situation and the relationships between the parties

Observation material

It is easy to individuate the different stages of the procedures in a criminal trial. The different stages can even be detected regardless of the content and the presiding judge of the hearing. The courtroom communication represented in the current data proved to follow carefully the stages of the trial laid down in the law. The observations by an external observer and by the parties participating in the hearing and producing and receiving information in the court, may, however, differ from each other (cf. Greene 1984, Petty & Cacioppo 1986).

At the beginning of the speech communication situation the most active party was the presiding judge i.e. she or he made the most speeches. During the description of the matter and the taking of evidence the prosecutor proved to be relatively active. The attorneys also produced many addresses during the hearing of evidence. Closing arguments were given equally by all the parties.

Communication in court is institutionalized discussion in nature. This means that discussion serves as a means to settle problems and conflicts between the par-

ties involved, but is affected by the specific context of the interaction and observable communication rather than the naturally evolving relations between the parties. Institutional conversation has three main characteristics: it is goal-oriented, it poses specific institutional restrictions on professional activity, and it is characterized by certain practises of drawing conclusions (Drew & Heritage 1992: 21–22, Karstinen 1998: 159). These characteristics can also be seen in courtroom discussion. One only needs to observe the stages of the presiding judge's professional activity and her or his speeches to see goal-orientedness and the specific restrictions on professional activity in action. One specific restriction is that the participants in a discussion are not allowed to speak spontaneously and that the speeches must be uttered with permission and in a certain order. The participants' professional activity is also restricted by the information on the matter, which they must gather not only continually by themselves, but also by examining the witnesses in turn. The examination is not initiated automatically because there is a restriction according to which every examination must be initiated with an oath or an affirmation ritual that legitimizes the truthfulness of the information uttered. The information produced in a trial is received, interpreted and processed by all the participants present, but the conclusions based on it are drawn by the judging parties, who, except for the presiding judge, do not participate verbally in the producing of the information.

The content or the stages of the procedure of each hearing were not specified aloud at the beginning of the situation, due to which the *purpose* of the situation could not be clearly identified from the communication in the trial. The lack of specification also meant that the communicative situation was not defined jointly, which, in turn, affected the *relationships between the parties*. The experts' speeches did not reduce the lay members' uncertainty (cf. Berger & Calabrese 1975) about the matter or the procedure in the hearings (cf. Bradac 2001). In the examination of witnesses, on the other hand, the procedure was often outlined, which reduced the witnesses' uncertainty of the forthcoming procedures at least partially. This, in turn, oriented the witnesses' communicative choices (see also Välikoski 2000). The different communicative choices in a trial seemed justified given the differences in the various stages of a hearing in the actual situation: witnesses are external participants in the case at hand, their function is to provide necessary information, and they are present in the physical space of the courtroom only for the duration of their testimony. This means that they need information on the legal procedure when they enter and participate, due to which the procedure of the taking of evidence should be specified

in addition to the specification of the swearing in ritual. This may affect the atmosphere during the taking of evidence and the discussion may become more open and unreserved than at the other stages.

Could the choice of not specifying the purpose and procedure of a hearing in the beginning of the procedure be based on grounds derived from the *abstract context* of the hearing, such as from the legal system? Do the events under scrutiny become real only when information about them is presented during the hearing, that is, do they, in a way, not exist at the beginning of a hearing? Lacking the mentioned initial information can, however, in the worst case mean that an individual does not even realise she or he is at her or his own hearing or in an actual hearing. If the concept of situations is defined as in Endler (1982), then the mental and physical connections of the participants prior to this situation are also involved when they meet in the situation proper. This permits the interpretation that the layperson may have been questioned prior to the trial, in the pre-trial examination, thus, such a person may be assumed to be aware of the purpose of the trial, and on a general level, of its content. Nevertheless the trial is a discrete and precisely delineated situation beginning when people convene physically and ending with their physical departure (cf. concept of situation in Argyle 1981: 30).

At least for a layperson, the initial information provides appropriate tools for defining the actual situation and also gives time for the information to turn into knowledge (cf. Salminen 2001).

The lack of initial information can also be a factor in the distribution of power. Because the experts know how trials proceed, introducing the procedure in advance makes the definition of the situation more impartial. Not presenting initial information can be viewed as a factor of power distribution in two ways: as a characteristic quality and as a relationship (cf. Harisalo, Rajala & Ståhlberg 1992). Initial information can be interpreted as a characteristic quality in the sense that those who have a legal education do not need to hear it, because the information is a characteristic quality of their education. When viewed as a relationship, not presenting the initial factual information can lead to an unequal communicative relationship between the parties. The fact is that the legal procedure already makes relationships unequal and that is a one part of the credibility of the system. Are the communication relationships between participants such if the system does not stipulate how to communicate (see GB 95/82/preamble)?

Reciprocal definition in the beginning of a situation is needed in many speech communication situations, such as negotiations, for the participants to be familiar with the structure and procedure in order not only to be able to analyze the situation, but also to control the amount, quality and timing of their argumentation. In negotiations, the structure of the activity may be the first common topic to be negotiated, but in court trials the structure and procedure are predetermined. They can be made common knowledge only if desired. When the presiding judge chooses to do so, she or he not only clarifies the procedure of the hearing and makes it easier for the laypersons to overcome possible tensions (cf. Pörhölä 1995), but also outlines the structure of the proceedings. This allows the laypersons to make observations on how the outlined structure is manifest in courtroom communication. Operating like this, the chairperson implements the spirit of the law as regards illustrative and clear direction of the hearing and the particular stage of the trial.

Furthermore, the charges and the judgments were mostly read aloud. It is essential for a lay member to understand these important points in the trial. Reading written information aloud does not aid laymen's understanding and, thus, emphasizes the dominance based on expertise among the parties. In the data analyzed, there was only one occasion where the chairperson asked the defendant after the deliverance of the judgment whether the judgment had been understood: "*did you understand the verdict?*" (R4/cm38). According to the statement of reasons in the Government Bill (GB 95/82/preamble), a layperson's understanding of the matter at hand must be ensured.

Ensuring the laypersons' understanding of the matter can be seen to facilitate the stage of describing the matter. This stage is a new one in courtroom proceedings and is one part of the prosecutor's new role according to the law (CrC 97/689). The prosecutors seemed to use colloquial language and to describe the details of the events in their own words. Furthermore, the defendants were allowed to evaluate what they had heard. The prosecutors and the chairperson, for their part, confirmed their own understanding with questions such as "*is this how it was?*" (O4/pr8) and "*did you mean…this?*" (R4/cm11).

The speech communication situation observed was clearly oriented at managing the task of handling the matter, that is, of delivering messages, which can be inferred from the scarcity of speeches that could be interpreted to have managed the task of maintaining communicative relationships (cf. Hart & Burks 1972). Maintaining communicative relationships is, however, always present in interaction, and, ac-

cording to the research (cf. Conley & O'Barr 1998, Haavisto 2000, Haavisto 2001, Juholin 1999, Leino-Kilpi 1990, Mikkola 2000), it seems to correlate especially with the laypersons' satisfaction with the nature of the interactive relations between them and the expert parties. The managing of communicative relationships entails that the participants indicate that they are listening (Strauman & Johnson 1998, Törrönen 2001), their presence (Cline & McKenzie 1998) and social support (Mikkola 2000). The prosecutors indicated that they were listening in the examination of the witnesses by basing the introductions in their questions often on information that had been previously presented in the courtroom.

Summarizing is one way to show attention and one way to create mutual understanding. In the material observed no summaries of the matter or the proceedings were made by anybody at any stage of the hearings. The previous oral-literal court proceeding practise in Finnish district courts, where the presiding judge dictated summaries (Välikoski 1996) seems to have disappeared completely.

Mutual understanding was not reinforced visibly by attempting to co-operate in discussions, as suggested by Grice (1975). The layperson parties received a lot of information and many questions (*the maxim of quantity*), for instance, in the examination of witnesses, whereas their responses to the experts' questions were relatively short. An observer must presuppose that the information sent by experts is truthful and evidence-based (*the maxim of quality*), or, otherwise, the credibility of the whole institution (cf. Kemppinen 1992) will be at stake. Witnesses and plaintiffs produce information under oath, due to which the information should be truthful, but in the data examined the truthfulness was occasionally doubted (cf. e.g. case P10). The information produced by the defendants, on the other hand, does not have to be truthful or evidence-based. There is no need for a defendant to speak the truth (cf. CrC 97/687, Chapter 6: 5 ;3). Because of this, interpreting defendants' speeches requires special skills in observing communication in its entirety (see deception studies, e.g. Karstinen 1998). Furthermore, the speeches in the data observed were relevant as regards their content (*the maxim of relevance*); there were relatively few interruptions by the presiding judge to disprove this result. Neither did the prosecutors ask the respondents to specify the information in the answers very often during the examination of witnesses. It was not possible to evaluate the relevance of the questions asked with the present research method, except for the questions by the chairperson based on factual information. Apparently, the speeches stuck to the topic and the trials proceeded as expected (*the maxim of manner*), as the chairpersons exercised control over the pro-

ceedings in their speeches only rarely. As prescribed by law (CrPA 97/689, Chapter 6: 5;1), the presiding judge is obliged to react to such information in court.

The relations between the participants were defined by the legal system and court procedure confirmed it. The stages of the court hearing and the central role of the presiding judge in controlling the communicative situation indirectly underlined the roles of and dominance among the different parties. The presiding judge's role is a very obvious one and she or he dominates relationships in a situation. Her or his activity as a controller and regulator of the communication in the situation is also one criterion of her or his credibility. This was also the role desired by prosecutors. One way to assert one's dominance is the permission of the law, which announces that the presiding judge has the authority to decide whether the questions asked are appropriate (CJP 17: 33; 3). In the present data, however, this authority was used relatively infrequently.

The courtroom communication observed showed that the communicative relationships between the different parties were distant. The expert parties, that is, the presiding judge, the prosecutor and the lawyers, produced hardly any speeches where they could be seen to tell about themselves. The other parties, on the other hand, talked constantly about themselves, which was obvious due to the nature of the matters at hand. Handling the case was not substantially jointly shared in the speech. The presiding judges produced occasional speeches whose topics had arisen from the actual situations. These speeches expressed, for instance, that the presiding judge understood why a party had chosen to bring children to the court, or that she or he felt empathy for a young defendant's difficult situation in life.

The asymmetrical relations were also illustrated by the fact that the topics and timing of speeches were controlled by only one of the participants. Furthermore, the one-sided controlling of the topics and contents of the addresses illustrated the anonymity of the legal system. Relations between different parties were created and maintained without one of the parties in a relationship sharing personal information with the other parties.

Except in the scope of the initial outlining of courtroom proceedings, the distribution of power could be seen as dominance over interaction, as illustrated above, and as clear dominance over the proceedings (cf. Focault 1980). Because of her or his high position, the presiding judge is responsible for and required to lead the judicial proceedings as could been seen in the data analyzed. The presiding judge also has

discretion to decide whether the speeches produced in the courtroom are qualitatively appropriate (CJP 17: 33; 3).

The above-mentioned observations on the communicative relationships between the different parties in the courtroom were in accordance with Burgoon and Hale's (1984) findings on the general characteristics of human relations. The only factor that made the present relations specific was the context of the communication. Many central general theories of interpersonal communication are, however, reflected almost inversely in the communication between different parties in a courtroom context. Altman and Taylor's (1973) theory of social penetration states that in order for a relationship and communicative activity to develop, open and confidential interaction between the participants is required. Communication makes this interaction observable. Open and confidential interaction is also a requirement for receiving relevant information. Can communication in a courtroom be open so that relevant information for the decision-making can be achieved?

The communication in the data observed proved to be relatively open in nature. The openness was due to the openness of the information, that is, the intimacy of the matters discussed in the courtrooms. However, these discussions occurred in interaction that was relatively regulated, controlled, and verbally not reciprocal.

According to the prosecutor questionnaire and the witness interviews (Välikoski 2000), conversation and interaction must be open, even if the relationships between the participants are not. *Communicative relationships can be separated from social relationships.* It is a challenge for the communication to be open in a situation, where the participants social relationships are already problematic. Open communication is an observable form of open interaction. This interaction between parties is created in the atmosphere in court. An atmosphere is not only a result of the interaction, but also affects the interaction and vice versa (Peltola 1999, Pincus 1986, Törrönen 2001).

The theory of uncertainty reduction (Berger & Calabrese 1975) is connected with the predictability of courtroom action and its communicative manifestations. With good justification, it was assumed that lay members were unfamiliar with courtroom proceedings. Because of this unfamiliarity, the beginning of the new situation and the initiation of a new interactive relation is especially important in grounding the participants' abilities to predict the procession of the trial.

The proceedings in court seemed to be relatively repetitive irrespective of the particular presiding judges and the nature of the hearings. However, the recurrent aspects were made into shared knowledge quite rarely. At least, the laypersons' uncer-

tainty about the proceedings (cf. Bradac 2001) was hardly reduced in the other stages of trials except for the examination of witnesses.

The theories of interpersonal communication may not seem to be accurate theories as background explanations of people's behavior in such a formal and institutional situation as the court context, yet they are basic theories in human relations and communication. If communication is defined as a simultaneus and continuous interaction between people in some evironment (Watzlavick, Beavin & Jackson 1967) is this also true in a courtroom? One cannot ignore these relations. The knowledge of interpersonal theories is specially needed in contexts where some formal system is continously present and the system is one of the basic definers of the roles between people involved. Such knowledge is also needed as a background to human relations in a situation where the same sitution is defined by the professionals and laymen.

It could also be interpreted that the people in the same courtroom created there own speech communication situation around a particular, shared problem. The problem was jointly defined, outlined, evaluated and handled within judicial restrictions by the members of the group. Furthermore, in interaction the group structured (cf. Poole, Seibold & McPhee 1986) itself within the framework of the external judicial system in all phases of its actions. Although already the system in itself seemed to produce recurrent courtroom activity in criminal court trials, the group communication defined by the presiding judges likewise contained only little variation indicating other types of structuring. The structures of the institutional system are present during all communication between the participants in a courtroom. This institutional nature of courtroom activity could be clearly seen not only in the stages of proceeding and verbal rituals mentioned above, but also in the nonverbal context of communication. While the space and furnishing arrangements naturally varied between courtrooms, one common feature was that all the parties had named seats in the courtroom and that the chairperson and the lay judges were often seated higher than the rest of the public. In addition, the presiding judge rapped the table often with a gavel to conclude her or his speeches.

The courtroom was also an interesting speech communication context in a chronemic sense. The group specified and handled *in the present time* certain group members' problems *in the past*, producing information to solve the problem, on the basis of which certain members of the group made decisions that would concretely affect certain group members' *future*.

The similarity of the physical contexts of courtrooms created an expectation that the activity would be recurrent on an abstract level, too. As mentioned above, the system and the structures representing it were recurrent. However, it seemed that the distant and formal interaction between the parties produced mainly communication that both *reinforced* these structures and *was reinforced* by them. On the other hand, the data observed also contained instances of relatively familiar, intimate and even casual interaction, which produced quite spontaneous and unforced discussions (cf. e.g. R7, P8).

5.2.2 The prosecutor's conceptions of the trial as a speech communication situation

The speech communication situation observed can be seen to have mirrored the prosecutor's conceptions of the situation relatively well. This result was obtained despite the fact that the data on the communication observed and on the prosecutors conceptions were gathered completely separately from each other.

The *purpose* of the speech communication situation was approached by tracing the prosecutors' conceptions of the principles of a fair trial (see question 4, Appendix 2). A clear majority of the responses contained mentions of unbiased professional activity and hearing of the parties. These principles of legal proceedings can be derived directly from law (the Finnish Constitution 19/94 and CrPA 97/689). Nearly all of the female respondents mentioned both principles. Making public the rights of the parties and the reasons for the charges, ensuring the different parties' understanding, giving an impression that one is listened to, and explaining the conclusion were also mentioned. The materialization of the purpose of courtroom activity described above can be observed in courtroom communication.

Furthermore, the mention that the different parties should be listened to could be found in half of the female prosecutors' responses. Quotes like "*Each party should know what is going on in the courtroom and understand what is being discussed and what the prosecutor is claiming and arguing. Everyone should also be allowed to be heard and to say what he has to say in his addresses*" (DA13) and "*the court of justice must give the impression that the parties are listened to and must express real interest*" (DA18) are examples of not only listening to the parties, but also of ensuring the different parties'

understanding, mentioned 12 times. The principles mentioned of a fair trial consisted of references to both general principles and to the tasks of the presiding judge or the prosecutor (cf. DA40).

A part of the results was due to the statutes and regulations and could be predicted, whereas another part was based on the prosecutors' conceptions. The principles of a fair trial produced by the female prosecutors, which were the expression of listening and interest, and especially the ensuring of laypersons' understanding, are especially important factors in formulating the laypersons' impressions of the trial. These factors affect not only contentment (Lehtonen 1999, Peltola 1999), but also the participants' impression of fairness (Haavisto 2001). Furthermore, the witnesses' conceptions of the elements of a fair trial supported the above-mentioned results (Välikoski 2000: 32–33).

Mutual understanding was, thus, not visibly reinforced in the hearings observed. However, the prosecutor questionnaire indicated that mutual understanding between the parties was considered important. It was even considered a guarantor of justice (DA13 and DA18) and an appropriate indicator of atmosphere. Furthermore, taking care of mutual understanding was seen as an important speech communication skill.

According to Endler (1982) the term situation can also extend to mental preparation of participants before their physical encounter. Those participants' prior definitions of a situation have correlations with their real action in a situation in question. One way to know a prosecutor's conceptions of a trial as a speech communication situation was to ask about their preparations for it. The prosecutors' preparation for court hearing as a speech communication situation was elicited in questions 1, 2, 5a, 7a, 8 and 11 in the questionnaire.

The first question asked was how they prepared for court hearing as a speech communication situation (question 1, Appendix 2). Asking about preparation was a logical first question. The concept of communicative preparation was assumed to be familiar to the respondents, who had previously attended a course on communication. Furthermore, the concept proved to be familiar to the prosecutors, as can be seen in some prosecutors' answers, where the court hearing was approached specifically as a speech communication situation: "*I try to manage without papers. Going through your papers interferes with the sending and the receiving of messages*" (DA24). One respondent, however, kept on wondering about the whole concept: "*what is a speech communication situation?*" (DA32).

The answers were categorized into three groups. The first group contained the prosecutors' descriptions of how the *different parties are taken into account* in the preparation. The second group consisted of illustrations of how the prosecutors prepare for the *case*. The third group portrayed how the prosecutors prepare for the *courtroom context* and the activity within it.

As could be expected on the basis of the nature of the prosecutor's task, most of the answers described how the prosecutors prepare for the case (53 mentions out of 58). In three responses the preparation for the case was seen to guarantee simultaneous preparation for one's own communication and the fluency of the communication (DA14 and DA25) and to ensure communicative consistency (DA56). Preparation for the case has been considered a way to achieve consistency in communication (cf. Pörhölä 1995) and to encourage it so much that one can concentrate on the impacts of the communication. Ultimately, worrying over communication does not entail worrying about *oneself* as a communicator or over one's succeeding in the *task* at hand; instead, the worrying can be oriented at the *impacts* of the communication (see Staton 1983).

The second biggest number of answers had to do with how the prosecutors prepare to act in the courtroom context (see Table 3).

Preparation for the courtroom context could be seen, for instance, in the prosecutors' formal clothing, in the loud volume of their speaking, and in that they were prepared to use audiovisual devices. However, taking into account the different parties already in the preparation stage gathered the least mentions (17 mentions, see Table 3).

In the preparation for a speech communication situation (e.g. Gronbeck 1998, Monroe & Ehninger 1994), preparing for the subject matter is a part of preparing for the actual situation. The situation consists of the speaker, the message, the audience, and the context. The purpose of the situation, the relationships between the participants and the context provide a background for the communication and recreate it (Miller, Cody & McLaughlin 1994). The intensity of the preparation correlated with the significance of the situation. Appropriate preparation for a situation included all the above-mentioned components of preparation.

Only about one third of the respondents (17 people) mentioned all the above components of preparation. Two respondents mentioned carrying out especially careful, all-around preparation, albeit in relation to unusual situations (DA1 and DA36). According to these respondents' descriptions, unusual situations require specific, all-

around preparation. Besides by analyzing the matter, the prosecutor is able to determine suitable communication in court by finding out who the other parties are, what their relations are, and how the relations manifest in the communicative context. Furthermore, being familiar with the participants' backgrounds helps the prosecutor to understand their communication.

The respondents' ways of defining communicative situations were also illustrated by the verbal and nonverbal elements in communication that their attention is oriented to in different situations. Because observational data does not provide evidence of the cognitive process of attention orientation, the prosecutors were asked to report what they pay attention to in hearings (question 2, Appendix 2). Those responses do not reveal what are the main points the prosecutors really paid their attention to in real life, but those answers only indicated their reported attentions in real life.

On the bases explained above, it was presumed that the respondents were familiar with the terminology in the question, and every prosecutor answered this question.

The answers were categorized into four groups according to what was mentioned: 1) the content or clarity of speeches, 2) eye contact and movement in the courtroom, 3) the use of language, and 4) voice control and clothing. The prosecutors reported that they paid a lot of attention in court to nonverbal elements in communication. A clear majority of the mentions were concerned with the eye contact between the parties, movement and voice control (84 mentions out of 137). In particular, all the female prosecutors mentioned voice control (16 respondents/16 mentions), and nearly all of them also mentioned eye contact (16 respondents/13 mentions). Gestures and facial expressions, however, were mentioned only rarely.

The result that attention is typically oriented to eye contact was in accordance with research carried out in other contexts. Similar results can be found in the international study on teaching communication (see McCroskey, Richmond & Sallinen 1997). In this study, Finnish students not only paid more attention to the teacher's eye contact and voice control than people from other countries, but also viewed variation in these features as criteria of the teacher's credibility. The witnesses, too, reported that they pay attention not only to eye contact oriented towards themselves, but also to eye contact between different parties in the courtroom, and most of them viewed eye contact as a component of treating people well (Välikoski 2000).

Apart from the mentions concerning the use of language (27 mentions), the content of speeches proved to be the only aspect of verbal communication that attracted the respondents' attention. There were a few particularly elaborate descriptions of

the use of language as such, as can be seen in "*I pay attention especially to words and adverbials, such as maybe, in my opinion, too, also, but*" (DA16) and "*I pay attention to word choices*" (DA39), as well as of the different ways of using language, as in "*I don't like it if the chairperson addresses the parties by their first names*" (DA47).

The result was quite surprising, since verbal information serves as both the substance and object of a trial. In courtroom context, like other contexts, the different participants make observations and interpret them subjectively (cf. Burgoon, Buller, Floyd & Grandpre 1996). Furthermore, the accuracy of different observers' observations is not identical (Hewes & Planalp 1987, Petty & Cacioppo 1986). In order for the interpretations based on observations to be well founded, the observations must be as objective as possible, which is hardly ever the case with nonverbal information. On the other hand, the questionnaire elicited what sort of observations are reported, not how the observations are processed.

An observer can evaluate the atmosphere of a speech communication situation only subjectively. In the data analyzed, the atmosphere seemed to be politely unreserved, even if the courtroom communication observed lacked some typical aspects of unreserved communication. One of the typical aspects of unreserved communication is immediate clarification of unclear points in a way that saves one's face and so that *all* the parties are involved in the process (cf. Coupland & Wiemann 1991). That is, unless the situation *in its totality* was seen as clarification of unclear points between the parties, which is the main function of courtroom communication.

The atmosphere seemed polite because, in general, the presiding judges addressed the parties by their surnames and because the speeches by the parties did not contain information that could have been interpreted as impolite.

According to the prosecutors, the atmosphere in courtrooms is relatively unreserved and unconstrained, but is characterized by somewhat frigid and formal dialogue, carried out in turns by the parties (questions 5a and 7a, Appendix 2). On average, the atmosphere was considered unconstrained rather than intimidating, unreserved rather than reserved, and relatively formal. The atmosphere was considered relatively confidential by 40% of the prosecutors, and relatively formal by 65% of them. The prosecutors had very similar views on the atmosphere, which can be seen in the small standard deviation in the average results (see Table 7a).

The scale for evaluating atmosphere introduced above may have been problematic, because the alternatives for describing the atmosphere that the respondents were to choose from were composed by me, due to which the results may have been pre-

dictable. The respondents' choices focused on the middle of the scale, but the extreme ends were also used. Two of the respondents found the usual atmosphere in court to be especially confidential, three respondents considered it especially formal, and five prosecutors felt it to be especially reserved.

The result was somewhat surprising. On the basis of commonly known facts it can be assumed that courtrooms are not generally seen as contexts that are characterized by an unreserved and unconstrained atmosphere. On the other hand, the prosecutors in the present study described the atmosphere in those contexts where they themselves worked. The visiting witnesses also seemed to view the atmosphere in the courtrooms similarly to the prosecutors working in the courts. Further proof of the common conception of the atmosphere was provided by the fact that while the prosecutors described their impressions of the atmosphere on a general level, based on their previous experiences, the witnesses' impressions were based on immediate experiences in the situations (Välikoski 2000: 34–35).

Most of the responses (23 in all) to the question concerning the general nature of contemporary hearings as conversation situations (question 7a, Appendix 2) pointed out the frigidity and formality of the situations, which affect the nature of the discussions. The prosecutors seemed to have the experience that conversations consist mostly of monologues uttered in turns. This form of discussion was occasionally even considered to hinder the laypersons' understanding of the matter. This individual result is in accordance with certain American (Molotch & Boden 1985) and Finnish (Engeström, Haavisto & Pihlaja 1992, Haapasalo 2000) studies. Some prosecutors found the leading of the discussion and the chairperson's responsibility for it to be essential for successful discussion (cf. DA4 and DA21). The results gathered were based on the prosecutors' own definitions of the terminology of the conversation, due to which the results contained, presumably, variation already in this respect.

The data observed reinforced this impression, although the language used in the hearings was colloquial, with the exceptions of the reading aloud of the charges and the delivery of the judgment.

The name of a speech communication situation according to prosecutors is one indicator of their definitions of the situation. The prosecutors were not directly asked to give a name or a title for the speech communication situation occurring in court. None of the respondents had written anything about this matter on their own initiative when answering the open-ended questions. Only in a few answers describing interaction between the parties and difficult communicative situations were expres-

sions such as "*warfare in sophisticated form*" (DA48) and "*the beginning is difficult…you must sell your case*" (DA53) used. It can be interpreted that these expressions were due to the respondents' impressions of debating or negotiation.

The first questions in the questionnaire revealed how the prosecutors prepare for court hearing as a speech communication situation. The prosecutors' conceptions of a criminal hearing as a speech communication situation were further traced by asking them which stage of the hearing they view as the most difficult one in communicative terms and why (question 8, Appendix 2).

In communicative terms, clearly the most difficult stage turned out to be the closing argument, which was mentioned 27 times in the answers (see Table 5). In some answers many different stages had been named, but also in these answers the closing statement was among the stages mentioned. Many different arguments were made to explain the difficulty of the closing argument. The most frequent argument was that the difficulties are caused by the message and the speaker.

The prosecutors seemed to define the court hearing as a relatively speaker-centered (cf. Gronbeck 1998) communicative situation. This meant that the success of a communicative situation was perceived to be dependent on the particular speaker's actions. This perception is understandable, since the closing argument, which was commonly considered difficult, is in essence an argumentative monologue that is usually not interrupted (Välikoski 1996). In the speaker-centered view, argumentation is not seen as interaction, but primarily as an independent entity (cf. O'Keefe 1982, 1988).

In some answers it was mentioned that the presentation of a charge and description of the matter are communicatively problematic stages because "*in the beginning you don't know what kind of motion the opposing party is going to propose. You must start blind-folded*" (DA11). The beginning and the description of the matter are, however, important stages of the trial, since "*in the description of the matter you should be able to both introduce everything that is relevant, and to put it so briefly that it can be remembered*" (DA10) and because "*at this stage you should sell you case to the court, for which purpose it is important for your message to get across*" (DA53).

The female prosecutors also found the examination of witnesses communicatively difficult. The examination of witnesses contains the possibility for conversation, it is more dynamic than the other stages of the trial, and predicting how it will proceed is more difficult than in the other stages (Välikoski 1996). Although the witnesses had been heard initially in the pre-trial investigation (law 87/449), they may have given

different answers in the courtroom context. Some witnesses also asked questions, or were scared or tense, which compromised the rationality of the answers (Välikoski 2000). Responsiveness to such situations requires the prosecutor to react immediately and quickly and to move from speaker-centeredness to communication-centeredness.

At the end of the questionnaire the prosecutors were asked to evaluate their role as a professional activity in court in general (question 11, Appendix 2). The prosecutors gave fairly positive evaluations of their activity. They evaluated, rather uniformly, their powers of concentration to be especially good. The prosecutors, furthermore, viewed their behavior as relatively formal and friendly, even genial. They were even unanimous about their geniality, which can be seen as a small standard deviation in their evaluation (see Table 9).

The data observed did not contain signs of the prosecutors being aggressive either. Only a few hints of aggression could be found in some conversations during the examination of witnesses, where the prosecutor asked many consecutive questions in order to get precise and immediate information from the witnesses, as in (DA4):

> "At which point did you pick up the tear gas?" (P4/pr18)
>
> "Yes, but at which point?" (P4/pr19)
>
> "Did you see anything having to do with this girl hitting A in the face?" (P4/pr20)
>
> "Yeah. The fight must have been hard, but did you see a blow, an individual blow, that is?" (P4/pr21)
>
> "So you did not see it." (P4/pr22)
>
> "Which is correct, then. You did not see it or you do not remember?" (P4/pr23)

The witness in this assault offence trial was the defendant's witness.

An interesting connection was found between the above results and the witness interviews, in which the same method of evaluating the prosecutor's professional activity was used. The witnesses' evaluations of the prosecutor's behavior were nearly identical to the results above. Even the average choice on the scale between geniality and aggressiveness was almost the same (mean 4.1., Välikoski 2000: 49–51). In contrast, in a broad American study, the different parties' impressions of the judge and

prosecutor's behavior, the prosecutors' activity was considered especially aggressive (Blanck 1996).

In the context of Finnish courtrooms, the participants' conceptions have so far been investigated only in civil cases, which do not involve prosecutors (Engeström, Haavisto & Pihlaja 1992, Haavisto 1997, 2000, 2002).

The prosecutors' conceptions of their own role was also illustrated by the answers to the question of how they take into account the different parties while speaking in court (see question 6b, Appendix 2). Prior to this (when answering question 6a), nearly all of the respondents had stated that they generally pay attention to the treatment of the different parties in court. The concept of treatment was not defined in the questionnaire, and the respondents were asked to answer by a simple 'yes' or 'no', due to which the result was mainly indicative.

However, when the prosecutors were asked how they *themselves* took into account the different parties, individuated in the question, while speaking, they produced only few descriptions of the different ways of taking them into consideration.

Some respondents claimed to take into consideration the *presiding judges*, for instance, by addressing them with expressions such as "*Sir*" or "*Your Honour*" and with eye contact. A few prosecutors, in addition, viewed the chairperson clearly as an object of influence, and even as a person to whom one's own conceptions were "*sold*".

The respondents mentioned hardly taking the *lay judges* into account, as could be seen in the answer where the respondent claimed to "*hardly remember their presence, although I should*" (DA8). There were nearly 50 answers like this (the maximum being 59). As could be seen in some answers, the lay judges are taken specifically into account when the relationship with the presiding judge is unclear (cf. DA3, DA16 and DA21). Although the task of the silent lay judge is important in the passing of judgments, it seems that they are not perceived as actual objects of verbal influence. The prosecutors really seem to consider the role of a lay judge as a non-existent member of the court. In contrast, in the USA, the other members of the court, the jurors, are clearly objects of verbal influence (Badzinski & Pettus 1994, Burgoon & LePoire 1999). The jurors' conceptions of the trustworthiness of particular lawyers and witnesses have been constantly explored (Rieke & Stutman 1990, Smith & Malandro 1985), and the different parties base their argumentation on this information. The duty of the jurors in USA (see e.g. Reinard & Arsenault 2000) differs from that of lay judges in Finland, which must be borne in mind when interpreting the present results.

Of all the respondents, only 15 prosecutors had produced specific descriptions of how they take into account the *plaintiffs* when speaking in court. The rest of the respondents reported that they do not take the plaintiffs into account specifically or provided no answer at all. Those prosecutors who reported taking the plaintiffs into account while speaking make it known that they do so mainly by the means of eye contact, smiling and nodding. Thus, nonverbal communication seemed to be the primary factor for some respondents in this question too, as can be seen in the fact that some of the examples given drew on nonverbal communication. On the other hand, the relatively thorough definition of the communicative situation was illustrated by the following two examples, where taking the plaintiffs into consideration was not described as an end in itself but as goal-oriented activity: *"I try to listen to them, because they give valuable help in gathering the facts"* (DA56) and *"I have to make them see that the prosecutor regards their case with appropriate seriousness"* (DA57). These respondents did not, however, specify how these goals could be reached.

The defendant is a suspect and a potential offender. This was presumably the reason why the prosecutor's descriptions of the ways in which the *defendants* are taken into account did not include sympathy for them or attempts to make the situation easy for them. One prosecutor mentioned avoiding using too many legal terms when the defendant is alone in the courtroom (DA42). In general, the prosecutors seemed to try to be formal and stern with defendants.

A witness has no interest in the matter at hand and is an external party to the whole case, but she or he is an important source of information in a case. This is a function of testimony. This could be seen in the examples given by the prosecutors, which outnumbered the examples given by the other parties noted in this question (6b). The majority of the prosecutors indicated that they attempt to take account of the *witnesses* by relieving their tension, by creating a safe atmosphere for answering questions, and by being polite. Among the practical means to take notice of the witnesses were addressing by name (DA4), polite greeting and making sure that the witness understands the matter at hand (DA6), beginning with easy questions (DA27 and DA36), remembering the events together with the witness (DA16) and thanking the witness at the end (DA36). The above examples showed that the prosecutors linked together the quality of the questions, the unfamiliarity of the situation and the initiation of the interaction, and *showed, thus, that they understand how relationships can be created*. In one answer it was pointed out that the relationship between the prosecutor and the witness is co-operative in nature, which provides the reason

for the prosecutor to take the witness into account: "*with the help of witnesses the prosecutor gathers information on what has happened. They are, however, often scared and confused, which means that, for starters, I must aid them to get rid of their fears and to understand the matter and their own importance in the handling of it*" (DA56).

The ways of taking account of the different parties mentioned above illustrated the communication between the witness and the prosecutor at the beginning and ending of the interaction. The middle part in the interaction, the actual handling of the case, establishing of the events that the witness has witnessed, was not illustrated. However, the handling of the case is the very reason why the witness is present in the hearing. In the witness interviews (Välikoski 2000) it turned out that the witnesses hoped that the prosecutor would take account of them by showing that she or he was listening, by presenting the questions slowly, and by speaking less to her or himself. The witnesses were, on the other hand, mostly happy with the prosecutor's politeness (Välikoski 2000: 67).

All in all, almost all of the prosecutors mentioned that they paid attention to the treatment of the different parties in court, but seemed to take little account of the different parties while speaking themselves.

5.2.3 The prosecutor's expectations of the communication between the different parties

Research question 1.2 – What kind of expectations do the participants have of the communication relationship in the situation in question – was answered on the basis of one party's, i.e. the prosecutor's, questionnaire. The answers 3, 5b, 6c, 7b, 9, and 10 (Appendix 2) in the questionnaire clearly demonstrated the prosecutors' expectations of the communication between the parties in oral trial procedure. Expectations of the atmosphere (5b) and discussion (7b) were compared with the prosecutors' views on the present situation (5a and 7a).

Relationships consist of the expectations the persons have of one another in interactive situations. Courtroom communication in a real time situation makes the relationships visible communication relationships. The researcher may describe and define them on the basis of the communication she or he perceives, but the real relationships may only be evaluated by those who experience them (Greene 1984), and

thus can only then be defined as social relationships, too (Perttula 1995 and Werner & Baxter 1994).

Experienced courtroom relationships have so far been little studied. Recidivists, according to a study by Aronsson, Jönsson & Linell (1987), wanted fast and formal trials. No special interaction and communicative relationships between the different parties was needed. On the other hand, Lind, MacCoun, Ebener, Felstiner, Hensler, Resnik and Tyler (1990) as well as Engeström, Haavisto and Pihlaja (1992), stated that the courtroom atmosphere and the treatment of the parties seemed to be of importance to their commitment to the decision. The people seemed to accept better the results of a procedure which was felt to be fair and just. The process leading to the decision was influenced by the commitment to the result of the process (Haavisto 2000, Tyler 1990).

In this research, the prosecutors did not want the communication between the parties in the courtroom to be special in any way (question 3, Appendix 2). Of all the respondents (58), 23 prosecutors reported that they did not want any special relationships between the parties. The descriptions that had been given were rather evenly divided into those which demonstrated either the affective or the cognitive sides of the relationships. However, the relationships are, as noted before, a result of interaction or maintained by it, and on the basis of them laymen formed their opinions on contentment, for instance, when dealing with a professional (see Juholin 1999, Lehtonen 1999, Peltola 1999, Pincus 1986).

Among the individual opinions it was mostly (8) mentioned that the interaction between the parties should not be a hindrance to the intelligibility. What can one conclude on the basis of this? None of the prosecutors wrote that the relationships should be distant and formal. Nor was it mentioned that communication created in interaction should be informal and familiar. Instead, it was stated that communication could reflect the confidential nature of the relation and no be, *humiliating and abasing the layman* (DA1).

This showed that the picture of the prosecutors of the interactive relationships of the parties were reminiscent of the concept of professionalism in different occupations, which include open and uncomplicated, yet not close and familiar, relationships between a professional and layman (cf. Kiikkala 2001). Creating and maintaining a relationship is not a desired inherent value in different professions, but in human relations this aspect is always present (Fisher 1978, Watzlavick, Beavin & Jackson 1967),

even though this was suspected in one of the answers: *"one does not seek interaction at court, but control over the situation*" (DA48).

Expectations of atmosphere and conversation in court

In this case, the environment was formed by the structures of the judicial system. These abstract structures are continuously re-established, in particular in the interaction between the members of the environment in question (see structuration theories and e.g. Poole, Seibold & McPhee 1986). The expectations and definitions of the situation of people involved as well as their roles and norms related the system are present. Those definitions are the means of their action, which is observable through communication. The continuously living atmosphere that emerges in the environment is the basis of the relation (see Figure 6), but it is also created in these relations and can be analyzed as evidence for evaluating those relations (Laing 1967, Werner & Baxter 1984). The systems and the structure are created in interactive dualism, affecting each other in a constant structuration process (Poole, Seibold & McPhee 1986).

Previously, the prosecutors' conceptions of the current courtroom atmosphere in general were presented (see question 5a, Appendix 2). In addition to this, the prosecutors described the desired atmosphere (5b). Eight of the prosecutors reported that they did not want any changes in the present atmosphere.

The statements that would change the situation most were, on the one hand, the statements about greater openness and relaxedness than at present (31), and on the other hand, even more accurate viewing of the structure in the proceedings (32). The latter was expressed in nearly all of the female prosecutors' answers (Table 7c).

Taking into account the parties, and the presiding judge's responsibility for the atmosphere were two things mentioned in some answers, and the chairperson was also given some instructions as to how to achieve the desired atmosphere (cf. e.g. DA42). Thus, not all the answers only *described* the ambiance desired by using words such as 'open', 'unrestrained', and 'equal'. Some of them also included defining and operationalising the words, that is, *what* did the ideal atmosphere *consist of,* e.g. confirming the understanding of the different parties, presenting the structure of proceedings, and indicating that presiding judges are listening. Thus, this was what some of the

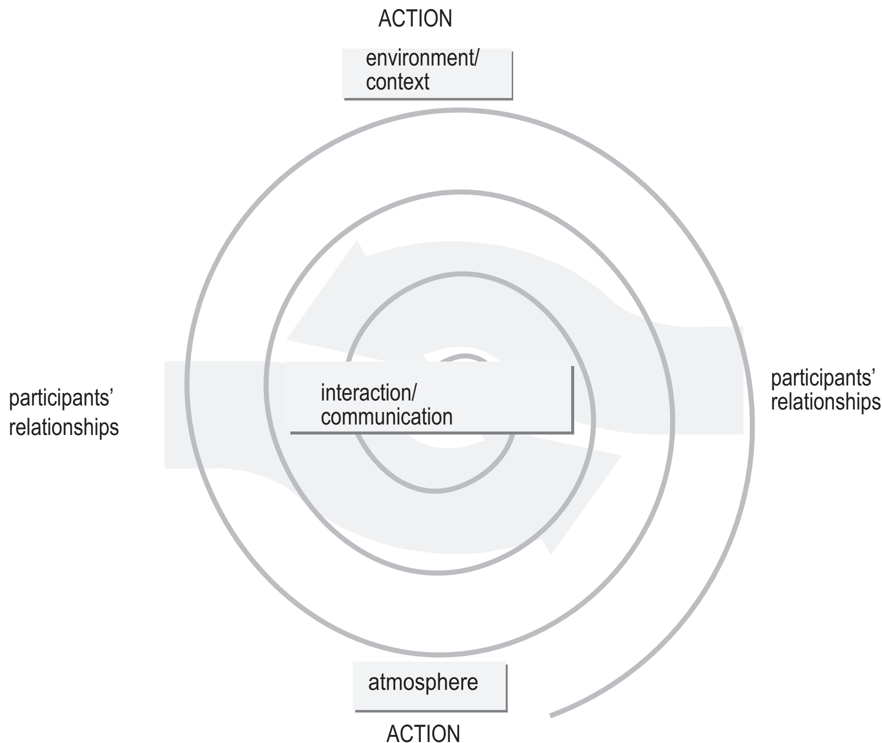

FIGURE 6. *The combination of interaction, relationships, atmosphere and an environment*

prosecutors were hoping for. However, the material observed showed evidence of that desire only in individual cases.

The description of the desired atmosphere, as a rule, did not seem to include any major changes to the descriptions of the current atmosphere. An excessively familiar atmosphere was as feared to detract from the credibility of the procedure. Creating an atmosphere was not the main goal of the interaction in a court, but the atmosphere must not disturb the actual procedure in court, that is, establishing the facts of the case and arriving at justice. One respondent even stated that the atmosphere was always dependent on the subject-matter in court, as the following example shows: "*to this I have to answer that the desired (atmosphere) does not much matter, because the nature of the cases varies a great deal and a big drug case cannot relax the atmosphere and make it very open, no matter what you do*" (DA4). Apparently, the ideal atmosphere, according to this description, was in fact open and relaxed.

The atmosphere around the legal procedure, nevertheless, was formed in the courtroom, whether created or developed without the parties' intentions (cf. Poole, Seibold & McPhee1986). However, on the basis of the prosecutors' answers it can be concluded that they understood the atmosphere as being something *outside of themselves,* something that *needs to be created by* somebody, for instance by the presiding judge or by the case itself.

The atmosphere has also been noted to correlate with the impression of contentment of the lay members, and even with the commitment (see i.e. the examples in health communication Mikkola 2000). The result has been confirmed in both international (Blanck 1996, Conley & O'Barr 1998, Messmer 1997) and Finnish studies (Engeström, Haavisto & Pihlaja 1992, Haavisto 2001, Välikoski 2000), conducted on the courtroom context.

Only about one third (21) of the answers mentioned something about the desired discussion (see question 7b, Appendix 2). For other respondents, this information was either missing completely (19) or there was a notion that no special desires existed (8). The result is interesting to interpret, because the questionnaire was otherwise answered carefully and extensively. None of the other questions lacked this much information or included the expression "*no special desires*" (total 37). Tiredness of answering the questions is evidently not the case, since the question was situated in the middle of the questionnaire, and the questions following it were answered thoroughly.

What does this result reveal? The concept of discussion was not generally determined and thus the answer, as well as the answer which described the present discussion (7a), contained variation already on the basis of the prosecutors' own conceptions of conversations. According to the descriptions of the discussions, it seemed that the prosecutors, as a rule, defined discussion as a dynamic situation where speeches were made and where there was overlapping speech, and a possibility to react spontaneously and immediately to the matter dealt with. This was not how they saw it in the courtroom. Two respondents (DA34 and 37) were of the opinion that discussion as described need not occur in the courtroom, and the whole need for discussion was questioned in their answers. In the other one, the discussion – as the respondent understood it – even prevented finding the truth (DA37).

Nevertheless, just those examples which analytically answered questions illustrated the discussion mentioned above, including either an adjective describing the quality of discussion or exact instructions for practical discussion. Some of the

answers implied a connection between the atmosphere and action in an ideal discussion (cf. DA30, DA40 and DA47). The answers of a few prosecutors showed insight in understanding that a given atmosphere or atmosphere as such is not only in the background of the action, but is affected by all the parties involved.

Regarding the expectations of different parties regarding their manners of taking the prosecutor into account nearly all of the prosecutors had different expectations as to how they wanted to be taken into account in the speeches of the different parties (question 6c, Appendix 2). Only 8 male prosecutors reported that they did not want to be taken into account at all.

Most mentions were clearly made on the fact that the different parties should make a distinction between the prosecutor's duty and his or her person. The result is rather understandable. The prosecutor may recall an unfortunate incident and presumably, emotions and rational actions at least from the side of the litigant parties are threatened in the courtroom (Välikoski 2000).

The prosecutors' expectations were compared with how the witnesses analyzed their action (Välikoski 2000: 49–51). They received feedback on abundance of speech, not listening, and fast and frequent presentation of questions, which are features included in a dominant style of communication (Norton 1983). A layman could have difficulties in separating the person and the style in formal courtroom activity.

The other expectations the prosecutors had were directed at the vocal skills of the different parties, justified counter-argumentation of the prosecutors' perspectives, and the identifying of the prosecutor's role as only one part of the legal system and court procedure.

Expectations of the presiding judge's manner of handling the procedure

There were many expectations of the presiding judges' manner of presiding (see question 9, Appendix 2). Mostly, the manner of leading was expected to be fluent without any unnecessary interruptions, and to proceed steadily and systematically. Almost all the respondents expected order to be kept. Other methods mentioned were: emphasizing equality, and ensuring the understanding between different parties. Nearly half of the female prosecutors mentioned the latter as an expected manner of presiding in court, whereas of the male respondents, only every seventh. Thus, secure, fluent

and formal conducting of proceedings was expected of the presiding judge, but also conduct aimed more towards understanding of the content of the subject-matter.

Although the present task of prosecutors is more participatory in nature and also more visible in the courtroom than it used to be in the former trial procedure, an assertive approach still seems to be expected. The responsibility for advancing the situation and fluency of the activity are still the tasks of the presiding judge.

The prosecutors seemed to define their role as a part of a larger legal system and one part of the courtoom process and wanted the responsibility for managing the situation to remain unchanged. The wishes seemed to be verified in practise, too, for the witnesses likewise perceived the chairperson's action as focused and easy to follow (Välikoski 2000: 65).

Expectations of an ideal person to answer their questions

The prosecutors also constructed an ideal person to answer their questions (see question 10, Appendix 2). There was a great number of answers and the data could be divided into two distinct categories. The first group was concerned with the contents of the answers whereas the second group with the manner or style of answering. The desired content was objective information without any conclusions drawn, formed by the real observations of the person. The manner of answering was supposed to be honest and systematic, uttered in a loud voice. A few prosecutors stated that not only was relevant and true information presented in an appropriate manner enough to establish and ideal answer, but the person should also show that the questions were understood. The criterion for ideal answering approached the criteria of a good message or good news by the maxims of Grice (see Brown & Levinson 1978), that is, the relevant truthfulness (quality) presented concisely and briefly (quantity and manner).

Profession or education were preconditions for ideal answering in three of the responses. In some surveys, the witnesses' occupation was linked with the impression of credibility they gave the laymen (Hans & Sweigart 1993, Philips 1990).

Expectations and important actions

The prosecutors were asked to prioritize the activities proposed (see question 6d, Appendix 2). The list of activities was based on literature from both speech communication and procedural law.

Clearly, the most important task was *ensuring the plaintiff's understanding* (42 percent of opinions). *Ensuring one's own understanding* was also placed first by over 20 percent of the prosecutors. Understanding the subject-matter seemed to be very important in court and the basis of all action. In the criteria (GB 95/82/preamble) for judicial proceedings (CrPA 97/689), too, it was emphasized that a concrete and observable trial should be a ground for common understanding. Furthermore, 42 percent of the respondents estimated *presenting logical and systematic questions* being so important as to take places 2 and 3. *Showing interest in the plaintiff's speech* collected nearly the same percentage, obtaining 40 percent of the tasks and acquiring places 5 and 6.

Ensuring understanding and showing interest when speaking are also factors for satisfactory interaction. This is the case in health communication (Leino-Kilpi 1990, Mikkola 2000), organizational communication (i.e. Lehtonen 1999, Peltola 1999, Pincus 1986) as well as in courtroom communication (Engeström, Haavisto & Pihlaja 1992, Välikoski 2000). *Influencing the decision-makers with speech* and *relieving the party's tension by speech* was seen as least important of the important activities. On the other hand, 30 percent of the respondents estimated influencing the decision-makers by speech as most important (places 1 and 2). Fifteen percent was of opinion that relieving the party's tension was most important. Otherwise, the choices of the respondents were spread fairly evenly over all options on the scale, and thus all the tasks were estimated to be generally important.

Influencing by speech is perhaps not seen as a part of Finnish trial culture, even though the court is here, too, a target of the prosecutor's argumentation. Several of the courtroom communication studies were based on studying influence (Sherr 1993, Smith & Malandro 1985). Relieving the tension may not be interpreted as the duty of the prosecutor, because the prosecutors seemed to define their role as being only a part of the judicial proceedings.

Allowing a sufficient amount of time for answering was fairly unanimously rated least important. There were hardly any differences in choices between the sexes. The witnesses, nevertheless, reported that it was quite essential to have time be able to

answer the questions (Välikoski 2000: 39–43). The studies have also proved that insufficient time for answering may not only disturb the witness's response but also make it more difficult for them to remember things (Molotoch & Boden 1985).

5.3 Appropriate courtroom communication

In this study, I have outlined the phenomenon of judicial proceedings as a speech communication situation. The results presented will also help to understand the court proceedings as a speech communication situation and the results form the foundation for appropriate communicative choices in this given environment. The results are useful information for the communicative choices not only of the professionals but for the laymen members in a courtroom, too.

The study as a whole is an answer to the last research question in this thesis. On the basis of the results, it seems that the desired, perceived, and experienced action all have several features in common.

For example, the idea that witnesses should be able to give testimony in peace and in their own words, is a part of the desired action in a legal system. This already seemed to happen as described. Instead, the prosecutors could interrupt the witness's accounts and they also estimated this enabling action as least important of the important activities in a whole (see Table 11a). This idea of having time to speak illustrated the experienced action too, because the witnesses wanted to talk without interruptions. The major part of the witnesses thought this actually happened, but some of them were of opinion that the prosecutors gave a hasty impression when they expected answers quickly or interrupted the story (Välikoski 2000: 34), a result which the prosecutors themselves also confirmed. The speech communication skills of the presiding judge included then the decision on defining the quality and quantity of the accounts given by the witnesses, and helping witness to construct accounts coherenty if the witness was unable to do so unaided (cf. CJP 60/362).

The courtroom activity, however, is formal and institutional, and a certain part of the entire judicial institution is created by the person's interaction there (cf. i.e. Mead 1934). The activity so created can be illustrated with the help of courtroom communication. Courtroom communication also reports on the institution itself and on the judicial system in question, but only understanding the institution and system would

clarify the understanding of the communication related to it. This particular information the laymen presumably lack. From the perspective of a layman witness, this systematic choice of communication corresponding to the institution in which the prosecutor and counsel asked the witness to answer the same or nearly the same question, changed into irrelevant communication and even into a sign of inattention in interpersonal relation between parties involved. A result that demonstrated this was found in a witness interview, in which the witness felt that the listening of the different parties was inefficient, because both the prosecutor and the counsel presented the same questions to them (Välikoski 2000: 36–37). According to the institution and judicial system, the different parties have to acquire the desired information by themselves, even though it may have been already brought forward by the other party. Only then can they use the information in question in their closing arguments (CrPA 97/689).

Presenting this system aloud becomes significant, because it is not only a communicative act which represents the action and thus functions as a tool for equal, factual understanding of the action, but also a part of the process of which the entire system consists. Now it is already known that there are obvious connections between the process and the resulting decision of the case (Hirokawa, Salazar, Erbert & Ice 1996), and, in the long term, a process that has proved successful may ensure the commitment of the entire institution and the system itself (Haavisto 2001, Messmer 1997). The appropriate choices of *interpersonal* communication also serve the appropriate activities at the *system* level.

Activity in the courtroom and the communication that makes it observable may include choices to be suggested later. The suggestions are based on the entire research material and they are presented in this part of the study due to their tentative nature. The suggestions are introduced acknowledging the limitations of one researcher, not specifully learned in the law.

Appropriate courtroom communication – suggestions

The change from written to oral proceeding in Finnish criminal trial is very significant. Finland's EU membership was the latest reason and the end of a discussion which lasted many years for changing legal procedures in our country. Even before

EU membership many governmental committees have introduced their suggestions on making legal proceedings more modern in Finland. The principle of orality is not only a procedural change but also an attitutional change because of the common need for comprehensibility of a trial.

It is not possible to evaluate the success of this new oral procedure in this thesis in general or to make any suggestions on how to develop it. It is thus enough to evaluate the succes of interaction between people interacting in this new procedure observable through their communication.

At the beginning of a hearing, the concrete subject i.e. alledged crime, the parties and the abstract aim i.e. finding out the truth in the subject-matter will be defined. This will determine the common situation, its meaning, participants, and environment (cf. Miller, Cody & McLaughlin 1994). The physical environment and its abstract context can also be structured by providing information on how the proceeding is going to continue by stages, and when the witnesses are due to appear. Together with this, information on other specific activities that the legal system demands can be added. Then, an example such as that mentioned earlier, where the different parties presented similar questions to the witness, is not unnecessarily interpreted as not-listening and miscommunication between the parties.

Appropriate communicative choices at the beginning of the procedure are naturally among to the tasks of the presiding judge. With the tasks presented, the chairperson can reduce the formal uncertainty and the uncertainty that presumably arises among the laymen, due to the strange situation (Berger & Calabrese 1975, Pörhölä 1995), and thus facilitate their communicative task.

The activity described above also demonstrates observable and firm process leading, which was also the wish of the prosecutors. The judicial proceeding reform and its explanatory section on charges i.e. description of a matter, where the charge was translated into more understandable language, presumably increased the layman's understanding of the case and helped them to adapt to it better (Engeström, Haavisto & Pihlaja 1992, GB 95/82/preamble). In addition to the plain language, the information in the explanatory section is content-wise directed to the layman.

Besides the explanatory part, the discussion includes the witness testimony which, as stated earlier, is verbally the most interactive phase and which could also contain spontaneous conversation. The witnesses expected easy and simple questions which they could answer in peace (Välikoski 2000: 60–62). The prosecutors, too, reported that they had understood this, and efforts had been made to make the situation more

open and relaxed, to create a safe atmosphere for answering and to be polite in their speeches.

Prosecutors also were of opinion that they began the interrogation with easy and simple questions and by looking back at the incident together. Some witnesses, nevertheless, found this recalling uncomfortable "*forced recollecting*" (Välikoski 2000). It was also experienced as awkward communication by the witnesses, when some of the prosecutors did not always seem to believe that the witness did actually not know or remember something elicited, which led to asking the same thing over and over again (Välikoski 2000: 37). Some of the prosecutors commented on this consistently that *they do not examine the witnesses unreasonably strictly or aggressively and do not harass the witness more than the defendant her or himself* (DA21).

However, the prosecutors considered it only of minor importance to leave enough time for answering.

The activity described illustrated fairly appropriate communication at the exact phase of the procedure, which included the justifications that even made it possible to create an ordinary and normal discussion between the parties.

The individual tasks emanate in speeches, which include content components in messages with information on the common understanding of the subject and the procedure. The relation component contained in speeches serves as extra material for interpreting the content component comprehensively (Perttula 1995). This simultaneous processing between the components creates an atmosphere of action, in which the relation components of the speeches play an important role (e.g. Frymier & Houser 2000, Välikoski 2000). The impressions of atmosphere (cf. also Haavisto 2002, Mikkola 2000, Peltola 1999, Tuomiranta 2002, Valpola 2000), that indicate listening between the parties, have proved significant in various surveys. In this study, too, the prosecutors hoped to be listened to and noted that not only listening but also gathering information was a method worth pointing out to the person who was giving evidence. To the observer, expressing listening in the observation situation manifested itself in the fact that the questions of the hearing often contained an introduction based on the information presented. Expressing listening is the affective side of the relationship and thus significant when contentment is experienced. This also came up when the witnesses were interviewed (Välikoski 2000: 36–56).

According to the prosecutor survey, the ambiance in the courtroom was expected to be open and relaxed and the phases of the procedure should be clear and enable accurate proceeding. The prosecutors' conceptions were almost identical with those

of the witnesses (Välikoski 2000: 34–35). The setting previously described also confirmed the desired appropriateness regarding the illustrative and clear action of the procedure.

The speeches form a discussion which is concrete and perceptible courtroom communication. Neither the witnesses (Välikoski 2000: 45) nor the prosecutors necessarily expected an easy and spontaneous discussion. If the discussion was created, it was assumed to be of an honest nature as well as open and clear. Clarity was defined as not speaking at the same time, and giving brief, concise and unambiguous information. The courtroom conversation was also expected to follow Grice's maxims (1975), of which there are already examples in the observation material.

It was hoped that the communication concerning the prosecutors themselves would be such that the parties could distinguish the prosecutors' personality from her or his position as a part of the legal system. The quality criteria, when answering the prosecutor's questions, were the truthfulness of the information and the fact that the parties would and could distinguish between factual observations and their own conclusions.

The prosecutor's understanding of the lay judges' role as one of the decision-makers was not clear. This was discovered both in the prosecutor survey and the speeches of the prosecutors in the observation material. Acting in a different way might increase the impression on the procedure's demonstrative side (cf. GB 82/95).

Appropriate action and the communication that illustrates it demonstrate particularly the significance of reciprocal relations, that is, searching for the truth and sharing it in an individual case. The right to a fair trial is one of the basic concepts of human relations according to the European Court of Human Rights (2003), too. Both the prosecutors and the witnesses' (Välikoski 2000) concepts of a fair trial consisted of general mentions of principles as well as mentions of the tasks of the chairperson or the prosecutor. All these tasks can be made observable through communication. In the following, there is one concrete example that can be confirmed through communication: *the parties have to know exactly what the suspect is accused of. Everyone has to present their evidence on time and be allowed to speak out. The process has to proceed lucidly and the parties concerned must have the feeling that they are being listened to* (DA40). The example has information on both the content and the relation components of the speeches.

The theories of interpersonal communication mainly examine the natural relationships of people. The relationships can, nevertheless, also be defined as natural

in court, if the relationships are thought to exist when people meet, not only when created (cf. Werner & Baxter 1994. See also Frymier & Houser 2000). However, they can be analyzed rather restrictedly as conscious expectations or acts concerning the relations in the light of these theories. The environment of the relationships, i.e. the institution and system of legal proceedings, is strongly in the background of these relationships. Knowledge of the theories of interpersonal communication will surely provide a background for appropriate activity at court.

Argumentation theories, too, are scarcely for structuring the argumentation that takes place in court, unless the argument is only understood as an independent entity between the different parties (Keough 1987). The interaction between the arguments does not develop by itself in court, but a certain successive order is created and will continue to be created for it. Firstly, argument 1 is presented, then argument 2, and only then can the conversation and assessment of the arguments take place. There is hardly an opportunity for immediate evaluation and reaction i.e. spontaneous verbal dialogue, but reacting is only possible in a certain phase of the procedure and with the permission of the presiding judge.

Can dialogues occur in a directed, even random, order so that the arguments and motives can instantly be commented on? Such a method emerged indirectly in the prosecutor survey.

The closing arguments, too, are independent monologues which consist of the original and separate arguments that support the orally presented information in court and the information processed on it. The closing statements were, according to the prosecutors' conceptions, were difficult communicative tasks because of being monologues and their contents, which time-wise were distant from the rest of the substance.

Thus the desired, observed and experienced appropriate activity and the communication that illustrates it have many interests in common. One common aim for them seems to be, as shown previously, the understanding of the case and the action between the parties.

Appropriate courtroom communication can be structured as follows (Figure 7):

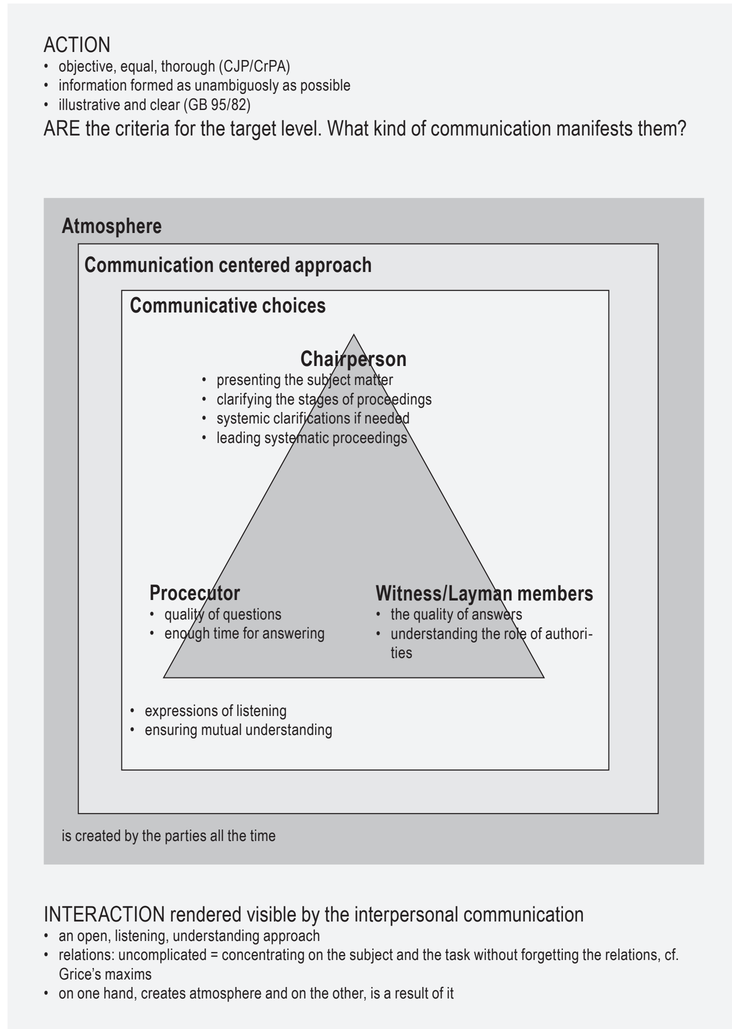

FIGURE 7. *Appropriate courtroom communication*

Action is observable through communication. When the communication is appropriate, there is a balance between the content and the relation components with respect to the situation and the parties (cf. Hart & Burks 1972). Communication also becomes appropriate when the objective result, ensured by communication, has been accomplished by action which is perceived to be appropriate (Messmer 1997, cf. also Tontti 1999). In this thesis, the action was mainly evaluated by prosecutors and in part by witnesses (Välikoski 2000).

Courtroom communication is also appropriate when the *relevant* aims set for the procedure can be achieved through communication. This study, however, does not cover appropriateness as stated. The *functional* aims that ensure a firm and lasting solution can also be discovered by analyzing courtroom communication. An earlier study on courtroom communication (Välikoski 1996) already revealed that these aims were carried out if the presiding judge's own communicative behavior and the regulations of interaction illustrated by the communication of the parties could be seen as demonstrating these goals. This study, too, confirmed the assumption of objective action. This discernible courtroom communication is not only a tool for realizing various factual and functional purposes but also a result of the interactive activity that creates it.

Purposeful action and the communication that illustrates it is approached, if the situation itself is defined, i.e. analyzed, and also prepared for by perceiving the purpose of the situation, what one's own role in it is, what relationships pertain between the parties, and how this information fits in the action environment. Understanding the parties' backgrounds also helps to understand their communication. The information referred to would also naturally prove useful for the lay members in the court. An individual's own communicative choices, furthermore, contain both content component and relation component information, for which one can prepare consciously by the evaluation of the situation described. Assessment of the situation is related to a person's analysis of how significant the situation is to her or him. In addition to preparations, the real time situation must be observed and the consequences of one's communicative choices estimated.

The prosecutor may sense that the atmosphere in the courtroom is tense and she or he will analyze the causes. After finding a possible explanation, the prosecutor still has to estimate if she or he can affect it if the chairperson is not doing so. Relevant power, reference power and the power over practical situations (dominance) also causes communicative choices in the court environment, where the concept of appropriateness has different meanings.

5.4 Further research

In this study, I surveyed a speech communication phenomenon which has not so far been studied in Finland. For this reason, it is only natural that the phenomenon studied is presented as authentically and simply as possible, to allow the phenomenon itself to become visible. This decision was influenced e.g. by the fact that the scientific approach is qualitative. Several materials have been used, and the analysis of the material has been mainly demonstrative and only rather loose classifications have been formed. However, I wanted to make some categorizations in addition to the textual descriptions, but also then have the groupings developed from the material itself.

The research attempts to understand the phenomenon observed, i.e. communication in court, as continuous and simultaneous interaction between the people in a specific environment and to study, analyze and interpret those features which relate to this interaction. Interaction has been seen as action (cf. Engeström 1987, March 1996) demonstrated by communication. Theoretically, interaction provides a background as a part of the existing structure of judicial proceedings and the entire judicial institution as such, but clearly also as the interpersonal relations between the parties. For this reason, the theories that outline the relationship that has been used in this study are fundamental theories of interpersonal relations and communication.

The aim of this research was to clarify and illustrate this specific relation in the courtroom in such a manner as to render comprehensible the communication between the participants, formed on the basis of this relation. Justified information also increases the options to define and, if desired, to change and reconstruct the phenomenon in the desired direction among those involved. Restructuring the cognitive constructions (cf. Delia 1987), too, provides new communicative choices.

After this basic research, it would be interesting to examine the parties involved in the phenomenon but yet unexplored, and their conceptions of the phenomenon itself. What does the defendant, the suspect, think of the communicative features of the court system? As what kind of speech communication situation does she or he see the legal proceedings?

Here I have studied criminal legal proceedings and only the conceptions of one party, the prosecutor, have been directly surveyed. Thus, in further studies the other parties' speech communication constructs could be examined. The results, regarding the prosecutors' estimation of the situation obtained in this study may be applied in

further studies, including how the constructions and various communication strategies such as persuasion (*compliance-gaining*. See e.g. Garko 1990) are related to giving testimony. The same material can also be used to study the prosecutors' argumentation or concentrate on the argumentation of closing statements. Much research has been done in the United States on the jury's conceptions of witness and lawyer credibility. What are the Finnish lay judges' opinions in a comparable research setting?

Group communication, especially from the decision-making perspective, might provide an interesting research topic. In this case, the object of study might be the decision-making between the presiding judge and the lay judges after a proceeding. How does a decision take shape (process theories and e.g. Fisher & Hawes 1971, Bales & Strodtbeck 1951)? What different phases does it include (cf. Gouran, Hirokawa, Julian & Leatham 1993, Jablin & Miller 1990)? How does leadership manifest itself in this process (cf. Cragan & Wright 1990)? How do recent theories on the decision-making of the jury such as the structuration theory (e.g. Poole, Seibold & McPhee 1986), fit into the study of decision-making of Finnish lay judges?

The observation material of this survey consisted of routine proceedings. What would the results have been like had the material consisted of the proceedings. The methods used here could be applied on careful examination to a few cases, too (see case studies and Eskola 1962).

The main principles in the Finnish judicial reform, i.e. orality, immediacy and concentration, have only been in use for a few years. Nevertheless, the reform has revealed its usefulness and problems. The principle of orality is only part of the reform, thus observations and conclusions drawn from the phenomenon of *oral* trial procedure are not profound enough for developing the whole procedure. One challenging avenue for further study could be to identify problems in a hearing as a whole and especially those problems one might claim to be resolvable by developing communication between the people in question. If one purpose in developing the procedure is to create mutual understanding in the situation between the people involved, this thesis provides some ideas.

6 Conclusions

This study concentrated on the social reality of criminal proceedings in a qualitative way (Eskola & Suoranta 1998, Perttula 1995: 60), which was reflected by the courtroom communication in the relevant situation (Blumer 1969, Mead 1934). The situation was created by its purpose, carried out in continuous and simultaneous interaction by the participants in this specific environment (Miller, Cody & McLaughlin 1994. See Goffman 1974). Taken in a constructivist way, the earlier cognitions of the parties and the observations made in the situation itself were the basis of the definition of the situation by the parties. These definitions of the situation, in turn, formed the background for the parties' communicative choices (Laing 1967). Thus, courtroom communication results from these choices and can be seen as observable action in the courtroom.

I have described this action and attempted to construe an interpretation which could be understood not only by the members of the situation in question but also by an outside observer (cf. Pacanowsky, O'Donnell & Trujillo 1983). The result, a formally proper judicial solution by the court in a criminal case can only be evaluated and judged by legal professionals. Evaluating the functional result, however, is possible for anyone, even an outside researcher.

What can we conclude from the foregoing?

Do the action and the communication that illustrates it have to be informal, familiar and easy in the courtroom? Does the discussion between the prosecutor and witness during testimony have to be more like a polite interview than assertive argumentation?

The action is connected to both the environment of the action and the individuals who use it and create it (Engeström 1987). The individuals' conceptions determine

their action in the situation. Besides this the purpose of being together forms their definitions of the situation. How each individual will define the situation will, in part, direct her or his communicative choices (Laing 1967, Miller, Cody & McLaughlin 1994). The result of these choices is communication between individuals.

This is also the case in a courtroom. Courtoom communication is a dynamic result of people's communicative choices. Courtoom communication is also a tool to confirm and maintain the functional part of the principle of fair trial so that factual part of the principle i.e. a formally competent judgment is possible.

A problem arises because there is *no* collective consensus or identical definition of the situation, or systematic and rationally processed activity, which communication would make identically observable and construed. In a courtroom, too, the action-makers are humans and the interaction between the parties is simultaneous. Although communication is simultaneous, it cannot be verbally concurrent nor spontaneous. This is restricted by the communication environment, the legal system, which has its own procedures prescribed by law (CJP 60/362, CrPA 97/689). It is the system which determines the legal procedure but it is interpersonal communication which makes the procedure observable.

The form of action is stipulated in the law in general, and many explanations behind the actions of the presiding judge and a prosecutor are based on procedural law. What is thus observable, is the action, not the explanation behind that action. Certain proxemic and artefact factors also create an image of standardized action, but it is nevertheless the presiding judge who controls the action. By her or his communicative choices, the presiding judge regulates and influences not only the atmosphere of the action but also the interaction between the parties. Courtroom communication, however, is not only an aggregate of the presiding judge's choices and the following choices made by the parties; it is simultaneous, living interaction between the parties, involving everybody present (Fisher 1978, Watzlavick, Beavin & Jackson 1967). The changes in any party's communication, including both verbal and nonverbal elements, thus affect the communication of the other parties as well, and vice versa. To transform this information into cognitive knowledge (Greene 1984, Salminen 2001) is the precondition for appropriate courtroom communication.

Thus as *the first conclusion*, I can suggest changing the form of observing the appropriate legal proceedings and the communication that demonstrates and structures it in such a way that, alongside the *functional-structural* approach, the *functional-interactive* approach could also be seen as an appropriate method of observing the

situation. Then the interaction will be understood in this particular environment, i.e. implementing the legal system as simultaneous and continuous interaction between parties with specific communicative functions. The functions can be made visible by the communicative choices at the interpersonal level, such as indicating of confirming the common understanding.

One of the purposes of the procedure on a system level is to create a clear and observable criminal trial in order to achieve a mutual understanding in it. The communicative choices in question, in turn, also influence the layman's understanding of the system level.

Theories of interpersonal communication explain the backgrounds of those communicative choices. If desired the knowledge of those theories with the help of the knowledge of the meaning of individual constructs in a situation in question also improve the development of appropriate communication.

The communicative choices of the judicial parties are thus based on their definitions of the situation (Laing 1967). What kind of a speech communication situation did the prosecutors, who were the target group of the survey, define and construct the communication between the parties in the courtroom, and what were their expectations concerning this relation?

The prosecutors seemed to define the speech communication situation in the courtroom as a rather formal and open dialogue containing successive monologues. The leader of the discussion was obviously the presiding judge and the nature of the discussion seemed to be unclear. The prosecutors reported that they paid rather a lot of attention to the nonverbal communication in the courtroom, which leads to the justified conclusion that the prosecutors not only reported paying attention to this phenomenon but also understood that nonverbal communication is a part of the entire nature of communication.

The case itself, however, was the main focus of preparation. Only 17 of the 58 respondents, of which 17 almost all were female, also mentioned the other components of the speech communication situation as the target of their preparations. Instead, the prosecutors did not define influencing by speech as one of their tasks, because they stated that they did not really take any party into account in their speeches. The lay judges were not seen as targets of persuading by speech, nor were they noticed in any other way either. The prosecutors' view of this was fairly consistent, because influencing by speech was not considered a very important activity. Internationally taken,

however, persuading is the most essential function of the prosecutor's speech (Napley 1983, Sherr 1993, Smith & Malandro 1985).

The prosecutors wished the interaction in the courtroom to be natural but they did not want to become more involved with the parties. The relationships between the prosecutors and the parties involved were not allowed to inhibit mutual understanding, for, according to the prosecutors, their most important activity with the help of speech communication was to ensure that they themselves and the people involved were understood correctly. The witnesses said that there was in fact some understanding in the courtroom (Välikoski 2000).

The prosecutors wanted to make a distinction between their job and their person, and they even stated that their actions in the courtroom were jovial. This idea was supported by the witnesses (Välikoski 2000).

According to the prosecutors, the most difficult communication situation was mainly the closing argument. What made it difficult was the respondents' own characteristics as speakers. Nearly all the female prosecutors mentioned that in addition to the closing argument, the giving of testimony was a difficult communication situation. It can be assumed that there is more verbal interactivity in the examination of witnesses than in the closing argument, which is a monologue.

The prosecutors mentioned that the most important speech communication skills i.e. the communicative choices of the target level, were also involved. These were asking logical questions and showing interest in the response of the person involved. These activities also described interaction, a phenomenon that was rarely mentioned in the answers. The least important activity chosen from the options in a questionnaire was giving enough time to answer. The witnesses, however, considered this essential when they defined how appropriately they were treated (Välikoski 2000).

When reporting on the action in the courtroom and features related to speech communication, the prosecutors also reported their attitudes. Based on the previous information, the prosecutors had quite a speaker-centered attitude towards the speech communication situation in the courtroom (Gronbeck 1998). The success of the situation depended on them as speakers and the preparations were focused on preparing the case. The speech was mostly directed to the judge. The answers were consistent because the situation in the courtroom was not defined as a discussion, either. However, female prosecutors described interaction so that they considered their own actions to be related to the actions of other people in real time.

The procedure reform states that the action in the hearings in Finnish lower courts should be clear and observable (GB 95/82/preamble). Everyone following the action in the courtroom is able to find these features in the communication of the courtroom. Can perspicuity and clarity develop in an action where one of the participants has a speaker-centered view in the situation? According to Eisenberg (1984), clarity is not only an attribute to describe the speaker's action but it is a relative variable between the speaker, the message and the recipient. The action does not change unless the communicative nature of the action is also understood.

As my *second conclusion* I can suggest that in an appropriate judicial hearing the activity and the communication expressing it, the attitudes of the participants should be changed to become not idea-centered but meaning-centered communication (Gronbeck 1998).

The purpose of judicial hearings is to produce a justified and dependable resolution of a case. Courtroom communication does not only describe this process but is also a tool for it. One of its functions is to produce a thorough and exact description of the case, i.e. what happened, when and why and how the parties were involved in what happened. A justified and firm result can be based on an accurate and well-grounded definition of the situation. The definition is made by the presiding judge with the lay judges, based on all the information that was orally produced during the hearing. They all handle and interpret the information with the help of their own data system and then communicate the result of their processing to the others as general information for decision-making. The presiding judge brings her or his own legal expertise to the decision making. The messages and hints on the definition evinced of the situation, gathered in the courtroom, are transferred to another processing and to the definition of the situation, which starts the decision-making process again. The result of this process is a justified and firm decision, a judgment in the case.

The third conclusion for an appropriate judicial hearing and the communication expressing it is an analogy to the above-mentioned judicial action. Appropriate communication proceeds in the same way, too. The parties in the courtroom can define the action in the courtroom as a speech communication situation *already when preparing themselves* for the action. They re-evaluate their definitions during the action and appropriate communicative choices are a kind of result of those definitions. The results of this study increase the understanding of the interaction between people in a criminal trial and help to define the situation.

Understanding the development of the actions in the courtroom and the communication that expresses it in a simultaneous and continuous interaction is also a guarantee of legal protection (cf. Nousiainen 1995 and material on a new oral procedure), for the judicial decisions are based solely on orally presented information. Perceiving, interpreting and processing this information are extremely challenging and demanding actions for decision-making. Based on what has been described above, it is possible to think that it is even more challenging than interpreting and processing written information (cf. differences between spoken and written language Nikula 1994). The action becomes a guarantee of legal protection because this action is more democratic than before. Here egalitarian means equal and at least in theory a simultaneous opportunity to understand the matter together. The presiding judge (Välikoski 1996), the witness (Välikoski 2000), the Criminal Procedure Act (CrPA 97/689) and the prosecutor all want the case to be comprehensible. Furthermore, the witnesses and some of the prosecutors seemed to hope that not only the matter but also the procedure, i.e. the action was understood. Even though the prosecutors did seek a special interactive relationship with the parties, they did not want the communication relationships to impede understanding either. After all, they had estimated that ensuring that both the person involved and they themselves understood the matter was their most important activity. This activity needs speech communication skills to be fulfilled.

Clarity makes it easier to understand what is going on. Clarity of the case may be difficult for laymen. Even though it is quite unnatural to separate the form and content of information (see e.g. Aristotle in Ross 1963), the clarity of the procedure is also one feature of the action related to the clarity of the case. This can also be assessed by the laymen.

When studying trials in civil cases, Tontti (1999: 301–302) found out that it is possible to achieve a fair trial by communicating with the people involved in a more sensitive way, paying attention to their own views. However, compared to a civil case, a criminal case is more problematic, for should the alleged act be found to be against the law, the act must be punished in spite of the views of the people involved. In this case, the purpose of courtroom communication is to produce material for the decision makers to help them to evaluate how well and accurately the evidence taken described the act and how the suspect was related to it. The conclusion of the evaluation is a decision which includes a punishment. Very often the law suggests a range of choices for the sentence.

The fourth conclusion for an appropriate judicial hearing and the communication expressing it is that the most important speech communication mission of the people involved is to create mutual understanding. Understanding the matter and the procedure increases the commitment of the parties to unwelcome decisions (Haavisto 2002, Frymier & Houser 2000).

In addition to interpersonal relations there is also group communication in the courtroom. However, this is not similar to traditional functional group communication (Gouran, Hirokawa, Julian & Leatham 1993) where the communication of the group determines the decision that the group will make. In this kind of group communication, the roles of the participants and the rules of the action are established and also known by those group members who have studied jurisprudence. The group communication is still an opportunity for the members to share the meanings of information, to scan and recognize the mistakes in their thinking and also to be an instrument of influence. The environment of group communication in this situation does not let the group communication create its own decision but is produced by certain members of the group. The environment of group communication is a part of a structure that the judicial system has produced.

The structures exist but people make them real in their interaction by constantly reforming and structuring them. The reformed Finnish legal system also allows this to happen.

The fifth conclusion for an appropriate judicial hearing and the communication expressing it is that one purpose of a trial is to reach a judgment by creating functioning interaction between the parties. This is not an inherent value but it can help to change the information produced and received into information that helps laymen to understand the issue and the action. In the long run this will increase not only the reliability of the decision but also the speed and economy of the procedure.

The results of this thesis are not for professionals' use only, but also for lay members in a trial. Mutual understanding is not understanding of laymen's definitions by the professionals only, but understanding professionals' definitions by laymen, too. Then it could be possible to for a layman, for instance separate an institution from a person.

It may not be possible to develop the oral, immediacy and concentrated legal procedure with the help of appropriate communication but it is quite possible to develop appropriate communication *within* this procedure.

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APPENDIX 1

TABLE 1. Number of speeches, duration of hearings and types of crime in data observed. Total sample

Total numbers of speeches were 3893 and total duration of hearings was 2210 minutes (36 hours 50 minutes).

PROPERTY CRIMES 8 (FRAUD AND THEFT)

• Durations 15–130 minutes = max. 655 minutes = 10 hours 55 minutes

Female presiding judge (=cm) in 2 trials and male presiding judge in 6 trials. Female prosecutor (=pr) in 3 trials and male prosecutor in 5 trials. Injured party is symbolized here by injp.

TOTAL NUMBER OF SPEECHES = 1290

O1	**Speeches 53 and duration 45 minutes** • cm = 18. To the injp. 5 and to the defendant. General speeches 6 • pr = 15 • other speeches 20, were answers to questening • pr and injp. vs. defendant • judgment included
O2	**Speeches 522 and duration 120 minutes** • cm = 125. To the defendant via counsel 60. General speeches 65 • pr = 127 • defendant's counsel = 86 • pr:s (3) and defendant's (3) witnesses = 184 • pr vs. defendants
O3	**Speeches 182 and duration 90 minutes** • cm = 60. To defendants (2) 11. General speeches 49 • pr = 69 • defendant's counsel = 42 • defendant X = 2 • defendant Y = 9 • pr vs. defendant • judgment included

O4	**Speeches 131 and duration 120 minutes** • cm = 52. To defendants 9. General speeches 43 • pr = 20 • defendant X = 28 • defendant Y = 23 • pr:s witness = 8 • pr vs. defendant
O5	**Speeches 23 and duration 60 minutes** • cm = 9. To the injp. 3 and to the defendant 2. General speeches 4 • pr = 2 • injp.= 7 • defendant's counsel = 5 • pr and injp. vs. defendant
O6	**Speeches 79 and duration 75 minutes** • cm = 44. To the injp. 2 and to the defendant 26. General speeches 16 • pr = 6 • injp. = 8 • defendant = 21 • pr and injp. vs. defendant • judgment included
O7	**Speeches 99 and duration 15 minutes** • cm = 41. To the injp. 12 and to the defendant 14. General speeches 15 • pr = 19 • injp. = 27 • defendant = 12 • pr and injp. vs. defendant
O8	**Speeches 201 and duration 130 minutes** • cm = 79. To the injp. 7 and to the defendant 12. General speeches 60 • pr = 31 • injp. = 12 • defendant's counsel = 56 • pr:s witness = 23 • pr and injp. vs. defendant

Crimes against life and health 11 (among other things grievous bodily harm)

• Durations 15–180 minutes = max. 855 minutes = 14 hours 15 minutes

Female presiding judge in 5 trials and male presiding judge in 6 trials. Female prosecutor in 3 trials and male prosecutor in 8 trials.

Total Number of Speeches = 1687

PO	**Speeches 303 and duration 125 minutes** • cm = 28. To the injp.2 and to the defendant 10. General speeches 16 • pr = 113 • injp. = 2 • defendat = 40 • defendant's counsel = 29 • defendant's witness (expert) = 5 • pr:s witness (expert) = 42 • pr:s witness (police) = 44 • pr and injp. vs. defendant
P1	**Speeches 168 and duration 90 minutes** • cm = 54. To the injp. 4 and to defendants 37. General speeches 13 • pr = 53 • injp. = 8 • defendant's counsel = 53 • pr and injp. vs. defendant
P2	**Speeches 58 and duration 30 minutes** • cm = 29. To the injp. 3 and to the defendant 6. General speeches 20 • pr = 13 • injp. = 9 • defendant = 7 • pr and injp. vs. defendant • judgment included
P3	**Speeches 127 and duration 150 minutes** • cm = 36. To the injp. 10 and defendants 7. General speeches 19 • pr = 27 • injp. = 25 • defendants = 19 • pr:s witness = 20 • pr and injp. vs. defendant • judgment included

P4	**Speeches 182 and duration 135 minutes** • cm = 36. To the injp. 9 and to the defendant 10. General speeches 17 • pr = 70 • injp. = 9 • defendant's counsel = 10 • defendant's witness = 57 • pr and injp. vs. defendant
P5	**Speeches 258 and duration 155 minutes** • cm = 83. To the injp. 8 and to the defendant 7. General speeches 68 • pr = 33 • injp. = 41 • defendant = 78 • pr:s witness = 23 • pr and injp. vs. defendant
P6	**Speeches 148 and duration 50 minutes** • cm = 65. To the injp. 26 and to the defendant 23. General speeches 16 • pr = 20 • injp. = 32 • defendant = 31 • pr and injp. vs. defendant
P7	**Speeches 67 and duration 30 minutes** • cm = 22. To the injp. 5 and to the defendant 8. General speeches 9 • pr = 19 • injp. = 17 • defendant = 9 • pr and injp. vs. defendant
P8	**Speeches 79 and duration 15 minutes** • cm = 35. To the injp. 4 and to the defendant 6. General speeches 25 • pr = 20 • injp. = 8 • defendant's counsel = 7 • pr:s witness = 9 • pr and injp. vs. defendant

P9	**Speeches 73 and duration 30 minutes** • cm = 39. To the injp. 3 and to the defendant 3. General speeches 33 • pr = 5 • injp. = 13 • defendant = 10 • defendant's witness = 6 • pr and injp. (2) vs. defendant • judgment included
P10	**Speeches 224 and duration 45 minutes** • cm = 37. To the injp. 4 and to the defendant 5. General speeches 28 • pr = 88 • injp. = 24 • defendant = 34 • pr:s witness = 41 • pr and injp. vs. defendant

Drunken driving 8

• Durations 15 – 60 minutes = max. 215 minutes = 3 hours 35 minutes

Female presiding judge in 3 trials and male presiding judge in 5 trials. Female prosecutor in 3 trials and male prosecutor in 5 trials.

Total Number of Speeches = 316

R1	**Speeches 38 and duration 20 minutes** • cm = 18. To the defendant 8. General speeches 10 • pr = 8 • defendant = 12 • pr. vs. defendant • judgment included
R2	**Speeches 23 and duration 60 minutes** • cm = 9. To the defendant 3. General speeches 6 • pr = 8 • defendant = 6 • pr vs. defendants (2) • judgment included

R3	**Speeches 30 and duration 15 minutes** • cm = 15. To the defendant 3. General speeches 12 • pr = 9 • defendant = 6 • pr vs. defendant • judgment included
R4	**Speeches 52 and duration 30 minutes** • cm = 25. To the defendant 21. General speeches 4 • pr = 3 • defendant = 24 • pr vs. defendant • judgment included
R5	**Speeches 99 and duration 40 minutes** • cm = 34. To the defendant 3. General speeches 31 • pr = 30 • defendant = 4 • pr:s witness (2) = 31 • pr vs. defendant • judgment included
R6	**Speeches 15 and duration 15 minutes** • cm = 7. To the defendant 3. General speeches 4 • pr = 3 • defendant = 5 • pr vs. defendant • judgment included
R7	**Speeches 30 and duration 20 minutes** • cm = 16. To the defendant 11. General speeches 5 • pr = 4 • defendant = 10 • pr vs. defendant
R8	**Speeches 29 and duration 15 minutes** • cm = 16. To the defendant 7. General speeches 9 • pr = 3 • defendant = 10 • pr vs. defendant

Traffic violations 3 (among others, endangerment)

• Durations 20–90 minutes = max. 145 minutes = 2 hours 25 minutes

Female presiding judge in 2 trials and male presiding judge in 1 trial. Female prosecutor in 0 trial and male prosecutor in 3 trials.

Total Number of Speeches = 254

L1	**Speeches 39 and duration 15 minutes** • cm = 20. To the defendant 16. General speeches 4 • pr = 2 • defendant = 17 • pr vs. defendant • judgment included
L2	**Speeches 24 and duration 40 minutes** • cm = 15. To the defendant 4. General speeches 11 • pr = 3 • defendant = 6 • pr vs. defendant • judgment included
L3	**Speeches 191 and duration 90 minutes** • cm = 52. To the defendants 15. General speeches 37 • pr = 50 • defendant X = 29 • defendant Y = 29 • pr:s witness = 31 • pr vs. defendant • judgment included

INTOXICANT AND NARCOTIC SUBSTANCE ABUSE CRIMES 3

• Durations 40 – 150 minutes = max. 340 minutes = 5 hours 40 minutes

Female presiding judge in 2 trials and male presiding judge in 1 trial. Female prosecutor in 0 trial and male prosecutor in 3 trials.

As a prosecutor, there was a woman 0 times and a man 3 times

TOTAL NUMBER OF SPEECHES = 346

H1	**Speeches 206 and duration 150 minutes** • cm = 114. To the injp. 17 and to the defendant 9. General speeches 88 • pr = 36 • injp. = 20 • defendant = 12 • pr:s witness = 24 • pr and injp. vs. defendant
H2	**Speeches 96 and duration = 150 minutes** • cm = 21. To the defendant 7. General speeches 14 • pr = 21 • defendant's counsel = 12 • pr:s witness's (2) = 42 • pr vs. defendant
H3	**Speeches 44 and duration = 40 minutes** • cm = 23. To the injp. 3 and to the defendant 11 • pr = 7 • injp. = 3 • defendant = 11 • pr and injp. vs. defendant • judgment included

APPENDIX 2

(QUESTIONNAIRE)

Prosecutor survey/Fall 2000

The law on court proceedings in criminal cases (CrPA 97/689) has made the role of the prosecutor more visible in the courtroom. The oral proceedings procedure has brought more communication to the process. The following survey aims to chart these factors. Naturally, there are always some differences in the procedure due to different conditions, but this survey is meant to chart the views of the respondents as an average, in other words, the situations in general.

I The Orality of the Trial

1. How do you prepare yourself for the trial as a communication situation?
2. What kind of verbal and nonverbal elements in communication catch your attention when acting at court?
3. What would you like the interaction between the different parties to be like in the courtroom?
4. What kind of features contribute to a fair trial (in your opinion)?

Atmosphere

5a. What kind of atmosphere prevails in the courtroom in general (in your opinion)?
Please mark the area (by using semantic differential) that best corresponds to your opinion of the atmosphere in criminal cases in general.

The atmosphere in the courtroom is:
relaxed /__/__/__/__/__/__/__/ tense
open /__/__/__/__/__/__/__/ closed
reserved /__/__/__/__/__/__/__/ confidential
formal /__/__/__/__/__/__/__/ informal.

5b. What would the ideal atmosphere be like?

Treatment

6a. Do you pay any attention to the treatment of different parties in the courtroom?
yes no

6b. When communicating, how do you take the different parties into account?
Chairman (judge)
Lay judges of the court
Plaintiffs
Defendant(s)
Witness(es)

6c. How would you like the different parties to take the prosecutor into consideration in their speech?

6d. Place the given activities in order of relative importance so that 1 is the most important and 8 the least.

1. ensuring that the parties have understood what has been said
2. ensuring one's own understanding
3. presenting logical and systematic questions
4. allowing a sufficient amount of time for answering
5. showing interest in the speech of the plaintiff
6. allowing the party in question to say all that she/he wanted
7. relieving tension
8. influencing the decision-makers with speech

Discussion

7a. What are the court sessions like as a conversational communication situation in general?

7b. How would you describe an ideal discussion?

8. What is the most difficult stage of the hearing as a communication? Why?

9. What do you expect from the presiding judges' manner of conducting the trial?

10. How would you define an ideal respondent to your questions? (like witness, litigant parties?)

11. Now, please, evaluate (using semantic differential) your own activity in the courtroom in general?

My activity in court is usually:

official(formal)	/__/__/__/__/__/__/__/	unofficial (informal)
friendly	/__/__/__/__/__/__/__/	unfriendly
participant centered	/__/__/__/__/__/__/__/	authoritarian
explicit	/__/__/__/__/__/__/__/	implicit
kind	/__/__/__/__/__/__/__/	aggressive
thorough	/__/__/__/__/__/__/__/	fragmentary
focused	/__/__/__/__/__/__/__/	absent.

II – Last Questions

Sex: female male

Age: under 35 36–40 41–45 46–50 over 50

Year of graduation:

University (Helsinki, Turku, Rovaniemi)?

Experience as a prosecutor (working experience):
under 2 years 2–5 years 6–10 years 11–15 years over 15 years

Size of the prosecutor's office.
Number of prosecutors: 1–2 3–5 6–10 11–20 over 20

Province (administrative district):

Thank you very much!