JUSTICE AS INTERACTION: LOOSE COUPLING AND MEDIATIONS IN THE ADVERSARY PROCESS*

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Among the guiding metaphors of judicial adversary proceedings, that of *due process* is the most salient.[1] Ideologically, organizationally, and behaviorally, this metaphor provides general goals which shape and justify courtroom procedures. Judge Jerome Frank's work (Frank, 1949, 1970; Frank and Frank, 1957) pioneered the concept of the "basic myth of law," which challenged the belief in the attainability of precise and certain legal procedures and outcomes. It may be, however, that the formal goals of due process and the practices available to attain them are in fact contradictory. As Wolf (1981) has argued in a subtly brilliant work, judicial practices may in fact be incompatible with scientific and discursive norms conventionally employed in inquiry. This suggests that forms of interaction in courtrooms (as law students quickly learn from texts on criminal proceedings) contribute dramatically to these contradictory norms. Such interaction reflects a type of mediating activity that decouples the metaphor of due process from the organizational and ideological structures which this metaphor supports.

RECENT RESEARCH ISSUES

Although it is clear that courtroom activity does not always serve the ends of justice, it is not always clear whether such activities are anomalies, penetration of external factors, or whether in fact these actually *typify* the trial process. That is, there may exist a contradiction between the due process goal on one hand, and the methods by which this ideological goal is implemented in courtroom practices on the other.

There has been considerable literature examining factors which penetrate and shape judicial processes. These studies include discretionary behaviors of police agents (e.g., Skolnick, 1975; Manning, 1977a, 1980; Van Maanen, 1978; Punch, 1978; Piliavin and

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Briar, 1964), the extra-legal bases of the enactment and implementation of legislation (e.g., Roby, 1969; Friedman, 1975), the role of lawyers in adversary proceedings (Hosticka, 1979; Lizotte, 1978), or prosecutorial or judicial discretion (e.g., Hagan, 1974, 1975; Burke and Turk, 1975; Eckhardt, 1968; Galanter, 1974; Jankovic, 1978; Cole, 1970; Stanko, 1981, 1982; Uhlman and Walker, 1980). Some researchers have examined ways in which legal processes reflect a multiplicity of social factors (e.g., Hopkins, 1975; Schwartz and Miller, 1965; Schwartz and Skolnick, 1962). Still others have examined the practice of justice in the U.S. as an outcome of normative social practices rather than a reflection of ideals or transcendent norms (Mileski, 1971; Balbus, 1977; Barak, 1980; Sudnow, 1965; Wolf, 1981). Some studies have suggested that the adversary process may possess a symbolic character in which actions and decisions may reflect subjective and discretionary meanings, rather than formal ideals (e.g., Blumberg, 1967; Scheff, 1968; Balbus, 1977; Thomas, 1980a). Others have suggested that legal proceedings may be read as a form of "social language" (Danet, 1980; Meisenhelder, 1981; Hogan and Henley,, 1979) or as an ideology (Sumner, 1979).

Recent interactionist-informed organizational theorists have emphasized the importance of symbolic activity in constructing organizational reality (e.g., March and Olsen, 1976; Manning, 1977b, 1979a; Maines, 1977, 1982a, 1982b; Weick, 1969, 1976; Brown, 1978; Thomas, 1980b; Silverman, 1971; Clegg, 1975, 1979). In this view, human activity reflects systems of coordinated and controlled activities that are guided and integrated by the myth-generating and ceremonial functions of institutional products, services, techniques, policies and programs (e.g., Meyer and Rowan, 1977; Kamens, 1977). Organizational activities thus reflect creative responses to solutions, problems, and choice opportunities (e.g., March and Olsen, 1976: 26-27), and therefore contain dramatic possibilities for *mediating* organizational structure. Organizational mediations are those policies or behaviors which reflect attempts to resolve what Antonio (1979) has identified as the contradictions occurring in the clash between formal and substantive rationality.[2] One useful concept of mediations which occur in judicial systems is that of *loose coupling*.

LOOSE COUPLING AND THE JUDICIAL PROCESS

Loose coupling is a metaphor[3] that allows identification of contradictions between and within structural and interactional organizational processes (Weick, 1980; Manning, 1979a, 1980; Thomas, 1980a, 1981). Loose coupling refers to decisions, behaviors, policies, and the like, which are made in what Weick has described as the grey area between organizational interdependence and individual autonomy. Loose coupling implies a lack of connections, or *slippage*, between organizational niches and the behaviors that are intended to bind organizational goals to organizational practices. The concept is useful to illustrate the degree to which individual discretion occurs, for example, in interpreting, enacting, negotiating, modifying, or simply ignoring explicit organizational policies. As a cognitive mapping device, it allows the researcher to examine the *structural* connection between individual and organizational behavior while preserving the *phenomenological* linkage between behaviors and organizational environment. It also allows, as Yoels (1982) has suggested, elaboration of Mead's distinction between the "I" and the "me," and facilitates also Goffman's distinction between "roles" and "role performance" (Goffman, 1972a) and framing activities (Goffman, 1974) as processes by which social life everywhere is always an ongoing dialectic between freedom and constraint.

Recent research has suggested ways in which the concept of loose coupling might be developed. Hagan, Hewitt, and Alwin, for example, have convincingly argued that the criminal justice system has become *decoupled* from the transcendent rules (e.g., due process procedures) and the formal organizational procedures meant to guide it. In this decoupling, the ideological sources of law remain intact while the mechanisms for maintaining an increasingly tension-laden system are recreated and perpetuated. The consequence of this is the suppression of the social and structural contradictions between courts and society, and within courts themselves. In a study of prison interaction between guards and prison residents, Thomas (1982) has identified how rigid administrative policies are neutralized by negotiations that dramatically decouple prison control policies from their goals. He concludes that one ironic outcome of rigid policies may be that informal implementation radically severs the locus of power from those upon whom power is exercised. In developing the concept to examine the ceremonial features of bureaucracy, Meyer and Rowan (1977:343) have observed that in loosely coupled formal organizations, structural elements are not tightly linked to one another and to their related activities. Rules are often violated, decisions may go unimplemented, or, when rules are implemented, the outcomes may be uncertain, and evaluation and inspection systems are often subverted or neutralized. As a consequence, rules provide little coordination. In courtroom situations, rules remain ambiguous, creating the *context* of organizational action, and functioning primarily as resources for organizing and rationalizing courtroom behaviors.

Heydebrand (1977) has suggested that courts are *networks of organized activity* reflecting diverse spheres of directed activity (such as judicial control or information exchange) by judges, lawyers, spectators, defendants, and other litigants (and even researchers). This array of participating groups reflects highly differentiated loci (and foci) of task-oriented activity guided by sometimes compatible, but often conflicting and antithetical, interpretations, preferences, and strategies. By definition, many participants are seeking incompatible outcomes (prosecutors seek guilt, defendants pursue exoneration, reporters seek a story, and researchers desire data). This creates a mosaic of differentiated practices which must be accommodated in the judicial forum. This accommodation creates competition over the ability of the participants to control their preferred view of the course of events and definitions of the world (Hosticka, 1979), and to obtain specific outcomes by use of strategems neither formally sanctioned nor provided for in official procedures.

This article discusses discretionary behavior within courtroom settings to display ways in which such behavior mediates the primary organizational goal of due process.

THE CHICAGO EIGHT TRIAL: A COMPARATIVE ANALYSIS

One of the most dramatic and highly visible examples of how the decoupling process operates occurred in the "Chicago Eight" conspiracy trial which ran from September 26, 1969 to February 18, 1970. Following the civil disturbances of the 1968 Democratic Convention in Chicago, eight persons (Rennie Davis, David Dellinger, John Froines, Tom Hayden, Abbie Hoffman, Jerry Rubin, Lee Weiner, and Bobby Seale) were indicted and tried on charges of conspiring to cross state lines for the purpose of inciting riot. The subsequent trial was highly publicized, as much for the excesses of presiding Federal judge, Julius Hoffman, as for the activities of the other participants, including the media and spectators. The trial has been described variously as a travesty of justice, proof that

the system works, superb theater, a mockery of the criminal justice system, and now in this essay, as an archetypical example of loose coupling.

This article will examine those features the trial shares with other trials—albeit in an exaggerated form—in order to illuminate those cracks and crevices where loose coupling occurs. The Chicago Eight trial seems appropriate for several reasons. First, it was a dramatic, highly publicized trial displaying a variety of interesting—even entertaining features. Second, its visibility provides a more-or-less shared stock of knowledge upon which readers may draw without additional reading. Finally, its *appearance* of atypicality is especially useful for displaying those interactional features that even the most extreme trials share with others. The Chicago Eight trial is ideal for symbolizing the conflicts, contradictions, and tensions between the sometimes cooperative, usually competing, but often selfish actions of participants, as well as the ceremonial strategies and rituals of the court. The participants in this trial manipulate, through behaviors appropriate for their tasks, those formal and other procedural legal rules which present a *fabricated, stage-managed public front* while attempting to conceal the *back-stage contradictions, maneuverings*, and *intents* from jury, judge and public (Goffman, 1972b; Manning, 1977a, 1980). It is precisely its *apparent* atypicality that makes this trial an excellent illustration of loose coupling. Its transformation by participants from a conventional "criminal trial" into a "political trial" occurred not because of unusual organizational procedures, for this trial was intended to proceed as would *any* jury trial. It was instead *transformed into* a political "circus" and media event by the behaviors of the participants and the meanings they imputed to the setting. By comparing the Chicago Eight trial with less-dramatic trials in conventional settings, it becomes easier to display the reasons this trial was *not* atypical, but in fact typifies the slippage that can occur in *any* adversary proceeding. The trials used here occurred in DeKalb County (Illinois) Circuit Court, Sycamore in 1980-81. Trials were chosen a) for which court transcripts were available, and b) at which I was present throughout, as an observer. Despite differences in visibility, drama, and ambiance, comparison of these proceedings with the Chicago Eight trial illustrates how the adversary process—despite its formal ideology and procedural framework—is embedded in situational activity that reflects a loosely-coupled system which is often considered an exceptionally formal setting.

No attempt will be made here to analyze the trials themselves, or to draw legal or procedural conclusions from the case. The intent instead is to examine the ways in which this trial reflects highly visible constituent elements of adversary proceedings in general. It is especially along the dimensions of *control and communication* that the loose coupling between judicial practices and their organizational and ideological premises become most evident.

Control

The opportunity to struggle for control in an adversary proceeding may take several forms. Although the court's organizational structure, operative rules and tacit policies limit the legitimate extent of this struggle, there nonetheless occurs considerable strategic and discretionary flexibility as the key participants, primarily the judge, lawyers, witnesses and litigants, all interact to secure for themselves an advantageous position. Several issues at stake in this struggle are especially important, especially the symbolic defense of ceremony and ritual which underlies due process, and the construction of an edifice of

"truth" upon which one's case is defended and the opponent's is argued. These issues usually take the form of struggle for control over decorum (i.e., those courtroom practices that are grounded on the legitimizing myths and ceremonial rituals of due process, judicial dignity and "correct" procedure), and courtroom strategy (i.e., ability to manipulate the flow, tempo, or definitions of trial, or the mechanisms employed to assure that one's own concept of procedure will prevail). The tactics of intimidation, disruption, humiliation, or force are among those with considerable dramatic potential, as the Chicago Eight trial indicates.

The recognition that court transcripts may at some later date provide the only record of "reality" offers an opportunity and motivation for a preliminary contest between some participants. Even before the trial began, Judge Hoffman and two defense attorneys engaged in preliminary jockeying to establish (or perhaps prevent) a symbolic "pecking order."

The Court:[4] And how do you plead, Mr. Rubin?

Mr. Kunstler: Just for the record...

The Court: Everything we do is for the record, Mr. Kunstler.

Mr. Kunstler: Of course, your honor.

The Court: That is why the government pays a high salary for an official reporter.

Mr. Kunstler: Yes your Honor...

The Court: You see this lady. She is a very competent reporter. Anything you say or I say, or anybody says, is for the record. You have my assurance.

Mr. Kunstler: Your Honor, I was not trying to put the court in terror, as you know.

The Court: Perhaps even way out in New York you have found that I don't frighten very easily.

Mr. Kunstler: Maybe that works for both sides.

Mr. Garry: I do, your Honor,

The Court: What did you say?

Mr. Garry: I get frightened.

The Court: Well, we will try to put you at ease.

Mr. Garry: Thank you, Your Honor [Transcripts:[5] A82-83].

The court clerk, as creator of the trial's "official record," becomes a medium in the initial jockeying for control as well as a focus in assuring that recorded "trial reality" is acceptable, as the following exchange in a highly technical medical malpractice suit in DeKalb County Circuit Court would indicate:

[The defense attorney, calling his first witness in an attempt to refute a highly qualified medical researcher, attempts to assure the testimony of his own expert witness be recorded "exactly" in the event of eventual appeal, and addresses the issue of competence of the court recorder.]

Plaintiff's Lawyer: I am sure this lady is very good, but I have never seen her before, and I don't know if she has taken medical depositions or not. I would think that you [the witness] might want to read the deposition to be sure she takes it down correctly, and I don't mean to impugn her, but I have never seen her before.

Defense Lawyer: I appreciate your situation. I can say for the record, she takes medical depositions continuously, but I think under these circumstances, being that [the plaintiff's lawyer] is from out of town, and [the witness] doesn't have any acquaintance, that it be well if he read the deposition. [Transcripts, *Sisler v. Fisher, 1979: 3*].

Such interpersonal baiting and conflict in the Chicago trial contributed not only to setting the initial tone, but also increased the hostility between the participants, thus becoming a prominent feature in the struggle for control between judge and defendants. In the second example, although the latent conflict situation is largely defused by the acquiescence of the defense attorney, the potential for turning communicative interaction into a struggle for control remains. It was the interactional strategies rather than differing structural characteristics, or procedural opportunities, that shaped the trial.

The struggle for control may involve not only lawyers, but witnesses or defendants as well. For example, after suggesting the judge was a "racist, a fascist and a pig," Rennie Davis is addressed by the judge:

The Court: I will ask you to sit down.

Mr. Davis: I have not completed my response.

The Court: I will ask you to sit down. I didn't ask you to get up here and further insult me.

Mr. Davis: I have a right. I have a right to talk about my intentions on each of these 23 [contempt] incidences.

The Court: You have no right to make insulting remarks in your remarks. That has been the trouble with this whole trial.

Mr. Davis: The trouble with the whole trial, Judge Hoffman, . . .

The Court: I will ask you to sit down, Mr. Davis.

Mr. Davis: . . .each and every time we attempt to make clear. . .

The Court: Put that man in a chair.

Mr. Davis: It is a fundamental right for a defendant to speak before he is sentenced.

The Court: It is not a fundamental right for any man to stand up and insult the trial judge. I won't take it.

Mr. Weinglass: Your Honor. . .

The Court: I have stood it for nearly five months, but I won't take it again.

Mr. Weinglass: Your Honor, he has a right.

The Court: He has no right to do that.

Mr. Weinglass: He has the right to place the allegations against him [in] factual context, and that is what he is doing. [Clark and Kalven, 1970: 89-90]

Davis was sentenced during the trial to a total of nearly 40 months for what the judge perceived as contemptuous conduct during the trial.[6] The point here is that occasionally the struggle for control can result in breakdown of conventional guidelines of interaction and necessitate *ad hoc* implementation of judicial or litigant behavior and discourse in which the fundamental relationships and antagonisms between participants become momentarily manifest. Such a breakdown can lead to the judge him/herself becoming an accused participant:

Specification 12 [against Davis]: On January 23, while the defendant Davis was on the stand as a witness on direct testimony, the Judge was required to make an evidentiary ruling. After the Court had considered a document and ruled that it could not come into evidence, Davis accused the Court of having ruled without reading the document.

The Court: I shall not take it in. In the presence of the jury I will sustain the objection of the Government.

Mr. Weinglass: Your Honor has read the document?

The Court: I have looked it over.

The Witness [Davis]: You never read it. I was watching you. You read two pages.

The Court: Mr. Marshall, will you instruct that witness on the stand that he is not to address me. You, Mr. Marshall, you are closest to him.

The Marshall: Face this way.

The Witness: I will look at the Judge.

The Court: Do you have what the witness said, Miss Reporter?

The Reporter: Yes.

Mr. Weinglass: I didn't hear that.

The Witness: I said he didn't read the document. I watched him. He never looked at it.

The Court: He said "You never read it," looking at me.

The Witness: I meant the Judge did not read the document. [Clark and Kalven, 1970: 81-82]

The incident in which Bobby Seale was bound and gagged in a chair in the presence of the jury is an extreme example of how a trial judge can attempt to re-exert control over the proceedings through *ad hoc* measures, which in this case led to a breakdown in protocol and control:

Specification 14 [against Seale]: On October 30, 1969, at the opening of the morning session the court ordered the marshall to adjust the restraint on defendant Seale after he had complained of discomfort. Thereupon the following occurred in open court...

The Court: If the marshall has concluded that he needs assistance, of course, I will excuse you, ladies and gentlemen of the jury, with my usual order.

(The following proceedings were had in open court, out of the presence of the jury:

Mr. Kunstler: Your Honor, are we going to stop this medieval torture that is going on in this courtroom? I think this is a disgrace.

Mr. Rubin: This guy is putting his elbow in Bobby's mouth and it wasn't necessary at all.

Mr. Kunstler: This is no longer a court of order, your honor; this is a medieval torture chamber. It is a disgrace. They are assaulting the other defendants also.

Mr. Rubin: Don't hit me in my balls, mother fucker.

Mr. Seale: This mother fucker is tight and it is stopping my blood.

Mr. Kunstler: Your Honor, this is an unholy disgrace to the law that is going on in this courtroom and I as an American lawyer feel a disgrace.

Mr. Foran: Created by Mr. Kunstler.

Mr. Kunstler: Created by nothing other than what you have done to this man.

Mr. Hoffman: You come down here and watch it, Judge.

Mr. Foran: May the record show that the outbursts are the defendant Rubin.

Mr. Seale: You fascist dogs, you rotten, low-life son-of-bitch, [Clark and Kalven, 1970: 26-27]

The resulting turmoil by the participants and especially the spectators resulted in chaos which forced recess of the morning session. The opportunity for disruptive strategies, or for imposition of force or violence by the participants, creates a situation which reveals the fragility of judicial proceedings intended to maintain the front of the due process metaphor. Three examples will display the types of slippage between ideal and practice which may allow the control of the proceedings to shift back and forth between participants:

Specification 15: [against Davis]: On January 23, the witness Davis falsely accused the judge of sleeping during the proceedings.

A. [Sic]: You are making me memorize them.

The Court: What did he say?

The Witness: I am sorry. I thought you had gone to sleep. I am sorry.

The Court: Oh, no. I am listening very carefully. I just wanted you to repeat. I wanted to be sure I heard what you said. [Clark and Kalven, 1970: 82]

Specification 18 [against Davis]: On February 2, after an extended speech by Mr. Kunstler, there was an outburst of applause in the courtroom. Mr. Davis participated in that applause and admitted having done so. It is reported in the record as follows:

The Court: Everyone of those applauders...

Voices: Right on, Right on.

The Court: Out with those applauders.

Mr. Davis: I applauded too, your Honor. Throw me out. [Clark and Kalven, 1970: 83]

On October 22, in the afternoon session, Kunstler requested that a birthday cake be presented to Bobby Seale. The cake was purchased by the other defendants for Seale's

thirty-third birthday and brought into the courtroom so that he might eat it later. Judge Hoffman immediately objected.

> The Court: I won't even let anybody bring me a birthday cake. I don't have food in my chambers. I don't have beverages. This is a court house and we conduct trials here. I am sorry.
>
> Mr. Kunstler: The cake is not to eat here, Your Honor.
>
> The Court: Your application will be denied. Will you will bring in the jury please, Mr. Marshall?
>
> Mr. Schultz: If the court please, can we wait until the defendants appear?
>
> The Court: The Defendants are not here? [Transcripts: 3639]

Upon entering the court, Rennie Davis called out in mock tragedy: "They arrested your cake, Bobby. They arrested it." This comment resulted in a two-day contempt citation.

These examples of the problematic nature of courtroom control show a few of the diverse ways such control can break down, and help us identify the source of that breakdown as grounded, in part, within the interaction of participants as they construct a meaningful social and organizational reality. Although court protocol and related rules formally and informally suggest the obligations expected from and by participants, they cannot mechanistically *determine* how participants will interpret and apply those rules. Nor can formal or tacit rules be used to assert authority or re-establish control over proceedings which break down. Control can be maintained only through the human activity of participants as they interact within organizational parameters by selecting legitimate or illegitimate strategies from available options. Control, then, is a continuously problematic element, and there is always the possibility that it may require resolution in ways not sanctioned by formal goals or even prior practices. Control, although provided for in the organizational procedures of the judicial process, is not itself an organizational feature of that process, but rather an anticipated outcome that occurs only through the *interactional work* of participants. It is because of this problematic nature of control that the struggle for control contributes to the loosely coupled nature of the judicial system by requiring constant maintenance and negotiation.

Communication

The representation, exchange and manipulation of such symbols as language, styles of discourse, or knowledge are widely variable and unequally distributed among courtroom participants. This often results in profound discrepancies between the ideological ideal, which holds that persons are "equal before the law," and the practice, in which "equality" is contingent upon, among other things, participants' stock of knowledge, and upon their ability and success in *bringing to bear* their symbolic repertoire on particular objectives. The ability to elicit strategic testimony, select, guide and pre-inform witnesses, use informants efficaciously, or even to fabricate evidence are a few examples of how symbolic resources can be employed and manipulated. Selecting a single category of trial communication, that of *testimony*, the slippage between the metaphor of justice and the expediency of practice becomes clearer. The purpose of testimony, that is, of the sworn attestation of fact, is varied. Courtroom procedures and the conventional ideology of justice convey an image of the trial as a mechanism from which an approximation of

"what really happened" will emerge from careful examination of all communication. In practice, however, communication displays its dramatic potential as a means for neutralizing "truth" through tactics of challenging competency, credibility, or relevance of opposing witnesses; by challenging the credibility of charges; or by reinforcing or challenging the legitimacy of the criminal justice system itself. Communication perpetuates at the symbolic level far more than a picture of "reality." Communication procedures tend to reinforce the ideology of due process, and also convey dramatic meanings which legitimize the credibility and competency of participants, and perhaps only incidentally bear upon the culpability or exoneration of those charged. Also at stake in the meanings conveyed is the symbolic maintenance of the credibility and legitimacy of the state as the sanctioning agency. It is especially in the realm of communication that the manipulation of symbols by defendants and witnesses may be reframed into a political event, *some might say in spite of*, but probably more accurately *precisely because of* the structure of adversary proceedings. There are several types of communication which help display both the particularistic and contingent nature of 1) testimony, 2) informants, 3) professional experts, and 4) symbolic testimony.

1. *Testimony.* Testimony is not always directed to the "officially" defined issues. It can also reflect attempts to introduce unsanctioned issues. The defense in the trial of the Chicago Eight continually raised the themes of racism, militarism, Vietnam, and other social issues in an attempt to symbolically redirect the definition of the meanings of the proceedings, to *politicize* them. This in turn presented difficulties for a judge bound by formal rules which may or may not be appropriate guidelines for handling problematic and delicate courtroom situations. This is illustrated by an exchange between Judge Hoffman and David Dellinger:

> The Court: I do not share your view. Mr. Dellinger, do you dare to say anything?
>
> Defendant Dellinger: Yes.
>
> The Court: Not a legal argument.
>
> Defendant Dellinger: No. I want to make a statement in the context...
>
> The Court: Only in respect to punishment. I will hear you.
>
> Mr. Dellinger: Yes. I think it all relates—and I hope you will do me the courtesy not to interrupt me while I am talking.
>
> The Court: I won't interrupt you as long as you are respectful.
>
> Mr. Dellinger: Well, I will talk about the facts, and the facts don't always encourage false respect. Now I want to point out first of all that the first two contempts cited against me concerned, one, the moratorium action, and secondly, support of Bobby Seale, the war in Vietnam, and racism in this country. The two issues that this country refuses to take seriously,
>
> The Court: I hope you will excuse me, Sir. You are not speaking directly to what I gave you the privilege of speaking to. I ask you to say what you want to say in respect to punishment.
>
> Mr. Dellinger: I think this relates to the punishment.

The Court: Get to the subject of punishment and I will be glad to hear you. I don't want you to talk politics.

Defendant Dellinger: You see, that's one of the reasons I have needed to stand up and speak anyway, because you have tried to keep what you call politics, which means the truth, out of this courtroom. [Clark and Kalven, 1970: 71]

A later exchange between Rennie Davis and Judge Hoffman occurred when the judge objected to Davis' attempt to explain that the judge's treatment of Seale had been a significant contributing factor to his behavior:

The Court: I won't hear you about that, and if you persist in that, I will...

Mr. Davis: How am I to explain to you that what happened to Bobby Seale directly led to my feeling that I could not stand what you did to Bobby Seale at that moment?

The Court: In the first place, what you say is not accurate.

Mr. Davis: I am reading from the record. I am reading from the court record.

The Court: In the first place, before we ever got to the point of discussing his lawyer, you know what he called me.

Mr. Davis: I do.

The Court: I wouldn't...

Mr. Davis: He called you a racist, a fascist, and a pig.

The Court: Several times.

Mr. Davis: Many times, and not enough. [Clark and Kalven, 1970: 89]

The opportunity for Davis to legitimately call the judge a "fascist and a pig" was allowed by the judge asking, and thereby encouraging, Davis to repeat Seale's court testimony. This strategic recollection allowed the political issues to be re-introduced into the testimony and record. This testimony, while challenging judicial dignity, nonetheless helped insulate Davis from another contempt citation because of the manner in which he introduced the epithets against the judge. The transcripts indicate that this ploy was used often during the trial, and a variety of subtle, often humorous, and usually effective strategies were employed during defense testimony to allow discussion of political topics.

The point here is that the battle over the *meaning* of the issues and the relevance of particular testimony to such meanings is a social, not a legal construct. This issue also arose in the Dekalb malpractice suit in which the plaintiff alleged a misdiagnosis of a potentially fatal tumor. Testimony of the defending physician's witnesses did not disagree over the facts of the case, but rather over the meaning of the concept "malpractice." Under Illinois law, when persons claim expertise in a "science" they must actually possess the skills and knowledge that any reasonably well-qualified specialist would use in similar circumstances. If not, then a judgement of malpractice could be rendered. Neither plaintiff nor defendant chose to dispute "facts," but rather developed strategies to persuade the jury that whatever the law, a "common sense" definition of competence was at stake. In this case, strategies were not based so much on legal expertise as much as on interactional techniques intended to arouse (or prohibit) expression of jurors' sym-

pathy. For example, during his opening statement, the plaintiff's attorney seated the plaintiff's wife with the plaintiff, even though she was not a party in the litigation. This symbolic representation of family dramatized the consequences of the alleged malpractice, especially in a conservative, family-oriented community from which the jurors were drawn. The defense attorney in open court immediately objected, which had the consequence of breaking the defender's own momentum, reframed the focus of courtroom interaction to the seating ecology, and thus emphasized the extra-legal issue of the "family." The defense attorney indicated he had no choice but to oppose the seating, knowing the consequences, because to allow the wife to remain present would have been even less desirable. This also, some observers suggested, created an image of the defense as the "bad guy" for breaking up the couple, and it was felt that especially because the defense lawyer was from a large northern Illinois city, this strategy by the plaintiff's lawyer was quite successful in shifting the meaning of the trial from one of technical competence to one of conventional community values. The plaintiff's lawyer in the malpractice case above and the participants in the Chicago Eight trial introduced a dramatic closing argument that the defense complained was "solely designed to inflame, prejudice, bias, and unduly influence the jury so as to create sympathy." Knowing (according to previous "expert" testimony) that the misdiagnosis was probably not fatal, the attorney nonetheless made an expertly delivered and highly dramatic closing appeal:

> Defense: [All my client wants is justice.] Justice for L. S. Justice, and I think he has the right to die knowing he had justice and his day in court, knowing that justice includes a proper award for what he has lost, which includes dying knowing that his family and the grandchildren that he won't be able to care for will be taken care of because he won't be there.
>
> Defense: Objection, your honor.
>
> Plaintiff: I will withdraw that.

These examples from seemingly disparate trials may appear "common sense" trial strategies. The point, however, is not to identify the existence of such strategies, but to suggest that the essential nature of such strategies is embedded in an interactional, rather than judicial, framework, and that justice is a game of social fabrication guided by rule-following, but not necessarily justice-intended behaviors.

2. *Informants.* Paid informants present a special problem of communication for both defense and prosecution. In the Chicago Eight trial, there were a variety of paid informants and infiltrators testifying for the prosecution. Informant testimony may be unreliable, and thus potentially embarrassing for the prosecution, as well as the opposition. For example, there may be a tendency among informants and other secret agents to fabricate, exaggerate, or otherwise selectively filter information in ways that may create unanticipated problems for those soliciting the information as testimony. There is also an *irony* in the use of informants which calls into question the credibility and legitimacy of the judicial system when it is discovered that there has occurred legal transgressions by informants (or by police undercover personnel) who are ostensibly mandated to enforce the law (e.g., Marx, 1981, 1982). There is also the danger that an informant might be "turned" and become a "double agent" (e.g., Marx, 1975; Masterman, 1972) thus discrediting those who originally planned to utilize the informant's services. In the Chicago trial, there were

three accredited news personnel who testified as paid informants. One was paid $6,000 to $7,000 by the FBI in the preceding year, in addition to $2,000 in expenses, to collect information relating to the defendants (*New York Times*, October 24, 1969). When payments or similar rewards are discovered, it reduces the credibility not only of communication, but also of the proceedings themselves, as occurred in the ABSCAM case. Because informant testimony may be constructed to show the informant in the best possible light, rather than to add anything of significance to the veracity of competing accounts, such testimony could be exposed as complete fabrication, and therefore not only useless, but also a discredit to the client and to the legitimacy of the proceedings themselves (e.g., Marx, 1982).

3. *Professional Experts.* Professional experts who are paid for providing testimony are apt to be chosen on the basis of their client's prior knowledge of the "line" they will present when testifying. Rare is the paid expert who will intentionally testify counter to the interests of those who purchase the service. In a case unrelated to the Chicago Eight trial, an "arson expert" in Chicago had, in the 1970s, provided important—and at times the only—testimony in arson trials. This expert was respected as a competent professional who often found evidence of arson where other investigators could not. For this reason he was sought as a highly skilled investigator by insurance companies and others who had an interest in "proving" arson to minimize insurance payments. In a turn of conscience, the expert confessed that not only were his credentials fraudulent, but that he had habitually lied—committed perjury—to bolster his reputation (and remuneration) as a witness. He acknowledged that on "numerous" occasions he had fabricated evidence, distorted facts, and otherwise presented misleading evidence, resulting in conviction of presumably innocent persons (*Chicago Tribune*, June 1, 1980: 1-1).

Although the Chicago Eight trial provided dramatic illustrations of the manner in which expert witnesses are presented to juries, the interactional process is applicable to other trials. In a felony-burglary case in DeKalb County Circuit court, the defendant had injured himself sufficiently to require hospitalization, which led police to him. The injury was then used as circumstantial evidence introduced in court. A young defense attorney attempted to challenge the ability of the treating physician—an experienced and respected local *practitioner*—to distinguish between a "gash" (such as occurred at the scene of the burlary) and a "cut" that might be sustained in a minor home accident. The ploy in this case failed, and this evidence (and the attorney's apparently clumsy effort to challenge it) led to the defendant's conviction. In the malpractice case, the defendant's expert physician spent exactly eight minutes establishing his professional credentials, about half of his total testimony time. The importance of the "battle of experts" revolves at least as much around the ability to present a professional front in a way that will persuade a jury as upon the actual expertise. As a consequence, expert testimony may be viewed, in part, as an interactional social construct.

4. *Symbolic Testimony.* An apparent need to add credibility to charges often leads to testimony which may not be intended so much to convict a defendant, but to justify the specific charges brought against the offenders or to legitimize evidence-gathering activities of law enforcement officers (as occurred in the recent FBI Abscam operation [Marx, 1982]). In another example, Chicago news columnist Michael Killian testified that he overheard Jerry Rubin say in a telephone conversation, "Fine. Send them on out. We'll start the revolution now." This was adduced by the prosecution to re-affirm the

legitimacy of the charge of conspiracy by invoking the *literal* image of imminent revolution. This ploy was used by the prosecutor to link all defendants' actions to a threat of armed political insurrection (*New York Times*, October 25, 1969: 16). One paid informant testified that the resistance group which sponsored Tom Hayden advocated violence. When asked what kind of violence, he said that in their private meetings, some individuals advocated chaining themselves to posts (*Chicago Sun Times*, October 23, 1969: 20). Although organized armed insurrection and individual advocacy of passive disobedience are both illegal, they are not analytically of the same magnitude. Both, nonetheless, became a means of justifying conspiracy charges. Imputation of exaggerated meaning to events in testimony contributes to the problematic nature of courtroom interaction by potentially distorting the incidents in ways that support a preferred view of events.

In sum, communication is a social construct, a *fabrication* designed and implemented by human labor for instrumental intents. As a fabrication, it is not necessarily guided by the formal judicial rules, even though it may be constructed by *following* the rules. Communication as fabrication embodies a variety of meanings and generates problematic interpretations, ploys, reconstructions, and negotiations by courtroom participants, and may also contain an assortment of exaggerations, prevarications, selective perceptions, or other characteristics which distort and thereby create an imagery intentionally different from, or at variance with, the events which originally transpired. Communication, then, is one means by which decoupling of formal organizational rules from the goals they are intended to implement can occur. It provides the opportunity to symbolically construct, using law and courtroom protocol as a medium, a Potemkin's Village in which an ediface of formal rules is employed to fabricate decisions and procedures which may be intended less to attain justice than to follow the rules of justice.

CONCLUSION

This study has examined the adversary process by focusing on the Chicago Eight trial as a typical, rather than abnormal, instance of the adversary process. By comparing this trial with other less-dramatic trials, it becomes easier to display how human activity *mediates* the formal rules of justice which in turn decouples organizational rules from intended outcomes. This discussion further illustrates that the structure of the judicial systems, ostensibly mandated to seek "truth" through a reasonably fixed set of organizational procedures, may be incompatible with the normatively grounded practices by which "truth" is obtained (e.g., Wolf, 1981). Loose coupling helps make more intelligible the justice process as human practice by conceiving it as a set of social relations. In these processes, human work activity transforms by symbolic means the social world within which formal structures, constraints and restraints may be mediated by such symbolic dimensions as communication, control, and style.

Several further insights are suggested by this study. *First*, whatever their personal motivations or beliefs, the behaviors of the participants are not structured to promote truth, but to symbolically confer meaning, credibility (or discredibility), significance, and control over information, events and proceedings that favor an interest-bound, pre-defined view of social reality. *Second*, the use of law by those officially mandated to employ it may serve as an instrument for suggesting, limiting, or shaping presentational or discursive strategies rather than provide a basis for prudent application of juridical principles in the interest of justice. More specifically, as Winter (1971) has suggested in a study of juries,

the conclusion of justice may be ultimately not so much a matter of making a correct decision, but rather a matter of reaching a decision by correctly following rules. *Third*, knowledge of law becomes a means of controlling information flow, and of establishing strategies to selectively and strategically reveal, conceal, or distort potentially relevant information and behavior. *Fourth*, participants all have potential opportunity for mediating the process, whether as direct participants, or as supporting actors. *Finally*, the behaviors of participants do not exist in a vacuum but are shaped by cultural, political, and other influences.

Although this study has been informed primarily by an interactional perspective, it is not intended to exclude organizational and broader (e.g., ideological, political-economic) issues, and should in fact be seen as an integral task for such analyses. Research displaying the deeper structures in which behavior is embedded is an absolutely essential task into which this type of interactional analysis must eventually be integrated (Thomas, 1983). One avenue for further research is examination of the sources which influence behavior as shaped by ideologically-bound social and cultural factors such as language, preferred views of social order, and cultural baggage which acompanies us on our excursions into the social world. The concept of loose coupling provides a conceptual tool by which such factors as class-bound judicial norms or forms of state control may slip into the judicial process in ways that reflect attempts at controlling, rather than attaining, the justice metaphor.

NOTES

1. Due process here refers to the basic judicial procedures Constitutionally established by the guidelines in the Bill of Rights (e.g., right to speedy trial, right to confront witnesses) and the 14th amendment (the "due process" clause).

2. Following Weber, *rationality* here refers to the identifiable rules by which organizations function. Such rules may be *formal*, in that they are explicit and "officially mandated" by the organizational apparatus, or *substantive*, in that they are unofficial, yet commonly accepted as necessary if the organization is to be effective. For excellent discussions of this distinction in policing organizations and prisons, see especially Manning (1977a, 1977b) and Thomas (1982).

3. As used here, metaphor refers to an alternative model of the world. Metaphors, as Manning (1979b) has indicated, are a means of setting phenomena apart from other things. Metaphors allow for articulating differences between objects and allow also for a "re-framing," so to speak, of objects in order to redirect cognition in ways otherwise unavailable when assuming an objectivist epistemology (Burke, 1969).

4. "The Court" refers to Judge Hoffman throughout.

5. Citations, wherever possible, are taken from published sources to aid those who wish to pursue reading. Otherwise material is cited from the trial transcripts (U.S. *v.* Dellinger, *et. al, 1969*).

6. By contrast, in DeKalb County, neither the Court Clerk nor the senior judge could recall a single contempt citation for courtroom behavior in the past seven years.

7. For an excellent discussion of the symbolic nature of use of information and especially its acquisition, see Feldman and March (1981). In their view, information is subject to numerous sources of distortion, and may not be as valuable as a resource as it is a ritual acknowledgement of shared values. In this sense, information becomes a ceremonial artifact useful for displaying competency and for providing an imagery of social efficacy. For a somewhat similar argument addressing the F.B.I.'s use of information, see Poveda (1982).

REFERENCES

Antonio, Robert J.
1979 "The contradiction of domination and production in bureaucracy: the contribution of organiza-

tional efficiency to the decline of the Roman Empire." American Sociological Review 44 (Dec.): 895-912.

Balbus, Issac D.
1977 The Dialectics of Legal Repression: Black Rebels Before the American Courts. New Brunswick, N.J.: Transaction.

Barak, Gregg
1980 In Defense of Whom? A Critique of Criminal Justice Reform. Cincinnati: Anderson.

Blumberg, Abraham S.
1967 "The practice of law as confidence game: organizational cooptation of a profession." Law and Society Review 1 (June): 15-39.

Burke, Kenneth
1969 A Grammar of Motives. Berkeley: University of California Press.

Burke, Peter J., and Austin Turk
1975 "Factors affecting post-arrest dispositions: a model for analysis." Social Problems 22 (Feb.): 313-332.

Chambliss, William J.
1969 Crime and the Legal Process. New York: McGraw-Hill.
1975 "Toward a political economy of crime." Theory and Society 2: 149-170.

Clark, Ramsey, and Harry Kalven
1970 Contempt: Transcript of the Contempt Citations Sentences, and Responses of the Chicago Conspiracy 10. Chicago: Swallow Press.

Clegg, Stewart
1975 Power, Rule, and Domination: A Critical and Empirical Understanding of Power in Sociological Theory and Organizational Life. London: Routledge & Kegan Paul.
1979 The Theory of Power and Organization. London: Routledge & Kegan Paul.

Cole, George F.
1970 "The decision to prosecute." Law and Society Review 4 (Feb.): 331-343.

Danet, Brenda
1980 "Language and the legal process." Law and Society Review 14 (Spring): 445-564.

Eckhardt, Kenneth W.
1968 "Deviance, visibility and legal action: the duty to support." Social Problems 15 (Spring) 470-477.

Feldman, Martha S., and James G. March
1981 "Information in organizations as signal and symbol." Administrative Science Quarterly 26 (June): 171-186.

Frank, Jerome
1949 Courts on Trial: Myth and Reality in American Justice. Princeton, N.J.: Princeton University Press.
1970 Law and the Modern Mind. Gloucester, Mass.: Peter Smith.

Frank, Jerome, and Barbara Frank
1957 Not Guilty. Garden City, N.Y.: Doubleday.

Friedman, Lawrence M.
1975 The Legal System: A Social Perspective. New York: The Russell Sage Foundation.

Galanter, Marc
1974 "Why the 'haves' come out ahead: speculations on the limits of legal charge." Law and Society Review 9 (Fall): 95-160.

Goffman, Erving
1972a Encounters. Harmondsworth, Eng.: Penquin.
1972b Relations in Public. New York: Harper.
1974 Frame Analysis. New York: Harper.

Hagan, John
1974 "Extra-legal attributes and criminal sentencing: an assessment of a sociologial viewpoint." Law and Society Review 8 (Spring): 357-383.
1975 "The scial and legal construction of criminal justice: a study of the pre-sentencing process." Social Problems 22 (June): 620-637.

Hagan, John, John D. Hewitt, and Duane F. Alwin
1979 "Ceremonial justice: crime and punishment in a loosely coupled system." Social Forces 58 (Dec.): 506-527.

Heydebrand, Wolf V.
1977 "The context of public bureaucracies: an organizational analysis of federal district courts." Law and Society Review 5 (Summer): 759-821.
Hogan, Robert, and Nance Henley
1979 "Nomotics: the science of human rule systems." Law and Society Review 5 (Aug.): 135-146.
Hopkins, Andrew
1975 "On the sociology of criminal law." Social Problems 22 (June): 608-618.
Hosticka, Carl J.
1979 "We don't care about what happened, we only care about what is going to happen: lawyer-client negotiations of reality." Social Problems 26 (June): 599-610.
Jankovic, Ian
1978 "Social class and criminal sentencing." Crime and Social Justie 19 (Fall/Winter): 9-16.
Kamens, David H.
1977 "Legitimating myth and educational organization: the relationship between organizational ideology and formal structure." American Sociological Review 42 (April): 208-219.
Lizotte, Alan J.
1978 "Extra-legal factors in Chicago's criminal courts: testing the conflict model of criminal justice." Social Problems 25 (Jun): 564-580.
Maines, David
1977 "Social organization and social structure in symbolic interactionist thought." Annual Review of Sociology 3: 235-259.
1982a Negotiated Order and Social Research. David Maines (ed.). Beverly Hills: Sage. (Special issue of Urban Life.)
1982b "In search of mesostructure: studies in the negotiated order." Urban Life 11 (Jan.): 267–279.
Manning, Peter K.
1977a Police Work. Cambridge: MIT Press.
1977b "Rules, colleagues and situationally justified action." Pp. 263-289 in R. Blankenship (ed.), Colleagues in Organizations. New York: Wiley.
1979a "Semiotics and loosely coupled organizations." Unpublished manuscript, Department of Sociology, Michigan State University.
1979b "Metaphors of the field: varieties of organizational discourse." Administrative Science Quarterly 24(Dec.): 660-671.
1980 The Narc's Game: A Comparative Analysis of Narcotics Law Enforcement in Two Cities. Cambridge: MIT Press.
March, James P, and Johan P. Olsen
1976 Ambiquity and Choice in Organizations. Norway: Universitetsforlaget.
Masterman, J.C.
1972 The Double Cross System. New York: Avon.
Marx, Gary
1975 "Of double agents and revolving doors." The New Republic 18 (Oct.): 8-13.
1981 "Ironies of social control: authorities as contributors to deviance through escalation, nonenforcement and covert facilitation." Social Problems 28 (Feb.): 221-246.
1982 "Who really gets stung? Some issues raised by the new police undercover work." Crime and Delinquency 28 (Jan.): 165-193.
Meisenhelder, Thomas
1981 "Law as symbolic interaction: Kenneth Burke's Sociology of Law." Symbolic Interaction 4 (Spring): 43-57.
Meyer, John W., and Brian Rowan
1977 "Institutional organizations: formal structure as myth and ceremony." American Journal of Sociology 83 (Sept.): 340-363.
Mileski, Maureen
1971 "Courtroom encounters: an observational study of a lower criminal court." Law and Society Review 5 (May): 473-538.
Piliavin, Irving, and Scott Briar
1964 "Police encounters with juveniles." American Journal of Sociology 70 (Sept.): 206-214.

Poveda, Tony G.
1982 "The FBI and domestic intelligence: technocratic or public relations triumph?" Crime and Delinquency 28 (April): 194-210.
Punch, Maurice
1978 "Backstage: observing policework in Amsterdam." Urban Life 7 (Feb.): 309-335.
Roby, Pamela
1969 "Politics and criminal law: revision of the New York State Penal Law on Prostitution." Social Problems 17 (Summer): 83-109.
Schwartz, Richard D., and James C. Miller
1965 "Legal evolution and societal complexity." American Journal of Sociology 70 (July): 159-169.
Schwartz, Richard, D., and Jerome H. Skolnick
1962 "Two studies of legal stigma." Social Problems 10 (Fall): 133-142.
Scheff, Thomas J.
1968 "Negotiating reality: notes on power in the assessment of responsibility." Social Problems 16 (Summer): 3-17.
Silverman, David
1971 The Theory of Organizations. New York: Basic Books.
Skolnick, Jerome
1975 Justice Without Trial: Law Enforcement in a Democratic Society. New York: Wiley.
Stanko, Elizabeth A.
1981 "The arrest vesus the case: some observations on police/district attorney interaction." Urban Life 9 (Jan.): 395-414.
1982 "The impact of victim assessment on prosecutors' screening decisions: the case of the New York County District Attorney's Office." Law and Society 16(2): 225-239.
Sudnow, David
1965 "Normal crimes: sociological features of the penal code in a public defender office." Social Problems 12 (Winter): 255-276.
Sumner, Colin
1979 Reading Ideologies: An Investigation into the Marxist Theory of Ideology and Law. New York: Academic Press.
Thomas, Jim
1980a "Law and legal repression." Paper presented at the annual meeting of the Society for the Study of Social Problems, New York.
1980b The Relationship of Federal Sponsorship to Criminology and Policing Research in the Social Sciences. Ph.D. dissertation, Michigan State University. (University Microfilms, Ann Arbor)
1981 "Class, state, and political surveillance: liberal democracy and structural contradictions." Insurgent Sociologist 11-12 (Summer/Fall): 47–58.
1983 "Toward a critical ethnography." Urban Life 11 (Jan.): 387–395.
Forthcoming "Negotiated order in maximum security prisons: social interaction as mediating activity."
Van Maanen, John
1978 "The asshole." Pp. 221-228 in P. Manning and J. Van Maanen (eds.), Policing: A View from the Street. Santa Monica: Goodyear.
Weick, Karl E.
1969 The Social Psychology of Organizing. Reading, Mass.: Addison-Wesley.
1976 "Educational organizations as loosely coupled systems." Administrative Science Quarterly 21 (March): 1-19.
1980 "Loose coupling and organizations: a thick interpretation." Unpublished manuscript, Graduate School of Business and Public Service, Cornell University.
Winter, Ralph K., Jr.
1971 The jury and the risk of nonpersuasion." Law and Society Review 5 (Feb.): 335-344.
Wolf, Eleanor
1981 Trial and Error. Detroit: Wayne State University Press.
Yoels, William
1982 Personal communication.
Zeitz, Gerald
1980 Interorganizational dialectics." Administrative Science Quarterly 25 (June): 72-88.