

A reading of Sacks' *Lawyer's Work* as an invitation to ethnomethodological studies of work

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Abstract

'Lawyer's Work' is a draft paper written by Harvey Sacks. It was not published before Sacks passed away in 1975, but later was included in a collection titled *Law in Action*. I will make an attempt to reconstruct a research program Sacks envisaged in this paper. Focusing on the lawyer's work, Sacks can be said to have been considering a way of conducting research on legal professionals' work. This turns out to be akin to a program Harold Garfinkel was thinking through in the later stages of his career as we can witness in *Ethnomethodological Studies of Work* and *Ethnomethodology's Program*. In order to show this, in reference to ethnomethodological studies of work Garfinkel presented in his later career, I will, throughout this paper, try to present what Sacks envisaged as a research program of legal professionals' work. I first attempt to convey my understanding of what Sacks argued in his draft paper. Secondly, I explore some related themes presented by a sociologist of law, Eugen Ehrlich, and try to establish the relationship between the arguments of Ehrlich and Sacks on sociological observation of law. This is expected to reveal what Sacks was trying to do by transforming some of the inquiries Ehrlich was engaged into an ethnomethodological ones, i.e., treating the problem as practitioners' practical problems. Here we can see a vision Sacks had, which we now as 're-specification of concepts'. Thirdly, I will discuss some implications of Sacks' paper to the program of ethnomethodological studies of work by exploring the relationship between the research programs of Sacks and Garfinkel.

A RESEARCH PROGRAM SACKS ENVISAGED

'Lawyer's Work' is a draft paper written by Harvey Sacks (Sacks 1997). It was not published before Sacks passed away in 1975, but later was included in a collection titled *Law in Action* (Travers and Manzo 1997). According to a lengthy footnote included in the published paper written by Emanuel Schegloff (Sacks 1997: 47–

48), it is assumed to have been drafted around 1960, but was still in an early stage then and was never finished.

It was Wes Sharrock who introduced me to a copy of this typewritten paper during the time I was a graduate student studying under his supervision. While he suggested that the paper would be helpful for my research, I must admit that initially it was hard to understand, since it was highly abstract without much elaboration. Yet, the paper eventually became one of the most inspiring papers for my research in terms of thinking about how to understand the practical management of knowledge in organisational or professional settings, which was my research topic.

Recently I have had an opportunity to translate this paper into Japanese, which has been a truly demanding task, as the paper is written in a highly condensed manner without much explanation of any of the themes (the body is only five pages long in the published book). It took me great effort to translate the text, and it was almost unavoidable to make somewhat creative translations to present what Sacks was saying in an understandable way. Those who have read the paper would immediately know what I mean. I also was asked to write an annotation for the translation to help clarify it. This paper is based on the annotation I wrote in Japanese for the translated text.

In this paper, I will make a bold attempt to reconstruct a research program Sacks envisaged in his paper. Focusing on the lawyer's work, Sacks can be said to have been considering a way of conducting research on legal professionals' work. This turns out to be akin to a program Harold Garfinkel was thinking through in the later stages of his career, as we can witness in *Ethnomethodological Studies of Work* (Garfinkel 1986) and *Ethnomethodology's Program* (Garfinkel 2002).¹ In order to show this, I first present a brief picture of the ethnomethodological program, with a focus on the notion of hybridity that Garfinkel presented in 2002. To be fair, what Garfinkel presented as a 'program' emerged after Sacks wrote his early paper. However, following Garfinkel, I will use the term 'ethnomethodological studies of work,' as there are various approaches with different emphasis on analysis, i.e., conversation analysis, interaction analysis, membership categorization analysis, and the term 'ethnomethodology' can be treated as a generic term. Hence, in reference to the ethnomethodological studies of work that Garfinkel developed at a later stage of his life, I will throughout this paper present what Sacks envisaged as a research program of legal professionals' work. Secondly, I

¹ For other examples of ethnomethodological studies of work, see Lynch (1985, 1993); Crabtree and Rouncefield (2012); Burns (2000); Randall et al. (2007); Rouncefield and Tolmie (2011); Tolmie and Rouncefield (2013); Ikeya and Sharrock (2018); Button and Sharrock (2009) and Button et al. (2015). Burns (2000), in particular, presents descriptions of judges' work as judicial mediators, which is distinguished from judges' work as adjudicators in litigations. This distinction is reminiscent of the distinction Sacks made about the lawyer's work, i.e., 'management of routinisation' and 'management of continuity.'

attempt to convey my understanding of what Sacks argued in his draft paper. This understanding is a product of translating the text, and of discussions I have had during the process with Takanori Kitamura, Wes Sharrock, and Michael Lynch. Thirdly, I explore some related themes presented by a sociologist of law, Eugen Ehrlich, and try to establish the relationship between the arguments and sociological observations about law made by Ehrlich and Sacks. In this, I aim to reveal what Sacks was trying to do by transforming some of Ehrlich's inquiries into ethnomethodological ones, i.e., treating those inquiries as practitioners' practical problems. Here we can see a vision Sacks had, which we now might call a matter of 'respecification of concepts'.

Sacks himself does not mention Ehrlich in his paper, but, according to Schegloff, Sacks was apparently at the same time writing other papers on the sociological jurisprudence of Ehrlich, including a draft paper that remains unpublished, entitled 'Introduction: The Problem of Viable Law'.

During that initial period in Berkeley, Sacks was writing other papers related to law, also not *prima facie* Ethnomethodological in style—for example, a paper on the sociological jurisprudence of Eugen Ehrlich, and another entitled 'Introduction: The Problem of Viable Law' (Schegloff, in Sacks [1997, n.1: 48]).

As I have not been able to read those papers by Sacks, all I know is that he was writing something on Ehrlich's argument. Thus, it has been a great challenge for me to explore the relationship between Sacks' argument and that of Ehrlich. Nevertheless, I think it is worthwhile exploring the relationship between Sacks' argument and Ehrlich's writings, as it allows us to see what kind of research program Sacks was trying to present by transforming some of Ehrlich's inquiries and explanations to ethnomethodological inquiries, i.e., transforming them into those involved in members' practices, in this case lawyers' practices. Examination of this transformation should reveal Sacks' vision of ethnomethodological studies of legal professional practices, which turns out to be close to what Garfinkel presented as ethnomethodological studies of work, particularly with his notion of hybridity. Lastly, I will make some observations about Garfinkel's influence on Sacks' paper. Through these steps, I attempt to show briefly how Sacks' text can be understood not only as an invitation to studies of lawyer's work, but also to ethnomethodological studies of work.

MANAGEMENT OF ORDER

To summarize Sacks' paper, it is about describing how 'management of order' would appear to lawyers, and how they would try to accomplish it. When it comes to managing order, lawyers as well as judges, prosecutors and jury members are all involved. He focuses on lawyers, and states that there are two ways in which the management of order appears for the them: one is management of routinisation, and the other is management of continuity. Cases lawyers deal with are not

limited to disputes that would lead to lawsuits, but also non-litigation cases, requiring consultation and legal procedures. It can be said that Sacks presents a method, i.e., a pairing of a problem and solutions for the lawyer to work upon in these two different settings. In the setting where the lawyer works on non-litigation cases, the problem is to prepare the client for troubles and litigations. For this, the lawyer scrutinises everyday activities of the client from a legal perspective; and modifies everyday routines when necessary, for instance by introducing a new form. This is what Sacks calls ‘management of routinisation’. In the setting of litigation cases, the problem the lawyer works on is to produce a continuity of the case with the legal system. Sacks describes how the lawyer does this in preparing cases and participating in court litigation, and he calls this the ‘management of continuity’.

Management of routinisation

According to Sacks, what lawyers attend to in non-litigation cases is *order itself*, and to demonstrate their attention to it in a way that is visibly available (accountable) for the lawyer’s client. In other words, lawyers attend to how things are ordered, and endeavour to show that such order is made available through an *appropriate* set of procedures and routines. According to Sacks, one reason why the lawyer attends to this aspect of their client’s activities is to gain insight into the extent to which the client is prepared for legal suits, in case a legal solution becomes available for the client. This is to say that the lawyer is interested in their clients’ interactions/transactions with others from a perspective that is systematically different from that of the client. Accordingly, the lawyer attends to the client’s daily activities, and if necessary, may directly intervene in the client’s management of order in a group or organisation the client belongs to. This may include changing the workflow as well as introducing written forms to be filled in so that a particular transaction can later be traced through documents to show that it has having been legally conducted. Sacks called this the ‘management of routinisation’. By ‘management of routinisation,’ he apparently was referring to the routinisation of the client’s activities from a legal point of view.

Sacks (1997: 46) states that choosing a legal solution for tackling a problem makes it possible for concerned parties to solve their problem in terms of the ‘legal system’ rather than through their respective motives, interests, and social positions. For this reason, according to Sacks, the lawyer carefully examines their client’s everyday interactions/transactions with others not in terms of the client’s individual framework, but from the perspective of the ‘legal system’, and that this may eventually introduce new procedures to their client’s interactions/transactions with others. Sacks uses the term ‘legal system’ in his paper, and while he provides no clear definition of the term, I assume that it is meant to cover entire field of

legal norms, including both statutes and common-law precedents that are evidently part of the legal system.

With his description of the lawyer's 'management of routinisation', Sacks can be said to have succeeded in showing how lawyers' and their clients' interests in everyday life differ from each other. In other words, by reading Sacks' descriptions, readers are able to see why people on the client side often come to feel that lawyers may be making things unnecessarily complicated and interfering with the clients' understandings of their own affairs.

In this way, for lawyers engaged in legal consultation and non-litigation cases, the problem of order is first to frame the client's routinized ways of doing things in terms of the legal system, and second to modify selected aspects of such routinized ways so that a legal solution can become an option when the client faces a problem in the future.

Management of continuity

For lawyers who deal with cases that lead to lawsuits, according to Sacks, the problem of order can be characterised as involving the 'management of continuity' for the following two reasons. First, for lawyers to construct 'a case' from the conflicts the client wants to resolve, the challenge is to 'convert' those conflicts into the terms of the legal system; i.e., to deal with the conflicts as 'a case' under the auspices of the legal system. In other words, it is to deal with a conflict as 'a new problem' for which a solution can be delivered in relation to 'existing solutions' available in the legal system. In this way, continuity of the legal system is assumed when a problem is placed under the auspices of the legal system; and at the same time, when a solution is delivered in relation to 'existing solutions,' the continuity of the legal system is maintained.

Second, through their actions in court, lawyers are theoretically able to use procedural rules to disrupt the continuity of the case. However, according to Sacks (p. 47), courtroom litigation is normally pursued without lawyers exploiting every such opportunity. In other words, Sacks suggests that order in the trial is accomplished by lawyers who *do not* take every opportunity to use procedural rules in the interest of their clients, but instead comply with the interest in continuity. He refers to the *Dennis* case where lawyers incessantly raised objections and motions to their opponents' actions in the trial, thus disrupting the continuity of the proceedings and infuriating the judge. Sacks argues that this breach demonstrates that order in the trial depends upon lawyers' tacit compliance with the expectancy of continuity.²

² Sacks (1997: 46) refers to the '*Dennis*' case, which evidently was the case *Dennis v. United States*, 341 U.S. 494 (1951): a case that reached the US Supreme Court, involving Communist Party leaders who were charged with advocating the violent overthrow of the U.S. government.

Thus, the lawyer attempts to relate a case to particular ‘existing solutions’ as well as attempting to not to question the proceedings in court. Sacks called this method the lawyer uses as ‘management of continuity’.

Competence of the lawyer

We have so far examined two methods for management of order Sacks presents as key procedures that the lawyer operates. In this sense, management of routinisation and management of continuity are competences the lawyer operates as a member of the legal profession. The competence, in this context, is the lawyer’s capacity to exercise methods which were developed for dealing with the problem of order, as a competent member of the legal profession in an actual situation. For Sacks, the lawyer would actually exercise relevant management of order in an actual situation, and others—including other legal professionals as well as the client—would expect the lawyer to do so in the course of the actual development of dealing a case. In this regard, it is probably fair to say that what Sacks presents is what we call ‘competence as a type’: competence adequate and unique to each ‘setting as type’ (e.g., working on non-litigation cases and working on litigation cases). In other words, Sacks specified two kinds of ‘competence as a type’ for the lawyer for each of two settings.

TRANSFORMING EHRLICH’S INQUIRES

So far, we have examined Sacks’ descriptions of lawyers’ work. In what follows, I explicate a possible relationship between his and Ehrlich’s arguments. As is widely known, Ehrlich (1962), who was regarded as having articulated a primary foundation in the sociology of law, proposed the notion of law as order. He considered that this notion of law as order would sustain people’s lives in their social, psychological, and economic dimensions. However, for Ehrlich, law was only one kind of order, and he took into account that people were oriented to other kinds of order in their lives. For him, the legal norm is merely one of the rules of conduct. One thing to note here is that Ehrlich considered law and legal norms as something that determines order. Furthermore, he proposed that the ‘internal order’ produced through the associations of human beings underpinned the basic forms of law. By an association he meant ‘a plurality of human beings who, in their relations with one another, recognize certain rules of conduct as binding, and generally at least, actually regulate their conduct according to them’ (Ehrlich 1962: 39). In other words, what he meant by ‘association’ is any community that individuals belong to, ranging from a family, to a church or a corporation.

Ehrlich (1962) states: ‘In order to explain the beginnings, the development, and the nature of law, one must first of all inquire into the order of the association’ (p. 37). This is the question Ehrlich’s inquiry raised: What is the beginning, the

development, and the nature of law? Considering most statutes are derived from an internal order of associations, Ehrlich proposed that in order to explore the nature of law we should start with the internal order of associations rather than the statutes that arise from that order.

Sacks, in contrast, seems not to have chosen to follow Ehrlich; that is, he does not start with Ehrlich's formulation of 'law and legal norms as something that determines order.' Instead, Sacks chose to start with the ethnomethodological notion of order: 'order as something accomplished by members'. In starting from this point, he focuses on one specific kind of player, i.e. lawyers. His choice of lawyers for describing 'management of order' can be considered a careful choice, which seems to resonate with the policy that was later named by Garfinkel (and credited to Sacks) as a focus on 'perspicuous settings'. It is the policy to identify a setting that seems particularly well suited for examining how members encounter and deal as a practical matter with what might otherwise be treated as a conceptual problem or distinction to be addressed from a general theoretical perspective (Garfinkel and Wieder 1992). Thus, in his attempt to deal with the problem of order, Sacks seems to have chosen lawyers as key players who deal with the problem of order as part of their profession, in the particularities of their day's work.

Sacks then examines how the problem of managing order is manifested in lawyers' professional work, and how lawyers try to solve this problem. By starting with these questions, Sacks seems to have succeeded in showing how an internal order of organisations and legal norms crosses over through lawyers' work into the production of legal order, as will be shown in detail in the discussion that follows.

Internal order of organisations

When a client comes to see a lawyer, it is likely that either the client fears that some disruption involving an opposing party will soon break up an order or already has broken it up. The lawyer examines the activities and complaints of the client and opposing party from a legal perspective, and tries to determine what can be done to address the situation with legal resources. The lawyer will try to prepare formal procedures and documents to enable legal solutions. To borrow Ehrlich's words, the internal order of organisations is determined by organisational norms, and the norms are constituted through traditions, contracts, and corporate statutes (1962: 26–38); whereas, according to Sacks, instead of accepting the norms (or the order accomplished by members) at face value, the lawyer would examine organisational norms from a legal point of view to determine whether or not there are any possibilities to pursue to reinforce the client's interests or undermine those of the opponent. Accordingly, Sacks chooses to describe the problem of order from a lawyer's point of view. In this way, he can be seen to

focus on a member's point of view, which is different from a researcher's point of view (though, of course, Sacks was a trained lawyer as well as a sociologist).

In this way, lawyers would try to examine the internal order of the client's ordinary organisational affairs from a perspective different from that which has been taken by ordinary members. For this very reason, the lawyer sometimes would appear to have tried to interfere in what the client would like to achieve. Yet, the lawyer's intervention may contribute to the achievement of the client's organized affairs, especially if its *internal order* was breaking down. The lawyer would examine the client's existing organisation of affairs from the legal point of view, which may result in bringing a new *internal order* to those affairs. In this regard, the lawyer's work can be characterised as being involved in the management of social order through examining and reinforcing the *internal order* of the client's prior sense of that organization. This is what Sacks termed the lawyer's 'management of routinisation', as explained earlier. In this way, in contrast to Ehrlich, who characterised the internal order of organisations as causally determined by norms particular to each type of organization, Sacks attempted to describe such internal order from the vantage point of the lawyer's problem, therefore describing it in the context of the lawyer's work of dealing with the client's organisations. Sacks' transformation of the researcher's problem—i.e., the internal order of organisations—to the member's problem is evident here.

Stability of legal norms

Another topic Ehrlich tried to explain, and Sacks tried to transform to the lawyer's problem, was the stability of legal norms. The 'management of routinisation' is certainly not the only domain in which a lawyer can engage with the management of social order. There is another domain of social order in which the lawyer can engage: the court. The court is a forum in which lawyers, judges, other legal officials, and lay participants try to reach a decision on a case. Ehrlich focuses on 'norms for decision' in the courts as a specific kind of legal norm, also as a specific resource for achieving the stability of legal norms.

The norm for decision, like all social norms, is primarily a rule of conduct, but only for the courts. It is not, primarily at least, a rule for the men who are the doers in life, but for the men who sit in judgment upon the doers. In so far as the norm for decision is a legal norm, it appears to be a legal norm of a special kind, different from the legal norms that contain general rules of conduct. (Ehrlich 1962: 122–23)

In particular, he tries to explain norms for decision in relation to the stability of law. He argues that, because of the stability of law, the norms for decision acquire 'an extremely tenacious life and an enormous extensibility' (pp. 133–34). The stability of law, according to Ehrlich, means that 'the norm for decision contains the general proposition on which the decision is based, and thereby sets up

the pretension that it is a truth which is valid, not only for the specific case under discussion but for every like or similar case' (p. 132). This principle of stability of law, Ehrlich argues, affects the *temporal* stability of the court by not changing the norm easily once it is applied; and it also affects the *spatial* stability, as a norm applied in one court comes to be applied in other court cases. Thus, Ehrlich can be observed to be providing explanations of a function of 'norms for decision' for the stability of law.

Sacks, in contrast, can be read to be dealing with the principle of stability through 'management of continuity', i.e., through describing how the lawyer manages this principle in practice. The lawyer, in the course of constructing a problem his/her client brought into a legal case, tries to decide which cases (i.e., precedents) would be of a similar type, in terms of norms for decision. In other words, the lawyer constructs a legal case by positioning the current case as 'a new case', i.e., as 'another case' in a series of similar cases. In this context, it is noted, the lawyer is able to place the current case as another case in a line of cases, which also assumes stability running through a particular type of case. Further, Sacks states that a trial can be completed, as long as the lawyer does not 'question' the stability of legal norms, i.e., norms for decision. This probably means that, as long as the lawyer assumes the stability of legal norms, it is possible for the parties to proceed with the trial.

In this way, when the lawyer is involved in a trial, continuity is achieved through relating the present case to specific precedents, and also through not questioning the norms in the court. Sacks states that the lawyer is engaged with management of continuity in this way. With this formulation he can be said to have presented how the lawyer's work accomplished what Ehrlich termed the stability of legal norms, by assuming the stability as part of its accomplishment.

Lawyers' professional competence

As the reader might realize, what Sacks presented in his paper can be understood as a transformation of Ehrlich's inquiry on the relevance of the inner order of the associations of human beings for the beginning, the development, and the nature of law. While Ehrlich tried to tackle this question by exploring various kinds of norms in different kinds of organisations, Sacks transformed the question and explored how legal norms, including the internal order and norms for decisions, arise in the course of the lawyer's work. In other words, what Sacks presented can be characterised as a set of descriptions of the legal order from the lawyer's point of view. Ehrlich can be said to have chosen a form of causal explanation from the analyst's point of view (as suggested by David Nelken [1984]). The lawyer is only one of the various legal professionals involved in the court, and legal norms can be described differently from the points of view of each of the different professions. However, Sacks chose to describe legal norms and how they are maintained

by contrasting the lawyer's point of view during the time in court versus outside the court.

By choosing to describe how the problem of order is manifested in the lawyer's work, Sacks can be said to have described two different competencies the lawyer is expected to exercise as part of professional work. He also briefly touches on the limit to the lawyer's exercise of competence even when acting as a professional. Sacks cites two examples. One occurs when the court needs to hear the opinions of other experts besides legal experts, and the other example is when the lawyer finds a large gap between her or his belief and that of the client. We will examine his argument in more detail in the following.

According to Sacks, the lawyer cannot necessarily be fully engaged with managing the continuity of legal norms in every aspect of his or her professional life. One reason for this that Sacks mentions is that some cases call for taking the opinions of professionals other than legal professionals, i.e., experts in areas relevant to the issues raised in the trial. This occurs, for example, in trials that involve determinations about a party's mental capacity, and courts must decide whether the judgment should be made by psychiatrists, and if so how the judgment should be situated in relation to the management of the case's continuity with legal norms. While it is not entirely clear what Sacks meant with this example, I gather that he is referring to a limit in the extent to which the lawyer can operate as a legal professional, even in a court. In such a case, the lawyer, as well as other legal professionals involved in the case, respects the logic of the opinions of other professionals. This is to say, legal professionals, including the lawyer, are expected to treat other professionals' opinions by acknowledging that they are not produced by referring to the continuity of legal system. It is only later that legal professionals decide how to treat them in the management of continuity of the legal system.

Furthermore, Sacks states that the lawyer is a citizen before being a lawyer; therefore, like other citizens, the lawyer also leads his/her everyday life under the auspices of common social norms. This is to say, while a person who works as a lawyer would operate with a lawyer's professional attitude, it does not mean that the norms of daily life get fully replaced with legal norms. Thus, if a case brought to the lawyer is based on norms that the lawyer as a citizen does not normally accept, the lawyer may choose to decline to take the case. This, according to Sacks, is another reason for the lawyer not being able to be fully engaged with management of continuity in all aspects of professional and personal life. This issue may arise especially when cases concerning political belief, religious belief, and sex/gender orientation are brought by the client. Thus, as Sacks points out, there are times when the lawyer declines a request from the client. Here we can notice that this issue is related to what Alfred Schutz discussed about the relationship between the natural attitude and the scientific attitude (Schutz 1962), though of course the legal attitude differs from the scientific attitude. What is worth noting here is that by focusing on the lawyer's attitude, Sacks can be said to have opened a way to

study different professional attitudes other than the natural and the scientific attitude.

THE RELATIONSHIP WITH GARFINKEL'S PROGRAM OF STUDIES OF WORK

Assuming that readers understand foregoing explication of Sacks' argument, we can now turn to its background, which can be reconstructed from his draft paper. It is not difficult to imagine that Harold Garfinkel's transformation of the problem of order had an influence on Sacks' argument. Garfinkel transformed the *problem* of order into the members' *problem of production* of order: from a question of how it is possible to conduct sociological investigations of the problem of order to how order is a members' production—how it is *accomplished* in the first place. Sacks himself acknowledges in his paper that 'the general orientation of this paper is due to Harold Garfinkel' (Sacks, 1997: n.2, 48).

By treating legal order as accomplished by members, Sacks managed to indicate two directions for empirical studies in the sociology of law. The first is to investigate how 'internal order' in the organisations the client belongs to is dealt with in the lawyer's work of managing legal order. The second is how the lawyer is involved in the procedures of the trial. Transforming the research question in these two ways suggests how the lawyer, who manages order as a professional, is actually engaged with accomplishing order.

'Management of order' is a problem that is not unique to legal professionals. If we remember Garfinkel's point that everybody is involved in the management of order, it is possible to ask how members manage order in different fields of activity. Garfinkel later called such studies 'ethnomethodological studies of work' (Garfinkel 1986). In studies of work, actual activities are described in terms of how order is managed and accomplished. The activities described can include one or another kind of professional work, but they also include leisure activities and everyday activities such as driving in traffic or standing in a queue.

Ethnomethodological studies of work thus shed light on how order is organized as part of activities, a phenomenon that theoretical explanations of order presuppose and overlook. In providing descriptions of this kind, it becomes possible to explicate how rules and norms are related in members' actual activities.

Interestingly, Sacks makes a prediction that, in a contingent future, his paper will become one among other studies influenced by Garfinkel.

The general orientation of this paper is due to Harold Garfinkel. This may be considered one of a number of studies which might be produced were wider attention given to his work (Sacks 1997, p.48).

Studies of work, as stated above, have been carried out in various fields ranging from courtroom trials, university lectures, and organisational meetings, but with one thing in common, which is to focus on how an organisation of activities accomplishes order. These studies can be seen as what Sacks had predicted as ‘a number of studies which might be produced were wider attention given to his [Garfinkel’s] work.’

To return to the legal setting, a paper by David Sudnow titled ‘Normal Crimes’ presents descriptions of how a public defender (a defence attorney who represents indigent defendants) transforms his/her client’s case during pre-trial plea negotiations with the prosecutor (Sudnow 1965). Assuming, as Schegloff suggests, that Sacks’ paper ‘The Lawyer’s Work,’ was written in the early 1960s, it was written when he and Sudnow were both students at UC Berkeley (Sacks 1997: 47–48). More precisely, Sudnow’s paper can be placed among papers, along with Sacks’, as part of the corpus associated with Garfinkel’s influence that Sacks envisioned. This speculation is made due to the fact that Sudnow’s paper also can be understood as dealing with what Sacks termed ‘management of continuity.’

CONCLUSION

If the argument in this paper is correct, it can be said that Sacks was trying to present a new way of developing empirical research, initially through professionals’ management of order, by exploring the field of law, with the focus on the lawyer and later on the police officer (Sacks 1972).³ Sacks’ analysis of lawyer’s work does not look obviously empirical, but it can be seen as preparing arguments necessary for starting empirical studies on lawyers’ work. Although Sacks does not present his analysis as an observational study of police practices, it is possible to assume that interviews with police officers or even a general kind of observation would have been carried out for producing the analysis which shows the details of the police officer’s work. At the same time, his arguments can be read to apply beyond the field of law. The paper includes a number of hints for studying in different professional fields, such as where Sacks implies that his arguments can be applied to other fields other than law, and where he encourages readers with an interest in this kind of research to read Garfinkel’s (1962) paper ‘Common Sense Knowledge of Social Structure’ (an early version of Chapter 3 of Garfinkel [1967]).

³ It is worthwhile noting that there is a paper by Sacks on the police’s work, ‘Notes on Police Assessment of moral character’ published in 1972, written some years earlier and presumably not long after ‘The Lawyer’s Work’ was written. Sacks describes the policeman’s problem as inferring the probability of criminality from the appearances persons present in public places, and presents methods for dealing with this problem. Together with ‘The Lawyer’s Work’, Sacks can be said to have started with perspicuous settings for investigating the local management of order, where practical management of order is the problem for professionals in both settings.

Thus, the present paper aimed to address the way Sacks presented lawyers' work in a way that suggests how sociological descriptions of work consist of members' methods, i.e., a pairing of *problems* (how sociological problems manifest themselves in members' practical problems) and *solutions* (members' practical methods for dealing with the problems). These descriptions are of a 'competence as a type'; this is to say, they describe the lawyer's competences in two typical settings: non-litigation and litigation. It is fair to say that Sacks shared a vision with Garfinkel in the way he described members' methods as routinised work, though he did not go as far as presenting descriptions of work in actual situations, i.e., presenting how the 'competence as a type' can be operationalised in actual situations.

On the surface, there seems to be some distance from the conversation analysis that Sacks later developed, but if one sees conversation analysis as examining members' work—i.e. how order is accomplished in a setting where conversation takes place—conversation analysis and 'studies of work' certainly do have something in common. Furthermore, according to Sharrock and Anderson, part of achievement of conversation analysis was to 'specify the problems to which the methods it identified stood as practical solution' (Sharrock and Anderson 1986: Chap. 6). Thus, there is a parallel between conversation analysis and Sacks' descriptions of the lawyer's work.

Another thing this paper pointed out was that, especially in his reference to Garfinkel's influence, Sacks forecasts a possible research program in his draft paper. Thus, it seems worthwhile to explore what the possible research program he envisaged might look like, in addition to the work he intended to achieve with descriptions of the lawyer's work. It looks as though he was trying to develop a research program for studying different lines of professional work. Decades later, when he was presenting an outline for studies of work, Garfinkel (1986: vii) referred to Sacks' observation of an orderliness that was missed by previous studies of work. With this reading of Sacks' draft paper, I hope that some of the parallels and potentials of both Sacks' and Garfinkel's research programs are made available to readers.

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