Admission of guilt as a communicative project in judicial settings

Per Linell, Lotta Alemyr and Linda Jönsson

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Admitting, or denying, that one has done something is a prototypical example of a so-called speech act (Searle 1969, 1975). Searle conceives of speech acts as doings by individual speakers. For example, admitting guilt would be something enacted by one single person, the perpetrator, who thereby assumes responsibility for a particular, possibly unlawful, action performed in the past. In this paper, we will look at data from two judicial contexts, criminal court trials and police interrogations, in which admissions (and denials) obviously constitute significant, and institutionalized, elements. In opposition to speech-act theory, we will demonstrate that admissions or denials of guilt are communicative acts, performed in collaboration between two parties, i.e. the professional interviewer (judge or police officer) and the person, defendant or suspect, who allegedly had to admit or deny responsibility for a criminal action. In a comprehensive corpus (70 court trials and 30 police interrogations) we will study the sociolinguistic variation in the communicative acts involved.

1. Some theoretical preliminaries

Searle’s (1969, 1975) speech-act theory, which has had such a great impact on theoretical and empirical studies of speech communication, is based on the assumption that a linguistic act, such as asserting, promising, giving advice or admitting guilt, is performed in and through an individual speaker’s uttering something, which then, under certain felicity conditions (e.g. the speaker being sincere, a wide-awake and knowledgeable addressee being present, etc.), counts as, respectively, an assertion, a promise, a piece of advice, or an admission of guilt. For example, if A promises B to do p, then it is the individual speaker A’s utterance only which is the promise. If B says something too, then his or her utterance would be another (kind of) speech act. A’s

Correspondence to: P. Linell, Department of Communication Studies, Linköping University, S-581 83 Linköping, Sweden.

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promise is his or her own doing, even if it is dependent for its success on certain conditions ultimately connected with B and the overall context; for example, the future action p, the object of A's promise, must be something which B would like to have done and which A believes B to like to have done, etc. (Searle 1969: 58). Similarly, the admission of having committed a certain unlawful act is, according to classical speech-act theory, entirely the perpetrator's own business; his or her utterance act alone, if performed in the right context, constitutes the admission.¹

Speech-act theory has been attacked on many grounds, not least by discourse analysts (e.g. Levinson 1981, 1983; Streeck 1980). Critics have emphasized features like the multifunctionality of utterances, the intrinsic relations between discoursal acts and their contexts, and the dependence on collective accomplishments. A central point of criticism is that speech-act theory is too monologic (e.g. Marková 1990a). Acts like asserting, promising, giving advice or admitting guilt invariably take place in, or implicate, communicative interplays between two (or more) interlocutors, and describing them as individual people's actions amounts to a false description and leads to a distorted view of communication. To avoid confusion with the speech-act theoretical approach, we therefore prefer to call acts like asserting, promising, etc. communicative acts, and we will also use the term (local) communicative project about the goal or effort of having the significance of such an act mutually recognized and understood in interaction. The term 'communicative' is designed to emphasize that the accomplishment of interactive acts necessarily presupposes the active involvement and (at least partly) shared concern by both interlocutors (traditionally called speaker and listener/recipient/ addressee) and that such an act cannot be reduced to a single speaker's uttering something.²

In recent years several discourse analysts have attempted more 'dialogical' approaches to communicative acts. Clark and associates (1986, 1987, 1989) have analyzed local communicative projects, corresponding to communicative acts, as conversational contributions consisting of two parts, or phases, namely presentation and acceptance. Such a contribution to discourse necessarily builds upon the work of both interlocutors; usually, one of them does the presentation part, and the other the acceptance part, in which the contribution is brought to completion. This latter phase is, however, often split among both speakers, in order for the contribution to be mutually accepted. In Clark's view, asking a question involves one party presenting the inquiry and the other party completing it, usually by producing an answer (or a reason why he or she need not or cannot answer). Similarly, an assertion would not be completed as a communicative act, unless 'the recipient' provides some reaction or feedback indicating recognition and/or understanding. Communicating admission of guilt is not successfully completed as a communicative act (or contribution to discourse), unless it is taken up and recognized as such an admission by the person receiving it.

Upon closer inspection, Clark's bipartite analysis may in fact be said to involve minimally three parts, since the mutual acceptance/completion phase engages both interlocutors through B's response and then A's reaction to, or acknowledgement of, this response (Clark and Schaefer 1987: 22). Accordingly, some scholars have argued that a theoretically more satisfactory analysis of a minimal communicative interaction has to recognize three steps as the basic format (e.g. Marková 1990b). The idea is that a mutually grounded belief in a shared understanding can only be achieved if A's attempt to have something made known or understood (through A's utterance) is first followed by B's response in which B indicates his reaction or understanding, and this then is followed by a third turn in which A shows her reaction to B's response. (If the third step is lacking, B would have shown his understanding to A, who could then unilaterally decide whether she had been understood, but B would not know if his response squares with A's intended message.) A three-step analysis of communicative projects was proposed by Mead (1934) and has been restated by many (e.g. Marková 1987: 137, 1990b; Severinson Eklundh and Linell 1983). Likewise, it is implicit in the analysis of the significance of the third turn within Conversation Analysis (e.g. Heritage 1984: 257).

However, even if a communicative act is a joint communicative project with usually at least three turns distributed between the two interlocutors, we do not always find this pattern empirically substantiated. On the contrary, we would sometimes find abbreviated (collapsed, truncated) sequences, where B's response and, especially, A's acknowledgment are withheld or at least not clearly expressed. There may be several reasons for this; for example, in an activity with a fairly pre-fixed progression, proceeding to the next item on the agenda often counts as accepting the previous contribution (examples below; see also e.g. Severinson Eklundh 1986: 40ff.).

On the other hand, many communicative acts are enlarged either by being grounded in some pre-atory sequence, which establishes an adequate discoursal context for the communicative project (cf. the concept of pre-sequence in Conversation Analysis, e.g. Levinson 1983: 345ff.), or they are extended through the introduction of new topical aspects in the responding parts of the communicative act, which then may gradually develop into new communicative acts and projects. The latter is of course a very common phenomenon, ³

¹ We will use the term 'admit' rather than 'confess' throughout this paper.
² The theoretical position outlined here shares important features with language game theory (e.g. Severinson Eklundh 1983), activity language theory (Levinson 1979) and conversation analysis (e.g. Heritage 1984).
³ Deviating from Clark's terminological preference, we stick to a more conventional definition of (discourse) contribution as that which is said during one turn at talk.
except perhaps in highly routinized and institutionalized question answer sequences.

2. The data

In this paper, we will study how admissions or denials of guilt are established in two judicial contexts, criminal court trials and police interrogations. In both contexts, the project of determining the defendant’s or suspect’s stance on the issue of guilt is quite crucial. In fact, the goal of the police in investigating an alleged offence and interviewing a suspect is to solve two tasks, viz., determining the suspect’s stance on this issue and to elicit an account by him or her on what happened in connection with the allegedly unlawful conduct (cf. Linell and Jönsson 1991). In the trial, on the other hand, the court, through the judge, has to elicit a statement from the defendant as to whether he or she admits or denies the offense for which he or she is being tried. Even if this appears to be a rather perfunctory step, especially for the defendants who have stated their views earlier in the police interrogations, it is important for the ensuing interviewing, argumentation and pleading in the trial and, of course, for the following verdict. If the defendant claims to be innocent, it will be more difficult for the court to find him or her guilty; the evidence must be more convincing, and attorneys must, at least in practice, invest more energy in careful argumentation in plea bargaining.4

Thus, when we study admissions and denials in these two contexts, we focus on acts which are truly important legally and socially for the actors involved. Secondly, by selecting these obligatory elements in a fairly large corpus of data from the two social situations in question, we get an opportunity to observe both recurrent features and significant variations in the performance of a specific type of communicative act.

The data used in this study derive from several collections available at the Department of Communication Studies, University of Linköping. The court trials were audio-recorded and observed at two different District Courts in middle-sized Swedish cities. The trials were all representative of the most frequent petty crimes that make up a good deal of the courts’ everyday reality. A first corpus of 40 trials (nos. A1–40), all dealing with minor economic offenses (larceny and fraud), has been subjected to several other analyses elsewhere (e.g. Adelswärd et al. 1988; Jönsson 1988a). The defendants in this corpus were selected to include twenty individuals who appeared in court for the first time and twenty persons who had been tried and convicted at least once in the last ten years. They either had blue-collar jobs or small businesses, or else they were not employed in the open labor market. An additional corpus consists of trials on traffic cases (nos. betw. A51 and A75); here, defendants represented somewhat more varied occupational backgrounds. Finally, there is a small corpus of 10 trials with immigrants as defendants and dialogue interpreters appearing as intermediaries between them and the legal professionals (nos. C1–3, 5–9, 11–12) (cf. Jönsson 1990). In these 70 trials, nearly twenty individual judges were active. It should be pointed out that a Swedish criminal trial is less formal and less adversary than are trials in the Anglo-Saxon system. There is no jury, but there are three lay judges who are seated at the front panel together with the professional judge (the chairman of the court, henceforth simply called ‘the judge’) and a clerk. Trials are open to the general public, although often (at least in petty cases) there are few or no auditors present.

The 30 police interrogations (nos. P1–30), held by 7 different policemen, deal with similar offenses as the first 40 trials, although in none of these we are dealing with the same individual case in both the police interrogation and the court trial. The police interrogations were also audio-recorded and then transcribed in extenso (see also section 3.3 below). They have been analyzed in other aspects in several publications (Jönsson 1988b; Linell and Jönsson 1991; Jönsson and Linell 1991; Jönsson et al. 1991). For extensive discussion of the data collection procedures and the structure of the corpora, see esp. Jönsson (1988a, b).

3. Analyses

3.1. Basic sequential structure

In the court trials, there is a strictly defined point at which the defendant is asked whether he or she admits the alleged offence. This formal event occurs right after the prosecutor’s brief statement of the charge (which, incidentally, is formulated in formal legal language (‘legalese’), i.e. quite early in the trial, before any interviewing or lengthy accounts of the case have taken place. If there is a defense attorney present, he normally steps in to answer in the defendant’s place, otherwise the defendant has to respond him- or herself. Let us start by looking at a typical example of how the local communicative

4 Since our focus in this paper is on the nature of communicative acts (with admission of guilt as the example), rather than on discourse in judicial settings, we will not review the extensive literature in the latter field. See e.g. Wodak (1985), Hoffman (1983), Jönsson (1988), Levi and Walker (1990).
project of eliciting and expressing a stance on the issue of guilt is carried out. In trial no. A36, there is no defense lawyer present:*

(1) (A36)
J: ja, e de riktit de här, John Eriksson?
D: ja, ja har ju erkänt de så
J: du erkänner
J: OK, is it correct, this, John Eriksson?
D: yes, I have admitted it, haven't I, so ...
J: you admit

This rather simple case exhibits the basic tripartite structure alluded to above. We find the judge (J) first providing the slot for a proper admission by asking 'is it correct, this, John Eriksson?' (where JE is the name of the defendant), just after the prosecutor's statement of the charge ('it' and 'this' in the judge's question refer to the content of the charge). The defendant then provides an affirmative answer, in fact using the verb 'admit' (erkänna). However, he does not use a proper performative in the 1st person singular present; rather, he refers back to a prior admission (which, of course, is meant to imply that he sticks to his own admission). The judge then comes back, acknowledging D's response and, as it were, upgrading it by uttering 'you admit' with an assertive tone in what may be called a representative declaration (Searle 1975:15) in the present tense.

It is hardly the case that the defendant's utterance, taken separately, counts as an admission. It gets this status in virtue of what the other party, the judge, does in the sequence, first by initiating the whole communicative project of establishing the defendant's stance on the issue of guilt, then afterwards by accepting the defendant's response and retrospectively assigning to it the status of admission. Thus, even if the defendant's utterance is crucially relevant, both interlocutors are, through their utterances, engaged in performing the communicative act.

A slightly different case is (2):

(2) (A12)
J: ja, John Rickardsson. e de riktit de åklagaren har sagt här?
D: ja.
J: du erkänner.
J: OK, John Rickardsson. is it correct what the prosecutor said here?
D: yes.
J: you admit.

Though similar to (1), (2) features a weaker contribution by the defendant. Given that his 'yes' is the response to 'is it correct what the prosecutor said?', it is in fact uncertain whether the court, or we as analysts, are entitled to regard it as (part of) an admission of guilt; it could be just some kind of overall assessment. Hence, the judge secures the desired interpretation in the third turn. Note that the judge, not the defendant, is the one who utters the verb 'admit'.

The third acknowledging, and often enhancing, turn is very common in the data. It occurs often also when the judge and/or the defendant have used the verb 'admit' in the preceding contributions, as in (3):

(3) (A5)
J: jaha. erkänner eller förnekar John Sigurdsson alla dessa gärningar?
D: ja, de erkänner ja.
J: erkänner?
D: ja.
J: OK. does John Sigurdsson admit or deny all these deeds?
D: yes, I admit it.
J: admit?
D: yes.

Here, the judge gives his follow-up turn a questioning intonation, which turns it into a request for confirmation. Only when such a confirmation is provided in the fourth turn, is the local project of establishing admission completed.

As we will see, there is a considerable (though not random) variation in the wording of the judge's initiating question and the following turns. It is typical, however, that the verb 'admit' (or its counterpart 'deny') occurs somewhere in the whole sequence. It is quite common in the judge's follow-up turn, especially if such a verb has not occurred earlier:

(4) (A21)
J: ja, då ska ja fråga dej, John Gregersson, va din inställning e till den här första gärningen?
D: de stämmer.
J: du erkänner?
D: ja.
J: OK, then I am going to ask you, John Gregersson, what is your stance to this first act?
D: it is true.
J: you admit?.
D: yes.
It seems that in a case like (4), where the speech-act status (or, more importantly, the judicially relevant status) of question and response is unclear, it is particularly important for the judge to secure the communicative project by explicitly asserting, or asking for confirmation of, admission (or denial) in the follow-up sequence.

As we mentioned earlier, if there is a defense lawyer present, he or she will usually (but not invariably) answer the question of guilt in the defendant’s name. An example is (5):

(5) (A31)
J: jaha. erkänner eller förnekar Adolfsson?
DL: Adolfsson erkänner gärningarna under båda åtalspunkterna.
J: ja. sakfrämställning. varsågod åklagaren!
J: OK, does Adolfsson admit or deny?
DL: Adolfsson admits the actions under both charges.
J: yes. presentation of the case. please, Mr. prosecutor!

It appears that defense lawyers are almost always explicit in their answers, by using either of the verbs ‘admit’ or ‘deny’. As a consequence, the judge need not be as explicit in his follow-up turn. In (5), he acknowledges the admission simply by ‘yes’, and in other cases he totally abstains from giving verbal feedback.

In nearly all the trials of our corpus, we observe an explicit admission or denial of guilt. (In one case (A58), the judge leaves the stance open for subsequent negotiation.) We note, however, that the work on the project of establishing (a judicially relevant) admission/denial is split up among the interactants involved. Exactly how the distribution of labor is organized, varies. For example, there is variation as to who utters the significant word ‘admit’ or ‘deny’, and where (in which turn) this is done. As table 1 shows, the significant words are used in more than ninety percent of the trials. However, it is especially noteworthy that the defendant is never alone in doing this; either the judge or the defense lawyer always engage themselves actively. Yet, the defendant is the one who is charged with something to admit or deny. Classical speech-act theory would clearly predict him or her to be the utterer involved.

3.2. Variants

There is overwhelming evidence that admission in our court trials is handled as a collaborative project, usually organized as a sequence of at least three turns. While there is considerable variation as to how these sequences are structured, this variation is hardly random. We may discern five types,

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<th>Table 1</th>
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<table>
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<tr>
<th>Occurrences in:</th>
<th>Corpus</th>
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<tbody>
<tr>
<td>Judge’s question (turn 1)</td>
<td>4 2 6</td>
</tr>
<tr>
<td>Defendant’s answer (turn 2)</td>
<td>1 1 1</td>
</tr>
<tr>
<td>Defense lawyer’s answer (turn 2)</td>
<td>16a 2 6 24</td>
</tr>
<tr>
<td>Judge’s follow-up turns†</td>
<td>8 2 10</td>
</tr>
<tr>
<td>Both (1) and (2)</td>
<td>2 5 2 9</td>
</tr>
<tr>
<td>Both (1) and (3)</td>
<td>1 1</td>
</tr>
<tr>
<td>Both (2) and (3)</td>
<td>4</td>
</tr>
<tr>
<td>All turns (1 + 2 + 3)</td>
<td>3 4 2 9</td>
</tr>
<tr>
<td>No turn</td>
<td>3 3* 6*</td>
</tr>
<tr>
<td>Total</td>
<td>40 20 10 70</td>
</tr>
</tbody>
</table>

* Ec: Trials involving minor economic offenses (fraud, larceny) (nos. A1–40)
* Tr: Trials involving traffic cases (nos. A51–75)
* Di: trials involving dialogue-interpreted proceedings (nos. C1–12)
* One in which the expression medvig ansvar is used instead of erkänna
* One trial (A58) in which the issue is never settled in the issue-of-guilt phase

† Usually the turn immediately following the defendant’s or defense lawyer’s answer, but in some cases some interjacent sequences occur based on how the sequences are initiated by the judges. In each category, there is some morphological, syntactic, and minor lexical variation, which we will not go into here; what distinguishes the five types are their major lexical items, especially the main verbs. We give here a basic wording for each type in Swedish, with an approximate English translation:

A. Erkänner eller förnekar du/ni/AA det hår? ‘Do you/AA(name) admit or deny this?’

B. Är det riktigt det hår? ‘Is this (i.e. the charge) correct?’

C. Vad säger AA om det hår? ‘What do you say (have you got to say) about this, AA?’

D. Vilken inställning har AA (till det hår)?/hur ställer ni er till det hår? ‘What stance (position) do you take (to this/charge), AA?’ or with a verb: ‘How do you position yourself to this?’

† Consider, for example, some variants in category D:
J: ja, ska ja fråga, va har Bertilsson för inställning till de? (A40)
J: ja, ska jag fråga de, John Gregerson, va din inställning e till den här första gärningen? (A21)
J: vi kun först hörta, hur ställer sej Eva till de hår? (A26)
J: får jag fråga va Hugoossans inställning e? (A6)
J: ja, för vilken kan va ta en inställning hår? (A20)
J: va har Axel Andersson för inställning till de ansvarsykedan? (C7)
J: jaha. din inställning till åtale? (A52)
E. No question at all by the judge; the defense lawyer responds directly to the prosecutor's charge. (It is possible, even highly probable in these cases, that the judge gives a non-vocal cue to the defense lawyer, e.g. by looking at him.)*

In these initiations, or in Clark's term: 'presentations', of the communicative project, the judges attempt to elicit a declaration by the defendant (or his or her attorney) on the issue of guilt. It is evident that these attempts vary in explicitness and specificity. Apart from type A, none could be said to make up an unambiguous introduction to the question of legal guilt. They must therefore rely on various contextual factors for their success. In this regard, it is important to recall that the question (or in case E: its absence) always occurs at a very well-defined point, namely right after the prosecutor's charge within the strictly fixed phase structure of the ritualized trial. However, with unexperienced defendants, this is not enough as a supporting condition.

The question 'Do you admit or deny?' (nearly always in this closed form of an alternative question; see examples (3) and (5)) is of course the most unambiguously designed elicitation type. It is fairly frequent, especially with nonexperienced defendants who appear without defense lawyers; it accounts for a little over one third of our cases (23/70). This may seem a surprisingly small number, considering the explicitness of this formulation. However, authoritative sources for Swedish procedural law do not recommend it; Eklof (1987: 150) notes that the defendant should be requested just to state his or her 'stance' with regard to the charge, and not be asked if he admits or denies, 'since that would mean that he were to state also if he considers the action to be criminal'. Yet, in practice, the question is indeed, as we saw, put fairly often.

The question 'Is this correct?' (type B; cf. examples (1) and (2)) seems to be a natural thing to ask after the prosecutor's assertions or, to use an everyday life notion, accusations. Its use would also fit the above-mentioned recommendations (Eklof), and even solitary defendants are often approached with it. Yet, it does not necessarily produce a legally relevant answer to the implicit query 'Are you guilty as charged?'. It is in fact sometimes followed by a more explicit question by the judge in the next round, and is thus retroactively reduced to a kind of prefatory inquiry prior to the main question of guilt:

(6) (A1: charge of fraud)
J: ja, John Alfredsson, e de riktit att du har tagit ut pengarna på den här postanvisningen?
D: ja.
J: erkänner du brottet bedrägeriet medelst förfalskning?
D: (suckar)
DL: ja kan förklara de att han medger ansvar ... (etc.)

* Note that, according to Swedish law, it is forbidden to make video-recordings in court.

Apart from being coherently connected to the preceding reading of the charge, it is possible that this strategy on the part of the judge reflects a wish, first to confirm the factual circumstances, and then approach the issue of legal responsibility (see also example (14) below). The same topical progression is possible if the judge starts by using the even lessor formulation 'What do you say to this?':

(7) (A64: charge of violation of speed limit)
J: va säger ni om åklagarens yrkande? erkänner ni eller förnekar ni de?
D: ja, de förnekar ja.
J: varsågod, åklagaren å fortsätt.
J: what do you say about the prosecutor's claim? do you admit or do you deny it?
D: well, I deny it.
J: please continue, Mr. prosecutor.

From the point of view of our classification, the difference between examples (6) and (7) is consequential; in (6), the judge uses two different formulations distributed over two different turns, whereas in (7) he goes from the first to the second question within the same initial turn. Since we base our classification upon the last formulation in the judge's first turn, (6) would go into category B, but (7) into category A.9

We noted that formulations of type C may seem quite informal and elliptic, especially in the form 'What do you say to this?' with the pronounal 'this'. If it is important for the judge to elicit adequate information as efficiently as possible, it may be risky to use this type with solitary defendants. It is therefore not surprising that it appears to be used only when defense lawyers are present, as in (8):

(8) (A35)
J: va säger Axelsson om detta?
DL: han erkänner gärningarna och han medger de enskilda anspråket.
J: ja.

* The reason for selecting the last formulation of the turn is that, as a rule, what is said just prior to turn relinquishing will contribute most to the interactive value of the turn.
J: what does Axelsson say about this?
DL: he admits the action and he concedes the separate claim.
J: OK.

A similar reasoning would apply, a fortiori, to category E, in which there is no verbal initiation by the judge (as in (9)) or just a brief 'yes' ((10)):

(9) (A33)
Pr: ((reads the charge))
J: ((pause))
DL: de erkännes.
J: jaha.
Pr: ((reads the charge))
J: ((pause))
DL: that is admitted.
J: OK.

(10) (A39)
Pr: ((reads the charge))
J: ja.
DL: ja, de erkännes.
J: erkännes. då får vi be om sakframställning.
Pr: ((reads the charge))
J: yes.
DL: yes, that is admitted.
J: admitted. then we ask for a presentation of the case.

Category D, finally, contains the expression inställning 'stance, position, standpoint' (or the verb ställa sig (literally:) 'position oneself'). This is quite a common word in everyday language, meaning 'attitude, view'; and for a defendant who has no experience of courtroom procedures, it might be difficult to realise that in legal language, it has a rather specific meaning, namely 'stance on the issue of guilt', and nothing else. It is therefore functional that this expression is used much more frequently (17/21) in the presence of defense lawyers, i.e. inside the group of legal professionals. Examples are (11) and, with a particularly informal wording, (12):

(11) (A6)
J: får ja fråga vad Hugooss position är?
DL: Ja, Hugooss bestrider ansvar för vårdslös skatteuppgift. ((etc.: long turn))

(12) (A20) (two defendants accused of several thefts)
J: ja för vi kan.. ska vi ta en inställning här?
Pr: ja, vi kanske kan höra varje punkt.
J: eh Edvinssons inställning?
DL: (clears throat) erkänner.
J: erkänner. och Eriksson?
DL: ja kanske kan göra ett saml.. ange att Eriksson bestrider samtliga åtalspunkter avseende stöld. de har ja sagt en gång för alla.
J: ja. mm.
J: yes, 'cause we can.. can we take a position here?
P: yes, we can perhaps hear each point.
J: eh Edvinsson's position?
DL: (clears throat) admits.
J: admits. and Eriksson?
DL: yes, I may perhaps make a joint.. state that Eriksson denies all the charges regarding theft. that I say once for all.
J: yes. mm.

(n8:) (P13)
P: hur ställer du dej till eh själva brottet?
S: aah, hur menar du då liksom?
P: ja, om du eh bestrider eller om du erkänner brottet?
S: ja, ja eh får ju erörna att ja åkte ju me men eh de va ju han (etc.: ...)
P: how do you position yourself regarding eh the offense itself?
S: aah, how do you mean then?
P: well, whether you eh deny or admit the offense?
S: yes, I have to admit, you know, that I went there but eh it was him, you know ((etc.))

(n8:) (P10)
P: va säger du om de här då?
S: ja va ska ja säja.
P: erkänner du eller förnekar?
S: ja erkänner självklart.
P: de gör du ja.
P: what do you say about this then?
S: well, what can I say.
P: do you admit or deny?
S: I admit of course.
P: you do. right.
The five categories cover all the 40 trials in the original corpus except one (no. 25, see below). We have seen that the admission of guilt as a communicative project is invariably sequentially organized and that some cases would not be immediately recognizable as instances of admission/denial, if it were not for the supporting context, i.e. the court trial frame with its phase structure. Furthermore, as is shown in table 2, the more specific execution of the communicative project is clearly correlated with primarily one major contextual factor, viz. the presence or absence of a defense lawyer. If we compare the explicit cases (type A) with the implicit ones (types B-E), there is a very strong correlation ($X^2 = 13.9$, $df = 1$, $p < 0.001$). This does not exclude effects due to personal routines of individual judges. In fact, the judge appearing in the largest number of trials in our largest corpus (nos. A1–40) almost consistently (9 out of 10 cases) employs type B. However, personal idiosyncrasies can clearly not explain the other systematic patterns; for the other judges, either the numbers of trials were quite small, or there were simply no significant patterns in their repertoires of formulations.

Table 2
Initiations of issue-of-guilt phase (judge’s questions).

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<tr>
<th>Formulation</th>
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<td>A: Do you admit or deny?</td>
<td>5</td>
<td>2</td>
<td>11</td>
<td>1</td>
<td>19</td>
</tr>
<tr>
<td>B: Is this correct?</td>
<td>8</td>
<td>5</td>
<td>3</td>
<td>1</td>
<td>10</td>
</tr>
<tr>
<td>C: What do you say about this?</td>
<td>13</td>
<td>3</td>
<td>3</td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td>D: What stance do you take?</td>
<td>11</td>
<td>11</td>
<td>3</td>
<td>2</td>
<td>4</td>
</tr>
<tr>
<td>E: - (no question)!</td>
<td>1*</td>
<td>4</td>
<td></td>
<td></td>
<td>2</td>
</tr>
</tbody>
</table>

F = defense lawyer present
F = no defense lawyer present
* DL = dialogue-interpreted proceedings ($n = 10$)
* One case (no. 25) in which no clear admission/denial is elicited (see text)

Like any other social activities, court trials will, in many ways, be further complicated when interlocutors do not speak the same language and have to communicate through an interpreter. Jönsson (1990) has argued that certain features which are typical of the somewhat formalized interaction in trials as compared to more conversation-like discourses, tend to get accentuated in dialogue-interpreted trials. Applied to the practices employed in the project of determining admission vs. denial, we might expect those strategies which are normally used with defendants without vs. with defense lawyers present, to be even more favored. As table 2 shows, this expectation is borne out, though it must of course be pointed out that the corpus is very small for our present purposes ($n = 10$). The three cases where defendants appear alone, all exhibit the most explicit question type (A), whereas 6 out of 7 cases with defense lawyers present have one or the other of the most insider-related types (D, E). The latter strategies seem natural in a situation, where, for basic communicative reasons, the judge’s question cannot be directly answered by the defendant anyway.

3.3. Police interrogations: Implicit projects

The issue of guilt forms the basis of a focussed, explicit and well circumscribed project in the court trials. This is so in two major respects:

(a) there is a contextually well-defined slot in the phase structure where this communicative project obligatorily occurs;

(b) the project is carried out according to a recurrent sequential pattern, within a few turns, and explicitly marked by the use of certain critical terms, in particular *erkänna* and *förneka*.

In our corpus, these conditions are always fulfilled, except for one case, where the second set of conditions have been slackened; instead we find the judge interviewing the defendant in a somewhat more conversation-like manner:

(13) (A25: charge of fraud)

J: åklagaren säger här att du har sält biljetter för 5769 kroner och 95 öre.
D: de stämmer.
J: å så har du behållt dom här pengarna själv (ohb)
D: ja.
J: å du har ingenting emot att betala Västerstads Trafik AB dom här pengarna?
D: ja har gjort upp en avbetalningsplan (etc.)
J: mm.

J: the prosecutor says here that you sold tickets for Kronor 5769, 95 öre.
D: that is true.
J: and then you have kept this money for yourself (inaudible)
D: yes.
J: and you have nothing against paying this money to Västerstad Transportation, Inc.?
D: I have made up an instalment plan ((etc.))
J: mm.

---

11 Since there is a fairly close correlation between the presence of a defense lawyer and the defendants’ courtroom experience, i.e. recidivists get defense lawyers more often than first-time offenders, there is also a (somewhat) weaker correlation between question category and courtroom experience. There are no correlations with type of offense (larceny, fraud, traffic case), except that the traffic cases tend to get either A or D. Traffic trials are also distinguished by the very high percentage of denials.
The admission here is implicit; it is not explicitly asked for or asserted as such, but arguably underlies the interview as a half-tacit assumption. Of course, the case for counting the sequence as an admission of guilt is greatly strengthened by the fact that the sequence occurs in the appropriate slot. On the other hand, the succinct nature of the admission sequences in the trials may seem a bit surprising in the cases where a defendant appears without a counsel, since it is not necessarily clear what the legal significance of the defendant’s answer is. For example, there is an important category in which the defendant would ‘concede to the factual circumstances but deny responsibility’ (which of course amounts to a denial in legal terms). Such a case would seldom be stated clearly by the defendant him-or herself. Indeed, judges sometimes use one of the more informal approaches (B, C) to probe the issue a bit more. (There are of course further opportunities later on in the trial.) This is done in trial no. 27:

(14) (A27: charge of buying stolen goods)
J: ja, John Emanuelsson, e de rikut att du har köpt den här cykeln? vid de här tillfället?
D: mmm.
J: för de angivna beloppet?
D: ja.
J: nu säger åklagaren att me hänsyn till omständigheterna och bland annat de pris (...) att den här cykeln inte va ärilt åtkommen, e de rikut?
D: de tycker ju absolut inte ja e rikut.
J: du förnekar de här me andra ord.
D: ja.
J: OK, John Emanuelsson, is it correct that you bought this bike? on this occasion?
D: mmm.
J: for the amount stated?
D: yes.
J: now the prosecutor says that considering the circumstances and among other things the price (...) that this bike was not honestly acquired, is that correct?
D: that is definitely not correct I think.
J: you deny this in other words.
D: yes.

When we turn to the police interrogations, we will often find radicalized versions reminiscent of (13) and (14). Although finding out whether or not the suspect considers him- or herself guilty of an offense is one of the major objectives for the police, we find that neither of the above-mentioned two conditions necessarily hold. In our data, the police interrogation is very much more of an informal interview with only two persons present in a small office, and the discourse style is more conversation-like than in the courtrooms (see Jönsson 1988b). Although the issue of guilt is sometimes brought up at a particular and characteristic occasion, namely after the police officer’s taking down personal data by filling in a preprinted form and before letting the suspect tell his story, we find that this is often not done; instead, the police officer embarks directly on an interview about the events concerned. Similarly, we do not always find the police officer asking an explicit question ‘Do you admit this?’ (or the like). Yet, the issue is highly relevant, and the report produced by the policeman should be clear on this point. What seems to happen is that the issue is treated, often at considerable length, but this is accomplished implicitly, i.e. the admission/denial will come out as an implicit summary of what the suspect says (or rather, what the police officer and the suspect collaboratively work out in discourse, cf. Linell and Jönsson 1991). Usually, the interlocutors are probably in tacit agreement about these admissions or denials, although a few defendants in court do dispute some aspects of what has been stated in the police reports.

In other words, we find that admissions/denials vary along other dimensions in the police interrogations than in the court trials. It proved fruitful to distinguish four general types:

(i) The police officer (P) acts, apparently in tacit agreement with the suspect (S), on the basis that S’s position on the issue of guilt is clear. (As it turns out, these cases, as well as those in category (ii), always involve admissions, cf. below.) No explicit question of admission/denial is put at any time.

(ii) These interviews are exactly like category (i), except that P does formulate an explicit question somewhere in the end, as it were to make sure that the tacit presupposition on which the interview was carried out, is actually supported by S.

(iii) Here, P asks questions in an unbiased way, seemingly uncertain about S’s position. Somewhere towards the end, an explicit question of guilt is asked. This often takes the shape of a so-called formulation (Heritage and Watson 1980).

(iv) This is the only category in which P asks an explicit question of guilt in the beginning of the actual interview. Accordingly, this category comes closest to the court trials, notably category A, although the linguistic style may differ a little.

For reasons of space, we cannot illustrate all the cases, since it is here usually necessary to cite rather extended stretches of talk. A few cases may suffice. In (15), the suspect is a 17-year-old boy who, together with his companion, is accused of having stolen a ‘plate’ of beers from a food store:
P: har du gjort de här själv eller--?
S: ja, de har ja gjort.

((44 turns omitted))
P: (…) då erkänner du eh … urkundsförfalskning alternativt förvanskning av urkund?
S: mm.

P: what do you say about the forge itself, is that anything eh …?
S: well, that is … that is a silly thing to do (P:yes), but you don’t think of that precisely when you do it, you-- (P:mm)
P: did you do this yourself or--?
S: yes, I did.

((44 turns omitted))
P: (…) then you admit eh … to document forgery, subsidiarily document alteration?
S: mm.

Here, again, P asks his questions, apparently assuming that S is guilty, and S seems to comply with this. Note, incidentally, that P’s first question is partly similar to category C in the trials, but as we can see, it is not taken up as a question of guilt (cf. also note 10), and therefore P does not here succeed in carrying through the project of establishing admission (whether this was actually intended or not). Not until much later does P come back with a formal question of guilt. When he does so, he gives it a fully legalale wording.

In category (iii), P seems to ask fairly unprejudiced questions, using them to draw conclusions about S’s position. Only rather late does he formulate an explicit question of guilt:

(17) (P25: suspicion of fraud)
P: får ja fråga så här, lämna du medvetet oriktiga uppgifter till banken när du sökte lån?
S: nej.

P: så du förnekar me andra ord då som ja fattat dej uppsåt till att vilseleda banken?
S: ja.

P: du förnekar uppsåt?
S: ja, alltså ja var inte ute efter att göra egen winning eller lura nån på något va (P:nåhå) (…) 

((19 turns omitted))
P: eh … då fattar ja så här att du förnekar de här brottet då, bedrägeri som ja har delgivit dej misstanke för va?
S: jaa.
P: may I ask you this, did you consciously give incorrect information to the bank when you applied for a loan?
S: no.
P: so you deny in other words as I understood you intent of misleading the bank?
S: yes.
P: you deny intent?
S: yes, you see, I was not looking for personal gains or cheating anybody on anything, you see (P: right) (...)
(19 turns omitted)
P: eh ... then I take it that you deny this crime then, fraud which I declared you suspect of, right?
S: yes.

Finally, two cases where the interview starts with the two parties explicitly establishing admission/denial (type (iv)):

(18) (P5: boy suspected of having stolen beer)
P: då ska vi se. du e här å ja ska höra dej som missänkt för tillgrepp av öl ur en affär (S:mm) tillsammans med Svenne ja (S:ja), va säjer du om de då?
S: ja erkänner.
P: du erkänner.
P: then let's see. you are here and I will hear you as suspect of appropriation of beer from a shop (S:mm) together with Svenne, right (S:yes). what do you say about that then?
S: I admit.
P: you admit.

(19) (P12)
P: mm. då kanske ja får höra så här först, erkänner du eller förnekar du brottet?
S: ja förnekar brottet helt å hålet.
P: mm. then perhaps I may hear this way first, do you admit or do you deny the offense?
S: I deny the offense completely.

Note that P in (18) chooses the rather imprecise 'What do you say about that?' (cf. (16) above), but here S 'saves' the project by providing a downright admission, thus making the sequence progress much in the trial fashion. Otherwise, most police officers who adopt strategy (iv), use the most explicit question type, as in (19).

<table>
<thead>
<tr>
<th>Implicit (categories (i) and (ii))</th>
<th>Theft</th>
<th>Shoplifting</th>
<th>Fraud</th>
<th>Admissions</th>
<th>Denials</th>
</tr>
</thead>
<tbody>
<tr>
<td>Explicit (categories (iii) and (iv))</td>
<td>4</td>
<td>1</td>
<td>5</td>
<td>10</td>
<td>-</td>
</tr>
</tbody>
</table>

We will not here indulge in discussing the sociocultural conditions behind the four categories, except that it is worthwhile observing that all the 10 denials (n = 30) occur in categories (iii) or (iv) (Table 3). In other words, the cases of implicitly assumed positions in (i) and (ii) all involve admissions; apparently, the policemen sense which are the clear cases.12 Another clear pattern is that nine out of ten shop-liftings are handled in categories (iii) or (iv) (whereas cases of theft and fraud are evenly distributed between the implicit, biased treatment ((i), (ii)) and the explicit, neutral treatment ((iii), (iv)).

4. Discussion

The issue of guilt is of utmost significance in procedures of criminal law. As a consequence, the communicative acts of admission and denial are quite central. Yet, we have seen how these communicative projects vary considerably in sequential organization, wording, and explicitness, especially between the two major situation types studied here. There are clearly a host of contextual factors which influence this state of affairs, among them differences in routinization and in the stability of phase structure. In addition, it might be easier for the interlocutors to accomplish focused admission/denial sequences in the trials, where the issue has just been thematized through the prosecutor's immediately prior statement of the charge, and when, after all, the defendant does not state his or her position for the first time. The police interrogation, on the other hand, is often the first official opportunity for the suspect to claim and formulate a specific position on the issue. The whole atmosphere is more informal in the police interrogation, and hence the strategies tend to be more implicit and ambiguous. However, whatever is gained by the informality, may partly be paid by a certain degree of persistent uncertainty of what has actually been claimed (cf. Atkinson 1982); thus, these data may be added to

12 Police officers choose a more neutral strategy when denials can be expected (see below). Yet, admissions are a more tricky category. There appear to be some cases where, partly through the implicit strategies used in the police interviews, it remains somewhat unclear if the legally crucial distinction between 'admitting guilt' (Sw. erkänna) and 'conceding to the factual circumstances but denying legal responsibility' (Sw. medge de faktiska omständigheterna men bestäda ansvar) is sufficiently researched.
the ongoing debate on the pros and cons of ‘rules versus relationships’ in legal discourse (Conley and O’Barr 1989).

We have dealt with a few cases of rather well-defined communicative acts in two forms of institutionalized discourse. With regard to general pragmatic theory, we have seen that communicative acts like admissions and denials of guilt cannot be analyzed as individual speakers’ speech acts. Some of the other assumptions of speech-act theory will of course remain true. For example, if a communicative project is construed as an instance of admission or denial, one person assumes the role of the main protagonist, the one who admits to, or denies, having done something blameworthy. Thus, by engaging in the communicative project in question, that specific person will take on certain moral obligations; therefore, he or she can be legitimately blamed or punished. (At the same time, the other parties involved in the admission/denial game will of course also be subject to moral consequences: they acquire commitments, rights, and obligations, determining their future conduct with regard to the main protagonist.) Furthermore, it is of course true that these social obligations are generated (mostly) through speech activities, i.e. in discourse. But these activities consist of collective concerted behaviors, usually sequentially organized. Quite often there is a basic three-part structure, although this can be both collapsed and expanded. Communicative acts, i.e. the activity which corresponds to ‘speech acts’, are social accomplishments, collectively assembled over stretches of discoursal activity.

Our case study has shown that admissions or denials of guilt in judicial settings:
- are never isolated speech acts, i.e. individual speakers’ utterances;
- are often not performed by the protagonist as the main contributor of discoursal substance (cf. e.g. minimal responses to questions);
- are sometimes carried out without there being any single utterance that can be unambiguously related to the project (cf. the implicit cases above).

In addition, we have demonstrated that these communicative acts take on their full meaning only as parts of the overall activity types (cf. Levinson 1979), i.e. in our case: court trials vs. police interrogations, and their respective subtypes.

In most discourse activities, utterances are ambiguous and have several illocutionary values. Hence, they can be interpreted in many ways. If something is taken as admission or denial of guilt, this does not exclude that the same stretch of discourse can be construed as performing other acts as well.

One characteristic of the legal procedures is that the construal as precisely admission/denial must be secured and intersubjectively recognized. This is in practice most obvious in the formal court proceedings, while it is something of a moot point if there really is an admission or denial in the implicit cases among the police interrogations.

It may perhaps be argued that such institutionalized communicative projects in judicial settings as the ones studied here are not representative of how confessions, admissions, or denials are carried out in everyday life. However, the interactive nature of communication will still be there, and though there are always some obvious exceptions, we would contend that the corresponding communicative acts in more informal settings would exhibit even more of ambiguity and implicitness than in those institutional settings where a reasonable degree of reliability is of vital importance.

References


13 It is not entirely clear how admissions/denials of guilt fit into Searle’s (1975) classification of illocutionary acts; they seem to have features of at least representatives and expressives.