Cross-talk: Pragmatics and Courtroom Questioning

DENISE MARIE ROKOSZ

Ph.D.

University of Edinburgh

1988

Abstract

Language use in the courtroom is action-guiding, in the sense that users attempt to influence a legal audience's perceptions about the facts of a case. The pragmatic study of questioning offered here explores the ways in which information is created and recycled to promote a set of beliefs about the claims or charges before the court and the credibility of witnesses.

Chapter One reviews current research on courts and courtroom interaction and discusses the underapplication of linguistic analysis to witness examination. In questioning, the pragmatic approach employed here differs from the traditional speech act or Gricean approach, and draws on other fields which examine language use in a conflict setting. Chapters Two and Three discuss the contributions to the pragmatics of courtroom questioning made by sociology of legal proceedings and argumentation theory.

Within pragmatics, the study of questions has produced a concern for what constitutes a pragmatically significant answer, a concern which contrasts with semantic interests in the truth-conditional nature of questions and their representations. Defining a question, and looking at question-answer relations in direct and cross-examination are the main aims of Chapter Four. Linguistic forms correspond to a variety of functions and the syntactic, lexical and discourse features of questioning are analysed in Chapter Four with particular attention given to the use of leading questions and hypothetical questions. Leading questions are designed to accomplish a number of tasks, but one job they have is to direct the audience's attention to the beliefs the advocate has about the quality of information being introduced. Sentence adverbs such as *obviously, clearly* and *in fact* strategically aid in the reorganization of information in the discourse and Chapter Five investigates how adverbs affect the perceived reliability of evidence. Leading questions are also designed to manipulate the coherence and continuity of information presented and Chapter Six discusses the ways in which connectives and other discourse deictic markers affect the interpretation of information about a case.

DECLARATION

This thesis is my original work.

Denise Rokosz

TABLE OF CONTENTS

CHAPTER 1

LANGUAGE USE IN COURTROOM COMMUNICATION

1.1. Introduction

Testifying in court is not a speech situation which speakers normally manage following a routine script. Witnesses and defendants, as language users involved in an institutionalised encounter, exploit different communicative strategies with differing degrees of success, in order to understand and participate in the giving of evidence. An institutional setting like the courtroom is constrained by a number of factors which influence set patterns of behaviour among the professionals and witnesses; these patterns of behaviour are related to the internal system of court organization; role, hierarchy, group relations give the interaction the (appearance of) coherence and consent. But these relations are infused with several concerns: professional competence, bureaucratic efficiency, public satisfaction, and the maintenance of professional identity. More importantly, lawyers are concerned with exploiting some of the conventional rules of language use in order to effect the interpretation of evidence presented in court -- testifying is a verbal encounter where a professional, legal register can be identified and where the legal domain interfaces most crucially with public preconceptions of the profession.

Johnson (1976: 139) pointed out that linguists had too long avoided applying their skills to the examination of linguistic behaviour in the legal context because as he saw it,

> 1.) language behavior in the courts is felt to be specialized, artificial, and generally unnatural. 2.) So much is already known about language behavior in these situations by certain non-linguists that the amount of catching up that one would be required to do is intimidating.

While Johnson's comments have a familiar ring, it is perhaps not the same situation today; the courts have been investigated in more recent times (Loftus 1983; O' Barr 1982; Atkinson 1979; Danet 1980), and linguists as well as sociologists have begun to focus on language and its relation to the legal proceedings. With pragmatics and discourse analysis now becoming established research domains, the courtroom can be investigated in a more appropriate manner. These are tools of analysis which can be applied to this underresearched communicative context.

This study focuses on the ways language is used for the building of a case. The questioning of witnesses in direct and cross-examination is a speech situation which calls for pragmatic analysis. Here, speakers may have conflicting viewpoints which become realized in the interaction between witness and advocate and the questioning procedure is crucial in producing a result. The purpose of this study is two-fold: first, this study contributes to the broader debates about the boundaries of pragmatics as the study of language use. Pragmatics is not solely concerned with reworking speech act theory (Vershueren 1985; Seung 1982) and in investigating the institutional context of legal proceedings, pragmatics can accommodate sociological accounts of law in action (Chapter Two) as well as models of argumentation and persuasion (Chapter Three).

Secondly, a more applied objective is the investigation of the pragmatic aspects of questioning, and in particular leading questions. Analysing courtroom communication means examining a speech situation with speakers who are engaged in convincing and persuading their audience of the validity of a claim before the courts. The notion of cooperation in discourse is one which, I would argue, needs critical examination for courtroom questioning. Rather than

presume that co-operation is always present, I start with the notion that speakers have dissenting points of view, and work through strategies to learn about the institutionalised nature of the proceedings they are engaged in. In discussing questions and witness examination, I will suggest that certain pragmatic means are used to affect the interpretation of information. Cross-examination is directed as convincing the court that a revision needs to made with regard to previous evidence. Leading questions used in cross-examination pragmatically presuppose information about the advocate's point of view and progressively reveal his strategy. Leading questions may have a variety of functions and there are difficulties in identifying facets which are specifically oriented to legal categories governing 'facts' and those oriented to a reassessment of the witness's credibility.

Of major pragmatic concern is the growing predilection in research on the courts for generalising about 'powerful' and 'powerless' modes of speech (Danet 1984; Woodbury 1984; Wolfson 1985), and for assigning a 'coerciveness' index to questions based on syntactic/semantic grounds. This ignores much of what pragmatics is about and more to the point, fails to address how questioning in court is different from any other speech context where questions are used (e.g. psychotherapy, interviewing, Mischler 1986). In discussing questioning in witness examination, 'coerciveness' and 'powerful' modes of language use will be re-examined in light of the institutional objectives of direct and cross-examination. This will contribute to a clearer understanding of questions in witness examination and the relationship between language use in and outside of the court. The chapters have been arranged to move from discussions of legal proceedings and sociological factors affecting the outcomes (Chapter Two) to a discussion of a model which can apply to language use in court, namely, argumentation (Chapter Three).

Chapters Four, Five and Six examine questions and illustrates pragmatic aspects of questions with examples drawn from a number of courts (Small Claims as well as High Courts). A brief summary of each chapter follows below.

In the rest of Chapter One, the legal proceedings are presented as situations which have been discussed in a number of ways. Some sociological accounts of legal proceedings (Linton 1965; Bankowski and Mungham 1976) portray the courts as institutions which disempower the defendants; others have emphasised the role of language in the distance created between witness and questioner. The analysis of courtroom style of presentation (O' Barr 1982; Danet 1980; 1984) is a starting point for discussing pragmatics and courtroom communication. Danet and O' Barr have initially specified types of questions as coercive (e.g. Yes/no) and make claims about a witness's credibility in terms of features of speech. These are areas where pragmatics can contribute to a broader understanding of language use in the courtroom.

In Chapter Two, I examine the parallels between pragmatics as a theory of 'language in action' and 'law in action' accounts of legal proceedings. 'Law in action' approaches to legal proceedings are grounded in legal realism, and realists, such as Frank (1949), provide a systematic attack on the notion that legal rules can be studied outside of a context of social processes. Realists' concerns parallel linguistic concerns for the study of language in social context (Giglioli 1972; Halliday 1978). However, while common ground exists between legal realists and linguistic functionalists, linguists have chosen a different way of looking at the role of social processes in language use. The starting point for functionalists (Leech 1983) are not the formal, abstract rules of language as a system of rules (Chomsky) but rather the principles which govern communication as a form of social interaction. This contrasts with realists'

accounts of the 'law in action' since the sociological factors affecting law are treated as deviance from an ideal set of rules. Two 'law in action' accounts of sociological factors affecting the process of trials are discussed in Chapter Two (*Magistrates' Justice* and *Conviction*). Both analyses provide realist critiques of the court system but differ in focus. What is of concern to pragmatics, however, is the way 'law in action' accounts consequently treat language use in the courts. In *Magistrates' Justice*, Carlen argues that the professionals use both a 'restricted' and 'elaborated' code, and 'switch' codes to exclude the defendant. There are a number of difficulties with the Bernsteinian notion of 'code' section 2.6 examines the semiotic, semantic and syntactic claims about language made by Bernstein (1971) in relation to courtroom discourse. For a pragmatic study of questioning, however, the 'law in action' accounts, I will argue, confuse the constraints specific to the legal context with those constraints on language use generally.

Chapter Three outlines a fundamental characteristic of courtroom communication, namely that of argument, which has thus far been excluded from most 'co-operatively centred' models of communication. The study of argument can contribute to pragmatics in a way that differs from a model of communication based on cooperation. Five approaches to argument are considered: argument within Gricean framework; argument as a form of perspective taking; conversational approaches to disagreement-based communication; rhetorical approaches to argument; and finally, speech-act approaches to arguments as complex illocutionary acts; Also the notion of 'relevance' is discussed with reference to the cognitive approach put forward by Sperber and Wilson (1986). What speakers consider relevant contributions may conflict with what the courts consider relevant testimony. In legal proceedings, relevance is governed by admissibility rules which are discussed

in the final section of the chapter.

Questioning includes both direct and cross-examination and Chapter Four discusses questions as they appear in examinations. I outline a pragmatic approach to questioning and discuss cross-examination as a situation where leading questions are used. The definition of a leading question is reviewed and one which takes into account pragmatic presupposition is proposed. Leading questions have a number of different facets and ways in which advocates use available pragmatic devices to convey beliefs about the witness and the issues of the case are examined. . Sentence adverbs along with cohesion devices appear in varying types of leading questions which have scalar effects on the discourse. Some questions appear more leading than others and this results from a combination of factors; mainly, the markedness of the question with pragmatic devices and the nature of the question (tag, yes/no, conducive...).

Sentence adverbs such as *obviously, in fact,* and *certainly* generate inferences beyond the scope of truth-conditional meaning and these are devices for conveying the advocate's beliefs about the content of his utterance. Sentence adverbs appear in questions posed by advocates in both direct and cross-examination and I argue that these contribute to judgments made about the case being presented.

Certain discourse features are associated with cross-examination and Chapter Six discusses cohesion in witness examination. Pragmatic connectives *and, so, but* often preface questions in such a way as to relate the advocate's current utterance to the previous discourse. The use of cohesion devices, though, may be an indication of cohesion manipulation where the advocate falsely or insincerely indicates a relationship of his question to the discourse. Similarly, repetition and reformulation phrases are cohesion devices which

function differently from repetition devices in other speech contexts. Here repetition is a means for the advocate to recycle what the witness has said in order to make it lend support to his case. A witness's testimony is thus used to cast doubt on the weight of information when the advocate poses questions which iterate and reformulate previous testimony.

1.2. The Courtroom Setting

As a way of introducing the courtroom as a speech situation, a brief summary is offered about the ongoing research in aspects of the legal process and relevant literature on language and law. This section looks at the courtroom interaction through the eyes of those either involved in or closely associated with legal proceedings. Legal philosophers, practitioners and sociologists of Law each have provided characterizations of the process and participants. In distinguishing legal proceedings from other types of social interactions, common metaphors figure in most analyses. For example, the fact that this is a conflict situation but executed in a convened manner suggests that this is a type of (verbal) game where advocates strive to win by following preset rules of engagement. By sifting through other models of courtroom interactions advocated by legal philosophers and tacticians, the groundwork will be laid for investigating the legal conventions which conditionally affect communication in witness examination. Additionally, sources on advocacy help to establish an overview of the interaction, the starting point for linguistic contributions about the communication process. In section 1.3, a general review of literature about language in the courtroom process is discussed with particular attention paid to the contributions made by psychologists and sociolinguists.

1.2.1. Testifying: Conflicting Reports

Sources on advocacy examine the courtroom interaction and provide useful descriptions. Various metaphors accompany these descriptions and the most popular one is that of the 'game'. Since competitiveness characterizes conflict situations, the courtroom verbal interaction between the two parties in the dispute is often likened to that of a 'game'. Both parties want to 'win' and winning consists in making an audience believe a claim is true either beyond reasonable doubt (in criminal cases) or on the balance of probabilities (civil cases). The participants engage in a linguistic battle to secure the truth of their claim as the natural conclusion of points tallied during the course of the game. Rappoport (1972) explains this gamelike nature along these lines:

> Here the conflicting parties, either by choice or necessity, must confine their aggressive acts to a specifically circumscribed range defined by the 'rules of the game'. The object is not usually to eliminate or to incapacitate the opponent as a living organism, but to gain specific objectives while adhering to the 'rules'.

The 'rules of the game' include conventional rules i.e. the Rules of Evidence and Procedure, as well as the code of conduct which governs the manner in which advocates present evidence. Barthes (1973: 22) suggests that a concern among advocates is to preserve their professional dignity, and that the manner in which they conduct themselves closely parallels the unwritten rules observed by all good sportsmen:

> The contestants confront each other with zeal, not rage: they remain in control of their passions, they do not punish their beaten opponents relentlessly, they stop fighting as soon as they have been ordered to do so and congratulate each other at the end of a particularly arduous episode.

The acceptable moves in this game are the evidentiary conventions observed by the advocates discussed in Chapter Three. The game metaphor provides an elaborate picture of the legal process: the strategies of communication result in linguistic 'moves' players make while attempting to win. A fundamental condition for playing the game is that both parties must intend to win--otherwise the contest is not genuine.

Central to this gamelike perspective is the idea of 'performance' (not to be confused with the Chomskyan sense). The performance of advocates and witnesses has been investigated by Goffman (1959) who maintains that legal proceedings have 'dramaturgical' features. He defines dramaturgy as: ((The way in which the individual in ordinary work situations presents himself and his activity to others. The ways in which he guides and controls the impressions they form of him and the kinds of things he may and may not do while sustaining a performance in front of them.) The advocate is an actor, staging a performance in the courtroom drama. Being familiar with a certain script, similar to parts he has, perhaps, played in the past (representing clients tried for a popular offence in the same court), he gives a performance -- hoping that the audience will believe that he is sincere and truthful.

The witness is likened to a stand-in who learns the script through ad hoc measures. More of a stage prop than a major character, if the witness chooses to put in a performance and grab some of the limelight, he jeopardizes the advocate's control of the audience's attention. To usurp such control is to risk 'upstaging' the advocate and earning associated 'rewards'. Bankowski (1980: 11) suggests that the witness usually goes along with courtroom drama because to do otherwise may bring unexpected results,

> In recognising the 'play' aspect, the defendant can also put in a

> performance. Ordinary conventions and procedures are subverted as the defendant begins to rewrite and recast the script. But such departures are unusual. Normally the defendant accepts what he is given not necessarily because he can conceive of no alternative or because he is unwilling to speak out but because of an appreciative sense of what will happen to him if he opts for the course of 'resistance'.)

Bankowski characterization leaves the impression that there is no room for manoeuvreing - the witness either conforms or risks ostracism from the play altogether. However, the witness can interrupt the advocate's performance without completely 'subverting' procedures. He need not rewrite the script but does have certain means to edit it as he goes along.

However, sociological descriptions of legal proceedings are concerned with the question of the relative power of the courts to enforce sanctions against witness and act as agencies of social control. Emerson (1969) contrasts legal proceedings unfavorably with everyday procedures and concludes that unpleasant experiences are the necessary consequence of the way the drama is organized. Advocates are the perpetrators of a type of degradation ceremony, designed to strip the defendant of his identity and, ultimately, his dignity. Atkinson (1979: 11) summarizes the findings of Linton (1965) and Emerson (1969) as accounts which end with a description of defendants as people "baffled, bullied, thwarted, misunderstood, oppressed, coerced, manipulated - all of which readily contrast adversely with alternative claims about the propriety of legal proceedings and ideals of justice."

In examining the relationship between the courts and language use, Atkinson and Drew in (1979) produce a ethnomethodological review of courtroom procedures. Following in the footsteps of Sacks and Schegloff (1974), they apply conversational analysis techniques to make sense of what is

really going on. Atkinson cites the major advantages of the ethnomethodological approach:

> First by concentrating on conversational materials, the analyst does not have to embark on the indefinitely extendable descriptive enterprise that necessarily follows from an ethnographic focus on contextual features. Second, by doing so, the analyst also avoids having to claim that the provision of detailed contextual descriptions somehow or other warrants a correspondence between what members in the setting might have been orienting to and his descriptions thereof . . .)
>
> [p. 33]

Although this may be an improvement over descriptions offered by legal ethnographers, considerable questions remain. The fact that ethnomethodologists can so easily dismiss context as unwieldy- hence unimportant, is a considerable shortcoming. Additionally, the somewhat arbitrary boundaries of breaking down verbal behavior into turns, moves, frames and sequences count as another limitation. The 'indefinitely extendable descriptive enterprise' might well apply to what ethnomethodologists embark on when focusing on managing 'sequences'. Atkinson and Drew investigate the organisation of verbal behaviour in court but have not provided a systematic account of the differences in language use inside the courts and outside (Maynard 1980).

Other sociological research discusses institutional factors affecting the process of trials. For example, Carlen (1976) provides an account of how situational rules undermine the formal rules of law in summary courts. Carlen and McBarnet (1981) critically examine the legal system and the ways in which sociological factors affect the outcome. Their contributions will be discussed in Chapter Two. Bottoms and McClean (1976) as well as Baldwin and McConville discuss defendants in the criminal process. Bottoms and McClean author a

comprehensive British study on defendants and factors which influence their choices of venue (types of courts to hear the cases), decisions to plead innocent or guilty, and the defendants' interaction in the lawyer-client relationship.

One of the conclusions reported by Bottoms and McClean was that defendants (perhaps because of no alternatives) often relied heavily on the advice of barristers and solicitors; depending on them to handle a case in the best possible professional manner. But defendants equally felt 'left out' of the case because of the lack of communication between counsel and client about the exact nature of legal proceedings. Defendants commented that this lack of interaction with their barrister (or solicitor) resulted in their making ineffectual court appearances and misunderstanding their role in the legal process. Defendants were not told, for example, about the purpose of cross-examination nor were they encouraged to ask questions about the important legal issues at hand. Lack of witness preparation left defendants to their own devices to try and present what they interpreted as the crucial issues. Inevitably, witnesses found themselves in positions where their contributions were contested by the court, as their testimony did not conform to a definition of being admissible.

1.2.2. Advocacy in the Courts

For examining the courtroom as a specific speech situation, rules of Evidence and Procedure are essential and standard law school texts by Cross (1974 ed.) and Eggleston (1978) have been consulted. Both outline the Rules of Evidence and discuss the application of the rules to cases. The particular area of law relevant to this research is the Rules of Evidence which govern the introduction of various types of information. Rules which prohibit certain

testimony, stemming from the definition of legal admissibility will be discussed in Chapter Three, but evidence which is admissible may be either relevant or irrelevant, a rule which contrasts with language use in other speech situations. Courts also make a distinction between the reliability of evidence and the credibility of witnesses. Credibility of witnesses has to do with their sincerity, and truthfulness while reliability of their evidence is measured against other discourse features.

Along with the standard texts on Evidence, sources which deal with the presentation of cases have also been reviewed. Catalogues of hints for developing successful trial techniques are found in Napley (1963) and DuCann (1964). Both underline the fact that effective communication is an essential component in winning a case but neither give full consideration to the use of language in the courts. The trial examples in both books illustrate the extent to which legal rules dominate, and in some instances contravene, rules governing linguistic behaviour in other situations. But Napley and DuCann do not systematically address the use of leading questions and since both books are intended to be used for newcomers to the profession, this is a serious drawback. The presumptions about questions and questioning assume a great deal about what constitutes an adequate 'response'.

The portrayal of language use in trial manuals is one area where linguistics has had little impact on the way lawyers characterize questions. Wellman (1979 ed.) , Jeans (1975) and Keeton (1973) are but a few of the trial manuals available to advocates. These manuals, meant as teaching aids, show step by step the organization of legal proceedings and illustrate the use of exhibits, demonstrations, etc. Language skills are emphasized and a certain number of scripts are used to familiarize the advocate with leading questions, the use of

objections, ways of counteracting effects of leading questions etc. From a linguistic point of view, the examples themselves are immensely instructive as to the nature of leading questions and questioning in general. However, the manner in which questions are categorised is misleading. This will be further explored in Chapter Four on questioning.

1.3. Language Use in legal proceedings

Linguistic research into the courtroom as a special speech situation is still in its infancy. However, over the past two decades a growing interest of social scientists in the courts has resulted in various language-related studies. Strictly speaking, few studies have involved linguists and fewer still have systematically examined courtroom discourse, but nevertheless psychologists, sociologists and others in communication studies have been conducting empirical research on aspects of the courtroom which involve language. Psychologists have overwhelmed the current market with a plethora of studies about the reliability of eyewitness testimony. Experiments testing aspects of memory of eyewitnesses, such as accuracy of recall and methods of information storage make up the bulk of psychological contributions. Such empirical studies focus on issues of legal credibility of witnesses. Sociologists have conducted studies accounting for verbal behaviour in court in terms of socio-economic status of witnesses (Wodak 1980). This section examines the contributions made by researchers in the psycho- , socio- legal fields which either directly (or indirectly) affect the presentation of evidence by advocates and witnesses.

1.3.1. Psycholegal research on testifying

Contemporary psycholegal studies have, according to Loh (1981), tended to focus on one of the following areas of courtroom interaction:

1. Pretrial Influences on the jury.
2. Jury Selection
3. Presentation of Testimony (filtered through rules of evidence)
4. Decision making by the jury.

Of the four areas that Loh outlines, (3) and (4) have preoccupied the psychologists. Psycholegal research has concentrated on eyewitness testimony and factors affecting memory and works by Saks (1978) and Yarmey (1979) figure prominently. Yarmey outlines some the general aspects of eyewitness testimony and empirically documents the ways in which an eyewitness's memory of a criminal event is susceptible to suggestion and distortion. He concludes that a good deal of tests the legal professionals rely on (i.e. photofit, lie detection, voice recognition tests etc.) are unreliable due to factors of stress, severity of the event witnessed etc. Yarmey statistically surveys accuracy in eyewitness recall as indicated by facial recognition tests and line-up identification procedures. The results suggest that memory and recall of event can be distorted. One place where Yarmey's research does overlap specifically with a pragmatic concern is in assessments about the status of information. In psychology, according to Yarmey, there is no differentiation between 'facts' and 'opinion': psychological 'facts' (1979: 29) do not differ from 'opinions',

> Facts and opinions are difficult to separate for the court, but the court must attempt to do so if it wishes to follow the rules of evidence. *The difference between facts and opinions is not a problem in psychology since they are seen to be identical.* To the psychologist, all perception is judgmental or inferential and there is no scientific distinction between the two terms.

The difference between a 'fact' and an 'opinion' within pragmatics been explored with regard to questions by Bock (1977), Harris, Teske and Ginns

(1978) and Marquis (1972). In relation to the adjudication process, Moore (1981) has also investigated the way in which the difference between representations of factual knowledge and personalised knowledge.

Lloyd-Bostock et al (1983) present a collection of current psychological research on topics relating to evaluating eyewitness testimony. However, this work does not measure up to the claim of integrating psychological findings with legal proceedings. The studies tested a wide range of events used in judicial proceedings and examined the accuracy in face recognition tests, use of voiceprints etc. The authors, in each case, come to the less than profound conclusion that eyewitness testimony is not the ironclad supporting evidence it is generally thought to be. Witnesses are unreliable to varying degrees in what they perceive as the events recorded.

Leaving aside a more detailed evaluation of psychological findings, the studies themselves show a misplaced emphasis which runs through research on courtroom interaction. Researchers have failed to take account of the entire situation in which a witness gives evidence. A lack of awareness and understanding of the legal system as a whole has resulted in psycholegal findings being ignored by the legal profession--an unfortunate consequence, according to Loh. The misplaced emphasis in psycholegal research on eyewitnesses shows in two conspicuous ways. First of all, eyewitness testimony is used in only a minority of all cases that come to court and of those, it is only a small proportion where eyewitness testimony alone, without other corroborative evidence, will determine the innocence or guilt of an accused. In short, these studies ignore the importance of corroboration.Secondly, even if eyewitness testimony could be taken as unreliable, psycholegal researchers have failed to address questions lawyers

want to know: 'Do errors in testimony produce errors in judgements rendered by the court?' and 'What about all the other mechanisms set up to filter and assign weight of information ?' (instructions to jury, summation statements...) Saks, Yarmey and LLoyd-Bostock have not addressed these questions in their research.

In short, psychologists concentrating on the memory issues have failed to put their findings in the courtroom context as a whole or show how memory is important to the proceedings. An undue amount of intellectual resource has been spent on eyewitnesses' testimony which distorts the importance of the role they actually play in legal proceedings. Conclusions appear little more than generalised theories with no understandable application to the everyday workings of the courts. Hardly surprising then, that psychological results on memory have received little attention from lawyers and other court participants. However, other psychological studies which deal with memory and questioning have been noticed such as Loftus (1983) and her research does makes an attempt at relating issues of memory and recall through questioning with the portrayal of credibility.

Loftus (1975) research supported the well-known concept of suggestibility in questioning. Concepts of suggestibility in questioning have been around a long time with suggestibility discussed in early works by Munsterberg (1908), Wrottesley (1921) and Burt & Gaskill (1932). However, Loftus's studies on the severity of verbs and the malleability of testimony did more than merely conclude that witnesses may be fallible in their recall of events. Unlike Yarmey and Saks, she has attempted to show *how* this is done. Her work and that of Johnson (1979) have made strides towards identifying specific linguistic features which affect the interpretation of evidence. The implicative nature of

verbs and the complexity of questions are two areas she identified which do appear in direct and cross-examination. Clearly, the choice of verbs in questioning (Did the cars *bump, hit, collide, smash...?*) relates to the speaker's desire to affect pragmatically the inferences the audience will make about events. An advocate cross-examining a witness does ostensibly suggest comments about the witness as well as the issues at hand and Loftus has isolated a few of the ways in which this is done.

Loftus et al's work also seems to differ from other studies involving eyewitnesses in that it has a realisable application. If elements of questioning can be identified, witnesses as well as lawyers can be made aware of the ways in which presentational styles will affect the interpretation of information. Her seminal work on specific features is relevant to the training of advocates as well as to the preparation of lay and expert witnesses.

Following Loftus's early work, Harris, Teske & Ginns (1975) combine pragmatic and psycholinguistic findings to test hypotheses about pragmatic implication in questioning. They conducted a study to see whether or not subjects differentiated between pragmatically implied and asserted facts. Subjects heard mock courtroom material and were later asked to rate statements about the material as true, false, or having an indeterminate truth value. They found that (p.494) 'Subjects generally remembered both implications and assertions as definite fact, even when warned not to do so.' Their findings support the notion of memory malleability, but more importantly, suggest that questions where the advocate pragmatically implies something will be recorded by the jury as factual. Harris states,

> In fact, the devious use of pragmatic implication in the courtroom has long been practiced by both lawyers and witnesses. A witness is liable for perjury for false assertions but not for false implications, even

if these implications may be remembered by the jury as asserted facts.

Harris' study has not been followed up on by psychologists but the difference between pragmatically assertion and pragmatically presupposition has been discussed by Fauconnier (1985) who argues that in practice, it is sometimes quite difficult to distinguish between the two.

1.3.2. Sociolinguistic Aspects of Testifying

Sociolinguistic research can be thought of as an exploration of the relationship between socialization forms and linguistic behaviour of speakers. O'Barr (1982) (reporting on studies conducted by the Duke University Language and Law Program), surveyed features of presentational styles in witnesses speech and his study includes a variety of sociolinguistic variables. Danet (1980) and Wodak (1980) also contribute to analysis involving social variables in Courtroom speech.

O'Barr tested four modes of presenting information. These were,

1. Powerless vs Powerful Speech
2. Narrated vs Fragmented Testimony
3. Hypercorrect Testimony style
4. Interruptions and Overlap Speech

Characteristics of powerless speech were outlined by Lakoff (1975) as gender specific features, however, O'Barr found that the use of intensifiers, (*very*, *definitely*, etc.) as well as hedges and polite forms etc. were not solely a feature of women's speech but reflected social status more widely. He concludes that

> These data indicate that the variation in Women's Language features may be related more to social powerlessness than to gender. Both observational data and some statistics show that this style is simply or not even primarily a gender related pattern. Based on this evidence it appears that the phenomena described by Lakoff is more appropriately termed POWERLESS LANGUAGE a term that is more descriptive of the particular features involved and of the social status of those who speak in this manner, and one that does not link it necessarily to the sex of the speaker.

O'Barr also recorded ratings of witnesses who used each of the mentioned features. He found that witnesses who testified without hedges or intensifiers were rated highly in each of the categories of truthfulness, convincingness, competence, intelligence and trustworthiness. Similarly, witnesses who narrated their testimonies and did not appear to have much hypercorrection in lexical choices were also rated highly in each of these areas.

While O'Barr's findings in the latter three categories appear to add to previous studies (Labov 1972), his first speech characteristic of Powerless Language warrants closer scrutiny. O'Barr (p.67) tested the frequency of distribution of the following as features of powerless speech,

- *Intensifiers* - Forms that increase the force of an assertion such as *very, definitely, surely* etc.
- *Hedges* - Forms that reduce the force of assertion allowing for exceptions or avoiding rigid commitment, such as *sort of, kind of, a little* .
- *Gestures* - Spoken indication of direction such as *over there*
- *Hesitation Forms* - Pause fillers such as *uh, um, ah* and meaningless particles such as *oh, well, let's see*
- *Polite forms* - Includes *please, thank you*
- *The use of Sir*

The sub-categories of *intensifiers* and *hedges* represent problematic areas of

linguistic research (Holmes 1984). Sentence adverbs, which partly fall into the loosely defined intensifier class, and hedging devices do not necessarily correlate with a speaker's educational background or social status. Moreover, their form does not correspond to a restricted range of functions. The adverbs *very* and *a lot* function differently from *definitely* or *surely*. The latter two are sentence adverbs which have pragmatic significance (Buysschaert 1982, see Chapter Five). Certain sentence adverbs appearing in assertions do more than serve an emphatic function and O'Barr tends to ignore this. Some of what he calls *intensifers* should properly be considered features of POWERFUL speech as an advocate or witness who expresses a belief about the content of his utterance, economically introduces his point of view into the discourse for strategic purposes. Thus, intensifiers, without a proper reclassification or subdivision, do not support the powerlessness claimed.

Furthermore, the category of hedges encompasses many dissimilar sorts of linguistic devices. Hedging can be accomplished by phrases, such as those stated, but also by modalised statements and other modal-like constructions. The hedging phrases *sort of, kind of* and *it seems* may appear to mitigate the speaker's response in other speech situations, but in the courtroom this is not necessarily the case. A witness who responds to a leading question with a sentence like 'I wouldn't characterize it in that way, no', or 'That is not quite the case' could be hedging his response but for a strategic reason. If the question was a leading one, the witness may avoid committing himself to an untruth or (as is frequently the case) committing himself to the false implications of an advocate's question. This way, he maintains his own speech goals and status within the discourse. With hedging, he circumvents a commonly laid trap of answering leading questions and then being confronted with purported inconsistencies of testimony. Hedging as outlined by Lakoff

encompasses multifaceted linguistic expressions which call for a pragmatic analysis.

However, O'Barr's does raise an interesting issue for pragmatics with his investigation of forms of address, namely, to what extent are norms of politeness operable in institutionalised encounters? Polite forms and forms of address are out of place and it may be that concepts of politeness are not manipulable. Here professionalism conflicts with politeness; witnesses who recognise the importance of other participants undermine their own credibility. Instead of appearing as a credible source, the witness who uses polite forms signals a disparity between his position and that of the questioner. Unfortunately, this research has not yet affected the advice given to police and other officials who frequent court proceedings. Told to appear polite, they follow orders with military precision, always answering questions using polite forms of address. Paradoxically, this makes them appear servile and less credible especially when they confuse forms belonging to advocate and judge as this next example shows. A police constable continually addressed the advocate as *your honour* as well as *sir* while being cross-examined (Graham; 163).

Q: In March last year I think you were so engaged at Birmingham airport were you?

A: I was *your honour*.

Q: And at 11.25 a.m. on Wednesday, the 19the March, as a result of of a radio message, did you go to the International Arrivals Lounge at Birmingham Airport?

A: I did *your honour*.

Q: There did you see the defendant, Mr. Fisher?

A: I did *sir*.

Q: Did you have a conversation with him?

A: Yes *sir*.

In another cross-examination example, the policeman makes every attempt to respond with *sir*, and devises odd places for positioning it which occurred in initial, mid- and post sentential places.

Q: Where had you got the addresses from?

A: From his property *sir*.

Q: In what form?

A: In the form I believe *sir* of letters. I don't think there was an address book but I am not sure.

Q: Well a record would have be kept of what property he had on him?

A: Yes *sir*.

Q: Have you got that record here?

A: No *sir*, unless it may be outside with the officer in charge of the case *sir*.

Another feature of courtroom speech is the occurrence of hypercorrection. Hypercorrection in lexical choices made by speakers was a variable tested by O'Barr as well as Wodak (1980). Labov (1972) described hypercorrection as the misapplication of imperfectly learned rules of grammar, incorrect use of vocabulary, and overly precise pronunciation. In the courtroom, witnesses using hypercorrect lexical choices make their testimony more technical than is either appropriate or necessary. The following example illustrates hypercorrection which occurred my data from Small Claims' Courts. The plaintiff makes an attempt to sound technical in his description but soon confuses himself and appears barely coherent.

Q5: Was the flat empty?

A: *To all appearances.* I was only on the ground floor of it. That it--the flat was uh *vacant,* yes. There was nobody else up there. He [referring to the caretaker] *effected an entry* through the window on the landing--because in most cases they're covered over with hardboard, plywood *etcetera.* And he broke a glass in the upper sash, *undone the sash fastener* and we--I climbed in after him and it was literally--the water was flooded over the floor.

O'Barr (p.86) comments that juries may actually penalize witnesses who hypercorrect as they appear insincere and less convincing,

> These findings further demonstrate the ability of jurors to perceive subtle stylistic factors and the particular tendency to discredit the testimony of and be punitive toward a witness who attempts to speak with an inappropriate degree of formality.

Wodak (1980) has investigated courtroom speech styles and directly relates styles to the socio-economic class of the speaker. She summarises her findings,

1. Middle class defendants maintain one linguistic style throughout the whole interaction. They manage conflicts, and ambivalence is not manifest.

2. Working class defendants don't know the situation. They will react strongly to parameters like fear. They shift styles more often.

3. Lower middle-class defendants are very insecure in such a formal situation, having no stable identity. They try to speak as well as possible, leading to hypercorrection (cf Labov 1970)

4. Previously convicted defendants know the situation. They are self-assured and don't shift. They continue in their dialect.

The correlation between hypercorrection and social status is oversimplified and while Wodak makes note of general trends in usage, this research cannot be taken as more than tentative suggestions for the direction of further research which examines how defendants react linguistically to direct and cross-examination. Speech styles of witnesses should take into account other

variables such as attitudes towards legal institutions, previous courtroom experience, etc. Sociolinguistic analysis of speech characteristics could complement the typology of witnesses devised by Bottoms & McClean (1976). In their study, defendants were screened for a variety of factors relating to the strategies they employed to present their cases (e.g. strategists, respectable first timers, passive, etc).

Sociolinguistic studies have contributed to understanding language use in in the courtroom, but they focus mainly on the witness and his perceived presentation associated with different variables. Sociolinguists have not undertaken research into aspects of advocate's questioning and the lack of studies about questioning in institutionalised encounters provide the impetus for the current study.

Studies which focus on questioning and question forms remain few and far between. The work by Danet et al, and Parkinson (1981) represent the rather meager contributions in this area.

Danet and Kermish (1978) and Danet et al developed a typology of question forms according to the degree in which they 'coerced' answers. Declarative questions are reported to be the most coercive because they tell more than they ask. Yes/No questions and alternative questions appear next on the coercive list, followed by Wh- questions which are less coercive (more open-ended) and finally what she calls 'requestions', those which indirectly request information. Danet summarizes the findings of previous work (1980: 521)

> Lawyers in fact use low proportions of leading declaratives and coercive Yes/No questions during direct examination but make ample use of them on cross-examination. In questioning of defendants and prosecution witnesses in criminal trials heard in Boston's Superior Court,

> an average of 87 percent of the questions asked on cross were coercive (declarative, yes/no) as compared to 47 percent on direct... wh-questions are prominent in direct examination but rare on cross; requestions are relatively rare in both, though slightly more common on direct.

While Danet has certainly made the correct observation that questions not only ask for but give information, her typology is rudimentary and at best a distortion of the language used in the courts. Her class of declaratives include tags, inverted yes/no questions and does not differentiate between declaratives which, because of contrastive stress, function like implied tags, and those which are full-fledged statements. Thus what she calls 'declaratives' are utterances which act as requests for confirmation, which only minimally show a speaker asking for information. Similarly, her class of 'requestion' supposedly includes requests (differentiated from requests for confirmation), commands, threats, offers, and other associated speech-acts which involve the speaker proposing some course of action to be carried out by the hearer. These categories are not informative as to the nature of questions, the categories themselves are confusing since only WH questions seem to be adequately distinguished. Moreover, investigating the 'coerciveness' of questions is perhaps a misnomer as requests for confirmation (i.e. leading questions) are not intended to constrain answers or coax responses, they are intended to suggest salient information to the audience. Danet's work does not properly address the advocate's intentions in using specific forms and the effects of contextual features on utterances is not fully taken into account. Although Danet concedes that (p.522)

> the form of a question alone does not necessarily determine how coercive it is. A non-controversial assertion cast in the declarative is less coercive in context than a supposedly wh- question.

her work on questioning has only scratched the surface of a rather rich area

of language use.

Similarly, Parkinson's study (1981) shows a lack of pragmatic awareness of a speaker's intentions. He matched 19 cases ending in conviction with 19 ending in acquittal and analyzed speech characteristics associated with trial outcomes. Success for prosecutors was correlated with verbosity, high frequency of questions explicitly about the witness, and unqualified statements of fact. Success for defence attorneys was correlated with unqualified verbs, the use of legal jargon, and the use of specific questions. However, his survey only examined the data lexically and these results are controversial as forms realize various linguistic functions. To date, no study has taken Parkinson's data and re-analyzed it in such a way as to include context sensitive and speaker sensitive variables. Questioning of witnesses and a different perspective on the nature of questions is offered in chapters Four and Five.

CHAPTER 2

PRAGMATICS AND LEGAL PROCEEDINGS

2.1. Introduction

Pragmatics draws equally on three linguistic fields of study: non-truth conditional domains of meaning and reference (studied under established pragmatic topics of deixis and implicatures), the social relationships governing speakers in particular contexts, and the discursive patterns of communication in situations, including argumentative situations. The latter two fields of inquiry have not been exploited by pragmaticists and potentially offer beneficial information for analysing language-use in the courtroom. This chapter examines the social factors affecting language-use in the courtroom. Pragmatics, as a theory of language use, has traditionally devoted much attention to presuppositions, at the expense, Verschueren (1985: 469) argues, of presenting ways in which presuppositions are strategically used by speakers in any interaction. If pragmatics is to reckon with how language is, or can be, used strategically, the first step forward is a break with the Anglo-American practice of narrowing pragmatic topics to the sole areas of speech acts, implicatures, and deixis. This narrow view of the pragmatic field of inquiry has excluded much sociolinguistic and discourse research. Chapter One suggested that both sociolinguistics and discourse analysis could make important contributions to language-use theories and in particular, to understanding language-use in institutionalised settings like the courtroom.

To investigate language use in courtroom witness examination, a starting point is an examination of the institutional factors affecting the process of trials. Two accounts of institutional factors affecting the process of trials are found in Carlen's (1976) *Magistrates' Justice* and McBarnet's (1981) *Conviction.*

These are sociological accounts which discuss the 'law in action' in relation to 'law on the books'. Both offer perspectives on the outcomes of summary trials and how legal rules are used by magistrates and other professionals in court. These two works are fundamental to studies of legal proceedings. As sociological analyses, they provide a starting point for discussing intersecting concerns about the role of language in the courts. Both provide accounts of the 'law in action' and in this chapter, I will argue that ' law in action' approaches do not entirely parallel pragmatic studies of 'language in action'.

'Law in action' opposes the 'law on the books' and this restates a wider sociological debate between formalism and functionalism. There is a parallel between legal formalism and legal realism on the one hand, and linguistic formalism and linguistic functionalism on the other. Formalism in law is committed to a number of theses: there is a right answer in every case, a deductive structure exists behind positive law, so that the rules from which decisions are deduced are themselves deducible from more general principles (Moore, 1981). Formalism as a theory of adjudication, according to Moore, describes what judges do when they decide a case, recommends what they ought to do when they so decide; and, makes assumptions about what is possible for judges to do in deciding cases. Formalist approaches to adjudication have been criticised by legal realists such as Frank (1949) and Twining (1973) who distrust the notion that traditional legal rules and concepts can describe what courts are actually doing (Twining: 82). Realists argue that adherence to formalism is 'mechanical jurisprudence' which ignores the social processes affecting legal decision-making. Instead of a prescriptive theory of law, realists posit that legal rules should be left open to revision as conditions change, that some cases should not be decided on the basis of rules and facts. Strategies exist for reaching decisions rather than absolute standards for

validation of such decisions. The realist movement was an 'amorphous movement of individuals who shared common points of departure' and provided 'systematic and programmatic attacks on orthodox approaches to law and legal research' (Twining: 79). Common points of departure included, for example, a conception of law in flux; a conception of law as a means to a social ends; a conception of society in flux so that any portion of law needs re-examination to determine how far it fits the society it purports to serve; divorce of Is from Ought for the purposes of study, and an insistence on evaluation of law in terms of its effect.

The legal formalism/realism debate parallels linguistic formalism/functionalism in some general respects; for example, functional accounts of language use and realist accounts of law in action consistently argue that there is more to law/language than the study of rules and that law/language needs to be viewed within a context of social processes. But where the language in use and law in action approaches differ is in the reliance on the 'law on the books' as a starting point for discussing 'law in action'. Abstract rules associated with law on the books become the point of comparison for discussing law in action. I will return to this shortly but the parallels between formalist theories of law and language initially outline the theoretical orientation of the two books discussed below.

However, since the starting point for discussing sociological factors affecting court proceedings are a set of abstract legal rules, this affects how both authors treat language and language use in the courts. An idealistic picture of justice generates idealisation of speech which means that no actual instance language use, inside or outside the courts, can ever match it. This, in turn, means that many of the conclusions about information distortion cannot

be substantiated in their approaches , since there are no distinctions made between language use inside the court and outside -- both are measured against an ideal model of communication. In reviewing the sociological accounts of factors affecting trial outcomes, what these law in action accounts depict as distortions of the law, and consequently language, may not in fact be distortions. These two books will be discussed in sections 2.3. and 2.4 and in section 2.5, an evaluation of the problems created by legal realist approaches to law in action with respect to language use will be discussed.

One of ways in which the idealisation of speech is problematised in Carlen's account is through her use of Bernstein's notions of 'elaborated' and 'restricted' code. Social classes, differences in conceptual relations between speakers, as well as notions of linguistic manipulation are of common interest to both sociologists and sociolinguists and Bernstein's (1971) distinction between 'elaborated' and 'restricted' codes provides descriptions which integrate these intersecting concerns. The writings of Bernstein have a controversial place in linguistic theory and section 2.6 reviews his contributions in the light of semiotic, semantic and syntactic claims made about the 'elaborated' and 'restricted' code and discusses whether or not the Bernsteinian version of code can adequately apply to courtroom language use. Pragmatics is concerned with language use, and effective use of language according to the speech situation, and section 2.7 brings Hymes 'communicative competence' model into the discussion for a glimpse of what sociolinguists have to say about speakers, communicative resources and communicative skill. The final sections of this chapter are devoted to identifying the remains of socio-legal and sociolinguistic contributions useful for a pragmatic analysis of courtroom questioning.

2.2. Law in Action in Summary Courts

Carlen (1976) and McBarnet (1981) investigate the routine operations of summary courts and present differing sociological accounts of the significance of the adversary system at work. Both are concerned with how summary courts operate and the way in which power is defined, distributed and maintained, in relation to formal and informal rules. In *Magistrates' Justice*, Carlen shows how justice is produced through a network of social relationships guided by situational rules. McBarnet, in *Conviction*, argues that the situational rules, made operational because of the institutional concern for efficiency, may not adequately explain the high number of guilty pleas. The role played by the legal system itself needs scrutiny and the legal rules themselves produce the unequal position of power between lay and professional court participant. i.e. vagueness and ambiguity of legal rules allow magistrates and police to operate in a way which contradicts all commonly held ideals of justice.

Both Carlen and McBarnet present summary courts as agencies of social control, but they differ in the explanations of the ways in which courts legitimise their rulings. Carlen presents the problems in terms of departures from the formal rules while McBarnet argues the problems lie in the legal rules themselves. Both authors discuss sociological factors of legal proceedings which account for high number of guilty pleas and the experience of non-control on the part of the defendant. Carlen emphasizes that situational rules, put into motion by magistrates, police and other court personnel restrict, if not deny, equal access to justice. In *Magistrates' Justice*, the production of justice is seen a consequence of goals of efficiency. Goals of efficiency displace goals of justice in the summary courts. In *Conviction*, McBarnet maintains that it is not so much the informal practices of professionals nor the organizational goals, but that the legal rules themselves obviate due process by

allowing for ambiguous readings of a rule to be applied to a situation. Carlen discusses situational restraints in a 'the machinery of control' and reveals how the network of interests which court workers have are linked with institutional goals of efficiency while McBarnet focuses on how the rules the police and courts use allow wide variation in what constitutes standards of legal 'proof'.

Magistrates' Justice and *Conviction* analyse the relationship between sociological factors and the outcome of trials and offer critiques of the court system. It is important to note at the outset that neither account focuses solely on the linguistic aspects of the courts, rather, they are mainly concerned to show sociological factors affecting the outcome of trials: they offer explanations of the effects of forms of negotiation among professionals and the ways in which defendants and witnesses come to accept the outcome of trials as legitimate. The use of language in that system, however, receives different treatment in each account. In *Magistrates' Justice,* Carlen is interested in the language of the courts but her treatment of language as an abstract system of rules impairs the strength of her critique and severely affects any formulations she could make for reform. The role of language in the legal process is described in much the same way that legal rules are described, that is, the starting point of the critique are the formal rules from which deviations occur. In *Conviction,* McBarnet argues that the legal rules themselves obviate due process, as they are ambiguous and vague, implying that reform of legal rules means doing away with ambiguity. McBarnet does not explore the role of language in the way that Carlen does (reference is made in *Magistrates' Justice* to Chomskyan notions of 'performance' and to Bernstein's notion of code); nevertheless, her account of the trial process makes some of the same assumptions about language that appear in *Magistrates' Justice*. Both these books analyse what really goes on in court in relation to rules. The

explanations differ, but the analyses, having invoked idealistic conceptions about 'law', and subsequently 'language', and can only offer a limited contribution to a pragmatic account of courtroom questioning.

Socio-legal research suggests that legal decisions cannot be viewed as products of the application of legal rules to particular cases carried out in a vacuum. Decisions made by courts need to be examined within both the immediate and wider legal context. There are, however, areas where socio-legal and pragmatic concerns coincide. For example, pre-trial information gathering and 'filtering' (wording of charges, precognitions) is not a process which is simply duplicated in court through questioning. Characteristic of the courtroom is the orality of the interaction. Written materials may be what is talked about, but facts are developed and presented orally through the questioning of those who were involved in events (Tannen, 1982).

The questioning of witnesses itself is a rich area of research since the relationship between questions and fact-finding is not straightforward. It would be naive to say that since solicitors and magistrates generally ask the questions, they are in a position of control of the discourse while witnesses, as respondents, are merely automatons providing responses which are anticipated and planned. It is perhaps just as naive to suggest that manipulation of communicative processes does not take place. That legal proceedings require information to be created within a questioning environment could be considered a constraint, but that does not say much about the effect that this has on the overall presentation of a case. Law in action accounts presented below tend to gloss all language use of professionals as 'coercive' or 'restrictive' and this conflates the constraints matched with the institutionalised setting of the courts with those that are part of naturally occurring language

use. Courts are viewed as agencies of social control and language is a means of social control. However, what remains unaccounted for is the fact that speakers have varying abilities to 'storify' events, and effective presentation of one's case depends on a number of variables including the ability to manage *unfamiliar* speech situations. Unfamiliarity with courtroom practices, and in particular cross-examination, could be a disadvantage, but this too needs to be examined more closely. Certainly, not all first-time court witnesses experience an epistemological bafflement and alienation when testifying.

Within the argument that courts are agencies of social control language is seen as the means of such practices, a product of institutionalised procedures where speakers have little control over the manipulation of the communication taking place. Arguments about language as a means of social control are not new, and it can be said that sociolinguistic research has consistently attempted to reveal how social processes manipulate essentially (allegedly?) neutral linguistic processes into a system which reflects and reinforces social and power differences. Since socio-legal arguments suggest that linguistic theory lends support to the legitimation exercise in court, it is necessary to inspect the assumptions which imbue such research. What happens in court is contrasted with what should happen in court and this blurs the fact that what happens in court, with respect to language use, also happens outside. Socio-legal research into the workings of the courts, via scrutinising participants or examining legal practices and rulings (as the example books below will show), to some extent mischaracterises language, but does so by providing functionally-motivated (realist) accounts of courtroom proceedings while intrinsically assuming quite narrow and formalist definitions of rules and systems. This will become clearer in section 2.5 where Chomskyan notions of competence and performance are discussed as being, for the most part,

peripheral to issues about language use and social structures but nevertheless are found in sociolegal research and form a peculiar supportive argument from which social control is viewed. But this is perhaps taking us a bit further afield than necessary for the moment and we return to a discussion about court practices and situational rules, as explored in *Magistrates' Justice*.

2.3. *Magistrates' Justice*

Magistrates' Justice investigates the daily operational activities of court personnel -- magistrates, police officers, social workers, and others -- and the practices and rules which they follow. Carlen focuses on participants and the situation rules which they follow. She intends to 'penetrate some of these images of justice to locate institutionalised mechanisms by which both legal rules and social rules can be manipulated to facilitate appearances of legitimised social control'. The main themes are what courts do, as distinct from what they claim they are doing.

> one is concerned with the abstract and situated meanings of rules, the other with the competence and performance of the rule users. A closely related theme is concerned with the moments of rule-meaning and rule-usage and studies the 'accounting' procedures of people as they antecedently, situationally and ex post facto attribute normative meaning to their actions. These three themes were the ones which provided the base lines for the sociological study of some of the Metropolitan Magistrates' Courts.
>
> [p.5]

Abstract rules are those which are talked about and written about, examples of which are the strategic, trans-situational and institutionalised rules invoked and successfully displayed and accounted for to define action. Situational rules are the rules people use to get things done; they are a combination of the abstract and formal rules. In discussing the rule users and their competence,

Carlen invokes Chomsky and his distinction between internalised rules (competence) and performance, the use of those rules. This distinction between abstract and situational is not clear cut, but this will be discussed shortly. She establishes a competing paradigm between rules and rules users: on the one hand, there are abstract rules, competence of the rule-users (referring to the Chomskyan notion of competence), elaborated code of the rule-users (Bernstein) and the constitutive nature of rules (Searle). On the other hand, there are the situational rules, performance of the rule users, restricted code, and regulative rules.

The importance of the symbolic acts of court proceedings is that these are events which are to be interpreted in the light of symbolism and imagery of the absurd. She states,

> The major aim of this study is to ironicise the daily celebration of legal absolutism in the magistrates' courts and to demystify some of the modes of control maintained and reproduced through that celebration.
>
> [p.13]

Carlen argues that rules (both legal and social) generate and reinforce certain 'ritualistic' aspects of the courtroom. She sees (p.12) magistrates' justice as resulting in 1) the ritualised control of situation 2) the ritualised control of information and 3) the suppression of alternative performances evocative of an unpermitted social world.

Ritualised control of the situation is one 'legitimising mechanism'. Control of the situation refers, in part, to the material arrangements of the courtroom e.g. proxemic relations, acoustic conditions, wardrobes of participants and stereotypic terms used by court personnel (social deictic terms specific to the courtroom are introduced, for example, the solicitors referring to each other as

'my learned friend', addressing the magistrate as or 'your honour' etc.). Carlen argues that 'It is the institutionalised setting charged with the maintenance and production of existing forms of dominance ' (p. 38). Courts run efficiently because of the inherent cohesion of court workers which Carlen emphasises: 'justice produced in the magistrates' courts emanates from social relationships which are socially coherent.' Legal proceedings run smoothly because court professionals know their positions vis-a-vis other participants and attempt to accomplish certain tasks without letting any conflicts arise. The coherence of relationships survives because of the court workers' concern to maintain credibility and a 'good working relationship' with other co-workers. The court organization is oriented toward efficiency.

This echoes Blumberg (1969: 322) who argues that court organization itself is grounded in bureaucratic priorities which exert a higher claim than that of 'due process of law'

> Largely overlooked is the variable of the court organization itself, which possesses a thrust, purpose and direction of its own. It is grounded in pragmatic values, bureaucratic priorities, and administrative instruments. These exalt maximum production and the particularistic career designs of organizational committments tend to generate a set of priorities. These priorities exert a higher claim than the stated ideological goals of 'due process of law', and are often inconsistent with them.

Blumberg further explains that the goals of efficiency displace professional goals

> Organizational goals and discipline impose a set of demands and conditions of practice on the respective professions in the criminal court, to which they respond by abandoning their ideological and professional committments to the accused client, in the service of these higher claims of court organization. All court personnel, including the accused's own lawyer, tend to be co-opted to become agent mediators

> who help the accused redefine his situation and restructure his perceptions concomitant with a plea of guilty.

Court professionals make alliances which aid the efficient and smooth operation of the courts. Situations do arise, however, where court workers' allegiances to their fellow workers conflict with their professional duty to the client (defendant, witness). For example, the social worker and the probation officer are professionals whose judgements about parole, assessments about personal characteristics may conflict with evidence given by the police. This conflict is one which, Carlen argues, is resolved but the defendant may, in the end, find that the divided loyalties of the parties which could (in some instances) provide supportive information to the courts, only make his case worse. Court professionals maintain a coherent policy for processing cases, and when inter-professional conflicts arise, the avenue the court social worker or probation officer adopts, resolves the conflict in a way which keeps the organization operational. The result, however, for the defendant, is the same - the defendant is subjected to organizational priorities which he must accept.

Relationships between solicitors, magistrates, defendants, and social workers, are described using the 'game' framework where different actors have different roles, but are continually concerned about maintaining credibility throughout all interactions in court. Carlen discusses the inter- and intra-professional liaisons and does so through the application of both the Chomskyan 'competence/performance' dichotomy, and the more general dramaturgical connotations of both competence (skill, know-how) and performance (actualization of a planned script). The strength of her accounts are severely undermined by the constant switching between analytical meanings of competence; taken to mean an 'idealised set of rules', and

competence as 'skill' or 'ability'. The following examples show how this fusion of terminology hampers, if not wholly dilutes, the descriptions offered. These terms may not in fact act as adequate heuristic devices, as for example, the Chomskyan competence / performance model inherently carries baggage with it: namely, the problematic nature of the discreteness of rules, hierarchic ordering of rule-levels, the primacy given to one level (i.e. syntactic) over another etc..

All teams (police, social workers, solicitors) make certain alliances to minimise their losses or maximise their gains and there is a paramount need for all members to maintain credibility before the magistrate. Professionals are concerned with processing cases efficiently. Dramatic, or drastic actions of professionals in one case can jeopardise future relationships with magistrates and well as other co-workers (most notably the police):

> One *performance* lacking in credibility may mean that future *performances* will be played with a handicap. Therefore all items of information that are presented to the magistrate as either evidence, facts, diagnoses or expertise have to be plausible . . .'plausibility' is situationally defined as meeting the demands of a justice situationally defined by particular magistrates.
>
> [p. 59]

Below, performance refers to the actions circumscribed not so much by the role, but by the results of the speakers' actions (akin here to perlocutionary effect). Court professionals, as actors in this drama come to learn what a 'good' performance means and Carlen outlines the events which constitute 'good' and 'bad' performances on the part of the professionals.

> *Performance* is followed by *performance* and nothing must be allowed to queer the pitch for the next *performance* . . . A good *performance*, is seen as being 'reasonable' and *speedy* interpretation of the formal rules which will be trans-situationally (i.e. in a Court of Appeal) be upheld as being just. A bad court *performance* on the part of

> the professionals is one which not only holds up play but, worse, allows the failure of congruence between the rules as announced and their actual administration.
>
> [p. 62]

Magistrates, as another group of performers, have a strategy to carry out their professional goals and in the excerpt below, we see performance as enactment or realization of ethical responsibility, introduced alongside of the Chomskyan sense of competence.

> Each magistrate finds that justice as he might want to *perform* it as an individual, is often not congruent with justice as he feels the public might want it *performed*. On these occasions, he can draw on his judicial *competence* tacitly to direct the *performances* of those who do not have to maintain an appearance of impartiality.
>
> [p. 63]

Inter-team alliances characteristically call for a bit of manoeuvering between professionals, and what counts as 'professional' courtroom behaviour is explained using the meaning of competent as both 'skilful' and 'knowing the rules'

> The mark of the *professional* in court is that he should know the informal rules; the mark of the *competent* professional in court is that he should know the informal rules, both implicit and explicit. The *strategic* rules however, are those embedded in interpretive actions which combine knowledge of written rules with situational rules (such as interpretive actions often popularly called rules of thumb).
>
> [p. 69]

Police are at the centre of information control, deciding on the wording of charges, the ordering of cases, etc., and are familiar with the conventions for courtroom appearances and

> At every stage of the proceedings they are aware of the strategic utility of differential rule usage. This is the essence of their organisational power that their *competent* use of all the rules can blight the otherwise formally *competent performances* of other participants.
>
> [p. 71]

And, finally, Chomsky is adapted to a new environment, contrary to his usual *ideal rule-system* habitat,

> action in the magistrates courts realises the specialised knowledge of situated rule-usage which is the stock-in-trade (*competence*) of those who perform justice.
>
> [p. 75]

The borrowing of linguistic concepts for analogy becomes problematic when Chomskyan notions of 'competence' and associated mentalist features are fused with meaning of 'competence' as 'qualified', 'effective' or 'capable'.

While the accounts given by professionals about their work are most beneficial, the ways in which professionals do their jobs are contrasted with the ways in which they perhaps could be doing them. The practices of the social workers and police are governed by 'situational' rules and it is at this stage where another theoretical and terminological conflation arises. The way in which 'situational' is contrasted with 'abstract', and the broad way in which some rules are called 'situational' while others 'social' or 'linguistic', certainly causes much epistemological cataplexy among those venturing to understand the valuable insights socio-legal research offers. Situational rules are contrasted with abstract ones, and this contrast is not hermetic. The strategic, trans-situational, and institutionalised rules assigned to the abstract category, arguably, coexist with those loosely termed situational. Situational rules

emanate from the professional aims of the participants whereas the abstract rules emanate from first the written codified procedures governing those in court, and more widely from legal written rules. This distinction means that the abstract rules are a yardstick by which situational rules deviate (hence the discussion of legal absolutism and the portrayal, or actualised deviance which occurs in courts). The distinction made between situational and abstract is related to the overall theoretical approach adopted by Carlen, namely, an adherence to formalist assumptions about the autonomy of legal rules. Moreover, as the following examples show, the term 'situation' refers to a variety of processes and events:

- Certain communications are conventionally presented as intimate communications, and both their timing and *situating* are delicately arranged (p. 23)

- Though it is unlikely that absolute control of the *situation* can be obtained in a cramped courtroom which may have thirty to forty people in its main area...officials, as I have argued, appear to be well aware of how to facilitate control through the exploitation of the courtroom's physical dimensions. (p. 24)

- In contrast to their unceremonious and coercive presentation of defendants, magistrates, policemen, solicitors and other court personnel all project visual images of themselves and verbally embellished images of one another which are designed to personify the absolute propriety of their *situated* (judicial) actions. (p. 31)

- The tension between the demands of the posited absolute morality of their professional ethic and the *situated* morality which is shaped by their professional activities is reduced by the conviction of court and legal personnel that 'this is what any reasonable man would do in this situation.' (p. 44)

- Again and again the criterion is one of 'reasonableness' given the perceived constraints of the *situation*. Frequently, these constraints are portrayed as being immanent in the juxtapositional absurdity of antecedent and *situational* rules. (p. 47)

- Magistrates also evaluate the strategies they use. A bad performance is instructive on how to play the same *situation* next time. (p. 62)

- . . . all players can arbitrarily invoke formal rules when they feel that a player's behaviour constitutes a threat to the very existence of the

> game as it is normally and *situationally* constituted. Thus the player who *situationally* invokes an abstract rule in order to justify his infraction of a *situationally* routinised rule is seen as 'trying to be funny'. (p. 70) [?]

There are two problems with Carlen's argument: the first is that to contrast abstract with situational is itself a beginning which can only provide a negative critique on the abstract rules. This means that all situational rules are deviations which undermine the formal, abstract rules. Secondly, the randon ways in which situational then is used with reference to different types of states and processes only complicates the critique. In other descriptive analyses, situation can be employed to cover states, on the one hand, and events, processes and actions on the other. But in the present analysis, situation is the key to understanding *agentive* aspects of courtroom as an institutionalised setting where 'coercion' is said to take place. 'Situation' can be a useful term but Lyons (1978: 483) outlines the difficulties, and suggests possible alternatives.

> A static situation (or state-of-affairs, or state) is one that is conceived of as existing, rather than happening, and as being homogeneous, continuous and unchanging throughout its duration. A dynamic situation, on the other hand, is something that happens or occurs or takes place): it may be momentary or enduring; it is not necessarily either homogeneous or continuous, but may have any of several temporal contours; and most important of all, it may or may not be under the control of the agent. If a dynamic situation is extended in time, it is a process; if it is momentary, it is an event; and if it is under the control of an agent it is an action. Finally, a process that is under the control of an agent is an activity; and an event that is under the control of an agent is an act.

The notion of agent is crucial to the arguments of social control and the indiscriminate use of 'situation' severely affects the distinction made between the situational, as the rules in practice adopted by court workers, and abstract

rules. This non-specification of agency with 'situation' is a disturbing element of the social control arguments, but is minimal in comparison with the sociologism of 'trans-situational'. Carlen uses 'trans-situational' to refer to both the court to court relationships (Magistrates' and Courts of Appeal), and inter-professional liaisons and alliances. But 'trans-situational meaning' is to be understood as created through the communication between professional groups, in short a secret signalling system.

> Some of the tacit signalling, however, has trans-situational meaning; it is a result of pre-court alliances and negotiations between magistrates and probation officers. Things that cannot even be said in the privacy of the magistrate's room can be written 'in between the lines' of the social inquiry reports.
>
> [p. 78]

The following interview illustrates how meaning is seen as 'emanating from routinised social relationships within a particular court setting'.

> Mr J (probation officer): We're fairly careful how we put things- you know- 'He says', 'he *claims*', that kind of thing. I think there's a sort of understanding between the magistrates. If we say 'He says', 'he claims' we haven't checked. If we say 'We. . .' and we make a categoric statement, he generally assumes we've checked. Also, there's a certain code, if you like, for recommendations- but 'a certain course of action' indicates probation.
>
> [p. 79]

Presented under the rubric of a tacit signalling system, specific to the courtroom where 'routinised meanings are insufficiently plastic to contain the exigencies of situational innovations of meanings', this is in fact, an excellent counterexample to Carlen's arguments about situated 'innovations in meaning'. Contrary to being an instance where 'reading between the lines' calls for some professional knowledge or skill outside the conventional understanding of language, this example shows how court workers use everyday, ordinary conversational implicatures when writing reports. Again, the topic of agent

appears and *he claims* is an assertion where the author implicitly doubts the validity of whatever follows and indicates this doubt with respect to the referent of *he*. This example leaves underdeveloped 'claims' about the discursive elements of exclusive signalling systems. Carlen suggests that the use of reporting verbs which pragmatically presuppose an attitude of the speaker are only used by professionals. But pragmatic presupposition is not only used in the court setting; *claim* is an example of a reporting verb which language users routinely use outside the court as well as inside. Her example is not one which supports her argument that courts use a 'language and logic' different from that of the defendant's. While the suggestion of a signalling system is of pragmatic interest, the example is one which detracts from giving it full consideration. In Chapter Four, a pragmatic examination of questioning will perhaps shed more light on pragmatic implication in language, and offer a different explanation of how 'signalling' works discursively.

Situational rules are compared with abstract rules in much the same way that 'competence' at knowing the rules is contrasted with how actions are interpreted as the application of rules. These divisions are made in an effort to describe how court professionals carry out their duties and how social control is achieved. Carlen proposes that legal absolutism is the guiding force by which application of rules needs to be viewed. Social rules visible in the everyday workings of the courts interfere with the legal application of rules, which are normatively constructed. Douglas (1970) defines the properties of the 'absoluteness' of rules as 1) meanings are assumed to be absolutely homogeneous, 2) unproblematic, 3) external to the individual 4) necessary, 5) a necessary part of reality, and 6) timeless or eternal. Carlen develops the idea that the absoluteness of rules is a necessary myth; necessary, in that it enables court workers to carry on as if there was some absolute standard against

which their actions were measured. She suggests that legal rules operational in court are portrayed as absolute:

> - Legal rules are portrayed as being homogenous; stemming from and denoting a consensual morality whose connotations are internally consistent. Legal rules are portrayed as being unproblematic; as governing practices whose situational attributes are antecedently known and accounted for.
>
> - legal rules are portrayed as being external; the mode and substance of their applications are presented as being beyond the discretion of their human agents.
>
> - legal rules are presented as being inevitable; as being, by their nature, not open to question. Legal rules are presented as being essential; as being necessary to an underlying reality existing independently of what human beings make of it.
>
> - legal rules are presented as being eternal; an aura of timelessness (and universality) surrounds their ritual production.
>
> [p. 99]

Magistrates' Justice makes use of ethnomethodology, structural linguistics (Chomsky), symbolism, and dramaturgy in describing court personnel and the practices they follow. The 'machinery of control' comprises police, social workers, magistrates and solicitors who through organizational concerns for efficiency reinforce the portrayal of a legal system engaged in settling disputes with recourse to absolute rules. The ways in which the court workers can and do act is held up against an understanding of the existence of an idealised situation where they could act differently.

Magistrates' Justice does offer a contribution to understanding legal proceedings and the inter-relationships of professionals but the descriptions are hindered by formalist assumptions about rules, language and language use. The informal and formal features of situational, social and legal rules fundamentally lack clarity, a result of unresolved theoretical constraints that accompany adherence to formalist assumptions about law, and language. For

the purposes of outlining themes which bear on pragmatic issues, we can briefly examine the theoretical underpinnings in *Magistrates' Justice*.

First, it needs to be discussed whether the Chomskyan competence/performance dichotomy can serve as an analogue for examining the courtroom proceedings as rule-governed situations. Chomskyan notions about competence/performance remain controversial in linguistics and, have little to offer sociolinguistics, let alone socio-legal studies. The formalism promulgated by Chomsky is inconsistent with any interest in the courts because not only does the autonomous language system not account for social relations but Chomsky himself has never been interested in issues surrounding performance. The Competence/performance model has been (inappropriately) used as a measuring stick of defendants' abilities and capabilities to articulate their positions. The arguments assume an 'ideal' speech situation, with speakers of approximately the same 'competence' manifested in their 'performance'. Competence has taken on a completely new meaning and, when applied to courtroom participants, inevitably leads to contradictions surfacing.

2.4. *Conviction*

Unlike *Magistrates' Justice*, the focus in *Conviction* is not on the courtroom situational rules, but rather the formal rules governing pre-trial and trial procedures. McBarnet argues that too much time has been invested on interactional accounts about the courtroom that show 'only one side of the equation - the operation of people who routinely play a part in the process'. Interactional accounts about legal proceeding have tended to ignore the extent to which written rules govern institutionalised practices,

> In conventional sociological studies of criminal justice then, 'law'

> stands merely as a supposed standard from which the enforcers of the law routinely deviate; legal procedures are simply assumed to incorporate civil rights. The 'law in action' is scrutinised but what the 'law on the books' actually says is simply taken as read; it remains unproblematic and unexplored.
>
> [p. 9]

She argues against a 'law in action' perspective which portrays administrators of justice as minions who undermine the notions of a fair trial for the sake of efficiency, with the net result of pressure on the defendant to plead guilty. Such a 'law in action ' view has two dangers: it paints too neutral a picture of the criminal process at the expense of examining what the bureaucracy is for, and secondly it 'overplays non-legal motivations at the expense of the part played by the legal system itself'.

The part played by the legal system is where McBarnet begins and she investigates rules governing the accumulation of information which constitute legal proof. The incidents under investigation are not just assumed to make up one absolute 'reality', to be later reproduced through witness examination, but rather

> Conceptions of reality vary. 'What happened' is, to a witness, what struck him as happening; how he made sense of what he saw. Different witnesses with different perceptive filters may be struck in different ways. Truth and reality are subjective and relative.
>
> [p. 11]

Prosecutors do not have to prove everything a jury might want to know about a case, they only have to produce sufficient evidence. But what is considered as 'sufficient' is vague and, in practice, often amounts to just the statements made by the police. 'Sufficient' evidence is practically speaking, very little, and the notion of proof beyond reasonable doubt is a minimal standard

easily attained for the prosecution. Similarly, the standards for legal relevance seem minimal,-- 'ultimately what is relevant is the facts of the accusation'. Moreover, juries cannot choose the issues they have to be convinced about.

McBarnet explains that legal 'cases' and 'incidents' are not the same thing: cases are constructs of the legal process -- edited versions of events, or rather narrative accounts of incidents structured to the needs of a legal audience (factual information separated from speculative statements etc.). Incidents are recounted in the form of a case and

> conceptions of reality are multi-faceted and unbounded; cases are 'the facts' as abstracted from this broad amorphous raw material. The good advocate grasps at complex confused reality and constructs a simple clear-cut account of it. A case is thus very much an edited version. But it is not just edited into minimal account- a microcosm of the incident- it is an account edited with vested interests in mind.
>
> [p.17]

It is precisely how this editing process works that interests McBarnet, and the ways in which the rules governing pre-trial collection of evidence are carried out along with the recording of information make her descriptions accessible for pragmatic research of courtroom questioning. Although she discusses the difference between a case and an incident, the former a 'storified, legal' account of an incident, she tends to overlook the importance of written versus spoken aspects of information collection. Case information collected before the trial does not simply reproduce itself in court and the presentation of proof has a peculiar oral tradition of its own.

A feature of presenting proof is that it is done through questioning where 'facts' are re-created within the courtroom discourse. The questioning of witnesses is carried out bearing in mind what needs to be established and understood as factual information. Adversary advocacy is

> particularising and abstracting the facts relevant for the case from multiple possible facts of the incident. This style of presentation helps construct an idea of clear cut proof, by filtering and controlling the information witnesses make available to the court and so transforming what could emerge as an ambiguous welter of vying and uncertain perceptions into the 'facts of the case'.

But there is some confusion implied about the way in which information is introduced when she suggests that,

> . . . interrogatory 'evidence' is not presented directly by witnesses but indirectly in response to questions by counsel. The rules prohibit leading questions but the very framing of a question, whether leading or not, and the context in which it occurs, set parameters on what can be an acceptable answer. The witness is a respondent.
>
> [p. 24]

Leading questions, however, are *not* prohibited on cross-examination; they are generally unacceptable on direct-examination but not on cross-examination. Although McBarnet notes that questioning can affect the interpretation of evidence, she tends to suggest that witnesses, as 'respondents' have rather superfluous functions. Because witnesses are not posing the questions, this does not mean their contributions are negligible for the reconstruction of facts for the case. Moreover, the framing of a question may set parameters (e.g. yes/ no questions generally only require a short answer) but this again does not indicate that because there are expectations of a length of response, they are met, nor should it be taken as an indication that the response, however long, can be considered an ineffective piece of information within the entire discourse. I discuss this later in Chapter Four on questioning, but the fact that a witness or defendant is a 'respondent' does not necessarily mean that his contribution has a pre- ordained significance, nor

should it be taken as an indication that *indirectness*, the 'abstracting' and 'inferring' cues suggested to the audience, is only associated with the ability to pose questions. On cross- examination, the witness may often be seen to be discredited, but this is an outcome, the result of a pattern of argumentation conducted through questioning, but certainly not inscribed on the role of the questioner from the beginning.

McBarnet explains that cross-examination makes the most of perceived ambiguities in testimony but again, linguists could take issue with the way in which she sees this happening,

> Cross-examination is often no more than bringing ambiguity back into an extreme case. Being an artifice, adversary advocacy makes for thoroughly artificial ways of discrediting people. A witness's credibility is attacked by bringing into cross-examination *what he would have liked to say in examination* given a chance to do so.
>
> [p. 24]

It is speculative to say that cross-examination brings ambiguity back into a case. This suggests that no ambiguity exists in language -- an idealistic view. It also suggests that direct examination is unambiguous while cross-examination generates ambiguity. If ambiguity serves as a weapon to destroy a witness's credibility, it does not follow that this only happens during cross-examination, nor that cross-examination is a method of saying what was left out of direct-examination. During direct examination, the defendant may know the areas of his testimony likely to be disputed and may attempt to provide preliminary refutations of counterarguments. It is not the other way around.

McBarnet sees information filtering as a process which is institutionally

sanctioned. The police, for instance, have sweepings powers to decide on a charge, and the wording of the charge etc. This is part of the way information is initially screened and 'packaged' before the defendant enters the courtroom. The biggest disadvantages for the defence are that they are prevented form knowing the issues, restricted access to evidence and have no means to ensure that witnesses for the defence are available. That the defence does not have sanctioning powers to force witnesses to testify or force the production of documents is a tremendous obstacle for the defending party as they cannot invoke a contempt of court citation nor issue supoenas (p.81).

Moving from the questioners to the defendants, McBarnet argues that information games in court allow for the selection of information from the pre-trial gathered facts. Solicitors and barristers are familiar with the routine elements of not only what counts as a case but what counts as an adequate presentation of the case to the court. When unrepresented defendants appear in court, they may be unaware of the necessary elements to make their story a legal case. Presenting the case, the defendant may transgress rules he is unaware of,

> . . . the defendant must do so according to the rules at each stage, and indeed may not understand the distinctions in the rules between questions and statements, or be too intent on getting his story across to the magistrate at the first opportunity to abide by the formal rules of the court.
>
> [p. 131]

Summarizing the ways in which unrepresented defendants fall prey to cross-examination, McBarnet argues,

> It is partly procedural nicety and grammatical pedantry that defines

> this as out of court because making a statement rather than asking a question is not cross-examination. Professional cross-examination proceeds by quite different means, by indirect approaches, by a series of questions on apparently peripheral matters, with a crucial issue casually dropped in *en route*, by a series of questions leading the witness to an accusation which the witness cannot logically deny without discrediting his previous answers.
>
> [p. 132]

Conviction highlights the fact that cross-examination is an argumentative situation with a certain number of standardised ways offering refutations. Defendants, in order to gain a hearing must adapt to the conventional ways of offering refutations of evidence (thus posing questions about particular aspects of police evidence rather than just arguing the denial statements like 'You're lying' etc.)

Finally, McBarnet argues that the right of the advocate to summarise the case for the audience is a right denied the defendant and 'allows still further editing, abstraction, and imputation of meaning to be imposed on what witnesses say'. This touches on another linguistic aspect of court proceedings, namely, what is the effect of the summary given at the end of a case?. Does it play an important role in the way juries decide on cases? Or is it an 'empty' action which does not affect the inferences the audience has drawn through the course of questioning? Opening and closing arguments are outside the scope of the present thesis, but Crawford (1983), as well as Dunston (1980) and LLoyd-Bostock (1983) suggest that closing arguments are opportunities to direct the audience's attention to the inconsistencies developed in testimony.

2.5. Language-use in 'Law in Action' Accounts

The previous sections briefly discussed two sociological accounts of the 'law in action'. *Conviction* and *Magistrates' Justice* show sociological factors affecting legal decision-making but the extent to which their accounts can contribute to pragmatics is limited by a number of factors. First, there is the tendency of the sociological descriptions to place language in a secondary position with social structures and processes. Rather than an interdependence between language and the social organization of courts, language is seen to mirror or reflect, and not affect, the institutional elements of the situation. *Magistrates' Justice* illustrates this with the Marxian analogy where owners of productive means are those in control, and, in the courtroom this means solicitors and magistrates control the language of those involved in legal proceedings. Carlen argues:

> For a Magistrates' court is an institution rhetorically functioning to perpetuate the notion of possible justice in a society whose total organisation is directed at the maintenance of the capitalist exploitation of labour, production and control. . .
>
> [p. 98]

While she investigates professionals as part of a social control agency, there is little discussion about their relation to conditions of capitalist social formations. Language is seen as a means of reaffirming the role of the rulers, 'capital's handmaid', and the use of language in the courts is an exercise in the use of capitalist power. If this is the argument, linguists may as well 'go home and do something else' and Mey (1985: 25) warns against simple explanations of language use in socio-economic terms. To do so is to paint too illusory a picture of what language is for, but he also warns that to claim that coercion, or manipulation is a common feature of contemporary Western society, hence uninteresting, is to project a bourgeois and fatally neutral image of the social

fabric of life. Roche, for example, takes a less conspiratorial view of social control:

> Authority, and behind it power, and behind it physical violence is arguably what social order is all about. And coercion of the individual to do what he otherwise would not do, in gross ways and in subtle ways, is a commonplace feature of social life. If chess is to be the analogy, it would do conceptual analysis a lot of good to look long and hard at the concept of 'losing' and to stop insinuating that every man who has free will is a winner. Man has free will, even in his defeats, even when he is being driven.

The secondary consideration given to language also has ramifications for the way in which the relationship between language, communication and meaning is characterised. For example, little notice is paid to the difference between written and spoken acts, where the former include the making of case histories or taking of statements from defendants and other witnesses, and the latter include the oral presentation of information to the courts. Attention is paid to language use, but language as a system of rules is seen the point of departure for discussing language use. The defendant's speech is measured against a notion of communicative competence derived from an ideal speech situation. There is little room in these realist accounts for the notion of linguistic convergence, or how speakers adapt their speech *in situ* through ongoing strategic assessment of the purposes of the questioners. In *Magistrates' Justice*, Chomskyan notions of competence and performance are introduced, and this only adds to some confusion about the relationship between language and communication. Both Carlen and McBarnet investigate sociological factors affecting the use of rules in legal proceedings but they present their cases in terms of departures from the rules, either situational (Carlen) or promised (McBarnet). Both are concerned with the process by which legitimation is achieved, and this is one place where theoretical stances seem

muddled. The emphasis, according to Carlen and McBarnet, is on process, (creation of facts, distribution of information) but the assumptions implicit in both accounts reveal a view of 'law as an object' and legal rules as absolute. This affects how meaning is seen to be created, and interpreted and more specifically, assumptions about ideal rules affects how both authors deal with information flow and building of facts.

Before discussing the ways in which sociolinguistics has attacked the problem of abstractness in the study of language, there are two aspects of *Magistrates' Justice* which call for discussion: one concerns the Chomskyan notions of ideal speech situations and the other, concerns Searle's regulative and constitutive distinction between rules.

2.5.1. Competence/ Performance arguments revisited

Language can be thought of as an abstract system of rules within various domains of linguistic theory (phonological, grammatical etc) while functionalists have emphasised that hierarchical ordering of rules, and levels of linguistic analysis has consistently overlooked language as a phenomenon to be studied within the confines of a given social setting. The view promulgated by Chomskyan linguists has in one sense presented a highly elaborated and extremely idealised 'mental' model of language. The three assumptions about language made by Chomsky, broadly speaking, are the autonomy of grammar, the innateness assumption and the competence /performance assumption. It is only the first and third of these claims which are relevant here.

Dascal (1986: 12) cites the most frequently levelled charges against Chomsky's theory of language as 'arbitrariness' and 'formalism'. These are charges against the three assumptions above as well as Chomsky's insistence

on speakers' capacities to use language as a 'free instrument of thought'. A module view of language which separates structure from use, and the distinction between competence (idealised, internal knowledge of a language system) and performance (the outward manifestations of that knowledge) have been attacked by linguists who argue that language rules and communication rules indeed are not mutually exclusive concerns but could and should more productively be studied within a network of interrelated social, political, discourse relationships. The study of language within various linguistic fields take issue with aspects of generative theories. Leech (1983: 4) summarises how Chomsky's abstract notions about ideal speakers and competence/performance distinctions have met criticism in many corners,

> Sociolinguistics has entailed a rejection of Chomsky's abstraction 'the native ideal speaker/hearer'. Psycholinguistics and Artificial Intelligence place emphasis on a 'process' model of human language abilities at the expense of Chomsky's disassociation of linguistic theory from psychological process. Text linguistics and discourse analysis have refused to accept the limitations of linguistics to sentence grammar. Conversational analysis has stressed the primacy of the social dimensions of language study. To these developments may be added the attention that pragmatics –the main subject of this book– has given to meaning in use rather than meaning in the abstract.

As discussed earlier, Carlen exploits the competence/performance dichotomy in her description and this leads to a certain amount of reification of rules. i.e. the ways in which magistrates carry out their jobs is measured against an ideal system where rules which constitute magisterial powers are fixed and accounted for. There is a measuring of the deviance from the standards which materially exist as 'social control' rules. Performance involves deviance from the ideal with court professionals carrying out their duties implicitly compared with the way they should be doing them.

2.5.2. Constitutive and Regulative nature of Rules

Searle is briefly discussed in *Magistrates' Justice* for his distinction between 'constitutive' and 'regulative' types of rules. The regulative type of rule is illustrated by the formal written legal codes as well as procedures followed in court. Regulative rules are often interpreted as imperatives of the form 'Do X', whereas the constitutive rules are of the form 'X counts as Y'. Searle made it quite clear that some constitutive rules are also regulative, and here is where some problems arise. Constitutive rules are *definitional* in so far as they define what counts as an acceptable action. But what is missing from Searle's discussion is that whilst one might know both the regulative and constitutive rules, that does not necessarily mean one can act on those rules, there are no *applicational rules* which would indicate how and when constitutive and regulative rules go into effect. In *Magistrates Justice*, Carlen defines constitutive rules as those which are social, situational, legal and finally the extra-legal rules-- none of which I think are clearly distinct. It may be that Searle's concept of 'regulative' rules is conflated with Habermas's 'regulative interests' of participants. In discussing how legitimacy is achieved, legal absolutism is reinstated through the use of remedial routines.

1. when legitimacy is threatened, remedial routines are employed to remedy the situation.
2. remedial routines reassert an appearance of legal absolutism.
3. through specialised and selective treatment of some extra-legal rules (regulative) rules as absolute...the contours of an absolutely *legal* morality can be systematically and consequently reasserted within the courts.
4. attempts by defendants to explicate the situational rules operative in particular cases are suppressed so that their absurd relationship to abstract legal rules do not become apparent.

[p. 99]

The difference between regulative and constitutive appears blurred, especially when situational rules can quite easily be called both. Searle's division of rules into types is not necessarily a help to social researchers and even in linguistics the application of his distinctions has never been fully introduced precisely because the rigid nature of rules does not aid in the explanations of the interaction of rules within levels of linguistic domains, nor does it explain how the application of rules is made operational. As Chapter Three will show, a more comprehensive and understandable model of courtroom interaction can be proposed by a introducing argumentation into pragmatic approach. Pragmatics differs from the realist approaches to law in that the abstract rules of language may not provide a useful a point of departure for discussing language. Situational rules are deviations from abstract rules, which in turn, generate deviations between language and language use; but this produces a negative critique of the abstract rules while pragmatics aims at an understanding of communicative means through an application of a non-reductive methods of analysis.

2.6. Courtroom Communication as a form Code

In *Magistrate's Justice*, Carlen argues that court professionals and in particular, advocates and judges have access to an 'elaborated' code while the speech of defendants is controlled by the imposition of a 'restricted code'. The terms 'elaborated and 'restricted' code were introduced by Bernstein (1971) as a way of characterising language in relation to different social classes. In order to discuss whether or not communication in court is a type of 'restricted code', in the way Bernstein described it, an examination of Bernstein's sociology of language is warranted. Some general characteristics of the codes are that 'elaborated' is opposed to 'restricted'; the codes themselves can be contrasted in terms of the generality of meaning they control: meanings in an elaborated

code are universalistic i.e. independent of the situation and explicit, while particularistic meaning arises in situations where meaning is implicit, hence representative of a restricted code. Bernstein posited that elaborated and restricted code corresponded to different meaning systems (universalistic and particularistic) and differed in their degree of 'predictability'. Bernstein (1971) explained 'The pure form of a restricted code would be one where the lexicon and hence the organizing structure, irrespective of its degree of complexity, are wholly predictable.' This definition of restricted code, however, is perhaps more complex than it appears.

The notion of 'elaborated' and 'restricted' code, along with the corresponding claims about orders of meaning and predictability of linguistic structures are problematic. For example, Bernstein attributed to 'elaborated' as signifying 'creativity' and 'complexity', which are positive value judgments. But 'restricted' on the other hand, was characterised as 'limited' or 'simple'--negative value judgments. The notion of codes, at least the way Bernstein described them, may not offer much to a pragmatic analysis of questioning and in the following sections the reasons for this will become clear. Bernstein tended to associate implicit meaning as a characteristic use of language only by one social class, and indeed, he was preoccupied with 'elaborated' as the most basic code. This does create problems in pragmatic approach to witness examination as, for example, pragmatic presuppositions draw on a witness's ability to interpret more than semantic (truth-conditional) meaning, something which does not appear to be a feature of both of his codes. Broadly speaking, Bernstein made a number of semiotic, semantic and syntactic claims about language and tried to show a structural relationship between all three in relation to social classes. We can start with the notion of codes as semiotic, organisational principles.

2.6.1. Codes as organisational principles

Atkinson (1985) argues that the contributions of Bernstein have, to a large extent, been misinterpreted by sociologists, but more alarmingly so by 'hysterical' linguists who have not understood his arguments in the context of a sociology of language but instead, have tried to interpret his contributions within an empirical sociolinguistic tradition. To begin a discussion on Bernstein one needs to examine the traditions which influenced his brand of sociology. Atkinson outlines some of the intellectual influences on Bernstein's orientation for discussing language,

> Bernstein's thinking was profoundly influenced by his acquaintance with various philosophical and anthropological authors on language and symbolism – including Cassirer and Whorf. . . also Vygotsky and Luria. . . These were combined with his absorption of the sociology of Durkheim in providing the foundations for a neo–Kantian concern with the cultural and linguistic framework that shape and regulate our experience of the world, and the transmission of such experience through symbolic form.
>
> [p. 14]

Bernstein, following the tradition of structural sociology tried to apply his methods to a sociology of language and Atkinson offers this explanation of codes,

> 'Codes' then are descriptive terms for regulative principles which are realized through *different possibilities of selection and combination*. . . . these principles can be identified in analytic contexts other than the purely linguistic; indeed their value rests precisely in their generalizability and their capacity to illuminate formal ('systemic') links. . . . Bernstein was never engaged in the identification and description of two contrasting dialects. Language – and this cannot be said too often – is subsidiary, in that it is a means to understanding social relationships, structures and processes.
>
> [p. 68]

Codes have to be understood in the semiological studies and Atkinson argues that Bernstein confirmed this in a recent (1981) article where he states the

> code is defined as 'a regulative principle, tacitly acquired; codes select and integrate 'relevant meanings', 'forms of their realization' and their 'evoking contexts'.

But further to this historical sketch, Atkinson suggests that Bernstein tried to explain this interest in social relationships in structural terms.

> Bernstein thus proposes at least a formal link, structural relationship between: social relationships; modes of language use; linguistic forms themselves. It is no doubt this last element in the equivalences which is the most controversial. . . . codes are not in themselves descriptions of language varieties: codes are principles of structuration which underpin linguistic and social forms, their variation and their reproduction.

Codes then as principles do not refer to sets of conventions in a given cultural domain but to fundamental sets of relationships within fields of cultural signification.

These three aspects of code: social relationships, modes of language use and the linguistic forms themselves, are what Bernstein attempted to explain with the use of 'elaborated' and 'restricted' code. In explaining the differences between elaborated and restricted codes, Bernstein made another distinction between *particularistic* and *universalistic* orders of meaning.

> The universalistic function of language- where meanings are less context-bound point to an elaborated code. The more particularistic functions point to a restricted code. Because a code is restricted, it does not mean that a child is non-verbal, nor is he in the technical sense linguistically deprived, for he possesses the same tacit understanding of the linguistic rule system as any other child. It does not mean that the children cannot produce, at any time, elaborated speech variants in particular contexts.
>
> [Bernstein, 1971]

In a further explanation of the definitions given by Bernstein, Atkinson

discusses them in a slightly different way, namely that particularistic and universalistic have two facets:

> Universalistic refers to meaning which is explicated through language, while particularistic meaning is implicit - and to that extent, context-dependent. This dichotomy does not map simply on the restricted/elaborated distinction. For there are two connotations to universalism and particularism generally. On the one hand, they refer - as I have indicated - to the degree of context-dependence. On the other hand, they refer to the general currency of language models which influence speech.
>
> [Atkinson p.71]

The notion of 'language models which influence speech' is one which structurally relates codes to linguistic forms yet it is one which is, to my mind anyway, has not been satisfactorily explored. Atkinson suggests that while restricted code is 'particularistic with respect to meaning, it is universalistic with respect to its models and their social availability'. By contrast, 'while elaborated code is universalistic with respect to its meaning, it is likely to be particularistic with respect to its models, or with respect to its 'special syntax''. Atkinson (p.76) quickly emphasises that this distinction is not two ways of saying the same thing.

> The two orders of meaning, therefore are more than simply two different ways of using language for the same purposes with equivalent outcomes. They imply different capacities for power, self- regulation and determination. Universalistic discourse, therefore resides in and makes possible the privilege of symbolic control. The restriction of such control to a minority reflects and reproduces the distribution of control over materials resources in this formulation.

The universalistic aspect of meaning was what Bernstein saw as the essential component in classroom pedagogy: schools operated with de-contextualised meanings, which made the pedagogy was 'visible' and the social relationships and inter-relationships recontextualised. Thus elaborated

code realised a process that selects, abstracts, refocuses and re-contextualises procedures and performances.

The problem with the 'particularistic' and 'universalistic' orders of meaning is that what is implicit may not always be available or understood by the hearer, even if he shares the same set of assumptions, as posited by a restricted code. Bernstein viewed restricted code as one where meaning was completely recoverable because the speakers shared the same orientation and assumptions. But instances where speakers make assumptions about what they believe the hearers know, or instances where the hearer shares the same assumptions, yet does not share the same orientation are not accommodated by Bernstein's distinctions. Argument and actions aimed at convincing or persuading an audience of the validity of some claim are instances where this particularistic and universalistic contrast do not seem of much use. The discussion of particularistic and universalistic orders of meaning could correspond to semantic versus pragmatic presupposition. However, pragmatic presupposition is not an instance of deviation from the semantic, and it is not associated with one particular type of speaker or speech situation.

Universalistic meanings are loosely thought of as those which are less 'context-bound', but 'context-bound' can refer to a number of elements in linguistic analysis. For Bernstein, context bound is an association of background knowledge or presupposition pools of speakers which reflect a restricted range of *conceptual* categories and social experiences. Thus, the working-class illustrate this notion through their uses of dialectal varieties which assume the same experiences and cognitive 'frames of reference'. In a pragmatic analysis, 'context-bound' may refer to different ways the speaker comes to terms with the implicit information. Context-bound means that although a speaker does

not share a set of common experiences with his interlocutors he can have access to a degree of those experiences and reconstruct a degree of shared assumptions, the 'discovery' of which occurs though the ongoing discourse and interlocutors are not without linguistic means to understand indirectness.

2.6.2. Predictability of codes

Another aspect of elaborated and restricted code is the claim of the 'predictable' nature of codes. Atkinson argues that the predictability factor must be understood in the light of Bernstein's understanding of 'fluency'. Fluency in speech was the realization of a highly structured, thus almost routine, patterns which drew on precious little of the participant's conscious knowledge. In other words, restricted code was associated with fluency in speech, fluency defined as low-level or minimal planning on the part of the speaker. Elaborated code is a governing principle in situations where the speaker has to contextualise his information for his audience, and is characterised by more planning, hence appears less fluent. Predictability, as Bernstein used it for speech situations associated with restricted code, was an indication that a high degree of implicit information was both *available* and *understood* by participants. Atkinson explains this predictability as

> Predictability will be closely related to the social context and the nature of social relations within it. Predictability will not be founded upon purely formal criteria of language, but upon social circumstances, the shared knowledge, values and assumptions of the parties to the encounter.
>
> The predictable form of the 'restricted' code is determined by and in turn regulates, social arrangements in which there is a high degree of shared orientation, which is taken for granted and /or reaffirmed.

The different aspects of elaborated and restricted code have been briefly outlined above and, the criticisms of codes can now be considered. One can

view codes as principles which govern the speech activity currently underway, or, as ways of suggesting 'meaning' potential, as the range of lexical choices and the realization of specific linguistic items in speech. For the former interpretation, Halliday seeks to rework 'code' into his semantic concept of *register*. For Labov (1972), along with Dittmar (1976), and Coulthard (1972) the latter interpretation of elaborated and restricted codes was certainly more troublesome. Pronouns and the measurement of pauses in speech tied into a general theory of meaning and access to meaning. The studies of pronouns, pauses and sentence structure, provided evidence for the 'restricted' code; a fundamentally 'lower class' phenomenon. The relationship between class and codes, is one which has associated Bernstein with the 'verbal deficit' theory outlined by Bereiter and Engelmann (1966). Although the connection between Bernstein and Bereiter and Engelmann has been overplayed, this is understandable in that Bernstein posited negative dispositional descriptions of restricted code which contradict his claim that speakers can use both variants. Elaborated was associated with 'creativity' while restricted connoted 'unequal' and 'deficient', often with the working- class speech used as an example. Labov's (1972) research revealed that the linguistic system of non-standard English speakers was not 'restricted' in the range of meanings that speakers had access to nor was it an inadequate system for expressing complex messages.

Coulthard, however, sees problems with both the semiotic and semantic claims about Bernsteinian codes. Coulthard (1972: 95) explains the basic elements of codes,

> restricted and elaborated codes arise in different social environments; the codes differ in their degree of structural predictability; the codes condition the way in which the speaker expresses himself and conceptualizes.

Coulthard systematically deals with the puzzling distinctions offered by Bernstein and outlines how definitions have varied from a (1962) psychological version where the difference between codes are described as an 'orientation to symbolize intent in verbally explicit form' to a later version (1964) where 'different forms of social relationship may generate quite different codes'. Bernstein's variation in definitions (1962 stresses the psychological and in other articles, the linguistic; 1964, the sociological) makes it unclear as to which aspect is the most fundamental for understanding code. More significantly, however, the investigation of pronouns and pauses, which form the basis for the predictability feature of restricted code, remains empirically unsound. Coulthard disputes the predictability and probability character of restricted codes since the experiments conducted did not take into account for example, distinctions between the anaphoric and exophoric functions of pronouns.

Coulthard points out that the three different emphasises of code - sociological, linguistic and psychological have not been clearly defined in Bernstein's work and the predictability feature, has been in the later writings replaced by a reliance on 'situation'. He concludes:

> the theory now appears to have moved into a position where it is unprovable-no statement is made about the linguistic criteria, which were so important in the earlier formulations, and the sociological and psychological statements are highly speculative.'
>
> [p. 99]

In addition, Stubbs (1983: 81) faults the code theory for its non-differentiation between stylistic and logical aspects of language. If Bernstein is primarily concerned with showing characteristic ways of using language to interact, rather than the specification of lexical choices he still conflates the two.

Bernstein (1971) has argued that a characteristic of restricted code

> is that it relies on a small group of conjunctions, such that an appropriate term is constantly substituted for a more exact logical distinction. However, Bernstein has confused a stylistic characteristic of spoken versus written English with a logical matter. . . . Bernstein has confused two things: (a) logical power and a question of lexical synonymy – there is no difference between synonyms such as *but, however, nevertheless* and so on; (b) logical power and stylistic preferences between spoken and written English – written English uses a wider range of lexical synonyms.

2.6.3. Codes and Register

Halliday (1978) dismisses criticisms about the non-empiricism of Bernstein's research and argues that the unique feature of Bernstein's contributions is the connection made between social structure and linguistic interaction. Codes act as determinants of register and

> there is a considerable source of confusion here as the term 'code' is being used in radically different senses. The codes control the meanings the speaker- hearer attends to (cf. Cicourel's 'socially distributed meanings') ...codes act as determinants of register, operating on the selection of meaning within situation types.
>
> [1978: 67]

For Halliday, social structure and social hierarchy are related to *register* which is loosely defined as 'variety according to use'; or (p. 111) 'the configuration of semantic resources that the member of a culture typically associates with a situation type'. He sees code as 'the principle of semiotic organization governing the choice of meanings by a speaker and interpreted by a hearer'. A code acts as a 'filter, defining and making accessible the semiotic principles of his own subculture, so that as he learns the culture he also learns the grid, or subangle on the social system.' He explains the significance of Bernstein's code as

> Bernstein postulates two variables within the code: elaborated versus restricted, and person-oriented versus object-oriented. The

> idealized sociolinguistic speaker-hearer would control equally all varieties of code; there is of course no such individual, but the processes of socialization of the child do demand - and normally lead to - some degree of access to all.
>
> [p. 67]

For Halliday, code and register are intrinsically linked where codes are not only 'types of social semiotic, symbolic orders of meaning generated by the social system' but are also fundamentally regulatory mechanisms which control the configuration of meanings available to the speaker-hearer, depending on the situation type. Halliday takes Bernstein's 'codes' to be more general principles which govern the use of language in communicative contexts; code is a meta-linguistic construct actualized through register. This, however, is not an entirely satisfactory explanation of code because the burden of social hierarchy and is removed to an indeterminate level of analysis, replaced, for the purpose of analysing discourse, by register which for Halliday is a uni-dimensional concept. In multi-partied interactions such as court proceedings, the proceedings themselves correspond to many registers in effect. There is nothing to suggest that situations cannot have more than one type of register currently in operation (Fairclough, 1985).

Codes for Halliday are significant in so far as they are semiotic explanatory tools. But the relationship between the semiotic, semantic and syntactic organization of language or the linguistic forms themselves and modes of use are not unproblematic and Coulthard's criticisms of illegitimate interpretations of linguistic forms still stand.

2.6.4. Courtroom questioning as a form of code

Returning to the notion of code as a description of the interaction among advocates and court professionals, in *Magistrates' Justice*, Carlen argues that the written procedural rules allow for 'the imposition of a restricted linguistic code whose lexicon and organising structure are wholly predictable' [1] She adds that

> symbolic structure of the court is not entirely directed towards control; it is also directed towards creativity and innovation. For much of the time, therefore an elaborated code is employed by lawyers and magistrates whilst defendants utilise an elaborated code when they challenge formal interpretations. . . restricted code is usually enforced when one of the parties to the verbal interaction is the defendant.

According to the interpretations of Bernstein's work, focusing on solely semantic meaning, is initially adopted by Carlen. But, she has then, first of all, *inverted* the code distinction. The legal professionals, if anything, use a restricted set of terms which have theoretical meanings -- hence 'restricted' if Carlen wants to adopt a Bernsteinian interpretation that refers the the selection of lexicon which is characteristically employed by one subculture. Words like 'fact', 'evidence', 'plea' etc. are theoretical terms that have an extended meaning for legal professionals which may not be known by the defendants. Moreover the saliency or weight to be accorded to information marked as 'factual' versus 'intuitive' or 'opinionated' again may not be visible to the defendant. Thus, court professionals can be seen to use a restricted code if one accepts that code refers to context-bound meanings which are shared and

---

[1] She follows a definition of 'restricted' code from Bernstein, 1971, where 'The pure form of a restricted code would be one where the lexicon and hence the organizing structure, irrespective of its degree of complexity, are wholly predictable.'

accessible to one subculture. However, the claim about predictability and the imposition of code needs examination. The way in which this 'predictability' is attributed to the realization and enactment of procedural rules is objectionable in that Bernstein's experiments on pronouns suggesting 'lexical' predictability still do not stand in light of the criticisms voiced by Coulthard and Stubbs.

Carlen further states

> The elaborated linguistic code allows for greater creativity and individuation of meaning. That fewer constraints are imposed when police and lawyers employ an elaborated code bears out Bernstein's assertion that: ' Access to an elaborated code will depend on access to specialised social positions within the social structure, by virtue of which a particular speech model is available.' (Bernstein, 1971) I shall argue that the power of the magistrate inheres, in part in his judicial competence which is constituted by an ability to simultaneously to switch codes and reinforce consensualised meanings.

Procedural rules, precisely because they are not shared by defendants and court professionals, and because they are not assumed to even be operable do not fall under the umbrella of 'restricted' code. However, the court professionals, among themselves can be seen to operating under some guiding principles but only outside the courtroom context. Carlen argues that magistrates, as speakers of both elaborated and restricted code, 'switch' codes when interacting with defendants, and this switching is consciously done in a conspiratorial way. Magistrates switch codes so that the defendant will be excluded from contributing to the interaction. This is a distinct interpretation of Bernstein since he never went as far as considering the codes in situations with competing interests.

Is there any way in which communication in court can be characterised as a restricted code, following Bernstein's definitions? I think the answer must be

no, in that there are too many contradictory aspects of Bernstein's codes and claims about language use. First of all, we might note that Bernstein had a rigid notion of class, and he was concerned with explaining differences in language use between the dominant and the dominated classes. However, he chose 'elaborated' to designate the code signalled in the speech of the dominant, and the fact that the dominant rather than the dominated were his starting point, indicates his view of class structure as one of uniform groups co-existing rather than a mutual dependency between groups (Bisseret, 1979). While Bernstein does discuss 'restricted' code as having a role to play in communication, he continually reinforces negative value judgments against it by referring to it as simple or limited.

The claim that one code is more explicit linguistically than another, is one which, as well as not differentiating the logical from stylistic aspects of speech, does not leave room for a pragmatic aspect of meaning which is available to all speakers. In other words, implicit meaning is a feature of language use in general and not typically associated with a less developed form of communication. Moreover, Bernstein makes some cognitive claims about speakers processing implicit information which may not be correct i.e. speakers recover all information necessary for interpreting utterances because they share the same assumptions and orientation. Similarly, it is hard to reconcile what Atkinson describes as Bernstein's real definition of 'predictability' as 'fluency' when Bernstein conducted studies as a way of assessing predictability. If Bernstein was primarily concerned with outlining some general semiotic principles which underpin language use, he nevertheless does engage in contrasting two dialects; for example, he repeatedly talked of the 'elaborated variant'. Although the notion of 'code' can contribute to understanding courtroom communication, the Bernsteinian versions of

elaborated and restricted codes may not adequately serve to explain language use in institutionalised settings like the courts.

The interrelationship between social experiences, the speech situation and the linguistic system have been referred to as a 'code', though used in a different way by Gumperz (1972) from Bernstein. According to Gumperz, the 'code' refers to a language or language variety which coexists with other varieties. Code shifting and code switching are the expression of social hierarchy in its various forms and occur regularly in all situations. Speakers' repertoires are a function of the social hierarchy and their place within it. Speakers shift and switch code according to situational factors. The language used by court professionals could be described as a type of language variety, but this does not mean to say that communication is impeded or constrained by speakers switching code, as the hearers' repertoire may well be equally responsive.

Gumperz' 'code' focuses on the situational fabric of interaction, while as has been discussed, Bernstein emphasizes both the 'meaning potential' and the 'semiotic organization of language'– neither of which have been accepted as unproblematic.

2.7. Speech as Skilled Work

Another approach to examining language use in witness examination consists of contrasting what happens inside the court with what happens outside. The witness does not come to court without any linguistic knowledge whatsoever, and we might make a number of points about this. The first concerns constraints which depict language use in the courtroom as oriented towards producing distorted information. That constraints are placed on speakers is not a new linguistic idea, but in the courtroom, the fact that the

witness is generally not allowed to ask questions may not be as serious a constraint as is sometimes proposed (Carlen and McBarnet). The defendant may not be familiar with the speech situation of direct and cross-examination, his role as a defendant, or the questioner's collection of 'facts', but in themselves these do not account for information distortion. An explanation of the interplay between the negative and positive aspects of constraints is often missing from accounts about the constraints specific to the courtroom context -- constraints are just seen as coercive measures. This ignores the fact that witnesses and defendants do have a store of knowledge about other institutionalised encounters and, through analogy, can contribute in an effective way.

Hudson (1980) defines speech as a type of *skilled* work and explains that speech situations inherently have constraints. The defendant or witness has to deal with constraints particular to the legal context; some of which are not unlike constraints experienced in other face-to-face communication situations (for example, cross-examination works in a way which is similar to conversational arguments, see Chapter Three) but some of which differ. He defines speech as skilled work in these terms:

> It is work since it requires effort, and its degree of success depends on the effort that is made. It is skilled in that it requires the 'know-how' type of knowledge, which is applied more or less successfully according to how much practice one has had (and according to other factors such as intelligence). Putting these two characteristics together, we can predict that speech may be more successful at some times than others and some people may be better at it than others.
>
> [p. 113]

Success in speech varies considerably 'according to its function. . . and it is not obvious how success should be measured except against the intentions of the speaker'. While it may be impossible to discern completely the intentions of a

cross-exmainer, we can however, take notice of the way in which cross-examination resembles argumentative speech situations. Before discussing the argumentative functions of language usage (Chapter Three), it is worthwhile to note that Hudson follows Gumperz's notions that communicative resources (know-how, intelligence, etc.) vary with individuals and that the ideal speaker who is skilled to perform effectively in all communicative contexts may not serve as a starting point for discussing language use.

2.8. Speech and Communicative Resources

Communicative resources vary between speakers and speakers may not have access to an unlimited amount of information stored in linguistic repertoires. This conflicts with the assumptions made both by Carlen and McBarnet (applies to Bernsteinian 'codes' as well) that a speaker has access to all necessary linguistic means to enable him to communicate all information legally relevant to his case. If the advocate did not have the role of interrogator, the witness would tell his version of events and, more importantly, his audience would adopt the same perspective in interpreting those events as the witness intended. There is the assumption of the ideal speaker - rational, lucid, truthful, etc. , but this is a normative notion, misleading as speakers may have linguistic means but vary considerably in communicative abilities necessary to engage in speech situations. Not every speech situation will have interlocutors of approximately the same skills nor access to equivalent linguistic repertoires.

In discussing the communicative abilities of speakers, Gumperz (1968) made a distinction between the superposed and dialectal modes of speech. The relationship between modes of speech in language behaviour for

communication represent syntagmatic and paradigmatic facets of language and are explained as variant relationships: the *dialectal* and *superposed* relationships governing language use. Gumperz (1968: 225) defines the dialectal relationships as 'those in which differences set off the vernacular of local groups from other groups within the broader culture'. Superposed variation refers to 'distinctions between different types of activities carried on within the same group.' Gumperz' notion of the 'superposed' is similar to Halliday's concept of 'register'. The variants proposed by Gumperz were an early attempt to discuss the interrelationship between the linguistic and extra-linguistic. To this end, dialectal relationships coexist with superposed relationships.

The fact that control of communicative resources varies not only in legal contexts, but as a natural occurence in speech contexts weakens the argument that defendants, because of a limited set of resources, are being suppressed. Or, put another way, what happens in court cannot be completely isolated from what happens outside. Moreover, speakers taking part in a 'new' speech situation, as second-language acquisition studies have suggested, do have ways of managing with a limited set of resources. Second language acquisition studies offer some interesting parallels between second language learners and first-time witnesses, and through a discussion of communicative competence models, such parallels will contribute to a less-conspiratorial view of language-use in witness examination.

2.9. Strategic communicative competence

Hymes (1972) argued that communicative competence, includes grammatical knowledge plus other knowledge which describes the discursive elements of communication. For example, an *appropriateness* feature inheres in utterances. Communicative competence, is far removed from the explanations

of grammatical competence provided by Chomsky. In a model of communicative competence, the ways in which speakers learning a language cope with new or unfamiliar speech situations offers explanations of language-use. Alongside Hymes' appropriateness feature, second-language acquisition research suggests that another factor, namely the strategic, should be considered. Canale and Swain (1980) redefine the nature of communicative competence. A revised version of 'competence' includes a strategic element whereby the speaker has some intuitive mechanism for gauging the discourse context in which his utterance appears. They argue that communicative competence, has sociolinguistic and strategic aspects, and that these are not symmetrical or constant for every speech situation. A communicative competence model includes features of the grammaticality, acceptability, appropriateness, and strategic significance of utterances. The last element of the communicative competence model as developed by Canale and Swain offers an interesting parallel between second-language learners and witnesses.

Second-language learners may well be capable of using the language adequately with the first three components but in situations where they have no background for judging the appropriateness, or the significance of their utterances, they make use of a strategic assessment process which enables them to gauge how their immediate contributions fit the discourse pattern in progress. Witnesses, although native speakers of English, may use a strategy in coping with court operations which is characteristic of all speakers engaged in 'new' speech situations. This communicative competence model contrasts with a predominant one which imbues research on the language of the courtroom: namely, that witnesses are rendered communicatively incompetent by a series of rules and procedures which they are prevented from 1) knowing about and 2) refuting and/or rejecting. The obvious problem with this position is that a

communicative competence model (as one which is not in fact open to strict formalisation rules) would not define these as 'limitations' which automatically generate distortions.

Witnesses, because of an unfamiliarity with legal procedures and codes of conduct, are not necessarily rendered incompetent to participate. The assumption that a witness's communicative competence is undermined by the organisational considerations of the court needs examination. If witnesses have a limited knowledge of court participants and their functions, is this a *linguistic* disadvantage? and secondly, would full awareness of the rules and procedures (those described at any level of abstractness) necessarily be a help in the presentation of evidence? The research in second-language acquisition emphasizes that speakers have a number of mechanisms to cope with new speech situations (ability, motivation, intuition etc.) and *unfamiliarity* can be managed. The fact that the defendant is unaware of professional 'behind the scene' conflicts and collusions is not a linguistic disadvantage as a speaker's knowledge of other participants, their roles and immediate relation to the discourse are assymmetrical, in speech situations outside the court. Arguments that symmetry in knowledge (legal, extra-legal, linguistic, etc) between participants is an essential component for 'ensuring fairness' assume a great deal more than is warranted as such a symmetry in relation to knowledge, intelligence, capabilities of speakers is completely idealistic.

Notions about the 'compromised' nature of what would otherwise be spontaneous speech assume a type of 'unconscious rationality' of speakers. Spontaneous speech is assumed to be an optimal way of exercising linguistic participation and is also presumed to have a rational content; an honest account of events given by a speaker who determines the salience and content

of his utterances. This is an oversimplification of communicative content and realist accounts of the courts (Frank) suggest that there is an ideal context for fact-finding where the defendant 'tells his story' without the interference of the advocate's questions. *Conviction* and *Magistrates' Justice* also suggest that 'spontaneous speech' is a desirable goal -- uninterrupted by questions which seek to apply legal categories to an event. This presumes that if a witness were given the time and opportunity he could 'tell his own story in his own words' and this would produce a more accurate account than could ever be produced through witness examination. However, a speaker who is directed to 'Tell us what happened in your own words', may well arrange his descriptions anachronistically, leave out information he assumes the hearers either already know or would find uncontroversial but which could affect the interpretation of his case.

CHAPTER 3

ARGUMENTATION THEORY AND PRAGMATICS

Courtroom communication centres around the way in which differing opinions are introduced, debated, accepted or rejected by an audience. Within courtroom communication, witness examination has an argumentative aspect which can be explored within pragmatics. Witnesses are not called to give evidence in such a way that they are only involved in acts of 'asserting' or 'affirming' some information. Whether they are giving a narrative account of events, providing descriptions and explanations, or speculating about possible interpretations, they do so in a speech situation which is aimed at convincing and persuading the audience to accept one version of events as the facts of a case. Advocates and witnesses present arguments (belief-laden assertions) about what constitute the facts of a case and try to have those beliefs accepted. Within a pragmatic framework, argument can viewed from a number of perspectives. Traditionally, argument and argumentation study have investigated the nature of truth and methods of proof; O' Keefe (1983: 6), for instance, outlines three such argumentative concerns. First, arguments have been studied as procedures for reaching critical decisions; secondly, standards have evolved for gauging the soundness of individual arguments, and thirdly, features of effective or persuasive arguments have been discussed. These concerns are normative rather than descriptive and focus upon what makes a good argument. A pragmatic approach to argument can develop a system of explanations and characterizations which are rigorous but non-reductive -- no small task to be sure, but this chapter is a step in that direction.

The first step in examining argument in relation to courtroom questioning is to sift through the inherited array of concerns about argumentive discourse.

Briefly, five different approaches to argument and conflict in discourse are considered: 1) relevance theory and argumentation; 2) arguments as communicative acts located within social interactions; 3) conversational arguments and how listeners manage unexpressed premisses; 4) rhetorical devices associated with argumentation as a form of demonstration and finally, 5) revised speech act approaches to argument as complex illocutionary acts and the institutional character of illocutionary acts.

An initial question about argument is whether Gricean notions of 'cooperation' can accommodate a discourse which is concerned with influencing the beliefs held by an audience. A communication model which starts from the concept of a general dissensus about the status of information may not presume that language users are willing, capable or interested in being cooperative as in Grice's model of conversation where the main purpose is to facilitate talk and achieve shared goals. It may be premature to apply 'cooperative' to the courtroom speech situation and it needs to be questioned whether Gricean maxims have anything to offer a pragmatic analysis of witness questioning. Instead of looking at disagreements between speakers as complex instances of maxim flouting or violation, it may be worthwhile, either to modify Grice extensively or perhaps to consider dispensing both with the notion of 'cooperation' as a bilateral property of institutionalised encounters, and with the notion of implicatures. The issue of 'cooperation', particularly in institutionalised settings where speakers are influenced by non-linguistic elements of the discourse will be discussed throughout this chapter, but initially in section 3.1 in relation to the research by Sperber and Wilson (1986) on relevance theory.

There are models of communication which can contribute to an understanding of discourse processes in conflictive situations in a different way

from Gricean or speech-act approaches, and the whole area of argumentation theory, I would argue, offers fruitful research on the complex facets of interaction in institutionalised settings. Arguments can be thought of as communicative events within an interaction, and O'Keefe (1983) has investigated arguments as social interactions where speakers engage in defending points of view. He de-emphasises both the logical and rational elements associated with critical models of argument. The practice of reducing statements to syllogisms which can then be further studied is one which offers only trivial information about the speakers, their purposes in communicating and the interpretation of utterance meaning within the discourse. Similarly, the debates about rationality are ones which O'Keefe seeks to re-examine since these have mostly produced infinitely regressive discussions, nonproductive for the study of language use. Rationality is one concept that is riddled with problems as it leads to a discussion about evaluating values and justification and verification methods.

The interdependence between social interaction and the cognitive processes of speakers is another aspect of argumentation. 'Field' theory interprets argumentative verbal interaction within the communication practices of the speakers involved, their social perspective or 'orientation' (including professional and personal goals) and the cognitive processes associated with dissent. Various 'fields' -- psychological, social, and discursive -- contribute to an understanding of argumentation as an activity 'nested' within a network of other activities. Such a model has been developed by Willard (1982, 1983) who integrates much of Goffman's interactionalism in his account of argumentation.

Rather than concentrate on the the social grounds of knowledge necessary for argumentation, Jackson and Jacobs (1980, 1981) start from a different point

of orientation in discussing conversational arguments. They show how arguments are publicly conducted and more importantly how two or more individuals arrive at some sort of agreement about the outcome. They are not concerned with individual reasoning processes or message-based stimulus which control the outcome, and object to the reductionism of locating an 'argument' within a strictly psychological and cognitive realm. Examining conversational arguments, Jackson and Jacobs consider the rhetorical aspects of the situation. Unexpressed premisses, or enthymemes, need not be made explicit when the parties to the interaction do not disagree about the conclusion expressed.

While enthymemes can be defined in a variety of ways, they are more generally considered as a type of rhetorical proof. Section 3.4.1 examines how rhetoric and rhetorical concepts of argument may contribute to an understanding of courtroom questioning. Rhetoric and the discursive means available in the study of argument have been discussed at length by Perelman and Olbrechts-Tyteca (1969). Speakers adapt their arguments to appeal to a 'universal audience' and they discuss argumentative techniques associated with different verbal forms.

Austin and Searle have discussed arguing and the nature of verbs like *convince, argue, and persuade,* but much has been left vague about the exact status of, for example, 'arguing' as an illocutionary act. In an attempt to discuss arguments in a modified speech act theory, van Eemeren and Grootendorst (1982), provide guidelines for analysing arguments as complex illocutionary acts. Argumentation is purposive activity not simply to be treated as a product of a constellation of statements. They examine how these acts are performed when arguments are put forward, the conditions which these speech acts fulfil

and their perlocutionary effect on the listener's acceptance or rejection of an expressed opinion. Section 3.6 outlines the expanded speech-act model of argument put forward by van Eemeren and Grootendorst. Finally, the courtroom as a type of argumentative speech situation will be discussed as one which exhibits features common to the models of disagreement-oriented communication discussed and, at the same time, is oriented towards institutional aspects specific to the legal register.

3.1. Grice on Conversation and Conflict

Grice made a number of broad observations about how people use language in conversations. First of all, he states as his cooperative principle, 'Make your contribution such as is required, at the stage at which it occurs, by the accepted direction or purpose of the talk exchange in which you are engaged' (1975: 45). He gives four maxims governing the application of this principle to any conversational situation, these include: QUANTITY 1.) Make your contribution as informative as is required. and 2.) Do not make your contribution more informative than required; QUALITY 1.) Do not say that what you believe to be false, and 2.) Do not say that for which you lack evidence; RELATION Be relevant; and finally, the MANNER maxims which are 1.) Avoid Obscurity 2.) Avoid Ambiguity 3.) Be brief 4.) Be orderly. As Conversational maxims, these help to broadly explain what a speaker does by engaging in communication, and Grice elaborates on how communication works with the notions of 'conversational' and 'conventional' implicatures. The fundamental idea is that the communicator is trying to meet certain standards. Even when a speaker flouts one of these maxims, he can still be considered as trying to be cooperative.

For example, the quality maxim is affected by the speaker's desire to avoid

an untruth. But it may be worthwhile to see all the maxims, and in particular, the quality maxim in a slightly different light in disagreement-oriented encounters. In the courtroom witnesses may want to avoid an untruth but, at the same time, not give information which could implicate something negative about their character or previous testimony. Witnesses questioned may try to avoid telling an untruth in order that the jury interpret the information as favorable to their claim. In the following excerpt, the addressee recycles 'a substantial proportion' to read 'some': the witness attempts to prevent a negative implicature being established.

Q: Sir Robert, you would not disagree with me though, if I put to you at at least a substantial proportion of the methods of surveillance and telephone interceptions, information gathering generally, employed by the security service are methods which are used by police forces; would you agree with that?

A: Some of the work of the security service is like police work, yes.

According to Grice, flouting of the quality maxim occurs when speakers intentionally lie. Advocates, for example, might also be considered as flouting maxims when they introduce a statement of strong belief (i.e. with the aid of factives and sentence adverbs) when they have no supporting evidence for doing so other than the desire to obtain a confirmation which will strengthen their case. Violations of the quantity maxim arise in situations, like those above, where a speaker-witness wants to prevent adverse implicatures from arising with the use of quantifiers. Both the quality and quantity maxims are interrelated concerns which are affected by the purpose of the immediate exchange. If the witness knows that a question demands either a 'yes' or a 'no' neither of which allow him an opportunity to qualify the inferences thus generated, he may choose to ignore the question and continue with a previous portion of the discourse. The question itself, if answered either way, may also

have been implicative of an untruth which he opposes.

The problem with taking a maxim flouting point of view is basically the normative character of truth. Sperber and Wilson (1986) try to de-emphasise normative considerations, and propose that relevance is the most important maxim in conversations. Their account of communication takes as its starting point the Gricean maxim of 'relevance', a phenomenon which represents a continuum of presumptions the speaker makes. These presumptions are a pre-condition for speakers' understanding any given 'context'. Relevance is the single property worth processing, and Sperber and Wilson put forward an ostensive-inferential model of communication. Relevance is a relation between the speakers' assumptions and the context:

> It is not that first the context is determined and then relevance is assessed. On the contrary, people hope that the assumption being processed is relevant (or else they wouldn't bother to process it at all) and they try to justify that hope: a context which will maximise relevance. In verbal comprehension in particular, it is relevance which is treated as given, and context which is treated as variable.
>
> (p.156)

Verbal communication involves two types of processes: one based on coding and decoding, the other on ostension and inference. For Sperber and Wilson, the coded communication process is not autonomous and is subservient to the inferential process. An act of ostensive communication automatically communicates a presumption of relevance and they call attention to what are two layers of ostension (p. 50), 1) the information pointed out, and 2) information that information has been pointed out. Hearers process information by taking account of the context and work out the relevance of information to that context. Relevance is also a comparative concept where there is a weak to strong continuum of effects on context.

Sperber and Wilson argue that Grice's Co-operative Principle assumes a greater degree of cooperation than their model. Successful communication can be achieved without the extra requirement that speakers assume a 'common purpose or direction'. Certainly there are problems with the notion of cooperation. The Cooperative principle deals with the accepted purpose or direction of an exchange, and Grice assumes that in conversations, the participants' purposes generate a common set of expectations. But in argumentative discourse-situations such as cross-examination, it may well be the case that participants do not share the same purpose in an exchange. A cross-examiner may have a specific purpose in questioning a witness about evidence (e.g to show the witness's memory to be faulty, reveal inconsistencies in statements given to the police, all of which attack the credibility of the witness or defendant). The witness may well be aware that the cross-examiner's purpose conflicts with his own. There exists no 'accepted direction' in this competitive situation -- it remains to be established by either party. It may also be the case that the witness has no idea of the 'real' purpose of the cross-examination, so he engages in a hypothesis testing routine (akin here to the way second-language learners acquire English) where he continually gathers information as the discourse progresses, about the speaker and his point of view. This 'convergence' or 'accommodation' phenomenon, as described for second language learners is particularly important in argumentative contexts. A hearer may not be aware of any purpose the speaker has in addressing him, and may have to develop a strategy for discovering the purpose of the interaction. While speakers in the courtroom, either by fate or choice, have joined opposite sides, each has agreed only to participate, and in this sense, courtroom 'co-operation', like other institutional settings, makes participants work through a strategy of discovery to determine the purposes of

interaction. In a sense, Gricean maxims can be interpreted as directives which can be obeyed or violated. But their violation can be either 'real or apparent', and Seung (1982: 107) argues that the Gricean cooperative principle cannot be regarded as the universal pragmatic principle governing language-use:

> Grice's conversational maxims hold only on the condition that the sole purpose of conversation is restricted to the exchange of information. From this restriction logically follows his four maxims, his four different ways of claiming that every utterance in conversations ought to be appropriate for the exchange of information. If the exchange of information is the sole purpose of conversations, they should be conducted in an appropriate manner for that purpose. But many of our conversations are meant to fulfil purposes other than that of exchanging information. We often talk not to inform others, but to tease or amuse them, to provoke or appease them, to edify or mystify them, or even just to break the silence. Hence Grice's Cooperative Principle cannot be regarded as the universal pragmatic principle governing the use of language in conversations.

Seung's criticisms of Gricean maxims focus on the rich and multi-purpose character of conversational interactions: an argumentative aspect to discourse, for instance, can 'inform' and at that same time 'mystify' hearers when speakers are engaged in trying to influence their beliefs. I agree that Gricean maxims do not suffice in situations where speakers do not share the same purpose, and though there is an element of 'participation' with speakers 'saying' and 'implying', it may be better explained with reference to models of argumentation.

3.2. Arguments and Communicative Acts

O' Keefe (1977, 1982) differentiates two senses of the ordinary term "argument". He describes argument$_1$ as a 'kind of utterance or a sort of communicative act' while argument$_2$ is found in the general meaning of 'a particular kind of interaction'. In explaining the difference between the two senses of argument, argument$_1$ is related to 'arguing that X' while argument$_2$ is closely associated with 'arguing about X'. In the following sentences,

argument$_1$ refers to instances where a single claim is being voiced, but this only seems to happen with rather simple that-comp. clauses.

(1) John argued that Bill was innocent.
(2) John argued that Bill was probably innocent.
(3) John argued that Bill's innocence promoted the CND's cause.

(4) John argued about Bill being innocent.
(5) John argued about Bill's innocence.
(6) John argued about Bill's innocence and its effect on the CND campaign.

Sentences (1)-(3) may imply that a speaker has made a series of previous arguments$_1$, even though each sentence refers to a single, current event. Although he is not entirely satisfied that 'arguing that' always refers to a single event, O'Keefe seems to stick to this distinction, namely that 'arguing that' is closely related to the phenomena of argument$_1$. I will return to these examples in a moment, but there is one area of O'Keefe's analysis which differs from the speech act approaches which will be discussed shortly. He questions whether argument$_1$ is a speech act, even a speech act complex, and is generally ambivalent about the term 'speech act' and its application. He proposes that if arguing is the speech act then argument$_1$ may be what is conveyed by the speech act, but it works differently from the way that promising is a speech act and a promise is what is conveyed in that act. It would be unclear that 'arguing' as a speech act conveys only argument$_1$ and not argument$_2$, hence he is hesitant about naming these speech acts and in general refers to the argument as product or argument as interaction. In defining argument$_1$ as what is conveyed when a speaker makes an argument, O'Keefe holds that this distinction makes it easier to talk about arguments$_1$ in the abstract, since they can be talked about with respect to their various elements:

> I can describe the arguments$_1$ someone made apart from the utterances of the speaker in the act of making the argument$_1$: I can, that is, abstract the argument$_1$ from its particular communicative vehicle and describe it. Obviously the speaker's utterances are related to the argument$_1$ that is made; but in describing the argument$_1$ I am not describing the speaker's utterances per se but rather the import of those utterances. Given several acts of argument making, I can abstract the several arguments$_1$ and compare them apart from the acts of argument making in which they occurred.

O'Keefe distinguishes two phenomena in his designation of argument$_1$ and argument$_2$: on the one hand, he describes the solitary, communicative event where a speaker puts forward a point of view, something which contributes to the 'making of an argument', while on the other hand, argument$_2$ is the discourse context in which argument$_1$ takes place. O' Keefe does not further elaborate the differences between argument$_1$ and argument$_2$ other than to suggest that they are related to the differences between 'arguing that' and 'arguing about'. As the above quotation suggests, O'Keefe sees more productivity in studying the structural elements of arguments$_1$, along with considering the 'import of those utterances' on the ongoing discourse. The import of those utterances is developed as the discourse continues, and may not be permanent. The speaker makes a continual effort to update his assessment of his listener's intentions. With information constantly being introduced, the effects of previous discourse can be displaced. O'Keefe never develops exactly how one is to go about examining the import of utterances except to try and abstract the separate arguments. What O'Keefe has also touched on is the difference between sentence meaning, utterance meaning and speaker meaning. He sees arguments as utterance tokens, although the importance of such utterances have to be viewed as instances of speaker meaning. A semantic /pragmatic distinction clearly emerges in O' Keefe's research.

An aspect of argument$_1$ is the level of public involvement to which the speaker commits himself, and the contemporaneous aspect of the utterance, particularly in instances where reporting verbs are used in narrative accounts. To return to the examples of (4)*John argued about Bill's innocence* and (1) *John argued that Bill was innocent*, in both cases there is an implied audience which recognises John's attempts as arguments. (4) is ambiguous as to whether or not John believed that Bill was innocent and was thus engaged in promoting Bill's case, or whether John questioned the fact that Bill was innocent. In (4) there is also the suggestion that John's actions are relatively stretched out over time while in (1) this does not seem to hold. In sentences such as (1) - (6), O'Keefe sketches the differences of what could be called argumentative focus, i.e. the emphasis in each utterance is either localised or more widespread with the themes constantly shifting. The importance of O' Keefe's work is his concern for two aspects of arguing: the wider communicative contexts where speakers are involved in disagreements, and utterances which are complex speech events, contributing to the arguer's setting out his position relative to that of his audience.

3.3. Argument as Perspective Taking

That logical forms underlie disputes and debates is one ordinary language claim which stems from the philosophical tradition of *a priori* logic, a tradition which dissociates the social and linguistic context of the use of argument. Among others, Willard (1983) rejects the normative definition of argumentation as the study of the 'best' grounds for conviction based on the truth-conditions of propositions, and seeks to locate the criteria for reasonableness or well-formedness of an argument in 'fields', which surround an audience and the context-dependent nature of meaning. He states that argument is a form of social interaction, 'a kind of interaction in which two or more people maintain

what they construe to be incompatible positions . It is a "social relationship" built from a co-orientation in which actors mutually attribute argumentative intentions to each other (p. 21)'. Willard uses subscripts based on O'Keefe's notation for argument, but with slight alterations: argument$_1$ as utterance where each utterance is an attempt to lay out publicly the perspective of the speaker, and secondly argument$_2$ as interaction where two people engage in a reciprocal, perspective-taking process. Willard's thesis is that arguments, in both senses of the word, display non-linguistic aspects which are nontrivial aspects of meaning. Non-discursive features of arguments contribute to understanding the perspective-taking process.

Willard also challenges what he sees as the major problems associated with the 'relative' nature of social and psychological arrangements of interactions, and the predilection in other analyses for treating 'situation' as an object. He rejects what he calls the 'situationalist doctrine' where

> situations possess obdurate characteristics apart from the social and psychological perspectives of the actors "in" them; they are, as it were, canisters or pre-existing shapes into which actors fit themselves and their developing lines of action.
>
> [1983: 18]

His definition of situation is 'the cognitive act that endows utterances with meaning; humans define and interpret events rather than responding to them'. Situation is a rhetorical process 'in the sense that actors construct the referents of judgment as well as the interrelationships of the these events and valuations'. Situations, and in particular argument situations, according to Willard, are amalgams of discursive and non-discursive symbols which inhere in different interpretive schemes. He emphasises that argumentation is based on the notion of perspective-taking. Perspective-taking is based on the

concept of 'fields' which are 'social arrangements - balkanised variations on Mead's "generalized other". They are broad and variously loose frameworks used by their actors to guide situated activities.'

A number of minimum conditions exist for the paradigm case of argument interaction:

1. its enabling condition is dissensus, the arguers belief that their positions are incompatible
2. it is a co-orientation based upon mutual attributions of argumentative intent, "we are having an argument"
3. it is a social comparison process regardless of the motives of the arguers, that is, an argument need not be a disinterested dialogue in order to serve epistemic functions
4. its purposes and meaning cannot for descriptive purposes be abstracted from the perspectives of the arguers
5. definitions of situation inform the procedures and outcome of the interaction and endow utterances with meaning.

[p. 33]

Willard has suggested that there is an interdependency between the discursive and non-discursive features of language, that perspective-taking is not to be considered a unidimensional concept (hence the discussion of fields) and that argumentation as a form of communication is not adequately served by the use of syllogistic and propositional logics as models of cognitive processes. His minimum conditions for the case of argument interaction are by no means unproblematic (e.g. the third condition assumes a conscious decision is made by a speaker to 'engage' in an argument), but, nevertheless, the conceptual framework Willard attempts to outline does link up with pragmatics as a theory of language use. Saying that arguments are context-embedded, ambiguous and enthymemic (implicit) is a rather uninteresting statement about communication, and Willard stresses that much of what is left implicit is eventually revealed

and more importantly, progressively builds a picture of the speaker's perspective on a topic. Arguers, he says, 'lay out publicly more total information about their assumptions and thinking processes than other interactants (p.20).' To illustrate the extent to which arguments call for a perspective-taking analysis, he cites the following discussion where two students are arguing about how Nazi war criminals should be treated.

(7) W: I still think the guards themselves, guys who hold rifles on Jews as they go into the gas chambers, need killing.

(8) C: Well, you're just a vindictive bastard; it does no good; you just impose religion. . . an eye for an eye, on the legal system.

(9) W: Religion has nothing to do with it.

(10) C: An eye for an eye; except how do you do an eye for an eye when a guy kills thousands of people: you'll probably want to torture them for the number of days of the people they killed.

(11) W:'Eye for an Eye' doesn't mean religion; but I hate to sound like X, but there's a whole generation of young people growing up who think evil isn't punished in this world; 'eye for an eye' corrects the failure of the social system to protect citizens who depended on it for protection.

(12) C: So 'eye for an eye' is like a social contract

(13) W:Yes.

(14) C: For the social contract, you exact revenge on millions of people?

[p.44]

This example illustrates 'perspective rooted statements' which progressively reveal the assumptions of the both C and W. Claims are being made which bear upon a single person's view and this is a characteristic referred to above as paradigmatic of ordinary discourse. There is perhaps more to this example than Willard suggests. Although C's argument is an *ad hominem* one, C's remark *You're just a vindictive bastard* is not a dismissal of W's opinion; on the contrary,

it acts as an invitation (if not a fully fledged command) for W to set out his arguments clearly. It is an opportunity for W to begin clarifying his position, and although (8) might generally be considered as an insult, it does not have the effect of stopping the conversation. *Ad hominem* arguments have a pragmatic significance here, namely, instead of being considered inappropriate and fallacious arguments (in the traditional sense), *ad hominem* arguments are overt statements which signal the onset of a disagreement. In this example, W takes C's remark as a challenge to defend the thesis that *the guards need killing*, and immediately seizes on C's reference to religious retribution and judicial punishment. W tries to explain that he does not want to mix the two notions and he goes on to redefine the cliche *an eye for an eye* in social terms – *corrects the failure of the social system to protect citizens who depended on it for protection*. C then restates W's argument in terms of a social contract which gains acceptance from W. Finally, C draws a conclusion from the notion of breaking a social contract and reverts to placing this within the religious viewpoint – *you exact revenge on millions of people*. This example illustrates a number of linguistic devices that C uses in an attempt to persuade W to agree to his rejection of the thesis that *guards need killing*. We see that not only is W's definition recycled, but C draws two conclusions from what W has said (prefaced by *so* and *for*).

Arguments are social interpretive accomplishments where persuasive messages are specific claims made on the attention and beliefs of the listener. Argumentation should fit, however, with the notions of communication and perspectivity, and, as far as guarantors of knowledge go, rationality begs a redefinition in line with Willard's view of 'perspective taking'. He points out that 'rationality' in arguments has often been thought of as an 'obdurate and distinctively human characteristic as well as theoretical construct capable of

virtually limitless alternative interpretations'. Any view of rationality, according to Willard, has a number of variants which are difficult to separate,

> scientific rationality, utilitarianism, hedonism, reason-giving, rule-following and acceptance on faith and attempts to generalise particular views to general status run into walls of counterexamples.
>
> [p. 96]

He hesitates about equating rationality unequivocably with 'reason-giving, giving good reasons, having an ordered set of preferences and being consistent'. Instead, a reformed view of rationality, in line with the notions of reflexiveness and role-taking might be more applicable. He sets out the following as ways of looking at the place rationality should occupy within argumentation;

- Rationality is a rhetorical construct, and this is the surest thing to be said about it;
- it is a sociological datum not to warrant something field actors believe in and try to live up to
- justificationist views of rationality are untenable, the *tu quoque* is undefeated, infinite regress has not been avoided
- a successful universal of rationality will be substantively trivial, so abstract as to say nothing about particulars, consistent with this, a reformed view of presumption is a successful universal of rationality
- the grand ontological disputes are irrelevant to argumentation; critics should study the conventions and orthodoxies of rationality in fields and bracket the broader disputes.
- perspective taking, which is broadly construed to encompass the reformed sense of presumption, is a precise and usable view of rationality which squares with the facts.

[p.87]

Willard, unlike speech act-theorists, does not assume that argumentation is conducted between 'rational' (in an ideal sense) discussants, and he finds it more productive to discuss the assumptions which surround the way speakers

organize their activities, suggesting that speakers' operate in arguments according to principles of appropriateness which they develop as they participate in arguing.

3.4. Conversational Arguments

Jackson and Jacobs (1980, 1982) argue that the structure of conversational arguments results from the occurrence of 'disagreement in a rule system built to prefer agreement'. Jackson and Jacobs propose that the class of events which natural language users would recognise as arguments can be delimited by two conditions - one functional and the other structural. Functional conditions relate to the propositional and performative levels of the interaction where, for example, questions of truth and consistency affect the propositional content. The performative aspect of arguments has to do with the speaker's knowledge, intention, sincerity, and character which help to determine the felicity of the act's performance. Structural conditions are determined within a conversational analysis framework and Jackson and Jacobs attempt to show how arguments become recognised as such by the hearers through the expansion or omission of a part of an 'adjacency pair' (identifiable two-turn units in conversations).

Working with the notion of adjacency pairs, they show how conversational arguments are generally incomplete when compared with critical models of arguments. Speakers implicitly draw conclusions, which is a more typical occurrence than speakers always explicitly stating the backing for their conclusions. Moreover, some conversational arguments are more incomplete than others, though this may not, in all instances, prove to be a problem for the hearer. Hearers generally decide when and in what way to disagree with what has been left implicit, and when the hearer engages in disagreement, it is

with the aim of working towards understanding the support that the speaker has not made available for his assertion. Thus,

> Conversationalists usually produce arguments which are minimally sufficient to gain agreement. In conversation, how much support will be given for proposals and assertions is not determined in advance (since, in principle, which turns will get argument can't be specified in advance); instead, recipients and authors of arguable turns jointly work out the amount and kind of support required to get agreement . . . Thus successful arguments in conversation depend upon negotiating the required amount of support or justification.
>
> [1980: 262]

In instances where disagreement occurs, it may well be triggered by what the speaker has left implicit. The unexpressed premisses of an argument have an enormous bearing on the recognition and 'uptake' by the hearer, and Jackson and Jacobs explain this with reference to the pragmatic basis of the 'enthymeme' and the Gricean maxim of Quantity. But enthymeme has a number of meanings, and before discussing conversational arguments further, it is worthwhile to take a closer look at what enthymemes are.

3.4.1. Enthymemes as Rhetorical Proofs

The enthymeme has been one of the 'most misunderstood, denigrated or ignored terms in the study of rhetorical proofs', according to Raymond (1984: 142), who explains that there is the widespread notion that an enthymeme is a syllogism with one of the three members taken for granted and suppressed. There are two main opposing debates in the field of argument about enthymemes: on the one hand, there is the view that an enthymeme is a formally deficient syllogism (i.e. with a suppressed premise), and on the other hand, the view that ethymemes are materially deficient syllogisms (i.e. based on debatable premises). In contrast to these views, Bitzer (1959) argues that enthymemes are not limited to instances where premises are implied or

debatable, but rather that their essence is to draw on the audience's presuppositions, so that whether or not they produce certitude or mere probability is, for the most part, irrelevant. Raymond further draws attention to the way in which

> . . . the enthymeme emerges, not as a regrettable lapse into nonlogic, but as a serious attempt by Aristotle to deal with the sorts of issues (those not resolvable by ratiocination or by empirical data) and the kind of audiences (those to whom it would be inappropriate to represent intricate chains of reasoning) that rhetoricians face. The enthymeme is like a syllogism with some differences: whereas a syllogism is a formal pattern of thought with expressed premises, the major premise in an enthymeme may be implied rather than expressed because the audience is presumed to know it; and whereas the major premise in a syllogism must be an established truth, the major premise in an enthymeme may be unproved (or even unprovable) if the audience believes in it.

Enthymemes are assumptions used in public discourse which may be left unstated and accepted by the speaker and audience without being proven. Persuasion occurs when the audience is willing to accept the assumptions, but this does not mean that the assumptions made by a speaker can be recycled into a logical type of proof (i.e. that by making the assumptions explicit, they can be syllogistically defined),

> Whether the assumption is debatable (for example, the assumption that free enterprise is better than government controls) or not (for example, that radiation can cause genetic damage) makes no difference, provided that the audience at hand is willing to grant it. Whether the assumption is implicit or explicit makes no difference: an enthymeme (for example, since the land was taken by force, it must be returned to the natives) would not become a syllogism if its major premise (taking land by force is illegal or unethical) were stated, because a syllogism, as Aristotle uses the term, proceeds from proven premises, not from assumptions.
>
> [p. 146]

The fact that assumptions are used in rhetorical proofs does not, however,

mean that the reasoning involved in such events is faulty. Raymond's position on this is quite clear; answers to questions raised in rhetorical discourse are 'by definition not knowable in the scientific sense; rhetoric has no business investigating facts that are discoverable by science. (p. 149)' To evaluate an argument critically, the assumptions, both implicit and explicit, need to be identified and specified in relation both to the audience, and to generally held beliefs which constitute 'common knowledge'. Consider the following quotation which illustrates a number of enthymemes. These produce a rather unpalatable description of the job of pragmatics but the example is not to be taken as a widely accepted view of pragmatics in linguistics:

> Since pragmatics is viewed as the study of complete discourse, it does not include semantics as such or syntactics as such. These two constitute linguistics; and linguistic analysis is not discourse analysis, though, of course, it can contribute to the understanding of discourse. Consequently, syntactics and semantics are beyond the borders of discourse study.
>
> [Kinneavy 1971: 23]

The author makes a number of assumptions which locate his perspective 'field' about pragmatics. He begins with *since*, indicating that a conclusion or concession is warranted, namely that *Pragmatics does not include semantics and syntactics as such*. The definition of pragmatics as not including semantics or syntactics because these are linguistic domains is an example of an enthymeme. It indicates a view of pragmatics as non-linguistic study -- a debatable assumption. *Complete discourse* is vague, and could refer both to the notions of *general language-use* and *discourse as text*. Further, the distinction between 'linguistic' and 'discourse' analysis which, perhaps is not very controversial, does not necessarily exclude semantics and syntactics from discourse studies. Although linguistic analysis is not discourse analysis,

discourse analysis is a type of linguistic analysis. This passage was taken from an author writing about theories of discourse from a perspective of literary criticism, which contains implicit and debatable background assumptions about pragmatics.

The assumptions which an audience is willing to accept (or ignore until they need to be examined) are the starting point for Jackson and Jacobs' model of enthymemes in conversational argument. Enthymemes are 'arguments in which the support is matched to the questions and objections of the recipient' (p.262). Their view of argument is that unstated premises do not necessarily have to be 'supplied' by the audience when the audience generally accepts the claim being made. Enthymemes are an argumentative way of adhering to the Gricean maxim of Quantity. The Quantity maxim states that the speaker should be as informative as necessary for the purpose of conversation. In conversational arguments, speakers work out how much is necessary for hearers to either come to understand their positions, or be persuaded of the truthfulness of their claims. More importantly, however, saying too much in arguments is much more serious than saying too little:

> Because recipients of turns always have the opportunity to ask for clarification, repetition and elaboration in the next turn, an underinformative turn can always be cycled through the repair organisation before getting a response. . . . Giving too much support for an assertion or proposal is not merely pointless, but detrimental. Giving more support than is necessary increases the number of places where disagreement can occur - and does so without improving prospects for agreement.
>
> [p. 262]

Jackson and Jacobs' main contribution to the understanding of conversational arguments is that the apparent 'under-informativeness of an

utterance' (i.e. where information is left unexpressed), may work in a way to help the speaker and hearer reach agreement. The 'informativeness' of the utterance is interpreted against the background either of shared assumptions about what is being talked about, or assumptions that the speaker believes the hearer will not find controversial. The notion that saying a little can be as informative as saying a lot, is one which can help to explain a number of issues about courtroom questioning, and Jackson and Jacobs' conclusions point to other considerations about language use. First, the notion of underinformativeness concerns what is not shared, or assumed to be shared as common knowledge between speakers who engage in arguments. Underinformativeness in the courtroom, however, works slightly differently from in conversation.

In conversation, as discussed above, speakers may well feel that there is little need to spell out their assumptions and that the uninformativeness of their utterance acts as a way of forestalling any future onset or spread of conflict; in short, it appears as an advantageous communicative device. In courtroom questioning, the witness or defendant may not share the same assumptions, and cannot be assured that underinformativeness lessens the number of avenues for future disagreement. Indeed, it can be argued that both witness and advocate have precious little in common to count as 'shared assumptions'. This certainly affects what witnesses or defendants infer about communicative intentions, and underinformativeness is something which may well work against the witness's communicative strategy. Further, the underinformativeness of utterances is not simply a matter of syntax, since length of response cannot be the sole indicator of the information being conveyed. If speakers endanger their argumentative position by 'saying too much', it may be the case that this 'saying too much' is not a matter of length

of response. Underinformativeness of utterances cannot simply be equated with length or complexity of responses. This puts a different light on what constitutes underinformativeness in the courtroom; it works differently from conversational arguments in as much as the arguments being put forward are assumed to be based on the same set of shared assumptions, but in the courtroom there may not be the same amount of cooperation and underinformativeness can become the focal point for disagreement. The ways in which witnesses can be said to 'say too much' has to do more with what was previously introduced in the discourse than the immediate question-answer sequence; hence even monosyllablic responses can be over-informative utterances.

Consider the following example where the witness says too much by the addition of *in this case*. In the recent Australian case brought by the British government against a former MI5 officer, the representative for the government was being cross-examined about MI5's activities with regard to telephone interceptions. Notice the number of comment clauses which serve to underline a perception of the ways telephone interceptions were conducted.

Q: So consistent with these principles laid down in the statute, what you say, is it your opinion that it is permissible to intercept the telephone conversations of trade unionists for the purpose of passing that information, surreptitiously obtained, to the employers, their opponents in an industrial dispute?

A: I don't accept that that was the purpose of the interception *in this case*.

Q: What was the purpose of the interception, Sir Robert?

A: According to Lord Bridge, it was undertaken in accordance with the rules and procedures and I know no more than that.

[Wright: 11]

Sir Robert's response of *I don't accept that that was the purpose of the interception*

in this case does say too much, as the final *in this case* may suggest that while that was not the purpose of the interception in this specified instance, nevertheless, in other cases, telephone interceptions do occur *for the purpose of passing information about trade unionists to their employers.* This example is also interesting in that the question posed *Is it permissible to intercept telephone conversations ? . . .* is a general question about interceptions. The determiner *the* in *for the purpose of passing on that information* is what Sir Robert decides to respond to, and this comment clause, although not used as a specific referent, becomes specified when he answers, *that was not the case.* We see the difference here in pronominal usages which move, with one speaker, from non-specific reference, to a specific reference about the purpose of interceptions (in a discourse deictic way).

The problem with this notion that saying too little is better than saying too much is that the thematic quality of enthymemes is assumed to be constant over time. Rather than accept this idealistic picture of arguments where the unexpressed premisses are regarded as uncontroversial by the hearer, we can point to instances where such premisses are not accepted, and open disagreement can occur. In courtroom cross-examination, enthymemes may not always remain uncontroversial and thus accepted by the hearer. They can become, as the discourse progresses, the focal point for disagreement. The witness may agree with something which appears like a fairly benign statement about some fact (that is, he does not object at that point to the assumptions made by the speaker), but when he realises the salience such assumptions suggest to another immediate piece of information, the unexpressed assumptions in previous utterances become highlighted and the focus of further disagreement. Chapter Four presents questioning in this light and examines the ways in which 'leading questions' can be thought of as those

which may have a number of unexpressed, controversial premisses. Before turning to specific instances in cross-examination where information is recycled and highlighted (Chapter Four), some discussion of the rhetorical devices available to arguers will help to establish the pragmatic context of argument in courtroom questioning.

3.5. Argument and Techniques of Persuasion

There have been numerous treatises on argumentation but the most influential in contemporary argument studies is Perelman and Tyteca-Olbrechts' *The New Rhetoric: A Treatise on Argumentation*. They resurrect classical rhetoric, with a few additions, and comprehensively explain argumentation and the devices which arguers use in trying to persuade an audience of the validity of a claim. Arguers do have some general knowledge of arguments -- an important aspect of argumentation,

> This brings us to a phenomenon of the utmost importance: the fact is that generalized - or at least intuitive - knowledge of the techniques of argument, of the conditions for their application, and of their results underlies many of the mechanics of argument; the hearer is not considered as an ignoramus, but rather as a well-informed person.
>
> [p. 109]

The notion that the hearer is not a *tabula rasa* is one which appeals to pragmatic analysis of courtroom questioning. Although Perelman and Olbrechts-Tyteca give a central position in argumentation to the notion of audience, it is a notion which, at times, is all too sweeping when they discuss how all arguments are directed at a 'universal audience'

> However, everything in argumentation that is deemed to relate to the real is characterised by a claim to validity vis-a-vis the universal audience.

[p. 66]

The notion of 'universal audience' is problematic (see Goodrich 1987, Chapter 5), but the descriptions of argumentative techniques provided by Perelman and Olbrechts-Tyteca are useful for a pragmatic analysis of questioning. Discernible structures contribute to an understanding of persuasion, and they consider an array of structures which have argumentative uses. They explain,

> In order that there may be a figure, the presence of two characteristics would seem essential: a discernable structure, independent of the content, in other words, a form. . . . and a use that is different from the normal manner of expression and consequently, attracts attention.

[p. 168]

A figure is argumentative if 'it brings about a change of perspective, and its use seems normal in relation to this new situation'. Some of argumentative techniques include:

- - Periphrasis - the replacement of a term with phrases which presuppose knowledge of the existence of the term, e.g. *the three goddesses who, according to myth, weave the web of our existence*, refers to "the Fates". Metonymy and synecdoche are common variants of this figure.

- -Prolepsis - or anticipation, can be a figure relating choice when its aim is to hint that there are grounds for substituting one qualification for another that might have raised objections; e.g. *Citizens, I say, if I call them by that name.* This is a very interesting figure since, as we shall see in Chapter Six, information can be introduced that hints at the objections which might have been raised by the witness had it been introduced in any other way.

- - Repetition - can accentuate the breaking up of a complex event into separate episodes which promotes the impression of presence. It can be used for amplification and qualification and in Chapter Six, repetition is viewed as means of argumentative progression in questioning.

- - Synonymy - repetition of a single idea by means of different words can convey progressive correction. In cross-examination, 'recycling' of a witness's testimony occurs in questioning when pejorative or ameliorative terms are substituted in an attempt to present a 'correct' version of events.

There are several more figures outlined by Perelman and Tyteca including oratory definition, allusion, quotation, indirect speech etc. but amplification and repetition are two which seem readily identifiable in courtroom discourse, typically during cross-examination, and Chapter Four illustrates how argumentative patterns serve to induce the witness to agree to arguments put forward by the advocate. In addition to classifying argumentative structures, Perelman and Tyteca also present a catalogue of informal fallacies. Working in a slightly different vein, Martinich (1984: 96) has also investigated informal fallacies and their place in a communication model. He suggests suggests that Grice's conversational maxims can provide a rough taxonomy of informal argument fallacies. Drawing on the notion of rhetorical argument structures, Martinich pairs fallacies with different maxims. This is a novel way to show the relationship of traditional argumentative structures to conversational arguments, and Martinich lists under the quality maxim, for example, the fallacies of hasty generalization, false cause, composition, division, ad ignorantium, ad populum, and ad verecundiam (appeals to authority). For the quantity maxim, he cites suppressed evidence and complex questions as occasions where the speakers' contributions may be more than necessary. The maxim of relation subsumes ad hominem, tu quoque and ad ignoratio arguments. Finally, the manner relation may explain the structural aspects of amphiboly, and equivocation. Consider how the following cross-examination illustrates several informal fallacies which affect the acceptance of the witness's position.

Q: I put it to you that over the last fifteen years, 6129 telephone interception warrants have been issued in the United Kingdom?

A: I don't have the figures before me. You may well be right.

Q: Knowing that you had to undertake the task of representing, if I may put it that way, your government in these proceedings, you

would have ascertained the extent of Lord Bridge's investigations, wouldn't you?

A: I know he reported to the Home Secretary.

Q: Were you satisfied that it was a full and thorough investigation?

A: I understand that it was.

Q: The investigation was carried out over 6 days between 28 February and 6 March 1985, wasn't it?

A: I don't recall the dates.

Q: On two of those days Lord Bridge sat in the House of Lords, did he not?

A: He may well have done.

Q: So he did four days work on these over 6,000 telephone interception warrants and concluded that nothing wrong had occurred?

A: I don't believe that he investigated 6,129 warrants. I doubt --

Q: How many did he investigate?

A: I am afraid I don't know what he investigated.

Q: The public doesn't know, does it?

A: The public knows what is in Lord Bridge's report.

Q: They know the conclusion, they do not know the reasoning, do they?

A: They know what was in Lord Bridge's letter to the Prime Minister.

[Wright: 11]

Throughout this cross-examination, the questioner works toward establishing the argument that *Lord Bridge's Report was not full and thorough* . He argues this by amplification and division (i.e. 6,129 warrants investigated in four days). The witness also uses some interesting arguments including an appeal to authority (the Home Secretary, the Prime Minister). There is also an example of prolepsis when the questioner asks *Knowing that you had to undertake the task, if I may put it that way of representing your government. . . .* Here the

cross-examiner hints that it is questionable whether or not the witness can really be called the 'representative' of the Government.

Substitution occurs in the examination of witnesses but, in cross-examination, synonomy can be related to the legal issues of the case. Consider the next example which indicates a difference in the amount of verbal resistance offered by a rape victim using *shout* and *scream*. The cross-examiner's questions are aimed at showing the victim's resistance was minimal. He does this by opposing the two lexical items *shout* and *scream*. Chambers and Millar (1986: 99)

Defence: Did you not try to scream or shout?

Complainer: I did shout.

Defence: At the top of your voice?

Complainer: Yes.

Defence: What were you shouting?

Complainer: Somebody to help me.

Defence: Tell us the words you shouted.

Complainer: I was shouting "Will somebody please help me".

Defence: Are these the words you shouted "Somebody please help me"?

Complainer: Yes.

Defence: And did you utter screams as well?

Complainer: I just kept shouting that.

Defence: You didn't scream?

Complainer: No, I just kept shouting all the time.

Defence: So there were no screams at that stage. Is that right?

Complainer: Yes.

In setting up the opposition between *shout* and *scream*, the cross-examiner

wishes to capitalize on the vagueness of *shout* as a verb which could be reflective of the complainer's anger rather than fear. The question *Did you utter screams as well?*, indicates that rather than seeing *shouting* as a reflex to a terrifying situation, only *screams* will do.

3.6. Argument and Speech Act Theory

Speech act theorists, according to van Eemeren and Grottendorst (1982), have paid little attention to perlocutionary acts. Austin (1962) distinguished three acts in his development of speech act theory: a locutionary act is the act of saying or the production of a meaningful utterance; illocutionary acts are acts performed in saying something, such as asserting or issuing commands; and finally, perlocutionary acts are acts whereby an act is performed by means of saying something, for example, persuading someone to do something. Austin made the further distinction between illocutionary force and perlocutionary effect. The illocutionary force of an utterance is understood as its status as a promise, threat, statement, etc. The perlocutionary effect is the effect an act has on the beliefs, attitudes or behaviour of the addressee, and as a possible consequence, the state-of-affairs within the control of the addressee. Speech act theory has left ill-defined the relationship between perlocutionary acts, and the role hearers play in the making such acts effective. The hearer is often seen to play a passive role, which is an unrepresentative way of considering listeners. Van Eemeren and Grottendorst discuss how the divorce of the (rational) listener from the perlocutionary act is a major disadvantage of traditional speech act theory:

> This conflicts with what often actually happens (or ought to happen) with perlocutions in practice and often leads to a view of conversations in which a conversation is reduced to flow of one-way traffic. In most conversations between language users - certainly, in our opinion, in discussions designed to resolve disputes - the listener is expected to decide on rational grounds whether or not he should allow

> the perlocutionary effect desired by the speaker to be brought about, i.e. whether or not he regards the performance or non-performance of the act and so on, as acceptable.
>
> [p. 28]

Argumentation is an attempt by a speaker at convincing the hearer of the acceptability or unacceptability of an expressed opinion and convincing is a perlocutionary act. There are, however, some problems in identifying the relationship between arguments and illocutionary acts. First, the relationship between sentences and illocutionary acts is not straightforward -- arguing can consist of more than one sentence. A number of statements can make up an argument statement, as most arguments will at least have the backing and warrant. Secondly, utterances in argumentation seem to have two simultaneous illocutionary forces. Double illocutionary instances are typically interpreted as a correpondence between the illocutionary act and sentence where the indirect speech act's 'primary' force is determined by convention or rules of politeness, and where the 'secondary' force is determined by literal meaning. But argumentation relies on the functions of both illocutionary forces which occur together and both contribute to the advancement of an argument. Advancing a constellation of statements can only be regarded as a performance of the speech-act argumentation if such a constellation stands in relation to an utterance which identifies an opposing opinion. To investigate the relationship of the illocutionary act *arguing* and the perlocutionary effect *convincing*, they suggest that amendments be made to the notion of illocutionary act and uptake, as well as perlocutionary act and uptake (i.e. a perlocutionary act is 'happy' if another desired affect on the listener is brought about).

> For the perlocutionary act to be successful, the illocutionary act complex argumentation must not only be understood by the listener

> (illocutionary effect), it must also have the consequence that the listener accepts (in the case of pro-argumentation or contra-argumentation) the expressed opinion to which the illocution refers.

[p. 66]

Complex illocutionary acts can combine different illocutionary acts such as assertives and commissives to advance the speaker's argument. Perhaps the most interesting aspect of their research is the notion of 'dual illocutionary force' and the ways in which such forces contribute to the ultimate acceptance or rejection by the listener of the speaker's argument. Less satisfactory is the way in which van Eemeran and Grootendorst explain unexpressed premisses. They adhere to Gricean conversational maxims, and in making an argument, state that a speaker can assume what the listener is presumed to know because the listener can supply it without much difficulty and that the listener is aware the speaker is doing this. Elements which are implicit are 'taken for granted' or referred to as 'common knowledge'. The explicitization of an unexpressed premiss is treated as an activity on the part of the listener that is 'directed towards remedying an apparent violation of a maxim in the speaker's argumentation by augmenting the argumentation in such a way that it conforms to the co-operative principle.' This presumes that the listener wishes to observe the co-operative principle -- something which may not be the case in courtroom questioning. The approach outlined by van Eemeren and Grootendorst, although a step forward in explaining perlocutionary acts, relies heavily on the notion of co-operation and rational discussants who engage in an unconstrained exchange of ideas.

3.7. Argument in Witness Examination

Courtroom communication has much in common with other discourse situations where speakers are involved in presenting arguments to influence the beliefs of an audience; but it nonetheless differs inasmuch as the institutionalised aspects of the law intervene in this process. Thus far, I have outlined a number of approaches to argument which can contribute to understanding courtroom communication as an argumentative speech situation: argument as perspective taking, argument as an illocutionary act complex, argument as dialectal features appealing to various audiences. These different approaches have one thing in common -- they attempt to explain,

> cases which present problems and complications in basic communications situations -- such cases include indirect speech acts, utterances whose forces are expressed obliquely, illocutionary acts in which there is no possibility of an explicit performative (such as allude, hint, snub, scoff etc.)
>
> [de Sousa Filho 1987: 103]

These certainly represent problematic areas even within pragmatics as

> . . . in both indirect speech acts and conversational implicatures the function of the utterance goes beyond its apparent meaning and force, and therefore we have to appeal to other elements (e.g. steps omitted because obvious apparent violations of pragmatic maxims generating implicatures, etc.) in order to determine the real force of the act performed and its implications in that particular speech situation.
>
> [de Sousa Filho 1987: 123]

One of the 'other elements' de Sousa Filho refers to is the institutional nature of action-guiding language-use. He investigates strategies of language-use and suggests that every 'institutional' speech act carries an ideological aspect where a speakers is 'committed to purposes and objectives, and therefore to values and interests, set by the institutions and not open to his choice or

sometimes complete understanding'. His point of orientation for discussing the institutional character of utterances is an 'illocutionary act', and certain ideological facets contribute to the determination of an utterance's force. An example of the institutional objectives affecting the interpretation of discourse was given previously with the cross-examination of a complainer in a rape case. The (denotative) meaning of *shout* and *scream* were affected by legal considerations. In that instance, *scream* pointed to information about the amount of verbal resistance offered by the complainer, evidence which was part of the advocate's attempt to argue that the act committed was not 'rape'. General legal considerations guide courtroom communication by way of rules specifying what constitutes evidence and what types of information should be excluded.

Evidence can either be admissible or inadmissible, and Eggleston (1983: 83) explains that 'all that is necessary to qualify evidence for admission is that it should increase or diminish the probability of the existence of a fact in issue'. Although the 'facts in issue' are not always straightforward, information which is generally admissible includes relevant evidence:

> The law of evidence, therefore, apart from the first rule of admissibility of relevant evidence, consists of two sets of rules: those that exclude logically probative evidence, and those that allow evidence which is not in itself logically probative to be given. To these rules of exclusion and inclusion there are exceptions of which account has to be taken. . .
>
> [Eggleston: 59]

Exclusions to the rules govern, for example, information such as hearsay, information about previous character of the accused, similar facts. Information about the defendant's character such as police records, or information about

the conduct of the defendant on other occasions are normally excluded. Although witnesses may not be introduced to provide evidence about the character of a defendant, the defendant may himself be questioned about his behavior on past occasions if it renders it more than likely that on this particular occasion he is not telling the truth. Hearsay is one of the more interesting exclusions. Although Eggleston does not include opinions as a source of hearsay, Cross (1981: 236) does. Witnesses are

> generally not allowed to inform the court of the inferences they draw from the facts perceived by them but must confine their statements to an accounting of the facts.

To say that the witness is not allowed to state opinions nonetheless means, for example, that the use of by a witness of a factive verb in giving testimony may be accepted. However, should the witness try to appear modest in his estimations of the facts and use various hedging devices, his testimony may well be dismissed. The hearsay rule though has exceptions and if it appears that the evidence would bear on the transaction or incident (res gestae) it can be admitted. This is a grey area of evidence and the example below illustrates the hearsay rule and the debate about whether the information sought was an 'opinion' or 'common knowledge' as well as whether it related to the claims made by the plaintiff.

In the courtroom context, evidence which is relevant is contingent on admissibility rules. This distinction is not one typically made in other linguistic contexts. Whatever a speaker says may indeed not be conversationally relevant, but it is accepted as either an irrelevant utterance, or an utterance which serves as a means to do something other than what the speaker expects (i.e. change the topic, in which case the whole implicature system is set into motion). In the courtroom, however, a speaker's contribution may be curtailed if

he includes relevant information which could precipitate a biased interpretation. The legal notion of relevance (information which is logically probative) is one which contrasts with, for example, with Sperber and Wilson's (1986) version of relevance as broadly characterised by presumptions the speaker can make.

In the following example, the cross-examiner asks a question which is contested as being irrelevant. The question is one which the defence argues is relevant.

Q: We are talking about Pincher being used on two occasions in 1956 by MI5 to plant sources in the press on an unattributable basis, at least unattributable to MI5. Sir Robert, given your experience of security matters and your apparent awareness of the antics of Chapman Pincher, *do you have any reason to disbelieve what Mr. Chapman has said in his book*?

Mr. Simos:
I object. That can't possibly be relevant to any question in issue.

Mr. Turnbull:
Do you know, from your own knowledge, whether Mr. Pinchers two statements therein are true?

Mr. Simos:
I object to that. It may well be a confidential matter, I don't know. I dare say the witness can speak for himself, but I object.

Mr. Turnbull:
The witness can speak for himself.

Q: Sir Robert, let me ask you this, and I will break it up. If you want to preserve confidentiality, just answer this yes or no. You do not have to, but I am just trying to help you. Do you *know from your own knowledge whether Mr. Pincher's statements that I have just read to you concerning his work on behalf of MI5 in 1956 are true*?

Mr. Simos:
I object to that.

His Honour:
What is the objection?

Mr Simos:
Because one knows the answer will verify the truth.

The objection initially raised was that the question about the witness's beliefs did not bear on a main issue of the case, namely that a breach of confidentiality took place. The defence, however, tried to argue that these questions were relevant since, if they could show that the government did not have a consistent policy of confidentiality, no breach could be said to have taken place. It is interesting that the cross-examiner tries to reformulate the question several times with little success. The main issue here is not getting the witness to attest to something as personal knowledge but rather establishing evidence about the government's previous record on information distribution. The cross-examiner attempts to introduce such evidence by reformulating his questions. He rephrases the first question and it is interesting that he substitutes a strong factive verb *Do you have any reason to disbelieve. . .* becomes *Do you know . . .* which refers to the propositions 1) Pincher indeed worked for MI5, and 2) He worked for MI5 in 1956. The witness is asked whether or not he has knowledge about the truthfulness of Pincher's statements. He is not asked about whether he agrees with the THAT-Complement clause which begins with *concerning his work on behalf of . ...* The use of factives in questioning *Do you know, were you aware of, etc* are extremely prominent and no matter which way the witness answers, he verifies the information provided in the complement clause. Mr. Simos quite rightly points out that if the witness answers the question, he will verify that Pincher worked for, or conducted work on behalf of MI5. This exchange continued with the judge suggesting an amendment to the question.

His Honour:
> Perhaps one can amend the question by adding the words 'or not'.

Mr. Simos:
> I am not sure that that covers it.

His Honour:
The answer that one knows whether it is true or not does not matter, but the next question, I appreciate could well be very sensitive.

Mr. Simos:
I maintain the objection.

His Honour:
At the moment I can't say.

Mr. Simos quite rightly maintains the objection, since the addition of the words 'or not' does not change the factual status of the embedded clause, i.e. *Do you know X?* when is becomes *Do you know X or not?* does not change the status of X as a piece of factual information. The judge, rather unsure of what to make of this all, asks a question of the witness

Q: Do you have any personal knowledge as to the matters which Mr. Pincher *purports to relate* in the two passages which Mr. Turnbull has read to you?

A: I have no personal knowledge whether these matters are true or not.

Q: End of Question.

The judge has in fact posed a different question than the one asked by the cross-examiner. He focuses directly on the information provided by Pincher, *purports to relate*, rather than the indirect way the that the cross-examiner had introduced this. This changes the situation entirely as the cross-examiner was trying to introduce the assumptions about Pincher working for MI5, Pincher planting sources in the press, etc. as given, factual information, whereas the Judge quite explicitly indicates that these are hypothetical facts with *purports to relate*.

The exclusion of information on the grounds of hearsay is another legal constraint on communication which offers a rich area for further pragmatic

research. Hearsay is typically excluded because it does not conform to the 'best evidence' rule, which is that first hand information should be used. But hearsay can be introduced as evidence in a such a way that it does not appear so. Consider that in the above example, the questioner prefaced his questions with *from your personal knowledge. . ..* In doing so, he attempted to assert information relevant to his case. But while the above example is not one of hearsay, it does show the reformulations which can occur in order to attribute authority to information. Rather than insist on the information being personal knowledge, a cross-examiner can ask *Was it accepted as common knowledge* or *Given that. . .* thus shifting the responsibility for knowledge of the fact from the witness personally to that of the witness being one of many who know that information as 'common knowledge'. In a sense, hearsay, similar facts, and information about the previous character of the witness, can all be introduced into the discourse over time by the use of hypothetical questions, definite descriptions, and factives which implicate something about the witness's previous beliefs, etc. The next three chapters offer pragmatic accounts of how the legal 'institutional voice' (Lerman: 1983) works in witness examination in the creation of legal (f)acts.

CHAPTER 4

COURTROOM QUESTIONING

4.1. Introduction

The examination of witnesses and defendants in court is not simply a matter of the reproduction, through questions, of a known story for the benefit of an audience. Not all utterances an advocate makes can be classed as questions, where questions are understood as 'asking for information'; questioners are involved in the arrangement of information for an audience to decide the facts of a case but this is not done by simply asking for information. One way of looking at the different types of communicative functions of courtroom questioning is through speech-act theory. Various types of speech-acts occur in the examination process which have little to do with giving or receiving information. The advocate may *request* the witness to follow some course of action (e.g. identify exhibits), he may *demand* that the witness do something (e.g. state your name), he can *threaten* to have a perjury sentence enforced against the witness, etc. The examination of witnesses offers a rich area for pragmatic analysis not only because of the sometimes directive character of the advocate's utterances, but more importantly, this type of speech situation shows language-use in an institutionalised setting as a complex communicative encounter.

Research on questioning and questions has traditionally focused on structural aspects of interrogatives (Hiz 1978), or has been predominantly concerned with the question-answer pair as the basic unit for analysis of information structuring (e.g. conversational analysis). While such research is helpful, it is perhaps incomplete without considering some of the institutionalised elements which guide the discourse. Dillon (1983) observes

that although much has been written about questions in the last two decades, few attempts at relating results from different disciplines have been made. In examining several fields, Dillon divides them according to theoretical, empirical or practical orientation. Within linguistics, and linguistic subfields, three aspects have been extensively analysed: the relations of question-answer sentences, the properties of the standard question-answer situation, and the social dimension of questioning. The first aspect refers to the interest shared by logicians and semanticists in the presuppositions asserted as part of a question (exemplified by the work of Katz 1972 and Hiz 1978). The emphasis is on the truth-conditional nature of the question and its representation. The second domain concerns the reasons why the questioner engages in the act of questioning. There must be a presumption of a lack of knowledge or a genuine condition of inquisitiveness for the question to be considered valid. Such concerns about conditions for considering an utterance as a question, or an adequate answer, are discussed within a speech-act framework in Kiefer et al (1983), as well as in certain conversational research (Sacks, Schegloff and Jefferson, 1974). The third area focuses on questioning as expressing the roles of participants and the management or control of the hearer's actions. Authority relationships may be indicated through questioning and questioning can be seen as a means to reinforce social roles and the status of the speaker. Investigating the role relationships between speakers and the norms of politeness, social status, professional identity, etc. all point to the ways in which obligations direct linguistic behaviour (e.g. Goody 1978, Mischler 1986, see Chapter Two).

These three aspects are not mutually exclusive, and the account of courtroom questioning offered here relates the theoretical lines of research on questioning to the legal context. Additionally, the argumentative aspect of

questioning is developed as the conflictual nature of legal proceedings brings with it a history of interaction which differs from other conversationally-based analyses where speakers share the same speech goals. As was discussed in Chapter Three, argumentation is not easily described in terms of question-answer units; rather than work from the notion of question-answer 'pairs', larger 'chunks' of discourse are used as these offer an opportunity to discuss a number of representative pragmatic devices occurring in courtroom questioning.

The notion that questions are a way of getting or giving information is one that is pervasive in linguistics as well as other fields. It is one notion that needs more explanation. Questioning, particularly in argumentative situations like cross-examination, may have more to do with recycling information from the previous discourse than with either of the traditional notions of giving and getting (new) information. It is a concern for information which is legally relevant to the claims before the courts which motivates the questioner. The advocate is engaged in recycling information previously introduced, or presumed to be known, along with new information, in order to establish certain facts. Such facts do not, however, have to be interpreted as limited to the propositional content of the utterances. Speaking as if the facts of the case were established, indicating the strength of the witness's beliefs about certain events, and making comments about the witness's ability to give evidence are all accomplished through a variety of linguistic means and are part of the reformulation which takes place. Variation in syntactic form, or, for example, the selection of certain lexical items, pragmatically conveys judgments which have a legal significance.

We can also make a few preliminary observations about witnesses testifying

in court. Witnesses and defendants testify within an environment which is concerned with constructing and debating what the facts are and how they relate to a case. While they may believe that their participation is a matter of narrating events which they were involved in, the telling of the whole story is not one that may make it a legal 'case' (McBarnet 1983). Witnesses may not tell all that is relevant, and conversational relevance differs from legal relevance. What is irrelevant in conversation can still be introduced while in the courtroom it would be inadmissible (e.g. hearsay in conversations is often accepted as a legitimate source of information but inadmissible). Witnesses testifying in court are often asked to join in the factual discourse concerned with examining propositions purportedly corresponding to a reality surrounding an event. However, such a discourse requires that they be prepared to defend their point of view against charges of uninformativeness and vagueness. Simultaneously, witnesses must call on a stock of extra- and meta-linguistic knowledge to cope with this sort of discourse sphere, bringing together analogous experiences from other argumentative speech situations. Information about their credibility and reliability as witnesses is continuously assessed by the way they respond and 'resistance' is something which can have a number of consequences (Harris, 1987).

Let us explore some pragmatic approaches to questioning before we moving on to witness examination. Within a revised speech-act approach, Kiefer et al (1983) offer definitions of questions in terms of the speaker and hearer's state of knowledge at a given point in time. Characterizing a question as specification of 'knowledge-desiderata' (Hintikka 1983, Kiefer, et al), focuses the discussion on what can be considered a pragmatically significant answer, namely, the nature of the information sought, the significance of such information within the discourse, and the speaker's reasons for wanting to

know. As Kiefer (1983: 5) explains,

> An adequate answer concept has also to take into account the following aspects of questions: (i) the speaker's purposes (teleological relativity), (ii) the speaker's state of knowledge at the time the question is asked and (iii) the relativeness in the elimination of knowledge desiderata.

Grewendorf (1982: 65) also points out that identifying the witness's or addressee's task goes a long way towards establishing a full understanding of a question. He conditionally specifies the addressee's task as one of eliminating types of information from the speaker's pool of knowledge and argues that

> In order to be able to characterize the concept of an answer, therefore in a manner relating to the nature of questions, it must be clarified when the questioner knows that something particular is the case.

Both Grewendorf and Kiefer emphasise that in order to interpret a question, the addressee assesses the state of knowledge that the questioner has. But this is not unproblematic, as it can be argued that the addressees are not engaged in trying to fill 'gaps' in the questioner's knowledge. That the hearer can and does consciously recognise a solitary purpose on the part of the questioner depends heavily on the notion that questions have discrete meanings and that the addressee has a certain cognitive machinery in place to assess the depth of the information sought and his ability to provide it. It is clear from research on the courts (e.g. Bottoms and MacLean) that many witnesses and defendants find themselves in a questioning environment for the first time with little idea of the purpose of direct or cross-examination, and have still less of an idea about the way in which the information they contribute helps to eliminate any lack of information that the advocate has. Rather than define a question as simply asking for information, or try to assess the way in which answers define what is a pragmatically significant question,

we could observe the function of questioning in the courtroom. Witness examination revolves around an advocate choosing specific syntactic forms and lexis as part of a strategy to arrange information so that it supports a number of issues before the court. Questioning can only in a limited way, be seen as the sincere request for information. The assignment of responsibility for information, the way in which the current responses rearrange the inferences generated from the previous discourse, and the division of information into facts and peripheral information about the strengths of the witness's convictions, all contribute to understanding what a question is and does.

In my discussion of questioning, the following sections have been arranged so as to move from a look at relatively simple forms associated with interrogatives, sometimes referred to as 'primary questions' (Leonardi, 1984) e.g. Yes/No, Wh-, and Alternative, to a more in-depth examination of how pragmatic considerations affect the way in which other questions (e.g. tags, hypothetical, echo, elliptical) are interpreted with reference to the neighbouring linguistic text within the discourse, or are parasitic on what the advocate wants the audience to infer as factual information.

4.1.1. Direct and Cross-examination

Advocates' strategies in witness examination are broadly affected by whether they are conducting direct or cross-examination. This was discussed in Chapter One but before embarking on a description of questioning, a brief review of the goals that advocates are supposed to have in mind when conducting witness examination is useful. Mauet (1978: 85) defines direct examination in the following terms:

> It [direct examination] should elicit from the witness, in a clear and logical progression, the observations and activities of the witness so that each of the jurors understands, accepts and remembers his

testimony.

> Direct examination lets the witness be the centre of attention. The lawyer should conduct the examination so that he does not distract and detract from the witness. After all, the witness will be believed and remembered for the manner and content of his testimony not because the questions asked were so brilliant.

Trial sources, including Mauet (1978), Keeton (1980) and Spinal (1982) suggest that advocates on direct examination do the following:

- Let the witness give conclusive answers
- Don't use leading questions
- Organize testimony in order to present events progressively and ask specific questions.
- Avoid interrupting a witness

Such advice suggests that in direct examination, questioning is a means of bringing apparently uncontroversial information into the discourse. The advocate works collaboratively with a witness to elicit facts central to the construction of a claim and his questions are not aimed at establishing alternative interpretations of the witness's testimony.

Cross-examination, on the other hand, is a conflictive speech situation and if the advocate decides to cross-examine a witness at all, he does so because he needs to 'put an acceptable face on uncomfortable facts'. Mauet (1978: 240) further explains what cross-examination should accomplish,

> a.) Elicit favorable testimony (the first purpose). This involves getting the witness to agree with those facts which support your case in-chief and are consistent with your theory of the case.
>
> b.) Conduct a destructive cross (the second purpose). This involves asking the kinds of questions which will discredit the witness or his testimony so that the jury will minimize or disregard them.

Accordingly, trial manuals have often cited the following as strategies for conducting cross-examination:

- Impeach the convictions, interests or credibility of evidence or witness by confronting him with previous statements.
- Test accuracy of observation or recollection using demonstrations.
- Restrict the witness in providing explanations.
- State the facts; have the witness agree to them.
- Use leading questions.
- Project a take-charge, confident attitude while keeping control of witness.

Such advice makes it clear that questions on cross-examination are argumentative ones which seek to show contradictions, inconsistencies, as well as introduce probabilities in such a way that the audience reconsiders the weight given to the witness's testimony.

4.2. Pragmatics and Primary Questions

In discussing the pragmatics of questioning, we can start by looking at the syntactic structures of interrogatives sentences. Even in relatively simple constructions, the institutional elements of the courtroom present themselves, but are not always immediately apparent.

4.2.1. Yes/No Questions

Yes/No questions are identified by the operator appearing before the subject, and the absence of a fronted *wh* word, and are normally neutral with respect to the answer prompted; either positive or negative answers are acceptable. Simple Yes/No questions typically occur during direct examinations while they are conspicuous by their absence in cross-examinations. An explanation for this could be that in cross-examination, the questioner seeks to re-establish some points previously addressed in the discourse and needs to contextualize his question with the aid of information introduced in subordinate clauses. The following illustrates a typical exchange with simple Yes/No questions.

H: Have you seen your sister Rhoda this morning?

F: Yes.

H: Is she quite well?

F: Yes.

H: I don't see her here. Is she here?

F: No.

[DuCann: 56]

The last question may seem a relatively straightforward example of a yes/no question, but the effect that the advocate achieves is not that of simply establishing that *Rhoda was not in court*. That Rhoda did not show up, and cannot be seen anywhere in the public gallery is meant to make a comment on the case and the defendant's credibility. With Yes/no questions the hearer is responding to propositional information as well as the pragmatic implications of that response. In the above example, *Is she quite well?* indicates that the advocate has in fact offered his estimation about the state of Rhoda's health. The appearance of adverbs like *quite, even, simply* and *just* indicate a pragmatic presupposition which the hearer may not address with equal adequacy by responding *yes* or *no*. Yaduguri (1986: 210) has investigated the types of information conveyed in yes-no questions and argues that

> The formulation of responses to yes-no questions depends not only on whether the addressee intends to affirm or negate the proposition put forward in the question but also on the pragmatic implications of the affirmation or negation of the proposition. Since the pragmatic implications of the affirmation and negation of certain types of propositions are different, *yes* and *no* when used in response to yes-no questions containing such propositions are not equivalent.

The way in which pragmatic implications can be generated in Yes-no questions has to do, among other things, with the type of modification present in the sentence; this explains the way in which simple yes-no questions can be 'leading'. I will return to the modifying aspects of sentences in section 4.6

when leading questions will be examined.

4.2.2. WH-Questions

WH-Questions begin with an interrogative like *who, what, when, why,* etc. An embedded WH-question appears as a less aggressive way of addressing the hearer. For example:

- Do you happen to know *when* the contractors were called in?
- Have you any idea of *how* you're being taxed?

Noun phrase substitutes for the interrogative items also occur:

- Could you give the court *the reason* for not appearing on April 12?
- Do you know *the date* that the contractors were called in on?

The indirect nature of wh-questions contribute to the appearance of professionalism (proper show of deference) between witness and advocate.

Harris (1980: 330) suggests, from work on the Magistrates Courts, that 'Who' and 'Which' questions occur less frequently than 'Where' and 'What' questions. This may be due to the fact that the participants are known from the outset of the interaction and 'which' questions can be reformulated as alternative WH-Questions, leaving the wh- element to be specified by the questioner. In the following example, the advocate asks a WH-Question first but then quickly reformulates it into a specific Yes/No question. This produced a noteworthy response from the witness.

Q: What was the condition of the Frenchman at suppertime? Was he as gay and chipper as when you said that he warmed up after he had been walking around awhile?

A: Yes, Sir.

Q: But in your affidavit you state that he seemed to be very feeble at supper. Is that true?

A: Well, yes he did seem to be feeble.

Q: But you said a moment ago that he warmed up and was alright at supper time?

A: Oh you just led me into that.

Q: Well I won't lead you into anything anymore. Tell us how he walked to the table.

[Wellman:431]

Another feature of witness examination is the lack of 'Why' questions. 'Why' questions may give the witness an opportunity to explain parts of his testimony and may open doors for future disagreement, something quite undesirable, according to trial manuals such as Spinal (1983: 89):

> There is only one technique worse than asking for a narrative [response] and that is asking the witness on cross-examination "Why" or "Can you explain?". This invites the witness to repeat his former testimony and to add material that was inadmissible in his direct testimony. In fact, these questions give the witness a license to say whatever he wants . . .If you learn no other rule of cross-examination learn never to ask the "why" question.

4.2.3. Alternative Questions

Alternative questions can resemble either Yes/No or Wh-questions. In the first instance, Yes/No questions can be converted into alternative questions by adding *or not* or a matching negative clause (Quirk: 199). The elliptical part of the alternative question may be placed at the beginning of the question as in,

Did you or *did you not* tell the jury that?

This type of question conveys a sense of impatience which penetrates the discourse and perhaps indicates that the examiner is frustrated at not getting

the desired response from the witness. Alternative Wh-questions are similar to the above except that the speaker expects the hearer to select a response from the choices given. Although the alternative Wh-question gives the witness a choice, the advocate selects the options. This preselection can undoubtedly lead to the witness being confronted with two unpalatable choices, particularly when the choices are in fact embedded propositions with disputed truth values. In the first example below, both types of alternative questions appear; with the consequences of the alternatives having a fairly benign effect on the discourse. However, in the second example, the witness is forced to choose between two damaging admissions.

Q: When you went to the elevator, there was nothing said about expenses?

A: I told you what was said about expenses.

Q: I understood you. I just want to make sure. *Was there or was there not* anything said about expenses?

A: The only mention of expenses was when he asked me where I was staying and I said the Hotel New Yorker and he made a gesture and I said 'Yes, it is rather expensive'.

Q: Do you recall whether that was *in the office or the elevator?*

A: That was in the elevator.

[Wellman: 210]

We might note that in complex questions, the alternatives offered force the witness to choose between two admissions, each confirming a different proposition relevant to the advocate's case. Consider how the witness, regardless of which alternative he chooses, admits that *He intended to cheat somebody.*

Q: You even admit that when you deposited the bonds with your broker as collateral against your stock speculations, you did not acquaint him with the fact that they were not your own property.

A: I did not mention whose property they were.

Q: Well, sir, in the event of the stock market going against you and your collateral being sold to meet your losses, *whom did you intend to cheat, your broker or your wife?*

[Wellman: 80]

4.2.4. Complexity in Questions

Pragmatic aspects can be manifest even in relatively pedestrian constructions, but complexity of interrogatives adds another aspect. The questioner may bring in crucial details of his argument though the use of complex constructions. Complexity could be a warning signal that the question is a leading one where misinformation is being introduced. Loftus (1979) and Johnson (1979), for example, have conducted studies examining variations in question wording and the extent to which subjects erroneously recalled details (misinformation) embedded in complex questions. Loftus argues that these types of questions focus on some aspect of the question while a piece of misleading information appears unfocused. This unfocused piece of information then becomes available for retrieval and may replace the witness's original memory of the event. She concludes,

> These results in conjunction with those of Johnson (1979) suggest that misinformation embedded in more complex questions is likely to have a greater effect on memory than that same information conveyed in simpler questions. The complex question seems to work because it focuses the subject's attention on something other than the critical information.

Whether or not complex questions succeed in altering or distorting the witness's memory by introducing information in embedded clauses, they nevertheless introduce the audience to this misinformation which thus can be referred to later on in the discourse. By posing a complex question, the

advocate provokes a blanket response to a number of assertions.

4.3. Pragmatics and Parasitic Questions

Certain questions rely on what has been previously introduced or on what the speaker anticipates the hearer will agree with, disagree with etc. These sorts of questions have been referred to as parasitic for a number of reasons; they can rely on the surrounding text for interpretation, or they can exhibit the speaker asserting something, whereby he introduces that information as background knowledge. Parasitic questions represent an important matrix of ways speakers progress through an encounter revealing a range of attitudes and beliefs about the content of their utterances.

4.3.1. Tag questions

Tag questions are notable as a type of request for confirmation. The speaker asserts something, then invites the hearer's response. In cross-examination, tag questions allow the advocate to narrate certain facts and ask for agreement, as is illustrated in the excerpt below. Tag questions can introduce information as if it is uncontroversial background knowledge between the advocate and witness--something which may not actually be the case. In the following example, tags are used to provisionally specify what the questioner considers as known information, then tentatively shared information and finally, controversial information.

Q: Officer Jones, this arrest you made took place over a year ago, *didn't it*?

A: Yes.

Q: One of the police officer's duties is to make arrests, *isn't it*?

A: Yes.

Q: How many arrests would you estimate you make each week?

A: Oh, perhaps two or three, on the average.

Q: This means that in the year since this arrest, you've arrested as many as 150 persons, *haven't you*?

[Mauet: 262]

In the courtroom, sentential tags are important in that they may refer to several bits of information which are packaged together. Sentential tags typically follow either a complex sentence or a chunk of discourse. For example:

Q: Mr. Taylor, your job, in so far as it relates to identikit, is obviously a specialist job for which you have special training.

A: It is, yes.

Q: You need not only practical skill in the use of the various component pieces for building up, but you need skill, both taught and acquired, to gain the confidence and ease of communication with the witness in order to build up a picture, *is that fair*?

[Graham: 155]

Other sentential tags include: . . . , *isn't that true?* . . . , *isn't that so?* . . . , *isn't that a fact?* . . . , *correct?* . . . , *is that a fair summary?* . . . , *is that a fair description?*

4.3.2. Inverted Negative Yes/No Questions

Conducive questions, or inverted negative Yes/no questions (e.g. *Didn't you . . .* or *Isn't it true that . . .*) are a special group which reflect the speaker's beliefs and/ or expectations (Kiefer 1980: 98). These questions indicate that a positive response is expected and is the one most adequate. While a negative response may be accepted, it is certainly not adequate as an expectation of a positive response is left unaddressed. These questions have two basic responses – positive or negative + explanation. In the courtroom, witnesses

may not be given the opportunity to provide an explanation of their negative responses (by being told to answer 'yes' or 'no'). When the questioner asks a conducive question, it is assumed that he has a valid reason for expecting that the witness will respond affirmatively. However, the problem for the audience is that this assumption of personal knowledge is ambiguous. Is it the case that the questioner has a belief which justifies his use of the marked negative form, or is it that the expediency of his case compels him to do so? The audience is left to work out what grounds the advocate has for this expectation if is appears irretrievable from the previous discourse and little reassurance comes from guidelines for trial conduct;

> The rules adopted by the Bar Council of 1917 with various amendments go on to require that an advocate should not undertake a cross-examination unless he has 'reasonable grounds' for thinking that the imputation conveyed by the question is well founded or true. *If his solicitor tells him that in his opinion the imputation is well-founded. . . he has reasonable grounds.*
>
> [DuCann: 102]

Asking a conducive question in instances where this expectation of a positive response seems unrecoverable is an argumentative way of shifting the responsibility for an adequate response to the witness. Common indicators of conducive questions include *Didn't you tell the court. . ., Isn't it a fact. . ., Hasn't it been your experience. . ., Didn't you say. . ., Weren't you aware. . ., etc.*.

In the next example, the advocate uses conducive questions, tags, and declarative questions to make the witness seem a minnow among tritans.

> Q: *You told this jury a moment ago* that you were willing to have them used (love letters) when you learned it would be for your benefit. You told this jury that a moment ago, didn't you? Take your time. *Isn't that what you told these twelve men*?

A: My attorney used them.

Q: *But didn't you tell his honor* and these twelve men that when your lawyers advised you it was for your benefit to use them you were willing to have them used in open court?

A: It wasn't in my power to prevent it.

Q: It wasn't in your power to control your own lawsuit, *is that your answer*?

A: Yes.

Q: *So* you were powerless to prevent it, *were you*, in your own lawsuit?

[Wellman: 281]

4.3.3. Declarative Questions

Declarative questions can either function like Yes/No questions due to rising intonation, or act as full-bodied assertions which not only request but demand confirmation from the witness (implied tag questions). In transcripts, intonation is never marked but the following could be an example of the latter.

Q: Your general proposition about the undesirability of MI5 officers publishing their memoirs would be equally applicable to MI6 officers assuming for one brief moment of allusion that that organisation did exist?

or

Q: In preparing your affidavits you have had no regard to the particular information in Mr. Wright's book?

4.3.4. Echo Questions

Echo questions are ones where the advocate repeats part, or all, of the witness's response. The witness usually confirms this echo. For example:

W: I didn't see any lights.

A: You didn't see any lights.

W: No.

This type of question may have intonational prominence appearing on key words, indicating that the hearer has failed to hear the rest of the sentence correctly. However, it may be that the echo acts to intimidate or rehearse the witness. By asking the witness to reaffirm his response the advocate may make sure that the audience recognises this as a salient piece of evidence being given.

4.3.5. Elliptical questions

Elliptical questions fall into two categories. They may be a continuation of a Yes/No question or a Wh-question and in either case may also be prefaced by a cohesion marker (e.g. *and*). In the first example below, echo and elliptical questions appear, as well as the utterance-initial *and*.

Q: All right. I ask you if you haven't beaten him up in the last week?

A: Yes and do you know why? Another gun episode.

Q: *Another gun episode*?

A: That's right.

Q: *And if you didn't cut--put a cut on his face here and break his ribs*?

A: Well, when you start, gonna shoot somebody, *you doggone right better,* threatening me, gonna shoot me, sue me.

[O'Barr: 158]

Wh-elliptical questions also appear in witness examination as in,

Q: Whom do you work for?

A: The Chicago Police Department.

Q: How long have you worked for the department?

A: Twelve years.

Q: *In what capacity?*

A: I'm a firearms examiner working in the Criminalistics Department, commonly called the Crime Lab.

Q: How long have you been employed as a firearms examiner?

[Mauet: 153]

In the examples above, the questioner moved to another topic after one elliptical question. However, ellipsis combined with parallel syntactic structures appears to have rhetorical consequences. A series of questions can be juxtaposed in the discourse for a rhetorical purpose of emphasis or reinforcement. Jeans (1975: 222) illustrates how elliptical questions in a series serve to intensify the witness's original response.

Q: At the time the lease was signed did the defendant advise you *that the balcony was rotten?*

A: No, he didn't.

Q: After you occupied the premises did he ever write you about the *rotten railing?*

A: No.

Q: *Or come by your home to advise you of the rotten railing?*

A: No.

Q: *Or even give you a phone call?*

A: No.

Q: Mr. Talbot, during the entire six months of your tenancy did the defendant do anything to warn you of the dangerous condition of that railing?

A: Absolutely nothing.

Jeans comments that 'if the jury does not get the point by this time, they never will.' Clearly, elliptical questions in a series give the questioner an opportunity to 'get the point across' to the jury. In this case, the advocate repeats a contested fact that *the railing was rotten*. In the next example, the questioner again uses elliptical questions as a rhetorical device, but instead of repeating key phrases, he provides a series of definitions crucial to underlining a point about promises made.

Q: You made that promise many times to your wife, didn't you, while you were corresponding with her–that you would keep all her letters sacred?

A: Yes.

Q: *And by sacred you mean secret*?

A: Yes.

Q: *And that you would take good care of them*?

A: Yes.

Q: *And not let others see them*?

A: Yes.

[Wellman: 280]

The missing expressions of utterances, however, are not unproblematic and Kato (1986: 415) suggests that with ellipsis,

> there is participation between the linguistic and the extra–linguistic. Hearers may recover words from the neighbouring linguistic environment, but some elements are only recoverable through collocation.

4.4. Hypothetical Questions

Another aspect of questioning is the use of factual, non–factual and counterfactual sentence conditionals. Non–factual hypothetical sentences,

particularly constructions with *If . . . then* and counterfactuals (e.g. *If men had wings, they would fly.*) are important in courtroom questioning as these can introduce new information or indicate information is tentatively assumed, and relevant to the issues of a case. Typically, the advocate uses the conditional in suggesting a hypothetical situation which, if proven, will substantially benefit his case. In the first example below, the advocate tentatively suggests his particular conclusions. Conditional questions may have one common usage in cross-examination when the advocate decides to exercise his arithmetic skills. All sorts of documents comprise crucial evidence, and situations which generate police reports/ letters/ administrative forms come under close scrutiny. An examiner may attempt to show that a particular document is one generated as a minute part of a bureaucratic system or routine followed by an individual and he employs conditional questions to imply that the witness cannot possibly recall accurately the details of one document amidst a myriad of others. In the example below, a letter was part of the defence's evidence. The cross-examiner is questioning the typist about the number of letters produced in her office over various lengths of time. He does so using implied conditionals and arrives at a final number of letters typed since the typist began working in that office; in short, he moves from introducing tentative numbers to nearly asserting a definite number of letters produced.

Q: How many letters, on average, do you type a day?

A: It varies of course, but it's probably around five a day.

Q: *So you would type approximately 25 letters a week*, right?

A: Approximately.

Q: *And that would make over 1,000 each year*, correct?

A: I guess so.

Q: This means that you've probably typed over 5000 letters for Mr.

Doe since you started working for him, correct?

[Mauet: 263]

Much of the questioning in witness examination centres around what witnesses might have done, seen, etc. or what they could have done or seen and the next example is one which shows a non-factual hypothetical question.

Q: Anyway, do we take it from you that you took the view that the information he was publishing was either in the public domain or of insufficient detriment to justify seeking an order for restraint?

A: Or simply false.

Q: *So if an insider gives false information to an outsider, he is not breaching the Official Secrets Act?*

A: That is an interesting question. I have never thought of it, I don't know what the answer to that is.

The past tense and in particular when it is used to refer to past probabilities is an interesting area to look at. Counterfactuals are cases 'of possibly valid reasoning from premises that are false in reality' (Fauconnier 1985: 109). The following is an example of a counterfactual question which asserts the falsehood of the antecedent.

Q: . . . if the Security Commission had taken the view that this sort of information, if published would seriously damage national security, it would plainly not have published it; that is so, isn't it?

[Wright: p. 294A]

In this example, the first clause is presumed to be false (i. e. that the security commission did not take the view that . . .). But the situation is not completely straightforward when dealing with past events. The tense and appearance of other features can contribute to either a weaker or stronger reading of the non-factual conditionals as in,

Q: I put to you that *if Mr. Pincher had suggested there was concern about ongoing penetration, if Mr. Pincher had said in his book that there was a real risk of ongoing penetration, the Prime Minister would have had a more formidable task in reassuring the public in her statement.*

[Wright: 284]

In this example, the tense in the antecedent *If Mr. Pincher had suggested. . .* is the past perfect and the consequent is also past perfect *Mrs. Thatcher would have had a more formidable. . .* but the presence of *more* makes the assertion that *Mrs. Thatcher had a formidable task in reassuring the public* a true one. Fauconnier argues that in the case of past counterfactuals, the past time reference combined with the past perfect is ambiguous between a strong and weak interpretation. This can be more opaque by the use of the passive as in,

Q: I put to you that *the need for an enquiry would have been seen by you as more pressing* if you had thought that the public considered there was an ongoing problem of Soviet penetration of the security service.

[Wright: 282]

In this example, *the need for an inquiry would have been seen by you as more pressing* suggests that there already was a pressing need for an inquiry, something which the government had been denying.

If . . .clauses can have either a factual or a non-factual reading and this is not always discernible in questioning. A typical example of a sentence with two interpretations is *If you're thirsty, there's a beer in the fridge.* If the speaker does not know whether or not the hearer is thirsty (i.e. if by chance, you're thirsty. . .) the sentence has a non-factual reading. On the other hand, if the speaker tentatively assumes that the hearer is thirsty, it can have a factual reading. Consider how the next example promotes a factual reading:

> Q: Sir Robert, if you and the Prime Minister decided that a particular piece of information should be put in the public domain, there are two routes open to you for putting it there, are there not?
>
> [Wright: 281]

In questions like the above presumably a factual reading is intended, namely that *Given that you and the Prime Minister decided that a particular piece of information should be put into the public domain....* Interestingly, in this instance the consequent clause, presumed to be factual, is what the witness questions with *Would you like to identify the two you had in mind?*.

Conditionals in questioning are an area of further research, but we could, however, note that Harris (1978) argues that pragmatically implied facts tend to be recorded as asserted facts, and it may well prove to be the case that hypothetical facts are also recalled as asserted facts. Thus, conditionals may be a powerful way of imputing facts for the audience to consider.

The area of modal usage and in particular hypothetical questions is discussed in a rather different light in trial advocacy manuals. According to trial advocacy sources (Keeton, Jeans, Mauet et al), conditional questions are to be employed sparingly, as speculation about possible events/consequences could produce unexpected responses. Parkinson's survey (1981) also lends statistical support to the notion that modals appear as features of poor prosecuting speech behaviour. This misses several points though about the function of modal constructions in argumentative encounters. Parkinson's lexical survey attempted to identify characteristics associated with 'winning' and 'losing' cases. Modals are affiliated with weak or ineffective prosecuting style. But this survey was limited in that modals can appear in *If..then* statements as well as requests, commands, and threats – all of which differ radically in the effect they evoke and the strength of factual information they

assert. Further research is needed to examine the range of modal usage in courtroom questioning and, in particular, the effect of conditional questions.

4.5. Cross-examination

Cross-examination is an argumentative part of witness examination and here all sorts of questions appear which only minimally fulfil the questioning requirement of the speaker 'needing to get some information'. For example, requests for confirmation could be interpreted as secondary questions (Givon 1984) since they are primarily concerned with giving information. Cross-examination opens all doors to the advocate: he can try to capitalize on a number of ways of giving different types of information which seek to elicit little more than monosyllabic responses from the witness.

4.6. Leading Questions

Advocates engaged in cross-examining witnesses use leading questions and these manipulate a number of features of the discourse. Leading questions can not only convey disputed factual information but they can also suggest the salience, and relevance in the advocate's view, of that information for the case. Definitions of leading questions vary as much in legal texts as in linguistics but the following are typical. DuCann (1968: 86), for instance, defines leading questions as 'questions so framed that the witness will understand from them the answer he is expected to give'. This suggests that leading questions may only be those which produce an expectation of response, such as tag questions or conducive questions. However, in practice, leading questions appear to do more than exhibit an expectation of response and Cross (1979: 26) addresses the quality of information that the advocate presumes the witness knows and

perhaps disagrees with. He defines leading questions as those which

> (a.) suggests the answer desired or (b.) assumes the existence of disputed facts as to which the witness is to testify.

He illustrates (b) with the question *What did you do after Smith hit you?* which is put to a plaintiff before the fact that *Smith hit him* had been established. This (b) definition covers a range of questions containing presuppositions which the witness may be trapped into confirming. The advocate introduces information *as if* it had been given and accepted by the witness.

Legal handbooks for inexperienced trial lawyers spend a good deal of time on the 'do's and don'ts' of leading questions and some such as Jeans (p.317) try to divide questioning into separate categories according to degree of 'aggressiveness'. He outlines as:

> (1)*Interrogatory* At the time of the operation were you licensed to practice medicine?
>
> (2)*Anticipatory* And *of course* Doctor, you were licensed to practice medicine when you performed this surgery?
>
> (3)*Accusatory* You weren't even licensed to practice medicine at the time of the operation, *were you*?

He advises that the first type of question, basically Yes/No, is only to be utilized on two occasions – 'when the answer is known; or when the answer is unknown but meaningless.' The *anticipatory* and the *accusatory* seem to be used in cross-examinations only. The tag question falls under the *accusatory* category characterized by aggressiveness while the second question is much less forceful but this is not always the case for tag questions. It is interesting that lawyers such as Jeans see this type of question as the most aggressive; it is also one which is perhaps more overtly marked by the presence of *even* and a tag.

The definitions supplied by Cross and DuCann, and the attempt by Jeans to describe what leading questions do, significantly underrate the extent to which the pragmatic aspects of questions affect their interpretation. Whether or not a question is considered leading depends not only on the explicit propositional content of the question, but also on the relationship the advocate indicates between such an assertion and the context. Questions which suggest either positive or negative responses (*Didn't you...*,or *Isn't it a fact that...*) along with questions which indirectly assert contentious information are questions which do not have a primary function of eliciting or asking for information. On the contrary, these are specifically designed to establish within the discourse, by oblique methods, advantageous points for the advocate's case.

Conducive questions suggest that the advocate is justified in expecting a particular response and the audience has to take it on faith that the basis for this expectation is locatable within the discourse. Similarly, questions which indirectly assert information (loaded questions, second-instance questions...) are leading because the embedded assertion is not the focus of the question and therefore not open to negotiation.

A leading question, in effect, has a number of aspects which shape its use. Its primary function is that of informing the audience of the expectations, beliefs and or attitudes that the advocate has concerning particular points of his case. Moreover, the advocate is trying to influence the witness and court to accept his convictions. Leading questions can manipulate several types of linguistic knowledge simultaneously; offering the witness a range of features he could address in responding. The overriding feature of leading questions is that they are not simply explanable in terms of syntax or semantics. There is a great deal of variety with which leading questions combine features of both to

indicate the advocate's attitude towards the content of his utterance and the way that fits in with the previous discourse. The following provides a rough outline of the pragmatic aspects of leading questions which will be addressed:

1. Questions which have an expectation of response.
2. Questions which act as requests for confirmation (e.g. Declaratives,).
3. Questions where the presuppositional content is disputed (i.e. embedded propositions which the advocate introduces as if they were true).
4. Questions which display a semantic recycling of previous information (key words repeated in new environments).
5. Questions which delimit the quality of new information (e.g. simple Yes/No questions, Wh-questions).
6. Questions which are attitudinally marked (Sentence Adverbs *in fact, obviously, surely, clearly* as these occur in assertive environments).

Leading questions can be thought of as those which signal an expectation of response (e.g. tag, conducive), but whether or not this expectation of response has a trivial or conflictive effect on the discourse is something which cannot be pre-determined. With questions which act as requests for confirmation (e.g. declarative, echo, elliptical), the fact that the advocate asserts some information still does not say much about how that information may contribute to or reorder previous information, but nevertheless the advocate is asserting information rather than eliciting it. Questions where the presuppositional content is disputed (i.e. embedded propositions which the advocate introduces as if they were true, with say *factives*), may be introducing comments about the witness's sincerity as well as factual information.

Substitution is an argumentative feature of cross-examination and additionally questions which require the witness to affirm modifiers suggested

(attributive, locative, etc.) may be leading because that information has not yet been introduced and the witness, rather than the advocate is supposed to introduce it. Similarly, questions which display attitudinal marking (e.g. sentence adverbs *in fact, obviously, surely, clearly* which only occur in assertive environments), may also be considered leading.

Leading questions manipulate linguistic means to indicate attitudes or beliefs that the advocate holds, towards the witness, the previous information and the current information. In one sense, leading questions could be described as those which have multiple epistemic markers. Dougherty (1982: 15) defines epistemic attitudes as those 'concerning the existence of the state-of-affairs referred to by a sentence'. She maintains that epistemic attitudes are realized by a set of syntactic, lexical, and phonological means which include:

> The set contains sentence negation, sentence adverbs, modal verbs, particles, verbs of thinking, question tags, contrastive stress, etc., all of which contribute to the expression of epistemic attitudes. A sentence may sometimes contain several of these attitudinal means; if it is an independent sentence, it will always contain at least two of them: one specifying an attitude and another one determining the speaker's relationship towards it.

Leading questions clearly involve the advocate conveying certain beliefs and in the examples given, many questions have been multiply marked with, for example, cohesion markers and repetition phrases (e.g. *So what you're really saying is. . .*). The difficulty in examining leading questions lies in the fact that several epistemic devices can appear in one question. This makes leading questions difficult for the addressee to respond to as he may either encounter ones which are relatively mildly marked epistemically or ones which appear loaded with cohesion markers, tags, reformulation phrases etc. Epistemic devices allow the speaker to inject various sorts of attitudes into the ongoing discourse and the devices are not limited to one level of linguistic realization.

The following sections are devoted to looking at a number of ways where epistemic attitudes indicate the divergent perspectives held about claims before the courts .

4.6.1. Syntactic Aspects of Leading Questions

Tag questions and conducive questions are typically called leading as the speaker asserts something and only asks for confirmation. Tag questions were outlined in 4.3.4. and in cross-examination, questions with medial placement of tags figure prominently. These call for agreement from the witness before he has even heard the rest of the proposition. In the first example below, the medially placed tag calls for confirmation of a number of propositions. A conducive question then refers to the entire previous utterance.

> Q: You know, *don't you*, that Mrs. Whitney, in the country, close to her own home has erected three private houses for her three children, in addition to her central home down there where her eight grand children are being raised. *Don't you know that?*
>
> [Wellman: 261]

A medially placed tag and tag statement follow lengthy surrounding text; the tags refer to the factuality of the entire utterance, leaving the addressee little room to rebut the assumed facts, much less address the implicit suggestion that the witness ought to have known all these facts.

In the next example, the advocate not only requests agreement but actually demands it by repeating the tag question a few times.

> Q: We have disposed of two things, haven't we frankly? We have disposed of two branches of the case, *haven't we?* You don't lack brains, *do you?*
>
> A: Maybe we have.

Q: *Haven't* you admitted it?

A: Yes.

[Wellman: 286]

4.6.2. Semantic Aspects of Leading Questions

There are several areas where advocates seem to handle meaning with considerable verbal dexterity and two such areas seem particularly visible: the use of factive verbs to introduce or re-introduce commitment to the truth of the proposition of the subordinate clause and the employment of highly implicative terms in recycling previous discourse.

Factive verbs such as *know, realize, make sense, be sorry, regret, become aware, bear in mind* and conditional factives (Kartunnen: 1971) such as *cause, become, have to, force, see,* and *hear* are all predicates which attribute factuality to the embedded proposition. In the courtroom, this factuality assessment has even more significance than in other contexts as whatever can be said to be factual may be crucial in proving the advocate's case. Factive verbs direct the audience's attention to the validity of the information provided in the *that*-Comp. clauses or other constructions (e.g. infinitival and nominalized). Not all factive constructions are leading but questions with factive verbs prefacing disputed or incomplete information are leading because the witness has to agree or disagree with whether or not he knew of some assumed fact; the fact itself is not open to discussion.

Negation does not change the truth of the embedded proposition.

Q: Oh. *You didn't know* that you were headed for the Russian Commission at the time you left his apartment house.

A: Why no.

Q: *You did know*, however you were going to try to make a sale of aluminum, did you not, at the other end of of this visit?

A: Yes.

[Wellman: 449]

See and *hear* have a particular factive status in the courtroom as first hand knowledge of events carries a lot of weight in establishing a case. In the following excerpt *hear* introduces what the advocate considers a fact.

Q: Do you know a betting man named Walton?

A: Did you *hear* that Walton had paid large sums to Wood for information about his mounts?

A: No.

Q: Do you say that you never *heard* that Walton had paid large sums to Wood?

A: Well, I heard something mentioned about a race in which Wood rode.

Q: Do you say that you never *heard* that Walton had paid large sums to Wood?

A: I only heard of one instance.

[DuCann: 99]

The questioner iterated 'Walton paid large sums to Wood' as a fact crucial in establishing a defence against libel. However, by not asking the witness about the validity of the fact (which had not been established) the advocate circumvents anything the witness would or could contribute about the fact being true.

DuCann (p.99) argues that this is an example of an effective cross-examination where the advocate

> does not interrupt. He does not bully. He is not discourteous in any

> way. This is a direct and perfectly fair insistence that the witness answer the question truthfully.

However, the advocate's repetition of the question is a method of rejecting all but what he considers as an acceptable response and although he does not interrupt and does not blatantly appear discourteous, it is arguably not the case that the questions are 'perfectly fair'. He does not ask the witness whether or not the fact is true, but assumes it is, and any attempts by the witness to qualify the fact before admitting to hearing about it are glossed over.

In short, questions containing factives may be considered leading when the information in the subordinate clause has not been established within the discourse; or when the information is only partially representative of a previously mentioned, but still contested, fact.

Rather than insist on the factuality of his (client's) position, the advocate may, alternatively, choose to concentrate on implying the indefensibility of his opponent's. Employing implicative vocabulary achieves this with reliable efficiency. For example, an advocate can use argumentative verbs which 'express a relation between the current truth claim and other claims made by S(speaker) or H(hearer).' (Leech: 224). Reporting verbs such as *admit*, *contest*, *deny*, *claim*, *allege*, and *insist* indicate what the speaker believes about the other positions held by the hearer. The advocate employs these verbs to reintroduce what the witness has previously said in a manner which makes a comment about the witness. For example, if a witness says ' X ' it may later become 'an admission of X'. These reporting verbs signal metalinguistic propositions about the witness such that a witness who is said to admit to X is attributed with consenting to X being 'bad'. In cross-examinations in particular, argumentative verbs highlight the advocate's beliefs about the *quality* of the witness's

evidence.

Did you say often becomes:

-Haven't you admitted . . .
-You claim that . . .
-So you contest . . .
-So you SAY *{stressed} . . .*

In much the same way that Leech outlines argumentative verbs, Verschueren (1985: 126) describes a class of action verbals which comprise the 'semantics of lying'. Certain verbs indicate lying and distortion e. g. *prevaricate, bend the truth, misrepresent, twist, warp, distort, to tell a lie, not to tell the truth, etc.* and others convey how the truth is being distorted, based on scales of quality and quantity. For instance, verbs at the lower end of the quantity scale, e. g. *to understate,* are quantity-diminishing verbs, whereas other verbs, e.g. *to exaggerate,* are quantity-increasing verbs. Verbs which have to do with the quality scale of truth, at the one end of the scale, are represented with verbs like *slander* where distorting the truth makes something look 'worse' than it is. Similarly, verbs like *whitewash* makes something look 'better' than it is. During cross-examination, verbs which imply distortion and which imply that the sincerity of the witness is questioned, are not uncommon. Consider the next example where the cross-examiner attributes a stealthiness to the witness by using *admit.*

Q: You say the bonds were not your own property, but your wife's?

A: Yes.

Q: And you say that she did not lend them to you for the purposes of speculation, or even know you had possession of them.

A: Yes. sir.

Q: *You even admit* that when you deposited the bonds with your

broker as collateral against your stock speculations, you did not acquaint him with the fact that they were not your own property.

A: I did not mention whose property they were.

[Wellman: 80]

In the excerpt below, the adjudicator uses *admit* and *contest* continuously and finally the plaintiff objects to the implications.

A: But...I think we're going a bit further on this if I may say so. *You don't appear to be contesting* that there was a footpath in front of the building.

P: Oh no-- I've never CONTESTED- I've never CONTESTED I didn't put it there on the map--

A: (interrupting) I'm wondering whether it's necessary to have an adjournment for that purpose if *you've admitted there's a footpath therefore there is vision* before you emerged from Brixton Station Road.

In this example, the adjudicator not only threatens to adjourn the case but draws his own conclusion as to the significance of the existence of a footpath in front of the road. If a witness says something, it may become an 'admission' which forms the basis for a damaging conclusion.

Reformulating previous testimony with argumentative verbs acquaints the audience with the advocate's perception of his position in relation to that of the witness. But he has another means of directing their attention to what he considers to be the weak or incorrect points of the witness's testimony. Pejorative or ameliorative vocabulary upgrading or downgrading previous information to support the advocate's position.

Atkinson's data (1979) from the Belfast Inquiry illustrates this. Reformulation occurs with substituted pejorative or ameliorative terms. The *Protestants* become *the mob; devastation and damage* reappears as *burned and*

pillaged; and finally *the Catholics* are given a more precise and human face as *Catholic property and people*. This is apparent in the cross-examination of a constable:

Q: You know in fact now that quite a lot of *devastation and damage* was done in Divis Street at that immediate junction?

A: Yes.

Q: And that there was a bomb attack at St. Congall's School?

A: Yes. Also fire was returned to St. Congall's School.

Q: From it or to it?

A: To it.

Q: Yes, we are coming to that shortly. I want to ask you about the phraseology here. 'Ask people in Percy street to go home as they can't stand there'. Was that your message?

A: Yes. That is my message.

Q: That was a rather polite way of addressing a *mob* who had *burned and pillaged a Catholic area*, was it not?

A: I did not know that. The object of that message, if I may answer it this way looking back was that there was such heavy firing in particular areas that it was in the interests of saving lives that this message of mine was sent.

Q: What I am suggesting to you is that you had information or means of information that this mob had *burned and petrol bombed Catholic property and people*

A: No.

Finally, there may appear to be a pattern to the usage of implicative vocabulary in cross-examination; if information is introduced, repeated, then reformulated with an argumentative verb or one which indicates distortion, it acts to re-assign responsibility for that information to lend support, or added support, to the the advocate's position. The witness's sincerity is questioned and this reflects on his credibility as a witness. Information can be introduced, or re-introduced in a number of ways and later, Chapter Six discusses

reformulation in relation to the overall argumentative coherence which it generates.

Rather than affect the interpretation of information through substitution of lexis, the advocate can 'recycle' information by way of switching moods. A not uncommon occurrence is when hypothetical questions are used and the advocate moves through a series of conditional statements and then shift to the indicative when posing a question. This may lead the audience to infer that the he was not hypothesizing about what the witness could or would have said, known etc. but rather that it was all to be interpreted as factual. While this shift in mood can place in the questioning sequences, another aspect of it is when the cross-examiner drops the conditional nature of a witness's response in reformulating it to match his claim. This happens in the example below; the questioner recycles the witness's response and drops the condition under which she initially stated it.

Q: Now bearing in mind the multiple responsibilities that Mrs. Whitney has outside her own family circle, her private art museum on West 8the Street, her own activities as a sculptress, and in view of all these activities can you now or will you now tell this court any motive Mrs. Whitney can have in her effort to keep the custody of her brother's child excepting to care for it's welfare?

A: That is very difficult for me to answer.

Q: I should say so.

A: But wait a minute. I want to say this. That *if* Mrs. Whitney insists upon bringing up her eight grandchildren and my child as well, she can only have a mania for rearing children.

Q: Then your response is this: that as to your mother, you think she is money mad and as to Mrs. Whitney, that she has an obsession to bring up children, is that it?

[Wellman: 262]

4.6.3. Discourse Aspects of Leading Questions

Cohesion markers, repetition phrases and sentence adverbs feature in leading questions and with these, the advocate can reformulate information which may have tenuous links to the witness's previous testimony. Repetition and reformulation phrases, for example, allow the advocate a means of rearranging information; information that is recycled with pejorative vocabulary, or introduced in a new environment are typically means of indicating the argumentative claims voiced by the advocate.

In separating out what counts as a leading question it is clear that some questions are not marked by contentious information presupposed in part of the question. Questions which are not complex, are not prefaced by a causal connective of some kind still may be considered leading because the witness is asked to affirm or deny the modifying terms introduced. For example, simple Yes/No questions may appear fairly innocuous. Questions like, *Did he appear hurried?*, *Were you close to the explosion?* and *Did she look unhappy?* do not exhibit an expectation of response; are not marked with pejorative vocabulary and have no reformulation markers. Yet these may be considered leading because the question specifies the type of new (attributive, locative, etc.) information that the witness must address. The witness has only the option of denying the positive statement form. He does not have the option to say that the particulars offered by the advocate are inadequate or indeed wholly inappropriate.

These types of questions could be reformulated into wh-questions but this gives the witness, rather than the questioner, the opportunity to define the exact nature of modification; instead the advocate opts for supplying the details and asks only for a confirmation or rejection.

Using these questions in direct-examination is generally disallowed since the witness is supposed to supply important facts, not confirm them. However, sometimes the over-ambitious or impatient questioner may forget this rule and the judge will no doubt remind him of his inappropriate questioning methods, as happens in the following example.

Q: The hands and feet were tied in this way?

A: Yes.

Q: And in this position the patient remained nearly one hour?

J: *You are making him assert that.*

and later-

Q: Did he (the patient) request to be loosened?

A: He did to that effect.

Q: Did the operator at the same time declare he could not explain the difficulty.?

A: Yes.

J: *You must ask what he said.*

Q: What did the operator say?

A: He said, more than once I think, but once certainly, that he could not explain the difficulty-that he could not explain what the difficulty was-was I think the expression.

Q: Did the operator appear hurried and confused?

J: *How did the operator appear? You appear to be a man of intelligence. You know how to put your questions.*

Q: Did he introduce his finger with great force?

J: *Did he introduce his finger? and how did he introduce it? If you make it necessary for me to be constantly interrupting you, I must desire that all questions be put through me.*

[DuCann:85]

An effective cross-examination is conducted with the aid of leading questions: the cross-examiner makes use of assertive questions, pragmatic connectives, mid-placed tags and conditional questions to focus the attention of the jury on his major argument. Consider how the following example illustrates the introduction of 'reasonableness of action'. The advocate first introduces a tentative fact that a certain route was a *possible route*. Later this becomes recycled to read a *reasonable route*. The advocate first introduces a possible fact which eventually re-emerges as a considerable supporting fact in his case. While in other communicative situations, the difference between a 'possible' route or a 'reasonable' route may be negligible, in the courtroom this was essential to establishing the case.

Q: *But* on the basis of your knowledge of this area and your experience with truck driver's route selection, *wouldn't it be fair to say that it was a possible route* to reach Foxville from Orson City?

A: I suppose it could be used.

Q: *Certainly*. We can agree, *can't we*, that the Ace Way driver wasn't off on an errand of his own, *simply because* he was going west on Route 236 to reach his terminal at the time of the accident?

A: Not from that fact alone.

Q: *And* since he was killed in the accident *so that we can't ask him why* he selected Route 236, *don't you think in fairness, we can conclude* he was still on company business?

Defence Counsel: Objection

Q: Let me withdraw the question and put it another way. *Would you agree, Mr. Alberts,* that the place of the accident and the direction the Ace Way truck was travelling *are consistent with one reasonable route* for a truck driver going from Orson City to Foxville?

A: Yes.

[Jeans: 332]

4.7. Commands / Requests

The advocate can make utterances which impose or propose some course of behaviour to be carried out by the witness. In Searle's (1979, 1975) classification of illocutionary acts, those which are 'directives' includes acts where the speaker is engaged in making commands, requests, etc. During witness examination, directives range from straightforward commands (*State your name*) to statements of insistence (*You must answer the question*). One hypothesis about how directives are used is that mild requests or offers appear in direct examination, while on cross-examination, commands, demands and threats are more often invoked. This seems only natural as the advocate avoids using a face-threatening act (Brown and Levinson 1978) with his own witness who is in a collaborative and not conflictive position. Conversely, in cross-examination the advocate wants to impugn the character of the witness or his testimony and may use some face-threatening acts.

Statements of insistence which can act as orders, have been outlined in general terms by Lyons (1980: 745):

> In order to avoid confusing the more general and specific senses of 'command' we will henceforth employ Skinner's term mand as a general term to refer to commands, demands, requests, entreaties etc. Our own use of the term 'mand' does not of course commit us to a behaviouristic analysis of meaning.

In describing acts which propose some course of action to be taken by the hearer, Leech (1983: 107) adds that the interpersonal aspect of utterances need to be attended to. He explains that sentences like *Peel the potatoes* and *Have another sandwich* represent scalar differences in the speaker's awareness of the effect his utterance will have on the discourse. Accordingly, account certain interpersonal rhetoric principles, 'tact' maxims, relate the speaker's evaluation

of the beneficial or costly nature of his utterance to the hearer's position within the discourse. In one sense, this parallels previous work by Brown and Levinson on face-threatening acts; both Leech and Brown and Levinson emphasize the scalar nature of impositive utterances.

In the courtroom, directives such as those cited above may be quite hedged or quite brusque, depending, among other things, on whether the advocate is directly or cross-examining a witness. What remains problematical is finding a system to capture the 'scalar' aspect of impositive utterances.

In the smaller courts, such as the Small Claims Court and the Arrears Court, adjudicators and magistrates are free to use requests and threats, and do so more liberally than advocates engaged in direct and cross-examination in the higher courts. Harris (1980) argues that in the Arrears Court, for example, as the everyday business of the court concerns enforcing previous judgements on non-payment issues (rent, alimony, child support, etc.) much time is spent on the repetition of threats. Threats may be hedged as in *If you can't manage to pay five pounds per week, then the alternative is a three months prison sentence* or put quite bluntly, as in *Pay today or prison tomorrow.*

In this example from a Small Claims Court, the adjudicator uses the construction 'whether or not X still Y' when referring to what the plaintiff may and may not consider as supporting evidence.

A: The refuse vehicle was proceeding across there flashing his hazard lights he says with his headlights on-

P: Sounding his horn--

A: *--Whether he comes to give evidence or not you're not in a position to contest that...*

Here he insists that the witness reconsider his argument

A: The sign I think you've told me is a GIVE WAY sign.

P: Yes indeed.

A: Yes, but you didn't give way. You proceeded to cross the junction.

P: I was expected to give way to traffic from the right, not traffic from the left--

A: DON'T think that's what the GIVE WAY sign means!

4.7.1. Performative marking

Certain questions on cross-examination are intended to challenge the witness's testimony and frequently appear marked with such phrases as, *I put it to you that...*, *I suggest to you...*, or *What really happened was...*. These present the witness with the opposite of what he has already stated for the purpose of 'advising the jury of counsel's client's disagreement' (Graham: 82). In English courts, conflicting evidence must be put to the witness for a denial or explanation. Failure to do this could mean acceptance of the witness's evidence and later attempts to challenge it would be inadmissible. However, this performative marking is unnecessary as there are a number of ways to challenge a witness without explicitly saying that that is what one is doing. DuCann warns newly initiated advocates about the use of these questions, and states that the empty formulae of *I put* and *I suggest*

> came into use late in the nineteenth century and are now widely used to challenge the truth of the witness's evidence and to put to the witness what the advocate's client or witnesses will later swear occurred. There is no need to use either of these alternatives provided he makes the challenge clear to the witness and the court . . . The alternatives of 'I put' and 'I suggest' are also open to objection in that the use of the personal pronoun brings the advocate into the case and makes it appear that he is giving evidence.

Phrases such as *I put* and *I suggest* are formulaic ones which indicate that whatever follows is meant as a challenge. Questions explicitly challenging the witness's version of events are required in cross-examination in England but are disallowed in the American courts and Graham (p.82) comments that

> such questions would generally be considered as argumentative in the United States. . . In America, such an expression of disagreement is argument properly delivered *only* during summation to the jury.

4.7.2. Discourse Downgrading

Frequently witnesses blurt out information which could prove disastrous to the advocate's case. In order to downplay the significance of this kind of information the advocate might say something like *Yes, we'll come to that shortly* or *I'll ask you about that in a minute*, indicating to the audience that what the witness has just said will be dealt with in the near future. Whether or not that happens is another matter though. However, if the advocate wants to show that the witness is being somewhat obstinate in answering questions, even though that may not be the case, he can demand responses with phrases like *I didn't ask you about that, I asked you about...* or *Answer the question* or even harsher *Never mind X, what about Y*. The following excerpt illustrates some of the ways in which an advocate can direct the audience to ignore the witness's testimony.

Q: You went on questioning him after that, didn't you?

A: No sir.

Q: Have a look at your own notes.

A: When he asked to see a solicitor, I said he could and I would go make further inquires. He then called me a bastard and I said "What do you mean by that?"

Q: *Go on.* You know that later on in the interview you resumed questioning a man who said to you he didn't want to tell you anything until he had seen his solicitor. You asked him how he got the money. You asked him what job it was.

A: I don't think in fact, sir, that I have asked a question until he had made an admission of the offence. The rest in between time were statements I believe.

Q: *But I am not concerned with that.* The fact is that here is a man who says he doesn't want to speak to you until he has got a solicitor and you nevertheless in the same interview go on questioning him. That is right, isn't it?

A: As I say sir I don't believe I put another question to him until . . .

Q: *Nevermind about 'until'.*

A: I certainly asked a question after he made an admission of the offence.

[Graham: 161]

There are a number of phrases, all of which occur in utterance-inital position which function to direct the audience to ignore what has just been said. For example, *in any event,* and *anyhow* both can indicate that the witness has just said something completely irrelevant though that may not have been the case.

4.8. Leading Questions and Witness Response

The final example below is instructive for a number of reasons. First, not unlike other court situations, the witness is questioned about a document he wrote some time ago. In this case, Sir Robert Armstrong is questioned about a letter he wrote in 1981. Although the letter was intended to put it 'on the record' that the British government had officially requested a copy of a book dealing with intelligence matters from the publishers, the cross-examination directed the court's attention to the fact that the government already had a

copy of the book. Two aspects of the letter were conflated in the questioning: the first concerned the (official) purpose for sending the letter and secondly, Armstrong's knowledge about the acquisition of the book.

The cross-examination also illustrates how an experienced witness might interact in arguing for certain claims to be accepted. Sir Robert was not an inexperienced or novice witness. He had held different positions within the government, worked with the Attorney General on legal matters and had certainly had prior argumentative encounters. In a sense, he is an expert witness (high-ranking civil servant) with knowledge of the bureaucratic machinery which handles intelligence matters.

Both Armstrong and Turnbull, the cross-examining solicitor, are highly trained professionals Armstrong is not like other first time court appears who may be 'baffled and bullied'; he is well aware of the ways in which language-use affects the interpretation of evidence and in the following excerpts, it is noticeable when he tries to prevent the substitution of implicative terms which present alternative interpretations about the contents of the letter.

The exchanges which took place about this letter also shed some light on what options witnesses have when dealing with leading questions. The witness was more than a match for Turnbull when it came to devising ways of dealing with attempts to recycle previous information; he inevitably repeated what he said before, used certain discourse deictic markers to show the consistency with which he was giving evidence (*as I stated in my affidavits..., as I said before...*, etc.), and challenged Turnbull to take responsibility for reformulations of information. But this strategy did not always help him appear knowledgeable or truthful and indeed may even have adversely affected the judge's

assessment of his evidence in the case.

A letter was sent from Sir Robert Armstrong to W. Armstrong of Sidgwick and Jackson requesting a copy of the book *Their Trade is Treachery* (March 23 1981). It read:

> I have seen extracts in the *Daily Mail* today from Mr. Chapman Pincher's book *Their Trade is Treachery*. The Prime Minister is in my judgement likely to come under pressure to make some statement on the matters with which Mr. Pincher is dealing.
>
> I believe you will agree with me that, if she is to make a statement, it is in the public interest that she should be in a position to do so with the least possible delay. CLEARLY SHE CANNOT DO SO UNTIL SHE HAS SEEN NOT JUST THE EXTRACTS PUBLISHED IN THE DAILY MAIL BUT THE BOOK ITSELF. I SHOULD LIKE TO BE ABLE TO PUT HER IN A POSITION WHERE SHE COULD MAKE A STATEMENT THIS THURSDAY (26THE MARCH) IF SHE SHOULD WISH TO DO SO.[1] I should therefore be very grateful if you would be willing to make one or (preferably) two copies of the book available to me as soon as possible today or tomorrow.

(1) Q: That letter, Sir Robert, you wrote - - I take it you admit that you wrote that?

(2) A: I wrote that.

(3) Q: That plainly conveys to Mr. William Armstrong that the Government did not have a copy of the book, does it not?

(4) A: It does not say that. The letter takes the form it does because, as it has been acknowledged, a copy of the book had been obtained but I wished to protect the source from which it had been obtained.

(5) Q: So you misrepresented the truth in order to protect a source of MI5?

(6) A: I said that I would like to have a copy from the publishers openly in order that the Prime Minister could make a statement.

---

[1] These two sentences are the focus of the cross-examination about the letter and although the first sentence (in Caps) is quoted by Turnbull (line 7), he is more interested in questioning Armstrong about the implications of the second sentence *I should like to be able to put her in a position to do so...*

Rather than asking a neutral Yes/no question (*Did you write that letter?*) for gaining confirmation of authorship, Turnbull begins with *I take it you admit that you wrote that.* He does more than ask for confirmation; he indicates his belief that Armstrong was not being fully cooperative on previous occasions. Armstrong states that the letter was written as a routine official request for a copy of a book in (6), but he introduces this after he provides a justification for knowing that the book was already in the government's possession, (4) . . . *but I wished to protect the source from which it had been obtained.* This sets the tempo of the cross-examination, as Turnbull is not interested in the bureaucratic purpose of the letter, but rather the fact that the government had a copy of the book. (5) is an interesting example of a conclusion drawn by Turnbull which relies heavily on previous discourse, and Turnbull's defence strategy. Nothing has been mentioned about MI5 and yet Turnbull is keen to attribute MI5 as the *source* referred to by Armstrong. The questioning continues:

(7) Q: You said in that letter, speaking of Mrs. Thatcher, "Clearly she cannot do so until she has seen not just extracts published in the Daily Mail but the book itself". That conveys the very distinct suggestion, the explicit suggestion, that she has not had access to the book before this letter, does it not?

(8) A: I don't know whether she had access to the book itself at that stage, but that is beside the point. I did not wish to disclose that we had obtained a copy of the book.

(9) Q: You misled Mr. William Armstrong in order not to disclose the fact--

(10) A: I did not disclose to Mr. Armstrong the fact that a copy of the book had been obtained.

(11) Q: You misled Mr. William Armstrong, did you not?

(12) A: If you put that interpretation on it. I was bound to do so, but I wished to protect the source.

In (8), Armstrong does not return to the point he made earlier about the purpose of the letter, and instead tries to emphasise the government's need for

secrecy. This however is recycled as an intention to mislead the publisher, and precedes a more rigorous cross-examination in which Turnbull tries to get Armstrong to accept the word *mislead* as an accurate description of the government's actions.

(13) Q: That letter was *calculated to mislead*, was it not?

(14) A: It was *calculated to ask for a copy* of the book on which we could take direct action.

(15) Q: It was *calculated to mislead* Mr. Armstrong as to whether the Government had a copy of the book or not?

(16) A: It was *calculated not to disclose* to Mr. Armstrong that the Government had obtained a copy of the book.

(17) Q: It was *calculated to mislead* Mr. Armstrong to believe that the Government did not have a copy of the book. Correct?

(18) A: It was *calculated not to disclose* to Mr. Armstrong that the Government had a copy of the book in order to protect the confidentiality of the source from which it came.

(19) Q: And the Government did have a copy of the book?

(20) A: The Government did have a copy of the book.

Armstrong refers to both bureaucratic reasons (14) as well as government's need for secrecy. He is well-aware of the implications suggested by *calculated to mislead* and continually substitutes *calculated not to disclose*. As was discussed earlier, certain verbs indicate 'distortion' or 'lying' and *mislead* attributes an intention to disguise the truth which Armstrong objects to. This passage is also interesting because both cross-examiner and witness refuse to give way on the substitution. Finally, in (19), Turnbull asserts what Armstrong has already said (20). Since the government had a copy of the book, Turnbull tries to argue that the letter was a 'lie'.

(21) Q: This letter is an untruth, is it not?

(22) A: It is what I have said. It was designed to protect the

confidentiality of the source and to avoid the disclosure that a copy of the book had been obtained.

(23) Q: Sir Robert--

(24) A: If that is misrepresenting, yes it was.

(25) Q: Do you understand the difference between a truth and an untruth?

(26) A: I hope so.

(27) Q: And a statement is true if it is an accurate representation of the facts, is it not?

(28) A: That is certainly one definition of truth.

(29) Q: And a statement is untrue if it misstates the facts, is it not?

(30) A: If it misstates the facts. This does not misstate the facts. This does not misstate the facts. You say it misrepresents the facts.

(31) Q: What is the distinction between misrepresenting and misstating the facts?

(32) A: In this letter, as I have explained, it was designed, it was written so as not to disclose the fact that a copy of the book had been obtained.

(33) Q: It misrepresented the facts, did it not?

(34) A: If that was misrepresenting the facts, it was misrepresenting the facts.

(35) Q: It did misrepresent the facts, did it not?

(36) A: If it did so, if you say it did, if you say that is what this letter was doing, very well.

(37) Q: Sir Robert, it is not what I say. I am asking you what you say. *Do you admit that that letter misrepresented the facts as they were?*

(38) A: It was designed, as I have said, not to disclose to Mr. Armstrong that a copy of the book had been obtained beforehand, and that was in order to protect the confidentiality of the source from which it had been obtained.

In (25), Turnbull asks whether or not Armstrong knows the difference between a truth and an untruth as a way of repeating his claim that the letter

misrepresented the facts. In (37), we again see Turnbull asking a question with *admit*, a factive verb which indicates an acceptance of a moral responsibility for *misrepresenting the facts*. The Judge interrupts at this point as clearly both witness and cross-examiner will not give ground on either interpretation offered about the letter.

His Honour:

> Mr. Turnbull, I am not sure if we are making any progress. We have fallen into an exercise of semantics. As I understand it, Sir Robert says, according to my note, that he would not wish to tell an untruth to protect national security. He has never been put in a position in which he was required to do so. However, it is my impression -- and I ask Sir Robert to assent or deny the accuracy of it -- that he would not say that he would not be willing to mislead people if that were in the national interest. Is that a correct assessment, Sir Robert?

Witness:

> I would not wish to do so. But in this case, as I said, what I did say not so much to protect the national security as to protect the confidentiality of the source from which the book came.

His Honour:

> *It certainly would be with the intention to mislead?*

Witness:

> Certainly with *the intention that Mr. Armstrong should not be aware* that the Government had already seen a copy of the book.

Typically, a judge may interrupt the cross-examination for a clarification of the witness's response. However, in this instance, the Judge simply adopts the cross-examiner's leading question with *the intention to mislead*. Armstrong carefully replies substituting *the intention that Mr. Armstrong should not be aware*. Turnbull continues the examination and confronts Armstrong with ludicrous definition tasks in (52) and (56). Armstrong manages to avoid the chasm of supplying a definition and then being forced into a generative game of criteria for that definition, but it remains an open question of who actually comes out the winner in this confrontation.

(39) Q: I put it to you that the letter contains an untruth. That is the question.

(40) A: It does not say that we have already got a copy of the book, that is quite true.

(41) Q: So it contains an untruth.

(42) A: It does not contain that truth.

(43) Q: You went further than you needed to go to get a copy of the book. You conveyed to Armstrong, to William Armstrong the clear impression that you did not already have a copy of the book, did you not?

(44) A: Yes, I did, because I was wishing to protect the confidentiality of the source from which we had obtained it.

(45) Q: And that impression was not a true impression, was it?

(46) A: Well, clearly we had a copy of the book.

(47) Q: So that letter contains a lie, does it not?

(48) A: It contains a misleading impression, in that respect.

(50) Q: So it contains a lie?

(51) A: It is a misleading impression, it does not contain a lie, I don't think.

(52) Q: What is the difference between a misleading impression and a lie?

(53) A: You are as good at English as I am.

(54) Q: I am just trying to understand.

(55) A: A lie is a straight untruth. A lie is a straight untruth.

(56) Q: What is a misleading impression - a sort of bent untruth?

(57) A: As one person said, it is perhaps being economical with the truth.

Throughout this cross-examination, leading questions were used and questions like (56) which mark the cross-examiner's skepticism are rhetorical ways of elaboration which 'emphasize the social perspective of language at the expense of the psychological.' (Leech: 1984: 150). This example illustrates a number of

features of questioning, most notably, through its lack of legal jargon or technical terms. What makes cross-examination a special case of institutionalised language-use is not the use of technical words or legal jargon. Indeed, cross-examination is unlike written legal discourse in that few technical terms appear except, perhaps with scientific evidence (certain expert witnesses, like forensic scientists etc.). But where this speech situation differs, even from conversational arguments, is in the way facts are constantly recycled within the discourse to support the questioner's claim. A cross-examiner demands explicitness, completeness, and accuracy of information from the witness, but whatever the witness says (and of course doesn't say) is recycled along with other information as the discourse progresses. Witnesses find their testimony reformulated in a way which completely downgrades the descriptions they previously offered (substitution of implicative terms, e.g. *intelligence officer* for *spy*). Recycling information occurs with the help of certain pragmatic devices: sentence adverbs (*certainly, in fact, undoubtably*), reformulation and repetition phrases e.g. *What you're saying then is..., In other words..., You told us earlier that..., You admitted that...,* , *If / Then ... constructions,* and various other rhetorical constructions (substitution, asking for definitions) which all indicate a relationship between the speaker and the information currently introduced. In Chapter Five, sentence adverbs will be examined as these indicate the questioner's attitude towards what he is saying; they can be used as a way of commenting on the evidence being given and the witness's sincerity.

CHAPTER 5

SENTENCE ADVERBS IN COURTROOM QUESTIONING.

5.1. Introduction

One way of affecting the interpretation of the ongoing discourse is by a speaker marking his speech with adverbs like *clearly, obviously, certainly* etc. In doing so, he expresses an attitude towards the content of what he is saying. This attitude may be one of conviction concerning the truth of the proposition expressed by an utterance, as in *certainly,* or may be one of conviction about the nature of his assessment as in *obviously.*

Adverbs like *obviously, clearly, in fact* and *certainly* generate inferences beyond the scope of merely truth-conditional meaning. These inferences are pragmatic as they convey a conviction held by a speaker within the speech situation. The advocate who wants to convince his audience of the factuality of a claim may use these adverbs to show conviction about what he is saying, thus intending that the audience take note of this when interpreting his questions and the responses given. Sentence adverbs contribute to the interpretation of information and, can be used to manipulate the inferences an audience draws about the quality of information being introduced. One way to think of the function of sentence adverbs is that they indicate to the hearers '. . . how the utterance so prefaced matches up to the cooperative expectations governing communication.' (Levinson: 162), as a speaker who expresses conviction about what he is saying can be viewed as adhering emphatically to the Quality maxim.

Some general remarks about adverbs and the way they seem to function in discourse are made by Bolinger who comments that sentence adverbs are

'...expressions which nudge the hearer into this or that attitude toward what the speaker is reporting' (1983: 82). He approaches the use of adverbs within a socio-semantic framework and adverbs like *clearly*, *actually* and *surely*, in the following sentences convey the speaker's attitude and at the same time seem to nudge the hearer into adopting the same attitude.

1. It costs ten dollars.
2. It *actually* costs ten dollars.
3. It *even* costs ten dollars.
4. It *clearly* costs ten dollars.
5. *Sure enough*,it costs ten dollars.

He argues that in Sentences (1)-(5), the appearance of an adverb triggers the reading of a 'hidden proposition' which could be paraphrased and added to (1) such that:

It costs ten dollars and

- (2) 'This fact is true despite contrary assumptions.'
- (3) 'That makes the fact more extreme than had been supposed.'
- (4) 'There is no doubting of the fact.'
- (5) 'That confirms what had been predicted.'

What Bolinger termed 'hidden propositions' are the inferences a hearer may draw when interpreting an utterance. These are not solely derived from the truth-conditional meaning of the adverb, but from what the hearer knows of its usage in a speech situation. In the courtroom, advocates and witnesses use sentence adverbs in a variety of ways; they can convey the strength of their conviction about certain information, with the use of *certainly*, or convey

attitudes which relate their current utterances to information in the previous discourse in a specific way, as with the use of *in fact*. The use of sentence adverbs may not only help to reflect on the interpretation of the witness's credibility, but can also relate the witness's prior testimony to the present testimony in a particular way.

Adverbs such as *certainly* and *probably* differ from *obviously* or *really* but finding the exact nature of these differences remains a complicated issue. The former group, sometimes called 'modal' adverbs, seem affiliated with the speaker assessing the truth of the proposition expressed by an utterance. But the latter group are less well-defined. Schreiber (1971) noticed a radical difference between groups of adverbs and those which seemed to being expressing an opinion about a fact, such as *fortunately* or *surprisingly*, he called 'evaluative'. Quirk (1981: 206) suggests that adverbs which are peripheral to the clause are either 'adjuncts' or 'disjuncts'. Disjuncts can be distinguished by the fact that they can appear at the beginning of the clause while adjuncts cannot. Adverbs which add information about the speaker's point of view are a type of 'attitudinal disjuncts'. Nilsen (1972) has suggested that adverbs such as *certainly, possibly, probably* function as affirmation markers in the discourse.

There is no shortage of different ways in which adverbs have been classified, and to some extent, research on sentence adverbs has attempted to take account of the speaker and the immediate context of utterance in providing explanations. An extensive typology of functions of all types of adverbs has been developed by Jacobson (1978, 1975) and Buysschaert (1982) who consolidate adverbs into basic categories relating to the informational nature they provide in utterances. These works are an improvement over standard reviews given by Lees (1960), Baker (1971), and Stalnaker (1973), who

investigate sentence adverbs from a non-pragmatic point of view.

The differences between *obviously, clearly* and *fortunately* and adverbs such as *possibly* and *probably* have been the focus of a number of studies the following Table shows the ways in which these have been labelled in the literature. In the table below, classes of adverbs proposed by various authors are arranged in two columns, reflecting a rough consensus about the most basic dichotomy. But there is little consensus on details beyond this basic dichotomy.

Modal Adverbs	**Other Sentence Adverbs**
Possibly, probably, certainly, maybe, conceivably	*frankly, briefly, in fact, obviously, really*
	Speech act adverbials/ Performative Adverbs (Ross; Parisi; Fillmore)
Adverbs of Affirmation (Nilsen)	
	Evaluative Adverbs (Schreiber)
Disjuncts, Intensifiers, Emphasisers, (Quirk,Leech)	
	Evidential & Perceptual (Mitchell)
	Style Disjuncts (Greenbaum)
	Claim, Fact, Modifiers (Buysschaert)
Denotative Meaning	Associative or affected Meaning [feelings or attitudes of speakers], Leech (1974)
Non-epistemic	Epistemic (Lyons, Dougherty)
Discourse-oriented	Speaker oriented (Quirk)

There are substantive differences between the approaches and these will

become apparent shortly, but I adopt the two most common terms to discuss sentence adverbs in courtroom questioning. MODAL adverbs will refer to adverbs such as *possibly* and *certainly* and the term EVALUATIVE covers the sentence adverbs such as *obviously* and *really*. The major differences between these groups are taken to be the following. MODAL adverbs show a speaker assessing the truth of the proposition expressed by an utterance. EVALUATIVE adverbs, on the other hand, are not linked directly to notions of the truth of propositions but rather here the speaker shows his commitment to the 'communicative validity' (Leech, 1974: 26) of the information provided by his utterance, inasmuch as what he is saying is marked with an assessment which the speaker wishes the hearer to recognise, and which is more than an emphatic marker. With EVALUATIVE adverbs, speakers can indicate *degrees* of commitment to various types of assessments e.g intuitive, perceptual, attitudinal.

While MODAL adverbs also inject evaluative comments into the discourse and have scalar aspects, they have stronger links with truth-conditional considerations of the propositions expressed by utterances than do EVALUATIVE adverbs. With EVALUATIVE adverbs, truth conditional meaning is not so much irrelevant as inappropriate as the speaker is concerned with indicating a commitment about the information presented which reflects his assessment about the quality of that information. There appear to be several types of EVALUATIVE adverbs, but only two are considered here. In the first group, adverbs such as *obviously, evidently, presumably* etc. indicate that the speaker is making an assessment of his utterance content in terms of the availability of information for the hearer to make a conclusion. In another group considered, *really, actually,* and *in fact* indicate the speaker re-evaluating the information in the light of previous discourse (i.e. confirming or correcting information).

5.2. Modal Adverbs

Speakers making assertions have some evidence to support their commitment and Mitchell (1976: 500) argues that an assertion involves a speaker drawing a conclusion based on evidence. The evidence may be inferred from the discourse or may be estimated from the speaker's belief about the nature of a situation. In either case, when necessary, the speaker may indicate that the evidence is less than substantial (or more than substantial) and does so by inserting a modal adverb.

Jacobson (1978: 30) expands on the basic argument that sentence adverbs mark conclusions in the discourse and he suggests that modal adverbs mark the speaker's force of commitment in presenting a conclusion. If the conclusion offered is clear to both speaker and hearer, it need not be marked. However, when necessary, the conclusion may be marked according to the strength of the evidence a speaker has for his assertion. For example:

(6) John will come tomorrow.

(7) John will *undoubtably* come tomorrow.

(8) John will *probably* come tomorrow.

By uttering (6), the speaker does not explicitly tell his hearer that the assertion is based on evidence that he should know about. He assumes that the hearer will believe him and believe that he is tacitly following the Gricean maxim of not saying anything for which he lacks evidence (Grice 1976: 46). By specifically marking (7) with *undoubtably* the speaker expresses that he has convincing evidence that *John is coming* and that the hearer need not doubt that this will actually happen. Whether the hearer is thereby actually left in no

doubt is another matter. If he has less than substantial evidence that *John is coming*, as in (8), he informs his hearers that he cannot give his full support to his prediction but that he believes it will happen.

Other modal adverbs are *doubtless, conceivably, possibly, perhaps, maybe, certainly, and surely*. These represent scalar differences in the estimation of the speaker's belief in the truth of the accompanying assertion. We could rank these somewhat intuitively as:

Unquestionably
Certainly
Surely
Doubtless
Probably
Perhaps
Maybe
Possibly
Conceivably

Modal adverbs do play a role in everyday speech situations but to what extent are they significant in courtroom communication? It should be emphasized that modal adverbs which express a strong commitment cannot normally occur in questions. Parisi and Puglieli (1972: 623) say

> Sentence adverbs are in fact modalities of the assertion and cannot become what is asserted i.e. the object of the assertion.

Whenever modal adverbs of strong commitment appear in the courtroom, they appear in assertions where the advocate has not elicited any information but rather has asserted some information and also indicated his confidence in that assertion. For example

Q: Father, you told him this was an optional tenet of the Catholic Church?

A: Yes.

Q: *Certainly* nothing required on his part.

A: Right.

[Fenn: 94]

In this example, the advocate conveys his commitment to the fact that nothing was required on the witness's part. He asserts this and emphasizes that he is committed to this point of view. The witness's responsibility is to confirm that assertion.

These adverbs exhibiting certainty are useful mechanisms in cross-examinations where the advocate is interested in introducing the strongest claim possible to support his position. By making an assertion and by marking it, he directs the jury's attention to his support for the conclusion expressed by his utterance.

5.2.1. Expressing Surprise or Disbelief

Some of the above adverbs seem to occur in special environments. For example, sentences beginning with *But surely...* or *But certainly...* usually preface a statement of surprise or disagreement where the speaker reacts to the previous discourse. These are often accompanied by a questioning intonation as in

Q: *But surely* you knew about the deceased's will!

A: No.

The inference generated here is that although the witness did not know about the existence of a will, he should have. The lawyer's strong commitment to the

assertion suggests he has strong evidence for what he says. In this case, such a strong assertion acts as a way to chide the witness. If a witness disagrees with an assertion, he must match the advocate's show of commitment.

Q: *Certainly* you knew about the deceased's will.

A: I *most certainly* did not.

5.2.2. Other Modal Constructions

In addition to Modal adverbs suggesting a speaker's commitment to the proposition expressed by the utterance, a number of other constructions act similarly. Kress (1976: 198) gives a few other constructions which mark the speaker's attitude.

a.) As an adjective in a complement clause

It is *certain* that...
possible
probable

OR:

b.) As an adjective marking personal function:
(NP is____to VP)

He is *sure* to have known about it.
certain

OR:

c.) Noun complement

There is a *possibility* that he knew about it.
probability
likelihood

In this group, (b) cannot be constructed with an adjective exhibiting less

than full-bodied commitment. In the courtroom, modal adverbs along with modal constructions appear but (a) and (c) typically occur in interrogatives while (b) appears in assertive environments as in the following:

Q: You told him, *I'm sure*, that in the event that your understanding of the Catholic Church position was different from as you've described it, he'd still be bound by that, wouldn't he?

A: Yes.

or

Q: You are aware, *I'm sure*, at least since the beginning of this trial of a variety of statements alleged to be attributable to the Vatican--to other people that have occurred. Is that correct?

W: Yes, very much so.

[Fenn: 95]

These other modal constructions may not appear as frequently as modal adverbs in the questioning of witnesses for two reasons. First, the advocate is primarily concerned with putting information in the briefest possible form; modal adverbs are an economical way to interject a point of view. Second, by using any of these other constructions he either overstates his involvement in projecting belief as in *I'm sure* or he overstates that his belief is the salient feature of the utterance, 'It is *sure* that...'

If an advocate overtly marks his utterance with the pronoun *I* he risks having an objection raised over this as being a statement of personal belief; Napley (p. 63), fo rinstance emphasises that advocates are to 'eschew any declaration of personal belief and put forward arguments which suggest the interpretation and value of the facts.' In other words, the advocate should mark his utterances to show conviction but not specifically mark the conviction as his own.

Constructions involving *that*-complement clauses may also seem less effective than modal adverbs for another reason. A likely explanation for *It is certain that . . .* not carrying as forceful a conviction of the speaker may be the nature of the information structuring. By placing *certain* in a set topicalization structure, the advocate highlights that the belief itself is the important information being introduced. We could argue that the set constructions allow for the modal adjectives to be interpreted semantically while modal adverbs have a pragmatic significance. By placing it in a set construction, the advocate does not express his own position in relation to a belief, he merely states it.

Finally, if the advocate is concerned with introducing the strongest claim possible to support his position, as with the use of tag questions, he still has a use for the adverbs which express minimal commitment. He could use these when questioning the witness about a hypothetical situation. But, in that case, a modal verb is an adequate substitute,

Q: Is there a *possibility* that you overlooked that?

replaced by:

Q: Could you (possibly) have overlooked it?

5.3. Evaluative Adverbs

The second class of adverbs are EVALUATIVE ADVERBS. Here the speaker indicates an assessment of the information being presented and his level of commitment to that assessment. For example, with *obviously*, the speaker indicates that the information is readily available for the hearer to see, understand, infer, etc. and that the information is highly relevant. With the adverb *in fact*, the speaker indicates that he is re-evaluating the present

information in light of the previous discourse. He thus appears to be either confirming or correcting previous evidence. The adverbs *obviously* and *in fact* represent two sub-groups of Evaluative adverbs and we discuss how each plays a part in courtroom questioning.

5.3.1. Evaluative adverbs marking degree of ostension

In the first subdivision, the speaker may convey that what he is saying is perceptually based on specific physical or mental evidence and he may use an adverb like *clearly, obviously, evidently, apparently, supposedly* or *presumably*. These adverbs indicate that the speaker's beliefs are based on evidence from the surrounding discourse including previously generated inferences.

Apparently, presumably, and *supposedly* are peculiar within this group because they suggest that the speaker has inferred what he is saying from the previous discourse but that he is not entirely convinced of its accuracy. For example,

He got the keys from the foreman and went into
the flat by himself *presumably*.
We don't know for sure *obviously*.

Here the speaker indicates that he has drawn some conclusion with *presumably,* but since he is reporting it he does not assume full responsibility for any subsequent report which would prove him wrong.

Like MODAL adverbs, this group could be ranked according to the extent to which the speaker believes his utterance to be inferable from the surrounding discourse on the following scale.

Obviously
Clearly
Evidently

Apparently
Presumably
Supposedly

With evaluative adverbs which indicate a strong commitment to a conclusion, the speaker conveys that since it is self-evident to him, it should be considered so by the hearer. Thus, *clearly* and *obviously* direct the hearer's attention to the strength of the evidence he has for infering the information. This is important in courtroom questioning because the advocate is first of all making an assertion or asking a leading question, and additionally, he indicates the extent to which the audience should be in a position to go through the same motions.

In the following example from a Small Claims court case, the defending party was represented by a solicitor who continually interspersed his speech with *obviously*. He did so in order to show his conviction about the absolute accuracy of the details provided by his testimony. (This case involved damage to a council flat which occurred after an independent contractor had been employed by the Council to repair a blocked pipe.)

The solicitor representing the Council:

> Water had *obviously* accumulated in the bath...
>
> *Obviously*, he (the caretaker) had to do something...
>
> What the caretaker is saying and *obviously* he is the one who was asked because he was first on the scene, is that there was no sign of forced entry... The works foreman will *obviously* say that as far as he was aware, the keys were with him until they were given to the contractor...

By continually marking his utterances with *obviously*, the solicitor aims to impress upon the court that his testimony is clearly deducible from the facts. In the next example, the cross-examiner questions a witness using *obviously*;

note that all his questions are declarative in nature.

Q: Mr. Taylor, your job in so far as it relates to identikit, is *obviously* a specialist job for which you have had special training?

A: It is, yes.

Q: You need not only practical skill in the use of the various component pieces for building up, but you need skill, both taught and acquired, to gain the confidence and the ease of communication with the witness in order to build up a picture, is that fair?

A: That is so, yes.

Q: And *obviously* it can be, and I would have thought very often is, very important work building up an identikit?

A: It can be, yes.

[Graham: 181]

This example shows that as well as adverbs exhibiting strong commitment appearing in full-bodied assertions, they can also appear in tentative assertions.

5.3.2. Evaluative Adverbs Marking re-evaluation

Another group of EVALUATIVE adverbs indicate that the speaker is re-evaluating current information in light of the current situation. The speaker may thus appear to be either correcting or confirming information. This group includes the adverbs *actually, really, indeed,* and *in fact.* In the first case, by marking his utterance with *indeed* the speaker suggests that he is confirming the information of a previous utterance (or discourse) as the example below shows.

Q: You have told us that the deceased had bronchial pneumonia.

A: Yes.

Q: And also that there was evidence of a cerebral infarction?

A: Yes.

Q: It is not uncommon to find bronchial pneumonia developing consequently upon a cerebral infarction.

A: No it is not uncommon.

Q: *Indeed*, cerebral infarction is not an uncommon condition in a woman of 87 years of age.

A: *Indeed not.* It is a common condition.

[Napley: 80]

In this example, *indeed* confirms the assertion made earlier by the advocate. In the next example, *indeed* appears to be a message booster and the fronting of the *indeed* contrasts the witness's position with the one introduced by the advocate.

Q: It would be fair to say, would it not that his career following the publication of "Their Trade is Treachery" was hardly blighted by any official shunning of him?

A: Not as far as I know.

Q: *Indeed*, Mr. Pincher continued and continues to rub shoulders and mingle with influential people in your government and Defence sectors.

A: I have no direct knowledge of that.

Q: *Indeed*, he has ready access to many senior civil servants and politicians, does he not?

[Wright: 111]

Really and *actually* may indicate that the conclusion the speaker makes, corrects a previous statement or inference.

I *actually* saw it happen.

When *really* appears in a negative construction, the correction may imply a lack of factuality in the present utterance.

Q: The 20the is the first day according to your testimony, is that correct?

A: On the 19the there was sufficient doubt in my mind.

Q: What?

A: On the 19the there was a suspicion.

Q: Well, you were never *really* sure that your wife had coloured blood in her veins until sometime in May 1924.

[Wellman: 272]

With Evaluative adverbs, the advocate indicates a type of assessment of the information provided by his question. With adverbs from the top of the scale from both MODAL and EVALUATIVE groups, the advocate asks a leading question since adverbs exhibiting strength can only appear in assertions. But more importantly, the witness, particularly on cross-examination has to be wary of these adverbs as marking controversial information as if it were patently clear. The advocate may use these adverbs *insincerely* since his position in the conflict compels him to do so. He may or may not have convincing evidence that the information is inferable, truthful, or in need of correction but the expediency of his case compels him to make the audience believe that that is so. Within the latter group of evaluative adverbs, *in fact* seems particularly prominent in cross-examinations and some adverbs seem to be used for the special effect of showing surprise: both of these are discussed below.

5.3.3. Marking surprise or sarcasm

Indeed, really and *actually* can express surprise or lack of credulity about some information. These can appear in interrogatives or declarative sentences but always with intonational prominence.

Did you *actually* tell him that?
really

When appearing to express surprise, the adverb receives rising intonation as in, *Really* you are Machiavellan in thinking things up!

Indeed seems to have an frequent appearance in cross-examinations, when lawyers pretend to be surprised at the witness's testimony. In acting surprised, the witness's previous testimony is then often seen as unbelievable in view of the circumstances as the following example illustrates:

A: The reporter who wrote that (news article) was only in my house five minutes.

Q: *Indeed!* He got a great deal more out of you and that is more than I have been able to do.

[Wellman: 460]

When *indeed* is used to express lack of credulity, one inevitably interprets the cross-examining advocate as saying 'Who'd believe that for a moment?' The use of *indeed* to express disbelief or surprise represents one of the ways language is used for the purposes of special effect. In much the same way that irony works, expressing surprise remains reserved for special occasions when the effect will most conspicuously benefit the advocate's position.

5.3.4. *In fact* as a discourse deictic marker

The phrase *in fact* not only suggests that the speaker is making a correction, but that this correction is attributable to what was previously said either by the witness or implied by his testimony. The advocate introduces a 'corrected version' of information which seems somehow anchored to the

previous discourse. *In fact* relates the advocate's currently utterance to the previous discourse and this contrast could be considered as a type of deictic marker.

Although deixis is a concept employed to explain the relationship between the situation of the utterance and the speaker and usually is discussed only in relation to pronouns, the category of discourse deixis may offer some insight into how *in fact* acts in courtroom situations. Lyons (1977: 637) defines deixis as:

> the location and identification of person, objects, events, processes and activities being talked about *or referred to* in relation to the spatio-temporal context created and sustained by the act of utterance and participation in it typically of a single speaker and at least one addressee.

In fact is a type of discourse deictic marker because the speaker relates his current utterance containing *in fact* to some previous information. Unlike modal adverbs, where the speaker projects his sense of conviction about the utterance content, here the speaker indicates that the correction or confirmation being made is somehow anchored within the current universe of discourse. For example, if during the course of a conversation A asked B "Is John coming tomorrow?", an acceptable response from B could be "He will *probably* come." If, however, B says " *In fact* he won't be coming.", one assumes that B's utterance would only be appropriate if a prior discussion between the two parties was being referred to or if both A and B have prior knowledge about John's particular habits which supported B's correction.

In cross-examination, the advocate who uses *in fact* may appear to be eliciting a concession from the witness that the witness's previous testimony

was inaccurate.

Q You know *in fact* now that quite a lot of damage was done in that immediate junction?

A: Yes.

The phrase *in fact* may also appear to cast aspersions about the witness's willingness to cooperate in telling the truth. This could happen whenever the advocate introduces information *as if* it should be the corrected version.

Q: Were they *in fact* a Protestant mob that was attempting to burst into Divis street?

A: I must have known there was a crowd of people there.

In fact may have lost some of its literal meaning in other situations, but in the courtroom at least, some of it remains.

5.4. Information Structuring and Adverb Placement

In the examples given throughout this chapter no distinction was made between sentences like (1) '*Actually* I SAW it.' and (2) ' I *actually* SAW it.' where SAW receives contrastive stress. Having shown that claim and modal adverbs mark a speaker's assessment towards the content of the utterance, this leaves unreconciled an approach by Quirk (1981) and Jacobson (1978) and others that these adverbs have a focalizing or emphasizing function in marking a particular part of the utterance as important. According to these authors, *actually* in (2) is a catalyst for interpreting SAW as a focused piece of information. However, it is argued here that the adverb itself does not have a focalizing function in addition to the functions previously discussed but that this apparent focalizing

effect results from the interaction of the information structuring with a pragmatic function of the adverb.

5.4.1. Topics and Comments

Discourse can be said to be divided into topics - what the speaker is talking about and comments - what the speaker says about the topic. This definition is certainly not troublefree; the relationship between topic / comment and corresponding constituents within the sentence is debatable. Confusion has arisen in one area because linguists such as Hockett (1958: 201) tend to see the topic/comment distinction solely in terms of grammatical equivalents of subjects and predicates. It may not be profitable to look at topic / comment in terms of of the linguistic context alone, and Buysschaert (1982: 111) provides explanations of topic and comment which go beyond those given by Halliday (1970) and Givon (1979). A topic is defined as:

> the subject matter about which/or with reference to which something is asserted or asked in an utterance. The topic may be outside the utterance - it is then either an extra-linguistic situation to which the utterance refers or it lies in the previous linguistic utterance. The topic may be part of the utterance in which case it can be focused upon by special linguistic means.

Comments are defined as:

> What is asserted (or asked) in or by an utterance. The comment may be the whole utterance or a part of it and can also be focused upon by special linguistic means.

Focusing methods highlight, either by set constructions or intonation, the comment or topic of an utterance. For example, identifying clauses are a type of topic set construction (Nilsen 1972: 132 or Buysschaert 1982: 130)

We can use Buysschaert's definitions of topic and comment to explain the placement of sentence adverbs. In doing so, the distinction between (1) and (2)

could be explained as follows;

1. MODAL and EVALUATIVE adverbs typically fall into the comment category as they indicate a commitment about what is being talked about. As part (or all) of the comment structure, the adverb itself or another part of the comment structure can receive intonational prominence.

2. The comment structure may appear as one unit (i.e. together) or part of the comment may appear, followed by the topic and then the remaining part of the comment. The flexibility in placing the adverb within the comment structure may be related to the speaker's desire to stage information according to its saliency.

Accordingly, modal and evaluative adverbs are comments as they reflect a speaker's attitude towards what is asserted by an utterance. As comments within a comment structure, either the adverb or another part of the comment may be emphasized by intonation. For example, a speaker who wishes to express that he didn't just hear something but that he did see it could say 'I SAW it.' or 'I DID SEE it.' with *saw* and *did see* receiving contrastive stress. This would happen without the presence of a claim adverb like *actually*. The insertion of the adverb *actually* only marks the entire utterance with a speaker's commitment to confirmation. It does not change the fact that some other part of the comment is focused.

For example:

a.) T C
I SAW it. Focus falls on SAW.

b.) T C
I DID SEE it. Focus falls in DID SEE.

c.) T C
I actually SAW it. Focus falls on SAW.

d.) C T C
ACTUALLY I saw it. Focus falls on ACTUALLY.

These sentences show that an evaluative adverb is part of the comment structure where either the adverb receives certain highlighting as in (d), or another part of the comment structure receives it as in (a)-(c). This emphasizing effect of adverbs then is not really a *function* of the adverb itself, but rather a *consequence* of it appearing as part of a comment structure which is focused.

Moreover, placement of modal and evaluative adverbs relates to the speaker's need to organize his presentation of information linearly. Grimes (1975) suggests that speakers 'stage' elements of the discourse to ensure that salient elements are recognized. In sentences (1) 'ACTUALLY I saw it .' and (2) 'I ACTUALLY saw it.', we have a speaker in (1) who first expresses his commitment to a confirmation and wants that perspective marker recognized as the most salient part of the discourse while in (2) the speaker first identifies himself, and then supplies a confirmation marker.

5.5. Conclusion

Certain sentence adverbs generate inferences beyond the semantic scope of conventional meaning. Sentence adverbs can be considered as tools for

'nudging' the hearer into adopting the same attitude as the speaker has about his utterance content. In the courtroom, the advocate has the objective of not only putting forward information, but also offering or suggesting the value of that information to the jury. In using sentence adverbs, he effectively promotes a set of beliefs about what he is saying. Thus the advocate can be seen as influencing to the audience's interpretation of utterances whenever sentence adverbs appear in his speech.

The sentence adverbs which I have examined have roughly fallen into two categories: MODAL and EVALUATIVE. Modal adverbs express the speaker's commitment to the degree of certainty about the propositional content expressed in the utterance. These include *certainly, surely, probably* etc. Evaluative adverbs express a different type of assessment. This group can be further subclassified into those expressing a conviction about the ostensible quality of the utterance content e.g. *obviously, clearly* and *evidently* and those which mark a commitment to the speaker's confirmation or correction of information.

Adverbs expressing strong commitment (from either group) can only appear in an assertive environment. Thus, an advocate using these adverbs is not eliciting information, he is giving it and he additionally signals the conviction he holds about that information. In the courtroom, adverbs from the higher end of the scale from both groups appear with information that is quite tentative. The advocate attempts to make tentative information seem appropriate or valid by the insertion of an adverb.

Modal and Evaluative adverbs may appear more frequently than other modalised forms such as that-comp. constructions (it is *certain* that) or personally marked comment clauses *I'm sure* because these constructions

directly involve the speaker. Adverbs are an economical way of conveying belief without marking it as a personal conviction. Modal adverbs which express a low degree of certainty may be substituted for alternative modal questions.

Evaluative adverbs from a second subclass mark the speaker's confirmation or correction of previous information. The most prominent member of this group is the phrase *in fact*. An advocate using *in fact* suggests that he is making a correction (which may or may not be necessary) attributable to or anchored in the previous discourse. *Actually, really,* and *in fact,* particularly in utterance-initial position, may be discourse deictic markers.

Finally, issues concerning the placement of adverbs are dealt with by an examination of the topic/comment structure of discourse, where sentence adverbs are seen as comments which appear in initial, mid or final position depending on the speaker's desire to 'stage' elements according to saliency.

CHAPTER 6

ARGUMENTATIVE COHERENCE IN WITNESS EXAMINATION

Questioning progresses in a non-random way, with participants contributing in what is seen to be a consistent way, or does it? In the previous chapter, I outlined how adverbs contribute to marking factuality, disbelief and disagreement and how their placement can affect the staging of information. The way in which other lexical and syntactic patterns used in questioning influence the interpretation of utterances was discussed in Chapter Four. It is to the overall argumentative coherence and features which manifest the questioner's point of view that I turn to now; or the strategies by which coherence is seen to be achieved. Advocates through various devices, attempt to align the evidence presented in a questioning encounter to support their cases. In addition to the use of adverbs, reformulation phrases, and modals, the institutional character of the interaction can be glimpsed through examining the use of connectives and other structures which, as previously argued in Chapter Three, 'lay out publicly information about the participants and their points of view'. Connectives and pronouns along with identifying clauses contribute to what Sperber and Wilson (1986) referred to as 'pointing to information about information in the discourse'. Connectives, for example, relate a current utterance to the previous discourse, and the relationship between the present utterance and the previous discourse is one which is not merely semantically based on the notions of causal or additive value of propositions. Utterance-initial connectives may well be considered discourse deictic markers in as much as they allow the speaker to 'anchor' what he is saying to the prior discourse and he leaves it up to the hearer either to force a confrontation over this 'anchoring' or just accept it.

Along with connectives and pronouns, identifying clauses (also called adverbs of reference) in English reflect argumentative positions within the questioning and reveal the speaker's attitude towards participation in that sphere. Examples of this are *As I am sure you know, As you made clear yesterday, As to your contention about. . ..* In addition to (re-) introducing topics in set constructions, identifying clauses can suggest that the hearer can 'recover', if necessary, the information identified. This is an interesting idea because in argumentative encounters, it seems that the use of identifying clauses is intended to do just the opposite, i.e. let the hearer do a lot of work at recovering information which is not locatable in the circumstances indicated; the speaker, however, appears to be unaccountable in such instances as the burden of retrieval rests with the hearer. Certain identifying clauses may be considered 'meta-communicative' markers (Ragan, 1983) in that they refer the hearer to the verbal properties of other messages. Referring the hearer to the verbal properties of other messages, or indexing messages which may or may not be recoverable will be discussed below. A brief examination of lexical cohesion precedes a discussion of examples from the *Wright* case, where the strategies of both witness and advocate are revealed. The cross-examination in this case illustrates the extent to which language-use in courtroom questioning is a process of recycling information, suggesting recoverability when none exists, and setting up contradictions through manipulating diverse pragmatic means. The way in which the witness interacts in this case is also of interest, as his methods of dealing with leading questions and the recycling of information are, at times, quite ingenious, and suggest how effective 'resistance' strategies can be realised.

6.1. Cohesion and pragmatic conjunctions

Cohesion is what Halliday and Hasan (1976) have argued binds a text. As a semantic concept, cohesion refers to relations of meaning that exist within the text. It occurs where the interpretation of some elements of a sentence are dependent on that of another. The one presupposes the other which cannot be effectively decoded except by recourse to it. Several different cohesive ties are discussed by Halliday and Hasan including reference, substitution, ellipsis, conjunction and lexical cohesion. Anaphoric pronouns, for example, designate terms in preceding sentences while conjunctions, such as *and* and *but*, indicate relationships between sentences of addition or contradiction. But in the courtroom, cohesion markers may be used pragmatically to signal a relationship between the current utterance and the discourse, and such a use is not necessarily based on logical relations between sentences. While these may indeed link text or show continuity within text, *and, yet, so, but* and *still* in utterance-initial position seem to have specific functions which go beyond accounts of text-linkage. They could be considered as connectives which link individual speech acts or a series of speech acts over stretches of discourse. Alternatively, utterance initial connectives could be considered discourse deictic markers. Both these approaches then place connectives in a pragmatic area of investigation.

A pragmatic account of connectives in terms of speech acts, is provided by Van Dijk (1983),

> most of the pragmatic connectives may be assigned a function in terms of the satisfaction of conditions for preceding or following speech acts: a speaker will add, check, question, attack, etc. any of these conditions or even the speech act as a whole. Variations may be stylistic, rhetorical and conversational: some forms will be more polite, more aggressive etc. than another form... Further research will have to

> focus of the textual or conversational details of the strategies determining the use of various pragmatic connectives.
>
> [1983: 176]

In cross-examination, 'strategies determining the use of pragmatic connectives' are related to the advocate's immediate position with the witness and his informational objectives. On direct examination, the advocate is in a collaborative position with the witness and connectives may appear to serve a relatively minor cohesive function. For example, *and*, often prefaces questions on direct examination; an indication of continuity in the questioning sequences. However, cross-examinations typically have questions prefaced by connectives which reflect the advocate's conflicting position with the witness. Connectives which indicate contrast such as *but* and *although* and those which may indicate conclusions, *so* and *then*, often preface questions which introduce controversial information. These connectives carry considerable import as they not only could preface incorrect conclusions, as with *so*, but do so in such a way that conclusions seems clearly linked with previous testimony. This makes the conclusions seem appropriate even though that may not be the case.

Utterance-initial connectives are quite conspicuous on cross-examination. *But*, *so* and *then* are frequently used connectives and this reflects the difference between these two parts of witness examination. A cross-examiner is concerned with contrast and conclusion rather than simply showing continuity or addition by way of questions. Van Dijk (1983: 171) emphasizes that the connective *so* links two speech acts where the second is taken to be that of drawing a conclusion,

> Pragmatic *so* (often sentence initial *So*) links two speech acts of which the second functions as a CONCLUSION with respect to the first speech act. The pragmatic nature of this connective is based on the fact that 'drawing a conclusion' is taken to be an act. Clearly this pragmatic

function may be based on the semantic relation of cause-consequence.

Van Dijk bases his approach to connectives within Speech-Act theory with recourse to semantics but the 'cause-consequence' notion is perhaps overplayed. With *so*, a concessive relationship can be indicated and as some of the following examples will show, such concessions appear in conjunction with parallel syntactic structures.

In addition to conjunctions, other connectives can be examined along the same lines as the adverbs discussed in Chapter Five, namely, that they are discourse deictic markers. Levinson (1984) has speculated on the nature of connectives as discourse deictic markers. He comments that certain particles and utterance-initial phrases such as *anyway, all in all, in conclusion* etc. may be discourse deictic; these resist a truth-conditional treatment and suggest that the utterance in which they appear is a continuation or a response to the previous discourse,

> utterance initial *anyway* seems to indicate that the utterance that contains it is not addressed to the immediately preceding discourse but to one or more steps back. Such signals are deictic because they have a distinctive relativity of reference, being anchored to the discourse location of the current utterance.

Discourse deictic markers in English include connectives, sentence adverbs and phrases which indicate a type of relationship the speaker has with the previous discourse. In a sense, the term 'discourse deictic' can cover much more than either Fillmore or Levinson investigate; it is partially related to the notion of epistemic markers discussed in Chapter Four which mark to the speaker's attitude but do so in relation to aspects of the discourse.

When the cross-examiner prefaces his utterances with *so* or *then*, he could

be indicating that there is a causal connection which the hearer is supposed to make and one which the hearer is presumed to agree with as a rational choice. But more importantly, he can indicate that the audience should search for a causal connection which is one outside the messages previously generated. Cross-examination is an argumentative speech situation, and conflicting goals appear to be signalled, minimally at least, by contrastive and consequential connectives. During cross-examination, the advocate probes the accuracy of the witness's testimony to elicit previously stated facts in a more favourable light. In this editing process, previous evidence is abstracted, re-examined and re-assembled to aid him in firmly establishing a case. The advocate checks, questions, protests or rebuts the evidence given on direct examination and his questions may, in fact, presuppose conclusions drawn from the facts as he sees them. He may seek to emend testimony previously given in order to introduce his audience to more advantageous aspects of his case and pragmatic connectives may signal this process.

So, *but* and *then* typically preface leading questions which can mark fictitious conclusions, rebuttals, or concessions put to the witness for affirmation or denial. Such manipulation of connectives refer the listener to messages of an imagined prior discourse but this could be seen as one way of achieving what advocacy experts, such as Spinal and Packal (1984:79), describe as objectives of cross-examination:

> On direct [examination], you want the witness to narrate the facts with as little apparent help or interference from you as possible. However, on cross [examination], you are not dealing with your witness, and you cannot count on him to express his answers in the way that will best serve your case. Your questions must be designed to elicit the facts in the most effective manner possible and give the witness the chance only to affirm or deny them.

Of the connectives mentioned, *but* and *so* figure prominently in

cross-examinations and often preface contentious information which the advocate is about to give. He links this contentious information with the rest of the discourse by inserting *so* or *then* thus indicating that his conclusion is consistent with previous evidence or testimony. In the example below, the adjudicator prefaces several of his conclusions with *so* and also shows his dissatisfaction with the witness's response by prefacing this disagreement with *but*.

Q: *So* did you then look to the right when you first emerged?

A: Yes. First, I go that way every morning you see so I'm quite familiar with the road.

Q: Did you stop at the junction first?

A: No, there isn't a STOP sign as such. It's a GIVE WAY and you don't automatically stop at a GIVE WAY sign so I was rolling.

Q: *So* the result of this would be that you wouldn't see any traffic from the left.

A: I wouldn't expect any traffic from the left.

Q: *But* you wouldn't see it if it came.

A: Well no.

Q: *So that* if he was travelling along with his headlights on, you wouldn't have seen him although you might have heard him if you had heard his horn.

The adjudicator in this instance disputed the witness's previous testimony and suggested a rather different interpretation of the incident. He drew conclusions which appeared to be linked to the witness's evidence but were in fact inconsistent with anything the witness had said, or implied; on the contrary, the adjudicator puts to the plaintiff exactly the opposite position of his claim. In his third question, he prefaces a conclusion with *so* which was clearly ill-derived; driving through a GIVE WAY sign does not result in having restricted visibility. The adjudicator then emphasized his dissatisfaction with the

witness's responses by proposing an alternative conclusion *But you wouldn't see it if it came*.

In the next example, the cross-examiner uses declarative questions prefaced by connectives to introduce the topic of witness misidentification.

Q: And it was perfectly clear to you I expect that you were the only person at that stage who could give the police any lead. You are an intelligent girl; you did realize that what you were telling them about the raider was of great importance.

A: Yes.

Q: *So* I daresay you would take very great care to get it as accurate as possible to help them?

A: Yes.

Q: And we have had your description. What I am interested in is this. You see there is no qualification of the description there. You described him as 25 years old, 5-feet 10 inches tall and either Asian or very light skinned West Indian?

A: Yes.

Q: *So* you were describing him either as an Asian or possibly as somebody of negroid features.

A: I would not have described him as negroid.

Q: What is a very light skinned West Indian if it is not negroid?

[Graham: 127]

So, then and *but* in the utterance-initial position of questions confront a witness with a conclusion, or concession which has not been drawn from the witness's evidence but rather invented to align the witness's version of events with that of the advocate's. Conclusions put to a witness about his own evidence are revised and condensed to promote the cross-examiner's case and this can inevitably lead to conflict when the witness has to confirm or deny a conclusion which differs radically from the one he would have drawn.

The next example is from a Small Claims Court where the adjudicator appeared to take on the role of a cross-examiner. Utterance-initial connectives appear to be a feature of cross-examination and when an adjudicator employs them, his questions may well seem *not* to be those of an impartial inquisitor. In the extract below, the adjudicator continually prefaced his questions with *but* and *so*. He drew conclusions from what he interpreted as the witness's evidence and several times, contested the witness's responses (prefaced with *but*). His zeal for stating facts which the witness had not stated continued until the witness began to wonder what was happening. This produced a noteworthy exchange where the plaintiff/witness, after being confronted with so many conclusions, tries to anticipate the one about to be offered by the adjudicator.

Q: He doesn't recall seeing you as he started to cross the junction. *So* it seems to me that if that information is correct, you must have emerged from the junction after he'd started to cross it. This corresponds with the place, on your own evidence, where you struck the vehicle.

A: But if that's the case.. I would have been going at a pretty fast rate not to see him in front of me if that's what you're saying. I think you're-

Q: *But* you weren't looking in that direction, were you?

A: No. But I think you're coming up to the fact that I hit him... with the front as I was pulling out and *I think you're leading up to the fact that I was going too fast and not looking, aren't you?*

Finally, when *so* prefaces a series of questions, the interaction of parallel syntactic structure and the utterance-initial *so*, instead of indicating a concessive or causal relationship, promote a sense of implausibility which is emphatically stated.

Q: *So* Mr. A is lying?

A: Yes.

Q: *So* Mrs. A is lying?

A: Yes.

Q: *So* your employer is lying?

A: Yes.

Q: *So* everyone is lying except you?

Because of repetition, the advocate indicates the contradictory nature of the witness's responses. This appears to exaggerate the witness's position and while the parallel syntactic structures of the questions contribute to this interpretation, *so* can also highlight the difference between the positions of the questioner and witness without such repetition. Consider the following example where *so* underscores the incredulity with which the cross-examiner holds the witness's inability to provide answers.

Q: *So you come out 10, 000 miles or however long it is from England,* you have sworn four lengthy affidavits calling for the suppression of all of this book except three chapters, and you are not in a position to tell his Honour which parts of the book would prejudice, if published, would prejudice the operations of MI5.

A: It is very difficult to make a damage assessment of that kind before a book is published.

[Wright: 170]

6.2. Reformulation of testimony

Repetition in conversations certainly occurs frequently, with the speaker doing so in an attempt, for example, at clarification or expansion of his points. A speaker may repeat what he said because he thinks his audience did not hear him; alternatively, he repeats part of the previous discourse as a way of re-introducing old information into the current discourse. Repetition could be considered a tool which allows the advocate to reshape information to

accomplish this goal. But repetition seems to go hand in hand with reformulation and this section examines the ways in which certain repetition as well as reformulation phrases (*in other words, that is, etc.*) appear in cross-examination for the specific purpose of recycling the witness's evidence. Repetition has an *argumentative* function in courtroom questioning, particularly in cross-examination. Here repetition and reformulation are used for the specific purpose of attributing inconsistency of argument to the witness by selecting parts of what the witness said or implied, or alternatively, attributing something drawn from the advocate's own perspective on the case. This is a way of challenging or mooting the arguments of the witness; the witness is confronted with apparent anomalies in his testimony, and instances where reformulation phrases appear, such as *You're saying . . .* or *You're saying. . .*, *You testified earlier. . .*, or *You told the police. . .* etc., are all prime candidates for challenges or doubts being levelled against the point of view advanced by the witness.

Repetition and reformulation may be a way for the advocate to present previous evidence in a contradictory light, but the information so prefaced seems to be the responsibility of the witness even though the witness may not be even be partially responsible for any such information. In short, the following repetition and reformulation phrases allow the advocate to appear to be repeating what the witness said, but he may in fact be reformulating the information to enhance his own position within the discourse or introducing new information. In either case, these phrases could preface leading questions.

Repetition of witness Response	e.g.	Echo questions
Repetition + Repetition Phrase	*(But)* you said... *You're saying...* *Didn't you say...*	

You stated...
You testified earlier...
You told us...
You gave evidence...
In your affidavit, you state...

Repetition and/or reformulation
+ Reformulation Phrase

Do you mean...
In other words...
That is to say...
Do I understand you to mean...
I understood you to say...
What you're really saying is...

In the first example below, the advocate cross-examines an expert witness about the mental condition of his patient. The cross-examiner uses a reformulation phrase to preface a tentative conclusion which he expects the witness to agree with. The example shows one instance where the reformulation phrase does not appear to be too detrimental to the witness's testimony. However, this excerpt has other interesting aspects which should be noted. The witness in this case was a psychiatrist called to testify as an expert witness. He adroitly handles the cross-examiner's leading questions by hedging some of his responses *before* he actually answers 'yes' or 'no'. Although this has not been discussed, witnesses do have available means to deflect the effect of leading questions. In this case, the witness makes full use of qualification phrases to avoid committing himself to facts which he does not consider true.

Q: I would like to ask another thing about Mr. Harrison. Has he the habit of repetition?

A: Very much so.

Q: And talking at length about the same thing over and over again, so that you can't stop him at the end of a sentence?

A: I would not characterize it in that way, no.

Q: Was it almost that?

A: No, not almost that but he repeats very frequently.

Q: Is that a characteristic of aging persons who are normal?

A: They very frequently do something like that, yes.

Q: The mere fact that a man does it is no evidence of his imbecility, insanity or deterioration of itself?

A: Of itself, no.

Q: *In other words*, if a witness were on the stand in this courtroom and did that kind of thing, you would not say that he was mentally deteriorated.

A: No, on that basis of fact, no.

[Wellman: 404]

In the next example, repetition is not marked with any indicating phrases. However, the way in which the judge considers the two statements made by the witness to be contradictory is an example of the way in which information is altered to show purported inconsistencies. In this example, the witness makes two modified statements about what his attacker said to him. The cross-examiner threatens to bring in the police to verify his statements and then the judge interrupts to ask for an explanation of what he considers to be contradictory statements. Note that when the judge repeats the witness's statements, he noticeably drops the qualification the witness originally gave.

Q: Did he say anything?

W: He might have. I couldn't make it out *exactly*.

Q: Have you always said that?

W: Yes.

Q: What did you say to the police?

W: Oh, aye, he said he was going to get me *or something*.

Q: Was it not more specific? I'm going to be talking to the policeman you spoke to that night you know, so let us be clear on what you are telling the court.

J: Now, Mr. S., you have at the moment made two contradictory statements. (Reading) 'I couldn't make it out'. and 'He was going to get me or something'. If I think you are prevaricating–do you know what prevaricating means?

W: It means, eh, saying something...

J: (interrupting) It means avoiding a question. Now if I get the impression you are prevaricating then, believe me, I have the powers to use. If you are going to answer, answer truthfully.

[McBarnet: 99]

In the above example, the Judge repeats the witness's response but drops the *exactly*. *I couldn't make it out exactly* is a statement which is not inconsistent with the witness's other response where he indicates again that he was not sure of the exact nature of what was said but offers an extended explanation of the gist of the conversation. The Judge completely ignores the importance of the sentence adverb *exactly*. In doing so, this completely changes the meaning of the witness's statement. The Judge's intervention was entirely unwarranted, but the mention of the presence of a Judge and his right of intervention reminds the witness that 'someone is looking over your shoulder' and this is in a way consciously warning a witness. Consider the next example where to the advocate reminds the witness of the presence of the Judge in reformulating his testimony.

Q: Do you mean to say that *you were telling his Honour* that Mr. Wright's book which you have read is a full account of his work in the security Service?

A: It gives a very full account of his life in the service.

[Wright: 167]

Reformulation within the process of cross–examination is motivated by a variety of propositional attitudes on the part of the advocate: puzzlement,

doubt, skepticism, or rejection. The role of the witness to accept or reject the expression of these attitudes and the linguistic means he employs to do so have not been examined and in the following section, I will examine a cross-examination which reveals a number of ways that witnesses attempt to deal with such attitudes and the effectiveness of different measures.

6.3. Cross-examination and Witness strategies: Notes on the Spycatcher Case

In November 1986, the Attorney General in and for the United Kingdom brought an action against Heinemann Publishers and Peter Wright, a former MI6 officer, in an attempt to prevent publication of the book *Spycatcher*. The case was heard in New South Wales and Sir Robert Armstrong, the principal adviser to the Prime Minister on security matters, appeared for the plaintiff. He was cross-examined by Malcolm Turnbull, an Australian solicitor. The British Government tried to argue that the book and the information it contained should not be published as the information had been obtained in breach of confidence. To publish the book would conflict with the 'consistent practice and policy of the governments not to make public information about the work of the security service. . . when in the view of the government information may be disclosed without risk of damage, it should be done by way official publication based on official records with a view to giving a comprehensive and accurate account[1]. The case has a number of interesting facets, but the one which Turnbull initially focused on was the fact that the Attorney General had not himself come to Australia to give evidence, and instead Sir Robert Armstrong had been sent. This raised questions as to whether the plaintiff was

---

[1]Transcript, p.8

represented adequately and the questioning by Turnbull made much of this. Armstrong admitted that he *not a lawyer,* or *he was not an expert in the administration of justice*. Nor could he claim to be *familiar with legal matters* or answer *questions about the Law* In this first example, Turnbull iterates this controversial point about legal personalities by introducing it in a subordinate clause. Additionally, he shows skepticism about the government's position with the use of *a real duty*.

> Q: I know that is your argument and I can assure you I don't accept that. *I do not want to canvass the law of confidence with you as you are not a lawyer.* What I am asking you is, accepting your contention that a *real* duty of confidence covers information which is already in the public domain, as you have described it, why do you say, or do you say that that information which is in the public domain, if published by Wright, would cause detriment to national security?
>
> A: It may or may not.
>
> [p.20]

Decisions about whether or not a book or publication should be restrained were the responsibility of the Attorney General, and Armstrong repeatedly said that *the decision is the decision of the Attorney General.* This issue of whether Sir Robert was a legitimate representative of the plaintiff was one the defence continually questioned, proposing, instead that the plaintiff had deliberately been obstructive by sending someone who could not answer questions as comprehensively as expected. In the next extract, Turnbull boldly questions Armstrong about his being chosen for this part.

> Q: Why has the Attorney General, who is the plaintiff in this case, sent you *out to Australia* to answer questions about this matter if you are not in a position to inform us, have you been sent here because of what you don't know?
>
> A: I can't tell you that I do know what I don't now, can I now, Mr. Turnbull?

Q: I will just start that again, I'm sorry, you can't tell me what you don't know?

A: Hmmm.

Armstrong sidesteps the issue of his authority to answer questions on certain matters and instead responds drawing attention to his ability to be frank about his lack of knowledge. Turnbull reformulates his question to indicate his dissatisfaction with the representation of the plaintiff.

Q: What I am asking is were you selected for this job because you are not in a position to answer these questions?

A: I don't know why I was selected for this job.

Q: Who selected you?

A: I suppose the Attorney General did since he is the plaintiff.

Q: That was very gallant of him wasn't it?

A: I don't think I can comment on that.

[p. 57]

Turnbull had a habit of mentioning Australia and the distance between the two countries. The 'distance' metaphor appears in a number of ways *So you come 10,000 miles just to tell us...* or *I don't know how you do things in England, but here* . . . and highlights the distinct relationship Australia has with Britain. The nation–colony distinction was important legally as Australia's national interest was not the same as that of the U.K. Consider how the national considerations are coupled with the adversarial spirit of competition marked with *your side,* and skepticism about Sir Robert's competence to answer questions by the repetition of his qualifications to do so.

Q: *You come out here, Sir Robert,* and you have told us in your affidavit about *your great knowledge of security matters, and you are chairman of a security committee and you are responsible ultimately to the Prime Minister for security,* and you are not in a position to

give any explanation for an allegation made by Miss Massiter which *your side*, the Attorney General, has admitted for the purposes of these proceeding was true. That is the case, isn't it?

A: I am not in a position to report on the detail of Miss Massiter's allegation, and I am not – the interception is the responsibility of the Home Secretary and the security service don't report to me on these matters. I am not in a position, I'm afraid, to help you on that.

Q: That is most apparent. . . .

[p. 10]

6.3.1. Strategies for addressing embedded information

The witness, when faced with tag or declarative questions which introduce information as background knowledge, has a couple of ways of dealing with aspects of that information and the inferences it could generate. In the next example, Sir Robert has a number of things to consider about the information conveyed in this question:

Q: Sir Robert, you agreed with me yesterday that much of the information in Mr. Wright's manuscript has already been put in the public domain?

First, Turnbull indicates that Sir Robert had made a concession yesterday *you agreed with me yesterday*; he asserts this in a declarative question indicating not only his commitment to its propositional content, but that the information originated with the defence. He also quantified the amount of information put in the public domain with *much*. Lest the defence be seen as responsible for extracting information that the plaintiff partially agreed with, Sir Robert chose to reassign the responsibility for the proposition that *certain information in the Wright manuscript is in the public domain* but he is quite careful about accepting how much.

A: *I agreed that we had admitted* for the purpose of argument in this court that those matters which were particularised earlier as being the public domain were in the public domain, yes.

Q: It is your contention, is it not, that even when matter has been put in the public domain, it is still likely to cause detriment to the interests you serve if that same matter is republished as it were by an insider.

A: *I think I agreed that it was capable of causing detriment on that account yes.*

In answering both these questions, Sir Robert appears to go to great length to specify the conditional nature of previous testimony. *Those matters which were particularised earlier,* however, is necessarily vague, and rather than appearing to be fastidious in responding, he appears overcautious to an extreme. It is interesting though that the responsibility for the introduction of previous information changes hands. In responding to questions where the modification of information is in dispute, the witness has a choice of either correcting the modification through substitution, or calling attention to the disagreement and forcing the questioner to reformulate the information. In the next example, Sir Robert disputes the way modifiers are used and points this out.

Q: I put to you, Sir Robert, that Arthur Martin admitted, as you have conceded a few days ago, I think, as having provided Nigel West with a *great deal* of information for his book "Matter of Trust". You admitted that.

A: I certainly admitted he had provided information. I don't know if I said *great deal.*

Q: You said he admitted having done that.

A: He admitted providing *information* to Nigel West.

Q: I put to you that he also admitted to the security service that he had provided copies of *service documents* to Mr. West.

A: I think he admitted to providing some documents. I don't know that he admitted they were *service documents.*

[p. 121]

By directly calling attention to modifiers as objectionable, Armstrong makes sure no inaccurate information is introduced, however, the cumulative effect of doing this to questions in a series may not go to his credit. It could be interpreted as non-cooperative behaviour; i.e. by not offering a clarification of his disagreement by substitution the witness does not appear to want to clarify his position, he just keeps rejecting the cross-examiner's information.

6.3.2. Pronominal Reference

The appearance of pronouns is an area of reference which is important and can cause a few problems. *That* can refer to a series of propositions and attitudes that the questioner has; the witness, in order to reject all of them, matches the answer with the question. Below, we see the way in which the anaphoric pronoun *that* covers different information.

Q: I want to put it to you your attitudes about insiders and outsiders has got nothing to do with giving a valued provenance to that information at all. I take it you do not agree with that.

A: I don't agree with *that*.

Q: I put it to you that you are only concerned with maintaining an appearance of a leak-proof security service when in fact you know as well as everybody in this court knows the security service leaks like a sieve?

A: I don't accept that *either*.

[p. 85]

During the trial, Sir Robert was asked who the head of MI6 was from 1976-1982. This was objected to by the plaintiff's counsel who argued that to answer the question 'will. . .be the first time that that matter will have been officially confirmed by an official of her Majesty's government'. However, on the previous day, the following questions had been put:

Q: Who was Sir Dick Goldsmith White?

A: He was the Director General of the security service some years ago.

Q: And also MI6, was he not?

A: He had *other jobs*, yes.

Q: And also MI6, was he not?

A: He was also head of *that other organization*.

[p. 78]

Although, Sir Robert had not used the word *MI6*, he had still referred to it anaphorically and thus officially confirmed its existence. Turnbull emphasised the fact that Sir Robert had admitted the existence of MI6 and throughout the trial occasionally reminded Sir Robert of this by referring to MI6 as *that organization* or *that other place*. When the objection was not upheld Turnbull pursued questioning Sir Robert, and his duty of confidentiality was one way of interpreting his answer to Turnbull's question.

Q: Sir, Robert, Sir Arthur Franks was like Sir Dick Goldsmith White who was also head of that organization, was he not?

A: I ackowledged the existence of MI6 at the time Sir Dick White was head of it. *I do not wish to go any further than that.*

This was ambiguous and Turnbull wasted no time in interpreting it as:

A:Really. Is the world to believe that it went out of existence after SIr Dick Goldsmith White left?

There are a number of salient aspects of this cross-examination which show how witnesses can employ different strategies when responding to leading questions but two are particularly worth noting. The first involves the witness referring the questioner to the previous discourse for an answer to his

current question with the phrases e.g. *I think I discussed that fully earlier*, or in dealing with written documents, (I covered that in my affidavit), *I am saying what I said in my answers*. This is a reply but certainly one where the questioner has to work to get some information. Responsibility for further discussion rests with the questioner. The second strategy is for the witness to ask questions about the question. In reply to a question about Government policy, Sir Robert directs the courts attention to what he said before.

> Q: I think that at the hearing yesterday you told his honour that one way in which such republication would cause detriment was that the republication by an insider would give the information a more valid provenance, is that so?
>
> A: That is so. I think that I have stated the views of the Government on this matter in the affidavits and in particular the third and fourth affidavits which I have sworn for this court, for this honourable court.

[p. 78- 80]

However, in the following instance, when further information was sought by Turnbull, reference to the affidavits in this case brought about a confrontation;

> Q: What sort of information pre-World War II, if released, could prejudice the Security Service in 1986?
>
> A: *I think I have dealt with these matters in my affidavits.*
>
> Q: With respect, I am asking you a question--?
>
> A: *I would like to stand on my -- on what I say in my affidavit.* I will have read out from that, if that will help.
>
> Q: You take me to the part of your affidavit which would justify the philosophy which keeps indiscriminate secrets of peace time intelligence records? Can you take me to the passage in your affidavit which justifies that?
>
> A: I think it runs through the affidavits, Mr. Turnbull, doesn't it?
>
> Q: You just give me one matter. Pick your best argument on that out of the affidavits and tell me what it is.

[p. 87]

Throughout this case, it was apparent that Sir Robert Armstrong had decided to treat the cross-examination like an open discussion, commenting *let's come to that later* etc. Perhaps the professional status he holds led him to participate in ways not usually noted in other trials; at several times during the trial he asked *Why are you putting that to me?*.

Q: So the view was taken that notwithstanding that the book contained information obtained in breach of confidence and notwithstanding that it had material publication of which could damage national security, you felt that any damage that would be caused could be fixed up by Mrs. Thatcher's statement in the commons?

A: The Attorney General decided or was advised that he had no basis to restrain publication.

Q: I am putting to you that the Attorney General received no such advice at all?

A: *Why are you putting that to me*?

Q: Because if he received that advice he received it from somebody that should have not got through first year law.

A: I cannot answer questions of law.

Q: I imagine you cannot. But that is what I am putting to you. And I am putting it to you fairly now so that you know that that will be part of our case.

[p. 46]

6.4. Conclusion

In this chapter I outlined how questioning progresses; connectives and reformulation phrases convey judgments about factuality, disbelief and disagreement and contribute to the overall argumentative coherence of cross-examination. Cross-examiners align evidence in such a way that it supports their claims and reformulation phrases are a means of achieving this.

Repetition has an *argumentative* function in courtroom questioning, particularly in cross-examination. Here repetition and reformulation are used for the specific purpose of attributing inconsistency of argument to the witness by selecting parts of what the witness said or implied, or alternatively, attributing something drawn from the advocate's own perspective on the case. With reformulation phrases, the cross-examiner can recycle information, suggest recoverability when none exists, and set up contradictions.

In Cross-examination, an advocate recycles information in an attempt to influence the inferences an audience draws about the facts of a case. Such recycling differs from that found in other institutional settings in that the legal values and interests of the cross-examiner are not shared by the defendant or witness and may even conflict with pre-conceptions held by a witness. Rules of evidence, as were discussed, screen information which a witness considers relevant and may lead to full- fledged disagreement about what constitutes the facts of a case. With limited legal knowledge, witnesses go through the process of first identifying the force of the questioner's utterance and then, work through a strategy of negotiating acceptance or justifying rejection of the information suggested through questioning.

In summary, uses of language in courtroom questioning are more diverse than are envisioned by existing 'cooperation-based' models of language use. Dissensus and disagreement characterize courtroom communication and non-Gricean approaches to conflict in discourse can contribute substantially different perspectives. To understand how conflict is manifest and negotiated in questioning, I have suggested that pragmatics draw on argumentation theory and sociolegal research on courts. Such research identifies factors affecting how witnesses manage conflict in institutionalized settings and, through different theoretical frameworks, addresses the complex issue of argument progression. Future pragmatic research on questioning in court will no doubt elaborate the importance of the legal and argumentative dimension of language use.

References

Allerton, D. J. and A. Cruttenden. 1974. English Sentence Adverbials: Their syntax and their intonation in British English. *Lingua:* 27. 27–46.

Atkinson, J. Maxwell and P. Drew. 1979. *Order in Court.* Atlantic Highlands, New Jersey: Humanities Press.

Atkinson, P. 1985. *Language, Structure and Reproduction. An Introduction to the Sociology of Basil Bernstein.* London: Methuen.

Austin, J. L. 1962. *How to do Things with Words.* London: Oxford University Press.

Baker, C. L. 1970. Notes on the description of English Questions. *Foundations of Language* 6. 197–219.

Baldwin, J. and M. McConville. 1977. *Negotiated Justice.* London: Martin Robertson.

Bankowski, Z. and G. Mungham. 1976. *Images of Law.* London: Routledge & Kegan Paul.

Bereiter, C. and S. Engelman. 1966. *Teaching Disadvantaged Children in the Preschool.* Engelwood Cliffs, N.J.: Prentice Hall.

Bernstein, B. 1981. Codes, Modalities and the process of Cultural Reproduction – a Model. *Language in Society.* 10. 327–63.

------- 1971. *Class, Codes and Control, Volume 1: Theoretical Studies towards a Sociology of Language.* London: Routledge & Kegan Paul.

Bisseret, N. 1979. *Education, Class Language and Ideology.* London: Routledge and Kegan Paul.

Bitzer, L. 1959. Aristotle's Enthymeme Revisited. *Quarterly Journal of Speech.* 45. 399–408.

Blumberg, A. 1969. The Practice of Law as a Confidence Game. In *Sociology of Law* ed. by Vilhelm Aubert. London: Penguin.

Bell, A. Language Style as Audience Design. *Language and Society* 3. 145–205.

Bock, J. K. 1977. The Effect of a Pragmatic Presupposition on Syntactic Structures in Questioning. *Journal of Verbal Learning and Verbal Behavior,* 16. 723–724.

Bodaken, E. M. 1976. Counterattitudinal Advocacy, Ego Involvement and Persuasive Effect. *Western Speech Communications* 40. 236–248.

Bolinger, D. L. 1980. *Language-The Loaded Weapon.* London: Longman.

Bottoms, A. E. and J. D. McClean. 1976. *Defendants in the Criminal Process.*

London: Routledge & Kegan Paul.

Boulton, W. 1975. *Conduct and Etiquette at the Bar*. London: Butterworth.

Brown, G. B. and George Yule. 1983. *Discourse Analysis*. Cambridge: Cambridge University Press.

Burt, H. & Gaskill. 1932. Suggestibility and the form of a Question. *Journal of Applied Psychology* 16. 358–373.

Burton, D. 1980. *Dialogue and Discourse*. London: Routledge & Kegan Paul.

Buysschaert, J. 1982. *Criteria for the Classification of English Adverbials*. Mouton.

Canale, M. and M. Swain. 1980. Theoretical Approaches to Second Language Teaching and Testing. *Applied LInguistics*. 1.1. 1–47.

Carlen, P. 1976. *The Sociology of Law*. Sociological Review Monograph 23. University of Keele.

----- 1976. *Magistrate's Justice*. London: Martin Robertson.

Chafe, W. L. 1976. Giveness, Contrastiveness, Definiteness, Subjects, Topics and Points of view in *Subject and Topic*, ed. Charles Li. New York: Academic Press.

Chambers, G. and A. Millar. 1986. *Prosecuting Sexual Assault*. Scottish Office Report. HMSO.

Churchill, Lindsey. 1978. *Questioning Strategies in Sociolinguistics*. Rowley, Mass.: Newbury House.

Cole, P. & Morgen, J. L. (eds) 1975. *Syntax and Semantics 3: Speech Acts*. New York and London: Academic Press.

Conley, J., W. O' Barr and E. Allen Lind. 1978. The Power of Language: Presentational Style in the Courtroom. *Duke Law Journal* 78. 6: 1375–1399.

Connors, R. J., L. Ede and A. Lunsford. (eds). 1984. *Essays on Classical Rhetoric and Modern Discourse*. Carbondale, IL: Southern Illinois Press.

Cox, R. and C. Willard. (eds). 1982. *Advances in Argumentation Theory and Research*. Carbondale, IL: Southern Illinois Press.

Craig, R. and K. Tracy. (eds). 1983. *Conversational Coherence. Form, Structure, and Strategy*. Sage: London.

Crawford, R. J. 1983. Closing Arguments: High Noon at the Penthouse Corral. *Trial Diplomacy Journal* 5. 12–17.

Cresswell, M. J. 1974. Adverbs and Events. *Synthese* 28. 455–81.

Cross, R. 1979. *Cross on Evidence*. Fifth Edition. London: Butterworths.

Danet, B. 1984. (ed) *Text*. Special Issue–Studies in Legal Discourse. Mouton.

------ 1980. Language in the Legal Process. *Law and Society Review* 14: 445–564.

de Joia, A. and A. Stenton. 1980. *Terms in Systemic Linguistics*. London: Batsford Academic and Educational Press.

de Souza Filho, M. 1984. *Language and Action*. A Reassessment of Speech Act Theory. John Benjamins: Amsterdam.

Dascal, M. 1983. *Language and the Philosophy of Mind*. Vol.1. Amsterdam: John Benjamins.

Dillon, J. T. 1982. The Multi-disciplinary Study of Questioning. *Journal of Educational Psychology*. 74. 2. 147–165.

Dittmar, N. 1976. *Sociolinguistics: A Critical Survey of Theory and Application*. London: Edward Arnold.

Doherty, M. 1983. The Epistemic Meaning of Questions and Statements in *Questions and Answers* ed. F. Kiefer.

Dritsas, W. J. and V. L. Hamilton. 1977. Evidence about Evidence: Effects of Presuppositions, Item Salience, Stress and Perceiver set on Accident Recall. University of Michigan, M.A. thesis.

du Bois, B. L. and I. Crouch. 1975. The Question of Tag Questions in Women's speech: they don't really use more of them, do they? *Language in Society* 8. 289–294.

DuCann, R. 1964. *The Art of the Advocate*. Penguin.

Dunstan, Robert. 1980. Contexts for Coercion: Analyzing Properties of Courtroom Questions. *British Journal of Law and Society* 7. 61–77.

Edelsky, C. 1979. Question Intonation and Sex roles. *Language in Society* 8. 15–32.

Eggleston, 1978. *Evidence, Proof & Probability*. London: Wiedenfeld and Nicholson.

Fairclough, N. 1985. Critical and Descriptive Goals in Discourse Analysis. *Journal of Pragmatics*. 9. 739–763.

Fauconnier, G. 1985. *Mental Spaces: Aspects of Meaning Construction in Natural Language*. MIT Press.

Fenn, R. K. 1982. *Liturgies and Trials*. Oxford: Basil Blackwell.

Fillmore, C. J. 1971. Verbs of Judging: an Exercise in Semantic Description. In Fillmore and Langedoen. 1971: 273–289

Fillmore, C. J. and D. T. Langedoen, (eds) 1971. *Studies in Linguistic Semantics*.

New York: Holt.

Fowler, R. 1986. *Linguistic Criticism*. Oxford: Oxford University Press.

Fowler, R., B. Hodge, G. Kress, and T. Trew. 1979. *Language and Control*. London: Routledge & Kegan Paul.

Frank, J. 1949. *Courts on Trial: Myth and Reality in American Justice*. New Jersey: Princeton University Press.

Fraser, B. 1980. Conversational Mitigation. *Journal of Pragmatics* 4. 379–409.

French, P. and M. MacClure. 1979. Getting the Right Answer and Getting the Answer right. *Research in Education* 22. 1–23.

Galanter, M. 1983. Reading the Landscape of Disputes: What we know and don't know (and think we know) about our allegedly contentious and litigious society. *UCLA Law Review* 31. 4–71.

Giglioli, P. P. (ed) 1972. *Language and Social Context*.

Giles, H. and R. St. Clair. 1979. *Language and Social Psychology*. Oxford: Basil Blackwell.

Givon, T. 1984. Prolegmena to Discourse Pragmatics. *Journal of Pragmatics* 8. 489–516.

----- 1979. Discourse as a Processing Strategy. *Syntax and Semantics* 12. 81–112.

----- 1978. Negation in Language: Pragmatics, Function, Ontology in *Syntax and Semantics* 9.

Goodrich, P. 1987. *Legal Discourse*. London: Macmillan.

----- 1984. Language and Law: A Historical and Critical Introduction. *Journal of Law and Society* 2. 173–206.

Goody, E. N. 1978. (eds) *Questions and Politeness*. Cambridge: Cambridge University Press.

Graesser, A. C. and J. Black. (eds). 1985. *The Psychology of Questions*. Hillsdale, N.J.: Lawrence Erlbaum Associates.

Graham, M. H. 1983. *Tightening the Reins of Justice in America: A Comparative analysis of Criminal Jury Trials in England and the United States*. Westport, Conn.: Greenwood.

Grice, H. P. 1975. Logic and Conversation. In P. Cole and J. L. Morgan eds. 41–58.

Gray, B. 1977. *The Grammatical Foundations of Rhetoric*. The Hague: Mouton.

Grewendorf, G. 1983. What Answers can be given? in *Questions and Answers* ed.

F. Kiefer.

Gumperz, J. J. 1982. *Language and Social Identity.* Cambridge: Cambridge University Press.

----- and D. Hymes. 1972. *Directions in Sociolinguistics.* NY: Holt, Rinehart and Winston.

----- 1968. The SPeech COmmunity. In P. Giglioli (ed). *Language and Social Context.* 1972.

Halliday, M. K. 1978. *Language as a Social Semiotic.* Edward Arnold.

Halliday, M. and R. Hasan. 1976. *Cohesion in English.* London: Longman.

----- 1970. Language Structure and Language Function in *New Horizons in Linguistics* ed. J. Lyons. Penguin.

Hansher, Michael. 1979. The Clarification of Cooperative Illocutionary Acts. *Language in Society* 8. 1-14.

Harris, D. R. 1983. The development of Socio-legal Studies within the U.K. *Legal Studies* 3.

Harris, R. J., R. R. Teske, and M. J. Ginns. 1978. Memory for Pragmatic Implication from Courtroom Testimony. *Bulletin of Psychonomic Society* 6. 494-496.

Harris, S. J. 1987. Defendant Resistance to Power and Control in Court. In *Working with Language: A Multi-disciplinary Consideration of the Use of Language in Work Contexts.* Mouton.

----- 1980. Language Interaction in the Magistrates Court. Ph. D. Diss. University of Nottingham.

Hintikka, J. 1983. New Foundations for a Theory of Questions and Answers in *Questions and Answers* ed. F. Kiefer.

Hiz, H. 1978. (ed) *Questions.* Dordrecht: Reidel.

Hockett, C. 1958. *A Course in Modern Linguistics.* New York: MacMillan.

Holdcroft, D. 1978. *Words and Deeds: Problems in the Theory of Speech Acts.* Oxford: Clarendon Press.

Holmes, J. The Functions of Tag Questions. *English Language Research Journal* 3. 40-65.

----- 1984. Women's Language: A Functional Approach. *General Linguistics* 24:3. 149-177.

Huddleston, R. 1970. Two approaches to the Analysis of Tags. *Journal of Language* 6. 161-315.

Hudson, R. A. 1980. *Sociolinguistics*. Cambridge: Cambridge University Press.

----- 1975. The meaning of Questions. *Language* 51. 1-31.

Hymes, D. 1972. On Communicative Competence. In J. Pride and J. Holmes, eds. *Sociolinguistics*. Harmonsworth: Penguin.

----- 1968. The Ethnography of Speaking. In J. Fishman, ed. *Readings in the Sociology of Language*. The Hague: Mouton.

Jackson, S. and S. Jacobs. 1981. The Collaborative Production of Proposals in Conversational Argument and Persuasion: A Study of Disagreement Regulation. *Journal of the American Forensic Association*. 18. 77-90.

----- 1980. Structure of Conversational Argument: Pragmatic Bases for the Enthymeme. *Quarterly Journal of Speech*. 66. 251-265.

Jacobson, S. 1978. *On the Use Meaning and Syntax of English Preverbal Adverbs*. Stockholm: Almquist and Wiksell.

----- 1975. Factors influencing the Placement of English Adverbs in Relation to Auxiliaries. Stockholm: Almquist and Wiksell.

Jeans, James W. 1975. *Trial Advocacy*. St. Paul, Minn. : West Publishing

Johnson, B. C. 1976. Communicative Competence In American Trial Courtrooms. *Centrum* 4: 2. 139-149.

Johnson, Kenneth Allen. 1979. The Leading Question: Isn't there an effect? Unpub. Ph. D. University of Washington (Seattle).

Kartunnen, L. 1973. Presupposition of Compound Sentences. *Linguistic Inquiry* 4. 169-193.

Katz, J.J. 1972. *Semantic Theory*. New York: Harper and Row.

Keeton, Robert E. 1973. *Trial Tactics and Methods*. Sec. ed. Boston: Little & Brown.

Kempson, R. M. 1977. *Semantic Theory*. London, New York and Melbourne: Cambridge University Press.

Kiefer, F. 1983. (ed) *Questions and Answers*. Dordrecht: Reidel.

Kinneavy, J. L. 1971. *A Theory of Discourse*. New York: Norton.

Knowles, J. 1980. The Tag as a parenthetical. *Studies in Language* 4. 379-409.

Kress, G. and R. Hodge. 1979. *Language as Ideology*. London: Routledge and Kegan Paul.

Kress, G. 1976. *Halliday: System and Function in Language*. London: Oxford University Press.

Labov, W. 1972. *Sociolinguistic Patterns.* Oxford: Blackwell.

----- 1969. The Logic of Non-Standard English. In P. P. Giglioli, *Language and Social Context.* 1972. Harmondsworth: Penguin.

Lakoff, G. 1972. Hedges: A Study in the Meaning Criteria and Logic of Fuzzy Concepts. *Papers from the Eight Regional Meeting, Chicago Linguistic Society.* 183–229.

----- 1970. Adverbs and Opacity. Mimeo. University of Michigan.

Leech, G. N. 1983. *Principles of Pragmatics.* London and New York: Longman.

----- 1975. *A Communicative Grammar of English.* London: Longman.

----- 1974. *Semantics.* Harmondsworth: Penguin.

Lees, R. B. 1960. *The Grammar of English Nominalizations.* Hague: Mouton.

Leonardi, P. and M. Santambrogio. 1981. Pragmatics, Language Games, Questions and Answers in : H. Parret, M. Sbisa and J. Vershueren, eds. *Possibilities and Limitations of Pragmatics.* Amsterdam: Benjamins.

Lerman, C. 1983. Dominant Discourse: the Institutional Voice and Control of Topic. In H. Davis and P. Walton eds. *Language, Image, Media.* London: Basil Blackwell.

Levinson, S. 1983. *Pragmatics.* Cambridge: Cambridge University Press.

Linton, N. K. 1965. The Witness and Cross-examination. *Berkeley Journal of Sociology* 10. 1–12.

Lloyd-Bostock, S. and B. R. Clifford. (eds) 1983. *Evaluating Witness Evidence: Recent Psychological Research and New Perspectives.* Chichester: John Wiley & Sons.

Loftus, E. and K. E. Ketcham. 1983. The Malleability of Eyewitness Accounts in *Evaluating Witness Evidence* (ed) Lloyd-Bostock.

Loftus, E. & Zanni, G. 1975. Eyewitness testimony. *Bulletin of Psychonomic Review* 5. 86–88.

Loftus, E. 1975. Leading Questions and the Eyewitness Report. *Cognitive Psychology* 7. 560–572.

Loh, W. D. 1981. Psycho-Legal Research. *Michigan Law Review* 79. 659– 707.

Lyons, J. 1977. *Semantics* Vol. 1 and 2. Cambridge: Cambridge University Press.

McBarnett, D. 1981. *Conviction.* London: MacMillan.

McCarthy, T. A. 1973. A Theory of Communicative Competence. *Philosophy of the Social Sciences.* 3. 135–56.

Marquis. 1972. Testimony Validity as a Function of Question Form. *Journal of Applied Social Psychology* 2. 167–186.

Marshall, J., K. H. Marquis and S. Oskamp. 1971. Effects of Kind of Question and Atmosphere of Interrogation on accuracy and completeness of Testimony. *Harvard Law Review* 84. 1620–1643.

Martinich, A. P. 1984. *Communication and Reference*. Van Gruyter.

Mauet, T. 1980. *Fundamentals of Trial Techniques*. Boston: Little and Brown.

Maynard, D. 1983. Language in the Court: Review Essay. *American Bar Foundation Research Journal*. 1. 211–222.

Mellinkoff, David. 1963. *The Language of the Law*. Boston: Little & Brown.

Mey, J. 1985. *Whose Language: a Study in the Pragmatics of Language Use*. Amsterdam: John Benjamins.

Mischler, E. 1986. *Research Interviewing : Context and Narrative*. Cambridge, MA.: Harvard University Press.

Mitchell, G. 1976. The Pragmatic Function of Sentence Adverbs. *Papers from the Regional Chicago Linguistic Society Meeting*. Chicago: CLS. 495–505.

Milroy, J.M. and L. Milroy. 1985. *Authority in Language*. London: Routledge, Kegan & Paul.

Moore, M. S. 1981. The Semantics of Judging. *Southern California Law Review* 151–299.

Nassli, S. 1984. *The English Tag Question: A study of sentences containing tags of the type isn't it, is it?* Stockholm: Almquist & Wiksell International.

Napley, D. 1963. *Techniques of Advocacy*.

Nilsen, D. 1972. *English Adverbials*. The Hague: Mouton.

Nofsinger, R. 1983. Tactical Coherence In Courtroom Conversation. In *Conversational Coherence* ed. R. Craig and K. Tracy. 243–259.

O' Barr, W. M. 1982. *Linguistic Evidence*. New York: Academic Press.

O' Donnell, H. 1983. Just Sign Your Name on the Dotted Line. *The English Journal*. 72, part 6. 59–62.

O'Keefe, D. 1977. Two Concepts of Argument. *Journal of the American Forensic Association*. 13. 121–128.

Packel, L. and D. Spinal. 1984. *Trial Advocacy: A Systematic Approach*. American Bar Association.

Palmer. 1974. *The English Verb*. London: Longman.

Parisi, D. and Antinucci. 1976. *Essentials of Grammar.* Academic Press.

Parisi, D. and A. Pugliele 1972. Hopping Adverbs. Preprints of the Eleventh International Congress of Linguists, Bologna.

Parkinson, M. G. 1981. Verbal Behaviour and Courtroom Success. *Communication Education* 30. 22–32.

Perelman, C. and L. Olbrechts-Tyteca. 1969. *The New Rhetoric: A Treatise on Argumentation.* University of Notre Dame Press.

Pratt, M. L. 1977. *Toward a Speech Act Theory of Literary Discourse.* Bloomington: Indiana University Press.

Probert, Walker. 1966. Courtroom Semantics. *American Jurisprudence Trials* 5. 695–805.

Quirk, R. 1972. *A Grammar of Contemporary English.* London: Longman.

Ragan, S. 1983. Alignment and Conversational Coherence. In *Conversation Coherence.* ed. R. Craig and K. Tracy. 157–173.

Raymond, J. 1984. Enthymemes, Examples and Rhetorical Method. In r. Connors, L. Ede and A. Lunsford (eds) *Essays on Classical Rhetoric and Modern Discourse.* 143–151.

Rawls, J. Two Concepts of Rules. 1955. *Philosophical Review* 64. 3– 32.

Read, J. D. , R. H. Barnsley, K. Ankers, and Whishaw. 1978. I. Q. Variations in Severity of Verbs and Eyewitness's Testimony: An Alternative Interpretation. *Perceptual and Motor Skills* 46. 795–800.

Roche, M. 1973. *Phenomenology, Language and the Social Sciences.* London: Routledge and Kegan Paul.

Sacks, H. , E. Schegloff, and G. Jefferson. 1974. A Simplest Systematics for the Organization of Turntaking in Conversation. *Language* 50. 696–735.

Sadurski, W. 1985. *Giving Desert its due: Social Justice and Legal Theory.* Law and Philosophy series. D. Reidel.

Schreiber, P. 1971. Some Constraints on the Formation of English Sentence Adverbs. *Linguistic Inquiry* 2. 83–101.

Schwartz, M. L. 1978. The Professionalism and Accountability of Lawyers. *California Law Review.* 66. 669–97.

Searle, John R. , F. Kiefer and M. Bierwisch. (eds) 1980. *Speech Act Theory and Pragmatics.* Dordrecht: Reidel.

Searle, J. 1979. *Expression and Meaning: Studies in the Theory of Speech Acts.* Cambridge University Press.

----- 1976. A Classification of Illocutionary Acts. *Language in Society.* 5.1. 1–23.

----- 1972. What is a Speech Act? in P. Giglioli ed, *Language and Social Context.*

----- 1970. *Speech Acts: An Essay in the Understanding of Language.* Cambridge: Cambridge University Press.

Seung, T.K. 1982. *Semiotics and Thematics in Hermaneutics.* New York: Columbia University Press.

Sperber, D. and D. Wilson. 1986. *Relevance.* Cambridge, MA.: Harvard University Press.

Stevenson, D. W. 1978. Rhetoric and Law: Designing a Program in Communication for Law Students. *College Composition and Communication* 29. 30- 35.

Stubbs, M. 1983. *Discourse Analysis.* Oxford: Basil Blackwell.

Taglicht, J. 1984. *Message and Emphasis: On Focus and Scope in English.* London: Longman.

Tannen, D. (ed). 1982. *Spoken and Written Language: Exploring Orality and Literacy.* Vol. 9, Advances in Discourse Processes. Norwood, NJ: Ablex.

Thomas, E. I. 1965. Cross Examination and Rehabilitaion of Witnesses. *Defence Law Journal* 15. 247-263.

Thomason, R. and R. Stalnaker. 1973. A Semantic Theory of Adverbs. *Linguistic Inquiry* 4. 195-220.

Trankell, A. 1972. *Reliability of Evidence: Methods for Analyzing and Assessing Witness Statements.* Stockholm: Beckman.

Tripi, F. 1974. The inevitability of Client Alienation: A Counter Argument. *Sociological Quarterly* 15. 432-441.

Twining, W. 1973. *Karl Llewellyn and the Realist Movement.* London: Weidenfeld and Nicolson.

van Dijk, T. A. 1981. *Studies in the Pragmatics of Discourse.* The Hague: Mouton.

van Eemeren, F. and R. Grootendorst. 1984. *Speech Acts in Argumentative Discussions.* Dordrecht: Foris.

Versheuren, J. 1985. *What People Say they do with Words.* Advances in Discourse Processes, 14. Norwood, N.J. Ablex.

------ 1985. Review Article. *Journal of Linguistics.* 21 459-470.

------ 1980. *On Speech Act Verbs.* Amsterdam: John Benjamins.

Walker, Anne-Graffam. 1982. Discourse Rights of Witnesses: Their Circumscription in Trial. *Sociolinguistics Working Paper* £ 95, July 1982. Austin, Texas.

Warren, I. D. 1969. The Effects of Credibility in Sources of Testimony on Audience Attitudes towards Speaker and Message. *Speech Monographs* 36.

Wellman, F. L . 1979. *The Art of Cross Examination*. Fourth ed. 12the Printing. New York: Collier Macmillan

Wesson, Mariann. 1985. Historical Truth, Narrative Truth and Expert Testimony. *Washington Law Review*. 60. No.2 March 1985. 331-355.

Willard, C. 1983. *Argumentation and the Social Grounds of Knowledge*. University of Alabama Press.

------ 1979. The Epistemic Functions of Argument: Reasoning and Decision-Making from a Constructivist/Interactionist Point of View. *Journal of the American Forensic Association*. 15. 211-215.

------ 1979. Propositional Argument is to Argument what Talking about Passion is to Passion. *Journal of the American Forensic Association*. 16. 21-29.

Wodak, R. 1980. Discourse Analysis and Courtroom Interaction. *Discourse Processes*. 3. 369-380.

Wolfson, N. and J. Manes. (eds). 1985. *Language and Inequality*. Amsterdam: Mouton.

Woodbury, H. 1984. Strategic Questions in Court. *Semiotica*. 48. 3-4. 197-228.

Wrottesley, F. J. 1921. *The Examination of Witnesses In Court*. London: Sweet & Maxwell.

Yarmay, D. A. 1979. *The Psychology of Eyewitness Testimony*. New York.: The Free Press. (MacMillan)

Addendum

Habermas, J. 1978. *Communication and the Evolution of Society*. translated by T. McCarthy. London: Heinemann.

Kato, K. 1986. Another Look at Ellipsis. *Journal of Pragmatics*. 10. 415-435.

Yadugiri, M.A. 1986. Some Implications of the Use of Yes and No in Response to Yes-No Questions. *Journal of Pragmatics*. 10. 199-210.