SPEAKING UP
IN COURT

REPAIR AND POWERLESS LANGUAGE
IN NEW ZEALAND COURTROOMS

by

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Abstract

Law courts purport to be seats of justice, yet there is constant debate about the even-handedness of that justice and ordinary people's access to it. This thesis reports on a study of seven criminal hearings in the District Court in Auckland, New Zealand.

The study focussed on repair (as defined in conversation analysis) and various phenomena which have been identified previously as characteristic of "powerless language" (that is, the speech used by those in subordinate positions to their social superiors). These phenomena included hesitations, hedges, intensifiers, witnesses asking questions, tag questions, high rising terminal intonation, polite terms, terms of address and *well*.

The results of the analysis have led to two interesting conclusions. First, traditionally linguists have considered repair as a means of dealing with problems. As such, repair itself has often been thought of as a problem. As far as these seven hearings are concerned, it is evident that repair is being used as a highly effective interactional resource in the process of "coming to an understanding" which seems to me to be the basis of courtroom interaction.

Second, the study calls the notion of powerless language into question. While it is true that many researchers have found that people evaluate powerless language negatively, this study finds that a) the features which have been said to form the powerless style in English are not used only by the powerless people in these hearings and b) these features cannot always or necessarily be said to operate in a powerless manner during the hearings. The analysis has produced a more detailed account of the features and their use than previous studies have achieved. The results show that the notion of powerless language is highly questionable. This in turn means that further study is necessary into how people make judgements on language use and what role such judgements play in the decisions of juries.

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Chapter One: Introduction

1.1 Goal of this study

Speaking up in court is far from being an equal and clearly understood business. In spite of a commonly held perception in New Zealand that its justice system is the fairest possible, there are many ways in which it is inherently not equally available to and effective for everybody. Not least among these are the adversarial nature of the court system and matters of institutional bias, which are well-known and widely discussed, including by the legal fraternity.

However, little or no attention has been given in New Zealand to the question of how language affects what happens in court. Language has been seen as merely a vehicle for arriving at legal decisions, for deciding disputes, and for dispensing justice. Indeed it acts in all these ways, and, it is assumed, very effectively.

On the other hand, linguists have been looking for some time now at how language affects what happens in the courtroom. They have studied such areas as the effect that a defendant's or a witness's language has on juries' perceptions of them, and the effect that their narrative style can have on judges, as well as looking at the effects of lexical choices. In New Zealand, for example, Lane (1988) has done an in-depth study of the kinds of questions asked in Auckland district courtrooms. These studies have used a number of approaches, including ethnography of speaking, research on attitudes, and syntactic and semantic analysis.

The goal of this study is to investigate the widely held view that a great deal of misunderstanding occurs in court, and to do so using the approaches outlined below in order to arrive at a comprehensive analysis. The beginning hypothesis was that, if misunderstanding is occurring in court, it may do so along not only inter-ethnic lines, but also along gender, power and professional/lay dimensions. Investigating this perception has involved looking at two broad strands of material in the data. The first of these is repair. It is perhaps obvious to suggest that repair is where we would find evidence of misunderstandings in court, whatever their underlying causes. Therefore the occurrence, functions and resolution of repair are considered, as well as the matter of who initiates the repairs in the data. It turns out that neither ethnographic factors nor power provide satisfactory ways to account for the operation of these repairs. Rather, the

explanation is to be found in the roles (and therefore the goals) of the participants involved. In addition, the study raises the question of whether we should be looking at repair as problematic at all, in the manner in which it has been approached in the past. Instead, repair is found to be an effective resource used in ensuring understanding between interactants.

The second strand is powerless language. For some time now it has been widely accepted that such a phenomenon exists, and studies have been done that suggest that listeners evaluate such speech negatively (e.g. Lind and O'Barr, 1979; Krenz and Roberts, 1993; Holtgraves and Lasky, 1997). The aspect considered here is whether the features associated elsewhere with this style operate to express power differentials in New Zealand. This meant finding out a) whether the features do occur in the courtroom in this country, b) if they do, who uses them, and c) what explanations would account in a satisfactory manner for their use. Here too the results of the analysis show that participants' roles are the determining factor. Thus it seems that powerless language is something of a misnomer. While some of the features appear to be used in a powerless way some of the time, this cannot be said about all of them. In consequence, there are problems with grouping the features as a style. Further, a number of the features appear to be used for purposes which cannot be associated with powerlessness in the courtroom context. This then raises questions about the listener evaluations of powerless language discussed by other researchers and it points the way for further research. This study does not investigate evaluations, but I do not discount the importance of this aspect, and will return to it in the final chapter.

This thesis presents the results of an investigation of language use in seven district court jury hearings in Auckland, New Zealand, recorded over a two month period in late 1990. The analysis aims to account for the language use in those hearings in a principled manner which includes all the apparently relevant factors, and to see whether cross-cultural differences, gender differences, and differences between lay and professional participants affect language use patterns in courtrooms, including misunderstandings. None of the approaches used previously can account on its own for all the factors affecting courtroom language. Further, relying on a single approach would lead inevitably to a simplistic view, perhaps controlled rather than guided by the theory. Therefore the data are considered on a range of levels, as outlined in the next section.

1.2 Approach to be used

Language in the courtroom cannot be seen as an isolated phenomenon. It must be seen as an aspect of the wider field of conversation. There is a large body of work investigating the features of spoken language, including conversation and its organisation, and a variety of approaches has been used in the literature.

Many linguists have worked on idealised or hypothetical data, with the consequent criticism that their work does not account for what occurs "in real life". Attention has now turned to avoiding idealisations and grounding analysis in naturally occurring data, using underlying principles of ethnomethodology (a term coined by Garfinkel when working with the Chicago Jury Project; Garfinkel, 1967). Fundamental to ethnomethodology is the idea that "the basis of culture ... is not shared knowledge, but shared rules of interpretation" (Gumperz and Hymes 1972, p. 304). We cannot, however, disregard the shared knowledge, for "social action thus not only displays knowledge, it is also critical to the creation of knowledge: one's own actions produce and reproduce the knowledge through which individual conduct and social circumstance are intelligible" (Schiffrin, 1994, p. 233). In other words, we need to look at both knowledge and interpretation, at both the speaker and the hearer (or the next speaker). Sacks and Schegloff apply this in their groundbreaking work investigating naturally occurring conversation, thereby founding the field of conversation analysis.

This is a structural (but not necessarily traditionally grammatical) approach, in which both what is said (the text) and its surrounding context are considered, but not matters of social and cultural context. Duranti and Goodwin sum it up by saying "conversation analysis provides a thoroughgoing analysis of language as a mode of interaction which relies upon context for the interpretation of action that at the very same time shapes, expands and changes that context" (1992, p. 30). Ethnographic aspects, for instance, are not necessarily relevant to the process of a particular conversation. They become relevant only when there is "some tie between the context-as-characterised and its bearing on 'the doing of the talk' or 'doing the interaction'" (Schegloff, 1987, p. 219).

Conversational analysis avoids the danger of relying on the awareness or competence of the various participants and the researcher, because all the data is available to them, and to the

readers. In other words, it relies on what has been explicit in the conversation (i.e. all the utterances and their structures), rather than on people's intuitions about what has occurred. It looks to uncover general principles by analysing the data rather than beginning with the principles.

An added dimension to conversation analysis, according to Schiffrin (citing Levinson, 1983), is that it is "searching not just for evidence that some aspect of conversation 'can' be viewed in a certain way, but that it is viewed that way by the participants themselves" (1994, p. 239). Conversation analysts are not trying to devise an idealised model to account for language use, but to say positively what speakers are orienting themselves to and taking account of in their conversations.

Conversation is highly structured and highly effective: it is not a rather inadequate substitute for written language, as has been assumed in the past by linguists, and still is by many educators and "ordinary people", including those working in the field of law. The courtroom can be described as a conversation with a clearly defined, central purpose which is recognised by all participants. While court hearings also could be described as interviews, this thesis will show how applying the principles and techniques of conversational analysis leads to significant insights into how the courtroom operates.

Despite this, the study does not see the structure of the courtroom conversation as providing a complete enough view in itself. In many conversations the participants have a great deal in common: they know each other (to a greater or lesser extent and in a variety of ways); they may have similar socioeconomic or educational backgrounds; they are assumed to have a common purpose; they are assumed to be speaking the same language. But the courtroom operates on very different lines. Some of the participants know each other, while others know no-one. Some know the court and its procedures intimately, others do not. The socioeconomic and educational backgrounds of the participants can be poles apart. The participants may not have the same goals, apart from the overriding one of resolving the dispute or criminal charge. Nor can it be assumed that the participants are speaking the same variety of the language.

Even when there is great similarity and agreement between conversational parties, breakdowns occur. How much more likely, then, are they to occur in the courtroom situation where there is

rarely such “alignment”? Breakdowns can stem from a number of factors, which can be placed in three categories: organisation (or violations of the structural rules of conversation); understanding (i.e. the content, either denotational or connotational); and intent (often relating to politeness and the cooperative principle). Some of the breakdowns lead to miscommunication, others do not. Some are addressed, others are not.

In order to consider breakdowns and their causes effectively, we need to be very aware of context. First, the ethnographic or social context is relevant. We need to know where the courtroom fits in the overall scheme of the society and language concerned, what its participants and power structures are, and what kind of language is used there. In addition we need to know how the particular participants fit within the courtroom, and in social and cultural contexts. Using the ethnography of speaking approach (Hymes, 1972), Schiffrin analyses questions from her reference and sociolinguistic interviews to show that the goals of the speech acts (the questions) are “neatly attuned” (Schiffrin 1994, p. 182) with those of the speech events in which they occur. In this way she shows how an ethnographic approach can subsume other approaches such as variation analysis and conversation analysis, thus providing an overall framework and a compatibility between the approaches.

Second, we need to be aware of the interactional context. Based on a combination of the work of John Gumperz (the language and culture angle) and Erving Goffman (the sociological perspective), this approach brings a concern with situated meaning, i.e. the relationship between context and utterances. It is simplistic to restrict oneself to either the wider macro-level of ethnography or the micro-level of a narrow version of conversational analysis. We need to consider the vast area between the macro and micro levels as well.

Looking at the context results in discovering how “a particular utterance can act as a contextualisation cue to the contextual presuppositions that inform and provide for its meaning and use” (Schiffrin, 1994, p. 113). It focusses not only on single utterances but also on neighbouring utterances as well as cultural, social and sociological factors. As Gumperz says, “situated interpretations are intrinsically context-bound and cannot be analysed apart from the verbal sequences in which they are embedded” (1992, p. 232). Schiffrin and Gumperz each show how utterances provide interpretive contexts both for following and previous utterances. This gives participants enormous flexibility to take interactions in different directions, thus co-

constructing the discourse. Applying this approach to a particular utterance, e.g. "She's on a diet", Schiffrin "situated the meaning of this act in several ways: as a display of participant alignment, gender identity, interactional frames, and as a means of building sequential coherence through taking the role of the other" (1994, p. 131). She believes that "the contexts in which an utterance occurs explain why it occurs there" (p. 134).

Schiffrin suggests an advantage of an interactional approach is that the linguist does not have to ascribe motivation to participants in an interaction, but rather can focus on the discourse strategy. If the linguist, however, does go on to look at motivation, it is grounded squarely in the contexts and strategies of the utterance.

1.3 An ethnographic description of New Zealand courtroom practice

1.3.1 Defining the community

To prepare an ethnography of speaking for the courtroom, it is important to question briefly whether we have a speech community in the first place. Rubin says that "what is necessary for a speech community to exist is for all or most of the members to agree upon the rules for appropriate usage for each of the varieties" (1976, p. 390). It is apparent from the generally smooth process of the courtroom hearings in this study that this condition is fulfilled, at least for these particular hearings. It is quite clear that most if not all of the participants are aware of and follow the general language conventions used in the court. I am not suggesting that there are no violations, but rather that where this occurs, it is a deliberate ploy and has the effect of underlining those conventions.

However, Eckert and McConnell-Ginet express their concerns with how the notion of the speech community has been applied by linguists in their analyses, saying that in reality communities studied have been defined by location or population. They believe that "sociolinguists still seldom recognise explicitly the crucial role of practice in delineating speech communities" (1998, p. 490). They prefer to adopt Lave and Wenger's idea of "the community of practice", which "focusses on a community defined by social engagement". And they go on to say that "after all, it is this engagement that language serves, not the place and not the people as a collection of individuals" (p. 490).

The courtroom is indeed a community of practice in this sense. The term is useful here because it can encompass short-term engagements between people who normally live their lives in very different spheres and who may not share all the specifics of each other's language behaviour. "Such a focus allows us to see the individual as an actor articulating a range of forms of participation in multiple communities of practice" (Eckert and McConnell-Ginet, 1998, p. 491).

In addition, seeing the courtroom as a community of practice with core and peripheral members allows us to accommodate the notion of people from differing backgrounds and experience, not to mention differing goals, coming together in a productive social engagement. This is supported by Freed (1999) in her discussion of whether pregnant women can be included in a "pregnancy" community of practice. In the speech community model the notion of shared norms can become hard to maintain where the community is less homogeneous (and where in consequence there are often situations involving conflict). The generalisation necessary in using the speech community concept often masks important and more subtle distinctions.

A disadvantage of the community of practice approach is that it has not yet resolved how to deal with the wider community such as a large city or an entire country (as pointed out by Bergvall, 1999). Some accommodation between the speech community and the community of practice is appropriate. Thus if we define a community in such a way as to include the realms of the collection of social practices participated in by groups of people, including language (rather than focussing on shared language norms) and the intersections between those groups and practices, we may be able to accommodate the advantages of both approaches. To an extent, such a combination is attempted in this thesis through the use of both ethnography of speaking and conversation analysis.

While the current study is subject to the criticism (e.g. Erlich, 1999, citing McConnell-Ginet, 1992) that it relies on defining the community in terms of location, I do not believe this is necessarily problematic. The fact is that the widely differing communities of practice making up a society do operate, at least to some extent, on the basis of location and there are many intersections between groups. It is perfectly appropriate, at least in New Zealand, to see the entire country as a community which uses, for instance, a system of courts operating under a single set of principles (i.e. a community of practice, on perhaps a larger scale than has been envisaged with this concept so far) and having one language at its base (although allowing for

languages other than English to be used where necessary). Bergvall describes this as "the accretion of all the local communities of practice as constituting one larger, more global practice" (1999, p. 280).

We can therefore see both smaller and larger-scaled communities of practice in the same picture. We can accommodate differences between the smaller systems which, when collected, make up the larger community (such as differences between tiers in the courts structure, or, in the context of the current study, judges and lawyers). This approach also allows us to include within the community those members who do not fit the "norms", e.g. in New Zealand, immigrants who have very different norms but who have to operate, to some extent at least, within the norms and practices that make up the community they have come to. At the same time we may be able to avoid the pitfalls of generalisation which have been a result of the speech community framework.

In sum therefore, I wish to define the District Court in Auckland, New Zealand as one community of practice within the wider community of Auckland and indeed New Zealand. Those forming the core membership are the judges, lawyers and court staff. Even though their individual mutual engagement is not always or even frequently achieved together, it is arguable that they are all engaged in the overall mutual task of achieving justice and managing hearings. The peripheral members are the defendants, police witnesses and lay witnesses, who are involved in that same mutual task on occasion. Just as peripheral members do not always become core members in a particular community of practice, so can any person be in a number of different such communities at one time. Nor does anyone have to operate in a community the entire time to be considered a core member. In the same way, people operate within a community in a variety of ways and with differing levels of involvement and expertise (whether they all share norms of language use or not).

1.3.2 New Zealand's court system

In this country, the courts are used to deal with all criminal matters and those civil disputes where alternative dispute resolution processes are either not appropriate or have not succeeded. The court system involves several tiers. The District Court is the main entry-level court. Above that are the High Court, the Court of Appeal and the Judicial Committee of the Privy Council. The level of formality (both of conduct and language) increases with each tier.

The approach used is an adversarial one, where the court reaches its decision by hearing evidence and argument presented by each party in the dispute, usually through lawyers.

Purely criminal matters are divided into two categories, depending on the seriousness of the offence. "Summary" criminal matters, which are defined in the Summary Proceedings Act 1981 and the Crimes Act 1961, are generally less serious matters. In these summary matters, if the maximum penalty exceeds three months, the defendant has the right to choose whether to have the case heard before a judge alone or a judge and jury. For cases involving lesser penalties or certain cases specifically stipulated by Parliament, the case will be heard by a judge alone.

"Indictable" offences (more serious offences) are defined in a variety of statutes and are also further divided into categories. Those with penalties of up to seven years are triable summarily and the defendant must elect either judge alone or trial by jury. For those carrying penalties of between seven and 13 years it is usual to have a jury trial. However the defendant can apply to have the matter heard by judge alone (but it is up to the judge to decide on that application). The most serious offences, carrying a penalty of 14 years or more, are heard in the High Court and the case is always heard by a jury, with no possibility of its being heard by a judge alone.

When a case is heard by a judge alone, the judge is responsible for both the facts and the law. When it is heard in front of a jury, the judge is responsible for the law, while it is the jury's task to decide on the facts (i.e. what the true facts are).

1.3.3 Physical design of the courtroom

The rooms in which the trials involved in this study are held all follow the same design. The judge sits at one end (the front) behind a long desk (bench) which is raised so that its occupant is seated higher than anyone else in the room. Facing the bench, at floor level and across the middle of the room, three long tables are arranged one behind the other. The front table (i.e. nearest the judge) is occupied by the prosecution counsel. Behind that is the table for the defence counsel. The third table is occupied by the defendant(s), accompanied by police or prison officers. To the left of the first table is a raised "box" in which the defendants and witnesses stand when giving their evidence. If an interpreter is used, that person stands on the floor behind the box (i.e. opposite the second table). Along the right hand side of the room, also in a raised

enclosure, sit the jurors, who face directly towards both the counsel and the witness stand. Behind that, towards the back of the room, is a table for members of the press who report on the proceedings. At this point a rail crosses the room, separating public seating from the hearing space.

While arrangements of this nature are often seen as reinforcing factors of hierarchy and power, Atkinson and Drew (1979) point out that distances in courtrooms may improve audibility for non-participants. Presumably they improve audibility for the participants as well. However the courtrooms in the current study are all equipped with an efficient sound system, so that audibility is rarely a problem, at least during these hearings.

1.3.4 Criminal hearings in the district court

The process for a criminal hearing to be heard by a judge and jury in the district court is as follows. Usually there has been a "pre-hearing" to decide whether the charge is appropriate, to confirm that a trial is necessary, to hear whether the defendant is intending to plead not guilty, and to consider the next steps in the process.

The hearing itself begins with the court registrar reciting the charge and the judge asking the defendant whether he or she wishes to plead guilty or not guilty. If the plea is guilty, either the judge passes sentence immediately, which is rare, or the matter is adjourned until a later date for sentencing.

If the plea is not guilty, then the jury is selected. As each prospective juror's name is called, that person proceeds to the jury box. During that time, if none among the counsel challenges the person, then he or she becomes a juror for the duration of that hearing. Challenges may be issued on the grounds of potential bias, either for or against the defendant, or personal knowledge of the defendant or any of the witnesses or of the matter at issue. There is no questioning of the potential jurors as in the American system.

Once twelve jury members have been selected, they are then asked to leave the room in order to choose a foreperson. Once they return the case may begin. At no time may the jury participate actively in the hearing. If jurors have any questions they must submit them to the judge in writing, through the court registrar.

The presentation of the case begins with the judge's opening remarks. These are confined to introducing herself or himself and the counsel for the defence and the prosecution and then setting out the different roles and responsibilities of the judge and the jury. These include the following clear directions about how the jurors should perform their role. They must take into account only what is presented to them during the hearing, which includes the demeanour of the defendant and the witnesses. They must declare any knowledge they have of any of the participants or the situation. They may not talk to anyone about the case other than their fellow jurors during the hearing. They may use their knowledge of the world, and they must put aside any notions of sympathy or prejudice which they may feel, either for the defendant or for any of the witnesses.

The hearing continues with the prosecutor's opening remarks, which usually include the police version of events and how the prosecution evidence will be presented (i.e. who the witnesses will be and, in some cases, what they will say). He or she may also repeat some aspects of what the judge has said in terms of how to consider the evidence.

Then comes the presentation of the evidence for the crown (the prosecution). The prosecution counsel questions the police witnesses (the arresting officer and any police who had a relevant part to play), followed by the other prosecution witnesses (alleged victims, and others). When the prosecutor has completed his or her questioning of a given witness (called examination-in-chief), the defence counsel has the opportunity to cross-examine the witness and then the prosecutor may ask any questions arising from the cross-examination (this is called re-examination). The judge is also explicitly given an opportunity to raise any matters he or she wishes.

When the prosecution counsel has finished presenting this evidence, the defence counsel presents the countervailing argument. The first task is to outline the defence position and what the evidence will be, much as the prosecution has already done. Then the defence witnesses will be called. If the defendant is going to give evidence, he or she will usually be the first defence witness called, followed by any other witnesses. Again, at the completion of counsel's questioning of each witness, the prosecuting counsel and the judge have the opportunity to put any questions to the witness.

After all examination and cross-examination is complete, the counsel address their closing remarks to the jury, the defence first, followed by the prosecution. Here they summarise the evidence, and suggest what factors the jury ought to take into account in their decision on the facts of the case. The judge has the final word, summing up at length the details of the case and giving instructions as to what the jury must, may and may not do.

The jury then retires to another room for as long as it takes to discuss and make its decision. When it returns the judge asks for the verdict. If the jury convicts the defendant, the judge either hands down a sentence immediately or, more usually, arranges a date for this to occur later.

1.4 The cases in the study

We turn now to the particular cases which form the corpus for this thesis. At the end of the two month period, seven hearings had been recorded in their effective entirety, i.e. opening remarks by the judges and prosecution and defence counsel, all the examination of the defendants and witnesses, the closing addresses by the counsel, and the final summings up by the judges.

The seven cases are all short (up to two days) and all fall into the category of indictable offences triable summarily. They are defended hearings (i.e. the defendants had pleaded not guilty) heard in front of a jury; and they cover a range of charges. The charges are: burglary, theft and receiving of stolen goods (2), assault with intent to injure, possession of cannabis for supply, robbery, and indecent assault. The hearings end with the decision from the jury.

1.4.1 Case one

This hearing involves two Samoan male defendants, an 18 year old (1D1) and a 24 year old (1D2) who had been charged with burglary. They had been arrested after allegedly attempting to break the glass windows in the door of a liquor store. A third person was also alleged to have been involved, in fact the initiator of the offence, but was never charged because the police felt he was too drunk at the time. Neither of the defendants are first language speakers of English, but only the older of the two applied to have an interpreter available during the hearing.

The judge (1J) is a male New Zealander of European descent (called New Zealand European or Pakeha from here on) who had recently received his jury warrant. Thus, although he had been a judge for some time in the district court, this is his first sitting on a jury hearing. The prosecutor (1PC) is also a male New Zealand European.

There are two defence counsel in this case, one for each defendant. The lawyer (1DC1) for the younger defendant is a female New Zealand European in her forties with a great deal of experience in defended criminal hearings. The second defendant uses a younger Samoan male lawyer (1DC2).

There is one witness in this hearing, the owner of the liquor store, who is a middle-aged New Zealand European male.

1.4.2 Case two

The defendant (2D) in this hearing, a New Zealand European male in his early twenties, had been charged with the theft of a motor vehicle and receiving stolen goods (a laptop computer).

The judge (2J) is a New Zealand European male with long experience as a district court judge. The prosecuting and defence counsel (2PC, 2DC1 and 2DC2) are also New Zealand European men. In this case the defendant had engaged both a barrister and a barrister/solicitor (1). The barrister (2DC1) gives the opening address for the defence while the barrister/solicitor (2DC2) takes the major role in the cross-examinations. The latter, although a lawyer of some years' experience, is participating in his first criminal jury trial.

There are two police witnesses, both New Zealand European males. The other witness (2W) in this hearing also appears for the prosecution. He is in his early twenties and a New Zealand European. He admits to being involved in the alleged offences, and in fact is already serving a prison sentence for his part in the theft of a truck involved.

The hearing includes a voir dire, which includes presentation of evidence by the defence and cross-examination of the defendant by the prosecutor. Note that in New Zealand, the term voir

dire is used to refer to a part of a hearing which is not heard in front of the jury (i.e. quite different from the USA, where the term is used for questioning potential jury members during the jury selection). The procedure is for the judge to hear the evidence without the jury being present. The judge then rules on whether the evidence may be heard by the jury, and the hearing proceeds accordingly.

In this case it revolves around the admissibility of some evidence which was only raised by the defence once the hearing had begun. It covers a matter which the defence is presenting for the first time, thus violating the usual court convention that each side notifies the other of relevant matters well before the hearing begins. It would also involve calling a new witness, of which the prosecution had no previous warning. The judge rules the evidence inadmissible, therefore not to be presented to the jury.

While this is then essentially adhered to, the defence counsel concerned (2DC2) continues to refer to it at various times after the jury returns to the courtroom, which causes a certain amount of difficulty. After nearly two days of hearing evidence, the judge declares a mistrial. He does not elaborate on this in court, merely saying to the jury that an essential witness is not available. A new trial date is set for some months later.

1.4.3 Case three

The defendant (3D) in case three, a New Zealand European male in his early twenties, was charged with the theft and receiving of a motor vehicle. Both the judge (3J) and the prosecuting counsel (3PC) also appear in case two. The defence counsel (3DC), a barrister, is a New Zealand European male in his early forties. There are two police witnesses (3PW1 and 3PW2), who are New Zealand European men.

1.4.4 Case four

This is the sole case among the seven included in this study where the defendant (4D) is a woman. She is a New Zealand European in her mid-thirties. She was charged with possession of cannabis for supply. The judge (4J), a New Zealand European male, is a very experienced judge.

The defence counsel (4DC) is the same man who appears as prosecuting counsel in case six (6PC). Two defence counsel appear for the defendant, but only the barrister (4DC), a New Zealand European man in his early forties, takes an active role in the hearing. There are two police witnesses (4PW1 and 4PW2), also New Zealand European men.

This hearing includes violations of court procedure in that the defendant's husband, who is also a witness (4W) in her defence, attempts to participate in the hearing at a point when he should not be present. He is a Maori man in his late thirties. He also violates the rules of court politeness and co-operation when it is his turn to give evidence.

1.4.5 Case five

In case five the defendant (5D), a young Maori man was charged with assault with intent to injure. The prosecuting counsel is an Irishman in his fifties, a very experienced lawyer. The defence counsel (5DC) is a New Zealand European woman in her late twenties. This is the first time she has appeared in a defended hearing in front of a jury.

There is one police witness, a New Zealand European male. The next witness (5W1) is the victim (male) of the alleged assault, who had been beaten up at a party. Three other witnesses (5W2, 5W3 and 5W4) had also been at the party and include two men and a woman who are all New Zealand Europeans. The fifth witness (5W5) is a Pacific Island male.

1.4.6 Case six

In this case the defendant (6D), a Niuean man in his twenties, was charged with robbery. The judge (6J) is a New Zealand European woman in her forties. The prosecuting counsel (6PC) is the same man who takes the defence counsel role in case four. The defence counsel also appears in case two, as 2DC1.

Two police witnesses appear in this hearing, both New Zealand European men (6PW1 and 6PW2). There are five other witnesses: the alleged victim of the assault and robbery, an elderly New Zealand European man (6W1); an Indian man in his thirties (6W2); an Irishman (6W3); and the mother (6W4) and sister (6W5) of the defendant, who are Niuean.

The services of an interpreter are used for the defendant and the last two witnesses.

1.4.7 Case seven

This is a very short hearing in which the defendant (7D), a mentally ill Maori man aged 25 years, was charged with indecent assault. The judge (7J) is the same woman as in case six. This is the only case among the seven for which the prosecuting counsel (7PC) is a woman, a New Zealand European. The defence counsel (7DC) is a New Zealand European male in his mid thirties. The two witnesses are a policeman (7PW, also a New Zealand European) and the alleged victim (7W1), a New Zealand European woman in her forties.

1.4.8 Summary of participants

A total of 50 different participants appears in the hearings. Their roles, ethnicity and gender are summarised in the following table.

Table 1.1: Participant information

Role	Total	Gender		Ethnicity*					
		M	F	NZE	M	S	N	Iri	Ind
Judge	5	4	1	5	0	0	0	0	0
Prosecutor	4	3	1	3	0	0	0	1	0
Defence counsel	7	5	2	6	0	1	0	0	0
both PC & DC	1	1	0	1	0	0	0	0	0
Defendant	8	7	1	3	2	2	1	0	0
Police witness	11	11	0	11	0	0	0	0	0
Witness	14	10	4	8	1	0	3	1	1
total	50	41	9	37	3	3	4	2	1

* NZE = New Zealand European (or Pakeha); M = Maori; S = Samoan; N = Niuean; Iri = Irish; Ind = Indian

Several people appear in more than one case: a male judge, the female judge, two male prosecutors, one male defence counsel, and one male who appears as prosecutor in one hearing and defence counsel in another.

It is immediately apparent that the great majority of participants in these hearings is male. Among the professional participants 13 out of 17 (76%) are male. The four female professional participants are a judge, a prosecuting counsel, and two defence counsel. The gender balance is somewhat different amongst the lay participants in the trials. Of the 33 lay participants, 28 (88%) are male, and 5 female. It is clear that in these hearings women appear less often than men, but that they appear in professional roles slightly more often than as defendants or witnesses. The police witnesses are all male.

The pattern of ethnicity is substantially different between the professional and lay participants. The 17 professional participants comprise 15 New Zealand Europeans (88%), one Samoan man, and one Irishman. Out of 33 lay people taking part in these hearings, 22 (70%) are New Zealand Europeans, while the other 11 include three Maoris, two Samoans, four Niueans, one Indian and one Irish person. Note that for the remainder of the study the two Irish participants are included as NZE because they are indeed New Zealanders of European descent, despite having been born outside New Zealand.

As it happens, no people with relevant professional training and/or experience appear in other than the professional roles during these hearings.

The hearings obviously involve other participants who are not included here. The registrar and stenographer have limited oral roles in court hearings. The first, a mainly formulaic role, rarely involves the content of the case, and not at all in these seven hearings. The stenographer also speaks only rarely, to ask for a speaker to repeat what he or she has said, to ask for time to complete the typing, or to read out what has been typed, usually at the judge's or one of the counsel's request.

Interpreters appear in two hearings (in case one, a Samoan, and in case six, a Niuean interpreter). Their utterances in Samoan and Niuean have not been transcribed because effectively they are quite separate speech acts, which do not "participate" in the hearings in the same way as the bulk of the contributions. They are not intended, for instance, for the judge, jury or counsel. In addition, the jury, the decision-makers about facts, would be unable to hear the translations as they are usually done sotto voce - this reinforces that utterances in languages other than English

are not intended for any audience other than the person directly receiving the translations. Note, however, that at times witnesses reply in English even if the question has been interpreted into another language and one witness appears to reply directly to the court in Niuean ("ae"); in these cases the answers are not sotto voce, and have been transcribed.

1.5 Further chapters

The thesis divides into four parts: preliminaries (chapters 1-3); repair (chapters 4-5); powerless language (chapters 6-10); and the conclusion (chapter 11).

Chapter two is a survey of the relevant literature. Chapter three describes the processes followed in selecting, obtaining, transcribing and analysing the data collected for the study, as well as presenting the basic information which will underpin the analysis in later chapters. It thus begins the analysis of participants' involvement in the conversation structure of these cases. This is done to set the scene for the analysis, providing the basis for the comparisons and comments made in subsequent chapters.

Given that difficulties occur frequently in the orderly and controlled process of courtroom interaction, it is interesting to look at such "trouble" and how it is dealt with. Chapter four therefore contains a consideration of repair (both self- and other-initiated), including similarities and differences between the cases and participants. I look at who initiates repair and to whom they address their repair attempts. I also look at whether specific groups have more frequent breakdowns than others and the success of the repair attempts. In chapter five I discuss some examples of "trouble" where the repair is extended, i.e. where it takes several turns to manage the repair. I also consider the apparent causes of trouble in these examples, including whether miscommunication is occurring (in Gumperz's sense).

Up until this point the thesis considers overt areas of difficulty and looks at explanations for them. Other aspects of communication difficulty may well arise in less obvious ways, which have to do with how people are perceived and how language contributes to this. The thesis therefore continues with a look at one area which appears relevant to courtroom interaction: the notion of powerless language. Chapters six through ten investigate this from a number of points of view.

First the question is considered by treating features which have been described as powerless language in the past, in the manner of O'Barr and Atkins (1980), i.e. as a group. Chapters seven, eight and nine look at a number of those features individually in order to determine whether their use can be explained in terms of power or not. Chapter ten takes a closer look at one further feature (*well*), adding a detailed functional analysis to the discussion of who is using it.

The final chapter attempts to weave together all the strands presented earlier in the thesis. It is based on the notion that the approaches to conversation outlined here all have something different to offer in attempting to account for how a courtroom operates, but that each lacks a dimension when considered on its own. Only when such a wider framework is applied can such questions as the effectiveness and the equity of court proceedings begin to be addressed in a productive manner. It answers the questions which have directed the processes of this study: is misunderstanding occurring in New Zealand courtrooms? what is its source? is powerless language a useful concept which can give us a better account of language dynamics in court?

End note

1. In the New Zealand legal system, all lawyers are qualified as barristers and solicitors. Once qualified they may take the option of working as barristers sole, in which case they cannot operate as solicitors. This results in the practice that if a defendant wishes to engage a barrister (often a more senior practitioner), he or she must do so through a solicitor and both lawyers take part in the trial.

Chapter Two: Literature Survey

As mentioned in chapter one, many different approaches have been used in analysing different types of discourse. Essentially the differences between them come down to a "shift in framework" (Schiffrin, 1994, p. 413) or focus, and they all have valuable insights to offer. "If we take 'language as social interaction' as the core shared assumption ..., we can say that discourse analysis studies not just utterances but the way utterances (including the language used in them) are activities embedded in social interaction" (p. 415). Many have suggested that it would be profitable to combine approaches (e.g. Schiffrin, 1994; Duranti and Goodwin, 1992).

Conversation analysis has been chosen from the different approaches to form the basis of this study because it is capable of showing how language choices affect interaction both in a structural sense and in its dynamic creativity and responsiveness. Other approaches also inform the study, including politeness theory, relevance theory and a range of work which I subsume under the title functional pragmatics. This chapter reviews material relevant to these. I continue by considering a range of research dealing with miscommunication, aspects of language in the law and how these may be affecting outcomes in court. Finally I take a brief look at some aspects of speech styles in New Zealand and the question of individual input.

2.1 Theoretical approaches

2.1.1 Conversation analysis

Sacks, Schegloff and Jefferson's (1974) seminal work on conversation revolutionised thinking about spoken language and linguistics in three important ways. First, as has been discussed in chapter one, they point out the necessity of grounding linguistic analysis in naturally occurring language, rather than either using idealised or intuitive data or using experimental data. Secondly, as with ethnomethodology (an approach from sociology based particularly on Harold Garfinkel's work), they make inferences only from evidence that is visible in the data itself, thus avoiding the criticism of relying on the analyst's intuition.

The third change it wrought was its recognition that conversation is both highly structured and locally managed. Sacks et al. found that conversation is basically co-operative, with participants working within a turn-taking system where, generally, the speaker selects the next speaker

(sometimes self-selecting). Violations of turn taking are marked occurrences and cause conflict at times. Sacks et al.'s work suffers to some extent from the criticism that it is an anglocentric approach and it has since been found that cross-cultural differences occur in how conversations are managed (for instance in overlap and pausing). Aside from that, however, their approach has been found highly valuable in determining how language is used, both in conversation and in other types of discourse. Their conclusions that conversation is locally managed and highly dynamic, allowing it to adapt to changing situations, information, attitudes and participants, remain valid in all cultures.

The structure elucidated by Sacks et al. consists of turns at talk (a fundamental unit used in conversation analysis), which are then organised into sequences and topic talk. The process of conversation needs to be able to deal with such organisational aspects as beginning and ending conversations, problems arising during conversations and speakers ensuring that others will attend to what they desire. These aspects are dealt with in sequences. Within the sequences, the turns are arranged into one or more adjacency pairs, such as questions and answers, or invitations and acceptances, which Schegloff and Sacks claim are "specially fitted to the solution of problems of that [organisational] character" (1973, p. 297). Without going into further detail here, the structure is flexible enough to allow for the disagreements, conflicts, clarifications and digressions which occur in most linguistic encounters.

Adjacency pairs have three characteristics: they involve adjacent utterances spoken by different speakers; they follow a set order (e.g. the question always comes before the answer); and the second utterance (second pair part, SPP) is tied to the first (FPP). Again, if any of these are violated, it is marked: the interactants notice and often attend to the violation explicitly. In addition, FPPs of adjacency pairs often require a particular kind of second part (for instance, yes/no questions and tag questions), and the SPP can be more or less acceptable (labelled as preferred or dispreferred).

As part of their approach Sacks et al. have also been interested in repair (often a result of a dispreferred SPP), which they claim had been "largely ignored, in spite of ... massive occurrence in ... conversation" (1977, p. 381). They characterise repair as "the self-righting mechanism for the organisation of language use in social interaction" (p. 381). They state that interactants prefer

to correct their own errors (i.e. self-initiated self-repair) rather than having others involved in the process (note that the term error is used here in a wider sense than correction, so that it includes, for instance, word searches). Again, other-initiated self-repair is preferred to other-initiated other-repair. These preferences are supported by structural evidence such as, for example, placement possibilities and the take-up of those. In other words, like the structure of conversation in general, repair is a highly structured and dynamic process.

A major criticism of conversation analysis stems from its focus at the level of the adjacency pair and the sequence, neither of which can be used to analyse the structure of an entire episode. It does not have a theoretical apparatus for analysing whole interactions, except as locally managed concatenations of sequences and topic talk (at various times Sacks et al. refer to "a single conversation", the "interaction episode", and the "occasion", but do not define them). However, despite that, the field's techniques remain useful for such larger texts, and the insights it can offer are extremely valuable, as will become clear in the current study. How it relates to courtroom language is discussed later in this chapter.

Sacks et al. do not consider matters of the wider context, believing that "it is undesirable to have to know or characterise ... situations for particular conversations in order to investigate them" (1974, p. 699). While this is an appropriate stance given their interest in describing the mechanics of conversation as a process, it means that their "systematics" need supplementing in order to arrive at a full understanding of any particular conversation. As Duranti and Goodwin point out "context and talk are now argued to stand in a mutually reflexive relationship to each other, with talk, and the interpretive work it generates, shaping context as much as context shapes talk" (1992, p. 31).

However, Schegloff later appears to give the wider context some room when he says that it is more important to show "from the details of the talk or other conduct in the materials that we are analysing that those aspects of the scene are what the parties are oriented to. For that is to show how the parties are embodying for one another the relevancies of the interaction and are thereby producing the social structure" (1992, p. 110). He notes, too, that interactants do this work on a continuing basis throughout the discourse; they do not merely address it once at the beginning. In sum, then, the linguist has to show both the relevance and the "procedural consequentiality" of the social elements of participants and setting in order to show that these social aspects are instrumental in shaping the discourse.

A further area which conversation analysis does not comment on is motivation in language use (other than that implicit in and necessary for the turn-taking system itself). Other kinds of analysis are necessary to supplement the findings of this approach. While conversation analysis can reveal how participants are orienting to what is being said, thus showing how they are interpreting the conversation, this does not neccesarily tell us their motivation for particular language choices. Politeness theory and relevance theory are two strong contenders for providing insights here and are discussed briefly below.

2.1.2 Politeness theory

Brown and Levinson (1978) build on Gricean pragmatics (Grice, 1975) to form their seminal theory of politeness, and it remains the basis for subsequent research in this area. They consider politeness to be a universal sociological principle. There has been much argument that Brown and Levinson's findings have an anglocentric bias and are not universal in fact (other cultures have been found to operate differently). However, New Zealand has a similar anglocentric bias, and the court system particularly so (despite the multi-cultural nature of New Zealand society). Therefore the concept may well be useful in assessing courtroom interaction and language in this country. One must remain aware of different cultural norms, however, when making those assessments. In addition the goals of courtroom interaction, as opposed to less institutionalised interaction, may modify what is appropriate in terms of politeness.

Brown and Levinson suggest that Grice's maxims (Grice, 1975) are used when speakers use "bald-on-record strategies", but that such strategies, which operate from the basis of efficiency, are not always appropriate.

Taking Goffman's (1959, 1981) concept of face, they develop the notions of positive and negative face (the desires to be liked and to be unimpeded or not imposed on respectively), which provide strategies for preserving face and for mitigating face-threatening acts (FTAs). While they say the maxims always operate at a deeper level, "politeness is then a major source of deviation from such rational efficiency, and is communicated precisely by that deviation" (1978, p. 108). Thus they are able to account for indirect speech acts in a more comprehensive way than by relying solely on Grice's principles.

Like Goffman, they too are interested in "the linking of social structure to behavioural patterns in the way that participants themselves do" (1978, p. 247) and "the differential use of such pragmatic resources by different categories of speakers in different situations" (p. 286). Their conclusion is that a strategic analysis is more useful than a rule-based analysis when looking at language use by real people in their everyday lives.

Over the years, many researchers have applied the theory in a wide range of situations, including courtrooms, for example, Bogoch and Danet. The latter quote Brown and Levinson's comment that "the choice of the more efficient rather than the more polite forms occurs in situations when the face wants of the conversational partner are unimportant to the speaker" (Bogoch and Danet, 1984). More recent work in this area, such as that of Holmes, is discussed as issues arise in subsequent chapters of this thesis, notably where it is concerned with powerless language.

Others have built on the theory. For instance, Buck suggests that we need to look at FTAs "in relation to other acts within and across discourse sequences" (Buck, 1997, p. 88), i.e. not just at sentence level, and that face action is not limited to FTAs. "Indeed, many acts which in Brown and Levinson's system are coded as face-threatening acts, cohere in a meaningful way precisely because their function *in relation to other acts* around them reveals them as more significantly face-tending than face-threatening acts" (p. 103). Buck also usefully questions Brown and Levinson's decision to isolate politeness features from other interactional features in conversation.

2.1.3 Relevance theory

As opposed to Brown and Levinson's position, relevance theory (Sperber and Wilson, 1995) suggests that communicating politeness is not the motivating factor underlying language choices. Bearing some similarities to Grice's maxim of relevance, but subsuming the other maxims as well, and operating on a more global level (Kitis, 1999; Yus Ramos, 1998), relevance theory postulates that "human central cognitive systems have evolved ... to maximise relevance" (Jary, 1998). It provides a cognitive rather than a decoding approach to utterance interpretation: "the addressee's inference fills the gap between the semantic representation of an utterance and what this utterance actually communicates" (Yus Ramos, 1999, p. 314), including the speaker's intentions. It is therefore capable of including the somewhat neglected question of the hearer's role in building an interaction as well as accounting for speaker intentions.

Jary builds on established politeness theory but does not believe that politeness strategies are necessarily always used to communicate politeness. He says that he follows Brown and Levinson in assuming that the use of politeness strategies "is aimed at mitigating potential face damage, though I add the assumption that even when the speaker is aiming to protect the hearer's face, her ultimate motivation is to maintain or raise her own status within the group and/or to ensure her continued well-being, in both the short and the long term" (1998, p. 2). He believes that politeness will only be communicated if the communicators' assumptions about the weightiness of FTAs are not correct and if both the speaker and the hearer know that the speaker intends that incorrectness. Jary does not seem to account for the fact that linguistic forms can have differring functions and can do more than one thing at a time. It seems to me that while relevance theory may explain a particular choice, a speaker may also wish to be polite. However it is the notion that politeness is not necessarily what is being communicated which is the distinguishing factor between the two theories.

Relevance theory is therefore able to distinguish between "unselfconscious compliance with and selfconscious exploitation of sociocultural constraints on language" (Jary, 1998, p. 6) in a way that Brown and Levinson's approach cannot (Jary notes their belief that redressive action indicates that an FTA is neither intended nor desired).

In addition relevance theory "emphasises how speakers craft their utterances in such a way as to exploit contextual features in order to modify their hearers' cognitive environments" (Jary, 1998, p. 18). The notion of relevance then can account for interactional and affective motivations for language choices as well as for structural and coherence choices.

However, the discussion on this seems all to be based on the notion that everyone wants to be liked (i.e. positive face wants), a notion which is often taken as a given but which cannot be applied straightforwardly everywhere, and certainly not for the current study's courtroom data. In addition Jary uses only two statements ("Open the window" and "Can you open the window") to exemplify his approach. He argues by use of reason rather than any kind of empirical investigation or check.

In fact, speech act theory, politeness theory and relevance theory all seem to rely on the notion that people wish to be liked, unlike conversation analysis. This is a major assumption which surely must be questioned in many situations, including the courtrooms which are the subject of

this study. (Austin, 1990 recognises this as far as politeness theory is concerned and proposes a model categorising "face attack acts" in terms of Brown and Levinson-type strategies.) Despite these comments, I see no reason in Jary's explanations to suggest that relevance theory cannot be applied equally well to situations where being liked is not relevant.

In addition the matter of co-operation in courtrooms (i.e. how far the co-operative principle can be said to apply) may be in need of some modification. Kitis suggests that courts can be explained as "conforming to some form of a general rationality principle, rather than to a co-operative principle" (1999, p. 653). Relevance theory provides just such a rationality principle.

Relevance theory therefore seems to me the only one likely to be able to account for language choices in situations where people do not necessarily or straightforwardly wish to be liked or wish to be co-operative.

In sum, therefore, conversation analysis provides a solid basis for analysing spoken language and underpins the analysis presented in this thesis. However, it will benefit by being supplemented with both ethnographic information and relevance theory in that these can provide valid bases for ascribing motivation in those individual language choices which are not adequately accounted for by their place in the conversation.

2.2 Miscommunication

Cross-cultural (or cross-sub-cultural) miscommunication has been a focus of interest for Gumperz (1982a, 1982b, 1992) in his studies of problems between native and non-native speakers of English in Britain and USA. Gumperz is concerned with what people have to know in order to participate successfully in a conversation: they have to share an understanding of contextual presuppositions, which may vary according to each person's linguistic, social and cultural background. "Since speech activities are realised in action and since their identification is a function of ethnic and communicative background special problems arise in a modern society where people have widely varying communicative and cultural backgrounds" (1982a, p. 167). He associates miscommunication with "misunderstanding of intent" (p. 50). He notes that we "cannot assume uniformity of signalling devices [for those contextual presuppositions] as a precondition of successful communication" (1992, p. 7). He devised the term "contextualisation cues", which appear in prosody, paralinguistic features, lexis, syntax and code choice, as well as

non-verbally, for such signalling devices. People use these cues to "signal the non-objective content of messages and evaluate the importance of what is being said" (1982a, p. 57). He sees the cues not as discrete elements but as a departure from the norm in one direction or another. Differences in the cues can lead to miscommunication because "notions of normality differ within what, on other grounds, counts as a single speech community" (p. 132).

He shows how different contextualisation cues and strategies, of which the participants are apparently consciously unaware, lead to different understandings of each other. In addition, the initial misunderstandings are exacerbated by the failure of the repair mechanisms by which participants try to remedy their situations. Gumperz also suggests that such instances are not confined to interethnic interactions (1992, p. 246).

Since then, a number of researchers have looked at miscommunication and broadened it to include more types of phenomena and to include gender (e.g. Tannen, 1984). However, there does not seem to be a precise definition adopted by a majority of researchers. Coupland, Giles and Wiemann (1991), for example, is a collection of articles in which any kind of problem seems to be included in the term, including audibility problems, second language misunderstandings and lying. In their introduction to this volume they point out that the term "resists simple definition" (p. 16) and that loosely it can refer to "any sort of problem that might arise interactionally" (p. 1). In this study, I use the term miscommunication to refer to misunderstandings caused by cultural differences, gender differences and differences between professional and lay participants.

Atkinson and Drew (1979) suggest that, while theoretically misunderstanding could occur when there is more than one possible interpretation of an utterance, in reality it does not occur as often as one might expect.

Metge and Kinloch (1978) suggest that differences between Pakeha (New Zealanders of European ancestry; in this case, speakers for whom English is their first language) and Samoan people in New Zealand mean that the former may be less aware of what is being communicated non-verbally by the latter. It is reasonable to consider that this may be likely for members of other cultures, including Maori, in this country. And of course the converse may apply also.

Lane's thorough study on questioning in New Zealand courtrooms (1985, 1988, 1993, see 2.3.3 below) also considers repair in depth: both other- and self-correction, and what he calls

"repetitive questioning sequences" (RQS), where the initial request is not answered satisfactorily, or violates the co-operative principle or Grice's maxim of quantity. He finds that RQSs almost always occur with serious difficulties in communication and in apparent conflicts. The longer the RQS, the more severe the difficulty. Longer RQSs were found much more often in cross-examination, in contrast to direct examination (examination-in-chief). He suggests that because cross-examination techniques exacerbate language difficulties, the only realistic solution is to provide interpreters. He says "... there is potentially a significant effect on the outcome of a trial if only the prosecution or defence witnesses are second-language speakers of English; and especially if the defendant is a second-language speaker, there is potential for a serious miscarriage of justice to occur" (1985, p. 210). However, he does not appear to suggest that having interpreters involved may not solve the problem entirely, given the likely very subtle pragmatic and other differences between the languages concerned.

Lane also discusses some differences between the use of English by Pacific Islanders and by native English speakers which may lead to miscommunication (e.g. *yes*/*no*, negative questions, tag questions, embedded interrogatives, alternative questions, fluctuation between present and past tense). This is particularly so where discourse functions are involved. Interestingly, he does not find his Pacific Islanders having trouble with alternative questions or negative questions, despite the common New Zealand belief that this is the case (rather, it was native speakers of English who showed such trouble). Further, he states that his study shows no ethnic differences leading to miscommunication in the use of *yes* and *no* and that the problems which occurred stem from "inherent ambiguities and indeterminacies surrounding the use of these two particles by speakers of English" (1993, p. 173).

He outlines differences in what members of different cultures in New Zealand view as appropriate behaviour and how they see trials. For example, Pacific Island witnesses in his study looked down more often, shifted their gaze more often, spoke more quietly, and showed repetitive movements. All these are appropriate in Pacific Island cultures, but not in Pakeha New Zealand culture. There is more emphasis on group activity in the former, especially in formal situations, and silence is a culturally appropriate way to respond when singled out (he finds no instance of a native English speaker not answering a question). Standing up and being physically higher than others indicates a higher status in these cultures, thus being in the raised witness box is somewhat confusing.

He mentions that Tongan people have trouble distinguishing the roles of witness and defence and always feel attacked in court. There are also marked differences from traditional Samoan methods of dealing with offences or disputes. (The fono, a social gathering, "provides participants with the necessary tools for reconciliation", Watson-Gegeo and White, 1990; it is at the same time a co-operative as well as accusing, blaming, and shaming exercise.)

He points out therefore that miscommunication is much wider than mere misunderstanding and finds lexical, phonological, morphological and syntactic examples as well as discourse instances. Further, he notices that questioners do not appear to simplify their language to assist second language speakers, although in examination-in-chief this may be a function of evidentiary restraints on leading questions, paraphrasing and supplying vocabulary. He also suggests that "it is rather misleading to isolate a single linguistic item which has been misconstrued and call it '*the cause'* of the misunderstanding" (1988, p. 272).

As far as the effects of all this go, he concludes that "where there is conflict between native speaker and second-language speaker, and the native speaker is in a controlling position with greater power and status than the second language speaker, the conflict can exacerbate the miscommunication that arises from language difficulties, to the detriment of the second-language speaker" (p. 186).

In reviewing Watson-Gegeo and White (1990), Phillips points out that the book reveals "a diachronic, processual, and transformative role for language, so that social realities are represented as being forever changed by the conflict management process" (1993, p. 607). "A salient theme of the book is the idea that, through the language of conflict management (whether joking or serious), a socially shared, agreed-to reality is eventually constituted that publicly defines the conflict as ended" (p. 606). There appears to be little concern about guilt, truth-telling and getting facts straight. The reviewer says that the book reveals different cultural concerns about conflict management. However, as the reviewer points out, the activities discussed in the separate papers are not related to each other or other activities and it is difficult to draw wider conclusions. A clear inference is that we cannot necessarily say that there is a "Pacific" way of resolving disputes. However, we can say that some of the methods used, including those in Samoa, are very different from a Western-style court system. Again this provides a warning that Samoan people may not be familiar with the New Zealand approach. And, of course, this may apply also to people from other Pacific Islands not considered in Watson-Gegeo's book.

Maria Stubbe notes that Maori and other Pacific cultures place importance on creating involvement in informal discourse. She also discusses “a marked tendency” (1998, p. 262) for Maori to leave meanings implicit and to not regard silence negatively. She finds that both gender and ethnicity are relevant when accounting for the use of verbal feedback, although it is difficult

to determine whether she comes to a conclusion as to their relative importance. She also notes that conversational tempo is slower for Maori speakers and that pauses often occur between turns. For Maori "pauses are respected by listeners as an opportunity for the speaker to gather their thoughts" (p. 285). She notes that this is also found among the Athapascan Indians and that Metge and Kinloch (1978) say the same applies for Samoans.

Many other linguists have discussed aspects of miscommunication in different parts of the world. In calling for changes where Australian Aboriginal people are in contact with the legal system, Diana Eades (1994) gives some specific examples of miscommunication in that arena caused by cultural and linguistic differences. These include grammatical forms such as either/or questions and the lack of gender distinction in the third person pronoun (leading to *he* being used for women as well as men). They also include pragmatic differences such as the necessity for indirectness, differences in the use of questions (and their not being used when Aboriginal speakers seek "substantial information" (p. 240), the use of *I don't know* (which often means "this is not an appropriate way for me to provide information of this nature" (p. 242), the importance of silence (it has a positive value in Aboriginal cultures), eye contact, gratuitous concurrence and being specific (Aboriginal speakers tend not to use numbers or other quantifying expressions, which leads to difficulty with wh-questions in court). In addition Eades asks whether the legal system is "a ritual which excludes Aborigines" (p. 248). Again, Australia has a very different cultural situation from New Zealand. However, the two legal systems are very similar (with a very similar anglocentric bias) and the Australian example provides a warning that New Zealand too may well face problems of completely different understandings of how conflict should be resolved.

Atkinson (in Drew and Heritage, 1992), in his chapter titled "Displaying neutrality: formal aspects of informal court proceedings", suggests that one of the reasons lay people feel intimidated and uncomfortable in court may be that they generally receive no response to their answers. He shows that such responses are usual in conversation but not in court examination (it is possible this could account, at least to some extent, for miscommunication not being recognised and therefore remaining unaddressed in court). He investigates the procedure in the London Small Claims Court (which no longer exists) where participants were questioned by the arbitrator and were not permitted to have lawyers present. He discovers that the arbitrators responded frequently to answers and suggests that this contributed to a less formal atmosphere.

He also finds that these responses are neutral and thus allow the arbitrators to avoid affiliating (or disaffiliating) with anything the previous speaker has said.

In the same volume, Graham Button shows how answers in job interviews are constrained, not only by the content of the questions, but also interactionally by when answers are permitted and when they may be elaborated or repaired. He too makes the point that the interviewees have no way to discover how their responses have been understood. This occurs for two reasons: first, at times the interviewers do not make explicit that answers do not fit the questions; and second, the interviewees are denied the opportunity, interactionally, to correct any problems they perceive. He says that these sequential practices are "designed to constitute and preserve what the candidate says as what he had to say, and all that the candidate had to say, rather than what he was led to say, cajoled to say, prompted to say, and in other ways directed to say" (1992, p. 227). In other words they play a part in constituting the interviewees' answers and may preserve misunderstandings by retaining them as part of the answers.

While this is obviously a different situation from courtrooms in that it would rarely deal with conflict (at least overtly), the fact that the format is highly constrained by the questioner provides a point of comparison. He also makes the useful point that it is necessary to see how the participants' orientations are relevant to their activities in talk, rather than simply to categorise them.

In discussing Harris's article "Ideological exchanges in British magistrates courts", O'Toole (a trial judge in Britain) comments that if "defendants who represented themselves before certain British Magistrates exhibited 'perspectives of social reality' which differed widely from those of the Magistrates, it seems to me that those widely different perspectives of social reality derive from *in*comprehension rather than comprehension of lawyers'/Magistrates' utterances" (Gibbons, 1994, p. 191). Even though this comment refers to people representing themselves rather than participating as a witness or defendant only, this is a telling point made from the point of view of a regular participant in the court system. It supports from another perspective the findings in recent linguistics that it is not always specifics of legal language per se which cause problems, but rather that very different understandings of the systems involved lie at the heart of many difficulties.

Gibbons also points out that the "adversarial approach, by its very nature, is likely to discredit those who are less articulate in legal language, or easily intimidated" (1994, p. 197). In the first category he includes second language speakers, those who speak a different dialect, those less educated in formal registers, and in the second he includes women, recent migrants and oppressed minorities.

Stygall too questions whether the difficulties in communication apparently occurring in courtrooms are really a matter of specific language features at all, or at least, per se. She suggests instead that we need to look at social theory and address "language's own role as a regulated and regulating social institution" (1994, p. 4). Following Foucault, she argues that the difficulties are based rather in the different participants in court having different discourse frameworks. It is impossible, given the trial process, for non-legal participants, including jurors, to have access to the legal discourse structure.

She presents an analysis of a civil case arising from a traffic accident, using observation, transcripts and participant interviews in the months after the hearing. The members of the jury, not legally trained, do not decide the case solely on the basis of what they hear in court. Against the expectation of the court, they often completely miss the relevance and significance of legally important points. She suggests this is caused by three main factors. First, while the lawyers and the judges share a fund of legal knowledge and experience, the jury is not familiar with the concepts involved. Secondly, the facts are "reduced" to a form suitable for court (suitable in terms of legal issues). The lawyers and the judge carry the knowledge of that with them, and see the facts in that context; they know what has been removed in this process. But the jury, when presented with a single sentence, knows neither of the process nor of the story behind that sentence. Thirdly, the order in which material is presented during the hearing is not chronological. It bears little or no relationship with the way facts are presented in ordinary conversation (through narrative). For the jury, who has no direct knowledge of the facts and who only has a very brief exposure to them during the hearing, it is therefore difficult to keep track of events and their relative significance.

Stygall suggests that, instead of assessing the situation on the basis of what is presented in court, juries carry their own, individual, stories, or memory organisation patterns (MOPs), with them. This is evidenced by her finding that, even when the defendant admits an element of fault in the accident, some jurors discount that completely. Stygall claims that is because their own MOPs

are not shaken by what has occurred during the hearing. In turn, she claims this is caused by the jury having no access to the legal discourse structure used by the lawyers and the judge.

Also very recently, Weigand has considered the notion of miscommunication from a definitional point of view. She believes that many discussions of miscommunication have seen it as failure, while others have seen language as inherently problematic (with miscommunication a part of communication). She rejects the traditional separation of language and communication, preferring to base her discussion of misunderstanding on the notion of "coming to an understanding". She concludes that "communication functions so well because it allows the risk of misunderstanding and trusts in the fact that it will be corrected by the ongoing dialogue itself" (1999, p. 783).

This seems to me to fit well with the interactional approach, which is based on the notion that linguistic interaction is dynamic, both reacting to the context and creating the context as it proceeds. It also acknowledges explicitly the existence of differences between participants, the complexity of the world and the fact that "not everything is said" (Weigand, 1999, p. 781) in a particular interaction. All these factors become particularly relevant when studying courtroom language.

A further factor in miscommunication is the question of interpreting into languages other than the usual language of the court concerned. Although this is not addressed in any detail in this thesis, it should be noted that this is not a straightforward matter. One of the areas which has been discussed in recent time concerns the pragmatic force of questions in court and how far this survives translation.

For example, Berk-Seligson (1999) finds that questions involving tag questions more often than not have their coerciveness reduced in the translation. Further, Hale (1999) finds that discourse markers are often not included in the translation at all. Rigney adds that even where discourse markers are translated, their effect ("idea of argumentation", 1999, p. 101) is not always translated accurately, due to the multifunctional aspect of such markers and their multiple meanings.

2.3 Language in the law

2.3.1 Introduction

The features of legal and courtroom language have received much attention from linguists and others. Two of the more recent and detailed reports are those by Atkinson and Drew (1979) and Danet (1980). Among other things, aspects relevant to this study are the former's discussion of the relative infrequency of repair (but see Lane 1988 for a contrary view) and their conclusion that co-participants and infrequent participants cannot show their understanding (or, presumably, their misunderstanding).

Danet's 1980 article includes a comprehensive review of previous research covering the features of legal English as well as people's ability to understand it, studies of eyewitness testimony and "linguistic engineering", and how speech styles affect judgements of social status and personality. She comments that her paper has a constructionist, phenomenological view of the legal process which focusses on the 'doers' of justice rather than the receivers of justice. However she does not attempt to redress the balance in any way. More recent developments, including the present study, suggest that that focus needs changing to include the other participants' perspectives as well.

Comments about language and the law, particularly when made by people connected with the law, have suffered at times from the problem of being affected by the analyst's own position, and a conversation analytic approach can be particularly useful in avoiding this. However, care is still needed to avoid the problem. Drew has carried out much research into language in court, and has commented carefully on his methodology. He states that one of his aims is "to free the methodological practices of reasoning from their local environment" (1992, p. 495), by which he means that the evidence he wishes to use is transparently visible in the data. Despite this, however, nowhere in his discussion of a rape trial does he state the basis for his conclusions about the witness's reasoning (i.e. the reasons behind her answering the way she does). In other words, while using a conversation analytic approach, he then makes statements which are not consistent with that approach. In doing so, his comments about what the witness is thinking appear to stem from a particular viewpoint, but nothing either in the data he presents or in his explicit statements backs up that view as opposed to any other.

There has been much discussion of "legal language" over the years. However, this is not discussed further in this thesis because the use of technical terms and complex legal expressions

appears to be minimal in the examination phases of the hearings studied here. In addition, the court had recently introduced new efforts to reduce the formality of the ritual language used, for instance when the trial opens.

2.3.2 Courtroom language as conversation

Caesar-Wolf (1984) questions the use of such approaches as the sociology of law, ethnomethodology and conversation analysis when investigating language in the law, saying that they have led to seeing legal communication as deviations from some norm of practice. This, she says, is sociologically unsound: courts were developed precisely because some conflicts were unable to be resolved in an everyday manner and others are too important to be resolved in that way. Therefore "differential patterns of communication must be expected as the normal form in court" (1984, p. 194).

However, in doing so she discounts the structural basis of conversation analysis and appears unwilling to place the courtroom "normally" in the overall language pattern of a community. On the other hand, Sacks et al. say "conversation should be considered the basic form of speech-exchange system, with other systems on the array representing a variety of transformations of conversation's turn-taking system. In this light, debate or ceremony would not be an independent polar type, but rather the most extreme transformation of conversation" (1974, p. 731). Others have taken this up and some of their work is discussed below.

Moerman (1988) considers repair, overlap and reference in village conversation and courtroom interaction in Thailand. In doing so he combines the approaches of ethnography of speaking and conversation analysis. This detailed study illustrates the benefits gained by combining approaches and, in particular, the benefits of applying conversation analysis to courtrooms and of considering the context of utterances. He demonstrates that participants invoke matters of ethnography, such as social status and occupation, in their language choices, for example their choice of reference terms.

Levinson (1992) discusses a number of approaches to discourse analysis, preferring those of Grice and Sacks, Schegloff and Jefferson. He proposes that a general set of constraints and strategies exists for conversation and that these are unmarked. In certain other situations, like courtrooms, further, marked, constraints and strategies characterise the activity types. He notes

that these are culturally specific. One difficulty arises with this, however, as far as the courtroom is concerned. In discussing the questions used in courtrooms, he proposes his explanation solely in terms of conversation practice (whether marked or unmarked). He ignores the legal requirement to have witnesses express facts directly in court, which stems from the prohibition on hearsay evidence. This leads to his offering explanations which impart motives, both for questions and answers, which may be inappropriate or incomplete in the legal context. Thus, if using conversation as a framework, we have to be aware of the special constraints of activities like court hearings.

Nofsinger (1983) also decides that courtroom language has many similarities to conversation. He works from the premise that, in the USA, cross-examination occurs when witnesses do not say what they are expected to say. He infers that witnesses both understand the questions (mostly) and understand what the lawyers are getting at and that lawyers can anticipate how on-target the answers will be. He discusses the notion of participants having to be aware of each others' goals. Within the constraint of fairness, a trial is assumed to be competitive, i.e. individual participants see their goals as incompatible. But, equally, all participants know that "courtroom competition must be enacted co-operatively" (1983, p. 247). There is a fundamental informational goal, where the jurors' knowledge is to be affected by the lawyers and the witnesses. That informational goal is to do with constructing, defining and validating the story. It restricts the range of conversational functions, leading to what he calls a rather formal two-party conversation.

An important difference from conversation is that some participants are required to be listeners only, i.e. the jurors. Jurors need to be able to recognise tactical objectives: "Ongoing examination of courtroom transcripts suggests ... that the coherence of a symbolic act involves more than an understanding of its propositional force" (1983, p. 250). But "since they can see the goal to which a particular courtroom conversation is directed, jurors and others are in a position to interpret the point of each symbolic act as a tactical objective designed to achieve that particular communication goal" (p. 251). Finally Nofsinger suggests that "... effective tactics are actually possible because previous experience has established certain patterns of symbolic action which have become conventional and accepted as serving the pursuit of ordinary conversation goals" (p. 257). In other words, the connection between the goals and the acts in court is conventional enough for jurors to follow (although I would like to suggest that they may not always do so).

Atkinson and Drew (1979) describe how some aspects of conversation are also present in

courtroom examination: participants speak one at a time, they change regularly (take turns), the current speaker selects the next speaker and gaps and overlaps are minimised. However, there are differences in that both the order and the types of turns are fixed. For each episode of questioning (e.g. a counsel's cross-examination of a witness) the examiner is selected by the rules of the courtroom. After each question is answered by the witness, who has been pre-selected at the beginning of the episode, the examiner puts the next question until that part of the process is completed. Atkinson and Drew (1979) note that the examiner may include more than one person, i.e. it could be a counsel and a judge, but that it is not usually more than two.

They discuss exceptions to the turn-taking system in court. Participants other than the pre-selected questioner may self-select in certain circumstances, e.g. objections. These are always made after the question, and become the first parts in one kind of remedial insertion sequence. They look at witnesses' resources for sequential management. "We have noted that, because of the pre-allocation system for examination, witnesses cannot be assured of opportunities to give explanations for their actions, given that they have no control over the production of 'why' questions" (1979, p. 187).

They suggest one of the implications of this pre-allocation of turns and turn-types is to reduce the range of types of utterance which the audience has to monitor and that the structure of adjacency pairs reduces the topic range. These factors in turn reduce the interpretive work required by non-participants (including jurors).

Atkinson and Drew also discuss pauses. They may be used as interactional strategies, both by counsel and by witnesses, and can be interpreted as such because of the pre-allocation of turns. Pauses may help to reduce misunderstanding. The authors raise the issue of when pauses are noticeable or not. They note the use of final pause plus tags to mark completion of utterance and prompt an answer. The gap minimisation constraint which applies in conversation applies if witnesses are seen as being evasive, but not if the counsel's use of a tag after a pause is seen as impatient. Silences and their implications depend on the circumstances: they cite case law suggesting that failure to answer may or may not be evidence supporting an accusation and that absence of a denial can be seen as evidence both of admission by the person charged and the truth of the charge. In other words they recognise that particular language features may be used for different purposes by different participants and that they may also be interpreted differently.

Atkinson and Drew point out that the characterisation of turns in examinations in court as questions and answers can only be minimal because other actions can also be performed in these turns, e.g. accusations, challenges, justification, excuses. Participants hear these and deal with them in their subsequent turns, thus using interactional management. Other tasks for witnesses include the need to avoid self-blame and disagreement with the position or information given in a prior question (this is an aspect of avoiding dispreferred responses).

Atkinson and Drew discuss violations of the expected second parts to adjacency pairs, saying that it is noticeable if the second part is absent, delayed or dispreferred, and that that "provides a basis for inferences to be made about the motives and moral character of the speaker who failed to do a projected second turn" (1979, p. 227). But it is also impossible to avoid this without eliminating the question-answer sequences because such inferences are a built-in feature of them.

They also discuss how attentiveness and orderliness are maintained in multi-party settings. They look at "how various organisational arrangements ... which differ from those operative for conversations may be necessary to facilitate the production of talk that can be monitored by all parties to a multi-party setting" (1979, p. 227), e.g. distances in the courtroom.

This brief review of some examples of applying conversation analysis to courtroom language has shown that it can be a highly useful approach in this field. Further, it illustrates how this kind of language fits into the overall patterns of daily language use in the community. Seeing courtroom language as one aspect of conversation allows us to see it as a normal part of life rather than as a deviation. It also seems to me to fit well with Weigand's (1999) conclusions, discussed in section 2.2 above on miscommunication.

2.3.3 Questions in court

Loftus (1979, 1980) is well-known in legal circles for her seminal and thorough work on evidence and how subtle changes in the wording of questions can influence the answer. She discusses the effects of vocabulary choices (verbs of contact such as *hit*, *smash*), *some*/*any*, *the*/*a*, tag questions, *why* questions, and questions involving presuppositions. In this classic study, lawyers' use of questions is shown to exert more control than many had realised previously.

Danet (1980b) looks at the role of questioning, and its different forms and functions, considering whether questions 1) seek or supply information, and 2) involve deference or seek control. She finds that the more serious the offence, the more frequent the coercive questions in cross-examination. She adds that there is some evidence that lawyers overestimate witnesses' ability to resist the control which is part of some questions. She cites Phillips's (1979) suggestion that the degree of coerciveness is a function of social as well as linguistic processes.

A number of others discuss the role of questions as controlling devices. Harris (1984) considers questions asked in arrears and maintenance hearings in magistrate's courts in England. She finds that when a person with higher status and a clear authority role asks a question, it is difficult for a defendant or other witness to hear it as just seeking information rather than fixing responsibility, or even blame. Many questions require minimal responses, and challenging these requires more interactive effort than supporting them; answering with an unexpected *no* (when the question presupposes otherwise - she calls these conducive questions) seems to need explanation. It is very difficult to refuse to answer any question. All participants seem to start with certain assumptions: the magistrates and clerks seem to presuppose that the defendants are unwilling to pay maintenance or arrears, while the defendants seem to start from the position of being unable to pay. She believes that confirmation requests cannot be separated in function from requests for information or accusations (accusation underlies many requests for information and accusations carry information). Therefore highly conducive forms with these functions act as a means of control by restricting the defendant's possible introduction of new information and challenges to the accusations.

Although Freed (1994) looks at questions in informal dyads rather than in courtrooms,and the conversations do not appear to involve conflict, she makes some useful points about how questions operate. First she questions Schegloff's view that the syntax of questions has little value when considering their role in conversation. She finds rather that speakers use pragmatic and social considerations when choosing syntactic forms. Secondly, she points out that "speakers and hearers are remarkably tolerant of peculiar exchanges and are prepared to interpret a much

wider range of utterance-combinations than some theories would indicate" (1994, p. 641). Thirdly she notes that answers, although relevant, are not necessary after questions, and that strict adjacency is not always required. The first two of these points are certainly applicable to courtroom interaction, but the latter of course is not.

Lane (1985, 1988, 1990) comprehensively analyses the questions occurring in the examination phases of a series of District Court hearings in Auckland, New Zealand. He prefers to use the terms "initiations" and "elicitations" when referring to what participants think of as questions in these trials. He does so in order to recognise that they do not always have question-like syntactic form and to stress the distinction between those which seek information and those with other pragmatic functions (instead or as well). Luchjenbroers, 1995, calls them "barrister contributions", a term she prefers because much of what barristers say in court cannot be called questions, but Lane's terms are preferable because they are a little more specific. However, while accepting the point, I continue to use the word question because the participants themselves orient to the initiations and elicitations as questions (this is clear from the data forming the basis of this thesis, as well as from Lane's own comment, 1990, p. 229, see below).

Lane points out the difficulty for witnesses in deciding where to address their responses: the judges (often called "the court") or the lawyer who has asked the question. Lane suggests they should be regarded as joint addressees. This allows him to then discuss felicity conditions on elicitations, based on the work of Searle (1971) and Labov and Fanshel (1977) and the notion of conversational implicature. He ties this in with conversational analysis by remarking on how the elicitations are locally managed. He suggests that what allows counsel to assert, claim, accuse etc. in their examinations is that "the witness, judge and other counsel are pre-disposed to look for a 'question' interpretation (whatever other interpretations they might make as well)" (1990, p. 229).

Luchjenbroers (1995) briefly reviews the functions of questions (including tag questions) in court before describing her research into how stories are told in courts in Australia and her conclusion that it is barristers (not witnesses) who are the "REAL storytellers" (1995, p. 7). She separates talk in examination (including re-examination) from cross-examination (which function to establish and challenge facts respectively) and talk by witnesses who are for, against or neutral

towards the accused (she establishes this more on the basis of where they appear in the hearing rather than what they say). Overall she finds that interrogative forms, as opposed to declaratives and other forms, appear in barrister contributions somewhat less often than one might expect. Interrogatives occur more often during talk in examination while declaratives occur more often in the cross-examination sections of her data. "A higher proportion of interrogatives indicates a greater familiarity (and trust) in what the witness will say, while a higher proportion of declarative forms would enable barristers greater direction of a witness's testimony as well as maximise their version of reality" (1997, p. 499). In addition, when looking at witness responses, she finds that the degree to which witnesses build on barrister contributions is another indicator of their powerlessness, because "they add only the required 'bits' to the barrister's characterisation of the events" (1995, p. 30). This interesting approach is able to take into account participant intentions, as tied to their roles in court, rather than restricting the analysis to structural matters. She thus combines aspects of interactional sociolingustics and conversation analysis to produce a rich analysis of her data.

2.3.4 Power and control in court

Fowler, Hodge, Kress and Trew (1979) argue that any text includes interpretations and evaluations about subjects and participants. These, based on the text's place in the socioeconomic system (i.e. they are not created uniquely for the situation), are used both systematically and automatically. "Language serves to confirm and consolidate the organisations which shape it, being used to manipulate people, to establish and maintain them in economically convenient roles and status, to maintain the power of state agencies, corporations and other institutions" (1979, p. 190). In other words, language not only reflects power differences, it helps to enforce them; there are causal links between linguistic structure and social factors. They also point out that "...the relation between intention and surface structure is not conventional or arbitrary" (p. 205).

Caesar-Wolf (1984) studies a German traffic accident case heard by three judges. She finds that the judges' questions limit the witnesses' possible answers and their feedback indirectly signals what they see as relevant. She suggests that the judges channel the witnesses' recollections in the process of reducing what she called the "divergences of relevancies" between the judges and the

witness. The judges use leading questions. They avoid explicitly discrediting witnesses on a personal basis, rather using the bases of conflicting testimony and their idea of what the testimony should be. She concludes that the judge strategically directs the communication process in court. She also says that the credibility of a witness's testimony is established on the basis of categories used in forensic psychology, which is largely consistent with common sense, even though the applicability of that approach has been questioned (cf. Loftus, 1979).

She says "The professional criteria of judicial relevancy, as well as standards of credibility are latent frames of reference, underlying the communication activities of the judge. They are not revealed to the witness. On the manifest level, communication is carried out in 'everyday language', apparently oriented towards subjective experiences and perceptions of the witness. By thus being kept structurally ignorant, the witness's chances to act strategically are reduced" (Caesar-Wolf, 1984, p. 222).

Of course, this work is based in the German court system, which operates on an inquisitorial basis, rather than the adversarial basis of courts in Britain, USA, New Zealand and elsewhere. However, it seems likely that her conclusions would also apply, possibly more strongly, in those adversarial systems.

In their study of a lawyer-client interaction in Jerusalem, Bogoch and Danet (1984) approach the analysis from the Gricean point of view, as well as looking at conversational moves and features. They conclude that the lawyer uses language to control and define the case, manipulating the presentation of information in a way which is convenient for the organisation rather than what the client wishes. While they consider only one lawyer and client, they do so in some depth and provide a convincing account of the interaction. They note that superiors talk and interrupt more, hesitate less, control the resumption of talk after pauses and control the introduction of new topics. They conclude that interruption is the lawyer's bid for control, which works by reducing clients' access to the floor and denying their chance to show knowledge of legal aspects. Interruption suggests that the client's utterance is not worth hearing, thus challenging the client's use of Grice's maxims of relation or quantity.

They also consider that certain speech acts are more controlling than others (e.g. yes/no questions are more coercive than wh-questions; imperatives are less deferential than indirect requests). They suggest that ambiguity underlies requests for clarification, which therefore question the

speaker's use of the maxim of manner. They suggest the gravest challenge to the speaker is to challenge their adherence to the maxim of quality, which is done through requests for confirmation. They stress the need to be careful, however, about assuming illocutionary force in some situations because it may not be achieved by the same devices in different languages.

Where familiarity is shown by the lawyer by using an in-group term, Bogoch and Danet suggest this does not show positive politeness in Brown and Levinson's sense (1978), but rather displays the lawyer's expertise and puts the client down. The lawyer uses pronouns (*we* and *I*) and the passive strategically as negative politeness distancing devices, enhancing the lawyer's power.

Bogoch and Danet use Labov and Fanshel's (1977) definition of challenges as "acts that assert or imply a state of affairs which if true would weaken a person's claim to be competent in filling the role associated with a valued status" to claim that the lawyer challenges both the client's use of the conversational maxims and his or her ability to be a competent client. They identify seven different strategies which the lawyer uses to challenge the client in this way. Danet also says that "communication between legal professionals and lay persons does not produce 'objective truth' or 'facts', but rather, to varying degrees, the strategies of the professionals enable them to construct their own versions of 'facts'"(Danet, 1984, p. 6).

Aronsson, Jonsson and Linell (1987) investigate speech accommodation by judges and lawyers during criminal court hearings in Sweden, where the court system is inquisitorial in nature and there is no jury. They note different levels of formality in different phases of the trial, which they describe as monologic or dialogic (i.e. examination or cross-examination). They find changes in the language accordingly. While these may be explained as style changes reflecting changes in situation, another possible explanation is speech accommodation. Looking at information density, uncertainty (expressed by hedges) and activity level (turn length), they report evidence of accommodation by both professional and lay participants. The differences they find are not accounted for by social characteristics, nor purely by situational factors, but by the individuals' linguistic repertoires and the nature of each dyad, i.e. there is interactional accommodation.

They then question how much the defendants understand in court. Most interviewees thought the language used was understandable, although there were moments where it was more difficult, especially when the professionals were talking together. They conclude that coping with the legal frame of reference was more difficult than the language per se. They suggest that when the

professionals use more legalistic language (in examination phases) this may be a deliberate strategy used to emphasise defendants' relatively low position in the hierarchy of the court and to discourage defendants' participation.

2.3.5 Powerless language features

Many have considered the different meanings and functions assigned to specific linguistic features, such as particular syntactic constructions, words, intonation etc., both in the courtroom and elsewhere. The lexical and syntactic studies have been supplemented more recently by Schiffrin's interactional approach (1987, 1994). Given that some of these features have been variously described as women's language or powerless language, how they are used in the courtroom is relevant to the subject of this thesis. They are discussed as appropriate in later chapters and a brief note only is made here.

Early work in this area focussed on women's language. Robin Lakoff's (1975) set of women's language features is well known and has been reviewed comprehensively. Although that work suffers from methodological inadequacies, it served as a springboard for further research in this area. As a result a great deal more is known now about women's language, not only among English speakers, but also among speakers of other languages. For instance, Holmes's work has added appreciably to the body of knowledge about differences within English and in New Zealand. It is widely accepted that women do indeed use language differently from men in many situations. Debate continues on the question of the basis for this, i.e. dominance v. difference (with some suggestion that the two are not mutually exclusive explanations, e.g. Hannah and Murachver, 1999) and indeed whether a new approach is appropriate. In such a new approach, the similarities of language use are considered rather than difference being the focus. Factors other than gender, such as power, are given their due weight also.

O'Barr and Atkins (1980) set out to discover whether women's language (i.e. Lakoff's features) would appear in the courtroom and in similar patterns. They based this work on an earlier study of courtroom language (reported in Erickson, Lind, Johnson and O'Barr, 1978; Lind, Erickson, Conley and O'Barr, 1978; Conley, O'Barr and Lind, 1978), which looked at the effects of presentational style. While this study is most interesting, the various papers refer in detail only to features of witnesses' language and differences within their witness group. They do not focus on what the professionals are doing. However, they find that their use by the witnesses who are the

subjects of this study is not simply a matter of gender, but depends rather more on the power dynamics operating in that situation. They therefore identify them as features of powerless language.

The language of middle-class New Zealand Pakeha women has been studied extensively by Janet Holmes. Her 1993 article states that the women's behaviour she has found should be viewed as positive features of women's speech rather than as powerless speech. She points out that "many of the facilitative patterns which characterise women's speech in general also characterise the speech of those in leadership roles or positions where they are responsible for ensuring the success of an interaction" (1993, p. 111). Further, they involve the speaker's taking the initiative and should not be seen as passive or submissive. She and others have since gone on to look at the speech patterns of Maori women.

Hosman and Siltanen (1994) look at the effects of powerful and powerless speech styles and question whether the two styles do exist in fact. They conclude that while a powerful style may be something of a misnomer, there is still a reasonable basis for suggesting that there is a powerless style. They point out that "While there are a few exceptions (e.g. Holmes, 1990), most studies indicate that a powerless speech style produces negative evaluations of a speaker's competence, authoritativeness, and social attractiveness" (1994, p. 287).

Their article reports the results of two studies. The first asks the subjects (141 undergraduates) to evaluate a number of messages, essentially the same, but either with one different feature of powerless language or with none of them. They find that hedges are judged as showing more control than tag questions, while intensifiers and powerful messages show the most control and authoritativeness. However, they then interpret this on the basis of certainty. It seems to me a large leap to assume that a powerful style shows certainty and a powerless style uncertainty. That aside, while this study is convincing on its own points, it is questionable whether any of these features acts purely on its own.

Perhaps in an attempt to deal with this potential criticism, the second study looks at combinations of features. Using the same base messages as the first study, the subjects were asked to assess versions with high or low levels of the features. The authors find here that hedges and hesitations lead to perceptions that the speakers have less control, both over themselves and others, and again

that intensifiers engender perceptions of greater control. They do not find significant interactions between the variables when combining them.

However, they do not look at more than two variables at once and thus do not overcome the question of whether there are cumulative effects given that, if there is a powerless style, more than one or two variables are likely to occur in the speech of any one person. This could have been checked by using naturally occurring language samples as well as artificially manipulated texts. This problem is exacerbated by the brevity of the texts (310 words each). This too may lead to masking possible cumulative effects of features over larger segments of discourse.

Freed and Greenwood (1996) conclude differently, saying that "it is the specific requirements associated with the talk situation that are responsible for eliciting or suppressing specific discourse forms, not the sex or gender of the speakers, or some abstract notion about the relationship between the speakers, or their group membership" (p. 21). They dispute that all women and no men use powerless language and that they have distinct conversational styles which apply in all situations. Consideration of the context is vital. However their study looks at same sex speakers from the same speech community in friendly situations and with no power differential between them. On the other hand an advantage of a study like this is that it is able to compare language use in different types of talk (spontaneous, considered and collaborative) while keeping the participants and the situation the same. They conclude that the frequency of *you know* and questions (including tag questions and HRTs) alters according to the type of talk and not with gender.

Bogaers (1998), on the other hand, finds that gender is a salient factor in language use in job interviews and that there are communicative rule differences between men and women. In her study, higher status leads to a dominant speech style more often for men than for women and the converse occurs for lower status. She finds that the degree of gender specific style differences decreases for people in higher positions. However, higher status derives in her study simply from being an interviewer rather than interviewee (and, presumably prospective employer and applicant) and she does not discuss the question of social status beyond the situation involved.

In sum, all of the work mentioned here has profferred useful contributions to our understanding of powerless language, but much of it raises as many questions as it answers. The major importance of Janet Holmes's work is two-fold. It considers both the differential use of features

by men and women (finding unexpected departures from what would have been predicted by the work of others); and it introduces functional analysis, which also turns previous predictions on their heads. This thesis attempts to apply that kind of depth to powerless language in order to see whether and how it is operating in New Zealand courtrooms.

2.3.6 The question of credibility

It is interesting to discover that different participants in interactions use language in different ways, whether this is because of role, social identity, personal identity, cultural or gender differences. It is also interesting to determine whether such differing language use is likely to affect the outcomes of the interactions. This is particularly important in matters of law and justice. Who is able to exert power in the courtroom and control the interaction obviously affects the outcome.

Another crucial factor is credibility, which also relates to some of the material discussed above (section 2.2 Miscommunication). The literature contains a variety of investigations in this area, which provide a variety of conclusions about just what effects language styles have on people's evaluations of others. While this area is not investigated in this thesis, the brief survey given below provides further background for the conclusions presented in the final chapter, and illustrates the dangers of extracting particular features from their contexts.

Ryan and Hurtig (1980) consider the point at which juries arrive at decisions about guilt or innocence. They find that it is not during the construction of the evidence base itself, but rather during the processing of what they have heard. This raises the question of how far specific aspects of the language use per se affect the judgements they make.

Lind and O'Barr (1979) describe how important credibility is and how it is affected by judgements about the speaker's competence, trustworthiness, attractiveness and "social dynamism". They note for instance a study showing that the more quickly someone speaks, the more competent and persuasive they are seen to be. They use a matched-guise technique to elicit evaluations of powerless language taken from a series of recordings of criminal trials in a North Carolina Superior Court. Testimony designed as powerful is seen as more competent, attractive, trustworthy, dynamic and convincing. The results are statistically significant, although not strongly so.

Lind and O'Barr also suggest that powerful testimony could affect outcomes. They believe the greater effects of this would be on social evaluations rather than on the information presented: "... use of power or powerless speech may provide cues which are interpreted as identifying the speaker as a particular type of individual and this identification may have certain connotations for the judgement of social qualities" (1979, p. 74). They also look at the difference in effect of fragmented and narrative testimony, suggesting that narrative testimony may be seen as the lawyer giving more control to the witness, which in turn may carry information about the lawyer's evaluation of the witness.

They comment that "the observational studies told us much about the use of various speech variables, but it was only through experimentation that we were able to make definite statements about the consequences of these speech variables, and only from the perspective of social psychological research and theories that suggestions could be made concerning the process by which court speech is interpreted" (1979, p. 87). While this seems a reasonable comment for when it was written and is well-based in their research, I hope to demonstrate that the development of the conversation analytic approach means that we can have more confidence about assessing interpretation from the text itself.

Others have investigated matters such as the effect of voice and speech style on social evaluations. For example, Scherer (1979) uses an experimental situation (simulated juries) to look at evaluations of competence, dynamism and dominance on the one hand and likeability, benevolence and trustworthiness on the other. He finds that participation rate has a strong effect on social influence. But he also finds that perceived influence does not relate to a cluster of variables interculturally. Further he does not find that manipulating the speech style affects attitude changes. This is one of the few studies in the sphere of courtroom language which compares participants of different cultures (American and German).

After analysing tape recordings of a number of short hearings in Vienna, Wodak finds that "defendants who succeed in acting in accord with the implicit commonsense rules or routines of courtroom interaction will make a good impression. Middle-class defendants are able to do this because they hold the same values as the judge" (1980, p. 374). She places much emphasis on social class as a determiner of outcome for these hearings. She concludes that in practice defendants are tried more on the basis of their discourse skills and social outlooks than for the crimes they are alleged to have committed.

Further support for this comes from Jucker (1993). He cites Watts (1989) who finds "convincing evidence for the fact that native speakers evaluate discourse markers negatively even if they use them very frequently themselves", and finds "an astonishing discrepancy between speakers' (sometimes very frequent) use of *well* and their own perception or rather non-perception of it" (Jucker, 1993, p. 437). This lends weight to the suggestion that juries are influenced by the language of participants (whether judges, lawyers, defendants or witnesses), such as their use of discourse markers.

Krenz and Roberts (1993) asked their subjects (88 university students) to describe the personalities of speakers in 12 very short (the average length was four turns), artificially created conversations. While the conversations seem unnaturally short (perhaps they would be better described as sequences), and thus the notion of context rather limited, their artificiality allowed the authors control over that context. They claim that speakers who make errors are evaluated more negatively. An interesting twist on this is that they also find that when pragmatic errors occur it is not only the speaker but also the addressee who is evaluated negatively (this unexpected result may have implications in court). They suggest that this may occur because we see conversation as collaborative (and therefore see both parties as at fault if errors arise). While courtroom conversation is less collaborative than everyday conversation in an attitudinal sense, it remains cooperative and therefore collaborative in the Gricean sense.

Mack (1993) discusses how those working in the law continue to believe that women are not credible witnesses, both by being less inclined to accept their stories and through the language used when speaking to and about women in court. Further, she says that judges more often ascribe blame to someone with a powerless speech style (but does not elaborate on this) and that their scepticism towards women may affect juries. She cites reports suggesting that the effect of this is indeed great enough to deny equal justice. While her field of discussion is rape trials, particularly in Australia, a peculiar situation in terms of corroborative evidence, the same factors may well apply in other types of hearings.

A further development is provided by Cargile and Giles (1997), who ask about the effects of listener emotions and how social identities influence people's attitudes. Their matched-guise study of attitudes towards speakers with standard American and a range of Japanese-accented English discovers that it is the salience of listener attitudes which is important in evaluating

speakers, rather than the speakers' accents per se. They point out that this is only one study (and the first to measure salience of listener attitudes) and thus that further studies would be prudent.

While this is a useful and interesting study, has a large number of participants (240), and attempts to include a variety of factors, it is yet another in the myriad of studies using undergraduate students in American universities. One wonders if this is a bias in itself (on the basis of age, among other things) and if it is not time to extend the range of participants rather more widely.

Hosman (1997) asks why powerless language receives less positive evaluations and investigates this by asking 122 people to comment on two texts (artificially created purported trial excerpts) and to fill out a measure of their "locus of control" (the extent to which people believe their behaviour is controlled by themselves or others). He finds that, rather than being based on features of the style per se, evaluation depends on the nature of those making the judgements. Those who are judged to be powerless are perceived to have less control over themselves and others. He concludes that the nature of the hearer should be considered as well as the speaker when considering the respective effects of powerful and powerless styles.

Holtgraves and Lasky (1999) look at the question of the effects of powerful and powerless language styles on persuasion. Their carefully manipulated study involving 94 men and 96 women (also undergraduates, psychology students who participated for course credits) reports significant effects and concludes that powerless messages are perceived more negatively by listeners. The students were asked to evaluate (on a detailed set of scales) two different versions of a 400-word message arguing for comprehensive exams. This, of course, is very different from naturally occurring language. It is also very different from the courtroom situation, where the lawyers are attempting to persuade the juries directly (although they have to be very careful to appear objective) but the witnesses and defendants are not able to do so in such a direct or controlled manner.

The studies discussed here show a clear consistency in finding that powerless language styles are evaluated negatively. However, perhaps as a result of using controlled experiments (and thus manipulating variables), they have made assumptions about the existence of powerless language and who uses it, and have ignored the possibility of people using so-called powerless features for different kinds of functions. If those assumptions are found to be incorrect then we have to

question whether such negative evaluations in real life situations are in fact based on the language of the interactants.

2.4 Attitudes towards speech styles in New Zealand

Various studies have been done on attitudes towards different accents and speech styles in New Zealand. Again, although this thesis does not investigate accents as such, the matters found in the studies discussed below may well be contributing towards juries' assessments, particularly of witnesses and defendants.

Vaughan and Huygens's (1990) investigation into sociolinguistic stereotyping in New Zealand (begun in 1979) looks at how Pakeha, Dutch, British and Maori speakers are perceived on the basis of their speech patterns. They conclude that British people are seen as having higher status and as being self-confident, Dutch people are seen as having more neutral status and as being hard-working, while Maori are seen as having low status, being less hard-working, less intelligent, but are rated (positively) as warm. Thus they conclude that ethnicity clearly affects the social evaluations of those speakers. Pakeha, on the other hand, are evaluated individually according to their perceived status: thus those with higher status are regarded as more hard-working, self-confident and intelligent; those in the middle are seen as warm and self-confident, while those with the lowest status are perceived as warm personalities. It should be noted that the informants in the study are all Pakeha, and it would be interesting to look at evaluations by other groups. It would also be interesting to look at the position for people of Pacific Island origin, who have increased in number in New Zealand substantially in recent years and who have become more visible.

More recently, Bayard has looked at evaluations of a range of accents found in this country, including what he calls cultivated New Zealand English (NZE), educated broad NZE and uneducated broad NZE. The results show that the latter accent is evaluated negatively and is "associated with a stereotype of lower class Polynesians" (1990, p. 93). He suggests general NZE has less overt prestige than other accents such as RP and North American accents, although it may still attract some covert prestige.

Bayard and Bryant (1993) report on a matched guise study of the effects of speech rate and gender. This finds that speech rate affects evaluations of charisma and competence (slower

speech led to lower evaluation), gender has more relevance in evaluating solidarity characteristics, and both are relevant in evaluating income and education (status and power). They suggest that unconscious stereotypes affect such evaluations. In doing so they note the existence of other studies finding, for example, that speakers who violate stereotypes (e.g. that women use tag questions more than men) receive less positive evaluations from hearers.

Neither of these two studies considers the position for Pacific Islanders in any detail. Nor do they consider Maori. For many years there has been discussion of whether there is a Maori English in New Zealand. Holmes (1997) discusses the status of New Zealand English, concluding that it has two distinct varieties, Pakeha English and Maori English. The latter has some distinctive features and some distributional differences from Pakeha English. In addition, te reo Maori (the Maori language) is the source of the characteristic features of Maori English. When looked at in conjunction with previous research on attitudes, this lends weight to the notion that Maori English speakers in court may be disadvantaged, although pinning this down with empirical data from actual juries would be a difficult and delicate task.

2.5 The question of individual input

All the literature outlined above would lead one to conclude that very little in our language use relies on individual preferences and usages. However, Johnstone and Bean consider that self expression has been neglected by linguists, pointing out that "all language use is ... essentially idiosyncratic and syncretic" (1997, p. 221). They further say that "stereotypes associated with profession, gender, ethnicity, and class are resources on which speakers can selectively draw" (p. 225) and that these factors do not determine language use. They cite Sapir, who believed that a culture is not so much a whole as the collection of all its members' individual cultures.

The article reports a detailed study of language use in various genres by two American women. They select different patterns, one to express flexibility, rebellion and "strategic Texanness", and the other to express consistency and constancy. Both of the women are accustomed to using language to great effect in their public lives. Although the article only discusses two women, they are part of a larger study, which will be reported in due course. The fact that the two women are public figures may mean that they are using the language resources rather more consciously than the authors allow. Thus it will be interesting to see whether the authors come to the same conclusions with a wider group of subjects.

In similar vein, Schilling-Estes finds evidence to support the "growing belief that style shifting may be primarily proactive rather than reactive" (1998, p. 54). Her study looks at the performance use of Ocracoke English by one speaker (Rex). While one might well consider this an insufficient basis for making much wider statement at all, she argues convincingly that individual and small-group studies are better for studying style shifting because they allow detailed examination and the inclusion of personal factors. It is better to see a speaker "as an individual whose identity is dynamic and is constituted far more subtly than as the intersection of a number of demographic considerations" (p. 55). She concludes that style shift "has to do with individually based expressions of identity, which may be more transient than ascribed social roles" (p. 72). Shifts "undertaken in the service of identity projection ... are initiated internally, and they often serve to bring about changes in the conversational context" (p. 73). In addition, Rex's style shifting allows him to be in more than one role relationship at once. All these comments can surely apply equally well to areas of language choice other than style shifts.

She also questions the long-held Labovian tradition that self-conscious speech is of less value when studying language use, and suggests that performance speech is not different from less self-conscious speech. She also points out that Labov's approach cannot distinguish between perfomance speech and formality. In addition, while she accepts Bell's notion of audience design (Bell, 1984), she questions whether it can account for Rex's style shifts (although some could be accounted for by the inclusion or not of a further audience, i.e. those who will listen to the tape recordings), saying that Rex is neither attempting to converge with nor diverge from his audience's language.

2.6 Conclusion

This chapter discusses a range of literature which covers many areas touching on aspects of the current study. Some of the points considered here are discussed in more detail in chapters dealing with their relevant areas. Others, mainly those to do with the effects of differing language use in court, are more relevant to the discussion presented in the final chapter.

This study attempts to address some of the areas not dealt with fully in the research discussed and to consider how they might apply in New Zealand courtrooms. First, I attempt to apply a systematic conversation analysis to courtroom language. Secondly, I consider whether

miscommunication could be occurring on the bases of gender and professional-lay differences as well as intercultural differences, particularly during serious communicative difficulties.

Thirdly, I address how the features of so-called powerless language are used by all participants in the courtroom, rather than simply by the less powerful participants. O'Barr and Atkins (1980) only considered the language of witnesses (although this was based on Lind and O'Barr's 1979 finding that professionals used the features far less often). Finally, in combination with the conversation analysis, I add a functional dimension in investigating some of the features categorised in the past as powerless language. In looking for causes of communication difficulties in the courtroom, this combination of analyses will show that the causes are more likely to be found in explanations that do not assume that it is always the language per se which is causing the difficulties.

Chapter Three: Methodology

3.1 Some preliminary questions

In considering a study on natural, everyday language use, a deductive approach is a logical and defensible way to begin. I therefore decided to collect naturally occurring data rather than creating an experiment in a controlled way, which could have resulted in artificial data perhaps bearing less relationship to reality.

The first issue to be addressed is that of natural language (the basis for choosing to use naturally occurring language rather than an experimental study has been outlined in chapter one). Some might question whether courtroom interaction can be called natural given that it is, after all, an artificial or contrived situation for some of the participants.

Following Sacks et al. (1974), it is accepted that conversation is the basic speech exchange system, while the courtroom can be characterised as a specialised system. While for some participants, it is a most unnatural situation, for others, i.e. the legal professionals, it cannot be called artificial. For many of them it is almost an every day experience. For no participant can it be called insignificant, although obviously its importance varies among the participants, both in degree and in aspect. Naturally occurring language, then, is language with real, important consequences, as opposed to language occurring in a situation controlled in the experimental sense.

The decision not to be concerned about any artificiality inherent in the courtroom is also supported by Wolfson (1976) and Myers (1998). Wolfson says that "natural speech is appropriate speech" (1976, p. 201), by which she means that all speech appropriate to particular situations is natural to those situations and that there is no single "natural/casual speech" (p. 201). Speech is only unnatural when the "norms of speaking are uncertain" (p. 202), which is clearly not the case in the courtroom. In his investigation of focus groups, Myers argues that "the apparent artificiality of the situation - the moderator's intervention, the topic guide, the time limit, the tape recorder - stop being weaknesses for which we apologise and start being features that we can use to begin our analysis of talk" (1998, p. 107-8).

A second issue arises because of the conventions operating in the courtroom. It could be argued that the rules of conversation as explicated by linguists such as Grice, Sacks, Schegloff, Jefferson

etc. simply do not apply in the courtroom. One could argue that the co-operative principle is frequently violated in the courtroom (but see the discussion in chapter two for a different view). One might even say that for some of the participants, it applies in only a very limited manner, if at all (in that they have so little control over what they may say and when).

Certainly it is arguable that the conventional conversational rules may not apply in areas such as selection for turn-taking, which are very strictly defined in court and are difficult for anyone to vary. But why, then, are the appearances of selection (i.e. speaker selects next speaker) adhered to? Counsel frequently, for instance, address questions to a witness by name even though the rules of courtroom behaviour assume the addressee. Unlike the practice of turn-selection, however, the requirements of adjacency pairs are usually rigidly followed in court. They can be violated, but only in certain clearly defined ways (objections by the judge or the counsel, or interventions by the judge). Any other violations are marked and can carry penalties. It would be more accurate, then, to say that the rules of the courtroom are superimposed on the rules for conversation. Conversational analysis is therefore a valid way of approaching courtroom language.

The final methodological question I wish to discuss is that of which kind of analysis to use. In *Discourse Markers* Schiffrin discusses the relative worth of quantitative and qualitative analyses. In acknowledging the distinction between them she points out the artificiality of that distinction. Most studies combine aspects of these two complementary approaches. Coherence options (a term she uses for discourse markers, among other things) "are neither categorically required nor prohibited" (1987, p. 67). Therefore they can do more than their referential content suggests. Qualitative analysis allows us to show when and how these aspects of the language have interactional significance (as opposed to simple reference). Quantitative analysis is useful in showing us speaker preferences in using those aspects. It can also point up the different contributions meaning and location make to the function of a marker.

She points out that a quantitative analysis runs into difficulties because discourse is locally created and managed. One of her questions here is "even if one wanted to count speaker intentions, how would they be identified with enough objectivity and certainty to do so?" (1987, p. 67). In addition, when we attempt to identify features of conversation, they need to be described in terms of their place in the sequence. This leads to some potential problems in identifying them as types appearing as part of a pattern, and may lead to masking subtleties in

their use. She does not address the problem of counting slots where a feature or option is appropriate but does not occur (apart from comments like that quoted above), although she discusses briefly why discourse markers do not always occur where they might be expected (p. 321).

Qualitative approaches have different difficulties caused by the fact that, by definition, the researcher's interpretations enter the picture. In addition a single instance can assume greater significance than it warrants. Thus making generalisations can be a somewhat questionable endeavour (of course, the converse applies with a quantitative approach: single or small numbers may receive less attention than they warrant). As a solution to these problems, she suggests we need to allow the possibilities of both "sequential accountability" and "distributional accountability" (1987, p. 69) and that a discourse analysis should combine qualitative and quantitative methods.

Notes of caution about quantitative analysis are also raised by, among others, Schegloff (1993), Danet (1980), Britain (1992) and Sankoff (1974). Schegloff points out that quantitative analysis is "built on the back of" single case analysis (1993, p. 102) and that this necessarily involves a qualitative approach. He outlines serious potential problems in applying statistical methods to language because of the difficulties in determining what he calls the "denominator" and the "numerator" (the field of possible relevant occurrence and what events should count as such occurrences respectively). This well-argued article also makes the point that mere incidence is not enough to provide an acceptable account: relevance is also important, evidence in this area often being based on departures from the normal practices.

Danet (1980) makes the valid point that there is a danger in using quantitative analysis in that it tends to make all occurrences equal in importance and effect, which is not justifiable. Britain (1992) too discusses the problems of quantification, including how possible it is "to establish a list of all but only those parts of speech where the variable could potentially occur" (p. 82). Indeed, as will be clear in chapters seven to eleven, it is simply not possible to perform a classic variation study with the features discussed. Because most, if not all, of them are optional and can occur in a wide variety of circumstances, we can only consider the instances which occur rather than potential instances which do not eventuate. Sankoff believes that quantitative analysis can be useful in showing both general patterns and "the subtle distinctions internalised by individuals

which are based on the human ability to deal with differences of degree, both in producing speech and interpreting the speech of others" (1974, p. 20).

The conclusion for this study has therefore been to use a combination of qualitative and quantitative approaches. Analysing single instances in a qualitative manner allows a picture to be built up of how the features are being used and then quantitative techniques can be used to provide the basis for comparisons to be made between speakers (both individually and in groups).

Despite the problems outlined above, quantitative comparison is used in this study because relying on the "sense" of how often things occur and the use of such words as "occasionally" and "massively" would mean that the reader would be unable to assess my statements on frequency. Presenting quantitative data on frequency of use adds to our picture of both the relative weighting and the patterning of features being discussed. However, a classic variation approach is not appropriate because there are not, nor can there be, baseline expectations. In other words, we cannot know how often a given form can occur, only when it does occur.

Conversation analysis is a micro-level approach based on the ethnomethodological principle that one can only make inferences which are visible in the data, i.e. the context of the preceding and following utterances. As outlined in chapter two, one of the weaknesses of this approach is that it does not deal with a whole text. Interactional sociolinguistics has shown unequivocally that full understanding of utterances cannot be achieved without looking at that wider context. Therefore, in addition to using both qualitative and quantitative approaches, this study also combines the macro-level of ethnography of speaking with the micro-level of conversation analysis and what one might call the inter-level which is the province of functional pragmatics and interactional considerations.

3.2 Data collection

Given the choice of conversational analysis as an approach, based on its attention to only what is visible in the data (see chapter two), audio tape recording was the logical choice for collecting the data (as opposed to relying on the court's transcripts, see 3.6 below). A further benefit is as Atkinson and Drew put it, "... the advantages of recordings as a source of 'raw data', which is not pre-organised by the researcher's descriptive practices prior to the start of any analysis" (1979, p. 188). They suggest that the then current restrictions on tape recording in court created

"a very serious impediment to the development of rigorous empirical research into the organisation of interaction in court" (1979, p. 193). Many other researchers have since used tape recordings, including Caesar-Wolf (1984) and Lane (1988). (While it is obvious that videotaping the hearings would have provided a fuller record of the proceedings, the use of videos in court had not yet occurred in New Zealand, and it was extremely unlikely that permission would be granted at the time.)

Observing and recording court hearings required seeking permission from the court as a whole as well as seeking consent from the participants. For reasons of practicality as well as acceptability to the judges, it was decided to restrict the study to jury hearings in the Auckland District Court over a two month period (6 October-7 December 1990).

The advantages of choosing jury hearings were twofold. First, it enabled a thread of consistency through the cases. In the New Zealand court system, if a case is beyond a minor level and is to be defended, all defendants have the opportunity to choose whether the case will be heard by a judge alone or by a judge and jury. In the latter situation, the jury's role is to decide on the facts, while the judge decides on matters of law. The thread of consistency here is that the counsel and the judges all proceed from the same base, i.e. that an unknown jury of twelve people, who are unlikely to have much, if any, experience of the court, is their audience and arbiter. In other words, they would not be adjusting their language greatly to account for any previously known factors about those people.

The second advantage was practical in nature: the courtrooms in which jury hearings are held in the Auckland District Court have an extremely good sound system with microphones available in the major positions in the rooms. Thus the judge, the prosecuting and defence counsel and those in the witness box use microphones. The effectiveness with which they are used varies, but on the whole they enable the language to be picked up clearly.

3.3 Selecting the hearings

Once permission for tape recording had been sought from and granted by the Human Subjects Ethics Committee of the University of Auckland and overall permission given by the Executive Judge of the Auckland District Court, the process of choosing hearings could begin.

Selection of hearings proved to be a matter of practicality. While it would perhaps have been preferable to have chosen cases on a random basis, this was not possible because of the time limit. On one level, of course, the cases which came up for hearing within the two months did so on a completely random basis - they cover the usual range of cases which occur in any two-month period in the Auckland District Court. My selection of hearings was also arbitrary in the same sense that Caesar-Wolf describes: "Our selection of cases was arbitrary, because permission to tape-record the hearings depended primarily on the consent of the judges and the parties involved" (1984, p. 196).

Each Friday afternoon the District Court Registrar has available the list of the cases to be heard during the following week. This list includes the names of the presiding judge, the prosecuting counsel, and the defence counsel, as well as the defendant and the charge. It was then a matter of choosing hearings which would give the project a variety of participants. This meant, first, choosing those which were likely to be completed within one or two days. Secondly, it meant trying to include a variety of people, i.e. people from different ethnic groups, different genders, and different ages appearing in the differing roles in the court. Hearings which involved matters of a delicate nature, for example incest, were excluded from the project.

3.4 The consent process

Having seen the list of cases occurring the following week and chosen which cases to record, it was then necessary to obtain the permission of the participants. First the judges were contacted; once they had agreed, the participating lawyers were approached. In all cases the judges and the lawyers preferred that the lawyers obtain the consent of the defendants and the witnesses rather than my doing that personally. Each was offered an information sheet outlining the project.

3.5 The recording process

I was able to sit in the public area of the court with a small tape recorder which was relatively unobtrusive. It was not in the direct sight lines of any of the participants when they were involved in the proceedings. Given also that the judge's summing up is tape recorded by the court and all the examination phases of the hearing are typed simultaneously in the courtroom, the possibility of the tape recording process affecting the hearing would have been minimal.

The recording was supplemented by informal written notes taken during the adjournments each day. It was not possible to take notes during the hearings themselves, as this is forbidden for the public.

3.6 The transcribing process

A transcription was prepared of all the taped material, using transcription conventions based on those of Sacks, Schegloff and Jefferson (1974). A list of the conventions used in this study appears as Appendix A.

Silences (pauses) were counted as being half a second or less, or complete seconds. While this differs from the conventions used by other linguists, it is justified by the slower pace of courtroom conversation. The conversational beat appears substantially longer than in ordinary conversation; awkwardness is not felt as quickly. Perhaps this is due partly to the perceived need to think carefully in court before one speaks, whether as judge, counsel or witness. Other factors may play a part too, such as the use of dramatic silence.

All details which could lead to identification of any of the participants have been removed. The speakers have been identified by capital letters referring to their roles (e.g. PC refers to the prosecuting counsel; D refers to the defendant). Other people, companies, and places have also been referred to by capital letters, in this case randomly chosen.

In each case the court transcription of the presentation of evidence in the hearings was also available. Such transcriptions are typed simultaneously with the utterances in the hearings. They were useful at times as a backup when the tape was less clear. However they could not have been relied on for the study because a certain amount of editing occurs in the process of typing. For instance, hesitation markers, terms of address, intonation and pauses are not included; nor, in many cases, are repeated questions (including those which are rephrased in some way). Aside from that, and as a side note, these seven court transcriptions are remarkably accurate.

3.7 The analysis

The turn (or utterance) has been chosen as the basic unit of analysis for several reasons (despite Schiffrin's belief that it is not precise enough in terms of its definition, structurally speaking, e.g. 1987, p. 33).

First, the turn is very clearly what the participants orient themselves to, thus fulfilling one of the standard tenets of conversation analysis: it attempts to account for data in ways that are relevant to what the participants themselves are doing. An example of this orientation is that there is very little interruption during the hearings, suggesting that completing of turns is recognised and respected in this environment.

Secondly, to break the turns down syntactically into clauses or intonationally into prosodic units is potentially restrictive (Schiffrin, 1987) because it may divert attention from wider matters of context. Thirdly, breaking the turns up in those ways also means making decisions about what goes with what. This is an issue in the courtroom because of the many (lengthy) pauses and the need to stop, often mid-clause, to wait for the court stenographer to catch up. Thus the analysis could be open to criticism on the basis of relying on the analyst's intuition. It could also suffer from breaking turns up in ways which may appear to reduce the existing coherence.

The first step in the analysis was to attempt an overall picture of the cases by discovering patterns of participation. Participants' turns and words were counted and compared in order to see whether different cases show different patterns. The results of this are presented in 3.8 and 3.9 below.

Then the instances of repair were counted, broken down further into those which were resolved within two turns (simple repair) and those which needed longer (extended repair - the term used by Lane, 1988). As well, the instances of self-initiated self-repair and the number of times the participants initiated other-repair were counted. These are discussed in chapter four.

The next step was to look at the repairs in more detail, again looking at the different cases and participant groups. Extended repairs are discussed separately along the same lines. Several examples are analysed in more depth, both in terms of their structure and their interactional progress. By way of comparison, a brief comment is made about repair in five conversations recorded as part of University of Auckland undergraduate courses in linguistics.

Powerless language is also analysed in terms of both cases and participants in order to determine whether it can be said to be a salient factor in the courtroom. Again all the features were counted and rates calculated, both for individual features and for the whole group of features. In addition, results for different types of examination (i.e. examination-in-chief, cross-examination and re-examination) have been calculated where preliminary examination of the data suggested that this factor resulted in interesting variation. Finally, one of those features, *well*, was chosen for a detailed functional analysis as well. This was chosen because it is used by all participants and in a wide variety of ways. In turn this means that the instances are numerous and complex enough to illustrate the subtlety of language use and to determine how far it is justifiable to speak in terms of powerless language. Here too the five conversations referred to above are used as a comparison in order to see whether the use of *well* found in the hearings is remarkable in any way or merely reflects "ordinary" usage.

3.8 Participants' turns

A turn is taken to be every utterance spoken by a participant during a hearing. When a participant is overlapped by another but continues his or her turn, that utterance is counted as one turn. Each attempt at overlapping is also counted as a turn, whether the person succeeds in taking over the floor or not. All turns during the examination phases (examination-in-chief, cross-examination and re-examination) are counted; the opening remarks and final summings up by the judges and the opening and closing addresses of the prosecuting and defence counsel are not.

The numbers of turns occurring in each of the seven hearings (see Table 1, Appendix B), on their own, mean little as the length of a hearing depends on many factors. It is more useful to look at the participants' turns as a percentage of the total number of turns in each hearing (Table 2, Appendix B).

Participation rates vary widely between the cases and this applies across all participant groups. However within that, the rates clearly reflect the roles and thus the dominance within the hearings. It is perhaps obvious to say that the professionals dominate the talking time in the courtroom: after all, each of them has the opportunity to question all the witnesses, whereas the latter may only speak when invited to do so, either by one of the counsel or the judge. However, there are some differences between and within the professional groups involved.

For instance, judges' participation falls into three distinct bands: those whose turns make up around 3% of the turns in their hearings (cases three, five and six); those falling at 7-8% (cases two, four and seven); and the judge in case one, who has the highest rate, 11%. The cases in the first of these groups show no particular evidence of any difficulty in the hearing process.

On the other hand the cases in the second group all show signs of some difficulty in the proceedings. Case two contains a voir dire, where the judge rules against the points raised by the defence. In this case there is also clear frustration with the process employed by the second defence counsel (this is addressed explicitly by the judge), and in the end the judge declares a mistrial. In case four the witness disrupts proceedings twice inappropriately (i.e. other than when he is giving evidence) and is also uncooperative at various points during his evidence. Here too, the judge addresses these aspects explicitly.

Case seven is different again. In this case there is no apparent difficulty either in procedure or in understanding. The judge's relatively frequent contributions are either extremely short or inaudible on the tape. The frequency of these turns may be related to the brevity of this hearing: rather than the judge speaking more frequently, it may rather be that there are fewer contributions from other participants (there is little dispute and the details of the incident involved are not complex, therefore the examination phases are brief in proportion to the more procedural aspects). Alternatively it is possible that this judge, the only female judge in this corpus, is doing something else entirely with these brief contributions, such as giving feedback, facilitating the process.

It appears that the judge in case one considers he needs to intervene more often than any of the other judges. Unlike cases two and four, there are no procedural difficulties in this hearing. However there are difficulties encountered in this case which are addressed explicitly as having to do with understanding. These lead to some extended repair sequences which will be discussed later, in chapter five.

Prosecuting counsels' participation varies in a more evenly spread manner, from 12% to 36%. However, the prosecutor in case two speaks markedly less often than all the others. I can only speculate as to why this is so: this man's personal characteristics are not likely to lead him to speak less often; and, given that this case does have some difficulties (as outlined above), it is perhaps surprising that he has proportionately fewer turns.

There is also a wide variation in the defence counsels' participation rates. But overall they are only slightly less than those of their opposing counsel, ranging from 10% to 31%. However, three defence counsel have a higher rate than the prosecutors in their respective hearings: those appearing in cases two, five and seven.

In case two, there are two defence counsel, whose combined turns give a rate almost three times higher than the prosecutor in that case. As it happens, though, these two counsel have the highest (2DC2) and the lowest (2DC1) participation rates for defence counsel. The difference between the two is simply explained by the role division that they have chosen for this hearing. To an extent, 2DC2's participation rate is a factor of his taking a major role in both the voir dire and the remainder of the hearing. Perhaps it is also a factor of some of the difficulties experienced in this hearing, noted above.

It is clear that neither ethnicity nor gender can account for the differences in the groups of professional participants. First, there is only one person among them who is not New Zealand European and the extent of his participation is not particularly remarkable, although he is the third least frequent turn-taker among the counsel. Secondly, there are only four women among the seventeen professionals involved, less than a quarter of the total. When we look at them (see below), we see that when they do have a greater or lesser rate than anyone else, it can be attributed to other factors.

Again, there is a wide variation in the participation rates of the defendants. Some of this relates to the nature of the case, for example, the complexity of the facts, or the way people are encouraged to tell their stories. But it may also relate to the amount of repair, both simple and extended. It may also relate to the persistence of the questioners in the extent to which they are determined to get the kind of answer they either expect or want.

One police witness, 2PW, has a much higher rate than the others. This occurs because effectively he gives much of his evidence twice (i.e. for the judge during the voir dire and then in front of the jury). Other differences may also be due to how the police witnesses are induced to tell their stories (whether they are led through their evidence by a lawyer or give it in a rather more narrative format, referring to their notebooks).

As far as the lay witnesses go, the difference in participation rates has little significance because the circumstances of the cases vary. It may reflect the importance of their evidence, or, as with police witnesses, the ways they are induced to tell their story.

In discovering whether the presence or absence of the jury makes any difference to how evidence is presented, it is interesting to look at whether different participation rates occur in the two different parts of case two (the voir dire, and the rest of the hearing) and if so, how they compare with the average rates for all the cases. The figures for case two are given in Table 3, Appendix B.

The judge shows a rate of 10% in the voir dire, as against 6% in the jury hearing. 2DC1 takes very little part in the voir dire with a participation rate of only 1%; this relates to the pattern of the entire hearing, where he appears to choose a less active role.

2DC2 also shows a higher rate in the voir dire than in front of the jury (39% and 24% respectively), whereas the average rate for all DCs is 7%. Given that he raises the voir dire and runs the examination during that, his higher rate is not surprising.

The defendant shows a slightly higher rate in front of the jury than during the voir dire (16% and 14%), both substantially higher than the average rate for defendants of 2%. The police witness shows an even rate of participation in both parts of the hearing.

One possible explanation for the pattern in this case may be the perceptions different people in the court have of their different roles and the role of the jury. In a voir dire the judge must make a ruling as to whether the evidence under discussion is admissible for the jury. Therefore the judge takes a different role from the one he or she takes when the jury is to rule on the facts. It follows, therefore, that the judge is likely to be involved more directly in the questioning process.

3.9 Participation by turn length

The number of turns on its own only gives part of the story. It is also useful to compare the turn lengths. Therefore the words spoken by each participant in the examination phases of the hearings have been counted and average turn lengths calculated.

The count comprises all complete words spoken, including those in overlaps. However, hesitations and false starts have not been included. Where sections have been inaudible on the tape, they have been counted as one word. The word counts for each participant can be found in Table 4, Appendix B.

As with the turn count, a banded pattern also appears in the numbers of words used by the participants: there are three distinct groups. The counsel, both for prosecution and defence, use the most words and have the highest averages. The witnesses (both police and lay) have the least, which is consistent with their lesser role. The judges also fall into this band, with a very slightly lower average than the witnesses. This, in turn, is consistent with the practice of allowing the counsel and witnesses to present their arguments, necessary both for the jury to decide on the facts and for the judges to make their decisions on the law. Between these two bands fall the defendants. Again this is consistent with their role. If they elect to give evidence at all (and this is not compulsory), they can expect to be cross-examined at some length, but that is the extent of their active involvement in the hearing.

Therefore, on a basic word count, participation and role appear to go together neatly: a greater role leads to using more words. Of course, a greater role refers here to the amount of participation, rather than the overall control, which lies with the judges. As with turns, however, this is a crude measure because it cannot take the factors which differ between the cases into account. A more revealing measure is the average turn length of each participant.

Table 3.1: Average turn lengths by case and participant

Role	Case One	Two	Three	Four	Five	Six	Seven	All
J	13	12	10	16	15	5	9	13
PC	14	31	16	12	17	11	19	14
DC1	11	14	10	13	15	15	9	
DC2	11	17	-	-	-	-	-	
all DCs	11	16	10	13	15	15	9	14
D1	5	12	7	12	7	5	6	
D2	7	-	-	-	-	-	-	
all Ds	5	12	7	12	7	5	6	10
PW1	12	10	34	13	13	10	21	
PW2	5	-	27	4	-	6	-	
all PWs	10	10	29	10	13	8	21	12
W1	5	13	-	14	4	13	4	
W2	-	-	-	-	5	15	-	
W3	-	-	-	-	4	8	-	
W4	-	-	-	-	6	6	-	
W5	-	-	-	-	8	2	-	
all Ws	5	13	-	14	5	10	4	9

Notes: The averages for all DCs etc. refer to the average turn length for all turns spoken by those taking that role in the cases concerned. For example, in case one, the two DCs between them use 2415 words in a total of 215 turns, which gives an average turn length of 11 words.

In several instances, the same person is taking the same or another role in two cases. Thus 2J = 3J, 6J = 7J, 1PC = 4PC, 2PC = 3PC, 2DC2 = 6DC (i.e. same person, different case). In addition 6PC is the same person as 4DC (i.e. same person, different role). However, the averages refer to the average number of words used in each role per examination phase of each case.

This table shows a different pattern, although the range of turn lengths is quite small. Here too the figures line up neatly, but slightly differently from the raw word counts. The groups with power in the courtroom situation have longer turns on average: the judges and the counsel on both sides of the case. This is consistent with Sacks et al.'s observation that "turn-size increases with increasing degrees of pre-allocation" of turns (1974, p. 730).

However, the police witnesses' rate is very close to that of the judges. This can be explained by their likely familiarity with and confidence in the courtroom. While not members of the legal

profession, they are likely to fall somewhere between the professional and the lay participants, in terms of how they see themselves. They may also be given more leeway in their answers than either defendants or lay witnesses.

The defendants use turns of medium length, in the scale seen in these hearings. They have less power but are probably the most concerned with the outcome. The lowest rates are seen with the lay witnesses. They are less likely to be familiar with the situation. Nor are they as strongly concerned with the outcome as the defendants, generally speaking.

Again therefore, participants' turn lengths can be predicted confidently by discovering their roles: the conversation analysis confirms what ethnography of speaking predicts.

The next question is to look within the participant groups to determine whether there are patterns in any differences between individuals.

The judges show fairly similar rates, apart from the judge in case six, whose average turn length is noticeably lower. This is the sole female judge participating in these hearings. She also appears in case seven, where her rate is the second lowest among the judges. But one female judge is not enough to warrant a claim that gender is salient here. There are insufficient other similarities between these two cases to account for the judge's shorter turn lengths. Although the defendants in these two hearings come from different ethnic groups, they also do in several of the other hearings. Among the counsel there are three men and one woman (all New Zealand European), the police witnesses are all men (also New Zealand European), and both cases have both male and female witnesses from a wide range of ethnic groups. In addition the two cases are very different in how they are conducted. An interpreter is involved in case six, but not in case seven. Case seven is short (1998 words in the examination phase) and little is in dispute, whereas case six is substantially longer (15,455 words) and much of the evidence is disputed. If this judge were removed from the reckoning, the average turn length for the remainder, all men, would be 13.74, only very slightly less than the rates for counsel (both defence and prosecution). In addition, note that the judge in case two has only a slightly higher rate than the judge in case seven, and again there is nothing that would account for this similarity (the cases are different in most respects).

Turning to counsel, the average turn lengths for the two different groups establish that there is no real difference between the prosecution and defence roles. The one lawyer who appears in the two roles in these hearings (case six, where he is PC and case four, where he is DC) shows only a trivial difference between the two hearings. In addition, his turns in both cases are below the average lengths for the two groups.

There are three women among the counsel, but there appears to be little relationship between their gender and their turn lengths. 7PC has the second highest figure for all counsel, but 1DC1 has a rate below the average and only three of the sixteen counsel have a rate lower than hers. The only other female counsel involved, 5DC, has a rate just above the average.

For defendants, neither gender nor ethnicity appear significant. The defendant with the shortest turn length is D1, the first defendant in case one. He is the youngest of all the participants, a Samoan and a second language speaker of English. It will be recalled that a Samoan interpreter is used in this case, but only with the other defendant. It is reasonable to postulate that D1's youth and lesser facility in English would lead him to feel even more unfamiliar in and daunted by the situation he finds himself in than the other defendants might be. This, in turn, might account for his comparatively short turns.

However, another defendant (6D) has an average turn length only slightly higher, in fact less than 0.1 of a word. This defendant, although not so young by any means, is also a second language speaker of English and in fact uses an interpreter. It appears that the second language aspect may be more salient than the age factor.

Let us look, therefore, at the range within the defendant group. The defendants fall into two distinct bands: those whose average turn length is below eight words, and those whose turns are longer. There are only two in the latter band: the defendants in cases two and four, and their averages are the same. The two points of similarity here are that they are both New Zealand European and native speakers of English. However they are from quite different age groups and are different genders. The only other New Zealand European defendant, a male, falls into the middle of the lower band of shorter turn lengths. Therefore, it cannot be said that ethnicity or gender predicts relative turn lengths for the defendants.

Police witnesses' turn lengths also fall into two distinct bands. Here I suggest it is nothing to do with individual characteristics, but rather with the ways the hearings are conducted. Two police witnesses stand with much longer turns than the rest, and they both participate in case two. This may be accounted for by the way they are induced to give their evidence, effectively reading large chunks from their notebooks recording the events concerned. Thus, rather than being asked a series of questions, they are encouraged to tell their stories as a whole. (The only other police witness who receives that treatment appears in case one, but his turn length falls into the lower rate.)

If these two PWs are removed from the group, the average turn length for this group (10 words) is much closer to that of the lay witnesses and very close to that of the defendants. This is accounted for by looking at their roles rather than individual characteristics. In other words, their lack of power as well as what they have to do in the courtroom affects their turn length rather than their gender, ethnicity or other personal factors.

Finally we look at the lay witnesses. With the lowest group average, there is a quite a range between the participants. Only four of the fourteen fall above the average. These four are all male; however, six of the ten in the lower band are also male. The four female witnesses all fall into that lower band.

The figures for female witnesses can be found in Table 5, Appendix B. While the difference between the average turn lengths for the male and female participants is small, only three women's turns are longer than the average male turn length. Two of these women are NZE lawyers and the third (4D, the only female defendant in the study) is also NZE. The others, with much shorter turn lengths, include all the female witnesses and the judge. This suggests that gender, at least on its own, is not the determining factor for turn length, although it may interact with role perception (for the judge) and power (for the other participants).

With ethnicity there is a greater difference in the average turn lengths, non-NZE speakers' turns averaging only two-thirds the length of the NZE participants (see Table 6, Appendix B). This suggests that ethnicity does have a bearing on turn length. However there is no discernible pattern, other than that the three second language speakers from the Pacific Islands all have turn lengths below the average. The longest turn length in this group belongs to 6W2, an Indian man.

Power does not appear to be relevant here, although with only one non-NZE professional participant, there are simply not enough speakers in this category to be certain.

Looking now at case two (see Table 7, Appendix B), we find that there are marked differences for each participant in their turns lengths for the two different parts of this hearing (the voir dire and the portion heard in front of the jury). At first glance, the explanation for this is simply the presence of the jury: all but one participant use longer turns with the jury present. For the professional participants (judge and lawyers), this can be accounted for readily on the basis of what the jury can be expected to know, or be familiar with. The judge would need less explanation. This might also apply to the police witness: he is likely to be familiar with the court process and courtroom language.

This leaves the defendant. Again this can be accounted for by familiarity with the court process: this defendant has been in court before (in fact he is serving a prison sentence for another offence at the time of this hearing). Another factor here is that he had the choice of having his case heard before a judge only or before a jury. Having chosen a jury hearing, he could be expected to have thought about how to use this to best advantage, which possibly could affect how he speaks in court.

However, one participant, a defence counsel, reverses this pattern and uses longer turns in the voir dire than in front of the jury. His turns in the voir dire are nearly twice as long as his turns before the jury. Not only that, they are the longest of anyone's turns in either part of this hearing. Possibly this is because he wishes to impress the judge when the judge is the one making the decision, i.e. in the voir dire. On the face of it, he is neither more nor less powerless during the voir dire than when the jury is present. If anything, he may consider himself more powerful in the voir dire because it is he who has introduced the point requiring the voir dire; it is therefore up to him to persuade the judge that the point is a serious one which would affect the outcome of the hearing.

3.10 A note of caution

While these results appear to show that participation rates and role go hand in hand in the hearings studied, Sacks et al. have some concerns about drawing conclusions on the basis of turns. They note that "it is sometimes suggested in the literature on small groups that relative distribution of turns (or some similar measure) is an index of (or medium for) power, status, influence etc" (1974, p. 711). In turn they suggest caution in assuming this because "the biases operative in turn-order determination ... may result in skewings intrinsic to the turn-taking system, in the overall distribution of turns to any point" (p. 712). Schegloff (1980) makes the same point.

This caution applies particularly in "institutionally controlled" systems such as court hearings. Therefore we cannot say merely that turn distribution in court indicates power per se, although we can suggest that it may reflect, or be consistent with, any power operating there. Further analysis is necessary to determine what factors affect language use in court.

Chapter Four: Repair

4.1 Repair distinctions

Before considering the repair occurring in the seven hearings involved in this study, it is useful to look briefly at the kinds of repair which will be discussed and appropriate distinctions between them.

Given the strongly pre-determined and adversarial structure of talk in New Zealand courts, and the fact that self-initiated self-repair (SI-SR) is rarely acknowledged by the participants during hearings or openly commented upon by the juries (as they are forbidden to discuss any aspect of the case outside the jury room), a distinction is drawn in this study between SI-SR and all the repair which occurs between speakers. The term cross-repair is used here, therefore, to refer to the other three categories of repair: self-initiated other-repaired; other-initiated self-repaired; and other-initiated other-repaired. All of these involve the possibilities of both miscommunication itself and its being acknowledged and addressed. Counting all the repairs along the axis of SI-SR versus cross-repair could reveal whether there are patterns which may correspond to perceived difficulties in the hearings.

Following Lane, I also consider repetitive questioning sequences (RQS), which he defines "informally as a sequence in which one participant asks versions of the 'same question' or 'questions' concerned with the same 'point' or 'issue') two or more times" (1988, p. 60).

Lane makes the useful suggestion that these occur when a speaker is not satisfied with the answer that has been given. However, his concentration on the answer reflects the fact that researchers have often been concerned with or interested in those with professional roles in the hearings, i.e. the judges and the legal counsel. It is also possible, however, for those in the defendant and witness roles to initiate repair. These repairs tend to be matters of clarification or disagreement rather than dissatisfaction. Thus I prefer to characterise repair as occurring when the speaker is not satisfied with an answer or a question which occurs in the previous or a very recent turn. The reasons for such dissatisfaction are many and various and are discussed as they arise in this chapter and chapter five.

In addition I wish to draw a further distinction within the repetitive questioning sequences between those which are resolved or abandoned quickly (essentially within one repair initiative) and those which become extended. I do so on the basis that, in court at least, repair is a resource used by interactants in resolving situations involving dispute of some kind. I will argue that it is more productive to see it in this way than as evidence of a problem with language (which may or may not be involved in the repairs).

It could be argued that some of the exchanges categorised as repair in this study do not fall into the original definition given by Sacks et al. However, since then expansion and clarification have been included, both by them and by other researchers (e.g. Fox, Hayashi and Jasperson, 1996; Jefferson, 1974, 1987; Sacks, Schegloff and Jefferson, 1977; Schegloff, 1982). Further, given that clarification, elicitation and challenge are strong parts of the point of examination in an adversarial system, they are structural in that environment in the sense that they are required as part of the courtroom process. This is one of the ways in which the practices of court are superimposed on those of the basic speech exchange system (i.e. conversation).

This chapter begins the process by looking at the repairs occurring in the examination phases of the seven recorded hearings to see who initiates them and whether they are successful in resolving the issues out of which they arise. I have counted all the instances of repair in the seven cases, categorising them according to whether they are self-initiated self-repair or cross-repair, and simple or extended cross-repair. This material is further organised according to case and participant role. This is done in order to discover whether more trouble occurs in particular cases and with particular participant groups. Then it may be possible to discover what factors may be instrumental in causing the trouble. Chapter five then continues the process by considering extended cross-repair sequences in more detail (including their functions) and addressing the question of whether miscommunication is occurring in the cases.

4.2 Self-initiated self-repair

It is perhaps obvious that several instances of SI-SR may appear within a single turn. Therefore I calculate the rate for SI-SR on the basis of the numbers of words. This will allow me to demonstrate any relativity between the cases and participants.

Table 4.1: SI-SR by case

Case	Words	SI-SR	
		no.	rate
One	9,997	82	1:122
Two	18,855	209	1:90
Three	11,065	198	1:56
Four	17,129	208	1:82
Five	16,029	166	1:97
Six	15,455	193	1:80
Seven	1,998	27	1:74

While these rates show clear differences between the cases, these are not clearly attributable to any patterns of an ethnographic (e.g. non-NZE or female participants) or procedural nature (such as the difficulties occurring in cases two and four). It does not appear that considering SI-SR by case sheds any light on SI-SR use.

The following table summarises SI-SR by participant group. The discussion below includes comments on individual members of the groups (Table 1, Appendix C outlines SI-SR use by each participant).

Table 4.2: SI-SR by participant group

Role	Words	SI-SR	
		no.	rate
J	5,456	22	1:248
PC	25,816	156	1:165
DC	25,176	235	1:107
D	13,634	298	1:46
PW	9,175	97	1:95
W	15,455	277	1:60

Much wider differences appear when we look at participant groups and it becomes clear that SI-SR correlates with the power differential in the courtroom. Thus the judges use it the least and the defendants the most often. However an interesting difference occurs in the groups of lawyers: the prosecuting counsel use it markedly less often than the defence counsel. Perhaps this difference is more to do with prosecution v. defence roles. A further study may shed light on this question.

Looking now at individuals, the judges in cases one and two show more SI-SR than the others. There is quite some degree of trouble in both these cases. However, other cases also experience trouble, particularly case four, but have lower rates of SI-SR. With cases six and seven, where the judge (the same person in both cases) uses none at all, there is very little similarity between the cases other than the fact that the judge is female; unfortunately we do not have enough female judges in the study to be sure whether this is a factor.

One prosecutor in the study, 2PC, shows a much higher rate of SI-SR than any of the others (1:87; the nearest to this is 5PC with a rate of 1:139). Again, this case is one where some difficulty occurs. 6PC has the lowest rate, which is interesting because he has by far the greatest number of turns of any of the PCs. He is also the lawyer with the greatest experience appearing in these hearings and case six proceeds fairly smoothly (in comparison with the others). Perhaps these factors combine to produce less SI-SR. On the other hand, perhaps it is a matter of individual style.

The average rate for SI-SR among the defence counsel is 1:107. Again there is a wide variation in SI-SR, which range from 1:62 to 1:273. But these two points in fact are extremes. They appear in 1DC2's and 2DC2's speech respectively. Case two is the case where the prosecuting counsel uses the most SI-SR and this case shows particular difficulties associated with 2DC2. This may explain the high rate. 1DC2, a Samoan, has a low rate, which suggests that ethnicity per se is not a strongly relevant factor in producing SI-SR. Once again, it is plausible that the SI-SR figures here may be matters of individual style or experience.

It is relevant here to compare the rates of the barrister who appears in two cases but in the two different roles of defence and prosecution counsel (4DC and 6PC). His rate of SI-SR is higher as 4DC than as 6PC (1:91 and 1:185 respectively). This reflects the difference found between the two groups of counsel and supports the notion that their different roles may be a factor in their different use of SI-SR.

The rate for defendants is substantially higher than those of the other (i.e. professional) groups discussed so far. Apart from 2D (who has the lowest rate by a long way), defendants use a remarkably similar degree of SI-SR, suggesting that ethnicity is not a factor with this group either. While 2D is a Pakeha male, so is 3D, who has the third highest rate of the nine defendants. Nor does gender appear relevant, although there is only one female defendant (4D).

We can ask whether the higher rate of SI-SR may have had any effect on how the jury saw the defendants. This, too, is an area which warrants future study.

Two of the police witnesses (2PW and 6PW1) show substantially lower rates of SI-SR than the others. There is nothing either ethnographic or procedural which would account for this (unless the difficulties in case two outlined above somehow account for 2PW's rate; but I found no clear evidence to support this).

The witnesses use SI-SR at very similar rates, apart from 6W4 (whose turns are mostly minimal answers). 6W1 and 6W2 show the highest rates amongst the witnesses. Apart from being witnesses in the same matter, they have nothing in common which explains their high use. Here it appears to be a matter of individual characteristics (6W1 is the victim of the offence giving rise to the hearing and 6W2 perhaps shows either a power or a style difference, given that he is not a first language speaker of English).

In summary, it is clear that, in a broad sense, SI-SR follows the lines of power in the courtroom. However, as far as the lawyers go, power does not explain the differences between the two groups and it appears that the differing roles of prosecution and defence may have some bearing on the matter. There are also individual differences within each participant group which cannot be explained easily. Both these areas warrant further research, as well as the question of whether high SI-SR rates affect jurors' evaluations.

4.3 Describing cross-repair

I use the term simple cross-repair to refer to an NTRI (next-turn-repair-initiator, i.e. a request to repair a trouble source which occurred in the previous turn) and its response as described by Sacks, Schegloff and Jefferson (1974). Many of these sequences are resolved satisfactorily within four turns, even if the response is not what the questioner wants or expects. Such sequences follow this course:

- a question is asked;

- an answer is given which contains a trouble source (or there is no answer at all) or which addresses a trouble source in the question;

- a question or response follows which attempts to address the trouble;

- and an answer is given which is either accepted (explicitly or otherwise) or

- the issue is abandoned and a new sequence begun.

Put more concisely, simple cross-repair is that which is resolved or abandoned within one question and answer after the trouble began. This is expressed diagrammatically in Figure 4.1.

Figure 4.1: Simple repair process (with repair positions*)

Question O.K.?
(P1)
ŭ no ŭ NTRI ŭ Q redo ŭ answer O.K. ŭ new sequence
(P2) (P3)

ŭ yes ŭ answer O.K.?
(P1)
ŭ yes ŭ new sequence

ŭ no ŭ NTRI ŭ answer O.K. ŭ new sequence
(P2) (P3)

* after Sacks, Schegloff and Jefferson; position 1 (P1) is the trouble source, position 2 (P2) is the NTRI, and position 3 (P3) is the response to the NTRI.

Note: "answer O.K." includes those examples where the answer may not be what is wanted or expected, but is accepted without any further attempts at clarification.

Below is an example of simple cross-repair:

Example 1 (Case three, file 1, p.13, l.20)

1 3DC: 3PW2 (2/4) how long after that did D become aware that you knew
2 the car was stolen
3 3PW2: (1) pretty soon after.
4 3DC: (1/1) how soon. =
5 3PW2: = say three to five minutes

However there are many sequences in court hearings where the sequence is not resolved so quickly, and these I call extended cross-repair. I prefer this term to Lane's RQS because it allows for the possibility of digressions, including legal objections, within the repair sequence rather than concentrating on the repeated aspects of the sequence (and indeed there are times where there is little or no repetition within such sequences).

Quite simply, extended cross-repairs take longer. In these cases, the answer after the first NTRI is still unsatisfactory, for whatever reason, and the initiator of the repair continues to attempt to resolve the matter. The exchange can then be extended, in a recursive fashion with successive simple cross-repairs, ad infinitum it seems at times. This too can be expressed diagrammatically (Figure 4.2).

Figure 4.2: Extended cross-repairs (with their repair positions)

Question ŭ answer ŭ NTRI ŭ answer ŭ NTRI
(P1/**1**) (P2/**1**) (P3/**1**) (P2/**2**)
(=P1/**2**)

ŭ answer ŭ NTRI ŭ answer ŭ and so on
(P3/**2**) (P2/**3**) (P3/**3**)
(=P1/**3**)

Note 1: P1/**1**, P2/**1** and P3/**1** refer to the first NTRI in this sequence; P1/**2**, P2/**2** and P3/**2** refer to the second NTRI in the sequence; and so on.

Note 2: Of course this is expressing it in a simplistic fashion. In reality, some sequences have embedded repairs, where a new trouble source occurs within a later NTRI or answer, and is addressed as well as the original trouble source. At times there are what look like pre-expansions occurring within a sequence. In addition, closing comments (P4) are added in some sequences.

Below is an example of extended repair:

Example 2 (Case three, file 2, p.2, line 22)

1	3PC:	(1/2) were you working for a panelbeater before you started that business
2		up?
3	3D:	(0.5) I've worked for many.
4	3PC:	(3) were you working for a panelbeater (1) before you started that
5		business up.
6	3D:	(0.5) yes not directly but I I have worked for many.
7	3PC:	(3) what panelbeater were you working for (1) the last panelbeater (1)
8		before you started up what you say was your Palmerston North business.
9	3D:	(0.5) I was working for a guy called LP.

This distinction between simple and extended cross-repair sequences is made because repair is an integral part of court hearings which use the adversarial approach. This process requires challenging what people have said or done (the evidence) and therefore it seems to me that the existence of repair in and of itself is not particularly significant. Two more interesting questions are a) whether there are patterns in the repairs and b) where there is difficulty, for one reason or another.

4.4 Overall occurrence of cross-repair

Firstly the instances of cross-repair are shown in Table 4.3. They are expressed as rates, in relation to the number of turns in each hearing. This is a straightforward relationship in that cross-repair attempts only occur singly within turns, at least in these seven hearings. In other words, turns do not contain more than one instance of cross-repair here.

Table 4.3 also shows the occurrence of simple and extended cross-repairs. The figures for simple cross-repairs shown here comprise all such repairs, including those which are part of the extended sequences. The figures for extended cross-repairs show the numbers of such sequences rather than the numbers of repairs within them.

Table 4.3: Cross-repair by case

Case	Turns	Cross-repair: simple		extended	
	no.	no.	rate	no.	rate
One	989	119	1:8	14	1:71
Two	1,337	160	1:8	25	1:53
Three	685	56	1:12	7	1:98
Four	1,372	182	1:8	22	1:62
Five	1,466	162	1:9	29	1:51
Six	1,479	136	1:11	26	1:57
Seven	184	1	1:184	0	0

It is predictable that there would be more instances of simple cross-repair than extended cross-repair; in other words, trouble would be repaired quickly more often than not. This is confirmed by Table 4.3. The table shows a remarkable similarity between the cases, other than case seven. The situation for that case is readily accounted for: it is a short case (lasting less than half a day) and has few disputed facts. Otherwise, looking at the repairs purely by case gives little indication of the fact that some cases appear to have more trouble than others, although two cases (three and six) do show lower rates.

Table 4.4 separates out the stand alone simple repairs from those occurring in extended sequences. For this purpose percentages are used in order to see the comparisons more easily.

Table 4.4: Occurrence of simple cross-repairs

Case	Stand alone simple repairs		Simple repairs in extended repairs		Total simple repairs	
	no.	%	no.	%	no.	%
One	29	24	90	76	119	100
Two	62	39	98	61	160	100
Three	28	50	28	50	56	100
Four	35	20	142	80	178	100
Five	60	37	101	63	161	100
Six	49	35	90	65	139	100
Seven	2	100	0	0	2	100

In only one of the hearings do more simple cross-repairs stand alone than occur in extended sequences: case seven shows markedly less cross-repair, and produces no examples of extended cross-repair at all. Case three has an equal number of simple cross-repairs standing alone and occurring in extended sequences. In the other five hearings, those occurring in extended sequences far outnumber those standing alone. This may indicate that when trouble (in Schegloff's sense of a trouble source, a P1) is not resolved quickly in the courtroom, it often then leads to difficulty effecting the repair. This brings up the question of the resolution of the extended repairs, discussed in chapter five (5.3).

The figures for case two include the entire hearing, i.e. the portion heard before the jury as well as the voir dire. A brief analysis shows that there is very little difference in the rates of repair between the two parts of the case, although there is a slightly greater occurrence of all types (i.e. simple and extended cross-repair and SI-SR) in the voir dire. This is discussed in more detail below.

4.5 Primary initiators of cross-repair

The process continues by looking at the different groups of participants. First, I present an overall discussion of the groups. Each group is then discussed separately and comparisons made. The point of departure is that each example of cross-repair is categorised according to its initiator. There is no comment as to who is the most significant participant in terms of repair, where a sequence involves more than one contributing aspect (for example a repair which begins with one issue, then a legal objection is embedded within it). Where this occurs in an extended cross-repair sequence, I do not count them as separate extended repairs if they contribute to or are

part of the sequence in some way, i.e. they cannot be seen simply as digressions but are integral parts of the sequences (although of course they do appear separately in the count of simple repairs).

4.5.1 Comparison of participant groups

Table 4.5: Cross-repairs initiated by participant groups

Role	Turns	Cross-repair:			
		simple		extended	
	no.	no.	rate	no.	rate
J	443	102	1:4	3	1:148
PC	1,861	394	1:5	62	1:30
DC	1,815	236	1:8	50	1:36
D	1,349	32	1:42	2	1:675
PW	636	26	1:24	1	1:636
W	1,307	27	1:48	5	1:1,307

The three professional groups (i.e. the two groups of counsel and the judges) involved in the hearings initiate cross-repair substantially more often than the other participants. This lines up neatly with the ethnographic analysis, in which these groups have been shown to control the hearings. While clearly the judge has the greatest underlying power in the court (i.e. in terms of the overall control of the process and its fairness), this demarcation also underlines the control which the counsel have in terms of the hands-on management of the process. The converse, of course, applies to the defendants and both groups of witnesses: they initiate vastly less cross-repair. This result therefore may also line up with the influence of power in court: i.e. those with power may feel more able to initiate cross-repair when they need to. This question invites further research into the perceptions of people involved in court hearings.

While at first glance the difference between PCs and DCs looks interesting, it is quickly apparent that their rates are very little different when compared to the other groups of participants. When looking at the other groups it is clear that the difference between the two groups of counsel is very small and, given the size of the sample group in the study, I do not consider this to be a significant enough difference to merit further discussion.

As with participation rates, it is interesting to see in case two whether the patterns of repair in the voir dire are similar to those in the rest of the hearing.

Table 4.6: Simple cross-repair in case two

Repair initiator	Repairs: voir dire		for jury		total	
	no.	rate	no.	rate	no.	rate
2J	15	1:3	15	1:3	30	1:3
2PC	8	1:7	15	1:7	23	1:7
2DC1	0	0	3	1:40	3	1:42
2DC2	16	1:12	52	1:4	68	1:6
2D	6	1:11	5	1:28	11	1:19
2PW	13	1:8	9	1:21	22	1:14
2W	-	-	3	1:17	3	1:17
total	58	1:8	102	1:8	160	1:8

Note: The witness does not participate in the voir dire at all.

The judge initiates cross-repair very slightly more often in the voir dire than in front of the jury, while the prosecuting counsel does so very slightly more often in front of the jury (although rounding the figures up or down in the table has obscured these small differences). Three participants show a marked difference in the rates: 2DC2 (the second defence counsel, who takes a greater role in the hearing than 2DC1), the defendant and the police witness.

One possible explanation for the pattern in this case may be the perceptions different people in the court have of their different roles and the role of the jury. For example, in a voir dire the judge must make a ruling as to whether the evidence under discussion is appropriate for the jury to hear. Therefore the judge takes a different role from that which he or she takes when the jury is to decide on the facts (i.e. whose story they believe). It follows, therefore, that the judge is likely to be more directly involved in the questioning process in the voir dire. (Note that the rate of cross-repair for case two falls in the mid-range of the seven cases, see Table 4.3.)

This explanation may also account for 2DC2's initiating more cross-repair when speaking for the secondary audience of the jury rather than the judge alone. Perhaps he feels a greater need to have things stated explicitly for the jury than for the judge: he may assume that the judge would be clearer about the salience and implications of the questions and answers.

Another possible explanation is that people may be altering their style in order to present themselves in different ways. Schilling-Estes (1998) discusses register and style shift in her study of the speech of Rex, a speaker of the Ocracoke dialect (spoken in a group of islands off the

coast of North Carolina). She comments of Labov's (1966, 1972) "attention to speech" concept and Bell's early work (Bell, 1984) on audience design that they suggest that style shifts are reactive, in the main. Bell's later work (e.g. 1990), among others (including work on speech accommodation theory), shows rather that such shifts are more often used proactively. Schilling-Estes finds that Rex uses performance speech to create the role ("quintessential quaint islander", 1998, p. 75) which he chooses to present to his audience. "We may follow Coupland in maintaining that even style shifts that are seemingly conditioned by external situation are in reality internally motivated, in that speakers CHOOSE to effect style shifts that correspond with shifts in the external situation. In this way we begin to view style-shifting in general as a way for speakers to maintain multiple roles" (1998, p. 76).

Applying this to the situation in case two, we can say that the external factor of audience changes according to whether the jury is present and that participants change their style in reaction to that. But we can also suggest that participants may choose proactively to present themselves differently when the jury is there; in other words, they may choose a (slightly) different role. Obviously Schilling-Estes' study is different from this study. Firstly the data sources are very different: Schilling-Estes' data come from sociolinguistic interviews, while those in this study are naturally occurring. Secondly, as alluded to above, there is an important external change (i.e. the presence or absence of the jury, a second audience) in addition to the internal changes seen as more significant by Schilling-Estes. However, the notion of performance seems relevant in the courtroom, particularly in light of her comment that all speech is performance (1998, p. 77). This whole question invites further research.

The defendant (2D) also initiates cross-repair more often in the voir dire than in front of the jury. This too is possibly explained by the perceptions of the different aspects of the hearing outlined above. Perhaps he feels the judge would take more account of him than the jury would; perhaps he feels the jury would evaluate him negatively if he initiated cross-repair. On the other hand, perhaps he simply hears more that he considers needs repair, given the subject matter of the voir dire (which includes his allegation that a detective pushed a table into him, resulting in 2D's being scalded) and the fact that it covers a new allegation.

4.5.2 Judges

Table 4.7: Judges' cross-repair

J	Turns	Cross-repair: simple		extended	
	no.	no.	rate	no.	rate
1J	106	32	1:3	0	0
2J	99	30	1:3	1	1:99
3J	32	5	1:6	0	0
4J	103	21	1:5	0	0
5J	42	10	1:4	2	1:21
6J*	47	4	1:12	0	0
7J*	14	0	0	0	0

* 6J and 7J are the same person

The two cases which show the lowest occurrence of cross-repair, cases six and seven, have the same judge: a female New Zealand Pakeha. These figures are possibly partly a result of the short duration of these two hearings compared with the other five. They could also be a result of individual style: perhaps this judge is less interventionist in her approach. Without further data involving more female judges, it is impossible to state whether gender patterns could account for this.

The judges initiate very few instances of extended cross-repair sequences, three in total, with only 2J and 5J initiating any at all. Perhaps this reflects their role of less intervention, leaving the jury, on the whole, to make up their minds about the facts principally on what the counsel set before them. 2J shows the highest rate, although it is very little more than 1J. As mentioned before, there is appreciable difficulty in these two cases (albeit that different factors appear to cause the trouble). However the figures are very small and do not warrant any stronger statement.

4.5.3 Prosecuting counsel

Table 4.8: Prosecuting counsels' cross-repair

PC	Turns	Cross-repair: simple		extended	
	no.	no.	rate	no.	rate
1PC	270	56	1:5	8	1:34
2PC	159	23	1:7	4	1:40
3PC	196	32	1:6	6	1:33
4PC	396	126	1:3	16	1:25
5PC	265	61	1:4	12	1:22
6PC	532	95	1:6	16	1:33
7PC	43	0	0	0	0

The highest rate of cross-repair among prosecuting counsel occurs in case four. This is the case in which a witness acts in an uncooperative manner (in Grice's sense) by violating the conversational maxims, and interrupting the proceedings inappropriately. Given that this witness is appearing for the defence, and that the defendant is his wife (whom he feels should not have been charged), perhaps it is not surprising that the prosecutor initiates repair more often than in the other hearings. However, this cannot be laid at the door of the potential sources of miscommunication which this thesis sets out to investigate. It is an unusual situation, one which does not fit the predictable patterns.

As with judges, the PC in case seven initiates the lowest number of cross-repairs in this group (zero). This too is a woman, in fact the only woman prosecutor in the study. She also shows the smallest number of occurrences of SI-SR (although not the lowest rate). However, although her rates are substantially lower than the other prosecuting counsel, we should remember that this case is substantially shorter, involving fewer disputed facts and a defendant who is mentally ill (and who appears less able to deal intellectually with the issues).

4PC and 6PC initiate the greatest numbers of extended cross-repair sequences, but in fact, they also have substantially more turns than most of the others (396 and 532 respectively - the average for all PCs is 266). Calculating their rates reveals that 4PC has the highest frequency, while 6PC falls in the mid-range. The fact that case four experiences a degree of trouble (in the sense of difficulties with the process of the hearing) means that it is predictable that 4PC has the highest

rate of extended cross-repair. While case six does not have the same degree of trouble, there is certainly some difficulty in 6PC's cross-examination of the defendant and some of the witnesses.

4.5.4 Defence counsel

Table 4.9: Defence counsels' cross-repair

DC	Turns	Cross-repair: simple		extended	
	no.	no.	rate	no.	rate
1DC1	95	15	1:6	4	1:24
1DC2	124	8	1:16	2	1:62
2DC1	128	3	1:43	1	1:128
2DC2	395	68	1:6	16	1:25
3DC	134	13	1:10	1	1:134
4DC	246	20	1:12	4	1:62
5DC	449	79	1:6	15	1:30
6DC	194	29	1:7	7	1:28
7DC	50	1	1:50	0	0

There is a wide variation in the occurrence of cross-repair among defence counsel. Simple repair rates range from one in six turns (1DC1, 2DC2 and 5DC; again, rounding the figures has obscured slight differences between these three) to one in 50 turns (case seven), while the rates for extended repair range from one in 24 turns to one in 134 turns (the same people produce the highest and lowest rates for both types). As with the judges, there is clustering rather than an even spread.

It is easy to account for the two very low rates. One of these is 2DC1, the barrister who plays such a small role (and a procedural one, more often than not) in case two; the second, 3DC, appears in case three, which appears to experience little difficulty (when compared to the other cases in the study); the third is 7DC where the case is very short and does not show much conflict in the hearing itself.

The four with the highest rates are 5DC, 2DC2, 1DC1 and 6DC. One could wonder whether gender and ethnicity (they are all Pakeha) are factors here. However, with two out of these four being male (2DC2 and 6DC) and two female (1DC1 and 5DC), gender is unlikely to be a factor. And with only one lawyer who is not Pakeha (whose rate is the third lowest), it is not possible to comment about the effect of his ethnicity here. We can suggest that a better explanation lies with

the occurrence of trouble: and indeed cases one and two do experience some trouble. But there is less difficulty in cases five and six. This reinforces the idea that it is not necessarily so much the occurrence of repair that signals problems, but how satisfactorily the repair is resolved.

There is an interesting difference between 1DC1 and 1DC2. In this case, both defendants are Samoan, but only one of them uses an interpreter. The counsel for the defendant who does use the interpreter (1DC2) shows a rate in the middle band, while the counsel for the other defendant has the third highest rate. It is tempting to suggest that using the interpreter lessens the need for cross-repair. But case six also uses an interpreter. In that case, the DC's repair is in the highest bracket. In other words, the interpreter does not appear to lessen the rate of cross-repair in that case. To explain this we would need to look in more detail at these repairs. However this has not been possible because for the most part the utterances in languages other than English are not audible on the tapes (usually being spoken sotto voce).

As for the barrister who appears as defence counsel in case four and prosecution counsel in case six, his rates for simple cross-repair (1:12 and 1:5 respectively, as can be seen by comparing tables 4.9 and 4.8) reverse the position of his SI-SR rates. As prosecutor his rate for initiating extended cross-repair is 1:33 (16 instances, see Table 4.8), whereas as defence counsel his rate is 1:62 (four instances, see Table 4.9). These differences are large enough to suggest that the difference of role may well be a factor in the occurrence of cross-repair.

4.5.5 Defendants

Table 4.10: Defendants' cross-repair

D	Turns	Cross-repair: simple		extended	
	no.	no.	rate	no.	rate
1D1	173	2	1:87	0	0
1D2	86	3	1:29	0	0
2D	206	8	1:26	1	1:206
3D	240	3	1:80	0	0
4D	284	3	1:95	1	1:284
5D	144	3	1:48	0	0
6D	176	0	0	0	0
7D	40	0	0	0	0

Defendants initiate less cross-repair than any of the previous groups discussed, other than witnesses (recall that they use substantially more SI-SR). In cases six and seven the defendants initiate no cross-repair at all, and in cases one, two, three and five they do not initiate extended cross-repair. In fact there are only two instances of extended cross-repair initiated by defendants.

The two defendants who initiate no cross-repair are both male; one is Maori and the other Niuean. The latter uses the services of an interpreter. The other Maori defendant (5D) shows a rate of 1:48 turns, while the two Samoan defendants (both in case one) have 1:87 and 1:29. Interestingly, 1D2, with the higher rate, also uses an interpreter. Clearly we cannot say that using an interpreter either increases or reduces repair by defendants. With a rate only slightly greater than 1D2's, 2D has the highest rate (1:26) and is also one of the two defendants who initiates an extended repair. There is nothing particularly about this defendant in ethnographic terms to account for his high rate, unless it is the fact that he is a NZ Pakeha. He is thus a member of the dominant group in New Zealand society (although much the youngest participant in this hearing, whose participants all belong to that same group). However, his rate does reflect the pattern shown by the other participants in case two.

4.5.6 Police witnesses

The 11 police witnesses are all New Zealand European men whose ages range from mid-twenties to mid-forties. If repair is related to ethnographic aspects or power, we could expect a fairly homogeneous set of results for this group.

Table 4.11: Police witnesses' cross-repair

PW	Turns	Cross-repair: simple		extended	
	no.	no.	rate	no.	rate
1PW1	58	0	0	0	0
1PW2	24	0	0	0	0
2PW	299	22	1:14	1	1:299
3PW1	26	0	0	0	0
3PW2	57	1	1:57	0	0
4PW1	111	1	1:111	0	0
4PW2	49	0	0	0	0
5PW	53	2	1:26	0	0
6PW1	26	0	0	0	0
6PW2	14	0	0	0	0
7PW	19	0	0	0	0

Since PWs are often familiar with the courtroom, one might expect that they would feel more comfortable with initiating cross-repair than defendants or other witnesses. But in fact, only four PWs initiate any cross-repair at all. Perhaps they do not do so because they have little stake in the outcome. Given that the numbers are so small, it is difficult to make much comment.

However, one PW stands out. 2PW has the most turns and shows the highest rate of cross-repair; he is also the only one to initiate extended cross-repair (although he does so only once). It is possible that he initiates cross-repair so often because of difficulty with the questions asked of him by 2DC2 (this kind of difficulty does not occur in the other cases in the study). And indeed most of his repairs involve some kind of clarification of 2DC2's questions. The other five involve disagreement, including correcting statements made by 2DC2. This provides conversation analytic support for my assertion that 2DC2's style of examination is the cause of the difficulties (and the consequent frustration and irritation) experienced in case two.

4.5.7 Witnesses

Table 4.12: Witnesses' cross-repair

W	Turns	Cross-repair: simple		extended	
	no.	no.	rate	no.	rate
1W	53	1	1:53	0	0
2W	50	3	1:17	1	1:50
4W	183	7	1:26	1	1:183
5W1	84	0	0	0	0
5W2	175	3	1:58	0	0
5W3	115	1	1:115	0	0
5W4	99	2	1:50	0	0
5W5	40	1	1:40	0	0
6W1	138	2	1:69	0	0
6W2	134	4	1:34	2	1:67
6W3	87	1	1:87	0	0
6W4	70	1	1:70	1	1:70
6W5	61	0	0	0	0
7W	18	0	0	0	0

Three witnesses initiate no cross-repair, and the remaining eleven show quite a range of rates. While many of them show quite high rates compared with other groups, it should be remembered that generally they also have far fewer turns as well. Therefore a small number of repairs shows up as a higher rate. It is consequently unwise to speculate about the effects of their roles in the hearings, their lack of power, and also their (presumably) lesser concern with the outcome.

On the other hand, in three cases the witnesses include complainants, i.e. victims of alleged assaults, who could be affected strongly by the outcome. These witnesses (5W1, 6W1 and 7W) initiate either no or very little cross-repair. (Recall that 5W1 and 7W also use very little SI-SR, but 6W1 is one of the three highest users; see Table 1, Appendix C.)

On the other hand, in another case (case four), the witness is the defendant's husband. He is incensed by what he sees as the injustice of the charge and the fact that the police proceeded with the case against her. He is therefore clearly heavily concerned with the outcome. His rate of cross-repair is the second highest among the witnesses. Therefore we cannot conclude that having a high stake in the outcome either has or does not have an effect on the witnesses' rate of initiating cross-repair. It is probable that the rate is influenced instead by what is discussed and how much a witness disagrees with it.

4.6 Comparison with "ordinary" conversation

As noted in chapter three, five conversations have been considered as a comparison with these courtroom conversations (details of these appear in chapter 10). The repair occurring in these "ordinary" conversations is mainly self-initiated self-repaired, as we would expect (Sacks, Schegloff and Jefferson, 1977). The few examples of cross-repair are matters of clarification, either because someone had not heard the previous utterance properly or wanted clarification of an aspect of the utterance. Only one example of extended cross-repair occurs and this is resolved quickly (there are only two NTRIs) and successfully. No examples occur of extended misunderstanding of the kind found in the courtroom data. It is not possible to make any comparison other than to note the difference. We can suggest though that the difference may relate to the different situations in the two types of conversation. Also the two have the very different functions of achieving friendly social interaction and resolving matters of fact and law respectively.

4.7 Lack of repair

A brief note is appropriate here on the question of when repair could have been attempted in the hearings but does not occur. I found very few clear examples in these data where this may have been the case.

One possible explanation for this is that the courtroom situation and requirements engender strenuous efforts to ensure that anything problematic is attended to. From the lawyers' and judges' points of view this is justifiable in that they have "initiating" speaking rights in court: it is perfectly acceptable, indeed it is required, that they make things clear.

However, this is not straightforward and we do not know whether everything seen by the other participants as needing repair is in fact addressed. Stephen Murray points out that "if 'repair mechanisms' are not used, it is not obvious that they are available. What isn't repaired is probably more important in 'doing domination' than 'errors and violations' that are explicitly addressed, repaired, or apologised for" (1994, p. 220). This may well apply particularly to those people in court who are required to answer rather than to initiate points, i.e. witnesses and defendants.

However, to go any further in this direction, it would have been necessary to interview participants after hearings and this was not within the scope of this study. In addition, I was not permitted by the judges to speak directly with any of the witnesses or defendants. This may well be an area worthy of future study, but it would require significant movement by the courts before they would give permission for such interviewing.

4.8 Conclusions

This chapter has considered who initiates repair in the courtroom, finding that it is the people with less power who generally use SI-SR more often while those with more power initiate cross-repair more often. Further, when difficulties extend beyond a simple resolution, it is extremely rare for defendants or witnesses to have initiated these. However, while it may operate along a power axis, it is not straightforward to conclude that initiating cross-repair is solely to do with power and domination in all circumstances. It appears to have more to do with role. Neither is it to say that all the potential problems of understanding will appear transparently in any interaction.

In these courtroom data, SI-SR (self-initiated self-repair) shows clear differences along the lines of role and power. In discussing apparent self-corrections, Lane says that they are at once a symptom of failure of mutual understanding and a cause of further difficulty. "The occasional occurrence of apparent self-corrections suggests that there is a great deal of hidden misunderstanding in these interactions" (1988, p. 231). However I have found nothing to support this statement in these data. It seems to me that other explanations are more plausible, such as nervousness, unfamiliarity and vulnerability (perhaps stake in the outcome too).

If, as Murray suggests, lack of repair has to do with domination (and if Lane's claim that much misunderstanding is hidden is correct), then it is not surprising that this study finds that cross-repair is undertaken fairly infrequently by lay participants in the courtroom. On the other hand, it could be argued that defendants and witnesses initiate cross-repair infrequently because they do not need to and that they would do so if they needed to. Perhaps the lawyers and judges are preempting possible misunderstandings by their careful and judicious use of language, stemming from a desire for the truth (or the best picture for their clients) to come out. However such a conclusion would need further research because of the question raised by the unequal situations of the different participants in the courtroom power dynamic.

Myers (1998) suggests in his study of focus groups that, instead of using bald on-record strategies, speakers can adopt repair as a less face-threatening approach to handling disagreement and he gives an example which would fall into my category of extended cross-repair sequences (although it is not a question/answer sequence). He says that disagreement is desirable in the focus groups which are the subject of his study. This is similar in some degree to courtrooms, where disagreements, if not actually desirable, are acceptable and induced deliberately. Further, focus groups operate "under the shared assumption that the purpose of the discussion is to display opinions to the moderator" (1998, p. 85). This too has a parallel in court where facts and opinions are displayed for the judge and jury. Certainly many of the cross-repairs found in the present data can be accounted for under this approach.

As discussed in chapter five, the whole question of whether repair should be seen as a problem is prompted by the recognition that resolving matters under dispute is a principal goal of courtroom interaction. Are we then to see the courtroom and its language as a problem? This matter will be discussed below.

In his discussion of miscommunication Gumperz (1992) suggests that initial misunderstandings are exacerbated by the failure of the repair mechanisms by which participants try to remedy their situations. Gumperz also suggests that this is not confined to interethnic interactions (1992, p. 246). In the courtroom hearings in the current study, if a repair attempt does not succeed, the repair process continues and the sequence becomes extended. As the next chapter will show, such extended sequences are resolved successfully more often than not. Despite this, greater difficulty does occur at times. Chapter five, then, considers some examples of extended cross-repair sequences in order to determine what may be causing the apparent difficulties in resolving cross-repair satisfactorily.

Chapter Five: Extended Cross-repair Sequences

The next step is to look at the patterns occurring with extended cross-repair in the data, i.e. situations in which the first attempt to repair the trouble fails and at least one more attempt is made. It seems to me that if miscommunication is occurring, then it ought to figure prominently in these less successful extended repair sequences (ERSs, defined as those involving more than four turns). There are 123 such sequences in the hearings recorded.

This chapter begins with a look at who is involved in these repairs and continues by considering their functions, their location in the hearings and their success. It then goes on to discuss some specific examples and whether miscommunication on the basis of cross-cultural, gender or professional/lay differences is contributing to them. This leads to extending Schegloff et al.'s system of describing repair. The chapter concludes by considering whether in fact we should be looking at repair in these terms at all, i.e. whether it is more accurate to think of it in terms other than problematic.

A note is useful here on what is meant by success (or reaching a satisfactory resolution) in this context. Describing a repair sequence as less successful does not imply that it does not succeed in the end: many of them do. It merely means that it does not achieve its purpose quickly (i.e. in one attempt). For some of the repairs success is simply a matter of achieving elicitation of further (often neutral) information than the answer (or in a few cases, the question) has provided. For others, it is a question of understanding the content of the answer (or, again, the question). For still others it involves the questioner trying to "extract" a specific answer which that person desires (but which, often, the respondent does not wish to provide, for various reasons); these often involve a degree of challenge. Lastly, where legally-based objections are concerned, success involves a ruling by the judge and/or any consequent change to the utterance which gave rise to the objection.

5.1 Who initiates ERSs?

ERSs occur in six of the seven cases involved in this study (as noted in chapter four, none appears in case seven). As Table 5.1 shows, in general they are initiated by counsel (112 or 91% of the 123 instances). Only eight are initiated by lay participants.

Table 5.1: ERS by case and initiating participant

Role	Case One	Two	Three	Four	Five	Six	Seven	Total
J	0	1	0	0	2	0	0	3
PC	8	4	6	16	12	16	0	62
DC	6*	17**	1	4	15	7	0	50
D	0	1	0	1	0	0	0	2
PW	0	1	0	0	0	0	0	1
W	0	1	0	1	0	3***	0	5
total	14	25	7	22	29	26	0	123

* four by 1DC1 and two by 1DC2
** all by 2DC2
*** two by 6W2 and one by 6W4

Table 5.2 presents rates for the ERSs in relation to turns (as with other calculations, these rates have been determined by dividing each person's total turns by the number of ERSs he or she initiates; this does not take into account that such repairs may include several turns). For example, 1PC initiated 8 ERSs in his total of 268 turns, which gives a rate of 1:34. (Note that case seven does not appear in this and the following tables in this chapter because, as noted above, no ERSs occur during that hearing.)

Table 5.2: ERS rates by case and initiating participant

Initiator	Case One	Two	Three	Four	Five	Six	Total
J	0	1:99	0	0	1:21	0	1:7
PC	1:34	1:40	1:33	1:25	1:22	1:33	1:30
DC	1:37	1:31	1:134	1:62	1:30	1:28	1:36
D	0	1:206	0	1:284	0	0	1:675
PW	0	1:299	0	0	0	0	1:636
W	0	1:50	0	1:183	0	1:163	1:261
total	1:71	1:53	1:98	1:62	1:51	1:57	1:60

First, there is quite some variation between the cases, with case five having the highest rate and case three the lowest. If cross-cultural miscommunication could explain this variation, we would expect cases one, five and six to show the highest rates, because they have the greatest numbers of non-NZE participants. However, while case five fits this expectation, cases one and six do not. Further, case seven has a Maori defendant but shows no ERSs at all (although, as mentioned earlier, it is a shorter hearing and involves little or no dispute about the facts).

Looking at the other side of the coin, we would expect cases two and three to show the lowest rates. These cases have the most homogeneous groups of participants (apart, of course, from the power/role differentials between them), but again, one fits the scenario and the other does not: while case three has the lowest rate, case two has the second highest.

Turning to participant groups, the only rates we can profitably discuss are those by PCs and DCs because the other groups initiate such small numbers of ERSs. Given the different roles of the participants in the courtroom, it is predictable that this pattern would appear. It is unlikely that lay participants would initiate much in the way of extended repair as they do not generally initiate the sequences in the hearings (quite aside from how far they would be prepared or even allowed to argue or persist with points in the way counsel do). Similarly, the judges, although initiating sequences much more often than lay participants, do not do so anywhere near as often as the lawyers.

Looking then at the counsel, two DCs stand out as showing very low rates: those in cases three and four. This is interesting because these two cases have little similarity. Case three is one of the cases which experiences little trouble and seems to follow a comparatively smooth path. In case four, on the other hand, a degree of trouble occurs, much of it caused by an unruly witness (4W; note that he is one of only three witnesses to initiate an ERS).

Apart from these two, the remaining lawyers in these hearings show rates in quite a narrow range: 1:22-1:40. The average rate for PCs is 1:30 while that for DCs is 1:36. For all the lawyers, the rate is 1:33. Although there is therefore a difference between the two groups of counsel, it is very small, especially when seen in comparison with the other groups of participants. It is difficult to see a reason for it other than suggesting that perhaps it has something to do with the prosecution role of having to prove guilt, while the onus on the defence is much less (it merely has to cast doubt, rather than prove innocence). This may mean that prosecutors end up by pressing points further, thus initiating more extended repair sequences.

The two highest rates for counsel are those for the prosecutors in cases four and five. It is interesting that case four shows both one of the highest and one of the lowest rates for ERSs. This suggests that, in addition to role, the occurrence of ERSs is more affected by individual aspects of what each participant says rather than by factors such as social status, power, ethnicity or gender.

We would perhaps expect 2DC2 to initiate a high rate of ERSs, given the way he conducts his case, but in fact this does not turn out to be so. Although he does initiate the highest number of any participant, he also has a high number of turns. His high number therefore does not translate into a high rate.

Despite my earlier saying that the numbers are very small for ERSs initiated by lay participants (8, or 7% of the total), a brief note is appropriate here in the interests of completeness. These ERSs only occur in cases two, four and six. Five of the speakers, including a Maori witness, are native speakers of English. The other, an Indian man, is very fluent in English. None of them is female. If we look at the entire group of lay participants in the hearings, these speakers are among those we could predict would initiate ERSs. But the small numbers preclude any further comment.

5.2 Who else is involved?

Also predictably, it is the lay participants who are the most frequent respondents in these ERSs (in 101 instances, 82% of the total), as shown by Table 5.3.

Table 5.3: Who responds to ERSs?

Respondent	Case One	Two	Three	Four	Five	Six	Total
J	0	2	0	0	1	0	3
PC	2	1	0	1	0	2	6
DCs	0	4	0	2	0	1	7
Ds	11	0	7	9	3	5	35
PWs	1	17	0	0	0	0	18
Ws	0	1	0	10	25	18	54

Judges clearly are involved as respondents when they are addressed directly, and this is usually when a legal objection is raised by one of the counsel. However, they are involved in more of the ERSs than this because they intervene in other kinds of ERSs essentially occurring between other participants (see section 5.5 below).

The large numbers occurring for witnesses in cases five and six are a function of the large number of witnesses (five in each of the two cases). 4W's involvement in 10 ERSs, a rate of

1:18, is rather higher than any other lay witnesses and is evidence of his contribution to the trouble occurring in case four. This is also the case for 2PW.

In almost three-quarters (73%) of the ERSs, only two participants are involved. In the remaining 33 (27%) examples, other people, either the judge or another lawyer, also participate directly.

Eight of the 14 extended repairs in case one are initiated by the prosecuting counsel; five of these centre on issues of understanding, with 1D1 (the first defendant) as the primary respondent. This defendant is a young Samoan man who does not use an interpreter (even though one is available). He is also involved in four of the other extended repairs found in this case; in other words he is involved in nine out of the total of 14. 1D2, however, is involved in only two of the extended repairs, and for both of them, the interpreter is used. These two repairs involve understanding and legal issues; one is resolved and one not (the one involving legal matters). The facts that the defendant without the interpreter in this case is involved in more ERSs than the other defendant and that these ERSs involve understanding certainly point to the effectiveness of interpreters in court hearings, without necessarily being conclusive. Although both defendants were convicted of the charges, one wonders whether the outcome would have been the same had an interpreter been used for both defendants.

5.3 Resolution of ERSs

There is marked difference in the percentages of ERSs resolved satisfactorily through the six cases where ERSs occur (see Table 5.4), although the figure is well over half in every case. Satisfactory resolution has been determined as the initiator's acceptance of a response to a repair attempt and/or willingness to leave the issue (as opposed to acknowledgement that it cannot be resolved).

Table 5.4: Resolution of extended cross-repairs by case

Case	Extended cross-repairs				
	no.	resolved?			
		yes	%	no	%
One	14	9	64	5	36
Two	25	21	84	4	16
Three	7	5	71	2	29
Four	22	15	68	7	30
Five	29	26	90	3	10
Six	26	24	92	2	8
total	123	100	81	23	19

Case six is the most successful and case five is a very close second.

Case one has the lowest success rate of only 64%. As mentioned above, this case has two Samoan defendants, one of whom uses an interpreter while the other does not. Nine of the 14 ERSs in this case involve 1D1, the first and younger of the two defendants, who does not use the interpreter. Three of those are not resolved (the two other unresolved ERSs in this case are addressed to 1PW1 and 1D2 respectively). While the numbers are small here, it may not be coincidence that one third of the repairs addressed to 1D1 are not successful. It is arguable that not using the interpreter disadvantages this defendant. However, it is also plausible, and certainly argued strongly by the prosecuting counsel, that this defendant is lying and being evasive.

As is clear, 81%, by far the majority, of extended cross-repairs are resolved satisfactorily, while only 19% are not (although sometimes a less than perfect resolution is achieved). Of course, the numbers for some cases are very small, so the percentages in those cases perhaps overstate the situation.

Nevertheless, nearly one-fifth of the extended repairs are not resolved satisfactorily. Indeed in cases one and four (which have the highest rates of repair overall) and case three, the number of unsatisfactorily resolved ERSs is close to or more than 30% of all the extended cross-repair occurring in those hearings. Given the goals of hearings and the seriousness of the outcome, this must be of some concern to those involved in the justice system.

The unsatisfactorily resolved ERSs are considered further in sections 5.5 and 5.7 below which discuss where ERSs occur in the hearings and their functions.

Table 5.5 presents figures for successful and unsuccessful resolution of ERSs by participant group.

Table 5.5: Resolution of ERSs by participant group

Role	Resolved?			
	yes		no	
	no.	%	no.	%
Js	3	100	0	0
PCs	48	77	14	23
DCs	42	84	8	16
Ds	2	100	0	0
PWs	1	100	0	0
Ws	4	80	1	20

Here too, the lawyers are the only participants where the percentages are useful, because the other participants initiate ERSs so infrequently. However, there is an interesting and quite a strong difference between the two groups of counsel: ERSs initiated by the defence counsel are apparently more successful. Again here I would like to suggest that this may relate to the different goals of prosecution and defence (proving guilt or casting doubt, as mentioned above). This is consistent with the functional analysis discussed below, which shows that PCs initiate more challenging ERSs than DCs.

5.4 Where do ERSs occur?

More than three-quarters of the ERSs occur during cross-examination: 95 (or 77%). Twenty-eight (23%) occur during co-examination (following Lane, 1988, this term includes both examination-in-chief and re-examination). Again, this is perhaps predictable from our ethnographic description, given that the aim of cross-examination is to challenge the witness's evidence.

However, the numbers occurring during co-examination give the lie to that easy interpretation. The aim of this phase of examination is to present evidence rather than to challenge it. Given that both the questioning lawyer and the defendant or witness know and have usually rehearsed what will be said, it is perhaps surprising that so many ERSs (and in fact simple repairs) occur during this phase. This suggests that a functional analysis will be useful.

It appears that ERSs are more likely to be resolved in a satisfactory manner than not (at least, as far as accepted by the participants and as clear from surrounding turns). Of the 123 instances of ERS, 100 (81%) are resolved satisfactorily. Further, 89% of those occurring during co-examination are successful, as opposed to 79% of those in cross-examination, a predictable result given their different aims. If we are to characterise repair as problematic, a common approach by linguists in the past, then we might find it remarkable that such a high proportion of the total is successful. This, of course, may be a function of the goals of courtroom interaction and may not be the case for other kinds of talk.

5.5 Functions of ERSs

A range of functions is evident among the ERSs: elicitation, clarification, establishing understanding (either of the question or the answer), challenge, and legal objection. I begin with a brief explanation of each category and then give an example for each. For ease of distinction the examples chosen here are relatively short.

(a) Elicitation: this group covers instances where the questioner has asked something which the respondent answers but not in the way or with the detail required by the questioner. Determining whether the questioner is satisfied with the answer is based on their acceptance or otherwise of the response and on the follow-up questions.

Example 1 (Case five, file 1, p.5, l.7)

1	5W1:	(0.5) I had (0.5) black eyes (0.5) cuts to my face (0.5) and xxx and (0.5)
2		injuries to my arm. =
3	5PC:	= what sort of injuries were they.
4	5W1:	(0.5) grazes and cuts mainly.
5	5PC:	(2) did any of the cuts that you had require (0.5) stitches?
6	5W1:	(0.5) ah (0.5) I can't remember but I think so.
7	5PC:	(6/1) I know you've said you can't remember but you think so.
8	5W1:	(1) xxx
9	5PC:	(1) I ask you if you're <u>able</u> to remember (0.5) if (1) any one of those cuts
10		required stitches which one it might have been?
11	5W1:	(1) the one across the top of the eye.

b) Clarification: in these instances the questioner is trying to get the position clear. This could be caused by a number of different problems. It is not to be confused with a misunderstanding.

Example 2 (Case one, file 1, p.22, l.8)

1 1DC2: (/1) and you made a statement to the police (1) that he struck the
2 window twice (0.5) did you not
3 1D1: (2/1) no
4 1DC2: (2) did you see mr D2 strike the window twice?
5 1D1: (3) only first.
6 1DC2: (/2) so you did see him strike the window. =
7 1D1: = yes

c) Establishing understanding: this is where misunderstanding is involved, either of the question or an answer. It could be caused by second language problems, or simply by the utterances not being clear for a variety of reasons.

Example 3 (Case two, file 1, p.12, l.30)

1 2DC2: (3) now (1) er your honour I I don't want to go through the questioning
2 in too much detail but I am going to have to (0.5) refer (0.5) to particular
3 (0.5) er parts of it if that is (0.5) in order (0.5) now obviously we can (0.5)
4 actually disregard the first question altogether because that's no longer the
5 subject of any charge (3) that was about the stereos (0.5) so so we'll
6 disregard that (0.5) now (2/4) would you agree then (0.5) that your first
7 question is how many times (2)
8 Typ: xxx =
9 2DC2: = would you agree then (2) that your first question (1/) is (/1) how many
10 times.
11 2PW: (1) that's not my first question.
12 2DC2: (0.5) well (0.5) what is then.
13 2PW: (1/2) it's as I've recorded in my notebook =
14 2DC2: = well I've already said xxx (0.5) I'm sorry if you didn't understand that
15 we were disregarding the first question (0.5) because that's no longer the
16 subject of a charge against this defendant (0.5) did I not make that clear.
17 2PW: (1) you did but (0.5) you also asked if that was the first question that I
18 asked him.
19 2DC2: (0.5) all right well (1) was the second question (0.5) how many times.
20 2PW: (6) that's correct.

d) Challenge: here the questioner has a particular (required) response in mind and has trouble extracting it from the respondent. It is the persistence of the questions plus their repeated directed content which allows us to arrive at the definition of challenge. It is supported by the apparent reluctance of the respondent to give the desired answer. Clearly the respondent could be landing in trouble by profferring that answer.

Example 4 (Case four, file 2, p.8, l.38)

1	4J:	carry on Mr PC =
2	4PC:	= just prior to lunch I asked you if you'd spoken to your (0.5) husband
3		about (3) the evidence you gave today?
4	4D:	(1) mm?
5	4PC:	(0.5) have you spoken to him at all (0.5) about the evidence (1) today.
6	4D:	(0.5) no.
7	4PC:	(3/) have you spoken to him at all (0.5) about the marijuana (0.5) under
8		the dashboard.
9	4D:	(0.5) no
10	4PC:	(5) when is the last time you spoke to him(0.5) about the marijuana under
11		the dashboard.
12	4D:	(3) I don't think we've had a conversation (0.5) concerning the marijuana
13		under the dashboard.
14	4PC:	(2) so you've never been curious enough to ask your husband about it is
15		that right.
16	4D:	(3) no I didn't discuss it with him.
17	4PC:	(5/1) the conversation that you had with him (0.5) at the police station (1)
18		you know the conversation I'm talking about?
19	4D:	(1) yes
20	4PC:	(1) what did you discuss then.
21	4D:	(0.5) well we (1) I don't (1) really think it was considered a discussion
22		(0.5) it was (0.5) a sentence from me (0.5) saying (0.5) um (1) that I
23		thought he was (0.5) um (1) wouldn't really be able to handle (0.5) um
24		(0.5) any (0.5) upset (0.5) at the moment (1) and (0.5) um (2) then (0.5)
25		it was about two (0.5) two sentences and then I walked into the (0.5)
26		other room?

(e) (Legal) Objection: this category covers the instances where something in a question put to a defendant or witness is not acceptable in legal terms. Thus it is caused by matters such as leading questions and hearsay. Objections are signalled explicitly and dealt with immediately and directly, usually by the judge (although occasionally a lawyer will simply make a change without waiting for a ruling from the judge).

Example 5 (Case one, file 1, p.24, l.36)

1 1PC: = how often do <u>you</u> go to a shop (0.5) to buy something when you know
2 you've got no money.
3 1DC1: (1) your honour that question is irrelevant because (0.5) it wasn't <u>he</u> that
4 was going to the shop to buy more beer it was S.
5 1PC: (0.5) I'll rephrase the question sir.
6 1J: (1) well I am would not I (0.5) would overrule the question anyway
7 I think it's a proper question (0.5) I'll allow that in the circumstances.
8 1DC1: xxx
9 1PC: perhaps I could rephrase it sir (0.5) how often do you go with somebody
10 else (0.5) to buy something when neither of you have got any money. =
11 1DC1: = your honour (0.5) I also object to that the evidence given was that (0.5)
12 um Mr D1 had twenty dollars in his pocket (1) so clearly he <u>did</u> have
13 some money (0.5) to overcome this that perhaps xxx could just ask him
14 (0.5) what did he intend to do with the twenty dollars when he reached
15 the liquor store? =
16 1J: = xxx Mr PC to raise his own questions as he wishes (1) um (0.5) I'm
17 going to allow (0.5) the question (1) um (0.5) it's up to (0.5) it's up to the
18 jury to assess (0.5) whether or not it goes (0.5) directly to the question of
19 (0.5) who had the money (0.5) the question is a proper one and the
20 objection is overruled. =
21 1DC1: = as your honour pleases?

For many of the ERSs the initial function, i.e. repairing the problem which gives rise to the sequence, remains the primary function throughout. There are 88 of these, making up 72% of the total. Their functions are:

elicitation	35
clarification	18
establishing understanding	17
challenge	12
objection	6

It is clear that by far the largest group of these falls into the elicitation category (35, or almost half of the instances).

For the remaining 35 of the 123 ERSs a combination of two clear functions occurs within the sequences:

elicitation + challenge	22
understanding + objection	1
clarification + challenge	5
elicitation + objection	3
challenge + objection	1
understanding + clarification	1
understanding + elicitation	1
elicitation + clarification	1

Again, elicitation is involved in most of these: 27 of the 35 instances. Clarification occurs in eight, while establishing understanding is part of only three.

Looking at all the 123 instances, we see that 62 of them (50%) involve elicitation. The problem occurring therefore to the greatest extent in these ERSs appears to be that the questioner is dissatisfied with the extent of the answer and is trying to elicit a fuller response (i.e. the response that he or she hoped to achieve with the question from which the need for repair derived). How far this need for repair is due to anything other than individual goals (e.g. witnesses and defendants wishing to present themselves in the best light or to not incriminate themselves or someone else) is not clear from the data. In fact, therefore, it is not possible to conclude that miscommunication is involved in some of these examples, but neither is it possible to exclude it as an explanation for the lack of immediate success of these repairs. I will return to this point in 5.8 below.

A further 25 (20%) involve clarification. There are 20 instances in total where misunderstanding, or establishing understanding, appears to be involved (16% of the ERSs).

Comment on any relationship between function and successful resolution of ERSs is not possible (because of the small numbers of unresolved instances), except for one category. Of the 62 instances involving elicitation, 15 (just under 25%) are not resolved satisfactorily. And eight of these involve challenge as well, where we would expect a certain proportion not to be accepted (in fact, this occurs in just over half of the 14 ERSs whose function is elicitation + challenge).

This is further supported by the fact that one third of the ERSs with a primary function of challenge are likewise not resolved satisfactorily.

Again, we must conclude that miscommunication is not necessarily a large factor in these elicitation examples, and that the goals of the different participants in the interaction are more salient.

With the instances involving misunderstanding, we find that only two are not resolved in a satisfactory manner. This suggests that if miscommunication is causing the problem occurring here, it is being recognised and dealt with. I will return to this question also in 5.8 below.

There is some relationship between participants and function in that PCs seem to be involved in rather more ERSs where the elicitation is a main function. This too may relate to the different goals of prosecution and defence. PCs also initiate more objections which become ERSs. However on matters of understanding, PCs and DCs initiate ERSs in equal numbers.

Turning now to whether there is any relationship between function and where the ERSs occur during the hearings, we find that most of the ERSs (95, or 77%) occur during cross-examination. This is true across all functional categories except one (legal objections).

The fact that ERSs containing objections occur more often in co-examination than in cross-examination is possibly explained by the different types of questioning allowed in the two phases. The aim of co-examination is to allow the defendant or witness to present their side of the story, and their counsel are required to operate under a constraint of avoiding leading questions. If they lead, they risk the charge of putting words into their witness's mouth. The same constraint does not apply in cross-examination. Therefore it would not be surprising to find more ERSs involving objections about leading questions during co-examination. However, in fact this only applies in one of the ERSs. The others involve other matters, such as hearsay. For the same reason, however, it is interesting that three of the 20 ERSs involving misunderstanding occur during co-examination.

5.6 Judges' intervention

When not the primary respondent in ERSs (as in legal objections), it is interesting to consider the role judges are playing in helping to sort out trouble. Judges become involved in 31 of the ERSs. This section looks at the circumstances in which they initiate repair and when (or why) they intervene in ERSs.

Two of the three ERSs initiated by judges are for the purpose of establishing understanding. In one of these (example 6 below) the judge is trying to find out what a defence lawyer (2DC2) means by a question put to a police witness. Having elucidated the question's meaning (lines 33-34, 36-38, 40), he then asks the lawyer to put the question directly in that clearer form (line 43). This is one of the few occasions where a lawyer responds to an implied criticism. 2DC2 says in line 44 that "I thought I already had" (put the question). This sequence is a mark of the somewhat unusual nature of the questioning process of this lawyer and the response he receives. (Note: the first six lines are included as part of the context where the lawyer is trying to establish that there is a time gap in the policeman's story; they are not part of the extended repair sequence as such.)

Example 6 (Case 2, file 1, p.17, l.15)

2DC2: yes is that (0.5) I'm sorry that's my own time but I (0.5) I'm not
sure if I got that from your notebook you probably got have you got
a note of when that finished?
2PW: (2) at half past one
2DC2: (0.5) half past one =
2PW: = the accused was arrested
2DC2: (0.5) yes but ah that's when he was arrested (0.5) but was there a
gap from when you (0.5) finished that particular piece of questioning
(2/) it's obviously xxx xxx xxx (1) and then there was a gap of half
an hour (0.5) that is from approximately one fifteen er (0.5) spose it
(0.5) if the time was then one fifteen (2) to about er one forty five.
(2/)
2J: I'm afraid I'm not clear what your question is mr DC2 =
2DC2: = now what where I'm now sir I'm s I'm coming I just want to see
when (0.5) the actual formal questioning ends (0.5) I'm trying to get
the timing from him sir on the basis of his (0.5) notebook entries (1)
er (0.5) my my calculations sit make it completely outside xxx =
2PC: xxx =
2J: = is it in reference to the question which begins O.K. or the answer
which begins O.K. this xxx
2DC2: yes (0.5) yes that's xxx
2J: xxx you (0.5) you are

putting it to this witness (0.5) at this stage (0.5) the officers (0.5) left the =

2DC2: yes =

2J: = accused alone

2DC2: indeed (0.5) now just after that reply

2J: would you put that to him please

2DC2: yes I'm sorry I thought I had (0.5) do you agree that (0.5) after (0.5) receiving the reply he's given you (2/) you and your (0.5) ah (0.5) colleague (0.5) then left the room.

The second of the judge-initiated ERSs occurs when the judge is asking the witness questions at the end of the witness's examination by the defence counsel and the prosecutor.

Example 7 (Case 5, file 1, p.18, l.36)

5J: (3/3) on the (0.5) night in question how long would you: have been watching the attack for.

5W2: (2/) from the time it started to the time it finished would've been (0.5) five or ten minutes?

5J: (3/2) you have described (0.5) one of the attackers as a Maori with dreadlocks (1) about five (0.5) foot ten to six foot aged nineteen to twenty (1/) how long did you have that person under (0.5) observation.

5W2: (1) just the night of the party?

5J: (1) I don't mean (2) on the night in question how long did you see him for

5W2: (1/1) how long (0.5) beg your pardon (0.5) I don't understand

5J: (0.5) on the night in question how long did you see that person for.

5W2: (1/1) for as long as the fight was going on.

The judge realises from the witness's answer that the witness has not understood what he (the judge) wants to know. After the judge restates the question, the witness says that he still does not understand the point. The judge tries again, this time successfully. The most plausible explanation here is that the judge has simply presented a confusing question, i.e. he has not made his point clear. There is nothing to suggest that either the judge or the witness has any other particular trouble. Nor is the witness a second language speaker of English. If this is miscommunication, perhaps it is on the basis of the professional/lay distinction, caused by differences in knowledge of the legal framework.

The purpose of the third judge-initiated ERS is elicitation. It also occurs when the judge is asking the witness questions (the same judge, but a different witness). The witness does not give

enough information to answer the question satisfactorily from the judge's point of view. The judge requires a more detailed description of the defendant's hairstyle than the witness gave initially.

Looking now at situations where judges intervene later in the sequences (rather than initiating them), we find this in 27 examples, which carry a range of functions. Six of these involve a question of understanding. One of the six, in case four, involves the judge's own understanding of the witness's answer. An alternative and equally plausible explanation is that the judge feels a need to make the answer clear to the jury. The remaining five (occurring in cases one, two and four) involve the judge's attempting to help clear up the difficulty which has given rise to the ERS.

The first of these occurs in an exchange between 1PC and 1D1. The matter at issue here is not resolved, in spite of several attempts by the lawyer and concerted effort by the judge. This serious breakdown (serious both in terms of the difficulty in resolving it and the potential consequences for the defendant) is discussed in detail in 5.7 below (example 9).

The second of these arises because the police witness has been unable to answer another of 2DC2's questions.

Example 8 (Case two, file 1. p. 12, l.30)

2DC2: (0.5) all right well (1) was the second question (0.5) how many times.
2PW: (6) that's correct
2DC2: (2) I wonder if I could ask you what what you actually meant by that question (0.5) xxx (0.5) do you think it would be a very (0.5) clear question.
2PW: (1) um (0.5)
2DC2: i it's a bit difficult sir because =
2J: = this is xxx time so you =
2DC2: yes
2J: = must make your questions brief sir =
2DC2: = yes sorry
2J: xxx =
2DC2: = yes
(4)
2J: the question is (0.5) I must ask you what did you mean by that question.
2DC2: yes (0.5) what did you mean by that question.
2PW: (2/2) how many times (1) he had occasion (1/2) to receive the alpine car stereos.

(The repair achieved, the exchange then continues with 2DC2 pointing out that there is some disagreement between the defendant's and the policeman's recollections.)

The difficulty is caused here by the lawyer's question in fact being two questions and the policeman apparently being unsure which one to answer. One could speculate that this is evidence that the witness is frustrated and/or annoyed by the style of questioning and is trying to make things difficult for the lawyer. The judge intervenes to direct the lawyer to make his questions brief and then restates one of the questions (note he chooses the question of "fact" rather than opinion).

The third instance, from case two as well, is very similar in that 2DC2 asks a confusing question. The judge's intervention allows the lawyer to recognise the confusion (and acknowledge it as his) and then to rectify it.

The final instance also occurs in case two, but in an exchange between the prosecutor and the defendant. In fact here the repair sequence is initiated by the defendant on the basis that he is not clear about what the PC is referring to. The PC attempts to deal with it by dividing the question into chronological parts. However the defendant still does not understand ("mm I don't really know what you mean by that"). The PC continues to try to clear up the problem, but is unsuccessful. Finally the judge poses another question, which leads to the matter's being resolved.

We can see that the judges in cases two and four are relatively successful in helping to resolve ERSs. Cross-cultural miscommunication is unlikely here because all of the participants except one are from the same cultural background (NZ European). For 4W, the one participant who is from a different cultural group with some different norms of behaviour, there is another, equally valid explanation that does not relate to cultural differences, but rather to personal goals. Gender differences cannot be commented upon here because all participants in these cases except 4D are male, and 4D is not involved in any particular communication difficulties.

There are 22 other ERSs which are not resolved but where the judges do not intervene. Given the judges' apparent success when intervening in difficulties, it would be interesting to investigate why they intervene in some but not others (and why some judges intervene more than others).

5.7 Causes of trouble - analysing some examples more closely

This section considers some further examples of serious ERSs whose purpose has been categorised as establishing understanding (or rectifying misunderstanding). Matters of straightforward clarification, elicitation and legal objection are not included in this section because they seem to me to be more about finding truth and presenting stories in the ways desired by the participants rather than potential miscommunication. In other words they are more likely to be based in achieving the overall purpose of the interaction rather than in being a problem in understanding the question or answer which gives rise to the ERS. This is a first point in establishing whether miscommunication is occurring.

The first example of an ERS presented here is one where we might predict that miscommunication is occurring because one of the participants (1D1) is a Samoan for whom English is not his first language.

Example 9 (Case one, file 2, p.3, l.50)

1PC: (/3) could you tell us please why you told the police about the kicking (2) of the bin
1D1: (/6) I said it before and I'll say it again (3/) that was (0.5) a lie
1PC: (2/1) why did you lie.
1D1: (3/6) (sigh) (6) because (1/) I don't want to lose my mate.
1PC: (2/2) how could telling the police about the kicking of the bin (0.5) lose your mate. (all at a higher pitch than usual)
1D1: (3/4) because I wanted to.
1PC: (3/1) could you answer the question please Mr D1 (1) why (0.5) telling the police (0.5) about kicking the bin (1) would that (0.5) cause you to lose your mate.
1D1: (2/18) because (2) if I tell the police his name (3/1) then I'll be losing my best mate?
1PC: (3/2) I'm asking you about kicking the bin Mr D1? (louder)
1D1: (2) that was a lie. (louder)
1PC: (1) why did you lie.
1D1: (1/2)
1J: Mr PC I'm going to intervene here because I think there's an ambiguity (1) preventing us making progress (1) there are two issues (0.5) one is (1) whether or not he named his friend.
1PC: (1) yes I'm aware of that sir?
1J: (0.5) the other issue is what he said was being done with the bin (words separate and distinct)
1PC: (0.5) sir
1J: (0.5) there are two things that could have been done with the bin and they've all been referred to in the evidence in chief =

1PC: = yes I was only asking him specific questions about the kicking of the bin =
1J: = all right =
1PC: = and why I accept (0.5) that he has said on numerous occasions that it was a lie (0.5) he has offered an explanation of the lies (0.5) in respect of S (0.5) what I want from this accused is an explanation (0.5) of <u>that</u> particular lie about the kicking of the bin?
1J: (0.5), yes (0.5) <u>that's</u> what I understand you to be xxxxxx the accused necessarily understands xxx =
1PC: = well that's a matter for your honour?
1J: all right (2) what Mr (0.5) PC is saying to you (1) is this (1) he's not now asking you about why you didn't name your friend (0.5) he's not asking you that question (2) he's saying to you (1) why did you make up a story about the bin being <u>kicked</u> (0.5) if in fact it was thrown (2) do you understand that (1) that's what he's aft is that is that your question (0.5) Mr PC?
1PC: (0.5) yes sir
1J: (0.5) that that's what I want you to answer (2) why did you make up a story (0.5) about (1) the kicking of the bin if in fact the bin was thrown at the window.
1D1: (1/15) because there was no kicking (0.5) was only throwing s it
(4/1)
1J: over to you to take xxx.
1PC: (2/) why tell the police that there was a kicking.
1D1: (4/25)
1J: will you answer that question please (0.5) mr D1.
1D1: (3/7) because (0.5) there wa no the kicking weren't (0.5) it's (4) there was no kicking at all (0.5) and the w (0.5) and that was a lie (0.5) and that's all?
1PC: (1/3) that again sir is not an answer to the question which the witness then seemed to understand (1) I seek an order for the (0.5) question to be answered.
1J: (1/6) it doesn't (0.5) answer the question Mr D1 for you to say (0.5) it was a lie (1) the question is (1/) why did you lie about what happened to the bin (1) you know it's a lie (0.5) or (0.5) we pre<u>sume</u> it's a lie (0.5) we want to know <u>why</u> (0.5) that is the question.
1D1: (6/8)
1J: do you have any (0.5) answer to that question. =
1D1: = no
1J: = no (0.5) all right (1) I don't think we can take it any further Mr PC
1PC: (3) how often did (1) S say (0.5) let's go and get beer or words to that effect?

This looks like a "straightforward" instance of the defendant just not getting the picture. The prosecutor tries repeatedly to get an answer to his question asking why the defendant has lied about kicking a bin containing real estate broadsheets which was standing on the pavement outside a liquor store.

The structure of the exchange, described as proposed in chapter four, is as follows (see Figure 5.1, p. 120 for a diagrammatic representation of this). Beginning with line three, which is the initial trouble source, successive NTRIs are introduced, or embedded, to try to resolve the trouble. Each subsequent turn happens in this instance to contain one move in the structure. (Note that the first number after the P is the position after Schegloff, i.e. conventional P1, P2 and P3; the number appearing in bold type after the stroke refers to the NTRIs embedded in the sequence).

3	P1/**1**	1D1 reply containing the original trouble source ū
4	P2/**1**	1PC's first repair attempt ū
5	P3/**1**	1D1's reply; at the same time this is P1/**2**, another trouble source ū
6	2/**2**	1PC requests an explanation ū
8	P3/**2**	1D1's explanation; alternatively it could be P3/**1** - we have no way of determining absolutely which previous utterance this reply of 1D1's refers to because it does not answer either exactly; however it also forms P1/**3**, another trouble source ū
9	P2/**3**	1PC asks 1D1 to answer the question, then restates it, P2/**2**, but using a why question rather repeating the how question ū
12	P3/**3**	1D1 tries again to explain why he lied, effectively repeating his answer in P3/**1** about not wanting to name his mate; however, this is not the reply sought in the previous turn and therefore it is also P1/**4** ū
14	P2/**4**	1PC points out that he is asking why 1D1 lied about kicking the bin, not why he did not name his mate ū
15	P3/**4**	1D1 answers that he lied about kicking the bin, which is also P1/**5** ū
16	P2/**5**	1PC repeats his first attempt at repair, which occurred in line 4, asking why 1D1 lied, but does not add "about kicking the bin"; we see from the next turn that this is another trouble source, P1/**6** ū
18	P2/**6a**	after a three (line 17) second pause, where presumably it is expected that 1D1 will answer, the judge intervenes with an embedded sequence; in this turn he begins to lay bare what he calls an ambiguity, saying that there are two issues involved; he then states the first one, the naming of the mate ū
21	P3/**6a**	1PC says he is aware of "that" and adds a (respectful) sir with raised intonation - it is not clear whether he means the ambiguity or merely the statement of the first issue ū

22 P2/**6b** 1J then states, carefully and clearly, the second issue, the kicking of the bin ū

24 P3/**6b** 1PC responds with another sir, this time with level intonation ū

25 P2/**6c** 1J continues to try to clarify the matter by recalling previous evidence, which refers to both throwing and kicking of the bin, but takes this no further; note that this is introducing yet another factor which might add to 1D1's confusion ū

27 P3/**6c** 1PC's reply to this is latched, possibly preventing 1J from saying any more; 1PC says that he is only asking about the kicking ū

28 P4/**6c** 1J attempts to close this embedded sequence, also with a latched utterance ū

29 P3/**6c** But 1PC has not finished what he wished to say; again latching on 1J's turn, he appears to continue on from his previous turn, giving an explanation and restating exactly what he is trying to question 1D1 about: the kicking of the bin ū

33 P2/**7** 1J confirms his understanding of what 1PC is doing, this part of the turn forming P4/**6c**; he then points out that 1D1 may not be understanding it; this part of the turn then also forms P2/**7**, for which the trouble source (P1/**7**) is not one particular turn but rather the compounding result of the entire sequence so far ū

35 P3/**7** Again latching on 1J's turn, 1PC appears to accept what 1J is saying; but he leaves the responsibility for seeing that 1D1 may not understand with the judge, saying that it is "a matter for your honour", again using respectful language; note that he introduces this with "well", suggesting that his answer is dispreferred ū

38 P2/**8** This turn has three parts: 1J begins it with P4/**7** ("all right"), which overlaps the end of PC's turn, and accepts that responsibility; we can say this because he then goes on to speak directly to 1D1, trying to clarify the question, the P1 for which is again the whole of the sequence so far; thirdly he asks 1D1 if he understands the question (line 40); at the same time, the middle part of the turn forms P1/**9** ("he's not now asking …thrown") ū

40 P2/**9** However, without waiting for 1D1 to respond to that, 1J interpolates another embedded repair, checking with 1PC as to whether he has stated the question correctly to 1D1 ū

42 P3/**9** 1PC confirms that the judge's interpretation is correct, again using sir ū

43 P2/**10** 1J refers back to his restatement of the question in P2/**8** and then rephrases the question; note that he includes here another reference to throwing the bin in addition to kicking it; again the P1 is the whole sequence so far ū

46 P3/**10** After a long pause, 15 seconds after the typewriter stops, 1D1 states that the bin

was not kicked, but thrown; this is yet another trouble source, becoming also P1/**11** ū

48 P4/**10** 1J hands responsibility for the questioning back to 1PC ū

49 P2/**11** 1PC restates the question ū

50 P3/**11** 1D1 simply does not answer; this slot is left blank; there is a 25 second pause after the typewriter stops; his silence forms P1/**12** ū

51 P2/**12** 1J asks 1D1 to answer the question; he does so in formal polite terms using a request form with please and 1D1's title plus last name ū

52 P3/**12** 1D1 attempts to oblige, but again only states that he had lied about kicking the bin and does not address why he lied; the latter then is yet another trouble source, thus forming P1/**14** ū

54 P2/**13** In another embedded NTRI, 1PC again appeals to the judge for help, using sir to make it clear that he is not addressing 1D1 here; after claiming that 1D1 "seemed to understand" the question, he asks 1J to order 1D1 to answer ū

57 P2/**14** 1J does not provide the P3 to 1PC's request directly; instead he explains to 1D1 that his reply was not satisfactory, and restates the question; in this case he uses emphasis on presume and why, which stands out from his usual pattern of delivery in this hearing ū

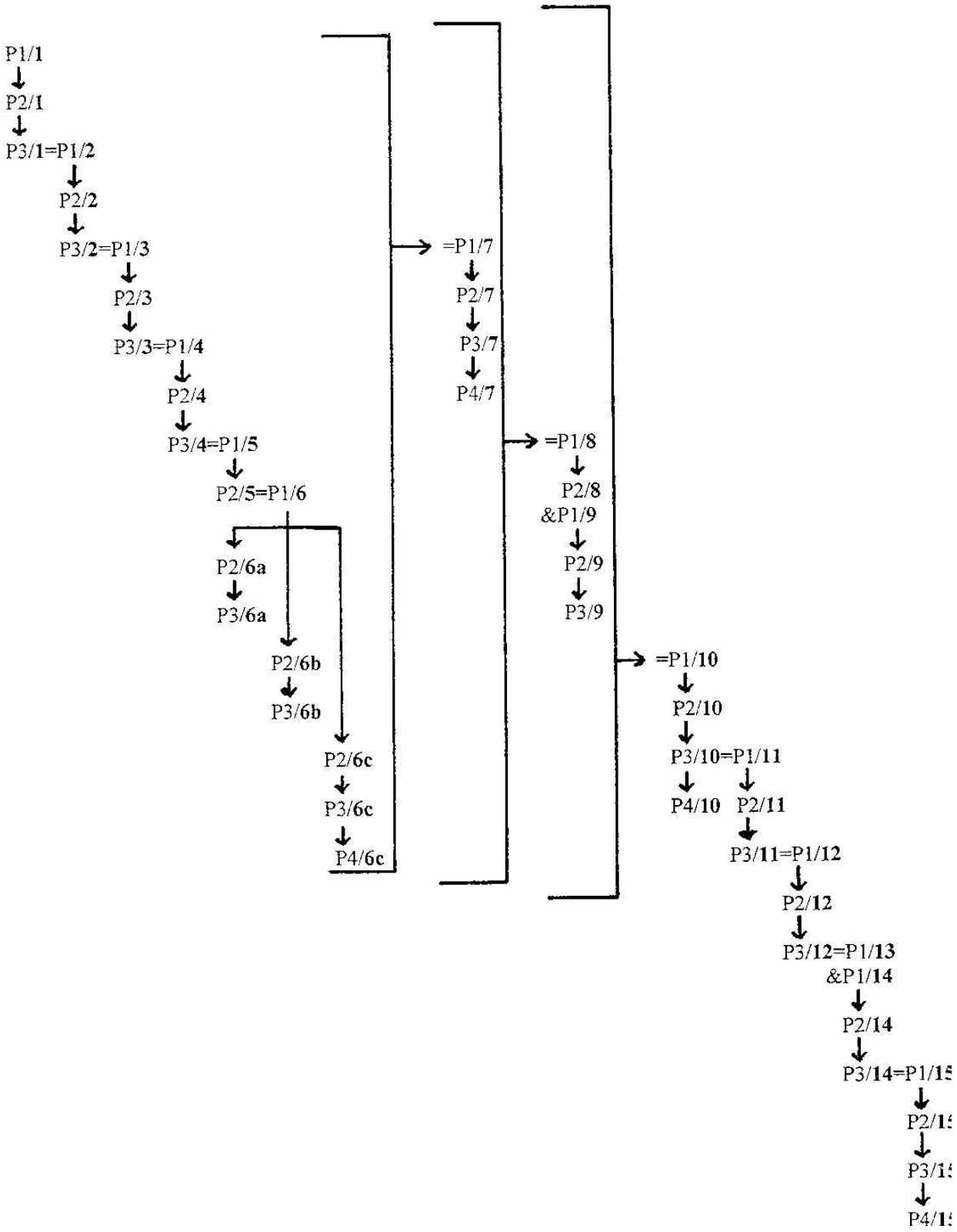
61 P3/**14** Again 1D1 does not fill his expected slot; there is a 14 second pause, eight seconds of which come after the typewriter stops; the silence forms P1/**15** ū

62 P2/**15** 1J tries again, rephrasing the question to ask if 1D1 has any answer ū

63 P3/**15** Very quickly, 1D1 latches his reply of "no" after 1J's turn ū

64 P4/**15** At this point 1J decides that there is an impasse which will not be resolved so suggests to 1PC that it should be left. 1PC then turns to a new topic (line 65).

Figure 5.1: Repair sequence in Example 9 (Case one, file 2, p.3, l.50)



The defendant believes his reply in line five has answered the question. For all their subsequent efforts, the PC and the judge receive no more than this.

Rather than being miscommunication I suggest that this is a situation of perhaps some second language difficulty combined with unfamiliarity with the legal framework. In this example it is clear that the defendant believes he has answered the question and simply cannot see how his answer is unsatisfactory. The judge's intervention to try to clarify the question does not resolve the matter, perhaps partly because he introduces the question of throwing the bin as well as its kicking. Note that while the judge checks that his restatement of the question reflects 1PC's intention, he does not in this instance check whether the defendant understands it. Even if he had done so and 1D1 asserted that he did understand, however, we would not necessarily be able to be sure that this was so, given the Samoan cultural practice of not giving an answer one knows might be problematic. In other words, the judge sees the ambiguity in the question and attends to that explicitly, but does not appear to realise that there may be more to the problem. The final turn in the sequence merely acknowledges the impasse with the implicit suggestion that it cannot be resolved. However nothing is visible in this data here to explain once and for all what the cause of the problem is. As Lane (1988) suggests, it may not be appropriate to talk of single causes, but rather of combinations, as indeed seems to be the case for this sequence.

Perhaps this ending to the sequence is satisfactory in terms of the overt process of the trial. But we have to question whether it is satisfactory in terms of the outcome. This exchange almost certainly contributes to the prosecutor's strong statements in his closing address to the jury where he calls 1D1's credibility into account, claiming he has lied about his involvement in the attempted burglary which gave rise to the hearing. The PC explicitly states in his closing that 1D1 has no difficulty with the English language and asks the jury to take into account the fact that the judge had to direct 1D1 to answer several times. He also asks them to take demeanour into account, saying that how something is said is often more important than the content of answers, but makes no comment about specific aspects of 1D1's demeanour.

No consideration at all is given to the possibility that the defendant is simply bewildered by the legal framework of insistence on exact answers to very specific questions and may be smothered by the onslaught of language in this unfamiliar and clearly uncomfortable situation. Without explicit comment by the judge in his summing up, and warnings about this kind of difficulty, how

could a jury (possibly suffering similar difficulties) be expected to take such factors into account? It all comes down to the question of credibility. If judgements about that are based on exchanges like this one without an understanding of their difficulties, which may or may not be based in matters of truth, can we say that justice is being served?

In her closing address 1DC1 discusses why 1D1 lied to the police when he was first spoken to after the incident concerned and emphasises his youth and his fear of S, the man who was never charged over the incident. But she does not mention any aspects of 1D1's inexperience and inability to handle 1PC's coercive and persistent questioning.

The judge also addresses the question of lies in his summing up to the jury. He specifically asks the jury to remember the possibility of there being a legitimate explanation, i.e. an explanation other than the one offered by the prosecutor (and indeed 1D1 has offered one). But he does not address the matter of the defendant's unfamiliarity with the courtroom and any difficulty he may have in handling the situation. He does note, in discussing 1D2, that there are cultural differences in body language. But although he asks the jury to be aware of this, he makes no specific points about it.

1D1 is involved in eleven ERSs, of which three are not successfully resolved. Thus there may be a cumulative effect if indeed the jury accepts the prosecutor's explanation that the defendant is evasive at best and a liar at worst.

Of course this example is spectacularly unsuccessful in resolving the issue at hand. Let us turn now to a more successful ERS. The following example comes from case four, where the charge is that the defendant possessed cannabis for supply, which is being disputed by the defence (including her husband).

Example 10 (Case four, file 2 p.8, l.38)

1	4PC:	(4/1) what did John (1) your husband say about the marijuana in that brief
2		discussion.
3	4D:	(2/) he said (1) one sentence that I can remember was (0.5) that he'd take
4		responsibility (1) and my brother-in-laww said (0.5) it's nnot his.
5	4PC:	(1) your brother-in-law said it wasn't his marijuana?
6	4D:	(0.5) h (0.5) my brother-in-law said it wasn't his meaning it wasn't (0.5)
7		(0.5) my brother-in-law's marijuana.
8	4J:	(0.5) it wasn't his own? =
9	4D:	= yes

10 4J: he wasn't saying it wasn't his own.
11 4D: no no it wasn't his own
12 4PC: (0.5) and your husband was saying <u>he</u> would take the blame for it.

This example is resolved much more quickly, and has the following structure:

3 P1/**1** 4D's reply to 4PC's question is acceptable to 4PC in terms of preferredness but contains an ambiguity with the referent for the pronoun "his" ū

5 P2/**1** 4PC attempts to resolve the ambiguity with an NTRI using a declarative question with raised intonation on the last two words; effectively he is asking for confirmation that he has the correct understanding that the brother-in-law did not own the marijuana ū

6 P3/**1** 4D answers with an explicit clarification ū

8 P2/**2** 4J then also checks his understanding, the trouble source probably being both P1/**1** and P3/**1**; he may do so either for his own benefit or for the benefit of the jury ū

9 P3/**2** 4D confirms 4J's understanding ū

10 P2/**3** 4J then rechecks with a negative question (note that this is structurally coercive), adding the factor that "he wasn't saying"; the trouble source for this is then P1/**1**, P3/**1**and P3/**2**: since 4D's answer appears quite clear, we can assume that the original ambiguity in P1/**1** is still troubling the judge; however, this new question changes the position, asking 4D in fact to confirm the opposite of what she has just said ū

11 P3/**3** 4D appears to miss the implication of the negative question, possibly because of the double negative; she reconfirms her earlier statement.

At this point the PC turns to a new aspect of the topic. Given that he accepts 4D's answer once he has obtained clarification of the ambiguity, this ERS has been classified as resolved in satisfactory manner. The judge does not attempt to either repair his own confusing question in line 10 or to repair 4D's answer in line 11. There are three possibilities here: we may assume that it does not matter to him (but if so, why did he introduce it in the first place?), or that he has recognised the confusion in his own question but does not wish to make that explicit since 4D's response is so clear, or that he does not even notice the difficulty in his question.

Here too, we cannot conclude that cross-cultural or gender-based miscommunication is the cause, or even has anything to do with causing the need for repair. 4D is a female NZE, while 4PC and 4J are male NZE. Nor can it be put down to a difference in familiarity with the legal framework. There is no apparent reason for this confusion other than the structure of English. It is possible, however, that this exchange occurs more for the benefit of the jury and/or the court transcript than any of the direct participants. If this is so we can add the legal framework and its need for clarity and certainty to our resources for understanding this a sequence (but we cannot say that this causes the confusion).

Another example is provided by case five; once again the exchange occurs between the prosecutor and the defendant, who has been charged with assault.

Example 11 (Case five, file 1, p.16, l.54)

1	5PC:	you were there with Mr W1 (0.5) from the very beginning of the attack
2		on him.
3	5D:	(1) yes I was the first person (0.5) up to Mr W1 =
4	5PC:	= yes (3/4) you explained to us that your role (0.5) was merely to (0.5)
5		first of all to speak to him (0.5) and then (0.5) at a later stage to try and
6		stop this Polynesian (0.5) youth (0.5) attacking Mr W1 further (0.5) is
7		that right?
8	5D:	(1) not this particular Polynesian who was attacking him (0.5) just <u>one</u> of
9		them (0.5) the
10	5PC:	xxx
11	5D:	person who was closest to me?
12	5PC:	(2/11) (pause for the typist to change the page)
13	Typ:	xxx
14	5PC:	(1) so it wasn't necessarily this first Polynesian who attacked him (0.5)
15		but just one of the group who was attacking him that you pulled off (0.5)
16		is that right?
17	5D:	(0.5) no
18	5PC:	(2/) was it just one you pulled off or more than one.
19	5D:	(0.5) I could only handle one.
20	5PC:	(4) have I understood this correctly you couldn't <u>say</u> (0.5) which one of
21		the ones it was (0.5) but it was just one of the youths (0.5) attacking
22		Mr W1.
23	5D:	(0.5) that's right sir
24	5PC:	(3) so that if Mr W2 and Mr W3 say as they have in court (1) that <u>you</u>
25		were <u>part</u> of the group involved with Mr W1 =
26	5D:	= no
27	5PC:	(1) now I understand it (0.5) do you say they would be <u>right</u> in identifying
28		you (0.5) as part of that group (0.5) but <u>wrong</u> (0.5) when they suggest you
29		were attacking (1) is that be right?

30 5D: that's correct sir
31 5PC: (9/1) when this first (0.5) Polynesian hit (0.5) Mr W1 for the first time (1) did that come as a surprise to you?

The structure of this exchange follows.

6 P1/**1** 5PC asks about 5D's role in the assault on Mr W1 using a recapping statement followed by a confirmatory, structurally coercive tag question; the trouble source here is the phrase "this Polynesian youth" ū

8 P2/**1** 5D attempts to repair 5PC's understanding by contradicting the phrase, replacing this particular Polynesian with "just one of them"; this turn is interrupted by the PC, probably to stop 5D so that the typist can change the page; 5D completes the answer he had begun with "the" (line 9), and then stops, on a high rising intonation - this intonation could well be a high rising terminal delimiting the end of the turn, rather than suggesting he has cut short what he wishes to say; this turn is also P1/**4,** as explained below ū

14 P3/**1** 5PC acknowledges the repair indirectly by confirming his new understanding with a tag question; however, it becomes clear that this too is a trouble source so it forms P1/**2** at the same time; the tag effectively makes the utterance into P2/**2** as well ū

17 P3/**2** 5D answers, with a quick (i.e. no delay, at least in terms of the courtroom conversational beat) minimal response; but the answer is not the one 5PC wants, therefore is the P1/**1** for his next turn ū

18 P2/**3** 5PC inserts an elicitation question into the sequence; this is not a direct repair of what has gone before, but contributes to 5PC's elicitation of 5D's role in the assault ū

19 P3/**3** 5D answers that elicitation question in a slightly indirect fashion; his "I could only handle one" sounds like an excuse and may suggest that he senses a degree of criticism from 5PC for not having done more to stop the fight ū

20 P2/**4** 5PC returns to the first line of questioning and explicitly checks his understanding of 5D's answer in line eight, which is the P1 for this sequence ū

23 P3/**4** 5D confirms 5PC's understanding; he adds "sir" for politeness, perhaps thinking that because he has given a dispreferred answer in line 17, P3/**2** (in terms of what the question required), he is (inadvertently) threatening 5PC's face ū

24 P2/**5** 5PC begins to challenge what 5D has said (again, the P1 is the sum of the previous answers in this exchange); introducing the challenge with "so" suggests that he is going to make a logical connection (or, more likely, disjunction, given that this is cross-examination) between 5D's answers and the evidence given by the two prosecution witnesses earlier in the hearing ū

26 P3/**5** Before 5PC can complete the proposition, however, 5D inserts a latched bald "no" in disagreement; this is the second dispreferred answer which is uttered without any of the signals usually associated with dispreferred utterances; this is also P1/**6** ū

27 P2/**6** 5PC first states that he understands now; he then checks that understanding, with a question involving two propositions, one of which he thinks he is right about and the other wrong ū

30 P3/**6** 5D confirms that 5PC has understood his answers and again adds "sir".

Again, cross-cultural or gender-based miscommunication seems unlikely to be the cause of the breakdown in this exchange. Although the defendant is a young Maori, it is more the need to establish the truth of the matter than any communicative difficulties which gives rise to the difficulty in resolving the repair. In fact, it is better characterised as 5PC's confusion which is at issue here rather than 5D's. If we add this defendant's politeness to the picture, we might surmise that, even though he is a lay participant and thus less familiar with the context, he is well aware of some courtroom conventions (whether this comes from his own sensitivity or knowledge, or from being well-schooled by his defence counsel).

Extending Schegloff et al.'s positional analysis in this way allows us to see the complexity of the structure of such sequences, with their embeddings and recalls of earlier points. Thus repair should be seen as a highly complex matter, and in these situations one needing great skill to negotiate one's way through, particularly if one is not familiar with and comfortable in the situation. It demonstrates that many things are going on and that the very complexity of the structure is enough in itself to cause difficulty, without miscommunication on the basis of cultural or gender differences entering the picture. If the latter does occur, then it may well compound an already difficult situation. Of course miscommunication may occur in the other functional categories described in this chapter as well (apart from objections, where it would be much less likely because of the nature of objections and who raises them and deals with them).

A further factor here is, of course, that defendants and witnesses may well be uncooperative to some extent. While blatant examples of this do occur (in these data, case four has many examples), I suspect that most are more subtle and less transparent, thus harder to find using a conversation analytic approach. In such situations it comes back to questions of credibility and demeanour: there is often no incontrovertible evidence available in the text itself. Again, then, we may be in the situation where people are judged unfairly and this may be where the miscommunication arises.

5.8 Conclusion

This chapter has looked at longer cross-repair sequences where the trouble needing repair takes more than four turns to resolve. Schegloff et al. seem to deal only with simple repair in their description of NTRIs and repair sequences. This appears to be because simple repair is what they find in everyday talk in interaction (and in my brief comparison with five ordinary conversations). The existence of what I have called extended repair sequences looks to be a characteristic of the courtroom (although it could not be called a defining characteristic). This supports Schegloff et al.'s belief that conversation is the basic speech exchange structure and that the courtroom uses a specialised form of this.

Further, their system of describing repair certainly remains applicable in this specialised form of speech exchange structure. This chapter uses a system I have adapted from their work to describe how more complicated repair sequences with multi-embedding operate. This analysis is necessarily complicated because, as the examples show, ERSs can become extremely complicated, with relationships between turns which are not necessarily adjacent.

It has emerged from this chapter that miscommunication as discussed by people such as Gumperz seems to focus only on cross-cultural differences (including the extension by Tannen into the area of gender issues). However these clearly form only one aspect of apparent communication difficulties. In addition, I have found little evidence of cross-cultural miscommunication appearing in these data, but many examples of communicative difficulties.

I therefore preferred initially the term proposed by Janet Holmes and Maria Stubbe at the Language and Gender Conference at the Victoria University of Wellington, New Zealand, in

October 1999: problematic discourse. This seemed productive to me in that it can cover more situations than the cross-cultural aspects usually associated with miscommunication.

Clearly this term could be useful in discussing courtroom discourse, because, as we have seen, much repair occurs in these hearings and further, in many cases the repair takes some time to achieve its purposes. To describe such sequences as problematic discourse is acknowledging some aspect of difficulty, but not laying it at any one door.

On the other hand, it does not account for the fact that much repair in courtrooms is contributing productively to the process at hand. In other words, I do not see repair in court as necessarily problematic, although in some cases this is clearly so. (Note also Caesar-Wolf's (1984) criticism that much ethnomethodological and conversation analytic research sees language occurring in the law as problematic). A better approach still, therefore, is that of "coming to an understanding" (Weigand, 1999). This accepts that there is an inherent risk of misunderstanding (based on a model which recognises that there are differences between the speaker's and the hearer's worlds) which the ongoing dialogue will address. Under this approach, we do not have to see extended repair sequences such as are found in these courtroom data as problems, nor do we have to see longer ERSs as necessarily more problematic than shorter ones. In all of them the aim is "coming to an understanding". This phrase also accounts for the interactive dynamic aspects of these sequences. Only in very few of them is a non-satisfactory result achieved, and even then there results some degree of understanding at least of whether the issue can be resolved.

In conclusion therefore, while I am certainly not suggesting that miscommunication does not occur in court, I am suggesting that the process of coming to an understanding about the matters being discussed in court is generally successful, at least in the hearings which are the subject of this study. Several types of difficulty arise, which for the most part are repaired successfully. It appears that, if miscommunication is occurring in court, the professional participants are doing everything they can to sort the problem out, even if they do not necessarily correctly identify its underlying cause. Thus in terms of the process, they are being highly successful. What remains at issue, however, is what the jury makes of this, especially when underlying causes are proposed in closing addresses. In other words, the outcome may well be affected negatively by incorrect identification of causes of trouble in the examination phases of trials. Another issue remaining unresolved is the question of hidden miscommunication, and this study can shed no further light on this matter.

This also raises the possibility that perhaps we have traditionally looked in the wrong direction at times. When we talk of difficulties in communication many have looked at the person who is, shall we say, the underdog (such as Gumperz' East Indian cafeteria workers, or the many studies of women's language). Applying this to the courtroom, it is tempting to think of difficulty as stemming from the defendants or witnesses. If we look at the examples which have been presented here, we might think instead that it is the professionals who are having some of the difficulties. Combine this with the notion of coming to an understanding and I think we are coming to our own greater understanding of what is going on, in these hearings at least. Further, this approach means that we may not have to think in terms of either deficit or difference to explain the nature of the communication that is occurring in these interactions.

Thus, finally, the apparent rarity of miscommunication in these seven hearings may be seen more productively as the result of "coming to an understanding" rather than some sort of problem (hidden or otherwise). We should be seeing the situation around which the language is occurring as having problems and the language being used to sort out the problem, rather than seeing the language as the problem.

Chapter Six: Powerless Language?

6.1 Introduction

Previous chapters have described the district court process in New Zealand and the seven cases involved in this study. Then followed a consideration of turn-taking and repair. Now I turn to the words themselves and the question of differences in language use among the participants. This and the following four chapters discuss the features which were first suggested as belonging to women's language (WL) and later to powerless language in order to see whether a) they occur in a New Zealand courtroom, and b) they occur in the patterns which the work of previous linguists would predict.

O'Barr and Atkins (1980), taking the work of Robin Lakoff (1975) as a starting point, look at features of women's language in the context of an American courtroom. They find that while the features certainly do occur, they are not distributed straightforwardly along gender lines. Rather they reflect the asymmetrical patterns of power in this context. They investigate the following features:

- intensifiers
- hedges
- hesitation forms
- witnesses asking lawyers questions
- gestures
- polite forms
- sir
- quotes.

They do not include, as Lakoff had, tag questions and joking. The first are excluded on the grounds that they were felt not to be salient in the courtroom, because witnesses do not frequently ask questions there (this seems somewhat inconsistent with their inclusion of witnesses asking lawyers questions). Joking is also excluded because it is seldom heard in court.

I have selected the following features to concentrate on in this study:

- hesitation forms (*um*, *er*, *ah*)
- hedges (*just*, *sort of*)
- intensifiers
- witnesses asking questions
- tag questions

- high rising terminal intonation (in declarative utterances)
- polite forms (*please*, *sorry*, *thank you*)
- terms of address
- *well*.

O'Barr and Atkins include *well* as a hesitation. However this does not encompass the range of functions *well* can have (cf, for example, Schiffrin, 1987) and therefore it is more productive to treat it as a separate category. This decision is supported by the results of this study, as will be seen.

In terms of address I have included title (*Sir, Your Honour*), title (*Mr, Mrs*) plus last name, professional title (with and without last name), and first name. First names are used (rarely) towards the defendants or witnesses, and never towards the professional participants or police witnesses, but they are included here in the interests of completeness.

O'Barr and Atkins, although mentioning high rising terminal intonation (HRT), do not discuss it further and do not include it as one of the features of the WL measure. It is included here because it is discussed by Lakoff and because it is often perceived as a distinguishing characteristic of New Zealand English. Indeed its use in this country is discussed in depth by David Britain (1992, see chapter eight below).

Also unlike O'Barr and Atkins' research, tag questions are included in the present study. This has been done both because my study includes professional participants as well as witnesses (O'Barr and Atkins had excluded tag questions because witnesses did not use them) and because tag questions have been shown to have functions other than merely questioning (cf, for example, Holmes, 1990). It is also consistent with the inclusion of other questions in the study. Therefore looking at who uses tag questions, even if it proves to be only one participant group, and how they do so, may show interesting patterns.

Several features have not been selected for this study. As with O'Barr and Atkins, joking is not considered here, and for the same reason. Jokes could be said to have occurred three times in the data. They appear to be somewhat sarcastic exchanges and if they are intended to be jokes, they fall very flat, perhaps because of their inappropriateness to the situation.

Nor are quotes considered here. While they are used extensively by police witnesses in their narrations of events leading up to and subsequent to arrests, they are rarely found in the speech of other participants. They would be better dealt with in a study of narrative in the courtroom. They relate more to narrative style than to the forms of powerful/powerless

language which are the subject of this study. Note, however, that quotes may be relevant to the credibility of defendants and witnesses in that the extent to which they are allowed to tell the story affects hearers' impressions of their competence (e.g. Lind and O'Barr, 1979, look at the difference in effect of fragmented and narrative testimony, suggesting that narrative testimony may be seen as the result of the lawyer giving more control to the witness, which in turn may carry information about the lawyer's evaluation of the witness.)

Neither are gestures included. This is not to ignore their importance, but is a result of the decision to tape-record the hearings. As mentioned earlier, the courts were initially somewhat reluctant to allow tape-recording. At some time in the future perhaps it will be possible that videotaping would be allowed for research purposes. In fact videotaped evidence has recently been permitted and admitted in New Zealand court hearings. In addition, since 1996 cameras have been permitted in court for newsgathering purposes, although the use of what they record is strictly controlled. However, videotaping was not possible in 1990 when this data was gathered.

While some comment on gesture could be made, it would therefore only be anecdotal and incomplete, as it would be taken from comments written during the regular adjournments. In New Zealand it is not permissible for any member of the public not directly involved in the proceedings (i.e. those other than participants and authorised news reporters) to be seen writing in the courtroom while the court is in session. However a follow-up study on gesture and body language would be useful and may be possible in the future.

The instances of each of the selected features have been counted by case and participant. In addition rates have been calculated to indicate how often each feature occurs in relation to the number of words spoken by each participant. Initially, the overall picture is discussed, i.e. these apparent features of powerless language are treated as a group rather than as individual phenomena.

In succeeding chapters, each feature is treated separately as O'Barr and Atkins (1980) suggest, because there may not be congruence between the frequencies of features. Chapter seven considers hesitation forms, hedges and intensifiers, chapter eight witnesses asking questions, tag questions and high rising terminal intonation, and chapter nine polite forms and terms of address. Lastly in this sequence, chapter ten discusses the use of *well*.

The final chapter addresses the question of whether it is useful to discuss powerless language

at all in the way this chapter does, given what this and the following chapters show.

6.2 Overall picture of powerless language features

Following O'Barr and Atkins' approach, then, the features listed above, bar one, have been counted and compared with the number of words. All the features except witnesses asking questions are included. The latter are excluded because they seem to me to be an aspect of powerful language, and it is their absence rather than their presence which may belong to powerless language.

As a first step, each individual participant's use of this group of features has been calculated. While it is not discussed further in this chapter, this information is presented in Table 1, Appendix D. The table also compares the use of PL features to turns, in the same manner as O'Barr and Atkins' ratio of WL forms to answers. Specific comments about individuals' use of the features appear in the next four chapters.

The following discussion presents the information in terms first of cases and then of participant groups. Tables 6.1 and 6.2 set out the numbers and rates respectively of powerless terms occurring in the examination phases of the seven hearings in the study.

Table 6.1: Summary of powerless forms by case

Form	Case One	Two	Three	Four	Five	Six	Seven	Total
hesitation	109	270	153	148	76	88	13	857
hedge	34	56	47	77	93	66	5	378
intensifier	25	149	35	78	116	87	6	496
tag Q	75	35	24	40	63	26	8	271
HRT	148	131	112	204	181	94	13	883
well	28	61	22	108	47	42	1	309
address term	112	156	28	40	72	46	13	467
polite form	79	82	53	46	42	32	21	355
total	610	940	474	741	690	481	80	4,016

Table 6.2: Rates of powerless forms by case

Form	Case One	Two	Three	Four	Five	Six	Seven
hesitation	1:92	1:70	1:72	1:116	1:211	1:176	1:154
hedge	1:294	1:367	1:235	1:222	1:172	1:234	1:400
intensifier	1:400	1:127	1:316	1:220	1:138	1:178	1:333
tag Q	1:133	1:539	1:461	1:428	1:254	1:594	1:250
HRT	1:68	1:144	1:99	1:84	1:89	1:164	1:154
well	1:357	1:309	1:503	1:159	1:341	1:368	1:1,998
address term	1:89	1:121	1:395	1:428	1:223	1:336	1:154
polite form	1:127	1:230	1:209	1:372	1:382	1:483	1:95
total	1:16	1:20	1:23	1:23	1:23	1:32	1:25

Looking at Table 6.2, we can see clearly that there is not a great difference between the cases if we look at the powerless language features as a group. In fact the similarity in rates is remarkable. For three of the cases (three, four and five) the rate varies within only 0.22 of a word. For all the cases the rate varies within only a sixteen word range. The rate over the seven cases is 1:22.

The case with the greatest frequency is case one: this case has two defendants (both Samoan), a Samoan defence counsel and a female defence counsel. Thus it is a case where four of the six most significant roles are taken by those who are commonly seen as powerless. However, the case with the next greatest frequency is case two, where all participants are NZE males, i.e. belong to the dominant group in New Zealand society.

On the other hand, the case with the lowest frequency is case six. Here too there are several participants who apparently belong to the less powerful groups in New Zealand society: a female judge, a Niuean defendant, an Indian witness, an elderly NZE witness (the victim of the assault) and two Niuean witnesses. Both counsel in this case are NZE males.

It looks very much as though looking at this issue by case gives us little insight into what precipitates the use of language which has been described as powerless. This may be because, as we will see, some of the features do not correlate with powerlessness. Or it could be that the nature of the individual participants does not have much bearing on the matter. It may instead relate to roles in the courtroom and therefore be primarily an institutional difference rather than individual or social (as related to ethnicity or gender).

The next step, then, is to look at how often the features are used by each group of participants

in this study. This information is presented in Tables 6.3 and 6.4.

Table 6.3: Summary of powerless forms by participant group

Form	Role J	PC	DC	D	PW	W	Total
hesitation	47	108	139	271	67	225	857
hedge	24	80	108	66	13	87	378
intensifier	8	58	198	107	30	95	496
tag Q	4	160	106	0	0	1	271
HRT	44	34	28	254	196	327	883
well	21	66	76	58	20	68	309
address term	90	141	219	11	6	0	467
polite form	76	130	105	15	17	12	355
total	314	777	979	782	349	815	4,016

Table 6.4: Summary of rates of powerless forms by participant group

Form	Role J	PC	DC	D	PW	W
hesitation	1:116	1:239	1:181	1:50	1:137	1:50
hedge	1:227	1:323	1:233	1:207	1:706	1:130
intensifier	1:682	1:445	1:127	1:127	1:306	1:119
tag Q	1:1,364	1:161	1:238	0	0	1:11,271
HRT	1:124	1:759	1:899	1:54	1:47	1:34
well	1:260	1:391	1:331	1:235	1:459	1:166
address term	1:61	1:183	1:115	1:1,239	1:1,529	0
polite form	1:72	1:199	1:240	1:909	1:540	1:939
total	1:17	1:33	1:26	1:17	1:26	1:14

In a general sense Table 6.4 shows a powerful/powerless pattern which can be said to follow that predicted by O'Barr and Atkins. Looking at the overall rates first (i.e. the totals row) first, we see that witnesses use these forms more frequently than all the other groups (and more even than defendants). Perhaps unpredictably, the judges use them as often as the defendants. Prosecuting counsel use them the least often, while defence counsel and police witnesses have similar rates. Thus, once again, it is not as straightforward as saying that the apparently powerless people in court use powerless forms more often. For instance, this would not account for the judges' use. Nor would it explain that the pattern is not the same for each feature, nor for the fact that for both the judges and the police witnesses the patterns for the different features vary more than for the other groups.

Tag questions do not appear to fit the pattern at all. It is the two groups of lawyers who use them more frequently, and markedly so. It is therefore clear that, like O'Barr and Atkins, we must question whether they should be classed as powerless features in the courtroom,

although the picture may be different in other situations. Tag questions will be discussed in more detail in chapter eight. The same issue arises with terms of address, which are discussed in chapter nine.

As stated above, in a very general sense the professional participants use PL forms less frequently and lay participants use them more. But this masks important differences within those groups. Among the professionals, the defence counsel use them rather more than the prosecuting counsel, while the judges use them markedly more often. This supports the notion that while power may be a factor, it is certainly not the only factor operating here.

Other factors may be attributed to participants' perceived roles. Thus the judges' interest in achieving a fair result, both procedurally and substantively, may mean that they are using language in a facilitative way. Their language use may not be describable simply in terms of power. In turn, then, this supports my suggestion that it may be too simplistic to speak of powerless language and its features.

For the lay participants, a different picture emerges: they do follow the predictable pattern to some extent, at least in terms of power. The most powerful lay participants are the police witnesses, both in societal terms (they are all members of the dominant group in New Zealand) and in the courtroom (both from a familiarity point of view and possibly self-perceived importance). And they use this set of so-called powerless language features much less often than the defendants and the witnesses. However power does not explain the differences between the defendants and the witnesses. Here perhaps a relevant factor is the importance of the hearings to the different participants.

It is worth discussing at this point whether relating PL forms to words gives a different result from relating them to turns and, if so, whether those differences are important. In other words, do the two different measures produce different results? Table 6.5 shows the two different measures for each participant group.

Table 6.5: Summary of powerless forms by participant group

Role	PL forms	Words	PLs-words	Turns	PLs-turns
J	314	5,456	1:17	430	1:1.37
PC	777	25,816	1:33	1,848	1:2.39
DC	979	25,176	1:26	1,800	1:1.84
D	782	13,634	1:17	1,349	1:1.73
PW	349	9,175	1:26	736	1:2.11
W	815	11,271	1:14	1,307	1:1.6

The first point to be made here is that overall the picture remains the same.

However, relating PL forms to the number of words gives us a somewhat more detailed view of what is going on than does relating them to turns. For instance, it shows, among other things, that lay witnesses use them remarkably more often than the other participants, including the defendants. It also shows that when we look at the amount of talk, we see judges are not in fact using PL forms the most, as the PL-turns ratio suggests. There are two reasons for this increase in detail and accuracy.

First, as discussed in chapter three, the number of turns is useful in assessing the degree of participation of each participant and supports the results of an ethnographic analysis. But it can only be a crude measure in that it makes no distinction between speakers with longer and shorter turns. Thus, it places all participants in a narrower range, suggesting that their rates of powerless forms are more similar than they are in reality. It thereby masks the point that is clear in the ratios of these forms to words: the lay witnesses use them more often in proportion to the quantity of their speech in these hearings.

Secondly, to a large extent the number of turns each participant has in court depends on factors quite other than who the individuals are. How often they speak depends instead largely on their roles, the complexity of the situations which have lead to the hearings, and for the professionals, how they choose to act in their roles on each occasion. The latter includes such aspects as whether they lead their witnesses through their stories (i.e. elicit the stories through a series of questions) or whether they prefer a more hands-off approach and allow the witnesses to tell their own stories (although Luchjenbroers (1985) suggests that in reality the lawyers always tell the stories).

The phenomena discussed here are continuous rather than discrete (as O'Barr and Atkins point out), and therefore the rates given above are presented on a continuum below (see Figure 6.1).

Figure 6.1: Powerless language use by participant group

	DCs	Js	
PCs	PWs	Ds	Ws
least			most
(1:33)			(1:14)

This can also be done with individuals, as Tannen (1984) did for her Thanksgiving dinner participants. By way of illustration, I apply it below (Figure 6.2) to individual defendants.

Figure 6.2: Defendants' use of powerless language

6D	7D	3D 4D	2D	5D	1D1
least (1:20)					most (1:9)

As is clear from the above, treating these features as a group has allowed an interesting factor to emerge: that the witnesses use them far more often than any other group. But it also masks some of the subtleties (a point glossed over by O'Barr and Atkins). For instance, Table 6.5 and Figure 6.1 show that police witnesses use them less often than judges, but, as will become clear, this is not so for all of the features making up the group. The picture may change somewhat if those features which do not appear to be operating on the basis of power/powerlessness are not included. Therefore, tag questions and terms of address are removed and the result discussed in 6.3 below. However, the discussion in subsequent chapters will show that many other qualifications are necessary about how factors of power and powerlessness are operating in this study. Therefore it seems a rather pointless exercise to try to refine that basis further: we would be left with very little to work with. The final chapter will discuss whether the notion of powerless language is useful at all, at least as far as the data presented in this study are concerned.

6.3 Revising the PL figure

As noted above, tag questions and terms of address do not appear to be used in the same way as the other features discussed here. It is therefore appropriate to see whether the overall picture changes when these two features are removed. The revised figures are to be found in Tables 2, 3, 4, and 5 in Appendix D.

In fact the revision produces no significant effect. While there are changes, both when we look at the figures by case and by participant, they are small and the overall picture remains the same. The rate over the seven cases becomes 1:28. The range remains very similar, with the predictable difference that removing two features means that the PL totals are lower and the rates therefore also lower. Only two cases (cases two and four) exchange their relative

positions, but the difference between them becomes smaller. Thus for the purposes of comparison between cases, excluding tag Qs and terms of address makes little difference.

We might expect a more significant change when looking at participant groups, but this does not turn out to be the case. There is no change for defendants, nor for either group of witnesses. The figures for judges and lawyers change rather more, but again the overall picture remains the same. The change merely makes the difference between the lawyers and the other groups more marked. The only other matter of interest is that a greater difference emerges between the two groups of lawyers. This is explained by their respective use of tag Qs, which is discussed further in chapter eight.

6.4 Comparison with O'Barr and Atkins

Turning now to the measure presented by O'Barr and Atkins, we can see whether their results are repeated in this New Zealand data. The figures they provide are the ratios of powerless (WL) forms to answers, so that 1:1, for example, means that one such form occurs for each answer. In my study, 1:127 means that one such form occurs in every 127 words. In other words the measures are presented differently, with the result that for O'Barr and Atkins' subjects, a lower score means a lower incidence of WL forms, while the reverse is the case in the present study. However, the patterns visible among the participants can still be compared.

Any comments have to be tempered by two major differences between the studies. First, the table in O'Barr and Atkins (1980, p. 100) looks only at six participants, whereas the present study covers 50 different people (including 25 witnesses). Second, the present study covers all groups of participants in the hearings, not just witnesses. Therefore the two sets of results can be compared for witnesses only.

Table 6.6 presents the data for the witnesses in both studies, with the ranges calculated according to O'Barr and Atkins' method (in the interests of completeness, Table 6, Appendix D sets out recalculated figures for all the groups in the present study). Those for this study include both lay and police witnesses on the basis that O'Barr and Atkins include expert witnesses as well as lay witnesses. Thus both sets of figures include some witnesses who are more powerful than others.

Table 6.6: Comparison with O'Barr and Atkins

Study	Number of witnesses	Range of rates of PL forms
O'Barr & Atkins	6	0.18 – 1.39
Innes	25	0.24 – 1.14*

* For the low point of this range, I have used the witness who shows the second lowest frequency because not all measures are available for the witness showing the lowest.

Note: Including police witnesses makes no difference to the range: apart from the one PW who uses no powerless forms at all, both the greatest and the lowest users of PL forms in this study are lay witnesses.

Interestingly, the ranges of the two sets of data are similar, although that for the American witnesses appears slightly greater and they appear to use PL forms slightly more often than the New Zealand witnesses. However, the number of witnesses is so small, especially in the American sample, that it is not clear that these are significant differences.

This raises fascinating questions about the nature of the two societies, given that the range for the New Zealand participants is even narrower than for the Americans. New Zealand is often seen as an egalitarian country, where the differences between rich and poor and different ethnic groups are not as great as elsewhere.

On the other hand, New Zealand society has changed dramatically over recent years, and poverty has increased as a result. In turn this may affect the power structure, heightening previously smaller differences in language use. A further study gathering data, say ten years after this one (1990), would show whether and how linguistic changes are occurring in tandem with the social changes.

It also raises the question of whether these forms are used for different purposes in the two countries. Again, a further study would be interesting, as the current study shows clearly that indeed power (whether in societal terms or granted by the court) is not the only factor and that other issues have a part to play in the use of these features in a New Zealand courtroom.

O'Barr and Atkins go on to discuss the effect of style differences on how witnesses are perceived. Using an extract from their courtroom data, they prepared tapes of a male and a female witness speaking in both powerful and powerless styles. These tapes were then assessed by 96 students in terms of how believable, convincing, competent, intelligent and

trustworthy they felt the witnesses were. O'Barr and Atkins conclude that "for both male and female witnesses, the use of the powerless style produced consistently less favourable reactions to the witness than did the use of the powerful testimony style" (1980, p. 107).

Clearly it is possible that similar conclusions would be drawn about witness testimony in New Zealand. However, would they also apply to the other court participants, all of whom are shown in this study to use several or all the features of powerless language discussed? This also points the way to further research, which needs to be allied with more precise work on how the features are being used. This should include discussion of whether the other potential functions are recognised by listeners or whether they interpret them only in terms of power.

Of course, in the courtroom this is particularly important, because juries may be making decisions based in part on these features, as O'Barr and Atkins point out. In other words, they may be assessing such things as credibility and demeanour on the basis of language features which do not in themselves express those things. The question must be asked whether juries can possibly be expected to arrive at fair decisions unless they have an explicit awareness of these features and their roles. Perhaps this is where the miscommunication lies in the courtroom, rather than (or in addition to) the difficulties discussed in chapter five.

In the next four chapters I turn to considering the features suggested as making up powerless language in order to see whether they can indeed be grouped in this way.

Chapter Seven: S/he Who Hesitates ... - Hesitations, Hedges and Intensifiers

7.1 Hesitation forms

O'Barr and Atkins (1980) divide hesitation forms into two categories: "pause fillers", and "meaningless particles" (as Lakoff, 1975, characterises them). They include such items as *well*, *oh*, and *you see* in the latter category. In this study I prefer to treat these as two separate categories. It is clear in the data, as well as in recent literature, that the term "meaningless particles" is a misnomer and that they are used with a variety of discourse functions. They are not meaningless at all and they are not simply hesitation markers either. One example of these, *well*, is discussed in detail in chapter ten below.

Fox, Hayashi and Jasperson (1996) discuss *um* and *uh* when looking at same-turn self-repair, saying that they should be considered as part of such repair when the syntax continues as projected. However they do not give any justification for this analysis and do not seem to consider other roles these forms perform, for example in word searches and delay. It therefore may be worth looking in future at how they work in SI-SR and in cross-repair in courtrooms. Fox et al. find no consistent differences between the same-turn self-repair found in the naturally occurring conversations, telephone conversations and the face-to-face tutoring interactions they study. They argue that same-turn self-repair "serves as a resource for expanding the syntactic possibilities present to a speaker at a given moment" (1996, p. 226). In such repair, both the first and the second attempts to say a particular thing "do important work in managing the interaction at that point ... making use of repair to accomplish several competing interactional goals before reaching a TRP" (p. 216). Thus, by implication, such particles may well do more than simply filling a space.

The hesitation forms which occur during the examination and cross-examination phases of the seven hearings in this study are *um*, *ah* and *er*. There are 872 examples and they occur across all hearings.

Example 1 (Case six, file 1, p.19, l.12)

1 6W2: (2) **ah** that in that corner there was nobody (1) **um** (0.5) for a long time
2 (0.5) maybe before before seven or (0.5) before six thirty there may've
3 been few people but (0.5) by six thirty most people go home there.

Example 2 (Case two, file 1, p.5, l.16)

1 2J: (4) well you **er** (0.5) mention that you were charged with the theft of
2 these two vehicles.

Table 1, Appendix E shows that the greatest numbers of these three hesitation forms appearing in the data occur in case two, and they make up 32% of the total found throughout the hearings. This case involves no women, nor are there any members of ethnic groups other than New Zealand European. The hearings with the lowest incidences are cases five and seven (9% and 2% respectively). Interestingly, these cases involve one female judge, one female prosecuting counsel and one female defence counsel, while the defendants in both cases are Maori or Pacific Islanders. On the face of it, the distribution of hesitation markers in these hearings fits neither the women's language nor the powerless language frameworks easily.

Comparing these raw figures to the number of words spoken by each participant will give a clearer idea of whether any case, individual participant or group of participants shows a greater rate of hesitation forms. The rates are presented in Table 7.1.

Table 7.1: Rates of hesitation forms

Role	Case One	Two	Three	Four	Five	Six	Seven
J	1:73	1:61	1:150	1:407	1:589	0	1:104
PC	1:404	1:55	1:92	1:579	1:4,581	0	1:777
DC1	1:350	1:138	1:188	1:1,600	0	1:933	1:418
DC2	1:121	1:62	-	-	-	-	-
D1	1:30	1:62	1:43	1:54	1:63	0	1:58
D2	1:26	-	-	-	-	-	-
PW1	1:52	1:1,455	1:110	1:139	1:137	1:63	1:81
PW2	1:126	-	1:153	1:24	-	0	-
W1	1:29	1:21	-	1:51	1:60	1:46	1:63
W2	-	-	-	-	1:144	1:55	-
W3	-	-	-	-	1:74	1:172	-
W4	-	-	-	-	1:44	0	-
W5	-	-	-	-	1:16	0	-

Taking out those who do not use these hesitation forms at all (one person in each of the participant groups) the ranges of use are given in Table 7.2.

Table 7.2: Range of hesitations for participant groups

Role	Lowest use	Highest use
J	1:589	1:61
PC	1:4,581	1:55
DC	1:933	1:62
D	1:63	1:26
PW	1:1,455	1:24
W	1:172	1:44

Clearly there are wide variations in the frequency of hesitations in the speech of the professional groups. The greatest frequency for these groups is 1:55 (2PC), while the lowest is 1:4,581 (5PC). This is interesting, given that one might predict that lawyers would use hesitations less frequently because they are prepared for the hearings; in the main they know what their questions are going to be before the hearing begins. This applies whether one sees these particles merely as hesitations, fillers or as performing other functions such as allowing more syntactic options.

The non-professional groups range from 1:26 (1D2) to 1:1,455 (2PW1). However this gives a somewhat skewed picture, because 2PW1 uses hesitation forms at a vastly lower rate than any other PWs (and in fact only two professionals use them less often than he does). Excluding his figure, the rates for non-professional participants range from 1:26 to 1:172 (6W3), a smaller spread than for the professional groups. The smallest range occurs with the defendants, with 1:26 being the highest use and 1:62 being the lowest for this group. The range for the lay witnesses is wider than that for the police witnesses (apart from 2PW1). This group includes 5W5, who has the highest rate of all the participants. Overall, hesitation forms generally appear much more often in the speech of the non-professional participants. On this dimension, therefore, it could well be argued that hesitations are features of powerless language.

Looking at individuals, only two of the judges use more than a very few hesitations: 1J uses 19 (1:73), 2J uses 20 (1:61). The other four judges only use these forms seven times between them. Again, the standard explanations do not fit 1J's and 2J's use as they are both New Zealand European men. One might consider the question of experience. But, although this is the first time that 1J has appeared as a judge in a hearing before a jury, he is nonetheless a judge of some years' standing, and 2J is a very experienced judge.

Two judges appear in two hearings each. For both these judges different rates appear in their two hearings. For 2J/3J it may be useful to look at any differences between the two hearings. As mentioned before, the participants in both cases are all male and all belong to the dominant social group in New Zealand. However, some difficulties are experienced in case two and certainly in this case the judge uses hesitations vastly more than in case three: perhaps he uses them more in case two than he would ordinarily. Of course, it may be the converse: there may be something about case three which makes him use fewer hesitation forms than is his usual pattern. However nothing emerges from the analysis to support this, unlike for case two. The difference in rates for 6J/7J is not a useful comparison in reality in that this judge barely uses these forms in either case: in case six she uses none, and in case seven she uses only one.

As with the judges, the prosecuting counsel in only two cases (cases two and three) use hesitation forms with any frequency (1:55 and 1:92 respectively). In fact 2PC and 3PC are the same person and he falls towards the frequent user end of the spectrum of all participants. If the difficulties in case two affect the number of hesitation forms used by the judge, this can also be said to apply to this counsel, although the difference in rates is far less. It would be necessary to do a functional analysis in order to see more clearly whether other factors are operating here.

Only one defence counsel shows a similarly high frequency. This is the counsel in case two who takes the greater role (2DC2). In fact, some participants and observers of this case would suggest that it is this lawyer who creates the difficulties in the case because of the detailed and painstaking approach he uses for cross-examination.

Putting those three groups together, it is noticeable that in each one the greatest user of hesitations appears in case two. This suggests that, certainly among the professional participants, factors other than powerlessness or gender account for their use of hesitation forms.

What about the non-professional participants? The range within the defendant group is much less than any other group. While the two Samoan defendants have the greatest frequency, no defendant stands out as having infrequent use. This fits the predictable pattern of powerless language. The defendant with the highest rate, 1D2, has an interpreter present, but does not use him much. The other defendant with an interpreter is 6D. He uses the interpreter for

most of his answers, but uses no hesitations in the answers he gives directly, i.e. without the interpreter. This suggests that using the interpreter may have an effect on hesitations (which may in turn have implications for jurors' evaluations of speakers).

2PW1 has the least frequent use of hesitation forms, only using them twice. On the other hand, 4PW2, the most frequent user in this group, in fact uses them more often than any of the defendants and all of the witnesses bar one. Again, there is nothing to explain this except that this policeman may have felt less certain because of unfamiliarity with Auckland (he lives in Southland, some 1,500 km away at the other end of the country). However the other police witness in case four also comes from Southland and does not show the same frequency of hesitation forms.

Given the wide variation, both between and within participant groups, it is necessary to consider whether other factors, such as gender and ethnicity, can explain the differences between individuals.

Table 7.3: Hesitation rates among female participants

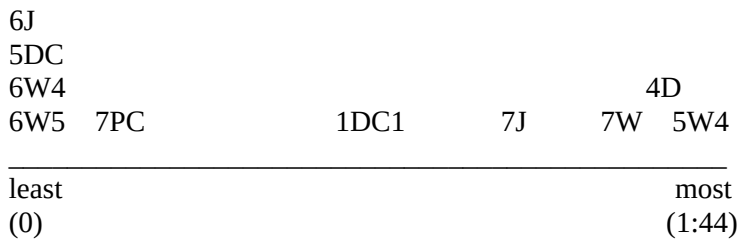
Participant	Hesitations	Words	Rate
6J/7J	1	330	1:330
7PC	1	777	1:777
1DC1	3	1,050	1:350
5DC	0	6,497	0
4D	66	3,536	1:54
5W4	14	612	1:44
6W4	0	438	0
6W5	0	137	0
7W	1	63	1:63
all women	86	13,440	1:156
all men	763	77,088	1:101

Table 7.3 shows clearly that the use of hesitation forms is not a corollary of being female in the courtroom situation. In fact this table suggests quite the opposite: that men use hesitations rather more often on average.

Putting these results onto a continuum (Figure 7.1), we see that role and power are relevant, in that it is those in non-professional roles who use them more frequently. The exceptions are 6W4 and 6W5, who use no hesitation forms. But both use an interpreter and we have only the transcript for 6W5 (although hesitations are sometimes typed, this is not always the case, so we cannot be sure that the transcript is accurate in this aspect). 6W4 answers directly quite

often, but her answers are very short - usually one word ("ae") which appears to mean yes (she is the only participant to use a language other than English when answering the court directly, as opposed to speaking sotto voce to the interpreter).

Figure 7.1: Female participants' use of hesitation forms



In sum, it appears that gender is not the indicator here, but that being in a powerless role may well be a factor.

Turning now to non-NZE participants, we get a different result (see Table 7.4). A superficial look reveals that, apart from one participant (1DC2), their rates are all substantially higher than the rate for all NZE participants.

Table 7.4: Rates of hesitation among non-NZE participants

Participant		Hesitations	Words	Rate
1DC2	(Samoan)	3	1,365	1:122
1D1	(Samoan)	26	789	1:30
1D2	(Samoan)	24	623	1:26
5D	(Maori)	17	1,079	1:63
6D	(Niuean)	0	811	0
7D	(Maori)	4	233	1:58
4W	(Maori)	50	2,546	1:51
5W5	(Pacific Is.)	20	316	1:16
6W2	(Indian)	37	2,030	1:55
6W4	(Niuean)	0	438	0
6W5	(Niuean)	0	137	0
total		181	10,367	1:57
all NZE		676	80,161	1:119

Discounting those who use no hesitations, all of whom use an interpreter, we see that the least frequent user is the one professional in this group (1DC2). This suggests that within the group either power or familiarity with the courtroom or both could be factors. However he has the second most frequent use of these forms among the defence counsel. Although two prosecuting counsel also use them more often than he does, he remains one of the higher users.

Among the defendants, 1D1 and 1D2 have the second most and most frequent use of these forms respectively, while 6D has the least. While both 1D2 and 6D both have an interpreter available, 1D2 makes little use of him (the possible effect of the interpreter is discussed above).

5W5 shows the most frequent use among the witnesses. Although using them less often than that, 4W and 6W2 remain frequent users in the overall picture. 6W4 and 6W5, who use no hesitation forms, also use an interpreter.

All participants of non-NZE origin (other than those using no hesitations), many of whom are second language speakers of English, fall into the more frequent end of the spectrum in using these hesitation forms. However, the explanation is not as simple as ethnicity on its own, because all bar one of these participants also belong in the non-professional groups of participants. In other words, ethnicity and powerless roles may interact to produce greater use of these forms. Thus ethnicity may be a contributing factor but it is not an absolute indicator.

By way of comparison Table 2, Appendix E details the NZE participants' use of hesitations. It shows, as already mentioned, that some NZE speakers show higher rates than many of the non-NZE participants.

Apart from 1DC2 and 6PC (the two professional non-NZE participants) the range for non-NZE participants is from 1:16 to 1:63. For the NZE participants, the range is vastly different, even taking into account the differing numbers in the two groups: 1:24 to 1:4,581, with only two of the 38 participants in this group using no hesitations (these two are involved in cases five and six, hearings where little trouble occurs). Fourteen of them fall within the range found for non-professional non-NZEs. Again this suggests that ethnicity is not the only factor. But neither is it straightforward to attribute it to powerlessness as three of them are professionals.

Thus it appears that ethnicity cannot be completely discounted as a factor in the use of hesitation forms, judging by the rate for non-NZE participants as opposed to NZE. However, it is unwarranted to suggest it is a strong factor, because some NZE participants use them more often than some non-NZE participants. A functional analysis might show other factors operating here and could be a subject of further study.

Looking now at participants as role groups, in Table 7.5 we see a pattern consistent with what

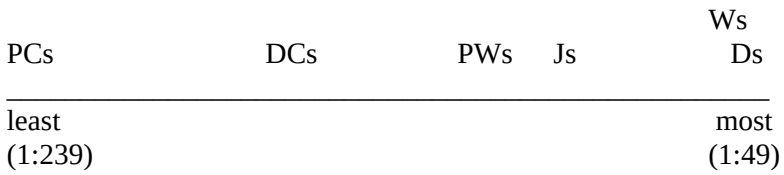
we would expect according to the power asymmetry, but with two interesting anomalies.

Table 7.5: Rates of hesitations by participant groups

Role	Hesitations	Words	Rate
J	47	5,456	1:116
PC	108	25,816	1:239
DC	139	25,176	1:181
D	270	13,364	1:49
PW	67	9,175	1:137
W	225	11,271	1:50
total	873	90,528	1:104

Using a continuum we see the following picture (Figure 7.2).

Figure 7.2: Use of hesitation by participant group



The highest rate of hesitation forms occurs among the defendants, with the witnesses showing a rate only a little less than this. In fact only one judge, one prosecutor and one defence counsel use hesitation forms more often than the defendant with the lowest use. This is entirely predictable on the basis of their position in the hierarchy of the court and supports the notion that powerlessness is a factor here.

After the defendants and witnesses, there is quite a decrease before the next group: the judges. But there is no clear explanation in terms of the power hierarchy for their apparently high rate compared to the remaining participants. It may relate to the fact that while they hold ostensibly the greatest power in the courtroom, they are also the only participants who are not informed about the case beforehand. It could also be related to other uses of hesitation, i.e. softening or facilitation. These would be consistent with their aims of trying to achieve a fair outcome and to ensure that the process operates as smoothly as possible.

Only slightly less frequent users of hesitation forms than the judges are the police witnesses, with a rate of one to 137 words. Looking at their roles in the justice system, police witnesses fall into neither the most powerful nor the least powerful categories. They appear more confident, at least in these hearings, than other witnesses, as well as having their own notes to refer to. They are usually much more familiar with the court process than any defendants or other witnesses. Thus their rate of hesitation forms in these data backs up their position in the hierarchical structure, if indeed such forms are evidence of powerless language.

The lowest occurrence of hesitation forms occurs with the counsel, although there is a noticeable difference between the two groups of lawyers. For the prosecutors, one hesitation form occurs in every 239 words, but for the defence counsel the rate is higher: one in 181 words. However, if we look at the figures more closely, we find that three of the 16 lawyers involved in these hearings use a substantial number of hesitation forms. Two of these are prosecutors: 2PC has a rate of 1:55; 3PC has 1:92, and, as noted above, these are the same person. The other fourteen prosecutors only use ten hesitation forms between them. This discrepancy, as with judges, suggests that the use of hesitation forms may have little to do with the participants' power in court, at least on its own account.

A similar observation may be made about the defence counsel. 2DC2 also has a high rate: 1:62 (between the rates for 2PC/3PC). Even though he has substantially more hesitations than most other participants, he has a large number of turns as well. Note, though, that 5DC has even more turns, but exhibits none of these hesitation forms. In addition to that, 2DC2 has longer turns than any other participant. Given that this is a New Zealand European man, thus belonging to the dominant group in New Zealand society, and that he is in a powerful role in the hearing, this can perhaps only be described as an individual difference. This is the first criminal hearing this lawyer has conducted in front of a jury, and perhaps his frequency in using hesitation forms is attributable to this lack of experience and/or confidence.

Another aspect worth looking at is whether there are differences between the cases. This will shed more light on the question of whether power is the major factor or whether other factors interact with it in a significant way.

Table 7.6: Rates of hesitation forms by case

Case	Hesitations	Words	Rate
One	109	9,997	1:92
Two	270	18,855	1:70
Three	153	11,065	1:72
Four	150	17,129	1:114
Five	76	16,029	1:211
Six	102	15,455	1:152
Seven	13	1,998	1:154
total	873	90528	1:104

Figure 7.3: Use of hesitation forms by case

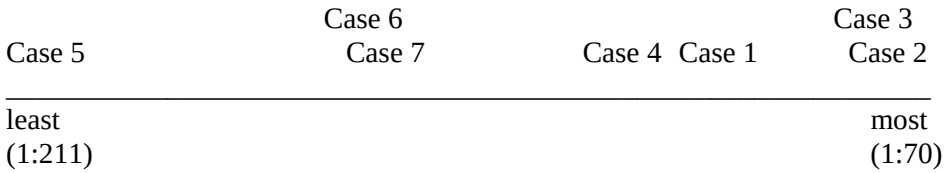


Table 7.6 and Figure 7.3 show that looking at rates by case changes the picture a little. The rate of hesitation forms occurring in this body of data is one to every 104 words. One case, case five, shows a substantially lower rate than the others. The two highest rates occur in cases two and three, and their rates are extremely similar. These are the two cases in the corpus which have only male New Zealand European participants. However case one shows the next most frequent use of hesitation. This case involves two Samoan defendants (one of whom uses an interpreter), a female defence counsel and a Samoan male defence counsel. Case four has a rate only just below the average. Here there is the one female defendant appearing in the corpus, but all other participants in this case are New Zealand European males.

There is then quite a lowering in frequency. Cases six and seven have very similar rates. These are the cases where the female judge presides. The defendants are Niuean (using an interpreter) and Maori respectively, and case six involves one Indian, one Irish and two Niuean witnesses (the latter also using the interpreter). Another Irishman appears as prosecutor in case six. In addition to the judge, case seven has a female prosecutor and a female witness.

These rates certainly support the notion that hesitation does not depend on gender, one of the

most often stated reasons for being powerless. Nor does ethnicity appear a strong factor when looking at the cases overall. However this must be tempered by noting Table 7.4 and Table 2, Appendix E, where ethnicity is shown to have some relevance. The conclusion must be either that hesitation is used by people in powerless roles in certain situations, or that it is not a powerless feature at all and is used for other purposes.

Swerts (1998) addresses this question of other purposes when considering the functions of pauses filled by *um* and *uh* in Dutch. While filled pauses are not defined explicitly, they appear to mean hesitations such as are discussed in the present chapter. He notes that "FPs may be useful for listeners, since they may presignal upcoming important linguistic materials" (1998, p. 486), although he reports differences between the functions of the two tokens. He concludes that filled pauses are "linguistic elements" (p. 494) rather than features which carry no linguistic function, such as laughter. He suggests that they function as discourse markers and that they are more likely to be used in the initial position at strong boundaries (the strength being estimated according to the speakers' agreement levels). Perhaps a similar analysis could be applied usefully to New Zealand data, but this is not done as part of the current study.

To summarise, then, the present study finds that, in a crude sense, the use of hesitation forms reflects the patterns of power within the courtroom, except for its use by the judges. But this conclusion is not necessarily supported completely when we look at the individuals within the participant groups. In other words, when we look more closely, we find other factors than solely position in the power hierarchy, whether in society in general or in the courtroom, are involved in the use of hesitation forms. This, when taken in conjunction with the results of other recent research, such as that by Swerts (1998), suggests that a functional approach may well yield more enlightening results.

7.2 Hedges

Recent studies have shown that the use of hedges is considerably more complicated than was assumed by Lakoff (1975) and O'Barr and Atkins (1980). The hedge *sort of* has been found to have two different sets of functions, epistemic modal (expressing speaker certainty) and affective (expressing speaker attitude), as well as being a filler or allowing planning (Holmes, 1988). Holmes (1993) finds that *sort of* can be used to mitigate the force of an utterance, that women tend to use it interpersonally more often than men and that women use it more than men in formal and semi-formal situations. She also finds that overall it appears more often in

less formal situations, and that its occurrence and function relate more to the activity type and discourse type than to factors such as gender. While accepting Holmes's point that the term hedge has connotations which do not reflect all the functions of these discourse features, I continue to use the term because pragmatic particle seems too broad, as it includes items with a range of (different) functions.

She refers to the difficulty of assigning functions to particular instances of *sort of*, which is complicated by the possibility of an instance being multi-functional. Despite this she does assign functions, based on such factors as co-occurrence (e.g. it often occurs in conjunction with non-degree words, numbers and measurements). However her assignations are not always as clearcut as she suggests. Her example "it's sort of surrealist" (1988, p. 95) illustrates the point. She suggests that *sort of* here is indicating that the precision of the following word is "not crucial" and that it is intended to be vague. While this is certainly one possible interpretation, I do not see that it can be stated unequivocally; it seems an intuitive judgement and at least one other meaning is possible as well (i.e. that it has some elements of surrealism but does not fit the genre completely). A similar comment can be made about its use as a special style marker (showing that the speaker "is aware that the following word is in some way marked", 1988, p. 98). Here too her examples do not seem to me to provide satisfactory evidence of her interpretation: the conclusions are certainly possible intuitively, but how do we know that the interpretations fit with the speakers' intentions?

Stubbe and Holmes (1995) comment that it is usually possible to identify a primary function, but do not discuss how to do so. Again it seems to be an intuitive judgement. This detailed study considers seven pragmatic devices, including the hedges *sort of* and *kind of*, as they occur in 75,000 words taken from the Wellington corpus. The authors find that age, gender and class interreact in different ways for the different devices discussed. *Sort of* and *kind of* (which they discuss together) are used more often by middle-aged speakers, with class and gender being less relevant.

A further comment is made by Viechnick (1997) in her study of discourse in a graduate seminar, where she attempts to marry conversation analysis with Goffman's face approach. While her interpretation of features such as long pauses and gaze could equally well be argued differently, she nevertheless makes some interesting points. One of these is her suggestion that what she calls "personal-point-of-view prefaces" (which include "*I think it's really*" and "*I just think*") are "the markers of judiciousness, not tentativeness" (1997, p. 110). This is

based on the premise that we accept that face preservation is an integral part of every interaction.

Two lexical hedges occur in the data with some frequency. The first is the word *just*, which is by far the more common of the two in the transcripts. Uses of this word in the sense of time (meaning immediately beforehand) and in the exclusive sense (meaning only in fact, e.g. "just the three of us" in response to "five of you") are not included. *Sort of* is perceived as a commonly used hedge, and does occur in the data, but other lexical hedges, such as *kind of*, occur much less frequently. Therefore, only *just* and *sort of* have been included for the purposes of this part of the study (note that instances of *sort of* with its "type of" meaning have been excluded).

Example 3 (Case one, file 2, p.l0, l.26)

1 1PC: why did you put your hand through the glass onto the bars.
2 1D2: (4/) I was **just** (1/1) holding the bars.

Example 4 (Case three, file 1, p.18, l.51)

1 3D: (1/) I was invited (0.5) to a barbecue (1) and um (/ 0.5) I didn't know
2 many people there that (0.5) um (1) **sorta** well but I I knew a few faces.

Given that the language situation in the present study is rather more formal than those Holmes discusses, we might expect to find hedges occurring less often. (On the other hand, if they show powerlessness, we might expect them more often).

Just occurs 331 times and *sort of* 47 times, making 378 examples in the total sample of 90,528 words. For *just* this is a percentage of 0.37%, while for *sort of*, it is 0.05%. Thus in this corpus *sort of* is indeed less frequent than in Holmes's 1988 data (0.165%), and also than the other studies Holmes cites (Aimer, 1984 - 0.34%; Coates, 1988 - 0.45%; Jones corpus - 0.134%; Meyerhoff corpus - 1.11%). In the five conversations used for comparison purposes in this thesis (see chapter ten for more details), *just* appears as a hedge 147 times (0.73% of the 20,155 words) and *sort of* 30 times (0.15%); these figures also support the assertion that hedges occur less often in more formal situations.

Table 3, Appendix E shows that the case where the most hedges occur is case five, while the fewest occur in case seven. The greatest individual user of hedges is 6W1. While a New Zealand European man, he is also elderly and the victim of assault and robbery; he is the only

participant who suffered physical harm. It is possible that his hedging reflects his distress at the events involved or that his memory has elements of uncertainty. These in turn could reflect a feeling of greater powerlessness, given his situation.

Again it is more useful to look at rates, i.e. the number of hedges occurring per number of words. These are presented in Table 7.7.

Table 7.7: Rates of lexical hedges *just* and *sort of* by participant group

Role	Case One	Two	Three	Four	Five	Six	Seven
J	1:279	1:406	1:100	1:181	1:196	1:226	0
PC	1:404	1:437	1:169	1:464	1:218	1:435	1:777
DC1	1:210	1:298	1:439	1:133	1:325	1:239	1:209
DC2	1:341	1:209	-	-	-	-	-
D1	0	1:366	1:200	1:272	1:54	0	0
D2	1:103	-	-	-	-	-	-
PW1	1:182	0	1:294	1:1,391	1:686	0	1:403
PW2	0	-	0	1:65	-	0	-
W1	1:289	1:640	-	1:150	1:180	1:62	1:63
W2	-	-	-	-	1:66	1:338	-
W3	-	-	-	-	1:50	1:229	-
W4	-	-	-	-	1:153	0	-
W5	-	-	-	-	0	0	-

Apart from those who do not use *just* and *sort of* at all (one judge, three defendants, four police witnesses and three lay witnesses), the least frequent user is 7PC, while 5W3 uses them the most frequently. A number of other people also use them more often than one in a hundred words: 3J, 5D, 5W2, 6W1, and 7W1. One of these (5D) is Maori, and one (7W1) is female. What is the picture for other participants: do the following tables show any pattern in the use of these words by either non-NZE or female participants?

Table 7.8: Rates of lexical hedges *just* and *sort of* for female participants

Participant	Hedges	Words	Rate
6J	1	226	1:226
7J	0	104	0
7PC	1	777	1:777
1DC1	5	1,050	1:350
5DC	20	6,497	1:325
4D	13	3,536	1:272
5W4	4	612	1:153
6W4	0	438	0
6W5	0	137	0
7W	1	63	1:63
all women	45	13,440	1:299
all men	333	77,088	1:231

Figure 7.4: Use of lexical hedges *just* and *sort of* by female participants

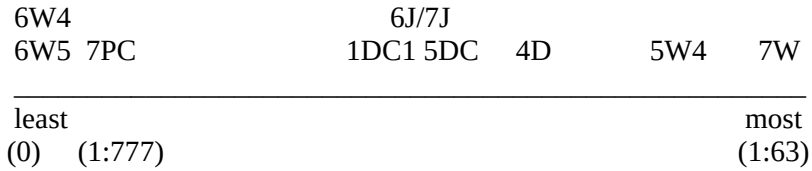


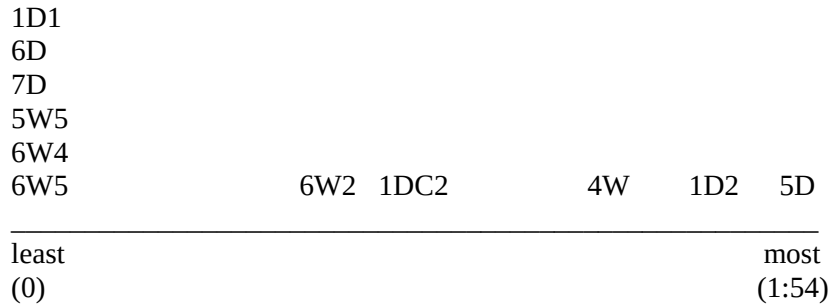
Table 7.8 and Figure 7.4 show that the range here is wide, and suggests that being female has little to do with using these two hedges, in the courtroom at least. Looking more closely we see that the women simply cannot be said to use these terms frequently, in comparison with men. Case seven appears to have both frequent and infrequent users among its three female participants. However the judge uses none, and the prosecuting counsel and witness use one each (in 777 and 63 words respectively). In fact, only 1DC1, 5D, 4D and 5W4 use them more than once. Once again, it is quite clear that men use these two hedges more than women in the courtroom. This is different from Holmes's finding that women use them more often in more formal situations.

Table 7.9: Rates of lexical hedges for non-NZE participants

Participant	Ethnic group	Hedges	Rate
1DC2	Samoan	32	1:341
1D1	Samoan	0	0
1D2	Samoan	6	1:103
5D	Maori	20	1:54
6D	Niuean	0	0
7D	Maori	0	0
4W	Maori	17	1:150
5W5	Pacific Is.	0	0
6W2	Indian	6	1:338
6W4	Niuean	0	0
6W5	Niuean	0	0
all non-NZE		75	1:138
all NZE		303	1:265

Table 7.9 details the rates of the two lexical hedges of non-NZE participants. Comparing this information with the use of hedges by the NZE participants, we find that only two of the non-NZE participants use these forms less often than the average for the NZE participants. One of these is the Samoan lawyer in case one, while the other is the Indian witness in case six. The average rates found for the two groups show what appears to be a substantial difference between them. However, as the continuum below demonstrates (Figure 7.5), more of the non-NZE participants do not use these hedges than do use them.

Figure 7.5: Use of lexical hedges *just* and *sort of* for non-NZE participants



Because only five of the eleven participants in this category use these terms at all, the average gives a false impression. Two of these five are second language speakers of English (6W2 and 1D2), as are four of the six remainder (1D1, 6D, 6W4 and 6W5). Perhaps using the services of an interpreter makes some difference here. For 1D2, who has an interpreter available but uses him little, these forms appear fairly frequently. 6D, 6W4 and 6W5, who have an interpreter and do use the service, use none of these forms. On the other hand, 1D1

does not use these hedges and also does not use the interpreter. This question needs to be looked at more closely.

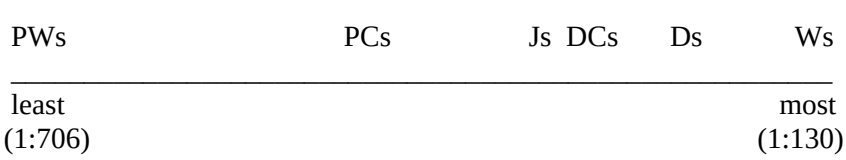
As a general comment, there appears to be little clear relationship between ethnicity and use of *just* and *sort of*. This is consistent with Lane's (1988) finding that hedges and uncertain responses do not occur often among second language speakers of English.

Looking now at the participant groups, we see from Table 7.10 and Figure 7.6 that one group uses them much less frequently than the other groups.

Table 7.10: Rates of lexical hedges *just* and *sort of* by participant group

Role	Hedges	Words	Rate
J	24	5,456	1:227
PC	80	25,816	1:323
DC	108	25,176	1:233
D	66	13,634	1:207
PW	13	9,175	1:706
W	87	11,271	1:130
total	378	90,528	1:239

Figure 7.6: Use of lexical hedges by participant groups



The lowest rate here is shown by the police witnesses. This may be explained by their ability to use their notes of arrests and interviews, as well as their presumed familiarity with the courtroom (at least compared to other witnesses and defendants) and their need to appear certain in their evidence.

The next least frequent users of the hedges are the prosecuting counsel. The defence counsel use them rather more than their colleagues. The rate for all lawyers is 1:271, a little greater than the overall rate at which hedges appear throughout the hearings, but the defence counsel use them more than that average rate. Although one defence counsel (2DC2) uses many more hedges than the other lawyers involved in the hearings (he uses 32 in 395 turns), three others use 20 or more. 2DC2's rate is 1:209, but 3PC has the higher rate of 1:169, while 4DC's rate

is higher still at 1:133. In addition, the lawyers are the only groups of participants who all use these hedges: not one of them avoids them. This certainly does not equate with powerlessness.

The range within the prosecuting counsel is far greater than the range among the defence counsel. 3PC and 5PC have much higher rates than the other prosecutors, while the defence counsel are much closer to each other in their use (with only 4DC being higher than 1:200 and 1DC2 and 3DC being lower than 1:300).

The witnesses have the highest rate of hedges, rather higher than the defendants. While this is predictable in terms of power for the witnesses in comparison with the professional groups, it is not so for the defendants. One would not have assumed that defendants would use hedges less frequently than witnesses. This difference may have to do with each group's level of involvement in the hearings and the degree to which the outcome matters to them.

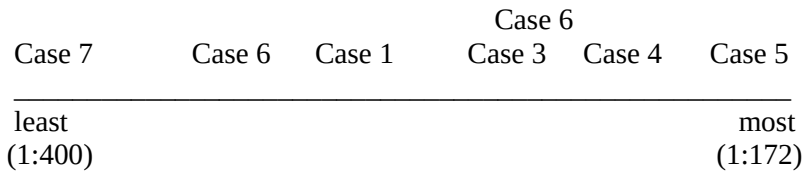
As with hesitation forms, the judges prove interesting, with a relatively high rate (1:227). This is only a little higher than the rate for defence counsel, but substantially higher than that for prosecutors. Again, this is not easily related to the question of power within the courtroom and other explanations are needed.

Table 7.11 and Figure 7.7 compare the use of *just* and *sort of* in the seven cases.

Table 7.11: Rates of lexical hedges *just* and *sort of* by case

Case	Hedges	Words	Rate
One	34	9,997	1:294
Two	56	18,855	1:337
Three	47	11,065	1:235
Four	77	17,129	1:222
Five	93	16,029	1:172
Six	66	15,455	1:234
Seven	5	1,998	1:400
total	378	90,528	1:239

Figure 7.7: Rates of lexical hedges *just* and *sort o*f by case



The greatest number of hedges occurs during case five, and the lowest in case seven. Looking at the rates confirms that picture. The position for case seven could be accounted for by the lack of dispute in this hearing. On the other hand, perhaps it is the reverse of the position which some previous research would indicate: the facts are that this case has three female participants, i.e. a greater proportion than any others in this corpus, and that they appear in three different roles. This supports the suggestion made above that using lexical hedges has little to do with gender, and is consistent with Holmes' (1988) results.

The position in case five, with the greatest rate of these hedges, also supports this suggestion. It has a mix of participants, with one female lawyer (NZE), a Maori male defendant, and a Pacific Island male witness, as well as New Zealand European men appearing in all the roles.

To summarise then, the picture for hedges, too, is complicated. It cannot be accounted for straightforwardly by the powerful v. powerless language distinction.

7.3 Intensifiers

Intensifiers occur 496 times in this data, more often than any of the other features of powerless language looked at in this study. Many different terms are used in this way in the study, and they include terms like *pretty*, *very*, *quite*, and *in fact*.

Example 5 (Case five, file 2, p.2, l.19)

1 5DC: you did obtain though didn't you a number of names and addresses
2 5PW1: yes
2 5DC: (3 /) and **in fact** you spoke to a number of those people?

Example 6 (Case two, file 2, p.8, l.6)

1 2DC2: (2 / 2) now I'm not disputing the (0.5) the next question you ask is how
2 you know G (0.5) and the answers **quite** straightforward that he ...

Example 7 (Case two, file 3, p. 10, l.2)

1 2PC: (1) yes (5 / 1) you I'm sorry (0.5) yet you were arrested and charged
2 with these offences (1) and alongside that (1) you had made (0.5) what
3 amounts to (0.5) **fairly** revealing confessions about your involvement (1)
4 with C and W1 (0.5) right?

Table 4, Appendix E summarises the use of intensifiers by case and participant. Among the professional participants, two defence counsel stand out as using many intensifiers: 5DC and 2DC2. 6DC is the next most frequent user. Otherwise the professionals use them in low numbers. No one stands out among the lay participants, who range from no use to 29 instances. Nine participants do not use intensifiers at all. They include four judges and five lay participants, but do not include any of the counsel. Table 7.12 outlines the rates for each participant.

Table 7.12: Rates of intensifiers by case and participant

Role	Case One	Two	Three	Four	Five	Six	Seven
J	1:697	1:243	0	0	0	1:226	0
PC	1:726	1:191	1:3,043	1:273	1:372	1:1,522	1:777
DC1	1:175	1:224	1:658	1:291	1:105	1:90	1:139
DC2	1:455	1:94	-	-	-	-	-
D1	1:263	1:88	1:138	1:141	1:98	1:203	1:233
D2	1:125	-	-	-	-	-	-
PW1	1:729	1:208	1:881	1:464	1:98	1:125	0
PW2	0	-	1:763	0	-	0	-
W1	0	1:107	-	1:116	0	1:88	1:63
W2	-	-	-	-	1:96	1:203	-
W3	-	-	-	-	1:149	1:137	-
W4	-	-	-	-	1:87	1:88	-
W5	-	-	-	-	1:105	1:46	-

Looking now at the rates of use, the two highest rates (6W5 and 7W1) are somewhat deceptive because the speakers had only a small amount of talk (137 and 63 words respectively). 6W5, a female Niuean, shows the highest use of intensifiers, although she only uses them three times. Note that for this witness only the court transcript is available of her evidence, and of course it is subject to some on-the-spot editing. This means that she may well have used more words than the figures given.

7W1, a New Zealand European woman, apparently has next highest rate, but in fact has very few turns, with only 63 words in total, and uses only one intensifier. However, she is the complainant who suffered assault by being touched inappropriately (in a sexual way) and one might therefore expect that she would be among the highest users of intensifiers in this study.

In reality, 6W1, a New Zealand European male, uses intensifiers with greater frequency than 7W1. It will be remembered that he is the elderly victim of assault and robbery. This suggests that other factors may influence the use of intensifiers, i.e. it may have something to do with involvement as opposed to either power or explanations such as uncertainty.

Table 7.13: Rates of intensifiers for female participants

Participant	Intensifier	Words	Rate
6J	1	226	1:226
7J	0	104	0
7PC	1	777	1:777
1DC1	6	1,050	1:175
5DC	62	6,497	1:105
4D	25	3,536	1:141
5W4	7	612	1:87
6W4	5	438	1:88
6W5	3	137	1:46
7W	1	63	1:63
all women	111	13,440	1:121
all men	385	77,088	1:200

Figure 7.8: Rates of intensifiers for female participants

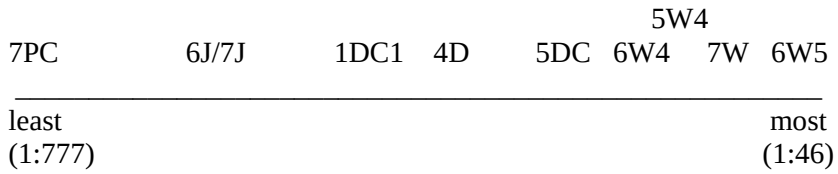


Table 7.13 and Figure 7.8 address the question of gender difference in the use of intensifiers. Here women are shown as using intensifiers more often than the men, which Bradac, Mulac and Thompson also find in their study reported in 1995.

However, it is clear that being female on its own does not predict the use of intensifiers, as the data show a range of no use (7J) to 1:46 words. While use may interact with role, it cannot be correlated straightforwardly with power. The female judges and prosecuting counsel use intensifiers rarely, but the female defence counsel use them markedly more often. Rather more predictably, the female witnesses all use them more often than every 100 words.

The two female defence counsel do not fit the pattern found with the other features looked at in this study. Rather than their use being only slightly more than the other female

professional participants, it is much closer to the witnesses and in fact the female defendant falls between them. However, this is not related to their gender, as can be seen below in the discussion of Table 7.15. One of these counsel falls above the average and one below in their use of this feature and neither is the lowest or highest user in that participant group. The same applies to the one female defendant. These findings are interesting in light of Bradac, Mulac and Thompson's conclusion that "female intensifiers produced relatively high ratings of sociointellectual status, a clear indicator of power" (1995, p. 113). Given that my study does not find that the powerful women in court use intensifiers more often than the less powerful women, it underlines the need to take care in making conclusions about evaluations based only on a very limited number of factors and not taking matters of the wider context into account.

Table 7.14: Rates of intensifiers for non-NZE participants

Participant	Ethnic group	Intensifier	Rate
1DC2	Samoan	3	1:455
1D1	Samoan	3	1:263
1D2	Samoan	5	1:125
5D	Maori	11	1:98
6D	Niuean	4	1:203
7D	Maori	1	1:233
4W	Maori	22	1:116
5W5	Pacific Is.	3	1:105
6W2	Indian	10	1:203
6W4	Niuean	5	1:88
6W5	Niuean	3	1:46
all non-NZE		70	1:148
all NZE		496	1:162

Turning to the question of ethnicity, on a superficial look Table 7.14 appears to show that ethnicity is a major factor here. However, with only one professional participant not in the dominant ethnic group (NZE) and ten of the 33 lay participants belonging to other ethnic groups, it is impossible to say whether it is their ethnicity, their power or their roles, or perhaps a combination of these, which is affecting their use of intensifiers. It is interesting that 1DC2 uses intensifiers far less frequently than the average for defence counsel as a group, but he is not the least frequent user among them; his ethnicity clearly does not account for his use of this feature. Unlike hedges, the use of intensifiers shows no relationship with the use of interpreters (this recalls Bradac, Mulac and Thompson's (1995) finding that hedges and intensifiers work independently of each other in problem-solving interactions).

Table 7.15: Rates of intensifiers by participant group

Role	Hedges	Words	Rate
J	8	5,456	1:682
PC	58	25,816	1:445
DC	198	25,176	1:127
D	107	13,634	1:125
PW	30	9,175	1:306
W	95	11,271	1:119
total	496	90,528	1:183

Figure 7.9: Rates of intensifier use by participant group

Table 7.15 and Figure 7.9 confirm that using intensifiers correlates with power in the courtroom with the exception of one participant group. Thus judges and prosecuting counsel use them rarely and police witnesses fall mid-range, while defendants and witnesses use them the most frequently. However, defence counsel and police witnesses do not fit the predictable pattern here.

In fact, defence counsel use them at almost exactly the same rate as the defendants. A possible explanation for this is that these defendants and their counsel may be reflecting each others' language use. This would be consistent with the findings of Aronsson, Jonson and Linell's (1987) research on speech accommodation. These are the participants likely to have the closest relationships within the hearings (apart from the defendant and witness in case four) and in these cases they had all had some dealings with each other (i.e. all these defendants had briefed their defence counsel; none of the hearings involved a duty solicitor). If accommodation were occurring, however, we might expect the finding to be repeated with at least some of the other features, and this is not the case.

Table 7.16: Rates of intensifiers by case

Case	Intensifiers	Words	Rate
One	25	9,997	1:400
Two	149	18,855	1:127
Three	35	11,065	1:316
Four	78	17,129	1:220
Five	116	16,029	1:138
Six	89	15,455	1:174
Seven	8	1,998	1:250
total	500	90,528	1:181

Table 7.16 reveals that case one shows a noticeably lower use of intensifiers, with a rate of one in every 400 words. They appear with the greatest frequency in case two, although the rate for case five is fairly close to this. This repeats the pattern found with the other features discussed here: a feature commonly associated with powerless language is found more often in a hearing where all participants belong to the dominant group in New Zealand society. Thus, rather than societal aspects, it may be a question of other factors (which could include personal feelings of powerlessness) operating here. Further research would be necessary to establish whether this is so.

Another view can be found in Hosman and Siltanen (1994). This carefully controlled study of the consequences of powerful and powerless speech finds that intensifiers are associated with perceptions of control (over oneself and others), authoritativeness and sociability. They then call into question whether intensifiers should be seen as powerless at all. The emphasis of their research is, of course, different from that of the present study in that they do not look at who is using the features but simply at how they are perceived and this may explain the two different conclusions about intensifiers' involvement in powerless language.

Putting the evaluative consequences aside for a moment, in summary the present study finds that intensifiers do show some correlation with powerlessness. But it is clear that other factors are also relevant, such as the four victims' emotional involvement. They may also have more to do with more personal factors in the case of defence counsel and perceptions of role in the case of police witnesses. Further research into hearer perceptions and a careful functional analysis are needed to clarify our understanding of how intensifiers operate.

Chapter Eight: Powerless Questions?

8.1 Witnesses ask questions

The matter of witnesses asking questions has already been considered in chapter four, which looks at cross-repair. For the purposes of this section (8.1), all those performing a witness function (defendants, police witnesses and lay witnesses) are included in the term "witness".

Although not all the cross-repairs found in the data can be called questions, strictly speaking, in general they do have this function. 2PW shows an unusual pattern (among the witnesses in these hearings) in that he initiates an unusually high number of cross-repairs (22); 10 of those can be categorised as questions (for the remainder he uses declaratives to correct something in the preceding utterance). Apart from those 12 examples, only three of the 85 cross-repairs initiated by witnesses are not clear questions; two of these are inaudible, but the fact that they are followed by a repeat of the preceding question suggests that they may have been clarification requests. Further, there is only one question uttered by a witness which does not fall into the category of cross-repair (4W asks whether he would be allowed to buy cigarettes during an adjournment which occurs during his cross-examination).

To recapitulate briefly, as predicted, witnesses do not initiate cross-repair, including asking questions, very often. This applies to all three groups which perform a witness function in court: defendants, police witnesses and lay witnesses.

Rather than repeating the material in chapter four, I simply present it here as continua, first for all the participant groups (Figure 8.1) and then for the separate witness groups (Figures 8.2 – 8.4). Note that on this issue I have chosen to use a ratio of cross-repair to turns, unlike the other aspects of powerless language considered in these chapters. I have done so because the repairs obviously contain various numbers of words and most of the time form complete turns.

Figure 8.1: Asking questions - by participant group

Figure 1 shows clearly that asking questions follows predictably the pattern of power in the courtroom, but reversing the situation for the other features (apart from tag questions and terms of address). As stated in chapter four, this is not a particularly exciting observation given that this is what we would expect in the courtroom situation anyway. In other words, this is situational rather than being caused by the power differential in a simplistic sense.

An interesting difference occurs with the judges. Unlike all the other features discussed in this study, they ask questions at a rate slightly higher than the lawyers rather than falling near the middle of the continuum as they do with the other features. This is not to say that they ask a lot of questions, because of course they have many fewer turns than the lawyers. Note that this rate does not include their asking procedural questions, but only their questions involving repair. Why they should have this comparatively higher rate of asking questions is not immediately apparent to me, unless it is that they are particularly concerned with making things clear and fair, as well as in the interests of achieving a smooth process (and perhaps avoiding having their decisions appealed against). This is another area which could profit from further research.

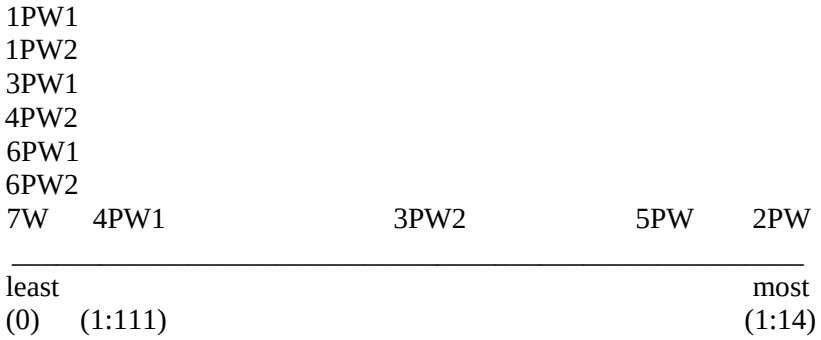
There appears to be quite wide variation among the defendants in this area, as shown in Figure 8.2.

Figure 8.2: Defendants asking questions

Lane (1993) notes that previous research has found that Samoans avoid making requests for clarification to people of higher status and that second language speakers avoid requests for clarification in formal situations. This could certainly explain 1D1's low rate for asking questions. However, he does not have the lowest use, and the other Samoan defendant has the second highest rate (which is substantially higher than that of 1D1). Note, though, that 1D2 uses an interpreter and we can speculate that this may encourage him to ask questions. But one defendant is not enough to allow a stronger statement and further research could prove interesting. Further, participants from other ethnic groups, including NZE, also ask few questions. It does not look as if ethnicity is particularly involved here. With only one female

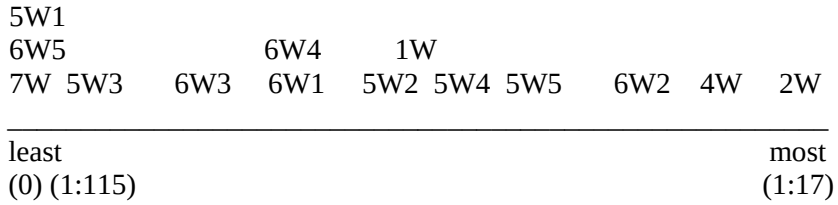
defendant (and she has the second lowest rate for asking questions) we can say nothing about the influence of gender here either.

Figure 8.3: Police witnesses asking questions



While Figure 8.3 shows a relativity between the police witnesses, it is a little misleading because apart from 2PW (who initiates 22 repairs, but also has a great many more turns), these participants ask almost no questions at all. And 2PW does so, as explained below, because of the cross-examining style of 2DC2 and the difficulties this causes.

Figure 8.4: Lay witnesses asking questions



Again there is a wide variation among the lay witnesses in this area, as Figure 8.4 illustrates. Certainly the explanations of gender and ethnicity shed no light on this variation, either in relation to low use or higher use.

Putting all this together, we are left with the conclusion that this is a matter almost purely of role in court and perhaps individual goals and situations, rather than societal factors.

As an example of individual causes we can see that one police witness and one lay witness ask noticeably more questions (i.e. have a higher rate) than the others. These both appear in case two. The defendant in case two also has the highest rate among the defendants, although it is much lower than the police witness and the other witness in that case.

Two factors may help to account for this. First, 2DC2, the most active of the two defence counsel, is appearing in his first criminal jury trial and performs painstaking cross-examination on matters of language and interpretation (many questions being "what did you mean by ...?" or an equivalent phrase). As a result a certain amount of cross-repair is initiated by the lay participants when they either do not understand what the counsel is asking or dispute something about his question. A further result is that it leads to some intervention by the judge and apparent irritation in general. Secondly, two of the aspects this study is looking at, gender and ethnicity, are not factors in this trial. All the participants are New Zealand European men. On the face of it, therefore, it could be argued that these witnesses, as part of the dominant group in New Zealand society, feel more able to ask questions than members of other groups.

Of course, members of the dominant group also appear as witnesses in several of the other cases. However, perhaps the fact that all participants in case two belong to that group changes the climate of the hearing. It is one of only two cases among the seven involved in the study which have such a homogeneous participant group.

In summary, then, the frequency of witnesses asking questions is as the power differential would predict and is caused by their roles in the courtroom situation. Neither gender nor ethnicity appears to be playing a part. Clearly, though, individual differences are also relevant to a defendant's or witness's choosing to ask questions in court.

8.2 Tag questions

Tag questions (tag Qs) have a number of uses, most obviously to express uncertainty about a referential proposition. They are also used as an "'exit technique' especially suited to do turn-taking work" (Ford and Thompson, 1996, p. 168). In the courtroom, however, turn-taking follows more predictable patterns than in everyday conversation and is controlled by both the genre and some roles. We can therefore wonder whether tag Qs in court do other things as well. On the one hand "they do Sacks et al.'s third turn job, creating or modifying a context for a next turn in the interaction" (p. 164). On the other hand, perhaps all they are doing is emphasising turn transition points. Therefore we need both to look at who is using them and to consider why they are being used.

While tag Qs have been found to be one of the features of women's, and later, powerless language, by some researchers, others have found them used just as often by men. The

difference has been found to lie in their functions rather than their occurrence per se. They have been shown to operate as coercive and confrontational devices (using negative politeness) and in other ways as well, including for facilitative purposes and positive politeness. Holmes (1990) reports the results of a study of tag Qs in New Zealand. She finds that in informal situations women do indeed use them facilitatively and for positive politeness more often than men, and that it is men who use them more often to request confirmation or express uncertainty. She finds that "those responsible for the success of an interaction" (p. 263), such as teachers, interviewers and hosts, use tag Qs facilitatively.

Stubbe and Holmes (1995) also consider tag Qs. These devices are another of their examples showing how different social factors interreact differently for different features. Unlike hedges, where age is found to be the salient factor, with tag Qs age, class and sex are found to be relevant. Further, as opposed to the study mentioned in the previous paragraph, the 1995 study finds tag Qs are used more often by middle class, middle-aged men. They are used less often in the semi-formal interviews (for radio and T.V.) than in the informal conversations. One might wonder whether this is inconsistent with their finding that tag Qs and the particle *eh* occur in complementary distribution according to whether standard NZE is being used or the "vernacular", but they do not address this. When tag Qs do appear in the interviews, they are used facilitatively.

The situation is clearly different again in the courtroom, where tag Qs have been shown to operate as confrontational and coercive devices (Danet et al., 1980; Lane, 1988, 1990) or as challenging (Luchjenbroers, 1997). Questions in court belong to the lawyers in the main. Thus, O'Barr and Atkins exclude them from their study on the basis that witnesses rarely ask questions. However they are included here because the notion of powerless language is best described on a continuum and because this study looks at language use by all active participants in the courtroom process. The groups which fall predictably towards the more powerful end of the spectrum will still appear at different places on it. I am therefore interested in discovering the patterns of use for all participants, not merely those who answer rather than ask questions. In addition to that, it is not prohibited for witnesses to ask questions, and they do so at times.

The tag Qs which have been considered here are of two types:

1) the aux + pronoun construction (grammatical tags, usually with reverse polarity), of which 154 appear in the data;

Example 1 (Case four, file 1, p.12, l.39)

1 DC: that's how you recorded it **isn't it**?

2) invariant tags - the transcripts show frequent use (117 instances) of *is that right?* and *is that correct?* in the same position and with apparently similar functions as the aux + pronoun construction;

Example 2 (Case one, file 2, p.13, l.22)

1 PC: (2.0) and that ah (2.0) it was just the spur of the moment that you lied to
2 the police (1.0) the night they arrested you **is that right**?

This makes a total of 271 tag Qs appearing in the data (i.e. combining the two types).

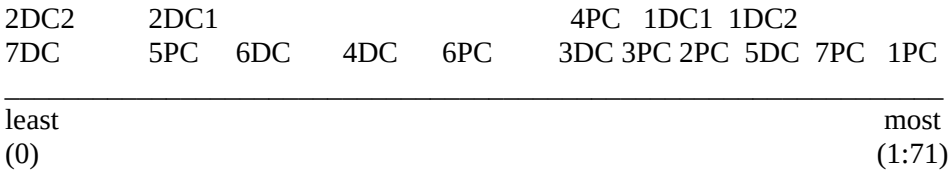
Table 5, Appendix E details the numbers of tag Qs used by each participant in the seven cases. It is obvious from that table that indeed only the lawyers use tag Qs to any extent at all. Table 8.1 below details the lawyers' use individually.

Table 8.1: Rates of tag Qs by lawyers

Participant	Tag Qs	Words	Rate
1PC	51	3,632	1:71
2PC	23	3,061	1:133
3PC	23	3,043	1:132
4PC	28	4,635	1:166
5PC	9	4,581	1:509
6PC	18	6,087	1:338
7PC	8	777	1:97
all PCs	160	25,816	1:161
1DC1	9	1,050	1:117
1DC2	13	1,365	1:105
2DC1	3	1,790	1:597
2DC2	9	6,674	1:742
3DC	1	1,316	1:1,316
4DC	10	3,200	1:320
5DC	54	6,497	1:120
6DC	7	2,866	1:409
7DC	0	418	0
all DCs	106	25,176	1:238

The overall picture seen in both Table 8.1 and Figure 8.5 is that the prosecuting counsel use tag Qs more often than the defence counsel, both in terms of the number of instances and the rate at which they are used.

Figure 8.5: Rates of tag Q use by lawyers



Although, obviously, the counsel form one of the two most powerful groups in the courtroom, it is constructive to consider whether the differences between them can be explained generally in terms of societal power. If they could, then we would expect that all the PCs bar one (7PC, the only female in this group) would have similar rates. But this is not so: the PCs show a wide range of use of tag Qs, although 7PC's rate is the second highest. Under the same prediction, we would expect 1DC1, 1DC2 and 5DC to use them more frequently than the other defence counsel (1DC1 and 5DC are women, while 1DC2 is a Samoan man). And indeed these three DCs are the three highest users in that group. Further, comparing them with the PCs, these three remain among the highest users among all the lawyers.

Once again, though, other factors are also operating here. First, let us look at the individuals who show more frequent use than the others. The PC in case one shows the highest use of both kinds of tag Qs for all the lawyers. This is a Pakeha male in his thirties, who is reasonably experienced in the courtroom and has a very confident demeanour. He is often quite aggressive, relentless and coercive in his questioning. He uses 38 invariant tags (*is that right?* or *is that correct?*) and 13 grammatical tags (a combined rate of 1:71). The next most frequent user (7PC) has six and two respectively (a rate of 1:97). All of the prosecutors use both kinds of tag Qs during these hearings.

But the defence counsel present a somewhat different picture. 1DC2, the most frequent user in this group, uses 13 grammatical tags and no invariant tags. The next most frequent user, 5DC, uses 51 grammatical tags and 3 invariant tags, giving a rate of 1:120. This DC is a woman in her late twenties, again with a confident demeanour. However this is her first appearance in a jury hearing. One could therefore perhaps account for her higher use of tag Qs on the basis of experience or confidence. But it may also be relevant that she behaves less aggressively in court. She may be using tags for facilitative purposes (cf. the data presented in Holmes, 1985, where 62% of the women's tags are facilitative). This interpretation may be supported by her use of the defendant's first name, which is discussed in chapter nine.

However, she uses all of her tag Qs before beginning the case for the defence. In other words, she uses them when cross-examining the prosecution witnesses. She does not use them when eliciting evidence from her client (the defendant) nor any of the witnesses for the defence. Thus it is likely that they are more to do with challenging opposing evidence than with facilitation.

The DC in case seven uses no tag Qs at all in his 50 turns. Four of the nine DCs use no invariant tag Qs. This suggests that it would be worth investigating whether the two groups of counsel use them for different functions or differing degrees of coercion (see Table 8.6 below).

In looking at functions of tag Qs I begin by looking at where they occur during the hearings. This is based on Lane's (1988, 1990) finding that tag Qs occur more often in cross-examination than in co-examination and his separate comment that cross-examination is more coercive in nature while co-examination is more facilitative. This ties in with Luchjenbroers's (1995) finding that tag Qs are used for the purpose of challenge, and with her distinction between lawyers working with witnesses for their own side of the argument as opposed to the other side.

Before doing so, I need to address the question of coercion as it applies to tag Qs. In one (formal) sense, these forms are coercive in nature, because their structure requires certain kinds of answers. However, in another (functional) sense, further distinction can be made between those which are facilitative, those which are asking for confirmation, and those which involve challenges. Within the group requiring confirmation a further distinction is possible between those which are truly neutral and those which are apparently neutral but are building towards making a point (which is often a challenge).

The next question, then, is how are we to tell the difference? Here is where we must depart from relying on syntactic matters only and look to context: not only the context within the utterance concerned, but the wider context, across turns and sequences (cf. Lane, 1990, p. 235). In order to illustrate this point, here are examples of the major types of discourse function apparent for tag Qs which appear in these courtroom data.

Example 3 facilitation (Case one, file 1, p.7, l.30)

1 1PC: (5/1) when you got back to the er (1) shop was the (2) shop in a different
2 (0.5) state than you had left it an hour and a half or so before? =
3 1W1: = it was

4 1PC: (7/1) and I think in particular the glass doors that front the (0.5) shop the
5 glass was hanging out of those doors **is that right**? =
6 1W1: = one pane of glass was hanging out the door yes

This occurs as part of the prosecuting counsel's examination-in-chief (co-examination) of the main witness for the prosecution (the manager of the liquor store which allegedly the defendants had tried to break into). It is thus cooperative and facilitative in nature rather than confrontational. The lawyer is in the process of eliciting the witness's story. We can classify this tag Q as facilitative, in that the context shows that this is part of a story which is emerging through the process of the lawyer guiding the witness in a relatively friendly fashion and not asking the witness to agree to anything which may damage the witness's credibility.

Example 4 confirmation (Case two, file 3, p.11, l.14)

1 2PC: (2/9) now after you were taken out of this interview room (2/2) you were
2 taken down to the watchhouse **weren't you**. =
3 2D: = yes

This example occurs as part of the prosecution lawyer's cross-examination of the defendant. Here the lawyer is in the process of establishing the chain of events once the defendant has been taken to the police station for interview before being arrested. This tag Q can be classified as requesting confirmation, in that the lawyer is establishing one in a set of facts which, at this stage, do not involve any conflict for the defendant and are part of his own story. However, given that this is part of the cross-examination, it is stretching a point too far to call this facilitative, because it is part of a process which builds toward the confrontational questions (about alleged timing and events during the interview), which follow a short time later. In other words, it is necessary to consider the wider context of the particular topic, its place in the cross-examination sequence, and its place in entire hearing as a whole, in order to come to an adequate understanding of how the tag Q is used here.

Example 5 request for confirmation-challenge (Case four, file 1, p.12, l.15)

1 4DC: (3/) John Williams was present (1/1) when that question was asked (0.5)
2 when his wife made the claim of ownership (4/3) so really we've got two
3 (2/) admissions after the car was searched by the defendant **haven't we**
4 one (0.5) on her own and (0.5) one in front of the =
5 4PW1: = yes that's correct
6 4DC: one in front of the other three.

This occurs during the defence counsel's cross-examination of the first police witness and

comes after the prosecutor's examination-in-chief. The whole purpose of this cross-examination is to throw doubt on the police handling of the situation at the time (leading later to a claim that the police had charged the wrong person). Thus the exchange is confrontational in intent. The tag Q can be classified as:

- requesting confirmation, in that on the surface it is merely asking the witness to agree to what might be seen as a fact, apparently not disputable (and indeed the witness does not dispute it);

- challenging, in that this is the first part of a sequence in which the defence counsel is trying to establish that the police took an unwarrantable interpretation from a confusing situation (that because the defendant admitted to owning a car in which cannabis was found this amounted to an admission of possessing cannabis for supply).

Example 6 challenge (Case six, file 2, p.19, l.7)

1	6PC:	(3/3) well <u>why</u> did you give him a Ponsonby address when you hadn't
2		lived there for two years.
3	6D	(through interpreter): (1) cause that's where my brother (0.5) is living (1) xxx
4	6PC:	(3/1) but the police officer asked you for <u>your</u> address **didn't he**.
5	6D:	(1) yes

This example too occurs during cross-examination. The police officer is trying to establish that the defendant lied to the police about where he lived at the time of the alleged assault. This occurs as part of building up a picture that the defendant is not credible and therefore that his protests that he did not assault and rob an old man are simply not believable. This tag Q is challenging, in that (whether the defendant realises it clearly or not) the counsel is trying to get the defendant to admit to something which is going to damage his, the defendant's, position. Once again, knowledge of the wider context is necessary to establish adequately that this is a challenge, not merely a request for confirmation.

Returning now to where the tag Qs appear and adding their discourse functions, we find the picture presented in Table 8.2.

Table 8.2: Occurrence and functions of tag Qs in court

Discourse function	Examination type		Total
	co	cross	
facilitation*	18	0	18
confirmation	22	113	135
confirmation-challenge**	1	50	51
challenge	0	66	66
justification***	1	0	1
total	42	229	271

* All but two of these are facilitating narratives.
** This category includes those which appear to be asking merely for confirmation but have an underlying challenge which is weaker than outright challenges.
*** This is the sole example of a witness using a tag Q and is a rhetorical question which occurs in the middle of an answer.

The picture is very clear and is consistent with Lane's (1988, 1990) findings: tag Qs occur far more often during cross-examination than elsewhere. Almost half of them (111) feature in questions involving challenges of some kind, and are strongly coercive. Only 42, or 15.5%, occur in co-examination and only one of these involves challenge. Equally clearly, facilitative tag Qs occur rarely in comparison, at 6.64% of the total, and only during co-examination.

It is instructive to see whether there is any material difference between the two groups of counsel in terms of how they use tag Qs.

Table 8.3: Use of tag Qs

Discourse function	PCs	DCs	Other	Total
facilitation	12	6	0	18
requesting confirmation	67	64	4*	135
confirmation-challenge	32	19	0	51
challenge	49	17	0	66
justification	0	0	1	1
total	160	106	5	271

* These are spoken by judges.

Table 8.3 shows that indeed there is a difference in how the two groups of counsel are using tag Qs (this difference continues when we calculate the rates as well). To begin with, PCs use them more often in every category than DCs and more than twice as often in challenges. In

fact it is only in the confirmation category that they use them in similar numbers (and rates). Again this backs up the suggestion that role and the goals of the individuals using tag Qs account for how they are being used, rather than social status or power, as those terms are used by O'Barr and Atkins. Role often involves the dimension of institutional power as well, and this is particularly so in the courtroom. However, O'Barr and Atkins focussed on societal power, presumably because they only discussed witnesses, who are all in the same institutional role. The professional/lay distinction applied in the current study partially captures the notion of institutional power, although the two concepts are not synonymous. For example, institutional power cannot explain the differences found between prosecution and defence lawyers.

For the four lawyers who appear in more than one case, their use of tag Qs in each appearance is detailed below, in Table 8.4.

Table 8.4: Use of tag Qs by lawyers appearing in more than one case

Participant	No.	Rate	Combined rate	Facilitate	Confirm	Challenge
1PC =	51	1:71		8	25	18
4PC	28	1:166	1:105	0	9	18
2PC =	23	1:133		0	11	12
3PC	23	1:132	1:133	0	9	14
4DC =	10	1:320		1	10	1
6PC	18	1:338	1:332	0	6	12
2DC1 =	3	1:597		2	1	0
6DC	7	1:409	1:466	0	4	3

There do not appear to be significant differences in the separate appearances of 2PC/3PC and 2DC1/6DC (albeit because of small numbers for the latter).

For 1PC/4PC the difference (both in tokens and rates) appears to lie in that he uses more tag Qs requesting confirmation in case one than in case four. In turn those in case one appear more often during cross-examination, suggesting that the reason for the difference lies in his taking a slightly different approach when examining his witnesses. They most often occur when he is questioning 1D1, who is the younger (18 years old) of two Samoan defendants in this trial and who does not use an interpreter. It may be therefore, that 1PC is choosing a slightly softer approach, i.e. using confirmation to establish his points rather than outright challenges, when dealing with this clearly young and bewildered defendant. However, this

could only have been established definitively by asking the prosecutor himself about the reasons for his choices (and this was not feasible so long after the hearing was held). On the other hand, even if this were the explanation, it does not allow us to go so far as to think that 1PC is being facilitative.

The lawyer who appears in different roles in two hearings, 4DC/6PC, has very similar rates for tag Qs in each. There is a clear difference in function however. He uses more tag Qs requesting confirmation during case four, when he is counsel for the defence, and more challenges in case six, when he is prosecuting. It is tempting to suppose that the difference in goals for prosecution and defence causes this. Looking at the instances separately, we see that all 4DC's tag Qs bar one (which facilitates a narrative) occur during cross-examination, i.e. both those used to request confirmation and challenges.

On the other hand, in case six his four which request confirmation occur during co-examination and he only produces challenging tag Qs during cross-examination. This gives some support to the suggestion that the different roles lead to different use of tag Qs. But this is only one participant and the numbers of instances are too small to make this a strong claim.

Returning briefly to the question of whether the two different forms of tag Qs discussed are used for different functions (see Table 8.5), the only clear difference appears to occur with challenges, where reverse polarity tags are used more than twice as often as invariant tags. This difference is greater for the DCs than the PCs (as is also the case with tag Qs requesting confirmation). However, given the difference in total tag Qs used by each group, these differences are not significant.

Table 8.5: Functions of different tag Q forms

Role	**Invariant:**			**Reverse polarity:**		
	challenge	**request confirm**	**facilitate**	**challenge**	**request confirm**	**facilitate**
PCs	35	49	8	46	17	4
DCs	2	15	1	34	51	5
total	37	64	9	80	68	9

As an adjunct, let us consider how often tag Qs receive the desired (by their speakers) responses. One hundred and sixty-five (60.51%) receive the responses which the questions appear to require, and a further 24 (7.85%) receive a response which is qualified in some way but remains in the realm of the desired answer. Fewer than one third (80, or 28.04%) receive

a response which does not fit the requirements of the question. While we cannot say therefore that a tag Q successfully predicts its answer, we can certainly say that these figures support, albeit indirectly and from the point of view of context, the fact that tag Qs are coercive in nature.

Lastly it is appropriate to ask whether men and women show different tag Q use, both in frequency and in function. Table 8.6 presents the numbers of tag Qs used by the female and male lawyers and the percentages of the totals for each gender.

Table 8.6: Male and female use of tag Qs

Function	**Male**		**Female**		**Total**	
	no.	**%**	**no.**	**%**	**no.**	**%**
facilitation	11	6	7	10	18	7
requesting confirmation	102	51	33	46	135	50
confirmation-challenge	38	19	13	18	51	19
challenge	48	24	18	25	66	24
justification	1	0.5	0	0	1	0.4
total	200	100	71	100	271	100

While the raw scores show a clear difference between men and women in this area, the rates (per total words) come out differently. For the women the rate is 1:189; for men it is 1:385. In other words the women (and remembering that these are all lawyers) are using tag Qs twice as often. This then confirms the traditional view that tag Qs are part of women's language. However looking back to the functions, by far the majority of these are used by 5DC during her cross-examination of prosecution witnesses, i.e. when she is on the attack. This then turns the traditional view of why women use tag Qs on its head. On the other hand, it runs counter to an extent to Holmes's findings about women using tags for facilitative purposes, as only 10% of the 71 used by women appear to be facilitative.

Schegloff in discussing closings of TCUs and turns states that "one of the signal jobs" of tag Qs is "the decisive completion of the turn to which it is appended" (1996, p. 91). This is obviously a particularly useful function in cross-examination, (despite my comment in the first paragraph of this section) where questions are often quite long and involved. Schegloff also says that they are "designed specifically for post-possible completion position" (p. 91). This in itself does not imply that they only occur at the ends of turns. And indeed, in this study they do appear at other points in turns.

But the data show that they are rarely used other than finally, except by one defence counsel (5DC). Example 7 shows an utterance where tag Qs appear in both the medial and final positions (note that it is the only example where this occurs in the data).

Example 7 (Case 5, file 2, p.3, l.23)

1 5DC: (/1) now that (0.5) record shows **doesn't it** (0.5) that (1/1) you recorded
2 Mr W's description as (0.5) Maori (1/1) five feet (0.5) nine five feet
3 ten (1) black dreadlocks or long braided hair **is that correct**?

Overall 49 tag Qs appear in other positions, and 39 of these belong to 5DC. All bar two appear during cross-examination. Twenty-two of these medial tag Qs require confirmation, while 27 involve challenges. This distribution does not suggest that the different positions imply different functions.

Predictably, tag Qs are used more often by lawyers in court than by anyone else (although the almost complete lack of them from other speakers may be unexpected). Prosecutors use them more often than defence counsel and they are used far more often during cross-examination than co-examination. Their use in court is related to role and to individual goals, particularly when challenging (although they are used for facilitative purposes at times).

8.3 HRT intonation

High rising terminal intonation (HRT) when used in declarative utterances (occurring often in this way, for instance, in narratives) has long been thought of as indicating uncertainty and/or powerlessness. Again, as with features discussed in earlier chapters, other researchers have questioned this, suggesting that it has other functions as well, such as maintaining conversational involvement and negotiating longer turns. On the other hand, Pauwels believes that the patterns of use are strong enough to indicate that it is a matter of powerlessness "regardless of the approach taken to the meaning of HRT" (1987, p. 12).

It is demonstrably a feature of both New Zealand and Australian English. This being so, and with most of the participants in this study being speakers of New Zealand English (42, or 84%, of the 50 participants), one would expect to find it occurring frequently within the data.

Scott Allan (1990) discusses HRT in New Zealand. Although his can only be seen as a pilot study because of the small number of subjects (nine), he finds that Maori women use HRT more than Pakeha women. However, he also recognises the possibility that this may be a socioeconomic difference rather than a matter of ethnicity. Looking at function, he considers that deference and powerlessness are not the reasons HRTs occur in his data, because the interviewer is not more powerful than the interviewees in terms of her personal characteristics.

In a somewhat larger study (recorded interviews of 75 speakers), David Britain (1992) also looks at the incidence and function of HRT in New Zealand English and challenges the earlier conclusions about it. Finding that it is in the process of change, he suggests that it is used particularly by young Maori and young Pakeha women. He claims that, while earlier researchers have analysed the functions of HRT in terms of negative politeness, it is more useful to see it as a positive politeness marker, i.e. it is used to help create common ground between the speakers. He uses Brown and Levinson's (1987) framework and then suggests that it can be added to the referential meaning of the clause, thus introducing a way of describing the affective meanings of HRT clauses along with their referential meanings.

While his data concentrate on narrative texts, his overall conclusions about HRT use in New Zealand are relevant to this courtroom study for three reasons. First, narrative is an important part of courtroom discourse, even though it is often elicited by way of questioning which breaks up the flow of the story. Second, narrative is also often interwoven with the opinion and explanation aspects of courtroom discourse; thus, although HRT has been found to be disfavoured in opinion texts and favoured in narratives, it is still likely that it will appear with some frequency in the courtroom. Third, Britain provides a comparative picture of who uses HRT. Such a comparative picture is also one of the goals of this study.

His principal conclusion is that young people, especially young women, are the most frequent users of HRT in New Zealand. But he also says that, while there is a statistically significant difference between men's and women's use, this is not as strong as earlier research would predict. His study finds that young Maori (both men and women) and young Pakeha women are the greatest users, while the oldest age group uses it the least. Oddly, though, while he says that "all age groups of Pakeha men disfavour the use of HRT" (1992, p. 91), his tables show that old men, whether Pakeha or Maori, use it more than the old women (it appears that old women disfavour HRT the most of all the groups discussed). He concludes tentatively that linguistic change is occurring (rather than age-grading) and that this change is being led by Maori. He does not find a significant relationship with class. Interestingly he does not think that HRT carries the same stigma in New Zealand as it does in Australia, because of the former's lack of strong class divisions (he does not elaborate on Australia's class divisions or how these differ from New Zealand).

Britain explains his results in terms both of the substantial research suggesting that women show more positive politeness in conversation than men and of research suggesting that some non-western societies (those with a strong oral tradition) place more importance on creating

involvement in conversation, and on establishing shared understanding, by using positive politeness markers. He says "This evidence, then, points convincingly to a recognition that members of Pacific cultures, both male and female, share with women in western societies a more cooperative style" (1992, p. 95). In particular, Metge and Kinloch (1978) discuss Maori and Samoan discourse styles, suggesting that indeed such cooperation is a salient aspect. This may then apply to the language use of the Maori, Samoan, and Niuean speakers in this study.

Further, one would expect to find HRT occurring more frequently among the defendants and witnesses, as well as the judges, than among the legal counsel, again because of their differing roles in the hearings (i.e. answering versus questioning). Therefore this chapter now continues by discussing who uses HRT in the seven hearings recorded. Table 8.7 presents the numbers of HRT occurring in the hearings.

The most tokens occur in case four and five, but once again, it is constructive to look at the ratio of HRTs to words (see Table 8.7).

Table 8.7: Rates of HRT by case and participant

Role	**Case One**	**Two**	**Three**	**Four**	**Five**	**Six**	**Seven**
J	1:100	1:152	1:299	1:81	0	1:226	0
PC	1:330	1:612	1:507	1:464	1:4,581	1:6,087	0
DC1	1:175	1:895	0	1:800	1:1,624	1:3,044	0
DC2	1:683	1:834	-	-	-	-	-
D1	1:18	1:47	1:71	1:84	1:25	0	0
D2	1:45	-	-	-	-	-	-
PW1	1:27	1:57	1:441	1:46	1:172	0	1:31
PW2	1:7	-	1:32	1:65	-	0	-
W1	1:26	1:320	-	1:27	1:51	1:36	0
W2	-	-	-	-	1:11	1:88	-
W3	-	-	-	-	1:17	1:43	-
W4	-	-	-	-	1:44	0	-
W5	-	-	-	-	1:79	-	-

All of the defendants, nine of the eleven police witnesses and thirteen of the fourteen lay witnesses use HRT more than once per hundred words. On the other hand, none of the lawyers involved use it that frequently. As is the pattern with the other features discussed, the judges fall between the two groups, with two of the judges using it more than once in a hundred words.

The most frequent user of HRT is 1PW2 (a ratio of 1:7 words). This clearly cannot be related to powerlessness as this police witness is a New Zealand European male as well as being in the mid-position in the court hierarchy. Neither does this reflect police witnesses' use (nor indeed that of this witness) of the other features discussed in the study. Furthermore, there is nothing in particular about this person's testimony or cross-examination which can account for his use of HRT. The only other possibilities here are that he is uncertain about his evidence, which is unlikely, or that it is an individual difference, a characteristic of this particular person.

Eleven participants do not use HRT at all during the hearings. Five of them appear in case seven. In fact only the police witness uses it in that case and this may be a result of his reading two briefs of evidence aloud. Again this infrequency of use can be accounted for by the brevity and the lack of dispute in the hearing. But, even so, it seems unusual, given that HRT is a well-documented aspect of New Zealand English.

Table 8.8: Rates of HRT by case

Case	HRT	Words	Rate
One	148	9,997	1:68
Two	131	18,855	1:144
Three	112	11,065	1:99
Four	204	17,129	1:84
Five	181	16,029	1:86
Six	94	15,455	1:164
Seven	13	1,998	1:154
total	883	90,528	1:102

Figure 8.6: HRT by case

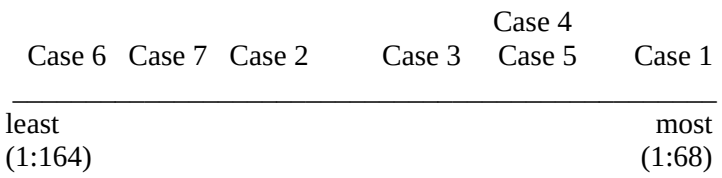


Table 8.8 and Figure 8.6 show the pattern of HRT use by case. The rates show three distinct bands. Case one shows the highest rate of HRT. Given that this case has two Samoan defendants, a female defence counsel and a Samoan defence counsel, this is predictable in terms of societal power. But this can only be confirmed by looking at their individual rates and the rates of the other participants in this hearing.

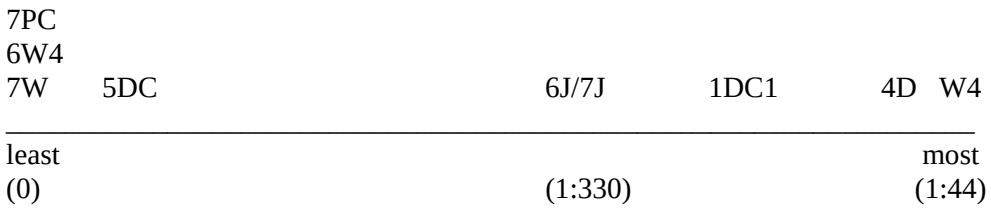
The next band comprises cases three, four, and five, and the difference between their rates is only a matter of 13 words. There is then quite a gap before the remaining band, where again the cases have similar rates (a difference of 22 words). Overall too, there is a remarkably narrow range in frequency between the cases, which is quite different from the other features discussed in this study.

Table 8.9 and Figure 8.7 outline HRT use by female participants.

Table 8.9: Rates of HRT for female participants

Participant	HRTs	Words	Rate
6J	1	226	1:226
7J	0	104	0
7PC	0	777	0
1DC1	6	1,050	1:175
5DC	2	6,497	1:3,249
4D	42	3,536	1:84
5W4	14	612	1:44
6W4	0	438	0
7W	0	63	0
all women	65	13,440	1:207
all men	818	77,088	1:94

Figure 8.7: HRT use by female participants



The women in the study use HRT less often than the men. Apart from 6W5 (whose evidence is only available from the court transcript and who therefore is not included in this table), four of the nine women in this study use no HRT, but only six of the 41 men. On the other hand, eleven of the male, lay participants use HRT more often than the highest female user. The wide range in the rates supports O'Barr and Atkins' conclusion that the use of HRT is related to power rather than simply gender, so their use is considered by participant group below. Table 8.9 also suggests that HRT, at least in New Zealand, perhaps ought to be considered as a feature of men's language, rather than discussing it as a female characteristic (even though this somewhat contradicts Britain's findings discussed earlier in this chapter).

Table 8.10: Rates of HRT for non-NZE participants

Participant	Ethnic group	HRT	Rate
1DC2	Samoan	2	1:683
1D1	Samoan	44	1:18
1D2	Samoan	14	1:45
5D	Maori	43	1:25
6D	Niuean	0	0
7D	Maori	0	0
4W	Maori	95	1:27
5W5	Pacific Is.	4	1:79
6W2	Indian	23	1:88
6W4	Niuean	0	0
all non-NZE		225	1:46
all NZE		883	1:91

Note: 6W5 is not included in this table because her evidence is not recorded on tape therefore there is no information on her use of HRT.

Once again (see Table 8.10), at first glance ethnicity appears to be a strong factor, with non-NZE participants using HRT almost twice as often as NZE participants. However this must be tempered with the knowledge that the least frequent user, 1DC2, is also non-NZE. A lawyer, he is the only non-NZE professional participant in these hearings, and stands in the powerful sector in court. The study does not include enough non-NZE participants to make any kind of statement about the role of ethnicity in HRT use. However, 1DC2's use suggests that it is at least possible that role is the salient factor here, rather than ethnicity.

Table 8.11: Rates of HRT by participant group

Role	HRT	Words	Rate
J	44	5,456	1:124
PC	34	25,816	1:759
DC	28	25,176	1:899
D	254	13,634	1:54
PW	196	9,175	1:47
W	327	11,271	1:34
Total	883	90,528	1:103

Figure 8.8: Use of HRTs by participant group

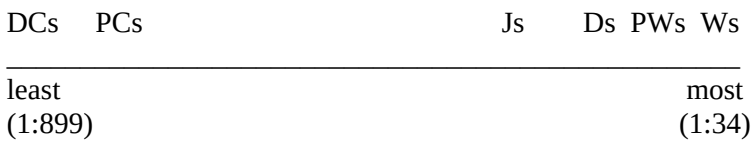


Table 8.11 and Figure 8.8 give the rates of HRT used by the different participant groups. As predicted, HRT use very clearly reflects role in the courtroom. The defendants, police witnesses and lay witnesses all fall above the overall rate for all the cases, while the judges and lawyers fall below that level. Additionally there is an extraordinarily large difference between the rates for the lawyers and all the other groups, suggesting strongly that role is the salient factor here. These results also support the notion that judges, although they have the most power in court, choose to exercise that power in a different way. Thus their power and their role (self-perceived) may interact to produce more HRT. The fact that police witnesses use HRT more than defendants also suggests that powerlessness is not an adequate explanation for HRT use.

Looking then at the lawyers, we find that three of the nine lawyers use no HRT at all. None could be said to use them frequently. The following table (8.12) has been prepared to detail what happens in each of the cases.

Table 8.12: Lawyers' rates of HRT

Participant		Case	HRT	Words	Rate
PCs	1PC	one	11	3,632	1:330
	2PC	two	5	3,061	1:612
	3PC	three	6	3,043	1:507
	4PC	four	10	4,635	1:464
	5PC	five	1	4,581	1:4,581
	6PC	six	1	6,087	1:6,087
	7PC	seven	0	777	0
		total	34	25,816	1:759
DCs	1DC1	one	6	1,050	1:175
	1DC2		2	1,365	1:683
	2DC1	two	2	1,790	1:895
	2DC2		8	6,674	1:834
	3DC	three	0	1,316	0
	4DC	four	4	3,200	1:800
	5DC	five	4	6,497	1:1,624
	6DC	six	2	2,866	1:1,433
	7DC	seven	0	418	0
		total	28	25,176	1:899

The two lawyers with the highest rates of HRT appear in case one (1PC and 1DC1). The prosecuting counsel is a Pakeha male, thus would not be expected to use powerless language. 1DC1 is a woman, albeit with much legal and courtroom experience. She too would be expected to use more powerful language. The common factors between them are their ethnic origin (NZE) and their level of experience in the courtroom. However these factors also apply to six others among the lawyers and they show much lower rates. The Samoan

lawyer's rate (1DC2) is 1:683, which does not feature as a high use, supporting the claim that ethnicity is not a salient factor here. The two other female counsel (5DC and 7PC) have low rates of 1:1624 and 0 respectively. In other words, the lower rates overall of the lawyers' use of HRT can be explained in terms of role in the courtroom, but gender and ethnicity do not appear to be relevant within that. There is no obvious societal or institutional explanation for the differences within the group.

It will be remembered that some of the participants appear twice during the hearings, and several of these are lawyers. Their HRT use and turns are summarised in Table 8.13.

Table 8.13: HRT use among lawyers who appear in two cases

1PC	11	3,632	1:330
= 4PC	10	4,635	1:464
	21	8,267	1:394
2PC	5	3,061	1:612
= 3PC	6	3,043	1:507
	11	6,104	1:555
6PC	1	6,087	1:6,087
= 4DC	4	3,200	1:800
	5	9,287	1:1,857
2DC1	2	1,790	1:895
= 6DC	2	2,866	1:1,433
	4	4,656	1:1,164

We can see that 1PC, who shows the second highest rate among the lawyers, does not continue that rate when appearing in case four, although this figure remains the third highest. There is a difference of 134 words between the two rates. 2PC uses HRT more often when he appears in case three, although again there is quite a difference in the rates (105 words). These two between them use 32 of the 34 uses of HRT by PCs in these hearings (although in four different cases).

6PC uses HRT only once in case six, but his rate increases tremendously in case four, when he appears as defence counsel (although, of course, it is only a difference between one and four instances). This mirrors his use of tag Qs. It is reasonable to suggest that the counsel alters his rate of HRTs for reasons quite other than power. It may have something to do with the differing roles of prosecution and defence.

It is every lawyer's duty to provide the best case possible for the client. Therefore this defence counsel would see it as at least legitimate, if not required, to set up sympathy for his client (the defendant, 4D), even though judges enjoin juries to put aside their feelings of sympathy. In addition to that, HRT may have a softening effect, as well as giving an impression of politeness towards his client. The defendant in case four is a woman who lives in trying circumstances and who is being tried for something which she has apparently not done. This contrasts with case six, where this lawyer uses HRT once only. Here he takes the prosecuting role and therefore has quite different, rather more confrontational, aims.

The prosecutor in case four, on the hand, has a lower rate in this case than he does in case one; this too suggests different attitudes towards the defendant (despite this lawyer's prosecuting role in both hearings). One of the defendants in case one uses an interpreter and one does not, although they both clearly have difficulty understanding English. This causes some problems during the hearing, when the prosecutor appears to have trouble getting his questions answered. Here the higher HRT rate is more likely to be indicating trouble than power.

2DC1, who is also 6DC, also shows a higher rate in one of the two hearings he appears in, case two. This is clearly not related to differing roles, other than that he is the only lawyer participating in case six, whereas in case two, although he is the barrister and thus the leading counsel, he takes a much lesser role in the hearing itself. Despite this, here too the differing rate may be related to trouble, although the trouble in case two is clearly due to factors quite other than those in case one.

The judges' rate is also interesting, in that HRT occurs half as often as for the non-legal participants (whereas the other legal participants use it vastly less often) and just below the overall rate for the data (refer Table 8.11). If power per se is the indicator of HRT use, then this is an unexpected result. Thus, it may be again that another factor (or factors) is at work here. Here too, it is interesting to look at the individual judges.

Table 8.14: Judges' use of HRT

J	HRT	Words	Rate
1J	14	1,394	1:100
2J	8	1,217	1:152
= 3J	1	299	1:299
	9	1,516	1:168
4J	20	1,627	1:81
5J	0	589	0
6J	1	226	1:226
=7J	0	104	0
	1	330	1:330
total	44	5,456	1:124

The judge with the lowest rate of HRT is the female judge who hears case six. When she hears case seven (the shortest case by far) she uses no HRT and it is reasonable to assume her rate would be low in this case too if it had gone on for longer. Clearly she is in the powerful group and confirms O'Barr and Atkins' notion that women are not automatically members of the powerless group in any situation. Even within such a powerful group as the judges in this study, she, the only female among them, has the lowest rate.

4J has the highest rate of HRT among the judges. A New Zealand Pakeha man, he had retired some time before, and had been recalled to serve as a temporary judge. Thus he would fall into the older age group, and is an exception to Britain's conclusion that older people men use HRT the least in New Zealand society. However, it is possible that the circumstances of this case may have affected the rate of HRT used by the judge, in a similar fashion to the defence counsel in this case. Perhaps the HRT is part of an attempt to seem reasonable, less aggressive, less controlling, and more willing to hear another's point of view on the part of the judge. These could be summed up with the word facilitative, and may well be an approach actively chosen by judges in some cases.

Case four is in some ways the most difficult of the cases because of the behaviour of the witness, who is also the defendant's husband. While emotionally highly concerned with the outcome of the case, he is caught on the horns of protecting his wife (who, he says, has been charged unfairly with a crime which he committed) and trying not to incriminate himself too much. The evidence suggests he is mentally disturbed and the defence counsel tries to engage

the court's sympathies towards the defendant on this basis. This is possibly assisted by the witness's disregard for courtroom protocol, shown by what he says, his refusal to answer certain questions, and his wish to speak at inappropriate times. This falls directly into the judge's preserve of controlling the process of the hearing. In fact, the judge allows him considerable leeway. Only after the evidence has been completed does the judge refuse him the right to speak further.

In conclusion, here too it is clear that power is not the single operative factor in the use of HRT, nor is gender or ethnicity. Looking at roles gives us a much more satisfactory account, allowing us to consider facilitative aspects. It is also possible that the use of HRT, at least by professional participants, may have something to do with trouble experienced in particular cases.

8.4 Summary

This chapter has considered witnesses asking questions in brief, as well as the use of tag questions and HRT in some detail. As with the features discussed in the previous chapter, it is clear that power cannot be advanced straightforwardly as the explanation for the patterns of use. This has been made clear both through analysing who uses the features (and when) as well as some degree of functional analysis. It has also become clear that a variety of purposes can be behind individuals' choice of such features. Further, syntactic (or structural) explanations are not adequate. Nor is the traditional conversation analytic approach. In order to arrive at a more complete understanding, we must consider the variety of context: the utterance, the sequence, the place of the episode in the interaction as a whole, and indeed the ethnographic context.

Chapter Nine: Polite Terms

9.1 Politeness

The established literature on politeness is well-known and will not be reviewed again here. Suffice it to say that arguments such as those based on the power and solidarity/distance axes or the notion of face suggest that, as with the features discussed already, one would expect the use of polite forms to follow the patterns of power in a courtroom hearing. Thus the lawyers would be most polite to the judges, and reasonably polite to each other. One would also expect them to be reasonably polite to the defendants and all the witnesses (even if they are challenging their veracity), although in this case it would not be due to power; rather it would be to do with achieving the goals they have set for the interaction. The latter, in their turn, would be expected to be polite to all other participants, and again this could be placed at the door of power. One would expect the defendants to be the most polite of all.

These are reasonable assumptions, given that the aim of all (other, perhaps, than the judges) is to impress the jury. There is no place for overt impoliteness in a New Zealand courtroom, and although there is obviously an important role for face threats, these remain couched in polite terms. On the other hand, given that New Zealand English does not have a particular structure of respect expressed in language (although courtroom protocol does require polite and to some extent ritualised behaviour), it is possible that politeness is used strategically rather than simply being a reflection of societal or institutional power.

Two sets of terms relevant to politeness which have been considered in the previous research on powerless language are considered in turn in this chapter: terms of address and polite terms (*please*, *sorry*, *thank you*). Superpolite expressions are not included here as planned because they appear so rarely in the corpus that we would only be discussing isolated examples rather than patterns.

9.2 Terms of address

O'Barr and Atkins included terms of address in their category "polite terms" except for *sir*, which they treated separately. Although terms of address per se have not been found to be features of powerless language (but rather, people with less power use more formal terms and those with more power use less formal terms), a fuller picture is appropriate for the current study, given that

powerlessness does not account satisfactorily for the use of features already discussed here. Therefore I have considered all terms of address occurring in the data.

Most of the range of address terms normally used in English appears in these hearings; the only exception to this is that no-one is addressed at the informal extreme, such as by a nickname. Thus in addressing participants there are titles plus last name (*Mr*, *Mrs*, *Miss*), titles only (*Sir*, *Your Honour*, *Ma'am*), occupational titles (*Sergeant*, *Constable*, *Officer*); occupational titles plus last name; title plus role (*Madam Registrar*, *Madam Attendant*, and *Mr Interpreter*); and first name. Jury members are addressed as *Ladies and Gentlemen of the Jury*, *Members of the Jury*, and *Madam Foreman*, but are rarely addressed directly (and only by judges) during the examination phases of proceedings. These add up to a total of 467 direct address terms. Table 7, Appendix E shows their distribution among the cases.

Once again, because of differences in the length of the cases, it is more useful to look at the rates at which the terms of address occur (see Table 9.1).

Table 9.1: Rates of terms of address by case

Feature	**Case One**	**Two**	**Three**	**Four**	**Five**	**Six**	**Seven**
TLN	1:232	1:650	1:1,229	1:902	1:382	1:499	1:182
T	1:169	1:176	1:651	1:902	1:1,145	1:1,717	1:1,998
OT	1:2,499	1:3,771	1:11,065	1:8,565	1:16,029	1:2,576	1:1,998
OT+LN	1:4,999	1:3,143	0	0	1:16,029	0	0
T+role	1:2,499	1:2,095	1:11,065	0	0	0	0
first name	0	0	0	0	1:1,145	0	0

It is apparent that only formal address terms are used in court with any frequency and in fact first names are used by one participant only. Table 9.2 gives the rates for all address terms used in the seven hearings involved in this study.

Table 9.2: Overall use of address terms

Case	Address terms	Words	Rate
One	112	9,997	1:89
Two	156	18,855	1:121
Three	28	11,065	1:395
Four	40	17,129	1:428
Five	71	16,029	1:226
Six	46	15,455	1:336
Seven	13	1,998	1:154
total	467	90,528	1:194

The continuum presented in Figure 9.1 below shows the range and relative use of address terms across the cases.

Figure 9.1: Address terms by case

Case 4 Case 3 Case 6 Case 5 Case 7 Case 2 Case 1

_____

least (1:428) most (1:89)

The comments below are made only in terms of the numbers of instances which occur, rather than comparing them with the absence of address terms. This is because of the difficulty of determining the possible environments for the different terms and of establishing what is marked and what unmarked use. They could, in fact, be used with every question and answer, but are not. In addition, 44% of the participants (i.e. 22 people) do not use terms of address at all during these hearings. Accounting for why such terms are not used more often is outside the scope of this thesis.

Depending on which explanation one prefers to explain the use of address terms (i.e. power or other factors), one would expect a wide or a narrower range of frequency across the seven cases. What we see is that there is a wide range. Case one shows the highest number of terms of address while case seven has the fewest. Looking at their numbers in relation to words, the rates for cases one and two are the two highest at 1:89 and 1:121 respectively, while the others range from 1:154 (case seven) to 1:428 (case four). Interestingly, while the brevity of case seven has explained its apparently lower use of the features already discussed, no such explanation is relevant here: case seven has the third highest rate for this feature.

Looking at the cases from the standpoint of ethnography gives no explanation for either the range of frequency or the pattern of use. For example, it is predictable in those terms for case one to show many polite terms, given that it includes three apparently powerless participants (however on this analogy, case five would be expected to produce more). On the other hand, case two, where all participants belong to the dominant group in New Zealand society, shows the second highest rate.

If it were purely a matter of relative power within the courtroom situation, one would expect the range over the seven hearings to be much narrower. Therefore it is reasonable to suggest, once again, that something other than societal power is operating here.

Next we look at who uses the terms in order to be more clear whether role (or institutional power) interacts with other factors to produce terms of address. Because so many participants do not use any terms of address at all, Table 9.3 only features those who do.

Table 9.3: Rates of terms of address

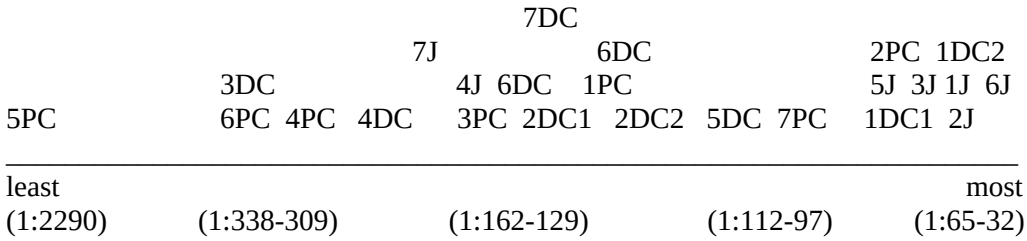
Participant	No.	Words	Rate
1J	27	1,394	1:52
2J	30	1,217	1:41
3J	5	299	1:60
4J	10	1,627	1:163
5J	9	589	1:65
6J	7	226	1:32
7J	2	330	1:165
1PC	28	3,632	1:130
2PC	51	3,061	1:60
3PC	19	3,043	1:160
4PC	15	4,635	1:309
5PC	2	4,581	1:2,290
6PC	18	6,087	1:338
7PC	8	777	1:97
1DC1	21	1,050	1:50
1DC2	29	1,365	1:47
2DC1	13	1,790	1:138
2DC2	55	6,674	1:121
3DC	4	1,316	1:329
4DC	15	3,200	1:213
5DC	58	6,497	1:112
6DC	21	2,866	1:136
7DC	3	418	1:139
1D1	2	789	1:395
2D	6	623	1:104
5D	3	1,079	1:360
1PW1	5	729	1:146
2PW1	1	2,911	1:2,911

Note: 2J/3J, 2PC/3PC, 4DC/6PC and 6J/7J are included separately for each appearance because their rates differ each time.

First it is clear that by far the majority of the address terms are used by professional participants, and in fact there is not one professional who does not use them. On the other hand, only five non-professional participants use them. Obviously terms of address are not the province of the powerless in terms of the court structure.

Placing professional participants on a continuum (Figure 9.2), we see the following, with apparent clusters of frequency.

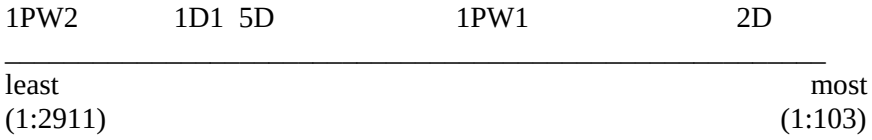
Figure 9.2: Professionals' use of terms of address



Among the nine participants who fall into the most frequent user category (one term for fewer than 120 words), four are women and one is the one Samoan lawyer. However the other five are NZE male participants and so we cannot deduce that either gender or ethnicity are relevant here.

Figure 9.3 shows a continuum for the non-professional participants who use terms of address. They are not among the very highest users and they fall fairly evenly across the entire range of 1:2,911 - 1:32 found among all the participants in the study.

Figure 9.3: Non-professionals' use of terms of address



Let us look now at whether having female and non-NZE participants in a case correlates with the frequency of address terms in that case (see Table 9.4). Five cases include both these categories of participants, while the other two have neither.

Table 9.4: Address terms in cases with female and non-NZE participants

Case	No. of females	No. of non-NZEs	Address terms	Rate
One	1	3	112	1:89
Four	1	1	40	1:428
Five	2	2	72	1:226
Six	3	4	46	1:336
Seven	3	1	13	1:154

Clearly there is no correlation here either. Taking both categories of participants together, case six has the highest number of powerless participants. But its frequency of address terms is the third lowest of all seven cases. The case with the fewest powerless participants, case four, has the second lowest use of address terms. That there is no correlation is supported by looking at

the cases which are not part of this table, cases two and three. They show the second highest and the lowest frequencies respectively.

The conclusion to be drawn here is that using terms of address does not depend on powerlessness, either in terms of institutional role or ethnographic factors. Lane (1990) suggests that address terms may be used for distancing purposes, to increase the level of face attacks (as opposed to face threats). His evidence for this is that they occur much less often during co-examination (facilitative in nature) than in cross-examination (adversarial in nature).

This pattern is borne out by the present study. Of the 467 tokens found, almost half (218, or 47%) occur during cross-examination. 138 (29%) occur during co-examination and a further 111 (24%) occur in neither (for instance, telling a witness he or she is free to leave). Note though that, while not providing figures, Lane implies a much greater difference than this in his comments about "relative absence" (1990, p. 245) and his suggestion that when counsel address defendants and witnesses "no-naming is the most appropriate address usage in co-operative interaction in this context" (p. 245). It is therefore not possible to compare my results directly. However, the frequency of address terms in my study cannot be called relative absence and simply seeing them as a function of occurring in co-examination (cooperative) versus cross-examination (adversarial) phases may be too simplistic.

Before coming to any further conclusions, some comments are appropriate on the apparent functions of these terms.

First, when terms of address are used in the hearings in this corpus, more formal terms of address are chosen most of the time. The most common terms are the titles *Sir*, Y*our Honour* and *Ma'am* (226 tokens) and TLN (184) tokens. Note that the addressees for terms of address are predictable according to role. Where titles are used, 97% of them are addressed to judges and the remainder are spoken to lawyers. Where TLNs are used, 70% are addressed to lay participants (by judges and lawyers) and 30% to lawyers (by judges). Professional titles (with or without last names) are addressed only to PWs.

First names are used rarely, only occurring in case five. Here it is 5DC who uses them: 13 times when speaking to the defendant (5D) and once to a defence witness (5W4). And they occur with co-examination, which would be consistent with Lane's explanation (but note that he found no

examples of first names being used in court). Both addressees are young and in a difficult position; the former is a Maori male, while the latter is a Pakeha female. 5DC is a Pakeha woman, and it is reasonable to suggest here again that she is using first names in a deliberate attempt to make these participants feel more at ease in this unfamiliar situation. One can put this down equally to either facilitation or solidarity (or both). This is said anecdotally (by lawyers) to be a common practice among district court trial lawyers, so it is perhaps surprising that first names do not occur more often in the data with similar witnesses and defendants.

Secondly, when the address terms occur during either co- or cross-examination phases, we cannot assume that the tenor of the phase is matched by all the turns occurring within it. Thus, remembering that the tone of co-examination is more facilitative (Lane, 1990) than cross-examination, many of the address terms occur (in both types of examination) when an opposing lawyer, or the judge, interrupts the flow of questions and answers to lodge some kind of objection (although this is not invariably the case). Thus it may not be a matter so much of where the turn with the address term occurs in examination phases, but rather the goals of the speaker for that turn.

Thirdly, let us look at those participants who appear in more than one hearing but who show different rates of terms of address in those appearances (see Table 9.5).

Table 9.5: Use of terms of address by participants appearing in more than one case

Participant	No. of terms	Words	Rate
2J	30	1,217	1:41
=3J	5	299	1:60
2PC	51	3,061	1:60
=3PC	19	3,043	1:160
4DC	15	3,200	1:213
=6PC	18	6,087	1:338
6J	7	226	1:32
=7J	2	330	1:165

We can explain these differences in terms of differences in the conduct of the cases. Notice that two of these people appear in the same cases, i.e. cases two and three. And the rate for each of them is greater for case two than case three. It is tempting to suggest that this relates to the greater degree of trouble experienced in case two, and that the increase in politeness is an attempt to deal with the trouble. This is supported by the rate for the case as a whole (second highest among the seven cases). However, in saying this it is clear that power is not the issue here, especially since at least some of the trouble can be laid at the door of the defence counsel's approach (in case two). In both cases 2PC/3PC uses terms of address more often than the prosecutors as a whole (1:183), so it could also be a matter of personal style rather than anything to do with the particular cases.

For cases six and seven, again, there is more trouble in the former hearing than the latter, which may explain the judge's greater use of terms of address. However, note that for the cases as a whole case seven shows the higher rate of the two (this is discussed further below).

Looking now at 4DC/6PC, we can ask whether the difference in rate is attributable, as with those above, to the degree of trouble in the hearing, or whether it has something to do with the different roles this person plays (i.e. defence v. prosecution). Once again, a greater degree of trouble occurs in one case (case four). As prosecutor in case six, this lawyer uses relatively more TLN (to the defendant and two witnesses) while as defence lawyer in case four he uses *Sir* and *Your Honour* more often. When he is addressing the judge, it is usually as part of normal procedure

(i.e. court protocol), but as 4DC he addresses the judge as *Sir* once when objecting to a question by the prosecutor. This lends no particular support to the suggestion that use of terms of address here relates to trouble in the hearing rather than being a result of a participant's place in society or role in the courtroom.

What, then, can we conclude about the use of address terms? Recent studies by Blum (1997) and Dickey (1997) make some interesting suggestions concerning naming conferring face and accommodation or convergence theory respectively. However these suggestions do not account for what occurs in the hearings which are the subject of this study.

This leaves us with the traditional approaches of politeness, solidarity/distance and face, as discussed in recent times by Holmes and Lane, and I see no reason to depart from these. They can account for all address terms occurring during the hearings, including 5DC's divergence from what appears to be usual practice.

It is interesting that when the lawyers interrupt each other's questioning, they do so through the judge. So if the terms of address in these situations are in fact increasing the face threat, it must be noted that the face threat is not, apparently at least, towards the judge. On the other hand, perhaps the lawyers are suggesting tacitly that the judge should have intervened rather than leaving it to the lawyer. This would amount to a face threat in the sense that the judge's ability to run the case may be being questioned.

Conversely, if that is indeed what the lawyers are doing, it is an equally strong argument that they need to show overt respect to the judge and in doing so may be mitigating the threat rather than signalling or increasing it.

The question remains to be answered as to whether we should include terms of address as part of powerless language. Clearly if we look at societal and institutional power, they cannot be called powerless. On the other hand if we look at where and how they are being used, albeit by the professionals, there may well be an element of relative powerlessness involved, caused by court protocol towards judges, or it may be related to the goals of the speaker (i.e. not their social or institutional position). In addition, Lane finds that address terms are "strategically placed" (1990, p. 244). Therefore, as I have found with some of the other so-called powerless language features, a more in depth study of their functions in future may well shed more light on the matter.

9.3 Polite terms

Attention to face is a reasonable and well-accepted explanation for the use of polite terms such as *please*, *sorry* and *thank you*. Holmes points out that the purpose of an apology is "to restore social harmony and equilibrium" (Bell and Holmes 1990, p. 256) and that it does so by attending to the addressee's negative face wants (Brown and Levinson, 1987). *Please* and *thank you* attend to the same face wants, although one could add that they relate to creating and continuing harmony respectively. Such polite terms can work as "a kind of social accelerator and social brake ... regardless of FTAs" (face threatening acts) (Brown and Levinson, 1987, p. 17).

Holmes (1993) reports that New Zealand women both give and receive apologies more often than men and that they are more frequent between women than between men. She comments that this is puzzling because one would expect positive politeness to be used more often towards those with power and status. She accounts for this by suggesting that men and women may have differing perceptions about devices for positive politeness. The relative informality of the situation may well be relevant here, as she has found with other research, but she does not discuss this here.

Politeness and formality are expected behaviour in court and face threatening acts occur with great frequency. One would therefore expect the terms *please*, *sorry* and *thank you* to appear frequently in the data. They are used for procedural matters (e.g. "could the witness *please* be shown exhibit four?"; "will you *please* speak up?") and for a range of other matters such as apologising for self-repair or giving an incorrect question or answer. The figures for *sorry* include two instances of "I apologise" and one of "I beg your pardon".

The three terms were counted and rates calculated for each case. Table 9.6 gives the numbers and the rates and shows that in the corpus as a whole they occur at remarkably similar rates.

Table 9.6: *Please, sorry* and *thank you* by case

Case	*Please*		*Sorry*		*Thank you*	
	no.	**rate**	**no.**	**rate**	**no.**	**rate**
One	33	1:303	9	1:1,111	38	1:263
Two	19	1:992	23	1:820	40	1:471
Three	20	1:553	20	1:553	13	1:851
Four	22	1:779	18	1:951	6	1:2,585
Five	10	1:1,603	19	1:891	14	1:1,145
Six	10	1:1,546	19	1:813	3	1:5,152
Seven	11	1:182	8	1:250	2	1:999
total	125	1:724	115	1:787	116	1:780

While clearly there are differences in the proportions of the three terms in the different cases, there is no discernible pattern to this. It is when we turn to participant groups (Table 9.7) that a pattern emerges.

Table 9.7: *Please, sorry,* and *thank you* by participant group

Role	*Please*		*Sorry*		*Thank you*	
	no.	**rate**	**no.**	**rate**	**no.**	**rate**
J	31	1:176	6	1:909	39	1:140
PC	54	1:478	14	1:1,844	62	1:416
DC	27	1:932	39	1:646	39	1:646
D	5	1:2,727	10	1:1,363	0	0
PW	2	1:4,588	13	1:706	2	1:4,588
W	1	1:11,271	9	1:1,252	1	1:11,271

The differences shown here are explicable entirely by considering roles in the courtroom. For instance, the lay participants use *sorry* more than they use *please* and *thank you*. This is not surprising, since they are, one might say, the "recipients" rather than the initiators of most of the moves in court. On the other hand, the judges and prosecuting counsel use *sorry* the least. The figure for the defence counsel is skewed to a large extent by 2DC2, who uses 26 of the 39 *sorry*s spoken by this group. This may reflect the trouble experienced in case two. Removing his figures gives defence counsel a very similar rate to the prosecutors.

As far as *please* and *thank you* are concerned, the judges and counsel have the roles of directing the process, therefore are more likely to be seeking and acknowledging actions. Note that judges

and prosecutors use *please* and *thank you* at similar rates. Again defence counsel would have a similar rate if we removed the skewing caused by 2DC2's use.

This is not to say, though, that power (or powerlessness) is necessarily causing the use of polite terms in general. It is simply to say that powerlessness and role affect the choice of polite term and the circumstances in which is used. It is only by treating the terms as a group that we can determine whether there is an overall pattern in the use of politeness.

On their own, the numbers of polite terms (see Table 8, Appendix E) do not tell us much, other than the frequent use of these terms by the professional participants as opposed to the lay participants in the courtroom. This is consistent with Holmes' (1990) finding that politeness devices are often used by those in leadership roles, e.g. in classrooms. Again, looking at the rates of occurrence per numbers of turns for each participant gives a clearer picture (see Table 9.8).

Table 9.8: Rates of use of polite terms

Role	**Case**						
	One	**Two**	**Three**	**Four**	**Five**	**Six**	**Seven**
J	1:70	1:81	1:33	1:148	1:54	1:25	1:52
PC	1:151	1:153	1:138	1:185	1:352	1:435	1:65
DC1	1:62	1:597	1:110	1:400	1:650	1:409	1:84
DC2	1:124	1:209	-	-	-	-	-
D1	0	1:366	1:1,334	1:3,536	0	0	1:233
D2	1:208	-	-	-	-	-	-
PW1	1:32	-	1:1,212	0	1:686	1:250	1:403
PW2	0	-	1:1,525	0	-	0	-
W1	0	1:213	-	1:2,546	1:359	0	0
W2	-	-	-	-	1:864	1:2,030	-
W3	-	-	-	-	1:149	0	-
W4	-	-	-	-	0	0	-
W5	-	-	-	-	1:69	0	-

The greatest users are the judges in cases seven and three. Interestingly, these two judges, who are the only judges in the study who appear in more than one hearing, use polite terms slightly less frequently in the other cases they are involved in (cases six and two respectively - note that this reverses the situation with their use of terms of address, backing up my suggestion that terms of address are used more or less often according to the trouble experienced in the hearings). One PC (7PC) uses them rather more than any other PCs and the defence counsel in cases one and

seven are also high users. Fourteen participants use no polite terms at all, and all of them are lay participants.

Table 9.9: Rates of polite terms by participant group

Role	No. of terms	Words	Rate
J	76	5,456	1:72
PC	130	25,816	1:199
DC	105	25,176	1:240
D	15	13,634	1:909
PW	17	9,175	1:540
W	12	11,271	1:939

Figure 9.4: Use of polite terms by participant group

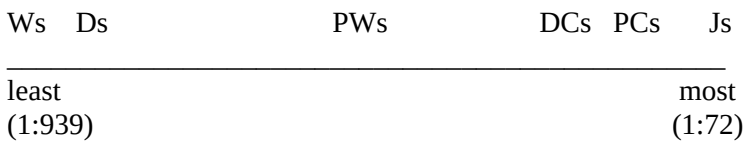


Table 9.10 and Figure 9.4 confirm that the professionals use polite terms the most often and that the gap between professionals and lay participants is extremely wide, the widest for any of the features discussed. Certainly the notion of powerless language does not explain this pattern. In fact it is entirely the converse. In this corpus polite terms are used by those who indeed have all the power in the courtroom and who control the proceedings. I suggest they are used for either procedural or coercive purposes and are not at all suggestive of powerlessness.

The pattern of frequency of polite terms used by the judges is different from that found with the other features discussed. As opposed to the other features, the judges do not fall between the other professionals and the lay participants: they use polite terms at a much greater rate than anyone else. This can be explained by their procedural and neutral role: it is in their interest to have the proceedings run smoothly.

Turning to the lawyers, Liebes-Plesner (1984) finds that defence lawyers use polite forms of address in Israeli courts for sarcastic and aggressive purposes, but this is not repeated in the current study. This may have something to do with the fact that juries do not exist in the Israeli legal system, whereas juries are present for all seven hearings in this study. Although the prosecuting counsel in the current study use polite forms more often than defence counsel, the

rates for the two groups are relatively close to each other given the rates for the other groups of participants. The different roles of the professional participants (i.e. lawyers as opposed to judges) may give some pointers here. The two groups of counsel stand to benefit equally from being polite in court, and there is nothing ethnography of speaking can offer obviously to explain the difference between them.

The police witnesses use these terms less often than the professional participants but much more than either the defendants or the other witnesses. As their role has neither procedural nor coercive aspects, I suggest this is to do with power on its own. While not a controlling force in the courtroom, they are the most confident of the witnesses, and arguably could see themselves as having enormous power in the justice system. On the other hand, the defendants and the other witnesses are not used to being in court. They have the most powerless roles, again with neither procedural nor coercive aspects.

Therefore, polite terms do not fall into the predictable patterns according to powerlessness. Looking at their use by female and non-NZE participants may confirm this or otherwise (see Tables 9.10 and 9.11 respectively).

Table 9.10: Rates of polite terms for female participants

Participant	Polite terms	Words	Rate
6J	9	226	1:25
7J	2	104	1:52
7PC	12	777	1:65
1DC1	17	1,050	1:62
5DC	10	6,497	1:650
4D	1	3,536	1:3,536
5W4	0	612	0
6W4	0	438	0
7W	0	63	0
all women	53	13,440	1:254
all men	302	77,088	1:255

There is remarkable similarity in the overall use of polite terms by the men and women in these hearings. Therefore we cannot say that gender has anything to do with this pattern in this study. This is consistent with Holmes' (1990) suggestion that, while there may be gender differences between how women and men perceive the functions of particular kinds of talk, these differences are less relevant in formal situations. The above table confirms what has already been suggested:

that power (as opposed to powerlessness), not gender, is operating in the courtroom. Note that Holmes' (1993) finding that women use apologies more often than men is not repeated in this study. The women in the hearings use apologies at a rate of 1:1920 words, while the men's rate is 1:714.

One female professional participant, 5DC, stands out from the other female professionals in that she uses polite terms very infrequently (and this is not explained by her using fewer words, as she uses more words than the other female professionals). As mentioned before, she appears very confident but it is her first appearance as defence lawyer in a criminal hearing. Equally, though, this case is not one which exhibits much in the way of trouble. Perhaps therefore, where these terms are used for procedural purposes in other hearings, they are not needed in this one.

Table 9.11: Rates of politeness terms for non-NZE participants

Participant	Ethnic group	Polite terms	Words	Rate
1DC2	Samoan	11	1,365	1:124
1D1	Samoan	0	789	0
1D2	Samoan	3	623	1:208
5D	Maori	0	1,079	0
6D	Niuean	0	811	0
7D	Maori	1	233	1:233
4W	Maori	1	2,546	1:2,546
5W5	Pacific Is.	2	316	1:158
6W2	Indian	0	2,030	0
6W4	Niuean	0	438	0
6W5	Niuean	0	137	0
all non-NZE		18	10,367	1:576
all NZE		337	80,161	1:238

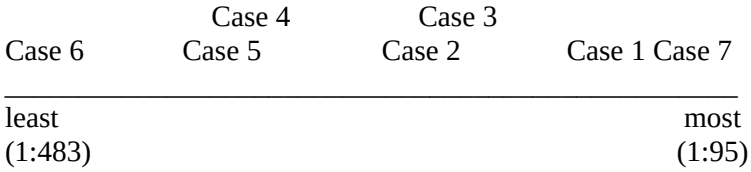
Six of the eleven non-NZE participants do not use polite terms at all. However looking at the individuals we see that this does not change the overall picture: even without including the non-users, this group uses these terms less frequently than NZE participants. Given what has already been discussed this is, of course, not surprising: only one of the non-NZE participants, 1DC2, belongs to the professional category, who are clearly the main users of these terms. And indeed he uses them most among the non-NZE participants.

Can their use be explained by looking at cases rather than the participant groups? Table 9.12 presents the numbers and rates for their use in the seven cases and Figure 9.5 presents the cases along a continuum.

Table 9.12: Use of polite terms by case

Case	Polite terms	Words	Rate
One	79	9,997	1:127
Two	82	18,855	1:230
Three	53	11,065	1:209
Four	46	17,129	1:372
Five	42	16,029	1:382
Six	32	15,455	1:483
Seven	21	1,998	1:95
total	355	90,528	1:255

Figure 9.5: Use of polite terms by case



Polite terms appear very frequently in case seven and a little less so in case one. What is it about these two cases which might explain this apparent largesse of politeness?

In case seven the judge, prosecuting counsel and the defendant are all female, which is very different from the other hearings. If it is the case that women are more polite than men, then perhaps this explains the frequency. However, Table 9.12 has shown that gender is not a factor in the use of polite terms, at least in this body of data. Apart from that, the brevity of case seven supports the notion that it is a matter of polite terms being used for procedural purposes: the cross-examination phases are very short in this hearing, but the same processes have to be followed in presenting the evidence. In other words, if polite terms are indeed used procedurally in court, rather than to express powerlessness, then they would appear proportionately more often in a shorter hearing than one with longer episodes of questioning.

Although case one and case seven are very different in terms of trouble experienced during the hearing, it might be worthwhile in the future to relate the use of polite terms to frequency of repair and success in resolving trouble as well as to procedural matters.

9.4 Conclusion

In summary, then, using forms expressing politeness explicitly, whether terms of address or lexical terms such as *please* and *sorry,* cannot be said to be a matter of powerlessness in court, although the powerless do use them occasionally.

Powerlessness aside, the functions of the two sets of terms appear to overlap to some degree, i.e. when they are used procedurally, but to diverge markedly in other situations. Polite terms such as *please*, *sorry* and *thank you* do not appear to have strategic use in these hearings, whereas many instances of terms of address do. The latter appear to emphasise or mitigate FTAs, particularly in the cross-examination phases of hearings. In addition, one participant, 5DC, uses first names, probably for facilitative purposes, and also uses TLN frequently, quite possibly for adversarial purposes (neither of which could be called powerless). Further, she uses the other polite terms discussed less often than many other participants (including all of the other professional participants and all of the females other than 4D).

This raises again the question of what should be subsumed in the term powerless language. In fact this question has arisen with a number of the features discussed in this study. This, combined with the qualifications clearly necessary on the powerless aspects of some other features discussed, means that we should perhaps also question the notion of powerless language over all. We should instead be speaking of the interaction between people's roles and goals within each interaction. These questions are addressed in the final chapter.

Chapter Ten: *Well*: Adding a Functional Perspective

10.1 Introduction

A great many words are multifunctional; some of these, pragmatic markers, can be shown to have interactional aspects. Such markers are "the linguistically encoded clues which signal the speaker's potential communicative intentions" (Fraser, 1996, p. 168). One class of these, discourse markers, can be defined as "those natural language expressions whose primary function is to facilitate the process of interpreting the coherence relation(s) between a particular unit of discourse and other surrounding units and/or aspects of the communicative situation" (Risselada and Spooren, 1998).

Schiffrin defines discourse markers as "sequentially dependent elements which bracket units of talk" (1987, p. 31). By sequential dependence, she means that the markers "are not dependent on the smaller units of talk of which discourse is composed" (1987, p. 37) and cannot be explained solely by looking at syntax. While this seems perhaps too broad a definition to be useful at first glance, she analyses a variety of markers with different forms and functions and the definition serves as a hold-all to gather in that variety. She discusses the merits of other units, e.g. sentences, but concludes rightly that they would all restrict the scope of the analysis too much and mask important insights. Schiffrin calls this definition an operational one. Her more theoretical definition, arrived at after applying the operational one in her analysis, says that markers are "members of a functional class of verbal (and non-verbal) devices which provide contextual co-ordinates for ongoing talk" (1987, p. 41).

In evaluating Schiffrin's work, Redeker considers that the definitions are vague, not used consistently, and not delimiting enough to be useful. She suggests a tighter definition and a change in terminology: "A discourse operator is a word or phrase - for instance, a conjunction, adverbial, comment clause, interjection - that is uttered with the primary function of bringing to the listener's attention a particular kind of linkage of the upcoming utterance with the immediate discourse context" (1991, p. 1168). While her comments on Schiffrin's analysis of particular examples may be valid, the definition she proposes is incomplete. First it ignores the fact that discourse markers can occur finally. Secondly, it in turn does not define "particular kind of linkage". While such linkage is given substantial discussion in her review, it is not tied in as part of the definition of discourse operator. I am not convinced that Schiffrin's "contextual co-

ordinates" are less useful as part of the theoretical definition (although I do accept that her operational definition is too broad). However, in the context of this chapter on *well*, either of these definitions is applicable.

Lenk notes that discourse markers "are used pragmatically, with a structuring and organising function" (1998, p. 246). She seems to believe that Schiffrin sees them as having a role in local coherence only (although Schiffrin states explicitly that they do not always work "pairwise") and points out that markers can also act globally, showing relationships to other parts of the conversation.

This chapter considers *well* in its function as a pragmatic marker, and does not include its use as an adjective (as in "was he *well* at the time?") or adverb ("how well did you know him?"). The data contain 309 instances of *well* used as such a marker.

Example 1 (Case six, file 1, p.18, l.43)

1 6PC: (2/3) and (0.5) how long did he remain at that table.
2 6W2: **well** (0.5) he was um (0.5) seated on the (0.5) chair (1/1) for more than
3 one and a half hours (0.5) could be close to two hours (0.5) but he was
4 at one particular place (0.5) all that period.

Example 2 (Case five, file 2, p.11, l.15)

1 5DC: did he fall to the ground?
2 5D: no
3 5DC: (2) **well** what happened then

Example 3 (Case five, file 2, p.19, l.34)

1 5DC: at the party (3 / 1) how would you say they (0.5) <u>compared</u> with the
2 complainant as his group xxx his group of friends.
3 5W4: **well** they stood out pretty bad
4 5DC: (1) **well** what do you mean by that
5 5W4: xxx **well** (0.5) we had two skinheads
6 and we weren't very well dressed for that party (2) we looked out of
7 place
8 5DC: (3) **well** after you'd gone in to the house (0.5) what happened then.
9 5W4: (1) **well** we walked in (1) me and my friend walked in we were
10 following the guys ...

O'Barr and Atkins (1980) include *well* as a hesitation in their list of powerless language features, thus implying it has little or no function apart from this. Since the data in the present study show that it may be used for a range of functions, it is treated as a separate category here.

The first part of this chapter (section 10.2) continues the process applied in previous chapters. It provides a picture of who uses *well* in the courtroom and assesses whether it can justifiably be spoken of as a feature of powerless language on that basis.

However, as will be seen, that analysis does not account for all that *well* is doing. Some of its functions, then, are the subject of 10.3, which takes Schiffrin's (1987, 1992) work as a starting point. After discussing some relevant literature, the section considers where *well* appears in the courtroom, its discourse functions, its occurrence with overlap and repair, its use as a softening device, and whether politeness theory can account for its use. The chapter goes on in 10.4 to provide a comparison with ordinary conversation in New Zealand English.

10.2 Who uses *well*?

All kinds of participants in these hearings use *well* as a pragmatic marker, rather than its being used predominantly by the powerless group (see Tables 1 to 4, Appendix F). The greatest users are the lawyers, the defendants and the witnesses, while the judges and the police witnesses use it the least. It therefore seems unlikely that the use of *well* can be explained convincingly by reference to power on its own.

But 18 of the 50 participants, almost one third, do not use *well* at all as a discourse marker, and this too is interesting. They also come from all groups participating in the hearings. These 18 people comprise two judges, one prosecutor, two defence counsel, three defendants, four police witnesses and six lay witnesses.

As with the features already discussed, it is more productive to look at the rates for the use of *well*. The highest users of *well* turn out to be three witnesses (5W4, 5W5 and 5W1) and one defendant (1D1), all of whom use it at a rate of more than one to 100 words. With rates of just under 1:100, 4D and 4W are the next most frequent users.

While it may be mere coincidence, it is worth noting that these high users appear mainly in two cases. 4D and 4W are husband and wife, so it is possible that they have adopted similar speech

patterns. However, the same does not apply in case five. Here the three witnesses concerned have little in common with each other. At this point we could begin to wonder whether some kind of speech accommodation could be occurring. However this cannot be the explanation as witnesses are not permitted to be present in the courtroom to hear previous witnesses give their evidence.

We need to discover whether there is something else about these cases which could account for it. Looking at the picture first by case and then by participant group may shed some light on whether some other factor could account for the pattern of use.

Figure 10.1: Use of *well* by case

Case 7	Case 3	Case1 Case 6	Case 5	Case 2	Case 4
least (1:1,998)					most (1:158)

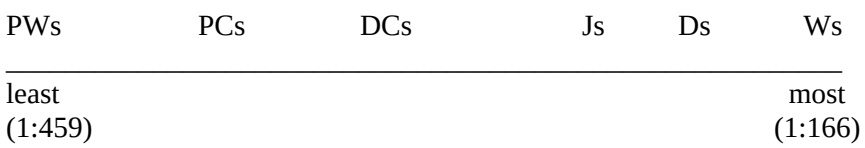
The rate at which *well* appears throughout the cases is once in 293 words. Case seven shows the least use of *well*, but with only one instance in the entire case, it may skew the picture over the seven cases.

Removing it from consideration, the rate for the other six cases becomes 1:287, which does not change the position in a material way. There is not a wide variation between four of these cases (ranging from 1:376 to 1:309), but case four has a substantially higher rate. As will be remembered, this is a case where much trouble occurs, particularly with the questioning of 4W, and (less so) of 4D (high users of *well*). Case five, where the three highest users appear, stands in the mid-range among the seven cases in the use of *well*. Thus looking at the pattern by case sheds little light on the question.

The narrow range of *well* occurrence is repeated when we look at the rates for the participant groups. Further, it falls into a rather narrower range than the features discussed in previous chapters. The highest user group is the witnesses, while the most infrequent users are the police witnesses; the first of these are part of the more powerless groups, the latter fall nearer the middle on the power continuum. Once again the judges appear in the middle of the continuum. On this measure, use of *well* broadly follows the patterns of power in the courtroom, with the particular

exception of the police witnesses. Interestingly, the latter group's having the lowest use also is not consistent with their use of the other features already discussed in this study.

Figure 10.2: Use of *well* by participant group



Turning to the question of gender (see Table 5, Appendix F), women in this study do use *well* as a pragmatic marker more often than men (1:210 and 1:315 respectively). However can we say that this is a matter of powerlessness? Clearly not, at least on its own, because four of the eight women in the study do not use it at all.

Figure 10.3: Use of *well* by female participants

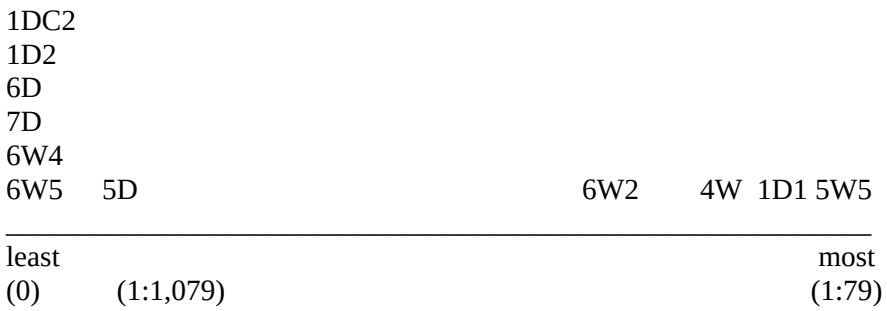
A superficial glance suggests that among the women *well* follows the lines of power/powerlessness, as one would expect from the ethnography of the courtroom. However two witnesses do not use it and 5DC uses it much more than the other professional women involved. The fact that this is the first time this lawyer has presented a defence case in court may account for her use, as it may have more to do with confidence or indeed other factors than having anything to do with power. However she uses it less than the average for men and her rate is slightly less than the rate for all defence counsel. Therefore we cannot say unequivocally that *well* is being used as a powerless feature by the women.

It could be argued that the number of female participants here is too small to allow reasonable generalisation. Be that as it may, looking at how the women are using *well* may reveal a distinctive pattern. I will return to this in 10.3.

In a similar way (see Table 6, Appendix F), although the rate for non-NZE participants is higher than for NZE participants (1:212 and 1:308 respectively), being non-NZE cannot predict the use

of *well* as a discourse marker: of the eleven non-NZE participants, six do not use *well* in this way at all. However, these six include the three Niueans who have an interpreter available and we have no way of knowing whether the lack of *well* belongs to the witness or is a consequence of the interpreter's translation of the question. It does not appear to be used more by one of the ethnic groups than the others.

Figure 10.4: Use of *well* by non-NZE participants



The highest users in this group are 1D1 and 5W5. It will be recalled that 1D1 is a young Samoan man (only 18 years old) who, his defence alleges, has been led into this situation by older men. He demonstrates explicit fear of one of those men. Secondly, although clearly a second-language speaker of English, he does not use an interpreter. Nor does 5W5 use an interpreter. So we could speculate that being a second language speaker is a factor in choosing to use *well*, but there are not enough non-NZE participants to do more than that.

It is quite clear that the choice to use *well* is rather more complex than being based simply on societal or institutional factors. While I do not wish to claim that these are irrelevant, I suggest that they may interact with other factors. Those factors may well relate to interactional aspects and other more personal choices.

10.3 Functions of *well*

10.3.1 Relevant literature

Schiffrin (1987) chooses *well* as an example of a discourse marker whose function is based on neither its semantic meaning nor its grammatical status. In citing previous research, including Schegloff and Sacks (1974), Labov and Fanshel (1977), Lakoff (1973), Pomerantz (1984), Owen (1983) and Wootton (1981), she notes *well* can do the following:

- it can be an interjection, filler, particle, hesitator and initiator (Svartvik, 1980);

- it often begins turns (Sacks, Schegloff and Jefferson, 1974);

- it can be a pre-closing device, which can offer an opportunity to return to an earlier topic or to open a new one (Sacks and Schegloff, 1973);

- it can shift talk towards topics of mutual concern (Labov and Fanshel, 1977);

- it can preface insufficient answers to questions (Lakoff 1973);

- it can preface disagreements and dispreferred moves (Pomerantz, 1984).

Schiffrin suggests that *well* also functions as a response marker, to display the speaker as respondent. Further, it appears when what is about to be said does not fit fully with the coherence options given immediately beforehand. She suggests that, unlike *oh* for example, *well* has no cognitive (referential) function at all and that its purpose is solely interactive.

She concludes that, unlike other markers (e.g. *so*, *y'know*), *well* can be used for so general a function precisely because it has no referential meaning. It "anchors its user in a conversational exchange when the options offered through a prior utterance for the coherence of an upcoming response are not precisely followed" and "locates a speaker as a respondent to one level of discourse and allows a temporary release from attention to others" (1987, p. 127).

Having reminded us that different forms of question create different possibilities for answering, she goes on to say that the use of *well* in an answer also relates to the form of the question. Thus *well* is likely to appear more often when the answer options are "relatively" (p. 104) limited by the question (as opposed to being highly limited, as in yes-no questions etc.). Her data confirms this, showing that it occurs more often before answers to wh-questions than before those to yes-no questions, disjunctive questions and tag questions. In addition, it is more likely when the person answering departs from the options provided by the question, for instance through lack of knowledge.

Well can also occur in other positions, such as after an immediate minimal answer, as part of expanding that answer. It occurs in answer deferral (where it is useful in signalling that speakers

are aware that their response is demanded by the preceding utterance) and in repair. It can occur after requests which are couched in forms other than questions, again when the answer does not fit the options supplied. It has a role when expected appreciation is not offered and in cooperative turn taking.

In discussing the roles of *well* in contingent requests, Schiffrin suggests that it signals a response to both the preceding question and its answer, i.e. it attends to more than one part of the exchange in which it occurs. Her data come from sociolinguistic interviews and the examples she gives (and so her conclusions) seem particularly related to that situation. How far her points relate to other situations is not addressed; therefore other possibilities are not considered.

Well "focuses on both speaker and hearer - for the one who uses 'well' is being defined as a respondent (a type of hearer) in relation to a prior speaker's expectations who must also alter his or her expectations about the course of upcoming talk" (1987, p. 323). Thus *well* focusses both on prior and upcoming utterances.

In her concluding chapter Schiffrin points out that the discourse markers she discusses do not create relations between utterances, i.e. coherence. Rather they display those relations. I wonder how she makes the distinction and I suggest that the two are entwined inextricably. It seems inconsistent to suggest that *well* marks speaker response on the one hand (thereby defining a relation which the hearer would not necessarily induce without the *well*), but that it merely marks "different planes of talk", (giving "contextual co-ordinates") on the other. If we accept, for example, Schilling-Estes's (1998) view that style shifting is proactive, we are bound to consider that proactivity might have a wider application, i.e. in word choices which have been assumed to be the unconscious result of social factors. Is it not possible that *well* is creating relations between utterances, i.e. being used rather more proactively? Given the response aspect of *well*, perhaps it is reasonable to suggest that speakers also choose *well* precisely because it can create those relations. As will be seen, this is supported by its use during the court hearings which are the subject of my study.

A further factor here may be that if *well* is only displaying coherence, why would it not be used much more often? In other words, there are many situations where *well* is not used when it would be perfectly appropriate. If we accept this, then we must look to *well* as doing more than simply displaying relations. Therefore its absence may carry meaning.

On the other hand Schiffrin (1987) suggests that both redundancy and the size of the discourse unit to which the marker relates can account for both a reduced meaning for some markers and for their not occurring where they might be predicted. Other devices can often do the same work. If such other devices are used then the need for the marker is reduced and it may not be selected. She does not address why it is that one marker is not selected as opposed to another, which may again relate, in the case of *well*, to something other than procedural choices.

However, when considering why a marker is not used we should also remember that co-occurrence of two factors does not necessarily mean that certain options will be chosen as a consequence. "After the event we can say very easily how it came about - we can even turn its antecedents into causes if we wish. *But things could always have been otherwise*" (McHoul, 1997, p. 11).

Greasley (1994) too finds that *well* signals that its speakers do not accept some aspect of a previous move or situation, i.e. it marks response. His data, which consist of tape recorded commentaries of four frames of snooker (a rather small corpus) contains 39 instances of *well* used to preface turns. He suggests that *well*'s function is to "take-up" a problem, again a notion consistent with Schiffrin's findings, although it is stretching the point to imply that expressing surprise over a good snooker shot is a "problem".

Sai-hua Kuo (1994) discusses *well* briefly in her article on agreement and disagreement in phone-in radio talk. While this is a study of one brief conversation with only two participants, and therefore rather too limited to be highly persuasive, she too finds speakers use *well* when delaying dispreferred responses. She argues that the politeness principles are fundamental in speakers' choices. However, "it is the less powerful speaker who follows the Politeness Principles but not her more powerful interlocutor" (1994, p. 111). But we have already seen in 10.2 that *well* use cannot simply be attributed to powerlessness. It is somewhat limiting to suggest that politeness is a tool used only by the powerless: it can also be used by those with power for a variety of reasons, as will be seen.

Morris, White and Iltis (1994) also mention *well* in passing in their review of accounts and literature looking at accounts from the conversation analysis point of view. However they say no more about *well* than that it shows that there will be some delay before the account itself. They define an account as "a description that reports trouble accomplishing what is expected ordinarily

and, therefore, is understood and credited by its recipient as an explanation for a divergence from assumptions about what ordinarily will or should happen" (1994, p. 130). Although they deal with language use in situations which are consistent with what others have found for *well*, they do not address this word's use fully in those situations. They make the useful point, though, that "people design accounts for particular recipients, on the fly, in light of what those persons have just said or might say ... and ... social relations and for their own interests, values and preferences" (p. 142).

Holtgraves (1997) regards *well* as a "hesitating preface" and as a positive politeness strategy. He reminds us that conversation analysis does not refer to psychological states, such as face wants and would therefore look at *well* only in terms of preference organisation. His study is based on a small number of somewhat artificially contrived conversations where the participants could not see each other - this was done to make the verbal interaction paramount in the analysis. He does not consider gender differences. However he does look at how people actually disagree. (Note that he finds hedges, whether phrases or single items, to be the most frequent strategy). He concludes that, despite the findings of conversation analysis, linguistic devices used for positive politeness in arguments "must be largely motivated by the interpersonal motives of the interactants" (1997, p. 236).

Jucker (1993) suggests that relevance theory is the only framework which accounts for all uses of *well*; this approach suggests that relevance (rather than politeness) is the motivating factor in speaker choice and hearer interpretation. Politeness only becomes involved if it is relevant to the situation in some way, rather than being necessarily communicated by certain features (i.e. interpretation is a matter of hearer inferences, not merely decoding). Jucker says that *well* has four functions (delay; and the marking of frames, of insufficiency and of face-threat mitigation). His claim that *well* marks a shift in relevant context rather than the FTA directly is consistent with Schiffrin's belief that it displays coherence rather than creating it. He concentrates on *well* in one 20 line extract (using intuition as the basis for his reasoning) and in reported speech in 90 minutes of tape recorded sociolinguistic interviews. While his comments are reasonable, he is looking at somewhat restricted contexts which do not involve conflict. This leads to his belief that *well* relates to relevance, even when it is used to mitigate FTAs. It seems likely that relevance would explain its use in contexts involving conflict as well.

To summarise, then, Schiffrin's approach makes a useful starting point for discussing *well* in the courtroom, in spite of some limitations. The other studies cited above also have useful points to add. However each has limitations either in the size and variety of the data pool or in the applicability of the analysis to this courtroom study. It is widely accepted that *well* is used as a response marker, indicating aspects of dispreferredness and structural coherence. Further, it has a role in politeness, although, again, it has not received a fully realised analysis. At a more global level, relevance theory, as explicated by Jucker, appears able to provide an umbrella wide enough to cover this variety of roles but allowing their different aspects.

10.3.2 Where is *well* appearing in the courtroom?

Turning now to the present study, we find that 127, or 41%, of the 309 *well*s occurring in the data appear in the first parts of adjacency pairs (FPPs) (1). (Note that Schiffrin, 1987, does not give details of how many *well*s appear in questions as opposed to answers - the weighting of the chapter concerned implies that she found far fewer in the FPPs; nor does she address their prior turns. Schiffrin appears simply less interested in these aspects. It seems to me that this means that she ends up with a less than complete picture of the functions of *well*. The present study attempts to remedy that and finds the picture to be more interesting as a result.) A high proportion of *well*s in FPPs, 116 (88%), follows previous turns which are declaratives (90% if we include the three declaratives ending in HRT). The remainder follow yes/no questions, wh-questions, and objections. Table 10.1 below gives details of this.

Most of these FPPs are addressed by professional participants to lay addressees (122, or 92% of the 132 tokens).

Example 4 (Case five, file 2, p.12, l.6)

1 5DC: (2/1) **well** can you tell us what that person looked like?
2 5D: (1) of medium build (0.5) of medium height (1) pretty (0.5) big (1) or
3 Polynesian (1/1) ah that's about it.

The remainder involve both professional speakers and addressees.

Example 5 (Case one, file 1, p.13, l.50)

1 1J: xxx mr DC2 =
2 1DC2: = sir I I did ask him whether mr D2 used (0.5) word appropriate to the

English language (0.5) um the constable said he did not (0.5) and so I
just put a word to him which seems (0.5) strange (0.5) when reading it
in the English (2) I asked the constable if he finds that to be strange use.
1PC: (1) **well** that's why I asked the question, sir. (1) I asked xxx the question
was what did the accused mean by using the word proud (2) not by
1J: (1) also I think if you rephrase the matter you'll overcome the objection.

No FPPs using *well* in the data are addressed by a lay speaker to a professional.

Turning to SPPs, 170 *well*s appear in this type of turn. Showing a different pattern from those in FPPs, 42 follow turns in declarative form (including four examples ending with HRT), 68 follow wh-questions and 42 follow yes/no questions (which includes four requests).

Table 10.1: Turns before *well*-turns

Previous turn form	Turns where *well* appears	
	FPPs	SPPs
declarative	112	37
declarative+HRT	3	5
yes-no Q	2	37
wh-Q	2	68
yes-no req	0	5
yes-no Q+wh-Q*	0	1
objections	3	1
tag Q	0	10
alternate Q	0	1
request	0	1
declarative+request	0	1
rhetorical Q	0	1
?	5	2
total (1)	127	170

* This is included separately because it is impossible to tell which part of the previous turn the *well* relates to.

This is consistent with Schiffrin's (1987) results in that *well* in SPPs follows wh-questions rather more than any other form. However, she does not appear to find it following declarative FPPs - perhaps this has something to do with courtroom patterns as opposed to sociolinguistic interviews. An example of a *well* following a declarative FPP from the present study is the following (lines 9-11), where the intonation and form are both declarative:

Example 6 (Case six, file 1, p.12, l.51)

1 6DC: (4) thank you your honour (0.5) Mr W1 (0.5) I take it (0.5) you're not
2 (0.5) absolutely certain (2/) that the (1) person you caught a glimpse of
3 (2/2) in the urinal (1/) was (0.5) the same person (1/1) whom you'd
4 (0.5) earlier seen sitting on a stool (0.5) near the TAB counter
5 6W1: (0.5) I've already stated that
6 6DC: (3/1)
7 Typist: say again
8 6W1: (0.5) I said I've I've I've already stated that
9 6DC: (4) **well** you would've laughed at the possibility (3/0.5) that the person in
10 the urinal might have been another (0.5) man (0.5) from the earlier
11 person.

In the predictable direct reversal of the situation with FPPs, by far the bulk of the 170 *well*s in SPPs (142, or 84%) are used by lay participants and addressed to the professionals. However a further 20 are addressed by professionals to professionals.

Looking at all *well*s used by professional participants to other professionals, eight appear in FPPs and 20 in SPPs, supporting the notion that, while role may well be important in the frequency of *well* use, function is also a determining factor.

This makes it apparent that if indeed *well* is used as a response marker, this function may be just as important for the questions as for the answers given in the courtroom. Schiffrin notes its role in contingent requests, but places rather less weight on this aspect (she gives no figures about it), concentrating more on its role in second pair parts. While this may be quite appropriate for group sociolinguistic interviews, the courtroom's adversarial approach and its reliance on the adjacency pair structure may mean that *well* can perform more strongly in this environment (FPPs) than Schiffrin implies.

One way of assessing this claim is to look at where *well* occurs through the examination phases of trials. As explained in chapter four, there are essentially two parts to courtroom examination: co-examination (examination-in-chief and re-examination) and cross-examination. If *well* is important in signalling speaker response, then we can expect it to show up differently in these two examination types, because of their different aims (the first being more cooperative and the second more combative).

And this is what we find. Table 10.2 below shows that 210 (68%) of the *well*s occur during cross-examination; 87 occur during co-examination (78 during examination-in-chief and another 9 during re-examination). Thus they are somewhat more frequent in co-examination in these data than Hale (1999) finds in her recent study of 17 court hearings involving Spanish interpreters in New South Wales (where only 1% of them occur in co-examination). The remainder, while appearing during the examination phases of the hearings, occur in other types of turns, e.g. procedural matters.

The 127 *well*s occurring in FPPs do so far more often during cross-examination than during co-examination (103, or 81%, and 22 respectively). On the other hand, 103 (59%) of those occurring in SPPs do so in cross-examination. On a chi-squared test this difference is statistically

significant at the 0.05 level (even taking into account the low expected values for some cells). It suggests that *well* may have different functions according to the kinds of turn it appears in (which may relate either to form or function) and when it is used in the courtroom.

Table 10.2: Well in examination phases

Examination type	FPP	SPP	Other	Total
cross-examination	103	103	4*	210
co-examination	22	63	2*	87
other	2**	8**	2**	12
total	127	174	8	309

* The turns in which these appear cannot be classified as either FPPs or SPPs.
** These occur purely as part of procedure (e.g. when the hearing was interrupted to expel a witness who should not have been present), or during the introduction to the voir dire in case two, or when the judge gave unsolicited advice.

An ethnographic approach suggests that, due to the nature of the hearing process, we would expect to find a certain amount of challenge, clarification and confirmation in the "questions", justification and hedging in the cross-examination phases. If the conversation analytic approach shows *well* to be occurring at those times, we can surmise that its use depends both on the user's roles and their goals for those turns. Thus we can conclude that either approach could account for the appearance of *well*.

Table 10.3 shows the forms of the TCUs where *well* occurs.

Table 10.3: Turn forms and *well*

Form	FPP	SPP
declarative	35	156
declarative+HRT	1	8
declarative +tagQ	12	1
wh Q	28	1
yes/noQ	41	0
yes/no request	2	0
alternative Q	6	1
imperative	2	1

With SPPs, it is clear that *well* is associated with declaratives. This is not surprising, given that these are the "answers" to "questions". But for FPPs *well* appears in a variety of constructions,

most often as part of yes/no questions, declaratives and wh-questions. It is interesting that it seems to occur less often with alternative questions. It may be suggested that such questions are heard less frequently in New Zealand courtrooms, which in turn could be a result of the commonly held view in this country that speakers of Polynesian languages have difficulty with this construction (note, however, that Lane, 1988, finds this not to be true).

10.3.3 What is *well* doing in court?

The discourse functions of the turns in which *well* appears provide greater interest than their syntactic functions.

Predictably there is very little overlap between the functions in the two kinds of turns. The most common functions (those which are associated with three or more instances) associated with *well* in this data are summarised here in Table 10.4. (Note that many instances of *well* have more than one function associated with them and it has not been possible to choose which function is primary in a principled way.)

Table 10.4: Functions of *well*

Function	FPPs	SPPs	Total
agree*	3	14	17
challenge	75	13	88
request**	22	0	22
clarify	10	7	17
delay	13	47	60
give information	0	10	10
justify/explain	1	35	36
hedge	0	21	21
raise new issue/begin story	10	0	10
continuation	4	5	9
reinvoke	2	1	3
disagree***	0	12	12
refuse****	1	5	6
signal focus	3	0	3
change utterance	1	2	3
other*****	6	7	10

* includes confirmation, admission
** all requests (including those for clarification, justification, opinions, rulings)
*** includes denying, disclaiming
**** includes denying knowledge, refusing compliance, and refusing a witness's excuse.
***** the "other" instances cover a range of functions such as scene setting, quoting, pre-sequences, signalling incomprehension, and criticising, most of which occur only once through the data.

Previous research generally agrees that *well* occurs in dispreferred SPPs, but less is said about how often this is so. Dispreferred SPPs do not meet the structural requirements of the previous speaker's turn and can be analysed quite systematically as such. For the present study, 120 (69%) of the *well*s appear in SPPs which are dispreferred. This leaves 46 examples which do not (I have included here the 14 tokens where delay is the only sign that the utterances may be dispreferred - this is discussed below) and eight which are unclear. Those 46 instances occur with the full range of form and function found among the dispreferred SPPs (i.e. no different pattern shows up here).

Before continuing we need to recall that *well* also occurs in FPPs, where, of course, the notion of dispreferredness does not apply. However, it remains the case that there is a similar awareness at work in FPPs, even if it does not have a structural element as dispreferredness does. This

awareness is discussed further below. What is happening here may be best described in terms of politeness theory, i.e. face-threatening acts (FTAs) (Brown and Levinson, 1987). As will become clear below, *well* is frequently used in FPPs which involve some threat to the hearer's face.

It seems to me that dispreferredness implicitly also involves an element of face-threat. Therefore it may be more economical to categorise both uses of *well* under the FTA umbrella, rather than having to categorise them differently for FPPs and SPPs.

Returning to those *well*s which occur in SPPs which are not dispreferred, it is now appropriate to add the 17 *well*s which occur in non-face-threatening FPPs and to consider whether any patterns appear. Table 10.5 gives a simple look at who uses *well* in a non-face-threatening manner, whether in FPPs or SPPs.

Table 10.5: *Well* in non-FTAs

	FPP: co-exam	**cross-exam**	**SPP: co-exam**	**cross-exam**
men	7 (3%)	7 (3%)	20 (8%)	9 (5%)
women	3 (5%)	0	12 (19%)	5 (8%)
non-NZE	0	0	8 (16%)	2 (4%)
NZE	10 (4%)	7 (3%)	24 (9%)	12 (5%)

Note: The percentages given in this table relate to the total numbers of *well*s spoken by the respective groups.

Although these are small numbers and very small proportions of the numbers of words spoken by these different groups, we can see that there is a pattern here. First of all, these non-face-threatening utterances occur more often during co-examination than in cross-examination, and this applies for both genders as well as for non-NZEs. However, in addition to that, the women use them in a non-threatening way rather more often than the men. This of course is consistent with the research by Holmes and others who suggest that women use facilitative language (discussed in previous chapters). Given the aims of co-examination as opposed to cross-examination, we can suggest that *well* may be used as a facilitator (by lawyers) or a mitigation device (by witnesses). Table 10.6 below therefore looks at these examples from the point of view of role.

Table 10.6: *Well* in non-FTAs by gender and role

	FPP: co-exam	FPP: cross-exam	SPP: co-exam	SPP: cross-exam
male professional	8	7	2	3
female professional	5	1	0	1
male lay	0	0	18	6
female lay	0	0	12	4

Among the professional participants, the men use *well* in FPPs in a non-face-threatening way in both co- and cross-examination, but the women do so more often in co-examination. However, for the lay participants there does not seem to be such a strong difference between the genders. On the other hand, the numbers for all groups are so small that these comments can only be suggestions about something which may bear further investigation. We can say, though, that the fact that the users of *well* in this way are not all powerless in court allows us to surmise that *well* is being used for different functions in the different phases of examination rather than simply being a social indicator.

Before going further into its functions we need to consider the question of delay. This has been assumed as a given with *well*. Many examples in my study demonstrate explicit delay, with use of pauses and hesitations (only nine instances occur with a lengthened vowel; of the two which appear to be minimal answers, one is probably intended as part of a longer turn which is interrupted, and the other is used to hold the floor while waiting for the typist). Thus it is perfectly acceptable to say that *well* is often associated with delay.

Example 7 (Case one, file 1, p.20, l.4)

1 1DC1: (3) how would you describe him.
2 1D1: (1/3) oh **well** (3) he's a violent man?

Example 8 (Case five, file 2, p.19, l.27)

1 4DC: (2/) did you see what sort of party it was that was being held?
2 4W4: (0.5) **well** (0.5) yeah xxx were ah (0.5) people who were well dressed.

However, there are many examples where *well* occurs without any of the other features associated with delay.

Example 9 (Case one, file 1, p.22, l.27)

1 1PC: (1/) **well** why didn't you tell the police that Mr D2 (0.5) had thrown (0.5)
2 the bin at the window.
(Note: the pause before the turn begins can be attributed to the speaker's waiting for the typist to be ready)

Example 10 (Case two, file 1, p.1, l.32)

1 2W: (0.5) he did not give it to me
2 2DC1: (0.5) xxx or even to (0.5) C =
3 2W: = **well** he gave it to C (0.5) not to me.

While we can suggest that *well* might be adding delay in these circumstances, it is difficult to be sure of this because of the lack of other corroborating evidence. This is particularly so in the second example given here, where the *well* begins a turn which latches the previous turn. There are several functions which we can justifiably attribute to *well* in such examples, and it is unwise to rely on delay as the only explanation. And in fact we may be able to attribute other functions to *well* in utterances where there is also explicit delay.

Leaving delay aside, we can now begin to group the specific functions into broader categories: neutral, agreement, and disagreement.

"Neutral" includes quoting, procedural matters, rulings, continuation, raising new issues, beginning stories, and rephrasing questions.

Example 11 (Case three, file 2, p.8, l.46)

1 3PC: (24) and who's that man that appears in your diary. =
2 3D: = it is um (0.5) <u>was</u> going to be a business partner of mine but that
3 was the only (1) contact number (0.5) I had of him but the police denied me
4 my diary back.
5 3PC: (6/1) **well** let's get back to the car (0.5) again (0.5) now (0.5) during the
6 interview at the police station (1) you were asked again (1) by Mr PW2
7 (0.5) where you got the car from …

"Agreement" involves providing something and includes agreement, acknowledgement, admissions, confirmations, and giving and requesting information which is straightforward and not involving dispute at the time (e.g. names and addresses, locations such as where a car was parked etc.).

Example 12 (Case one, file 1, p.20, l.5)

1 1DC1: (1/1) why did you leave the area.
2 1D1: (3/1) **well** (2) S ask (0.5) ask us to walk down to the shops (0.5) and
3 (0.5) the shop was close

"Disagreement" includes denials, hedges, requesting clarification, refusals to comply, challenging, posing unpalatable questions, and giving unacceptable answers. I include reinvoking earlier topics or statements as disagreements because they generally involve challenging something the witness has already said (note that this does not include reinvoking something said by another witness). I follow Muntigl and Turnbull's definition of a challenge as "any negative thought, attitude, or action that a speaker attributes to an addressee" (1998, p. 230) (after Labov and Fanshel, 1977).

Example 13 (Case 4, file 2, p.2, l.2)

1 4PC: (3) so how many (0.5) hours did you spend (0.5) in Queenstown.
2 4D: (1/1) **well** (2) it's hard to say (0.5) exactly (0.5) it

However this still leaves us unable to account for some tokens. We need a fourth category, which I will call evaluative. This includes qualifying as well as giving opinions, explanations and justifications.

Example 14 (Case five, file 2, p.4, l.46)

1 5DC: (3/1) well if you had had a suspect (0.5) identified (0.5) at a party (0.5)
2 you might well include a number of the other party goers in the
3 identification parade wouldn't you
4 5PW1: (0.5) **well** we get whoever we can to ask (0.5) willing to ah
5 undergo (1) the parade

Table 10.7 shows how the uses of *well* in the hearings fall into these four categories.

Table 10.7: Categorising *well* functions

Type	FPP	SPP
neutral	39	16
agreement	20	51
disagreement	80	70
evaluative	4	4

That neutral instances occur nearly twice as often in FPPs as in SPPs can be accounted for by the fact that often they are concerned with the conduct or forward progression of a hearing and that this aspect is controlled by the lawyers and, to a less overt extent, the judges. A similar comment can be made about the agreement category: the witnesses and defendants are being required to provide information, which will appear in SPPs by virtue of the nature of the interaction.

However the same does not apply with the disagreement category, where well over half of the instances fall. Disagreement occurs more or less equally in both FPPs and SPPs, although slightly more in FPPs. This supports findings of previous research that *well* is often associated with dispreferred responses. But, of course, FPPs are not responses, by definition. This suggests that we should consider *well* in a wider sense, as often indicating speaker awareness that he or she is about to say something which may be unpalatable to the hearer, irrespective of whether it is in an FPP or an SPP.

This study repeats Schiffrin's finding that *well* marks speaker response to a previous utterance, looking backwards to what has already been said.

Example 15 (Case 2, file 2, p.12, l.11)

1 2DC2: (2/) so (0.5) there no direct evidence (1) that this xxx that that laptop
2 computer was (0.5) at his house.
3 2PW1: (1) I didn't say that.
4 2DC2: (2/1) **well** all I'm trying to say is you can't have it both ways it was either
5 (1) there at the time of the search (0.5) which is one of your own
6 witnesses (1) or it (1) now your next comment (5/1) that doesn't appear
7 to follow.

In this sequence, the lawyer's (2DC2) second turn (line 4) has two distinct parts: a post-expansion followed by an FPP ("your next comment ... doesn't appear to follow"). It begins with a challenging comment where the *well* signals that he does not accept the witness's (2PW1)

previous answers. However we can also argue that it signals that the lawyer is about to say something unpalatable, i.e. the challenge itself, which also appears in the post-expansion. Thus *well* also looks forwards, acting as a signal. Having expressed his challenge, the counsel then turns to the next issue he wishes to raise (the FPP, which 2PW1 answers in the succeeding turn).

Similarly, *well* is looking both backwards and forwards in the following example.

Example 16 (Case three, file 1, page 13, l.33)

1 3DC: (2) did (0.5) D know that the car had been stolen at that stage.
2 3PW2: (2) I couldn't be sure
3 3DC: (0.5) couldn't be sure (2) **well** wouldn't you tell him that you were
4 making enquiries as to whether (0.5) the car was (0.5) in his
5 possession legitimately?

Here the lawyer does not appear to accept the police witness's apparent lack of certainty or knowledge. The *well* looks backwards, signalling that response, but it also looks forward, signalling the upcoming challenge, expressed in a negative yes/no question (i.e. a coercive strategy). The two second pause here, although relatively short in the courtroom context, is explicit delay and lends weight to the suggestion that the forward-looking aspect of this *well* may be primary, but does not rule out its backward glance.

Despite not meeting the structural requirements of the FPP, and possibly not meeting the FPP speaker's goals, a dispreferred answer (SPP) may well suit the current goals of its speaker. For instance, a lawyer may ask a question for which the preferred answer (preferred structurally, but also desired from that person's point of view) is one thing, but for the hearer the desired answer is different from that structurally preferred answer (and in court this often revolves around the fraught question of truth). *Well* seems to be particularly useful in this situation.

Example 17 (Case two, file 2, p.25, l.5)

2DC2: (11) what did you (0.5) observe (0.5) C and (0.5) W1 (0.5) to do (1/)
after you'd received these (1/1) instructions from (1/1) Detective M.
2D: (1/) um (0.5) **well** (0.5) on a couple of occasions (2/) I saw them driving
(0.5) late model vehicles (0.5) around the streets of Te Atatu.

Note: The 11 second pause occurs because the prosecuting counsel has interrupted 2DC2's previous turn; although the interruption is inaudible, it ends with *please*, and is probably an objection to that question, which is supported by the prosecutor's telling the judge four turns later that he has asked 2DC1 not to ask leading questions three times; presumably the defence counsel needs time to reconsider his question.

Here 2D is apparently giving a preferred answer if we look from the 2DC2's point of view and the structure of his question. This is a typical environment for *well* to occur: following a wh-question. The question asks for information and 2D provides it. However, it is delayed and only speculation is available to suggest why. We can wonder if either the 2D knows that 2DC2 requires a more damning answer or, on the other hand, whether he is uncomfortable with his role as a police informer. This exchange goes on:

2DC2: (2/14) why (1/1) did (0.5) or do you know (0.5) the reason (2/1) you
were asked to (0.5) do this work for Detective M.
2D: (1/) yes um (0.5) they'd been (0.5) trying to catch (0.5) C and W1 for (0.5)
quite some time (2) especially after (0.5) C had stolen (1) a high ranking
(0.5) police officer's car out of his house.

After the prosecutor's objection about leading questions, the defence counsel continues trying to establish why 2D was acting as an informer, eventually getting him to admit that it was for financial reasons as well as because after another, unrelated, episode, Detective M had "dropped all charges against a co-offender as he was quite young anyway".

In this situation the *well* is not only marking the speaker's response to what has already been said, but it is also used to mark the speaker's attitude towards what he or she is about to say. Again, Schiffrin notes this only briefly.

Another situation in which *well* is used in a similar way is when a speaker uses sarcasm, as in giving a literal answer (knowing very well, generally, that this is not what is being sought). Jorgensen suggests, based on experimental data, that the use of irony is a face-saving measure because it "guarantees distance between the speaker and the mentioned proposition, and thus retains ambiguity about the seriousness of intent" (1996, p. 629). However, there are some

problems with the nature of the experiments (e.g. subjects being asked to recall sarcastic remarks which had occurred at unspecified earlier times) and the experiments all involved friends. This circumstance allowed the researcher to conclude that sarcasm is used to promote solidarity, which could not be suggested with the following examples from the current study. However his suggestion that sarcasm involves an element of complaint does apply to the examples in this study and ties in with the notion of face-threat.

Giving sarcastic literal answers occurs with some frequency during case four. The question here relates to cannabis smoking.

Example 18 (Case four, file 2, p.4, l.12)

4PC: (0.5) how do you know they were smoking heavily.
4D: (1) **well** (2) because (0.5) you see (0.5) um (0.5) white (0.5) um (2) paper (1) with smoke coming out of it (2) being dragged into their mouth and then passed to the next person.

Here 4D gives a preferred response, structurally speaking, in that she answers the wh-question explicitly. However she violates Grice's maxims of quantity and relevance, using *well* to signal that upcoming violation.

Another example is:

Example 19 (Case four, file 2, p.26, l.6)

4PC: (1/) all right I'll (0.5) try and be a bit more specific did you sell any (0.5) in (1) Queenstown.
4W: (3) **well** (0.5) we sort of (1) when we got to (1/1) Bluff (0.5) we had no money so apparently I can't have (0.5) sold any in (0.5) Queenstown I sort of had a (0.5) pretty heavy session in (2) Queenstown (3) and anything coulda happened.

Clearly delay is also an aspect of both of these examples. However it is arguable that there is more to it than that. And although these answers are preferred in that they answer the questions, the speakers are relying, indeed playing, on everyone's knowledge that they are not the desired answers. *Well* may be used here to signal that awareness on the part of the speaker and perhaps even to warn the respondent, i.e. it is looking both ways.

We now turn to the question of what *well* is doing in FPPs. Taking as given the functions previous researchers have found, such as opening turns or introducing new topics, I suggest that it carries a function of looking forward in FPPs as well as in SPPs. Thus it can project something about the speaker's orientation or stance towards the FPP that is about to be produced and can in fact look backwards and forwards and between sequences at the same time.

This is clearly illustrated with challenges, of which there are a great many in this body of talk.

Example 20 (Case one, file 1, p.9, l.18)

1 DC1: (2) what can you tell us about S?
2 1W1: (4) he became a s-source of ah annoyance (0.5) as the weeks went by.
3 1DC1: (2) **well** let's put lets lets (0.5) lets put it a little more strongly than that
4 you'd barred him from the shop hadn't you.
5 1W1: (1) I barred him from the shop yes?

This sequence occurs in cross-examination between a defence lawyer and a witness called by the prosecution. On the face of it, the witness's (1W1) utterance fulfils the requirements of the question and is not a strongly dispreferred answer (although the delays in "s-source" and the hesitation *ah* might suggest some discomfort with it). However, clearly it is not satisfactory for the lawyer's purposes (which, from the context of the whole case, we can state as an attempt to discredit S in order to place blame for the attempted break-in at the liquor store on S, thus moving it from 1DC1's client). The *well* appears at the beginning of a question which implies that the answer is not satisfactory and then poses the expected answer with a tag question, thus severely constraining what the witness's reply can be. There is also an element of delay in the lawyer's challenge, which backs up the notion that there is an element of unpalatability about the question. It is also possible to suggest that the *well* could be used here to add an element of softening to the challenge: after all this witness is the liquor store owner and thus could be seen as the victim of the attack.

We saw earlier that *well* functions as a linking device between FPPs and SPPs; now we have seen that it can also link utterances which are not within adjacency pairs, but rather can be a link between adjacency pairs (i.e. between SPPs and FPPs or between sequences). Its function is more than that, however, as the linkage often also carries a projection of the speaker's stance. This, then, brings the two aspects of *well* being discussed here into the same framework: dispreferred answers and FPPs which are unpalatable in some way.

Such a view is consistent with Schiffrin's conclusion that *well* should be treated as a coherence device, but one that is not "pairwise". It frequently relates adjacent statements but these are not necessarily adjacency pairs. In addition it can relate utterances which are not adjacent, as with Schiffrin's "reinvoking" function, which of course concerns still earlier utterances. Further, it is arguable that it can project speaker stance further ahead than just the turn in which it appears (at the same time as marking response to the previous turn).

Example 21 (Case six, file 2, p.24, l.19)

1	6PC:	(1/1) did you see any Polynesian men in the bar with sticking plasters on
2		their nose and chin (0.5) that day?
3	6D:	yes
4	6PC:	(1/4) **well** tell us about this person that you saw with the (0.5) sticking
5		plaster on his face.
6	6D:	no I can't
7	6PC:	(1/1) because it's not true is it Mr D.

Note: 6D speaks here through the interpreter.

We can suggest here that the *well* prefigures the challenge that will occur in 6PC's next turn. The close relationship between 6PC's two turns here is, we could say, pre-invoked. There are six examples of this in the data. While this is of course only a small number, it is enough to suggest this aspect would be worth investigating over a larger corpus (or series of corpora), particularly of conflict interaction.

Most *wells* appear in the initial position of TCUs: only 35 (11%) appear medially and one finally.

Most (82%) also appear initially in their turns. Fox, Hayashi and Jasperson point out that English speakers can use the beginnings of TCUs "to project a possible course for the utterance" (1996, p. 213) and it is quite clear from the above that *well* can fulfil this function.

A lengthened vowel would be likely to contribute to any delay caused by *well*. Interestingly, though, only nine instances (3%) occur with a lengthened vowel. These all occur during repair sequences (five in extended sequences) and eight of the nine during cross-examination. Two are spoken by professionals (both defence counsel) and the rest by one defendant (1D1 - two instances), a police witness (one instance) and one witness (4W - three instances). Perhaps 1D1 and 4W use *well* in an idiosyncratic way, i.e. more often than most. It is equally plausible that it

has to do with their ethnicity (Samoan and Maori respectively - but other members of these groups do not show the same pattern) or their apparent position within the hearings (1D1 is the youngest participant and clearly has some difficulty with English; 4W has difficulty with the process of the hearing and his role within it). On the other hand, perhaps its use is related to its appearance in repair (discussed in 10.3.4 below).

10.3.4 *Well* and overlap

A number of researchers have considered how overlaps should be interpreted and it has often been seen as related to dominance (Zimmerman and West, 1975; West, 1984; Bogoch and Danet, 1984). On a slightly different tack, Murray suggests (following Gumperz) that people from different backgrounds may "judge the 'interruptor' to have hostile intents" (1985, p. 29). Holmes (1993) also notes that interactants always see interruption as evidence of the speaker's intent.

There is little doubt that such hostility is perceived in courtroom hearings. But it is not necessarily straightforward to decide whether and how *well* contributes to that effect. The use of *well* to begin overlaps could potentially heighten the offence or violation of the overlap or it could soften it, in which case it could alter any perception of hostility caused by interruption.

Well begins an overlapping turn seven times, which is 2% of all the *well*s which occur in these data. This is clearly not enough to posit its use in overlap as a major concern, but it remains interesting to look at what is going on in such examples. Three of these instances occur in case two and four in case four, both of which are hearings which exhibit trouble with the process. Four occur in FPPs, two in SPPs, and one in neither (the judge intervenes - see below). Six occur in cross-repair and all occur in utterances which are dispreferred or unpalatable in some way.

All except one of these utterances all fall into my disagreement category. This one is an unusual circumstance where the judge intervenes to advise 4W that, even though he is giving evidence to support his wife, he is not obliged to answer any questions which could incriminate him. It is not clear why the judge uses well to begin this interruption. Given that only one example of this nature appears in the data, it is difficult to make any definitive comment.

The interruptive FPPs which begin with *well* all delimit their responses (two declaratives, one yes/no question and one yes/no request), thus are fairly coercive. The SPPs are also declaratives,

but given that most SPPs have this form, we can draw no further inference from this. The same applies to the judge's intervention.

Bilmes (1997) suggests that interruption should be seen (by researchers and participants) as a resource for the participants in an interaction. This rather neatly accounts for the problem of the apparent differing goals of competitive and co-operative overlap, providing a way of looking at them within one framework. For an overlap to be seen as a violation there must be some response to it, although not necessarily an explicit one. He suggests that many examples of what have been called competitive overlap in the past are not violations because they are accepted by the person being overlapped.

His data are taken from two televised political debates, once again raising the spectres of the small size and specialised nature of the data pool. These are not naturally occurring conversations and we can see readily that overlap is an effective tool in the environment of political debate which may not be so used elsewhere.

If we accept that participants see overlap as a resource and we recognise that debates and courtroom examination share at least some goals, we can see that this is a plausible explanation for the interrupting *well*s in the present study. In no case is there any kind of explicit verbal response to the interruption. It may be that in this comparatively combative environment too, interruption may not be seen as a violation potentially causing offence, but rather as an acceptable interactional resource (although Murray, 1994, would dispute this). The use of *well* may indeed then heighten the challenge in the FPPs and soften the challenge of the potential violation by the less powerful speakers of the SPPs.

This conclusion is supported by both Murata (1994) and Makri-Tsilipakov (1994), who question the notion that interruption is solely a domination device. Murata's study of Japanese and native speakers of English finds that the latter use interruption to "show conversational participation and listenership" (1994, p. 399). Makri-Tsilipakov, looking at cross-sex conversations between Greek men and women, argues that the "one-at-a-time" view shows a white American bias. She prefers face and preference as explanations, suggesting the two coincide because preference has a psychological component and is not merely structural in nature (cf. my comments in 10.3.3). Pointing out that a linguistic phenomenon can carry different functions she finds that interruption is used differently by men and women (for agreement/disagreement and support/agreement

respectively). That face and preference are operative factors in overlap is intuitively acceptable and is supported by the present study. However only one of the seven examples found here is spoken by a woman (the defendant in case four), and so I am unable to comment on gender differences in this situation.

A somewhat earlier study by Walker (1982) discusses overlap in terms of its effects on the courtroom process (whether disruptive or not) and on evaluations by the questioning attorney. She points out that it has been studied from both a negative point of view (where it is seen as interruption) and a positive point of view (where it is seen in terms of co-operation or establishing rapport).

In her study of three deponents in a depositions hearing and the questioning attorney's views of them (sought four months later, which seems to me a questionable approach), Walker finds that "apparently, when a deponent self-selects a turn, midclause, especially by way of an utterance which has a strong, if deep-structured, negative component, counsel views that as role encroachment" (1982, p. 109). Such role reversal "does not go unnoticed" (p. 109). She notes that one deponent, whose overlap is never disruptive, is seen by the attorney as "a sweet lady who didn't know anything"; the deponent who uses the most overlap (which is mainly disruptive) is viewed as wishing to control, less believable and less willing to cooperate. This indicates that judgements are made about overlap, which in turn reinforces the suggestion made above that at times *well* is being used to mitigate face-threatening acts.

10.3.5 *Well* in repair

Myers looks at disagreements in focus group discussions and finds that *well* is used as a "preface to a qualification on agreement" (1998, p. 99). He notes that sometimes repair is used as a less face-threatening approach for achieving disagreement. Given the functions of *well* described elsewhere in this chapter we might therefore expect that it would be used frequently in repair.

Well is used in SI-SR (self-initiated self-repair) only six times during the examination phases of the hearings. Schiffrin (1987) says it occurs in SI-SR in category replacement. Again, though, we do not know the frequency with which it occurs in her data, and so I can make no further comparison. In the present study no pattern emerges for the instances of *well* in self-repair, other than category replacement (five of the six instances), probably because there are so few

examples. They appear equally in cross-examination and co-examination, equally in preferred and dispreferred turns, and are used equally by professional and lay participants. However only one instance occurs in an FPP. SI-SR occurs throughout the hearings (see chapter four), and it does so much more frequently than considering merely the few examples where *well* appears would suggest. Therefore *well* does not seem to play a major role in SI-SR.

Schiffrin does not discuss whether *well* has a particular role in what I have called cross-repair (i.e. repair involving two participants, whether other-initiated or other-repaired). The following table details how often *well* appears in repair in these data.

Table 10.8: *Well* in repair

Turn type	Simple cross-repair	Extended cross-repair	SI-SR	Not repair	Other*
FPP	19	53	1	54	0
SPP	33	42	5	92	2
other	1	1	0	6	1
total	53	96	6	152	3

* This refers to utterances where not enough is audible on the tape to determine whether repair is involved.

Looking at all the *well*s in the corpus, we see that nearly half (47%) of them appear in repair. Of those almost twice as many appear in extended cross-repair sequences as in simple sequences. Remembering that none of the *well*s are used by lay speakers to professionals in FPPs and that lay people rarely initiate repair in court, we can exclude any suggestion that "powerless" witnesses and defendants find *well* useful for initiating cross-repair (although, of course, they do use it in answers). In order to determine whether it has a significant role in initiating repair for professional participants, we need to look at some examples in more detail.

Example 22 (Case two, file 3, p.11, l.7)

1 2PC: (2/9) now after you were taken out of this interview room (2/2) you
2 were taken down to the watchhouse weren't you. =
3 2D: = yes
4 2PC: (2/) and you say that was about nine o'clock at night do you?
5 2D: between nine and ten.
6 2PC: (2/1) **well** I put it to you (0.5) that (0.5) that you were received in
7 the watchhouse (1) at three thirty-five p.m. that afternoon (1) and <u>not</u>
8 between nine (0.5) and ten o'clock that night?
9 2D: (3/1) **well** I would put it to you that it was dark at eleven in the

10		morning if that was the case.
11	2PC:	(4/) so that's all you want to say about the proposition I've just put to you
12	2D:	(4) (sigh) **well** I'm sworn to tell the truth. that's what I'm doing. (1) you
13		can fabricate xxx I (1) sorry your honour.
14	2PC:	(2) you're saying (1) that (1/) police constable gives evidence (1) that
15		you were received in the watchhouse at three thirty-five p.m. (0.5) on the
16		fourth of May nineteen ninety (1/1) they're lying. is that what you're
17		saying?
18	2D:	yes that's exactly what I'm saying.
19	2PC:	(2) and that detective PW (2) is lying when he says that he (0.5) arrested
20		you at half past one in the afternoon (0.5) after finishing a twenty-five
21		minute interview with you.
22	2D:	(1) yes (0.5) it was certainly well and truly <u>dark</u> when the final arrest was
23		made.
24	2PC:	(2/3) there's a matter raised ah just come up sir that I've had a note passed
25		to me that um (0.5) if if counsel could see you in chambers (0.5) it
26		touches upon a matter that we discussed yesterday xxx sir (0.5) um
27	2J:	I'm sorry for these interruptions ladies and gentlemen of the jury but ah
28		(0.5) I will (0.5) have to ask you again to be patient (0.5) ah I will take
29		a short adjournment.

In this sequence, one *well* is spoken by the prosecuting counsel and two by the defendant. In each case we can say that the *well* looks both ways. It looks backwards, giving the speaker's response to the previous utterance (we can suggest from the referential content that the lawyer's stance and the first stance of the defendant are challenging while the defendant's second stance is defensive). It also looks forwards, signalling that the speaker is going to challenge that utterance baldly. And indeed each does so: the lawyer goes on to challenge the truth of the defendant's position and the defendant does the same with the added dimension of sarcasm in his first instance and possibly his second as well.

We see that the *well*s appear towards the beginning of a fairly lengthy sequence. We can interpret this positioning by suggesting that each speaker has made his stance clear upon the different issues involved. The lawyer is challenging the defendant: he quite simply accuses him of lying. Both times the defendant uses *well*, he is directly challenging the lawyer and accusing the constable of lying (note that it is extremely unusual for a lay person in court to challenge anyone). Having made their positions clear, there is no further need for either of them to do so during this sequence.

Does this appearance of *well* towards the beginnings of sequences continue in other examples? Thirty-four of the 107 *well*s in extended repair sequences, i.e. slightly less than one third

(31.77%), occur within the first three turns of the sequences. When we see that one very long sequence has thirteen instances occurring in the tenth turn and later, we could wonder whether this skews the result. Removing this sequence from the reckoning, we have certainly a greater proportion (36%, or 34 of 94 examples) appearing towards the beginning of sequences, but this is a trivial difference. We can therefore say that signalling participants' attitudes at the beginnings of sequences may be one of the useful roles of *well*. But given the different lengths of repair sequences and the frequent appearances of *well* later in longer sequences, we cannot conclude that it is a major role.

As with SI-SR there are a great many repairs where *well* does not occur. There are 816 instances of simple repair (including those which occur in extended repair sequences) and *well* occurs in 149 of them (18%), leaving 667 repairs which do not use *well*. Occurring in fewer than 20% of the cases suggests that *well* is not particularly significant as an indicator of upcoming repair per se. This gives support for the notion that it signals speaker stance, i.e. how the speaker feels about what has been and/or is about to be said.

While perhaps useful in repair in this way, it is not being used to indicate procedure; i.e. it relates to speaker perceptions within the interaction rather than managing the events of the interaction.

In order to determine whether *well* is significant in cross-repair we need to consider its functions within both extended and simple cross-repairs (remembering that all extended repair sequences are in fact made up of series of simple repairs and that the difference between the two comes down to the speed of their resolution). The tables below summarise *well*'s functions in cross-repair in these data.

The first table here (Table 10.9) details the 108 *well*s which appear in uni-functional turns and then gives the totals of those which are multi-functional. Those multi-functional examples are then categorised further in Table 10.10.

Table 10.9: Functions of *well* in cross-repair

Function	**Simple repair:**		**Extended repair:**			**Total**
	FPP	**SPP**	**FPP**	**SPP**	**Other**	
agree	1	0	1	0	0	2
give information	0	2	0	1	0	3
clarify/explain	1	9	6	0	0	16

justify	0	6	1	4	1	12
delay	0	4	1	5	0	10
hedge	0	1	0	3	0	4
evade	0	1	0	5	0	6
request clarify	4	0	2	0	0	6
request justify	2	0	0	0	0	2
challenge	5	0	28	4	0	37
disclaim	0	1	0	1	0	2
disagree*	0	0	0	1	0	1
neutral**	0	2	0	1	1	4
other***	0	2	0	1	0	3
sub-total	13	28	39	26	2	108
multi-functional	4	7	15	15	0	41
total	17	35	54	41	2	149

* includes denying, refusing to answer

** includes continuing, restarting, raising new issues, reinvoking, rephrasing questions, judge's direction (ruling)

*** the other category includes requesting or correcting information, narrative evaluation.

The pattern here is clear: when *well* is involved in cross-repair sequences it is strongly, and remarkably so, associated with challenges, mainly in the challenges themselves. It also occurs in the responses to these challenges (i.e. when giving clarification, explanation, or justification) and is associated with delay.

Now turning to those *well*s occurring in multi-functional utterances in repair, for which we cannot assign a primary function in any principled way, we can see from Table 10.10 that a similar pattern emerges. There are 41 such tokens. Many of them, of course, appear in more than one category in this table, and therefore final totals are not given here, as they would be meaningless for comparison purposes.

Table 10.10: Multi-functional *well* in cross-repair

Function	**Simple repair:**		**Extended repair:**		**Total**
	FPP	**SPP**	**FPP**	**SPP**	
agree + ...	1	1	0	3	5
give information + ...	0	1	0	0	1
clarify/explain + ...	0	0	7	0	7
justify + ...	0	1	0	1	2
delay + ...	0	4	5	5	14
hedge + ...	0	1	0	4	5
evade + ...	0	1	0	1	2
request clarify + ...	0	0	1	0	1
challenge + ...	2	1	11	3	17
disagree + ...	0	0	1	3	4

neutral*	1	0	3	1	5
other **	2	1	1	0	4

* includes continuing, restarting, raising new issues, reinvoking, rephrasing questions etc.

*** the "other" category includes directing (ruling), requesting information, giving a literal answer (inappropriately) and criticising.

Note that no "Other" category appears at the top of this table. This is because the two *well*s which occur in cross-repair in these data but in neither FPPs or SPPs occur in uni-functional utterances only and not in multi-functional utterances.

In these multi-functional occurrences of *well* in cross-repair, delay and challenge are the two functions which occur most frequently and they each occur with a range of other functions (see below). Apart from that, no particular pattern stands out in the functions which occur together. Some examples of functions occurring together are disagreement + hedge (1), objection + justification (4), objection + disagreement (1), challenge + reinvoking a previously discussed matter (1), and giving information + criticism (1).

Delay occurs in 14 of these examples, i.e. it occurs more often in association with other functions than on its own. The other functions are challenge (1), clarification (2), clarification and challenge (2), judge's ruling (1), explanation (1), disagreement (1), hedging (3), evasion (1), sarcasm (1) and objection and disagreement (1). This lends support to the notion expressed earlier in this chapter that while *well* may be associated with delay, it is not routinely used simply in this way. In other words, it is unwise here too to suggest that *well* is necessarily being used for delay.

Table 10.10 shows that 17 of the multi-functional examples involve challenge, thus strengthening the conclusion that when *well* is selected during repair it is often selected for powerful purposes. As with delay, challenge occurs in conjunction with a range of other functions: clarification (2), delay (1), clarification and delay (2), judge's ruling (1), explanation (1), objection and justification (1), justification (1), reinvoking matters mentioned previously (1), requesting clarification (1), beginning new issues (2), agreement (1), evasion (1), and requesting information (2).

It is straightforward to suggest that *well* is being used consciously to signal both upcoming challenge and responsiveness to the previous utterance. However it also appears in the answers. Rather than relying on powerlessness to explain this, I suggest that it is often used to mark the

speaker's awareness that he or she is being challenged as well as signalling that they are going to respond to the challenge (i.e. marking coherence while recognising that their answers may be dispreferred).

In summary, then, almost half of the *well*s occurring in these data do so in repair, particularly cross-repair, and it appears in FPPs almost as often as in SPPs in this environment. It is clear that when *well* is used in repair it signals speaker stance rather than upcoming repair. While it is used for purposes often associated with powerlessness, such as delay and hedging, it is also often used for more powerful purposes such as challenge.

10.3.6 Well as a softening device

All the high users of *well* (1D1, 4D, 4W, 5W1, 5W4, 5W5) appear to use it for delay at times, and 1D1 uses it only for this purpose. He is indeed one of the most powerless participants in this study, both from a social point of view and by his role in the hearing and thus it is possible to say that powerlessness accounts for his use of *well*. However, the other high users have other functions for it as well. Summarising these gives the following:

Table 10.11: High users of w*ell*

	1D1	4D	4W	5W1	5W4	5W5
delay	9	9	2	1	3	3
agreement	-	5	1	-	6	1
disagreement	-	3	15	1	-	-
hedge	-	5	4	-	3	3
explain/justify	-	11	1	2	-	-
evaluation	-	0	2	-	1	-
neutral	-	4	1	-	1	-
other	-	1	1	-	-	-
total	9	38	27	4	14	7

4D, a female, is a high user of *well* in turns expressing agreement and in those explaining or justifying. Adding her use of it with hedging, the pattern is even stronger. Her *well*s could be softening her answers, seeking to mitigate her "culpability". She is the only defendant among the high users of *well* (other than 1D1, who only uses it for delay). 5W4 is also female and uses *well* often in turns expressing agreement and hedging. It is possible that their gender combines with their respective roles of defendant and defence witness to account for their use of *well*.

As stated earlier, 5DC uses it more often than the other professional women involved in the study. Ten of her 22 tokens involve challenges (including two requests for clarification), while six more involve continuation and raising new issues. This defence counsel too may be using *well* to mitigate her challenges, perhaps with the aim of putting the witnesses at ease, especially since one of them had been injured in the assault which gave rise to this trial. However nine of her ten challenges are addressed to prosecution witnesses, her adversaries in a sense. Looking at her role suggests that she is heightening her challenges whereas looking at other factors, such as her gender and the fact that it is her first criminal trial before a jury might suggest mitigation and/or facilitation to be informing her choice of *well*. The fact that she is the only professional who uses someone's first name (the defendant and a witness) supports the latter. It is not possible to be sure which of the two interpretations is correct here.

In keeping with their particular role in court, the judges use *well* in some different ways from the other participants. The most common single function for the judges is delay (five tokens). However it does not occur on its own but always in conjunction with other functions. Those other functions particularly associated with their role are giving rulings and resolving issues, clarifying, giving advice and directing procedure (14 tokens). The judges are certainly not operating under powerlessness. However we can suggest that they could be using *well* to mitigate their intervention (and, as explained elsewhere, judges in New Zealand jury trials seem reluctant to intervene). In other words they could be using it to soften the potential threat of their intervention, i.e. as a device for negative politeness.

6J/7J does not use *well* at all during the two trials in which she takes part. In neither case does she participate other than to respond to invitations for her to ask questions, to indicate adjournments, to open and close the hearing and to assist the typist. The fact that she does not participate in a substantive way means that she is not posing the threat of intervention, unlike the judges in the other five hearings.

For PCs and PWs, who have the lowest use of *well*, mitigation clearly cannot be a significant factor in their use. Both groups could be said to be on the attack: PCs are trying to prove the defendants' guilt and PWs are intent on showing that the police have done their job appropriately. PCs use *well* frequently in challenges and 93% of their 82 tokens occur in FPPs: 52, well over half, are examples of challenges and requests for clarification or confirmation. Delay occurs in only eight examples. I suggested above that *well* could be being used to heighten the challenges

being made (on the whole) by the lawyers in this study. On the other hand, it is also possible that they too could be using it to mitigate the force of their bald on-record challenges, although, of course, these pose a different kind of threat from that of judge intervention.

The question then becomes, how can we tell the difference between *well* used to heighten challenge and to mitigate it? With 5DC we have seen that either argument can be applied. But perhaps she is unusual. Looking at *well* occurring in challenges by all the lawyers a clear pattern emerges:

Table 10.12: *Well* in lawyers' challenges

Speakers	**Addressees: Defendants**	**Witnesses: prosecution**	**defence**
PCs	35	2	13
DCs	6	26	1

It appears that the lawyers tend to reserve their challenges, or at least those using *well*, for those giving evidence "for the other side". As a general position, given the adversarial system operating in the New Zealand legal system, one would therefore expect that the *well*s would be used for heightening the effect. Supporting this is the fact that all the DCs' challenges to defendants are of the less bald kind, being requests for clarification, opinions or justification and all of them occur in co-examination. It does not appear likely that lawyers choose to use *well* to mitigate challenges, unless their challenge is directed to someone appearing "on the same side" of the issue (which supports the interpretation that 5DC is *well* to heighten her challenges to prosecution witnesses).

10.4 Can politeness theory explain *well*?

Rather than attempting to rely on powerlessness to explain the use of *well*, it has become clear with the emergence of challenge and mitigation as operative factors that politeness theory may be a more useful framework to use. Some uses of *well* seem to fall squarely into politeness theory, i.e. those involving face threat (Brown and Levinson, 1978), such as challenges.

However, while supporting Brown and Levinson's work in general, Buck (1997) questions their separation of politeness from other interactional features in conversation. He suggests extending

their model to include face tending, i.e. not limiting it to FTAs. This allows it to look at larger sequences and to explain the "intricate dynamics at work, dynamics which go beyond the fact that speakers simply formulate linguistic strategies around politeness concerns" (1997, p. 103). Although the extent to which face-tending is occurring in the courtroom is debatable, clearly it is not precluded (as demonstrated by 5DC's use of first names).

This is consistent with relevance theory's approach, which suggests that the desire to communicate politeness is not sufficient on its own to explain language choices. Jary adds to Brown and Levinson by claiming that "even when the speaker is aiming to protect the hearer's face, her ultimate motivation is to maintain or raise her own status within the group and/or to ensure her continued well-being, in both the short and the long term" (1998, p. 2-3). This comment seems to me intuitively appropriate to describe much of courtroom interaction. The different participants have differing goals at different points in the hearings, and we cannot put them all down to the need to be polite. On the other hand, at all times all participants are seeking to maintain their status (except perhaps judges) or to raise their status, so that their version of events will be accepted by the court.

If we accept this, we then have to conclude that, while politeness is certainly more attractive than powerlessness as an explanation, it still does not account adequately for all of what we might call the personal (attitudinal) functions found for *well* in this set of courtroom data. Nor is it the most powerful way of explaining the coherence aspects of this discourse marker.

10.5 Comparison with everyday conversation

It is appropriate to ask at this stage whether the uses of *well* which I have described are in fact different from earlier descriptions. Does the situation of the courtroom really have any bearing on the matter at all? Or is this pattern a feature of New Zealand English?

To assist in answering this, the use of *well* has been analysed in the transcripts of five conversations in New Zealand (also used for comparison purposes in chapters four and seven). These conversations were collected as part of an undergraduate University of Auckland linguistics course. All are conversations between family members or friends and cover a variety of (mainly) naturally occurring topics.

The transcripts are of varying lengths. They include different numbers of participants of various ages, all appearing to know each other well: two involve families ("Lunch for four" and "Dinner party") and the others involve friends of apparently varying closeness. Apart from "Drinking", which is a telephone conversation, the conversations are informal group chats covering a range of topics and often involve storytelling and laughter. They are also all mixed-sex conversations apart, again, from "Drinking", which is a conversation between two women. None of the conversations involve conflict of any kind, although in "Jenny's tape" the discussion on one issue becomes quite lively.

These transcripts provide a strong contrast, therefore, with the courtroom data presented in this study. If what I have concluded is correct, we would not expect *well* to be used in the same ways in the two sets of data.

There are 20,155 words in the conversation transcripts and *well* occurs 101 times, a rate of 1:200. This compares to a rate of 1:293 for the courtroom data. Apparently it is at least possible that *well* occurs more frequently in ordinary conversation than in the courtroom.

It is questionable that power is a strong explanation here, given the familiarity and friendship the participants appear to have with each other. This provides incidental support for the doubts expressed earlier in this chapter about how far the notion of powerlessness explains the use of *well*.

Table 10.13: *Well* in 5 ordinary conversations

Conversation	***Wells***	**Words**	**Rate**
Lunch for four	34	5,855	1:172
Jenny's tape	22	5,730	1:260
Family dinner	22	3,025	1:138
Drinking (telephone)	19	1,509	1:79
Barbara's tape	4	4,036	1:1,009
total	101	20,155	1:200

Table 10.13 shows that, apart from Barbara's tape, *well* appears in these conversations more often than in the courtroom data. If we remove Barbara's tape from the mix, we find a rate of 1:166, i.e. a rate which looks substantially higher than that found for the courtroom.

Interestingly, by far the highest rate is found in "Drinking" (the telephone conversation). This could suggest that *well* may be used more often in telephone calls. On the other hand, it could be related to the call's being between a same-sex dyad. Thirdly, it could be related to the fact that both participants are women. This points to another area of further research.

There are 20 conversationalists in these transcripts. One tape (Jenny's) involves Maori speakers while the others involve Pakehas (NZE). While I have very little information on their roles and relationships with each other (apart from what is available from within the transcripts), their genders are available: there are eight men and twelve women. Five do not use *well* at all (one boy, one girl, two women, one man). Table 10.14 sets out their use of *well* individually.

Table 10.14: Who uses *well* in conversation?

Participant	Gender	*Wells*	Words	Rate
E	M	1	1,175	1:1,175
S	M	9	1,681	1:187
M	F	3	919	1:306
B	F	20	2,080	1:104
A	F	6	1,199	1:200
Ja	F	3	1,556	1:519
D	M	3	1,556	1:519
Jo	M	10	1,417	1:142
Ca	F	6	931	1:151
P	M	13	1,488	1:114
L	F	3	537	1:179
C	F	8	888	1:111
Pa	F	11	621	1:56
J	F	1	830	1:830
K	M	3	1,140	1:380

The highest user here is Pa, a woman whose rate is 1:56. Interestingly, this is exactly the same rate as for the highest user in the courtroom data, also a woman. Then comes a group of three, two women and a man, with rates of 1:104, 1:111 and 1:114 respectively. Placing those who use *well* during these conversations on a continuum (Figure 10.5), as I have done with the other features of "powerless" language, gives the following picture.

Figure 10.5: Use of *well* in five "ordinary" conversations

B
Ch
S
Be E J Ja K M A S L Ca Jo PCB Pa

least most
(0) (1:1,175) (1:56)

Among those who use *well*, the average rate for the women is 1:157 and for men it is 1:217. If we add those who do not use *well* during these conversations the rates become 1:161 and 1:264. While this changes the women's rate little, it does lessen the men's rate significantly, and of course increases the difference between the genders. In other words, as I have already found with the New Zealand courtroom, there is a clear association between *well* and women in these conversations.

However, it is likely here too that a functional analysis would reveal differences between the men's and women's use, as has been found in previous research with other features, such as *you know*. This line could be pursued usefully at a later date.

Given that I have found a different pattern for the use of *well* in the courtroom from that which previous researchers have discussed, the other point of interest here is whether the pattern I found is repeated in these conversations. And it is not. Of the 101 *well*s occurring here, only four appear in an FPP, while 17 occur in SPPs. All the rest occur in topic talk (discussion, as opposed to sequences of adjacency pairs of questions and answers), and their use appears to be consistent with earlier research. This is markedly different from the courtroom examination patterns (41% in FPPs and 56% in SPPs) discussed earlier in this chapter.

As is predictable, given that more than three-quarters (78%) of the *well*s appear in topic talk in these conversations rather than FPPs or SPPs, *well* appears commonly in declarative utterances, again a very different pattern from that of the courtroom. In fact only five are otherwise: four occur in tag questions and one in a yes/no question (and these are part of adjacency pairs rather than topic talk).

Considering how *well* is used in these conversations also reveals a different pattern from that found in the courtroom examinations. Only two examples occur in cross-repair and none in self-

initiated self-repair. Nineteen (19%) occur in FTAs, although they are all extremely mild forms, and nine (9%) in responses dispreferred in some way.

Table 10.15 applies the four-way categorisation used in Table 10.7 above to the 17 *well*s with determinable functions which occur in FPPs and SPPs during these conversations. We see that the *well*s are used here for agreement and evaluation, quite a different picture from the courtroom. However, given the vastly different numbers of tokens occurring in the two settings, it is not possible to make more comparison than this.

Table 10.15: Comparison with *well* in court

	Conversation		**Courtroom**	
	FPPs	**SPPs**	**FPPs**	**SPPs**
agreement	3	4	20	51
disagreement	0	2	80	70
evaluative	0	7	4	4
neutral	1	0	39	16

It is possible, though, to suggest that the difference may well be due to the completely different situations and sets of goals, remembering that the conversations all take place between people who know each other at least reasonably well and involve no conflict, as opposed to the courtroom data. In addition, the kind of questioning behaviour found in court would not be appropriate in ordinary conversation; in fact, it would be seen as hostile.

10.6 Conclusions

As far as the definitions cited at the beginning of this chapter apply, *well* is certainly operating as a discourse marker or operator in those terms, i.e. revealing contextual co-ordinates. The discussion above shows that it not only reveals simple coherence, but also indicates participant responses and attitudes. From this point it may seem a simple step to suggest that it may indicate aspects of the person using it, i.e. ethnographic or social factors such as powerlessness.

Using a broad brush, the data presented in this study suggest that the use of *well* follows the patterns of power of the courtroom. However, looking at the corpus in a little more depth shows

that the reality is more subtle and that there are differences within the power groups participating in this study.

It has emerged that *well* does not necessarily operate as a powerless feature, or follow the same pattern as some of the other features discussed in earlier chapters. For instance, the police witnesses have the lowest use of *well*, but this is not the case with other features. Further, 19, more than one third, of the 50 participants do not use it at all and eight of these fall into the two least powerful groups (this becomes 13 if we include the police witnesses).

The next step was to consider the functions of *well* in these data in order to determine whether factors other than powerlessness are indeed operating in people's choice to use *well*. *Well* clearly is used pragmatically in a structural sense, i.e. as a link between utterances. It also signals both speaker response and awareness of the hearer's likely response, thus looking backwards to what has been said and forwards to what is about to be said.

Within this broad function it is being used in three distinct ways in these data. It carries a neutral function which is very often procedural in nature. When its function falls into the agreement category, it is facilitating or mitigating in nature. And when it is in the disagreement category, it is often used for explicit challenges or for utterances which are unpalatable in some way, whether for the speaker or the hearer. Thus we can conclude that the choice to use *well* may be accounted for by perceived needs for challenge, facilitation or mitigation. In turn, it may well be found in further research that the absence of such motivation can account for the non-selection of *well*. This study therefore supports Schiffrin's conclusions (discussed in 10.3.1) and adds a further dimension to them by looking in detail at their use in FPPs, rather than concentrating on SPPs. It shows *well* operating in a proactive way rather than being confined to reaction.

We can all agree intuitively with Lenk's (1998) statement that "speakers will attempt to predict the other participants' interpretations of the conversational contributions" (p. 246). This is consistent with relevance theory, which states that communication is a cognitive function and not merely a matter of decoding. All participants in an interaction have to assess each other's intentions. This chapter has shown how *well* is used, suggesting in turn that it can be interpreted in just such a manner, providing further support for my conclusion that it is unwise to restrict our understanding of *well* selection to such notions as powerlessness.

In concluding this chapter, therefore, we can say that the power/powerlessness axis has some bearing on the use of *well* in this corpus of courtroom data, but that this relates to the participants' roles and their goals rather than to social factors. Thus some uses of *well* are clearly related to face threat, but not all of them. Discovering that *well* appears to be used differently in the adversarial courtroom and ordinary friendly conversation also provides support for describing it in a broader manner than power and powerlessness. Relevance theory appears to be a more useful framework in that it can account for all its different functions, i.e. the structural (cohesion and delay) and the attitudinal (including matters of face).

End notes

(1) Note that some of the *well*s are attributable neither to FPPs nor to SPPs, because the turns in which they appear do not have enough substance to be clear about the place of *well* in the structure, or because the rest of the turn is inaudible, or because the utterance is neither an FPP or an SPP.

(2) This matter is never resolved. In fact the hearing is declared a mistrial when the court reconvenes the following morning. No reason is available for this action, but it is not impossible that it is related directly to this sequence. The question at issue here (whether a police constable is lying) is very similar to the matters discussed in the voir dire, which the judge ruled were inadmissible in front of the jury.

(3) The conversations are "Lunch for four", "Dinner party", "Jenny's tape", "Drinking" and "Barbara's tape".

Chapter Eleven: Weaving the Rug

It remains to weave the threads of the previous chapters together (both those of theoretical approach and those of the practical findings), answer the questions posed in chapter one and suggest future directions.

11.1 The warp thread: a multi-disciplinary approach

One of the aims of this study has been to combine ethnographic information with conversation analysis. An ethnographic approach has been used to shed light on social aspects of courtroom interaction as well as looking at socially-based variation. Conversation analysis has been used to consider the data at a micro-level, allowing us to note matters at a rather more individual level and to discuss interactional matters as well.

Muntigl and Turnbull (1998) suggest the term "social psychological pragmatics", which seems to me to subsume all those aspects plus allowing the possibility of including psychological realities and individual goals in the one description. The aim of social psychological pragmatics is to describe (analyse) the combined influence of conversation and social structure and its central assumption is that "conversation both creates and reveals social structure" (1998, p. 252). Further, as Davis and Henze (1998) point out, we cannot remain isolated in our professional fields. Both ethnographic and pragmatic approaches can provide useful input and result in useful practical benefits, for instance in education and justice systems. The results of the present study reveal that ethnographic and conversation analysis approaches offer insights into what is going on in New Zealand courtrooms and that a comprehensive and satisfying result only appears when each can inform the other. Considering the matter from only one view masks some of the subtleties in courtroom conversation.

In addition, this study also supports the notion that it is dangerous to rely on one or a small number of explanations even within one approach for what we see occurring in linguistic interaction. As Martin Rojo suggests, "we shall have to give up comfortable generalisations and face each conversation as a unique and unrepeatable event" (1994, p. 286). This is not to say we have to reinvent the wheel when analysing each conversation, but rather that we should be open-minded enough to recognise that different approaches, factors and axes may be applicable to the

same interaction. Each may contribute something useful to the analysis and increase our understanding of the dynamics occurring in a set of data.

11.2 The weft: summary of the findings

The weft in the rug of this study comprises two different colours, repair and powerless language, which interweave to provide a picture of courtroom language. Beforehand, they appeared to be quite separate matters, but this study has shown that weaving them together illustrates that the same factors underlie choices both in language use and in resolving issues which arise in courtroom interaction.

11.2.1 Repair

Given that one of the initial strands of this study was to investigate a widely held perception that a great deal of misunderstanding occurs in court, repair was seen as the most likely place in which to find examples of miscommunication (caused by cultural or gender differences or differences between professional and lay participants) if they are occurring in New Zealand courtrooms. In order to see if this perception is correct, all the repair occurring in the examination phases of the hearings has been analysed to see what patterns exist. First a line is drawn between self-initiated self-repair (SI-SR) and repair involving others, which I have called cross-repair, and the two are considered separately.

The findings for SI-SR show that, generally speaking, the use of SI-SR is predictable from an ethnographic analysis of the courtroom and its participants, and that it follows the lines of power which exist there. However, an interesting difference is found within the lawyers: defence counsel use SI-SR more often than counsel for the prosecution. This leads to the suggestion that the difference in role (i.e. prosecution v. defence) may have some bearing on the matter. In other words it cannot be explained simply in terms of the power hierarchy, either in court or society in general. In addition the study finds some evidence that SI-SR may be associated with cases which experience more trouble (particularly case two, where several participants show high rates), but this does not apply absolutely as some cases with trouble see less SI-SR.

Overall the picture is similar for cross-repair. It is initiated mainly by the lawyers (91%) and, again, the incidence is predictable from the ethnographic analysis. However, role is found to be

more salient than power here. No evidence is found that the incidence of repair is affected by ethnicity, gender or stake in the outcome. Note that, in general, using an interpreter does not appear to lessen the need for cross-repair either (although see the comment in the following paragraph). Thus there are several indications that any miscommunication which does occur is not doing so according to conventionally accepted factors. The analysis of case two, which contains a voir dire, makes it clear that the presence or absence of the jury does not affect the overall occurrence of repair. However, different participants initiate repair at different rates during the two different parts of the hearing, and this can be accounted for by perceptions of slightly different roles for the judge in the two parts.

The study finds that trouble arising in court is repaired quickly and successfully more often than not. This leads to the conclusion that the occurrence of repair of itself does not necessarily signal problems, but rather, how satisfactorily the repairs are resolved. The consideration of extended cross-repair sequences finds again that cross-cultural and gender-based miscommunication do not explain what is occurring (although there is some suggestion in case one that the interpreter lessens the need for ERSs). Predictably, it is rare for judges, defendants and witnesses to initiate ERSs. While it is possible to account for this on the basis of power as far as the latter two groups are concerned, this does not apply to the judges: role provides a better answer. This is supported when we look at the ERSs initiated by the lawyers, whose roles (prosecution v. defence) and consequent goals are clear factors. Here we find that those initiated by defence counsel are successful more often than those initiated by prosecutors. Further, while more than three-quarters (77%) of the ERSs occur during cross-examination, those which occur during co-examination are successful more often. When we add that half of the ERSs involve elicitation (whether on their own or in combination with other functions, notably challenge), it becomes clear that indeed role and goals are the salient factors.

Finally, it has become more satisfactory to see repair in terms of coming to an understanding rather than as evidence of problems. It is plausible to suggest that, rather than miscommunication on the basis of cross-cultural, gender or professional/lay differences being the cause of difficulties, many appear instead (or in addition) to be due to differences in understanding and dealing with the legal framework operating in court and the complexities of the sequences themselves. Repair is a highly effective resource used to resolve issues so that as full an understanding as possible is reached about the matters being discussed in court.

11.2.2 Powerless language

The notion of powerless language has received much attention and has seemed a most productive vein of research with potential practical application. However, a number of questions have arisen which undermine its ultimate value. This study has found that not all the features studied here contribute to powerlessness in the courtroom: they are not used only by people with less power in the court, nor are they always used for powerless reasons. Even when powerlessness appears to be operating with a particular feature, it is not straightforward and other factors are often operating at the same time.

The concept of powerlessness referred to in this study is that used by O'Barr and Atkins (1980) who refer to societal power and do not appear to consider institutional power. The latter is accounted for in this study by the use of the professional/lay distinction. When role has been found to be the salient factor in the use of so-called powerless language features, much of the time this is congruent with institutional power. However, institutional power on its own does not explain all of the patterns found in this study (e.g. differences between prosecuting and defence counsel and between lawyers and judges). In fact neither societal nor institutional power have been found to be adequate explanations for the use of the features discussed in this study.

First treating the features of powerless language as a group, the study has found that they follow, in a broad sense, the pattern discussed by O'Barr and Atkins (1980). Comparing powerless language forms with turns supports the prediction that this style is used by the powerless more often than the powerful in court. Using figures based on the numbers of words each participant uses has allowed a more detailed result which allows the analysis to reveal subtleties of use not revealed by a comparison with turns (or answers, as O'Barr and Atkins use). Judges are found to use them more often than might be expected; and, again somewhat unexpectedly, defence counsel and police witnesses use them at similar rates to each other. Further, differences have been found between prosecution and defence lawyers, where we would not expect to find a difference of power.

Second, the features have been considered individually, and this has revealed not only that their use is not confined to the powerless in court but also that they are used in different ways and for different purposes by the different participants.

Hesitations are found to operate to some extent according to powerlessness, but more strongly according to role. For example, while non-NZE participants use them more often than NZE participants, the one professional in the former group uses them the least. Being female does not increase the use of hesitations here: men use them more often than women in this study.

A similar conclusion is reached with the hedges *just* and *sort of*: gender and ethnicity are not operating here. Again, judges use them in the mid-range. Police witnesses use them the least, which may be explained by their familiarity with courtrooms and their ability to refer to their notebooks. Witnesses use them more often than defendants, which may be related to varying stakes in the outcome and their level of involvement in the hearings. We are led to the conclusion again that role is the determining factor.

Conversely, gender is a factor with intensifiers in that women use them more frequently than men. This is consistent with Lakoff (1975), who believes this occurs because women do not expect to be taken seriously. This would predict that less powerful women would use intensifiers more frequently. However, in the current study, the result is not so clear-cut, with the rates for the two female defence counsel being closer to those for defendants and witnesses rather than judges and prosecuting counsel. Nor is the result for these women entirely consistent with more recent conclusion of Bradac, Mulac and Thompson (1995) that intensifiers are indicators of power. While there is some correlation with power over the whole group of participants, judges and defence counsel again do not fit the pattern in the predictable manner. Personal factors rather than societal aspects may be relevant (e.g. for the defence counsel), as well as perceptions of role (e.g. for police witnesses). It is also a possibility that emotional involvement (especially of victims) is a factor.

Witnesses ask questions only rarely, thus reversing the situation for the other features discussed so far. Once again, role is found to be the salient factor, rather than power. Individual goals and situations play a part. Tag questions too do not fit the use predicted by their previous inclusion in powerless language. In this study they are only used by the lawyers. Some interesting results are found here. Their use is found to vary according to the kind of examination in which they are used. They appear more often in cross-examination, where they are used for challenge and coercion (confirming the work of researchers such as Danet et al., 1980). In co-examination they are used for more facilitative purposes, such as encouraging witnesses to tell their stories. While women are found to use them more often than men; this is partly explained by one defence

counsel's high rate (5DC), and she uses them for challenge. This reverses the traditional view and also runs counter to Holmes' (1990) conclusion that women use them for facilitation. Once again, role and goals are found to be more salient factors than power and status. This is further supported by 4DC's less frequent use as defence counsel in case four than as prosecutor in case six (where he uses them for challenging purposes).

Power appears to be operating with high rising terminal intonation (HRT), in that lawyers use it the least frequently. However, here too this does not provide a full picture. Eleven participants do not use it at all (more than 20%) and women use it less than men. For judges, power and role may be interacting to produce a higher rate of HRT, and there is a suggestion that they may use it for facilitative purposes. 4DC/6PC's use of HRT in the different roles he takes in cases four and six parallels his use of tag questions, supporting again that role (and the consequent goal) is more important than power per se. Some correlation is also found between the frequency of HRT and the occurrence of trouble.

Terms of address also do not fit their inclusion in the powerless language style. With one exception (5DC), only formal terms are used in these courtroom hearings and in the main they are used by professional participants. There is a wide range of frequency across the cases, suggesting that power is not a factor. Neither gender nor ethnicity have been found to be salient here. Terms of address are used more often during cross-examination, confirming Lane's (1988) suggestion that they may be used for distancing purposes. However, in some other examples they may have a mitigating aspect. Thus once again we find that role and goals determine the use of this feature. Here too there is some relationship between increased use and the occurrence of trouble.

And, in a pattern that is now becoming familiar, polite terms (*please*, *sorry*, *thank you*) are also found to operate other than in a powerless fashion. Here too role is the salient factor, not powerlessness. In fact they are used by those with power, for either procedural (particularly judges) or coercive purposes (and note that prosecuting counsel use them more often than defence counsel). Gender and ethnicity appear to have little to do with this. On the other hand, for police witnesses the determining factor does appear to be power, as it is not appropriate for them to use them for either procedural or coercive reasons.

Finally, *well* (in its use as a discourse marker) was chosen for a more detailed functional analysis. Although *well* use follows the lines of powerlessness, in terms of frequency of use, once again this is found to be inadequate in explaining its use. Women are found to use it more often, but this cannot be put down to powerlessness (because 5DC is one of the highest users amongst the women in the study); the same applies with ethnicity (more than half of the non-NZE participants do not use it). It is found to mark speaker response and to project some kind of unpalatability

about the upcoming utterance (whether it is a face-threatening act or a dispreferred reply). It occurs more often during cross-examination than co-examination and appears to carry different functions according to whether it occurs in FPPs or SPPs. Its functions can be categorised as neutral, agreeing, disagreeing, or evaluative. It is found in both face-threatening acts (e.g. challenges) and non-face-threatening acts (where lawyers use it for facilitation and judges and lay participants use it for mitigation). Nearly half of the instances occur during repair sequences and are markedly associated with challenge, i.e. have a powerful rather than powerless use.

Well is used rather less often in this courtroom data than in the everyday conversations used for comparative purposes in this study. In the latter, there is a markedly different pattern: it is used for agreement and evaluation rather than disagreement and appears rarely in repair (although this may be a function of the comparative rarity of repair in the conversations). Note too that these conversations occur between people who are friends or family members, so are very different situations from the courtroom. Power and powerlessness are less likely to be operating here than in court. This comparison backs up the conclusions presented that power(lessness) does not adequately explain the uses of *well* and that role (and goals, often consequent upon the roles) is the salient factor.

The functional analysis applied, for instance, with tag questions and *well* has shown clearly that the use of pragmatic features is complex and cannot be reduced to simple decoding. This being so, relevance theory is more likely be able to account for all aspects of their use than other approaches such as politeness theory. This, combined with the results showing that the so-called powerless language features are used by the powerful in court as well as the powerless, raises serious questions about the notion of powerless language. The concept has become so diluted by the need to account for the variety of uses of some if its features that I believe it has little value.

Further, as Hosman and Siltanen say, "... studies have found that the components of powerless and powerful speech styles have different evaluative consequences than the global concepts do. For example, intensifiers, which are typically included in powerless messages, are not always perceived as powerless" (Hosman and Siltanen, 1994, p. 288). They suggest instead that different components may interact with each other in different ways. This would be a fruitful area for follow up research from the present study, and could be helpful in improving the justice system.

The fact that features of so-called powerless language are not always used in a powerless way in the courtroom backs up Stubbe and Holmes's statement that "the same device often fulfils different functions in different contexts, and speakers may exploit the 'polypragmatic' nature of pragmatic devices" (1995, p. 63). They also find that factors interact differently for the seven pragmatic devices they investigate. For instance, they find that gender and class interact strongly for *eh* and *you know* but that age, class and gender interreact in the use of tag questions, while *sort of* is related to class. This helps to account for situations where these devices would be perfectly acceptable but are not selected by the speaker.

Holmes argues in her study in New Zealand that "these women's behaviour patterns are not evidence of powerlessness, but should rather be seen as positive features of women's speech ... many of the facilitative patterns which characterise women's speech in general also characterise the speech of those in leadership roles or positions where they are responsible for ensuring the success of an interaction" (1993, p. 111). They involve taking the initiative, which cannot be called powerless behaviour.

However, while these are convincing arguments, a difficulty emerges when we consider evaluative studies, such as those mentioned in chapter two. These have shown, by manipulating features of "powerless" language, that people often interpret such features in negative ways and have suggested that the term reflects a "real" concept to which interactants orient themselves. Can we reconcile the two sets of research? I believe that the answer may come in the different kinds of approach used.

Those studies which find negative evaluations based on the use of particular features (individually and when gathered together into a "style") can be countered by considering that they do not look at wider matters such as context and function: they manipulate only narrow aspects of the situation. Studies which only consider the reactions to one group of participants, such as witnesses, also constrain the results. Knowledge of the speaker's role may affect evaluations and experiments with other speakers, such as lawyers, may yield quite different results. Further, the studies do not appear to consider the multi-functional nature of certain features. It seems to me that such studies come up with easy answers which, because they are narrowly based, simply cannot account for real-life language use. The study which has been presented in this thesis clearly supports this argument because of its finding that powerless language is a misnomer.

The argument is also supported by Hosman (1997), who has found that it is not necessarily the features of the language per se which are causing evaluations of powerless messages. Rather, for him, the answer lies in the hearer's perceptions of the speaker's "locus of control". People are divided into internals (those who believe that they control their own behaviour) and externals (those who believe that their behaviour is controlled by others). Locus of control is defined as the extent to which people believe that they are internals or externals. Hosman concludes that "Externals evaluated a speaker more positively ... when the style shifted from a powerless style to a powerful one" (1997, p. 75). Internals, on the other hand, "perceived a speaker using a powerless style as exhibiting more control than a speaker using a powerful style" (p. 75). It has been outside the scope of this study to investigate this notion further, but it may well be an avenue worthy of further research.

It may be fruitful to consider this in combination with Stygall's (1994) approach, which also questions whether it is language features per se which cause communication difficulties. Stygall considers how interactants' (including jury members) different discourse frameworks (and understanding of legal discourse) affect outcomes in court. This also recalls Aronsson, Jonsson and Linell's (1987) conclusion that legal language is understandable but that it is in dealing with the legal framework where difficulties arise, and Margaret O'Toole's (1994) discussion of participants' widely diverse views of reality.

Looking then at the understandings which those participating in courtroom hearings arrive with (including their understanding of legal discourse), rather than focussing on specific features of language, may provide an approach for looking at just where evaluation is seated and how it works in court.

All this is not to say that power is not operating in a great many interactions, and certainly in most, if not all, courtrooms. Rather, particular features of language do not necessarily and always encode powerlessness. The inevitable conclusion is that language use contributes to power, but language on its own does not create power; perhaps the power and the situation are there first and

language is one of the tools used in reinforcing the power in that situation. So, if men dominate, they do not just wheel in the language tool to do the job; instead they choose from the set of possibilities in the language those aspects which they believe will reflect the power they want (or want to maintain). In other words, they have the power and they will use any means at their disposal, including language, to keep it. We cannot take social constructivism so far as to conclude that language is doing the whole job of constructing individuals' identity and social reality.

This is consistent with Eckert and McConnell-Ginet's view of language and gender. "Language is never encountered without other symbol systems, and gender is always joined with real people's complex forms of participation in the communities to which they belong" (1998, p. 486). Such concepts as gender, and I contend power also, are therefore not to be seen in isolation and certainly not as being expressed by particular language features inevitably. Eckert and McConnell-Ginet suggest that "Analysts not only jump too readily from local observations to global claims; they/we also too often ignore the multiple uses of particular linguistic resources in the practices of a given community" (p. 487).

"The community of practice is where the rubber meets the road - it is where observable action and interaction do the work of producing, reproducing, and resisting the organisation of power in society and in societal discourses of gender, age, race etc." (Eckert and McConnell-Ginet, 1998, p. 492). Although Eckert and McConnell-Ginet do not take it so far as this, I suggest that this concept also allows us to account for individual goals and intentions for specific interactions and how these interact with characteristics of the members of the community (whether we call it a speech community or a community of practice) which we happen to be investigating.

11.3 Where to from here?

11.3.1 Access to justice?

In looking at whether aspects of language use make a difference to people's access to justice, the comments below relate only to the areas discussed in this thesis, i.e. repair and powerless language. They should not be taken to imply that other areas of language do not have important effects. For example, the syntax and lexicon associated with legal language have not been traversed in the thesis and I do not suggest that their effects would be trivial.

The conclusion to be drawn from the results presented in this thesis is that, while there are frequent suggestions in New Zealand that access to justice is often limited and unequal, it is a very large, and possibly unwarranted, step to suggest that language has a strong bearing on this per se, i.e. by its nature (whether because of misunderstanding of factual content or misunderstanding of attitudinal and interactional aspects). I want instead to suggest that the power dynamics involved are creating this inequality quite aside from the specific interaction in a hearing. The professional participants in court in this country make every attempt to ensure that the court receives the best understanding possible of what is being heard. If defendants and witnesses feel misunderstood, this is rarely transparent in the language used in these hearings. As far as powerless language is concerned, we have seen that is not a justifiable concept to apply to the language of the hearings. It is therefore simply not justifiable to suggest that such features necessarily have anything to do with whether justice is being served. A deeper study based on real situations is necessary in order to see how language is contributing towards evaluations in court (of all participants, i.e. not only defendants and witnesses).

All of the comments expressed above about the role of language in justice receive support from research such as O'Barr and O'Barr's study of courts in Tanzania, India and Papua New Guinea. They see the courts there as multilingual, in the sense that "barriers may be erected by entire languages or by specialised styles within particular languages" (1976, p. 19). But they also say that "advocates of linguistic reform must realise that linguistic changes can, at most, facilitate intercourse and that the real barriers to effective communication are seldom linguistic" (p. 27). In Tanzania, where legal professionals do not take part in primary courts (including as judges), there are simpler procedures and no special legal language.

Robert Kidder in the same volume says of courts in Bangalore, South India, that "linguistic ambiguity is the most useful attribute of legal language because it allows the promotion of their [lawyers'] own interests based on the influence they can muster" (1976, p. 251). He suggests that main barrier there is not language, but rather the elitism of the professionals involved and their need for self-protection.

In a more recent discussion relevant to whether changing language use is going to improve access to justice, Mack has considered the matter of women's credibility in the law. Although her 1993 article focusses on judges' instructions to juries in rape trials (on the matters of corroboration of evidence and credibility of victims), and only considers women as witnesses, Mack makes points

relevant to the subjects of this thesis. She claims that "the legal system has always had, and still has, special rules and practices that wrongfully lessen the value of women's evidence, especially in cases of sexual assault" (1993, p. 353). Noting that greater confidence does not mean greater accuracy, she points out that women's use of so-called powerless language features and hesitancy forms "the first element in the lack of belief in women as witnesses [and that it] has to do with general social expectations about how a credible speaker is supposed to sound" (p. 330). Her final point is that "the full remedy for gender inequality lies in broad social change, so that when women speak, they will be heard and believed" (p. 353).

Mack's remarks support my conclusion that we have to question whether it is the language per se which sets up perceptions of powerlessness. As we have seen, women do not always use "powerless" features in powerless ways. Mack's conclusion about gender inequality can be applied to other issues of social inequality potentially affecting participants in court hearings. Thus broad social change is necessary to alter inequality in court: having judges educated about different uses of language in a more detailed manner, reflecting the insights gained in this thesis, might go some way towards redressing imbalance in court hearings. However, that education needs to spread far more widely before it would contribute to the broad social change which is necessary to remove such inequality before the law.

A further related point, but coming from another angle, is made by Drew and Heritage (1992). They suggest that the setting does not necessarily make talk institutional. Rather, it becomes institutional when "participants' institutional or professional identities are somehow made relevant to the work in which they are engaged" (1992, p. 4). This is interesting in that, as far as court is concerned, it only applies fully to some of the participants: those who are already well-established in and aware of those institutional or professional identities before they enter the courtroom. They are also likely to be aware of what is expected from them as those identities. However other participants may not be in the same position, and these are likely to include those for whom the outcome is critical: the defendants. While the institutional identities of defendants and witnesses are quite clear to the professional and regular participants in court, the implications of those identities may only be superficially clear to lay participants who are not regularly in court. Even if they have been briefed carefully by their lawyers, they are unlikely to have such a full understanding. Again, this is consistent with the community of practice framework as well as Stygall's beliefs about accessibility to the legal framework of discourse in court.

This imbalance is a direct corollary of the power differentials in the court system. While judges may be aware of, or can be educated about it, how far is a jury likely to be aware of this aspect of imbalance? Given the apparent difficulties juries have with understanding jury instructions (e.g. Charrow and Charrow, 1980; the recent Law Commission study of jury trials in New Zealand, see below), how possible is it to make them aware of it? How far are this imbalance and any awareness of its impact likely to affect the result of a hearing?

11.3.2 The Law Commission's jury trial study

Over recent years the New Zealand Law Commission has been considering the effectiveness of juries, looking at a wide range of issues. The deadline for submissions on its report was 30 March 2000, and their report will be finalised some time after it has considered those submissions.

The second part of its discussion paper, published late in 1999, deals with enhancing jury effectiveness by improving the information and processes available. For example, it is suggested that juries would find it more helpful to hear the defence opening earlier in the hearing (rather than after all the prosecution's evidence has been heard, as is usually the case now). Juries also need clear frameworks for cases (both the facts and legal issues), provided in the judge's opening statements as well as those for the prosecution and defence. The commission found clear evidence that jurors have difficulty absorbing the large amounts of oral information, especially early in the hearings. "By and large, the report concluded that juries did not understand the logic or appreciate the importance of restricting themselves to the information presented by the parties and the judge" (*Law Talk* 2000, p. 12).

These comments all reinforce Stygall's (1994) beliefs about lay participants having completely different frameworks (from the professionals involved) which they can bring to bear on their experience in court, whether they be direct participants or jurors. This lays bare the need for and potential practical application for further research in this area.

11.4 Tying the knots: answering the questions

It has become clear that relying on a broad brush ethnographic approach does not give us a completely satisfactory way to account for courtroom language. It provides a useful framework

within which to begin such an accounting. But it has dangers in that it masks the individuality of many situations. Thus in order to explain properly what is going on we need to supplement that approach with finer detail such as that provided by conversation analysis (note that the word supplement is not intended to suggest lesser importance). To ignore the ethnographic approach is equally unsatisfactory and its insights have been shown to be highly useful in informing conversation analysis of the hearings. The conclusion to be drawn is that both approaches are necessary, with the addition of interactional considerations, before we can account for language in the courtroom satisfactorily.

What is the source of misunderstanding in courtrooms? This study began from the widely held perception that there is a great deal of misunderstanding in New Zealand courtrooms and has attempted to see whether that is visible in the language. It seemed that miscommunication might be occurring in Gumperz' sense and I wished to see whether in fact courtroom difficulties could be revealed and remedied in such an apparently clear-cut manner.

The study therefore attempts to ask whether all miscommunication is based in the language and its particular features or whether, rather, we should be talking about people, who already have taken positions about the situations they find themselves in, using language to "come to an understanding".

In the hearings discussed there seems to be little miscommunication in the traditional sense of interethnic differences, nor when extending the notion to gender and the professional-lay axis. Considering the data from the second of the above points of view ("coming to an understanding") allows us to account for both repair in the courtroom and the use of features which have been called powerless. It shows both phenomena in a more productive light and does not rely on a priori categories. Indeed it supports the social constructivist approach, to the extent that language is being used in particular ways in particular interactions to achieve the goals the participants have for those interactions (as opposed to its function of creating social identities).

Is powerless language, then, a useful concept which can give us a better account of language dynamics in court? The study has shown, again, that the broad brush approach of this concept has also masked the subtlety of individual language choices and thus limited our notions of how language is operating. In fact, role and goals (often consequent upon role) appear to be a far more salient factor than power per se.

Concepts such as powerless language have the potential to be defined and used in a glib fashion which serves little good purpose. It would be tempting for some, for instance, to suggest that judges should be telling juries about powerless language, warning them that it may have nothing to do with truth. But great care would be needed in doing so. We have seen that features which have been characterised previously as powerless do not always operate this way in fact and are not used exclusively by the powerless in court. There could be a danger of jurors seeing, or rather hearing speech as powerless which is in fact facilitative or is dealing with structural coherence rather than personal attributes.

Finally, looking at the context has been shown to produce a more complete account of the variety of factors operating in any situation. It suggests a whole new approach to studying people's perceptions and evaluations. First, we should be looking at real interactions rather than those heavily manipulated for very limited factors. Secondly, there is an important role for evaluative studies using real people, i.e. those involved in the interactions. Thirdly, we need to use broader brushes in what we select to describe, but to combine those with a very specific approach such as that provided by conversation analysis.

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Appendix A: Transcription conventions used in this thesis

1. Speakers are identified by case number, role, and number within the case. Thus:

   J: judge
   PC: prosecution counsel
   DC: defence counsel
   D: defendant
   PW: police witness
   W: lay witness

   e.g. 1J: the judge in case one
   1DC1: the first defence counsel to appear in case one

2. Pauses are given in brackets. The numbers represent pauses of either up to half a second in length (0.5) or completed seconds. Slashes (/) appearing within the brackets indicate when the court stenographer's typewriter is heard to cease.

3. Intonation is marked for the ends of utterances, with a period (.) marking a final fall and a question mark (?) a final rise. If no marking appears at the end of an utterance, the intonation remains at an even level. No intonation is marked within utterances.

4. A lengthened sound is indicated by: .
   e.g. no: yess:

5. Bold type is used to indicate particular features being discussed in the text.

6. Underlining is used to indicate particular emphasis.

7. Such things as signs, laughs, coughs, etc. are indicated in brackets, as well as comments about volume or the way in which something is spoken.

8. Latching is indicated with = .

   e.g. 1J: all right =
   1PC: = and why I accept ...

9. Overlap is indicated by the placement on the line of the overlapping parts of the utterance.

   e.g. 2J: is it in reference to the question which which begins O.K. or the answer which begins O.K. this xxx
   2DC2: yes (0.5) that's xxx
   2J: xxx you (0.5) are ...

10. Indecipherable utterances are indicated by xxx.

Appendix B: Further tables referred to in chapter three

Table 1: Cases - numbers of turns

Role	Case One	Two	Three	Four	Five	Six	Seven	Total
J	104	99	30	101	40	45	12	431
PC	268	159	194	394	263	530	41	1849
DC1	93	127	132	244	447	192	48	
DC2	122	396	-	-	-	-	-	1801
D1	173	206	240	284	144	176	40	
D2	86	-	-	-	-	-	-	1349
PW1	58	299	26	111	53	26	19	
PW2	24	-	57	49	-	14	-	736
W1	53	50	-	183	84	138	18	
W2	-	-	-	-	175	134	-	
W3	-	-	-	-	115	87	-	
W4	-	-	-	-	99	70	-	
W5	-	-	-	-	40	61	-	1307
total	981	1336*	679	1366	1460	1473	178	7473

* This is the number of tape-recorded turns; the first hour of this hearing is not recorded; the typed court transcript shows at least 222 more turns, but does not record overlaps or very brief unfinished utterances; neither does it necessarily include repeated questions and retries.

PC = prosecuting counsel
DC = defence counsel
D = defendant
PW = police witness
W = witness

Table 2: Participants' turns (as a % of the turns occurring in each hearing)

Role	Case One	Two	Three	Four	Five	Six	Seven
J	11	7	3	8	3	3	8
PC	27	12	29	29	18	36	23
DC1	10	10	20	18	31	13	27
DC2	13	30	-	-	-	-	-
D1	17	15	35	21	10	12	22
D2	9	-	-	-	-	-	-
PW1	6	22	4	8	4	2	10
PW2	2	-	8	4	-	1	-
W1	5	4	-	13	6	9	10
W2	-	-	-	-	12	9	-
W3	-	-	-	-	8	6	-
W4	-	-	-	-	7	5	-
W5	-	-	-	-	3	4	-

Table 3: Case two - participation rates

Role	Turns: total no.	%	voir dire no.	%	for jury no.	%
2J	99	7.41	49	10.23	50	5.83
2PC	159	11.90	58	12.11	101	11.79
2DC1	127	9.51	7	1.46	120	14.00
2DC2	396	29.64	189	39.46	207	24.15
2D	206	15.42	66	13.78	140	16.34
2PW	299	22.38	110	22.96	189	22.05
all	1336*	96.26*	479	35.85	857	64.15

* These include the witness in the hearing, who is not involved in the voir dire.

Table 4: Word count by case and participant role

Role	Case One	Two	Three	Four	Five	Six	Seven	Total	Average
Judge	1,394	1,217	299	1,627	589	226	104	5,456	779
PC	3,632	3,061	3,043	4,635	4,581	6,087	777	25,816	3,688
DC1	1,050	1,790	1,316	3,200	6,497	2,866	418		
DC2	1,365	6,674	-	-	-	-	-	25,176	2,797
D1	789	2,562	4,001	3,536	1,079	811	233		
D2	623	-	-	-	-	-	-	13,634	1,704
PW1	729	2,911	881	1,391	686	250	403		
PW2	126	n/a	1,525	194	-	79	-	9,175	834
W1	289	640	-	2,546	359	1,845	63		
W2	-	-	-	-	864	2,030	-		
W3	-	-	-	-	446	686	-		
W4	-	-	-	-	612	438	-		
W5	-	-	-	-	316	137*	-	11,271	805
total	9,997	18,855	11,065	17,129	16,029	15,455	1,998	90,528	12,933

Note: In several instances, the same person is taking the same or another role in two cases. Thus 2J = 3J, 6J = 7J, 1PC = 4PC, 2PC = 3PC, 2DC2 = 6DC (i.e. same person, differrent case). In addition 6PC is the same person as 4DC (i.e. same person, different role). However, the averages refer to the average number of words used in each role per examination phase of each case.

* The testimony of this witness was not captured on tape so is counted from the court transcript. This means that that person spoke at least this many words, but may well have spoken many more. Therefore, the numbers given (both here and in later chapters) can only be a broad guide to her usage.

Table 5: Average turn lengths for female participants

Participant	Average turn length	
6J/7J	6	
7PC	19	
1DC1	11	
5DC	15	
4D	12	
5W4	6	
6W4	6	
6W5	2	
7W	4	
all females	11	(1,170 turns)
all males	12	(6,300 turns)

Table 6: Average turn lengths for non-NZE participants

Participant	Average turn length
1DC2	8
1D1	5
1D2	7
5D	7
6D	5
7D	6
4W	14
5W5	8
6W2	15
6W4	6
6W5	2
All non-NZE	8
All NZE	13

* This witness was not recorded on tape; therefore this figure, taken from her utterances as detailed in the court transcript, may understate the true position.

Table 7: Case two - turn lengths in voir dire

Role	Voir dire:		For jury:	
	words	turn length	words	turn length
J	402	8	815	16
PC	937	16	2124	21
DC1	166	24	1624	13
DC2	3181	12	3493	17
D1	720	11	1842	13
PW1	718	7	2193	12
W1	0	0	640	13

Appendix C: Further table referred to in chapter four

Table 2: Participants' turns (as a % of the turns occurring in each hearing)

Role	Case One	Two	Three	Four	Five	Six	Seven
J	1:155	1:203	1:299	1:325	1:589	0	0
PC	1:214	1:87	1:127	1:185	1:139	1:338	1:194
DC1	1:131	1:105	1:101	1:91	1:224	1:159	1:105
DC2	1:273	1:63	-	-	-	-	-
D1	1:49	1:160	1:29	1:46	1:36	0	1:23
D2	1:25	-	-	-	-	-	-
PW1	1:91	1:194	1:80	1:56	1:57	1:250	1:45
PW2	0	-	1:117	1:97	-	1:79	-
W1	1:48	1:46	-	1:64	0	1:26	1:63
W2	-	-	-	-	1:36	1:29	-
W3	-	-	-	-	1:28	1:49	-
W4	-	-	-	-	1:38	1:438	-
W5	-	-	-	-	1:63	0	-

Appendix D: Further tables referred to in chapter six

Table 1: Individuals' use of powerless features

Participant	PL forms	Total: words	turns	Rate: PL-words	PL-turns
1J	98	1,394	104	1:14	1:1.06
2J	84	1,217	98	1:14	1:1.17
3J	19	299	30	1:16	1:1.59
4J	63	1,627	101	1:26	1:1.6
5J	26	589	40	1:23	1:1.54
6J	19	226	45	1:12	1:2.37
7J	5	104	12	1:21	1:2.4
1PC	145	3,632	268	1:25	1:1.85
2PC	181	3,061	158	1:17	1:0.87
3PC	134	3,043	194	1:23	1:1.45
4PC	138	4,635	394	1:34	1:2.86
5PC	63	4,581	263	1:73	1:4.17
6PC	85	6,087	530	1:72	1:6.24
7PC	31	777	41	1:25	1:1.32
1DC1	68	1,050	93	1:15	1:1.37
1DC2	65	1,365	122	1:21	1:1.88
2DC1	50	1,790	127	1:36	1:2.54
2DC2	344	6,674	395	1:19	1:1.15
3DC	31	1,316	132	1:42	1:4.26
4DC	91	3,200	244	1:35	1:2.68
5DC	227	6,497	447	1:29	1:1.97
6DC	86	2,866	192	1:33	1:2.23
7DC	14	418	48	1:30	1:3.43
1D1	84	789	173	1:9	1:2.06
1D2	52	623	86	1:12	1:1.65
2D	153	2,563	206	1:17	1:1.35
3D	209	4,001	240	1:19	1:1.19
4D	179	3,536	284	1:20	1: 1.59
5D	95	1,079	144	1:11	1:1.52
6D	4	811	176	1:203	1:44
7D	6	233	40	1:39	1:6.67
1PW1	56	729	58	1:13	1:1.04
1PW2	20	126	24	1:6	1:1.2
2PW	81	2,911	299	1:36	1:3.69
3PW1	21	881	26	1:42	1:1.24
3PW2	60	1,525	57	1:25	1:0.95
4PW1	46	1,391	111	1:30	1:2.41
4PW2	16	194	49	1:12	1:3.06
5PW	21	686	53	1:33	1:2.52
6PW1	7	250	26	1:36	1:3.71
6PW2	0	79	14	0	0
7PW	21	403	19	1:19	1:0.90
1W	22	289	53	1:13	1:2.41
2W	47	640	50	1:14	1:1.06
4W	208	2,546	183	1:12	1:0.88

5W1	20	359	84	1:18	1:4.2
5W2	108	864	175	1:8	1:1.62
5W3	47	446	115	1:9	1:2.45
5W4	50	612	99	1:12	1:1.98
5W5	33	316	40	1:10	1:1.21
6W1	149	1,845	138	1:12	1:0.93
6W2	89	2,030	134	1:23	1:1.51
6W3	31	686	87	1:23	1:2.81
6W4	5	438	70	1:87.6	1:14
6W5	3*	137	61	1:46	1:20.34
7W	3	63	18	1:21	1:6

* This includes one less measure than for the other participants because HRTs can not be counted for this witness as she is not captured on tape.

Table 2: PL without tag questions and address terms - by case

Form	**Case One**	**Two**	**Three**	**Four**	**Five**	**Six**	**Seven**	**Total**
hesitation	109	270	153	148	76	88	13	857
hedge	34	56	47	77	93	66	5	378
intensifier	25	149	35	78	116	87	6	496
HRT	148	131	112	204	181	94	13	883
well	28	61	22	108	47	42	1	309
politeness	79	82	53	46	42	32	21	355
total	423	749	422	661	555	409	59	3,278

Table 3: PL rates without tag Qs and address terms - by case

Form	**Case One**	**Two**	**Three**	**Four**	**Five**	**Six**	**Seven**
hesitation	1:92	1:70	1:72	1:116	1:211	1:176	1:154
hedge	1:294	1:367	1:35	1:222	1:172	1:234	1:400
intensifier	1:400	1:127	1:316	1:220	1:138	1:178	1:333
HRT	1:68	1:144	1:99	1:84	1:89	1:164	1:154
well	1:357	1:309	1:503	1:159	1:341	1:368	1:1,998
politeness	1:127	1:230	1:209	1:372	1:382	1:483	1:95
total	1:24	1:25	1:26	1:24	1:29	1:38	1:34

Table 4: PLs without tag Qs and address terms by participant group

Form	Role						
	J	**PC**	**DC**	**D**	**PW**	**W**	**Total**
hesitation	47	108	139	271	67	225	857
hedge	24	80	108	66	13	87	378
intensifier	8	58	198	107	30	95	496
HRT	44	34	28	254	196	327	883
well	21	66	76	58	20	68	309
politeness	76	130	105	15	17	12	355
total	220	476	654	771	343	814	3,278

Table 5: PL rates without tag Qs and address terms by participant group

Form	Role					
	J	**PC**	**DC**	**D**	**PW**	**W**
hesitation	1:116	1:239	1:181	1:50	1:137	1:50
hedge	1:227	1:323	1:233	1:207	1:706	1:130
intensifier	1:682	1:445	1:127	1:127	1:306	1:119
HRT	1:124	1:759	1:899	1:54	1:47	1:34
well	1:260	1:391	1:331	1:235	1:459	1:166
politeness	1:72	1:199	1:240	1:909	1:540	1:939
total	1:25	1:54	1:39	1:18	1:27	1:14

Table 6: PL forms by participant groups calculated according to O'Barr and Atkins' method

Role	PL forms	Turns	PLs-turns
J	314	430	0.73
PC	777	1848	0.42
DC	979	1800	0.54
D	782	1349	0.58
PW	349	736	0.47
W	815	1307	0.62

Appendix E: Further tables referred to in chapters seven, eight and nine

Table 1: Hesitation forms - occurrence by case and participant

Role	Case One	Two	Three	Four	Five	Six	Seven	Total
J	19	20	2	4	1	0	1	47
PC	9	56	33	8	1	0	1	108
DC1	3	13	7	2	0	3	1	
DC2	3	107	-	-	-	-	-	139
D1	26	41	93	66	17	0	4	
D2	24	-	-	-	-	-	-	271
PW1	14	2	8	10	5	4	5	
PW2	1	-	10	8	-	0	-	67
W1	10	31	-	50	6	40	1	
W2	-	-	-	-	6	37	-	
W3	-	-	-	-	6	4	-	
W4	-	-	-	-	14	0	-	
W5	-	-	-	-	20	0	-	225
total	109	270	153	148	76	88	13	857
(%	13	32	18	17	9	10	2	100)

Table 2: Rates of hesitations for NZE participants

Participant	Hesitations	Words	Rate
beginning with males, we find:			
IJ	19	1,394	1:73
1PC	9	3,632	1:404
1PW1	14	729	1:52
1PW2	1	126	1:126
1W	10	289	1:29
2J	20	1,217	1:61
2PC	53	3,061	1:58
2DC1	13	1,790	1:138
2DC2	107	6,674	1:62
2D	41	2,563	1:63
2PW	2	2,911	1:1,456
2W	31	640	1:21
3J	2	299	1:150
3PC	33	3,043	1:92
3DC1	7	1,316	1:188
3D	93	4,001	1:43
3PW1	8	881	1:110
3PW2	10	1,525	1:153
4J	4	1,627	1:407
4PC	8	4,635	1:579
4DC	2	3,200	1:1,600
4PW1	10	1,391	1:139
4PW2	8	194	1:24
5J	1	589	1:589
5PC	1	4,581	1:4,581
5PW	5	686	1:137
5W1	6	359	1:60
5W2	6	864	1:144
5W3	6	446	1:74
5W4	14	612	1:44
6PC	0	6,087	0
6DC	3	2,866	1:955
6PW1	4	250	1:63
6PW2	0	79	0
6W1	40	1,845	1:46
6W3	4	686	1:172
7DC	1	418	1:418
7PW	5	403	1:81
sub-total	601	67,909	1:112
adding now the female NZE participants, we get:			
6J/7J	1	330	1:330
7PC	1	777	1:777
1DC1	3	1,050	1:350
5DC	0	6,497	0
4D	66	3,536	1:54
7W	1	63	1:63
sub-total	72	12,253	1:170
total for all NZE	673	80,162	1:119

Table 3: Lexical hedges *just* and *sort of* by case and participant

Role	Case One	Two	Three	Four	Five	Six	Seven	Total
J	5	3	3	9	3	1	0	24
PC	9	7	18	10	21	14	1	80
DC1	5	6	3	24	20	12	2	
DC2	4	32	-	-	-	-	-	108
D1	0	7	20	13	20	0	0	
D2	6	-	-	-	-	-	-	66
PW1	4	0	3	1	1	0	1	
PW2	0	-	0	3	-	0	-	13
W1	1	1	-	17	2	30	1	
W2	-	-	-	-	13	6	-	
W3	-	-	-	-	9	3	-	
W4	-	-	-	-	4	0	-	
W5	-	-	-	-	0	0	-	87
total	34	56	47	77	93	66	5	378

Table 4: Intensifiers by case and participant

Role	Case One	Two	Three	Four	Five	Six	Seven	Total
J	2	5	0	0	0	1	0	8
PC	5	16	1	17	14	4	1	58
DC1	6	8	2	11	62	32	3	
DC2	3	71	-	-	-	-	-	198
D1	3	29	29	25	11	4	1	
D2	5	-	-	-	-	-	-	107
PW1	1	14	1	3	7	2	0	
PW2	0	-	2	0	-	0	-	30
W1	0	6	-	22	0	21	1	
W2	-	-	-	-	9	10	-	
W3	-	-	-	-	3	5	-	
W4	-	-	-	-	7	5	-	
W5	-	-	-	-	3	3	-	95
total	25	149	35	78	116	87	6	496

Table 5: Occurrence of tag Qs

Role	Case One	Two	Three	Four	Five	Six	Seven	Total
J	2	0	0	2	0	0	0	4
PC	51	23	23	28	9	18	8	160
DC	22	12	1	10	54	7	0	106
D	0	0	0	0	0	0	0	0
PW	0	0	0	0	0	0	0	0
W	0	0	-	0	0	1	0	1
total	75	35	24	40	63	26	8	271

Table 6: HRT by case and participant

Role	Case One	Two	Three	Four	Five	Six	Seven	Total
J	14	8	1	20	0	1	0	44
PC	11	5	6	10	1	1	0	34
DC1	6	2	0	4	4	2	0	
DC2	2	8	-	-	-	-	-	28
D1	44	55	56	42	43	0	0	
D2	14	-	-	-	-	-	-	254
PW1	27	51	2	30	4	0	13	
PW2	19	-	47	3	-	0	-	196
W1	11	2	-	95	7	51	0	
W2	-	-	-	-	78	23	-	
W3	-	-	-	-	26	16	-	
W4	-	-	-	-	14	0	-	
W5	-	-	-	-	4	-*	-	327
total	148	131	112	20	181	94	13	883

* This witness is not recorded on tape and her evidence is only available from the court transcript. Therefore it is not possible to ascertain her use of HRT.

Table 7: Use of terms of address by case

Feature	Case One	Two	Three	Four	Five	Six	Seven	Total
title + last name	43	29	9	19	42	31	11	184
title	59	107	17	19	14	9	1	226
occupational title	4	5	1	2	1	6	1	20
occupational title + last name	2	6	0	0	1	0	0	9
(title +) role	4	9	1	0	0	0	0	14
first name	0	0	0	0	14	0	0	14
total	112	156	28	40	72	46	13	467

Table 8: Occurrence of polite terms

Role	Case One	Two	Three	Four	Five	Six	Seven	Total
J	20	15	8	11	11	9	2	76
PC	24	20	22	25	13	14	12	130
DC1	17	3	12	8	10	7	5	
DC2	11	32	-	-	-	-	-	105
D1	0	7	3	1	0	0	1	
D2	3	-	-	-	-	-	-	15
PW1	4	2	7	0	1	1	1	
PW2	0	-	1	0	-	0	-	17
W1	0	3	-	1	1	0	0	
W2	-	-	-	-	1	1	-	
W3	-	-	-	-	3	0	-	
W4	-	-	-	-	0	0	-	
W5	-	-	-	-	2	0	-	12
total	79	82	53	46	42	32	21	355

Appendix F: Further tables referred to in chapter ten

Table 1: Instances of *well* by case and participant

Role	Case One	Two	Three	Four	Five	Six	Seven	Total
J	9	3	0	7	2	0	0	21
PC	8	3	12	25	2	16	0	66
DC1	1	2	2	17	19	5	0	
DC2	0	30	-	-	-	-	-	76
D1	9	8	8	32	1	0	0	
D2	0	-	-	-	-	-	-	58
PW1	1	11	0	2	3	0	1	
PW2	0	-	0	2	-	0	-	20
W1	0	4	-	23	4	6	0	
W2	-	-	-	-	1	12	-	
W3	-	-	-	-	0	3	-	
W4	-	-	-	-	11	0	-	
W5	-	-	-	-	4	0	-	68
total	28	61	22	108	47	42	1	309

Table 2: Rates for *well* by case and participant

Role	Case One	Two	Three	Four	Five	Six	Seven
J	1:155	1:406	0	1:232	1:295	0	0
PC	1:454	1:1,020	1:254	1:185	1:2,291	1:380	0
DC1	1:1050	1:895	1:658	1:188	1:342	1:573	0
DC2	0	1:222	-	-	-	-	-
D1	1:87	1:320.25	1:500	1:111	1:1079	0	0
D2	0	-	-	-	-	-	-
PW1	1:729	1:265	0	1:696	1:229	0	1:403
PW2	0	-	0	1:1,273	-	0	-
W1	0	1:160	-	1:111	1:90	1:308	0
W2	-	-	-	-	1:864	1:169	-
W3	-	-	-	-	0	1:229	-
W4	-	-	-	-	1:56	0	-
W5	-	-	-	-	1:79	0	-

Table 3: Rates for *well* by case

Case	*Well*	Words	Rate
One	28	9,997	1:357
Two	61	18,855	1:309
Three	22	11,065	1:503
Four	108	17,129	1:159
Five	47	16,029	1:341
Six	42	15,455	1:377
Seven	1	19,98	1:1,998
total	309	90,528	1:293

Table 4: Rates for *well* by participant groups

Role	*Well*	Words	Rate
J	21	5,456	1:260
PC	66	25,816	1:391
DC	76	25,176	1:331
D	58	13,634	1:235
PW	20	9,175	1:459
W	68	11,271	1:166
total	309	90,528	1:292

Table 5: Rates of *well* by female participants

Participant	*Well*	Words	Rate
6J	0	226	0
7J	0	104	0
7PC	0	777	0
1DC1	1	1,050	1:1050
5DC	19	6,497	1:342
4D	33	3,536	1:107
5W4	11	612	1:56
6W4	0	438	0
7W	0	63	0
all women	64	13,440	1:210
all men	245	77,088	1:315

Table 6: Rates of *well* for non-NZE participants

Participant	Ethnic group	*Well*	Rate
1DC2	Samoan	0	0
1D1	Samoan	9	1:88
1D2	Samoan	0	0
5D	Maori	1	1:1079
6D	Niuean	0	0
7D	Maori	0	0
4W	Maori	23	1:111
5W5	Pacific Is.	4	1:79
6W2	Indian	12	1:169
6W4	Niuean	0	0
6W5	Niuean	0	0
all non-NZE		49	1:212
all NZE		260	1:308

Table 7: Discourse functions of TCUs containing *well*

Function	FPP	SPP
request information	9	-
rephrase question	1	-
challenge	75	13
accuse	1	-
clarify	10	7
request clarification	5	-
request confirmation	1	-
request justification	2	-
request opinion	1	
refuse witness's excuse	1	
delay	13	47
disclaim		2
request	2	-
request ruling	2	-
give ruling	-	1
pre-clarify	1	1
pre-disagree	1	-
acknowledge	-	2
give information	-	10
correct some information	-	1
agree	3	8
admit	-	1
confirm	-	2
explain	1	8
justify	-	27
qualify	-	3
hedge	-	21
disagree	-	4
criticise	-	1
object	-	1
negate	-	4
deny	-	2
deny knowledge	-	1
refuse information	-	3
non-compliance	-	1
reinvoke	2	1
continuation	4	5
restart questioning	-	1
raise new issue	10	-
unacceptable answer	-	2
search	1	-
signal incomprehension	1	-
signal focus	3	-
begin story	-	1
scene setting	1	-
orientation	-	3
quote	1	1
respond to NTRI	1	-
building	-	2
refer to question	-	1
literal answer	-	1
change utterance	1	2