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Language and Power in a Louisiana Murder Trial: Discourse Features in Witness Testimony.

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**LANGUAGE AND POWER IN A LOUISIANA MURDER TRIAL: DISCOURSE
FEATURES IN WITNESS TESTIMONY**

A Dissertation

**Submitted to the Graduate Faculty of the
Louisiana State University and
Agricultural and Mechanical College
in partial fulfillment of the
requirements for the degree of
Doctor of Philosophy**

in

The Interdepartmental Program in Linguistics

by

**Kara L. Gibson
B.A., Louisiana State University, 1991
May 2001**

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ABSTRACT

The literature concerning language, law, and power has traditionally focused on the linguistic strategies legal professionals employ for the purpose of controlling the speech of their clients and / or witnesses. However, newer research, stemming from gender-based theories of how power and / or powerlessness is manifest in language, promotes linguistic analyses from the perspective of the disempowered as opposed to the empowered. Such studies claim that speakers' election or avoidance of certain discourse features (e.g., hedges, hypercorrect forms, polite address forms, overlap, quotatives and gestures, etc.) and responses-types (e.g., declarative-context questions, copy responses, fragmented versus narrative responses, etc.) reflects their perceived power as a function of social characteristics such as status and gender. Taking excerpts of cross-examination sequences retranscribed from the court transcript of a single criminal trial as data, this work focuses on discerning evidence of power and / or powerlessness in the language of five witnesses. Methodology includes using discourse analytic methods including investigation of the patterning of linguistic features, the application of quantitative criteria established in the literature, and in-depth consideration of the discourse context. Results of both quantitative methods and context-sensitive analyses of the data are found to combine effectively in characterizing witnesses' speaking styles as being powerful or powerless. Witnesses' language evidences features of speech that have traditionally been designated as powerful. Additionally, in this study, witness language is presented as being proactive rather than as being invariably passive, and the choice of power-linked features by witnesses is

shown to be motivated by individual objectives which supersede gender, social status, and other factors that are generally credited in the literature as predominantly influencing the presence or absence of power-linked features in witness language.

CHAPTER 1: INTRODUCTION

Law and American Culture

The arena of legal discourse increasingly encompasses the general public, whether in the form of a copyright warning, a parking ticket, or a medical disclaimer on a pack of cigarettes. In these ways, nearly everyone is drawn, however innocuously, into the realm of legal discourse on a daily basis. The language of the law works its way into our collective consciousness and into our vocabularies. Because legal language is specialized, yet is used by both those trained in its use and by lay people, and because of the important consequences also associated with law, the use of legal language is an interesting and important subject for linguistic investigation.

Legal discourse as the language of power, and the courtroom as a showcase of who commands that power and who does not, fascinates us as a nation. The media is bringing courtroom trials and depositions hearings into American homes in a steadily-growing stream for the ostensible purpose of informing the voting citizenry, but also for the purpose of feeding Americans' interminable curiosity.

Legal Stories in the Media

In The Language War (2000), Lakoff discusses the morphogenesis of the language of power in America as it occurs through high-profile news events often staged at least in part as judge-lawyer-witness interaction in the courtroom. Among the stories "we hate to let ... go" are:

The Anita Hill / Clarence Thomas hearings

The Bobbitt contretemps

The O.J. Simpson saga

Sexual misconduct in the military

The "Cambridge Nanny" case

Sex (or whatever) in the Oval Office (17).

These stories, according to Lakoff, command the interest of their audience because they deal with questions and quests for solutions that affect everyone, e.g., personal problems and social issues of race and gender, which “cause [] unrest and dissension at all levels of national discourse”(19). More to the point as concerns the present work, Lakoff proposes that what is at stake as reflected by this national obsession is more than the desire to experience a sense of fellowship in a communal fallibility. Rather, a war of words is being conducted to determine “who has the ability and the right to make meaning for everyone “ (19). If culture defines the way individual lives are lived, so too does language and the way it is used in cultural context (Fairclough 1989, Foucault 1982, Gumperz 1982a, Sapir 1929, Whorf 1956). Lakoff contends that the proliferation of news events centering on legal issues is a manifestation of the fight over language rights, and that representation of the speech of minorities such as women and African-Americans in high-profile, public controversies represents changes that are taking place in the dynamic language of power.

Power in the Courtroom

If power is contested in the courtroom, it stands to define what power is. Ng and Bradac discuss power as a dual concept consisting of both “power to” and “power over” (Ng and Bradac 1993: 3-4). “Power to” in its positive sense encompasses “the realization of personal or collective goals”; negatively, it refers to the hindering of others’ goals. “Power over” is relational, and describes a situation between individuals in which one person is submissive and one person is dominant.

Obviously, the legal representatives of the courtroom enjoy role-related privileges which allocate to them power to achieve their own goals, whatever those goals may be in the context of a particular interaction (e.g., a winning record, a large paycheck, etc.). They also enjoy the power they have over witnesses, dictated by the

protocol of the trial. In cross-examination, the attorneys' power to achieve their goals likely entails the hindering of witnesses' power to achieve theirs.

Walker looks specifically at the sources from which power derives within the context of the courtroom (1987: 58-60). Power, claims Walker, is attributable to three sources, including: 1. sociocultural norms, such as those that dictate role assignment and deference to institutional representatives; 2. the actual body of laws that govern courtroom procedure; and 3. language, through the attorney's prerogative of asking witnesses questions. Neither Ng and Bradac's nor Walker's description of power seem to allow witnesses to claim power for themselves within the structure of legal interaction. In this dissertation, I will address the linguistic resources available to witnesses to exercise power toward achieving their goals in the courtroom. In order to place the exercise of power in legal language into an appropriate context, I will first describe the speech event of the criminal trial, which is the source of data for this study.

The Criminal Trial

In the United States, a criminal trial is used to determine whether or not the alleged perpetrator of a crime is guilty, and, if that is the case, what the applicable punishment will be. The trial is executed in a predetermined and adversarial format which is controlled by the judge and the attorney, who have been trained in the use of legal language. At the stage at which a trial enters its courtroom phase, the presiding judge and attorneys for the defense and the prosecution have worked communally to impanel a jury, who will serve collectively as the trier of fact in the trial. Juries and most witnesses are lay users of legal language. The jury listens to the introductory opening statements from both the defense and the prosecution, which is followed by the questioning of witnesses.

Attorneys first interview their own witnesses during cross-examination. The opposing side then has the opportunity to cross-examine those witnesses. If desired,

attorneys repeat this process with the same witnesses in redirect and recross-examination. Each side's attorney summarizes in closing arguments, in a way that is designed to be persuasive to the jury, but this is not the only place where persuasion occurs in a trial (see below). On the basis of the testimony and any additional instructions from the judge, the jury determines whether or not the defendant is guilty of any alleged crime(s); then, the judge determines the applicable penalty. A trial for appeal of a verdict is an exception to this format, as it involves judge(s) and lawyers, and the transcripts and materials collected during the initial trial; witnesses do not testify again in an appeal.

Ideally, the courtroom trial is an equal opportunity forum, allowing each witness a chance to voice an account and conversely permitting the opposition to challenge incriminating testimony. However, the playing field is far from even in the courtroom. An imbalance that is key to this dissertation is that witnesses vary in their knowledge of the conventions of courtroom procedure and in the extent of their actual exposure to and prior involvement in courtroom proceedings. They will vary, too, with respect to participant roles in a trial and general expectations of the trial experience. Witnesses will represent different social groups with reference to education, financial status, and cultural background, for example, all of which factor into their testimonial style. All of these differences in experience and background affect their language use, and are reflected in their use of language in the courtroom context.

Objectives

The task of the witness, and particularly the lay witness, is complex. She enters what is typically an unfamiliar speech situation, the courtroom, for the purpose of engaging in the speech events called direct and cross-examination, which are governed by a set of rules unfamiliar to her. Some of these rules are normative, such as standard rules of procedure and rules of evidence; some are pragmatic, in that they dictate what

types of questions are to be asked and when. Some of these rules are made explicit by the authorities, but most are implicit and are left for the witness to infer during the process itself. The witness is instructed to convey “the truth, the whole truth, and nothing but the truth,” but she must communicate within the dictated format of courtroom procedure. She will be challenged during the cross-examination phase of the trial not only as regarding the veracity of her responses, but also in her ability to maneuver within the legal register.

Lakoff holds that witnesses are ultimately at the mercy of the jury, as the ultimate arbiters of fact. The jury, claims Lakoff, holds the real power in the courtroom, and lawyers, “who need things from the others,” have the least (Lakoff 1989: 97-9). Walker, on the other hand, thinks that “the real power” lies with the attorneys, whose role dictates an imperative of controlling witnesses, as, for example, through their ability to insist on role integrity (only the lawyer can ask questions, not witnesses) (Walker 1987: 57-66, 78-9). Ultimately, however, it is the witnesses who potentially have the most at stake. The witnesses in a criminal trial are the ones who risk everything from personal credibility to financial loss to lifetime imprisonment or even execution. The defendant in the trial that is the focus of this paper is himself subject to two lifetime sentences plus ninety years at hard labor at the conclusion of his trial.

If witnesses typically have more at stake than the legal personnel directing the trial, what resources are available to witnesses to gain power over the presentation of information during the trial in a way that is advantageous to their objectives? How do witnesses exercise power in having their own needs to tell their own stories met beyond the limitations imposed by the opposition and even by the court, which is motivated to expedite the trial process due to limited resources of time, for instance?

I hold that some witnesses will be more successful than others in promoting their objectives within the dictated format of testimony, and that success (or failure) will

correlate with the witness' election of certain discourse elements and strategies. Their success or lack of success, in turn, will be a function of power. I will identify particular strategies and forms as contributing to a speaker style that is characteristically powerful or powerless. I will refer to these strategies and forms generally as power-linked features.

I anticipate that the salience of power-linked features will correlate with other power-related variables, such as individual and social characteristics. Relevant factors include the witness' role in the trial, level of education, and experience in the courtroom, among others. I also investigate whether or not analysis of courtroom testimony with respect to power-linked features will uphold traditional characterizations of certain groups as powerless (e.g., women) or powerful (e.g., expert witnesses), as described by the literature, which I review in Chapter 2.

CHAPTER 2: LITERATURE REVIEW

A History of Courtroom Language Literature

In this section, I discuss the evolution of courtroom language studies within the legal profession and provide a brief overview of courtroom language studies by researchers outside of the legal profession.

Trial Practice Manuals

The role of language in the cross-examination phase of trials in the United States receives treatment as early as the beginning of the twentieth century by trial attorneys; one classic example is Wellman's commentary on "the manner and the matter" of cross-examination in The Art of Cross-Examination (1903). In his book, Wellman advises lawyers on how to identify different "types" of witnesses in order to select an appropriate means of frustrating or neutralizing their testimony, as in the case of "the perjured witness" (65-8):

Witnesses of a low grade of intelligence, when they testify falsely, usually display it ...in the voice, in a certain vacant expression of the eyes, in a nervous twisting about in the witness chair, in an effort to recall to mind the exact wording of their story, and especially in the use of language not suited to their station in life.

... Try [the perjured witness] by taking him to the middle of his story, and from there jump him quickly to the beginning and then to the end of it. If he is speaking by rote rather than from recollection, he will be sure to succumb to this method.

Incidentally, no mention is made of the possibility of encountering an intelligent perjured witness; the assumption may be that an intelligent perjurer would not perjure or would not be detected.

Wellman has advice for the attorney cross-examining an expert witness; he recommends subversion of testimony through personal attacks (100-1):

The whole effect of the testimony of an expert witness may sometimes effectually be destroyed by putting the witness to some unexpected and offhand test at the trial, as to his experience, his ability and

discrimination as an expert, so that in case of his failure to meet the test he can be held up to ridicule before the jury, and thus the laughter at his expense will cause the jury to forget anything of weight that he has said against you.

Wellman also recommends the control of expert testimony through structural features, such as type of questions posed to the witness (97):

... no question should be put to an expert which is in any way so broad as to give the expert an opportunity to expatiate upon his own views, and thus afford him an opportunity in his answer to give his reasons, in his own way, for his opinions ...

Modern trial practice manuals echo Wellman's in their prescriptive recommendations for controlling witness testimony during cross-examination. Uniformly, they advise lawyers to obstruct narrative responses (Bailey 1994: 136-7; Brown 1987: 83-92; Easton 1998: 198-200; Levine 1989: 131-35, 142; Morrill 1971: 34-9); one means of avoiding narrative response is to not ask open-ended or "why"-type questions (Bailey 1994: 141-61; Keeton 1973: 140; Levine 1989: 131-3, 142, 156-67). Trial practice manuals warn against "gilding the lily" (Brown 1987: 101-2), or inducing overkill in the eyes of the jury by asking questions beyond the point of proving the case or dismantling that of the opposition (Bailey 1994: 138, 164; Brown 1987: 40-3, 101-2, 114; Levine 1989: 147-53). Frequently, manuals address techniques useful in the circumstance of having to cross-examine certain types of witnesses, such as women, and particularly the "uneducated female," (Levine 1989: 182-3) or "old person[s]," women and children, as well as people with "little education," an accent or "peculiar mannerisms" (Brown 1987: 105-13). Overzealous cross-examination may cause a jury to sympathize with witnesses who are assumed to be at a hopeless disadvantage in terms of power, among other resources.

In addition to the listing of recommendations for questioning witnesses, the trial practice manuals illustrate through their rhetoric the imperative for trial lawyers to control witnesses. To Easton (1998), cross-examination is a "battle for control," the

outcome of which will be determined “within the first five minutes” (198-9); Easton complements this theory with a quote from General Douglas MacArthur: “It is fatal to enter any war without the will to win it.” F. Lee Bailey also alludes to the trial as warfare, likening the trial lawyer to a battlefield commander (Bailey 1994: 21), and Brown includes a chapter on “focusing fire” on main adverse witnesses (1987: 16-20). Levine cautions that “an adversarial style telegraphs to the witness that the cross-examiner is hell-bent on destroying him or her” and may incite the witness to “circle the wagons around the campfire” (1989: 123-4). If channeling the spirit of past war heroes is not sufficiently stout a formula, an attorney might want to consider fortifying her arguments with quotes from the Bible or Shakespeare (Wright 1994: 304-13). In any case, the reader garners from lawyers’ manuals that the courtroom is a dynamic place where causes are won or lost depending upon lawyers’ abilities to negotiate power through linguistic choices.

Lawyers’ Language Studies

It is not until the 1970s that the adversarial language of the courtroom attracted the attention of researchers outside of the legal profession. Many social scientists, including anthropologists, sociologists and ethnomethodologists, became interested in courtroom language as a paradigmatic instantiation of conflict discourse (Kurzon 1994: 6). These researchers provided ways of describing what lawyers (and judges) do with language during a trial from an academic perspective gleaned from empirical research as opposed to the goal-oriented, impressionistic, and lawyer-centered efforts of the authors of trial manuals.

Like the trial manuals, many of these studies are concerned with how lawyers and judges control witnesses through language. In a 1987 study, Walker claims that the attorney is afforded the right to control witnesses in “legal adversary interviews” via at least three “bases of power” including: 1. sociocultural norms of role assignment and

deference to those roles; 2. legal rules governing dispute resolution; and 3. linguistic techniques, or manipulations, such as enforcement of role restriction (who asks questions and who answers), question types, and abrupt topic shifts (Walker 1987: 57-80). In a complementary study to Walker's, Philip's (1987) analysis of courtroom interactions proves that questions directed to defendants by a judge are "highly routinized and controlling" (85-6) as compared to the types of questions exchanged by "officers of the court" (85-91). Magneau (1997) lists specific "oppositional routines" that are used by attorneys in an American criminal trial to impugn witnesses, including the use of contrastive markers, like "well" and "but," and "coercive and strategically placed questions." Liebes-Plesner (1984) and Drew (1985, 1992) provide detailed analyses of lawyers' tactics in constructing negative stereotypes of rape victims in an Israeli and an American rape trial, respectively; Ellison (1998) describes lawyers' methods in cross-examining rape victims more generally. Adelswärd, Aronsson and Linell (1988) discern discourse strategies used in Swedish criminal trials by prosecutors and a judge in examining defendants; they find that defendants' social identities reflexively affect and are shaped by the judge's and prosecutors' use of questioning and reproach strategies, forms of address and (lack of) acknowledgment of defendants' responses to questions. Caesar-Wolf (1984), too, finds that defendants are afforded differential treatment expressed in the form of the questioning style of the presiding judge in a West German civil trial depending on social factors (i.e., class status and possibly gender). Bogoch and Danet (1984) show that clients' language is often manipulated and categorized for the benefit of the lawyer in an Israeli legal aid office in a manner similar to cross-examination. Finally, Matoesian (1998) demonstrates how a lawyer undermines the credibility not of a defendant or victim but of an expert witness through crafting and sequencing of questions.

Almost all studies treat the language of judges and lawyers that is directed to defendants and witnesses as being uniformly controlling and thus, powerful, in the context of the legal setting. An exception that actually reinforces the underlying trend is Marwin's analysis of failed politeness initiatives in the speech of Judge Lance Ito in the O. J. Simpson criminal trial and the resultant perception that Judge Ito was himself weak (1997). Also, Danet's (1980) focus differs from that of others cited above; she characterizes the impact of lawyers' argumentation as a function of lexical variation in its own right, and not by calculating damaging implications inflicted upon a witness or defendant.

Women's Language as Powerless Language

Although the bulk of trial (or trial-related) language studies have been largely concerned with the structural and hegemonic qualities of the speech of legal personnel as they are executed and evolve within the context of the discourse (Charrow and Charrow 1979; Danet 1980; Bennet and Feldman 1981; Gumperz 1982; Bogoch and Danet 1984; Liebes-Plesner 1984; Caesar-Wolf 1984; Snellings 1985; Walker 1987; Adelswärd 1989; Adelswärd et al. 1988; Drew 1992; Philips 1984, 1985, 1987, 1992; Magneau 1997; Matoesian 1993, 1997, 1998), one study in particular paves the way for research focusing on the experience and linguistic performance of the witness during trial instead. Lakoff's foundational work on the "powerless" features of women's language, Language and Woman's Place (1975), is the catalyst for an analytic focus on the language of the disempowered in general, including witness language.

Lakoff proposes that there are certain features predominantly characteristic of women's language as opposed to men's that are indicative of a "social inequity" existing between the sexes (Lakoff 1975: 4). Lakoff holds that cultural norms dictate and perpetuate the use of the language and behaviors through which "women are systematically denied access to power" (7). Although she does not provide a definitive

listing of women's language features, Lakoff includes the following in her discussion (adapted from 53-57):

1. a specialized lexicon that pertains to women's interests, i.e. "dart" and "shirr" as sewing terms;
2. "empty" adjectives like "divine," "charming" and "cute";
3. question intonation used with declarative statements ("What's your name dear?" "Mary Smith?") and tag questions ("It's so hot, isn't it?");
4. hedges, "words that convey the sense that the speaker is uncertain about what he (or she) is saying, or cannot vouch for the accuracy of the statement" (53), including "well," "y'know," "kinda," "I guess" and "I think" before declarations; "I wonder" before questions; etc.
5. intensives, like "so";
6. hypercorrect grammar and / or lexicon: men are less likely and women more likely to be discriminated against for using substandard or "marked" forms ("ain't" as opposed to "is / are not");
7. superpolite forms: "please" and "thank you" as well as euphemisms, for example; avoidance of "off-color or indelicate expressions" (55);
8. an absence of humor, as in the form of jokes; and
9. "speaking in italics" to give important information emphasis, and other "specifically female intonation patterns" that are difficult to describe (56).

These features, Lakoff writes, are "personal markers" that reveal both how the speaker feels about what he / she is saying and what reaction the speaker hopes for or expects from the hearer (59). Lakoff is one of the first researchers to recognize that language use is a function of the societal position of the language user (47); however, she limits her discussion in assuming that societal position is fundamentally divided along the axis of gender.

Women's Language or Powerless Language?

O'Barr and Atkins find that a powerless speech style is a function of a speaker's belonging to a relatively powerless social group (O'Barr and Atkins 1980). O'Barr applies Lakoff's identification of powerless language features to the courtroom for evidence that a powerless speech style is primarily and objectively linked to status rather than to gender. In other words, O'Barr claims that the lower the witness' status, the less that witness' "power to" express herself and the more likely the examining attorney will wield "power over" her testimony (Ng and Bradac 1993, see "Power in the Courtroom" Chapter 1). There is no distinction between how the speaker is perceived in terms of social status by others (i.e., a jury) and how the speaker identifies himself / herself in O'Barr's work.

In Linguistic Evidence (1982), O'Barr describes the findings that he and his team surmise from comparing testimony of various witnesses involved in trials held in a county court of North Carolina; the witnesses represent "different social, economic, ethnic, and linguistic backgrounds" (57). He and other researchers, in consultation with lawyers and judges, identify four distinct "patterns of speech variation" of testimony employed by the witnesses in their data including:

1. the use of powerless language features, such as:

- a. intensifiers, forms that increase or emphasize the force of assertion, such as "very," "definitely," "surely," and "such a";
- b. hedges, forms that reduce the force of assertion allowing for exceptions or avoiding rigid commitments, such as "sort of," "a little," "kind of";
- c. hesitation forms, pause fillers such as "uh," "um," "ah," and "meaningless" particles such as "oh," "well," "let's see," "now," "so," "you see";
- d. questions, where rising intonation is used in normally declarative contexts (e.g., "thirty? thirty-five?"), and others;

- e. gestures, spoken indications of direction such as “over there”;
- f. polite forms, includes “please,” “thank you,” etc.;
- g. “sir,” a polite address form considered independently due to its high frequency in witness language; and
- h. direct quotations, as permitted withstanding the general exclusion of hearsay;

(adapted from Table 5.1, 67)

- 2. the election of fragmented (“brief, incisive, nonelaborative”) versus narrative (“more loquacious”) responses (76-83);
- 3. the use of hypercorrect forms, forms derived from “the overapplication or misapplication (usually irregularly) of the rules of formal language” (83); and
- 4. a reluctance to interrupt or overlap a speaker, or to engage in simultaneous speech, in a move to control the presentation of testimony (87-89).

O’Barr and his team applied their findings through an experimental study on witnesses’ speech styles. By design of the experiment, O’Barr and his team altered excerpts of the courtroom testimony for the purpose of testing how university students, in the role of mock jurors, would rate the various patterns of speech variation with respect to witnesses’ “convincingness,” “truthfulness,” “competence,” “intelligence,” and “trustworthiness” (74, 86) as well as witnesses’ “social dynamism” (80). O’Barr developed “experimental stimulus tapes” to play for his mock jurors. These tapes consisted of versions of testimony “based on” actual testimony as well as “doctored” versions scripted to enhance or negate the effects of the feature being considered (58-9). O’Barr’s intention was to test for mock jurors’ opinions of hypercorrect speech, for example, by including a version that “closely replicates the original testimony on which it is based” as well as a corollary “doctored” version “in which hypercorrect vocabulary and grammar are eliminated as much as possible” (149).

O'Barr presented mock jurors with excerpts of the testimony exhibiting the four speech patterns listed above. The mock jurors judged that witnesses were more credible when they did not use powerless features, avoided hypercorrect patterns, responded with *minimal* assistance from the allied attorney, and resisted the opposition's efforts to cut short their answers (113-114). O'Barr's study goes so far as to suggest that witnesses might benefit from "extensive pretrial witness education or coaching" to improve the credibility of their testimony (114).

Language and Power in the Courtroom Trial

The following studies concern how and why witnesses express power or powerlessness in courtroom discourse.

Linguistic Strategies in an English Tribunal of Inquiry

Atkinson and Drew offer one of the earliest interactive accounts of courtroom language in their book, Order in the Court (1979), in which they describe both lawyers' and witnesses' linguistic strategies in an English Tribunal of Inquiry. Tribunals of Inquiry, which are intended to find out "what happened" toward some legal purpose, do not have defendants "in a formal sense," although the "construction of an accusation" is generally the same as with other legal proceedings (Atkinson and Drew 1979: 106). During cross-examination, the lawyer works toward (wielding "power over" the defendant by) constructing accusations, while the defendant avoids (having her "power to" impeded through) being allocated blame (see "Power in the Courtroom" Chapter 1). Atkinson and Drew identify the strategies available to a witness who is in the position of defending herself: a witness may elect not to respond at all to the cross-examining attorney in an effort to forestall the examiner's line of questioning, or may provide a "rebuttal" plus an "account" (221). Additionally, the rebuttal / account may be initiated by the witness prior to the actual formalization of the accusation that the witness predicts is imminent. Witnesses "manipulate projected action sequences ... in order to

avoid counsels' rejections of their accounts" (187). Atkinson and Drew's work is descriptive and does not rate the effectiveness of the witnesses' strategies they identify in the data.

Contrasting Versions

Drew continues in this vein in two later studies (Drew 1985, 1992) where he describes the construction of contrasting versions of events as presented by a defense attorney and the victim in an American rape trial. The attorney discredits the victim's testimony by juxtaposing questions that require answers from her that seem incongruent. A witness can combat this tactic in various ways, but she generally elects those strategies that avoid directly rejecting or contradicting the attorney (Drew 1985: 146-47; Drew 1992: 516). Building on the strategies mentioned in Atkinson and Drew (1979), these include the use of "alternative descriptions" and "strategic avoidance" (Drew 1992: 480-87). "Alternative descriptions" allow the witness to suggest versions of events that "are designed to rebut and replace those of the attorney," with or without the addition of an "overt correction marker" such as "no," "Strategic avoidance" may be employed when the witness senses her version of events may be compromised by supplying the examining attorney with the information he requests. An example of the use of strategic avoidance are recurrent statements like "I don't remember" and "I don't know" in the witness' testimony; by claiming to not remember something, the witness thwarts the attorney's construction of an account that is at odds with her own without either confirming or disconfirming his claims. In these ways, the witness exercises power within the constraints of the fixed question-answer format of cross-examination in order to promote her side of the case and, thus, her own interests.

Copies and Constraint in Witness Testimony

Philips (1984) also explores variation in witness responses to lawyers' questions. Specifically, Philips analyzes the language of an Arizona criminal procedure

called the Change of Plea to determine the extent to which defendants' responses to certain types of questions comment on their relative "status and authority" (Philips 1984: 225-26). She finds that the greater the social status of the defendant, the less constrained the response to both Yes-No questions and Wh-questions (233-41), where constraint is demonstrated by both: 1. response length, "whether or not the answer goes beyond a single utterance" and 2. whether or not the form of the question is copied ("deleted or not") in the answer (225). For example, the question: "Was anyone else with you?" could be answered with "copy" forms such as: "No," "Yes, someone was with me," "Uh huh," "Huh unh," "No, no one else was" and "My brother [was with me]". Possible non-copy forms include: "Huh? ,", "I don't know," "I entered the building alone," "Yes they are" (due to a tense change in the verb), "Someone else drove me there," (which is only a partial copy) and "When I committed the crime?" (which responds to a question with another question). Philips holds that by opting for copy forms and less elaboration in responses, lower status witnesses "exert less influence over the negotiation of social reality" as occurs through the construction and negotiation of courtroom discourse (225).

Defendants' Testimony as a Function of Class and Gender

Wodak, too, correlates speaker styles or strategies with social status in her study of defendants' language in a Viennese traffic court, where defendants interact directly with a presiding judge (Wodak 1985). She hypothesizes that, due to "class and sex-specific socialization," middle-class defendants "will be more able to cope with the authority situation at court" than working-class defendants (184).

Wodak's data support her claim: she finds that a middle-class male is treated more leniently by the judge than a working-class female defendant, despite the fact that his transgression had more severe consequences than hers. Wodak posits that the middle-class male is better able to discern testimonial techniques that are preferred by

the judge, including use of properly applied technical vocabulary, provision of details sufficient to satisfy the judge's requirement for background information, and addition of relevant "metacommunicative" information (e.g., the feelings of shock and fear experienced at the time of the incident in consideration) to the "bare facts" of the case (188-89). The implication of Wodak's study is that lower-class and female defendants' performance in the court suffers as a consequence of social distance and intimidation that keeps them from knowing or prevents them from discovering the type of speech the judge prefers.

Related Studies

The following two studies do not specifically concern courtroom language and power, but they do address how individuals' linguistic performance in the context of legal interviews affects their excusal from jury duty and their ability to secure the protection of right to counsel.

Voir Dire Hardship Case Requests

Wood (1996) examines how jurors' linguistic performance during voir dire proceedings in a Louisiana courtroom affects the examining judge's decision to excuse them individually from jury duty. She finds that the judge's disposition toward excusing a particular juror is affected by whether or not the potential juror:

1. overlaps / interrupts the judge's speech,
2. asks the judge (clarification) questions, and / or
3. engages in other-initiated repairs.

In brief, a juror who disrupts a judge's linguistic rhythm or routine is less likely to be excused from jury duty than a juror who answers a judge's questions without incident. A juror can effect the disruption by speaking when the judge is speaking, or by asking questions (even those required to clarify a judge's question) in violation of the standard

format of courtroom questioning, which is unidirectional and dictates that the judge or examining attorney pose all questions. According to Wood's data, a juror's request for excusal is also in jeopardy if he / she is involved in a repair-sequence enacted to correct "an occurrence of some speech miscommunication or trouble source" initiated by the person who is not the source of the miscommunication (192-93). In other words, even when it is the judge who asks a juror for clarification, the likelihood of the juror being excused is prejudiced. This study does not link juror success with sociological information such as gender and class explicitly, but suggests that a juror may succeed in being excused by intuiting which behaviors will affect her being excused.

The Pragmatics of Powerlessness in Police Interrogation

A final study that does link sociological characteristics to speaker performance is Ainsworth's discussion of "the pragmatics of powerlessness in police interrogation" (Ainsworth 1993). Ainsworth considers the effect produced by suspects employing different linguistic registers in invoking the right to counsel provided by the Miranda v. Arizona (1966) reading of the Fifth Amendment of the U.S. Constitution during police interrogation. Neither the Supreme Court nor the lower state and circuit courts have settled on a definition of what constitutes an invocation of the constitutional right to counsel (Ainsworth 1993: 292-301). Currently, three "standards" are in effect, including:

1. the threshold-of-clarity standard, requiring that an invocation be expressed in a "direct and unambiguous" manner, "without qualification" (302-6);
2. the per se standard, "the polar opposite of the threshold-of-clarity standard", which treats even ambiguous requests for counsel as "effective invocations of the right to counsel" (306-7); and
3. the clarification standard, a middle-of -the-road standard which

instructs police interrogators to clarify a suspect's request when the request for counsel is deemed to be "ambiguous" (308-15).

Only the *per se* standard would find that an invocation of the right to counsel had been effectively asserted if the invocation were issued in an indirect or qualified form, as when preceded by hedges such as "maybe" or "I think"; the threshold-of-clarity standard would find such an invocation "devoid of legal significance" (306-7). Ainsworth also claims that the clarification standard, in practice, offers little more protection than the threshold-of-clarity standard (308-15).

Suspects received varying degrees of protection of their right to counsel depending on what speaker styles, or registers, they used. Ainsworth defines a "register" as "a characteristic manner of speaking that is adopted by certain members of a speech community under different circumstance" (273). Drawing on Lakoff (1975), Ainsworth finds that women's register and possibly registers used by members of certain ethnic speech communities are characterized by "indirect modes of expression" including: 1. the use of hedges, 2. the use of tag questions, 3. the use of modal verbs (e.g., "may", "could"), 4. avoidance of imperatives, and 5. rising intonation used in declarative statements (271-86). She found that law enforcement officers may display unfair prejudice against speakers who use the five speech register features she identified. She also invokes O'Barr's work (1982) in claiming that "women's register" may be synonymous with "powerless language" in circumstances of pronounced power asymmetry; police interrogation of a suspect constitutes an emblematic situation of power asymmetry (285-6). Ainsworth's study demonstrates not only how socially derived linguistic behavior reinforces and perpetuates social class distinctions, but also the consequences that social evaluation of linguistic features may have for speakers.

Literature Review: Conclusions

In sum, the literature concerning language, law, and power has traditionally focused on the linguistic strategies legal professionals employ for the purpose of controlling the speech of their clients and / or witnesses. However, newer research promotes linguistic analysis from the perspective of the disempowered as opposed to the empowered. Lakoff's (1975) introduction of the idea that there are speech patterns that are characteristic of the language of women, as a disempowered group, paves the way for analysis of the speech of other groups who are at a power disadvantage generally or in the context of particular speech situation, as is the witness in the context of the trial. The number of studies that investigate the dynamics of language and power in institutional settings is growing, but studies specifically concerning evidence of power in witness language are still few.

CHAPTER 3: MATERIALS

In this section, I describe the process by which I acquired and selected the data I used in my analysis. I consider differences in the transcription methods of the court reporter and the linguist and how these differences influence the focus of my analysis. I end by introducing the five witnesses who are the subjects of my study. I outline their general backgrounds and speech styles through information appearing in the trial transcript. I provide an orientation to the topics discussed in the cross-examination portions of the trial in which they participate in order to contextualize the language of the cross-examination excerpts.

Data Collection

The story of my search for data illustrates in itself key features of the legal system and of legal language, including its processual orientation and in-group exclusivity. Intrigued by what I knew or intuited of courtroom interaction, I began my search for data in the Baton Rouge City Court. I spoke with a bailiff and a judge about the possibility of tape-recording hearings, but I found that I would only be allowed to observe and take notes during hearings. I then spoke with one of the judge's clerks, who permitted me to review transcripts of cases. The cost of copying the transcripts, however, was prohibitive (three dollars per page for cases a minimum of one hundred pages long), and I was still interested in acquiring a video- or audio-recording from which to make my own transcripts.

I reapproached the clerk about obtaining any form of audio-record of court proceedings that might be on file, since I had seen a recording device in the courtroom when I had been to the hearings originally. The clerk produced a file cabinet full of cassette tapes, some labeled, and explained that the tapes could only be played on a certain piece of equipment at her desk. In any case, she could not authorize me to

borrow the tapes or the tape-player to take home for the time-consuming task of transcribing the proceedings.

I listened to portions of some of the tapes at her desk, which she shared with me for a couple of afternoons. The tapes were not very high-quality recordings and included a lot of extraneous noise. When I requested the companion transcripts for the recordings, the clerk was not able (or willing) to comply.

I accepted a job as a runner for a law firm in my next endeavor to collect satisfactory data. The experience was short-lived for a couple of reasons. For one, the law firm I worked for generated a wealth of depositional transcripts but few trial transcripts, which had become the object of my desire. More importantly, the staff dissuaded my interest in reading the transcripts in subtle but persuasive ways. I left when I sensed that I could never make enough coffee to sate my handful of lawyers and their supporting staff in order to be able to spend time on tasks more germane to my research.

My final two resources were more profitable. First, I contacted a cousin who is a local lawyer in the field of international law. He had been working on a Greek shipyard case that he invited me to review and copy, if suitable. While what I read of the case was intriguing, the volumes it comprised literally filled a small room, and its pages numbered into the tens of thousands. I did use a few volumes to just look at and get a feel for the mechanism of courtroom language, but I decided against using the case as a source of data. An analysis of the text as a whole for the purposes of composing a dissertation would have been unwieldy at best.

I struck gold in the form of complete court reporters' trial transcripts in the Nineteenth Judicial District Court in Baton Rouge. I had decided to try a new courtroom (and new courtroom personnel), hoping that I would not encounter the obstacles that I had in the City Court. While I was wandering the halls in search of a judge in chambers,

I struck up a conversation with a court reporter who was sympathetic to my needs. She offered to ask the judge with whom she worked about making a recording of a trial, but suggested that I might like to look at her transcript of a recent trial in the interim. I did, and I was excited by the possibilities for analysis of a single criminal trial contained in a relatively compact volume. The court reporter made a copy of the trial transcript for me to keep and later gave me a copy of a similar trial. She did request that I alter the names in the trial to preserve individuals' anonymity which I have done; I have also changed the names of some locations mentioned, also with the goal of preserving participants' anonymity. She has been available in person and by telephone for questions I have had concerning trial procedure and court reporters' transcription conventions.

Selection of Text

After reviewing the materials I had collected from one source or the other, I decided to limit my analysis to one of the two transcripts from the Nineteenth JDC. I chose to consider a single, complete trial transcript for the purpose of being able to talk about a single text. By concentrating on only one trial, I felt I would be able to make an in-depth analysis of targeted linguistic features in their linguistic environment as uttered by the individual trial participants in the courtroom context.

In addition, I chose to concentrate on the cross-examination portions of the trial, which were richer in the power-linked features I am analyzing. The data in its final form consist of the cross-examination and recross-examination portions of five witnesses as they appear in the official court reporter's transcript of a jury trial held in the Nineteenth Judicial District Court of East Baton Rouge Parish in Louisiana.

Transcription

In this section, I talk about the differences in the transcription techniques and goals of the court reporter and of the linguist. I list and define transcription conventions that appear in the data.

Goals: Court Reporters' vs. Linguists'

While the notes and recordings collected during a trial by a court reporter constitute the “official” trial record according to United States Code (28 U.S.C. §753(b)(1976)), the court reporter’s completed transcription is conventionally the sole and permanent record of a trial in the view of legal professionals. Significantly, the court reporter transcript (CRT) serves as the primary (and usually only) record of the initial hearing that is considered in appellate proceedings; while lawyers are allowed to re-represent their arguments in person, witnesses’ voices are heard by the presiding judge(s) through the original transcript alone.

The court reporter is assigned the task of producing “verbatim by shorthand or by mechanical means” a transcript of a trial that “shall be deemed prima facie a correct statement of the testimony taken and proceedings had” by United States Code (28 U.S.C. §753(b)(1976)). To be able to fulfill this requirement, the court reporter is trained for one to two years minimally in schools that are, preferably, accredited by the National Shorthand Reporters’ Association to ensure methodological uniformity (The Louisiana State Board of Examiners of Certified Shorthand Reporters). Although the phrasing of the law regarding trial transcripts presumes “verbatim” and “correct” to be intrinsically defined, these descriptors are, in fact, relative to the purpose for which the transcript is intended.

The “verbatim” aspect of the United States Code requirement is generally satisfied by the reproduction of all the words spoken in a trial, as well as assignation to a speaker (Walker 1986). The words are represented as constituting sequential turns by the judge(s), attorneys and witnesses. The court reporter does not always represent features of the language such as overlapping speech or “non-word sounds” like laughter or gasps, for example. Paralinguistic features that convey information about what a speaker is saying, such as pitch and intonational contours, are not conveyed in the CRT

other than to indicate falling intonation, where a sentence functions as a declarative statement (signified with a “.” at the end), or rising intonation, as in a question (signified with a “?”). That the court reporter distinguishes falling and rising intonation as constituting a declarative statement or a question, respectively, is illustrated in the following excerpts, where function is not conventionally represented through form:

CRT: Excerpt 1

D2 Q. YOU STATED THAT YOU WERE THE DIRECTOR OF THE
D3 CHEMICAL DEPENDENCY UNIT?

CRT: Excerpt 2

D13 Q. OKAY. YOU'RE A PRIVATE PHYSICIAN PRACTICING
D14 PSYCHIATRY RIGHT NOW?

CRT: Excerpt 3

D203 Q. SO YOUR TESTIMONY WAS DESIGNED TO SAY HE DID NOT
D204 HAVE A SPECIFIC INTENT TO KILL THOSE INDIVIDUALS BECAUSE
D205 HE WAS ALCOHOL IMPAIRED.

D206 A. LOOK, YOU'RE A LAWYER --

D207 Q. ANSWER MY QUESTION, PLEASE, DOCTOR.

The “correct” aspect of the U.S. Code requirement pertains to a transcript’s format. “Correctness” in terms of literate production in the general population of a society is often associated with adherence to conventionalized standards of grammar and punctuation. This standard of correctness, which is part of the court reporter’s training, is applied by the court reporter to the task of producing a transcript, probably for ease of interpretation associated with writing styles to which readers are accustomed (Lakoff 1981: 13). Consider:

1.) HOW MANY TIMES HAVE YOU GONE OVER YOUR
TESTIMONY WITH THAT PHOTOGRAPH WITH THE PA NONE
SIR NONE NONE I SEEN HIM NOT THAT WHAT WHAT HAVE
YOU GONE OVER WITH HIM HUH WHAT DID YOU GO OVER
WITH HIM ON A MAP NO MY STATEMENT

and:

E222 Q. HOW MANY TIMES HAVE YOU GONE OVER YOUR

E223 TESTIMONY WITH THAT PHOTOGRAPH WITH THE PA?

E224 A. NONE.

E225 Q. SIR?

E226 A. NONE.

E227 Q. NONE?

E228 A. I SEEN HIM -- NOT THAT.

E229 Q. WHAT -- WHAT HAVE YOU GONE OVER WITH HIM?

E230 A. HUH?

E231 Q. WHAT DID YOU GO OVER WITH HIM - ON A MAP?

E232 A. NO; MY STATEMENT.

Example 1 contains the same words as appear in Example 2, but its interpretation is probably unclear to the lay person and unsatisfactory to legal professionals. Example 2, which contains the conventionalized punctuation of the CRT, brackets information in a way that is readily interpreted by the legal community as well as outsiders.

Linguists' goals in producing written transcripts of spoken language are not the same as court reporters'. Although their training is perhaps less rigorous, linguists do have conscious goals behind each system chosen (Ochs 1979: 43-72). Court transcribing is traditional and goals are seldom considered consciously. Discourse analysts, depending upon the subject of their interests at a given time, comment on the

aspects of speech that indicate or contribute to what the analysts perceive to be the communicative intent of the speaker(s). Thus, in addition to representing an inventory of words appearing in a discourse sample, they are likely to consider information such as: interruptions, simultaneous and overlapping speech, phonetic descriptions of words / phrases / sounds, pitch and pause length. Whatever the methodological approach, it should be noted that all transcriptions are subjective in that they are interpretations of the original language they represent: they reflect the aspects of the discourse that are of concern to the person producing the transcript (Brown and Yule 1983, DuBois et al. 1992, Ochs 1979, Schiffrin 1987).

My choice to use prepared transcripts stems from the availability of CRTs relative to the availability of audio- and video-recordings of trials and is validated by the suggestion that, as the permanent record of a trial and the sole reference with respect to trial proceedings for all subsequent actions, the CRT “might be more important in the long run” than the primary interaction (Tannen 1987: 3-5). A fortunate consequence of the choice to use CRTs is that I have been able to analyze a larger corpus of data (i.e., thousands of pages of trial transcripts) than I would have been able to had I chosen to make my own transcripts. Although some features of language are lost in a CRT, as discussed above, plenty are preserved. Judging from my data, these include false starts (B45, B52-53, C364, F133, E741); speaker- and other-initiated interruptions (B6, C36, C105, F53, E45), although “interruptions” are not distinguished from overlapping speech; speaker “mistakes” (labeled “(SIC)” in C307, C316); and both rising (marked with “?”) and falling (“.”) intonation. Still, a court reporter may identify interruptions or false starts, for example, in a way that a discourse analyst would deem unsystematic. To avoid discrepancies of this nature, I have limited my analysis to a description of features of language that are immutable in either style of transcription. For example,

whether or not a witness uses “Sir” regularly in responses is a stylistic feature that is readily detected in all styles of transcription.

Court Transcription Conventions

Court reporters generally use standard orthographic conventions in representing the language of a trial. Writing conventions, however, are designed for the structuring of pre-planned language rather than for the idiosyncrasies of spoken language, which include sentences that start with conjunctions, false starts, etc. Court reporters therefore employ a mixture of standard orthographic conventions and specialized symbols of discourse transcription in reproducing the language of a trial. Punctuation appearing in the data include: the period (“.”), comma (“,”), question mark (“?”), and the hyphen (“-” and “--”). The court reporter’s use of these punctuation symbols in the data appears to agree with how these symbols are generally used by linguists in the production of transcripts:

- falling intonation followed by a noticeable pause
(as at the end of a declarative sentence)
- ? rising intonation followed by a noticeable
pause (as at the end of interrogative sentence)
- , continuing intonation: may be slight rise or fall
in contour (less than “.” or “?”); may be
followed by a pause (shorter than “.” or “?”)

(Schiffrin 1987)

- truncated word
- truncated intonation unit

(DuBois et al. 1992).

The hyphen and double-hyphen of the court reporter transcript are, however, collapsed into a single category and are used alternately and indiscriminately. This practice

occurs despite the fact that the single hyphen is the standard form of court reporters, according to my interviews with two 19th Judicial District court reporters. The CRT from which I take my data is written in all capital letters, although I have also worked with transcripts from other courts that do not employ this convention. Also, the indentations present in the CRT are conventional; interaction between the attorney and witness begins at the far left of the page, while interaction between the attorneys and the judge (the court), as well as the narrative “reporter’s notes” (e.g., E365-7, E376), are indented.

Trial Background

The trial transcript I am using documents a trial for murder in the Nineteenth Judicial District Court in Baton Rouge, Louisiana. As I note in “Data Collection” in this chapter, the names I use are pseudonyms at the request of the court reporter who transcribed the trial. The defendant is Francis Begbie, a nineteen-year-old who was sixteen at the time the victim, Tommy Scott, was shot multiple times and killed. Francis has a criminal record spanning back to age ten, when he was first convicted of simple burglary.

The transcript reveals that Francis and Tommy had known each other fairly well from having grown up in the same neighborhood, an extremely poor area in southern Baton Rouge located between Nicholson and Highland roads. Francis had at one time dated the same woman, Fiona, who was the victim’s girlfriend at the time of his death. Fiona, who is now twenty, lives with her mother and sister in the same neighborhood.

Francis, Tommy and Fiona were all familiar with the local drug scene to some extent at the time of Tommy’s murder. Tommy was a dealer who mostly sold crack cocaine to clients like Mark, the young automotive mechanic who is a witness in the trial. Mark had lived at home and worked with his father in his father’s auto-repair shop

before he was incarcerated. The shop is located on a major street bordering the neighborhood that was home to Francis, Tommy and Fiona.

Mark had gone to Fiona's house to buy crack from Tommy a total of three times on the day of Tommy's murder. While Mark was waiting in his car for Tommy to come out of Fiona's house, he saw the defendant, Francis Begbie, and another man, Anthony Welsh, approaching. He knew both men from the neighborhood and recognized them in spite of the hoods and bandanas they were wearing to disguise their appearance. They instructed Mark to stay in his car and be quiet, and they crouched behind his vehicle. When Tommy came out, they intercepted him and demanded that he hand over his drugs. When Tommy refused, Francis and his accomplice, Anthony, led him over a barricade and out of sight of Mark, who immediately drove away. Shortly after he left, Mark heard what he thought to be at least one gunshot.

Mark drove to a local bar and paged Tommy to see what had happened. When he did not get a response, he contacted Tommy's family, who then called the police. The police investigated, finding the body and other physical evidence at the crime scene.

Officer Connery is among the police detectives responsible for questioning witnesses at the time when the murder occurred to obtain information leading to suspects. He interviewed Mark that night. At that time, Mark did not divulge the names of the men he had seen lead Tommy away. Nearly a month after the murder, Officer Connery also interviewed Fiona, questioning her to see if "the word on the street" implicated Francis Begbie (a.k.a. "Moo") and Anthony Welsh (a.k.a. "Little Hoochie") in Tommy's murder (F119-30). Although Officer Connery was reassigned before the case was closed, police eventually apprehended Francis. There is no mention of the fate of his counterpart, Anthony, in the trial transcript.

Trial Summary

The trial of The State of Louisiana vs. Francis Begbie takes place over the course of three days before a grand jury and a presiding judge. The trial begins with opening statements by the state and the defense, followed by witness testimony, and the jury's verdict. Three months after receiving the verdict, the attorney for the defense proposes a motion for a new trial, which the judge denies. The judge then sentences the accused.

The prosecution first calls eleven witnesses to the stand; the defense then presents only one. In the order in which they appear, the state witnesses include: the murder victim's mother, who testifies to giving Tommy a large sum of cash the day he was killed; a Baton Rouge City Police (BRCP) officer who collected physical evidence at the crime scene; Officer Bird, a BRCP fingerprint analyst; the deputy coroner who performed Tommy's autopsy; a forensic scientist who is the supervisor of the BRCP Crime Lab Physical Evidence Unit; Officer Connery, a patrolman / detective for the BRCP; the younger sister of Tommy's girlfriend, Fiona; Fiona; Mark, an associate and client of Tommy, from whom he bought crack cocaine; and two detectives who are together a team in the Robbery / Homicide Division of the BRCP. The witness for the defense is Dr. Superior, a private psychiatrist from Baton Rouge.

After hearing testimony, the twelve-person jury finds the defendant guilty of the three charges against him, which include second-degree murder, armed robbery and aggravated kidnapping. The motion for a new trial and the sentencing hearing are conducted three months after the conclusion of hearing witness testimony. The motion for a new trial is denied. After reviewing Francis' extensive criminal record, the judge sentences him to two life sentences and one ninety-year sentence at hard labor "without benefit of probation, parole, or suspension of sentence"; the sentences are to be served concurrently.

The Subjects

In this section, I introduce each of the five witnesses represented in my data, as well as contextualize the cross-examination excerpt for each witness. I also discuss my motivations for selecting these particular witnesses for my analysis.

Introduction to the Subjects

Out of the eleven witnesses, I have chosen to analyze the testimony of five, primarily due to the fact that, of the eleven, the five I have selected provide the lengthiest excerpts, which should logically include the most information about each witness' individual speech style. Also, my desire to represent both a male and female expert witness (the police officers), a male and female lay witness (Mark and Fiona) and an expert witness who is not exclusively a member of the legal profession (Dr. Superior) influenced my decision to use these excerpts. I have also represented witnesses for both the prosecution and the defense in my choice of excerpts, although I have included only one witness for the defense, since Dr. Superior is the only witness called upon to testify on behalf of the defendant.

Witness 1, Officer Bird, is an expert witness testifying for the State of Louisiana. She is a Baton Rouge City Police Corporal with seventeen years experience as a police officer. She works in the Latent Office, which is a division of the Crime Scene Unit. Her job requires her to collect fingerprints from crime scenes and also to compare prints that she and others have collected to prints of known suspects.

Witness 2, Officer Connery, is also an expert witness testifying for the State. He is a veteran of the Baton Rouge City Police Department, with 26 years experience as a police officer, fifteen or more of which he has worked as a detective. With respect to this case, Officer Connery was responsible for investigating suspects whose names derived from sources including Mark, the victim's client, and the victim's girlfriend. He was transferred from the case before it was resolved.

Witness 3 is Dr. Superior, the sole witness for the defense. He is also the only expert witness represented in the data who is employed in a field other than law-enforcement. Dr. Superior is a private psychiatrist in Baton Rouge, Louisiana, whose specialties include chemical dependency. He has been accepted as an expert witness in the Nineteenth Judicial District Court more than “one hundred times” (D50) and has served as an expert witness for the defense in 15-20 cases in the last two years. He is an older witness, based on the information that he completed the residency requirement for his M.D. in 1977.

Mark, Witness 4, is a lay witness for the State. He is currently incarcerated at the Hunt Correctional Center in Louisiana on a charge of cocaine possession. He is a repeat-offender who regularly misses court dates (E288-313) for charges associated with his several-times-a-week crack habit (E141-209). He was a regular client of Tommy’s, as indicated by the fact that he had a personal beeper code to signal Tommy with when he wished to make a purchase. When Tommy was murdered, Mark was on his third trip of that day to purchase crack cocaine.

His earnings as a mechanic at his father’s shop, amounting to around \$400 per week, helped him to support his drug habit before he went to jail. His father’s auto-repair station is located in the same neighborhood as Fiona’s house. He is familiar with people in the neighborhood, including the defendant. Mark had been living with his father before he was arrested.

The last witness, Fiona, is the second lay witness for the State. She is now twenty, and was only eighteen or nineteen during the three-month period she and the victim dated. She also dated Francis, the murder suspect, when she was approximately fifteen. Fiona lives in an impoverished area of Baton Rouge, Louisiana. Her speech exhibits features of a subcultural variety of nonstandard English (A11, A28, A55, A56, A88).

Introduction to the Trial Transcript Excerpts

The trial transcript excerpts appear in Appendices B-F. In this section, I will provide a brief summarization of the trial in its entirety and of what is talked about in the cross-examination and recross-examination of the five witnesses in this study. I will contextualize the direct examination portions of the testimony when necessary to facilitate understanding allusions to information discussed during prior testimony.

Officer Bird

During direct examination, Officer Bird testifies that she received prints that were collected from the crime scene and submitted to her by an investigating officer. The fingerprints in question were taken from a car that the attackers may have touched while crouching behind in order to conceal themselves while waiting for Tommy to leave his girlfriend Fiona's house. At the request of a member of the prosecuting attorney's office, Office Bird compared the prints to existing records for identification of a suspect.

Officer Bird found no indication that the prints collected from the car were those of either the defendant or of his alleged accomplice. The goal of the prosecuting attorney is to establish that even though no prints matched those of the suspects, they could still have touched the car. One explanation the prosecuting attorney puts forth for why the suspects' prints were not identified is that the car's surface may have been too dirty a surface for collecting serviceable prints. Even though the evidence does not support the prosecuting attorney's account of events from the night of the murder, he chooses to address the results of the print analysis in order to demonstrate that the evidence does not discount his account, either. In this way, he may lessen any negative implications introduced by the defense.

The attorney for the defense counters by having Officer Bird admit that at least some prints were successfully harvested from the surface from the car, implying that the

suspects' prints would have been recoverable, too, if they had touched the car at the crime scene. If the defendant cannot be linked to the crime scene by the physical evidence that was collected that night, then there is a chance the jury will not find him guilty.

Officer Connery

In the excerpt, the attorney for the defense is trying to establish three facts:

1. that Mark's testimony and identification of Francis as a suspect is unreliable on several counts; 2. that other suspects exist in the case; and 3. that Fiona did not positively implicate Francis and Anthony when questioned by Officer Connery.

Dr. Superior

In this excerpt, the prosecuting attorney attempts to undermine the validity of Dr. Superior's testimony on a number of levels (see Chapter 2 "Trial Practice Manuals"). He begins by questioning Dr. Superior at length about his professional qualifications and experience as a psychiatrist who claims to specialize in chemical dependency. The prosecutor then asks the doctor if he himself has ever used cocaine, the drug that Mark, the primary witness for the state, had been using the day of the murder. The doctor cannot win in this situation. He has already testified in direct examination to the effects of cocaine on a user's perceptual abilities; if he says he has not tried cocaine, his descriptions are valid only insofar as his secondary sources are accurate, and if he says that he has tried cocaine, he loses credibility because he admits to having engaged in a criminal act and is thus an unreliable witness. Dr. Superior claims that he has never used cocaine in any form.

Next, the prosecuting attorney questions Dr. Superior with regard to the supplemental income he generates annually as an expert witness as well as the specific amounts he is charging for both Francis' case and another case he has just completed. The prosecuting attorney makes reference to the doctor's role in the other case, which

was to testify that the defendant's crime, the shooting and killing of several people, was to an extent a result of his intoxicated state. Thus, the prosecuting attorney wants to show that Dr. Superior is a "hired gun" who is typically used to demonstrate that a person's actions or perceptions are not what they might have been when they witnessed or committed a crime had the person been sober. In this way, the prosecutor can safeguard the value of Mark's eyewitness testimony. He concludes by procuring a negative response from the doctor as to whether or not the doctor even knows Mark; if he hasn't treated him, he probably could not authoritatively determine if or how much of what Mark saw and heard at the crime scene was attributable to crack-induced hallucination.

Mark Renton

The defense attorney introduces several themes in this lengthy excerpt. Although these themes all relate to Mark's account of events surrounding the murder, the attorney's constant and abrupt topic-shifting obscures the relevance of some questions. The tactic of topic-shifting is common during cross-examination when the examiner wants to exercise strict control over a witness and dismantle the witness's defensive capabilities (Agar 1984: 150-3; Walker 1987: 61-4, 78-9).

The attorney for the defense begins questioning by asking Mark why, if he had recognized Tommy's assailants on the evening of the crime, he had not given the names of Tommy's attackers to detectives until after he was arrested on a drug charge. The attorney repeatedly suggests that Mark offered information regarding Tommy's murder only because he was hoping to receive favorable treatment from the BRCP in relation to the drug charge for which he was imprisoned and another felony charge that was pending against him at the time he met with Officer Connery. A second felony charge would mean that Mark would not be eligible for probation, so cooperation with the police might be critical in having his charge(s) reduced or dropped. Mark, on the other

hand, insists that his initial reluctance to divulge the names stemmed from the fact that he was protecting his father, who owns a business “in the neighborhood” (E750-2). Mark claims that he feared that his father’s business would be the target of retaliatory action, since Francis had not been arrested at the time Mark originally talked to detectives. Mark claims that his subsequent change of heart was due to his guilty conscience and the feeling that “maybe [he] should have did something “(E64-5).

The defense attorney repeatedly asks Mark about his drug use: what he uses, how often he gets high, what effect crack has on his perceptions, how much the drugs cost in relation to what he makes in income, and whether or not he would sometimes trade the use of his vehicle for crack. The defense attorney does not address the sequence of events on the evening of Tommy’s murder until approximately two hundred lines of testimony have transpired (E213), which constitutes one-fourth of the duration of Mark’s entire cross-examination. When he does, he asks Mark about the details / circumstances of that day and night, including: the crack he had smoked that day, what and whom he saw at Fiona’s house the last time he was there, what he heard with respect to the voices of Tommy’s assailants and gunshots, whether or not he actually witnessed a murder, and what his state of mind was during and after the evening’ events. The attorney for the defense ends his recross by asking if Mark had written his own statement or if he had signed a prepared one, and by clarifying Mark’s positive response to the prosecuting attorney’s question asking him during redirect examination if he had “come forward” to cooperate with police in the investigation.

Fiona Stevenson

The attorney for the defense begins cross-examination by demonstrating an inconsistency in direct examination: initially, Fiona denies remembering a conversation “at a club” with the defendant about who killed her boyfriend, but later she admits to recalling only some of what was said during the same conversation (F2-8). Next, the

attorney tries to have Fiona admit knowledge of Tommy's drug-dealing activities, insinuating that he dealt at Fiona's home (A44-A56). However, she only acknowledges seeing drugs in Tommy's possession (which "he wasn't distributing ... in front of [her]") outside of her home. The attorney for the defense solicits detailed descriptions from Fiona of the cocaine she saw Tommy with in order to demonstrate her familiarity with the drug.

Next, the defense attorney questions Fiona about events beginning on the evening that Tommy was murdered; he wants to know: 1. if Mark's purpose in coming to her house was to lend Tommy his car in exchange for drugs, 2. which detectives she spoke to about her boyfriend's suspected murderers and when she spoke to them, 3. what Francis did or did not tell her at the club about Tommy's murder, and 4. what was said to her about the murder during a phone conversation Fiona alleges Francis placed to her after the murder.

Selection of Subjects

In choosing which witnesses' excerpts to analyze, I have selected a diverse group of individuals with respect to: 1. gender, 2. power (social status, with respect to job title or educational level) and 3. previous experience in the courtroom. Although I do not have access to detailed information regarding subjects' ethnic and / or cultural backgrounds beyond their speech styles and the roles they play in the trial, the information presented in the trial clearly roots two of the subjects, Mark and Fiona, in a life connected with poverty, exposure to illegal drugs, and other related crime. As such, these two subjects represent a societal underclass: the legal system is set up to reinforce their social powerlessness (see "Copies and Constraint in Witness Testimony," "Defendant's Testimony as a Function of Class and Gender," and "The Pragmatics of Powerlessness in Police Interrogation" in Chapter 2). By including the testimony of two socially disadvantaged witnesses along with the testimony of two police officers and a

doctor whose career is well-established in the community in which the trial is staged, I have represented the extremes of witness types with respect to social status and projected power.

Also, in selecting cross-examination excerpts, I wanted to limit the number of subjects so as to be able to consider each speaker in some depth. For this reason, some witnesses represent more than one of the three “groups”:

<u>Subject</u>	<u>Sex:</u>	M	F	<u>Power:</u>	H	M	L	<u>Experience:</u>	H	M	L
Officer Bird			X			X				X	
Officer Connery	X					X			X		
Dr. Superior	X				X				X		
Mark	X					X					X
Fiona			X				X				X

This representative sample provides me with over 1700 lines of discourse to examine.

While this sample is not large enough for me to claim definitive conclusions, I am able to draw a series of valuable findings about the contextual use of discourse strategies related to power.

CHAPTER 4: METHODS

Discourse Analysis: Selected Sub-Disciplines

Linguistics encompasses multiple methodologies and subfields. I have considered various methodologies in deciding how the linguistic features I am examining might best be identified and discussed. I have also given thought to the extent to which I will include extralinguistic features of the data, including speaker motivations / roles and projected speaker intentions.

In order to determine where my study fits in terms of data-type and objectives, I have consulted a broad scope of the theoretical and methodological literature in discourse analysis (Brown and Yule 1983; Goffman 1967; Green 1996; Grice 1975; Gumperz 1972; Hymes 1972, 1996; Levinson 1983; Mey 1998; Schiffrin 1994; Wardhaugh 1992). Schiffrin's Approaches to Discourse (1994) provides an insightful survey of major subfields under the rubric of "discourse analysis", including pragmatics, conversation analysis, interactional sociolinguistics and the ethnography of communication, among others. After considering these various disciplines, Schiffrin concludes that language analysis must be interdisciplinary: analysts cannot fully evaluate structure independent of function, or text void of context (418-19). I concur with this philosophy of discourse analysis. Below, I introduce some general precepts of discourse analysis generally as well as four of the disciplines from which I borrow in synthesizing my own hybrid methodology.

Discourse Analysis

Discourse analysis undertakes to describe language, written and spoken, in context. One of the goals of discourse analysis is to explain how various devices are used purposefully in discourse: for example, deictic forms, as terms that refer to other elements in a text (e.g., "it," "now," "these," etc.), contribute to discourse cohesion; and implicatures, in suggesting meaning outside of a literal interpretation of an utterance,

explain hearer response and, by extension, discourse continuity. A broader goal of discourse analysts is to define texts as units of discourse, as in terms of cohesive elements, for example.

Brown and Yule hint at the discourse analysts' choice of data in their definition of text as "the verbal record of a communicative act" (1983: 6). Here, data are a record of actual communication through language and are "typically based on the linguistic output of someone other than the analyst" (20). Transcriptions of the text may indicate "features of the original production of the language" (12), such as a quavering voice, in order to capture aspects of the interaction relevant to the objectives of the analysis. Still, in discourse analysis, as in all sciences, "transcription is a selective process reflecting the researcher's theoretical goals and definitions" (Ochs 1979: 44) to the exclusion of other information, and some features of the original occurrence will be lost.

Pragmatics

The problem of defining pragmatics receives attention in the literature (e.g., Levinson 1983: 1-35), probably for the reason that pragmatics is "the youngest subdiscipline" of all the subdisciplines of linguistics (Mey 1998: 716). Simply expressed, pragmatics is "the study of language in a human context of use" (Mey 1998: 724). It is the domain of how a speaker chooses to say something, and how a listener interprets both the literal and implied meanings of a speaker's utterance. In pragmatics, speaker utterance itself is not a clearly defined category (e.g., Figueroa 1990: 284; Harris 1951: 14) but may be thought of as a context-bound language unit (Hurford and Heasley 1983: 15; Schiffrin 1994: 41). Factors relating to textual coherence and generalized participant expectations influence the production and interpretation of utterances by the participants. Pragmatics is concerned with local, individual utterance meaning to the exclusion of broader social or cultural meanings of texts.

Practitioners of pragmatic analysis employ a broad data-base reflective of their interests. Fraser (1998: 710-711) describes these sources as:

1. introspective, constructed by the linguist's appraisal of her own imagined speech;
2. consultative, where the researcher solicits intuitions of native speakers about their language;
3. pseudo-natural, where linguistic interaction is induced through role-playing and other contrived circumstances by the researcher; and
4. natural interactive, where the data derive from "actual verbal interaction."

All of these methods serve to capture the individual, intention-based meaning that is the focus of linguistic pragmatic analysis.

A specific contribution to pragmatic investigation into how speaker meaning is generated and understood is Grice's cooperative principle (Grice 1975). The cooperative principle is a guideline Grice formulated to describe how speakers make sense of each other's statements in the context of ideal conversation. It states:

Make your contribution such as is required, at the stage at which it occurs, by the accepted purpose or direction of the talk exchange in which you are engaged.

(Grice 1975: 45)

In abiding by the cooperative principle, speakers must obey four basic maxims:

- | | |
|------------------|--|
| Quantity: | Make your contribution as informative as is required (for the current purposes of the exchange). Do not make your contribution more informative than is required. |
| Quality: | Do not say what you believe to be false. Do not say that for which you lack adequate evidence. |
| Relation: | Be relevant. |
| Manner: | Avoid obscurity of expression. |

**Avoid ambiguity.
Be brief (avoid unnecessary prolixity). Be orderly.**

(Grice 1975: 47)

These guidelines account for how an addressee assumes a speaker to be operating during cooperative conversation, which forms the basis for how the addressee responds to the speaker and thus determines the sequential construction of communicative interaction. Derivatively, a speaker may generate meaning by blatantly violating, or flouting, a maxim to signal the hearer that some alternative or supplementary meaning is intended instead of or in addition to the literal meaning of an utterance. In so doing, the speaker employs conversational implicature.

One instance of conversational implicature that figures largely into the discourse of cross-examination is the hedge. In discourse analysis generally, a hedge is a form that modifies the force of a statement. Brown and Levinson (1978) introduce an analysis of hedges as they are oriented to Grice's cooperative principle maxims. These include:

Quality hedges, which suggest the speaker is not taking responsibility for the truth of his utterance, e.g., I think, I believe, I assume;

Quantity hedges, which give notice that not as much or not as precise information is provided as expected, e.g., basically, I (should) think, I can't tell you any more than that it's ...;

Relevance hedges, which mark (and may apologize for) a change of topic, e.g., This may not be relevant but ...; Oh, I've just thought ...; Sorry, ...; Hey, ...; and

Manner hedges, which comment on the way something is expressed, e.g., ... if you see what I mean; you see, What I meant was

(Brown and Levinson 1978: 169-176)

Even though cross-examination is adversative, and therefore does not operate according to the cooperative principle in the way an idealized conversation would, Gricean pragmatics offers tools for explaining how meaning is generated and understood, on a turn-by-turn basis, both overtly and implicitly.

Another contribution of pragmatics concerns interlanguage communicative strategies of the (foreign) language learner. Originally devised to account for the ways learners of a second language compensate for varying levels of ability to communicate in their target language, a description of learner strategies is useful in describing the ways witnesses infer the rules of courtroom discourse and apply their acquired knowledge to the task of communicating within the dictated linguistic format of the trial (e.g., Bialystok 1990 and Tarone 1981).

Conversation Analysis

Interest in linguistic studies from a sociological point of view began in the 1970s with work on how everyday conversation is used in constructing social and personal reality. Conversation analysis, in turn, grew from the ethnomethodological imperative to define “a member’s knowledge of his ordinary affairs, of his own organized enterprises ...” (Garfinkel 1974: 17). Reflecting this focus on organization, or structure, Heritage describes conversation analysis as presupposing that: 1. interaction is structured, 2. utterances are contextually-oriented, and 3. no detail is accidental or irrelevant (1984: 241).

Turn-taking mechanisms as structured, contextually situated elements, are an example of one of the topics with which conversation analysts are concerned (Sacks, Schegloff, and Jefferson 1974; Schegloff and Sacks 1973). Analysis of the organization of conversation entails study of how conversational participants engage in conversation through turns at speaking. Speaker turns are constructed through elemental two-turn units known as adjacency pairs, which may consist of a greeting and a return greeting, an offer and an acceptance or refusal, and so on (Schegloff and Sacks 1973: 295) (see “Units of Analysis: Turn-Taking” at the end of this chapter). Whether the topic is how speakers initiate, sustain, or terminate an exchange, conversation analysts are interested in the mechanics of everyday talk.

In “achieving a naturalistic observational discipline,” conversation analysts opt for data that documents naturally occurring interactions as opposed to materials obtained through experiments or interviews (Schegloff and Sacks 1973: 290-1). Inferences about speaker intentions or language generally are impermissible; claims of features such as recurrent patterns and organizational structures must be substantiated by their occurrence in the data. The naturally occurring language that conversation analysts employ as their data usually takes the form of an extended and isolated text.

Consideration of the language of cross-examination within a conversation-analytical framework allows for a description of preference organization with respect to turn-taking. Again, speaker exchanges are organized into two-turn units, where a greeting anticipates a return greeting, an offer anticipates either an acceptance or a refusal, etc. When the first part of the two-turn unit is met with the anticipated second part, the second part is said to be “preferred.” A person providing an adequately informative answer to a question is providing a preferred response. Alternately, dispreferred responses to a question could include silence or an otherwise inappropriate answer.

Cross-examination is structured as question / answer pairs that are initiated by the attorney conducting the cross-examination. Predictably, the cross-examination process elicits a high volume of dispreferred second parts from witnesses who are reluctant to answer questions that may be damaging to their testimony. For example:

- A64 Q. HOW MUCH COCAINE DID HE HAVE AND BREAK UP IN
 A65 FRONT OF YOU?
 A66 A. I DON'T KNOW.
 A67 Q. MA'AM?
 A68 A. I DON'T KNOW.

A69 Q. DESCRIBE IT; LIKE BIG, SMALL.

A70 A. IT WASN'T MUCH.

In this excerpt, a witness is reluctant to answer the examining attorney's question about the cocaine she saw in her boyfriend's possession. A preferred response, structurally and subjectively (from the vantage of the examining attorney) would provide the exact or estimated quantity of cocaine the witness saw. Both "it wasn't much" and "I don't know" are dispreferred responses.

Preference organization, then, is a structural notion associated with the selection of a second part in response to a first that provides for there being at least one preferred and one dispreferred response (Levinson 1983: 307). Dispreferred second parts often occur:

- (a) after some significant delay;
- (b) with some preface marking their dispreferred status, often the particle "well";
- (c) with some account of why the preferred second cannot be performed

(Levinson 1983: 307).

Dispreferred seconds are also marked forms in that they contain "various kinds of structural complexity" that correspond with their function (e.g., prefaces) (Levinson: 307). Naturally, dispreferred seconds, or marked forms, occur frequently in cross-examination, the prototype of adversative discourse. Hedges in the form of discourse markers or particles are an example of a power-linked feature that is used to mark or signal a dispreferred response.

Interactional Sociolinguistics

Anthropologist / linguist John Gumperz promotes a study of language in society that is mindful of "social or nonreferential meaning" in addition to other variables (Gumperz 1986: 434). Observation of speech behavior without relevant cultural

knowledge and knowledge of “the processes which generate social meaning” is not enough (434). Relatedly, sociologist Erving Goffman is interested in describing the language of social situations: how language affects the forms and structures of the interaction, and how language is shaped by its social context (1967, 1971). The combined works of Gumperz and Goffman contribute heavily to an approach to discourse analysis that Schifffrin terms “interactional sociolinguistics” (Schifffrin 1994: 97). In examining the interactional dimensions of language and culture, speaker and society, sociolinguists necessarily turn to natural speech situations as a preferred source of data (Gumperz 1972: 23-25).

One of the ways in which Goffman contributes to interactional sociolinguistics is with his concept of speaker face (Goffman 1967). To begin with, notions of speaker identity, or self, are constructed in social interaction. Face refers to a certain interval in the ongoing construction of self through social interaction. Specifically, face to Goffman is “the positive social value a person effectively claims for himself by the line others assume he has taken during a particular interaction” (Goffman 1967: 5). Brown and Levinson build on Goffman’s discussion of face, describing face as “the public self-image that every member wants to claim for himself” (Brown and Levinson 1987: 61). The “public self image” consists of two related components, analogous to Ng and Bradac’s concept of a “power to” versus “power over” (see “Power in the Courtroom” Chapter 1). These components are:

negative face: the basic claim to territories, personal preserves, rights to non-distraction - i.e. to freedom of action and freedom from imposition

positive face: the positive consistent self-image or “personality”(crucially including the desire that this self-image be appreciated and approved of) claimed by interactants.

(Brown and Levinson 1987: 61)

Ideally, speakers work to maintain others' face needs and wants in the interest of having their own positive and negative face requirements met. When respect for the preservation of others' face is not as important as meeting one's own face requirements, a speaker must breach the code of mutual face maintenance by executing a face-threatening act.

Face-threatening acts that threaten negative face do so "by indicating (potentially) that the speaker (S) does not intend to avoid impeding the hearer's (H's) freedom of action" (Brown and Levinson 1978: 70-1). face-threatening acts that threaten positive face do so "by indicating (potentially) that the speaker does not care about the addressee's feelings, wants, etc. - that in some important respect he doesn't want H's wants" (Brown and Levinson 1978: 71-2). Postive face violations include criticism, insults, and "blatant non-cooperation" of a hearer with a speaker (Brown and Levinson 1987: 66-7). Preservation of negative face is associated with non-imposition and formal politeness (Brown and Levinson 1987: 67-9); negative face wants are violated to varying degrees by orders, requests, or threats. Examples of face-threatening acts that impinge upon both positive and negative face include complaints, interruptions, and requests for personal information, among others (Brown and Levinson 1978: 72; Brown and Levinson 1987: 67). Additionally, the gravity of the face-threatening act is a factor of the social distance between the speaker and the hearer, the asymmetric relation of power between S and H, and the degree of imposition with respect to cultural norms created by an utterance, although at least one study suggests that the latter two variables outweigh social distance in importance (Brown and Gilman 1989: 159-212).

Cross-examination represents an intensely dynamic interaction with respect to maintenance of face and face wants. The examining attorney's role as interrogator necessitates the relentless construction of negative face infringements on witnesses in

the form of demands, requests, etc., compounded by the fact that the information sought is often detrimental to the preservation of witnesses' positive face, as well. The witnesses' resources in preserving their own face are limited in part by the fact that witnesses are compelled by law to respond to "questions properly put" by the Federal Rules of Civil Procedure (26, 30, 37) (Walker 1987: 59). Witnesses may also be impeded by notions of what is permissible or required in terms of respecting the face wants of the examining attorney. Finding a balance of respect for the face of the attorney for the purpose of minimizing negative implications to one's self and the preservation of one's own face requirements, dependant to a degree upon avoidance of divulging information that is damaging to the plight (and face) of one's self, depends on factors like prior experience in the courtroom, power (relative to that of the attorney), and ingenuity in terms of the linguistic strategies and techniques that are discussed in the literature (e.g., Wodak 1985; Drew 1985, 1992).

The Ethnography of Communication

The ethnography of communication is an approach developed largely by Dell Hymes to address theoretical and methodological shortfalls of using either traditional anthropological or linguistic approaches to studying language (Hymes 1972, 1974). Ethnography of communication is particularly concerned with the analysis of communication as cultural behavior manifest in patterns of language within a culture. Ethnographers seek to discover the range of communicative possibilities as well as how those communicative actions function meaningfully to the members of the culture in which they are found.

Communicative patterns are detected through participant observation. Hymes' classificatory framework is the SPEAKING grid (e.g., Hymes 1986: 58-70); it provides a way of analyzing linguistic interaction gathered during observation in terms of the components that constitute the interaction. SPEAKING is an acronym for the following

units, for which I have provided some information as pertains to cross-examination:

S	Setting and Scene	- physical circumstances, occasion (courtroom)
P	Participants	- speaker / sender / addressor / receiver / addressee / audience (lawyer, witnesses, judge, jury, etc.)
E	Ends	- purposes: outcomes and goals (to promote a “version” of a story that is advantageous to the allied side)
A	Act sequence	- message form and content (question / answer format)
K	Key	- the tone, manner or spirit in which an act is done (serious, formal)
I	Instrumentalities	- channel (verbal, nonverbal, physical); forms of speech from community repertoire (verbal, legal register)
N	Norms of interaction / interpretation	- specific behaviors and properties that attach to speaking (lawyer asks permissible questions; witness must answer responsively)
G	Genre	- textual categories (cross-examination)

(Hymes 1972: 56-71)

Knowledge of these components and their functions in the context of culturally relevant interactions, in addition to grammatical knowledge of a language, contributes to a person’s sociolinguistic or communicative competence (Hymes 1974: 75).

Speakers’ level of communicative competence varies dramatically with respect to factors like experience, familiarity with the forum, etc. Even though people are exposed to legal language as a part of American culture regularly, not all are

communicatively competent in the stylized discourse of the courtroom. Ethnography of communication, then, provides a useful and thorough way of analyzing the discourse of cross-examination as a speech genre involving participants who dynamically demonstrate varying degrees of communicative competence during a trial. In order to incorporate an ethnographic aspect into my interpretation, I attended several courtroom trials. Even though I did not observe this particular trial first-hand, I did observe this judge in the process of jury instruction. In addition, my inclusion of entire transcript sections provides the maximal ethnographic context possible.

Methodological Approach

In sum, my methodological approach borrows from a variety of discourse-analytic subfields. Pragmatics provides the basis for talking about hedges as conversational implicatures, which derive from the flouting of Grice's maxims for cooperative conversation. Conversation analysis allows me to talk about witnesses' responses in terms of preference organization in order to explain why some responses are preferred and some are dispreferred in different contexts. Interactional sociolinguistics provides for discussing speakers' choices of forms in terms of protecting and / or promoting speaker face. The ethnographic perspective provides a structured way of determining speakers' level of communicative competence within a given speech situation, such as the trial. In terms of data selection, my choice of using data that are a record of actual interaction aligns me further with those subdisciplines that stress a preference for natural data, including all of the aforementioned subdisciplines with the exception of pragmatics. None of these approaches alone are tailored to my needs; I feel that a synthesis of approaches is not only possible but desirable for the purposes of my study.

Units of Analysis: Turn-Taking

In cross-examination, turn-taking has a fixed structure as opposed to the dynamic mechanism of turn-allocation in “natural” conversation (Sacks, Schegloff, and Jefferson 1974; Schegloff and Sacks 1973). However, both conversation and cross-examination share a basic unit of organization: the adjacency pair (Schegloff and Sacks 1973: 295-9). Adjacency pairs are adjacent and consist of two utterances. These utterances, produced by two different speakers, consist of a first and second pair part that together form a pair type. Sample pair types include: question / answer, greeting / greeting, and offer / acceptance - refusal. Adjacency pairs and their constituent parts are easily identifiable in trial transcripts: the court reporter labels the first part, the attorney’s question, with a “Q” and the witness’ response with an “A” as in this excerpt:

E140 Q. YOU SKIPPED THAT; DIDN’T YOU? [question]

E141 A. YEAH. [response]

E142 Q. YOU JUST DIDN’T CARE? [question]

E143 A. I WAS ON DRUGS. [etc.]

E144 Q. YOU WERE ON DRUGS?

E145 A. YEAH.

My unit of analysis is generally the second-part component of the adjacency pair sequences that comprise cross-examination: the witness’ response. I prefer the term “response” to “answer” because it better describes the nature of the witness’ turn at talk, which does not always constitute a straightforward answer to the immediately preceding question (e.g., D206 and E544). In my data, each response ranges in length from one word to 153 words (D177-93).

The witness, who can only respond to the questions of the examining attorney, operates on a turn-level basis and cannot direct the development of the discourse on a

macro-level (e.g., topic organization). On the other hand, the attorney directs the discourse at the level of the turn as well as at a broader pragmatic level: i.e., a series of questions from the cross-examining attorney are designed to elicit specific answers which combined may demonstrate to a jury that the witness is inconsistent, that the information to which the witness testifies supports (or at least does not discredit) the opposition's claims, etc. Therefore, the response as a unit of analysis of discourse features as a reflection of the attorney's text-level pragmatic strategies is insufficient; however, the witness response is an adequately descriptive analytic unit with respect to the examination of witness testimony for the purpose of identifying and quantifying discourse elements such as the power-linked features that are described in the following section. I will, however, also make mention of witnesses' strategies, such as topic avoidance, that operate not only at the level of the turn but throughout the discourse as well in my discussion in Chapter 6.

Focus on Power

In the literature, many discourse elements reflect power or a lack of power (Lakoff 1975; O'Barr and Atkins 1980; O'Barr 1982; Philips 1984). Some that are both salient and reliably recorded in the trial transcript include the following:

“women's language,” or powerless features:

1. polite forms, of which “Sir” is the predominant form;
2. hedges and intensifiers, forms that modify the force of a statement;
3. questions asked by the witness;
4. hypercorrect forms, derived from the misapplication of the rules of formal grammar;

and other traditional power-linked features:

5. copy forms, which are patterned after the form of the question;

6. brief, fragmented responses (often consisting of one-word) versus narrative (sentential or longer) responses; and

7. witness-initiated interruptions (indistinct from overlapping speech in the transcript).

I do not consider those traditionally defined power-linked features that do not occur in the data or are not reliably reported in the transcript. Hesitation forms, for instance, are unreliably represented due to their insignificance in the schema of the court reporter (Walker 1986: 218-9).

In Chapter 5, I quantify these features. I consider each in terms of: definitional ambiguities and / or appropriateness as a measure of powerful or powerless speech style. I discuss the multifunctionality of certain features that are not intrinsically powerful or powerless in the context of my data. Based on these findings, I am able to roughly assess the speech style of each witness as being more powerful or powerless, or neutral, relative to the other witnesses.

In Chapter 6, I then identify occurrences of power-linked strategies that are novel or ambiguously defined in the literature. I describe how the witnesses use these strategies in the context of the discourse. Finally, I summarize my findings as regards each witness' individual style. I analyze the fit between which speakers might be expected to use predominantly powerful or powerless discourse features and strategies and which speakers actually do.

CHAPTER 5: TRADITIONAL FEATURES OF LEGAL DISCOURSE

In this chapter, I discuss how certain power-linked features treated in the literature function within my data. In order of appearance, these include: polite forms, copy forms, hedges, witness-initiated questions, hypercorrection, fragmented versus narrative responses, and overlap / interruption.

Polite Forms / "Sir"

"Sir" is the only polite address form that occurs in the witnesses' testimony uniformly. There is no corresponding "Ma'am" probably because, by virtue of my data, no female examining attorneys or judges are involved in trying the case. If there had been, one might expect the witnesses to have used "Ma'am" at a frequency reflective of perceived power differentials. If power is in fact a function of gender, witnesses might be expected to use fewer polite address forms in addressing women legal representatives than men. The single use of a polite address form other than "Sir" in the data is one instance when a witness refers to the judge as "Your Honor" (D174-5), an idiosyncratic usage which I will comment on later in my discussion. "Sir," which occurs in the testimony of four of five of the witnesses, is a more significant variable.

Who Uses "Sir"?

Lakoff suggests that superpolite forms, including polite forms of address, are more prevalent in women's speech in general than in men's (1975). In considering courtroom testimony specifically, O'Barr finds that relatively predominant usage of polite forms does not correlate with gender per se, but that the election of language features typically associated with women is based upon those characteristics and conditions from which power is derived, including "social standing" and "status accorded by the court" (O'Barr 1982: 69-71). O'Barr considers correlations between gender and powerless linguistic forms to be derivative of "the greater tendency of women to occupy relatively powerless social positions" (70-1). Whether women use the

polite address term “Sir” more because their gender dictates their social standing which in turn shapes their linguistic choices, or whether women use “Sir” more in fulfillment of gender-linked societal expectations, I would expect to find in my data that “Sir” would be used most by women and by witnesses who are inexperienced and / or at a power disadvantage: i.e., Mark and Fiona. The data do not support this expectation, however.

Surprisingly, both the female police officer Bird and the young lay female witness Fiona each use “Sir” only once (B60 and F156, respectively); for Officer Bird, “Sir” appears in one out of seventeen responses (5.9% of responses), and for Fiona “Sir” appears in one out of 64 responses (1.6%). In contrast to the near absence of polite address forms in the speech of the female witnesses, the male police officer Connery supplies the most significant evidence contrary to my expectation that powerless and / or female individuals would demonstrate a relatively high use of “Sir.” Officer Connery addresses the examining attorney as “Sir” sixteen times in 78 responses (20.5%). In contrast, Dr. Superior, the witness with perhaps the most experience in the courtroom and with the greatest prestige as far as job title and educational background, does not use “Sir” even once.

Mark, the male lay witness, is in an interesting position relative to power. He is not on trial himself, although he is currently incarcerated. He has extensive courtroom experience from the perspective of being a defendant. The attorney for the defense suggests during cross-examination that Mark is cooperating in this trial in the hope of receiving favorable treatment for himself with respect to the sentence he is serving for a drug charge (E793-7, E799-802, E818-9). I expected that the power differential between a convicted drug felon and an attorney, both in terms of implied social status and in terms of courtroom-dictated rights, would be expressed and reinforced by the use of deferential forms by the power-disadvantaged (Mark) in addressing the power-endowed

(the examining attorney). This expectation was borne out. Mark uses “Sir” much more than any other witness: “Sir” appears 95 times in 235 responses (40.4%).

Where Does “Sir” Occur?

I am interested in the discourse context in which “Sir” occurs to determine:

1. whether or not the use of “Sir” is in some way prompted, such as by a particular construction or question-type, and 2. if “Sir” occurs exclusively or primarily in conjunction with linguistic structures that could provide some indication of a broader purpose for an individual’s choice to use this polite form.

First, I have considered the total occurrences of “Sir” in the witnesses’ speech (as compared to the attorneys’ use of “Sir,” which I discuss in “Copy Forms in the Data” later in this chapter). “Sir” is used in response to the examining attorney’s questions for which he seeks a yes / no answer. Out of the total 113 occurrences of “Sir,” 112 occur in such responses. The only time when “Sir” does not occur as part of a yes / no response is when Officer Connery replies “Good afternoon, Sir” in response to the attorney’s greeting of “Good afternoon” (C2-3). As a preliminary categorization scheme, I have divided the other occurrences of “Sir” as appear in five “yes/ no contexts”: 1. “Yes, Sir”; 2. “Yes, Sir [+ additional]”; 3. “No, Sir”; 4. “No, Sir [+ additional]”; and 5. “other.” These categories indicate whether the witness responded simply with “Yes, Sir” or “No, Sir,” or responded “Yes, Sir” or “No, Sir” in preface to additional information, including explanations, partial rebuttals, etc., with the “other” category representing an answer that implied but did not explicitly use the terms “yes” or “no.” Responses such as “Yes, Sir, I did,” (C226) or “No, Sir, I wasn’t,” (A156) are considered simple copies (see “Copy Forms” later in this chapter) that I include in the “Yes, Sir” and “No, Sir” categories, respectively. “Yes, Sir, because I wrecked that car,” (E398) is an example of “Yes, Sir [+].” “No, Sir. I can’t say that. I just simply don’t recall,” (C142) is an example of “No, Sir [+].” Responses such as: “Sir, I don’t

recall,” (C366); “That’s basically true, Sir,” (E509); and “Well, I’m currently serving a three year sentence, Sir,” (E70-1) are included in the “other” category. The following chart illustrates my findings:

Table 1

Use of “Sir” in Yes / No Responses in the Data

Witness	Yes, Sir	Yes, Sir+	No, Sir	No, Sir+	Other	Total
Officer Bird			1			1
Officer Connery	5	1	5	2	2	15
Dr. Superior						0
Mark	49	5	37		4	95
Fiona			1			1

What Does “Sir” Mean?

In my data, “Sir” figures predominantly in the briefest copy-type responses in witnesses’ language: “yes, Sir” / “no, Sir.” If copy-type responses are taken to be “weak” forms, in that their use demonstrates witnesses’ willingness to allow their answers to be constrained by the structure of the examining attorney’s questions (Philips 1984), then the election of the use of “Sir” is also weak as a corollary form. Only two witnesses (out of five) use “Sir” more than once in my data. Both are male, with significant experience in the courtroom (one having been arrested repeatedly, and one having made arrests for many years). These two men are on opposite ends of the spectrum in terms of the social / situational power they possess relative to each other and relative to their examining attorneys. Predictably, the incarcerated man uses the most polite forms, perhaps in recognition of his disempowered status and in deference to his examiner. By comparison, the relative absence of the form in the speech of the female witnesses is surprising, especially considering that Officer Bird and Fiona might be expected to mirror Officer Connery and Mark, as an experienced police officer and

as a drug-culture associate, respectively. Implications of regional variations of the use of polite address forms such as “Sir” may influence the frequency and the distribution of “Sir” in the speech of the witnesses in my data, who speak in a southern dialect. In sum, the use of “Sir” in my data is neither proven nor disproven to be a function of gender, social status, age, or courtroom experience (Gibson 2000).

Copy Forms

In a 1984 study, Philips investigates the relationship between questions and responses with respect to interactant role in Change of Plea proceedings (Philips 1984). The Change of Plea procedure takes place in a courtroom and consists mostly of questioning, like a trial, but involves ordered three-way interaction between a judge, opposing lawyers and a defendant. Philips claims that, in these proceedings, responses of interactants to both Yes-No and Wh questions are more or less constrained depending on the relative status and authority of the questioner and respondent, i.e., the greater the speaker’s status, the less the relative constraint. A Yes-No question calls for agreement or disagreement with its proposition (Lyons 1977), while a Wh question calls for completion of its proposition (Goody 1978: 22). The degree of constraint inherent in the question, according to Philips, is measurable in “whether or not the form of the question is copied (deleted or not) in the answer, and whether or not the answer goes beyond a single utterance” (Philips 1984: 225).

Philips defines a copy as an answer to a question that is “within the frame provided by the question, whether part of that frame was deleted in the answer or not” (233). Philips provides examples of copy responses to the question “Was anyone else with you?”, including: “Someone else was with me”; “No one else was with me”; “Yes, someone else was with me”; “No”; “No, no one else was”; and “My brother” (233-4). Non-copies she lists include: “Huh?”; “I don’t know”; and “I entered the building

alone” (234). “Yes they are” is also a non-copy, due to a change in the verb tense, and “Someone else drove” is classified as a “partial copy” (234).

Philips’ data suggest that Yes-No questions, 90% of which receive copy responses in general, are “twice as likely to be copied” as Wh questions, which are copied 80% of the time (234-5). Additionally, non-copy responses to Yes-No questions provide the clearest evidence of “a status-differentiated pattern” in Philips’ data (236-7). Philips reports non-copy responses to Yes-No questions as being 46% for judges, 32% for lawyers, and 5% for defendants. These results, Philips argues, suggest that “the form of response marks or conveys the respondent’s view of his status relative to the questioner” (225). Thus, the election of a higher frequency of copy responses by lower status participants in courtroom interaction is the manifestation of an imbalance of power between courtroom interactants (225).

Categories of Questions

I have chosen to consider the variable of question type in analyzing the frequency of copy responses in the data. Findings in the literature indicate that witnesses and / or defendants may be subject to differential questioning strategies in the courtroom depending on various factors. For example, a study by Adelswärd, Aronsson and Linell finds that defendants in courtroom proceedings are asked more controlling questions in relation to the seriousness of their alleged offense and pre-existing criminal record (1988). If, as claimed in Philips’ study (1984), Yes-No questions are twice as likely to receive copy responses as Wh questions in the courtroom, and certain witnesses and / or defendants are subject to more controlling (i.e., Yes-No versus Wh) questions, then a representation of question type in conjunction with frequency of copy responses is critical for an informative analysis.

Categorically, questions occurring in the data are not all Yes-No or Wh questions per se. Some questions are phrased in a declarative format and spoken with

rising intonation to indicate question function:

F90 YOU DIDN'T THINK THAT THAT WAS ILLEGAL?

Also, not all questions appear to be questions grammatically:

C243 Q. WOULD YOU BE WILLING TO LOOK AT YOUR REPORT AND

C244 TELL THE JURY THE EXACT DATE OF YOUR INTERVIEW?

C245 A. I HAVE NOTHING TO HIDE. I MEAN, IF IT'S THERE, IT'S

C246 THERE.

C247 Q. OKAY. I'D ASK YOU TO LOOK AT YOUR REPORT, THEN.

C248 A. I DON'T HAVE IT.

C243-4 and C247 are both intended to accomplish the same thing: to get the respondent to look at his report. The first is in the grammatical form of a question and the second is in declarative form, but both are imperatives that are mitigated for politeness reasons.

Walker (1987) provides a useful typology for assigning attorneys' utterances to categories of questions. Her question categories include: Wh questions, which expect only Wh answers; Yes-No / Wh questions, where Wh answers are expected but Yes-No answers are possible as fallback; disjunctive (DISJ) questions, where a Yes-No response is inappropriate; and Yes-No questions, which expect a Yes-No answer (Walker 1987: 69-79). The following is a list of sample questions of each type from the data:

Wh Questions

When was the request made for the comparison? (B37)

You've been a detective for how long? (C122)

Where were you when you got the phone call? (F157)

Yes-No / Wh Questions

Can you tell the jury why he was in prison? (C120)

What did he look like? Could you describe him? (E85)

You don't remember if it was [] in the spring or the summer of '95 or the fall of '95 or the winter of '95 [] or the spring of '96? (F168-73)

DISJ Questions

Was this right after the murder or a year after the murder? (F135-6)

Was it hot or cold when you got it? (F161)

I mean, was it spring, the summer, the fall? (F163)

Yes-No Questions

You missed your arraignment in drug court? (E15)

You were in that same Beretta; weren't you? (E20)

You were free. (E41)

Of the three Yes-No / Wh questions listed, the first two are phrased as Yes-No / Wh questions as a function of politeness: i.e., "Can you tell the jury why he was in prison?" (C120) softens the force of a command like: "Tell the jury why he was in prison." The third is the kind of Yes-No / Wh question described by Walker (1987: 73-5); it asks the question "When [...] was it?" in the form of the Yes-No patterned: "You don't remember [...]?"

Copy Forms in the Data

I apply Philips' (1984: 225) definition of copies to my data to determine the average number of copies per response with respect to the four question types (Wh, Yes-No, Yes-No / Wh, DISJ) for each of the five witnesses. These results are displayed in Tables 7-10. Additionally, I list an average of copies per response for each witness for the combined question types in Table 11. Before discussing these results, however, I explain which question types do not apply to this analysis and which response types do or do not qualify as copies in my analysis.

To begin with, not all of the attorneys' turns constitute questions within Philips' framework. One troublesome form includes the attorneys' use of "Sir?" and "Ma'am?", as in the following:

E191 Q. HOW MANY DAYS A WEEK YOU SMOKE CRACK?

E192 A. AT THAT TIME, MAYBE THREE, FOUR.

E193 Q. FIVE?

E194 A. NO.

E195 Q. ~~SIR?~~

E196 A. ALL DEPENDS.

and in:

F104 Q. WHAT TIME DID THEY COME BACK?

F105 A. I DON'T KNOW.

F106 Q. ~~MA'AM?~~

F107 A. I DON'T KNOW.

In these and similar sequences (e.g., F64-8, C133-9, E222-8, E709-14), the attorney seems to be challenging the witness' last response. A gloss of such a use of "Sir?" or "Ma'am?" might be: "Are you sure you're willing to stick with your last response?" However, it is also possible that these prompts are nothing more than clarification checks resulting from simple miscomprehension. Because I can not determine the attorneys' intent in each circumstance, I do not include responses to these kinds of prompts in my quantification of copy frequency according to question type.

I also will not include sequences in which the attorney's question is incomplete and / or cannot be identified as pertaining to one of the four question types discussed above, as in the case of some statements like:

E48 Q. ~~WELL, LET'S JUST TALK -- LET'S FORGET THE DATES. LET'S~~

E49 ~~JUST TALK ABOUT THE EVENTS~~

and some interruptions:

F53 Q. ~~AND AS TO WHAT YOU'RE TELLING--~~

F54 A. AND THAT WAS THE FIRST TIME TOMMY EVER DID THAT.

The attorney in cross-examination is the only person who can control the flow of the discourse through topic control, for instance. For this reason the “let’s” in E48 is rhetorical and serves a politeness function rather than to genuinely inquire if the proposed topic is amenable to the witness; the witness is not expected to respond. In A53, it is unknown what the attorney is asking when the witness interrupts to expound upon her previous answer. If the attorney had asked: “Would you like cream or sugar with your --?” before he was interrupted, I would consider the question to be disjunctive.

I likewise do not include sequences in which the witness is not allowed to complete a response that is still a copy at the point at which an interruption occurs. In other words, if the witness has not deviated from the framework of the question (thereby engaging in a non-copy response) but might have done so before being interrupted, I do not use the response in my results. The following is an example of such an indeterminate response:

F15 Q. AND THEN HIS BEEPER WOULD GO OFF; RIGHT? AND THEN

F16 HE'D LEAVE TO GO SELL DRUGS TO PEOPLE; RIGHT?

F17 A. ~~NO. HE--~~

F18 PA: OBJECTION.

Other responses that I do not consider to be copies pertain largely to the categories that I will call verb changes, evaluative responses, and other elaborations. Verb changes include changes in verb tense and verb substitutions.

Verb change non-copies are those in which the nature of the proposition entailed in a question is altered through a modification or substitution of the verb in that proposition. The following example illustrates both:

F90 Q. YOU ~~DIDN'T THINK~~ THAT THAT WAS ILLEGAL?

F91 A. I ~~KNOW~~ IT'S ILLEGAL.

Not only has the witness substituted “know” for “think,” she has also changed the tense from past to present. Other verb modifications include prefaces like “I think” (e.g., A137-8), “I guess” (e.g., A180), and “I believe”:

C227 Q. SHE RESIDED AT 966 WEST PRESIDENT; IS THAT CORRECT?

C228 A. YES, SIR; I ~~BELIEVE~~ THAT'S CORRECT.

and the introduction of modal hedges:

C98 Q. AND AT THAT TIME HE TOLD YOU HE DID NOT KNOW WHO

C99 THOSE SUSPECTS WERE; ~~ISN'T~~ THAT CORRECT?

C100 A. YES, SIR; THAT ~~WOULD BE~~ CORRECT.

Evaluative responses, such as “correct” (e.g., D124), “right” (e.g., D96), “that’s right” (e.g., B45), and “that is correct” (e.g., C41), are not copies in that the witness is commenting on the validity of the attorney’s assessment in addition to responding affirmatively or negatively, even within the framework of the question. Elaborative responses, too, operate outside of the frame provided by the question in that they provide more information than is necessary to answer the question. In the following, “yes” or “no, it’s not a board,” for example, would suffice to answer the question posed in D116, but the witness volunteers additional information (shaded in gray):

D115 A. THE AMA IS NOT A BOARD.

D116 Q. IT'S NOT A BOARD?

D117 A. ~~THE AMA IS A MEDICAL ORGANIZATION. IT'S A TRADE~~

D118 ~~UNION FOR DOCTORS~~ IT'S NOT A BOARD.

The shaded material in the following does the same:

E51 Q. THE FIRST TIME YOU TALKED TO THE POLICE, YOU WERE

E52 NOT IN CUSTODY; ISN'T THAT CORRECT?

E53 A. YES, SIR; ~~THE NIGHT OF THE MURDER~~

Applying these definitions and categorizations, I have formulated the following tables that demonstrate the frequency of copy responses according to question type in each witness' testimony:

Table 2

Copy Responses to Wh Questions

Witness	Total Questions	Copies	Avg. Copies / Response (%)	
Officer Bird	4	1	.25	(25.0)
Officer Connery	9	2	.22	(22.2)
Dr. Superior	18	8	.44	(44.4)
Mark	40	24	.60	(60.0)
Fiona	14	6	.43	(42.9)

Table 3

Copy Responses to Yes-No / Wh Questions

Witness	Total Questions	Copies	Avg. Copies / Response (%)	
Officer Bird	0	-	-	
Officer Connery	2	0	0	
Dr. Superior	1	0	0	
Mark	1	1	1	(100)
Fiona	1	1	1	(100)

Table 4

Copy Responses to Disjunctive Questions

Witness	Total Questions	Copies	Avg. Copies / Response (%)	
Officer Bird	0	-	-	
Officer Connery	2	1	.50	(50)
Dr. Superior	2	1	.50	(50)
Mark	3	3	1.00	(100)
Fiona	5	1	.20	(20)

Table 5

Copy Responses to Yes-No Questions

Witness	Total Questions	Copies	Avg. Copies / Response (%)	
Officer Bird	12	2	.17	(16.7)
Officer Connery	61	21	.34	(34.4)
Dr. Superior	30	15	.50	(50.0)
Mark	163	101	.62	(62.0)
Fiona	38	24	.63	(63.2)

Table 6

Copy Responses in Combined Question Types

Witness	Total Questions	Copies	Avg. Copies / Response (%)	
Officer Bird	16	3	.19	(18.8)
Officer Connery	74	24	.32	(32.4)
Dr. Superior	51	24	.47	(47.1)
Mark	207	129	.62	(62.3)
Fiona	58	32	.55	(55.2)

The consistency of Philips' (1984) results is not replicated in my analysis. To begin with, none of the five witnesses in my data use as many copy forms for either Yes-No or Wh questions as the subjects in Philips' study, which found that Yes-No questions generally command copy responses 90% of the time and that the less coercive Wh questions command copy responses 80% of the time (234-5). In fact, the highest rate of copy for any question type where the total questions of that type asked of the witness exceed three is achieved by Fiona, in responding to 63.2% of Yes-No questions in copy form. Also, the disparity between the rate of copy responses for Yes-No questions and Wh questions is inconsistent. Although four of the witnesses respond to Yes-No questions in copy form at a higher frequency, one (Officer Bird) shows a moderately lower incidence of copy forms in response to Yes-No questions than to Wh questions (16.7% versus 25%, respectively). Finally, the correlation between role or status and copy frequency is not as extreme in my data as it is in Philips', where lawyers did not use copies in 32% of responses to Yes-No questions as compared to only 5% non-copies on the part of defendants.

Nonetheless, the data are informative. The two police officers consistently use fewer copy forms relative to the other witnesses. They are the two lowest in overall copy forms by a significant margin, with 19% (Officer Bird) and 32% (Officer Connery) copy responses apiece compared to the next lowest (Dr. Superior) at 47%. Although a low frequency of copy forms in the speech of the officers is not surprising, Dr. Superior, the psychiatrist, used relatively many. The number of overall copies in his testimony approaches the level of the young female, Fiona, at 55.2% and the incarcerated male, Mark, at 62.3%.

While the data for copies are suggestive, the presence or absence of copies in a witness' testimony, is not, however, a foolproof measure of acquiescence or assertiveness. Other factors come into play, such as a witness' underlying motivations

and related strategies. Consider this excerpt from Fiona's testimony:

F166 Q. WHAT DID YOU SAY?

F167 A. I DON'T REMEMBER.

F168 Q. YOU DON'T REMEMBER IF IT WAS --

F169 A. **NO.**

F170 Q. -- IN THE SPRING OR THE SUMMER OF '95 OR THE FALL OF

F171 '95 OR THE WINTER OF '95 --

F172 A. **NO.**

F173 Q. -- OR THE SPRING OF '96?

F174 A. **NO.**

F175 Q. SUMMER OF '96?

F176 A. **NO.**

F177 Q. YOU DON'T REMEMBER?

F178 A. **NO.**

F179 Q. COULD IT HAVE BEEN IN THE SUMMER OF '96?

F180 A. I GUESS IT COULD HAVE BEEN, BUT I DON'T REMEMBER.

The responses outlined in red are copies within Philips' criteria, and hence evidence of Fiona's acquiescence. Contextualized consideration of this excerpt, however, suggests that Fiona is not being acquiescent; on the contrary, Fiona will not easily be swayed from her claim that she doesn't remember. In sum, I find a high incidence of copy forms in witness testimony to correlate to some extent with a lack of power in the courtroom as non-legal personnel employ the most copy forms in my data. Still, consideration of copy forms void of context may be misleading.

Hedges

In her description of women's language features, Lakoff identifies hedges as "words that convey the sense that the speaker is uncertain about what he (or she) is saying, or cannot vouch for the accuracy of the statement" (Lakoff 1975: 53-4). In addition to expressing uncertainty, hedges like "well," "kinda," and "y'know" in certain contexts serve a politeness function. For example, the expression "Adam can kinda play basketball" may indicate that Adam is a relatively proficient player or that he is a dismal basketball player and that the speaker is using a hedge to mitigate the slight to Adam's athleticism.

A clear instance of such a politeness-oriented usage includes prefaces to declarations like "I think" or "I guess" and prefaces to questions like "I wonder":

1. I think I like the red shoes.
2. I guess I'll have the clam chowder.
3. I wonder if you can come this afternoon?

In the first two sentences, there is no apparent reason why a speaker would choose to hedge propositions for which she is the ultimate authority: she more than anyone should know her color preference and command menu selections. In the third sentence, the question arises of why the speaker does not ask the addressee directly whether or not she will come by saying: "Can you come this afternoon?" Lakoff proposes that hedges provide protection from being challenged and can communicate deference (54). So, in the absence of other apparent motivations, a hearer may infer that a speaker is hedging in order to protect the face requirements of the interactants (see "Interactional Linguistics" in Chapter 4). In the first example above, a speaker might be delicately rejecting her friend's suggestion to try on some snakeskin boots; the second could occur if a lunch guest is trying to communicate that he is selecting the chowder for the purpose of keeping the amount of the bill low, even at the expense of denying himself

what he truly wants (the file); and the third hedge possibly functions in context to lessen the imposition or coercive force associated with what could be interpreted as an implied imperative (“Come this afternoon.”). All three are concerned with preserving the negative face requirement of freedom from imposition (Brown and Levinson 1987: 67-9).

Brown and Levinson (1978, 1987) expand on this discussion of hedges. They define a hedge as “a particle, word, or phrase that modifies the degree of membership of a predicate or a noun phrase in a set” (Brown and Levinson 1978: 150). In addition, a hedge may indicate that a proposition is “true only in certain respects” or that it is “more true and complete than perhaps might be expected,” as illustrated in the following (1978: 150):

A swing is sort of a toy.

Bill is a regular fish.

John is a true friend.

I rather think it’s hopeless.

I’m pretty sure I’ve read that book before.

This paper is not technically social anthropology.

You’re quite right.

Brown and Levinson provide insight into speakers’ motivations for using hedges by showing how hedges relate to the maxims of Grice’s cooperative principle (see “Pragmatics” in Chapter 4). Hedges on the maxim of quality suggest that a speaker is either avoiding or stressing a commitment to the truthfulness of an utterance, as in statements involving constructions like (1978: 169-70): “As I recall,” “I (think / believe / assume),” “I would say that,” and “I absolutely promise that” Quantity hedges, including adverbs like “roughly,” “approximately,” and “basically,” signal the hearer that information is incomplete or imprecise. Phrases such as: “I can’t tell you any more

than that it's ..., "I'll just say ...," and "I should think ..." do the same (1978: 171-2). "Well," "You know," and "I mean" are quantity hedges, too, "with clear politeness functions" (1978: 172) that emphasize the interactive nature of the speaker / hearer exchange. Manner hedges address the way a speaker chooses to express a proposition: "More clearly ...," "You see ...," and "What I mean is" Finally, relevance hedges (e.g., "While I think of it ... ," "By the way ..." and "Hey...") are necessary to lessen the imposition to the hearer created by topic change. However, relevance hedges, which are used to initiate changes in the topical development of a discussion, for example, would not be expected to be prominent in witness language in cross-examination, during which the examining attorney predominantly dictates the structure and content of the discourse.

The breadth of Brown and Levinson's analysis does not figure into O'Barr's consideration of hedges (O'Barr 1982). He vaguely defines hedges as the "frequent use of 'you know,' 'sort of like,' 'maybe just a little bit,' 'let's see,' etc." (65) and as "forms that reduce the force of an assertion allowing for exceptions or avoiding rigid commitments" (67). "Sort of," "a little," and "kind of," in addition to the few mentioned in the previous definition, are the only examples O'Barr lists. Although O'Barr only considers the impact of hedges on speaker style as part of a complex of powerless features, other research has offered strong evidence that, as an independent variable, hedges are indicative of powerlessness (e.g., Vinson and Johnson 1989). In fact, hedges are allegedly among "the clearest indicators of low power" (Ng and Bradac 1993: 24-37) both in the courtroom (Vinson and Johnson 1989) and in non-courtroom contexts (Hosman and Siltanen 1991).

Intensifiers

A study by Wright and Hosman (1983) projects that courtroom audiences might rate hedges and intensifiers variably with respect to defendant credibility, attractiveness,

than that it's ...," "I'll just say ...," and "I should think ..." do the same (1978: 171-2). "Well," "You know," and "I mean" are quantity hedges, too, "with clear politeness functions" (1978: 172) that emphasize the interactive nature of the speaker / hearer exchange. Manner hedges address the way a speaker chooses to express a proposition: "More clearly ...," "You see ...," and "What I mean is" Finally, relevance hedges (e.g., "While I think of it ... ," "By the way ..." and "Hey...") are necessary to lessen the imposition to the hearer created by topic change. However, relevance hedges, which are used to initiate changes in the topical development of a discussion, for example, would not be expected to be prominent in witness language in cross-examination, during which the examining attorney predominantly dictates the structure and content of the discourse.

The breadth of Brown and Levinson's analysis does not figure into O'Barr's consideration of hedges (O'Barr 1982). He vaguely defines hedges as the "frequent use of 'you know,' 'sort of like,' 'maybe just a little bit,' 'let's see,' etc." (65) and as "forms that reduce the force of an assertion allowing for exceptions or avoiding rigid commitments" (67). "Sort of," "a little," and "kind of," in addition to the few mentioned in the previous definition, are the only examples O'Barr lists. Although O'Barr only considers the impact of hedges on speaker style as part of a complex of powerless features, other research has offered strong evidence that, as an independent variable, hedges are indicative of powerlessness (e.g., Vinson and Johnson 1989). In fact, hedges are allegedly among "the clearest indicators of low power" (Ng and Bradac 1993: 24-37) both in the courtroom (Vinson and Johnson 1989) and in non-courtroom contexts (Hosman and Siltanen 1991).

Intensifiers

A study by Wright and Hosman (1983) projects that courtroom audiences might rate hedges and intensifiers variably with respect to defendant credibility, attractiveness,

and blameworthiness. This particular study has male and female experimental subjects reading testimony scripted by the researchers. Each script is attributed to a fictionalized male or female speaker, and is either high or low in hedge forms and / or intensifiers. Generally, the study found that subjects judged high levels of hedging negatively in the speech of both male and female witnesses, and high levels of intensification in the speech of females as more attractive than in the speech of the men. At first glance, these findings are noteworthy and merit consideration with respect to my analysis. Upon consideration of naturally occurring data, however, I find the distinction between hedges and intensifiers tenuous.

O'Barr defines intensifiers as forms that "increase or emphasize the force of assertion," such as "very," "definitely," "very definitely," "surely," and "such a" (O'Barr 1982: 67). Ostensibly, intensifiers perform the converse function of hedges: i.e., intensifiers intensify the force of an assertion, and hedges reduce the force of the assertion. The emphatic overlay of intensifiers, though, is itself a show of uncertainty in that the speaker is communicating concern that, in the absence of the use of intensifiers, she might not successfully convey her meaning or be found credible. Consider:

1. Those shoes are genuine leather.
2. I think those shoes are genuine leather.
3. Those shoes are surely genuine leather.

The first sentence contains no hedges or intensifiers. The second, which consists of the same proposition as the first, is hedged with "I think." The third contains the intensifier "surely" that, in theory, ought to increase the force of the assertion according to O'Barr's characterization of intensifiers. Of course, the essence of these sentences will vary depending on the context (e.g., where the shoes are being sold and whether or not the salesperson is also selling snake oil). Nonetheless, it is conceivable that the third

sentence might communicate a weaker conviction than the first in some contexts of use in spite of containing an intensifier.

The importance of considering context in determining the function of a particular form can be seen in the following example:

D155 A. I'M NOT CERTAIN. TO ACCUMULATE THE HOURS -- I
D156 BASICALLY CHARGE THREE HUNDRED DOLLARS AN HOUR AND I
D157 PROBABLY HAVE ABOUT -- I DON'T KNOW EXACTLY HOW MANY
D158 HOURS. I HAVE TO CALCULATE IT AND WRITE IT UP.

"Exactly" in D157 is not an emphatic form; it is a hedge on the speaker's ability to accurately quantify his hours worked. A similar expression could be achieved using various hedges: e.g.,:

I'm not sure of how many hours.

I really don't know how many hours.

I guess I don't know how many hours.

However, "exactly" in a sentence like: "I know exactly which one you're talking about" would unambiguously be considered to be an emphatic usage. In spite of these context-derived differences, analyses like O'Barr's (1982) categorize discourse elements largely according to form rather than function for the purpose of maintaining definitive, quantifiable discourse features. Additionally, Wright and Hosman's scripts may have been stylized somewhat in their construction to avoid the problem of form-versus-function distinctions. To resolve my own hedges-versus-intensifiers dilemma, I consider intensifiers to be a subset of hedges which I call emphatic hedges.

My position is aligned with Brown and Levinson's discussion, which blurs the categories of hedges and intensifiers by including intensifiers, such as "really" and "certainly," as types of hedges (Brown and Levinson 1978: 152). Of Brown and

Levinson's "strengtheners" and "weakeners" hedge categories, intensifiers belong to the former and the O'Barr / Lakoff variety pertain to the latter (Brown and Levinson 1978: 152).

Hedges in the Data

While the definitions given above seem adequate enough, as such, the actual identification of hedges in my data is problematic because the definitions provided in the literature (Lakoff 1975: 53-4, O'Barr 1982: 67) are vague. "Words that convey the sense that the speaker is uncertain about what he (or she) is saying, or cannot vouch for the accuracy of the statement" (Lakoff) and "forms allowing for exceptions and avoiding rigid commitments" (O'Barr) encompass a wide range of forms, as demonstrated in the following excerpts from my data:

Hedges: Excerpt 1

- B2 Q. WE KNOW IT'S PROBABLE, THOUGH, THAT PRINTS CAN BE
 B3 LIFTED FROM THAT CAR; ISN'T THAT TRUE?
 B4 A. ~~I WOULD USE THE WORD POSSIBLE~~

Hedges: Excerpt 2

- C220 Q. NOW I'M NOT TRYING TO BE HYPERTECHNICAL. IS IT YOU
 C221 COULD HAVE AND YOU JUST DON'T REMEMBER, OR YOU DIDN'T?
 C222 A. ~~I DON'T RECALL. I MAY HAVE AND I MAY NOT HAVE. I JUST~~
 C223 ~~DON'T RECALL.~~

Hedges: Excerpt 3

- C253 Q. WOULD YOU BE WILLING TO ASK THE D.A. FOR A COPY OF
 C254 YOUR REPORT TO REVIEW?
 C255 A. ~~IT'S WHATEVER YOU WANT I MEAN.~~

Hedges: Excerpt 4

C282 Q. WHO DID SHE GIVE YOU?

C283 A. ~~I BELIEVE~~ SHE GAVE ME YOUR CLIENT'S NAME AND ONE

C284 OTHER.

C285 Q. ON WHAT DAY?

C286 A. ~~I DON'T RECALL THE DATE. I'M SAYING I DID INTERVIEW~~

C287 ~~HER. AS TO THE DATE, I CAN'T TELL YOU THAT I DON'T RECALL~~

The highlighted phrases in each of these four excerpts demonstrate that the respondent is expressing uncertainty and / or avoiding a rigid commitment, meeting O'Barr's definition (1982: 67). However, O'Barr does not specifically include any of these forms or even similar forms in his quantification of hedge frequency in witness testimony.

Now consider a fifth excerpt:

Hedges: Excerpt 5

E57 Q. THE FIRST NIGHT YOU TALKED TO THE POLICE, FRANCIS

E58 BEGBIE WASN'T IN CUSTODY; ISN'T THAT TRUE?

E59 A. NO, SIR.

E60 Q. OKAY. AND YOU SAID YOU DIDN'T WANT TO SAY HIS

E61 NAME BECAUSE HE WASN'T IN CUSTODY?

E62 A. YES, SIR.

E63 Q. BUT HE WASN'T IN CUSTODY FEBRUARY 21ST, 1995?

E64 A. YES, SIR. ~~WELL~~, I FELT LIKE ~~MAYBE~~ I SHOULD HAVE DID

E65 SOMETHING.

The words "well" and "maybe" qualify as hedges in both Lakoff's and O'Barr's

classifications, respectively (although O’Barr considers “well” to be primarily a “‘meaningless’ particle”). However, it is unlikely that this speaker’s motivation in this response is to express uncertainty or to avoid commitment to his claim that he felt as if he should have done what it was he felt should have done. Rather, these hedges evidence strategic politeness (Brown and Levinson 1978: 172). Even though this speaker is discussing his own feelings, his response is strategically hedged to avoid being rebuked by the cross-examining attorney in the event that his answer is something other than what the attorney wants to hear.

I do not feel compelled at this juncture to redefine what constitutes a hedge for analysis of my data. Discourse-level phenomena are potentially ambiguous in their multi-functionality (Tannen 1993; 167-8), and hedges are no exception. However, I do need to point out that examples of hedges in the discourse literature are limited, and do not satisfactorily characterize the multitudinous expressions that witnesses use to carry out the function of hedging in cross-examination, as shown in my data. While I will not redefine hedges to accommodate my data, I do feel that it is important to fully document the hedges that occur in my data. I have developed a categorization which includes a comprehensive listing with corresponding examples of hedges from my data that will apply toward my analysis, below. The hedges occurring in the data and specifically mentioned in the literature (Brown and Levinson 1978: 150-78, Lakoff 1975: 53-4, O’Barr 1982: 63-75) are in red, below; the balance are novel forms in that they do not appear in the literature. In the Appendices (B-F), however, all of the following hedges, both old and new, are in red.

HEDGES

TEMPORAL HEDGES

sometimes (F26)	at the time (B36)	(only) recently (D221-2)
not every time (F28)	then (D11)	within a day or two (F120)
(at) one time (E852)	shortly (C164)	a minute or two (E164)

a few times (E308)	as of yet (D152)	a second (E629)
(even) at that time (C20)	eventually (C19)	whenever (C289)
one of those times (F123-4)	the very next day or a few days later (C231-2)	

MEASUREMENT HEDGES

several (C189)	a little (E309)	not that far (E614)
a bunch of (E785)	not much (F70)	like about (E591)
a (whole) lot of (F128)	or better (C123)	about (C194)
more than (D150)	at the most (E161-2)	approximately (C123)
	a small amount of (D174)	

RELEVANCY HEDGES

I mean (C255)	oh (D160)	if you remember (E603)
you know (F43)	look (D206)	if I said correctly (E 604-5)
well (F81)	now (D210)	I'm sorry (E652)
okay (E652)	let's see (E647)	it's like I told you (E756)

CAUSALITY AND EVENTUALITY HEDGES

(most) probably (C272) possibly (D44) all depends (E196)

if and then clauses: if that's what it said (E136) / if that's what I wanted to do (E188)

then it worked, then I've got a lift (B13)

EMPHATIC HEDGES

exactly (D20)	(nothing) at all (C215)	absolute / absolutely (C236)
real / really (C172)	certainly (D153)	never (D140, 142)
very (C56)	I'm telling you (C218)	I'm sure (C27)
truly (C167)	I'm saying / I said (C286)	

yes, that's what he did (F49) yes, that's what he was (D215)

GENERAL MITIGATORS

generally (D83)	simply (C353)	kind of (E767)
basically (E261)	whatever (F168)	just (C185)
apparently (C32)	these (F123)	pretty (close) (C97)
essentially (D100)	those (F34)	kind of like (E257)
really (D221)	maybe (C194)	only (D228)
	perhaps (D186)	

I (would) agree (C132) it's hard to explain (E258) somewhere (in there) (C32)

say clauses: (it) says ["but I do not vouch for"] (B7, B8)

tense modals and auxiliaries: may (have) (C172), might (C105), would be (C97), etc.

VALIDITY DISCLAIMERS

I guess (F26)

I know / knew (C135)

all I know is (B9)

I believe (B35)

I'm pretty sure (E440)

I can tell you (C31)

I think (F137-8)

I understand (C168)

all I can tell you is (B39)

(that is) my best recollection (C302-2)

as I (came to) see it (D209)

all I can tell you from my memory is (that) (C177)

as far as I thought (E514)

I can only tell you from my recollection (C317)

not to my knowledge (E443)

it's been two years (E89)

not that I know of (E36)

it's hard to say (E89)

I'm not (real) sure (C194)

I have no idea (C121)

I truly don't know (C167)

I'm not certain (D155)

I'm not saying that (C183)

I don't know (if / why / where, etc.) (F31)

I can't tell you that (B10)

I don't know anything about (C215)

I can't say that (C142)

I don't have an exact date. (B38)

I swore (E514)

I could have sworn (E595)

... and that's about all I can say (C145-6)

I don't know anything about (C215)

I don't recall (if / how, etc.) (C18)

I don't recall the circumstances (C119)

I can't remember ... (what / how many / when / how long, etc.) (F183)

yes, but ... clauses: yes, ... but that charge was going to be dropped (E410)

yes, because clauses: yes, ... because I wrecked that car (E398)

AVOIDANCE HEDGES

It appears to be. (C347)

If that's what you say. (E99)

It's whatever you want. (C255)

I have nothing to hide. (C245)

I don't recall ... (C207)

(There's a) possibility in either direction. (B17)

I can tell you ["but I won't tell you any more than"] (C31)

tense modals and auxiliaries: might (have been) (E811), could (be) (E670), etc.

tautologies: I may have and I may not have. (C222)
 I did what I did. (E382)
 If it's there, it's there. (C245-6)

These categories are not meant to be rigid classifications, but are meant to highlight functional similarities with respect to their occurrence in the data. Due to their multifunctionality (mentioned above) many hedges arguably figure into more than one category (e.g., “just now” versus “I just don’t remember”). Also, “I don’t recall” (C199) is a special case: in my data, it operates as a hedge on “I don’t know.” “I don’t know” independent of clausal conditions (why, how, etc.) is not a hedge; it is a statement of a cognitive state.

Despite the classification I elaborated above, for the purpose of data analysis, I treat all hedges as a single category, since there is no evidence in the literature that certain hedges are perceived as more or less powerful forms. Furthermore, if my purpose is to count isolated hedges in the data, I need to determine whether or not some forms count multiply due to a multi-dimensional hedging function. Consider the following excerpt:

C218 A. I DON’T RECALL. I’M TELLING YOU, I JUST SIMPLY DON’T
 C219 RECALL.

Does the response in C218-9 represent one hedged proposition, two hedges, or more? A case could be made that it contains two hedged sentences and therefore two functional hedge groupings:

(I don’t recall.)¹ (I’m telling you, I just simply don’t recall.)²

or that it contains three phrasal hedges:

(I don’t recall.)¹ (I’m telling you,)² (I just simply don’t recall.)³

or that, by my categorization scheme, it contains five distinct hedges:

(I don’t recall.)¹ (I’m telling you,)² [I (just)³ (simply)⁴ don’t recall.]⁵

Even though all three methods seem direct enough and potentially adequate, other

considerations create complications with any and all of these approaches. For example, the problem of hedges embedded in hedges via the use of forms such as modals obstructs a straightforward count of hedges, as in the following:

C167 A. I BELIEVE IT WAS ASSIGNED – I TRULY DON'T KNOW, BUT I

C168 ~~COULD~~ ONLY TELL YOU I UNDERSTAND IT WAS ASSIGNED TO [...].

In this example, is the inflection of “can” in “I could tell you” a hedge apart from the phrase “I can tell you”?

My solution is simple: as I can neither assign a relative power rating nor distinguish authoritative counts of multi-level hedges, my quantification will be concerned as much with demonstrating where witnesses don't use hedges as it is with how many they do use. Toward this end, I represent, in the following table, which witnesses' responses are hedged (to any extent, in any way or ways as discussed in the previous sections) and which witnesses' responses are not hedged. I provide a percentage of hedged responses of the total responses for each witness. Conventionalized responses, such as return greetings (C3), are not considered in the number of total responses as they are unlikely to be hedged in the way responses to questions during cross-examination are.

Table 7

Hedges in the Data: Hedged vs. Non-Hedged Responses				
Witness	Hedged	Non-Hedged	Total Responses	% Hedged
Officer Bird	8	10	18	44.4
Officer Connery	51	16	77	66.2
Dr. Superior	23	30	53	43.4
Mark	82	153	235	34.9
Fiona	20	44	64	31.3

Despite the restrictions I imposed, I have found the results of this method of quantifying hedges in the data to be quite revealing. Based on my familiarity with the data, I have found that this representation of the witnesses' respective use of hedges accurately reflects their language use, both in general and in terms of which witnesses demonstrate more or fewer hedge forms. Officer Connery, who employs the salient idiosyncratic hedge phrase, "I just simply don't recall," as a personal marker (Lakoff 1975: 59; see "Women's Language as Powerless Language" in Chapter 2), predictably scores the highest in frequency of hedged responses. The other two expert witnesses, Officer Bird and Dr. Superior, follow as the respective second and third most productive witnesses in hedge use by a substantial margin, indicating that this aspect of their individual speech styles is markedly different from that of Officer Connery's.

Fiona and Mark hedge less than do the officers and the doctor, which is a result that may seem unexpected at first. This result is explained, however, through the reciprocity of forms in the discourse. Responses containing certain hedges, such as the preface hedges "I guess," and "I think," for example, exclude copy forms, and vice versa, by definition. In the following excerpt, the addition of "I believe" transforms a response from a copy (i.e., "Yes, Sir; that's correct," in response to: "Is that correct?") to the hedged response in C228:

C227 Q. SHE RESIDED AT 966 WEST PRESIDENT; IS THAT CORRECT?

C228 A. YES, SIR; ~~I BELIEVE~~ THAT'S CORRECT.

I conclude that the quantification of hedges for the purpose of determining power as a function of speaker style is informative, but, as with the copies discussed in the previous section, is useful only with reference to context.

Questions

According to O'Barr (1982: 61-75), questions that the witness asks of the examining attorney are indiscriminately assessed as being powerless. However, in O'Barr's recorded data, there are only two instances of a single witness, "Witness A," asking the examining attorney a question out of over four hundred responses from six total witnesses (67, 128-31); the questions (highlighted) include:

Q. Well, [...] do you know which direction you were headed?

A. ~~Yeah, which way do you go to Duke Hospital? Seems like you're headed west, is that right?~~

(O'Barr 1982: 130)

Q. Do you-do you have any idea of the speed that he was driving the ambulance?

A. No, sir, I'm not sure about that-you know-it couldn't have been too-too fast. ~~Maybe thirty, thirty-five?~~

(O'Barr 1982: 130)

The first is a request for confirmation in the form of a syntactically recognizable question structure and a hedged statement followed by a tag question. The second is also hedged, and is considered to be a question due to its being used in conjunction with rising intonation, despite a "normally declarative context" (67).

My data did not contain any questions of these types, probably for two reasons. The first is that O'Barr's examples are taken from direct examination only, which is less adversarial than cross-examination. It is not surprising that a witness might request information or confirmation from an attorney who is aligned with the same party as is the witness but would decline to do so with an attorney for the opposition.

The second reason has to do with the transcription system used by the court reporter (see Chapter 3 "Transcription"). A court reporter punctuates the record of

testimony not only to reflect supposedly correct grammar and syntax but also according to the role assignment of the speaker. Thus, attorneys' turns at speaking are routinely recognized and labeled ("Q") as questions (and witnesses' turns are always labeled "A" for "answer") even though they may not actually be structured as questions according to the criteria of syntax and / or intonation. Consider the following attorney's turns:

D2 Q. YOU STATED THAT YOU WERE THE DIRECTOR OF THE
D3 CHEMICAL DEPENDENCY UNIT?

and:

D16 Q. YOU NO LONGER WORK FOR ANY TYPE OF HOSPITAL OR
D17 ANYTHING LIKE THAT?

Presumably, the court reporter indicates that the examining attorney's turns above constitute questions by appending the question mark punctuation in response to their being used in conjunction with rising intonation. Now consider:

D203 Q. SO YOUR TESTIMONY WAS DESIGNED TO SAY HE DID NOT
D204 HAVE A SPECIFIC INTENT TO KILL THOSE INDIVIDUALS BECAUSE
D205 HE WAS ALCOHOL IMPAIRED.

D206 A. LOOK, YOU'RE A LAWYER --

D207 Q. ANSWER MY QUESTION, PLEASE, DOCTOR.

D208 A. I DON'T KNOW THE ANSWER TO YOUR QUESTION [...]

This excerpt is unlike those above; here, both the attorney and the witness refer to the statement made in D203-5 as a question by virtue of its being issued by the examining attorney despite the fact that no question mark appears in the transcript, indicating presumably that D203-5 was uttered with the flat or falling final intonation of a statement. Conversely, declaratively structured witnesses' responses with rising intonation may not always be transcribed with a question mark for the reason that, by

definition, their turns are supposed to consist of answers and not questions. The uptake, or the perception of the force of the interactants' utterances, is affected by their respective roles in the institutional setting of the courtroom (Searle 1975). Accordingly, a court reporter might choose to omit evidence of intonational patterns, i.e. question marks, that do not match the institutionally mandated "answer" function of the response (see "Transcription Conventions" in Chapter 3).

The declarative-type questions and information-seeking questions that O'Barr finds in his data are not apparent in the speech of the witnesses in my transcript, either because they are not used by the witnesses or because they are not recorded as questions by the court reporter. However, other questions forms do appear in my data, which I classify as either clarification requests or overrides. Clarification requests receive mention in the literature (e.g. James and Clarke 1993, Wood 1996), and I define clarification requests as petitions by the hearer for a repetition or explanation of something the speaker has said that was inaudible or otherwise unclear to the hearer. Overrides is a term I use in reference to attempts by the witness to (temporarily) reverse the question / answer format of cross-examination (see Chapter 4 "Conversation Analysis"). Clarification requests and overrides are distributed in the data according to the following table:

Table 8

Witnesses' Question Types in the Data

Witness	Clarification Requests	Overrides	Total
Officer Bird	0	0	0
Officer Connery	0	0	0
Dr. Superior	0	1	1
Mark	10	2	12
Fiona	1	0	1

In Appendices B-F, clarification requests and overrides are outlined in blue. I have not included “Sir?” in the following excerpt in my classification of witness-initiated questions:

E505 Q. MR. RENTON?

E506 A. SIR?

E507 Q. YOU REALLY DON'T KNOW WHEN YOU HAD THAT BENCH

E508 WARRANT ISSUED FOR YOU IN THE DRUG COURT; DO YOU?

Here, “Sir?” conveys that the witness is attentive and cooperating with the attorney in response to the attorney’s summons. “Sir?” in this context is less interrogative and more akin to a declarative “Yes.”

Clarification Requests

Clarification requests are questions designed to elicit information in explanation of any ambiguity perceived by a respondent, including definition of referents, auditory difficulties, etc. The clarification requests in the data take the form of: “What you mean?” (F11), “When was that?” (E34), “For me?” (E668), “Who?” (E687), “Huh?” (E170, E230, E283), “When?” (E765), “Why I didn’t turn myself in?” (E302), “When they were walking away from me?” (E530), and “The day of the line-up? When I picked them out of the line-up?” (E24-5). Although the last example consists grammatically of two separate questions, the two subcomponents have the force of asking a single question, since “When I picked them out of the line-up?” is itself a clarification of the clarification question: “The day of the line-up?” Clarification requests might seem to be weak or powerless forms of language use in that they represent appeals for information. In this data, the clarification requests are all directed toward the cross-examining attorney. Requests for information can succeed only when the individual questioned complies by providing the requested information.

However, a case can be made that clarification requests are in fact an expression of power. First of all, the clarification requests are responses to questions for which the cross-examining attorney is seeking particular concise answers, such as yes or no, the time at which an event occurred, its duration, etc. (see “Copy Forms” above). Failure to answer is disruptive to the cross-examination process and makes extra work for the attorney. For example, the attorney is compelled to refine his question in F11, E230, E34, E668, and E687 to procure a response. The disruptiveness of the clarification response in E302 is compounded by the fact that the witness also interrupts in anticipation of what the attorney is in the process of asking:

- E300 Q. I KNOW, BUT AFTER YOU QUIT, WHY DIDN'T YOU GO BACK
 E301 TO THE DRUG COURT AND SAY --
 E302 A. WHY I DIDN'T TURN MYSELF IN?
 E303 Q. EXCUSE ME. I GOT A QUESTION.

The attorney makes overt reference to the dictated question / answer format of cross-examination in E303 in order to regain control of the discourse.

Research supports the theory that clarification requests are disruptive and dispreferred by institutional representatives (Philips 1984, Wood 1996). Wood's study findings suggest that potential jurors in voir dire proceedings are much less likely to be excused if they ask questions of the judge, including clarification requests (1996). Philips comments on clarification requests as belonging to a category of responses that are less constrained than copy forms (1984: 233-4); the lower the incidence of copies in a witness' responses, the less the institutional representative demonstrates control of the interaction. Clarification forms, then, are powerful enough for weak participants to use them in order to purchase temporary control of the floor.

Overrides

Overrides are blatant violations by the witness of the fixed turn-sequencing of cross-examination. Three witness-initiated questions functioning as overrides occur in my data and are outlined in blue in the following excerpts:

Overrides: Excerpt 1

E540 Q. OKAY. YOU COULDN'T TELL WHAT KIND OF HAIRDO'S

E541 THEY HAD UNDER THAT HOOD; COULD YOU?

E542 A. NO, SIR.

E543 Q. OKAY.

E544 A. CAN I RESTATE THAT? I COULDN'T TELL WHAT KIND OF

E545 HAIRDO'S THEY HAD AT THAT TIME WHILE THEY WERE WALKING

E546 AWAY FROM ME.

Overrides: Excerpt 2

E809 Q. YOU WERE EXPOSED TO FIVE YEARS IN THE DRUG COURT;

E810 WEREN'T YOU?

E811 A. MIGHT HAVE BEEN.

E812 Q. YOU DON'T EVEN KNOW?

E813 A. NO.

E814 Q. YOU ONLY GOT THREE, THOUGH; DIDN'T YOU?

E815 A. SIR, I'M IN JAIL WITH ONE OF THEIR BROTHERS RIGHT NOW,

E816 SAME PENITENTIARY. SOUND LIKE I GOT SOMETHING OUT OF

E817 THAT?

Overrides: Excerpt 3

D172 Q. OKAY. AND WHAT WAS THE SUBJECT OF YOUR TESTIMONY

D173 IN THE WESSINGER CASE?

D174 A. MAY I HAVE A SMALL AMOUNT OF LATITUDE, YOUR

D175 HONOR?

D176 THE COURT: YOU CAN ANSWER THE QUESTION.

The first two questions, both from Mark, are rhetorical in effect. In the first, Mark realizes that he has admitted (in E542) to not being able to recognize the “hairdo’s” of the suspects he is being asked to identify at the scene of the murder. He asks: “Can I restate that?” and continues to refine his previous answer without waiting for a response from the examining attorney. In the second excerpt, Mark suspects that the examining attorney is suggesting that his testimony in this case was coerced: the relevant background is that Mark may have had the sentence he is serving reduced from five years to three on the condition that he serve as a witness for the State in this case. Mark’s question in E816-7 represents an objection to what he supposes the attorney’s motivation to be in this line of questioning. His response, far from being powerless, challenges the attorney’s argument.

The last override comes from Dr. Superior. He projects that the length of his upcoming answer (D177-93) may be in violation of the implied maxims of quantity and / or relevance (Grice 1975: 47) as applied to witnesses’ responses during cross-examination, and might therefore be objectionable to the examining attorney. To avoid interference from the attorney, Dr. Superior seeks to secure “a small amount of latitude” from a higher authority: the presiding judge. In this case, Dr. Superior uses his position of power as an expert witness and the power accrued through his familiarity with court

proceedings to create a situation where he will have the opportunity to engage in narrative or to say all he wants to say.

With respect to my data, questions asked by witnesses during cross-examination do not contribute to a powerless speech style. Whether they are challenges or overrides, witnesses employ questions to temporarily redirect the order of cross-examination. Thus, asking questions is indicative of a powerful strategic move, if not a powerful style. Questions are found predominantly in the testimony of the inexperienced or disempowered speakers, Mark and Fiona, but a question also appears in the testimony of Dr. Superior, who is a powerful speaker, when he addresses the even more powerful judge. No question forms occur in the testimony of the law officers. Perhaps their orientation to the legal process or their familiarity with trial dictates render them less willing than the other witnesses to disrupt the flow of testimony by using the specific device of overlap to accomplish their objectives. Also, the officers could be expected to have less of a strategic agenda in the trial relative to participants like Mark and Fiona; their testimony in this case is all in a day's work, and will unlikely affect their lives outside of the courtroom. In any case, the few questions by witnesses that do appear in my data suggest that questions are multifunctional in the context of the courtroom, in that they can be used both in a powerful way, as indicated by my data, as well as in a powerless way, as indicated by prior research (O'Barr 1982).

Hypercorrection

In O'Barr's study (1982), mock jurors rated the speech of witnesses employing hypercorrect forms as being "less convincing," especially "when listeners are most like the speakers" (86-7). In identifying instances of hypercorrection, O'Barr uses Labov's (1972) definition, which includes incorrectly used vocabulary and grammar stemming from the misapplication of imperfectly learned rules. Vocabulary that is "more formal or technical than is normally expected" is included, as is "overly precise enunciation"

(O'Barr 1982: 83), a phenomenon mentioned earlier by Lakoff (1975: 55). However, since phonetic variation is not captured in the trial transcript, it is not considered in this study.

O'Barr's data reveal hypercorrection to be an "unusual" but "not infrequent" style in witness testimony (84-5). The occurrence of hypercorrection in my data generally parallels O'Barr's findings. Of the five witnesses, Officer Connery provides the only clear-cut examples of hypercorrect speech. The most conspicuous usages are shaded in gray in the following excerpts of cross-examination in which Officer Connery responds to the defense attorney's questions:

Hypercorrection: Excerpt 1

C31 A. I CAN TELL YOU I DID ~~SOUGHT OUT~~ THEIR PICTURES. SO
C32 APPARENTLY ~~I DID OBTAIN~~ THE NAMES FROM SOMEWHERE.

Hypercorrection: Excerpt 2

C164 A. ~~IT WAS SHORTLY THEREAFTER~~ THE MURDER THAT I WAS
C165 TRANSFERRED.

Hypercorrection: Excerpt 3

C173 Q. NOW THIS FIRST PERSON YOU GOT THE GUN FROM; HE WAS
C174 A SUSPECT? [...]

C177 A. YES. HE -- ALL I CAN TELL YOU FROM MY MEMORY IS THAT
C178 HE ~~PRODUCED~~ THE WEAPON. I TOOK IT TO THE CRIME LAB FOR
C179 BALLISTICS.

Hypercorrection: Excerpt 4

C183 A. I'M NOT SAYING THAT HE VOLUNTARILY WALKED IN THE
C184 OFFICE. ~~SOMEONE PRODUCED HIM TO ME~~. I DIDN'T -- ~~AS TO HOW~~

C185 ~~ICAME ABOUT THE INFORMATION, I JUST SIMPLY DON'T RECALL~~
 C186 RIGHT NOW.

Excerpts 1 and 2 contain the incorrectly inflected “I did sought out their pictures” and the incorrectly applied adverb, “thereafter,” respectively. These are hypercorrect forms on the syntactic level, resulting from misapplied grammar. The remainder of the highlighted material, though not technically ungrammatical, is hypercorrect by the criterion of its being “stilted and unnatural” in the manner of a person attempting to speak in an uncharacteristically formal style (O’Barr 1982: 83), i.e. “he produced the weapon” instead of “he had the weapon” or “apparently I did obtain the names” versus “I got the names,” etc. These are hypercorrect forms on the lexical level, involving marked vocabulary choices.

In the last excerpt, the expression “I just simply don’t recall” qualifies as a hypercorrect form by virtue of the way it contrasts stylistically with the preceding testimony of the witness; in other words, this phrase is affected and unnatural when uttered by the same witness who struggles with relatively simple grammatical constructions, e.g. “I did sought out their pictures.” Variations of “I just simply don’t recall” appear as a refrain throughout Officer Connery’s testimony: “I don’t recall” (C119, C199, C207, C218, C222, C286, C287, C364, C366), “I simply [...] don’t recall” (C23, C38), “I just don’t recall” (C222-3) and “I just simply don’t recall” (C138, C142, C185, C218-9, C353-4). These stilted expressions appear with greater frequency in Officer Connery’s testimony than the more colloquial forms like “I can’t remember” (C35-6), “I can’t say that” (C142), “I couldn’t really tell you” (C170), “I’m not real sure” (C194), etc., that convey a similar idea. No other witness, including the erudite Dr. Superior, uses “I don’t recall,” but all use more common phrases like “I don’t know [...]” (A66, B6, D232-3, E31). In this way, variations of “I don’t recall” operate idiosyncratically and conventionally, or formulaically, in Officer Connery’s testimony.

In sum, the data from the courtroom present an inverse representation of what Officer Connery would be expected to say in his everyday speech, suggesting that he employs a different register for the purpose of testifying.

While Officer Connery uses many hypercorrect utterances, other speakers use few if any. However, Fiona uses a hypercorrect form in the following:

F42 A. HE DIDN'T MAKE IT. HE WAS JUST BREAKING IT UP. I SAW
 F43 IT, BUT HE WASN'T **DISTRIBUTING**, YOU KNOW, DRUGS IN FRONT
 F44 OF ME.

Additionally, Mark says:

E544 A. CAN I **RESTATE** THAT? I COULDN'T TELL WHAT KIND OF
 E545 HAIRDO'S THEY HAD [...].

While the highlighted words in A43 and E544 are hypercorrect in that they are unusual or even unnatural in the speech of these two witnesses, it is not unlikely that Fiona and Mark are repeating legal lingo they have heard in the context of the legal setting. Neither Fiona's nor Mark's overall speech could be characterized as stylistically hypercorrect, although these two usages are recorded as hypercorrect forms in the following table:

Table 9

Hypercorrect Forms in the Data				
Witness	Lexical	Syntactic	Formulaic	Total
Officer Bird				0
Officer Connery	2	4	20	26
Dr. Superior				0
Mark	1			1
Fiona	1			1

The only formulaic hypercorrect form in the data is “I [...] don’t recall” in the testimony of Officer Connery. Even though this form is also a member of the lexical category of hypercorrect forms, I consider it as an independent category due to its high frequency and specialized use (discussed above).

Fragmented vs. Narrative Responses

O’Barr notes that some witnesses give “relatively brief, ” or fragmented, responses while other witnesses are “more loquacious,” responding in a narrative style (1982: 76). Additionally, O’Barr’s observations indicate that witnesses are “rather consistent in their tendency to use one or the other of these styles” (77). O’Barr provides no specific criteria for assigning a speaker to one group or the other, although in a chart (79) he provides the “average words per answer” for both the responses of the witnesses identified as narrative-style speakers and for the responses of fragmented-style speakers.

O’Barr’s interest in response length stems from his hypothesis that jurors evaluate narrative responses more positively than fragmented responses, and thus constitute “another aspect of the power of speech style in the courtroom” (76). His research supports this prediction generally, if not uniformly. For instance, his test jurors rank males who employ fragmented-style replies with a “particularly low rating” compared to narrative-style male speakers (80). However, the test jurors make less of a distinction between female speakers employing narrative- versus fragmented-style testimony. O’Barr proposes that the test jurors’ biased assessments could be accounted for by “traditional expectations concerning gender-related differences in speech assertiveness” (81), even though this distinction does not apply to the same test jurors’ ratings of the use of other powerless features including hedges, hesitation forms, polite forms, intensifiers, and questions (71-5). Nonetheless, O’Barr’s results indicate that jurors’ find narrative speech generally “more convincing” than fragmented speech.

Not only are O'Barr's results mixed, but his methodology for identifying narrative and fragmented styles is uncalibrated. O'Barr acknowledges that the length of a speaker's response is both influenced and limited by the questioner: longer questions receive longer responses, and longer responses are made possible when lawyers, for whatever reason, relinquish some control to their witnesses (77-8). However, his analysis of his findings makes no reference to the probable impact of question length.

O'Barr also disregards the issue of question types in relation to coerciveness, where research indicates that Yes-No questions, questions that anticipate a yes or no answer, are more coercive than Wh questions, that solicit information regarding "who," "what," "when," "how many," etc. (Danet et al. 1980, Philips 1984) (see section "Copy Forms" above). Logically, the degree of coerciveness of a question may also affect response length. However, O'Barr does not include this factor in the analysis of his results. For example, he could have listed average response length according to question type to provide evidence for this question, but he failed to do so.

Finally, the excerpts of witnesses' testimony considered in O'Barr's research are not uniform in length: the various witnesses' excerpts range from thirty to 131 question-and-answer pairs apiece. Therefore, counts such as average-words-per-response provide incomplete and possibly skewed information in determining a witness's assertiveness during cross-examination.

Taking these limitations as caveats, I have adapted O'Barr's analytic methods to apply to my own data. Since my data concern cross-examination exclusively, as opposed to the combined direct and cross-examination used in O'Barr's work, the lawyers' role is anticipated to be more consistent. Ostensibly, the cross-examining lawyers' imperative of limiting witnesses' responses, such as through selection of question type (see section "Copy Forms" above), will constrain the witnesses' testimony uniformly, resulting in more comparable samples than in O'Barr's data.

The following chart lists the figures used to determine average response length for each speaker:

Table 10

Average Response Length in Data

Witness	No. of Responses	No. of Words	Average Words / Response
Officer Bird	18	195	10.8
Officer Connery	78	694	8.9
Dr. Superior	53	779	14.7
Mark	235	1438	6.1
Fiona	64	406	6.3

I have counted proper nouns, e.g. "Little Hoochie" (F129) and "Hunt Correctional Center" (E241) as one word.

The results are as anticipated in that the two speakers with the longest average responses, Dr. Superior and Officer Bird, are both authoritative figures who do not exhibit other powerless features such as a high incidence of polite forms or hypercorrect forms in their testimony. Officer Connery's intermediate position coincides with the fact that he, too, is an authoritative figure, but that he also demonstrates use of powerless features such as the frequent use of "Sir" and hypercorrect forms. Fiona and Mark are predictably on the low end of the scale, although Fiona, who does not use many polite forms or hypercorrect forms, has marginally longer responses than the incarcerated Mark.

What is not reflected in this chart is that the two speakers with the fewest responses in fact exhibit the longest individual replies of all of the witnesses. One of Officer Bird's responses measures in at 68 words in length, while Dr. Superior's two lengthiest responses average 113.5 words, with the longest consisting of 151 words. Conversely, the lengthiest of Mark's 235 total responses is only 58 words long.

Officer Connery's responses, too, are surprisingly brief; the average of his two lengthiest responses is less than for any of the other witnesses, in spite of his position of authority and the relatively high number of turns in which he speaks (in the excerpt of his cross-examination, he responds 78 times, as compared to Officer Bird's 18 responses). The variation in the witnesses' lengthiest responses is shown in the following chart:

Table 11

Lengthiest Responses in the Witnesses' Testimony (No. of Words)			
Witness	1st	2nd	Avg. Words / Response
Officer Bird	68	39	53.5
Officer Connery	40	37	38.5
Dr. Superior	151	76	113.5
Mark	58	43	50.5
Fiona	49	31	40.0

I conclude that consideration of average-words-per-response as a measure of speaker power is a suggestive but incomplete representation, which needs to be complemented by the incorporation of information regarding question length, length of excerpt, and notation of exceptional individual performance, for example, in addition to contextual information describing the type of interrogation (direct or cross-examination), the witness' role in the trial, etc.

Overlap and Interruption

"Interruptions and simultaneous speech" constitute one of the four styles of speech O'Barr's study analyzes (87-91). Of the four, it is the only style that occurs exclusively in cross-examination in O'Barr's data (87-8). O'Barr refers to the terms "overlapping speech," "interruptions" and "simultaneous speech" loosely.

“Overlapping speech,” says O’Barr, is the result of “verbal clashes” between a lawyer and witness who both want “control over the presentation of testimony” (1982: 88). The reader is left to infer that these verbal clashes ensue from a violation by either party of the implicit rule that only one party speak at a time during the examination. This violation of speaking rights constitutes an interruption. Simultaneous speech refers simply to any instance of two speakers talking at once.

O’Barr’s experiment tested mock jurors’ perception of four speech situations:

1. where no overlap occurs, 2. where the lawyer dominates in interrupting and persisting in simultaneous speech, 3. where the witness dominates, and 4. where “both persevere equally often” (88-9). In all situations where overlap occurred, “the witness is perceived as having greater control” (90). Although the lawyer is perceived as having less control in any situation resulting in overlap, lawyers who yield to witnesses’ interruptions rather than attempt to overpower witnesses regain some of the jury’s favor.

Overlap and Interruption: Data Considerations

The trial transcript I am using is ambiguous with respect to the details of overlap in so far as the conventions of court reporting lack a mechanism for designation of simultaneous or overlapping speech (see above Chapter 6 on “Transcription”). Court transcripts record one speaker speaking at a time, rendering simultaneous speech a nonexistent category. Still, the transcript captures some events of interruption, such as the following example from Appendix F:

F78 Q. WHAT DOES THAT MEAN, HE WAS BREAKING IT UP?

F79 A. ~~HE WAS BREAKING IT UP. I GUESS IT'S HARD -~~

F80 Q. ~~I DON'T KNOW WHAT THAT MEANS~~

F81 A. WELL, IT WAS HARD AND HE WAS --

F82 THE COURT: AD, LET HER ANSWER THE QUESTION.

In this excerpt, the attorney for the defense (the AD) interrupts the witness in F80. The judge, or “the court,” advises the attorney to allow the witness to answer the present question before continuing with new questions (F82). In interrupting when he does (at F80), the attorney is taking advantage of what may be construed, irrespective of other indicators such as intonation and pragmatic intent, as a point of syntactic completion (Ford and Thompson 1996: 143-5): i.e., the attorney treats “I guess it’s hard” as having arrived at a terminal boundary, which, were it the case, would signal his opportunity to resume questioning.

That the witness had not yet come to a point of completion in F79 (possibly indicated by level intonation, for example) when the attorney begins speaking in F80 is substantiated in the judge’s admonition to the attorney, coupled with the court reporter’s use of the transcription convention, “--.” In court transcription, this convention is multipurpose; for example, it marks hesitations and self-corrections made by a speaker within a turn (e.g. B45, E2, E82, E148, D99) and resumption of an interrupted turn (e.g. F168, F170-1, F173; C89, C91; E494, E496) as well as where interruptions are initiated. Although the convention for recording interrupted speech is multifunctional and thus ambiguous, there is enough information provided in the data to merit consideration of an overlap / interruption category for clear-cut cases like the one exemplified above (F78-82).

The following chart displays the gross number of witness-initiated overlap and / or interruption in the transcript as a general category:

Table 12
Witness-Initiated Overlap / Interruption in Data

Witness	Overlap / Interruption	Total
Officer Bird		0
Officer Connery	C90, C364	2
Dr. Superior		0
Mark	E251-2, E257-8, E302, E384, E601, E672, E740	7
Fiona	A53, A169, A172	3

Officer Bird and Dr. Superior do not overlap; all other excerpts contain witness-initiated overlap / interruption.

Defining Overlap

This information alone reveals little. The distinction between overlap and / or interruption in the literature provides more insight. In a 1973 Linguistic Institute lecture, Schegloff distinguishes overlap from interruption (Bennett 1981: 172-3). He claims that the term “overlap” applies to a situation where one speaker begins speaking at “what could have been a completion point of the prior speaker’s turn,” but that “interruption” occurs when a speaker begins speaking “in the middle of a point that is in no way a possible completion point for the turn.”

Tannen distinguishes the two using different criteria. “Overlap,” which she considers to be neutral, occurs in “symmetrical” conversations, but “interruption,” which is negative, occurs when one party dominates (1994b: 232-3). Furthermore, overlap can be disruptive, interfering with the direction of the current speaker’s turn, or supportive, demonstrating interest in the speaker’s topic (1994a: 63).

In the court reporter's transcript that is my data, the above distinctions between overlap and interruption do not exist, since the court reporter transcribes all instances of co-occurring speech in the same way. Therefore, for my purposes, I refer to all instances of interrupted speech as indicated in the transcript as overlap. I assign each of the overlaps in my data to one of three categories, which I call cooperative, anticipatory or disruptive. Cooperative overlap shows support and / or encouragement for the speaker by the listener, as in the form of "back channels" like "aha" and "oh yes" (Brown and Yule 1983: 92). Officer Connery is the only witness to use a back channel.

C88 Q. OFFICER CONNERY, JUST SO WE CAN GET OUR TIME LINE

C89 CORRECT --

C90 A. SURE

C91 Q. -- THE MURDER HAPPENED ON JANUARY 10, 1995; IS THAT

C92 CORRECT?

C93 A. YES, SIR.

Disruptive overlap serves the opposite function of cooperative overlap.

Disruptive overlap frustrates the current speaker's utterance without regard for whether or not the current speaker is near completion of her turn. Only two witnesses employ disruptive overlap in the data and both use the overlap to regain the floor. One is Fiona, who interrupts the attorney to elaborate on her previous answer:

F50 Q. HE WOULDN'T DO IT IN YOUR HOUSE. IS THAT WHAT

F51 YOU'RE TELLING THE JURY?

F52 A. YES.

F53 Q. AND AS TO WHAT YOU'RE TELLING --

F54 A. AND THAT WAS THE FIRST TIME TOMMY EVER DID THAT. I

F55 ~~NEVER SEEN HIS DRUGS ON HIM BEFORE. I KNEW HE SOLD IT, BUT~~

F56 ~~I NEVER SEEN THEM UNTIL THAT DAY~~

The other is Mark, who also employs disruptive overlap to amend his previous response:

E380 Q. OH, BY THE WAY, THE NEXT DAY, DID YOU WRECK THAT

E381 CAR?

E382 A. YES, SIR.

E383 Q. JANUARY THE --

E384 A. ~~NOT THE NEXT DAY.~~

E385 Q. SIR?

E386 A. NOT THE NEXT DAY.

The final classification, anticipatory overlap, accounts for all remaining overlap. It is the most frequent form of overlapped speech in the data. Anticipatory overlap occurs when the listener projects the speaker's intent and interrupts for the purpose of responding to the projected utterance before the completion of the speaker's turn. Anticipatory overlap falls in between cooperative and disruptive overlap in terms of the degree of intrusiveness resulting from the interruption. Some instances of anticipatory overlap demonstrate the witness' willingness to cooperate. In the following excerpt, Mark's overlaps (E251-2 and E257-8) are part of a joint attempt by Mark and the cross-examining attorney to describe the immediate effects of smoking crack:

E249 Q. AND IT ONLY LASTS FOR A COUPLE OF SECONDS AND YOU

E250 JUST --

E251 A. ~~THE INITIAL BUZZ. THE BUZZ THAT YOU FEEL WHEN YOU --~~

E252 ~~WHEN YOU'RE DOING IT, IT ONLY LASTS A SECOND - A MINUTE~~

E253 Q. AND WHAT IS THAT BUZZ?

E254 A. IT JUST MAKES YOU REAL AWAKE. GIVES YOU A RUSH.

E255 Q. MAKES YOUR SYSTEM RUSH, LIKE PINS AND NEEDLES IN

E256 YOUR BLOOD, OR --

E257 A. ~~NO. JUST MAKES YOU RUSH, YOU KNOW, KIND OF LIKE --~~

E258 ~~IT'S HARD TO EXPLAIN~~

E259 Q. I CAN UNDERSTAND.

Other instances of anticipatory overlap result from the witness' seeming impatience with a line of questioning. In the following excerpt, Fiona demonstrates her firm adherence to her initial response (F164, F167), that she doesn't remember what season it was when she received a particular phone call, using anticipatory overlap:

F163 Q. I MEAN, WAS IT SPRING, THE SUMMER, THE FALL?

F164 A. WHATEVER SEASON IT WAS WHEN HE TOLD ME. I DON'T

F165 REMEMBER.

F166 Q. WHAT DID YOU SAY?

F167 A. I DON'T REMEMBER.

F168 Q. YOU DON'T REMEMBER IF IT WAS --

F169 A. ~~NO.~~

F170 Q. -- IN THE SPRING OR THE SUMMER OF '95 OR THE FALL OF

F171 '95 OR THE WINTER OF '95 --

F172 A. ~~NO.~~

F173 Q. -- OR THE SPRING OF '96?

F174 A. NO.

No set of conditions proposed by the examining attorney will change her response, so she does not wait to hear those conditions before responding in A169 and A172.

The following chart exhibits the types of overlap used by each witness:

Table 13

Types of Overlap in Data

Witness	Cooperative	Anticipatory	Disruptive	Total
Officer Bird				0
Officer Connery	C90	C364		2
Dr. Superior				0
Mark		E251-2, 257-8, 302, 601, 672, 740	E384	7
Fiona		F169, F172	F53	3

If the use of overlap is indicative of a powerful speech style, one might expect the police Officer Bird and Dr. Superior, the two witnesses who consistently use the fewest powerless features, to overlap more than the other witnesses. However, Officer Bird and Dr. Superior do not ever overlap the examining attorney. This may reflect their respective knowledge of the norms and expectations of cross-examination as professionals or as individuals. In contrast to the other two authority figures, Officer Connery engages in one instance each of cooperative and anticipatory overlap. With respect to the expert witnesses only, Officer Connery's divergent use of overlap parallels his idiosyncratic use of powerless features such as "Sir" and hypercorrect forms. Officer Connery is the only witness to use supportive overlap, which comes in the form of a back channel ("sure" C90).

Although Officer Connery's overlap is unusual in the context of the expert witnesses, the witness who engages in the most overlap overall is Mark, the inmate whose testimony is filled with evidence of powerlessness (as in his use of "Sir" and copy responses, for example). The nineteen-year-old lay witness, Fiona, engages in a few instances of overlap, too. Thus, my data suggest that a tendency to overlap correlates with a powerless style, regardless of what juror perceptions such as those projected by O'Barr might be. My findings are in opposition to O'Barr's claims, which promote overlap / interruption as a characteristic of a powerful speech style and which he uses to go so far as to recommend overlap as "an effective technique for witnesses" (1982: 88-91, 121).

Quotatives and Gestures

Directly quoted speech (as opposed to paraphrases) and gestures are two of the forms targeted in O'Barr's analysis as traits of a powerless speech style (O'Barr 1982: 61-75). Quoted forms would not be expected to figure prominently, as they are generally impermissible in American courts as hearsay (American Bar Association 1994: 42, 558-9), and in Louisiana courts specifically under Article 802 of the Louisiana Code of Evidence. There are some exceptions however, including the circumstance of "spontaneous exclamation" or "excited utterance," where a speaker may be quoted if it can be demonstrated that the speaker was "under enough emotional stress to say things 'spontaneously' [and] without the ability or will to edit his utterances for the listener," (Elwork, Sales and Suggs 1981: 42-3; see also American Bar Association 1994: 42 and the Louisiana Code of Evidence: Art. 803).

There are no clear-cut incidences of quoted speech in the data. Witnesses avoid direct quotations in places where direct quotations would be most likely to occur, as in response to questions like the following:

Quoted Speech: Excerpt 1

F181 Q. OKAY. THIS PERSON ON THE OTHER END OF THE PHONE,
 F182 THEY SAID THEY SHOT HIM IN THE HEAD THREE TIMES?

F183 A. I DON'T REMEMBER HOW MANY TIMES. ~~I JUST REMEMBER~~

F184 ~~HE GOT SHOT IN THE HEAD~~

and in:

Quoted Speech: Excerpt 2

C49 Q. WHAT DID HE TELL YOU? DID HE TELL YOU HE DIDN'T

C50 KNOW WHO IT WAS, HE DIDN'T GET A GOOD SIGHT, HE DIDN'T SEE

C51 HIM, IT WAS TOO DARK?

C52 A. ~~HE SAID THAT HE DIDN'T KNOW.~~

In Excerpt 1, the witness avoids copying the quotative suggested by the attorney's question, opting for an agentless report. In Excerpt 2, the quotative appears, but the witness quotes the most uninformative possible response.

The only near-quoted speech is in the following excerpt:

Quoted Speech: Excerpt 3

F123 A. THEY -- YEAH. THEY CAME TO MY HOUSE. ONE OF THOSE

F124 TIMES THEY TOOK ME TO THE STATION AND ASKED ME ~~WHAT~~

F125 ~~WAS THE WORD ON THE STREET.~~

Some ambiguity arises as a result of the syntax of the object of the "asked me [X]" clause. The wording suggests that Fiona's response can be interpreted as meaning: "The detectives [...] asked me: 'What [i]s the word on the street?'" However, the past tense "was" more probably indicates that Fiona is characterizing a past action rather than re-enacting the detectives' actual speech. The uninverted word-ordering is indicative not of

question formation, but rather of Fiona's individual speaker style.

Deictic forms, or terms such as "this" and "now" (see "Discourse Analysis" Chapter 4), are referred to as gestures when they are used in the context of physical descriptions (O'Barr 1982: 67). The only gesture specifically mentioned by O'Barr is "over there" (67).

In my data, these forms are rare. Mark demonstrates the sole usage of deictics in a gestural description in the following:

E693 A. NO. WHEN I SEEN HIM HE WAS RIGHT BESIDE MY CAR

E694 WALKING UP. ~~LIKE HERE'S THE SIDE OF MY CAR, HERE'S THE~~

E695 ~~PASSENGER SEAT~~. HE WAS -- WHEN I CAUGHT HIS EYE, ~~I'M~~

E696 ~~LOOKING RIGHT HERE. I CAUGHT HIM LIKE RIGHT HERE~~, WALKING

E697 UP.

In this excerpt, the present tense "here [i]s" and "I [a]m looking" serve the same function as the deictic form "here"; they are both active in Mark's recreation of the events he is describing. The paucity of both gestural deictic forms and quoted speech in the data prevent my ability to comment on these forms as operating in a powerful or powerless way in the speech of the witnesses.

CHAPTER 6: CONTEXTS OF USE OF WITNESS STRATEGIES

In the last chapter, I examined my data for evidence of powerlessness after the style of studies like O'Barr's (1982) and Philips' (1984), which hold that powerlessness is manifest in speakers' election of certain features, like polite forms and hedges, and response-types, including copies. In this chapter, I will introduce several strategies that I claim can encode power in the witnesses' language but are not treated in the literature (see "Contrasting Versions" Chapter 2). I have divided these strategies into two groups, depending on whether they operate at the level of the speaker turn or at a broader level of discourse. The strategies evident at the level of the speaker turn I will refer to as turn-level strategies. Those features that characterize witnesses' linguistic behavior throughout the discourse I will speak of in the context of individuals' global discourse strategies.

Turn-Level Strategies

Some of what witnesses accomplish in their language occurs within the construct of a single turn; I call these turn-level strategies. Among the turn-level strategies that I have identified are overrides and challenges, evaluative responses, and reformulations. I began my discussion of overrides, which are violations by the witness of the fixed turn-sequencing of cross-examination, in the "Questions" section of the previous chapter. I will continue this discussion here, in connection with a related form, challenges. I will also introduce additional turn-level strategies I have analyzed as being strategically deployed in my data.

Overrides and Challenges

I group overrides and challenges together for the purposes of this discussion because they serve a related function, which is to disrupt the flow of cross-examination. Some overrides are challenges (e.g., E816-7); some challenges comprise a subset of overrides, such as challenges phrased as backward-pointing questions. Both challenges and overrides function as powerful speech strategies, in that witnesses employ these forms in order to overcome structural and / or topical constraints of the examination, if only for the moment.

Overrides

Overrides are blatant violations by the witness of the fixed turn-sequencing of cross-examination. In my data, witnesses execute an override by asking a question where an answer is required. The question is most often directed to the examining attorney with the exception of one instance in which a witness, Dr. Superior, bypasses the lawyer in order to ask the judge a question D174-5. The three overrides in my data include the following (outlined in blue):

Overrides: Excerpt 1

E540 Q. OKAY. YOU COULDN'T TELL WHAT KIND OF HAIRDO'S

E541 THEY HAD UNDER THAT HOOD; COULD YOU?

E542 A. NO, SIR.

E543 Q. OKAY.

E544 A. CAN I RESTATE THAT? I COULDN'T TELL WHAT KIND OF

E545 HAIRDO'S THEY HAD AT THAT TIME WHILE THEY WERE WALKING

E546 AWAY FROM ME.

Overrides: Excerpt 2

E809 Q. YOU WERE EXPOSED TO FIVE YEARS IN THE DRUG COURT;

E810 WEREN'T YOU?

E811 A. MIGHT HAVE BEEN.

E812 Q. YOU DON'T EVEN KNOW?

E813 A. NO.

E814 Q. YOU ONLY GOT THREE, THOUGH; DIDN'T YOU?

E815 A. SIR, I'M IN JAIL WITH ONE OF THEIR BROTHERS RIGHT NOW,

E816 SAME PENITENTIARY. SOUND LIKE I GOT SOMETHING OUT OF

E817 THAT?

Overrides: Excerpt 3

D172 Q. OKAY. AND WHAT WAS THE SUBJECT OF YOUR TESTIMONY

D173 IN THE WESSINGER CASE?

D174 A. MAY I HAVE A SMALL AMOUNT OF LATITUDE, YOUR

D175 HONOR?

D176 THE COURT: YOU CAN ANSWER THE QUESTION.

These overrides, which I discussed in Chapter 5, are moves by the witness that temporarily redirect the order of cross-examination and are thereby powerful uses of speech by witnesses whose role, by definition, is relatively powerless.

Challenges

The override in the second excerpt: "Sound like I got something out of that?" is powerful not only in that it is a reversal of questioning order, but also in that it functions as a challenge. In my data, a challenge is a statement made by a witness in response to a question by the examining attorney that indicates both to the attorney as addressee and

to the courtroom audience that the witness challenges the lawyer's basis for asking that question. Witnesses use challenges to dispute the validity of the examining attorney's questions, thereby undermining the examining attorney's status as an authority figure in the courtroom.

Dr. Superior issues a conspicuous challenge in the following:

D203 Q. SO YOUR TESTIMONY WAS DESIGNED TO SAY HE DID NOT
D204 HAVE A SPECIFIC INTENT TO KILL THOSE INDIVIDUALS BECAUSE
D205 HE WAS ALCOHOL IMPAIRED.

D206 A. LOOK, YOU'RE A LAWYER --

D207 Q. ANSWER MY QUESTION, PLEASE, DOCTOR.

D208 A. I DON'T KNOW THE ANSWER TO YOUR QUESTION, BECAUSE
D209 MY TESTIMONY WAS THE TRUTH, AS I CAME TO SEE IT, AND IT
D210 WAS ABSOLUTELY WITHOUT PRESSURE IN ANY WAY. NOW THE
D211 INTENT OF THE ATTORNEY, THAT'S JUST ATTORNEYS. THAT'S
D212 THEIR BUSINESS.

The examining attorney appeals to role integrity, which assigns the role of questioner to the attorney, and the role of answerer to the witness, to overcome the Doctor's violation of turn ordering. He interrupts Dr. Superior's challenge in D206 ("Look, you're a lawyer --") by asking the doctor to answer his question in D207 ("Answer my question, please, Doctor").

Dr. Superior's challenge is an objection to the message implied by the attorney through a series of preceding questions in D164-D205 (see "Discourse Analysis" on implicatures in Chapter 4). These questions include:

D168 Q. AND IN THAT CASE DID YOU TESTIFY THAT MR. WESSINGER

D169 DID NOT KNOW WHAT HE WAS DOING BECAUSE HE WAS
D170 ALCOHOL DEPENDENT?

and:

D194 Q. BUT DID YOU TESTIFY IN THAT PARTICULAR CASE THAT HIS
D195 ABILITY TO PERCEIVE MAY HAVE BEEN LIMITED BY HIS ALCOHOL
D196 DEPENDENCY?

Presupposed within these questions is the suggestion that the Doctor's testimony in this case is insincere, since he has a pattern of testifying that people's actions and perceptions are attributable to a drug- and / or alcohol-induced state.

Dr. Superior uses a similar rhetorical strategy in his challenge. Just as the attorney attempts to diminish the truth value of the doctor's testimony by appealing to the larger context of the doctor's role as a paid, career expert witness, Dr. Superior is able to expose the attorney's own self-serving motivations for discrediting the doctor's answers through a challenge. "You're a lawyer," Dr. Superior says to the examining attorney in front of the courtroom audience, and "the intent of the attorney, that's just attorneys. That's their business" (D206, D210-2). Through these statements he declares to all participants, including the jury, that he is being defamed for no other reason than that it is in the design of the cross-examination process.

Dr. Superior's statement in D206, and the expansion of that statement in D210-2, are framed by the discourse markers "look" and "now" in a way that iconically reinforces Dr. Superior's objection. Schifffrin says that "look" may figure into challenges (327), which is confirmation of the role "look" plays in the context of the Doctor's utterance. Schifffrin also notes that a speaker can indicate a transistional shift, as into an evaluative mode (see below), or vie for control of "the development of talk" with "now" (Schifffrin 1987: 241). Dr. Superior is indeed evaluative of the lawyer's apparent intentions, and he uses the challenge to bring out into the open what underlies

the exchange by deviating somewhat from the type of speech he is allowed through the question-and-answer format. Control of the floor and challenges are structural staples of cross-examination, and the use of these discourse markers in this context is logical and motivated.

Evaluative Responses

Evaluative responses include responses such as “that’s correct” and “right” in place of “yes” and “no.” These might be considered copies because they function within the frame of a question. Consider:

Attorney: Isn’t it true that [proposition X]?

Witness: [Proposition X] is correct; [you are] right [in stating that X].

“Proposition X” represents any of the numerous topics that the attorney addresses in this general format: e.g., “[But you were in custody on February 21st, 1995]; isn’t that true?” (E9-10). Philips ascribes a powerless orientation to those witnesses who opt to respond in copy format with a relatively high frequency (Philips 1984; see Chapter 5 “Copy Forms”). However, I find in my data evidence that leads me to hold that evaluative responses are powerful.

In addition to answering in the affirmative, responses like “correct” function to comment on the truth value of the proposition addressed by the question. Consider Dr. Superior’s response (D124) in the context of the following exchange:

D123 Q. BUT YOU ARE A PSYCHIATRIST?

D124 A. CORRECT.

Not only does this use of “correct” indicate affirmation of the proposition “You are a psychiatrist,” it suggests that the respondent is in an authoritative position in relation to the questioner. The respondent is judging whether the attorney has gotten his

information right or whether he is mistaken in his assumption and, in so doing, undermines the cross-examining attorney's imperative to be the sole judge of truth during cross-examination.

The police officers and Dr. Superior are not surprisingly the primary adherents to the use of evaluative responses as shown in the following table:

Table 14

Evaluative Responses in the Data			
Witness	correct / that's correct	right / that's right	# / total responses (%)
Officer Bird	B26, B63	B45	3 / 18 (16.7)
Officer Connery	C41, C196	-	2 / 78 (2.6)
Dr. Superior	D15, D47, D124	D96	4 / 53 (7.5)
Mark	-	E92	1 / 235 (0.4)
Fiona	-	-	0 / 64 (0)

I have not included incidences of evaluative responses that are copied from the attorney's question, as in:

B30 Q. ALMOST A YEAR AND A HALF LATER YOU DID YOUR

B31 ANALYSIS; CORRECT?

B32 A. THAT'S CORRECT.

Those uses of "(that's) correct" (B32, C9, C100, C152, C228,) and "(that's) right" (E681) that are copied from the question represent the witness' concurrence with the attorney's phrasing rather than an independent assertion.

Although an isolated "that's right" shows up in Mark's testimony, it represents less than one-half percentage of his total responses. Alternatively, evaluative responses

make up 16.7% of Officer Bird's responses. Dr. Superior is second with four evaluative responses making up 7.5% of his total responses, and Officer Connery is a comparatively distant third with only two "that's correct" responses of 78 total responses. One reason for this distribution lies in the disparate roles of the witnesses, with respect to their professional and / or social roles generally and with respect to this particular case.

The officers and the doctor are involved in the trial on a professional basis. Officer Connery is testifying in regard to his investigation of the murder, including his interviews with witnesses and suspects in connection with the murder, while Officer Bird is testifying with regard to her analysis of fingerprints collected at the crime scene. Dr. Superior's sole purpose in the trial is to testify, as a contracted expert witness, that Mark's observations during the events preceding Tony's murder may have been clouded by his crack use that evening. His conclusions are theoretical only, since he was hired the day of the trial (D143-4) and has never met or interviewed Mark personally (D234-5).

As such, Dr. Superior and Officer Bird are particularly distanced from the case as far as their personal knowledge of events and persons surrounding the case. Their testimony involves decontextualized commentary that only they are qualified to make. Their evaluative responses are indicative and indexical of their capacity as experts in the trial and function to establish credence for their value judgments as professionals generally.

Officer Connery, too, is an expert with no immediate personal stake in the outcome of the trial. However, his involvement in the case is much more extensive than

that of Officer Bird and Dr. Superior. In the trial, he is asked to report dates and facts concerning the case, such as when he interviewed suspects and witnesses and what information these interviewees divulged, but he also is questioned with respect to topics that are not objective. For example, he is asked to judge whether Mark was “very credible” or “evasive” during an interview (C59-60, C101-102). His proximity to the events and the persons involved in the murder places him in an intermediate position with respect to his role in the case. He is neither a participant in the events leading up to Tony’s murder (like Mark and Fiona) nor a removed appriser like Officer Bird and Dr. Superior. His intermediate level of use of evaluative responses may therefore comment on the circumstances of his role in this case.

Fiona and Mark are laypersons. Not only are they not professionals, they are implicated as criminals, in that they were involved with a known drug dealer as a girlfriend and as a customer, respectively. In the context of the courtroom, their ascribed role relative to the examining attorney is one of submission. This is hinted at, for example, in how the attorney prompts with “Sir?” and “Ma’am?” almost exclusively (with only one exception in the testimony of Officer Connery at C136) to dispreferred responses from Fiona (F67, F106) and Mark (E66, E120, E163, E195, E225, E310, E385, E392, E590, E711, E853; see “Copy Forms in the Data” in Chapter 5). They are not within their rights socially or professionally to respond evaluatively to the attorney’s questions. The only exception, Mark’s isolated “right” in response to “That’s been two years?” (E91-2) constitutes only .4% of Mark’s total responses.

Reformulations

A second turn-level mechanism that functions powerfully albeit rarely in the witnesses' testimony is reformulation. Reformulations occur where witnesses elect to interpret questions according to their own immediate interests and make an interpretive editing of the question explicit in their responses. Reformulations in the data either consist of reframing of the entire question or proposition, or they are achieved through the alteration of a single element, such as the verb phrase.

Two notable instances of propositional reformulations occur in the following excerpts:

Reformulations: Excerpt 1

- B2 Q. WE KNOW IT'S PROBABLE, THOUGH, THAT PRINTS CAN BE
 B3 LIFTED FROM THAT CAR; ISN'T THAT TRUE?
 B4 A. I WOULD USE THE WORD POSSIBLE.

Reformulations: Excerpt 2

- D78 Q. OKAY. DOES THE MEDICAL FIELD RECOGNIZE - I MEAN A
 D79 SPECIFIC DEGREE SAYING YOU ARE A CHEMICAL DEPENDENCY
 D80 EXPERT?
 D81 A. NO. THE QUESTION YOU'RE ASKING IS ABOUT BOARD
 D82 CERTIFICATION, AND THERE ARE ACCREDITING BOARDS WHICH
 D83 ARE GENERALLY ACCEPTED.

In the first excerpt, Officer Bird elects to reformulate the question rather than provide the answer to which the question points: i.e., "yes" or less preferably "no," or a variation thereof. By responding: "I would use the word possible," Officer Bird does

nothing short of reformulating the attorney's question, which hinged on possibility, not probability.

In the second excerpt, the attorney's question in D78-80 is aimed at finding out from Dr. Superior whether or not there is a specific degree in chemical dependency recognized by "the medical field." In response, Dr. Superior uses metalinguistic language ("No. The question you're asking about is ...") in correcting what he considers to be the attorney's misdirected question and to informatively and successfully redirect him. In fact, the Doctor continues his lesson about accrediting boards through D122. In this way, Dr. Superior provides an opportunity for himself not only to showcase his knowledge in the role of expert to the cross-examining attorney's role as student, he also informs the attorney that he has asked the wrong question, then provides the proper question and goes on to answer it. The resultant role reversal emphasizes and enhances the doctor's status and power.

Verb alterations are a slightly more frequent type of reformulation. Consider these examples:

Reformulations: Excerpt 3

B28 Q. AND WHEN WERE THOSE PRINTS SUBMITTED TO YOU?

B29 A. I RECEIVED THEM JANUARY 24TH OF 1995.

Reformulations: Excerpt 4

C355 Q. DID YOU REVIEW YOUR REPORT BEFORE GETTING ON THE

C356 STAND TODAY?

C357 A. I READ IT.

Reformulations: Excerpt 5

E131 Q. AND THEN THEY LET YOU OUT OF JAIL RIGHT AFTER THAT;

E132 DIDN'T THEY? ~~YOU BONDED?~~

E133 A. YEAH; I MADE BOND.

Reformulations: Excerpt 6

F90 Q. ~~YOU DIDN'T THINK~~ THAT THAT WAS ILLEGAL?

F91 A. I KNOW IT'S ILLEGAL.

These excerpts occur in the testimony of Officer Bird, Officer Connery, Mark, and Fiona, respectively. Excerpts 3-5 involve responses where the speakers make a substitution or alteration of the verb that is part of the question. "Submitted (to)" becomes "received," "review" becomes "read," and "think" becomes "know." Excerpt 5 involves the substitution of "made bond" for "bonded." These verb substitutions and alterations are related and stem from a shared, underlying motivation on the part of the witnesses to interact proactively with their cross-examiner.

Discourse Strategies

When certain discourse features characterize a speaker's style, they are indicative not only of individual style, but also of the speaker's strategies for accomplishing objectives within the discourse. The strategies that generate those features shape the individual's speaker style. O'Barr's study (1982) claims that the complex of features traditionally thought to be characteristic of women's register contributes to a powerless style (see "Women's Language or Powerless Language?" in Chapter 2). The features reflective of that powerless style, including a high incidence of intensives and superpolite forms (Lakoff 1975: 54-5), for example, may be motivated by strategies of politeness or deference, among others.

With respect to my data, I have identified three global strategies that describe the way witnesses, successfully or unsuccessfully, promote their own accounts and protect themselves from committing to versions of events that could be damaging to them (i.e., the attorney's) during cross-examination. These strategies, listed from most to least powerful, include: tenacity, avoidance, and abandonment. I exemplify how these strategies operate by referencing excerpts of the texts of the witnesses' testimony. For the purposes of this discussion, I examine the speech of each witness in the context of what I have identified as the dominant text-level strategy of that witness' testimony, even though each witness may be motivated by different strategies at various points.

Tenacity

To illustrate the strategic use of tenacity, I begin with Officer Bird. The first question the attorney asks her is if it was probable for (useable) fingerprints to be lifted from a car at the crime scene based on her analysis of prints that are supposed to have come from that same car (B2-3). Officer Bird does not answer "yes" or "no"; she reformulates (see "Reformulations" in this chapter) the question in answering it, to qualify her response, stating that obtaining results from the lifts is "possible," and, therefore, by implication, not quite "probable." The attorney is not deterred by Officer Bird's reformulation, and continues in the same vein in the next four questions he asks her:

B2 Q. ~~WE KNOW IT'S PROBABLE, THOUGH, THAT PRINTS CAN BE~~

B3 ~~LIFTED FROM THAT CAR, ISN'T THAT TRUE?~~

B4 A. I WOULD USE THE WORD POSSIBLE.

B5 Q. ~~WELL, YOU'VE GOT A PRINT FROM THAT CAR, DON'T YOU?~~

B6 A. I'VE GOT A PRINT -- I DON'T KNOW WHERE IT CAME FROM.

B7 I HAVE A PRINT THAT SAYS IT CAME FROM THE CAR. I DIDN'T

B8 LIFT IT. I HAVE NO IDENTIFIER HERE THAT SAYS THIS CAME OFF

B9 OF WHATEVER KIND OF CAR THAT IS. ALL I KNOW IS I HAVE A

B10 LIFT THAT SAYS IT CAME FROM A CAR. I CAN'T TELL YOU THAT

B11 THIS CAME FROM THIS CAR.

B12 Q. ~~WELL, IF IT DID COME FROM THAT CAR?~~

B13 A. THEN I'VE GOT A LIFT. THEN IT WORKED.

B14 Q. ~~THEN THIS POSSIBILITY THAT YOU CAN'T GET ONE IS DOWN~~

B15 ~~THE TUBES, BECAUSE WE KNOW YOU CAN GET A PRINT FROM~~

B16 ~~THAT CAR, CORRECT?~~

B17 A. POSSIBILITY IN EITHER DIRECTION.

B18 Q. ~~WELL, IT'S MORE PROBABLE IF YOU GOT ONE, ISN'T IT?~~

B19 A. I'VE GOT ONE OUT OF FIVE, SO IT'S POSSIBLE IN EITHER

B20 DIRECTION.

B21 Q. OKAY. LET ME ASK YOU THIS. WHEN DID YOU DO THE

B22 ANALYSIS?

If the attorney's repeated questioning is directed toward having Officer Bird recant her initial answer (B4), it does not work. She clings to her claim that getting useable prints from the car in question is "possible" (B17, B19) rather than "probable" (B18), as promoted by the attorney. In addition, she disassociates herself from the

assertion that the prints from her analysis even pertain to the prints taken from “whatever kind of car” it was at the crime scene (B6-B11).

The second witness demonstrating a discourse strategy of tenacity is Fiona. The strongest evidence of tenacity is seen in the following excerpt, which is first mentioned in “Copy Forms in the Data” in Chapter 5:

F149 Q. WHEN WAS THE PHONE CONVERSATION?

F150 A. ~~I DON'T REMEMBER.~~

F151 Q. WAS IT A FEW DAYS AFTER THE MURDER?

F152 A. ~~I DON'T REMEMBER.~~

F153 Q. SO WHENEVER THIS PERSON THAT YOU'RE SAYING ON THE

F154 PHONE TOLD YOU, YOU WEREN'T LOOKING AT THAT PERSON

F155 TOLD YOU; WERE YOU?

F156 A. NO, SIR; I WASN'T.

F157 Q. WHERE WERE YOU WHEN YOU GOT THE PHONE CALL?

F158 A. AT HOME.

F159 Q. AND WHERE WAS THAT AT?

F160 A. 996 WEST PRESIDENT.

F161 Q. WAS IT HOT OR COLD OUT WHEN YOU GOT IT?

F162 A. ~~I DON'T REMEMBER.~~ I WAS INSIDE.

F163 Q. I MEAN, WAS IT SPRING, THE SUMMER, THE FALL?

F164 A. WHATEVER SEASON IT WAS WHEN HE TOLD ME. ~~I DON'T~~

F165 ~~REMEMBER.~~

F166 Q. WHAT DID YOU SAY?

- F167 A. ~~I DON'T REMEMBER~~
- F168 Q. YOU DON'T REMEMBER IF IT WAS –
- F169 A. NO.
- F170 Q. -- IN THE SPRING OR THE SUMMER OF '95 OR THE FALL OF
- F171 '95 OR THE WINTER OF '95 –
- F172 A. NO.
- F173 Q. -- OR THE SPRING OF '96?
- F174 A. NO.
- F175 Q. SUMMER OF '96?
- F176 A. NO.
- F177 Q. YOU DON'T REMEMBER?
- F178 A. NO.
- F179 Q. COULD IT HAVE BEEN IN THE SUMMER OF '96?
- F180 A. I GUESS IT COULD HAVE BEEN, BUT I DON'T REMEMBER.

The phone call in question is a call allegedly placed by Francis Begbie, the defendant, to Fiona sometime after Tommy's murder. In this excerpt, Fiona repeats a total of eleven times that she does not remember specifically when the call took place.

Drew looks at "I don't remember" as an example of response avoidance as it occurs throughout a text in one witness' repertoire (Drew 1992: 480-6). He claims that his witness uses "I don't remember" strategically, for purposes that include thwarting lines of questioning that she projects may "turn out to be prejudicial to her story" (481).

Drew claims that the use of “[I don’t remember] frustrates the attorney employing that version [of the question] in a series of further questions” (481).

Drew’s assessment of “I don’t remember” in his witness’ speech does not apply to Fiona’s. There is no evidence in the cross-examination sequence that providing the requested information, i.e., when the call was placed, would adversely affect Fiona. In fact, one might assume that she would want to do what she could to put the man alleged to have killed her boyfriend behind bars. It is also possible, however, that she is trying to avoid any negative consequences of finger-pointing. In any case, “I don’t remember” does not appear to be clearly motivated by avoidance as much as it appears to be a firm statement of what Fiona believes. Furthermore, “I don’t remember” does nothing toward enabling Fiona to stymie the line of questioning.

Avoidance

The cross-examining attorney has the power to select topics unfavorable to the witness’ interests in the trial and to construct, through rigorous question-and-answer sequences, versions of events that portray the witness and / or the witness’ testimony in a way that is damaging. For these reasons alone, it is generally in the witness’ interest in the courtroom to avoid the implications of committing face violations with respect to the examining attorney; she is, for the time being, at the mercy of her cross-examiner. One of the basic violations of positive face requirements is “blatant non-cooperation” (Brown and Levinson 1987: 66-7; see “Discourse Analysis: Selected Subdisciplines” in Chapter 4). A witness who wants to minimize the damage of being overtly non-cooperative while maintaining the responses that support her objectives is faced with a dilemma.

In cross-examination, witnesses mitigate the implications of directly confirming or rejecting the propositions set forth in the cross-examining attorneys' questions in a variety of ways. I have addressed this phenomenon as it occurs at the level of the individual response, as through hedges (e.g., "If that's what it said" at E136) and reformulations (e.g., "I would use the word possible" at B4). However, response avoidance also operates at a more pervasive level of the discourse; it is evident at the level of the topic and also throughout entire sections of cross-examination.

Officer Connery utilizes response avoidance as a strategy throughout his testimony. Variations of "I don't recall" are a recurrent refrain, appearing twenty times in Officer Connery's testimony: C18, C23, C38, C119, C138, C142, C185, C199, C207, C218, C218-9, C222, C222-3, C232, C266, C286, C287, C353-4, C364, C366. Officer Connery applies "I don't recall" to answers for which he does not want to or cannot provide the information solicited by the examining attorney's question. These topics include the names (e.g., C189), dates (e.g., C38), and other details surrounding Officer Connery's investigation into Tommy's murder, including information gathered in interviews with witnesses (e.g., C18, C23).

Officer Connery does not limit himself to not recalling. He alternately "can't remember" (e.g., C35-6), "ha[s] no idea" (e.g., C121), "really" or "truly ... do[es]n't know," "can't say," or "couldn't tell" (e.g., C142, C167, C172, and C214); he is generally "not real sure" (C194). These responses do more than serve to hedge isolated questions Officer Connery is unwilling to answer definitively. These responses contribute to a distinct style that speaks of this speaker's preference for avoiding commitment as a testimonial strategy.

Officer Connery's use of "I don't recall" and like responses bears similarity to the usage of "I don't know" that Drew discusses insofar as it allows Officer Connery to avoid overtly confirming or disconfirming propositions set forth by the examining attorney. However, as in the case of Fiona, Officer Connery's use of these forms does not seem to be motivated by an attempt to stem specifically self-incriminating lines of questioning. Additionally, it is inconceivable that Officer Connery, as a career crime investigator, remembers as little about the case as he claims to remember. His motivation appears to be something other than topic-specific avoidance or an inability to remember. Whatever it is, it is not revealed to the courtroom audience or readers of the transcript, who are left to imagine possibilities such as Officer Connery holding a grudge against the lawyer examining him or criminal lawyers in general, or that he is senile.

Abandonment

The ultimate demonstration of powerlessness in witness speech in my data is the strategy of response abandonment that pervades Mark's testimony. Response abandonment occurs when a witness dismisses his own response at the attorney's actual or perceived prompting. The following excerpt serves to illustrate:

Abandonment: Excerpt 1

E213 Q. NOW I WAS A LITTLE CONFUSED. DID YOU CALL FROM THE
 E214 BROADMOOR OR DID YOU CALL FROM THE REBEL SHOPPING
 E215 CENTER?
 E216 A. BROADMOOR SHOPPING CENTER.
 E217 Q. DO YOU KNOW WHERE THE REBEL IS?

E218 A. ~~I GUESS I MIGHT HAVE HAD THE WRONG NAME~~

E219 Q. WELL, WHICH ONE WAS IT?

E220 A. BROADMOOR SHOPPING CENTER, RIGHT IN FRONT OF

E221 NATIONAL SUPERMARKET.

A follow-up question as innocuous as the attorney's question in E217 is enough to cause Mark to be willing to recant his answer, even though his physical description of the place he is asked about in E220-1 shows that he was certain of his response originally.

Mark's strategy for surviving the ordeal of cross-examination is to give in to the cross-examining attorney's demands. His status as an incarcerated felon may contribute to his submissiveness. Mark's sense of guilt in having participated in the actions he is made to describe during the examination may contribute to his yielding demeanor, as in the following:

Abandonment: Excerpt 2

E189 Q. YOU SMOKE CRACK EVERY DAY?

E190 A. NO, SIR.

E191 Q. HOW MANY DAYS A WEEK YOU SMOKE CRACK?

E192 A. AT THAT TIME, MAYBE THREE, FOUR.

E193 Q. FIVE?

E194 A. NO.

E195 Q. SIR?

E196 A. ~~ALL DEPENDS.~~

E197 Q. WELL, I MEAN, WOULD THERE BE WEEKS THAT YOU

E198 SMOKED FIVE TIMES A WEEK?

E199 A. ~~COULD HAVE BEEN~~

In the following example, Mark asks the examining attorney a clarification question (E24-5) before responding to be sure that he is answering the question correctly. Nonetheless, he abandons his answer with little resistance:

Abandonment: Excerpt 3

E22 Q. AND SO YOU'VE JUST TOLD ME THAT BEGBIE WASN'T IN

E23 CUSTODY ON FEBRUARY 21ST, 1995; ISN'T THAT RIGHT?

E24 A. THE DAY OF THE LINEUP? WHEN I PICKED THEM OUT THE

E25 LINEUP?

E26 Q. YES.

E27 A. YES, SIR.

E28 Q. HE WASN'T IN CUSTODY?

E29 A. HE WASN'T IN CUSTODY.

E30 Q. HE WASN'T?

E31 A. I GUESS HE WASN'T. I DON'T KNOW.

Similar sequences are found throughout the duration of Mark's testimony. A few more flagrant examples of response abandonment include the following:

Abandonment: Excerpt 4

E610 Q. AND HOW FAR IS THE VET SCHOOL?

E611 A. VET SCHOOL IS ABOUT HALF A MILE.

E612 Q. ALL THE WAY DOWN NICHOLSON, THROUGH LSU, ALL THE

E613 WAY TO THE END THROUGH CAMPUS?

E614 A. IT'S NOT THAT FAR.

E615 Q. FROM WHERE THE PRINCE MURAT IS TO THE VET SCHOOL

E616 ON NICHOLSON YOU SAY IS HALF A MILE?

E617 A. ~~MAYBE MAYBE TWO MILES MAYBE A MILE.~~

E618 Q. YOU DON'T KNOW; DO YOU?

E619 A. NO, SIR; I DON'T.

E620 Q. ARE YOU GUESSING?

E621 A. YES, SIR.

Abandonment: Excerpt 5

E809 Q. YOU WERE EXPOSED TO FIVE YEARS IN THE DRUG COURT;

E810 WEREN'T YOU?

E811 A. MIGHT HAVE BEEN.

E812 Q. YOU DON'T EVEN KNOW?

E813 A. NO.

E814 Q. YOU ONLY GOT THREE, THOUGH; DIDN'T YOU?

E815 A. SIR, I'M IN JAIL WITH ONE OF THEIR BROTHERS RIGHT NOW,

E816 SAME PENITENTIARY. SOUND LIKE I GOT SOMETHING OUT OF

E817 THAT?

E818 Q. YOU GOT THREE YEARS INSTEAD OF FIVE YEARS; DIDN'T

E819 YOU?

E820 A. ~~WELL, YOU'RE SAYING THAT THEY OFFERED, LIKE THEY -~~

E821 Q. I DIDN'T SAY THEY OFFERED ANYTHING. YOU'RE SAYING
E822 THAT. I'M SAYING WHAT YOU WERE HOPING TO GET.

[objection sequence]

E828 Q. YOU WERE HOPING TO GET FAVORABLE TREATMENT;
E829 WEREN'T YOU?

E830 A. NO, SIR; I WASN'T.

E831 Q. YOU WEREN'T? YOU'RE IN JAIL?

E832 A. I DID WHAT I DID.

Abandonment: Excerpt 6

E705 Q. HOW LONG DID THEY STAY AT THE FRONT?

E706 A. ABOUT A MINUTE.

E707 Q. WERE YOU LOOKING AT YOUR WATCH?

E708 A. NO, SIR.

E709 Q. ARE YOU GUESSING ABOUT THE MINUTES?

E710 A. NO, SIR.

E711 Q. SIR?

E712 A. NO, SIR.

E713 Q. WELL, HOW DO YOU KNOW IT WAS A MINUTE?

E714 A. ~~OKAY. WELL, YES. I'M GUESSING.~~

and:

Abandonment: Excerpt 7

E380 Q. OH, BY THE WAY, THE NEXT DAY, DID YOU WRECK THAT
E381 CAR?

- E382 A. YES, SIR.
- E383 Q. JANUARY THE --
- E384 A. NOT THE NEXT DAY.
- E385 Q. SIR?
- E386 A. NOT THE NEXT DAY.
- E387 Q. DIDN'T YOU WRECK THAT CAR JANUARY 11TH, 1995?
- E388 A. YEAH; I WRECKED IT.
- E389 Q. WELL, THE NEXT DAY -- WOULD BE JANUARY 10TH, 1995.
- E390 THE NEXT DAY WOULD BE JANUARY 11TH, 1995?
- E391 A. OKAY.
- E392 Q. SIR?
- E393 A. I SAID YES, SIR.

In Excerpt 5, Mark's initial indignation in E816-7 sets this interchange apart from the others in that Mark appears determined, for once, to have his actions characterized fairly by his cross-examiner. Mark is intent on not having the attorney misconstrue his willingness to testify as part of a deal with the prosecution. This determination is short-lived, however; it is tempered in his next response: "Well, you're saying that they offered, like ..." (E820). Mark resigns himself to defeat by the time he reaches his final response in this series: "I did what I did" (E832). His resignation is echoed in the acquiescent "okay" of the last two excerpts.

Although Mark does not succumb to the will of the cross-examiner in every instance (he resists successfully in E622-38), the times he does far outnumber the times

he doesn't. His role in the trial is shaped by his frame of guilt. As such, his status relative to his cross-examiner is greatly diminished as compared to the other witnesses. As a result, his imperative to defer to the cross-examining attorney outweighs his imperative to convey an objective account of events.

Appeal to Authority Status

Dr. Superior does not demonstrate tenacity, avoidance, or abandonment of response. He does not need to employ these strategies to wield power in the courtroom because he enters the courtroom as a powerful participant, relative to his examiner and to most other participants in the trial. The only person Dr. Superior perceives as more powerful in the context of the trial is the judge himself, as indicated in the Doctor's use of the polite address form, "Your Honor" (D174-5).

In addressing the judge directly, Dr. Superior bypasses the authority of the cross-examining attorney to ask for "a small amount of latitude" in his response (D174). From his extensive experience, he knows the protocol of the trial. He thus knows that lengthy answers during cross-examination are unorthodox and may provoke an objection from the cross-examiner. This is the first hint that Dr. Superior condescends to the examining attorney. The second indication is in the form of the challenge: "Look, you're a lawyer –" in D206. In D208-12, Dr. Superior elaborates on this statement, stating that the lawyer's question is intended to distort the facts because "the intent of the attorney, that's just attorneys. That's their business." Dr. Superior's challenge coupled with the ensuing elaboration are related to the "rebuttal" plus "account" strategy Atkinson and Drew identify in witness speech (Atkinson and Drew 1979: 221; see "Linguistic Strategies in an English Tribunal of Inquiry").

Dr. Superior's strategy to avoid adversity in the first place and to dissuade his examiner from opposing him is to appeal to his own authority status. As a physician, he is more proximately connected with the judge in terms of professional kinship. This is why he asks the judge permission where he will not seek permission from the attorney. Also, when the examining attorney tries to portray Dr. Superior in a negative light, he responds by belittling the attorney's profession. The Doctor claims that the job of the attorney is, after all, to discredit people whereas he, as a doctor, is concerned with more important pursuits, such as objective fact; his testimony, as opposed to the attorney's contrived allegations, reflects "the truth" (D208-209). Doctor Superior is performing a service for humankind and he is indignant that the attorney is audacious enough to challenge him.

CHAPTER 7: CONCLUSIONS

Review of Individual Speaker Styles

In this section, I summarize the individual witnesses' styles according to their implementation of both traditionally powerless features (O'Barr 1982, Philips 1984) and the new turn-level and global strategies I have identified (Chapter 6).

Officer Bird

In terms of speech patterns labeled as being weak in the literature, Officer Bird exhibits no hypercorrect forms and no gestures or quoted speech. She uses a single polite address form, asks no questions of the examining attorney, and does not overlap or interrupt once. Her responses, which average 10.8 word per response, are the second lengthiest of all of the witnesses. Officer Bird responds least frequently in copy format of all the witnesses by a significant margin (she averages 18.8% copy responses as compared to Officer Connery's use of 32.4%, which is the next lowest frequency). She hedges more than the lay witnesses and less than the doctor, just as the male officer does.

A traditional analysis of features like these suggests that Officer Bird uses a relatively powerful speech style during cross-examination. Analyses that rate speakers according to their use of isolated features, though, might misrepresent her as a weak speaker based on the number of overall hedges in her speech (e.g., Wright and Hosman 1983). A more accurate account requires a more comprehensive representation of her production, as a synthesis of the features discussed above as well as of the features I find to be indications of strength in the context of the courtroom, including: the highest incidence of evaluative responses as a percentage of responses (16.7%) and a tendency

to reformulate the examiner's questions in order to promote an account more advantageous to herself.

Numerical and percentage accounts such as those shown in the various Tables (1-14) does not permit a full characterization of the strategies motivating Officer Bird's style of testimony. I find that Officer Bird is motivated by a strategy of tenacity, or of persistence in maintaining her original response. She does not appear to be intimidated by the examining attorney's prompts that are intended to persuade her to change her responses.

Officer Bird is not susceptible to agreeing with the cross-examiner's characterizations during the cross-examination. After all, the cross-examiner is representing an alleged criminal whom Officer Bird is in the business of putting in jail. Relative to the other witnesses, she does not answer in the form of (coerced) copy responses (see Chapter 5 "Copy Forms in the Data"), and she modifies questions to suit her needs (e.g., "I would use the word possible"— see "Reformulations" above). She shows that she is in control through her election of evaluative responses. Through her avoidance of the term "Sir," she indicates that she might not want to give deference to the cross-examining attorney. Hedges (e.g., "All I know is [...]" in B9 and "I can't tell you that [...]" in B10) in Officer Bird's speech are part of her reluctance to acquiesce to the demands of the examiner and are therefore used to fortify her powerful testimonial style.

Officer Connery

Officer Connery's speech resembles that of Officer Bird, the other police witness, in that he asks the examining attorney no questions and uses no gestures or

direct quotes. He answers in copy form 32.4% of the time, which is less than in Dr. Superior's, Mark's, or Fiona's testimony; only Officer Bird's testimony contains fewer copy responses (18.8%). He scores intermediately with respect to average response length (8.9 words per response average); his average response length is lower than the other two expert witnesses' and higher than the two lay witnesses'. Officer Connery interrupts the examining attorney twice, which is more than the other expert witnesses, who do not interrupt at all, but less than Mark and Fiona, who interrupt seven and three times, respectively. Once he answers before the attorney finishes his question in anticipation of what was being asked, and the other time he interjects with the supportive back channel "sure."

The number of times Officer Connery addresses the examining attorney as "Sir" is second only to the number of times the inmate Mark addresses the examiner as "Sir." By comparison, the other officer, Officer Bird, uses "Sir" only once and Dr. Superior does not use "Sir" at all. Analogously, Officer Connery uses non-copied evaluative responses only 2.6% of the time as compared to Officer Bird's 16.7% and Dr. Superior's 7.5%. Mark uses evaluative responses less than one percent of the time and Fiona does not use any evaluative responses. In his use of "Sir" and his relative disuse of evaluative responses, Office Connery's speech most closely resembles the speech of Mark, the incarcerated lay witness.

Two other features that distinguish Officer Connery's linguistic performance are his use of hypercorrect forms and his propensity to hedge. He is the only witness to repeatedly use hypercorrect forms, which occur on both a lexical and syntactic level in his testimony. He hedges in 66.2% of his responses, which is far more than any other

witnesses. These hedges, the most prominent of which includes variations of “I don’t recall,” contribute to Officer Connery’s heavy reliance on the strategy of response avoidance as does the single reformulation in his testimony, in which he responds that he “read” his report when asked if he had reviewed his report (C355-7).

Officer Connery’s testimonial style is an amalgam of indications of power, such as a low frequency of copy responses, and of powerlessness, as in his frequent use of hypercorrect forms and the supposedly powerless form “Sir.” This indeterminacy is mirrored in Officer Connery’s tendency to place in between lay witnesses and expert witnesses statistically with respect to the frequency of use of forms like interruptions, evaluative responses, and response length. Judging his speech by the presence or absence of power-linked features alone portrays Officer Connery as an apparently inconsistent witness.

Officer Connery recognizes the courtroom as a formal setting in which the trial, a formal event, is conducted in a formal key. His elevated use of polite address forms and his attempt to speak in an uncharacteristically formal style, resulting in hypercorrect forms, are homage to the formality associated with the event of the trial, and especially of the criminal trial.

Officer Connery’s frequent use of “Sir” also might be an attempt to promote solidarity with the examining attorney. Officer Connery establishes rapport with the attorney by giving the attorney the deference he wants. In this way, Officer Connery enhances his credibility by enhancing his image with the attorney. Notably, though, this deference is not reciprocated; the examining attorney does not address Officer Connery

as “Sir” other than in a prompt (C136) and in thanking him at the conclusion of the examination (C367).

Another feature of Officer Connery’s testimonial style belies the apparent deference he grants the attorney through his polite address and formal speech, which is that he does not feel compelled to be particularly cooperative, but that he is hesitant to appear uncooperative for reasons that might include giving offense to the judge, receiving harsher treatment from the examining attorney, etc. “Sir,” elevated and resultingly hypercorrect grammar, minimal interruptions other than the supportive back channel “sure” (C90), shorter responses than those of the other officer and the doctor – all of these features contribute to the illusion of Officer Connery’s being relatively cooperative. However, the low incidence of copy responses and the high incidence of hedges in his testimony reveal his underlying strategy of response avoidance. Officer Connery is a witness who knows how to appear cooperative on a superficial level while frustrating the examining attorney’s imperative of having him divulge and corroborate information that supports the defense’s case.

Dr. Superior

Dr. Superior uses few powerless features in his speech. He uses neither quotatives nor gestures, and he does not overlap the attorney. He uses a single polite address form (“Your Honor” in D174-5), addressed to the judge as the highest authority in the courtroom; no other witness addresses the judge. He is in the exact middle of the other witnesses with respect to both the percentage of copy responses he uses (47.1%) and the percentage of hedged forms in his testimony (44.4%). Although

his speech style is formal, the formality is characteristic of his normal style in that his speech is consistent; he does not evidence hypercorrect speech.

Although Dr. Superior uses few powerless features, he also uses few conspicuously powerful features in his speech. He executes one override (“May I have a small amount of latitude, Your Honor?” D174-5), and he reformulates precisely one of the cross-examining attorney’s questions (“The question you’re asking is [...]” in D81-3). He issues a single challenge to his cross-examiner when the questioning hints at an intent to disparage his character (“Look, you’re a lawyer --” D206).

Stylistically, what stands out in Dr. Superior’s testimony are his flagrantly lengthy responses (averaging 14.7 words per response – or nearly seven words more than the combined average of the other witnesses – and ranging up to 151 words in a single response) and the absence of “Sir” used as a polite address form (see Table 1 in Chapter 5). Additionally, Dr. Superior uses the second most evaluative responses in the form of “correct” (D15, D47, D124) and “right” (D96).

An evaluation of Dr. Superior’s linguistic performance in terms of individual features is misleading. Other than the absence of a single polite address form (“Sir”) and a preference for narrative answers, nothing about Dr. Superior’s speech is particularly striking when judged by the criteria in the literature for determining the power inherent in a witness’ speaking style. What is outstanding, however, is that Dr. Superior is represented consistently in most of the categories that I have found to be an indication of powerful language use in the courtroom: no other witness initiates a challenge, an override (question), and a reformulation in conjunction with a relatively high incidence of evaluative responses, narrative responses, etc. The challenge,

override, and reformulation present in Dr. Superior's speech highlight the primary verbal strategy he employs in the courtroom, which is to appeal to his status as an authority. His position as a highly educated and experienced medical expert authorizes him to address the judge directly and to keep the (lower-status) examiner in check. His appeal to his own authority status is an appeal to a context that transcends the courtroom: he might feel that his status outside of the courtroom is greater than that of the cross-examining attorney's, and so there should be no reason that his status and the respect attached to that status should not be applied within the trial forum as well. Dr. Superior does not address the cross-examiner as "Sir" because, in relation to the examining attorney, he is "Sir."

Mark

Mark, the young inmate, uses no quotatives, one possibly hypercorrect form, and relatively few hedges (34.9%, which, as a percentage per response, represents proportionately fewer hedges than the police officers and the doctor use). However, he exhibits almost all other speech patterns labeled as being weak in the literature.

Mark is the only witness to use a gestural description ("Like here's the side of my car, here's the passenger seat [...]" E693-7). He responds in copy format 62.3% of the time, which is more than any other witness does. He addresses the attorney as "Sir" far more than any other witness; "Sir" appears in 40.4% of Mark's responses as compared to the 19.5% incidence of "Sir" in the speech of Officer Connery, who is the only other witness to use "Sir" more than once. Mark demonstrates a highly fragmented speech style; his answers, averaging only 6.1 words per response, are the shortest of all of the witnesses'. A final indication of powerlessness in Mark's speech with respect to

traditionally power-linked features is his use of overlap. Although the literature promotes overlap as evidence of a powerful style of speech, I have found the opposite to be true (see “Overlap and Interruption” Chapter 5). Mark engages in overlap seven times, which is more than twice the number of times any other witness interrupts the cross-examiner.

There is also evidence of power in Mark’s speech. He asks the examining attorney twelve questions, ten of which are clarification requests and two of which are overrides. In comparison, no other witness asks more than a single question of either type. Furthermore, Mark employs the following turn-level strategies: he uses one reformulation (“Yeah; I made bond.” E133), one evaluative response (“Right.” E92), and a single challenge (“Sound like I got something out of that?” E816-7). Other than Dr. Superior, Mark is the only witness to use all three of these turn-level strategies.

A cursory evaluation of Mark’s testimonial style yields mixed results. In terms of traditionally power-linked features, Mark exhibits a powerless style. This evaluation might be expected, given that Mark is a convicted felon and, as such, is at a power disadvantage in the context of the courtroom. However, Mark demonstrates a certain level of power through his ability to maneuver around the linguistic restrictions of the courtroom in order to promote his own accounts and opinions through his use of overrides, clarification requests, reformulations, evaluative responses, and challenges.

In spite of Mark’s sporadic attempts to claim power for himself, his ultimate powerlessness is evident in his proclivity for the discourse-level strategy of response abandonment (see Chapter 6 “Abandonment”). The cross-examiner is usually able to cause Mark to substitute his original response with an alternative response suggested by

the cross-examiner, as in the example below (see “Abandonment” Chapter 6 for more examples):

E705 Q. HOW LONG DID THEY STAY AT THE FRONT?

E706 A. ABOUT A MINUTE.

E707 Q. WERE YOU LOOKING AT YOUR WATCH?

E708 A. NO, SIR.

E709 Q. ARE YOU GUESSING ABOUT THE MINUTES?

E710 A. NO, SIR.

E711 Q. SIR?

E712 A. NO, SIR.

E713 Q. WELL, HOW DO YOU KNOW IT WAS A MINUTE?

E714 A. ~~OKAY. WELL, YES. I'M GUESSING.~~

Mark may feel entitled to some respect as a witness; after all, he proclaims that testifying “is his way of doing something” to right past wrongs (E758, E762). When Mark is faced with the adversarial aggression of the cross-examiner’s questions, however, any confidence derived from his sense of purpose is apparently replaced by his resignation to being treated with the disrespect his criminal status merits.

Fiona

Fiona, the nineteen-year-old lay witness, uses few overt forms that are traditional indications of powerlessness. She uses a single polite address form, a marginally hypercorrect form (“distributing” in F43), one questionable quotative, no gestures, and the second fewest hedges, on average (in 31.3% of responses). She asks a single clarification question: “What you mean?” (F11).

However, Fiona also exhibits two speech patterns discussed in the literature that I find to be indicative of a weak style. The first is overlap. Fiona overlaps the attorney's speech three times, which is the most a witness overlaps in the data, aside from Mark. Also, her responses, which average 6.3 words per response (slightly longer than Mark's average of 6.1), are more fragmented than they are narrative.

Overall, Fiona's testimony would merit her consideration as a powerful speaker if judged by the standards of the literature. Other than the fact that her responses are shorter than most of the other witnesses', Fiona demonstrates no pattern of traditionally powerless features. Her overall speech style, however, is not as powerful as Dr. Superior's or Officer Bird's, for instance – at least in some respects. A more comprehensive characterization of Fiona's linguistic performance requires consideration of features outside of the scope of those treated in the literature.

Fiona is most revealing, in terms of her speech style, in what she does not do. I have already discussed how she does not use hypercorrect speech or other powerless features. Fiona also answers outside of the format of the question only rarely. In other words, Fiona answers in copy form more frequently (in 55.2% of responses) than most of the other witnesses. Additionally, Fiona avoids the use of any evaluative forms or overrides. In fact, her terseness is symptomatic of her reluctance to answer either expansively or responsively.

If Fiona avoids longer, elaborative answers (as well as other overtly powerful or powerless forms), she also avoids answering in the ways suggested by the cross-examining attorney. Fiona's testimonial strategy is one of tenacity. For instance, the attorney's prompts (see Chapter 5 "Copy Forms in the Data") are completely ineffective

in encouraging Fiona to change her response (F66-8, F105-7). Fiona is the witness to whom an attorney unsuccessfully directs fourteen questions in the hope of having his original question: “When was the phone conversation?” answered (F149-80). She never does answer the question, beyond saying that she does not know.

Fiona’s persistence in sticking to her original answer is echoed in her ability to overcome presuppositions and to resist using the answers that are presupposed in the format of the question (Walker 1987: 73). Consider the following exchanges:

Fiona: Excerpt 1

F108 Q. WHAT TIME WAS THIS THAT MARK CALLED THE LAST TIME?

F109 A. ~~I DON’T REMEMBER HIM CALLING.~~

Fiona: Excerpt 2

F71 Q. WAS IT ALREADY IN CRACK OR DID HE COOK IT IN YOUR

F72 MICROWAVE AND MAKE IT INTO CRACK?

F73 A. NO. ~~I DON’T KNOW IF IT WAS IN CRACK, AND HE DIDN’T~~

F74 ~~COOK IT IN MY MICROWAVE.~~

In F109, a weaker witness might be expected to simply answer “I don’t know” in response to the attorney’s question that presupposes that Mark called. If she had answered “I don’t know,” she still would have been open to giving the impression that she had received a call from Mark at some time. Fiona is astute in noting that she does not remember Mark calling in the first place. In the second excerpt, the question that the examining attorney poses presupposes that Tommy had crack cocaine at some point during the night of his murder, and that the crack cocaine Tommy had was either already in crack form or that he cooked it and made it into crack in Fiona’s microwave.

Fiona does not allow herself to be cornered into accepting either presupposition suggested in the form of the question; she distances herself from the entire topic by claiming not to have known exactly what Tommy had, and by claiming also that he did not cook crack in her microwave.

Fiona's testimonial style is characterized by a combination of dogged adherence to her original responses in spite of the examining attorney's opposition in conjunction with a high incidence of responses copied from the format of the attorney's questions. She gives the impression of being stubbornly insistent in being of as little help to the attorney as possible. In any case, Fiona is a tenacious, if not an innovative, speaker. She answers minimally whenever possible, and she is not susceptible to changing her original response.

Problems and Solutions

I began this study with the basic idea that I would like to talk about what happens linguistically in a trial. After an initial survey of related literature, I found that witness language, as strategic speech that is reflective of motivations and conscious choices by witnesses was grossly underrepresented (see Chapter 2 "Literature Review"). In contrast, the literature concerning lawyers' strategic use of power is large, and has long been the topic of language-and-law works in the United States (e.g., Wellman 1903). Much of the literature consists of didactic trial practice manuals, written by lawyers for lawyers, which addresses witness language use as depending entirely upon the trial attorney's manipulative and skillful linguistic control, rather than as a function of the witnesses' independently motivated strategic language choices.

Most social scientists and linguists writing about witness language accept and build upon the assumption that witness language is primarily reactive or passive rather than proactive (Caesar-Wolf 1984; Liebes-Plesner 1984; Magneau 1997; Matoesian 1993, 1997, 1998; Philips 1984, 1987; Snellings 1985; Walker 1987).

However, consideration of various trial transcripts and depositional materials (see “Data Collection” Chapter 3) has led me to believe otherwise. For example, witnesses show an awareness that transcends passivity in their use of metalinguistic reference. In the criminal trial that is my data source, both the witness demonstrating the most powerful testimonial style (Dr. Superior) and the least powerful testimonial style (Mark) (see “Review of Individual Speaker Styles” in this chapter) appeal to metalinguistic strategies in the following examples:

Metalinguistic Language: Excerpt 1

D78 Q. OKAY. DOES THE MEDICAL FIELD RECOGNIZE - I MEAN A
D79 SPECIFIC DEGREE SAYING YOU ARE A CHEMICAL DEPENDENCY
D80 EXPERT?

D81 A. NO. ~~THE QUESTION YOU'RE ASKING IS~~ ABOUT BOARD
D82 CERTIFICATION, AND THERE ARE ACCREDITING BOARDS WHICH
D83 ARE GENERALLY ACCEPTED.

Metalinguistic Language: Excerpt 2

D203 Q. SO YOUR TESTIMONY WAS DESIGNED TO SAY HE DID NOT
D204 HAVE A SPECIFIC INTENT TO KILL THOSE INDIVIDUALS BECAUSE
D205 HE WAS ALCOHOL IMPAIRED.

D206 A. ~~LOOK, YOU'RE A LAWYER~~

D207 Q. ANSWER MY QUESTION, PLEASE, DOCTOR.

D208 A. ~~I DON'T KNOW THE ANSWER TO YOUR QUESTION, BECAUSE~~

D209 ~~MY TESTIMONY WAS THE TRUTH~~, AS I CAME TO SEE IT, AND IT

D210 WAS ABSOLUTELY WITHOUT PRESSURE IN ANY WAY. ~~NOW THE~~

D211 ~~INTENT OF THE ATTORNEY, THAT'S JUST ATTORNEYS. THAT'S~~

D212 ~~THEIR BUSINESS.~~

Metalinguistic Language: Excerpt 3

E510 Q. AND WHEN YOU TOLD THE JURY A MINUTE AGO YOU

E511 DIDN'T GO TO COURT FOR YOUR UUM CHARGE BECAUSE THEY

E512 HAD A DRUG COURT WARRANT FOR YOUR ARREST, THAT WASN'T

E513 TRUE; WAS IT?

E514 A. AS FAR AS I THOUGHT - I SWORE THEY DID. ~~SO IT REALLY~~

E515 ~~WOULDN'T BE TELLING A LIE, YOU KNOW. SO YOU CAN'T SAY I'M~~

E516 ~~LYING.~~ TO THE BEST OF MY KNOWLEDGE, I THOUGHT I DID HAVE

E517 A WARRANT.

In the first excerpt, Dr. Superior uses metalanguage to draw attention to the fact that the attorney's question is based on a mistaken assumption. First, he draws attention to the attorney's question, demonstrating that he recognizes the metalinguistic nature of a question in the courtroom context. Dr. Superior then answers his own reformulation of the question. In the second excerpt, Dr. Superior uses metalanguage to protest the negative characterization of himself the attorney is implying. Dr. Superior defends himself against the attorney's accusation that his "testimony was designed" according to

a particular goal. Dr. Superior uses two strategies, one that refers to his role as a witness, explaining that he is doing his job (linguistically), which is to tell the truth, as it contrasts with the role of the lawyer, and that what the attorney is doing (linguistically) is “just” the “intent of the attorney,” implying that the intent of attorneys is to do something other than to tell the truth. Secondly, in this excerpt, Dr. Superior also refers to the metalinguistic unit of the question, stating that he does not know the answer to it.

In the third excerpt, Mark reiterates the linguistic imperative of the witness during testimony, which is not to lie, and the linguistic imperative of lawyers during cross-examination, which is, among others, to demonstrate that the witness is untruthful. He demonstrates his recognition of the courtroom metalinguistic touchstones of true statement versus lie. The attorney has accused him of lying, and he asserts that he was telling the truth to the best of his ability. These examples where courtroom participants refer to courtroom metalanguage suggest that witnesses are aware of the linguistic dynamics of cross-examination, and can make reference to those dynamics in presenting testimony and in defending themselves from cross-examiners’ verbal assaults.

I have found that witnesses’ strategic resourcefulness, as exemplified in their recognition and use of metalanguage, operates in witness language in other ways as well. For instance, a pervasive objective for each witness in my data is avoidance of that which is detrimental to them. One of the goals of attorneys in cross-examination is to manipulate the witness into stating, or allowing to have recorded, information that shows them to be guilty, lying, etc. (see “The Criminal Trial” and “Objectives”

Chapter1). The witnesses in my data alternately avoid: 1. providing incorrect information (i.e., perjuring themselves) (Officer Bird, Officer Connery, Dr. Superior, Mark); 2. incriminating themselves in illegal activities (Mark and Fiona); and 3. incriminating others in illegal activity for fear of negative repercussions (Fiona). In my data, witnesses practice avoidance through several strategies, including hedging (see “Hedges in the Data” Chapter 5), and ignoring the implied intent of the attorney’s question (see “Categories of Questions” Chapter 5). The ability of the witnesses represented in my study, and of witnesses generally, to devise and employ such strategies in order to achieve their objectives, especially in the environment of cross-examination, varies according to their role in the trial and related motivations (see “The Criminal Trial” and “Objectives” Chapter1), as well as to their personal style (see “Review of Individual Speaker Styles” above).

A witness’ performance is also potentially influenced by factors including age, gender, status, educational background, and experience in the courtroom. Trial practice manuals acknowledge that certain types of witnesses (such as expert witnesses and females, for example) are prone to use particular testimonial styles and / or behaviors; the attorney examining members of these groups is encouraged to follow guidelines that recommend (cross-)examination strategies specific to the category the witness represents (see “Trial Practice Manuals” Chapter 2). My investigation into witness testimony, however, proves this methodology to be misguided. The diversity of the witnesses’ linguistic performance in my data alone demonstrates that witnesses’ linguistic behaviors cannot be explained or predicted, much less manipulated, on the basis of factors such as gender or prior experience in the courtroom.

For example, Officer Connery and Dr. Superior, who are both expert older male witnesses with extensive courtroom experience (see “Introduction to Subjects” Chapter 3), and who are both testifying in the routine capacity of their respective jobs, might be expected to share many similarities in testimonial styles. The opposite is true. Officer Connery uses many polite forms (i.e., “Sir”) and hypercorrect forms, a high level of hedges, relatively few evaluative responses, medium-length answers, no challenges and no overrides. In contrast, Dr. Superior never uses “Sir” or hypercorrect forms, and he uses an intermediate number of hedges, relatively many evaluative responses, very long answers, one strong challenge, and an override. Officer Connery pays deference to the examining attorney, through his use of “Sir” and hypercorrect formal style, while Dr. Superior condescends to the attorney, as in his challenge (“Look, you’re a lawyer [...]”), and tries to bypass the attorney’s authority by speaking directly to the presiding judge.

The comparison of Dr. Superior’s and Officer Connery’s testimonial speech styles alone may not disprove the methodology upon which trial practice manuals are based, but further comparisons of the contextualized language usage of witnesses according to the various idealized groups they represent provides more evidence against the reliability of that methodology (see “Review of Individual Speaker Styles” in this chapter). A comparison of the speech style of the two female witnesses shows that Officer Bird uses a low incidence of copies and narrative answers while Fiona exhibits a high preference for copy forms and fragmented answers. Comparison of the lay witnesses’ styles also shows difference: Mark demonstrates a high use of “Sir” and relies heavily on the strategy of response abandonment, while Fiona uses “Sir” only

once and makes use of tenacity as her fundamental strategy of resistance. Of course, innumerable variables (e.g., Officer Bird's dual status as both an expert and a female) contribute to these differences, both subtle and pronounced, in the witnesses' individual styles. Since my sample of witnesses is so small, one individual may represent several idealized categories. However, my data is sufficient to demonstrate that lawyers' trial manuals have represented incomplete accounts of witnesses' speech styles in discounting the role context plays in determining those styles, and especially in the context of the linguistically dynamic exchange of cross-examination.

If legal professionals writing about witness testimony err in assuming uniformity of witnesses' styles, both generally and within stereotypical categories, so, too, do the linguists and other social scientists who try to derive generalizations from and impose classifications on speaker styles irrespective of contextual considerations. In this dissertation, I have modeled portions of my analysis after the style of studies like O'Barr's (1982) and Philips' (1984). These studies claim that identification and quantification of isolable features, such as polite address forms, hypercorrection, and copy responses, in witnesses' language reveals information about witnesses' power, credibility, etc. (see Chapter 2 "Women's Language or Powerless Language" and "Copies and Constraint in Witness Testimony"). I have adapted their quantitative techniques alongside my own qualitative, contextualized analyses, and I have determined that the sole use of quantitative classificatory schemes can provide misleading results.

Ambiguity of Function

One reason for the inadequacy of quantitative data is the multifunctionality of linguistic forms. Although I began my study with the idea that evidence of power in witness language during cross-examination could be linked to the salience of particular discourse features in the individual witness' testimony, I found that those features differ functionally according to context. This observation is supported in Tannen's discussion of how particular linguistic strategies can indicate both an asymmetrical relationship (power-governed) and a symmetrical relationship (of solidarity) between their users (Tannen 1993). Tannen adapts the discussion by Brown and Gilman (1960) of how European speakers use pronouns to indicate both power and solidarity (as with the French *tu* and *vous*) by showing how the use of first names in English operates on both power and solidarity levels. If only one participant in an exchange addresses the other by first name but is herself addressed by title and last name, then she is in a position of power over the other speaker. However, if both speakers address each other by first name, the mutual use of first name is a sign of solidarity. In this way, use of first names in addressing another are multifunctional or ambiguous and certainly depend upon context of use. Furthermore, Tannen finds that this ambiguity applies to more than a select few discourse elements; she claims that "all linguistic strategies are potentially ambiguous" (Tannen 1993: 167-8).

I have found Tannen's insight to be resoundingly true with respect to my data. The ambiguity of function demonstrated in speakers' differential use of first names is applicable to the differential use of respect titles, and immediately recognizable in the pragmatic use of "Sir" in my data. I have shown the use of "Sir" to be a powerless

strategy in the context of witness testimony, in part due to its predominant conflation with another supposedly powerless form, the copy (see Chapter 5 “What does ‘Sir’ mean?”). Most instances of “Sir” in witness testimony occur as copies in responses of the “Yes, Sir” and “No, Sir” variety (see “Where Does ‘Sir’ Occur?”). I have also shown that the very same respectful address form “Sir” and its counterpart “Ma’am” can be used strategically for a much different purpose by the cross-examiner (see Chapter 5 “Copy Forms in the Data”). The following excerpt illustrates the variable uses of “Sir”:

E380 Q. OH, BY THE WAY, THE NEXT DAY, DID YOU WRECK THAT
E381 CAR?

E382 A. YES, SIR.

E383 Q. JANUARY THE --

E384 A. NOT THE NEXT DAY.

E385 Q. SIR?

E386 A. NOT THE NEXT DAY.

E387 Q. DIDN'T YOU WRECK THAT CAR JANUARY 11TH, 1995?

E388 A. YEAH; I WRECKED IT.

E389 Q. WELL, THE NEXT DAY -- WOULD BE JANUARY 10TH, 1995.

E390 THE NEXT DAY WOULD BE JANUARY 11TH, 1995?

E391 A. OKAY.

E392 Q. SIR?

E393 A. I SAID YES, SIR.

In the excerpt, “Sir?” is used strategically by the attorney (E385, E392) in prompts that are intended to force the witness to revise his previous answer, which he ultimately does in E391 and E393. In the witness’ testimony, however, “Sir” is used as a function of acquiescence. In conclusion, the use of polite address forms is not an inherently powerless strategy, but is instead defined by the context in which a speaker uses “Sir” and “Ma’am.”

I have also shown other forms, such as copies, overlap, and questions, to be multifunctional within the scope of witness language. To begin with, while I concur with Philips’ (1984) assessment that a high incidence of copy forms in a witness’ testimony correlates with linguistic powerlessness, I find that copy forms may be used by witnesses in the context of powerful strategies, as well (see Chapter 5 “Copy Forms in the Data”). With respect to overlap, I have proposed three functional types of overlap to characterize the occurrences of witness-initiated overlap in the data, including (from what I claim to be the least to most powerful): cooperative, anticipatory, and disruptive overlap (see “Defining Overlap” Chapter 5). A listener uses cooperative overlap, such as the back channel “sure,” to show support and encouragement to the speaker. A listener alternately uses disruptive overlap to overtake the speaker’s turn. Anticipatory overlap has an intermediate function, in that the listener employing anticipatory overlap may be showing support for the speaker, but nonetheless takes over the speaker’s turn in the process. Finally, I have argued that, contrary to O’Barr’s characterization of questions as powerless forms, witnesses use questions in my data in ways that are not powerless and, in fact, are sometimes very powerful (see Chapter 5 “Clarification Requests” and “Overrides” and Chapter 6 “Challenges”).

Ambiguity of Form

In analyzing my data, not only have I encountered multifunctional discourse forms, I have also discovered that the forms themselves can not always be consistently or clearly defined as to their linguistic or discourse category. The potential ambiguity of form is best exemplified in my analysis of hedges.

In the literature, linguists describe hedges and intensifiers as they might occur in the language of a hypothetical speaker (e.g., Brown and Levinson's construction of the speech of "a Model Person"; Brown and Levinson 1987: 21, 58-9) or based on their introspections about the way these forms are manifest in their own language (Lakoff 1975: 4-5). The resultant definitions and examples do not encompass the breadth of examples occurring in actual interaction (see "Hedges" Chapter 5). O'Barr (1982), too, defines hedges vaguely. For his purposes, which are to determine mock jurors' evaluations of fictionalized and / or altered witnesses' testimony in which allegedly powerless forms, including hedges and intensifiers, are present or absent, a vague definition suffices. As applied to my natural data, however, a generalized definition of hedges is not sufficient.

In Chapter 5 "Intensifiers," I addressed the initial difficulty of discerning hedges from intensifiers, e.g., how to compare "I don't know exactly" to "I know exactly." I demonstrated the role context plays in determining function, and I concluded that form is not independent of function. In "Hedges in the Data," I turned to the problem of adequately describing what constitutes a hedge in my data. As I have indicated, a listing of forms irrespective of context is not enough. For this reason, I have devised a

comprehensive classificatory scheme (see “Hedges in the Data”) in which I reveal the functional categories of hedges, i.e., temporal hedges, measurement hedges, relevancy hedges, causality and eventuality hedges, emphatic hedges, general mitigators, validity disclaimers, and avoidance hedges, that I discern in my data. This new classification provides a template for future empirical analyses of hedges.

Areas for Further Research

There is an apparent deficit in language-and-law studies focusing on the linguistic dynamics of witness language as a subgenre of legal language in its own right. A first step to better understanding the linguistic performance of the witness during cross-examination would be, simply, for more researchers to analyze more witness testimony, and discourse analysts particularly. The “cases-and-interpretations” methodology of discourse analysis (Geertz 1980: 165) lends itself well to the investigation and description of the individual’s linguistic experience, as in the context of the trial.

Also, although I have identified new power-linked strategies in this paper, I have not attempted to gauge how these strategies are perceived and judged by courtroom audiences. An obvious application of my analysis would be to study jurors’ and judges’, as well as attorneys’, perceptions of and reactions to the turn-level and global discourse strategies I have discussed, as with respect to witness credibility and competence.

Although I have focused in this paper on linguistic strategies that I claim are evidence of power in witnesses’ speech, relevant studies might treat the engagement of multiple strategies in witnesses’ testimony, e.g., how witnesses endeavor to achieve

multiple objectives through their language. For example, it might be interesting to investigate a witness' use of powerless strategies in conjunction with strategies of noncompliance (e.g., Fiona), or a witness' use of powerful forms in the linguistic environment of strategies of compliance (e.g., Officer Connery).

I have shown how supposedly powerless discourse forms are multifunctional, and can be used in both powerful and powerless ways by witnesses (see "Ambiguity of Function" in this chapter). A related area requiring investigation is how participant role affects the meaning or force of discourse features and strategies. I have touched on this subject in my discussion of the use of polite address forms by showing how "Sir" can function as both a power-commanding prompt in the speech of attorneys (see "Copy Forms in the Data" in Chapter 5), and as a sign of deference in the speech of the witnesses (see "Who Uses 'Sir'?" in Chapter 5; see also "Officer Connery" and "Mark" in this chapter). Other linguistic forms taken to be powerless in the speech of witnesses, such as tag questions, may be used in controlling ways by attorneys. A comparison of the variable usages of such multifunctional discourse forms could be revealing.

Finally, I have mentioned the interplay in interaction between witnesses and attorneys, as with how certain types of questions are more likely to be answered in the form of a copy by witnesses than other types of questions (see Chapter 5 "Copy Forms"). Further investigation into what responses are motivated by particular linguistic forms (e.g., how witnesses respond to tag questions as opposed to other question types) in the context of both direct and cross-examination might contribute to a more comprehensive understanding of witnesses' linguistic choices during testimony.

The Linguistic Individual

In my investigation of witness language, I have shown witness language to be motivated by factors beyond gender, social status, and experience, for example, in that witnesses elect strategies to accomplish individual objectives in the context of cross-examination. In executing linguistic strategies, witnesses are exerting, or relinquishing (in the case of response abandonment), their power to control the talk in which they are engaged. As witnesses' objectives are evident at the level of speaker turn and at a broader, discourse level, so, too, are the strategies that witnesses apply toward achieving their objectives. In my discussion, I have identified turn-level strategies including overrides, challenges, evaluative responses, and reformulations, and discourse strategies including tenacity, avoidance, abandonment, and appeal to authority status, that reflect witnesses' power or powerlessness in shaping the discourse of cross-examination.

I have argued that witnesses' linguistic performance is not adequately described by analyses that quantify features irrespective of context. I have shown that such analyses risk misrepresenting speakers' meanings in not accounting for the potential ambiguity of the forms and functions of linguistic strategies. I find support for my argument in Johnstone's The Linguistic Individual (1996), in which Johnstone rallies discourse analysts to look to the speech of the individual in trying to answer "fundamental questions about language" (24-5). "Discourse analysts' goal," writes Johnstone, "is to understand their data, rather than to prove or disprove preformulated hypotheses or to create general predictive models" (24). I have investigated the language of five individual witnesses with the purpose of understanding each individual's context-specific linguistic meanings and intentions. My results include the

discovery of novel strategies of power and powerlessness that contribute to a broader understanding of the linguistic strategies of the power-disadvantaged in the context of adversative discourse.

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APPENDIX A TRANSCRIPTION KEY

Traditionally Power-Linked Features

Polite forms: **SIR and YOUR HONOR**

Copy responses: **NO, I DID NOT** , **YES, SIR; I WAS** , **TWICE** , etc.

Hedges: I MEAN , SOMETIMES , CERTAINLY , I DON'T RECALL , etc.

Hypercorrection: **I DON'T RECALL** , **IT WAS SHORTLY THEREAFTER** , etc.

Gestures: **LIKE HERE'S THE SIDE OF MY CAR**

New Power-Linked Strategies

Questions:

Clarification Requests: **WHAT YOU MEAN?** , **FOR ME?** , etc.

Overrides: e.g., **CAN I RESTATE THAT?**

Challenges: e.g., **LOOK, YOU'RE A LAWYER -**

Evaluative Responses: RIGHT , THAT IS CORRECT , CORRECT , etc.

Reformulations: e.g., **I WOULD USE THE WORD POSSIBLE**

Abbreviations: PA: Prosecuting Attorney AD: Attorney for the Defense

SIC: court reporter's notation of verbatim quote; occurs in C307 and C316 to indicate attorney's use of an incorrect name in reference to a witness

Note: Grammatical mistakes in the data are as they appear in the original transcript, e.g., "hairdo's" (E540), "I've seen the err of my ways" (E307), etc.

APPENDIX B
CROSS-EXAMINATION OF OFFICER BIRD

CROSS-EXAMINATION

B1 BY AD:

B2 Q. WE KNOW IT'S PROBABLE, THOUGH, THAT PRINTS CAN BE
B3 LIFTED FROM THAT CAR; ISN'T THAT TRUE?

B4 A. I WOULD USE THE WORD POSSIBLE.

B5 Q. WELL, YOU'VE GOT A PRINT FROM THAT CAR; DON'T YOU?

B6 A. I'VE GOT A PRINT -- I DON'T KNOW WHERE IT CAME FROM.

B7 I HAVE A PRINT THAT SAYS IT CAME FROM THE CAR. I DIDN'T

B8 LIFT IT. I HAVE NO IDENTIFIER HERE THAT SAYS THIS CAME OFF

B9 OF WHATEVER KIND OF CAR THAT IS. ALL I KNOW IS I HAVE A

B10 LIFT THAT SAYS IT CAME FROM A CAR. I CAN'T TELL YOU THAT

B11 THIS CAME FROM THIS CAR.

B12 Q. WELL, IF IT DID COME FROM THAT CAR?

B13 A. THEN I'VE GOT A LIFT. THEN IT WORKED.

B14 Q. THEN THIS POSSIBILITY THAT YOU CAN'T GET ONE IS DOWN

B15 THE TUBES, BECAUSE WE KNOW YOU CAN GET A PRINT FROM

B16 THAT CAR; CORRECT?

B17 A. POSSIBILITY IN EITHER DIRECTION.

B18 Q. WELL, IT'S MORE PROBABLE IF YOU GOT ONE; ISN'T IT?

B19 A. I'VE GOT ONE OUT OF FIVE, SO IT'S POSSIBLE IN EITHER

B20 DIRECTION.

B21 Q. OKAY. LET ME ASK YOU THIS. WHEN DID YOU DO THE

B22 ANALYSIS?

B23 A. WHEN?

B24 Q. YES.

B25 A. 6-10 OF '96.

B26 Q. JUNE 10TH OF 1996?

B27 A. UH-HUM; THAT'S CORRECT.

B28 Q. AND WHEN WERE THOSE PRINTS SUBMITTED TO YOU?

B29 A. I RECEIVED THEM JANUARY 24TH OF 1995.

B30 Q. ALMOST A YEAR AND A HALF LATER YOU DID YOUR

B31 ANALYSIS; CORRECT?

B32 A. THAT'S CORRECT.

B33 Q. WERE YOU ASKED BY -- WELL, LET ME ASK YOU THIS. WHO

B34 SUBMITTED THEM TO YOU; WHAT DETECTIVE?

B35 A. THEY WERE SUBMITTED TO ME BY - I BELIEVE IT WAS

B36 CORPORAL BOYLE AT THE TIME, THE CRIME SCENE.

B37 Q. WHEN WAS THE REQUEST MADE FOR THE COMPARISON?

B38 A. I DON'T HAVE AN EXACT DATE FOR THE REQUEST FOR THE

B39 COMPARISON. ALL I CAN TELL YOU IS, THE PERSON WHO ASKED

B40 FOR THE COMPARISON WAS MIKE FORESTER AND COMPARISONS

B41 ARE DONE WITHIN A DAY OR TWO OF BEING ASKED.

B42 Q. SO IF YOUR REPORT IS DATED 6-10 OF '96, IT WOULD BE FAIR

B43 TO SAY THAT MORE PROBABLE THAN NOT - THAT THE REQUEST

B44 WAS MADE AROUND THE 8TH OR 9TH OF JUNE, 1996?

B45 A. THAT'S -- THAT'S RIGHT.

B46 Q. DO YOU KNOW MIKE FORESTER IS WITH THE PA'S OFFICE?

B47 A. YES, I KNEW THAT.

B48 Q. SO NO DETECTIVE INVESTIGATING THIS CASE EVER

B49 REQUESTED THAT A COMPARISON BE MADE; CORRECT?

B50 A. IF THEY DID, THAT'S NOT WHO MY REPORT REFLECTS THAT

B51 I SENT IT TO.

B52 Q. DID YOU COMPARE AGAINST ANY OTHER SUSPECTS -- LET

B53 ME -- LET ME REPHRASE. WERE YOU ASKED TO COMPARE THOSE

B54 PALM PRINTS AGAINST AN INDIVIDUAL NAMED RON IRVINE?

B55 PA: I'M GOING TO OBJECT TO THAT, YOUR HONOR.

B56 THE COURT: OBJECTION OVERRULED.

B57 BY AD:

B58 Q. WERE YOU ASKED TO COMPARE THOSE PALM PRINTS OR

B59 FINGERPRINTS TO AN INDIVIDUAL NAMED RON IRVINE?

B60 A. NO, SIR.

B61 Q. IS THAT THE ONLY REQUEST YOU RECEIVED, ONE REQUEST

B62 FOR ANALYSIS OF THESE PRINTS?

B63 A. THAT'S CORRECT.

B64 Q. THAT'S ALL THE QUESTIONS I HAVE

APPENDIX C
CROSS-EXAMINATION OF OFFICER CONNERY

CROSS-EXAMINATION

C1 BY AD:

C2 Q. GOOD AFTERNOON.

C3 A. GOOD AFTERNOON, SIR.

C4 Q. WHEN YOU -- THAT WASN'T THE FIRST TIME YOU HAD

C5 CONTACT WITH MARK RENTON IN FEBRAURY OF '95, WAS IT?

C6 A. NO, SIR.

C7 Q. YOU INTERVIEWED HIM THE NIGHT OF THE MURDER, OR

C8 THE EARLY MORNING HOURS; IS THAT CORRECT?

C9 A. THAT IS CORRECT.

C10 Q. AND YOU LIFTED -- BASED ON THAT INTERVIEW WITH MR.

C11 RENTON, YOU LIFTED PALM PRINTS, OR YOU DIRECTED OFFICER

C12 BOYLE TO LIFT SOME PRINTS OFF HIS BERETTA, THAT CAR; IS

C13 THAT CORRECT?

C14 A. YES, SIR.

C15 Q. NOW WHEN YOU INTERVIEWED MR. RENTON, HE DIDN'T

C16 GIVE YOU ANYBODY'S NAME ON THE MORNING OF JANUARY

C17 11TH; DID HE - 1995?

C18 A. ~~I DON'T RECALL IF~~ HE GAVE ME THE NAMES THAT WE

C19 EVENTUALLY ENDED UP WITH, BUT WE DID TALK, AND HE WAS

C20 RELUCTANT, EVEN AT THAT TIME, TO SPEAK TO ME.

- C21 Q. RIGHT. BUT HE DIDN'T GIVE YOU ANY NAMES AT THAT
C22 TIME; DID HE?
- C23 A. ~~I SIMPLY DON'T RECALL.~~
- C24 Q. WELL, IF HE WOULD HAVE, WOULDN'T YOU HAVE GONE
C25 OUT AND TRIED TO FIND THOSE INDIVIDUALS, IF HE GAVE YOU
C26 THOSE NAMES?
- C27 A. IF HE DID, I'M SURE I WOULD HAVE.
- C28 Q. AND YOU DON'T HAVE AN INDEPENDENT RECOLLECTION
C29 THAT YOU CAN TELL THE JURY THAT YOU WENT AND SOUGHT
C30 OUT FRANCIS BEGBIE ON JANUARY 11TH, 1995; IS THAT CORRECT?
- C31 A. I CAN TELL YOU I DID ~~SOUGHT OUT~~ THEIR PICTURES. SO
C32 APPARENTLY ~~I DID OBTAIN~~ THE NAMES FROM SOMEWHERE.
- C33 Q. IN FEBRUARY OF '95 YOU GOT THEIR PICTURES; ISN'T
C34 THAT CORRECT?
- C35 A. SOMEWHERE IN THERE I GOT THE PICTURES. I CAN'T
C36 REMEMBER --
- C37 Q. WELL, TELL THE JURY WHEN YOU GOT HIS PICTURES.
- C38 A. I SIMPLY CAN'T TELL YOU THAT BECAUSE ~~I DON'T RECALL.~~
- C39 Q. BUT WE KNOW THAT YOU HAD THE PICTURES IN FEBRUARY
C40 OF '95.
- C41 A. THAT IS CORRECT.
- C42 Q. AND UP UNTIL FEBRUARY OF '95, YOU DIDN'T TRY AND
C43 INTERVIEW FRANCIS BEGBIE; DID YOU?

C44 A. NO, SIR.

C45 Q. IN FACT, MR. RENTON DIDN'T GIVE YOU ANY NAMES THE
C46 NIGHT HE INTERVIEWED WITH YOU ON JANUARY 11TH, 1995 THAT
C47 YOU HAVE AN INDEPENDENT RECOLLECTION OF?

C48 A. NO, I DON'T.

C49 Q. WHAT DID HE TELL YOU? DID HE TELL YOU HE DIDN'T
C50 KNOW WHO IT WAS, HE DIDN'T GET A GOOD SIGHT, HE DIDN'T SEE
C51 HIM, IT WAS TOO DARK?

C52 A. HE SAID THAT HE DIDN'T KNOW.

C53 Q. HE DIDN'T KNOW?

C54 A. HE DROVE OFF, DROVE AWAY. HE HEARD SEVERAL SHOTS,
C55 AS HE APPROACHED NICHOLSON DRIVE, IN THE AREA. HE WAS
C56 VERY EVASIVE IN HIS --

C57 Q. HE WAS VERY EVASIVE?

C58 A. YES, SIR.

C59 Q. YOU DIDN'T FIND HIM TO BE VERY CREDIBLE THAT NIGHT;
C60 WOULDN'T THAT BE FAIR TO SAY?

C61 A. THAT IS FAIR TO SAY.

C62 Q. AND IT WASN'T UNTIL HE HAD BEEN ARRESTED ON BENCH
C63 WARRANTS ON HIS COCAINE CHARGE THAT YOU WENT AND SAW
C64 HIM IN PRISON; ISN'T THAT CORRECT?

C65 PA: I'M GOING TO OBJECT TO THAT, YOUR HONOR.

C66 THE COURT: BASIS?

C67 PA: MAY WE APPROACH?

C68 THE COURT: YES.

C69 REPORTER'S NOTE: COUNSEL FOR THE STATE AND

C70 FOR THE ACCUSED APPROACHED THE BENCH FOR A

C71 CONFERENCE WITH THE COURT AS FOLLOWS:

C72 THE COURT: WHAT'S THE BASIS OF THE OBJECTION?

C73 PA: BECAUSE HE'S ASKING FOR ARRESTS OF MARK

C74 RENTON.

C75 THE COURT: WELL, IT'S A PENDING CHARGE ON ONE

C76 OF YOUR WITNESSES ON THAT AT THIS POINT.

C77 PA: SO --

C78 THE COURT: I'M GOING TO OVERRULE THE

C79 OBJECTION. I'M NOT GOING TO LET HIM GO INTO A WHOLE

C80 LOT OF DETAIL ON IT RIGHT NOW, BUT HE'S BEEN

C81 ARRESTED. IT'S ALL GOING TO COME OUT. WE TALKED

C82 ABOUT IT IN OPENING STATEMENTS.

C83 PA: OKAY.

C84 THE COURT: OKAY.

C85 REPORTER'S NOTE: TRIAL PROCEEDED AS FOLLOWS:

C86 THE COURT: PROCEED, MR. AD.

C87 BY AD:

C88 Q. OFFICER CONNERY, JUST SO WE CAN GET OUR TIME LINE

C89 CORRECT --

C90 A. SURE.

C91 Q. -- THE MURDER HAPPENED ON JANUARY 10, 1995; IS THAT

C92 CORRECT?

C93 A. YES, SIR.

C94 Q. ABOUT NINE O'CLOCK. YOU INTERVIEWED MARK RENTON

C95 AT APPROXIMATELY 1:30, ONE O'CLOCK IN THE MORNING ON

C96 JANUARY 11TH, 1995?

C97 A. THAT WOULD BE PRETTY CLOSE.

C98 Q. AND AT THAT TIME HE TOLD YOU HE DID NOT KNOW WHO

C99 THOSE SUSPECTS WERE; ISN'T THAT CORRECT?

C100 A. YES, SIR; THAT WOULD BE CORRECT.

C101 Q. AND YOU FOUND HIM NOT TO BE VERY CREDIBLE AND

C102 EVASIVE THAT NIGHT; IS THAT CORRECT?

C103 PA: HE'S ALREADY ANSWERED THAT QUESTION.

C104 OBJECTION.

C105 A. I MIGHT SAY --

C106 THE COURT: SUSTAINED. MOVE ON.

C107 AD: OKAY.

C108 THE COURT: NEXT QUESTION, MR. AD.

C109 AD: YES, YOUR HONOR. I'M GOING FORWARD.

C110 THE COURT: OKAY. ALL RIGHT.

C111 BY AD:

C112 Q. WHEN YOU INTERVIEWED MR. RENTON IN FEBRUARY OF '95

C113 HE WAS AT THE EAST BATON ROUGE PARISH PRISON; ISN'T THAT

C114 CORRECT?

C115 A. I BELIEVE SO.

C116 Q. BECAUSE HE HAD BEEN ARRESTED ON WARRANTS FOR NOT

C117 GOING TO COURT ON HIS COCAINE CHARGE; ISN'T THAT

C118 CORRECT?

C119 A. ~~I DON'T RECALL~~ THE CIRCUMSTANCES --

C120 Q. CAN YOU TELL THE JURY WHY HE WAS IN PRISON?

C121 A. I HAVE NO IDEA.

C122 Q. YOU'VE BEEN A DETECTIVE FOR HOW LONG?

C123 A. OH, APPROXIMATELY FIFTEEN YEARS OR BETTER.

C124 Q. WOULDN'T IT BE FAIR TO SAY THAT YOUR EXPERIENCE --

C125 AND HAVE YOU HAD A LOT OF EXPERIENCE WITH INMATES

C126 CONTACTING YOU AT THE PARISH - FROM THE PARISH PRISON?

C127 A. SURE.

C128 Q. AND HAVEN'T YOU FOUND THAT INMATES WHO CONTACT

C129 YOU FROM THE PARISH PRISON AND WANT TO GIVE YOU

C130 INFORMATION IS BECAUSE THEY WANT SOMETHING IN RETURN?

C131 GENERALLY SPEAKING.

C132 A. GENERALLY SPEAKING, I WOULD AGREE WITH THAT.

C133 Q. MR. RENTON DIDN'T COME FORWARD BEFORE HE WAS PUT

C134 IN PRISON; DID HE?

C135 A. AND I'M NOT SAYING HE CAME FORWARD THEN.

C136 Q. SIR?

C137 A. I'M NOT SAYING HE CAME FORWARD AND PRODUCED THAT

C138 INFORMATION. ~~I JUST SIMPLY DON'T RECALL~~ HOW I CAME IN

C139 CONTACT WITH HIM.

C140 Q. RIGHT. WELL, YOU CAN'T TELL THE JURY THAT HE DIDN'T

C141 COME FORWARD; CAN YOU?

C142 A. NO, SIR. I CAN'T SAY THAT. ~~I JUST SIMPLY DON'T RECALL.~~

C143 Q. BUT YOU KNOW THAT WHEN HE'S IN PRISON, NOW THAT'S

C144 WHEN HE CONTACTS YOU; CORRECT?

C145 A. I KNEW I WAS CONTACTED THAT HE WAS IN PRISON, AND

C146 THAT'S (ABOUT) ALL I CAN SAY.

C147 Q. AND BASED ON THE INFORMATION THAT YOU RECEIVED ON

C148 FEBRUARY 21ST, 1995, YOU, YOURSELF, DID NOT FEEL THAT THAT

C149 WAS ENOUGH TO EVEN GO TO A JUDGE AND TRY TO GET AN

C150 ARREST WARRANT BASED ON PROBABLE CAUSE; ISN'T THAT

C151 CORRECT?

C152 A. THAT IS CORRECT.

C153 Q. THE FACT THAT HE WAS A CRACK COCAINE ADDICT LED

C154 YOU TO THINK THAT HE WAS VERY EVASIVE AND NON-CREDIBLE?

C155 PA: I'M GOING TO OBJECT TO THAT. THAT CALLS

C156 FOR INFORMATION --

C157 THE COURT: SUSTAINED.

C158 BY AD:

C159 Q. DID YOU HAVE ANY INFORMATION THAT HE WAS A CRACK

C160 COCAINE ADDICT?

C161 A. NO, SIR.

C162 Q. NO? CAN YOU TELL THE JURY THE EXACT DATE THAT YOU

C163 WERE DISCHARGED FROM THIS CASE?

C164 A. ~~IT WAS SHORTLY THEREAFTER~~ THE MURDER THAT I WAS

C165 TRANSFERRED.

C166 Q. WHO WAS HANDLING THE CASE AFTER YOU?

C167 A. I BELIEVE IT WAS ASSIGNED -- I TRULY DON'T KNOW, BUT I

C168 COULD ONLY TELL YOU I UNDERSTAND IT WAS ASSIGNED TO

C169 DETECTIVE BLADES, LENNOX, AND POSSIBLY SERGEANT

C170 ROBERTSON. I COULDN'T REALLY TELL YOU.

C171 Q. WERE YOU ON THIS CASE IN JUNE OF 1995?

C172 A. I MAY HAVE BEEN. I REALLY DON'T KNOW.

C173 Q. NOW THIS FIRST PERSON YOU GOT THE GUN FROM; HE WAS

C174 A SUSPECT? THE 9 MILLIMETER THAT YOU SUBMITTED TO THE

C175 STATE POLICE CRIME LAB. HE WAS A SUSPECT? THE MAN FROM

C176 SUNSHINE.

C177 A. YES. HE -- ALL I CAN TELL YOU FROM MY MEMORY IS THAT

C178 HE ~~PRODUCED~~ THE WEAPON. I TOOK IT TO THE CRIME LAB FOR
C179 BALLISTICS.

C180 Q. I MEAN, HE JUST SHOWED UP AT YOUR OFFICE AND GAVE
C181 YOU THE WEAPON, OR DID YOU ASK FOR IT BECAUSE HE WAS A
C182 SUSPECT?

C183 A. I'M NOT SAYING THAT HE VOLUNTARILY WALKED IN THE
C184 OFFICE. ~~SOMEONE PRODUCED HIM TO ME~~. I DIDN'T -- ~~AS TO HOW~~
C185 ~~I CAME ABOUT THE INFORMATION, I JUST SIMPLY DON'T RECALL~~
C186 RIGHT NOW.

C187 Q. SO YOU ORIGINALLY HAD A SUSPECT IN THIS CASE, ISN'T
C188 THAT CORRECT? LIKE THE FIRST DAY, FIRST DAY OR TWO?

C189 A. THERE WERE SEVERAL NAMES THROWN ABOUT.

C190 Q. YOU CAN'T REMEMBER ANY OF THOSE NAMES?

C191 A. NO, SIR; I DO NOT.

C192 Q. HOW MANY, THOUGH, WOULD YOU TELL THE JURY, NAMES
C193 WERE THROWN ABOUT?

C194 A. ABOUT TWO, MAYBE THREE. I'M NOT REAL SURE.

C195 Q. AND ONE OF THEM WAS THE GENTLEMAN FROM SUNSHINE?

C196 A. YES; THAT'S CORRECT.

C197 Q. DETECTIVES LENNOX AND BLADES GAVE YOU THE NAME
C198 OF IRVINE; DIDN'T THEY?

C199 A. ~~I DON'T RECALL~~.

C200 Q. IF THEY TESTIFIED THAT THEY GAVE YOU THE NAME OF

C201 RON IRVINE, WOULD YOU DISPUTE THAT?

C202 PA: I'M GOING TO OBJECT TO THAT QUESTION,

C203 YOUR HONOR.

C204 THE COURT: SUSTAINED.

C205 BY AD:

C206 Q. YOU DON'T KNOW IF YOU GOT THE NAME OF RON IRVINE?

C207 A. ~~I DON'T RECALL.~~

C208 Q. OTHER THAN FRANCIS BEGBIE'S FINGERPRINTS THAT WERE

C209 COMPARED TO THE PALM PRINTS THAT WERE LIFTED FROM THE

C210 BERETTA, WHO OTHER INDIVIDUALS DID YOU TRY TO COMPARE

C211 THOSE PRINTS WITH?

C212 A. I REALLY DIDN'T HAVE A WHOLE LOT OF INVOLVEMENT IN

C213 THIS CASE BEYOND THE FIRST INITIAL INVESTIGATION. I

C214 COULDN'T REALLY TELL YOU. I DIDN'T FUNCTION IN THAT

C215 CAPACITY AT ALL. I DON'T KNOW ANYTHING ABOUT THE PRINTS.

C216 Q. DID YOU TRY TO RUN THE GENTLEMAN FROM SUNSHINE'S

C217 PRINTS AGAINST THOSE PRINTS?

C218 A. ~~I DON'T RECALL.~~ I'M TELLING YOU, ~~I JUST SIMPLY DON'T~~

C219 ~~RECALL.~~

C220 Q. NOW I'M NOT TRYING TO BE HYPERTECHNICAL. IS IT YOU

C221 COULD HAVE AND YOU JUST DON'T REMEMBER, OR YOU DIDN'T?

C222 A. ~~I DON'T RECALL.~~ I MAY HAVE AND I MAY NOT HAVE. ~~I JUST~~

C223 ~~DON'T RECALL~~.

C224 Q. YOU ALSO INTERVIEWED FIONA STEVENSON; ISN'T THAT

C225 CORRECT?

C226 A. YES, SIR; I DID.

C227 Q. SHE RESIDED AT 966 WEST PRESIDENT; IS THAT CORRECT?

C228 A. YES, SIR; I BELIEVE THAT'S CORRECT.

C229 Q. WHAT'S THE DATE THAT YOU INTERVIEWED MS. FIONA

C230 STEVENSON?

C231 A. NOT THAT NIGHT. THE VERY NEXT DAY OR A FEW DAYS

C232 LATER. ~~IDON'T RECALL~~ THE EXACT DATE, BUT I DID INTERVIEW

C233 HER.

C234 Q. IF YOU REVIEWED YOUR REPORT, WOULD THAT REFRESH

C235 YOUR MEMORY ON THE DATE OF THE INTERVIEW?

C236 A. SURE. ABSOLUTELY.

C237 AD: JUDGE, I'D ASK THAT HE BE ALLOWED TO

C238 REVIEW HIS REPORT TO GIVE THE JURY THE INFORMATION

C239 AS TO THE DATE OF THE INTERVIEW.

C240 THE COURT: I CAN'T MAKE HIM LOOK AT THAT

C241 REPORT, MR. AD.

C242 BY AD:

C243 Q. WOULD YOU BE WILLING TO LOOK AT YOUR REPORT AND

C244 TELL THE JURY THE EXACT DATE OF YOUR INTERVIEW?

C245 A. I HAVE NOTHING TO HIDE. I MEAN, IF IT'S THERE, IT'S

C246 THERE.

C247 Q. OKAY. I'D ASK YOU TO LOOK AT YOUR REPORT, THEN.

C248 A. I DON'T HAVE IT.

C249 Q. WELL, I'M NOT GIVEN IT EITHER, SO I THINK THE PA'S GOT

C250 THE REPORT.

C251 THE COURT: MR. AD, NEXT QUESTION.

C252 BY AD:

C253 Q. WOULD YOU BE WILLING TO ASK THE PA FOR A COPY OF

C254 YOUR REPORT TO REVIEW?

C255 A. IT'S WHATEVER YOU WANT. I MEAN --

C256 Q. I WOULD LIKE YOU TO ASK THE PA FOR A COPY OF YOUR

C257 REPORT.

C258 PA: JUDGE, THE WITNESS IS NOT --

C259 THE COURT: IS THAT AN OBJECTION?

C260 PA: YES, IT IS AN OBJECTION.

C261 THE COURT: SUSTAINED.

C262 AD: MAY WE APPROACH?

C263 THE COURT: MR. AD, NOT ON THIS ISSUE; NO, SIR.

C264 BY AD:

C265 Q. DIDN'T YOU INTERVIEW HER ON FEBRUARY 6TH, 1995?

C266 A. I DID INTERVIEW HER. ~~JUST DON'T RECALL~~ THE DATE AND

C267 TIME.

C268 Q. AND WEREN'T YOU ASKING HER WHAT DID SHE HEAR IN
C269 THE STREET AND WHAT DID SHE KNOW ABOUT IT, AND YOU
C270 WERE TRYING TO GET POTENTIAL SUSPECTS FROM HERE; WERE
C271 YOU NOT?

C272 A. MOST PROBABLY DID; YEAH.

C273 Q. AND SHE DIDN'T GIVE YOU ANY INFORMATION; DID SHE?

C274 PA: I'M GOING TO OBJECT TO THAT, YOUR HONOR.

C275 THAT CALLS FOR HEARSAY. COUNSEL CAN'T HAVE IT BOTH
C276 WAYS.

C277 THE COURT: I'M GOING TO OVERRULE THIS.

C278 A. YES.

C279 BY AD:

C280 Q. SHE DID?

C281 A. YES.

C282 Q. WHO DID SHE GIVE YOU?

C283 A. I BELIEVE SHE GAVE ME YOUR CLIENT'S NAME AND ONE
C284 OTHER.

C285 Q. ON WHAT DAY?

C286 A. ~~I DON'T RECALL~~ THE DATE. I'M SAYING I DID INTERVIEW
C287 HER. AS TO THE DATE, I CAN'T TELL YOU THAT. ~~I DON'T RECALL~~.

C288 Q. AND THAT WAS WITHIN A FEW DAYS AFTER THE MURDER?

C289 A. YES; WHENEVER THE INTERVIEW OCCURRED.

C290 Q. COULD IT HAVE BEEN FEBRUARY 6TH, 1995 THAT YOU

C291 INTERVIEWED FIONA STEVENSON?

C292 PA: HE'S ALREADY ANSWERED THAT QUESTION,

C293 YOUR HONOR.

C294 THE COURT: OVERRULED.

C295 A. IT COULD HAVE BEEN.

C296 BY AD:

C297 Q. AND DIDN'T SHE TELL YOU AT THAT TIME SHE DIDN'T

C298 HAVE ANY INFORMATION ABOUT FRANCIS BEGBIE?

C299 A. MY BEST RECOLLECTION IS, SHE TOLD ME THAT SHE HEARD

C300 IN THE STREET A INDIVIDUAL BY THE NAME OF MOO AND

C301 HOOCHIE HAD WANTED TO - THAT THEY KILLED THE VICTIM IN

C302 RETALIATION FOR RAMONE'S DEATH. THAT IS MY BEST

C303 RECOLLECTION.

C304 Q. DID YOU GO INTERVIEW FRANCIS BEGBIE AT THAT TIME?

C305 A. NO, I DID NOT.

C306 Q. OKAY. DOESN'T YOUR REPORT INDICATE THAT FIONA

C307 STEVENS (SIC) DID NOT GIVE YOU THE NAME OF FRANCIS BEGBIE

C308 ON FEBRUARY 6TH, 1995?

C309 A. I REALLY, TRULY DON'T KNOW, SIR.

C310 Q. AND YOU DON'T WANT TO LOOK AT YOUR REPORT AND

C311 TELL THE JURY WHETHER OR NOT THAT'S TRUE?

C312 A. I CAN ONLY TELL YOU FROM MY RECOLLECTION. THAT'S

C313 ALL I HAVE.

C314 Q. WELL, CAN YOU TELL THIS JURY FOR A FACT, UNDER OATH,
C315 THAT ON FEBRUARY 6TH, 1995 YOU RECEIVED FRANCIS BEGBIE'S
C316 NAME FROM FIONA STEVENS (SIC)?

C317 A. I CAN (ONLY) TELL YOU FROM MY RECOLLECTION THAT I
C318 DID INTERVIEW HER AND ANY NAMES THAT I DID OBTAIN DID
C319 COME FROM HER. AS TO THE EXACT DATE AND TIME I CAN'T
C320 TELL YOU THAT.

C321 Q. IS THERE ANY PARTICULAR REASON WHY YOU DON'T
C322 WANT TO LOOK AT YOUR REPORT ON THIS ISSUE?

C323 PA: YOUR HONOR, I WANT TO OBJECT TO THIS LINE
C324 OF QUESTIONING.

C325 AD: JUDGE, I NEED TO APPROACH THE BENCH. I
C326 MEAN, THIS IS AN IMPORTANT ISSUE.

C327 THE COURT: SUSTAINED. NOT AT THIS TIME, MR.
C328 AD.

C329 AD: AND WHY IS THAT?

C330 THE COURT: MR. AD, NEXT QUESTION, SIR.

C331 AD: I'D ASK THE JURY BE REMOVED AND A
C332 HEARING ON THIS ISSUE, BECAUSE WE'VE BEEN PROVIDED
C333 BRADY MATERIAL ON THIS ISSUE --

C334 THE COURT: MR. AD, NO FURTHER IN FRONT OF THE
C335 JURY, SIR.

C336 NEXT QUESTION.

C337 BY AD:

C338 Q. FIONA STEVENS DIDN'T TELL YOU THAT FRANCIS BEGBIE

C339 CONFESSED TO HER; DID HE -- DID SHE?

C340 A. NO, SIR.

C341 Q. SO YOU WOULD AGREE THAT WHENEVER YOU

C342 INTERVIEWED FIONA STEVENSON, SHE DIDN'T TELL YOU ABOUT

C343 A CONFESSION?

C344 A. NO, SIR.

C345 Q. THAT'S CORRECT. WELL, MY STATEMENT IS CORRECT;

C346 ISN'T THAT TRUE?

C347 A. IT APPEARS TO BE.

C348 Q. WELL, IN FEBRUARY OF '95 WHEN YOU GOT FRANCIS

C349 BEGBIE'S NAME, DID YOU TRY TO RUN HIS AGAINST THE PRINTS?

C350 A. I MAY HAVE. I JUST --

C351 Q. YOU MAY? CAN YOU TELL THE JURY UNDER OATH THAT

C352 YOU DID?

C353 A. ALL I CAN TELL YOU IS THAT I MAY HAVE. I JUST SIMPLY

C354 DON'T RECALL.

C355 Q. DID YOU REVIEW YOUR REPORT BEFORE GETTING ON THE

C356 STAND TODAY?

C357 A. I READ IT.

C358 Q. WHEN?

C359 A. TODAY.

C360 Q. TODAY?

C361 A. YES, TODAY.

C362 Q. AND DIDN'T YOUR REPORT INDICATE THAT FIONA DIDN'T

C363 TELL YOU --

C364 A. I DON'T -- ~~I DON'T RECALL.~~

C365 Q. DID YOU EVER TRY TO RUN RON IRVINE'S PRINTS?

C366 A. SIR, ~~I DON'T RECALL.~~

C367 Q. THANK YOU, SIR.

C368 THE COURT: ANY REDIRECT?

C369 PA: YES, YOUR HONOR.

APPENDIX D
CROSS-EXAMINATION OF DR. SUPERIOR

CROSS-EXAMINATION

D1 BY PA:

D2 Q. YOU STATED THAT YOU WERE THE DIRECTOR OF THE
D3 CHEMICAL DEPENDENCY UNIT?

D4 A. YES.

D5 Q. AND WHEN WAS THAT, SIR?

D6 A. APPROXIMATELY 1988 TO ABOUT 1991, '92.
--

D7 Q. SO ABOUT THREE YEARS?

D8 A. YES.

D9 Q. WHY DID YOU LEAVE, SIR?

D10 A. THEY CHANGED HOSPITALS. I WAS HIRED BY WHAT WAS
D11 THEN PARKLAND HOSPITAL AND THEN SUBSEQUENTLY MOVED
D12 TO ANOTHER HCA HOSPITAL.

D13 Q. OKAY. YOU'RE A PRIVATE PHYSICIAN PRACTICING
D14 PSYCHIATRY RIGHT NOW?

D15 A. CORRECT.

D16 Q. YOU NO LONGER WORK FOR ANY TYPE OF HOSPITAL OR
D17 ANYTHING LIKE THAT?

D18 A. I DO WORK FOR THE CORNERSTONE HEALTH
D19 MANAGEMENT, A HEALTH CORPORATION, CORNERSTONE,
D20 INCORPORATED. I'M NOT SURE EXACTLY OF THEIR TITLE, AND

D21 I'M A MEDICAL DIRECTOR OF A PSYCHIATRIC UNIT IN

D22 GREENSBURG, LOUISIANA.

D23 Q. WHAT TYPE OF PATIENTS DO YOU DEAL WITH THERE?

D24 A. IN THAT, GENERAL ADULT PSYCHIATRIC PATIENTS, PLUS

D25 THE ELDERLY.

D26 Q. DID YOU HAVE ANY OTHER INVOLVEMENT WITH

D27 CHEMICAL DEPENDENT INDIVIDUALS, OTHER THAN THE

D28 DIRECTOR FOR MEADOWOOD?

D29 A. I SEE CHEMICALLY DEPENDENT PEOPLE ON A DAILY

D30 BASIS. THE LAST PERSON I SAW BEFORE COMING OVER HERE

D31 WAS CHEMICALLY DEPENDENT. IT'S A PART OF WHAT I DO.

D32 THERE ARE TWO CHEMICAL DEPENDENCY COUNSELORS WHO

D33 WORK IN OUR OFFICE AND THEY DO THE THERAPY FOR THOSE

D34 PEOPLE AND I DO THE MEDICATIONS. I'M A MEDICAL

D35 DOCTOR.

D36 Q. YOU'RE ALLOWED TO WRITE PRESCRIPTIONS, THAT TYPE

D37 OF THING?

D38 A. YES.

D39 Q. IN THE FIELD YOU'RE BEING OFFERED AS AN EXPERT,

D40 HAVE YOU EVER BEEN ACCEPTED AS AN EXPERT IN THAT FIELD

D41 IN THE NINETEENTH JDC?

D42 A. YES. YES.

D43 Q. APPROXIMATELY HOW MANY TIMES, SIR?

D44 A. I CANNOT POSSIBLY TELL YOU.

D45 Q. IN THE FIELD OF PSYCHIATRY AND CHEMICAL

D46 DEPENDENCY?

D47 A. CORRECT.

D48 Q. MORE THAN ONE, MORE THAN TWICE, MORE THAN TEN

D49 TIMES?

D50 A. MORE THAN A HUNDRED.

D51 Q. HAVE YOU EVER BEEN QUALIFIED AS AN EXPERT BEFORE

D52 THIS PARTICULAR JUDGE?

D53 A. NO, I HAVE NOT.

D54 Q. WHEN WAS THE LAST TIME YOU WERE QUALIFIED AS AN

D55 EXPERT?

D56 A. YESTERDAY.

D57 Q. AND WAS THAT IN THIS DISTRICT?

D58 A. YES.

D59 Q. FOR WHICH JUDGE?

D69 A. UH --

D61 Q. WELL, LET ME PUT IT THIS WAY. WHICH CASE WAS IT?

D62 A. TODD WESSINGER.

D63 Q. AND WAS THAT FOR THE DEFENSE OR FOR THE STATE?

D64 A. FOR THE DEFENSE.

D65 Q. AND YOU WERE TESTIFYING IN THAT REGARD FOR

D66 CHEMICAL DEPENDENCY; IS THAT CORRECT?

D67 A. THAT'S CORRECT.

D68 Q. YOU'VE BEEN A PRACTICING PSYCHIATRIST FOR HOW
D69 LONG?

D70 A. TWENTY YEARS.

D71 Q. DO YOU ATTEND ANY TYPE OF SPECIALIZED TRAINING
D72 SEMINARS THAT ALLOW YOU TO INVOLVE JUST CHEMICAL
D73 DEPENDENT PATIENTS AND TRAIN YOU IN CHEMICAL
D74 DEPENDENCY?

D75 A. I HAVE TAKEN SOME SPECIALIZED COURSES IN CHEMICAL
D76 DEPENDENCY TREATMENT, BUT I HAVE NOT TAKEN ANY
D77 RECENTLY.

D78 Q. OKAY. DOES THE MEDICAL FIELD RECOGNIZE - I MEAN A
D79 SPECIFIC DEGREE SAYING YOU ARE A CHEMICAL DEPENDENCY
D80 EXPERT?

D81 A. NO. THE QUESTION YOU'RE ASKING IS ABOUT BOARD
D82 CERTIFICATION, AND THERE ARE ACCREDITING BOARDS WHICH
D83 ARE GENERALLY ACCEPTED.

D84 Q. GENERALLY ACCEPTED.

D85 A. CORRECT. THAT IS, THEY ARE ACCEPTED FOR
D86 APPOINTMENT; FOR EXAMPLE, AS A PROFESSOR AT A MEDICAL
D87 SCHOOL. SO I COMPLETED MY CERTIFICATION IN PSYCHIATRY

D88 BY THE AMERICAN BOARD OF PSYCHIATRY AND NEUROLOGY.
D89 THAT CERTIFICATION IS ACCEPTED AROUND THE WORLD.
D90 THERE ARE OTHER GROUPS WHO ATTEMPT TO ISSUE
D91 CERTIFICATION, BUT ARE NOT ACCEPTED. VERY SIMILAR TO A
D92 DEGREE. SOME PEOPLE CAN GET A PH.D. FROM A RECOGNIZED
D93 UNIVERSITY AND SOME PEOPLE CAN BUY - BUY IT IN THE MAIL.
D94 Q. THE AMA, FOR EXAMPLE; THE AMERICAN MEDICAL
D95 ASSOCIATION?
D96 A. RIGHT.
D97 Q. DO THEY RECOGNIZE SPECIALIZED DEGREES IN
D98 CHEMICALLY DEPENDENT PSYCHIATRISTS?
D99 A. NO. THE AMERICAN MEDICAL ASSOCIATION IS A -- IT'S
D100 ESSENTIALLY A TRADE UNION. IT'S A DOCTOR'S
D101 ORGANIZATION. THE ACCREDITING BODY IS A DIFFERENT
D102 GROUP THAN THE AMERICAN MEDICAL ASSOCIATION.
D103 Q. WELL, WHAT ACCREDITING BODY ARE YOU TALKING
D104 ABOUT?
D105 A. THE ACCREDITING BODY FOR PSYCHIATRISTS IS THE
D106 AMERICAN BOARD OF PSYCHIATRY AND NEUROLOGY. THE
D107 SURGEONS HAVE THE AMERICAN COLLEGE OF SURGEONS.
D108 THOSE BODIES TOGETHER HAVE A OVER-ARCHING BODY. THE
D109 ORIGINAL CERTIFYING BOARD WAS THE AMERICAN BOARD OF
D110 PSYCHIATRY AND NEUROLOGY. IT IS THE OLDEST BOARD. IT

D111 STARTED ALL THE OTHERS.

D112 Q. YOU'RE TELLING ME THE AMERICAN BOARD OF

D113 PSYCHIATRY AND NEUROLOGY STARTED THE AMA? YOU SAID

D114 IT STARTED ALL THE OTHER BOARDS.

D115 A. THE AMA IS NOT A BOARD.

D116 Q. IT'S NOT A BOARD?

D117 A. THE AMA IS A MEDICAL ORGANIZATION. IT'S A TRADE

D118 UNION FOR DOCTORS. IT'S NOT A BOARD.

D119 Q. THE AMERICAN BOARD OF PSYCHOLOGY AND

D120 NEUROLOGY, DO THEY RECOGNIZE SPECIALIZED DEGREES IN

D121 CHEMICAL DEPENDENCY?

D122 A. NO.

D123 Q. BUT YOU ARE A PSYCHIATRIST?

D124 A. CORRECT.

D125 Q. THANK YOU VERY MUCH, DOCTOR.

D126 A. THANK YOU.

D127 THE COURT: ANYTHING ELSE, MR. AD?

D128 AD: NO, SIR. I'D LIKE TO OFFER DR. SUPERIOR AS

D129 AN EXPERT IN THE FIELD OF PSYCHIATRY AND CHEMICAL

D130 DEPENDENCY.

D131 PA: I WILL OBJECT TO THE FIELD OF CHEMICAL

D132 DEPENDENCY. I WILL ACCEPT HIM AS A PSYCHIATRIST, A

D133 SPECIALIST IN PSYCHIATRY.

D134 THE COURT: COURT'S GOING TO ACCEPT HIM AS

D135 AN EXPERT IN THE FIELD OF MEDICINE, PSYCHIATRY,

D136 WITH THE ABILITY TO SPEAK ON THE ISSUE OF CHEMICAL

D137 DEPENDENCY.

CROSS EXAMINATION

D138 BY PA:

D139 Q. DOCTOR, HAVE YOU EVER PERSONALLY DONE COCAINE?

D140 A. NEVER.

D141 Q. HAVE YOU EVER DONE CRACK COCAINE?

D142 A. NEVER.

D143 Q. WHEN DID MR. AD HIRE YOU?

D144 A. ELEVEN O'CLOCK THIS MORNING.

D145 Q. AND HOW MUCH DID HE PAY YOU?

D146 A. SIX HUNDRED DOLLARS.

D147 Q. HOW MUCH WERE YOU PAID YESTERDAY FOR THE

D148 WESSINGER CASE?

D149 A. I WASN'T PAID.

D150 Q. YOU WERE NOT PAID. HAVE YOU SUBMITTED A BILL FOR

D151 THAT CASE?

D152 A. I HAVE -- I DON'T KNOW IF I HAVE AS OF YET, BUT WE WILL

D153 CERTAINLY SHORTLY.

D154 Q. AND HOW MUCH WILL THAT BILL BE?

D155 A. I'M NOT CERTAIN. TO ACCUMULATE THE HOURS -- I
D156 BASICALLY CHARGE THREE HUNDRED DOLLARS AN HOUR AND I
D157 PROBABLY HAVE ABOUT -- I DON'T KNOW EXACTLY HOW MANY
D158 HOURS. I HAVE TO CALCULATE IT AND WRITE IT UP.
D159 Q. MORE THAN A THOUSAND?

D160 A. OH, CERTAINLY.

D161 Q. AND YOU TESTIFIED IN THE PENALTY PHASE OF THAT
D162 PARTICULAR CASE; IS THAT CORRECT?

D163 A. CORRECT.

D164 Q. AND IN THAT PARTICULAR CASE, YOU TESTIFIED FOR THE
D165 DEFENSE ON THE ISSUE OF ALCOHOL DEPENDENCY; IS THAT
D166 CORRECT?

D167 A. CORRECT.

D168 Q. AND IN THAT CASE DID YOU TESTIFY THAT MR. WESSINGER
D169 DID NOT KNOW WHAT HE WAS DOING BECAUSE HE WAS
D170 ALCOHOL DEPENDENT?

D171 A. NO, I DID NOT.

D172 Q. OKAY. AND WHAT WAS THE SUBJECT OF YOUR TESTIMONY
D173 IN THE WESSINGER CASE?

D174 A. MAY I HAVE A SMALL AMOUNT OF LATITUDE, YOUR

D175 HONOR?

D176 THE COURT: YOU CAN ANSWER THE QUESTION.

D177 A. IN LOUISIANA, THE STATE OF LOUISIANA OPERATES A
D178 HOSPITAL CALLED THE FELICIANA FORENSIC FACILITY, WHICH IS
D179 A HOSPITAL, PSYCHIATRISTS, PSYCHOLOGISTS, NURSES, SOCIAL
D180 WORKERS, AND WHEN PATIENTS ARE ACCUSED OF EMOTIONAL -
D181 ARE CONSIDERED TO HAVE AN EMOTIONAL ILLNESS, THEY'RE
D182 ADMITTED THERE. MY ROLE IS OFTEN IN THE OPPOSITE; THAT IS,
D183 TO EVALUATE PATIENTS FOR DEFENSE ATTORNEYS AND MY ROLE
D184 IS REALLY VERY DISCRETE; THAT IS, IN MOST CASES TO
D185 DETERMINE SOMEONE'S MENTAL STATUS WHEN I SEE THEM,
D186 PERHAPS IN JAIL, OR ALTERNATE - AND THEN TO EXTRAPOLATE,
D187 BASED ON EVIDENCE THAT'S AVAILABLE, THEIR MENTAL STATUS
D188 AT THE TIME OF THE COMMISSION OF THE CRIME. WHEN I
D189 INTERVIEWED MR. WESSINGER, IT WAS WITH NO PRESSURE FROM
D190 HIS ATTORNEY IN ANY WAY. HE WAS AN ABSOLUTE HONEST
D191 ATTORNEY. HE ASKED ME TO EVALUATE THIS INDIVIDUAL AND
D192 REPORT TO HIM WHETHER HE HAD A MENTAL DISEASE OR
D193 DEFECT. MY OPINION WAS THAT HE DID NOT, AND I SO STATED.

D194 Q. BUT DID YOU TESTIFY IN THAT PARTICULAR CASE THAT HIS
D195 ABILITY TO PERCEIVE MAY HAVE BEEN LIMITED BY HIS ALCOHOL
D196 DEPENDENCY?

D197 A. HE CONSUMED TWENTY-FOUR OUNCES OF ALCOHOL IN A
D198 PERIOD OF TIME A FEW HOURS BEFORE HE SHOT THE PEOPLE, AND

D199 HE WAS INTOXICATED, AND THAT IS, HAD HE BEEN SUBJECT TO A
D200 BREATHALYZER, HE WOULD HAVE HAD A LEVEL OF BREATH
D201 ALCOHOL SUFFICIENT TO BE CONSIDERED INTOXICATED, AND
D202 THAT'S BASICALLY WHAT I SAID.

D203 Q. SO YOUR TESTIMONY WAS DESIGNED TO SAY HE DID NOT
D204 HAVE A SPECIFIC INTENT TO KILL THOSE INDIVIDUALS BECAUSE
D205 HE WAS ALCOHOL IMPAIRED.

D206 A. LOOK, YOU'RE A LAWYER --

D207 Q. ANSWER MY QUESTION, PLEASE, DOCTOR.

D208 A. I DON'T KNOW THE ANSWER TO YOUR QUESTION, BECAUSE
D209 MY TESTIMONY WAS THE TRUTH, AS I CAME TO SEE IT, AND IT
D210 WAS ABSOLUTELY WITHOUT PRESSURE IN ANY WAY. NOW THE
D211 INTENT OF THE ATTORNEY, THAT'S JUST ATTORNEYS. THAT'S
D212 THEIR BUSINESS.

D213 Q. ALL RIGHT. YOUR TESTIMONY WAS HE WAS INTOXICATED
D214 AT THE TIME HE COMMITTED THOSE KILLINGS?

D215 A. YES; THAT'S WHAT HE WAS.

D216 Q. YOU STATED THAT YOU EVALUATE PATIENTS FOR DEFENSE
D217 ATTORNEYS. APPROXIMATELY HOW MANY TIMES ARE YOU
D218 HIRED BY A DEFENSE ATTORNEY? HOW MANY TIMES IN THE PAST
D219 YEAR?

D220 A. IN 19 -- IN THE LAST ONE YEAR, VERY FEW TIMES. I QUIT
D221 DOING FORENSIC WORK IN 1992, AND REALLY HAVE ONLY

D222 RECENTLY DONE A FEW CASES. I'VE DONE TWO CASES FOR THE
D223 STATE OF LOUISIANA ON DEFENSE, ONE ON A CHILD WHO WAS
D224 MOLESTED IN A MENTAL HEALTH CENTER, AND ONE ON AN
D225 INMATE WHO WAS ABUSED.

D226 Q. HOW MANY TIMES IS THAT, SIR?

D227 A. I CAN'T TELL YOU. IN THE LAST TWO YEARS, PROBABLY -- I
D228 DON'T KNOW. I'VE PROBABLY ONLY DONE ABOUT FIFTEEN OR
D229 TWENTY CASES. I DON'T REMEMBER.

D230 Q. SO WHAT WOULD YOU SAY YOUR INCOME IS FROM THOSE
D231 FIFTEEN, TWENTY CASES IN THE PAST TWO YEARS?

D232 A. I DON'T KNOW; MAYBE THIRTY THOUSAND DOLLARS, I
D233 GUESS. I DON'T KNOW.

D234 Q. DO YOU KNOW MARK RENTON?

D235 A. NO.

D236 Q. THANK YOU.

D237 AD: TENDER?

D238 PA: YES.

APPENDIX E
CROSS-EXAMINATION OF MARK

CROSS-EXAMINATION

E1 BY AD:

E2 Q. YOU SAID YOU DIDN'T TELL THEM ON JANUARY 10TH, 19 --
E3 11TH, 1995 BECAUSE THEY WEREN'T IN CUSTODY. IS THAT WHAT
E4 YOU JUST TOLD THE JURY?

E5 A. YES, SIR.

E6 Q. THEY WEREN'T IN CUSTODY ON FEBRUARY 21ST, 1995 TO
E7 YOUR KNOWLEDGE; WERE THEY?

E8 A. NO, SIR.

E9 Q. BUT YOU WERE IN CUSTODY ON FEBRUARY 21ST, 1995;
E10 ISN'T THAT TRUE?

E11 A. YES SIR; I WAS.

E12 Q. YOU GOT PICKED UP ON A BENCH WARRANT FOR NOT
E13 GOING TO THE DRUG COURT; RIGHT?

E14 A. YES SIR; I WAS.

E15 Q. YOU MISSED YOUR ARRAIGNMENT IN DRUG COURT?

E16 A. YES, SIR.

E17 Q. YOU GOT ARRESTED NOVEMBER 24TH, 1994 FOR BUYING
E18 ROCKS; IS THAT RIGHT?

E19 A. YES, SIR.

E20 Q. YOU WERE IN THAT SAME BERETTA; WEREN'T YOU?

E21 A. YES, SIR.

E22 Q. AND SO YOU'VE JUST TOLD ME THAT BEGBIE WASN'T IN
E23 CUSTODY ON FEBRUARY 21ST, 1995; ISN'T THAT RIGHT?

E24 A. THE DAY OF THE LINEUP? WHEN I PICKED THEM OUT THE
E25 LINEUP?

E26 Q. YES.

E27 A. YES, SIR.

E28 Q. HE WASN'T IN CUSTODY?

E29 A. HE WASN'T IN CUSTODY.

E30 Q. HE WASN'T?

E31 A. I GUESS HE WASN'T. I DON'T KNOW.

E32 Q. OKAY. AND HE WASN'T IN CUSTODY ON NOVEMBER 11TH,
E33 1995, OBVIOUSLY.

E34 A. WHEN WAS THAT?

E35 Q. I MEAN, JANUARY 11TH, 1995, THE NIGHT OF THE MURDER.

E36 A. NOT THAT I KNOW OF.

E37 Q. AND THE ONLY DIFFERENCE IS THE FACT THAT YOU
E38 WEREN'T IN CUSTODY ON JANUARY 11TH, 1995; RIGHT? YOU
E39 WEREN'T IN CUSTODY THAT NIGHT; WERE YOU?

E40 A. NO, SIR. NO, SIR.

E41 Q. YOU WERE FREE.

E42 A. YES, SIR.

- E43 Q. ON THE STREET. AND ONLY DIFFERENCE IS THAT YOU
E44 WERE IN CUSTODY ON FEBRUARY 21ST, 1995; ISN'T THAT TRUE?
- E45 A. YOU'RE CONFUSING ME. I DON'T --
- E46 Q. THE DATES ARE CONFUSING YOU?
- E47 A. YEAH. THE DATES -- YOU'RE CONFUSING ME.
- E48 Q. WELL, LET'S JUST TALK -- LET'S FORGET THE DATES. LET'S
E49 JUST TALK ABOUT THE EVENTS.
- E50 A. OKAY.
- E51 Q. THE FIRST TIME YOU TALKED TO THE POLICE, YOU WERE
E52 NOT IN CUSTODY; ISN'T THAT CORRECT?
- E53 A. YES, SIR; THE NIGHT OF THE MURDER.
- E54 Q. THE SECOND TIME YOU TALKED TO THE POLICE, AT THE
E55 PARISH PRISON, YOU WERE IN CUSTODY?
- | |
|------------------|
| E56 A. YES, SIR. |
|------------------|
- E57 Q. THE FIRST NIGHT YOU TALKED TO THE POLICE, FRANCIS
E58 BEGBIE WASN'T IN CUSTODY; ISN'T THAT TRUE?
- | |
|-----------------|
| E59 A. NO, SIR. |
|-----------------|
- E60 Q. OKAY. AND YOU SAID YOU DIDN'T WANT TO SAY HIS
E61 NAME BECAUSE HE WASN'T IN CUSTODY?
- | |
|------------------|
| E62 A. YES, SIR. |
|------------------|
- E63 Q. BUT HE WASN'T IN CUSTODY FEBRUARY 21ST, 1995?
- E64 A. YES, SIR. WELL, I FELT LIKE MAYBE I SHOULD HAVE DID

E65 SOMETHING.

E66 Q. SIR?

E67 A. I FELT LIKE MAYBE I SHOULD HAVE DID SOMETHING.

E68 Q. WELL, NOW THAT YOU'RE IN PRISON YOU FELT LIKE YOU

E69 SHOULD DO SOMETHING; RIGHT?

E70 A. WELL, I'M CURRENTLY SERVING A THREE YEAR SENTENCE,

E71 SIR.

E72 Q. I KNOW. BUT THE NIGHT OF FEBRUARY 21ST, 1995 YOU

E73 HAD BEEN ARRESTED FOR NOT GOING TO THE DRUG COURT ON A

E74 BENCH WARRANT.

E75 PA: YOUR HONOR, HE'S ALREADY ASKED AND

E76 ANSWERED THAT QUESTION.

E77 AD: I'LL MOVE ON. HE WAS JUST CONFUSED ON THE

E78 DATES.

E79 THE COURT: OVERRULE THE OBJECTION. IT HAS

E80 BEEN ANSWERED. LET'S GO TO THE NEXT QUESTION.

E81 BY AD:

E82 Q. THAT WAS SPUD - DETECTIVE SPUD CONNERY THAT CAME

E83 OUT TO SEE YOU AT THE PARISH PRISON?

E84 A. YES, SIR.

E85 Q. WHAT DID HE LOOK LIKE? COULD YOU DESCRIBE HIM?

E86 A. HEAVYSET MAN, MID FORTIES.

E87 Q. OKAY. AND HOW LONG HAD YOU BEEN IN CUSTODY AT

E88 THAT TIME?

E89 A. IT'S HARD TO SAY. DON'T REMEMBER. IT'S BEEN TWO
E90 YEARS AGO.

E91 Q. THAT'S BEEN TWO YEARS?

E92 A. RIGHT.

E93 Q. AND YOUR MEMORY HAS FADED IN TWO YEARS, ARE YOU
E94 TELLING THE JURY?

E95 A. NO, SIR. I JUST DON'T REMEMBER HOW LONG I WAS IN JAIL
E96 BEFORE THEY COME TO SEE ME. IT'S HARD TO SAY.

E97 Q. JANUARY 20TH, 1995 WERE YOU ARRESTED? SO YOU HAD
E98 BEEN IN JAIL ABOUT A MONTH?

E99 A. IF THAT'S WHAT YOU SAY.

E100 Q. DID YOU GO THROUGH -- WERE YOU GOING THROUGH
E101 WITHDRAWALS IN THERE?

E102 A. NO, SIR.

E103 Q. NO? YOU JUST SAID WHEN YOU DO THE CRACK IT MAKES
E104 YOU MORE AWAKE AND MORE OBSERVANT; ISN'T THAT RIGHT?

E105 A. YES, SIR.

E106 Q. AND WHEN YOU CRASH IN OFF THE CRACK AND WHEN YOU
E107 DON'T HAVE THE CRACK, YOU'RE LESS OBSERVANT AND LESS
E108 AWAKE; ISN'T THAT TRUE?

E109 A. NO, SIR.

E110 Q. WELL, WHY DID YOU TELL THE JURY IT MAKES YOU MORE
E111 AWAKE?

E112 A. WELL, YOU'RE JUST BACK TO YOUR NORMAL SELF WHEN
E113 YOU COME DOWN.

E114 Q. BACK TO YOUR NORMAL SELF?

E115 A. YEAH; LIKE I AM RIGHT NOW.

E116 Q. OH, SO IT GETS OUT OF YOUR SYSTEM THAT QUICKLY,
E117 YOU'RE TELLING THE JURY?

E118 A. THE EFFECT THAT IT GIVES YOU. IT STAYS IN YOUR
E119 SYSTEM FORTY-EIGHT HOURS.

E120 Q. SIR?

E121 A. I SAY A GRAM OF IT WILL STAY IN YOUR SYSTEM
E122 FORTY-EIGHT HOURS.

E123 Q. WELL, HOW MUCH DID YOU SMOKE THAT DAY?

E124 A. ABOUT A GRAM AND A HALF.

E125 Q. A GRAM AND A HALF. SO THAT WOULD HAVE BEEN IN YOUR
E126 SYSTEM A LONG TIME?

E127 A. ABOUT SEVENTY-TWO HOURS.

E128 Q. NOW YOU PLED GUILTY WHILE YOU WERE IN JAIL, IN THE
E129 DRUG COURT; ISN'T THAT RIGHT?

E130 A. YES, SIR.

E131 Q. AND THEN THEY LET YOU OUT OF JAIL RIGHT AFTER THAT;
E132 DIDN'T THEY? YOU BONDED?

E133 A. YEAH; I MADE BOND.

E134 Q. AND YOU HAD A NOTICE TO RETURN TO COURT ON AUGUST
E135 16TH, 1995 FOR SENTENCING; DIDN'T YOU?

E136 A. IF THAT'S WHAT IT SAID. I CAN'T REMEMBER THE DATES.

E137 Q. YOU DIDN'T GO BACK FOR YOUR SENTENCING, THOUGH;
E138 DID YOU?

E139 A. NO, SIR.

E140 Q. YOU SKIPPED THAT; DIDN'T YOU?

E141 A. YEAH.

E142 Q. YOU JUST DIDN'T CARE?

E143 A. I WAS ON DRUGS.

E144 Q. YOU WERE ON DRUGS?

E145 A. YEAH.

E146 Q. AND THAT MAKES YOU DO DIFFERENT THINGS THAN WHEN
E147 YOU'RE NOT ON DRUGS; IS THAT RIGHT?

E148 A. NO. I JUST DIDN'T -- I KNEW I WAS DIRTY AND I WAS GOING
E149 BACK TO JAIL.

E150 Q. AND THEN YOU ACTUALLY SERVED OUT ANOTHER - UNTIL
E151 APRIL 23RD, 1996 WHEN THE PA'S OFFICE CALLED YOU TO COME
E152 DOWN THERE?

E153 A. YES, SIR.

E154 Q. AND THEN WHEN YOU WALKED IN, THEY ARRESTED YOU;

E155 ISN'T THAT RIGHT?

E156 A. YES, SIR.

E157 Q. SO WHAT YOU'RE TELLING THE JURY IS, WHEN YOU SMOKE
E158 CRACK, YOU JUST GET HIGH, AND THEN RIGHT AFTER YOU FINISH
E159 SMOKING CRACK, YOU GO BACK TO NORMAL. THAT'S WHAT
E160 YOU'RE TELLING THE JURY?

E161 A. YES, SIR. THAT'S ABOUT A MINUTE, TWO MINUTES AT THE
E162 MOST.

E163 Q. SIR?

E164 A. SAY IT LASTS ABOUT A MINUTE OR TWO AT THE MOST.

E165 Q. AND BY THE TIME YOU HAD WENT TO TOMMY'S HOUSE FOR
E166 THE THIRD TIME, YOU'D ALREADY SMOKED, WHAT, A HUNDRED
E167 AND FORTY, HUNDRED AND FIFTY DOLLARS' WORTH OF CRACK?

E168 A. YES, SIR.

E169 Q. WHAT KIND OF JOB YOU HAVE?

E170 A. HUH?

E171 Q. WHAT KIND OF JOB YOU HAVE?

E172 A. MECHANIC.

E173 Q. YOU MADE A HUNDRED AND FIFTY, TWO HUNDRED
E174 DOLLARS A DAY?

E175 A. NO. I MADE ABOUT FOUR HUNDRED DOLLARS A WEEK.

E176 Q. WELL, WHERE DID YOU GET THAT KIND OF MONEY TO
E177 SUPPORT THAT CRACK HABIT?

E178 PA: I'M GOING TO OBJECT TO THAT, YOUR HONOR.

E179 A. I JUST TOLD YOU THAT I MAKE ABOUT FOUR HUNDRED
E180 DOLLARS A WEEK.

E181 THE COURT: OVERRULED. OVERRULED.

E182 BY AD:

E183 Q. WHERE WERE YOU LIVING?

E184 A. WITH MY DADDY.

E185 Q. SO YOU DIDN'T HAVE ANY BILLS?

E186 A. NO, SIR.

E187 Q. SO YOU JUST USED YOUR MONEY TO SMOKE CRACK?

E188 A. IF THAT'S WHAT I WANTED TO DO.

E189 Q. YOU SMOKE CRACK EVERY DAY?

E190 A. NO, SIR.

E191 Q. HOW MANY DAYS A WEEK YOU SMOKE CRACK?

E192 A. AT THAT TIME, MAYBE THREE, FOUR.

E193 Q. FIVE?

E194 A. NO.

E195 Q. SIR?

E196 A. ALL DEPENDS.

E197 Q. WELL, I MEAN, WOULD THERE BE WEEKS THAT YOU
E198 SMOKED FIVE TIMES A WEEK?

E199 A. COULD HAVE BEEN.

E200 Q. WELL, LET ME SEE. IF MY MATH IS CORRECT, AND YOU HAD
E201 SMOKED A HUNDRED AND FORTY DOLLARS A DAY, TIMES FIVE,
E202 THAT WOULD BE SEVEN HUNDRED DOLLARS A WEEK. WHERE
E203 WOULD YOU GET THE EXTRA THREE HUNDRED DOLLARS?

E204 A. I HAD FRIENDS THAT DID IT.

E205 Q. OKAY.

E206 A. WE'D ALL PITCH IN.

E207 Q. YOU'D ALL PITCH IN. YOU WOULDN'T GO OUT AND
E208 COMMIT CRIMES TO GET MONEY TO BUY THAT CRACK; WOULD
E209 YOU, MR. RENTON?

E210 PA: OBJECTION, YOUR HONOR.

E211 THE COURT: SUSTAINED.

E212 BY AD:

E213 Q. NOW I WAS A LITTLE CONFUSED. DID YOU CALL FROM THE
E214 BROADMOOR OR DID YOU CALL FROM THE REBEL SHOPPING
E215 CENTER?

E216 A. BROADMOOR SHOPPING CENTER.

E217 Q. DO YOU KNOW WHERE THE REBEL IS?

E218 A. I GUESS I MIGHT HAVE HAD THE WRONG NAME.

E219 Q. WELL, WHICH ONE WAS IT?

E220 A. BROADMOOR SHOPPING CENTER, RIGHT IN FRONT OF
E221 NATIONAL SUPERMARKET.

E222 Q. HOW MANY TIMES HAVE YOU GONE OVER YOUR

E223 TESTIMONY WITH THAT PHOTOGRAPH WITH THE PA?

E224 A. NONE.

E225 Q. SIR?

E226 A. NONE.

E227 Q. NONE?

E228 A. I SEEN HIM -- NOT THAT.

E229 Q. WHAT -- WHAT HAVE YOU GONE OVER WITH HIM?

E230 A. HUH?

E231 Q. WHAT DID YOU GO OVER WITH HIM - ON A MAP?

E232 A. NO; MY STATEMENT.

E233 Q. YOUR STATEMENT?

E234 A. YEAH.

E235 Q. HOW MANY TIMES HAVE YOU GONE OVER YOUR

E236 STATEMENT WITH HIM?

E237 A. TWICE.

E238 Q. WHEN WAS THE LAST TIME YOU WENT OVER YOUR

E239 STATEMENT BEFORE YOU GOT ON THIS STAND? THIS MORNING?

E240 A. NO. LAST SATURDAY WHEN THEY COME TO SEE ME AT

E241 HUNT CORRECTIONAL CENTER.

E242 Q. SO WHEN YOU WOULD BE ON THIS CRACK, YOU WOULD

E243 JUST MAKE THIS BIG LOOP DOWN FLORIDA BOULEVARD TO

E244 AIRLINE HIGHWAY, BACK TO O'NEAL, JUST DRIVING AROUND?

E245 A. YES, SIR.

E246 Q. ARE YOU SMOKING IT AT THE TIME, OR YOU'VE ALREADY

E247 SMOKED IT AND YOU JUST DRIVE AROUND?

E248 A. I'M SMOKING IT AT THE TIME.

E249 Q. AND IT ONLY LASTS FOR A COUPLE OF SECONDS AND YOU

E250 JUST --

E251 A. THE INITIAL BUZZ. THE BUZZ THAT YOU FEEL WHEN YOU -

E252 WHEN YOU'RE DOING IT, IT ONLY LASTS A SECOND - A MINUTE.

E253 Q. AND WHAT IS THAT BUZZ?

E254 A. IT JUST MAKES YOU REAL AWAKE. GIVES YOU A RUSH.

E255 Q. MAKES YOUR SYSTEM RUSH, LIKE PINS AND NEEDLES IN

E256 YOUR BLOOD, OR --

E257 A. NO. JUST MAKES YOU RUSH, YOU KNOW, KIND OF LIKE --

E258 IT'S HARD TO EXPLAIN.

E259 Q. I CAN UNDERSTAND. AND SO YOU'RE TELLING THE JURY

E260 WHEN YOU'RE NOT ON IT, YOU'RE JUST PERFECTLY NORMAL?

E261 A. BASICALLY, YES.

E262 Q. DO YOU RECALL DOING A PHOTOGRAPHIC LINEUP IN

E263 FEBRUARY OF 1996 WITH OFFICERS LENNOX AND BLADES?

E264 A. YES, SIR.

E265 Q. WHERE DID THEY -- HOW DID THEY GET HOLD OF YOU IF

E266 YOU HAD BENCH WARRANTS FOR YOU AT THE TIME?

E267 A. THEY COME AND PICKED ME UP AT MY DADDY'S

E268 APARTMENT.

E269 Q. DO WHAT?

E270 A. COME AND PICKED ME UP AT MY DADDY'S HOUSE WHERE I

E271 WAS STAYING.

E272 Q. AND W'ERE DID THEY BRING YOU?

E273 A. MAYFLOWER STREET.

E274 Q. YOU DIDN'T TELL THEM AT THAT TIME YOU HAD

E275 WARRANTS OUT FOR YOUR ARREST; DID YOU?

E276 A. NO, SIR.

E277 Q. BECAUSE YOU WANTED TO STAY OUT, SMOKE YOUR

E278 CRACK?

E279 A. NO; DIDN'T WANT TO GO TO JAIL.

E280 Q. WERE YOU ON CRACK IN FEBRUARY OF '96?

E281 A. NO. I THINK I WAS DRYING OUT.

E282 Q. ABOUT -- WELL, HOW LONG DID YOU DRY OUT FOR?

E283 A. HUH?

E284 Q. HOW LONG DID YOU DRY OUT FOR?

E285 A. MAYBE A MONTH.

E286 Q. SO THEN IN MARCH OF '96 YOU WENT BACK TO USING?

E287 A. NO. I WAS CLEAN.

E288 Q. YOU WERE CLEAN WHEN YOU GOT ARRESTED AT THE

E289 PA'S OFFICE?

E290 A. WELL, THEY ARRESTED ME ON BENCH WARRANTS.

E291 Q. IN THE PA'S OFFICE?

E292 A. YEAH.

E293 Q. YOU WERE CLEAN AT THAT TIME? YOU'RE TELLING THE

E294 JURY YOU WERE CLEAN AT THAT TIME?

E295 A. YES, SIR.

E296 Q. WHY DIDN'T YOU GO TO COURT THEN IF YOU WERE CLEAN?

E297 YOU JUST TOLD THE JURY -TOLD THE JURY YOU DIDN'T GO TO

E298 COURT BECAUSE YOU WERE AFRAID YOU WOULD TEST POSITIVE?

E299 A. WELL, I WAS DIRTY THEN. I QUIT AFTER THAT.

E300 Q. I KNOW, BUT AFTER YOU QUIT, WHY DIDN'T YOU GO BACK

E301 TO THE DRUG COURT AND SAY --

E302 A. WHY I DIDN'T TURN MYSELF IN?

E303 Q. EXCUSE ME. I GOT A QUESTION.

E304 A. OKAY.

E305 Q. WHY DIDN'T YOU JUST GO BACK TO THE DRUG COURT AND

E306 SAY, JUDGE, I QUIT, I'M CLEAN, I'M READY TO BE SENTENCED,

E307 I'VE SEEN THE ERR OF MY WAYS? WHY DIDN'T YOU DO THAT?

E308 A. BECAUSE I DID IT A FEW TIMES AND MAYBE I THOUGHT

E309 THEY WAS A LITTLE TIRED OF ME.

E310 Q. SIR?

E311 A. I SAID I DID IT A FEW TIMES --

E312 Q. DID WHAT A FEW TIMES?

E313 A. MISSED MY COURT DATE.

E314 Q. WELL, I KNOW YOU SAID YOU MISSED IT BECAUSE YOU

E315 WOULD HAVE TESTED DIRTY; RIGHT?

E316 A. YES, SIR.

E317 Q. AND WHAT THAT MEANS IS, THEY DRUG TEST YOU UP

E318 THERE AT THE DRUG COURT WHEN YOU SHOW UP FOR YOUR

E319 PROCEEDINGS; IS THAT CORRECT?

E320 A. YES, SIR.

E321 Q. BUT NOW, EVEN WHEN YOU GOT CLEAN, YOU STILL

E322 WOULDN'T GO BACK TO THE DRUG COURT; CORRECT?

E323 A. YES, SIR.

E324 Q. HADN'T YOU MADE ANOTHER CHARGE PUT ON YOU IN

E325 FEBRUARY OF '95 WHEN YOU MADE THIS ALLEGED

E326 IDENTIFICATION OF FRANCIS BEGBIE? DIDN'T YOU HAVE AN

E327 UNAUTHORIZED USE OF A MOTOR VEHICLE CHARGE --

E328 PA: I'M GOING TO OBJECT TO THAT, YOUR HONOR.

E329 THE COURT: WHAT'S THE BASIS?

E330 PA: CAN WE APPROACH?

E331 THE COURT: YES.

E332 REPORTER'S NOTE: COUNSEL FOR THE STATE AND

E333 FOR THE ACCUSED APPROACHED THE BENCH FOR A

E334 CONFERENCE WITH THE COURT AS FOLLOWS:

E335 PA: UNLESS HE SHOWS THAT HE PLED GUILTY TO
E336 THAT CHARGE, HE CAN'T ELUDE TO THE ARREST.

E337 AD: IT SHOWS HIS BIAS. HE'S IN PRISON, THEY'RE
E338 PUTTING CHARGES ON HIM AND HE'S --

E339 THE COURT: IF HE'S GOT A CHARGE ON HIM THAT'S
E340 PENDING IN YOUR OFFICE -- IF HE DOES, I'M GOING TO LET
E341 HIM GO INTO IT. YOU CAN ASK HIM IF IT INFLUENCED HIM
E342 IN HIS TESTIMONY IN ANY WAY.

E343 PA: WELL, HE'S GOT TO SHOW THAT IT'S PENDING
E344 FIRST.

E345 THE COURT: IF HE HAD A CHARGE ON HIM, IT'S
E346 PENDING. THE QUESTION IS, DID HE HAVE A CHARGE ON
E347 HIM. IT'S EITHER YES OR NO TO THAT. I'M GOING TO LET
E348 HIM ASK THE QUESTION.

E349 REPORTER'S NOTE: THE TRIAL PROCEEDED AS
E350 FOLLOWS:

E351 THE COURT: GO AHEAD, MR. A.D..

E352 BY AD:

E353 Q. SO JUST SO WE CAN GET THIS STRAIGHT, WHEN YOU GOT
E354 ARRESTED JANUARY 20TH OF 1995 FOR NOT GOING TO THE DRUG
E355 COURT, YOU HAD ANOTHER CHARGE PUT ON YOU WHILE YOU
E356 WERE IN THE PARISH PRISON, UNAUTHORIZED USE OF A

E357 MOVABLE, BECAUSE THE BERETTA YOU --

E358 PA: YOUR HONOR, I OBJECT. CAN WE --

E359 THE COURT: WOULD Y'ALL APPROACH,

E360 GENTLEMEN? I THOUGHT WE HAD IT STRAIGHT.

E361 AD: I DID TOO, YOUR HONOR.

E362 THE COURT: MR. AD, SAVE YOUR COMMENTS FOR

E363 UP HERE, PLEASE.

E364 AD: YES, SIR.

E365 REPORTER'S NOTE: COUNSEL FOR THE STATE AND

E366 FOR THE ACCUSED APPROACHED THE BENCH FOR A

E367 CONFERENCE WITH THE COURT AS FOLLOWS:

E368 PA: HE'S NOT ALLOWED TO GO INTO THE FACTS.

E369 THE COURT: I DON'T WANT YOU TO GO INTO THE

E370 FACTS OF THE CASE. THE QUESTION IS IF HE HAS A CHARGE

E371 AND IF THERE'S ANY BIAS AS FAR AS THAT CHARGE. BUT

E372 AS FAR AS THE -- I DON'T WANT TO -- WE'RE NOT GOING TO

E373 TRY ANOTHER CASE HERE.

E374 AD: OKAY. OKAY.

E375 THE COURT: OKAY. SUSTAINED.

E376 REPORTER'S NOTE: THE TRIAL PROCEEDED AS

E377 FOLLOWS:

E378 THE COURT: REPHRASE THE QUESTION.

E379 BY AD:

E380 Q. OH, BY THE WAY, THE NEXT DAY, DID YOU WRECK THAT

E381 CAR?

E382 A. YES, SIR.

E383 Q. JANUARY THE --

E384 A. NOT THE NEXT DAY.

E385 Q. SIR?

E386 A. NOT THE NEXT DAY.

E387 Q. DIDN'T YOU WRECK THAT CAR JANUARY 11TH, 1995?

E388 A. YEAH; I WRECKED IT.

E389 Q. WELL, THE NEXT DAY -- WOULD BE JANUARY 10TH, 1995.

E390 THE NEXT DAY WOULD BE JANUARY 11TH, 1995?

E391 A. OKAY.

E392 Q. SIR?

E393 A. I SAID YES, SIR.

E394 Q. AND WHILE YOU WERE IN THE PARISH PRISON, YOU HAD

E395 AN AUTHORIZED USE OF A MOTOR - A MOVABLE - FELONY

E396 CHARGE PUT ON YOU WHILE YOU WERE IN THE PARISH PRISON;

E397 ISN'T THAT TRUE?

E398 A. YES, SIR, BECAUSE I WRECKED THAT CAR.

E399 Q. AND YOU WEREN'T SUPPOSED TO BE USING THAT CAR.

E400 PA: OBJECTION, YOUR HONOR.

E401 A. YES, I WAS.

E402 PA: OBJECTION.

E403 THE COURT: SUSTAINED.

E404 AD: OKAY.

E405 BY AD:

E406 Q. SO AT THE TIME THAT YOU TALKED TO OFFICER MURPHY,

E407 NOT ONLY DID YOU HAVE A FELONY DRUG CHARGE PENDING,

E408 BUT YOU HAD ANOTHER FELONY CHARGE THEY HAD JUST PUT ON

E409 YOU; CORRECT?

E410 A. YES, SIR. BUT THAT CHARGE WAS GOING TO BE DROPPED.

E411 Q. WELL, THAT'S WHAT YOU SAY. BUT I MEAN AT THE TIME

E412 THAT YOU GAVE YOUR STATEMENT TO OFFICER MURPHY, YOU

E413 HAD TWO FELONY CHARGES; CORRECT?

E414 A. YES, SIR.

E415 Q. AND YOU KNOW YOU CAN'T GET PROBATION FOR THE

E416 SECOND FELONY; RIGHT?

E417 PA: OBJECTION TO THAT, YOUR HONOR.

E418 THE COURT: SUSTAINED.

E419 BY AD:

E420 Q. YOU DIDN'T GO TO COURT FOR THAT ARRAIGNMENT ON

E421 5-18 OF '95 EITHER; DID YOU?

E422 A. I BELIEVE NOT.

E423 Q. YOU HAD A BENCH WARRANT FOR THAT ONE; RIGHT?

E424 A. YES, SIR.

E425 Q. WELL, LET ME SEE, THEN. THEY DON'T TEST YOU FOR
E426 REGULAR ARRAIGNMENT COURT; DO THEY?

E427 A. NO, SIR.

E428 Q. SO WHY DIDN'T YOU THEN SHOW UP FOR YOUR
E429 ARRAIGNMENT ON 5-18 OF '95?

E430 A. BECAUSE I HAD A CHARGE IN ANOTHER COURT. I FIGURED
E431 IF I SHOWED UP THERE, THEY'D JUST CALL OVER THERE AND
E432 ARREST ME ON THE SPOT.

E433 Q. WAIT. SAY THAT AGAIN NOW. YOU HAD A CHARGE WHERE?

E434 A. IN DRUG COURT.

E435 Q. I KNOW, BUT YOU HAD PLED GUILTY TO IT.

E436 A. YEAH. BUT I HAD A WARRANT FOR MY ARREST AT THAT
E437 TIME TOO, FOR THAT.

E438 Q. YOU'RE TELLING THIS JURY THEY HAD A WARRANT FOR
E439 YOUR ARREST ON 5-18-95 FOR THE DRUG COURT?

E440 A. YES, SIR. I'M PRETTY SURE.

E441 Q. DID MR. PA JUST NOD HIS HEAD WHEN YOU LOOKED AT
E442 HIM?

E443 A. NOT TO MY KNOWLEDGE.

E444 PA: I OBJECT TO THAT, YOUR HONOR.

E445 AD: YOUR HONOR, I'D MARK THIS DEFENSE-EXHIBIT
E446 NUMBER 1.

E447 PA: MAY I SEE IT, PLEASE?

E448 AD: YES.

E449 PA: OKAY.

E450 AD: IT'S A CERTIFIED COPY OF THE MINUTE ENTRY
E451 FROM DRUG COURT ON 8-14 OF '95.

E452 THE COURT: DO YOU WANT TO ASK HIM A QUESTION
E453 ABOUT IT OR WHAT - WHAT ARE YOU DOING?

E454 BY AD:

E455 Q. I'M GOING TO ASK HIM ISN'T IT TRUE THAT THE WARRANT
E456 WASN'T ISSUED UNTIL AUGUST 14TH, 1995 AND THAT YOU DIDN'T
E457 HAVE A WARRANT FOR YOUR ARREST ON 5-18-95 WHEN YOU
E458 SKIPPED ARRAIGNMENT IN FELONY COURT.

E459 A. IN FELONY COURT -- THEY WERE BOTH FELONIES.

E460 PA: YOUR HONOR, I'M GOING TO OBJECT AT THIS
E461 TIME AND ASK TO APPROACH.

E462 BY AD:

E463 Q. FOR YOUR UUM.

E464 THE COURT: GENTLEMEN, APPROACH THE BENCH,
E465 PLEASE.

E466 REPORTER'S NOTE: COUNSEL FOR THE STATE AND
E467 COUNSEL FOR THE ACCUSED APPROACHED THE BENCH FOR
E468 A CONFERENCE WITH THE COURT AS FOLLOWS:

E469 THE COURT: WHERE ARE YOU GOING WITH THIS?

E470 A.D.: HE JUST LIED AND SAID THAT HE DIDN'T GO TO
E471 COURT --

E472 THE COURT: HOLD YOUR VOICE DOWN.

E473 AD: HE SAID HE DIDN'T GO TO COURT ON 5-18-95
E474 BECAUSE HE HAD A WARRANT FOR HIM.

E475 THE COURT: KEVIN, AT SOME POINT YOU'VE GOT TO
E476 GET TO THE RELEVANCE OF THIS, AS FAR AS - AS FAR AS -
E477 AS FAR AS IF ANY OF THESE CHARGES INFLUENCE HIS
E478 TESTIMONY OR NOT.

E479 AD: OKAY.

E480 THE COURT: THAT'S THE ISSUE. HE'S ADMITTED TO
E481 THE BENCH WARRANTS.

E482 PA: WE'RE --

E483 AD: HE JUST LIED.

E484 PA: WE'RE TRYING HIM FOR A --

E485 AD: AND I'M IMPEACHING HIM RIGHT NOW FOR A
E486 LIE.

E487 THE COURT: HOLD ON. WE'RE GETTING FAR AFIELD
E488 FROM THE ISSUES HERE. OKAY? YOU CAN GO AHEAD AND
E489 ASK HIM WHEN HE THINKS HE HAD BENCH WARRANTS OUT.
E490 HE MAY NOT KNOW HE HAD A BENCH WARRANT ON HIM --

E491 AD: HE JUST TOLD THE JURY HE HAD --

E492 THE COURT: LISTEN UP: LISTEN UP. YOU CAN ASK
E493 HIM IF HE KNOWS WHEN HE HAD A BENCH WARRANT, BUT
E494 AT SOME POINT YOU'VE GOT TO GET ON TARGET HERE --

E495 AD: OKAY.

E496 THE COURT: -- AS FAR AS DID ANY OF THIS
E497 INFLUENCE HIM. WE'RE NOT JUST GOING TO SIT HERE AND
E498 TALK ABOUT HOW MANY BENCH WARRANTS HE HAD ALL
E499 DAY. SO EITHER CLOSE IT UP REAL QUICK -- I'M GOING TO
E500 GIVE YOU A FEW MORE QUESTIONS TO CLOSE THIS UP.

E501 REPORTER'S NOTE: THE TRIAL PROCEEDED AS
E502 FOLLOWS:

E503 PA: THANK YOU, YOUR HONOR.

E504 BY AD:

E505 Q. MR. RENTON?

E506 A. SIR?

E507 Q. YOU REALLY DON'T KNOW WHEN YOU HAD THAT BENCH
E508 WARRANT ISSUED FOR YOU IN THE DRUG COURT; DO YOU?

E509 A. THAT'S BASICALLY TRUE, SIR.

E510 Q. AND WHEN YOU TOLD THE JURY A MINUTE AGO YOU
E511 DIDN'T GO TO COURT FOR YOUR UUM CHARGE BECAUSE THEY
E512 HAD A DRUG COURT WARRANT FOR YOUR ARREST, THAT WASN'T
E513 TRUE; WAS IT?

E514 A. AS FAR AS I THOUGHT - I SWORE THEY DID. SO IT REALLY

E515 WOULDN'T BE TELLING A LIE, YOU KNOW. SO YOU CAN'T SAY I'M
E516 LYING. TO THE BEST OF MY KNOWLEDGE, I THOUGHT I DID HAVE
E517 A WARRANT.

E518 Q. IN THE DRUG COURT?

E519 A. YES, SIR.

E520 Q. WELL, WHY? YOU HAD JUST PLED GUILTY ON APRIL 16TH,
E521 1995.

E522 PA: JUDGE, CAN WE GET TO THE RELEVANCE OF
E523 THIS NOW?

E524 THE COURT: MR. AD, GET TO THE RELEVANCE OF
E525 THE BENCH WARRANT.

E526 BY AD:

E527 Q. NOW THESE TWO INDIVIDUALS THAT YOU SAY YOU SAW
E528 WHEN YOU DROVE DOWN WEST PRESIDENT INITIALLY, YOU
E529 DIDN'T RECOGNIZE THEM; DID YOU?

E530 A. WHEN THEY WERE WALKING AWAY FROM ME?

E531 Q. YEAH.

E532 A. NO, SIR.

E533 Q. DID THEY HAVE THEIR HOODS UP ON THEIR HEAD? YOU
E534 HAVEN'T TOLD THE JURY WHAT THEIR - WHERE THEIR HOODS
E535 WERE.

E536 A. YEAH; THEY HAD THEM UP ON THEIR HEAD.

E537 Q. SO YOU DIDN'T REALLY GET A CHANCE TO SEE THEIR
E538 HEAD; DID YOU?

E539 A. I SEEN THE BACK OF THEM WALKING AWAY AT THAT TIME.

E540 Q. OKAY. YOU COULDN'T TELL WHAT KIND OF HAIRDO'S
E541 THEY HAD UNDER THAT HOOD; COULD YOU?

E542 A. NO, SIR.

E543 Q. OKAY.

E544 A.

CAN I RESTATE THAT?

 I COULDN'T TELL WHAT KIND OF

E545 HAIRDO'S THEY HAD AT THAT TIME WHILE THEY WERE WALKING
E546 AWAY FROM ME.

E547 Q. RIGHT. THAT'S WHAT YOU JUST SAID?

E548 A. AT THAT TIME I COULDN'T TELL WHAT KIND OF HAIRDO'S
E549 THEY HAD.

E550 Q. HOW WERE THE HOODS ON?

E551 A. KIND OF LIKE RIGHT AT - RIGHT ABOVE THE BASE, RIGHT AT
E552 THEIR HEAD, TOP OF THEIR HEAD. YOU COULD STILL SEE THE
E553 HAIRLINES.

E554 Q. SO WHAT YOU'RE TELLING THE JURY, YOU COULD SEE LIKE
E555 THIS?

E556 A. A LITTLE HIGHER UP ON YOUR HEAD, SIR, ABOUT THE
E557 HAIRLINE.

E558 Q. LIKE THAT?

E559 A. YES, SIR.

E560 Q. AND YOU'VE TOLD THE JURY THAT YOU HEARD ANTHONY
E561 WELSH'S VOICE BUT YOU DIDN'T HEAR FRANCIS BEGBIE'S VOICE;
E562 IS THAT CORRECT?

E563 A. YES, SIR.

E564 Q. YOU DIDN'T SEE A MURDER; DID YOU?

E565 A. NO, SIR.

E566 Q. WELL, YOU WROTE DOWN HERE YOU SAW THESE PEOPLE
E567 AT THE MURDER?

E568 A. WELL, AT THE MURDER. HE WAS --

E569 Q. SIR, YOU DIDN'T SEE THE MURDER; DID YOU?

E570 A. NO, SIR.

E571 Q. BUT YOU PUT DOWN HERE YOU SAW THEM AT THE
E572 MURDER?

E573 A. THAT MEANS AT THE NIGHT OF THE MURDER.

E574 Q. THAT'S WHAT YOU MEANT?

E575 A. YES, SIR.

E576 Q. WHAT YOU WROTE DOWN RIGHT HERE?

E577 A. THAT'S WHAT THE OTHER ONE SAYS; THE NIGHT OF THE
E578 MURDER.

E579 Q. AND YOU DIDN'T HEAR ANY SHOTS; DID YOU?

E580 A. YES, SIR; I DO BELIEVE I DID.

E581 Q. YOU DID?

E582 A. YES, SIR.

E583 Q. HOW MANY SHOTS DID YOU HEAR?

E584 A. I HEARD ONE.

E585 Q. ONE?

E586 A. YES, SIR.

E587 Q. AND WHERE WAS YOUR CAR AT WHEN YOU HEARD THAT

E588 ONE SHOT?

E589 A. COMING OFF SOME RAILROAD TRACKS FROM DOWNTOWN.

E590 Q. SIR?

E591 A. LIKE ABOUT TWO, THREE HUNDRED YARDS DOWN THE

E592 ROAD.

E593 Q. DOWNTOWN?

E594 A. YEAH. WHEN YOU TURN AND COME BACK OVER RIVER

E595 ROAD, I COULD HAVE SWORN I HEARD A GUNSHOT BECAUSE I

E596 HAD TO PASS OVER THE RAILROAD TRACKS, THE SAME

E597 RAILROAD TRACKS WHERE HE WAS FOUND.

E598 Q. I THOUGHT YOU SAID WHEN YOU LEFT YOU PULLED OUT OF

E599 WEST PRESIDENT AND THEN YOU TOOK A RIGHT ON NICHOLSON

E600 AND THEN WEST DOWN TO --

E601 A. I WENT DOWN TO LSU VETERINARIAN SCHOOL.

E602 Q. THAT'S NOT DOWNTOWN; IS IT?

E603 A. I SAID I ENDED -- WELL, IF YOU REMEMBER - IF I SAID

E604 CORRECTLY, AT THE VETERINARIAN SCHOOL I TOOK A RIGHT ON

E605 RIVER ROAD AND WENT BACK DOWNTOWN TO A BAR CALLED

E606 GEORGE'S AND PAGED HIM.

E607 Q. RIGHT. SO HOW FAR ARE THOSE - END OF WEST PRESIDENT

E608 FROM RIVER ROAD?

E609 A. TWO BLOCKS.

E610 Q. AND HOW FAR IS THE VET SCHOOL?

E611 A. VET SCHOOL IS ABOUT HALF A MILE.

E612 Q. ALL THE WAY DOWN NICHOLSON, THROUGH LSU, ALL THE

E613 WAY TO THE END THROUGH CAMPUS?

E614 A. IT'S NOT THAT FAR.

E615 Q. FROM WHERE THE PRINCE MURAT IS TO THE VET SCHOOL

E616 ON NICHOLSON YOU SAY IS HALF A MILE?

E617 A. MAYBE. MAYBE TWO MILES. MAYBE A MILE.

E618 Q. YOU DON'T KNOW; DO YOU?

E619 A. NO, SIR; I DON'T.

E620 Q. ARE YOU GUESSING?

E621 A. YES, SIR.

E622 Q. OKAY. SO YOU TOOK A RIGHT AND YOU WENT ALL THE

E623 WAY DOWN NICHOLSON AND YOU WENT AND TOOK A RIGHT AND

E624 YOU WENT BY THE VET SCHOOL AND THEN YOU TOOK A RIGHT

E625 AND YOU WENT BACK UP RIVER ROAD. HOW LONG DID THAT

E626 TAKE?

E627 A. TO GET TO RIVER ROAD?

E628 Q. YEAH.

E629 A. THE ROUTE I TOOK, A SECOND.

E630 Q. A SECOND?

E631 A. I MEAN, LET'S SEE -- TWO MINUTES.

E632 Q. ARE YOU GUESSING AGAIN?

E633 A. NO, SIR.

E634 Q. TWO MINUTES. YOU HAD A WATCH ON?

E635 A. NO, SIR.

E636 Q. WELL, HOW DO YOU KNOW IT WAS TWO MINUTES THEN?

E637 A. AS FAST AS I WAS DRIVING, YOU KNOW; ABOUT TWO

E638 MINUTES.

E639 Q. SO YOU'RE SAYING WHEN YOU WERE ON THE RIVER ROAD

E640 HEADED DOWNTOWN YOU HEARD ONE SHOT?

E641 A. YES, SIR.

E642 Q. YOU HAD YOUR WINDOWS UP OR DOWN ON JANUARY 10TH,

E643 1995?

E644 A. DOWN.

E645 Q. DOWN?

E646 A. YES, SIR.

E647 Q. WHEN DID YOU ROLL THEM BACK UP THAT NIGHT? DID

E648 YOU EVER ROLL THEM UP THAT NIGHT?

E649 A. NO. I ROLLED THEM UP -- LET'S SEE. I THINK AT THE
E650 CRIME - AT THE POLICE STATION WHEN I LEFT THE CAR IN THE
E651 PARKING LOT ON MAYFLOWER STREET, I ROLLED THE WINDOWS
E652 UP. NO. OKAY. I'M SORRY. WHEN THE POLICE DEPARTMENT CAME
E653 AND PICKED ME UP AT THE BAR, I WENT OUTSIDE AND I LOCKED
E654 MY CAR UP.

E655 Q. DID YOU TELL THE POLICE THAT NIGHT YOU HAD HEARD A
E656 SHOT? I MEAN, YOU DON'T REALLY HAVE TO IDENTIFY
E657 ANYBODY.

E658 A. NO, SIR.

E659 Q. YOU DIDN'T EVEN TELL THEM YOU HAD HEARD A SHOT;
E660 DID YOU?

E661 A. NO, SIR.

E662 Q. WERE YOU THERE TO LEND TOMMY YOUR CAR?

E663 A. NO, SIR.

E664 Q. DID YOU EVER GIVE HIM YOUR CAR IN EXCHANGE FOR
E665 CRACK?

E666 A. YES, I HAVE.

E667 Q. THAT'S A COMMON PRACTICE; ISN'T IT?

E668 A. FOR ME?

E669 Q. FOR CRACK USERS.

E670 A. IT COULD BE FOR SOME OF THEM.

E671 Q. FOR YOU, IT'S JUST AN OCCASIONAL --

E672 A. NO. I DID IT ONE TIME.

E673 Q. WEREN'T YOU SUPPOSED TO GIVE HIM YOUR CAR THAT
E674 DAY?

E675 A. NO.

E676 Q. WHEN THIS SECOND INDIVIDUAL CAME OUT FROM BEHIND -
E677 WHAT YOU SAY - BEHIND YOU, BEHIND THAT RAIL AREA, DID YOU
E678 SEE HIM COME FROM BEHIND THE RAIL AREA?

E679 A. NO, SIR.

E680 Q. BECAUSE YOU WERE LOOKING STRAIGHT AHEAD; RIGHT?

E681 A. RIGHT. I WAS LOOKING TO THE FRONT SIDE OF THE RIGHT
E682 SIDE OF MY CAR.

E683 Q. TO THE FRONT RIGHT?

E684 A. YES, SIR.

E685 Q. AND WHERE DID THAT INDIVIDUAL GO? HOW DID HE GET
E686 OVER THERE?

E687 A. WHO?

E688 Q. THE SECOND INDIVIDUAL WHO CAME OUT FROM THE
E689 BUSHES. WHAT ROUTE DID HE TAKE TO GO TO THE FRONT RIGHT?

E690 A. CAUGHT HIM OUT THE CORNER OF MY EYE COMING UP
E691 FROM THE BACK.

E692 Q. SO HE CAME UP THE SIDE?

E693 A. NO. WHEN I SEEN HIM HE WAS RIGHT BESIDE MY CAR

E694 WALKING UP. ~~LIKE HERE'S THE SIDE OF MY CAR. HERE'S THE~~

E695 ~~PASSENGER SEAT~~. HE WAS -- WHEN I CAUGHT HIS EYE, I'M

E696 ~~LOOKING RIGHT HERE. I CAUGHT HIM LIKE RIGHT HERE~~, WALKING

E697 UP.

E698 Q. AND YOU'RE SITTING IN YOUR CAR, IN YOUR BERETTA?

E699 A. YES, SIR.

E700 Q. AND THEN YOU'RE LOOKING OVER TO -- AND YOU GOT TO

E701 THE HOOD, ABOUT RIGHT HERE, THE ROOF?

E702 A. YES, SIR.

E703 Q. AND SOMEBODY WALKS BY AND WALKS TO THE FRONT?

E704 A. YES, SIR.

E705 Q. HOW LONG DID THEY STAY AT THE FRONT?

E706 A. ABOUT A MINUTE.

E707 Q. WERE YOU LOOKING AT YOUR WATCH?

E708 A. NO, SIR.

E709 Q. ARE YOU GUESSING ABOUT THE MINUTES?

E710 A. NO, SIR.

E711 Q. SIR?

E712 A. NO, SIR.

E713 Q. WELL, HOW DO YOU KNOW IT WAS A MINUTE?

E714 A. OKAY. WELL, YES. I'M GUESSING.

E715 Q. OKAY. IT WAS VERY -- THIS ALL HAPPENED VERY QUICK;

E716 DIDN'T IT?

E717 A. YES, SIR.

E718 Q. AND YOU WERE VERY SCARED; WEREN'T YOU?

E719 A. YES, SIR.

E720 Q. AND YOU WOULD AGREE WITH ME THAT YOU HAD BEEN

E721 DOING CRACK MOST OF THE DAY; WEREN'T YOU?

E722 A. YES, SIR.

E723 Q. AND YOU NEVER HEARD THAT SECOND INDIVIDUAL SAY

E724 ANYTHING; DID YOU?

E725 A. NO, SIR.

E726 Q. AND THAT SECOND INDIVIDUAL HAD A BANDANA ON HIS

E727 FACE AND A HOOD ON HIS HEAD?

E728 A. YES, SIR.

E729 Q. AND IT WAS DARK, AT NIGHT?

E730 A. YEAH, BUT THEY GOT A BIG STREET LIGHT AT THE END OF

E731 THE STREET, RIGHT ABOVE MY CAR.

E732 Q. THAT WAS AT NIGHT; WASN'T IT?

E733 A. YES, SIR.

E734 Q. AND I THINK YOU'VE TOLD THE JURY YOU WERE SO

E735 SCARED THAT YOU TOOK OFF IN YOUR CAR, PEELED OUT AND

E736 LEFT?

E737 A. THAT WAS AFTER THEY WERE AWAY FROM MY CAR. I

E738 MEAN --

E739 Q. I MEAN, YEAH, AFTER THEY --

E740 A. YEAH, I WAS SCARED.

E741 Q. DID YOU -- DID YOU GIVE ANY DESCRIPTIONS TO THE
E742 POLICE THAT NIGHT?

E743 A. NO, SIR.

E744 Q. I MEAN, YOU DIDN'T GIVE THEM ANY KIND OF DESCRIPTION
E745 AT ALL; DID YOU?

E746 A. NOTHING AT ALL.

E747 Q. SO YOU WERE LYING TO THE POLICE WHEN YOU TOLD
E748 THEM YOU COULDN'T GIVE THEM A DESCRIPTION?

E749 A. YES, SIR.

E750 Q. YOU ALSO TOLD THE JURY YOU DIDN'T GIVE A NAME
E751 BECAUSE YOU WERE WORRIED ABOUT YOUR DAD'S BUSINESS,
E752 RIGHT, BEING IN THE NEIGHBORHOOD?

E753 A. YES, SIR.

E754 Q. THAT DIDN'T CHANGE ON FEBRUARY 21ST, 1995. YOUR
E755 DAD'S BUSINESS WAS STILL IN THE NEIGHBORHOOD; WASN'T IT?

E756 A. WELL, IT'S LIKE I TOLD YOU. YOU KNOW, I THOUGHT
E757 MAYBE I COULD HAVE SAID SOMETHING OR SIGNED
E758 SOMETHING, AND THIS IS MY WAY OF DOING SOMETHING.

E759 Q. SAY WHAT?

E760 A. I JUST SAID I THOUGHT MAYBE I COULD HAVE DID
E761 SOMETHING AT THE NIGHT. I COULD HAVE SAID SOMETHING OR
E762 SIGNALLED HIM, SO THIS IS MY WAY OF DOING SOMETHING NOW.

E763 Q. UM-HUM. WELL, YOU COULD HAVE DONE SOMETHING
E764 THEN; RIGHT?

E765 A. WHEN?

E766 Q. THE NIGHT THE POLICE WERE TALKING TO YOU.

E767 A. WELL, YES. YOU KNOW, I WAS KIND OF IN SHOCK, YOU
E768 KNOW.

E769 Q. OH, YOU WERE IN SHOCK?

E770 A. YEAH.

E771 Q. DID YOU GO TO THE DOCTOR, THE HOSPITAL?

E772 A. NO, SIR.

E773 Q. YOU WERE REALLY WORRIED ABOUT WHERE YOU COULD
E774 GET YOUR NEXT ROCK; WEREN'T YOU?

E775 A. NO, SIR.

E776 Q. ISN'T THAT WHAT CRACK PEOPLE DO WHEN THEY'RE OFF
E777 THE ROCK, THEY'RE TRYING TO FIND THAT NEXT ROCK?

E778 A. NO, SIR.

E779 Q. NOT YOU; RIGHT? HOW DID YOU KNOW THAT THAT WAS A
E780 .38? YOU TOLD THE JURY IT WAS A .38. HOW DO YOU KNOW IT
E781 WASN'T A .357 OR A .32 OR A .22?

E782 A. I'M PRETTY GOOD WITH GUNS.

E783 Q. HOW -- WHAT BASIS DO YOU HAVE FOR GUNS? YOU A GUN
E784 COLLECTOR?

E785 A. NO, SIR. MY DAD HAD A BUNCH OF GUNS; A SHOTGUN.

E786 Q. SO HOW DID YOU KNOW IT WAS A.38? DID YOU SEE .38
E787 WRITTEN ON THE REVOLVER?

E788 A. I LOOKED AT IT AND LOOKED DOWN THE BARREL OF IT.

E789 Q. DID YOU SEE .38?

E790 A. I SEEN THE BARREL SIZE OF IT, SIR.

E791 Q. DID YOU SEE .38 WRITTEN ON IT?

E792 A. NO, SIR.

E793 Q. WHEN YOU TALKED TO OFFICER MURPHY IN FEBRUARY OF
E794 '95 FOR THE FIRST TIME AND YOU WERE IN JAIL WITH TWO
E795 FELONY CHARGES PENDING AGAINST YOU, YOU WERE HOPING TO
E796 GET FAVORABLE TREATMENT BY TALKING TO HIM; WEREN'T
E797 YOU?

E798 A. NO, SIR.

E799 Q. AND WHEN YOU WENT BACK INTO THE PA'S OFFICE AND
E800 GOT ARRESTED AGAIN AND GAVE STATEMENTS TO THE GRAND
E801 JURY, YOU WERE HOPING TO GET FAVORABLE TREATMENT WITH
E802 THE DRUG COURT SENTENCING; DIDN'T YOU?

E803 A. NO, SIR.

E804 Q. YOU WERE EXPOSED TO FIVE YEARS IN THE DRUG COURT;
E805 WEREN'T YOU?

E806 P.A.: I'M GOING TO OBJECT TO THAT, YOUR HONOR.

E807 THE COURT: OVERRULED.

E808 BY A.D.:

E809 Q. YOU WERE EXPOSED TO FIVE YEARS IN THE DRUG COURT;
E810 WEREN'T YOU?

E811 A. MIGHT HAVE BEEN.

E812 Q. YOU DON'T EVEN KNOW?

E813 A. NO.

E814 Q. YOU ONLY GOT THREE, THOUGH; DIDN'T YOU?

E815 A. SIR, I'M IN JAIL WITH ONE OF THEIR BROTHERS RIGHT NOW,

E816 SAME PENITENTIARY. SOUND LIKE I GOT SOMETHING OUT OF

E817 THAT?

E818 Q. YOU GOT THREE YEARS INSTEAD OF FIVE YEARS; DIDN'T
E819 YOU?

E820 A. WELL, YOU'RE SAYING THAT THEY OFFERED, LIKE THEY --

E821 Q. I DIDN'T SAY THEY OFFERED ANYTHING. YOU'RE SAYING
E822 THAT. I'M SAYING WHAT YOU WERE HOPING TO GET.

E823 P.A.: YOUR HONOR, I'D ASK THAT HE BE ALLOWED --

E824 THE COURT: SUSTAINED. LET'S TURN THIS BACK

E825 INTO QUESTION AND ANSWER, PLEASE.

E826 P.A.: THANK YOU.

E827 BY A.D.:

E828 Q. YOU WERE HOPING TO GET FAVORABLE TREATMENT;

E829 WEREN'T YOU?

E830 A. NO, SIR; I WASN'T.

E831 Q. YOU WEREN'T? YOU'RE IN JAIL?

E832 A. I DID WHAT I DID.

E833 A.D.: I'M FINISHED WITH THIS WITNESS, YOUR

E834 HONOR.

E835 THE COURT: MR. PA?

E836 PA: YES, YOUR HONOR.

RE CROSS-EXAMINATION

E837 BY AD:

E838 Q. YOU DIDN'T WRITE THAT; DID YOU?

E839 A. NO, SIR.

E840 Q. THE DETECTIVES WROTE THAT.

E841 A. YES, SIR.

E842 Q. DID YOU SAY YOU CAME FORWARD ON YOUR OWN TO

E843 COOPERATE?

E844 PA: YOUR HONOR, THIS IS GOING PAST WHAT WE

E845 ASKED HIM ON --

E846 THE COURT: OVERRULED.

E847 PA: THANK YOU.

E848 BY AD:

E849 Q. DIDN'T YOU SAY YOU CAME FORWARD ON YOUR OWN TO
E850 COOPERATE? YOU SAID YES WHEN HE ASKED YOU THAT
E851 QUESTION?

E852 A. NO. I WAS GOING TO TURN MYSELF IN ONE TIME.

E853 Q. SIR?

E854 A. I SAID I WAS GOING TO TURN MYSELF IN, NOT COOPERATE
E855 ON THAT.

E856 Q. WELL, YOU NEVER CAME FORWARD TO COOPERATE ON
E857 THIS DID YOU?

E858 A. I SAID I WAS.

E859 Q. YOU WAS? BUT YOU NEVER DID?

E860 A. NO, SIR.

E861 Q. WELL, YOU WERE GOING TO COOPERATE ON YOUR BENCH
E862 WARRANT; RIGHT?

E863 A. YES, SIR.

E864 Q. YOU WEREN'T GOING TO COOPERATE ON THIS CASE. SO
E865 WHAT ARE YOU TALKING ABOUT WHEN YOU SAID COOPERATE?

E866 A. I MIGHT HAVE MISUNDERSTOOD THE QUESTION.

E867 Q. NO FURTHER QUESTIONS.

APPENDIX F
CROSS-EXAMINATION OF FIONA

CROSS-EXAMINATION

F1 BY AD:

F2 Q. ISN'T THE FIRST THING THAT YOU TOLD MR. PA IS THAT

F3 YOU DON'T RECALL WHAT FRANCIS BEGBIE SAID TO YOU AT THE

F4 CLUB?

F5 A. YES.

F6 Q. AND WHAT YOU ACTUALLY DID IS, YOU RECALLED

F7 STATEMENTS THAT YOU GAVE TO MR. PA; ISN'T THAT RIGHT?

F8 A. UM-HUM.

F9 Q. NOW TOMMY SCOTT WOULD STAY AT YOUR HOUSE FROM

F10 TIME TO TIME. IS THAT FAIR TO SAY?

F11 A. WHAT YOU MEAN?

F12 Q. LIKE STAY AROUND THERE DURING THE DAY LIKE HE DID

F13 ON JANUARY 10TH?

F14 A. YES.

F15 Q. AND THEN HIS BEEPER WOULD GO OFF; RIGHT? AND THEN

F16 HE'D LEAVE TO GO SELL DRUGS TO PEOPLE; RIGHT?

F17 A. NO. HE --

F18 PA: OBJECTION. YOUR HONOR, I'D ASK THAT SHE

F19 BE ALLOWED TO ANSWER THE QUESTION BEFORE HE --

F20 HE'S GOT MORE THAN JUST ONE QUESTION IN THERE.

- F21 A.D.: I'M SORRY. I'LL SLOW IT DOWN.
- F22 THE COURT: ALLOW THE WITNESS TO ANSWER THE
- F23 QUESTION.
- F24 BY AD:
- F25 Q. MY QUESTION WAS, THE BEEPER WOULD GO OFF. RIGHT?
- F26 A. YEAH, I GUESS. SOMETIMES.
- F27 Q. AND THEN HE WOULD LEAVE?
- F28 A. NO, HE WOULDN'T LEAVE EVERY TIME HIS BEEPER GO OFF.
- F29 Q. OKAY. BUT HE WOULD LEAVE SOMETIMES FROM YOUR
- F30 HOUSE TO GO SELL DRUGS; IS THAT CORRECT?
- F31 A. I DON'T KNOW IF THAT WAS WHY HE WAS LEAVING.
- F32 Q. YOU TOLD THE JURY HE DIDN'T DEAL DRUGS IN FRONT OF
- F33 YOU; IS THAT CORRECT?
- | |
|--|
| F34 A. HE DID NOT DEAL THESE DRUGS IN FRONT OF ME. |
|--|
- F35 Q. WELL, WHAT WAS HE DOING WHEN HE WAS BREAKING UP
- F36 THE COCAINE INTO LITTLE PACKETS?
- F37 A. HE DIDN'T SELL DRUGS IN FRONT OF ME. I SAW IT, BUT HE
- F38 DIDN'T -- HE HAD IT. HE DIDN'T SELL DRUGS IN FRONT OF ME.
- F39 Q. SO YOU'RE CONSIDERING HE DIDN'T SELL IT, BUT THAT'S
- F40 NOT DEALING IT, IF HE'S GOT IT AND MAKING IT IN LITTLE
- F41 PACKAGES?
- F42 A. HE DIDN'T MAKE IT. HE WAS JUST BREAKING IT UP. I SAW
- F43 IT, BUT HE WASN'T DISTRIBUTING, YOU KNOW, DRUGS IN FRONT

F44 OF ME.

F45 Q. YOU LET HIM DO THAT IN YOUR HOUSE?

F46 A. IT WASN'T IN MY HOUSE. WE WERE OUTSIDE.

F47 Q. OH, OUTSIDE BY YOUR HOUSE. HE WOULD BREAK IT UP

F48 OUTSIDE IN THE WIND?

F49 A. YEAH. THAT'S WHAT HE DID.

F50 Q. HE WOULDN'T DO IT IN YOUR HOUSE. IS THAT WHAT

F51 YOU'RE TELLING THE JURY?

F52 A. YES.

F53 Q. AND AS TO WHAT YOU'RE TELLING --

F54 A. AND THAT WAS THE FIRST TIME TOMMY EVER DID THAT. I

F55 NEVER SEEN HIS DRUGS ON HIM BEFORE. I KNEW HE SOLD IT, BUT

F56 I NEVER SEEN THEM UNTIL THAT DAY.

F57 Q. WHAT -- THAT'S THE DAY, THE FIRST TIME YOU SAW IT?

F58 A. YEAH.

F59 Q. HE WAS BREAKING IT UP THAT DAY?

F60 A. YEAH.

F61 Q. DID HE GO TAKE THE MONEY HIS MOMMA GAVE HIM FOR

F62 THE TICKETS AND GO BUY COCAINE THAT MORNING?

F63 A. I DON'T KNOW.

F64 Q. HOW MUCH COCAINE DID HE HAVE AND BREAK UP IN

F65 FRONT OF YOU?

F66 A. I DON'T KNOW.

F67 Q. MA'AM?

F68 A. I DON'T KNOW.

F69 Q. DESCRIBE IT; LIKE BIG, SMALL.

F70 A. IT WASN'T MUCH.

F71 Q. WAS IT ALREADY IN CRACK OR DID HE COOK IT IN YOUR

F72 MICROWAVE AND MAKE IT INTO CRACK?

F73 A. NO. I DON'T KNOW IF IT WAS IN CRACK, AND HE DIDN'T

F74 COOK IT IN MY MICROWAVE.

F75 Q. SO YOU'RE SAYING ON THE DAY HE WAS MURDERED, HE

F76 HAD ALL THIS COCAINE AND HE WAS BREAKING IT UP?

F77 A. YEAH. HE WAS BREAKING IT UP.

F78 Q. WHAT DOES THAT MEAN, HE WAS BREAKING IT UP?

F79 A. HE WAS BREAKING IT UP. I GUESS IT'S HARD --

F80 Q. I DON'T KNOW WHAT THAT MEANS.

F81 A. WELL, IT WAS HARD AND HE WAS --

F82 THE COURT: AD, LET HER ANSWER THE QUESTION.

F83 MA'AM, GO AHEAD AND ANSWER THE QUESTION. THE

F84 QUESTION WAS, WHAT DOES IT MEAN.

F85 A. HE WAS, YOU KNOW, BREAKING IT IN PIECES.

F86 BY AD:

F87 Q. AND WHAT WOULD HE DO WITH THE PIECES?

F88 A. THEY WAS STILL IN THE BAG. HE WAS JUST BREAKING

F89 THEM IN PIECES.

F90 Q. YOU DIDN'T THINK THAT THAT WAS ILLEGAL?

F91 A. I KNOW IT'S ILLEGAL.

F92 Q. NOW YOU SAY MARK WAS SUPPOSED TO GIVE TOMMY

F93 HIS CAR THAT DAY?

F94 A. UM-HUM.

F95 Q. IS THAT WHAT MARK WOULD DO FOR COCAINE? HE'D

F96 LET TOMMY USE HIS CAR?

F97 A. I DON'T KNOW WHY HE WOULD DO IT, BUT THAT'S WHAT

F98 HE -- THAT'S WHAT TOMMY SAID, HE WAS GOING TO GET HIS CAR.

F99 Q. AND HE DIDN'T GET THE CAR THAT DAY?

F100 A. NO.

F101 Q. AND HE LEFT WITH MARK AND ANOTHER GUY FOR A

F102 WHILE?

F103 A. YES.

F104 Q. WHAT TIME DID THEY COME BACK?

F105 A. I DON'T KNOW.

F106 Q. MA'AM?

F107 A. I DON'T KNOW.

F108 Q. WHAT TIME WAS THIS THAT MARK CALLED THE LAST TIME?

F109 A. I DON'T REMEMBER HIM CALLING.

F110 Q. WELL, HOW WAS IT THAT HE -- HE JUST SHOWED UP AT THE

F111 HOUSE?

F112 A. YES.

F113 Q. WAS HE SUPPOSED TO GIVE TOMMY HIS CAR AT THAT

F114 TIME?

F115 A. YES.

F116 Q. WELL THEN TOMMY WOULD HAVE HAD TO GO DROP MARK

F117 OFF, HUH?

F118 A. UM-HUM.

F119 Q. WHEN'S THE FIRST TIME YOU TALKED TO THE DETECTIVE?

F120 A. A DAY OR TWO AFTER TOMMY WAS MURDERED.

F121 Q. AND WEREN'T THEY COMING BACK AROUND ASKING WHAT

F122 YOU HEARD IN THE STREETS?

F123 A. THEY -- YEAH. THEY CAME TO MY HOUSE. ONE OF THOSE

F124 TIMES THEY TOOK ME TO THE STATION AND ASKED ME WHAT

F125 WAS THE WORD ON THE STREET.

F126 Q. AND YOU TOLD THEM THAT YOU HADN'T HEARD

F127 ANYTHING?

F128 A. NO. I TOLD THEM I HEARD A LOT OF DIFFERENT STORIES.

F129 THEY SHOWED ME A PICTURE OF MOO AND LITTLE HOOCHIE, AND

F130 TWO MORE OTHER DUDES. ONE OF THEM, I KNEW.

F131 Q. WHAT DETECTIVE WAS THAT?

F132 A. I DON'T KNOW.

F133 Q. BLACK -- BLACK DETECTIVE?

F134 A. I DON'T REMEMBER.

F135 Q. WAS THIS RIGHT AFTER THE MURDER OR A YEAR AFTER

F136 THE MURDER?

F137 A. I THINK -- THIS WAS RIGHT AFTER, WHEN THEY DID THAT, I

F138 THINK.

F139 Q. WHEN WAS THIS THAT YOU SAW FRANCIS IN THE GAME

F140 ROOM, THE DATE; DO YOU KNOW?

F141 A. NO.

F142 Q. AND LIKE YOU TELL THE JURY, YOU DON'T REALLY KNOW

F143 WHAT HE SAID; CORRECT?

F144 A. NO.

F145 Q. THAT'S ALL THE QUESTIONS I HAVE.

F146 THE COURT: ANY REDIRECT?

F147 PA: YES, YOUR HONOR.

RECROSS-EXAMINATION

F148 BY AD:

F149 Q. WHEN WAS THE PHONE CONVERSATION?

F150 A. I DON'T REMEMBER.

F151 Q. WAS IT A FEW DAYS AFTER THE MURDER?

F152 A. I DON'T REMEMBER.

F153 Q. SO WHENEVER THIS PERSON THAT YOU'RE SAYING ON THE

F154 PHONE TOLD YOU, YOU WEREN'T LOOKING AT THAT PERSON

F155 TOLD YOU; WERE YOU?

F156 A. NO, SIR; I WASN'T.

F157 Q. WHERE WERE YOU WHEN YOU GOT THE PHONE CALL?

F158 A. AT HOME.

F159 Q. AND WHERE WAS THAT AT?

F160 A. 996 WEST PRESIDENT.

F161 Q. WAS IT HOT OR COLD OUT WHEN YOU GOT IT?

F162 A. I DON'T REMEMBER. I WAS INSIDE.

F163 Q. I MEAN, WAS IT SPRING, THE SUMMER, THE FALL?

F164 A. WHATEVER SEASON IT WAS WHEN HE TOLD ME. I DON'T

F165 REMEMBER.

F166 Q. WHAT DID YOU SAY?

F167 A. I DON'T REMEMBER.

F168 Q. YOU DON'T REMEMBER IF IT WAS --

F169 A. NO.

F170 Q. -- IN THE SPRING OR THE SUMMER OF '95 OR THE FALL OF

F171 '95 OR THE WINTER OF '95 --

F172 A. NO.

F173 Q. -- OR THE SPRING OF '96?

F174 A. NO.

F175 Q. SUMMER OF '96?

F176 A. NO.

F177 Q. YOU DON'T REMEMBER?

F178 A. NO.

F179 Q. COULD IT HAVE BEEN IN THE SUMMER OF '96?

F180 A. I GUESS IT COULD HAVE BEEN, BUT I DON'T REMEMBER.

F181 Q. OKAY. THIS PERSON ON THE OTHER END OF THE PHONE,

F182 THEY SAID THEY SHOT HIM IN THE HEAD THREE TIMES?

F183 A. I DON'T REMEMBER HOW MANY TIMES. I JUST REMEMBER

F184 HE GOT SHOT IN THE HEAD.

F185 Q. WHILE HE WAS KNEELING DOWN?

F186 A. YES.

F187 Q. SHOT HIM IN THE HEAD WHILE HE WAS KNEELING DOWN,

F188 THEN PUSHED HIM DOWN THE HILL; RIGHT?

F189 A. UM-HUM.

F190 Q. THAT'S WHAT THE PERSON ON THE OTHER END OF THE

F191 PHONE TOLD YOU?

F192 A. UM-HUM.

F193 Q. NO FURTHER QUESTIONS.

F194 MR. PA: THANK YOU VERY MUCH, FIONA.

F195 THE COURT: YOU MAY STEP DOWN.

F196 WITNESS EXCUSED.

VITA

Kara Lynn Gibson obtained her bachelor of arts degree from Louisiana State University with a double major in Spanish and in English in 1991. Ms. Gibson will receive the degree of Doctor of Philosophy in May of 2001.

DOCTORAL EXAMINATION AND DISSERTATION REPORT

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Major Field: Linguistics

Title of Dissertation: Language and Power in a Louisiana Murder Trial:
Discourse Features in Witness Testimony

Approved:

M. J. Brady

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Date of Examination:

April 2, 2001