DISCOURSE DYNAMICS IN THE COURTROOM
Some methodological points of description[1]

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ABSTRACT

It is the aim of this paper to present an approach to, and some results from the discourse analysis of a Supreme Court Murder trial held in Victoria, Australia; and to discuss some sociological aspects that act as scenario constraints on this type of discourse; which (therefore) should enter into the discourse analysis of this type of talk. The methodological concerns dealt with include: details of the setting and how these interact with power-relations; rules of conduct; and the role of the individual as embedded within social context.

The data are the court transcripts of a single Supreme Court murder trial, held over 6 days in Victoria (Australia) during 1986. The data encompass 33 witness testimonies.

The method of discourse analysis embraces the theoretical perspectives of Cognitive Linguistics, which aims to consider linguistic phenomena within a context of (general) cognitive and cultural constraints. To this end, my approach includes a new treatment of the concept of topic, as well as the Given vs New information dichotomy in terms of (cognitive) Mental Spaces, in an attempt to achieve a dynamic approach to language that will capture on-line comprehension; inference generation; and the integration of information gleaned across witnesses during the trial into a congruent whole - the basis from which a jury must derive its verdict.

1. Introduction

The main focus of interest in the researcher's current investigations deals not only with linguistic structures, but its relation to cognitive strategies in information processing. The approach I take is grounded in a cognitive linguistics approach to the processing of information, of which the processing of linguistic information is considered a subpart. I will discuss in this paper, on the basis of natural discourse (transcript) data from a Supreme Court trial, some conceptual and sociological aspects of this discourse that arguably have a determining nature on the talk produced in this setting.

The Schema is taken as the essential cognitive unit for information processing, which is assumed distinct from, but pertaining to linguistic information processing and production. In Section 2, I will present some theoretical aspects of Schema Theory and its natural relation to the process of Mutual Ground construction. By this I refer to the on-line establishment of conceptual structures that become background information with which newly introduced information is integrated.[2] This process is presented in cognitive terms as the on-line schema creation of the 'facts' of the trial; and the treatment of the functional categories discussed

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[1] This paper is based on two recent papers: *Courtroom Discourse: some important issues for discourse analysis*, - Dept. of Cognitive Science seminar, Univ. of California, San Diego; & *Courtroom Discourse Dynamics: a discussion*, - 25th Annual ALS Conference, 'Language and the Law' Workshop. Univ. of Queensland, 1991.
Thanks to Edith Bavin, Aaron Cicourel, Gilles Fauconnier, Jean Mandler & Hilary Chappell for their many helpful comments on earlier drafts of this paper and/or parts pertaining to it. Of course, all oversights are my own.

[2] *Mutual Ground* is referred to in linguistic literature as *Mutual Knowledge* (Clark & Marshall 1981; Clark & Carlson 1982) or *Mutual Beliefs* (Wilks & Bien 1983; Wilks 1986), which are all theoretical attempts to grapple with that body of knowledge that appears implicitly accepted by discourse participants by their on-line linguistic output.

later in this paper offer an account of how linguistic phenomena may be said to aid or hinder this process. In particular, it is argued that *Mutual Ground* construction is essential for the cognitive process of information integration of incongruent testimonies into a coherent understanding of the trial, if Jury-members are to be able to derive a verdict.

I shall then proceed to illustrate important aspects of courtroom discourse dynamics, in terms of power relations and asymmetries. Further, data analysis of courtroom discourse is suggested which involves an alternative treatment of some well-known functional categories: *Topic, Focus,* and *Given* vs *New* information; as well as the relatively new conceptual category known as *Mental Spaces* (Fauconnier 1985). The suggested treatment of the categories in this paper are meant to capture the extent to which information processing strategies and cues are reflected in language. They are further meant to capture the means to on-line *Mutual Ground* construction (i.e. context creation) where information already presented in discourse becomes the backdrop for the processing of *New* information.

It is the aim of this paper to present these sociological and linguistic aspects of the discourse inherent in a courtroom setting, and to offer suggestions (where possible) as to how the analyst might deal with them.

2. Schema Theory

Much research on text comprehension has been concerned with the problem of inference generation needed for comprehension purposes in general, and the related problem of knowledge representation. Essentially it is assumed that if various aspects of knowledge concerning real-world events or states can be simultaneously accessed to provide inferences during comprehension, then this must be a function of how that information is stored in memory. This work has led to a number of theoretical constructs being postulated by different researchers, all of which encompass the view that knowledge of real-world phenomena cluster together to form units which can be drawn upon during discourse production and comprehension. These approaches include: *Scripts* and *Plans* (Schank & Abelson, 1977), *Schema(s*) (Rumethart, 1975; Mandler 1977, 1984) and *Frames* (Minsky 1975). These structures would be created in memory on the basis of experience with phenomena in the 'real world'. Schank describes this developmental process as one where humans first store individual events, and later, on the basis of a number of events that are similar in form, create generalized events structures (Schank 1986:179).

Hence, notions like *schemas* (*scripts* and *frames*) are conceived as conceptual structures that are needed to represent generic (and generalized) concepts stored in memory, and the complex relations implicit in our knowledge base (Rumeihart et al. 1987:18): such as objects, social situations, events, sequences of events, actions and sequences of actions; and further, they can be embedded within one another to represent knowledge at all levels of abstraction. These structures have been posited as playing critical roles in the interpretation of new (incoming) information; the guiding of action; and the storage of knowledge in memory (Rumelhart et al. 1987:7). *Schema* theory is embraced as a representation for the mental processes that enable the mind to call upon related concepts during language production and comprehension of on-line discourse. In this way, not only information in memory can be called upon in the comprehension process, but also input information from other modalities (e.g. visual information and tactile information from photographs and exhibits) to be combined with linguistic information.

A sufficient body of research into *schemas* recognizes the human ability to identify similar events as being similar and to generalize across such events, whether these events are experiences of a word, event, or event sequence like "how to behave in a restaurant" or retellings of a story (Rumeihart, 1977, Mandler, 1984, Lakoff & Johnson 19870, Johnson

1987). Hence, comprehension is seen as a matter of matching incoming information to the relevant *schemas*. In similar manner, *Frame*-based computational systems usually encompass notions such as default reasoning, automatic inheritance of properties through the structures they are part of, and procedural attachment (Allen 1987:324). When an instance of a *frame* is created, the system will attempt to find the values for each of its roles using any specific information from its knowledge base. If the value of a slot remains unknown, the system will provide a default value if one need be specified.

A major component of my work is concerned with *on-line* discourse comprehension and the establishment of *Mutual Ground* between discourse participants which functions as the context for subsequent discourse. The functional approach adopted in this study accounts for the process of information integration from multiple sources (linguistic, physical, visual and memory) that must occur if Jury-members are to internalize a coherent idea of "what happened" — viewed as the basis for the sentence they pass on the defendant. Legal procedures involve members of the Jury being guided (by respective barristers) through the facts of the trial to encourage them to find the witness either guilty or not-guilty. This entails a higher-order cognitive process of the creation of a particular representation of the trial (i.e. a *schema* of the trial), on the basis of which Jury members would conclude guilt or innocence.

The bulk of my research efforts to date is concerned with the procedure of schema creation in the course of a Supreme Court murder trial. It is argued that the means to account for the integration of testimonies into a congruent "whole", as well as the integration of testimonies with (schematic) knowledge of the world, is to isolate the linguistic cues and clues that assist, or hinder, Jury-members in accomplishing this task. This paper will suggest a number of methodological perspectives that I have considered in order to deal with this task.

3. The Data

The data are taken from a single 6 day murder trial, heard in the Supreme Court of the (Australian) State of Victoria. This entails that this case has already been heard in several previous courts: namely, the Coroner's Court and the Magistrate's Court. This trial was heard almost two and a half years after crime.

The data consists of 33 witnesses: 27 Crown Witnesses (i.e. witnesses called by Crown for the *Prosecution*); 5 Character Witnesses (for the *Defence*); and the Accused's *Statement from the Dock*, which is not subject to Cross-Examination.

3.1 Synopsis

The Appellant is on trial for murder. The Deceased had a rental lease on one of seven units owned by the Appellant's family (of which they occupied five units). After several arguments, the Deceased and his girlfriend agreed with the Landlord to break lease and move elsewhere. On the day of their departure, a violent dispute erupted with regard to the Deceased's failure to close the gates to the property and the Deceased was shot by the Appellant - several times - in the courtyard of the units. The Appellant pleaded 'not guilty' of murder on the grounds of self- defence and provocation.

3.2 Court types and procedure

In broad terms, there are two legal systems to which all the courts of the world can be categorized: the *Adversarial* (Accusatorial) system - used for example in Anglo-America, Britain and Australia - and the *Inquisitorial* system that is customary in Europe (Certoma 1982). The data used for this investigation follows the Adversarial system tradition.

The Adversarial system involves a 'contest' between rival parties, and a frequent criticism of this system is that it is primarily concerned with "winning" and not necessarily about

revealing the truth (Brouwer 1981). Brouwer describes the Adversarial system as "Gladiatorial", where the jury decides who fought the better battle.

In criminal trials, the dueling parties are: the Crown (The State) and the Accused (Defendant or Appellant). The trial is umpired by an independent and objective judge whose main task is to ensure that all procedural and evidential rules are strictly adhered to (Bates 1985). Evidence is exclusively in the hands of the two adversary parties and not at all with the judge, which is tendered during direct *Examination*, which preceeds the process of *Cross Examination.*

The *object of the* ***Examination-in-Chief*** is to elicit the facts of the case, and not to contradict the witness. The witness should be allowed to tell his/her own story in his/her own words; leading questions are not allowed; and counsel cannot call a witness to discredit other witnesses s/he has already called (Bartley & Brahe 1986).

The *object of the* ***Cross-Examination*** is the test the witness's testimony in order to discredit the case for the prosecution; leading questions are permitted and answers may be contradicted by later evidence (Bartley & Brahe 1986).

During ***Re-Examination***, the Examiner (i.e. person who called the witness) may respond to information raised during *Cross Examination*, but s/he still may not use cross *examination* style of dispute.

In principle, the accused is *innocent until proven guilty*, so it is not (necessarily) the task of the Defence to replace the Prosecution's story with another version, instead they merely have to discredit that story. This is a fundamental contrast and centres on the Jury instruction to only deliver a verdict of "guilty" *in absence of any reasonable doubt.* Hence, it may be easier for the Defence to show the case against as unlikely or incoherent, than to replace it with an alternative that might suffer the same type of deficiencies - i.e. if the Jury is presented two stories to choose from, they might chose the better story, instead of only judging the merits of the case against.

This contrast in barrister objectives results in more than just a division of labour: one to show innocence and the other to prove guilt. In order for the case against to prove guilt, the Crown must convey a convincing story. This necessitates a process of information integration (both within and across witness testimonies) into a 'congruent' whole; on the basis of which Jury-members can be persuaded that guilt exists. Although 'facts' are utilized in this process, it is the convincingness of the story (and those who tell it) that counts. This process is then sabotaged by the counter process of *Cross-Examination*, where the chief aim is to jeopardize that process — guilt or innocence is therefore, subsidiary.

3.3 Why these data?

Any investigation into the nature of inferencing, and pragmatics in general, must address the role of background information on these processes. Of course, creating a situation where the researcher may reliably assume a "blank slate" onset is not possible. However, courtroom discourse comes closest to this type of situation, as it involves a state where the jury starts with no knowledge of the crime narrative they are to construct during the trial, and a very limited knowledge of courtroom procedures. Seemingly in contrast to ordinary discourse, courtroom interactions are notoriously explicit and repetitive in nature (Lakoff 1985) and was therefore chosen in an attempt to focus on maximally explicit presentations of information which will hopefully shed light on how context (*Mutual Ground*) frameworks are set up and utilized in the comprehension process.

Danet (1980) points out that speakers can only develop arguments by linking them to premises that are taken for granted by the addressee (hearers). During the trial, the "facts" of a case will be constructed through the question-answer interaction between lawyers and witnesses, and therefore do not pre-exist. Because the defendant's conviction or acquittal depends on the jury members' construction of "what happened", the crime narrative is presented in a rigidly incremental form of small pieces of new information in a developing 'given' context. Hence, such data are optimal for observation of discourse (information) building and *Mutual Ground* construction, which form part of the inference machinery drawn upon in discourse. Namely, the benefit of using a Y situation is that it reduces the number (and types) of variables involved for observing topic creation, shift or evolution.

4. Aspects of Courtroom Discourse

The methodological concerns dealt with in this paper include a discussion of aspects of the setting and how these interact with power-relations. These aspects include: power relations between court participants; rules of conduct and the roles of participants - i.e. Who is the REAL addressee?; as well as aspects of the setting that (presumably) affect witness's performance as discourse participants.

4. 1 Power relations (witnesses versus legal professionals)

The following characteristics of courtroom interaction are suggested as those means by which the court attributes (and maintains) power to legal professionals, which would presumably intimidate witnesses, resulting in the witness' performance as a discourse participant being adversely affected (i.e. processes of discourse comprehension and production may be impaired by normal standards).[3] Consequently, these characteristics lead to a discourse type that is very artificial and a-typical of 'normal' discourse.

a) **Rules of conduct**

Power results directly from the fact that legal professions frame the questions (and make the demands), but witnesses do not share that right. Danet (1980) describes questions as 'weapons' that serve to test or challenge claims made by witnesses, and 'vehicles' to make accusations.

Of fundamental importance is recognition that the witness's goals may be quite incompatible with those of the court. The court imposes its will on witnesses, in that they can not negotiate the court's impression of them or leave the scene. Penman (1987) explains that courts operate on their own set of rules, and private or intrinsic rules are not tolerated. Any infringement of court rules will invariably elicit sanctions (e.g. contempt of court).

Penman explains that rules of the court are instrumental in thwarting information, and she reports (among others) the following rules imposed on witnesses that would add to their intimidation:

- responses must give the precise information required.
- do not give more information than is asked for.
- witnesses may answer only what is asked; they may not provide unrequested information.

Although Penman equates Court rules with Grice's maxims of Cooperative Behaviour (maxims of Quantity, Manner, and Relevance), these rules suggest an overriding principle: "Speak only when spoken to", which is reminiscent of 'adult-child' type interactions.

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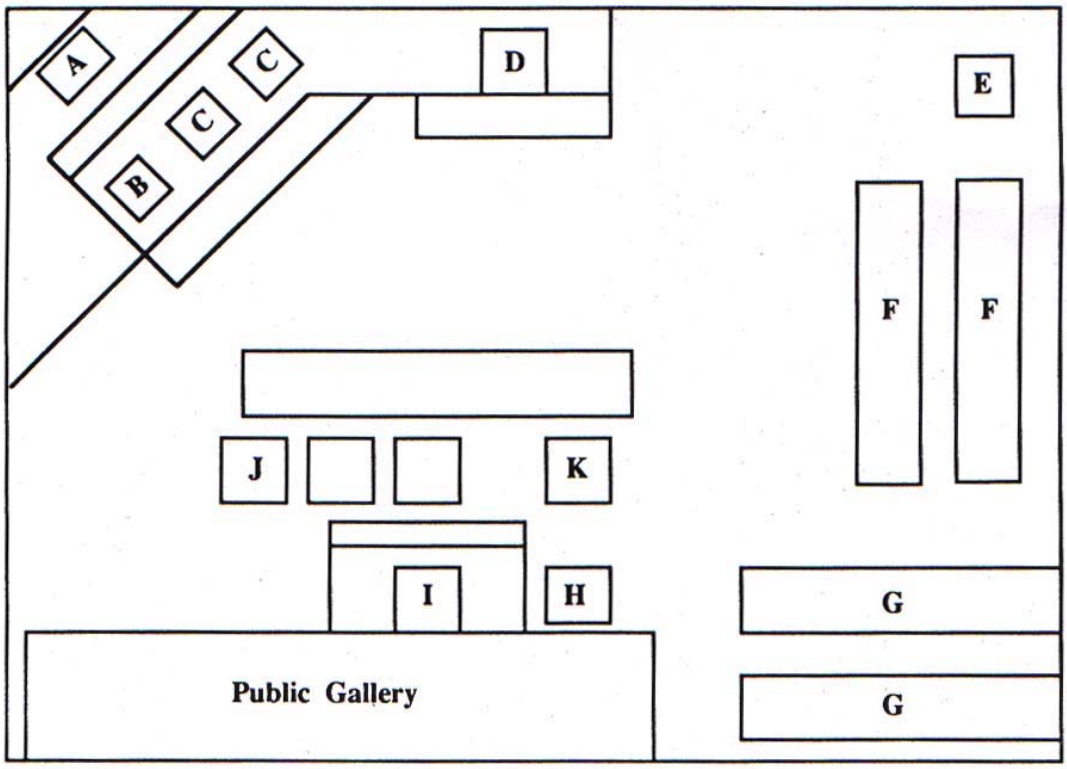
[3] It is not suggested that we know what the norm is, only that these factors would presumably create an environment that is counterproductive to these processes.

b) **The setting**

An imbalance in aspects of the Court layout, in terms of furniture and dress; as well as rules of conduct, emphasize power imbalances. As illustrated in Figure 1, the (scene) layout shows the witness in focus position where all eyes (and ears) are on the witness.

FIGURE 1: **A Typical Criminal Court**
(Juror's Handbook, Queensland Department of Justice)



Key:
A - Judge
B - Judge's associate or clerk
C - Shorthand Reporters
D - Witness
E - Bailiff
F - Jurors
G - Media & Police (if any)
H - Prison Officer
I - Accused Person
J - Defence Counsel
K - Crown Prosecutor

Furniture is also used to emphasize power imbalances, in terms of height if not (also) mass - i.e. legal professionals and Jury (especially the Judge) look down on witness. The Judge is seated higher; and his/her bench is generally constructed from more massive wood. Barristers stand during testimonies; and Juries are seated in tiered rows (where at least the second row looks down) to facilitate view of the court proceedings.

A further factor in Australian courts is that of *Dress*. Although Australian banisters don't have freedom of movement (like U.S. lawyers), they wear distinctive clothing (i.e. gowns and wigs) that mark their affinity and belonging with the setting.[4] This forms a somewhat stark contrast with witnesses (and Jury members) who do not adorn scene specific, elaborate clothing.

c) **Control/power**

[4] In the U.S., Barristers' freedom of movement around the court (stage) is starkly contrasted with witnesses (& Jury) immobility - which would have the same message & effect on all participants.

Clearly evident from my data analysis (to date), is that Banisters have their line of argument well planned before the actual discourse commences, and nothing is really "new" to either barrister. This would be due to not only pre-trial procedures, but also the repetition of courts; namely, this trial has already been heard in two earlier courts. The natural consequence would be that testimonies are predictable. The data has shown evidence of this in two ways:

1. The data show a break in the testimony of witness #15 by three intervening witness testimonies, before *Cross Examination* was performed. In this case, unfamiliar evidence was given during *Examination*, and consequently, the Defence lawyer required extra time to prepare for the *Cross Examination* of that witness. Notable is that the procedure of eliciting testimony from the intervening witnesses (#16, #17 and #18) was not disturbed by the incomplete testimony of witness #15 (all four were police witnesses).
2. Secondly, the *nature of questioning* itself shows the extent to which banisters can plan their path of reasoning, with no (or little) account for how witnesses might respond, which in itself attests to how little scope witnesses have in influencing the Barrister's line of argument. As already mentioned, the procedural restrictions imposed on the nature of the witness's answers (i.e. his/her contributions to these proceedings) itself robs witnesses of any power in this scenario, illustrating the extent of barrister control over the proceedings and an inverse lack of control on behalf of witnesses. Neither do witnesses have power over 'topic' choice - i.e. they have no control in determining **what** will be said or **when** it will be said (if at all).

However, the nature of the questions themselves need to be analyzed in multiple ways to illustrate the real dynamics of this discourse type. For example, it is well known that during *Examination* more (real) questions - i.e. Yes/No and Wh- questions - are produced than declarative questions (cf: (1) below). However, during *Cross Examination* the antithesis would be true. This is taken as a direct reflection of the essentially different nature of the two types of procedures and their objectives in court (discussed in 3.2). For example, in (2) below, a small amount of data taken from the murder trial under investigation reveals that according to this analysis, witnesses are offered the opportunity to participate and contribute more during *Examination*, than during *Cross Examination* where the barrister makes more statements (or stated questions) than questions.

(1)	Yes/No Question:	Did you work on that day? Is that when you returned?
	Wh- Question:	What did Mr S do? When did he do that?
	Declarative Question:	You left and went to Fiji and then came back? He was then, you said, moved away by Mr 5?

(2)	**Examination:**	**Yes/No Q**	**Wh-Q**	**Deci Q**	**Non-Q**	**Total**[5]
	(across Questions)	45%	30%	25%		(140)
	(across contributions)	37.95%	25.3%	21.09%	15.66%	(166)
	Cross Examination:					
	(across Questions)	36.4%	3.37%	60.23%		(445)
	(across contributions)	35.14%	3.25%	58.14%	3.47%	(461)

It is the function of the *Examination* phase of witness testimony *to let the witness tell his/her own story, unimpeded, un-contradicted and in his/her own words* (i.e. don't *lead the witness*). However, these data show that although counting questions may suggest that this is largely true, an alternative analysis — which is meant to capture the *interactiveness* of Barrister contributions with answers provided by Witnesses — gives a different picture. Namely, if witnesses are true participants in the trial narrative to be unfolded to the Jury, then one would expect barrister questions to relate to their output. However, the *Examination* phase of witness #2 also showed that of the 166 units,[6] produced by the Examining barrister, only 23 relate to the Witness' prior response. Hence, only 13.85% of those contributions were build on information presented by the witness. During a witness's testimony, barristers use questions as a prompt, for the witness to provide the required "bit" (supplement) in his/her response, and in this sense they are not interactive. Turns that are counted as *Interactive* include: barrister turns that elaborate on the witness's last response [below] and conclusions [or repeats. The following text example shows how a witness's contributions are severely limited by the scope allowed by barrister questioning, provided more explicitly in the breakdown in (4).

(3)	#24	CL[7]	How are those gates operated?	[wit#2-E:24-30]
		Z	*remote control*	
	#25	CL	Remote control from what?	
	#26	CL	You have some kind of unit in the car as you approach the entrance?	
		Z	*That's right*	
	#27	CL	So a remote control unit is operated to gain entry to the courtyard area?	
		Z	*Yes*	
	#28	CL	and once inside, what does one do to shut the gates again?	
		Z	*Use the control*	
	#29	CL	and each occupier of the units within that block has a unit to operate the security gates?	
		Z	*Yes*	
	#30	CL	and was there one in the vehicle driven by the deceased?	
		Z	*Yes*	

5 Percentages [& numbers] were taken from Witness #2, only. Real numbers for Examination = 166 contributions & Cross Examination = 461 contributions.

6 The unit of analysis (contributions) is largely synonymous with main clauses.

7 CL = Crown Lawyer; DC = Defence Counsel; Contributions are indicated by the following formalism: [Wit#?-E:??], [Wit#?-XE:??] = Witness number ?- Examination (Cross Examination): unit number??

(4) **Breakdown**

	(question)	*Prompt*	*(witness) Answer*
#24	Wh-Q	those gates are operated by _____?	*remote control*
#25	Wh-Q	primer (no question)	_____
#26	Dccl.	Yes/No?	*yes*
#27	Dccl.	Conclusion Yes/No?	*yes*
#28	Wh-Q	to close the gates __?	*use the control*
#29	Dccl.	Yes/No?	*yes*
#30	Y/N-Q	Yes/No?	*yes*

Although the above pieces of discourse may *appear* interactive, the entire structure and content of witness responses are determined by the barrister. In fact, the 'crime narrative' could largely (if not totally) be reconstructed solely on the basis of the content and flow of the (Examining) barrister's turns - the witness provides merely the details. In essence, the barrister's questions provide the next link in the narrative chain of events and the witness (dutifully) provides the required "bit" of information. This also shows that banisters can "lead the witness" (i.e. put words in their mouths) in other ways than asking Yes/No questions (as opposed to declaratives or Wh-. questions). Hence, counting question types is not necessarily a true reflection of what is happening, or of the interactive process under investigation.

In many cases, utterances are counted as interactive when in fact they need not have been, but because a deictic term refers (in any sense) to the content of the witness's prior contribution, they are counted as interactive - for example, #25 (cited above) which really acts as a prompt for the following (intended) question. Looking at the nature of interactiveness has revealed a basic contrast between those contributions that interact with the content of witness contributions and those that interact with the witness. This latter category encompasses non-questions and potentially indirect questions where the main clause relates directly to the witness's person, but the turn, as a whole, still involves the barrister adding to the Discourse Space rather than adding onto what the witness has provided (e.g. (5)). However, this category (*Apparently Interactive* contributions) occurs infrequently, accounting for only 6.07% of *Examination* and 3.04% of *Cross Examination* barrister contributions.

(5) CL Do you recall coming back from Fiji, and the then occupiers of the flat going out for some food? [Wit#2-E:68]

Non-questions (cf: (6) below) are those that have some *speech act* function other than question (or declarative question) - e.g. encouragements; repeats of the witness's last contribution; replies to witness questions; apologies and instructions (including those that pertain to court procedures). These account for another 16.27% of barrister contributions during *Examination* (27/166), but only 6.07% of barrister contributions during *Cross Examination* (28/46 1).

(6)

#97	CL	I'm sorry,	[Wit#2-E:97]
#100	CL	Yes, all right	[Wit#2-E:100]
#101	CL	Sorry, I don't think..	[Wit#2-E:97]
#105	CL	Let's just be clear on this	[Wit#2-E:105]
#212	DC	I see.	[Wit#2-XE:212]
#378	DC	Thank you	[Wit#2-XE:378]

Both types of contribution (non-questions and *apparently interactive* turns) are *interactive* in the sense that they interact with the witness rather than the content of what they are saying. Although these are evidence that barristers do acknowledge the witness as a discourse participant, they hardly constitute even a collaborative effort in crime narrative construction, let alone show the witness to be imparting his or her version of the crime.

In this respect, the fundamental contrast in function between *Examination* and *Cross Examination* procedures vary less than one might expect. For example, a measure of interactiveness during *Examination* of 13.85% is not so very different from *Cross Examination*, where 17.14% (79/461) of the barrister's contributions interact with information presented by the witness. Although the higher incidence of interactiveness with content in *Cross Examination* might be surprising, this is a direct reflection of the high conflict nature of that procedure — the barrister first tries to "pin down" exactly what the witness is saying, to then point out some discrepancy or argue for its falsehood. Cf: [- Interactive turns are presented in bold type.

(7)

#269	DC	and the note that I took of **what you said in this court is,** "I will shoot you both, you and Mr 1'?	[Wit2-XE:269-270]
	Z	*Yes*	
#271	DC	**That is what you said in this court**, right?	[XE:271-272]
	Z	*Yes*	
#273	DC	and **that is as near as you can get**, is it, to the words?	[273-274]
	Z	*Well, I remember those words distinctly*.	
#275	DC	**You do?**	[XE:275]
	Z	*Yes*	
#276	DC	and **they were said just the once?**	[XE:276]
	Z	*No, twice*	
#277	DC	**Twice they were said**, were they? **You have onlymentioned it once so far?**	[XE:277-279]
	Z	*I remember those words distinctly, they were said.*	
#280	DC	**You remember those words were said twice**, This is English, is it?	
	Z	*Yes*.	[XE:280-282]
#283	DC	"I will shoot you both, you and Mr 1'?	[XE:283]
	Z	*Yes*	
#284	DC	and **you have a clear recollection of that?**	[XE:284]
	Z	*Yes*	
#285	DC	**Things you would never forget?**	[XE:285]
	Z	*No*	

The difference in interactiveness between the two procedures is shown in (8) below:

(8)

	Non-Int'v	**Content**	**Non-Qn**	**Appar. Int'v**
Examination	63.86%	13.85%	16.27%	6.02%
Cross Examination	73.75%	17.14%	6.07%	3.04%

A measure of interactiveness sooner shows the similarity between these two procedures - in stark contrast to counting question types. Although in *Examination*, the barrister appears to interact with the witness more (22.29% vs 9.11% respectively), neither procedure relies to

any great extent on the witness to provide the details of the case (63.86% vs 73 .75% respectively).

This type of phenomenon has been noted in similar discourse situations where there exists a power imbalance between participants (e.g. Medical discourse, Cicourel 1982, 1990). Cicourel (1982) explains that questioning techniques impose a particular set of communicative norms on the interviewee and ignore the extent to which they are accustomed to communicating their thoughts and feelings. And further, that, elicitation procedures restrict the answer frame, as well as allocation of the floor and the time and content of answers.

An additional means of gleaning similar evidence that has been tested in this study, is to analyze witness responses. For example, analysis of Witness #2 *Examination* shows that this witness provided a minimal response (i.e. *Yes, No, That's right*, or fill in the Wh-question gap) on 73% of all answers given (81/111). In only 27% of all answers given is some form of elaboration offered, although these are also greatly restricted in form. This result is also largely the same during *Cross Examination*, where 69.57% (207/46 1) elicit only a minimal response and 26.09% elicit an elaborated response. For example, in (9) below, all three answers include elaborations: #98 "because I was inside"; #99 "not Mr Z...."; and #100 "and well, I sort of think....". Notably, both questions #99 & #100 ignore the elaborations offered in in preceding answers, which is another indication of the barrister's power to "run through the facts".

(9) #98 CL Did you see him approach your flat at all? [Wit#2E:98]
Z *No, because I was inside*
#99 CL What happened after he said that he would shoot you and Mr Z? [E:99]
Z *No, not Mr Z and I, but Mr Y and Mr Z*
#100 CL Yes, all right [E:100]
Z *Mr S asked him to leave and well, I sort of think he used a bit of force to ask him to leave*.

Another notable difference between *Examination* and *Cross Examination* procedures is that during *Examination*, 27% (46/166) are backgrounded contributions (i.e. questions/ statements that precede the question that elicits a witness response) - e.g. (10) below (Backgrounded turns in bold type). This contrasts with *Cross Examination* contributions where 55.1% (254/461) are backgrounded, leaving only 44.9% (207/461) that offer the witness an opportunity to respond or contribute to the Crime narrative at all. On this result alone, one may be encouraged to assume that *Cross Examination* is indeed more a case of the Barrister telling his/her story than the witness doing so. However, the count of specifically interactive contributions by these barristers, across all contribution types, shows that during neither stage is the witness really a participant in the process of crime narrative construction.

(10) #61 CL **You left and went to Fiji and then came back.** [Wit#2-E:61-62]
#62 CL How long prior to Mr Y's death was your return from Fiji?
#67 CL **I draw your attention to about the Tuesday night.** [Wit#2-E:67-68]
#68 CL Do you recall coming back from Fiji, and the then occupiers of the flat going out for some food?

In essence, these data reveal how witnesses are not allowed to detract from the line of argument constructed by barristers. By greatly restricting the amount (and type) of information the witness can contribute to the proceedings, barristers maintain "Topic control" over these interactions; and hence, they not only maintain control over witnesses, but also over the crime narrative they wish to convey to the Jury. Although this is important for the

version of reality each Barrister wants the jury to construct, it may be shown to have adverse consequences for non-Anglo background witnesses who do not share the same cultural discourse norms.[8] Additionally, the data show that this form of talk and power imbalance is a far cry from the witness being encouraged (or allowed) to tell *his/her own story in his/her own words.*

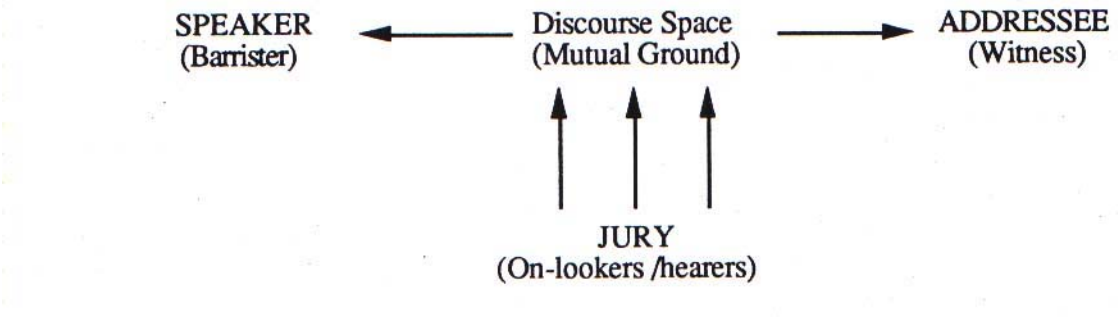
4.2 Participant roles

Courtroom discourse is characterised not only by the imbalance power, but also by the imbalance of knowledge (or expertise) that exists between discourse participants. In terms of knowledge, the following contrasts exist:

barristers & witnesses	share knowledge of the Crime narrative; although it is not necessarily true that all witnesses share equal knowledge of all the crime narrative details.
barristers & Judge	share knowledge of court rules and conduct.
Judge & Jury	are totally unfamiliar with the details of the trial.[9]

Although the dyadics of this conversation type are between the barrister and a witness (who is the *apparent* Addressee), questions are asked by people who (generally) KNOW the answers, to people who KNOW that they KNOW the answers - on the basis of pre-trial conversations, and court repetitions. The only people who do not know the crime narrative to be unfolded in court, are the REAL Addressees in this scenario: the Jury. Jury members are the ones who deliver the verdict and are therefore the people the legal professionals need to convince. However, members of the Jury remain silent throughout the trial, and are only 'privy' to the *Discourse Space* between the Speaker (Barrister) and the witness. Cf. Figure 2:

FIGURE 2: **Who is the REAL addressee?**



The consequence of this fact is that any analysis of how Jury-members arrive at the verdicts they do is necessarily indirect. It is the working assumption of this study that analyzing the *Discourse Space* will shed light on how jury members are led to the verdicts they arrive at. Because the Jury is silent, what Jury-members, as individuals, actually do with the information presented is beyond the field of analysis. Consequently, the analysis in some sense deals with "Perfect Worlds" where individual differences (biases, prejudices and performance) are necessarily ignored. However, it is argued that such an analysis is not unreasonable, as it rests on the assumption that the structures that we perceive and describe are "open" to similar construal.

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[8] Cf: Michael Walsh [reports on the ethnocenthcity of Australian court procedures, which presuppose culture-specific knowledge and adoption of Anglo discourse norms and procedures - e.g., only the addressee (witness) is to respond to questioning; and only one person may speak at a time.

[9] This may be to a lessor extent true of Judges.

5. Mutual Ground Construction (discourse building)

As suggested earlier, courtroom procedures come closest to a "blank slate" discourse onset as is conceivable of any natural discourse situation. As such, courtroom interaction is considered optimal data for the observation of discourse building and *Mutual Ground* (context) construction throughout discourse. Comprehension of utterances involves the placement of *New* (newsworthy) information in a context of Given (known) information. Throughout a stretch of discourse, initially stated information becomes the background for the processing of subsequent information. In this sense, *mutual ground* is constructed during verbal interactions. The jury starts with no knowledge of the crime narrative they are to construct during the trial and therefore, at the onset of the trial, all the "facts" of the trial will be New.

Of course, discourse participants are no *tabula rasa* before a given discourse event commences and their knowledge of the world will interact with information presented. In this sense, *New* information may not be so new, but inferrable. Chafe (1987) refers to this phenomenon as *Accessible*. Inferences so drawn are largely up to the individual and beyond the scope of this investigation. However, information provided by early witnesses (across witness testimonies) also becomes background information for the Jury, adding to the inference machinery drawn upon by them in the comprehension process. In order to observe this process, one must acknowledge that *mutual ground* will be constructed in two ways: (i) within individual testimonies; and (ii) across the trial as a whole.

Within ordinary discourse in dyadic pairs, there will be pressure to build-up *mutual ground* during interchanges, as just jumping in at some point would generally render comprehension impossible. For example, imagine someone you hadn't seen for a year comes up to you and says: *"I told him to get out!"* Similarly, local cohesion is essential between barrister and witness for on-line comprehension to be possible between them, even though (in this setting) the addressee (witness) is not the *Real* addressee. Additionally, the entire exchange is much more elaborate than it would otherwise need be, to provide the Jury with the background information they need to comprehend incoming information. This data shows that the first witness to cover a particular part of the Crime narrative is questioned far more comprehensively than subsequent witnesses. Nevertheless, issues are sometimes raised in testimonies where the relevance is not made clear from that witness's testimony. Relevance may sooner be evident across witnesses, which shows how witnesses themselves are the tools by which Banisters impart their versions (or opinions) to the Jury with regard to either the content or the reliability of that witness. For example, two text pieces (below) show how (i) local coherence within a single testimony reveals incoherence across testimonies; and (ii) how the relevance of a question which is imperceivable at a local level, can only be perceived at the global level available to the Jury b not witnesses - the first (11) from the *Cross-Examination* (Crown) of the first (*Defence*) Character witness, #28 [wit#28-XE:5-14] and the second (12) of another Character witness, #31 [wit#31-XE: 11-13]. The issue regards whether or not the Appellant is the kind of person to get upset about things concerning the flats, and whether he would complain about it to others, leading to the more global inferences: "this person lets little things upset him; he is unreasonable". The contrasting testimonies result in an unclear picture of the Deceased's character, which is arguably the Cross Examining barrister's objective.

(11) #5 CL He was, as far as you knew, not a man that worried about little things or let little things upset him? [Wit#28-XE:5-6]

B *I have no evidence of anything like that. I've never seen him upset, and he was mild in his approach when he came to my shop and when I delivered things*

#7 CL So it would be out of character, you think, for this man to be very angry about things happening at home? [XE:7-8]

B *Yes, that's what prompted me to come as a witness. I offered my.. I wasn't asked*

#9 CL He was very proud of his home, wasn't he? [XE:9-10]

B *They were all very proud of their home*

#14 CL Did he ever mention to you there were problems at home with the maintenance of the place? [XE:14]

B *No*

(12) #11 CL Good. And they were a very house proud family, weren't they?

M *Oh, very much so* [Wit#31-XE:11-13]

#14 CL and they kept their flat block and the courtyard area in meticulous condition?

M *Yes* [XE:14]

#15 CL and did you understand, did you hear of any difficulties with tenants who did not share the same attitude to the house? [XE:15-16]

M *Yes, indeed, we have, yes*

#17 CL and that was upsetting for Ac, wasn't it? [XE:17-18]

M *Of course, yes*

#19 CL and it worried him and it was the subject of a great deal of conversation

M *Conversation with?* [XE:19-20]

#21 CL That is, he spoke about people who didn't share his desire to keep the house clean? [XE:21]

M *He spoke to other people?*

#22 CL Spoke to you about it? [XE:22]

M *To us - well, yes, we heard the complaint*

5.1 Topic

The task of identifying *mutual ground* construction itself necessitates reaching a workable definition of the well-known descriptive category *topic*, in order to be able to plot reference points in discourse and changes in context — i.e. attach incoming information onto existing structures (already presented in discourse) as a function of what they are *about.* Although the notion of *topic* has proven a popular candidate for discourse analysis, it has been used to denote a variety of phenomena including: *Given* (vs *New*) information; *theme* or *aboutness; focused* or *unfocused* information (cf: Halliday 1967); as well as encompassing concepts like *motives* - i.e. speaker's point of view, perspective, or salience (e.g. Grosz, 1986; Prideaux, 1989).

Reinhart (1981) evaluated the notion of *topic* in terms of the two most favoured criteria: *Old* information versus *Aboutness*, and determined that neither category is sufficient in itself to account for the grammatical concept of *topic*. Consequently, recent authors in the field of discourse analysis have begun to either turn away from the notion of *topic*, or simply choose *aboutness* as its definition (e.g. Polanyi, 1988) due to the general lack of precision in the use of this term (see van Oosten (1986) for literature review). Similarly, in this work, the category of *topic* has been avoided in favour of the (English) folk theory definition of *aboutness* (i.e. "what a piece of talk is *about*"), on the basis of definitional problems

associated with this notion, as well as the perceived implication of uniqueness, which I argue, may often be unwarranted.

I have taken the position that, at any given point in discourse, speakers may be talking about a number of things at one time, although not with equal discourse prominence - cf: the following text example:

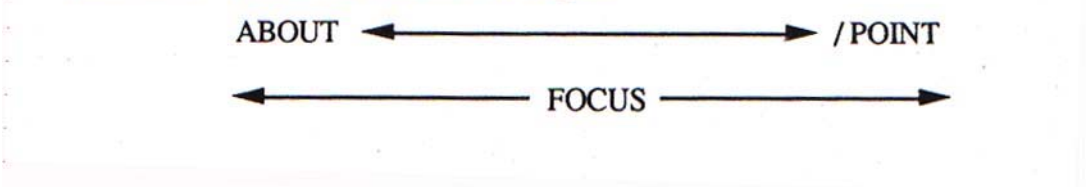
(13) #86 CL and when he burst in through the door, can you tell us what the conversation then was between the parties? [Wit#2-E:86]
Z *between Ac. and* - ***EDIT***
#87 CL or between anyone that was there? [E:87]
Z *Well, Mr S came in first, as I said, and he said* - ***EDIT***
#88 CL Was this in the presence of the accused man? [E:88]
Z *No, I'm sorry. When Ac. came in he was very annoyed and was saying things like, you know, "What do you think this is, a massage parlour?"*
#89 CL What was his manner of speech? [E:89]
Z *very, very rough. He was very angry.*
#90 CL Was anything said by anyone at the time about comments of 'comings and goings' of different people at the flat while you were away? [E:90]

In this particular text example, I draw attention to question #90, where the following elements are already being talked about and are present in the Discourse Space: *Conversation (participants* and general *content*); the *time* and *place* that this conversation (argument) took place and the conditions that caused this conversation to arise. A major objection I have with the traditional treatment of the notion of *topic* is that it suggests the speaker is talking *about* only one thing, and that New information pertains to only that element. More recent literature has recognized the need to go beyond this single category by introducing the notion of *discourse topic*, as opposed *to sentence topic* (Reinhart 1981). I would like to suggest that this may also prove too narrow. A working assumption of this study is that as dialogue progresses, the objects and actions that are most relevant to the speaker will (predictably) be those most focused (stressed) in his/her linguistic output, in the speaker's attempt to provide the hearer with sufficient cues to derive his/her intended meanings. At this point I assume that speakers (potentially) talk:

- *ABOUT* a number of elements at any point in discourse,
- which incorporate varying degrees of *FOCUS*
- where at least one sentential element will be the most focused element, called the (focal) *POINT*

Hence, a given utterance may be about a number of things, where each element enjoys a certain degree of focus, culminating in the focal *Point*. (cf: Figure 3).

FIGURE. 3: **Focus as a matter of degree**



5.2 Focus tests - What is the *Point?*

The following tests are suggested for establishing the *Point* (or at least, what the addressee treats as the *Point* during discourse.

Test #1 That element responded to in the witness' answer. This is a fairly reliable test as the barrister would (presumably) restate the question if the witness responded to an unintended element. For example (14) below, shows that question #75 is treated as a Yes/No question (*Point* = VP, (something) *happened*). The following question (#76) indicates the intended *Point* was a specification of what constitutes *anything* — thus intended *Point = Subject*; Wh question). Notable is that the witness's answer "yes" adds little to the Discourse Space.

(14) #75 CL and did anything happen after your brother and his friend went out to get a pizza? [Wit#2-E:76]
Z *Yes*
#76 CL What was that? [E:76]
Z *Mr S had knocked on the door*

Problems with this test are that it is a retrospective analysis; and is not clear in all cases as to which part of the utterance was intended (or treated) as the *focal Point* - for example, cases of minimal responses. Cf:

(15) #3 DC *"Did he tell you of his love of duck shooting*?" [Wit#29-XE:3]

In cases such as (15) either a "Yes" or a "No" answer would address the verbal element "tell" (sentence nucleus) and preserve the enclosed proposition "he loves duckshooting". However, that this is intended by the witness is an assumption that is not always supported. Consider, for example, text (16) [Wit#3-E:11-21]) as an example of Sentence Embedding / "*Smuggling information*" (Luchjenbroers 1990):

(16) #11 CL and if I can take you to a time, some short time prior to the shooting incident, I understand that your sister and Mr Y went to Fiji for a holiday? [E:11-12]
Z *That's right*
#13 CL Prior to them doing so, was any arrangement made about yourself moving into the flat whilst they were away? [E:13]
Z *Yes, yes there was*
#14 CL Did anyone move in with you? [E:14]
Z *No, no-one else except me and my fiancee*
#17 CL and did you in fact move into that flat? [E:17]
Z *No, we didn't move in. We just stayed there for 8 days just to look after the place*.
#21 CL When you moved there, did you ever use the large security gates?
Z *Yes, I did ...* [E:21]

In this text example, the (sub) proposition you *moved into that flat* is implicitly accepted in #13 and #14; then explicitly denied in #17 (when exactly that element is being questioned - i.e. occurs in the sentence nucleus); but is again implicitly accepted in #21. This suggests that information will not likely generate an objection from the witness unless it is treated as the focal element of an utterance and further that sentence nuclei are prime candidates for focal information.[10] Presupposed information assumes the status of uncontroversial, true

[10] Currently under investigation in my dissertation

information and it must be assumed that the July will treat it as such unless the witness specifically rejects it. In this way, unsubstantiated information could get *smuggled* into a person's testimony.

Test #2 A negation test where elements other than the Point require far more complex responses to negate - cf:

(17) #3 CL "Did he tell you of his love of duck shooting?" [Wit#29-XE:3]

a. *"He doesn't go duckshooting"*

b. *"He doesn't LOVE duckshooting, he seldom goes*"

Interestingly, negation of a less focal element tends to make the inherent Point either irrelevant or false - i.e. he can't tell you about "his love of duckshooting" if he doesn't go. And similarly, a negated head would make the modifier of that head also irrelevant or false - i.e. if he doesn't GO "duckshooting", he can hardly LOVE it!

Test #3 It would be the main contribution to the Discourse Set — and in this sense one might expect the focal *Point* to be *New* information. However, I do not claim that the *Point* of an utterance must be *New* information.

The data show that in terms of the trial narrative to be unfolded, discourse building starts (with each witness and across subsequent witnesses) by first establishing most basic elements - i.e. witness' name, address, etc., role in narrative...) and subsequent contributions add New information to that evolving information set (presented in the *Discourse Space*). The function of the witness (and the July who is privy to that *Discourse Space*) is to identify that New element and to add it to the evolving information set. This is a simplistic formulation, and raises two questions:

1. "What is *New* or *Given* information?"
2. "Is the focal *Point* always *New* information?"

I expect that if there is only one piece of *new* information in the barrister's contribution, focal detection won't be a problem — *new* information would naturally attract discourse prominence. However, what if there is more than one piece of new information, or no **really** *new* information at all?

5.3 *Given* versus *New* information

Current literature has shown that the *Given* versus *New* dichotomy is unsatisfactory: Sometimes *Given* information is not very given, and information marked as *New* is not very new - e.g.:

(18) *"Last week I helped on the Red Cross doorknock appeal and I walked up to* this *house and it had a note on* the *door saying ...."*

Recent literature (Chafe 1987) has suggested a third category to the Given/New dichotomy that encompasses schematically related concepts, (such as 'house' and 'door' in the above example), as well as information that has been talked about but has been 'off-stage' for some time (during the discourse). These categories reflect concerns about the relation between linguistic input and output to cognitive processes: namely, the new categorization encompasses the idea of neural activation in information processing. Hence, *Given* information is *Active* (in that this information is currently being processed, and neurons already *fired*); New information is *Inactive* (to become Active); and *Accessible* information is information that needs to be reactivated (or is accessible by virtue of schematic relatedness). Such information is not *New*, but also not quite *Given*.

Consequently The *Red Cross doorknock* is uniquely modified (definite article) and is accessible by virtue of an expected (shared) knowledge of this (Australian) annual event; *this house* would be accessible by virtue of expected knowledge of doorknocks (i.e. is schematically related); and *the door* is accessible by virtue of an expected (schematic) world knowledge of houses.

However, I'd like to suggest that greater leniency might be offered to this category of *Accessible*, as within this discourse type, information is frequently treated as *New*, when in fact (under normal circumstances) it may be justifiably considered *Accessible* by virtue of schema relatedness - cf:.

(19) #24 CL "how are those gates operated?" [Wit#2-E:24]
Z "remote control"
#25 CL "remote control from what? [E:25]
#26 CL you have some kind of unit in the car as you approach the entrance?" [E:26]

One might expect that mention of "entrance gates" to a property and a "remote control" to operate those gates, would make questions #25 and #26 redundant. The *Point* here is that 'the unit' is "in the car"; however, one might wonder where else might it be? Consider, for example the oddness of:

(20) *No, I have one on my bicycle.*

Essentially, 'in the car' would be *accessible* on the basis of information already in the *Discourse Space*; however, it is clearly being treated as a 'newsworthy' contribution, which (under normal conditions) would need to be *new* information. Such examples show that banisters sometimes treat information as *new* when in fact, it may justifiably be considered 'obvious' or an expected schematic "default" value.

Always possible in this type of discourse is the discourse strategy of 'Driving home a point'. However, I would argue that this explanation ought be avoided (particularly in the course of witness *Examination*)[11] as Courtroom time is very expensive and this type of talk, very goal-directed. Hence, one ought assume that all questions have some function in adding to information in the *Discourse Space* (albeit only a new perspective on information already *Given*). In the above case, hearers are invited to draw the global inference of 'operating gates is easy' (i.e. not burdensome). Essentially I am suggesting that if a contribution does not appear to offer *New* information at the local level, hearers would presumably test Newness (or newsworthiness) at a higher level of information processing - e.g. "Why did s/he say that?"

At this point, there are 2 potentially distinct parameters for a discourse analyst to deal with:

- Focal POINT detection
- (degree of) NEWness

6. Levels of processing

Much of what I have been talking so far about concerns the construction of a Crime narrative. This is potentially quite distinct from establishing what one may think of the information presented.

I am suggesting a fundamental contrast between hearers (i) establishing what the discourse participants (barristers and witnesses) are saying; and (ii) determining what they (as

[11] This is contrasted to the phase of Cross-Examination where different priorities are evident.

individuals) think of it. This contrast is not meant to reflect *literal* versus, *pragmatic* levels of processing, as the extent to which a person's *knowledge of the world* interacts with *on-line* information processing at both local and global levels, is a matter of debate and many researchers argue that such a distinction ought not be made (Fauconnier 1985; Lakoff 1986, 1987). It is the view of the researcher that schematic patterns of experience capture not only general events and event sequences, but also events as small as the word. Therefore, even a process of establishing what someone else is saying involves one's own schematic knowledge, by virtue of the conceptual tools one brings to bear in all levels of the interpretation process. The following breakdown into *levels* of information processing is an attempt to capture the patterns of coherence that appear in the data; and the role of one's knowledge of the world is assumed to interact with smaller to larger sections of talk, depending on the scope of the inferential process:

i) *Sentence (local)* information provided within and between successive contributions
ii) *Set* sections of talk that cohere in terms of logic and content
iii) *Global* information combines the overall input with knowledge of the world

Firstly, a lot of information is *given* to the Jury, which is done is a form that would encourage them to construct a trial narrative that conforms to the one the barrister(s) want them to construct. To this end, the pieces are presented in a pre-determined order (as previously indicated). In this sense, determining what message court players are presenting is simplified.

Above this level are larger textual units (called *Sets*) which cohere in terms of logic and content, and which are also describable in terms of the *Aboutness / Point* contrast suggested for Sentence level information processing. This category involves any number of local elements that all relate to a more global "topic" — presumably captured by the concept of "discourse topic" (Reinhart 1981). As indicated earlier, courtroom talk is very goal-directed and issues are raised (sententially) for more global purposes — for example, in ordinary discourse, one might ask: *What's your Point? Why are you telling me this?* At the end of a Set, the Point is generally made clear - i.e. stated by the barrister. For example: in the *Cross-Examination* of Witness #2, 68 questions concerning the deceased's keen interest in physical fitness and martial arts were asked, to prime the following *Set Point*:

(21) DC *"and he was the sort of man, if he thought the occasion warranted it, was prepared to use a weapon, don't you agree with that?"* [Wit#2-XE:157-8]

The force of this *Set Point* is clearly stated: this person (*he*) is volatile and would, therefore, use a weapon. However, on a larger scale, it is also another contribution to encourage the view that the defendant was justifiably scared for his life — in a context where the defendant is pleading 'not guilty' to murder on grounds of self-defence. If the *Defence* can create a view of the crime where the Appellant is justifiably scared for his life, then his shooting the deceased may not be viewed as murder, but manslaughter. Although this is inferrable from the context and the information given, this would undoubtedly also be stated in the Banisters' Addresses to the Jury.[12] The data show that Banisters leave little argument or inferences unexplained.

The pattern that these data suggest is that a prime motivation for the explicitness of barrister-talk for which it is notorious (Lakoff 1985) is that the more information (incrementally) offered (in a 'logical' order) by the barrister, the more control s/he has over the Crime

[12] I can only surmise this, as the Opening and Closing Addresses are not part of the Court transcripts; however, the Court transcripts do include barrister's interactions with the barristers with regard to the Judge's Address to the Jury, and on the basis of that a clear idea of the nature of barrister arguments can be gleaned.

narrative s/he is encouraging Jury-members to create; and I surmise further that the more information actually provided by the barrister, will serve to reduce the inferential power of that information. For example:

(22) a. *I went to see my thesis adviser yesterday but she wasn't there.*

b. *I went to see her about travel funding.*

Without (b) one may speculate (falsely) about the reason for my visit (in favour of a default reason "about my thesis"); however, having been given extra information, that possible inference has been blocked. The data show that information at all levels is given to the Jury including the most global aspects of the Crime narrative which are given in Barrister Openings and Closing Addresses to the Jury - i.e. they are told how to find the defendant and the reasons why.

7. Mental Spaces

Within this approach (Fauconnier 1985), truth is established locally (i.e. within a given space). *Space Builders* (e.g. modifiers, Temporal and Locative phrases and clauses) define the circumstances under which a given proposition can be considered true. For example, in (23) (below), the *Space Builder* "if-"clause specifies the conditions under which the proposition *you will come to their house* is truth-functional. The possible fact that *you* may *come to their house* in any number of ways is not at issue, if the *space builder* specification given is itself false, then the sentence is false. Hence, the *space builder* defines those conditions that are expected to be true in order to process the enclosed proposition.

(23) *If you follow this road, you will come to their house.*

The truth of the *space builder* is presupposed by its very nature and subsequently functions like a (*given*) "context" within which new information can be considered true or false. In this sense, one would expect *space builders* to have a less focal nature - i.e. attract less discourse prominence. As mentioned earlier, information can be successfully *smuggled* into a person's testimony if placed in less focal sentential positions. However, *Space builders* are not the only potential means for conveying *smuggled* information — for example, modifiers are not (necessarily) *space builders*, but can contain *smuggled* information. For example, in (24) "his love of" is not a *space builder*, but is successfully smuggled into this testimony.[13]

(24) CL *Has he spoken to you about his love of duck shooting* [Wit#29-XE:3]

This *mental spaces* approach has a natural affinity to the notion of cognitive constraints on information processing. Namely, it helps clarify why some syntactic categories (form and function) are less likely to contain focal information than others. It further helps clarify another e major issue in discourse comprehension; namely, the process of *mutual ground* construction and the integration of testimonies into a congruent 'whole'. Within this approach, truth of embedded spaces will project to related spaces. When a witness refers to an existing space, then all the propositions accepted as true of that space (i.e. within that domain) will map onto the current discourse. Hence, that information will be accessible (as background / schematic knowledge of the case) for current talk, whether that is within the same witness' testimony or part of another witness' testimony to which the Jury has been privy.

[13] Other witnesses much earlier in the trial testified that the Accused had only been duck shooting 2 or 3 times in the preceding 1-2 years. This hardly constitutes a "love of".

The context for each utterance is an evolving phenomenon constructed during discourse, and involves the set of propositions that either discourse participant has accepted as true at that point in the discourse (or has not rejected as false). Consequently, each new assertion is added to the already existing knowledge set, unless the Addressee finds reason to reject or challenge it. Subsequently, information that is less focused and not reacted upon by the witness, can be accepted into the Discourse Space as true. This illustrates that even though witnesses may not accept certain propositions *smuggled* into their testimonies, unless these propositions are overtly rejected by them, Jury members will assume that all information is uncontroversially true.

8. Cognitive Constraints

A fundamental premise for the approach taken in this investigation, is the assumption that during discourse, speakers intend only one interpretation of any given utterance, and to that end, they are responsible for providing adequate cues for the addressee to derive these 'correct' interpretations. Consequently, I assume an interplay between hearers' choosing focal information from a speech stream and speakers' structuring the speech stream to facilitate that search in favour of speaker-intended focal information.

Current researchers in computational systems (Grosz 1986; Sanford & Garrod 1988) argue that interlocutors rely on limited 'focused' memory systems for representing and interpreting texts. Focusing strategies are a result of fundamental processing constraints, and are consequently essential to the comprehension process as the number of alternatives would otherwise overwhelm any cognitive system (human or artificial). Hence, the ability to focus on a subset of the system's knowledge relevant to a particular situation is crucial (cf: Grosz 1986). As only a limited amount of information is within a speaker's scope of attention at any one time, possible foci is constrained by the relevant knowledge pool. Johnson-Laird (1983) also argues that biological constraints on the nature of mental processes and their representations exist and any theory of mental processes should account for what is possible within those constraints.

In order to integrate witness testimonies into a congruent template of "what happened?", hearers must, at the introduction of each new witness, search memory for that part (or node) of their developing Crime narrative, to which that witness's testimony is relevant; or 'where' in narrative time, this new segment should be inserted. It is my claim that the processes already discussed interact: namely, the (global) process of *Mutual Ground* construction results from constantly adding *New* (newsworthy) pieces of information into a growing information set, that develops from satisfying *local* needs of identifying *focal* information from the speech stream and adding it to the evolving information set; a process that is facilitated (or hindered) by the judicious placement of *new* information in *focal* syntactic positions. I have argued (1990), that information could be *smuggled* into a testimony by being less focused in the Barrister's output, or by virtue of being inappropriately placed in a sentential position that one might expect *given* information. From this it follows that if a particular piece of information was not reacted upon because it was in a non-focal position, then there must be something inherently *given* (or non- focal) about that syntactic position. This must be testable and is currently under investigation.

Although *focal* information is typically *new* (as has been seen in examples of information *smuggling*), not all *new* information is necessarily *focal.* New elements will naturally attract discourse prominence (i.e. be prime candidates to achieve focal prominence). I expect that if there is only one piece of *new* information, focal *point* detection will not be a problem; however, if there is more than one (as discussed earlier in the "smuggling information"

examples) the hearer will make a choice, due to processing constraints on the amount of information s/he is able to treat as *focal*.

9. Discussion

As discussed above, it is due to *on-line* cognitive constraints that limit a person's ability to treat all incoming information as equally important (focused or New). At the introduction of each new witness and each discourse topic (i.e. what/who each discourse participant is talking *About*), Jury members must decide where to integrate such information in order to achieve a coherent version of what they think 'happened'. This position is motivated by the argument that it is unreasonable to assume that Jury members would construct an individual representation for each witness's testimony, in isolation of all others.

Integration of information of the trial would occur both within and between witness testimonies. Although witness testimonies sometimes overlap in content, in general each witness is responsible for recounting their version of the facts, pertaining to some specific part(s) or aspect(s) of the overall narrative to be constructed. I expect that the entry point of each Set will link up to existing spaces (if already developed), and all true propositions from those existing spaces will be projected into the new discourse.

Hence, a *Schematic* process is postulated, where input information is generalized across testimonies to construct a single 'template' of the events, and exceptions (i.e. contradictions) are (potentially) remembered as individual entities. By forming a schematic representation across testimonies of "what happened", the actual incoming information processing load would be reduced, by allowing

- more and more information to be treated as *Given*
- Jury members to focus on *New* and *Focused* incoming information.

Such a process of generalizing across the input stories into a single schematic *Template* of the events is a necessary consequence of and prerequisite to *memory management*; and further: memory management (and focusing strategies) are consequences of "on-line" cognitive constraints on information processing. Ultimately, an overall (super-ordinate) narrative structui will result of the trial proceedings, constructed (in real time) during the course of a trial, Of course, the major obstacle to this process is the judicial trial stage of *Cross-Examination*, which serves to achieve *reasonable doubt* in the case against the defendant by bringing discredit to (hostile) witnesses and their testimonies. This necessarily confuses elements of the Crime narrative being constructed in order to make the crime narrative appear unlikely or incoherent.

Essential to the approach outlined in my work is the intimate relation between *local* (sentence level) and *global* (textual) processes. Deane (1991) suggests certain grammatical processes occur within a local domain (e.g. island constraints), and argues that a theory of grammar ought explain why syntactic processes display this essentially local character. This viewpoint is fundamental to the functional categories used in this study, and how they interact with each other at a local level of information processing, which necessarily feeds the more global levels. In this way, local strategies are perceived as the means to Global processes of 'on-line' *Mutual Ground* construction.

Deane (1991) further suggests that a general theory of grammatical competence may be found to interact with *attentional processes* which follow as a result of processing constraints. The sum of these attentional needs and purposes is the process of *Mutual Ground* / context construction that allows all the details of the trial (within and among witness testimonies) to be collated into a single version, on the basis of which Jurors pass judgement.

10. Conclusion

I have aspired to show a variety of factors that I believe play a role in the discourse analysis of courtroom interaction, and have suggested a number of units of analysis to describe this type of discourse. In terms of the discourse dynamics of this scenario, I have outlined a number of factors within this setting — relevant to the concept of power relations among participants — that have consequences for the type of discourse produced, and the performance of its participants. And, more importantly, I have shown to what extent witnesses' contributions (during both *Examination* and *Cross Examination*) are limited by the nature of the questioning procedures. I have argued that in neither testimony phase do witnesses get the opportunity to *tell their story*, or are they treated as true discourse participants.

A major perspective of my work is the claim that schematic structures are the means by which (cognitive) focusing strategies are achieved. This mental process serves to lessen the cognitive workload by simplifying retrieval processes of information from memory (Casanovas 1991), as well as making accessible schematically related information for inference generation. On the basis that the amount of information presented to the brain that can be treated as focal is limited by general processing constraints, the process of *mutual ground* construction proceeds from addressing local needs of identifying *new* or *focal* elements to add to the evolving Discourse Set. In this way, a growing *schema* of the Crime narrative develops, providing *given* information for the processing of consequent incoming information (either from the same or subsequent witnesses), and this construct allows information (presented within specified *mental spaces*) to project to related spaces in subsequent talk.

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