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Courtroom Discourse as Verbal Performance: Describing the Unique Sociolinguistic Situation of the American Trial Courtroom

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ABSTRACT

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Individual events within courtroom discourse, such as lawyer-witness interactions have been studied extensively, particularly within a framework of powerful vs. powerless language (Adelsward, 1987; Archer, 2006; Bogoch, 2000; Eades, 2010; Fuller, 1993; Gnisci & Bakeman, 2007; Hobbs, 2007; Keating, 2009; Penman, 1990; Philips, 1984; Roberts, 1990). However, this thesis will show that courtroom discourse is sufficiently unique to warrant a distinct framework. It will also explore the explanatory power of a Courtroom Discourse Verbal Performance framework influenced by *Verbal Art as Performance* (Bauman, 1977). In particular this work will create a framework (Courtroom Discourse Verbal Performance) that explains the sociolinguistic situation of the entire courtroom trial instead of simply one small part (i.e. questioning a witness, entering a plea, etc.). This framework allows for the inclusion of the whole courtroom discourse event into a single unifying idea of courtroom discourse as performance. The peculiar sociolinguistic interactions of various people within courtroom discourse are explained as restrictions on the interactions of roles within the performance. Courtroom discourse data gathered from the Provo Fourth District Court is presented and analyzed as supporting evidence.

Keywords: [courtroom discourse, verbal performance]

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Chapter 1

Introduction

The study of the interactions between language and law has been of great interest to both lawyers and linguists. A particular focus has been the unique discourse that takes place in the courtrooms of Western countries (Aronsson, Jönsson, & Linell, 1987; Atkinson & Drew, 1979; Eades, 2010; Innes, 2007; Johnson, 1976; Philips, 1984, 1998). All of these studies have contributed to a greater understanding of language-based interactions in courtroom settings including, the language of the interaction of courtroom participants: judges and defendants (Archer, 2006), lawyers and defendants (Aronsson, Jönsson, & Linell, 1987), lawyers and juries (Hobbs, 2007), and lawyers and witnesses (Gnisci & Bakeman, 2007; Roberts, 1990). This thesis however will seek to show that courtroom discourse, as a whole event, is sufficiently unique to warrant a distinct framework, Courtroom Discourse Verbal Performance. This framework explains the linguistic interactions of the entire courtroom event adding to the insights given by Critical Discourse Analysis models which use power as the basis of analysis.

Critical Discourse Analysis has been applied to courtroom discourse in many ways particularly in order to understand sociolinguistic interactions of courtroom discourse. This theory essentially analyzes all interactions at the level of powerful vs. powerless communicative acts. Thus, from a Critical Discourse Analysis perspective, courtroom discourse is not unique, but shares the same framework as all other discourse. Communication researcher Thomas Lindlof discusses the Critical Discourse Analysis take on communication and states that Critical Discourse Analysis seeks to understand "the ways power and domination are exercised in

organizations through communication" (Lindlof, 1995). This is to say that Critical Discourse Analysis identifies, in every interaction, someone with power dominating or controlling someone without power. Even modified versions of this idea, for example, “situated power” discussed by Diana Eades in her recent book *Sociolinguistics and the Legal Process* (Eades, 2011) have attempted to explain aspects of courtroom discourse particularly the testimony of expert witnesses. The change that is exhibited within these power hierarchies forms the backbone of Courtroom Discourse Verbal Performance. Individual sub-events (witness questioning, sentencing, entry of plea, etc.) may seem to be explained quite easily completely in terms of power, such as witness questioning, or sentencing. But, when these sub-events are taken alone, important generalizations may be missed because of the lack of the context that the other sub-events provide. The performance determines changes in power structures between sub-events. This can be illustrated by looking at multiple sub-events throughout the courtroom performance. When greater context is gained, the power hierarchy from one sub-event, for example, Witness Questioning, does not carry over to other events such as Jury Selection. This makes it difficult to simply assign some roles in the courtroom as "powerful" and others as "powerless." Thus, a new framework is necessary that incorporates the impact that the structure of the performance has on the power structures of courtroom discourse. Setting forth the basic structure of that framework is a major focus of this thesis.

This framework, henceforth referred to as, Courtroom Discourse Verbal Performance, uses Richard Bauman's 1977 book *Verbal Art as Performance* as a starting point. Additional insights that help to understand courtroom discourse are also added. Courtroom Discourse Verbal Performance will prove to more effectively explain courtroom discourse as a whole event rather than simply a collection of unconnected individual sub-events. An analysis of courtroom

discourse based upon this framework will seek to answer the essential research questions of this thesis:

1. Is courtroom discourse sufficiently unique to warrant a distinct framework?

2. Can Courtroom Discourse Verbal Performance explain the uniqueness of courtroom discourse more fully than current models?

Courtroom discourse has numerous unique linguistic features that distinguish it from any other linguistic situation. These differences occur syntactically, lexically, semantically, and perhaps most importantly, pragmatically. These unique features will be analyzed using fresh data gathered in 2011 and 2012 from Utah Fourth District Court located in Provo, Utah. This data will provide examples of performance role interaction, with particular attention paid to the specific ways in which certain persons interact, are allowed to interact, or not allowed to interact with others within the bounds of the courtroom event. This analysis will provide answers to the research questions outlined above. To accomplish this, a review of literature will be set out in Chapter 2 demonstrating the work that has previously described courtroom discourse. This research will lay the foundation for the Courtroom Discourse Verbal Performance framework. Chapter 3 will discuss the methodology used to gather and analyze the data along with outlining each of the performance roles. Chapter 4 will present data from courtroom observations to support Courtroom Discourse Verbal Performance as a valid framework for understanding all the interactions in courtroom discourse. Chapter 5 will present implications of this work as well as

conclusions and suggestions for future research. An appendix including all the relevant data gathered from Provo Fourth district court will also be presented.

Chapter 2

Review of Literature

This review of literature will lay the groundwork for answering the two main research questions of the present study:

1. Is courtroom discourse sufficiently unique to warrant a distinct framework?

2. Can Courtroom Discourse Verbal Performance explain the uniqueness of courtroom discourse more fully than current models?

In order to do so, both a historical review as well as a theoretical review will be presented.

Historical Review. The American trial court descends from Anglo-Saxon law brought to Britain in the fifth and sixth centuries, along with many additions and innovations brought by various other groups, such as the Norman conquerors of the eleventh century. L.B. Curzon in his 1968 book *English Legal History* details the growth of the English legal system (the more recent ancestor of the American trial court). Much of this section dealing with the English legal system is paraphrased from his research. Speaking of the Anglo-Saxon legal system he says:

> "It should be emphasized... that the Anglo-Saxon lawmakers were not motivated by a desire to establish a systematic and comprehensive code of laws, nor were they influenced by any coherent general theory of law. The law was made up in large part of customary rules and dooms, local, rather than national in their operation, and based very often in oral tradition." (Curzon, 1968, p.11)

This is an important point in understanding courtroom discourse as performance. Courtroom discourse is rooted in oral tradition; this is a likely source of many of the features that set it apart as Performance. As will be noted below in this chapter, work in Performance began with understanding and documenting primary oral cultures.

However, early Anglo-Saxon courts were far less complex than current American trial courts. Local and regional courts were presided over by a government official such as a sheriff. Decision-making power rested collectively with all the freemen that resided in the jurisdiction.

The introduction of Norman cultural influences saw the introduction of a practice in which those involved in court proceedings "were obliged to declare and oath that they would neither accuse any innocent person, nor conceal any guilty one." (Curzon, 1968, p.147) This oath has become the modern oath that witnesses swear before taking the stand.

It was also the Norman period that saw the introduction of lawyers. Henry II of England allowed a substitute to appear in court on behalf of an accused person. Although in the early period of this practice, the substitute was usually a relative or friend. The rise of professional representatives of litigants came about because of the increasing number of courts and litigants, as well as the growing complexity of the law as successive rulers added new laws to those that already existed. It is also in this period that a specialized role for oral argument developed. This is a further development in what is now a lawyer.

The increasing complexity of court procedure also produced a standardized officiator: the judge. These first came into existence in the King's court under Henry II, but eventually the practice was adopted by all levels of courts. This replaced the sheriff or other government official as officiator at court.

With the discovery and colonization of North America, this legal system was transplanted to the English colonies that would eventually form the United States of America. As stated in Samuel Walker's (1980) *Popular Justice: A History of American Criminal Justice*, American colonists, particularly those in religiously based colonies such as Massachusetts and Pennsylvania adopted and fused English law with Old Testament law. Walker states:

> "These communities were not tolerant, liberal, and pluralist in their outlook. They were rigidly conformist with little forbearance for deviance and dissent. The colonial system of punishment reflected the equation of crime and sin. The colonists took a pessimistic view of humankind; man was depraved creature, cursed by original sin. There was no hope of "correcting" or "rehabilitating" the offender. An inscrutable God controlled the fate of the individual." (Walker, 1980, p.13)

The colonists also expanded the duties and responsibilities of the court. It was not only a governmental center but also a social center. It was a forum not only for justice but also for political debates. These courts were most important on the county level, and were presided over by appointed members of the community, most without any legal or political training. Along with what might be called a democratization of the court system was the expansion of power of a defense lawyer to participate in court proceedings. This has evolved into complete equality of participation between defense and prosecuting lawyers. (Walker, 1980)

The early colonial period in America also saw the rise in power of juries. Walker describes a situation in which juries could arbitrarily question whether or not a law was appropriate at all. They could also lower normal punishments, and at the time when the movement for independence grew, they even helped to protect favorite leaders with rebel sentiment. Our modern system has reduced the power of jury significantly.

After independence from Britain, the American court system evolved into what is currently in place today. This history is vital to understanding courtroom discourse as Performance. This discourse, although based heavily in tradition, has grown and adapted and

evolved along with the culture of which it is a part. It has maintained cultural centrality despite numerous changes by changing to adapt to new cultural and social circumstances.

Theoretical Review. This thesis will draw a distinction between two types of theoretical background research, both of which will be reviewed here. The first portion will review work that helps to establish courtroom discourse as Performance. The second portion will review research from power-based approaches that reveal some of the current understanding courtroom interactions. It should be noted that most of the research (although not all) concerning courtroom discourse as Performance comes from the sub-field of Anthropological linguistics, whereas the research detailing interactions between performance roles comes mostly from Forensic linguistics. This research will show the greater explanatory force that the addition of Performance brings to traditional power-based approaches.

Courtroom as Performance. This work will incorporate research presented in Richard Bauman's book *Verbal Art as Performance* (Bauman, 1977). Bauman presents a unique way to approaching language situations that are considered special in their cultural context. Bauman defines performance in these words,

> "Performance, as we conceive of it...is a unifying thread tying together the marked, segregated esthetic genres and other spheres of verbal behavior into a general unified conception of verbal art." (Bauman, 1977, p.5).

This slightly vague definition is supplemented by these more precise definitions:

> "Fundamentally, performance as a mode of spoken verbal communications consists in the assumption of responsibility to an audience for a display of communicative competence. This competence rests on the knowledge and ability to speak in socially appropriate ways. Performance involves on the part of the performer an assumption of accountability to an audience for the way in which communication is carried out, above and beyond its referential content." (Bauman, 1977, p. 11)

> "...Performance is accomplished through the employment of culturally conventionalized metacommunication. In empirical terms, this means that each speech community will make use of a structured set of distinctive communicative means from among its resources in culturally conventionalized and culture-specific ways to key the performance frame, such that all communication that takes place within that frame is to be understood as performance within that community." (Bauman, 1977, p. 16)

From a later publication, Bauman states this about the concept of performance:

> "The deepest meanings and values of a culture are embodied, enacted, and placed on display before an audience. Thus materialized and placed on view, these enactments allow not only for the contemplation of received and authoritative truths, but for experimentation, critique, even subversion." (Bauman, 2011, p.715)

These definitions give an idea of a set of genres and events that are special within their own communities. But, not only are the events important, the performers are also important. They are expected to communicate in ways that are generally accepted among the community to the correct or proper way for a given event. These definitions will be the basis of the new evaluation of courtroom discourse presented in this thesis. And it is at this point that there will be some variance away from Bauman's work. Bauman carries on to discuss performance as mainly aesthetic genres and language events: "[Performance] is marked as available for the enhancement of experience, through the present enjoyment of the intrinsic qualities of the act of expression itself" (Bauman, 1977, p. 11).

Thus, in Bauman's original model, most if not all performance had as either a primary or major goal the aesthetic enhancement of its audience. This thesis will create a distinction between those acts and events that are mainly aesthetic in purpose and those that fit the characteristics of performance, but are not primarily aesthetic. The former will be referred to here as Verbal Art and latter as Verbal Performance. These two categories together form what might simply be called "Performance" (with a capital P). Separating Verbal Art and Verbal

Performance is not to say that there are no aesthetic elements in Verbal Performance, merely that they are not the major focus of the performance. Courtroom discourse will be placed within the category of Verbal Performance. It should be noted that Performance as used here is not connected to other similarly named concepts in linguistics, namely the Chomskyan or Austinian senses of the word "performance."

Although the purpose of courtroom discourse is not aesthetic, there are generally followed types of "good" interaction in the courtroom. This can be seen as a type of aesthetic. Perhaps the best description of the kinds of verbal interaction that is predominant in courtroom discourse are the Gricean Maxims. Paraphrased from *Studies in the Way of Words* (1989) they are as follows:

Maxim of Quantity: say no more or no less than is necessary.

Maxim of Quality: say only that which you believe to be true

Maxim of Relation: say pertinent, relevant things

Maxim of Manner: Be as orderly, clear as possible.

The work that has been done in Performance has been completely confined to Verbal Art: The entirety of Volume 15, Issue 5 of the *Journal of Sociolinguistics* was dedicated to the study of performance in sociolinguistics. All of these articles deal with what is classified here as verbal art. "Staging Language: an Introduction to the Sociolinguistics of Performance" by Allan Bell and Andy Gibson is a particularly noteworthy member of that collection (Bell & Gibson, 2011). In this article, Bell and Gibson state:

> "Here we are specifically interested in what Bauman (1977) calls ‘verbal art’... These are instances of language which stand out from the ordinary, marked and reframed in some explicit way as ‘performed’... Staged performance is the overt, scheduled identification and elevation (usually literally) of one or more people to perform, typically on a stage, or

> in a stage-like area such as the space in front of a camera or microphone. It normally involves a clearly visible and instantiated distinction between performer and audience. Prototypically, staged performance occurs through genres such as a play, concert or religious service, and in venues dedicated to such presentations – a theatre, concert hall or place of worship. Performances tend to be for the audience, rather than simply to the audience – there is a priority to entertain and to interest, not just to communicate a message." (p. 556-557)

Thus, with the focus on entertainment or interest, Bell and Gibson place themselves clearly within the Verbal Art category of Performance. This is also true of other researchers in this field.

For example, Coupland (2011) *Voice, Place and Genre in Popular Song Performance* deals with Performance and popular music. The presentation of popular music, especially as envisioned by Coupland is undeniably in the category of Verbal Art because of its mainly aesthetic purpose. He finds numerous interesting applications of Performance to a field of linguistic study previously untouched by researchers with a perspective of Performance.

Similarly, Mary Bucholtz and Quiana Lopez in their 2011 article of the aforementioned issue of the *Journal of Sociolinguistics* "Performing Blackness, Forming Whiteness: Linguistic Minstrelsy in Hollywood Film," focus on Performance as part of an aesthetic genre of entertainment. They argue that parodies of Black racial stereotypes by White actors are a form of Performance. This would be classified in this thesis as Verbal Art and not Verbal Performance.

Bell and Gibson, although more interested in Verbal Art than Verbal Performance, do bring important insights about Performance in general which apply to Verbal Performance as well as Verbal Art. In summing up the issue of *Journal of Sociolinguistics* dedicated to performance, Bell and Gibson have this to say: "The articles in this issue demonstrate how performers rely on identifiable speech styles to index social meanings and construct associated personas" (p. 569). Bell and Gibson identify an important aspect of performance language. They isolate out the fact that performance relies on being able to speak in a way that is not necessarily

representative of self, but of a role in a community or event. Where Bell and Gibson use the term "persona," this work will utilize the phrase "performance role" in order to emphasize the connection between this type of acting and the existence of the performance itself. This will be vital to understanding courtroom discourse. It is this fact that allows participants in courtroom discourse to communicate in the unique ways required by the performance. These roles will determine the restrictions on interactions in courtroom discourse. (See Chapter 3)

Another aspect of performance discussed by Bauman which will be important in understanding courtroom discourse as Performance is what he calls the "emergent quality of performance. This idea is, in its simplest terms, that the complex arises of "emerges" from the multiple simple interactions. As Bauman states it: "The emergent quality of performance resides in the interplay between communicative resources, individual competence, and the goals of the participants, within the context of particular situations." (Bauman, 1977, p.38) Courtroom discourse is a beautiful example of such emergence. The interactions of any two given performance roles is not very complex, perhaps taking the form of simple question and answer, however, when all the other roles are taken and woven together, the complexity emerges. The interaction between all the roles across all the sub-events (See chapter 3) creates Performance out of what would otherwise be non-Performance interaction.

These quotations all point to the same idea. A verbal performance is an event which primarily features oral communication between various participants. This event is planned and consciously constructed. Although there may be some elements of spontaneity in the discourse itself, the event has culturally determined (often traditional) standards and procedures. This performance also tends to be very important in the culture in which it appears.

Bauman (1977) includes multiple examples of verbal art that can help to gain a greater understanding of Performance as a whole. The first is called "Kabary" and it is a traditional form of speaking in the plateau regions of Madagascar. He includes this from research done by Elinor Keenan in her 1973 article *A Sliding Sense of Obligatoriness: The Poly-Structure of Malagasy Oratory*. In this performance, which has sometimes been called oratory, the performer attempts to show his prowess in verbal communication (the Kabary is performed by males). The performer also showcases his knowledge and mastery of Kabary forms. (Bauman, 1977, p. 12)

Another example shared by Bauman (1977) is that of the Chamula tribe of the highlands of the Chiapas region of Mexico (Bauman shares research done over many years by Gary H. Gossen). Their performances, known in their language as "pure speech," particularly include the retelling of mythical stories. To the Chamula, these performances are what keep the universe safe and stable and keep out the encroaching forces of darkness. Thus, great value is given to performing them well, and as such, each performance is open to evaluation by members of the community. (p.24, 84-85)

Bauman sums up much of the sociolinguistic work that has been done with Performance in his article "Commentary: Foundations in Performance" (Bauman, 2011). In this article he notes:

> "It is significant that the turn to performance in sociolinguistics, in these pages as elsewhere, is often heralded as a critical corrective to dominant tendencies in the field that would exclude on principled grounds the highly crafted, self-conscious, and reflexive ways of speaking that are at the forefront in the study of performance" (p. 708).

By saying this, he addresses the importance of researching the oft-ignored genres of non-spontaneous speech. And although courtroom discourse is not explicitly named as one of these genres, its highly deliberate nature certainly qualifies it to be included. It should be mentioned

that this thesis is unique. This represents the first attempt, to the knowledge of this researcher, to apply some of Bauman's ideas of Performance to courtroom discourse. This thesis also makes the new distinction between two types of Performance: Verbal Art and Verbal Performance. Courtroom discourse belonging to the latter. And, it may, at this point, be unclear how Bauman's work fits with courtroom discourse. To quote Bauman again:

> "We view performance as situated behavior, situated within and rendered meaningful with reference to relevant contexts. Such contexts may be identified at a variety of levels—in terms of settings, for example, the culturally defined places where performance occurs. Institutions too—religion, education, politics—may be viewed from the perspective of the way in which they do or do not represent contexts for performances within communities" (p. 27).

Courtroom discourse is this kind of situated behavior. It has elaborate contexts built up around it to give it greater meaning: a separate and distinct court building, a courtroom set up specifically for the purpose of a trial, even the date and time are very specific and decided sometimes months in advance. The meaning of these contexts will be discussed in Chapter 4.

This is not to say that all legal discourse is performance. Dennis Kurzon, in his 1994 article "Linguistics and Legal Discourse: An Introduction," discusses the difference between courtroom discourse and legal mediation sessions. Both a court trial and legal mediation can fulfill essentially the same purpose; they serve as a way to resolve a conflict between two parties. However, legal mediation, according to Kurzon, can have a much more casual register than courtroom discourse. It also has much less structure. There are fewer restrictions on linguistic behavior in legal mediation than in courtroom discourse. This contrast with a related genre of discourse serves to illustrate the need for a distinct framework with which to analyze courtroom discourse.

Despite the fact that much research has been done on courtroom discourse, no research has thoroughly examined how all these pieces fit together to form a connected and systematic

discourse. Thus, the current understanding of courtroom discourse is limited to individual sub-events (Witness Questioning, Closing Statement, etc.) within the larger event of the trial as a whole. One possible exception to this generalization is Bruce C. Johnson in his article "Communicative Competence in American Trial Courtrooms" (Johnson, 1976). He lists some of the differences of courtroom discourse from other types of discourse but only on the level of pragmatics. The focus of his study was to show the constraints inherent in courtroom discourse. He focuses on constraints on channel of communication, form of speech, addressor, hearer and so forth. He touched on many of the salient issues without investigating any farther. He also identified what he called "participant roles"- major players within the courtroom discourse. However, he leaves out important participants in the trial, such as the defendant, seemingly because of this role's lack of verbal participation throughout much of the trial. This work will adopt a similar, albeit expanded version of this idea, to include all verbal participants in courtroom discourse. (See chapter 3) These performance roles will be used to analyze the various interactions, particularly restrictions on interactions that are conventionalized in courtroom discourse, and will seek to unify these various observations into a unified framework called Courtroom Discourse Verbal Performance that explains the unique features of courtroom discourse.

Of particular note are seven "keys" of performance, about which Bauman states:

"A general list of communicative means that have been widely documented in various cultures serving to key performance is not difficult to compile. Such a list would include at least the following:

1. Special Codes
2. Figurative Language
3. Parallelism
4. Special Paralinguistic Features

5. Special Formulae
6. Appeal to Tradition
7. Disclaimer of Performance" (Bauman, 1977, p. 16. Numbering added for convenience)

Bauman indicates that a list of performance keys would include at least these seven, implying that there could be more keys to any given performance depending on the culture, but that the basic seven will always be present. Once again it is noted that this is the first attempt to apply these ideas to courtroom discourse. Each of these keys will be introduced as Bauman envisions them; their application in courtroom discourse will be discussed in Chapter 4. All information about the performance keys that is presented below is taken from *Verbal Art as Performance* (Bauman, 1977, p. 17-22).

Special Codes. Every performance will be distinguished by a special linguistic code unique to that performance. Bauman notes that these special codes often have an archaic feeling.

Figurative Language. Bauman states that figurative language is essential to performance, particularly 'artistic verbal performance' or what this thesis will call Verbal Art, as opposed to Verbal Performance. However, it is expected that figurative language will be found in both categories of Performance.

Parallelism. To quote Bauman: "Parallelism...involves the repetition, with systematic variation, of phonic, grammatical, semantic, or prosodic structures, the combination of invariant and variant elements in the construction of an utterance" (Bauman, 1977, p.18). Although Bauman talks about this as mostly aesthetic, he also states that it can be also be used to help foreground particular information, or to improve the fluency of unplanned discourse.

Special Paralinguistic Features. These deal mostly with intonational, prosodic, and other features of voice quality. Bauman admits that this is often ignored by other researchers and thus there is a certain lack of data on this topic. However, he also states that "what is important is the

contrast between performance and other ways of speaking in the informant's own community." (Bauman, 1977, p.20)

Special Formulae. Bauman exemplifies the use of special formula by invoking the traditional beginning to English fairytales: "Once upon a time." These are statements that indicate a move to a particular genre of speech. These statements may have other functions, such as referencing a certain place and time along with indicating a change in genre.

Appeal to Tradition. Bauman mentions the idea of a "standard of judgment against which one's performance is to be evaluated" (Bauman, 1977, p.21). He also states: "For each ceremony or ritual to count as a valid instance of its class, the appropriate form must be rendered in the appropriate way, by the appropriate functionary (Bauman, 1977, p. 32). This appeal to tradition is a vital aspect of Performance because it connects to previous iterations. It also allows a standard to exist against which members of a community can judge and categorize particular attempts at Performance.

Disclaimer of Performance. The disclaimer of performance counterbalances the power inherent in performance. A participant in the performance says or does something to indicate that they consider themselves imperfect at performing. The particular realization of this disclaimer will vary considerably across cultures, but in each case will be part of a culturally accepted norm.

Background of Critical Discourse Analysis. One of the founding figures of Critical Discourse Analysis, Ruth Wodak stated that the goal and purpose of Critical Discourse Analysis is to analyze the "opaque as well as transparent structural relationships of dominance, discrimination, power and control as manifested in language." (Wodak, 1995, p.204) These structural relationships are a critical aspect of this thesis. Here they will be called "performance role

interactions" in order to help show their connection to Performance. These structural relationships are determined and

Another founding figure of Critical Discourse Analysis, Norman Fairclough, states that in Critical Discourse Analysis "power is conceptualized...in terms of asymmetries between participants in discourse events." (Fairclough, 1995, p.1) These definitions will be used in this thesis to understand the way that language is used and controlled in a courtroom setting. And, it is onto this foundation that the ideas of Performance are added. Critical Discourse Analysis establishes the basic idea that asymmetries in discourse are an expression of power and control over the discourse. This will be of paramount importance in the understanding of Performance and courtroom discourse.

Performance Role Interaction. The lack of a comprehensive study of courtroom discourse using either Performance or Critical Discourse Analysis underscores even more the need for a unified framework for understanding courtroom discourse. A large portion of published research involving courtroom discourse has focused on interactions between lawyers and witnesses. These interactions occur in the direct examination and cross examination (Adelsward, 1987; Aronsson, Jönsson, & Linell, 1987; Gnisci & Bakeman, 2007). Some of the research in this area that is most applicable to the overall understanding of performance role interaction in courtroom performance will be reviewed below. This research will also help form the basis for understanding other interactions between performance roles. It should be noted that there is a severe lack of research on interactions between any other roles in courtroom discourse (for example: judge-defendant or judge-jury). And, perhaps most importantly, no work, to the knowledge of the author, has been put forward with exploration or explanation of the direct

interactions that could occur in a courtroom but in fact do not. For example, the defendant and jury are not allowed any direct interaction during the performance. The fact that these interactions do not occur can be addressed clearly in a Courtroom Discourse Verbal Performance framework. Thus, this work may present the first attempt to understand these all real and potential-but-non-existent interactions in a courtroom from a linguistic point of view. More will be said on this topic in Chapter 4.

Gnisci and Bakeman (2007) discuss various interactions of the length and form of turns in conversation between lawyers and witness in both direct and cross examinations. Quoted here are some of their "eight hypotheses" that help to show the interaction typical of lawyer-witness interactions in American courtroom discourse. (It should be noted that their research actually deals with Italian courtroom discourse, however, the aspects of courtroom discourse being studied are very similar to American courtroom discourse). Lawyers of both sides of a case engage in asking a witness questions as part of making an argument one way or another. These selected sections of their work also help to clarify the way these two roles interact:

> "H1 (Hypothesis 1): Interruptions will be more characteristic of lawyers and latchings (i.e., smooth transitions between turns) more characteristic of witnesses...
>
> H8b: The lawyer will use interruptions mainly for limiting the content of the witness's answer: Lawyers will interrupt both elaborated and evasive answers and will latch or pause after pertinent (i.e., minimal) answers.
> H8c: The lawyer will use interruptions for limiting the length of the witness's answer" (pp. 239-240).

(It should be noted here that only two of their hypotheses are listed, because throughout the course of article, they themselves disprove some of the hypotheses, these two are the only two that are proved correct and which have applicability in this thesis).

Although not explicitly stated here by Gnisci and Baker these hypotheses all deal with the basic concept of power. Interruptions can be seen to be an indication of control over the

conversation. Although this present study will show that power is not the only force at play in Lawyer-Witness interactions, their hypotheses are important to understand the restrictions on this interaction.

Another source on the interaction between lawyers and witnesses is Stefania Biscetti's "Tag Questions in Courtroom Discourse." (Biscetti, 2006) It should be noted that this article analyzes courtroom discourse in the United Kingdom. This is a not an obstacle to using this research to shed light on American courtroom discourse because of the great similarity between the American and British courtrooms, particularly as it has to do with the interaction of lawyers and witnesses.

Biscetti's article shows that particular syntactic features will be used more commonly in the interaction of lawyers and witness than with any other role in the courtroom. Lawyers almost exclusively use questions when addressing a witness, whether during direct (sometimes called friendly) examination or during cross-examination (also called hostile examination). Tag questions present the lawyer a method of controlling the discourse between himself and the witness. Biscetti notes that tag questions occur more often during hostile examination. This stands to support the idea of lawyers attempting to control the discourse. During a friendly examination the lawyer and witness are on the same "side." Thus, the lawyer can allow the witness more freedom of expression because they have similar goals in establishing a course of events relevant to the case at hand. It should be noted here that it is reasonable to assume that the interactions between other roles may also contain syntactic anomalies. These, however, are not well documented, because, as mentioned above, much of the attention on interaction in the courtroom has been directed at lawyer-witness interaction.

Taylor Roberts' article "Syntactic and Semantic Aspects of Persuasion in the Courtroom," in a similar vein as Biscetti's research, shows the syntactic character of the speech of lawyers. He also examines the semantic peculiarities and differences between defense and prosecution lawyers. To quote Roberts: “It seems that prosecutors will represent defendants as semantic agents, while defendants and their lawyers will tend to avoid agentive roles for themselves.” (Roberts, 1990, p. 94). This shows that these roles will vary even on semantic-pragmatic levels, depending, not on their own sociolinguistic background as much as on the role they play within the performance and how that role must interact with other roles.

Elizabeth Keating, in her article "Power and Pragmatics" (Keating, 2009) argues that power is maintained in the interaction between lawyers and witnesses by the very structure of courtroom discourse itself. For example, when a lawyer and witness are allowed to interact, the lawyer asks a question that the witness must respond to. After the response, the lawyer asks another question that the witness must respond to. This continues until the lawyer decides that he or she has no more questions for the witness. The structure of the discourse disallows the witness from asking questions or guiding the interaction. Keating maintains that this arrangement maintains a power distinction between lawyer and witness.

In a more general discussion of the language behavior of lawyers, Janet Fuller, in her 1993 article "Hearing Between the Lines: Style Switching in a Courtroom Setting" states that:

> “Style switching enables the lawyers to do indirectly what they are not allowed to do directly. A lawyer cannot, for example, baldly accuse someone of being a chronic liar or irresponsible or an alcoholic; s/he cannot say that the witness is stupid or has impure motives. All of this can be implied, however, with style switching.” (Fuller, 1993, p.33)

Although Fuller is focusing on how lawyers effectively circumvent this restriction, this statement implies the fact the role of Lawyer has strict rules about what he or she can say during the performance.

It is important to note that not all scholars take a strictly power-based approach to Lawyer-Witness interactions. Diana Eades in her book *Sociolinguistics and the Legal Process* (Eades, 2010) discusses this issue while summing up one of her previous studies:

> "I pointed out the problematic assumption of a one-to-one relationship between the linguistic form of questions and the extent to which they function to control the witness's answers. That study shows how lawyers' use of the question forms which had been analysed as most controlling is sometimes taken by witnesses as an open invitation for an explanation, and thus such question forms can actually function in the least controlling way." (Eades, 2010, p. 44)

Eades recognizes lawyers' attempts to control what a witness is saying often backfire and allow the witness to say whatever they want. This is a small but important indicator that a power-based analysis of lawyer-witness interaction cannot tell the whole story.

These articles lay a groundwork for understanding the way in which power-based theories have viewed courtroom discourse interactions. These articles illustrate the problems presented earlier, namely, that only small portions are ever studied extensively (e.g. cross-examination) and that the power hierarchy posited cannot carry over to other portions of courtroom discourse. No presently published research addresses the key issues of how a power schema based on one sub-event (i.e. witness examination) would relate to other sub-events. It is clear that power-based approaches classify the lawyer as using powerful speech and the witness using powerless speech during examination. However, the data in Chapter 4 tell a different story. There are many examples of traditionally powerful language being used by witnesses during examination, as well as traditionally powerless language being used by lawyers and judges. Expanding and considering even more of the sub-events that comprise courtroom discourse

(sentencing, entry of plea, jury selection, etc.) show an ever more difficult situation to explain purely with power. Thus, Courtroom Discourse Verbal Performance provides a simpler and more inclusive framework for understanding the interactions in courtroom discourse, both those that do occur and those potential interactions that are not allowed to happen (e.g. Jury and Defendant).

Chapter 3

Methodology

This chapter will detail the methods used to gather data from the Provo Fourth District Court, located in Provo, Utah. The data was gathered from both civil and criminal trials from 2011 and 2012. This data was gathered to help answer this study's two major research questions:

1. Is courtroom discourse sufficiently unique to warrant a distinct framework?

2. Can Courtroom Discourse Verbal Performance explain the uniqueness of courtroom discourse more fully than current models?

The courtroom discourse data is classified by role involved. A detailed description of each role will be given in Chapter 4. The roles that are used in the present study are as follows:

1. Judge
2. Lawyer
3. Witness
4. Defendant
5. Jury
6. Audience

The addition of performance roles is an important aspect of Courtroom Discourse Verbal Performance. This idea, inspired by Johnson (1976), highlights the fact that among events described as Performance, courtroom discourse is unique in the fact that there are not merely one, or perhaps two performers, but six separate and indispensible roles that are filled in each performance (This is perhaps only somewhat true in the case of the Audience role, without which

the trial can proceed). These roles also have restrictions on their interactions with each other. There are restrictions both on when performance roles may interact as well as on the content of those interactions. These restrictions help to reveal and understand the changing power structures throughout courtroom discourse. These restrictions are specific to the part of courtroom discourse in which they occur.

This thesis will divide courtroom discourse into sub-events in order to better understand the changing power structures dictated by the performance. Six sub-events are identified in this thesis.

1. Entry of Plea
2. Jury Selection
3. Opening Statement
4. Witness Questioning
5. Closing Statement
6. Sentencing

These sub-events are broad, but they correspond to the way in which power structures necessarily change. These pre-determined changes in power structure will be analyzed in chapter 4.

Nature of the population I observed- Participation in courtroom discourse does not discriminate based on gender, race, ethnicity, age, language, or other factors. Thus, the population observed in this study came from all backgrounds. However it will be noted that there was a markedly higher proportion of adults to children in courtroom discourse. In fact not one child verbally participated in the discourse. Some were present in the audience. Some of the participants present were not native English speakers and were assigned court interpreters to allow them to participate. However, in this data set, none of the participants who had interpreters chose to verbally participate, thus for that reason, no data is recorded for these individuals.

Because of its lack of relevance gender, age, ethnicity, and other factors will not be identified with those who participated.

Quantity of Data. Over more than fifty hours of direct courtroom observation, one hundred and thirty one individual portions of relevant discourse were gathered. This represents over thirty different participants. In particular this includes four different judges from the Provo Fourth District Court. The obtaining of fifty hours of observation also entailed an additional thirty hours of waiting for trials to start, or resume from recess.

Methodological Background. The data in this study was gathered using a method called "participant observation." This method fits under the umbrella of ethnography. In the words of James P. Spradley in his 1980 book simply titled *Participant Observation*, ethnography in general, including participant observation, seeks "to describe the cultural terrain." (Spradley, 1980, p.26) He goes on to talk of the participant observer as having dual purposes. They are unsurprisingly "participant" and "observer." The first of those purposes is to participate. That is to say, the participant observer does the things that are appropriate for whatever situation he or she finds themselves in. This is an important aspect of participant observation. This allows the participant observer to be close enough to the action that he or she wishes to observe. He or she gets a view from inside an event instead of simply as an outsider looking in. The second purpose of the participant observer is to observe. The researcher seeks to notice everything about the way that people and settings interact. He or she records the aspects of the situation that are usually ignored by those who are only participants in the event. (Spradley, 1980)

Spradley explains that there are various levels of participation that the researcher can assume, from nonparticipation on one end of the spectrum to complete participation on the other. Each level is useful for different types of research. Nonparticipation is useful when

understanding behavior on television shows, for example. Whereas complete participation is used when observing an event in which the observer is already a participant. This can be used, for example, when observing other patrons riding on a bus with the researcher.

Of all these various levels, the approach best suited for gathering the data for this thesis was passive participation. At this level the researcher "is present at the scene of action but does not participate or interact with other people to any great extent." (Spradley, 1980, p.59) This mode of observation was used by Spradley himself when observing various figures at a courthouse in Seattle. Choosing this level was not so much a choice as a process of elimination. Higher levels of participation (called "moderate," "active," and "complete" by Spradley) would have required me to pass myself off as a witness or lawyer, or in fact be brought to trial myself. The consequences of that kind of action were, in a word, unappealing. Nonparticipation was also not an option. Obtaining video and audio transcriptions of trials is sufficiently difficult to make it unfeasible for the purposes of this thesis (See below Medium of Data Gathering). Thus, the only option remaining to me as a researcher was passive participation.

Spradley indicates two ideals that should be sought when doing participant observation: unobtrusiveness and permissibleness. The degree to which these were achieved in this research is discussed below.

Unobtrusiveness. The passive nature of my observations, as well as the presence of other audience members made me blend in to a point where I went almost completely unnoticed for most of the time I was observing. Only twice in the seventy or more hours that I spent in the courtroom was I ever addressed personally by anyone.

Permissibleness. Court proceedings are open to the public. Thus there were no problems of gaining permission to record data from court trials. (See Medium of Data Gathering)

Physical Site. All courtroom observations took place at the Provo Fourth District Court in Provo Utah. This site was chosen because it is the only courthouse that was close enough to allow regular trips for long periods of time.

The physical set up of a courtroom is distinctive and important. The Judge sits in a seat that is on raised platform approximately four feet from the floor. Behind the Judge is the flag of the United States as well as the flag of the state of Utah. The wall directly behind the Judge bears the seal of the state of Utah. The Jury sits in area that is also raised from the floor but not to the same degree as the Judge's seat. The Jury seating area is enclosed. There are two adjacent tables, one for each side of the trial. These tables are on ground level and face the Judge and Jury. Behind the tables is a small barrier and rows of seating for the Audience.

This set up is highly symbolic and sends important messages about courtroom performance and its social and cultural significance. The raised seating areas for the Judge and Jury help to underscore an important aspect of courtroom discourse: The Judge and Jury are symbolic of the performance as a whole. The Judge represents order in the performance, and the Jury represents the decision making power of the courtroom performance. In trials that do not involve a Jury, the Judge represents both order and the decision making capacity of the performance. The seating area of Audience is also significant. The barrier sends the message that while sitting in the Audience seats, the members of the audience are not participating verbally in the performance. When a member of the audience is allowed to participate, they are invited to come in front of the barrier and stand in the middle of the courtroom and stand facing the Judge. This enforces the message that members of the audience cannot verbally participate unless they are allowed onto the other side of the barrier. It is on this barrier that warnings appear informing

the Audience of the linguistic restrictions on their participation (See Chapter 4, Judge-Audience). The tables are also symbolically significant. The equal level of both tables suggests that the court has no predisposition for either the plaintiff or the defendant.

The flags and seal that appear behind the Judge symbolize the connection that the court bears to political power. Judges are appointed by those with political power. Governments are bound to uphold the outcome of the courtroom performance. These connections establish the courtroom performance as socially significant and socially powerful.

Medium of Data Gathering. The preferred method of gathering data would have been video recording each of the courtroom situations attended. However, both audio and video recording are strictly prohibited in the courtroom. Thus, the only option remaining was to take notes by hand of the proceedings while they were occurring. It is of course impossible to make a perfect transcription with this method. However, every effort was exerted to record the data as well as possible (See "Limitations" in Chapter 5).

There were other methods that could have been used to gather courtroom discourse data. The three major alternative options were to use written court transcripts, court audio and video transcripts, or to use data recorded by others and used in previous studies. All information on transcript requests was accessed through the website of the Utah State Courts: www.utcourts.gov under the heading Audio Records and Transcripts.

The use of written court transcripts was rejected because they could not record pauses, intonations, false starts, and other linguistic features that are unique to spoken discourse. Written transcripts also do not record any interactions that is stricken from the record or any interactions that happen outside of normal parameters, such as two lawyers whispering to each other. Such interactions are an important aspect of the Courtroom Discourse Verbal Performance framework.

They help to show where the boundaries of courtroom discourse are by crossing over those bounds. Thus, any form of data which would omit those would not be suited for helping prove the Courtroom Discourse Verbal Performance framework. Other problems exist with using written court transcripts. One of the most problematic obstacles is that a request must be made in order to access the transcripts. There is also a charge for every page of court transcript. This cost is significant enough to prohibit gathering a large amount of data through official court transcripts.

Although a large corpus of audio and video recordings would have been an ideal source of data for this study, this option had to be rejected. Audio and video transcripts can capture all the linguistic features that a written transcript omits. However there are significant obstacles to obtaining a large amount of data from these recordings. Court audio and video transcripts are only made available if one is searching for a specific case, and can only be requested for specific trails. The person requesting the audio or video transcript must know the case that he or she would like to see. He or she must know who was involved and when the trial took place. Thus, like written court transcripts it would be very difficult to gather a large amount of data this way. Also, the cost associated with obtaining audio and video transcripts is much higher even than that associated with written transcript requests.

The last alternative to gathering data by hand was to use data that had been gathered by others and used in previous research studies. Although this option has the disadvantage that the data may be already filtered through some particular theory or research agenda that another researcher may have. Because of this, another researcher may omit a portion or aspect of the data that is not relevant to their research, but which would prove to be critically important to this study. This study is pioneering a new framework for understanding courtroom discourse and thus

needs data that has not already been filtered through another theory. It is hoped that by using only data that has been gathered for this specific purpose, that this framework would better represent the actual situation in the courtroom. However, due to the difficulties in procuring any data on opening and closing statements, this method was employed in these cases. (See Lawyer-Jury interaction in chapter 4). In order to avoid the aforementioned problems, the data I used was presented by another author in an essentially unaltered form. It is hoped that this would not allow any bias or interpretation from another author to creep into the text.

While gathering this data there were certain things that I looked for. The focus of this data and indeed of this present study is on the interactions that take place in courtroom discourse. For this reason, I recorded data that exemplified typical interaction for each performance role interaction. However, after multiple examples of that behavior had been recorded, no more typical behavior for that performance role interaction was recorded. I also gathered data that appeared to contradict power-based explanation. This data is crucial in underlining the explanatory power of the Courtroom Discourse Verbal Performance framework that is being developed here. The discussion of the data and explanation of its relevance to answering the research questions of the present study will be presented in Chapter 4.

Data Coding. The data gathered for this thesis was organized by the participants. Because of the nature of courtroom discourse, almost all communication is between two roles at a time and no more. Thus, this became a convenient and useful way to organize the data. As the data is presented in chapter 4, it will be presented in categories based on the two participants of any interaction (e.g. Judge-Lawyer).

Ethical Concerns. Although court trials are open to the public, no specific names of those involved were used, except in the case of opening and closing statement data which was taken

from other sources. This was done as a courtesy to those involved. Also, the names of law firms were redacted. This was done so as to avoid any sense that this thesis endorses any particular law firm.

Chapter 4

Discussion

This chapter will present data from the Provo Fourth District Court gathered in 2011 and 2012 in order to answer the research questions of the present study:

1. Is courtroom discourse sufficiently unique to warrant a distinct framework?

2. Can Courtroom Discourse Verbal Performance explain the uniqueness of courtroom discourse more fully than current models?

This chapter will discuss the application of Performance to courtroom discourse. Bauman's seven keys will be applied to courtroom discourse. A justification of the categorization of courtroom discourse as Verbal Performance and not Verbal Art will also be given.

As well, every possible interaction between roles in courtroom discourse will be examined in this study. Many of these potential interactions, as noted above, have not undergone serious linguistic research (to the knowledge of this author). It is also important to note that many of the possible interactions listed below do not actually take place at all (These will be referred to as "forbidden interactions"). The restrictions placed on interactions between performance roles will be of primary interest. Each role has restrictions as to when and how it can interact with any of the other roles.

Bauman's Seven Keys and Courtroom Discourse

1. **Special Codes**. Every performance will be distinguished by a special linguistic code unique to that performance. The unique code of courtroom discourse is perhaps best termed a "register." As defined by Ronald Wardhaugh in his 2010 book *An Introduction to Sociolinguistics, Sixth Edition*, register is a "[set] of language items associated with discrete occupational or social groups." (Wardhaugh, 2010, p.48) Some would argue that the linguistic code used in courtroom discourse is not in fact a special code but simply a formal register, the same kind of register that could be found in many other discourse genres. This seems particularly true because of the seeming lack of linguistic features that are unique to courtroom discourse. However, upon closer inspection there are indicators to suggest that courtroom discourse has a distinct and unique code. Firstly, the use of "your honor" to address judges is one feature that appears to be confined to courtroom discourse. On the lexical level courtroom discourse has many words or definitions of words that are used only in legal contexts. It may be argued that this is simply a professional jargon. Thus, lexical differences cannot be said to define the code by itself. Susan U. Philips, in her 1984 article "Contextual Variation in Courtroom Language Use: Noun Phrases Referring to Crimes," discusses lawyer's nuanced and specific use of noun phrases that refer to various types of crimes. In addition to lexical differences the use of formal terms of address, such as full names, mister/misses/miss, and 'your honor' helps support the idea of a special courtroom code. Once again, these features may be observed in other contexts. There is also a tendency in courtroom discourse to refer to people who are present in the third person, or even to refer to oneself in the third person such as when the judge speaks as "the court." This is quite marked in normal English discourse and thus works to set courtroom discourse apart. Lastly, it is noted by (Johnson, 1976) that witnesses are not allowed to use as evidence facts related to them by someone else (hearsay). This pragmatic restriction is also unusual in most other genres of

English discourse and can be considered an aspect of the special code of courtroom discourse. So, as stated above, the special code of the performance of courtroom discourse is made up of features that exist uniquely together in this one linguistics situation.

2. **Figurative Language**. Bauman states that figurative language is essential to performance, particularly 'artistic verbal performance,' or what has been called here Verbal Art. Seeing that courtroom discourse belongs to Verbal Performance instead of Verbal Art, this may explain the seeming lack of figurative language in courtroom discourse. However there are aspects of courtroom discourse that depend heavily on figurative language. Central to the idea of a trial is that of guilt or fault, meaning that a person or persons is guilty of making some condition arise, or even, in fact, of intending to make it arise. This can intimately tied to Lakoff and Johnson's idea from *Metaphors We Live By* (Lakoff & Johnson, 1980). Guilt can be seen as an ontological metaphor. This concept is incorporated into language in many ways. A jury declares a person to have guilt or be free from guilt. (Although the adjective "guilty" is used more often than the noun "guilt" the concept is the same). A judge may determine how much at fault a person is and thus how much they need to be punished. Thus, the figurative language of guilt is central to courtroom discourse.

3. **Parallelism**. To quote Bauman:

> "Parallelism...involves the repetition, with systematic variation, of phonic, grammatical, semantic, or prosodic structures, the combination of invariant and variant elements in the construction of an utterance" (Bauman, 1977, p.18).

Courtroom discourse is replete with parallelism. Most particularly the examination of witnesses fits this description. In this part of the discourse, there is a constant repetition of question and answer. The content can vary significantly from one question to another, but the form of the turns will always be parallel. Parallelism, as noted in chapter 2, can also be used to foreground

certain information. This can be seen in an excerpt from a closing statement of Gerry Spence (See Chapter 4 Lawyer-Jury)

> "Mr. Paul doesn't have the right to come into a court and say: "I think this happened." And: "I think that happened." And: "Maybe this happened." And: "Isn't it probable that this happened." And: "I think the circumstances of this, and the circumstances of that." And to take a whole series of unrelated events and put them together and try to tell you somehow that I have the responsibility that the judge and the law doesn't place upon me, and to mislead you in that fashion." (Lief, M.S., Caldwell, M., & Bycel, B., 1998, p. 141,145)

The repetition and variation of the statement of a witness, with each variation containing a new way to mark uncertainty, is used to foreground the fact that the witness does not in fact know what happened, but has some ideas about it.

4. **Special Paralinguistic Features**. Bauman deals mostly with intonational, prosodic, and other features of voice quality. An obvious fulfillment of this key is hard to find for courtroom discourse. However, the following quote from Bauman clarifies the situation: "what is important is the contrast between performance and other ways of speaking in the informant's own community." (Bauman, 1977, p. 20). With this in mind, courtroom discourse does have a special paralinguistic feature. In other forms of discourse in American society it is considered normal to become angry and defensive if accused of a crime. This is not allowed in courtroom discourse. Emotional outbursts are not tolerated by any performance role.

5. **Special Formulae**. Bauman exemplifies the use of special formula by invoking the traditional beginning to English fairytales: "Once upon a time." This is very similar to the formulae used to mark the beginning and ending of portions of courtroom discourse. These include the command "All rise" that is given by the bailiff whenever the judge or jury enter or exit the courtroom, or the declaration "Court is now in session." These must be uttered before other parts of the performance may proceed. Also included is the judge's edict "Court is

adjourned" or similarly "Court is in recess until..." Lawyers also have a special formulaic phrase "I have no more questions, your honor" which is said when a lawyer does not wish to ask a witness any more questions at the present time.

6. **Appeal to Tradition**. Bauman mentions the idea of a "standard of judgment against which one's performance is to be evaluated" (Bauman, 1977, p.21). He also states: "For each ceremony or ritual to count as a valid instance of its class, the appropriate form must be rendered in the appropriate way, by the appropriate functionary (Bauman, 1977, p. 32). This appeal to tradition helps create the consolidated notion that every trial has the same standards by which it can be judged. Courtroom discourse fits this criteria in the fact every trial of the same type must have the same parts performed by the same roles. For example, sentences must always be passed down by a judge, not a lawyer or a defendant. The examination of witnesses is done by a lawyer, not juror or member of the audience. Another important appeal to tradition in courtroom discourse is the objection. A Lawyer may object to something said or done if that action is outside of the proscribed rules for conduct for that particular sub-event of courtroom discourse. The Judge then decides to either uphold or overrule the objection.

7. **Disclaimer of Performance**. The disclaimer of performance counterbalances the power inherent in performance. A participant in the performance says or does something to indicate that they consider themselves imperfect at performing. In the case of courtroom discourse verbal hedging serves as this disclaimer. Every participant in courtroom discourse hedges at some point. These hedges mitigate any perceived power held by the participant. When witnesses are asked about the events of a certain period of time, it is common for a witness to be questioned about their recollection of events. Witnesses are not asked what *happened* but rather

what they *recall* happening, thus highlighting the inherent imperfection in what a witness will recount.

General Observations on Performance Roles. Before discussing the individual interactions of performance roles, some general notes are presented that help explain numerous aspects of courtroom discourse as seen through the Courtroom Discourse Verbal Performance framework.

By reviewing Table 4.1 it becomes clear that not all roles have the same amount of ability to interact within the courtroom. For example, the role of Judge can interact in some fashion with every role in the performance. These interactions often have to do with the performance itself, or rather, making sure that the performance stays orderly. This includes ruling on objections, and the bailiff's call of "All rise" when the judge or jury enters or exits the courtroom. On the other end of the spectrum it can be seen that the Audience role has the least interactional freedom, being only able to interact with the Judge role.

Each of these roles will be discussed in turn giving some general information about the role. It should be noted that the roles of Judge, Jury, and Audience, by necessity, contain more than one person, and that the role of Lawyer (for either prosecution or defense) may contain more than one person. However, they act in uniform ways and share the same linguistic restrictions. This allows them to be considered part of a single role. When the name of a role is capitalized, it refers to the role in general and not the specific person who is playing that role at any given time.

1. **Judge**. The role of judge contains the judge, the bailiff, and the judge's secretary. The role of Judge has the responsibility to keep order and maintain the integrity of the performance. This is quite clear when the interactions of the Judge role with other roles are analyzed. Most of the

interactions that the Judge has have to deal with administrating the performance. The secondary members of the Judge role (bailiff and secretary) also help in keeping order. The bailiff has the responsibility of escorting the jury when they exit or enter the courtroom and announcing the call of "All rise" whenever the jury or judge enter or exit the courtroom. The secretary also helps in the administrative duties of the Judge role. The secretary has the responsibility of swearing in witnesses and scheduling future court dates. As mentioned above, the Judge represents order in the performance. However, in trials without a Jury, the Judge also represents the decision making power of the courtroom performance.

The Judge is also responsible for recesses. Recesses allow the performance to be broken into many portions. The Judge can essentially put the performance on pause and appoint a time when it will be resumed. The Judge uses the set phrase "Court is in recess until (time)" to fulfill this responsibility. This responsibility highlights the Judge's oversight and maintenance of order throughout the performance.

The final responsibility of the Judge is to hand down sentence. This underscores the Judge's connection to political power. The Judge decides the actions that will be taken by the government against the defendant.

An overall note is that the Judge role seems to have almost no restrictions on the content of his or her interactions with other roles. The Judge can say whatever he or she deems necessary in each situation. This is very apparent in the sections "Judge-Defendant" and "Judge-Jury" in this chapter. However, there are some set phrases which must occur in particular sub-events. These will be discussed below as part of the interaction in which they occur.

2. **Lawyer**. Each courtroom event has at least one incarnation of the role of Lawyer; at least one for the prosecution and at least one for the defense. If either the prosecution or defense has more

than one lawyer, these act together, and cannot act separately. This is evidenced by the rule that once a lawyer from one side has begun to examine a witness, no other lawyer from that side may interact with the witness. Lawyers, regardless of side, share the same restrictions on interaction, thus the role of Lawyer can apply to either a prosecuting or a defense lawyer.

3.**Witness**. This role may be filled by those who may also happen to fill the role of Defendant or Audience in other sub-events. This role has unique interactional restrictions, and so even though it is filled by people who may also fill other roles, while being a witness, that person must adhere to the rules for the role of Witness. In order to qualify to fill the role of Witness, a person must have knowledge that pertains to the trial.

4. **Defendant**. This role shows itself as a separate role only in entry of plea and sentencing. Otherwise, the defendant is represented by someone in the role of Lawyer.

5. **Jury**. The role of Jury is made up of multiple (eight, in this data set) individual jurors. All jurors share the same restrictions on language use and must come to a unified conclusion at the end of the trial. Thus, they will be considered to be part of the single role of Jury. The Jury (when present) represent the decision making power of the courtroom performance. For trials that do not have a Jury, the Judge represents the decision making of the court.

6. **Audience**. The Audience is the only non-essential role. It can be absent and the courtroom process will continue. However, if there are people who make up this role, those people share the same interactional restrictions and are thus considered part of the role of Audience. The Audience is only allowed to participate during sentencing. The Judge, at that point, may invite a member of the audience who has some important connection to the defendant to participate actively in the performance (See "Judge-Audience" in this chapter).

The absence of an interactional role for the plaintiff or complainant should be noted. There is no sub-event within the performance that allows this role to act independently of the Lawyer role that they are aligned with. The plaintiff is often referred to, especially during the examination of witnesses, however, since no interaction is allowed, it cannot be considered a performance role. As noted above, the plaintiff may take on the role of Witness.

Sub-Events. Chapter 3 outlined six sub-events that come together to form the entire courtroom discourse event.

1. Entry of Plea
2. Jury Selection
3. Opening Statement
4. Witness Questioning
5. Closing Statement
6. Sentencing

These six sub-events help to showcase the changing nature of the power structures of courtroom discourse. As role interactions are discussed, a note will be made as to which of the sub-events this interactions belongs.

However, an important distinction will first be made that will aid in understanding the power structures of each sub-event. Two distinct types of power change will be analyzed here. The first kind of change comes about because of the change of sub-event. This change is property of every trial in during that particular sub-event. For example, during the Closing Statement sub-event, the Audience is not allowed to speak and is in a powerless position. The Lawyer on the other hand, has very high power because of his or her control over the discourse. However, with the transition to the Sentencing sub-event, the Audience has an opportunity to speak, which is quite broad. The Audience is allowed significant power and control over the discourse during this sub-event. Whereas the Lawyer is not allowed to speak at all and thus put into a powerless position. This will be called a "rigid" change of power.

Rigid changes of power are to be contrasted with "fluid" changes of power. Fluid changes of power are those changes of power which are not scripted to happen as various sub-events progress. Fluid changes of power are those which are allowed, but not necessary. For example, when a Witness who is being questioned by a Lawyer changes from hedging every answer, to answering directly. A particular instance of this is noted below as a witness answers confidently in a manner contrary to the expectations of the lawyer. This is the only instance of fluid power change recorded in this data. However, it does provide contrast to all other power changes that occur during courtroom discourse.

Presentation of Data. Table 4.1 illustrates all the logically possible interactions that could occur between the roles defined in Chapter 3. The roles that only include one person at a time obviously cannot interact with themselves, and thus are considered logically impossible and discarded. The remaining interactions fall into three categories: Forbidden, Extremely Restricted, and Legitimate. Forbidden interactions are those interactions that are not allowed as part of the performance. If they do occur, they must be somehow outside the performance (during recess, in chambers, or as a whispered aside for administrative purposes). Extremely Restricted interactions are those interactions that occur either only in an unusual circumstance, or through intermediaries. Legitimate interactions are those that are allowed in courtroom discourse as part of the performance. Legitimate interactions are subject to restrictions, both in how and when the roles may interact.

Listed here are the interactions that will be examined in this work. Data gathered from personal observations at the Provo Fourth District Court during 2011-2012 will be used to understand and classify the restrictions that are placed on the performance roles that form part of the courtroom discourse performance. Data relevant to each of the interactions will be presented

separately. The conclusion will present a unified analysis of these interactions as a single verbal performance. It should also be noted that there may be some peculiarities that are unique to the Utah State court system. These will not be addressed.

Table 4.1- Courtroom Discourse Interactions

	J	L	W	Def	Jury	Aud
J	ER					
L		F		F		F
W			XXXX	F	ER	F
Def		F	F	XXXX	F	F
Jury			ER	F	F	F
Aud		F	F	F	F	F

Abbreviations:

J- Judge
L- Lawyer (either prosecuting or defense)
W- Witness
Def- Defendant
Jury- Jury
Aud- Audience
XXXX- Logically impossible
F- Forbidden
ER- Extremely Restricted
Legitimate interactions are left blank.

The data transcribed from notes taken in courtroom observations will be presented as follows:

Example: L-W-- Question? W-L-- Answer.

L-W indicates that the speaker is L (Lawyer) and the intended recipient of the statement is W (Witness).

Due to restrictions on courtroom discourse, nearly all interactions take place between only two roles at any given time. Thus, this simple schema of indicating speaker and intended recipient will suffice. Statements separated by a blank line are to be considered part of a different context.

Role Interactions. Each legitimate interaction will be detailed and its restrictions discussed. Relevant examples of these interactions will also be presented along with commentary. Each section will show that the Courtroom Discourse Verbal Performance framework has greater explanatory strength than purely power-based approaches. The numbers next to the title of the interaction correspond to numbers in Appendix A which includes all the data in the set for all interactions.

1. Judge-Lawyer. (Entry of Plea, Witness Questioning) The Judge-Lawyer interaction is a very common interaction in courtroom discourse including numerous different sub-events. Judges and Lawyers often interact on the level of administrative elements on which the Judge must decide. In these instances it is not uncommon for a Judge to interrupt a Lawyer when the Judge feels enough information to make a decision has been presented. For example:

> J-L-- (While L is talking about the case instead of responding a simple yes or no to a question about paperwork) Thank you. That's more than I wanted to know.

> L-J-- Your honor, let me clarify a few points. J-L-- (interrupting) Don't tell me what I already read. Just tell me if I'm missing anything. L-J-- I apologize, your honor.

> J-L-- (While speaking about a treatment facility) If it's on the list then I'm happy.
> L-J-- It's very pricey, which by today's standards seems to mean that J-L-- (interrupting) Thank you, I have enough information that I can make a decision.

This is a good example of the power difference between the Judge role and the Lawyer role. This interaction is also an integral part of the performance. When considered along with the other interactions of the Judge role (almost all of which are focused on keeping the performance in order) the Judge's interactions with the Lawyer role can be seen as an attempt to maintain the restrictions of the performance. The Judge in these situations does not allow the Lawyer to exceed the restrictions on his or her role and speak about topics not relevant to the task at hand. Thus, an interruption be seen not only as an expression of power, but also as a call that the Lawyer is trying to exceed his or her restrictions.

Another important aspect of Judge-Lawyer interactions are objections. Objections are an appeal to the rules and restrictions inherent in courtroom discourse due to its nature as a verbal performance. Lawyers can raise a concern that a portion of the performance has not been conducted properly or that someone has exceeded their role's restrictions. This is usually done by simply uttering the word "Objection" even if interrupting another participant. This utterance is followed by the Lawyer specifying what restriction they feel has been violated, as the following examples illustrate:

L-J-- Objection. It does not say that she was beaten. It says that she was grabbed.

J-L-- Sustained. That is misrepresenting the evidence.

L-J-- Objection. She's bringing up something that is not in the petition.

J-L-- Sustained! That is *not* in the petition. (Italics indicate emphasis)

In ruling on objections, the Judge fulfills his or her responsibility to maintain the order and integrity of the courtroom performance. This is not only an appeal to the power that the Judge has throughout the duration of courtroom discourse. As noted above, this is also an appeal to tradition in the sense the Bauman includes in his seven keys (Bauman, 1977) Judges and Lawyers can have interactions outside of the performance while the performance is on hold. This is done either in another room (often referred to as 'chambers') or at the judge's seat but with a static noise in the microphone so as to not allow others to hear. Outside of the performance conversations can occur with three active participants unlike inside the performance when only two at a time can be involved. Obviously, no data is available on these interactions.

2. Judge-Jury. (Jury Selection, Witness Questioning) The relationship between Judge and Jury seems to be one that is built on cordiality and solidarity. There are many examples of the judge being friendly with members of the jury. For example are these interactions from the jury selection process:

> Jury-J-- (After presenting other introductory information about himself) And my favorite movie has got to be 'True Grit.'
>
> J-Jury-- Do you like the original or the newer one?
>
> Jury-J-- The original.
>
> J--Jury-- Great (smiling)

> J-Jury-- (Explaining about the potential juror introduction process) I had a lady stand up once and say 'I have 5 kids. I'm pregnant. I'm a member of Sam's Club, and I don't have

leisure time.' She wanted to be on the jury for a break! (laughter throughout the courtroom)

These interactions initially seem to hardly even belong in a courtroom because of its seeming lack of formality. However, this is a prime example of the Judge mitigating power. This also shows the Judge role's lack of content restrictions. It appears that if the Judge thinks it's worth knowing what a potential juror's favorite movie is, then that is the Judge's prerogative to ask about. The jury selection process has fewer restrictions for the Jury as well, as indicated in the Judge's humorous anecdote in the second excerpt above. However, that seems to be made up for by the restrictions placed on the role of Lawyer. Lawyers from both sides are allowed to interview potential jurors, but (at least in Utah State Courts) this is done in an adjacent room, outside the performance. But, while in the performance, the lawyers were only able to introduce themselves, their law firm, and the witnesses they intended to call so as to make sure that none of the potential jurors had biases based on previous experience with anyone involved in the trial.

Outside the jury selection process, the interaction between Judge and Jury is much more restricted but still legitimate. The Judge may, for instance, instruct the Jury to disregard something said or done outside the restrictions of the performance, as in this example:

J-L-- I object. We're getting into bio-mechanical expertise.

W-L-- I've seen it.

J-W-- Sir, when counsel objects I have to rule before you answer anything.

J-Jury-- The jury will disregard that comment.

The interactions between Judge and Jury show that the restrictions on various roles change dramatically throughout the course of trial. The Jury, which during the jury selection has very few restrictions on their content, have very strong restrictions on when they can speak and what they can say during the remainder of the trial. This is an important aspect of the performance. An approach based solely on power would expect that if the Jury had very few restrictions early in the trial because of any power that they hold, that that lack of restrictions would remain throughout the duration of the trial. However, this is not the case. This helps to show the importance of considering the Performance aspects of courtroom discourse. Performance shapes and changes the power dynamic as the trial progresses.

3. Judge-Witness. (Witness Questioning) Judge and Witness have few interactions, but when they do, they tend to be instructions. This follows with the role of Judge in charge of keeping order in the performance. For example:

> J-W- Raise your right hand (Witness raises right hand). Do solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God?
>
> W-J- Yes
>
> (This is actually done by the secretary, who, as mentioned earlier in this chapter, is considered part of the performance role of Judge.)
>
> J-W-- Sit here. Answer the questions truthfully.
>
> J-W-- Come on over and take a seat.

J-L-- I object. We're getting into bio-mechanical expertise.

W-L-- I've seen it.

J-W-- Sir, when counsel objects I have to rule before you answer anything.

J-Jury-- The jury will disregard that comment.

J-W-- You can step down, thank you.

These interactions, though restricted, underscore the rule-based nature of the performance. As seen above, the Judge is responsible for keeping the Witness within the restrictions set for his or her role. Much of the interaction between the Judge and the Witness is in the form of formulaic phrases that must be used to accomplish tasks such as swearing in, or dismissing the witness.

4. Judge-Defendant. (Entry of Plea, Sentencing) Direct interaction between Judge and Defendant usually only occurs during sentencing. But, during sentencing, the interaction contains a lot of variety. Sentencing takes place after a defendant is found guilty, either by trial or by the defendant's own admission. The Judge determines what punishment is to be meted out to the Defendant. The Judge, in this sub-event, once again mitigates power and shows that his or her role lacks content restrictions. The following excerpts show the Judge talking to the Defendant waiting to be sentenced in friendly and encouraging ways:

J-Def-- It's difficult to say why you've put yourself in this situation. Maybe you feel that something is owed to you because of the life you've lived. I don't know. (pause) I wish I could do more to put you on the right track.

J-Def-- I'm going to put you on probation, I know they don't want to see you, but, you know what? I think you can do this.

J-Def-- I don't see in this that there's no hope for you, I don't see it.

J-Def-- I think you can do it, maybe no one else does, but your mom, but I do. I'm going to give you a chance. Don't let me down.
Def-J-- (tearfully) I won't, your honor.

It is important to note that the Judge uses hedges such as "It's difficult to say", "Maybe you feel", and "I think you can do this." These hedges are traditionally interpreted as powerless language (Bradac, Hemphill, Tardy, 1981, p. 328). This is once again an instance of the Judge mitigating power.

The data in this study also contains many instances of the Judge being very direct with the Defendant. For example:

J-Def-- I don't want you coming back saying you didn't complete it. You didn't do it.

J-Def-- Do you realize how lucky you are you didn't kill someone that night? This is more than what you call a 'bump in the road.' It was my intention to give you six months. You were a drunken nightmare that night. The miracle is that you didn't kill someone else or yourself that night.

The Judge is able to show power over the Defendant by mitigating it or by expressing it clearly. However, it is the addition of the idea of performance that helps explain why the Defendant is able to participate directly in this sub-event despite strong restrictions on his or her participation earlier in the discourse. Thus, in this position of seeming powerlessness the Defendant is finally afforded the opportunity to speak. The performance changes the power hierarchy so as to give power to the Defendant to speak with few restrictions. Although in this data all the defendants are penitent and apologetic. For example:

Def-J-- I've been extremely selfish. I've missed two years of my son's life. I'm thankful for this chance if I get it. I won't let you down, your honor.

Def-J-- I know I messed up. I know I've been a knucklehead.

Def-J-- I'd like to apologize to those I've hurt, to the taxpayer that struggles to keep me incarcerated, and mostly I'd like to apologize to my family.

This opportunity to speak represents the Defendant's only legitimate interaction in the performance. The actual person who is the defendant in the case may in fact participate earlier, but only under the role of Witness.

It is important to note that the Judge does have some restriction in the content of his or her interaction during sentencing. When actually announcing the sentence, the Judge must use the phrase "I sentence you to..." This is one of the Judge's only content restrictions in all of the courtroom performance.

5. Judge-Audience. (Sentencing) Throughout the performance, the Audience has the strictest restrictions of any role. These restrictions on the Audience are enforced to the point that a sign with the following warning can be seen in the audience seating area of all the courtrooms in the Provo Fourth District Court.

> "WARNING. Unless you are legal counsel, please do not speak to anyone in the jury box. If you do so, you will be asked to leave the courtroom and may be found in contempt of court."

This is also illustrated by an incident in which a member of the audience attempted to participate at an inappropriate time:

> Aud-J-- Your honor, I would like to address the court on this. I'm the victim in this case and received no...
>
> J-Aud-- (interrupting) I'll have you speak with the prosecuting attorney.

The Judge refused to allow the Audience to participate at this point, and referred that particular member of the audience to speak with a lawyer, and although not explicitly stated, it is inferred that that interaction would take place outside the performance.

The legitimate interaction between Judge and Audience takes place only during the sub-event of sentencing. Before the Judge passes sentence, he or she asks if anyone present would like to speak on behalf of the Defendant. At this point, any member of the audience (usually a relation of the defendant) may receive permission to speak to the Judge about the Defendant. When this happens, the member of the audience is invited to in front of the barrier, and stand facing the Judge in the center of the courtroom. In the following examples the members of the audience are the mothers of the defendants.

> Aud-J-- I know that what happens today will be the best for him. He comes from Mormon Battalion heritage, Mormon Pioneer heritage, and on the Navajo side they were also great warriors.

> Aud-J-- He's had a rough life. It didn't help that I was using at the time. I got help and I've been clean for twelve years. We're going to help him through. I know he can do it. I just know he can.

There is an enormous disparity between the restrictions placed on the Audience throughout most of the performance and the extreme freedom given, once being offered a chance to speak during the sub-event of sentencing. This would certainly pose a problem for a totally power-based approach, in which the Audience would have to be seen, throughout most of the

discourse, as having so little power that they are not allowed to speak at all. However, Courtroom Discourse Verbal Performance can very clearly explain this disparity. The Audience has very high restrictions on when they can participate, however, when their time to participate comes, they experience no observable restrictions on the content of their interactions. Power schemas are manipulated by the performance. It is also interesting to note that the two excerpts included above both come from speeches that lasted over five minutes. This length of turn is unheard of in any other sub-event or from any other role.

6. Lawyer-Jury. (Opening Statement, Closing Statement) These interactions take place during opening and closing statements, and in the jury selection process. Due to difficulties in obtaining opening and closing statements from the Provo 4th District Court, an opening statement is quoted here from *McElhaney's Trial Notebook* (McElhaney, 2005). This is an opening statement of R. Eugene Pincham. He relates an episode from his personal life in an attempt to illustrate a point important to the case.

> "I have one rule around my house:
> "Stay out of my wallet!"
> If you need money, come ask me for it. If it is worthwhile and I have the money, I'll give it to you, but "Stay out of my wallet!" There is one exception. That's my wife, Alzata. After thirty years of marriage, to me, she has the right to go in my wallet. But for the children: "Stay out of my wallet!" The other night when I went to bed, I put my wallet on my dresser like I always do. And when I got up the next morning, I checked my wallet to make sure I had enough money to park the car and have lunch. When I checked my wallet, I only had one or two dollars, and I knew I had twenty in there the night before. So I asked my wife, "Alzata, did you take that twenty-dollar bill I had in my wallet?"
> "No, honey, I haven't been in your wallet."
> "All right," I said, "call the family together."
> "Get everybody downstairs, because somebody took a twenty dollar bill out of my wallet, and know there has been no burglary in the house."
> Well, Sandy was off for the weekend, and had not returned, so that left the two boys, Scooter and Jim.
> Scooter—he's eighteen—he's the slick one. Jim—he's twelve—he's the naive one.
> They came downstairs, and I said,

> "All right, one of you two's been in my wallet, and I want to know who."
> Scooter, he said, "I haven't been in your wallet, Dad."
> And Jim, he said, "I haven't been in your wallet, Daddy."
> I was mad. "Now one of you is lying, and I'm going to find out who. I am going to get to the bottom of this."
> "Tell you what I'm going to do. I am going to give me out some immunity."
> Then Jim, he's the naive one, he says, "Immunity? What's immunity?"
> And Scooter, the slick one, says, "Immunity is where you can't be punished for what you did, but you got to talk about it."
> So Jim says, "I don't need any of that, 'cause I didn't take any money."
> And Scooter says, "You going to give out immunity?"
> I said, "That's right."
> Scooter said, "Sign the order. I took the money from your wallet."
> "O.K.," I said, "What did you do with the money?"
> Scooter said, "I gave some of it to Jim!"
> "Jim," I said, "You are convicted. No more bowling for a month. No movie on Saturday night. No more television. You are going to your room and you are going to stay there. You are guilty."
> That night I heard something no parent ever likes to hear. I heard my boy in his room, crying. Alzata asked me, "Gene, why did you do that to Jim?"
> I told her, "Because he's guilty. I gave Scooter immunity. He's got no reason to lie."
> Alzata looked at me and said, "That's no reason not to believe Jim. He's your flesh and blood, too." (McElhaney, 2005, pp. 690–691)

This opening statement takes an informal, colloquial tone. This can be understood by the fact that this sub-event of the performance sets up the power hierarchy in such a way so as to allow the Lawyer to have almost complete control over the discourse with the Jury. He or she is the only one allowed to communicate at that time. Thus, by mitigating that power the Lawyer can create solidarity between himself or herself (and his or her client by extension). This is another prime example of how the performance changes and molds the power structure of a sub-event within courtroom discourse, and how those in the participating roles utilize that particular structure further their cause.

The closing statement has similar characteristics to the opening statement. The Lawyer wants to create a bond with the Jury. This closing statement is taken the book *Ladies and Gentlemen of the Jury: Greatest Closing Arguments in Modern Law* (Lief, M.S., Caldwell, M., &

Bycel, B., 1998, p. 141,145). This closing statement was given by Gerry Spence at the highly publicized trial Silkwood v. Kerr-McGee.

> "All I have is suspicions. I can't prove a thing." Their own witnesses, witness after witness, who was willing to point the finger without any evidence—how do you like that? How would you like that if it was your child who was dead, and whose lips are sealed by death, who can't come forward and tell her side? Now, I think it is shameful to point the finger in accusation, and know, as Mr. McGee knew clear back in 1975: "It is not likely that the source of her contamination will ever be known." He knew that. The AEC had come in and never came to any such conclusion. They investigated it. Morgan Moore said, "All there are are suspicions." Everybody said they can't prove it. "I can't prove it, I can't prove it, I can't prove it." They couldn't prove it. Mr. Paul knew he couldn't prove it when he talked to you the first time, and still he has been willing to make the accusation. Why? Because it is the only defense they have, and they hope to drag you into mud springs.
>
> Like Will Rogers used to say: "If you say it enough even if it ain't true, folks will get to believing it."
>
> Well, I think it is reckless. I would like to see that kind of stuff stopped. I think a verdict in this case should stop it. It is necessary for people to be honorable, and to tell the truth, and if they can't be honorable and tell the truth, then to not make reckless accusations and destroy and desecrate the good name of a decent, honorable person.
>
> Now, I heard Mr. Paul say this: "My heart reaches out praying for answers based on the evidence."
>
> "Praying for answers based on the evidence." I would think he would pray for answers based upon the evidence, because he hasn't got any. He doesn't have any more now that [sic] he ever did. All that you ever heard Mr. Paul say, as he stood up here and pointed his finger toward Karen Silkwood—and I want you to stop and remember, ladies and gentlemen, please, that this is a free country—and the one thing that makes this country different from all the other countries in the world is that when somebody makes the accusation against a citizen of this country, alive or dead, they have to make the proof. Mr. Paul doesn't have the right to come into a court and say: "I think this happened." And: "I think that happened." And: "Maybe this happened." And: "Isn't it probable that this happened." And: "I think the circumstances of this, and the circumstances of that." And to take a whole series of unrelated events and put them together and try to tell you somehow that I have the responsibility that the judge and the law doesn't place upon me, and to mislead you in that fashion. And I'm angry about that. I expect when a corporation of the size of this one comes into this courtroom that they should bring you honest, fair, documented evidence—that they shouldn't hide behind little people—and that they should bring you the facts that they know."

He uses numerous parallelisms, and repetitions, and just as in the opening statement seen above, a colloquial style meant to create a bond of solidarity between the Jury and Lawyer.

It should also be noted that opening and closing statements contain perhaps the most aesthetics of any part of an American court trial. Many of Bauman's seven keys are found in these statements. Particularly clear are the figurative language (analogy, or perhaps even allegory) of the opening statement above, and the parallelism used in the closing statement.

During jury selection process, at the request of the judge, each of the lawyers introduced themselves and their law firms, and stated who they had consulted with on this case as well as who they intended to call as witnesses. This was done to ensure that none of the potential jurors had a bias because of acquaintance with someone who had worked on the case.

> L-Jury- I am (Name redacted) from (Law firm name redacted). I have consulted with (Names redacted) on this case. We intend to call (Names redacted) as witnesses.

7. Lawyer-Witness. (Witness Questioning) The Lawyer-Witness interaction takes place only during witness examination. Each witness is questioned by one lawyer on each side. The restrictions for these roles are perhaps the strictest of any interaction in courtroom discourse. The Lawyer is under a restriction on the content of his or her interaction and must only communicate with the witness by asking questions. The Witness is required to answer these questions. The way in which the witness answers the question is subject to some variation. As noted in the Review of Literature in Chapter 2 the interaction of Lawyer and Witness during witness examination is most often pointed to as a power-based interaction in courtroom discourse. This comes about in part because of the common practice among witness of using linguistic hedges that are seen to indicate lack of surety, weakness, or deference to the authority of the Lawyer asking the questions (Bradac, Hemphill, Tardy, 1981, p. 328). However, the data presented here

show a slightly modified situation. Hedging is indeed a common aspect of the speech of witnesses. But, this seems to be most prevalent when the witness is asked to recall events, and people from a particular day relevant to the trial. In many cases years have passed since the incident (four years is the longest gap between incident and trial that is recorded in this study). But, this data will show that when witnesses are asked not about distant events, but about topics for which they have definite knowledge, the hedging disappears.

Examples of hedging:

L-W-- That would be incorrect, right?

W-L-- I think so, yes.

L-W-- Can we say you left at 11:30?

W-L-- I guess, I can't be sure.

L-W-- Who was the other cousin?

W-L-- I'm not sure, I don't know.

L-W-- Would you define this as 'quiet time'?

W-L-- I guess.

L-W-- Did Mrs. (Plaintiff) ever tell you that she was non-compliant in taking her (medicine name)?

W-L-- Well, I don't recall that. Not in my recollection. I think it's in the medical records.

These are all paragon examples of witnesses hedging in answering questions during witness examination. But, this must be compared with the following interaction. The witness that does not hedge in the following set is the same witness that hedged in the previous set.

L-W-- What's the basis of your opinion on this?

W-L-- Experience.

L-W-- In your experience how many times has an MRI missed a tear?

W-L-- Hundreds.

What happened after this interaction is very important. The Lawyer, who had built up an argument based on the infallibility of an MRI scan, is suddenly flabbergasted. The Lawyer proceeds to try to ask another question, false starting three times, while glancing between the ground, the witness, and her notes. This is hardly the powerful image presented in the literature. (See Adelsward, 1987; Aronsson, Jönsson, & Linell, 1987; Biscetti, 2006; Bradac, Hemphill, & Tardy, 1981; Fuller, 1993; Gnisci & Bakeman, 2007; Hobbs, 2007; and Keating, 2009). This interaction defies one of the major tenets of power-based approaches to courtroom discourse: lawyers have greater power than witnesses. However, in a completely power-based approach, the Witness's terse, un-hedged statements followed by the Lawyer's false starts would seem to indicate the witness is asserting power in this discourse.

The same witness that quite excessively hedged when asked about a particular statement made years earlier does not hedge in any sense when asked about a topic of his specialty. This is indicative of the fact that hedging comes not as much from power difference as it does from the

content the Witness is asked to speak about. Contrary to the evidence presented here, a totally power-based approach would expect hedging to show up in all parts of a Witness's speech because of the Witness's perceived lack of power (See (Adelsward, 1987; Biscetti, 2006; and Bradac, Hemphill, & Tardy, 1981).

8. Jury-Witness. (Witness Questioning) This interaction is extremely restricted and actually can only happen after both opposing Lawyers have fully questioned a witness. The Judge then asks for any questions from the Jury for the Witness. If there are questions, these are written down, and handed to the Judge, who then converses with the opposing Lawyers. During this consultation, the Judge's microphone picks up static creating noise enough in the room to keep others from hearing the conversation, with the effect of removing it from the performance. If a question is accepted, the Judge then asks the Witness that question. Presented here is an example:

> J-Jury-- Does the jury have any questions for the witness? (Juror raises hand) Write the question down and give it to the bailiff. (Bailiff retrieves question written on a small piece of paper and hands it to the judge)
>
> J-L-- Counsel, come on up. (Judge hits a button which transmits static over the microphone so as to not allow the jury or the audience to hear the discussion. The witness is able to hear it quite well.)
>
> J-W-- Is there a hinge on the water meter?

All other logically possible interactions in the courtroom are forbidden to occur within the performance (See Table 4.1). Some of these roles do in fact interact during the time that the performance is happening, but if they are to interact, they must either do so in a way that cannot be heard (whispering, writing down notes, etc.) or they must leave the courtroom to interact. Some of these forbidden interactions will be mentioned here with some notes.

16. Lawyer-Lawyer. One instance of interaction between Lawyers from opposing sides was recorded. It is interesting to note that because this interaction is forbidden, the communication was whispered.

> L-L-- (whispered with heads almost under their respective tables as if trying to be out of sight and earshot of the Judge) Do you have a copy of that?

This was apparently an administrative task that was supposed to have been taken care of before the beginning of the trial. The fact that this was whispered while their heads were ducked seems to indicate that this was not in fact permissible within the performance.

17. Jury-Jury. The Jury makes its decision on verdict by interacting with each other. However, that interaction is never allowed in the courtroom itself. When this interaction happens, it is in a separate room away from all other participants in the performance. This is why this interaction is considered forbidden.

All the interactions mentioned here work together to form a complete picture of the interactions of courtroom discourse. By taking the whole courtroom event as context, analysis

with the Courtroom Discourse Verbal Performance framework has shed light on the responsibilities and restrictions of each of the participants in a court trial. Chapter 5 will draw together the insights not only of this chapter, but of all the previous chapters as well to show how the research questions of the present study have been answered.

Chapter 5

Conclusion

This study set out to answer two main research questions:

1. Is courtroom discourse sufficiently unique to warrant a distinct framework?

2. Can Courtroom Discourse Verbal Performance explain the uniqueness of courtroom discourse more fully than current models?

Chapter 2 and Chapter 4 showed that there are numerous unique restrictions and requirements that separate it from other types of discourse. These features include unique patterns of lexical, syntactic, and semantic use by courtroom discourse participants, as well as restrictions on when and how various participants in courtroom discourse are allowed to interact with one another.

Chapter 2 laid out the basis for the Courtroom Discourse Verbal Performance framework by reviewing pertinent aspects of Richard Bauman's 1977 book *Verbal Art as Performance*. Chapter 3 detailed the specifics of this framework by defining each of the performance roles of courtroom discourse. Each potential interaction was then sorted into categories Legitimate, Extremely Restricted, or Forbidden depending on the restrictions placed upon it within the performance. Chapter 4 presented data of these interactions which both challenged purely power-

based approaches and supported the validity of the Courtroom Discourse Verbal Performance framework.

This study, through review of previous research and by gathering and analyzing new data, has shown the need for a new framework to understand the unique sociolinguistic interactions that take place in courtroom discourse. It has also provided that new framework in the form of the Courtroom Discourse Verbal Performance framework. The Courtroom Discourse Verbal Performance framework has shown the capacity to explain all the interactions that take place in courtroom discourse as well as explaining the forbidden nature of some potential interactions.

Limitations. This study has limitations that are worth noting here. Perhaps the most obvious limitation is type and quantity of data. Although the Provo Fourth District Court is open and running five days a week, the vast majority of their work is in two sub-events: Initial appearances and sentencing. These are well represented in the data for this study. However, the relative rarity of jury trials did not allow for the robustness of data that would be desirable. With that being said, the data that was able to be gathered is able to provide a reasonable picture of the interactions occurring in courtroom discourse. In future work, it is hoped that this limitation may be overcome in a number of ways: access to a larger court (more trials scheduled and occurring), or a number of different researchers that are able to observe in more trials in more courts.

Another important limitation to this study is the manner in which the data was gathered. As stated in Chapter 3, data was gathered using pen and paper because of restrictions on audio and video recording in the courtroom. Recording with pen and paper can occasionally be unreliable, as the recorder must simply remember and quickly write what was said. This also

means that some potentially important parts of the discourse are missed because the recorder is writing. Some potentially important data may be missed due to the time it takes to record a previous statement. It is hoped that future research will be able to obtain special permission to record video and audio in the courtroom. This would be done in the hope that the ability to review data multiple times would give greater accuracy and also eliminate the lag between recording excerpts of courtroom discourse.

Implications. There are many implications of this work. Many of them apply practically to those who practice law or regularly appear in court. This thesis can be a starting point for understanding the courtroom process in a new way. Particularly the areas of objections and appeals can be understood clearer if the Courtroom Discourse Verbal Performance framework. Objections are essentially an attempt to assert that the performance is being done wrong or, in other words, that the restrictions for a particular role are being violated. A knowledge of the Courtroom Discourse Verbal Performance framework may help law professionals better understand the interactions and the restrictions that accompany them.

The Courtroom Discourse Verbal Performance framework applied to courtroom discourse can also help to understand why flagrant rejections of normal courtroom behavior can sometimes be observed, particularly in high-profile cases such as the Guantanamo Bay trials, or the highly publicized trial of Norwegian Anders Breivik. This can be seen as rejection of the validity of the performance altogether and an attempt to undermine its authority.

Future Work. This work opens up numerous and varied research options. Firstly, much remains to be done in relation to courtroom discourse as performance. Bauman mentions while listing his

"seven keys of performance" (Bauman, 1977, p.16) that these seven keys are a list that all performances will share, but that performances will likely have other keys that are specific for the that performance and the culture in which it exists. Other keys that are specific for courtroom discourse should be sought out and described. This could be particularly helpful in understanding the connectedness that courtroom discourse may have to other performances that occur within American culture.

Further research is necessary to understand the differences in manner or execution of performance between various types of courts: small claims court, State Courts, the Supreme Court, and even military courts. The legal systems of other countries, both those that share a legal heritage with the United States and those that do not, should be scrutinized using Courtroom Discourse Verbal Performance in order to understand what differences occur and what similarities occur as well.

Work remains to be done to understand the boundaries of the courtroom performance more clearly. Specifically, when does the performance begin? Is it with the initial appearance in court and the entry of plea, or does it potentially begin, for example, with a defendant being read his or her Miranda rights when arrested? Similarly, the question must be answered of when the performance ends. Does the performance end with the Judge passing sentence, or does it end once that sentence has been carried out?

Variations within the American court system should be examined. For example, does the size of the community affect the manner of the performance? Does the performance run differently in a big city court, in which, more likely than not, most of the participants are strangers to each other, than in a small town court in which the likelihood of the participants

already being acquainted is much higher? Variations should also be examined by region and by state.

There also likely many performances that have yet to be described linguistically as such. Like courtroom discourse, these events may have already been analyzed extensively. Events that come to mind are congressional hearings, congressional debates, classroom discourse (at all levels of education), sermons, and business meetings. This is certainly a small list, as numerous other options exist. Much may be learned about the dynamics that fuel the specific discourse practices and sociolinguistic anomalies of these language events.

This work will also hopefully inspire attempts to understand the workings of courtroom discourse from the viewpoint of even more frameworks than power, or Courtroom Discourse Verbal Performance.

On a different level, such studies of courtroom discourse as performance should be used to meet criteria that appear in (Eades, 2010). That is that all studies of law and language should be used to help improve lives, particularly of the disadvantaged. A greater understanding of the ways that courtroom discourse works can certainly be used to help make it a more equitable event for all involved.

In more the spirit of anthropology than linguistics, research should also be done that examines that evolution of verbal performances. Major research questions may include: How do verbal performances come into existence? How and why do they cease to be effective in their cultures? Can performances evolve into an event that is not a performance? And, alternately, can events that are not originally performances ever evolve into performances?

Overall, it is hoped that researchers from all three areas of linguistics represented in this work (namely Forensic Linguistics, Anthropological Linguistics, and Sociolinguistics) will take

this work as a starting point for fruitful research furthering the understanding of the crucial importance of Courtroom Discourse Verbal Performance, particularly in situations in which language and law interact.

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Appendix A- Relevant Data Arranged by Interaction

This is data gathered by personal observation in Provo Fourth District court in between 2011-2012. It is listed by the relevant interaction. Each section will be numbered.

1. Judge-Lawyer

Judges and Lawyers can have interactions outside of the performance but during the time of the performance, or rather, while the performance is on hold. This is done either in another room (often referred to as 'chambers') or at the judge's seat but with a static noise in the microphone so as to not allow others to hear. Outside of the performance conversations can occur with three active participants unlike inside the performance when only two at a time can be involved. Obviously, no data is available on these interactions.

J-L-- What do you expect me to rule on today?

J-L-- Just out of curiosity, how many legal fees have accrued in this case? (sharply, with a tone of reproof) L-J-- Probably more than we should, your honor.

J-L-- Frankly, counsel, I'll be very honest with all of you. I'm appalled at this. This is ridiculous! Kill it dead, let's move on. Does either side have an objection?

L stands as if ready to speak, J-L-- Do you have an objection? L-J-- No. J-L-- Have a seat. (said while cutting off what L was attempting to continue saying)

J-L-- If I can why I make a decision then, I can do what I want.

J-L-- Do you have any case law or code that would give me any guidance?

L-J-- Your honor, I think you're exactly right.

J-L-- (While L is talking about the case instead of responding a simple yes or no to a question about paperwork) Thank you. That's more than I wanted to know.

J-L-- Would that be the short and simple version? L-J-- With one addition, your honor.

J-L-- I'm seeing *lots* and *lots* of pages. (sarcastic, annoyed tone) (italics indicate emphasis)

L-J-- I stand corrected

L-J-- 'fair and equitable,' This isn't a new issue, your honor, but, your honor, if I may J-L-- (interrupting) Doesn't that cut both ways? I don't think either side is clean on that.

L-J-- Your honor, would you like to hear from me on those points? J-L-- No, not really.

L-J-- Your honor, let me clarify a few points. J-L-- (interrupting) Don't tell me what I already read. Just tell me if I'm missing anything. L-J-- I apologize, your honor.

J-L-- It seems clear that the parties had sex and made babies. They settled paternity last December, right?

J-L-- I would hope that someone making $15,000 dollars a month would have something in savings.

J-L-- (referring to L's client) I'll give him that opportunity.

Conversations are strictly between two roles during the performance. J cannot suddenly start addressing Def. when he or she has been addressing L without signaling a change in discourse.

L-J-- He is either unable or unwilling to conform to the requirements of society. He apparently feels that stealing from others is a good alternative to filling his needs.

L-J-- I think we're prepared to go forward.

L-J-- I think that there's something else to take a look at.

L-J-- Your honor, there is one thing I'd like to raise if I can.

L-J-- Let me hear from the counsel for the state.

L-J-- I'm probably not as convinced as Mr. (Name redacted) about the defendant's change of attitude.

L-J-- I don't know what that means, but I guess I just question his commitment, and with that I'll submit.

J-L-- I find that the automobile was not involved in the distribution of marijuana.

J-L-- How about having him come back on (Date)?

J-L-- (While speaking about a treatment facility) If it's on the list then I'm happy.

L-J-- It's very pricey, which by today's standards seems to mean that J-L-- (interrupting) Thank you, I have enough information that I can make a decision.

L-J-- May I approach, your honor?

J-L-- (J starts addressing L) I order that he serve no more than 5 years in the Utah County Jail, stay that term, (here J switches to addressing Def) and put you on probation.

There is some confusion on the part of the people in the various roles as to who they address and when.

J-L-- (After a lawyer who had been quiet for a long time makes motions as if to speak) Wait! The potted plant is coming to life?! Mrs. (Name redacted) is going to speak?! I thought she was just here for decoration! (laughter throughout the courtroom).

J-L-- It seems that he just landed here. It seems to me that he doesn't know anyone in this community. It seems to me that he was a mule (slang word that means someone who is paid to carry illegal drugs from one point to another) that came here to bring the drugs.

L-J-- He offered no explanation as to why he had the drugs, where he was taking them or who he was meeting here. And then they recommend 90 days. I just don't think that's appropriate.

J-L-- I will order that he serve no more than 5 years in the Utah County Jail. I will stay the imposition of that term and place him on his probation.

J-L-- My recollection is that we are here on sanctions on the old case and sentencing on a new case, is that correct?

L-J-- Objection, your honor, she is testifying about events that are not in the protective order.

J-L-- (Plain. tries to speak up and say something) You need to speak to your client in proffer.

L-J-- Objection. She's bringing up something that is not in the petition. J-L-- Sustained! That is *not* in the petition.

L-J-- If I may continue.

L-J-- Mrs. (Name redacted) knows how to call the cops.

L-J-- Objection. It does not say that she was beaten. It says that she was grabbed. J-L-- Sustained. That is misrepresenting the evidence.

J-L-- You're repeating now, I remember that.

J-L-- Today I'm just here on the protective order. L-J-- I understand.

J-L-- Counsel, you're repeating. L-J-- Detention? You want me to argue that? (very sharply)

J-L-- That will be the order of the court.

J-L-- I object. We're getting into bio-mechanical expertise. W-L-- I've seen it. J-W-- Sir, when counsel objects I have to rule before you answer anything. J-Jury-- The jury will disregard that comment.

J-Jury-- Does the jury have any questions for the witness? (Juror raises hand) Write the question down and give it to the bailiff. (Bailiff retrieves question written on a small piece of paper and hands it to the judge) J-L-- Counsel, come on up. (Judge hits a button which transmits static over

the microphone so as to not allow the jury or the audience to hear the discussion. The witness is able to hear it quite well.) J-W-- Is there a hinge on the water meter?

2. Judge-Jury

J-Jury-- (After each potential juror introduced themselves the Judge said affirmed with) 'Great' or 'Alright.' (J had a very cheerful cordial tone)

Jury-J-- (After presenting other introductory information about himself) And my favorite movie has got to be 'True Grit.' J-Jury-- Do you like the original or the newer one? Jury-J-- The original. J--Jury-- Great (smiling)

J-Jury-- (Explaining about the potential juror introduction process) I had a lady stand up once and say 'I have 5 kids. I'm pregnant. I'm a member of Sam's Club, and I don't have leisure time.' She wanted to be on the jury for a break! (laughter throughout the courtroom)

J-Jury-- Cows come in herds, geese come in gaggles, and lawyers come in law firms.

J-Jury-- We're going to excuse the jury for a second while so we can talk about evidence.

J-Jury-- Does the jury have any questions for the witness? J-Jury-- (After no answer from the jury) Apparently not.

J-L-- I object. We're getting into bio-mechanical expertise. W-L-- I've seen it. J-W-- Sir, when counsel objects I have to rule before you answer anything. J-Jury-- The jury will disregard that comment.

3. Judge-Witness

J-W-- Sit here. Answer the questions truthfully.

J-W-- Come on over and take a seat.

J-L-- I object. We're getting into bio-mechanical expertise. W-L-- I've seen it. J-W-- Sir, when counsel objects I have to rule before you answer anything. J-Jury-- The jury will disregard that comment.

J-W- Raise your right hand (Witness raises right hand). Do solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God?
W-J- Yes
(This is actually done by the secretary, who, as mentioned earlier in this chapter, is considered part of the performance role of Judge.)

J-Jury-- Does the jury have any questions for the witness? (Juror raises hand) Write the question down and give it to the bailiff. (Bailiff retrieves question written on a small piece of paper and hands it to the judge) J-L-- Counsel, come on up. (Judge hits a button which transmits static over the microphone so as to not allow the jury or the audience to hear the discussion. The witness is able to hear it quite well.) J-W-- Is there a hinge on the water meter?

4. Judge-Defendant

J-Def-- (to an inmate brought from the county jail that is wearing prison clothes and kept under guard separate from anyone else) Sir, if you'll step forward.

Def-J-- (Def tries to speak while L and J are interacting) Your honor, can I speak on this? J-Def-- Speak to your attorney first.

Def and J were not allowed to interact at this point in the performance. Thus, J deferred Def to the only role he was permitted to interact with at that time.

J-Def--We've heard from counsel. It's your turn to address the court if you want to.

Def-J-- I'd like to apologize to those I've hurt, to the taxpayer that struggles to keep me incarcerated, and mostly I'd like to apologize to my family.

J-Def-- It's difficult to say why you've put yourself in this situation. Maybe you feel that something is owed to you because of the life you've lived. I don't know. (pause) I wish I could do more to put you on the right track.

J-Def-- I'm going to put you on probation, I know they don't want to see you, but, you know what? I think you can do this.

J-Def-- You need to be in prison, maybe.

J-Def-- Do something productive.

J-Def-- You've got family, kids, mother.

J-Def-- I don't see in this that there's no hope for you, I don't see it.

J-Def-- I think you can do it, maybe no one else does, but your mom, but I do. I'm going to give you a chance. Don't let me down. Def-J-- (tearfully) I won't, your honor.

J-Def-- Start with looking right at me. Look right at me.

Def-J-- I know I messed up. I know I've been a knucklehead. J-Def-- Look at me.

J-Def-- It's tough when you're 19 and AP&P (Adult Probation and Parole) has given up on you.

J-Def-- You, like many, had a tough upbringing. Don't use this as an excuse. Use it as something to make you better.

J-Def-- Do something different to help other. They (referring to Def's friends) didn't.

J-Def-- I hope you're different. You can always do good if you choose to do good.

J-Def-- Fort Duchesne, I guess is where that's at.

J-Def-- I don't want you coming back saying you didn't complete it. You didn't do it.

J-Def-- You can find your way through that if you want to.

J-Def-- Okay, Mr. (name redacted), good luck.

Def-J-- I've been extremely selfish. I've missed two years of my son's life. I'm thankful for this chance if I get it. I won't let you down, your honor.

J-Def-- I will give opportunities to succeed. But I want you do it. If you come back before me, it won't be my fault. I'm going to give you a shot. Everyone wants to give you a shot.

J-Def-- It won't be easy. People believe in you. I believe in you.

J-Def-- Let's make this a one-time deal, at least a one-time deal in court, I'm not naive enough to believe that this was the first time you've had marijuana.

J-Def-- That would be putting things off for six weeks and I don't think that's appropriate.

J-Def-- You're going to have to have proof of employment.

J-Def-- (looking at something on her desk) I'll order that you pay 250 dollars.

J-Def-- (looking at something on her desk) I'll order that (pause) you pay 950 dollars. I'll order that (pause) you report to AP&P (Adult Probation and Parole).

J-Def-- Mr. (Name redacted) is there anything else you want me to know?

J-Def-- Do you realize how lucky you are you didn't kill someone that night? This is more than what you call a 'bump in the road.'

J-Def-- It was my intention to give you six months. You were a drunken nightmare that night. The miracle is that you didn't kill someone else or yourself that night.

J-Def-- If you haven't learned that you can't take that first sip, then you will not succeed.

J-Def-- I don't get a kick out of throwing people in jail.

J-Def-- (after passing the normal sentence) In lieu of that I will allow that you serve 10 days.

J-Def-- Don't screw it up. Good luck.

J-Def-- (J starts addressing L) I order that he serve no more than 5 years in the Utah County Jail, stay that term, (here J switches to addressing Def) and put you on probation.

There is some confusion on the part of the people in the various roles as to who they address and when.

J-Def-- Is there anything else you want to say, sir?

5. Judge-Audience

The judge entered the court quickly, but not in his robes. He simply grabbed a book and left again. This was not part of the performance and thus no one in the audience stood when he entered or was required to.

Aud-J-- Your honor, I would like to address the court on this. I'm the victim in this case and received no... J-Aud-- (interrupting) I'll have you speak with the prosecuting attorney.

This was not an appropriate time for a member of the audience to be addressing J so, the Judge deferred the interaction to the role that audience member was allowed to interact with at that time.

Aud-J-- (The member of the audience is the defendant's mother) I know that what happens today will be the best for him. He comes from Mormon Battalion heritage, Mormon Pioneer heritage, and on the Navajo side they were also great warriors.

Aud-J-- (The member of the audience is the defendant's mother, although not the same one as above) He's had a rough life. It didn't help that I was using at the time. I got help and I've been clean for twelve years. We're going to help him through. I know he can do it. I just know he can.

J-Aud-- (to Def's boss) Do you have anything to say Mr. (Name redacted)? Aud-J-- We keep him busy as you saw.
Aud-J-- Well, that's my recommendation, but we will submit to what the court says today.

6. Lawyer-Jury

These interactions take place during opening and closing statements, and in the jury selection process. During jury selection process, at the request of the judge, each of the lawyers introduced themselves and their law firms, and stated who they had consulted with on this case as well as who they intended to call as witnesses. This was done to ensure that none of the potential jurors had a bias because of acquaintance with someone who had worked on the case.

L-Jury- I am (Name redacted) from (Law firm name redacted). I have consulted with (Names redacted) on this case. We intend to call (Names redacted) as witnesses.

7. Lawyer-Witness

L-W-- That would be incorrect, right? W-L-- I think so, yes.

L-W-- Can we say you left at 11:30? W-L-- I guess, I can't be sure.

W-L-- I don't know, maybe an hour. L-W-- About 2:30? W-L-- About then, it was late.

L-W-- Who was the other cousin? W-L-- I'm not sure, I don't know.

W-L-- It was probably like 9 in the morning.

W-L-- He was picking at his arm or something.

L-W-- Would you define this as 'quiet time'? W-L-- I guess.

This question is quite unusual. This may lead to the hedging. The witness does not have protocol on how to answer a question like this.

W-L-- I don't even think we were in even in the house, I think we were in the garage or something.

W-L-- I can't be for sure, but I don't think so.

L-W-- We don't have any subsequent MRI's to compare it with, is that right? W-L-- As far as I know, yes.

L-W-- You are not her treating physician, are you? So you don't see her regularly, do you? W-L-- No.

L-W-- That's what he found when he got into her knee, during that surgery back in 2007. W-L-- Correct.

L-W-- What's the basis of your opinion on this? W-L-- Experience. L-W-- In your experience how many times has an MRI missed a tear? W-L-- Hundreds.

L-W-- I'll have you look at your deposition. Do you remember when I took that? W-L-- No (laughing) L-W-- Last summer?

W-L-- (in reference to physicians) We don't mind hurting people if we think we can get away with it (smiling)

L-W-- You examined Mrs. (Plaintiff) and said that you didn't find any tenderness in her kneecap. W-L-- I'd better review my records before I let you put words in my mouth.

L-W-- In the MRI there was no evidence of a tear, is that correct? W-L-- Yeah, but that's an MRI, that's an apple and this is an orange.

W-L-- Physicians are a disagreeable sort. Kind of like attorneys. (smiling) (W in this case is a physician)

L-W-- Did Mrs. (Plaintiff) ever tell you that she was non-compliant in taking her (medicine name)? W-L-- Well, I don't recall that. Not in my recollection. I think it's in the medical records.

L-W-- How long have you been working with water meters? W-L-- Since high school. L-W-- Where was that? W-L-- Wyoming. L-W-- After Wyoming where did you do that? W-L-- I worked for Provo city and then for Orem city for 28 years.

L-W-- Do you have any bias today? W-L-- No.

L-W-- Mr. (Name redacted) (A party who was not present in court, but was present for some of the events in question), you hired him, correct? W-L-- Yes. L-W-- When was that? W-L-- Ninety (pause) one? I don't know, early nineties, I think.

L-W-- When else did you visit Mrs. (Plaintiff)'s home, what date? W-L-- Um, summer of 2010, I think.

L-W-- The city took your deposition, right? W-L-- Yeah L-W-- They drilled down to a lot of details, right? W-L-- Yes.

L-W-- The water meter reader is not required to notify anyone about a problem, right? W-L-- They notified us (the city managers over water meter readers) through the repair code.

L-W-- Could you tell us why this water meter would come loose? L-W-- (Opposing lawyer) Objection, your honor, beyond the scope of this witness. May we approach? (Lawyers approach the judge's bench, at which point the judge switches on the static on the microphone).

This is intended to be outside the performance.

L-W-- You went to Mrs. (Plaintiff)'s house after her accident with (Name redacted)? W-L-- Correct L-W-- But you don't recall anything you did that day? W-L-- No, I don't. L-W-- And you don't recall speaking to anyone. W-L-- No.

8. Jury-Witness

Extremely Restricted -- This interaction cannot occur directly. If a member of the jury has a question for a witness, they must write the question and then present it to the bailiff who presents it to the judge who confers with the opposing lawyers whether or not to admit the question. Thus, this interaction can be considered, if not forbidden, extremely restricted. The following exchange is the only instance of such interaction present in this data.

J-Jury-- Does the jury have any questions for the witness? (Juror raises hand) Write the question down and give it to the bailiff. (Bailiff retrieves question written on a small piece of paper and hands it to the judge) J-L-- Counsel, come on up. (Judge hits a button which transmits static over the microphone so as to not allow the jury or the audience to hear the discussion. The witness is able to hear it quite well.) J-W-- Is there a hinge on the water meter?

9. Lawyer-Defendant- Forbidden

10. Lawyer-Audience- Forbidden

11. Jury-Defendant- Forbidden

12. Jury-Audience- Forbidden

Signs are posted that read 'WARNING. Unless you are legal counsel, please do not speak to anyone in the jury box. If you do so, you will be asked to leave the courtroom and may be found in contempt of court.

13. Witness-Defendant- Forbidden

14. Witness-Audience- Forbidden

15. Defendant-Audience- Forbidden

If the defendant is in custody, the following restriction applies as posted on sign in the audience seating area of the courtroom 'Do NOT communicate in any fashion with those in custody. If you do, you will be asked to leave. This is your only warning.'

16. Lawyer-Lawyer-Forbidden

L-L-- (whispered with heads almost under their respective tables as if trying to be out of sight and earshot of J) Do you have a copy of that?

It appears that this is not part of the performance and so it must be done in a way that distinguishes it from the performance, thus they whisper and bend their heads over.

17. Jury-Jury- Forbidden

When they converse they have to do it in a separate room away from any others involved so that it is not in fact part of the performance.

18. Judge-Judge- Extremely Restricted

The judge is able to ask the secretary to set up another court date.

19. Audience- Audience- Forbidden