The discourse of denial: aspects of language which characterise the cross examination of child victim witnesses in adversarial court proceedings

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Abstract

A study of the aspects of language which characterise the cross examination of child victim witnesses affords the opportunity to respond to the question "How is language used to deny the experience of another human being and how is this signalled linguistically?" In that response data from a wide variety of stakeholders are brought together to provide an informed interpretation of the phenomenon of the child victim witness under cross examination. An empirical test of non court children's responses to court language provides the finding that children do not hear around half of what is addressed to them on such occasions. Other data and sources of information suggest that this finding is part of a general pattern of communication and one possible interpretation of that pattern is created through the postulation of 'the discourse of denial'. This discourse is described and a possible set of connections between levels of patterned behaviour, particular uses of language and their social consequences, is suggested.

The study articulates a relationship between language and the construction of meaning and seeks to show how child victim witnesses, and what they might have to contribute to the court process, are marginalised. This articulation of language in use is informed by contextual information which is extended here to include the 'inner context' of the experiences of the child victim witness.
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The focus of this thesis is to answer and illuminate the question:

"How is language used to deny the experience of another human being and how is this signalled linguistically?"

The question is justifiable on a number of grounds. Personal grounds suggest that as an adult human being I should spend my energy and intellect in promoting 'communication' rather than 'misinformation'. Professional grounds suggest that as an educator, I should articulate and share insights that educators have about children's capacities to create and express meaning and the conditions which either promote or hinder this. Theoretical grounds suggest that the interaction and connectedness of language and thought manifests itself in all situations, but with more effect in some than in others.

As a direct consequence of the first two grounds, the situation of child victim witnesses under cross examination in adult criminal courts presented itself as a problematic phenomenon. A study of this situation would both test and illuminate the particular and consequential connections between language and action. Further, I would be contributing to a general body of knowledge and theory about the role of language in life. Adding to the general body of theory would impact on a wide range of social, legal and moral issues; issues which are informed and defined by perceptions about the nature of language generally and specifically its use under certain circumstances.

It was necessary to carry out the study within a paradigm which would acknowledge and respond to many sources of information. I decided upon a naturalistic paradigm, within which a range of strategies, both qualitative and quantitative, could be employed. This enabled the focus question to be addressed; the admittance as knowledge of the insight from a wide range of human experience; and the pursuit of this in a real and problematic context.

A taxonomic device was subsequently developed to respond to the problems of description, analysis and critique, and to the particular problematic situation of the child victim witnesses. The taxonomy consists of a set of descriptors of a particular discourse which I have designated 'the discourse of denial'. This discourse is grounded in the data analysed in the thesis and it now presents itself as an analytical tool to apply in other situations.
This taxonomy clarifies the punitive and devastating effects of language deployed in a context of authority and power. The implications of this for adult moral obligations, legal practice, social equity, and therapeutic practice are far reaching. Its application to the problematic situation of the linguistic treatment of the child victim witnesses clarifies their treatment under cross examination.

The outcomes of the thesis are both applied and theoretical. On the one hand a problematic situation is informed and alternative action is thus made more possible. On the other there has been a contribution to the general knowledge of language in use.

This thesis identifies aspects of language which make it difficult for child witnesses to 'hear' the language which characterises cross examination. The study is an exploration of why much of the language of cross examination is hard for children to hear and further, how such language works to deny the experience of the child. At the outset of the research project the situation of the child was perceived in a general sense as punitive. Towards the conclusion of the thesis the descriptors for that punitive effect are made explicit.

From these descriptors and from frameworks of language use and power suggested by Valdes (1986), O'Barr (1982), Labov (1972) and Brause and Mayher (1985) it was possible to build up a taxonomy which draws upon the insights of the dynamics and the details of cross examination. This taxonomic description is presented as 'the discourse of denial'.

The results strengthen the concept of 'language as action' rather than 'language as rehearsal', and as such recognise the significance and centrality of ideological struggles as linguistic struggles.

The results also specifically answer the focus question 'How is language used to deny the meaning of another human being and how is this signalled linguistically?'

Following this overview:

Chapter 1 provides the background for the development of the thesis. It sets out the contexts within which the problematic phenomenon of the child victim witness under cross examination is to be studied.

Chapter 2 reviews literature in a number of areas of language study, analysis and interpretation which had some bearing in the thesis. The bodies of knowledge which will be addressed cover 'language ideology and control', 'analysing discourse from court', and 'analysing language'.
Chapter 3 considers the issues associated with choosing an appropriate research method. This is pursued both in a general sense for the type of study I undertook and also how I saw that method being appropriately employed in this thesis.

Chapter 4 describes the research procedures which I used to generate and analyse data.

Chapter 5 presents the results of the application of the procedures outlined in the previous chapter.

Chapter 6 draws together the results in order to create the taxonomic framework used to describe the 'discourse of denial'.

Chapter 7 through reflective discussion, recapitulates and retraces the research journey back to my initial concerns which led to the study being carried out.
CHAPTER 1
BACKGROUND

This study specifically addresses the question: "How is language used to deny the experience of another human being and how is this signalled linguistically?" The situation chosen to study this question is the cross examination of child witnesses, often victims, in adult criminal cases of alleged sexual abuse. The reasons for the selection of this study are varied and include a personal, an educational and a theoretical orientation towards the topic.

In describing those reasons I need to decide, as in the case of all narratives, where to begin the telling. That point for me is indicated by the time when concerns, ideas and aims became discernible and were discussable beyond the totally personal. Through discussion with friends and colleagues, I came to accept that the treatment of child victim witnesses in court was inappropriate and thus worthy of study. I accepted that the problematic phenomenon as described by others was also of concern to me, and I also saw that my own concerns, skills and insights may have something to contribute.

To reach this point, my own interest in establishing connections between language behaviours and their social and psychological effects was shared, used and tested in a situation of debate fraught with professional and philosophical division. Welfare considerations versus justice considerations were constantly argued about by the protagonists in the debate and much of this within generalised arguments about children's credibility.

See Appendix 1: News clips and case study

Given these sometimes irreconcilable perspectives I was challenged by the possibility that, as a researcher, I could find new ways of looking at old problems. Through my participation I could restructure, refocus and clarify problematic issues. My response to this challenge signalled a willingness to discuss, investigate and share. I recognised that whilst there was a wealth of information offered about the problem, it came from many different perspectives.

At this early stage I was intent that my own study be informed by a variety of significant data and perspectives. I was also convinced that insight into language in use could best be served by crossing discipline borders. I was mindful of both the criticism and direction offered by Sless:
There has been a long and sterile debate in communication research about the relationship between researchers and the messages, texts or discourse of study. The debate has focused on questions of objectivity or subjectivity, as if a simple dichotomy between two positions were sufficient to deal with the complexity of relations within communication ... we need to move beyond simple notions of position such as insiders or outsiders, subjective or objective.

(Sless, 1986:24)

The personal orientation of this study derives from my commitment to the rights of the individual, including the right to resist oppressive and damaging behaviour. My educational orientation is towards protecting the interests of children. This involves constantly searching for contexts which are supportive and in which children can express themselves clearly and fully. Further, this educational orientation indicates a commitment to outcomes arrived at through insight and development. The third orientation, arising from both of the former, is towards the theoretical connections between language and action, such that language use is seen as significant in determining the framing of concepts, relationships, conflicts and outcomes.

In addressing the focal question this thesis displays, in a variety of ways, the nature and effect of courtroom interrogation. It is a study which began by drawing together concerns for the welfare of child victim witnesses in proceedings of sexual assault, the language features of those proceedings, and the characteristics of sexually abused victims. The study arose from the concern for the welfare of such children and produced results which suggested they were being linguistically discriminated against in a predictable and patterned way. The data the study draws upon consists of interviews with medical, legal, health and welfare professionals, analysis of transcripts, discussions with child victim witnesses and their carers, and the results of a testing program assessing children's ability to respond to a range of questions.

The opportunity to study a situation which is antithetical to my educational precepts arose when young children (for the first time in NSW) were allowed to give sworn testimony in an adult criminal court. The general intent of the change in the law was to let children 'have their say', especially in cases where they were the supposed victims. But accompanying this good intention came the exposure to what appeared as rigorous and often punitive cross examination. Having opened up the possibility for these children to contribute, the general evidence from court observers was that many children were being systematically and publicly abused by the court process. This occurred in a situation which purported to adduce 'the truth' by the taking of evidence. However this very context seemed to deny the evidence of (potentially) its most valuable contributor. This observation raised suspicions of social inequity.
As interviews with informants and my own observation progressed, I decided to collect records of court proceedings. These represented the basis for the credibility, or lack thereof, of the participants. These are the records that only exist if a case is sent to a higher court and thus become the basis of subsequent argument and review. I accumulated a range of transcripts from every possible level of proceedings, twenty six transcripts in all. The transcripts came from a variety of sources including local, regional and metropolitan; they were recent (within the last three years), and they were not chosen for any particular feature or characteristic.

An initial review of these, prior to any other speculation or analysis, revealed that twenty two out of that twenty six finished with the words: 'child breaks down'. The 'child breaks down' observation represented a central motif and phenomenon and also contradicted data and assertions from members of the legal and judicial profession who maintained that barristers were 'gentle with children' and saw no future in appearing as 'bullies'. There were comments from others that children broke down in court as a final admission that they could no longer sustain an untrue story. The generalised reports of trauma were supported by this single patterned observation, but were not interpreted in a cohesive or complementary way. To some, 'child breaks down' would appear as proof of lying, to others as proof of an effort to sustain a truthful story. I accepted the existence of the phenomenon but sought to generate explanations which could be understood and in turn responded to by judicial, legal and welfare personnel.

In addressing the question of how the language of cross examination is used to deny the experience of child victim witnesses it was reasonable to suggest that an understanding of society in general might be discerned from understanding particular incidents and interactions in court. The way language is constructed and used creates and perpetuates relationships, definitions and realities. Since linguistic expression is a function of the context in which it is used, it is best understood in terms of its social intent and effect, through a full description of context. It follows therefore that children's expression will be fuller, richer and more complete in an investigative environment which allows for the construction of an informed and detailed narrative. The opportunity to construct that narrative does not seem to be available to the child victim witness in criminal court proceedings. In this thesis I explore how and why language is used to deny the experience of child victim witnesses and suggest that, for reasons of equity and social justice, this situation should not be so.

In exploring the specific question of how language is used for such denial purposes, I have applied educational knowledge and insights about the communicative strength of children who are able to express themselves
with clarity and truth if they are given appropriate time, space and tools. In so doing I have aimed to provide others with the tools of linguistic analysis and description in order that they may explain their own disquiet about the cross examination of child victim witnesses and better advocate the rights of the child.

In order to fully comprehend the significance and impact of cross examination upon the child, the nature of the cross examination process is described, and I include contextual descriptions which acknowledge the experiences of these child victim witnesses.

This chapter looks at the variety of contexts within which the phenomenon of the child in court is examined. These include the linguistic (1.1), legal (1.2), psychological (1.3), personal (1.4) and social (1.5) contexts. The chapter concludes (1.6) with a brief response to the challenge of studying the experience of the child victim witness in court.

Whilst each of these contexts can be identified and discussed separately it is obvious that the intersection of all of them is critical for the child in the witness box. The ways in which these contexts interact and intersect will inform the extent and nature of the answer to the research question: 'How is language used to deny the experience of another human being and how is this signalled linguistically?'

1.1 THE LINGUISTIC CONTEXT

1.1.1 The role of language

Why language as a focus of concern?

One of the assumptions on which this study is based is that language is the prime vehicle for the definition and creation of meanings.

What can linguistic analysis tell us?

The first principle we must understand is that words can only really be understood and analysed in terms of their context. Context is made up of all those things which impinge upon and define what words are used, how they are put together, what purposes they serve and what function they satisfy. Words, as well as purporting to mean something in their own right, are primarily defined by situation, history, role and intent. Analysing language and its impact in terms of words alone is to deny the basis of their existence. Thus we need to examine the contexts in which the words are used.
1.1.2 Language and its contexts

The context of court is almost totally a context of words and those words, their effect and the responses they provoke, are worthy of study. However, the nature and function of language is more than the utterance of words alone, thus it is necessary to place these words in a social, physical, historical and psychological context, that is, we must study text and context together.

For example, an account of court proceedings (the 'text') may denote 'the witness'. However if the context is not given that the witness is a nine year old female who has been the likely subject of constant sexual assault by her father over a period of five years, who is fearful of being sent away from her mother, who has been interviewed at least six but possibly twenty two times, and who is regarded as 'trouble', then the fuller narrative is not being told.

What happens in a particular context delineates the purposive role of language. The purposive role of language in cross examination is expressly to discredit the witness's version, or story. This purpose becomes formalised and ritualised in the culture of court, a culture of formal proceedings and power relationships. As a result, the language of court proceedings becomes removed from the language of everyday, and a pattern of definite language behaviours emerges, peculiar to one particular social context. Houghton describes such specific use of language thus:

the texts are part of the enacted discourse of a socially defined group, a culture or speech community and [that] to fully understand these texts as linguists we need to look at them within the broader context of the culture from which they spring and within which they belong.

(Houghton, 1988: 8)

However while cross examination highlights the problems of language faced by child victim witnesses, the prosecution and the bench are by no means free of difficult and convoluted language. As a result, the cases they are charged to put and protect often fail because the child witnesses are not given the opportunity to say what they might.

The problem of courtroom language denying the individual the opportunity to recount their experiences is not exclusive to children, sexually abused or otherwise. However, being young, as well as being victims of abusive power, they represent the most obvious example of this kind of constraint. Young people who have asked for help and protection, are forced to become accusers and their only tool of credibility, their language, is almost totally denied them at the time of confrontation.
1.1.3 The psychological importance of words

As indicated earlier, the context of court is words. It is about what you say to me, and what I say to you, and what you said about what I said to you. From the perspective of psychological health, the greatest single factor in the establishment and maintenance of sanity is that the meanings people carry with them (embodied in their own language of thought and word), are recognised by others as existing, and are thus meaningful. Conversely it is legitimate to maintain that the stuff of insanity is the denial of meaning; when others refuse to recognise meanings created and held by another. Some discourses are grounded in and reflective of acceptance, healing, development and growth, while others contain and project processes of exclusion, repression, dismissal and injury. This psychological perspective of discourse views language from effect rather than intent. The discourses cannot be reviewed on the evidence of words alone, but have to be considered as an interaction between the words used and the effect they have.

1.1.4 The power of words

The deployment of words by a powerful speaker upon a weaker one who is either known or suspected to have been the victim of specific traumatic experiences, provides an opportunity to study a specific and intended use of language - in this case, the use of language to deny the experience of the 'weaker' individual.

Since the time of Socrates, arguments and positions have been maintained from both moral and functional perspectives, about the essential uses and effects of language and the power of words. For Socrates, the use of language was for the express purpose of discovering and disclosing meaning. For others it was, and remains, a tool for exploitation like any other resource, for whatever end the user chooses. In many cases this expressly involves the covering up of the truth. This is the art of the advertiser and the propagandist, the state of the psychopath and the job of the inquisitor. There is a range of positions about the power of language. However one function of language which can be tested is to what extent the language used in any particular situation either admits or denies the experience of the participants.

Language can be used in such a way that it either recognises the experiences of an interlocutor, or it does not. Combating the values of sexism and racism has been carried out largely through the reconstruction of certain kinds of phrases, expressions and vocabulary (Lakoff, 1989).
Working class education movements have recognised the need for language and expression to allow for and embrace the experiences of working class children in middle class schools. The very existence of cultures is grounded in the language and the concepts which that language either nurtures or excludes. Linguistic imperialism is one of the major causes for the decline of indigenous languages and the concepts and relationships embodied in those languages. I believe it is appropriate to study language as discourses which can either admit or deny experiences of one or other partners to a dialogue.

1.1.5 The language of cross examination and filters

During cross examination (it appears) language is most often used for calling into question the credibility of the child victim witness rather than assessing the truth of a proposition. Cross examination is that part of court proceedings where the interests and rights of the child are most likely to be ignored and sacrificed. Evidence is displayed to discredit the witness and thus bolster the case for the defendant. The extent to which truth is prejudiced by the use of language tactics is a question to which the legal profession must eventually address itself.

When cross examination takes place, the style and the content of the language serves as a filter through which the child's experience often cannot penetrate. Cross examination generally is so denying of the child's experience that anything connected with that experience has to be eliminated from the conscious working mind.

An example of the effects of such denial is evident in Sylvia Fraser's book, *My father's house* (1989), in which the author details a lifelong episode of amnesia which is only relieved as the victim relives the episodes of abuse she experienced as a young child. Prior to this reliving, the victim had eliminated the experiences from her mind.

Cross examination can be seen as a summative example of how such denial is effected and where

... language, by its words, its grammar, its syntax, by the whole spirit which is frozen in it, determines how we experience, and which experiences penetrate to our awareness.

(Fromm, 1960: 101)

Societal taboos also exist in that every society excludes certain thoughts and feelings from being thought, felt, and expressed. Court represents one such society as does the society from which an abused child might come. In court, the nature of the adversarial combat requires the child's perception
to be negated and denied, whilst at home, normal societal taboos operate so that the experience is left unrecognised. Such societal taboos act as another filter through which it is difficult for a child's experience to penetrate. Children, like adults, may often prefer to endure physical and psychological abuse rather than expose such abuse and risk being ostracised by family and society at large. Fromm's profound observation (1960: 104) of the human condition is that 'While insofar as he is an animal he is most afraid of dying, insofar as he is a man he is most afraid of being utterly alone'.

In addition to social taboos there are individual elaborations of these taboos which differ from family to family. Children may repress experiences which they recognise as taboo for either or both parents. They may fear that expression of such experiences may lead to abandonment or retaliation. These fears act as a filter on the language they use to describe their experiences.

1.1.6 Language and inequity

The inequity which takes place when a sexually abused child is cross examined in court during the trial of his or her attacker is encapsulated at the end point of cross examination where, in the majority of cases, the 'child breaks down'. This often signals an end to the child's involvement.

A testing program conducted during the course of this study showed that children ranging in age from 6 to 16 failed to hear about half what was said to them in court. Questions were asked in such a way that they could not respond to them accurately. In this thesis I consider the extent to which this lack of match between questioner and respondent is a function of the strangeness of the language employed. Some of the aspects which characterise of that language are also illustrated.

Thus my initial concern with inequity, with the use of power, and the issue of social justice is fundamental. This is a critical and descriptive study rather than an attempt to prove the internal consistency of a context free idealised lexico-grammatical system. In the words of Fowler et al. (1979: 185) 'there are strong pervasive connections between linguistic structure and social structure'.

1.1.7 The language of the court

The situation of court is one in which issues of equity and ideology are constantly played out and a truly informative study of courtroom language needs to recognise these dimensions. Whilst the legal profession is aware
that there is a distinct courtroom language containing inherent problems, it appears that the use of such language is still able to sway judicial outcomes. Lind and O'Barr comment that:

... the legal profession has shown considerable concern with speech variables - primarily in the context of tactical considerations in trial advocacy - but this concern has not been translated into procedural restrictions on the use of particular manners of court speech. Speech dimensions which are influenced by factors which are supposed to be irrelevant to judicial decisions, may in some instances affect such decisions.

(Lind and O'Barr, 1978: 86).

The following observation establishes the courtroom as a site for the study of human interactions other than those concerned exclusively with 'the law'.

The social psychological study of court speech may also be expected to be of considerable value to the understanding of the social psychology of language in other situations. The courtroom provides a social context with definite and widely recognised social relations within which general speech may be studied. While studies will be needed to determine the accuracy of generalisations from studies of court speech to other speech situations, there is no reason to think that such generalisations are not valid.

(Lind and O'Barr, 1978: 87).

1.2 THE LEGAL CONTEXT.

1.2.1 Changes in the law.

In March 1986 the law was changed in New South Wales regarding the testimony of children under the age of ten who (supposedly) are victims of sexual abuse. The evidence of young children can now be heard in adult, open court. Their involvement is part of the court process in which a person is charged by the police with an offence. The case is brought to court with that person as the defendant. Witnesses are examined for both the defence and the prosecution and in turn are cross examined by the lawyers on each side.

The July 1987 Consultation Paper issued by the New South Wales Government Violence Against Women and Children Task Force notes that:

The requirements for giving sworn evidence were altered so that a child under 12 can give evidence as if on oath once she/he has satisfied the court that she/he is intelligent enough to give evidence and that she/he understands the duty to tell the truth in court.

However, in a successive paragraph it states:
Although the child sexual assault reforms introduced in 1985 have significantly reduced the trauma of child victims giving evidence in court, the Child Protection Council continues to hear from concerned professionals who witness the inadequacies of our criminal justice system when dealing with child complainants. The difficulty of obtaining clear evidence from very young children who do not have the verbal skills to explain what has happened to them remains a significant problem which can often lead to a decision not to prosecute. The number of times a child is required to retell the story of the assault is usually against a child's best interests.

The evidence from workers in the field (including police, youth and community services officers, community health workers and doctors), indicates that because of the rigours of the adversarial, adult court procedures, those responsible are reluctant to prosecute offenders whose victims are either young, unconfident, slow or passive. However, these are precisely some of the characteristics which either suggest them as victims in the first place or are the results of continuous victimisation. These views are echoed by a magistrate who stated in an early interview that cross examining children in court is '... like shooting rats in a barrel ... it's easy to confuse them and make out they're telling lies'.

1.2.2 Child victim witnesses and cross examination

There are several vital aspects which justify the interest in the cross examination of children who have been sexually abused. Cross examination is a special kind of questioning which, within the legal profession, is acknowledged as being tactically geared to upset the credibility of a witness. The witnesses in this study are victims, a psychological status which carries its own characteristics. In cross examination a question is not a mere question but a tactical tool deployed on the battleground of credibility; a battleground where the option for negotiation is wrested from the child victim witness.

There are many issues about the experiences of child victims during cross examination, and because the context of court is primarily a context of words and what they represent, it is useful to view those issues in terms of the uses and effects of language. Some of these issues include the following: What are the effects of multiple recounting? What do children remember of traumatic happenings and how do they recount them? What are the effects of multiple and continuous abuse and how is this reported by children? What account do courts take of age? Is aggressive cross examination a legitimate tool to test truth? What are the effects of continuous questioning? What means are currently available for allowing children to tell their story? How can children's stories be validated?
These issues were brought into focus when I examined the way in which children responded to questioning in court. The need to provide quality information for practitioners in the field is supported in the concluding statements of the New South Wales Bureau of Crime Statistics and Research publication, *Child Sexual Assault - The Court Response* (Cashmore and Horsky, 1987)

Although special Children's Courts were established some time ago in most jurisdictions in recognition of the special needs and vulnerability's of juvenile offenders and 'children in need of care', so far there has been little special provision for accommodating the needs of children who appear in often traumatic circumstances as witnesses in the 'adult' criminal justice system. Children who are required to appear in criminal court, to give evidence and face cross examination, encounter a number of difficulties in dealing with a system that does not take into account that, as children, they are even more vulnerable than an adult witness giving evidence about a traumatic event in their lives.

The major difficulties faced by any witness include the requirement that they repeat the story of what happened to a variety of people during the investigation and in court hearings, the delays between the various stages of investigation and prosecution, and the intimidating nature of the physical environment of the court and of court procedures. Child witnesses experience all these difficulties, but more acutely, since they may not be (depending on age) at a stage of their development which would enable them to fully understand the court experience and place it in a meaningful context.

(Cashmore and Horsky, 1987: 82)

This statement assumes that children must be subjected to cross examination. There are children who do have the verbal skills to tell clear, sustainable and substantial stories but whose sense of self and command of language does not equip them to withstand the rigours of cross examination. It appears that the existing procedures do not focus on the establishment of truth but rather on the assertion of power; the power to confuse.

This is not to say that children should not be given the opportunity to confront their attackers, real or imagined. Nor is there support for the assumption that retelling stories over and over is necessarily bad. It is in the nature of trauma to want to do this. Likewise we should not assume that all recounts will be of equal quality, or that it is wrong to submit children to complex adult language since this is how they learn and develop language. However there is an obvious need to educate all members of the legal profession about the linguistic implications and effects created by their activities in court.

For the child victim witness the effect of certain linguistic activity may be to deny the legitimacy of their claim of abuse. To deny the existence of
such deeply felt experiences is to isolate these children from sources of comfort and reconciliation on one hand and from a belief in the validity of their own experiences on the other. These are the techniques of torture and perpetuate the abuse of privilege and secrecy.
1.3 THE PSYCHOLOGICAL CONTEXT.

1.3.1 Language and its psychological effects

In addressing the question of how language is used to deny individual's experiences and how this is signalled linguistically, I have tried to illuminate and suggest a relationship between the language used and its psychological effect. The cross examination of victim witnesses in adult criminal court may not be just a generalised expression of power but a specific and expressly created punishment. Words spoken are the primary currency of court proceedings and although they can withstand scrutiny and analysis in isolation, they are only fully revealed when their context is apparent. However context is not appreciated by simply describing the situation in terms of the actors, time and place. Rather there must be an appraisal of the social and psychological baggage which the actors bring to the situation. Analytical tools for describing this baggage and the interactions with words have been developed to some extent through the systemic analysis of the structure and function of language in context.

Various researchers have conducted studies which suggest an appreciation of the psychological context of language. Halliday's concepts arise from his appreciation of contextual interaction (Halliday, 1973). Bernstein provides powerful descriptions of class associated language. (Bernstein, 1980). Labov shows insights on propositional knowledge (Labov, 1972) and Vygotskii discusses inner speech (Vygotskii, 1962).

1.3.2 The denial of personal experience

Language has the capacity to include or exclude experiences, to create taboos, to provoke guilt and to create deep psychological states. The denial of personal experiences, especially of victims of trauma, has effects which have been documented in a number of arenas. Victims of war, rape, imprisonment and natural disaster need the acceptance of those around them and the opportunity to tell their story in their own way in order to commence the process of healing. They also need time. I am not suggesting that court should become a place for therapy or that it should be 'soft on kids' at the risk of convicting someone on unsubstantiated evidence. However I am concerned to show the dynamics of denial which operate to some degree in many social situations. Cross examining a child victim witness in court is expressly about denying that person's story.

Often it seems, the effectiveness of the denial of a person's meaning is predicated on the assumption that the witness is indeed a victim. By making this assumption the cross examiner can then rely on the existence of vulnerabilities which facilitate his/her task in achieving loss of witness credibility so that the 'child breaks down.'
1.3.3 Children's reactions to sexual abuse

Children who have been sexually abused carry a burden of responsibility by keeping the abuse secret. They often blame themselves for any discord which occurs. Having been forced into a quasi-adult role, they are often isolated by the requirement that they speak for themselves. The 1987 N.S.W. Task Force paper (p.7) observes that:

... children are not adults in miniature and they are not usually expected to understand or behave as adults in most aspects of their lives. When children become victims or witnesses of violence or sexual assault however, they are generally expected to perform on a par with adults in a legal system designed by adults for adult participants.

Loneliness, confusion and guilt define the condition. Aggression, passivity and anger are often it's expression.

1.4 THE PERSONAL HISTORICAL CONTEXT

1.4.1 The importance of personal history

The fourth context brings with it all the force of personal psychological history. In the cases I am concerned with this means the history of being a victim. This particular history has its own susceptibilities which can be acted upon by well prepared phrases and accusations designed to intimidate and trigger painful associations within the child victim. In turn the personal histories of child victim witnesses influence their linguistic vulnerability to the courtroom situation.

A study of language aims at leading to some understanding of the impact of one actor upon the other. It also aims to give some clues to ways in which child victim witnesses could resist the forces of intimidation and easy confusion.

Psychological indicators of the abused child, which are features of their personal historical context, are summarised as:

- loss of trust by the abused of those around them, especially those in authority
- self-loathing
- confusion of sexuality and affection.

All of these features combine to reduce a clear sense of self in the victim. These indicators provide a grounding for further abuse through the
deliberate distancing of the victim from available help, thereby perpetuating physical, psychological and linguistic vulnerability.

It is in this context of loneliness and desperation that cross examination and the courtroom drama takes place. Given that it is only the children who are 'good witnesses' who get to court, (that is articulate children who can be helped to cope with this experience), then it must be assumed that the worst or most needy cases (in terms of long term protection and resolution) simply do not appear.

1.4.2 Personal responses to abuse

Lindberg and Distad (1985) having reviewed the situation of twenty seven incest victims aged between 12 and 18 years of age, tabulated a number of survival responses to incest. All responded to their experiences with self-destructive behaviours such as substance abuse, suicide attempts, perfectionism, isolation or depression. These behaviours can be seen as attempts to alleviate stress and assert some control over the helplessness created by incest. Subsequent therapy focused on the premise that such adolescent behaviours are logical and predictable survival responses rather than simply clues to sexual abuse. Treatment goals included:

... establishing trust, helping the victim re-define his or her role by viewing destructive behaviours as predictable responses, and understanding that present behaviours are a continuation of these past survival responses.

(Lindberg and Distad, 1985: 521)

The authors go on to note that:

A child is helpless when incest occurs. Inherent in that helplessness is rage toward the abuser as well as other family members who have left the child unprotected and unsupported; guilt and confusion for participation in acts the child cannot understand intellectually or emotionally; isolation in sustaining the incest secret and enormous stress. These adolescents had little insight into their self-destructive behaviours ... They saw no connection between their incest behaviours and their incest histories ... their experiences had so distorted their perceptions of family roles they did not realise they were victims ... they believed they had always been 'bad' or 'crazy'.

(Lindberg and Distad, 1985: 522)

As the child victim witness is caught in the cross-fire of adversarial combat the hopes for a therapeutic resolution fade. The requirements and inclinations of the justice system become the prime consideration rather than the emotional and social needs of the child. Even after clear assurances are given that it is the defendant who is on trial, the child assumes otherwise given the adversarial nature of the proceedings and the
nature of cross examination. The perpetuation of shame, guilt and hurt become a tool of the court through the denial of the personal experience of the child victim witness.

As Summit and Kryso (1978) have pointed out, sexual abuse is not a single condition or activity. It carries with it psychological consequences and cultural interpretations. What an adult criminal court tries to do is rationalise away conflicting accounts of what happened. There is a general assumption that someone will 'win' the case and that someone will 'lose'. Whether the victim 'wins' or 'loses' the case, there is inevitably a degree of trauma surrounding the whole court procedure.

System-induced trauma arises where the real and personal hurt visited upon a victim is either subjected to repeated examination or is openly disbelieved. The experience of the child victim witness is invalidated and is thus the grounding for radical and continuous disturbance. The occurrence of system-induced trauma can only increase as rising numbers of child victim witnesses appear in court. This is because the incidence and the effects of sexual abuse seem to be a more widespread cultural phenomenon than has been previously appreciated.

1.4.3 Children as witnesses

The personal history of being an abused child is located both within the individual's personal experience and within a wider context of personal histories about 'children' and their 'truthfulness'.

Much of the current literature and public debate on the ability and willingness of children to tell the truth is propounded by those who believe that children are less responsible than adults by virtue of their frailty, lack of maturity, social prowess or intellectual capacity. This often leads to dismissal or denigration of their evidence in court. On the other hand there are those who are pleased to recognise the 'specialness' of children and to plead the case for the need to talk to them in special ways. However both partners in the competing rhetoric miss a basic point of philosophy and justice. To argue in terms of a whole class of people manifesting a single unifying characteristic - for example, Aborigines are lazy, women are hysterical, men are aggressive - masks alternative definitions.

The characteristics and needs of people are often lost in the 'class action' waged by one side against the other. In the case of 'children are capricious' versus 'children are innocent', the nature of the debate excludes precisely those characteristics and needs which must be addressed.
However one thing that is abundantly clear about children as a class of people is that, in cases of notified and alleged sexual abuse, their cases are notoriously unsuccessful in NSW courts. (Cashmore and Horsky, 1987). This lack of success will continue as long as the underlying issues go unrecognised, and the unequal treatment of children as witnesses continues.

1.5 SOCIAL CONTEXT.

1.5.1 Language as part of society

As well as having regard for the nature of abusive relationships and the nature of court procedures, I have also tied this thesis to a perspective which suggests that institutional discrimination is not acceptable in a just society, and that instances of its occurrence should consequently be highlighted, substantiated and critically appraised.

I am suggesting that the language of cross examination when applied to a victim-witness, functions to confirm feelings of guilt, confusion and responsibility. Language is thus regarded as 'an integral part of social process' (Fowler and Kress, 1979: 189).

By studying the sociolinguistic dimensions of cross examination in court I hoped to increase my understanding of the dynamics of adversarial combat, and particularly the mechanics of the denial of meaning. The nature of the relationship between language, action and ideology is axiomatic to this study.

If linguistic meaning is inseparable from ideology and both depend on social structure then linguistic analysis ought to be a powerful tool for the study of ideological processes which mediate relationships of power and control. But linguistics is an academic discipline and ... rests on a number of assumptions which constitute an ideology of the subject. It is not a neutral instrument for the study of ideology, it is one that has been neutralised. The need then is for a linguistics which is critical, which is aware of the assumptions on which it is based and prepared to reflect critically about the underlying causes of the phenomena it studies, and the nature of the society whose language it is.

(Fowler and Kress, 1979: 186)

In accepting this view of linguistic study I also accept the fundamental relationship between personal experience and social experience. The social areas of interest in this study encompass the culture of abuse, the culture of court and the culture of formalised power. In order to understand the connections between language and culture, I needed to consider an ethnography of communication.
As Muriel Saville-Troike writes about the ethnographic study of communication; ... the field of inquiry lies at the intersection of linguistics and anthropology, sociology and hermeneutics, folklore and political science, speech and social psychology, and like Kurdistan, remains a terra incognita divided amongst competing states..

(Houghton, 1988: 83)

1.6 THE CHILD VICTIM WITNESS IN COURT

1.6.1 The focus of the study

The phenomenon of the child victim witness in court is a manifestation of the various contexts outlined above. Each describes particular and sometimes competing aspects of the phenomenon but no single perspective is sufficient to describe the experience of the child victim witness under cross examination in adult criminal court. I aimed at developing a cohesive description which acknowledges the significance of each of these contexts.

Different situations offer the researcher an opportunity to unravel and present the details, dynamics and essences of particular relationships. Those relationships are dependent upon particular configurations of words, phrases and larger units of text. In an attempt to understand, analyse or duplicate the dynamics of easy communication, (based on sharing and inclusive language) it would be useful to observe the workings of a church group or therapy session. Similarly, the techniques for convincing others to buy products would be observed through the language of advertising. Such situations are fertile ground which present themselves for social and linguistic analysis, in much the same way as court language.

To anyone who has observed the trial of a civil or criminal law case, one of the most obvious characteristics of this social institution is the great amount of spoken communication which goes into the generation of the final verdict.

(Lind and O'Barr, 1979: 66)

The method used in pursuing this study derives from the work of ethnographers and naturalistic researchers who claim that reviewing the data as it is generated and accessed in a variety of forms generates insight and foci for testing and review. This study is based on the following assumptions:

- a child victim in court is less powerful than the cross examiner
- language is the prime vehicle for the construction of meanings
• reduction of credibility is the main aim of the cross examining discourse.

The focus of this study is to show how these assumptions are translated into action as linguistic mechanisms.

1.6.2 Outcome of the thesis

The thesis aims to develop a perspective of language, the denial of another person's experience or meaning as a result of the discourse of cross examination. The credibility of the thesis is built upon the analysis and review of discourse as it functions in the site chosen, that is, the court. It is neither possible nor desirable in such a study to provide mathematical proof, or diagrammatic aesthetics, but rather to provide a cogent argument which convinces the reader that cross examination of child victim witnesses demonstrates in part how external behaviour is determined by internal or personal history. The interpretation of 'child breaks down' is problematic.

In summary, this thesis arose from a concern for children who had been subjected to a process that denied them the ability to preserve their integrity and generate a cohesive version of the truth. The context of court examination, and cross examination in particular, does little to generate the best possible narrative.

The thesis seeks to show how the dynamics of denial are, for many children, a further punishment activated and endorsed by public action. The denial of personal experiences, especially those of victims, has effects which have been documented separately in a number of arenas.

These studies will be acknowledged in the thesis but are not central to it. The central aim is to show how cross examination is used as a linguistic device to deny the experiences of child victim witnesses, and thus a sense of the meaning of their own lives.
CHAPTER 2
REVIEW OF LITERATURE

Since the time of Benjamin Whorf and Edward Sapir, language analysts such as Saussure, Labov, Lakoff, Kress, Halliday, Lawton, Bernstein, Vygotskii and Ortony have studied the relationship between thought and language and more specifically the capacity of language to shape our social, psychological and political experiences. With less specific intent but with equal philosophical force Socrates talked of the different uses of language and urged the pursuit of truth as its main feature. Indeed he saw it functioning otherwise, as educated practitioners practised the art of confusion and obfuscation.

Dwight Bolinger used the expression 'the sorcery of words' in his 1980 publication *Language - the loaded weapon* to capture the idea that on occasions language is used to twist and conjure meanings in such a way as to create illusions. An illusion is not simply another version of the truth but rather something which displaces truth. However, the illusions are absolutely necessary in order to create new meanings where none existed before. Without closer examination it is difficult to differentiate between the liar and the creative artist.

I have chosen three separate collections of literature in order to review the literature base which acknowledges, activates and explores these concepts. They are presented here as bodies of literature which extend from the broader concerns of courtroom studies, (especially those which recognise the usefulness of language analysis); to literature which seeks to connect ideology, control and linguistic behaviour; concluding with a review of the possible tools of language analysis which may be usefully utilised in this thesis.

In the first collection of literature I consider studies of court proceedings (2.1) generally. A variety of measures and perspectives are used in these studies and provide us with the landscape within which to place this thesis. The majority of studies referred to seek to connect and acknowledge the nature of linguistic activity in the courtroom setting and thus to analyse in some way the speech of the courtroom. These studies embody a perspective which persuades us to view court proceedings as:

- a manifestation of a wider social process
- a social activity controlled primarily by identifiable discourse styles
• a setting in which certain human relationships are clarified.

A consideration of these processes points to the need to review studies which acknowledge the more specific connection between ideology, control and linguistic behaviour (2.2). These studies are not restricted to those focusing upon courtroom interaction but provide the possibility for a wider analytical context within which to place this thesis.

The third collection on analysing language (2.3) reviews those works which have implications for what exactly should be evaluated in the process of language analysis. What is recognised as data and subsequently analysed depends on the (perceived) nature of language itself. In this section I acknowledge a range of features of linguistic activity which present themselves as possible candidates for analysis. The section concludes with the observation that, in spite of recent concerns with the 'contextual nature of language', little has been done to accommodate the most significant feature of all, namely, the lived through experiences of an interlocutor.

I commence then, with studies which examine the nature of court proceedings as they are viewable through analysis of court discourse. With the occasional exception, most of the literature assumes that courtroom behaviour is predicated upon legal constraints, such as rules of evidence or due process, and tends to ignore the more pervasive fact that what happens in court is as much a function of adversarial combat, as of legal protocol.

2.1 DISCOURSE ANALYSIS AND COURT PROCEEDINGS

A significant aspect of the study of language interaction in the courtroom is that it is an environment in which language is not so much a rehearsal for action but is the action itself. The environment is almost entirely regulated and manipulated through the deployment of words.

The interaction functions as a result of a near continuous stream of words in an adversarial context. In the criminal court results are neither tempered nor negotiated. There are only winners and losers.

This environment is defined and given substance through a series of private rules which arise from notions of right, wrong and winning by a variety of means. It is accessible to the public gaze and demands the attention of selected members of the public.

At the centre of the environment are the parties who are to some extent desperate to procure a particular judgment. The courtroom
proceedings are society's response to an as yet unresolved conflict. It is also a place in which children are subjected to adult rules and action.

Courtroom interaction stands as a counter situation to 'normal' conversational interaction, wresting from the individual witnesses the strategies they have built up during their development as members of society.

Hearings in courts involve verbal exchanges which in many respects are organised differently from conversational talk. Verbal exchange is frequently regarded as the source of the 'oppressive' nature of court proceedings; proceedings in which the needs of an individual are overshadowed by the general societal need for the court process to proceed.

Courtroom language studies represent a range of concerns and perspectives. The 'legal' aspect of the proceedings is often assumed or addressed and the researchers' insights and findings are expressed in such terms. This section (2.1) however reviews courtroom language studies which include a consideration of legal aspects as well as a range of features and factors which clarify our perceptions of courtroom interaction, especially those studies which express such interaction in terms of verbal exchange. The review proceeds under the following headings:

2.1.1 Identifying special features of courtroom interaction
2.1.2 Understanding discourse in courts
2.1.3 Dealing with difficulty; its analysis and interpretation
2.1.4 Towards the pragmatic
2.1.5 From the pragmatic to the ideological

2.1.1 Identifying special features of courtroom interaction

Identifying courtroom interaction as a special feature, as a variation of 'normal speech', is one way of analysing the distinctiveness of 'courtroom language'. A number of students of courtroom interaction, having accepted the concept of 'linguistic variation' as their prime measure of sociolinguistic analysis, have identified many such special features of which the following are examples. The examples in this sub-section (2.1.1) are significant in that they not only demonstrate a range of indicators of a different discourse environment but they attempt to do so by identifying single features.

2.1.1.1 Embedding in legal propositions
In an effort to understand the features that set legal texts apart from others, Hiltunen (1984) has concentrated on the aspect of embedding. His concentration is on both statements which take place in a legal context as well as legal documents. The language under scrutiny in this thesis is the former rather than the latter. However much of what is said in legal proceedings draws heavily on the corpus of regulations from which those proceedings arise. Hiltunen's concern is with the syntax of legal discourse and especially '... the extensive use of clausal embedding which is definitely one of the style markers of the legal genre' (Hiltunen, 1984: 2).

2.1.1.2 Propositions within propositions

As a direct outcome of the revelations of transformational-generative grammar the use of subordinate clauses within one sentence came to be seen as a measure of either compactness or depth. In turn, depth was perceived as more difficult to comprehend. This provided the tangible and measurable link between language (what is said) and psychology (what is comprehended). Many suggested or assumed that the difficulty of understanding heavily embedded sentences was a function of the strain upon 'short term memory' directly attributable to the syntactic complexity. The corollary however is not sustainable, ie. that memory or comprehension test results could be taken as a reading of syntactic complexity. Hiltunen alerts us to the assertion that 'memory for sentences has a semantic rather than syntactic basis' (Hiltunen, 1984: 2).

This suggests a particular kind of complexity in the construction and comprehension of language, a complexity which needs to be mirrored in analysis.

2.1.1.3 Untangling complexity

According to Charrow:

There apparently are confounding semantic, pragmatic and performance factors that make real world situations much more complex than the earlier studies suggested.

(Charrow, 1979:15)

Although that now appears as a sensible and acceptable proposition the situation still pertains that:

... there are some types of embedding, such as the so called self embedding constructions of the type 'the boy (whom the girl (whom the man in the red car hit) kissed) lives next door to me' (quoted from The Man in The Red Hot Car Kissed Lives Next Door to Me)
Hiltunen draws on two concepts for his analysis of depth and complexity. One is the concept of left branching and right branching sentences and the other is distance from nested clauses. Both these approaches however suggest an analytical interest in discovering a single, main 'culprit' or factor within the whole complex activity of using and responding to language.

2 1.1.4 Finding the x factor

The Hiltunen article attempts to tackle the problems of access to English in legal settings on the basis of a single concept, embedding.

It is interesting to acknowledge other studies which proceed from the point of single factor analysis. One is Joan Cashion's work on 'politeness', (Cashion, 1985) in which she compares and contrasts the degrees of politeness displayed by male and female judges.

O'Barr's work through the Duke Language and Law Project must be acknowledged as the most extensive study in the field of single factor analysis, especially in narrative versus fragmented testimony. The concept and manifestation of symmetry is also important especially as it relates to powerful and powerless speech. Here I shall briefly outline just three examples of 'x factor' study; politeness, narrative/fragmented testimony, and symmetry.

i. Politeness

Joan Cashion suggests politeness as a significant variable and investigates this because it is seen to be associated with powerful and powerless speech (Cashion, 1985). The paper attempts to test and replicate the courtroom study by O'Barr and Atkins (1981) which suggested that Lakoff's (1975) 'women's language features' were associated more strongly with power and status variables than with the sex of the speaker. Cashion hypothesised that:

... judges hold the most power and have the highest status within the courtroom, therefore the language of judges should contain the least number of 'powerless' language features.

(Cashion, 1985: 10)

In this study politeness did not correlate with either sex or power. The main methodological outcome of the study was a reassertion of the
proposition that in order to understand language and human relations more acutely we need to:

... spend more time looking at situational factors involved in the use of language and consider in what context we find or do not find sex differences.

(Cashion, 1985: 20)

Politeness and the underlying concept that when one is polite it acts to solicit either compliance or agreement with the other party, derives from the 'Grice-ian' principle attributed to H.P. Grice in his 1975 paper entitled 'Logic and conversation'. In discussing the way in which conversations operate Grice views speaker-hearer interaction in terms of his posited co-operative principle:

... we might then formulate a rough general principle which participants will be expected (ceteris paribus) to observe namely: make your conversational contribution such as is required, at the stage at which it occurs, by the expected purpose or direction of the talk exchange in which you are engaged. One might label this 'the co-operative principle

(Cashion, 1985: 7)

Compliance to the rules of the conversation itself, and through this of one speaker to another, is the communicative product.

ii. Narrative and fragmented testimony

Observations of court speech suggested that a major variable in testimony speech is the length of a witness' response to the lawyer's questions. In some of the observed testimony the witness responded at length to the lawyer's questions while in other testimony the witness gave a relatively brief answer to each question. As might be expected, relatively fewer questions were needed to elicit the same amount of information in the 'narrative' type of testimony than in the 'fragmented' type.

O'Barr's studies (1979, 1982) confirm that the manner in which witnesses and lawyers speak in the presentation of testimony can affect social evaluations of them by those who hear the testimony. The first experiment demonstrated that a socially patterned variable in witness speech, the relatively frequent use of 'powerless' features, has strong effects on evaluation of the witness and perceptions of the witness' credibility. The second and third experiments showed that speech dimensions in the form of the lawyer/witness interaction, as exemplified by the narrative/fragmented testimony, also influence the social perceptions engendered by testimony. These findings have important
implications for language studies, social psychology, the law and this thesis.

iii. Symmetry

Although not a courtroom study the observations of Fisher (1984) in educational and medical settings are of obvious significance. In a discussion of the way in which structural authority is both discerned and maintained through discourse, Fisher suggests that:

In everyday contexts, participants engage in conversations in a relatively symmetrical relationship ... in the institutional contexts of schools and medical settings they engage in conversation in more asymmetrical relationships.

(Fisher, 1984: 200)

Fisher notes that authority is controlled:

... both by the selection of the topic as well as who will speak next
... The asymmetry is also reflected in the noticeable absence of similar behaviour by the students.

(Fisher, 1984: 201)

One of the obvious features of court interaction, and especially of cross examination, is the discrepancy between the volume and the quality of language spoken by both parties. Lawyers ask questions in a variety of styles and for a variety of communicative purposes and by and large witnesses answer 'yes' or 'no'.

Although special feature identification might be revealing, the essence of discourse analysis is to understand and reveal the texture of an interaction. The interaction of the details (of analysis) with the whole meaning of the text requires us to constantly refer to the forces which generate 'the big picture'. There are differing views as to how this big picture is accessed. Courtrooms are complex social settings in which oral language predominates. If we are to understand these settings, especially with respect to the focus of this thesis, we need to go beyond the single feature analysis which characterises the research reviewed above. We need to throw a wider analytic net to 'understand the discourse of court'.

2.1.2 Understanding discourse in courts.

Court discourse has interested researchers for a variety of reasons ranging from the opportunity to study a particular piece of significant social interaction to the attractiveness of study in an isolated and closed situation which dramatically exhibits specific aspects of social
interaction. Within and between the studies reviewed below I show a set of connections tying general social appreciations of courtroom interaction with particular social and (ultimately) psychological states.

### 2.1.2.1 Viewing court and seeing society

This sub-section reviews some examples of literature which trace the connection between a social requirement (to establish the truth), how that requirement is institutionally manifested (by courtroom interaction), and how as part of that interaction, key players are positioned and (re)defined. When taken together, these studies imply that denial to the point of degradation of an individual is part of (or may even be required by) the process of administering justice.

Atkinson and Drew (1979) see the study of the court situation as a microcosm and as an encapsulation of society, in the way it affects the lives of individuals. It is also seen as the forum for the public expression of personal power. All of the above can be shown to be brought about through patterned behaviour and thus structurally defined. The sociological appreciation also forces the analyst to look further, beyond the actual proceedings, to more generalised patterns within the wider society. In so doing, what goes on backstage must be accepted as data along with what appears in the proceedings. Language used in the courtroom can be better understood by deepening and widening the concept of what constitutes 'context' so as to admit into our understanding both the intent and the effect of language in use. One of the pervasive aspects of the courtroom situation is not only what 'goes on backstage' but the domination of the environment by words themselves. Orality itself must be seen as a significant social determiner just as physical movement is a strong feature of the football field.

### 2.1.2.2 Courtrooms as a sea of words

One of the most significant language features of the court situation is its reliance on words spoken, to the exclusion of all other communicative supports; supports which are available in other social situations. As Atkinson and Drew note:

> Whatever else may be said about court proceedings, the fact that talk is an all pervasive and highly significant feature can hardly be seriously doubted.

(Atkinson and Drew, 1979: 6)
Because of an almost total reliance on words, the court setting is an appropriate site in which to study the words themselves and how they reflect other significant relationships.

Yet it would seem strange to any competent speaker of English were one to conclude from this that the term 'trial' can be equated with 'people talking. For any such person could presumably point out that it clearly is not 'ordinary talk' that takes place in courts of law, and that there is a sharp distinction to be drawn between the kinds of talk that characterise court proceedings and those which are to be heard in various other contexts.

(Atkinson and Drew, 1979: 6)

In examining the difficulties of some actors in handling court, many studies tend to assume that 'difficulty' arises only from the demands of 'legalese', a language derived from legal documentation, Latin forms, and the dualistic logic of adversarial proceedings. These forms and processes are defended on the grounds of 'looking for the truth'.

2.1.2.3 Looking for truth

Another significant feature of courtroom studies is their critique of a forum which claims for itself a high standard of seeking truth for the purpose of dispensing justice. The court claims this status through a supposed ability to establish truth at the level of 'what happened' and 'who did what to whom'. This proposition sets up and capitalises upon a dualistic concept of truth and falsity, the very existence of which philosophically justifies the adversarial system. As we become aware of other concepts of truth, other mechanisms for revealing such are explored.

The legal process of examination, cross-examination and re-examination can hardly be rated highly as an instrument for ascertaining the facts of past history, at least no scientist would expect to extract the truth from opposite directions ... no one can fail to be struck by the contrast between high degrees of sophistication attained by forensic science in the detection of crime and the prescientific character of the trial process itself.

(Wootton, 1963 in Atkinson and Drew, 1979: 10)

Indeed, if it were possible to establish facts 'scientifically' there would be little need for the continuation of courtrooms. It is obvious that they do not concern themselves with matters of simple truth. They are the stage for acting out philosophical, political, and moral dilemmas. To use Goffman's (1959) theatre metaphor I would suggest that if the court is a stage then this thesis might be about examining who has access to the script for the repertoire of plays performed. The sense of privileged access to the script for only some of the stakeholders, points to a
situation which is worthy of study in terms other than those set down by the key players.

In a comprehensive review of language in the legal process Danet (1980a) points to the dearth of discourse analysis in this area and to '... their potential contribution in advancing the critique of the adversary system of justice' (in Penman, 1987: 201).

Penman goes on to explain how even in a situation of adversity and the strong desire for different outcomes, coherence in the discourse still exists. As a function of coercion an enforced co-operation is enacted via the careful use of language. She notes that some court studies employ a sociolinguistic orientation:

... studying such variables as the speech styles of witnesses (eg O'Barr, 1982) and of barristers (eg Parkinson, 1979); verbal response modes under direct and cross examination (eg McGauney and Stiles, 1980); coerciveness of question form (eg Danet and Kermish 1980) and the strategic use of questioning (eg Woodbury, 1984). These studies all indicate that the various ways in which language can be used, do influence the dispute-processing function in courts. On the other hand, none of these studies tell us how language is used interactively in courts.

(Penman 1987: 201)

Penman's own concern is to unveil the dynamic mechanisms of language in use which contribute to the establishment of the court's authority. This aspiration to both outcome and establishment of an appropriate method for study, suggests support for the process and outcome of this thesis.

2.1.2.4 Establishing the authority of court through discourse

Penman continues:

One of the rather unique features of courtroom conversations, compared with more everyday ones, is the formal power invested in the court to impose its will on others.

(Penman, 1987: 202)

To allow the format of adversity to continue, some sense of coherence has to be established by the court especially when '...the witness's goals may be quite incompatible with those of the court' (Penman, 1987: 202).

That coercion as well as cooperation is used to enforce this coherence is the subject of Penman's examination of the Gricean Cooperative Principle in which it is suggested that one has to:
... make your conversational contribution such as it is required, at
the stage at which it occurs, by the accepted purpose or direction of
the talk exchange in which you are engaged
(Grice, 1975 in Penman, 1987: 203)

The requirements of institutional continuity as well as the nature of adversarial discourse conspire to create a discourse which is extremely restrictive when compared with other ways of people have of 'telling their story'. This restrictiveness is significantly different from the prescriptiveness of other genre of information and story telling. Penman also notes the summative work of Atkinson and Drew (1979).

Like many types of communication, the question-answer adjacency pair forms the foundation for the organisation of talk in courtrooms. This is particularly the case in the direct and cross examination episodes in which one person asks a question and the other answers. However the rules governing these exchanges differ markedly from more ordinary conversations. In the first instance, the type of speaker turn is explicitly and rigidly fixed, there can be only questions and answers. Second the type of speaker turn is fixed to the acting role; it is only the barrister (or judge) who has the right to ask questions, and the witness is under strong obligatory pressure to answer and to answer in certain ways only. These structural features identified by Atkinson and Drew (1979) are the same as those identified by Fisher (1984) in her analysis of doctor-patient discourse and as Fisher demonstrates, parallels can also be drawn with classroom interaction.

(Penman, 1987: 204)

2.1.2.5 Keeping the discourse cohesive

In the first instance Penman reviews an array of court language in order to assess the workings of the maintenance of cohesion in this site and to reflect upon the relationship of this to the Cooperative Principle of Grice. With the help of an account of conversational difficulties, to highlight the points of tension (where appropriate discourse is redirected) she is able to generate a list of 19 rules. These rules:

...can be taken as indicative of the institutional constraints imposed on talk so that the exchanges are coherent in the eyes of the court...Moreover, they are not unrelated to each other being employed as a whole to ensure that the 'truth of the matter' is arrived at, at least approximated, in some orderly manner.

(Penman, 1987: 211)

This assertion is only possible if one adopts a teleological definition of truth (truth is what the court finds); and if the status and potential contribution of stakeholders are ignored. These two premises are only possible if one accepts that talk and the purpose of conversation is to exchange information with maximal efficiency.
Talk exchanges in court however ... appear to be other than a genuinely co-operative effort."

(Penman, 1987: 214)

A contradiction appears to exist, namely, that courts need to coerce participants to be cooperative. Not only do judges require this of the court as a whole, but cross-examiners drive the witness towards this end in support of their own (opposing) case (Penman, 1987).

2.1.2.6 From cohesion to coercion

Penman suggests that a range of coercive devices is employed, the most obvious one being:

... admonitions and orders by the judge to answer in the proper way and the refusal to acknowledge any information given by participants that was outside the parameters of the questioning. Less directly obvious, equally powerful devices are contained in the particular form of questioning used in courts. The typical use of closed questions in cross examination asked by barristers with the authority of the court is one particular way in which witnesses are forced into answering what is required. Moreover failure to comply, in manner and content, to the requests and directions of the court, can bring about the use of even more coercion: the threat, or actuality, of finding the witness in contempt of court.

(Penman, 1987: 214)

Given this background of threat and coercion it is legitimate to suggest that principles other than cooperation might be involved in enabling the proceedings to continue; to cohere. The need of a witness to avoid further retribution can be seen as a significant driving force. The establishment and continuation of all sorts of relationships stems from more than the simple exchange of information. They are also based on the negotiation of roles and the meeting of needs, including the need to be released from threat.

... information on exchange is not the only function served in conversation. In fact we never just exchange information with someone we converse with, we are always at the same time offering a commentary, however implicit, on the relationship and negotiating our own identity. Whatever information may be obtained in talking, it is never independent of the relationship and negotiating our own identity.

(Penman, 1987: 216)

The negotiation of identity now becomes the 'commodity' which is the subject of competition in the courtroom drama.
2.1.3.4 Recognising motives

In moving towards establishing a 'micro analytical framework' for investigating sequences of examination and cross examination, Valdes accepts the appropriateness of such accounts revealing the 'discourse- hood' of the language interaction. This recognises that:

Courtroom speech must be viewed not as an unrelated sequence of questions of the same or of different types, but rather as a series of moves which are used to carry out specific actions.

(Valdes, 1986: 277)

These actions can be viewed as necessary to establish fact X or situation Y or supporting detail Z, which justifies asking question A or B. This accounts for the sequence and type of question but does not account for the general desired effect of all cross examination questions, namely to discredit the witness.

Levinson (1983) recognises the inappropriateness of assuming the same rules of analysis of conversation in one place will apply in another. He resolves to exclude talk which:

... occurs inside specific institutional settings such as religious services, law courts, classrooms and the like, from his definition of conversation. For this reason, analytical frameworks developed for the analysis of normal conversation (both within the tradition of discourse analysis and conversational analysis) are difficult to apply directly to either classroom or courtroom speech.

(Valdes, 1986: 279)

Certainly a study of sequences rather than adjacency pairs provides a larger context and a sense of discourse, however none of the studies referred to above suggest a framework arising from the stated aim of the situation, that is, 'you discredit the other party in the context of a strictly controlled question and answer sequence'.

The microanalytical framework suggested by Valdes

... seeks to identify the basis of the smallest unit of interaction and relate this unit to the larger contexts which conditions courtroom talk.

(Valdes, 1986: 294)

It is based upon a system put forward by Edmonson (1981) in which

...verbal interactions are seen to consist of communicative acts...acts which are considered to be both interactional and illocutionary in nature.

(Valdes, 1986: 294)
Interactional describes functions such as 'initiate', 'respond', 'terminate' which fuel the interaction. Illocutionary describes the way in which this is done such as by 'requests display of information', 'responds literally', 'clarifies'. The basis for these descriptions comes from the utterances themselves and arise from the grounding proposition that the whole sequence is patterned in order to achieve the purpose of the questioner. That purpose is to display evidence in a particular way to fulfil the requirements of the laws of evidence.

By organising and viewing the 'text' in this way, examination encounters can be seen in terms of the general interaction as it is manifested in and projected by illocutionary acts. Further:

... each exchange within a phase of an examination encounter is considered to have been intended (by the examiner/cross examiner) to contribute to this (his own) purpose.

(Valdes, 1986: 284)

This gives rise to the view that in a situation in which one person has control over the discourse, and chooses not to change it to include others, then their action is intentional. It is not only intentional, but becomes an integral part of the situation. In developing a framework which is both truly descriptive and appropriate to the situation, the above research presented me with a plethora of tools and units of analysis and description. The considerations ranged from single unit identifications to wider descriptions of all manner of 'contexts'.

Existing models of analysis provided a point of reference for developing more useful ones. They also provided a range of the possible essential features and characteristics which might be taken into account. The analysis of 'intent' however presented a challenge to 'objective' evaluation.

In Valdes' account of the demands that courtroom language makes upon speakers of ordinary English, each exchange within a phase of an examination encounter is considered to have been intended by the examining attorney. Function and intent are assumed to exist, given the control the lawyers have over the situation and also the predictable and patterned nature of its occurrence.

Language studies which recognise the manifestation of motives in language and which further recognise the varying effects of language on different interlocutors acknowledge both the social import of language and the need for language analysis to include such vital factors. This directed me towards studies in pragmatics, studies in which intent and effect are regarded as appropriate qualities for linguistic description.
interlocutor to recognise the effect of his/her speech. The combination of intention, effect and further response creates the dimension of the pragmatic. This dimension further informs our 'discourse understanding'.

For Scha (1986) the term 'discourse understanding' refers to all processes of:

... natural language understanding that attempt to understand a text or dialogue. For such processes, the sentences of natural language are elements whose significance resides in the contribution they make to the development of a larger whole, rather than being independent, isolated units of meaning.

(Scha, 1986: 2)

To understand discourse one must track the structure with respect to the proper context:

... taking into account the real world setting of the utterance as well as the linguistic context built up by the utterances preceding it.

(Scha, 1986: 3).

This view can be tested against the reality which is the concern of this thesis, that is, the 'text' created during cross examination is not so much the sum of the individual evidentiary elements and proposals as the total achievement of reducing the credibility of the witness.

The pragmatic perspective on discourse and its analysis, as encapsulated by Scha and others, provides the analytical space to accommodate the details of real lives, the concerns of the researcher, and the descriptors of linguistic analysis. The following extended quote sums this up:

Language, especially written language, is often viewed as a code for packaging and transmitting information from one individual to another. Under this view, a linguistic message is fully represented by the words and sentences it comprises; texts are thus objects that can be studied in isolation. By taking such a stance, one is led naturally, for instance to regard words as referring back to other words. Concepts like coherence, relevance, and topic are then referred as properties of texts, leading researchers to confine their search for these properties to words and sentences. A contrasting view, proposed by Strawson (1950), Austin (1962), Searle (1969) and others is that speakers or writers use words to do things, for instance, to refer to things or to get a hearer or reader to believe or do something. They are produced by a person who is attempting to use them to produce certain effects on an audience. According to this view, utterances are tools used in social interaction and should be studied in this light ... Pragmatics is the study of communication as it is situated relative to a particular set of communications demands, speakers, hearers, times, places, joint surroundings, linguistic conventions and cultural practices including language in a theory of action, this suggests that 'pragmatics' is just the application to verbal problems and of general abilities for interpreting
the everyday world. People tend to interpret the behaviour of other humans in terms of the situation and the actors intention and beliefs. Much of what has been discussed under the rubric of pragmatics is most reasonably seen as the interpretation of linguistic behaviour in similar terms.

(Scha, 1986: 36)

Scha continues:

The pragmatic perspective on language has three important implications for discourse understanding research. The first is that the meaning of a linguistic message is only partly represented by its content; its meaning for a hearer also depends on the hearer's construal of the purpose the speaker had for producing it. The second is that the attribution of intentions to a speaker must be an integral component of the listener's comprehension process. The third is that a theory of language comprehension should determine the extent to which the same strategies people use to arrive at satisfactory explanations of physical behaviour of others can be employed in their comprehension of speech acts.

(Scha, 1986: 37)

This analytic perspective acknowledges the legitimacy of attempting to establish, for example, the possible connections between the meaning of a message and the producer's goals and beliefs.

Further as Grice has pointed out (Grice 1957), effective communication is achieved when hearers attribute to speakers intentions which the speaker's intend them to hear.

If we regard communication only as the transmitting of propositions then cross examination of children in court will be viewed as a prime example of 'failed' communication. If we regard communication as achieving a specific result for one party, then failure to comprehend on the part of the child victim witness represents itself as 'successful' communication.

This insight makes obvious the sense of the concept of speech acts; social acts performed by means of linguistic utterances (Searle 1969). Amongst these are requests, commands, assertions and most significantly here, questions where a question is interpreted as '...a command to provide an answer' (Scha, 1986: 40). Pragmatic studies suggest that analysing language is a real opportunity to examine many aspects of real life relationships.

2.1.4.2 Analysing language: analysing life

The operational challenge within the focus question of this thesis is to create a descriptive framework within which to display linguistically
manifested relationships, intents and effects. That is, to create a linguistics that is informed by and is informative for the real lives of real people in real social situations.

The studies reviewed above led me to accept the need to incorporate into linguistic analysis the details of intent and effect as competing parties use whatever is available in order to gain control of the discourse.

2.1.4.3 Fighting with what's available

In his book *Courts on trial*, Frank contrasted the 'truth theory' of courts with what he called the 'fight theory', which attributes the origins of the trial to the substitution of public, verbal battles for private physical brawls (Frank, 1966). This replacement suggests that although the format for the resolution of conflict has been overlayed with an ideological rational imperative to 'seek truth', the pragmatic intent 'to win' is at the root of the court process. As Frank points out:

... the adversary system encourages the use of trial tactics to prevent the judge or jury from correctly evaluating the trustworthiness of witnesses and to shut out evidence damaging to a case. The lawyer aims at victory not at aiding the court to discover the facts, he doesn't want the trial court to reach a sound educated guess if it is likely to be contrary to his client's interest.

(Frank, 1966 in Danet, 1980: 190)

This tactic, to exclude certain meanings, is closely scrutinised by Danet's (1980) review of the Edelin trial. In that trial Danet reports the explicit preoccupation with language. The defence counsel for Edelin, William Homens, submitted a motion for an order to prevent the use of the words 'suffocate', 'smother', 'murder', 'baby boy', and 'human being'.

In making such a submission the defence counsel was certainly recognising the significance of words; however there is an implicit assumption that the meanings of those words are constant from one sentence or paragraph context to another. This is not a defensible assertion as the significance of their having been uttered differs from context to context. Indeed one aspect of context is that meanings are cumulative. The repetition or lack of reference to a particular word will generate meanings which can only be apprehended, and possibly comprehended, by those involved.

Defence counsel sensitivity to the significance of the semantic issues was in evidence throughout the trial and in his opening statement he addressed the jury with the words 'that your effort be at all times to determine not what is said to have happened in terms of the words you
Court proceedings create an ideological stance, which is heightened during cross-examination. Under cross examination the victim witness is clearly asked to accept the proposition that there is no 'social' problem but rather a 'personal' problem, the basis of which is his/her own misrepresentation of reality. There are a number of theoretical positions within which to view the impact of what is said to victims under cross examination. Some of these may be used to show how linguistic structures are used to explore, systematise, transform or obscure analysis of reality; to regulate the ideas and behaviours of others; to classify and rank people, events and objects; to assert institutional or personal status. I am inclined to adopt the orientation of Kress when he says that:

There is no reason in principle why linguistics should not make a systematic study of... social structure and linguistic form, function and process and complex states of mind. Such linguistics would be of direct value in a critical account of contemporary culture.

(Kress, 1979: 25)

That orientation is further detailed in Fowler's statement that:

1. Language embodies specific points of view, realities and propositions. These are created and maintained through a wide variety of linguistic mechanisms and forces, some of which are more easily distinguishable than others... The linguists Edward Sapir and Benjamin Lee Whorf both proposed the concept and gave it flesh in their study of whole (speech) communities.

2. Different social groupings and different relationships vary from each other and can be seen to be at once different from each other and internally patterned. Social meanings are both created and perpetuated by the maintenance of discourses.

3. These discourses are part of the social processes and constitute social meanings and social practices.

(Fowler, 1979: 1)

These premises lead me as a student of language to:

... make a contribution to the unveiling of linguistic practices which are instruments in (social) inequality and the concealment of truth.

(Fowler, 1979: 2).

Studies which address themselves to issues of language and control will be reviewed according to their ability through linguistic analysis to provide insight into human experiences (2.2.1 Language and life; responding to the reality). These are followed by studies which take seriously the challenge to analyse language in terms of intent and effect in patterned social behaviour (2.2.2 Using the anthropological). For the purpose of this thesis there is a need to build upon precepts of ideology and social control to find an appropriate way to describe language as it
is used both (generally) as a cultural tool and in specific circumstances for specific ends. Studies which attempt this are thus of central interest for review. (2.2.3 Connecting culture, site and language)

2.2.1 Language and life: responding to the reality

There are several areas of study where the organic synonymy of language and experience are taken as a given whilst the intricacies of the connections are investigated further. Nowhere is this more clearly expressed than in the field of language and ideology where pursuing the subject continues because:

... ideology operates not so much as a coherent system of statements imposed on a population from above, but rather through a complex series of mechanisms whereby meaning is mobilised in the discursive practices of every day life for the maintenance of relations of domination. It is of the utmost importance, therefore to search for ways in which the theory of ideology can be linked with methods for the analysis of the discursive forms in which ideology is expressed.

(Thompson, 1984: 64 in Threadgold, 1986: 15)

Halliday establishes the relationship in the following way:

The study of language which is linguistics, is for many, in no way different or separate from the study of semiotics, that is the study of the way meanings are made in a social system ... Linguistics has often failed to concern itself with the crucial relations between meanings, contexts and realisations which is central to the study of language and ideology.

Meanings, ideas, intentions, and positions do not '... float about without any relationship to discursive or linguistic form'. (Halliday in Threadgold, 1986: 15)

Threadgold reiterates this point, stating:

Ideas do not circulate in the air. They are produced and reproduced as spoken or written utterances ... To study ideology is then always in some sense, to study the ways in which language and meaning are used in everyday forms of social interaction. This is why a theory of language and a linguistic tradition which concerns itself with ideology will be much richer than narrow approaches to linguistics and the philosophy of language which concern themselves only with systems of signs, fixed meanings, or language as communication of well formed sentences. A theory of language as social semiotic and of language and ideology has the potential in itself with language as a form of social interaction, a meaning potential in and through which subjects and the social are reconstructed and reproduced and cultural and human conflict are negotiated.

(Threadgold, 1986: 16)
Threadgold extends this understanding to the issue of appropriate research technique.

What has been missing has been any attempt to account for particular, concrete linguistic forms as realisations of meaning and contexts. (That is we have lacked any adequate account of the relationship between micro and macro levels of linguistic, semiotic and social analysis) ie. the relationship between the analysis and the material.

(Threadgold, 1986: 17)

Translating this general appreciation into the specific situation which is the focus of this thesis suggested that what happens in cross examination is not so much isolated from real life but rather, for the victim, a lively expression of it.

There are many ways in which one speaker manages to achieve and maintain that control. When studies on language and control were restated in terms of position and discourse I began to appreciate that the desired outcome of cross examination is to position the witness in the (dominant) discourse in such a way as to be insignificant (as a victim).

Practitioners in court depend on a neat separation of the lexical meanings of words and the semiotic meanings generated as a function of use, impact, response and situation. William O'Barr notes:

> Whether consciously planned or merely the result of native intuition, form communicates. As form varies, the messages communicated vary as well. Some forms are strategically more useful because of the connotations they carry.

(O'Barr, 1982: 7)

Here there is the implied duality of denotation and connotation: the real meaning and the developed or used meaning. In a fully social definition of language use it is difficult to maintain the separation as one becomes the other.

William O'Barr echoes the problems expressed by so many other analysts of invading the territory of practices which are 'obviously natural and naturally obvious'.

Classical rhetoric and oratory are based on this knowledge as are rules of journalistic style, advertising practice, media presentation, and such everyday rules as the etiquette of social interaction. Yet, such a perspective on the legal process is neither widely recognised nor understood by the public, by social scientists who study it, nor even by lawyers and their witnesses who regularly employ such strategies.

(O'Barr 1982: 7)
Most sociolinguistic researchers show a clear preference for the use of social factors in explaining language variation. It is uncommon to find researchers pursuing language to understand social phenomena. In working toward an understanding of the relation between two such matters as language and society, it is difficult to attempt to explain both. Rather in relating phenomena not usually considered together, an explanation of one must be the goal while the other is the means. For most sociolinguists then, explaining language is the goal whereas social factors are the means used.

(O'Barr, 1982: 8)

If it is desirable to move beyond the correlational to where language is seen as the essence of the social construct then the attribution of meanings in particular situations remains problematic.

2.2.1.2 Nominating the text

'Meaning', as an expression, suggests a unitary concept, that 'it' can be identified as a single entity. The meaning of a conversation is not necessarily discernible from the script alone but from the location and relocation of the speakers within it. The text is a vehicle and can serve as a window into the multiplicity and complexity of meanings. This conceptualisation of meaning is reflected in comments by Wardlaugh when he suggests that:

Conversation is an activity which makes use of many devices in order to reduce the risk of participants. Consequently conversationalists rarely get hurt.

(Wardlaugh, 1985: 3)

However, unskilled ones can be severely punished as he recognises:

You may be hurt or you may inflict hurt in that one of the participants can emerge from the conversation diminished in some way.

(Wardlaugh, 1985: 3)

In extending this appreciation, he later states:

There is often considerably more to a message than the actual words that were uttered; there may be matters of importance both beyond and behind those words.

(Wardlaugh, 1985: 78)

It follows that a suitable linguistic description would take into account the 'meanings beyond and behind those words'. Those meanings are sometimes made available to us through viewing the experience of the individual in the widest anthropological context possible. This is the focus of the next sub section.
being a function of their context. Instead words are seen only as the
means for establishing 'facts' and the rules evoked for regulating this
procedure are aimed at maximum efficiency in the gathering of facts.
Communication is taken as something instrumental in the legal process.
As a consequence, witnesses are seen as something simply instrumental
to the process. That they are seen as no more than this, is further
evidenced by the observation that there are no formal rules to regulate
the relational aspects of discourse. They are thus left to proceed almost
unregarded and only get noticed when they cut across the rules of 'the
fact game'.

(Penman, 1991: 28)

Besides the existence of the 'fact game' Penman posits the existence of
the 'face game' (from Brown and Levinson, 1987) in which all parties
strive to either promote or detract from their own or the others 'face'.
A struggle to maintain face or to diminish the face of another,
constitutes a significant but unadmitted discourse, while conversational
difficulties arise in court as the court proceeds with the other more
obvious struggle to establish 'facts'. If the concept of 'conversational
difficulty' can be seen to encompass the 'difficulty' of child victim
witnesses not hearing, but responding to, what is addressed to them in
court, it suggests a huge discrepancy between the discourses being
enacted. The difficulty arises because of the tension between the official
'fact' game and the unofficial 'face' game which are played
simultaneously.

Penman's study suggests that because 'credibility' and not 'truth' is the
basis of the court play, one discourse (the fact game) is in fact a cover
for the other (the face game) and the real purpose of the court is well
served by the continuance and nurturing of this. This specific assertion
about court is reflected in the general assertion of Fowler and Kress that
language serves to:

... confirm and consolidate the organisations which shape it, being used
to manipulate people, to establish and maintain them in economically
convenient roles and statuses, to maintain the power of state agencies,
corporations and other institutions ... language is a part of as well a
result of social process.

(Fowler and Kress, 1985:190)

As I have come to appreciate that language is 'part of and a result of
social process', I have also come to see how particular language features
are deployed to create and perpetuate social relationships; to see that:

The systematic use of ... linguistic structures is connected with the
text's place in the (socio economic) system.

(Fowler and Kress, 1985: 190)

The system under consideration here is the adversarial system operating
according to the limits and licence of evidence. Within those rules of
procedure other discourses are established and realised. It is a matter of argument elsewhere as to just how conscious the cross examiners are of the details and dynamics their own discourse. By attributing intent or purpose to the cross examiner it suggests that:

... the processes X manipulates Y through language and X pulls the wool over Y's eyes through language. But these processes tend to be unconscious for most members of the speech community, for much of the time. If they were not they would not work.

(Fowler and Kress, 1985: 186)

All language users draw upon differences, perceived, real or imagined, between themselves and their fellow speakers however:

... once we become conscious of the ways in which interpersonal structures encode power relationships, it is easy to see spoken interactions as enactments of or negotiations about status - contrary to the commonsense view of, say, the research interviewer or the job interviewer that their discourses are neutral, designed merely to elicit information.

(Fowler and Kress, 1985: 186)

Cross examination professes to be part of the process necessary for the pursuit of 'the truth' but can, when deconstructed, be seen as an expression of ideological interests.

If linguistic meaning is inseparable from ideology, and both depend on (social) structure, then linguistic analysis ought to be a powerful tool for the study of ideological processes which mediate relationships of power and control. This is possible providing that such descriptions are aware of the assumptions on which they are based and are prepared to:

... reflect critically about the underlying causes of the phenomena it studies and the nature of the society whose language it is.

(Fowler and Kress, 1979: 186)

An operational challenge which flows from this conclusion is that linguistic analysis should in some way be able to provide insightful connections between general culture and specific site. In the next subsection (2.2.3) I review studies which attempt to tie down in analytical detail the language and ideology connection in court whilst speculating on the significance of that challenge for this thesis.

2.2.3 Connecting culture, site and language

There are some features of both the court process and cross examination which are particular and pervasive:
- adversarial methods are the accepted ways in which 'the truth' is ascertained;

- there are certain cultural assumptions about being 'a child' which can be presented as implications

- being an alleged victim does not entitle one to any 'privileges' when giving evidence

- telling your story in your own way is not acceptable

- cross examiners, acting in the best interests of their clients, are entitled to constrain the witness to tell only the story he, the cross examiner, wants to be told.

The list above, although not comprehensive, suggests some ideological underpinnings to both the culture of court proceedings and the pursuit of cross examination.

These ideological underpinnings suggest what participants are allowed and not allowed to do (or get away with) in that particular cultural context which itself is a part of a wider culture which supports it. The relationship between the cross examiner and the child victim witness becomes both metaphor and sample of a pervasive social reality. And the language used becomes the substance of that reality.

2.2.3.1 Language as representation or matter

This assertion operates from the premise that the words of language 'stand for' a deeper, possibly more elusive reality. It suggests in the strongest terms that language asserts an influence on reality and the way it is constructed, to the point of determinism.

In this case the cross examiner and the child victim witness become the representatives of external social groups. They come to stand for other situations in which one party seeks to 'rewrite' the script; to recast the victim as a culprit, and to restrict their capacity to 'tell their own story'. The activity serves to define a reality acceptable to the listening world. The force of language is so clear and direct that language comes to be regarded as having a material existence. If language is not this material, how well founded is the philosophy which pursues the critique of society synonymously as a critique of language? How misdirected are the plethora of liberation movements which pin on language their hopes for identity and change? In seeking to transform language we seek to transform the world. Why else do people fight and die for their
language? Why do people seek to destroy the language of others? The essentiality of language in culture is a far cry from concepts of language which admit only the accumulation and combination of words. The difference forces the choice:

... between an idealist contemplation of the essence of language, whether grasped as grammar usage, the ego, rational properties of everyday language or the difference, or an attempt to effect a material transformation of the practice of language, in the widest range of the settings in which it occurs.

(Silverman and Torode, 1980: xiii)

Given such a choice this thesis would position itself with the latter.

The studies reviewed indicate that language can be used and displayed in such a way that it either recognises or denies the experience of the interlocutor. The fact that a great deal of political and educational activity focuses on language change or constraint is either a conscious or intuitive recognition of this issue. Language and sexism, language and working class education, language and colonialism, language and cultural maintenance, are clear and powerful examples of these axiomatic links.

Further to these axioms, language both drives and perpetuates certain psychological, social and political positions. This reality is recognised by those who seek to maintain such positions and by those who seek to change them. News reports, propaganda statements, advertisements, speeches and conversations all serve human intention at some level of consciousness. The propaganda statement is designed to create a single line of thought to the exclusion of all others, the conversation to provide grounding for a social relationship. Throughout the range of possibilities there exists a range of discourses which provide the maps and templates for one set of engagements or the other. They are not mutually exclusive and the borders are not necessarily clear cut as they seek to fit reality with its description. In many cases however it is possible to generate formulae for one discourse or another. There is an analytic imperative when considering the ideological basis of language to not only identify differences between various discourses but also to articulate their communicative intent and their consequent impact.

2.2.3.2 Language tools and language weapons

Views on ideology and language and the focality of language in (social) change are driven by perceptions of how 'close' the association between 'language' and 'society' is, or even whether they are separable entities.
The organic relationship between the two is consummated when placed in an ideological context.

There are a number of ideological assumptions which underlie the existence and tolerance of the sometimes punitive cross examination of child victim witnesses. Indeed the activity is allowed to continue because of the existence of the, (albeit unspoken), ideological defence that this is the way we get at 'the truth'. But a lot is achieved other than the dominant purpose as Penman showed above. It seems reasonable to accept that discourses could be described and defined in terms of their ability to heal, accept, or develop as opposed to their capacity to exclude, punish and diminish the position of a speaker. This can be seen to operate at both the cultural mass level as well as the personal individual level. The invitation is to view language as a series of choices of discourses. This arises from a functional perspective which describes language in terms of effects, intentions, precepts. Language viewed in this way can neither be understood nor analysed through the evidence of the words alone, written or spoken. What possibly appears as a repressive speech in one context might appear as high comedy in another.

There are situations however in which the parameters and players are well defined and represent a constant, where the words are the bringing to life of the script as they reveal the deeper text. The context of sexual abuse is the application of personal power and the maintenance of secrecy. The context of the abused child is shame, guilt and helplessness operating as a function of isolation. The context of cross examination is the denial of personal experience and perception. The context of court is to choose a winner. In order for the defendant to not become 'the loser', the experiences and perceptions of the abused child have to be reconstructed and reformulated and re-presented. That language is and should be the focus of our (analytical) activity as we seek to understand how people and societies work is supported by the traditions of analysis which relate 'language and ideology' with 'language and thought'.

2.2.3.3 Managing thought with language

In her work on eyewitness testimony, Loftus offers one of the most convincing demonstrations of the consequences and power of words. In a series of ingenious experiments, she reveals a great deal about the relation of language, thought and legal processes. From the very moment people begin to talk about an event, their words capture, encode, and shape memory of the event. Through an experiment in which subjects viewed films of automobile accidents and later answered questions about events occurring in the films, Loftus and Palmer (1974)
were able to show that questions using different verbs to describe the action elicited different answers. The question:

... 'About how fast were the cars going when they SMASHED into each other?' elicited higher estimates of speed than questions using the verbs 'collided', 'bumped' 'contacted' or 'hit' in place of 'smashed'. Questions of the form 'Did you see the broken headlight?' as opposed to 'Did you see a broken headlight?' encouraged experimental subjects to say 'yes' more frequently.

(Loftus, 1974: 118)

The power of the selected word or phrase may on the one hand be seen to be derived from the selectivity of one item over another and thus framing and limiting the response. It can also operate as a function of negation, i.e. of all the other possible expressions or forms not used. If the word 'collide' is *not* used then this contributes much to the interpretation and response to the question, as does the word 'smashed', which *is* used.

The detail of court proceedings that is left unexamined is the possible range of other options. A question is asked and an answer is given. The language transaction is supposedly complete. However, two fundamental questions are posed. First, what other questions could have been asked and secondly, does the fact that an answer is given indicate comprehension. In this context of uncertainty and restriction, desired themes and ideologies can be built and nurtured.

The continuation of court proceedings does not necessarily depend on whether or not they are comprehended by participants. Jurors and witnesses are often left behind but respond, as they are compelled to do, in an appropriate way. Charrow and Charrow 1979 have found that jury instructions are poorly understood and that, '... alterations to some of the more troublesome linguistic features significantly increase comprehension' (O'Barr, 1982: 27)

2.2.3.4 Picking the variables

In taking up the challenge to study and represent more clearly the workings of language in court, O'Barr decided on four speech variables around which to concentrate his research efforts.

1. 'Powerful' versus 'powerless' speech (based on Robin Lakoff's notions of 'women's' language, which we found to be generally present in courtroom speech but more closely associated with social class, educational background and previous courtroom experience, rather than gender).
2. Hypercorrect versus formal speech (inspired by the work of Labov et al.)

3. Narrative versus fragmented testimony (based on observations in court and opinions expressed by lawyers about the significance of long versus short answers).

4. Simultaneous speech by witness and lawyers (inspired by work done in the conversational analysis tradition).

All four sets of studies focus on the central question of the importance of form over content of testimony.

(O’Barr, 1982: xii)

The concern with 'form over content' is a reflection of linguistic concern with 'syntax' and the organisation and structure of expression rather than with lexical content. What emerges most significantly from these studies is that:

... seemingly minor variations in manner of testifying produce major differences in the evaluation of testimony on such key factors as credibility, competence to testify, intelligence of the speaker, and the like. In a court of law, factors affecting such evaluations of speakers may in turn affect the entire decision making process.

(O’Barr, 1982: xii)

The examination of language and the law led O’Barr to be extremely critical of the processes and consequences of the system he studied. He baldly summarises:

The findings of the Law and Language Project raise fundamental questions about the degree to which certain aspects of the (American) legal system as presently structured serve the cause of justice.

(O’Barr, 1982: xii)

O’Barr attributes much of the injustice to the perpetuation of forms of expression and presentation which are justified by an ideology of domination.

... Form at times may be highly significant, even to the point where a change in form can alter or reverse the impact of a message.

(O’Barr, 1982: 2)

O’Barr was concerned to demonstrate:

the inseparability of form and content in a setting where it is customary for many of us who normally operate in it to think of 'facts' and 'demeanour' as inseparable.
The conclusions to O'Barr's study are partly expressed in a table where he shows not only what lawyers need to do in order to achieve successful examinations but what witnesses need to do in order to resist the control and domination of cross examination. Welcome though this orientation is, the study may be little more than a confirmation or expansion of the techniques manuals. It is expressed only in terms of counter tricks and does little to encourage a qualitatively different kind of procedure or discourse within the courtroom.

2.2.3.5 Language as lens

In general terms the rationale of the Language and Law Project carried out over twenty years at Duke University also forms part of the rationale for this thesis in that:

Thus far sociolinguistic studies have focussed on the rich variety of socially patterned language variation but have done little with courtroom language per se. Those social scientists who have studied courtroom processes have not for the most part devoted much attention to language as a factor to be explained or as a factor that can help explain the legal process itself .... despite the importance of language in the law and of language as a strategic resource to lawyers, the role of language in courtroom chemistry has been and remains poorly comprehended.

(O'Barr, 1982: 12)

Although these studies provide some basic evidence for a critique of the justice purported to be at the centre of the court's enterprise, there is little focus on the direct consequences to the witness of the effects of the court experience.

The focus of the next section (2.3) will be upon possible and appropriate ways of analysing language whilst having due regard for the significance of the overarching implications of the relationship between language, thought and control.

2.3 ANALYSING LANGUAGE

Having reviewed some of the pertinent literature in the general field of language, ideology and control and also in the more specific field of courtroom study I move now to address the issue of reviewing possible ways of analysing language. The aim is to identify appropriate ways of analysing language to illuminate the relationship between language, ideology and control and also accommodate the nature and complexity of courtroom interaction.
Operationally there are three major aspects to the task of 'analysing language'. They are:

- the focus of the analysis and the use to which it might be put
- the most appropriate pools of data to inform the research question
- the most appropriate linguistic indicators with which to analyse and present the data.

This section (2.3) seeks to locate this thesis amongst language studies which acknowledge the social and ideological nature of linguistic activity and which seek also to ground their linguistics in the observation and analysis of problematic situations. As such the field of inquiry of this thesis and those it seeks to be associated with lies, (as Dell Hymes (1972) suggests) at the intersection of linguistics and anthropology, sociology and hermeneutics, folklore and political science, speech and social psychology and, like Kurdistan, remains a terra incognita divided among competing states!

Studies which analyse and present language in a way appropriate to the research question of this thesis are reviewed.

An appropriate literature base includes those works which seek to address and respond to productive and ever richer ways of describing how language works to particular effect in nominated situations and circumstances.

I start by acknowledging and commenting upon studies which establish linguistic inquiry as an appropriate activity (2.3.1); one which requires the researcher to delineate a field of inquiry and to nominate a perspective from which the research is both carried out and interpreted. This is the general activity of establishing a focus. I then (2.3.2) review studies which suggest a variety of pools of data which may be appropriate to consider in informing the research question of this thesis. Following this I present a selection (2.3.3) of linguistic indicators which others have used as a basis for their analysis of a range of data pools.

2.3.1 Establishing a focus

Given that the territory of linguistic inquiry can be mapped and interpreted in many different ways, the only truly useful way of understanding the territory is to chart with the tools available and, as in all good navigational practice, to take readings from a number of angles. The perspective which is called upon, one which admits and
acknowledges the complex intersection of angles involved, is a sociolinguistic perspective. I have decided to adopt a sociolinguistic perspective because it clearly uses linguistic insight to inform social practice and vice versa.. The nature of the research question is such that it also clearly seeks to respond to a problematic situation in terms of its social and linguistic dimensions.

2.3.1.1 Establishing a sociolinguistic perspective

A sociolinguistic perspective provides us with that information which 'a foreigner must learn about a group's behaviour in order to participate appropriately and effectively in its activities' (Hymes, 1972: 101).

The depth of that perspective is only as extensive as the angles, instruments and descriptors used to investigate and define it. Jonathan Webster gives us the simple proposition that:

Any observable tendency to use a particular word or phrase or to define it in a particular way suggests some manner of common experience, some shared trait.

(Webster, 1988: 67)

Given that the:

... meaning of something does not reside in any outside, objective or independent reality; rather meanings are created out of our communicative practises ... any account or explanation cannot be taken as a discovery in the 'real world', but as the creation of a story to make sense of our world.

(Penman, 1990: 1)

The making of a credible and useful story rests not so much on the validation of a single reading or calculation but the accumulation of disparate data which when reviewed alongside each other 'make sense'. This suggests not only an outcome, a sensible story, but a way of going about laying the foundations for such.

All discourse analysis is concerned with making sense of a fundamental human phenomenon-communication. At the heart of this analysis is the assignment of meaning to communicative practices.

(Penman, 1990: 1)

This statement supports the idea that the focus of study generally drives the method and strategies used to uncover both the display of that communication and the subsequent assignation of meanings. The tools of examination already contain within them certain meanings and exclude certain others. When a study is concerned most specifically
with language, and talking about language, the levels and details of embedded meaning become our concern.

2.3.1.2 Committing the researcher

The position of the researcher as both driving force and filter must be recognised. Questions of morality, for instance, have been neglected in much past research not only because of the paradigmatically driven belief in scientific neutrality but also necessity to maintain distance from the object of study. Within that conventional framework, the researcher and writer was expected to act as a dispassionate chronicler and analyst of observed events; not as a proponent of, or commentator on, a moral position. Within a framework of language study which admits the social and thus ideological nature, all communicative practices are taken to have a moral dimension and researchers have the moral task of exploring it. The nature of such communicative morality is that communicative acts have consequences and this requires communicators to take responsibility for such. Penman suggests a conceptual framework in which 'goals' and 'games', which can be seen to be operating through discourse, provide the basis for inferring a moral order. (Penman, 1990)

If for no other reason the aspect of morality is established by the general fact that in all communicative situations where one party is 'in control' then that party has options as to how the discourse will proceed. The constant linguistic fact which flows from this is that when someone says 'something' they are not saying 'something else'. If we can imagine that something else is utterable then we have to acknowledge that a choice has been made.

Analysing the language of cross examination clarifies and establishes that it is different from other speech activity. It establishes also that other ways of speaking in court can be imagined. This sense of alternative is the basis of a moral commitment to both the focus and the process of the research. The mode of inquiry is as significant as the items of inquiry in determining the morality of research processes. Qualitative research presents itself as being able and willing to accommodate such concerns into the process of research. What matters most is answering the questions to which we need answers.

2.3.1.3 Responding to site and data

What constitutes 'language analysis' is necessarily part of the choice of site and data, the definition of the problem and questions addressed, the
extent of context, and the method of reporting. All phases and aspects are reflective one of the other, are recursive in their progress and are responsible for the constant growth of our appreciation.

All these aspects taken together become an ethnography of communication and in order to increase our understanding we need to know more about all aspects of the genre, particularly the often unconscious bodies of social conventions which guide and constrain the possibilities of communicative action.

Analysing language thus becomes a challenge to widen as far as possible the parameters of our investigation in order to allow for the emergence of 'patterns which connect'. In order to develop an appreciation of patterned linguistic behaviour it may be useful to explore it in two dimensions. The following dimensions are suggested by Webster (1972).

i Lexico semantic dimension. This consists of lexical units which contribute to the thematic construct of discourse. This is usually recognised as:

... jargon, special vocabulary. They need not be uncommon words but might, as is most often the case, be lexically common but semantically special. They mean something special in that context. Two speakers may speak closely related and on the surface mutually intelligible varieties of the same language, but they may nevertheless misunderstand each other because of differences in usage rules resulting from differences in background.

(Gumperz, 1970:138 in Webster, 1972)

ii The stylistic dimension. This consists of those features of language which are restricted to or highly identifiable in a certain kind of social context, as in a feature when:

... it is restricted in its occurrence to a limited number of social contexts, we shall call a stylistically significant or stylistically distinctive feature. Crystal and Davy's definition of style is so broad as to make the term nearly synonymous with ... register. Halliday et al. define register as a variety of language 'distinguished according to use'.

(Webster, 1972: 49)

This dimension is discernible through both surface and prosodic features such as repetition, pitch, loudness and pause (Crystal and Davy, 1969).

Taken together analysis and combinations in both these dimensions may provide a complete description but cannot be as critically significant as a description which takes into account belief systems and ways of
knowing. The tools and the resulting descriptions suggested above allow only for the identification of specialised varieties of language through the observation of variation from others. Valuable and necessary as this is in making initial distinctions, it fails to critically analyse the activity. An example of a complete but uncritical analysis is to be found in Ghadessy's treatment of business letter analysis.

### 2.3.1.4 Form and function

Ghadessy used a schematic analysis of form and function in order to arrive at an appreciation of the commonalities of business letters. (Ghadessy, 1988)

Alongside the (almost physical) recognition of form was set the appraisal of functions which, when existing together, suggest some kind of ideal or complete specimen of the type. Functions referred to the possible processes of greeting, inquiry, bargaining, offering and the like. The possible outcome of this analysis was a series of proposals for discourse patterns for business letters which could be translated into computer programs. The programs might prompt the writer to give attention to or review both the details of form and function in order to produce not only 'the ideal' type but also varieties and combinations of letter types. Again, this analysis clearly recognised the need to create analytical insights from the interaction between surface features of language and the differential effects they have on 'listeners'.

Nevertheless the challenge remains to understand the:

> ... precarious dependence of all we know upon linguistic tools which themselves are largely unknown or unnoticed

(Whorf in Fishman, 1966; 505)

In referring to 'linguistic tools' Whorf is talking of the language in use. The dependence is 'precarious' insofar as often we cannot imagine ways of carrying out our communications, other than the ways we currently use.

Through studying discourse which was initiated and sustained through questioning, Mishler (1975) sought to bring together individual aspects of expression with a macro appreciation of the structure of the dialogue plus the contextual understanding of differential status between the speakers.

Mishler analysed the 'chain and arching functions' of a discourse where power and authority are maintained by the adult speaker. The technique
consisted of drawing diagrammatic links between questions, subsequent
questions and the maintenance of the status of questioner.

In doing this Mishler consciously addressed the connected issues of data,
analysis, problem focus and methodology. He indicated that the various
ways in which a conversation may be extended or sustained through the
use of questions

... provided the basis for a typology of discourse. We propose that
the different subtypes of question-sustained discourse reflect role
relationships between speakers, particularly along a dimension of
authority and power ... the ways in which social relationships are
'realised' in the structure of language is the central topic of the larger
study from which these data are drawn; our approach to the analysis
and interpretation of findings is guided by our concern with the
general problem.

(Mishler, 1974: 100)

In an effort to step beyond the analysis of words and strings of words
Mishler suggested the usefulness of connections between non-adjacent
strings of words and developed the concepts of arching and chaining.
What is importance is that this approach:

allows us to formulate discourse in terms of dialogue; that these
connected units of dialogue constitute discourse. There are three
primary ways in which questions may serve to connect dialogue
units and thus produce a type of discourse that is both question-
initiated and question-sustained. These are referred to as Chaining,
where the confirmation utterance contains a question; Arching,
where the response utterance contains a question; and Embedding,
where there are two responses to the initial question.

(Mishler, 1974:101)

Having settled upon these criteria to form the basis of description
Mishler speculated whether the length of the discourse is related to the
types of connections used and whether there might be systematic
relationships between types of connection and the age and sex of
interlocutress. The significance of the study is the connections it sought
to make between the details of a discourse described at both a micro and
macro level and how these are realisations of social relationships and
social functions. He was interested in:

... the ways in which social reality is constructed through language.
We have assumed that questioning is one of the ways through which
one speaker attempts to exert control over another. For us, it is a
realisation of an expression of authority relationships. Through the
act of questioning, one speaker defines the way in which the other is
to continue with the conversation and thus defines their relationship
to each other along a dimension of power and authority.

(Mishler, 1974:103)
When we look to the range of functions which a 'question' can fulfil this is not surprising. Mishler calls upon the Webster's *New International Dictionary* which contributes synonyms for 'question' as *challenge, demand, dispute, call into question, examine, charge, accuse and doubt*. The questioner using these functions is calling the tune. The term *ask* is often considered to be a synonym for question, however the synonyms for it are given as *need, entreat, beseech, petition, and implore*, a much lower status in terms of control. When the functions associated with 'questioning' are translated into the dynamic of the suggested chaining, we observe a complete and powerful control of one speaker over the other as the dialogue is controlled a cycle ahead. Questioning is revealed to be a 'mode of communication through which authority relationships are realised' (Mishler, 1974: 107).

Mishler contended that as a common method of creating extended discourse when talking to children adults use chaining extensively. Children when talking to each other, use the dynamic considerably less:

> In research on language, as in any other inquiry, we must begin somewhere. That is, we must take some features of the world as given for the purposes at hand ... we must ... choose particular problems for study, select particular ways to observe and collect samples of relevant speech, and define particular units and relationships for analysis ... our methods of collecting samples of talk, of segmenting the corpus into conversational episodes, of selecting question initiated exchanges, and of unitising and connecting units of dialogue and stretches of discourse - all of these procedures were intended to permit an analysis of language through which we could explore these intuitive and orienting assumptions. (Mishler, 1974: 119)

For the purposes of a rich, informed and relevant analysis there is a need to use a wide selection of appropriate data and analytic procedures. The studies referred to above help to establish focus and give some initial operational flesh to answering the research question and orientation of this thesis. However while some useful types of data and techniques of analysis have been identified, the appropriate data pools for this thesis lay both amongst and beyond data pools utilised in other studies.

### 2.3.2 Possible pools of data

#### 2.3.2.1 Constructing a record

The first issue of discourse analysis is to fix on a pool of discourse in a given form as the focus for analysis. The very construction of a record of a discourse in a particular form determines and pre-empts analysis and perception. The most obvious feature in any record is the naming
of the parties. To read of a conversation between 'General Schwarzkopf' and the 'terrorist' attributes clear personal identity and rank to one party and negative anonymity to the other. Naming in this way claims for one party legitimacy and for the other disregard. The way in which an interaction is recorded further constrains interpretation of the discourse.

A large pool of data was available to this research project in the form of transcripts from nearly every level of court. It is amongst these transcripts that the official identity of the child victim witness is to be found and it is within the social and verbal contexts, (of which the court transcripts are one record), that those children find themselves.

2.3.2.2 People and words in context: the practice of questioning

Studies, especially those which focus on questioning practice in educational settings, represent the range of orientations available to the language researcher. The decision to settle upon 'questions' as a useful focus for my other problematic concerns may be justified because of their obvious centrality. If someone stops 'asking the questions' then the social relationships change or disappear. It is this aspect of associating linguistic activity in one situation with more pervasive social relationships that distinguish between studies of 'language in use'.

Language studies differentiate themselves from each other by:

- recognising a larger or smaller range of contextual features for analysis, and

- associating language behaviour with other aspects of social experience.

Whilst participants use their understanding of the context to interpret what a particular utterance is doing at any one moment, (Beynon, 1987)

...it is evident that the question and answer pattern dominates (in schools); and that this is learnt early in pupils' school careers (Willes, 1983). Further it seems that teachers' questions are a confirmation of power relations, rights and obligations (Edwards, 1976).

French and N. Maclure (1979) explore how teachers orchestrate right answers by constantly providing indicators of what they define as valid; by controlling discourse in this manner teachers also control the transmission of knowledge and employ recognisable 'methodic practices' to 'make lessons happen'. Payne confirms that in most secondary classrooms teachers do nearly all the talking and ask nearly all the questions, the great majority of these being the closed factual variety. (Payne, 1976)  

(Beynon, 1987: 39)
It seems that deciding just what a question is, is itself problematic.

### 2.3.2.3 When is a question?

On the nature of questions, Beynon (1987) suggests that there is no clear cut way of recognising questions as such and indicators that a question is being asked, and an answer sought, is as much defined by situation and history as by grammatical construction and inflection. It should be further noted that teachers and other people concerned to establish and maintain authority rarely ask questions to which they don't already know the answers. He tells us that:

> ... the asking of known-answer questions is ... associated with situations where one partner assumes power and authority over another ... (and is) ... displayed most noticeably in the follow-up turn from the questioner, whose prior knowledge of the answer is then revealed.  

(Beynon, 1987: 40)

The analysis employed by Beynon is based on his own response to the meanings generated by conversations between pupil and teacher, informed also by a follow up interview with the participants.

Following his account of a 'verbal wrestling match' between teacher and pupil as the pupil resists the challenge to answer a 'stupid' question to which the teacher already knows the answer, Beynon observes that:

> ... a question is a product of the way features of total form interact with aspects of its situation ... Participants use their understanding of the context to interpret what a particular utterance is doing at any one moment. Questions are not only used to gather and display information but also to 'deride, complain, challenge, disrupt, assert stature and invoke institutional power'.  

(Beynon, 1987: p42)

In conclusion he calls for:

> ... increased interdisciplinarity in the study of (classroom) language, but for the collection of ethnographic data through both participant observation and interviewing, to complement the distanced, cold analysis of transcripts. Only then can the discourse function of (classroom) questions be adequately related to their wider negotiative and strategical roles and the interpretive work entailed in asking and answering them.  

(Beynon, 1987: 42)

### 2.3.2.4 What does a question do?
I suggest that the significance of questions in court is not so much how 'questioning' they are but rather how constraining of a particular response they are. Barnes and Todd (1975) in *Some problems in the analysis of questions* make the following observations about some of the difficulties in identifying a question as such. They state:

> The question statement/distinction is essentially a false one, and one that is rooted in a specific method of analysis, namely the consideration of single utterances only. Our examination of situated continuous discourse leads us to believe that question and non-question forms alike may be used to make identical claims about speech roles, that is to offer 'interaction frames'. The way the strength of these claims varies from utterance to utterance tells us far more about the construction of meaning in conversations than does an analysis in terms of form alone.

*(Barnes and Todd, 1975: 12)*

### 2.3.2.5 Ideology as context

Gunther Kress (1985) in *Discourses, texts, readers and the pro-nuclear arguments* suggests that:

> ... the listener/reader, speaker/writer (should be) seen not as an isolated individual, but as a social being located in a network of social relations, in specific places in a social structure. What we are looking to identify are a series of sociolinguistic strategies which together create a particular discourse. This inquiry proceeds upon the established premise that texts are everywhere and inescapably ideologically structured, and that the ideological structuring of both language and text can be related readily enough to the social structures and processes of the origins of particular texts ...

*(Kress, 1985: 67)*

Kress's approach to the analysis of public discourse is to critically review the text whilst reflecting upon the larger social and political intentions of the creators of those texts. In this work there is a real interest in understanding social and psychological process, within the frameworks of linguistic theory.

> A discourse provides a set of possible statements about a given area and organises and gives structure to the manner in which a particular topic, object, process is to be talked about, in that it provides descriptions, rules, permissions and prohibitions of social and individual actions.

*(Kress, 1985: 68)*

> Discourses strive towards total and encompassing accounts in which contradictions are resolved or at least suppressed of problematic areas are resolved in this way and the social is made natural when everything is not 'obviously natural' and 'naturally obvious'.

*(Kress,1985: 73)*
Because the nature of the adversarial court system is to express outcomes in terms of right/wrong and win/lose it is possible to apply the above insight. The process is about a struggle between 'total and encompassing accounts'. In my search for appropriate ways of analysing language in order to inform the research question of this thesis, it may useful to heed Kress's advice that:

A theory of language based on (discourses) explains two fundamental factors at one and the same time; the social determination of an individual's knowledge of language on the one hand and individual difference and differing position vis-a-vis the linguistic system on the other hand ... in a discourse oriented theory of language both (social determination of linguistic practice and individual difference in linguistic practice) find a plausible and motivated account.

(Kress, 1985: 74).

It is also a working premise of other researchers that linguistic structure is a most significant mechanism through which to create different realities.

In the tradition of ethnomethodology some researchers (Garfinkel, 1974; Hymes, 1975; Demarest and others, 1975) have explicated the relationship between discourse understanding and social reality and the coercion towards particular meanings as they explored the nature and effect of Christian Science oral testimonies. Because this analysis actively seeks to relate the experiences of individuals to the general process of truth seeking, it suggests some useful concepts for analysing the treatment of child victim witnesses under cross examination. The roles in both situations are heavily circumscribed (victim-witness and liar-sinner), and both are ritualised public 'examinations'.

A process common to both the Christian Science testimony and the cross examination situation may prevail. Both are intended to create a 'text' in such a way as to enforce a particular insight. Such insights are often created by commonly held beliefs which do not require conscious articulation. Because of their powerful presence as framers and creators of meaning however it is imperative that such cultural meanings be recognised as data when attempting to describe and analyse language in use.

Using the Christian Science testimony example further it is possible to see that the words, patterns and sequences can be shown to constitute a carefully managed dialectic between what is told, and what is understood and not told. What is not told draws upon the background knowledge which can remain untold but remains powerfully present (Demarest, 1975).
Demarest suggests there are two distinct kinds of such knowledge.

- The cultural knowledge and conventional wisdoms held by the listeners. In the court situation being studied here this would include press, gallery, judge, and jury. In the Christian Science situation this would include all present.

- The experiential knowledge of the 'witnesses' being addressed. In both the Christian Science situation and the court the 'witnesses' are the focus of attention as they are persuaded to accept new creations of the truth.

The basis of the analysis in the Demarest paper consisted of identifying distinctive features which arose out of the creation of a distinctive language variety, restricting usage of certain forms to the (Christian Science) context or by assigning specialised meanings to everyday forms when used in (that) context (Demarest, 1975).

Demarest observed that this process is shared by many religious and professional groups. He observed further that the 'advantage' of this accomplishment is the maintenance of group solidarity through the public sharing of (specialised) common understandings and associations which members can readily and easily bring to bear (Demarest, 1975).

The process of truth construction can be viewed as a process which, through a series of patterned interactions, creates themes which can be 'played' at will.

In the Christian Science testimonies under examination, patterns of meaning focussed specifically upon:

- the concepts of (personal) error and (transcendent) truth. These are related through a number of propositions and agencies.

- 'truth' and its reference.

The underlying pattern is derived from its individual documentary evidences but in turn the individual documentary evidences are interpreted on the basis of 'what is known' about the underlying pattern. Harold Garfinkel's (1967) description of this process as 'the work of fact production':

... throws light on the testimonial account. In addition it indicates that reality construction processes (in Christian Science) share basic features with reality construction processes in everyday life.

(Demarest, 1975: 23)
The outcome of the analysis is a seven step 'map' for the giving of testimonies and an explanation of each of the seven section headings suggested. However it is the analytical perspective which shows us the relationship created by the more powerful speaker. Individual and personal inadequacy juxtaposed beside superior notions of generalised truth are implicit within the relationship. These analytic insights are created by reviewing whole texts and the social, psychological and cultural contexts in which they are placed.

It is this development of cultural imperatives which steers us to a consideration of language interactions which are patterned and themed, and thus predictable and constraining of the roles of interlocutors; as constituting a 'discourse'.

2.3.2.6 Discourse for analysis

'Discourse' is used by Halliday to delineate a given text or script which is so featured in a particular way, and which functions in a particular way and to such a degree, that its application is observable in a given setting. The discourse arises from a register which in turn is a function of the general proceedings. In this thesis my interest is in the site of activity called 'court proceedings' or 'cross examination' within which a particular 'discourse' may be discerned. By concentrating on this site the study may be able to reflect the insight that:

Types of linguistic situation differ from one another, broadly speaking, in three respects; first as regards to what is actually taking place; secondly, as regards what part the language is playing; and thirdly, as regards who is taking part. These three variables, taken together determine the range within which meanings are selected and the forms which are used for their expression in other words they determine the register.

(Halliday, 1978: 31)

In the context of that observation I reiterate that the primary linguistic focus of the research question of this thesis is to investigate the purposive role of the language as part of what we are doing (Ghadessy, 1988).

2.3.3 Choosing appropriate linguistic indicators

The outcome and rationale of an analysis of discourse is its differentiation from other uses of language; of other discourses. A particular discourse may be shown to vary from another by virtue of its variation in syntactic structures, lexical items, patterned progression, development of themes, or the role of key elements. Indeed much
recent work on the relationship between language and ideology has concentrated on the employment of particular syntactic patterns with marked but not always easily discernible designs on the reader (Carter in Ghadessy, 1988).

Carter points out the differential use of the 'factive verb' in the example, 'the Prime Minister explained that the budget measures were unnecessary' v. 'The leader of the opposition claimed that the budget measures were unnecessary'.

He observes that:

The truth flows more easily from the verb 'explained' in that it is non-contentious whereas the verb 'claim' creates elements of doubt as it is a position attributable to only one person.

(Carter, 1988: 8)

This analysis of the role played by the verb is only one option amongst many available to the observer of language in use. Carter (1988) suggests the following indicators; first, that agents and processes can be lexicalised to distort or direct emphasis away from real world events and towards expression of a particular ideology. In the situation of court where the attribution of blame is of the essence, this linguistic indicator may be significant. In this context, Carter also refers to 'nominalisation' which is used to simplify and objectify, and thus sometimes mask causal relations.

Another suggestion is that 'lexical choice' is a key determiner of meanings, although he acknowledges that this is hard to pin down from an analytical point of view because words change their meanings and emphasis with a slight shift in time situation, or history. Carter suggests that because of the 'slipperiness' attached to attributing set meanings to lexical items, it is appropriate to develop a descriptive scheme:

... for the recognition of core vocabulary as a step towards fuller examination of lexical structure and the role of lexical items in a discourse ... allow[ing] us to discuss vocabulary in a more principled way, and provide a basis for examining 'bias' in the lexis ... and, in a more general way, provide a basis for exploring the relationship between lexis and ideology.

(Carter, 1988: 8)

If an objective or dispassionate 'truth' is being searched for (in court proceedings) then one might expect, as suggested by Carter, a prevalence of 'core terms', that is, a vocabulary which is as accessible as possible to the discussants. As an extension of this idea, he suggests that a 'lack of coreness' would naturally reduce the participation of one of the partners in the conversation. He summarises:
Linguistic devices at several levels interpenetrate to produce some especially dense and subtle effects ... the deletion of any agent or witness ... serves to impart evidence which cannot be authenticated.

(Carter, 1988: 12)

The significance for this thesis is the suggestion that core lexis be regarded as a feature of text generation. The general proposition is that general coreness will be inclusive of participants and possible interpretations and that as the vocabulary becomes less core, the text becomes more interpretive and excluding of a range of possible meanings. This concept of 'shared vocabulary' between speakers is a possible lens for viewing the language relationships between child victim witnesses and cross examiners.

2.3.3.1 Context of situation

Ghadessy (1988) suggests that for the acculturated reader the relationship between text and context is two-fold. If we have access to the context, we can predict the essentials of the text; if we have access to the text, then we can infer the context from it. He draws on the observation that 'we proceed from that which is present to that which is not present but stands in some relation to the former' (Hasan, 1981: 111.).

If the research question is to relate linguistic reality to the reality of the experience of the child victim witness, the 'context of situation' must be acknowledged. A way of establishing contextual connections is available through the identification of 'collocational patterns'.

2.3.3.2 Collocational patterns

Collocational patterns are those patterns of meaning that are created when one word goes with or is invariably used with another. The meaning generated is a function of their particular combination and semantic chemistry. A collocation is the regular co-occurrence of two or more words or word forms, within a given text (Sinclair, 1985 in Ghadessy, 1988).

It may be that being a victim is so tied to other experiences that the linguistic characteristic of collocational patterning can be used to great effect.

A technique for establishing collocation is to designate a key word and examine it in the context of the five words either side of its occurrence. The text may then be seen to vary from other texts according to the type
and distribution of its collocational patterns. Where these patterns are pervasive and denote a variation from other texts, there exists the possibility of asserting that they be regarded as registers in their own right. This variation in register may occur both between discourse as well as within a particular discourse.

2.3.3.3 Being the object of attention

Another linguistic indicator which distinguishes between actors in a given dialogue is that of subject and object. Transitive and intransitive verbs define grammatical subject or object. Where the subject stands, in real life and grammatically, in relation to the action, alleged or otherwise is axiomatic to the whole proceedings. A struggle over this relationship, in the context of the word battle that is court, can be viewed as a battle over grammar.

2.3.3.4 Learning from advertising

Other language behaviours which present themselves as devices for establishing and keeping control, and also as possible units of analysis in this thesis, are available from studies of advertising.

• Repetition

Sheer repetition of a proposition has been noted as a feature of much advertising, the underlying aim of which is to firstly create a meaning (even from sometimes totally fictitious and erroneous premises) and then to convince the hearer to adopt that meaning (Leech, 1966).

Most advertisements reveal copious repetition of the product name and certain emphasised attributes. (Toolan in Ghadessy, 1988). This results in narrowing the attention of the consumer.

• Syntactic chunking and modal verbs

Syntactic chunking is a technique used in advertising where one small proposition is expressed in close proximity to another with the result that the reader creates a cohesive meaning. This occurs because it is in the interests of humans generally to create for themselves whole, sensible stories about themselves and others. This sense can be created even if it has no foundation in truth. The acceptability is to be found not so much in the verifiability of their details but in the completeness of the presentation. Music and rhythm are often used in advertising to support this sense of completeness. Leech notes that the commonest
modal verb in advertisements is 'can' but in other arenas other modal verbs may be employed. A verb becomes the central message having been used in such a way as to set up a dominating and seductive musical rhythm (Leech in Ghadessy, 1988).

- Closure

A sense of incompleteness in any message induces a hearer to create their own meaning. On the one hand this has the effect of constructing a desired message whilst on the other creating in the hearer a sense of involvement. Having gone through the process of completing the message they then have part ownership of such, and consequently defend and promote that message themselves.

- Common adjectives and verbs

By using a common pool of adjectives and verbs the creator of advertising and other messages constrains the hearer to not think in terms of other processes and descriptors.

- Twisting words

Over time lexical items change so that a word can be used which means something slightly different in the context now, but is close enough to the 'dictionary meaning' to allow the speaker to utter it either without challenge, or if challenged to appeal to the authority of the dictionary. In language the constant dynamic which operates between usage and reference creates an ambivalence which is at once interesting, lively and evolutionary as well as fertile ground for exploitation.

The aim and power of advertising is to trigger a series of underlying tendencies and to react positively to one product or range of products in particular. There are a number of characteristics of the message (constructed by the advertiser), as noted above, which serve to focus these tendencies and needs.

It is feasible to suggest that judge and jury in the courtroom might be similarly subjected to the 'advertising techniques' of the cross examiner as are the victim witnesses who, as a result of good selling, will come to believe in their own lack of credibility, as the other hearers do. The techniques specified above suggest themselves as of possible use in capturing the linguistic dynamics of cross examination. However whilst these micro aspects of language offer the possibility for a restricted insight of 'language in use' the development of a macro level appreciation will modify or enrich that insight and contribute to an understanding of the culture to which the particular language style
belongs. Such macro-level structures might include themes, arguments and the way in which they are treated.

2.3.3.5 Understanding culture

Diane Houghton's analysis of creationist writings (Houghton, 1988) and the source of their power of both conviction and credibility, provides such an appreciation as she seeks to account for activity, participants, and the nature of participation. In seeking to know more about all aspects of the creationist genre she points to the often unconscious bodies of social conventions which guide and constrain the possibilities of communicative action (Houghton in Ghadessy, 1988).

The lenses through which she views the texts, although not referred to specifically as such by her, are impressions created upon her as a user of language. She uses her intuitions and insights to make judgments as a mature and experienced language user and examples of her analysis read in a conversational and personal way.

Houghton's concern is with the meanings embodied in the language, which are not equally accessible to all parties. In order to address this concern she attempts to explicate a range of language devices and their effects which contribute to this lack of equity.

Something that is clear to one party but not clear to another, or something which is used to great advantage by one but diminished advantage by another, is problematic in language. Language devices are not always consciously understood by the one who is advantaged, but the advantage itself is most certainly apprehended.

Houghton lists a number of aspects of the language used in creationist writings and speeches, all of which go beyond linguistic insights associated with words and phrases.

- Word meanings and allusions are clouded when the majority (of terms) involve use of the names to describe the theory rather than its supporters.

- Theme or topic are discerned not from the thesis being proposed but from the underlying propositions that permeate the text.

She suggests that by appealing to these macro characteristics of the text, we are able to discern principles of the generation, delivery, and reaction to that text. A traditional sentence level or even paragraph
level analysis is unlikely to reveal the most interesting and important aspects of these texts.

A variety of features are displayed by the written passages she analyses, but she suggests that in order to make them visible, our analysis must be of the context of culture. Some of these features are 'nominal group', 'syntactic density', and 'modal verbs' which set a particular tone of credibility or lack thereof, 'authorial involvement' (present or not), and 'implied dialogue'. What combine the different writings into a single identifiable genre are not only the surface features of the text but the ways of knowing they imply, suggest and enforce. She suggests that:

... cultural factors can have a legitimate place within a model of language in use, and that there does already exist a category within which these (creationist) texts can be placed. The category to be chosen is the category of 'genre'.

(Houghton, 1988: 75)

Having flagged the intricate sociolinguistic enterprise of systemic linguistics, which is articulated by using the tools and framework of functional grammar she summarises as follows:

Michael Halliday's systemic approach to register [it] seems ... is part of the 'context of situation' in which a variety of language belongs. There are three components of register - field, tenor and mode. Field includes setting or scene, topic and action; tenor is made up of participants, their purpose and role relations; and mode includes the channel used for the communication, and its form. As we work downwards, from context of situation, to the semantic system, the three components of register are matched by equivalent semantic components, namely:

context of situation; field tenor mode
semantic system; ideational interpersonal textual

(Houghton, 1988: 76)

The fineness of the analysis is achieved by working further downwards towards greater specificity. However:

... there is always the danger that two pieces (of writing) may illustrate similar organisational patterns, using Halliday's analysis, but it could be clear from other observable features that the texts are from very different 'registers'.

(Houghton, 1988: 76)

She asserts that what is actually wanted is an analytical tool that works upwards from context of situation, rather than downwards.

She reports Martin's suggestions that purpose, at present an aspect of tenor, should be regarded in a more umbrella fashion to become context of culture. Thus, in attempting to establish the existence of a genre the
analyst would take into account context of culture (described in terms of genre); context of situation (described in terms of register consisting of field, tenor and mode); and semantic system (described in terms of linguistic realisations). Together these indicators and features describe language.

The forms of text are likely to vary considerably at the micro-level. However at the macro-level of themes and arguments and their treatment, there are certain structural similarities to be discerned. Just as texts which make use of the bible as the only source of data so the single examination and use of a child's (child-victim-witness) answer to questions of memory could be used to enforce the general proposition that it is poor. Creationist texts are against evolution rather than for creation. They are dedicated to establishing a single position to the exclusion of another. The argument is mounted from the point of creating doubt in one side in order to strengthen the other.

The ultimate tension in this cultural and macro appreciation of the nature and use of language is that the culture of abuse which is the basis of the conflict in court exists. But it is the one proposition which cannot be admitted out loud in court. In order to fully understand the 'texts' created in court we need to place them in the culture to which they belong.

Clearly the advice is that when one is truly interested to understand the nature and dynamics of language use, and when one has come to realise that the culture within which that language is uttered is pivotal to both its apprehension and its meaning, then in any analysis of language one has to accommodate as much of that 'culture' as is possible. What we choose to take note of is necessarily selective.

This section (2.3) on 'analysing language' has ranged across a variety of alternative and useful ways in which language can be analysed given the focus question of this thesis. All suggest aspects of concern and possible terms within which to carry out analysis.

On reflection of the chapter as a whole I am confronted with a challenge. As language analyst, I am obliged not only to find descriptors and characteristics which differentiate one discourse from another, but to place this study within other courtroom studies and to also relate the study to concepts of pervasive ideology and culture. This chapter has sought to review works which, when taken together, examine not only 'engine parts' but the 'driving force' of language in use.
CHAPTER THREE
METHOD

The purpose of this chapter is to describe, explain and justify the choice of research method. By 'method' I mean the processes of data collection, analysis, and interpretation which were generated in response to the research problem. In answering the focus question, the desired outcome of the method was to create an informed narrative, a detailed and cohesive account that was convincing to the variety of central stakeholders. That account also aspired to 'present the case' for the child victim witness under cross examination.

The research design of this study was based on several methodological considerations and operational constraints. As the aim of the study was to uncover and explain a strongly perceived but not clearly appraised phenomenon, (the experience of the child victim witness under cross examination), the tools of data collection and analysis were unknown at the beginning. The design was therefore emergent with a view that exploratory and investigative procedures would reflect emerging questions and would respond to these in order to refine both the concerns and the answers.

This is not to suggest that the study took place in a theory vacuum. On the contrary - it was constantly reviewed and informed, not only by emerging data and results, but by a range of theories including schema theory, speech act theory, critical linguistics and pragmatics as indicated in the previous chapter.

The search for an appropriate method proceeded by first considering the nature of the phenomenon under question, the context in which the focus question was situated, and the stance of the researcher (3.1). The next section focuses on recognising what constituted data (3.2) followed by a description of the various methods used to collect data (3.3). A suitable paradigm was considered and a theoretical statement concerning sociolinguistics included (3.4). Issues of validity, useability, reliability and narrative style form the basis of the next section (3.5), and the usefulness of ethnography as a suitable research method is discussed (3.6). The chapter concludes (3.7) with a statement on the choice of appropriate method.
3.1 ISSUES, CONTEXT AND METHOD

The focus question of this thesis 'How is language used to deny the experience of another human being and how is this signalled linguistically'? was grounded in the experiences of child victim witnesses as they were cross examined. The whole issue of their experience became problematic when a great deal of distress was observed by workers in the field. Even at that level of generalised concern it was suspected that the occurrence of distress was common and constituted a patterned social phenomenon. Subsequent evidence from the courtroom, transcripts, and surveys did nothing to reduce that suspicion. In order to arrive at a method appropriate to pursue the research question it was necessary for me to:

• look at the options regarding research methods available to me (3.1.1)

• delineate the context within which the research question was being asked (3.1.2)

• take into account my own stance as a researcher (3.1.3)

The results of these reflections and considerations determined the choice of a paradigm of research activity and the subsequent choice of method appropriate for the pursuit of the study.

3.1.1 Research method options

In seeking to clarify and examine the phenomenon of the child victim witness under cross examination I sought a way to talk about and investigate personal and social experience and change. I was influenced in this search by Bateson's conceptualisation of cybernetics which:

... has become an increasingly influential way of understanding and describing human events, and has been claimed to be the appropriate epistemological foundation and language for talking about personal and social change.

(Bateson, 1972 in Kaye and Winefield, 1988: 131)

A basic aim was to generate insights by drawing data and evidence from a variety of sources which were grounded in the experiences of a variety of informants. One problematic and challenging aspect of the phenomenon being studied, the experience of the child victim witness, was that it was interpreted and viewed by the central stakeholders in non-comparable ways.
I needed to find a method which would allow me to make connections and create narratives capable of being informed by a number of sources. The resulting accounts should 'make sense' in a variety of settings. Like other settings in which question asking is a major feature of the discourse (as in educational settings), it was obvious that language played a dominating role in shaping the setting.

I needed data and ways of analysing that data which would examine and clarify meanings displayed and perpetuated through language; thus I was looking for an approach which recognised that:

> The complexities of child sexual abuse inadvertently invite analyses and responses that seek to simplify the problem and reduce it to manageable components. Thus professionals, agencies and the community itself may be seduced into a reductionist and linear mode of thought about child sexual abuse. In this context, solutions which will make a difference become more and more difficult to generate.

(Kaye, 1988: 134)

This meant that the method needed to be oriented towards establishing patterns and connections rather than the seductive option of isolating a predetermined number of factors.

The method of research chosen could either open or close options. No method could claim to be neutral. Because this thesis was based upon a perception of the personal experience of child victim witnesses and their subsequent public treatment by cross examiners and the court system, a method of research was needed which acknowledged these personal, public, legal and linguistic dimensions, and which also allowed others to scrutinise the process. The method also had to acknowledge the complexity of the inter-relationships between information and methodology.

Given these research needs I concluded that I needed a research method that would:

- examine and clarify the phenomenon from the perspective of the experience of the child;

- convince a wide variety of otherwise non-resolute stakeholders.

One paradigm of inquiry which seemed to fit these parameters was the naturalistic paradigm described by Guba and Lincoln, a paradigm in which:

> Phenomena do not converge into a single form, a single truth, but diverge into many forms, multiple 'truths'. Moreover, the layers cannot be described or understood in terms of separate independent
and dependent variables; rather, they are intricately interrelated to form a pattern of 'truth'. It is these patterns which must be searched out, less for the sake of prediction and control than for the sake of verstehen or understanding.

(Guba and Lincoln, 1982: 57)

In order for the research activity to proceed, it was necessary to give some kind of substance to the phenomena under investigation. I saw that this could be achieved by encapsulating the experiences and qualities of the phenomena in language. Without such encapsulation the phenomena would remain disembodied and unanalysable. The choice of language itself as the medium for analysis responded to a range of research needs, pressures and advantages. Atkinson and Drew state that:

[while] a systematic approach to the study of language use is a sensible and even essential starting point for the analysis of data consisting largely of extended verbal exchanges, it is perhaps less widely appreciated that, even in social science disciplines other than sociology, empirical research into language use is still a relatively recent development. The issue of ordinary language philosophy, however, coupled with technological innovations in audio and video recording, has stimulated an increasing interest in such research. Psychology has seen the growth of psycho-linguistics as an expanding field, in linguistics there has been some movement away from the traditionally predominant concern with grammar and syntax toward pragmatics and speech act theory, while in anthropology there has been an emergence of the ethnography of communication and componential analysis. Viewed in these terms, then, the development of ethnomethodology and conversational analysis by sociologists can be seen as a trend which is consistent with similar changes in emphasis taking place elsewhere. And insofar as this multi-disciplinary convergence is a recent phenomenon the products of which are only just becoming available, it is hardly surprising that the organisation of verbal exchanges in courts has yet to be subjected to much in the way of detailed scrutiny.

(Atkinson and Drew, 1979: 5)

For this study a scrutiny of the written records of interaction could be juxtaposed beside simple observation. To sit in court and simply absorb the rhythms, sounds, actions and manners of the proceedings was an engaging and eventually interpretative activity. Being there in both a focussed and unfocussed way generated questions and confusions which later become the stuff of data and analysis. To predict the worth and force of observation was not possible; it was simply an act of faith which suggested that experiencing, however vicariously, is eventually informative. It reflected the idea that:

The best way to learn how the courts work is to go and watch them. The rules which govern the process of law enforcement only become comprehensible when they are seen in action; in the abstract, they seem hopelessly obtrusive and confusingly muddled.

(Barnard, 1974: 1 in Atkinson and Drew, 1979: 9)
3.1.2 Context of the research question.

The mere issue of contrast between the language which takes place in court and the language of other speech contexts was not enough to justify the concern of this study. However there was a further concern that language in the specific instance of cross examination was being used in an 'exclusionary' way. Most rules of evidence are exclusionary:

... which means that they seek to prohibit the use in court of various conversational practices which may, in most everyday settings, be perfectly adequate and acceptable methods for discovering and deciding matters of fact, blame, responsibility and so forth.

(Atkinson and Drew, 1979: 8)

It would appear that, in the pursuit of 'truth' in court, players are restricted in their means of expression.

For me to have assumed the primacy of words as so many lexical items strung together would have been a mistake. There are several contexts in which they exist, and understanding these contexts became a significant part of the investigation. I could not simply compare 'ordinary' speech (whatever that might be) with 'special' (court) speech. I needed to show how the 'special' becomes a discourse with its own features and effects. In this study the concept of 'context' needed to accommodate the largest and most extensive aspects of social fabric.

As a researcher I did not want to fall into the sort of trap described by Carlen (1976) in which 'the staging of magistrates' justice in itself infuses the proceedings with a surrealism which atrophies the defendant's ability to participate in them'.

Obviously there are likely to be as many versions of what goes on in court as there are observers. It is the focus of that observation and the sharing of the observer's perspectives which allows the reader to assess the veracity of the observer's conclusions. The challenge for me was to observe, scrutinise, and critique situations that to others were 'obviously natural and naturally obvious'.

Court appeared not only as a violation of 'normal' rules of interaction but as a special kind of normal situation itself; court normally disenfranchises vulnerable witnesses. The basis of concern about the effects of court was not just the difference that court presents since people cope with radical differences in their everyday lives. Rather the exclusionary practices which seem to go on in court create an environment which cannot be accounted for only in terms of contrast to other environments. Atkinson and Drew question how effective 'ordinary' everyday practices and language would be in reaching
unambiguous, final legal decisions if 'special' legal procedures were dispensed with. They claim that:

[if the main thrust of analysis] is to complain about the special legal procedures and to argue in favour of the greater appropriateness of 'ordinary' procedures, then ... the most desirable situation would presumably be one in which there were no recognisably 'special' procedures at all but only 'ordinary' ones; in which case the situation itself would presumably be no longer as recognisable as other than an 'ordinary' one. But, if it is the case that the existence of special legal procedures may be related to the noticeable inadequacies of ordinary everyday procedures as effective methods for arriving at decisions which are (for practical purposes) unambiguous, definite and final, then it is not at all clear how such decisions could be reached in a recognisably appropriate way following the elimination of the 'special' legal procedures.

(Atkinson and Drew, 1979: 17)

This 'defence' of the need to have a special court language rests on the premise that what happens in court happens in pursuit of 'legal procedure'. However a lot more goes on in court than the pure pursuit of legal procedure. The challenge for the methodology of this study was to identify, describe and analyse the phenomenon in other than the purely legal dimensions.

3.1.3 Stance of the researcher

The initial asking of the research question was born out of my concern for justice and the rights of child witnesses. Those rights are grounded in the general notion that everyone has a right to 'tell their own story' in their own way. Anne Walker (1981) refers to these rights as 'discourse rights'.

The perspective arising from rights has its own preferred way of engaging in data collection, data analysis and data presentation. The challenge for me was to create and present that perspective so that it was well grounded in evidence and did not fall into simple relativist rhetoric.

Transcripts of things said represent only one record of what goes on. There are other records; the way people stand, the way they respond, various histories that people bring with them to the court situation, the various stakes they have in that situation, whether they are there and attending under duress, whether they are there as part of their job or whether they are there in a voluntary capacity. The analyst could choose to observe any one of these ranges of behaviours. All observations are driven by theory whether personal or formal, but
theory nevertheless. Different ways of recording observations necessarily permit (or restrict) different types of presentation and interpretation.

Whether we use a series of category systems, or a narrative approach, or whether we depend for our observational data on video and audio recordings, the observer is the first level of mediation of available data. The tacit or formal theory held by an observer can orient them in deciding what kind of data to record and what kind of data to ignore.

The features of the research problem which existed in my mind can be summarised thus - there was a problem (the seemingly inequitable treatment of child victim witnesses in criminal court during cross examination) and one of the possible ways of investigating this was through the examination of special language features. This perspective arose because I believed human interaction to be a function of, and describable as, language in use. The rationale for this has its foundations in a plethora of linguistic, sociological, anthropological and philosophical premises.

However the fact that language could be seen as both a source and expression of power was not the only concept justifying this study. There was also a need to clarify the dynamics and characteristics of language activities which either accept or deny the experiences of one or other partners to a conversation. Effective human communication does not tolerate the perpetuation of any language activity which seeks to exclude others.

It follows that acceptance of a particular conceptualisation of language has implications for its subsequent analysis. I accepted that:

... the study of language which is linguistics, is for so many, in no way different to or separate from the study of semiotics, that is the study of the way that meanings are made in social systems.

(Threadgold, 1986: 15)

Just as Threadgold asserts that ideologies do not 'float about without any relationship to discursive or linguistic form', then neither do other forms of proposition or meaning. Rather:

... a theory of language and linguistic tradition which concerns itself with ideology will be much richer than narrow approaches to linguistics and the philosophies of language which concern themselves only with systems of fixed signs, fixed meanings, or language as communication or well formed sentences.

(Threadgold, 1986: 16)
In exploring the relationship between social meaning-making practices (semiotics), and language and ideology as suggested by Threadgold, I engaged in a search for connections between the socio-historical conditions of the actors as manifested in the language they use and the language with which they are confronted.

Trials are literally 'wars of words' in which one side must win and in the struggle to define, trials are clearly battles about language itself. Facts in law are not objectively determined entities, but constructions created by persons engaged in interaction and negotiation. The adversary system encourages the use of trial tactics to prevent the judge and jury from correctly evaluating the trustworthiness of witnesses and to shut out evidence damaging to (one side of) a case. In this war where words are the tools for the construction of 'facts', there is clearly a need to understand them.

In order to respond to aspects of the research question which included issues, phenomenon, context and stance, I needed to establish a data base using a variety of techniques. These included observation, participant observation, interview, and empirical testing. It was also necessary to accommodate the variety of views and perspectives represented by the experiences of child-victim witnesses, social workers, lawyers, judges, magistrates, teachers, counsellors, administrators, and academics in a variety of associated fields.

This data base needed to be both inclusive and holistic. The 'whole' at issue in this study was the experience of the child victim witness in court. The holistic appreciation needed to consider how individual parts related to the broader whole - how the courtroom experience is part of the broader experience of society; how the child's experience is continuous in and out of court; how the deployment of language in cross examination relates to other settings; how the status of victim is perpetuated; how the experience of being a witness is manifested. The challenge was to recognise just what constituted 'data'.

3.2 RECOGNISING DATA

3.2.1 Deciding on the data

The way in which a problem or phenomenon is investigated is driven by perceptions of that problem and the likely ways in which its resolution can be approached. Just as language and thought are inseparably related, an approach to a problem limits, expands, or redefines the statement of that problem. It is at the point of planning and choosing tools and techniques of investigation that the relationship
between what we believe and how we shape and respond to the world comes into play.

To believe in the connectedness of a range of phenomena and investigate them only by conducting reductionist experiments focusing on isolating 'X' factors, would lead to a schizophrenic knowledge. 'Wholeness' and 'particularity' themselves represent many of the basic aims of research and investigation and often suggest conflicting directions. The particular, the detail, the final clue is only of interest insofar as it contributes to, creates or suggests a clearer, more understandable, more accessible story or model. The *raison d'etre* for being interested in parts, in analysing, categorising, cataloguing, testing, is that they provide us with a way of describing wholes.

In this study the data generated was suggested by the scope and nature of the aims of the study. There needed to be a range of data of different qualities and from a variety of sources. Even at the outset, interviews, observations, empirical testing, background and historical information were implicated, as were appropriate forms of analysis that might follow.

Standards of veracity flow from the quality of data generated, their subsequent analysis, and the propositions and connections which are drawn. Their success must be measured in terms of how well the problems have been investigated and how well such investigation either confirms, reflects or counters other credible propositions. My fundamental aim in this study was to achieve 'connectedness' rather than 'objectivity'.

I was guided by Howe and Eisenhart (1990) who, in their consideration of standards for research, suggest the following guidelines:

- There should be a fit between the research questions and data collection and analysis techniques so that 'the data collection techniques employed (are) suitable for answering ... the research question entertained. (p 6)

Generally speaking, the method should follow the question rather than the method determining the question, although there will always be tension and movement between which drives which.

- Data collection and analysis techniques should be effectively applied and carried out. The characteristics of 'good' interviewing, appropriate sampling, relevant analysis and the like need to be adhered to.
• There should be a 'coherence' between background assumptions, states of knowledge and the existing research question. This applies to knowledge in the field generally but also encompasses the knowledge in the researcher's head which creates premises and assumptions. As Peshkin (1988) has argued:

Subjectivity is the basis for the researcher's distinctive contribution, which comes from joining personal interpretations with the data that have been collected and analysed. As with assumptions derived from the literature, subjectivities must be made explicit if they are to clarify, rather than obscure, research design and findings.

(Howe and Eisenhart, 1990: 7)

• The overall warrant of the research question, and the methods employed for resolving it, should be capable of viewing alternative explanations so that:

... [when] researchers explain the arguments by which some theories are rejected and by which disconfirming data are handled, their conclusions are more warranted than when they are not.

(Howe and Eisenhart, 1990: 7)

• The issue of value constraints, both external and internal, are dealt with by making explicit the values and contexts which inform the research and being willing to test such by making research both accessible to and testable by those affected by its production. This must involve fair dealing with the informants to the research on the one hand and reference to the 'communities' they represent on the other.

3.2.2 Disparate data

The general conclusion reached by those concerned with the relationship of language and ideology, social structures and internalised psychological dispositions is that any analysis of language in use has to include reference to a broad range of phenomena and criteria which can make sense of what we are observing. Not all data will prove to be equally useful; nor will all data coming from different sources be comparable one set with the other. Atkinson and Drew clarify this thus:

... a fundamental idea in the research methodology which has been heralded as providing the key to such areas of social life, namely ethnography or participant observation, is that data should be collected from many different parts of the organisation being studied with a view to arriving at some sort of balance between the diverse and often conflicting versions of reality claimed to be oriented to by the subjects involved.

(Atkinson and Drew, 1979: 2)
However my expectation was that each set of data would embellish, challenge, or reflect other sets, thus it was necessary to decide on a general process for proceeding with the investigation, and a way of gathering data.

3.3 COLLECTING DATA

The data gathering procedure consisted of the following activities:

• Listening to counsellors and social workers who had experience of attending committal and trial court proceedings with sexually abused children.

• Interviewing these people and a range of other professionals who had protective contact with such children - namely, two paediatricians, five counsellors, and two police officers. Interviews were subsequently held with personnel directly associated with court proceedings, and involved one judge, one magistrate, two lawyers, and two public prosecutors. The interviews were open-ended but focussed specifically on the collection of perspectives and perceptions.

• Reviewing and analysing interviews.

• Collecting transcripts of court proceedings from a variety of courts at different stages of proceedings, all involving cross examination of children between the ages of 6-16 years.

• Collecting other transcripts and police statements and counsellor interview schedules to acquaint myself with other record formats.

• Searching through libraries and data banks for appropriate literature.

• Observation in court accompanied by a research partner so that parallel records could be kept and checked against each other.

• Being with four children before, during (both in court and in the breaks) and after court proceedings.

• Interviewing four children and three parents.

• Conducting an experiment to test an hypothesis on comprehension.

The mass of data accumulated by the above procedures was conceptualised as pools of data, each of which could be analysed and responded to.
3.3.1 The transcripts

Whilst calling for a broad research orientation in seeking to understand the social significance of courtroom interaction, Atkinson and Drew warn that:

... the much recommended unstructured techniques of observation are less well suited to the analysis of formal court proceedings than they are to the study of interaction in other settings. Thus, while descriptions of relatively short sequences of interaction or isolated quotations from informants can be fairly easily recorded in the ethnographer's field notes at the end of the day, the data of court hearings are more resistant to such methods of reportage. Sequences of interaction are frequently very extended and a single trial may last for days or weeks, and the significance and relevance of some particular utterance, or sequence of utterances, may not become apparent until it is too late for it to be recorded.

(Atkinson and Drew, 1979: 3)

Transcripts of court proceedings not only create a material substance of the proceedings but they encapsulate what otherwise might simply be lost in other less extensive accounts. However they are by no means a complete record of proceedings. Two important insights arise from this observation. One is that transcripts are significant pieces of the data in that they provide a continuous thread for the observer analyst. The other is that although the inputs of various witnesses may only be fragmentary and highly selective, these fragments may be used by either side to build up a version or story. The versions arrived at and postulated as truth may not be either recognisable and credible by any one participant. The transcripts, although not contextually complete, form the most extensive linear record. They are thorough in that they are continuous. Although transcripts are not the whole flesh, (indeed no documentary account of life ever can be), they are both the frame and the focus of the interaction and the analysis. The transcript can be regarded as a series of signals which both manifest and trigger aspects of relationship, context and history.

However the combination of interview data about the court proceedings combined with the long view provided by the transcripts of the court proceedings offered an alternative interpretation to that generated by the formality of the court transcript alone.

3.3.2 Interviews

As noted above, I interviewed a wide range of people connected with cross examination, on the premise that they might be able to contribute insights and perspectives which would lead to a fuller appreciation of the phenomenon under investigation. Open ended questions were asked
which challenged conventional expectations of the research process. Based on work by Simmons (1981) I adopted interview as a data gathering tool on the following grounds.

- case study research is an appropriate mode of inquiry.
- interviewing is a useful tool in case study research.
- the recording of people's subjective definitions of experience is a normal part of case study research.
- whereas structured questions are appropriate when you know what you want to find out, unstructured questions are preferable when you are not sure what you want to know but are prepared to depend on your capacity to recognise significant data and appearance.
- it is necessary to adopt an unstructured approach to interviewing in the study of social situations whose complexity has to be uncovered by research.
- unstructured interviewing offers more scope for involving the interviewee in the research.
- because interviewing is a most penetrative way of gaining information both from and about people, rules of confidentiality and subsequent use of material have to be clearly established for all participants.

3.3.3 Participant observer reflections

As a participant observer I had to recognise that:

- all observations are selective
- all observations are driven by theory
- different ways of recording observations permit and exclude different types of interpretation
- the observer is the first level of mediation. Once we create a record, that record is treated as the data.

During the course of this research I occupied a variety of roles and the nature of my participation changed accordingly. I was, at different times, all of the following: a participant committee member at local and
regional policy and case conferences; a courtroom observer; an interviewer of children, parents and adult professionals; a reviewer of transcripts; an organiser of access to materials; a research designer; and a partner.

3.3.4 Experimental data

As will be reported fully in Chapter Four an experiment was conducted to test the comprehensibility of nominated expressions as indicated by children's recall.

3.4 FROM PARADIGM TO TOOLS

According to Guba and Lincoln (1982: 56) 'the choice between paradigms in any inquiry or evaluation ought to be made on the basis of the best fit between the assumptions and postures of a paradigm and the phenomenon being studied or evaluated.' I therefore settled on the naturalistic paradigm which assumed:

... that all phenomena are characterised by interactivity. While certain 'safeguards' may reduce that interactivity to its minimum, a large amount nevertheless remains. It is fruitless to pretend that it is not there; a more intelligent approach requires understanding the possible influence of interactivity and taking it into account. This stance does not merely involve a trade off of less 'objective' data for the sake of more understanding. No data can be objective in that sense. What is important is to determine the perceptions of the 'data collector' and the effect of those perceptions on the developing information.

(Guba and Lincoln, 1982: 40)

In this research project the 'data collector' was a human investigator who was collecting, categorising and analysing data from 'data producing' human beings. The personal determinants of perception, position and stance were themselves part of the data rather than interferences in the data.

I hoped that the intersection of data I was proposing would generate an appreciation not only of personal connections but also of social constructs, and it would show patterns of social behaviour through an analysis of the language used, particularly in the situation of cross examination of child victim witnesses.
3.4.1 Developing a sociolinguistic appreciation

As an exercise in applied critical sociolinguistics, an exercise seeking to change a social situation by informing and establishing a different perspective upon the language in use in that situation, I came to see the task as one that should explore 'how language is used to establish social context while simultaneously exploring how the social context influences language use and the communication of meaning' (Bloome and Green, 1984).

Given that there already exist a number of theories of language and frameworks of analysis, there was a temptation to base the current study upon a 'proven' model.

Halliday’s systemic linguistics with its features of field, tenor and mode seemed to offer the most cohesive and extensive possibilities. Although I have used many of the insights of functional grammar arising from the concepts of 'context of culture' and 'context of situation', I chose not to adopt the extant analytical or descriptive frameworks for three reasons. One was that I was committed to a process of narrative inquiry and reflective response rather than a process of mathematical and diagrammatic analysis. The second was that although the analysis purports to be informed by 'context', there is no recognition of the lived through experiences of the interlocutors. The third reason was that the system, because of its complexity and specialist qualities, is not accessible to the stakeholders I was interested to address. It was imperative for me to share the process and the results of this thesis with users; those people who were informants to the study.

Chomskian linguistics, by implication, has contributed to this thesis the concept of 'deep structure', and the impetus for the linguist to come up with ever better descriptions of 'what's going on' in language. However, the material of Chomskian analysis is based on samples of speech which take place between speakers and hearers in an ideal rather than a real situation. The analysis is based substantially on the perceptions and intuitions of mature language users. The outcomes are layered descriptions of grammatical connections and patterns. There is no concern with a real social context, a concern which is axiomatic to this thesis. Although I also call on my own perceptions as an informed user of language, I also seek to inform a sociolinguistic description with a wealth of 'social' data; data about people's lives, intentions, needs, conditions and the effect of language upon these. In doing this I attempt to overcome some of the masking dichotomies vested in such distinctions as Langue/Parole, competence/performance, prosodic/linguistic.
In functional grammar terms I sought to bring to bear a wide variety of characteristics and influences which might inform our reading of the text, in particular, the lived through experiences of a significant interlocutor. The acceptance of the concept of text as a material manifestation of language owes much to the philosophy of Searle.

The theoretical orientation of the thesis was to develop a description of language in use in a particular situation; a description which was as responsive as possible to the constraints, characteristics and influences of context. In the process of developing this description it was necessary to build up a personal and grounded theory about the process and nature of that description.

The process of the research, the kinds of data and the tools of analysis were developed in response to this and, whilst mindful of and informed by a variety of theories and procedures, was wedded to none.

The research process and the concepts which inform it accepts the following theoretical tenets:

- language is essentially social (Halliday);
- in order to understand what's going on when we use language, analysis should proceed at several levels (Chomsky);
- records of speech have a material existence which are analysable (Searle);
- the usefulness of the dichotomising distinction between langue and parole (Saussure), although historically useful, is now questionable;
- other linguistic analyses (Crystal’s prosodic features for instance) which 'add' to the word record, tend to marginalise profound aspects of language use and understanding.

### 3.4.2 Triangulation

'Navigation' provides not only a working metaphor for carrying out research but also an historical basis for the procedures employed. The use of three 'sightings' in order to plot a most likely position within a definite area of activity is a navigational concept which has been used for hundreds of years and takes two main forms.
• Three sightings are taken by a single method and when the points of these sightings are joined up create a triangle within which the most probable position will lie.

• Plottings created from three different methods (e.g. stars, land sighting, distance calculation) will supply three readings which either confirm or disconfirm each other.

The same calculation methods are employed by different readers in order that one provides a check on the other in terms of accuracy of calculation.

Methodological triangulation is at work when a researcher mixes data arising from different sources such as interview, observation and testing procedures. Organisational triangulation is operating when personnel occupying different positions and roles in the study contribute their perceptions. The use of statistical, narrative and taxonomic techniques provides another layer of triangulation.

Three outcomes may emerge from a triangulation strategy.

• **Convergence** occurs where different sources, methods, investigators or perspectives provide evidence that results in a single or unifying proposition about a social phenomenon.

• **Inconsistency** occurs when a number of perspectives arise which do not confirm a single proposition but instead suggest alternatives. These inconsistencies can be resolved by either clarifying the positions and premises from which they arise or by integrating them into a higher level of theorising.

• **Contradiction** provides the potential for greatest insight through its ability to negate one position or the other, or to revise, refine, reconstruct or create new positions and appreciations. Mathison indicates that these new positions become possible as:

> All the outcomes of triangulation, convergent, inconsistent and contradictory, need to be filtered through knowledge gleaned from the immediate data, the project context, and understandings of the larger social world. [And in this way] we attempt to make sense of what we find, and that often requires embedding the empirical data on hand with an holistic understanding of the specific situation and general background knowledge about this class of social phenomena. This conception shifts the focus of triangulation away from a technological solution for ensuring validity, and places the responsibility with the researcher for the construction of plausible explanations about the phenomena being studied.

(Mathison, 1988: 16, 17)
This technique of triangulation appeared to be an appropriate tool in approaching the research question.

3.4.3 Observational Analysis

Within the range of techniques available to gather data, observational analysis is the tool which most obviously brings together the dispositions of the researcher with the context under scrutiny.

The notion that observational studies be regarded only as 'dust bowl' efforts intended to describe the nature of social interaction rather than explain it is challenged here. Such dismissive evaluation is neither accurate nor characterises the present field.

Direct observation and involvement by the researcher is inextricably linked to the tenets of triangulation. However some form of assessing the information gained by direct observation needs to be implemented by the researcher using such techniques.

Observational research thus benefits from the use of a broader range of assessment parameters than traditionally employed. Using multiple levels of analysis seems advisable especially when studying social activity in context.

3.5 REVIEWING THE METHOD

3.5.1 Validity

Validity reflects the traditional need to establish relationships between cause and effect in such a way that these relationships will be seen to exist over time and space. The naturalistic paradigm seeks indicators of dependability, that is, concepts which are connected and reflective of one another as well as transferable and credible according to a range of criteria.

The connectedness between aspects under study and the nature of the connection also operates within the framework of implied or explicit theoretical constructions. The essence of grounded theory and the validation to be expected from it lies in the ability to convincingly show the connection between aspects of the questions explored and to theorise about the nature of such, using either extant or emerging theory,

3.5.2 Useability and Accessibility
Research topics which purport to be grounded in notions of social justice and which use the precepts of action should be able to stand the test of useability. Upon completion of a research report it should be possible to use and apply the findings in a way which will have impact on the problem addressed. Naturally a vital prerequisite of useability is the accessibility of the process, concerns and outcomes. In the case of this study the group needing access was most obviously represented by lawyers, judges, professional child care workers, counsellors, doctors, and prosecutors, as well as educators.

I needed to consider this aspect of the research in the planning stages when developing the research questions, during the operational phases as the data emerged and were refocussed, in the concluding phases as outcomes were interpreted, and after completion in distributing the results of the study to different readerships.

3.5.3 Reliability

Reliability traditionally refers to the extent to which the 'results' of a study can be found in similar situations separated by time and space. The reliability of this study is to be found in:

- The perceived existence of a particular discourse in a designated context.

- The perceived similarity between the characteristics of cross examination across court proceedings generally.

- The constancy of the results of the (experimental) testing program in other comparable situations.

From a range of reliability measures grew transferable results and the ability to generalise.

3.5.4 Generalisation; theory and practice

Generalisation can take a number of forms and is usually looked for in the form of statistical validation where experimental variables are kept constant. Other aspects of generalisation can be found in transferability of results and insights to other sites or situations, in consistency with logical argument and presentation, and in applicability to a range of theories and previously developed concepts.
Researchers and the people who study the subsequent research reports gain a kind of intuitive awareness of whether the interactions of the study can be replicated. Within the naturalistic paradigm one thinks in terms of how consistent the results are with other knowledge and how dependable they are given the data and procedures used to generate them, rather than considering results as a final end point for the research.

For any number of reasons a particular piece of research may not be able to be duplicated, but it may still be significant in generating insights into the conditions studied. For example there is a high possibility of this thesis informing the practice of classroom questioning.

3.5.5 Manifestation of method; thesis as narrative

In order for this research report to be accessible to all interested stakeholders, I needed to create a cohesive and informed narrative. Such an approach is consistent with the assertion that:

... humans are storytelling organisms who individually and socially, lead storied lives. The study of narrative is the study of the ways humans experience the world ... narrative researchers describe lives, collect and tell stories of them, and write narratives of experience. Narrative is a way of characterising the phenomena of human experience and its study.

(Conelly and Clandinin, 1990: 2)

In order to start work on the task of creating such a narrative I needed to negotiate my way into the field of inquiry and in that setting, to clarify and reflect the concerns of those in the field. The narrative was written, not in accordance with a pre-planned plot, but in such a way that connections and revelations created new themes and plots.

3.6 ETHNOGRAPHY

3.6.1 The nature and usefulness of ethnography

Question and method are inextricably linked in ethnographic research and the method employed is as developmental as the questions being asked. Although the process can be made clear, the details of procedure are part of a changing responsive and reflective framework. If the question is problematic and the ground unclear then an emerging design is needed.

Ethnography is concerned with the implied or explicit theoretical grounds of the research questions being asked. It is more appropriate to
'finding out' and 'connecting' previously unconnected phenomena, than 'proving' or 'confirming' a single theory or proposition. The theoretical assumptions underlying an ethnographic approach are as follows:

• It is a theoretically driven, systematic approach to the study of everyday life.

• It involves the elements of planning, discovery and presentation

• It is culturally driven and is 'guided by a concern for exploring the human condition to illuminate the nature of 'the social being'.

  The goal of the ethnographer is to explore, describe and compare the cultures of different groups in order to gain understanding of similarities and differences among peoples and general processes ... ethnographers identify and explore the patterns of everyday life and the consequences for participants of being members of particular cultural groups.

  (Zaharlick and Green, 1991: 4)

It is thus a deliberate inquiry process based on the general view that what goes on between people is both a reflection and a consequence of other cultural attributes. This orientation frames how the cultural phenomena are studied and explained and suggests what is regarded as data.

  Just as a photographer must aim and focus a camera in order to capture a scene, so too must an ethnographer focus on what the theory suggests is important in order to describe, and possibly explain, some particular aspects of culture or even define what constitutes an holistic description of the culture.

  (Zaharlick and Green, 1991: 5)

Ethnography may call upon the insights of different theories to explore the complexity of everyday life and in so doing develop creative insight that would otherwise not be available to a model of research which confined itself to theory confirmation.

• A comparative perspective is implied.

• The process of carrying out the research is typified by an interactive-reactive process.

• Ethnographic 'results' provide the basis for ethnology, that is, a comparison between groups beyond the immediate focus of the primary study.
3.6.2 A method to suit the situation

Ethnographers of communication not only focus on detailed analysis of the talk and actions between individuals in particular social contexts; they also depend heavily on participant observation and the use of whatever records can be collected. They use culture and its theoretical underpinnings to approach the study of everyday life. The focus on child victim witnesses revealed three kinds of 'everyday' experience, which constitute regular, predictable and expected social interactions.

The institution of the court is an everyday setting for the resolution of conflicts; individuals are exposed to this environment every day; and it is now an everyday occurrence that children experience the rigours of the courtroom and its procedures. Therefore the pool of data created by observing the institution, the individual and a specific group of people provides a clear and significant cultural picture.

Ethnomethodology aims to arrive at cohesive descriptions grounded in particular situations and to identify the possible transferability of these to other situations. This form of research is not so much a single method, but a stance which combines a number of empirical techniques. The basic theoretical question underpinning this thesis was not so much 'Why is the social order as it is?' but rather 'How are particular aspects of a perceived social order achieved?' In this particular case I wanted to explore the perceived effects of the language of cross examination on child victim witnesses.

3.6.3 Ethnography as research strategy

Whilst I was in favour of ethnography as a research strategy, the decision to use it did not restrict or determine what I would observe and record, or how I would interpret my observations. As Spindler explains, there are many ways information can be used and interpreted:

It is essential to have a model of relationships among phenomena in order to do sensible ethnography. Even if the object of the 'ethnography' is to produce a 'straightforward', non-theoretical, non-technical description of events and behaviour in some setting, there will inevitably be many models of how the events relate to each other that will influence what is observed and recorded and how it is interpreted.

(Spindler, 1983: 97)

The test of ethnography is if an outside reader of an ethnographic report is able to anticipate and interpret the study as would one of the members of the society being studied.
The members that I was observing were child victims, lawyers, parents and medical and health workers, and as the shape of the study emerged I tested and referred to these members wherever practically and ethically possible.

In drawing connections between the details of individual experience and the overarching relationships, I needed to develop strategies for eliminating some of the information I collected by deciding what was significant and what was not. I also had to show how the point of view which I brought to the study evolved because of the study.

Since I was concerned with both details of relationships and details of their observation, I used a microethnographic perspective for my study. As Erickson (1984) says 'microethnography seeks to understand the culture of processes ... [and is] especially concerned with the face to face interactions of the participants'. My concern was the experience of child victim witnesses as viewed through verbal exchanges in cross examination. Clearly this was a socio-linguistic study, one concerned with both linguistics and society which Hymes describes as:

... interested in the use of linguistic data and analysis in other disciplines concerned with social life, and conversely the use of social data and analysis to inform linguistics.

(Hymes, 1974 in Berghoff, 1990: 2)

Cook-Gumperz (1990 in Berghoff, 1990: 3) discusses the relationship between language and ethnography thus: 'language enters into the way social order is created and maintained through interaction', and Berghoff writes:

Hymes (1974) has coined the term 'the ethnography of communication' to further specify microethnographies rooted in sociolinguistic theory. The task of the interpretive researcher is to make the familiar strange ... In order to make sense out of those aspects of our culture which we most take for granted, it is necessary to examine our social constructs. We can only come to appreciate the significance of everyday events in our own culture by taking an interpretive stance.

(Berghoff, 1990: 7)

I needed to bring together perspective, data, analysis and interpretation in order to construct an informed and cohesive account as a response to the research problem.
3.7 CONCLUSION ON METHOD

In creating a narrative I needed to apply a variety of appropriate and dependable analytic tools to the widest possible pools of data available. Method became a reflection of initial beliefs, not about the particular results, but about the nature of those results. The more flexible the research process was, the more likely would be different kinds of results. I had to make choices between prescribing the process of investigation and mapping the process of investigation.

In the end evaluators/researchers should not be troubled that they share a 'narrative and anecdotal style with the novelist and the journalist' and that 'lines between novels, newspaper articles and sociological research get blurred'. We should not be upset that the relativism we attribute to these other accounts of our human situation also characterises the accounts presented by evaluators/researchers.

(Rorty in Smith, 1988: 208)

There is no suggestion in an interpretive/hermeneutic approach that 'anything goes' or that one's personal inclination is the basis of all interpretation. On the contrary, the research desire is to describe and examine phenomena in such a way that they are seen as part of a pattern of phenomena, and that the existing patterns connect with each other.

In collecting and connecting a range of data from a variety of sources and using myself as a filter I sought to combine different pieces of knowledge and data, to discern points of contact and tension between them and to create a patterned description. The elements of this process are:

- Clarify the question to a state that it is answerable;
- Suggest how this question is related or not related to other questions;
- Establish a variety of (types) of data;
- Develop a series of analytical procedures;
- Test hypotheses;
- Cross reference concepts ideas and insights;
- Create a description;
- Suggest connectedness of phenomena described.

The following chapter will report how these considerations of method became manifest as procedure.
CHAPTER FOUR
PROCEDURE

I don't think it makes no differents where you start the telling of a thing. You never know where you begun realy. No moren you know where you begun your oan self. You myt know the place and day and time of day when you ben beartht. You myt even know the place and ay and time when you ben got. That dont mean nothing tho. You stil dont know where you begun.

(From *Riddley Walker* by Russel Hoban, 1980.)

In this chapter I intend to share information, histories, activities, and responses to enable the reader to gain a clear understanding of the gathering and analysis of data according to the chosen research method. The chapter also provides enough information to enable readers to either retrace the process themselves or modify and adapt it for their own time, place and purpose.

I start by presenting a brief overview of the chapter. This is followed by a more detailed appraisal of the significant aspects of procedure. As the project developed, pools of data and analyses created insights and perceptions, so what otherwise might be regarded as 'results' emerged during rather than at the 'end' of the research process. The results of an empirical survey for example suggested further procedures and analyses. For ease of presentation however such results will be reported in chapter five even though some procedures were carried out concurrently and as a response to such results. This chapter concludes with the desired research process in place.

4.1 OVERVIEW OF THE PROCESS

The process of research started at the point of posing the research question. From there I needed to be informed and then to position myself amongst all the competing evidences and points of view. This made listening to, recording and gathering information about others' definitions and perceptions of the issues a necessary starting point.

In the early stages many of the informants made reference to the overwhelming, maddening effect of court proceedings and pointed out that what went on in court was unlike any of the other 'official' interactions, conversations or investigations to which the child victims were exposed. These other interactions included police investigation,
counselling sessions, FACS (NSW Family and Community Services) interviews and schoolteacher discussions.

Observation in criminal court proceedings in which children were involved as witnesses in cases of their own alleged abuse gave rise to:

- field notes
- an appreciation of atmosphere and interaction
- samples of speech, and
- my own supportive presence for children who I had been with under different circumstances. That presence led to further relationships with significant informants including prosecutors, caseworkers, police and doctors.

Whilst observation and work with informants was being undertaken, I collected the records of court proceedings as these represented the basis for the credibility, or lack thereof, of the participants. These records only exist if a case is sent to a higher court and thus become the basis for subsequent argument and review. Twenty six transcripts were accumulated from every possible level of proceedings (Committal Hearing, Criminal trial, and Appeal). The transcript data was treated and responded to in a variety of ways:-

- As reading - to acquaint myself with the style and other aspects of court language.

- As language data - which purported to be 'the record'. By its very existence it stood as the record of trial to go forward to the next level of court. All transcripts came into my possession with this status. As such they were the creators and transmitters of 'complete stories'.

- As language records - which contained words, phrases, sentences, expressions of ideas and attitudes, and assertions.

- As extensive hard copy records - which offered an opportunity to trace in a variety of ways the generation or dislocation of particular meanings as they occurred or were embedded throughout the text.

The need for an empirical study grew out of the desire to test the suspicion that many children did not hear much of what was said to them in court. Having accumulated a range of data using a variety of techniques, there was a need to summarise and refine it in order to make sense of it and to make it accessible to the participants and
protagonists. It seemed that the workings of language in the situations concerned could be brought together to form the descriptors for a discourse. In keeping with both the intention and the effect of such language the label 'the discourse of denial' seemed appropriate. This identification suggested that what goes on in such situations is not so much an aspect of 'legalese' but rather 'denialese'.

The detailed procedures reported in this chapter, and the way they appear as a list of operations, are artifacts of the reporting rather than of the recursive and evolving nature of the steps themselves. There was a constant process of cross referencing which accompanied the mixture of growing experience, reading, orientation, and perspective. In both the overall procedure and the setting up of the empirical testing program, the research problem dictated the specifications of the research instrument and it was unlikely that an already developed code would be found which met the specifications of the individual research problem.

The range of data to be brought together to create a single credible appreciation was dictated by the need to deal with elements of supposedly contradictory data as well as to address professionals operating from contradictory positions and perspectives.

A specially constructed testing program involving thirty (non-court) children between the ages of six and fifteen, responding to some fifteen hundred questions was set up.

The testing program was designed to settle upon units of meaning which were discernible from the responses and which could also be seen to intersect with the nature of the questions asked. Further, those units needed to be set out in a way that reflected educational knowledge about children's language ability. The significant distinctions here are between 'some' meaning and 'the' meaning.

The results of the testing program were to be expressed in terms of children's abilities to 'make sense' of nominated expressions. The actual aspects of the expressions which contributed or detracted from such sense was the subject of separate analysis. In an initial attempt to specify aspects of language which characterise cross examination which were special and may pose difficulty, a review of the transcripts was undertaken. This review focused specifically at the micro level of the phrases, sentences and expressions as they appeared in the transcripts. A further macro level analysis was undertaken of the transcripts. This revealed a series of 'themes' (about the children).
The twenty six transcripts and over five thousand questions asked and responded to, form one set of data. Fifteen interviews with medical, legal and counselling personnel form another. A library of some 300 books, articles and reports has become the literature base. Attending court, taking field notes and talking with child victim witnesses maintained the focus of the study.

Section 4.2 outlines the nature and extent of peer involvement, while Section 4.3 lists the interviews with a range of informants who carry with them a variety of, sometimes competing perspectives and roles. Section 4.4 describes the process of reviewing transcripts of court proceedings. All of these procedures informed the testing program devised to test the difficulty of court language. This is reported in section 4.5.
4.2 PEER NETWORKING and PEER DEBRIEFING

Throughout the study, the partnership and criticism of colleagues has been significant from a number of angles. They have acted as:

- sounding boards for my emerging ideas.
- supports whilst I was dealing with disturbing and traumatic data.
- co-workers willing to respond to exercises in analysis
- collectors of data separate from my prejudices and perspectives

These functions were carried out by several people on a number of occasions, but the continuous participation of one, Roslin Brennan, is of greatest significance here. In addition to this significant partnership, there were other co-workers and colleagues who constantly reflected upon and responded to the emerging thesis.

During the collection of the data for this piece of research I attended The Children at Risk Committee in Wagga Wagga. This was an interagency group made up of people from the following organisations:

- Family and Community Services Counsellor and Child Protection Officer
- Private Practice Paediatrician.
- Catholic School Principal.
- NSW Child Sexual Assault Police Officer.
- Department of Health Doctor.
- Private Practice Lawyer.
- Women's Refuge Nominee.
- Calvary Hospital.
- Community Health - Wagga Base Hospital.
- Child Psychologist and Counsellor.

Over a two year period, fortnightly or monthly meetings took place with these people, for whom the central concern was the problems which confront children in this community. The group focused on different issues and each person utilised and explored their own perspectives and experiences in an effort to develop an holistic appreciation of children at risk. Linguistic, social, religious, educational, medical and psychological perspectives allowed the group to view any given problem on several levels and from a variety of vantage points. Exchange, support and strength were the personal
benefits from this interaction. New contacts, interviews and references were the professional benefits.

This group allowed me to present ideas, worries and concerns knowing that they would be appreciated, developed and added to through both anecdotal and objective information. New dimensions to the problems associated with child sexual assault and the trauma of court were available and shared. Contacts with workers in the field (such as social workers, police officers, magistrates, paediatricians, child psychologists, Child Protection Officers and Counsellors) were all established through the professional generosity of members of the group.

See Appendix 2: CARS meeting minutes

The net effect of this association was that the aspects of language being studied and collected in court were related as fully as possible to the condition of the children of this study.

The testing program was similarly organised under the supportive umbrella of this group. School principals and teachers who were interested in helping with this project were suggested by group members.

The composition of the Committee was biased in favour of practitioners who work with children at risk. These workers invited me to participate intimately in a range of activities associated with the damage caused by court appearance and its possible repair. I was invited to be present at court cases for which field notes, records of interviews and personal impressions formed the supplementary pools of knowledge provided by these workers. Notifications, formal interview procedures and descriptions, files and cross references to children from different contexts allowed me to become part of a more total appreciation of the child and the court experience. Court and the linguistic stresses associated with living through such an ordeal could be juxtaposed beside other facets of institutional abuse and care which the child had to deal with leading up to their court appearance.

This group of people also shared the trust which they built up with child victims. I was introduced to children before, after and during court cases and the dubious privilege of sitting on the periphery of another person's distress was facilitated by the strength of the relationships which these colleagues had built up with the children in their care. Such rare glimpses of other people's lives in disarray added passion and commitment to the completion of this research.
Collection of relevant transcript data was made possible through contacts made in these meetings. The complex set of negotiations, including safeguards, security checks, Ministerial approval, and anonymity, needed to gain access to the proceedings of committal and then trial, and finally access to the Department of Public Prosecutions, were aided by supportive members of this group. Although the clearing process took six months, the help, both physical and moral, which members of this Department offered, was overwhelming. Desk space, photocopying, file and case selection, good quality conversation and refreshing coffee were all part of the service which was offered both in Wagga Wagga and Sydney. Similarly members of the Police Department shared their perceptions, worries, concerns and desperations about the child as a victim and a witness.

By choosing language as the medium for analysis, it was possible to involve and incorporate the perspectives of a variety of sometimes opposing practitioners. The focus on language and its use represented a common ground for a number of perspectives that would otherwise have been expressed in terms of rules and 'professional' practice. The participation of a wide variety of informants in the research project was made possible by concentrating on the medium rather than the content of procedures eg. rules of evidence, child advocacy. Collaboration, support and feedback were offered in various forms by a variety of people who were required as informants; people who had something to tell.

4.3 INTERVIEWS

At different stages throughout the study a wide range of informants were interviewed. These included:

- Judge (1)
- Magistrates (2)
- Practising Lawyers (4)
- Social Workers (5)
- Counsellors/Therapists (2)
- Children - before court or after court proceedings (4)
- Parents (3)
- School Teachers (3)
- Paediatricians (2)
- Hospital Staff/Health Workers (3)
- Police officers (4)
- Prosecutors (2)
All interviews were conducted in a flexible format, appropriate to each situation and informant, but I sought to collect the range of perspectives and insights surrounding the issue of questioning children in criminal court cases.

See Appendix 3: Sample interview questions

An 'outer circle' of informants is represented by the group of colleagues and friends who maintained a critical interest and whose perceptions of issues and data constantly informed the research work.

In my discussions with all those referred to above I was constantly mindful that:

Children are easily ashamed and intimidated both by their helplessness and by their inability to communicate their feelings to uncomprehending adults. They need an adult clinical advocate to translate the child's world into an adult-acceptable language.

(Summit, 1983: 183)

Very early in the interviews some concepts emerged which would become touchstones for further activity. It became clear that many workers in the field do not have available to them the tools of linguistic analysis which would enable them to describe court language. They are nevertheless able to cite examples of the 'inappropriate' use of language with child victim witnesses. Their concerns for the alleged victims of child sexual abuse are partially based on the need to pick up the pieces of a child's life after successive court appearances.

A child protection officer offered the following example of her frustration at the treatment of a child under her care. The cross examining lawyer persisted, (in her view), with a line of questioning phrased in language which seemed strange and was outside the capacity of the child.

He kept asking her for dates, and dates before the 11th of November. The 11th of November meant nothing to her. If he'd said 'after your birthday' which was the 4th of November she might have had a chance. Now, she knows when her birthday is. If he'd asked, 'After your birthday did something happen to you?' she would have said 'Yes'. But he just kept on saying 'before the 11th of November'. Well the 11th of November meant nothing to her, but he just kept on asking the questions.

Another child protection officer described how a child could recount the details of his assault in one context, with the help of anatomically correct dolls. When the child was confronted with questions during cross examination which contained highly technical terms for the sexual
organs, he became disoriented, distressed and was then unable to answer.

He took the bottom half of the doll's clothes off and was quite fascinated with the penis, and he medically showed us what happened ... and yet if you asked him a question like 'How far did he insert his penis into your anal area?' the child would just go 'Huh'.

Similar questions asked of children during cross examination about the fine anatomical details of their assault represent, in the minds of those concerned with the welfare of child victim witnesses, unfair presuppositions about the language and emotional capacities of children. The reiterations and repetitions of questions with subtly altered language components appeared to confuse and degrade the child witness.

A number of people intimately concerned with the welfare of child witnesses articulated a widespread dissatisfaction with the architecture and physical organisation of the courtroom. Before any words have been spoken the child is confronted with an environment which is alien, unfriendly, oversized and threatening.

They go into a large gloomy building set up with archaic furniture and monopolised by men, to answer a case that invariably involves men. And unless steps are taken to allay those fears, it is very difficult for them to tell a story that involves highly intimate sexual details.

The anxieties expressed above highlight some of the problems associated with the cross examination of child victims of sexual assault. Strange language, strange architecture and strange people dominate the context into which the child is admitted. Individuals charged with the care of child victims are understandably disturbed by the effects which courtrooms and their contexts have on these children. In cases which are all about children, language does not appear to include the child's world.

4.4 TRANSCRIPTS

My initial perusal of one transcript gave rise to the following reflections.

The transcript of the proceedings to which the child is required to respond captures not only phrases and sentences but also the flow of language and thus the way topics, registers and expressions connect to build quite specific meanings. A question 'out of the blue' is different from a question which is part of an observable sequence. The use of one term in a number of different ways across and within questions may
be significant. Changing registers from formal to colloquial within the string of questions has an effect of its own. These notes and comments serve to alert us to some of the language strategies employed as the witness's credibility is examined. These strategies often have more to do with creating impression and effect rather than with clarifying evidence.

One of the contexts for a question asked in court is all the questions preceding it and, from the standpoint of the reader of transcripts, all those that come after it. As a reflection of this view of data, a transcript of a committal hearing of a thirteen year old girl, Beverley, is included as Appendix 4.

See Appendix 4: Sample transcript and notes

The transcript includes her examination by the prosecutor, her cross examination by the defence, interventions from the bench, and legal argument between bench and counsels.

It is a full word record of what happened in Beverley's presence. The transcript is interrupted when she is taken out of court and is resumed when she re-enters. To this record, some of my early notes, observations and queries have been added in an attempt to appreciate the language of the situation. This procedure led to the creation of a set of descriptors and indicators for that language and also gave rise to the testing program on children's ability to 'hear' questions.
4.4.1 Responding to Review of Transcripts

This initial perusal of a single transcript pointed to some characteristics of cross examination and the position of the witness. As a word record, it clearly embodies tensions and concerns expressed by informants. It created a place to record and examine my own concerns, prejudices, unanswered questions. Because it was a concrete record which could be put 'on the bench' and worked on, it suggested the accessibility of all the other transcripts in my possession. Most significantly however my observation that there was, towards the end of the transcript, a discernible structure, (probably because it all happened within two pages instead of over fifteen or more). I saw that there were patterns to be found both within and between transcripts.

Consequently, without either the help or restraint of an existing taxonomy, I started searching throughout the whole transcript pool for features and characteristics unique to this situation. I was also motivated to reflect on the nature and uses of language generally, as well as its nature and use in the courtroom.

4.4.2 Reflections on transcripts

4.4.2.1 The conventions of court language

Court language is a world of its own where the normal conventions of communication have become subservient to a set of procedures established over generations. Some of these conventions are:

- the person examining the child frequently faces the bench whilst questioning the child
- questions are interrupted by procedural objections
- discussions of what the child has been asked and how that child has replied are discussed at length while the child remains present
- the alleged offender sits in a special place whilst all this is going on and frequently says nothing.

At best they appear foreign to the child. At worst, they seem intimidating and confusing. The rules for language use determine the interactions that occur between people. To a child these conventions must appear as though they are in the middle of an incomprehensible film script. People dressed in gowns and wigs, totally formal speech, people who sit and look blank for hours at a time, all overseen by a
someone to whom everyone defers for advice, guidance and resolution of disagreements.

Within such a tightly managed environment, language and the movement of the actors are the only variables. The scope for responding is very limited. The child witness has to cope with these limitations and translate the formalities of the environment into linguistic terms in order to deal with the language of the courtroom. The child is expected to respond in a precise and prescribed manner. Upon these responses his or her veracity is assessed.

4.4.2.2 An alien experience

The child has little room for negotiation or manoeuvre. The situation is alien to the child's previous experience of language where words have been used to learn about, explore, test and generally establish relationships with the rest of the world. This change in the use of language confronts child witnesses who can become the victims of a set of language rules which prohibit them from expressing themselves in a meaningful and truthful way. They are not permitted to tell their story in their own words and the restrictive questioning format frequently frustrates and confuses the child victim. The courtroom context and the language in particular quickly reinforces in the child's mind their role as the victim in the proceedings and members of the court generally do little to contradict this.

Language is the medium of exchange in the courtroom, which is steeped in traditions some of which are quite outside the normal language repertoire of both adults and children. It seemed useful to identify some of the linguistic features peculiar to the courtroom, and so a testing program was set up to assess children's ability to hear different questions.

The problem was, how might the distance between the child's language capacities and the language of the courtroom be described and displayed? This distance seemed to be most pronounced during cross examination of the child victim witness. In order to examine whether this distance actually existed and if so how it might be described, a testing program was created, using children unconnected with court.

4.5 THE TESTING PROGRAM

The basic premise of the test is that if a person can repeat a piece of language (text) then the language, its structure, vocabulary and length
are manageable and within the linguistic repertoire of the respondent (Clay, 1976). If they fail to repeat the text it is assumed that there is a mismatch (of some sort) between the speaker and the listener. It is rare to find complete understanding existing between speakers and listeners. However, in the courtroom this difference becomes a critical problem particularly when children are involved as witnesses.

4.5.1 Theory and format of repetition

Repetition of questions was the method used to determine whether the language of the questions asked was part of the language repertoire of the child. The theory and format for this methodology were based on the work of Marie Clay whose *Record of oral language* uses a repetition model to observe aspects of a child's control over oral language and assess a child's ability to handle selected grammatical structures (Clay, 1976).

One way to find out how much of the structure of adult speech a child has learned is to ask him to listen to a sentence and to repeat it. By having a child repeat sentences which represent a wide range of syntactic structures in English a teacher can learn as much in a relatively short time about his control of those structures as would be learned from listening to the child's spontaneous speech over much longer period (Clay, 1976: 9)

The premise which underlies Clay's work is that what is not reproduced accurately is not heard; what is reproduced accurately is heard, and there are variations in between. There are multitudinous factors which influence what is heard, and as Clay states:

No single linguistic criterion has been devised for predicating reliably the difficulty of sentences ... There are many factors which influence the difficulty of a sentence. An unusual word or ambiguity of meaning could easily cause an increase in difficulty greater than that produced by a change in grammatical structure or an increase in sentence length. The most reliable guide to difficulty is the nature of the child's response.

(Clay, 1976: 39)

The repetition mode was the basis of the test and was used to observe how children handled a range of court, school and counselling questions. If they could repeat a question accurately then both the language and length of the question were accessible. Only then could they attempt to answer the question. The testing program made no judgements about context, stress or victimisation; these aspects were considered separately. It was an assessment of whether these questions and their expression were part of the child's repertoire. The children were not required to answer the questions but simply to repeat them.
To understand and then respond to a question presupposes that the language of the question is part of the language repertoire of the listener. Repertoire is a concept which includes both the syntax and semantics of language. Syntax embodies the principles of order which govern a language. It is a set of rules which develops and refines with age and allows us to communicate with other people. Words are not randomly combined, their choice is patterned by unstated rules. Grammars are only one attempt to describe the complex inter-relationships between different word classes. All these rules are gradually absorbed without direct instruction and appear as the guideposts for effective communication and language. If certain syntax is not part of the repertoire of the listener then answering that question becomes a problem.

For example if someone asked the question: "Where were you today?" in an unfamiliar syntactic form such as: "Were today you where?", it would be difficult to respond because the unfamiliar syntax interferes with the meaning for which the listener is searching. On the other hand if the question was: 'Where were tot niigelster?' the listener would experience difficulty in responding because the words 'tot' and 'niigelster' are not part of the listener's semantic repertoire. Sensible meanings cannot be attributed to the words. Syntactic and semantic mismatches between questioner and respondent seem frequent in court.

The aim of this part of the study was to investigate the difference between the language repertoire of the child and the language repertoire demanded by the courtroom in cases of child sexual assault.

4.5.2 Gathering and using transcripts

Transcripts obtained from the Sydney and Wagga Wagga offices of the Department of Public Prosecutions were catalogued according to the age of the child witness. Twenty six transcripts were collected, in which children aged between six years and fifteen years gave evidence under cross examination. The majority of these transcripts were a record of Committal Proceedings, where transcripts had been made because the case was to proceed to the District Court level. In two instances transcripts were used which followed cases from the Magistrates Court to the Court of Appeal.

A table of the number of transcripts collected appears below:

<table>
<thead>
<tr>
<th>Age</th>
<th>Transcripts</th>
</tr>
</thead>
</table>

From these twenty six transcripts 5,654 questions were identified as being asked during the cross examinations of child witnesses.

The transcript questions for each age group were then combined and numbered sequentially. The age grouping allowed matching with the ages of the children tested, and also offered the opportunity to observe any differences in questioning style which many magistrates and lawyers claim to make as concessions to the language maturity of child witnesses.

The bulk of questions which the children in the testing program were asked to repeat were taken from actual court cases. However, it was decided to include the extra two categories of questions, 'Counsellor' and 'Teacher', to provide contrast rather than experimental control. The five 'Counsellor' questions for each age are specifically related to interview procedures for alleged victims of child sexual assault. Five questions appropriate to classrooms in which children of different age groups would find themselves were also collected. These questions show that different contexts and different reasons for asking questions exist and that information can be obtained from children by asking question in different ways.

### 4.5.3 Transcript questions

Two criteria were used to select questions from the transcript material available, thus creating two different sets of questions for repetition. One was arrived at by using random numbers. These are referred to as 'Random lawyer' questions. The other set was created by selecting from the transcripts questions which, for a variety of reasons, were thought might cause difficulty for the listener. These are referred to as 'Selective lawyer' questions.
• Random lawyer questions

To ensure that a representative sample of questions was chosen, a set of random numbers was used to find twenty questions from the total pool of questions for each age group of children. Each of the questions in the transcripts were numbered and then a set of random numbers was used to select twenty questions for each age group.

• Selective lawyer questions

Having read all the transcripts a number of times it became obvious that there were a number of hard to answer questions. A list of question types and lengths was developed and this formed the basis for the selection. These questions contained examples of court language and court style which are often confusing to the most competent of language users. These questions encapsulated and reflected some of the predominant linguistic concerns held for children trying to come to terms with the language of the courtroom.

These linguistic concerns are based on the assumption that for communication and information exchange to be effective there must be an adequate match between the language used by both conversational partners. If the gap between the two participants is widened by unclear speech, peculiar structure and unfamiliar vocabulary then one party to the conversation is excluded from the process of effective understanding (Hull, 1985). The questions for repetition in the 'Selective lawyer' group were chosen on the basis of the categories which contributed most to this apparent mismatch. The categories were developed from the transcripts rather than from any previously developed list or taxonomy.

For each age group of children twenty randomly chosen transcript questions and twenty selectively chosen transcript questions were listed. Five classroom questions and five counsellor questions were added to each pool and together, when randomly mixed, became the sets of questions which the children were asked to repeat.

4.5.4 Developing a coding format

In this study 'difficulty with the language' is initially defined in terms of the ability or inability to reproduce. The basis of that difficulty is the subject of later analysis.

The poles of the assessment, totally accurate reproduction and nil reproduction, are self evident. Totally accurate repetitions by the child indicated a total control over the language structures and vocabulary
contained in any given question. Nil reproductions indicated that for whatever reason the child did not have the capacity to hear and repeat the questions, and the question was outside their language repertoire.

However, I also wanted to find out about (and take into account) the fractures or breaks which occurred as the listeners struggled to recreate what they had heard. I decided that single element changes should be classified differently from multiple element changes. Some children imposed their own sense on questions which they found difficult to repeat, some maintained partial sense when repeating, while others simply regurgitated nonsensical strings of words. This analysis (of departures from the text of the original questions) was developed in terms of the fractures which children made to the flow of language of the question. These fractures could be isolated firstly in terms of whether, within any one given question, there was only one such fracture, or whether a number of these occurred. In the testing profile these become Single Element or Multiple Element changes respectively.

4.5.5 An example of a test profile

To make these points clearer and to give the reader a greater appreciation of the dimensions of this study, a testing profile for James aged 11 years, has been included as Appendix 5. All subsequent examples are taken from this profile.

See Appendix 5: Sample testing profile, James.

For example, James fractured question eleven in the 'Selective Lawyer' class. The original question was: "Well, you are not sure whether you said those things to the Principal which are wrong?" James only changed one element of this question when he repeated:

"Well you are not sure that you said those things to the Principal which are wrong?"

This fracture type was called a single element change to the original question because only one unit of the question had been changed in repetition.

Multiple element fractures occurred when a number of elements within the original question were changed by the child during repetition. For example, question thirteen in the 'Selective Lawyer' class was:

"All right, so between his patting you and his attempt or his trying to put his squash racquet in your bag there was nothing else, is that right?"
James repeated the question in the following way.

"As you attempt trying to put his squash racquet in your bag there nothing else was there?" Within the repetition made by James there were seven fractures to the original question. These were: four omissions "all right", "so between his patting", "and his" "or his", one addition "as" two substitutions "is" for "was", "was there" for "is that right".

This represents a multiple element change to the original question. For the purposes of this analysis an element within a question was defined as being a chunk of language which could stand on its own and maintain some sense in isolation and without context. The task of analysing each individual word change within a question made by a child during repetition would be enormous and not necessarily productive or appropriate. Language is stored and dealt with in chunks. Some pieces of language naturally occur together given the rules of syntax governing the structure of our language. These naturally occurring chunks were taken as the elements which combined to form the questions offered for repetition. In those cases where only one word was changed, these were also regarded as elements.

Looking back at the example of James, repetition one shows James substituting the element "that" for the element "whether". This is a single element change consisting of only one word. A single element change consisting of more than one word is exemplified below. Question sixteen in the 'Selective Lawyer' class reads: "This terrible thing happening to you, if there was someone else there you'd remember it wouldn't you?" James repeated the question in the following way: "This terrible thing happening (Omitted "to you"), if there was someone else there you'd remember it wouldn't you?"

The omission of "to you" is regarded as a single element, a single chunk of language that stands together as an utterance.

The decisions made thus far would have produced an extensive set of only quantitative data. These would have been expressed in terms of numbers and extents of fractures, as single and multiple element changes. Descriptive labels could also be attached, namely omissions, additions, substitutions, transpositions and reconstructions.

4.5.6 A qualitative approach to repetition responses
In order to come closer to a qualitative appreciation of what was going on between what was said and what was heard, the fractures were viewed in terms of how extensively they distorted the form and content of the original question. This assessment was expressed in terms of syntactic and/or semantic dislocation. In most cases it is unwise to distinguish between the form and content of a piece of language, as a change in one necessarily occasions a change of some sort in the overall meaning, and thus the other. However, there are occasions when one word is substituted for another (semantic) and the overall structure (syntax) is left intact.

The following example illustrates how devastating such a change can be. The single element change maintains the structure and maintains sense but the meaning of the original question has changed.

Original Question: "Would it be incorrect to suggest that it was not so much a tripping, but because of the state of inebriation of yourself that you fell over?"

Repetition: "Would it be correct to suggest that it was not so much a tripping over, but because of the state of inebriation of yourself, that you fell over?" (Transcript 13 years)

4.5.7 'The sense' of a question

With this accumulation of qualitative, descriptive and quantitative data each incorrect response was then placed alongside the original text to see how far the reproduction reflected the sense of the original. 'The sense' occurred when the sense of the repeated question reflected the sense of the original. The following sample of James's repetition demonstrates this.

Original Question. "Well you are not sure whether you said those things to the Principal which are wrong?"

Repetition: "Well you are not sure that you said those things to the Principal which are wrong?"

4.5.8 'A sense' of a question

'A sense' occurred when the repeated question made sense but not the actual sense of the original. For example:
Original Question: "Well on the week before you made this statement to the Principal you said that one night you were in the kitchen?"

Repetition: "Before you made this statement to the Principal you said that you were in the kitchen the night before?"

4.5.9 'No sense' of a question

'No sense' occurred when neither the actual sense of the original, nor another sensible expression was repeated. When read alone the repetition was nonsense. For example:

Original Question: "You went for a swim there, I am putting to you, at Cronulla Beach?"

Repetition: "You went for a swim there you put at Cronulla Beach?"

The coding format developed to collate and display all the types of data collected, appears as Appendix 6.

See Appendix 6: Blank coding format

4.6 ADMINISTERING THE TESTING PROGRAM

Three schools in Wagga participated in this testing program; one male high school, one female high school and a co-educational primary school. The teachers were asked to select three children in each age group according to their perceived language abilities: one above average, one average and one below average language user in each age category. I thus obtained a representative range of general language abilities from a cross section of three schools.

Each child was introduced to the testing format individually. The purpose of the study was explained in terms of the researcher wanting to find out more about different questions children are asked. The whole exercise was not presented as a test of their ability and it was made quite clear to children that inability to repeat questions accurately must not be construed as failure. A number of practice questions were given to establish comfort with the format.

After the child was settled and comfortable he/she was asked to repeat the nominated questions. The questions from each category were presented in mixed order. Enunciation, intonation and speed of asking were kept as uniform as possible.
When the nominated list was finished each child was asked to comment upon the questions in terms of their ease and difficulty for repetition. The whole session was tape recorded so as to avoid intrusive notetaking and the tapes were used to assess the differences between the repetitions and the original questions. These were scored in terms of fractures and their types. These were then coded onto the data display sheet for each child and for each of the thirty children these analyses were organised according to the categories of question types.

The range of procedures outlined in this chapter produced a variety of data. Observation, participation, interview, testing and reflective material were reviewed and analysed to produce three distinctive sets of results and these are the subject of the next chapter.
CHAPTER FIVE
RESULTS

Once all the data had been collated, a method for dealing with it was needed. The initial analysis took several forms ranging from the statistical to the search for descriptors and themes.

The results of the data collection and its analysis led to the development of a linguistically specific tool which could be used to examine and describe the extent and the effect of language in use. This operational outcome is reported in Chapter Six and is a response to the totality of the results reported here.

Three sets of results were generated by the collection and analysis of data. The first (5.1) is a range of results from the empirical study which showed, amongst other things, the validity of the claims that the children did not understand 'about half' of what was said to them in court. The statistical calculation of 43% for expressions (across all age groups) which were not accurately responded to confirms that children have a poor understanding of the discourse as a whole. The collection of 'random lawyer' questions was chosen at random from all the available transcripts and provides the clearest link with the concern of this thesis. The other categories of 'counsellor', 'teacher,' and 'selective lawyer' serve as points of comparison and emphasis to the central finding. Strong as this result was however, it was still unfinished, because the details which contributed to the lack of comprehension had not been specified other than in a general sense.

By comparing characteristics of the language samples which the children in the testing program failed to hear with the characteristics of the 'selective lawyer' sample, a second set of results (5.2) was generated. These results highlight particular aspects of language and seek to relate the test results with the experiences of the child victim witness. Without any attempt at proportional representation, I created a list of aspects of the 'language of cross examination'. These may be perceived as rhetorical tactics and strategies which have debilitating effects upon comprehension (as shown in the results of the testing program). The list showed:

- the context of situation (eg. lawyers examine children on police statements)
- context of the text (eg. lawyers change topics) and
• context of words, phrases and expressions (eg. semantic and syntactic features of language generate meanings).

The list is an initial collection of aspects of linguistic expression which characterise the interactions and constitute this second collection of results for the study.

A third (5.3) set of results has been made possible by a macro level review of the 'themes' about children which were either expressed or implied in the large pool of transcripts available. These results encapsulate certain cultural understandings about children as they are manifested in the process of cross examination.

All three sets of results contribute to our understanding of the experience of the child victim witness under cross examination and the significant role of language. In reporting these results I have sought to interpret them in the light of:

• my membership as an adult language user

• my appreciation of a wide range of literature on the effect of linguistic constructs upon comprehension

• my understanding of the condition of being a child victim witnesses

• my experiences as an educator in the field of literacy and language development, and

• my synthesis of interviews with a range of stakeholders.

5.1 TEST RESULTS

The results of the testing program can be read either for individuals or the 30 children as a group. I first present, by way of illustration, the scores and profile of one child (James). This is followed by an accumulation of features of the testing profile for all children, and then a summary of the results overall.

5.1.1 James and his scores

See Appendix 5: Sample testing profile for James
• Selective lawyer questions

Within the 'Selective lawyer' questions James did not accurately reproduce any of the original pieces of text. Therefore his score in the 'total reproduction' category was zero.

James altered two questions by single element changes. One of these changes was an omission and one was a substitution. Both these changes resulted in James generating syntactically and semantically whole pieces of language and while these changes did not produce 'The Sense' of the original question, they resulted in 'A Sense'. He altered the questions but his alterations maintained a language form as well as a discernible meaning. As a percentage of the total number of 'Selective Lawyer' questions offered for repetition, the two single element changes which James made preserved 'A Sense' in 10% of the cases. James changed multiple elements within four questions. He omitted fifteen elements, added two elements, substituted eight elements and transposed one element. These changes resulted in an even division between syntactically and semantically dislocated pieces of language, with half of his reproductions being unlike 'normal' language.

With these dislocations James produced two reproduction which had 'A Sense' of language, and two which had 'No Sense' of language. Therefore, the multiple element changes which James made to four questions resulted in 10% maintaining a 'A Sense' of language (as a proportion of the total number of questions within the 'Selective Lawyer' category) and 10% having 'No Sense' of language. James failed to attempt any reproduction of fourteen out of the twenty 'Selective Lawyer' questions. Therefore 70% of the total number of questions offered for repetition had 'No Sense' for James.

• Random lawyer questions

Within this category, James accurately reproduced eight questions, 40% of the total number of questions offered for repetition within this category.

None of the changes were single element changes and four shifts in repetition contained multiple element changes. These multiple element changes consisted of eleven omissions, one substitution and one transposition. Within three questions the multiple element changes which James made resulted in syntactically and semantically dislocated pieces of language. Therefore only one out of the four repetitions in this category had 'A Sense' of language and three contained 'No Sense' of language. James preserved 'A Sense' in 5% of the questions, and 'No Sense' in 15% of the cases. James failed to attempt repetition of eight
questions. Therefore a total of 40% of the questions had 'No Sense' for James.

• Teacher questions

Within this group James accurately reproduced three out of the five questions and therefore maintained 'The Sense' in 60% of the questions offered. The remaining two questions were altered on a multiple element basis with three omissions, one addition and three substitutions. Both questions which were altered in this way resulted in syntactically and semantically acceptable pieces of whole language. One of these questions preserved 'The Sense' of the original question and one preserved 'A Sense'. As a percentage of the total number of questions offered for repetition, the multiple element changes resulted in the maintenance of 'The sense' in 20% of cases and 'A Sense' in 20% of cases.

• Counsellor questions

James accurately reproduced all the questions within this category thereby maintaining total sense in 100% of cases.

5.1.2 James and his profile

The above description of how James handled questions of different types is now a profile which can be presented and analysed in different ways. If we use the format discussed by Marie Clay, only totally accurate reproductions should be scored as reflecting those language structures with which the child is comfortable. If this division is adopted the profile appears as:

<table>
<thead>
<tr>
<th>Question class</th>
<th>Totally accurate reproductions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Counsellor</td>
<td>100%</td>
</tr>
<tr>
<td>Teacher</td>
<td>60%</td>
</tr>
<tr>
<td>Random Lawyer</td>
<td>40%</td>
</tr>
<tr>
<td>Selective Lawyer</td>
<td>0%</td>
</tr>
</tbody>
</table>

If we accept that ability to repeat questions is an accurate reflection of the synonymy between the language of the question and the language repertoire of the child then the counsellor questions are perfectly matched, the teacher questions matched in 60% of cases, the random lawyer questions matched in 40% of cases and the selective lawyer questions are completely outside James's language repertoire.
5.1.3 Categories of repetition shifts

However, this level of analysis has been further refined to admit other dimensions of language ability. By analysing the types of repetition shifts which James makes, it is possible to observe how James deals with questions considered by the court to be suitable to his age but which may nevertheless be outside his normal language repertoire.

Within the 'Selective lawyer' class 70% of the questions appear to be so ill matched that he makes no attempt to repeat them. 30% of the questions offered for repetition are changed, two thirds of these have 'A Sense' of language, and one third has 'No Sense'.

Within the 'Random lawyer' selection of questions 40% preserved 'The Sense' of the original question, 5% had 'A Sense' of language and 55% had 'No Sense' of language.

Within the 'Teacher' grouping 80% preserved the total sense of the original question and 20% had an independent 'A Sense'.

The 'Counsellor' questions produced total sense in all cases.

5.1.4 The analysis of the repetitions of 30 children

An analysis identical to the one just outlined above was carried out for each of the 30 children involved in the testing program and an overall profile of the results in the form of a graphic display is presented as Appendix 7.

See Appendix 7: Graphic summary of testing program results

5.1.5 An overview of the results

The four graphs represent the responses which children made when asked to reproduce questions presented as a mixed list. Three children aged between 6 and 15 years, of high, middle and low general language ability, were represented.

Types of Questions and Responses

i. Counsellor questions in all but one instance were reproduced with the sense left intact. Some element of challenge is obvious, indicated by several instances of single element changes, which were nevertheless reproduced with the original sense of the
question. This is an expected result from an activity designed to include the sensitivities of the respondents to the fullest possible extent. It should be noted here though, that we are looking not at individually tailored questions but a genre of questions asked in a counselling situation which children unconnected with that situation are asked to reproduce.

ii. *Teacher* questions displayed a variety of responses. This may reflect the classroom orientation of teacher questions where regrettably a proportion of children are always left out. There is a definite entrance, according to these results, at the age of 10, of children who lose their grip on the language of the questions asked by teachers. Overall 'The Sense' was reproduced 80% of the time, 'A Sense' was reproduced 10% of the time and 'No Sense' was evident 10% of the time. In an educational context a developmental perspective is acceptable when reviewing children's achievements in language and learning, and it is not generally expected that children will make 'The Sense' of all that is said to them the first time. It is enough that 'The Sense' is made most of the time and that 'A Sense' occurs so that 'The Sense' if appropriate can be worked towards. Special provision has to be made for children who fail to grasp sense either fully or partially.

iii. *Random lawyer* questions showed that, according to the unstressed children of the testing program, the sense was evident around 60% of the time while 'The Sense' was missed 40% of the time. These questions are usually asked in a context which operates according to strict rules of procedure aimed at generating precision and accuracy. 'A Sense' however sensible, is not acceptable yet appears around 20% of instances and 'No Sense' is evident the other 20%. The greater amount of the 'No Sense' score is due to no attempt at reproduction being made. These questions were not heard well enough to even make a stab at reproducing them.

iv. *Selective lawyer* questions supported the selective choice of questions, with only some 15% being capable of reproduction with 'The Sense'. A third of these required 'creative editing', as shown by the maintenance of sense in spite of single and multiple element changes. Around 30% displayed 'A Sense' and over 30% of all the questions were lost to the hearers. The least affected age group on both the lawyer selections, it should be noted, were the six year olds. This may indicate an echoic response where their hearing was not impaired by a search for meaning. If nothing else this differential shows clearly the frailty of interpreting in only one way, in only one situation, children's responses to questions.
5.1.6 A continuum of question difficulty

From these profiles organised according to the age of the children tested there are some obvious results. For example those repetitions across question types which preserved 'The Sense' of the original question create a continuum of question difficulty. This reflects the synonymy between the language of the questions and the language abilities of the children tested.

1. The language of the counsellor group of questions most closely paralleled the language abilities of the children. They are thus more likely to be answerable because the questions themselves are accessible to the children.

2. The language of the teacher generated questions is ranked next in terms of the match between the language of the questions and the language repertoire of the child with the exception of the six year old age group.

3. Questions chosen from the transcripts using random numbers, the random lawyer questions, appear next in the continuum.

4. Selective lawyer questions showed the greatest mismatch between the language of the child and the language of the question. The following tables in Appendix 8 display the figures to substantiate these statements.

See Appendix 8: Tables of testing program responses
5.1.7 The questions and their rankings

It is clear that the ranking of the questions in terms of ease of repetition and closeness to the language repertoire of the child appears as:

1. Counsellor
2. Teacher
3. Random Lawyer
4. Selective Lawyer

This is no surprise, given the intentions of the different questioning modes. Individuals involved with the counselling of child victims of sexual assault are concerned with giving children a format for talking through traumatic events. They are concerned with preserving the mental welfare of the child so they ask questions which offer maximum freedom of expression, in language with which the child is comfortable.

Within a classroom, teachers ask questions for different reasons, ranging from assessment of what the child knows to a method for exploring new concepts and information. When teachers ask questions the focus ideally remains with the child. The questioner tries to match what he or she knows about children with the language and style of questions asked.

5.1.8 The transcript questions - an analysis of sense

In a courtroom questions are asked for very different reasons.

- They display information.
- They are the weapons of combative legal interactions.
- They are used to call the credibility of the witness into question.
- They are competitive illustrations of legal skill and language manipulation.

The extent to which children can deal with the language of these different questioning formats has been illustrated. The issue which needs to be addressed is the magnitude of the mismatch between the language of the lawyer and the language of the child, and the features of lawyer language which can account for this mismatch.

If attention is focused on the differences between repetitions which preserved 'The Sense' of the original question and those which contained 'No Sense' of the original question it is obvious that the questions generated by the transcript material posed problems for a significant group of children. There is also an obvious difference
between the lawyer questions which were randomly chosen and those which were selectively culled from the transcripts. The selectively chosen questions represent a pool of lawyer questions which display most clearly some of the language characteristics which are only common to a courtroom. These characteristics will be explored in more detail later in this chapter (5.2). The extent to which children could repeat questions which have these characteristics is clearly displayed by the general lack of success which all children had with the selectively chosen class of lawyer questions.

The extent of the mismatch between the language repertoire of the child and the language of any particular questioning category can be measured by looking at the percentage of inaccurate repetitions which produced 'No Sense'. Most frequently the 'No Sense' category was identified by the obvious lack of syntax of the piece of text produced by the child. Because the syntax had been interfered with, the meaning of the text was unclear or confused.

The extent of this mismatch can be shown in the following way.

The three eight year old children tested had zero scores for 'No Sense' for both the 'Teacher' and the 'Counsellor' categories. The language of these two questioning categories seems to be within the language abilities of these three children. The 'Random lawyer' questions produced 'No Sense' in 27% of cases whilst the 'Selective lawyer' category of questions had 'No Sense' in 53% of instances. It therefore appears that 27% and 53% of questions in both these categories were outside the language repertoires of these children.

5.1.9 A consideration of 'A Sense'

So far the results of the testing program have only included two categories of responses; those which preserved 'The Sense' of the original question offered for repetition, and those which had 'No Sense' as independent pieces of text. However, some shifts in repetition while not preserving 'The Sense' of the original question, were syntactically and semantically acceptable pieces of text and exemplify the child's imposition of meaning on difficult text to create 'A Sense'.

5.1.10 'No Sense' and mismatch

The immediate implications of the established mismatch as displayed by the results in the 'No Sense' category of repetitions should now be
examined, as these form the springboards to a more detailed and expansive appreciation of the child as a witness in court.

'No Sense' responses indicate that the language of the question is outside the repertoire of the child's language capacities. If the child can impose no sense on a question, the corollary must be that their responses in court to questions of that type are of dubious value. This reflects on the lack of insight on the part of the questioner rather than calling into disrepute the credibility of the child. The questioner has the power to competently match the language of the questions with the language capacities of the witness. The respondents are instructed that they have no responsibilities other than to answer questions truthfully and to the best of their abilities. They have no capacity to negotiate and no opportunity to express their frustration at not understanding questions. The interactions between the lawyer and the respondent are prescribed by tradition and protocol which seem to perpetuate language mismatch. It appears that the processes of the law can proceed with no acknowledgment of the fact that child witnesses can be disenfranchised by language.

5.1.11 The cumulative effect of linguistic mismatch

Another issue which arises as a consequence of the mismatch between the language of the lawyers and the language of the children, is the cumulative effect on the child of being confronted by questions which do not linguistically form part of their speech repertoire. Confusion, frustration and despair are understandable reactions on the part of any person to a combative sequence of ill matched questions. If language is the pre-eminent mode of display in the establishment of truth in court then it seems to exclude the child victim. Language mismatch in this context implies a form of secondary punishment.

I would speculate here that the more extensive and prolonged the mismatch between lawyers and children, the more likely it is that the whole interaction between witness and cross examiner will become confused and disjointed. Ripples of distress spread across questions which may be perfectly matched to the child's language abilities but the history of past difficult questions inevitably leads to the break-down of the child witness. These break-downs have been attributed by observers to a number of causes:

- the presence of the alleged offender in court,
- the architecture of the courtroom,
- the male dominated environment, and
- the lack of support which the child feels.
I would suggest that all these factors could be accommodated by the child if the language with which they were confronted was sympathetic to their level of development and acuity. However it is not and the effect of being confronted with questions outside the child's language capabilities seems to account for some of the pressure which produces distress. The point at which the mismatch between the language of the lawyers and the language of the children becomes critical and causes effective communication to completely break down should also be considered.

5.1.12 Types of responses available to children

The more constrained the questioning format used by the lawyers the less likely it is that this mismatch will be observable. If a child has been asked to answer (only) 'Yes' or 'No', the answer offered by the child tells the questioner nothing about the child's appreciation or hearing of the question. If you are offered two options and you have been told to choose one, it is quite possible to reply without having heard the proposition which demands your response. The 'I don't know' response is the only other option available to the child when confronted with a question. This response is often used to call the credibility and reliability of the child into disrepute. The speciousness of this argument will be discussed in more detail but it is worth noting here that this response may represent a reaction to a question which is not matched with the language capacity of the child witness. If the child has not heard the question, or if they do not feel able to answer definitely either 'Yes' or 'No', the only alternative that remains is the neutral linguistic territory provided by the 'I don't know' response.

5.1.13 Taking directions from the testing program

The results of the testing program can now be translated into the arena of those wider concerns expressed for child victims appearing as witnesses in court in cases of sexual assault. What do the results of the test and a close examination of extant transcript material tell us about the linguistic treatment of children in court? What aspects of language, particular to the courtroom, contribute to the mismatch between children's language abilities and the language of the lawyers? How and why are these language characteristics employed by members of the legal profession and how justifiable is their usage? Are the stories which children tell of their assault given due weight and consideration? What provisions are made for relatively inexperienced language users who appear as witnesses?
A considered response to these questions will lead to an informed answer to the research question 'How is language used to deny the experience of another human being and how is this signalled linguistically?' In the following section (5.2) I attempt to identify the characteristics of hard to hear speech whilst drawing on insights about the state of child victim witnesses.

5.2 ASPECTS OF LANGUAGE IN CROSS EXAMINATION

One of the concerns expressed by people interviewed who work with victims of child sexual assault is the devastating effect which court appearances have on these children. The alien environment, the male domination of the legal profession and the formality of the courtroom are frequently identified as forces contributing to the disquiet and distress of the child victim witness. Those same social workers, paediatricians and counsellors find it much more difficult however to articulate the features of language which supposedly mitigate against the perceived rights of the child. They find it easier to express what they know of the events and details surrounding the assault. Their anxieties about the strange language which pervades the courtroom are deeply felt but unclear in their expression.

Most people do not have the tools of analysis required to decode and translate this language. They recognise the effects which strange language has on the child witness. They can cite some of the more obvious techniques and tactics which give courtroom language its own private flavour to such an extent that for many, courtroom language is a dialect. The communication gap created by this difference is dependent on the language competence of the novice participant and the level of specialisation of the dialect which is being used.

To understand how it works it was necessary to collect samples of courtroom language, identify the most striking aspects of the language which characterise the interaction, and explore how these characteristics might produce confusion and distress in the minds of individuals. As foreshadowed in Chapter Three the organisation of the aspects of language themselves was not constrained by the use of a pre-existing taxonomy and the organisation of aspects here arises from the transcript data.

The following aspects of lawyer language have been selected from the twenty six transcripts collected for this study. They have been chosen for their discrepancy value. They display ways of asking questions which I see as outside the normal competencies of many adult users of the language, and which pose mismatch difficulties for children who are
already under stress in court. They include some of the aspects of the 'Selective lawyer' questions which the children of the testing program found most difficult to hear.

The list of language aspects which are specifically court related is a long one. For the purposes of generating some immediate and suable results I have concentrated only on the following thirteen. The aspects and their labelling are grounded in the transcripts and do not represent either a cohesive description, a set of mutually exclusive criteria, or categories of equal or like status. The list represents a pool of results which invite further exploration and refinement in order to answer the research question.

1. Use of negative.
2. Juxtaposition
3. Nominalisation
4. Multifaceted questions
5. Unclear or confused expressions
6. Specific and difficult vocabulary
7. Unclear anaphora
8. Use of police statements
9. Quoting of the child's words
10. Quoting of other people's words
11. Repetition of previous response
12. Time, space and location questions in cases of multiple assault
13. Embeddings

Each feature identified is illustrated with examples. The elements of the mismatch between the speaker and hearer are explored as are the implications of this mismatch for the child victim witness. I have made the descriptions as 'common sense' as possible in an effort to allow access to a variety of stakeholders who, although they may be convinced that aspects of language do indeed drive certain results, are unqualified and unwilling to adopt a 'pure' linguistic description. The description also seeks to admit, in an effort to embrace contextual information, the experiences of the child victim witness and other aspects of stakeholder orientation. My assertions and connections are sometimes speculative in that they depend on my own perception of 'what's going on'. My perceptions are informed and influenced by my status as a competent language user, my immersion in the court experience, and my discussions with a wide range of informants. I also sought to check those perceptions with a variety of people involved and uninvolved with the court experience.
5.2.1. Use of the Negative

Simple negatives, complex negative constructions and negative expressions appear frequently in the transcripts. They appear to be placed in unusual positions, and it seems their function is to break up and fragment the content of questions. Ostensibly they are included to add precision to the question, but their effect is often confusing to those not familiar with their format. Negative expressions are common in everyday language, however it is unlikely that anyone except lawyers uses the negative form so widely, or in such particular ways.

In asking a large number of questions in the negative the child is required to refute or agree with that range of negative expressions. A conversation dominated by negative constructions requires constant transposing. The person on the receiving end of such a dialogue may begin to doubt the value of their participation in the interaction.

There are a number of patterns which determine the ways in which lawyers incorporate negative forms in the questions they ask. The grammatical structure of these negatives, and their position in questions, conforms to an unwritten set of rules which are outside the normal language capacities and experiences of both adults and children.

* Insertion of negative form

The first way in which the negative is used is when a negative expression is placed symmetrically between two pieces of information. The negative expression itself is totally lawyer specific and is a likely cause of confusion and mismatch. The example below is a model for this particular use of the negative.

Q. "Now you had a bruise, did you not, near one of your breasts, do you remember that?"
A. "No"
(Transcript 12 years).

The insertion of the negative form "did you not" generates three questions in one question. It can be unclear which part of the question the child should respond to as she is confronted with three possible questions to answer. These are:

1. Did you have a bruise?
2. Was it near your breast?
3. Do you remember that?
In offering one response the child automatically excludes possible answers to the remaining two questions. It is not possible to link, with any degree of confidence, the child's 'no' response to any particular part of the question.

- **Negative as rhetoric**

  The negative is also used as a rhetorical device in court where the negative construction is generally placed at the end of the question as the following example shows.

  Q. "Now, this happened on a Friday, was it not?"
  A. "Yes."
  (Transcript 7 years).

  Its inclusion creates a number of options for the relatively inexperienced language use, who is trying to come to terms with the basic content of the question. Does the "was it not" imply that the question means that 'it did happen on a Friday'? The child is confronted with the issue of how to answer. The level of complication spawned by this rhetorical question marker is unnecessary to the issue of either 'happening' or 'Friday'. It does not add to the weight of the answer given by the child; the tendency would be to detract from it.

  Confusing questions are likely to produce confused answers. The issue of confusion becomes critical when the question being asked is full of options for response. The following example typifies how this confusion can become entrenched by the addition of a negative rhetorical tag.

  Q. "When Mr Smith asked you if you could remember anything about a towel you said you could not remember anything about a towel? The first time? Is that not right?"
  A. "No."
  (Transcript 15 years).

  **Isolated rhetorical negative**

  The rhetorical use of the negative form also appears without any other supporting question content. Frequently children are asked questions such as 'Is that not true?' Most users of the language would find it much easier to answer the question 'Is that true?' than to respond to its negative rhetorical counterpart.
There is a higher likelihood of mismatch when the negative rhetorical form is used since it requires double processing before any answer is given. Because of this potential for mismatch, there is also a greater likelihood that the response given by the child will be mismatched with the intention of the question being asked.

- **Uncommon use of the negative**

The following example illustrates another specific use of the negative in court. It is representative of that class of question which is prefaced by an uncommon use of the negative. The subject of the action is placed after the negative form. This construction rarely appears in everyday language. It is most unusual to hear questions such as 'Did not Susan go to Macdonald's last night?' or 'Did not Peter hit you with the stick?' The purpose of including the negative form at the beginning of a question is to reinforce its status as carrying the primary meaning thrust of the whole question. However, because of its unusual form it is predictable that it will cause some immediate concern in the mind of the respondent. Its strangeness is immediately apparent.

Q. "**Did not Phoebe** have an accident with the horse about ten days before this, have some bruising. Remember that?"
A. "Oh yes, she had one just here"
(Transcript 11 years)

The insertion of "Did not Phoebe ..." unnecessarily overloads the content of the question being asked. If the questions were rephrased to bring it more closely into line with the language abilities of the child, it would probably appear in this form.

Q. "Did Phoebe have an accident with the horse about ten days before this, have some bruising? Remember that?"

The content of the question has in no way been prejudiced by the dismissal of the negative preface to the question. The omission of the negative improves the linguistic precision of the question and changes it into a more comprehensible and manageable form for the child to deal with. It removes that element of linguistic mysticism which confronts the listener when unfamiliar and outdated forms of expression are used. It becomes a much more inclusive way of obtaining information required by the court. To answer the question above in its original form requires the respondent to think clearly about the implications of answering a question asked in the negative. In the example given the possible interpretations which could be imposed are:
1. Phoebe did not have an accident with the horse.
2. Phoebe did have an accident with the horse.

It is not a true negative but a rhetorical device used to reinforce the impact of the questioning process. It is doubtful that this level of language sophistication falls within the repertoire of the child witness. If the child hears the 'not' as a true negative rather than as a piece of rhetorical jargon, then the child has to decide whether Phoebe did have an accident or not. If she did, then the child will then have to decide how to best express this fact given the negative restraints of the question format. Does the child say 'yes' or 'no' to this part of the question? If the answer is 'yes', what she is actually saying, in linguistic terms, is 'Yes. She did have an accident with the horse'. If the child has acquired the linguistic subtlety to recognise the 'not' as a rhetorical marker, then the answering pattern would be reversed. The four possible options for response imply that this form of questioning is inappropriate if the conditions of precision and clarity are to be satisfied. However, experimental evidence casts a more definite light on this assertion.

- Multiple negatives

The inclusion of multiple negatives in questions makes them difficult for even the most experienced language user to answer with confidence. A thirteen year old responded with 'I don't know' to the following:

Q. "And do you remember another occasion your father, or your stepfather, asked if you were playing sport, did you say no?"
A. "I don't know".
(Transcript 13 years)

The inclusion of negatively loaded terms such as 'deny' and 'dispute' may also pose problems for child witnesses as the following extract indicates.

Q. "Do you deny going to Cronulla Beach with Martin and your brother before November 1985?"
A. "What does deny ...
Objection
Question allowed
Q. "Now go back to Cronulla Beach. I am putting it to you that you and your brother on a school day went to Cronulla Beach with Martin around November it was certainly before December 1985? Do you remember that?"
A. "No"
(Transcript 10 years)
• A generalised effect

Questions with negative terms which do not contribute to semantic clarity may confuse children, frustrate their attempts to tell the truth, and generally reduce their level of confidence in court. Given that child witnesses in cases of sexual assault are generally nervous, reluctant, upset and unsure of themselves in an adult dominated courtroom, the extra pressure created by asking questions in ways which only serve to reduce semantic clarity in the pursuit of rhetorical force is an example of how language mismatch can be used to discriminate against the child.

5.2.2 Juxtaposition

Communication is generally characterised by the development of ideas. An explicit effort is made to link these ideas especially when the people speaking to each other are relative strangers. In many everyday interactions the unspoken conventions for changing topics of conversation are accepted. There is generally an obvious link between what has just been discussed and the new item of conversation on the agenda. It is common to hear people say, for example, '... speaking of such and such ... did you read about ... did you know... have you seen...' If these cues are left out communication becomes disjointed and possibly frustrated. Someone is inevitably left stranded.

• A lack of linkage

In court there is no provision within the language to establish linkages. The cross examiner jumps from topic to topic and the child witness is expected to keep pace. The juxtaposition of questions seems inexplicable as topics are jostled randomly. The effects of this are most critical when intimate details of the child's alleged sexual assault are questioned, and then juxtaposed with general and more objective questions.

• Changing topics

A change of topic requires some kind of marker to accommodate a new context for the interaction. The practice of juxtaposing unrelated topics excludes the possibility of any transition time. Without this accommodation time it is likely that the child will become disorientated, confused and unclear about the general line of questioning. The greater the frequency of these shifts from the personal to the objective, the greater the cumulative effect of the confusion will be. The rapid shift
from the highly personal and traumatic to the details of acquaintances, for instance, as shown in the following example requires the child to leap from one subject to another at an often alarming pace.

Q. "That was after he had stripped you?"
A. "Yes"
A. "And you had your legs together?"
A. "Yes"
Q. "And then you said he tried to put his finger in your vagina. Did he put his finger in your vagina or on your vagina?"
A. "In my vagina, in my vagina?"
Q. "Inside, you felt it inside did you?"
A. (No verbal answer)
Q. "Did he do anything else to you?"
A. "No"
Q. "Do you know Frank Murphy?"

(Transcript 14 years)

Frank Murphy has not been mentioned previously, and his identity in the case is not established subsequently.

In the example given above the pattern of questioning shifts from a highly personal recounting of the details of the alleged incident of sexual assault to a question about whether the child knows a particular person. The rapidity of topic change from vaginal penetration to known acquaintances requires a cognitive and contextual leap. The cross examiner has not provided the child witness with any adjustment time or any preliminary discussion about the subject change. However in court children are expected to change from topic to topic at a pace determined solely by the cross examiner, with sometimes no cues as to why these questions are being asked. Little or no effort is made to set the stage for the child's processing of topic changes.

The following example illustrates starkly the kind of conceptual leaps demanded by the use of this particular technique. A thirteen year old boy, allegedly the victim of multiple assault, has answered fifty questions relating to the fine anatomical details of his assault. The topic suddenly changes, and then reverts back within the space of one question.

Q. "And that you say that he puts his penis into your bottom about, what, fifty times?"
A. "Yes".
Q. "On that occasion when Mum went to, being the night that Mum went to the Youth Group you were at Clareville?"
A. "I have made a mistake there, it wasn't Clareville, it was West Hampton."

Q. "It should be West Hampton. You did not see the defendant at any time when he put his penis in your bottom, did you?"

A. "What do you mean?"

Q. "Well you did not see his penis go into your bottom?"

A. "No".

5.2.3 Nominalisation

Nominalisation refers to the language process where an action is objectified so that neither the agent nor the recipient are mentioned.

'The environmental clearance campaign that was instituted in the pursuit of public safety' is possible as a claim only because someone previously talked about 'the cutting down of the trees' as being 'an insurance company requirement'. Both the claims are a long way from their alternative expression which exposes the relationships involved as in 'I am cutting down the trees because the insurance company manager told me I have to'.

• The process in court

Nominalisation in the courtroom is often achieved by changing the verb in a piece of spoken text into a gerundive. For instance the text 'Susan hit Bill's leg' could be nominalised by changing the verb 'hit' into its gerundive form 'the hitting of the leg'. Susan and Bill are implicitly removed from any discussion of this leg which has been hit. We now have no prejudices about who did the hitting and whose leg actually got hit. Both people have been effectively removed from the discussion as have any decisions about the consequences of the action. It is a less personal statement which has put a distance between the recipient of the action and the person responsible for the action.

• Processing nominalisations

Linguistic theory indicates that nominalisations are more difficult to process then their equivalent verb forms (McCawley, 1970). In the Charrows study of (jury) instructions, nominalisations were not well understood. The mean percentage of correct replies for instructions relating to nominalisations was 29 percent, as compared to nearly 40 percent for all instructions not containing them. Moreover, removing nominalisations significantly improved comprehension of instructions.

(Danet, 1980: 485)
The results of this research are more significant when one considers that children (young and inexperienced users of the language) are being confronted with linguistic forms which pose comprehension problems for adult language users. The impact is even greater for the child when one considers that the status of a juror in the courtroom is ostensibly that of objective observation of the proceedings in the case, while the child’s status as the alleged victim and then primary witness exposes her to interrogation, impeachment and disputation.

• The effects of nominalisation

This technique can be used by cross examiners to preserve the status of their client. It would seem that the purpose of this line of questioning is to maintain objectivity. A child confronted with nominalised questions may feel discounted and disenfranchised from the events about which they are being questioned. Objectivity is a difficult mode for adults to operate in when discussing personal problems or shattering events. One can only assume that this is much more the case for children who are being asked to give details of their own sexual assault as though they had been watching it from the vantage point of a surveillance satellite.

• Telling examples

Q. "Did you have to step out of them (pants), what happens as regards that?"
A. "Yeah I stepped out of them a bit."
Q. "Now did you resist that in any way?"
A. "Mmm."
Q. "The actual taking down of the pants?"
A. "A little bit, I was scared."
(Transcript 12 years)

Q. "She was laughing. Well you do not think too much about that yourself did you? You were not troubled by that were you?"
A. "The massage of the breast."
(Transcript 12 years)

Q. Was there ever touching between you or by Vincent Baines of your boob, ever?"
A. "Only once."
(Transcript 11 years)

Q. "Now just stop there. Did you tell the police what is in that statement about the matter, about the touching of the boobs?"
A. "Yes I told her."
(Transcript 11 years)

Q. "How many times did it happen this tickling of the vagina?"
(Transcript 10 years)

Q. "He never hit you at any time or about any time that these particular acts that you have spoken of, the sucking of the penis or the putting of the penis in your bottom, occurred, is that right?"
A. "It happened, like when that was not happening, yes I'd get hit, yes.
(Transcript 14 years)

• Distance and nominalisation

In the examples offered above young children, unused to the sophisticated distancing device of nominalisation, are being asked to answer questions about the details of their assault as though they had been watching rather than participating. Given the highly personal and traumatic aura which surrounds incidents of child sexual assault, the process of nominalisation can only be construed as adding to the language pressures exerted on the child in court.

5.2.4 Multifaceted questions

Perhaps one of the most obvious examples of specifically lawyer language is embodied in long and complicated questions which are often asked of children in court. They consist of convoluted preambles, confused centres and rhetorical endings which invite no response. These questions produced the highest degree of mismatch in the testing program. This is not surprising when the amount of information processing required by some of the following examples is considered. Their sense would defy the most articulate of language users.

Q. "Now do you say that whatever it was that happened, or whatever it was that happened to Dianne, you were in the toilet at the time and you obviously heard something, did you?"
A. "Yes."
(Transcript 11 years)

Q. "Well I know, I understand what you say you have been talking to her today but you see what I am asking you to do is this, that statement suggests that you said those things that you now say are wrong to the police. Now did you say it to the police or did you not?"
A. "I don't know."
(Transcript 9 years)

Q. "So the first time you got smacked for telling stories you still told stories and got smacked again. So it didn't make any difference to whether or not you told any stories did it?"
A. "No."
(Transcript 7 years)

Q. "And did your mother ever say to you that if somebody asks you the questions I am asking you, you should say that we didn't say what was going to be said?"
(Transcript 10 years)

• A common form of multi-faceted questions

The examples of multifaceted questions given above reflect their common form. Frequently they begin with a word such as 'well', 'now', 'so' as if they are the result of a set of experiments from which an hypothesis has been extracted. They contain a number of ostensibly already established facts, presumably offered by the child witness at an earlier stage of the proceedings, and they are finalised by rhetorical questioning markers which invite no response because of the tone in which they are delivered to the child. Long and complicated questions are difficult enough for the child witness, but when they are accompanied by rhetorical devices the child has no options for reply. Rhetorical questions are display boards for other people's information and have little to do with the answer given by the respondent.

• Multiple option questions

Multiple option questions are one of the most common forms in which multifaceted questions appear in the cross examination of the child victim witness. In these cases the child is confronted with a question which contains a number of options. However the instruction to answer 'yes' or 'no' and the requirement to keep responses short and to the point reduces the negotiability which the child has in this context. The child could conceivably disagree with a number of the options offered by the cross examiner in any one question, or agree with a number of the options, but the child does not have the opportunity to express this. Considering that everything that the child says can be called back at a later stage, this is a strategy which creates oral evidence of a particular kind which cannot be gone back on in the proceedings.
Q. "Okay after Mum had gone to work, did you have tea before she went or did you have tea after or what was the set up?"
A. "Before."
(Transcript 12 years)

The multiple option questions are frequently characterised by long strings of words with complex interrelationships existing between the ideas expressed in them. It is quite conceivable that the child witness may agree with some of the propositions contained in any one question and disagree with others, and yet their is no provision within this mode of questioning for the child to express these views.

Q. "The only reason that it did happen was because you were scared of what might happen if you didn't allow it?"
A. "Yep."
(Transcript 12 years)

Q. "And you told the policeman that Daddy said 'Mum's coming'. Now that is not true is it. Do you remember telling the court here just a few moments ago, you said "Mum's coming". That is true is it not?"
A. "Yes."
(Transcript 7 years)

Q. "Well did he take hold of you and make you do anything? Did he grab hold of your hand and do anything with your hand?"
A. "No."
(Transcript 14 years)

Q. "And is this the position Peter, that whenever the defendant puts his penis in your bottom, as you say you were always on the bed and Steve was out of the bed?"
A. "Yes."
(transcript 14 years)

Q. "Now after your father tried to get you to put your willie into his bottom, you say that he put his willie into your bottom?"
A. "Yes."
(Transcript 11 years)

5.2.5 Unclear or confused questions

Many members of the community experience an immediate sense of intimidation when confronted with anything legal because of the specificity of the language used in the legal context. The public are usually generous in their interpretations of language and willing to
tolerate shades of meaning in the language which they use and respond to. The law operates according to a completely different set of principles. Words and phrases are the embodiment of the law. Meanings and interpretations have been prescribed by generations of legal argument, precedents and established conventions. Legal language is bound by these histories, with specificity, precision and established questioning protocols being the hallmarks of courtroom interactions. It is therefore surprising to find examples of badly phrased, confused, unclear and indecipherable questions being addressed to young children in court. There is no obvious pattern underlying this lack of clarity, but if the following examples are an accurate representation of this class of questions the child victim witness will experience a great deal of difficulty in decoding their meanings.

Q. "Were you the first to go into the shower that, after tea that night or not?"
A. "Yes."
Q. "At any stage whilst you were in the bathroom did he ever enter the bathroom that previous week?"
A. "Only about two or three times, not more than that."
(Transcript 11 years)

Q. "Well I know, I understand what you say you have been talking to her today but you see what I am asking you is this, that statement suggests that you said those things that you now say are wrong to the police. Now did you say it to the police or did you not?"
A. "I don't know."
(Transcript 10 years)

5.2.6 Specific and difficult vocabulary

Every profession has its language conventions which are particular to it. Science, medicine, engineering and the law are examples of professions which use vocabulary and technical terms particular to the discipline. Within the law, words are the display boards of guilt and innocence and their usage is controlled and pre-determined in a totally specific way.

Anyone who has been confronted with a legal document knows that it needs the translation skills of a solicitor to allow the reader to come to terms with the actual content of the document. Unlike other contexts where language is used, each word and phrase has generally only one meaning. Language does not have the flexibility and open ended interpretation which most of the rest of the world is used to. It is a private language with its grammar and its meanings arrived at by tradition and generations of usage. Children in court, as relatively
inexperienced language users, find the specificity of language disconcerting and very unlike their experiences of the rest of the world. The intensity of this mismatch discriminates against them.

• **Specificity of legal language**

The specificity of language usage is determined by unwritten formulae and tradition. The novitiates in the court context do not have the opportunity to express their lack of comprehension. The pace, the format and the protagonists allow no time and space for those who do not comprehend. Few adults and even fewer children reply to a question by saying that they do not understand or by asking for the question to be repeated. There is an underlying expectation in courtrooms that answers must be given even if they are 'I don't know'.

• **Use of specific terminology**

There are a number of different kinds of linguistic specificity reflected in the language of the courtroom. The first of these is the use of terms whose meaning is understood only by those acquainted with court procedures. These may be individual words or phrases. These pieces of legal terminology are used ostensibly to clarify interactions and procedures, to argue points of law and to preserve the already agreed format for the conduct of cases.

• **Arguing points of law with specificity**

Q. "Now the envelope, I'll withdraw that, the park that you were in, has it got a fence around it?"

This example was taken from the cross examination of a seven year old child. The use of such terminology implies that the child is expected to understand the meaning of 'I'll withdraw that'. In the context of the courtroom this piece of language has a totally prescribed meaning, that of taking back the immediately preceding piece of text. It is questionable whether it is realistic to expect that a child should also have this understanding. If they do not know how can they be expected to reference the term 'that' in any way? How do they know what the 'that' refers to, assuming that they can assign a meaning to the word 'withdraw'?

"I suggest to you that all of this is figment of your imagination". (Transcript 7 years)
Q. "Well Peter didn't stay and you ran away, you ran away, I mean, I withdraw that. You didn't run away and Peter stay. You say Peter ran away and you stayed?"
A. "Yes Peter did run away."
(Transcript 7 years)

Q. "And is it possible that when he came into the bedroom it was about 9 o'clock and not just a few minutes after 7 o'clock?"
A. "I've forgotten."
Q. "You have forgotten. But it is possible is it not that it was 9 o'clock?"
A. "Yes"
(Transcript 10 years)

Q. "You went for a swim there I am putting to you at Cronulla Beach?"
A. "No."
(Transcript 10 years)

Q. "You went to, went and got into the car outside your home, I withdraw that, whereabouts in relation to your home, did you get into the car on this morning?"
A. "Well on the, when?"
(Transcript 10 years)

• A private language

The meanings of the examples above exist only in the province of the courtroom and their privacy of interpretation excludes the child, yet the child is expected to answer questions which include such expressions.

• Vocabulary specificity - its effects

Some questions asked of child victim witnesses contain individual words which are appropriate for sophisticated adult language users but which have little meaning in questions directed to young children. The following display some of these vocabulary mismatches.

Q. "And if that statement was made in the latter part of April?"
(Transcript 11 years)

Q. "See, Daddy did not interfere with you on this day, did he?"
A. "No."
(Transcript 7 years)
The prosecutor intervened at this stage and asked the following questions.

Q. "The last question that Mr. Smith, this man here asked you, was that Daddy did not interfere with you on this day. Do you know what he meant by that?"
A. "No."
Q. "I see, and you know what Mr Smith means when he says interfered with you?"
A. "No."
(Transcript 7 years)

Q. "Are you denying that it happened?"
A. "What does deny mean?"
Bench: "I wonder if she understands the word deny?"
(Transcript 10 years)

Q. "I am sure he might have been, but I am suggesting that notwithstanding where your father was you telephoned the house where Max was living, is that true?"
A. "No."
(Transcript 10 years)

The words used in these questions which would have caused some vocabulary problems for the children are 'latter' (child 11), 'interfere' (child 7), 'deny' (child 10), 'notwithstanding' (Child 10). Even if they had heard these words used before coming to court it is unreasonable to assume them to have these specific meanings as part of their vocabulary.

5.2.7 Unclear anaphora

Despite the ostensible precision and clarity of lawyer language there are a number of clearly identifiable areas of sloppiness. In an attempt to preserve the formality of the language used in court, lawyers appear to sacrifice brevity and clarity for complication and confusion. This is reflected in the examples given in the section immediately above. Paradoxically lawyers also omit whole chunks of information on the assumption that the witness has immediate access to the topic which is under examination. They replace these chunks with pronouns or other referencing markers in the expectation that the respondent will be able to recognise the item which they are referring to.

These types of references to things mentioned earlier, are known as anaphora. For example the question:- 'did you hit the boy with the large red handled hammer with a tempered steel head?' would probably be streamlined in repetition by removing the chunk 'large red handled
hammer with a tempered steel head', and replacing it with the pronoun 'it'. Provided that the original question has been asked, and the refined anaphoric version was repeated next in the sequence, there would be no confusion about what the pronoun 'it' referred to. It would be clear to the respondent that the question, 'Did you hit the boy with it on Tuesday or Wednesday?' was a question relating to the hammer and when it was used.

- Courtroom anaphora

In the courtroom, anaphoric references are often unclear. The main cause of this confusion is the difficulty involved in establishing the actual referent implied in the anaphoric replacement.

Q. "Well you are not sure whether you said those things to the police which are wrong?"
A. "Mmm"
(Transcript 11 years)

It is very difficult, even with the advantage of time for reflection and the printed transcript, to establish exactly what the 'those things', anaphorically referred to in this question, relate to.

5.2.8 Use of police statements

As well as asking the child witness about evidence given at an earlier stage of the case the cross examiner devotes a great deal of questioning time to the content of the police statement which the child made after the disclosure of the alleged sexual assault. Time delays in court proceedings mean that this statement may have been made between three months and two years earlier. If the case of alleged assault proceeds through the District Court and further, the time period involved increases accordingly. A child may have been allegedly sexually assaulted and made a Police Statement when they were 7 years of age. Two years later, at age 9, they are questioned in court about the fine details of this statement.

While the law's delays are applicable to both adults and children involved in litigation, two years in the life of a young child is significant in terms of experiences and vital learning. Everything that we know about child development highlights the fact that change typifies emotional, physical, social and cognitive growth at this stage of any persons life. The differences between a 7 year old child and a 9 year
old child are much more observable in all spheres than the difference between a person at age 32 and age 34.

The rapidity of change is clearly seen in the types of language structures, vocabulary and uses to which language is put by the developing child. Ways of saying things, the words which the child uses and the concepts which underlie these expressions develop and change rapidly. Mastery of language does not magically appear; it is a process which continues long after a child has acquired the ability to speak. It is dangerous to assume that because children are able to express themselves they have a competence which parallels that of the mature adult speaker. This is clearly not the case since some facets of language maturity are not reached until late adolescence.

These issues of child development generally, and linguistic development specifically, are overlooked by many courtroom protagonists. The language of cross examination in particular takes little account of the characteristics of the emerging language user. Structures, vocabulary, tone and context reinforce the status of the child as an inferior and immature speaker of the language. These language differences between the developing and the developed speakers are entrenched and strengthened by the ways in which questions are asked. Few concessions are made for the learner. The child witness is expected to conform and then respond to an unknown pattern of language without the prior experience, the developmental capacity or the linguistic maturity necessary to understand it.

• Police statements and the child witness

Ideas about child development are overlooked during cross examination in many subtle but destructive ways. The extensive citing of Police Statements by cross examiners and the uses to which the children's answers are put reflect a dismal lack of appreciation about childhood cognition. To return to words which were written down according to a prescribed formula for admittance into the court, and which were said perhaps two years earlier under circumstances of stress and trauma, denies the possibility that the child has changed. The legal magnifying glass which is used to scrutinise the child's words, as recorded by the Police, closes in around the words alone. Given the childhood context of change and development, it is unreasonable to expect anything other than confusion and distress to be the response to detailed questions about scripted events which occurred so long ago in the child's life.

Child witnesses in court generally attempt to answer all the questions which they are asked. They take their instructions from the magistrate or judge most seriously. The following example shows how the
The juxtaposition of answers given in the 'here and now' and answers in response to questions about a Police Statement given at a much earlier stage can be used to imply that the child is lying about the details of the alleged assault.

Q. "Just have another look at the statement will you, and have a look on page 2 of your statement. You see there is nothing in there about telling Lisa on the Thursday night he had touched you there?"
A. "No."
(Transcript 12 years)

It is understandable that the child witness may feel as though the cross examiner is trying to trick her, confuse her, or imply that she is not telling the truth. The question, preceding the one above had been about who this child had told about the alleged assault. The preceding six questions had dealt objectively with who the child had told. The police statement was then produced and implications drawn that she was lying because she had not mentioned these incidents in her police statement. It is doubtful that the child appreciates the legal weight attached to a Police Statement. Neither does the child understand the implication made by the cross examiner here, that if information is not included in the Police Statement it cannot be considered to be true. To the best of her ability the child is answering the questions put to her. The legal subtleties of relatively weighted pieces of evidence are not within the experience of a twelve year old girl. She has fulfilled her obligations and the only response she receives is the imputation that she is not telling the truth. These dynamics are unwritten, unexplained and only serve to confuse and distress the child.

The following example shows how one child attempted to explain why a particular piece of information was not included in her statement. The cross examiner's response indicates that he is not really interested in the child's reasons for omitting this evidence, but that he is more involved in displaying the child's ostensible inconsistency about the details of the alleged assault.

Q. "Did you say this that you did not tell that to the police?"
A. "Yes I told her before 'cause I didn't have a chance to tell her, I told her..."
Q. "Now just stop there..."
(Transcript 11 years)

There is a common pattern for integrating the evidence contained in a child's Police Statement with the other evidence obtained from the child witness. This pattern reflects no obvious concern for the age of the child, their possible level of development or their general emotional
well being in court. Children frequently break down in court and their distress is usually associated with this part of the proceedings. The following example shows how the juxtaposition of police statements and current evidence was orchestrated by a successful cross examiner.

It concerns an eight year old boy allegedly assaulted twice by his stepfather. According to the information available on the transcript the alleged assaults took place when the child was 5 and 6 years old. The strategy is structured something like the following:

- establish that two incidents of assault took place.
- establish the time between the two incidents in the child's mind.

Q "How long after the first time did he ask you to go upstairs the next time?"
- The child replies understandably that he does not know.
- Cross examiner suggests some time options.
- Child chooses one of these options.
- Details of the abuse are elucidated.
- Introduction of the police interview.
- Signing of the police statement by the child confirmed.
Q. "And you say that you haven't seen any mistakes is that right?"
A. "Yeah, no mistakes".
- Document handed to the child.
- Goes over preceding evidence about details of the alleged assault again.
- Quotations from the statement which directly contradict what the child has been forced into saying.
Q. "So what's the position, did it happen the next day or did it happen the next year?"
A. "As I said the next day but then I must be wrong if it said on my statement".
Q. "You made a mistake?"
A. "Yes."
Q. "A big mistake, is that right?"

Child breaks down
(Transcript 8 years)
Child returns

Q "You see these things I've been putting to you Peter, they're just too big to be a mistake aren't they?"
A. "I don't know what you mean"
Q. "What I'm saying is you're not telling the truth?"
A. "I'm telling the truth".
The number of questions which were asked relating to this issue is one hundred and one. Yet if we refer back to the response to the first questions asked about the time period between the two alleged incidents the child initially replied 'I think, I don’t know but I just know that he told me to go upstairs'.

Q. "Well do you know how long, was it a couple of days later or a week or months or a year or what?"
A. "I think it was one day, I'm not sure".
Q. "You think it was one day?"
A. "Yes, I'm not sure."

The child had admitted that now he could not remember the time period involved yet it was used as a given fact by the cross examiner. The child's lack of confidence in remembering the time period involved was used to call all of his evidence into question.

5.2.9 Quoting of children's words

Every word spoken in a courtroom has its particular worth. The line '... anything you say may later be used as evidence in court' has a particular relevance to the child victim witness in cases of sexual assault. Frequently what the child has said in response to one question is used in another context to verify the particular piece of evidence and approach it from a different angle.

Q. "And is that because of what you told us that he threatened to, not just bash you, but bash, I think your words were, all of you?"
A. "The family."
Q. "Remember that you told us before the lunch break that you had never been out with Martin before this particular day, 8th of November, do you remember saying that, before lunch, do you remember or do you not?"
A. "No."
(Transcript 10 years)

Q. "Do you recall just before lunch saying to the court that you had your tracksuit pants on when you sat in his lap?"
A. "No I said that I had my tracksuit pants off."
(Transcript 9 years)

Q. "On the second time he asked you said he used these words 'Come on please take your pants off' do you remember saying that?"
A. "Yes."
(transcript 9 years)
These are not questions about what happened, but about what was said about what happened. Children find it difficult to wade through this web of ambiguity. The child is also being asked to comment on what can be termed linguistic assertion. They are not being asked a direct question but rather they are required to think about something which they have said on a different occasion in response to a totally different question.

If we return to the second example given above we see the child is being asked about both remembering evidence given before lunch as well as the actual context of that evidence. Further, the final part of the question 'do you remember or do you not?' requires only a 'yes' or 'no' response.

The wisdom of asking two questions in one is again called into question as is the validity of asking the child to refute evidence given at an earlier stage of the proceedings. If we consider the actual number of questions which a child is asked in any one session in court, we realise that the child is being asked about a response to one or two or three questions out of a possible five hundred. The pace of interchange between questioner and respondent places a great deal of strain on the child's memory for detail and time sequencing as does asking specific questions about responses given at other times in the court hearing. Many articulate and confident language users would not be able to accurately and truthfully answer questions about interchanges which had occurred two to four hours earlier in the day.

Returning to the second example given above, the child may in fact not remember that she answered in this way 'before lunch', and therefore she would be obliged to answer 'no,' as she did. The implication is not that she did not say it, or that it wasn't true, but only that she did not remember this one response out of her preceding five hundred. However, this leeway is not tolerated and her 'no' response can be used by the cross examiner to call her evidence into disrepute. Her credibility is diminished not by her ability to substantiate her story, but by her inability to respond to the connections imposed by this form of questioning.

5.2.10 Quoting of other people's words

Another feature of lawyer language which appears in the cross examination of child witnesses in cases of sexual assault is the quotation of other people's words incorporated into the questioning format. These questions are often prefaced by the words 'I put it to you' or 'I suggest to you' and are assertions on the part of the cross examiner.
rather than questions directed to the child witness. The subtle distinction between a rhetorical assertion and a question is a difference which children cannot be realistically expected to appreciate. This device allows the cross examiner to introduce information which might otherwise be inadmissible, but it does so at the expense of the credibility of the child. It is unrealistic to expect the child witness to recall the exact words of conversations which took place perhaps two years earlier, yet these are the questions they are being asked. Since most of these questions only offer the possibility of a yes/no response the child is further constrained. Their capacity to negotiate about the content of the quotation is refused by the structure of the question as the following examples illustrate.

1. Q. "And I suggest to you that when you got on the bike Daddy said 'Look get off, you're not allowed to ride it in the house'. Is that true?" (Transcript 8 years)

2. Q. "I put it to you that those conversations on the Monday and Tuesday that I have spoken to you about he said to you 'I am working'. What do you say to that?" (Transcript 11 years)

3. Q. "And when was it that Sue said 'Did he touch you?' was that in the bathroom or where?" (Transcript 12 years)

The apparent precision of the words quoted in the questions above can be mystifying rather than clarifying for the child witness. The fact that they may be part of the hypothesis testing technique used by the cross examiner is not understood by the child witness.

5.2.11 Repetition of previous response

Children's responses to questions are often repeated by cross examiners. The following examples illustrate how this is done.

Q. "And is that because of what you have told us that he threatened to, not just bash you but bash, I think your words, all of you?"
A. "The family."
Q. "The family?"
A. "Yes."
(Transcript 12 years)

The repetition by the cross examiner of the answer offered by the child ('the family') reduces the impact of the child's answer. It is not done to
check the child's response (because it is a clear and understandable answer), but to hold the child's answer up to more scrutiny and possible disbelief. In everyday conversations the same practice occurs. For instance imagine a conversation between two fishermen about a third fisherman.

Harry: "Fred caught a five kilo trout."
Pete: "A five kilo trout?"
Harry: "Yes a five kilo trout."

Pete's repetition of Harry's words are more likely an expression of disbelief than an expression of amazement or interest. The fact that Harry sticks to his story may mean that Fred really did catch a five kilo trout, but Pete's question has introduced an element of doubt into the conversation. Similarly in a courtroom the repetition by the cross examiner of clearly expressed responses given by the child witness casts doubt on the accuracy of these responses.

5.2.12 Time, space and location questions

Cases involving multiple incidents of assault pose a particular set of problems for the child witness. Cross examination is not renowned for establishing the context within which such questions are framed and this becomes critical when questions about different times, details and locations for assaults are asked. The language and structure of these questions reflect the mismatch between the precision demanded by the court and the set of painful experiences which characterise the evidence of the child witness, who has been assaulted consistently over a long period of time.

In instances of multiple assault, the law selects one or two incidents which are the substance of the prosecution case. These incidents may be representative of a hundred such assaults in the child's mind, and yet the child is expected to remember with total accuracy the time, location and details of just this select few. This selectivity is endorsed by the cross examiner who deals with the selected incidents in the most precise detail. The following examples show how inadequately the context for these questions is presented and how the language used by the lawyers serves to reinforce the confusion already firmly established in the mind of the child witness who has been the victim of multiple assaults.

Q. "I'm sorry, you might not understand me, the first time and then it's finished, how long until the next time that your father puts his penis in your vagina?"
(Transcript 7 years)
Q. "Now which class were you in when Dad asked you to go upstairs, were you in the class for the first time or first class for the second time?"
(Transcript 8 years)

Q. "I mean if something happens today and something happens tomorrow, you're not going to say they're about a year apart are you?"
(Transcript 8 years)

Q. "Well when you were in first class for the first time and when you were in first class for the second time those are a year apart aren't they, not one day, one whole year at least, that's right isn't it?"
(Transcript 8 years)

Q. "When was the last time he did this to you before the one we have been speaking of? We have been speaking of just one in February, obviously, when was the last time he interfered with you before that?"
(Transcript 12 years)

Q. "And on none of these 11 or 12 occasions, prior occasions was, to use the expression, was he ever sprung?"
(Transcript 12 years)

The examples offered above reveal a passion for details of time, yet the ability to describe a time frame must be related to a context and yet this is absent from all of the questions. Similarly, the tone and content of these questions makes no allowance for the developing sense of chronology of the child witness. These questions require an adult perception of time and events which is inappropriately imposed on the child witness. Under circumstances of minimal stress where the event is not characterised by fear, physical pain or trauma children have difficulty accurately establishing a time frame for incidents in their lives. Given the emotional damage associated with multiple cases of assault, it is even more unrealistic to devote time and energy to the process of fine questioning about temporal, spatial and physical aspects of abuse. The only predictable responses will be those of confusion and distress aggravated by poorly constructed and restrictive questions.

5.2.13 Embeddings

The language which cross examiners use is sometimes compressed. They have the ability to squeeze a lot of information into a single
questions indicated earlier when the confusion created by multifaceted questions was discussed.

However there is another dimension to these compact questions which requires exploration, because not only are they multifaceted in their content but their syntactic structure mitigates against a clear understanding of them by individuals not totally immersed in the language style of the courtroom.

The feature which makes these compact questions so difficult for the novice to understand is the fact that they do not maintain the normal pattern of speech conventions. They are more like their Latin models rather than normal English speech. For this reason they pose a particular problem for the child witness who is unlikely to be familiar with either their history or form.

The technique which is used to compact information within any given utterance is referred to as embedding. It is a process of wedging more content and connections in a piece of language by the use of certain syntactic devices. For example the question 'Did you see the dog run over the road with a bone in his mouth, looking everywhere for place to bury it?'. This is right branching, and reflects the most common pattern of embedding which occurs in English speech. The primary foci appear early in the utterance and the more complex qualifications and expansions occur after it. However this question could be rephrased by moving the phrase 'run over the road' to the end of the question. The question would then become 'Did you see the dog, with a bone in his mouth, looking everywhere for a place to bury it, run over the road?' The rearranged question is a left branching construction because the complexities precede the verb, rather than follow it. This would be even more so if the interrogative marker 'did you see' were also placed at the end.

Left branching sentences pose a greater strain on the listener than do right branching sentences. This was shown by Charrow and Charrow in 1979 when they investigated the comprehensibility of oral instructions given to the jurors in court. The results of their research have been reported by both Danet and O'Barr who summarised Charrow & Charrow's findings. William O'Barr informs us that most English sentences tend to be right branching where the verb comes early in the sentence complex constructions following it. Many jury instructions are expressed as left branching sentences. (O'Barr, 1982). Danet reports that:

embeddings were inversely related to comprehension; modifying instructions to reduce embeddings sharply increased comprehension in sentences containing three or more embedded clauses.
Embeddings increase the stress on the respondent in court. If the child witness is confronted with questions containing a number of embedded pieces of information it is likely that comprehension will decrease and deteriorate as the number of embeddings increase. If the technique for embedding does not conform to the normal speech and conversation patterns of English, the comprehensibility of the question will be even lower. The fact that adult jurors had difficulty understanding speech which was characterised by left branching embeddings confirms that children will find the task of comprehension daunting.

The following examples of left branching embeddings have been selected from the transcripts of children under cross examination.

Q. "Taking you back to the time when you were living in Sydney, when you first met Fred, at that time and throughout the period that Fred was living with your family, he used to work as a baker, didn't he?"
(Transcript 9 years)

Q. "At or after you finished seeing Mum at the hospital, were you walking home?"
(Transcript 9 years)

Q. "You had not seen him at all. Now it would be incorrect to suggest that whilst you were up between the buildings and this was occurring that the only noises coming from you were moans of pain?"
(Transcript 15 years)

Q. "All right, so between his patting you and his attempt or his trying to put his penis in your vagina, there was nothing else, is that right?"
(Transcript 11 years)

Q. "This terrible thing happening to you, if there was someone else there you'd remember it wouldn't you?"
(Transcript 11 years)

Q. "How far was the trampoline from you when you were first helped on the bike by Mr Brown?"
(Transcript 7 years)

Q. "If I asked you to promise me to tell the truth, will you tell the truth?"
(Transcript 6 years)
Q. "When you started playing with it, was it wet or dry?"

(Transcript 6 years)

The examples given above cover an age range between six and fifteen years and illustrate different methods of incorporating left branching embeddings in questions directed to child witnesses. In each it is possible to see how these questions could be rephrased to more closely parallel other more comprehensible English speech patterns. The rephrasings are an issue of style and would not prejudice the content of the questions. The questions would simply become more comprehensible.

Questions which incorporate a number of left branching embeddings are a feature of lawyer language. They appear constantly in all the transcripts studied. They contribute to the confusion described by the child witnesses in cases of sexual assault and interfere with the child's search for meaning and sense in court.

5.2.14 Responding to the aspects of language identified

The preceding aspects of language appear to be significant contributors to the denial of meaning of the child victim witness under cross examination in cases of sexual assault. These are clearly identifiable features of language which in one way or another exclude. When each of the tactics is combined with another, the result is a strategy which creates confusion and wrests credibility from the child victim witness. That it seems to be a verbal assault on the victim witness suggests that the listed aspects might be valuable as a functionally organised display of language behaviour.

In response to this suspicion, I developed a framework which created the possibility of reviewing and displaying these developing connections and concerns. I was also alerted to the possibility of reviewing the transcripts at a level other than that of sentences and phrases.

The thirteen aspects outlined above are an accumulation of 'micro features' of the language. Review of transcripts and the associated data at a 'macro level' produced the evidence of 'themes'; continuous propositions which run throughout the text. The next section (5.3) of this chapter provides a set of results expressed in these terms.

5.3 THEMES IN CROSS EXAMINATION
In the transcripts, the identification of themes about children represent a set of results complementary to the results reported in 5.1 and 5.2. Because they draw upon the developing insights provided by the previous results, the results here are more interpretive and reflective. They suggest a cultural and psychological context within which the questioning of cross examination of child victim witnesses takes place.

A trial is a very complicated communicative process with many variables simultaneously at work.

Quantitative techniques applied to natural language tend to assume that every instance of a term is of equal importance and effect to every other...this is not so...the strategic use of just one term in the right context can have a devastating effect. (Danet, 1980: 211).

This effect is a function of the histories and intentions of the participants, the perceptions of the observers and the seriousness of the outcomes for the parties.

In the process of investigating a phenomenon or series of phenomena there emerges the inclination and need to order and interpret an otherwise amorphous body of data. If our aim also is to impose meaning on whatever grouping or patterning arises, that is, making sense of these phenomena in terms of how they relate to other phenomena, we will be searching for continuous threads of meaning in our data. In a piece of music, a painting, a dance or a social relationship we will be able to discern 'themes', that is assumptions and shared meanings upon which the discourse is both mounted and driven. Even a post modern display of some sort makes the statement that 'classical order and relationships are not being stated here'. Some discourses will only proceed on the assumption of expected sex related behaviour..and as such become the embodiment of 'themes'. Such themes will also serve as the bridge between the lived experience and the stories of that experience. These need not be elaborate fabrications but simple strong structures which form the conceptual links between experience and its expression.
One of the outstanding features of language and its analysis is that within discourses one is able to produce, project and identify themes. These are story lines which arise from one or other of the interlocutors or which arise as an admixture of their interaction. In criminal court, sides are taken, and story lines presented and defended. The themes thus created are a function both of supposed 'facts' and also 'stances' which one or the other parties can be shown to have - lazy, drunken, unreliable, provocative. The 'kind' of person you are, or can be shown to be, thus becomes central to the assessment, by judge and jury, of individual credibility. The establishment and maintenance of 'themes' thus becomes an essential part of the fight for credibility.

Generally speaking, if Scotsmen can be regarded as mean, and here we have Scotsmen, we are probably confronted by a person who is mean. Such themes, as in this example and in the transcripts under consideration, can be created from side comments, statements, and in some cases by omission.

'I put it to you that everything you have said is a total pack of ... sorry, I'll ask that question again'.

Such expressions are only possible because they capitalise on ideas and notions that exist in the general fabric of social relationships. If the cross examiner presumes the witness's victim status he will have much more ammunition for undermining his/her credibility.

The themes which were given voice in the proceedings reviewed were ones which cast children as manipulative, unreliable and fantasy prone beings. Such generalisations are unwarranted and serve only the dynamics of prejudice and punitive discrimination. The assertion that children as a class, are reliable truth tellers, is similarly untenable for the same reason. In an effort to appreciate the nature and effect of language in the situations under scrutiny, the extrapolation of these themes adds another dimension. The macro level analysis can be placed beside the micro level examination of the individual linguistic features. These themes are drawn out under the headings 'telling lies' (5.3.1), 'fantasy and reality (5.3.2), 'memory' (5.3.3) and 'motives' (5.3.4). Themes can be created by explicit statements, triggered meanings, and overall structure.

To appreciate the implications of linguistic composition of the themes it is necessary to place lawyer language within the broader context of the total court proceedings, and examine the impact that language mismatch has on the protagonists within the court. The magistrate at the committal stage, and the judge and the jury at higher court hearings have to make decisions based on the information displayed to them by
the prosecution and the defence in unison with the witnesses. If the alleged victim is one of these witnesses and also a child whose language abilities are outstripped by the language repertoires of the interrogators, the status of the child and his/her evidence is inevitably reduced.

In a combative arena where the format for questions is determined by the questioner, inequality in language usage and expertise confers lower status on the respondent. Any confused responses given by the child, the inevitable tearful and emotional breakdowns, and any examples of conflicting information offered, all confirm the child's lack of credibility within the corporate mind of the court. The fact that this credibility gap has been partially created by a language mismatch between the lawyer and the child witness is either tacitly acknowledged as acceptable practice, or it is an issue which has fallen outside the province of those concerned with the administration of justice.

The tendency to doubt the credibility of children falls conveniently into slots already present in the community's ethos. Children are thought of as being prone to fantasy; their ability to differentiate between reality and imagination is considered to be poorly developed; their memory for detail is regarded as being far below that of adults; and generally their evidence is to be treated with scepticism unless their outstanding performance in court dispels this predisposition.

5.3.1 Theme 1: Children are inclined to tell lies

The most stark example of questions which reduce the credibility of the child occur when the cross examiner asserts directly that the child's responses are untrue. These assertions either appear as single dramatic interpolations or as the result of a subtle line of questioning. These questions are intended to call the truthfulness of the child witness into disrepute, and although the legal technology for achieving this end varies, the effect of the campaign against child credibility is the same.

The following examples taken from the transcripts display the language levers which are used to directly impeach the evidence given by the child victim witness.

In this first example the preceding four questions had dealt with living arrangements and then the tone of the questioning altered:

Q  "And you are telling the truth up there, are you, on the witness stand?"
A  "Yes"
Q  "It is not all a pack of lies?"
A "No"
Q "You are not fabricating this evidence just to support your mother, or have a go at your father in some way?"
A "No, I am telling the truth"
(Child 12 years)

Q "Now you said you used the term 'bull artist'?"
A "Yes"
Q "Are you absolutely certain that was the term that you used?"
A "Yes"
Q "You have no doubt about that?"
A "No"
Q "Could you have said the words 'You're a big fat liar'?"
A "Yes"
Q "And not the term 'bull artist'?"
A "Yes, I could have"
Q "See, you could be mistaken about a lot of the evidence you are giving could you not?"
A "Yes"
(Child ten years)

"You're getting a bit mixed up because it wasn't the truth?"
(Child 11 years)

"I put it to you, you have made up this story"
A "Beg your pardon?"
Q "About what the, you say the defendant did to you and made you do to him, you made it up, have you not?"
A "No"
Q "You have made it up because you have been upset and angry with the defendant from time to time, have you not?"
A "No"
Q "It is a ... of lies. I am sorry I withdraw that, he will not, it is all lies, is it not?"
A "No"
(Child 13 years)

The suggestibility of the child witness is explored during cross examination by a line of questioning which is meant to imply that either the child's counsellor or the police have coached the child to give acceptable answers. The fact that the child witness has been permitted to read her Police Statement is assumed to be prejudicial to the case. Adults have access to their statements but children are expected to recall events that happened perhaps two or more years ago with no reference to the words they used or the facts which they cited. Preparation for court seems to be an implied luxury reserved only for adults. This line
of questioning appears in the majority of transcripts studied and it is firmly based on the implicit but unexamined theory that children are more suggestible than adults.

Q "And I take it that you spent a lot of time with each of those police officers before coming to court today, have you not?"
A "Yes"
Q "And have they gone through the evidence that you would give this morning with you?"
A "Yes"
Q "And have they told you what to say in relation to certain questions?"
A "No"
Q "Have they told you the sort of questions they were going to ask you?"
A "Yes"
Q "And how many times did they ask you, tell you what questions they were going to be putting to you?"
A "Only once"
(Child aged 10 years)

5.3.2 Theme 2: Children have difficulty distinguishing between fantasy and reality

One of the explanations for the low credibility of the child witness is the often cited tendency of children to revert to fantasy, and their inability to make clear distinctions between what is real and what is part of their make believe world. This theory leads neatly into a widespread belief that children fabricate claims of sexual assault.

No one disputes the fact that children do have a fantasy world, just as adults do; only adults don't talk about it very much. However, children's fantasies are generally within the realms of their literate, emotional and social lives. It is unusual for a child to fabricate sexual encounters because these are beyond their expected levels of maturity and experience. Nevertheless the ethic of the lying and manipulative child who creates fantasy incidents of sexual abuse to punish an innocent and unsuspecting adult remains a prevalent attitude. The examples which follow show how this idea is woven into the fabric of cross examination.

In one case the cross examiner asked the child witness aged seven years, one hundred and twenty one questions about her propensity to make up stories, and the kind of punishment she and her brother received when her father, the alleged offender, suspected such stories.
Q "Do you sometimes make up stories Susan?"
A "At school"
Q "Anytime?"
A "Yes"
Q "Those stories are what you think about in your head?"
A "Yes"
Q "Do you make up stories that are sometimes not true?"
A "Yes"
Q "Do you make up stories from what is inside your head?"
A "Yes"
Q "You think about things and you tell them to others and they are not true. Is that right?"
A "I write it down on paper"
Q "You write it down on paper. OK. You make up stories on paper?"
A "Yes"
Q "Do you sometimes make up stories when you tell other people?"
A "Sometimes but most of the time I tell the truth"
Q "But you don't always tell the truth?"
A "Only when I am making up stories".
(Child 7 years)
and so it continued for another one hundred and eleven questions.

A similar line of questioning was pursued at the outset of the cross examination of an eleven year old boy.

Q "You write essays at school, Donald?"
A "Beg your pardon?"
Q "Do you write essays at school?"
A "Um, no"
Q "Do you know what an essay is?"
A "Yes, a long story"
Q "You don't write stories at all at school in English or anything like that?"
A "In English, we just write stories but not really long ones".
Q "And are you pretty good at making up stories?"
A "Oh, with my imagination just little stories, yeah"
Q "So you've got a fairly good imagination?"
A "Yeah"
Q "And see I suggest to you Donald that all this is in your imagination"
A "No. No it isn't"
(Child 11 years)
5.3.3 Theme 3: Children have poor memory

It is not surprising that in cases of multiple assault, the memory for detail which is demanded by the cross examiner is often unclear. This is not just an affliction of childhood but a patterning within memory which is a human characteristic. The inability to accurately recall the minute details of repeated instance of sexual assault is not an adequate criterion for downgrading the credibility of the child witness.

The cumulative effect of such an assault on the credibility of the child witness frequently forces the child to break down or become distraught. The consistency and unrelenting questioning format which is followed by the cross examiner is illustrated by the following example which involves a child of eleven years of age. The child by this stage of the proceedings had already answered two hundred and forty questions directed at him by the prosecutor and two hundred and ninety questions posed by the cross examiner.

Q "Would you read paragraph 9 to yourself, did you read it?"
A "Yes"
Q "Do you agree that what I read to you appears in that document signed by you?"
A "Yes, but when I was reading the statement and I can't remember that Dad tried to enter me at Churchill Street".
Q "But you see when you read your statement the other day, you didn't see anything wrong with your statement did you?"
A "No"
Q "And you signed that document is that right?"
A "Hmm"
Q "And when you went home you had a look at it and you didn't see any mistakes?"
A "No"
Q "And you can read, you're a fairly intelligent lad aren't you, you've got to answer yes or no, you're not allowed to say hmm"
A "Yes"
Q "So that would be something that you would pick up isn't it, an intelligent lad like you, wouldn't it?"
A "Yes"
Q "But you didn't pick it up because what you're telling His Worship isn't the truth?"
A "Yes it is"
Q "Well why did you make the mistake?"
A "I'm not sure. I just can't remember reading it in the statement"
Q "Well did it happen in that way?"
A "Not that I can remember"
Q "Well that could be something you'd remember wouldn't it, you see the position Donald I suggest to you, you're not telling the truth?"
A "I am"
Q "Well do you know why you made the mistake?"
A "No I just can't remember any of the statement"

Prosecutor: Would Your Worship take a short adjournment, the boy's obviously distraught.

5.3.4 Theme 4: Children operate from devious motives

In a number of transcripts studied it became clear that the cross examiner tried to ascribe other motives to the child for disclosing alleged incidents of sexual assault. The implication was that the child fabricated a story to punish a parent or relation who did not indulge the child's whims and fancies or who was in conflict with another parent or sibling. The following shows how this line of questioning develops:

Q "And this is the, this October, 1984, that's the only time that your father has done anything like that to you, isn't it?"
A "Yes"
Q "And your mother has been deceased since 1978?"
A "Yes"
Q "And your father bought you up?"
A "Yes"
Q "And you were in relation to being grounded, you didn't like not being able to go with girl friends to the movies in town?"
A "mm"
Q "That's right isn't it?"
A "Yes"
Q "And your father didn't like you going down to Coolamon on your own and roaming the streets on your own did he?"
A "No"
Q "And you were unhappy and angry about that, weren't you?"
A "Yeah"
Q "So apart from the reason of the allegations that you have made here, you had reason to be unhappy and angry with the way your father was looking after you, didn't you?"
A "mmm" (no verbal reply)
Q "Because he wouldn't let you do what you wanted to do?"
A "Yeah"
Q "And you didn't like it?"
A "No"
Q "And that's the reason you didn't want to go home?"
A "No" (Child 13 years)
In this example, as in many similar examples, the right of the cross examiner to suggest various alternatives to the evidence given by the witness is considered acceptable legal practice. The extent to which the child witness appreciates this facet of the law is doubtful.

When the child is not aware of the motives behind such lines of questioning, the conclusions which they draw are hurtful. They have had their suitability as a witness scrutinised at the outset of the case. They are therefore presumably aware of the importance of the court and its demands for absolute truth and accuracy. Yet they are still subject to suggestions which are quite outside the parameters of any other evidence which they give. One magistrate tried to explain the legal assumptions upon which such impeachments are based when he said to a distraught 11 year old:

Bench: "Mr Brown is asking you, is when we say 'putting to you' he is suggesting that something happened, now if you say that it didn't happen, I think the easiest thing for you to say is 'yes' so perhaps if, I know that you have already said that the phone call didn't happen, is that right?"

A "Yes"

Bench: "Now he is suggesting some other things to you that might I suppose remind you that it might have happened, now I suppose it is hard to understand why he says these things to you when you say it didn't happen, that's hard to understand isn't it but he is allowed to do these things and if you say it didn't happen, all you have to say is 'no', okay, or if it did say 'yes', now do you follow that?"

A "Yes"

5.3.5 Responding to themes about children.

Lawyer language generally, and questions which confront the credibility of the child specifically, mitigate against a belief in the competence of the child victim witness in cases of sexual assault. The attitude of suspicion which surrounds children appearing in court has a long and complicated history. In recent times the myth of the untruthful child can be traced to a cluster of French psychoanalysts who disputed Freud's original theory of child sexual assault being responsible for later life neuroses in females. Freud withdrew his theories, under pressure from Charcot, who described children with deplorable antecedents as being prone to constructing fantastic stories about perfectly respectable human beings and upstanding members of the community. The idea has persisted and many adults still assume that children are more untruthful than truthful.
The perception of the child as an impure and lesser version of an adult was entrenched by Victorian ethics. The child was considered to be a miniature adult whose childish ways had to be modified to ensure that they would become civilised members of the society. As children their rights and abilities to tell the truth were questionable.

Today the community is generally still sceptical of the child's ability to tell the truth. This attitude is focused clearly when the discussion concerns child sexual assault. Disclaimers of child credibility range from anecdotal instances of children exploiting adults, to questions about the child's ability to perceive accurately and report truthfully. Society still has a model for child performance which is a derivative of adult experience.

5.3.5.1 Themes reflect perception

Children are expected to perform in an adult way yet at a much reduced level of competence and efficiency. The inherent appreciation of the differences between children and adults are considered by the community to be quantitative rather than qualitative. As a child develops, they get more of the same until they reach adulthood. This way of thinking about children is based on ideas of childhood 'deficit'. Children are thought of as socially, emotionally and intellectually inferior to their adult models and their validity and reliability as individuals is reduced in direct proportion to their age. This way of thinking precludes any serious consideration being given to the issue of child credibility. As long as child development is seen as having little integrity, the inferior status of the child will remain entrenched.

To evaluate child credibility it is necessary for the community as a whole to appreciate the many stages and faces of child development. In a courtroom few provisions have been made to accommodate the world of the child. The language used by the law is perhaps the most glaring example of the uncompromising imposition of adult models on individuals whose age and development put them outside the language. The existence of a mismatch between the language of the speaker and the language of the hearer is attributed to the general incompetence of the child witness whose credibility is reduced by implication.

Roland C. Summit (1983) in an article called 'The child abuse accommodation syndrome' adds another perspective to the discussion about child credibility. He maintains that society's values are in several ways stacked heavily against the child victim witness. First, the child has a great deal of difficulty accepting the abuse of love and power by a trusted adult. Second, the translation of this abuse during disclosure is restricted by the likely absence of language and concepts to express the
necessary details in a convincing and credible way. Third, the legal system bolstered by community attitudes:

... allows the child one acceptable set of reactions to such an experience. Like the adult victim of rape, the child victim is expected to forcibly resist, to cry for help and attempt to escape the intrusion. By that standard almost every child fails. The normal reaction is to play possum, that is to feign sleep, to shift positions and pull up the covers ... When there is no place to run they have no choice but to try and hide. It is sad to hear children attacked by attorneys and discredited by juries because they claimed to be molested yet admitted they made no protest or outcry ... A victim will be judged as a willing accomplice unless compliance was achieved through overwhelming force or threat of violence. Adults must be reminded that the wordless action or gesture of a parent is an absolutely compelling force for a dependant child and the threat of loss of love, or loss of family security is more frightening to the child than any threat of violence.

(Summit, 1983: 183)

5.3.5.2 Research in child memory

Two factors are primarily responsible for the ethic which underlies attitudes towards child credibility in the courtroom. These are concerned with the generally unreliable status of children's eye-witness memory, and their seemingly high level of suggestibility to outside influences, comments and coaching. These two propositions underscore much of the thinking which produces the consistent attack on the credibility of the child witness during cross examination. The extent to which these propositions have external validity, apart from the strength of those who espouse them, has stimulated a great deal of debate over the past ten years. This work culminated in 1987 with the publication of a book entitled *Children's eyewitness memory* (Ceci, S.J. et al. 1987) which the editors maintain

... grew out of a 1985 American Psychological Symposium that was devoted to the issue of children's eyewitness memory. The book comprises a collection of chapters that lie at the crossroads of psychology and criminal justice.

(Ceci et al., 1987: v)

The conclusions which are drawn at the end of each section support the ability and integrity of the child witness to accurately answer questions in court.

A comprehensive review of the literature on this topic turns up a prodigious volume of material. The extensive research, the numerous experiments involving tests of memory under conditions of stress and non stress and the compilation and comparison of already extant data reflects the interest in this subject, particularly in the United States.
It is difficult to find a path amongst all this information, but there are certain arguments which reappear as themes in these studies. The theory that children are more susceptible to suggestion has been challenged by Loftus and Davies. An analysis and description of some of the major research undertaken led them to conclude that it is one thing to claim that children are suggestible, but quite a different matter to claim that they are more suggestible than adults. (Loftus and Davies, 1984)

A description of the processes by which information is stored in memory and then retrieved (acquisition, retention, retrieval) is seen by the authors as explaining the reasons why children, and adults, may focus on remembering different details surrounding an incident. Some researchers have actually maintained that children's memory for detail may in fact be more accurate than adults' because their level of the sophistication of cognitive inferences and value judgements which pervade the mature memory.

Research on the recognition memory abilities of children compared with the skills of adults has shown that there are typically no age differences in performance, with children as young as five years of age performing as well as adults. The differences in memory abilities are clearer when the mode of recall is altered. When given free recall tasks young children may require external cues or prompts if they are to retrieve or recall past events. (Marin et al, 1979).

As expected the number of items mentioned increased linearly with age. Some studies indicate that the patterning of memory is established as early as first grade. The paradigm by which information is allocated to memory seems to remain constant from this age onwards. Although significant developmental differences exist in the amount of information recalled from simple stories, the pattern of recall for story grammar categories is highly consistent across age from first grade to adulthood. (Saywitz in Ceci et al. 1987)

The effects of stress on memory capacities have also been a subject of research, with children in an information clinic participating in memory related tasks. The study involving an inoculation demonstrated that children were not equally suggestible about all types of information. Their suggestibility was greater for characteristics of the room in which the event took place or the physical characteristics of the 'culprit'. Interestingly, across the studies, children never made up false stories of abuse even when asked questions that might foster such reports. (Goodman, et al in Ceci et al 1987).
The pervasive attitude that children are more susceptible to suggestion than adults has been a subject of controversy for some time. Despite the fact that this issue has not been resolved, in a number of purely experimental contexts children and adults performed equally well on tasks designed to rate their relative suggestibilities. Also, the workings of the human memory are now better understood, as are the factors which influence the strength of a memory or its susceptibility to alteration. However, memory is more likely to be as individual a characteristic as personality, with just as many internal and external factors controlling its development. Some of the factors which contribute to the relative strength or weakness of a memory have been identified as acquaintance with the predominant theme of the situation or event, the linguistic ability to translate experience into memory, the significance or focus of the experience, and the emotional intensity associated with the event.

Once a memory is in place it does not reside in the mind in splendid isolation. All images, experiences, ideas and emotions are integrated into an already existing mental pattern which may be changed or modified depending on the type of new information received. Memory is a constantly changing dimension of human intellectual activity, it almost goes on without our knowledge. Given this framework, no one is free from the slight of suggestibility.

Conclusion

In this chapter I have set out three kinds of result which emerged from testing, analysis, and review. The results are qualitatively different from each other and the latter set on themes (5.3) are more reflective than the previous two. The set on aspects of language (5.2) is interpretive and in cases speculative. The first set, derived from the testing program, (5.1) is empirical. An informed response to the research question requires an appreciation of a wide variety of 'results' which together might describe 'language in use'. The next chapter is devoted to the development of a taxonomic description which frames all three kinds of results reported in this chapter. Along with the accompanying responses and within the wider psycho social context of the child victim witness I present a description which conceivably delineates the 'discourse of denial'.
Lawyers are masterful language users. They may not be aware of the intricacies of their language usage at a conscious or descriptive level but they have at their disposal the benefits of fine training in the use and abuse of words, phrases and structures. Their careers are built on words since these are the currency of the law. They know how to choose their words and structures to gain maximum effect, and they are skilled at using the words of others for their own (and their client's) benefit. In few other contexts are words and their meanings so tightly prescribed. To the child, a relative novice on the continuum of language use, the distance between the language of court and their own experiences of how and why language is used must appear immense. The confusing effect of lawyers' language use is clearly expressed in the following excerpt:

... when do you get a chance to say something? ... I'm only fifteen and it's hard for me to match their level of talking when you want to put something across. Some of the words they use, the long words that they might use, and you might not even know the meaning of ... and they sit there and they don't tell you and they expect you to answer.

(15 year old male witness)

The combination of confusing language features and the pervasive themes discussed in the previous chapter suggests a powerful linguistic force so clear and discrete that it may be described as a recognisable and specific discourse. The discourse operates to deny the meanings and experiences of the child victim witness and depends on linguistic tactics and strategies (which I have classified according to fifteen categories of speech construction) as well as the many strategies that lawyers use in cross examination. These factors form the basis of the discourse of denial.

Austin (1962) pointed out the performative value of utterances. He showed that concepts of truth and falsity don't help the researcher describe and analyse this aspect of language. Rather he explored the conditions under which the performance of an utterance is effective or ineffective. Labov and Fanshel (1977: 188) further stress that conversational analysis which focuses only on turn taking systems misses some of the essential links among the utterances of that conversation. There is need for an expansion in the analysis to take into account the intent of an interlocutor's speech.
In this chapter I provide a brief rationale for the category description chosen (6.1) after which I propose a descriptive taxonomy for the 'discourse of denial' (6.2), followed by a response to the identification of the discourse (6.3).

6.1 DEVELOPING A DESCRIPTIVE TAXONOMY

6.1.1 The taxonomy in context

The arena of criminal courtroom adversity and the action of cross examination offer the opportunity to view, review, and analyse the properties of language which admit or deny, which heal or injure, to the point where one can theorise about the connections between the conditions and the consequences. I needed to understand more precisely the patterns connecting abusive activity, linguistic manifestation, and further abusive activity.

I therefore searched for a taxonomy which would:

- encapsulate and present the connectedness between conditions and consequences to students of the court system, practitioners, language analysts and educators.

- build on the devices proposed by others who have worked on 'language in the courtroom' studies (Atkinson and Drew, O'Barr, Danet, Valdes, Penman) and which can be seen as an extension of extant devices used by linguistics. These linguistic devices are represented by the systemic system of Halliday, the taxonomic framework of Valdes, the linguistic indicators of Ghadessy, or the single aspect orientation of Cashion (eg 'politeness') and O'Barr (eg 'power').

- create a description accessible and comprehensible to a wide variety of stakeholders.

- create some indicators and instances of meaning-denying behaviour which may be viewable in situations other than court.

6.1.2 The format of the taxonomy

I chose a narrative, transferable format rather than a mathematic or graphic one. It is accessible and challengeable and purports to be a taxonomy which displays the underlying single orientation of the cross examiner. It is focussed upon the 'aspects of language use which are
characteristic of cross examination' referred to in the preceding chapter. It is also concerned with the tactics and strategies of cross examiners.

I needed to classify and display all of the language data in a cohesive and connected way. I also needed to relate back to data and analyse them in terms of initial concerns and perspectives. Since the relationship between language use and psychological effect is of the essence, it was necessary to show the nature of this connection.

The fifteen categories of speech construction proposed in the taxonomy are not necessarily mutually exclusive. Indeed a single string of words may contain examples of several designated meaning-denying constructions within another more pervasive construction. This is true for instance of a 'nominalisation' or a 'passive' occurring not just in cross examination over 'what happened' but rather on 'what was said about what happened'. The nature of cross examination is such that a substantial part of the questioning is about verifying the veracity of an earlier record, a police statement or a record of interview. The construction of 'meta - conversation' is therefore:

- a significant construction to include in the taxonomy
- an indicator of the combination of abstract activity (talking about what was said to have happened) with concrete, physical precedents (sexual abuse) and outcomes (disbelief and all that flows from that)

In order to build up a taxonomy of denial I proposed the following descriptive criteria.

<table>
<thead>
<tr>
<th>Construction</th>
<th>Character</th>
<th>Sample</th>
<th>Operation</th>
</tr>
</thead>
<tbody>
<tr>
<td>This is a linguistic label which highlights the aspect of the speech sample under consideration.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>This describes the language characteristics which explicate the label (construction) suggested.</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>This is a speech sample extracted from the transcript material. It is perceived as a singular example of an act of speech which, because of an identifiable feature or characteristic, contributes to the general aim of reducing credibility of the interlocutor.</td>
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</tr>
<tr>
<td>This describes how particular meanings are created and parties positioned in terms of whether</td>
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possible meanings and participation are accommodated or excluded or otherwise affected. This is the perceived effect on one party to a 'dialogue' - the child witness. This effect is suggested as a result of a combination of perceptions which take into account the state of mind of the witness and how he/she is situated in the discourse.

Because all samples are subject to this uniform descriptive format it becomes possible to compare and combine descriptors. What follows is the summary which itself becomes the data base upon which to ground the discourse of denial.

6.2 CATEGORIES OF THE TAXONOMY

Construction 1: Negative rhetorical

Character

A question form is used which requires only confirmation or silent assent as a response and in which a negative expression is used to create that question form.

Sample

Q: "Now you had a bruise, did you not, near one of your breasts, do you remember this?" (Transcript 12 years)

Q: "When Mr Smith asked you if you could remember anything about a towel, you said you could not remember anything about a towel? The first time? Is that not right?" (Transcript 15 years)

Operation

The conversion of what is essentially a statement into a question form and then back into a statement by the insertion of the 'not' allows the whole expression to go forward as a question - a request for information. It creates the illusion of choice but implies also that the speaker already has the necessary information and insight, and is merely seeking a simple endorsement or refutation of the insight. However refutation, although it is inferred as an option, requires the careful dissection and refutation of a number of embedded propositions.
The onus for the refutation and the subsequent careful presentation of the elements that constitute the content of the refutation rests with the child witness. The witness is a child.

The rhetorical form, as it remains unrefuted, adds weight to the notion that the lawyer can continue to be the 'story maker'.

**Effect on witness**

The consequence of this is that the hearer is restricted in the options for answering for a number of reasons:

- The rhetorical nature requires only assent in some form.
- The negative form is more difficult to 'unpack' and then reprocess.
- The part of the question that might be 'answered' is not clear.
- The confusion of propositions on the one hand with the form urging assent, supports the 'wisdom' of a single response (Yes/No) and the likelihood of that response being a 'yes'. 
Construction 2: Multi-faceted question

**Character**
Many sub propositions are contained in the one question utterance.

**Sample**
Q: "Well did he take hold of you and make you do anything? Did he grab hold of your hand and do anything with your hand?" (Transcript 14 years)

Q: "Well I know, I understand what you say you have been talking to her today, but you see what I am asking you is this, that statement suggests that you said those things which you now say are wrong to the police. Did you say it to the police or did you not?" (Transcript 9 years)

Q: "So the first time you got smacked for telling stories you still told stories and got smacked again. So it didn't make any difference to whether you told stories did it?" (Transcript 7 years)

**Operation**
A single 'sentence' utterance appears as a single question but in a multifaceted question a series of propositions are put and it is not clear to the listener which 'question' should be answered. It is further muddied by the confusion surrounding which possible answer satisfies which one of the plethora of embedded questions which pose as one. With so many options to choose from the hearer has difficulty knowing which 'facet' or question requires a response.

Multifaceted questions can be long and complex involving layers of clauses. They can include convoluted preambles, confused centres and rhetorical endings. The unifying feature however is that when an answer is given, the control to interpret which sub question it most easily serves remains with the cross examiner.

Multifaceted questions can also elicit an "I don't know" response. This is significant in so far as "I don't know" represents a possible number of distinctly different degrees of knowledge ranging from "I have no knowledge of one or many of the propositions posed" to "I don't understand how all
the propositions fit together" to "I don't know how to respond to the question" to "I am not 100% sure of one or a number of the propositions."

Also when any answer is given the questioner may then choose which 'question' the response is linked to. This technique serves the examiner's purposes well. It allows for the free reconstruction of a story confirmed by the answers of the witness.

**Effect on witness** Witnesses are constrained by circumstance, tone and position to answer something to a barrage of options. By answering at all they either choose something from the barrage for themselves or they respond as they feel expected to. Either way the explication of the response is left to the interpretation of the cross examiner and those listening.

Unclear options place the hearer under a great deal of strain. The hearer either has to unpack the whole construction or take a risk and gamble that their response will match the appropriate part of the question.

Having produced an answer, the topics included in the question are then seen to have been covered making it difficult, if not impossible, to revisit them for the purpose of clarification,
Construction 3: Lack of grammatical and/or semantic connection

Character
The syntactic connections between parts of an expression are unclear as are the connections between individual meaning elements.

Sample
Q: "Were you the first to go into the shower that, after tea that night or not?"
A: "Yes".
Q: "At any stage whilst you were in the bathroom did he ever enter the bathroom that previous week?" (Transcript 11 years)

Operation
Words and phrases are joined in a contiguous way due to the lack of adequate connectors. This makes it difficult to apprehend the sense of the question.

The form of delivery, an intonationally complete question, implies a sense. However a scrutiny of content contradicts what is only an impression of sense. Incomprehensibility is a linguistic choice wherein the sound of a relationship can be maintained but remain unsupported by words, phrases or constructions which together make sense. Occasionally the expression collapses or tangles and reveals the lack of meaning.

Effect on witness
The responsibility for finding sense in nonsense is shifted to the witness, and as the child does not recognise that this doesn't make sense to adults either, they assume their own inadequacy. The hearer is isolated by the fact that what is being said 'sounds' like language, but makes little sense. Such expression is difficult to respond to without challenging the comprehensibility of the question.

When and if an answer does come there is no way of deciding what it is an answer to. In needing to formulate an answer the hearer imposes their own meaning on a confusing question. Where this is the case there is no opportunity for the respondent to display or explain what the constructed meaning might be. The propensity to 'make sense' creates a communicative isolation for the witness.
Construction 4: Juxtaposition of topics

Character

Topics of unequal significance are placed alongside one another. Topics which have no obvious sequential ties or markers are similarly linked by proximity to each other.

Sample

Q: "On that occasion when Mum went to, being that night that Mum when to Youth Group, you were at Clareville?"
A: "I have made a mistake there it wasn't Clareville, it was West Hampton".
Q: "It should be West Hampton. You did not see the defendant at any time when he put his penis in your bottom, did you?" (Transcript 13 years)

Q: "That was after he had stripped you?"
A: "Yes".
Q: "And you had your legs together?"
A: "Yes".
Q: "And then you said he tried to put his finger in your vagina. Did he put his finger on your vagina or in your vagina?"
A: "In my vagina. In my vagina."
Q: "Inside, you felt it inside did you?"
A: (no verbal answer)
Q: "Did he do anything else to you?"
A: "No".
Q: "Do you know Frank Murphy?"
(Transcript 14 years)

Note: Frank Murphy has not been mentioned previously and his identity and relationship to the case is not established subsequently. In fact he disappears off the questioning stage immediately following this introduction.

Operation

All expressions are juxtaposed beside something else but this category suggests a juxtaposition which does not flow for either syntactic or semantic reasons. Meanings are not connected in an accessible, sense-making way. Unmarked topic changes, parenthetical statements unrelated to the main expression, additions and insertions made in an apparent attempt to create clarity through 'loading on' of more detail, repetition of previous
answers used as leads into another unrelated topic, all exemplify the operation of juxtaposition.

Highly emotive experiences are often juxtaposed beside non emotive experiences; mundane experiences are placed beside living personal situations. In this way all events are made to appear of equal importance and what sometimes emerges as a list of unrelated details serves to create a 'linguistic fog'.

Because the examiner has control over both the creation and dispersal of the 'fog', he/she can choose to increase the density and volume or blow it away at will revealing a free standing and disembodied detail.

**Effect on witness**

Because neither time nor topic markers allow the hearer to make sense from the discontinuity, the 'listing' of unrelated topics creates a 'linguistic fog' within which the display of general versus specific experience becomes obscured.

The effect on the hearer is disorientation, as the speech of the questioner creates continuity in the temporal/spatial sense, but lacks cohesion in a meaning creating sense. The disorientation of the hearer leaves topic control in the hands of the questioner who can remain remote or unflustered while the witness is thrown off balance. The constant adjustment and readjustment to topics creates strain, disallowing time for either reflection or intellectual re-appraisal.

By the style of questioning, the witness is lead to respond as though each topic within a string has equivalent status. The result is discrimination, upset, inability to answer and confusion.
Construction 5: Specific/Multiple Questions

Character  
Restates a continuous experience as a single event.

Sample  
Q: "When was the last time he did this to you before the time we have been speaking of? We have been speaking of one in February, obviously, when was the last time he interfered with you before that?" (Transcript 12 years)

Q: "I'm sorry you might not understand me, the first time and then it's finished, how long until the next time that your father put his penis in your vagina?" (Transcript 7 years)

Operation  
Asking questions about a specific event in the context of continuous assault operates to disallow the experience of memories or expressions of a continuous experience of multiple episodes.

Effect on witness  
The witness is forced to forget all the other occasions of alleged assault and focus on the one event which the cross examiner is dealing with. The process of continuous assault makes the clarity of the individual experiences of assault very difficult to articulate clearly.
Construction 6: Perseveration

Character

Questions can be asked in such a way that answers which are predictable to the examiner are elicited. These questions and answers set up a particular tempo and rhythm.

Sample

"I don't know" x 53 times
"No" x 100 times

Operation

Having set up a musical flow to the interaction, the examiner creates another dimension to the sound of the interaction and as in other musical activities, he or she can conduct that sound. This can be done by creating a lulling continuity, a sharp fire rhythm, and most significantly by interrupting that flow for particular effect.

Effect on witness

The witness allows the examiner to control the flow of interaction by responding in a similarly rhythmical way. The consequences for letting the 'music take over' are varied.

If elicited continuously the response "I don't know" will echo in the minds of those listening as a recapitulated theme. A string of rhythmically arranged "yes"s or "no"s (whether about substantive issues or not) also creates a sense of the questioner being in charge of the story with little refutation or critical appraisal being offered by the witness. Given the propensity of witnesses to co-operate, this presents an opportunity to hand themselves over as the music makes a sense of its own.

Rhythms of speech can be used to develop rapport and comfort and are successfully employed in the process of hypnosis or during the singing of a lullaby or during the recitation of rosary or a mantra.
Construction 7: Repetition of a response

Sample
Q: "December last year, and was that a weekend or week day?"
A: "I can't remember."
Q: "Cannot remember. Were the circumstances much the same then as they were on the last occasion you can remember?"
A: "Yes, it was the same just about every time." (Transcript 8 years)

Q: "And is that because of what you have told is that he threatened to, not just bash you but bash, I think your words, all of you?"
A: "The family."
Q: "The family?"
A: "Yes." (Transcript 12 years)

Character
The cross examiner repeats a word or phrase uttered by the witness.

Operation
95% of witness responses are "yes", "no", "I don't know". On the few occasions witnesses utter words or phrases other than those, they are often repeated by the cross examiner. This has the effect of taking over the response.

Effect on witness
The contribution of words or phrases other than the formulaic "yes/no/I don't know" can be the foundation, albeit a pebble, of alternative narrative. This does not sit well with the general process of cross examination for two reasons:

• the alternative narrative may compete with the one being built

• the idea that there may be an alternative is in competition with the process of creating a single narrative.

By repeating the witness's words the cross examiner absorbs them for accommodation or dismissal. The witness cannot say anything in their own right with independence and assertion. Their statements are not accepted.
This device allows the cross examiner to reduce the credibility of any response offered by the witness. Credibility rather than information is at issue here.
Construction 8: Meta Conversations

Operation
To examine what was said about what happened.

Sample
Q:"Just have another look at that statement will you, and have a look on page 2 of your statement. You see there is nothing there about telling Lisa on the Thursday night that he had touched you there, is there?" (Transcript 12 years)

Q:"Did you say this that you did not tell that to the police?"
A:"Yes I told it to her before 'cause I didn't have a chance to tell her...."
Q:"Now just stop there...." (Transcript 11 years)

Q:"Now just have a look at paragraph 8 again. Towards the end".
A:"No."
Q:"Read paragraph 8."
A:"It's not."
Q:"To yourself. Now the contents of that paragraph are not true, are they?"
A:"No."
Q:"And did you tell the Police the contents of that paragraph?"
A:"Some of it."
Q:"Well you tell us what you told the Police and what you did not tell the Police in that paragraph?"
A:"I told her after he had a look at my boobs, but not rubbing me on the fanny."
Q:"Yes."
A:"Didn't tell them that I asked him for my pants, he didn't have the, he'd been holding them in his left hand. These pants I've got on. I've got the pants, but he didn't have them....the girl looking through a mirror on them and a flower pot but...."
Q:"Speak up. Speak."
A:"A little girl looking through a flower pot, with a flower pot and he gave them back, but he didn't have them anyway. I said: 'Geez you're rude Bob.' but I didn't say and he goes: 'Why?' And I said 'Cause you're rude.' He left the bathroom. That last bit I didn't say."
Q:"Well did you say 'Geez you're rude Bob.' Did you say that?"
A: "No."
Q: "Did you tell the Police that you had said that?"
A: "No. I don't know. I can't remember."

CHILD BREAKS DOWN. (Transcript 11 years old)

**Operation**

It puts the cross examiner in the position of power because he/she possesses all the information in a written form and can select and quote from it whenever they choose and in whatever configuration they choose. They indulge in an historiographical exercise where they alone have access to the primary source materials. The witness has no hard copy to refer to and no time to reply. Where the content is of no significance it is difficult to keep the memory distinction between 'that' and 'the reporting of that'.

**Effect on witness**

Experiences on which the proceedings are grounded and based are not recognised by the witness. They are so far removed from the trauma of the actual event that they are not remembered with the clarity demanded by the cross examiner's reference to police statements etc which have been recorded in other places by other people. This is frequently the time when the child victim witness breaks down in the courtroom.
**Construction 9: Passive Voice**

**Character**

Players in an action can be presented as acting or being acted upon, or remaining anonymous.

**Sample**

Q: "And when, as you say you were frightened, what happened next?"

Q: "The door was then closed behind this person. Is that what you're saying?" (Transcript 8 years)

**Operation**

By re-locating a player in relation to an action, the player can be cast as being directly involved, responsible for or peripheral to that action. One of the primary functions of passive voice construction is to make one of the actors anonymous and to reduce the agent's sense of acting upon (something). Bolinger tells us that:

... the most useful - and dangerous function - of the passive is to enable the speaker to keep silent about who performs the action: 'the cars are loaded here' says nothing about who does it - which is fine if who does it is not important, but misleading if it is, unless something else fills us in.

(Bolinger, 1980: 28)

Like many others he has also observed that:

Deliberate use of the passive comes easy to officials who want their acts to have the ring of higher authority and not to appear arbitrary ... the fact that the agent is unexpressed enables the transfer to be made by sleight-of-hand, and a quality is imputed that only reflects the prejudice.

(Bolinger, 1980: 86)

**Effect on witness**

By maintaining the focus of action on the person being spoken to, the dynamics of 'victim blaming' are brought into play both for the interlocutor and for other listeners. In a context where initiation by one party is of the essence, non recognition of an actor and the action for which they are responsible requires the other party to re-frame their appreciation. Further:

Contending with the non-propositional is difficult because it has to be done propositionally, and the defenders can always say they 'did not mean that'.

(Bolinger, 1980: 107)
## Construction 10: Embedding

### Character
A series of qualifying subordinate clauses occur within a 'sentence'.

### Sample
Q: "Taking you back to the time when you were living in Sydney, when you first met Fred, at that time and throughout the period that Fred was living with your family, he used to work as a baker, didn't he?" (Transcript 9 years)

Q: "At or after you finished seeing Mum at the hospital, were you walking home?" (Transcript 9 years)

Q: "How far was the trampoline from you when you were first helped on the bike by Mr Brown?" (Transcript 7 years)

### Operation
By adding clauses which qualify either the nature or the identity of the actor or action, the sense can only be apprehended after careful scrutiny.

Supplying an answer to a question containing embedded clauses also elicits an implicit response to both propositional and non-propositional expressions. Bolinger (1980) warns:

> It will no longer do to imagine that well-defined words and propositions are the bulk of language and the rest can be ignored or easily held in check. They are the hard, bright core of communications, but are dimmed by the fog around them and much of the time are scarcely visible.

(Bolinger, 1980: 71)

### Effect on witness
Because an answer to one proposition can be taken as an answer to another witnesses often do not know which question to answer. However, they are constrained to answer and then have no redress if their answer is assumed to be to another part of the question. The witnesses are out of control of the interpretation which their response is used to trigger. Beyond the feature of multi-facetedness is the feature of implied proposition.
Construction 11: Backward referencing

Character  A pronoun is used to refer to a noun which was spoken earlier in the utterance.

Sample  Q: "Well you are not sure whether you said those things to the police which are wrong?" (Transcript 11 years)

Q: "So, you told us that you don't remember, do you remember saying that a moment ago?" (Transcript 10 years)

Operation  The referent which is the focus of the question is placed (grammatically) at a distance.

By pronominalising anaphorically, a referent occurs before and at a distance from its marker. By the time the marker and its significance in framing a response is indicated, the object or action to which it refers is part of speech history and thus has to be retrieved and re-connected. It also creates another layer in the generation of meta-conversation where something actually stands for something else.

Effect on witness  Use of this device makes the hearer work harder at identifying what the 'it' might refer to. This places extra strain on the hearer. The witness has to deal with an abstraction rather than a specified referent. Both noun and pronoun are 'words', therefore if there is a difference between them it is a difference of 'realities'.

The interlocutor has a responsibility to connect a substantive concept with its referent. The hearer becomes responsible for making sense of the speaker's expression. The direct consequence is extra load on the hearer because of this created obligation.

The strain of connecting words, references and reports to something experienced is further mediated and the opportunity to talk about the substantive experience is further limited.
Construction 12: Nominalisation

Character
What might otherwise be presented as actions (involved in identifiable parties acting and being acted upon) is presented as agentless happenings/operations.

Sample
Q: "Now just stop there. Did you tell the police what is in the statement about the matter about the touching of the boobs?" (Transcript 11 years)

Q: "He never hit you any time or about any time that these particular acts that you have spoken of, the sucking of the penis or the putting of the penis in your bottom occurred, is that right?" (Transcript 14 years)

Operation
By creating a 'thing' rather than a 'process' this expression alienates the sense of a person doing and a person being done unto. Use of nominalisations avoids any emotional involvement or responsibility for items being discussed or reported.

In examination this operates to deny the involvement of one party in maintaining the 'victim' status of the other, and creates a sense of 'objectivity'. This implies impartial appreciation and eliminates and protects the anonymity of an agent.

Nominalisations are more difficult to process than their equivalent verb forms (McCawley, 1970). Danet (1980) reports that in jury instructions, nominalisation were not well understood. The mean percentage of correct replies for instructions containing nominalisations was 29 per cent, compared to nearly 40 per cent for all instructions not containing them. Removing nominalisations significantly improved comprehension of instructions. (Charrow and Charrow, 1976)

Effect on witness
The hearer is eliminated from the action by the use of nominalisation. To the child witness nominalised questions disenfranchise them from describing events in their lives and discount their experiences.
Nominalised expression alienates the hearer from this action in such a way that they become disembodied occurrences. The reporting of experience, the creation of any narrative, requires the teller to either position themselves in the story (by language and role) or to choose a suitable medium (a puppet) to 'tell' the story for them. In all cases, the construction of a cohesive and comprehensible narrative requires the clear, embodied identification of the teller in the story. Nominalisation denies this opportunity.
**Construction 13: Unmarked question**

**Character**
A string of words is uttered but the fact that a response is required is not made obvious at all.

**Sample**
"I put it to you you're telling a lie." (Transcript 8 years)

**Operation**
By not indicating the purpose or nature of an interaction one party remains in command while the other is left contextless. Unmarked questions achieve this by leaving dormant the eventual requirement of the interaction. Even obvious questions contain little sense of asking for unknown information or requesting a sharing of ideas. Barnes and Todd (1980) suggest that after all the question/statement distinction is not a fruitful one. In cross examination this is certainly the case. In 'unmarked questions', what might otherwise appear as 'questions' appear for what they are - statements.

**Effect on witness**
Because the kind of response required of the witness is not indicated the witness is isolated and their role is undefined as the conversation proceeds. When a response is eventually asked for they must review words that were uttered in an unclear context.

Unmarked questions confirm the underlying effect that the cross-examiner is telling the story and that the witness's response is peripheral.
**Construction 14: Tagging**

**Character**  
Induces or obliges the hearer to answer in agreement with the content of the question being asked. It achieves this by opening the question as a statement that stands for fact.

The indication that a response is required appears at the end of a string words which otherwise appears as a statement. Tagging usually draws its affirmative power by combining a negative form with a positive one.

**Sample**  
Q: "I mean if something happens today and something happens tomorrow, you're not going to say they're about a year apart, are you?"  
(Transcript 8 years)

**Operation**  
The hearer is not cued into the linguistic nature of the unfolding expression until it is 'too late'.

English has a pattern of tagging that is used to 'get around' the defences of a hearer in several ways. The most familiar is the tag question, which pleads for agreement by pretending to offer the hearer a choice between a positive and a negative answer. The tag has the opposite polarity from the rest of the sentence (if one is negative the other is affirmative, and vice versa), it is in question form, and it consists of a pronoun and an auxiliary (or a form of the verb to be):

- It will be all right, won't it?  
- He hasn't a chance in the world, has he?  
- You like him, don't you?  
- It wasn't Jill, was it?

The intonation of the tag can be either rising or rising-falling - the latter for when one is pretty sure of the hearer's agreement.

This same device of reverse polarity is used in questions without tags, to appeal for agreement or just to state something that is so obvious that agreement is assured. The question is negative, and the expected answer is affirmative:

- Isn't it a nice day?  
- Wouldn't you like to try some of these almonds?

- but by overreaching itself, 'appealing' sometimes becomes the opposite; the question is insincere and is taken at its real value. (Bolinger, 1980: 84)

**Effect on witness**  
In order to answer otherwise (other than agreeing) the hearer has to dispute the fact which formed the
preface to the question itself. This is almost impossible given the staging of courtroom proceedings during the process of cross examination. The respondent has to process the statement as a question in order to make a response.

Because hearers are not cued in, their reading and interpretation of the meaning of the expression is diminished. Because meaning in print or speech is developed by the reader or listener actively accumulating and recreating information and connections, cues are constantly needed to 'make sense'. Without these cues hearers are excluded from the discourse.
Construction 15: Negative Tagging

Sample

Q: "Now this happened on a Friday, was it not?" (Transcript 7 years)

Q: "Now you had a bruise, did you not, near one of your breasts, do you remember that?" (Transcript 12 years)

Q: "When Mr Smith asked you if you could remember anything about a towel you said could not remember anything about a towel? The first time? Is that not right?" (Transcript 15 years)

Q: "And do you remember another occasion your father or your stepfather, asked if you were playing sport, did you not say no?" (Transcript 13 years)

Operation

A tag at the end of a statement to signal that a response is required can be phrased as a negative construction. This shores up the statement quality by creating a challenge to deny the statement rather than an invitation to confirm.

This use of the negative construction at the end of a sentence is a rhetorical device. It gives the questioner status as the possessor of knowledge and places the respondent in the position of having to defend themselves.

Effect on witness

Agreeing is generally emotionally easier than disagreeing and this construction capitalises on this human propensity. To do other than agree is to put the witness in the position of having to (rudely) deny the proposition and subsequently defend their opposition. This course of action, if only faintly apprehended, enforces agreement. This leaves the control of the narrative with the cross examiner.
6.3 RESPONDING TO THE DISCOURSE OF DENIAL

6.3.1 How language creates denial

The function of cross examination is to deny the meaning of the witness. It seems this is aided by combining specific aspects of language with social and cultural preconceptions in a situation of threat and authority. They combine to create a specifiable genre of discourse elements.

The data presented so far have identified several ways in which 'reality' is created by the defence; a reality which requires that the allegation of sexual assault is perceived by the observers and the victim as a non-issue rather than just a different version of the truth. For the 'reality' of the defence to be sustained the 'reality' of the child's allegation must be denied. This is a feature of adversarial court proceedings.

The aspects of language which create denial may be classified in the following ways:

- As in foreign languages, differences in codes and registers can be viewed through specialised lexicon, unusual grammatical structure and lexical density.

- Roles and actions are changed by the manipulation of themes and by juxtaposing topics and comments, subjects and objects. These effects are created by the use of passive constructions and nominalisation.

- Simple statements of negation can lead onto accusations of lying.

- Use of triggers specific to the situation can cause anxiety.

- Embedding and lengthy and disconnected statements can cause confusion.

- Ownership of information can be influenced by claims made and establishment of themes.

Adversarial combat in the criminal court requires that the outcome is expressed in terms of winning or losing, thus tactics and expressions are used that are devoted particularly to that outcome, for one side or the other. Questioning attempts to establish the case for one side in these terms.

The exercise or denial of one side or the other is a counterpoint to situations of secrecy and threat at the heart of most sexual abuse cases. The experiences of the abused child have already been severely filtered
by threat and secrecy, by guilt and powerlessness, and the task of the
cross examiner is to strengthen and perpetuate the filter so that the felt
experiences of the child become unrecognisable both to observers and to
the victim. For sociologists generally the question is to understand:

... more concretely how this 'social filter' operates, and how it
happens that it permits certain experiences to be filtered through,
while others are stopped from entering awareness.

(Fromm, 1960: 99)

The question for the student of language in use is "what are some of the
devices, techniques, connections, patterns of language which either
admit or deny certain experiences?" Language itself, as a constructor,
definer and perpetuator of reality, is a filter and the language
(discourse) of denial is a more highly articulated and finer filter. When
the filtering becomes fine experiences clog and in extreme cases remain
unperceived by the conscious, but not unrecorded or unfelt.

Whether or not subtle affective experiences can arrive at awareness
depends on the degree to which such experiences are cultivated
(recognised) in a given culture (interaction or situation). There are
many affective experiences for which a given language has no word,
while another language may be rich in words which express such
feelings ... In a language (or register or discourse) in which different
affective experiences are not expressed by different words, it is
almost impossible for one's experience to come to awareness, and
vice versa. Generally speaking, it may be said that an experience
rarely comes into awareness for which the language has no word.
But this is only one aspect of the filtering function of language.
Different languages differ not only by the fact that they vary in the
diversity of words they use to denote certain (affective) experiences,
but by their syntax, their grammar, and the root meaning of their
words. The whole language contains an attitude of life, is a frozen
expression of experiencing life in a certain way.

(Fromm et al, 1960: 100)

Whorfian linguistics, critical linguistics and adherents to the general
notion that ideology resides in language, share common premises here
with psychoanalytic theory. This kind of linguistic determinism would
not be found in contemporary 'language in use' literature as it
increasingly stakes its credibility on 'contextualising' texts and thus
taking more account of the descriptions, experiences and orientations of
participants and the history of the situation in which they are being
studied. On the other hand the psychoanalytic literature reflects its own
involvement with the experiences, reflections and consequences of a
person's existence, and recognises the significance of language in this.

Another aspect of the filter which makes awareness possible, or not, is
the logic which directs the thinking of people in a given culture. Some
connections are assumed to be natural or acceptable or predictable
whilst others are not. There is a cultural logic which drives and
perpetuates the propositions 'women are hysterical', 'aborigines are lazy', and 'children are prone to lie and be forgetful'. This cultural logic filters (that is, allows for or excludes) a whole range of propositions and their corollaries. The basis of court proceedings and the adversarial situation creates and draws on a particularly dualistic concept of the world. It finds its expression in the extraction of 'yes' and 'no' answers, strings of which are put together to create the desired 'reality' and more significantly, to cast the witness in a single role, that of 'accuser'. The sexually abused child may have a range of roles and feelings associated with the accused, many of them 'positive', yet only one role is allowable in this context.

Aside from language and logic, a further aspect of the filter suggested by Fromm is the content of the experience and this is particularly significant in situations where taboos are in place. Fromm et al (1960: 102) suggest that 'every society excludes certain thoughts and feelings from being, thought, felt and expressed. There are things which are not only 'not done' but which are even 'not thought'. Children placed in a situation of talking about taboo experiences feel threatened by societal pressures and the possibility of ostracism. Those experiences which cannot be filtered through to awareness remain unconscious. Unless a person is to become insane '...he has to relate himself in some way to others. To be completely unrelated brings him to the frontier of insanity.' (Fromm, 1960: 104)

That fear of being utterly alone is the most effective agent in preventing conscious awareness of taboo feelings and thoughts. Cross examination of victim witnesses consolidates the taboos and guilt's already in place. It embodies the dynamics of denial and causes the often unobserved consequences from the mild 'child breaks down' (and cries), to the more obvious expression of hurt '16 year old girl miscarries on court-house steps'.

On many occasions the victim develops amnesia as a reaction to the unacceptability of what is being demanded of them sexually (that is, the act of abuse itself), socially (the secrecy and guilt surrounding the abuse), and psychologically (the reaction of others in the child's environment).

Many children in court are perceived to be 'cold and calculating', 'manipulative', or 'not nice kids at all'. What appear as descriptors of a condition to the educator and the psychologist, are perceived by the public, judge and jury as being the very characteristics which reduce their credibility.
The denial of meaning is of such profound significance to the social, psychological and physical organism, that when it happens with predictable and patterned incidence it can legitimately be regarded as socially purposive.

6.3.2 From cross examination to degradation

I suggest that the denial of meaning attempted through the process of cross examination reflects the universal 'ceremony of degradation' identified by Garfinkel who suggests that:

Just as the structural conditions of shame are universal to all societies by the very fact of their being organised, so the structural conditions of status degradation are universal to all societies

(Garfinkel, 1973: 91)

The evidence of this thesis confirms the degradation observation in that the child victim witness is shamed both by the events of the past and by the actions within the court. By identifying such devices we may be providing not only 'description' but the basis for 'resistance'.

6.3.3 Resisting denunciation

The power to resist the oppressive actions of others is directly related to one's own ability to attribute meaning to one's own existence. Bruno Bettelheim developed this theme as he observed individuals and groups coping with the pressures of extermination camps. Recognised as one of the world's greatest psychologists he observed that:

... any trauma proves (to the victim) that in some respect the integration one has achieved fails to offer adequate protection. If the trauma is utterly destructive...then it demonstrates that the integration of one's personality has failed the crucial test of its validity".

(Bettelheim, 1979: 39)

Being a victim is itself a mark of failure and induces guilt and shame, and reduces the individual's sense of power, including the power to resist. Isolation is a corollary to victimisation and all the foregoing describe the psychological and social status of sexually abused children. Religious groups, clubs and gatherings of people who come together for 'a common cause' resist the forces of oppression and often find that the act of establishing the group is the first step in healing members. Groups generate their own meanings and individuals adopt such meanings. To deny an individual or group the expression of meanings they have created is a final assertion of power and domination. This concept is starkly realised in conflicts over language use in colonial
situations. The right to converse, record and present in one's own language is often denied by those seeking to dominate. The cultural and psychological colonisation which follows such restriction occurs throughout the world. The imperialist enterprise, predicated on the domination of one by another, is put into operation by negating, devaluing and denying meanings of the 'opposition' and often the first line of attack is to restrict the use of the 'opposition's' language. Just as meaning can be constructed through language so it can also be taken away. When this happens one's power to resist is diminished and acquiescence to the 'counter' force becomes more likely.

The denial of personal experiences by suggesting or stating that victims are 'just making it up' has effects and parallels in a number of arenas. In order to commence the process of healing victims of war, rape, imprisonment and natural disaster need the acceptance of those around them and the opportunity to tell the story in their own way. The process of cross examination of child victim witnesses does everything but allow this process to occur, with predictable consequences.

The patterned but predictable behaviour of children under cross examination is that they 'break down'. The situation generally works to ensure that outcome. The procedure followed in this study took into account insights coming from a variety of sources. The operational problem for this study has been how best to represent the forces and interactions which are at play during the process of cross examination, and how best to make that insight accessible to others. The aim was to develop a series of descriptions which convinced the reader that there is a definite (punitive) connection between what is said to the child victim witness and serious resulting hurt. That description is now encapsulated in the expression 'discourse of denial', the descriptors of which have been detailed in this chapter.
CHAPTER 7
RECAPITULATION

I have presented a taxonomic description of 'the discourse of denial' and discussed some of the possible implications of its identification. The identification of a discourse which can be seen not only to be punitive to the child victim witness but antithetical to the aim of discerning truth, has been informed by a range of research processes. This has been possible by bringing together otherwise disparate pools of data and a range of procedures for responding to that data. Those research processes took place in a context of investigation which acknowledged a number of perspectives among which was my own educational orientation towards children and language development.

This chapter comments on the research journey. In it I clarify the forces and dynamics which allowed me to interpret the phenomenon of the child victim witness under cross examination as being controlled by 'the discourse of denial'.

I point to the need for an informed and critical language study that crosses discipline borders (7.1). Language as an issue in cross examination is considered (7.2), along with children's rights. Because of its multidisciplinary flavour, the study has implications for areas of professional practice and research which were used to inform and are now informed by it (7.3). An appropriate research process was chosen (7.4) within which method, tools and results were developed (7.5). Having retraced the journey thus far I make suggestions for further study and action (7.6) and draw the chapter and this thesis to a close with a short concluding statement (7.7).

7.1 CROSSING DISCIPLINE BORDERS

7.1.1 Studying language in context

The study of language in its social context, a phrase used by many students of language from the time of Saussure, is not a uniformly accepted concept. Schools of description and analysis have tackled appraisal based on variations of speech characteristics and distribution according to class, time and place, but have generally managed to steer clear of problematic social questions. If one adheres to the principle that, '... the social context is ... not so much an external condition on the learning of meanings as a generator of the meanings that are learnt'
(Halliday, 1974:140) then it is almost impossible to study language without a major reference to its context and problematic social questions.

In this thesis the context included the baggage of anxieties and associations which reside in a person's experience. Just as one seeks to understand the behaviour of others by considering their cultural background so the focus here was on the phenomenon of the child victim witness under cross examination. Such a socio semiotic perspective allows us to see how social reality is shaped, constrained and modified.

A variety of forces need to be accounted for in such shaping, and so the research process had to admit information from many sources. The boundaries between levels and bodies of understanding needed to be challenged as a phenomenon within a cultural setting.

In the close and culturally constraining environment of adversarial court proceeding language becomes in the full Hallidayan sense a metaphor of reality. Talking becomes a critical issue and applying labels becomes the assertion of power.

Earlier in the study, what appeared as 'strange' language to some listening in court was compared to other excluding languages - codes which seek to include one set of people while excluding others by assuming the right to label and control 'reality'.

7.1.2 Adversarial law: creating competing narratives

In taking a stance critical of the treatment of child victim witnesses as evidenced through language use, this study was by implication also critical of the inadequacy and reluctance of disciplines (as traditionally defined) to tackle significant issues. This thesis drew on new sources of data and created a new narrative which has become a fresh and credible version accessible to competing stakeholders, providing them with a new and productive way of interpreting the phenomenon of the child victim witness under cross examination. The challenge remains however for child victim witnesses and their carers to find ways within the legal system to 'have their say' when it comes to the point of battle in court. Indeed the whole court situation can be conceptualised as a battle over competing narratives.

The aim of the prosecutor can be seen as the creation (through the witness) of a particular narrative, and the task of cross examination is to break down that narrative not only in terms of 'the story' but also in terms of 'the telling'.
Winning is of the essence, and to advocate listening to the witness hinders that process. But if display of truth is of the essence then nothing is compromised by the array of data from a variety of sources. The burden of truth in court is grounded in the same philosophical precepts as atavistic discourse and Arisotelian logic. Listening to witnesses would not be a softening of the rules of evidence but rather an expansion of the evidence that can be admitted, and thus a strengthening of the precepts of truth.

The assumptions and values which I attach to language in use are different from the assumptions and values of those who work within the court structures or whose role it is to win.

Adversarial proceedings determine that a duel 'to the death' is enacted between barristers through witnesses.

The terms 'plaintiff' and 'defendant' are examples of dialectical terms employed in the law. These terms separate actions into opposing camps and identify the partisan forces which divide the parties in dispute. These position forces are not characterised physically, but rather in the way we position the opposing forces. This positioning assigns a value orientation by which actors develop and employ strategies for prevailing in the given case. (Danet and Bogoch, 1980)

7.1.3 Social science research and the law

This thesis draws on insights and concepts from a variety of disciplines, the link always being the experiences of the child victim witness. The relationship between the disciplines of law and social science is considered by Charles Robert Trempert (1987) in a paper entitled 'Sanguinicity and disillusionment: where law meets social science'. He begins with the challenging words:

The current state of legally orientated social science research is a mixture of success and unfulfilled promise ... inhibiting factors include uncertainty about whether any particular study will influence policy making, and a profession reward structure that discourages interdisciplinary empirical research.

(Trempert, 1987: 267)

The adoption by courts of social science findings faces two main hurdles. Firstly the judiciary has not embraced social science, and secondly it is in the nature of the social sciences to disagree amongst themselves as to the significance of outcomes and their interpretation. Trempert quotes from Richard Abel (1980: 803)
Social studies of law have reached a critical point in their development. The original paradigm is exhausted. Until new ones are constructed, scholarship will be condemned to spin its wheels, adding minor refinements to accepted truths, repeating conventional arguments in unresolvable debates.

(Trempert, 1987: 271)

Trempert claims that many other commentators echo Abel's concern and contends that '... researchers do not deal adequately with the moral underpinnings of the legal system they study' The identification of 'the discourse of denial' represents a challenge to the morality of court proceedings.

The other challenge of this thesis has been to engage in a research process which would inform and find credibility amongst a variety of professional peers whilst establishing as common ground the centrality of language as a useful medium for clarifying the phenomenon of the child victim witness under cross examination.

... An interdisciplinary researcher faces the dual hurdles of peer review and judicial scrutiny. Daunting as these hurdles may be for the researcher content to work in established areas, they are even more dispiriting for anyone inclined to follow the law and social science soothsayers' exhortations to explore new terrain where the prospects of either peer or judicial acceptance are less certain.

(Trempert, 1987: 274)

7.2 LANGUAGE AS AN ISSUE IN CROSS EXAMINATION

Within Australian and international literature on 'the child as witness', the only place to find specific critique of language as a central issue is in papers and presentations arising from the development of this thesis. That language is of central importance is not doubted, yet at one of society's most significant sites of struggle and inequity, where powerful are sent into combat against the poorly equipped and the weak, where words and the way they are put together are everything, language rates not a mention.

At the time of writing there is much interest in the concept of allowing children in sexual abuse cases to be examined and cross examined by videotape. There is also much discussion about the credibility of children as a 'class' of people. Neither of these responses negates the concern of this thesis because the language issue, which determines all the rest, remains largely unrecognised.

Recognising and making obvious the problem of what now appears as punitive, unfair and inappropriate treatment of sexually abused children in criminal court proceedings was grounded in linguistic activity and
was discernible through linguistic analysis. The discourse rights (Walker, 1981) were seen to be a legitimate area for study and advocacy, given the focus on the phenomenon of the child victim witness.

I was also mindful that children have rights. I was aware that children cannot protect those rights themselves, but need a person, agency or process that is prepared to pursue their 'rights'. The legal nature of these rights is specified in the preamble to the United Nations Declaration of the Rights of the Child in which the duty of the law and its administration is made totally clear:

> The child shall enjoy special attention, and shall be given opportunities and facilities by law and by other means, to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity. In the enactment of laws for this purpose, the best interests of the child shall be the paramount consideration.

(Proclaimed by the General Assembly of the UN 20/11/59).

This statement was especially significant in a context of legal administration. Rather than recognising that child victim witnesses may have 'special' rights, there is no recognition that they even have the same rights as others. Adult rights are articulated in the International Covenant on Civil and Political Rights where it is stated that:

> ... everyone shall have the right to freedom of expression (and) this right shall include the freedom to seek, receive and impart information and ideas of all kind.

(Australian Law Reform Commission, 1984)

But witnesses in courts are not free to impart information and ideas of all kinds (Penman, 1990). Indeed they are actively restricted from uttering the 'whole truth'. Because of an assumed inadequacy, children are even more likely to be restricted in expressing themselves clearly. On review of the available transcripts, this is borne out in the frequent 'child breaks down' statement. This represents not only patterned but predictable behaviour and the situation generally works to ensure this outcome. The concept of 'rights' expressed above is apparently not being upheld by the very processes that have been established to pursue and uphold such rights.

This thesis is a direct response to an imperative which acknowledges the real and extensive experiences of sexually abused children. For those children the courtroom experience of cross examination is not only about the settling of a disagreement. It is a part of and a continuation of their own real experiences. Identifying the linguistic descriptors of the
child victim witness under cross examination has varied, and in some cases radical, implications for other areas of practice and study.

7.3 IMPLICATIONS FOR OTHER AREAS

For the applied sociolinguist there was the challenge of defining and responding to the widest possible definition of context, the personal psychological and historical inner context of the child victim witness. It was an opportunity to investigate in an applied and socially critical way the connections and consequences of the relationship between language and thought. Those connections have been expressed in the descriptive taxonomy of the discourse of denial which was constructed as a result of studying particular constructions of speech used in cross examination.

The study offered the possibility of understanding the dynamics of language which is constructed to obfuscate. My professional orientation as a language educator has developed the belief that language should be used to support and clarify. However the language of cross examination contradicted the precepts of education wherein language is used as an 'ally' for growth and learning rather than as a 'weapon' of destruction. The implication for effective teaching (teaching which seeks to engender the ability in others to create narratives and texts of many different kinds), is that the language characteristics identified in 'the discourse of denial' should be avoided at all costs. Educators need to constantly search for linguistic strategies which counter the effects of denial.

The possibility of being able to identify and describe language features and their effects in a specific situation suggested a heightening of awareness for practitioners in all fields of human interaction. Specifically, counsellors of children and others preparing children for court stood to benefit from any clarification of the experience of the child victim witness under cross examination. Within the court, police prosecutors and judges might also be helped to identify more clearly the plight of the child victim witness through developing an appreciation of the details of force embedded within the language of cross examination.

The range of areas of practice that might inform and be informed by the thesis suggested the use of a research paradigm that could recognise and respond not only to the focus question but also to the range of potential stakeholders. The diversity of data required to create a credible, dependable, confirmable and transferable result could only be tackled within a naturalistic paradigm.
7.4 CHOOSING A RESEARCH PROCESS

In a naturalistic inquiry, it is the movement through the layers of inquiry activities and the interaction between them that constitute the dynamics of the (emergent) design. The human as instrument, using his or her tacit knowledge is the mechanism by which the process occurs. (Cambourne and Curtis, 1988)

This suggests that any consideration of the language and its effect in court should take into account the possible reasons for the existence of these effects. It is an implied assertion of this thesis that many language characteristics are not so much grounded in legal requirement but rather in the necessity to do combat with words. The combat is fought both with propositions embodied in words, as in argumentation, and with configurations and forms of strings of words. The quality of wordness itself in the combat may be paralleled to the person with withered arms who has to prove him or herself in a sword fight.

As I became informed by the research process I realised the need to test traditional assumptions about subjectivity and objectivity. The study had to be credible to non-sympathetic observers and stakeholders. The need to present a mixture of objective and subjective descriptions and results influenced the choice of research paradigm and method.

Although causal connections are often looked for in research, it is questionable whether they are the strongest form of connection. For the purposes of this study the strongest degree of connectedness is that which shows the existence of certain human responses and activities as part of a pattern of responses, the sense of which can be made by reference to an overarching theoretical proposition:

Causation should perhaps be viewed as a semantic or attributional phenomenon ... because the concept of causality does not fit human research, the designs of research based on that concept, however implicitly, are misleading and may, ultimately, be the cause of the demise of our profession.

(Guba and Lincoln 1982: 9)

In discussing the process of naturalistic research in the social sciences Guba and Lincoln suggest five axioms. These are 'multiple realities, investigator-respondent interaction, generalisations, causality, and values' (1982: 10). They assert that these criteria of the investigative process are more useful than the plethora of approaches and procedures arising from a rationalist philosophy.

The data collection techniques of interview, review of documentary evidence, and general survey create an appreciation of 'the state of play'. Descriptive statistics are a significant and important aspect of the
report as they provide another means of embellishment, support, and refutation of the case being made, as do personal comments and observations. Opening up a case to a variety of tests and sources of data can strengthen that case by providing a variety of means by which to gauge it. In this study such variety enriched the whole experience and helped to clarify points of concurrence and tension as concepts arose and were adopted or discarded.

Although my research journey was not carried out in accordance with an initial briefing chart, the thesis displays the power of generalisation or transferability. There are several kinds of generalisation which are applicable:

- there is a perceived relationship between the dynamics of private abuse and the public abuse observed in court proceedings bound together by the denial of valid experience. This is supported by social theories which suggest that micro behaviour can be viewed and analysed as a cellular embodiment of macro behaviour.

- the activity of language denial can be seen to operate in a number of other sites and situations to a greater or lesser degree.

- the existence of a discourse of denial is consistent with a number of other theories which speculate about the relationship between language and society, human experience and mental states.

Although it is a mistake to equate correlation of any phenomenon with any other phenomenon as creating a causal relationship, it is equally remiss of any researcher to knowingly ignore relationships in the data which present themselves as connections.

The standards for the conduct and veracity of this research must be created and reviewed in terms of my aspirations as a researcher, and the claims that I made about the subject which were that:

- a particular phenomenon, children under cross examination, warranted investigation beyond the rules and requirements of court procedures, from the child's point of view.

- what happens in court is a function of, and is viewable through the lens of language interaction.

- the language used embodies a particular set of pressures and dynamics.
the pressures and dynamics of court appearance reflect the pressures and dynamics which exist both in the society at large and in sites other than the court setting.

Because of the desire to go beyond correlational sociolinguistics to establish connections and patterns of connections, the results reflect the premise about the linguistic base of ideology. The results also describe connections and dynamics in such a way that change can be effected. The research process (which created and allowed for all the above constraints, aspirations, contexts, and levels inherent in the research question) had to be responsive in the fullest possible sense.

7.5 USING A METHOD AND DEVELOPING TOOLS

In response to Danet's observation (1980: 211) that 'a trial is a very complicated communicative process with many variables simultaneously at work', I decided upon three ways of creating, accessing and combining data. Both qualitative and quantitative results were produced which provided:

- empirical evidence of the lack of match between what is said and what is heard
- detailed descriptors of the aspects of language which characterise cross examination
- an appreciation of aspects of propositional force which are contained within the cross examination interchanges.

These results were produced respectively by:

- the testing program which showed that around half of what was said to children was not heard as language
- an analysis of transcripts which produced a list of possible descriptors of the hard to hear language
- a collection of propositions from transcripts which created discernible and constant themes about the reliability and veracity of children's testimony
7.5.1 The testing program

This empirical study showed the validity of the claims that the children did not understand about half of what was said to them in court. The statistical calculation of 43% confirmed a general appreciation of the discourse as a whole. The general collection of 'lawyer questions' was chosen at random from all the available transcripts and provided the clearest links with the central concern of this thesis - that is, how is language used to deny the experience of child victim witnesses in cross examination. The categories of 'counsellor', 'teacher', and 'selective lawyer' serve as points of comparison with the central finding.

7.5.1.1 The search for meaning in questions

The results indicated that although the language of the questions offered for repetition was outside the respondents' normal repertoire, (indicated by an inaccurate repetition), they still searched for, and imposed meaning on, what they heard. They used a variety of techniques to change the original text into a piece of language which was comprehensible for them.

This tactic indicates that children actively search for meaning in what they hear. Their preference is for 'A Sense' rather than 'No Sense'. The existence of this category highlights the distance which must exist between the language of the child and the language of the questioner before 'No Sense' is produced. Even if there is a mismatch between the child and the questioner's language capacities, as indicated by an inaccurate repetition, the child will attempt to compensate for this distance and try to actively search for an independent and sensible piece of text. To fail in this task, as indicated by the 'No Sense' category represents the child's total failure to hear the language of the question being asked. In everyday conversation most of us search for sense in the language of other people. Frequently messages are wrong, sometimes they are right. But when we find 'No Sense' in the language of the other person, frustration and confusion are the likely results. If we multiply these feelings by an anxiety quotient to adequately reflect the stress of the child witness under cross examination we have a disturbing picture of what is happening to children in the courtroom context.

7.5.1.2 The Implications of mismatch

In the courtroom transcripts examined there was a mismatch between the language of the lawyers and the language capacities of the children.
This mismatch varied according to the particular type of question asked. As the questions became more courtroom specific and more combative under cross examination, the less likely it was that children would be able to hear the language and respond in a meaningful and truthful way.

Strong as this result was however, it was still unfinished. The picture was incomplete. There was a need to add depth and colour to the canvas.

7.5.2 Analysis of transcripts

By comparing characteristics of the language samples which the children failed to hear with the features of the selective lawyer sample, it was possible to generate a list of features of the language of cross examination. When perceived functionally they became known as tactics and strategies because of their debilitating effects upon comprehension. The list of features included:

- the context of the situation (lawyers examine children on police statements)
- the context of the text (lawyers change topics)
- the context of words, phrases and expressions (semantic and syntactic features of language which generate meanings).

Other contexts which create and project meanings include architectural features of a particular site, physical stance of the interlocutor, male domination, and intonation.

7.5.3 Establishing themes

One of the outstanding features of language and its analysis is that within discourses one is able to produce, project and identify themes or story lines which arise from one or other of the interlocutors, or which result from their interaction. In criminal court, sides are taken and story lines presented and defended. The themes thus created are a function both of supposed 'facts' and also 'stances' which one or the other parties can be shown to have - lazy, drunken, unreliable, provocative, aggressive. The 'kind' of person you can be shown to be becomes central to the judge and jury's assessment of individual credibility. The establishment of 'themes' becomes an essential part of the fight for credibility. In the transcripts under consideration themes were created from side comments, statements and in some cases
statement by omission. 'I put it to you that everything you have said is a total pack of ... sorry, I'll ask that question again'. Such expressions are only possible because they capitalise upon ideas that exist in the general fabric of social relationships.

In the proceedings reviewed, the themes which were voiced cast children as manipulative, unreliable and fantasy prone beings. Such generalisations are unwarranted and only serve the dynamics of prejudice and punitive discrimination. The assertion that children, as a class, are reliable truth tellers, is similarly untenable. It is my experience as an educator that such claims are not true. The example of Matthew as a child 'striving for meaning' rather than as one who is incapable or inactive illustrates this point.

Matthews change for example of "Let me see if I've got it right? You've told stories which are untrue?" to "Let me see if you've got it right? You've told stories that are untrue?" illustrate this point well.

See Appendix 9: Test question responses for Matthew

To appreciate the nature and effect of language in the situations under scrutiny the examination of these themes adds another dimension to the analysis.

An analysis of discourse can be carried out at a number of levels drawing on units of varying features and size. The problem with analysing only the meanings of words spoken is that unless an appeal is made to meanings other than those contained in the words spoken, no sense can ever be made of the discourse. Insanity itself is often the result of such tension and lack of resolution between 'statement' and 'meaning'.

When talking about units of analysis it is tempting to appeal to the notion of micro or macro features. Choosing the size of units for analysis however misses a crucial feature of discourse itself, that is, that it can be appreciated in a number of different ways. Drawing upon the concept of 'levels' suggests an hierarchical arrangement of factors and indicators whereas the concept of 'difference' allows for the presence of alternative perspectives.

From the combination of results from different analyses of a variety of data pools the descriptive taxonomy of 'the discourse of denial' was created.

7.6 SUGGESTIONS FOR FURTHER ACTION
This thesis distances itself from other linguistic studies in three significant respects:

- the province of language studies and sociolinguists, with correlated links between the social and the linguistic, is not connected enough for the precepts of this study. It is inconceivable to study language in use without also studying the social. The term 'sociolinguists' becomes redundant and we are left with language which is social.

- the end point for many studies of language in use is the display of correlational behaviour itself. In this thesis I am looking for the explication of power, role and status as expressed and embodied in particular linguistic expression

- the motive behind studying a particular site is to understand more about that site and to use that understanding to complement more global analyses.

To address all of the above the speaker/hearer needs to be admitted into the speech act and its subsequent analysis and presentation. For a full appreciation, their role and function needs to be noted as well as the baggage of experiences, assumptions and needs they embody. By including in data gathering and analysis the relationship between context, experience and consequences for the child, the discourse of denial has been identified.

I am not suggesting that the effects of cross examination in court can be viewed only in terms of a single discourse. There are other discourses operating independently which support the central one of denial. It may have been possible to reflect some of those possibilities - 'the enactment of the legal process', 'the perpetuation of myths about children', or 'the assertion of power in the courtroom'. However because of my concern with the possible effects of language upon the victim I pursued the research problem and created conclusions in those terms.

I have not claimed any supra legal status for children. Rather I would claim that because of their less powerful position and the forceful effect of words on them, child victim witnesses are being treated as sub legal entities. Being powerless and the subject of verbal batterings are by no means the sole province of children, abused or otherwise, but the issue is most discernible with this particular group of society's victims. What is done to these children in court is done in the name of the defendant's welfare. The adversarial nature of criminal proceedings is responsible for the child's powerlessness.
This study creates some critical space for the further consideration of the welfare of the child in the context of court, and a reappraisal of that context. The children who find themselves in court are neither accusers in the traditional adult sense, nor bystanders to the activities of others. They are young people who have asked for help and protection and in so doing have brought down upon themselves all the force and scrutiny of combat.

To accommodate a concern for the welfare of children in court whilst preserving the rights of the defendants, there have recently been a number of measures discussed and tried. They include the use of screens in court, replaying in court interviews held elsewhere and using closed circuit video devices. Whatever the efficacy or advisability of these measures there remains the issue of language which confuses and denies.

Because the language of court is so strange to children, the use of a translator could be justified. However no single response will accommodate the concerns of this study. The meanings and effects of language come from a number of sources and any response to the problem should recognise this. A total change to the court environment could be advocated as well as a total reform of language in court proceedings. The basic recommendation is not conceptually complex - children and alleged victims should be allowed to tell their own stories in their own language, supported by other methods of communicating sense and meaning. If the court cannot accept this adjustment then the child is entitled to a translator. If neither of these adjustments can be made then the evidence of this study suggests that the child will remain unheard. There is no doubt that children's knowledge remains virtually untapped and unexploited even by the prosecution. Strange and obfuscating language is not a feature only of cross examination. Sympathetic prosecutors fail to make the adjustments required to enable children to respond sensibly to questions asked.

Inappropriate language is a barrier which stands in the way of child victim witnesses saying what they might. An appreciation of the strangeness and its effects should equip prosecutors to help their witnesses present themselves more fully, and magistrates and judges to hold in check the linguistic excesses of cross examiners. Police are reluctant to prosecute on behalf of young children because of the treatment they get in court, and magistrates refuse to set cases for trial because they believe the primary witness would not stand the rigours of the trial. Yet other ways of collecting evidence, asking questions, cross referencing stories and ascertaining truth remain unexploited by the courts.
The young and the slow are increasingly vulnerable:

There are four main reasons why prosecution in these cases is difficult. First, adults are often sceptical when children report having been molested. Second, many lay and professional people believe that sexual abuse is caused by a mental disorder, and therefore that the mental health system, not the criminal justice system, is the proper forum for dealing with the matter. Third, many fear that children will be traumatised by taking part in such legal proceedings and hence be further victimised. Fourth, many prosecutors do not want to undertake cases that rest heavily on the testimony of child victims because they fear that the child will not be able to perform adequately as a witness.

(Berliner & Barbieri, 1984: 126)

The more strange or denying the examining environment, the more likely it is that these fears will be realised.

When there is no evidence of physical injury and there is no other corroborating evidence, the case comes down to an issue of child versus adult in a legal context which is more appropriate for the adult than the child. Currently available statistics indicate '... there is no indication of physical injury to 171 (76.7%) of the 223 complainants' (Cashmore and Horsky, 1987: 26).

Given these figures it is necessary for the judicial system to create a new category of evidence which is admissible in court and which safeguards the interests of this large population of children who sustain no obvious physical signs of assault. There is a need for the admission of expert advice on the identification of indicators of sexual assault other than the purely observable ones. The verbal assaults evident in many of the proceedings reviewed, and their continued endorsement, stand in the way of any progress in this direction.

The claim by a community health counsellor that '... there is more in the system to stop kids talking than to keep them going' is sustainable. The situation is even more critical for young and less verbal children who need, and can ably take advantage of, the opportunity to display what they know in a variety of ways. The use of anatomical dolls, drawings, interviews and assessments are all forms of creating messages to either supplement, support or refute verbal testimony. The courtroom does not generally allow for these non-verbal representations by the child.

Children are persistent and tenacious language users and pursue sense and meaning with vigour, they are not frail in this respect. However when their efforts to create and respond to meaning are discriminated against, their youth and social inexperience become critical factors. There is little evidence to suggest that their vulnerability is regarded by
the court as requiring any adjustments through language. Victimisation, immaturity and vulnerability are met with time lapses, disbelief, and intimidation. The denying language of cross examination fits well in the stable of social and circumstantial punishments.

7.7 CONCLUSION

Given the power and significance of language in determining the position, definition and fate of the individual in relation to others, it is interesting to note that the issue is often missing from documents and investigations which have reform and critique as their focus. Architecture, setting, and physical confrontation of the accused are considered more significant than language.

The observed maltreatment of child victim witnesses has drawn a variety of responses from workers in the field of law and law reform. These responses have ranged from protection of the defence counsel's right to do whatever is necessary to further their own client's cause, to calls for the introduction of video technology to insulate children from the exposure of the open courtroom. None of these recognise the centrality of language activity and its manipulation to further the needs of adversarial combat.

Amongst these responses lies my own decision to settle on aspects of language as a measure of the perceived inequity. That decision was based on the moral premises that firstly, the child has the right to be protected from abusive adult behaviour in both private and public contexts; and secondly that language behaviour itself, where it is seen to contribute to such abuse, should be exposed and held in check.

Specifically because the processes of criminal law are established to hold in check the excesses and infringements of others, to critique those processes is problematic to say the least.

The deconstruction of the myth that the process of law is grounded in the pursuit of truth begins when the processes which law purports to uphold are shown not to operate. What can be observed in the language of cross examination of victim witnesses is a discourse which underpins the raw expression of power; where the central pursuit is the establishment of control over meaning; where language is used as an instrument of domination created by the elimination of the expression of experience of the child victim witness. It is both problematic and worrying that 'the pursuit of truth' is fuelled and driven by the 'discourse of denial'.
Appendix 1

News clips
Understanding children's lies

Lying by children is rated by parents, teachers and clinicians as one of the most serious of child behaviour problems. Behaviour that may sometimes be only 'child's-play' can have serious consequences in the court-room battles of the adult world.

In criminal court cases, particularly those dealing with child sexual assault, concern runs high about the reliability of child witness testimony.

Dr Kay Bussey, senior lecturer in psychology at Macquarie, began research on children's lying and truth-telling three years ago as part of a study aimed at preparing children for court.

The major question arising out of Dr Bussey's observations of court proceedings during the study concerned the reasons why children, as witnesses, often fail to perform successfully in court.

Children's evidence, she points out, is often refuted as invalid by judges or defence counsels holding the belief that children cannot distinguish fabrication from the truth. Such cases are then dismissed from the court.

Child witnesses in court also deny testimony presented by them prior to the court hearing, says Dr Bussey. Thus a child who has been abused may say months later, when the case finally reaches the courts, that 'it didn't happen'.

In cases involving sexual abuse, kidnapping or domestic violence, the child is often the sole victim and witness of an event. It is in these hearings that the debate concerning lying or truth-telling in children becomes a crucial element in the outcome of a case.

Increasing numbers of children are required to provide testimony as witnesses in court. Until recently, however, most of the major research examining children's capacity for truth-telling had been conducted more than 50 years ago. Research conducted by Jean Piaget indicates that children 'lie more or less as ... [they] play'. This evidence underlies the arguments of many of those who question the veracity of children's testimony.

Dr Bussey's findings throw a shadow of doubt on Piaget's conclusion that children cannot distinguish the truth from a lie. She maintains that Piaget's research 'seriously underestimates younger children's competence' in this area.

Current research at Macquarie indicates that children can provide 'accurate and useful' evidence to a court hearing by at least seven years of age. Preschoolers' accuracy rate in identifying lies from truth is still good -- 'about 85 per cent', Dr Bussey says.

Children from a young age, it is argued, can tell the truth. Dr Bussey's position on whether or not children will tell the truth is equally clear. 'No age group has a monopoly on honesty' -- even adults may lie in court. However, as the study reveals, the motivation behind children's lies differs from that of

(continued on page 2)
Sexually-abused children 'lie' to courts out of fear

The court system should be changed to encourage children to give truthful evidence in sexual assault and other cases, according to a leading Sydney Psychologist.

Senior lecturer in psychology at Macquarie University, Dr Kay Bussey, believes evidence given by children in sexual assault and similar cases is too often dismissed as invalid because the court questions the veracity of their testimony.

Dr Bussey, whose three-year, Australian Research Council funded study on children's lying habits was prompted by these concerns, said children as young as seven can provide "accurate and useful" court evidence.

"Children can tell the truth but we need to have a court structure that would allow them to tell the truth," she said.

"One day in court I saw a case where the father was charged with abusing the child, but by the time that case got to court the child had recanted the evidence."

"She was saying it didn't happen because she realised the repercussions were enormous."

One problem was that children often retracted initial evidence because they were afraid of the repercussions.

As the child was often the sole victim and witness of sexual abuse, kidnapping and domestic violence, their honesty in such cases was crucial.

Dr Bussey advocates a system in which children would give evidence on video in a relaxed and friendly atmosphere, and most importantly, away from any eye-contact with the defendant.

by Bronwyn McNulty (The Australian 3/10/89)
Children learn to lie—and well—at an early age: Study

Sydney - Children learn to lie at a much earlier age than most people realise, according to a new United States study.

The researchers also found that young children were "highly persuasive" liars, and that girls were more likely than boys to deceive.

Reported in the latest Australian Dr Weekly magazine, they said this could reflect that girls were more likely to feel shame after doing something naughty and thus more likely to deny the act.

"Evidence that females are more interested in social approval suggests they deceive so as not to displease an experimenter and, possibly, to avoid punishment," the researchers said.

"These results indicate that very young children have begun to learn how to mask their emotional expressions and support the role of socialisation in this process."

The study, conducted jointly at the Institute for the Study of Child Development and the University of Medicine and Dentistry in New Jersey, involved 15 boys and 18 girls, all aged about three.

They were individually videotaped while sitting alone in a room, after having being told not to peek at a toy on a table behind them.

(The Daily Advertiser)
Researchers lift lid on the ancient art of lying

When the truth hurts, we bend it

The world is full of liars, and that's no lie. Children are told that it's wrong to lie, but are taught how as part of their survival package for life. So, what is wrong becomes right.

Despite its paradoxical and bedevilling character, lying is one of the most under-researched areas of the human condition. But that is about to change.

Professor John Barnes, a sociologist with the Australian National University in Canberra, is considering writing a book on lying; Dr Candida Peterson, a senior lecturer in psychology at Murdoch University in Perth, is now looking at lying trends in China; and Dr Kay Bussey, a psychologist at Macquarie University in Sydney, has just made lying topical again with her findings from a three-year study.

Dr Bussey started her research because she was curious about the perception of children as liars. "That reputation has been one of the factors that has been impeding children acting as witnesses in court cases," she explained. "The judiciary is concerned that they will undermine the integrity of the court because they lie so much ... children in the age group three to five rarely get into the witness stand because of judges' perceptions that they are lying."

Dr Bussey has concluded from her work that adults are more adept liars than children. However, by learning to mask their true emotions through card and board games like Monopoly, youngsters can learn to become more successful in the art.

Dr Bussey said the testimony of young children in sexual assault cases was often not taken seriously as the defence counsel and judge could call into question the child's capacity to tell the truth.

"What I have concluded is that rather than children not being credible witnesses, they are not credible liars," she said. "Adults are much better liars. The fact that children are much more likely to be found out means they are more easily labelled as liars."

Sociology Professor John Barnes argued that lying was often essential to save us from potentially embarrassing or damaging situations. To teach children to bend the truth is an integral part of their socialisation. "It can be very embarrassing when children say something which is true but which is offensive," he explained.

Professor Barnes has been titillated by the subject since he attended a conference on lying in Sydney six years ago. His research has focused on differences between one culture and another in their attitudes to lying.

"Some cultures like Ireland and Greece have much more productive liars than others," he observed. And Australia? "(It's) not doing too badly. They are good liars. My argument would be that you cannot run society without a certain amount of lying going on. Nothing but the truth would be horrendous."

A white lie has always been regarded as the harmless variety of the species. But it has never really been defined. "A lie is treated as white if it is regarded in the culture as
acceptable," said Professor Barnes. "But a lie which may appear white to one person may be black to another."

In her book, 'Lying: Moral Choices in Public and Private Life', author F Bok defined lying as "an intentionally deceptive message in the form of a statement". In her years of research into the subject, Dr Candida Peterson has found that the interpretation of what constitutes a lie differs widely.

In one Australian study, she found that 38 per cent of five-year olds considered swearing as a lie. This finding was consistent with the conclusions of Jean Piaget, a French psychologist who did extensive research into lying in the 1930s. Even then children reported that to tell a lie was to say something naughty.

One of the more interesting aspects of Dr Peterson's work was the number who considered exaggeration to be a lie. In one example, a child who over-estimated the size of a chicken chasing her - she compared it to an elephant - was believed by most of the children questioned to be telling a lie. More surprising, however, was that half of the adults questioned also believed her to be lying.

It is generally accepted that most children lie to avoid punishment. Dr Bussey, in her research, pointed out that in sexual abuse cases children often knew that they would be punished by the accused if they told the truth, so they lied to avoid severe punishment.

"In this case, children don't have the option of telling the truth. This is true for many everyday examples of lying. To tell the truth is worse than to lie," she said.

Dr Bussey argued that just knowing that lying was wrong was not enough to encourage truth-telling. Children needed to be made to feel good when they told the truth and censured when they didn't. "... it is our own reactions of self-censure for lying and feelings of pride for truth-telling that will lead us to be truth-tellers rather than liars," she observed.

by Muriel Reddy (The Sunday Age) 22 October 1989
Researchers lift lid on the ancien

**By Muriel Reddy**

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Why Children Lie in Court

New research shows how the power of suggestion can lead U.S. youngsters to say things that send innocent adults to jail

By JEROME CRAMER WASHINGTON

The poignant scene is played out time and again in America's courtrooms. A small, bewildered child sits in a witness chair, being led by an attorney through shocking testimony. The youngster speaks haltingly of unspeakable things done to him or her by a stranger, a babysitter or even a parent. Could such an innocent soul possibly be telling anything but the truth?

Most legal experts, child psychiatrists—and juries—have long thought that children rarely lie about sex-abuse crimes on the witness stand. On the strength of that assumption, many adults in the U.S. have been sent to jail for sexual abuse or other charges, professing all the way that innocence stand. On the strength of that assumption, many adults in the U.S. have been sent to jail for sexual abuse or other charges, professing all the way that

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Child-custody disputes are often the trigger for youngsters' unwitting lies. Suspicions can cause parents to launch what legal scholar Douglas Besharov of Washington's American Enterprise Institute calls "the atomic bomb of child-custody fights." In these stressful situations, children quickly discover what has happened, only eight mentioned the vaginal examinations,

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A CASE STUDY

SUBJECT : Jason
D.O.B. : 3.9.81
CARE & PROTECTION ORDER : 21.3.84
Placed with foster parents, H and S of Town X

Jason was the victim of a number of sodomy offences by his mother's defacto C, while he was in his mother's care in Town Z from late 1986 to early 1987. He was subsequently placed with his father, R of Town X. This placement broke down because of physical abuse by his father.

Jason was then placed with his two younger sisters in foster care on 3 August 1987. It is envisaged that this will be a permanent placement. Jason has had multiple placement changes but has settled in very well with the family.

In October 1987, this office was contacted by the Crown Prosecutors office, requesting that Jason be a witness in the crown case against C. To prepare Jason for this rather traumatic episode his foster mother and I spoke to him on a number of occasions to reassure him that C would never hurt him again and that the incidents were not his fault. During this period Jason frequently soiled his pants and seemed generally anxious.

I accompanied Jason and his foster mother to the Crown Law Office to see Q on 20 November 1987. Q prepared Jason as best as possible and talked to him about how he would be like a 'star on a stage' in court. Jason responded well to this. Q was also made aware of Jason's anxieties about the court procedure.

We were requested to have Jason at Town Z Court House on 3 December 1987 at approximately 9 a.m. To avoid having Jason accidently meet the offender or his mother before court, the staff placed S, Jason and I in a small court room. We waited in this room until approximately 12 p.m. - Jason becoming increasingly agitated with the passing hours.

We were allowed to take Jason for a drive until 1.45 p.m. When we returned we were placed in another small room. Jason, being very tired and frustrated, fell asleep on the floor.

Jason was finally called into the court room at 3.30 p.m. His foster mother was allowed to sit about ten feet from
him. There were approximately thirty strangers in the court room (including 12 jurors).

Considering that Jason is only six years old, he did quite well in the witness box. Q demonstrated very early in the process that Jason had not mastered the concept of time - hours, days, weeks, months or years.

Unfortunately the defence lawyer tried unnecessarily to further confuse Jason regarding time.

Jason had been "practising" his story before court but occasionally needed prompting to say the words 'penis' and 'bottom'. He was too embarrassed to say these words in front of a room full of strangers. Although Jason could not be asked leading questions, it was a shame that the questioning did not proceed at a more child oriented pace.

After Jason had been on the stand for about twenty minutes his voice started to fade, and he got restless. There was no microphone for him to use, so he was continually being prompted to repeat himself. This upset the flow of events for Jason.

During the cross-examination Jason was questioned about his family circumstances. It was a shame that the court had not been made aware that Jason has three families (i.e. his foster family, his father's family and mother's family) because it seemed to the court that Jason was very confused. Jason actually made a lot of sense considering his many placement changes - but it did not seem so to the court.

Towards the end of the 1.5 hour long court appearance, the defence lawyer accused Jason of being a liar. This could have been done without distressing Jason - for instance, by asking if he knew what happens when people don't tell the truth, etc.

In summary, the judicial process very much worked against the child - victim in this circumstance. The end result was that the offender was acquitted and Jason was traumatised. Some of the process could not be avoided given the present legal arrangements for child witnesses. I was mostly concerned about the huge time delay and the manner with which the defence lawyer was 'allowed' to address Jason.

<< This case study was provided by a country-based care worker who is unable to attend the seminar, but wished to have this made available for participants' consideration >>
Appendix 2

CARS meeting minutes
CHILD AT RISK COMMITTEE MEETING

1. Law Reform Commission's report on Criminal Records
2. Community Education - Media
3. Video and discussion
4. Legal Seminar
5. Child Sexual Assault Team
6. Other Items

AGENDA

Move to treatment rather than punishment
now one affair seen as minor at past hour

Australian Law Reform Commissioner

Not be allowed into any part of
authority be children. No exception of
limitations. Does not say they can't do other
Things just not kids
Destitution of sent. property.
PRESENT: Mark Brennan, Robert Stone, Kathy Sharpe, Barb Howard.

APOLOGIES: Kathryn Peters.

It was decided to:-

1) Examine cases of intellectually handicapped children that had not proceeded to/or succeeded at court because of the children.

2) Make recommendations that would assist these cases to proceed. This would include such things as
   a) Children's oath age.
   b) Means of communication - possibly an interpreter.
   c) Tools that could be used, include dolls, screens, pictures.

B. Howard
MINUTE TAKER.
CHILD AT RISK COMMITTEE MEETING

15.2.89 - 11.30 A.M.

AGENDA:

1. Apologies.

2. Report on sub-committee meeting re submission on legal representation for children with intellectual disabilities.


5. Next meeting 29.3.89.

Interational Conference on Children Giving Evidence.
Cambridge June 26-29.
Details to be circulated.

Ann Cooney C.A.R.C.
Children Misconduct Screening in Court.

Judy Cuthbert "Senior Assault: The Court Response"
Presentation of Evidence in Court.

Matters concerning Sexual Assault Cases
Look at age of child at time of

- Under 10-16 (girls)
- Under 10-18 (boys, management)

Details of type of offence:
Statement given to police = Full Vetting
Charges revealed by DPP = Prosecution

regarded as more serious - yet
Basis of prosecution: case statement given
to police

Children under 8 - no usually complaint (notification)

Other evidence - Examination (medical) (witness)

Over 14: Prosecution to commence within 12 months...

[Tally Score]

[Tree Saturday]
CHILD AT RISK COMMITTEE MEETING - HELD AT WAGGA WAGGA DISTRICT CENTRE
ON 15.2.89 AT 11.30 A.M.

PRESENT:  Eileen Knox, Anne Cooney, Mark Brennan, Jim Humphries, Fran Beechan, Bernice Reid.

APOLOGIES:  Community Health - Kathy Sharpe.

MATTERS ARISING:

1. Discussion was held re the submission to the Child Protection Council on physical abuse and neglect of children. Kathy Sharpe has arranged a series of meetings with professionals in Wagga and Jillian Calbert from Child Protection Council.

2. Report given by Mark and Barb re the sub committee meeting on legal representation for children with intellectual disabilities. It was agreed that a 3 month time frame should be sent and a letter sent that we are preparing a submission. Three cases have been identified and court transcripts are being obtained and will be examined closely.

3. Mark reported Malcolm Beveridge, Magistrate at Dubbo requested details of special requirements for children in courts. He was interested in screens, or anything else that the committee could suggest. Anne and Mark to draft a letter in reply.

4. Mark reported that an International Conference was to be held at Selwyn College Cambridge. June 26-28 1989 on Children's Evidence in Legal Proceedings. (Please see enclosed details).

5. Guest speaker John Hall from public prosecutions presented a very informative talk on what the prosecutions has to consider before a court hearing. John kindly gave us his notes to circulate to other members who were unable to attend - please see enclosed notes.

6. Next meeting 29th March, 11.30 at Wagga District Centre.

Future meeting dates for the year are:-

May 10th - 1989
June 21st
August 2nd
September 13th
October 25th
December 6th

Barbara Howard
A/Chair Person
CHILD AT RISK COMMITTEE
3H:7B
Appendix 3

Sample interview questions
QUESTIONS FOR ELEVEN YEAR OLDS.
SELECTIVE LAWYER QUESTIONS

1. That’s not quite correct is it, you had been out with him before let me assist you, you have been to the Sturt Mall with Peter and your brother Ted on a number of occasions before going to school in the morning hadn’t you?

2. Remember that you told us before lunch break that you had never been out with Fred before this particular day, 8th of August do you remember saying that before lunch, do you remember or do you not?

3. Now there was another time when you went out with Fred and your brother apart from the Sturt Mall and that was to Cronulla Beach do you recall that, can’t give you a date but in July about a month or so before the 8th of August, Fred took you and your brother to Cronulla Beach do you remember that?

4. I put it to you that those conversations on the Monday and Tuesday that I have spoken to you about, he said to you "I am working". What do you say to that?

5. Now he is suggesting some other things to you that might I suppose remind you that might have happened now I suppose it is hard to understand why he says these things to you when you say it didn’t happen, that’s hard to understand isn’t it, but he is allowed to do these things and if you say it didn’t happen, all you have to do is say no, okay or if it did say yes, now do you follow that?

5. How far away from your front door were you or from the front gate of your house when you got into the car? Two or three houses away or six houses or whereabouts was it?

7. Now when you reached the start of the rocks just when Fred held your hand and started to help you over there, do you recall how long it was before you got to the little cave area?

8. Now do you say that whatever it was that happened, or whatever it was that happened to you and Sue, you were in the kitchen at the time and you obviously heard something did you?
9. Yes if you would have a look at this document, is that the statement that you made to the Principal and that you referred to before giving your evidence today and that you signed?

10. Well I know, I understand what you have been talking about to her today but you see what I am asking you is this, that statement suggests that you said those things that you are now say are wrong to the Principal. Now did you say it to the Principal or did you not?

11. Well you are not sure whether you said those things to the Principal which are wrong?

12. Well on the week before you made this statement to the Principal you said that one night you were in the kitchen?

13. All right so between his patting you and his attempt or his trying to put his squash racquet in your bag there was nothing else is that right?

14. Yes so he sat down beside you and started talking about football and then he started tickling you and then what happened next in the sequence, do you understand?

15> You have got a distinct recollection of seeing Judy coming into the room have you?

15. This terrible thing happening to you, if there was someone else there you'd remember it wouldn't you?

17. Well what do you mean you can't remember, this is something you'd remember, you've just told the teacher, that's the instructor, that if Judy had been present that'd be something you'd remember, do you remember saying that earlier?

18. Well that would be something you'd remember wouldn't it, you see the position is I suggest to you you're not telling the truth?
19. You read through this statement a day or so after you made it and there was nothing wrong with it, is that right?

20. See we went through the sequence of what happened and how you stayed in bed and your father went out, he went downstairs, do you remember all those questions?

COUNSELLOR QUESTIONS

1. Do you know why you are here?
2. Where was your Mum when it happened?
3. How many times did it happen?
4. When did it happen?
5. How did you feel?

RANDOM LAWYER QUESTIONS

1. You went for a swim there I am putting to you at Cronulla Beach?
2. Well I am not concerned with what your Father does or dosen't allow you to do I am concerned with what you actually did?
3. I will put this to you that on Wednesday afternoon that's the 7th of August, that's the day before the Thursday at about half past three in the afternoon you telephoned the place where Frank was living, what do you say to that?
4. You do realise or do you realise the important position Fred is in at the moment?
5. You do understand the importance of telling the truth don't you?
5. Are you denying that it happened?
7. Was it a long time or a short time?
8. All right. Well what is the next thing you recall happening as regards Sue?
9. And you indicate as you walk on your right hand side is the doorway that lead into the bathroom?
10. So where is the doorway of the bathroom?
11. Just so, you have drawn two drawings, on the left hand side is a larger version, on the right hand side is a smaller version, is that right?
12. Whose address is it in Garland Street?
13. And what did she say to you?
14. Did Sue tell you what she told her Mother?
15. Well, were you saying anything?
15. And you say you got in?
17. And between the first time and this time had you slept in your Mother's bed on a number of occasions in the meantime?
18. After these things happened did you go in September of this year, did you go to see a doctor, were you examined by a doctor?
19. It went in a little way is that right?
20. The first time this terrible thing happened to you, do you remember that?

TEACHER QUESTIONS

1. Can you explain to me the way you think the eyes work?
2. Could you tell me about what happens at school on Fridays?
3. What happens when Daddy comes home from work?
4. What sort of things do you usually do on weekends?
5. What do you remember about the last school holidays?
Appendix 4

Transcript of Beverley’s committal hearing
Bench

1. Q. Beverley how old are you? A. Thirteen.
2. Q. Do you go to school? A. Yes.
3. Q. What school do you go to? A. Eastridge High.
4. Q. And what class are you in? A. Year 7.
5. Q. And who is your Teacher? A. Miss Harste, Miss Halliday, Mr. Eco and Miss Spencer.
6. Q. That is for all the different subjects you have is it? A. Yes.
7. Q. And do you know what a Bible is? A. Yes.
8. Q. What is a Bible? A. It tells you all about God, Jesus and ......
9. Q. And do you know what an oath is to tell the truth on the Bible? A. Yes.
10. Q. What do you understand that to mean? A. Not lie
11. Q. And what happens if you do tell a lie? A. You get punished for it.
12. Q. Yes, thank you. I am satisfied the person is competent.
PROSECUTOR

14. Q. Beverley will you tell the Court your full name, what is your full name? A. Beverley May Courtney.
15. Q. And at the moment are you residing at the Children's Centre? A. Yes.
16. Q. You are a School girl? A. Yes.
17. Q. Do you still go to Pankhurst High School? A. No.
18. Q. What School do you go to now? A. Eastridge High.
19. Q. Beverley, is the person before the Court, David Courtney, known to you? A. Pardon.
20. Q. Do you know David Courtney? A. Yes.
21. Q. And to your knowledge was he married to your mother? A. Yes.
22. Q. Were you present when that marriage ceremony took place? A. I don't get what you mean.
23. Q. Were you there when they were married? A. I think so.

MR. MANNERS: Sorry, did not hear what Beverley said. A. I said I think so.

PROSECUTOR:

24. Q. Did you used to live in Horsley with your mother and David? A. Yes.
25. Q. Did you also live with your brothers and sisters? A. Yes.
26. Q. Were they John who is fifteen years of age, fifteen years of age, Greta, Ray and your twin sister Sonia? A. And Mary.
27. Q. How old do you believe you are at the moment? A. Thirteen.
28. Q. Do you recall before living at Horsley you lived at Crowley and about that time you were in Sixth Grade at School? A. Yes.
29. Q. Do you remember an occasion when you were in Sixth Grade, around your birthday? A. Yes.
30. Q. At that time were you living at 19 Morrow Street Crowley? A. (No verbal answer).
31. Q. Can you remember an evening during - withdraw that. Can you remember an evening when you were in your bedroom asleep? A. Yes.
32. Q. Did something happen between you and your stepfather? A. Yes.
33. Q. Did he enter your bedroom? A. Yes.
34. Q. What happened then? A. Then he walked into my room and......
35. Q. Walked into your room and what happened? A. Took my knickers down.
36. Q. How were you dressed at that stage? A. I was in my nightie and I had my nickers....
37. Q. You say he took your nickers down, what room were you in at that stage? A. I was in with Sonia.
38. Q. Sorry? A. I was in the room up the end.
39. Q. Did you share that room with anyone else? A. Yes. Sonia.
40. Q. Do you know where your mother was at that stage? A. I think she was at Aunty Margaret's I think.
41. Q. When he took your knickers down did he say anything? A. Yes.
42. Q. What did he say? A. He said “This won’t hurt”...
43. Q. Did you feel anything? Were you frightened? A. Yes.
44. Q. What happened then? A. When he fingered me.
45. Q. When you say he fingered you Beverley can you tell the Court exactly what he did? A. He put his finger into my vagina.
46. Q. Did you say anything to him? A. No. I just screamed.

MR. MANNERS: Sorry, I did not hear that.

PROSECUTOR: .....just screamed.

47. Q. Did you scream out? A. Not very loud.

MR. MANNERS: Sorry, I cannot hear her.
BENCH: Not very loud. A. Not very loud.

PROSECUTOR:
48. Q. Yes, then what happened? A. Then he went out of the room.
49. Q. How was he dressed on that occasion? A. He had his, he had jeans, shoes and a shirt on.
50. Q. Beverley do you know what the term penis is, what is a penis? A. It's a dooover.
51. Q. Right, it is part of a male or a female body? A. A male.
52. Q. And whereabouts is it? A. Between their legs.
53. Q. When you were living at Crowley did something happen with David's penis? A. Oh....
54. Q. Did he visit your bedroom on any other occasion? A. No.
55. Q. What did you feel when he fingered you on the occasion you told the Court about? A. Scared.
56. Q. Did you feel any pain? A. Yes.
57. Q. When you screamed did he say anything to you? A. No.
58. Q. Did you do anything when he left the room? A....(inaudible) toilet.
59. Q. Do you know where Sonia was at that stage? A. No.
60. Q. Was she in the room? A. No.
61. Q. Did anything else happen when you were living at Crowley? A. Yes.
62. Q. When was that? A. I think two nights, two nights away from the first time.
63. Q. Before or after? A. After.
64. Q. What happened on that occasion? A. He rooted me.

BENCH: I'm sorry, I know it is terribly hard, but you've got a soft voice, could you just raise it a little bit, just take your time. A. Yes.

PROSECUTOR: The answer was "he rooted me". Your Worship.

BENCH: Thank you.

MR. MANNERS: Sorry, I still cannot hear even what my friend said.

PROSECUTOR: "He rooted me."
65. Q. Where were you when he rooted you? A. In his bedroom.
66. Q. How did you get into his bedroom? A. He came and got me.
67. Q. Where from? A. My bedroom and he put me on his bed and I woke up.
68. Q. Did you walk to the bedroom? A. No.
69. Q. How did you get there? A. He carried me.
70. Q. Did he say anything to you as he was carrying you? A. No.
71. Q. Did he say anything to you when he entered your room? A. No 'cause I was asleep.
72. Q. Well, when did you wake up? A. When he put me on his bed.
73. Q. Do you know where your mother was then? A. No.
74. Q. Was she home? A. No.

MR. MANNERS: What did she say? I cannot hear her.

BENCH: The answer 'No'.

PROSECUTOR: So on that occasion he put you on his bed. What happened next? A. Then he took off my nightie and my knickers.
75. Q. Yes. A. And he got undressed.
76. Q. Yes? A. Then he hopped on me and was moving up and down then while he was moving up and down he was breathing hard...

77. Q. Do you know where his penis was when he was on top of you? A. Yes.

78. Q. Where? A. Inside my vagina.

79. Q. Did you feel anything at that stage? A. Yes.

80. Q. What did you feel? A. Sore.

81. Q. Did he say anything to you? A. No.

82. Q. Did you say anything to him? A. (No verbal answer.).

83. Q. How long did that take place? A. Two nights after.

84. Q. You say two nights, was there another incident? A. That was the same incident.

85. Q. Well what did you mean when you said "two nights"? A. Two nights after the first.

86. Q. Yes, and after he moved up and down what happened next? A. He was breathing hard and then he hopped off and then....

87. Q. Did he say anything when he hopped off? A. No. I hit him and then I went to my room.

88. Q. Could you see his penis on that occasion? A. No.

89. Q. What position were you in on the bed? A. On my back.

90. Q. Where were your legs? A. Together.

91. Q. How were your legs when his penis entered your vagina? A. Were open.

BENCH

Q. Sorry? A. They were open.

PROSECUTOR:

92. Q. And how were your legs opened Beverley. Who opened your legs? A. Uncle David.

93. Q. Did you do anything at that stage? A. No.

94. Q. Did anything else happen to you at Crowley? A. No. We moved to Horsley.

95. Q. Do you recall when it was you moved to Horsley? A. In the middle of Sixth Grade I think.

96. Q. Do you know the address at Horsley? A. Yes.

97. Q. What was the address? A. (...inaudible) Street I think it was where we lived, the number of the house was 19.

98. Q. ...Your Worship.

MR. MANNERS: Sorry. I cannot still....

PROSECUTOR: Can you speak up a little bit please Beverley.

BENCH: Number 19.

MR. MANNERS: I am having great difficulty hearing anything that the young person is saying.

BENCH: Beverley, look I know it is terribly hard for you, but this is a rather big room and we have got to hear, do you understand? A. Yes.

99. Q. Now you have got a soft voice, you might have to just raise it a little bit, can you do that for us. Thanks.

MR. MANNERS: Thank you. Sir.

PROSECUTOR: Thank you, Sir.

100. Q. Do you recall where you lived when you moved to Horsley? A. Why can't he say "remember" or "Can you tell us the address?"

101. Q. How many houses did you live in that street? A. One

102. Q. Was there a Cafe near the house? A. Yes

103. Q. Where was the Cafe? A. Across the road

104. Q. How long did you live in that house? A. I can't remember

105. Q. Was it weeks, days, months? A. I think a few weeks and then we How old was she then?
106. Q. Did anything happen to you when you were living in the house near the Cafe? A. No
107. Q. You told the Court you moved to a Commission house, how far was that from the other house? A. A few blocks away
108. Q. Was that still in Horsley? A. Yes
109. Q. Did something happen between you and David in the house we have referred to as the Commission house? A. Yes
110. Q. What happened there? A. Well Mum went out and Uncle David came home from darts and he asked me to make him a cup of tea and I made him a cup of tea and I took it into his room and when I was coming out, going out of the room he grabbed me.
111. Q. Yes? A. Then he pushed me onto the bed.
112. Q. Now Beverley do you recall when that was? A. A third time.
113. Q. How long ago did that happen? A. I can't remember.
114. Q. Do you know whether it was this year, last year or the previous year? A. No, no.
115. Q. What happened after he pulled you down onto the bed? A. I had my uniform on.
116. Q. What uniform was that? A. My school uniform.
117. Q. Yes? A. And he took it off and my knickers.
118. Q. Yes, what was he wearing? A. I couldn't see.
119. Q. Well what happened next? A. Then he hopped on top of me.
120. Q. Yes? A. Then he rooted me and he was breathing hard and then I said to him I was going to tell Mum and......
121. Q. Just pause there for a moment. You say he rooted you Beverley, what did he do? A. He put his penis in my vagina and when he stopped I said I was going to tell Mum and he said if I tell Mum he'll make sure I would go into a home.
122. Q. Do you know where your mother was at that stage? A. No, not really.
123. Q. Did you tell your mother at that stage? A. 'Cause he said if I did I'll go into a home.
124. Q. Did you believe that? A. Yes.
125. Q. Do you remember last August School holidays? Where were you living then? A. In Horsely I think.
126. Q. Where were you living then? A. In Horsely I think.
127. Q. Was it the house near the Cafe or the Commission house? A. Commission.
128. Q. Did something happen to you on that occasion? A. Yes.
129. Q. What happened then? A. Well he rooted me.
130. Q. Well where were you when that took place? A. In his room.
131. Q. Can you tell the Court how you got into his room on that occasion? A. No.
132. Q. Did you walk in? A. No.
133. Q. How did you get there? A. Can't remember.
134. Q. When you say he rooted you in his room on that occasion can you tell the Court what happened then? A. Well he took my clothes off and he was on me and he was moving up and down and he stopped and then I decided that I wasn't going to go home the next day when I was at School.
135. Q. Did he place his penis in your vagina on that occasion? A. Yes.
136. Q. Did you have any conversation on that occasion? A. No.
137. Q. On each of these occasions - withdraw that. Did you ever tell anyone about these occasions? A. Yes.
138. Q. Who did you tell? A. Greta.
139. Q. Greta is your sister? A. Yes, and down at Crowley I told Chloe and Rachel.
140. Q. Are they relatives of yours? A. Yes, cousins.
141. Q. Did you run away from home? A. Yes.
142. Q. Why did you do that? A. 'Cause I didn't want to get hurt anymore, 'cause I didn't want to get hurt anymore.
143. Q. And were you apprehended by the Police? A. Pardon
144. Q. Were you caught by the Police? A. No.
145. Q. Did you later speak to an Officer of the Youth and Community Services? A. Yes.
146. Q. And in turn did you then speak to Police Officers? A. Yes.
147. Q. Did you later go to The Prince of Wales Hospital in Sydney? A. Yes.
148. Q. And there were you examined by a Doctor Hay? A. Yes.
149. Q. Did you ever see David with anyone else apart from yourself? A. No.
150. Q. Did you ever see David with your sisters? A. Yes.
151. Q. When was that? A. I can't remember.
152. Q. Do you recall whether it was this year or last year? A. No.
153. Q. Do you recall where you were? A. At Horsley.
154. Q. At the Cafe house or the Commission house? A. Commission.
155. Q. Did you notice anything about Greta? A. Yes, she was crying.
156. Q. Did she have any clothing? A. I don't think so.
157. Q. Did David have any clothing on? A. Don't think so.
158. Q. Did anyone say anything? A. Yes.
159. Q. What was said? A. Uncle David said, told me to get out.
160. Q. Did you leave the room? A. Yes.
161. Q. Did you later talk to Greta? A. Yes.
162. Q. What do you recall whether it was this year or last year? A. No.
163. Q. Do you recall where you were? A. At Horsley.
164. Q. At the Cafe house or the Commission house? A. Commission.

CROSS EXAMINATION

MR. MANNERS:

1. Q. Beverley you have been staying at Meleymead have you not? A. Yes.
2. Q. And you ran away from Meleymead did you not? A. Yes.
3. Q. Why did you run away from Meleymead? A. Because I didn't like the place.
4. Q. You liked living at Crowley did you not? A. Yes.
5. Q. You love your mother? A. Yes.
6. Q. You do not like your Uncle David? A. No.
7. Q. And do you know why you left Crowley? A. Uncle David got a promotion to go to Horsley on the silos.
8. Q. And you wanted to stay at Crowley, did you not? A. Yes.
9. Q. Now during the School holidays in August this year where were you living? A. Horsley.
10. Q. At the Commission house? A. Yes.
11. Q. And who lived there? A. My two brothers, step-brothers, Greta, Sonia, Mary and I. Mum and Uncle David.
12. Q. And that was a three bedroom house? A. Yes I think so.
13. Q. And the boys slept out the back did they not? A. Yes.
14. Q. And you shared a room with Sonia is that not right? A. Yes.
15. Q. Sonia is your twin sister? A. Yes.
16. Q. She is very close to you is she not? A. Yes.
17. Q. You are very good friends as well as being twin sisters? Is that not right? A. Yes.
18. Q. And quite often you and Sonia share the same bed do you not, sleep together do you not? A. Yes.
19. Q. Now, where was your room, you and Sonia's room from your mother's room? A. Um it was next door.
20. Q. It was next door? And you mother and Uncle David's bedroom door was always open was it not? A. Yes.
21. Q. And their room, their bedroom was right next to the kitchen? A. Yes.
22. Q. The kitchen is a large open area is it not? A. Yes.
23. Q. It has a table in the middle? When you got up first thing in the morning, when you were living at Horsley, you all, all the children had chores did they not? Things to do? A. Yes.
24. Q. You had set things to do did you not? And the house worked on a routine? A. Yes.

25. Q. And what chores did you have to do first thing in the morning, after you got up? A. Wiping up, and do, clean my room.

26. Q. And Greta had chores too did she not? A. Yes.

27. Q. And Sonia? A. Yes.

28. Q. One of Greta’s chores was to take some tea in to her? A. Uncle David, make breakfast for Mum and Uncle David.

29. Q. Right. And she did that every morning did she not? A. Yes.

30. Q. Did she ever, was she ever away from Horsley this year, up until you left home? A. Yes she used to babysit.

31. Q. And where did she babysit? A. With, for a friend, that used to come around.

32. Q. And that was in Horsley was it? A. Yes.

33. Q. And, but she had never stayed overnight would she? A. Oh yes, a few nights she did.

34. Q. And when were those nights? A. She stayed overnight when she was babysitting, I can’t remember the night.

35. Q. That was at the beginning of the year was it not? A. Yes.

36. Q. So around about August she was living all the time, she did not go away from Horsley? A. No.

37. Q. From the Commission house. So she would take tea into, or breakfast into your Uncle David and your mother every morning? A. Yes.

38. Q. What was the weather like at Horsley in August this year, do you remember whether it was hot or cold? A. No.

39. Q. It was winter time was it not? A. I think so.

40. Q. It was very cold was it not? A. Yes.

41. Q. And you and Beverly, sorry you and Sonia and Greta usually wore jeans to school did you not? A. Yes.

42. Q. When it was cold? In fact you did not like your school uniform did you? A. No.

43. Q. Now can you remember the first incident that something, that you say Uncle David interfered with you at Horsley? A. It was at the Commission house.

44. Q. Yes, and it was in the morning was it not? A. No.

45. Q. It was not in the morning? A. No.

46. Q. When was it? A. In the night.

47. Q. And what time of night? A. I don’t know.

48. Q. You do not know? A. No.

49. Q. Sorry, could you tell me again what happened? A. Well he came into my room.

50. Q. Yes. A. And he took down my blankets, and took down my knickers, and um he said this wouldn’t hurt.

51. Q. I see, and that was at Horsley? A. Yes.

52. Q. In the Commission house? A. Yes.

53. Q. And you were awake? A. Yes.

54. Q. And where was Sonia? A. I don’t know.

55. Q. You do not know? A. No.

56. Q. And was that in August this year? A. Yes.

57. Q. Was it dark outside? A. I don’t know, I didn’t look outside.

58. Q. I see. Was it night? A. Yes.

59. Q. You sure it was at night? A. Yes it was.

60. Q. And how long had you been in bed for before this happened? A. We were going to bed at 7.30.

61. Q. I see, and how do you know it is 7.30? A. Because we always go, we always go to bed after Sale of the Century.

62. Q. I see, and you were watching television on this night, were you? A. Yes.

63. Q. And after Sale of the Century, you and your sisters went to bed is that right? A. Yes.

64. Q. And Greta does not sleep in your room? A. No.
65. Q. She shares a room with Mary does she not? A. Yes.
66. Q. So do all four of you go to bed straight after Sale of the Century? A. Yes all of us do.
67. Q. And that is what happened on this night, this first incident? A. Yes.
68. Q. At Horsley is that not right? A. (No verbal answer).
69. Q. Sorry? A. Yes.
70. Q. And where was your mother? A. I don't know.
71. Q. You do not know, but she was in the house when you went to bed was she not? A. I think so.
72. Q. Yes. Sorry, you think so? A. Yes.
73. Q. Can you not remember? A. No.
74. Q. Where would she have been if she was not in the house? A. I don't know.
75. Q. She did not go away anywhere in August holidays did she? A. Yes, she went away for a week to Aunty Thelma's.
76. Q. That was not in the school holidays was it? A. I can't remember.
77. Q. No it was not in the holidays at all? It was before the holidays? A. (No verbal answer).
78. Q. Or was it after the holidays? A. I can't remember.
79. Q. But apart from that week that your mother went to your Aunt Thelma's she was at the house, the Commission house at Horsley all the time, was she not? A. I don't know.
80. Q. As far as you know, she was, is that not right? A. Some, some nights she was 'cause she went over to Kathy's because she lived next door to us.
81. Q. I see. But she would be always there to put you to bed would she not? A. No, no-one put us to bed, we had to go ourselves.
82. Q. I see, but she would be in the house when you went to bed? A. Yes, I think so.
83. Q. And when your Uncle David came in to your room, did he turn the light on? A. No.
84. Q. You do not know? A. No.
85. Q. Did he close the door after him? A. I think so.
86. Q. And that is when he came in? A. Yes.
87. Q. And he closed the door? A. Yes I think so.
88. Q. And you say you think so? A. Yes.
89. Q. Are you not sure? A. Yes, I'm not sure.
90. Q. You are not sure. You usually sleep with your bedroom door closed or open? A. Closed.
91. Q. Did you hear him come into your room? A. No, because I was asleep.
92. Q. You were asleep? And did you hear Sonia leave the room? A. I don't really know.
93. Q. You do not really know? A. Yes.
94. Q. So you do not remember if you heard Sonia leave the room do you? A. Yes.
95. Q. When your Uncle David came into the room, did you look to see where Sonia was? A. No.
96. Q. She was not sleeping in your bed that night, or was she? A. She wasn't.
97. Q. Was there any reason for that? A. She doesn't sleep in my bed every night.
98. Q. I see. Just when you want to talk or not? A. Yes.
99. Q. What did, what did he do, sorry, did you wake up as soon as Uncle, your Uncle David came into the room? A. Yes.
100. Q. And did he say anything to you? A. No.
101. Q. And you saw him close the door behind him did you? A. No, because it was dark.
102. Q. I see, so you did not know whether it was Uncle David did you at that stage? A. No.
103. Q. So somebody came into your room? A. Yes.
Q. And somebody, that person, then pulled the blankets down from your bed is that right? A. Yes.

Q. And that person who you do not know, who you did not know at that stage? A. Mmm.

Q. What time frame?

Q. Took your nightie off? A. He didn't take my nightie off, he took my knickers off.

Q. Took your knickers off? And you did not say a thing? A. No.

Q. You were frightened? A. Yes.

Q. Did you scream? A. No.

Q. Why did you not scream? A. Because I was frightened.

Q. Did you try and get away? A. No. I tried to get my blankets.

Q. You tried to get your blankets to cover up? A. Yes.

Q. And, but you did not know who this person was? A. It must have been Uncle David because there's no-one else would come into my room and do that.

Q. I see. But you had no idea who it was but you thought it was your Uncle David? A. Yes.

Q. These do not mean the same.

Q. Is that right? A. Yes.

Q. And after this person took your knickers off, what happened then? A. He fingered me.

Q. He fingered you. And how long did that last? A. For a while.

Q. Did you scream out? A. Yes.

Q. And why did you scream out? A. Because it hurt.

Q. You were not frightened? A. Yes.

Q. You were frightened? Why did you not scream out when you were frightened? A. Because I was too frightened to.

Q. And there was no conversation? A. No.

Q. So this could have been some stranger? A. And when he was doing, he said this won't hurt.

Q. And did you recognize the voice did you? A. Yes.

Q. And it sounded like Uncle David? A. Yes.

Q. So those words were the only identification you had of him? A. Yes.

Q. Now how loud did you, did you scream? A. Not long.


Q. Not loud. Why did you not scream loud? A. Because I didn't want to get in trouble.

Q. You did not want to get into trouble? A. Yes.

Q. You were able to scream when he hurt you? A. Yes.

Q. But you were not able to scream when he frightened you? A. No.

Q. Sonia could have heard you if you had screamed could she not? A. Yes I think so.

Q. Sonia has not said, sorry, have you said anything to Sonia about this incident? A. No.

Q. You have not told Sonia at all? A. Um I told her, just before I, when I ran away.

Q. So you told Sonia about this night? A. Yes.

Q. Did you not ask Sonia if she heard Uncle David or this person on that night? A. Yes.

Q. Did you not ask Sonia if she heard Uncle David or this person on that night? A. Yes.

Q. And what did she say? A. She said she did, and Uncle David told me to tell her that a dog bit me.

BENCH. Sorry? A. Uncle David told me to tell Sonia that a dog bit me.

MR. MANNERS:

Q. I see. When did Uncle David tell you to tell Sonia that a dog bit you? A. When he was in my room.

Q. On this night? A. Yes.

Q. Was there any other conversation? A. No.

Q. So there were two bits of conversation, there was him saying "this won't hurt"? A. Yes.
Q. And then he said “Tell Sonia the dog bit you”? A. Yes.

Q. Now is that all the conversation there was? A. Yes.

Q. The dogs do not sleep in your room do they? A. No.

Q. And after he had finished, or this person had finished interfering with you, what happened? A. He went out.

Q. He went out, and did he close the door after him? A. Yes.

Q. And did you say anything to Sonia then? A. No.

Q. Did you see, try and see if she was awake? A. No.

Q. Or indeed if she was in her room? A. No.

Q. You did not even think to speak to your sister? A. No.

Q. You went back to sleep did you? A. Yes.

Q. And when was the next incident at the Commission house? A. (No verbal answer).

Q. When was the next? A. Two days after.

Q. Two days after, so that would, was this in August this year? A. Yes I think so.

Q. And school holidays? A. Just before school holidays.

Q. Just before the school holidays? And what happened on this occasion? A. He rooted me.

Q. Well can you tell me how that came to pass? A. No.

Q. Sorry? A. No.

Q. You cannot tell me what led up to? A. No.

Q. You cannot remember? A. (No verbal answer).

Q. You cannot remember anything about it at all? A. No.

Q. You have forgotten everything about it? A. Yes.

Q. You have forgotten where it took place? A. No.

Q. Where did it take place? A. Horsley.

Q. Horsley. Apart from the fact that it took place in Horsley, there is nothing else you can remember about it? A. Yes.

Q. Is that, is what I have said correct? A. Yes there’s nothing else.

Q. There is nothing else you can remember? A. No.

Q. Sorry, keep your voice up? A. No.

Q. Do you remember the day of the week? A. No.

Q. Do you remember whether it was night or day? A. It was night.

Q. It was night. Do you remember if it was early at night? Or late at night? A. No.

Q. You do not? Do you remember if you were in bed, or you were up? A. I can’t remember.

Q. You cannot remember. Do you remember who was home? A. My sisters and brothers.

Q. Your sisters and your brothers? And do you remember where you say Uncle David rooted you? A. No.

Q. When you come home from school, if you had been wearing school uniform you always change do you not, get out of your school uniform as quickly as you can? A. Sometimes.

Q. You do not like wearing it do you? A. No.

Q. It is not very attractive is it? A. Yes.

Q. So really you try and get out of your school uniform as quickly as possible? A. Yes.

Q. And you put on some jeans or something like that if you are just going to do your homework or do chores around the house do you not? A. Yes.

Q. Because you do not want to get your school uniform dirty, so you have to wash and iron it again, is that right? A. Yes.

Q. So every day really you get out of your school uniform, every school day that you wear your school uniform you take it off as soon as you get home do you not? A. Yes, nearly every day.

Q. Sorry? A. Nearly every day.

Q. Nearly every day, well can you remember any day where you did not take if off? A. When I went down the shop with Greta.
Q. I see, so that was one day when you went down to the shop with Greta, can you remember any other days? A. Yes I was, I just went to my friend's place and I was just playing with, playing in my school uniform.

Q. I see, that was before you went home? A. No. After.

Q. So you can remember two days can you? A. Yes.

Q. And that would be about all would it not? A. Yes.

Q. Did anything happen to you during the August school holidays? A. I think so.

Q. You think so? A. Yes.

Q. What do you think happened to you? A. Uncle David rooted me.

Q. A third time? A. Yes.

Q. Where was this at? A. He never, he tried to and I was sitting on the lounge, and he tried to, he undone my zipper and I ran outside.

Q. I see, so he did not root you? A. No.

Q. You say he tried to undo your zipper? A. Yes.

Q. Who did you tell about this? A. No-one.

Q. You have, this is the first time you have told anybody about it, is it not? A. No. At school I told Wendy Mills.

Q. Right you told Wendy Mills. Did not tell anybody from the Youth and Community Services did you? A. No.

Q. You did not tell the Police? A. No.

Q. And today, the second time you say, that you have spoken about this incident is that right? A. Yes.

Q. Yes. So he did not root you then did he? A. No.

Q. Right. So did anything else happen during the August school holidays? A. Not that I can remember.

Q. And what about after you went back to school again? A. When I went to school I decided that I wasn't going to go back home.

Q. Right.

BENCH:

Q. Sorry, when you went back to school you? A. I decided I wasn't going home.

MR. MANNERS:

Q. Was that the first day of school? A. I don't think so.

Q. You do not think so. So other than the incident that you have told His Worship today about Uncle David taking down your zip? A. It's in the um, thing there.

Q. In what thing where? A. It's on the papers down there.

Q. Well I do not get to see those papers Beverley, so will you, do you mind telling me? A. No.

Q. You do not mind, so is it what you are saying that during the school holidays, your Uncle David tried to take, or took you zip down, you say that is all that happened? A. Yes.

Q. And as soon as you went back to school, you ran away? A. Yes.

Q. So nothing else happened? A. No.

Q. Now, could we go back to, has your Uncle David put his penis into your vagina whilst you were living at the Commission house at Horsley? A. Yes.

Q. In the middle of sixth grade? And when were you in sixth grade? A. At Crowley.

Q. Right. So the only time he put his penis into your vagina was at Crowley? Is that right? A. Yes.

Q. And so he did not put his penis into your vagina at Horsley? A. Yes.

Q. I am sorry, Beverley, I thought you said the only time he did it was at Crowley.
BENCH: No, this has been a problem, I think you will find that the emphasis on the Commission house. This happened before when you were talking about at the Commission house and then on the second occasion, and two days later. Now you said Horsley.

MR. MANNERS: Well I just...

BENCH: I think to be fair to clean it up...

MR. MANNERS: Certainly I will...

BENCH: Just indicate that to you.

MR. MANNERS: I do not mean to be...

BENCH: No, no. I am just saying to be fair to clean it up, both to the Witness and to the Defendant.

MR. MANNERS: All right.

219. Q. Where did Uncle David put his penis into your vagina? A. At Horsley.

220. Q. At Horsley. Now whereabouts at Horsley? A. At the Commission house.

221. Q. At the Commission house, and where did he do this? A. In the August holidays.

222. Q. In the August holidays? A. Yes, just before.

223. Q. Just before the August holidays. Did you not say to me a few minutes ago that he did not put his penis in your vagina at Horsley? A. He did.

224. Q. He did. You are saying he did? A. Yes. What she said was “Yes” to his negative statement.

225. Q. Can you tell me where he did? A. In his room.

226. Q. In his room. And what time of day was that? A. Night-time.

227. Q. Night-time. And this was just before the August school holidays this year? A. Yes.

228. Q. You are certain of it? A. Yes I think so.

229. Q. You think so? A. Yes.

230. Q. How certain are you? A. A little bit.

231. Q. A little bit. And what did you remember about it? A. When he rooted me.

232. Q. Well can you tell me anything more about it? A. No.

233. Q. There is nothing more that you can remember? A. No.

234. Q. Tell me about any other incidents? A. No.

235. Q. There were no other incidents at Horsley? A. Yes there was but I can’t tell you.

236. Q. I am sorry, you cannot tell me? A. Yes.

237. Q. Why can you not tell me? A. I don’t know.

238. Q. You cannot tell me. Have you told anybody else? A. Yes.

239. Q. Who have you told Beverley? A. Some kids at school.

240. Q. Perhaps Beverley could...

BENCH: Would you like a glass of water or would you like a little rest? A. Yes. I think I will give the Witness a break.

MR. MANNERS: Yes, certainly Your Worship I do not want...

BENCH: I will take a short adjournment so the Witness can have a break.

MR. MANNERS: Beverley before lunch you mentioned that at Horsley various things happened, now this was the Commission house at Horsley, is that not right? A. The Commission house, yes.

242. Q. Beg your pardon? A. Yes.
243. Q. Yes, and in Horsley nothing else happened other than at the Commission house? A. No nothing else happened other than at the Commission house.

244. Q. Thank you, and do you say there were two incidents, or more than two incidents at the Commission house? A. Two incidents.

245. Q. Two incidents. Now you are certain about that? A. Yes.

246. Q. And when did those incidents take place, at the Commission house at Horsley? A. I don't remember.

247. Q. You do not remember. Do you remember if they took place this year? A. No they didn't take place this year.

248. Q. Sorry? A. They didn't take place this year.

249. Q. Two incidents. Now you are certain about that? A. Yes.

250. Q. And when did those incidents take place, at the Commission house at Horsley? A. I don't remember.

251. Q. Where do you say, when do you say these incidents took place? Do you say last year or the year before that? A. I don't remember.

252. Q. You do not remember? A. No.

253. Q. And do you think it might be 1984? A. I think.

254. Q. You think it was 1984? A. Yes.

255. Q. And do you remember whether it was in the summer-time or the winter-time? A. I think it was summer.

256. Q. You think it was in the summer, and can you remember if these incidents took place during the school holidays or during school times? A. No.

257. Q. You do not remember? A. No.

258. Q. Now who did you tell about these incidents? A. Down at Crowley I told.

259. Q. Well leave Crowley aside and just looking at what happened at the Commission house at Horsley last year? A. I told Greta and at School and I told Wendy Mills.

260. Q. Right, and you did not tell anybody else? A. Yes, I told Felicity Mills when I ran away from home.

261. Q. Right, but you ran away from home over a year later, do you understand my question? A. No.

262. Q. You said the incidents at Horsley at the Commission house took place last year, do you remember saying that? A. Yes.

263. Q. And you agree with me that you ran away from home? A. Yes.

264. Q. ...in August or September this year, do you say that you did not tell anybody for all that time from? A. I told some friends at school.

265. Q. And you did not tell your school teacher? A. No.

266. Q. Did not tell your mother? A. No.

267. Q. Did not tell the Youth and Community Service people? A. No, only when I ran away.

268. Q. Only when you ran away? A. Yes.

269. Q. Now you said before you did not like your Uncle David, is that not right? A. Yes.

270. Q. Do you remember he saved your life? Remember that? A. Yes.

271. Q. You are an epileptic are you not Beverly? A. Yes.

272. Q. And sometimes you stop breathing and you have a fit, is that not right, and your father saved your life on one occasion that you know about, or your step-father I mean, I'm sorry. A. Yes.

273. Q. And do you support a Rugby League team? A. Yes.

274. Q. And is that the same team that your Uncle David supports? A. Yes.

275. Q. And he has bought you T-shirts and jumpers in Manly colours has he not? A. Yes.

276. Q. And you got on very well with your Uncle David, did you not? A. Yes.

277. Q. You are very close to him, were you not? A. Yes.

278. Q. True to say that you loved him at one stage? A. Yes.

279. Q. And he is hard on the girls is he not, when you were all living together, strict, he is hard on you, is he not? A. Yes.
280. Q. He is very strict? Sorry, do not shake your head or nod because...
   A. Yes he is.
281. Q. He is. And if you do something wrong he punishes you does he not? A. Yes.
282. Q. And you admit that you have done things wrong in the past, have you not? A. Yes.
283. Q. And he has punished you, is that not right? A. Yes.
284. Q. Now did he not punish you for smoking? A. Yes.
285. Q. And do you remember when that was? A. Oh a while ago.
286. Q. Do you not think it could have been the August holidays this year? A. ...(inaudible).
287. Q. You do not think it was the August holidays? A. No.
288. Q. Just before you ran away? A. No.
289. Q. Do you remember him saying to you “We'll give you the cigarettes, we'll buy your cigarettes for you if you give up all your school outings and your sport”, do you remember him saying that? A. Yes.
290. Q. And you told him that you did not want to do that you would stop smoking, do you remember that? A. Yes.
291. Q. Did that happen in August this year? A. I don’t know.
292. Q. You do not know. Do you remember how you came to be punished for smoking, do you remember that? A. Yes, we were made to smoke a cigar.
293. Q. And do you remember another occasion your father, or your step-father asked you if you were smoking, did you not say no? A. Yes.
294. Q. So you told him a lie, did you not? A. Yes.
295. Q. And he found you smoking on another occasion, did he not? A. Yes.
296. Q. And this was about August this year, or September this year, just before you ran away? A. I don’t know.
297. Q. Did he not yell at you? A. Yes.
298. Q. He was very angry, was he not? A. Yes.
299. Q. Did he tell you he was very angry with you because you told him a lie? A. Yes.
300. Q. And he shouted at you and told you to go to your room? A. Yes.
301. Q. Do you remember that he kicked you in the bottom as you went into your room? A. Yes.
302. Q. Now in September of this year just before you ran away do you remember that Uncle David and your mother went to Crowley for the day, do you remember that, and the girls stayed at home? A. No.
303. Q. You usually vacuum your room do you not? A. Yes.
304. Q. And that is the room you share with Sonia. Do you remember that you hit Sonia on the arm with the steel part of the vacuum cleaner? A. Yes.
305. Q. And that hurt Sonia, did it not? A. Yes.
306. Q. Were you and Sonia having a fight? A. Not a real fight we were just, you see Sonia was calling me names and I just hit her with the vacuum cleaner.
307. Q. What names was she calling you? A. She was stirring me.
308. Q. What names was she calling you Beverley? A. I can’t remember the names.
309. Q. Remember if she was calling you “Iceberg”? A. What, yes, they used to call me that at Pankhurst High.
310. Q. See you did not like that, did you? A. No.
311. Q. Did Sonia call you that? A. Yes, and they used to call me another name.
312. Q. And what was the other name? A. A two C tunnel cunt.
313. Q. Two C tunnel cunt.
314. Q. Did your Uncle David see Sonia after you had hit her with the vacuum cleaner? A. Yes.
Sonia was in great pain, was she not? A. Yes.

She was crying, was she not? A. Yes.

And your Uncle David told you that he thought you had broken Sonia's arm? A. Yes.

He was very angry with you, was he not? A. Yes.

Sent you to your room did he not, again, he yelled at you? A. Yes.

Shouted at you? A. Yes.

Do you remember what he said to you? A. No.

Do you remember him saying to you “Your mother ought to put you in a home where you belong”? A. Yes.

You remember him saying that to you? A. Yes.

And that was after the incident with the vacuum cleaner, was it not? A. Yes.

And you did not want to go to a home, did you? A. No.

No. You wanted to go back to Crowley? A. Yes.

And do you know a man called Mr. Kay, Mr. Mark Kay? A. Yes.

He is the Welfare Supervisor, is he not? A. Yes.

He had told you that you would be sent to a home, did he not? A. Oh I can't remember.

And that was about August or September this year. He had spoken to you about stealing, had he not? A. Oh yes.

Breaking into a lady's house? A. Yes.

And he told you that you would be sent to a home if you did not behave, did he not? A. Yes.

Now you were very worried about what your father had said to you, shouted at you, had he not? A. Yes.

And you were worried that he was going to put you in a home, were you not? A. Yes.

Now your mother gave you a beating after Uncle David told her about this incident with Sonia, did she not give you a hiding? A. Yes.

And this was just before you ran away, was it not? A. I don't know.

A few weeks before you ran away or a few days? A. I don't really know when I ran away.

Do you remember when you ran away? A. Yes.

You do not remember when you ran away? A. Yes.

You ran away in September this year, did you not? A. I think so.

You think so. Do you remember going to see your mother in hospital? A. Yes.

Do you remember going with Greta and Sonia? A. Yes.

With the Welfare Officer, the lady Welfare Officer? A. Yes.

And that was after your mother had been sick, was it not? A. Yes, after Mum had the baby.

Yes, so it has been in the last two months, has it not? A. Yes.

Yes. Do you remember Sonia saying to your mother about Uncle David, do you remember Sonia saying something about Uncle David? A. No.

No? A. No.

You do not recall Sonia saying “I don't know why I have to he’s never done anything to me”, did not Sonia say that? A. No, I didn't go with them to pick up.

Sorry? A. I didn't go with them to pick up Sonia and them.

I am talking about at the hospital when you went to see your mother? A. No. She never said nothing like that.

Sonia did not say that? A. No. I never heard her.

In front, sorry? A. I never heard her.

You did not hear her. Now after you left home where did you stay? A. At Felicity Mill's.

I see, and how many days did you spend there? A. I think a week.

A week? A. Or so.

And after that where did you go to? A. I went to the Refuge at Pankhurst.

Note: "Hitting" and "Stealing" are assumed to be actions typifying undesirable behaviour. They are not regarded as symptoms of a condition or as clues to a problem.
356. Q. Now what happened to Greta and Sonia and Mary, where were they when you were at the Refuge? A. They were at the Refuge too.

357. Q. I see, and did Greta and Sonia and Mary share a room with you at the Refuge? A. Yes.

358. Q. Did you say, sorry. At the Refuge you and your three sisters used to talk at night, did you not? A. Yes.

359. Q. And sometimes you would wait on till you thought Mary had gone to sleep before you would talk, did you not? A. Yes.

360. Q. Do you remember saying one night after Mary had gone to sleep, to your two sisters, “if you follow what I’m doing then we’ll get rid of him”. Do you remember saying that? A. No.

361. Q. Did you say that - sorry. I suggest to you that Mary - I withdraw that. If I said to you Beverley that Mary had said that you said “If you follow what I’m doing then we’ll get rid of him”. What would you say? A. I never said it.

362. Q. You say Mary is telling a lie? A. I didn’t say anything like that.

363. Q. Do you say Mary is telling a lie? A. No, I don’t know what she’s saying because I never said.

364. Q. You do not know whether Mary is telling the truth or telling a lie, do you? A. No.

365. Q. So what she could have said could have been the truth, could it not? A. No.

366. Q. So it is a lie is it? A. Yes, ‘cause I never said anything like that.

367. Q. You say Mary is telling a lie do you?

OBJECTION:

PROSECUTOR:
Well I object Your worship. My friend has put a hypothetical question to the Witness initially, if Mary said certain things.

MR. MANNERS: I do not press the question Your Worship.

368. Q. Did you go to school at Pankhurst? A. Yes.

369. Q. What school did you go to there? A. Pankhurst High.

370. Q. I see, and who was your Form Master? Who was your Form Master this year? A. Mr. ....

371. Q. Mr. Carlton was it not? A. Yes.

372. Q. And he was away for a time this year, was he not? A. Yes.

373. Q. Before August of this year, was he not, and you had a Relief Teacher, is that not right? A. I don’t know.


375. Q. No. Did you have friends at this school? A. Yes.

376. Q. Boyfriends and girlfriends? A. Yes.

377. Q. Did you know a boy called Steve Donne? A. Yes.

378. Q. And that was this year, you knew Steve Donne this year, he was in your class was he not? A. Yes.

379. Q. Do you know what it means to have sex, do you know what that means? A. No, don’t know what it means.

380. Q. Do you know what it means to have sexual intercourse? A. 1.....

381. Q. Do you know what that means? A. I think so.

382. Q. What do you think that means? A. When someone forces you to do something.

383. Q. And did you have sexual intercourse with Steve Donne?

OBJECTION:

PROSECUTOR: I object Your Worship.

MR. MANNERS: I am going to press the question Your Worship.

PROSECUTOR: Your Worship evidence of prior sexual conduct as regards this Complainant is not admissible in proceedings of this type.

BENCH: Not in that form it is not.
MR. MANNERS: Well Your Worship.

BENCH: It would have to come within the...

MR. MANNERS: Well with, with respect it does because the question is leading up to this in as much as the time framing. It does come within the period.

BENCH: But that has not been, that has not...

MR. MANNERS: Oh well perhaps...

BENCH: Not in the form it is in at the moment.

MR. MANNERS: I thought it was implicit.

BENCH: No, it is just do you know Steve Donne, have you had sexual...

MR. MANNERS: ...with Steve Donne.

MR. MANNERS: 384. Q. Now this year at Pankhurst High School did you have sexual intercourse with Steve Donne? A. ....

OBJECTION:

PROSECUTOR: I object Your Worship.

MR. MANNERS: Well Your Worship I press the question.

BENCH: Yes.

PROSECUTOR: Once again, Sir, ...Section 409. Evidence of prior, or evidence which tends to ... indicate or suggest prior sexual behaviour. Sir, is not admissible. The only exemption to that rule, Sir, are basically - of consent. It may be considered by the Court in determining these matters. In respect of the matters now before the Court, Sir consent is not a defence. I suggest that there is a total prohibition in relation to evidence of this nature.

MR. MANNERS: Well if I could take Your Worship to Section 409B. There are many, many exceptions to the admissibility rule. If I can take Your Worship first, to Section 409B sub-section (3) sub-section (f) where it is evidence given by the complainant in cross examination by or on behalf of the Accused person, being evidence given in answer to a question which may refer to sub-section (5) be asked, and its probative value — any distress, humiliation or embarrassment which the Complainant might suffer as a result of the — we could then go to sub-section (5) where it says in prescribed sexual offence proceedings and that in my submission is such proceedings that we are presently dealing with, where the Court or Justice is satisfied that it has been disclosed or applied in the case for the Prosecution against the Accused person that the complainant has or may have during specified period or without reference to any period had sexual experience or lack of sexual experience of a general or specified nature or to have taken part or not taken part in sexual activity of a general or specified nature, and the Accused person might by unfairly prejudiced it the Complainant could not be cross examined by or on behalf of the Accused person in relation to the disclosure of implication. The Complainant may be so cross examined but only in relation to the experience or activity of the nature - so specified during the period, if any, so specified. Now the Prosecution in this case are relating a time frame that goes from sometime in January 1981 - sorry - 1983 up until August 1985. The evidence of Beverley is not conclusive, it is very vague about incidents within that time frame. The evidence of the doctor must be borne in mind too, in relation to what he said he discovered upon his examination. I am asking my questions in a particular way, where it is, or in such a fashion to minimise any distress, humiliation or otherwise. Which might
be occasioned to Beverley. But it would be my submission that Mr. Brent would be unfairly prejudiced if I could not put questions in relation to any sexual experience Beverley might have had prior to her examination of the doctor, which would fall into the category of those experiences which would result in the findings that the doctor gave before the Court last week. That would be quite, that will tie in with the Doctor's evidence if the answers came out as I expect they will.

BENCH: How would he be unfair.

MR. MANNERS: Pardon?

BENCH: How would he be unfairly prejudiced?

MR. MANNERS: Well, Your Worship is hearing this, these proceedings by way of a committal. In doing that under, pursuant to Section 41 of the Justices Act, it is forcing you to hear the matters and then making, make a decision as Judge and Jury, the inferences being left following the Doctor's examination that the results or his findings, could only have come in the absence of any other evidence from the allegations that have been made against my clients. If I can show to Your Worship, that there are many other instances involving Beverley and Greta, that the Doctor's findings could have come from, then that is a proper matter that Your Worship ought to take into consideration, when considering the matter as Judge and Jury, as Section 41 requires you to.

BENCH: Now, I put it to you this way that not in this particular case. This is, is it not what the heart of the legislation goes to that if a female person complains that some person had sex with anybody on any number of occasions, is not relevant to.

MR. MANNERS: It is not relevant in that particular case, but it is relevant in this particular case.

BENCH: Why?

MR. MANNERS: In as much as the findings of the doctor implicate Mr. Brent at the present, if there are alternatives which would tend to not implicate those Doctors findings with Mr. Brent, then for that evidence not to come out, he would be severely prejudiced.

BENCH: How in this case does, other than the...

MR. MANNERS: Well perhaps...

BENCH: ...the medical findings disregarding what he was told by the Complainants, how apart from his medical findings, is that different in this situation?

MR. MARSHALL: Well perhaps I could continue with what I wish to say to Your Worship in the absence of the witness.

BENCH: Yes.

MR. MANNERS: Because then I can make it...

BENCH: Beverley, do you mind waiting outside for a moment while we have...A. Yes.

(Witness stood down) 13 12/85

(Beverly Brent, Re-sworn, examined as under) 23 2/86

385. Q. Beverley when was the first time that you told anybody that your step-father had been interfering with you? A. That was down at Crowley.

386. Q. And who did you tell at Crowley? A. Rachel and Chloe.

387. Q. And they are your cousins? A. Yes.

388. Q. And did you tell your sisters? A. Yes.

389. Q. When did you tell your sisters? A. They already knew.

390. Q. When did they know? A. I don't know.

391. Q. Was it at Crowley that they knew? A. I don't know.
Or was it at Horsley? A. I think at Horsley.

So they did not know in Crowley, they knew in Horsley? A. Yes.

And did you speak to, this is Sonia and Greta, is this right? A. Yes.

And did you speak to either Sonia or Greta about what your step-father had been doing to you? A. Yes.

And where did you speak, was that at Horsley? A. Yes.

And what did you say to Greta? A. Well I just told her what was going on.

And what was going on? A. About what Uncle David was doing.

And did you speak to Sonia? A. No she was speaking to me.

And what about, you say you told Greta, now did you tell Sonia? A. Yes.

And what did you tell Sonia? A. Just what happened.

And that was at Horsley? A. Yes.

And that was the first time you had spoken to Greta and Sonia about what was happening between you and Uncle David? A. Yes.

In Crowley you shared a room, did you not? A. Yes.

Who did you share a room with? A. Sonia I think.

And do you remember Uncle David had two jobs at that time? A. Yes, he was on the, driving taxis and he was on the silos.

He worked at the silos during the day and drove the taxis at night, is that not right? A. Yes.

And when do you say he interfered with you at Crowley? A. At night 'cause he didn't work every night.

And where was Sonia on this particular evening? A. I don't know.

You were the only person at home, were you? A. No.

Who else was at home? A. Greta, Mary and Sonia.

And they were at home when your father first interfered with you? A. Yes.

Your step-father that is? A. Yes.

Did you not scream out? A. Yes.

And the first time that you spoke to Sonia or Greta about this was two years later at Horsley? A. Yes.

Did you tell your mother? A. No.

Did you ever tell your mother? A. Yes I told Mum.

When did you tell your mother? A. I can't remember when I told her, but we told Mum.

Did you say “we told mum”, who is “we”? A. Yes. Me. Sonia and Greta.

All three of you at the same time? A. Yes.

And when was that? Was that at Horsley? A. Yes.

Was that in August this year, or last year, sorry. Just before you left? A. I think so.

You think so. Are you not sure? A. No.

What did you tell your mother? A. We just told Mum that Uncle David was being rude to us.

Being rude to you, is that all you said? A. Yes, that's what I said.

And what did Sonia say? A. She told Mum that he was being, that he was being rude to her.

What did Greta say? A. I don't know.

You do not know? A. No.

And what did your mother say? A. Mum said no.

She said no? A. Yes.

Is that all she said? A. She said no it didn't happen.

Now you recall the day that you left Horsley, left home as it were, do you remember that? A. Yes.

When you packed some things to take to School? A. Yes.

Do you remember saying to your brother on that day, do you remember speaking to Stewart on that day? A. Yes.

Do you remember saying about your Uncle David “I'm going to get rid of him and I know just how to do it”, remember saying that? A. No, no.
436. Q. Do you say you did not say it? A. Yes.
437. Q. When you were at Crowley your mother usually put you to bed did she not? A. Yes.
438. Q. And as she put you to bed she usually stayed in the house, did she not? A. Sometimes she used to, she would go down and see Aunty Margaret for a while.
439. Q. But that was only two houses away, was it not? A. No.
440. Q. And she would not go down and see your Aunty Margaret very often at night, would she, after you had gone to bed? A. Not very often.
441. Q. Not very often. Your Uncle David did he say anything to you on any of the occasions that he interfered with you, do you recall that he said anything to you? A. Yes he said something but I don't remember.
442. Q. Do you recall him saying “I'm teaching you to do, what to do to please men when you grow up?” A. Yes.
443. Q. Do you remember when he said that? A. Yes.
444. Q. When? A. We were sitting on the lounge.
445. Q. Was that at Crowley or Horsley? A. Horsley.
446. Q. That was at Horsley. That was the only thing he said to you? A. Yes.
447. Q. Either at Crowley or at Horsley? A. No he said something else too.
448. Q. What else did he say? A. He said something about if I tell anyone I'll get into trouble.
449. Q. Was that at Crowley or at Horsley? A. Horsley.
450. Q. So he did not say anything to you at Crowley? A. No.
451. Q. Did you see your Uncle David interfering with Greta? A. Yes.
452. Q. What did you see? A. I saw Uncle David on Greta.
453. Q. Sorry? A. I saw Uncle David on Greta.
455. Q. And when was this? A. It was in Horsley when I went to tell him that Sonia was sick.
456. Q. And it was in his bedroom was it? A. Yes.
457. Q. Do you remember what time of the year this was at? A. No.
458. Q. Do you remember whether it was winter or summer? A. No.
459. Q. Do you remember whether it was 1985? A. Yes.
460. Q. It was in 1985. Do you remember if it was shortly before you left Horsley or was it a long time before you left Horsley? A. I can't remember.
461. Q. Did you speak to Greta after this incident? A. No.
462. Q. Greta did not say anything to your mother in your presence about this particular incident, did she? A. No.
463. Q. And you did not tell your mother, you did not tell your mother specifically or in detail what you say Uncle David had been doing to you, did you? A. No, not specific.
464. Q. Do you remember being at the Pankhurst Youth Refuge? A. Yes.
465. Q. With your Aunt Margaret? A. Yes.
466. Q. And do you remember Greta saying “We’re not allowed to talk about it”, referring to your Uncle David? A. Yes.
467. Q. Do you remember Sonia saying that he has done nothing to me? A. Yes.
468. Q. Do you remember then saying to Sonia “Shut up”? A. No.
469. Q. Do you remember telling Sonia and Greta “Just follow me and I'll get you out of this mess”? A. No.
470. Q. You visited your mother in hospital with your Aunty Grace, did you not? A. Yes.
471. Q. Do you remember Sonia saying to your mother “I don't know what I'm doing mixed up in this”, or words to that effect? A. Yes.
472. Q. It is correct to say that Sonia looks up to you, follows your example, does she not? A. Yes.
473. Q. And you are a stronger girl than Sonia? A. Yes.
474. Q. You are cleverer, more clever than Sonia? A. Yes.
475. Q. And she accepts what you say, is that not right? A. Yes.

476. Q. Did you go swimming with Sonia one day at the river near Horsley? Last year? A. No I don't remember.

477. Q. With Nick Curtis? A. No we never went swimming.

478. Q. You do not remember Sonia taking her clothes off? A. No.

(Witness retired and excused)
Appendix 5

Testing profile for James
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NOTES:
### Child: JAMES

### Age: 11 yrs

### Question Class: Counsellor

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Appendix 6

Coding format
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NOTES:
Question type - Counsellor

KEY
Graded in terms of sense

- Total reproduction
- Single element
- Multiple element
- The sense
- A sense
- No sense
- Nil reproduction

AGE OF CHILDREN

[Bar chart showing percentage of sense in terms of age]
AGE OF CHILDREN

Question type – Random Lawyer

KEY
Graded in terms of sense

- Total reproduction
- Single element
- Multiple element
- No sense
- Nil reproduction

The sense
- Single element
- Multiple element

A sense
- Single element
- Multiple element

No sense
- Single element
- Multiple element

The sense
- A sense
- No sense
- Nil reproduction

A sense
- A sense
- No sense

15y 14y 13y 12y 11y 10y 9y 8y 7y 6y
Question type – Selective Lawyer

KEY
Graded in terms of sense

- Total reproduction
- Single element
- Multiple element

The sense

- Single element
- Multiple element

A sense

- Single element
- Multiple element

No sense

- Single element
- Multiple element

Nil reproduction

100 PERCENT

AGE OF CHILDREN

15y 14y 13y 12y 11y 10y 9y 8y 7y 6y
Appendix 8

Tables of testing programme responses
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## COUNSELLOR

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Appendix 9

Test question responses for Matthew
SELECTIVE LAWYER QUESTIONS

1. At the time that this occurred you were seven years old, is that right?

2. And the park that you were playing in, is that next door to the pre-school that you went to?

3. And where is the trampoline in respect to where you first met Mrs Brown here, do you understand what I am saying?

4. Had you been going to the pre-school for some years before?

5. Right and when Mrs Brown approached you, do you remember what was said between herself and you.

6. And how long did you stay on the bike for whilst he was helping you ride it?

7. Alright, well when you stopped riding the bike, what did you do then, when you stopped riding, you did then? what was the next thing that happened?

8. Now do you remember giving some evidence about after you had gone and seen Jenny, I think it was, and told her you then went back to the park and you saw Mrs Brown near a tree?

9. Right now after you had first gone to the Principal's office you remember whether it was on the day that you made the statement, or the next day?

10. Well, do you know that you're going to tell me something that's happened, that's why you've been asked to come here, do you know that?

11. Those stories are what you think about in your head?

12. And you make up stories about what other people have done with you, is that right?

13. When you say you got into trouble for telling stories what sort of trouble did you get?

14. And then another time later after you've had the smacks, maybe weeks, maybe months, maybe years later, you've told other stories that are untrue and you've got more smacks from Mummy and Daddy?

15. Do you understand that but the second time you got the smacks for telling lies the second time, it didn't stop you telling lies did it?

16. But, you told the Principal earlier before lunch that your cat was pulled back off the lounge do you remember, pulled back off the lounge?

17. Well the first time that your sister pulled your hair is the same time that your sister punched against you, against you is that right?

18. Did you have a look to see whether there was any damage to it?

19. Did you see her do anything else, did she do anything else?

20. I'm sorry, you might not understand me, the first time and then it's finished, how long until the next time that your sister pulled your hair?

RANDOM LAWYER QUESTIONS

1. That is stories that are untrue?

2. So the first time you got smacked for telling stories you still told stories and got smacked again, is that right? So it didn't make any difference to whether or not you told any stories did it?

3. The third time it was dark, was it?
4. And you've been for telling lies in Loughnan Street?
5. Again?
6. Let me see if I've got it right? You've told stories that which are untrue?
7. He has got into trouble for telling lies at Loughnan Street?
8. Has there been sometimes when Mummy and Daddy have got the three of you together and told you that you are not allowed to tell lies? Has that ever happened?
9. Not only have you been told that it is bad but when you have told lies you've been smacked?
10. When was that?
11. And whilst she was pushing you around what was your friend doing?
12. Now the envelope. I'll withdraw that the park that you were in, has it got a fence around it?
13. Any climbing equipment?
14. Right now you say that you had your costume that day, is that right?
15. And what sort of costume was it?
16. When did you first see the envelope?
17. Right and you spoke to Mrs Brown there, is that right?
18. Yes?
19. And has the park got a path through it?
20. Now how far was the trampoline from you when you were first helped on the bike by Mrs Brown?

COUNSELLOR QUESTIONS
1. Did it only happen once (one time)?
2. Who did it?
3. Was anyone else there?
4. Were you scared?
5. Did you tell your Mum?

TEACHER QUESTIONS
1. What did you do over the weekend, Jodie? (N.B. insert name)
2. Which subject do you like best at school?
3. Who is your favourite teacher?
4. When did you start feeling ill, before breakfast or afterwards?
5. How do you make the dog sit up and beg?
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