A corpus-assisted study of the discourse marker *well* as an indicator of judges' institutional roles in court cases with litigants in person

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1. Introduction

Due to cuts in legal aid in England and Wales since July 2013, as a result of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, civil courts are now struggling with the influx of lay people who act on their own behalf in legal proceedings without counsel or a solicitor (i.e., as litigants in person). The changes complicate the management of cases by the judiciary and raise serious concerns about access to justice. This is further complicated by the fact that research on the phenomenon of litigation in person is scarce and official reports (e.g., Report by the Judicial Working Group on Litigants in Person, 2013) struggle to recognise the complex and multi-disciplinary character of the topic. Communication and interaction between the parties lies at the core of adversarial legal proceedings. The mere presence of litigants in person introduces many imbalances in power relations and affects the institutional roles of all participants involved, especially those of the judiciary.

The corpus discussed in this study was designed to bridge the gap between linguistic research on courtroom discourse and legal research on litigants in person. Real-life communication is often overlooked in legal studies whereas linguistic studies may not have real impact for legal practitioners. This study attempts to bridge the gap by combining the analysis of (i) authentic communication in court, and (ii) the use of language for the strategic purposes of legal practitioners. For instance, corpus samples of interaction between judges and litigants in person can be used in the training of the judiciary on dealing with litigants in person at the Judicial College. The vision behind the corpus building was to meet the needs of both linguists and legal practitioners, and to create a tool for conducting multi- disciplinary research. Although the corpus at this stage has some limitations (see Section 3), an analysis of the discourse marker well shows that it can nevertheless illustrate different aspects of the interplay between legal and lay discourse types. The focus here is on the function of well in its turn-initial position as it is used by judges in court proceedings with an unrepresented party.

Discourse markers in general, and well in particular, are well-suited as indicators of the participants' strategies of negotiating their institutional roles. Although discourse markers are semantically and grammatically optional, and can be omitted without causing any deviations in meaning or irregularities in syntax (Fraser, 1999: 6; and Schourup 1999: 231), they play an important function in orientating the listeners and defining the force of the utterance (Hale, 1999; and Norrick, 2001). Finding a unified definition for discourse markers is problematic since they do not form a unified group and differ significantly from their correlates (e.g., discourse marker like versus its correlate verb like, discourse marker well versus its correlate adverb well, discourse marker so versus its correlate conjunction so). Moreover, a single discourse marker can often be found to display a wide variety of uses and functions (Fraser, 1999; and Schourup, 1999).

The core meaning of discourse markers (Fraser, 1999) presents yet another puzzle for researchers because, in pragmatic terms, it is not always clear whether the meaning of the marker is intrinsic or influenced by the context (Cuenca, 2008: 1373). What is important for this study, though, is that discourse markers are often indicative of power relationships as they help to structure and control the interaction as well as negotiate the roles of speakers (Carter and McCarthy, 2006: 212). Studies on the use of discourse markers in different social contexts and settings show that the role of speakers and their relationship influences the use and distribution of discourse markers (Carranza, 2004; and Fuller 2003). For instance, Fuller (2003) shows that in conversation the discourse marker well is found to occur frequently in responses (i.e., second-turn position), whereas in interviews it is used more often by the interviewer (i.e., first-turn position).

The discourse marker well is one of the most frequently studied discourse markers due to its versatility and its high frequency of occurrence in everyday conversation (Cuenca, 2008; Fuller, 2003; Jackson and Jones, 2012; Kim, 2013; Lam, 2010; Schiffrin, 1987; and Svartvik 1980) as well as in spoken interaction in

institutional settings, including interviews (Fuller, 2003; Jackson and Jones, 2012; and Schiffrin 1987) and courtroom discourse (Hale, 1999; and Innes, 2010). It has been studied as a turn-initial discourse marker occurring in all three positions: first-pair part of adjacency pairs (Hale, 1999; and Innes, 2010), second-pair part (Innes, 2010; and Schiffrin, 1987) and also third turn (Kim, 2013).

In its textual function, the discourse marker well introduces a change of topic (Fuller, 2003), reinforces coherence links (Fuller, 2003; Lam, 2010; and Schiffrin, 1987) or is used as a delaying device when a speaker needs to pause (Cuenca, 2008; and Fuller, 2003). The interpersonal functions of well are mainly those of (i) a responsive marker, prefacing answers indicating insufficiency or incompleteness, or (ii) an emotive marker, conveying the speaker's surprise, dismissal or state of mind in general (Lam, 2010). The interactional functions of the discourse marker well range from (i) self-repair, self-correction and reformulation (Jackson and Jones, 2013) to (ii) turn- management and taking the floor (Lam, 2010). The discourse marker well also holds an important pragmatic function – that is, to initiate face-threat mitigation (Cuenca, 2008; Fuller, 2003; Innes, 2010; and Jucker, 1993). Given its wide range of textual, interpersonal, interactional and pragmatic functions, turn-initial well provides scope for exploring how judges adapt their professional roles when dealing with litigants in person. Section 2 provides a more detailed reasoning of how the discourse marker well in its different functions helps negotiate or establish institutional roles of the participants in courtroom settings, and Section 5 illustrates different functions of well-initiated turns as used by judges in courtroom proceedings with litigants in person.

2. Previous research on the legal-lay discourse in courtroom settings and the role of discourse markers

There is little research on the communicative challenges that are experienced by litigants in person, the judiciary, court staff or opposing counsels in court proceedings with an unrepresented party. Even the most recent publication on legal–lay discourse, an edited volume by Heffer et al. (2013), does not mention difficulties litigation in person brings to the judiciary and the courts. Although the edited volume is a useful source of information on many communicative issues arising from differences in legal- and lay-discourse types in a variety of contexts (e.g., police interviews and public hearings), the omission of self-representation as a topic shows an important gap in the research – a gap which this paper attempts to bridge.

Research dealing directly with linguistic aspects of litigation in person is limited to two short studies on small claims courts (Conley and O'Barr, 1998; and O'Barr and Conley, 1990) and research that I have conducted (Tkačuková, 2007, 2008, 2010, 2011). The first two studies concentrate on narrative structures and conclude that litigants in person use narrative devices that are common in everyday conversational interaction and, therefore, produce relational accounts instead of the narrative devices of rule-oriented accounts that are expected by the judiciary (e.g., self- represented litigants describe their feelings instead of limiting themselves to the facts). This is in line with Heffer's (2005: 20–4) observation of the tension between the paradigmatic (socio-scientific) mode of reasoning employed by legal professionals and the narrative mode of reasoning often used by lay participants (e.g., witnesses and members of the jury).

As per O'Barr and Conley (1990), single case studies conducted by the author (Tkachuk, 2007, 2008; and Tkačuková, 2010, 2011) have found that there is a disparity between the rules of everyday conversational discourse and the pre-specified requirements of courtroom discourse. As a result, litigants in person typically find it challenging to adapt their interactional habits and language use to the hostile atmosphere of cross-examination when it is necessary to discredit witnesses or their presentation of facts (Gibbons, 2003). Professional counsels challenge witnesses by asking them closed leading questions and limiting their interactional space (Danet et al., 1980; Harris, 1984; Heffer, 2005: Chapter 4; Luchjenbroers,

1997; Philips, 1987; and Woodbury, 1984) and coercing them into preferred replies by using controlling pragmatic strategies (Aldridge and Luchjenbroers, 2007; Conley and O'Barr, 1998; Cotterill, 2003; Drew, 1990; Gibbons, 2003: 112–27; and Matoesian, 2005). Instead, the litigants in person in Tkačuková 's data, based on the libel case McDonalds v Helen Steel ad David Morris, allowed too much interactional space for witnesses, used too many open questions and their closed questions were not restrictive enough (Tkačková, 2010, 2011). This is also reflected in their use of discourse markers. Hale (1999) notes that common

discourse markers such as well are used to signal coherence in everyday conversation, whereas in cross-examination the same discourse markers are used in their more challenging functions for indicating disagreement and controlling the flow of questioning. Tkačuková (2010) shows that discourse markers are used by litigants in person in their supportive function to indicate comprehension and acknowledgement during cross-examination rather than adding force to the challenging questioning. For the very fact that litigants in person were not always challenging enough, the judge had to interfere in their cross- examination and ask specifying questions.

The above-mentioned studies on litigants in person focus on the evidentiary stage of the proceedings (i.e., witness examination stages). The use and functions of discourse markers during the evidentiary stage have been analysed in several studies (Hale, 1999; Innes, 2010; and Tkačuková 2010). In contrast, the focus of this paper is on procedural stages (discussions between litigants in person, opposing counsels and judges about legal points and organisational matters). It is during procedural stages that most distinctions between legal- and lay-discourse types arise because judges need to ensure litigants in person are not disadvantaged due to their lack of legal training. The functions of discourse markers can, thus, indicate the roles of judges in cases with litigants in person.

The discourse marker well in its initial position is especially well- placed for illustrating the interactional and communicative interplay between legal and lay participants. The reasons are numerous. Firstly, the discourse marker well frequently occurs both in paradigmatic and narrative modes; it has a firmly established place in question/answer driven institutional settings such as court (Innes, 2010) or interviews (Fuller, 2003) as well as everyday conversation (Fuller, 2003; Jackson and Jones, 2013; Kim, 2013; Schiffrin, 1987; and Svartvik, 1980) or even story-telling (Norrick, 2001).

Secondly, the discourse marker well in its turn-initial position can help signal turn-taking management. Turn-taking in courtroom settings is strictly pre-specified with turn order and the distribution of turns pre-allocated to speakers with specific roles (e.g., witnesses answer questions and are not permitted to offer any other types of contributions, counsel ask questions) and overlapping speech is avoided by counsel employing such remedial techniques as cut-offs or re-starts to restore the turn-taking order (Atkinson and Drew, 1979: 67). Litigants in person have, however, been found to follow turn-taking management common in everyday conversation, which is less orderly and lacks many pre-allocated aspects (Tkačuková, 2010). They often interrupted witnesses or were interrupted by witnesses and their witness examination was, thus, disorderly (Tkačuková, 2008). Judges were also found to interrupt witness examination that was conducted by litigant in person in order to ask witnesses additional questions or interfere with litigant in person's questioning strategies (Tkačuková, 2010). In its function as a cohesive link between turns (Fuller 2003; and Schiffrin, 1987) and as an initiator of self-repairs (Jackson and Jones, 2013), well is indicative of the turn-taking management during interaction between legal professionals and litigants in person.

There are two more functions of the discourse marker well which often stand out in the interplay between the legal- and lay-discourse types and interactional styles: well indicating inequalities in the institutional authority of the interlocutors, and well as a mitigation device. In its first function, the discourse marker well controls the flow of the interaction (Carter and McCarthy, 2006: 212) and adds force to coercive questioning or challenging replies (Hale, 1999; and Innes, 2010). One of the judges' roles is to ensure litigants in person understand the complicated legal concepts and principles related to their case. The orientation of the discourse marker well backwards and forwards in specifying the meaning intended by the previous speaker and the current one (Schiffrin, 1987) allows well-initiated turns to unfold the negotiation of meaning between judges and litigants in person.

Furthermore, the function of well as a mitigation device for toning down the potential face-threat to the hearer (Cuenca, 2008; Fuller, 2003; Innes, 2010; and Jucker, 1993) is especially important to legal scholars and practitioners. Due to the growing number of litigants in person, the traditional role of judges is currently undergoing change since judges have increasingly to undertake the additional role of being the main facilitator of the legal process and the mitigator between the legal parties. Among other suggestions, the first official report by the Judicial Working Group on Litigants in Person (2013) advocates training for judges

and court staff on dealing with litigants in person within the newly established Judicial College. The mitigating function of the discourse marker well has a special place in legal–lay discourse where litigants in person are in a disadvantaged position and can potentially find themselves in many face- threatening situations with judges and opposing counsel requiring action from them.

In general, linguistic research on the role of judges in legal proceedings has been preoccupied by power inequalities, the difficulties of lay people with presenting their stories and the disparity between the paradigmatic and narrative modes in legal–lay discourse. Legal research on self-representation is more aware of potential complications that litigants in person cause and of the changing role of the judiciary. The discourse marker well in all of its functions and versatile uses is in the ideal position to reflect all of the complexities of legal–lay interaction. Most importantly it has the potential to uncover mitigating strategies used by the judiciary and to show how judges negotiate the roles of litigants in person and the meaning of legal concepts.

3. Data

The corpus is based on verbatim transcripts from seven civil and criminal court cases transcribed by professional court transcribers. Civil cases are not generally audio recorded (with the exception of family cases, which are strictly confidential). Therefore, the audio recordings were not available for the cases I analyse here. With the criminal cases, I made a substantial effort to obtain recordings, but the recordings could not be released to researchers from abroad. It is extremely difficult to obtain even court transcripts due to a number of complications: the sensitive nature of the data and ethical considerations, the very high cost of transcription services, and difficulties tracing case numbers of cases with litigants in person.

Furthermore, conducting linguistic analysis based on verbatim transcripts is not ideal for the purposes of spoken discourse analysis and the accuracy of verbatim court transcripts has been questioned in many studies due to the nature of spoken language and the fact that transcripts are produced for purely legal purposes (Eades, 1996; Fraser, 2003; and Walker,

1986). Sometimes transcribers make conscious changes in the participants' language. Reporter-induced changes mostly include correction of inaccurate grammar, syntactic rearrangements or restoration of dialectal features into standard forms (Walker, 1990: 228–32). The extent to which court reporters correct the speakers' language depends on the type of participant they transcribe. The language of legal professionals and expert witnesses, for instance, is corrected more often as these professionals are expected to express themselves better than ordinary lay participants (Heffer 2005: 56; and Walker 1990: 232–4). Even including punctuation in the transcription makes transcripts dependent on the stenographers' interpretation of an utterance (Eades, 1996; Fraser, 2003; and Walker, 1986). Interruptions are, for instance, usually indicated with dashes, but such a simplified system does not make it clear when exactly interruptions begin and for how long simultaneous speech lasts (Walker, 1986: 211–13). However, these limitations are minimised by the fact that this study concentrates on the formal features of interaction such as the use, function and occurrence of the discourse marker well. In spite of the possibility of transcriber-induced correction, researchers consider court transcripts to be a valuable source for linguistic analysis (Eades, 1996). From his observations in court, Heffer (2005: 58) concluded that, in the overwhelming majority of cases, the language presented in transcripts was accurate.

The corpus used in this research consists of 12,338,166 words and is a collection of seven sub-corpora, each based on a court case tried in different jurisdictions (England and Wales, USA and Canada). Table 1 shows the list of cases analysed, their types, jurisdictions and sub-corpus size.

In the corpus, there are three long and widely publicised cases in which litigants in person chose to represent themselves despite having other options available: McDonald's Corporation v. Helen Steel and David Morris, David Irving v. Penguin Books and Deborah Lipstadt, United States of America v. James A. Traficant. The activists Helen Steel and David Morris chose to represent themselves after they were sued over the contents of the leaflets 'What's Wrong with McDonald's? Everything they don't Want you to Know', which they were distributing in public. David Irving, a British historian, publicly expressed his sympathy for anti-Semitism, and filed a libel suit against Penguin Books and Deborah Lipstadt for being labelled as a Holocaust denier. James Traficant, a politician and member of the US House of Representatives, represented

himself when federal corruption charges were brought against him. The other cases are small claims cases, for which there is no extra-linguistic information available and the names were anonymised.

Case	Case type	Country	Sub-corpus size (tokens)
McDonald's Corporation v. Helen Steel and David Morris (McDonald's Sub-Corpus)	Libel	UK	9,005,850
David Irving v. Penguin Books and Deborah Lipstadt (Irving Sub-Corpus)	Libel	UK	1,685,058
LiP v. an insurance company (Small Claims Sub-Corpus 1)	Civil	UK	43,812
United States of America v. James A. Traficant (Traficant Sub-Corpus)	Criminal	USA	1,384,469
LiP v. a cable communications company (Small Claims Sub-Corpus 2)	Civil	USA	116,868
LiP v. family members (Small Claims Sub-Corpus 3)	Criminal	USA	36,013
LiP v. an investment company (Small Claims Sub-Corpus 4)	Civil	Canada	66,096

Table 1: List of sub-corpora outlining cases involving litigants in person (LiP)

Recent research conducted for the Ministry of Justice found that litigants in person coming from different educational, social and professional backgrounds, including those with high levels of education or professional experience, struggle with many aspects of the legal process (Trinder et al.,2014). Educational or professional background does not, thus, affect an individual's capacity to represent themselves. For this reason, the sub- corpora are comparable and relevant for the analysis of the discourse marker as used by judges in their communication with litigants in person.

The corpus is a work in progress which is being constantly supplemented with newly acquired verbatim transcripts. Each sub-corpus includes all stages of court cases, including evidentiary stages (witness examination), opening and closing statements, and resolving procedural and organisational matters. Sub-corpora can be searched individually, in different combinations or as a whole corpus. Despite the differences in the size of individual sub-corpora (caused by the duration of cases), jurisdictions, types of cases and types of litigants in person, the corpus as a whole presents a solid position for identifying specific problematic areas of court communication for litigants in person, and the interplay between the legal and lay discourse types.

4. Corpus linguistic approach and corpus design

A corpus approach offers several advantages for dealing with novel and timely topics: an easy way for incorporating new materials, re-usability for different types of analyses and the quick speed of processing data (McEnery et al., 2006). This is especially important for the inter-disciplinary topic of self-representation, which is rapidly gaining in significance and has an impact on a wide and varied community of legal professionals, stakeholders, policy makers and academics. A corpus approach allows researchers to extract individual lexical features from texts, quantify them and then put them into the wider context by identifying regular patterns and analysing the role of formal features for specific communicative purposes in the given context (Thornbury, 2010: 276). The bottom-up approach provides an objective basis for the analysis and eliminates weaknesses that are sometimes associated with discourse or pragmatic analyses, such as subjective conclusions, selective extraction of features or de-contextualised examples (McEnery and Wilson, 2001: 115). The research into smaller specialised corpora shows that more contextualised corpora are better suited for exploring specific linguistic features (Flowerdew, 2004; and Ma, 1993). The use of small, specialised corpora instead of big, generic corpora is well-established in discourse analysis because researchers find it easier to rely on a smaller number of whole texts with detailed metadata about speakers (McEnery et al., 2006).

Another advantage of corpus linguistics connected with objectivity is the necessity to consider, thoroughly, three main principles of corpus building: sampling, balancing and representativeness of the texts (McEnery et al., 2006: 13–21; and Nelson, 2010: 56). Balancing and representativeness are of particular importance in smaller specialised corpora such as this. The criterion of representativeness of a corpus is normally judged

against the situational context and the linguistic context (Koester, 2010: 69–71). The situational variability and representativeness of this specialised corpus are clearly determined by the focus on court cases with litigants in person who come from different social and educational backgrounds and opt for self-representation for different reasons. The corpus includes cases with well-educated and highly articulate litigants (i.e., David Irving and James Traficant used the court as a forum for expressing their views despite having financial means for legal representation); activists (i.e., Helen Steel and David Morris who chose to represent themselves because of their strong belief in the freedom of speech); and ordinary litigants in person who chose to represent themselves in typical small claims cases because of a lack of financial means. The representativeness of the linguistic context is ensured by the fact that all sub-corpora include court hearings from the very beginning until the end and are, thus, representative of the evidentiary dialogic stages (witness examination) and monologic stages (opening and closing speeches) as well as procedural stages (discussions between the parties and the judge about order of witnesses, legal arguments, admissibility of evidence, etc.). Since the differences between the paradigmatic and the narrative modes are of a universal character (Heffer, 2005), litigants in person across different jurisdictions can be expected to have similar problems with communication in court.

The principles of sampling and balancing are inter-connected as both refer to choosing appropriate texts which represent a wide range of typical situations (McEnery et al., 2006: 125). The sampling of the corpus was largely determined by the availability of courtroom materials and the motivation to include whole cases from different jurisdictions. The importance of including whole texts for the contextually informed analysis when it is necessary to examine linguistic features within the text is supported by Flowerdew (2004: 15). The opportunity to compare how judges deal with the needs of litigants in person in different jurisdictions is especially valuable for legal professionals, stakeholders and practitioners, since each jurisdiction uses a slightly different approach and the results are visible in interaction between litigants in person and judges. For now, the corpus is limited to only a few cases from several jurisdictions and so cannot fully function for the needs of comparative legal studies. This use can be explored in future.

Balancing the corpus remains a weakness because of the differences in sizes of individual cases and the variety of cases. But the corpus is a starting point for the project in progress and this weakness is counterbalanced by the fact that it is possible to search individual sub-corpora or combinations of them and, thus, control the input data. Since there is no objective or unified method to measure the representativeness of the corpus, it is the research question that determines the criteria for corpus building, balancing, sampling and representativeness (McEnery et al., 2006: 21). The design of the corpus was adjusted to enable the answering of research questions from both disciplines, (i.e., linguistics and socio-legal studies).

When designing the corpus, the main challenge proved to be dealing with dialogic materials as it was necessary to divide the utterances in the transcripts into individual sentences according to the punctuation (sentence was defined as a sequence of words staring with a capital letter and ending with a full stop for purposes of simplicity). The choice of a sentence as a unit of analysis was guided by the need for an inter-disciplinary and varied approach to data: research questions the corpus needed to answer were on the syntactical level. With the transcripts divided into sentences, it is easier to organise data, assign speakers to utterances, categorise types of utterances, categorise types of questions during witness examination, assign pragmatic marks ups, etc. Such basic division into sentences is problematic from the linguistic point of view as it does not account for discourse units. Pragmatic annotation would have been more functional if the corpus was designed for purely linguistic purposes. But the corpus would then not be easily applicable for answering research questions for socio-legal studies, where a fully automated annotation is an advantage for working with many varied cases. A basic simplified division proved to be more flexible for the reusability of the corpus.

Each sentence was marked up with four categories ('type', 'category', 'speaker' and 'comment') for a combination of automatic and manual tagging. The outlay and regular punctuation of verbatim transcripts with an exact indication of speakers allowed for speakers and categories to be assigned automatically to each sentence. Speakers were tagged as 'witness', 'judge', 'counsel' or 'litigant in person'. The division into categories according to types of utterances ('q' for questions, 'a' for answers and 'o' for other types of utterances) was a key step which helped to distinguish between witness examination stages and procedural

stages. This, for instance, allows the analyst to see how litigants in person negotiate their institutionally ambiguous role when examining other lay people (i.e., witnesses) and when discussing legal points and procedural matters with the judge and the opposing counsel. The mark-up category, 'type', was reserved for types of questions and was tagged manually in a selected sub-corpus of cross-examinations (described in Tkačuková, 2010); the 'comment' mark up space was used for additional tags for pragmatic and semantic strategies, and allows for a flexible, manual tagging system which could fit the aims of potential future studies:

```
<s comment="" speaker="counsel" category="question" type=""> Ms.
Bobby, when you testified last week, do you recall a series of
questions and answers that were asked to you about the relationship
between Charles O'Nesti and Congressman Traficant? </s><s comment=""
speaker="Smith" category="question" type=""> You recall that series
of questions and answers? </s>A. <s comment="" speaker="witness"
category="a" > Yes. </s>
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The marked-up documents were then tagged for parts of speech using TreeTagger (Schmid, 1994) and uploaded into the corpus query system Sketch Engine (Kilgarriff et al., 2014). As a result, the corpus and sub-corpora are now searchable according to different combinations of the following features: speakers, types of interaction, lemmas, words, phrases and making attribute-value queries specific for the Sketch Engine. The corpus required an individual approach to corpus building and a specific annotation system. But, once designed, it functions as a fully reusable source of information for an interdisciplinary analysis fulfilling the requirements of both disciplinary bases (i.e., linguistics and legal studies). The main advantage of the corpus is that it can be re-applied to answer research questions that were not originally envisaged (McEnery et al., 2006: 30).

5. Discourse marker well in legal-lay discourse

As mentioned in Section 2, the focus of this paper is on the roles of judges during procedural stages as evidenced through their use of well-initiated turns. Table 2 provides a general overview of the occurrences of well in the turn-initial position, according to the roles of speakers and all court hearing stages.

	McDonalds sub-corpus	Irving sub-corpus	Traficant sub-corpus	Small claims sub-corpora
Witnesses – under witness examination (well in second turns)	411.1	464.1	550.4	61.4
LiPs – conducting witness examination (well in first turns)	32.1	104.4	151.7	49.8
LiPs – procedural discussions	40.8	46.9	96.8	12.7
LiPs in total	72.8	151.3	248.5	62.5
Counsel – conducting witness examination (well in first turns)	12.8	83.1	54.2	18.4
Counsel – procedural discussions	7.3	22.0	13.7	3.1
Counsel in total	20.1	105.0	67.9	21.5
Judges – additional questions for witnesses (well in first turns)	14.1	62.3	122.8	9.4
Judges – procedural discussions	60.3	139.5	331.5	20.7
Judges in total	74.4	201.8	459.4	30.1

Table 2: Normalised frequency of the discourse marker well in turn- initial position (all figures are normalised per million)

The figures show that during witness examination well is most frequently used by witnesses to initiate their second turns. In the first part of adjacency pairs (i.e., questioning turns) litigants in person use well most frequently. Counsels use well considerably less than litigants in person during witness examination and procedural discussions. This could indicate that lay participants, witnesses and litigants in person, use well

most frequently because they are phrasing their narratives in the narrative mode. The paradigmatic mode of counsels' turns is more structured and does not require much self-correction, delays or rephrasing. Counsels mainly use well to reinforce the challenging force of their cross-examining questions (Tkačuková, 2010). The figures are comparable to those presented by Innes (2010), who provides a detailed overview of the functions, uses and frequencies of the discourse marker well used by counsel and witnesses (i.e., uses of well in its first- and second-turn positions). The findings in Innes (2010: 104) show that in its first turn position, well is used mainly to challenge the witness, whereas in its second position well introduces a delay tactic or justification/explanation.

Although well is much more frequently used by witnesses, litigant in person and counsels during witness examination, the situation is different during procedural discussions. The shaded rows in Table 2 illustrate that during procedural stages judges use well in the turn-initial position approximately twice as often as litigants in person and at least three times more than counsels. This is consistent with the fact that judges are the main contributors in the procedural and organisational stage of hearings and both parties turn to them for making decisions; litigants in person in particular expect judges' guidance and suggestions. The focus on judges' well-initiated turns during procedural discussions illustrates additional roles judges have to undertake in cases with litigants in person.

The Sketch Engine offers a function for identifying collocations by setting the range of words preceding and/or following the word in question, the number of minimal occurrences of the collocation in the corpus and in the given range. The collocations are then listed according to different association scores. For the purposes of this study the following three scores are of special importance: MI score, T-score and logDice score. The first two are common association scores. The MI score is not dependent on the size of the corpus and identifies lexical bundles and idiomatic occurrences, whereas the T-score is corpus-specific and bears more information about the grammatical use of the word. The logDice score is a modification of the Dice score. The logDice is based on several measures: the frequency of the precise relation, the frequency of the headword in the same syntactic position with any collocation and the frequencies of the collocation in any syntactic position (Rychly, 2008). This was thus found to be the most reliable score for small specialised corpora such as the present corpus because it combines grammatical and lexical criteria.

A combination of these scores was used to identify the left- and right- hand context of the discourse marker well in turn-initial positions as used by judges. Punctuation marks (full stops, dashes and question marks) rank highest by all three association measures for the left-hand context (L4–L1) in the data. Table 3 shows the top three results are ranked according to the logDice score.

As established in Section 2, court transcribers use a varying number of dashes to indicate interruptions in verbatim transcripts and their occurrence preceding well-initiated turns signifies the use of well for taking the floor and interrupting the previous speaker. The occurrence of the question mark then mainly applies to instances of judges interjecting witness examination in order to inquire about its course or ask specifying questions. Table 4 shows the proportion of well-initiated interjections and interruptions by judges. The first two rows show judges' well-initiated interjections of Q/A sequences during witness examination, whereas the last two rows show the rate of judges' well-initiated mid-turn interruptions during procedural discussions.

	Freq.	T-score	MI	logDice
.	562	16.999	3.73	4.71
?	175	7.078	3.207	4.182
-----	126	6.069	6.016	6.92

Table 3: Association measures for left-hand context of well-initiated turns used by judges ranked according to the logDice score

	McDonalds sub-corpus (percent)	Irving sub-corpus	Traficant sub-corpus	Small claims sub-corpus
Judges interjecting LiPs' witness examination	87.8	79.9	67.3	89.9
Judges interjecting counsels' witness examination	12.2	20.01	32.7	10.1
Judges' mid-turn interruptions of LiPs in procedural stages	59.5	63.7	58.9	78.3
Judges' mid-turn interruptions of counsels in procedural stages	40.5	36.3	41.1	21.7

Table 4: The proportion of well-initiated interjections and interruptions by judges (LiPs stands for litigants in person; all figures are percent)

Judges interrupt litigants in person and counsels in similar proportions during procedural discussions. But the rate of judges interjecting litigants in person's witness examination is much higher across all the cases. This may be due to the fact that judges need to complement the litigants in persons' witness examination by asking witnesses additional questions. Another reason why judges interrupt litigants' in person witness examination is to control its course by pointing out aspects that are relevant to their decision-making and ensuring court time is used more efficiently, as illustrated in Example 1.

Example 1: The judge interferes with the litigant in person's (Irving's) cross-examination of a witness

MR IRVING: I am dangerous to the whole of existing history of the Holocaust? Is that what is implied by that?

MR JUSTICE GRAY: Well, that is, in the end, a matter for me, what Professor Lipstadt would have been understood to mean, but it seems to me it is pretty clear that the danger is that a lot of people will – I was going to use the word "swallow", that is a bit offensive – accept the denial case.

(Irving Sub-Corpus 2)

In this example, the judge interferes with Mr Irving's cross-examination by stating clearly which aspects are to be left to him. In so doing, the judge reinforces his authority, implying that it is, ultimately, his decision. The discourse marker projects the judge's stance to the line of questioning chosen by the litigant in person and the redundancy and limited value of Irving's cross-examination questions to his decision making. Reinforcing their role as decision-makers is the predominant function of judges well- initiated interruptions of counsels, as shown in Example 2.

Example 2: Judge's mid-turn interruption of the counsel during procedural discussions

MR. RAMPTON: With respect, I do not accept that. I will dutifully —- MR. JUSTICE BELL: Well, that is my ruling.

MR. RAMPTON: If that is your Lordship's ruling, I dutifully obey.

(McDonalds Sub-Corpus 1)

The judge interrupts counsel to state, briefly, that there is no point in objecting to his ruling and well helps indicate the force of the proposition expressed by the judge, which counsel accepts as an irreversible position. Projecting their firm stance and re-enforcing their authority is the main function of judges' well-initiated mid-turn interruptions: they amount to almost 70 percent of all their well-initiated mid-turn interruptions directed at counsel. When directing their speech to litigants in person, judges follow further objectives: judges need to ensure that there are no misunderstandings and that hearings are not strongly impeded by the lay people's lack of legal knowledge, experience or training.

While the left-hand context of well illustrates when judges take the floor and how they control the flow of interaction, the right-hand context (R1–R5) helps identify different functions of judge's well-initiated turns. The results in Table 5 are ranked according to the logDice score:

The top collocates for the right-hand context with the highest logDice score and association scores include the following words: pronouns I, we and you; verbs think, know and have; conjunction if ; negation form not and n't; modal verbs can, could, may and would. The frequent occurrence and close association of these words with well coincide with different functions of the discourse marker: explanation (think, know and have), instructions (have and you), suggestions (modal verbs, if), mitigation (we, modal verbs, think), disagreement (forms of negation).

	Freq	T-score	MI	logDice		Freq	T-score	MI	logDice
n't	326	7.389	4.211	7.587	be	303	3.66	3.555	4.503
may	50	4.275	4.501	5.431	know	46	3.651	3.521	4.47
think	78	5.371	4.309	5.262	what	56	4.64	3.473	4.436
,	1004	21.215	4.235	5.215	could	32	3.508	3.408	4.358
will	63	4.726	4.191	5.139	not	170	7.525	3.313	4.289
put	29	2.977	4.089	4.994	it	177	7.873	3.282	4.258
I	369	12.152	3.939	4.917	just	32	3.079	3.17	4.118
do	154	6.158	3.802	4.769	if	48	3.75	3.107	4.067
we	98	5.704	3.743	4.709	have	91	5.604	3.002	3.976
can	51	4.533	3.743	4.699	you	131	6.828	2.991	3.967
There	70	5.042	3.654	4.617	would	35	2.414	1.877	2.844

Table 5: Association measures for right-hand context of well-initiated turns used by judges ranked according to the logDice score

To meet the needs of the interdisciplinary topic, the examples were further classified on two levels. The overarching categorisation is according to institutional functions that judges perform through well-initiated turns. Subordinate to it is the categorisation according to linguistic functions of well. The first tier of categorisation is, thus, guided by the roles of judges according to the civil procedure rules for legal proceedings with an unrepresented party (Trinder et al., 2014; and Zuckerman, 2014). The second tier of categorisation is adapted from the linguistic research by Innes (2010), Lam (2010) and Fuller (2003): textual function of introducing the topic; textual function of linking and establishing coherence; responsive interpersonal function of insufficiency/incompleteness; emotive interpersonal function of challenge/dismissal/state of mind; interactional function of reformulation; interactional function of turn-management; and pragmatic function of threat mitigation. The two-tier classification meets the needs of both disciplinary bases (i.e., linguistics and legal studies). Table 6 shows the overlaps between the legal and linguistic categorisations. There are often several linguistic functions corresponding to a single legal function of well-initiated turns used by judges. Examples below illustrate one linguistic function from each legal category.

The above examples show that although well could be omitted, it is significant for defining the force of the propositions expressed. In Examples

3 and 4, the discourse marker introduces the judges' explanation of legal concepts or procedural matters. In addition to introducing the explanation of the concept of the 'opening statement' in Example 3, the discourse marker well performs the textual function of establishing coherence. In Example 4, the discourse marker points to the insufficiency of the litigant in person's previous turn. What both examples have in common is the need to clarify a complex issue for litigants in person. The judges should, thus, preferably formulate their explanation in the narrative mode (e.g., comparing opening statements to road maps in Example 3). Both examples, however, contain lexical and syntactic patterns of the professional paradigmatic mode (e.g., 'layout the facts as you allege the facts to be' and 'conditional ruling on evidence that is conditioned on the Government being able to demonstrate'). Authentic samples from courtroom interactions extracted from corpora can be used for the purposes of training judges to illustrate how they can explain common concepts or procedures to lay people. Since the second category of providing guidance

on procedural matters is the most frequently employed function of well-initiated turns, it is important for judges to ensure that their explanation of procedures can be easily understood by litigants in person.

Table 6: Legal and linguistic classification of well-initiated turns as used by judges during interaction with litigants in person (LiP)

Legal function:			
• Providing advice/guidance/explanation on legal points/concepts			
Linguistic functions:			
• Textual function of introducing the topic			
• Textual function of linking and establishing coherence			
• Responsive interpersonal function of insufficiency/incompleteness			
McDonalds sub-corpus	Irving sub-corpus	Traficant sub-corpus	Small claims sub-corpus
11.4%	12.9%	14.5	4.8%
Example 3: Textual function of linking and establishing coherence LiP: In regards to opening statement, that is my opening statement and I can say and present my case in a manner that would ---- THE COURT: Well, opening statement is just what it says. It's a statement of your position as far as what your case is about or what you contend your case is about. Some people say it's like a road map of their case. You cannot testify during it, and you cannot make arguments. There is a difference between an opening statement and a closing argument. So you cannot make an argument, but you can lay out the facts as you allege the facts to be. (Small Claims Sub-Corpus 2)			

Legal function:			
• Providing advice/guidance/explanation on procedural matters			
Linguistic functions:			
• Textual function of introducing the topic			
• Textual function of linking and establishing coherence			
• Responsive interpersonal function of insufficiency/incompleteness			
McDonalds sub-corpus	Irving sub-corpus	Traficant sub-corpus	Small claims sub-corpus
37.2%	19.7%	23.9%	30.9%
Example 4: Responsive interpersonal function of insufficiency/incompleteness MR. TRAFICANT: The tape recording of the dying man who they were able to tape but not make available for me to tape and depose. THE COURT: Well, the way you're putting it has not in itself been presented to me, but we have not ruled that -- I have a conditional ruling on evidence that is conditioned on the Government being able to demonstrate certain things that the law requires them to demonstrate under these circumstances. It was a pretty straight forward ruling, and you'll see it when you go back on the docket. (Traficant Sub-Corpus)			

Legal function:
- Giving instructions/suggestions on (in)appropriateness and (in)effectiveness

Linguistic functions:
- Textual function of introducing the topic
- Responsive interpersonal function of insufficiency/incompleteness
- Interactional function of turn-management

McDonalds sub-corpus	Irving sub-corpus	Traficant sub-corpus	Small claims sub-corpus
24.9%	21.2%	13.2%	28.9%

Example 5: Interactional function of turn-management

MS. STEEL: I do not think it should necessarily be assumed that he was from America. He could be from -----

MR. JUSTICE BELL: Well, ask about that if you like. I do not want to interrupt your cross-examination, but one thing you might ask is where Mr. Copeland arrived from, to the best of Mr. Mehigan's knowledge.

(McDonalds Sub-Corpus)

Example 6: Textual function of introducing the topic

MR IRVING: It is the way Morland J would put it probably too.

MR JUSTICE GRAY: Well, you might then take the opportunity, either in cross-examination or perhaps re-examining yourself, to make the points you are wanting to make in reference to Professor Levin or Dr Levin's report.

(Irving Sub-Corpus)

Legal function:
- Give rulings, reinforcing authority

Linguistic functions:
- Responsive interpersonal function of insufficiency/incompleteness
- Emotive interpersonal function of challenge/dismissal/state of mind
- Pragmatic function of threat mitigation

McDonalds sub-corpus	Irving sub-corpus	Traficant sub-corpus	Small claims sub-corpus
4.6%	8.9%	14.6%	3.5%

Example 7: Emotive interpersonal function of challenge/dismissal/state of mind

MR. C.: Okay. But he did answer it.

THE COURT: Well, the legal effect of that, I will sort out. MR. C.: Okay.

THE COURT: He said what he said.

(Small Claims Sub-Corpus 4)

Legal function:
- Mitigating, resolving issues between parties

Linguistic functions:
- Pragmatic function of threat mitigation

McDonalds sub-corpus	Irving sub-corpus	Traficant sub-corpus	Small claims sub-corpus
7.8%	13.2%	6.8%	11.3%

Example 8:

RAMPTON: It is sometimes necessary to say things rather than often necessary to say things which may be provocative but which nevertheless it is necessary to say.

MR. JUSTICE BELL: Well, we have been in this courtroom a long time together, we are going to be here for many months more, and anything which those conducting the case, either counsel or the Defendants themselves, can do to keep the temperature at a steady level showing some mutual respect and courtesy is to be welcomed by me.

(McDonalds Sub-Corpus)

Legal function:			
• Challenging, expressing disagreement with the proposition expressed by LiPs			
Linguistic functions:			
• Responsive interpersonal function of insufficiency/incompleteness			
• Emotive interpersonal function of challenge/dismissal/state of mind			
McDonalds sub-corpus	Irving sub-corpus	Traficant sub-corpus	Small claims sub-corpus
9.7%	19.3%	16.4%	10.1%
Example 9: Emotive interpersonal function of challenge/dismissal/state of mind MR IRVING: Yes, but the left wing – MR JUSTICE GRAY: Well, do not argue about it, we have the evidence. (Irving Sub-Corpus)			

Legal function: Other			
Linguistic functions:			
• Textual function of introducing the topic			
• Textual function of linking and establishing coherence			
• Interactional function of reformulation			
• Interactional function of turn-management			
McDonalds sub-corpus	Irving sub-corpus	Traficant sub-corpus	Small claims sub-corpus
4.4%	4.8%	10.6%	10.5%
Example 10: MR. C.: Well, now, who is on first? THE COURT: Well, Mr. W. is going to call Mr. P., and then you will cross-examine him. (Small Claims Sub-Corpus 4)			

In Example 5 the discourse marker well is followed by an imperative and in Example 6 by the modal verb might. Both judges introduce suggestions as to preferable and more effective options litigants in person might want to take. In Example 5, this is further reinforced by the turn- managing function of well. Similarly, Example 6 illustrates well in its textual function of introducing the topic. Examples 7, 8 and 9 illustrate the multiple roles of judges, where they assert their authority through making firm decisions (Examples 7 and 9) and also through being mitigators between the parties (Example 8). Example 10 shows one of legally unspecific uses well, to which only linguistic functions were assigned.

The analysis only relates to well-initiated turns used by judges. But by combining linguistic and legal approaches, Table 6 gives an indication of what roles are most common for judges in cases with litigants in person and how they engage with litigants in person. The results show that (i) providing guidance on procedural matters and (ii) giving suggestions as to (in)effectiveness of arguments or undertakings are the most frequent roles of judges in cases with litigants in person. This resonates with the findings of Trinder et al. (2014). For the purposes of training the judiciary, samples of real-life interaction from court can serve as useful examples to discuss and learn from.

6. Conclusion
Procedural stages are important for negotiating meaning and institutional roles through legal-lay communication. Judges' well-initiated turns show that judges often reinforce their authority when directing their speech to counsel and provide explanation or advice when talking to litigants in person. The most frequent roles judges undertake through well-prefaced turns is providing explanation on procedural matters and legal concepts as well as initiating face-threat mitigation.

By illustrating the uses of well and functions of judges' well-initiated turns during procedural discussions, I have demonstrated how a corpus linguistics approach can help to trace specific linguistic features to uncover more general aspects that are useful in other disciplines (e.g., legal studies). If the interdisciplinary approach is taken into account from the very beginning of the process of corpus building, the corpus can be re-used for purposes that were not originally envisaged. The corpus presented here has potential for being constantly supplemented and further exploited for developing materials for the judiciary or for developing practical handbook-style information packages for litigants in person.

A similar approach shown here can be used to analyse how the meaning of common legal concepts (e.g., 'evidence', 'opening speech' and 'cross-examination') is negotiated and explained to litigants in person in practice. Although many judges have personal experience with litigants in person who struggle with these concepts (Trinder et al., 2014), samples from court interaction can help judges practice clearer explanation strategies. This would give specific initiatives for the training of the judiciary but also inform personal support units and first-tier support organisation (e.g., Personal Support Units) on the basis of their guidance materials and how to help litigants in person.

A corpus approach provides a firm methodological basis for socio- legal studies as it presents an opportunity to work with real-life interactions. Corpora can be used as a complementary methodological tool in addition to empirical research methods, questionnaires, interviews and other socio-legal research methods.

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