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“Stolen Stories?”:

Language, Narrative, and Power in the Contemporary Criminal Courts

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i. Abstract

Insights from the nascent field of Narrative Criminology highlight the importance of storytelling for individuals going through the criminal justice process, particularly in the way they fight for ownership over their stories in opposition to legal forces. However, these observations tend to be made in post-hoc studies – after processes such as trials, judgments, and sentencing – leaving uncertain how narrative construction is negotiated in interaction in the courtroom. Indeed, research in Law and Language suggests there are limited opportunities for individuals to "tell their stories their own way," as the altered rules for talk-in-interaction in court place disproportionate language-using and narrative-building power on legal professionals over lay participants.

This thesis explores the courtroom as a site for the fruitful study of relationships between language, narrative, and power, with an initial motivator being to evaluate how appropriate or useful the metaphor of "narrative theft" is to describe what happens in Western adversarial criminal trials. To that end, an approach that draws on conversation analysis and narrative analysis serves to explore how rights to speak are negotiated in interaction between legal professionals and lay participants in court and how narratives are constructed, deconstructed, and reconstructed in interaction based on these dynamics.

Three case studies are considered: the trial of Adnan Syed in the United States, which was documented in publicly available legal transcripts; the trial of Derek Chauvin regarding the death of George Floyd in the United States, which was publicly broadcast and recorded; and a murder trial that took place in New Zealand, which was accessed in real-time virtually.

This thesis finds that rights to speak and lay claim to knowledge are considered vis-à-vis a clear but flexible hierarchy of epistemic authority, that determines which stories individuals do and do not have a right to tell. Far from being passively disempowered, however, some lay participants resist this hierarchy, in the fight to "use their own words" and have them be accepted in legal proceedings. Tropes, as a

particular type of story, emerge as important not only in general sense-making in court but also as a tool in the negotiation of rights to be heard and accepted.

Ultimately, this thesis maps out some of the assumptions and boundaries inherent in the metaphor of narrative theft and suggests some ways it may or may not be a useful lens through which to further explore courtroom proceedings.

ii. Lay Summary

A lot of research in Criminology has suggested that people who attend the criminal courts – be it as victims of crime, people accused of crime, or witnesses to crime – do not have a positive experience with the court system. They experience feelings of confusion, anxiety, and frustration, and, above all, they often report that they felt they were not allowed to "tell their story their own way." This is important because the expectations of people attending court is that it is their chance to say what happened to them and to have their say in the pursuit of justice. This thesis explores this phenomenon, asking if it is fair to say that the courts "steal" people's stories.

In order to answer this question, the research in this thesis looks closely at courtroom interaction between people who attend court on one hand and legal professionals such as lawyers and judges on the other hand. How do people manage to tell stories, within the confines of the question/ answer format of courtroom interaction? How might legal professionals use their power to prevent people from telling their stories in the way they want to? How might people, in reaction, fight for their rights to say things a certain way?

Drawing primarily on two academic traditions – Narrative Criminology and Conversation Analysis – this thesis studies interaction in three separate contemporary trials in order to answer these questions: the trial of Adnan Syed in the United States, the trial of Derek Chauvin in the United States, and a trial that happened in New Zealand in 2021. This thesis finds that there are many forces that guide and direct how people talk in court and what they are permitted and not permitted to say; it finds that people resist these forces in creative ways; and it also finds that certain kinds of stories have more power and influence in court than others. Ultimately, this thesis reflects on the idea of "stolen stories" and its implications.

iv. Acknowledgements

Although I claim ownership of this thesis, in the spirit of one of its main underpinnings I must acknowledge its story as a shared production. I will limit these remarks to the people whose emotional and intellectual support most immediately enabled me to complete this project – although we are all an amalgamation of a lot more than just a few immediate people.

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Throughout my PhD, I continued working at a temporary accommodation unit for homeless women. The very aspects that make my colleagues, current and former, excellent support workers make them unconditionally selfless friends. I especially want to acknowledge Jane for her patience, ruthless humour, and (though she would never admit it) understated cheerleading; and my close-friend-become-manager,

Cass, who, in addition to acting as an emotional rock through many personal struggles, also aggressively carved out space in my work world for me to finish my thesis in the last few months.

I have too much for which to thank my parents and I struggle to keep to the aforementioned boundary of “immediate” support for this thesis. It is the life they fought to give me (wee post-communist Romanians thrown into the big world of the West) that acted as initial conceptual inspirations for this thesis. I also appreciate the support shown by my small extended family – that is, what was offered after the general and understandable remarks of “you’re *still* working on that doctorate?” And, finally, I would like to acknowledge the efforts of my cat, Riel, who many a time helpfully planted herself in my lap while I was writing and thus prevented me from leaving the laptop in moments of frustration. I forgive her now for not paying rent.

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Chapter 1: Introduction

> Adnan told me all he wanted was to take the narrative back from the prosecution, just as an exercise. So people could see his case without makeup on, look at it in the eye up close and make their own judgments. He told me, he doesn't think I should weigh in. (Koenig, 2014)

The "Adnan" in question is Adnan Masud Syed. The reported speech refers to words spoken during a phone interview from a Maryland prison in the United States, where Syed had been incarcerated for 14 years for the killing of Hae Min Lee in 1999. Syed had always maintained his innocence, but his story had faded into obscurity – until Rabia Chaudry, an attorney and family friend of Syed, approached investigative reporter Sarah Koenig for help to get his story heard. Claiming nothing but professional curiosity, Koenig began looking into the case and, in 2014, presented her findings in the debut of the podcast Serial. The story was told in 12 episodes, won a Peabody Award in 2015, and enjoyed wide international popularity online – from casual interest to amateur sleuthing.

Koenig portrays herself as an objective investigator weighing the evidence in favour of and against Syed. She presents "both sides" and regularly pleads suspension of disbelief and plays devil's advocate in her storytelling. The story comes in layers; her hook: there was an apparent alibi witness that Syed's lawyer had simply failed to pursue and produce at his trial. Koenig then takes the narrative of the prosecution and puts it to tests of common sense, rationality, and feasibility. She gets in her car and attempts to recreate the proposed timeline of the prosecution. She chases down witnesses and jury members and questions them. She approaches the forensic evidence as a novice and educates both herself and her listeners in the field, getting experts to weigh in. She questions everything from motive, to memory, to psychology, to professional competence – all in pursuit of the apparently accessible "truth" of "what really happened." And yet, at the end, she reports finding herself at a standstill, with very little about the case making any sense.

Near the end of Koenig's investigation, in episode 12, Koenig takes stock and asks Syed how he feels she should present the evidence to the audience; Syed replies with the above comment. His language is compelling. He suggests his fate is due not to the evidence against him, but due to the "narrative" told by the prosecution. What's more, this narrative was "taken away" from him, suggesting that it was in some way rightfully "his." He implies that the prosecution did something dishonest to the narrative – put "makeup" on it – which made it so the audience could not see it clearly – "look at it in the eye." The jury judged something, but it was not his narrative, the naked narrative, the real narrative. In essence, he suggests, the prosecution stole his story from him and corrupted it, which led to his false imprisonment.

This thesis engages with the myriad implications of statements such as Syed's, in relation to the aims and functioning of the criminal courts, through deep analysis of three different case studies – one of which is the trial of Adnan Syed itself. In these introductory remarks, I will present the rationale leading up to the main aims of this thesis, before mapping its scope and presenting an outline of the rest of the thesis.

To start with, I draw attention to Syed's request that Koenig not "weigh in" on the question of his guilt or innocence. She, as an investigative reporter, can choose to not "weigh in." We, as listeners to a podcast, can choose this too, if we are so inclined. But the criminal courts do not have that same luxury.

1.1 Narrative Ownership and Narrative Theft

It is far from a simple question to ask what the purpose of the criminal courts is, but it is certain at least that they need to "weigh in" on the issues presented to them. I refer here to what Smith and Natalier call the "common sense" perspective on the role of the courts: 'each party 'tells their story,' and on the basis of the evidence, either the judge or jury determines which version of events is true' (2005, p. 120). That is, in the general understanding of the courts, the aim is to identify the "truth" of a matter or "what really happened" from among the plurality of stories told, and, based on this, to make a judgement that delivers "justice" in some way. Some assumptions,

therefore, may be highlighted: the courts are a site for storytelling; these stories exist in a power play negotiated linguistically; and a "true" story exists and is identified during proceedings, which leads inexorably towards justice. Hence, we arrive at the three themes in this thesis title: language, narrative, and power.

The issues discussed in criminal court are, by nature, at the very least sensitive, often painful. A crime may have been committed, at least one person harmed, and at least one person facing judgment; it can hardly be expected that going to court as a victim, witness, or defendant (categories which I call in this thesis "lay participants" in court) will be an experience that elicits an abundance of positive emotions. However, research tends to highlight the harm caused by the process itself, to compound the negative emotions that inevitably arise in relation to the topics of discussion in court. A large body of historic and contemporary literature on emotions in court, often conducted through interviews and reports of lived experience, highlight that the experiences of lay participants in court are overwhelmingly negative – they experience confusion, anxiety, frustration, anger, embarrassment, etc. (e.g. Carlen, 1976; Conley et al., 2019; Fielding, 2013; Matoesian, 1993; Mulcahy, 2007; Rock, 1991). More recently, scholars have argued that these negative experiences constitute "re-traumatisation" or "re-victimisation" (e.g. Conley et al., 2019; Matoesian, 1993; Pemberton et al., 2018). Despite the consecrated commitment to truth and justice, academic literature suggests that, in the eyes of its lay participants, the courts often fail to deliver this to the satisfaction of those affected by crime.

However, curiously and of particular interest in this thesis, there is a certain phrase and variations thereof that pepper the language of this large body of literature. It has already made its presence known in this thesis twice: in what Syed reported, and in Smith and Natalier's (2005) "common sense" perspective on the role of the courts: participants do not feel proceedings delivered on their promise because lay participants were not permitted or able to "tell *their* story," to tell it "*their own* way," to "use *their own* words," etc. Even when not explicitly mentioned by interviewees, scholars summarize the effect using this possessive language as well, often marked orthographically with quotation marks to indicate its colloquiality or metaphorical nature (e.g. Eades, 2000; Fielding, 2013; Fridland, 2003; Halsey, 2017; Pemberton et al., 2018). Further language beyond possessive pronouns allude to a similar

phenomenon: Hall and Rossmanith describe stories as “imposed” on defendants (2016, p. 38), Eades (2000) suggests testimony is “hijacked” by lawyers (2000, p. 211), and Pemberton et al. (2018) categorise the forces that “reduce” victim narratives from their original (2018, p. 408). All throughout literature, possessive language relating to language and stories births the concept of narrative ownership; with it, the implication that the courts somehow take this away from individuals; and linked, as it is, to the negative experiences individuals so often report regarding court processes.

To unrightfully take something away – theft – is a harsh accusation to level at the courts, though it is not without precedent within literature on criminal justice processes. Most famously, in 1977 Nils Christie published his influential essay *Conflicts as Property,* whose morally neutral title belies the harsh accusations that this property, rightfully belonging to the defendant and the victim, is stolen by legal professionals in traditional Western legal systems (‘a deplorable outcome’ (Christie, 1977, p. 1)). Since then, Christie’s essay has become a foundational text for restorative justice research and community empowerment movements. Just over two decades later, a new scholarly sensitivity to language in the legal process led Conley and O’Barr, in the first edition of Just Words: Law, Language, and Power, to argue that if we are to search for how unfairness or inequity happen in court we must look at language – the currency through which ‘everyday legal practice’ takes place (Conley et al., 2019, p. 3). Indeed, *if* conflicts are stolen, the means by which this happens are linguistic; and, in the marriage of the two perspectives, we may then ask if it is *language* that is actually being stolen.

To take stock, we thus far have a wide literature highlighting the negative experiences of individuals going through the courts. We have suggestions from participants and scholars that these negative experiences have something to do with what happens with narratives in court. We furthermore have the highlighting of language as the means through which all things are done in court, including the telling of stories. And we have the question of whether these two things – language or narratives – may be said to be “owned” and subsequently “stolen.” Less explicitly but no less importantly, is the third element in the tripartite title of this thesis: power. After all, if something is stolen, it cannot be done without someone exercising power

over someone or something else. Thus, we arrive at the driving question of this thesis that combines a focus on language, narrative, and power: to ask whether "stolen stories" is an appropriate and useful metaphor to describe what happens in contemporary criminal courts.

1.2 Language, Narrative, and Power

It would be of great value to scholars if we may understand courtroom proceedings through the explanatory lens of "narrative theft." In the first instance, it would improve understanding of the dissatisfaction or even violation that many lay participants report with courtroom proceedings. There would furthermore be significant wider legal implications for courtroom processes. Are voices being heard? Is there something immoral about what the courts do with people's stories? Is evidentiary quality impacted? And how can truth and justice be pursued if the process does something dishonest or harmful to participants? This question regarding "narrative theft" served as a springboard for wider issues surrounding language, narrative, and power in the courtroom. Essentially, I ask next, what do we need to know about the concepts of language, narrative, and power in order to eventually answer a question about "narrative theft" in the courtroom?

Over the next few paragraphs, I will describe some implications of the driving question that led me to my broader research questions, thus defining some aspects about the scope of the thesis: specifically, I highlight observation as method of data collection, verbal interaction as object of research, and the criminal courtroom in adversarial systems as context.

First of all, what I have described from the scholarly research done so far is a finding related to subjective experience – individuals *feel* they aren't permitted to use their own words, or they *feel* their story was taken away from them. This reflects the dominant methodology of the literature in question, which has been based largely on post-hoc interviews with individuals that have been through the court system. This means that, while insightful, the findings are limited to what people intend to do, attempt to do, and think they are doing with words. It relies on implicit

understandings of what it means to own words or stories, why it is important to individuals, and why having it taken away is a bad thing. That is, it relies on a cognitive perspective which, while valuable, leaves the question of *how* this might happen unanswered. In this thesis, I do not seek to replicate this very thorough and definitive interpretivist finding or, indeed, offer a psychologically-informed explanation for "why" people feel this way. Instead, drawing on social constructionist perspectives, I seek to push the issue further:

What we know little about is *how* the phenomenon happens: can we actually see this proposed "theft" happening in real time? Certainly, if we could, it would offer a tangible site where, if reform were desired in order to improve fairness and equality in court, it could be enacted (Conley et al., 2019; Matoesian, 1993). Indeed, Conley et al. argue that 'reformers […] have been looking in the wrong places' (2019, p. 3) for real improvement by focussing on procedural reform (e.g. in cases of rape, rape shield laws), when the reality of revictimization lies in 'the linguistic details' of common strategies 'taken for granted in the adversary system' (2019, p. 3). Initial possibilities I considered early on in my research, very basically and instinctively, were whether we could see attempts by individuals to say something and being denied, if we could see interruption or silencing, or if we could see stories being changed from what the person initially says.

While these questions grew more refined (a process mapped out in this chapter as well as the subsequent literature review Chapters 2 and 3), they highlight a core element of my research: observation as method. Rather than replicating findings on what people intend to do or feel they are doing, the interest was on what they *are* doing – or, rather, what their language is doing. As such, a key assumption in this thesis is that words *do* things, and language deserves attention not for what it represents or reflects, but what it *does*. Two traditions – one focussing on narratives and one on verbal interaction – adopt this approach to language-use: Narrative Criminology (NC) and Conversation Analysis (CA).

If narratives are stolen *(verb, act)* we must first ask what narratives are told, how they are constructed, and then how they are deconstructed and reconstructed in a different form. This assumes narratives are not to be studied just as formally

complete and passive entities – e.g. in terms of genres or plot or characters. Rather, in the tradition of NC, this thesis will study stories as co-constructed entities emerging from interaction, and entities furthermore that *do* something: e.g. they create moral categories and they contribute to court outcomes. While this understanding of narratives has gained traction in other areas of criminological study, it has largely been neglected in the courtroom setting, which is a knowledge gap I seek to address. In doing so, furthermore, it will take the less common approach in NC of studying narratives as co-constructed between participants in criminal justice settings rather than co-constructed by participants with researchers in an interview setting (e.g. Kirkwood & Hamad, 2019; Mullins et al., 2022; Mullins & Kirkwood, 2021; Stokoe, 2010; Stokoe & Edwards, 2008).

Secondly what becomes clear is that this is a question about interaction, and more specifically verbal interaction. Thus, I draw heavily on the tradition of talk-in-interaction or Conversation Analysis for my analytic tools; i.e. in essence, I apply the tools of CA in the analysis of the NC concept of narrative ownership. In the latter part of the 20th century and around the turn of the century, a number of scholars explored the altered rules of courtroom talk as compared to everyday talk (e.g. Atkinson & Drew, 1979; Heritage & Drew, 1992; Matoesian, 1993, 2001; Pomerantz & Atkinson, 1984). Adding to this body of work, I ask in this thesis how these rules are instrumentalized by participants: *how* do people navigate courtroom expectations for talk, *how* do they construct the context through their talk, and, ultimately, *how* do they exercise linguistic power from their relative positions to fight for ownership over words?

Both of these traditions and what they say about the relationships between language, narrative, and power will be explored in more detail in Chapters 2 and 3. Briefly, I will also highlight a particular concept from CA that emerges as crucial to the consideration of “narrative theft” in an NC tradition. The descriptions above introduce the concept of “rights” – rights to speak, to narrate, and then the rights to be heard, acknowledged, accepted. This is the study of epistemic authority in interaction. Research on epistemics – or ‘the knowledge claims that interactants assert, contest and defend’ in talk (Heritage, 2014) – has received little-to-no explicit attention in the context of courtroom talk, despite the fact that the courtroom is a

social context with clearly power-dependent altered rules for talk; this, too, is a knowledge gap this thesis will address.

Following these few words on what I do in this thesis, I also offer a few on what I do not do, with the aim of clarifying my objectives further. I do not seek, in observing interaction, to access what people want to do or why – i.e. I do not take a cognitivist approach. Rather, through the analytic tools provided by CA, what observation can offer is an understanding of how interlocutors negotiate meaning with each other, how participants perform actions in response to previously performed actions, how they present their words and how these are received, how interlocutors mark the aspects of what they are saying that are important, how the "message" changes, etc.

I also do not presume to make some kind of blanket statement on any one type of courtroom process or in one particular jurisdiction; the findings will refer to insights on interaction rather than on legal categories. In terms of context, I focus specifically on trials in traditional Western adversarial systems. While a choice largely dictated by issues related to data access (see Chapter 4), the topics and approach taken in this thesis were perhaps most pertinent in this particular context. Firstly, literature tends to suggest that the phenomena outlined above are lessened in other kinds of systems and processes, such as inquisitorial systems, problem-solving courts, or even civil courts (e.g. Conley & O'Barr, 1985; Jeffries & Bond, 2014; Schaefer & Beriman, 2019; Wiener & Georges, 2013). Thus, in order to highlight issues related to language, narrative, and power, it is most appropriate to study the themes in traditional courtroom settings. Secondly, if 'resolution' of a case refers to agreement, as Smith and Natalier suggest, then, structurally, it is trials that are most unsuited to this, creating, as they do, 'a winner and a loser' (2005, p. 120). It is in this arena of explicit "contest" that we may best see how power is exercised over language and narratives.

In brief summary, the broad aims of this thesis were to explore the interplay between the themes of language, narrative, and power in the criminal courts. Given existing literature, this was organized conceptually and analytically into "Narrative and Power," drawing primarily on NC, and "Language and Power," drawing primarily on CA. This structure will be reflected throughout the thesis, in the literature review

chapters, in the research questions, and in the empirical chapters. Ultimately, my goal was to bring these two traditions together (NC and CA) to comment on the appropriateness of the metaphor of “narrative theft” to describe what happens in court.

To address these aims, I have focussed on three case studies comprised of three different trials: the trial of Adnan Syed in the United States in 2000, the trial of Derek Chauvin in the United States in 2021, and a trial that happened in New Zealand in 2021. With a focus on verbal interaction, I studied how linguistic power is exercised by different parties and subsequently negotiated in legal-lay interaction, with the aim of describing the dynamics of epistemic authority. Conceptualizing epistemic authority as “rights to speak and be heard” or “rights to tell certain stories,” I have studied the impact of these verbal dynamics on storytelling, in terms of what stories are told, how they are told, and how they are de-constructed and re-constructed.

1.3 Thesis Outline

Chapter 2 is a review of literature on “Narrative” and “Power” in the courtroom context. This primarily explores insights from the nascent field of Narrative Criminology, although it branches out to other disciplines in which the themes are relevant. It explores the tension between the metaphor of narrative ownership, in terms of the importance of telling one’s story in one’s own way in a criminal justice setting, and the insights from NC into the nature of narratives as something co-constructed and context-dependant rather than owned. Notably, the courts have a very small presence in NC and I begin to map out what position such research can have within the field.

Chapter 3 is a review of literature on “Language” and “Power” in the courtroom context. Unlike narratives and storytelling specifically, there is a wealth of literature on language-use in courtroom-based research. Two traditions emerge: the first, drawing on Conversation Analysis, describes linguistic patterns in the courtroom and how these create and re-create the social context; and the second, more recent,

drawing primarily on sociolinguistics, focuses on social disempowerment of individuals and how language is used to reinforce existing social inequalities.

Consideration of “language” and “narrative” each alongside “power” suggests some ways in which each term can be understood. While I do not attempt to offer any simple or definitive definitions of these three very broad terms, at the end of these literature review chapters I will offer some reflections that will be of relevance to the rest of the thesis, followed by my research questions.

Chapter 4 presents the methodology of the thesis. The chapter begins with a description of the access difficulties related to obtaining data on verbal interaction in the courtroom, particularly in light of the Covid-19 pandemic. Ultimately, a case study approach was taken, each with slightly different data sources: legal transcripts for the Adnan Syed trial; publicly available video broadcasts for the Derek Chauvin trial; and a virtual ethnography for the New Zealand trial. The benefits and limitations of each data collection method, as well as ethical considerations, are explored. Analytic tools, such as key concepts in CA, are also described in this chapter.

Chapters 5-7 present the three cases and analyse each in terms of the aims and objectives of the thesis as described above. Chapter 5 focuses on the trial of Adnan Syed; Chapter 6 on the trial of Derek Chauvin; and Chapter 7 on a trial that took place in New Zealand. The analysis draws on tools from Conversation Analysis and Narrative Analysis, and focuses on how narratives are constructed, deconstructed, and reconstructed in interaction, how language is used in interaction to exercise power or control testimony, and how rights to speak or narrate are negotiated in interaction.

Chapter 8 is a discussion that brings together the three case studies and explores wider insights into language, narrative, and power in the courtroom. Three main findings are explored: the hierarchy of epistemic authority built into courtroom interaction; the phenomenon of “witness resistance” to the terms of this approximate hierarchy; and the role of tropes (defined in Chapter 2) in organizing and constituting courtroom storytelling. At the end of this chapter, I return to the question of “narrative

theft” and suggest some ways this thesis has contributed to the study of the matter. Limitations, implications, and future research directions are also discussed.

Finally, chapter 9 is a short conclusion that offers some personal reflections on the research conducted in this thesis as well as possible re-conceptualisations for future research.

Chapter 2: “Narrative” and “Power”

2.1 Introduction

> Crimes involve physical actions, of course, but these actions are morally neutral processes that become criminal only when the events are imbued with meaning via a narrative. (Maruna & Liem, 2020, p. 126)

Definitions of the term “narrative” within the social sciences have been varied and contested, but the ‘imbu[ing]’ with meaning is a commonly cited aspect (along with an element of temporality). Presser, for instance, distinguishes a narrative from other types of discourse by writing that it is a ‘morally suggestive statement’ about events (Presser, 2016, p. 138); while Sandberg and Presser argue more colloquially that they inevitably ‘mak[e] some point’ (Presser & Sandberg, 2015c, p. 2). If narratives indeed, by their nature, suggest meaning, then the courtroom is where these meanings are proposed, evaluated, and ultimately judged.

Within the social sciences, it is common to identify a “narrative turn” in the second half of the 20th century (e.g. Czarniawska, 2004; Goodson & Gill, 2011; Polkinghorne, 1988), often referring to a shift in scholarly epistemologies across a broad range of disciplines from studying the social world through positivist approaches to understanding it through narratives and stories. Within this context of a “narrative turn,” Criminology came to this shift relatively late. Lois Presser coined the term Narrative Criminology (NC) only in 2009 (Presser, 2009) and reviews and collections only began to proliferate in the following decade (e.g. Halsey, 2017; Maruna & Liem, 2020; Presser, 2016; Presser & Sandberg, 2015b; Sandberg & Ugelvik, 2016).

In terms of mapping the boundaries of the field of NC, the potential – based on its theoretical principles and calls by scholars – is broader than the practice has been thus far: e.g. ‘a clarion call for criminology to take stories seriously in our study of human lives’ (Maruna & Liem, 2020, p. 126); or any study of the ‘multiple

connections between stories, storytelling practices, and life' (Sandberg & Ugelvik, 2016, p. 133). While individual studies have approached this call in creative ways, Maruna and Liem have identified two significant traditions that have emerged thus far: narratives in desistance studies, in terms of the role of narratives in leading people to desist from crime; and narratives in victimology studies, in terms of the role of narratives in surviving serious harms. In both traditions, narratives are studied not only in terms of how they make sense of a person's past but also how they guide future action (Presser & Sandberg, 2015a). More specifically, the practice of NC has focussed on self-narratives – stories told by individuals about their own experiences of harm – usually elicited in interview-based settings between research participants and researchers. Presser and Sandberg called for 'expanding the methodological toolkit,' including by studying 'storytelling in context' (2015a, pp. 289–290) – a call this thesis takes up.

Thus far, very few NC studies study narratives in construction between participants within specific criminal justice contexts – some exceptions in criminal justice social work will be reviewed later in this chapter. Even within this approach, however, the specific context of the courtroom has been particularly neglected; and it is the position of this thesis that studying narratives in courts is very valuable. After all, according to Maruna and Liem's observation above, if what narrative does is give moral significance to physical events, where else is this more important than in a social context whose *raison d'être* is making decisions regarding morality? In this introductory section I will emphasize first the importance of courts to the study of narratives, as suggested by research that has focussed on narratives outside the context; before mapping out some theoretical potential for the study of the courts within NC; and finally presenting the specific approach this thesis takes.

First of all, even if the focus were to remain on self-narratives, the significance of courts needs to be considered. Though they themselves focus on prisoner self-narratives post-sentencing, Hall and Rossmanith (2016) remark on the importance of the way narratives are constructed in court to the understanding of the self-narratives that prisoners then construct, deconstruct, and reconstruct in custodial settings: 'If, at the time of the police investigation, the official legal narrative is constructed, it is during court processes that this story is sutured to the offender' (2016, p. 43). One

offender, who was narratively constructed by the judge as ‘a violent young man’ with no rehabilitative potential, said that ‘the judge’s words sent him into a deep despair [and] in no way reflected the complexity of the offense and his feelings about it’ (Hall & Rossmanith, 2016, p. 39). Fleetwood (2015), in a similar discovery, conducted interviews with female prisoners in Ecuador and observed that construction of narratives in prison is often made as a “pushing back” against the narrative imposed on them in courts. The story told in interviews in post-court settings thus is often constructed in relation and reaction to this ‘acceptable legal narrative’ (2016, p. 39). In other words, the trial is a watershed moment in the self-narratives of participants, constituting the moment that the myriad stories of “what happened” are essentialized into one official legal narrative. This legal narrative has significant impact on victims and people who have been convicted of crime after court, making it valuable to study how the stories are constructed in court in the first place.

As for suggesting how we may study narratives in court, one need only return to a core tenet in NC: that there is a crucial distinction between NC and other studies of narrative within Criminology. The latter ‘value stories […] for their capacity to tell us about something else’ (Presser, 2016, p. 141); in this ‘representational view’ (Presser, 2016, p. 141), narrative is only a ‘delivery system for other data’ (Presser, 2016, p. 142). In courtroom-based studies, for instance, language and narratives have for decades been studied in terms of what they reveal about emotions (Bens, 2018a, 2018b; Dahlberg, 2009; Rock, 1991), judicial discretion (Emerson, 1969; Harris, 2007; Paik, 2011), or control (Carlen, 1976; Cicourel, 1976; Rock, 1991). In other words, narratives have been studied for their ‘factual content’ (Maruna and Liem, 2021, p.128) and what is communicated. In contrast, NC takes a constitutive view of language and narrative: ‘narrative criminologists are interested in what stories *do* […] and not principally in what they *reveal’* (Presser, 2016, p. 139). This is a conceptualization that runs through this whole thesis and will come up again in the next chapter on “language” and “power.” In this vein, a few court-based studies have been conducted in NC: Barrera (2019), for instance, showed the key role that narratives play in decision-making processes throughout the criminal justice process, while Offit (2019) studied the narrativization of cases by legal professionals in preparation for trial and how lawyers attend to nuances in the presentation of evidence.

But considering what stories *do* opens up much richer potential for courtroom-based studies. Narratives are ubiquitous in court. The cases of prosecution and defence constitute competing narratives (Felton Rosulek, 2014; Offit, 2019), proposed in opening and closing statements as a cohesive sequence of events with a clear beginning, middle, and end, as well as a moral evaluation, leading inexorably to a court outcome of guilty or not guilty. Beyond opening and closing statements, the orality principle – a cornerstone of common law procedure in many jurisdictions – dictates that presentation of evidence is done through the privileging of first-hand narrative accounts by witnesses (Jackson, 2023). Beyond that still, the moral character of participants is constructed narratively, mitigating and aggravating factors in sentencing are presented through storytelling, and even presentation of forensic evidence is often presented in a temporally ordered fashion. In terms of what stories *do* in court, at the very least they construct judgeable characters, they imbue action with moral evaluation, and they (help) determine court outcomes.

In terms of how this thesis will address narratives, I emphasize Sandberg and Ugelvik's (2016) link between narratives and harm. In the context of a criminal trial, the stories laid out by legal professionals may be seen as "proposals" for how a series of events may constitute harm and criminal responsibility. Far from a criminal case being a simple enumeration of straightforward facts (or evidence), facts are woven into a narrative, where legal and moral meaning is assigned to behaviour and to people. What I do in this thesis is study how these proposed stories are constructed, how they are imbued with meaning, how they are made plausible through linking to evidence/ facts, how they are made to have the characteristics NC recognizes as being important (such as coherence or unity), and how they are made convincing within the social context of a trial.

Given the dearth of NC studies on the court, this chapter will carve out some space for this. It will engage with NC literature and occasionally literature on narratives outside NC, approaching the relationship between "narrative" and "power" in two senses. The first sense is what the concept of narrative ownership can mean, in terms of power being exercised over narratives. While there is an initial normative sense in which narratives are owned, in Criminology more broadly and in public

discourse, this is challenged by ideas in NC on co-construction and rewriting of narratives. This leads to an emerging focus on how participants in a conversation negotiate rights to narrate certain stories and thus the study of epistemic authority. The second sense of the relationship between "narrative" and "power" addressed in this chapter is a review of a few characteristics that make narratives "powerful" in court, with a view to setting up the analysis in this thesis – how these characteristics are "created" in interaction.

2.2 Narrative Ownership

2.2.1 The Normative Model with a Moral Valence

Pemberton et al. (2018) propose that stories related to crime are the "property" of those who experienced them and argue that "narrative ownership" is a concept of key value to victims of crime. Exploring the ways victim narratives are constructed in relation to outside forces in the criminal justice system, they find that victims often experience storytelling as a therapeutic practice and that, for them, the strength of their story is derived from its uniqueness rather than its resemblance to other situations of harm. Furthermore, there are forces that pressure victims to "change" their stories, according to the needs of other parties involved in criminal justice processes, such as the interests of the accused or the process of "victim-blaming." Notably, certain actions such as apologies from those who have harmed them have the power to aid recovery from harm for victims. In this sense, the apology acts as acknowledgement and acceptance of the rights of victims over their stories and subsequently empowers them.

Pemberton et al. (2018) write in the tradition of Narrative Victimology, which may be conceptualized as a tradition branched off from Narrative Criminology but developing its own focus and frameworks (Fleetwood et al., 2019). As such, while narrative ownership is an explicit metaphor in their research, it is not characteristic of NC more broadly. A distinction must be made between possessive grammar indicative of relationships between people and things – which is inescapable in language – and

the actual conceptualization of narratives as “owned.” In this section, I will briefly explore narrative ownership as a possibility emerging from some research within and adjacent to NC, rooted in wider Criminological thought. However, I emphasize that this is a minority concept, and in the following section I will emphasize more prevalent ideas from NC of narratives as something fluid, multi-voiced, and co-constructed that cannot be said to be “owned.”

Grammatically, possession is pervasive in the language of studies on narrative in the criminal justice context. Halsey (2017), as just one characteristic example, discusses stories as something that belong to offenders, using: the possessive clitic ‘‘s,’ as in ‘placing offenders’ words prominently on the page’ (2017, p. 633); possessive personal pronouns, as in ‘when people tell their story’ (2017, p. 644); the possessive preposition ‘of,’ as in ‘offender-based accounts of criminal behaviour’ (2017, p. 634); the simple juxtaposition of nouns, as in ‘offender narratives’ (2017, p. 634); or, even, the word ‘own’ as an adjective or adverb, as in ‘their own words, using their own sense of time, place, and significance of events’ (2017, p. 638).

This language of narrative ownership also characterizes some court-based studies. Fielding’s (2013) interviews with lay participants in English courts reveal a number of common emotions such as anxiety and frustration, which both the participants and Fielding himself attribute to the fact that lay participants are prevented from providing cohesive narrative testimony or from narrating “their own stories” in “their own way.” As Fielding argues, courtroom processes ‘make lay participants frustrated bystanders to events in which they were the central players’ (2013, p. 287). Studies on silence and silencing in courts similarly assume ownership of narratives: Eades writes that the silencing of the witness meant she was ‘not free to construct the story in her own way’ (2000, p. 171); Ehrlich argues that these silencing techniques cause a victim to “lose [her] voice” (2013, p. 189); and Fridland studies silencing as ‘reduc[ing] the alleged victim’s ability to tell his own version of events’ (2003, p. 121).

While difficult to say in what way stories are “owned,” given its presentation as universally accepted or commonsensical, there are subtle differences in how the concept is applied to stories of people who have been convicted of crime as compared to stories of victims of crime. When ownership language is applied in

studies of individuals convicted of crime (especially as a verb, “to own,” rather than an adjective, “own property”), it is often synonymous with admitting agency, accepting responsibility, and expressing remorse – sequential ideas that the criminal justice system understands as the convicted perpetrator “taking ownership” of the narrative. Hall and Rossmanith make explicit the synonymity of ownership with expressing remorse in the case of convicted perpetrators through a parenthetical definition following narrative: ‘when an offender gets into the witness box and tells his story (that is, when an offender gives evidence of his remorse […]’ (2016, p. 44). McKendy similarly notes that, to the criminal justice system, convicted perpetrators need to think of themselves as ‘authors of [their] own actions’ (2006, p. 474), suggesting that narrative ownership means accepting responsibility.

Narrative ownership often has a different meaning in victim studies. As McKendy (2006) discusses them, the stories people convicted of crime tell are not developed in their minds prior to the criminal justice system’s imposition of the official narrative; their “own” narrative is developed afterwards and in combat with the official one. In the case of victims, there is a sense that their stories are their own from the beginning and they are subsequently “taken away” during the criminal justice process. Pemberton et al. writes about victims needing to ‘retain narrative ownership’ (2018, p. 2) – “retain” rather than “reclaim” or “reconstruct.” As such, ownership tends to refer to authority (they are the ‘rightful owners’ (2018, p. 10) of their narratives) rather than responsibility.

Despite these subtle differences, in both senses there is a positive valence to the concept of narrative ownership. Whether it is convicted perpetrators taking responsibility for their actions or victims being heard and acknowledged as the harmed parties, it is of psychological value to both and essential to both “moving on” from the crime – whether for those convicted of crime to go on to build non-offending identities or for victims to continue living after being harmed. Corollary, when this ownership cannot be granted, maintained, or enacted, this has a negative moral valence.

While rarely alluding directly to Nils Christie’s highly influential work on stolen conflicts (1977) presented in Chapter 1 of this thesis, the language is inescapably

reminiscent: if conflicts are stolen, and the mechanism by which this happens is linguistic, then narratives, too, are stolen. In particular, the moral undercurrent of Christie's arguments – i.e. it is a "bad" thing (wrong, unfair, or damaging) that the criminal justice process steals conflicts – lingers in the literature on narrative ownership, turning the issue into one of stolen narratives.

2.2.2 Co-Construction and Re-Writing of Narratives

> We are only co-authors of our own stories. (Pemberton et al., 2018, p. 406)

NC, as a tradition, has found that people's self-narratives are far from monolithic. That is, they are not static pillars of meaning with a single teller of an unchanging story that is somehow owned by the person. It is a frequently cited challenge for NC and for narrative studies in the social sciences more generally – or, at least, a characteristic that requires critical consideration: the simple fact that people's narratives are not static, immutable, or, indeed, ever formally complete. As Presser and Sandberg ask at the end of a significant collection of emergent NC works: 'how can we pin down any stories [for study] when they do not sit still for analysis but rather are always generated in and through social encounters?' (2015a, p. 287).

Exploration of narratives in NC hinges on acknowledgement of the various forces that make narratives the opposite of simple albeit intangible things that can be owned: the influence of research design on what stories are told and how they are told (Brookman, 2015; Sandberg, 2010); the wider 'cultural narratives' or discourses drawn upon for individual narratives (Sandberg, 2010, p. 448); the 'multiple voices' of each narration (Fleetwood et al., 2019, p. 21); etc. In simpler terms, narratives are 'dialogical' in nature (Fleetwood et al., 2019, p. 20) and, rather than emergent, co-constructed by participants in interaction.

People's narratives differ from one telling to another. This happens, as Linde (1993) points out, even without a literal audience or co-author: even when we tell our own stories to ourselves, every episodic account is retold in an endless iterative process of integrating into our ever-changing life stories, to be made coherent and consistent

with how we think about ourselves and account for ourselves. More importantly to NC and the social sciences, however, is that the stories people tell depend on the audience and the social context of their telling. As Presser succinctly argues: 'stories are always made *for* (and on) occasions of use, and they are subsequently *remade* for occasions of presentation' (2010, p. 433). As this thesis focuses on the courtroom, the following section will review work on the impact of *context* – social, institutional – on co-construction of narratives.

The fact that people's stories are context- or audience-dependent – occasioned and co-constructed – has presented concerns to researchers when questioning how their presence, identity, or position of power over research participants may influence what stories participants tell and how they tell it – while some reflections on this exist, they remain under-interrogated (Kirkwood, 2016; Mullins & Kirkwood, 2021). A few exceptions to this may be noted: Brookman (2015) reflected on the impact of research design and participant selection on the types of stories told; Presser (2004) reflected on how research participants tailored their stories to her gender and status as a researcher; McKendy (2006) noted how participants managed their stories in relation to anticipated or perceived judgment from him as a researcher; and Carlsson (2012) emphasized how categories imposed by researchers may bias or distort the narratives told. While important to make these critical observations, these elements cannot simply be "removed" from the data, as if there were some core, underlying, "true" story, unmediated by context or audience.

This fact that interaction is context-dependent has led some researchers to advocate for the study of interaction *in situ* – how narratives are co-constructed in interaction in particular naturally-occurring institutional settings, where social actions performed by participants differ from those enacted at interview (Kirkwood, 2016). One case for this approach is simply that the stakes are higher for participants in naturally-occurring institutional settings as compared to participants in research settings (Stokoe, 2010). But the practice of studying interaction in criminal justice contexts – though still a small and developing field (Mullins et al., 2022) – has had diverse contributions, e.g. how interaction at a conversational level influences narratives and actions at a more macro level; or how certain aspects known to have a relationship with achieving institutional goals (such as the function of warmth and respect in

creating effective relationships (Mullins & Kirkwood, 2022)), rather than being qualities of person are in fact actions created in interaction.

While the work in this tradition is broader (for a review, see Mullins et al., 2022), in this short section I will review some of this literature through the specific lens of "narratives." I begin with a short disclaimer. In the previous section, I highlighted how Pemberton et al. (2018) advocate for a normative model of narrative ownership. Their comment at the beginning of this section demonstrates that the acknowledgment of the co-constructed nature of storytelling does not preclude the normative sense of ownership: stories may still be considered "our own" even as their telling is joint and occasioned (as in 'co-authors'). Nevertheless, the co-constructed nature of narratives gives the normative sense more dimension, especially in terms of the moral valence of the issue.

Some of the work in this field may be cast as literature on narrative commencement, or what aspects of language-use prompt engagement or narration from participants. Heritage et al. (2007), for instance, demonstrated how the structure of 'any' as in 'is there anything else' in medical settings is negatively polarised and projects a 'no' response while 'something else' elicited further information on unmet concerns (2007, p. 1430). Sikveland & Stokoe (2016), studying mediation services, demonstrated how a question of whether people were 'willing' to engage was more effective in eliciting engagement as compared to asking if they think it might 'help' them or if they were 'interested' in the support offered (2016, pp. 245–246). Heritage and Watson (1979) demonstrated how 'formulation,' or narrative summaries of the gist of a matter, can better achieve institutional goals (1979, p. 123).

In terms of narrative construction, Stokoe (2010) and Stokoe & Edwards (2008) have done research on interactions between police and suspects in UK-based interrogations. Stokoe (2010) used membership categorization analysis to show how male suspects of assaults on women narratively create categories of the kind of men who would attack women and men who wouldn't, aligning themselves with the former category of men; these narratives are often prompted by police officers' non-categorical questions and indirect prompts, constituting co-construction of narratives. Similarly, Stokoe & Edwards (2008) explored how "silly questions" by officers initiate

courses of talk that create representations of the suspects' state of mind or intentionality – often, interestingly, to the result of creating affiliation and agreement between officers and suspects.

Over the past few years, Mullins, Kirkwood, and colleagues have also conducted extensive research on narratives co-constructed in criminal justice intervention programmes for people convicted of crime (e.g. Kirkwood, 2016; Kirkwood & Hamad, 2019; Mullins et al., 2024; Mullins & Kirkwood, 2019, 2021, 2022, 2024; Mullins, 2019). Schröck and Padavic (2007) also performed research in this gendered context, showcasing the interactional processes through which versions of masculinity – particularly hegemonic masculinity – are constructed. A particular interest, in a gendered context such as sexual offending but also in other contexts, has been how desistance narratives are co-constructed, through the performance on the parts of people convicted of crime and groupwork coordinators of actions such as shame, risk, warmth, and praise in interaction (Mullins et al., 2024; Mullins & Kirkwood, 2019, 2022, 2024).

Of particular interest in some of these studies have been strategies people convicted of crime use to apparently "mitigate" their crime, which I mention here for its implication that stories coming from individuals are somehow distorted from reality. The implication is that their ownership of the stories they tell is questioned and need to be "rewritten" in social work interaction. There is general agreement that narratives of people convicted of crime tend to distance the individual from the crime, attributing offending behaviour to situational and external factors rather than taking responsibility and accountability for the behaviour (e.g. Maruna, 2001). These are sometimes termed "cognitive distortions," with a strongly negative moral valence. However, there is strong critique in the tradition under discussion of the idea that this is a moral problem, arguing, rather, that this tendency may form part of preserving a core moral self and therefore creating desistance narratives and non-offending identities. The concept of 'cognitive distortions' – particularly with a negative valence – in evaluation of such interactions has been critiqued explicitly (Auburn, 2010; Auburn & Lea, 2003; Waldram, 2010) and also implicitly (Schröck & Padavic, 2007; Stokoe, 2010).

Evaluations on distortions in offender thinking and therefore the narratives they tell suggests that, in contrast to evaluations of victims' stories, there is not so readily a tendency to view narratives as "owned," that individuals have privileged authority over their own experiences, or that narrators have some kind of ultimate authority over their stories simply by dint of having been the one to experience them. Furthermore, there is not such ready belief that co-construction of narratives has a negative moral valence and therefore that intervention from someone who did not experience events first-hand constitutes "theft."

In fact, there is often a positive valence to the idea of re-writing individuals' narratives. In narrative psychology, according someone else authority of narrative over one's "own" story can be of therapeutic value: '[a]nalytically, narrative psychologists search for this narrative, and in treatment the emphasis is on changing this self-story' (Sandberg, 2013, p. 71). The rewriting of narratives, or 're-story[ing]' (Mullins & Kirkwood, 2021, p. 317), is at the heart of both desistance (people convicted of crime) and recovery (victims) research: people convicted of crime must write a redemption script for themselves before desistance may occur (Maruna, 2001) and victims must reinterpret the meaning of the crime in order to move on (Walters, 2015). It is, perhaps, the 'imposition' of a different narrative, as the legal system is seen to do (Hall & Rossmanith, 2016), rather than collaborative, gradual, and consensual co-construction, that might be the source of the psychological distress lay participants experience. This reflection on the co-construction of narratives and the challenging of normative ownership leads me to a discussion of what "rights" people have over events they experienced "first-hand."

2.2.3 Privileged Access and Epistemic Authority

> My main intention is to position each interviewee as a figure of authority over their own lives and myself as novice or student of *their* story. (Halsey, 2017, p. 639)

What makes possible the normative model of narrative ownership as well as the study of how narratives are co-constructed in interaction are insights from the field of

talk-in-interaction or Conversation Analysis (CA) – particularly the concepts of privileged access and of epistemic authority. Both, I will argue, after offering a brief introduction to them, are particularly salient in the courtroom context; and both will be explored in more detail in the next chapter.

The normative model of narrative ownership echoes a commonly accepted precept from the field of conversation analysis (CA): interlocutors usually treat each other as having special access to their own first-hand experience (e.g. Heritage, 2014; Heritage & Raymond, 2005; Pomerantz, 1980; Raymond & Heritage, 2006; Sacks, 1984). That is, in interaction, if I have experienced certain events first-hand and the other conversant has not, the conversant typically treats me as having greater authority than them to tell the story – essentially, both conversants agree I "own" the story. Additionally, participants with first-hand experience not only have special access to this type of knowledge, but they also therefore have special rights to narrate them. The negotiation of these rights to narrate, in co-construction of sequences of speech, is the study of epistemic authority.

Types of knowledge are in an implied hierarchy in terms of telling rights; several versions of this hierarchy have been proposed but they all orient themselves around the concept of privileged access. For instance, Raymond and Heritage describe the way interlocutors constantly manage different 'epistemic rights' (2006, p. 685) in conversation, based at least in part by whether access is 'first-hand and immediate' (the person has actually experienced that which is discussed) or 'second-hand or mediated' (the person has perhaps heard information about the topic from someone else but not experienced it first-hand) (2006, p. 684). Pomerantz (1980) describes types of 'knowables,' where Type 1 knowables are first-hand or directly experienced and Type 2 knowables are derivative, hearsay, or otherwise indirect. Kamio (1997) describes domains of information on a scale from 0, which is highly distant from first-hand knowledge, to 1, which is close and 'possessed' by the speaker. While these scholars use different terms and measurements, the emphasis is on the idea that individuals treat each other in interaction as having greater rights over knowledge that is first-hand.

These basic observations surrounding privileged access and its influence over hierarchies of epistemic authority have been rightfully challenged by several scholars and they are far from a "rule" of interaction. Atkinson offers a strong critique of the idea that participants have privileged access to their own experiences; it would 'not be right,' he writes, 'to assume that autobiographical accounts thereby become privileged kinds of data, with greater or different claims for authenticity' (1997, p. 341). He adds that 'narrative does not provide a hyperauthentic version of actors' experiences or selves' (1997, p. 343). Indeed, in the section above on co-construction of narratives, concepts such as "cognitive distortion" or the acceptability of supporting people to "re-write" their own narratives would not be possible without a challenge to the idea of privileged access to first-hand experience.

Certainly, interlocutors in second-position may rightly claim greater authority over even a person's first-hand experience. Sandberg (2013), for instance, offers an analysis of the manifesto of Anders Behring Breivik, who carried out two terrorist attacks in Norway in 2011. The manifesto, made public by Breivik just prior to the attacks, contained Brevik's self-narrative as accounting for his actions. But Sandberg hardly treats it as an uncritical and authentic story – as somehow factually "true": '[Breivik] states that his business adventures in the early 2000s were motivated by the need to raise money to mount the attacks, while according to friends he was obsessed with the idea of becoming rich' (2013, p. 73). What makes Sandberg's doubt possible is the fact that sense-making in life narratives is often retrospective – particularly in writing – and any number of issues related to memory, retrospect bias, or psychological distortions may erode our "rights" to "our" story; many apparent "facts" may be sacrificed to the pursuit of coherence and impression management.

In brief summary, in these few sections I have highlighted two ideas that are related but exist in tension, with bearing on the concept of "narrative ownership." In NC, narratives are not treated as somehow hyperauthentic accounts of a person's experiences. As Presser writes, 'we wonder about the impacts of stories; it matters little whether they are "true" or "false"' (2016, p. 139). Indeed, a lot of criminal justice social work or other psychological intervention would not be possible if people somehow "owned" their stories about their personal experiences in a pure way. Despite this, however, there is a tendency – with however many exceptions – for

participants to treat each other has having some kinds of special rights over their own experiences, as CA shows. Indeed, I refer back to Halsey's comment at the beginning of this section – that he reports wishing to position a research participant 'as a figure of authority over their own lives and [him]self as novice or student of *their* story' (Halsey, 2017, p. 639). Whether as an ideal or an instinct, these two ideas co-exist and form the basis of the analysis of epistemic authority in this thesis.

The concept of epistemic authority – how rights to narrate certain knowledge are managed in interaction – has not been explored in any detail in courtroom literature. However, if epistemic authority is managed based on certain aspects in everyday conversation (e.g. primacy of experience as described above, hierarchies in family relationships (Heritage & Raymond, 2005; Raymond & Heritage, 2006), or indeed anything else that might affect a person's ability to lay claim to knowledge such as personality, mental health, or social inequalities), in institutional contexts it becomes more salient. The ways in which the rules governing the negotiation of epistemic authority are different in the courtroom context as compared to everyday conversation are many, and I offer a few examples below.

In the courtroom context, there is an unusual situation in which a professional party that did not experience the events (the lawyer) is allocated certain narrative power disproportionate in comparison to everyday interaction; thus, the challenge to the concept of privileged access is structural. Furthermore, the same event may be told through multiple first-hand experiences, which differ among witnesses, so questioning privileged access is in the very design of the interaction (most obviously in cross-examination). There are also different sources of testimony and professionals manage the different levels of authority (e.g. expert witnesses granted more authority even if what they narrate is opinion rather than first-hand experience). And, finally, there is "banning" of certain forms of knowledge such as hearsay, which is not so rigidly controlled in everyday interaction. These brief observations will be critiqued in more detail in Chapter 3, but I mention them briefly to highlight how the very setup of courtroom interaction creates different expectations regarding narratives as compared to everyday conversation.

I have thus far in this chapter highlighted narrative ownership in NC as a valuable – but problematic – concept. There is a sense in which it is assumed to exist in certain NC contexts, but, equally, it is challenged by others. The concept of privileged access from CA in one sense makes the idea of narrative ownership possible. However, in the courtroom context, the challenge to privileged access is built-in to interaction. Given the different rules governing talk in the courtroom context, epistemic authority becomes very important for study in this thesis. What emerges here is a different sort of right – not just the right to claim knowledge or the right to narrate it, but also the right for these to be accepted by another party; the right, in other words, to be believed, which is far from straight-forward in the courtroom context. In the following section, I consider some aspects of the "believability" of narratives, in terms of what makes narratives "powerful" or convincing.

2.3 "Powerful Narratives"

> The Rabbi hears in his study a dispute between two congregants. He listens to the first person carefully and comments, "You're right." Then he listens to the second person and concludes, "You're right." The Rabbi's wife, overhearing it all from the kitchen, calls out, "They can't both be right." "You're right also," says the Rabbi. (Minow, 1996, p. 35)

The ultimate aim of a court case is to arrive at the "truth" of a matter. Many different first-hand accounts are heard in a trial, but only one narrative emerges as the official narrative, considered "the truth" of what happened, whether this is one party's version or an amalgamation of various stories. Therefore, one sense in which narratives may be powerful in court is that they are "believed." In the following section, I will review some of the literature on what makes narratives or narration styles "powerful," in terms of their internal qualities: what aspects of the narrative or the narration style themselves influence their apparent "believability"? While many elements may be identified in the literature, I focus on a few that have particular bearing on issues of "truth" – coherence and consistency, artistry and appeal to emotion, and, most importantly, familiarity.

However, it is not the position of this thesis that decisions in court are made exclusively based on the properties of the stories; the following are only some structural aspects that are known to have some kind of impact on jury and court decisions. Rather, the value of exploring internal qualities of narratives in this context is as a foundation for the approach taken in the rest of this thesis – how certain of these aspects are *achieved* in interaction: for instance, how a narrative taps into widely understood cultural tropes, how it connects with stereotypes, how it meets evidentiary expectations – essentially, how certain narratives become trustworthy. Power, ultimately, will be studied as something that occurs relationally, contextually, and discursively.

2.3.1 Coherence and Consistency

> The courtroom lawyer's task […] is not a simple process of addition, stringing the beads of events into a necklace of narrative. There are contradictions and incoherencies to be dealt with, alibis and excuses to be found, gaps to be filled. Hypothetical narratives are formed to cover and explain events; they are narratives that themselves modify events, change their status, produce other events to fill the gaps, lend intention to action. (Brooks, 1996, p. 17)

In other words, Brooks emphasizes that the task of the courtroom lawyer is to create a coherent narrative from a series of fragmentary elements. Coherence as a pursuit is the work of the courts, yes – but it is also an element in the construction of compelling narratives more generally. As Presser and Sandberg note, the very act of narrating may be defined as ‘the creative and artful construction of coherence and consistency’ (2015c, p. 8). Coherence is something tellers aspire to and something listeners expect and need.

Literary and psychological scholars often remark on the importance of coherence to the believability or persuasiveness of a narrative – it has to “make sense” to the audience. Linde (1993) in her seminal work on the creation of coherence in life stories, argues that, in telling life stories to each other, conversants connect important landmarks in their lives with narratives linked together by the principles of

'causality' and 'continuity' (1993, p. 127). She further argues that these narratives are rehearsed and refined throughout our lives, making consistency also a key principle in telling life stories. She further uses the language of 'accountability' to describe the social role of coherent life stories – we tell stories to account for our identities, our past choices, and our future paths. The principle of accountability is interesting, as nowhere are defence, accountability, and justification more scrutinized than in the courtroom. While Linde is writing in vast fields on language, psychology, and sociology, I will limit the following remarks to the importance of coherence and consistency as explored in NC.

NC is universal in its observation of the importance of coherence of narratives to issues of identity. Narrative coherence is crucial in desistance from crime: 'the sorting of an internally consistent redemption story probably *precedes* the physical aspect of desisting from crime,' argues Halsey (2017, p. 638). He goes further to note that it is internal subjective coherence that is the primary narrative aim, more than constructing a story that seems coherent to an audience: 'the story being told […] has its own moral coherency, no matter how "monstrous" or otherworldly it may seem' (2017, p. 642). Pemberton et al., taking a more psychologically-oriented approach, note that a crime is a trauma that disrupts an existing thread of coherence in one's impression of their life and self: 'repairing the rupture in the life story, thereby retaining a sense of continuity in a temporal and interpersonal sense, is an important element of sense- and meaning making in the aftermath of victimisation' (2018, p. 3).

In these senses, coherence in narratives has the power to change an individual's behaviour and to heal; this is coherence as important to the teller. But there is also a sense in which coherence in narratives has the power to persuade and is therefore something we pursue as an interactional strategy. 'Many narrators manage to give the listener the impression of a unified self-narrative, perhaps because a unified narrative is expected and thus readily perceived,' Sandberg (2013, p. 79) writes, in the aforementioned study of Breivik's manifesto, highlighting coherence as a shared pursuit in communication.

The stakes are high in the courtroom setting for coherence and consistency of testimony. Often, their opposites are treated as possible indicators of lies. Baillot et al. (2009) and Baillot et al. (2014), for instance, offer an exploration of the relationship between inconsistency in narratives and perceptions of credibility in the specific case of female asylum-seekers in the UK claiming rape in the country they are leaving. In fact, one of the main goals of the discursive process of cross-examination is to expose the inconsistency of an individual's story, thereby casting doubt on their reliability as a witness (Stone, 2009). This practice sits uncomfortably alongside another observation in NC literature: although coherence is a pursuit, it is not always a realization; and, furthermore, the failure to achieve it does not necessarily say anything about its "truth."

NC literature – and narrative studies in general – often argue that the elements of inconsistency or incoherence are inherent in storytelling and they therefore do not have such a strong bearing on truth as court business posits. Linde's (1993) definition of coherence allows for all kinds of contradictions, plurality, discontinuity, and change; life stories are not necessarily the achievement of coherence but rather the pursuit of coherence. Verde (2017) similarly notes that narratives are inherently 'multidimensional, fluctuating, fragmented, and disarticulated' (2017, p. "Summary"). They are co-constructed at the moment of telling and therefore their content may differ based on the party with whom they are constructed. Linde, for instance, reflects that she has 'many stories' to account for her arrival at her profession as a linguist, which she uses selectively 'when the proper occasions arise.' These occasions are 'not a matter of how the teller happens to be feeling that day'; it is primarily a social matter, related to the 'degree of intimacy' she shares with the listener (1993, pp. 5–7). Consistency and coherence are therefore largely social matters rather than psychological ones.

In terms of clarity, McKendy notes the frequency, in his interviews with offenders, of what he calls 'narrative debris' – 'fragments, false starts, pauses, gaps, inconsistencies, disfluencies, self-interruptions, repetition, non-lexicalized sounds, and various kinds of verbal stumbling' (2006, pp. 473–474). These, McKendy finds, are not 'a function of [participants'] level of verbal skills and 'cultural capital' (2006, p. 474); they are only evidence that a person convicted of crime is 'work[ing] hard to

artfully manage […] his ongoing discursive project of exculpation […] and the requirement to position himself within the dominant discourse as a self-possessed responsible agent' (2006, p. 482). That is, hesitation and 'narrative debris' may only be evidence of an individual trying to balance a variety of discursive needs and it is unavoidable rather than an automatic indicator of mistruth or dishonesty.

Thus, while coherence and the accompanying factors of consistency, causality, and continuity are often treated as crucial in courtroom contexts, with bearing on believability and truth, the finding in narrative studies and NC is that the link between these factors and truth is not so straightforward. The analysis in this thesis will attend to how participants attempt to create these effects through their storytelling.

2.3.2 "Art"

There is a perception that legal language is (or ought to be) somehow the opposite of "artistic" language. It is (or ought to be) literal, factual, instrumental, precise, logical, and driven by reason rather than emotion (Tiersma, 1999) – and these are incompatible with "art." While many scholars have made observations on art in courtroom language in terms of the pervasiveness of literary devices (e.g. Campos Pardillos (2016) on metaphors in legal language) or rhetorical devices (e.g. Drew (1990) on the "power of three" in interaction), this section will focus specifically on art as related to narratives – what this might mean and in what ways this makes narratives "powerful."

"Applied legal storytelling" is an established pedagogical field (e.g. Meyer, 2014; Papke, 1991; Rideout, 2015). However, there are several perspectives on what "storytelling" means in these. One line of argumentation is that, for persuasive power, the goal of the legal professional is to make legal discourse like a literary story. For instance, Foley & Robbins (2001) note that "tell a story" is a frequent instruction in the teaching of persuasion for young legal professionals, and they set out to offer a how-to guide for this. Their first suggestion is to think of 'the building blocks of all stories – character, conflict and resolution – and two essential techniques in all storytelling – organization and point-of-view' (2001, p. 461). That is,

in instructing how to conduct legal storytelling, they refer students to the same building blocks as literary stories. Thus, in their point of view, to tell persuasive stories one must tell literary stories – this is one sense for 'art' in storytelling.

While hardly as direct as this observation, certainly in Criminology it has long been observed that decision-making in court depends in some way on the formal qualities of the narratives told. Bennett & Feldman (1981) argue not only that evidence is reconstructed by professionals as "stories" but that juror decisions about truthfulness are often made on the basis of the structural characteristics of these stories rather than the legal facts that construct them. Fielding (2013) also links narrative to the issue of legal truth, but with a rarer focus on witness rather than professional storytelling. He writes that 'narrative exposition by a suspect can have a different bearing on the outcome than the cross examination at trial' (2013, p. 288) – that is, cohesive storytelling (i.e. narratively-presented testimony) can hold more weight with jurors than the legal processes dedicated to "truth-finding." Unlike Bennett & Feldman (1981), who are concerned with the potential for distortion of truth through storytelling, Fielding (2013) sees increased use of first-hand narrative testimony as a positive force that would 'raise evidential quality' (2013, p. 288).

While usually not interrogating what, exactly, it is about literary storytelling in legal arenas that is so persuasive, one candidate for this is appeal to emotion. Walklate et al. (2019) explored the case of Rosie Batty in Australia and argued that the reason her case had such widespread appeal was because of her effective storytelling and the way it appealed to collective emotions. Briefly, Batty's son was murdered by her ex-partner at cricket practice in 2014. The case and Batty's stories in the media afterwards had widespread effects: she was named Australian of the Year in 2015 for her campaigns against family violence, she was appointed to an Advisory Panel on violence against women, and her efforts contributed to the establishment of the Royal Commission into Family Violence which resulted in a lengthy report with recommendations. Walklate et al.'s analysis of the case refers frequently towards Batty's storytelling in literary terms: the victim who became a 'heroic figure,' (2019, p. 206); the characters of the ideal victim (2019, pp. 205–206), the ''good' mother,' (2019, p. 206), and the 'independent woman' (2019, p. 207); and the symbolism of the cricket bat as a weapon used for crime in a country in which it tends to symbolize

‘individual pride and even reverence in Australia’ (2019, p. 205). Although not in so many words, Walklate et al.’s argument refers to the power of Batty’s story in literary terms. More specifically, these are literary “tropes” – which will begin to be explored more in the following section.

Rhetorical appeal to emotions in courtroom settings has also been a theme in other works on criminal courtroom proceedings. David et al. (2016), exploring the language present in Malaysian legal judgments, outline three ‘genres’: logos, logical appeal; ethos, ethical appeal; and pathos, pathetic appeal, or appeal to the emotions of pity or sadness (2016, p. 76). Their main finding is that judges overwhelmingly used pathos in the narratives present in their judgments, rather than logos or ethos as might be expected. Bens (2018a) and Bens (2018b) demonstrate how emotions are elicited in court-goers, how this process of sentimentalizing people and objects contributes to ‘legal meaning making’ (2018a, p. 74) and how this in turn impacts evaluations of guilt and justice. He gives as a salient example a moment from his ethnographic research at the International Criminal Court (ICC) in 2016. The prosecutor in the case began presenting a historical narrative of the war in Uganda and then brought as evidence a cassette tape of a conversation between the accused fighters. Bens (2018b) points out that although the ICC was equipped with simultaneous translation facilities, the prosecutor insisted that no interpretation from Acholi be performed. As such, there was only the tone of the conversation in evidence, creating a poignant affective atmosphere and appealing to the emotions of the verdict-makers.

Thus, using literary or artistic forms in storytelling is often treated as a way to persuade in court, possibly through the mediating factor of emotions. This thesis will therefore attend to the impact of artistic forms – as rhetoric or literary forms – on narrative construction in court. However, I propose another mediating factor for the relationship between ‘art’ in narratives and believability in court: and that is through their appeal to collective experience and that which is familiar.

2.3.3 Familiarity

In the section above, I alluded to an aspect of “art” in narratives being the appeal to familiar characters – Rosie Batty as the hero, the good woman, the independent mother, etc. (Walklate et al., 2019) – which I called “tropes.” I borrow the term from Sandberg (2016) and argue that tropes are of key relevance to the aims of this thesis, in terms of their role in negotiating rights over stories. One way to tell “powerful” stories is to appeal to pre-existing familiar narratives that have the authority of common cultural understandings of identity, experience, or behaviour.

In Sandberg’s (2016) analysis of interview data with imprisoned drug dealers in Norway, he delineates the differences between a life story (e.g. the biographical elements that led up to the commission of a crime), an event story (e.g. the narrative of the crime itself), and a trope. The latter he defines as ‘single words or short phrases that only hint at familiar stories’ (2016, p. 164); they are fragments of a story that a listener understands as belonging to a wider narrative – a shared understanding that does not need to be explained thoroughly. The example Sandberg gives is a comment from one of his research participants when he attempts to account for his current identity with events from his past: the participant summarizes his past by saying ‘Child Welfare Services, foster care, group homes, that sort of thing.’ Sandberg argues that, in short order, this keys into common cultural understandings of the results of such an upbringing – a troubled childhood, severe problems at home, and/ or potential emotional disturbance (Sandberg, 2016, p. 165). With just a few short phrases, the research participant communicated a much larger narrative – one that, moreover, implicitly accounts for offending behaviour.

The importance of tropes has been alluded to by many scholars – without the use of this specific term. Elsewhere, Presser and Sandberg note that narratives are ‘not always distinguishable […] Oftentimes a narrator only hints at a narrative, and the listener – the researcher or someone else – grasps a fuller narrative and its meaning’ (Presser & Sandberg, 2015c, p. 15). It is through the appeal to some story familiar to both speaker and listener that this is possible. Tropes may be said to be similar to what Abbott (2021) calls ‘masterplots’ or skeletal stories familiar to a cultural group and filled in by the audience narratives (2021, p. 54). Gewirtz (1996) refers to them as ‘stock stories,’ particularly in the courtroom context:

> There is some evidence that jurors tend to come to the trial with a set of stock stories in their minds and that they try to fit trial evidence into the shape of one of those stock stories. This suggests that lawyers will have an easier time persuading a jury that their side's story is true if they can shape it to fit some favorable stock story. (Gewirtz, 1996, pp. 8–9)

Echoes of the importance of familiar stories abound: Hall & Rossmanith (2016) observe that 'technocratic justice requires stories that can be easily categorized, sorted and stored' (2016, p. 42), due to the needs of the courts to process a large number of cases to time constraints; McKendy (2006) argues the most powerful narratives for listeners are the ones that key into what he calls the 'same old story' (2006, p. 498); and Roemer (1997) remarks that 'to know is to connect to a familiar narrative' (1997, p. 13).

The importance of tropes – stories familiar to both a speaker and a listener – is evident in literature, but I emphasize their "power" here with an example that shows that tropes can be used to challenge the cornerstone of "privileged access" that I described in previous sections. Drew (1991), in the tradition of CA, gives an example of an unusual interaction between two conversants. Cloe and Dave are talking about Dave's failing marriage; thus, it is a situation in which one party has first-hand knowledge (Dave) and another party does not (Cloe). Typically, in such a situation, Cloe and Dave both would be treating Dave as having privileged access to knowledge about his relationship and therefore greater epistemic rights to narrate the story. However, Cloe claims greater epistemic rights – and the way she does this shows the power of tropes. I reproduce the example here without the orthographic representation of tone, pitch, speed, and pronunciation that are typical of the CA transcription style.

> Cloe: Definitely for the fifteen years I've known you, you know you've really both basically honestly gone your own way.
> Dave: Essentially, except we've had a good relationship at home you know.
> Cloe: Yes, but I mean it's a relationship where, uh, you know, pass the butter dear. You know, make a piece of toast dear –

Dave: No not really.
Cloe: – type of thing.
Dave: We've actually had a real healthy – I think we've had a very healthy relationship, you know.
Cloe: Why, because you haven't knocked each other's teeth out?
(Drew, 1991, pp. 27–28)

As Drew analyses this interaction, he points out that, technically, Cloe is in a 'weak' position and can only have 'inferential' knowledge (1991, p. 29) about what goes on in Dave's relationship behind closed doors (i.e. when Dave claims 'a good relationship at home'). Nevertheless, she dominates the conversation. She does this through the use of 'a formulaic or stereotyped image of a bankrupt marriage' – i.e. a relationship where the extent of communication is 'pass the butter dear' (1991, p. 29). Dave attempts to deny this but Cloe continues with another such image – suggesting that lack of domestic violence is the bare minimum of a relationship and does not in itself constitute a good marriage. Drew further writes that Cloe's 'selection of a formulaic cliched expression' is a powerful claim in this interaction because it is 'anyone's knowledge' (1991, p. 29).

In other words, tropes, as 'glosses for evidentiary details' (Drew, 1991, p. 29), have such "power" that they can be used to challenge even accounts of first-hand experience – knowledge that may or may not be said to be "owned" by people, in the terms of this thesis. This is important in the courtroom, where lay participants speak to their personal first-hand experiences, and legal professionals nevertheless claim greater epistemic rights and attempt to persuade a judge or jury to accept their authority.

It is also interesting to note that the needs cited above for listeners – to connect to a familiar narrative – sit in contradiction to some observations about the needs of the speaker – which is often to present a unique story. As Drew (1991) above shows, Dave initially attempted to weave a narrative unique to his situation, different to others, to demonstrate the complexity of his situation; this was rejected by Cloe. In their study on narratives as property, Pemberton et al. (2018) write that 'for most victims, the strength of their own story is derived from its quality as a unique,

authentic and special account of their own experience, not from its resemblance to a generic shorthand' (2018, p. 7). Similarly, McAdams describes how 'each of us constructs, consciously and unconsciously, a personal myth which makes every individual unique' (1997, p. 11).

Thus, in terms of the importance of familiarity of stories for persuasiveness and believability – for constructing powerful narratives – the concept of a trope emerges as a key consideration in this thesis. The role of tropes will be explored in the case studies in this thesis and Chapter 8 (the Discussion) will offer some further literature and analysis related to the concept. I highlight here that my use of the term "trope" will refer to the story that is keyed into rather than the specific phrase used to key into it.

2.4 Conclusion

Drawing primarily on NC but also on wider ideas in narrative studies, this chapter has reviewed existing literature joining the concepts of "narrative" and "power" in the courtroom context. Beginning with the observation that the courts are understudied in NC, I argued that it is important to do so, due to the role of the courts in determining people's self-narratives moving forward as well as the role of narratives in determining court outcomes. I sought, in the rest of the chapter, to map out how we may begin to do this. Beginning with the normative sense of "narrative ownership" in more traditional criminological thinking and the grammar of NC-adjacent works, I contrasted this with other literature on the idea of "co-constructing" or "re-writing" narratives from NC. With the emerging emphasis on "rights," the review appealed to explanatory concepts from CA, such as privileged access and epistemic authority, to better understand what makes the concept of "narrative ownership" both possible and problematic. Leading from rights to lay claim to knowledge and rights to narrate, I turned to rights to be believed, and the question of which qualities make narratives "powerful" – in general, but in particular in the courtroom context – such as coherence, artistry, and, most importantly, familiarity.

As such, I conclude this chapter with the interpretation of the relationship between "narrative" and "power" that this thesis takes. I will not offer some definitive definition of narrative here – not when centuries of narrative studies have failed to settle on one (Maruna & Liem, 2020; Presser & Sandberg, 2015c). I will emphasize one nebulous aspect of what makes something a narrative – imbuing a series of events with *meaning,* at the very least, but often an evaluation or a moral stance. When it comes to courtroom interaction, the same series of events is given different meanings (evaluations, moral stances) by different parties, and so different narratives are constructed and are presented in contest. This contest involves the action of power. From a consideration of what makes narratives "powerful," I draw out questions of how people attempt to create these characteristics in their narratives – how do participants attempt to create coherence, consistency, art, or familiarity? Power, therefore, is not considered in this thesis as a passive entity that narratives have; nor am I referring to legal power and the imposition of narratives. Rather, I ask how power is exercised in interaction in order to construct stories and influence court outcomes. That is, this thesis considers *linguistic* power – and so I turn next to a review of literature on "language" and "power."

Chapter 3: “Language” and “Power”

3.1 Introduction

> Language is the stuff of contracts, statutes, judicial opinions, and other legal documents, as well as the essence of the daily dramas that unfold in trial courtrooms, lawyers’ offices, and mediation centres. (Conley et. al., 2019, p. 8)

Conley et al.’s remark emphasizes that there is no studying courtroom interaction – or, indeed, human interaction in any social setting – without studying language. As such, there is no courtroom study that may escape the topic of language, whether the authors themselves draw conscious attention to it or not. The degree to which courtroom-based studies emphasize the ‘linguistic basis of the law’ (Conley et al., 2019, p. 1) has varied widely – from complete lack of engagement to what Mulcahy has referred to as a scholarly ‘obsession with the word’ (2007, p. 384).

This thesis began with the concept of “narrative ownership.” The previous chapter reviewed literature on narratives and their relationship to power in the courtroom setting, leading the issue of narrative ownership into the realm of co-construction of narratives in interaction, of epistemic authority and the negotiation of rights to tell certain stories, and a consideration of what makes narratives “powerful.” The question now becomes *how* people construct stories and how they create the effects in their narrations that lends their stories “power,” thus bringing me to the importance of observable linguistic interaction in the courtroom. Thus, this chapter will review primarily observational research in ethnographic approaches to courtroom interaction. After a brief historicization of this body of work, I will then turn to the specific tradition of Conversation Analysis (CA) as the main focus of the chapter.

Ethnographic work in the courtroom setting has been extensive. Seminal courtroom ethnographies from within the discipline of Criminology have tended to come from the USA and the UK, partly due to well-resourced universities and multiple sources

of research funding (Travers, 2021). More recent years have seen courtroom ethnographies having a wider geographical reach, including in non-English speaking countries in South America, Europe, Africa, and Asia. Thematically, the focus has been on a wide range of topics related to legal processes and procedural justice (e.g. plea-bargaining (Feeley, 1979; Maynard, 1984; Sudnow, 1965), judicial discretion (Emerson, 1969; Harris, 2007; Paik, 2011), legal culture (Eisenstein & Jacob, 1977; Harris, 2007; Mirchandani, 2005; Sudnow, 1965), control, spacing, and social order (Carlen, 1976; Cicourel, 1976; Rock, 1991); performativity and identity (Emerson, 1969; Garfinkel, 1956); emotion (Bens, 2018a, 2018b; Dahlberg, 2009; Rock, 1991; van Oorschot et al., 2017); and many others).

Within this tradition of courtroom-based studies, an important distinction must be made in the *way* scholars have engaged with language. In the previous chapter, I highlighted Presser's distinction between Narrative Criminology (NC) and other studies of narratives within Criminology, with the latter taking a 'representational view' (p.141) of narratives, and the former more interested in 'what stories *do* […] and not principally in what they *reveal*' (Presser, 2016, pp. 139–141). A similar distinction may be applied to studies of language-use in courtroom studies. The studies mentioned above tend to take a representational view of language, their approach being essentially cognitivist: the epistemological undercurrent is that language offers uncritical access to people's minds – their thoughts, aims, values, and intentions – while the medium via which these are accessed merits only a passable mention.

This thesis, on the other hand, will focus on what language *does* rather than what it *reveals.* That is, it takes the view that language is a medium for social action, constituting social context but in turn constituted by it. This constitutive approach is the realm of ethnomethodology, and more specifically CA, both of which will be introduced at the beginning of the next section. Taking a conversation analytic approach to language in the courtroom enables a close and detailed study of how people use language in interaction, how they instrumentalize the linguistic resources available to them, and ultimately how they negotiate the rights to speak and be heard. This will be valuable in the evaluation of the question of how people potentially lay claim or "own" their words, and how "theft" might, if at all, occur.

This chapter will begin with a historicization of CA, highlighting how courtroom talk differs in its assumptions and organisation from everyday talk. It will review some of the work already conducted in the courtroom in this tradition. It will also present some precepts, concepts, and tools that will be useful to the analysis of the three case studies in this these, keeping in mind the relationship between “language” and “power.”

3.2 Ethnomethodology and Conversation Analysis

In terms of contextualizing CA as a scholarly field, Edwards describes it as the ‘application of ethnomethodological principles to the empirical study of talk’ (1997, p. 84), suggesting CA is a specific ethnomethodological approach. As such, I will begin by offering a brief historicization of both of these traditions.

Ethnomethodology as a field emerged in the early 1950s through the work of Harold Garfinkel, as a result of his work on the Chicago Jury Project in the United States. Studying jury deliberations, Garfinkel found that what a jury actually did during deliberations was not particularly ‘unique, special, or unusual’ in terms of how they reasoned and made their decisions; rather, ‘the methods of reasoning used in jury decision-making are very similar to those used by ordinary persons in making mundane or routine decisions [in their] everyday lives’ (Pomerantz & Atkinson, 1984, p. 284). That is, they made categorizations of evidence in terms of what is fact and what is ‘fancy,’ what is put on and what is truth, and what is credible and what is calculated, based on evaluations of what is ‘typical’ and commonsensical to them (Garfinkel, 1967, p. 105). As such, Garfinkel advocated a methodology that studied the ‘seen but unnoticed’ ways in which people, in interaction, ‘analyse, makes sense of, and produce recognizable social activities’ (Pomerantz & Atkinson, 1984, p. 286).

Conversation analysis takes up this methodological agenda. With precursors in the work of Garfinkel and the work of Erving Goffman on face-to-face interaction, the field of CA has its origins in the lectures of Havey Sacks in the 1960s and 1970s, further developed by his colleagues, Emanuel Schegloff and Gail Jefferson

(Edwards, 1997). Originating, therefore, in sociology (rather than linguistics, as might be assumed), the focus was on language as a 'vehicle for social action' (Stivers & Sidnell, 2014, p. 3). While the field proliferated and diversified, intersecting with other related fields such as Law and Language or wider approaches such as discourse analysis, ethnography of speaking, linguistics, semiotics, etc. (Stivers & Sidnell, 2014), Pomerantz and Atkinson described three basic or original tenets of ethnomethodology and conversation analysis: (1) '[t]he main focus should be on how participants themselves produce and interpret each other's actions' – i.e. it is not concerned with what participants "intend" to do or other cognitivist interests; (2) the researcher orients to data as being 'anthropologically strange' – in order to observe that which is "seen but unnoticed"; and (3) there is a preference for working with 'naturally occurring interactions' (1984, pp. 286–287) – thus, a naturalistic approach, enabled by audio- and video-recordings.

3.2.1 Everyday Talk

Conversation analysis developed primarily through the study of naturally-occurring "everyday" talk, preserved in the form of audio-recordings, its interests being 'the ordinary, mundane, everyday world' (Maynard, 2014, p. 15). Everyday conversation, for all its apparent effortlessness, disorder, and unconscious construction, is, according to Matoesian (1993), a highly structured system, and it has been the goal of CA to explore this system, identifying underlying principles of how conversation is managed by interlocutors. CA is a vast field and it is far beyond the scope of this chapter to catalogue the major findings and contributions for everyday talk. I focus in this brief review on several principles identified in everyday talk that are of particular importance to courtroom interaction: specifically, question/ answer pairs, preference, affiliation, and repair.

Conversation functions on a turn-taking model via which social action occurs. That is, for one participant to 'show that what they are saying and doing is responsive to what another has said and done [one] party needs to talk after the other, and, it turns out, they have to talk singly' (Schegloff, 2007, p. 1). The basic unit of turn-taking is the adjacency pair – that is, two turns, whereby a second turn is responsive to the

first, together performing a social action. This may be greeting/ greeting, question/ answer, offer/ acceptance, request/ granting, etc. In the courtroom context, action is almost exclusively built on a question/ answer adjacency pair, whereby a legal professional asks a question and a lay participant must answer it.

Preference and affiliation are two broadly related principles in interaction that apply to many types of actions, including question/ answer pairs. As Pomerantz and Heritage write, questions can be 'built to display a preference or expectation for a particular answer' (2014, p. 213). That is, if one says "you went along, didn't you?" the preference is for an answer of "yes"; while for "you didn't go along, did you?" the preference is an answer of "no." Conversation analysts have identified patterns with regard to responses given by participants in conversation, noting that, where dispreferred responses are given, these tend to be given more reluctantly, marked by delays, prefaces, or mitigation, often confirming as much of the answer as possible before producing the dispreferred action or offering reasons and excuses for the production (Pomerantz & Heritage, 2014).

Affiliation, meanwhile, refers to agreement with the terms of the question as a show of 'social solidarity' (Heritage & Raymond, 2005; Pomerantz & Heritage, 2014). In the previous two examples, both the "yes" and "no" are affiliative answers, as they agree to the terms implied by the question. If, rather, "you went along, didn't you" is answered with "no, I didn't," or if "you didn't go along, did you?" is answered with "actually, I did," these are examples of disaffiliative responses. Extensive research has shown that, like a tendency to orient oneself to preferred actions, there is a tendency to prefer affiliative over disaffiliative action (see e.g. Hayano, 2014; Heritage & Raymond, 2005; Pomerantz, 1984; E. Schegloff et al., 1977).

One way to manage preference organisation is through "repairs" (Pomerantz & Heritage, 2014). Initially defined by Schegloff, Jefferson, and Sacks (1977), repair is defined as 'the set of practices whereby a co-interactant interrupts the ongoing course of action to attend to possible trouble in speaking, hearing or understanding the talk' (Kitzinger, 2014, p. 229). This includes "correcting" a co-participant in conversation. Kitzinger (2014) explores practices of repair in everyday conversation and notes the overwhelming preference for repair to be performed by the first

participant – whether they immediately correct a word before their turn is done, correct it at the end of their turn in the transition space before the second respondent begins their turn, or correct it in the third position after the second interlocutor exposes the "trouble." Most of the time, this is a self-initiated repair. However, Kitzinger also notes that other-initiated repair (i.e. prompted by the second interlocutor) also tends to invite repair by the first interlocutor rather than performing the repair for them e.g. with open class phrases (Sorry? Pardon?), with category-specific interrogatives (Who?), with simple repetition of a phrase to indicate confusion, or with offerings of potentially incorrect understandings prompting correction (Kitzinger, 2014, p. 249).

I have highlighted these three observations from CA – that the tendency in conversation is to provide preferred answers, produce affiliative actions, and elicit corrections rather than make them – because courtroom interaction is in many ways set up against these tendencies. This will be explained in more detail in section 3.2.3 below but, in brief summary, a trial is set up as a discursive contest or competition between two sides, which means that disagreement is not just expected but instrumental to its functioning. Cross-examination is designed to challenge participants, cast doubt on their testimony, or expose holes in their stories, and therefore it creates a linguistic atmosphere where dispreference and disaffiliation is necessary and expected. Leading questions, as one example of a common courtroom practice – where the desired answer is embedded in the question – can be said to play on preference and affiliation, while the witness is expected to, in fact, resist giving the expected answer. Furthermore, regarding repairs, with legal professionals attempting to lead witnesses to the terms of their argument, other-produced repairs are more necessary and therefore common than self-repairs. It is important to note, therefore, that the set-up for interaction in the courtroom is, by design, unusual for the expectations of lay participants.

3.2.2 Institutional Talk

While the primary focus in CA has been analysis of everyday talk, a subset of dedicated scholars have turned their attention to the machinery of institutional talk,

where the organisation of talk can differ significantly. The settings studied have been eclectic, some main focuses being medical settings (e.g. Heath, 1986; Heritage et al., 2007; Kitzinger & Kitzinger, 2007), counselling and psychotherapy settings (e.g. Bergmann, 1992; Hutchby, 2005; Peräkylä, 2019), and journalism interviews (Clayman, 1992; Greatbatch, 1992; Heritage, 1985).

Institutional talk differs fundamentally from everyday talk in that at least one participant represents a 'formal organization' and interactions are 'task-oriented' in relation to the aims of that organization (Drew & Heritage, 1992, p. 3). While effects differ across all the settings mentioned above, a substantive difference between institutional talk and everyday talk is that there are recognised roles in interaction, such as doctor/ patient, interviewer/ interviewee, lawyer/ witness – all of which suggest a power differential in interaction. That is, these roles dictate who has a "right" to produce certain actions, such as who has a right to initiate parts of the interaction and who is expected to provide information. Institutions, for instance, might 'asymmetrically allocat[e] opportunities to participate in talk (Matoesian, 1993, p. 99), thus restricting turn order (when one is permitted to speak) and turn size (how much one is permitted to say). In the following section, I focus specifically on courtroom talk as institutional context.

3.2.3 Courtroom Talk

Conversation analysis of courtroom interaction, although not extensive as a subfield, had its golden age in the late 1980s and 1990s. Early works noted the relative lack of empirical research on courtroom discourse, given the overflowing interest in discourse in many fields across the social sciences and humanities, and have offered as possible explanations the scriptedness of courtroom interaction (Atkinson & Drew, 1979), the small and decreasing place of courtroom proceedings within the totality of legal proceedings (Atkinson & Drew, 1979), and the lack of availability of data due to judicial reluctance to permit researchers to record talk (Drew, 1985). Nevertheless, this body of work has extensively documented effects of the courtroom arrangement on specific features of discourse, and this section will briefly review some contributions, with a focus on affiliation, preference, and repair. Since then,

sources of courtroom data have become more extensive, and a new tradition from within Criminology around the turn of the century has employed CA in the study of courtroom interaction, with a focus on the role of social identity in interaction. This tradition will be explored in more detail in the next section (3.3).

Atkinson and Drew's (1979) landmark study of courtroom interaction began to map out the altered 'grammar of conversational interaction' (Conley et al. 2019, p. 15). They began by exploring some of the differences between the turn-taking systems of everyday talk versus courtroom talk. In basic terms they note that turns are pre-allocated and more restrictive: the legal professional has unilateral power to ask questions while the witness must answer them; it is legal professionals that decide when a witness's turn starts and finishes; there is no confusion over selection or self-selection of the producer of the next turn; etc.

One way in which courtroom talk is constitutively different from everyday talk that has been of interest to scholars is the fact that interaction is designed primarily for a nonspeaking, nonparticipating audience (the jury or the judge) rather than directly for the interlocutors (Atkinson & Drew, 1979; Drew, 1985; Komter, 1994). An effect of this is that the question/ answer organisation of courtroom talk does not assume the epistemic asymmetry usually present in such adjacency pairs, whereby something is known to the answerer that is not known to the questioner (Drew, 1991); that is, lawyers do not (usually) ask questions to which they do not know the answers. Therefore, questions in court tend to be of the known-answer type and thus contribute to the sense of performativity often noted in studies of courtroom interaction (Komter, 1994).

The orientation towards a nonspeaking, nonparticipating third party, according to Drew, 'complicates the investigation of properties of talk whose effect cannot easily be observed in naturally occurring data' (1985, p. 134). He references a frustration to the aims of CA – to observe how interlocutors themselves orient themselves towards each other and how interlocutors use their turns to make relevant a previous turn. However, the interlocutors remain the lawyer and the witness rather than the lawyer and their intended audience, and the fact that questions in court have a more strategic role than mere solicitation of information unknown to one party does not

differ in essence from the potential role of questions in everyday conversation: a question may be fishing for something that is already known (Pomerantz, 1980), it may attempt to catch someone out in a lie, it may be a preface to a request or an accusation, etc. (Hayano, 2014).

Atkinson and Drew (1979) also provided a framework for analysing particular types of talk, less common in everyday talk, that are made relevant in a legal context: specifically "disaffiliative talk." As previously described in section 3.2.1, in everyday conversation this type of interaction is not preferred, while the nature of adversarial justice demands an unusual amount of talk such as accusing, alleging, doubting, defending, justifying, denying, excusing, etc. Disaffiliation or dispreference is frequently marked in interaction by hesitations, delays in response, prefaces that confirm as much of the information as possible before disagreement, mitigation, and other actions (Lindström & Sorjonen, 2014; Pomerantz & Heritage, 2014). Reflecting this observation, several scholars have studied particular lexical markers in court that preface disaffiliation in court specifically. Innes (2010), studying the use of the term 'well', summarized that, when it is used by lay participants, 'what is about to be said does not fit fully with the coherence options given immediately beforehand' (2010, p. 97). Heritage (1998) found a similar effect with 'oh' when it prefaces responses. One function of the marker is to indicate that the question feels 'inapposite' and that 'the question questioned something which could (or should) be "beyond question"' (Heritage, 1998, p. 294).

Scholars continued the curiosity into disaffiliative talk, through discussion of the formation and deployment of "alternative descriptions" – and variations of the term. In essence, this refers to the use of descriptions of events that might broadly or semantically be the same but contain connotations and implications that impact rulings on aspects such as truth or culpability. For instance, Pomerantz & Atkinson (1984) showcase the descriptions used by an adjudicator and a plaintiff in describing the damage allegedly done to a dress during dry cleaning: the adjudicator described the damage in areas of common wear and tear such as armpits and where the belt goes through the loops; while the plaintiff pointed out damage to the back of the collar and all around the belt, where there is no friction. Pomerantz and Atkinson's examination then shows how such alternate descriptions are presented in context

and how one or the other may triumph; while similar semantically, these descriptions have a different bearing on issues of concern to the court. Atkinson & Drew (1979) and Metzger & Beach (1996) both showed how witnesses may anticipate accusation and consequently use their answers to offset such implications, through offering alternate phrasing to units of speech that they perceive as being somehow "loaded."

Summarizing how litigants in small claims courts use alternate descriptions – constituting an apt summary for the literature on alternate descriptions in general – Pomerantz lists the following as the most common actions: ''tell what happened', 'correct misinformation', 'make arguments', 'concede points', [or] 'attribute blame to others' (1987, p. 227). Of note here is that most of these verbs – correct, argue, concede, blame – involve a resistant reaction (of witnesses) to a previously made assertion (of lawyers). As such, although the descriptions may take many grammatical forms, they are, in essence, an action produced by a witness to resist the power of the legal professional, and therefore a form of 'repair' in the terms of CA (see section 3.2.1). Thus, while the superficial role of questions in court may be to elicit information not known to the jury, their action is often to set up arguments (e.g. regarding someone's culpability); and those answering the questions may be more or less inclined to provide affiliative or preferred responses depending on whether such arguments are in their favour or not.

While contributing extensively to our understanding of courtroom talk, literature in this tradition has tended to neglect issues of social status and power and how these may affect interaction. I turn therefore to a related tradition of scholarship which uses CA but emerged from within Criminology rather than from outside it.

3.3 Sociolinguistics and Critical Criminology

In more recent years, language has become a topic of deeper study in criminological court-based studies, specifically in terms of what sociopolitical insights it can bring. While these studies may make occasional, often basic and instrumental use of CA, other aspects of language have also been brought to the surface, such as the effect of lexical or grammatical choices or the role of social patterning to language. The

defining feature of this group of works is that they focus on narrow subsets of cases, defined by the social category of lay participants – in particular, categories that are already vulnerable, in minority, or otherwise disadvantaged (i.e. by sex, ethnicity, class, native language, etc.) – exploring how these existing social disadvantages are reproduced and enforced during criminal proceedings. Therefore, while taking up the concept power with enthusiasm, the focus is on social and legal (rather than linguistic) power – and, more specifically, disempowerment.

The vast majority of papers on these themes are feminist studies on rape cases, the overall aims or findings exposing how culturally-dominant ideas about sex, consent, and rape are reproduced and reinforced during trial proceedings. In terms of which aspects of language are of relevance, these tend to centre on the grammatical features of language and their sociocultural implications. For instance, de Freitas & Bastos (2019) study how passive versus active verbs in written judgments in Brazil construct the character of alleged offenders, encoding agency and therefore culpability (or lack thereof). One recurring observation of note among scholars is the widespread use of euphemisms relating to the crime of rape during trials. Svongoro et al. (2012), for instance, found that, while euphemisms were preferred by victims and witnesses in rape cases in Mutare, Zimbabwe, legal professionals tended to reject these and insist on a sexually-explicit register. They reflect on this in terms of the socio-cultural function of euphemisms and why women and children may prefer this, thus leading to them being disadvantaged in the legal process. Mugari et al. (2015) similarly observed the preference for euphemistic language during rape trials, showing how code-switching in chiShona-English bilinguals is performed in order to avoid a sexually explicit register. Meanwhile, Lucas & Fyke (2014) explored how euphemistic language during criminal proceedings led to the infamous cover-up of Jerry Sandusky's abuse of young boys at Penn State University.

Similar themes of disempowerment through language have also appeared in consideration of other socially vulnerable populations. Second in preponderance to rape cases is research on racial or ethnic minorities, particularly consideration of the challenges faced by minority populations in hegemonically white courts. For instance, Urbina (2004) explores how underqualified interpreters for Latinx individuals in court leads to poor translation or the addition or omission of

information. Eades (2000, 2008) studies how cultural understandings and uses of language in Aboriginal populations in Australia cause them to be disadvantaged in White courts. The way language can be used to disadvantage lay participants in court has also been studied for juvenile offenders (Andrews & Lamb, 2017; Prince et al., 2018), particularly in the form of the confusing nature of structurally-complex question types. For minorities of sexual orientation or gender identity, language in court has been highlighted in terms of how it reproduces ignorance and discrimination (Cadle, 2013; Goldyn, 1981).

Some papers further study the topics from an intersectional perspective, e.g. racial minorities and non-native language speakers (Urbina, 2004); juveniles and racial minorities (Marshall & Haight, 2014); sex and non-native language speakers (Mugari et al., 2015); as well as racial minorities, sex, and non-native language speakers (Svongoro et al., 2012). Like the aforementioned studies on rape cases, language is explored in terms of its role in exacerbating existing social inequalities; the differences that arise lie in how each social category in focus highlights different characteristics of language use, e.g. cultural assumptions (race/ ethnicity) or rhetorical complexity (juveniles).

It is clear from these examples that the particular aspects of language or rhetorical strategies that are important in the disempowerment of different social categories vary – e.g. decontextualization of events for women; misinterpretation of language for minority ethnicities; structural complexity for juveniles; discriminatory language for sexual and gender minorities. However, there is remarkable broad consensus on the topic of language-use in court: the language used during a trial serves to disempower individuals who are already socially disempowered.

In this tradition, the study of language is valuable only insomuch as it provides sociocultural insights into the particular social category or minority under scrutiny. Few authors are willing to extend the implications of their findings beyond the particular crime or social category they are studying. For instance, Svongoro et al. (2012) describe wider research interests in law and linguistics, analysing both lay and legal language to find ‘linguistic and socio-cultural’ reasons for choosing certain ‘lexical and syntactic features’ (2012, p. 117); and yet their concluding

recommendations are much more conservative, only advocating increased language sensitivity ‘in cases of alleged rape’ (2012, p. 127).

The conceptual conclusions of works in this tradition – that the findings regarding language and power dynamics are somehow isolated to the one particular social category or the one particular crime type that is under study – I argue present a limitation of this body of work. Conley et al. (2019) make a conscious argument for the value of broadening the implications of these studies. In their reflection on Matoesian’s (1993) work on the role of language in the re-traumatisation of rape victims in court, Conley et al. themselves find little in the linguistic effects that is unique to rape cases, arguing rather that what they describe is the usual language of cross-examination (dominating talk) applied to a crime whose primary dynamic is of domination. They suggest re-traumatisation is something cross-examination does to any number of vulnerable groups. In section 3.4.3 below I describe another such instance, in which findings from research done on “women’s language” have been recast as applying to a much broader population.

In this thesis, I take this position of “generalization” of effects on social populations under the umbrella of what *language* does in court. After all, the findings of this tradition in Criminology are often similar in terms of power dynamics and language, despite the focus on different social groups; further evidence of the legitimacy of this position of “generalisation” across social identities in terms of language-use will be presented in sections 3.4.2 and 3.4.3.

3.4 “Powerful Language”

> In a courtroom, the power of participants is far from equitably distributed, creating a context where the negotiation of discourse and discursive expression rests in the mouths of those granted the institutional authority to speak. (Fridland, 2003, p. 119)
>
> These courtroom-specific rules have the consequence of empowering lawyers linguistically over the witnesses […] From the outset, the structural

> arrangements for talking in court do not privilege all speakers in the same way. (Conley et al., 2019, p. 24)

It has been widely recognized by scholars that there is a strong linguistic power imbalance between legal professionals and witnesses in courtroom interaction. However, for the most part, these focus on the way legal professionals use (and might manipulate) language (e.g. Conley et al., 2019; Drew, 1990; Eades, 2000; Fridland, 2003; Luchjenbroers, 1997; Matoesian, 1993). This is implied by what both Fridland and Conley et al. above write: Fridland attributes the power imbalance to the 'institutional authority to speak' (2003, p. 119) granted to legal professionals, while Conley et al. (2019) refer to the legal power lawyers have to control witness responses.

These may be understood in terms of 'deontic authority' in court, or the power one party has to determine the 'future actions' of another party (Stevanovic & Peräkylä, 2012, p. 297). Certainly, legal professionals in court have certain legal powers: to force a person to answer a question, to strike certain testimony as inadmissible, and, not least, to determine a person's fate in the criminal justice process. However, while a topic that merits some elaboration, first and foremost it must be recognized that, even before deontic authority comes into play, a lot of these exhibitions of power are made possible by the very nature of the question/ answer format of courtroom interaction; in essence, the very nature of question/ answer adjacency pairs encodes certain powers.

3.4.1 Question/ Answer Adjacency Pairs

> Questions are a powerful tool to control interaction: they pressure recipients for response [and] impose presuppositions, agendas and preferences. (Hayano, 2014, pp. 395–396)

As conversation analysts have thoroughly explored, everyday conversation has a wide range of possible adjacency pairs; e.g. greeting/ greeting, request/ granting, offer/ acceptance. In courtroom interaction, the adjacency pair of most relevance is

the question/ answer. As with any other adjacency pair constructed of a first pair part (FPP) and a second pair part (SPP), the participant who creates the FPP has certain "powers." As Schegloff writes:

> Adjacency pair organization has […] a powerful *prospective* operation. A first pair part projects a prospective relevance […]. It makes relevant a limited set of possible second pair parts, and thereby sets some of the terms by which a next turn will be understood – as, for example, being responsive to the constraints of the first pair part or not. (Schegloff, 2007, p. 16)

That is, by asking a question, the speaker of the FPP is expecting an answer; the speaker of the SPP must either answer or be heard as not providing an answer. So powerful is the projection of an answer, rarely is this refused outright. As Conley et al. note, '[a]lthough it is logical to assume that a witness might in turn offer parallel commentary on the questions asked (such as "I don't think that's an appropriate question," "You're trying to put words in my mouth," or "I don't see where you're going with that question"), such instances are rare in court' (Conley et al., 2019, p. 31). Although they speculate that this is because a legal professional may immediately object that the answer is not responsive to the question, it is also possible that it is related to the tendency to produce affiliative actions in interaction – and a question projects an answer.

Moreover, the form of the question makes relevant a certain type of answer. A wh-question such as 'who' makes relevant an answer that references a person, as 'where' makes a place relevant. If we see this as a power of the speaker of the FPP, a respondent offering a non-type-conforming answer (Komter, 1994) may be described as resisting that display of "power." It is the concept of preference that enables this interpretation of power in interaction. In an adjacency pair, there is a strong preference for agreement; rejections or disagreement are considered "dispreferred" responses (Pomerantz, 1984; Sacks, 1987). By asking a question, there is a preference for not just an answer but an answer that agrees with the terms of the question. Producing dispreferred responses in court may run several risks, such as positioning the respondent as somehow incompetent (i.e. not able to

understand the question) or non-compliant (i.e. refusing to perform their role in the court process).

There is well-established agreement that certain question types constrain an answerer more than others. Conley et al. (2019) present a straightforward evaluation of this, arguing that, structurally, open-ended wh- questions (who, what, where, when, why) are the least restrictive, while tag-questions (statements turned grammatically into questions such as “you did this, yes?”) are most restrictive – leaving yes/ no questions somewhere in the middle. This tendency of different question formats to project certain answer formats is something Conely et al. point out is an explicit point of learning in trial-advocacy texts (2019, p. 27).

A natural consequence of the above is that an additionally inherent power a questioner has is that of ‘topic management’ (Conley et al., 2019; Hayano, 2014). The lawyer in the case of trials has the power to determine what topic is under discussion and thus does not allow the witness full freedom to narrate what they might find most relevant – even with open-ended questions. This, too, may be understood in terms of the deontic authority of legal professionals: the power to direct lay participants to a certain topic of interest.

Between the projection of an answer to a question turn at talk, the preference for affiliation, the projection of certain types of answers to certain types of questions, and the dictation of topic of discussion, there are several layers of power structurally built-in to the question/ answer interaction between legal professionals and lay participants in court. This power differential built into the question/ answer format will be treated from this point as an axiom in this thesis, casting actions such as disaffiliation, dispreference, and non-type-conforming answers as “resistance” in interaction.

3.4.2 Linguistic and Rhetorical Strategies

On this basis of a built-in power differential into the question/ answer format, scholars have extensively documented the various ways legal professionals may

strategically use this – and other resources available to them – to further exercise their linguistic dominance. A few of these have been reviewed in Chapter 2, such as the use of artistic forms or tropes; in this short section I refer to rhetorical strategies of relevance to courtroom interaction.

Researchers studying the construction of talk in the courts have highlighted the importance of rhetoric – the linguistic skills related to the effective and persuasive use of language (e.g. Bens, 2018a; Cotterill, 2004; David et al., 2016). Komter (1994) described some of the strategies used in the management of accusations and defences: offering 'alternative descriptions' (1994, p. 174) to cast evidence into different lights; erasing agency, such as through the use of passive voice, to encourage mitigative considerations; and making moral insinuations through incidental descriptive words. The latter of these is also something Conley et al. draw attention to: they show how an utterance may be couched as a question, to 'stay within the bounds of the courtroom's prescribed question-and-answer format' (2019, p. 30) but may nevertheless contain negative connotations that judge the witness's behaviour or call to attention inconsistencies in testimony.

Drew describes strategies used by both witnesses and lawyers in the competition for linguistic control and dominance. Legal professionals use 'contrast devices' (1990, p. 46) – the juxtaposition of a witness correction with their previous testimony in order to imply inconsistency. The example Drew offers is of a witness stating she did not know the defendant well being juxtaposed to her previous testimony that she allowed him to kiss her goodnight, thus casting doubt on her honesty. Evaluating a similar example in which a witness's testimony is contrasted to previous statements, Conley et al. (2019) emphasize how a series of questions dedicated to ascertaining the source of knowledge that the witness claims may serve to challenge the legitimacy or admissibility of the evidence. The example they use is whether a witness remembers something happening or whether the knowledge was implanted retrospectively by police. This relates to the concept of epistemic authority, discussed in section 2.2.3 and further addressed later in this section.

These rhetorical strategies are linguistic skills that are learned, enabled by the built-in power differential in the question/ answer format. Fielding (2013) observes that

police officers who testify in court receive training in the strategies that professionals might use when eliciting testimony; lay participants receive no such training. Similarly, Conley et al.(2019) point out that such strategies are frequently taught in trial-advocacy texts. In summary, O'Barr and Conley write that 'the ability to manipulate [language] becomes an important determinant of the relative power of the parties' in opposition (1985, p. 663) – who speaks more eloquently, coherently, and authoritatively.

Silence in courtroom interaction is a topic of wider interest to scholars. Conley et al. briefly touch on the ways silence may be manipulated by legal professionals. First, they point out that silence is in their control: a lawyer decides when a witness's turn commences by ending a question; while, if they choose to stay silent after a witness completes their turn, 'there is little the witness can do' (2019, p. 25). If a witness does not begin their turn immediately, a lawyer may interpret the silence unfavourably, to imply the witness's memory is faulty (e.g. following silence after a question, suggesting '[o]r don't you remember that?' (2019, p. 26)) or that the witness knows the answer but is reticent (following a silence, repeating the question with more emphasis).

Eades's work (2000, 2008) draws a distinction between silence as a noun and silencing as a verb. The former, she studies from a sociolinguistic perspective. Her observations involved Aboriginal witnesses in White courts in Australia and she outlines difference in language ideology and the meaning of silence between the two ethnic groups. Whereas in Western societies silence after a question may be interpreted negatively as 'evasion, ignorance, confusion, insolence, or even guilt' (2008, p. 220), in Aboriginal societies it may indicate a 'desire to think' (2008, p. 219). In terms of "silencing," she describes some of the tactics which legal professionals in this Australian context may use to prevent a witness from testifying "in their own words" – e.g. by interruption, by metalinguistic instructions on how to answer, or simply by using restrictive question types (Eades, 2000). Decontextualizing testimony, particularly in rape trials, has also been argued to be a way to silence witnesses – Ehrlich (2013) explores how taking testimony out of context was used in an American trial as a strategy to encourage rape myths, while Fridland argues that 'fragmenting' the victim's attempt at narration is used to

construct alternative versions of events that bind him in a way that he has ‘no possible ‘good’ response’ (2003, p. 121).

Interestingly – and a concept for exploration in this thesis – is that all three of these scholars interpret the term of “silence” in terms of the metaphor described in the previous chapter as narrative ownership: Eades writes that the silencing of the witness meant she was ‘not free to construct the story in her own way’ (2000, p. 171); Ehrlich argues that these silencing techniques cause a victim to “lose [her] voice” (2013, p. 189); and Fridland studies silencing as ‘reduc[ing] the alleged victim’s ability to tell his own version of events’ (2003, p. 121). With a mind to the literature reviewed in section 3.3, I draw attention here to the fact that these observations cross social identity barriers – an effect common to several socially disadvantaged populations rather than particular to a single one.

Returning to the issue of legal power, not all of these strategies would be available to interlocutors in everyday conversation. Some exercises of linguistic power, therefore, are enabled by the superior legal power (or deontic authority) of the professionals in court: the power to object to a non-response, to redirect a witness to the topic at hand, or to force a yes/ no answer. Challenges to capacity for knowledge may be used in everyday conversation (Conley et al., 2019), but it is more potent in court where the challenge may result in whether a piece of knowledge is admitted as “fact” or not on the record.

3.4.3 Witness Language Style

Thus far, I have focussed on the language of legal professionals in showing how they use language to dominate in interaction. I will also briefly discuss the literature on power related to witness language-use – what is considered a “powerful” language style, in terms of rights to be heard and believed in the courtroom context.

John Conley and William O’Barr, working sometimes with other colleagues, have written extensively on “powerless language” versus a more forceful speech style in court as used by witnesses. They were initially inspired by Robin Lakoff’s work on

“women’s language” (1973; 1975). Lakoff argued that women, ‘as a result of their socialization, speak a language of subordination’ (Conley et al., 2019, p. 66) which is perceived and treated as less powerful in court. This type of powerless speech style has been associated with lower levels of believability among mock jurors (Conley et al., 1978). However, a number of scholars have argued against the appellation, noting that this language style is not at all isolated or particular to women. Conley, O’Barr, and Lind (1978), O’Barr and Atkins (1980), and Weatherall (1998), among others, argue rather that this type of speaking style characterizes the language of a much wider population, including men – the common element is that it characterizes the speech of individuals who are already disadvantaged in society (i.e. racial or ethnic minorities, lower classes, or members of the LGBTQ+ community). “Women’s language” has therefore been recast as “powerless language.”

In line with this focus on the speech style of witnesses, Conley et al. (2019) also contrasted two other styles of speaking in court that have bearing on hearability and believability: that is, rule-oriented storytelling versus relational storytelling. The basic differences between the two are that rule-oriented accounts tended to be linear and based their logic on ‘rules, duties, and obligations’ (2019, p. 69), while relational accounts tended to be delivered less linearly, their logic more organized by ‘personal status and social position’ (2019, p. 69) and reflecting relationships between actors. The significance of this finding is that relational accounts are closer to everyday storytelling but less preferred in a legal context. Furthermore, they argue that, while this also somewhat follows gender stereotypes, the relationship with gender is not exclusive.

Conley, O’Barr, and Lind (1978), in their experimental design, also evaluated a few other elements of witness speech style that affected mock jurors’ perceptions of witnesses. They found that powerless language was evaluated as less believable, less convincing, less intelligent, and less trustworthy compared to a more assertive style. In addition, testimony delivered in narrative style was more favourably perceived in terms of credibility compared to fragmented styles of co-construction with a lawyer; hypercorrect speech compared to simple formality was also negatively perceived in terms of competence and intelligence; and interruptions on either side (lawyer or witness) led to perceptions of lawyers’ lack of control in interaction.

In the above examples, there are several assumptions of what is “powerful” in interaction in court: a powerful witness is one that is perceived as credible, convincing, believable, intelligent, competent, and trustworthy. However, these are not categories of person or qualities to be studied as passively existing within language or narrative, but rather actions that are performed linguistically, through the exercise of power in interaction; it is this position that this thesis takes.

3.4.4 Witness Resistance

As has been shown in this section, overwhelmingly, research on language and power in the courtroom has focused on the superior power of the legal professional over lay participants in court and the implications thereof. This is also the forceful driving force behind the literature in the previous section on sociolinguistics in Critical Criminology – how language is used in court to disadvantage participants who are already disadvantaged in society based on their social identity. A short word must also be said about the opposite – under-researched and under-conceptualised, but a real possibility that emerges in this thesis. Limited to a few curious observations in papers that are otherwise about legal dominance, there are some indications that witnesses sometimes exert their own power over legal professionals from their linguistically disadvantaged position. While these are not necessarily successful tactics in the examples below, these nevertheless show some potential for lay exercise of power over legal professionals, which will be addressed in this thesis. In these few remarks I emphasize some ways in which this resistance may be exercised linguistically.

Drew observed that witnesses, put in the position of constructing their testimony only through answers to questions prescribed by legal professionals, attempt to wrest some control through ‘next-turn other corrections’ (1990, p. 45) – answering the question while correcting some term, phrase, or implication. I reproduce here some samples of a transcript Drew used, regarding the questioning of a female witness alleging rape; I preserve the orthographic details of Drew’s CA transcription.

Counsel: An' you went to a: uh (0.9) ah you went to a ba:r? in Boston (0.6) is that correct?
(1.0)
Witness: It's a clu:b.

Counsel: It's where uh (.) gi:rls and fella:s meet, isn't it?
(0.9)
Witness: People go: there.

Counsel: An during that eve:ning: (0.6) uh: didn't mistuh ((name)) come over tuh sit with you
(0.8)
Witness: Sat at our table.
(Drew, 1990, p. 45)

In all three of these instances, the witness 'avoids fully confirming counsel's version' (1990, p. 45) through small corrections of certain terms proposed by the questions – it was not a bar, it was a club; it wasn't a place girls and fellas meet, just a place that people go; and the accused didn't specifically go to sit with the victim, he sat at the table. All these small proposals and small corrections orient themselves to the implication that the victim had some interest in the accused or that she was actively engaging in a situation that would make his behaviour understandable and acceptable. This has the effect of rejecting some of the words which legal professionals may attempt to "put in their mouths" and thus allows witnesses, to a limited degree, to present evidence more in their own words. These instances, which conversation analysts refer to as 'repairs,' (see section 3.2.1) will be studied in this thesis in terms of how they are used to resist legal power and how successful or unsuccessful they may be.

Although they do not use the term 'repair,' Conley et al. (2019) also give several examples in which a witness resists the terms of a question posed by a lawyer, correcting several leading terms. In these cases, Conley et al. (2019) tend to point out that the resistance is short-lived and the lawyer manages to regain control of the

questioning in short order; however, it once again highlights the potential for witness resistance against the “power” discussed in this section.

Hirsch’s (1998) study also takes an unusual approach in studying power dynamics in court, describing ways in which Swahili women in Islamic divorce courts dominate with their accounts over men. While this is outside the scope of this thesis – relating, as it does, to social power dynamics between lay participants rather than between them and legal professionals – of note is the finding that this power comes precisely from their relational speech style, detailing relationships and marital hardships, as compared to men’s more rule-oriented accounts that appealed to religious and legal doctrines. To reiterate, from section 3.4.3 above, relational accounts tend to be disfavoured in court, compared to rule-oriented ones. This research opens up the possibility that different types of language-use may have different relationships with “power” in different types of courts and proceedings. Indeed, “power” is specific to contexts, dependant on their norms and expectations, and exercised in interaction, which in turn constitutes the contexts; and “context” can be far more particular than just “a criminal court case in a traditional adversarial system.”

Also arguably a form of “resistance” – which I take as a way of exercising power in interaction from a disempowered position – may come from the observations of Eades (2000). She noted how restrictive question types (such as yes/ no questions) are sometimes taken as invitations to more narrative-style testimony which, as Conley et al. (1978) showed, was more powerful to mock jurors in terms of credibility. Thus, ignoring the structural expectations of certain linguistic forms (see section 3.4.1) may be termed resistance in this context. Similarly, Conley et al. (1978) showed that interruptions or overlapping speech, regardless of whether it is the legal professional doing the interrupting or the witness, leads to a perception of the legal professional as being less in control. Thus, interruptions will also be looked at in this thesis as potential ways of resisting legal questioning.

3.5 Conclusion

The previous chapter began with an exploration of the concept of narrative ownership from NC and other studies of narrative in the social sciences, leading from normative ownership to co-construction and re-writing of narratives, into epistemic authority and how rights to narrate are negotiated in interaction. The latter led to a consideration of not just narratives but of its building blocks – language. While a consideration of language in courtroom studies and even language-and-power can draw on many traditions, the second chapter narrowed the scope to observational studies of language in interaction and introduced CA as theory and method.

The chapter began with a broader consideration of the contributions of CA specifically as related to the courtroom context, highlighting some concepts that are of particular salience – specifically, affiliation, preference, and repairs. While, in general, CA has been less focussed on issues of social power, I briefly reviewed a tradition within Criminology that uses CA instrumentally with the broad finding of how language is used in court to disempower lay participants who are already disempowered in society. Leading into a reflection on power dynamics embedded in the organisation of courtroom talk, this introduced the possibility of "resistance," or of power exercised by lay participants from their generally disempowered position. Thus, the interpretation I take of the relationship between language and power is of how people assert and defend claims to knowledge.

3.5.1 Research Questions

Emerging from this summary, the following research questions will guide the rest of the thesis:

I. Narratives and Power

a. What kind of narratives are told?
b. How are narratives constructed, deconstructed, and reconstructed in interaction between legal professionals and lay participants?

c. How do the altered rules of institutional talk impact the extent to which narratives are constructed by lay versus legal participants?

II. Language and Power

a. How is language used to negotiate power in interaction between legal professionals and lay participants?
b. How is epistemic authority encoded and exercised?
c. To what extent are lay participants permitted to and able to construct testimony “in their own words”?

III. To what extent is ‘narrative theft’ an appropriate or useful metaphor to describe what happens to narratives in court?

Chapter 4: Methodology

4.1 Introduction

In this chapter, I will outline the approach taken to conducting my research and addressing the research questions presented at the end of the previous chapter. I will begin with a short reflection on the research philosophy embodied by this thesis, which will suggest my initial intentions for data collection. I will then describe and reflect on the barriers I encountered while gaining access to data, particularly related to the measures taken by the courts in response to the Covid-19 pandemic.

In response, a change to my data collection plans took place and I will next explain the alternatives that were deemed suitable as well as the rationale for the final selection of cases. I used data from three sources, making up the three case studies that will follow this chapter: the legal transcripts of the trial of Adnan Syed; the publicly available recordings of the trial of Derek Chauvin; and a virtual ethnography of a trial in New Zealand. Each of these data collection methods presented both limitations and benefits, which I will describe next in this chapter. After reflecting on reflexivity, positionality, and ethics, I will also present some tools I used for the analysis of my data.

4.2 Ontology and Epistemology

While different justice systems, different jurisdictions, and different types of court present great variation in terms of legal principles and traditions, there is a sense in which the overarching goal of the courts in general is to establish truth, or "what really happened," based on which decisions regarding guilt and justice are made (Smith & Natalier, 2005). Indeed, this commitment is embodied, in most Western adversarial systems, in the oath or affirmation that witnesses are required to make formally – variations exist but commonly contain the promise to "tell the truth, the whole truth, and nothing but the truth."

It is to this end that witnesses are expected to speak to the “facts” of the case rather than their interpretations or speculations (Jackson 2023). In this way we may treat the ontology of the courts as believing there is an external reality “out there” and their epistemology as positivist: we can access reality directly through the experiences of lay participants. This will be seen in Chapter 5, where tropes are used to argue what “really” happened; in Chapter 6, where legal professionals treat the video recordings of the proposed crime as reflections of “reality”; or, indeed, in Chapter 7, in which a significant portion of the testimony comes from forensic professionals who establish with exaggerated specificity the state of the crime scene and reconstruct from it what “actually” happened.

On the other hand, this thesis relies on an ontology that there is no objective, singular, or definitive reality that exists independent of our experiences and interpretations, and instead that reality is built through interaction within specific social contexts. I emphasize this point as it marks a difference from what might be assumed the philosophy would be by the initial conceptualization of the thesis. In Chapter 2, I discussed narrative ownership and the feelings of discomfort or violation reported by research participants, as related to experiences in the courtroom. These findings came from largely interpretivist research and have a cognitive cast. However, in the broadening of the research aims to observation of interaction and the concern with what language does (rather than what people intend to do or attempt to do with their words), the epistemology of the research in this thesis may be said to be social constructionist, with its attention on how ‘social processes’ are constituted by ‘linguistic interaction’ and how linguistic interaction in turn constitutes social processes (Coyle, 2007, p.99-100).

More specifically, I borrow from several research approaches that have an affinity with social constructionism. Discourse analysis and its subfield discursive psychology, Coyle (2007) argues, embody the research philosophy; from this tradition I borrow the common method of coding – the first of Potter and Wetherell’s (1987) loose 10-stage list of suggestions for conducting discourse analysis – as well as the general view of language as a form of social action and the scepticism that individuals’ accounts are strict representations of psychological or social realities

(Coyle, 2007). Ethnomethodology and Conversation Analysis (see Chapter 3 for introductions and the relationship between them) also tend to take a non-cognitivist social constructionist approach, premised on the idea that the way people 'make sense' of the world can be 'seen on the conversational surface' (Mullins et al., 2022a, p. 1000). As such, I avoid, in this thesis, commentary on cognitive aspects of interaction; I focus instead on the effects of language and how participants themselves orient linguistically to each other.

With this philosophy in mind, the initial intention was to conduct an in-person observational research project in the Scottish criminal courts. Recordings of proceedings would have later been transcribed for a detailed analysis of linguistic interaction. However, due to the measures implemented as a result of the Covid-19 pandemic, access to the courts proved to be very difficult. As such, in the first part of this chapter, I will describe some of the access barriers I encountered across nearly a year of attempts and subsequent changes to my data collection methods.

4.3 Ethnographies in the Courts During Covid-19

4.3.1 Access Barriers

According to guidance for media visitors to the court, the criminal courts in Scotland are generally open to the public in the interest of justice being seen to be done (Scottish Courts and Tribunals Service, n.d.-a). That is, my proposed data was in the public domain. Access to the courts, therefore, presented fewer initial potential obstacles than other social research domains. In terms of recording proceedings, guidance on the matter very firmly states that one can be held in contempt of court under the Contempt of Court Act 1981 subsection 1 if one records without permission (Scottish Courts and Tribunals Service, n.d.-b); which implies to the hopeful academic that recording with permission is possible. However, I encountered significant obstacles to accessing not just the courts but recordings of proceedings – most, but not all, related to Covid-19 responses.

In March 2020, with the announcement of lockdown in Scotland, the Scottish Courts and Tribunals Service (SCTS) immediately ceased all jury trials and adjourned all but essential business (Scottish Courts and Tribunals Service, 2020b). Some business made a rapid transition to alternative means: e.g. tribunal hearings that needed to continue where done by telephone conference call, guidance was published about how to pay fines online, and administrative work began to accept scanned signatures where needed. Ten hub locations were soon set up for Sheriff and Justice of the Peace courts in order to deal with essential business (Scottish Courts and Tribunals Service, 2020a). In September 2020 a pilot remote jury trial was held at the Odeon cinema at Fort Kinnaird in Edinburgh (Law Society of Scotland, 2020); this pilot was deemed successful and more such trials began to take place.

4.3.1.1 Scottish Courts

The Scottish Courts and Tribunals Service (SCTS) have published a document containing guidance for those who wish to conduct research in the courts (Scottish Courts and Tribunals Service, n.d.-b) – on the surface, presenting a very transparent process. The Head of Research at the SCTS is the first point of contact according to the document, responsible for the interface between the courts and academic interests.

I drafted a research proposal which included my aims and objectives as well as my interest in language and narrative in the courtroom. I requested access to a broad range of proceedings – for example trials, sentencing courts, problem-solving courts – as well as permission to record proceedings. I also included my measures for data protection and ethical consideration.

The proposal, sent first to the Head of Research, was then passed on to the Lord President of the Court of Session, also known as the Lord Justice General when dealing with criminal matters. I received a denial of my access request passed on to me by the Head of Research. The reason given for the denial of access was, as expected, the Covid-19 pandemic. But it was not made clear exactly in which sense the pandemic influenced this decision. Indeed, it would be an extra safety concern if I

had requested access in person to the premises, but my application had been for virtual access; I would be putting no one in physical danger as an extra set of pixels on a screen. In which case, I reflected that the denial had more to do with human resources and not being able to spare extra attention to academic pursuits in such a time of crisis, especially with the consideration of recording proceedings.

Although this was not made explicit to me at the time, there was an early indication that it was the request to record that posed the most issues. After the denial of my request, the Head of Research directed me to the Crown Office and Procurator Fiscal Service (COPFS) to put in place a mechanism for recording for when business returned to normal; COPFS promptly referred me back to SCTS as the proper people to deal with the matter. Recording, therefore, was the controversial matter.

4.3.1.2 English and Welsh Courts

It was through my subsequent attempts to access data through Her Majesty's Courts and Tribunals Service (HMCTS) in England and Wales that I better understood the reasons to such trouble with the issue of recording proceedings. Certainly, the courts hold records of a sensitive nature, and there were issues surrounding data protection and the protection of vulnerable individuals.

I was introduced to another consideration by the equivalent in England and Wales of the Scottish Head of Research; the interface between the courts and academic interests in this case is a team of people known as the Data Access Panel. In a similar show of transparency, the HMCTS website also has published guidance for researchers seeking access to the courts (HM Courts and Tribunals Service, 2021). Far more systematic than the Scottish version, which offered no template or digital platform for submitting a proposal, for HMCTS the process was to first obtain ethical approval from the University, then secure business sponsorship, and then complete a long form proposal to the Data Access Panel. Contacts at the Data Access Panel suggested I would not be permitted to record because HMCTS owned recordings of proceedings. This was the other element I had not considered: data ownership. Quite literally, the courts own the stories told on their premises.

As such, I changed my access requests. I asked to access existing recordings of proceedings rather than making my own. After an initially promising meeting with the Data Access Panel, they consulted with the service expert on what recordings I might be able to access; thereafter, like in Scotland, I was issued a blanket denial on access. Previously supportive contacts directed me back to the often-linked information on commissioning transcripts for a price. This is another example of accessibility being only surface-level: the price at the time of research to commission a transcript was approximately £1.50 per folio; a folio is 72 words; making the price of even short-duration proceedings completely unaffordable with PhD funding.

4.3.1.3 Northern Irish Courts

Afterwards, I turned to the Northern Irish courts, continuing the search for a jurisdiction as close as possible to my original intention to study the Scottish courts. There was a system in place to access Crown Court recordings in Northern Ireland for members of the public at the much more affordable rate of £34.00 per hour. There was also a relatively simple process in place for gaining access to virtual proceedings, in particular at the Laganside Crown Court. After sending speculative emails to the general public relations addresses listed online, I was sent along to an individual who acted as a gatekeeper – but had no title in his email signature and did not introduce himself. The court lists were published online and if I found proceedings I wanted to observe I emailed this gatekeeper to send me a link to the online platform.

The cases taking place at Laganside Crown Court were entirely virtual, with every participant appearing from a different room. There were usually 10 or more people online at first, with each one dropping out when their business was done, eventually leaving me alone with the judge. The types of proceedings covered a diverse range. There were official presentations of pleas, sentencing proceedings, arraignments (to call before the court), and bail applications. Very rarely was a trial listed on the court lists.

While some of these types of proceedings potentially had material on language, narrative, and power, for the most part there was limited opportunity for analysis. Few had what one would consider “narratives,” consisting more of purely legal concerns. I made a few simple observations on language, on the use of linguistic formulas, speaking on behalf of lay participants, and jokes. However, most of my observations were more to do with interesting aspects of technology (which is not the focus of this thesis) and the limitations of doing a virtual ethnography of the courtroom (which will be discussed below). Attempts to access trials failed in every case, whether due to technological neglect or postponement of the case.

I will also make a note on the communication between different players in the system, my visibility, and my observation of my own feelings of awkwardness. For the most part, I was invisible. When a participant was not being directly addressed, they put their camera off, so I followed suit. The judge frequently scanned the list of participants to call people up, ignoring my unknown name. Twice, I was asked to speak and explain who I was – once by a judge and once by a clerk (a disembodied voice not on camera). I explained that I had been granted access, using the name of the gatekeeper previously mentioned, and emphasized my willingness to leave if my presence presented discomfort. Both times they said they had not been made aware that I would be present, with some hostility. I was put in the position of wondering who had the right to grant access to the courts. I assumed the authority lay with the person sending me links to access proceedings, but the participants themselves claimed that authority. This was also curious to me as, in theory, there is a public gallery in a courtroom where members of the public, journalists, and researchers could sit. The reality did not inspire a sense of the openness and transparency of justice, and justice being seen to be done, and I was left feeling very vulnerable.

In the end, the scant material I gathered from the Northern Irish courts was not deemed sufficient for any meaningful analysis and I turned my attention to other sources of data.

4.3.1.4 New Zealand Courts

I researched other English-speaking court systems around the world and sent speculative emails and research proposals to a number of courts in the United States, Australia, and New Zealand, from January to March 2021. While the first two yielded no results, almost immediately New Zealand criminal caseflow managers replied, for the most part directing me in a friendly way in other directions. A high court in a particular city (anonymized in this thesis for identity protection) replied in mid-April progressing my request, with full permissions to attend a case and record proceedings coming in June 2021. This level of freedom with data and transparency stood in stark contrast to every other jurisdiction I had attempted to access.

Supportive, too, was the facilitation of actual access to the case; and, unlike the previously accessed jurisdictions, all gatekeepers introduced themselves and had titles in their signatures. Every day, an hour before proceedings started, the deputy registrar would log me in and test the cameras and microphones for me, ensuring I could see and hear everything properly. This consideration – the seriousness with which they took a researcher in their midst, and the informal and friendly attitude to my presence – once again stood in stark contrast to the other jurisdictions. My presence was not forgotten throughout the trial; I noticed that, when small breaks were taken, my audio was cut, and it was started again promptly when proceedings resumed.

In brief summary, my only experience of attempting to access the courts in any jurisdiction was during the Covid-19 pandemic, and thus my experiences are particular to this unusual state of affairs. Furthermore, there was little information in the literature on courtroom ethnographies to guide me on how to gain access, though from what little I found my impression was that it was done through personal or professional connections (Andrews & Lamb, 2017; Prince et al., 2018), which I did not have. Because of this, it is difficult for me to separate which of the issues I had with access were inherent in the court system (i.e. in terms of openness to researchers, transparency to outsiders, and friendliness of manner) and which were specifically related to Covid-19 concerns (e.g. the sense of hostility I encountered could have been a result of stress of managing only the essential actors to participate in court business).

4.3.2 Secondary Data

This period of negotiating access to live criminal proceedings and recordings spanned roughly from October 2020 (when I first reached out to the SCTS) to June 2021 (when I was granted access to one trial in New Zealand). During this period, due to the obstacles I was encountering, I also sought sources of secondary data as an alternative. With the goal of preserving my aims of studying legal-lay linguistic interaction, two main sources of data emerged and were deemed acceptable for the aims of this thesis.

The first were legal transcripts. Commissioning transcripts was considered (e.g. as described above, these might have been affordable with PhD funding in the jurisdiction of Northern Ireland), but this would have given me no control over selection of cases and might not have offered the linguistic data I required. Open-access pre-existing transcripts were deemed preferable, both for financial reasons and the control it offered over selection. There are a few of these available online in the National Archives, though these tend to be historical – the most recent I could find being the Harold Shipman trial (2000). The Steven Avery case from 2007 was also available online, though it has since been removed. The John Jay College of Criminal Justice has a New York County collection of transcripts from 1883 – 1927, which unfortunately were not fully digitalized nor contemporary. The Adnan Syed trial was available as well, though it, too, has been removed since I conducted my research (The Undisclosed Wiki, n.d.).

In the end, I chose the Adnan Syed trial for two reasons: one, due to my own familiarity with the context of the case from the podcast Serial (described in more detail in Chapter 5), which facilitated immediate focus on the interaction; and two, because I was aware that it was an unusual case in which there was limited forensic evidence, which would make the study of the stories woven at trial more salient in terms of impact on court outcomes.

The second source of data deemed acceptable were videos of trials. The International Criminal Court famously streams its proceedings, but these trials take

place over an extended period of time and I would not have been able to consider one trial in its entirety. Beyond the ICC, video recordings available online are almost exclusively high-profile trials from the United States, available on sites such as YouTube. Most of these are not organised very neatly. On this platform, however, the trial of Derek Chauvin was ongoing, topical, and clearly organised based on trial day and network, which is why in the end I selected it.

All three of these sources of data – the trial in New Zealand, the transcripts of Adnan Syed's trial, and the videos Derek Chauvin's trial – presented issues and advantages in the data collection process, on which I will now elaborate.

4.4 Data Collection

4.4.1 Case Studies

My choice to work with case studies was imposed, largely, by the type of data to which I had access. My data did not come from the same source and therefore I could not use the same methods of analysis in all cases – the particularities of each source and what was possible and not possible with each will be explored in this section.

One common criticism of case study research is that they are not generalizable (Flyvbjerg, 2010); however, I take this as a caution rather a weakness. Case study research is well-suited to close or in-depth analysis (Flyvbjerg, 2010; Stake, 1995) and therefore pairs well with the detail of the methods of CA. I do not attempt to generalize findings to any legal categories: e.g. I do not claim, from my two American trials, that I have found something particular to the American jurisdiction; nor do I treat the New Zealand case as in any way generalizable to the criminal justice system in the whole country in contrast to the American. Additionally, while all three trials share some significant similarities – they are all murder trials in adversarial systems based on English common law – I do not presume to make a commentary about the practice in "all" such settings.

This thesis, in other words, does not seek to comment on legal systems or what other information might be accessed through interaction (i.e. the 'representational view' (Presser, 2016, p. 141) discussed in Chapters 2 and 3); rather, it seeks to comment on interaction itself. While there will be a comparative element (Chapter 8), this will be limited to observations about language, narrative, and power in interaction e.g. how different linguistic choices by one party influence the linguistic choices of another party, how people orient themselves to the actions of other parties, or how a narrative may be constructed given a particular context.

4.4.1.1 Adnan Syed and Using Legal Transcripts

The data in the Adnan Syed trial consist of 2,559 pages of A4 writing. It was available in pdf format online at the time of the research, on a website that has since closed down (The Undisclosed Wiki, n.d.). For the most part, each pdf page consisted of 4 quadrants of writing in small font, although for portions of testimony one quadrant was maximised across a whole page. The words, though typed, were often distorted and at times difficult to read, as if the pages were produced elsewhere and were scanned *en masse* for publication online.

The most immediate drawback of using this material as data relates to its quality as a pre-existing legal transcript, rather than a transcription I could have created myself for the specific purposes of this research. Certain data that would have been relevant to a close study of power dynamics in interaction was lost. It is well-recognised in literature that legal transcripts are designed for legal content, such as for appeals, rather than aimed at providing a faithful representation of interaction. Prasad et al. (2002), for instance, reflected on their work on a speech recognition system for transcribing courtroom hearings and found that the most significant difference between a legal transcript and one the researchers might make is that the legal transcripts are 'generated to provide content rather than providing faithful annotation […] So they lack most of the non-speech events and do not include hesitations and restarts' (2002, p. 1). Furthermore, they suggest this actually constitutes a lot of lost data. Contrasting, perhaps, to observations of the exercise of linguistic control in

courtroom interaction (Carlen, 1976; Rock, 1991), Prasad at al. (2002) have described the speaking style in court as very spontaneous, reporting a Word Error Rate of 25% in the comparison between the legal transcripts and their more faithful transcriptions.

CA famously takes a very detailed approach to transcription, preserving not only the words spoken but extra-linguistic elements such as gaps/ pauses, intonation, volume, speed of speech, gasps/ sighs, voice quality, gestures of emotion, etc. (Hepburn & Bolden, 2014). Many of these indicators of the way things are said would have been valuable in a study of power dynamics in interaction. Pauses or hesitations may preface a dispreferred or disaffiliative response, for instance, or repeated words may preface a repair (see Chapter 3 section 3.2.1 for definitions). This was not data I could access.

Furthermore, it is often argued in CA that the very act of producing a transcript serves an important purpose in research. Bolden writes that '[i]n attempting to capture details of talk on paper, researchers become analysts rather than simple observers of interaction' (2015, p. 277). Bolden (2015), like Moore (2015), makes this observation with regards to the difference between manual transcripts and automatic transcription technology, and they agree that there is a loss of 'intima[cy]' with the data (Bolden, 2015, p. 276). Indeed, many 'representational' choices I might have made regarding how to format the data and what I select for transcription (Bezemer & Mavers, 2011) were not available to me.

These are not simply theoretical observations. The podcast Serial, previously presented as one contextualising tool I used for the trial of Adnan Syed, contained some audio recordings of the trial. In these, the defence lawyer can be heard to be speaking very loudly and aggressively – a detail that is absent from the transcripts. Tone and volume would have been valuable to the aims of this research in terms of, for example, how power may be exercised in interaction. However, having some access to this from the podcast improved the intimacy with the data that Bolden (2015) cautions may be lost.

Despite some of these limitations, using legal transcripts offered some benefits, and I adapted my research accordingly. One of these is the time saved with the data transcribed by another party. With over 2,500 pages of material, I would not have been able to produce a complete transcript myself – let alone one with the level of detail often produced in CA research. Without certain possibly distracting details of interaction (a common criticism of CA transcription) I was better able to examine larger structures such as verbal 'projects' that are 'interactionally negotiated, jointly launched, diverted or aborted' (Hepburn & Bolden, 2014, p. 126) – projects such as telling a story. As I will describe in more detail below regarding the approach taken with the Derek Chauvin trial, this was something that was not possible with observation and personal transcription.

4.4.1.2 Derek Chauvin and High-Profile Cases

The New Zealand trial allowed me to explore interaction in everyday relatively non-controversial court cases. While more contentious and dealing with bigger social issues in the United States, the Adnan Syed trial was at its time another run-of-the-mill case. Although this trial eventually became well known around the world, it was not, at its time, what Chancer (2005) described as a high-profile crime or what Soothill et al. (2004) described as a mega case. The trial of Derek Chauvin, on the other hand, was a very high-profile case. This short section will reflect on some of the characteristics of such trials and some ways they may influence study; more details will be offered in Chapter 6.

The death of George Floyd and the trial of Derek Chauvin were heavily publicized, with an endless stream of news segments and articles published as the situation developed. It was also socially and politically relevant, as most high-profile crimes are (Cottle, 2005), with Berman actually calling the trial of Derek Chauvin a 'political trial' rather than a 'criminal trial' (2022, p. 481). The trial streamed on YouTube and 10 other channels (The Associated Press, 2021). While it is difficult to ascertain, in the case of YouTube, how many people watched proceedings live, as videos were posted from several different networks at the same time, the videos both in entirety of testimony and shorter segments often have thousands, if not millions of views.

While viewership numbers for the trial were not (or cannot) be estimated, it is estimated that the verdict was viewed by between 18 million (Koblin, 2021) and 23.2 million (The Associated Press, 2021) people worldwide across all channels – that is not including those who watched from their laptops or phones (Koblin, 2021).

Televising a trial on one hand can be said to increase access to justice to the everyday person (Arenella, 1997). While some commentators have expressed concerns that the presence of the camera in a courtroom might influence the behaviour of both legal professionals and lay participants, research suggests this is not the case and rather participants soon forget about the presence of the camera (Arenella, 1997). While it is possible that the behaviour of participants was influenced by the weight of testifying in such a socially significant case, this is of less relevance to the aims of this thesis and its focus on linguistic interaction rather than cognitive aspects or "why" someone might have said what they said.

Above, I highlighted as a benefit of using legal transcripts in the Adnan Syed trial that it allowed me to study the entirety of a long trial and take a more macro approach to analysis. Working with videos and composing the transcription myself was more time-consuming. Indeed, it was only possible for me to observe the entirety of the New Zealand trial – despite working with videos – because the trial was much shorter and ran for 8 days. This was not the case with the trial of Derek Chauvin, which began on March 29th, 2021 and ended on April 19th, 2021.

The videos were very well-organized on YouTube. Although multiple news platforms offered their own streams, the videos themselves were identical. Furthermore, although the commentary differed amongst news channels, there was no input from news agents during actual proceedings, so I did not deem it necessary to be selective about the channel I chose. There were streams of the entire day, but also individual witness testimonies. This enabled me to make strategic choices regarding what testimony I watched. For instance, opening and closing statements for both prosecution and defence were chosen for their narrative accounts of "what really happened."

There were also summaries online from news agents of who would testify in upcoming days as well as retrospective summaries of testimony, which I used to make some other strategic decisions; for instance, noticing that both sides had an expert witness of the same discipline, I chose both for analysis, to see how the same sequence of events can be given different meanings in interaction. These aspects of high-profile crimes facilitated certain aspects of my research. However, I was also conscious that these summaries of testimony were not made by my own evaluation and I could not control for potential social or political biases of those writing them. As such, I strove to use only the "factual" details of content in my decisions – i.e. job description of expert witnesses or relevance of events narrated to the overarching "story." Details of all selected proceedings will be in Chapter 6.

Finally, a benefit of this data source is that audio and video were of high quality. This may be contrasted to the New Zealand trial (described below). Cameras were focussed closely on whoever was speaking at any given time, allowing good visual of facial expressions and gestures of both lawyers and witnesses. Some of these have been preserved in transcription in terms of relevance to the aims of the thesis. There were no failures of technology or resulting gaps in data.

4.4.1.3 New Zealand and Doing Virtual Ethnographies

Closest to my original intention of doing an in-person observational project, conducting a virtual observation of a trial that took place in New Zealand also presented some limitations as well as benefits. Although technology has long been a feature of court proceedings and these proliferated during the Covid-19 pandemic – a practice which has drawn both criticism and advocacy (e.g. McIntyre et al., 2020; Rossner, 2021; Young, 2011) – the New Zealand trial was *not* a virtual trial. All participants were present in the courtroom: defendants, witnesses, and legal professionals. The "virtual" aspect I refer to in this thesis is that I, as a researcher, accessed the trial virtually. As such, I will not review the questions that arise in terms of procedural justice in virtual proceedings, and in this section I will address only methodological limitations of accessing a trial virtually as a researcher.

Some of these limitations are similar to the issues highlighted above regarding transcripts or videos of high-profile trials – a greater distance from the data and a more limited sense of atmosphere. Rather than dress smartly, interact with police and legal professionals on my way to court, and sit in silent observation, I "attended" the New Zealand trial in casual clothing, safe behind a screen and muted microphone. Knowing I was recording proceedings and would be able to watch and rewatch proceedings as much as I needed to afterwards, being "present" at the time was of less concern – especially as the trial took place in the middle of the night due to the time difference between the UK and New Zealand. Atmosphere is often cited as an important element of courtroom interaction, impacting the way people interact within the social context; however, with my focus on interaction of participants and the 'conversational surface' (Mullins et al., 2022b, p. 1000) rather than my own experiences, it was of less importance that I fully experience the "atmosphere" as it might have been in other types of research.

In terms of visibility, I did not have a clear view of everyone in the courtroom. I had access to four cameras. One camera was placed in the corner of the judge's desk, allowing a constant view of his face and actions. One camera zoomed in on the defendants and also happened to capture the solicitors who sat closest to them – one of the two prosecutors and one of the two defence lawyers. One camera was a slightly zoomed-out version of the second, to cover the majority of the courtroom, capturing all the solicitors as well as the defendants on the left-hand side of the screen and the group of people in the viewing gallery behind a glass screen. The last camera also took a zoomed-out view of the whole court from a different angle that did not include the defendant's dock. Despite all the cameras and the various angles, they did not allow a view of every player in the courtroom. The witness box was not visible, although I deduced from the sightlines of the solicitors during examination and cross-examination that it was to the left of the judge's desk. The jury was also not visible, although they passed in front of the camera on their way to sit down and I deduced they were on the right-hand side of the judge's desk.

This made it difficult to evaluate certain nuances of testimony. For instance, I only realized one witness was getting emotional when her voice wavered and became weepy; whereas, if I could have seen her, I might have caught on more quickly. The

legal professionals likely did notice long before I did, which might have impacted how they interacted with her. However, once again, the CA approach taken in this thesis is not concerned with what individuals “might” have done and rather focuses on the ‘conversational surface’ (Mullins et al., 2022b, p. 1000).

On the other hand, assuming that during an in-person ethnography of courtroom proceedings I would have been sat in the audience box, the virtual setting allowed me a better view of certain players such as the judge and the facial expressions (smiles, encouraging nods) from the legal professionals. I am sceptical of how well I would have seen the witnesses’ facial expressions in-person, as they would have been as far from the audience box as possible.

Furthermore, a limitation of in-person ethnographies – particularly in the Scottish courts – that I did not realize would be a problem until I began my observation of the New Zealand trial is the limited acoustics of the courtroom. Realistically, I would have recorded proceedings with a single device, ideally situated next to the judge. However, during the New Zealand trial, every participant had a microphone (except the defendants). It is possible that my original intention would not have captured sound as well as I needed it to. While this aspect tends to not be discussed in studies that have conducted courtroom ethnographies, it is a possibility that was suggested in Prasad et al. (2002) in which researchers described the problems associated with noise in court and found that as many as eight microphones are often necessary to properly record proceedings. Thus, there is a trade-off of benefits and limitations of doing virtual observation of courtroom proceedings versus in-person observation.

4.4.2 Reflexivity, Positionality, and Bias

As any researcher, my identity, background, values, and life experiences have shaped my approach to my research in this thesis. By critically reflecting on these throughout my research, I was able to mitigate potential biases. In this short section I will offer some transparency about the way my own experiences and values influenced my choice of topic, my selection of cases, and my research process. In

the first instance, my choice to study language-use in a criminal justice context is easily accounted for by my academic background – an undergraduate degree in English Language and Literature followed by a postgraduate degree in Criminology.

However, the initial direction of inquiry came from a more personal place. My school years were spent moving home at least every four years back and forth between Romania and the United States. The Romanian school system was vastly different from the American, in terms of subjects as well as pedagogical methods; I went by different names in the two countries, as my first name is too common in Romania and my middle name is too difficult to pronounce in the US; and I also had a different relationship with Romanian as a language compared to English and felt far more comfortable with the latter. In summary, what resulted was the "creation" of two different people, with different behaviours, preferences, and personalities. Thus, it was my personal experience of managing multiple cultural identities that led me to an appreciation of the role of language and interaction in shaping identity.

Furthermore, I experienced significant psychological distress as a result of this perceived dual identity, which gave my initial interest in coherent life stories and the psychological importance of "owning" your story an activist cast. While very aware of this from the beginning of my research, I challenged my own assumptions about narrative ownership, which led to research questions that were broader and less biased in their cast. Indeed, my findings – detailed in the empirical chapters (5-7) and Chapter 8 – highly problematized the morally-loaded issue of "theft" of narratives, which would not have been possible without the conscious challenging of my initial assumptions.

Above, I described the methodological reasoning that went into my selection of cases – specifically the trial of Adnan Syed and that of Derek Chauvin. These were most suitable from the data available for the aims of the thesis to study language, narrative, and power in interaction. However, both cases also held personal interest to me and I had prior exposure to both cases before beginning my research.

I had a personal interest in the trial of Adnan Syed, having come across the now-famous podcast Serial about the case in 2014 – five years before a PhD was even a

consideration. While the podcast host did not explicitly make these points, I myself formed two opinions: that Syed was innocent of the crime and that Islamophobia played a large part in his conviction. I also followed the death of George Floyd and the subsequent media coverage out of personal interest, attending a Black Lives Matter protest in Edinburgh around the time. In short, both of these cases dealt with social injustice and the experiences of minority communities in the United States. While not a part of either of those social groups myself, I do belong to several groups considered socially disadvantaged and I have thus tended throughout my life to align myself with "the underdog" and to embrace liberal politics. Indeed, while this is not an unusual position in sociological research (Becker, 1967), it requires transparency and reflection.

My positionality as someone who aligns with socially disadvantaged groups therefore influenced my case selection and in both cases I had an opinion on culpability. However, while a personal opinion on the "guilt" or "innocence" of an individual might in other cases present a significant research bias, this was offset by the topics of this particular research project as well as the social constructionist research philosophy. As I wrote in Chapter 1 of this thesis, I was not interested in the factual content of the narratives or concerned with the truth or outcome of the matter; rather, I was interested in the linguistic interaction between participants themselves and how *they* orient themselves to issues such as truth, justice, legitimacy, etc. I maintained a clear focus on linguistic analysis and consciously distanced myself from judgment. As such, to mitigate potential biases, I employed neutral language throughout my case studies and systematized the way I addressed participants. I also consciously sought out "both sides of the story" when I found myself instinctively focussing on only one perspective – for instance, actively seeking out defence's forensic pathologist in the Derek Chauvin case after watching the prosecution's.

By constantly reflecting on potential biases throughout my research, I was able to mitigate them, maintain analytic focus on the aims of the thesis, and produce more balanced findings.

4.4.3 Ethical Considerations

Before commencing research, it was approved by the Research Ethics and Integrity Committee (REIC) at the University of Edinburgh School of Law. In terms of secure data management, all data was kept on a single encrypted and password-protected laptop accessible only by me. Data was backed-up on the University's secure servers to prevent loss of data.

Of the three case studies in this thesis, two used secondary data available in the public domain online, thus reducing ethical complexities. Both websites used were verified to be open-access (YouTube, and the now-defunct Adnan Syed wiki). In terms of confidentiality and anonymity, I maintained measures that were already present: for instance, in the Derek Chauvin trial, underage witnesses were not visually represented on screen, and I did not breach this by seeking the information elsewhere. In the Adnan Syed transcripts, certain names were redacted; though these are publicly available elsewhere (such as in the Serial podcast), I maintained the level of confidentiality and anonymity present in the transcripts.

The virtual observation of the New Zealand trial involved more detailed ethical consideration. There are some challenges of doing research in criminal courts compared to other social contexts in the social sciences. In general, courtroom research must be particularly attentive to vulnerability. While special ethical considerations are necessary for research with vulnerable witnesses (DeMatteo et al., 2011), paralleling legal measures for certain populations in many jurisdictions, I considered all lay participants in court vulnerable to a degree. Attending court when a crime has potentially been committed is not always fully free and voluntary, least of all for defendants. All individuals may also be considered vulnerable due to the sensitive nature of the topics of discussion and potential trauma that they have experienced.

Nevertheless, the courts are open to the public, and in this way, I was no different from any other stranger, reporter, or researcher that had open access to the trial. Therefore, while it is generally considered best practice to obtain opt-in consent from

research participants in the social sciences (DeMatteo et al., 2011) this was not possible or appropriate in this situation; under the principle of non-interference, the judge in the New Zealand trial considered it to be in the best interests of the participants that they do not know about my virtual presence (personal correspondence).

I was transparent about my role and research aims in my proposal to the Acting Criminal Caseflow Manager in the New Zealand trial. They, in turn, obtained consent from the Judge in the trial in question, after conducting a security risk assessment. Permission to attend virtually and record proceedings was explicitly granted in writing. I received a secure link to the platform that New Zealand courts use for virtual proceedings and ensured I carefully read their guide on reporting for the media – no conflicts were identified. In terms of general confidentiality and anonymity, I have avoided any identifying information: I have not disclosed the city in which the trial took place, I have mentioned no street names or other geographical markers, and I have not used any names for participants (identifying people by their role, such as Neighbour, Defendant 1, or prosecutor). Facial anonymity was an issue taken care for me, as I could not see the witness and no appearance markers could make it into my thesis.

In Criminological research – which often deals with sensitive personal matters that could act as triggers for researchers – the wellbeing of the researchers is also a necessary consideration. Throughout my studies, I tried to remain aware of my own reactions to the data and to step away when I needed to. For instance, this arose while watching the testimony of Christopher Martin in the Derek Chauvin trial. During his testimony, CCTV was shown of George Floyd in the shop before the police arrived on the scene. I was aware of my confusion during most of this testimony of why this was relevant to the case. I then had a very visceral reaction as I thought that George Floyd, in those moments, had no idea he was going to die that night. He was under the influence, with friends, possibly with plans for the evening, and unfinished business with people in his life. I immediately projected, and to think that I might be going about my day not knowing I was going to die that evening distressed me significantly. While warring with my curiosity of how this testimony would be used

in the trial, I chose to not finish watching Mr. Martin's testimony and reached out for support.

4.5 Data Analysis

My analysis of the three case studies in this thesis drew on multiple well-established methods. Because of the conceptual nature of my topics of interest as well as the multiple sources of data, I deemed it appropriate to consider multiple approaches to analysis of narratives and language. In this thesis I draw on several approaches, principally the precepts of Conversation Analysis but also Discourse Analysis (for more macro structures than CA and working with legal transcripts), and Narrative Analysis (specifically for linguistic construction of narratives). I will briefly outline some of the main analytic tools I used.

4.5.1 Discourse Analysis and Coding

I employed coding of linguistic material, most attentive to Saldaña's (2021) guidance in his manual for qualitative researchers. In the Adnan Syed trial, I read all 2,559 pages of transcripts; in the Derek Chauvin trial, I observed testimony in full for seven witnesses in addition to opening and closing arguments; and in the New Zealand trial, I watched the recordings of the entire trial. While the process differed between the transcripts and the videos, in all three cases I paused to note particular instances of verbal interaction that stood out to me, whether this was copying over material from the transcripts or noting timestamps and providing short descriptions of context and quick transcriptions. All of these instances received preliminary codes and 'analytic memos,' which Saldaña defines as 'symbolic prompt[s] or trigger[s] for written reflection' on 'emergent patterns, categories and subcategories, themes, and concepts' (2021, p. 58)

Saldaña draws special attention to a deductive versus an inductive approach to coding. Deductive approaches begin with 'a set of a priori […] codes' (2021, p. 40) inspired by either existing indexes, other researchers' codes, or theory; while an

inductive approach involves ‘entering the analytic enterprise with as open a mind as possible’ (2021, p. 41) and subsequently developing a grounded set of codes. Despite drawing this distinction, Saldaña writes that these approaches are ‘dialectical rather than mutually exclusive research procedures’ (2021, p. 41). My own approach embraced this duality. Although I came to the data equipped with theory on power, language, narrative, talk-in-interaction, and storytelling, as well as with related research questions, I did not develop a set of specific codes for the data. My first codes came from the data itself, from what I noticed in the language of the transcripts. These, in turn, inescapably were influenced by my theoretical assumptions – such as the linguistic disempowerment of witnesses, the use of shorthand tropes, or the construction of legal categories such as “ideal victim.” As Saldaña (2021) then writes, codes developed inductively became deductive codes for the rest of the data, as my focus sharpened and I began to develop categories and themes.

I noticed that, as my reading and analysis progressed, ideas I was working through in lengthier analytic memos took shape more and more as common short codes. I started taking note of common phenomena even though I had not yet fully explicated the commonality theoretically. For instance, I began my research with a strict assumption, drawn from theory, that the linguistic power imbalance built into courtroom talk in interaction left witnesses at a huge power differential from legal professionals; they do not have power to “tell their story their own way,” they must accept the linguistic framing of the lawyer and they only have the power to say “yes” or “no.” Therefore, initial instances in which this was not borne out were described in lengthy memos. As I found that there are a number of ways witnesses may resist linguistically, these notes reduced to a summary code on the way in which resistance was employed, from asking clarifying questions, to self-repairing or other-repairing (whether accepted or not), to refusing to answer.

4.5.2 Conversation Analysis

In chapter 3 I offered a brief history of CA in addition to outlining some of the key concepts of particular relevance to the courtroom context, such as preference,

affiliation, and repairs. In the following sections, I describe some methodological choices regarding transcription, followed by a summary of key CA concepts that will serve as “assumptions” back to which I will refer in my analysis.

4.5.2.1 The CA approach to transcription

According to Hepburn and Bolden, the tradition of transcribing talk began with Gail Jefferson in her role as clerk in 1965, when she took it upon herself to ‘type out everything that was said in the tape-recorded samples Sacks had collected’ (2014, p. 57). Since then, CA has become a rigorous empirical method with the most ‘comprehensive system for transcribing talk’ (2014, p. 57). The transcription done in CA not only captures the words conversants use (what is said) but also other things considered relevant to talk (how it is said): a short list of these features includes overlapping talk, pauses, intonation, pitch, breathing, voice quality, laughter, speed, etc. This is done through punctuation that does not necessarily correspond to our usual use of grammar. In the most common transcription method – Jefferson transcription – for instance: a full-stop (.) does not indicate the end of a sentence but rather it is a falling intonation that often occurs at the end of a sentence but may also occur during a sentence; greater than or less than symbols (<>) indicate the speeding up or slowing down of talk; pauses are indicated in parenthesis by units of time in brackets, e.g. (0.2).

This highly detailed method of transcription has been defended by conversation analysts as essential to understanding how talk is constructed but criticized by scholars from outside the field. These criticisms are both epistemological – that this level of detail ‘gets in the way of what is analytically important’ (Hepburn & Bolden, 2014, p. 73) – and practical – that it is ‘too difficult to read, transcriptionist-dependant, and […] caricatured’ (Hepburn & Bolden, 2014, p. 74).

There are a variety of ways of transcribing and presenting interactional data across different scholarly traditions. While the complexity of CA transcription is necessary in inquiries focussed on the most minute details of talk – and, indeed, such details often turn out to be meaningful in interaction – this thesis employs the micro level of

analysis *in service of* more macro structures such as narratives. Capturing narratives produced extracts much longer than what could be analysed with a CA transcription style. As such, a less fine-grained approach to transcription was deemed appropriate, in line with more traditional criminological approaches to such data. This involves two key differences from CA transcription: I preserved certain details (e.g. pauses in speech as possible indicators of uncertainty, emphasis, or resistance), but not (routinely) more fine-grained ones such as pitch or tonality; and I noted pauses, gestures, and facial expressions in brackets rather than using orthographic conventions typical of CA, primarily for the clarity of a criminological reader. While not arbitrary and rather guided by my concepts of interest, other researchers, of course, may have noted different elements as important. Limitations of this transcription style in terms of representational choices and robustness of analysis will be highlighted in section 8.6.2 of the Discussion chapter.

In my personal transcription of the Derek Chauvin trial, I used American spelling conventions, to match the context in which the trial took place. Furthermore, while I transcribed work for the Derek Chauvin trial and the New Zealand trial, my data for the Adnan Syed trial came from transcripts, which only preserve the legal essence of what is spoken with little indication of narrative debris, false starts, gestures, etc. In this case it was necessary to draw more on Discourse Analysis and Narrative Analysis (sections 4.5.1 and 4.5.3).

4.5.2.2 Principles of Conversation Analysis

The following constitutes a short review of some of the main concepts from CA that served as methodological tools of analysis in my thesis. They have been more thoroughly described in previous chapters. Chapter 2 introduced epistemic authority as related to narrative ownership; while Chapter 3 offered a history of CA, some definitions of concepts such as adjacency pairs, question/ answer pairs, preference, affiliation, and repairs, and some reflections on how courtroom talk differs fundamentally from everyday talk in terms of these concepts.

Adjacency pairs form the building-blocks of interaction, whereby one participant performs an action that projects another action from another participant. Therefore, to understand interaction, it is important to study conversation as it unfolds rather than focusing on what just one party or another says. In the courtroom, the main adjacency pair that structures conversation is the question/ answer format. In Chapter 3 I highlighted some issues around implications for power dynamics in interaction, specifically that the questioner has certain powers like topic-selection and agenda-setting (Hayano, 2014), while also controlling to a degree what possible actions are available to the answerer. Therefore, legal professionals asking questions are in a structural position of advantage over the lay participant.

This simple observation that being a questioner in a question/ answer interaction indexes a certain power differential is far from straightforward in courtroom interaction. Drew (1991) notes that question/ answer pairs index epistemic asymmetry – i.e. something is known to the answerer that is not known to the questioner (Heritage, 1984, p. 250). Furthermore, in the courtroom, the answers sought relate to the answerer's first-hand experience, which, as described in Chapter 3, is a source of knowledge that is usually considered 'privileged' in terms of what rights individuals have to narrate it (Heritage & Raymond, 2005, p. 16). Put together we have a questioner eliciting information ostensibly unknown to them, and the information is of the first-hand nature; which would imply that the questioner is claiming fewer rights to narrate than their co-participant and would normally yield to their authority. This state of affairs – these expectations – are not the case in the courtroom on several levels: (1) the questions tend to be of the known-answer type (Komter, 1994), particularly in examination-in-chief when the legal professional is building a case together with their own witness, and epistemic asymmetry does not usually apply; (2) courtroom proceedings are designed to challenge first-hand authority, particularly in cross-examination; (3) rather than having their first-hand authority yielded to, participants have to fight for it – what I call "resistance."

This complex power dynamic regarding what knowledge is owned and what claims individuals have over them refers to the study of epistemics in CA. To reiterate, epistemics refers to 'the knowledge claims that interactants assert, contest and defend in and through turns-at-talk and sequences of interaction' (Heritage, 2014, p.

370). This negotiation (asserting, contesting, defending) is on plain display in the courtroom: lay participants claim the power of privileged access to first-hand experience; legal professionals, on the other hand, may claim the legal power to establish facts and truth, above and beyond what individuals experience. Epistemic authority – the way rights to claim certain knowledge are made, defended, and accepted or rejected – is therefore a key concept in understanding courtroom interaction and power in interaction.

Further tools from CA will support this study of epistemic authority. A concept I will use extensively in the case studies is repairs. Initially defined by Schegloff, Jefferson, and Sacks (Schegloff et al., 1977), repair is defined as 'the set of practices whereby a co-interactant interrupts the ongoing course of action to attend to possible trouble in speaking, hearing or understanding the talk' (Kitzinger, 2014, p. 229). There are many forms this might take. Repairs might be starting to say one word and saying another instead – an example of self-initiated repair. Another example of self-initiated repair might take place in another turn after the co-conversant has already replied – a 'self-initiated repair later than the same' turn-constructional unit (Kitzinger, 2014, p. 244) – adjusting their initial assessment. This latter is seen in many cases in the case studies I will describe, and I will show what the implications of self-repairs are for testimony. I will also discuss other-initiated repairs, in which a witness might correct a word used by a legal professional in their question. I will argue that this is a form of linguistic resistance to the implications of a legal professional – demonstrating, in their talk, that they are aware of the implications and seek to communicate something different.

Other important precepts are those of preference and affiliation in conversation, both of which I define in Chapter 3 (Hayano, 2014; Pomerantz & Heritage, 2014; Raymond & Heritage, 2006). The tendency for answerers to perform preferred and affiliative actions may be used strategically in conversation by legal professionals, to further their arguments or create impressions of incompetence or uncooperativeness on behalf of the witness. A witness-initiated repair may therefore by seen as a disaffiliative response, as they do not accept the framing of a question, even though the answer may overall be affiliative (e.g. question: 'the crowd was angry?' answer:

‘desperate, yes’). The way answers are offered, therefore, also contribute to the study of epistemic authority in interaction.

4.5.3 Performative Narrative Analysis

The narrative analysis in this thesis most closely aligns with what Sandberg describes as performative narrative analysis – the study of not so much ‘what the story is about or how it is told, but who speaks, when, and why’ (2022, p. 220). This is an approach particularly suitable to the courtroom context, where much of linguistic interaction may be seen as a “performance”: there is an overhearing audience (the jury, the public); questions tend to be of the known-answer type (Komter, 1994); and, not least, the setting is frequently conceptualized in the literature using dramaturgical imagery (Carlen, 1976; Mulcahy, 2007; Rock, 1991). In this approach, two aspects are emphasized, as compared to other narrative approaches such as thematic or structural analysis. First, there is a focus on interaction and how it impacts the narrative construction of the teller, e.g. how a narrator orients their storytelling to the words or actions of the audience (Gubrium & Holstein, 2008). Second, there is an emphasis on the narrative context of the storytelling that other approaches do not necessarily take. Loseke (2007), in particular, calls for attention to institutional narratives and the expectations embedded in the context; for instance, in the courts, we, as listeners, might expect stories of defence, culpability, or moral character, and storytellers provide these.

This is not to say that this thesis takes an approach that exclusively focuses on performative narrative analysis. The content of the stories, or ‘what the story is about’ (Sandberg, 2022, p. 217), is treated as important, specifically in terms of the tropes that are constructed. This is more the realm of thematic analysis. Furthermore, the way stories are told in terms of form (i.e. structural analysis) is also considered, through basic units such as exposition, plot, or character; rhetorical devices such as metaphors, juxtapositions, and repetitions will also be used. However, these are supportive elements in the overall consideration of how stories are constructed and responded to in interaction within a specific social context.

Of particular importance to the analysis will be the concept of tropes, as described in Chapter 2 section 2.3.3. To reiterate, the process of appealing to “familiar” stories that are shared knowledge between a speaker and a listener emerged as particularly important in the courtroom context, in terms of how individuals may claim “rights” to own certain knowledge. The evidence suggests that such stories have immense persuasive power in the courtroom context. I use the term tropes to refer to these stories, in the tradition of Sandberg (2016), while emphasizing that I use the term to refer to the story *keyed into* rather than the lexical units that *key into* the story. In Chapter 8 I will explore the origins of the concept and similar ideas in more detail.

4.6 Conclusion

In brief summary of this chapter, I began by reflecting on the ontology and epistemology of this thesis, from social constructionism to more specific academic traditions. Given my research aims and philosophy, I originally intended to conduct an in-person observational research project in the Scottish courts, which – after nearly a year of access attempts – proved impossible due to the Covid-19 pandemic. I adjusted my data collection methods correspondingly, designing a case study approach with three different trials from three different sources of data: the trial of Adnan Syed, using legal transcripts; the trial of Derek Chauvin, using videos streamed online; and a trial in New Zealand, accessed in real-time virtually. While all three of these provided data of a sufficient and robust nature, each had its own limitations and benefits, which I have reflected on in this chapter. I conducted my analysis of each case study firstly by coding material; afterwards, I used tools and concepts from Discourse Analysis, Conversation Analysis, and Narrative Analysis to explore legal-lay interaction in terms of the research questions outlined at the end of Chapter 3. The following three chapters present the three case studies and their analyses.

Chapter 5: Adnan Syed

5.1 About the Chapter

The following chapter is a case study of the trial of Adnan Syed that took place in the United States between January 21st, 2000 and February 25th, 2000. The case, described in more detail in the Introduction section (5.2) below, involved the killing of high school student Hae Min Lee, with the accused being her ex-boyfriend, Adnan Masud Syed. This case study will take an exploratory approach to various aspects of the relationships between language, narrative, and power in interaction, drawing on methods and concepts in Narrative Criminology (NC) and Conversation Analysis (CA). In addition to examining the particularities of this trial, the chapter will also serve to introduce concepts and categories which will then be revisited in the two subsequent case studies.

Throughout this chapter, I will address lay participants by their first names, for consistency and clarity, as this is how they are presented in the legal transcripts. Legal professionals will be addressed by their last names. This chapter – as well as the subsequent two empirical case studies – will be structured broadly around the same concepts as the literature review chapters, which in turn reflect the research questions presented at the end of Chapter 3: Narratives and Power on one hand and Language and Power on the other hand.

I will first take a broad narrative approach to explore how legal professionals construct powerful stories in opening statements, staging a battle between two different interpretations of the story of Adnan Syed and Hae Min Lee. This will draw on concepts in NC reviewed in Chapter 2, in terms of the needs of storytellers and story-hearers around narrative coherence and familiarity; and especially on Sandberg's (2016) classification of types of stories into life stories, event stories, and tropes. Tracking story construction throughout the Adnan Syed trial, I will then explore how defence and prosecution orient themselves to their stories and emerging testimony to defend their tropes.

I will then turn to more detailed study of language, describing linguistic power dynamics and epistemic authority as negotiated in the trial. In particular, I test the theory that witnesses are linguistically disempowered in the courtroom due to the particularities of institutional talk (Chapter 3). I study the self-referential way the court, through instructions from the judge and from lawyers, talks about the types of knowledge witnesses have the authority to narrate, and how this type of authority is regularly negotiated throughout the trial. I do this with an eye on the metaphor of narrative theft, asking whether my observation can fairly and fruitfully be described as "stolen stories."

5.2 Introduction

5.2.1 Background to the Trial

Although many "stories" proliferate about Adnan Syed and Hae Min Lee, in the news and in various media, the following summary of events is drawn on the testimony given at trial. Hae Min Lee, a Korean-American student at Woodlawn High School near Baltimore, Maryland in the United States was reported missing on January 13th, 1999. On February 9th her body was found partially buried in Leakin Park by Mr. S (whose name is redacted as per the legal transcripts), who would later testify that he found her by accident after going to urinate in the park. She had been missing for 4 weeks. In this time, police had interviewed a large number of Hae Min Lee's friends and family, many of whom would testify at trial. On February 28th, 1999, Lee's Pakistani Muslim ex-boyfriend, Adnan Syed, was arrested for her murder. They had been broken up only a short time when Hae went missing.

A trial began on December 8th, 1999, with Judge Quarles presiding, Kevin Urick and Kathleen Murphy for the State, and Cristina Gutierrez for the defence. This ended in a mistrial 6 days later when the jury overheard the judge calling Ms. Gutierrez a liar in a heated debate that was meant to be private. A second trial began on January 21st, 2000, with Judge Wanda Keyes Heard presiding, Mr. Urick and Ms. Murphy returning for the State, and Ms. Gutierrez returning for the defence. This trial lasted

22 days, with 27 witnesses brought by the State and 12 by the defence. The trial ended with Adnan Syed being convicted of the murder of Hae Min Lee by the Baltimore Circuit Court and sentenced to life in prison plus 30 years.

The case of the State relied in most part on the testimony of Jay Wilds, an acquaintance of Adnan's, who claimed Adnan called him up after the murder, showed him the body, and enlisted his help in burying it in Leakin Park. Jay did not claim to witness the alleged murder itself. The examination and cross-examination of Jay at the second trial lasted 5 days. The other witnesses that the State brought were mostly classmates of Hae and Adnan who spoke about their relationship and, in particular, about how it went against Adnan's religion and the wishes of his parents. Several expert witnesses also spoke about the investigation. No DNA evidence linked Adnan (or, indeed, anyone else) to the crime. Other evidence involved were Adnan's cell phone records, which the State argued corroborated Jay's account of the day and placed the phone in Leakin Park on the evening that Hae went missing. In other words, the evidence that convicted Adnan was circumstantial; while not necessarily legally "weaker" than direct evidence (Monaghan, 2015), circumstantial evidence arguably relies to a larger degree on the weaving of coherent and consistent narratives.

The case of the defence consisted largely of character witnesses who testified that Adnan was a stand-out student, a good athlete, and in general a "good person." Ms. Gutierrez tried to cast suspicion on Mr. S, who found the body, and argued both that Jay was an inconsistent witness that was offered a deal to testify and that the police fixated on Adnan and ignored evidence to the contrary. Adnan was found guilty of first-degree murder, kidnapping, false imprisonment, and robbery.

5.2.2 Consequences of the Case

At the time, Adnan's case generated little public interest beyond the local. However, it became a highly publicized case of widespread interest in 2014. The case came to Sarah Koenig, an investigative reporter, who hosted a popular podcast named Serial on the topic (Koenig, 2014) which generated international interest. Sarah Koenig

meticulously investigated the credibility of the evidence that led to Syed's conviction: cellular phone records; testimony from Jay Wilds; and prosecution's claims about Syed's motivation. Her investigation not only cast doubt on every piece of evidence the State brought forth but also uncovered new information about the investigation and court case. Among these are the fact defence had failed to chase up a potential alibi witness (Asia McClain); that there was DNA evidence that was never tested; that Jay's audio-recorded testimony to the police was confused, inconsistent, and peppered with strange knocking or tapping before apparent recall of the events of the day; that the phone record evidence was forensically unreliable; and that Adnan's defence attorney had been going through a difficult personal time that may have resulted in incompetence.

Across various appeals, the criminal court system in the United States was split in its evaluation of the case. Adnan's team first appealed his conviction in 2003 and this was denied. In 2013, his petition for post-conviction relief was also denied. After Serial debuted in 2014, Adnan appealed the post-conviction relief denial and in 2016 he was granted a new trial. This trial in turn was denied by the Maryland Court of Appeals. The case went to the Supreme Court of the United States, which, in 2019, rejected the bid for a new trial (Piccotti & Chang, 2023). Throughout this process, new legal evidence was largely accepted; however, all applications were eventually unsuccessful and the new evidence ruled as too weak to have swayed the jury's assessment of Adnan's motive (Prudente, 2019). The issue of how "motive" was constructed will be explored in this chapter.

In the media, Adnan's case became very popular, with Serial averaging 1.5 million listeners per episode during its release (Carr, 2014). The question of Adnan's guilt was heavily debated on forums by listeners and amateur sleuths well after the podcast ended (Dean, 2015). Since Serial, more media was produced on the topic of this case, including the HBO documentary series 'The Case Against Adnan Syed,' the podcast 'Undisclosed,' the book 'Adnan's Story' by Rabia Chaudry, and the book 'Confessions of a Serial Alibi' by Asia McClain. In addition to this, there have been numerous news articles, blogs, single episodes on podcasts, and other media.

In September 2022, a Baltimore City Court judge vacated Adnan's conviction, in light of new evidence about two other suspects police had not disclosed and violations in the prosecution's turning over of evidence to the defence prior to the trial (Witte, 2022). This opened up the possibility of a retrial; however, a month later, prosecutors dropped the charges entirely and Adnan was set free. At this time, Adnan's case became a symbol of a miscarriage of justice and he started working with Georgetown University on its Prisons and Justice Initiative that studies mass incarceration, as well as on its Making an Exoneree course which studies historical wrongful convictions (Georgetown University, 2022).

In March 2023, Adnan's conviction was reinstated when Hae Min Lee's brother argued he didn't receive enough notice of the hearing to be able to attend. Adnan remains outside of prison pending a repeat of this hearing (Halpert, 2024).

5.3 Narratives and Power

> To know is to connect to a familiar narrative. (Roemer, 1997, p. 13)

The trial of Adnan Syed differs from the other two case studies in this thesis in that there was relative lack of forensic evidence from which to construct narratives of the crime, or 'event stories' in Sandberg's (2016) terms. As such, more than the other two cases, the Adnan Syed trial relied on tropes told by the respective attorneys, which served to construct Adnan's character and eventually his "motive." Both defence and prosecution attempt to shape events into the form of a trope – a more familiar, straightforward, and judgeable story. Prosecution try to construct what I will call a "Jilted Muslim Lover" narrative, while defence attempts to counter with a "Star-Crossed Lovers" narrative. Essentially, the trial became a battle between which hypothetical construction of events created a more coherent, plausible, and convincing story.

I will focus on the Jilted Muslim Lover trope as constructed in interaction in this particular trial – how elements of it are made relevant by participants in interaction – but a short word must be said about another – wider – lens through which its "power"

may be understood. In the context of an American audience, in which assumptions about a fundamentalist Islamic religion predominate, the Jilted Muslim Lover may be considered a Master narrative (Bamberg & Wipff, 2020), or a culturally-dominant narrative 'perceived as [a] natural trut[h] rather than as [a] stor[y]' (Sandberg & Colvin, 2020, p. 1587). This has no doubt something to do with its power, i.e. why it was so persuasive. In this vein, Ms. Gutierrez may be understood as constructing a counter-narrative, in terms of the aim of challenging these commonly accepted ideas (Bamberg & Wipff, 2020). However, Ms. Gutierrez does not resist with a particularizing Islamic counter-narrative. She proposes a Star-Crossed Lovers narrative – literary, but culturally dominant in its own way. As such, in this chapter, I prefer the lens of competing tropes, rather than the framing of a Master narrative versus a counter-narrative.

In the following few sections, I will present the tropes being constructed by prosecution and defence, first showing how the respective attorneys construct their story. I will then suggest that, in her campaign to offset Mr. Urick's implications, Ms. Gutierrez inadvertently ended up supporting it instead.

5.3.1 Competing Narratives in Opening Statements

Opening and closing statements are not universal among traditional Western adversarial systems, but they were employed by all three of the trials studied in this thesis. In contrast to the piecemeal construction of interaction in examination-in-chief and cross-examination, opening and closing statements offer an opportunity for more cohesive storytelling – a proposed broad summary of the case. Notably, aspects that are controlled for more rigorously in testimony, such as speculation on motive and moral evaluations, are permitted, in service of "making sense" of a series of events, and will be seen in the following descriptions.

5.3.1.1 The Jilted Muslim Lover Narrative

Mr. Urick's storytelling strategy in his opening statement is "artful." He does not present his story as a linear sequence of events; rather, his exposition is non-linear

and guided by rhetorical effect. He begins at the end, with what is an apparent forensic fact: at 7:09pm or 7:16pm, Jen Pusateri calls Adnan's phone looking for her friend, Jay; Adnan answers, says they are busy, and hangs up the phone. This will be pieced together from phone records and Jen's testimony, but this is not of concern just yet in the opening statement. Mr. Urick delivers the dramatic punchline early on:

> At that moment the defendant, along with Jay Wilds, was in Leakin Park. The defendant was burying the body of one Hae Min Lee. (Day 3, p.97)

From there, Mr. Urick segues to the beginning – the relationship between Adnan and Hae at school prior to her death. He begins his construction of the Jilted Muslim Lover narrative not with the "jilted" part, but with the "Muslim" part, reducing the story of Adnan and Hae into an efficient 7 sentences and 71 words.

> This relationship caused problems. The defendant is of Pakistani background, he's a Muslim. In Islamic culture, people do not date before marriage and they definitely do not have premarital sex. Their family is a very structured event. They're not supposed to date. They're only supposed to marry and engage in activities after they marry. So he was breaking the cultural expectations of his family and his religion to date Ms. Lee. (Day 3, p.97)

Rhetorically, this story is presented in short and mid-length, simple sentences for easy digestibility – contrasting to the longer sentences preceding it. Formally, its simple style suggests that the issue itself is simple. There is anthropological Othering occurring at this point in Mr. Urick's statement – he informs the jury what things are like in this foreign culture that Adnan belongs to and that they themselves don't. Most importantly, it is only Adnan being Othered; Hae Min Lee, despite also coming from a foreign country that is not represented on the jury, is not Othered. This distinction will become important when looking at Ms. Gutierrez's opening statement, where she attempts to reverse this.

Immediately following this, Mr. Urick returns to apparent "facts" to give legal legitimacy to his narrative, by using examples. He brings up the Homecoming dance

at which Adnan's parents showed up and took their son home after meeting Hae for the first time and having the truth of the situation exposed to them. However, according to Mr. Urick, they didn't just take Adnan home, they 'practically dragged' (Day 3, p.98) him home; and they didn't just meet Hae, they spoke to her in a way that was 'abusive' (Day 3, p.98). This infuses the passive story of Adnan going against his family with real consequences – invoking the stereotype of the violence of Islamic culture as a non-Muslim American audience might understand it.

Thus far, the exposition imbued apparent "facts" with moral significance. This sequence makes Mr. Urick's concluding speculation on motive logical and plausible.

> [Hae] saw that the relationship was not good for the defendant, and because she truly loved him, she let him go. The defendant, however, had a different reaction. In order to have this relationship, he had to live a lie. He'd had to lie to his parents. He'd to had to lie to his religious friends. He was living a lie, denying to them that he was engaging in the activities that was forbidden in their culture. This is a great sacrifice. It was a double life for him. He was leading a lie, and when it ended, that's all he had left, was the lie that he'd been leading. He became enraged. He felt betrayed that his honor had been besmirched. And he became very angry. And he set out to kill Hae Min Lee. (Day 3, p.101)

There are several elements of note in this section. First, Mr. Urick appeals to another culturally familiar adage – the source is unknown but likely literary (O'Toole, 2012) – the idea that "if you love something, let it go," with the continuation that it might return to you and you will know it is yours. This is something with which Mr. Urick trusts the jury will be familiar; and once again he Others Adnan – he is being contrasted not only with Hae but also with "everyone else," who would have reacted as she did. Mr. Urick then emphasizes the idea that Adnan was "lying" through repetition – another common understanding that living a lie torments an individual and makes horrible behaviour possible. Mr. Urick associates this language with religious language – it was "forbidden," it was "a sacrifice," and his "honor had been besmirched."

Thus, through appeal to a number of familiar tropes as well as usage of rhetorical strategies, Mr. Urick successfully keys into the fundamentalist Islamic narrative and finishes where he started: with the logical conclusion to the story, murder.

5.3.1.2 The Star-Crossed Lovers Narrative

The judge in all three of my case studies emphasized in their directions to the jury that the burden of proof is on the prosecution to prove their case beyond a reasonable doubt. In terms of storytelling, it would therefore be sufficient for the defence to simply counter the State's narrative, exposing inconsistencies and implausibilities. Ms. Gutierrez takes up this narrative task, but, as is often the case, she also offers an alternative story – structurally, if not politically, a counter-narrative – that of the Star-Crossed Lovers.

In contrast to Mr. Urick's storytelling practice, which is clear in its strategy if not linear, Ms. Gutierrez jumps back and forth between her dual narrative task. She begins by proposing her counternarrative:

> It is important that you understand who these two young people were. Young, star-crossed lovers of different cultures, of different races, from different countries, from different families, from different religions, from one side of the street to the other, from one set of answers straight to another, throughout history populated our collective human history. The younger they are the more tragic it is. (Day 3, p.113-114)

As described above, in the State's case only Adnan is being Othered while Hae remains to belong to the same group as the rest of the non-Muslim population. Hae is "normal" while Adnan is not. Ms. Gutierrez reorganizes this arrangement, casting them as different relative to each other, essentially Othering them both – or, rather, normalizing them both. She continues this attempt by integrating Adnan and Hae into their friend group at Woodlawn High School and casting them all as different from each other: 'You will be amazed at the diversity among this group of children. Some of them were Muslim who consider themselves Mideastern. Others were Indian,

others were black of every hue, others were white of every ethnicity' (Day 3, p.116-117). She does not mention Hae's Korean background at this stage, but the overall effect is to normalize Otherness.

At this point, Ms. Gutierrez is side-tracked from her Star-Crossed Lovers narrative. She takes a break to counter what she treats as the State's fear-mongering of Islam. She embarks on a verbal journey of education and awareness-raising, as she attempts to further normalize Adnan's Muslim heritage and associate it with aspects other than violence and restriction.

> His ancestry on both his mother's and father's side, whom you will get to know and identify, is of Pakistan. They are Pakistani. And they came to this country before he was born or thought of in hope of a better life from their native land, like generation after generation of immigrants, other than the first people in this country, with their hopes and dreams for new families, for new life. (Day 3, p.117)

Here, being Muslim is not an isolated identity, but just like any other immigrant identity. It is associated, therefore, with positive ideas of hopes and dreams, keying into a trope just as familiar to an American audience as the fundamentalist Islam narrative – the American Dream narrative. Indeed, she insists that Muslims fleeing their countries are no different from other immigrants, be they 'German, Dutch, Finnish, [or] Italians' (Day 3, p.119) – interestingly, all Western European countries.

On the other hand, her very attempt to explain Pakistani history and Islamic traditions contributes to the Othering effect. She mentions in her educational campaign that 'Pakistan was a country that was formed out of the bloodbath that was India right after India gained its independence from Great Britain. It was a bloody revolution.' (Day 3 p.118). This association of Adnan's country to blood and violence more supports the State's narrative than the defence's. She also presents two separate statements which, juxtaposed, creates an Othering effect – she initially describes how many immigrants attempt to assimilate, 'to leave behind their native languages, their native customs, their native dress, their native culture, and their religions' (Day 3, p.118) but later, when describing Adnan's family, implies they were

not these kinds of immigrants, as they ‘brought with them their culture, their religion, their habits, their beliefs, their way of life, they’re [sic] own language’ (Day 3, p.119). Rhetorically, Ms. Gutierrez therefore is inconsistent about committing to any one trope.

After this historical detour, Ms. Gutierrez returns vaguely to the Star-Crossed Lovers narrative, emphasizing the love Adnan and Hae had for each other. It is ill-fitting, given certain realities. The Star-Crossed Lovers trope of the Romeo and Juliet type have a strong bond of love that defies the people around them; they do not have the frequent break-ups that Adnan and Hae did, as reported in Hae’s diary.

> You'll see the ups and downs of the relationship. She talks about the continual declaration of what she calls "recesses," which me and you will see exactly what they sound like. She would declare a recess from the relationship. (Day 3, p.126)

Ms. Gutierrez concludes her argument by attempting to directly repair Adnan’s character from the State’s characterization of him as a Jilted Muslim Lover. However, rather than using examples of behaviour, as Mr. Urick did, Ms. Gutierrez relies on absence of negative behaviour (e.g. ‘from [Hae’s] diary, you will see nothing from Adnan, no asking, no pushing her away, giving her space’ (Day 3, p.127)) and on character references (e.g. Adnan was ‘laid back, funny, always joking, completely understanding and compassionate, willing to do anything for anyone, very good listener’ (Day 3, p.127-128)).

Thus, in opening statements, Mr. Urick and Ms. Gutierrez lay out their core tropes, through appeal to a number of familiar stories and adages. These encode both characterisation of Adnan and the issue of motive – Adnan had a motive to kill Hae because he was a fundamentalist Muslim and his honour was besmirched; Adnan didn’t have a motive because he was a normal loving partner in a tragic situation. Throughout the rest of the trial, both attorneys orient themselves to their respective stories and attempt to elicit testimony that serves to back them up. In the following sections I will look at what happens after the opening statement and how Mr. Urick and Ms. Gutierrez attempt to defend their story, before arguing that Ms. Gutierrez

frequently confused her narrative goal and ended up inadvertently eliciting evidence in favour of the State's trope.

5.3.2 Defending Tropes

5.3.2.1 Mr. Urick

Logically, there are a number of things that Mr. Urick would have to defend in order for his Jilted Muslim Lover theory to be proven beyond reasonable doubt: e.g. not just that Adnan was Muslim but that he was fanatical about his faith, and that he was angry or self-righteous (i.e. "jilted") about the break-up. However, for the most part, what Mr. Urick treats as important to prove his story is not Adnan's character as violent or "jilted." Throughout his examination of the 27 witnesses the State brought, Mr. Urick is concerned only with establishing that Adnan was going against his religious beliefs and his family's expectations to be in a relationship with Hae.

Mr. Urick establishes with Nisha, a romantic interest of Adnan's, on Day 4:

> Q. What, if any, instructions did he give you as to how to contact him?
> A. He did give me his pager number. He didn't give me his house number.
> Q. Did he ever give any explanation why he didn't give his house number?
> […]
> THE WITNESS: Well, later on, he did say that his parents were a little strict about having girls call, but he did give me his house number, but I never did call him.
> (Day 4, p.204)

Immediately afterwards, in his early examination of Krista, a school friend of Adnan and Hae, Mr. Urick establishes several times that Adnan's parents did not approve of him seeing girls.

> Q. And where did you let him off?
> A. At the church parking lot across the street from his residence.

Q. Why didn't you take him to his residence?
A. Because he requested that I drop him off across the street.
Q. Did he explain why?
A. Usually because his parents didn't approve of him speaking with girls, especially out of his ethnic background. So it would have been better for him had I dropped him off across the street so that they wouldn't have seen who drove him home.
(Day 4, p.215)

Later, with detective O'Shea, Mr. Urick makes the same point. The detective took over the case from Office Adcock and visited Adnan's home when he wasn't there, leaving a calling card. Adnan contacted him and left his cell phone number.

Q. Did he indicate any reason why he gave you a cell phone number as opposed to a home number?
A. Due to his relationship with Hae, he believed that his parents didn't approve of it, and he would rather have me contact him on the cell phone instead of calling his residence.
(Day 5, pp.26-27)

Through his first witnesses, Mr. Urick establishes thoroughly and without challenge from the defense that Adnan was hiding his relationship with Hae from parents who didn't approve of the relationship because of their religion. This lays the foundation of the Jilted Muslim Lover narrative. It is with the introduction of Jay Wilds that Mr. Urick drives the point home.

Jay Wilds is the State's key witness. An acquaintance of Adnan's, Jay was a drug dealer who sometimes spent time driving around and smoking marijuana with Adnan. On the day that Hae went missing, Adnan had left his car and cell phone with Jay so that Jay could buy a gift for his girlfriend, Stephanie, a good friend of Adnan's. According to Jay, Adnan contacted him after murdering Hae immediately after school. Adnan showed him the body in the trunk of Hae's car in the parking lot of a Best Buy. Adnan said he needed to make an appearance at track practice after

school in order to have an alibi, so Jay drove him back to school. Jay testified that at this point he had a conversation with Adnan on the subject of the breakup:

> This is when we started to talk a little bit. I don't know, he said to me it kind of hurt him but not really, and when someone treats him like that, they deserve to die. How can you treat somebody like that that you are supposed to love? And then, all knowing is Allah. (Day 9 p.142)

These few lines are the only moment in the entirety of the trial that bridges the gap between Adnan's religion ('all knowing is Allah'), his character as in some sense "jilted" ('it kind of hurt') and his motive to kill ('they deserve to die'). Although I highlight this moment as important to Mr. Urick's storytelling, I emphasize that it is a singular moment easily missed in the entirety of the trial. For the most part, Mr. Urick only fights to show that Adnan was a Muslim and he was hiding his relationship from his parents, entrusting that this alone will suggest to the jury the idea of an Islamic honour killing.

5.3.2.2 Ms. Gutierrez

Mr. Urick's story is straightforward; Ms. Gutierrez has a much more complicated job. In her cross-examination of witnesses, she makes a few attempts to independently construct a Star-Crossed Lovers narrative. That is, she emphasizes Hae's Korean background and makes it known to the jury that her mother didn't approve of the relationship either:

> These young people were agonized over their families' reaction to the relationship; were they not?' (Day 9, p.37)

It is essential for a Star-Crossed Lovers narrative that the resistance to the relationship comes from both sides of the families. Ms. Gutierrez later uses a witness – school friend Debbie – to establish that, in fact, both Adnan and Hae are from Asian countries. This combats the sole Othering of Adnan, reminding the jury that Hae is different as well; or, rather, that they are both normal enough.

In her cross-examination of Aisha, who testified that Adnan's parents did not approve of him having contact with girls, Ms. Gutierrez briefly returns to the terms of her Star-Crossed Lovers narrative.

> Q. And there was nothing hidden about this anguish eating up these two young people who professed their love openly? (Day 4, p.270)

In fact, her emphasis assumes that one element that effectively disproves the Jilted Muslim Lover narrative and supports the Star-Crossed Lovers narrative is whether the relationship was hidden. Ms. Gutierrez establishes from Aisha that Adnan and Hae were open about being in a relationship to everyone else except their parents. Another element she orients herself to as disproving the Jilted Muslim Lover narrative is whether Adnan expressed his feelings or bottled it up:

> Q. And did you sense his sadness over it?
> A. Yes.
> Q. And was he able to express those emotions to you?
> A. Yes.
> (Day 4, p.277)

These choices make evident component parts of the Jilted Muslim Lover trope: for it to be apposite, Adnan must have been keeping the relationship a secret and he must have been repressing his negative emotions.

However, one weakness of the Star-Crossed Lovers narrative is that in itself it does not exclude the ending Mr. Urick proposes. Ms. Gutierrez therefore spends more time attempting to expose flaws in Mr. Urick's story than in constructing her own story. In the process, she often inadvertently ends up supporting the State's case. In the following, I will showcase both how she attempts to defend Adnan and how she feeds into the State's story.

5.3.2.2.1 Defending Adnan

Mr. Urick did not show himself overly concerned with evidence that Adnan was angry, violent, jilted, or in any other way capable of murder. Ms. Gutierrez, on the other hand, was very concerned with Adnan's characterization. Most of the 12 witnesses Ms. Gutierrez brought were character witnesses that testified that Adnan was a bright student, a good athlete, and a generally kind person. In her cross-examination of the State's witnesses, she doggedly pursues Adnan's characterization, establishing almost unanimously that not only was Adnan a bright, athletic, kind person but that his behaviour around the breakup and Hae's disappearance were not at all suspicious. This exhaustive effort did not yield results – and not because it was factually unconvincing.

One example of when Ms. Gutierrez uses cross-examination to establish Adnan's good character is with the witness Don. After Adnan and Hae broke up, Hae started seeing Don, who worked at the same store as her. Don and Adnan met once when Hae's car was having trouble and she called Adnan to help her. At this point Hae and Adnan were freshly broken up and Hae had only been seeing Don for a short while.

> Q. And subsequent to Adnan coming up to you, and, by the way, during no time during any of your discussions with him on that parking lot was there any hostility between the two of you?
> A. No.
> Q. He was pleasant; was he not?
> A. Yes.
> […]
> Q. And it was clear, based on what you heard, that there was no hostility between your now girlfriend and Adnan Syed, correct?
> A. Correct.
> (Day 6, p.85-86).

Ms. Gutierrez also manages through cross-examination to establish that Adnan and Hae's friends did not see anything suspicious about his behaviour after the breakup. Krista reports:

Q. And did you ever observe him to appear to be bitter?
A. Not bitter, no. Sad, yes.
(Day 4, p. 224)

And Ms. Butler-Hendrix, a school teacher:

Q And was there ever a time when you ever heard either of them trash each other verbally?
A No.
Q Blame the other for what was the source of their pain?
A No.
(Day 9, p.42)

Ms. Gutierrez establishes that Adnan was not a routinely violent person, especially not to Hae. Referring to the homecoming dance:

Q. He didn't appear to be forcing her to come out.
A. No.
Q. He wasn't dragging her, was he?
A. No.
Q. Didn't appear to be assaulting her?
A. No.
Q. And she didn't appear to be protesting.
A. No.
(Day 7 p.101)

Ms. Gutierrez's approach is acknowledged by Judge Heard in her instructions to the jury.

You have also heard testimony about the good character of the Defendant Mr. Syed. Evidence of good character is not, by itself, a defense of a crime, but you must consider it together with all other evidence in the case. You may

> decide that it is unlikely that a person possessing these traits of good character would have committed the crime charged. (Day 22, p.36)

While Ms. Gutierrez was successful at establishing the good character of Adnan on principle, other aspects of her examination and cross-examination worked against the story of the Star-Crossed Lovers – particularly in terms of the religious aspect of the case.

5.3.2.2.2 Against Adnan

Ms. Gutierrez has a very dogged style of examination. Where Mr. Urick makes a point and ends his examination, Ms. Gutierrez is exaggeratedly thorough and often repeats herself – to the point that this starts causing problems when the judge begins to sustain objections to repetition later on in the trial. In her thoroughness and her attempt to tackle the religion issue head-on, she ends up inadvertently supporting Mr. Urick's point by eliciting more details of how the relationship went against Adnan's parents and religion. For instance, as seen above, Mr. Urick established with Krista and Nisha that Adnan's parents did not approve of the relationship. Only Krista mentioned this was for 'ethnic' reasons. Mr. Urick leaves his examination with this small mention of ethnicity. The religious aspect was, in fact, interrogated by Ms. Gutierrez herself. She begins her cross-examination.

> Q. And prior to the time when they became an item as a girlfriend and boyfriend, everyone in the class knew that Adnan Syed was a Muslim, did they not?
> A. They did.
> (Day 4, p.217)

Over the next three pages, Ms. Gutierrez relentlessly pursues the issue and succeeds more thoroughly than even Mr. Urick to establish the contradictions between Adnan's behaviour and his religion. In fact, the story is often told by Ms. Gutierrez herself, as Krista's testimony consists only of symbolic confirmations of Ms. Gutierrez's comments. The testimony continues:

Q. And that he didn't, or he had not dated?
A. Correct.
Q. And he hadn't dated, not just because his parents didn't approve of it, but because his religion didn't encourage that; is that correct?
A. Correct.
Q. And all of you all just sort of accepted that, did you not?
A. Yes.
(Day 4, p.218)

Ms. Gutierrez's questions about Adnan's Muslim faith at times actively contradict her Star-Crossed Lovers narrative. Star-crossed lovers like Romeo and Juliet are passionately together despite resistance from outside their relationship, while Adnan and Hae, as Ms. Gutierrez herself establishes, had frequent breakups.

Q. And they knew about the difficulties regarding Adnan Syed's parents and his Muslim faith, disapproving of that relationship? Did you not get that information from almost everyone?
A. Yes.
Q. And that because of that difficulty, the relationship had been tumultuous?
A. Yes.
Q. And that it had been off again, on again on more than one occasion from the time they began having a relationship in the Spring of 1998 all the way up to the end, at the end of December, 1998?
(Day 5, p.31)

Ms. Gutierrez even makes the point when the witnesses themselves does not.

Q. And were you aware prior to that evening that Adnan Syed and his family were Moslems?
A. No.
Q. And that going to dances was forbidden for Moslems?
A. No.
Q. And dating was forbidden for Moslems.

A. No. (Day 7 p.97-98)

Ms. Gutierrez could have stopped after the witness's denial of knowledge of the fact of Adnan's religion. Arguably, this would have supported her case – Islam was not so core to Adnan's identity that it was the first or only thing people know about him. At times, her attempts to normalize Islam backfire, as when she cross-examines the athletic trainer at Woodlawn:

Q. You were aware that other Muslim students also, like Adnan, violated their religious tenents [sic] and dated others; were you not?
A. No, I don't know of any other Muslims that dated.
(Day 9, p.46)

Another way Ms. Gutierrez may be said to be making Mr. Urick's point for him is in the way her educative campaign about Islam backfired during examination of one of her own witnesses. On Day 20 of the trial, Ms. Gutierrez called as witness Adnan's father. His testimony consisted of very detailed information about Islam. However, it is unclear if this had the desired effect.

Q. And that is supposed to be the person, according to Islamic faith, that created all life?
A. Creator for the whole entire universe.
Q. Okay. Now, is there a figure in Islam that is called Allah?
A. No figure.
Q. I mean, is there a person that's referred to as Allah?
A. Well, actually, Allah, the creator, is beyond comprehension of a human being who have been created from a drop of seed.
(Day 20, p.259)

In this case, the fact that Rahman Syed regularly repaired Ms. Gutierrez's questions may have had the effect of further Othering the religion – understanding Islamic beliefs is even beyond Adnan's attorney, who is meant to be defending him. Furthermore, it does not serve Ms. Gutierrez's attempts to counter the Jilted Muslim

Lover narrative that there were frequent subtle examples of restrictiveness and control in Rahman's testimony.

> Q. And what -- in the daytime -- and back then in December and January, did Adnan have a job?
> A. We never let him have any job.
> (Day 20, p.273)

In one instance, Rahman attempts to repair Ms. Gutierrez's language to a less restrictive verb and Ms. Gutierrez does not accept it.

> Q. All right. And did you require your sons to go with you to pray during Ramadan?
> A. Yeah, I asked them to go.
> Q. Did you -- well, now, you asked them. Does that mean that they were expected to go?
> A. Well, when we ask them, they are, yes, they are expected to go with us there.
> Q. They're expected to do what you ask?
> A. That's right.
> Q. Because you are the father?
> A. That's right.
> (Day 20, p.281)

Ms. Gutierrez introduces the restrictive term "to require" a certain behaviour, which Rahman Syed attempts to repair to the term gentler verb "to ask." Ms. Gutierrez does not accept this and clarifies that there was a pressure on Adnan to behave by certain standards. Ms. Gutierrez is then, again, the one to offer the reason – Rahman's authority as a father.

Ms. Gutierrez therefore confirms Mr. Urick's point that Adnan led a contradictory life and that Islam is a restrictive religion (from the examples above, she used absolute terms such as 'forbidden,' 'violated,' and 'required'). Furthermore, in her examination of Rahman, her educative campaign fails, as she frequently gets details about Islam

wrong herself. Arguably, this could have a distancing effect between her and her Muslim client. If even Adnan's attorney, hired to defend him, does not understand him, how are the jury expected to understand?

In summary, this section has served to show how defence and prosecution constructed two different tropes, while analysing how attorneys infused their stories with power – or failed to do so. Rather than prescribing what the attorneys had to prove for their respective tropes to have evidentiary power, I have explored what they themselves treat as important to prove: Mr. Urick, that Adnan's religion was important to him and that he was hiding the relationship from his parents; and Ms. Gutierrez, that he was not hiding from anyone other than his parents and that Adnan was a good person. The abundance of evidence of Adnan's good character did not convince the jury, not because it was factually uncertain, but, this thesis argues, because of the evidentiary power of tropes. In the following section, I turn from the power dynamics between defence and prosecution to legal-lay power dynamics.

5.4 Language and Power

In Chapter 3, I argued that the organisation of linguistic interaction in the courtroom – particularly, the question/ answer format – leads to linguistic power lying disproportionately with the legal professional. It gives the legal professional the power to direct the object of narration and to frame it in their own way – leading, perhaps, to the phenomenon of lay participants not feeling they can tell their story "their own way." The Adnan Syed trial differs from the other two case studies in this thesis in that testimony was highly restricted. I will show how control over testimony is exercised, how linguistic power is reinforced and reclaimed when witnesses do not cooperate, and, finally how witnesses manage to resist in very small ways – albeit usually unsuccessfully.

5.4.1 Exercising Linguistic Power

Fielding (2013) showed how close-ended questions limited narrative testimony in English courts, arguing that this is why witnesses felt they couldn't tell their story "their own way." This observation is in line with a long tradition of courtroom ethnographies that find the linguistic organisation of the courts as highly controlled and restrictive. The Adnan Syed trial – more so than the other two case studies – is a powerful defence of this observation.

One way power and control are reinforced is with a very common reminder to accept the framing of the question and answer only in absolute terms, yes or no.

> A. Some areas fluoresced.
> Q. Okay. By fluoresced, you mean like the fluorescent quality of what the laser produces on the shirt; do you not?
> A. If I can have a minute, I can explain fluorescence and how it works.
> Q. Sir, did you not understand my question?
> A. Yes.
> Q. Okay. Let me ask you another one then.
> THE COURT: One moment. She asked you a question. Can you answer her question yes or no? I know you would like to explain, but her question doesn't allow for an explanation.
> THE WITNESS: That's correct. And the way it was posed is not scientifically accurate.
> THE COURT: Well, then you have to say that you cannot answer the question.
> THE WITNESS: I'm sorry. I can't answer the question.
> (Day 6, p.139)

In this battle between legal power and expert knowledge, the expert trace analysis witness refuses to answer yes or no and requests instead to nuance his answer, producing a disaffiliative action. Ms. Gutierrez denies him with an implication that the witness is simply being recalcitrant or incompetent – 'did you not understand my question?' The judge intervenes sympathetically – 'I know you would like to explain, but her question doesn't allow for an explanation.' The judge then reminds the

witness that not answering the question is also an option – something not a lot of witnesses take up in this trial.

The power to force yes/ no answers is not just a method of exercising control. It may be used against a witness, forcing them to accept certain parts they may feel is inaccurate along with the parts that are accurate. 'Technically, yes' is not an acceptable answer. An example of this occurs in Jay's testimony.

> Q. […] But nonetheless you went into a room, an office with this woman who had been introduced to you as a very good lawyer, a defense lawyer who does pro bono cases?
> A. Some, yes.
> Q. Answer my question. You went into the room with her?
> A. Yes.
> (Day 15, p.62)

In context, Ms. Gutierrez is suggesting that Jay received an unfair deal in order to testify against Adnan. Here, her basic question is whether or not Jay went into a room with the lawyer. However, the framing of the question implies a number of other questions: Was the room an office? Was she introduced to you as a very good lawyer? Did you know she did *pro bono* cases? Jay demonstrates resistance to the multitude of implied questions and attempts to answer "some," but he is forced to accept all of the extra information Ms. Gutierrez introduced – it would likely not have been framed that way if he had been permitted to use "his own words."

In the examples above, resistance from witnesses is subtle and the reinforcement is treated as occasioned – it's simply one moment in which the witness needs a reminder. With one particular witness, however, the frequency of these reminders led the legal professionals to provide meta commentary on the nature of courtroom interaction.

Mr. S was a witness for the defence – albeit an unwilling one. He was the maintenance worker who found the body. He did so under circumstances that could be considered suspicious by the standards of common sense, which is what Ms.

Gutierrez attempts to emphasize. His testimony was as follows: he left work during his lunch break to get a tool that he had at home, without checking whether there was one at work already; he left home with a beer, which he drank in his truck; halfway back to work he had to urinate and stopped in the park; previously convicted of publicly exposing his penis, he was so deeply concerned with his privacy that he went into a very obscure and wild location in the park, far removed from any passersby; he noticed the body when police officers had trouble locating it even knowing where it was; he left without urinating. Ms. Gutierrez calls him as a witness for the defence and tries to cast suspicion on his behaviour. From the beginning, Mr. S attempts to resist questioning and is summarily denied at every turn:

> THE COURT: And your address for the record.
> THE WITNESS: excuse me, can I talk to someone for a minute?
> THE COURT: You can't speak to anyone. You're a witness. Your address?
> (Day 19, p.111)

> THE COURT: -- you're adding all the stuff that you want us to know, but that's not your job. Your job is just to answer the question that is asked.
> (Day 20, p.34)

While legal professionals often controlled testimony in this trial according to the expectations of roles – what a witness ought to say – in these examples it was necessary to explicitly state the role; it is offered to Mr. S that he can't speak to anyone because he "[is] a witness," as if it is clear what that implies, and what he is doing is a "job." The examples above serve to show how highly controlled and restrictive – explicitly and self-referentially so – legal power was during the trial of Adnan Syed. For the most part throughout, resistance in the form of elaborating answers is summarily denied. However, the trial is rife with another phenomenon whereby witnesses attempt to exercise resistance to questioning: repairs.

As defined and described in chapter 3, repairs are 'the set of practices whereby a co-interactant interrupts the ongoing course of action to attend to possible trouble in speaking, hearing or understanding the talk' (Kitzinger, 2014, p. 229). In everyday conversation, most of these repairs are self-initiated (i.e. the speaker correcting

themselves mid-speech). In the case of other-initiated repair (i.e. initiated by the other speaker), they often take the form of interrogative structures such as “excuse me?”, “pardon?”, “who?”, “when?” (Kitzinger, 2014, p. 249), inviting the speaker to perform the repair. In the courtroom, because questions from the witnesses are not permitted, repairs take the shape of small corrections that are closer to what the witness wants to communicate – i.e. they are instrumentalized by participants to regain some control over their testimony. Thus, I interpret repairs as attempts by witnesses to wrest or reclaim control over their testimony, better using “their own words.”

In the next two case studies, I will show how resistance to repairs is more readily permitted, and thus how witnesses “win” minor power struggles over language. In the case study at hand, however, repairs are almost always rejected. In the following two subsections, I will take the point of view of the witness and show how attempted repairs tended to “fail” – i.e. are rejected by counsel – and give a few examples in which their attempt might be classified as a “win” – i.e. they are accepted and go on the record.

5.4.1.1 Losses

In the following examples, the loss of the attempted repair is not immediately obvious, as Ms. Gutierrez moves on from the initial attempt. Later, however, she returns to her original phrasing, and the witness is forced to accept her words.

Mr. Waranowitz was an AT&T cell phone network engineer that was brought by prosecution in an expert capacity to testify as to the whereabouts of Adnan’s cell phone on the day of the alleged murder. During cross-examination – like many expert witnesses – Mr. Waranowitz attempts to resist questioning when the phrasing does not match his knowledge as expert. In this example, Mr. Waranowitz is resistant to what constitutes a “report.”

> Q. And did you give them a report of your findings?
> A. No.

Q. You didn't report your findings to them?
A. I verbally gave Ms. Murphy my readings as we conducted the test.
Q. Okay. So, you don't consider that to be a report?
(Day 11, p.69)

Mr. Waranowitz and Ms. Gutierrez have a different idea of what a report is – the former considers it a formal written document while Ms. Gutierrez is referring to any feedback he may have given. Mr. Waranowitz attempts to repair Ms. Gutierrez's questions from "reporting findings" to "verbally giving readings." It is many pages later that the outcome of this struggle becomes clear. Ms. Gutierrez goes in circles and returns to the same matter:

Q. During the test as you reported them to her, correct?
A. Correct.
Q. And during the test as you were reporting ongoing results, Ms. Murphy didn't say, oh, that's not good enough, did she?
(Day 11, p.99)

Ms. Gutierrez returns to her interpretation of the term "to report" and Mr. Waranowitz finally yields to her phrasing – 'correct,' he says. While it is unclear why it matters to Mr. Waranowitz that his findings were communicated verbally rather than in writing, in another example the stakes are clearer. When Jay is called to answer for the inconsistency of the information he gave to the police, he is uncomfortable with the word "lie."

Q. And what you told them and your act of showing them that place, those were lies, weren't they?
A. They were not the truth, no.
Q. They weren't the truth. What's the opposite of the truth?
Mr. Urick: Objection.
The Court: Sustained.
(Day 12, p.68)

The intervention of the judge meant that Ms. Gutierrez briefly turned away from her insistence on the term “to lie.” However, the power struggle over phrasing continues and recurs throughout much of Day 12 as Ms. Gutierrez attempts to get Jay to use the term “lie.” Whether or not it makes a difference to the jury, both Jay and Ms. Gutierrez act as though it has weight in determining the credibility of Jay as a witness. Eventually, Ms. Gutierrez wins the struggle.

> Q. So, you continued — and that was a lie, right?
> A. No, it was not the truth, you're right.
> Q. It wasn't, so yes it was a lie?
> A. Yes. Ma'am.
> (Day 12, p.126)

In a slightly different example, the repair is not a correction, but rather a refusal to use a certain term. Jen was a friend of Jay’s and Ms. Gutierrez attempts to cast doubt on her testimony by implying that Jay was cheating on his girlfriend with her. While this strategy only becomes clear later, when Ms. Gutierrez explicitly asks Jay if he was ‘stepping out’ on his girlfriend with Jen, here Ms. Gutierrez lays the foundation for this accusation. She does this by referring to Jay as Jen’s “very very good friend,” splicing it in during almost every reference to him. At first, Jen ignores this and only uses his name. Ms. Gutierrez refuses to accept this and through sheer insistence and repetition forces the witness to use her terms.

> Q. Because prior to that day your very, very good friend Jay Wilds had asked you to keep it all to yourself, had he not?
> A. Yes, my friend Jay said that.
> (Day 16, p.28)

Rather than ignoring this once again and just replying “yes, Jay said that,” Jen accepts the phrasing and repeats back to Ms. Gutierrez ‘my friend Jay’ – albeit without the intensifiers. Later on, without prompting, she even accepts the intensifier.

A. That's how I felt at the time but I really wouldn't stick with that. I really wouldn't be like you really can't get in the car if you really don't tell me what's going on. I wouldn't be like that with my very good friend Jay.
(Day 16, p.83)

In these three examples, witnesses show themselves resistant to questioning and attempt through repairs to reclaim some control over their storytelling; they are summarily defeated. This is typical of this particular trial. However, I turn briefly to some of the few instances in which witnesses "win" the struggle.

5.4.1.2 Wins

The so-called wins I present below are not unmitigated. In the first two examples, Ms. Gutierrez loses simply because she is wrong and she has no choice but to yield. The third example is a win in terms of the (potential) effect of the repair, even though it was technically dismissed. Finally, in the fourth example, the win is only possible due to the judge's intervention.

In a rare immediate acceptance of a repair, Ms. Gutierrez has a smooth exchange with an expert witness in latent prints.

Q. It only means that you couldn't lift prints, right?
A. I was not able to develop any prints, yes.
Q. And you are an expert at trying to develop prints from things submitted to you; are you not?
(Day 6, p.43)

The witness corrects Ms. Gutierrez's phrasing from "lifting prints" to "developing prints," and in Ms. Gutierrez's follow-up she accepts the repair. In the constant epistemic struggle between expert knowledge and legal authority, the expert witness in this case wins.

Although this happens more often with expert witnesses, other witnesses may do this as well. For instance, Ms. Gutierrez tries in her cross-examination of Jay to emphasize that he is a drug dealer, but she does so from a position of technical ignorance, giving Jay a chance to resist her questioning and to repair.

> Q. You made it in an attempt to get dope, did you not?
> A. I don't use dope, ma'am.
> Q. Back then you made it in an attempt to track down dope, did you not?
> A. I have never used dope, ma'am.
> Q. You made it to track down marijuana?
> A. Yes, ma'am.
> (Day 9, p.236)

Presumably, Jay understands what Ms. Gutierrez is referencing, but rather than correct her use of the term ‘dope’ he simply denies her – twice. Ms. Gutierrez is forced to correct herself. In this case, she has no choice but to accept Jay’s framing, because she is technically incorrect and Jay has proven himself resistant to her questioning.

A more subtle win occurs during Detective MacGillivery’s cross-examination. Ms. Gutierrez attempts to cast suspicion on Mr. S, the man who found Hae’s body:

> Q. And during that investigation Alonso came to be listed somewhere as a suspect in the murder of Hae Min Lee, did he not?
> A. Everyone's a suspect until they're eliminated.
> Q. So the answer to my question is yes?
> A. Yes.
> (Day 17, p.225)

The detective does not immediately answer Ms. Gutierrez’s question with a yes or no and rather repairs to an extreme case formulation (‘everyone’s a suspect’). While Ms. Gutierrez exercised her institutional power and eventually forced the detective to answer her question with a yes or no, it would have had a different effect without the repair. A simple answer of yes would have told the jury that Mr. S was suspicious.

Detective MacGillivery's repair has the effect of reducing the impact of such an admission – he was only a suspect in that everyone is a suspect. While Ms. Gutierrez eventually got her desired response, Detective MacGillivery made his point.

Finally, I offer an example of a rare time when the judge intervenes to defend the right of the witness to use their own words. As shown in a previous example, the judge did not interfere when Ms. Gutierrez was attempting to get Jay to use the term "lies" but she did step in when Ms. Gutierrez insisted with another word:

> Q. And it also outlines promises that Mr. Urick makes that he's going to do; is that right?
> A. I wouldn't say promises but –
> Q. Well, sir, he promises to take certain action in regard to recommending a sentence, does he not?
> A. Yes ma'am.
> Mr. Urick: Objection
> The Court: Sustained. Sustained. […] Counsel, I would just ask if you would be careful in the use of the word promises in that this witness does not accept to word promise. He's indicated as such.
> (Day 15, p.116-117)

In this section, I considered small instances in which there was a legal-lay power struggle over testimony. In these, there is no explicit legal basis given for why the witness's own words were or were not accepted. In the following sections, I turn to what rights govern admissible evidence in this particular trial.

5.4.2 Hierarchies of Epistemic Rights

The legal professionals in the trial of Adnan Syed were very strict about epistemic rights – they frequently tested where knowledge came from in order to determine whether the witness could legally lay claim to the knowledge. More so than in the New Zealand trial and the Derek Chauvin trial, in which epistemic authority tended to

be more self-regulated, in the Adnan Syed trial the right to narrate certain knowledge frequently required the input of the judge. Because of this strictness, a hierarchy of epistemic knowledge that is, for the most part, clearly maintained, can be reconstructed.

In the following sections, I will present an outline of this hierarchy. I will start with basic epistemic rights of lay witnesses – the right to lay claim to first-hand knowledge. Within this, I will show that first-hand knowledge is not a straightforward category, outlining two types of knowledge that vie for that status – second-hand knowledge and speculation. I will then describe the advanced epistemic rights of expert witnesses and finally show the primacy of the written word over the spoken word.

5.4.2.1 Basic Epistemic Rights

5.4.2.1.1 First-Hand Experience

As described in Chapter 3, conversation analysts have frequently described a phenomenon in everyday conversation whereby people treat each other as having privileged rights to their own first-hand experience. This is the evidentiary rule that lay witness testimony is held to in court – in the trial of Adnan Syed, stated explicitly at many times during proceedings:

> The Court: […] And so there's not expertise conclusion that I would expect that you would try to draw from this witness, other than her observations, what she saw, what she did, what she knows not what someone else told her, not what someone else presented to her, but what she knows.
> (Day 4, p. 128)

The concern with knowledge being first-hand may be seen sometimes in the manner of eliciting testimony itself. For instance, when Ms. Woodley, the deputy headteacher at Woodlawn High School, was called to describe the events of the homecoming

dance, Ms. Gutierrez frequently and doggedly seeks confirmation that what she is saying is first-hand knowledge to which she can lay claim:

> A. She [Adnan's mother] wasn't speaking to me. She was fussing at Hae Lee.
> Q. At Hae Lee. Okay. But what you heard?
> A. Correct.
> Q. What you heard though – did that lead you to believe that at least his mother was a Moslem?
> A. It led me to believe that the mother had beliefs that did not agree with the two of them seeing each other.
> Q. Okay. That's based on what you heard.
> A. Right. Whether it's Moslem or not, I don't know.
> Q. Okay. So but that was based on what you heard that was going on between Adnan and Hae Lee and Adnan's parents?
> A. That's who was – who was involved, yes.
> Q. Is that who you observed?
> A. I observed those people.
> (Day 4, p.219)

In every single line of this exchange, Ms. Gutierrez seeks confirmation that what Ms. Woodley is saying is first-hand experience rooted in the body. Three times she seeks confirmation that this was what Ms. Woodley herself "heard" with her own two ears and once that it was what she "observed" with her own two eyes. This is characteristic of Ms. Gutierrez's style of questioning, establishing by the form of the question that the information is first-hand knowledge:

> Q. You observed Adnan during this period past the breakup; is that correct?
> A. Yes.
> Q. And did you ever observed him to appear to be bitter?
> […]
> Q. But you never heard from him or observed bitterness from him towards Hae?
> A. No.

Q. From him you observed on a daily basis an expression of love?
A. Correct.
(Day 4, p.224-225)

When the source of knowledge is uncertain, the requirement that knowledge be first-hand experience is tested and either accepted or dismissed along clear boundaries. For instance:

A I don't -- there were approximately four or five that I had written down and given it Deborah which she placed inside her agenda book.
MS. GUTIERREZ: Objection. Move to strike the last part of her answer.
THE COURT: Overruled if, and only if, did you see her.
THE WITNESS: I saw her place them.
(Day 4, p. 148)

On the surface of it, legal professionals treat the issue of first-hand knowledge as testable and straightforward, clear when it is so and when it is not. However, this is not always the case, and certain knowledge fights to be admissible on the grounds of basic epistemic authority.

5.4.2.1.2 Second-Hand Knowledge

Second-hand knowledge (i.e. knowledge that is not directly experienced by the witness but that they found out from someone else) occupies a contested space in this trial. It may be argued that, in this particular trial, the court has no choice but to admit some second-hand knowledge, as there is a dearth of forensic or eyewitness information. While not as readily dismissed as speculation, it is frequently tested – sometimes eventually accepted, sometimes dismissed in part or in whole. The line of acceptability becomes second-hand knowledge from the words of Adnan or Hae themselves – not third-hand from another party.

This tension – and the line – are clearly showcased in the testimony of Ms. Schab. Ms. Schab was Hae's French teacher with whom Hae also interned every day in first

period. Ms. Schab had occasion to observe the two interacting when Adnan would come to visit her and she testified that both spoke to her about their relationship. At the first trial, Ms. Schab testified to an occasion at an unspecified point in time before Hae's disappearance when Hae did not come to her at first period. Hae was on the phone with Ms. Schab when Adnan came in, and Hae asked Ms. Schab not to let him know she was on the phone. The State claimed this was tangential to motive; the defence claimed this was prejudicial. Judge Heard decided to allow Ms. Schab's testimony at the second trial – despite her inherently only being able to offer second-hand knowledge – while emphasizing that she would be scrutinizing the testimony. True enough, Ms. Schab's testimony is peppered with objections and tests of her rights to narrate knowledge.

> A There had been an incident at the homecoming dance, an argument
> MS. GUTIERREZ: Objection. Unless it's based on personal knowledge.
> THE COURT: We're instructing that you can tell us what someone said to you, that someone being the victim. But you can't tell us –
> THE WITNESS: I can't -- yeah, I'm not understanding.
> […]
> THE COURT: You may tell us what she said to you.
> THE WITNESS: Okay.
> THE COURT: But you may not tell us what someone else said. So when you say there had been an incident, I need you to say –
> THE WITNESS: It's not first-hand experience, I understand that.
> THE COURT: Did Ms. Lee tell you that there had been an incident?
> THE WITNESS: Yes, she did.
> THE COURT: All right. Well, that's how you need to testify
> (Day 4, p.139-140)

Ms. Gutierrez's objection seeks the source of the knowledge Ms. Schab laid claim to – that there had been an incident at the homecoming dance. She needs it to be 'based on personal knowledge.' Arguably, this would mean that Ms. Schab had to have seen the incident herself. On the surface, the judge's comment implies this interpretation: 'you may not tell us what someone else said.' However, she then rules

that ‘personal knowledge’ can still be claimed if Ms. Schab found this out from Hae herself.

At other times, the problems posed by first-hand, second-hand (from Adnan or Hae), and third-hand (from someone else) are solved by seemingly ignoring them.

> Q. When did you become aware that she had disappeared?
> A. The weekend or, I suppose, the Monday afterwards. Her friends had come to me and said -- MS. GUTIERREZ: Objection.
> THE COURT: Sustained. You can't tell us what anyone else said.
> THE WITNESS: Okay.
> THE COURT: The asked question was when did you discover, and you discovered it the weekend after, is that what your testimony is?
> THE WITNESS: Uh-huh.
> THE COURT: To the extent that the witness can testify as to when she got the information, that part of the answer is admissible to you. As to who told her and what they said, that is not admissible, and that portion of her response will be stricken at this time.
> (Day 4, p.145 -146)

In the first line, it is likely that Ms. Schab meant to say that she found out about Hae’s disappearance from her friends. This is third-hand knowledge, therefore, as Ms. Schab did not see the body herself and the information did not come from Adnan himself. However, the question had been when she found out, not how, and the judge rules that the answer of ‘the weekend after’ is admissible, while the source – unsolicited – is not.

5.4.2.1.3 Speculation

One form of knowledge witnesses sometimes attempt to lay claim to as first-hand knowledge is summarily dismissed at every turn – speculation or interpretations of mental states. For instance, Debbie, a school friend of Adnan and Hae’s, attempts to

report that Adnan thought Hae was seeing Don prior to breaking up with him. Ms. Gutierrez immediately pounces on her framing of the issue.

> A. He assumed or thought that Hae was having relations with him before Adnan —
> MS. GUTIERREZ. Objection to what he thought.
> THE COURT: Okay.
> MS. GUTIERREZ: Or what he assumed.
> THE COURT: Right. Well, sustained as to what your intention is for your objection and I will sustain the objection, and now I will direct the witness. You can't tell us what you thought based on something you thought up in your mind as it relates to -the question was whether he told you. That is did Mr. Syed tell you what he thought.
> THE WITNESS: Yes.
> THE COURT: Not you thought he thought. Do you follow what I'm saying? (Day 16, p.300-301)

Similarly, when Ms. Murphy asks Jennifer Pusateri if Jay called her, she replies that ‘he must have’ (Day 15, p.190). The knowledge that he called her comes from deduction of events – i.e. she knows she spoke to him so he must have called – and perhaps from previous behaviour – i.e. it is what he normally does at a certain time of the day. This is not acceptable from a legal point of view.

> THE COURT: Well, I don’t know what you knew. I'm just saying that if you start off a sentence with it must have, it means you're guessing unless it is. So that's an objection and it's sustained and you're being directed to answer the question from what you know, what you saw with your own eyes, what someone told you with your own — you heard with your ears, not what someone else said that you didn't see or what you guessed at or what must have happened, do you understand? (Day 15, p.190)

The strictness with which speculation is regulated will stand in stark contrast with what is admissible in the Derek Chauvin trial, in which witness interpretation about possible mental states is treated with more leniency.

In the examples above, we see knowledge types that are dismissed outright (speculation) and contested (second-hand knowledge) – both of these orient themselves to the basic epistemic rights of witnesses: the right to narrate their first-hand experience.

5.4.2.2 Advanced Epistemic Rights

The Adnan Syed trial, unlike the next two case studies, made it very clear which witnesses were expert witnesses and which ones were not. The testimony of expert witnesses in the Adnan Syed trial all began with a series of questions on the education and professional background of witnesses, after which the judge would formally and formulaically confer their authority as an expert witness.

> Mr. Urick: Would the defence be willing to stipulate to this witness' expertise and training in the rea –
> Ms. Gutierrez: We were always willing to stipulate.
> THE COURT: Very well. And the expertise will be as?
> MR. URICK: In the field of Forensic DNA Profiling.
> THE COURT: Let her be accepted then as an expert in the area of Forensic DNA Profiling.
> (Day 7, p.8)

The reason it is so important to establish their character as an expert witness instead of a lay witness is because expert witnesses are demonstrably governed by different – more advanced – epistemic rights. The stakes are made clear at the second trial during a debate over whether the school nurse, Ms. Watts, could be admitted as an expert witness in traumatic mental health reactions.

In the first trial, she testified that she believed Adnan was faking a catatonic state after learning of Hae's death. At the second trial, with the jury absent, Ms. Watts underwent a rigorous *voir dire* (i.e. a preliminary examination of a witness or

potential juror) in which her professional education and experience were interrogated.

> The court: [...] And I concluded that unless the State can satisfy the court that M's Watts is an expert with the requisite medical and psychological training, or unless the State can show sufficient additional evidence that M's [redacted] has prior expertise training under DSM in diagnosing individuals under the Maryland Rules 5-703 and 5-704, her testimony must be limited to those personal observations of the defendant.
> (Day 7 p.9-10)

The judge's phrasing (i.e. use of the term 'limited') makes it clear that expert identity confers upon an individual epistemic authority above and beyond a non-expert witness. The stakes with Ms. Watts are high.

Ms. Watts was the nurse at Woodlawn High School when Adnan and his classmates learned that Hae's body had been found. Ms. Watts was doing grief counselling at the school and Adnan was one of a number of students that hung around the nurse's office that morning. At the first trial Ms. Watts was accepted as an expert witness after a short *voir dire.* She testified that it was her medical opinion that Adnan was faking a catatonic state that morning. She notes her observations about his behaviour: his eyes were initially wide and he wasn't engaging with anyone who tried to talk to him; then, when Ms. Watts went to put an arm around him and invite him into her office, he abruptly changed his behaviour to a more normal and engaging state. This is something any witness would be permitted to testify to – personal first-hand observations. The extra privileges afforded expert witnesses meant that Ms. Watts could describe his initial behaviour as apparently catatonic. Her expert knowledge that catatonic states don't just melt away without psychological intervention meant that she could then offer an opinion that his behaviour was insincere.

At the second trial, judge Heard did not so easily accept Ms. Watts as an expert in traumatic mental health reactions. After a rigorous *voir dire*, she was dismissed and the jury did not hear any opinions regarding Adnan faking a catatonic state.

Interestingly, there was an instance in which an informal version of expert status was conferred on a witness in a very limited way. The State brings up Adnan's training as evidence to suggest that he would have the medical knowledge to strangulate a person. Debbie, a school friend of Adnan and Hae's, attempts to testify to this training.

> A. He had an EMTB training class which means he's certified for basic medical administration. He could work --
> MS. GUTIERREZ: Objection. Move to strike.
> THE COURT: The information that you can testify to is what you know. Unless you took the course yourself —
> THE WITNESS: I did.
> THE COURT: - you can't- you did?
> THE WITNESS: I took that course.
> THE COURT: Very well. You may answer.
> (Day 16, p.312-313)

The hesitation of the judge was significant enough that it made it into the cleaned-up transcript, therefore suggesting this was a case in which the legal rules that the judge is following had unintended consequences. In this short exchange, Debbie becomes an expert in EMTB training by virtue of having experienced it first-hand.

5.4.2.3 The Written Word

There is in general throughout the trial another form of knowledge that is privileged above others – above the first-hand "owned" knowledge of personal observation and even above the professional opinions of an expert witness: that is, written knowledge. There are legal reasons for this – written testimony tends to be agreed between defence and prosecution (Monaghan, 2015) – but I highlight here the way participants themselves orient themselves towards the written word and give it special authorities. Various pieces of written evidence are brought forth over the

course of the trial, including Hae's diary, interviews detectives conducted with witnesses, and Adnan's cell phone records.

When Detective MacGillivery testifies, he is not only asked what his interrogation of Jen Pusateri consisted of; he is invited to read from the statement in court and thus report with improved authority what happened. Yielding to the authority of the written word is something that's done instinctively not only by the court but also by the witnesses themselves.

> Q. Is that right? But that she came home from her job first, and then Jay came.
> A. Where in the statement is that?
> Q. Is that because you don't remember, sir?
> A. If it's in the statement.
> (Day 18, p.41)

Another example of proceedings yielding to the authority of the written word over other types of testimony is when Mr. S was invited to confirm his signature on the written record of a statement he allegedly gave to detectives after claiming he found Hae's body. Mr. S did not have his glasses with him and thus could not confirm with the certainty the courtroom requires that it was his signature. This almost brings questioning to a standstill, as the questions pressure an affirmative answer. Indeed, the stakes are high: as shown in extracts above, Mr. S is demonstrably a reluctant witness and seeks to control his situation; if he acknowledges it is his signature on the document then everything contained within it can be admitted as testimony, thus giving up the control he is attempting to gain over proceedings.

> Q. That is your signature?
> A. I'm sorry.
> Q. That is your signature?
> A. I guess it is.
> […]
> THE COURT: You guess it is?
> THE WITNESS: Yes. Yeah, I guess so.

BY MS. GUTIERREZ: Q Well, sir, do you have some doubt as to whether or not this is your signature?
A. It probably is if you say it is.
THE COURT: Well, it doesn't work that way. The attorney doesn't testify. You raised your hand. You're the one that took an oath. We don't want you to guess at things.
THE WITNESS: It looks like it. I mean, my I'm sorry.
THE COURT: Mr. S we don't want you to guess at your answers. We want you to say -- you say it looks like your signature, is that right?
THE WITNESS: Yes, right.
THE COURT: All right. And you can see that much of that paper to see that that is your signature?
THE WITNESS: The way it's -- I write, yes, I think I can.
THE COURT: You think it is?
THE WITNESS: Yes.
THE COURT: But do you have any doubt that that might not be your signature, that it might be someone else's signature?
THE WITNESS: I shouldn't have any doubt. I don't think nobody else would sign it.
THE COURT: I'm sorry, I can't hear you.
THE WITNESS: I don't have no doubt. I don't think nobody else would put my signature on there?
THE COURT: So do you -- you can see that much of it to see that?
THE WITNESS: Yes, I do. Yes.
(Day 20, p.52-53)

Epistemic stance is the term Heritage uses to refer to the ‘moment-by-moment expression’ (2014, p. 377) of conversants’ ‘joint recognition of their comparative, knowledgeability, and rights relative to some domain of knowledge’ (2014, p. 376). Mr. S is asked if it is his signature on the paper, but he claims he can’t see without his glasses. While he answers affirmatively from the beginning (‘I guess so’), he does so while claiming a more distant epistemic stance from the knowledge than the court requires. This is supposed to be his first-hand experience, knowledge he “owns” that no one else could claim. He attempts to say first ‘I guess so,’ ‘it probably

is if you say it is,' it looks like I is,' 'I think it is,' 'I shouldn't have any doubt,' and finally the simple 'yes' that the court was looking for. Only then does the examination continue – regardless of whether the answer was grudgingly given, it was, in the end, given.

5.5 Conclusion

In this chapter, I have explored the interplay between language, narrative, and power in the trial of Adnan Syed with the aim of addressing the research questions presented at the end of Chapter 3. Three key synthesizing observations emerged: the role of tropes in structuring the trial; the restrictiveness of linguistic interaction; and the hierarchy of epistemic authority constructed and defended by legal participants. In these brief concluding remarks, I present a summary of findings; these will be further examined in Chapter 8, in relation to the findings from the following two case study chapters.

In the first part of the chapter, I focussed on Narrative and Power in the trial, related to the questions of what stories are told, how they are constructed, de-constructed, and re-constructed in interaction, and how the altered rules of courtroom talk impact these aspects of storytelling. Tropes emerged as constitutive of the trial. The State's narrative is neat and concise: Adnan, an Islamic fundamentalist, killed Hae when she besmirched his honour by breaking up with him. Mr. Urick presents his story in his opening statement and then defends it throughout the rest of the trial primarily by showing that Adnan's relationship with Hae went against the wishes and beliefs of his restrictive parents. Ms. Gutierrez's story is less straightforward than Mr. Urick's. It is her job to show the flaws in Mr. Urick's story and offer an alternative at the same time. However, her proposed Star-Crossed Lovers story, whereby there was no motive for murder, is seen very rarely beyond the opening statement, as Ms. Gutierrez has her hands full trying to normalize Islam in the eyes of the jury. Her attempts often backfire, as her educative campaigns end up Othering Adnan even more and exposing the contradictions of his lifestyle from a Western Christian point of view (i.e. the cultural community to which the jury belongs).

Lakoff and Johnson define the essence of a metaphor as ‘understanding and experiencing one kind of thing in terms of another' (1980, p. 5). This is problematic, they suggest, because no two things can be exactly alike. ‘In allowing us to focus on one aspect of a concept [...] a metaphorical concept can keep us from focusing on other aspects of the concept that are inconsistent with the metaphor’ (1980, p. 5). This aspect of tropes (as metaphors) is instrumentalized by legal professionals in the trial of Adnan Syed: the jury are encouraged to project the trope on the story of Adnan and Hae and to ignore the aspects of the story that are not consistent with the trope. The relationship between metaphors and tropes will be explored in more detail in Chapter 8, but I introduce it here to highlight both the strengths and the limitations of familiar concepts. In particular, research reviewed in Chapter 2 that suggested the powerful evidentiary quality of tropes (Drew, 1991; Gewirtz, 1996; McKendy, 2006) is borne out and demonstrated in this chapter. Ms. Gutierrez’s exhaustive efforts to prove that Adnan was not “jilted” were largely ineffective, as was her educative campaign to nuance Islam. The power of Mr. Urick’s trope rested in the relationship between familiar stories and “truth,” as described in Chapter 2 (section 2.3).

In the second section of this chapter, I turned to a micro-level analysis of legal-lay interaction, with a focus on how language is used to negotiate power in interaction, as well as how epistemic authority is encoded and exercised. In large part, this served to confirm much of the literature reviewed in Chapters 2 and 3 on courtroom interaction. Narrative-style testimony was, indeed, severely restricted (Fielding, 2013) and close study of language shows how this was done: questions tended to be close-ended, elaborations and repairs were frequently denied, and objections to a witness’s testimony were overwhelmingly sustained. Narrative construction was led by legal professionals, reinforcing the literature on legal control in court (Carlen, 1976; Mulcahy, 2007; Rock, 1991). From this case study, the popular dramaturgical imagery whereby legal professionals are following a script that is unknown to lay participants may be defended: witnesses often expressed and demonstrated confusion with legal instructions on what knowledge they may or may not claim.

In terms of epistemic authority as negotiated in interaction in the courtroom – which, as highlighted in Chapter 2, has received little attention in the literature – this case study suggests this is tightly regulated according to relatively clear rules. The

epistemics of the courtroom in the Adnan Syed trial may be imagined as a sliding scale of proximity to what is experienced first-hand. In the case of lay witnesses, the value of first-hand experience is emphasized; however, because there were no eyewitnesses, second-hand knowledge from the victim or accused themselves are sometimes accepted. Third-hand knowledge and speculation fall last on the hierarchy of epistemic authority. Expert witnesses are afterwards afforded advanced epistemic rights, permitted to testify not only to their first-hand experience but also to their professional opinions. Overarching this, both legal and lay participants orient themselves to written testimony as most authoritative.

Overall, the trial of Adnan Syed confirms much of the literature on courtroom interaction in terms of how narratives are constructed, how witnesses are controlled, and how the law of evidence is translated in interaction. It does, however, also offer some new ideas: specifically, the possibility that tropes are more powerful in court than has so far been acknowledged and that, rather than being passively disempowered, witnesses attempt to resist the power exercised on their testimony by legal professionals. These will be explored in more detail in Chapter 8.

Chapter 6: Derek Chauvin

6.1 About the Chapter

The following chapter is a case study of the trial of Derek Chauvin that took place in the United States between March 8th, 2021 and April 20th, 2021. The case, which will be described in more detail in the Introduction section (6.2) below, involved the death of George Floyd, with the accused being former police officer Derek Chauvin. The analysis was done in a similar way to that of the previous case study of Adnan Syed's trial – taking an exploratory approach to language, narrative, and power, but also drawing on some categories from the previous case study that emerged as relevant such as storytelling, legal-lay interaction, and epistemic authority.

Unlike the trial of Adnan Syed, for which I read all the transcripts, and the trial in New Zealand, which I watched in its entirety, I only observed selected proceedings from the trial of Derek Chauvin. This was in part for methodological reasons related to transcription and general time constraints (see Chapter 4). However, perusing the entirety of the trial was also deemed not essential for exploring the phenomena of interest in this thesis, as depth of analysis was more important than breadth. Thus, in the opening sections of this chapter, I will highlight the proceedings analysed along with the rationale of their selection. Transcription conventions, as described in Chapter 4, will preserve some extra-linguistic elements such as pauses and gestures, and will contain American spelling. Participants will be referred to by last names.

Subsequently, the chapter is organized in a similar way to other two case studies – along the broad categories of Narrative and Power followed by Language and Power – in consistency with the literature reviews in Chapters 2 and 3 and the research questions. In the first part, the focus will be on the role of videos in narrative construction, along with their positioning on the hierarchy of epistemic authority proposed previously. The role of rhetorical strategies by prosecution and defence in constructing, deconstructing, and reconstructing stories will also be explored.

The second part will, like the previous chapter, focus on witness resistance and the negotiation of epistemic rights, highlighting the greater freedom witnesses had as compared to the trial of Adnan Syed and the way this was instrumentalized by lay participants to better “tell their stories their own way.”

6.2 Introduction

6.2.1 Background to the Trial

The death of George Floyd and the trial of Derek Chauvin were extremely high profile, with wide-ranging sociopolitical implications. While of value to scholarship for many aspects related to American history and contemporary race relations in and outside the United States, most of these are beyond the scope of this thesis – focussing, as it does, on interaction during courtroom proceedings. As such, this introduction will be only a basic summary of select background aspects that contextualize the case and give an indication of its reach.

6.2.1.1 The Death of George Floyd

The following summary of events is drawn entirely on the story constructed at trial. On May 25th, 2020, a 46-year-old African American man named George Floyd bought cigarettes from Cup Foods, a small shop in Minneapolis. The store worker who accepted the $20.00 bill believed it to be counterfeit. He made several attempts to recall George Floyd and his two companions into the shop to pay, but Floyd refused. The manager then called the police. Two officers from the Minneapolis Police Department initially attended, with a further two being called for backup soon after – this latter pair included Derek Chauvin, who had worked for the Department for 19 years. George Floyd resisted attempts to get into the squad car, presenting as agitated and claiming that he was claustrophobic; there were also suspicions he was under the influence of drugs. Officers handcuffed Floyd and put him face-down on the ground next to the car. The struggle attracted the attention of a group of

bystanders, who started arguing with the officers and filming the events. While on the ground for approximately 9 minutes with two officers (Thomas Land and J. Alexander Kueng) kneeling on his back, Derek Chauvin kneeling on his neck, and a fourth officer (Tou Thao) keeping the bystanders at bay, Floyd called out several times that he couldn't breathe. George Floyd died that evening.

The death of George Floyd was filmed by several bystanders, including a 17-year-old girl named Darnella Frazier, who uploaded the video online on her Facebook. It soon went viral. While the original video is no longer publicly available and while few sources report on the actual spread of views, one source estimates that the video garnered 2.5 million views in the 12 hours after it was posted (Blake, 2020). Medaria Arradondo, Chief of the Minneapolis Police Department, fired Derek Chauvin and the other officers involved the next day and called for an FBI investigation to be launched (Boggs, 2020)

6.2.1.2 Protests and Immediate Consequences

The death of George Floyd sparked both peaceful and violent protests in the USA and abroad. Protests began in Minneapolis hours after George Floyd's death, with hundreds marching to the Minneapolis Police's 3rd Precinct north of the incident. Police in riot gear were dispatched; videos showed them employing smoke bombs, tear gas, and flash grenades, while protesters were shown smashing squad cars, breaking the precinct windows, and throwing bricks and rocks (WCCO News, 2020). Monuments to people in history that had espoused racist sentiments or supported slavery were torn down (Chang & Dodson, n.d.).

Throughout 2020 and 2021, violence broke out in many cities in the US, as authorities responded with violence as well, in some cases with extreme police brutality including against reporters. Over 200 cities in the US imposed curfews and declared states of emergency, while many states called in the National Guard, the State Guard, the 82nd Airborne, and the 3rd Infantry Regiment to counter violent protests (Kindy et al., 2020).

6.2.1.3 Cultural Significance

As mentioned, 2.5 million views of Darnella Frazier's video were recorded in the first 12 hours after George Floyd's death; the same source reports that Black Lives Matter and race-related videos received over 1.4 billion views in just the 12 days following his death (Blake, 2020). A further 23.2 million people are estimated to have watched Derek Chauvin's trial live. These numbers give an indication of the widespread impact of this event.

The protests surrounding the death of George Floyd, as described above, were the biggest since the Civil Rights era in the United States (Buchanan et al., 2020). Far from representing to the American people (or, indeed, to observers worldwide) an isolated case of a police mistake, the death of George Floyd became yet another in a line of egregious killings of Black Americans by police officers, often White ones. George Floyd became the biggest symbol for Black Lives Matter (BLM) – a political and social movement against racism in the USA that began in July 2013 on social media after the acquittal of George Zimmerman in the fatal shooting of the African American teenager Trayvon Martin in Florida (Black Lives Matter, n.d.). The movement grew following the deaths of Michael Brown, Trayvon Martin, and Eric Garner, and grew more with each death of an African American at the hands of mainly white officers. BLM has since spread worldwide.

It is difficult to overstate the reach of the story in the public imagination. Perhaps fuelled by the Covid-19 lockdown and the fact that more people were staying indoors with only the Internet to connect them to others (McLaughlin, 2020), the murder of George Floyd and the consequences thereof were the subject of news articles and segments around the world. As such, this case stands out from the trial of Adnan Syed and the New Zealand trial in that the narratives told about what had happened and what was happening around the world are far more prolific. While news article narratives have been drawn on to describe the events surrounding the murder of George Floyd and the trial of Derek Chauvin, the narratives discussed in this chapter will focus on those told during the trial by lay participants, expert witnesses, and legal professionals.

6.2.1.4 The Trial of Derek Chauvin

Derek Chauvin was arrested on May 29th, 2020, and charged with unintentional second-degree murder, third-degree murder, and second-degree manslaughter. State of Minnesota v. Derek Michael Chauvin began on March 29th, 2021, and ended on April 19th, 2021. The trial was televised and streamed online, where the videos remain on multiple platforms. The presiding judge was Hennepin County Judge Peter Cahill. The lead prosecutor was Assistant Attorney General Matthew Frank, with other prosecutors involved in questioning including Jerry W. Blackwell, Steven Schleicher, and Erin Eldridge. For the defence there was Eric Nelson. The State rested after 11 days on April 13th after calling 38 witnesses. The defence began its case on April 13th and rested on April 15th, after calling 7 witnesses. The jury announced their verdict on April 20th, 2021, finding Derek Chauvin guilty on all counts. Chauvin was sentenced to 22.5 years in prison. Since his conviction, the other officers involved in George Floyd's arrest have also been convicted and sentenced to shorter stays in prison (BBC News, 2022).

6.2.1.5 Legacy

While social commentators tend to portray the death of George Floyd as a symbol of police brutality against Black individuals and the conviction of Derek Chauvin as a step forward in acknowledging that Black Lives Matter, academic commentators are more sceptical. Berman (2022) writes that it is too early to tell what the legacy of the trial will be, theorising two different ways it could go down in 'collective memory' (i.e. 'a community's shared narrative of the past'): 'the murder as part of America's irreparably racist past, against the murder, and especially Chauvin's conviction, as part of America's evolution toward a more racially equitable society' (2022, p. 482).

Academics conducting early empirical research have found some indication that the impact of George Floyd's death, especially on White Americans, was temporary – at least by certain quantitative measurements. Onwuachi-Willig (2021), for instance, examined polls of attitudes towards policing practices and racism and found that, while the disparity between Blacks and Whites closed somewhat during the

immediate aftermath, the disparity has since grown again. Brantingham et al. (2022) examined changes in police-public cooperation since the death of George Floyd as seen in police calls for service and found that whatever small changes were noticed immediately after the death of George Floyd were temporary. Koslicki (2022) also found that there were 'no statistically significant variance in police use of force against […] Black citizens following the immediate aftermath of protests' related to George Floyd's death, while other models found that there has been a 'statistically significant rise in use of force' following the conclusion of Derek Chauvin's trial (2022, p. 586).

Following this brief introduction to the background of the case, I will now move on to the trial, beginning with the proceedings selected for analysis in this thesis.

6.2.2 Selected Proceedings

Opening and closing statements were initially observed, due to their role in establishing the legal narratives at play. While witness testimony is co-constructed piecemeal, opening and closing statements are an opportunity to offer relatively coherent narratives (Felton Rosulek, 2014). In addition to opening and closing statements, I selected for analysis a number of witness testimonies.

Dr. Andrew Baker is the forensic pathologist who performed the autopsy of George Floyd and ruled the cause of death a homicide in the medical sense. He described the cause of death as 'cardiopulmonary arrest complicating law enforcement subdual, restraint, and neck compression.' As such, I selected him for the analysis for three reasons. The first is that his description is key to the arguments of both prosecution and defence as to establishing the "truth" of what happened. The second is for comparison with the forensic pathologist the defence brought – how do two experts in the same field construct two different narratives from the same events? The third reason is the way this comparison might give way to an exploration of what gives one witness more legitimacy than another.

Dr. David Fowler is a retired forensic pathologist called by the defence. As above, I selected him for comparison with the forensic pathologist called by the prosecution. Dr. Fowler argued that there were multiple factors that contributed to George Floyd's death beyond Derek Chauvin's weight on his neck.

Genevieve Hansen is an off-duty firefighter who tried to administer first-aid but was prevented by Officer Thao, who was controlling the scene. News clippings showed her being admonished by the judge and arguing back actively. This suggested to me two points of interest: the explicit interplay of legal vs. lay power dynamics, and the understanding, to an extent, of lay audiences regarding the "rules" of the court.

Medaria Arradondo is the Chief of the Minnesota Police who fired Derek Chauvin and the other police officers involved. Chief Arradondo, alongside Lt. Richard Zimmerman, Seargent Jody Stiger, and Lt. Johnny Mercel, all testified about use of force policies and training, as well as giving their professional opinion on whether the use of force exhibited by Derek Chauvin was legal and acceptable. I selected Chief Arradondo and his colleagues due to the weight of the issue of the use of force on the outcome of the case.

Christopher Martin is the boy (18 at the time) who accepted the fake $20 bill from George Floyd and reported it to his manager – who, in turn, called the police. I selected this witness because it is the beginning of "the story," before police became involved, and I was curious what bearing it had on the events that followed.

Darnella Frazier is the girl (17 at the time) who took the video that went viral and spurred the worldwide reaction. This video is the centrepiece of the trial and her testimony held a lot of weight in the establishment of legal narratives.

6.3 Narratives and Power

6.3.1 Videos and Event Stories

6.3.1.1 Narrative constructions from videos

The events of May 25th, 2020 were captured on video from multiples sources and angles: several bystanders besides Darnella Frazier filmed part of the events; there was CCTV footage around the scene of the crime; and there was body cam footage from the four police officers. Videos, therefore, formed the backbone of Derek Chauvin's trial, the same ones played repeatedly and dissected carefully. As such, in the first instance, the Derek Chauvin trial hinges on what Sandberg (2016) called event stories, referring, as the name suggests, to short events, as opposed to, for instance, life stories (Linde, 1993; Sandberg, 2016) which make coherent a person's biography.

In many jurisdictions, video evidence is treated as 'real evidence,' or evidence that might be used 'by a jury to establish fact, whetever [sic] the other testimony' may be (Law Society of Scotland, 2017). This is, notably, not the case in the United States. In this trial, the videos, while having significant weight, are not treated as pure representation of reality in ontological terms; this is evident in that prosecution and defence ask witnesses to also verbally describe what they saw, not just what the camera saw. Prosecution and defence use the videos to reconstruct the events of the 25th of May into two – subtly – different stories. Given the reliance on videos of the event in this trial, an important question becomes how one might tell two different stories when the event was recorded and played for everyone to see and interpret.

The brief answer to that question as emerges from this trial is reliance on the selective nature of narratives (see e.g. Chatman, 2021). When one reads a narrative, it is not a complete, mimetic account of reality. That would render any book incoherent, filled as a life is with debris (for instance: it would be very distracting to make a note of whenever a character blinks; or if there were no time-jumps a book would hardly cover a day in the life of a person). Therefore, a narrative selects the events that contribute to a certain goal – the moral of the story or at least the conclusion. As the defence lawyer Mr. Nelson says in his closing argument: 'lawyers – and I'm going to do it too – we pick and choose.'

There are many examples throughout the trial in which prosecution and defence play the same videos and encourage the jury to pay attention to one detail over another, the selectivity serving to create two different stories. For instance, in closing arguments, both sides played body cam footage of Floyd in the prone position with the officers kneeling on his back and neck. Prosecution points out that another officer on Floyd's back suggested turning him on his side, while Chauvin refused. This, they imply, augments his culpability above that of the other officers. Meanwhile, Mr. Nelson points out that the officers were discussing excited delirium – a state of heightened arousal and possible violence often the result of drug-taking – which he argues justifies their use of force.

In another example, playing the well-known video of Chauvin kneeling on Floyd's neck, prosecution describes Chauvin's manner as relaxed and comfortable, implying a ruthlessness to his character. Meanwhile, defence points out that he's looking down, around, assessing the situation, acting calm in a crisis situation, exactly as per his training. This helps to construct Mr. Nelson's idea – or trope – of the Reasonable Police Officer, which will be explored in more detail below. Also contributing to this construction, the defence and prosecution often haggle over adjectives to describe the crowd of onlookers. Several times during the playing of videos Nelson points out the swearing and raised voices, attempting through leading questions to elicit testimony that the crowd was "hostile" and "angry"; while prosecution downplays this and infuses empathy, describing the crowd variably as "upset," "alarmed," and "desperate."

6.3.1.2 Hierarchies of epistemic authority

In the Adnan Syed trial, the kind of material that was afforded the greatest authority in interaction tended to fall neatly into a hierarchy representing what was closest in bodily and temporal proximity to the events in question: interviews given right after the event were more authoritative, for example, than testimony given verbally on the day; and first-hand knowledge was more authoritative than more distant sources of knowledge. In the Derek Chauvin trial, with the introduction of the material of the

video, this hierarchy was oftentimes subverted; i.e. the positioning of the videos in the hierarchy of authority was not stable.

The videos from bystanders, body cams, and CCTV footage are given high symbolic value in this trial. Mr. Blackwell, for the prosecution, emphasized this point in his opening statement:

> Blackwell: And when that didn't work you can see any number of them pulled out their cameras. To document what was happening. Such that it will be memorialized, such that it will not be misrepresented, such that it could not be forgotten.
> 24:41 – 24:55 https://www.youtube.com/watch?v=UwDQ30MNVKs

The videos are variably a document, a memorial, and a representation, in this description. All three of these terms imply acknowledgment of that fact that, while invaluable, the videos are not the actual events – they are one step removed from "what really happened." Mr. Nelson, too, though he does not explicitly comment on the value of the videos, uses them extensively though the trial. They are accorded high authority throughout. Furthermore, if a video is once removed from the "actual events," a narration of that video is twice removed, and even more temporally removed.

Being closer to the event itself, it would make sense, if following the logic of the hierarchical structure in the Adnan Syed case, for the videos to be given greater authority than the narration of witnesses during the trial. However, the videos have certain limitations: in the case of the CCTV, the cameras are very far away; the quality of phone recordings is not enough to capture details that may nevertheless have been observed by the eye; and the videos only represent bits and pieces of the full event which people experienced but did not capture. As such, as much authority as the videos had, sometimes the verbal testimony given in court held more weight.

For instance, the prosecution lawyer examining Chief of Police Medaria Arradondo asks him to describe what happened in the video he saw, rather than playing the video first. He offered detail and description not captured in the video, which was

readily admitted into testimony. Darnella Frazier's video was sacrosanct for the prosecution, yet Blackwell asked her to describe what she saw in the exact same timeframe as what the video showed: Frazier replied that she saw Chauvin leaning harder on Floyd's neck at different times – something which is not apparent in the video. This was valuable testimony, as the amount of weight placed on Floyd's neck came up again in the questioning of Genevieve Hansen.

These two levels of narration removed from the actual event are juggled by both prosecution and defence in order to attempt to reconstruct the singular narrative of "what actually happened." Unlike in the Adnan Syed trial, where the hierarchy of what kind of testimony is given more or less authority was relatively consistent, in this trial it was not. In the following section, I will highlight the strategies by which the two sides flesh out "what actually happened" from the bits and pieces they have.

6.3.2 Poetics of the Prosecution

The story, prosecution insists, is short, neat, straightforward, and tidy. It boils down to one video of the event – the one Darnella Frazier recorded and uploaded to the internet before becoming viral.

> Blackwell: You will learn what happened in that 9 minutes and 29 seconds, the most important numbers you will hear in this trial, 9-2-9.
> 2:56 – 3:03 https://www.youtube.com/watch?v=UwDQ30MNVKs

Nine minutes and 29 seconds becomes a mantra for the prosecution, repeated throughout the trial. In fact, Derek Chauvin was kneeling on George Floyd's neck for longer than that, as he was already in that position when Frazier started recording. It is not the absolute length of time that matters as much as the emotive power of 9-2-9 – the suggestion that the video tells the story, the whole story, and nothing but the story. Thus, 9-2-9 is a narrative device aimed at dramatization and persuasion rather than a legal or medical fact.

This is an example of the more literary narrative style that the prosecution employs, in contrast to the strategy of the defence. The narration, particularly in opening and closing statements, contains many literary elements put to emotive effect: poetic turns of phrases; use of technology; juxtaposition; repetition; and metaphors, to name a few.

> Schleicher: He knew that kneeling on somebody's neck in addition to the positional asphyxia – the pressure – is dangerous. Anyone can tell you that, a 9-year-old can tell you that, did tell you that.
> (Closing) 1:13:57 - 1:14:08 https://www.youtube.com/watch?v=Llu4y9d-31Q

In a short tripartite sequence, Mr. Schleicher appeals to common sense ('anyone can tell you that'); uses a common phrase to indicate its obviousness (a child could tell you that); and then infuses the expression with the power of fact – alluding to Frazier's 9-year-old cousin who testified earlier on in the trial.

> Blackwell: This case is not about split-second decision-making. In nine minutes and twenty-nine seconds there are four hundred and seventy-nine seconds, not a split second among them.
> (Opening) 21:00 – 21:08 https://www.youtube.com/watch?v=UwDQ30MNVKs

This is not mathematically accurate (there are 569 seconds in 9 minutes and 29 seconds), an aspect which highlights the fact that this is a persuasive device rather than a factual, legal statement. It serves to lengthen the sense of the time it took for Chauvin to make and re-evaluate his decision on the appropriate use of force. Once again, Mr. Blackwell creatively uses an expression – a split second – to make his point.

Juxtaposition is used several times to highlight the horror of the crime, combatting possible desensitisation from the clinical overexposure to the videos.

> Blackwell: The cousin was taking the younger one to Cup Foods. To be able to pick up candy and snacks, when they came upon what was happening with Mr. Chauvin and Mr. Floyd on the ground.

(Opening) 23:11 – 23:23 https://www.youtube.com/watch?v=UwDQ30MNVKs

Mentioning the detail of why the girls were at Cup Foods is not factually necessary, but it serves an emotive function. Mr. Blackwell puts side-by-side the innocence and pleasant mundanity of the girls going to the shop to pick up snacks for an utterly unremarkable evening with the events they came across – implying the spoilage of innocence, mundanity, and routine, thus portraying the events as an unusual atrocity.

> Schleicher: […] Continued, the restraint, continued grinding and twisting and pushing him down and crushing the very life out of him. It wasn't too late. He could have rolled him over, performed CPR. No, he continued. Past the point of finding a pulse, past the point when the ambulance arrives, past the point when the EMTs get out of the ambulance. What's the goal? What's the plan here? What are we trying to accomplish? This was a counterfeit $20 bill.
> (Closing) 1:36:57 – 1:37:28 https://www.youtube.com/watch?v=Llu4y9d-31Q

While Mr. Blackwell in the previous example presented first the positive and then the negative, Mr. Schleicher here starts with the negative, with a build-up to the unreasonableness and horror of the crime. He does this through the well-known persuasive device of the rule of three (see Drew (1990) for exploration of the use of the rule of three in the context of a trial) – 'past the point […]' x3 – and through highly visual synonym adjectives – 'grinding,' 'twisting,' 'pushing.' He uses the rule of three again, with three rhetorical questions to imply the nonsensical nature of the thought process behind it (beginning with 'what'). He then juxtaposes it to a simple sentence: 'this was a counterfeit $20 bill.' Thus, he highlights how much events escalated, from the rather harmless use of a low-value counterfeit bill, and how unreasonable the consequences were compared to the crime.

Prosecution uses metaphors several times during opening and closing statements to emotive effect. In an oft-cited comment in the news, Mr. Blackwell says during his rebuttal in closing statements:

> Blackwell: You were told (pause) that Mr. Floyd died because his heart was too big (pause) The truth of the matter is that the reason George Floyd is dead is because Mr. Chauvin's heart was too small. (Berman, 2022, p. 508)

Mr. Nelson's case, as will be discussed more in a later section in this chapter, was that there were other factors that contributed to the death of George Floyd, not only the weight placed on his neck; one of these was his enlarged heart from heart disease. Mr. Blackwell juxtaposes this literal interpretation of "heart" with the metaphorical one – to have heart and be compassionate. The literal and the metaphorical are used several times throughout opening and closing statements; for instance, Mr. Schleicher also says:

> Schleicher: All that was required was some compassion. Humans need that. People need that. But more fundamental than that, and more practical, at that time, in that place, what George Floyd needed? Was some oxygen. That's what he needed. He needed to breathe. Because people need that. Humans need that.
> (Closing) 8:48 – 9:14 https://www.youtube.com/watch?v=Llu4y9d-31Q

The metaphor in this case is compassion being exactly like oxygen. While 'needing' compassion uses the term 'need' in a soft sense, oxygen is 'needed' biologically for humans to survive. By using the same term for both, emotional and biological needs are conflated. A different example of metaphor is Mr. Blackwell's comment in opening statements:

> Blackwell: You're going to see these bystanders. A veritable bouquet of humanity, these bystanders.
> (Opening) 22:42 – 22:47 https://www.youtube.com/watch?v=UwDQ30MNVKs

Bystanders being a 'veritable bouquet' – different flowers gathered together in aesthetic harmony – serves to neatly point out the diversity of the crowd, in terms of race and age and backgrounds. They were united, however, in their reaction to the scene, implying that what happened was wrong in some fundamental sense agreed

upon cross-racially and cross-culturally. Perhaps another effect of this phrase is to allude to the whiteness of Derek Chauvin without mentioning it directly.

6.3.3 Strategy of the Defence

In general, and in direct comparison of parallel openings, defence attorney Eric Nelson tends to be more formal and literal than the prosecutors. Although Mr. Nelson has moments of impromptu levity (some of these described later in this chapter), his script tends to be more formulaic, less literary, and tending to appeal to reason over emotion. For instance, Mr. Blackwell and Mr. Nelson begin their opening statements with a slightly different approach.

> Blackwell: May it please the court, counsel. Ladies and gentlemen of the jury, good morning. My name is Jerry Blackwell, and I apologize for talking to you through this Plexiglas but […] it's probably the least of the gifts the pandemic has given us.
> 12:04 – 12:19 https://www.youtube.com/watch?v=dvCv-soaifo

> Nelson: May it please the court, counsel, Mr. Chauvin, members of the jury.
> 1:10:01 – 1:10:06 https://www.youtube.com/watch?v=dvCv-soaifo

Although Mr. Blackwell begins with a familiar linguistic formula typical of courtroom settings, just as Mr. Nelson does, Mr. Nelson's is longer, acknowledging not just the judge and counsel but also the defendant and the jury. Mr. Blackwell then spends just under 15 seconds addressing the jury – in which short time he appeals to a sense of familiarity and closeness. He apologizes for the Plexiglas as though it were rude, or perhaps as though it puts more distance between attorneys and the jury than Mr. Blackwell would like. In commenting on the pandemic, he further invites closeness through commiseration – "we all know how the pandemic has been." In contrast, Mr. Nelson does not greet the jury with a friendly address, does not address them directly, does not introduce himself, and does not make an effort to foster closeness – he merely acknowledges the jury through the formula. Afterwards Mr. Blackwell launches into an introduction about the emotional meaning of the

badge that Derek Chauvin wore. By contrast, Mr. Nelson's next comments are on the letter of the law about reasonable doubt.

Mr. Blackwell and Mr. Nelson also greet Darnella Frazier in slightly different ways – Mr. Blackwell informal and friendly, Mr. Nelson still polite but shorter and more formal.

> Blackwell: Good morning, Darnella.
> Frazier: Good morning.
> Blackwell: Are you a little nervous up there?
> Frazier: Yes.
> Blackwell: It's understandable. I'm just gonna take uh, a few minutes this morning, uh to (pause) talk with you and, eh, give the jury a chance to hear from you about what you saw, how you reacted, and what happened on May 25th, okay?
> Frazier: Yes.
> 0:00 – 0:21 https://www.youtube.com/watch?v=FrO92IWAu9U

> Nelson: Thank you. Good morning ma'am.
> Frazier: Good morning.
> Nelson: Thank you for being here. I just have a few questions for you, okay?
> Frazier: Okay.
> 5:05 – 5:13 https://www.youtube.com/watch?v=yOpvEt6vjbM&t=24s

Once again, Mr. Blackwell's opening is spoken less briskly than Mr. Nelson's. He attempts to bridge the distance of power between himself and his witness by acknowledging emotions ('understandable' 'nervous[ness]'), by allowing himself pauses and narrative debris (uh, eh), and by downplaying the gravity and formality of proceedings: taking just 'a few minutes' (rather than 23), 'to talk with you' (a conversation rather than stilted question-answer), and to 'give the jury a chance to hear from you' (rather than perhaps "receive testimony"). Mr. Nelson also downplays the amount of time required ('a few questions,' which lasted 28 minutes). However, he uses the more formal 'ma'am' to address Darnella Frazier, he calls what will

follow ‘questions’ rather than a conversation, and his manner is shorter and more direct.

These examples of juxtaposition of the manner of prosecution versus defence are characteristic of their approach throughout the trial: Mr. Nelson is less literary or poetic and he relies more on the cold facts of the law. He does not attempt to elicit sympathy for Derek Chauvin, merely attempting to convince the jury he acted in a professional and logical way. As such, I refer to Mr. Nelson’s approach to narrative construction as a strategy, rather than a poetics.

In the following short section, I will describe some ways in which Mr. Nelson constructs his narrative. In the first instance, he constructs his story in opposition to the prosecution’s rather than constructing his own. In his opening statement, Mr. Nelson attempts to lengthen and complicate the literarily simple narrative prosecution describe – the 9 minutes 29 seconds.

> Nelson: So this case is clearly more than about 9 minutes and 29 seconds.
> 4:11 – 4:15 https://www.youtube.com/watch?v=1RfRTnqL5bI&t=5s

Although this is the only time Mr. Nelson explicitly tries to lengthen the story in his opening statement, he insists more on this in his closing statement.

> Nelson: And so we get into the 9 minutes and 29 seconds, at this point. The State has really focussed on it, 9 minutes and 29 seconds, 9 minutes and 29 seconds, 9 minutes and 29 seconds. It’s not the proper analysis. Because the 9 minutes and 29 seconds (pause) ignores the previous 16 minutes and 59 seconds.
> 53:55 – 54:20 https://www.youtube.com/watch?v=69jUpwsd9xI

Although ‘16 minutes and 59 seconds’ may have been an effective parallel counter to the prosecution’s refrain, Mr. Nelson only mentions this once again shortly after the above comment; he does not attempt to construct a story around this, as seen in the fact that this was not part of his opening statement. True to his attempt to lengthen the story, Mr. Nelson spends more time in his closing argument on the

build-up to the crime – using videos to show and explain what happened when George Floyd was resisting arrest.

In addition to lengthening the proposed relevant story, Mr. Nelson attempts to complicate the narrative from the simple version proposed by the prosecution. Within two minutes of Mr. Nelson's opening statement, he launches into a lengthy discussion on how much material was involved in this case. 'In this case you will learn that the evidence was collected broadly and expansively,' Mr. Nelson says, before giving a detailed account of how many case agents had been employed, how many people were interviewed, how many search warrants were executed, and how many bait stamp numbers there were (incidentally, although he says we will hear this term throughout the trial, I have never heard it again in the proceedings selected for analysis).

In addition to complicating the case and the events leading up to the crime, Mr. Nelson attempts to complicate Floyd's cause of death – that is, he does not argue simply that one other thing was the cause of death; rather, that a number of other aspects contributed: Floyd's enlarged heart, his paraganglioma, the drugs in his system, and even a speculative CO poisoning from the car's exhaust.

In the Adnan Syed trial, I showed how the defence attorney had a dual task in terms of storytelling: Ms. Gutierrez had to refute the State's story of the Jilted Muslim Lover but she also had to construct an alternative one with its own independent existence. Mr. Nelson in this trial also did the same. After lengthening and complicating the event stories of the evening on which George Floyd died, he attempts to construct an independent story, which he does through two related narrative approaches: character construction and point of view (POV) shifting.

Mr. Nelson's approach, detailed below, acts as a foil to reveal the prosecution's strategy, which is less obvious. Through the POVs of various eyewitnesses and videos, the State weaves a singular overall narrative told from an omniscient POV. Between eyewitnesses telling what they saw from multiple angles, recordings from eyewitnesses, recordings from 4 different body cameras, and CCTV from a distance, prosecution argues that there is only one story – what "really" happened.

Furthermore, it enlists expert witnesses into this process – constructing what "should have" happened. Lieutenant Richard Zimmerman, Chief Medaria Arradondo, Inspector Katie Blackwell, Lieutenant Johnny Mercil, among others, testified as police experts to the policies and procedures surrounding use of force, offering opinions on how Derek Chauvin should have acted. As such, they together create the character of the ideal police officer – how a police officer should behave if they remembered every word of every policy.

Mr. Nelson counters the State's omniscient POV and construction of the ideal police officer with Derek Chauvin's POV and the construction of the 'reasonable police officer.' At the beginning of his closing arguments, Nelson reads out the Minneapolis Police Department's use of force policy:

> Nelson: The kind and degree of force a police officer may lawfully use in executing his duties is limited by what a *reasonable police officer* in the same situation would believe to be necessary. Any use of force beyond that is not reasonable. To determine if the actions of the police officer were reasonable, you must look at those facts, *which a reasonable officer in the same situation would have known at the precise moment the officer acted with force.* You must decide whether the officer's actions were objectively reasonable in light of the totality of the facts and circumstances confronting the officer and without regard to the officer's own subjective state of mind, intention or motivations.
> 16:25 – 17:23 https://www.youtube.com/watch?v=69jUpwsd9xI my emphasis

Mr. Nelson latches onto and repeatedly returns to the phrase 'a reasonable police officer,' constructing this hypothetical character for rest of his statement. He does this, for instance, by alluding to the duties of an officer, their training, their experience, and commonsensical "goodness" traits such as wanting to keep fellow officers safe.

However, far more important to Mr. Nelson's construction is the second italicized element of the definition: a key part of the behaviour of the reasonable police officer is what is known to them at the time they intervened. This includes information from

before arrival on scene. They must consider a plethora of factors: ‘is this a high crime location?’; ‘am I going into a densely populated urban environment, or am I in a kind of secluded backyard?’; ‘what resources do I have based upon?’; ‘how close am I to a hospital?’; ‘what’s the expected time if I call EMS?’ All of these sample questions that Mr. Nelson offers are from the first person POV (“I”), emphasizing his attempt to counter the State’s omniscient approach.

From there Mr. Nelson describes the knowledge of a reasonable police officer as they arrive on scene, once again complicating the number of factors that must be considered. What did dispatch say? Are there bystanders and civilians? Are drugs or alcohol involved? What is the experience level of the other officers responding to the scene? A reasonable police officer ‘take[s] into account their experience with the subject at the beginning, the middle, the end.’ The reasonable police officer, thus, becomes a highly observant, impartial, and competent character, capable of weighing a seemingly limitless range of considerations and making a decision that is “reasonable.” The ideal police officer that the prosecution constructed, in the face of this wide range of issues to consider, is too simplistic and not a relevant standard, in Mr. Nelson’s implication.

The descriptions Mr. Nelson makes of the reasonable police officer, while apparently objective and unrelated to the matter at hand, serve to set the stage for the next step in his strategy: conflating Derek Chauvin with the character of the reasonable police officer. Mr. Nelson takes almost every hypothetical example he listed and applies it to the situation at hand: e.g. it was a high crime area; there were a lot of bystanders and civilians; dispatch mentioned Floyd appeared under the influence.

Mr. Nelson then describes in great detail what happened leading up to the 9 minutes and 29 seconds the prosecution focusses on – that is, ‘at the beginning, the middle, the end.’ He relies on body cameras to construct the argument that Floyd was actively resisting arrest and that the struggle was violent (e.g. showing a video and pointing out that the car was rocking back and forth) and thus necessitated a high level of use of force from the reasonable police officer. Nelson travels seamlessly between his construction of the reasonable police officer (what they would do) and that of Derek Chauvin (what he did do).

In the following section, I will move to a more detailed look at the language used to construct some of the narratives above in legal-lay interaction.

6.4 Language and Power

In the Adnan Syed case study, I explored the interplay between legal-lay language and power primarily in terms of lay (non-expert) witnesses – and specifically the tension between their 'privileged' first-hand authority and legal authority. In the Derek Chauvin case, it was the testimony of expert witnesses that best reflected the tensions between legal and lay power dynamics. Drawing on CA and Discourse Analysis, I will explore in the following section how three witnesses (Genevieve Hansen, Dr. David Fowler, and Dr. Andrew Baker) demonstrate three distinct ways in which lay participants deal with (i.e. resist or fail to resist) the institutionalized power dynamics of the courtroom setting.

6.4.1 Resisting Legal Power

6.4.1.1 Genevieve Hansen

Genevieve Hansen was an off-duty firefighter who came across the scene. Hansen occupied an ambiguous position between the role of an expert witness and a lay witness during the trial. She was a bystander and therefore testified to what she experienced at the scene, but she arrived in uniform to the trial and was also questioned about her expertise as a firefighter. Unlike the Adnan Syed trial, expert witnesses in the Derek Chauvin trial were not linguistically sworn in as such at the beginning of their testimony, rendering the lines between expert and lay witnesses blurrier. Ms. Hansen testified that she tried to approach Mr. Floyd to administer first aid but was denied by Officer Thao. She began recording on her phone and, when the video is played in court, she can be heard trying to convince the officer that she was indeed a firefighter in the face of his scepticism and then demanding the officers check George Floyd's pulse.

In brief summary of the findings in this section, the interplay between legal-lay language and power was volatile. Examination-in-chief exemplifies an interesting power dynamic between the prosecutor and Ms. Hansen. While examination-in-chief often serves to establish the legitimacy of the witness and therefore involves some ceding of epistemic authority to the witness, in this case the authority was not seized with confidence, clarity, and certainty. As such, the power imbalance remained despite the legal professional's efforts to inverse it. In cross-examination, by contrast, Ms. Hansen attempts to seize epistemic authority with confidence but fails to do so at Mr. Nelson's hands.

Examination-in-chief began with background questions about Ms. Hansen herself. Ms. Hansen presented as unsure about her own professional history and training, frequently answering questions with 'I think' and 'probably' and responding with variable answers – despite presumable rehearsal of her testimony with prosecution. For instance, early on in the examination prosecutor Matthew Frank attempted to establish when and how long her EMT training was – which is crucial to giving Hansen expert authority and painting the refusal of the officers to listen to her as unreasonable. He asks her several times:

> Frank: So when did you first do the EMT program?
> Hansen: Um (pause) I think it was (pause) sometime in 2017.
> 9:34 – 9:42 https://www.youtube.com/watch?v=yKN4_rpz844&t=157s

The first time she is asked this question, she answers vaguely – 'I think' and 'sometime' – and her uncertainty is also suggested by her beginning with 'um' and her pauses. Mr. Frank tries again:

> Frank: And so, what was that program, how long was that?
> Hansen: Um, it's called Pathways Academy, uh, and, it was (pause) a summer (pause) um, it was just the majority of the summer. I went to a fire station (pause) and did my course.
> Frank: And so that, do you remember how long that was, was that 4 months did you say?

Hansen: Maybe about that.
9:44 – 10:07 https://www.youtube.com/watch?v=yKN4_rpz844&t=157s

The second time she is asked how long the course was, she recalls that it was specifically over the summer rather than just 'sometime in 2017.' However, her answer still lacks specificity, as she describes it as 'the majority of the summer.' Frank repeats the question of how long it was, attempting to reach a more specific length of time. When he suggests 4 months, as she mentioned before, he adds 'did you say,' attempting to pass on the authority back to her and make the words her own; however, once again she does not seize it, hedging 'maybe about that.' Shortly after, Frank returns to the issue.

Frank: So how long was the Pathways Academy program all together?
Hansen: I think it was probably about 3 months or so, I can – I can check.
11:23 – 11:30 https://www.youtube.com/watch?v=yKN4_rpz844&t=157s

Once again, she gives a different answer and makes her uncertainty explicit when she says 'I can check.' As this first part of Ms. Hansen's testimony continues, Mr. Frank attempts to weave together her professional history into a coherent narrative, but Ms. Hansen's uncertainty and hedging continue, with several invitations to narrate her life story herself not being taken up. She hedges again:

Frank: So is this Pathways Academy […] affiliated with the fire department?
Hansen: Um, it's, I think it's, I believe it's through the city of Minneapolis.
11:58 – 12:05 https://www.youtube.com/watch?v=yKN4_rpz844&t=157s

Mr. Frank is perhaps offering very easy opportunities to speak more confidently, considering Ms. Hansen said herself in a previous exchange that she went to a fire station to do the course; it would be fair to assume therefore that it was affiliated with the fire department. As questioning continued, Mr. Frank asks some more basic questions about her first-aid knowledge.

Frank: And, so, CPR is the process of trying to resuscitate somebody? If I'm not –

Hansen: Yea! We're looking for, to regain a heart rhythm.
Frank: And heart rhythm is another way of saying the pulse?
Hanse: Correct.
Frank: You can tell, I have not been through [laughter] the training you have, right? And so I just want to make sure – you know more about this than we do, that's why I'm trying to just fill in these terms.
17:06 – 17:31 https://www.youtube.com/watch?v=yKN4_rpz844&t=157s

The lawyers in this trial have questioned many witnesses using jargon from their respective fields with confidence – jargon far more obscure than 'heart rhythm' and 'pulse.' In fact, later in Frank's questioning he asks about 'agonal breathing,' a term which Ms. Hansen does not even know. Nevertheless, in this case, Mr. Frank attempts to coax the terms and explanations from Hansen herself. In the first line above, Mr. Frank might have continued 'if I'm not mistaken.' He attempts to elicit the specific term 'pulse,' perhaps because in the video Ms. Hansen shot she can be heard demanding the officers take Floyd's 'pulse' rather than his 'heart rhythm' – this would position her acting in the video as an expert rather than a lay bystander. Finally, Mr. Frank lightly says he has 'not been through the training [she] has.' Thus, in this short exchange, Frank attempts repeatedly to cede epistemic authority to Ms. Hansen – 'you know more about this than we do' – and she does not convincingly seize it.

Another subtle way Ms. Hansen acts more like a lay witness than an expert one is that she is the only expert witness from those observed who had to be prompted to answer with the words 'yes' or 'no' for the record rather than 'mmhm' or other sounds. This is something of which other lay witnesses, such as Darnella Frazier, also had to be reminded repeatedly.

Shortly after the above exchange Ms. Hansen is admonished for the first time.

Judge: Let's make sure we don't talk over each other.
Hansen: Oh sorry, I didn't notice.
Judge: Makes it really hard to have a good record.
17:57 – 18:02 https://www.youtube.com/watch?v=yKN4_rpz844&t=157s

This admonishment is gentle, using the phrase ‘talk over each other’ rather than the harsher term ‘interrupt;’ using the first-person plural ‘we’ rather than implying it was only Ms. Hansen making a mistake; and explaining it as a practical issue about having a ‘good record.’ The next admonishment comes during cross-examination.

> Judge: Just try to not interrupt each other.
> Hansen: I’m sorry, it’s not conscious.
> Nelson: (smiling) Yea, it’s –
> Judge: It’s not a normal conversation, so –
> Hansen: Yea.
> Nelson: We all started talking at one time. So – it’s unusual but, I’m sorry, I’ll try to slow down too.
> 1:10:34 – 1:10:48 https://www.youtube.com/watch?v=yKN4_rpz844&t=157s

Once again, the admonishment is gentle, although the judge does use the term ‘interrupt’ this time. When the judge says ‘it’s not normal conversation,’ that may be interpreted as either an understanding acknowledgement of the “weirdness” of institutional talk or an instruction; however, Mr. Nelson’s comment is clearly cast as the former and he claims part of the responsibility for her mistake.

As cross-examination continues, Ms. Hansen becomes more actively resistant even as the understanding veneer drops from both Nelson and the judge.

> Nelson: And so, in a situation where you see someone having a medical emergency, right, wouldn’t it be reasonable to assume that the police had already called for medics.
> Hansen: (pause) It would also be reasonable to assume (pause) that if the patient was cuffed and –
> Nelson: I’m gonna ask you – I’m gonna cut – I’m gonna say objection, non-response.
> Hansen: (rolls eyes)
> Judge: Wait for the question and then answer the question that is asked.

> Nelson: It's a yes or no question, ma'am. Is it reasonable to assume that if a patient is having a medical emergency, and the police are present, that they have called for EMS.
> Hansen: (pause) (eye roll) Your question is unclear because you don't know my job, so, um, can't answer.
> 1:15:02 – 1:15:55 https://www.youtube.com/watch?v=yKN4_rpz844&t=157s

Ms. Hansen is open about her opinion on Derek Chauvin's guilt but is not allowed to state this explicitly. As such, she resists cross-examination in a variety of small ways that we have seen with other witnesses in the Adnan Syed trial – through repairs and non-answers. In this case, she resists the implication that the police had behaved appropriately more explicitly with both her hostile words ('your question is unclear because you don't know my job') and her manner (eye-rolling). Mr. Nelson pulls on his deontic authority both legally ('objection, non-response') and linguistically ('it's a yes or no question'). The judge, while still calm, is firmer in his admonishment, and uses his power to control her future.

The hostility and verbal resistance continue. While Hansen insists, with what she claims is her expert authority on emergency response times in the area, that if police had called EMS or the fire department when they should have then emergency services would have arrived sooner than they did, Mr. Nelson presents her with very specific time stamps (to the second) regarding when EMS was called and when they arrived. Hansen, in the face of a fact, firmly says 'I don't believe that' (1:18:44). She also responds with sarcasm.

> Nelson: And would you describe other people's demeanors as "upset" or "angry"?
> Hansen: Um, it's – it's […] I don't know if you've seen anybody be killed, but it's upsetting.
> 1:29:03 – 1:29:15 https://www.youtube.com/watch?v=yKN4_rpz844&t=157s

The judge intervenes to say that is argumentative and Mr. Nelson agrees and says he was just going to object. These moments culminate in another moment in which the judge's admonishment becomes severe.

Nelson: Did you describe Mr. Floyd as a small, slim man?
Prosecution: (inaudible objection)
Judge: Overruled.
Hansen: Yea, it appeared to – with three grown men on top of somebody, it appeared that he was small and frail.
(6 second pause)
Hansen: (overlapping speech) But I know that's not true now, obviously.
Nelson: (overlapping speech) – I'm – there's no question.
Judge: (inaudible)
Hansen: I was finishing my answer.
1:37:24 – 1:37:54 https://www.youtube.com/watch?v=yKN4_rpz844&t=157s

In the turn-taking structure between the legal professional and the witness, lawyers frequently take long pauses before asking their next question. These are usually not mistaken as invitations to continue their turns by witnesses, perhaps due to non-verbal markers that are absent compared to everyday conversation (e.g. consistent eye contact might not be maintained, as in this case Mr. Nelson is shuffling through his notes). However, this exchange begs the question: how long must a witness's pause be before it signals the end of their turn? Certainly, in this case, it must be under 6 seconds. The judge then dismisses the jury and admonishes Hansen severely.

Judge: We are outside the hearing of the jury. Ms. Hansen I am advising you (pause) do not argue with counsel (pause) and specifically do not argue with the court.
Hansen: (overlapping speech, undecipherable) Are the cameras off?
Judge: No they're not, you are on the record.
Hansen: Okay.
Judge: You will not argue with the court, you will not argue with counsel.
Hansen: Mmhmm.
Judge: They have the right to ask questions. Your job is to answer them.
Hansen: I was finishing my answer.
Judge: (pause) (shifting posture) I will determine when your answer is done.

Hansen: Ok well (pause) (nods)
Judge: And so, do not argue with the court, do not argue with counsel, answer the questions, do not volunteer information that is not requested. The attorneys for the State have redirect. They can ask you questions if they think that certain things were left out.
Hansen: Okay.
Judge: It is the counsel's prerogative to ask leading questions and for you to answer those and not volunteer additional information. Are we clear on this?
Hansen: Okay.
1:38:40 – 1:39:33 https://www.youtube.com/watch?v=yKN4_rpz844&t=157s

This exchange is highly significant because it creates a stark contrast with proceedings in other situations. Legal power is not always displayed and strictly maintained; it is flexible. Rather than following strict rules of evidence, the research in this thesis shows that it is negotiated on a case-by-case basis at the local level. Some witnesses are permitted to narrate beyond yes/ no; the judge sometimes intervenes to ask the legal professional to allow the witness to repair or elaborate; and in one significant instance within this same trial the judge sustains an objection that a question is leading. Thus, the above exchange can be read as the judge reacting to explicit linguistic resistance with "doubling-down" on the epistemic and deontic authority of legal professionals. The judge returns to the "rulebook" of institutional language in the courtroom – witnesses cannot 'argue' with the legal professional, there are strict linguistic 'rights' legal professionals have over witnesses, witnesses by contrast have 'jobs' to answer questions, witnesses may not give lengthier answers beyond yes or no, may not clarify answers, may not add information, and may not speculate.

In summary, in the sense that Genevieve Hansen attempted to exercise power over her own testimony with active hostility against demonstrations of legal linguistic power, she failed and thus damaged her credibility. The next example will show another instance in which a witness attempted to resist this type of power, but rather than being openly combative he attempts to resist from within his "role" as a witness by using the linguistic tools available to him.

6.4.1.2 Dr. David Fowler

Defence called Dr. Fowler, a retired professional in forensic pathology, to testify that Mr. Floyd died primarily of conditions other than police behaviour, thus countering testimony by a prosecution witness in the same field (Dr. Baker, whose testimony will be explored in the next section 6.4.1.3). In approximately 2 hours and 40 minutes of examination, Mr. Nelson and Dr. Fowler co-construct an alternative narrative about what killed George Floyd: a combination of heart disease, possible CO poisoning from the car's exhaust pipe, possible adrenaline secreted by his paraganglioma, not the prone position itself, and not strangulation. In contrast to the testimony of Dr. Baker, Mr. Nelson and Dr. Fowler bring up an extensive number of academic articles to defend their claims and give Dr. Fowler's testimony professional legitimacy. For the most part, examination-in-chief is seamless co-construction.

However, it is another matter entirely in cross-examination, in which the prosecutors exercise their linguistic power to the extreme and delegitimise Dr. Fowler as an expert witness. Mr. Blackwell begins with a series of questions about what it means to be an expert witness:

> Blackwell: Do you agree that, as an expert witness, you should be (pause) objective, fair, and impartial, as best you can?
> Fowler: (pause) Yes I agree, that that's appro - as best you can.
> Blackwell: Do you agree that in the background research you do, to testify, that you should be thorough?
> Fowler: Yes.
> Blackwell: Meaning that you should do your homework before arriving at your opinion. Fair enough?
> Fowler: Yes.
> 1:31 – 2:02 https://www.youtube.com/watch?v=-D2DEnDBbzI

This leisurely exchange serves to imply that Dr. Fowler was indeed the opposite of what an expert witness should be and anticipates evidence of these implicit accusations. After setting this stage, getting Dr. Fowler to agree to Mr. Blackwell's

description of the ideal expert witness, Mr. Blackwell immediately offers a small example in which Dr. Fowler "did not do his homework."

> Blackwell: (pause) I asked that question in part because (pause) you answered a question about Mr. Chauvin's weight, and you understand that the relevance of Mr. Chauvin's weight, to this case, is how much weight he was putting onto the body of George Floyd beneath him, you understand that, don't you?
> Fowler: Yes.
> Blackwell: You told the jury that Mr. Chauvin's weight was 140lbs, didn't you?
> Fowler: That is the information that I was provided, yes.
> Blackwell: Where did you get this information provided?
> Fowler: From counsel.
> Blackwell: Did, uh, in the information that was provided to you, were you not told that Mr. Chauvin was wearing equipment?
> Fowler: (long pause) That was not considered as part of the process, I will agree with you, counsellor.
> Blackwell: Okay, so (pause) you know he is wearing equipment, though, he was a police officer at the time, right?
> Fowler: Absolutely.
> 2:05 – 2:54 https://www.youtube.com/watch?v=-D2DEnDBbzI

Derek Chauvin's size and weight as compared to George Floyd's comes up several times with several different witnesses. During Genevieve Hansen's testimony, Mr. Nelson questions previous testimony she had given that Floyd was a 'small, frail man.' Ms. Hansen defends her description to say that he looked that way with three grown men on his back, but she is aware that he was not small and frail. This is an important point for the defence in closing, when Mr. Nelson presents their relative sizes to imply the use of force was justified, given that Mr. Floyd was a much larger man than Mr. Chauvin. As such, Mr. Blackwell's challenging of Dr. Fowler on the topic is not a minor point of curiosity. Furthermore, in the line of questioning, there is also a shift in the assignation of blame. At first, Mr. Blackwell seems to accept that it was counsel's mistake not to consider the weight of the equipment. However, Mr. Blackwell then turns the blame onto Dr. Fowler himself – as an 'objective,' 'fair,'

‘impartial,’ and ‘thorough’ expert witness who had the responsibility to know that Mr. Chauvin was wearing police equipment, he should have ‘done his homework’ and factored that in. ‘Absolutely,’ Dr. Fowler agrees.

Shortly thereafter are the first instances (which continue throughout cross-examination) of the most common display of linguistic legal power during trials: forcing the witness to only answer yes or no to a question. Normally – particularly in examination-in-chief – witnesses are allowed to answer yes/ no questions with added details, explanations, or narratives. This is also usually true of cross-examinations during the Derek Chauvin case. However, in this particular case, Dr. Fowler was regularly forced to fit his answers into a binary – with questions that are polar by design and reminders to limit extra details.

> Blackwell: You haven’t seen (pause) any data (pause) or test results that showed Mr. Floyd had a single injury from carbon monoxide, is that true?
> Fowler: That is correct because it was never sent to – (incoherent)
> Blackwell: (speaking over him) I asked you if it was true, sir, yes or no.
> Fowler: It is true.
> 3:53 – 4:09 https://www.youtube.com/watch?v=-D2DEnDBbzI

Again, within a minute:

> Blackwell: Did you see any (pause) air monitoring data (pause) that actually would give you any information as to what (pause) amount of carbon monoxide, if any, would have been in Mr. Floyd’s breathing zone?
> Fowler: (pause, then quickly) No, because it was not tested.
> Blackwell: It was a yes or no question. You haven’t seen any, have you?
> Fowler: I have not seen any data.
> 4:53 – 5:14 https://www.youtube.com/watch?v=-D2DEnDBbzI

Both of these exchanges pertain to the same issue. In examination, Dr. Fowler testified – with references to literature – that carbon monoxide from the car’s exhaust may have contributed to George Floyd’s death. While in examination-in-chief he was permitted to speak in the hypothetical, Mr. Blackwell is discrediting the value of the

research in the particular case at hand. In both of these exchanges, Dr. Fowler attempts to explain his yes or no answer with the defence that CO was not considered or tested for in the first place, but Mr. Blackwell uses his power to dismiss his qualifiers and force a binary answer – which Dr. Fowler has no choice but to eventually give. In fact, Mr. Blackwell powerfully dismissed long testimony on CO by asking if Dr. Fowler even knew if the car was on.

There are many more instances throughout cross-examination in which Dr. Fowler attempts to exercise linguistic power and add to his answers, but he is interrupted and told to answer with yes or no. In all cases, he is forced to cede to the prosecution and he is not successful once. In one particular case, Dr. Fowler goes further in his attempt to get a word in edgewise, ignoring Mr. Blackwell's first interruption, but he is eventually calmly denied. Mr. Blackwell brings up an article that Mr. Nelson and Dr. Fowler used in direct examination to argue that the prone position was not inherently dangerous. An academic who originally wrote that it was dangerous apparently retracted his statement. Mr. Blackwell brings forth an affidavit by the author.

> Blackwell: And so, Dr. Fowler, does having seen this affidavit from Dr. Reay, um, change your opinion as to whether he had retracted his opinion of concerns about, um, positional, um the prone position as relates to positional asphyxia?
> Fowler: (long pause) so it appears that he hasn't completely (clears throat) withdrawn, um, his position, um but –
> Blackwell: (attempts to interrupt)
> Fowler: (holding up a finger) but he does go into, um, some additional description, which is the paragraph above, um, which you didn't highlight –
> Blackwell: Dr. Fowler. You answered my question.
> 21:41 – 22:18 https://www.youtube.com/watch?v=-D2DEnDBbzI

While not quite the same linguistic expression of power as the previous exchanges, this reminder of how talk is organized in court achieves the same effect here.

Another way in which witnesses may attempt to wrest even a small amount of control over their testimony, as described many times in this thesis, is through small one-word repairs. Throughout the Adnan Syed trial, I have shown how these may be used to great effect, how they may be accepted, and how they may be rejected. In this particular case, Dr. Fowler won none of the battles with prosecution over small terms. For instance, Mr. Blackwell brings up the Forensic Panel, with which Dr. Fowler has been associated since his retirement and which served during direct examination as a way to give legitimacy to his status as an expert in forensic pathology. Mr. Blackwell takes Dr. Fowler through a series of questions to ascertain what kind of organisation it is. Mr. Blackwell confirms that Dr. Fowler is employed as a consultant, then that it is not a non-profit. Dr. Fowler says he does not know what they are classified as and Mr. Blackwell continues, confirming he earns a livelihood from it and it is not a governmental body. Dr. Fowler acquiesces that it is an independent organisation.

> Blackwell: It's a business.
> Fowler: (pause) It's a (pause) medical slash forensic science practice, which, medical practices are (pause) businesses, yes.
> Blackwell: It's a business.
> Fowler: Yea.
> 24:47 – 25:02 https://www.youtube.com/watch?v=-D2DEnDBbzI

While Dr. Fowler initially refuses to classify the organisation, through a series of questions and a process of elimination, Mr. Blackwell exercises his power to force an answer Dr. Fowler was reluctant to give (i.e. not his "own" words). He confronts Dr. Fowler with the term "business." Although Dr. Fowler's attempt to expand suggests resistance to the term, and perhaps an attempt to elevate the legitimacy of the organisation, he eventually accepts the term 'business' – a term of less favourable connotations. Although Dr. Fowler has accepted the term, Mr. Blackwell repeats it for emphasis.

As cross-examination progresses, Dr. Fowler makes fewer and weaker attempts to explain or repair, though his resistance to certain terms or questions is apparent in long pauses.

Blackwell: So Mr. Floyd then is (pause) sandwiched, in a way, between Mr. Chauvin on top and the asphalt pavement beneath him. Right?
Fowler: (8 second pause) (sigh) Yes, if you (pause)
Blackwell: It's a yes or no question.
Fowler: Yes.
27:30 – 27:56 https://www.youtube.com/watch?v=-D2DEnDBbzI

While these may seem like small victories for the prosecution – albeit victories that accumulate to challenge Dr. Fowler's credibility effectively – the power of the yes/ no structure can be used to far bigger effect. Immediately after the above exchange in which Dr. Fowler has agreed, however grudgingly, to the phrase that Mr. Floyd was "sandwiched," Mr. Blackwell continues:

Blackwell: I wanna ask you a question about putting pressure on, uh, someone's neck. That is, if you're on a person's back and you are applying pressure to the neck. Um, doctor, do you agree, uh, that if pressure is applied to somebody's neck in the prone position, and the person is squeezed until they become unresponsive (pause) and if that pressure is maintained for a minimum of four minutes (pause) that can cause irreversible brain damage (pause) because the brain may be starved of oxygen. Is that true?
Fowler: (pause) Once cessation of oxygen to the brain starts –
Blackwell: Dr. Fowler, my question was 'is it true?'
Fowler: (pause) Would you please restate the question.
Blackwell: Yes, sir. If you apply pressure to someone's neck and squeeze until the person becomes unresponsive, and you maintain that pressure, for at least four minutes, you will cause irreversible brain damage, because you will have starved the brain of oxygen. Is that true?
Fowler: Correct. It takes four minutes of no supply of oxygen to the brain to cause irreversible brain damage.
27:59 – 29:16 https://www.youtube.com/watch?v=-D2DEnDBbzI

It is important to note that, in nearly three hours of testimony in direct examination, Dr. Fowler had made clear his medical opinion that George Floyd did not die of

positional asphyxia – he did not die from low levels of oxygen. However, Mr. Blackwell does not ask about George Floyd. The above exchange is couched entirely in the hypothetical – 'somebody's neck,' not Mr. Floyd's; 'the person is squeezed,' not Mr. Floyd is squeezed. Dr. Fowler is, in fact, trapped. Under the twin pressures of the hypothetical framing and the yes/ no prompt, he cannot answer anything but yes. He cannot say "yes, but that's not what happened in George Floyd's case," because Mr. Blackwell could easily say he wasn't implying that at all. In the eyes of a jury or audience, however, it is not hypothetical.

Finally, perhaps the most damning moment of all for the defence during Dr. Fowler's cross-examination ironically occurred near the end and when Dr. Fowler was finally permitted to hedge and elaborate his answer. Mr. Blackwell asked Dr. Fowler if he could estimate the moment George Floyd's sudden death occurred in the continuum of time between when he was put on the ground and when he was found not to have a pulse. Dr. Fowler explains there is a difference between sudden cardiac arrest and death, specifically that cardiac arrest is not irreversible. He does not technically answer the question; rather, if Mr. Blackwell had insisted on a yes or no answer, his answer would simply have been that no, he cannot estimate when death occurred. However, Mr. Blackwell uses this answer to his advantage:

> Blackwell: So – so, we are in this space, where there is a space, um, between cardiac arrest and between the actual death. Are you suggesting that though Mr. Floyd may have been in cardiac arrest (pause) there was a time (pause) when he may have been revived because he wasn't (pause) dead yet?
> Fowler: Immediate medical attention (pause) for a person who has gone into cardiac arrest may – may well, um, reverse that process, yes.
> Blackwell: Do you feel that Mr. Floyd should have been given (pause) immediate emergency attention to try to reverse the cardiac arrest?
> Fowler: As a physician, I would agree.
> 58:00 – 58:40 https://www.youtube.com/watch?v=-D2DEnDBbzI

Rather than insisting Dr. Fowler use his framing and words, Mr. Blackwell here uses Dr. Fowler's own against the defence's case. Considering the State's case is that the

“unreasonable force” came at the very least when Chauvin continued to kneel on Floyd’s neck after he became unresponsive, this is damning testimony indeed.

In summary, Mr. Blackwell capitulates to the extreme on the superior linguistic power conferred upon him by the courtroom institution, including the power of suggestion. This results in the gradual erosion of the legitimacy Dr. Fowler built in examination-in-chief, as he is forced to agree with the prosecution more and more. The next example will show another instance in which an expert witness used the linguistic tools available to him to maintain control over his own testimony – a far more successful endeavour.

6.4.1.3 Dr. Andrew Baker

Dr. Baker was the forensic pathologist who conducted the autopsy on George Floyd, ruled it a homicide, and offered the heavily debated cause of death ‘cardiopulmonary arrest complicating law enforcement subdual, restraint and neck compression.’ It is important to note here – as it was during his testimony – that the term ‘homicide’ in this case referred to the medical sense, which is different from the legal one. In the medical sense, homicide is one of five classifications of death permissible when the death was not from disease, the others being natural, accident, suicide, or undetermined. As Dr. Baker establishes, homicide in the medical sense is a neutral term that does not imply criminal intent, and he simply followed a process of elimination for medical purposes.

My initial impression of Dr. Baker’s testimony was that this was the first time in my research in which I had the “sense” that it is the witness that was more powerful linguistically than the lawyers, despite the power imbalance which is skewed in favour of the latter (Chapters 3 and 4). My analysis therefore centred on how Dr. Baker achieved this effect.

Part of this impression of being powerful from his position on the stand is the manner in which he spoke – something my transcript does not fully capture – characterized by rapid speech, little-to-no narrative debris (uh, um, self-repair), limited hesitation in

other-turn repairs, limited pauses in his answers to consider his words, a professional mien, and apparently objective and unbiased with both prosecution and defence. His physical turning to address his answers to the jury rather than the lawyer also suggested an acknowledgement that the jury have the ultimate power in this case, more than the lawyers. All of these extra-linguistic aspects contributed to a relative impression of linguistic clumsiness on the part of both prosecution and defence.

Before I explore Dr. Baker's testimony, I will make a short comparison to the testimony of Chief Arradondo. Formally, the lawyer's words cannot be taken into testimony – only what the witnesses say can. This is a point made explicitly during both the Adnan Syed and the Derek Chauvin trials. With other expert witnesses in the Derek Chauvin case, it is often the case that this is just a formality. For long stretches of Chief Medaria Arradondo's time on the stand, prosecution's "questions" are statements tagged at the end with 'is that right?' or 'correct?' Arradondo apparently doesn't need to repeat the statement; if he says 'yes' then the lawyer's statement is accepted as his testimony – accepted as "his own words" though they are technically the lawyer's.

> Schleicher: There are various types of neck restraints that were authorised at that time, is that right?
> Arradondo: Yes.
> Schleicher: And, uh, neck restraint, uh, was defined as compressing one or both sides of the neck – person's neck with an arm or a leg, is that right?
> Arradondo: Yes.
> Schleicher: But without applying any direct pressure to the trachea, the airway that needs to be protected?
> Arradondo: Yes.
> Schleicher: Right. And there were two types of neck restraints that were authorised, conscious neck restraint and unconscious neck restraint.
> Arradondo: Yes.
> Schleicher: And the objective of the unconscious neck restraint, the second one, would be to have the person actually pass out –
> Arradondo: That is correct.

> Schleicher: And under (pause) certain circumstances in which, uh, um, the officer was in fear of great bodily harm or death that would be authorised, is that right?
> Arradondo: Yes.
> 34:28 – 35:15 https://www.youtube.com/watch?v=3BIqq9saLx8

This is only one example sequence of many in Chief Arradondo's testimony in which the lawyer is saying the words that will be admitted as testimony, with Chief Arradondo only confirming his words. Three times above, a statement is turned into a grammatical question with the three words 'is that right?' tagged at the end. However, even this formality does not always exist: in his third turn, Mr. Schleicher merely turns his tone up at the end to signify that it is technically a question; and in his fourth turn it is a statement with no upturned intonation, although Chief Arradondo answers as if it had been a question.

This form of questioning is present throughout the trial, particularly with expert witnesses. Although sometimes asking questions and allowing lengthy testimony from an expert on their field of expertise – particularly upon examination-in-chief – the lawyers do not always position themselves as lay audiences to witnesses' expert knowledge; they use the professional jargon and guide the testimony. Their pronunciation of complicated jargon is usually easy, casual (perhaps rehearsed). In the case of Dr. Baker, this dynamic is not preserved.

> Nelson: (looking at notes) Have you ever certified a death due to hypertensive cardio (pause) (deep breath) megalai--- (grimace). I don't know how to – M E – cardio M E G A L Y. Megalee? (grimace)
> Baker: So the answer to that, counsellor, is yes. The term you're going for is hypertensive cardiomegaly, which is fancy medical lingo for the heart is too big because of high blood pressure.
> 1:27:58 – 1:28:20
> https://www.youtube.com/watch?v=ZNueFy7OWHs&t=7351s

Mr. Nelson's fumbling of a technical term and his friendly grimaces create the impression that he doesn't know very well what he's talking about. Whether offered

freely or by accident, the fumbling and grimaces have the effect of yielding epistemic authority to the expert witness – Dr. Baker has greater authority to narrate this part of the story than Nelson does. Dr. Baker then claims this authority (unlike the examples of Genevieve Hansen above), not only by correcting the term but also by qualifying it with 'the term you're going for is […].' The phrase takes back the word into his ownership by suggesting Dr. Baker knows what Mr. Nelson is trying to say more than he himself does.

It is not the only time during cross-examination in which Mr. Nelson asks a technical question with a significant amount of narrative debris, hesitations, and informal speech or manner. It is also not the only time that Dr. Baker corrects him with a phrase like the one above. Earlier in the cross-examination, Mr. Nelson is taking Dr. Baker through the form on which Dr. Baker noted the cause of death of George Floyd.

> Nelson: And (pause) you factored those in in your, uhh, in your cau – there's the cause, the manner of death, uh, and there's the (pause) second thing that you left blank, right? And then there's the contributing (pause) causes. (pause) Or contributing factors.
> Baker: Yes. The term of ours is other significant conditions, is what you're getting at, counsellor.
> 1:11:58 – 1:12:19
> https://www.youtube.com/watch?v=ZNueFy7OWHs&t=7351s

These short phrases – 'the term you're going for is […]'; 'the term *of ours* […] is what you're getting at' (my emphasis) – reverses the dynamic in which lawyers "put words in people's mouths," as Fielding (2013) described. Dr. Baker is putting his (expert) words in the legal professional's mouth, even laying claim to it with the possessive pronoun 'ours.' However, it is important to note that this is not merely what happens upon cross-examination – a lawyer trying to match an authoritative expert in what is by-design an unrehearsed (or less rehearsed) interrogation; it also happens in direct examination.

> Blackwell: So Dr. Baker, just a point of clarification that frankly occurred to me as you were talking. Um, as a forensic pathologist, it – it's not part of what you do, uh, within the four corners of your job, uh, to try to calculate what Mr. Floyd's either lung volumes or oxygen reserves or that sort of thing would have been, is it?
> Baker: I think what you're getting at, counsellor, is the sort of thing that I would defer to a pulmonologist.
> 50:26 – 50:55 https://www.youtube.com/watch?v=ZNueFy7OWHs&t=7351s

Although in this case it is not correcting a particular term ('hypertensive cardiomegaly,' 'other significant conditions'), it is once again approaching the lawyer's question by claiming greater epistemic rights ('what you're getting at is […]'). However, Dr. Baker is simultaneously yielding some of this epistemic authority to another expert – he self-regulates what right he has to narrate certain knowledge while simultaneously laying claim to his "bubble" of authority.

Although these examples show moments in which Dr. Baker dominates epistemically, there are also many other small ways in which he resists the linguistic power dynamic built into courtroom discourse. Sometimes this is in the form of simply not ceding to a lawyer even when they are offering apparent "facts," which other witnesses accept despite their uncertainty.

> Nelson: You received the, uh, you received the toxicology on (looks down at notes) June 1st 2020?
> Baker: Could I refer to my record and see if that's correct?
> Nelson: Yes. (pause) On or about June 1st.
> Baker: (pause) (checks notes) That is correct. And I'm going off the toxicology report itself, it appears that it was issued on the morning of June 1st, at 7:04.
> 1:48:40 – 1:48:52
> https://www.youtube.com/watch?v=ZNueFy7OWHs&t=7351s

Although Dr. Baker confirms June 1st, just requesting to check his records prompts Mr. Nelson to withdraw some of the epistemic authority he claimed – 'on or about June 1st.' Dr. Baker then returns with information even more specific than what

Nelson had requested, when excessive specificity is generally more the legal professional's job than the witness's.

Other times, Dr. Baker exercises epistemic power in the form of repairs, as seen throughout the Adnan Syed trial and the New Zealand trial as ways to resist the lawyer's framing of an issue. Shortly after the exchange above and while still discussing the results of the toxicology results, Mr. Nelson continues:

> Nelson: Do you recall having a conversation with Hennepin county prosecutors about the significance of the toxicology findings?
> Baker: I recall having the conversation. I don't recall the specifics of it but I'm certain that I would have relayed the toxicology findings to them.
> Nelson: (pause) Do you recall describing the level of fentanyl (pause) as a fatal level of fentanyl?
> Baker: I recall describing it – in other circumstances it would be a fatal level, yes. In other circumstances.
> 1:49:07 – 1:49:35
> https://www.youtube.com/watch?v=ZNueFy7OWHs&t=7351s

Nelson's implication and Dr. Baker's repair, while small, have great weight in the establishment of the "truth." Nelson's strategy throughout the trial is to suggest that other factors contributed to George Floyd's death, such as a drug overdose. It is in his power to introduce the framing of the issue. Dr. Baker's repair serves to discredit this implication: the level of fentanyl would be fatal 'in other circumstances' but his professional opinion is that it did not in this case. While he does not elaborate on why it cannot be true in this case, the simple repair makes his case clear.

In summary, witnesses in this trial often resist legal power through small-scale repairs, as seen in the Adnan Syed trial and as will be seen in the New Zealand trial. Dr. Baker exhibits this many times. However, his exercising of epistemic authority is more effective than any other case I have observed: through reclaiming his words from lawyers as well as his manner of authority. Thus, while employing some of the same tactics as Genevieve Hansen and Dr. Fowler, Dr. Baker is more "successful" at giving testimony in "his own words."

6.4.1.4 Self-repairs

While other-repairs are common in all three trials I studied, the Derek Chauvin case was slightly unusual in its presentation of self-repairs – key words exchanged for synonyms. This suggests that the social actors have some awareness of the unintended connotations of words. Not only that, but, in the case of witnesses, subtly changing them indicates that there is also awareness of where the lawyer intended to lead them; and furthermore, the witnesses have in mind a different direction in which to steer the discussion. Self-repairs, I thus argue, indicate a person (witness) attempting to keep and exert control over their own words and stories. I will therefore in this short section explore in detail some self-repairs and what the witnesses might be resisting.

One early example was given by Darnella Frazier, the young woman who filmed the viral video of George Floyd's death. While this example came from examination-in-chief and the prosecutor was not "leading" her to an alternative connotation, Darnella Frazier could still be resisting connotations the defence might take up.

> Blackwell: And what did you hear or see (pause) Mr. Floyd doing while he was being restrained underneath, as you describe it, the knee of Mr. Chauvin?
> Frazier: He was (pause) complaining about (pause) he was stating that he was in pain, he said his neck, his back, everything hurts, I can't breathe, mom.
> 18:23 – 18:46 https://www.youtube.com/watch?v=FrO92IWAu9U

Darnella Frazier's pause before the term 'complaining' prefaces a self-repair to 'stating,' which is a term with different connotations. There are many definitions for 'complain' in the Oxford English dictionary. Number 1 and some other secondary definitions might be the sense with which Ms. Frazier may have intended to use it (given the intention implied by her self-repair and her subsequent description of Floyd's words):

I. 'To give expression to sorrow or suffering' (OED Online, n.d.-a)

However, other definitions – especially historical – contain such words as: ‘bewail oneself,’ ‘deplore,’ ‘moan,’ ‘grievance,’ ‘blame,’ and even ‘give expression to feelings of ill-usage, dissatisfaction, or discontent; to murmur, grumble.’ While Frazier may not have been aware of the term’s historical uses, a word carries their connotations in its modern usage. Compared to the more neutral term that Frazier preferred – ‘stating’ – complaining might imply that Floyd’s vociferations held some sense of anger or blame, that his attitude was disproportionate to the situation, or that he was feeling sorry for himself; while Frazier is ostensibly trying to argue that he was only suffering and rightfully so.

Genevieve Hansen also had a significant moment:

> Frank: And, at that moment you go back up onto the sidewalk, do you remember why you went back up onto the sidewalk?
> Hansen: Um, because, the officer controlling the scene, was (pause) requesting that we stay on the sidewalk. Demanding we stay on the sidewalk. 32:12 – 32:27 https://www.youtube.com/watch?v=yKN4_rpz844&t=157s

In a similar fashion to Frazier’s example above, Hansen makes a short pause before using the term ‘requesting’. She very rapidly corrects it to ‘demanding.’ “Requesting” versus “demanding,” in terms of connotations, is a matter of power exerted and perhaps tone utilized. If the officer was “requesting,” he was being reasonable and polite, according to the first OED definition of the term.

1.
a. *transitive.* To ask (a person), esp. in a polite or formal manner, *to* do something.
(OED Online, n.d.-c)

Whereas “demanding” implies a different tone and level of authority:

I. To ask (authoritatively or peremptorily) for: * *a thing*.
1.

a. *transitive.* To ask for (a thing) with legal right or authority; to claim as something one is legally or rightfully entitled to.
(OED Online, n.d.-b)

Throughout their questioning, neither Darnella Frazier nor Genevieve Hansen adopt the veneer of unbiased witnesses; they have an opinion on Mr. Chauvin's culpability and Mr. Floyd's victimhood, and their answers carry out their agenda to express this opinion. The small self-repairs above show this agenda in action.

Christopher Martin also has a delayed self-repair in cross-examination.

> Nelson: And, um, at one point you tried to actually (pause) stop, uh, stop somebody (pause)
> Martin: Hold them back.
> Nelson: Hold them back.
> Martin: Correct.
> Nelson: Um (pause) and that individual appeared to be pretty angry?
> Martin: Correct.
> Nelson: And you held him back because you didn't want him to (pause) get involved?
> Martin: Yes. Well, I would say (pause) not necessarily angry. He's been pushed so he was kinda defending himself.
> Nelson: Okay.
> 55:57 – 56:32 https://www.youtube.com/watch?v=k5xcKGRLzqI&t=3681s

Initially, Mr. Martin agrees with Mr. Nelson's term that the individual was 'angry,' thus taking it in as his own. However, on his next turn, he does not answer the question posed to him; he goes back and self-repairs the term 'angry' that he had accepted. In his explanation, he suggests the connotation he was trying to avoid: "angry" people are instigators and this individual was responding to the actions of someone else. While this is not part of any OED definition of the term 'angry,' it holds this connotation for Mr. Martin. It may suggest that Mr. Martin, along with other prosecution witnesses upon cross-examination, is responsive to some degree to the subtle difference between how defence and prosecution try to characterize the

crowd: prosecution uses such terms as ‘upset’ and ‘helpless’ or the more neutral term ‘loud;’ while defence uses ‘hostile,’ ‘screaming,’ ‘yelling’ – and ‘angry.’

Supporting the theory that self-repairs may expose haggling over power, a different example occurs when Mr. Nelson cross-examines Chief Medaria Arradondo:

> Nelson: Now, as the police chief, I’m assuming you are not out on the street day-to-day arresting people.
> Arradondo: That is correct.
> Nelson: Can you just give me a general sense, when is the last time that you’ve (pause) actually – I don’t mean to be dismissive – but actually arrested a suspect?
> Arradondo: It’s been many years, sir.
> 50:33 – 50:49 https://www.youtube.com/watch?v=3BIqq9saLx8

Unlike the previous examples in which awareness of connotations may be assumed from the repairs themselves, in this example Mr. Nelson draws explicit attention to his awareness of the connotations of the qualifier ‘actually’ – saying he ‘do[esn’t] mean to be dismissive.’ And while he offers an apology (in essence, if not in form), he refuses to repair it and instead repeats it. In doing so, he downplays Chief Arradondo’s right to narrate the story he attempts to.

In the Adnan Syed trial, there was frequent legal regulation of epistemic rights – regular objections when lay witnesses tried to lay claim to anything other than first-hand experience such as speculation, interpretation, assumption, or logical (rather than actual) conclusions. This trial does not demonstrate the same kind of dynamic. With many expert witnesses, both prosecution and defence use hypothetical examples and persons rather than the specifics of this particular case, thus inviting speculation and conditionals. These often go by without legal objection. In fact, epistemic rights are more self-regulated than imposed.

More extended self-repairs are also sometimes associated with the witness attempting to claim epistemic rights over knowledge that, in the courtroom context,

they do not have access to. Darnella Frazier demonstrates apparent awareness of her epistemic rights in this example:

> Blackwell: Could you tell the ladies and the jury – the members of the jury – how did you see him respond and react to the crowds calling out to him, what did you see him do?
> Frazier: He just (pause) stared at us, looked at us (pause) he had like this (pause) cold look, heartless. He didn't care –
> (murmur in background)
> Frazier: (louder) – it seemed, it seemed as if he didn't care.
> 0:34 – 1:01 https://www.youtube.com/watch?v=yOpvEt6vjbM&t=24s

Darnella Frazier's short answer begins with what she legally has epistemic rights to and progressively departs from it. She begins her answer with a neutral description of her first-hand experience – 'he (pause) stared at us, looked at us.' Her next comment is a description of Chauvin's expression ('cold look, heartless'), which, while still technically a description of her first-hand experience, already begins to imply interpretation of his state of mind. Her next comment is fully speculation of Chauvin's state of mind ('he didn't care') and, while the murmurs in the background may have been the beginning of an objection for speculation, Frazier immediately self-repairs ('it seemed as if he didn't care'). She cedes some epistemic rights with her correction.

Similarly, Genevieve Hansen performs some self-repairs as she regulates her own epistemic rights.

> Frank: So, what did you see about the officers there in relation to (pause) the body on the ground?
> Hansen: Um (pause) I noticed (pause) uh, leaning their – the officers were leaning over his body in – with the – it must have – it appeared to be the majority of their weight on Mr. Floyd.
> 38:32 – 39:00 https://www.youtube.com/watch?v=yKN4_rpz844&t=157s

The question of how much weight the officers were putting on Floyd's back is not knowledge Ms. Hansen has direct access to – or 'rights' to claim. Awareness of this fact is suggested by her attempts to self-repair – from 'with the [majority of their weight]' (which would have claimed full epistemic access) to 'it must have been [the majority of their weight]' (which, perhaps, would have ceded too much of her epistemic rights) and finally to 'it appeared to be the majority of their weight.' In other words, through her grammatical form she gradually distances herself epistemically from the knowledge she claims (Heritage, 2012) to a position which is legally acceptable.

In summary, the Derek Chauvin trial contained more instances of self-repair by witnesses than the others in my thesis. Correcting words with certain connotations to others and self-correcting terms to fit with what one has legal epistemic rights to can be interpreted as witnesses attempting to control the story and tell it "in their own words."

6.5 Conclusion

In this chapter, I have made some observations on the interplay of language, narrative, and power in the trial of Derek Chauvin with the aim of addressing the research questions presented at the end of Chapter 3. Guided by some of the themes from the previous chapter such as epistemic authority, tropes, and witness resistance, the analysis shows that the Derek Chauvin trial presented a number of similarities and differences as compared to the Adnan Syed trial. In these concluding remarks, I will offer a summary and findings, which will be further explored in Chapter 8 alongside the other two case studies.

In the first instance, noting the importance of videos in the trial of Derek Chauvin, I approached these as event stories (Sandberg, 2016) and examined their positioning in the hierarchy of epistemic authority in court – how participants oriented towards these in terms of what weight they had on the issue of truth. The videos occupied a variable position in this hierarchy, vying for epistemic rights with verbal testimony, reflecting the ongoing debate of what kind of evidence videos are at trial: are they

direct evidence, reflecting “reality” in some sense (Law Society of Scotland, 2017) or are they only aids secondary to the usual privileging of first-hand experience presented orally in court?

Furthermore, due to the number of videos captured of events, the case – on the surface – hinged less on tropes as speculative stories. However, what emerged from the analysis was that these event stories were used ultimately in the construction of tropes: the Reasonable Police Officer using appropriate force to do his duty versus the Racist White Police Officer using excessive force against a Black man. This continues to support findings from the Adnan Syed trial regarding the evidentiary value of familiar stories (Drew, 1991; Gewirtz, 1996; McKendy, 2006; Roemer, 1997; Sandberg, 2016). These findings will be explored in more depth in Chapter 8, including the relationship between familiar stories and perceived truth.

In support of these narrative constructions, the first part of this chapter also explored the rhetorical strategies employed by prosecution and defence in support of their case. Prosecution took a more ‘artful’ approach – using devices such as metaphors, juxtaposition, and turns of phrases – all to emotive effect (or “pathos,” as David et al. (2016) suggests). This furthers some research on art in courtroom language (e.g. Campos Pardillos, 2016; David et al., 2016; Drew, 1990) adding to it an analysis of its effect and use beyond just its existence. Defence, on the other hand, took a less emotive effect and appealed to reason, but nonetheless used certain rhetorical strategies (i.e. lengthening, complicating) to build a case for a logical and reasonable police officer. While valuable research on rhetorical strategies used by legal professionals in court exists (e.g. silencing (Eades, 2000; Felton Rosulek, 2014; Fridland, 2003), emphasizing and de-emphasizing (Felton Rosulek, 2014), de-individualisation (D’Hondt, 2010) this chapter shows the value of studying this on a case-by-case basis rather than on aggregate populations.

Meanwhile, in close study of interaction with a view to whether witnesses speak “in their own words,” there is more evidence than in the trial of Adnan Syed that witnesses actively seek to do this, shown through the way they resist questioning. I have shown three main examples of how witnesses may resist. Genevieve Hansen resisted with open hostility and this triggered a legal response that “put her in her

place" – reminding her of her "job" as a witness and subsuming her in her role – much like Mr. S in the Adnan Syed trial. This is in line with literature on legal control and the portrayal of courtroom interaction as a script that lay participants must follow (e.g. Carlen, 1976; Mulcahy, 2007; Rock, 1991). However, in contrast to this perception in the literature, there was evidence of witnesses "learning" their script and speaking to it – through self-repairs particularly related to what knowledge they may claim.

Dr. David Fowler resisted using common linguistic resources technically available to him as a witness that were also seen in the trial of Adnan Syed – attempted elaborations of answers and repairs. In his particular case, these tended to be unsuccessful, as prosecution in cross-examination exercised their power to frame issues and limit answers to the form of the question (Hayano, 2014). Dr. Andrew Baker, on the other hand, presented as a very linguistically empowered witness, and the analysis in this chapter suggested some ways witnesses may do this. Many times in this trial and that of Adnan Syed, the information admitted as testimony actually came from the legal professional and was admitted with a formulaic linguistic acquiescence from witnesses (i.e. facts stated as questions to which witnesses only symbolically answered "yes"). Dr. Baker, on the other hand, did not yield unconditionally to the authority of the legal professional when it came to apparent "facts"; just by double-checking them from his own sources, even if he eventually confirmed the lawyer's comment, he claimed the facts as his "own" knowledge rather than passively accepting the lawyer's authority in this. His control over his discipline also enabled him several times to "correct" lawyers with his expert knowledge, which prompted legal professionals to yield to his epistemic authority. Aspects of his manner of speech – pace, lack of hesitation, excessive specificity – also supported his presentation as an empowered witness.

Overall, related to the Adnan Syed trial, the Derek Chauvin trial may be described as "laxer" in terms of legal regulation of language, which allowed a greater range of interactional patterns to be observed. The most common forms of resistance – other-repairs and elaboration of answers – were accepted far more often in the Derek Chauvin trial than in the Adnan Syed trial. Nevertheless, the most common expression of linguistic legal power – forcing yes/ no answers – was also employed

extensively in the Derek Chauvin trial, particularly in cross-examination. All in all, both trials largely confirm the literature on the way language is used in the courtroom to control testimony and enforce epistemic rights. In the next chapter I will offer a third case study of a trial that occurred in New Zealand. This one subverts many of the observations made in the previous two case studies.

Chapter 7: New Zealand

7.1 About the Chapter

The following chapter is a case study of a trial that took place at a High Court in New Zealand in July 2021. The case and brief information about the New Zealand legal system will be described in more detail in the Introduction (section 7.2) below. The case involved the killing of a man inside his home, with the accused being two men tried at the same time. The details of the exact dates, the city in which it took place, and the legal designation of the trial are anonymized. The analysis was done in a similar way to that of the previous two case studies, with an exploratory approach taken to aspects of language, narrative, and power and their particular relationships in this trial; however, following the previous two cases, special focus was given to relevant codes that have already emerged, such as the hierarchy of epistemic authority, narration style, and witness resistance.

As described in Chapter 4, despite working with visual recordings and personal transcriptions rather than legal transcripts I was able to attend to the entirety of the trial due to its length (8 days). In transcription, names are redacted by preserving only the initial in square brackets (e.g. [N]).

Far more than the other two case studies, special attention was accorded in the unfolding narrative of the case to linearity and logic. Narrative testimony (Fielding, 2013) was far more readily accepted and encouraged; interestingly, invitations to such were not always taken up, and an effect of confusion was created that was lesser in degree in the previous studies. The Narrative and Power section in this chapter will therefore focus on storytelling practices and co-construction of narratives in interaction.

In terms of Language and Power, the New Zealand trial stands out from the other two case studies on several levels. In terms of control and restriction of language-use, this was significantly lessened in this trial, with more power granted to lay

participants to “use their own words.” There was less legal-lay tension in interaction and humour played a significant role in equalizing power imbalances. These aspects will be detailed in the rest of this chapter.

7.2 Introduction

7.2.1 Criminal Courts in New Zealand

Prior to 1840, the legal system in New Zealand was Tikanga, or Māori customary law. New Zealand inherited the common law system from England in 1840, when New Zealand was brought into the British empire through the Treaty of Waitangi signed between the UK and Māori chiefs. Although in practice this was not a straightforward transition due to disagreement in the interpretation of the Treaty, the main system today is that of adversarial justice similar to that in the UK and the United States; although there are a number of specialist courts that take a more inquisitorial approach. In terms of the organisation of the courts, the Supreme Court of New Zealand sits at the top of the hierarchy, followed by the Court of Appeal, the High Court, the Courts Martial Appeal Authority, the District Court, various specialist and indigenous courts, and tribunals (Joseph & Joseph, 2012).

7.2.2 The Case and Trial

Two defendants (Defendant 1 and Defendant 2) were charged with murder and tried at the same time for the killing of the Victim. Whether or not they committed the killing was not in dispute, and the trial was a search for motive – was it a senseless killing or were there mitigating factors? Defendant 1 was charged as the main perpetrator and Defendant 2 was charged as a party to murder. The two defendants were tried at the same time and each had a separate defence lawyer. This process, known as a ‘joinder,’ may be employed when the defendants are accused of having participated in the same criminal act and there is significant overlap in the evidence brought before the court (Leipold & Abassi, 2006).

Usually done in the name of efficiency and avoiding inconsistent verdicts, joinders of defendants have sparked worries of procedural fairness. Few studies have empirically tested this concern, but Leipold and Abbasi (2006) have found that joining co-defendants does not impact likelihood of conviction. The effect of the joinder in this trial in New Zealand was that most of the evidence related more to Defendant 1 than Defendant 2. Defendant 2's defence lawyer stated in his opening statement that the two defendants were being tried separately and the guilt of one should not reflect on the potential guilt of the other; however, he made clear that legally the jury could only find Defendant 2 guilty of being party to murder if Defendant 1 was found guilty of murder.

A particular characteristic of this trial is that, as outlined by Defendant 1's defence lawyer, the question under debate for the jury was not whether the two defendants committed the killing, but rather whether there was intention to kill on their part. Thus, a lot of the evidence brought by the case was, as prosecution and defence phrased it, presented 'by consensus.' One effect of this was that a lot of testimony came in the form of a written statement – particularly from expert witnesses – read out by either the witness in person or by the prosecutor or clerk in the case of their physical absence. Furthermore, there were very few objections and cross-examinations from the defence lawyers, presumably because the forensic facts did not speak to the issue of "intention" that was the focus of the defence.

7.3 Narrative and Power

7.3.1 Linearity

In the sense that a trial itself is a story, a defining characteristic of the New Zealand trial is its explicit preservation of the linearity of the narrative. This is not something either of the other two trials studied in this thesis demonstrated. In fact, this was addressed directly in the prosecution's opening statement in the Adnan Syed case, which contained a warning that the story of Hae Min Lee's murder would not be told in a linear fashion, the reason being a practical one – based on when witnesses

were available (Adnan Syed, Day 3, p.95). This promise held true throughout the trial. The lay witnesses and expert witnesses were mixed, with testimony to small parts of the story being peppered throughout, from the relationship between Hae Min Lee and Adnan Syed prior to Hae's death to the finding of the body. The star witness, Jay Wilds, even began testifying on Day 9 and was interrupted by cell phone record testimony before resuming on Day 12.

The New Zealand case, on the other hand, preserves the linearity of the story as well as keeping lay witnesses and expert witnesses separate. The trial begins with lay witnesses that establish the relationships among the Defendants, the Victim, associates such as the Daughter of Defendant 1, various neighbours, the Employer of Defendant 1, and friends of the Defendants (among others). This is, narratively, the exposition of the story and establishment of characters and their relationships. Subsequently, there is testimony from police constables on the day of the murder, followed by forensic experts that described the crime scene and how they interpreted the evidence as to what happened. Finally, the State's case progressed to the to the aftermath of the killing of the Victim in the form of how the suspects were apprehended.

There is further evidence that the case laid out by the prosecution very consciously preserved the linearity of the narrative. Even among the numerous expert witnesses, the evidence is constructed logically: one witness on Day 4 described a series of technical terms which were later also used without further explanation by another witness. Several times, prosecution apologized for nonlinearity in the photograph book, suggesting that telling the story in its proper sequence was of importance.

The order in which a story is told has an impact on its effect. As an example from social science research, McAdams reflected on the ordering of stories and the effect on listeners, describing for instance how a bad event followed by a good one was a 'redemptive narrative' (2006, p. 16) while a good followed by bad constituted a 'contamination sequence' or a 'fall from grace' narrative (2006, p. 209). In Chapter 5 of this thesis, we saw how Mr. Urick's nonlinear storytelling in his opening statement was used to emotive effect, the dramatic punchline preceding the lining up of facts and enabling the construction of his trope as legal argument. In the case of the New

Zealand trial, rather than being an amalgamation of stories that leave the construction of a coherent overarching story to the jury, the linearity created the impression of the trial as a singular story. It enabled a more efficient analysis of how the component parts of the story contribute to the whole, as well as – seen below – an analysis of narration as an act (i.e. narrative-style testimony) rather than of narratives as entities.

7.3.2 Narrative-Style Testimony

In the previous two case studies, I have used Sandberg's (2016) categorization of narratives, particularly the role of tropes and their relationship to event stories. While these remain of relevance in the New Zealand trial, I focus more on narrative as an unfolding process rather than objects with certain qualities, borrowing more from Fielding's conceptualization.

As described in Chapter 2 of this thesis, Fielding (2013) conducted an ethnography of courtroom proceedings in cases of physical violence in England and Wales, including interviews with lay participants on their subjective experience of courts. The article highlights miscommunications between lay people and legal professionals, emphasizing the dissatisfactions of lay participants in particular. Fielding concludes his article with a call for more opportunities for what he calls 'narrative testimony' i.e. more open-ended questions that permit witnesses to give their testimony in story-style and, therefore, "in their own words." He wrote that this will not only improve the satisfaction of lay participants in court but will also improve the evidentiary quality of testimony. Notably, this direct relationship between open-ended questions, narrative-style testimony, and evidentiary quality, has been a consistent finding in the specific case of child witnesses in New Zealand courts (e.g. Davies & Seymour, 1998; Hanna et al., 2012) and English courts (e.g. Andrews & Lamb, 2017; Prince et al., 2018) but has yet to be extended to "all" witnesses.

The hostility to narrative-style testimony is evident in the Adnan Syed trial. Witness testimony was tightly controlled, often limited to yes/ no answers, and witnesses

were frequently admonished by both lawyers and judge to not offer more information than is requested. By contrast, in the Derek Chauvin trial, while occasionally (as strategy when cross-examiners had an agenda to delegitimise a witness) the yes/ no format was enforced, for the most part witnesses were allowed to offer extra information.

The New Zealand trial suggests that this hostility to narrative testimony is not universal. While problem-solving courts are known to be more open to narratives (Jeffries & Bond, 2014; Schaefer & Beriman, 2019; Wiener & Georges, 2013), the trial I observed did not take place in a problem-solving court – yet it nevertheless was overall very open to narrative testimony. There were frequent invitations by legal professionals to give narrative testimony; these were sometimes accepted and sometimes rejected by witnesses, which challenges Fielding's observation that witnesses universally seek more opportunities to tell stories in court.

7.3.2.1 Invitations to Narrative-Style Testimony

Invitations to narrative testimony are sometimes managed grammatically, by the form of the question – an open-ended 'what' question rather than a question that may be answered with yes/ no. More often, however, there is very explicit invitation in the form of a demand rather than a question:

> Prosecutor: And did something happen on the occasion that you went to visit them?
> Witness: Yes, yes.
> Prosecutor: Tell us about that, please.
> Witness: Okay, so I just popped down to go and say hi to [N].
> (Day 3)

> Prosecutor: Firstly, items from, uh, Mr. [R], I think you examined the top, long-sleeved top, that he was wearing?
> Witness: Yes, so the - the long-sleeved top and a pair of pyjama (inaudible).
> Prosecutor: Right. Tell us about that.

(Day 5)

Prosecutor: And you - well you tell us, you pulled up to the address?
Witness: Uh yes, we turned right onto [R] Road.
(Day 4)

In the first two examples, the prosecutor issues a request for the witness to "tell [the jury] about" something. In the final examples, the prosecutor begins with a question form that might have ended as a yes/ no question, but she self-repaired mid-question and issued a prompt for narrative testimony. Although the question itself is in yes/ no form, by the invitation of 'you tell us,' the prosecutor is indicating – and the witness is recognizing – the question as an invitation to offer narrative. The observation I highlight in the following sections is that these invitations, though frequent, were only occasionally taken up; in addition, I will explore what happens in interaction when these open invitations are taken up.

7.3.2.2 Acceptances of Invitations

7.3.2.2.1 Neighbour's story

Witnesses tend to recognize the invitations to offer narrative testimony for what they are; they at times accept them, but the stories tend to be short. One witness on Day 3 was an exception to this, often taking the opportunity to tell lengthier stories. This was the Neighbour of the Victim and friend of Defendant 1, who testified at length about the emotional abuse she allegedly experienced at the hands of the Victim. Below is a significant example in which she tells an event story – significant because the type of story the witness chooses to tell is of a style that literature has observed is often controlled against in the courtroom.

Prosecutor: Now (pause) in relation to, um, January, or that January/ Christmas-time, was there (pause) um, an occasion where you had a friend called [T] over?
Witness: Yes.

Prosecutor: And uh [T] is a friend of yours?
Witness: Yes.
Prosecutor: Of long standing?
Witness: Yes.
Prosecutor: And (pause) was there an incident that occurred when he was over in early January, that you recall?
Witness: Yes.
Prosecutor: Oh, could you tell us about that, please?
Witness: Hmm, well, I'd been starting to, you know, like, stay indoors. Like, pretty much becoming a victim of my own home, really, because I couldn't be bothered with all the saga, and drama, and abuse I was putting up with. And I got [T] over this night to come and stay with me, just, you know, be a support person because I was scared of what was going to happen to me. And umm, [Victim] knocked at the door, I got my friend [T] to answer the door, and umm, I just let it go for a bit, the conversation between [Victim] and [T], and then umm, yea um, [Victim] was off his face, um slurring, and just all over the [inaudible], I don't know what he was on. And then, yes, he started, he started, calling me a slut and all this to my friend [T] who I'd had been a friend of for a very long time. And then I was in my lounge, and then I popped by, yea, and just told him to fuck off. I wasn't going to put up with that. Sort of. You know, I didn't know, yea, yea, that was my coping mechanism, yea, fuck off. I had to, like, yea. It was terrible. Just nasty, narcissistic behaviour.
(Day 3)

This exchange begins with a yes/ no questioning sequence which sets a context. The legal professional establishes with the witness when the event took place (‘early January’) and who was involved (the Neighbour’s friend). Afterwards, the prosecutor invites narrative testimony, with the urge to ‘tell us about that, please?’ The witness launches into a story about the Victim visiting her flat while her friend was over and harassing her in the process.

Structurally, the Neighbour’s story begins with a clear narrative structure: exposition and introduction of characters (herself, her friend, and the Victim) followed by the climax, or the event in question. However, interestingly, her story derails at the end,

peppered by repetitions and narrative debris and offering an unclear resolution (‘I wasn't going to put up with that. Sort of. You know, I didn't know, yea, yea, that was my coping mechanism, yea, fuck off. I had to, like, yea.’). Her final point is her interpretation of the character of the victim – legitimizing, in the process, her own reaction (‘It was terrible. Just nasty, narcissistic behaviour.’).

The story serves to establish the Victim’s bad character: he was ‘off his face,’ he was verbally abusive (calling her a ‘slut’), and he was a ‘terrible’ ‘narcissistic’ person. The story also serves to offer a self-characterization of the Neighbour herself. She presents herself at first as a harassed victim, too scared to leave the house because of her neighbour’s behaviour. However, near the end she also portrays herself as fighting back (‘just told him to fuck off. I wasn’t going to put up with that). Her repetitions and narrative debris at the end of her story may be seen an attempt to attend to some potentially problematic implications of her testimony. That is, telling someone to ‘fuck off’ might present the witness in a negative light (i.e. aggressive), which does not fit with her previous presentation of herself as a victim. She attends to the negative implications by reframing them, firstly offering a reasonable explanation of not putting up with abusive behaviour (‘I wasn't going to put up with that’), then softening the story (‘Sort of. You know’), providing a rationale that emphasizes her psychological trauma (‘that was my coping mechanism’), and portraying the response as needed (‘I had to, like, yea’).

Conley and O’Barr (1990) outlined two different styles of narration in court, one which is preferred by legal professionals and one which they suggest is more “natural” to a lay speaker but dispreferred in court. These two styles of narration are ‘rule orientation’ and ‘relational orientation’ and this categorization has also been explored since then by other scholars. In rule orientation, narratives are framed in terms of ‘legal rules and principles and omit details of their social statuses or relationships’ (Ewick & Silbey, 1995, p. 207). As was shown in the previous two case studies, legal professionals often direct witnesses to this style of narration, objecting to aspects of testimony that more closely resemble a relational style of speaking in which speakers structure their narrative around ‘details of their social relationships, motivations, emotions, and […] expectations’ (Ewick & Silbey, 1995, p. 207).

The narrative offered by the Victim's Neighbour in this case is a very relational-style narrative in terms of which aspects of the story she treats as important. She structures her story around the relationship between herself and her friend (close, protective) and between herself and the victim (harassing, abusive). She emphasizes her emotional state at the beginning of the story as well the feelings triggered by the Victim's behaviour. And as her story winds down, she offers her opinion on the Victim's behaviour towards her.

Notably, in contrast to the findings of Conley and O'Barr (1990) about the relational style being treated with dismissal or hostility by legal professionals, the prosecutor in this case spurs on the witness's story with encouraging nods and smiles. This is interesting because the emphasis on the emotional impact of the Victim's abuse does not serve the "case" of the State: it serves to characterize the Victim as a "bad person" and thus potentially mitigate the crime committed against him. In contrast to the other two case studies, therefore, the approach of the prosecution in the New Zealand trial is more "fact-finding" than "case-making"; this might be related to jurisdictional differences regarding the role of the legal professional in a trial or possibly related to the more domestic nature of the crime allegedly committed.

7.3.2.3 Rejections of Invitations

7.3.2.3.1 Detective Constable

As described above, Fielding (2013) found that lay participants reported that they wanted more opportunities for narrative testimony. However, in the New Zealand case, there were many instances in which legal professionals invited narrative testimony and the witness preferred to give short answers. While this is not a clear indication that the witnesses did not "want" to offer freer testimony (other reasons for avoidance of narrative testimony could be nerves or confusion, the latter being a possibility which will be explored in the next section), it does demonstrate a different approach on the part of the legal professionals to so readily welcome it and encourage it.

On Day 4 a detective who investigated the scene of the crime testified about her role. The first sequence of interaction between the prosecutor and the witness sought to establish what the detective's involvement was and what she did.

> Prosecutor: And what was your uh involvement in – in the investigation into [Victim]'s death.
> Witness: I was tasked with (pause) um, from here, is – there would have been exhibits, or evidence, in – at [E] in [C]. So I was tasked to search for and retrieve those exhibits.
> Prosecutor: And in terms of – when you're tasked to do something like that, what – what does it involve? Is there a security of the scene, that sort of thing?
> Witness: Yes, there was – had already been – there was two scenes and there was two scene guards present (pause) on those two scenes.
> Prosecutor: And um, and it would involve for example examination of the scene, um, removal of any exhibits – that sort of thing?
> Witness: Yep, there's uh, initially an initial look at the scene, um, photography, specialist search, and then the collection of the exhibits.
> Prosecutor: And you've mentioned that there were two scenes, um, in relation to your part in this investigation. Where were those scenes?
> Witness: Both on [E], sorry from here (pause) if you don't mind my…
> (Overlapping speech)
> Prosecutor: It's alright, I can lead you a bit.
> (Day 4)

In this exchange, there are a number of instances in which the prosecutor is inviting narrative testimony – both by the form of the question by the intonation. She first asks an open-ended question, 'what was your involvement?' Although this could be answered at length, the witness offers a short answer. The prosecutor attempts again with the open-ended question 'what does it involve?' She follows this with an example of a possible answer. While an example might arguably close down the open-endedness of the previous question, the prosecutor then follows up with 'that sort of thing' thus inviting other examples; the witness does not accept this invitation and only replies in relation to the example. The prosecutor attempts this structure

again – examples followed by ‘that sort of thing?’ This time the witness elaborates a bit more, offering other examples not mentioned by the prosecutor, but her answer remains short and she does not respond as if she recognizes or accepts the invitations for narrative testimony.

Eventually, the prosecutor recognizes the witness's preference and assures her ‘it's alright, I can lead you a bit.’ Unusually, from the point of view of Fielding’s (2013) writing, which implies that witnesses want to give narrative testimony and are controlled by lawyers in court, in this case there is a witness who does not accept the lawyer's invitations for narrative testimony. Where leading questions are often treated as exploitation of professional power in court, in this case it is offered as a reassurance.

7.3.2.3.2 Managing Confusion

On Day 3 of the trial, the prosecution called Defendant 1’s Daughter as a witness. A particularly long exchange began a while into the questioning which may shortly be described, by its interactional effect, as “confusion.” There is difficulty extracting information on the part of the prosecutor, suggested by open-ended questions that fail to elicit elaborated testimony, attempts to “clarify” answers, questions punctuated by long pauses, and apologies for misunderstandings. In this section I will focus on this exchange and explore this effect of confusion, suggesting it might be read as an ongoing attempt to establish an intersubjective understanding (Schegloff, 1992) of a state of affairs as well as a case of participants managing different agendas.

> Prosecutor: Did he talk to you about that? I’m not asking you for the word-to-word or anything, but did he talk to you about that, on the Tuesday?
> Witness: Well, I think he was just looking for the best way to, um, go about, ummm, helping her to feel safer. I gave him some suggestions.
> Prosecutor: Right. (laughter). And, did he like those or not?
> Witness: He didn’t seem too receptive of them, I couldn’t really gauge what kind of, if he was gonna take any of my suggestions on or anything, but I did say a few things to him and he heard what I said.

Prosecutor: Alright and (pause) would it be fair to say you thought that he shouldn't, he should, part company with her, or something like that?
Witness: Ye, she should have parted company with her.
Prosecutor: Right. And that's what you said essentially, to him.
Witness: Yes.
(Day 3)

The verbal agenda of the prosecutor in this short exchange is revealed in the last question that establishes what advice the daughter gave her father. Reaching this answer was not a straightforward process. The prosecutor begins with a yes/ no question ('did he talk to you about that?'). The witness answers not with a yes or no, nor even with an elaboration of what they "talked about," although the question could have been interpreted as an invitation to do so. Rather, she offers an interpretation of her father's mental state ('I think he was just looking for the best way to […] helping her feel safer'). Interpretations of mental states such as this were carefully controlled for in the Adnan Syed case; here, the prosecutor not only does not object, he accepts this slight deviation and goes with it ('Right. (laughter). And, did he like those [suggestions] or not?').

This is revealed to be a deviation the prosecutor made because of the non-conforming answers he received because his next turn asks a question about the content of her suggestions, which he could have questioned in the previous turn when the witness mentioned she gave him suggestions. Once again, the prosecutor asks a yes/ no question ('did he like those or not?') and once again the witness gives an answer slightly outside the scope of the question ('he didn't seem too receptive […] I couldn't gauge […] I did say a few things […] he heard what I said'). Having not elicited the desired answer (what the suggestion actually was), the prosecutor offers this information himself – interestingly, while trying to frame it in the witness's "own words" ('would it be fair to say […]'). The new information is accepted by the witness. Finally, both the prosecutor and the witness had framed this information as what the witness "thought," and the final question brings it back into an acceptable evidentiary realm of what was "actually said."

The prosecutor then begins another sequence with a simple question, the change in direction marked by a long pause: ‘How did he refer to the people who were allegedly bullying [the Neighbour]?’ The witness gives several dispreferred answers – not answering, saying several times she doesn’t remember, and one time mis-interpreting the question.

> Prosecutor: Do you remember?
> Witness: No. (heavy sigh) (long pause). Um, I think he just said people at the unit, that, at the complex, had been giving her a hard time. I can’t remember how he referred to them as individuals.
> Prosecutor: Right. I didn’t mean as individuals, just collectively.
> (Day 3)

As will become clear after a few more minutes of failed exchanges, the prosecutor was apparently attempting to elicit a particular descriptor for “how Defendant 1 referred to certain people collectively.” As such, his changing questions are attempting to lead the witness to that particular descriptor in different ways. The prosecutor seemingly goes back to previous testimony the witness gave.

> Prosecutor: Alright so he didn’t like your suggested solution for her –
> Witness: Oh I don’t know if he didn’t, he just didn’t seem too receptive of them all. Haven’t given me any feedback on them.
> Prosecutor: What – did he say anything about what he was gonna do?
> (Day 3)

The prosecutor offers what might be a fair interpretation of the testimony previously given: since they’d established that the father had not taken on board the witness’s suggestion, it is not unreasonable to deduce he didn’t like the suggestion. However, the witness interrupts to claim she cannot draw that conclusion. The prosecutor does not qualify this and proceeds with what might have been his goal before he was interrupted, which was whether Defendant 1 said what he was going to do. In response to another negative answer, the prosecutor changes tactics again.

Prosecutor: Did he know someone, or does he know someone called (pause) [R]?
Witness: Yes
Prosecutor: Is that [R] [K]?
Witness: I don't know his last name.
Prosecutor: (pause) and (pause) was there any talk about him?
Witness: (unintelligible) he was just visiting him.
Prosecutor: But in relation to this issue about [Neighbour] being bullied, did your dad say anything?
Witness: Well I don't remember.
Prosecutor: Is that because of the time that's elapsed?
Witness: Yea, it, it, it is.
(Day 3)

This exchange prefaces a significant moment in the interaction in terms of epistemic authority as negotiated in this trial. The witness has been giving dispreferred and non-conforming answers for a significant amount of time of testifying – as above. This often included the defence that she does not remember something. In the last exchange, the prosecutor asks to confirm that the reluctance is simply an issue of memory. In the following extract, in a logical progression, the prosecutor offers her a typed transcript of a statement the witness made to police earlier during the investigation in order to 'refresh [her] memory'; he confirms with her that it is her initials on every page and her signature on the last page. Much like the similar instance with Mr. S in the Adnan Syed trial, this is treated as a verbal ritual that has the subsequent effect that anything in the written document may be admitted as the person's official testimony at trial. After this has been established, the prosecutor directs her to a particular section which presumably contains the information he is trying to elicit which the witness claims to not remember.

Prosecutor: And just, read it to yourself, don't read it out loud. We were talking about, a moment ago, if you look at the bottom of page 2, paragraph 18 and down to the bottom.
Witness: Yes.

Prosecutor: Just read that to yourself.
Witness: (pause) Yes.
Prosecutor: And I'd asked you, was there any talk or mention of [R]?
Witness: Yes.
Prosecutor: That help you remember now?
Witness: Well it doesn't help me to remember that I said that.
Prosecutor: What do you mean? (slight laughter)
Witness: Well number 20 at the bottom, what that says (pause) the wording might have changed.
Prosecutor: Right. Well what's the right wording then?
Witness: People.
(pause)
Prosecutor: Sorry? (pause) well, just tell us what – what was said by your father.
Witness: He was going to go see [R] and see if there were some people that could help him to resolve the issue. (pause) and the way it's worded just gives it a different – makes it look different.
Prosecutor: Right. Well do you accept that was a word you used at the time?
Witness: Well, I don't remember.
(pause)
Prosecutor: (pause) You don't remember using – you think you said people?
Witness: Yes.
(Day 3)

The prosecutor's agenda does not yield the desired response; the witness does not offer the information he is attempting to elicit. What is interesting here, though, is the way tension is managed between the authority given in a written statement nearer the time of the crime and the authority given to oral testimony during the trial. This will be explored in more detail in section 7.4.2 below on witness resistance. In terms of managing confusion in this instance, the prosecutor simply moves on: ('alright, thanks, just put that to one side, if you can. I'll carry on asking you questions.')

In the examples above there has been evidence of confusion in talk, which I would argue are due to differing agendas as participants attempt to establish an

intersubjective understanding of a state of affairs. The prosecutor's manner is fact-finding. He asks direct questions about what actually happened, pushing the testimony forward. In his role to establish the guilt of Defendant 1, he attempts to elicit a damning word the defendant used in a written statement. However, when the witness shows herself reluctant to use it, he moves on. The confusion and roundabout answers of the witness, as well as her attempt to offset negative implications (such as by interpreting the defendant's mental state in an inoffensive manner at the beginning and insisting he used neutral words to describe the people who were bullying the Victim's Neighbour), may suggest that, although she is a witness for the prosecution, she is resisting a response that might implicate her father and instead provides responses that mitigate her father's guilt.

7.3.2.4 Co-construction

In the Neighbour's story there was an example of free narrative testimony uninterrupted by the prosecutor and encouraged with nods and smiles. In the Daughter's story, there was attempted co-construction of narration which suffered from a lack of intersubjective understanding and thus displayed confusion. This following example is of a narrative co-constructed between the witness and the prosecutor on Day 3. The prosecutor intervenes a few times to limit testimony, encourage further narrative, and steer narrative in a direction relevant to the case. In response, the witness alternates between free relational storytelling and possible confusion with the direction of the questioning judging by her pauses, repetition, and fall-backs to single-word answers. Essentially, it is a narrative about the lack of a narrative, lost due to the witness's memory gaps.

The narrative begins with a yes/ no question that was taken as such by the witness. Following her single-word response, the prosecutor prompts narrative testimony with an imperative rather than a further question.

> Prosecutor: And did something happen on that occasion that you went to visit them?
> Witness: Yea. (pause) Yep.

Prosecutor: Tell us about that please.
(Day 3)

In response, the witness begins her story with an initiating sequence ‘okay, so,’ followed by a relational-style exposition characterized by a description of the players and relationships between them.

Witness: Okay so I just popped down to go and say hi to [N], and when I arrived there [B] and [S] [P] were there in the lounge. And as soon as I came in they disappeared, so I carried on and had a wee drink with [N]. You know, he’s quite a good fella, I thought (pause) um, or know of.
(Day 3)

Notable is the short reflection of [N]‘s character, which is characterized by decreasing levels of epistemic certainty: first, she makes a bold statement (‘he’s quite a good fella’), followed by a less certain one that shifts the subject from [N] to her (‘I thought’), then epistemically distancing herself further (‘um, or know of’). This may signal trouble later on in the story, where we may see evidence that N] wasn’t that good. The witness then continues the narrative and she is interrupted when she veers away from evidentiary rules. This prompts the witness to interrupt the narrative character of her testimony and revert back to one-word answers.

Witness: And yea, um, something’s happened, I feel like, you know there’s a little bit there, where my mind, I don’t recall anything. Maybe – and I know I wasn’t intoxicated, so I was wondering if something was actually put into my drink, like (overlapping) like a spike -
Prosecutor: Oh, okay, I’ll just pause you there.
Witness: Okay.
Prosecutor: It’s fine, but what we have to talk about is what we know and see and hear.
Witness: Right.
Prosecutor: So, you’re in the unit with [N] and (pause) just [N]?
Witness: Yea. After [B] and [S] (overlapping)
Prosecutor: Yes? Ah, they had left.

Witness: Yes.
Prosecutor: So (pause) just tell us what you saw and heard.
(Day 3)

In this extract, the prosecutor interrupts free narrative testimony to control the witness's storytelling according to the epistemic rules of the courtroom. This is a rare occasion, in this trial, in which the prosecutor issues such instructions, which were very common in the trial of Adnan Syed. However, notable is the apologetic nature of the prosecutor's interruption ("I'll just pause you there"; "It's fine"). This was absent in the transcripts of the Adnan Syed trial, where the instructions were presented firmly and authoritatively. Further of interest is consideration of the purpose of this correction by the prosecutor. While it is speculation, it is a reflection on the witness's mental state which might address a possible problem with the coherence or plausibility of subsequent narration. The function of the admonishment may indeed simply be legal – heading off a mention of a crime not being charged (i.e. drugging someone). After this gentle admonishment, the prosecutor prompts a return to free storytelling in a couple of exchanges followed by another imperative – this time, repeating the evidentiary rules she had just outlined ('so (pause) just tell us what you saw and heard').

Witness: Well, um, [B] and [S] disappeared, I was there with [N], I remember staying there with him for a little while having a chat. Annnd, had a couple of drinks. Aaaand (pause) I remember telling him he had a nice smile, and um nice teeth (chuckle). And then (pause) I don't know what's happened after that for a while (pause).
Prosecutor: So, you have no memory.
Witness: No.
Prosecutor: And then what do you next remember?
(Day 3)

The witness shows herself taking to heart the prompt for concrete description of facts rooted in first-hand experience ('I remember staying'; 'I remember telling'). Her manner of speech (drawn out 'aaaand's and pauses) might suggest some uncertainty about what the prosecutor is looking for in this story which she can't

narrate due to memory loss. Further suggesting confusion, she offers a statement of a fact about what she remembers ('I remember telling him he had a nice smile […] nice teeth') punctuated by self-deprecating laughter. Following a summary of the main takeaway from the story thus far ('so, you have no memory'), the prosecutor once again guides testimony by prompting further narration ('and then what do you next remember?')

> Witness: Uh I somehow had obviously made it back to my unit. And (pause) I went to – I went indoors because like I had obviously been assaulted very badly, I had gashes and everything on my head. I had been done over quite nicely, whatever had happened. Um (pause)
> Prosecutor: But you don't remember that.
> Witness: No.
> Prosecutor: Okay.
> Witness: And then, ummm (pause) that's right I had managed to get into bed, I remember being in bed, and I had been woken up by the police knocking on MY door. And, um, arresting ME, for assault.
> (Day 3)

Despite being asked to talk about what she next actually remembers happening, the witness offers (logical) speculation on what "must have" happened. The prosecutor reminds her again 'but you don't remember that' and this time without prompting the witness continues with her actual memory – of the police knocking on her door the next morning. She expresses outrage with the outcome through emphasis on her person, appealing to categories of persons: those who injure people are arrested, whereas victims of harm do not. The prosecutor pushes the dialogue forward through a few more one-word answers to establish whom the witness was alleged to have assaulted: [S], [N]'s partner.

> Witness: [S].
> (6 second pause)
> Prosecutor: And, um, you mentioned that you were in [N]'s unit and that [B], [B] [R] and [S] [P] had been there. Had [S] been there as well?
> Witness: No. She wasn't home.

Prosecutor: That you recalled.
Witness: I, I, I remember, she was not home.
Prosecutor: Oh I know it was just that you were saying you had no memory –
Witness: That was after I'd been there after a couple of drinks. But only like 2, not like off my face, I can hold a few.
Prosecutor: Right. So you don't recall [S] being there at all.
Witness: No.
Prosecutor: Thank you.
(Day 3)

After saying [S]'s name, the witness then offers no explanation for this apparent problem in the storytelling, which is that [S] had not been part of the conversation at all, and the witness only mentioned spending time with [N] after the other two neighbours had left. The lengthy pause of the prosecutor after the one-word declaration [S] may have been a reaction to the problem in the continuity of the story, possibly simply indicating confusion or constituting a wordless invitation for the witness to repair the trouble. The prosecutor attempts to bridge the gap in continuity by reiterating the memory problems that had been exhaustively established ('that you recalled'). This is framed as a statement by the prosecutor, but the witness treats it as a question and an opportunity to elaborate. The witness exerts her epistemic authority in this instance, insisting this is first-hand fact ('I, I, I remember, she was not home') and not accepting that she could be mistaken. The prosecutor reacts with an oh-prefaced statement, which has been argued to be an acknowledgment of new information (i.e. after establishing the witness had no memory, she then introduces the new possibility that there was, in fact, some important memory) and also an indication that this new information is 'problematic in terms of its relevance, presuppositions, or context' (Heritage, 1998, p. 291)(Heritage, 1998, p. 291). The prosecutor accepts this testimony eventually ('thank you') but first emphasizes that the testimony is still problematic (she says 'so you don't recall [S] being there at all' rather than 'so [S] wasn't there at all'). This general acceptance of the witness's authority in this instance is unlike the more powerful exertions of legal power seen in the Adnan Syed in equivalent situations.

This example of co-construction of testimony involves varying degrees of verbal participation by the prosecutor and the witness, guided by the framing of the legal professional but offering some leeway for narrative testimony. It also demonstrates the negotiation of epistemic authority where the claim to certain knowledge is challenged.

7.4 Language and Power

The Adnan Syed trial featured an ongoing struggle between legal professionals and lay participants to gain control over testimony. Many times lawyers had to remind witnesses not to offer more information than what they asked for, and just as many times had the judge had to intervene either on the legal professional's or the lay participant's side. Overall, the tension over power was clear even through official transcripts. The New Zealand trial, on the other hand, did not demonstrate the same interactional features. Witnesses were accorded more control over their testimony and the overall setting was collaborative and supportive.

7.4.1 Expression of Legal Power

In the Adnan Syed trial, objections and judicial intervention saw frequent reminders to witnesses that they can only testify to events they have experienced first-hand; this is what their epistemic authority is ostensibly limited to. Such a reminder occurs only once in the New Zealand trial, when a witness offers speculation on what may have happened – the example cited in the section above.

> Prosecutor: Oh, okay, I'll just pause you there.
> Witness: Okay.
> Prosecutor: It's fine, but what we have to talk about is what we know and see and hear.
> Witness: Right.
> (Day 3)

In this extract, the prosecutor interrupts free narrative testimony to control the witness's storytelling according to the rules of the courtroom. This is a rare occasion in which the prosecutor issues instructions for the admissible epistemic authority of the courtroom. This is the same rule as was frequently emphasized in the Adnan Syed trial - however, notable is the apologetic nature of the prosecutor's interruption ("I'll just pause you there"; "It's fine"). This was absent in the transcripts of the Adnan Syed trial, where the instructions were presented firmly and authoritatively.

Another form of expression of legal power may be seen in the instances in which prosecution is attempting to elicit certain information and correct the testimony of a witness on the grounds of “fact.” When this happens, it is often prefaced in this trial with a visible nod to the defence lawyers and a remark that the information is not in dispute, reinforcing the control legal professionals have over facts of the case.

> Prosecutor: And in particular, um, did you know a person called [Victim's name]?
> Witness: Yes.
> Prosecutor: And what unit number did he reside in?
> Witness: Ah shit. One up there. (laughter). Whatever it was. Sorry.
> Prosecutor: It's okay. And when you say one up there, was he upstairs from you?
> Witness: (overlapping) Oh sorry. Two up, yea, on the top floor. Was that 10 I think? Or maybe 9.
> Prosecutor: So if I said unit 17?
> Witness: That's 17, yes, correct.
> (Day 3)

Also above the authority of the witness's first-hand observation is the information the courtroom "knows" – that is, the information that is not in dispute between prosecution and defence. This happens several times during the trial, in which the prosecutor does not manage to elicit the desired information and instead, prefacing with "I don't think it's in dispute," offers the information themselves. This is not something we observe in the Adnan Syed case, where prosecution and defence were at total odds. Ms. Gutierrez made many public comments on prosecution

refusing to share information they were owed. In this case, most of the events leading up to the Victim's death are accepted universally, with defence objecting once through the whole trial and offering little cross-examination.

7.4.2 Resistance to Legal Power

In the Adnan Syed trial, attempts by witnesses to wrest epistemic control took the form of small linguistic repairs, which were about equal in the number of times they were accepted or rejected by legal professionals. Such small repairs occur in the New Zealand case as well, the difference being that they are largely accepted.

> Prosecutor: Did he drive in a car?
> Witness: Drive a car? Yep – well, it was, um, more of a wagon. Yea, like a four-wheel drive. Uh, truck.
> Prosecutor: Truck (smiling and nodding).
> (Day 3)

This repair is offered structurally tentatively. First, the witness repeats the question (‘drive a car?’), inviting a self-repair by the prosecutor, which is usually preferred in conversation rather than other-repair (Schegloff et al., 1977). Initially, the witness agrees with the offered term (‘yep’); then corrects after a drawn-out series of hesitations (‘well, it was, um’); while the correction is softened (‘more of a wagon’); then further repair (‘uh, truck’). This repair is then not just accepted, in the prosecutor’s repetition of the witness’s chosen noun; it is, in fact, encouraged with a smile and a nod. This may be contrasted with both the Adnan Syed trial and the Derek Chauvin trial, where repairs were offered more promptly with limited opportunity for any lengthier search for words on the part of the lay participant.

Witnesses in the New Zealand trial, especially expert witnesses, are accorded a greater degree of freedom to testify in their own words than they were in the previous two case studies. On Day 4, a detective constable verifies the prosecutor's listing of crime scenes by asking if she can refer to her notebook. Several times, when going through the photobook from the investigation, the expert witness directs the

prosecutor to a more appropriate photograph than the one they are indicating, and the prosecutor thanks them; or the prosecutor asks an open-ended question, permitting the expert witness to go anywhere in the book:

> Prosecutor: Are there any photographs in relation to those drip stains and the ceiling near the interior light?
> (pause)
> Witness: On page 148 photo 239 and 240, the arrow labelled there (pause) indicates some of the blood staining around the driver's door pocket. But there was also drip stains inside it which were difficult to photograph due to the angles.
> (Day 4)

In these ways the prosecutor often cedes not just epistemic authority to the expert witness but also control of the direction of testimony.

As seen in both the Adnan Syed trial and the Derek Chauvin trial, lay participants in court find ways to resist the linguistic power differential between them and legal professionals. This is especially true in the New Zealand case. Responses by witnesses were generally not constrained by the terms of the initial questions and, and what's more, this was usually respected by legal professionals both by their verbal actions and their encouraging gestures.

The lengthy example cited above, regarding the testimony of the Daughter of Defendant 1, is also a key example of both the way in which a witness resisted questioning and the way in which the legal professional ceded to her rights. To reiterate and expand on this example, this was the instance in which the prosecutor was attempting to elicit a certain word allegedly used by Defendant 1 to describe a group of people involved in the alleged crime. The Daughter claimed not to remember what he said and the prosecutor offered her a written statement given by her to police nearer the time of the alleged crime. The prosecutor explicitly asked her not to read it out loud and to use it just to refresh her memory. The Daughter, despite having the written statement and having confirmed it was her signature at the end

attesting that they were her words, denied she used this particular word. I cite a portion of this extract again for further analysis:

> Prosecutor: And just, read it to yourself, don't read it out loud.
> […]
> Witness: (pause) Yes.
> Prosecutor: And I'd asked you, was there any talk or mention of [R]?
> Witness: Yes.
> Prosecutor: That help you remember now?
> Witness: Well it doesn't help me to remember that I said that.
> Prosecutor: What do you mean? (slight laughter)
> Witness: Well number 20 at the bottom, what that says (pause) the wording might have changed.
> Prosecutor: Right. Well what's the right wording then?
> Witness: People.
> (pause)
> Prosecutor: Sorry? (pause) well, just tell us what – what was said by your father.
> Witness: He was going to go see [R] and see if there were some people that could help him to resolve the issue. (pause) and the way it's worded just gives it a different – makes it look different.
> Prosecutor: Right. Well do you accept that was a word you used at the time?
> Witness: Well, I don't remember.
> (pause)
> Prosecutor: (pause) You don't remember using – you think you said people?
> Witness: Yes.
> (Day 3)

In this exchange, the prosecutor directs the witness to a very specific place in the transcript which presumably contains the information he has been trying to elicit – how Defendant 1 referred to [R]'s associates. Notably, the prosecutor is not specific about his agenda, offering open-ended questions to the witness ('was there any talk or mention of [R]?' 'what's the right wording?'); it only becomes clear through the witness's reactions what the point of contention is. It is the witness that leads the

interaction and draws attention to a particular word in the statement. The prosecutor accepts this narrowed focus and engages in conversation regarding this word. Rather than forcing the witness to read the word out loud – as he would be legally entitled to do – the prosecutor explicitly tells her not to speak it, once the witness claims it is not an appropriate word. Subsequently, there is no point during this exchange or the trial as a whole where this word is clarified.

This exchange is challenging to analyse on several levels. The first is that it defies expectations in a legal sense. We have seen in the previous case studies the overwhelming tendency to privilege the written word over oral testimony by both legal professionals and lay participants. Indeed, Greer argues that it is an oversimplification to suggest oral evidence is always given ultimate authority, as suggested by the orality paradigm (Jackson, 2023). Greer writes that 'where evidence is contained in a document, the court will give precedence to that document over the oral testimony of the party or parties who drew it up' (1971, p. 131). Given that this is evidence submitted to the court and accepted by both parties, the prosecutor would have legally been within his rights to make this word known; he chose not to.

The witness not only criticizes the use of a particular word, she refuses to accept that she even used it in the first place (Prosecutor: 'do you accept that was a word you used at the time?'/ Witness: 'I don't remember.'/ Prosecutor: 'you think you said people?'/ Witness: 'Yes.'). The witness is thus exerting her epistemic power – over the document and over the prosecutor. Such resistance is not unusual in the examples in this thesis. What is unusual is that the prosecutor accepts this power. He emphasizes twice that she shouldn't read the statement out loud, possibly so the word doesn't reach the jury without the witness's sanction. He makes an attempt to get the word accepted ('do you accept that was a word you used at the time?') but the witness categorically rejects this, and the prosecutor eventually moves on, making no more attempt to elicit this word.

Shortly later, it is the witness that returns to the issue:

Prosecutor: Okay. (pause) And when your father mentioned [R], was there any mention of when that would be?
Witness: No.
(pause)
Prosecutor: Or where?
Witness: It wasn't – I'd just like to point out it wasn't said in a hostile, threatening manner, or anything like that.
Prosecutor: No no, I'm not suggesting that. But my question was that, was there any, did your father say whether he was gonna see him, or if he was, where?
(Day 3)

The prosecutor's line of questioning at this point has completely changed: he is asking about the details of a meeting between [R] and Defendant 1. The witness demonstrates herself still preoccupied with the word discussed previously, and she brings it up outside the line of questioning ('I'd just like to point out it wasn't said in a hostile, threatening manner'). The prosecutor does not object to her non-answer and does not correct her for stepping outside her role as a witness, as might have been the case in the previous two case studies in this thesis. He rather dismisses her concerns ('no no, I'm not suggesting that'); in fact, he is orienting to the implication of the witness's comment (i.e. that the prosecutor might be implying her father was being hostile), acknowledging her rights to make her case.

This exchange as a whole is challenging from the point of view of a conversation analyst – an observer of language that describes what is evident on the conversational surface' as conversants both have knowledge of a word, orient themselves towards the importance of a word, but never speak the word out loud. An observer may conclude, from how participants orient towards the word, that it is a word more damning than "people" – it is in the interest of the prosecutor to emphasize the defendants' culpability and in the interest of the witness, who is resisting these implications, that the word not be known. However, no conclusions may be drawn regarding "why" the prosecutor might have chosen to uphold the witness's right to replace the mystery word with another during oral testimony at trial.

The tensions of authority given to oral testimony during a live court case versus the authority of their previously given testimony is a matter to which I will return in Chapter 8 when discussing hierarchies of epistemic authority.

Returning to the theme in this section of witness resistance, other examples abounded. Another shorter example of a witness resisting the linguistic power structure of the courtroom occurred when a prosecutor was attempting to elicit an opinion from the witness.

> Prosecutor: When you said don't act like a fool and don't get any charges, were you referring to anything in particular?
> (pause)
> Witness: Well, uh, it's a complex question, requires a long answer.
> (Day 3)

The question is a polar one (i.e. inviting a yes/ no answer). Furthermore, in using the 'any' structure in 'anything' rather than the 'some' structure in 'something,' it invites an answer of 'no' (Heritage & Robinson, 2011). Thus, the witness provides a dispreferred response that does not fit in the polar framing, both with her hesitations and her eventual answer ('it's a complex question'). Again, relating to examples from the previous two case studies, she indicates that she prefers to offer an answer more elaborate than a simple yes or no; in contrast to the tendency in the previous two case studies, the witness in this instance is then permitted to elaborate her answer.

This is not to suggest that legal professionals yielded to the witness's authority in all cases; in an example seen above, regarding the situation in which the witness was telling a story in which she admitted some details escaped her memory, the prosecutor challenges her and the witness defends her epistemic authority.

> Prosecutor: Had [S] been in there as well?
> Witness: No, she wasn't at home.
> Prosecutor: That you recall.
> Witness: I – I – I remember, she was not home.
> (Day 3)

Here the prosecutor attempts to appeal to the accepted epistemic authority of the courtroom – first-hand subjective experience – by suggesting the reality may have been different than what the witness recalled. This is not framed as a question but a statement ('that you recall') but the witness treats it as a question and corrects it. Her repetition of 'I' ('I – I – I') also marks her action as dispreferred, challenging the implication of the prosecutor. She thus exerts her rights to narrate this portion of the story. In a sense, this is more powerful exertion of power than the small examples of repair (often of a single word or a short phrase) seen throughout the Adnan Syed trial.

7.4.3 Legal-Lay Equalizers

7.4.3.1 Linguistic Formulas

Literature on linguistic formulas in court (e.g. Carlen, 1976; Licoppe & Dumoulin, 2010; Rock, 1991) has a cast that these formal elements serve to contribute to an atmosphere of gravitas; by dint of their unusual-ness, they increase the perceived distance between legal professionals and lay participants in court.

The New Zealand trial maintained solemnity and professionalism in interaction; however, compared to the trials of Adnan Syed and Derek Chauvin – and especially the former – the New Zealand trial was notably missing a number of formal linguistic rituals. For instance, I have noted previously that in the Adnan Syed trial expert witnesses were always sworn in formally as such, with phrases such as "let [the witness] be accepted then as an expert in the area [discipline name]." This linguistic ritual was absent in the Derek Chauvin trial, which I have shown created a level of uncertainty in terms of what knowledge witnesses could legally claim. In the New Zealand trial, this formality was also absent; however, there was little confusion about the capacity in which witnesses were testifying, all experts being exclusively forensic.

In terms of signalling ends of turns at speech, these were also not formalized in the New Zealand trial. In the Adnan Syed trial, the passing of the speaking role from judge to lawyer was verbally marked with the lawyer's name and an invitation to speak. In the New Zealand trial, lawyers began to speak without formal invitation by the judge, or with simply a nod on his part.

There was also a difference in terms of formal appellations. In the Adnan Syed trial, with only a few exceptions in which the judge was referred to as “you” or “judge,” for the most part all legal professionals referred to the judge as “the court” (Including the judge herself). In the New Zealand case, the judge was not referred to as “the court” or in third person in any way. The judge himself issued his opinion on the only objection of the trial using the first-person singular “I think”; prosecution addressed the judge on Day 3 using the second person singular “you”; and on another occasion the judge was referred to as “sir.”

7.4.3.2 Humour

The solemnity and formality of the atmosphere in courtroom proceedings is well-documented in the classical courtroom ethnography literature (Carlen, 1976; Mulcahy, 2007; Rock, 1991). Humour does not feature in these studies and, indeed, with the focus on control and gravitas, it might be assumed humour has no place in the courtroom. More recently, however, there have been some studies on the function of humour in the courtroom (Milner Davis & Roach Anleu, 2018; Roach Anleu et al., 2014): these focus on the effects of the humour (such as relieving tension; fostering a positive mood; relaxing and engaging lay participants), but also what is appropriate and acceptable humour in the courtroom and what is not.

While there have been some examples of levity in the Derek Chauvin trial (colloquiality at the very least, some self-deprecating jokes at most), in the New Zealand trial there were many light-hearted breaks in the solemnity of the proceedings, with many examples of laughter and even jokes. This short section will explore some of these instances, in terms of how the humour was created as well as the effect it had in interaction.

First, I make a brief comment on the type of humour not in discussion here. During Covid-19, many videos surfaced on social media and in the news of virtual proceeding gaffes in many institutional settings, including the court. When technology is involved and weakens the courts' control over the setting, the by-product is humour – by ridicule. This is arguably an extreme case scenario of frequent concerns in literature on virtual court proceedings that the appropriate amount of gravitas and formality cannot be reproduced (Rossner, 2021). The result, in these cases, is that the whole process becomes something to be taken less seriously. More than that, however, when the source of the humour is something the legal professionals do not share in – when the judge is visibly aggravated or lawyers are stone-faced – it serves to widen the gap between legal professionals the lay participants.

The examples below from the New Zealand trial diverge from the literature on humour in the courtroom in one crucial sense. The literature, drawing a lot on commentary from legal professionals themselves, refers to "jokes" as something highly strategic, deliberate, and controlled, designed for certain effects; in the New Zealand trial they were much more spontaneous. Nevertheless, the effects created by the humour are highly consistent with the literature. While humour abounded in the New Zealand trial, rather than putting distance between a legal participant and a lay audience, it brought them closer together – or, as argued by Roach Anleu et al., it 'reinforce[d] social relations and connectedness' (2014, p. 659). The effect of the humour was often to relieve tension – particularly of the hierarchical kind.

For instance, this exchange takes place near the end of a nearly 7-hour long day, during a discussion between the prosecutor and an expert witness about photographs in evidence:

> Witness: 391 as well.
> (pause)
> Prosecutor: And (pause) 391 or 291?
> (pause)
> Witness: S - Sorry, that's 2, thank you.

Prosecutor: 291. It's getting late (laughter).
Witness: It's getting late.
(Day 5)

The beginning of this exchange reproduces the hierarchy of legal professional and witness, with the legal professional in greater control of the evidence. The witness is caught in a mistake – a common occurrence in courtroom interaction. However, rather than proceeding immediately, the prosecutor makes a joke about the lateness of the hour – "excusing" the mistake as easily made, as an understandable effect of human tiredness. The prosecutor "understands," as he, too, is human. The witness accepts this gesture of solidarity by acknowledging and repeating the joke – 'it's getting late.' Thus, rather than reinforcing the legal-lay hierarchy, it closes the gap.

Other instances of humour relate to the oddness of the social context itself. For instance, throughout the trial, relevant text messages were read out loud, e.g. between Defendant 1 and his Daughter or between the Victim and the Victim's Neighbour. These texts tended to be very informal, full of slang, profanities, and text-speak abbreviations. However, these were read out loud by lawyers word-for-word, without intonation, slow-paced, with excessively specific explanations of what common text-speak abbreviations mean. This created an impression that the world of the lay participants was somehow incomprehensible to the legal professionals, perhaps too low-brow and inappropriate for them. This was taken for granted by witnesses. Defendant 1's Daughter, in particular, seemed to "get the hint" after being asked to explain a number of such elements of her texts, and it resulted in this earnest clarification from Defendant 1's Daughter:

Prosecutor: And afterwards you said "you too" with an x.
Witness: That's a kiss.
Prosecutor: (short laughter) Thanks.
(Day 3)

In this case, the prosecutor did not ask what the x meant. But throughout her testimony this far the witness has been made accustomed to having to explain such culturally commonsensical elements of her texts and anticipates a similar clarifying

question. The prosecutor could have solemnly accepted this explanation, which would have maintained the distance he created between his role as professional and the lay world; instead, he reacts with humour, indicating that the x was clear to him and didn't require an explanation. With his laughter, he bridges the legal-lay gap, indicating that some, if not most, of his excessive specificity was performative.

In the vein of acting as a hierarchical equalizer or reliever of tension, much of the humour of legal professionals in the New Zealand trial was actually self-deprecating in nature. They accepted their own mistakes with a laugh. Much like the expert witness's easily-made human mistake above, legal professionals also made mistakes like this and indicated their acceptability with humour.

> Prosecutor: In terms of photograph – on page 209, photograph 333 (pause) and, correct me, that's not the one you're referring to on the (pause) uh, ceiling near the interior light, that's something different?
> Witness: Uh, that's coming up in the next photograph -
> Prosecutor: Right (laughter) I thought it might be.
> (Day 4)

In this exchange with an expert witness, the prosecutor appears confused, with frequent pauses, upturned intonation as with a question, and an invitation for the witness to correct her. The witness then directs the conversation, momentarily reversing the established dynamic of legal-versus-lay epistemic control. The prosecutor accepts this reversal with a laugh, creating a more collaborative atmosphere than is usually documented in adversarial trials.

This analysis is limited to the impact the jokes or laughter had on the interaction itself, rather than whether the witness subjectively experienced anything as a result. It is notable that in all these examples, while the legal professionals reacted with humour and this created certain equalizing effects in interaction, they did not result in an audible parallel reaction from witnesses – i.e. I could not hear any responding laughter. Roach Anleu et al. (2014), indeed, point out the appropriate humour in the courtroom is the kind that only elicits smiles rather than all-out laughter; whether or not this happened was not possible for me to ascertain given my camera angles.

However, there was one moment in the trial where laughter from lay participants was audible.

On Day 5, one of the prosecutors indicates that the testimony that follows will be from a DNA profiler and will be read out loud, rather than through questioning of the witness orally in court. Prior to this statement being read, the prosecutor warns that it will be ‘dry’ and shows concern that things be done in the ‘easiest’ and most ‘user-friendly’ way. The judge shows real concern about this, asking how long it will be and if it would be useful for the jury to have a copy of the statement. The court adjourns for a short break while arrangements are made for copies for the jury. As above, with ‘it’s getting late,’ there is acknowledgement of basic human limitations; for the moment, the legal professionals themselves are not included in this assessment, they are simply showing concern for a lay audience who may be subject to these.

After reading out this report for 30 minutes non-stop, in monotone and with no change in tempo or other indication of struggle, the judge interrupts:

> Prosecutor (reading): No standard DNA profiling results were obtained from this sample.
> Judge: (overlapping) Okay we'll stop. We'll have a break.
> Prosecutor: (clasping chest) Okay. (laughter).
> (Laughter in the courtroom)
> (Day 5)

The judge’s comment does not mark a “joke” in any essential way; that is not the source of the humour. It is the prosecutor's professional demeanour that invites laughter, as her professional demeanour drops and she clasps her chest and laughs, indicating she, too, had been struggling with the “dryness” of the statement. With this, the previous concern regarding testimony that is too “dry” for the audience now admits the prosecutor into the ranks of “basic humanness”; while the judge’s comment may be read as concern for the prosecutor, it might also include him in the struggle with “dryness.”

As Roach Anleu et al. (2014) note, this is a common and acceptable use of humour – humour directed at the procedure of the courtroom itself. Unlike the examples mentioned at the beginning of this section regarding ridicule, the fact that this laughter is invited by the legal professionals rather than unintentionally caused or causing aggravation to the legal professionals makes it a moment of solidarity rather than division: legal and lay participants united against a necessary, but slightly odd, aspect of the institutional social context they are temporarily inhabiting, rather than aggressively maintaining that there is no oddness.

7.5 Conclusion

In this third empirical chapter, I have explored the relationships between language, narrative, and power in a trial that took place in New Zealand in 2021, with the aim of answering key research questions related to how narratives are constructed, deconstructed, and reconstructed in interaction, how epistemic authority is negotiated in interaction, and to what extent language and narratives are presented in the lay participants' "own words." The following chapter (Chapter 8) will integrate findings across all three empirical chapters, but in these concluding remarks I will highlight some key contributions of this particular chapter in brief comparison to the other two.

Beginning with the observation that legal power is exercised differently in this trial as compared to the previous two case studies, this may be broadly summarized as legal professionals being less linguistically controlling and restrictive. A simple observation is that there were a lot more open-ended questions and invitations to narrative testimony (Fielding, 2013) from legal professionals – even just structurally, more opportunities for witnesses to "tell a story in their own words." In addition to this, the usual agenda-setting power of being the first part in a question/ answer pair (Hayano, 2014) was often subverted, with legal professionals sometimes inviting the witness to take control of the direction of testimony, and even where this was not invited legal professionals acknowledged changes in topic before redirecting questioning. As such, there were many instances of legal professionals yielding epistemic authority to witnesses, both lay and expert. Humour, particularly of the

self-deprecating kind, or the kind that acknowledged the oddness of the legal process, emerged as a power equalizer.

A marked difference in the negotiation of epistemic authority was observed in a particular instance with a witness, in which she sought to provide in her oral testimony information that contradicted a previous statement given to the police; unlike the previous case studies, where such prior written evidence took precedence, in the New Zealand trial the legal professional protected her right to change this statement. Although it is only one example and no generalizations can be made of this, it is interesting in terms of the orality/ confrontation principles (Jackson, 2023) and how these may be negotiated differently in individual instances in courtroom interaction. In terms of knowledge as "owned" and what rights individuals have to narrate it, these rarely fit in a clear legal category (e.g. admissible, first-hand), and as such are negotiated individually and locally. This will be discussed in the following chapter in terms of how rights to claim knowledge are organized and negotiated in court, guided by rules of evidence but not exclusively so.

When presented with more of these opportunities to "use their own words," a number of effects were observed. First, there was indeed a preference for relational-style narration, as argued in the literature (Conley & O'Barr, 1990; Ewick & Silbey, 1995). However, in contrast to the argument that courtroom interaction tends to prefer more rule-based accounts, legal professionals in the New Zealand trial showed an openness to the relational style – both through encouraging gestures locally but also demonstrated by their ceding of control over the direction of testimony to witnesses. In particular, this greater freedom accorded lay participants led to the observed effect of confusion in interaction, as participants attempted to achieve a shared intersubjective understanding; this may be argued to have the potential to subvert power dynamics and control in court.

In terms of the construction, deconstruction, and reconstruction of stories, this case study has shown how lay participants may negotiate this themselves, such as through impression management, when legal professionals allow them to do so. Interestingly, we continue to see the role of tropes, or categorization of experience into familiar stories. Compared to the previous two case studies, these were a bit

more subtle in the New Zealand trial, but analysis has shown how people orient themselves to tropes of e.g. deserving victim, ideal victim, vigilante, cold-blooded murderer, and how these are instrumentalized by participants leading to a court outcome of guilty or not guilty.

Overall, the New Zealand trial was less linguistically restrictive than the Derek Chauvin trial, which in turn was less restrictive than the Adnan Syed trial; this created different interactional effects in all three cases. This resulted in different dynamics in terms of lay "resistance," as I have termed it, and I will explore these in the next chapter as one of the key findings of this thesis. In addition to this, I will explore two other key findings emerging from a consideration of all three case studies together, including a hierarchy of epistemic authority and how participants orient themselves around it, as well as the role of tropes in structuring legal cases.

Chapter 8: Discussion

8.1 Introduction

The overarching aim of this thesis was to reflect on the appropriateness and usefulness of the metaphor of “stolen stories” for understanding courtroom interaction. To that end, the research questions sought to explore language, narrative, and power in court, in terms of how narratives are constructed and how power is exercised in linguistic interaction. The study of epistemic authority – i.e. the negotiation of “rights” to narrate certain claims – emerged as crucial to addressing these aims. Drawing primarily on the traditions of Narrative Criminology (NC) and Conversation Analysis (CA) this thesis took a case study approach and I conducted my analysis on interaction in three different trials – the trial of Adnan Syed, the trial of Derek Chauvin, and a trial in New Zealand. Specifically, the research questions that guided the research, presented at the end of Chapter 3, were as follows:

I. Narratives and Power

a. What kind of narratives are told?
b. How are narratives constructed, deconstructed, and reconstructed in interaction between legal professionals and lay participants?
c. How do the altered rules of institutional talk impact the extent to which narratives are constructed by lay versus legal participants?

II. Language and Power

a. How is language used to negotiate power in interaction between legal professionals and lay participants?
b. How is epistemic authority encoded and exercised?
c. To what extent are lay participants permitted to and able to construct testimony “in their own words”?

III. To what extent is ‘narrative theft’ an appropriate or useful metaphor to describe what happens to narratives in court?

In each empirical chapter Conclusion, I reflected briefly on the implications of each trial in terms of the research questions. In this Discussion chapter I will explore some of these further, integrating findings with reference to some of the literature previously reviewed. Rather than approach each sub-question individually, I will synthesize them to outline three main findings of this thesis: how epistemic authority is negotiated at a local level in courtroom interaction, creating and subverting an approximate hierarchy; how witnesses resist the strictures of courtroom language-use; and the role of tropes in relation to narratives in the courtroom.

The three case studies in this thesis were ordered based on what I have previously called the degree of restrictiveness evident in legal-lay interaction – in other terms, the degree to which lay participants are permitted or enabled to "tell stories their own way": from barely at all in the Adnan Syed trial, to more leeway in the Derek Chauvin trial, and to a high degree in the New Zealand trial. This assessment was based largely on three factors: the degree to which narrative-style testimony is permitted, particularly of the relational style; the allowance of opinions and value statements; and the degree to which witness resistance, in the form of repairs, disaffiliation, or dispreference, is exercised and upheld.

I will begin with a discussion of courtroom assumptions about what rights lay participants have to narrate certain knowledge – from a CA perspective, the analysis of epistemic authority in interaction. While there is a respectable amount of literature on the particularities of institutional talk in the courtroom (reviewed in Chapter 3), epistemics have not received much attention. This thesis begins to shed some light on some of the assumptions or "rules" guiding epistemic authority in the courtroom, showing that across the three case studies this is in no way a clearcut issue. While legal rules of evidence are extensive (see e.g. Monaghan, 2015), this thesis has highlighted that one of its main assumptions parallels the pervasive CA observation of individuals treating each other as having privileged access to their own experiences.

This is an idea that underpins the orality paradigm of common law criminal trial processes, which states that the 'paradigmatic form of evidence in English criminal

trials' is testimony 'delivered orally by witnesses with relevant first-hand knowledge' of matters (Roberts, 2022, p. 311). However, what this thesis shows is that knowledge claims in court by witnesses are far from easily categorizable according to top-down rules of evidence. Rather, rights to narrate certain knowledge are negotiated at the local level and there is iterative negotiation, enforcement, and subversion from all participants in courtroom interaction.

These guidelines regarding rights to knowledge, while underpinned by history and legal rules of best evidence, are often experienced by lay participants as strictures. Most literature on courtroom talk focuses on how these strictures, in addition to the inherent power imbalance of the question-answer format (Hayano, 2014), limit witness testimony and ultimately constitute disempowerment (literature reviewed in Chapter 3). While the analysis in the case studies indeed has found ample evidence for this, this thesis also sheds some light on witness resistance rather than disempowerment – that is, how witnesses attempt to claim or recover epistemic rights and retain or reclaim "ownership" over their words. This is an unusual finding, related to existing literature, but holds implications for the idea of "owning" language or narratives.

These observations at the micro-level will then be expanded to wider units of language in the courtroom – the narratives constructed and based upon which decisions are made. The main finding I emphasize in this thesis regarding narratives in court is the key role that tropes (Sandberg, 2016) – that is, shorthand, familiar, and judgeable narratives – play and their weight on court outcomes. While there have been some observations in the literature on the importance of these kinds of stories in court, these have tended to be limited to passing mentions (reviewed in Chapter 2); this thesis argues that the phenomenon must be studied more comprehensively and, as such, will briefly reflect on the relationship between tropes, cognition, and perceptions of truth.

I will then return to the issue with which this thesis started: the metaphor of "stolen stories." Based specifically on the findings of this thesis, I will discuss in what ways it may or may not be said that stories are "owned" and then I will explore the merits of using "theft" as a description of what happens to these stories in court.

Finally, in the Conclusion section of this chapter, I will emphasize the main implications and contributions to knowledge of this thesis, highlight some important limitations, and make some proposals for immediate future research.

8.2 Hierarchies of Epistemic Authority

Epistemic authority, or 'the management of rights to knowledge [and] the rights to describe or evaluate states of affairs' (Raymond & Heritage, 2006, p. 680), is in focus in this thesis especially as it pertains to storytelling – the rights to narrate. While there is some work on epistemic authority in everyday interaction (e.g. Heritage, 2014; Heritage & Raymond, 2005; Raymond & Heritage, 2006), there is far less on the impact of institutional contexts on these rights. After all, institutional talk is characterised by certain elements with a direct impact on epistemic rights as compared to everyday interaction: who holds first-hand knowledge, who has a right to elicit information, and who has a right to speak and when. This thesis provides a preliminary exploration of and framework for how epistemic authority is negotiated in the courtroom context.

What emerges from the study of epistemics in everyday conversation, made explicit or not by scholars, is that there is a hierarchy of epistemic authority that guides interactants in their negotiations. To summarize some research from Chapter 2 (section 2.2.3) Pomerantz (1980) distinguished between Type 1 knowledge – 'firsthand, e.g. directly experienced' – and Type 2 knowledge – 'derivative, e.g. known only by hearsay or other indirect means' (Heritage, 2014, p. 374). Interactants treat each other as having greater rights to the first Type than the second. Kamio (1997) conceptualized it more as a continuum than a polar categorization, with knowledge being somewhere between 0 – 'highly distant' – and 1 – ''possessed' by the speaker' (Heritage, 2014, p. 375). Both conceptualizations rely on one of the cornerstones of CA analysis – the privileged status of first-hand experience.

The rules of evidence in Anglo-American legal systems orient themselves to a certain extent to this concept – first-hand experience is privileged while other types

of knowledge are subject to scrutiny. As Monaghan writes: ‘a witness is only permitted to give evidence as to what they directly perceived (saw, heard, smelt, etc.); the opinion of a witness is not admissible evidence’ (2015, p. 6). This orality paradigm is accompanied by the equally relevant confrontation paradigm – which is commonly equated with the right of the defendant to have this evidence cross-examined or challenged (Jackson, 2023). This demonstrates that this ideal form of knowledge (first-hand, *sans* evaluations and opinion), is not treated as somehow absolute and is open to scrutiny and possible dismissal. In other words, negotiation of epistemic rights is built-in to courtroom interaction and a strong feature of adversarial justice. Thus, in the courtroom, legal professionals are constantly evaluating rights to knowledge and the hierarchy of epistemic authority is not just ethically present but subject to rules of admissibility – that is, how the messiness of experience can be categorized in the absolute categories of admissible and inadmissible knowledge. In the Adnan Syed case study, the hierarchy of epistemic authority is remarkably explicit, consistent, and rigorously reinforced.

This privileging of first-hand experience in terms of the law of evidence poses particular issues in the trial of Adnan Syed, as there were no eyewitnesses to the crime. Given, perhaps, the dearth of this kind of knowledge in this particular trial, the admissible standard becomes second-hand knowledge (i.e. if it comes from something either Adnan [the defendant] or Hae [the victim] themselves said), as these comments constitute first-hand experience of the witness testifying. Third-hand knowledge (e.g. Ms. Schab, Hae’s teacher, who heard from Hae’s friends who heard from Hae that something happened) was considered inadmissible. And, finally, speculation was summarily and rigidly dismissed. For expert witnesses, on the other hand, their expert opinion was admissible and treated with the same authority as the first-hand experience of lay witnesses. This was explicitly stated at various points in the trial and, perhaps, that is why such weight was placed on formally admitting a witness as an expert in a given field.

Additionally, interactants in court in the Adnan Syed trial noticeably accorded special privileges to the written word – or documentary evidence (Monaghan, 2015). This observation was made in terms of how the participants oriented themselves to written material rather than a reflection of legal rules. For lay witnesses, this took the

shape of written transcripts of evidence given to police in initial interviews; the approach for witnesses in the trial of Adnan Syed may be colloquially summarised as "if it says so there, then I must have said it." For expert witnesses, this took the shape of forensic evidence recorded and represented in written form. Lay witnesses usually yielded to the transcript as a more accurate representation of events and expert witnesses referred frequently to their written documents to testify. Although this is an observation rooted in the interaction at trial, it is in line with rules of evidence in common law: Greer argues that it is an oversimplification to say that the law relies primarily on first-hand oral evidence given in court and writes that 'where evidence is contained in a document, the court will give precedence to that document over the oral testimony of the party or parties who drew it up' (1971, p. 131).

This hierarchy was protected jealously by legal professionals in the trial of Adnan Syed, to the point of being disruptive. Ms. Gutierrez, in particular, was exhaustive in establishing that what witnesses were testifying was based on their first-hand experience – rooted in the body, what they heard with their own ears or observed with their own eyes. Epistemic authority of this kind was indexed at different points in Ms. Gutierrez's questions, whether with tags at the beginning demanding that the knowledge be first-hand (e.g. p.118 of this thesis) or with clarifications in dogged subsequent questions that the answer was based on first-hand experience (e.g. p.135 of this thesis).

However, this hierarchy reconstructed from the trial of Adnan Syed does not hold as strongly in the other two case studies. For instance, as indicated in the Derek Chauvin case study, lay witness speculation on mental states, opinions, or interpretations of motives were not as rigidly controlled. Darnella Frazier was free to say Derek Chauvin 'had this […] cold look, heartless' or that it 'seemed as if he didn't care' (p.193 of this thesis) – commentary that would not have been likely to be accepted by the legal professionals in the Adnan Syed trial. In fact, interpretations and evaluations were explicitly sought by lawyers in the Derek Chauvin trial and had bearing on the case. For instance, evidence was sought by both sides regarding how the crowd of bystanders "seemed" – angry and aggressive (supporting the

Reasonable Police Officer trope), or upset and distressed (supporting the argument that Mr. Chauvin used unreasonable force).

The trial of Derek Chauvin also introduced a form of evidence not present in the other two case studies into this suggested hierarchy – neither written word nor oral: the videos. This posed a further challenge to the negotiation of epistemic authority, in terms of what kind of evidence is privileged. Video evidence that the jury can see with their own eyes is, by the law of evidence, privileged as 'real evidence' (Monaghan, 2015, p. 7). By this status and by the logic described above, participants should have given videos of events higher epistemic authority than oral testimony – perhaps even greater than police transcripts or forensic evidence. Indeed, prosecution in particular referred to videos as proof that speaks for itself, that documents reality. However, as described in the case study analysis, there is in fact a complicated relationship between the evidence from the videos and the oral testimony presented in court. Despite their key role in the trial, the videos were far from treated as some kind of ultimate authority; there were times where witnesses were asked to describe what happened before the video was played, implying their oral testimony had primacy, and other times where the video was played and the witness was invited to add details that were not clear from the video alone. The fact that the same videos were used to construct two different stories by the two parties at trial suggests that videos, as 'real evidence,' do not simply "speak for themselves."

The New Zealand trial further challenges the hierarchy of epistemic authority, even subverting it. There was a single solitary example in the whole trial of a lawyer reminding the witness that she could only testify to 'what we know and see and hear' (Day 3), with the rest of the trial accepting the witness's style of narration, even when it was relational-style, peppered with opinion and interpretation, rather than rule-oriented (Conley & O'Barr, 1990; Ewick & Silbey, 1995). Of even more interest, the tension between documentary evidence and oral evidence given in court, which, in Adnan Syed trial inevitably led to the privileging of documentary evidence, was reversed in an instance in the New Zealand trial. As described in the case study, a witness – the Daughter of Defendant 1 – did not yield to the authority of her previous testimony given at police interview and claimed greater authority in court. When reading through a transcript of her own testimony, the Daughter denied she used a

certain word to reproduce her father's speech, or denied that it was the right word to use in the first place; in either situation, the prosecutor strictly forbade her from speaking out loud the word in the statement, thus positioning her oral testimony in court as having greater authority than the written word. Indeed, police statements are sometimes evidence that is agreed-upon by prosecution and defence when entering a trial; if a witness changes any parts of this statement, the prosecutor could easily have proposed this as a challenge to the witness's credibility – in this particular instance, it would have supported the prosecution's case against Defendant 1.

Contributing to our knowledge of courtroom interaction, these findings show that courtroom interaction is not simply a clear script that legal professionals follow to the ignorance of lay participants, as traditionally portrayed in classical studies (e.g. Carlen, 1976; Mulcahy, 2007; Rock, 1991). It also does not strictly follow rules of evidence, as if these can sort any and all forms of knowledge proposed in court into clear categories of admissible and inadmissible evidence (e.g. Greer, 1971; Jackson, 2023; Roberts, 2022). Indeed, even more importantly, it is not even strictly committed to the privileging of first-hand experience, as often attested.

A close study of interaction suggests that knowledge that witnesses claim rarely fits so neatly in one category of evidence or another; even if it could, not every statement is or can be challenged. Instead, rights to lay claim to knowledge are negotiated in interaction, at the local level. They are context-dependent to the smallest degree: not just depending on their source as first-hand or hearsay; not just depending on the crime or jurisdiction; not just depending on the nature of the case made by the lawyers; not just depending on the identity or character of the witness; but influenced by all of these. As such, knowledge claims are in a constant power play – what a witness claims as their "own" knowledge, what a lawyer may agree with and not challenge, what is challenged and on what grounds, and, after this negotiation, what is determined to be admissible or not. In the following section I focus on the way a witness may resist legal categorization of rights to narrate.

8.3 Witness Resistance

As explored at length in Chapter 3, the overwhelming majority of literature employing CA in the study of courtroom talk focuses on the disempowerment of lay participants in interaction – particularly, the disempowerment of social identities already disadvantaged in society (Conley et al., 2019; Eades, 2000, 2008; Ehrlich, 2013; Matoesian, 1993). Indeed, the analysis in this thesis serves in large part as an illustration of the findings of this body of work, highlighting that the underlying mechanisms are not restricted to particular categories of social identity and are instead an effect of the regular course of legal-lay interaction. However, the analysis also introduces a concept that has received little-to-no attention: the linguistic resistance of witnesses in courtroom interaction. In relation to the above commentary on epistemic authority, this resistance may be conceptualized as an exercise in claiming epistemic authority over and above the way an issue may be presented by a legal professional. It is ultimately an expression of a lay participant's agency in interaction.

Some witnesses in the case studies in this thesis, while structurally disempowered and limited in linguistic resources (see Chapter 3), nonetheless found ways to exercise power and resist the terms of legal professionals, sometimes even successfully. There is also evidence that, far from being actors without a script as suggested by many classical courtroom ethnographies (Carlen, 1976; Mulcahy, 2007; Rock, 1991), there is room for knowledge of their role, whether pre-existing or developed during courtroom proceedings – and this empowers them in interaction. Therefore, in the following, I will briefly illustrate how witnesses were disempowered by the structure of courtroom talk, before suggesting some ways in which they may empower themselves.

In the terms set out in this thesis, "restrictiveness" in court refers to the prevention of witnesses from "using their own words." This happens in large part through the exploitation of power dynamics embedded in the question/ answer format. Tag questions, leading questions, or questions that are formally declarative statements are the most restrictive, as they contain the expected answer within the question (Hayano, 2014). Ms. Gutierrez in the Adnan Syed trial made extensive use of this form (e.g. 'He wasn't dragging her, was he?' (p.119 of this thesis)). These types of questions exploit the preference for agreement or affiliative actions (Sacks, 1987).

More common than these types of questions are polar questions, and in particular the forcing of polar answers to questions that witnesses demonstratively do not consider are appropriately answered with yes/ no. Indeed, the analysis in this thesis shows not only how common these restrictive-type questions are in courtroom talk, but also how they are explicitly reinforced to strategic ends – particularly in cross-examination (e.g. the gradual delegitimization of Dr. Fowler in the Derek Chauvin trial through implications that issues were black and white rather than forensically nuanced, p.176-183 of this thesis).

What is evident in this short summary is that the power in courtroom interaction is embedded in the dynamics of the question/ answer pair. It is often only reinforced, rather than constituted by, "legal" power. For instance, a lawyer may use legal power to object, but, in the examples in this thesis, this tended to happen when the witness did not conform to the linguistic demands of the question (e.g. 'objection, non-response' when Ms. Hansen attempted to offer information not solicited, p.172 of this thesis). Or a judge may intervene to demand an answer that conforms to the demands of the question (e.g. the judge reminding Mr. S that his job as a witness is to answer questions rather than ask them, p.127 of this thesis)

However, the analysis in this thesis suggests that there are many instances in which witnesses resist the terms set out by legal professionals in courtroom talk. While not a specific focus or explicit finding in the literature, several scholars have highlighted such moments. For instance, Atkinson and Drew (1979) and Metzger and Beach (1996) both showed how witnesses may anticipate accusation and consequently use their answers to offset such implications, through offering alternate phrasing to units of speech that they perceive as being somehow "loaded." Indeed, in this thesis, some witnesses employed self-initiated self-repairs (Kitzinger, 2014) to offset certain implications, as seen particularly in the Derek Chauvin trial (section 6.4.1.4). Ms. Hansen corrected herself initially saying that an officer was "asking" that bystanders stay away with the harsher term "demanding," to offset the implication that it was a calm, reasonable request; or Mr. Martin corrected his usage of the term "angry" to clarify that that the individual was defending himself, to offset the implication that it was an unjustified emotional reaction.

Eades also found evidence that 'the syntactic form of question types in court is [not] inherently related to the way in which power is exercised, and […] supposedly controlling question types can be taken as an invitation to explain' (2000, p. 162). This could be seen throughout the New Zealand trial, where open questions were frequently answered with a yes or no or, corollary, where closed questions were taken as invitations to offer an elaborate answer. These type-non-conforming answers (Komter, 1994) resist the prospective power of questions (Hayano, 2014). Given the preference in conversation for agreement, affiliation, preference, and type-conforming answers, the myriad instances in this thesis of people performing opposite actions fall under exercise of power in interaction.

The Derek Chauvin trial offered examples of different ways witnesses may resist questioning, in the examples of Genevieve Hansen, Dr. David Fowler, and Dr. Andrew Baker. Genevieve Hansen in the Derek Chauvin trial and Mr. S in the Adnan Syed trial may be said to have resisted most openly and explicitly, attempting to do so with resources not accepted legally as being at their disposal; this made their attempts ineffective at best, damaging to their legitimacy at most. Hansen was openly hostile to Nelson, arguing back, rolling her eyes, attempting to offer information not requested – she was routinely and systematically shut down by the judge. Mr. S did not want to testify at all, and the judge put him in his place by reminding him of his "job" as a witness and denying his requests to step out of that role.

Other times, witnesses resisted in ways more acceptable to the court, using the linguistic resources available to them. The trial of Adnan Syed, as I have shown, is the most linguistically restrictive of the three case studies, characterized by frequent objections to type-non-conforming answers, regular challenges to the sources of knowledge claimed by witnesses, an abundance of tag-questions, and numerous interventions of the judge to instruct witnesses. Even in this restrictive interactional environment, witnesses found ways to resist if only in a very small way – through other-repairs (e.g. Jay substituting 'not truth' for 'lie' (p.129 of this thesis), an expert witness substituting 'develop prints' for 'lift prints' (p.131 of this thesis), Jen referring to Jay as her 'friend' instead of her 'very, very good friend' (p.130 of this thesis)). Other-repairs in the Adnan Syed's trial were overwhelmingly rejected – but the

abundance of such linguistic phenomena suggests that witnesses were far from passive victims of a legal display of power and they were responsive or resistant to the implications of certain words. Indeed, literature on repairs shows that interactants initially tend to self-initiated self-repair or invitations for the other party to self-repair through prompts such as 'sorry?' (Kitzinger, 2014). Actively other-repairing the legal professional in court, even through small corrections, may therefore be interpreted as a more active form of resistance.

There is also a notable dearth of what may be considered the ultimate form of resistance, not just to the content of a question or its framing, but to its very structure – refusing to answer a question. This is in line with Conley et al.'s (2019) observation that, '[a]lthough it is logical to assume that a witness might in turn offer parallel commentary on the questions asked (such as "I don't think that's an appropriate question," "You're trying to put words in my mouth," or "I don't see where you're going with that question"), such instances are rare in court' (2019, p. 31). With the exception of Ms. Hansen, who boldly employed this resource ('your question is unclear because you don't know my job, so, um, can't answer' (p.173 of this thesis)), witnesses in this thesis have often demonstrated uncertainty that this was even an option. An expert witness in Adnan Syed's trial, for instance, was admonished for trying to offer further explanation of a technical term and it was only upon prompting from the judge that she employed the resource of refusing to answer (p.125 of this thesis). Refusal to answer, therefore, may be considered an underused form of linguistic resistance in courtroom interaction – whether this is because witnesses are aware that refusal to answer may lead to being held in contempt of court, or because of the interactional instinct to meet a question with an answer rather than refusing the terms of the question.

Another way witnesses may be said to have been resisting questions is by not conforming to polar questions and attempting elaboration and nuancing. Dr. Fowler, the forensic pathologist for the defence in the trial of Derek Chauvin, attempted this during cross-examination with little success. Indeed, the stakes were high for both the legal professional and Dr. Fowler himself – elaborations would have served to solidify his legitimacy as an expert witness, while the successful shooting-down of these by prosecution had the effect of delegitimizing him. Jay, in the Adnan Syed

trial, took a different approach to the restrictiveness of questioning and the insistence on yes/ no answers to complex questions: when Ms. Gutierrez asked if he sold 'dope,' rather than attempting to nuance this and explain the difference in drug terminology he simply answered "no" until Ms. Gutierrez was forced to self-repair to 'marijuana' (p.132 of this thesis).

While these are the main methods of witness resistance in this study, there are several other verbal effects that may contribute to the perception of a "powerful" witness versus a "powerless" one. I have argued that Dr. Baker in the Derek Chauvin trial demonstrates several of these, although he was an exception in the data. Through aspects such as the speed of his speech, his lack of hesitation, his emotionless and factual tone, his overly-specific contextualization, and his insistence on double-checking apparent "facts" presented by the defence lawyer, Dr. Baker epistemically dominated his turn in the stand. Borrowing the dramaturgical imagery of a preponderance of court-based studies (Carlen, 1976), if a trial is a play where legal professionals know their script and perform it seamlessly while lay participants are disadvantaged by their ignorance, Dr. Baker's success suggests that the most effective way to resist disempowerment is, apparently, to "play the game bigger and better." As a sole example in my data this is not in any way verifiable but suggests further research on perceptions of "power" in court especially by extra-linguistic resources would be valuable.

Finally, a short word must be said about the power of witnesses in interaction that is granted to them rather than taken by them. As has been noted in the literature on courtroom-based interaction, certain portions of testimony are staged as collaborative rather than adversarial (e.g. examination-in-chief as compared to cross-examination); in these, power may be yielded to the witness by the questioning lawyer. For instance, the prosecutor attempted to do this with Genevieve Hansen in the Derek Chauvin trial, positioning her as an expert above and beyond him, giving her power she did not or could not claim herself. In the New Zealand trial, the prosecutor granted Defendant 1's Daughter authority over her own language by refusing to make heard to the jury a certain word that the Daughter used in a written statement that she later rejected; though this word would have likely helped the prosecution's case, the prosecutor yielded to her ownership of her own words.

Similarly, witnesses may be granted power in interaction through the intervention of the judge, such as the judge chastising Ms. Gutierrez in Adnan Syed's trial for not accepting that Jay's repair of the term 'promise' (p.133 of this thesis).

In summary, the first major finding in this thesis referred to a general organisation of rights to claim certain knowledge, guided by laws of evidence but also the privileging of first-hand experience. Actual instances of interaction did not fall neatly into categories of knowledge and thus the second finding refers to how rights to lay claim to knowledge are defended by witnesses in the face of opposition and how they are ultimately negotiated in interaction, thus adding to recent literature on resistance in interaction (e.g. Hepburn et al., 2023; Humă et al., 2023; Sikveland & Stokoe, 2016). What is ultimately at stake with these micro-level exercises of agency and power is control over the stories that are being told in court. The next section will focus on a third major finding regarding the narratives told in court and their relationship to court outcomes.

8.4 Tropes

Using Sandberg's (2016) categorization of narratives as life stories, event stories, and tropes, the case studies in this thesis have demonstrated the instrumental role of tropes in structuring criminal cases at trial stage and, moreover, their direct relationship with court outcomes. Indeed, a simple finding is that tropes – as the familiar stories that are suggested by a series of events – are pervasive in court. In the Adnan Syed trial, the Jilted Muslim Lover who killed his ex-girlfriend in a fit of religious pride wars with the Star-Crossed Lovers who were unfortunate victims of others' influence; in the Derek Chauvin trial, the Reasonable Police Officer whose legitimate choices led to an unfortunate and unintended outcome wars with the cold-hearted racist officer who abused his badge; and in the New Zealand trial, the vigilante who took revenge on a man that tormented his close friend wars with the pre-meditated attack of a ruthless gang member – to name only the central ones.

However, this thesis finds that tropes are not just pervasive in court; they are constitutive of court processes and have a direct impact on court outcomes.

Furthermore, their construction is in an iterative relationship with the individual "facts" of a case. In the following, I will begin with a reflection on some related concepts in psychology, philosophy, and literary theory, to discuss the relationship between tropes and court outcomes particularly through their characteristics of familiarity and judgeability. This leads to a reflection on the perceived relationship between tropes (as metaphors) and "truth," before linking the phenomenon to the previous discussion on epistemic authority and witness resistance.

The outcomes of a criminal trial in the jurisdictions in this thesis are absolute categories: guilty or not guilty. A trial needs to organize the messiness of experience – multiple witnesses and points of view, multiple possible reasonings and motives, multiple interpretations, as well as possible bias, lies, issues of memory reliability, intuitive association, stereotypical thinking, etc. into the useable categories of guilty and not guilty. Categorization – as a process whereby individuals make sense of experiential inputs by reducing 'the infinite differences among stimuli to behaviourally and cognitively usable proportions' (Rosch, 1978, p. 28) – is, traditionally, in cognitive social psychology, associated with prejudice and distortion. Billig (1985) offers a critique of this notion and advocates for a rhetorical approach to understanding categorization and, in this process, emphasizes its opposite, particularization: how individuals can argue for different categories to be used based on different elements of an experience and how particular cases can be made "exceptions to the rule." This interplay between categorization and particularization can be applied in the terms of this thesis to narratives in the court: as a tension between creating a trope out of a given series of events by emphasizing certain aspects of what happened that are "like" another story and arguing how a series of events is "not like" the trope by highlighting differences.

Applied to the criminal justice process and trials in particular, the outcomes of these processes of categorization and particularization have a direct impact on decision-making; and the stakes are high, considering these decisions have the power to determine the futures of both victims and defendants at the very least. Garfinkel argues these stakes incisively when he writes that a degradation ceremony, such as what a trial may be, is a "transformation" (rather than recategorization) – that of an

individual's 'total identity' to an identity 'lower in the group's scheme of social types' (1956, p. 420).

Garfinkel argues that this phenomenon occurs based on judgements on the 'motivational' type of the defendant rather than the 'behavioural' type, or 'what the group holds as the ultimate "grounds" or "reasons" for his performance' (1956, p. 420). In the case of Derek Chauvin, for instance, his behaviour is evident: the whole world saw the video of him kneeling on George Floyd's neck until Floyd died. The trial is a search for the 'motivational type' of the defendant – was he a reasonable police officer who made an unfortunate mistake, permitted to remain in the ranks of the social group? Or was he Other? Thus, not only may categories of member (of the social group)/ Other be mapped onto the court outcome of not guilty/ guilty, but the categories themselves are the identity tropes identified in this thesis.

The identity tropes in question are moral in nature. A jury knows what to do with a Jilted Muslim Lover turned murderer; they know what to do with an Unreasonable Police Officer; they know what to do with a Cold-Blooded Killer – call guilty and thus 'transform' an individual into an Other. That is, in the legal context, not all tropes are equal or simply alternative characterisations: the Jilted Muslim Lover, the Unreasonable Police Officer, and the Cold-Blooded Killer are not just a different category of individual; they are Other and must be judged as unacceptable in society. The reason this is relatively straightforward is due to the familiarity and judgeability of the categories – they have appeared in society before, and they have been judged myriad times before; once the categorisation is complete, the decision of guilty/ not guilty is simple enough. However, what this thesis shows is that the construction of these identities is a process that is interactional and narrative in nature – it is narrative tropes that construct the judgeable identities, and their power, too, is derived from their familiarity and judgeability.

Sandberg uses the term "trope" in its modern usage rather its traditional one, to refer to 'a significant or recurrent theme, esp. in a literary or cultural context' (OED Online, n.d.-d). As such, in literary contexts, it is often synonymous with a cliché, theme, or motif. In more macro-level narrative studies, they may be referred to as what Abbott calls 'masterplots,' a reusable kind of 'skelet[on]' that 'undergird[s]' different literary

narratives (2021, p. 54). However, far from being limited to fiction, Sandberg himself showed that individuals in everyday contexts often make sense of their lives through tropes or use them to communicate something about themselves with an audience.

A wide tradition of scholarship exists on the compelling relationship between tropes or metaphors and the concept of truth; in philosophy, this connection is often traced back to Antiquity, peaking in the 18th and 19th centuries, through Nietzsche and other famous thinkers (Burkhardt & Nerlich, 2010). Though outside the scope of this thesis to explore this relationship, the connection between the two is made through the characteristic of tropes as familiar or recognizable. Nietzsche is often cited on the topic:

> What then is truth? A moveable host of metaphors, metonymies, and anthropomorphisms: in short, a sum of human relations which have been poetically and rhetorically intensified, transferred, and embellished, and which, after long usage, seem to a people to be fixed, canonical, and binding. Truths are illusions which we have forgotten are illusions; they are metaphors that have become worn out and have been dried of sensuous force, coins which have lost their embossing and are now considered as metal and no longer coins. (Nietzsche, 1873, p. 117)

That is, a trope, through reuse and familiarity, may often be perceived as simple truth. And, indeed, reaching “the truth, the whole truth, and nothing but the truth” is a key aim of the courts, thus explaining at least in part their reliance on tropes.

However, scholars have also been wary of the link between tropes and truth, cautioning that tropes can be used, deliberately or not, to mislead from truth, based on the same exact quality of power by familiarity. Bazzanella & Morra (2010), in fact, suggest this was the prevailing philosophy until the last century. The problem, of course, is that no individual story can be entirely like another. Lakoff and Johnson write that metaphors can create problems for interpretation because ‘in allowing us to focus on one aspect of a concept [...] a metaphorical concept can keep us from focusing on other aspects of the concept that are inconsistent with the metaphor’ (1980, p. 5). That is, for instance, the prosecutor in Adnan Syed’s trial, constructing a

Jilted Muslim Lover trope, focused on the ways “Muslim” and “Lover” fit the situation and had no concern about Adnan’s character; so powerful was the association of these elements that Ms. Gutierrez’s efforts to demonstrate that Adnan was not “jilted” – though extensive and interactionally successful – had no impact on the court outcome.

This characteristic of tropes is instrumentalized in courtroom interaction as a persuasive tactic. Far from being passive entities in court, tropes are dynamic in nature. I propose this understanding of the role of tropes in a trial. A trial is not a presentation of facts in sequence which, lined up, add up to sufficient evidence for an outcome of guilty/ not guilty. Facts are woven together into a narrative which gives it a moral thrust – proposing a certain interpretation or evaluation of characters and events. This sequence then suggests a trope – a narrative that a jury, as members of a shared community, would be familiar with. The trope has the benefit of containing pre-judged characters and events – it’s easier to judge something that has happened and been judged before. Presenting the trope at trial, the prosecution fits the facts into the trope (Adnan was a religious Muslim) and that which does not fit is disregarded (Adnan did not present as jilted). This uses the process of categorization. The opposing side, on the other hand, attempts to show how the case is not like the trope, emphasizing those details that are inconsistent with the metaphor (particularization). This process of de-emphasizing and re-emphasizing of facts, or deconstruction and reconstruction of stories as this thesis frames it, is most clear in the Derek Chauvin trial, where defence and prosecution played the same exact videos and highlighted different aspects of it in order to weave different narrative tropes from the same sequence of events.

In Chapter 2 I highlighted a discrepancy between the needs of a speaker (e.g. a person convicted of a crime or a victim of a crime) and the needs of listeners (interviewers, the courts, probationers, etc.). As Pemberton et al. most succinctly put it, ‘the strength of [a victim’s] own story is derived from its quality as a unique, authentic and special account of their own experience, not from its resemblance to a generic shorthand’ (2018, p. 7). That is, in Billig’s (1985) terms, a general need of a speaker is to particularize a story rather than its opposing force described above as categorization. Often, in the trials in this thesis, this is constituted by complicating a

story in order to depart from the proposed trope: Ms. Gutierrez fights to show that Adnan is more complex than a stereotypical Islamic fundamentalist, Mr. Nelson argues that it is too simple to attribute George Floyd's death to a single cause, and defence in the New Zealand case suggests there were more elements to the defendants' motives than the bloody forensic evidence may have painted.

It would be facile and far from my intention to suggest that, given the constitutive nature of tropes in the courtroom, the whole enterprise of technocratic justice lies in contrast to "the needs of the speaker," but the contrast between speaker needs/ listener needs and forces of categorization/ particularisation are important for understanding what is at stake for lay participants in court. Indeed, what I have described as "witness resistance" in the section above may be described as attempts to 'particularize' stories, usually through attempts to apply nuance to the narrative presented by legal professionals, evident in repairs of key words or the frustrated attempts to reject yes/ no framings and elaborate answers.

While initially only intended as a tool for general analysis of some narratives that may be told in court, tropes emerged in this thesis as essential for understanding storytelling in courtroom interaction. A number of scholars, previously mentioned in Chapter 2, have made some passing mentions on the importance of familiar stories in criminal justice contexts – Gewirtz, for instance, noted how lawyers have an 'easier time persuading a jury' if they fit evidence in a 'stock story' (Gewirtz, 1996, pp. 8–9); Hall and Rossmanith reflected on how technocratic justice requires stories 'that can be easily categorized, sorted and stored' (2016, p. 42); and McKendy noted that the most powerful narratives are the ones that key into the 'same old story' (2006, p. 498). This thesis furthers these remarks, suggesting that tropes are far more important to understanding narratives in court than has previously been acknowledged. It finds that tropes are pervasive and constitutive, instrumentalized by both lay participants and legal professionals; and they have many functions, from making sense of events, to constructing judgeable characters, to eventually determining court outcomes.

Thus, the research in this thesis suggests that further work should be done on tropes in court, connected with the history of their relationship with perceptions of truth as

well as cognition and how people make sense of the world. The proposal in the previous paragraph – that speakers in some sense need to 'particularize' or de-tropify stories – offers one way we may interpret the desire to tell a story "in one's own words" and thus leads back to the concept of narrative ownership and ultimately theft, the evaluation of which was the third research aim of this thesis.

8.5 'Stolen Stories'

8.5.1 Narrative Ownership

> That is what is going on, before our eyes.
> But is that truly what is going on?
> (Coetzee, 2008, p. 27)

The courts, under the orality principle and the hierarchy of epistemic authority discussed in this chapter, tend to privilege people's experiences and what went on 'before [their] eyes'; but the courts cannot take that at face value, as their ultimate goal is to access what "truly" went on in an epistemologically realist sense. The third of the research questions in this thesis poses a deceptively simple question: To what extent is 'narrative theft' an appropriate or useful metaphor to describe what happens to narratives in court? In this section I will reflect on some of the ways this thesis suggests narratives can and cannot be said to be "owned," and, given those frameworks, what might or might not constitute "theft."

The research in this thesis began with the observation of a recurring phrase in ethnographic studies of courtroom proceedings. It is somewhat of an axiom of courtroom studies that lay participants often report negative perceptions of court processes they participate in, citing feelings of revictimization, frustration, anxiety, dissatisfaction, etc. (e.g. Carlen, 1976; Conley et al., 2019; Fielding, 2013; Matoesian, 1993; Mulcahy, 2007; Rock, 1991). Some scholars have identified the source of these feelings as related to their inability in court to "use their own words" or "tell their stories their own way." Indeed, a lot of Criminological work uses this

possessive grammar even when not the explicit aim of the research (e.g. Eades, 2000; Fielding, 2013; Fridland, 2003; Halsey, 2017; Pemberton et al., 2018). The implication is that narratives are owned in a normative sense – those who experienced the crime in some sense do or should own their own stories.

In the vein of Christie (1977) and his idea of conflicts as property, Pemberton et al. (2018) make the metaphor explicit, reflecting on victim stories as "property," and describing some of the forces that act on those stories to make them fit the needs of the criminal justice process. Therefore, there are two senses that emerge for the concept of "stories as property" when it comes to victims in the criminal justice system: (1) freedom of telling in a manner of their choosing – with context, with emotion, relational storytelling etc.; but also (2) acceptance of the telling – a telling that is acknowledged, validated, accepted, and, ultimately, taken into account in the judgment. In other words, it is central to the concept of narrative ownership that the individuals have a role in meaning-making – and therefore, perhaps, decision-making.

What the normative version of narrative ownership implies is that people (should) have certain rights when it comes to stories they tell. Certainly, it is a pillar of the study of epistemics in Conversation Analysis that conversants seem to implicitly treat each other as having certain privileged rights when it comes to their first-hand experience (e.g. Heritage, 2014; Heritage & Raymond, 2005; Pomerantz, 1980; Raymond & Heritage, 2006; Sacks, 1984). It is precisely because this seems to be such a consistent implied contract across time and language that challenges to this precept in conversation becomes the subject of study (e.g. Drew, 1991; Ehrlich, 2013; Heritage, 2014; Jackson, 2023). But, once again, the question remains of what rights these are, exactly. The right to know my own experience is different from the right to narrate it which is different in turn from the right to be believed. In court, on the surface, the first of these – the right to know one's own experience – is a cornerstone, reflected in the orality paradigm (Jackson, 2023). Rights to narrate, on the other hand, are subject to greater scrutiny and legal filter, and, finally, the right to be believed and to therefore have a role in meaning-making is in no way guaranteed.

Thus, there seem to be rather nebulous ways in which stories may be owned, but perhaps impossible to pin down because the nature of stories makes "ownership" highly problematic. As I have written, a major issue with "metaphors" or "tropes" is that no two things – in this case no two stories – can be the same in a sort of mathematical identity theorem sense. Taken to an extreme, that means there is no such thing as "different versions of the same story," only different stories. Anything like rephrasing, summarizing, or even using synonyms for words, in this conceptualization, constitutes a different story. That contrasts with findings from narrative research, which shows that individuals' tellings of their own experiences are context-dependent and change depending on time, place, and audience (e.g. Czarniawska, 2004; Linde, 1993). Do we own all versions of the telling? And what do we own when the telling changes? In a related sense, it cannot be said that anyone "owns" any stories as we all borrow to tell them – we borrow words and we borrow tropes. As Billig (1985) suggests, using categories is not only a concession we make to our listener so that we can be understood; it is in the very way we tell stories even to ourselves and make sense of experience.

The application of CA to the concept of narrative ownership has highlighted the complexity of the issue. Conversants do not possess strict categories of knowledge in a clear hierarchy, as in "I experienced something first-hand, therefore everyone treats me as having greater authority to tell this story than anyone else." Categories of knowledge are on a continuum, to start with (Kamio, 1997) – first-hand, second-hand, third-hand, and so forth – an epistemic gradient (Heritage, 2012). But in addition to this there are different types of knowledge that war for authority: in this thesis e.g. implied cultural knowledge or expert knowledge. Furthermore, related to interaction, the question/ answer format is far from a simple situation of a questioner eliciting information unknown to them and an answerer with greater epistemic status that provides this information. Heritage (2012) has shown how the perceived epistemic status of interactants has greater bearing on interaction than the epistemic stance morphosyntactically claimed by a question. The question of narrative ownership, therefore, may be argued to be a question of the epistemic status – the relative access to a particular domain of knowledge – of an individual; which is not an absolute category but something negotiated constantly in interaction.

It is far from my intention to establish in any definitive way what “narrative ownership” means. Instead, I refer here to one sense of “ownership” that emerges from the research in this thesis, particularly the findings on trope stories above. NC points out broadly that speakers need to tell unique stories (McKendy, 2006; Pemberton et al., 2018), while listeners need to hear familiar stories (Gewirtz, 1996; Hall & Rossmanith, 2016; Roemer, 1997); therefore, it may be said that we own stories if the way we particularize them (Billig, 1985) is accepted in the determination of the final “meaning” of a set of events that affect multiple people. This is “ownership” as having a narrative of something that happened to a person not only *heard* but *drawn upon* and “having a say” in the outcome of a court case (Christie, 1977).

8.5.2 Narrative Theft

> The victim is a particularly heavy loser in this situation. Not only has he suffered, lost materially or become hurt, physically or otherwise. And not only does the state take the compensation. But above all he has lost participation in his own case. It is the Crown that comes into the spotlight, not the victim. It is the Crown that describes the losses, not the victim. It is the Crown that appears in the newspaper, very seldom the victim. It is the Crown that gets a chance to talk to the offender, and neither the Crown nor the offender are particularly interested in carrying on that conversation. The prosecutor is fed-up long since. The victim would not have been. He might have been scared to death, panic-stricken, or furious. But he would not have been uninvolved. It would have been one of the important days in his life. Something that belonged to him has been taken away from that victim. (Christie, 1977, pp. 7–8)

Nearly half a century ago, Nils Christie did not mince his words when he radically declared that the modern criminal justice process in Western nations amounted to theft of conflicts from those who experienced them by legal professionals and institutions. In his sense, what ownership means and what legal institutions “steal” is expressed through the concept of “participation” – which, incidentally, is the provisional definition arrived at above about having a role in meaning-making and

decision-making. Thus, for instance, narrative testimony (Fielding, 2013) or relational storytelling (Conley & O'Barr, 1990), such as was seen in the New Zealand trial, may be a suggestion for how participation – and therefore ownership – may be exercised or preserved.

The initial aims of this thesis drew its questions from this potent metaphor. Noting that the means through which conflicts may be "stolen" are linguistic in nature, this thesis asked whether criminal proceedings may be understood as "stealing" narratives. However, through the application of CA concepts related to epistemics, the concept of "theft" has become highly problematic.

Certainly, it is not difficult to understand the subjective sense in which people might "feel" that the courts steal their story. A trope-ified potential internal monologue of a victim of crime, recreated from literature on normative ownership of stories and evidence of what happens in court, might be: "something traumatic happened to me and only me, only I can tell what the impact has been on me, it is therefore my story, I go into court expecting to tell it and to be heard and validated. But my experience is that, actually, I'm not allowed to tell my story, instead of "telling" anything I am just answering questions, these questions feel leading or miss the point, I feel people are implying things that aren't true and they're not letting me correct them. My story is distorted by the opposition. They are telling a different story, not "my" story, and now a judge is deciding that is the "true" story. My story is taken away from me permanently and without my permission. It feels like it's been stolen."

But this thesis did not set out to explore this phenomenon in a social activist or psychologically-informed way – the *why* of the situation. The question was *how* it might happen in real-time. Proceedings in court constitute a social context where meaning is created linguistically between different parties. As such, a different paradigm was needed: the social constructionist angle that sees social reality as constructed in interaction and thus explores the *how* of this reality. It sought to explore narratives in context, *how* they are constructed, what forces act upon them and *how* they might be deconstructed and reconstructed, *how* power is exercised in interaction over narratives and other units of language, *how* people orient themselves to each other's statements, and *how* rights to claim knowledge are

negotiated. Therefore, I ask in this section, is there any sense, in these terms, that narratives can be said to be stolen in court?

I start, therefore, at the beginning, with some definitions of the terms “steal” and “theft.”

“Steal”

- ‘to take away dishonestly [something] belonging to another; esp. to do this secretly or unobserved by the owner’ (OED Online, n.d.-d)
- ‘to take something without the permission or knowledge of the owner and keep it’ (Cambridge Dictionary Online, n.d.-a)

“Theft”

- ‘the felonious taking away of the personal goods of another’ (OED Online, n.d.-e)
- ‘dishonestly taking something that belongs to someone else and keeping it’ (Cambridge Dictionary Online, n.d.-b)

The key implications from these definitions are, in summary: dishonesty or secrecy, lack of permission, permanence; as well as, underpinning, the existence of two parties, and agency (compared to e.g. losing something). Particularly and evidently, the terms “theft” and “steal” have an inescapable negative moral valence. I will challenge these each in turn.

First of all, structurally, “theft” of narratives cannot be said to fit the definitions above, as the process could not happen without a third party. If theft is a person in second position claiming greater epistemic rights than us over and above our first-hand experience, these are simply two opposing propositions for claims over knowledge. The “theft” is only complete or successful if a third party decides to accord greater authority to the second position claim: in conversation, a listener to both sides; in court, the decision-making judge or jury. In this case, the issue of “agency” also comes into play – who could (theoretically) be called the thief: the person who claimed greater epistemic rights or the person who used their deontic authority to

declare this as “truth”? Rejecting someone’s epistemic authority – rejecting rights, ownership, possession – is not the same thing as theft.

Let us assume people normatively own the stories they tell about events they experienced first-hand. They go into court expecting to have their stories heard and weighed fairly. It cannot be said, for most people, that they are ignorant of the way the courts work, with lawyers asking questions and lay participants being limited to answers; nor are they ignorant of the fact that the ruling might not be in their favour. Representations of trials (if with varying degrees of accuracy) abound in visual and written fiction and high-profile real-life trials are consumed by the public regularly. Barring that, in preparation for a court case or during proceedings themselves, lawyers and judges inform their clients to some degree how proceedings will unfold. It cannot, therefore, be said that there is something particularly “secret” or “dishonest” about courtroom proceedings, though it may not be perfectly understood by participants.

Following from that, it may be said that by agreeing to appear in court there is a degree of “permission” to this state of affairs. Scholarship has shown that lay participants in court may experience confusion, popularly depicted as actors in a play that do not know their role or scripts (Carlen, 1976; Mulcahy, 2007; Rock, 1991); however, if we regard the criminal court as a space for the public determination of social/ moral issues, it can be said that there is an implied social contract – an implied permission – whether understood or not in full by participants. A further issue may then be raised: a court case is a temporary and transitory event and the definition of “theft” includes permanence. Are we best, then, to say stories are appropriated or borrowed temporarily rather than “stolen”?

The negative moral implications of “theft” are also suspect. They imply ill will. We may equally say that lawyers telling stories in court constitutes advocacy, speaking on behalf of someone more powerless and infusing their story with legal power and the right to be heard. Are stories manipulated and distorted, or are they adapted, emphasized, enhanced, or recast for a morally neutral context-specific purpose? These questions would, of course, attract similar critique as studies into the power dynamics of researcher-researched populations (Carlsson, 2012; Kirkwood, 2016;

McKendy, 2006; Presser, 2004) but, in whichever case, the element of “ill will” can easily be dismantled.

Furthermore, the suggestion that any reworking of a person’s first-hand-experience-based narrative is “theft” also does not hold up to scrutiny. If this was true, the work done in offender programmes to ‘re-story’ events (Mullins & Kirkwood, 2021, p. 317), would be suspect. Indeed, we may look at psychological interventions, where the individuals present their story as they understand it and, with help, retell it in a healthier, more constructive way. This, then, becomes “their” story (McGlynn et al., 2012).

Each of these questions could be debated at a length much greater than this discussion allows. Returning to the suggestion of what “narrative ownership” can mean from the previous section, i.e. that people can be said to own narratives if the way they particularize them is accepted, the question of whether categories (Billig, 1985) or tropes (Sandberg, 2016) are “reductive” becomes important. Billig reflects on this issue: on one hand, processes of categorization may be seen as adaptive and therefore morally neutral; on the other hand, they may also be accused of simplification and distortion and therefore present as morally negative. If uniqueness/ particularization constitutes exercising ownership, an agent “reducing” it may constitute something of negative valence – but perhaps not theft.

> Yet if hope has flown away
> In a night, or in a day,
> In a vision, or in none,
> Is it therefore the less *gone*?
> (Edgar Allan Poe, 1849)

If something is taken away dishonestly and without permission or if it is taken away simply by our cognitive or social way of needing to understand, ‘is it therefore the less gone?’ Perhaps something is lost but cannot be said to have been stolen – with any agency, permanence, dishonesty, lack of permission, or ill will.

As for the question of whether the metaphor is “appropriate or useful” for understanding courtroom interaction – I suggest that, from a CA point of view, perhaps not. Territories of knowledge are varied and overlapping, and the claims that people assert are not so usefully categorizable in terms of normative rights. However, from a Criminological point of view, the metaphor might still be useful, if not “apt” in a specifically NC sense. The negative moral valence of the metaphor is inescapable, simplifying, and potentially obfuscating; it would not be “fair” to argue that this is what the courts do. However, it can still be useful as an interpretive tool for understanding the feelings of “violation” or “re-traumatisation” reported by lay participants in criminal court processes. Regardless of whether stories can be understood as “owned” in any CA sense, individuals have a “sense” of owning something and a sense of violation when it is denied.

8.6 Conclusion

The discussion in this chapter has focused on three main findings in this thesis: the emergence of hierarchies of epistemic authority in court guiding the acceptance or rejection of knowledge claims – co-created, reinforced, subverted, or inverted; the phenomenon of witness resistance to the linguistic dominance of legal professionals; and the particular narrative form of the trope as constituting and being constituted by the facts of a criminal case in relation to perceptions of truth. The reflection on the concepts of narrative ownership and narrative theft – and the original question in this thesis of whether these are useful or appropriate metaphors to understand what happens in court – leaves a number of questions unanswered, including in what ways stories may or may not be said to be owned by individuals, what kind of social contract individuals engage in by appearing in court, and what constitutes “theft.” In these further few remarks I will synthesize some of the contributions of this thesis to literature, reflect on some limitations of the research design, and propose some avenues for further research.

8.6.1 Contributions to Knowledge

This thesis has supported the narrowing of a number of significant knowledge gaps in criminological literature on courtroom interaction; substantively, the study of epistemic authority in the courtroom in CA tradition and the study of narratives in the courtroom in the NC tradition. The novel approach of the application of CA concepts of epistemics to NC concepts of narrative ownership has had a number of enlightening contributions to existing knowledge.

The study of epistemics and epistemic authority in the courtroom – or the negotiation of knowledge claims in interaction – has thus far received no attention in the literature. Taking a CA approach in this thesis has shown the value of studying claims to knowledge through the lens of interaction rather than legal rules of evidence. While rules of evidence may be enshrined in legal procedure, knowledge claims in practice are not easily categorizable as, for example, “first-hand” or “hearsay.” Sources of knowledge in court may be indeterminate or plural; they do not always merit challenge and therefore may come from sources that would technically be considered inadmissible; and they are far from strictly reinforced by legal professionals. As such, I suggest that CA offers a more fruitful tool for understanding the rules of interaction in the courtroom as compared to more legally-oriented approaches.

Knowledge claims, rather, are negotiated at the local level in interaction and dependent on context; and this context does not only refer to the courtroom, but the individual characteristics of each case. Furthermore, claims to knowledge are not reinforced in a top-down fashion by legal professionals; participants often regulate their own knowledge claims. In this way, while the “rules of evidence” may be said to guide courtroom interaction, they are in turn constituted by interaction – oriented towards not just by legal professionals but also by lay participants. Furthermore, this thesis has challenged the focus in literature on the scriptedness and control of courtroom talk (e.g. Carlen, 1976; Mulcahy, 2007; Rock, 1991) as well as the disempowerment of lay participants by legal professionals in the courtroom (e.g. Eades, 2000; Fridland, 2003; Matoesian, 1993; Svongoro et al., 2012). It finds that, rather than being passively and routinely disempowered, witnesses demonstrate active resistance in linguistic interaction, and some power is derived specifically from their understanding of the script.

Also receiving little attention in literature has been the study of the courts within the tradition of Narrative Criminology, and this thesis has shown the value of taking this approach. While much can be said based on this research about the co-construction of narratives as legal cases and the role of stories and storytelling in determining court outcomes, the main contribution has been to show the crucial role of tropes in the courtroom. Tropes – as familiar stories shared between participants and audience – have powerful evidentiary quality (e.g. Drew, 1991; Gewirtz, 1996; Sandberg, 2016). By dint of their familiarity, they "make sense" to an audience, as their logic, coherence, plausibility, and consistency have already been tried, tested, and refined many times before. As such, they have heavy bearing on court outcomes. Overall, the research in this thesis is a call for further interrogation of the concept of tropes, in relation to perceptions of truth and cognitive sense-making, in the courtroom.

8.6.2 Limitations

As mentioned in Chapter 4, the case study approach taken in this thesis has a number of limitations, most specifically generalizability in terms of legal categories. For instance, the findings in this thesis cannot be linked through causation to jurisdiction or crime type. It cannot be said that "this is how it is done" in the United States versus New Zealand; or how it is done in high-profile cases versus more everyday cases; or how it was done in the 2000s United States versus in 2020s United States. Instead, the findings must focus on interaction: how one linguistic action may prompt another, how a certain choice might create a different effect, or how a particular narrative form shapes a criminal case. Furthermore, in this vein of the limitations of case studies, all of the trials featured in this thesis were murder trials. In terms of narratives, in all cases there was one set of stories notable in their absence: the victim's. As such, the findings should be understood within this framework.

Another significant limitation, following on from the reflection of my positionality as a researcher (Chapter 4), is my lack of training in law, which aligned me more with lay

participants than legal professionals. While this positioning enabled me to approach the courtroom context as 'anthropologically strange' (Pomerantz & Atkinson, 1984, p. 287) and thus focus on what I observed in interaction rather than what legal rules may be guiding choices by legal professionals, it may also be seen as a limitation. Certain effects observed in the New Zealand trial as compared to the American trials, for instance, may also be understood through the lens of differing jurisdictional rules of evidence or differences in legal practice. Indeed, certain factors guiding claims to epistemic authority in the specific context of the courtroom will be guided by legal rules; an exploration of the specific relationship between laws of evidence and epistemic authority would be valuable. The further research suggestions in the next section will also address some of these limitations.

Another limitation of note is related to my data transcription style. I did not use the level of detail or the technical orthographic conventions of CA transcription (e.g. Jeffersonian conventions). The rationale for this, described in section 4.5.2 of the Methodology chapter, was primarily due to the nature of the research aims and primary audience of the thesis: the micro movements of talk (CA purview) were often of interest *in terms of* their impact on more macro structures such as narratives (NC purview), and, as such, I preferred a language of analysis that better bridged the two. Nevertheless, there are a number of limitations of not using the fine-grained notations typical of CA. CA is designed to capture details that might normally be missed that are nonetheless meaningful in interaction. In particular, in the CA tradition, detailed transcription is deemed important in institutional contexts where *how* something is said often reflects power dynamics and asymmetries; elements of this may be lost with a less detailed transcript. Detailed transcription also aids a researcher in avoiding reliance on interpretation of the psychological states of participants; as such, with my more basic transcription, there are moments in analysis where cognitive elements or elements of participant competence may be drawn upon. A more detailed transcription would also have minimized bias related to representational choices and therefore would have improved research transparency and accountability as well as the reproducibility of the research.

8.6.3 Further Research

The study of tropes in the courtroom merits further exploration. In the first instance, the relationship between tropes and truth, which has a long history in philosophical thought, would be valuable to study more closely in the context of an institution whose core aim is accessing "the truth, the whole truth, and nothing but the truth." Through combining this tradition with equally well-established research on categorization in cognition, the role of tropes in the courtroom could be better understood. Specifically, it would be interesting to study how they are used in the construction of a legal case: how do the facts of a case suggest a trope to a lawyer, and how are facts subsequently "fit in" or "omitted" based on this proposed story? After all, actual trials constitute a small portion of criminal proceedings, and the majority of cases are settled outside of court; therefore, broadening trope research beyond trials would be valuable in understanding criminal justice more broadly.

Methodologically, there are a number of ways forward. With the specific approach taken in this thesis – a social constructionist and observational study of courtroom interaction – research would benefit from being applied to more cases, in the pursuit of greater generalizability. The focus of data collection could be a particular jurisdiction, a particular type of crime, or a particular type of court. For instance, it would be valuable to apply the terms of this thesis to other types of proceedings, such as problem-solving courts, where it is known that "things are done differently" in terms of language, narratives, and power (e.g. Jeffries & Bond, 2014; Schaefer & Beriman, 2019; Wiener & Georges, 2013), to explore how this relates to lay satisfaction and evidentiary quality. Study within a particular jurisdiction rather than across jurisdictions – American courts or New Zealand courts, for instance – would allow a deeper commentary on the impact of the rules of evidence of that particular jurisdiction on the negotiation of epistemic authority in court.

In this vein, I would also recommend further study in terms of different categories of crime, specifically based on what stories might be told. This thesis has focussed on murder trials, where there is a significant absence of the victim's story, and it is likely that language, narrative, and power would be negotiated differently if the victim's

stories were present and in direct opposition with the defendant's. Related to this, it would improve the robustness of research to consider what training lay participants may receive regarding how language may be used in court.

Based on the research in this thesis and the limitations of some of the existing research on CA and the courts (Chapter 3 section 3.3), I would be cautious, if focussing on specific social categories of individuals (e.g. female victims of sexual crime, victims of hate crime, ethnic minorities in preponderantly White societies), of limiting observations to those identities. Indeed, as Conley et al. show, literature that focuses on the disempowerment of particular social categories may benefit from close study of interaction, presenting a range of rhetorical tools that may be used to disempower people more generally (Conley et al., 2019). Commentary may then be made on social disadvantage in interaction as a phenomenon; afterwards, if reform is desired, this must lie in how linguistic interaction unfolds, rather than procedural adjustments that discriminate based on social category.

Chapter 9: “An Ending”

> Adnan Syed: You don’t really have, if you don’t mind me asking, you don’t really have no ending? Like, it’s just…
> Sarah Koenig (aside): I mean, do I have an ending? Of course I have an ending. We’re going to come to an ending today. Plus a smattering of new information, a review of old information cast under different light, and an ending. In case you haven’t noticed, my thoughts about Adnan’s case, about who is lying and why, have not been fixed over the course of this story. Several times I have landed on a decision, I’ve made up my mind, and stayed there with relief. And then inevitably I learn something I didn’t know before, and I’m upended.
> (Koenig, 2014)

Adnan Syed’s question about whether Koenig has an “ending” bookends the last episode (Season 1 episode 12) of Serial, presented as if the question – and the potential that the answer is “no” – distresses Koenig; so she postpones the answer. But what constitutes an “ending” for the case presented in the podcast differs for Koenig and Syed. Syed’s attitude, reflected in the quotation at the beginning of this thesis, indicates that it is a sufficient “ending” for Adnan to only “tell his story,” to strip it of the ‘makeup’ the prosecution put on it, and to just be heard (Koenig, 2014). As such, he sees it as an “ending” if Koenig presents the evidence and chooses not to “weigh in.” In this sense, it can be said that Syed wanted the podcast to be his trial – a fair trial – with Koenig as objective fact-finder and the audience as the jury. Koenig, on the other hand, wanted to be the jury, and, to her, the “ending” should have been the verdict. She wanted to decide if Syed was guilty or innocent, and her distress is that she cannot do this.

The term “narrative” is acknowledged by most narratologists and social scientists to be very difficult to define (Presser & Sandberg, 2015b), but it is part of most basic definitions that it is a form of discourse with a certain temporal ordering, or, colloquially, a beginning, a middle, and an end. By an “ending,” definitions allude to some kind of “moral of the story”; a lesson, a decision, an evaluation, or simply a

reason for the telling. Though Koenig does not ask explicitly, the source of her distress is implicit: was the whole venture in her podcast useless without this conclusive “ending”? It is compelling that Koenig suggests this decisive sort of ending would be a relief. Like Koenig, I started with what I thought would be a relatively straightforward question – yes, stories are stolen, or no, it’s a completely inappropriate metaphor. I, too, felt relief when coming across data and analysis that confirmed my expectations. And I, too, inevitably learned new things and felt upended.

As is suggested by the framing of the original ideas for this thesis in the introduction to this thesis (Chapter 1), the idea of “stolen stories” began with a somewhat activist cast: “if” this is happening, then it is “wrong,” and it needs to be “fixed.” I have described in Chapter 1 the progression from this cast to broader and more neutral research questions, regarding now narratives are told and how rights to speak are negotiated. And, indeed, as I conducted my research, this served the analysis well and challenged the very assumptions with which I started. Expectations of what courtroom interaction is like were thwarted left and right.

The trial of Adnan Syed was the first case study I conducted. In many ways, it confirmed my own expectations of what a trial is like – expectations that came from both reading (e.g. Bens, 2018b; Carlen, 1976; Fielding, 2013; Mulcahy, 2007; Rock, 1991) and personal observation of proceedings at the Scottish Sherrif Courts. The formality and verbal rituals were typical, from the way expert witnesses were sworn in to the technical language and rejection of slang. Even without visual on the trial I could “feel” the atmosphere, and it was harsh, restrictive, and formal. Furthermore, the combativeness was also what I would have expected, from the tension between a confident prosecution and a defence that was aggravated at the lack of evidence sharing, to the endless objections and challenges to witness testimony. The hierarchy of epistemic authority – what knowledge people were permitted to claim and what they weren’t – was clear and explicitly reinforced. It was easy to see, from this case study, why people would feel they were not permitted to “use their own words” or “tell their own stories” or why they would end up feeling these were “stolen” from them.

The trial of Derek Chauvin confounded many of these expectations. This trial and that of Adnan Syed may have been separated by nearly two decades and a differing degree of public interest, but one of my first observations was that expert witnesses were not sworn in ritualistically, their epistemic rights not declared formally, creating confusion of the capacity in which witnesses were testifying. Even lay witnesses were permitted to give their own evaluations of aspects such as intent and character – with no objection from the opposing side. Rather than unilateral dominance, lawyers yielded epistemic authority to lay participants, and emotional outbursts were kindly accepted. My handy diagram of epistemic authority in the courtroom that I had drafted following the Adnan Syed trial grew a long list of asterisks – "i before e except after c," and the exceptions piled on with the same abundance as with the old adage.

Still, despite the differences, in both cases there were clear examples of people attempting to say more and being denied, of attempted repairs being rejected, of information people gave being recast. In terms of "stolen stories," a case could still be made. The New Zealand trial then offered an entirely different perspective. There, invitations to free narrative testimony were abundant – but, contrary to expectations, often not taken. Repairs were not only accepted but encouraged; instances of self-deprecating humour abounded; confusion in interaction was embraced – in short, the rigid control described in the literature and witnessed even by me in other cases was greatly reduced.

I have also, throughout the thesis, used the term "resistance" to refer to legal-lay interaction – repairs and elaborations, for instance. This made sense, in the trial of Adnan Syed, given the tension, combativeness, and legal dominance, to say people were "resisting." But this implies a deliberate and strategic act. The exact same processes of repair and elaboration in the New Zealand trial did not have the same air of "resistance," given the way they were encouraged and embraced. My sense as a perceiver was simply that witnesses were fumbling around, searching for words that would be appropriate. They're finding their own way around the information, presented not with free space to narrate but with proposals for a story they have to accept, reject, or adjust, in the space of a split second. Do we not stumble in our own stories all the time, searching for the right words, even when faced with an attentive

and accepting audience? While interactionally it may still be fairly termed "resistance" (e.g. Hepburn et al., 2023; Humă et al., 2023; Sikveland & Stokoe, 2016) the term took a less activist cast as my research proceeded.

Finally, while I was expecting to have something to say about epistemic authority and resistance, I was not expecting the concept of tropes to emerge as so prominent; nor was I expecting, after they made their appearance, that understanding them and their role in the courtroom would be so complex. Seeing that they structure some trials was simple. Seeing that more subtle forms of them were pervasive was also relatively simple. Understanding the feedback loop in which they exist – suggested by facts yet organizing facts, constituting yet constituted by the context – was a bit more complicated. And the more I studied tropes the more I realized this was not something I found unique to trials – categorisation is in how we understand other people, the world, and ourselves, in many contexts.

If there is something I see as a common denominator in all these findings is that what people are doing, with their words and stories, with their repairs, with their tropes, is constantly "accounting" for something – for their actions, their interpretations, their beliefs. Indeed, it brings to mind Linde's (1993) language, when describing the social role of life stories and the creation of coherence. She offers as an example the commonsense observation that we do not tend to tell life stories to account for, say, our sex – except in cultures where an individual's sex is determined by actions in a past life, at which point these stories become apposite. In other words, we tell stories to account for aspects of our life that involved agency and choice, as if we are always on trial. In this sense, inside the courtroom or outside of it, we are always testifying.

It is not a leap, then, to say that if we are constantly accounting for ourselves with our stories then what is really driving people – in court and out – is the desire to be "understood." I have written about rights to speak, rights to be heard, even rights to have interpretations and opinions accepted in the decision-making process – "to be understood" can be argued to drive these; and the evidence for this is pervasive, if not always explicit. After all, what Conely and O'Barr (1985) found in small claims courts is that there were higher rates of satisfaction with proceedings because of the

greater space people had to simply express their thoughts and feelings; even if the judgment was not in their favour, their experience was better understood, and that is all people needed. Hall & Rossmanith (2016) described a situation in which an individual convicted of a crime was in a mental standstill, not because he ended up in prison but because he felt the legal story did not match how he thought of himself; he could not move forward because he was misunderstood. Even the abundant research on the way criminal proceedings may recreate and reinforce rape myths have at their core the fact that rape victim behaviour is routinely misunderstood (e.g. Ehrlich, 2016; Matoesian, 1993; Svongoro et al., 2012).

Indeed, certain modern reforms or entire criminal justice processes presenting as "alternatives" to traditional Western adversarial justice often focus on just this issue related to "understanding." Scholarly debates on their effectiveness aside (Chalmers et al., 2007; Lens et al., 2015; Sanders et al., 2001), many jurisdictions have incorporated the option for victims to present a statement to the court so the court and the perpetrator may *understand* the impact on their life (e.g. Ministry of Justice, 2013). Problem-solving courts are designed to allow individuals to tell their stories in more depth so that a crime may be *understood* in its complexity (Jeffries & Bond, 2014; Schaefer & Beriman, 2019; Wiener & Georges, 2013). And the case for restorative justice is to facilitate mutual *understanding* between perpetrator and victim through dialogue (Kirkwood & Hamad, 2019; McGlynn et al., 2012; Walters, 2015). Finally, I point out that Syed says he "just" wanted to tell his story. Regardless of the verdict the audience may declare, he implies, just to be understood would be enough.

But this proposal for the importance of "being understood" is not something that can so easily be put in a tidy metaphor like "stolen stories." It is a suggestion for something bigger than language, narrative, and power in the courts; something, indeed, that overwhelms the confines of a thesis –

> To lead you to an overwhelming question…
> Oh, do not ask, 'What is it?'
> Let us go and make our visit.
> (T. S. Eliot, 1917)

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