

**‘I hurt her. I hurt her bad. She’s dead.’:
An interdisciplinary exploration of interactions between
the state and the individual in legal settings**

Kirsty Elizabeth Blewitt

**Thesis submitted for the degree of
Doctor of Philosophy**

School of Education, Communication and Language Sciences

Newcastle University

June 2018

Abstract

This study contributes to analyses of courtroom interactions building on previous research (Cotterill, 2003; Matoesian, 2001) through its investigation of the multiple layers of narrative and interaction. This work builds on the methodological approach of Thornborrow (2002) and brings together micro-analysis (drawn from Conversation Analysis) and macro-level discourses. These discourses include narrative in legal settings (Ehrlich, 2015) and the Foucaultian concept of power relations (Foucault, 1982). The jury is conceptualised as a ‘silent participant’ (based on research by Carter (2011)) as opposed to Heritage’s (1985) conceptualisation of ‘overhearer’ and builds on research into the systematic format courtroom interactions (Atkinson and Drew, 1979).

Data are taken from two US murder trials in North Carolina, USA. The selected trials are from mid-2013 and early 2014. Both concern the same homicide, with the defendants being tried separately. This allows for a localised comparison of data, as the judge and prosecution team remain the same whilst the defence teams (and jury) are different.

This study analyses courtroom interactions from three areas of the trial process. These are: the cross-examination of the defendant from the trial of Amanda Hayes; opening statements across both trials; and interactions in the absence of the jury. This thesis shows how courtroom discourse operates at multiple levels within courtroom interactions. Using a three-level conceptualisation of agenda, macro-narratives and micro-interactions, this study will show how linguistic devices are employed by interactants to formulate their ‘version’ of events and how these linguistic devices are employed towards the jury. It will also show how broader social discourses are directly oriented to by interlocutors in the formation and presentation of their narratives. Particular attention is paid to the manner in which these (competing) narratives are made relevant, and their co-construction within micro-level interactions.

This thesis is dedicated to my parents, Elizabeth and Bill, for their unwavering and unconditional love and support; for always being there through the long days, late nights and early starts. To my brother, William, for his endless patience, the long walks and good advice – even when I wouldn't listen. And to my dogs, Amberley and Diesel, for the hugs and laughs when nothing else worked.

Without you this would have always remained just another 'what if'.

Acknowledgements

First and foremost, I would like to thank my supervisors, Peter Sercombe and Elaine Campbell, for all of their support and guidance throughout my PhD journey. No problem was ever insurmountable and their kindness is truly inspirational. Without them, this project would never have been possible and I am grateful for all of the help and advice they have given me; I could not have had better mentors.

I would also like to thank the staff of the Applied Linguistics section of the School of Education, Communication and Language Sciences for all of their encouragement and advice, and the administration staff. Alina Schartner, Tony Young and Adam Brandt, I would like to thank for their advice and direction in learning to not only write a thesis, but to prepare for life afterwards.

I am grateful to my fellow PhD students across the campus and in 2.41, whose strong community spirit was of more support than they could possibly realise; particularly Yoonjoo, Anna, Khadija and Vesela. I would also like to thank all of the members of the Micro-Analysis Research Group (MARG) for their suggestions and comments as this project progressed.

I'm thankful to the members of the Germanic Society of Forensic Linguistics for their feedback and continued advice and support.

Special thanks to all of my friends, particularly Michelle, Sean, Donna, Graham and Richard who gave up more of their lives than anyone should listening to me ramble my way through the highs and lows of this project.

Finally, inexpressible thanks go to my parents, Elizabeth and Bill, without whom I would never have had the courage to attempt this; my brother, William, for his calming influence and listening ear; and my dogs, Amberley and Diesel, whose capacity for love knows no bounds.

Table of Contents

List of Figures	vii
Introduction	1
Chapter 1: Literature review	7
1.1 Overview	7
1.2 Key terms	7
1.2.1 <i>Communication, interaction and institutional settings</i>	8
1.2.2 <i>State</i>	9
1.2.3 <i>Individual</i>	10
1.3 Defining law	11
1.4 Discussing power	13
1.4.1 <i>Foucault: power relations</i>	14
1.4.1.1 <i>Foucault: power-knowledge and truth claims</i>	15
1.4.2 <i>Power relations in court</i>	16
1.4.2.1 <i>Asking questions</i>	18
1.4.2.2 <i>Giving answers</i>	24
1.5 The public-private dichotomy	27
1.5.1 <i>Public state and private society: a ‘clear’ divide</i>	29
1.5.2 <i>Cameras in court: the United States of America</i>	34
1.5.2.1 <i>The ‘Media Circus’</i>	38
1.5.2.2 <i>Whose recording is it anyway?</i>	41
1.5.3 <i>Section summary</i>	43
1.6 Final remarks on linguistics and court research	43
1.7 Narrative in courtroom research and opening statements	46
1.8 Chapter summary	50
Chapter 2: Research questions and methodology	52
2.1 Introduction	52
2.1.1 <i>Overview of trial narratives</i>	53
2.1.1.1 <i>Background to the custody narrative</i>	54
2.1.1.2 <i>The events of 13th July and its aftermath</i>	56
2.1.1.3 <i>Summary of salient evidence referred to in this study</i>	61
2.1.1.4 <i>Summary of key witnesses and related testimony</i>	65
2.2 Research questions	68
2.2.1 <i>Overview of chapter contributions to research questions and methods applied</i>	71
2.3 Approach to narrative	75
2.4 Summarising use of Foucault and links with <i>legitimacy</i>	81
2.5 Micro-analysis and approach to discourse	84
2.6 Application of linguistic and narrative analysis methods	96
2.6.1 <i>Linguistic analysis and identifying features in talk</i>	97

2.6.1.1	<i>Data selection</i>	97
2.6.1.2	<i>Applying linguistic analysis</i>	97
2.6.2	<i>Narrative analysis, coding data, and identifying themes</i>	101
2.6.2.1	<i>Narrative in discourse</i>	101
2.6.2.2	<i>Narrative coding and the identification of themes</i>	103
2.7	Characterising the jury and its role in the adversarial criminal trial	105
2.8	Data collection	108
2.9	Ethical considerations	109
2.10	Final remarks on methodology and summary of original contribution	110
 Chapter 3: Analysis of Amanda Hayes' cross-examination		 112
3.1	Introduction	112
3.2	Self-selection during cross-examination	114
3.2.1	<i>Background</i>	114
3.2.2	<i>The use of self-selection in Amanda Hayes' cross-examination</i>	115
3.2.3	<i>Section summary</i>	122
3.3	Retaining the floor	125
3.3.1	<i>Background</i>	125
3.3.2	<i>Reasserting institutional norms</i>	126
3.3.3	<i>Retaining the floor and resisting the question</i>	135
3.3.4	<i>Section summary</i>	146
3.4	A detailed analysis of the final stages of re-cross examination	148
3.5	Discussion	159
3.6	Chapter summary	165
 Chapter 4: Analysis of opening statements		 167
4.1	Introduction	167
4.1.1	<i>Restating the theoretical framework</i>	170
4.1.2	<i>The case of the state</i>	174
4.1.3	<i>The case of Grant Hayes</i>	176
4.1.4	<i>The case of Amanda Hayes</i>	177
4.1.5	<i>Final remarks on narrative overviews</i>	178
4.2	Analysis of opening statements	179
4.2.1	<i>Introducing the narrative: analysis of the introductory three minutes of all opening statements</i>	180
4.2.1.1	<i>The openings of the prosecution</i>	180
4.2.2	<i>The openings of the defence</i>	197
4.2.2.1	<i>The opening statement for the defence in the trial of Grant Hayes</i>	198
4.2.2.2	<i>The opening statement for the defence in the trial of Amanda Hayes</i>	206
4.2.2.3	<i>Discussion</i>	218
4.2.3	<i>Comparative analysis of the four opening statements</i>	221

4.2.3.1 <i>Down the rabbit hole: the importance of time and location</i>	221
4.2.3.2 <i>The Talented Mr Ripley and his Stepford Wives: agency and responsibility in gendered societal roles</i>	229
4.2.3.3 <i>Reframing evidence and invoking the voice of the victim</i>	234
4.2.3.4 <i>Just the facts: the characterisation of law enforcement and the judicial process</i>	237
4.2.3.5 <i>He said, she said: epistemic positioning and claims to knowledge in the defence narratives</i>	241
4.3 Chapter summary	244
Chapter 5: Jury absence	249
5.1 Introduction	249
5.2 ‘If it says so, then it is’: the vocalisation of circumstances	251
5.2.1 <i>Reason and ruling</i>	252
5.2.2 <i>Orientation to knowledge and understanding</i>	258
5.3 Resolving issues within the legal framework	262
5.3.1 <i>‘Where are we now’: the experiment that did not happen</i>	263
5.4 Introducing the previews	286
5.5 Final remarks	294
Chapter 6: Conclusions	298
References	305
Appendix A: Transcript of Amanda Hayes’ re-cross-examination	315
Appendix B: Tables of themes from opening statements	319

List of figures

Figures

Figure 2.1 *Visualisation of conceptual approach*

69

Introduction

This thesis presents an interdisciplinary analysis of two trials that took place in mid-2013 and early 2014 in North Carolina, USA. The defendants in these trials were Grant and Amanda Hayes (respectively), who were married to each other at the time of the crime. Both were charged with the first-degree murder of Laura J. Ackerson, a 27-year-old woman who had two young children with Grant Hayes. Grant Hayes was found guilty of first-degree murder and sentenced to life in prison without parole; Amanda Hayes was found guilty of second-degree murder and was sentenced to approximately 13-16 years in prison, with credit given for time served. The crime of homicide took place in July 2011, with the trials taking place approximately 2-2.5 years later. For further information on the ‘story’ of the crime, please see Chapter 4, Sections 4.1.2-5.

The literature used in this study is drawn from the fields of both linguistics and criminology, exploring the use of narrative and linguistic devices in courtroom interactions and unpacking how interactions between the state and the individual unfold within the trial genre. The data involve the same crime, but the defendants have been tried separately. This allows for a localised comparison within the criminal trial setting as much of the evidence, the prosecution team and judge are the same, with the defendant and defence teams changing.

This study is divided into five main sections followed by a conclusion. These sections are the Literature Review; Methodology; Cross-examination of Amanda Hayes; Comparison of Opening Statements; and Interactions in the Absence of the Jury. A more detailed summary of each section is provided below.

In Chapter 1 an overview of relevant literature and underpinning concepts is explored. This includes previous research into courtroom settings, which range from the analysis of the

O. J. Simpson trial (Cotterill, 2003) to discussion of identity and the use of language and discourse in rape trials (Matoesian, 1993; 2001). In discussing courtroom research, this is divided into general courtroom research within the (forensic) linguistics field and narrative analyses of courtroom discourse. In reference to criminological research, the concept of the courtroom as a public space and what is meant by the terms public and private are also unpacked, as understanding the attribution of public and therefore widely viewable (or observable) impacts upon the lens through which one views interaction (as the interactants themselves are aware of being observed). Within this the blurred lines between public and private space and how these discourses can intermingle is also discussed, as courtrooms are an arena in which what may have been construed as ‘private’ actions can become matters of ‘public’ interest.

Central to the theoretical foundation of this work is the concept of power relations as put forward by Foucault (1982). The literature review will also unpack power relations and what is meant by power in this thesis; delineating between theories of power as something possessed as opposed to something that is relational and negotiated within a discursive space. Power within courtroom research will also be explored, as this additionally feeds into the main thrust of this work.

Following this, Chapter 2 will outline the research questions, methodology, data collection, and ethics of the project. The interlinked and interactive three-tiered concept of courtroom interactions employed by this thesis will be unpacked, exploring how the theoretical approaches utilised feed into the relationship between micro-level interactions, macro-level narratives, and the overall agenda of participants in this institutional setting. Theories of narrative will be unpacked incorporating links between story-telling as a literary practice and as a co-constructed interaction. Micro-analytical principles drawn from Conversation Analysis will also be critiqued, drawing distinctions between different

approaches and uses of Conversation Analysis and its approach to context. The tension between Conversation Analysis and its use in discussing power will also be critiqued and the overall approach of this project as drawing together macro- and micro-level perspectives will be justified. The methodology will also provide an explanation of ‘legitimacy’ as borrowed from criminological research and how this can be interwoven with the Foucaultian approach to power relations and self-regulation through discipline. This will be done through utilising the dialogic approach to legitimacy as discussed by Bottoms and Tankebe (2012).

The data collection process is outlined, with the sources of data stipulated, following which the ethical observances and practices of this study are also stated.

Chapter 3 introduces the first analytical chapter of this thesis. This chapter discusses linguistic features of from the cross-examination from the trial of Amanda Hayes. As the only defendant to take the stand, it was of analytical interest to observe the linguistic features within this interaction, as well as the co-construction of conflicting narratives within the discourse. Linguistic features discussed in this chapter include self-selection on the part of the defendant; retaining the floor; and resisting questions within the institutional question and answer context. Further to this, a detailed analysis of the final two minutes of the re-cross examination are undertaken, showing the interactive tension between the two adversarial parties and the means through which these conflicts of interest manifest within the discursive space. Findings include the furthering of Foucault’s theory of power relations (1982) and Thronborrow’s (2002) approach to power within discursive space as being a negotiation separated to an extent from institutionally legitimised authority.

This is followed by Chapter 4, which discusses the four opening statements delivered across both trials. The narratives of all sides are explored in the context of their being introduced to the jury as the stance from which they will make their cases. A key feature of

this chapter is that both prosecution opening statements were delivered by the same attorney, with differences in approach and contextualisation highlighted as the focus shifts between the two trials. A detailed analysis of the opening three minutes of each statement is explored, focus being on linguistic structure and the topics oriented to by each attorney in their introductions to the opening statements. This also allows for comparison in performance and style of delivery between speakers, giving shape to the form as well as content of the utterances. Following this is a cross-comparison of topics and themes emerging from all four statements overall.

Narrative features of the opening statements are explored, particularly the use of time and space. Narrative time is viewed through Ricoeur's (1980) theory, viewing narratives as beginning at the end and temporal aspects being retrospectively applied to otherwise disparate events. Labov's narrative framework is mentioned, but is not explicitly used (for rationale, please see Chapter 4).

In addition, the orientation by the speakers to aspects of gender, agency and the conflicting characterisations of law enforcement are also detailed. These discourses are explored as part of the analysis due to their direct references within the data, bringing together the macro-level theoretical aspects of these discourses as made relevant through their emergence within the micro-level interactions. This supports the use of macro-level discourse as a resource that is relevant to and made relevant within interactive space by participants. This also links with the overall three-level concept of agenda, macro-, and micro-level elements of courtroom interaction that are interlinked with one another in a reflexive relationship whereby each aspect influences and is influenced by the other (as detailed in Chapter 2).

Findings in this chapter include the theoretical applications of Ricoeur's approach to narrative form in courtroom discourse; the cross-comparison of four opening statements regarding the same crime event over two different criminal trials (as opposed to previous research comparing criminal and civil trials concerning the same event [Cotterill, 2004]); and the additional contributions to the study of opening statements in courtrooms (Heffer, 2005; 2010), which constitute an area less extensively researched than their closing argument counterparts.

The final analysis chapter in this study concerns the interactions in the absence of the jury. This chapter focuses on the role of the judge and the orientation to his role in these proceedings. Further to this is the impact of decisions upon the narratives deemed acceptable to be presented to the jury. These data are of relevance to the public-private discussion outlined in the literature review, as the viewing public has access to information that the jury does not. This thesis does not make this observation to criticise these decisions, as the issue of prejudice within a trial is a serious matter to consider and entirely removed from the focus of this study.

Findings for this chapter include the formulations of judgements in sustaining or overruling an objection; the orientation towards the judge's knowledge and understanding (and to relevance and the rules of evidence); and the active role of the judge in bounding what can and cannot be said in witness testimony through a 'preview' of the witness' narrative as elicited through a preliminary examination-in-chief and (where necessary) cross-examination. The findings of this chapter address the research focus of this study in exploring the role of the judge as an interlocutor whose role is explicitly positioned as acting on behalf of the concept of the 'state' (see Chapter 1 for definition). The concept of power relations as interactive and relational is explored throughout all three sections, with institutional restrictions vis-à-vis discursive negotiations expanded upon, as exemplified through a

detailed analysis of interactions between the judge and defence counsel when the latter attempts to have a prosecution witness make a phone call in court. A detailed analysis of this sequence was selected due to its marked presence in the data as an ‘unusual’ occurrence (and the only such instance across both trials comprising this dataset).

In terms of the narrative thread running through all three chapters, the role of the judge in determining acceptable evidentiary support and how this can influence the narrative at the micro-level (and thereby its potential actualisation at the macro-level, consequently impacting upon the narrative’s perceived capacity to fulfil the agenda) is of relevance to this study.

This study does not attempt to assert that findings herein are generalisable beyond the data analysed, but instead puts forward qualitative findings within the localised comparison of these two trials. Having a crossover in participation has allowed an in-depth analysis where evidentiary support is highly similar, showing how the institutional interactions are reflexive to circumstance and what devices are utilised therein. Drawing on an interdisciplinary approach, this study also provides a theoretical contribution to both criminological and linguistic work in this field.

Chapter 1: Literature Review

1.1 Overview

This literature review provides an overview of the definitions of key terms applied throughout this thesis and the context in which they are applied. In addition to this, key themes will also be addressed, and include; defining and applying the term law; how power has been addressed throughout previous research; the issues inherent in discussing public and private space; and other relevant features highlighted in previous research.

In addition to identifying and evaluating the salient points of previous literature and outlining the core elements of this thesis, the sociolinguistic approach applied in this study shall also be outlined as warrantable and necessary to this research. As this approach is the lens through which the subsequent data is viewed, it is important to this study that this is outlined clearly.

1.2 Key terms

In this section, some of the key terms that are used throughout this thesis will be described in accordance with their application in regard to this project. These include communication and interaction, the state, and the individual.

1.2.1 Communication, interaction and institutional settings

Communication, intentionality and interaction have been linked together in this definition, as communication is viewed as an interactive process (Beach, 2013). The approach to communication utilised in this project draws on theories of sociolinguistics and Conversation Analysis and directly refers to these theories as applied to institutional settings. In this communication is not just a means through which information is passed along, but is talk-in-interaction, whereby participants ‘pursue various practical goals’ through this medium (Drew and Heritage, 1992: 3). In referring to talk-as-interaction in specifically institutional settings (such as the courtroom), conversation is usually subject to restrictions, reducing the interactional resources available to participants based on the norms of that interactive framework (Heritage and Clayman, 2010: 17).

In defining what is meant by an institutional setting, this includes any setting that applies a restricted interactional framework distinct from ‘ordinary’ conversation. It is recognised that this boundary can be difficult to distinguish, for example, establishing the point at which a business meeting goes from an ‘ordinary’ conversation into a professional interaction, or a doctor-patient interaction moves from greetings to the focus of the visit (Ibid). Nevertheless, for the purposes of this analysis, with a specific view towards courtroom interactions, the institutional setting here is defined in terms of the participants’ engagement with and orientation to the institution’s interactional framework (Heritage and Clayman, 2010; Atkinson and Drew, 1979).

1.2.2 State

In this study, the state is not viewed as a central entity, but rather as a term that encapsulates a myriad of different discourses that fall under the perception of governance. Within this thesis, the state is not viewed as a single sovereign entity, but rather as a construct that is perpetuated through nodes of power/knowledge and legitimised through society's own dissemination and propagation of discourses and truth claims (Gordon, 1980; Schirato *et al*, 2012). Discipline and its maintenance are part of a self-regulatory system upheld by legitimised institutions, thus creating a greater sense of hegemony amongst the population with punishment being tied to deviations from the established and perpetuated norm (Foucault, 1977; Schirato *et al*, 2012). This is most assuredly not to say that criminal activity is justified or acceptable in any way (particularly as regards the research focus of this thesis), but seeks to identify the state not as a unified entity, but as a number of discourses (interlinked and otherwise) that are granted legitimacy through societal acceptance of claims to knowledge, hierarchy and veracity. The ethnomethodological approach of Garfinkel (Heritage, 1984) is relevant here as, by the view of this study, the state is contextually created and contextually renewed within society through interaction and ritual practice.

Despite this overall view of the 'state', the use of the term *in situ* becomes somewhat more complex when applied to legal interactions. In the context of trial settings, the term 'state' takes on a number of explicit and implicit roles. As the data used is from the United States of America, the 'State' means the representation of the place and its governing body, which is, in turn, a representation of the public. For example, in the United Kingdom the parallel would be that of the Crown, as crimes are not against only the victims, but also the whole community and thereby imply both the place and the governing body representing the people (Smith and Natalier, 2005). The prosecutors in this data also refer to themselves as

representatives of the ‘State of North Carolina’, thus reinforcing the embodiment of the community of North Carolina as the ‘side’ against which a wrong has been committed as opposed to a civil case between two individuals (expecting civil cases involving prosecutions against the ‘state’ as in the institution of governance).

In separating the state from the community, system of governance, and geographical location, it is necessary to point out that the term state can take on a somewhat anthropomorphised role in which its existence as a whole and non-disparate entity could be implied. Despite this somewhat more Parsonian use of the term (Heritage, 1984), in such occasions as this arises, this project treats the term as an overarching encapsulation of said institutions and discourses as outlined previously. This usage is drawn on as a means through which such imagery and appearance of cohesive unity can be used within interaction to create and perpetuate the concept of an ‘entity of the state’, much as ‘law’ can be used to imply unification within a multitude of different discourses (see Section 3, this chapter).

1.2.3 Individual

The reference to the term ‘individual’ in this setting is used to represent any person not explicitly viewed as a representative of the ‘state’ in this setting. To this end, all those excepting the prosecution (‘representing the state of North Carolina’), the judge (as the adjudicator presiding over these proceedings) and court staffers (such as the court reporter) are viewed as individuals within the context of this trial and not as representatives of the court, and by extension, the state. The reason this does not include police officers who give testimony and other such individuals is that within the context of the trial (excepting civil cases) they do not claim to act as representatives of the ‘state’, but are questioned as individuals as to their own actions within the context of the case (such as what *they* did, what

procedures *they* followed, what *they* witnessed). Whether these other institutional roles are drawn upon to support truth claims or add weight to the veracity of testimony is a matter discussed within the analysis section and is not predetermined at the conceptual level.

1.3 Defining law

When discussing ‘law’ and all that is considered to be ‘legal’, it is important to recognise the context in which these terms are being utilised and what they encompass within them. This study does not intend to oversimplify the complexities inherent in these terms, but does mean to supply only a brief summary of their intended use, whilst still acknowledging that this does not wholly reflect the nuanced use often attributed to these terms (for example, ‘customary law’, whereby it is not an ‘official’ law but is recognised within the community).

Within the terms ‘law’ and ‘legal’ there are a multiplicity of discourses which then become bounded by association with the concept of the justice system (Smart, 1989). For example, within law one might discuss aspects such as family law, which in turn could encompass matters ranging from custodial rights to divorce. While in individual cases these issues might not necessarily be unrelated, in terms of discourse, to view the separation of persons and the custodial arrangements for a child as being bounded together could present an argument for *post hoc ergo propter hoc* and not take into account other matters such as adoption. Through this example, one can see how even one category within law can represent a number of discourses, much less the term ‘law’ alone. Consequently, this thesis draws on Smart’s (1989: 4) definition, in which:

‘... law constitutes a plurality of principles, knowledges, and events, yet it claims a unity through the common usage of the term ‘law’.’

In this study, the same conceptual outlook is applied to associated terms such as ‘legal’ whereby what is considered to be legal are those discourses which are linked with the concept and context of law and its associated system of governance.

Conceptually, when discussing the approach being taken to law and the legal system, this thesis also draws on Foucaultian interpretations of the law when addressing courtroom interactions. Firstly, the concept of trial proceedings in the current age of increased interconnectivity and social media produces a new space in which the public connects with the courtroom processes (see Section 5, this chapter). Even without these developments, those testifying were largely doing so in a public arena (exceptions such as vulnerable witnesses notwithstanding). This allows for the concept of the panopticon and Foucault’s approach to self-regulation and surveillance to be drawn upon.

If, as posited by Foucault, society is increasingly surveilled and, through this, our own behaviour is believed to be permanently under scrutiny by an observer at any given time then it could be argued that trials are a form of surveillance, particularly those that are televised and thereby have an unknown number of observers at any given time. Taking it a step further in a trial context, the jury are normally present and could be looking at any of the key persons of the trial at any given moment. Therefore, although courtrooms are already bound by institutional rules and norms, they are also producing and perpetuating the ‘diffuse’ disciplinary power theorised by Foucault (Golder and Fitzpatrick, 2009).

This study also tends towards Golder and Fitzpatrick’s (2009) approach to Foucault and the law in that, rather than excluding the law from his approach (see Hunt and Wickham,

1999), it remained a part of his theoretical approach. Golder and Fitzpatrick outline two dimensions to Foucault's law: firstly, 'a determinate law which expresses a definite content'; secondly, law as responsive, illimitable and 'in excess of its determinate self', forming itself through... encounter[s] with... what lies beyond itself'. In this, the law is considered to be rigid and definite within society, and yet also responsive and adaptive to external influences, thus also having an element of self-resistance that forces the law to challenge its 'position', 'content' and 'being'. These two dimensions are not viewed as opposing interpretations of the law, but as 'two modalities of the very same law'. (Golder and Fitzpatrick, 2009: 71-2).

The need to establish this conceptual approach towards law is necessary, as it links with the approach taken towards the state, the individual and power relations, all of which are of central relevance to this thesis. The proceedings of the trial and the enactment of legal requirements are all linked within the underlying theoretical approach through the concept of the state as a discursive construct, to the individual, to power as relational rather than absolute (see Section 4).

The following section will provide an overview of the approach to power taken within this thesis and discuss it within the context of previous literature regarding courtroom settings.

1.4 Discussing power

The pattern of adaptability and fluidity as a philosophical and theoretical grounding for this study should now be evident as a theme that will continue throughout this thesis. Already apparent, this theme will be revisited as a linking mechanism between the theories of

defining law (as already discussed), the approach this study takes towards power, and the public-private dichotomy (discussed in below section 5).

Having discussed the definition of law that shall be utilised throughout this thesis, this section shall address the issue of power drawing on Foucaultian ideas of power relations, power-knowledge and truth claims. Further to this, the concept of power within courtroom interactions will also be discussed, particularly with reference to Conley and O'Barr (1998) and the works of Matoesian (2001; 1993). This will provide an outline of both the theoretical standpoint of this thesis with regards to power relations and the approach used by previous studies this thesis will use to inform its analysis vis-à-vis power and the courtroom data under analysis.

1.4.1 Foucault: power relations

For Foucault, power was not something which could be possessed by any entity, but was rather a negotiated state; a 'complex flow' that changed 'with circumstances and time' (Schirato, Danaher and Webb, 2012: xxv). Foucault posited that in order to understand power, one would need to also understand resistance. This was because the two forces interacted with one another and each held the other as a prerequisite in order to exist (Foucault, 1982: 790). Foucault also put forward that in instances such as slavery, this was not a manifestation of power relations but of 'physical determination' (Ibid: 790). The theory behind this is that power is only exercised over 'free subjects' and that those who are physically constrained, therefore, cannot exercise the 'recalcitrance of will' or 'intransigence of freedom' necessary in order to truly create a power relation (Ibid: 790).

In describing power as a dynamic relationship not possessed by any single entity, this links with the definition of the state (provided in section 2.2), whereby the state is not a single

entity with individual agency, but an umbrella term encompassing many different political and social discourses. This was a rejection by Foucault of the Marxist traditional view of the state, moving away from macro-level views of power and focussing instead on the ‘small powers’ (Hunt and Wickham, 1994: 16) As there is, by definition, no single and unified entity that is the state to enact agency it therefore cannot possess power as a thing. Subsequently, power relations are a form of micro-power, negotiated at various levels between individuals and groups within society (Hunt and Wickham, 1994: 16). This thesis also puts forward that the institution of criminal justice (being representative of and enacting the discourses of law and perpetuating the discourses that create the larger political state) performs relations of micro-power in the courtroom. This validation and recreation of the status attributed to various quarters in the discharge of a trial (such as the office of the judge, the respect owing to the courtroom, inter alia) can be argued to show how larger discourses are accepted and reproduced through individuals with agency.

1.4.1.1 Foucault: power-knowledge and truth claims

Having outlined this relationship of power as a negotiated state, it would also be reasonable to consider Foucault’s theory concerning the link between power and knowledge. As outlined above, in order for power to be exercised it must exist in a relationship with resistance, however; Foucault also discusses another contingent relationship for power, which is its link with knowledge. For Foucault, the relationship between power and knowledge is associated with discourse; in which discourse allows the articulation of a particular view (often associated with – though not limited to – medical, political or academic discourse) that joins together power and knowledge (Schirato *et al*, 2012: 48). An example of this would be where the ‘expert knowledge’ of medical practitioners is used to influence a power relation

(for example, between a parent and child), as the parent can use the discourse (which has a higher status attributed to it courtesy of its source) to exercise prohibitions and monitoring over the child, thus resulting in a power relation (Ibid: 48-9).

Power and knowledge are conceptually intertwined as one implies the other. According to Foucault, power produces knowledge; yet this is not in the sense that knowledge is inherently subordinate to power. Knowledge is also interlaced with power, as to refer to a field of knowledge is to induce a power relation. (Foucault, 1977: 27). In taking a Foucaultian approach, power is ‘productive rather than repressive’ (Schirato *et al*, 2012: 48). Therefore, the relationship between power and knowledge is one whereby knowledge produces power and power produces (and gives weight to) knowledge. This allows fields of knowledge and discourses to make claims of truth, as they are put forward by institutions as a vehicle and expression of power, both promoting and being promoted by the discourse (Hunt and Wickham, 1994: 11). These regimes of truth are consequently in a ‘circular relation with systems of power’, which both maintain and generate them (Gordon, 1980: 133).

1.4.2 Power relations in court

Various studies have addressed power in the courtroom, including Conley and O’Barr (1998); Matoesian (2001; 1993); Cotterill (2003); and Ehrlich and Sidnell (2006), amongst others. In this section, a brief overview of research on power in the courtroom will be presented, followed by a discussion on the question-answer format of courtroom interactions.

Approaches to power include not only the linguistic practice of questioning, although this is a large feature, but also incorporate ideological approaches. Gender discourses, for example, have been a part of this field of work through research into rape and sexual crimes. The concept of patriarchal frameworks and the discursive construction of gendered ‘norms’

and interactive practices have been investigated by a number of researchers (see Ehrlich, 2001; 2016; Cotterill, 2007; O'Barr, 1982; Matoesian, 1993; 2001; inter alia). Eades (1996; 2004), Moeketsi (2004) and McCaul (2011) have produced work on cultural differences in language in legal settings and how these impact upon the interactants, influencing power relations and the ability to use discursive resources.

Ainsworth (2011) highlights some of the entrenched institutional discourses within the multiplicity that are encapsulated within law regarding perceptions and the ability to change these. As mentioned previously, the view of this study towards power is that it is relational, and that law is both reflexive and determinate through Golder and Fitzpatrick's (2009) reading of Foucaultian theory. In this regard, that there is a reflexive shift to move from the concept of a 'reasonable man' to 'reasonable person' within the legal lexicon, does not, in Ainsworth's view, demarcate a definite shift towards gender neutrality, but may only serve to 'impose a superficial mask of purported universality onto the unchanged behavioural norms and values' of that same 'reasonable man' (Ainsworth, 2011: 179).

This same concept of wider social discourse can be applied regarding research into 'rape myths' and how it is perceived one 'should' behave in such a circumstance (for example, fighting one's attacker vehemently). These discourses are then perpetuated within the courtroom, despite research to the contrary (Woodhams *et al*, 2012).

Consequently, research into power within the courtroom draws on a number of different fields of study and studies on discourse have referred to a range of interdisciplinary contexts when exploring this matter.

As mentioned above, a common thread in research on power in the courtroom is the amount of 'power' attributed to the lawyers asking the questions versus the witnesses answering (be they lay or expert witnesses). The issue of power and control in courtroom questions is important to address, as the adversarial process utilised in Anglo-American

courts relies largely on the use of this adjacency pair. The lawyer is in the position whereby they can ask the question; allowing them to direct the topic and flow of the interaction, and to restrict or expand upon the responses provided by the witnesses. In order to address this topic fully, this segment shall be divided into two parts, the first addressing the issue of asking questions in adversarial courtroom settings, and the second examining the responses. Though these two issues represent facets of the same whole, both halves deserve a good deal of attention; as indicated by Ehrlich and Sidnell (2006: 656), a lot of research has investigated the question element of this interaction, whereas it is only recently that studies have considered the power potentially exercised by the witnesses in this prescriptive setting. Consequently, the following segment discusses: the theory behind questioning in more general terms, outlining the types of questions and the answers normally associated with them; questioning as it is practiced in the courtroom; and the power associated with such practices. The subsequent segment outlines court rules on answering questions; the restriction on narrative in court; and the impact this has had on those who have provided testimony.

1.4.2.1 Asking questions

Questioning is largely considered to be a regular, everyday activity. As has been alluded to, this is not necessarily the case when applied to courtrooms. Types of question become very important, with lawyers being trained in which types of question to use and which to avoid during witness testimony. This is understandable as asking a question where the answer is unknown to the lawyer or the witness may elaborate and may well prove detrimental to the case they are attempting to argue. Lawyers representing clients in court under the adversarial system are not attempting to present *the truth*. Indeed, if we continue to

follow Foucaultian principles, a truth that is rational and removed from power relations is singularly unachievable. Rather, both sides are attempting to persuade the jury that *their* version of the truth is the most plausible (Henderson *et al*, 2016; Cotterill, 2003).

In the adversarial system employed in the UK and the USA, the burden of proof rests upon the prosecution. This means it is the role of the prosecution to present a version of events in which the accused is guilty 'beyond all reasonable doubt' (McBarnet, 1981). The defence team typically has to refute this evidence by showing its validity to be in question; providing a different version as to how this evidence may have occurred; or provide alternative evidence, the conflict produced by which brings the original evidence under dispute (Ibid). In the case of witness testimony, presenting the witness as unreliable or placing a different emphasis on their account can alter how this evidence may be viewed by the jury. In order to do this, lawyers are trained in the art of questioning (O'Barr, 1982).

It is important to note the difference between questioning tactics employed in direct examination (or examination in chief) versus those of cross-examination. Direct examination is where the witness is questioned by the lawyer who represents the side they are the witness for (an example being Oscar Pistorius, as the defendant, being questioned by the defence first). Cross-examination is where the opposing counsel questions the witness and is the more adversarial of the two as the witness is potentially more damaging to their case (Henderson *et al*, 2016).

Questions can be categorised at many levels, the most fundamental of which are open and closed questions. As the titles imply, open questions allow for longer answers driven by the respondent, whereas closed questions place a high restriction on the form (and even length of the answer). For example, Conley and O'Barr (1998: 24) describe these questions in terms of the WH- questions and tag questions. WH- questions consist of 'why, where, when, which, who, what and how', and are considered to be at the least controlling end of the

questioning spectrum as they do not necessarily impose a restriction on the form an answer can take (Ibid: 24). In contrast, ‘tag questions’ are often a statement followed by a question device attached to the end (Ibid: 24). For example, the question ‘[y]ou were attracted to [him], weren’t you?’ is a tag question, whereby the witness is being asked only to confirm the validity of the question and is not invited to add any additional information or narrative (Matoesian 1993: 154 in Conley and O’Barr, 1998: 27). Indeed, this example is used by Conley and O’Barr (1998: 27) to exemplify how a witness may attempt to resist the question, but is subsequently unable to due to the lawyer’s ability to continue framing and re-framing the question. They also indicate the extent to which lawyers may utilise elements of the witness’s response in order to do this and reach their goal.

In direct examination, therefore, it is more likely to see open questions that invite narrative from the witness or encourage elaboration. In contrast, cross-examination tends towards more tightly controlled questions that can be used to mitigate the damage done by the original testimony (Henderson *et al*, 2016).

Sidnell and Ehrlich (2006: 658) also discuss the concept of tag questions and have studied how presuppositions within questions are more damaging to a witness than a ‘psuedo-proposition’. Taking the above example (as done by Ehrlich and Sidnell), the witness can still deny the proposition being made. In contrast, the presupposition is an element of the question that the respondent cannot challenge within the restrictions placed upon their ability to answer fully. A presupposition is where a fact is asserted within a larger statement or question, for example, ‘John didn’t hit Rosie’ contains the presupposition that someone did hit Rosie, it just was not John (Ehrlich and Sidnell, 2006: 659). In questions, these presuppositions can be particularly difficult for respondents to refute, for example:

49 M: [knowing what you know no:w (.)
50 do you have any **regret** in not interve:ning
51 in the business plan p-process and saying:
52 you're go:ing: too fa:r.

(Ibid: 666, emphasis in original)

Though this example shall be revisited when looking at how questions may be answered, this question illustrates how a damaging presupposition may be inserted into a question and yet (should the respondent comply with the corresponding answer form) not be easily challengeable. The main thrust of the question is the issue of regret, which is framed in terms of a yes/no question. The presupposition is that the respondent did not intervene. Given the form of the question, if the respondent addresses the presupposition (as this respondent does), he is not answering the question (does he 'have any regret') (Ibid: 666-8). Consequently, where this method of questioning is used, respondents may be driven to accept a presupposition which may place a different twist on their testimony.

Cotterill (2003: 141-2) refers to embedded questions and the potentially convoluted form that such questions can take. In one example she shows how a question put to an expert witness contained 'five separate propositional elements', to which the witness was expected to (and did) answer with a simple yes or no. Cotterill's observations during the O. J. Simpson trial were that should witnesses attempt to separate out these components and address them individually, they were often directed by the judge to 'answer the question' (Ibid: 142). She also discusses the questioning lawyer's ability to frame the content of the answer expected from the witness. This can be done in the form of openly stating what is to be omitted ('...without telling us what she said...'), as well as directing the respondents to monitor their

own responses ('[b]eing very careful with your answer...') (Ibid: 144-5). The ability of the lawyer questioning to continually frame and reframe the question until they reach the desired answer appears to be a generalised theme in cross-examination; in particular when the opposing counsel is attempting to shift the witness testimony away from damaging implications or discredit it entirely. This can also be seen in the way questions can also be used by lawyers to enhance a point or reiterate information already stated in order to draw further attention to it. For example:

- 1 Q: But when you first discovered it [the tape] during the first
2 week of March, who in the robbery/homicide division did
3 you talk to about this.
- 4 A: Nobody.
- 5 Q: You didn't tell anybody at first?
- 6 A: No.

(Ibid: 147)

As Cotterill (2003: 147) illustrates, asking the question again appears to serve no other purpose than that of a rhetorical device used for emphasis rather than gaining additional information. The presupposition that he should have told somebody makes the declaration of having informed nobody appear all the more injurious (Ibid: 147), thus linking with the work of Ehrlich and Sidnell (2006) outlined above.

Taking the concept of reframing a matter to suit the purpose of the questioner, the issue of rape trials is one instance whereby this practice may result in the revictimisation of the victim. Though it should be borne in mind that the purpose of a trial is to ascertain guilt (and not presume it), the cross-examination of rape victims can result in revictimisation

through the regular practices of cross-examination (Conley and O’Barr, 1998: 36-7). Conley and O’Barr (1998: 36-7) argue that this particular realisation of power through linguistic practice is one which is unique to rape trials, however; the mechanics under discussion are generalizable (even if they lack the impact that may be attributed when used in the circumstances of a rape trial).

Lawyer: Did have your pantyhose on when you got to the parking lot at the Kennedy home?

Witness: Yes.

Lawyer: Did you have your pantyhose on in the car, in the parking lot?

Witness: Yes.

Lawyer: Did you have your pantyhose on when you got out of your car?

Witness: I’m not sure.

Lawyer: Did you have your pantyhose on when you went into the house?

Witness: I’m not sure.

Lawyer: Did you have your pantyhose on in the kitchen?

Witness: I don’t remember.

(Extract from Conley and O’Barr, 1998: 36)

This reiteration and repetition of the question form is powerful in that it draws the focus to a particular item (in this case, the pantyhose of the alleged victim). The unique power of this example as part of a rape trial lies in the moral overtones that can be inferred from the repeated questioning (Conley and O’Barr, 1998: 37-8). This method of repeating and

reiterating questions and question form can be seen in other examples, including the previous example regarding the video tape.

That the power always rests with the lawyer is not necessarily true in every case. Whilst the questioner does have a significant amount of control in the proceedings that is ratified by the rules of court, the answerer does not always acquiesce and provide answers which conform to question type. In the following section this study shall look at the means through which respondents provide answers; the extent to which these answers conform; and the ability of the respondent to alter the power relation, redirecting control and potentially mitigating the damage that could be inflicted upon their testimony.

1.4.2.2 Giving answers: ‘ask me no questions, I’ll tell you no lies’ (Oliver Goldsmith)

Ehrlich and Sidnell’s study concerning a tribunal – in which people had died as a result of water contamination – pointed out that the power does not always lie with the lawyer and can be subverted by the witness. However, they also indicated that this circumstance may also be a result of *who* was being questioned (a high-ranking official). Nevertheless, the extent to which witnesses are willing and able to subvert questioning displays a potential negotiation within the interaction as to how the question-answer adjacency pair is adhered to.

49 M: [knowing what you know no:w (.)
50 do you have any **regret** in not interve:ning
51 in the business plan p-process and saying:
52 you’re go:ing: too fa:r.

53 Harris: Well:you assumed that I didn't intervene
54 in the business process and I think
55 that's-that's not an assumption you ought
56 to make.

(Ibid: 666, emphasis in original)

As can be seen in this extract, Harris responds to the lawyer's question by orienting to the presupposition rather than the focus of 'regret'. Embedded presuppositions can be problematic for respondents in that they can be sanctioned for noncompliance in certain institutional settings (as mentioned previously). Raymond (2003) shows how responses can be preferred or dispreferred when referring to yes/no interrogatives. These polarised questions invite a response that is already delimited by the question design (Heritage and Raymond, 2012). There is a preference in talk to deliver a type-conforming preferred response and where a dispreferred response is proffered it is interactionally 'noticeable and eventful'; thus reflecting an asymmetry in the treatment of the two response types (Raymond: 2003). In applying this to the strictures of responding in a courtroom setting, this results in witnesses invoking various strategies in formulating responses.

Atkinson and Drew (1979) discuss this and proffer evidence showing how witnesses can attempt to predict a line of questioning (particularly when it is perceived as damaging) and orient to this projection forward rather than the question being asked. In producing nonconforming responses in this institutional framework, resistance to the question can have an escalating impact. This is shown in Matoesian (2001: 60-1), whereby the victim attempts to resist the line of questioning and downgrades its importance, which only serves to prolong the sequence and 'escalate' the sequence. Within this is shown the restrictions for action placed on the respondent and the asymmetrical nature of the interaction.

Another aspect of responding to questions is not only based in structure and formulation within these interactions. In addition, there are also differences in social knowledge of questioning practices. For example, Eades' (1996; 2004) work on the treatment of Aboriginal populations in Australian courts highlights the disparity that can exist when assumptions regarding interactional norms are made. In a case study presented by Eades regarding the imprisonment of a woman for murder, it was shown that she had acted out of self-defence after a period of domestic abuse. She had not been permitted to testify at her trial as her lawyers viewed her silence as uncooperative. For Kina, this was not the case, as long silences are not deemed inappropriate within her community. As she saw a different attorney for each interview, she was unable to establish the rapport necessary to confide details she found personal and embarrassing regarding her abuse. The legal questioning style did not allow time for a relationship to build between Kina and her legal representation, leading to misunderstandings and the defendant unable to express herself (1996). The purpose in highlighting this study is to show how questioning practices are not universal and should not be overgeneralised as such. Whilst questions can be purposefully designed to set restrictions upon the respondent, this can also happen through different normative frameworks as applied by participants upon the interaction, influencing how they interpret and orient to talk. As such, it is the view of this study, that while an inductive approach to research is preferred, there is merit in a two—fold approach that allows for the analysis of macro-level discourse at the point at which it emerges as relevant to that interactive event. Thus, while context is renewed within interaction (Heritage, 1984), the exclusion of all other factors cannot be dismissed out of hand. To elucidate, the point at which Kina's communications with her legal team broke down can only be fully explained through an understanding of the difference in normative communicative practices between the participants. Therefore, one must be careful

to avoid attributing to interactive sequences an interpretation that inadvertently reflects an ethnocentric understanding of communication (such as the misinterpretation by her legal team of Kina's alleged lack of cooperation).

Having explored aspects of questioning and answering as an adjacency pair underpinning legal interactions, the following section will discuss the concept of public and private space and the positioning of legal discourses within this.

1.5 The public-private dichotomy

This section discusses the issue of public and private space and its relation to the courtroom. This is an important issue to examine in relation to the larger project of language use in courts, as the very concept of a trial itself is a merging of private and public issues presented in a judicial setting. Further to this, the concept of trials as a forum for state-individual interaction implies, to a certain level, the existence of a public-private dichotomy, whose existence must be investigated and ascertained in order to cement the theoretical backdrop upon which this project is reliant.

The development of this discussion establishes that the issue of public-private space is a complex matter both in theoretical and conceptual terms, as well as in actual discussions pertaining to the public-private nature of the courtroom. The inherent description of this space as placed in terms of a dichotomy will be displayed as an oversimplification of an otherwise grey and fluid area. Building on this, the discourses surrounding the public-private space of the courtroom will be shown in an American context to potentially produce a

juxtaposition of their own between the 1st and 6th Amendment (as briefly mentioned in the introduction to this thesis), which is also not as straightforward as it may at first appear.

As discussed in detail above, it is relevant to emphasise that in using the terms ‘state’ and ‘law’, which shall appear frequently throughout, the meaning is not reflective of any single entity but follows the Foucaultian theory that these institutions consist of many and varied knowledge discourses, which are accepted by society as comprising the state and the legal justice system. Thus, though on the surface it may appear that these terms are accepting of the simple view of institute as entity, the use of these terms is simply for the sake of ease when referring to the complex matters which they encompass.

In addressing the matter of public-private space in court, this section discusses the following approaches, theories and debates surrounding the issue. Firstly, in order to comprehend the theoretical concepts of public and private within society and between the state and the individual, the theories concerning the public-private dichotomy shall be discussed in light of political science and criminological research in this area. Following this the discussion of public-private space in courts will be outlined, considering the issues of society’s ‘right to know’; the interests of the media and its role as public surrogate; the rights of the defendant; the distribution and dissemination of trial news and footage, and the courts’ role in this; and the potential and actual privatisation of public information. To conclude, a summary of the salient facts will be given, as well as a brief outline of the potential progression of this argument. Final remarks on this subject will highlight this debate’s overall impact on the wider project of language use in courtroom settings.

1.5.1 Public state and private society: a 'clear' divide

The issue of public and private is often presented as a basic dichotomy between two obviously opposing factors; those being the public arena of the state, and the private realm of the individual. Despite this deceptively clear divide, however; the matters and extent to which the public and private spheres interact is adaptive and dynamic (indeed, it is not dissimilar to the articulation of law and society provided in section 2 of this chapter). Sales (1991: 296) describes the issue of a binary distinction in this case as problematic. Whilst Sales discusses public and private space in terms of differentiating and defining civil society, his critique of this binary distinction is relevant. Sales holds that this perspective creates a distinction in which the state is 'a monster capable of subjugating the tumultuous social reality' and everything else falls under the umbrella of 'civil society' (Ibid: 296).

The labels of public and private are argued by Freund (and outlined by Sales, 1991) to have come from a means of distinguishing between the political sphere and the non-political sphere. Within this, it is important to note that the label of something as private is consequently not a reference to the individual's relation with oneself but refers instead to 'all of the relations within which he is but one individual among others' (Freund [1965] 1978: 292-293 in Sales, 1991: 297). If the term 'public' therefore is deemed to be synonymous with the state as a political manifestation, Freund subsequently argues that the state and the individual rarely meet one another directly. This is due to the private sphere encapsulating all non-political scope, including those areas which negotiate with the public sphere (Ibid: 297). In contrast to the wide range of issues and relations encapsulated within the category of the private sphere, the public realm can be argued to have a greater internal consistency and a much narrower scope as an umbrella for representing political issues and their manifestations.

Indeed, included within the four components which, for Freund, create the public sphere, there is one which relates directly to the law:

‘... the demand for homogeneity through law, which means “a rationalisation of relations between individuals and of their relationships with the necessary organs of a political collectivity” (Freund [1965] 1978: 322 in Sales, 1991: 298).

This delineation of *public* and *private* places the law within the public sphere and also categorises it as inherently political.

Whilst there is a clear boundary as to what constitutes *public* in this theory, for the purposes of this project it remains too narrow and does not include other attributions to the public sphere which may not be so categorically political. For example, matters pertaining to ‘the public’ and their right to know; consequently bringing matters into a public sphere that encompass the social rights and obligations of society and community rather than a political state conglomerate. According to this theory, these matters may be viewed as private inasmuch as they are individuals reacting to the political (public) sphere, which would consequently place them under Sales term of civil society (Ibid: 308). Sales article critiques not only Freund, but also discusses Habermas’ model of System-Lifeworld. The particularly interesting conclusion his analysis draws is what should be included as the content of civil society. Out of the six points he lists, two are of especial relevance to this thesis:

- *a place of association and social integration where mediations take place between individuals and groups, groups and social institutions, social institutions and political and economic institutions...*
- *a reality primarily linked to the state, but also to the transnational economic system and, more and more, to the domestic or internal area of everyday life*

(Ibid: 309)

The interpretation this thesis draws from this is the concept of civil society as a blurred extension of the private sphere which engages with the public sphere. Indeed, the concept of the public and private spheres as two parts of the same whole provides an interesting visual, whereby one sphere can only expand at the expense of the other. Much like the interpretation of law as both determinate and adaptive, these realms interact, regulate and reshape one another (Ibid: 299). Nevertheless, when considering these arenas of social and political interaction, the Foucaultian concepts concerning power and negotiated space (as discussed above) do show that to categorise in such a binary manner runs the risk of interpreting the issues of public and private discourse as mutually centralised, where the reality is more disparate. Returning to the concept of power as discussed in section 1.4, discourses and truth claims are disseminated through institutions which hold claims to knowledge (as discussed in the outline of knowledge-power above). This dissemination can be construed as part of the public (political) sphere, however; not only is the private sphere blurred with the public sphere through the concept of civil society, but the public sphere becomes blurred with the private as matters which were not always considered public come under formal regulation (such as ‘identity’, ‘physical and mental health’, ‘social assistance’, inter alia) (Ibid: 299).

The discussion to this point shows that a dichotomy between public and private space does not adequately encompass the complexities within state and non-state interactions. Sales (1991) concept of civil society helps bring an additional layer to the discussion and provides a means of visualising the extended interactions of private individuals as groups which then interact with the public sphere (which incorporates the numerous political institutions that represent the varied discourses presented as knowledge and truth claims). In order to link this theory of public and private space as a contested area with the practices of law, the issues of regulating the family and domestic abuse serve as practical exemplifications of the indistinct nature of this space.

Smith and Natalier (2005: 69-70) point out that in terms of the law as an institution there is no formal area of privacy outside of its purview, however; in discussing legal regulation of family life, there is a perception of reluctance to interfere in the realm of the family home. This perception, according to Keyes and Burns (2002: 583), is something of a fallacy as family law does arbitrate matters within the family. In fact the family, its constitution, and its structure are regulated by various institutions through practices including, inter alia, registering marriages and births, managing divorce proceedings, and declaring relationships (which might not be formalised by marriage) in order to calculate social benefits and taxation (Berns, 1992: 153-154). The laws surrounding abortion are arguably another area in which the public and private spheres become somewhat blurred. As outlined by Smith and Natalier (2005: 70), in the United States, in the Supreme Court case of *Roe v. Wade*, it was stated that a woman's right to abortion was an extension of the 14th Amendment as it was directly related to privacy and personal liberty. Nevertheless, cases following this ruling have since argued that a 'woman's right to privacy is separate matter to the State's responsibility to protect or fund that right', with some cases concerning abortion concluding that state resources should not be used in abortions unless the woman's life was at

risk (Ibid: 70). Consequently, the issue remains somewhat contentious and unsettled, with the boundaries of public and private rather indistinct.

The idea that the private sphere of the family should not be penetrated by the public institution of law is one that is often linked back to the concept of patriarchy with one man as the head of the household (Berns, 1992: 154). Yet the attitude propagated by this perception has been acknowledged to have proliferated and embedded discrimination and domestic abuse (Keyes and Burns, 2002: 583). The issue of domestic abuse is one which has been subject to various approaches. Mirchandani (2006), discusses how courts in Salt Lake City, Utah, have applied a style whereby the gender of governance is more matriarchal in the handling of domestic abuse cases. This study addresses the structural changes applied in their domestic abuse court, which are significantly altered in comparison with traditional court. Mirchandani outlines how ‘masculine’ values within law are promoted and proliferated at the expense of ‘feminine’ values, with masculine values encompassing matters such as: ‘abstract rationality, expressed as objectivity and distance’; the ‘adversarial model of justice modelled on the duel’; and the ‘emphasis on hierarchy encapsulated in the bureaucratic structure of law’ (Mirchandani, 2006: 783-4). Though the focus for this thesis is not that of feminist theory versus patriarchal structuring, that this exemplifies an instance in which legal structures were altered in order to address an ostensibly private issue is important as it serves to illustrate that the public-private dichotomy is an oversimplified means of addressing boundaries that are conceptually fluid and problematic to apply (Smith and Natalier, 2005: 71).

Having considered the theoretical issues surrounding public and private space and the difficulties in clearly delineating these areas in terms of the institutions of the state and the private society of the individual, this thesis shall now consider how the application of public

and private space is applied concerning the dissemination of courtroom data and the developments of video cameras in the courtroom.

1.5.2 Cameras in court: the United States of America

Video cameras in the courtroom (hereafter simply referred to as cameras) is a fairly well-debated issue in various justice systems around the world. The United Kingdom, the United States of America, Canada, Australia, and New Zealand, inter alia, have all encountered this issue and have all had varying responses to it (Stepniak, 2012). The largest concentration of filmed trial footage arguably comes from the United States, with CourtTV alone having famously aired hundreds of hours of trial footage. Consequently, it is from the United States that our data sources originate. Nevertheless, in order to contextualise the data footage that forms the mainstay of this thesis, it is pertinent to examine the arguments surrounding the availability of this data. This is due to its being closely related and relevant in addressing not only the issue of public and private space, but also the interactions of the state institution of the criminal justice system; the principle focus of this study.

The core support for cameras in court appears to stem from the perspective of justice as '[being] seen to be done' (Stepniak, 2004a: 791). This perspective often invokes the view that courtrooms are public space – not private. In this sense, 'public' appears to take on a broader sense of meaning than simply that which is political (as put forward by Freund). The public space in this sense appears to be the physical space (as well as the theoretical), in which this is an actual space that 'the public' are free to enter as members of society. As well as being a public space, in the USA, the concept of justice as public has been linked with the

freedom of press; a First Amendment argument. This has collided with the defendant's right to a fair trial; a Sixth Amendment argument.

In order to elaborate, the First Amendment in the constitution of the USA states that:

'Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.' (The U.S. National Archives and Records Administration).

Whereas the Sixth Amendment states:

'In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favour, and to have the Assistance of Counsel for his defence.' (Ibid).

In accordance with the societal development, many people now gather their news from broadcasters and other outlets (newspapers, news websites etc.). Included in this is the means through which members of the public learn of developments in the courtroom. News broadcasters have increasingly become something of a surrogate for public society in terms of how and where this information can be accessed without requiring attendance in the courtroom itself (Stepniak, 2012: 85). Consequently, freedom of press in reporting matters of public interest can be attributed to a right under the First Amendment (Stepniak, 2004b: 326).

In accordance with this, cameras in state courts are increasingly common and are often permitted on a case by case basis at the discretion of the presiding judge (though this is not always the case) (Sellers, 2008). In federal courts cameras are still generally banned, however; at the time of writing this thesis, a pilot scheme was underway in federal courts whereby civil cases were being filmed on a trial basis and uploaded to the US Courts' Website.

The conflict with the Sixth Amendment and the reason that cameras in court remains a debated issue both within and without the justice system and academia is where public coverage of a trial is believed to impinge or have impinged upon the defendant's right to a fair trial. There have been instances where the media presence has been argued to have a negative impact on judicial proceedings, which in turn impacts upon the defendant's right to a fair trial; one of the most famous being the case of *Estes v Texas* (1965), in which the Supreme Court ruled that the media coverage of the trial had been detrimental to the rights of the accused (Friendly and Goldfarb, 1967: 215). At the time, this was largely attributed to the 'physically disruptive' nature of audio-visual recording equipment, however; it has long since been argued that technology has advanced to the point where this is no longer the case, and the physicality of recording equipment is no longer such as to prove 'prejudicial to a fair trial' (Stepniak, 2004b: 798). Although the stance has oscillated throughout the last fifty or so years and has varied greatly amongst individual states (as well as at the federal level), it has been noted that the right to a fair trial is not the right to a private trial (Stepniak, 2004b, 326-7).

This links back to the previous discussion of the problematic arena of defining public and private space. If the courtroom is public insofar as it is an institution of the political, it is also an area open to 'the public', which could be argued to be the 'civil society' discussed by Sales (1991). This, one could argue, would thereby classify courtrooms as a space between

those two dynamic and adaptive spheres. In this space, private matters become a public concern (as discussed with regards to the issues of domestic abuse previously). Nevertheless, it is also possible for a courtroom to close its proceedings or limit who may view them. Though not an US-based example, this could be seen during the trial of Oscar Pistorius in South Africa during the spring-summer of 2014, whereby no one was filmed whilst providing testimony (including Pistorius himself). Thus those present in the courtroom viewed the proceedings in their entirety, but those who viewed the televised footage had a somewhat edited version of events.

Though this may place restrictions on the concept of open justice, the ability to reduce court access is arguably necessary, however; as the rights of the vulnerable must also be protected (such instances may include children providing testimony etc.). Consequently, though arguments for cameras in court have grounds, it is necessary that the rights of society to view proceedings in a more easily accessible form should not come at the expense of administering a fair trial (Sellers, 2008), nor should the concept of administering a fair trial automatically preclude the concept of its being broadcast.

A final point to be made is that of the importance attributed to wider society having access to judicial proceedings in the first place. The concept of justice being ‘seen to be done’ has been mentioned as an important part of the criminal justice system in countries such as the United States. In this case it can be argued that the public interest in criminal proceedings comes not only from trials as a form of entertainment (though this is undoubtedly a factor) (Peelo, 2005), but also stemming from the concept of matters of ‘shared concern’. Couldry and Markham (2006: 256), in a study concerning ‘public connection through media consumption’ describe shared concern as issues which are not ‘purely private’ and ‘that in principle citizens need to discuss in a world of limited resources’. Their study also addresses the public sphere as something which may have become fragmented into specialist

‘sphericules’ as a result of the increasingly connected digital world (Ibid: 256). Judicial proceedings are a matter of shared concern, particularly in a case which incites public outrage. Though referring to cases with child victims, Jewkes (2011: 117) points out that high profile criminal cases and the public mourning which may accompany them (rare though they may be) play a part in the ‘creation and maintenance of an *imagined community*’ (emphasis in original). This sense of community and cohesion is arguably strengthened through the ‘negative characteristics’ displayed (such as child murder) that in turn fuel a public ‘need for unity’; this need could then be said to be fulfilled through the illusion of connectivity provided by mass media (Ibid: 117).

Nevertheless, striking the right balance between the defendant’s rights and those of wider society continues to provoke strong opinions and generate discussion. Stepniak (2012, 98) notes that high profile trials still generate societal criticism. This is arguably reinforced by the concept of the ‘media circus’ which has been seen to play out in various conspicuous cases that have famously aired at an international level.

1.5.2.1 The ‘Media Circus’

The O. J. Simpson trial is one of the most noted internationally broadcast trials in history. Taking place over nine months, it was long and landmarked the use of cameras in the courtroom at a new level (Sellers, 2008). It has since been used as a reason both for and against cameras in the courtroom, given the extraordinary amount of attention it garnered and the resulting negativity it generated towards the inclusion of cameras in courtrooms on an international scale (Stepniak, 2012: 29-32).

The reasons for this may include: that no one seemed to predict the amount of attention allowing cameras into this trial would generate; and there was no tried and tested

method for the court to handle the media coverage of such a high profile trial (Cushner *et al*, 2009). Indeed, in the years following the Simpson case, trials involving Michael Jackson, Louise Woodward, Martha Stewart and Conrad Murray have garnered a large amount of public attention, not least because of who was involved. Cushner, Hartley and Parker (2009) published an article outlining the methods of communication used by courts to interact with the media and offering advice as to how these can be utilised to greater effect.

Communicating with the media is by no means a recent development for the court, yet the means through which data are now disseminated have become increasingly fast (with 24 hour news coverage and the increasing role of the internet, *inter alia*). Taking this into consideration, Cushner *et al* indicate that effective communication with the media can aid in the creation of a 'positive image' of the justice system (Cushner *et al*, 2009: 52).

In spite of the positive implications of well-managed, high profile coverage, there is a counter to this approach. This is the negative reflection that can fall upon the media outlets themselves as regards their impact upon the perceived serenity of the courtroom and the level of respect they are viewed as displaying towards the proceedings and the case.

It has been noted throughout the history of this debate that one issue with allowing increased media access into the courtroom is that those representatives are then alleged to not abide by the rules and boundaries set (Cotterill, 2003). This stigma can be seen in the 1935 trial of Bruno Hauptmann, who was found guilty of kidnapping and the murder of the son of Charles Lindbergh, a well-known aviator. An early international sensation, Stepniak (2004b: 319) remarks that approximately 700 members of the press were believed to have attended and the public galleries were filled beyond capacity. The press were condemned for their behaviour as anyone linked with the trial became 'fair game', including witnesses and jurors (Ibid: 319). In 1937, *The ABA Code of Judicial Ethics* employed Canon 35, entitled 'Improper Publicizing of Court Proceedings', which effectively prohibited cameras in court

(Ibid: 321). Thus the aforementioned vacillation between allowing cameras into the courtroom has continued.

Returning to the O. J. Simpson trial in 1995, the trend of the press not entirely abiding by the rules set out by the court could still be viewed. Cotterill (2003: 109) outlines two instances of particular note, in which the cameras were cut courtesy of a 'kill switch' that was located by the presiding judge, Lance Ito, who had a screen under his desk in order to be able to view the broadcast footage. One of these was when an alternate juror was within the shot during the opening statements of the prosecution, which is prohibited under the California Rules of Court, Rule 980 whereby jurors are not to be identified (Ibid: 109); and a second took place during the closing statements of the prosecution, where the writing pad in front of O.J. Simpson was filmed constituting, as Judge Ito put it, a 'flagrant violation and intrusion into the attorney/client privilege' (Ibid: 110). Another issue raised by Cotterill is the pressure under which the jury were placed, as they were made aware of the viewing public by the attorneys and pushed to 'do the right thing' (Ibid: 112). Judge Ito expressed his concern over this and again considered terminating the video-feed, accusing the attorneys of 'pandering to the cameras' (Ibid: 112).

Though cameras were permitted to continue filming after both of the events that resulted in termination and after the expressed concern, the scrutiny under which allowing news cameras into the courtroom underwent was not viewed by all as having been favourable towards the concept of video cameras in court. In fact, other countries have even cited this trial as a reason to continue their own prohibitions regarding video cameras. In Britain, despite the progress made in some instances in Scottish courts, England and Wales continue to have a ban on still photography (much less video recording). This has only been relaxed in regards to the Supreme Court with its livestreaming via Sky News (2017), and as of October 2013 the broadcasting of the Court of Appeals via the BBC, amongst other broadcasters

(BBC, 2013). In spite of these large steps forward, the Simpson trial is said to have played a role in dissuading previous supporters of cameras in court. Lord Browne-Wilkinson reportedly came to the view that the participating lawyers had become distracted and that televising proceedings ‘appeared not to favour the administration of justice’, and the then Lord Chancellor ‘was also said to ‘go cold on the idea’’ (Stepniak, 2012: 30).

Nevertheless, in regards to the progress made in US trial footage recordings, this appears to be an area of continued growth; despite any setbacks that may have occurred or arguments to the contrary. This heightened level of broadcasting has also had an additional impact on trial footage; that of potential privatisation of a public proceeding.

1.5.2.2 Whose recording is it anyway?

To this point, it has been outlined that the public-private distinction has been more complicated than may be inferred from the labels. As well as having outlined the theoretical spheres, the concept has also been applied to the interactions of the court with the lives of the participants; the physical space of the courtroom; the involvement of wider society and the impact of the media as a surrogate for disseminating information. However, that a news company records the trials consequently means that they have the potential to own and brand the footage; thus making it privately-owned property. In the USA, courts do not necessarily keep the footage of trials they have tried. Upon telephoning the LA Superior Court, the author was informed that they did not keep the footage and the best people to contact were the media outlets themselves. This is not to say that all courthouses do not maintain a visual record or that all trial footage after the immediate airdate must be purchased, but it does highlight an interesting point in the concept of owning what was initially a public proceeding viewable by wider society.

Using a contrast to elaborate, in the United Kingdom, footage of the Supreme Court is copyright of the court (not Sky News) (Sky, 2017). However, if a member of the public wishes to access past footage, the Supreme Court website states that this facility is not provided, as converting the broadcast footage into ‘domestic DVDs or other output formats’ is beyond their current resources (The Supreme Court, 2017). That being said, ‘footage of the Justices’ brief summaries of their judgements’ are placed on a dedicated YouTube channel, showing that progress in the developed use of cameras in court is certainly being made (Ibid).

In the case of gathering footage from overseas high-profile cases there are options, but these involve private outlets. For example, in order to view the trial footage of cases such as the Pistorius trial from South Africa it is aired live. To watch it after the fact, the options are reduced to contacting the primary company who filmed the trial (not the broadcasters who then had the rights to also air that footage), or searching for a public access (free or fee payable) online archive. When obtaining footage from a company, the recordings are their property and therefore the footage being bought can include the purchase of a license to use that footage, as well as the footage being provided in a preferred format (such as DVD) (TruTV, 2014). It should be noted that this is not a criticism of any private company distributing courtroom footage and that in the purchase of an item, such as a DVD, costs will undoubtedly need to be paid. The element of interest is the point at which a public proceeding becomes private property; courtesy of having been distributed by a surrogate who is acting on behalf of the wider society (for whom this matter is one of interest and shared concern).

Given the impact this issue has on the data collection element of this project, its theoretical implications link well with the public-private issues hitherto discussed, and further exemplify the intertwined nature of public and private space.

1.5.3 Section Summary

In bringing all of these elements together, it is clear that the concept of the public-private dichotomy is an oversimplification of a more intricate theoretical and practical balance at many different levels in society and the courtroom. Despite the issues outlined at the level of politics and society, law and the private individual, and the courtroom and broadcast news, as outlined by Couldry and Markham (2006: 256) the labels of public and private maintain a certain use when discussing these spaces and the interactions therein. The adaptive nature of these spheres is important, as it shows that the space of the courtroom is not necessarily exclusive as either public or private space, but could be argued to be a negotiated space in which these two spheres adapt and interact. This links with the theory of law and its interactions with society (as discussed in 1.3) as being arguably both adaptive and determinate.

The concept of cameras in court and its impact on the discussion of the public-private dichotomy highlights a progression towards the courtrooms not only as accessible in person, but also as a space which can be disseminated on a larger scale. The importance of society, therefore, as an element of these proceedings (as well as the state and the individual) is worthy of note as it impacts upon how these proceedings are presented.

1.6 Final remarks on linguistics and court research

Much research regarding linguistics in court has already been expressed throughout various sections of this literature review. Nevertheless, this section shall provide some final remarks

on research that has yet to be explicitly discussed and is not incorporated into Methodology (Chapter 2, Section 2.4).

As has been outlined previously, there is a growing body of research within linguistics concerned with courtroom interactions; and, as has been discussed above in Section 1.4 on power, linguistic analyses are not wholly divorced from other features under discussion, allowing for overlap within the field.

Research into courtroom proceedings as ‘talk-in-interaction’ has been conducted by researchers using Conversation Analysis, particularly Atkinson and Drew (1979) whose seminal work *Order in Court* provided a detailed analysis of interactions drawn from coroner’s court and tribunal testimony (for further information, see Chapter 2, Section 2.4). Heritage and Clayman (2010) and Drew (1992) discuss trial examinations. Within these is the concept of resisting the question and answer format (as discussed above) with a focus on the structural formation of the interaction and the identification of linguistic strategies. For example, Drew’s (1992) research discusses how participants in interaction display neutrality in Small Claims Court in London. Drew found a six stage sequence occurred in which the arbitrator asked a question with a ‘projection of minimal response’ (such as yes or no); the litigant responded with a non-minimal response; pause; arbitrator gives a ‘receipt’; pause; arbitrator asks a question (Ibid: 203).

Other such patterns such as the formulaic nature of the question and answer format (Atkinson and Drew, 1979) and resistance to questions (Thornborrow, 2002; Heritage and Clayman, 2010; Matoesian, 1993; 2001; Ehrlich and Sidnell, 2006; Ehrlich, 2001; etc.) is well researched within linguistics, utilising various approaches to analysing discourse.

Though not part of courtroom analysis specifically, one core linguistic work in the area of legal linguistics is that of Carter (2011). Her analysis of police interrogations in the UK included the orientation by interactants to the tape recorder as a ‘silent participant’. The

role of the tape recorder is to create a record of the police interviews and can be called upon at a future point as a resource (for example, evidence in trial). In Carter's view the tape recorder represents 'future listeners' who have yet to be realised. Using Conversation Analysis and drawing on Maynard's research into plea bargaining (Maynard: 1984), Carter shows how the tape is involved within the interaction between police, the suspect and other relevant persons, even though it does not respond.

This links with research into news and political interviews (Heritage, 1985), radio talk shows (Hutchby, 1996), etc. whereby talk is designed for an 'overhearing' audience that does not participate in the interaction itself (Heritage, 1985). Drawing this back to courtroom research, as Carter (2011) and Drew (1992) both point out, the jury have the means through which they can ask questions in a trial, but rarely do. Nevertheless, talk is oriented towards the jury (much like the tape) and has previously been described as an 'overhearer' (Heritage, 1985). We would link back to Carter's observation and further it by aligning this study with the position of the jury as a silent participant within the interaction, as 'overhearer' implies they are on a similar level to that of a television or radio audience far removed from the interactions being observed. In realigning the jury (as the with the police tape) with the role of 'participant' (even if non-vocalic), it more accurately reflects their position within the institutional proceedings. Building on Carter's reference to the jury, this study contends that, in a manner extending beyond the concept of the tape, the jury are also more involved and are not just oriented to as a participating and yet potential future listener. The jury are still physically present and as such, there remains the concept of nonverbal feedback (whether voluntary or otherwise) resulting – in our view – in the interactions having the potential for an additional level of involvement and performativity.

In concluding this section, linguistic analyses of courtroom interactions have focused on micro-analytical perspectives exploring structure and formulation within courtroom and

related legal proceedings (Atkinson and Drew, 1979; Heritage and Clayman, 2010; Maynard, 1984; Drew, 1992; Carter, 2011; inter alia). However, there are differences between different linguistic approaches, be they corpus-based (Cotterill, 2003; Heffer, 2005) or discourse approaches that draw from wider contextual theories (Conley and O’Barr, 2005; Matoesian, 1993; 2001). This provides an increasing body of work to draw upon, but also highlights where these approaches may be drawn together more closely and in a more cooperative manner when looking at both ‘form and content’ (O’Barr, 1982) as two parts of the same whole and addressing conflicting approaches to context and the extent to which it is considered to be emergent from the data.

The following section will discuss narrative within courtroom proceedings, with a focus given to research on opening statements.

1.7 Narrative in courtroom research and opening statements

The role of narrative in courtroom research has been developed over a number of years, with studies exploring aspects including case construction, rhetoric, and discursive features within interaction (such as Bennett and Feldman, 1981; Brooks and Gewitz, 1996; Cotterill, 2003; Jackson, 1988).

When discussing the role of narrative within the adversarial courtroom system, the role of the jury is often discussed, with particular attention paid to how juries view cases and the extent to which they can be persuaded to the veracity of one side over another (ref). For Bennett and Feldman (1981), the use of narrative in court is a means of translating legal requisites into everyday understanding; thus, allowing for the fulfilment of legal requirement whilst endeavouring to ensure one not versed in law can discern relevant aspects of evidence from those otherwise to be considered extraneous to that side’s perspective. Through

narrative, therefore, one can use coherent storytelling as a means of persuading the judging audience that one side is more believable than the other. Within this is also a step away from the establishment of ‘truth’ within the trial phase, as there is a suggested shift away from establishing the facts of the case and a move towards the agenda of whether or not it is believed the person(s) on trial are guilty of the accused act.

Jackson (1988), however, considers there to be weaknesses within the framework of Bennett and Feldman (1981). Bennett and Feldman use three criteria for evaluating courtroom rhetoric: definitional, inferential, and validational. Definitional and inferential are linked with how pieces of evidence ‘fit’ with the overall narrative, whereas validational refers to the ‘weight’ or reliability of the evidence. In this approach, the overall effectiveness of the rhetoric is ‘a function of its relation to story structure’ (Jackson, 1988: 73). Jackson’s view of Bennett and Feldman’s model is that there is an ‘assumption that the jury is able to make judgements as to the “truth” of the “evidence”’ outside of the judgement as to the ‘coherence’ of the narrative that is being ‘constructed from that evidence. There is, consequently, an overall weakness in that the semantics of the narrative becomes the only view through which the pragmatics of the courtroom are then viewed. (Ibid: 73-5) Jackson summaries this as overlooking the potential for a ‘multi-layered discursive model’, in which narrative structure is analysed separately from the narrativization of the pragmatics of courtroom procedure (Ibid: 76). The development of the interactive three-layered concept of courtroom procedure used in this project (see Chapter 2) is partially formed from on this critique.

Though reference has already been made to Cotterill’s (2003) work on the O. J. Simpson trial, it is a seminal work that provides an holistic and comprehensive analysis of a single trial, including an array of relevant areas for courtroom research. Though an analysis of language and power in court (see Section 1.4), Cotterill also discusses narrative. Her initial

approach to macro-, micro-, and multiple narratives is necessary to explore, as it lays the foundation upon which much of this thesis has been built.

Cotterill (2003) provides a detailed deconstruction of the overall narratives of the trial in separating them into the ‘crime’ story, the ‘investigation’ story, both of which intersect at the point of the ‘trial’, which is in itself a narrative. In her analysis, she employs an overview of narrative as spans the entire trial, looking at the months in which types of witnesses were called and the story element they were linked with. Given the overall duration of the Simpson trial, this approach serves as the macro-level analysis for Cotterill’s research. In her analysis of the opening statements she examines the ‘strategic lexicalisation’ used through a corpus-based approach. There is little detailed research on opening statements within an already niche area of linguistic analysis under the remit of ‘forensic linguistics’. In her findings, Cotterill (2003) expands upon the use of key words with a high frequency in both the prosecution and defence openings (for example, the word ‘encounter’) and their collocations. Her findings show that words such as ‘encounter’ are often collocated in the negative, whilst terms such as ‘incident’ are collocated as neutral. This emphasises the lexical awareness of the attorneys speaking and the strategic formulations of these interactions so as to create ties to the stance of the speaker.

This provides a linguistic corpus approach to an area that has previously been the remit of legal, sociological, and criminological research (such as Powell, 2001; Ahlen, 1995; Lucas, 1991). For example, Snedaker’s (1986) article on storytelling in opening statements, which provided a narrative analysis of the Chicago Anarchist Trials, focusing on form (as the structure shaping discourse), content (as the ideas shaped by form), and style (as the ‘linguistic embellishment’ that presents form and content). Snedaker (1986) found that there was a contrast in the defence and prosecution styles. Her findings include the prosecution as

using a one-sided narrative approach, where the defence had a two-sided approach which ‘refuted the allegations’ of the prosecution to and provided an alternate portrayal of events.

Stygall (1994) also brings a linguistic lens to opening statements in her work *Trial Language*. She describes opening statements as an ‘outline’ (a term used by judges and attorneys). Her analysis looks at opening statements through Schiffrin’s (1980) definition of ‘metacommentary’, summarised as having three linguistic operators, which are:

- ‘metalinguistic referents’ (demonstrative pronouns/ordering schemes)
- ‘logical operators’ (‘right/wrong’; ‘true/false’)
- ‘metalinguistic verbs’ (verbs talking about talk – ‘say’; ‘tell’; ‘ask’)

(Stygall, 1994: 108)

Stygall argues that opening statements are an extended form of metacommunication that occurs as a monologue (1994: 108-9). In addition to this is the concept of topic shift and bracketing, which are shown to be core features in the opening statements analysed, with a quantitative breakdown of their type, number, and percentage (Ibid).

Finally, research by Heffer (2005; 2010) and Harris (2001; 2005) shows narrative use in opening statements as having the structure of a ‘master narrative’ that largely conforms to Labov’s personal narrative framework (Heffer, 2010: 203-4). This application of narrative structure to opening statements provides an interpretive framework from which they can be viewed as the determination of the ‘crime story’.

Given the current research on opening statements, there is scope to further the field and provide a linguistic analysis of opening statements that considers the micro-aspects of delivery in terms of the opening statement as an interactive performance, as well as the potential to further examine the use of narrative form as it is created *in situ* and its links with assumed shared cultural knowledge and macro-level societal discourses.

Other research into narrative use in the courtroom relates to the analyses of rape trials and the construction of identities within these settings (Ehrlich, 2015; Matoesian, 1993; 2001; as discussed previously for their linguistic focus). This research draws on both language use within these settings and the application of ideological standpoints to construct and deconstruct both narrative and identity.

There is an overlap in this section with the analysis of linguistics in court that should be mentioned at this point, as it is not the intention of this subdivision of sections to imply that these analyses are mutually exclusive and held apart from one another as either narrative or linguistic – indeed such a stark distinction could be viewed as potentially problematic as methodological approaches utilised by linguistics, such as Conversation Analysis, emerged from sociological research (Sidnell and Stivers, 2013: 3).

From this, the summary of the literature review will be presented before moving to the methodological approach of this thesis.

1.8 Chapter summary

To conclude, in reviewing the literature above, there are three areas that this study will contribute to.

The first area is in adding to literature on defendant cross-examination. Though this is not understudied, the qualitative analysis of cross-examination of a defendant, rather than a victim or witness, adds to the information available in this area. Defendants do not have to speak on the stand and can choose to remain silent. The analysis in this data also lacks the ‘expert identity’ dimension found in Matoesian’s analysis of the Kennedy-Smith rape, resulting in further expanding and comparing the means through which identity and narrative are established and linguistically formulated in this area.

The second area of study is that of opening statements. Whilst there is some research on opening statements (Cotterill, 2003; Stygall, 1994, etc.), there is room for expansion and development. Much of the emphasis on trial monologues is placed on closing arguments, through the lens of this being the last ‘packaging’ of the adversarial narratives the jury will be exposed to prior to their deliberations. As an area with comparatively less research, this study intends to contribute and develop research in this aspect of trial procedure.

Finally, there is little research on the specific area of interactions between participants in the absence of the jury. This aspect of courtroom interaction has been touched upon in other studies, but as yet remains an underdeveloped matter in this field.

The means through which these areas will be built upon and the manner in which they link together will be expanded upon in the following chapter on Methodology. This will provide the research questions that guide and underpin this project, an overview of the methodological approach to analysis, and the data and ethics at the centre of this study.

Chapter 2: Research Questions and Methodology

2.1 Introduction

Having discussed previous literature in this field and identified where this work is situated within the larger framework of research into courtroom discourse, the research questions, conceptual model and methodological approach underpinning this thesis will now be outlined.

Firstly, the research questions and the overall conceptual approach will be set out, followed by the contextual narrative of the trials, and then the methodologies that are being used to underpin this. This study brings together linguistic principles from conversation analysis (and discourse analysis more broadly) and Foucaultian theories of power as a negotiated space. Though these two methodological approaches are often characterised as being removed from one another ontologically, particularly regarding context, this study argues that in drawing on both micro- and macro-level theories, a rich analysis of courtroom interaction can be put forth. The reason for this approach is that, in viewing courtroom interactions, testimony does not take place wholly in isolation or without a broader social context. Additionally, broader social context can be viewed within the micro-interactions. Given that each 'side' has an agenda within the adversarial system and that this can be considered shared knowledge amongst the participants, this study takes the stance that both macro- and micro-level approaches are relevant, as the agenda of each side is permanently relevant throughout all subsequent interactions.

2.1.1 Overview of trial narratives

In order to fully contextualise the methodological approach and the data which is under analysis, this section will provide an overview of the trial narratives and the overall ‘story’ of the case. A more concise summary, divided by the narratives of the prosecution and defendant(s), can also be found in sections 4.1.2–4, with particular relation to the narrative as relevant to the opening statements of the two trials.

The trials of Grant and Amanda Hayes were held separately, but both took place in Wake County, North Carolina in the United States of America. Grant Hayes was tried first in mid-2013, and Amanda was tried in early 2014. Both accused the other of having been responsible for the death of Laura J. Ackerson, which led to a decision by the presiding judge that they be tried separately, as a potential ramification would be a mistrial (Fanning, 2016). The overall story of events emerged as follows¹.

Laura Ackerson was the ex-girlfriend of Grant Hayes at the time her of death on 11th July 2011. She and Grant Hayes had two children (Grant IV and Gentle Hayes). At this time, Grant was married to Amanda Hayes and they had one child together (Lily, who was then an infant).

Grant Hayes and Laura Ackerson had been in a relationship that was characterised by both sides as being somewhat turbulent. This friction was increased as both sides were engaged in a custody dispute for Grant IV and Gentle Hayes, which was due to return to court in the August of that year.

¹ Please note that this summary is provided by the researcher on the basis of the trial footage reviewed, including any quotations, unless otherwise stipulated.

2.1.1.1 Background to the custody narrative

In order to contextualise the relationship, throughout the trial, the following details are made salient in characterising events leading up to the custody dispute.

Prior to his marriage to Amanda, Grant and Laura had moved to the US Virgin Islands with their two sons, however, Laura Ackerson and their sons eventually moved back to North Carolina while Grant Hayes pursued a music career. Whether or not they were still a couple at this point is disputed, but it marked the beginning of Grant's relationship with Amanda. When Amanda Hayes moved to New York with her eldest daughter, Sha Guddat (née Elmer), Grant Hayes followed soon thereafter and they began living together as an established couple.

Following Grant and Amanda's move to New York, Grant Hayes visited North Carolina and kept contact with his sons and Laura Ackerson. During the course of this contact, Grant Hayes took his eldest son (Grant IV) to New York for what was characterised by Laura Ackerson (through various communications with friends, her brother and statements pertaining to the custody case) as being of a limited duration. This turned into Grant Hayes having his eldest son living with him, and Laura Ackerson began motions to have her son returned. Included within this were medical complications for Grant and Laura's youngest child (Gentle), who required surgery.

This situation evolved into a full custody dispute, and primary custody of both children was given to Grant Hayes, as Laura's work and living situation were not as stable. Grant and Amanda Hayes also married during this time and moved to North Carolina from New York; one of the reasons the marriage took place so quickly was indicated to have been the custody dispute.

The custody arrangements were of particular note in this case, as it was the deviation from this arrangement that placed Laura Ackerson in the apartment of Grant and Amanda

Hayes at the time of her death. Due to allegations on both sides (Grant accused Laura of soliciting male attention for money, and Laura stated that Grant had used prohibited substances), custody was divided by the judge so that the children were with Grant and Amanda during the week, and with Laura at weekends. The exchange of the children took place at a petrol station in Wilson roughly midway between both parents (Grant lived in Raleigh and Laura lived in Kinston; all locations being in North Carolina). This arrangement was characterised as being less than ideal, and a source of friction between the Hayes' and Laura Ackerson. Grant and Laura also exchanged various messages that communicated a tense relationship and their apparently differing approaches to parenting. Laura Ackerson and Grant Hayes did agree to attempt a midweek meeting between the boys and their mother, but this did not go well and the original arrangement was subsequently adhered to.

There was also evidence of some tense exchanges between Amanda Hayes and Laura Ackerson, where the two are believed to have argued over the exchanges and Laura's alleged treatment of Sha Guddat (Amanda's eldest daughter, who also moved to North Carolina), and Laura wrote in her diary regarding her concerns over how Grant had portrayed her to Amanda.

As part of the custody case, all three adults (Grant, Amanda, and Laura) underwent a psychological evaluation – though the focus was primarily on Grant and Laura, with Amanda's involvement being comparatively peripheral, though present. As part of this both parties (Grant and Laura) had to complete a parenting history survey and undergo observations by Dr Ginger Calloway. These surveys and Dr Calloway's evaluation became of key importance in the trial narratives (and is explained further in sections 2.1.1.4 and 2.1.1.5), as this was said to look promising for Laura's bid for custody and she was likely to be successful in having a more even custody split at the very least.

This was characterised by the defence as forming part of the motivation on the Hayes' part for Laura's death, as they would have been unable to follow through on plans to leave the state and travel if Laura had at least joint custody of her two sons, and there were indications in the report by Dr Calloway that they wanted Laura removed from their lives and not further integrated into them.

2.1.1.2 The events of 13th July its aftermath

On Wednesday, 13th July 2011, Laura Ackerson went to Grant and Amanda Hayes' apartment to visit her children midweek. She had been invited by Grant and had, according to the people she had spoken to that day and a voice message she had left for a friend, been looking forward to seeing her sons. This was a deviation of the regular custody agreement, which had the boys with Grant and Amanda during the week and with Laura at weekends. After the previous negative experience of trying a midweek visit, this was marked by the prosecution as important, and it is largely uncontested that Grant Hayes instigated this alteration to the regular routine. Adding to this were the recent revelations of the psychological evaluation, which looked promising for Laura Ackerson in the custody case.

Laura Ackerson was last known to be alive when she entered the Hayes' apartment on the evening of the 13th July 2011. What happened inside the apartment is characterised in following ways.

Inside the apartment: the prosecution

Laura arrived inside the apartment, having been lured there by Grant and Amanda Hayes, who had the premeditated intention of killing her. At some point, a letter was written that was forensically shown to have been part written by Grant Hayes and part by Laura Ackerson

(though who wrote Laura's alleged signature remains inconclusive). The letter granted full custody of the children to Grant and Amanda, with Laura receiving \$25,000 in return.

The prosecution contends that Laura Ackerson would not have written this without being under duress, given the lengths she had gone to in order to gain custody of her sons (regular employment, keeping records, having a child friendly apartment, etc.) and her attitude towards her children as a loving and devoted mother.

An altercation of sorts is believed to have potentially taken place and Laura Ackerson was murdered. Both Grant and Amanda were involved, as they were 'acting in concert' (legal terminology for both working together), and, consequently, who struck the fatal blow is characterised as less important.

Once Laura had been murdered, Amanda Hayes took the children out of the apartment (who had presumably been in a separate room), allowing Grant time and space to remove Laura's body from the living room. Laura Ackerson is then believed to have been (at least at some point) then hidden in one of the apartment's two bathrooms.

During the night of Wed 13th July, Grant Hayes purchased coolers, plastic sheets, a Skil saw and extra blades, amongst other items. Following these events, Amanda Hayes purchased bleach and cleaning utensils, eventually borrowing the vacuum of her eldest daughter Sha, as theirs had broken. Both Grant and Amanda Hayes then worked together in the removal of Laura's remains and the disposal of her body in Texas.

Inside the apartment: the defence of Grant Hayes

The position of Grant Hayes' defence outlined the events in the following way.

It was not unusual for Laura Ackerson to be at Grant Hayes' apartment. The custody arrangement had been deviated from before, and they were trying to make the midweek visit work as it was something Laura Ackerson wanted. Despite the argument that had taken place

the last time this had happened, Grant offered to try again. Numerous exchanges via text message and email took place, with Grant originally suggesting 3 o'clock in the afternoon and meeting in a public place that was child friendly (Monkey Joe's). Laura could not make that time, so it was pushed back to closer to 5 o'clock, and she would meet them at the apartment instead.

Once she had arrived at the apartment, Laura and Grant began discussing the custody case and this led to them both writing out the letter, filling in what they wanted from the agreement. This gave Grant full custody, but Laura still had visitation rights, and Laura would receive the sum of \$25, 000. The defence for Grant Hayes contends that the signature on the document is that of Laura Ackerson.

Amanda Hayes was present during this arrangement and became angry at the agreement, as Grant and Amanda Hayes did not have the money and she did not know where they were going to find it. Grant left the room to get the two boys ready to spend time with Laura, leaving Amanda holding their daughter Lily (who was still an infant) with Laura in the sitting room. At this point, the defence for Grant Hayes indicates that we do not know exactly what happens, but references an alleged confession Amanda Hayes is said to have made to her sister, Karen Berry. In this Amanda is alleged to have said that Laura attempted to grab Lily and that Amanda 'hurt her bad', resulting in her death.

After this, Grant's defence characterises Amanda as having taken charge in the disposal of Laura Ackerson's body, citing Amanda's calling Sha to look after the boys the next day, and it being Amanda's family they then go to in Texas. Grant Hayes is portrayed here as having made a 'terrible' decision and being 'terrified', trying to protect his family by disposing of the body and not calling law enforcement.

Inside the apartment: the defence of Amanda Hayes

The position of Amanda Hayes' defence is outlined as follows.

As outlined in the defence of Grant Hayes above, Laura Ackerson was invited to the apartment as she would be late in seeing the children.

Amanda Hayes' defences purports that Grant wanted to discuss the custody case with Laura, but did not want to do so in front of the children. Amanda took the children out the room and in her absence, the letter regarding the custody case was written including the \$25,000 payment to Laura in exchange for her dropping the custody case. Amanda is then claimed to have re-entered the room with Lily (her one month old daughter) and seen the letter. Laura asked if she could hold Lily, but Amanda turned around and walked away. As Amanda was walking away, it is claimed that Laura tripped over a rug and bumped into Amanda's back, who called for Grant. It is then asserted that Grant 'grabbed' Laura from the back to pull her from Amanda, resulting the Grant and Laura 'falling to the floor'. Amanda Hayes' defence states that she then left the room and re-joined the two boys.

Following this, it is said that Grant Hayes came to Amanda and recommended that she take the boys out of the apartment, as Grant needed to call an ambulance for Laura due to her having sustained a head injury in the fall, and Grant did not wish for the children to see their mother injured. Amanda took the children out of the apartment for a drive and dinner, giving Grant time to have emergency services tend to Laura. Amanda Hayes then returned once and saw Laura's car still outside, so left again assuming that the situation was ongoing. The second time she returned with the children, Laura's car was gone, and Amanda and the children went to the apartment.

Amanda Hayes' defence states that Grant claimed that Laura had driven home and was fine, and that Amanda had no knowledge that Laura Ackerson was, in fact, dead until after she, Grant, and the children had arrived in Texas.

The cleaning supplies purchased by Amanda Hayes are said to have been due to the family leaving the apartment (having received an eviction notice prior to the night of Wednesday 13th July 2011), and that she was in no way involved with the dismemberment or the removal of Laura Ackerson's body from North Carolina.

Texas, the disposal of Laura Ackerson's remains, and the arrest of Grant and Amanda Hayes

Following the events of that evening, Laura Ackerson was reported as a missing person by a business associate, Chevon Mathes. Chevon Mathes reported Laura Ackerson as a missing person to the Kinston police department, and this was eventually passed to Raleigh for further investigation (as her last known location). Her car was located in Raleigh and, during the course of the investigation, Grant Hayes was questioned regarding Laura's last known whereabouts.

Grant and Amanda Hayes travelled to Texas on 16th July 2011, where Amanda's older sister, Karen Berry lived. Grant Hayes' defence claims that this was Amanda's idea (evidenced by this her family) and that Amanda confesses to her sister that she killed Laura Ackerson. Amanda Hayes' defence claim that once they had arrived in Texas, Grant told Amanda that Laura was dead and that she had to help him or the safety of herself and the children would be at risk (threatening and coercing Amanda into co-operating).

Both defence teams and the prosecution state that Grant and Amanda Hayes were present at the disposal of Laura Ackerson's remains in Oyster Creek, Texas, which was accessible from the Berry's home.

During the Hayes' absence from North Carolina, the police investigation continued, with the Hayes' apartment being searched and evidence of extensive cleaning (bleach stains) being found, along with items missing from one of the bathrooms (such as the bath mat,

shower curtain, inter alia). As a result of the investigation, Grant and Amanda Hayes were arrested on 22nd July 2011, after their arrival at the home of Grant's parents.

Police from North Carolina travelled to Texas, working with Fort Bend County Sheriff's office (the local police department). Though this case crossed state lines, Federal law enforcement were not involved and it was a co-operative investigation. Laura Ackerson's remains were discovered in the creek, and subsequently recovered by law enforcement. A search warrant was executed on the property of Amanda's sister, including the discovery of the coolers and the boat used by Grant and Amanda Hayes in the act of getting rid of Laura Ackerson's body. Karen Berry and her family were questioned, and Karen Berry is said to have quoted Amanda as having confessed, 'I hurt her. I hurt her bad. She's dead.', regarding the fate of Laura Ackerson.

This summary provides an overview of the salient events that are referred to in these trials. Further to this, sections 2.1.1.4 and 2.1.1.5 (below) will provide further details on relevant evidence and witnesses referred to in this thesis.

2.1.1.3 Summary of salient evidence referred to in this study

The phone numbers

Perhaps one of the more convoluted aspects of evidence presented in this case was the issue of the mobile phone records and is particularly salient in section 5.3.1.

Grant and Amanda Hayes' mobile phone records were extensively referred to in Amanda Hayes' trial in particular. One of the numbers on these records is indicated by the defence to be indicative of Grant Hayes' illicit activities. This number is said to be linked with a voicemail centre and not a mobile phone. This is claimed to mean that when dialling

this particular number, the caller will access a voicemail system. From there they can leave and access voice messages, without this being traced to a specific phone. The defence for Amanda Hayes put forward that this was a practice commonly used by drug dealers, as it left no records as to which mobile number the message had been left for – only that the voicemail centre itself had been contacted directly. In creating this link, they also put forward that this was further evidence to support the claims of the danger Grant Hayes posed to Amanda Hayes, and that she was as much a victim of Grant Hayes as Laura Ackerson was.

Regardless of the veracity of this claim, this became an important point for the analysis of interactions in the absence of the jury (see section 5.3.1), as they were removed from the courtroom when the defence attempted to have an ‘experiment’ conducted in court and was prevented from having a witness call the indicated number by the prosecution, with the objection sustained by the judge.

The witness (a police officer who was involved with the investigation and who had previous experience with ‘Vice’ – a department within the police force which investigated drug crimes, amongst others), claimed to have no knowledge of this particular practice involving the use of voicemail centres and was consequently deemed unable to comment on this, nor to partake in an ‘experiment’ in court.

Another aspect of this denied experiment was that the trial was taking place over two years after the crime, which led to doubts about whether the evidence of this phone number (as presented in the current timeframe of the trial) would be applicable to the case timeframe of two years prior.

The parenting history survey

This document was completed by both Grant Hayes and Laura Ackerson (independently of one another) and informed the court ordered psychological evaluation of both parents. This

document was extensively referred to by the prosecution and the defence of Amanda Hayes', particularly regarding what Laura Ackerson wrote about Grant Hayes, and is referred to at various points during this thesis, particularly throughout Chapter 4 (analysis of opening statements). This document characterised Grant Hayes as a 'sociopath' and was where the claims were made that Grant characterised himself as characters from the movies *The Talented Mr Ripley* and *Six Degrees of Separation*.

The document was a key piece of evidence in both how the victim's voice was presented in describing Grant Hayes and the threat she felt he posed, and by the defence of Amanda Hayes, who used this as evidence to indicate that Grant had also posed a threat to Amanda, coercing her through threats of violence to become involved with the disposal of Laura's body after the crime had taken place.

Dr Calloway's report

The psychological evaluation reported by Dr Ginger Calloway was also a key part of the trial narrative and of particular relevance to Chapter 4, though it is also referred to throughout this study. Dr Calloway's report included the findings that Grant and Amanda Hayes wanted Laura Ackerson 'obliterate[d]' from their lives, and that Grant Hayes was untruthful (thus potentially undermining his credibility).

This report was said to look promising for Laura Ackerson in the court case (and consequently less so for the Hayes'), thus contributing to the prosecution's narration of the motives of the case being linked with a hatred of Laura Ackerson and the desire to have her 'erased' from their lives.

The muriatic acid, coolers, and cleaning supplies

Muriatic acid was purchased by Grant Hayes and evidence was found that indicated this had been used on the disembodied head of Laura Ackerson, post mortem. This evidence is important to highlight as it is referred to in both trials as evidence of the different attempts to dispose of the body (dumping in the remains in Oyster Creek is believed to have become the method of disposal after the acid did not work as expected). Amanda Hayes is seen on a surveillance camera dumping the empty acid boxes whilst in Texas.

The coolers are also important to highlight as these are believed to have been the means through which Laura Ackerson's remains were transported from North Carolina to Texas. CCTV evidence and testimony from the sales assistant confirmed the purchases made by Grant Hayes. Amanda Hayes' defence claims that these were hidden during the move behind a large piece of furniture and that she had no knowledge of Laura's death or that her remains were there until after their arrival in Texas. The coolers were placed into the boat and the remains were put into the creek. The empty coolers were subsequently found on the property of Amanda Hayes' sister, Karen Berry, by investigators. This evidence is of particular contextual importance in Chapter 3.

The large piece of furniture

The final piece of evidence worth noting is that large piece of antique furniture owned by Amanda Hayes' as a bequest of her late husband. The piece of furniture is both large and tall (potentially reaching the height of a ceiling). It is believed that Laura Ackerson's remains were hidden in coolers behind this piece of furniture. It is made relevant in the cross-examination of Amanda Hayes, as she claims that she did not help Grant Hayes remove the piece from the U-Haul trailer used to transport their belongings, and had no knowledge of what was hidden behind it.

That Amanda Hayes owned the furniture is also salient, as it is part of the defence of Grant Hayes that Amanda was the person responsible for Laura Ackerson's death and the disposal of the body. That the furniture was owned by Amanda and it was Amanda's family they went to visit was emphasised as being evidence of Grant's lack of culpability, and not vice-versa.

This evidence is relevant in Chapter 3, but also provides further understanding in the context and overall narrative for Grant Hayes' defence.

The final aspect of this overview, (outlining the key aspects of the trial for the purposes of contextualising the approach, analysis and findings of this study), a summary of key witnesses shall be provided.

2.1.1.4 Summary of key witnesses and related testimony

Laura J. Ackerson

Though not a witness, per se, it would be remiss to exclude Laura Ackerson from this list, as she was the victim in these trials. Laura Ackerson was the 27 year old, ex-girlfriend of Grant Hayes, who also had two young sons with him. Laura Ackerson was running two businesses, one graphic design business, and one with a business associate (Chevon Mathes) making restaurant menus.

Grant Hayes and Laura Ackerson were in the midst of a custody dispute regarding their children. She was last seen alive in North Carolina on Wednesday 13th July 2011. Laura Ackerson's remains were recovered from Oyster Creek, Texas.

Grant Hayes

Grant Hayes is one of the two defendant referred to in this thesis, though he did not testify during either trial – exercising his right to remain silent under United States law. He was convicted of the first-degree murder of Laura Ackerson in 2013, receiving a sentence of life without parole. Grant Hayes' defence claimed that Amanda Hayes was responsible and that he was only guilty of accessory after the fact (helping to dispose of the body).

Grant Hayes appealed his case on the grounds of prejudicial evidence in March 2016, but this was rejected by the Court of Appeal.

Grant had two sons with Laura Ackerson and one daughter with Amanda Hayes. Grant and Laura were in the middle of a custody dispute at the time of her death.

Amanda Hayes

Amanda Hayes is one of the two defendants referred to in this thesis. She testified in her own defence at her trial in early 2014, giving evidence that she was coerced and threatened into assisting Grant Hayes in the disposal of Laura Ackerson's remains, but had no knowledge of Laura's death until after the family's arrival in Texas.

Amanda Hayes was convicted of second degree murder in early 2014 and sentenced to 13-16 years in prison, with credit given for time served. Amanda Hayes has one daughter with Grant Hayes and the couple have divorced since the trials took place.

Heidi Schumacher

Heidi Schumacher testified in both trials and was a close friend of Laura Ackerson. Heidi Schumacher testified regarding Laura Ackerson's relationship with Grant Hayes and behaviour she observed from Grant, as well as threats she alleged to have received as well.

She testified regarding Laura's parenting history survey (see section 2.1.1.4 above), having proofread it for Laura.

Heidi Schumacher's testimony was subject to extensive *voir dire* (heard by the judge in the absence of the jury for the purpose of making a ruling), which resulted in limitations being placed on what she was permitted to say regarding allegations of domestic abuse in Grant Hayes and Laura Ackerson's relationship, due to its potential as prejudicial evidence (see section 5.4). This ruling was later overturned in light of testimony elicited by Grant Hayes' defence counsel during cross-examination.

Ginger Calloway

Dr Ginger Calloway was responsible for the psychological evaluations of Grant Hayes and Laura Ackerson as mandated by the court in their custody dispute. Dr Calloway testified in both trials as a lay witness (not an expert witness), having spent time with and observed both Grant and Laura as part of her remit for the custody case.

Dr Calloway had both Grant Hayes and Laura Ackerson complete a parenting history survey each (as outlined above in section 2.1.1.4) and observed their interactions with the children. As a result of her observations and evaluation, the prosecution contends that Laura was in a strong position in terms of the custody case. Dr Calloway also observed in her evaluation that Grant and Amanda Hayes wanted Laura removed from their lives. The testimony of Dr Calloway and her link with the overall narrative of the case is salient throughout this thesis (though particularly in Chapter 4), as the custody case and the evidence of Grant and Amanda as wanting Laura 'obliterate[d]' is cited as a motivating factor leading to Laura's death.

Jason Ackerson

Jason Ackerson was the elder half-brother of Laura Ackerson. Jason gave testimony regarding Grant Hayes' behaviour and character, as well as its impact upon Laura Ackerson. He also described threats Laura had claimed Grant had made against her and the children and her state of mind during the custody case.

It was claimed that he and Laura had discussed her moving in with him (and away from Grant) at a prior point in the relationship, but that they had decided against this due to the threats of violence, as Jason Ackerson had the safety of his own child to consider as well.

As with Heidi Schumacher, Jason Ackerson's testimony was subject to *voir dire* (heard by the judge for a ruling in the absence of the jury), as made relevant in section 5.4.

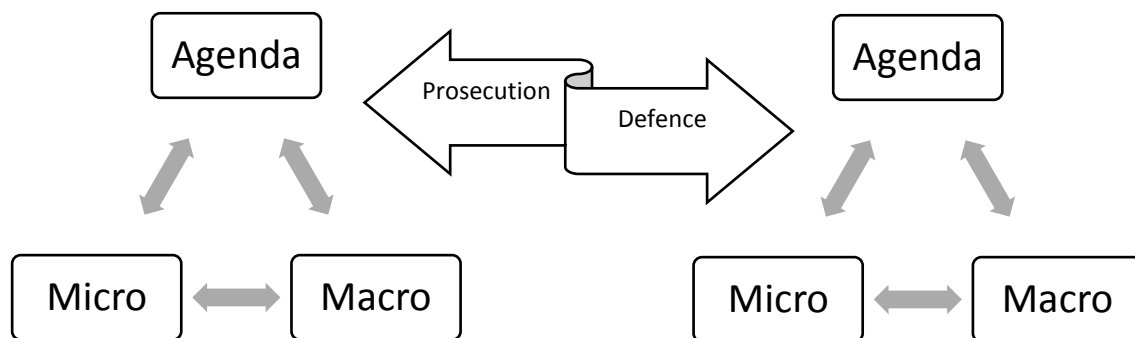
Having established the background to the trials, key evidence and witnesses, and the overall narrative approaches salient for understanding the contextual backdrop of this study, the following section shall explore the conceptual approach and research questions that form the basis of this thesis.

2.2 Research questions and conceptual approach

The above-mentioned conceptual approach this study takes draws upon both micro- and macro- analytical approaches. The layers within these interactions have been called 'agenda', 'macro narrative/context', 'micro-level interactions'. This concept is expanding on the work of Heffer (2005; 2010) and Cotterill (2003), who both explore the narrative elements of the trial process. Cotterill (2003) explored the two narrative strands of the O. J. Simpson trial, drawing a distinction between the narrative of the crime and the narrative of the investigation.

This thesis argues that the multiple layers of contextualisation and interaction that take place within the courtroom interact with and influence one another. This is not to say that drastic changes take place at any of these levels, such as major changes in the narrative, as a consequence of this, but that the adversarial element of the criminal justice system being analysed provides an additional level of interaction and influence. This will be explored more thoroughly using Figure 2.1 (below) as a visualisation.

Figure 2.1 Visualisation of conceptual approach



In unpacking these terms (in fig. 2.1), agenda represents the desired outcome for each side; for example, the prosecution has the agenda of influencing the jury to make a guilty verdict and the defence that of an acquittal (both defendants pleaded ‘not guilty’ to the charge of first degree murder). This in turn influences both the overall narrative (at the macro level) and the interactions and questions themselves (at the micro level). Furthermore, the overall narrative influences the potential actualisation of the agenda and directs the micro interactions. As a result of the micro level interactions, the narrative can also be influenced as well as the potential for realising the agenda. These three interacting elements are not locked on one side, as they are also influenced by the self-same elements of the opposing counsel; particularly when one considers matters such as cross-examination of witnesses and wherein what one

side presents can then potentially influence and alter the other side's argument or approach. This approach to courtroom interactions draws strongly upon Heffer (2010), but also takes a slightly different approach to narrative in that theoretical influence is drawn from Ricoeur (1980) rather than Labov's narrative structure (Heffer, 2005) (see 2.2 and Chapter 4). The interactive processes between the three levels and each side are also important, as courtroom interactions are reactive as well as active, creating a discursive space that responds and adapts as well as remaining determinate within their institutional role. This echoes the conceptual approach taken to the matter of Foucaultian theories and law (Golder and Fitzpatrick, 2009) (see 1.3), as it is the position of this study that, as law is both fixed and reactive, so are each of these elements as outlined above.

This conceptual approach is used to answer the following research questions:

1. In what particular ways do the state and the individual communicate with each other in the trials of Grant and Amanda Hayes?
2. What functions do these patterns serve in these interactions (including the (co)construction of narrative and associated strategies)?
3. How are power relations between the individual and the state established and represented in these interactions (including narrative (co)construction, subversion, statement interpretation, and (re)direction of subject matter)?

Within these questions, the narrative thread and agenda remain constant elements, as each of these contextualising factors remains relevant in terms of contextualisation and shared knowledge the jury has already been exposed to throughout the course of the trial to that point (remembering, of course, that the jury members have already been exposed to some

elements involved in the case through the jury selection process). The approach to context is discussed in more detail in 2.4.

2.2.1 Overview of chapter contributions to research questions and methods applied

The following is an overview of how each analysis chapter addresses the research questions, the methods applied, and the corresponding data analysis sections.

Chapter 3 (the cross-examination of Amanda Hayes, as a witness in her own defence):

RQ1:

- The emergent ways in which the state and the individual interact, focusing on the question and answer structure of the interactions (all sections).

RQ2:

- The ability of the defendant to provide information outwith the established question and answer format (section 3.2).
- The co-construction of conflicting narratives through the phrasing and lexical choices of the prosecution and defendant (sections 3.3; 3.4).
- The ability of the defendant to reframe and respond to questions from the prosecution to support her narrative position, and the ability of the prosecution to, in turn, reformulate these responses for the prosecution's agenda (such as being in a negative comparison with the fate of the victim) (sections 3.2; 3.4).

RQ3:

- The demonstrable ability of the prosecution to impose institutional restrictions in spoken interactions and enact these (section 3.3.2).
- The ability of the defendant to resist the question (section 3.3.3).
- The ability of the defendant to self-select outside of the institutional norms of the question answer format (section 3.2).

Method(s) applied:

- Linguistic micro-analysis using principles of Conversation Analysis (throughout chapter 3; addresses all research questions) (see section 2.6.1 for further information regarding application of method).

Chapter 4 (analysis of opening statements)

RQ1:

- The communications of the state (as the prosecution) with the court (and primarily the jury) through a narrative monologue (section 4.2).
- The communications of the defence(s) with the court (and primarily with the jury) through a narrative monologue (section 4.2).

RQ2:

- The topics introduced in the first three minutes of each opening statement, and the order in which they are introduced in comparison with the other opening statements (sections 4.2.1 and 4.2.2).
- The comparison of these performances at a micro-analytical level, demonstrating differences in strategy, approach to the narrative, and performance of the interlocutor when directly addressing the jury (sections 4.2.1 and 4.2.2).
- The contrasting narrative presentations of the same evidence (section 4.2).
- The function of time and location in the establishment of narrative coherence (section 4.2.3.1).

RQ3:

- The variance in the narrative portrayals of both defendants in terms of agency and responsibility (section 4.2.3.2).
- The power relationship of the state and the individual as characterised through the portrayal of law enforcement (section 4.2.3.4).
- The invocation of epistemic positioning in the narratives of the defence as a claim to knowledge (section 4.2.3.5).

Method(s) applied:

- Linguistic micro-analysis using principles of Conversation Analysis (sections 4.2.1, 4.2.2, and 4.2.3.2) (addresses research questions 1 and 2).

- Narrative coding and analysis (section 4.2.3) (see section 2.6.2 for further information regarding application of method) (addresses research questions 2 and 3).

Chapter 5 (interactions in the absence of the jury)

RQ1:

- Communications of the attorneys as being managed through the judge, particularly regarding rulings to objections and contested testimony (sections 5.2 and 5.3).
- The role of the judge as arbiter, determining the information the jury is allowed to hear as applied to the rules of evidence (sections 5.2 and 5.3).

RQ2:

- The judge's application of a reason-ruling format in the vocalisation of rulings for the record (section 5.2.1 and 5.3).
- The judge's orientation to knowledge and understanding of the rules of evidence in the determination of rulings (5.2.2 and 5.3).
- The editing of prosecution/defence narratives in *voir dire* (testimony heard in the absence of the jury), as previewed by the judge and based on the potential prejudicial impact of the evidence, relevance, and the rules of evidence (section 5.4).

RQ3:

- The judge as a personification of the state in a position oriented to and legitimised by participants within the interactions (sections 5.2, 5.3 and 5.4).
- The increased participation of the judge in interactions taking place when the jury is absent (section 5.3 and 5.4).
- The gaining and retention of the floor by the judge in these interactions (5.3 and 5.4)

Method(s) applied:

- Linguistic micro-analysis using principles of Conversation Analysis (addresses all research questions).

Having provided an overview of the research questions in the context of each chapter and a brief descriptor of applied methods (linguistic and narrative), the following sections will discuss the theoretical and methodological approaches underpinning this research in more detail, and how they have been applied to this thesis.

2.3 Approach to narrative

In the literature review, previous studies concerning narrative and courtroom discourse were discussed, as well as linguistic research in this area, and the theories of Foucault as concerns the law and power relations. Expanding on this, the following sections in this chapter will discuss the methodological applications of narrative and linguistic theories within the context

of this study and summarise the implementation of Foucaultian theories of power relations for analysis purposes.

In 1.7 narrative in courtroom research was presented. Having looked at previous research in this area, this section will provide the methodological approach to narrative as applied by this study.

Within previous research, Labov's (1972) model of narrative structure has been utilised as a means of unpacking those areas where courtroom narratives are most explicitly outlined (such as opening and closing statements) (Cotterill, 2003; Heffer, 2010). Whilst there is merit in this approach, this study does not actively apply Labov's narrative framework, but rather applies the approach of Ricouer (1980). Within this approach, time is not viewed in a sequential linear fashion, but as a means through which events are connected through a retrospective lens. For Ricouer, the ending of the narrative is the primary function for how the narrative is formed (Mishler, 2006). (For further discussion and development of Ricouer's approach, please see 4.2.3).

Within the approach to narrative, this thesis draws on literary theories as well as interaction based methods of unpacking narrative formulations within data. Though the monologic aspects of proceedings (such as opening and closing statements) are interactive only in terms of their engagement with the jury (though the jury cannot respond in any vocalic regard); these soliloquies are not delivered into a vacuum, but are presentations made to a listening audience. This audience will then have these presentations as a potential resource to draw upon as part of their deliberations. As such, the narratives can be analysed from the perspective of broader literary theory, as well as incorporating aspects of their *in situ* performativity as (somewhat) interactive sequences.

When looking at the ‘stance’ taken by interactants at the micro-level, where narratives are produced (or reproduced) for an audience, one aspect of import is that of epistemic positioning. When witnesses testify, there are those who provide what is termed ‘eyewitness testimony’, that is they claim to have seen something that coincides with the events deemed salient to the trial (by one side or another). These can be described as ‘personal narratives’. According to Schiffrin (2006: 207), personal narratives are the verbalisation of experiences in which characters – including the ‘self’ – act and react, pushing forward a particular plot. In the act of telling a story, one person is interacting with another; this creates yet another situated ‘self’ and ‘other’ within the act of doing the ‘telling’. The interaction that takes place in the telling of a personal narrative to another is also interwoven with and part of larger discourses (ideological positioning of the teller and hearer, social practices, shared cultural knowledge, etc.). When discussing the ‘stance’ of a speaker, Schiffrin (Ibid) puts forward that this is a combination of epistemology and evidentiality, whereby epistemology is the knowledge one has and evidentiality refers to the source of the information. For Schiffrin, this produces ‘epistemicity’ or ‘certainty of information’. Added to this is an assumption within narrative telling (and hearing) and the more direct the connection between the teller and the source of information, the more valid and reliable said narrative is (Ibid: 210-11). This is of direct relevance to courtroom testimony and links with the concept of ‘legitimacy’ (discussed below in 2.4), as one aspect of narrative in the courtroom is the attempt to establish it as the more likely of the adversarial narratives presented (or, given that there is no burden of proof on the defence to provide an alternative narrative, that the prosecuting narrative is invalid and/or lacks reliability). Testimony from witnesses who appear to have a credible epistemic claim to knowledge can therefore be said to be preferable in terms of shaping the overall narrative for that side (Henderson *et al*, 2016).

To summarise, narrative is perpetuated through the micro-level interactions in which witnesses are guided through their testimony courtesy of the lawyers' questions. In this, they act as witnesses with a recognised claim (by at least one side) to speak of what they have observed with a sense of legitimacy – though this may be opposed or undermined by the other side. In testifying, it can be argued that a witness is taking an epistemic position in which they become a 'legitimate teller' of their 'story', which in this instance would be their sworn testimony. This allows us to link Schiffrin's (2006) conceptualisation of personal narratives and elucidation of epistemic stance with Hutchby's (2001: 483) approach to 'witnessing' as applied to talk radio. Lay witnesses in court (much like those on talk radio) do not speak in abstract, detached terms, rather in terms of 'immediacy, experience and authenticity'. Whilst there are arguably additional limitations on speaker rights and processes within the court system in comparison with call-in radio, that witnesses are placed in a position of having a knowledge claim that is subsequently accepted or brought into doubt (usually by the questioner). Hutchby puts forward that there is an element of asymmetry (see Section 2.4 below) introduced in this setting, as the caller uses various strategies to legitimise their rights to 'witness' and recount their narrative, but it is the voice of the host that manages the interaction and remains constant throughout the programme (whilst those who call in have a limited duration to speak and are in a pre-allocated institutional setting) (Hutchby, 2001).

Taking a more literary approach to narrative, the very concept of narrative comes from the term *narrates* in Latin, meaning 'made known' (Berger, 1997). According to Richardson, narratives function as both a means of reasoning and of representation (Ibid). Through narrative coherence is given to life events, providing a structure in which they can be understood. In a similar way, narratives are also a conduit for learning both in the receiving and in the telling (Ibid: 9-10). The underlying assumption of narrative as meaning-

making through both its enactment and reception also ties in with theories of Ricoeur (1980), whereby the ending of the narrative is the point at which it can be made sequentially linear.

One aspect of storytelling that has also been touched upon is that of characterisation. Some researchers argue that in telling a story, the speaker places their own ideological views within the language used (Reissman, 1993). Thus, the content of a narrative can be argued to be subjectively linked with the teller, even in situations where there may be claims of detachment. Within the telling of the story are those involved (regardless of whether or not the teller is a principle person or relating a narrative without having borne witness to it). Literary concepts such as victims, villains, heroes, bystanders, inter alia, can be pervasive aspects of a narrative, even if this is not universally present in all stories ever told. Berger (1997) states that in ‘describing a character’ some of the following characteristics might be included:

- Name
- Age
- Gender
- Body language
- Clothes
- Facial expression
- Occupation

(For full list see Berger, 1997: 53)

Though this is applied to fiction, many of these characteristics can be mapped onto descriptions of participants in a trial setting. Without seeking to trivialise the trial process, it is not extending beyond analytical reach to state that, much like the *dramatis personae* of a play, the persons involved in a trial are presented with such features oriented to as relevant. Indeed, these characteristics arguably humanise and create a personification of the person for

the jury, which can be of particular important in cases where, for example, the victim is deceased and therefore unable to speak for themselves (Gerwitz, 1996).

In view of the distinctions within approaches to narrative analysis as outlined by De Fina and Georgakopoulou (2012), the methodological stance of this study will be discussed further. The approach to narrative taken within this work closely views two aspects as being under consideration that are both distinct and yet, one would argue, interlinked. The first of these is the structure of the narratives as presented in a specific format and targeted at a specific audience (see analysis of opening statements, Chapter 4). The second aspect refers to the narrative as macro-level construct used by each side of the adversarial court system that permeates interactions through discourse (where discourse refers to broader social practices outwith interpersonal interactions).

A final aspect of narrative analysis that influences this work is the research of Ehrlich (1990) on points of view. The concept of represented speech and thought (RST) refers to third person narration events rather than first person. As first-person pronouns can be present (as found in character voices within literary text), the concept of third and first-person narratives has been deemed by some to be problematic. According to Tamir (1976 in Ehrlich, 1990: 6), this could be described in terms of personal and impersonal narratives, whereby references by the narrator to themselves are 'personal' narratives, and where the narrator themselves is absent are 'impersonal'. RST involves the narrator reporting on thoughts and activities of 'characters from an objective perspective' (Ibid: 6-7). This is particularly salient when looking at opening statements in courtroom discourse, where such literary devices are employed.

Finally, a remark on involvement strategies in discourse. Research by Tannen (1989) shows that literary scholars and research in conversation have separately identified involvement strategies that both hold to be of import. These include, but are not limited to,

rhythm; repetition; content words; collocations; figures of speech; tropes; and imagery (Tannen. 1989: 17). In particular, repetition can be both a deliberate rhetorical device, or an ‘automatic’ linguistic device contributing to multiple functions such as connection, comprehension, clarification, emphasis and production. As such, both aspects of repetition are deemed salient to this analysis as operating at a narrative level and a micro-interactive one. Imagery is also salient, as can also operate at multiple levels. Tannen (1989: 166) describes the use of imagery in relation to meaning making as a device which allows the ‘individual imagination to create involvement’. In invoking imagery and use of imagination, the individual is more involved in the interaction as they ‘recreate a scene’ that can be recalled. This increases ‘interpersonal involvement’ which, in turn, potentially increases understanding (Ibid).

Having discussed narrative approaches and some of their links with interpersonal discourse, as well as drawing on literary theory and macro-level discourse, the following section will discuss the concept of legitimacy and its links with the approach to Foucaultian theories as applied by this study.

2.4 Summarising use of Foucault and links with *legitimacy*

As outlined in 1.3 and 1.4, this study takes a Foucaultian approach to the conceptualisation of the law and power relations. The ‘state’ is not considered a unified entity, but rather an umbrella term for multiple discourses that function within society with its acceptance. These discourses are perpetuated and reproduced by our interactions; making them relevant at the macro-level, as discourses which are considered shared knowledge within society; and at the micro-level, as discourses which are reproduced within our interactions with one another.

Building on the concept of power as a relational concept rather than something to be possessed by one person over another, this thesis also links with criminological approaches to 'legitimacy'. Legitimacy can be defined as the recognition of an organisation as holding authority within society through a shared normative framework in which it is viewed as 'right and proper' (Tyler, 2006). An authority (or organisation) is deemed to hold its position as that to which society defers and obeys through its normative establishment as holding the right to do so. Much work in legitimacy discusses power in terms of that which is 'held' by an authority, of which legitimacy is one form.

For the purposes of this study, however, it is contended that the view of legitimacy actually links with the Foucaultian principles of power relations and truth-claims. If one takes the view of legitimacy as a means through which authority can be established over another, it stands to reason that legitimacy (as with power) is arguably constructed in the face of resistance, whereby that positioning can be challenged, thus leading to the negotiation in which that authority seeks to demonstrate legitimacy through the perpetuation of discourse.

Within criminology, research has shown that people do as law enforcement officials say through a belief that law enforcement have a legitimate right to tell them what to do. This was described by Tyler as 'normative compliance' (Bottoms and Tankebe, 2012). As put forward by Bottoms and Tankebe (2012), legitimacy can only be found where there is a 'positive *recognition* by the citizens' (italics in original) of the organisation's 'right to govern', thus rendering it a conditional relationship through which those who obey recognise and legitimise the authority. By extension, this also means that such legitimisation can be 'defeasible' and withdrawn (Ibid: 125).

In maintaining legitimacy, those who acknowledge the right of the authority to govern are believed by Weber to internalise this recognition in terms of social norms and values. This becomes a form of self-regulation, separate from any rewards or sanctions that might be

brought to bear externally (Tyler, 2006). Though these approaches are somewhat divergent, it can be argued that Weber and Foucault converge in certain areas, despite differences in the articulation of power (inter alia) (O'Neill, 1986; Rudolph, 2006). It could be argued that there are links between this and Foucault's approach to surveillance as a means of forming self-regulatory practice. Foucault's use of the panopticon as a means of describing this, could be extended to include the idea that if one is subject to an authority legitimised through legal discourse and that self-same authority is perceived to, therefore, have the right to enforce these laws as legitimised by society, then these standards become internalised norms of behaviour (Foucault, 1977).

This is not to say that all people recognise the authority of law enforcement or self-regulate. Indeed, the concept of legitimacy relies upon its being part of the bilateral relationship between those who would exercise authority and those who decide whether or not that authority is to be recognised (Tyler, 2006; Bottoms and Tankebe, 2012).

In disseminating discourses that propagate legitimacy, various means can be used. For example, media exposure can increase or decrease the perceived legitimacy of law enforcement (Chermak and Weiss, 2005). Van Leeuwen (2007:91) moved towards the creation of a framework for analysing the 'language of legitimation', in line with Habermas' approach to 'demarcating types of legitimate authority'. Despite the conflicting philosophical approaches, one consistent factor within legitimation is its existence being predicated on acceptance by those over whom it would exercise authority. With specific reference to courtrooms, Rosulek (2010: 183) determines that legitimation refers to the 'reasons' and 'validations for how things are'. In the context of closing arguments, she discusses the multiple voices invoked in closing arguments by the speaker in order to legitimate the version of the narrative being presented. Aside from the narratives themselves in terms of each side, she states that closing arguments incorporate a mythopoetic narrative, the purpose of which is

to legitimate the speaker's position that those listening (i.e. the jury) should act in the manner proposed.

Legitimation in this sense is not simply a means of promoting one's own side; it is also the means through which one can delegitimise the conflicting narrative. In the closing arguments analysed, Rosulek concluded that the use of multiple voices within narrative (or heteroglossia) were invoked not only in terms of witness testimony, but also to invoke the law as an authoritative and 'impersonal' voice that could be applied as a legitimising force for their side (Ibid).

To summarise, the theories of Foucault and the concept of legitimacy are of import to this study in the following ways. In applying Foucault within a grounded, evidence-based approach, this study will analyse interactions in terms of how discourses emerge and are oriented to by participants. The view of the state as a series of discourses that are then potentially anthropomorphised through interlocutors who invoke that label allows for the analysis of the multiple levels of interaction that take place within the courtroom. In addition to this the concept of legitimacy, there is the potential to determine whether or not the concept of the 'state' and its representatives are oriented to as a legitimate authority with both institutional and discursive rights within this setting.

Having discussed these concepts, this following section will explore the micro-analytical and linguistic discourse approaches applied to this study.

2.5 Micro-analysis and approach to discourse

This project utilises the micro-analytical tools of Conversation Analysis as part of the approach to analysing the interactions at the micro-level (as applied to the conceptual model outlined in Section 2.1).

Conversation Analysis is an inductive approach attributed to Harvey Sacks (Liddicoat, 2011: 4-5). It is used in the analysis of naturally-occurring data (i.e. data that has not been scripted or pre-prepared, such as experimental data) (Ibid). Though often used in analysing interactions in 'everyday' settings, Conversation Analysis has increasingly been used in research investigating institutional settings (Hutchby and Wooffitt, 2008). Before discussing institutional applications of micro-analytic principles, the more general practices and tenets will first be outlined.

When one is analysing talk, one of the first things to consider is that interactions are not merely communicative means of imparting information, though this is undeniably one aspect. Language and talk are also means of 'doing' things; through talk, action takes place, such as requesting, inviting, complaining, *inter alia* (Schegloff *et al*, 2002; Maynard, 1984). Furthermore, talk is fundamentally organised, whether or not overt restrictions on interaction are present. This organisation can take the form of order of participation and speaker rights or turn-taking (who speaks when), designing talk for specifically for both the conveyance of the message and for the recipient (lexical choice and recipient design), whilst taking into account the context and 'normative parameters' framing the interactional setting (Ibid). Consequently, talk and interaction taken in this vein are seen as a way of achieving goals through the means of communication (Liddicoat, 2011: 5).

The three main elements that form a foundation for Conversation Analysis are; a) order is produced through the coordination of the participants and not as something pre-existing outwith the interaction; b) order is the result of reflexive interactions between participants who orient to the conversation as it unfolds, resulting in order as internally accomplished by the interlocutors and not externally presumed by the analyst; and c) the order is 'repeatable and recurrent', in that it recurs across numerous speakers and not only one individual (Ibid: 5). Though in this study, the data does not allow for a particularly large

corpus with which to engage fully with this notion, a localised comparison can be made without forming generalisations that extend beyond the dataset.

A salient feature within Conversation Analysis that is highly relevant to this work is that of ‘recipient design’. This is relevant to discuss, as the design of turns within the courtroom context is multifunctional with multiple audiences. Recipient design is the means through which a turn is tailored to other parties within the interaction (including, in the context of this research, the overhearing audience of the general public and the silent participants of the jury). This tailoring is managed through lexical choice, ‘topic selection’, ‘options and obligations for starting and terminating conversations’, and the ‘ordering of sequences’, amongst others (Sacks *et al*, 1974: 727).

Additionally, given the nature of the data micro-analytic features such as repair, overlaps, turn-taking and silence are considered to be of relevance to the methodological approach undertaken, as it is the micro-level features of interaction that determine how the narratives are perpetuated (or undermined) within the questioning sequences (see 1.4.2.1 and 1.4.2.2).

An important point that has already been alluded to and remarked upon is that of the broader contextual approach taken by this study that results in its utilising principles from micro-analysis, whilst not employing a ‘pure’ Conversation Analysis approach.

Conversation Analysis views talk as ‘context-shaped’ and ‘context-renewing’. In other words, talk is shaped by the context in which it occurs and responds to that context, thus perpetuating (or renewing) the context as relevant and oriented to within talk. As Heritage (1984: 107) puts it, ‘actions reflexively and accountably redetermine the features of the scenes in which they occur’. Context, therefore, can be taken as a two-fold consideration, that of context which is external to the interaction, and that which occurs within it. For

Conversation Analysis, the extrinsic factors (such as social categories, etc.) cannot be viewed as equally relevant within a given interaction, as context is ‘invoked... rather than something which impacts on’ the communicative exchange (Liddicoat, 2011: 8).

Komter (2013: 627-9) puts forward that context in the courtroom is a ‘multi-faceted and flexible interpretive resource’ with three dimensions; a) the ‘organisation of talk’; b) ‘institutional tasks and interests’; and c) ‘underlying beliefs and ideas’. This study holds with this view to an extent, however; even though the micro-level interactions are considered to be context renewing and reflexive in their construction through the question and answer process, the overall setting of the courtroom and the previous shared knowledge remain relevant, regardless of whether or not they are oriented to within the interactions at that moment, particularly as regards the overall narratives. In that regard, this study addresses Komter’s ideological dimension of courtroom interaction. Though one cannot (in accordance with Komter) establish the extent to which the ‘overhearing audience’ (referred to as the ‘silent participant’ in this study) has construed the interactions they have been witness to, that this is part of constructing (and deconstructing) the two adversarial narratives remains part of an overarching context that is both determinate and reflexive in nature (*vis-à-vis* the approach taken to law by this study).

One of the seminal works for Conversation Analysis as applied to courtroom settings is that of Atkinson and Drew (1979). In this work, the researchers studied interactions within a Coroner’s Court in the United Kingdom and from the Scarman Tribunal. The findings of this work highlighted the sequential nature of legal proceedings and the manner in which this was structured and adhered to. Atkinson and Drew identified courtroom settings as multi-party settings, but where those able to actively participate are restricted and predetermined by institutional rules (1979: 35). In terms of sequential patterns within the spoken data, they

determined that rather than just ‘question and answer’ adjacency pairs, there was the pattern of accusation-response. In this pattern, the preferred response was to mitigate self-blame through denial and reduction strategies. Responses to accusation could include denial, justification, admission, or apology (amongst others). Furthermore, in using a Conversation Analysis approach, Atkinson and Drew (1979) identified eight key features (though this list was not considered exhaustive). Of these features, the following are of particular relevance to this study:

- ‘The placement of questions about the factual status of a description’ within an utterance (‘isn’t it a fact’; ‘isn’t it true’ etc.)
- Questions which prepared the preferred response as agreement in the next turn.
- The length and frequency of pauses.
- The categorisation of a person from the options made relevant by the setting (such as ‘defendant’).
- The name form chosen and its use when referencing the person who is to speak next (such as ‘title + surname’).

(Atkinson and Drew, 1979: 195-6)

These features add to the foundation upon which this study builds, as the systematic features of court identified in this work remain an active part of Anglo-American legal proceedings as conducted today. This also contributes to a Conversation Analysis approach to courtroom settings as institutional talk, the concept of which will be expanded on next.

In the context of this thesis, institutional settings are not considered divorced from ‘ordinary talk’. This study takes the view put forward by Thornborrow (2002), in which institutional

talk is not simply identified through its difference to ‘ordinary talk’, but is defined rather by talk that displays a number of characteristics. These include (but are not necessarily limited to):

- ‘Talk that has differentiated, pre-inscribed and conventional participant roles, or identities’ (in this instance the roles of the courtroom, such as judge, prosecution, defence, defendant, etc.).
- ‘Talk in which there is a structurally asymmetrical distribution of turn types between the participants such that speakers with different institutional identities typically occupy different discursive identities’.
- ‘Talk in which there is also an asymmetrical relationship between participants in terms of speaker right and obligations’.
- ‘Talk in which the discursive resources and identities available to participants to accomplish specific actions are either weakened or strengthened in relation to their current institutional identities’.

(Thornborrow, 2002: 4)

This applies directly to courtroom analyses, as it allows for the asymmetrical interactions between participants as attributed through legitimisation of the institutional role, but also accommodates the concept of power as relational and discursively managed within the interactions.

Power within Conversation Analysis has had some contention placed around it, as it could be argued that in analysing power relations, there is presupposition of power as a concept to exist within interactions, thus applying power to analysis in a top-down deductive way. This then runs the risk of becoming a self-fulfilling prophecy, whereby power relations are determined to exist because the researcher was looking for evidence to support that hypothesis, rather than it emerging from the data in an inductive manner; thus also allowing

the researcher to ‘read in’ to the data the ‘relevance of external factors’ where supporting evidence may be lacking (Hutchby and Wooffitt, 2008: 210). In addressing the issue, the concept has been viewed through the lens of asymmetry by Hutchby (Wooffitt, 2005).

Hutchby proposes that Conversation Analysis analyses of institutional talk allow for the exploration of interactional features that can be interpreted ‘in terms of interpersonal power relations’ (Ibid: 193). This does not mean a rejection of the Conversation Analysis approach to context, but rather that ‘asymmetry’ could be said to include observable power relations as ‘an *oriented-to* feature of the interaction’ (italics in original) (Hutchby, 1999: 90). Hutchby’s (1999; 2001) work on talk-radio (as mentioned in 2.2) shows an established sequential normative framework for that setting that callers adhere to, and can be subject to sanctions from the host if they deviate from this established pattern. Hutchby refers to this as an ‘asymmetrical distribution of argumentational resources... in which power becomes observable as a discursive phenomenon’ (Hutchby, 1999: 90). This is to say that hosts have argumentational resources available to them that are not available in the same way to callers. Paralleling this with courtroom interactions, witnesses are similarly left without the confrontational resources that are available to the questioning attorneys. Attorneys are institutionally legitimised in dictating the topic, question form, and (to an extent) predetermining the form a response can take (though this does not mean that the preferred response is the one that will be received, merely that the groundwork for this formulation can be made). Through Hutchby (1999; 2001), micro-analytical principles can arguably still be applied and maintain a valid inductive approach. In addition to this, reference is also made to the agendas of the caller and the host, which are characterised as a ‘contest’, this again links with the conflicting agendas as prescribed by the adversarial court system and realised through the interactions between attorneys and witnesses. For Hutchby (1999), the host is in a position with greater confrontational resource through the position of second speaker,

whereas this could potentially contrast with courtroom sequential discourse, in which the witnesses are the second speaker but have their ability to respond potentially curtailed and directed through the formulation of the preceding turn (Hutchby 1996); and their ability to resist this potentially opening them to sanctions from the institutional setting (though also arguably orienting-to resistance as part of the negotiated state of an interpersonal power relation (Foucault, 1982).

Other aspects of discourse analysis relevant to this research are the features of topic management and reported speech. Both of these aspects of discourse analysis are salient to the setting, as both have been shown to be important and consistent features of courtroom interaction in previous research (Cotterill, 2003; Matoesian, 2001; Stygall, 1994).

In looking at topic management, it is important to unpack what is meant by a seemingly innocuous, common sense term. As put forward by Myers (2004), topic can be attributed simply to what an interaction is 'about'. This can, however, become problematic when one considers the boundaries between topics and the point at which a topic can be determined to have moved onto something different (Ibid: 90). In courtroom interactions, topics are managed through the question and answer process and are largely determined by the questioning attorney. Nevertheless, this form of management should still be considered interactive, as the initial question of a sequence might begin an interaction, but subsequent questions that follow are formed in response to the preceding response (ref). This influences topic management for although the questioner has an agenda and previously prepared topics to cover, it is argued in this study that this does not necessarily link directly with a topic-closing sequence followed by a new topic-opening.

Though discussed by Jefferson (1984) in reference to 'troubles-telling', this study utilises the concept of 'stepwise' topic shift as being relevant to the interactional management

of topics by participants in the structure of question and response sequences. This is in accordance with the approach used by Myers (2004: 101-4) and his work on focus groups, in which participants' responses are monitored by a moderator for relevance (applying this to a courtroom would be the questioner, who in turn can ask for appeal to the judge if witness is considered not to be addressing the topic at hand), though it is the interactants within that discursive space that determine whether or not a topic is appropriately oriented to.

Stepwise topic transition is described by Harvey Sacks as follows:

'... conversation is movement from topic to topic, not by topic-close followed by a topic beginning, but by a stepwise move, which involves linking up whatever is being introduced to what has just been talked about, such that, as far as anybody knows, a new topic has not been started, though we're far from wherever we began.'

(In Jefferson, 1984: 198)

The concept of moving from one topic to the next through a linking transition is also salient to the overall methodological concept employed by this thesis. That is, in linking potentially disparate topics through transitional shifts, it is arguable that this could potentially add an appearance of coherence to otherwise disparate events. In this regard, the micro-level interactions could then be said to fulfil not only legal requirements in terms of presenting the relevant evidence of the case, but also perform a connective function that is not necessarily linked with spatial or temporal aspects (for more on space and time in narrative, see 4.3.2.1).

Though the concept of step-wise transition adds both an analytical depth to the overall analysis and is relevant to the methodological approach, it does not however, address the previously mentioned issues regarding the determination of topic boundaries and at what

point a topic can be determined to have shifted or transitioned (please note that for the purposes of this study, these terms are used interchangeably throughout). In determining topical boundaries, the analyst may view emergent themes and topics differently from the interactants and their utterances *in situ*. In determining appropriate coding strategies, one must, therefore, be aware of how a gloss is framed and whether this could alter the interpretation of the interaction that actually took place (Myers, 2004; Saldaña, 2016). Consequently, it should be acknowledged that a certain amount of subjectivity can be involved when teasing apart topics, the point or utterance at which they are determined to have shifted, and how these are subsequently summarised within the research despite any aspirations one may have towards an inductive, data-driven approach.

Finally, as outlined above, reported speech will now be discussed. Reported speech (or direct reported speech) is a feature within discourse that in layman's term could be summarised as quoting another person (within a given degree of accuracy). According to Coulmas (1986: 2), traditionally, reported speech was placed within two categories: '*oratio recta* (direct quotation) and *oratio obliqua* (indirect quotation)'. The first category is defined as reproducing 'the original speech situation' wherein the speech is claimed to be an exact reproduction of the utterance in question. The second allows for adaptation, whereby the speech can be altered to fit the circumstance within which it is being reproduced (Ibid: 2).

Previous research on reported speech is applicable to this study, as reported speech has been determined to imply a level of objectivity to the claim being made (Holt, 1996; Clift, 2006). Direct reported speech is shown to imply a 'fidelity' to the original source and is used by lawyers in court given the general perception that it is more accurate (Holt, 1996). Given that reported speech is often used as a means of providing evidence (not necessarily in terms of 'evidence' as bound by legal restrictions, but in more general terms of relating an

account), Holt (1996: 226) also outlines that psychological research has shown, despite the perception of accuracy, that the ability to recall an utterance verbatim is 'often not possible'. Buttny (1998) puts forward that reported speech is contextually altered in its reproduction within the reporting circumstance. To expand upon this, by reproducing the speech (accurately or otherwise) in a contextually different scenario (the 'current' context in which the reporting is being enacted), the meaning of the speech being reported is already inherently altered. Tannen (1989: 105) also takes this same stance with reported speech, with the view that it is 'creatively constructed' within that interactional setting by the speaker.

Reported speech is often used in recounting narrative, but, importantly, adds other voices to the interaction when they are not physically present. Myers (2004: 137-9) highlights that a link within research on the use of reported speech within interaction is that it is 'rhetorical'. In this sense, reported speech is used when 'participants assume the existence of opposing views and use reported speech to dramatize, shift, or reinforce a view, or to bring out the tensions between views'. This is then divided into two categories: firstly, 'detachment', in which 'reported speech is separated from what the speaker says' for themselves; secondly, 'direct experience', in which reported speech is a 'depiction of what is said, rather than a description', thus '[carrying] an immediacy, an indexical connection to the original setting'.

For the purposes of this study, the focus is primarily on the second of these categories. As will be shown (see in particular Chapters 3 and 4), the concept of reported speech as a depiction, whereby the speech *does* something. Though, as Myers (2004) states, these categories are not wholly mutually exclusive, the focus on direct experience when invoking reported speech ties in with the concept of epistemic positioning and claims to knowledge within testimony. The use of reported speech can also be considered damaging (as will be shown in Chapter 4) when one considers that reported speech can also come in the form of an

alleged confession that is then reproduced in court. As shown in Matoesian's (2001) research on the Kennedy Smith rape trial, lawyers are encouraged to involve the jury at an emotional level and reported speech is one means of attempting to invoke an affective response from the listener.

In discussing reported speech, one must invoke Goffman's work on footing, which underpins much interactional research in this area. According to Goffman (1981), identities are not static within interaction, but are dynamic and emerge through interaction, responding to changes in context. Goffman postulates that the notion of a single speaker model in interaction does not fully account for complexities therein. Instead, Goffman puts forward the concepts of animator, author and principle. To elucidate, the idea of the 'animator' would refer to the production of the speech or 'sounding box', as Goffman describes it; the 'author' would be the person who selected that which is being expressed; and the 'principle' would denote the one who is committed to what those words say and the beliefs articulated (Goffman, 1981: 144). The 'speaker' can shift footing within an interaction, allowing them to change social roles within the same conversation (Goffman (1981) describes this as 'changing hats'), and not every aspect need be subject to change within a given interaction. With this underpinning sociological approach to interaction, reported speech can be viewed as a means of displaying multiple voices, without each of those voices being singly attributed to the concept of a static identity of the speaker. This allows for a more nuanced and fuller view of the function of speech and interaction overall, and reported speech in particular.

It would be remiss at this stage to close a discussion on multiple voices without reference to Bakhtin's work in this area. In line with the postulations on reported speech as fundamentally altered from its original state, Bakhtin also puts forward that reported speech can be altered through the act of being reported. Tannen (1989: 108), claims that in the work of Bakhtin there is no role of 'animator' (as described by Goffman), as this implies a

‘conveyor of information’ wholly removed from the utterance they are producing. For Bakhtin, language is interactive and incorporates multiple voices and ideologies. These ‘dialogic relations’ are intertextual and are formed in relation to past and current discourse, wherein speech cannot be reported without being influenced and altered by its current context (Matoesian, 2001).

In analysing reported speech within the context of this project, the role and formulation of the speech is of particular regard, as the reported utterance has been selected in accordance with the larger agenda and macro-narrative, thus being oriented to as relevant by that party to that case. Thus, the theoretical concept of reported speech as context-generated and context-altered through its use within interaction is of import to the subsequent analysis.

Having discussed the theoretical underpinnings of the methodology and methods employed within this study, the application of these methods, the data, its collection, and the ethical considerations of this project will be outlined in the following sections.

2.6 Application of linguistic and narrative analysis methods

Having discussed the theories and methods that are relevant to this study (sections #) and outlined where these methods are to be applied throughout this study (section 2.2.1), this section will outline the process through which these approaches have been applied in the analysis of data. Firstly, the application of linguistic analysis will be discussed, followed by that of narrative analysis. The concepts of legitimacy and the Foucaultian approach to power relations (as discussed in section 2.#) are evidenced in relation to the findings as they

emerged from the data (and were not applied or assumed to be present *a priori* by the researcher.

2.6.1 Linguistic analysis: Applying micro-analysis and identifying features in talk

2.6.1.1 Data selection

In applying the micro-analytical principles drawn from Conversation Analysis, the data was viewed first in its entirety (approximately 119 hours of trial footage from both trials; for further details on data specifications please see section 2.8) for a minimum of two whole viewings. After reviewing this footage, the particular foci of the data (cross-examination of Amanda Hayes; opening statements; interactions in the absence of the jury) were determined by the researcher through the identification of areas for further development as a result of extensive literature review; the ability to utilise an holistic approach to the trials and (co)construction of (conflicting) narrative(s); and potential contributions in terms of both the research questions and originality. Due to the volume of footage and limited scope of the study, full transcription of all 119 hours of footage using Jefferson transcription conventions (as provided in Jenks, 2011) was not undertaken, with this only applied to identified areas for analysis.

2.6.1.2 Applying linguistic analysis

Having identified the areas of the trials that were to be analysed in detail, transcriptions were produced by the researcher using Transana Standard (Version 6.21b) transcription software.

As the one of the core conceptual aims of this study is to triangulate data across a multi-level perspective (see section 2.2, figure 2.1), it was deemed important that findings emerged from the data, and were not ascribed to it, by using the inductive (or bottom-up) principles of micro-analysis (Sidnell and Stivers, 2013:2).

In identifying conversational features, these emerged as patterns within the data through close review of the transcripts and the videos themselves. It is worth highlighting that transcripts in this study were a tool to aid with data analysis and were not considered data in and of themselves, as the data was regarded to be the video-recordings (Jenks, 2001: 5). In accordance with the conventions outlined in section 2.5, features of talk identified were a) produced through the coordination of the participants; b) reflexive interactions between participants who orient to the conversation as it unfolds; c) repeatable and recurrent within the data (Liddicoat, 2011: 5).

In adapting this to the institutional context of the courtroom and the dataset under review, the rules that bind courtroom interactions did not mean that these concepts could not be applied. Though restricted through format of the interactions (such as the question-answer format), in transcribing and analysing this data, it will be shown that, emergent from the data, participants still coordinated interactions, were reflexive in their responses (see particularly Chapters 3 and 5), and that identifiable patterns could be established that were repeatable and recurrent in the data (see particularly 3.2; 3.3; 5.2; and 5.3). What is worth noting here is that the even though the patterns will be demonstrated to be recurrent, this is within the bounded context of the two trials analysed and not across a sample of multiple trials. As noted throughout this thesis (and particularly Chapter 6), generalisations outwith the dataset are not claims that will be made from this study.

In identifying conversational features within these interactions, observable phenomena were identified and interpreted in line with Conversation Analysis principles.

These included the identification of overlaps in talk; repair; intonation and prosodic features; turn length; lexical choice (including the re-use and recycling of terms); and orientation by speakers to the previous turn, *inter alia* (Hutchby and Wooffitt, 2008; Liddicoat, 2011).

Linguistic features were interpreted within the context of the talk itself and their relationship with surrounding talk (considering the turns that came before and after), addressing the fundamental question of ‘[w]hy that now?’ (Heritage and Clayman, 2010: 17). In examining observable phenomena within the context of the interactions, patterns and functions of these occurrences are then discernible features. This interpretation is in accordance with the application of this method in linguistic research, including Atkinson and Drew (1979), Heritage and Clayman (2010), and Hutchby and Wooffitt (2008), *inter alia*; where talk is considered to be both context creating and context renewing, with institutions as ‘talk[ed] into being’ (Heritage and Clayman, 2010: 20),

In reviewing the data and identifying features, the concept of asymmetry as defined by Hutchby (1996; 1999; 2001) was employed (see section 2.5). This was necessary in analysing institutional footage as it allowed the concept of power relations (Foucault, 1982; section 1.4 and 2.4) to be analysed without imposing the theory upon the data. In observing details such as floor management (for example, who has the floor and when do they have it?) and how speaker rights are managed (such as, who claims/is permitted to speak and when does this occur within the interaction; to what extent is the talk allowed/curtailed, and by whom [if anyone] is this managed; and in what ways?), it is possible to identify the ‘asymmetrical distribution of argumentational resources... in which power becomes an observable phenomenon’ (Hutchby, 1990: 90) as discussed in theoretical terms in section 2.5.

Having power as an observable phenomenon that can emerge from the data, in turn, means that the Foucaultian concept of power relations (wherein power is negotiated within interactions and not possessed and resistance is a pre-requisite for a power relationship to be

established; sections 1.4 and 2.4) can be evidenced and interpreted as emerging from the data, without the assumption that it will be inherently found within it. This adds to the methodological triangulation of data as purported by this study (section 2.2), in which macro-level and micro-level theories are brought closer together as complimentary forms of analysis, rather than in conflict.

Narrative (as a concept and not a method of analysis in this instance) is also relevant in the analysis of talk through the use of micro-analysis, as it is closely intertwined with topic. In analysing topic and topic shifts within the talk (Chapters 3, 4, and 5), how the narrative(s) unfolds, is oriented to, and shifts becomes observable within the data.

In reviewing the data and transcripts, and in accordance with the theory of topic (as discussed above and in section 2.5; Myers, 2004; and Jefferson, 1984), transition between topics is observed within the data (as applied in Chapters 3, 4 and 5). With topic and topic shift as observable phenomena (particularly notable through the institutional interactions, and their question and answer based framework), this study reviews topic within the context of micro-level interactions; addressing how/if it is oriented to by participants, shifts between topics, and how these topics are framed both at the micro-level, and as part of the larger macro-level narratives of the defence and prosecution, relating to the overall agenda. As narrative is co-constructed in these interactions, the emergence of conflicting co-constructed narratives through the discussion of topics at the micro-level is also observable and emerges from the data (applied in Chapters 3, 4 and 5).

In addition, this approach addresses the research questions (and particularly RQ2), as it contributes to the function(s) of the patterns of interaction (and the [co]construction of narrative), as well as addressing the concept of power relations (RQ3), as the asymmetrical

nature of the interaction with the questioner also having the capacity to manage the topics within the interaction can also be observed (Chapters 3 and 5).

In addressing more functional aspects of the application of methods to this study, transcript extracts accompanied by the video recordings and preliminary findings were presented at regular data sessions (Newcastle University's Micro-Analysis Research Group [MARG]), and conferences (including the Germanic Society for Forensic Linguistics, 2015; 2016; Sociolinguistics Symposium, 2016; and International Association of Forensic Linguists, 2017) for purposes of peer review (see 2.7 for further information regarding reliability and validity).

2.6.2 Narrative analysis, coding data, and identifying themes

In utilising narrative analysis in this thesis, this section will outline how narrative approaches (as discussed in 2.3) were applied, including the application of narrative within discourse; Ricoeur's (1980) approach to narrative time; coding data; and identifying themes.

2.6.2.1 Narrative in discourse

This thesis draws on discursive and literary theories as well as interaction based methods of unpacking narrative formulations within the data. As discussed in section 2.3, applying Schiffrin's (2006) approach to personal narratives is considered to be parallel to witnesses providing testimony in the context of the trial data of this thesis. In analysing the narrative formulations one aspect identified is the 'stance' of the speaker (their position within the narrative), which is observable through their epistemology (evidenced through their claims to

knowledge) and evidentiality (evidenced through the source of the information). These were interpreted in the data through the speakers' positioning of the 'self' within the testimony (Schiffrin, 2006: 210-11) and use of direct, indirect or reported speech (Myers, 2004: 137-9).

In having epistemology and evidentiality as observable and emerging from the data, it is also possible to observe and interpret the enactment of 'legitimacy' (section 2.4), which is also in line with the research of Bottoms and Tankebe (2012); wherein legitimacy is not possessed but, as with power relations, is negotiated within interactions. The invocation of different voices within testimony (such as the use of Amanda Hayes' alleged confession by the prosecution [Chapter 4] and the testimony of Heidi Schumacher in which she quotes Laura Ackerson [Chapter 5]), also allows for the identification of patterns and functions in interactions, whereby it is possible to interpret the enactment of legitimacy as emergent from (and not applied to) the data. As such, the stance of speakers and the voices that they invoked in producing testimony are identified and analysed as part of this study (see Chapters 3, 4, and 5). This is applied in accordance with Bottoms and Tankebe (2012), Schiffrin (2006), and Myers (2004).

In the formulation of macro-level narratives and the identification of the overall 'story' for each aspect of the trial, a more literary approach is applied.

After reviewing all of the video footage available (after a minimum of two viewings of all 119 hours), the overarching narratives for both prosecution and defence in both trials were identified, with extensive notes made and coded by the researcher identifying evidence, witnesses, objections, inter alia at the broader level. After this initial stage (as mentioned previously), it was determined that a focus would be made on the opening statements (four in total across the two trials; Chapter 4). The concepts of victim, villains, heroes, bystanders, and other such 'characters' could be identified in the framing of these narratives, with these

characteristics being actively applied in the courtroom setting (Berger, 1997). Having outlined these characteristics in more detail in section 2.3, they can be observed as directly oriented to and invoked by the interlocutors in the opening statements, emerging from the data in both micro-analysis and coded, thematic analysis (Chapter 4).

Although it has been used in previous linguistic research on courtroom and narratives (Cotterill, 2003; Heffer, 2005; inter alia), Labov's (1972) narrative schema was not applied in this study (due to the critique discussed in sections 2.3 and 4.1.1); and it is part of the contribution of this thesis, that Ricoeur's (1980) approach to narrative time is employed instead (for further details of the theoretical approach, see sections 2.3, 4.1.1, and 4.2.3.1).

In order to operationalise this theory Ricoeur's (1980) theory of narrative time and to perform a thematic analysis of the opening statements (as the primary introduction of the narratives of each side to the jury) to this study, narrative coding was utilised, with further details of this process provided below.

2.6.2.2 Narrative coding and the identification of themes

In order to apply Ricoeur's (1980) approach to narrative time as retrospective, non-linear and outwith a predefined schema (such as Labov, 1976), there are two main considerations.

Firstly, the episodic dimension ('which characterises the story as made out of events'), and secondly the configuration dimension (where the plot constructs the whole out of 'scattered events'). In order to employ these concepts, the events themselves must be identified. This was done through the application of inductive coding, using Saldaña's (2013: 135) approach to narrative coding as an initial guide, the process of which being as follows.

Transcripts were produced by the researcher for all four of the opening statements. These opening statements then went through the process of open coding, in which codes were generated based on details emerging from the data. This coding process was undergone twice by the researcher for each opening statement at separate points in the production of this thesis to check the consistency and reliability of the coding process. In accordance with Saldaña (2013: 198-206), codes were clustered according to emergent similarities which formed the themes that emerged from the data (for tables of topics, summary and themes for each opening statement, please see Appendix B).

As part of the coding process, topics and temporal features of the data were coded and analysed. This allowed for the identification of each 'episode' outwith a linear framework. It is contended that identifying these episodes, as made relevant by the interlocutors, allowed each element to be identified without applying a linear model. As will be evidenced in Chapter 4, all court case narratives are arguably retrospective (through the act of being told at trial) with the jury already aware of how the 'story' ends (Dershowitz, 1996). In identifying the individual episodes which make the 'scattered events' that have occurred, it can be seen how otherwise disconnected events (such as shopping or meetings) are drawn together in the configurational dimension to form the overall narrative plot (Ricouer, 1980; section 4.2.3.1). In removing a linear approach to time as a preconceived schema, it can also be seen how episodes themselves are oriented to outwith the narrative chronology of the plot (not all events discussed at trial are done so in the order that they are claimed to have occurred in), as will be shown in section 4.2.3.1, for example, the defence of Amanda Hayes does not adhere to a narrative chronology in the same way as the prosecution does.

This section has discussed how the methodological approaches introduced in this chapter are applied in this thesis, including both linguistic and narrative approaches at both the micro-

and macro-level. The conceptual constructs (such as power relations and legitimacy) have been discussed as observable phenomena that can be evidenced and interpreted within the data analysis, and the importance and means through which data is triangulated (as links with the overall three-level concept introduced in 2.2) has been reviewed. Sections and chapters of particular relevance to each approach have been identified throughout, and for a further outline of which methodological approaches were applied to which chapters, please see the overview provided in section 2.2.1.

The following section will discuss the role and relevance of the jury in this study, followed by an overview of the data and its collection; ethical considerations; and concluding remarks for this chapter.

2.7 Characterising the jury and its role in an adversarial criminal trial

As part of the methodological approach of this study, it is of value to outline the role of the jury and its characterisation throughout this thesis. As much as the jury is oriented to in court, and talk is tailored for the purposes of persuading the jury (Heffer, 2005) (and as is evidenced in Chapters 3 and 4), in Chapter 5, the role of the jury becomes highly relevant through its absence. It is the jury who determine the guilt or innocence of the defendant; and questions, answers, and narratives are all put forward with the agenda of persuading the jury in one direction or the other (Heffer, 2010). In examining the interactions in the absence of the jury, this study will show the ways in which testimony is edited and what is required to be removed before it is considered suitable for the jury to hear. The role of the judge as arbiter as to which aspects of evidence are permissible becomes more interactive (see Chapter 5), and it is for the purposes of presenting to the jury, testimony that adheres to the legal rules of

evidence. Therefore, even in its absence, the jury remains of key importance in the trial, and the evidence to which it is exposed is determined through the judge's role as decision-maker and gatekeeper (Ibid).

The concept of the jury as a 'silent participant' (Carter, 2011) was introduced in section 1.6 and will be expanded further here, along with the rationale for its application to this thesis.

The jury are oriented to throughout the trial, both directly and indirectly. Their impact on the courtroom through their presence is demonstrated in Chapter 3, the cross-examination of Amanda Hayes (one of the defendants). As those tasked with passing judgement, the jury determine the guilt or innocence of the defendant and, as such, play a major (if largely non-vocalic) role in these trial proceedings. Goffman (1981: 132) refers to 'overhearers' as those who are listening, but are not 'ratified participants' of the talk. He also acknowledges that not all talk is dyadic (between a speaker and an 'addressed recipient') and that once these boundaries are broken, there is the potential for the interaction to be 'played out' for those who are listening, with an example including that of a jury 'overhearing' the elicitation of witness testimony (Ibid: 132-3). For Goffman, this allows 'subordinate talk' to take place, in which there is a layered message and inference within the dominant communication directed towards the ratified participant (Ibid: 133-4).

This provides a good foundation upon which to build our approach to the role and characterisation of the jury in this study. Goffman allows for the complexities of communication and challenges the simplistic conceptualisation of a 'hearer' or 'recipient' within an assumed formula of dyadic communication (1981: 134-7).

Within the specific context of jury trials, however, the term 'overhearer', whilst a forward-moving conceptualisation of those who 'hear' or receive talk, has been highlighted as failing to fully encompass the role of the jury and the orientation of talk within this specific institutional context (Heffer, 2005: 48-50); particularly as the term is also applied to

an audience listening to a radio or watching television (Heritage, 1985), and whose role in proceedings is arguably more passive (and without the implications of judgement pertaining to a person's possible loss of liberty – or life – depending on the charges, jurisdiction, and court).

In building on the characterisation of the jury, this thesis is presenting a shift towards terminology that it contends encapsulates the active role of the jury in a trial (as a participant), even if this role does not have an obvious 'on-stage' vocal presence (silent). It is the actions of the jury at the end of the trial that determine its overall outcome, and it is the jury for whom the majority of talk is designed. Thus the phrase 'silent participant', as introduced by Carter (2011) has been used throughout this study. Carter (2011: 69-70) referred to the tape recorder in interviews as a 'silent participant', as the tape is oriented to by police officers in the interviewing of suspects. Through an application of Drew (1992: 495 in Carter, 2011: 70), in which it is identified that 'the structural feature that talk in (cross)-examination is designed for multiparty reciprocity by nonspeaking overhearers can immediately be seen to have certain consequences for sequential patterns and activities in talk'. In the process of questioning a witness, the attorneys will provide an uninitiated third-turn receipt of the answer received (as will be demonstrated in Chapter 3 in the reformulation of responses in cross-examination), which is structurally designed for the jury. It is important to note here that juries can, in fact, ask questions, but rarely exercise this right (Drew, 1992: 517). This further contributes to the argument of this study that the jury can be characterised beyond the implications of an 'overhearing' audience, as they also have institutionally bounded participant rights within trial proceedings.

As such, the jury is 'oriented to and accounted for' in the talk of the interlocutors.

Further to this, Heffer (2005: 48-51) also indicates that attorneys interact with the jury during

questioning through gaze and prosodic features such as intonation within trial talk, thus shifting their position from indirect to direct recipients of talk.

On the basis outlined above, having considered Goffman's (1981) use of 'overhearer' and in accordance with the developing terminology in reference to the jury in trial proceedings, this thesis refers to the jury as a 'silent participant'. This builds on the work of Heffer (2005) and Carter (2011), shifting the term from its application to the tape recorder (as in Carter's research) and applying it directly in the characterisation of the jury (as was proposed as a potential application in Carter, 2011: 70-1).

2.8 Data collection

Having discussed the methodological approach utilised within this study data, its collection, and other salient features will be outlined.

As discussed previously in 1.5.2.2, data collection and who owns courtroom footage were issues that needed consideration throughout the conception of this project. The result of this was that the data in this study are comprised of video footage of two trials (those of Grant and Amanda Hayes) that were published on a video archive available to the public via WRAL, a news site for Raleigh, Durham and Fayetteville in North Carolina (wral.com). For the trial of Grant Hayes, the general overview of the data is as follows:

- **Data collected from:** http://www.wral.com/news/local/asset_gallery/12826513/
- **Approximate length of footage viewed overall:** 57 hours
- **Verdict:** Guilty (first degree murder)
- **Sentence:** Life in prison
- **Appeal:** Dismissed on Tuesday, 3rd March 2015

For the trial of Amanda Hayes, the general overview of the data is as follows:

- **Data collected from:** http://www.wral.com/news/local/asset_gallery/13329437/
- **Approximate length of footage viewed overall:** 62 hours
- **Verdict:** Guilty (second degree murder)
- **Sentence:** 157 – 198 months in prison (approx. 13 – 16 years)
- **Appeal:** No known appeal

In the sentencing of Amanda Hayes, it should be noted that credit was given for time already served.

In order to ensure validity and reliability in transcription and analysis, aspects of this study have been presented at for peer review at linguistics conferences (such as the Sociolinguistics Symposium 21, Spain, June 2016) and data sessions with Newcastle University's Micro-Analysis Research Group (MARG) throughout the duration of the period of study.

Data were transcribed using Transana Standard (Version 6.21b) transcription software (Woods and Fassnacht, 2017) and the Jefferson transcription system (Jenks, 2011: 114-115). This manner of transcription was chosen in order to allow for a full analysis of data selected, including features which would not be noted in other transcription methods, such as overlaps, asymmetry in turn length, and prosodic features that can impact upon the interpretation of an utterance, as form impacts upon interpretation of content (O'Barr, 1982).

2.9 Ethical considerations

This study was undertaken in accordance with the Codes of Ethical Practice of the ESRC, Newcastle University, the British Association of Applied Linguistics and the British Sociological Association.

Matters such as anonymity were not required for this project as this was a desk-based study with information gathered from the public domain. However, despite the public nature of this data, some details were redacted by the author (these included telephone numbers and addresses) as these were considered to be a matter of conscience to the author, who saw no need to further distribute such details as their inclusion had no bearing on the quality of the analysis.

2.10 Final remarks on methodology and summary of original contribution

This chapter discussed the interactive, three-fold approach between agenda, macro-, and micro-levels of discourse within courtroom settings. Drawing on research from approaches to narrative, sociology and criminology, and linguistics, this study utilises a fundamentally inductive, data-driven approach that uses evidence drawn from the data to identify features that are oriented to by interactants as salient. These features are contextually linked with the broader aspects of the trial as made relevant by the setting and overall institutional roles of those present. In drawing together micro- and macro-approaches to data analysis, this study builds upon previous research in this field (including Thornborrow, 2001; Haworth, 2006; *inter alia*).

In terms of data, this thesis contributes to the field on knowledge in its ability to form a localised comparison between two criminal trials that maintain the same judge and prosecution team, but have different defendants and defence counsel. Whilst broader generalisations are not made from this study, it provides a platform from which observances

can be made regarding interactions between the anthropomorphised label of the 'state' and the interactants who partake of the embodiment of what is here believed to be a multitude of different discourses, and those who testify as 'witnesses' but are outwith this 'state' embodiment (thus classifying them in this study as 'individuals'). It also provides a means through which narrative use and changes within narrative can be observed within the criminal trial system and without comparison to a civil trial; thereby building on previous research (such as Cotterill, 2003). This can be done as the victim, and a large amount of the evidence and witnesses remain the same across both criminal trials.

Having discussed the methodology, methods and contribution of this project, the following chapters will present analyses across three main areas. These areas are: the cross-examination of Amanda Hayes; the opening statements between the four trials; and interactions in the absence of the jury.

Chapter 3: Analysis of Amanda Hayes Cross-examination

3.1 Introduction

Throughout these two trials, Amanda Hayes was the only one of the two defendants to speak on her own behalf from the witness stand. Under the Fifth Amendment of the Constitution of the United States of America, defendants have the right to remain silent and (in contrast with judicial practice in England and Wales) the prosecution cannot infer guilt. Consequently, for example, Grant Hayes could not be inferred to be guilty by not taking the stand and refusing to be questioned under oath concerning the charges, as he was exercising what is considered to be a basic right in this judicial process (Justia, 2017). As part of her defence, Amanda Hayes took the stand and, in doing so, was able to put forward her version of events in person (as opposed to through an interlocutor in the form of her legal representation). Nevertheless, in doing so, she was also able to be questioned by the opposing counsel regarding the events of and surrounding the death of Laura Ackerson (the victim and former girlfriend of Grant Hayes, with whom he had two young children).

The questioning of Amanda Hayes took place over two days and the viewable video footage is almost 6 hours long (see 2.6 for link to video archive). The process took the form of direct examination (questioning by Ms Hayes' attorney), cross examination (questioning by Assistant District Attorney), re-direct examination, and re-cross examination. It should be noted that as part of this process, certain limitations were placed on the re-direct and re-cross segments. Particularly with regard to the re-cross segment, the Judge ruled that questions had to be limited to the re-direct only (and, consequently, the prosecution could not ask new questions regarding the original direct examination from the previous day). Amanda Hayes (hereafter referred to as AH) was only questioned by one person from each 'side' whilst on the stand: her primary attorney (GAS), and a female Assistant District Attorney (ADAH).

Though this analysis does not draw overly on gender-based arguments due to space constraints, it is worthwhile to note that although her direct questioning comes from a male defence attorney (even though there is a female member of her team), the cross-examination is performed by the female member of the two-person prosecution team.

During this cross-examination, several features came to be of note which can be divided into two sections for discussion. These two sections form the basis of this chapter. The first section examines the use of self-selection during cross-examination by the defendant. Though the frequency with which this was exercised was limited, its occurrence at a micro-analytical level was significant in the pattern that emerged when this took place. In the second section examines the means through which the defendant retained and maintained the 'floor' were also deemed significant. These features also, in the view of this study, support the Foucaultian theoretical approach posited in 1.4 regarding power and resistance, and the negotiated state in which they exist. In support of Thornborrow (2002), these interactions display a discursive shift in power and resistance that can – at times – contradict the expected norms of the institutional roles being performed; particularly in this instance those of the cross-examining lawyer and the defendant. It is the stance of this thesis that these interactions also demonstrate this theory of power and resistance at a micro-analytical level, thus providing evidence in support of the macro-level theory (1.4) without imposing a 'top-down' approach.

3.2 Self-selection during cross-examination

3.2.1 Background

As outlined by Atkinson and Drew (1979) in their analysis of a coroner's court and tribunal testimony, the institutional roles of the courtroom are predetermined factors within the context of the interaction. These roles ascribe to the interactants when they can and cannot speak and what form their interactions should take. In the case of Amanda Hayes' cross-examination, there are three key roles which are oriented to; those of the defence and prosecuting attorneys, and that of the witness (in this case, also the defendant). As has been discussed by various scholars (Ehrlich, 2006; Matoesian, 1993; 2001; Cotterill, 2003, *inter alia*), one of the mainstays of courtroom interaction is that of questioning. Though often viewed as a fairly commonplace process, questioning has been extensively researched and the forms that questions take are taught to aspiring lawyers (Conley and O'Barr, 1998). Questioning is also a dimension of adjacency pairs within CA (conversation analysis), with the question-answer format being extensively researched (Heritage and Raymond, 2012; Raymond, 2003).

Though discussing self-selection, it is important to outline the institutionally expected norms of a question-answer format, as self-selection in the context of this courtroom setting breaks the established pattern and deviates from the expected norms of courtroom interaction (as outlined through the institutional roles discussed above). This is discussed in greater depth below.

3.2.2 *The use of self-selection in the case of Amanda Hayes cross-examination*

There are three key points during Amanda Hayes' cross-examination in which self-selection occurs. In all three of these instances there has been pause which is longer than those which have occurred previously within that exchange, though the length of these pauses is not uniform. Contextually, the following extract is discussing whether or not Amanda Hayes' discussed the victim, Laura Ackerson, after she had been supposedly injured in the apartment (the prosecution narrative being that at this point she was likely deceased).

Extract 3.1

91 ADAH so you don't remember if you (0.7)
92 u:m (0.4) Asked about lau:ra: how she wa:s=
93 AH =i don't believe so no↓ (0.3) i-i
94 don't believe she was brought up (.)
95 no
96 (3.1)
97 AH i'm just not gonna swear that we never
98 eve:r spoke about her i don't
99 recall any conversations we had about
100 her .hh i'm just not gonna say she was
101 never men↑tioned↓

As can be seen in extract 3.1, Amanda Hayes' is denying asking about Laura Ackerson's wellbeing after she was supposedly injured in the apartment; after which, Grant Hayes is

alleged to have informed Amanda Hayes that the victim had returned home while Amanda Hayes was out with the children. At this point Amanda Hayes claims that she had no knowledge that Laura Ackerson was deceased and would not learn this information until after she, Grant Hayes, and the children had arrived in Texas.

As can be seen in extract 3.1 at line 96, the duration of the pause is 3.1 seconds. At no point during this segment (or in extracts 3.2 and 3.3) does the camera show what is happening in a wide-pan view of the courtroom, however; throughout both Grant and Amanda Hayes' trials, long pauses have not been unusual with various actions taking place during these from documents being organised to attorneys briefly conferring with one another. There is no visible or audible prompting for the defendant to continue speaking or to elaborate on her answer, making the orientation by AH to continue speaking a marked occurrence. Though there must be some allowance made for the possibility of a nonverbal cue to continue, this must be weighed against the potential lack of such a cue becoming part of the permanent record as it would not necessarily be documented by the court reporter.

The question, which is put forward by ADAH at lines 91-2 is framed in terms of a statement to be confirmed (or denied) by the defendant (AH) as a binary yes/no (Raymond, 2003). This is responded to swiftly by AH as can be seen by her latched response at line 93. AH repeats 'no' at both lines 93 and 95, but hedges this denial with 'i don't believe' both times. The negative response to this question fulfils the requirement of responding to complete the adjacency pair and is within the interactional 'rules' established within this setting. In spite of this, and of the 'usual' preconception that witnesses should not volunteer information under cross examination beyond answering the question, AH waits 3.1 seconds and then continues to elaborate. This second turn from lines 97-101 is a (seemingly) voluntary elaboration of the previous turn's content that provides additional hedging. AH shifts slightly in this elaboration from 'i don't believe' to qualifying the use of 'no' with

reference to her inability to recall such a conversation and that she is ‘not gonna say she was never mentioned’. In this second turn the words ‘swear’, ‘spoke’, and ‘never mentioned’ are all emphasised.

This leads to extract 3.2, in which a similar pattern is observable. Contextually, after the death of Laura Ackerson, her body was dismembered and disposed of in Texas near the family of Amanda Hayes. A large piece of furniture was alleged to have been in the U-Haul trailer and placed in front of the coolers in which the victim’s remains were being stored. Amanda Hayes claims to have had no knowledge of this and denies having helped remove the large piece of furniture.

Extract 3.2

61 AH well i did not help (.) unload the
62 furniture↓ i don't know how it got
63 out↓ (0.5) like i said i thought that
64 they had helped↑ (1.3) but if they
65 didn't (.) then i don't know how he got
66 it out↓
67 (11.2)
68 AH when i went outside that night (0.2)
69 it was already on the grass↓ (.) and he:
70 was: (.) in the trailer↓
71 (1.3)
72 ADAH °okay what night are you speaking of°
73 AH monday night↓

During this extract, AH is outlining that she did not help Grant Hayes remove a large item of furniture from the trailer while they were in Texas. AH is claiming that she believed other members of her family had helped him, which is being brought into question by the prosecution.

In this extract, it can be seen that the pause length at line 67 is 11.2 seconds long before AH self-selects. This is the longest pause of the three extracts under discussion and again, there is no audible evidence that AH has been encouraged to expand upon her previous answer. AH answers the question in line 61 ('well i did not help') and expands after a micropause to complete the first part of the turn at line 63 ('unload the furniture i don't know how it got out'). This is then followed by a 0.5 second pause, after which there is further elaboration of this initial negative answer. This elaboration is again broken up by a 1.3 second pause at line 64, before the conclusion of the elaboration at line 66. After the 11.2 second pause, AH self-selects and offers additional information, thereby continuing to elaborate on her previous response.

Again, an interesting feature of this self-selection is the apparent voluntary provision of additional information, particularly when the question has already been answered. Compounding this is the contextual setting where the defendant is not even under an obligation to take the stand; much less the apparent breaching of the established question-answer pattern to volunteer information to the opposing counsel. Further to this is the implication of the wider narrative, Amanda Hayes distances herself from helping Grant Hayes move the furniture behind which the victim's remains are hidden. There is a potential narrative inference that could be drawn from this; that of Amanda Hayes distancing herself from acts surrounding Laura Ackerson's death and disposal and attempting to subvert an implicit line of questioning (in helping Grant Hayes move the furniture, she could also be

placed epistemically closer to the crime), rather than an explicit one (Atkinson and Drew, 1979).

Examining this closely, this follows a similar pattern to the previous extract which could be described as an initial answer followed by an elaboration; this leads to an apparent conclusion of the answer with a pronounced pause and no immediate follow-up question (there are also no obvious cues for AH to continue); this is then followed by the defendant's self-selection and another elaboration turn. Interestingly, in this extract, ADAH then follows this self-selected turn with an audibly quieter clarification question at line 72. Again, as with the previous extract, AH emphasises certain words. In this extract, the words 'did not help' at line 61 are stressed, making them emphasised – which also form the initial answering of the question. However, there is no apparent evidence in the extracts selected to currently suggest that although certain words are stressed in these turns, they are done so in terms of a particular formulaic or repeatable pattern.

The final extract examining self-selection comes from the last two minutes of Amanda Hayes' time on the witness stand during the re-cross examination segment of her questioning. This extract is part of the conclusion of Amanda Hayes' testimony (which shall be examined in more detail in 3.4), before she is allowed to step down.

Extract 3.3

65 AH i ↑am concerned about my safety i'm
66 a-afraid he's gonna tip the boat over↑
67 we're gonna go ↑in the water i- i'm
68 afraid of- for lots of things↓
69 (4.9)
70 AH i- i don't think you can imagine (.) the

71 kind of fear that i was under↓ (0.5) i i
72 honestly don't think you can imagine↓
73 (1.0)
74 ADAH the fear that you were under was that
75 the boat would tip over=
76 AH .hh
77 ADAH =and the animal[s would hurt you ()]
78 AH [i had lots and lots of]
79 fear

Extract 3.3 is in response to a question made by ADAH regarding AH's concern for her own safety. This is being placed in contrast with the victim, as the discussion is focussed on the disposal of Laura Ackerson's remains in a Texas creek.

As can be observed in lines 65-8, AH does not make any significant pauses in the initial response to this question. There is use of the historical present tense in lines 65-8, which has been attributed with demarcating 'dramatic' events (Wolfson, 1979). This then subsequently reverts to the past tense after self-selection (lines 70-9).

The pause at line 69 of 4.9 seconds does not receive any audible response from ADAH, nor is there any apparent evidence of this turn orienting to a nonverbal cue to continue, as discussed above. The pattern of Extract 3.3 is in keeping with the previous two examples, showing an initial response (with elaboration) (lines 65-8); a pause with no apparent response from the questioner (line 69); and then a self-selected elaboration turn (lines 70-79).

In this final self-selected turn, however, AH appears to directly address ADAH through both the position of gaze (the camera angle is static and there is no obvious movement of her head/gaze to the left towards the jury), and through her use of direct address

(‘you’), which is also a use of active rather than passive voice. This turn seems to take the form of a direct statement to the prosecuting attorney with ‘i don’t think you can imagine the kind of fear that i was under’ (lines 70-1). This analysis continues to frame this as an extended elaboration of previous content, as the topic under discussion was AH’s ‘fear’ and being ‘concerned for [her] own safety’ (see 3.4, extract 3.13) whilst she was in the boat. The self-selected elaboration turn, though different in terms of using direct address and forming a possible accusation, attempts to support the previous turn (as in extracts 3.1 and 3.2) through further mention of AH’s alleged fear and her framing its extremity in terms of what cannot be ‘imagined’ by her listening audience.

The follow-up by ADAH to this self-selected turn comes after a 1-second pause (much like the 1.3 second pause in Extract 3.2), however; this response takes the form of a reformulation (Heritage, 1985) of previous content (lines 74, 75, and 77), rather than the clarification question found in extract 3.2. This reformulation is then overlapped at line 78 by AH, who makes an implicit resistance to this reformulation through her restatement of ‘fear’ (lines 78-9).

Though the scope of these three extracts is limited, it can be seen that in these instances a pattern does emerge through which these self-selected turns occur and are managed by the defendant. This is discussed in more depth below.

3.2.3 *Summary*

These three extracts are admittedly limited in terms of frequency and length, and cannot at this stage be deemed a generalizable pattern beyond the scope of this particular defendant's testimony. Comparisons with the trial of the other defendant cannot be made within this thesis as the other defendant did not take the stand. Nevertheless, these occurrences, though particular only to this testimony, do demonstrate an emerging formulaic (linguistic) approach taken by the defendant when faced with some instances of marked pauses and where a receipt token has not been received from the prosecuting attorney. As put forward by Heritage (1985), third turn receipt tokens within a courtroom are not common. This contrasts with settings such as radio interviews, where there is an audible acknowledgement when receiving 'news' (which in this case takes the form of testimony) (Ibid).

That the defendant self-selects in each of these instances is also marked, however; the reasoning behind these self-selections would be speculative as there is not enough evidence within the data to put forward a viable hypothesis. That being said, the role of the overhearing audience and the silent participants (Heritage, 1985; Carter, 2011) should also be raised when discussing the orientation to turns within the courtroom. The questioning prosecutor does not censure the defendant for self-selecting in any of these extracts and makes no obvious attempt to prevent her from adding to her testimony, despite the question having already received a response.

That there is an agenda for each of the participants cannot be dismissed at the micro-level and can be argued as oriented to; particularly if extract 3.3 is cited as evidence, where the self-selected turn is challenged by the prosecution using a reformulation of previous content provided by the defendant (for example, 'the fear you were under was that the boat would tip over', lines 74-5). These turns occur with the full awareness of the interlocutors

that the main audience to receive their content is the jury. In addition to the jury is also the audience in the form of news media, as the video camera situated at the back of the room also represents the viewing audience of the general public. As the jury make the decision concerning the liberty of the defendant, the general public in this instance could be considered the less important of the two; nevertheless, the existence of both audiences should be given due consideration. The jury are not active participants within this interaction and have no 'voice' of their own (with the judge ensuring that evidence is clarified for the jury through his own questions should the need arise). However; in accord with Carter (2011) and her discussion of police interviews and the role of the tape, the presence of the jury is a constant undercurrent within the courtroom. Consequently, the voluntary presentation of additional testimony, whilst addressed to the prosecution, is arguably directed at the jurors. Therefore, although the jury do not actively contribute to the proceedings vocally, they do provide an important contextual influence in shaping proceedings. In this sense they could be argued to be 'actively observing' the interactions up until the point of judgement: the only point at which the jury are seen to vocally partake in proceedings within the courtroom.

Taken in this light, the elaborative form these turns take and the information they supplied could be viewed as an attempt at additional clarification for the jury and a response to the pause following the previous turn. According to Eades (2004; 1996) and her research concerning Aboriginal uses of silence, such pauses are not handled by everyone in a uniform manner and can provoke different responses depending on cultural influences². For Eades' research, silence as used by Aboriginal communities was not deemed uncomfortable but allowed space for formulating responses. This contrasted with the perception of

² The term 'culture' in this instance is used in a broad sense with a nonessentialist view to include various social and ideological influences that can influence one's perception of accepted norms within a given setting, such as use of silence (ref). For this study, therefore, although Eades (ref) focusses on the use of silence in Aboriginal communities, it is acknowledged that perceptions may be influenced by more factors than belonging to a particular community.

white/Caucasian Australian lawyers, who deemed silence as indicative of lack of communication and resistance to questions (Eades, 1996).

In the context of the self-selected elaborations made in this cross examination, if the pauses are considered a dispreferred response to the answers given as the second part of the question and answer adjacency pair, then the self-selection to continue could be an orientation to this contingency. In other words, there is potential to interpret the continuation of this turn as the respondent elaborating due to the lack of receipt from the questioner (in this case the cross-examining attorney) (Hepburn and Bolden, 2013; Pomerantz, 1984).

That this self-selection also potentially breaks the established turn-taking system of the courtroom has been evidenced. However, this is not oriented to by the prosecution, who would have the authority to do so. The courtroom setting and its institutional rules are macro considerations; that they are not always oriented to discursively is of import to this discussion. This continues to build on Thornborrow's (2002) discussion that institutional roles and the authority that they can bestow on an interlocutor are not necessarily a constant, manifest or oriented to in the negotiated discourse of interaction.

This concept of negotiation within the cross-examination data of this trial is expanded upon in the following two sections, discussing how the defendant retains the floor within her testimony, and finally a detailed analysis of the final stages of the re-cross-examination.

3.3 Retaining the floor

3.3.1 Background

It has already been established that the question-answer format is a core aspect of eliciting testimony within the institutional setting of the courtroom. The testimony provided by witnesses (which can also include the victim and/or defendant) becomes part of the evidence provided to the jury that claims to support one 'side' or the other (though one would emphasise that this is not necessarily a clear dichotomy). It has also been established within this study that there are restrictions within this institutional setting in terms of how and what questions can be asked, and how they can be responded to. Part of these restrictions are put in place by the judge prior to the witness being questioned and in accordance with the rules of evidence (see 5.4 for a more detailed discussion of restrictions on narrative and testimony). These limitations can also be made obvious through objections raised by the opposing bench (which are then ruled on by the judge), and also through the active censure that an attorney deliver to a testifying witness should they breach the interactive norms of the courtroom (Atkinson and Drew, 1979).

In the cross examination of Amanda Hayes, there is evidence which supports the expected censure that a witness can expect if violating one of these norms; however, this is not exclusively the case. As has been outlined above regarding the issue of self-selection, this section will expand upon this theme of violating institutional norms and present examples of the defendant both facing rebuke from the prosecution for speaking out of turn and examples of her retaining the floor, examining the manner in which these occur.

Through these examples, this study puts forward that the Foucaultian concept of power relations is both relevant and demonstrable whilst drawing on concepts from micro-

analysis. Power relations as being negotiated within interaction will be shown to be perceptible within these extracts, as is the act of resistance. As outlined in 1.4, the theory that power can only exist where there is resistance (Foucault, 1982) is a concept that becomes manifest within the data and, in the view of this study, is empirically observable within the interactions analysed below. It will be shown, through the following analysis and discussion, that although the theory of power relations is a macro- level concept, this does not result in its being incompatible with micro- level analysis. One can argue that the use of micro-analysis in these cases does not ascribe a pre-existing theory to the data, but instead provides evidence in support of this larger-scale concept through observable trends within the interactions themselves as they are oriented to by participants.

3.3.2 Reasserting institutional norms

In this section, extracts will be examined that focus on the performance of the prosecuting attorney's institutional role and the manner in which the identity of and interactive norms expected within this setting by the witness become reinforced. There are three extracts that will be analysed demonstrating the forms this interaction took within the cross examination of Amanda Hayes.

Extract 3.4

21 ADAH miss↑ ha:yes↑ (1.0) isn't↑ it↑ true (0.6)
22 that when you were out in the boat↓
23 (1.1) that you were taking (0.3) laura
24 ackerson's remains↓ and

25 [throwing them into () wait to the-]
 26 AH [ma'am i never saw anything]
 27 ADAH (.) >wait to the end of my question
 28 please ma'am↓ (1.3) isn't it
 29 true (0.4) that you were taking laura
 30 ackerson's remains which included
 31 her torso (0.4) and her head (0.2) and parts
 32 of her leg↓ (.) and throwing them
 33 over the side of the boat↓
 34 AH again (.) i never saw any↑thing↑ (.) that
 35 was going on (.) behi:nd me

In extract 3.4, Amanda Hayes is being questioned regarding the disposal of Laura Ackerson's remains in a creek in Texas and the extent to which she was involved in that act. It can be seen in this extract that the initial point of deviation from the question-answer and turn-taking format occurs in lines 26 and 27 in the form of an interruption that results in an overlap with line 25. Leading up to this, ADAH begins the question at line 21. The delivery of the question over lines 21-5 is not fast-paced interaction, but includes several notable pauses. Particularly noticeable are the 1.0 second pause after ADAH addresses AH ('miss hayes') at line 21; the 0.6 second pause after the emphasised word 'true' (also at line 21); and the 1.1 second pause at line 23. These pauses slow the pace of delivering the question and AH overlaps with a response at line 26. The deviation from the expected turn-taking pattern occurs directly after the mention of the victim's remains (line 24) and overlaps at the point in which ADAH reaches their disposal in the creek ('throwing them into...'). AH's attempt to gain the floor at line 26 is unsuccessful, as ADAH does not stop talking but instead requests that the defendant 'wait to the end of [the] question'. This injunction is repeated twice, firstly

an aborted attempt during the overlap at line 25, and then repeated in a complete form at line 27 after a micropause.

In comparison with the slower pace of use when delivering the question, the request for AH to wait until the question is finished is delivered at a quicker rate (lines 27-8). This pace then slows again once questioning is resumed midway through line 28, though the pause lengths are no longer as pronounced as they were in the first question turn (lines 21-5).

The response AH gives is in accordance with Atkinson and Drew's (1979) observations of a tribunal. They noted that witnesses could see the direction of a particular line of questioning and attempted to take steps to pre-empt the question or mitigate its impact on their testimony. Here AH does not respond as to whether or not she was 'taking laura ackerson's remains and...' (which is where the overlap occurs) but responds that she 'never saw anything'. The word 'saw' is stressed in this initial attempt to respond at line 26 and without reference to the disposal of the remains, which was the question being posed by ADAH.

The question is then repeated by ADAH in lines 28-33. However, the question is not directly restated in its initial form. Instead, it is reformulated and extended to include a more detailed – and graphic – description of the victim's remains ('which included her torso...'), with each named part being stressed. The word 'throwing' was a term from the initial question (line 25) and is used again (line 32); but instead of 'throwing them into', which was the point at which the question broke off at line 25, it now makes a completed turn in the form of 'throwing them over the side of the boat' (lines 32-3). This could be surmised to show a shift in the formulation of the question from where they are being thrown to (presumably, the creek), to where they are being thrown from (the boat). The use of the term 'throwing' as a lexical choice should also be noted. This question is being delivered with the

jury as the main audience and the description of the alleged crime and the choice of words that are being utilised adds to the imagery being established by the prosecution.

The second response turn delivered by AH in lines 34-5 is now in a completed form and restates 'i never saw anything...', but now includes the physical aspect of the answer in the form of her position in the boat ('... that was going on behind me'). Though there is a limited amount of space in the boat (that the jury have seen previously as part of the evidence submitted in this case), this choice of words by AH could be argued to create a distance between the defendant and the alleged crime. Through claiming not being able to have seen the act as it was going on behind her, it could also be inferred that AH is answering the question regarding the physicality of whether or not she handled the human remains, as if she could not see them (they were behind her) how could she have handled them and participated in putting them in the creek?

The censure faced by the defendant in this extract and the subsequent structure of the interaction is relevant as it shows what could be interpreted as an attempt at resistance by AH (her early response before the previous turn has finished). This is then oriented to by ADAH who, instead of allowing AH to have the floor, continues the overlap and then makes a request for AH to wait to speak. In this instance, ADAH reasserts her institutional role and authority, and AH also orients to this and does not attempt to retake the floor again until 'her' turn at lines 34-5.

Another contextual point to be made here is taking this extract in relation to what has come previously. This takes place almost three minutes into the cross examination by ADAH. Directly before the sequence in which AH is censured for attempting to interject, a similar sequence occurs, but unfolds rather differently.

Extract 3.5

1 ADAH when you te↑stified when you talked
2 (0.2) u:m↓ (0.4) on direct when you testified
3 before this jury (0.5) earlier today
4 you said it took a <really really
5 long time>
6 (0.7)
7 AH yes ma'am it [seem-]
8 ADAH [how-] (0.2) >i'm sorry
9 (.) go ahead<
10 AH it seemed like it took forever (.)
11 yes ma'am it sure did
12 (0.7)

Placing the previous extract into sequence, AH has already been allowed the floor; however; the structure of this holds several distinct differences. When AH is allowed the floor, she is orienting to the previous turn as seeking confirmation, whereas ADAH begins an elaboration in the form of a direct question at line 8 ('how'). ADAH stops and gives the floor to AH at lines 8-9 ('I'm sorry, go ahead'), allowing a full response before moving on. It could then be surmised that the censure in the following turn stems somewhat from how the floor is being managed. AH was allowed to interject previously, but is censured for doing so now. That being said, in extract 3.4 the question has not been fully asked, nor could it be inferred to have been so (in contrast to extract 3.5).

In both of these extracts, the authority of the lawyer is evidenced and adhered to. Whilst this might seem like common sense in the first instance, given the institutional roles

ascribed within these settings, there is more to be said regarding how these interactions unfold and the innate complexities within the entanglement of discourses. From a linguistic perspective, the disruption of the question and answer pattern is observable as being at the discretion of the lawyer, who determines whether or not the defendant can interject. In extract 3.5, it can be seen that there is an acknowledgement of how the preceding turn at lines 1-5 could be construed as seeking confirmation, particularly as there is a 0.7 second pause following this. This point is implicitly acceded when ADAH grants AH the floor and encourages her to finish her response. This contrasts with the censure at the initial extract, as the question is clearly unfinished, there is no preceding pause, and the overlap occurs in conjunction with the description of how the victim's remains are believed to have been disposed of.

In furthering this analysis, several aspects of the interaction can be analysed through the Foucaultian lens. Firstly, the assertion or reassertion of institutional norms is taking place at the discretion of ADAH through the role of the questioning lawyer. There is no apparent deviation perceived in her behaviour from the lack of interjection either by opposing counsel or the judge. It can be argued here that although AH both agrees and disagrees in her responses to questions, there remains an innate resistance throughout. This comes in several contextual forms that cannot truly be removed from interpreting the interaction. The agenda of the defendant is (obviously) different to that of the prosecution; thus even in matters where there is agreement (such as Amanda Hayes' presence in the boat) there is still resistance in how that 'fact' is interpreted. For the narrative espoused by AH, there is fear and uncertainty. For the narrative of the prosecution, there is her presence in the boat as support for being a willing participant in the disposal of Laura Ackerson's body³.

³ a more detailed discussion of narrative in this case can be found in Chapter 4.

This undercurrent cannot be divorced from interpreting the interactions as they unfold. The power relationship also fulfils the criteria as laid out by Foucault (1982). There is resistance and power existing simultaneously in both participants, and the presence of one is the prerequisite for the presence of the other. This both embodies and displays the power relationship between the defendant and the prosecution. Building on this, the state is embodied in the role of the prosecution in a particular form utilising particular discourses – these discourses not only inform the narrative of the prosecution in this case, but also how the institutional role itself is performed (Thornborrow, 2002).

This discussion supports and builds on Thornborrow (2002) and Atkinson and Drew (1979), though in slightly different ways. In accordance with Thornborrow (2002), this displays a negotiated interaction that is in keeping with the Foucaultian concept of power relations outlined above (for a more detailed discussion see 1.4). It also shows an attempt at gaining discursive power by the defendant in extract 3.4, which is overruled by the institutional authority that is recognised within the role of the questioning and prosecuting attorney. This is subsequently oriented to by the defendant, rather than a further attempt to pre-empt the question and to resist the order of the question and answer format as applied within the courtroom. For Atkinson and Drew (1979), this also supports their findings regarding the order of proceedings and the turn-taking system utilised in courtroom settings. They also discussed how attempts to pre-empt the line of questioning can then be unsuccessful and difficult to implement, particularly as witnesses under cross-examination can be restricted in how they may respond (as can be seen in the above extract, the question is closed and does not invite a narrative response).

Attempting to resist the question or providing an answer that can be considered non-responsive is an aspect of interaction a witness can find themselves faced with in the

courtroom. This links with the next extract, below, in which the questioning attorney orients to the defendant's response as inadequate.

At this point in the cross-examination, Assistant District Attorney Holt is questioning the defendant about whether and in what way she asked a family member for help in the disposal of the victim's remains after the Hayes' had arrived in Texas.

Extract 3.6

89 ADAH and (.) what did you ask her↓
90 (0.3)
91 AH u:m (0.5) basically what you've heard
92 here (.) already↓ (.) just=
93 ADAH =no >what↑ did↑ you↑< ask↑ her↓=
94 AH =just it- w-we needed- i needed help
95 (0.9)
96 ADAH °okay° (1.2) did you ask her (0.3) how do
97 we get rid of a bo↓dy↓
98 (1.0)
99 AH u:m (.) i don't remember exactly the
100 terminology↑ but basically↓=
101 ADAH =°okay°=
102 AH =that's the general
103 (0.7)
104 ADAH and what did she tell you

In this extract, the prosecuting attorney directly rejects a response given by Amanda Hayes.

This is oriented to as a non-conforming response as the summary 'basically what you've

heard already' is not seen as adequately addressing the question 'what did you ask'. As mentioned above, at this point, Amanda Hayes is being questioned regarding a conversation with a family member that she, Grant Hayes and the three children were visiting. In this conversation it is alleged that Amanda Hayes asked the family member questions regarding possible ways to dispose of human remains. Amanda Hayes' could be argued to be hedging in this response as she does not provide a verbatim quotation; however, motivations behind this cannot be concluded.

AH's attempt to summarise her response as 'what you've already heard here' (lines 91-2) is met with a direct rejection ('no') and a direct repetition of the question from ADAH. The sequence from lines 92-4 is rather swift with latching (no discernible space) between the turns. ADAH's repetition of the question is more emphasised in intonation, but delivered at a faster pace. This is something of a contrast with extract 3.4, where the question was expanded and elaborated during the repetition; however, this could be attributed to a potentially differing strategic function and the positioning of this question in the overall sequence.

At line 94 AH performs a self-initiated self-repair in the form of 'we needed- I needed help', with the word 'help' emphasised. This response is not subject to censure and seems to be treated as adequate with the quiet 'okay' from ADAH. It should be noted that this response, although not directly oriented to as non-responsive or inadequate is subject to a follow-up closed question (lines 96-7). AH's ability to resist answering the question or mitigate the potential damage that might be caused by answering is demonstrably limited in this extract. There is evidence of continued hedging in lines 99-102 by AH with 'I don't remember exactly the terminology, but basically' and 'that's the general...'. This could be argued to be creating a distance between AH and the question, as there is no recycling of or engagement with terminology used by ADAH.

That being said, the assertion of institutional norms on the structure of the interaction is apparent, as is the epistemic positioning of ADAH in her role as having the ability to accept or reject an answer from the witness and determine whether or not it is adequate. The evidence of Foucaultian power relations as evidenced in these sequences maintains the accepted norm of the questioning lawyer as being in an institutional position of higher (legal) authority as sanctioned by the state. Though there is evidence of some limited resistance from AH, the floor is yielded to ADAH who has the accepted role of questioner (the role that also allows her to direct the topic and manage which answers are considered adequate).

This section has focused on the assertion and reassertion of the norms of courtroom interaction. The selected extracts show that the expected pattern, previously established in courtroom interactions remains valid and current (Atkinson and Drew, 1979); however, as outlined above, this is not always the case, or uniform. The concept of resistance, in a more active form than has been shown in these extracts from the defendant and the circumstances in which this occurs, will be the main focus of the following section.

3.3.3 Retaining the floor and resisting the question

The focus of the previous section was on the maintenance and reinforcement of institutional norms in courtroom interactions. Specifically, extracts were shown that demonstrated the epistemic positioning of the lawyer as being able to determine the level of resistance that was acceptable and what responses could be censured as noncompliant with the question and answer format. This section will focus on instances where Amanda Hayes demonstrated resistance to a question (to varying degrees of ‘success’) and where she retained the floor. This is in line with Thornborrow’s (2002) theory regarding the discursive ability of an

interviewee to resist the institutional role of the interviewer. This section will also show how the defendant actively takes the floor from the cross-examining lawyer and is not necessarily censured or forced to desist from speaking (as was shown above in extract 3.4). Not only that, but there are also instances in which AH requests the floor and asks a question or makes a request of ADAH. This ‘flipped’ sequence, though infrequently occurring, creates an interesting shift in the dynamics of the interaction, as will also be explored throughout this section.

In the extract below, Amanda Hayes is being questioned regarding the disposal of Laura Ackerson’s remains in a creek in Texas. It was alleged that she was in the boat with Grant Hayes at the time and was working with him to conceal Laura Ackerson’s murder.

Extract 3.7

(Part of longer turn by AH)

27 AH that [is correct]
28 ADAH [tell this jury] <right now> (0.4) what
29 he was doing↓
30 AH a- i'm pretty sure that they just heard me
31 i a- i [knew what he was doing]
32 ADAH [i didn't hear you what] was he doing
33 (1.9)
34 AH he was throw- he was getting rid of laura's
35 bo↑dy↓

Firstly, this extract could easily be said to demonstrate the features outlined above regarding the reinforcement of institutional roles regarding ADAH; however, this extract also

shows direct resistance from AH in her response. To unpack this further, ADAH does not actually ask a question using a standard (question and answer) format (as has been previously established as the norm of interactions in this setting). Instead, a demand is made of the witness using direct and forcefully produced language. 'Tell this jury' is not a request or a question and the production of 'right now' is both slower in pace and stress occurs on each word. The 0.4 second pause adds emphasis to the turn, the latter half of which provides the context for the 'telling'. This is an interesting extract as both sides could be argued to deviate (albeit briefly) from the established interactional norm. AH does not comply with this demand and produces resistance in attempting to undermine the need for it. No descriptive or narrative response is openly forthcoming. Lines 30-1 instead include two clauses, one of which attempts to negate the need for compliance and the second which produces a response to a different question. Looking at these two lines in more detail, the initial resistance to the demand comes in the form of 'I'm pretty sure they just heard me', thus implying that repetition is unnecessary as the 'question' has already been answered. This could also be viewed as an implicit criticism, as if the question has been answered, further repetition would arguably be redundant. The second half simultaneously produces both distance from the act (of disposing of the victim's remains) and addresses a slightly different point, the defendant's knowledge of the act. Though this is the same topic, the question being answered produces almost a 'stepwise' shift (Jefferson, 1984) in terms of perspective 'I knew what he was doing'. The act of disposal is consequently indirectly addressed whilst simultaneously being treated as both removed from the defendant and as a matter having already been covered (thus negating the need to discuss it further). In terms of nonverbal aspects that are relevant to this analysis, it should be noted that throughout this extract AH is the only person visible in the camera angle (with ADAH being off screen, and the jury never being filmed throughout the trial). From other views of the courtroom layout and awareness of where people are

positioned, however, it is worth noting that during this response where the jury are directly referred to in lines 30-1 ('they') AH moves her gaze between ADAH and the jury. Her gaze has shifted to the jury as she states 'I knew what', but moves back to ADAH as she finishes the statement ('he was doing'). This nonverbal interaction can also be viewed as indicative of the continued awareness of the importance of the jury in these proceedings and as overtly including them in the her response – even if it does not directly conform with the demand made by ADAH.

The positioning of this resistance is interesting in that it also follows from the prosecution breaking the question and answer pattern. In terms of sequencing, the lawyer-witness pattern is not disrupted, but the overall pattern of question and response is. The prosecution orients to this resistance by reproducing the original demand in the form of a WH- question at line 32. This also overlaps with AH's second clause regarding knowing 'what he was doing'. The production of this question also includes what could be argued to be an implicit reinforcement regarding the relevance of the question ('I didn't hear you'). This repositions the intended 'hearer' from the jury to ADAH, since the original focus was 'tell this jury right now', even though the jury will still hear the response and are arguably who the response will be designed for. The rephrasing of the demand into a WH- question also reasserts the normative pattern of the interaction – a question requires a response. This re-establishment of the question-answer sequence (and reassertion of relevance) is oriented to by the defendant, though this takes place after a somewhat pronounced 1.9 second pause.

The following 'answer' no longer contains resistance to the question, but comes in the form of 'he was throw- he was getting rid of Laura's body' at lines 34-5. It is important to note here that this response also contains a self-initiated self-repair. The word 'throw-' could be heard to be an incomplete form of 'throwing'. It cannot be said with certainty what would have followed, but it can be reasonably surmised from the context of the interaction and the

compliant response to the question at this point that there would have been a reference to the victim's remains being placed into the creek. The change occurs midway through 'throwing' and repairs to 'getting rid of'. This could be argued to display an awareness by the defendant of perceptions surrounding certain words. For example, 'throwing' someone's remains anywhere could resonate rather poorly with the jury, whether or not there is a distance created through the description of the act as being committed by a non-present third party ('he' being Grant Hayes in this sequence). An additional interpretation of this repair could also refer to the position being taken by the defendant in the wider context as not having seen what was happening. To use the verb 'throw' could lead to an inference that the action itself was viewed, but to be aware of something being '[gotten] rid of' could arguably imply knowledge without the potential for a simultaneous implication of having witnessed the act.

Also of note is that this small sequence is orienting to the alleged acts of Grant Hayes and not those of the defendant, including the turn which precedes AH's resistance. The defendant re-establishes her knowledge of 'what he was doing', but produces both resistance and distance when pressed to verbalise this. This leads to an implication of image management and the overt relevance of the jury as the final arbiters in assessing the guilt of the defendant.

The importance of the jury and their role in proceedings is also overt and explicit in this sequence. They are made directly relevant in the proceedings despite having no reciprocal role in the interaction. They are not directly addressed, but are made relevant through the language used. For example, as outlined above, the demand states 'tell this jury' (line 28). The response to the demand in lines 30-1 is addressed to ADAH but again is arguably designed for the jury ('they'), as well as the restatement regarding AH's knowledge of events. The response in lines 34-5 once the demand has been rephrased into a question is again made to ADAH but is arguably designed for the jury, including the repair outlined

above in line 34. The shift in line 32 from the jury to ADAH ('I') provides a contextually reinforced relevance for the question, but does not detract from the importance or role of the silent participants, the jury. In having the jury overtly mentioned, it could be argued that there is an implication of a three-party interaction, even though only two of the participants engage verbally and overtly. The participants themselves make the jury relevant by orienting to their place within the interaction and their institutional role as decision-makers regarding Amanda Hayes' guilt or otherwise.

Though a short extract, this sequence below shows the complexities of resistance, sequencing, and image management through word choice. The following extract will again have a focus on resistance, but will also examine the concept of 'holding the floor' (Goffman, 1981) and its influence on the sequence and overall segment of interaction.

Extract 3.8

20 ADAH >but your testimony is that you were
21 the one that was the↑re↓ (0.3) all after-
22 all all these days (0.2)
23 [during the day (you said you were there)<]
24 AH [i- i was gone thursday]
25 i don't know if they came↑ (0.4) honestly
26 it just neve:r we never had i- (0.4)
27 conversation about it again↓ so↓
28 ADAH °okay° [the (maintenance)]
29 AH [WHIle i↑ was there:] the
30 maintenance people did not come=
31 =that is correct↓

In this extract, the topic under discussion is the amount of time Amanda Hayes was present in the apartment during the week of Laura's demise and (subsequent) 'disappearance'. The issue under dispute is the bathroom that is claimed to have been out of use and that Amanda alleges she did not enter (it being primarily used by Grant and his two sons while she used a separate bathroom). The relevance of this bathroom is that it is implied to be a location where the victim's body was at least stored. It should be noted that in the course of both trials the exact details of what occurred in the apartment remain circumstantial and thus a matter of conjecture, with the only established fact from both defendants being that somehow Laura died there. The bathroom needed repairs from maintenance staff and there is an attempt to establish whether they came to the apartment. Amanda claims that they did not come to the best of her knowledge. The prosecution is attempting to challenge this based on her prior testimony.

During this sequence an overlap occurs at lines 23 and 24. This comes after a 0.2 second pause that could be viewed as a point where the question turn was perceived to have finished and AH began the response. AH is not censured for the overlap (which is something that has been shown to have occurred during her cross examination) and retains the floor to finish her response. Her response is acknowledged ('okay') at line 28, but at this point another overlap occurs. ADAH begins her next turn in the sequence after giving this receipt token, and although AH ends on the word 'so' in her previous turn, this is oriented to by ADAH as a full response to the previous turn. The intonation in the use of 'so' here is marked, as volume decreases along with a downwards intonation. Though the use of 'so' itself could indicate a potentially unfinished turn, these prosodic features are identified as indicators of turn completion even where grammatical completion is absent, which is the way in which the talk is then oriented to by ADAH, with the previously indicated receipt token

(‘okay’) (Liddicoat, 2011; Walker, 2013). The overlap at 28 shows ADAH begin a new turn, whereas AH in 29 re-enters with a loud and emphasised elaboration of her previous turn’s content (‘while I was there’). Interestingly, ADAH yields the floor to AH and allows her to continue, rather than asserting the speakership rights of her institutional role. It should be noted that although this study does not wish to make claims beyond those which can be illustrated through the data, the ability of ADAH to choose whether or not to exercise the ‘rules’ of interaction in this setting does present a complicated relationship between the sequencing of the interaction and the choices that are made by AH and ADAH in whether or not to take, allow the other to take, or attempt to maintain the floor and balancing these with the overall narrative each side wishes to present regarding the events surrounding Laura Ackerson’s death.

In lines 29-31 AH establishes her testimony as being ‘while I was there the maintenance people did not come’. This allows for the time she was present in the apartment, but also incorporates her testimony on line 24 (‘I was gone Thursday’) whereby she asserts that she was not always present in the apartment on ‘all these days’. The latching between lines 30 and 31 is relevant as there is no natural pause between the statement and the phrase ‘that is correct’. This implies a response to the question, but AH has discursively reframed the question in her response so as to incorporate any absences from the apartment.

This demonstrates a discursive capacity by AH to exert a certain (albeit limited) amount of independence in presenting her version of the events without conforming to the narrative put forward by the prosecution or being viewed as nonresponsive.

Another example of this discursive capacity can be seen in the following extract.

Extract 3.9

102 ADAH and that was prior to: you getting
103 any discovery or any information
104 prior to the police† department even
105 knowing about the saw‡
106 (0.9)
107 AH um (0.4) i-i- (0.5) yes it was before i: got
108 any discovery that's correct‡

This (very short) sequence also exemplifies an instance where the reformulation of the previous turn is not made by the prosecution, but by the defendant. The question put forward by ADAH is that AH had knowledge regarding the saw that is believed to have been used to dismember Laura Ackerson's body before either discovery (where information is shared between the prosecution and the defence) or before the police department knew about it.

AH only addresses one of the clauses in this question, that of discovery, but does not include or acknowledge the reference to the police department. In line 108 there is again the use of 'that is correct', which could be argued to explicitly state compliance with the question and formulates agreement; however, this is conditional agreement at a discursive level. The issue of discovery is explicitly referred to and the issue of the police department is not included, yet the use of 'that's correct' displays AH as conforming to the norms of interaction (responding to the question) and yet also includes a certain amount of mitigation (it is not established whether or not this was before the police department knew about the saw). Also of note is that this is not oriented to as inadequate or nonresponsive by ADAH.

The use of agreement whilst still forming responses that are selective in the aspects of the question they address leads to the final extract of this section, below, which shows both

the use of agreement (potentially indicative of compliance) and a disruption in the question and answer format that has been reviewed to this point.

Extract 3.10

62 ADAH and you asked for her help
63 to help get rid of laura's remains↓
64 (1.0)
65 AH u:m yes ma'am=can i explain↑
66 (1.1)
67 ADAH sure↑
68 AH um i was doing that because (0.5) grant
69 (0.6) told me to tell her that↓ (.) it
70 was not my idea to tell her↑ it
71 was his idea for me to tell her and
72 WHat to tell her .hh because um
73 he felt like that was that was the
74 only way she was going to help us
75 .hh and at that point that was the
76 only (0.5) solution he had↓

In this extract the prosecution is questioning the defendant about a request she is alleged to have made to a family member concerning the disposal of Laura Ackerson's remains. Contextually, this is the same family member referred to in extract 3.6.

It can be seen that the word 'help' is stressed by ADAH on line 62 and is repeated during the formulation of this question. This question is (again) closed and invites a confirmation (or denial). There is a 1-second pause before AH answers, which could be

indicative of a dispreferred response (especially given that the response is a confirmation). What is particularly worthy of note here, is that the agreement is latched to a request ('can I explain' in line 65). The use of 'latching' here has been utilised to describe this turn as there is no observable space between the 'yes ma'am' and request, with the response and follow-up request being spoken together as part of a single sequence. This disrupts the question and answer pattern that has been established and reinforced through the institutional setting, as AH is making a request of the prosecution. This is followed by a 1.1 second pause. It should be noted that this could lend itself to potentially being over-interpreted by the researcher, as there are various possible reasons as to why this delay occurred (for example, it could indicate a dispreferred response, surprise or both *inter alia*). If we examine the following response in line 67 ('sure'), the word is stressed and has a rising intonation. This could be interpreted as an indication of surprise or that the response was unexpected. That being said, the request is also allowed.

The following turn shown in the above extract from lines 68-76 is an explanation by AH regarding why she asked a family member for help. The turn itself is rather long and contains a number of interesting clauses. The way AH positions herself within this turn is to place herself in contrast to Grant Hayes. This is done directly ('I was doing that because Grant told me to tell her that') and phrased in more than one way ('it was not my idea to tell her, it was his idea for me to tell her and what to tell her'). Though AH admits that she did make the request, she uses the following turn (allowed at the discretion of the prosecution) to elaborate on the context of the request. Grant Hayes' (GH) role is oriented to and made relevant in this turn, though it should also be pointed out that this takes the form of a (rather brief) narrative, where the implications of the question (AH asking for help in disposing of a body) are countered by a fuller description and reasoning from AH's version of events. AH also provides a rationale for why she claims GH had her make the request, as can be seen at

lines 73-76 ('... he felt like that was the only way she was going to help us... that was the only solution he had'). It is interesting to note that AH uses the word 'he' at line 76, rather than 'we', thus creating further distance between herself and the events under discussion.

Though reasons as to why the family member might not have been willing to help Grant Hayes have been mentioned previously at various points in the trial, they are not explicitly oriented to in this extract.

This leads to the summarising discussion for this section, before progressing to a detailed analysis of the final 2.5 minutes of Amanda Hayes' cross examination.

3.3.4 Section summary

This section has examined AH's ability to resist the question and retain the floor. Throughout this it has been shown that the witness has the ability to retain the floor and reframe the question despite being in a restrictive interactional setting. Although AH remained in a position where there was the risk of censure for noncompliance with institutional norms, she demonstrated an ability to, both linguistically and epistemically, adjust her position during questioning. The impact of success of this is not measured by this study, but the extent to which it was employed and the devices used are of primary import to the aims of this analysis.

As shown above in 3.3.2, the institutional norms of courtroom interaction conformed to the general image of trial proceedings whereby a question is asked by the lawyer and the witness answers. This implicit concept within this is that power is 'held' by the questioner and the witness is in a weaker position to assert their views and form their responses. This was shown through the active censure that AH received when the institutional norms were reasserted; however, the inconsistency within this was also highlighted in extract 3.10, where

it was shown that the ability to interject was allowed. AH was permitted to continue talking in a recent prior turn, but was actively censured for a similar infraction shortly afterwards. This arguably falls under perception regarding the question and answer process (as outlined above), nevertheless, the ability to allow or restrict the turns of the witness remains with the role of the prosecution.

Despite these findings regarding the assertion of institutional norms, this section highlighted three main strategies that were employed in resisting the question or gaining the floor.

Firstly:

- the ability of the defendant to hold the floor.

This was demonstrated using extracts 3.8 and 3.9. These showed that although the defendant was overlapping with the prosecution and was not necessarily in an institutional position to take the floor, she continued to elaborate on her answers and the prosecution gave way. That being said, although she resisted the demand made in Extract 3.7, she did still have to answer the question in a more detailed manner (as will be addressed below in more detail).

Secondly:

- AH demonstrated an ability to reframe her responses in that they were not addressed as being noncompliant, but did not necessarily answer the entire question.

The use of 'that's correct' could be inferred to have also had a limited impact on follow-up questions, particularly regarding extract 3.9, where only one aspect of this question was addressed, but this omission was not actively pursued.

Finally:

- the use of questions by the defendant was demonstrated.

Though again limited in frequency, this is of particular importance given its reversal of the interactional norms of this environment. By requesting the opportunity to expand upon an

answer, AH is volunteering to give additional information. As a defendant, this could be viewed as something of a risk given the limitations of witnesses to refute reformulations by the opposing counsel. That the request was unexpected can be surmised from the response of ADAH. The concept of image management and the presence of the jury have also been highlighted as factors within this interaction, and will be expanded upon below in Sections 3.4 and 3.5.

Having outlined the three core findings within this section, these link with the following examination, which provides a detailed analysis of a longer section from Amanda Hayes' cross examination.

3.4 A detailed analysis of the final stages of re-cross examination

Although aspects of this have been discussed above, this final sequence of Amanda Hayes' cross examination will now be discussed as a discrete section. Several overarching themes have been discussed in detail from throughout this cross examination, however, the final aspects of the defendant's time in the stand are important to unpack in detail as they not only contain elements previously outlined, but are also representative of the final minutes that the jury saw the defendant speak on her own behalf (for the full, uninterrupted transcript of this section, please see Appendix A).

Relating this back to the concept of the state and the individual, in this the attorney is an interlocutor acting on behalf of the 'state' (whilst still acknowledging the inherent complexities of this term) and the individual is in the form of the defendant, who is witnessing on her own behalf. Within this, one will also see the both the co-construction of

conflicting narratives within the questions and answer sequences below, as well as the epistemic positions taken by the participants within their turns at talk.

In the final two and a half minutes, Amanda Hayes and ADA Holt are in the process of re-cross examination. In terms of the broader process this means that Amanda Hayes was on the stand over the course of two days and has been questioned by her attorney (direct examination; first day), by ADA Holt (cross examination; first day and second day), again by her own attorney in response to the cross examination (re-direct; second day), and is now being questioned again by ADA Holt (re-cross examination; second day). The judge has placed limitations on the re-cross examination, in that ADA Holt has been instructed to only ask questions based on the re-direct (that day), and not based on the previous day's direct examination testimony.

ADA Holt is questioning Amanda Hayes again regarding the night Laura Ackerson's remains were disposed of in Oyster Creek, Texas.

Extract 3.11

1 ADAH mr gaskins just ask you about↓ (1.1)
2 the bo:at↓ (1.0) and that night on the boat
3 and what you testified when he asked
4 you this time (0.6) was that i knew what
5 grant was do:ing↓
6 AH that's correct
7 ADAH °okay° that's not what you said (0.6) on cross
8 examination yesterday↓
9 AH no ma'[am]
10 ADAH [yester]day it was you were in

11 your own world and you were listening to
12 the ani↑mals↓ looking towards the back of
13 the boat (0.3) bailing out having no idea what
14 was in the boat or what grant hayes was
15 doing↓

16 AH i never said i had no idea what he was
17 doing↓ (.) that's incorrect=
18 ADAH =>what did you [tell=]
19 AH [i]
20 ADAH =the jury yesterday
21 about what he was doing<

22 AH i said that i was facing the other direction
23 that i didn't see anything .hh and i did not
24 touch anything in regards to what he was doing
25 .hh i didn't say i didn't know what he was
26 doing i (.) absolutely knew what he was doing (0.3)
27 that [is correct]

28 ADAH [tell this jury] <right now> (0.4) what he was
29 doing↓

30 AH a- i'm pretty sure that they just heard me
31 i a- i [knew what he was doing]
32 ADAH [i didn't hear you what] was he doing
33 (1.9)
34 AH he was throw- he was getting rid of laura's
35 hbo↑dy↓

The data in this extract displays a number of engaging interactional features. Firstly, as was indicated above, the questioning is limited to what has been discussed that day. ADAH

however, discusses the previous day's testimony but places it in relation to the testimony AH has given in her re-direct (lines 1-10). The contrast presents an interesting exchange, as AH enters at line 9 with 'no ma'am' but the negative appears ambiguous. Clarification is not received until line 16, when AH explicitly states that the version of her testimony presented by ADAH is 'incorrect'. The matter under contention is whether or not AH knew that Laura Ackerson's body was being placed in the creek while she was present on the boat with Grant Hayes. AH admits that she knew what was happening, but was not taking part in the actual disposal.

Another feature of this segment is that there is no WH- question until line 18. The first three turns from ADAH are oriented to as clarification questions by the defendant, but there is no direct invitation for a response until line 21 with the completion of the question 'what did you tell the jury yesterday about what he was doing'. AH appears to attempt to gain the floor at line 9, but the 'no ma'am' remains ambiguous with no additional expansion as ADAH orients to that as a complete response in line 10, overlapping with the second half of 'ma'am' and elaborating on her previous statement. The first WH- question in this segment occurring at line 18 and is phrased as an open question, inviting the defendant to repeat what she told the jury yesterday. In completion of this question-answer pairing, AH is then allowed to give a fully elaborated response. This response also links back to the previous discussion regarding AH's positioning of herself as being compliant with the prosecution. The response in lines 22-27 sees AH place stress on the senses that were not engaged. She claims to have not 'seen' or 'touch[ed]' anything, but agrees that she knew Laura's remains were being disposed of. This places her in an epistemic position in which she is the authority regarding the events of that night.

AH admits to having been present, but creates a contrasting distinction between her actions and involvement in the events of that night versus her knowledge. This segment is

concluded with ‘that is correct’, which is overlapped by ADAH. There are two primary interpretations of ‘that is correct’. The first can be viewed in terms of positioning theory (Benwell and Stokoe, 2006), as AH – having redefined the narrative of that night in terms of what she knew, rather than what she was doing – could be viewed as placing herself in accordance with the prosecution. Another possible interpretation could be that this statement is not placing AH in agreement with the prosecution, but is remarking that this amended version of events is correct (in contrast to the version put forward earlier). The act of disposal is not articulated by the defendant in this response, but is framed in terms of ‘what he was doing’ (this being the alleged actions of Grant Hayes).

The final section of this segment has been explored in detail previously (see extract 3.7). In addition to the above remarks on this, it is worth indicating that even when placed in situ within the larger interaction, the orientation towards the demand at line 28 and the reformulation as a WH- question at line 32 displays not only resistance from the defendant in articulating the fate of the victim’s body, but is a question that appears to arise from a lack of articulation in lines 22-27. As shall be shown below, this also feeds into a larger chain of questions from the prosecution regarding this particular act.

Extract 3.12

32 ADAH [i didn't hear you what] was he doing
 33 (1.9)
 34 AH he was throw- he was getting rid of laura's
 35 hbo↑dy↓
 36 ADAH okay and how was he doing that↓
 37 AH i'm assuming he was putting it in the water
 38 ADAH °okay° <could you hear the spla:sh as her head

39 went into the water↓>

40 (1.6)

41 AH .hh again i heard lots of things i heard (0.7)

42 splashing noises i heard animals i heard lots

43 of animals .hh [i was]

44 ADAH [what kind of] animals did

45 you he↑ar↓

46 AH i don't know what kind of animals they were↑

47 i was- (.) i (0.5) have no idea

48 ADAH so what you↑ recall about that boat trip

49 (1.3) is that there were splashing noises and

50 you heard animals and you were bai:ling (0.8)

51 the boat↓

52 AH that's correct and i was trying to keep the

53 wa- the boat from going into the grassy areas↓

54 ADAH and why was th↑at↓

55 AH because i didn't know what was in the

56 grassy areas

It is worth noting that there is a 1.6 second pause following ADAH's follow-up question at lines 38-9. Again, this could be indicative of a dispreferred response (Raymond, 2003), and it is also followed by hedging from the defendant with the response remaining rather vague and undefined ('I heard lots of things... I heard lots of animals'). This is in line with other research (Matoesian, 2005; 2001) regarding the importance to attorneys of 'nailing down' a response from witnesses during testimony. Nevertheless, one potential difficulty in this (both in more general terms and regarding these proceedings specifically) is the time lapse between when events take place and the actual trial, particularly as regards memory.

Therefore, whilst in interactional terms this response could be viewed as dispreferred by the defendant, the delay and inability to recall specifics could also be linked with the long period of time between the act and (the high-stakes environment of) the trial.

Further to this, in analysing ADAH's question at lines 38-9, this is again rather detailed and graphic. The specific references to the victim's head and whether or not it made any noise going into the creek are again arguably designed for the jury rather than the defendant. The position of AH throughout this testimony has been that she had her back to the proceedings, it is therefore unlikely that a response to this question would come in the form of a confirmation. At this point, the design of the question and the purpose it serves becomes part of a broader overall view of the prosecution's narrative as well as being a linguistically relevant aspect of micro-based interactions.

Again, this is the last 2.5 minutes of the cross examination, after which AH will leave the stand. In discussing this matter, the prosecution has linked the final aspects of cross examination with the topic that they opened with at the start of cross examination the previous day. An image of resistance to the question could be said to be implied by the prosecution as there is a push for specifics, such as 'what kind of animals' there were. The lack of forthcoming detail is also summarised by ADAH for the jury into three main aspects ('splashing noises', 'animals', and 'bailing the boat'). As this summary occurs so close to the description of Laura Ackerson's head (within three related questions), it could be inferred that AH's concerns are placed in direct contrast with what is being done to the victim's remains.

At lines 43-7 AH makes two attempts to formulate a response using 'I was'. The first instance at line 43, this is not completed as it comes in an overlap with ADAH's question at line 44. The second occurrence comes at line 47. ADAH orients to AH's response at line 43 as complete with 'I heard lots of animals', and overlaps with the first 'I was' from AH asking

about the animals she heard. When AH responds to this question, she states ‘I don’t know what kind of animals they were. I was- (.) I (0.5) have no idea’. This second use of ‘I was’ is again aborted and there is no further elaboration given. AH restarts this response (‘I’), but pauses for 0.5 seconds before concluding with ‘have no idea’. The conclusion of this response also contains no new information and is not an elaboration on previous content, but restates the lack of knowledge regarding the specificity of noises made by local wildlife.

The details of the events on the boat are made relevant by ADAH through her line of questioning; however, the questions ADAH asks are formed using the previous responses of AH. For example, the ‘splashing’, ‘animals’ and ‘bailing’ were words that ADAH reformulated that were taken from AH’s previous testimony. This recycling does not necessarily come from a directly previous turn, but does create a link between the responses and the chain of following questions. Another example of this can be seen in the following extract.

Extract 3.13

54 ADAH and why was th↑at↓
55 AH because i didn't know what was in the
56 grassy areas
57 ADAH >°okay°< so you: during the time that you're
58 out in the boat knowing that grant hayes
59 is (1.0) taki:ng (0.9) laura ackerson's the
60 pieces of her body and throwing them into the
61 water >what you're concerned about is your o:wn
62 safety< and the a:nimals that are in the
63 water

64 (1.1)

65 AH i ↑am concerned about my safety i'm

66 a-afraid he's gonna tip the boat over↑

67 we're gonna go ↑in the water i- i'm

68 afraid of- for lots of things↓

69 (4.9)

70 AH i- i don't think you can imagine (.) the

71 kind of fear that i was under↓ (0.5) i i

72 honestly don't think you can imagine↓

73 (1.0)

74 ADAH the fear that you were under was that

75 the boat would tip over=

76 AH .hh

77 ADAH =and the animal[s would hurt you ()]

78 AH [i had lots and lots of]

79 fear

80 (1.7)

81 ADAH thank you i don't- °i don't have anything

82 further↓

83 (0.6)

84 JUD >anything else<

85 GAS no further questions↓=

86 JUD =all right thank you↑ (0.2) thank you ma'am

87 you may stand do↑wn↓

88 AH °thank you°

The use of the word 'fear' moves back and forth between ADAH and AH with both recycling the term. AH first uses the term on line 71, where it is emphasised as in her self-selected turn

(see section 3.2.2). This is then reused in line 74, in ADAH's reformulation; and then used again by AH in line 79. Another interesting point regarding the terminology used is how 'concern' appears to be refocused as being 'afraid' or 'fear'. ADAH first brings in AH's emotional state in this extract with the term 'concerned' at line 61. This is recycled by AH in line 65, but is supplied as part of her positioning herself in contrast with Grant Hayes ('he'); thereby placing distance between herself and the victim. This is also another example of AH framing her response in compliance with ADAH ('I am concerned about my safety'), but elaborating on this in a manner which appears to seek to mitigate the unfavourable comparison. This elaboration reframes being 'concerned' as being 'afraid', as can be seen in lines 65-6. This lexical alteration then becomes the reused term regarding AH's emotional state until the end of questioning.

There has been some discussion regarding how AH is positioned within her responses, yet there is also scope to consider the wider implications of her position as a defendant; particularly as one giving testimony as a witness. AH is positioning herself in terms of her environment; with references to Grant Hayes and his actions, and to the physical environment of being on the creek at night. Conversely, ADAH is positioning AH in comparison with Laura Ackerson. As can be seen throughout the last three extracts (Extracts # - #), the broader view of this last section of questioning sees Laura Ackerson's remains and their disposal placed in contrast with AH's alleged fear. ADAH could be argued here to be taking an implied morally superior position, whereby the 'fear' of Amanda Hayes placed in contrast with the fate of Laura Ackerson becomes minimised, thus reducing the mitigation being sought through Amanda Hayes' description of events.

Amanda Hayes has an epistemic authority through being the person present at the time this event occurred, yet despite this she does not hold the floor to the extent seen in previous extracts. There is strong evidence of resistance (as has been discussed previously in

Section 3.3.3) and the use of self-selection remains of interest (see Section 3.2.2), yet despite this, the prosecution appears to maintain a moral standpoint and holds overall epistemic authority. The reuse of terms that have originated with Amanda Hayes' testimony provide a lexical platform from which the reformulations of her statements could be argued to retain their legitimacy. Nevertheless, this linguistic feature appears to work both ways, in that Amanda Hayes also recycles terms that originate with the question from ADAH. She does not then provide a closed answer, but uses the elaborations to reframe the narrative (such as lines 65-8). In the broader picture, another point of interest is the vague aspect of Amanda Hayes' responses. For example, as part of her defence's version of events, Amanda Hayes is alleged to have been afraid for her safety and the safety of the children under her care. When fear is mentioned in the closing sequence of this cross examination, the allusion to what she is afraid of remains vague and unsubstantiated (such as lines 78-9, 'I had lots and lots of fear'). This contrasts with the graphic imagery presented by the prosecution (such as the direct references to the victim's head in lines 38-9).

The position of the prosecution and the power relations being shown in this sequence are complicated as the macro and micro positions could be argued to exist simultaneously in a fluid and dynamic state. Whilst the prosecution maintains an overall position legal, and thus state, authority, AH exerts resistance and demonstrates an ability to disrupt the pattern of events, particularly through self-selection. Nevertheless, this contrasts with the vague claims made in her statements which are reformulated by the prosecution to present either an unfavourable comparison with the victim or an aspect of incredulity, potentially undermining the credibility of the statements without necessarily making this explicit.

3.5 Discussion

Before embarking on a discussion of findings, the three core research questions that form this analysis are restated:

1. In what particular ways do the state and the individual communicate with each other in the trials of Grant and Amanda Hayes?
2. What functions do these patterns serve in these interactions (including the (co)construction of narrative and associated strategies)?
3. How are power relations between the individual and the state established and represented in these interactions (including narrative (co)construction, subversion, statement interpretation, and (re)direction of subject matter)?

This chapter has explored three aspects of the cross examination of Amanda Hayes. These aspects are the use of self-selection by the defendant during testimony; the ability of the defendant to retain the floor and resist the questions of the prosecution; and a detailed examination of the closing 2.5 minutes of Amanda Hayes time on the stand. This discussion seeks to draw these aspects of analysis together and to examine them in line with the three research questions that comprise the focus of this study.

In determining how the state communicates with individuals, it is necessary to define whether these roles are present, who maintains them and how they are enacted within this setting. As discussed in 1.2.2, the state is not viewed as an actual ‘thing’, but is a series of discourses that come together to form a particular formulation referred to as ‘the state’. Within court proceedings, ‘the state’ takes on several mantels. Firstly, the role of the prosecution is attributed to the state. Secondly, the state is also the term used to define the

geographical region of North Carolina as a state within the USA. Thirdly, the state is also the adjudicator in these proceedings through the role of the judge, whose duties include ensuring a fair trial and that the procedures of the court are followed in line with the law and prevailing legal discourse. In the extracts explored throughout this chapter, the state as prosecutor has been embodied in the institutional role of ADA Holt (Thornborrow, 2002). Although an individual, she represents the state's case and throughout her questioning of Amanda Hayes inserts the presence of the victim, Laura Ackerson. This also puts forward the case of the prosecution as representing the victim, particularly as this is a homicide case and the victim has no voice of her own. That being said, this is in line with theories concerning the narratives of trials, as in criminal cases it is the prosecution and not the victim who determine the overall narrative of the case since the state is the prosecutor (not the victim or their estate) (Smith and Natalier, 2005). Consequently, in this particular instance, this study argues that even though the state is a series of interlinked discourses in a legal setting, the label of 'state' can be applied to the institutional role of the prosecutor and that ADA Holt is acting as an interlocutor personifying this role.

Amanda Hayes is the defendant in this case and is volunteering to testify on her own behalf. It should be noted here that she is under no obligation to speak in her own defence, as burden of proof rests on the prosecution and she has the 'right to remain silent' under American law. There can also be no inference of guilt had she chosen not to speak on her own behalf (as evidenced by the Grant Hayes case, in which he did not testify but no inference as to guilt can be drawn from exercising this right). In terms of Amanda Hayes' role within these proceedings, there are various labels which can be attached to her position. She is an individual citizen who stands on trial for murder, this places her institutionally in the position of 'the defendant'. She also testifies as a witness in her own trial (which she was not obliged to do), which places her as a witness providing evidence in the form of testimony.

In addressing the question of how the state communicates with individuals, it is the opinion of this study that although Amanda Hayes is in the dual role of both defendant and witness, she remains an individual communicating with the state. The rationale behind this approach is that she is not acting as a vehicle for an overarching body, but is speaking as a member of society in the witness stand (albeit in her own defence).

The question and answer format has been referenced throughout this chapter; however, it is significant beyond the micro analytical perspective as it provides constraints on how conflicting versions of events are presented to the jury. These overarching narratives maintain importance at the macro-level as they become competing discourses for the jury to consider. As discussed by Ferguson (1996), juries do not necessarily consider the evidentiary value of each individual piece of evidence, but are believed to consider overall narratives and how the evidence fits into the most 'believable' version of events. Even though the authorial voice of the narrative moves between ADA Holt and Amanda Hayes at various points throughout the cross examination, how that discourse is managed comes through the linguistic format of question and answer. The format within this trial is ultimately controlled by the state through the prosecution and legitimised legal process. This is not to say that the balance is automatically tilted away from the individual, as the direct examination allowed for the defendant to express her version with comparative freedom. Nevertheless, the means through which the state communicates with individuals comes through the fixed interactional rules of the courtroom as an institutional setting.

In determining the patterns of communication evident between the individual and the state, it has been shown throughout this chapter that this is not as obvious as might first be assumed. Although the question and answer format is the institutional norm, how this is implemented and the way in which both prosecutor and defendant interact show a more fluid and dynamic interaction. This analysis has shown that there is room within the format of

courtroom interactions for the defendant to take the floor and resist the question (and its implications). In this cross examination, it has been demonstrated that the defendant had the ability to reframe the question. This could be compared to the ability the prosecution has to reformulate the responses given by the defendant. Although the scope in which prosecution can reformulate a response is admittedly larger, the defendant showed a capacity for reframing the question, or her position within the question. This was shown in extract 3.9, lines 107-8, where the response only refers to the aspect of discovery and not that of the police department. An extension of the capacity to reframe the approach of the prosecution can also be seen in the detailed analysis of the final few minutes, as discussed above regarding lines 65-8, where being ‘concerned’ is reframed as being ‘afraid’ by the defendant.

These devices cast the question-answer format in an interesting light, particularly when addressing the Foucaultian concept of power relations. The authority imbued in the personification of the state is not fixed. The balance of power-knowledge shifts between the prosecution and defendant. This occurs as the defendant (acting as a witness in her own case) claims the epistemic authority to recount what occurred having admitted she was present at the time. This is evidenced through her denials of accusations concerning her own actions and the verbalisation of the very resistance that Foucault posits needs to exist as a prerequisite for the negotiation of a power relationship. That being said, one interesting factor is that although the defendant takes the position of having first-hand knowledge of events, this is not always employed. In fact, some responses are formed around explicitly stating what she did *not* witness. For example, she admits knowledge of Grant Hayes allegedly placing the victim’s remains into the creek but denies witnessing this due to her orientation and activities in the boat (which she claims do not involve directly handling the remains of Laura Ackerson). This could be linked with Matoesian’s (2003; 2001) discussion of the defendant taking the role of the expert witness. Although the Kennedy-Smith rape trial

proceedings were different in various ways, Matoesian's discussion of the changes in role are highly relevant even when recontextualised.

To elucidate, in Matoesian's examination, the witness was medically trained and could draw on that experience when delivering testimony and addressing the injuries of the complainant. This placed the lay witness in a position whereby he could deliver testimony drawing on knowledge that pertained to having expertise in the necessary field. This study puts forward that this principle can be expanded upon in terms of the epistemic positioning of the defendant when they take the stand. The defendant claims to have first-hand knowledge of certain events and how they unfolded, thereby placing them in the position of 'expert' regarding how the occurrences under discussion transpired. Therefore, during their testimony, the defendant has the ability to contextualise their narrative based on refuting the claims of the prosecution. The extent to which attempts to exercise this ability could be viewed as 'successful' is another matter entirely and not within the purview of this research, as no claims are being made vis-à-vis how one could measure the 'success' of an interaction or whether this ability outweighs other factors apropos the trial process. Nevertheless, that the defendant can claim this position, even when placed in a restricted interactional event, adds further credence to the theory of negotiated interactions in both the assertion of power relations and in the implementation of power-knowledge.

Moving forward with this view, this links with the observation above regarding the co-existence of multiple layers of power relations at the micro and macro level. At the macro level, the defendant is placed in a particular institutional role. This role comes with established norms and rules. In terms of physical positioning, when the defendant takes the stand she is also physically closer to the jury and this becomes the one point at which she can choose to interact with them – even if this is mediated and directed through her answering questioning from an attorney. The concept of involving the jury in testimony both verbally

and nonverbally was mentioned briefly above and will be expanded upon at this point. The rationale behind this is how the jury's presence influences the creation and maintenance of power relations by both sides and is evidenced through their interactions.

The prosecution directly invokes the presence of the jury when making the demand of the defendant in extract 3.7. Although this was used as a micro-level example of resistance, the broader impact of referring to the jury could be argued to produce a more layered impact. The setting of the trial and what is at stake (that being the liberty of the defendant) is also invoked through reference to this aspect of the courtroom process. In addition, through taking the stand all witnesses swear an oath to tell the truth. The impact this has on phrasing and lexical choices becomes paramount as part of the larger picture. This study would argue that in this instance, part of the invocation of the jury is to try and include them directly in the interaction. Through referencing their role, they are no longer being conceptualised as twelve individuals, but as a coherent body with a specific task.

In concluding this discussion, the roles of each of the participants may appear to be fixed, but are in actuality dynamic and shifting. The interactants are not limited to those with a verbal role (in this instance the prosecuting attorney and the defendant), but also encompass the jury and (although this aspect has not been the focus of this chapter) the wider viewing public both in the gallery and watching the trial through broadcast media. The concepts of having a rigid interactional structure and with it fixed power dynamics are also called into question. The evidence provided supports the idea that although the institutional roles do indeed provide constraints, there are linguistic devices that allow for these restrictions to be subverted, such as self-selection or the ability to retain the floor. Concepts of micro-analysis derived from conversation analysis would only focus on the narrower (language) context made evident within each turn; however, in courtroom proceedings this would not necessarily provide an informed analysis. The dual layer of courtroom proceedings has been shown to

reside in both the micro-level interaction, but also importantly, how these micro-level proceedings add to the larger image being constructed. If the larger agenda of the interactants is not incorporated into the analysis of the micro-level exchanges, then the full context in which events unfold could be missed within the analysis process. Although this study supports the concept of findings being data driven and does not intend to ascribe top-down approaches, within the courtroom context the ‘big picture’ is something that cannot be divorced from the micro-analysis, as, to borrow from the Foucaultian approach to power and resistance, both the big and smaller narratives are arguably necessary prerequisites for the existence of the other.

3.6 Chapter summary

To summarise, there are three main findings within this section:

- Firstly, the use of self-selection by the defendant in an established question and answer setting.
- Secondly, that the defendant takes and maintains the floor during her testimony; evidencing resistance to the question and using questions herself in order to expand on her own testimony.
- Finally, that the defendant’s lexical decisions allow scope for reframing the question in terms of the defence narrative, even though this may not be a linguistic approach that has been previously trained.

As shown throughout this chapter and the discussion, these points address the research questions through:

- showing the means through which the state and the individual communicate (primarily the use of the questions and answer format);
- the patterns that are evident in these interactions (as highlighted above);
- and dynamic nature of power relations in terms of the defendant's ability to hold the floor and the circumstances under which this occurs (particularly that the role of power-knowledge becomes an intrinsic part of the proceedings and both the prosecution and the witness have the ability to reframe and reformulate the allegations being made).

This chapter contributes to research in this field through the application of both micro- and macro- analysis using qualitative methods, in a homicide trial where the defendant has taken the stand. The methodological contribution is the continued expansion and exploration of mixed methods without finding that the two approaches contradict one another or are intrinsically incompatible. The use of a bottom-up, data-driven approach has evidenced linguistic features in this interaction of import – particularly when challenging the lay view of courtroom proceedings. These have, in turn, validated the sociological underpinnings of much criminological research, both in the field of forensic linguistics and within the broader spectrum of interdisciplinary criminological and legal research (Thornborrow, 2002; Matoesian, 2003; 2001; 1993, *inter alia*).

Leading on from this and furthering this contribution, the following chapter shall discuss the opening statements used in both the trials of Grant and Amanda Hayes.

Chapter 4: Analysis of Opening Statements

4.1 Introduction

This section introduces the use of narrative in the opening statements of the trials of Grant and Amanda Hayes. In analysing the openings of both trials, the application of a seemingly coherent narrative structure is applied to the cases prior to the delivery of any evidence.

However, by analysing these more closely, it is found that the narratives are not fixed and develop across both trials (for a methodological overview of narrative and its application in this process, see Section 4.1.1). In particular, the case of the state, whilst remaining similar throughout both trials, evolves and shifts with variation for each defendant and variations between each of the opening and closing remarks.

In analysing the opening and closing statements and how the narratives are used, it is important to fully understand the meaning of the criminal charges and their legal definitions; as these present the criteria to be fulfilled or refuted by the parties involved. In the trials of Grant and Amanda Hayes the primary charge by the state was first degree murder. In North Carolina, the criteria for first degree murder are outlined in State's General Statutes, Chapter 14, subchapter III, *Offenses against the person*, §14-17. The main aspects to be considered here can be found in the following extract:

§ 14-17. Murder in the first and second degree defined; punishment.

- (a) *A murder which shall be perpetrated by means of a nuclear, biological, or chemical weapon of mass destruction as defined in G.S. 14-288.21, poison, **lying in wait, imprisonment, starving, torture, or by any other kind of willful, deliberate, and premeditated killing**, or which shall be committed in the perpetration or attempted*

*perpetration of any arson, rape or a sex offense, robbery, kidnapping, burglary, or other felony committed or attempted **with the use of a deadly weapon shall be deemed to be murder in the first degree, a Class A felony, and any person who commits such murder shall be punished with death or imprisonment in the State's prison for life without parole** as the court shall determine pursuant to G.S. 15A-2000, except that any such person who was under 18 years of age at the time of the murder shall be punished in accordance with Part 2A of Article 81B of Chapter 15A of the General Statutes.*

(Emphasis added)

In committing an act of murder in the first degree one core element is that of premeditation, whereby the person committing the act planned to do so prior to the act taking place. The segments in bold-type are particularly salient when examining the narratives of the Hayes' trials. Though more complex within the legal framework, for the purposes of outlining the contextual backdrop of these narratives and their associated interactions, the core criteria for first degree murder in these cases could be summarised as:

- Whether (or not) the act was planned
- Whether (or not) the act was intentional
- By what means the act took place (were the act to have taken place as outlined in the narratives)

In reviewing these criteria, it will be shown in the analysis how these emerge as themes within the narratives and how the narratives are made to fulfil or reject the criteria and the context they create.

Another factor within the analysis is that of the role of the interactants and who or what they represent. As has been drawn out throughout this thesis, the role of the state, though referred to as an embodied single entity is far more complex and disparate, and arguably never more so than at this level of exploration. The state possesses at least a duality of representation in the courtroom that presents what could initially be viewed as a conflict. Though appointed by the state, the judge has the role of impartial adjudicator, guiding the jury through their role and making judgements based on what is legal, reasonable and acceptable within a case to ensure a fair trial. The second discourse for the state is through the role of the prosecution, as the victim is not the ‘adversary’ of the defendant (given that the system utilised in the United States of America is the adversarial system – as in the United Kingdom – rather than the inquisitorial system found in some parts of Europe). In the context of the USA, this is further compounded as the distinction between the state in a Foucauldian sense, and the State (as in the embodiment of the state of North Carolina in and of itself). Though this use of the term ‘state’ does overlap to some extent, it is the discourses that are drawn out through the use and embodiment of the term that present different nuances in its use.

The role of the prosecution is the embodiment of the state as a representation of the community. As has been outlined previously, criminal justice is considered of public interest as the crime against the victim is an infraction against the community (Smith and Natalier, 2005). Consequently, it is a representation of the community as part of the public sphere, but is also an extension of the civil sphere (as discussed in 1.5), where the private and the public overlap. The distinction between the discourse of the state as an impartial adjudicator and as

the ‘accuser’ against the accused is delineated in a number of ways, not least of which is the physical format of the courtroom and the ritualistic practices undertaken as part of the institution framework of conducting a trial.

Discussing the legal aspects of the charges and the framework for the state within the courtroom is relevant to this analysis as trial narratives do not occur in isolation. They occur as part of a wider criminal justice system within a recognised node of power/knowledge that has a legitimised status within its society. In understanding these practices, the interactions and ritual undertakings that participants within trial settings orient to are made clearer. In this instance, one risks undermining an analysis of trial data by rejecting influences that might not be overtly oriented to by participants, but implied within the interactions.

The opening statements of a trial are monologues that have been prepared by speakers allocated the floor at a specific point within the trial for a specific purpose. The prosecution provides their opening statements, first, at the beginning of the trial. This is linked with their providing their case first, as the defence can choose to defer their opening statements until after the prosecution has finished presenting their evidence. In both the Hayes’ trials, the defence delivered opening statements directly after the prosecution and before the presentation of evidence.

The overall narratives for each of the trials will be outlined in the following subsections, followed by an analysis of the opening statements.

4.1.1 Restating the theoretical framework

At this point it is worth restating the theoretical framework of this study as discussed in Chapters 1 and 2, and revisiting the conceptual model with the three interconnected sections of the agenda, the macro-level narratives, and the micro-level interactions. In this chapter, the

focus is placed on the macro-level narratives as represented in the opening and closing statements of the attorneys in both trials.

In approaching a narrative analysis, it is necessary to outline what is meant by the use of 'narrative' in this context and how such an analysis has been utilised in this study.

Narrative in this context is used to describe the overall version of events presented by a party to the jury. It has been interchangeably used with the term 'story', though the use of this term has been somewhat restricted due to the connotations of a story as being the events that occur within a narrative, whereas a narrative tells the story through the actions of the characters involved (Berger, 1997: 66-7). It should be noted that whilst references within this analysis will refer to literary terms (characters, plot, etc.) this is not a means of trivialising the severity of the case under analysis by reducing it to a form often associated with entertainment.

Rather, the purpose in this is to show how something so severe as the loss of human life and the potential loss of liberty for those placed on trial can and *is* reduced to a narrative form that is deemed accessible for the jury and is used to frame and present a coherent structure to otherwise potentially disparate events.

In analysing narrative, it is important to remember that many aspects of how life is understood and in imparting of events (be it fairytales or scientific experiments), there is a tendency towards a form of storytelling (Ibid, 9-11). This can, however, be viewed as overly broad with some scholars, such as Labov, viewing narrative as 'discrete units with clear beginnings and endings' that are 'detachable from the surrounding discourse rather than situated events' (Riessman, 1993: 17). Labov's six-part structure of abstract, orientation, complicating action, evaluation, resolution and coda is paradigmatic and well known throughout narrative and linguistic analysis, however; this paradigm, whilst a useful means of situating a narrative, does not encapsulate the intricacies within the narrative of the opening

statement. Consequently, though there can be references made to Labov's model, this thesis does not conform to this viewpoint in the given context of opening statements.

The context in which the narrative is being received removes the position of the opening statement as being detachable and discrete from its surroundings. The need, then, to take the situational factors into account removes the ability to apply Labov's model at the critical level to the opening statement, as it affixes a static, universal, a priori structure that does not allow for institutionally bounded setting of the courtroom or the manner in which narrative is situated as part of the larger structure of the trial and its place within the concept of the agenda, narrative, and interpersonal interactions.

Although the opening statement is presenting a narrative, including implications of a beginning and an ending, the theoretical underpinnings in how the narrative unfolds lends itself to Ricoeur's approach to narrative time (Ricoeur, 1980), in which the past becomes part of the 'making-present' and knowledge of the ending allows for the coherent formulation of the beginning and the middle. Another aspect is that the narrative of the opening statement does not 'end' per se, but enters into the present with the case reaching the point of trial. This then projects into the future, indicating that the narrative is not yet finished as the jury will be asked to formulate a judgement at the end of the trial based on what they have heard and what they (in that moment) have yet to hear (time as a theme is discussed below, see 4.2.3.1).

In addition, the Labovian model also highlights the issue of interaction within narrative. In appraising Labov's structure, there is the criticism that it did not incorporate the position of narratives as co-constructed interactions (De Fina and Georgakopoulou, 2012: 34-6). This may seem to be less applicable to this study, as the opening statements are delivered as monologues to a captive audience that is bound by institutional rules of interaction not to

speak (namely, the jury)⁴. Nevertheless, this study argues that regardless of a vocalised role (or lack thereof), the narrative is being enacted and presented to an audience, the process of which implies an interaction through the very act of the jury being required to receive the presentation.

Accordingly, the approach to narrative taken in this thesis draws heavily on the fields of literature and sociology. Narrative within opening statements is not simply a means of sequentially connecting a series of events, but encapsulates a number of different aspects. Narrative has been purported as a way in which meaning is given to human experience (De Fina and Georgakopoulou, 2012: 16). There are criticisms regarding the extent to which narrative should be privileged as regards its necessity to lead a full and meaning life (Ibid: 21-2), but these are not the focus of this thesis, in which the application of narrative theory is limited to the context created through the act of the opening statement. This, in turn, conforms with the approach to narrative analysis as a continuum in which the ‘what’ (content), the ‘how’ (structure) and the performance of the narrative (as delivered outwith a text-based medium), are incorporated to varying extents and are not viewed as separate, dichotomised studies (Ibid: 23-25).

In analysing these narratives, it is important to draw on underlying discourses that are linked to wider societal dialogues, as these are evidenced within the creation of these narratives and are utilised as a resource by the interlocutors towards their audience (the jury) in creating a dialogue that is designed to engender their support for that specific version of events using shared cultural knowledge. Consequently, this chapter draws on discourses of gender, the body, representations of the state, power, and race *inter alia*, when analysing the

⁴ There is scope for objections from the opposing attorneys during opening statements, but as this was not part of the dataset, this was not explored other than to acknowledge its potential as a variable in analysing other opening statements.

themes presented within the statements as well as how these are linguistically and discursively constructed.

These themes have not been enforced by predetermined design, but have emerged based on analysis of the data. This may seem at odds with the concept of an holistic approach to analysis (after all, researchers are not completely objective without a filter through which they view the world), however; the format of opening statements is that of a monologue which presents a version of events. Through this act, ipso facto, the narrative for each case emerges. Given the purpose of the opening statement as an opportunity to present a ‘story’ and an argument, the coding process used did make reference to a narrative coding taxonomy for guidance (Saldaña, 2013: 135). Codes that emerged from this process, however, were not restricted to the taxonomy alone, allowing for alternative codes to emerge from the data should they be visible. Themes that emerged from the data and are presented in this thesis were selected based on their prevalence within the data and for their contribution to this field of analysis. The themes represented are not necessarily representative of all themes that emerged from the data, but are germane to the study and are oriented to as relevant by participants within the data.

This process was applied after the micro-level analysis of the first three minutes had taken place (see 4.2 and 4.2.1 for a rationale) had taken place, allowing for an analysis that draws together both a narrow and broader view of the opening statements.

4.1.2 The case of the state

In both trials, it is made clear that the state, through the vehicle of the prosecution, contends that both Grant and Amanda Hayes killed Laura Ackerson while she was at the Hayes’ apartment during the evening of Wednesday 13th July, 2011. The overarching glue in the

prosecution's case is that they both acted in concert and with premeditation. The two narratives for Grant and Amanda Hayes vary slightly both in terms of emphasis and nuance, providing narratives that are parallel to one another, yet also have details and theories posited to explain evidence that vary somewhat.

The prosecution's narrative for the Grant Hayes trial contended the following (this is a summary provided by the author based on the trial footage unless otherwise stipulated). Grant Hayes and Laura Ackerson had a vitriolic relationship and were going through a difficult and expensive custody battle. Following the release of a court-ordered psychological evaluation, Laura Ackerson believed she was in a strong position to gain full custody of the children. This, along with other improvements Laura had been making to her life, made it unlikely that she would agree to exchange her parental rights for money. Grant Hayes was a controlling person and had behaved in such a manner towards Laura Ackerson that she feared for her personal safety and voiced that concern to others. Grant Hayes hated Laura Ackerson and wanted her removed from his life and the lives of his wife and their children. The prosecution put forward that this was fuelled by the custody dispute, as he was unable to cross state lines with the children which he blamed for his struggling music career. He and Amanda Hayes were in financial difficulties and were being evicted from their apartment. As a consequence of these factors and the increasing anger Grant Hayes is said to have had towards Laura Ackerson, the prosecution asserted that Grant Hayes lured Laura Ackerson to his apartment with the promise of her seeing the children midweek (she only had the children at weekends) and to discuss her taking full custody. Once in the apartment, the prosecution argues that Grant and Amanda Hayes both worked in concert to murder Laura Ackerson and then dispose of her body. That both Grant and Amanda were responsible for the murder of Laura Ackerson is central to both trials.

This narrative is largely similar for Amanda Hayes' trial, though there are some differences. The emphasis in this trial is placed on Amanda Hayes' role as an active and voluntary participant in the crime. This is primarily brought forward using Amanda Hayes' behaviour following the death of Laura Ackerson. The journey to Texas and Amanda Hayes' family to dispose of the body is emphasised along with the quote 'I hurt her. I hurt her bad. She's dead.', which is presented to the jury as a confession by Amanda Hayes to her older sister. The narrative also highlights Amanda's role in the purchase of items after Laura Ackerson's death that the prosecution believes were used in the dismemberment, clean-up and disposal of the remains. Finally, the narrative also focusses on Amanda Hayes as also having a contentious relationship with Laura Ackerson and wanting the victim out of the lives of her and her family.

This presents a contextual overview of the general narratives of the prosecution in both trials and is followed by the outlines of both Grant and Amanda Hayes' defence narratives.

4.1.3 The case of Grant Hayes

Grant Hayes' defence primarily focusses on the claim that Amanda Hayes committed the murder and that he helped dispose of the body in an attempt to protect his wife and family. The defence asserted that Amanda Hayes had an altercation with Laura Ackerson and this resulted in the accidental death of the victim. Following this, Grant Hayes' defence then admits to his helping to dispose of the remains (a lesser charge), but denies murder.

The custody dispute is normalised (downgraded in the characterisation of its severity as an emotional and negative relationship in comparison with the prosecution's version of events) with the contention that Grant Hayes and Laura Ackerson argued as was normal with

separated couples, and that these arguments were not a precursor to a more violent disposition or act. The journey to Amanda Hayes' family in Texas (section 2.1.1.2) when disposing of the remains is cited as evidence that Amanda Hayes was the person responsible and who took charge of the situation after Laura Ackerson's demise.

4.1.4 The case of Amanda Hayes

By contrast, Amanda Hayes' defence focusses on Grant Hayes as the person who killed Laura Ackerson. The narrative presented in this instance is that of Grant Hayes as a controlling sociopath and of two victims – Laura Ackerson and Amanda Hayes. Grant Hayes is described as suffering from a personality disorder and of being a person who manipulated, controlled and threatened both women. It is claimed that Amanda Hayes was not aware of Laura Ackerson's death until after the family had arrived at Amanda Hayes' sister's house in Texas. Evidence from Grant Hayes' previous trial, witness testimony, and Amanda's own account are used to support the contention that Amanda was coerced and threatened into assisting Grant with the disposal of the remains. State witnesses such as the victim's closest friend also become part of this narrative through negative character testimony they have made in the previous trial against Grant Hayes.

This narrative puts forward that Amanda Hayes was upset over an arrangement she saw being made whereby Grant Hayes would give Laura Ackerson \$25,000 in exchange for full physical custody of their two young children. Laura Ackerson attempted to touch Amanda Hayes' baby daughter (then a couple of months old) and Amanda turned away calling for Grant and leaving the room. Amanda Hayes claimed to have neither heard nor seen how Laura Ackerson died and that she returned to the bedroom to sit with the children. It is then claimed that Grant Hayes told Amanda to take all the children out as Laura had hit

her head and he did not want the children to see medical personnel attending to her. Amanda claims that by the time she returned to the apartment Grant told her that Laura had returned home. While in Texas, Grant Hayes is then said to have revealed that Laura Ackerson was dead and threatened to harm Amanda Hayes and the children (including Amanda's older daughter from a previous marriage) unless she helped him. It is this threat which is claimed to have prevented Amanda Hayes from contacting the relevant authorities or raising an alarm.

4.1.5 Final remarks on narrative overviews

The 'story' of Amanda Hayes' version can be presented in more detail through the additional testimony provided by the defendant. Nevertheless, the two contrasting versions of what took place within the apartment also interweave with aspects of the state's case.

The opening statements for each case will be analysed in the following sections. The rationale for analysing these even though they are not evidence is that they present a summary of the evidence before the prosecution and defence cases have been made. This synthesis then places the evidence into the chosen contextual frame of each delineated party, whereby disparate pieces of testimony, photos and physical evidence are then used to create multiple coherent and linear stories (Cotterill, 2003; Heffer, 2010; Ricouer, 1980). Though much work has been done on closing statements in courtroom proceedings, the focus here on opening statements has been selected as it provides the lens through which the subsequent evidence is then viewed by the opposing 'sides'. This initial contextualisation is salient throughout the entirety of the trial as it presents the recurring themes that are utilised and referenced for the jury in support of their own version of events (and in undermining the opposition's stance). Whilst this does not in any way remove or undermine the importance of research into closing statements (as the last final version of the narrative the jury will hear),

an analysis of opening statements is important as trials are an holistic event in and of themselves where what has gone before remains permanently relevant. To this end, though aspects of Conversation Analysis (CA) in terms of micro-analytic procedures and transcription norms have been drawn upon in this chapter, the tenets of CA in terms of removing the wider social context have not; as to ignore the wider context of the narrative is to remove the very contextual foundation upon which future interactions within the trial are based.

4.2 Analysis of the opening statements

An initial analysis of the first three minutes of the opening statements has been selected as a sample in order to highlight the differences in approach and style across the four opening statements. The rationale in this sample selection was based on the premise that the opening statements provide the narrative context in which each side is framing the evidence and the need to impress their version of events on the jury. This selection was made to provide a comparison as to how each case was initially introduced to the jury and what was made relevant by the attorneys *in situ* during that first opening sequence and first impression of the trial⁵. The choice of three minutes was based on the average amount of time the speakers took to shift frames from their opening sequence to the main body of their speech.

Subsequent to this is an holistic thematic analysis across all four opening statements incorporating both micro- and macro-level approaches. The themes that will be discussed are: time and location; agency and responsibility; reframing evidence and the voice of the victim; the characterisation of law enforcement and the judicial process; and epistemic positioning

⁵ The use of the phrase 'first impression' is used in the context of this being the first official introduction of the parties' narratives in the trial itself, though the author remains aware that the jury may well have been exposed to the attorneys and some aspects of the cases as part of the jury selection process.

and claims to knowledge. These were selected as they emerged as having salience across the opening statements as points of comparison or (in the case of the opening statement of Amanda Hayes’ defence) marked contrast (where extreme opposing views on the same theme emerged, such as Amanda Hayes’ complicity versus her coercion in 4.2.3.2). Tables of emergent themes in the opening statements are provided in Appendix B and are referred to as required.

4.2.1 Introducing the narrative: analysis of the introductory three minutes of all opening statements

4.2.1.1 The openings of the prosecution

The first three minutes of both the prosecution’s opening statements demonstrate the shift in focus between defendants, whilst maintaining consistency across the presented timeline and the key aspects of the narrative linked with evidence and testimony.

The statement for Grant Hayes’ trial opens with an introduction of the defendant and the victim, the date and the place.

Extract 4.1: Prosecution opening GH

1 ADAZ ladies and gentlemen of the jury↓ (0.6)
2 as the sun rose of kinston north
3 carolina (0.4) on july: thirteenth of
4 twenty eleven (0.5) laura ackerson woke
5 up exci↑ted↓ (1.0) for ↑once things were

6 going her way↓ (0.7) yu=see the
7 twenty seven >year old< mother
8 of two little bo:ys↑ (.) little grant
9 and gentle (0.3) and she (shared/carried)
10 custody of them with this man
11 grant hayes↓

What is visible here is the framing of each of the participants and the discourses that this draws on. Opening statements are prepared in advance, so lexical decisions can be argued to be deliberate and designed to have an impact on the jury. In line 1, the role of jury is re-emphasised through the initial address. This is followed by the introduction of the place and time, which are not simply stated but presented in amongst a narrative and prose-style description of Laura Ackerson's morning. Lines 2-6 set the scene for the victim's final day and make claims to knowledge regarding her state of mind (lines 4-5 'woke up excited'); thus, representing her as excited and optimistic. This already forms a contrast to the jury's shared knowledge of the end of this story – her death.

This is then followed (lines 7-10) by framing Laura Ackerson within selected discourses. Laura Ackerson is represented as both a young woman (whose life has ended prematurely) and a mother with two small children, placing her in the role of caregiver. Within this comes the named introduction of the children, whose lives are also impacted by the loss of their mother. The contrast is emphasised with the introduction of the defendant (lines 10-12), 'this man grant hayes↓', who is placed in relation to the victim as the person with whom she shared custody of the children. The emphasis here is on the victim, her life and her loss. The children are referred to by name and their stage of development is also highlighted (line 8 'two little bo:ys'). This contrasts with Grant Hayes introduction as 'this man', which is accompanied by the prosecuting attorney turning to point where he seated at the defence table.

Though the same attorney is speaking, this beginning is markedly different to that used in the case of Amanda Hayes.

Extract 4.2 Prosecution opening AH

1 ADAZ i hurt her (1.0) i hurt her ba:d (0.9)
2 she's dead
3 (1.3)
4 those are the words of amanda hayes↓
5 (0.5) to her own sister (1.1) those are
6 the words of amanda hayes↓ (0.2)
7 six da:ys (0.2) after laura ackerson
8* came over to the apartment that she
10 shared with grant hayes↓ (1.0) °um°
11 those are (.) the words of amanda
12 hayes HOUrs (0.9) before she (0.2) and
13 grant hayes (0.4) deposited laura's bo↑dy↓
14 in a texas creek
15 (1.3)
16 those were the words of amanda hayes
17 (0.7) ↑six da↑ys↓ (0.5) before lar-laura
18 ackerson's severed to↑rso↓ (.) would be↑
19 found↓ (1.0) <i hurt her (0.5) i hurt her
20 bad (0.5) she's dead↓>

In this introduction, the emphasis remains firmly on Amanda Hayes. Lines 1-2 are making use of direct speech which is claimed to be a statement the defendant made to her sister. The

use of pauses here is of particular note as the direct speech is broken into three distinct parts, each building on the former in terms of severity ('i hurt her (1.0) i hurt her ba:d (0.9) she's dead). The word stress also shifts across the three segments, moving from 'hurt' to 'bad' before finally reaching 'dead', building up to the culmination of the alleged quotation, which also amounts to a confession. There is also a 1.3 second pause before the speaker continues to elucidate on the salience of those words and their context. The distinction between this and the introduction used in Grant Hayes trial is particularly notable through the framing of the victim in comparison to the defendant. The focus remains firmly on the defendant throughout this stretch of talk, with Laura Ackerson being referred to in terms of her death and how her remains were treated rather than her life as a young mother and frame of mind.

The 'those are the words of Amanda Hayes' is repeated four times throughout this section (lines, 4, 5-6, 11-12 and 16). In each instance, Amanda Hayes' full name is used, whereas Laura Ackerson is referred to once by her full name (line 7); once by her first name in conjunction with the fate of her body (line 13); and once again by her full name but still in relation to the condition of her remains (lines 18-19). Grant Hayes (who has been convicted of the first-degree murder of Laura Ackerson at the time this statement is made) is mentioned twice as a co-participant with Amanda Hayes (lines 8-9, 12-13).

Though this sequence does introduce both the defendant, the victim and – in this instance – the alleged co-participant, the characterisation of the participants is distinct from the previous introduction. Laura Ackerson is related solely to the discourse of the victim, and Grant Hayes is mentioned only in the role of co-habitant and co-participant in Laura Ackerson's murder. The details of time and place are also distinct as the chronological starting point for the opening statement is after the murder has taken place. The alleged confession becomes temporally significant as it is around this statement all other activities are referenced. When Laura Ackerson came to the apartment is not referenced here as the 13th

July, 2011, but as being 'six da:ys (0.2) after laura ackerson came over the apartment' (lines 7-8). The disposal of the victim's remains is also placed in relation to this statement as being hours prior (lines 12-14). The final temporal reference in this sequence comes at lines 17-18, where the focus is then placed on the time the victim's remains were found, which also provides a form of numerical symmetry in that it is described as being six days after the statement.

In placing the focus on the alleged confession, the place of reference also shifts. Though the apartment is mentioned in line 8 (which will be outlined as where the crime took place), its significance remains implied at this point in the opening statement. The only direct reference to a named geographical location is that of Texas, where the remains were disposed of subsequent to the initial crime taking place.

Extract 4.3 Prosecution opening GH

13 (1.7)
14 y'll hear tht- (0.4) that mo:rnin: (0.3)
15 laura got her things an >an< started
16 to walk out the doo:r and walked past
17 (0.5) uh her refrigera↑tor↓ covered with
18 pictures of her little boys↓
19 (0.8)
20 little did she know that (0.8) those
21 little boys would only know their
22 mother for three years↓
23 (1.3)
24 little did she know that (0.3) as she
25 walked out that doo:r↓ (0.3) that within

26 twenty fours hours (.) she would take her
27 last breath
28 (0.9)
29 little did she kno↑w↓ (0.3) that that↑ man↓
30 (0.4) the father of her children↓ (0.9)
31 would be the one responsible (0.4) for her
32 murder and disappea↑rance↓

This sequence continues directly from extract 4.1. The use of repetition in both of these introductory sequences is apparent in both extracts, from extract 4.2 it was the phrase ‘those were the words of Amanda Hayes’, whereas in extract 4.3 it is ‘little did she know’, which occurs three times in lines 20, 24 and 29. In this extract Laura Ackerson’s optimistic disposition from that day is contrasted with her murder. The narrative foreshadows events through the claims of the victim’s lack of epistemic knowledge (‘little did she know’), whilst simultaneously acknowledging that the jury have this shared knowledge of the victim’s death and already know the end of the story. This links with Dershowitz (1996), who notes that narratives within courtroom settings must begin at the end, as the ending of the narrative is in and of itself the reason for the trial.

Within this sequence there is also the continued emphasis on the victim (continuing to contrast with the introductory sequence in extract 4.2). Lines 14-18 begin with ‘you’ll hear that’, potentially placing the opening statement in the position of ‘Abstract’ within a Labovian framework, warning the listener of what is going to be said (Benwell and Stokoe, 2006). This section then describes Laura Ackerson’s movements that morning, continuing to draw on known discourses in framing how the jury is to perceive the victim. These known discourses include those of family and Laura Ackerson’s role as a devoted mother. The implication of this addendum to her position as a mother is implied through the description of

the refrigerator ‘covered with pictures of her little boys’ (lines 17-18). The age range of the children is also introduced at lines 20-22, placing the two children at three years old and under.

The perspective from which this information is presented is noteworthy in that it is not a narrative delivered from the point of view of the victim, but from an outside future perspective that is looking backwards to what the victim did *not* know. This form of foreshadowing is not an uncommon storytelling device, however; the temporal positioning of the teller in relation to the events will then be contrasted with the difference between the narrative as being removed from depictions of a ‘story’ as the events were real (see extract 4.4, lines 49-50).

These three extracts encompass the introductory segments of the opening statements. The analytical reasoning behind this division is the topic shift which occurs as a parallel in each statement. This also maps onto Labov’s (Ibid.) narrative structure with the introductory sequence providing the Abstract, followed by the Orientation. The Orientation sequence in both opening statements covers three main topics: the introduction of the case of prosecuting attorneys; an explanation as to the purpose of an opening statement in the trial process; and the chronological beginning of the prosecution narrative.

Extract 4.4 Prosecution opening GH

33 (1.4)
34 my name's boz zellinger and (.) along with
35 becky holt we'll be ray- (.) representing
36 the state of north caroli↑na↓ in this
37 tri↑al↓ (0.4) >an as you<heard↑ from judge

38 stephens (0.5) this is just a forecast of
39 what the evidence is↓ an- (0.3) so
40 nothing that i: sa:y or nothing that
41 the defence attorneys sa:y at this
42 opening (0.4) is evidence↓ (0.2)
43 all that evidence is gonna come from
44 this witness↓ stand↓ and it's gonna
45 come from (0.7) people invo:lved in
46 laura's life n invesitgators
47 n they're gonna get up here and
48 tell you the truth about what hap↑pened↓
49 (0.6) and it's not a story it's a
50 reality (0.8) and you'll hear that
51 that morning on july thirteenth=

In the trial of Grant Hayes, the introduction of the attorneys comes first (see extract 4.4, lines 34-7), whereas in the trial of Amanda Hayes, it comes slightly later (see extract 4.5, lines 30-4). In Amanda Hayes' trial, there is a transitional sequence that acknowledges a prior significant aspect of the trial process – jury selection. The jury selection process is not mentioned during the opening statements of Grant Hayes' trial by either the prosecuting or defence attorneys, highlighting it as being oriented to as a more significant factor in the second trial than the first (given the public attention the first trial received). Following this comes a brief sequence that orients to and restates prior talk from the judge regarding the purpose of the opening statements (see extract 4.5, lines 22-7). The word 'forecast' is stressed in both descriptions of the opening statements (extract 4.4, line 38; extract 4.5, line 26). The jury selection process is again referenced in the Amanda Hayes trial with the introduction of the prosecution, orienting to a previously shared event. In the Grant Hayes trial, this sequence

not only occurs first, but aside from the reference to jury selection is very similar. The introduction from the Amanda Hayes trial is similar (extract 4.5, lines 30-4) to that of the Grant Hayes trial (extract 4.4, lines 34-7). There is a potential implication that this introduction of the attorneys may be delivered in a similar manner in opening statements by this attorney, though more data would need to be gathered to confirm this (or potentially whether this was a template-like aspect for introducing prosecuting attorneys more generally).

Extract 4.5 Prosecution opening AH

21 (1.1)
22 now i wanna thank you for for sitting
23 through that arduous (0.4) <jury
24 selection process> and as the judge
25 to:ld you (0.2) this an opening statement↓
26 this is a forecast of what the
27 evidence will be °n° (0.4) u:m↓ (.) i got-
28 had the opportunity to talk to
29 some of you during jury selection=
30 =my name is boz zellinger (0.2) n
31 i'm an assisant district attorney
32 here in wake county along with becky
33 holt (0.3) we represent the state
34 of north caroli↑na↓
35 (0.6)
36 >now i ↑want you to ↓take< (0.3) pay close
37 attention to the fact that what

38 the judge told you is that the
39 evidence will come from this witness
40 stand↓ (0.7) >and people are gonna< come
41 up here and swear to tell you the
42 truth↓ (0.6) and they're gonna tell
43 you about what they saw and what
44 they heard (0.6) and from that story
45 you're gonna learn that on <july
46 thirteenth of twenty eleven↓> (0.5)
47 laura ackerson woke up excited
49 she was a twenty seven year old
50 mother of two of little boys
51 (0.5) gentle and grant the fourth
52 (0.5) and she shared custody of
53 those two little boys with (0.3)
54 amanda hayeses husband grant hayes↓

The description of the opening statements in Grant Hayes' trial references the judge and emphasises that nothing any of the attorneys say (including the defence) is evidence. The presence and importance of the witness stand is emphasised both lexically and physically. This is paralleled closely in Amanda Hayes' trial, even though the introduction of the attorneys occurs within the explanation of the opening statements. Again, the physical presence of the witness stand is emphasised along with the role it will play in the trial. This is particularly interesting as it is the direction of attention towards the witness stand that shifts the topic from the opening statement (as a forecast of evidence) to the forecast itself. From the witness stand, both opening statements shift to the witnesses who will tell the 'truth' (extract 4.4, line 48, extract 4.5, line 42). Though both opening statements have initially

contrasted from the outset, by this point the differences are now more nuanced. In the first trial (Grant Hayes) there is an emphasis that this is ‘not a story’ but a ‘reality’ (extract 4.4, lines 49-50), however; in the second trial (Amanda Hayes) this distinction is not made (‘from that story you’re gonna learn’, extract 4.5, lines 44-5). Nevertheless, in both instances the topic shift from the witness stand to the witnesses is then followed by the narrative of the state’s case.

In the first trial, the date is reintroduced but not the year, and the narrative continues from Laura Ackerson’s departure from her apartment (which was related in the introductory sequence). In the second trial, the narrative is introduced from the very beginning, as the introductory sequence begins with the reported confession and the disposal of the victim’s remains. At this point in the second trial, two statements from the first trial are reused verbatim. These include ‘on July thirteenth of twenty eleven (0.5) Laura Ackerson woke up excited’ (extract 4.1, lines 3-5; extract 4.5 lines 45-7); ‘the twenty seven year old mother of two little boys’ (extract 4.1, lines 6-8; extract 4.5, lines 49-50). There are also other parallel phrases, but these re-present the information from the first trial to allow for the differences of the second courtesy of the change in defendant. For example, in the second trial custody was shared between Laura Ackerson and Amanda Hayes’ husband, Grant Hayes, whereas in the first trial this was with Grant Hayes directly (extract 4.1, lines 10-12; extract 4.5, lines 52-4).

Again, deviations occur with these opening statements, with Grant Hayes’ trial focusing on the victim, and Amanda Hayes’ trial focusing on the defendant and her relationship with Grant Hayes.

Extract 4.6 Prosecution opening GH

52 =a wednesday mor↑ning↓ (0.5) as laura
53 headed out the door to her (.) white
54 ford focus it was a two thousand
55 six ford focus (0.5) she had a
56 couple of business meetings on (taff)
57 that day↓
58 (0.9)
59 and you'll hear that (.) laura
60 along with one of her good friends
61 chevon ma↑thes↓ (0.6) u:m had a- a
62 business called go fish and she also
63 had another (0.4) u:m business called fork
64 and spoon (0.6) and (.) primarily what
65 laura and chevon would do is (0.4) u:m↓
66 bri:ng restaurants menus for the
67 restaurants↓ and they're the types that
68 have the advertising down the sides
69 n (0.4) laura and chevon would sell
70 that advertising n (0.4) so laura
71 had a couple of business meetings
72 that da:y (0.3) u:m throughout her area
73 throughout kinston and wilson↓
74 (0.6)
75 um (.) you'll hear that laura had
76 family up in michiga:n and that
77 she had a brother lived in

78 wake forest but that she wasn't
79 especially close to them

In these two extracts (4.6 and 4.7), there is clear evidence of deviation in what is considered salient information, despite the overarching similarities within both cases. In the first trial (extract 4.6), the focus remains on the victim. Laura Ackerson's day is returned to as a fixed temporal frame of reference (she leaves the apartment, she heads to her car to go to business meetings). This then provides a stepwise topic shift (extract 4.6, lines 57-9) where the Laura going to business meetings provides an opening for the explanation of who Laura worked with and the businesses she was involved in. The introduction of Chevon Mathes at this point (extract 4.6, line 61) also begins the process of naming and forecasting some of the state's witnesses. Chevon Mathes is the first witness named in this opening statement and is also the first witness to take the stand. Line 73 also reiterates Laura Ackerson's position geographically in that 'her area' was Kinston and Wilson. This begins to foreshadow a contrast between her usual movements and her trip to Raleigh. Laura Ackerson's family and their locations are also introduced, providing additional information regarding the victim and implying a lack of a familial support system ('she wasn't especially close to them', extract 4.6, lines 78-9).

Extract 4.7 Prosecution opening AH

55 (0.9)
56 you'll hear that (0.3) grant (0.4) hayes
57 and laura ackerson had been in a
58 relationship↑ together↓ (0.3) >an
59 that< these two boys had been bo:rn↓

60 and then grant hayes (0.2) LEft laura
61 for aman↑da hayes↓ (0.3) an actress
62 (0.4) that she met <that grant met> in
63 the you-es virign is↑lands↓
64 (1.0)

This section of the opening statement is not echoed at this point in the second trial. In Amanda Hayes' trial, this section does not focus on the victim's movements on the 13th July or describe her business arrangements, but expands on the victim in relation to the defendant and Grant Hayes, providing additional context as to how Amanda Hayes and Laura Ackerson are linked within the narrative. The segue comes through the prior sequence (extract 4.5, lines 53-4), where Laura Ackerson is described in terms of sharing custody of the children with Grant Hayes. At this point, the topic then shifts to the relationships within the narrative (that Grant had children with Laura, and that he 'left Laura for Amanda Hayes', extract 4.7, lines 60-1). It is also at this point that Amanda Hayes' background in acting is first oriented to as relevant (extract 4.7, line 61). Though these segments are not similar in length, in terms of their sequencing within the overall statement and how the first three minutes are constructed, their positioning provides an interesting mixture of paralleled and contrasting foci. In the final section of this micro analysis, it can be seen that the two opening statements return to a similar topic with the discussion of the custody arrangements.

Extract 4.8 Prosecution opening GH

80 (0.6)
81 you'll hear that she was living
82 in kin↑ston↓ (0.4) um↓ and sharing custody

83 of those two little boys with
84 grant hayes >an that (0.3) grant
85 hayes had custody of the boys↓
86 monday through friday (0.3) and that
87 laura got em for the weekend
88 and tht- (.) they would meet at
89 a sheets in wilson which was half
90 way between where grant lived in
91 ra↑leigh↓ (0.3) and where laura lived (0.4)
92 um in kin↑ston↓
93 (0.6)
94 tch n you'll also↓ hea:r tht (0.9) a lot
95 about this this <bitter custody
96 dispute> that was going↑ o↑n↓ (0.6)
97 u:m
98 (0.5)
99 you'll ↑hear (.) during that day↓
100 that (0.5) uh from these restaurant
101 uh owners that laura met with at
102 two o'clock=you'll hear that she
103 met with (0.4) u:↑m↓ sean tudor from
104 wilson amusements↓ so you'll (.) >hear
105 about that meeting<=↑pay ↑close
106 ↑attention↓ to how (0.4) sean descri:bes
107 her↓(0.5) >()
108 she goes on in that day< to four
109 o'clock meets with randy jenkins

Both of these segments (4.8 and 4.9) discuss the custody arrangements. In the first trial, the description of the overall custody dispute as ‘bitter’ occurs after the temporal and geographical aspects have been outlined (extract 4.8, line 95), whereas in the second trial this occurs beforehand (extract 4.9, line 66). Rather than ‘bitter’, used in the first trial, the dispute is characterised as ‘contentious’ in the second.

Extract 4.9 Prosecution opening AH

64 (1.0)
65 >but you< hear↑ that (.) there
66 was a (.) pretty contentious↓ (0.4)
67 custody dispute↓ between (0.4) um amanda
68 and grant and lau↑ra↓ (0.5) and you'll
69 hear a lot about that dispute n
70 you'll hear how there was a (0.3) a
71 <custody schedule> set up where (0.3)
72 grant and amanda had custody of these
73 two little boys from <monday through
74 friday> (0.7) and that (0.3) they would
75 meet laura at a ↑sheets gas station
76 in ↑wilson north carolina >which
77 was< (0.3) pretty close to where grant
78 and amanda lived in raleigh↓ (0.3)
79 and laura lived in- i:n uh kin↑ston north
80 carolina↓

Throughout the first three minutes of both opening statements, the phrase ‘you’ll hear’ (and similar variations) is repeated. In Grant Hayes’ trial it occurs seven times and in Amanda Hayes’ trial it occurs three times. This maintains the ‘forecast’ position of the opening statement overall as an overview of the evidence. The phrase ‘you will’ does not leave ambiguity but implies the narrative (and thereby the state’s case overall) has certainty and legitimation through evidence.

The first three minutes of both opening statements made by the prosecution highlight a number of interesting features. Though there are many parallels within these sequences, there are more differences than might have initially been expected. The focus in Amanda Hayes’ trial is not as heavily placed on the victim as it was in Grant Hayes’ trial, with more focus being placed on Amanda Hayes and the narrative of her involvement. The initial openings show the contrast clearly. Parallels in terms of the introduction of the attorneys and the introduction of the witness stand as a means of moving onto other aspects of the narrative are both evident in the structure of these three minutes. Despite the shifts in topic lacking a linear chronology, the use of temporal features throughout these extracts seems to imply a chronological coherence to the narrative, tying events together. In Grant Hayes’ trial the fixed point of the 13th July, 2011 and Laura Ackerson’s movements on that day provide the temporal reference around which other events are framed. For Amanda Hayes’ trial, there are two points used to provide a timeframe. The first of these is the reported confession, which is said to have occurred six days after Laura Ackerson’s murder, the day her remains were disposed of and six days before those remains were discovered. The second of these is also the 13th July, 2011, which again introduces Laura Ackerson’s state of mind.

The interesting point in both opening statements is that the topic shift occurs when a linked topic is referenced rather than based on the chronology of the case. This allows for the introduction of the parties’ backgrounds and other relevant information that has a bearing on

the overall narrative but occurred prior to the case itself. The case is grounded by the death of the victim (which could be argued as the basis for why this is used as the primary temporal referent), but the overall narrative is more disparate.

The discourses referred to throughout both opening statements also overlap to an extent. This is particularly evident regarding the description of the victim and the discourses of youth and motherhood, as discussed above.

4.2.2 The openings of the defence

Before analysing the opening statements of the defence, it is important to be aware of a procedural choice that is made prior to these statements being delivered. In both trials, the defence has been given the choice to present their opening statements either directly after the state has made theirs, or to defer it until the state's case has concluded (and the option for the defence to present their own evidence is given). In both trials, the opening statements for the defence were made after the opening statements for the prosecution.

It is salient to note that whilst there are obvious overlaps in the prosecution opening statements as a consequence of not only the case material itself, but that the presenting attorney is also the same, for both the defence attorneys there is little overlap and two very different approaches are used. The conclusion of Grant Hayes' trial and its verdict is salient to the narrative of the defence in the trial of Amanda Hayes. There is no overlap between defence attorneys or other such potential points for direct comparison as could be found in the opening statements of the prosecution. Consequently, rather than the comparative approach used above, the two defence opening statements will be analysed separately.

4.2.2.1 The opening statement for the defence in the trial of Grant Hayes

Extract 4.10 Defence opening GH

1 DEFD this case is about a man↓ (0.3)
2 covering↑ up (0.2) his wife's °actions↓°
3 (1.6)
4 on july thirteenth (0.3) amanda hayes
5 killed laura ackerson↓ (.) during
6 a fight (1.2) it wasn't something that
7 was planned↓ (1.8) (it was just) something
8 that happened
10 (1.7)
11 now i'm gonna talk more about that
12 but <i'd like to tell you first>
13 a little bit about (.) the party's
14 background↓

The opening statement made by one of the defence attorneys for Grant Hayes opens with a single turn summary of the case (lines 1-2). The use of language here is interesting insofar as it introduces Grant Hayes as a 'man' and places Amanda Hayes (at this point unnamed) in the societal role of 'wife'. This establishes both Grant Hayes' role within the household and implies an obligation of a 'man' to protect his 'wife', drawing on discourses of gender and stereotypes of a patriarchal system in which the male head of the household is responsible for the actions of the spouse (Rothman, 1994).

This is followed by a 1.6 second pause, before some supporting explanation is given (lines 3-8). In this section the alleged guilt of Amanda Hayes is directly stated ('amanda

hayes killed laura ackerson↓'), providing the jury with an alternative perpetrator and already attempting to provide a claim for 'reasonable doubt', on which the defendant could be acquitted. Another point of interest is the downgrading of the crime itself from premeditated murder to 'something that happened'. This simultaneously does a number of things. It places Amanda Hayes in the position of 'guilty' whilst also reducing the severity of the crime, implying that it was not intentional on her part either. The narrative of an unplanned accidental death as the result of a fight between two other women also prepares the listener for the justification of whatever role Grant Hayes is said to have played in this scenario. However, having prepared the listener for Grant Hayes' role in covering up a crime that he was not part of, the defence moves onto expanding on the defendant's background. Whereas Grant Hayes has been characterised in the previous extracts from the initial three minutes of the prosecution's opening in terms of 'that man', a 'father', and as being 'responsible for [Laura Ackerson's] murder', this provides a platform to introduce the defendant as a person, rather than a brief construct of societal roles.

Extract 4.11 Defence opening GH

15 (1.4)
 16 uh mr hayes is a local musi↑cian↓
 17 (0.8) °an° he's also an artist (0.6)
 18 people you know may have seen him
 19 (.) playing in local restaurants
 20 and bars↓ he also (0.5) u:m (0.5) does
 21 por↑traiture work↓ (0.5) u:m an some
 22 of his art he was in the process
 23 when↓- when all this all this

24 hap↑pened↓ (0.4) u:h un- putting
25 some of his art on eye-phone
26 cases↓ (0.4) as part of a deal to
27 sell eye↑-phones↓ (0.3) that's kinda
28 what he does (0.2) °um (0.5)
29 professionally↓°
30 (0.5)

In the above extract, Grant Hayes' professional character is presented. This is similar to the opening statement of the prosecution in this trial, which attested to Laura Ackerson's business accomplishments. Grant Hayes' talents as an artist and a musician are described, however; they are so in a manner which personalises him to the jury. For example, the use of 'local' (lines 16 and 19), placing the defendant as an active member of the community. The use of 'people you may know' also implies a level of potential familiarity between the jurors and the defendant. The reference to having his art placed on iPhone cases also provides professional links that can be associated with a known and respected brand, even if the manufacturer of the phones themselves is in no way connected to this artistic endeavour. The discussion of Grant Hayes as a local performer and artist not only entrenches his position within the community, but also implies that he is talented and respectable through the value of linking his reputation with that of a 'trusted' brand (Kotha *et al*, 2001).

Having established Grant Hayes as an individual outside the remit of the case and the institutional title of 'defendant', the defence then shifts the topic to Grant's relationship with both the victim and Amanda Hayes, providing a temporal framework for the conclusion of Grant Hayes' relationship with Laura Ackerson and his marriage to Amanda Hayes, as shown below.

Extract 4.12 Defence opening GH

31 an from two↑ thousand seven
32 to two thousand ni:ne↓ (0.7) uh
33 mr hayes↓ and mstr- miss ackerson↓
34 (0.6) had a kinda <on↑ aga↑in↓ off aga↑in↓>
35 (0.4) °relationship↓°=they lived
36 together for a whi:le they
37 separated for a whi:le .hh >and
38 from that relationship< m as
39 the state said↓ they had (.) two
40 boys↓ (0.8) first they had little
41 grant↑ (0.7) and then they had↓ (.)
42 °gentle hayes↓° (0.5) n that was
43 around two thousand eig↑ht↓ °and
44 two thousand nine↓°
45 (0.9)
46 an then late↑ two thousand ni:ne (.)
47 nuh that relationship (0.2) finally
48 ended (0.9) uh=n=at that↑ time grant
49 was living in: the virgin is↑lands↓
50 (0.3) he was playin' music↑ there °uh°
51 <at different> (0.7) °uh° (0.2) resorts↑
52 (0.4) an he was sending money <back to> (.)
53 laura↓ who was living in kin↑ston↑
54 (1.6)
55 and THERE (0.3) <grant met> (0.6) amanda↓
56 hayes an they fell in love↑ (0.8)

57 an:d (0.6) °u:h° shortly after that↓
 58 a:↓round january of two thousand
 59 ten they mo:ved together↓ (0.3) from
 60 the virgin↑ islands↓ to:↓ new=york
 61 city (0.6) an they lived together
 62 as a family=grant amanda an
 63 amanda's teenage ss- dau↑ghter↓
 64 (0.2) sha (shay) elmer↓ .hh (0.3) an
 65 that was kind of their life an
 66 in new york grant u:mm (1.0) tk ran a
 67 variety show at a local ba:r↓
 68 °um° that's kind of- was his
 69 major source of inco:me↓ (0.5) u:m
 70 (0.5) a:n (.) amanda was in school↓

The relationship between Grant Hayes and Laura Ackerson is also downgraded throughout this extract. Although they have two children together (lines 39-40), the defendant and the victim are described as having been in an ‘on again off again’ relationship (line 35), which is further characterised in the delivery through the rising and falling intonation and the slower pace used for this section of speech. This is expanded through lines 35-7, where their living arrangements are highlighted as being together and separated ‘for a while’, displaying instability. The state is mentioned with reference to having introduced the two children previously in their opening statement – linking the facts together coherently, whilst altering the context and implications. The births of the children are placed within a timeframe, outside of which Grant Hayes’ and Laura Ackerson’s relationship is said to have ended. This also adheres to establishing a heteronormative societal standard in which Grant Hayes did not ‘cheat’ on Laura (Green, 2013), but the two had parted ways and *then* Grant Hayes met and

married Amanda Hayes (lines 46-59). Also included is Grant Hayes' role as a responsible father after the separation insofar as he continued to contribute to the financial wellbeing of the children by 'sending money back to Laura' in Kinston, despite being geographically removed in the US Virgin Islands. The final segment of this extract (lines 57-70) also encompasses Grant Hayes' movements and provides a brief overview of his new relationship with Amanda Hayes. In this narrative, the focus on family and Grant fulfilling a male patriarchal role within this construct is drawn on extensively. In lines 60-4, Grant Hayes' life with Amanda Hayes and her teenage daughter is characterised as 'a family', with that being their 'life in New York'. Grant Hayes' income through a running a variety show in New York, also demonstrates a work ethic that has positive societal implications regarding his character. His producing income is also juxtaposed with Amanda Hayes being 'in school', which though not presented negatively also feeds into the imagery of the patriarchal household.

Extract 4.13 Defence opening GH

71 (1.4)
 72 an then in february of two
 73 thousand ten (1.0) during a visit
 74 (1.0) grant an laura had some
 75 conversations decided (.) to have
 76 little↑ grant (0.5) come back up
 77 °with (0.6) with big grant (0.5)
 78 to: new york city° (0.5) u:m (1.5)
 79 what- (.) what's goin' o:n was
 80 gentle↑ (.) had some health needs

81 (0.3) °u:m° he was also (0.5) °um° (0.7)
82 still a very young infant (0.5)
83 °uh° an (0.3) >little grant had some
84 behaviour problems an it was
85 just a lot↑< (.) for (0.2) °laura
86 ackerson↓° (0.5) so grant stepped
87 in an took (0.2) uhh (0.4) little grant
88 back with him to new york↓ (0.3)
89 an shortly after they decided
90 tht (0.3) it would be best for↓ (0.2)
91 li↑ttle gra↑nt↓ just to stay there↓
92 at least for (.) °a while longer↓°
93 (0.3) uh=aman↑da↑ (0.2) dropped out of
94 school↓ (0.5) uh so that she could
95 be more of a full time mo:m
96 to: little grant .hh um she
97 >she< still had a teenage daughter
98 but there wasn't the kind of day
99 to day (0.3) uh require↑ments↓ as uh
100 a young child↓

The final extract in this three minute excerpt continues to highlight the approach of the defence in establishing the defendant as a person of good character and standing within the community, whilst characterising a version of his interactions with the victim whereby discussion, conflict and compromise were normal parts of being ex-partners negotiating what was best for the children. The narrative surrounding Grant Hayes having physical custody of

his eldest son is presented as Grant Hayes stepping in to help Laura Ackerson, who was struggling. This introduces the custody dispute, while at the same time normalises the defendant's behaviour. There is also an emphasis on mutual accord between Grant Hayes and Laura Ackerson at this point ('they decided', line 89) regarding custody.

Amanda Hayes' role here is also introduced. She is characterised as leaving school to become a full-time mother to Grant's eldest son (lines 93-6). The terminology and associations of the word 'mom' also present a potential source of friction between Amanda Hayes and Laura Ackerson for the jury, whilst continuing to expand on the imagery of a shared societal standard for familial roles.

It has already been established within courtroom research that attorneys draw upon references and discourses they believe the jury to be familiar with and to connect with through shared common knowledge (Dershowitz, 1996). Although this micro-analysis goes beyond contextual principles of conversation analysis, the use of terms and imagery is not accidental in a pre-prepared speech for court and is therefore of value to a full analysis of the narrative macro-level of the trial procedure.

The character of Grant Hayes is established in the narrative through presenting a person who earns an income and is invested in the wellbeing of his family. One particular point of note is that in none of these three minute excerpts is the race of the defendant, his wife or the victim oriented to as relevant. At this point, discourses surrounding family and gender are focussed on by participants as being more salient to the trial.

4.2.2.2 *The opening statement for the defence in the trial of Amanda Hayes*

Extract 4.14 Defence opening AH

1 GAS good afternoon↓ ladies
2 an gentlemen↑
3 (1.6)
4 i had to confess to you
5 that (0.3) (after) doin'
6 this for thirty five years↑
7 that (1.4) i (0.4) >have
8 spoken to many jurors↑< (0.8) an
9 i have always begun (0.2) in
10 exactly the same way↑
11 (1.0)
12 very↑ nervous↓

The introductory statement from the defence in the second trial contrasts vividly in comparison with the three other excerpts examined thus far. The defence attorney speaking on behalf of Amanda Hayes opens with a salutary phrase followed by a description of the attorney himself. This is the only extract in which the narrative for that party is not established at the initial stages. The experience of the attorney and his general practice form the introduction of his statement. The use of the term 'confess' and establishing his state of mind as 'very nervous' stand out as being salient terms. The opening statement of the prosecution is discussing an alleged confession of his client, which potentially creates a

lexical parallel insofar as the defence attorney is ‘confessing’, though to nerves rather than murder.

Extract 4.15 Defence opening AH

13 (2.2)
14 i have a very (0.4) important
15 (1.0) <role to play> at
16 this moment↑ (0.8) an i recog↑nise
17 that role↓
18 (2.6)
19 my job (0.5) at this point↓ (0.9)
20 <is to> (1.2) help you to understand
21 (1.0) what it is↓ that you
22 are (0.7) about to hear in this
23 case↓
24 (2.1)
25 you have heard us speak (0.9)
26 in↓ (0.7) <general terms↓> about
27 what the evidence w- (0.8)
28 would show (0.2) during jury
29 selection (1.1) but (1.0) <those
30 general> terms were only for
31 the purpose of- (0.5) determining
32 whether you were (.) appropriate

33 jurors to serve >in this case<↓
34 (1.1) NOW (0.4) it's my responsibility
35 (0.7) to (0.8) talk↑ to you in more↑
36 detail↓ (0.5) about >what the
37 evidence in this case will< (.)
38 in- (0.2) fact- (0.4) actually show↓

There are two initial observations in this extract that stand out. Firstly, the speaker's pacing is markedly slower than any of the previous speakers analysed to this point. Though each speaker does make use of pauses and they are frequent in all the opening statements, it can be seen that the duration of the pause lengths is generally longer within turns. In the first three minutes of the defence opening statement for Grant Hayes, the longest pause is 1.7 seconds and this length of pause does not occur within an incomplete turn. Likewise, in the first three minutes of the prosecutions opening for Grant Hayes' trial, the longest pause is also 1.7 seconds and in Amanda Hayes' trial is 1.6 seconds, again, these do not occur within an incomplete phrase. This contrasts with the current extract, as pause lengths can already be seen to be longer, with pause lengths of 2.2 and 2.6 seconds (lines 13 and 18), with frequent longer pauses within incomplete phrases (such as the 1.2 second pause in line 20 and the 1.1 and 1.0 second pauses in line 29, inter alia). This provides a stark contrast both in terms of the style of the speaker and disrupts the fluidity of the statement in comparison with other speakers, particularly as the frequent long pauses are not always indicative of turn completion or topic shift, and are open to interpretation as self-repair or encountering an issue during the presentation of the statement. The concept of pause length will be revisited in the summary discussion below (4.2.2.3).

The second observation is that of content. In this extract, the speaker still has not begun discussing the case, contrasting again with the previous three introductions to opening statements. Instead, the role of the defence attorney is introduced. The process of jury selection is again directly referenced, as it was in extract 4.5, lines 22-4 by the prosecution, but is utilised in a different manner. Whereas this was a means of the prosecutor connecting with the jury (use of thanks and an acknowledgment of a long jury selection process with ‘arduous’ [extract 4.5, line 23]), the usage here provides a ‘then and now’ comparison. There is a reinforcement that whatever evidence the jury heard in selection is an incomplete picture with the use of ‘general terms’ (lines 26 and 30). This is then contrasts with the use of ‘more detail’ (lines 35-6), which occurs after a temporal shift with ‘now’ (line 34). The shift in timeframe is also marked through increased volume.

This explanation of the role of the defence is then linked with the purpose of the opening statements, as continued below.

Extract 4.16 Defence opening AH

39 (2.1)
 40 it's somewhat (0.6) like (1.1)
 41 givin' you: a: (0.5) guide (0.8)
 42 for (.) >what you are about to
 43 hear↓< (1.6) PLEAse remem↑ber↓ (0.6)
 44 u-u-um i (think) mister bozley↑
 45 (0.4) uh mr zellinger↓ (0.8) uh (0.9)
 46 also told you (0.3) tht (.) what
 47 you hear↓ (1.5) °from° (.) this podium↓

48 (0.6) is not evidence in this
49 case (0.7) the ev↑idence in this
50 case is gonna be what you
51 hear from the wit↑ness↓ stand↓
52 (1.0) so: (0.4) if- (0.9) i tell you:
53 to expECT to hear something
54 that is different (0.6) than what
55 you actually hear >then it's<
56 (.) uh: then you should rely
57 on what you hear from the
58 witnesses and not (0.6) °from
59 what uh you've heard me↑ say↓°

Again, this extract continues to discuss the purpose of an opening statement, which provides a comparison with the opening statement of the prosecution in this trial. The first point of note is the way in which the instructions regarding opening statements not being testimony are reiterated. In lines 52-9 the defence attorney tells the jury to rely on what they hear from the witnesses and not him. This is worth particular attention, as it could be argued that the attorney has emphasised that the jury can disregard what he is saying, whilst still having yet to establish a narrative for the defence. This contrasts vividly with the prosecution's use of these instructions, which frames their argument in terms of what the evidence will show. This is explicit and unequivocal, with a strong statement of what the witnesses 'will' tell the jury and what they are 'gonna learn'; thus, embedding their narrative within the instructions of the opening statement (see extract 4.5, lines 37-47). The defence attorney for Grant Hayes' trial does not reiterate these instructions in the first three minutes of the opening statement.

The prosecution and defence both use examples to describe the purpose of an opening statement. In the case of the prosecution this is the term ‘forecast’ (extract 4.5, line 26), whereas the defence uses the simile of a ‘guide’ (extract 4.16, line 41). This simile not only provides a function insofar as it explains a legal proceeding in terms of shared cultural knowledge one assumes the jurors to have, but it also places the attorney in an epistemic place of authority, as he is the person who is in a position to ‘guide’ the jurors through the evidence and (potentially) unfamiliar legal territory. Nevertheless, there is an interesting link to be made here between the initial claim to knowledge through the use of ‘guide’ and its then being juxtaposed with the reiteration of the judge’s instructions that the jury should rely on their own understanding of the evidence and not what the attorneys claim during their openings. This could potentially be viewed as undermining the initial claim to authority by empowering the jury, but moving beyond this point would merely be speculation.

One final point in this extract is the acknowledgement of the prosecution’s previous opening statement. Lines 43-47 bring attention to and foreshadow an overlap between the prosecution’s reiteration of the opening statements’ purpose and that of the defence. In this one can see in line 43 there is a 1.6 second pause before the emphasis on ‘PLEAse remem↑ber↓’, which is then followed by a 0.6 second pause. After this pause comes a sub-clause in which acknowledgement is made of a repetition of information. This shift, however, also includes a self-repair of the prosecutor’s name (lines 44-5) and frequent pauses on line 45 (0.4; 0.8; and 0.9 respectively). This produces a somewhat disjointed shift before the main thread returns from line 46 onwards (‘tht (.) what you hear↓’).

The conclusion of this extract also marks a shift from roles and procedure to the narrative itself. This is the only instance across all four openings where the case does not receive an initial overview and deviates from the Labovian structure highlighted in both of the prosecution opening statements.

Extract 4.17 Defence opening AH

60 .hh (0.8)
61 this case (.) ladies and
62 gentlemen↓ (0.8) is (1.0) essentially
63 about (1.8) tu- three (0.8) primary
64 individuals↓=there're a
65 lot of other individuals
66 involved=the children for
67 example .hh but (0.5) essentially
68 (0.2) we (0.3) are talkin' about
69 (0.5) three (1.1) primary (1.1)
70 participants↓

At this stage, the case is finally introduced. The topic shift is marked by the intake of breath and pause (line 60) followed by the emphasis on the words ‘this case’ (line 61). This extract draws attention to the pacing of the speech through use of latching and pauses. The introduction of the ‘three primary individuals’ at lines 63-4 introduces the theme of the defence narrative, in which an emphasis is placed on the individuals outwith the temporal framework utilised in the previous opening statements. This immediately followed by the dependant clause, which is latched without a pause to the previous clause, and within this the acknowledgement of other individuals within the narrative is accepted. This is followed by an intake of breath and the use of ‘but’ and a 0.5 second pause before the main clause is reiterated (lines 68), thus forming a hypotactic clause combination (Halliday and Matthiesen, 2014: 437).

The 'three primary individuals' form the main basis for the defence narrative in this case and marked pauses are utilised in the repetition of this stance of 1.1 seconds in between the words of this phrase (lines 69-70). The children and other alluded to individuals are placed in the dependant clause and are of lesser importance to the argument both implicitly and explicitly, despite the admission of their presence within the overall narrative. By reducing the number of participants in the case to three, the defence could be seen as having attempted to reduce the potential complexity of the narrative, as well as placing the focus on the participants involved rather than adhering to a chronological sequence of events. This contrasts with the defence opening for Grant Hayes' trial, in which a timeline of events prior to the death of Laura Ackerson was established. However, this does compare with the defence opening for Grant Hayes' in which a similar strategy of simplification was used ('this case is about a man covering up his wife's actions'; extract 4.10, lines 1-2). There are subtle differences in how these strategies are utilised, however; in the trial of Grant Hayes' this occurs as the first turn and provides a one-line summary of the defence's narrative; in the trial of Amanda Hayes' this occurs as the introduction to the case (that is not positioned at the start of the statement) and does not provide a simplified form of the narrative argument. Instead, the jury are presented with the key persons involved. This is expanded upon below in the final extract of this three minute sequence.

Extract 4.18 Defence opening AH

71 (1.7)
72 the first of those is grant↑
73 hayes↓ (1.0) grant↑ hayes↓ (0.7) is
74 the classic (0.3) sociopath↓
75 (3.0)
76 on the one↑ hand↓ (1.0) he is very
77 (0.9) talented↑ (0.6) he's a
78 talented musi↑cian↓
79 (1.3)
80 he is very charmin'↑
81 (1.0)
82 he is very witty↑
83 (0.9)
84 he is very charismatic↑
85 (2.0)
86 he is very intelligent↑
87 (3.0)
88 but on the other↑ hand↓
89 (1.9)
90 he is also very controlling↑
91 (1.5)
92 he is very maNIpulative↑

93 (1.4)
94 he is very deceitful↑
95 (1.1)
96 he is very dishonest
97 (1.5)
98 and most of all
99 (0.6)
100 he is very (0.4) dangerous↓

Continuing from the previous point of the introduction of ‘three primary individuals’, rather than introducing the case for the defence outright, there is an introduction of the *dramatis personae*. In this the three primary individuals are introduced, though the timeframe examined only extends to the description given of Grant Hayes. The main theme of the narrative, which has only previously been alluded to in extract 4.17, begins to build into a clearer picture. Grant Hayes is introduced first in explicit and direct terms as a ‘classic sociopath’ (line 74). It would be narrow to assume that this term was not chosen deliberately and in part because of the shared cultural knowledge it is assumed the jury will have regarding negative connotations surrounding a term linked with those believed to have an antisocial personality disorder (Blackburn, 1988).

That Grant Hayes is introduced first is also worth noting, as in the opening statement by Grant Hayes’ defence team, the defendant himself was the first person to be described and introduced to the jury as the sequence of ‘a man covering up his wife’s actions’ leads to a description of the defendant as a person. Amanda Hayes has yet to be introduced to the jury as a person at this point, which also places an interesting point of comparison as in this case the prosecution opened with an introduction of Amanda Hayes as a person who was not only

guilty of murder, but who had also confessed this fact to a close family member. In the case of the defence for Amanda Hayes, Grant Hayes is introduced first as the ‘villain’, reinforced by the accusation of being a ‘classic sociopath’. This in turn foreshadowed Amanda in the role of another ‘victim’, though who she was as a person had yet to be established. This also creates an implication of a power dynamic, whereby someone with the attributes outlined by the defence was in a clearer position to cause some form of harm and have another person act contrary to their own wishes or desires (such as the attributes of being both charismatic and manipulative).

This sets the scene for introducing Amanda Hayes as a woman who has suffered abuse at the hands of her spouse (be it physical or mental). In beginning to introduce Grant Hayes as a dangerous and mentally unstable individual, the defence concurrently lays the foundation for their overall contention – that Amanda Hayes was coerced to act contrary to her own will under fear and duress. It is not an overextrapolation to make this claim of scene setting, nor is it beneficial to any analysis to exclude the wider social context of domestic abuse and that the jury will already hold some awareness and opinion of this issue. Though it could be viewed that there is a continued delay in the introduction of the defendant in comparison to the three other opening statements reviewed thus far, there is also a greater amount of scene setting and foundational work being done in preparation for the underpinning argument of the defence narrative. Consequently, the introduction of Grant Hayes has taken precedence in order to provide the means through which Amanda Hayes can be presented as a second victim alongside that of Laura Ackerson. Furthermore, in establishing Amanda Hayes as a second victim, the criteria for a conviction of murder or the separate charge of accessory after the fact are not met, as a person cannot be found guilty if they were not acting of their own free will and under threat.

The sequencing of this extract is of note, as it makes the most deliberate and prevalent use of pauses within this opening statement. The attorney also employs the use of listing attributes generating a rhythm to the statement. The pacing is slow and each attribute is emphasised through word stress. There is also strong repetition with the phrasing and the constant use of 'he is very'. The listing of attributes (lines 76-100) can be divided into two halves. The first half (lines 76-87) outlines five potentially positive characteristics (talented; charming; witty; charismatic; and intelligent). This is then contrasted with five negative characteristics (controlling; manipulative; deceitful; dishonest; and dangerous) (lines 88-100). There is also an implication of alliteration within the final three negative attributes as all begin with 'd' and are placed in a list of three building up to the 'most' negative of them all with 'dangerous'. This is an engaging use of literary devices within the opening statement, but the extended pause lengths (ranging from 0.6 to 3.0 seconds throughout lines 76-100) and list of ten items, makes the sequence rather long with a fairly slow pace. The use of repetition is in line with Tannen (1989) who discusses repetition as part of connection and comprehension. The use of this as oratory or 'public oral poetry' can be linked with this use of repetition and the assertive use of 'he is' as a focal point for the listener (Tannen, 1989: 82-7). Nevertheless, this contrasts vividly with the styles employed by the other interlocutors as the pacing and manner in which the statement is delivered is less animated.

Rather than a direct introduction to the case of the defence, a different sequence has begun to emerge. Throughout the extracts for Amanda Hayes' defence, the sequential shifts have been from an introduction of the attorney himself, to the purpose of the opening statement, to the persons of interest in the narrative. This provides a build up to the defence's core argument – that of Grant Hayes' as the main perpetrator and of Amanda Hayes as another victim alongside Laura Ackerson. This build up has, however, resulted in an extended introductory sequence over the first three minutes of the statement, whereby those

listening were not made aware of the core arguments of the defence from the outset. There is no way of claiming whether or not this had any impact on the decision-making process of the jury from the data, but the difference in styles and the different application of literary and narrative devices displays that despite the similarities within opening statements and their function, the use of rhetoric within these sequences can vary greatly.

4.2.2.3 Discussion

Having dissected the opening three minutes of all four opening statements, it behoves us to provide an analytical summary that is not merely a list of independent observations, but brings together a comparison as to *what* the attorneys themselves oriented to in terms of presenting a first impression to the jury and *how* that occurred. After all, in communicating their case, the opening statements are the first means through which each narrative is fully presented to the jury and directs the context in which each party seeks to frame the testimonial and physical evidence.

The issue of performativity and *how* the material is delivered is of undeniable importance, as the narrative is a presentation delivered as a form of monologue or soliloquy. From this presentation, the jury are not only introduced to the narrative of the parties involved, but also to at least one interlocutor per side who will be ‘guiding’ them through the evidence throughout the trial. Common belief is that juries do allow emotion and trust to impact on the decision-making process (Dershowitz, 1996) (whether intentional or otherwise), consequently, legal literature espouses that the manner in which first impressions are made has an impact on how the trial unfolds.

This leads to the stark contrast between the defence opening of Amanda Hayes and both other speakers. The volume, pacing and gestures were all markedly different in

comparison with the other three opening statements. The use of pause length is often considered a device within professional communication (Molloy, 2009), with research outlining how effective communication allows time for the listener to digest what is being said. However, the point at which a pause can be considered too long or their occurrence too frequent can null this effect and instead lead to implications of hesitancy, lack of faith in what is being said, or poor preparation (as described by Barge *et al* [1989] regarding the effects of nonverbal communication in opening statements on impression formation). Whether or not this had any impact on the jury or was in fact interpreted in such a way is beyond the scope of this analysis. That being said, it is interesting to note that the other two interlocutors both took a more active role in their opening statements. For example, the podium was used by the defence attorney for Amanda Hayes, but not the prosecutor or Grant Hayes defence attorney. The physical demonstrations, such as interacting with the witness stand, also present a more interactive means of introducing the narrative.

The topics that each attorney oriented to also provide an interesting view of what was selected as having primacy when talking to the jury. As has been mentioned previously, opening statements do not occur spontaneously, but are, by their very purpose, predetermined and (we hope carefully) planned introductions to each version of the case. Consequently, it is interesting to note that three out of the four initial openings provide a brief summary of the narrative in a manner not dissimilar to a prologue, two of which (the prosecution's opening for Amanda Hayes' trial and the defence opening for Grant Hayes' trial) begin with single sentence declarations designed to be impactful and memorable. In the prosecution's opening for Amanda Hayes' this is the recitation of her alleged confession to her sister: 'I hurt her. I hurt her bad. She's dead.'; whereas for the defence of Grant Hayes, this was a single sentence summary: 'this case is about a man covering up his wife's actions.'.

In the defence of Amanda Hayes, the initial topic is more procedural and focusses on the attorney himself and his role, rather than introducing his client or outlining a summary of the narrative. This divergence from the other three opening statements is not a sign that this strategy is less successful (such conclusions could not be drawn from such a small dataset), but is indicative of how, in that interaction, the attorney begins with an attempt to humanise himself (as someone capable of being nervous) and create a rapport with the jury. The position of empowering the jury could arguably remain somewhat ambiguous (see 4.2.3.4), however, the continued delay in introducing his client is something of a contrast with the prosecution opening, whereby the guilt of the defendant is set out in what is claimed to be a direct quote. That this perception remains unchallenged for that length of time is also a marked contrast to the approach taken in the defence of Grant Hayes.

In analysing the first three minutes of each opening statement, it is apparent that each attorney prioritises differently and that this in turn highlights differences in both personal style and trial strategy (as the concept of strategy cannot be removed from courtroom interactions). For the prosecution, both cases are similar, but the introductions to these cases contrast. The jury is not introduced to the victim first, as they are in the defence of Grant Hayes, but to the defendant. Establishing the guilt of the defendant, in this instance, supersedes the humanisation of the victim in terms of topic order. By the same token, the defence of Amanda Hayes places a priority on framing Grant Hayes as the person responsible in order to provide a foundation for the claims regarding Amanda Hayes own victimhood. This groundwork then supplants the introduction of the client in favour of producing a framework in which she can be recast in a role incongruous with that of ‘doing being’ a murder suspect.

This leads us to a more holistic analysis of the opening statements overall, whereby the themes that have emerged overall are identified and discussed within the narrative framework as outlined in Section 4.1.1.

4.2.3 Comparative analysis of the four opening statements

All four opening statements (summaries in Appendix B, Tables 1-4) present an interesting use of chronology and theme. In comparing these four openings, one can also observe the different implications and meanings attached to the same evidence and ‘facts’ presented in each case. The opening statements for the prosecution were approximately 26 minutes each, while the defence openings for Grant and Amanda Hayes were approximately 19 and 40 minutes each, respectively.

4.2.3.1 Down the rabbit hole: the importance of time and location

In discussing the importance of chronology as applied in the opening statements, it is first worth exploring the notion of time and its application to narrative. This thesis employs the notion of time within narrative as discussed by Ricoeur. In order to fully grasp this notion of time, it is important to discuss the theoretical underpinnings of chronology as a more complicated notion than that of one event following another.

For Ricoeur, sequences of events do not necessarily construct a narrative. An emphasis is placed on the ‘plot’, which ‘construes significant wholes out of scattered events’ (Ricoeur, 1980: 178). Another core aspect is that of the ending of a story. For Ricoeur, stories are constructed through their ending, as this provides understanding to the events that have

proceeded it, giving the beginning and the middle. This maps onto our conceptualisation of time within opening statements. The end of the ‘story’ is already known and therefore, the plot begins at the end and makes relevant those events which preceded it. Similarly, the ‘conclusion must be acceptable’, meaning that with the ability to look backwards from the end, the events that have gone before created the means through which this ending was reached. This is described by Ricoeur as the ‘paradox of contingency’, characterising the comprehension of the story (Ibid, 174).

This can be applied to our understanding of temporality in the opening narratives. Time itself is not simply something that sequences events, but is made relevant in the telling. The ‘now’ becomes the being within-time, in which time is reckoned with; whilst in the telling, the narrative is also recollected and therefore transitions to historicity (Ibid).

This also introduces the concept of life stories, in which one’s present situation influences and is influenced by what has gone before. It is the ability to reflect between the then and the now that allows the narrative of one’s life to gain coherence, with the end informing the beginning and middle, whilst the beginning and the middle are the events which have led to the end (or present ending) (Mishler, 2006). The ‘within-time-ness’ of the telling, in which time is made relevant through our preoccupations as *Dasein* (German for ‘being’), is situated through the act of ‘making-present’ (Ricoeur, 1980).

This conceptualisation of time is relevant to a temporal analysis of the narratives of the opening statements as it is through this spiral of end-to-beginning that law narratives are told, repeated and realised. Far from simply being a sequence of events, the plot of the opening narrative is one that links the end to the beginning and back again, and adds coherence to evidence that is otherwise ‘scattered’.

In comparing the structure of both the prosecution's opening statements, there is some divergence in presentation as well as focus. The shift of focus is clearly the shift from Grant Hayes to Amanda Hayes as the defendant in the trial, however; the shift in presenting the evidence is subtler as it displays a somewhat more refined version of the chronology of events. The timeline is more focussed and the 'scene' shifts spatially between Texas and North Carolina; and from Grant and Amanda Hayes movements to the actions of Laura Ackerson's friends and the police. This occurs whilst keeping the days as a fixed point of reference (for example, the use of 'meanwhile' to move from Texas to North Carolina).

Though the timeframe of events underpins the structure of these two openings, it is worth noting how the crime is framed differently for both defendants. In the case of Grant Hayes (Appendix B, Table 1) the use of the rhetorical question 'where is Laura?' is put forward as a question that people were asking from her friends to complete strangers as her disappearance became protracted. This device is not used the prosecution's later opening statement for the trial of Amanda Hayes (Appendix B, Table 2), in which this appears to have been substituted by focussing on the time Amanda Hayes is believed to have been in the apartment without Grant Hayes' presence and 'presumably with Laura's body'. This shift in emphasis invokes a different strategy in implicating the guilt of the defendant.

In Grant Hayes' trial, the rhetorical question of 'where is Laura?' is not asking for a direct response but is instead a device through which the jury can emotionally connect with the case. As Dershowitz (1996) outlined, stories within law begin at the end with the jury already aware of how the story concludes. The narrative, therefore, provides the story leading up to the ending. However, in Amanda Hayes' trial, the focus is on Amanda Hayes' alleged complicity in the death of Laura Ackerson. This is implied through an emphasis on inaction rather than action in topic 5 (Table 2) and throughout the trial, whereby Amanda Hayes did not attempt to get help despite being alone. In turn, this could be designed to undermine a

defence of duress as it presents the opportunity for the defendant to have done so. There could also be the potential for attempting to provoke a sense of incredulity as the question could then be posited; how could someone not know there is a dead body in the bathroom of their apartment?

The emphasis on establishing a firm chronological timeframe also allows for a more direct contrast between the actions of those concerned for Laura Ackerson's safety and whereabouts with those attempting to conceal a crime. Whereas in Table 1 the timeframe is used as an anchor point to refer back to while describing events, it appears to be more marked in the Table 2.

Nevertheless, one can also be more critical within the analysis of time. Days are used as an anchor point, but the days are only relevant insofar as they are *made* relevant within the narrative. For example, revisiting Extract 4.2, the preoccupation at the beginning of the prosecution's opening statement in the trial of Amanda Hayes, could be argued to be that of the alleged confession. All other events within that initial opening sequence are then positioned temporally around this reported statement and not within a strictly linear concept of time as the confession links both further back within the narrative (such as Laura Ackerson's arrival at the apartment – lines 7-10) and projects forward to events that are in the past but are made into the past-as-future (such as the discovery of Laura Ackerson's remains – lines 17-19).

Within the prosecution's opening statement in the trial of Grant Hayes, the chronological referencing appears to present a linear chronology of events, but that same use of time references interactions which are then tangential in their introduction of further information regarding the victim's life. To elucidate, the 13th July 2011 is the second fact introduced within this opening statement (the first being the location of Kinston, North Carolina) (extract 4.1, lines 1-4). The introductory sequence of this opening statement then

takes the jury through a narrative of Laura Ackerson's movements on that day (extracts 4.1; 4.3). However, with each time referent comes a linked piece of information used to refer to the victim's past as it is relevant to her movements within the 'now' of the narrative. All of which are then part of the overarching plot leading the listener to the already known conclusion of the story. For example, Laura Ackerson 'had a couple of business meetings that day' (extract 4.6, lines 56-7), this leads to an introduction of Laura Ackerson's business partner and what the victim's business endeavours were. This then leads to an explanation of her relationship with her family; the arrangements of the custody dispute (and its characterisation as 'bitter'); before reorienting back to the meetings themselves and through the positioning of the first meeting at two o'clock.

Thus, the chronology of events seems linear, but is actually subject to the preoccupations of the overall narrative as defined by the evidence being foreshadowed. Ricoeur refers to two dimensions within narrative in 'various proportions, one chronological and the other nonchronological' (Ricoeur, 1980: 178). These are the:

- **episodic dimension:** 'which characterises the story as made out of events';
- **configurational dimension:** whereby the plot constructs the whole out of 'scattered events'.

The introduction of topics outwith the chronological framework and yet related to the events referenced therein is contended by this study to be an aspect of the configurational dimension. Within this, additional aspects are reflected upon as relevant to the plot and draw together both sequence and pattern. Taking this a step further, through the sequence of events and the reflections contained within these, a pattern is then established which relates directly to the plot, leading the listener (who in this specific instance is aware of the story's climax) to

join together a pattern of behaviour which supports the overall narrative conclusion – the point at which the story ends and (in this instance) in so ending becomes the present, with the act of the trial.

This same link between pattern and sequence can be seen in the opening statement of Grant Hayes' defence. The chronological approach to Grant Hayes' history with the victim is also used to include references to pattern, in this case that pattern being his behaviour as a father and husband (see Section 4.2.3.2). The defence of Amanda Hayes, however, does not immediately orient to the chronological framework of placing events temporally, but instead places preoccupation with the psychological state of Grant Hayes. That is not to say that this opening statement is without a temporal framework (quite the reverse), but that the footing of narrative within time is not as immediately apparent.

What is interesting here is that the past-present-future of the narrative is linked through various means, not least of which is the standard use of date and time. To illustrate, in putting forward Grant Hayes as the person responsible for the death of Laura Ackerson, various devices are used. The voice of the victim is invoked (see Section 4.2.3.3) through the reading of extracts from the parenting history survey. This is a document produced in the past that was written in the 'now' and is linked with the past-as-future, whereby Laura Ackerson's concerns regarding Grant Hayes are implied to have been realised through the act of her death. This in turn applies to the 'made-present' of the narrative, whereby this event is linked with the pattern of the plot and therefore supports the claim of Amanda Hayes as innocent.

One final point regarding time, and bringing another facet into its use within the narrative of an opening statement, is the need to pull back slightly from the abstract and reinsert some of the practical issues regarding 'time' in court (although it is contended that, in doing so, the concept of time as discussed above is in no way invalidated). Another reason to establish a

timeline is both the physical evidence and the specifics of outlining a case. Though perhaps a rather crude representation, the core aspects of Cluedo are who, where and how – one is less concerned with ‘when’ Dr Black met his demise in the ballroom with the candlestick and Miss Scarlett rarely makes it to trial – this, however, presents a potential weakness in an actual trial, hypothetically speaking, as under what circumstances can the presence of the accused be proven if there is no timeframe in which to have it established (particularly with the burden of proof being the responsibility of the prosecution and not the defence)?

The second aspect of import here is that of location. As has been discussed, time is a more critical aspect of narrative than simply a means of sequencing events. In turn, the importance attached to geographic positioning within the opening statements also emerges as a point of interest. Events are not only footed in time, but in a physical space. This does not simply encompass Laura Ackerson’s movements between Kinston and Raleigh on the 13th July 2011, or indeed the movements of Grant and Amanda Hayes between North Carolina and Texas, but follows the history of the defendants and victim over a combined period of several years from the US Virgin Islands to New York and so on.

The location of persons of interest within the narrative becomes an intrinsic part of establishing events. Whilst it could be argued that the spatial positioning is simply a function of establishing the narrative in respect of the facts of the case, *where* can be treated in as critical a manner as *when*. Not only is the location a part of establishing the ‘facts of the case’, it also provides a contextual means of understanding other related issues and implications. For example, Laura Ackerson’s residing in Kinston while Grant and Amanda Hayes lived in Raleigh is not only relevant in terms of placing the victim in the defendants’ apartment on the night of the 13th July 2011; it is also relevant as part of the (‘bitter’) custody

dispute, which in turn forms a contextual backdrop upon which the prosecution frames the turbulent relationship of the three primary persons.

Location is also relevant inasmuch as it can be a form of spatial identity. For example, the trip to Texas is used by Grant Hayes' defence to indicate that Amanda Hayes was the driving force behind the disposal of Laura Ackerson's remains (as well as the person responsible for her death). Grant Hayes' lack of ties (familial or otherwise) and Amanda Hayes' links with that area through her family are cited as indications of Grant Hayes' lack of agency (see Section 4.2.3.2). Thus, Amanda Hayes is attributed as having an identity linked with Texas, thereby reinforcing the narrative that she was responsible above Grant Hayes.

In the opening statement of Amanda Hayes' defence, the use of this geographic location is switched to imply that Grant Hayes was deliberately using a location associated with his then wife as a means of covering his own actions and implicating her (as part of the narrative concerning Grant Hayes having coerced and manipulated Amanda Hayes). Location is also key in this defence as it is used as a means of supporting a narrative of isolation, which includes physical space – while Grant Hayes was away spending Amanda Hayes' money, she was at home, alone, with his children (Benwell and Stokoe, 2006).

Location, therefore, becomes a multifaceted tool rather than simply a 'fact' or a means of allowing the jury to picture the scene. Location, as with time, is not merely about listing a sequence of events, but becomes a part of a larger framework in which where something took place has as much significance in terms of identity and state of mind as it does in terms of affixing a map co-ordinates (as during testimony aerial views of areas of interest were shown to the jury). Consequently, the question of *where* something took place is not an issue answered in isolation, but, this thesis contends, is intrinsically linked with the wider concept of '*why that there?*'⁶.

⁶ to borrow from the Conversation Analysis question of 'why that now?' (Prevignano and Thibault, 2003; 69).

4.2.3.2 The Talented Mr Ripley *and his Stepford Wives: agency and responsibility in gendered societal roles*

The themes within the opening statements also provide a rhetorical comparison. Both defence openings refer to fear as a driving force behind the actions of their client, though the framing of this theme takes two different forms. For Amanda Hayes' opening statement the fear is that of Grant Hayes, whereas the fear described in the latter's opening statement is that of fear for his family and of not being believed regarding Laura Ackerson's death as accidental (though these two things are admittedly interlinked).

The theme of fear within the opening statement of Amanda Hayes is also interlinked with the concepts of manipulation and coercion. These two additional concepts are listed as separate entities as manipulation and coercion are arguably distinct from one another in practice, though members of the same continuum (Perloff, 2014). To illustrate, one could argue that, based on the opening statement of her defence, Amanda Hayes was manipulated into agreeing to travel to Texas and visit her family, and coerced into helping dispose of the remains. Another aspect within this is the reduction of agency attributed to Amanda Hayes by her defence. Amanda Hayes is portrayed as someone who was isolated by her spouse and lost control over her own life. Her actions, therefore, become an extension of Grant Hayes' as opposed to the acts of an autonomous individual. Through this reduction of individual agency, Amanda Hayes is portrayed as lacking responsibility for her actions in tandem with complying under duress.

The rhetoric for Grant Hayes has a somewhat more nuanced approach towards agency and responsibility. Though also alleging that the act of disposing of the victim was one of fear, the theme of family with Grant Hayes 'covering up his wife's actions' places him in a role of responsibility for committing a lesser crime. This is then interlinked with his taking a

more passive role in the decision-making process for the disposal with the claims that he was doing as Amanda Hayes directed. This is supported by the trip to Texas with Amanda's family and connections, not those of Grant Hayes, and through the confession she is claimed to have made to her sister taking responsibility for Laura Ackerson's death. This places Grant Hayes in a position of reduced responsibility whilst still maintaining an acceptance of some limited agency over his actions and decisions.

Both defence statements also present their client as a person separate from the crime with which they are charged. This, however, occurs in different ways. With Grant Hayes, this is one of the first topics introduced by his attorney (Table 3, Topic 2⁷), however, with Amanda Hayes this occurs much later (Table 4, Topic 4). As outlined above, in situating Grant Hayes within the community, it provides a means of humanising the defendant outside of the label attached courtesy of courtroom procedure. By contrast Amanda Hayes could be argued to be humanised through her introduction, though this is almost exclusively in conjunction with describing her as a second victim. Therefore, rather than giving her an independent identity within the context of her being an individual, she is victimised and positioned only in association with Grant Hayes' alleged descriptions of her (describing her as an 'investor' and a 'Stepford wife' – Table 4, Topics 4 and 5). As such, Amanda Hayes personality becomes a construct that exists only inasmuch as it provides evidence of Grant Hayes as controlling and manipulative. That she was an affluent widow with an older daughter are relevant as her loss of financial status and role as carer for the younger children are integral to the narrative. Consequently, whilst Grant Hayes is positioned not only within the family unit but also the wider community, Amanda Hayes is positioned to a lesser extent with a greater focus placed on who she was in relation to Grant Hayes.

⁷ Please note, as mentioned previously, that all tables for this chapter are located in Appendix B.

Both prosecution opening statements make use of the same evidence and chain events, however; the layering of events so as to indicate the guilt of Amanda Hayes draws on different social inferences. As mentioned previously, the inference of guilt is layered with inaction as well as action. The prosecution provides the assumption that the defendant had knowledge of the crime and thereby was complicit whilst in the apartment and failing to raise an alarm. This provides an interesting link with perceived versus reported behaviour. If the attempt is to undermine a defence of duress (prior, at this juncture, to its having been made), then research on domestic violence and rape could provide a means through which this argument could be analysed.

In cases of domestic violence, it is not always straightforward for police to prosecute due to the reluctance of the victim to enter into the legal process (Mirchandani, 2006). Similarly, rape cases are increasingly claimed to be underreported and research shows a disparity between the believed behaviours of a victim versus those reported. These 'rape myths' include behaviours such as fighting with one's attacker, *inter alia*, whereas reported behaviours include a level of compliance and negotiation between attacker and victim in an attempt to reduce the harm inflicted (Woodhams *et al*, 2012). Similarly, those who have been victims of domestic violence do not necessarily report abuse to the police, nor do they raise an alarm when alone (Smith and Natalier, 2005). This discussion is not for the purposes of inferring either the guilt or innocence of Amanda Hayes (such is the remit of the jury alone), nevertheless, for the purposes of analysing the narratives and themes situated within the opening statement, the societal issues that appear to be pre-emptively undermined could be argued to be based on 'popular' perceptions of behaviour rather than those increasingly reported through psychological and related research. This, in turn, perpetuates those same myths to the benefit of one case (convicting someone for homicide), whilst perpetuating the

means through which other cases may struggle to contend with what is only perceived to be ‘normal’ behaviour.

By contrast, the themes within the opening statement for the prosecution of Grant Hayes focus very much on his relationship with the victim and the custody dispute, without the additional inferences outlined above. The custody evaluation of the actions of Grant Hayes, particularly the evidence connecting him with various purchases, places the narrative in a framework that appears to draw fewer inferences from external theories. However, that is not to say that these are entirely removed. As discussed in the initial analysis of this opening statement (Section 5.2.1), themes such as the family and inferences made as to the acceptable actions of a father towards the mother of his children are also explicitly referred to.

The opening statement for the defence in the trial of Grant Hayes makes use of similar themes found in the prosecution’s opening for this case. The theme of family and of the role of the father are threaded throughout the defence’s opening, though with different implications. The shift here can be marked by the subtle alignment with Grant Hayes as a husband acting to protect his wife, which contrasts with the prosecution’s inferences of the actions a father took against the actions of the mother of his children. Both arguments invoke the concept of family and allude to societal expectations of a man within the family unit, but reframe what form that family takes. This does not provide evidence towards guilt or innocence, but does highlight the nuanced rhetorical shift that can take place within the same theme.

The custody dispute is also mitigated throughout the defence’s opening. The conflict is placed in terms of ‘normal’ behaviour and the witness (Dr Ginger Calloway) is invoked as a person who can support the claim that arguments and the contentions within the custody dispute were not unusual (Table 3, Topic 6). Furthermore, this also implies that if the arguments within the custody dispute were ‘normal’ then they should not be viewed as a

precursor to premeditated murder. There is also an emphasis placed on the alleged mutual agreements between Grant Hayes and Laura Ackerson regarding the custodial arrangements of the children. This introduces the concept of Laura Ackerson as a mother who is struggling. Contrasting with the prosecution's narrative of the victim as a devoted parent determined to gain full custody over the children, the defence gradually introduces a narrative whereby Laura Ackerson struggled to have both children full-time initially and reiterates this through the two-week period where she is claimed to have had the children while Amanda Hayes was giving birth.

A final point regarding this extract is the description of Grant Hayes in lines 29-32. The defendant is referred to as 'that man' in line 29, which could be argued to be a reformulation of 'this man' (extract 4.1, line 11). Grant Hayes is then described as 'the father of her children' before being named the person responsible for Laura Ackerson's murder. In a manner not dissimilar to the use of the direct speech from extract 4.2, this also shows a three part shift in towards a negative and rather dramatic conclusion to the segment. Initially the defendant is described as 'that man'. This not only highlights the defendant and his physical presence in court (along with the accompanying pointing gesture), but also provides no additional information regarding him as a person. This then becomes a 'father', which can be argued to draw on shared societal norms as to what the role of a 'father' should be. Finally, this becomes 'the one responsible for her murder and disappearance', providing a juxtaposition to the role of 'father' and the implications of one murdering the mother of their own children. As with extract 4.2, there are words that are stressed; 'that', 'father', 'responsible' and 'murder'. The culmination of this segment is the claim of the defendant's guilt, which indicates an end to the introductory sequence before the topic shifts to the introductions of the prosecuting attorneys.

Prosecution opening GH

10 and gentle (0.3) and she (shared/carried)
11 custody of them with this man
12 grant hayes↓

Prosecution opening GH

29 little did she kno↑w↓ (0.3) that that↑ man↓
30 (0.4) the father of her children↓ (0.9)
31 would be the one responsible (0.4) for her
32 murder and disappea↑rance↓

This creates a gendered disparity between a presupposed shared societal norm regarding how a ‘father’ should act and the alleged actions of the defendant.

4.2.3.3 Reframing evidence and invoking the voice of the victim

Each of the four openings includes the following aspects: the events of the 13th July and their aftermath; the cleaning supplies; the co-produced letter giving Grant Hayes full custody of the children; the custody evaluation and the testimony of Dr Calloway; the disposal of the remains in Oyster Creek.

This inference of evidence can also be seen in the other similar aspects mentioned above such as the ‘boat ride’ and the custody evaluation. The testimony of Dr Calloway becomes a recurring theme across all four openings. For the prosecution, her evidence situates the custody dispute as contentious and Laura Ackerson as a hardworking mother, with Grant and

Amanda Hayes by contrast as a couple who wanted her removed from their lives; thereby providing a foundation for the claim of premeditated murder. For the defence of Grant Hayes, the claim in the opening statement was that should would show that arguments in custody disputes were normal; mitigating the claims of the prosecution. For the defence of Amanda Hayes, her evaluation of Grant Hayes would support the claims of his negative personality characteristics and bolster the view that he was a dangerous individual. The references to Dr Calloway's testimony are also accompanied by the custody evaluation and the parenting history surveys that Grant Hayes and Laura Ackerson both had to complete as part of the ongoing custody case. This foreshadows the intertextuality of the evidence in that it is not one piece of evidence or testimony in isolation that creates the claim to knowledge, but also the documents created that surround that testimony, thus giving a physical (documented) credence to statements made. It is also worth noting that despite the professional standing of Dr Calloway, she does not testify as an expert witness as her testimony is based on her 'personal observations' of the defendants and victim and not based on her 'specialized (sic) training' (Matoesian, 1999: 491); though all the opening statements make use of her title and position of authority as a professional within the custody case, thus giving additional weight to the power-knowledge dynamic of the conflicting claims each opening statement makes regarding her (yet to be heard) testimony.

Both opening statements for the defence also invoke the voice of the victim. Laura Ackerson's diary, parenting history survey, recordings of custody exchanges, emails etc. are made relevant in the all the opening statements, but the active portrayal of the victim's voice is particularly noteworthy in both the defence statements. In the defence of Grant Hayes, reference is made to Laura having written online how much better her situation was compared to others. This remark is brief but represents a use of the victim's voice as support for the defendant's claim to innocence. By contrast, in the defence of Amanda Hayes, the

defence reads out aspects of Laura's parenting history survey for the custody evaluator which describes Grant Hayes as a sociopath and introduces the comparison of Grant Hayes to the movies *Six Degrees of Separation* and *The Talented Mr Ripley*. Interestingly, this use of the victim's voice also adds the reported speech of Grant Hayes, as the claim within the report by Laura is that Grant Hayes made the comparison between himself and *The Talented Mr Ripley*. The invocation of the victim's voice occurs to support the perspective of the defence by citing the victim's own reported writings as a means of reproducing her state of mind. Consequently, Laura Ackerson writing that her situation was better than others supports the claim that whilst she and Grant Hayes argued, this was normal behaviour in the context of a custody dispute. On the other hand, the claims from the report read out by Amanda Hayes' defence go towards the accusation of Grant Hayes as a controlling and dangerous individual. Consequently, the uses of the victim's voice become re-contextualised outwith the form of the original utterance.

The defence also addresses evidence that has previously been framed as damaging in the prosecution's opening. Evidence such as the cleaning supplies are presented as the actions of a frightened man making a bad decision to attempt to help his wife. The cleaning supplies (and the saw) are thereby placed in a light which supports the lesser charge of accessory, but does not fulfil the claim of premeditated murder. This same reformulation of the evidence can also be seen in the defence opening for Amanda Hayes (Table 4), whereby the cleaning supplies are purchased by Grant Hayes and are presented as innocuous to Amanda Hayes through her then ignorance of the victim's demise. Purchases and actions after that are attributed to her acting out of fear and coercion.

4.2.3.4 Just the facts: the characterisation of law enforcement and the judicial process

The characterisation of law enforcement is another aspect of the narratives displayed throughout the opening statements. Though less prevalent in the narrative presented by Amanda Hayes' defence, law enforcement officials are central in both prosecution narratives and are also referenced in the narrative presented by Grant Hayes' defence.

As has been discussed previously, time and location are the means through which the prosecution narrative is grounded into a coherent and linear story for the jury. As the story fissures into two separate locations (those of North Carolina and Texas), two parallel plotlines are formulated. Those plotlines diverge not only on the basis of location, but also of the participants within those plotlines, primarily Grant and Amanda Hayes as the antagonists attempting to get away with murder and law enforcement as the protagonists who are working to uncover the truth and find justice for the victim. The role of law enforcement described in both prosecution opening statements underpins the conceptualisation of police as impartial, hardworking, and trustworthy. This is arguably a necessary presupposition to entrench within a jury, as it is evidence presented by the state that was gathered and analysed by law enforcement (and other associated and governmentally sanctioned departments) that forms the physical, fact-oriented basis upon which the narrative is framed. Any discrepancies within the evidence, therefore, could then potentially invalidate the prosecution narrative. Though the nuts and bolts of outlining the procedures followed when collecting the evidence takes place within the trial, the initial formulation of law enforcement is designed to engender a sense of trust that comes from being in a position of legitimised authority.

As discussed in 1.4 and 2.4, Foucault posits that disciplines objectify those on whom they are enacted without the visible entrapments found in traditional views of sovereignty (Foucault, 1977). Consequently, within the role of law enforcement is a characterisation of

the knowledge they have gained that pertains to the 'truth'. This discourse is perpetuated by the prosecution, which is an actor legitimised by society. That is not to say that one should subsequently distrust anything said by a state authority, but the framing of the persona of law enforcement, though implicit, forms a presupposition which is implicitly challenged by the defence narrative of Grant Hayes.

To illustrate, the work of police officers is exemplified through the process by which the conclusion was reached that Grant and Amanda Hayes were persons of interest in the case. From the missing persons report made by Chevon Mathes to the Kinston Police Department, until the arrest of Grant and Amanda Hayes, the narrative focus for law enforcement introduces details deemed pertinent to the prosecution's story. This includes each law enforcement department that contributed to the investigation as they became involved, and the order in which evidence was gathered; such as the discovery of the victim's car. This is punctuated by the question 'where is Laura?', which is attributed as much to investigators as it is to those who personally knew the victim.

The concept of police as rational actors in an objective role is not new (see Campbell, 2003; 2004), nevertheless, this presentation of police processes of gathering evidence are characterised as impartial fact-finding in such a way as to engender a sense of trust from the outset. This is furthered through the unfavourable juxtaposition with the role of the defendant(s). Through the parallel chronological description, as the police are looking for Laura Ackerson, Grant and Amanda Hayes are disposing of her remains in a creek. The contrast is vivid and graphic, serving not only to impress the gravity and severity of the case, but also to provide a clear dichotomy between the objective gathering of evidence by those working hard to keep society safe, and those who would commit such an abhorrent act of violence upon another person.

In the opening statement of Grant Hayes' defence, the characterisation of law enforcement is subtly different. The main theme of Grant Hayes' defence is that he was covering up for the actions of Amanda Hayes that had resulted in Laura Ackerson's death (described as something that 'wasn't planned' and an 'accident'). That Grant Hayes was covering up for his wife is cast in the light of a man trying to protect his wife. The role of law enforcement is then placed in a position of fallibility; the fear of being wrongfully imprisoned for a crime one did not commit. Grant Hayes defence not only casts Amanda Hayes as the person responsible for Laura Ackerson's death and the mastermind behind the plan to dispose of her remains, but also places this alongside the fear of not being believed by the police.

Extract 4.19

105 grant and amanda started making
106 terrible decisions because they
107 were afraid to call the police
108 they were afraid that no one was
109 gonna believe what had-
110 happened wasn't intentional
111 wasn't something that meant to
112 happen ws- that kinda thing
113 worried about going to prison
114 and they made terrible decisions
115 and amanda took charge of the
116 situation

As can be seen in the extract above, the fear of contacting the police is explicit (lines 107-9). Law enforcement is not in an authoritative position of trust, but one of fear. Encapsulated within this is the entire legal process, as the characterisation of the police as a fallible authority is also placed within the wider context of fearing the consequences of being found guilty – namely, ‘going to prison’ (line 113). We provided here with a different view of the authority of the police, no longer a tireless protector, but an authority with the power to have him imprisoned and that the defendant fears that he will not be believed by.

One is also presented with the justice system itself as being included within this representation of the police. The police not believing the defendant is also one part of a much larger subsequent process; that of the trial. This not only places the trial in the context of a fear made manifest, but also highlights the role of the jury as those who sit in judgement. If the jury, now, also do not believe the narrative of the defendant, then they are realising the very fears that are alleged to have driven the actions that he took in disposing of the victim’s remains. This is not to say that any of these narratives are the ‘truth’ or otherwise, but the setting of a trial and the context of the opening statement as being for the benefit of the jury cannot be ignored in teasing apart the narrative presented.

This allusion to the role of the jury and the judicial system overall leads to the portrayal of the jury itself within the opening statements. The function of the opening statement is to introduce how each side views the evidence and what they believe it will show. It is an opportunity to introduce a narrative and foreshadow upcoming testimony in the trial. However, the role of the jury is also reiterated throughout these opening statements. Each opening statement makes reference to the jury as those who will ultimately cast judgement upon the defendant. A point of interest in this are the dual implications of empowerment and accusation that can be made without being mutually exclusive. In the case of Amanda Hayes’ defence, the jury are reminded of their role up to the point of excluding all

else but their own recollections and interpretations of the evidence in decision-making and, in this sense, are empowered as a part of the judicial process (extract 4.16, lines 49-59).

However, this contrasts with the somewhat accusatory implications of the jury as part of the judicial system sitting in judgement that can be inferred indirectly from the defence of Grant Hayes, whereby a guilty verdict makes them part of the very system of which he was afraid (and through that logic would be justified in that fear and distrust). By contrast, the prosecution empower the jury through the reminders regarding their role and what will be asked of them, but do not present their opening statements in such a way as to directly allow their dismissal.

4.2.3.5 He said, she said: epistemic positioning and claims to knowledge in the defence narratives

One of the main differences in the prosecution and defence narratives is that of the rights to knowledge. Who owns or has the right to a story is prevalent throughout narrative research (Schiffrin, 2006), and narratives within the courtroom form a particular kind of institutional interaction. Stories in the courtroom are a mixture of co-constructed (and sometimes conflicting) narratives, as well as those based in the style of a monologue; namely through the opening and closing statements of the attorneys.

In the opening statements of the prosecution for both trials, the actual events that occurred within the apartment on the night of Laura Ackerson's murder remain conjecture. This is not subverted away from the jury or implicit, but is explicitly acknowledged. Instead, evidence surrounding the victim's arriving at the apartment and that she was never seen alive afterwards is utilised to reconstruct a possible sequence of events that could have occurred

within the apartment, regardless of which, the victim did not survive. The actions of the defendant(s) after this event – particularly regarding the dismemberment and site of disposal of the remains – is cited as support for the act being congruent with the charge of first degree murder.

In the two prosecution opening statements the variation on these events is slight, focussing mainly of the shift from one defendant to another. The re-presentation of this evidence in both the defence narratives, however, is distinct. For example, the actual events of the 13th July in the prosecution narrative remain vague on the details of what happened inside the apartment. Instead, the narrative reflects Laura Ackerson's movements of that night and how the Hayes' apartment was the last place she went to. There is also the reference to the final phone call she made and inferences the prosecution draws as to her state of mind at the time. This is followed by the actions of Grant and Amanda Hayes respectively subsequent to Laura's visit to the apartment. The conclusion to be drawn is that Laura Ackerson went into the apartment, but did not leave it alive.

By contrast, the defence narratives both discuss the events of the 13th July 2011 from the perspective of the defendants' having been present at that time and what they claim to have observed (or indeed, did not observe in the case of Amanda Hayes). In the opening by Grant Hayes' defence, the narrative provided describes events within the apartment. This provides an interesting point as Grant Hayes' team are placing their client in the epistemic position whereby a claim to knowledge is made. That the defendant was in the apartment is undisputed, but the prosecution were not and the implication, therefore, is that they cannot make a claim to knowledge as to how events unfolded. The version from Grant Hayes' attorney places Amanda Hayes as the person who killed Laura Ackerson while Grant Hayes was out of the room. An emphasis is also placed on how this was accidental and not a deliberate action on her part, though this is arguably secondary to the claim of Grant Hayes'

innocence. The claim made is that Grant Hayes had no part in a physical altercation with Laura Ackerson and only helped to conceal his wife's guilt.

This is paralleled somewhat by Amanda Hayes' defence attorney, where a similar claim is made regarding the spouse's presence at the time Laura's death took place. In this instance Amanda Hayes called for her husband after Laura Ackerson fell into her from behind and then Grant Hayes and the victim both fell as she left the room; without observing the events that followed.

There are similarities insofar as Amanda Hayes is claimed to have been displeased with the custody document the other two had produced (as the financial settlement was beyond the means of the Hayes'), and Laura Ackerson is claimed to have tried to hold Amanda's baby daughter. There is also consistency insofar as both claim that Laura Ackerson wrote the custody settlement with Grant Hayes of her own free will (which is contested by the prosecution's case). The divergence comes with the events that follow. Grant Hayes' defence claim he helped conceal a crime committed by his wife, which took place as he left to get the children ready; Amanda Hayes' team claim that she left the room as both Laura Ackerson and Grant Hayes fell to the floor and she did not know that Laura Ackerson was dead until after they had arrived in Texas.

This presents two separate claims to knowledge where both defendants are positioned above the prosecution in knowing what happened inside the apartment, but both narratives present opposing views as to who is guilty. Though this is an obvious difference on the surface, the threads on continuity within all four accounts are what make the rhetoric sophisticated in its production. The concept of 'truth' is then mingled with the production of 'facts'. The facts presented are that Laura Ackerson did not leave the apartment of her own free will; a document was produced regarding custody (though whether this was by the victim's own volition or not is contested); Grant Hayes purchased cleaning supplies and a

saw; and Amanda Hayes took the children out of the apartment that night. The ‘truth’ therefore becomes somewhat removed from the adversarial process, as the jury are faced with a decision on ‘narrative of best fit’ rather than a solid conclusion as to what actually happened to the victim. Thus, it becomes evident that the purpose of the trial is to determine whether the defendant is believed to be guilty of the crime, rather than an opportunity for the victim to have her ‘day in court’ – even posthumously – as the ‘truth’ remains a product of discourse in the relationship between power and knowledge rather than an absolute.

4.3 Chapter summary

In drawing this chapter to a conclusion, there are two final aspects to consider. Firstly, how does this analysis link the narrative with the charges (as introduced above)? Secondly, how does this analysis directly address the research questions of this project?

In answering the first, it is prudent to restate the three criteria of the charge of first degree murder as identified above:

- Whether (or not) the act was planned
- Whether (or not) the act was intentional
- By what means the act took place (were the act to have taken place as outlined in the narratives)

A number of different social themes and issues have been invoked in order to address these. The act as premeditated is part of the prosecution narrative through the victim having been invited to the apartment in the middle of week, which was not part of normal events. For both defences, the invitation is implied to have been an attempt for both parties to improve

relations. The evidence itself is that Laura Ackerson did go to the apartment that night. The requirements of *mens rea* and premeditation are not addressed by foreshadowing one piece of evidence or testimony alone, but become an ongoing theme throughout the prosecution narrative of events leading up to and directly after the death of the victim. The behaviour of the victim also becomes relevant, which leads to the importance attached to the letter she is believed to have co-written with Grant Hayes that night granting him full custody of the children. This is then framed as an act that was out of character for the victim.

This is the same behaviour that is normalised in the defence of Grant Hayes, whereby the victim is described as having struggled to look after the children by herself at various points. Amanda Hayes' defence narrative maintains that she was unaware that the victim was deceased until they were in Texas, thus removing her physically from the homicide itself and, consequently, removing her from having planned to murder the victim, as well as the act itself.

The issue of agency and responsibility is also important, as this links directly with intent. As has been discussed, both defence narratives place agency and responsibility for the death of the victim with the other defendant. They both then seek to reduce the level of responsibility that can be applied to their own client. For Grant Hayes' defence, this is framed through Amanda Hayes' taking 'charge' and the trip to Texas involving her family. Grant Hayes' defence then admit to a lesser charge of disposing of Laura Ackerson's remains. Whilst there are arguments made against admitting to lesser offences in opening statements (as this could be viewed as prejudicial against the client), these arguments do not seem to apply to this specific case as one can presume the client was consulted on the narrative (the author has found no published evidence to the contrary, including the appeal information) and admitting to lesser charges can be used as a trial strategy (Wasik, 1982). The lesser charge of

helping to dispose of the body is then contextualised in the frames of responsibility to protect one's family in a patriarchal context, and fear of law enforcement and the justice system.

The claims concerning the events on the 13th July 2011 become the most conflicted and yet focused upon aspects of all four opening statements. The prosecution cannot identify exactly what happened to Laura Ackerson, but does emphasise her state of mind prior to going to the apartment that night and focuses on the evidence surrounding her disappearance and the disposal of her remains. Issues such as the custody dispute are made relevant as the prosecution uses these as being indicative of a contentious atmosphere out of which motives for murder could (and, in their narrative, did) arise.

As outlined above, both defences differ greatly in their characterisation of what took place in the apartment, not least being their claims that the other person was responsible (though intent and levels of responsibility vary). One important part of proceedings to reiterate at this point is that, although the two defence opening statements are compared in this thesis, they were not produced as part of the same trial. Consequently, *in situ*, they were only in direct contention with the prosecution and not one another. The main aspects of the narrative that relate to this criterion for first degree murder, however, remain that the victim entered the apartment that evening and was not seen alive again. In all four opening statements, that remains as fact. It is the issues of intent and planning that remain in contention.

In terms of the research questions (see 2.2), the representations made by the interlocutors of the state (both as the abstract legitimisation of the accepted authority of the justice system and as the representation of the state of North Carolina) and those who represent the defendants have provided a means through which the communications between the state and the individual in this setting can be compared. The opening statements provide a view as to how the

attorneys orient their cases, particularly how the evidence supports their own narrative. The defence is under no obligation to speak directly after the prosecution, but this has been noted as potentially risky, as a prolonged absence for the defence means that the prosecution is the only narrative to which the jury is exposed throughout the case of the state (Wells *et al*, 1985). The defence in both cases orients to evidence they know to be in the prosecution's possession (and have themselves through discovery). The defence is under no burden of proof and does not need to have its case fully prepared in terms of evidence prior to the conclusion of the state's case, therefore, they do not need to refer to defence exhibits in the opening statement. This influences how the opening statements are framed, as the communications for the defence do include references to evidence and have a time-oriented framework that relates to the within-time-ness of events, but also place a focus on humanising their clients and contextualising circumstances. This is far from new (Cotterill, 2003), however; in comparing the two openings for the defence one could argue that there is the potential for an imbalance of power in proceedings simply through the act of one trial preceding another. That is not to criticise the act of holding two separate trials or indeed to imply that they should somehow have occurred separately in parallel. The implication highlighted here is that the trial of Grant Hayes held much of the evidence that was to be used in the trial of Amanda Hayes. The trial of Grant Hayes was oriented to as important by the defence of Amanda Hayes, using his conviction and testimony regarding his character as a means of providing evidence to support the framing of her as a second victim.

In this instance, the patterns of communication have focused upon the topics attorneys have chosen, the themes that have emerged and how these topics have been managed through delivery and lexical choices. Opening statements do not occur spontaneously in a context-free vacuum, but are the result of planning and consideration (Ahlen, 1995). What can be drawn from this analysis regarding patterns of communication is that, although there is overlap

within opening statements regarding elements such as timeline, humanisation of the defendant/victim, etc., there is continued support for the claim that the act of storytelling in and of itself is part of the narrative in that it is how the story is experienced by the jury.

To conclude, the opening statements provide the foundation for the narrative of each party. In terms of a three-level structure of agenda, macro-narrative, and micro-interaction, this provides the story through which the micro-interactions are managed and the aims of the agenda are funnelled. However, the agenda itself could also be viewed as somewhat flexible depending on the rigidity of one's view of guilt and innocence. The agenda of the defence of Grant Hayes, for example, can be viewed as more complex than being found 'not guilty', it is specifically homicide that is under dispute (as evidenced through the admittance of lesser crimes). This contrasts with Amanda Hayes' defence, whereby coercion against one's will can find the accused innocent on all charges including any lesser ones which may have been filed, thus having an agenda to be found 'not guilty' on all counts. It is important to note here that the charge of accessory does not appear to have been part of Grant Hayes' trial, as it is stated that helping to dispose of the body is a crime, but not murder and not the crime for which he is on trial.

For the prosecution, this provides an interesting shift between both trials, as the lesser charges are included for Amanda Hayes' trial and all charges are disputed by her defence team, contrasting with the charges focused on for Grant Hayes' trial. The agenda, therefore, is not as simple as 'guilty' or 'not guilty' between the defence and the prosecution, but also incorporates other influencing factors (many of which are often part of any plea-bargaining processes, see Maynard, 1984). It is the contention of this thesis, that through the opening statements further support is given for the cyclical nature of courtroom interactions as regards the three-level conceptualisation.

Chapter 5: In the Absence of the Jury

5.1 Introduction

Research into courtroom interactions has often had a focus on the interactions that take place in the presence of the jury (Cotterill, 2003; Matoesian, 1993; 2001, etc.). In this chapter, the focus is placed on those interactions that take place outside of the hearing of the jury, but which remain available to the viewing (or, to borrow from Heritage [1985], ‘overhearing’) audience. These interactions were filmed by the camera in the courtroom and could be viewed by members of the public, but the jury were absent. It is important to note that a distinction here is made between those who are able to observe what is happening but have no recognised participation in the interaction, and the jury, who have a role within proceedings, even if they are largely non-vocal throughout. With this distinction, this thesis holds that the term ‘silent participant’ (Carter, 2011) is more aptly suited to the jury, rather than a more general application of ‘overhearer’, which is better suited to the viewing public outwith the institutional roles of the trial.

Theoretically, this links back to the discussion of public spheres (see 1.5), whereby the public, private and civil spheres can be considered separate, and yet contain a level of overlap (much like a Venn diagram). In this instance, the civil sphere represents the level at which public and private boundaries can overlap. For example, private matters within a family can become matters pertaining to public interest when placed within a courtroom, or laws can be passed that influence the private sphere; thereby creating a socio-political space between what is commonly denoted as public and private (Sales, 1991; Smith and Natalier, 2005). Within the context of the criminal trials under scrutiny, the public can be privy to information that can be withheld from the jury, particularly when the courtroom is being aired to the wider public via video-camera, yet the jury is absent.

Placing this in a contextual frame of reference, the interactions that took place in the absence of the jury had various functions. Firstly, there were instances of *voir dire* of witnesses, where they gave testimony before the judge and opposing counsel as a form of preview. This was usually so a decision could be made as to whether or not the testimony was allowed under the rules of evidence. Particular consideration can also be given to the prejudicial effect of the evidence versus its probative value (Imwiler, 1988). Second, were the interactions that took place where judicial decisions were required outside of the hearing of the jury (for example, a ruling regarding an objection in an instance where both sides wanted to be heard). Finally, interactions that were administrative and focussed on the process of ‘doing court’, such as the attorneys’ charge conference near the closing of the trial where the charges and the judge’s instructions to the jury can be discussed.

Interactions without the presence of the jury can also be viewed as a fundamental insight into the workings of the trial system. These discussions provide a means through which testimony can be edited or rebuffed before it reaches those who make the final judgement regarding the defendant’s guilt or innocence. In this regard, the importance of this aspect of court should not be understated. In this role, the judge acts as a gatekeeper, reviewing and determining what is permissible under law and the discussions are arguably contextualised in a more legalistic framework than an emotional or narrative one. This can be seen in the orientation towards ‘relevance’ that takes place within these interactions (as will be shown below).

In analysing the interactions that took place, several points of interest emerged of which three have been selected as both relevant and of interest to this thesis. The first of these was the vocalisation of what was taking place for the benefit of the record; the second point was that of resolving of an issue that was oriented to as being a source of ‘trouble’ or unclear;

and the third was that of *voir dire* of witnesses prior to their presenting a contested piece of testimony.

5.2 ‘If it says so, then it is’: the vocalisation of circumstances

Cotterill (2003) *inter alia* have discussed the importance of and orientation to the court reporter in analysis of courtroom interactions. The importance of the role of the court reporter should not be understated, given the weight attached to the documents they produce as the ‘official’ record of any given courtroom interaction. Proceedings recorded by the court reporter can later be reproduced as a written document which becomes an official record of what took place in court. This written document can be referred to in potentially important circumstances (for example, should a case go to appeal) and therefore has a certain status within law that should not be overlooked when analysing how courtroom interactions are conducted and oriented to.

In the two trials presented here, structurally, the judge announces the absence of the jury, despite their obvious lack of physical presence, before continuing to outline the matter at hand (which is presumed to be for the benefit of ‘the record’). This is not then followed by anything that is discernibly formulaic in terms of phrasing or orientation, though the judge consistently holds the floor at this point and directs where proceedings go next. This places the judge in the position of selecting the next speaker or, indeed, self-selecting and continuing to hold the floor.

5.2.1 Reason and ruling

Within the institutional context of vocalising matters deemed salient, one pattern occurred at various points during these interactions; this was the pairing together of a reason and ruling. Either before or after a ruling the judge provided a reasoning for that ruling, illustrating why that decision had been taken. Though this was not a universal pattern, it did occur several times throughout these interactions and provides a potential area of further investigation with a wider corpus of courtroom data. Within the context of this localised comparison, it displayed a vocalisation not only of nonverbal features, but also exemplified why a decision was taken by the judge. This is arguably with a view to possible future uses of these utterances after should a verdict be reached that induces an appeal or the matter entering a different court of law. As such, the concept of the silent participant can continue to be applied, much as Carter (2011) did with her findings regarding police orientation towards the tape recorder in British police interviews, however; in the context of trial proceedings, the silent participant could also be argued to encompass the transcript being produced by the court reporter. As with the tape recorder, this is not animate, but represents the potential future use of the recording (or in this case document) as a representation of interactions (Ibid).

Though this study does not dismiss the court reporter as a person who is also participating in the trial process (and the person who determines content of the document under production), there is an argument at this point for placing an emphasis on the potential document itself. This being that, although the court reporter is not here arbitrarily viewed as a passive actor without agency, the court reporter does not have the potential active role in later proceedings that the document they produce does. In this regard, it is for the benefit of the potential uses of a document that may be required at a later point in time that these utterances

are made. Much as a police tape at interview is oriented to, not for its immediate value, but for its later potential uses at an undetermined future point within the legal process (Ibid).

With this being said, the following extracts exemplify this reason-ruling pair in the absence of the jury.

Extract 5.1 (D10P7Ex1 AH)

81 JUD .hh that is for the jury to determine↓
82 (0.5) u:h (0.5) what those words meant (0.2)
83 i understand that (1.4) u:hh that there
84 is sufficient evidence by the law (0.2)
85 to: to allow the (0.7) that issue
86 to go the jury based at this↑ point
87 on s- the evidence before the (.)
88 court (.) before the jury and therefore
89 the motion↓ to (.) dismiss °the° (0.8)
90 → HOMICIDE charge is denied↓

This extract occurs at the end of state's case in Amanda Hayes' trial and comes after a request for charges to be dismissed based on the state having failed to make its case. This follows prior talk in which the issue is discussed with the defence stating their argument and reasons to the judge. This sequence could be viewed as a form of summary that precedes the final decision (thereby closing the topic). Lines 81-88 contain the reason for the decision, with the ruling following at lines 88-90. The language used in delivering the ruling is well-

known and formulaic within the context of legal proceedings, which (although common knowledge) allows the ending of the reason and the start of the ruling to be clear and distinct.

Extract 5.2 (D10P7Ex1 AH)

225 JUD °i understa↑nd↓° (.) u:mm (1.2) at this↑
226 point i- i don't i fail to see the relevance
227 of it i certainly fail to see how
228 it's competent under the rules of
229 le- evidence as i understand↓ it↑ (0.6)
230 a:nd u:m (.) the request to (0.8) u:hh you
231 can offer it for the record u:h the
232 request to (.) u:h (.) i-in submission i:s
233 → u:h (0.9) does the state object↑
234 ADA1 [yes]
235 ADA2 [yes sir]
236 JUD °yes° i thought↑ you had↓ u:h the
237 → objection's u:h sustained uh (0.4)
238 it will be (.) made a part of the record
239 but it will not be (0.7) u:h (2.6) it
240 will not be referred to: (0.2) u:hh (1.2)
241 until such time as u:h you convince me
242 later a-d- during your evidence that
243 it-it's become relevant (0.5) i'll hear
244 you again↑ if you do↓ (0.5) °all=right° (1.2)
245 what additional evidence () do
246 you intend to offer any↑

This occurs at a shift between the state's case and the opportunity for the defence to present a case in response (remembering that the defence does not carry burden of proof and therefore is not required to present a case; it can contend that the evidence is lacking and there is no case to answer). There are three points that need to be addressed when applying the reason-ruling pair within this extract. Firstly, there is the orientation to the judge's understanding as the reasons for the ruling (that is to follow) are initially laid out. This, however, is interrupted by a question to the prosecution, confirming that there was, indeed, an objection. Only after this clarification is the ruling then made, sustaining the objection. This is followed by a form of postscript caveat, contextualising the form of the objection and the circumstances under which the topic may be revisited. In this instance, the pattern could be argued to have formed a reason-ruling-addendum format.

Extract 5.3 (D10P5 GH)

16 JUD .hh (1.0) ↑u::m (2.2) hh the court does
 17 find that the: probative value out (0.5)
 18 weighs any prejudicial effe:ct (3.2) a:nd
 19 → has overruled your (2.6) obje:ction (3.5)
 20 the words in the so:ng and th- and also
 21 the (3.4) °uh° (1.2) t-the way in which
 22 they're used u:h (.) the jury may find
 23 relevant (1.6) uh and therefo:re the
 24 → objection is overruled

This extract comes from the trial of Grant Hayes and refers to a song alleged to have been written by the defendant and has been under discussion as having a prejudicial effect should the jury be given access to it. The reasoning yet again comes first in lines 16-19 (whereby the probative value is determined to outweigh the prejudicial effect) and is followed with the ruling in line 19 ('has overruled your objection'). This is then followed by an expansion of the initial reason (lines 20-3) with details as to why the evidence has been probative and relevant, before being followed with the formulaic 'objection is overruled' in line 24. Though this does support the reason-ruling pattern, it also shows that this is a more general concept that, rather than a strict pattern, is subject to variations on a theme with the two occurring in tandem but allowing for variations in their presentation.

Extract 5.4 (D3P4 AH)

33 JUD with regard to: the: (2.5) request of the
34 witness to call a number that was listed
35 <o:n the: u:hh> (1.4) the item of evidence
36 u:m (2.4) to determine who answered toda:y↑
37 (0.9) since mister gaskins has had all that
38 information throughout the course of this
39 investigation then- by way of disco↓very↑
40 (0.4) and since he had every opportunity to
41 find out (.) who that number belonged to
42 (0.6) he certainly could have made that call
43 or somebody could have made that call on his
44 behalf and .hh therefore the uh (0.9) u:hh
45 → the hh (0.9) objection was sustained↓ (0.7)

This extract also shows the same format with regards to the presentation of the reasoning and then the ruling itself. The context for this is an instance where the jury has been sent out after an attempt was made by the defence to have a witness make a phone call as a demonstration during testimony (for further details see 5.3.1).

Extract 5.5 (D3P4 AH)

166 JUD i don't preclude you calling a witness
167 to demonstrate what you're trying to
168 sho:w but i'm not willing (0.5) allow you
169 to conduct a demonstration in this
170 court↑room↓ (0.4) from the testimony of a
171 witness who is not familiar with what
172 you're ↑talking about↓
173 DEF1 i understand
174 JUD → okay (0.9) >all=right< (0.4) objection
175 → sustained (0.8) without prejudice to the
176 right to call up- for you to call a
177 witness to show what it is you're
178 trying to show (.) okay↑

This follows a similar pattern outlined above as regards the reason-ruling-addendum format. Within this extract, the reason for the specific refusal (the witness' lack of familiarity with the topic under discussion) is separated from the more general issue of eliciting this testimony in general. As such, there is a caveat regarding the defence's position should they provide their own witness in lines 166-8 (as this was a witness for the prosecution), but the reasoning for

the ruling then follows in lines 168-72 (which is acknowledged by the defence). Only after this at 174-5 does the ruling itself occur, with the addendum summarising the caveat outlined initially in lines 166-8.

The reason-ruling format has been shown to contain variations on a theme (including caveats/addendums) rather than to be a stringent formula, however, this is still indicative of the institutional and formulaic concept of speech within a legal context and the manner in which these legal requirements vocalised for the record and are met.

5.2.2 Orientation to understanding and knowledge

Another point of interest that emerged from the data was the judge's orientation to understanding and knowledge. Though this is also linked with resolving issues (see section 3.3), it also performs a vocalisation of the judge's understanding of the matter at hand. This is relevant, as in verbally reiterating and reformulating what is being said, the judge is providing a record of the premise on which the reasoning and subsequent ruling will be made. In addition, the through demonstrating a lack of understanding, the judge also invites additional clarification for the record, which could be argued to reduce potential ambiguities from the evidence being presented.

Extract 5.6 (D2P7 GH)

1 JUD u:m the jury↑ is absent↓ (11.2) .hh
2 uh (3.5) i guess maybe i'm confused okay
3 so a-and i kinda need to know what's
4 going o:↑n↓

The above extract occurs during the questioning of Amanda Hayes' daughter during the trial of Grant Hayes. With the absence of the jury, the judge directly orients to a need for clarification, citing that his own understanding is important. In this instance, it is not with a view to making a ruling on a point of contention between the state and defence, but a clarification of his own understanding of the custody exchanges of the children between the defendant and the victim.

While this extract refers to the issue of understanding specifics of testimony, the following orients towards knowledge of the law.

Extract 5.7 (D10P7Ex1 AH)

197 JUD → () uh i know of no basis
198 → (.) for it's admis↑sion↓ .hhh (2.8) i-it
199 uh i'd be glad to hear y' again↑ if
200 u:h if her state of mind at that time↓
201 (1.1) at th-the ti:- at the time you're
202 ta↑lking↓ about her state of mind at
203 that↑ time which is what u:m (0.6)
204 ten days after this (0.4) alleged offence↑

205 or more↑ (0.7) u:hh (0.3) on that date
206 becomes relevant↑

In this extract, the judge refers to his knowledge of the rules of law (lines 197-8) as the grounds upon which a judgement has been made regarding the admission of a certain piece of evidence. Here the defence is making the argument for the admission of evidence and the judge can be seen to place his decision within his knowledge of the law, also referring directly whether or not the point being made can be considered 'relevant' within those rules.

Extract 5.8 (D9P3 GH)

29 JUD hm (0.7) do you contend that you have
30 never seen it or (.) don't have access
31 to it .hh
32 (0.5)
33 DEF1 no °=your honour= (.) i wouldn't↓° (0.4)
34 uh-i- i contend u:m
35 JUD i mean yu-you have had access to it↑
36 DEF1 yes i have had access to it↓ (0.3)
...
55 JUD so (0.2) um (1.7) what is it that we're
56 (.) talking about↑

Lines 37-54 of the above extract have been omitted. This sequence shows the judge's position as seeking clarification as to the point of contention between the defence and the

prosecution – which in this instance regards whether or not aspects of a document can be included as evidence. Contextually, this occurs at a point in which the evidence is in the process of being presented by the prosecution and becomes an objection that is to be resolved outside of the jury's presence. The sequence from lines 29-36 focusses on whether the defence had access to a document that is part of the prosecution's evidence. The need for clear understanding by the judge is once again a point of orientation for the jury absence sequence, with the judge finally asking, 'what is it we're talking about' in lines 55-6. This question does not select the next speaker, but opens the floor for either attorney to provide an explanation. The floor is then taken by the prosecution, making this their first turn within this specific interaction.

While the absence of the jury appears to provide a discursive space in which elements of the trial can be discussed and ruled upon prior to their becoming evidence, it also provides a space for clarification. The judge not only probes for further understanding, but then summarises and reformulates what has been said in a demonstration of understanding, be this the form of seeking agreement for the summary or as part of the reasoning provided for a ruling. As this remains part of the court record, it demonstrates a vocalisation of said understanding as well as generating a record of what each party said on the subject at hand. This provides further evidence towards the importance of the potential future audience of the court record, orienting to a listener (or reader) that has yet to be actualised (much as the audio recordings in research by Carter [2011]).

Another interesting feature highlighted within this sequence is its bearing on the overall defence narrative. The defence of Amanda Hayes is seeking to establish in front of the jury that there is doubt about the character of Grant Hayes through the use of the telephone

records. In casting aspersions on the character of Grant Hayes, the narrative for the defence purports that this supports the claims that Amanda Hayes was also victimised.

Having explored the importance of vocalising circumstances within these interactions, the following section will discuss the resolution of issues outwith the jury's presence. These matter for discussion have been described generally as 'issues' with the term here encompassing any matter which requires discussion and/or resolution by the judge without its being exposed to the jury.

5.3 Resolving issues within the legal framework

One of the main themes within the interactions where the jury was absent was that of resolving a perceived legal issue. This could involve an issue where the judge's understanding of the current situation is unclear or where there is a motion or objection that needs to be discussed prior to the continuation or presentation of testimony.

The first sequence has been analysed in its complete form as it provides an holistic view of an issue where understanding was oriented to repeatedly as an issue that required resolution, even after the topic had been ruled on. Following this, other examples of the judicial role in resolving issues will be discussed and contextualised.

Within this analysis, the role of the judge in these instances also reinforces the Foucaultian concept of power as being legitimised through institutional nodes. In these interactions, the judge can claim the floor without reprisal and makes the final decision (citing reasons in law for doing so). The judge here invokes both his knowledge and understanding of the law and the particular situation being presented when determining what course of action to take (as shown in section 5.2).

5.3.1 'Where are we now?': the experiment that did not happen

One particular interaction that took place whilst the jury were absent was of note simply by the extraordinary nature of the content when placed in the context of the other interactions within both trials under exploration. To briefly summarise the context of this interaction, directly preceding the jury's absence the following took place.

During the prosecution's case of Amanda Hayes, the defence were cross-examining a police officer. In the course of this cross-examination, the defence attorney was granted permission to approach the witness and proffered his own mobile phone for use by the witness, with the task being for the officer to call a telephone number deemed relevant by the defence for the purpose of identifying to whom the number belonged (allegedly a voicemail system). This was interrupted by the prosecution who, rather than calling an objection, oriented to the judge noting that the defence attorney would have his phone placed in evidence were this to continue. This resulted in the judge sending the jury for a break and holding a discussion over this development (see extract 5.9).

Extract 5.9

5 DEF1 let's use my phone↓ first
6 WIT okay
7 (1.6)
8 ADA1 your honour (0.6) i'm afraid that if (0.8) mister
9 gaskins uses his phone to do it it's gonna
10 be admitted into evidence↓
11 JUD i'm sorry↑

12 ADA1 i said i-i'm worried that if mister gaskins
13 uses his phone then it's then gonna be
14 admitted into evi↑dence↓
15 (0.6)
16 JUD it certainly i↑s↓
17 (2.3)
18 JUD u:m
19 DEF1 can i get it back↑
20 (4.1) ((some laughing))
21 JUD ↑tell you what↓ uh we'll have that
22 conversation while the jury takes a bre↑ak↓
23 °okay↑° (0.8) uh >folks you haven't heard it

This exchange invokes a number of interesting features, not least of which is the manner whereby the contestation of current events is noted, but not in such a way as to provide additional adversarial tension to proceedings. The orientation by the prosecution to the judge holds a different tenor to that found in other objections. The judge is addressed, interrupting the defence (as is the nature of an objection), but is not followed by a formulaic phrasing. Instead the judge is made aware that the defence attorney will lose his phone should the interaction continue on its current trajectory. What is of note here is that this is a turn that orients to the judge, but is neither an explicit objection nor a direct turn orienting to the defence, even though it is Mr Gaskins' awareness of the possible fate of his mobile phone that forms the subject of the utterance. The judge responds with 'I'm sorry' (line 11), which is then treated as a request for clarification, with the prosecution producing a longer explanation regarding the fate of the mobile phone should the experiment take place (lines 12-14). This rephrasing shifts from 'I'm afraid' (line 8) to 'I'm worried' (line 12). The use of

these phrases expresses a concern for the loss of the mobile phone, yet this is later oriented to as an objection (see extract 5.10, line 45). In addition, the response by the defence (line 19) produces laughter as a response. While this does not necessarily mean that the utterance is being viewed as humorous – as laughter has multiple uses within interactions (Hepburn and Bolden, 2013) – it does continue the tenor instigated by the prosecution (line 8) and the judge then orients to the defence’s question as a matter requiring attendance outside the hearing of the jury.

This provides the context in which proceedings then continue after the jury has left. One aspect of note within this interaction was the orientation to ‘now’ in the context of a sequence that focuses on resolving an issue.

Extract 5.10

33 JUD with regard to: the: (2.5) request of the
34 witness to call a number that was listed
35 <o:n the: u:hh> (1.4) the item of evidence
36 u:m (2.4) to determine who answered toda:y↑
37 (0.9) since mister gaskins has had all that
38 information throughout the course of this
39 investigation then- by way of disco↓very↑
40 (0.4) and since he had every opportunity to
41 find out (.) who that number belonged to
42 (0.6) he certainly could have made that call
43 or somebody could have made that call on his
44 behalf and .hh therefore the uh (0.9) u:hh
45 → the hh (0.9) objection was sustained↓ (0.7)

46 → u:m (1.0) now (.) tell me mister gaskins what
 47 you're asking (0.3) this witness to do right
 48 now↓
 49 (2.5)

This extract provides a summary of the judge's reasoning (lines 33-44), followed by the ruling itself (line 45). On the surface this appears to have oriented to the prosecution's interjection as an objection, which has then been sustained, including vocalised reasoning; however, at line 46 there appears to be a topic shift towards what the defence attorney is asking the witness to do 'right now'. This orientation to 'now' seems to be introducing something new, but the request being made of the witness has already been denied through lines 33-45.

This orientation to 'now' is then treated by the defence as something which can be resolved through going 'back' (see below, extract 5.11, line 49), with the subject then divided into more than one issue.

Extract 5.11

50 DEF1 → let me go back to the first issue that
 51 i raised about the two-oh↓-one↑ exchange↑
 52 (1.1) i- [i-]
 53 JUD [i-]i'm not sure what [you]
 54 DEF1 [()]
 55 know who that phone number belo:ngs to:
 56 JUD >okay<=

57 DEF1 =na-i'm want- to find out from hi↑m↓
58 (1.0)
59 JUD he doesn't know who it belongs↓ to↑
60 DEF1 it belongs to a voicemail system↓
61 JUD (well) he said he didn't know who it
62 belonged °to↓ so↓°
63 DEF1 but if he dialed it the voicemail system
64 is gonna answer↓
65 (1.4)
66 JUD well (0.3) u:m .hh (1.8) you can put that
67 evidence on:↓ (0.3) when you choose (1.0) he
68 → doesn't kno:w and i'm not gonna have him dial
69 that (.) in this courtroom↓ today↑ (0.4) okay
70 (0.9) you can call somebody and have them
71 dial that number↓ on your own ca↑se↓ (0.9)
72 >all right↑<
73 DEF1 °okay°

In going back to orient to the ‘now’, the seemingly resolved issue of making a phone call in court is once again the topic, though now contextualised in terms of the purpose it serves to the overall case for the defence. This extract is marked through the short exchanges that take place between the judge and the defence attorney, with the judge taking the floor regularly throughout the explanation of the defence. This can be seen in lines 51-3 with the overlapping talk, and the subsequent exchanges in lines 55-64. The reiteration that the phone call is denied is made yet again at lines 68-9, but introduces a new caveat in that this phone call is not being allowed in regards to *this* witness, with the defence being told they can provide this evidence with their own witness during their case (remembering that this is a cross-

examination by the defence during the prosecution's case). This appears to link back to the objection that has already been sustained (the phone call is not allowed), but now provides additional information for the defence as to a circumstance in which this evidence *may* be allowed.

Once again, this appears to close the matter regarding the phone call experiment. Immediately after this, the orientation once again returns to 'where are we now' (see below, Extract 3.4, line 74). This is the second iteration of this question. This time, however, the defence orients to the present as opposed to the previous instance where the orientation was towards the past. There is no further reference of there being more than one 'issue' that needs resolving, but rather the topic appears to continue, despite the two clear indications that the phone call is not allowed in the present circumstances (lines 45; 68-9).

Extract 5.12

74 JUD → so where↑- where are we now↓
75 DEF1 → °okay° where (.) we are now (.) is that (.)
76 he's indicated that he's not familiar with
77 the-
78 JUD and i would say (0.6) h-he doe- (0.4) we
79 won't kno:w↓ (0.4) u:hh (1.7) (h)what the
80 respon↑se is↓ (1.8) if he dials the num↑ber↓
81 (0.6)
82 DEF1 he will ↑hear the response↓
83 (1.5)
84 JUD >well ↑he won't- ↑he won't know anything

85 except what he hears↓<
86 (2.0)
87 JUD that's -at's hearsa:ya↑ (1.1) that's coming
88 in from somewhere else↑ (.) nobody knows
89 where it's coming in from↑ (0.7) so (.) °in
90 → any↑ event the objection's sustai↑ned↓°
91 → (0.3) n-n so where are now↓
92 (3.1)

The judge again claims the floor, interrupting at line 78. This interruption re-establishes the topic of the phone call as the point of the conversation for the third time, with the judge providing an additional comment to his previous reasoning. The topic is again oriented to as unresolved, despite having been denied twice. The interjection by the judge adds an additional legal reason as to why the experiment is denied – that of ‘hearsay’. Hearsay is defined in North Carolina as ‘a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted’ (Smith, 2013: 2). At this point, the reasoning has encapsulated the officer’s lack of knowledge regarding the phone number, lack of familiarity with the process being described by the defence, and now the hearsay law, in which the information would be coming in from outside (also two years after the crime took place) from an unknown source, then being repeated by the officer as ‘truth of the matter asserted’. This leads to the second sustainment of the objection (line 90) and the third asking of ‘where are we now’ (line 91).

At this point, the issue of the telephone call has recurred as an issue in need of resolution three times, with both the defence (line 49) and the judge (lines 33 and 78) reintroducing the topic; though the third introduction of the topic is somewhat ambiguous, as

the defence could have been continuing to orient to the issue at line 76, but this was interrupted by the judge with the hearsay reasoning.

Throughout these four extracts, there has also been an orientation towards the hypothetical, with the predicate act of making the phone call providing the platform for potential outcomes and their veracity in court. The divergence between the information to be gained should the call be made regarding its being a voicemail system (the defence assertion) and the lack of knowledge on the part of the officer regarding the owner of the phone number (the judge's position) presents a schism in understanding that appears to impact on the topic recurring. The officer's knowledge (or lack thereof) is referred to four times across these four extracts in lines 59; 61-2; 67-8; and 84-5. The knowledge of those in the courtroom ('we won't know what the response is') is also referred to as part of the hearsay reasoning.

The defence reasoning behind the experiment is predicated on their claim to knowledge that the phone number belongs to a voicemail system. The concept itself is not dismissed by the judge (lines 78-80; 87-90), but the means through which that evidence is attempted to be elicited is under dispute (the use of the phone by the police officer in the courtroom). The hypothetical outcome is first introduced in line 63 ('but if'), with the officer hearing the response oriented to as adequate means through which to introduce the testimony. Having the officer use the phone to elicit the testimony that the number is alleged to belong to a voicemail system becomes not only a legal issue that requires resolving, but also shows the importance of the judge's understanding.

The lack of understanding between the judge and the defence attorney does not end with the third denial of the request, but the matter of the phone call experiment continues to be discussed with the judge introducing the topic a fourth time (see extract 5.13, below).

Extract 5.13

93 DEF1 >that's probably all i have then↓<
94 JUD okay↑ are you going to (.) u:hh (1.3) i
95 sent the jury↑ out u:h (1.5) you wanted him
96 (0.6) you wanted to show him your pho:ne=
97 → i wasn't sure exactly what (0.4) the purpose
98 of that was↓
99 DEF1 w-w-w- i-i'll go back to that↓ (0.3) i
100 don't- i don't want t- i don't want
101 my phone- lose my ↑TELEpho:ne↓ though
102 (1.3) u:h
103 JUD well i mean i- if anybody else wants to lend
104 you their ↑phone uh you can use thei↑rs↓
105 → uh (0.8) uh b-but- (0.8) i don't understand
106 what (1.5) <what is your intention by handing
107 a telephone to the officer and asking
108 him to do something please↑>
109 (1.5)

The judge orients twice to the matter of his own understanding in the extract above. In line 97 this is framed as 'I wasn't exactly sure', and in line 105 this is explicitly stated as 'I don't understand'. This has the issue of the phone once again being reintroduced by the judge. The defence at this point has oriented to the matter as closed, but it is reopened with the judge making two enquiries regarding the reason. The first of these is implicit in lines 97-8 ('I'm not exactly sure what the purpose of that was'). The defence once again refers backwards away from the 'now', indicating that this orients to prior talk, but references the initial

interruption made by the prosecution in the potential loss of his mobile phone. The judge responds to this, but then makes an explicit question of the intent behind handing the phone to the officer with emphasis on ‘what’ and a slower pace of speech (lines 106-8). The force of this question is marked in comparison to the previous talk and it could be inferred that the judge’s understanding of the situation remains unclear, despite the prior rulings and the previous orientation to the matter as closed. The following extract has been shortened for convenience, but represents a lengthy turn in which the defence attorney provides a more detailed explanation – this time without interruptions.

Extract 5.14

110 DEF1 i intend to demonstrate (.) that (1.4)
111 telephone (0.3) numbers (1.3) within the
112 telephone (0.3) messaging system (0.4) are
113 assigned (0.5) different numbers (0.5) than
114 the telephones have↓ (0.6)
...
126 mail- message centre where you can leave
127 a message your friend can pick it up↑ (.)
128 using the same code=the same telephone
129 number (0.4) and ther- it generates no
130 record (.) ↑any↑where
131 (1.6)

This is the first instance in this sequence where a prolonged explanation is provided regarding the defence’s proposition as to the voicemail system and the telephone numbers. This sequence is marked by the lack of interruptions from the judge. Though it provides more

detail regarding the defence's theory and provides an illustration of the theory (redacted), it is not oriented to as providing the judge with the requisite understanding of the issue at hand (as can be seen below).

Extract 5.15

132 JUD well i assume it generates a record
133 as to what number you ↑called (1.5)
134 whether it's the voice (1.0) voice (.) mail
135 number or your (0.3) ↑office number↓
136 DEF1 but it generates a record [for-]
137 JUD [for] the number
138 you called=
139 DEF1 =n the- the ↑voicemail number that you
140 called=
141 JUD which is the number you called=
142 DEF1 =and the nu- voicemail message tells you
143 (0.6) that the number you have reached
144 <is belongs to> someone ↑else (1.2) but
145 that number doesn't get ↑recorded (0.8)
146 my point is↓ [()]
147 JUD [reported to what] by
148 [(what)]
149 DEF1 [anywhere]
150 (1.3)
151 JUD what do you mean
152 DEF1 (yeah well) anywhe:re (.) anyplace (.)

181 DEF1 °when the jury comes in°=
 182 JUD =that's fine
 183 (1.9)
 184 JUD all right u:hh why don't we take u:hh
 185 a little break uh be in recess about
 186 five minutes by then the jury'll be
 187 back and (.) w-
 188 ((video cuts))
 189 (9.9)

The sense-making of the defence's previous turn by the judge is highlighted through the use of 'I assume' (line 132). Though this is not direct disagreement with the previous turn, it introduces a distinction between a 'number' and a 'voicemail number' (lines 134-5), which continues throughout lines 137-141. A further point of clarification comes at line 147-153, with the judge's interruption regarding the record-keeping system. This interruption overlaps with the defence's turn and comes in as the defence states 'my point is', rendering the following utterance difficult to discern. The judge does not directly orient to understanding, but begins to foreshadow his reasoning and ruling in highlighting the defence 'may' need to put their own evidence on to show this. The use of 'may' at this point hedges the statement, rather than providing a concrete decision. The orientation to the witness at this point seeks additional clarification that the witness is unfamiliar with the phone number theory presented by the defence, which is responded to in the negative at line 158. It is only after this clarification that we then receive another reasoning sequence in which there is an orientation towards a decision (lines 159-163), which the defence orient to as understanding (line 164), followed by a reasoning sequence (lines 165-172). This reasoning sequence includes a caveat allowing the evidence to be presented by the defence, but not through this witness in the

state's case. As has been outlined above in the reason-ruling pattern, this is then followed by the ruling (lines 174-178) that upholds the objection yet again.

There is no direct orientation towards the knowledge and understanding of the judge in this extract; however, this sequence leads into a closing interaction before the video cuts off for the recess. Unlike previous turns, there is no additional questioning at this point regarding 'where' we 'are now', but appears to be a co-construction of mutual understanding as to how matters will proceed, with the sequence in lines 179-182, in which neither turn by the defence appears to be structurally complete (lines 179 and 181), but is oriented to by the judge as being acceptable ('that's fine'; lines 180 and 182).

Were there no additional data after this sequence, it could be inferred that understanding has been established by the judge regarding this topic and the matter is closed. This, however, was not the case. As can be seen below, the recording resumes after the recess with the jury still absent from the courtroom.

Extract 5.16

190 () um (2.0) the defendant and counsel are
191 present u:m (1.0) ↑mr gaskins i'm trying to
192 um (3.9) trying to understand what point
193 you're (.) making u:m (1.2) and you ↑seem
194 to have suggested that there is some practice
195 of drug dealers uh this officer is a
196 drug officer but he's not familiar
197 with it apparently (1.3) u:hh (xxx has)
198 some mechanism to attempt to conceal
199 (1.0) u:hh (0.8) their calls umm (1.1) by

200 calling a (0.9) voicemail (0.5) umm (1.0)
201 centre (1.4) in lieu of calling
202 each other (0.9) to: get (0.9) °↓messages°
203 (1.7)
204 DEF1 exactly
205 JUD >okay< .hh u:hh (0.8) <so you haven't lost me
206 entirely↓ i (.) think i understand↓> (1.2)
207 DEF1 i think==
208 JUD =d- i jus- i understand what you're
209 saying but do ↑you intend to el- uh
210 do you believe that through cross
211 examination of the state's witnesses
212 or presentation of your of your own↑
213 (0.3) of any evidence that (.) you u:h
214 <seek to elicit> u:hh (0.9) that there'll
215 be any testimony↑ by any witness
216 that this practshi- practice
217 actually occurred in this case↑
218 (1.1)
219 DEF1 i think the telephone records will
220 show that↓
221 (5.5)
222 JUD an- (0.8) will show (0.2) that with regard
223 to what num↑bers↓
224 DEF1 °the two-oh-one exchange°
225 (4.0)
226 JUD .hh well i guess you're gonna hafta (0.5)
227 <call somebody that- (0.9) is familiar

228 with that (0.5) practice> and can (.) can
229 (0.4) elicit that because (.) apparently
230 this officer s-is not familiar with
231 that↓ (0.6) okay (.) i'm just trying to
232 figure it out↓
233 DEF1 y-y-you you understand where i'm
234 going i-i mean you and i are on
235 the same-
236 JUD WEll i understand what you're telling
237 me but don't- i- have yet to uh
238 hear a witness who uh is uh prepared
239 to answer your questions in the
240 affirmative (0.6) okay
241 DEF1 i-i'll finish up quickly with
242 [(the witness)]
243 JUD [all right] °well that's fine° (1.3)
244 >all=right↑< u:hh (0.6) ask the jury to come
245 in please↑

The above extract begins with an announcement of who is present, as is in-keeping with the vocalisation of circumstances for the benefit of the record (lines 190-191). What is notable here is that the jury are not remarked upon at all, but are instead omitted from a listing of who is present (thus presenting the implication of their absence).

This final extract regarding the topic of the mobile phone experiment is marked as it not only occurs after the topic has been closed, but orients (this time directly) to the judge's understanding. Another overall feature of this sequence is that the judge does not make

another reason/ruling, but instead orients solely to his own understanding of the defence's theory and how they are seeking to manifest this in their proposed line of questioning.

Rather than the judge asking the defence to explain their stance, the judge opens this topic with his own summary of prior talk (lines 191-202). The orientation towards understanding is directly referenced at line 192, with a focus no longer on the act of the mobile phone experiment itself and its permissibility. Instead, the orientation of the summary is towards the argument being made by the defence regarding the use of phone numbers and voicemail numbers and its links to the practice of drug dealers. This is linked to the witness (and thereby the overall line of questioning) as an officer who has experience in investigating drug-related criminal activity. There is continued use of hedging, with the words 'seem' (line 193) and 'apparently' (line 197) emphasised during talk. This could be viewed as highlighting the hypothetical and (currently) unsubstantiated claims of the assertion within the trial, as well as indicating that this sequence is seeking clarification for understanding. With this summary oriented to in the positive by the defence, the judge orients to a hedged state of understanding (lines 205-6). The judge then stipulates a more specific form of his understanding as being limited to what the defence is proposing, but moves from this to questioning whether or not the defence believes this will be elicited through cross-examination of witnesses; thereby creating a distinction between a) the proposed theory regarding the telephone numbers and b) whether or not this can be elicited from the state's witness(es) (lines 208-217). The judge's orientation towards understanding is further referenced in lines 231-2 ('I'm just trying to figure it out'), though this comes after a turn that reiterates prior talk regarding the defence needing to provide its own witness to elicit the testimony it is seeking. The judge's understanding is then directly referenced by the defence (lines 233-5). This, however, invokes a sense of alignment through the phrasing ('you understand where I'm going... you and I are on the same-'). The judge's understanding is

oriented to as resolved at this point, though, in contrast to the previous sequences, no further rulings are made.

In breaking down this interaction, it has been placed within the remit of resolving issues within the legal framework, though it also overlaps with orientations towards understanding (see section 3.2.2). This is because these occurrences are not always mutually exclusive and it can be argued that an issue of understanding by the judge is a facet of resolving issues within the legal framework. What this extract brings to our understanding of interactions during the jury's absence is the manner in which not one, but two issues were in fact in need of resolution outside of the jury's hearing.

The first of these issues was the experiment itself and whether or not the phone call would be considered permissible. Within this, the following emerged as requiring discussion based on the turns of the judge and defence attorney and the apparent recurrence of the same issue:

- The reasoning behind the phone call experiment (why is this physical demonstration considered necessary?)
- How this relates to the line of questioning (what are the defence seeking to prove through this line of questioning?)
- Whether this is allowed under the rules of law (should the objection be sustained or overruled?)

If one extracts these as separate points in need of resolution, it is possible to unpack how the topic itself appears to recur, despite repeated rulings (which, in the context of court, would indicate a closing statement for the topic). In the first instance, the judge denies the

experiment (lines 45), but then seeks further information regarding its purpose. This could imply that the matter of allowing the phone call is resolved (in the negative), but there remains a lack of clarity as to why it was considered necessary by the defence in the first place; a difference here being nuanced between the experiment itself (disallowed) and the need to understand the defence's narrative that brought it up in the first place. This devolves into further discussion of the experiment itself through two iterations of 'where are we now' and the subsequent sequences, rather than addressing the broader defence argument as the subject of enquiry (lines 74; 91).

The uninterrupted turn where the defence explains the broader reasoning full occurs after the question by the judge shifts from 'where are we now' to a direct address of the 'intention' in handing the phone to the witness. This is not oriented to as pertaining to the veracity of making a phone call from the witness stand in court, but as to the underlying argument that the defence seeks to prove – in other words, 'why it is considered relevant by the defence that the phone number is proven to be a voicemail system' and *not* 'is the experiment itself permissible'.

In separating these issues, the points in need of resolution and the need for clarification become somewhat clearer. Despite the topic's being oriented to as closed (again) at lines 174-8, the recurrence after the recess also shows an orientation of the judge away from the experiment itself, but in demonstrating his understanding of the broader line of questioning by the defence. There is also a potential here for pre-empting further issues arising from this line of questioning, as the defence is asked whether they think *any* of the state's witnesses (not just this witness) will provide the testimony they seek.

There was no systematic formula to emerge from this sequence as regards resolving issues within the legal framework, but what has emerged is the manner in which the seemingly same topic can emerge repeatedly and yet be subtly oriented to in different ways to

fulfil different requirements of the court. In this instance, it was indicated to the defence that they may need to provide their own witness to elicit this testimony, identifying not only the phone experiment itself as in need of resolution, but also the overall line of enquiry by the defence in its current form (extract 5.15, lines 165-178).

In returning to the narrative thread, this sequence highlights an important aspect of narrative determination in the absence of the jury and how this legal editing is brought to bear on the overall defence narrative. This is not to say that the editing is somehow nefarious or illicit (far from it), but in this case a proposed performance – in one of the decidedly more dramatic attempts to admit evidence – not only disrupts the general proceedings in format, but then proceeds to have evidentiary and narrative value (relevance to the case) called into question.

The defence is seeking to establish in front of the jury that there is doubt about the character of Grant Hayes through the use of the telephone records. In casting aspersions on the character of Grant Hayes, the narrative for the defence purports that this supports the claims that Amanda Hayes was also victimised. In this instance, the telephone number has no ‘voice’ but is reduced to a document (the telephone records). The telephone number under dispute becomes representative of a voicemail system that has no physical voice in court. The defence attempts to have this intertextual evidence admitted and vocalised through the proposed demonstration. Much as with ‘reading in’ evidence (such as emails, etc.) this would then potentially allow the voicemail system to become tangible to the jury and support the narrative under construction.

That this is then disallowed through the legal restrictions on hearsay becomes of macro-level import. The defence is attempting to use cross-examination and a state witness to give credence to its stance (and, indeed, overall agenda). This links back with the theory of ‘legitimation’ described in 2.4, in which an attempt is made to use recognised organisational

authority to support one's position (Rosulek, 2010). The role of the witness is being shifted from a law enforcement official who was involved in the case, to the role of 'expert' through having experience as in drug-related crime. The defence then, through this, attempts to elicit agreement with the theory of drug dealers calling voicemail systems directly so as not to leave a record of who receives the message. The projected view is that both this epistemic position *and* the evidence of the number under discussion being that of a voicemail centre (rather than a mobile phone) would then provide support for the defence narrative. Both of these aspects of legitimation are denied outwith the presence of the jury. Consequently, this thesis contends that this not only resolves a legal trouble, but also links with the following section on previewing testimony in that the narrative itself then becomes previewed for the judge prior to its continuation before the jury. In accordance with the rules of evidence (perhaps ironically) this legitimation strategy *in its current form* is both edited and denied.

In a final address towards the orientation to the judge's understanding and narrative, the orientation towards a hypothetical scenario as a means of eliciting understanding should also be discussed. As was mentioned in the truncated Extract 5.14, there is one extended turn in which the defence attorney attempts to explain the reasoning behind his line of questioning. This turn has been described as being oriented to by the judge as being insufficient in furthering his understanding, but from the perspective of the defence narrative, it is worth exploring as an uninterrupted sequence in its own right.

Extract 5.17

108 DEF1 i intend to demonstrate (.) that (1.4)
109 telephone (0.3) numbers (1.3) within the
110 telephone (0.3) messaging system (0.4) are
111 assigned (0.5) different numbers (0.5) than

112 the telephones have↓ (0.6) for example (0.8)
113 my (0.5) >telephone number< is ***** my
114 ↑voicemail s-s-telephone number is *****
115 (0.6) if you dial (0.3) my (.) voicemail
116 (1.0) s- a-answering system (0.8) the record
117 that is created on-on those bi↑lls is a
118 telephone call to ***** not a (.) record
119 to (0.3) ***** yu- (0.4) the (0.3) telephone
120 call to ↑my office (0.3) will never show up
121 on any telephone record anywhere in the world
122 (0.7) the only number that will show ↑up is
123 the telephone call to the ↑voicemail
124 mail- message centre where you can leave
125 a message your friend can pick it up↑ (.)
126 using the same code=the same telephone
127 number (0.4) and ther- it generates no
128 record (.) ↑any↑where

In this sequence, the defence creates a hypothetical scenario to explain the proposition being made regarding the telephone numbers; and that telephone messages could be exchanged between Grant Hayes and others without leaving a record of with whom he was communicating. The emphasis in this turn relies on the example to emphasis the anonymous nature of contacting a voicemail system rather than a mobile phone directly (see lines 120-121). This can be argued to appeal to the larger macro-level requirement of reasonable doubt. The stance taken within this sequence, however, is also interesting. The example (lines 112-121), sees the defence attorney referencing ‘I’ and ‘you’ in the hypothetical scenario (‘if you dial my voicemail’), this shifts in lines 124-5, where the stance adjusts to ‘you’ and ‘your

friend'. This is not to say that the use of 'you' specifically denotes the judge's own person, but appears to take an inclusive example and then shift to a more distanced position with the introduction of an unknown third party.

This is also positioned within the talk as a hypothetical example for a proposed (and as yet unrealised) demonstration; wherein the demonstration itself is claiming to legitimise an aspect of the defence's macro-level position. This chain is not designed to be deliberately convoluted, but to expose a chain of potentiality that is being adjudicated. The judge's orientation to understanding and knowledge provides the epistemic position and legitimised authority to curtail the *potential* of the line of questioning as formed by the defence. This could be argued to link with Atkinson and Drew's (1979) observations regarding witnesses' foresight as to where a line of questioning is heading and orienting to that rather than the direct question itself. This observation regarding the ruling on *potential* questioning is, therefore, evident and emergent from the data, as it is oriented to by the participants themselves. The judge explicitly objects to the *means* through which the evidence is being presented through his understanding of the rules of evidence, but does not object to the potential argument in and of itself. In this, the narrative in general is not being repressed, but rather the form and manner of its presentation (such as asking a witness to make a surprise phone call in court).

Having discussed the ruling-reason pattern and the orientation to the judge's knowledge and understanding in resolving issues within the legal framework, the following section will discuss instances where testimony is viewed by the judge prior to its presentation to the jury.

5.4 Introducing the previews

The final category of interactions to be examined is that of the *voir dire* of testimony before the judge, prior to its being made available to the jury. This is akin to a preview of the testimony and allows the judge to make a ruling as to whether not a piece of contested testimony is allowed. The format tends to be one whereby the ‘side’ who has called the witness asks their questions (largely uninterrupted, excepting the judge himself) and then a cross-examination may take place and arguments as to why the evidence should or should not be allowed. This can include matters such as the prejudicial weight of the testimony, as well as its relevance and admissibility under the rules of law.

Voir dire is not limited to lay witnesses only, but can also encompass expert witnesses (such as Dr Stimson in the trial of Grant Hayes) or any witness called to testify where there is a contention regarding the admissibility of evidence. That this occurs outside of the hearing of the jury shows how the narratives that are finally presented are tailored within the rules of law. This is not to provide a criticism of said rules, but does emphasise the iterations narratives can undergo before being presented to the jury.

In the trial of Grant Hayes one such *voir dire* was that of Heidi Schumacher, a close friend of the victim. Her testimony was of particular note as it was not only contested by the defence, but a ruling was made delimiting what parts of her testimony were acceptable and what was to be prohibited. This same ruling was later reversed by the judge in the presence of the jury in response to the line of questioning undertaken by defence counsel.

The purpose of *voir dire* in terms of delimiting the boundaries of testimony in the trial of Grant Hayes included the evidence of the victim’s brother, Jason Ackerson and her friend,

Heidi Schumacher. In both instances the defence objected to testimony regarding Grant Hayes' alleged behaviour towards Laura Ackerson.

Extract 5.18 (D3P3 GH)

1 JUD folks uh i need to make a technical
2 ruling about um uh some matters
3 uh don't concern yourself about that
4 that's my job not yours uh but i'm
5 gonna have to hav- excuse you and
6 what we're gonna do is i'm gonna
7 let you take the morning recess while
8 we do that uh take about twenty
9 minutes
...
28 JUD u:m in the absence of the jury
29 the def- uh witness remains
30 on the witness stand as some
31 testimony that may be the subject of
32 an objection i'll preview the
33 testimony go ahead

Firstly, what is worth noting here is the mitigation the judge uses in his dismissal of the jury. In the previous sequence above regarding the attempted phone experiment (see extract 5.9, lines 21-2) the dismissal of the jury is downgraded to their taking 'a break', with the unusual act of attempting a phone call mitigated through the use of humour. In this extract, it is described as a 'technical ruling' and the jury are explicitly told not to 'concern' themselves

with it. In this is an orientation to the institutional roles being enacted, with the judge stating this is ‘my job not yours’ (line 4). The judge also explicitly refers to previewing the testimony prior to its presentation to the jury (lines 32-3). In this, the term ‘technical’ orients to the determination of whether or not the testimony is objectionable. Thus, ‘technical’ refers to the technicalities of legal discourse as applied by the rules of evidence.

The interactional orientation to specific roles perpetuates and reaffirms the contextual setting of the institution through directly referencing the overall circumstance in which the utterance occurs. In this, as put forward by Conversation Analysis, the institutional context is both context-shaped and context renewed (Goodwin and Duranti, 1992). Another remark to be made on this sequence is the positioning of the judge in comparison with the jury. The judge directs the jury and is recognised as having a legitimate authority over them (no one on the jury can be heard to make an active dissent or challenge the claim of the judge to this position). In this, there is no perceivably overt act of resistance in the establishment of a power relationship, but there is evidence to support the claims within criminology that legitimation occurs through a conditional relationship between those who make a claim to that position and those who abide by it (or resist) (Bottoms and Tankebe, 2012). In this instance, the jury can be heard to leave the room as directed by the judge.

The judge’s vocabulary also explicitly asserts the claim to authority through the institutional role (thus also realising this role through discourse). The judge’s position within the turn is also interesting to note. In lines 4-8 the use of ‘I’ and ‘we’ shifts. The initial ‘I’m gonna have to excuse you’ is actionable (despite being mitigated by the use of ‘have to’) in that the jury are being dismissed and supports the approach to communication as ‘doing’ (ref). This then shifts to ‘what we’re gonna do is’; that then immediately becomes ‘I’m gonna let you...’; before again referencing ‘while we...’. The use of ‘I’ and ‘you’ appears to be straightforward in denoting the judge (‘I’) and the jury (‘you’) in terms of who is being

referenced. The use of ‘we’, however, seems slightly more complicated than might be supposed on an initial viewing. ‘We’ appears to denote the judge and counsel, but line 6 appears to leave this as inconclusive. It could be read as a self-initiated self-repair (ref), whereby the shift from ‘we’ to ‘I’ is indicative of a correction within the turn. This could be supported by the use of ‘while we do that’, which could indicate the parties who will be involved in the aforementioned ‘technical’ issue. ‘While we do that’ in reference to the previous use of we also reads as vague and incomplete, given that ‘that’ has not been stipulated, but potentially corrected to ‘I’. In unpicking this, the orientation of ‘we do that’ appears to connect to the inferred discussion needed to make the technical ruling. However, ‘we’ is not directly oriented to and thus remains in a somewhat ambiguous position since readings could include ‘we’ as referencing the embodiment of the state, a generalisation, or other participants in ruling.

In the following extract is the testimony of Heidi Schumacher, as mentioned above. It is worth noting that the testimony of this witness was only subject to *voir dire* for the trial of Grant Hayes and not that of Amanda Hayes.

Extract 5.19

1 JUD i'm going to advise (.) at the bench↓ that (5.1) u:m
(5.5)
2 the witness now on the stand heidi uh schma-macher↓
(3.8)
3 uh is a witness that (3.4) has informa↑tion uh
4 reference to: (2.1) >what we refer to as four-oh-four-
5 bee evidence that< hh dealing with (2.4) uh other a:cts
6 that might constitute (.) cri:mes .hh for which the

7 defendant's not charged
...
9 of any such evidence< (3.2) and since the witness
10 is here it would see- and the jury is ou:t it
11 would seem appropriate uh- and since she's on the
12 stand to (1.7) to elicit (1.8) what that (.) evidence
13 would entai:l an- so i can (.) >be in a< (.) position
14 to make some ruling >on it< in the event that the state
15 (.) decides (.) at this time or sometime later during
16 the trial to offer that evidence

As with the previous extract, the preview of testimony is explicitly oriented to by the judge as being required through the possibility of it containing objectionable material that is not permitted under the rules of evidence. The evidence here is stipulated as relating to crimes that the defendant has not been charged with.

The closing aspect of the testimony of Heidi Schumacher will now be analysed, as this was pertinent to the thesis in that it presented evidence of interaction between the representatives of the state, the individual, and displays tailoring of the narrative outside the presence of the jury as in interactive and relational process.

Extract 5.20

476 JUD otherwise admissible and so↑ (1.2) u:h (0.5) your
477 objection is noted↑ (.) the objection is overru:led
478 (0.6) the: evidence is admissable (0.7) save and
479 except .hh uh and um (1.5) miss (ADA1) i- i instruct

480 you to take c- care and caution how you↑ (.) a-address
481 (1.3) the (.) incident in which there was a: (0.6)
482 injury to the victim's no:se in (.) two thousand and
483 ei↑ght↓ .hh uh i don't want this (.) witness (1.3)
484 saying what the um (3.1) what the victim said to her↑
485 about how that happened .hh or what she did or didn't
486 intend to do↑ about it↓ (1.1) u:m unless the
487 *defendant's counsel asks questions
*(points finger at defence))
488 that specifically elicit that information .hh (1.0)
489 but the state↑ can't offer it (1.1) .hh all right hh
490 >anything else<
491 ADA1 your honour >can i< um (0.7) miss ***** do you
492 understand that that that you can't (.) cannot
493 with regard to the the incident ()
494 talk about anything that laura (.) had to
495 say to you↓
496 WIT can i [say anything]
497 JUD [after she arrived]
498 ADA1 after[you arrive ()]
499 WIT [after i arrive=]
500 JUD [after you arrive ()]
501 WIT [= ()] the phone call
502 JUD [i mean you can say what] um you=
503 WIT [=is that still relevant↑]
504 JUD =certainly are permitted to testify: as to your

505 telephone conversation .hh u:h in which you
506 could hear the defendant >as i understand it
507 you could hear the defendant in the background
508 so<
509 WIT yes
510 JUD okay so he was in a position to be able to hear
511 .hh what she was saying to you↑
512 WIT yes
513 JUD all right (0.5) .hh uh you can testify to that but
514 after arrIving at the location you can say what
515 you SAW (0.8) u:h and you can describe (.) the u:m
516 (2.4) uh the condition of the vic↑tim↓ (.) you can say
517 what you↑ said (0.3) °but you can't say what she
518 said↓°
519 WIT okay=
520 JUD =all right↑
521 WIT yes

The judge's ruling in this extract takes place in lines 476-490, including the caveat through which the evidence could *become* permissible, but only in relation to cross-examination by the defence (which was what occurred in jury's presence, as mentioned above). The ADA takes the floor in line 491, orienting to the judge's question of 'anything else'. Though initially addressing the judge, the ADA presents a clarification question to the witness in determining whether or not she has understood the limitations on her testimony. Interestingly, the witness begins to ask a question in response (line 496), thereby not directly fulfilling the response aspect of the question-answer adjacency pair, but arguably giving a negative

response through the use of a clarification question in lieu of a closed yes or no. After initiating the question, the judge overlaps with ‘after she arrived’ (line 497) in what can be viewed as anticipating the question. The use of ‘arrive’ is then echoed in lines 498-500 by the ADA, the witness and finally the judge. The extensive overlapping at this point results in the judge speaking in parallel with the witness (lines 496-7), the witness speaking in parallel with the ADA (lines 498-99) and the judge speaking again in parallel with the witness (lines 500-1). Throughout this sequence however, there is an orientation towards co-operation within the talk, where this repetition could be viewed as shadowing (Tannen, 1989). Tannen states that shadowing is automatic within conversation and occurs in sequences with overlaps such as the one evidenced here in lines 497-500. She also puts forward that this can be ‘co-operative and rapport building rather than interruptive’ (Tannen, 1989: 89). In the aspects of courtroom interactions analysed in this study, there has been little evidence of sequences such as this in the presence of the jury – and not with the participation of the judge.

With this co-operation one can also see the reframing of the narrative so that it can be produced in an institutionally acceptable way for the jury. Thus, even though the judge limits what can be said and this authority is legitimised *in situ* by the participants, the resulting version of the witness’ testimony (as a personal narrative (Schiffrin, 2006) that has been deemed relevant to the context of the trial) is co-constructed between the judge, witness and questioning attorney. The judge completes this sequence with clarifying the presence of the defendant (lines 510-11) before delivering a complete clarification of what can and cannot be said. This turn (lines 513-18) is not co-operatively constructed and is uninterrupted throughout. It does not repeat the ruling-reason formula found in lines 476-89, but seems to orient towards the witness. That being said, again, this could potentially (and only potentially) serve a dual purpose in that it explicitly restates what the limitations are for the

benefit of the witness, but also outlines them in an uninterrupted turn that will be ‘on the record’; however, there is no additional evidence to support this conjecture.

5.5 Final remarks

A theme across all the elements discussed in this chapter is the absence of the jury when material arises that is deemed objectionable by one side or another. The active participation of the judge in this process contrasts with that in the jury’s presence. In addition, in dismissing the jury there is some evidence to indicate that this not overly remarked upon, though reasons as to why would only be speculative at this stage and are beyond the scope of this study. Whether this is a theme across courtroom data, or merely specific to those interactions analysed in this study is a matter for further exploration and a limitation both of this analysis and dataset.

The explicit orientation to knowledge and understanding is a key element of this chapter, as it defines the rules of evidence in terms of the judge’s role as adjudicator not only between both sides, but also as the recognised authority of what is and is not permissible under law. The adversarial aspect of the adversarial system is not only enacted in the presence of the jury, but the judge allows scope to be ‘convinced’ of the relevance of admissibility of evidence. Thus, each side is presented with an opportunity to present its stance.

In terms of the narrative impact, the judge is in a position to orient to specific aspects of the testimony and limit what is allowable in front of the silent participant. As can be seen in extract 5.20, the judge engages actively with the witness to ensure her understanding of the limits on her testimony. This should not be overextended, however, for this is not to say that

witnesses always engage in this way in this setting, but does demonstrate that the witness maintains a discursive power in that she is permitted to speak more freely outside the presence of the jury (and has been tacitly invited to do so by the ADA, lines 491-5). This also brings to bear the institutional role of jury as one which has a legitimate authority outside of the role of passing judgement. It could be argued that certain institutional norms become contextually relevant in the presence of the jury. To further opine on this train of thought, the concept of institutional norms and roles are determinate in the sense of a legitimised and acknowledged mode of behaviour that is deemed acceptable within that legal setting, however; the setting itself is reflexive in that not all pre-conceived norms are fully established unless certain participants are present. This builds on Atkinson and Drew (1979), whereby the ritual aspects of the coroner's arrival were structurally significant. In this data, it is argued that the presence of the jury impacts upon interaction, bringing about what are more commonly viewed as the institutional norms of courtroom interaction. This is not to say that such norms are wholly absent when the jury is not present (the attorneys, for example, are censured at one point in Grant Hayes' trial for talking to one another rather than speaking through the judge), but much as law is deemed to be both determinate and reflexive in this thesis, so are the interactions that take place within it. This allows for the negotiated space in which authority as recognised through institutional role can be discursively balanced within the interactions themselves (Thornborrow, 2002).

In addressing the three research questions, this chapter evidences the personification of the legal discourses of the 'state' as represented by the judge, rather than in the role of the prosecution. In this manner, the judge interacts with individuals in a capacity wholly removed from the prosecution, highlighting the theory of the state not as one fixed overarching 'entity', but as a range of discourses legitimised and bound together under a common label (see 1.2; Gordon, 1980). The judge's position of institutional authority as physically and

interactionally situated within the discourse is legitimised through its recognition and being oriented to by the other participants.

Linguistic formulations have been identified within these interactions, particularly as regards the reason-ruling formula employed by the judge. This orientation both to the present and present-as-future in articulating the decision and reasoning behind it is of particular interest in terms of how these institutional devices are structured in this setting. Further to this is the direct orientation both to legal discourses (particularly those discourses as bound by the term 'relevance' and the rules of evidence) and the judge's knowledge and understanding. The orientation to knowledge and understanding is therefore viewed as having a dual function in orienting to both the judge's own personal knowledge and understanding of the situation, and that of the legal discourses described above.

In ascertaining power relations in this setting, the dynamics between participants, whilst still regulated, show a marked difference in comparison to communicative exchanges made in the presence of the jury. The floor is primarily held by the judge and shows increased activity in terms of overlapping talk. Where overlaps occur, they appear to be primarily through interjections by the judge himself, or through co-constructed conversation between participants. Witnesses are in a position whereby further clarification can be sought from the judge directly.

This last analysis chapter draws together the final aspects of narrative being explored within this study, explicitly orienting to acceptable and unacceptable aspects of testimony and consequently editing what the jury is permitted to hear. In addition to this, as introduced in Chapter 2, narrative as a macro-level discourse that is threaded through the micro-level interactions is also explored in the attempted phone experiment, showing how narrative potential and projection can be redirected and subverted as a consequence of courtroom procedure.

Having concluded the final analysis chapter of this project, the following section will present the overall conclusions for this project. This will bring together the core findings and main themes across all three analysis chapters as they relate to one another, the research questions, and address the overall purpose of this study.

Chapter 6: Conclusions

In 2.2 of this thesis the following research questions were introduced:

1. In what particular ways do the state and the individual communicate with each other in the trials of Grant and Amanda Hayes?
2. What functions do these patterns serve in these interactions?
3. How are power relations between the individual and the state established and represented in these interactions (including narrative (co)construction, subversion, statement interpretation, and (re)direction of subject matter)?

Within these questions, the theme of narrative and the interplay between agenda, macro-narrative, and micro-interactions provided the conceptual and methodological underpinnings to analyses.

In presenting conclusions the findings for each of these questions will be summarised from all three analysis chapters, and links between each of the chapters will also be explicitly presented. Finally, the overall contribution of this study will, as outlined in the introduction will be revisited in light of these conclusions.

In addressing the research questions, the state was viewed as a disparate array of discourse unified and legitimised through nodes of power, along with the individual as one who testifies in court without being party to a role that claims ‘state’ representation.

The cross-examination of Amanda Hayes contributed to previous findings in the field of linguistics in the pre-allocation of turns vis-à-vis institutional role and reformulations of witness answers whereby they are reframed by the questioner into a narrative-conforming response (Heritage, 1985). Findings also included limited instances of self-selection and of

the defendant (as a witness on her own behalf) maintaining the floor and disrupting the question and answer sequencing. In each instance of self-selection, it was found that this was preceded by a pause that followed on from the defendant's response to a question. With no verbal indication (that should be a prerequisite for the record) that the defendant should continue or an overt orientation to the response as inadequate, she self-selects and voluntarily proffers an elaboration on the previous turn.

This chapter also highlighted that through interactions, asymmetry could be evidenced (Hutchby, 1999), but also determined that there was a level of negotiation that supports the concept of power as relational (Thornborrow, 2002). These power relations were evidenced through institutional roles, but through discursive space created within the interactions. There remained a limiting factor on this based on the restrictions of the trial framework, however, which also supports Thornborrow's (Ibid) observation that institutional roles that are granted legitimacy have more resources to control the interaction than those who do not.

The interactions within the defence were explicitly oriented to both the agenda and the narrative, with the conflicting co-construction of each sides' narrative forming an interesting example of resistance within talk, whilst still formulating two versions of the same story from the same interaction.

In the opening statements across both trials, the monologic introduction of the narrative was presented to the jury by a single speaker. These presentations formed the basis for the narratives from which all following interactions were formed. This was linked with the previous chapter as the basis upon which micro-level interactions were grounded. Despite the high level of cross-over between both trials, it was found that there was a significant shift in focus in each of the prosecution's opening statements and both defence teams invoked very different strategies in their openings. For example, the prosecution focussed on the alleged

confession through reported speech of Amanda Hayes, whereas there was a focus on the victim, Laura Ackerson, and familial roles of mother and father invoked in the opening statement for Grant Hayes. The defence for Grant Hayes humanised him and normalised his alleged behaviour during the custody dispute, whereas the defence for Amanda Hayes focussed on Grant Hayes as a deviant personality and positioning Amanda Hayes as another victim, alongside Laura Ackerson. The micro- and thematic analyses displayed what each speaker oriented to and how this was legitimised. The power relations within this chapter were determined less through interactive process, but were based more on the salience given to each topic and who, within the narrative, claimed an epistemic stance that attempted to position their narrative as the most valid and credible.

The analysis of the interactions in the jury's absence viewed the increased activity of the judge and the representation of the 'state'. Linguistic patterns in the rule-reasoning formula and the orientation to knowledge and understanding, both in terms of relevance and the rules of evidence, and the judge's own personal knowledge and understanding were findings within significant linguistic features. The analysis of the aborted phone experiment added to this analysis as it allowed a protracted sequence through which the importance of these aspects could be viewed in-depth. The 'previews' of testimony were also significant in that they tailor the potential narratives that can be shown to the jury and the manner in which these proceedings are conducting compared with those in the jury's presence.

The jury as the silent participant was salient throughout, as they were consistently explicitly referred to and oriented to in talk. This characterisation is held to have been furthered through this research and builds upon foundations laid by Carter (2011).

The conceptual model between the three-levels of discourse was relevant throughout this thesis. The micro-level interactions were a consequence of and a pre-requisite for the

macro-level narrative and the agenda. Although the realisation of the agenda was dependant on the decision of the jury (as they determine whether the defendants are found guilty or not guilty, thus realising the agenda for one of the two adversarial sides), its existence as an overarching goal was the guiding force for determining the narrative strategy and the micro-interactions. The macro-narrative and was both a determining factor for the existence of the agenda (rather than, for example, a different plea) and guided the micro-level interactions. The micro-level interactions were relevant in determining the relevance and realisation of the narrative for the jury and were the vehicle for the potential actualisation of the agenda.

Macro-level societal discourses were also discussed as they were made relevant by the interactions themselves, such as Laura Ackerson as a mother and familial discourse and the portrayals of Amanda Hayes as another victim in this case. By only referencing those discourses that emerged from the data, this thesis holds that it is possible for micro- and macro- level discourses to cooperate with and complement one another within analysis without falling victim to overt applications of *a priori* conceptualisations in a top-down approach.

There are limitations to this study, which have been mentioned at various points throughout. This study cannot determine whether or not the behaviours highlighted herein are general practices within courtrooms more widely, as this was a qualitative study between two trials that only allows for a localised comparison. Consequently, further research could expand upon this in the development and analysis of a wider corpus of interactions from a more diverse sample of trials to attempt to discover whether the features discussed here are restricted to these particular trials, or are relevant to wider institutional courtroom practice.

Related to the point above, the interactions of individual interlocutors also cannot be generalised beyond the remit of this study. The grounds for this being that speakers may be

‘performed’ these interactions for the specific purpose of this trial, and as such, general attributions based on assumed normative behaviour cannot be made without viewing a larger sample of the individual speakers across different trial settings.

A further limitation is the inability of this study to determine whether (or not) the linguistic strategies discussed had an impact on the jury’s decision and the extent to which the image management viewed within interactions was ‘received’ or oriented to by the silent participant as part of their judgement formation. To expand in this direction in the future would require access to both trial footage and jury members that was beyond the scope of this thesis.

Future research for these data includes, a comparison of the testimony in the *voir dire* when being previewed by the judge, to its delivery to the jury *in situ* and whether or not there are any discernible differences in the relation of the narrative in (aside from any restrictions from instructions) in how the interactions unfold. Additionally, a detailed comparison of both the opening and closing statements across both trials would build on the research of Chapter 4 in terms of both narrative analysis and comparison; and as other speakers from the prosecution and defence teams contribute to the closing statements, thereby widening the participant pool. In broader terms, as this study was focussed narrowly on two trials, both using the adversarial system found in the United States of America and the United Kingdom (amongst others), another point of comparison for future research is that of the inquisitorial system (found, for example, in France and Italy, *inter alia*). This would provide the potential for research not only between trials within that system, using the same conceptual foundation as applied to this thesis, but also between systems. In terms of theoretically based future research, this further analytical work can be done regarding the use of Foucaultian discourse analysis and how subject positions are produced (and reproduced) in courtroom settings

(including the judge, defendant, witnesses, inter alia), which was beyond the current scope of this thesis.

This work has contributed to the fields of criminology and linguistics in the following ways. Firstly, the theoretical contribution of this thesis can be seen through the application of the three-level conceptual methodology; providing a framework for the inter-linked concepts of the agenda, macro-level narrative and micro-level interactions and how these influence and are influenced by one another. In building on previous research (Cotterill, 2003; Heffer, 2010; Matoesian, 1999; 2001; inter alia), this triangulation of data allowed for a detailed and rich analysis, whilst allowing findings to emerge from the data through an inductive approach. Further to this was the application of Ricoeur (1980) as the basis for narrative analysis. Using Ricoeur's approach to narrative time and sequencing allowed for a more reflexive approach to the narrative of a courtroom. The narrative as presented in the opening statements was not necessarily well-suited to a pre-existing narrative schema (such as Labov [1972] as discussed in sections 2.3 and 4.1.1). In applying the episodic dimension of Ricoeur (1980: 178), which 'characterises the story as made out of events', individual events were identified as delineated by interlocutors in the opening statements through narrative coding; the 'plot' provided a retrospective coherency for these 'scattered events', using the concept of the configurational dimension. This application of Ricoeur contributes an alternative approach than has been used in previous studies of trial narratives (Cotterill, 2003; Heffer, 2005; Heffer, 2010; inter alia).

The empirical contribution of this work lies in its use of two trials that were closely related and were of the same type (both were criminal trials, rather than a comparison of criminal and civil); referring to the same homicide; having the same judge and prosecution team; and using the majority of the same evidence. Through this, the use of language, and the ways in which the speakers developed and framed the same facts in different ways was

demonstrated. This work also contributed to the areas of research into opening statements and interactions in the absence of the jury, both of which are still developing research domains.

This study has the potential to contribute to actual data that can be used to talk about how trials take place. Given the popularity of crime and legal dramatizations, there can be misconceptions surrounding how the legal system functions and the expectations members of the public then have for what will take place. In having research using genuine trial data, this can help the public to understand a system and processes that are often inaccessible or impenetrable through a lack of information and the additional complexities of legal jargon that can be a 'false friend' or misleading in comparison to everyday uses of such terms (O'Barr, 1982).

In outlining the potential impact of this research beyond the academic domain, there is scope for this study to inform potential participants who are preparing to take part in a court process; for example, the preparation of lay witnesses who have never been part of a trial before and have limited knowledge of what to expect. This would be in line with the application of legal research used to inform training and as part of workshops, such as those undertaken by Professor Stokoe and the application of CARM (Conversation Analytic Role-play Method) for mediation and police training (2014).

Finally, as outlined above, this thesis presents an original contribution to knowledge in a growing interdisciplinary field, and has demonstrated its potential value and impact on wider society.

References

- Ainsworth, J. (2011) 'The construction of admissions of fault through American rules of evidence: Speech, silence and significance in the legal creation of liability', in Wagner, A. and Cheng, L. *Exploring courtroom discourse: The language of power and control*. Abingdon: Routledge. 177-192.
- Ahlen, M. J. (1995) 'Opening statements in jury trials: What are the legal limits', *North Dakota Law Review*, 71, 701-720.
- Atkinson, J. M. and Drew, P. (1979) *Order in court: The organisation of verbal interaction in judicial settings*. Basingstoke: The Macmillan Press Ltd.
- Barge, K. J., Schlueter, D. W. and Pritchard, A. (1989) 'The effects of nonverbal communication and gender on impression formation in opening statements', *Southern Communication Journal*, 54(4), 330-349.
- Beach, W. A. (2013) 'Conversation Analysis and communication', in Sidnell, J. and Stivers, T. *The handbook of Conversation Analysis*. Chichester: Blackwell Publishing Ltd. 674-87.
- Bennett, W. L. and Feldman, M. S. (1981) *Reconstructing reality in the courtroom*. London: Tavistock Publications Ltd.
- Benwell, B. and Stokoe, E. (2006) *Discourse and identity*. Edinburgh: Edinburgh University Press.
- Berger, A. A. (1997) *Narratives in popular culture, media and everyday life*. Thousand Oaks: Sage Publications, Inc.
- Berns, S. S. (1992) 'Regulation of the family: Whose interests does it serve?'. *Griffith Law Review*, 1(2), 152-209.
- Blackburn, R. (1988) 'On moral judgements and personality disorders. The myth of psychopathic personality revisited', *The British Journal of Psychiatry*, 153, 505-512.
- Bottoms, A. and Tankebe, J. (2012) 'Beyond procedural justice: A dialogic approach to legitimacy in criminal justice', *The Journal of Criminal Law and Criminology*, 102(1), 119-170.
- Brooks, P. and Gerwitz, P. (eds.) (1996) *Law's stories: narrative and rhetoric in the law*. London: Yale University Press.
- Campbell, E. (2003) 'Interviewing men in uniform: A feminist approach?', *International Journal of Social Research and Methodology*, 6(4), 285-304.

- Campbell, E. (2004) 'Police narrativity in the risk society', *British Journal of Criminology*, 44, 695-714.
- Carter, E. (2011) *Analysing police interviews: Laughter, confessions and the tape*. London: Bloomsbury Academic.
- Chermak, S. and Weiss, A. (2005) 'Maintaining legitimacy using external communication strategies: An analysis of police-media relations', *Journal of Criminal Justice*, 33, 501-512.
- Clift, R. (2006) 'Indexing stance: Reported speech as an interactional evidential', *Journal of Sociolinguistics*, 10(5), 569-595.
- Conley, J. M. and O'Barr, W. M. (1998) *Just words: Law, language and power*. (1st ed.) Chicago: University of Chicago Press.
- Conley, J. M. and O'Barr, W. M. (2005) *Just words: Law, language and power*. (2nd ed.) Chicago: University of Chicago Press.
- Cotterill, J. (2003) *Language and power in court: A linguistic analysis of the O. J. Simpson trial*. Basingstoke: Palgrave Macmillan.
- Cotterill, J. (2004) 'Just one more time': Aspects of intertextuality in the trials of O. J. Simpson', in Cotterill, J. (ed.) *Language in the legal process*. Basingstoke: Palgrave Macmillan. 147-161.
- Cotterill, J. (ed.) (2004) *Language in the legal process*. Basingstoke: Palgrave Macmillan.
- Cotterill, J. (ed.) (2007) *The language of sexual crime*. Basingstoke: Palgrave Macmillan.
- Coulmas, F. (1986) 'Reported speech: Some general issues', in Coulmas, F. (ed.) *Direct and indirect speech*, Berlin: Mouton de Gruyter.
- Coulthard, M. and Johnson, A. (eds.) (2010) *The Routledge handbook of forensic linguistics*. Abingdon: Routledge.
- Couldry, N. and Markham, T. (2006) 'Public connection through media consumption: Between oversocialization and de-socialization', *Annals of the American Academy of Political and Social Science*, 608, 251-269.
- Cushner, Q., Hartley, R., and Parker, D. (2009) 'Spreading the news: Communicating with the media during high-profile trials', *Judicature*, 93(2), 52-61, 82.
- De Fina, A. and Georgakopoulou, A. (2012) *Analyzing narrative: Discourse and sociolinguistic perspectives*. Cambridge: Cambridge University Press.

- Dershowitz, A. M. (1996) 'Life is not a dramatic narrative', in Brooks, P. and Gerwitz, P. (eds.) *Law's stories: narrative and rhetoric in the law*. London: Yale University Press. 99-105.
- Drew, P. (1992) 'Contested evidence in courtroom cross-examination: the case of a trial for rape', in *Talk at work: interaction in institutional settings*. Cambridge: Cambridge University Press. 470-520.
- Drew, P. and Heritage, J. (1992) 'Analysing talk at work: An introduction', in *Talk at work: interaction in institutional settings*. Cambridge: Cambridge University Press. 3-65.
- Eades, D. (1996) 'Legal recognition of cultural differences in communication: The case of Robyn Kina', *Language and Communication*, 16(3), 215-227.
- Eades, D. (2004) "'Evidence given in unequivocal terms": Gaining consent of young aboriginal people in court', in Cotterill, J. (ed.) *Language in the legal process*. Basingstoke: Palgrave Macmillan. 162-179.
- Ehrlich, S. (1990) *Point of view: A linguistic analysis of literary style*. Abingdon: Routledge.
- Ehrlich, S. (2001) *Representing rape: Language and sexual consent*. Abingdon: Routledge.
- Ehrlich, S. (2015) 'Narrative, institutional processes, and gendered inequalities', in De Fina, A. and Georgakopoulou, A. *The handbook of narrative analysis*. Chichester: John Wiley and Sons, Inc.
- Ehrlich, S. (2016) 'Post-penetration rape: Coercion or freely given consent?', in Ehrlich, S., Eades, D., and Ainsworth, S. (eds.) *Discursive constructions of consent in the legal process*. Oxford: Oxford University Press. 47-70.
- Ehrlich, S. and Sidnell, J. (2006) "'I think that's not an assumption you ought to make": Challenging presuppositions in inquiry testimony', *Language in Society*, 35(5), 655-676.
- Fanning, D. (2016) *Bitter remains: A custody battle, a gruesome crime, and the mother who paid the price*. New York: Berkley.
- Ferguson, R. (1996) 'Untold stories in the law', in Brooks, P. and Gerwitz, P. (eds.) *Law's stories: narrative and rhetoric in the law*. London: Yale University Press. 84-98.
- Foucault, M. (1977) *Discipline and punish: The birth of the prison*. London: Penguin Books Ltd.
- Foucault, M. (1982) 'The subject and power', *Critical Inquiry*, 8(4), 777-795.

- Friendly, A. and Goldfarb, R. L. (1967) *Crime and publicity: The impact of news on the administration of justice*. New York: The Twentieth Century Fund.
- Gerwitz, P. (1996) 'Victims and voyeurs: Two narrative problems at the criminal trial', in Brooks, P. and Gerwitz, P. (eds.) *Law's stories: narrative and rhetoric in the law*. London: Yale University Press.
- Goffman, E. (1981) *Forms of talk*. Philadelphia: University of Pennsylvania Press.
- Golder, B. and Fitzpatrick, P. (2009) *Foucault's law*. Abingdon: Routledge.
- Gordon, C (ed.) (1980) *Michel Foucault: Power/knowledge: Selected interviews and other writings 1972-1977*. Harlow: Prentice Hall.
- Green, S. P. (2013) 'Cheating', *The international encyclopaedia of ethics*. Chichester: Blackwell Publishing Ltd.
- Harris, S. (2001) 'Fragmented narratives and multiple tellers: Witness and defendant accounts in trials', *Discourse Studies*, 3(1), 53-74.
- Harris, S. (2005) 'Telling stories and giving evidence: The hybridisation of narrative and non-narratives modes of discourse in a sexual assault trial', in Thornborrow, J. and Coates, J. (eds.) *The sociolinguistics of narrative*. Amsterdam: Benjamins Publishing Co. 215-237.
- Haworth, K. (2006) 'The dynamics of power and resistance in police interview discourse', *Discourse and Society*, 17(6), 739-759.
- Heffer, C. (2005) *The language of jury trial: A corpus-aided analysis of legal-lay discourse*. Basingstoke: Palgrave Macmillan.
- Heffer, C. (2010) 'Narrative in the trial: Constructing crime stories in court', in Coulthard, M. and Johnson, A. *The Routledge handbook of forensic linguistics*. Abingdon: Routledge. 199-217.
- Henderson, E., Heffer, C., and Kebell, M. (2016) 'Courtroom questioning and discourse', in Oxburgh, G., Myklebust, T., Grant, T., and Milne, R. (eds.) *Communication in investigative and legal contexts: Integrated approaches from forensic psychology, linguistics and law*. Chichester: John Wiley and Sons, Ltd. 181-208.
- Hepburn, A. and Bolden, G. B. (2013) 'The conversation analytic approach to transcription', in Sidnell, J. and Stivers, T. (eds.) *The handbook of Conversation Analysis*, Chichester: Blackwell Publishing Ltd. 57-76.
- Heritage, J. (1984) *Garfinkel and ethnomethodology*. Oxford: Polity Press.

- Heritage, J. (1985) 'Analyzing news interviews: Aspects of the production of talk for an "overhearing" audience', in Van Dijk, T. A. (ed.) *Handbook of discourse analysis*. Vol 3. London: Academic Press.95-119.
- Heritage, J. and Clayman, S. (2010) *Talk in action: interactions, identities, and institutions*. Chichester: John Wiley and Sons.
- Heritage, J. and Raymond, G. (2012) 'Navigating epistemic landscapes: acquiescence, agency and resistance in responses to polar questions', in de Ruiter, J. P. (ed.) *Questions: Formal, functional and interactional perspectives*. Cambridge: Cambridge University Press. 179-192.
- Holt, E. (1996) 'Reporting on talk: The use of direct reported speech in conversation', *Research on Language and Social Interaction*, 29(3), 219-245.
- Hunt, A. and Wickham, G. (1994) *Foucault and law: Towards a sociology of governance*. London: Pluto Press.
- Hutchby, I. (1996) *Confrontation talk: Arguments, asymmetries, and power on talk radio*. New York: Routledge.
- Hutchby, I. (1999) 'Beyond agnosticism: Conversation Analysis and the sociological agenda', *Research on Language and Social Interaction*, 32, 85-93.
- Hutchby, I. (2001) "'Witnessing': The use of first-hand knowledge in legitimating lay opinions on talk radio", *Discourse Studies*, 3(4), 481-497.
- Hutchby, I. and Wooffitt, R. (2008) *Conversation analysis*. (2nd ed.) Cambridge: Polity Press.
- Imwinklerried, E. J. (1988) 'The meaning of probative value and prejudice in Federal Rule of Evidence 403: Can Rule 403 be used to resurrect the common law of evidence?', *Vanderbilt Law Review*, 41(5), 879-908.
- Jackson, B. S. (1988) *Law, fact and narrative coherence*. Liverpool: Deborah Charles Publications.
- Jefferson, G. (1984) 'On stepwise transition from talk about trouble to inappropriately next-positioned matters', in Atkinson, J. M. and Heritage, J. (eds.) *Structures of social action*. Cambridge: Cambridge University Press. 191-222.
- Jenks, C. J. (2011) *Transcribing talk and interaction*. Amsterdam: John Benjamins Publishing Co.
- Jewkes, Y (2011) *Media and Crime* (2nd ed.). London: Sage Publications Ltd.

- Keyes, M. and Burns, K. (2002) 'Contract and the family: Whither intention?', *Melbourne University Law Review*, 26, 577-595.
- Komter, M. (2013) 'Conversation Analysis in the courtroom', in Sidnell, J. and Stivers, T. (eds.) *The handbook of Conversation Analysis*, Chichester: Blackwell Publishing Ltd.
- Kotha, S., Shivaram, R., and Rindova, V. (2001) 'Reputation building and performance: An empirical analysis of the Top-50 pure internet firms', *European Management Journal*, 19(6), 571-586.
- Labov, W. (1972) *Language in the inner city*. Philadelphia: Philadelphia University Press.
- Liddicoat, A. J. (2011) *An introduction to Conversation Analysis*. London: Continuum International Publishing Group.
- Lucas, J. R. (1991) 'Opening statement', *University of Hawai'i Law Review*, 13, 349-371.
- Matoesian, G. M. (1993) *Reproducing rape: Domination through talk in the courtroom*. Cambridge: Polity Press.
- Matoesian, G. M. (1999) 'The grammaticalization of participant roles in the constitution of expert identity', *Language in Society*, 28, 491-521.
- Matoesian, G. M. (2001) *Law and the language of identity: Discourse in the William Kennedy Smith rape trial*. New York: Oxford University Press, Inc.
- Matoesian, G. M. (2005) 'Nailing down an answer: Participations of power in trial talk', *Discourse Studies*, 7(6), 733-759.
- Maynard, D. W. (1984) *Inside plea bargaining: The language of negotiation*. London: Plenum Press.
- McBarnet, D. J. (1981) *Conviction: Law, the state and the construction of justice*. London: The Macmillan Press Ltd.
- McCaul, K. (2011) 'Understanding courtroom communication through cultural scripts', in Wagner, A. and Cheng, L. *Exploring courtroom discourse: The language of power and control*. Abingdon: Routledge. 11-28.
- Mirchandani, R. (2006) "'Hitting is not manly": Domestic violence court and the re-imagination of the patriarchal state', *Gender and Society*, 20(6), 781-804.
- Mishler, E. G. (2006) 'Narrative and identity: The double arrow of time', in De Fina, A, Schiffrin, D., and Bamberg, M. (eds.) *Discourse and identity*. Cambridge: Cambridge University Press.

- Moetski, R. (2004) 'Understanding the other: A case of mis-interpreting culture-specific utterances during alternative dispute resolution', in Cotterill, J. *Language in the legal process*. Basingstoke: Palgrave Macmillan. 196-212.
- Molloy, E. (2009) 'Time to pause: giving and receiving feedback in clinical education', in Delany, C. and Molloy, E. (eds.) *Clinical education in the health professions*. Chatswood: Elsevier Australia. 217-245.
- Myers, G. (2004) *Matters of opinion: Talking about public issues*. Cambridge: Cambridge University Press.
- O'Barr, W. M. (1982) *Linguistic evidence: Language, power, and strategy in the courtroom*. New York: Academic Press Inc.
- O'Neill, J. (1986) 'The disciplinary society: From Weber to Foucault', *The British Journal of Sociology*, 37(1), 42-60.
- Peelo, M. (2005) 'Crime and the media: Public narratives and private consumption', in Peelo, M. and Soothill, K. *Questioning crime and criminology*. Cullompton: Willan Publishing. 20-36.
- Perloff, R. (2014) *The dynamics of persuasion: communication and attitudes in the 21st century*. New York: Routledge.
- Pomerantz, A. (1984) 'Pursuing a response', in Atkinson, J. M. and Heritage, J. (eds.) *Structures of social action*. Cambridge: Cambridge University Press. 152-166.
- Powell, G. R. (2001) 'Opening statements: The art of storytelling', *Stetson Law Review*, 31, 89-104.
- Prevignano, C. and Thibault, P. J. (2003) *Discussing conversation analysis: The work of Emanuel A. Schegloff*. Amsterdam: John Benjamins Publishing Co.
- Raymond, G. (2003) 'Grammar and social organization: Yes/no interrogatives and the structure of responding', *American Sociological Review*, 68(6), 939-967.
- Ricoeur, P. (1980) 'Narrative Time', *Critical Inquiry*, 7(1), 169-90.
- Riessman, C. K. (1993) *Narrative analysis*. London: Sage Publications, Ltd.
- Rosulek, L. F. (2010) 'Legitimation and the heteroglossic nature of closing arguments', in Schiffrin, D., De Fina, A., and Nylund, A. (eds.) *Telling stories: Language, narrative and social life*. Washington D. C.: Georgetown University Press. 181-194.

- Rothman, B. K. (1994) 'Beyond mothers and fathers: Ideology in a patriarchal society', in Glenn, N. K., Chang, G., and Forcey, L. R. (eds.) *Mothering: Ideology, experience, and agency*. Abingdon: Routledge.
- Rudolph, S. H. (2006) 'Weber and Foucault: Convergences and divergences', *International Political Science Association Meetings*, Fukuoka, Japan, July 2006.
- Sacks, H., Schegloff, E. A., Jefferson, G. (1974) 'A simplest systematics for the organization of turn-taking for conversation', *Language*, 50(4), 696-735.
- Saldaña, J. (2016) *The coding manual for qualitative researchers*. London: Sage Publications Ltd.
- Sales, A. (1991) 'The private, the public and civil society; Social realms and power structures', *International Political Science Review*, 12(4), 295-312.
- Sellers, D. A. (2008) 'The circus comes to town: The media and high profile trials', *Law and Contemporary Problems*, 71, 181-199.
- Schegloff, E. A., Koshik, I., Jacoby, S., and Olsher, D. (2002) 'Conversation Analysis and applied linguistics', *Annual Review of Applied Linguistics*, 22, 3-31.
- Schiffrin, D. (2006) *In other words: Variation in reference and narrative*. Cambridge: Cambridge University Press.
- Schirato, T., Danaher, G., and Webb, J. (2012) *Understanding Foucault: A critical introduction*. London: Sage Publications Ltd.
- Sidnell, J. and Stivers, T. (2013) 'Introduction', in Sidnell, J. and Stivers, T. (eds.) *The handbook of Conversation Analysis*, Chichester: Blackwell Publishing Ltd.
- Smith, P. and Natalier, K. (2005) *Understanding criminal justice: Sociological perspectives*. London: Sage Publications Ltd.
- Snedaker, K. H. (1986) 'Storytelling in opening statements: Framing the argumentation of the trial', *American Journal of Trial Advocacy*, 10, 15-45.
- Stepniak, D. (2004a) 'Technology and public access to audio-visual coverage and recordings of court proceedings: implications for common law jurisdictions', *William and Mary Bill of Rights Journal*, 12, 791-823.
- Stepniak, D. (2004b) 'A comparative analysis of first amendment rights and the televising of court proceedings', *Idaho Law Review*, 40, 315-349.
- Stepniak, D. (2012) *Audio-visual coverage of courts: A comparative analysis*. Cambridge: Cambridge University Press.

- Stygall, G. (1994) *Trial language: Differential discourse processing and discursive information*. Amsterdam: John Benjamins Publishing Co.
- Tannen, D. (1989) *Talking voices: Repetition, dialogue, and imagery in conversational discourse*. Cambridge: Cambridge University Press.
- Thornborrow, J. (2002) *Power talk: Language and interaction in institutional discourse*. New York: Routledge.
- Tyler, T. R. (2006) 'Psychological perspectives on legitimacy and legitimation', *Annual review of Psychology*, 57, 375-400.
- Van Leeuwen, T. (2007) 'Legitimation in discourse and communication', *Discourse and Communication*, 1(1), 91-112.
- Walker, G. (2013) 'Phonetics and prosody in conversation' in Sidnell, J. and Stivers, T. (eds.) *The handbook of Conversation Analysis*, Chichester: Blackwell Publishing Ltd, 475-491.
- Wasik, M. (1982) 'Partial excuses in the criminal law', *The Modern Law Review*, 45, 516-533.
- Wolfson, N. (1979) 'The conversational historical present alternation', *Language*, 55(1), 168-182.
- Woodhams, J. Hollin, C. R., and Bull, R. (2012) 'Behaviour displayed by female victims during rapes committed by lone and multiple perpetrators', *Psychology, Public Policy, and Law*, 18(3), 415-452.
- Woods, D. and Fassnacht, C. (2017) *Transana v2.61b*. <https://www.transana.com>. Madison, WI: Spurgen Woods LLC.

Websites:

- BBC News (2013) *Live: Watch proceedings from the Court of Appeal*. Available at: <http://www.bbc.co.uk/news/av/uk-24756186/live-watch-proceedings-from-the-court-of-appeal> (Last accessed: Oct 2013)
- Justia (2017) *California criminal jury instructions (CALCRIM): 335 Defendant's right not to testify*. Available at: <https://www.justia.com/criminal/docs/calcrim/300/355.html> (Last accessed: Sept 2017)
- Sky News (2017) *Supreme court live*. Available at: <http://news.sky.com/supreme-court-live> (Last accessed: Sept 2017).

Smith J. (2013) 'Criminal evidence: Hearsay' in Smith, J. (ed.) *NC Superior Court Judge's Benchbook*. Available at: <https://benchbook.sog.unc.edu/evidence/hearsay-rules> (Last accessed: Sept 2017).

Stokoe, E. (2014) *From talk to text – using the 'Conversation Analytic Role-play Method' to engage (potential) mediation clients in spoken and written communication*. Available at: <http://www.languageinconflict.org/90-frontpage/169-from-talk-to-text-using-the-conversation-analytic-role-play-method-to-engage-potential-mediation-clients-in-spoken-and-written-communication.html> (Last accessed: May 2018)

The Supreme Court (2017) *FAQs*. Available at: <http://www.supremecourt.uk/faqs.html#51> (Last accessed: Sept 2017).

TruTV (2014) Available at: <http://www.trutv.com/about/insession/footage-request.html> (Last accessed: 29th August 2014).

The U. S. National Archives and Records Administration (2017) *The Bill of Rights: A transcription*. Available at: <https://www.archives.gov/founding-docs/bill-of-rights-transcript#toc-amendment-i> (Last accessed: Sept 2017).

Appendix A: Transcript of Amanda Hayes Re-cross-examination

1 ADAH mr gaskins just ask you about↓ (1.1)
2 the bo:at↓ (1.0) and that night on the boat
3 and what you testified when he asked
4 you this time (0.6) was that i knew what
5 grant was do:ing↓
6 AH that's correct
7 ADAH °okay° that's not what you said (0.6) on cross
8 examination yesterday↓
9 AH no ma'[am]
10 ADAH [yester]day it was you were in
11 your own world and you were listening to
12 the animals↓ looking towards the back of
13 the boat (0.3) bailing out having no idea what
14 was in the boat or what grant hayes was
15 doing↓
16 AH i never said i had no idea what he was
17 doing↓ (.) that's incorrect=
18 ADAH =>what did you [tell=]
19 AH [i]
20 ADAH =the jury yesterday
21 about what he was doing<
22 AH i said that i was facing the other direction
23 that i didn't see anything .hh and i did not
24 touch anything in regards to what he was doing
25 .hh i didn't say i didn't know what he was
26 doing i (.) absolutely knew what he was doing

27 (0.3) that [is correct]

28 ADAH [tell this jury] <right now> (0.4)

29 what he was doing↓

30 AH a- i'm pretty sure that they just heard me

31 i a- i [knew what he was doing]

32 ADAH [i didn't hear you what] was he doing

33 (1.9)

34 AH he was throw- he was getting rid of laura's

35 bo↑dy↓

36 ADAH okay and how was he doing that↓

37 AH i'm assuming he was putting it in the water

38 ADAH °okay° <could you hear the spla:sh as her head

39 went into the water↓>

40 (1.6)

41 AH .hh again i heard lots of things i heard (0.7)

42 splashing noises i heard animals i heard lots

43 of animals .hh [i was]

44 ADAH [what kind of] animals did

45 you he↑ar↓

46 AH i don't know what kind of animals they were↑

47 i was- (.) i (0.5) have no idea

48 ADAH so what you↑ recall about that boat trip

49 (1.3) is that there were splashing noises and

50 you heard animals and you were bai:ling (0.8)

51 the boat↓

52 AH that's correct and i was trying to keep the

53 wa- the boat from going into the grassy areas↓

54 ADAH and why was th↑at↓

55 AH because i didn't know what was in the
56 grassy areas

57 ADAH >°okay°< so you: during the time that you're
58 out in the boat knowing that grant hayes
59 is (1.0) taki:ng (0.9) laura ackerson's the
60 pieces of her body and throwing them into the
61 water >what you're concerned about is your
62 o:wn safety< and the a:nimals that are in the
63 water
64 (1.1)

65 AH i ↑am concerned about my safety i'm
66 a-afraid he's gonna tip the boat over↑
67 we're gonna go ↑in the water i- i'm
68 afraid of- for lots of things↓
69 (4.9)

70 AH i- i don't think you can imagine (.) the
71 kind of fear that i was under↓ (0.5) i i
72 honestly don't think you can imagine↓
73 (1.0)

74 ADAH the fear that you were under was that
75 the boat would tip over=
76 AH .hh

77 ADAH =and the animal[s would hurt you ()]

78 AH [i had lots and lots of]
79 fear
80 (1.7)

81 ADAH thank you i don't- °i don't have anything
82 further↓

83 (0.6)
84 JUD >anything else<
85 GAS no further questions↓=
86 JUD =all right thank you↑ (0.2) thank you ma'am
87 you may stand do↑wn↓
88 AH °thank you°

Appendix B: Tables of themes from opening statements

Table 1: Overview of opening statement for the prosecution (Grant Hayes)

Topic	Summary	Theme(s)	Notes
1. Introduction of Laura Ackerson (victim) and overview of the case	<ul style="list-style-type: none"> • Laura Ackerson’s state of mind on the day she died 	<ul style="list-style-type: none"> • Innocence of the victim • Family • Foreshadowing murder 	
2. Introduction of the prosecution team/purpose of opening statements	N/A	N/A	
3. Laura Ackerson’s movements on the 13 th July (date of murder)	<ul style="list-style-type: none"> • Victim’s businesses • Friends • Family relationships (not close) • Custody dispute • The midweek visit: background/contextual information • Victim’s final phone calls • Victim’s disappearance 	<ul style="list-style-type: none"> • Family • Foreshadowing murder 	Evidence that will be shown to the jury is introduced and foreshadowed (both physical and testimonial)
4. Laura Ackerson as a missing person	<ul style="list-style-type: none"> • The role and actions of Chevon Mathes • The role and actions of Detective Gwartney (Kinston Police Department) • The conversation between Det. Gwartney and Grant Hayes (18th July) • The introduction of the Raleigh Police Department; their role and actions • Discovery of Laura Ackerson’s car and proximity to Grant and Amanda Hayes’ residence 	<ul style="list-style-type: none"> • ‘Where is Laura?’; foreshadowing murder 	Although the overall topic concerns the search for Laura Ackerson, the shift between the initial investigation and the treatment of Grant and Amanda Hayes as suspects marks a shift in the narrative focus. This is shown through the division of the main topic from Laura Ackerson as a missing person to the police investigation of the Hayes’.
5. Police investigation of	<ul style="list-style-type: none"> • The search of Grant and Amanda Hayes’ 	<ul style="list-style-type: none"> • ‘Where is Laura?’; 	The introduction of the note with both

<p>Grant and Amanda Hayes</p>	<p>apartment (inc. state of the apartment and items found)</p> <ul style="list-style-type: none"> • The vacuum cleaner and the introduction of Sha Elmer (Amanda Hayes’ older daughter from a previous relationship) • The trip to Texas and moving of a large piece of furniture • The tracking of Grant and Amanda Hayes’ mobile phones • The description of their trailer’s movements 	<p>foreshadowing murder</p> <ul style="list-style-type: none"> • Covering up a crime 	<p>Grant Hayes’ and Laura Ackerson’s handwriting is done here. This is a piece of evidence which is explored in detail during the trial. The state of the apartment is also something that recurs throughout the trial and is referenced through numerous witnesses and pieces of physical evidence/photographs.</p>
<p>6. Police investigation in Texas/the disposal of Laura Ackerson’s remains/the arrest of Grant and Amanda Hayes</p>	<ul style="list-style-type: none"> • Two detectives from North Carolina (NC) travel to Texas (TX) – timeline established • Introduction of detectives’ testimony re. interview with Karen Berry in TX (Amanda Hayes’ sister). • Introduction of co-operation with local Sheriff’s office • Oyster Creek near Karen Berry’s home and the significance of the coolers on the property • Grant and Amanda Hayes and the disposal of Laura Ackerson’s remains in Oyster Creek (19th July) • Answers the question ‘where is Laura?’ • Discovery of remains by law enforcement • Arrest of Grant and Amanda Hayes • The continued discovery of Laura 	<ul style="list-style-type: none"> • The discovery of Laura Ackerson and the shift from missing person to homicide 	<p>These three topics have been placed together as they are interwoven within this section of the opening statement.</p>

	Ackerson's remains and their return to NC <ul style="list-style-type: none"> • Introduction of scientists who processed the remains 		
7. The emotional premise/Final summary	<ul style="list-style-type: none"> • Introduction of the emotional premise for the crime • New question regarding who would want Laura to be missing • Discussion of Dr Ginger Calloway and the custody evaluation • What the jury will hear regarding the purchases Grant Hayes made (duffle bags, coolers, ice, etc.) • Summary of parallel timeline • Description of Grant Hayes' movements on 14th July (purchases continued inc. saw) • Recap of key events • Introduction of what the prosecution will be asking for at the end of the trial – a guilty verdict – and graphic description of what Grant Hayes is guilty of (murder; dismemberment; etc.). 	<ul style="list-style-type: none"> • Intent and guilt • Justice 	<p>The premise of hatred and the custody evaluation are also key aspects of the case that are discussed at length throughout the trial, particularly as Dr Calloway is presented as a neutral third party who had the opportunity to observe Grant Hayes and Laura Ackerson prior to Laura's death.</p> <p>The purchase items is also relevant as they are claimed to be linked with the disposal of Laura Ackerson's body (in particular the mention of the saw which is believed to have been used for the dismemberment)</p>

Table 2: Overview of opening statement for the prosecution (Amanda Hayes)

Topic	Summary	Theme(s)	Notes
1. Amanda Hayes confession/overview of the case	<ul style="list-style-type: none"> • Introduces the alleged confession of Amanda Hayes to her sister regarding the murder of Laura Ackerson • Temporally positions the quote against other events in the narrative (the murder/discovery of remains etc.) 	<ul style="list-style-type: none"> • Guilt of the defendant 	The quote 'I hurt her. I hurt her bad. She's dead' becomes a recurring point of interest within the trial.
2. Thanks to the jury/the purpose of the opening statements and the introduction of the prosecution team	N/A	N/A	
3. Introduction of Laura Ackerson/the custody dispute	<ul style="list-style-type: none"> • Description of Laura Ackerson • Shared custody with Grant Hayes • Grant Hayes having left Laura Ackerson for Amanda Hayes • The custody dispute and then current custodial arrangements • Laura Ackerson's state of mind (positive) and the custody evaluation • Laura Ackerson as a devoted parent 	<ul style="list-style-type: none"> • Family • Devoted (young) mother • Optimism for the future 	
4. Laura Ackerson's movements on the 13 th July/the disappearance	<ul style="list-style-type: none"> • Introduction of Chevon Mathes and Laura Ackerson's business endeavours • Rarity of midweek visits 	<ul style="list-style-type: none"> • Laura Ackerson as a hard-working young mother 	

	<ul style="list-style-type: none"> • Timeline of Laura's movements on the 13th July, inc. phone calls and last known location 		
5. The severity of the case/the movements of Grant and Amanda Hayes on 13 th July	<ul style="list-style-type: none"> • Graphic description of the case's severity; Laura Ackerson missing for 11 days • Amanda Hayes' movements on the 13th July; taking the children out of the apartment, where they went • Grant Hayes' movements on the 13th July; purchases made inc. saw • Amanda Hayes' being in the apartment alone while Grant Hayes was out; mention of Amanda Hayes' mobile phone 	<ul style="list-style-type: none"> • Amanda Hayes' role; inaction as compliance/indicative of guilt 	<p>Introduction of saw as key piece of evidence.</p> <p>Focus on Amanda Hayes as being alone with the children in the apartment and presumes Laura Ackerson's body was also there.</p>
6. Description of 14 th July	<ul style="list-style-type: none"> • Chevon Mathes actions as a concerned friend of Laura Ackerson • Contrasted with Amanda Hayes actions; having her older daughter look after the children; the need for a second vacuum cleaner 	<ul style="list-style-type: none"> • Implies the 'clean up' of the crime scene 	
7. Description of 15 th July	<ul style="list-style-type: none"> • Description of Chevon Mathes attempts to contact Laura Ackerson • Grant Hayes movements; more 	<ul style="list-style-type: none"> • Implied guilt through inaction 	<p>The actions of Grant Hayes in going to the custody exchange are</p>

	<p>purchases; going to the custody exchange (where Laura Ackerson ‘shockingly’ does not arrive)</p> <ul style="list-style-type: none"> • Amanda Hayes as being at home with her baby and Laura’s body 		<p>highlighted and the jury told to pay close attention to the phone call Grant Hayes makes.</p> <p>The theme of implying Amanda Hayes as having had the opportunity to get help is marked by its recurrence in conjunction with her having been alone to be able to do so.</p>
8. Saturday (16 th July)	<ul style="list-style-type: none"> • Description of Grant and Amanda Hayes shopping; introduction of coolers • Introduction of the trip to TX to visit Amanda Hayes’ sister • Grant Hayes renting the trailer • Amanda Hayes as being at home with a mobile phone and Laura Ackerson’s body 	<ul style="list-style-type: none"> • Active participation contrasted with inactive compliance 	<p>Continued presentation of what the prosecution view as potential opportunities for Amanda Hayes to call for help</p>
9. 17 th and 18 th July	<ul style="list-style-type: none"> • Actions of Chevon Mathes in trying to contact Laura Ackerson; discovery of Laura Ackerson as having missed the custody exchange • Grant and Amanda Hayes on their way 	<ul style="list-style-type: none"> • The mounting concern of others for Laura Ackerson’s safety and wellbeing • Reiteration of Laura Ackerson as a devoted mother 	<p>In having established through the previous introduction of the victim as a devoted mother, this then adds weight to the</p>

	to TX, renting a room in Alabama; their phones as having been off		claims of concern and fear felt by Laura Ackerson's friends on her behalf as missing the custody exchange is out of character.
10. Tuesday 19 th July/the search of Grant and Amanda Hayes' apartment/the confession/Detectives go to TX	<ul style="list-style-type: none"> • Chevon Mathes reporting Laura Ackerson as a missing person to the police; introduction of Det. Gwartney • 'Meanwhile in Texas' Amanda and Grant Hayes are arriving at Amanda's sister's home • Paralleled with actions of Det. Gwartney (contacting people who may have seen Laura Ackerson; introduction of CCTV footage and Laura Ackerson's car) • Description of Det. Gwartney contacting Grant Hayes and his alleged description of the events of the 13th July; telling Det. Gwartney he is in the 'boonies' while sitting next to Amanda Hayes during the phone call 	<ul style="list-style-type: none"> • Introduction of the criminal investigation narrative contrasted with the actions of the defendant and Grant Hayes • The emphasis on certain pieces of evidence (the boat, coolers, etc.) • Amanda Hayes as an active participant • The role of the police • Contrasting the behaviour of the defendant(s) with that of police investigators • Laura Ackerson as (still) a missing person case 	These topics were placed together in this analysis as the themes are interlinked. The 'scene' shifts from North Carolina to Texas are marked and create a constant contrast between the actions of the investigators and the defendant(s)

	<ul style="list-style-type: none"> • Grant Hayes telling Det. Gwartney that he and Laura Ackerson discussed her having full custody of the children • Det. Gwartney briefing Raleigh PD on Laura Ackerson's case • Amanda Hayes' confession to her sister regarding Laura Ackerson's death; Amanda Hayes' movements that day (purchases made inc. acid) • In NC: everyone wondering 'where is Laura?' • In TX: description of boat trip (boat as evidence emphasised) • In NC: Raleigh PD locate Laura Ackerson's car; proximity to Grant and Amanda Hayes' apartment • TX: coolers appearing around Amanda's sister's property (emphasised) • NC: Raleigh PD search of Amanda and Grant Hayes' apartment; description of bathroom and further reference to Sha Elmer's testimony • Raleigh PD finding Grant Hayes' 		
--	--	--	--

	<p>phone to be in Texas</p> <ul style="list-style-type: none"> • Amanda Hayes' talking to her sister and claiming to be covering for Grant Hayes • Detectives head to TX as Grant and Amanda Hayes return to NC; execution of a search warrant of Grant and Amanda Hayes 		
11. Detectives in TX/the arrest of Grant and Amanda Hayes	<ul style="list-style-type: none"> • Dets arrive in TX; description of the interview with Karen Berry (Amanda's sister) • Introduction of Fort Bend County Sherriff's Office and the river search • The discovery of Laura Ackerson's torso and other body parts • Grant and Amanda Hayes arrested in Kinston, NC • Continuation of discovery of remains (emphasis placed on testimony regarding the condition of the victim's head) • Description of processing victim's remains 	<ul style="list-style-type: none"> • Shift from missing person to homicide investigation • The treatment of the victim's remains 	<p>The condition of the victim's remains is graphically marked, emphasising the sense of violation when contrasted with the previously established good character of the victim.</p>
12. The custody evaluation/summary of the case	<ul style="list-style-type: none"> • Introduction of Dr Ginger Calloway and the custody evaluation • Introduction of Laura Ackerson's 	<ul style="list-style-type: none"> • Custody evaluation • Laura Ackerson's state of mind/depictions of Amanda and Grant Hayes 	

	<p>diary and her descriptions of Grant and Amanda Hayes</p> <ul style="list-style-type: none"> • Summary of the custody dispute and the contentious atmosphere between Laura Ackerson and the Hayes' 		
13. Final remarks concerning Amanda Hayes	<ul style="list-style-type: none"> • Case as not being about who struck the 'fatal blow', but more about the 11 days Laura Ackerson was missing and the 6 days before the boat ride; more about the custody dispute • Three adults were in the apartment but only two survived • Amanda Hayes background as an actress introduced • Reminder that this is not about movies/a stage, but a case about a young mother, the children who will not see her again and the role of Amanda Hayes in her death 	<ul style="list-style-type: none"> • What the focus of the case should be when considering the verdict • Fiction vs reality 	<p>The introduction of Amanda Hayes' background as an actress could be viewed as an attempt to undermine her credibility alongside the contrast between the stage and the reality of a homicide having taken place</p>

Table 3: Overview of opening statement for the defence (Grant Hayes)

Topic	Summary	Theme(s)	Notes
1. Introduction to case	<ul style="list-style-type: none"> • One-line summary of case • Outline of how Amanda Hayes ‘accidentally’ killed Laura Ackerson 	<ul style="list-style-type: none"> • Innocence of the defendant of murder • Death of Laura Ackerson as unintended 	Introduces Amanda Hayes as the person guilty of murder and places Grant Hayes as guilty of a lesser crime
2. Grant Hayes’ background	<ul style="list-style-type: none"> • Describe Grant Hayes a local artist/musician; position within the local community 	<ul style="list-style-type: none"> • The defendant as a person 	
3. Grant Hayes’ relationship with Laura Ackerson	<ul style="list-style-type: none"> • Introduction of Grant Hayes’ relationship with Laura Ackerson (“on-again off-again”); introduction of timeframe over which their relationship took place • Introduces the children and the timeline for the end of the relationship • Describes Grant Hayes move to the (US) Virgin Islands and sending money to Laura Ackerson in North Carolina 	<ul style="list-style-type: none"> • Father • Providing for family 	
4. Grant Hayes’ relationship with Amanda Hayes	<ul style="list-style-type: none"> • Grant Hayes meeting Amanda in the Virgin Islands and the start of their relationship; mention of Sha Elmer (Amanda’s daughter from a previous relationship) • The move to New York (inc. timeline) • Description of their life in New York • Mutual decision for Grant Hayes and Laura Ackerson’s 	<ul style="list-style-type: none"> • Grant Hayes life in the Virgin Islands and New York – normal family life • Marriage • Custody arrangements as having been mutual/for the benefit of the children • Mitigation of custody dispute 	The introduction of Laura Ackerson as a mother who was struggling and of Grant Hayes as a caring father who was acting in the best interests of the children and helping his ex-girlfriend

	<p>oldest son to move to New York; Laura Ackerson struggling with two young children</p> <ul style="list-style-type: none"> • Amanda Hayes leaving school to be a full-time mother to Grant's son • Marriage of Grant and Amanda Hayes • Laura Ackerson filing to resolve the 'custody issue' (previous arrangements were informal) 		
5. The custody arrangements/issues	<ul style="list-style-type: none"> • Grant and Amanda Hayes move to NC to be closer to Laura Ackerson, Grant's second son, and the custody case • Grant's youngest son needing surgery and Grant Hayes gaining custody (arrangement described as 'agreed upon') • Describes custody arrangements as being 'imperfectly' followed • Outlines the custody issues as containing fights (references prosecution's use of 'bitter') • Introduces Laura Ackerson's recordings of the exchanges; recordings as showing the arguments as 'normal' with no 'tenor of violence' • Introduces Laura's diary and describes the hostility between Amanda Hayes and Laura Ackerson; 	<ul style="list-style-type: none"> • Normalisation of custody dispute • Mitigation of prosecution's evidence 	<p>The beginnings of mitigation can be seen here in introducing the state's evidence and highlighting that it is in their possession (thus also implying that the extracts will be selective). Acknowledging potentially damaging evidence and reframing it into a different narrative.</p>

	claims Amanda Hayes as resentful of victim		
6. The custody evaluation	<ul style="list-style-type: none"> • Introduction of custody evaluator (Dr Ginger Calloway); how she will claim the behaviour as being normal to most custody cases • Description of message Laura Ackerson sent to a support group saying her situation was better than others 	<ul style="list-style-type: none"> • Normalisation of the custody dispute 	Continued normalisation of the custody disputes and arguments contained therein
7. Birth of Amanda Hayes' youngest daughter	<ul style="list-style-type: none"> • Birth of Grant and Amanda Hayes' daughter • Laura Ackerson as having her children for 2 weeks during this time; claims that she found this difficult 	<ul style="list-style-type: none"> • Grant Hayes as a new father • Laura Ackerson as struggling with having the children full-time 	This could be seen as foreshadowing the alleged custody agreement (introduced in Topic 8), providing a foundation for claims that Laura Ackerson may have conceded custody of her children to their father
8. The 13 th July	<ul style="list-style-type: none"> • Background of the midweek visits; description of emails between Grant and Laura • The introduction of the children's favoured venue for going out • Description of the multiple forms of communication and exchanges between Grant Hayes and Laura Ackerson in finalising the arrangements for the visit 	<ul style="list-style-type: none"> • Grant Hayes as a devoted parent; Laura Ackerson who was struggling with having the children • Animosity between Amanda Hayes and Laura Ackerson • Mitigating Grant Hayes role – invocation of 'fear' 	The emphasis on Laura Ackerson going to Grant Hayes house as something for which there was precedent potentially mitigates the argument that this was out of character for Laura Ackerson – that she had been 'lured' there.

	<ul style="list-style-type: none"> • Laura Ackerson as running late and going to Grant Hayes' residence (as had done before) • Introduction of the discussion re. custody case between Grant Hayes and the victim; describes the document produced • Grant Hayes pleasure at the agreement as he wanted full custody • Description of Amanda Hayes seeing the agreement and being angry as they did not have the money; Grant Hayes leaves the room to get the children ready • Amanda Hayes described as the person who had an altercation with Laura Ackerson over the latter's attempt to hold her infant daughter • Introduction of Grant Hayes' involvement in the aftermath – "terrible decisions of people who are terrified" 		<p>Additionally, the FBI is invoked as an expert source with the defence using their handwriting analysis findings to support that both Grant Hayes and Laura Ackerson co-produced the document – implying mutual agreement</p>
<p>9. The aftermath of 13th July; the trip to TX</p>	<ul style="list-style-type: none"> • Amanda Hayes positioned as being in charge and telling Grant Hayes what to do • Amanda Hayes as the person who contacted Sha Elmer (her daughter) to take the children the next day • Describes how Grant and Amanda Hayes were left alone with the victim's body 	<ul style="list-style-type: none"> • Amanda Hayes as the person driving events forward and making decisions • Grant Hayes making bad decisions for the sake of his family 	

	<ul style="list-style-type: none"> • Description of clean-up supplies, trailer rental, etc. • Amanda Hayes' decision to go to TX – Grant Hayes as never having been there before and having no contacts there (“Amanda’s kin”) • Description of Amanda Hayes' confession to her sister and the remains being placed in the creek 		
10. Final remarks	<ul style="list-style-type: none"> • The victim's death as having been 'spontaneous' and 'unpredictable' • Grant Hayes as only being responsible for the clean-up and disposal of the victim's remains 	<ul style="list-style-type: none"> • Mitigation of Grant Hayes' role in the death of Laura Ackerson 	<p>The language used here addresses the charges – by the death having been 'spontaneous' it would imply that it therefore could not have been premeditated.</p> <p>Focus placed on a lesser charge – still a crime, but not of the same severity</p>

Table 4: Overview of opening statement for the defence (Amanda Hayes)

Topic	Summary	Theme(s)	Notes
1. Introduction of the role of the defence attorney/purpose of opening statements	<ul style="list-style-type: none"> • Description of the role of the defence attorney • Summary of the purpose of opening statements (references prior mention of this in the prosecution's opening statement) • Reiteration to the jury that they should rely on their own recollections when considering the evidence 	<ul style="list-style-type: none"> • Framing the context of the case in terms of the opening statement 	
2. Introduction of Grant Hayes	<ul style="list-style-type: none"> • Introduction of the case as being about 3 primary individuals • Description of Grant Hayes' character as being that of a 'classic sociopath' (references his conviction for Laura Ackerson's murder) • Description of the custody dispute between Grant Hayes and Laura Ackerson; introduction of custody evaluation by Dr Ginger Calloway • Reads from the report Laura Ackerson wrote regarding Grant Hayes; uses this to introduce the movies to be used as a frame of reference when describing Grant Hayes' character (<i>Six Degrees of Separation</i> and <i>The Talented Mr Riply</i>) • Summary of <i>The Talented Mr Riply</i> and 	<ul style="list-style-type: none"> • Personality disorders • Grant Hayes as a dangerous individual 	<p>Begins to lay the foundation for the defence of duress, introducing Grant Hayes as both the person responsible (referencing conviction) and as someone with the ability to manipulate and harm others.</p>

	connection to Grant Hayes		
3. Introduction of Laura Ackerson	<ul style="list-style-type: none"> • Introduces the presence of “two victims in this case” • Laura Ackerson as having believed she was married to Grant Hayes, but he had deceived her • Describes Laura Ackerson as a loving mother • Description of custody arrangement and dispute, inc. being ‘increasingly bitter’ and description of the then upcoming hearing • Description of Grant Hayes receiving the custody evaluation; relationship between Grant Hayes and Laura Ackerson worsening • Describes Amanda Hayes’ role as that of ‘peacekeeper’ 	<ul style="list-style-type: none"> • Introduction of the victim(s) • Grant Hayes as the person responsible for murder • Amanda Hayes as mediator 	<p>The introduction of Laura Ackerson is used as a means of supporting the coming narrative of Grant Hayes as an abusive spouse (at least mentally, if not physically)</p>
4. Introduction of Amanda Hayes	<ul style="list-style-type: none"> • Amanda Hayes as the second victim in the case • Grant Hayes’ treatment of both women as being the same; viewing women as needing to be submissive to him • Amanda Hayes backstory in meeting Grant Hayes; affluent widow • Grant Hayes using the children as ‘social bait’ and describing Amanda Hayes as his ‘investor’ 	<ul style="list-style-type: none"> • Amanda Hayes as having been manipulated by Grant Hayes as much as other people in his life • Establishing a pattern of abusive behaviour 	<p>This introduces the driving force of the defence, using the foundation laid previously to create parallels between Grant Hayes’ treatment of the victim and the treatment of his then wife.</p> <p>The theme of isolation is also potentially important, as this adds to the</p>

	<ul style="list-style-type: none"> • Description of swift marriage and Grant Hayes access to Amanda Hayes financial assets; travelling and selling her jewellery while she stayed at home with the children (plots this behaviour onto timeframe) • Description of Amanda Hayes as a new mother to her youngest daughter; Grant Hayes having isolated her • Description of the impending eviction by July 2011; Grant and Amanda Hayes having to move in with his parents 		concept of domestic abuse and provides a foundation in which Amanda Hayes may not have then felt able to reach out for help.
5. The 'Stepford Wife'	<ul style="list-style-type: none"> • Describes Grant Hayes as having wanted to marry a 'Stepford wife' and Amanda Hayes as having been an extra in that movie • Describes the movie <i>Stepford Wives</i> • Reads out a piece written by Grant Hayes regarding this desire and his meeting Amanda Hayes 	<ul style="list-style-type: none"> • Gender roles 	Continues to develop the themes of manipulation and subjugation.
6. The 13 th July	<ul style="list-style-type: none"> • Introduces the events of the 13th July • Outlines Laura Ackerson's arrangements to see the children and her going to the apartment as a result of running late and being unable to take the children to the child-oriented restaurant 	<ul style="list-style-type: none"> • Grant Hayes as guilty of murder 	

	<ul style="list-style-type: none"> • Grant Hayes as wanting to discuss the custody case and having Amanda Hayes take the children out of the room • Laura Ackerson and Grant Hayes' settlement agreement (references letter) • Description of altercation: Amanda Hayes entering the room with her infant daughter and seeing the agreement; Amanda Hayes walking away when Laura Ackerson asked to hold the baby and tripping into Amanda Hayes; Grant Hayes grabbing Laura Ackerson from behind and them both falling to the floor; Amanda Hayes continuing into the bedroom • Grant Hayes asking Amanda Hayes to take the children out as he need to call Emergence Medical Services (EMS) for Laura • Description of Amanda Hayes movements with the children • Description of Grant Hayes telling Amanda Hayes that Laura Ackerson is fine and has returned home; Amanda Hayes believing Laura Ackerson is alive and well 		
7. The aftermath; the trip to TX	<ul style="list-style-type: none"> • Descriptions of Grant Hayes movements 	<ul style="list-style-type: none"> • Threats 	Race is made relevant here

	<p>from midnight 14th July until midnight 16th July</p> <ul style="list-style-type: none"> • Foreshadows that jury will hear where Grant Hayes dismembered Laura Ackerson; claims Amanda Hayes did not know • Grant Hayes' idea to go to TX and his idea to move the furniture • Description of Grant Hayes' activities surrounding the murder of Laura Ackerson • Amanda Hayes lack of knowledge that Laura Ackerson's remains were in the trailer • Describes the arrival in TX, Grant Hayes' behaviour, and his telling Amanda Hayes that Laura Ackerson is dead • Describes machete and Grant Hayes' threatening Amanda Hayes if she did not help him; Grant Hayes as telling Amanda what to tell her sister • Description of Amanda Hayes' confession to her sister and acknowledgement that she is covering for Grant Hayes • Describes Amanda Hayes helping dispose of the victim's remains out of fear 	<ul style="list-style-type: none"> • Manipulation • Race • Coercion • Fear 	<p>through reported speech that Grant Hayes is to have said to Amanda Hayes, who has then repeated it to her lawyer. The issue of race is not something that occurs regularly throughout this trial, but is noticeable in its occurrence as a claim for justification of an action.</p> <p>This is linked with the confession and provides a context in which the confession could have been made but without it having the significance of guilt attached to it in the prosecution's opening statement.</p> <p>The description of fear provides a mitigating circumstance in which the defendant can be found innocent of the charge of accessory</p>
--	---	--	--

<p>8. The charges</p>	<ul style="list-style-type: none"> • Description of charges: 1st degree murder and why Amanda Hayes is innocent; accessory after the fact as being “diametrically opposed” to the first charge and describing legal requirements • Outlines the ‘real issue’ as being whether or not Amanda Hayes acted voluntarily in helping dispose of Laura Ackerson’s body • Amanda Hayes as being innocent of this as was acting under duress • Contextualisation of Amanda Hayes’ actions through her state of mind and knowledge at the time 	<ul style="list-style-type: none"> • Legal requirements and decision-making processes of the jury 	
<p>9. Final remarks</p>	<ul style="list-style-type: none"> • Describes to the jury how they will believe that Grant Hayes concealed what he had done for as long as possible; Grant Hayes’ motives for choosing places associated with Amanda Hayes • Grant Hayes as a ‘master manipulator’ • Reiterates that Amanda Hayes is innocent of murder and that the only question is whether she voluntarily agreed to help conceal what Grant Hayes had done. 	<ul style="list-style-type: none"> • Manipulation • Legal requirements 	

