

Control and resistance: Exploring witness testimony for narrative negotiation using question and answer types

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Abstract: Using questions strategically to control witness testimony is imperative to a successful criminal trial. Witnesses are not without power and can deploy resistance strategies in the face of controlling questioning. Through an examination of question typology, question function, and answer types, this paper aims to provide a holistic understanding of how counsel and witness negotiate narrative production through the unique turn-taking system present in witness testimony. Rachel Jeantel's testimony, in the case of *Florida v. Zimmerman*, was analyzed to explore the relationship between question types, question functions, and type-conforming or resisting answers. Results are in line with general counsel strategies for direct and cross-examination; counsel prefer more controlling questions, with a higher relative proportion of controlling questions in cross relative to direct examination. Type-conforming responses are the most common response in both types of examination. Resistance strategies employed by the witness are more common in cross-examination. However, there exist interesting dynamics between avoidance, correction, and confirmation-eliciting questions. Finally, the presence of question clusters and interruptions may contribute to narrative control and resistance to such control.

Keywords: *question type; narrative constructions; witness resistance; courtroom; question interruption*

1 Introduction

The killing of Trayvon Martin on February 26, 2012, attracted national and international attention over the killing of unarmed Black men and Stand Your Ground laws common in many US states (Cooper et al., 2023; Hodges, 2015). Seventeen-year-old Martin was walking home from a convenience store to his father's fiancée's house before he was shot; as it was raining, he had his hoodie up, which had apparently attracted the unwanted attention of the head of the neighborhood watch, George Zimmerman (Cooper et al., 2023). Perceiving Martin as a suspicious male, Zimmerman called 911 and began to follow him, even as Martin started running and despite the 911 dispatcher's urging for Zimmerman to stay where he was (Cooper et al., 2023). An altercation ensued, whereby Zimmerman shot and killed Martin. Although initially released, George Zimmerman was eventually arrested and charged for the murder of Trayvon Martin; Zimmerman claimed self-defense and was ultimately acquitted (Hodges, 2015). Leading up to and throughout

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Zimmerman's pursuit and killing of Martin, Martin largely remained on the phone with a friend, Rachel Jeantel, who became a key witness for the prosecution's case against Zimmerman.

As questioning of Jeantel lasted two days, there was ample time for both the prosecution and defense counsel to create and challenge a narrative of what occurred on February 26th, 2012, based on the witness's testimony. Rules of evidence surrounding testimony generally dictate that new information may only be introduced through witness questioning; although nuances may change depending on jurisdiction, there is significant overlap in courtroom rules between US, UK, and Canadian criminal courts when questioning witnesses in a criminal trial (Dostal, n.d; Harris, 2001; Heffer, 2005). Therefore, the role of counsel is paramount in building, and challenging, a narrative to conform to the goals of the prosecution or defense. However, the witness is not without power; Galatolo and Drew (2006), Newbury and Johnson (2006), and Ehrlich and Sidnell (2006) illustrated that witnesses can exert autonomy during questioning through various strategies of resistance. In response to Harris's (2001) calls for a clearer understanding of witnesses' role in narrative construction and in light of the critical roles of counsel in shaping narrative, this paper examines the entire testimony of Rachel Jeantel to explore how question types, question functions, and answer types engage in narrative negotiation—the building and challenging of courtroom narrative.

2 Literature review

Narrative is crucial to understanding experiential existence (Harris, 2001; Heffer, 2005). Narrative is also crucial in understanding the facts of the case or any matters before the courts; however, courtroom narrative deviates from commonly understood narrative structures within a court setting. Instead, a courtroom narrative is highly fragmented, largely due to the structure of the courtroom settings and the rules of evidence for the inclusion and presentation of information (Harris, 2001; Heffer, 2005; O'Barr, 1982; Woodbury, 1984). Unlike common conversational practices, dialogue between witness and counsel is a function of institutional discourse, or the relationship between interaction and social structure (Schegloff, 1992). The institution plays a key role in guiding verbal exchanges and speakers' goals, of whom at least one is a representative of said institution (Schegloff, 1992). In the case of the courtroom, which is adversarial by design, two competing narratives are presented, and both counsel attempt to discredit the other's version of events (Drew, 1992). Witnesses are the vessels through which narratives are constructed and discredited (Drew, 1992). However restricted or limited the role of witnesses is in the courtroom setting, narrative production is not a one-sided interaction and there is space for witness autonomy and agency in negotiating the boundaries of narrative creation (Ehrlich & Sidnell, 2006; Galatolo & Drew, 2006; Newbury & Johnson, 2006). In this antagonistic system, the outcome of trial may depend less on the actual sequence of events, and more on the types of questions asked, the responses they elicited, and the witnesses' ability to communicate their version of events in a credible manner (Drew, 1992). Interaction between counsel and witness is designed to aid decision-making of an overhearing third party (judge or jury), one which minimally participates in the verbal exchanges of testimony; communication between them is thus highly prescribed in a unique turn-taking system that is further limited by procedural rules (Drew, 1992). Rule 611 of the Federal Rules of Evidence in the US lays out rules for the examination of witnesses and presentation of evidence, including the allowed usage of leading questions and the scope of cross-examination in order to make witness examination effective, avoid wasting time, and protect witnesses (Legal Information Institute, n.d.).

Beyond institutionally prescribed rules, the courtroom institutional discourse is also influenced by power inequalities established along lines of class, ethnicity, race, age, gender, and language (Schegloff, 1992). Rickford and King (2016), Angermeyer (2021), Slobe (2016), and Sullivan (2016) have analyzed Jeantel's testimony to explore the intersection of race, dialect, and courtroom testimony in the construction and contestation of narrative and witness credibility. In examining Jeantel's testimony, Rickford and King (2016) illustrated that the presence of non-standard English dialect can significantly and negatively impact the legitimacy and credibility of crucial witnesses. The authors also point to Jeantel's underbite and low speaking volume as factors that may have contributed to comprehension problems that fed into the perception of her as an unbelievable witness. Institutional racism and prejudice against non-Standard English dialect plays a key role in institutional discourse within the courtroom. Slobe (2016) illustrated how opposing counsel used pauses, hyper-articulated Standard American English (SAE), and emblematic deictic terms to create moral distance between the dominant post-racial culture of the courtroom and a constructed "culture" into which Jeantel and Trayvon Martin are incorporated. Furthermore, Sullivan (2016) argued that both counsels engaged in altering Jeantel's voice through comparisons to SAE that placed her non-SAE dialect on a lower position in a constructed intelligibility and comprehensibility hierarchy. As a result, Jeantel's credibility as a witness, and by extension Martin's actions, came into question. Finally, Angermeyer (2021) argued that prejudice against Jeantel's dialect (African-American Vernacular English with influence from Haitian Creole and Caribbean English) also manifested in the prosecutor's choice to employ less narration-eliciting questions and in frequently interrupting and repeating her testimony, effectively sabotaging the narrative that was constructed through her testimony and contributing to the lack of perceived credibility.

Institutional discourse is therefore a complex phenomenon, guided by institutional rules, etiquette, a unique turn-taking system, and individual choices by counsel and witnesses; these factors are further contextualized by systemic inequalities. The following will review the respective roles of counsel and witness in creating and maintaining narrative during courtroom testimony by examining question types, question functions, and answer types. This study focuses on a criminal case from the US due to availability of the transcript.

2.1 The role of counsel in narrative construction

Narrative construction in the courtroom setting is determined largely through the rules of evidence for the introduction of new information (Seuren, 2019). Specifically, in order to present evidence to the court, counsel must ask specific questions that elicit desired information from the witness, thereby constituting a peculiar turn-taking system between counsel and witness that builds the narrative in a question (and answer) by question (and answer) manner, in contrast to the free narrative common in conversational discourse (Heffer, 2005; Mortensen, 2020; Seuren, 2019). Additional limitations are placed on questioning within direct and cross-examinations.

Within direct examinations, where counsel elicit information from witnesses that they called, leading questions are prohibited (Heffer, 2005; Mortensen, 2020; Woodbury, 1984). Where counsel are engaging in cross-examinations, the questioning of witnesses called by opposing counsel, they may only question evidence that was introduced in direct examination and are generally prohibited from eliciting new evidence (Heffer, 2005; Mortensen, 2020; Woodbury, 1984). Thus, the goals of counsel in direct and cross-examination differ. Within direct examination, counsel aim to balance their desire to instill confidence in their case by allowing witnesses to speak freely with their need to control the narrative and the direction it takes (Heffer, 2005). Counsel

completing cross-examination also engage in controlling the narrative; however, their goals are to reduce the credibility of the witness and their narrative by highlighting gaps and discrepancies, and to present an alternate version of events (Mortensen, 2020; Seuren, 2019). As a result, counsel in both direct and cross-examinations must use questions in a strategic *and controlled* manner to construct, or challenge, witness narrative in a way that aligns with their goals.

A number of studies have examined the use of questions to control and construct narrative in a legal setting. Woodbury (1984), one of the first to examine question types, identified three broad question types, divided into seven sub-types total, that varied in their level of control and coerciveness. She identified wh-questions as least coercive, yes/no questions as most coercive, and alternative questions (where two options are provided that are not yes/no) as inhabiting a space between the least and most coercive types. In controlling evidence, yes/no questions are more controlling in part due to their potential for including embedded presuppositions that are difficult for witnesses to counter, especially considering the limited response options that such questions offer (Ehrlich & Sidnell, 2006). Unsurprisingly, Woodbury (1984) found the least coercive question types to be present within direct examination, where witnesses were prepared beforehand and challenging witness testimony reflects poorly on the attorney. The most coercive types and subtypes were found in the cross-examination, where counsel challenged the witnesses', and therefore the opposing counsel's, version of events. Woodbury's (1984) formal distinction between question types also illustrates the ways in which questions can elicit preferred responses, and thus guide narrative construction: for example, positive or negative tags eliciting a "yes" or "no" response.

Seuren (2019) collapsed Woodbury's (1984) typology into three categories: polar questions, content questions, and alternative questions. Each category contains elements of Woodbury's (1984) typology: yes/no questions and declaratives (similar to prosodic questions) constitute polar questions, content questions include wh-questions and imperatives, and alternative questions are identical to Woodbury's. Seuren's (2019) results are similar, with polar questions exerting the most control, and content questions exerting the least, thereby allowing witnesses more freedom of narrative.

Woodbury (1984) has been criticized for a poor correlation between typology and speech act function (Heffer, 2005; Seuren, 2019); as a result, subsequent studies have amended her typology to varying degrees or abandoned it in favor of speech act functions. Heffer (2005) focused on what acts the questions elicit: narration, specification, or confirmation. The author argues that witnesses do not provide information, but are instead service providers, engaging in three potential services: telling the court what happened, specifying details, or confirming propositions embedded within questions. Interestingly, the author incorporates Woodbury's (1984) typology into his speech act classification system. Finally, Mortensen (2020) reproduces an amended version of Woodbury's (1984) typology, finding a similar distribution of question types, but argues that speech act functions (regulative, constative, communicative, and other) are a more effective classification system. However, this author still relies primarily on question typology to determine level of control.

As each of the above studies classifies questions in different ways, with each study providing support for the author's unique classification system, it would be prudent to incorporate multiple classification systems, as this paper attempts to accomplish.

2.2 The role of witness in narrative construction

Within the question-answer dynamic between counsel and witnesses in the courtroom setting, literature on question responses is not as expansive as that of question types, functions, and forms. Previously, literature examining witness responses emphasized the concepts of powerless and powerful speech styles (see for example Hosman & Siltanen, 2006; O’Barr & Atkins, 1980).

More recent literature has examined the agency of witnesses in utilizing strategies of resistance to controlling or coercive questioning. Galatolo and Drew (2006) and Newbury and Johnson (2006) identified five general strategies for resisting the controlling nature of questions: narrative expansion, contest, correction, avoidance, and refusal. Narrative expansion is the practice of providing the minimal response requested by a question, along with additional information that is not requested; this strategy is used in providing context to a response and in shifting the respondent’s blame elsewhere (Galatolo & Drew, 2006). Contest is the strategy of answering “no” where a “yes” response is expected, while correction incorporates contextualizing information to support the contesting response (Drew, 1992; Newbury & Johnson, 2006). Furthermore, avoidance is the practice of providing a response without confirming or disputing the embedded proposition; refusal is the absence of a response or the provision of a response that is a non-response (“I have nothing to say”) (Drew, 1992; Galatolo & Drew, 2006; Newbury & Johnson, 2006). It should be noted that the strategies of avoidance and refusal may be met with sanctions from the court, in the form of compelling the witness to answer the question (Galatolo & Drew, 2006; Newbury & Johnson, 2006). Ehrlich and Sidnell (2006) illustrated similar resistance strategies; although their study explored the transcript of a civil inquiry in a Canadian context and is therefore governed by different rules than criminal trials, their subject, Ontario Premier Michael Harris, engaged in a variety of resistance strategies when faced with questions containing damaging presuppositions. Addressing presuppositions directly reflects a form of correction, while not producing recognizable answers or transforming presuppositions overlap with the strategies of avoidance and narrative expansion, respectively.

The degree to which these strategies are used depends in part on the nature of the questioning, as witnesses are more likely to be “friendly” to questioning in a direct examination, having been prepared by counsel on which questions will be asked and the degree to which they should be answered; these strategies may therefore be used more frequently in cross-examination, where counsel is more likely to utter controlling questions (Harris, 2001; Heffer, 2005; Seuren, 2019). Resistance strategies are deployed in response to the legal, procedural, and narrative constraints placed on the witness.

The above literature illustrates the dynamic relationship between counsel-and-witness and questions-and-answers in building, and challenging, courtroom narrative, albeit in a piecemeal fashion. The following study therefore attempts a holistic exploration of how narrative is negotiated through the questions posed by counsel and answers provided by a witness. The entire transcript, consisting of direct and cross-examinations of Rachel Jeantel, is examined for question types, question functions, and answer types.

Considering the key importance of Jeantel in the prosecution’s case and in line with previous research on question types, the first hypothesis is that direct and cross-examinations will therefore reveal different strategies to control witness testimony, manifesting in different rates of wh-questions and yes/no questions posed. A greater proportion of controlling yes-no questions are expected to be present in cross-examination, relative to direct examination, reflecting the level of

control exerted by counsel in witness examination. Therefore, it is expected that counsel in cross-examination will rely on more controlling questioning, with a majority of question types consisting of yes/no questions. In contrast, counsel in direct examination is expected to utilize less controlling question types at a rate higher than counsel in cross-examination. Similarly, the second hypothesis predicts that questions that elicit confirmation will be predominant in both forms of examination, with narration-eliciting questions limited to direct examination. Finally, the presence of resistance strategies by Jeantel would be predominantly present in cross-examination, although expanded narrative is expected to appear in direct examination as well.

3 Methodology

This study examines multiple elements of the unique turn-taking discourse present in courtroom settings, specifically the testimony of Rachel Jeantel using a court transcript spanning 293 pages.² This transcript was chosen because of its accessibility and the possibility of examining question and answer pairs for a single witness, and therefore, a single narrative as its boundaries are negotiated from direct examination, through cross-examination, and until re-direct and re-cross-examinations. As a result, the methodology is informed by multiple typologies and classifications.

In examining question *types*, the study uses an expanded version of Woodbury's (1984) typology of broad, yes/no, and alternative questions. Questions were further classified into broad and narrow wh-questions while yes/no questions were additionally classified as grammatical yes/no, negative grammatical yes/no, prosodic, and tag (including confirmatory, checking, and copy) questions. This study also made note of positive and negative prosodic questions, as they may indicate varying levels of control and narrative construction in questioning, in line with Woodbury's (1984) finding that positive and negative tags can elicit preferred responses. Woodbury's (1984) study forms a foundation for other studies on question types and functions and, therefore, serves as a key methodology.

Heffer (2005, p. 112) incorporates Woodbury's (1984) typology into his classification of question functions, where questions were also classified according to the functions of narration, specification, and confirmation. This study incorporates both Woodbury's (1984) question typology and Heffer's (2005) question classification.

Finally, answer types were classified as to whether they conformed to the question type and function or whether they resisted in the form of contest, correction, avoidance, or refusal; narrative expansions were also incorporated into the analysis, whether they conformed or not to the question type and function (Galatolo & Drew, 2006; Newbury & Johnson, 2006).

Two stages of coding followed.³ First, the transcript was assessed for question types and functions and answer types; during this stage, observations were made about question clusters, question interruptions, and witness responses where the witness asked clarifying questions. These

² Case no. 2012CF1083A, STATE OF FLORIDA, Plaintiff, v. GEORGE M. ZIMMERMAN, Defendant. The transcript is an enhanced court transcript provided by John Rickford.

³ The following exclusion rules for inclusion and analysis of questions applied. First, only questions posed by counsel were included. Questions related to witness or jury instructions were not included, regardless of whether they originated from the court or from counsel. In the event of an objection, the utterance was not included if it could not be determined to have been a question. Questions were not included in the cases where objections to them were sustained. In the event of an objection, the question was not included if the question and answer were repeated without change to form or substance. Finally, questions from other individuals in the courtroom (i.e., court reporter or judge) were not included in the analysis.

observations were noted as having a possible effect on counsels' or the witness's efforts to negotiate the narrative. The second stage of coding involved coding the transcript for the previously noted question clusters, question interruptions, and witness responses. Additionally, quality assurance was conducted to ensure codes were applied consistently throughout the transcript.

4 Results and analysis

Analysis identified a total of 1,231 question-and-answer pairs over four forms of examination: direct ($n = 156$), cross ($n = 1016$), re-direct ($n = 37$), and re-cross ($n = 22$). Question types, question functions, and answer types were identified in Rachel Jeantel's testimony within all forms of examinations and cross-referenced against each other; a brief overview of answer types and question types and functions within direct (DE) and cross-examinations (CE) can be found in Table 1.

Table 1. Distribution of question types, question functions, and answer types within Rachel Jeantel's testimony.

	Direct	Examination	Cross-examination	
	($n = 156$)		(n = 1016)	
	Percentage	Frequency	Percentage	Frequency
Question types				
Wh-questions total	31.4%	49	8.0%	81
<i>Broad</i>	9.6%	15	0.1%	1
<i>Narrow</i>	21.8%	34	7.9%	80
Alternative questions	3.8%	6	2.0%	20
Yes-no questions total	64.7%	101	90.1%	915
<i>Grammatical</i>	36.5%	57	22.0%	224
<i>Negative grammatical</i>	0.6%	1	2.7%	27
<i>Prosodic</i>	25.0%	39	48.0%	488
<i>Negative prosodic</i>	1.3%	2	9.2%	93
<i>Tag – confirmatory</i>	1.3%	2	6.4%	65
<i>Tag – checking</i>	0.0%	0	1.8%	18
Question functions				
Narration	16.0%	24	0.6%	6
Specification	22.4%	35	12.6%	128
Confirmation	55.8%	87	82.3%	836
Other	5.8%	9	4.5%	46
Answer types				
Type-conforming	78.8%	123	60.7%	617
Clarifying	1.3%	2	3.8%	39
Narrative expansion	14.1%	22	11.3%	115
Resistance strategies	5.8%	9	24.5%	249
<i>Contest</i>	0.0%	0	2.7%	27
<i>Correction</i>	0.6%	1	14.8%	150
<i>Avoidance</i>	4.5%	7	6.6%	67
<i>Refusal</i>	0.6%	1	0.4%	4

Overall, support was found for all three hypotheses: (1) while question types revealed a larger locus of control in both DE and CE, where both counsel preferred more controlling questions, yes/no questions were used at a higher frequency in CE than DE. Yes/no questions constituted 90.1% of questions asked in CE and 64.7% of questions in DE. That is, counsel used yes/no questions about 25% more in CE than in DE. Relatedly, wh-questions were also used at different rates, constituting 31.4% of question types in DE and only 8% in CE; (2) confirmation-eliciting questions (Heffer, 2005) also dominated in both DE and CE; and (3) resistance strategies employed by Jeantel were significantly higher in CE than DE. The following will expand upon the results for these hypotheses and discuss them within the context of negotiating the bounds of narrative construction.

Table 1 illustrates overall results for the study through the percentage and frequency of question types, question functions, and answer types across the direct and cross-examinations. Although both re-direct and re-cross were coded, their overall contributions to the question count, and therefore analysis, are minimal; as a result, they are not included in this table. With regards to the “Other” category in the Question Functions section, this category refers to prosodic questions intended for clarification (such as “I’m sorry?”) or for declaratives that do not have explicit question cues but that still elicit a response. It should be noted that although there are only 1016 question-and-answer pairs in the dataset for the cross-examination, 3 answer responses were dual-coded, where the witness provided a narrative expansion and asked a clarifying question in the same response; therefore, there are 1019 labels total for the answer types. However, percentage calculations are completed using the 1016 total count.

4.1 Role of counsel in narrative negotiation

There are some significant differences between the findings of this study and those of Woodbury’s (1984) with regards to question types. Similar to Woodbury (1984), this study found wh-questions used more frequently in direct (31.4%) relative to cross (8.0%) examinations. However, the proportion of wh-questions in this study is much lower than in Woodbury’s (1984), which found wh-questions to be 54% and 31% of all questions posed in direct and cross-examinations, respectively. This may reflect counsel preference for question types, or it may be a reflection of the perception of Jeantel as a credible witness. The latter may have influenced the prosecutor’s decision to minimize Jeantel’s speaking time through the use of more controlling questions. This finding is in line with literature examining the roles that racial and dialect prejudice play in institutional discourse. Angermeyer (2021) also found a larger-than-expected use of confirmation-seeking questions by the prosecutor, arguing that this practice, along with frequent interruptions and repetitions, functioned to fragment the prosecutor’s narrative and suppressed Jeantel’s voice and agency.

The use of yes-no questions, specifically grammatical and prosodic, dominated both forms of examination, constituting 64.7% (DE) and 90.1% (CE) of questions posed to Jeantel. These results are consistent with Woodbury’s (1984) findings that more controlling questions were used in CE relative to DE. However, yes/no questions in this study constituted a higher percentage of the overall questions, relative to Woodbury’s (1984) finding of 45% (DE) and 82% (CE). Of note, the largest proportion of questions even within DE are yes-no questions. While this finding is a deviation from Woodbury’s (1984), it is in line with contemporary studies of question types—Seuren (2019) also found that polar questions constituted a majority of the DE, providing additional support for the higher prevalence of controlling questions in DE. Multiple scholars (Mortensen, 2020; Seuren, 2019; Woodbury, 1984) have illustrated that yes-no questions are more

controlling, or coercive, than wh-questions because they restrict the responses available to witnesses. Thus, the preference for yes-no questions along with the reduced use of narrow wh-questions suggests that counsel preferred to exert a larger locus of control in constructing, or challenging as in the case of CE, Jeantel's narrative. The use of increasingly controlling questions in CE is also evident in the disparity between negative prosodic questions in DE (1.3%) and CE (9.2%); this finding lends additional support to the notion that cross-examining attorneys are apt to engage in practices that catch witnesses "off-guard" in order to damage their credibility. Prosodic questions contain declaratives with question cues that function to communicate the speaker's truth as an embedded proposition (Woodbury, 1984). A negative prosodic question therefore also includes a challenge to the witness's version of events as told up to the point of challenge.

While all types of yes-no questions can be used to confirm information presented by counsel (Heffer, 2005; Seuren, 2019), the relatively higher presence of negative grammatical and prosodic questions and the increased use of tag questions in Jeantel's testimony in CE (see Table 1), all of which have been identified in literature as more coercive (Harris, 2001; Seuren, 2019), lend support to the notion that counsel during CE are engaged in challenging the narrative put forth. Consider the following excerpts.

(1) Case no. 2012CF1083A, p. 49, CE:

05 Q: And that you realized that you were the
 06 last person to have talked to him?
 07 A: Yes.
 08 Q: And you didn't report that to anyone?
 09 A: What? They said they had got the person who
 10 shot Trayvon, and I never thought I was a witness of this
 11 situation

(2) Case no. 2012CF1083A, p. 50, CE:

11 Q: So you didn't contact anyone to say that you
 12 were the last person to have talked with him?
 13 A: Friends, they knew.
 14 Q: Right. Not law enforcement or --
 15 A: No
 16 Q: -- or parents or anything like that?
 17 A: No.

The second question of both examples, in lines 8 and 14 of example (1) and (2) respectively, illustrate negative prosodic questions. As discussed above, negative prosodic questions contain an embedded belief and a challenge to the witness's narrative. Both examples discuss Jeantel's knowledge that she was the last person to speak to the victim before his death and her decision not to report this knowledge to authorities. Implicit in this question-and-answer interaction is the belief that Jeantel perhaps did not act in a reasonably responsible manner; opposing counsel is thus attempting to resist the narrative that Jeantel has constructed by challenging her judgment, and therefore her credibility as a witness.

Other prosodic questions may be used in both direct and cross-examination for opposing purposes. Consider the following excerpts.

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(3) Case no. 2012CF1083A, p. 16, DE:

18 Q: Okay. So Mr. Martin told [*sic*] he was leaving the
19 mailing area where he was at?

20 A: Yes. And then --

21 Q: He started talking about something else?

22 A: Yes

(4) Case no. 2012CF1083A, p. 59, CE:

15 Q: Is that because you lied about your age?

16 A: She ain't know my age. She thought I was a
17 minor just like Trayvon.

18 Q: But you weren't, actually. You were 18?

19 A: Yes.

In Example (3), yes-no questions are utilized to confirm the embedded proposition in order to move the narrative forward. In contrast, Example (4) illustrates the use of similar question types, along with an embedded proposition that Jeantel lied about her age. Both counsels are utilizing similarly controlling yes-no questions and both are in line with the goals of counsel during witness examination. Counsel during direct examination uses controlling yes-no questions to move the narrative forward while opposing counsel, during cross-examination, uses such questions to cast doubts on the witness's credibility, and by extension, their version of events.

The distribution of question types within DE and CE appears to conform to the goals of counsel in DE and CE (Harris, 2001; Heffer, 2005). In Jeantel's case, the prosecutor attempted to balance the desire for Jeantel to be perceived as trustworthy, as evident in the use of wh-questions to encourage storytelling, and as is illustrated by the significantly higher percentage of such questions in DE compared to CE, with the desire to control the direction that narrative takes, as evident in the use of grammatical and prosodic questions. Defense counsel emphasizes the use of more controlling questions to bring attention to gaps and discrepancies for the purpose of challenging the narrative put forth by Jeantel. The versions of events that each counsel attempts to argue may be further influenced by interruptions that occur from the judge, court reporter, jury, and opposing counsel.

With regards to question functions as described by Heffer (2005; see Figure 1), the majority of functions elicited by counsel are those of confirmation, representing 90.4% (DE) and 86.9% (CE) of questions asked. Supportive of the second hypothesis, these results are not surprising considering this category is composed of yes-no questions which, as illustrated previously, appear heavily in the questioning of Jeantel. Heffer's (2005) findings show only 19% (DE) and 43% (CE) of questions eliciting confirmation; however, his classification of yes/no questions fell under both "Specify" and "Confirm" elicitation functions, whereas yes/no question types largely elicited confirmation within this study—a difference in coding may explain the wide disparity in the relative distribution of confirmation-eliciting questions.

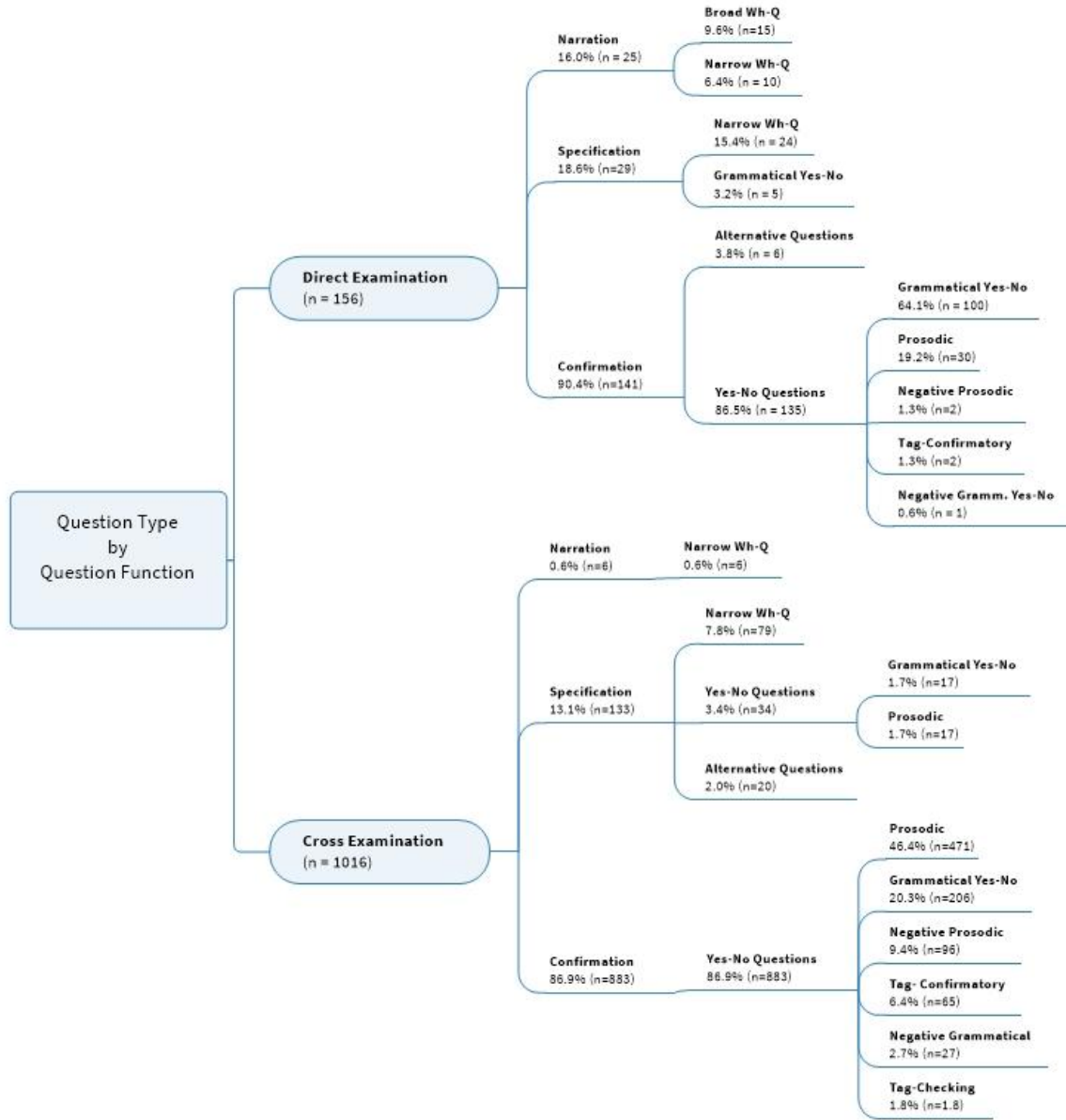


Figure 1. This figure illustrates the breakdown of question type by question function across both direct and cross-examinations. It should be noted that only those question type and function combinations that exist in the dataset appear in this figure.

Furthermore, there is overlap of question types within the question functions, largely in line with Heffer’s (2005) findings. For example, in Figure 1, narrow wh-questions in both DE and CE of Jeantel elicited narration and specification, depending on the embedded propositions and situational contexts; however, in both cases, narrow wh-questions more commonly elicited specification. Considering that analysis focused on one witness with one prosecutor and one defense counsel, there is insufficient data to determine whether this reflects a propensity of such questions to elicit specification over narration, or whether this simply reflects the personal questioning style of the counsel involved. In line with Heffer’s (2005) findings, grammatical yes-

no questions also overlapped between the functions of specification and confirmation in both DE and CE. The use of prosodic questions, however, was found to elicit specification in some rare occurrences, in contrast with Heffer's (2005) position that such questions would elicit confirmation only. Consider the following excerpts.

(5) Case no. 2012CF1083A, p. 51, CE:

01 Q: What? I'm sorry. The First 48?
 02 A: A show, the First 48. When a victim die, they call
 03 the number that the victim called before they had
 04 die. They ain't call my number, so, and they had
 05 already got the person, so case closed I thought.

(6) Case no. 2012CF1083A, pp. 63–64, CE:

22 Q: So you knew then that when you had the meeting
 23 with Ms. Fulton that it would be a tough one for her?
 24 A: Yeah, definitely. To hear that I was the last one
 25 to even talk to her son.
 01 Q: Of course. Of course. You knew that she would
 02 be very interested to know because --
 03 A: Emotional.

Example (5) provides an interesting illustration of specification, in that the act being elicited from the question is to clarify what is meant by “The First 48,” since the show is not common knowledge. Similarly, example (6) illustrates Jeantel's specification that the nature of the meeting between her and Martin's mother would be an emotional one. Both excerpts demonstrate that the response provided goes beyond simply confirming or disconfirming a proposition; both “specify for the court given details” (Heffer, 2005, p. 111). In general, the results of this study provide support for Heffer's (2005) classification of question functions and their elicitation of specific responses.

Overall, the above findings indicate that control within questioning is not clearly delineated and reflects more of a spectrum, consistent with Seuren's (2019) position that control lies on a gradient, with broad wh-questions as least controlling and yes/no questions, especially tag questions, as most controlling. Narrative in the courtroom is therefore influenced not only by question types, but also through the speech act functions that counsel elicit. While narration-eliciting and wh-type questions allow witnesses to speak more freely and produce a more coherent narrative, the predominant use of polar questions and confirmation-eliciting questions contributed to the fragmented nature of Jeantel's testimony.

4.2 Role of witness in narrative negotiation

Multiple scholars have recognized the dynamic nature of the counsel-witness relationship during questioning; although the courtroom setting contains a multitude of restrictions on witness responses, there is space and opportunity to effect agency, and where applicable, resistance to the controlling nature of courtroom questions (Galatolo & Drew, 2006; Heffer, 2005; Newbury & Johnson, 2006). The witness is not always required to select a response from the offered options despite the presence of a question compelling a response (Heffer, 2005). An examination of witness responses is therefore crucial to the understanding of how the boundaries of narrative are negotiated within the courtroom.

As a result, answer types were also analyzed in Jeantel's testimony and produced the following general categories: type-conforming, clarification, narrative expansion, and resistance strategies, including contest, resistance, avoidance, and refusal (Newbury & Johnson, 2006); a general overview of these is provided in Table 1. Type-conforming answers are those that aligned with the question proposition and did not deviate from the question type, and they were by far the most common response for both DE (78.8%) and CE (60.7%). Considering that the power of counsel in constructing narrative comes not just from the use of controlling or coercive questions, but also from compelling type-conforming answers to their questioning (see Ehrlich & Sidnell, 2006), this result is not surprising and further bolsters the importance of strategic questioning. Responses that make a request for clarification are not common in either form of examination, even less so within DE. Narrative expansions (NE), see example (7), are similar to corrections, example (8), as they both provide a minimal response, along with the provision of additional information that was not requested. It should be noted that NE as an answer type cannot occur in response to a request for narration, as, according to the definition of NE as an answer type, it functions to expand beyond an expected response.

(7) Case no. 2012CF1083A, p. 13, DE:

15 Q: Did Mr. Martin say the guy kept looking
16 at him?
17 A: Yeah. And then he just told me he just
18 going to try to lose him.

(8) Case no. 2012CF1083A, p. 55, CE:

04 Q: Nothing in the news that you heard?
05 A: I don't watch the news. The only time I watch
06 the news is for weather.

As illustrated, NEs are aligned with the proposition embedded within the question while corrections are aligned against. NEs suggest acceptance of the question proposition, making their relatively higher incidence within DE reasonable. Considering that witnesses are prepared for a direct examination (Harris, 2001; Heffer, 2005), these findings are not surprising. Furthermore, NEs allow witnesses not just to provide additional context, as illustrated above, but also to deflect blame from themselves or others, as illustrated in Example (9).

(9) Case no. 2012CF1083A, p. 46, CE:

01 Q: And you believed that it was just a fight?
02 A: And then I believed -- I told you I believed that it
03 was just a fight. And he already told me he was by his
04 father house, so I thought his father was going to help
05 him. And I did hear sounds from the background that
06 people could help him. So I never thought it was that
07 deadly serious. So I had called back on a number before.

In this case, opposing counsel is questioning Jeantel on why she hadn't reached out for help if she was concerned about Martin's safety; she responded with a justification of her actions to reduce the blame placed on her and the attack on her credibility.

Resistance strategies are identified and defined in accordance with Newbury and Johnson (2006). They appear significantly more frequently in CE (24.4%, Table 1) than DE (5.8%, Table 1). In order to gain more insight into the nature of these resistance strategies, they were cross-referenced with question functions and types for both DE and CE. Table 2 (DE) and Table 3 (CE) show results for answer types by question function. Resistance strategies are more likely to be employed in response to confirmation-eliciting questions across both DE and CE, representing 55.6% and 81.9% of all resistance strategies employed within each examination type, respectively. This is not surprising, considering such questions are more controlling and provide limited options to witnesses (Heffer, 2005; Newbury & Johnson, 2006; Seuren, 2019). Confirmation-eliciting questions ask the receiver to affirm or deny the proposition embedded in the question (Heffer, 2005); within the courtroom setting, resistance strategies are thus more likely to be deployed when a witness challenges the proposition relayed by counsel. These findings are in line with the goals of counsel. The prosecution aims to balance free narrative speaking with controlling the direction that the testimony takes (Heffer, 2005). Witnesses are frequently prepared on the types and nature of the questioning, so there would be less necessity in using resistance strategies relative to cross-examination, where witnesses may not be prepped on opposing counsel's questions. Furthermore, while cross-examining a witness, opposing counsel's goal is to challenge the version of events as laid out by the witness, thereby using questions with limited answer options that incorporate propositions in direct opposition to the narrative constructed by the witness in direct examination (Mortensen, 2020; Seuren, 2019) Tables 2 and 3 provide additional insight into specific strategies employed, illustrating that avoidance (4.5% of all response types) is more common in DE while correction (14.8% of all response types) is the strategy of choice within cross-examination. Avoidance in DE may reflect the presence of question clusters (see section below), as it is difficult to provide an answer to multiple questions at once, thus meeting Newbury and Johnson's (2006) criterion for avoidance (providing a response that does not address the embedded proposition of the question); however, this is not necessarily an intentional evasion of answering questions. Correction, on the other hand, is an intentional act, as it requires explicit disagreement of the question proposition, along with an explanation of the disagreement. Its prevalence in CE is thus reasonable and unsurprising; cross-examining counsel attempted to identify inconsistencies in Jeantel's testimony and cast aspersions on her version of events—Jeantel responded by resisting these efforts and returning credibility to her narrative through correction.

It should also be noted that contest-type answers are non-existent in direct examination. In combination, these results indicate that answer types of witnesses are, to a large extent, a reflection of the question types and functions of counsel and the institutional setting and thus also reflect counsel goals for narrative construction. Type-conforming responses constitute the majority within both forms of examination, although substantially higher in DE than CE. Coupled with the presence of narrative expansions, most answer types thus follow counsels' lead in constructing narrative within the courtroom. There is, however, space for resistance and effecting personal agency. As cross-examining counsel attempt to guide narrative from its established path, resistance strategies provide witnesses with a strategic toolkit to push back.

Table 2 illustrates the breakdown of answer types by question function within the direct examination. Empty cells indicate answer type and question function combinations that do not exist in the data—zero values for these cells were omitted for ease of readability. Percentages *shown illustrate relative distribution of answer type for each column.

Table 2. Distribution of answer types within direct examination and cross-referenced by answer type and question function.

		Question function – direct examination								Total		
		Narration		Specification		Confirmation		Other				
Answer types direct examination		%	Frequency	%	Frequency	%	Frequency	%	Frequency	%	Frequency	
		Type-conforming	88.8%	22	91.4%	32	71.3%	62	77.8%	7	78.8%	123
		Clarifying	4.0%	1			1.1%	1			1.3%	2
		Narrative expansion			8.6%	3	21.8%	19			14.1%	22
		Resistance strategies	8.0%	2			5.7%	5	22.2%	2	5.8%	9
		Contest										
		Correction					1.1%	1			0.6%	1
		Avoidance	4.0%	1			4.6%	4	22.2%	2	4.5%	7
Refusal	4.0%	1							0.6%	1		
Total		100%	25	100%	35	100%	87	100%	9	100%	156	

Table 3. Distribution of answer types within cross-examination and cross-referenced by answer type and question function.

		Question function – cross-examination								Total		
		Narration		Specification		Confirmation		Other				
Answer types cross-examination		%	Frequency	%	Frequency	%	Frequency	%	Frequency	%	Frequency	
		Type-conforming	66.7%	4	59.8%	76	60.0%	504	69.6%	32	60.6%	616
		Clarifying	16.7%	1	8.7%	11	3.0%	25	4.3%	2	3.8%	39
		Narrative expansion			3.1%	4	12.7%	107	8.7%	4	11.3%	115
		Resistance strategies	16.7%	1	28.3%	36	24.3%	204	17.4%	8	24.5%	249
		Contest			1.6%	2	2.6%	22	6.5%	3	2.7%	27
		Correction			7.1%	9	16.3%	137	8.7%	4	14.8%	150
		Avoidance	16.7%	1	18.9%	24	5.0%	42	2.2%	1	6.7%	68
Refusal			0.8%	1	0.4%	3			0.4%	4		
Total		100%	6	100%	127	100%	840	100%	46	100.3%	1019	

Table 3 illustrates the breakdown of answer types by question function within the cross-examination. Empty cells indicate answer type and question function combinations that do not exist in the data—zero values for these cells were omitted for ease of readability. It should be noted that although there are only 1016 question-and-answer pairs in the dataset for the cross-examination, 3 answer responses had two labels each for the answer types; therefore, there are 1019 labels total. Percentages shown illustrate relative distribution of answer type for each column.

4.3 Additional observations: Question clusters and interruptions

Table 4. Distribution of question clusters and interruptions in direct and cross-examinations.

	Direct examination	Cross-examination
Question cluster	8	31
Question interruption	7	88
<i>Interruption by witness</i>	6	78
<i>Interruption by counsel</i>	1	10

Table 4 illustrates the frequency of question clusters and question interruptions within the direct and cross-examinations. Question clusters are two or more questions that are posed by counsel in rapid succession without providing the witness an opportunity to complete a response. In this transcript, one question cluster was asked by the witness to clarify opposing counsel’s question. The remainder were asked by counsel, in either direct or cross-examination.

Examination of the transcript identified the presence of question interruptions and question clusters, the asking of two or more questions in rapid succession without providing the witness an opportunity to complete a response (see Table 4). Question clusters are present in both DE ($n = 8$) and CE ($n = 31$) and largely occurred as a way for counsel to clarify a previous response, or in an effort to undermine Jeantel’s credibility as a witness by trying to catch Jeantel “off guard” within the CE, as in Example (10).

(10) Case no. 2012CF1083A, pp. 234–235, CE:

22 Q: Are you saying that the sound of wet grass that
 23 you used to describe this yesterday, as you described it
 24 today you’re saying that you believe that was people
 25 rolling around on the ground?
 01 A: Yes, sir.
 02 Q: And what’s that based on? What is the sound
 03 you heard that led to that conclusion?
 04 A: I really don’t know how to --
 05 THE REPORTER: I don’t know how to?
 06 THE WITNESS: I really do not know how to
 07 describe that.
 08 BY MR. WEST:
 09 Q: Do you know how one of those headsets works?
 10 A: Like this (indicating).
 11 Q: Right. So if something brushes against it, you
 12 you hear just like what you heard here, right?
 13 A: Yes, sir.
 14 Q: So it could have been fabric? It could have

15 been wind? It could have been a thousand other things
 16 than somebody rolling on the ground, couldn't it?
 17 A: Yes, sir.

Leading up to Example (10), opposing counsel had asked Jeantel multiple times to explicitly describe the sound she heard while on the phone with Martin. This line of questioning culminated in two sets of cluster questions, as shown in this example (lines 2–3 and lines 14–16). The first set of cluster questions (lines 2–3) pushed Jeantel to provide a clear description of the sound she heard while the second set of cluster questions (lines 14–16) placed doubt on Jeantel's interpretation of the sound she had heard by presenting alternate possibilities, after which Jeantel responded in the affirmative. This line of questioning, and the embedded cluster questions, challenged Jeantel's testimony, and by extension, her credibility.

It is possible that the combination of question type and presentation in the form of a cluster may intensify coercive elements of questioning; however, this requires further research. Future research should also note whether witness response conforms in type to the last question in a cluster or to previous ones.

Both counsel and witness may engage in question interruptions; witness interruptions are more prevalent ($n = 84$) across both DE ($n = 6$) and CE ($n = 78$) than counsel interrupting a witness response ($n = 11$). Interruptions by counsel may occur to clarify testimony, or more frequently in CE, to challenge the witness's credibility, as in Example (11).

(11) Case no. 2012CF1083A, p. 59, CE:

13 Q: Ms. Fulton wanted to talk with your mother?
 14 A: Before she talked to me and --
 15 Q: Is that because you lied about your age?
 16 A: She ain't know my age. She thought I was a
 17 minor just like Trayvon.

Witness interruptions may occur organically as when, for example, Jeantel provided clarification on the headset Martin was using to communicate with her. However, just as question clusters can work in combination with coercive question types to challenge existing narrative, question interruptions can provide an additional strategy for resistance, especially when combined with other strategies. Examples (12) through (14) illustrate witness interruptions to counsel questions.

(12) Case no. 2012CF1083A, p. 38, CE:

15 Q: Okay. I may ask you to use that to refresh
 16 your recollection or be able to pinpoint --
 17 A: There should be more.
 18 Q: This call record begins at 5:09 --
 19 A: No.

(13) Case no. 2012CF1083A, p. 258, CE:

07 Q: What is it that you say, though?
 08 THE REPORTER: I can't hear you.
 09 A: That's not what I said. That's your opinion,
 10 sir.

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11 BY MR.WEST:

12 Q: All right on the paragraph where Mr. De La
13 Rionda asks you did he ever say the guy got out
14 of the car --

15 A: Keep reading it, sir.

(14) Case no. 2012CF1083A, p. 249, CE:

06 Q: And you knew in your mind that it was going to
07 be a fight?

08 A: No, sir.

09 Q: But when you --

10 A: Maybe an argument.

11 Q: You thought Trayvon Martin would approach a man
12 he'd never seen in his life and that he would --

13 A: I didn't say Trayvon approached a man, sir.

The controlling nature of coercive questioning comes in part from the embedded presuppositions that witnesses may not be able to address adequately, or at all (Ehrlich & Sidnell, 2006). Witness interruptions may be an effective strategy to resist questions containing presuppositions that do not align with the witness's version of events. Example (14) illustrates such a practice; here the opposing counsel is trying to put forth a characterization of Martin as a confrontational and potentially violent individual in uttering that Martin would approach someone he hadn't met before in order to physically confront them. Jeantel interrupts this characterization. Therefore, interrupting the questions functions as a means of interrupting the presupposition within the question and thus resists its implied truth. Embedded presuppositions may contain damaging narrative fragments (Ehrlich & Sidnell, 2006). Furthermore, witnesses may be compelled to answer completed questions using a limited number of response options (Ehrlich & Sidnell, 2006; Galatolo & Drew, 2006; Newbury & Johnson, 2006). Interrupting counsel's question may therefore provide a loophole allowing witnesses to address damaging presuppositions beyond their normally limited options. Furthermore, question interruptions may also provide an avenue for resistance that is unlikely to be sanctioned by the court. Out of 95 total interruptions, only two were penalized by the court—all others were allowed. This finding is surprising considering the restrictions placed on verbal exchanges within the courtroom institutional discourse. Furthermore, only counsel interruptions were sanctioned by the court; this may be due to the professional ethics or guidelines that counsel must abide by as representatives of the institution at play. Most counsel interruptions were not sanctioned; future research should examine counsel interruptions to determine if patterns exist between interruptions that are sanctioned and those that are not. All interruptions by the witness were allowed. The lack of sanctioning of both witness and counsel interruptions presents an interesting avenue for narrative building and contesting; by interrupting a question, the witness prevents the embedded proposition from being completed. In the case of counsel, interrupting the witness stops the witness from completing their testimony, and therefore their version of events. The use of question clusters and question interruptions therefore provides an interesting avenue for future research, especially when combined with other strategies for narrative control by counsel and for resistance by witnesses.

5 Discussion

Narrative construction through witness testimony in a criminal trial is multifaceted and reflects the complexity of institutional discourse and the socio-legal factors that shape the scope and nature of questions and answers. Question types and functions, answer types, and question clusters and interruptions all mediate the construction and contestation of witness narrative within the courtroom.

Overall, results in this study examining Jeantel's testimony are in line with previous research examining the role of counsel in constructing and impeaching witness narrative. When questioning their own witnesses, counsel use strategic question types in order to effect desired storytelling through narration, specification, and confirmation. These attorneys walk a fine line between allowing witnesses free narrative to bolster their credibility, and by extension, the trustworthiness of the case as they see it, and the need to control the narrative to comply with rules of evidence and to prevent unnecessary openings for opposing counsel. Cross-examining counsel, on the other hand, use similar questions to different degrees in order to challenge the existing narrative and bring to light gaps and inconsistencies in witness testimony. Support for all three hypotheses was found, suggesting that the level of control within questioning falls along a spectrum. Resistance strategies were examined, and although type-conforming answers are the most common answer type, there are interesting relationships between avoidance, correction, confirmation-eliciting questions, and prosodic questions that ought to be explored further. Finally, the identification of question clusters and interruptions may shed further insight into strategies of narrative control and witness resistance. While other resistance strategies (avoidance and refusal) may be penalized by the court, witness interruptions appear to be rarely penalized and thus may reflect a more effective resistance strategy by the witness. However, this assumes that such witness interruptions do not poorly reflect upon witness credibility and legitimacy in the eyes of the judge or jury. It is possible that due to Jeantel's age, race, and spoken dialect (see for example Rickford & King, 2016), the practice of witness interruptions may further delegitimize Jeantel's credibility, or perception thereof. The delegitimizing of witnesses or victims is not exclusive to the American context. In the Canadian context, Roach (2014) similarly found that a high burden of proof was expected of Indigenous victims when considering harms caused by residential schools in both civil and criminal matters. Further research should examine the role of such factors in the effectiveness and legitimacy of witness interruptions to counsel questions. Future research should also address some of the limitations of this study. First, the author served as the only coder for the data—future research should employ multiple coders to increase the accuracy of the coding. Additionally, this study examined the transcript of one witness with one prosecutor and one defense counsel; therefore, the results of this study may, to a degree, reflect the personal questioning and response styles of attorneys and the witness. Future research should incorporate data from multiple witnesses and counsel. Question types and forms may also vary by type of witness (Heffer, 2005)—it would be prudent to therefore examine different types of witnesses for varying response types. Finally, this study focused on a criminal case that occurred in the US. However, while nuances may change depending on jurisdiction, there is significant overlap in courtroom rules between US, UK, and Canadian criminal courts when questioning witnesses in a criminal trial. Rules of evidence surrounding testimony generally dictate that new information may only be introduced through witness questioning (Dostal, n.d.; Government of Ontario, 2012). With respect to counsel etiquette and the rules surrounding the questioning and cross-examining of witnesses in a criminal case, there are overarching similarities across jurisdictions. For example, similar to courts in the US, Canadian law prohibits the use of leading questions in direct examinations, and opposing

counsel may not introduce new evidence—questioning during cross-examination may challenge evidence that has already been offered by the witness in the direct examination (Dostal, n.d.; Government of Ontario, 2012). Future research may therefore incorporate Canadian criminal court transcripts in exploring the production of narrative in this unique institutional discursive setting to verify and expand on the results presented here.

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