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LINGÜÍSTICA APLICADA**

**HOW ARE VIOLENCE AND GENDER TALKED
ABOUT IN PUBLIC? CULTURAL ASSUMPTIONS
AND THE DISCURSIVE CONSTRUCTION OF THE
PAST**

**TRABAJO DE TESIS PRESENTADO POR
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ABSTRACT

From the theoretical perspective of situated discourse analysis and drawing on the related research traditions of critical discourse analysis and conversation analysis, this study examines the discursive construction of interested versions of the past in the context of lay witness examinations. The view of discourse advocated acknowledges its socially constructed nature, and understands it as a complex configuration of semiotic resources. The corpus analyzed is made up of a linguistic subcorpus of twelve lay witness examinations and a multimodal subcorpus of 101 video clips featuring extracts from interactions between lay witnesses and litigants. The analysis reveals that litigants deploy interactional mechanisms that guarantee the generation of implications favorable for the version of the past upheld. One of the mechanisms identified includes the use of questions about the meaning of everyday expressions. The other consists in combining questions about specific past behaviors with those that invoke mental representations stored in situation models. This study also includes an exploration of different speech-accompanying gestures that cooccur with a specific kind of propositional content. It is shown that lay witnesses' use of hand movements combined with facial expressions and head shakes is related to the type of cognitive activity performed and the kind of information requested in the question. The examination of the recurrent interactional routines initiated by litigants indicates that institutional participants resort to mechanisms through which they guide their interlocutors into verbalizing content aimed at generating implications that are damaging to the positive face of parties involved in the conflict. The analysis reveals that, in the examinations observed, what gets systematically evaluated is witnesses' past sexualized conduct. This suggests that witness credibility can be attacked by alluding to the dimension of morality. This study concludes by unveiling the cultural assumptions and values about sexualized practices that permit that covert evaluations be generated.

Key words: Discursive construction, Face-to-face interaction, Gender, Past, Morality

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CHAPTER I: Introduction

The ultimate objective of a criminal trial is to determine the liability of individuals for having committed a crime. Yet, the attainment of justice cannot escape the complexity posed by the very fact it seeks to unveil; removed in time and place from the context in which they are tried, the alleged criminal events can only be accessed through the use of language.

During the stage of the public hearings, representatives for each side undertake the complex task of assigning meanings to the body of evidence available to them. The courtroom becomes the site in which antagonistic versions of past realities are reconstructed, resignified and reinterpreted. In lay witness examinations, matters concerning the selection of specific aspects of the past that will be talked about and the manner in which they will be talked about are crucial for the development of the case because they will necessarily impact on the verdict. Which “facts” will be elicited and offered as supporting evidence and which ones will be left unexplored?

This research study will examine data from a high-profile criminal case involving a male defendant and a female victim which took place in a jurisdiction in the US. The defendant was found guilty of the crimes of kidnapping and murdering a minor and the misdemeanor of possession of pornographic material featuring under aged persons. He was sentenced to the death penalty and currently serves time in a state penitentiary. There are a series of characteristics that make the data worthy of examination. First, there were no material witnesses to the kidnap and subsequent murder of the victim. Second, none of the parties could present conclusive biological or psychiatric evidence that could indicate the defendant’s involvement in the crime. Therefore, the role of language was essential to determine the criminal liability of the defendant because oral testimonies were the primary source on which judges and jurors based their decisions.

Grounded in the theoretical perspective of situated discourse analysis and drawing on the compatible research traditions of critical discourse analysis and conversation analysis, this study will explore the discursive construction of alternative versions of the past in the context of lay witness examinations. The selection of this research topic derives from the fact that only one of the competing versions will attain the status of “official”; therefore, exploring the role of discourse in the construction of

the past can contribute to the understanding of how socially significant decisions are made. Considering the impact of contextual factors, this study will identify different types of interactional mechanisms aimed at generating meanings convenient for the parties in the conflict, and it will reveal specific ways through which participants orient themselves verbally and non-verbally to the communicative activity at hand. This study will conclude by unveiling cultural assumptions and values that are present in the community in which the trial took place and that made possible that specific implicit meanings be generated.

1.1. Delimitation of the research problem

This study aims at exploring how antagonistic versions of the past are negotiated and multilaterally constructed in face-to-face interaction. In order to do so, it focuses on uncovering the discursive mechanisms oriented to gradually construct an interested version of the past. Given that during witness examinations, the construction of witnesses' credibility is a central component in the construction of a coherent version, this research study focuses on discursive strategies oriented to enhance or destroy the positive face of parties involved in the conflict. In addition, it seeks to detect some of the underlying cultural assumptions related to femininities and masculinities that are present in an English-speaking community. In order to achieve these aims, the data are drawn from the official records of a criminal trial that took place in a jurisdiction of the US and that involved a male defendant and a female victim. Given the characteristics of the case, it is expected that representations of female and male behaviors are recurrent during the examinations under study.

The working hypotheses are two. Firstly, given the institutional rules that condition the discursive behavior of different participants during an examination, it is expected that covert challenges to somebody's face are preferred over more explicit ones. Secondly, in view of the nature of the criminal acts tried, we are likely to find numerous representations of violent acts. In order to test these hypotheses, the research questions that guide this study are the following: a) Which are the discursive mechanisms that litigants mobilize in order to construct a particular version of past events?; b) What representations of sexualized behavior are verbalized during an institutional event?; c) What do recurrent representations about sexualized behavior reveal about cultural understandings of gender roles?; and d) Which discursive

resources do lay participants resort to in order to negotiate aspects of the past during examinations and which semiotic channels are they expressed in?

The general objective of this research is to contribute to an understanding of the complex generation of meanings in face-to-face communication. The specific objectives are: a) to detect ways through which the past is constructed in an institutional event; b) to identify some of the cultural assumptions related to gender that are present in the English-speaking community in which the trial took place; c) to describe the connections between meanings expressed verbally and those expressed through other semiotic channels.

1.2. Theoretical approach

The point of departure is the theoretical perspective of situated discourse analysis as proposed by Chouliaraki and Fairclough (1999) and Fairclough (1989, 1992, 1995, 2003). This perspective departs from the premise that social life, the object of study of discourse analysis, is made up of social practices, that is, historically-situated “habitualized ways in which people apply resources (both material or symbolic) to act together in the world” (Chouliaraki & Fairclough, 1999: 21). Routine ways of carrying out different aspects of social life –social practices– typically include a combination of discursive and non-discursive aspects. In turn, social practices mediate between concrete social events and more abstract structures, such as the ‘order of discourse’, that is, the total configuration of discourses and genres articulated together in a social practice (Chouliaraki & Fairclough, 1999; Foucault, 1992 [1970]). ‘Discourse’ is here understood as a complex of “semiotic elements of social practices”, which includes verbal and non-verbal communication (facial expressions, body movements, gestures) as well as visual images (Chouliaraki & Fairclough, 1999: 38). From the point of view advocated, discourse stands in a dialectal relationship with other aspects of the social plane in the sense that it constructs and is potentially able to transform already existing social identities, social relations and systems of knowledge and beliefs (Fairclough, 2003).

This study benefits itself from contributions made within socio-cognitive discourse analysis (van Dijk, 1993, 1999; van Dijk *et al.*, 1997). This perspective, rooted in the premise that discourse is doubly conditioned by matters that are cognitive and social in nature, has provided useful conceptualizations about the workings of

discourse in the perpetuation of ideologically motivated discourse practices. In order to account for the impact of recurrent and habitualized ways of conceiving of and talking about different social categories and experiences, I resort to the concepts of ‘event model’, ‘situation model’, and ‘context model’ because they help describe orientations to and manifestations of shared cultural knowledge and how their evocation can be put to serve specific communicative purposes. According to van Dijk (1999: 108), when a person experiences an event, they construct a mental representation of that event, which is stored in the episodic memory. This type of mental model, or ‘event model’, is subjective because it represents a personal experience and it reflects a person’s opinions about and interpretation of an event. In this way, when a person speaks about a past experience, what is manifested in discourse is the individual’s knowledge about a particular cognitive model they have constructed for that event. Individuals also have access to stored knowledge about social situations that they may not have experienced directly. A ‘situation model’ is a cognitive structure that contains subjective representations of different kinds of social situations. Evidently, information stored in event models and in situation models tends to overlap (van Dijk, 1999: 109). For example, when someone speaks about a particular car accident they were involved in, they retrieve information stored in a model of the specific event, that is, the mental model they constructed for the incident as well as general knowledge, or social representations, they have about accidents, injured people, roads, traffic, etc. In this way, “social representations are materialized in mental models” (van Dijk, 1999: 109). Finally, knowledge related to the type of communicative event that is taking place constitutes a type of cognitive model called “context model” (van Dijk, 1999: 111). This type of model contains information related to the place and time in which a communicative event takes place, the circumstances surrounding it, the participants involved, and their attitudes towards the event. While the information stored in event models is relatively stable, context models represent the changing nature of discourse production and comprehension and they tell people how to behave appropriately in a given communicative situation and, therefore, how to accommodate the way they speak in different contexts (van Dijk, 1999: 112).

Traditions within critical discourse analysis have accounted for the intersection between power and discourse. According to van Dijk (1999: 93), ideologies are directly related to social power because they contribute to legitimize existing inequalities and

social relations of domination. Ideologies are systems of socially-shared mental representations, which include shared beliefs, opinions, values, and truth criteria (1999: 92). Within social cognition, the main function of ideologies is to organize the mental representations that control personal and social beliefs and, particularly social practices, which include discursive practices (1999: 92). The social aspect of ideologies is related to the fact that they are shared by the members of a social group.

According to Fairclough (1989), cultural assumptions are also related to the workings of power. Cultural (or background) assumptions are kinds of implicit, commonsense ideas that intervene in discourse production and interpretation (Fairclough, 1989: 7). They are ways of conceiving aspects of reality that are taken for granted and only rarely explicitly or publicly examined (Fairclough, 1989: 77). Evidently, not every cultural assumption is ideological, however, when these commonsense, implicit sets of ideas help maintain existing power relations, they become ideological. Cultural assumptions associated with gendered practices are ideological when they help perpetuate established normative views of feminine and masculine behavior that are convenient for the interests of particular powerful groups.

Critical discourse analysts share with feminist scholars an interest in unveiling the nature of gender identity and its social construction. Considering gender a social construct that can be enacted through and in discourse means acknowledging that different social groups occupy different positions in the social organization but, at the same time, it is necessary to admit that those positions are neither static nor pre-defined (Cameron, 1995; Speer, 2005). This view of gender rejects static and categorical conceptualizations and, instead, argues for its dynamic and socially constructed nature. As other aspects of social identity, social gender is subject to negotiation in discourse and can be eventually responded to (Cameron, 1997).

Another research tradition that is compatible with the view upheld here is conversation analysis (Atkinson & Heritage, 1984; Pomerantz, 1984; Heritage, 2002) because, within this perspective, discourse is conceived of as social action. In order to analyze the interactional sequences produced during lay witness examinations, I draw upon descriptions of the interactional dynamics that characteristically take place in institutional and organizational contexts (Drew & Heritage, 1992; Sarangi & Roberts, 1999). Regarding courtroom settings, the relatively strict organization of turns at talk determines that the interaction is organized in terms of sequences of questions and

answers. In general terms, studies of courtroom interaction (Drew, 1990, 1992; Drew & Sorjonen, 1997; Wang, 2006; Tracy & Robles, 2009) suggest that the deployment of recurrent interactional mechanisms is related to the achievement of a specific communicative goal. In order to analyze witnesses' orientation to the joint activity at hand, I make use of the concept of 'preference organization' to account for "alternative but non-equivalent" courses of action "that are routinely implemented in ways that reflect an institutionalized ranking of choices" available to participants (Atkinson & Heritage, 1984: 53). Given a sequence of turns at talk, a 'preferred response' is the choice that the first pair-part expects. On the other hand, a 'dispreferred response' is a second pair-part that is regarded as less expected than an alternative course of action (Atkinson & Heritage, 1984: 53). Dispreferred activities are usually associated with features of utterance design such as delaying devices and they are linguistically marked by lexical choices and (Pomerantz, 1984: 70).

The perspective adopted is well suited to account for the interconnections between different types of semiotic modes in the expression of situated meanings (Chouliaraki & Fairclough, 1999; Fairclough, 2003; Kress & van Leeuwen, 2001; Kress, 2010). This is justified on the basis of the multimodal nature of most current printed texts, which is related to cultural changes (Fairclough, 1989, 1995; Bezermen & Kress, 2009; Kress, 2010). For example, the contemporary use of layout, typography and imagery in printed texts produced by the press (Fairclough, 1995) and those produced for educational purposes (Bezermen & Kress, 2009) are indicative of the new kinds of social relations established between text producers and consumers in our present text mediated 'visual era' (Chouliaraki & Fairclough, 1999). As regards the analysis of oral texts, particularly those generated in face-to-face interactions, Montes Miró (2009: 219) argues that the study of the verbal mode is still given prominence. For this reason, linguists interested in face-to-face interactions (Montes Miró, 2009: 219; Carranza, 2012: 14; Park, 2009: 104) argue for the need to consider different semiotic channels in order to fully understand the complex nature of meaning generation.

From the field of gesture studies (Kendon, 2004; McNeill, 1992), I make use of the concepts of 'rest position', 'stroke' and 'recovery' in order to distinguish between different phases of gestural action. The 'rest position' is the initial position from which the particular body parts involved in the gesture are moved away. Once mobilized, they undertake a 'movement excursion' or 'excursion' or a succession of those excursions

(Kendon 2004: 111). During an excursion, there is a moment in which the gesture achieves its peak or “apex”, which is “usually recognized as the phase when the ‘expression’ of the gesture, whatever it may be, is accomplished” (Kendon, 2004: 112). This is known as the ‘stroke’ of the gesture. Eventually, the body parts involved in the gesture return to the initial position or to some position of rest. This gestural phase is referred to as the ‘recovery’.

Since the 1970s, different typologies of gestures have been proposed. McNeill’s typology, which is a reinterpretation of Kendon’s (1988) proposal, is known as the “Kendon’s continuum”. McNeill distinguishes five major gesture types: Gesticulation – Language-like gestures – Pantomimes – Emblems – Sign languages. As we move from left to right in the continuum, we can see that “(1) the obligatory presence of speech declines, (2) the presence of language properties increases, and (3) idiosyncratic properties of gestures are replaced by socially regulated signs.” (McNeill, 1992: 37). At the right end of the continuum, we find ‘gesticulations’ (i.e. hand and arm movements) which accompany speech and which are idiosyncratic and spontaneous. Then, we find ‘language-like gestures’ “that are grammatically integrated into the utterance” and are used instead of a linguistic structure (McNeill, 1992: 37) as when, for example, an Argentinean speaker says “La vi [gesture]” and, instead of uttering an adjective, the speaker extends an open hand and rotates it various times. With ‘pantomimes’, the hands are used to illustrate objects or actions, “but speech is not obligatory” (1992: 37). ‘Emblems’ are gestures that have invariant meanings and can be recognized in most contexts. An example is the use of the thumb and index finger to mean “okay”. Finally, on the left end of the continuum, we find ‘sign languages’, which are “full-fledged linguistic systems with segmentation, compositionality, a lexicon, a syntax, distinctiveness, arbitrariness, standards of well-formedness, and a community of users” (1992: 38).

In addition, McNeill distinguishes four categories of gestures following criteria related to form and the relation between the gesture and the type of verbal content produced. According to this author, ‘iconic gestures’ are a visual representation of concrete objects as when an Argentinean speaker raises a clasped hand showing the thumb and index finger slightly apart from each other to refer to a coffee. ‘Metaphoric gestures’ are similar to iconic ones in that they represent visually the entity referred to, but they are characterized by representing abstract concepts. An example is the use of a

clasped hand with an extended index finger circling and pointed to the side of head, which is used by Argentinians to indicate that someone is mad. Furthermore, ‘deictic gestures’, which function similarly to linguistic deictics, are used to point to aspects of the context of situation; for example, when one accompanies the verbalization of “that car” with the gesture signaling the specific object referred to. Haviland (2000 in Montes Miró, 2003) has identified a subtype of deictic gesture, namely ‘abstract deictic gestures’ which are signals to referents found in discourse as opposed to physical objects in the context. Finally, ‘beats’ are those gestures that are used to signal the pragmatic relevance of different types of discourse units. These are the gestures that seem to be marking the tempo or occurrence of specific units in discourse (Montes Miró, 2003, 2009). Regarding their form, they are relatively simple gestures consisting of two sequential movements of execution and retraction to the initial position; for example, moving one’s head downwards and then back to initial position.

The applicability and usefulness of using strictly delineated categories in the analysis of gesture can be criticized for various reasons. As Kendon claims (2004: 103), the nature of the categorical schemes proposed seems to reflect linguists’ desire “to apply quantitative statistical methods” to the study of gestures. Also, because in naturally occurring instances of language in use, it is typically the case that gestures perform more than one function simultaneously; therefore, working with mutually exclusive analytical categories seems pointless (Kendon, 2004: 103-104). According to Kendon, an approach to the study of gestures needs to “recognizes [...] a series of dimensions in terms of which gestures can be compared” (Kendon, 2004: 104). He goes on arguing that,

“it is useful to distinguish the different ways in which gesture can be used, to study the different conditions which constrain or facilitate the different forms that can be created by it and to examine the processes by which forms can become established that are socially shared. [...] Given the nature of gestures as a form of human expression, we cannot establish permanent categories that represent *essentially* different forms of expressive behaviour.” (Kendon 2004: 107; *emphasis in the original*).

Although Kendon (2004) himself acknowledges the futility of departing from a relatively fixed typology of gesture forms, he proposes to depart, instead, from a typology of the functions that gestures can perform in discourse. Gestures, according to the author (Kendon, 2004: 225) can perform a series of discourse functions that include ‘referential’, ‘interactive’, and ‘pragmatic’ uses. Gestures are used referentially in cases

in which they contribute to the representation of a particular propositional content. Interactive or interpersonal uses of gestures are related to the signaling of aspects of the interactional dynamics; for example, pointing to the speaker to which an utterance is directed or raising one's hand in order to claim one's role as current speaker. Finally, gestures are said to perform 'pragmatic' functions when "they contribute to or constitute the acts or moves accomplished by utterances" (Kendon, 2004: 225). In turn, the author distinguishes between the following subtypes of pragmatic functions: Gestures that realize a 'performative' function are those which signal the type of speech act a speaker is realizing. In addition, gestures can signal how a particular discourse unit is to be interpreted, and, in cases like this, they are said to perform a 'modal' function. Finally, gestures can perform 'parsing functions' "when they contribute to the marking of various aspects of the structure of spoken discourse" (2004: 225).

Advances in the field of gestures studies have contributed to the understanding of how speech-accompanying gestures are used. However, the view of discourse advocated in the present study departs from the premise that semiotic resources, including gestures, perform multiple discursive functions simultaneously (Fairclough, 1989, 1995; Montes Miró, 2003, 2009). Therefore, the potential functions gestures can perform in concrete instances of use necessarily go beyond any typology of fixed categories because of the multiplicity of factors that impact on the uses of gestures, which include yet are not restricted to the identities of the participants and their own histories and communicative aims, the kind of discursive activity at hand, and the peculiarities of the situational, social and cultural contexts.

1.3. Antecedents to the present study

This research study rests upon preceding studies that have revealed some of the characteristic interactional mechanisms (Drew, 1992; Drew & Sorjonen, 1997) and discursive strategies (Conley & O'Barr, 1998; Ehrlich, 2001, 2002; Cotterill, 2003; Matoesian, 1993, 2001) that are typically deployed in the context of witness examinations. As regards the former, Drew (1992) analysis a mechanism through which litigants are able to show inconsistencies in witnesses' testimonies by introducing subtle changes in the representation of past events that contradict the version of the past upheld by the witness. Regarding strategic behaviors, Conley and O'Barr (1998) analyze rape trials and detect a series of discursive mechanisms initiated by litigants in order to

discredit the witness on the stand. They include the a) strategic use of silences to covertly comment on the inadequacy of a witness's response, b) "epistemological filters" or challenges to the sources of information evoked by witnesses, c) the use of different types of interrogative structures to control the length and form of witnesses' responses, d) the discursive control of topics, and c) the capacity to implicitly comment on a witness's past conduct. Also working with a corpus of rape trials in Canada, Ehrlich (2001) identifies three discursive strategies used by litigants; strategic questioning, the strategic use of presuppositions and selective reformulation. The latter consists in reformulating subtle aspects of witnesses' contributions in order to impose a version of the past that contrasts with the one defended by lay participants.

Studies interested in the social dimension (Carranza, 2007, 2011) have shown that witness examinations, and particularly cross-examinations, constitute power sites because the superordinate participant is able to mobilize resources only available to them. Eades (2006) identifies discursive strategies deployed by Australian litigants when they examine Aboriginal witnesses. The author shows that litigants systematically reject the labels used by the witnesses and she concludes that the recurrent use of lexical reformulations helps ratify the social control of powerful social groups over minorities.

Regarding cases involving sexual violence against women, discourse analysts (Conley & O'Barr, 1998; Ehrlich, 1998, 2001) have shown that cross-examining questioning practices like scrutinizing the victim's past sexual history or their sexual history with the accused are essentially discriminatory because they revictimize the victim 'in the name of justice' (Mateosian, 1993, 2001). These kinds of practices contribute to legitimize normative views of female and male sexualities and reassert the symbolic power of males over females.

Numerous studies that have focused on questioning practices during cross-examination arrive at a similar conclusion; the relatively strict organization of the interactional dynamics found in witness examination allows litigants to exercise discursive power over non-institutional participants (Conley & O'Barr, 1998; Ehrlich, 2001, 2002; Cotterill, 2003; Wang, 2006; Tracy & Robles, 2009). Little is known, however, about the resources that non-institutional participants actually mobilize (cfr. Mateosian, 2000, 2005; Haworth, 2006). In this respect, Mateosian (2008) argues that witnesses are able to resist the attacks orchestrated by litigants during cross-examination

through different kinds of discursive resources that include those expressed through non-verbal modes.

Further antecedents are found in the studies by Mendoza-Denton and Jannedy (2011) and Montes Miró (2003, 2009) which account for the multimodal expression of meanings in face-to-face interactions in institutional settings. Of particular interest are the studies carried out by Montes Miró because the analyst studies televised interviews and explores the relationship between the verbal and the gestural mode. In her 2003 study, she describes the discursive function of a hand gesture that consists in moving the hand from a central position to the periphery as if one was sweeping the air. Such hand movements cooccur with propositions that are presented as invalid, and therefore they can be eliminated from the argumentation. This author argues that through these gestures, speakers give indications of how a particular portion of their discourse is to be understood. There are a few studies that have integrated attention to gestures with the discursive and linguistic analyses of courtroom discourse. One such case is Matoesian (2008), which analyzes data from the cross-examination of a rape victim. According to the author, resistance behaviors can be manifested through a variety of different modes, which include verbal and non-verbal resources such as gaze direction and body posture.

1.4. Methodological approach

The present study adopts the methodological design of a case study. This decision is based on the fact that it allows for a thorough and detailed investigation of the phenomena observed. In this respect, the focus of analysis goes beyond the use of linguistic elements in order to encompass phenomena only observable at the interactional level. Therefore, this study aims at producing a detailed textual analysis for which a case study design results well suited.

Discourse analysts have explored different discursive phenomena (e.g, narrative accounts (Harris, 2001), the enactment of gender through talk (Ehrlich, 2001), and the realization of grammatical agency in the construction of discursive consent (MacMartin, 2002) in courtroom data obtained from the web. Researchers have also relied on computerized databases available online (for example, *Quicklaw*), as they allow for readily access to and categorization of specific types of legal judgments (Ehrlich, 2001; MacMartin, 2002) and they facilitate the diachronic analysis of linguistic phenomena (Coates *et al*, 1994; Coates & Wade, 2004). In addition, computerized databases have

also been used to carry out quantitative analysis of linguistic resources used in the courtroom (Heffer, 2005, 2007).

The methodology employed for the analysis of the linguistic data combines procedures derived from discourse-analytic traditions that share an interest in understanding how concrete text producers acting in concrete socio-cultural contexts are able to make sense of social life (Chouliaraki & Fairclough, 1999; Fairclough, 2001; van Dijk, 1993, 1999; Atkinson & Heritage, 1984; Schegloff, 2007). The procedures used to analyze the linguistic subcorpus were the following. The analysis departed from the identification of recurrent interactional mechanisms and discursive strategies in which the negotiation of a version of the past was at stake. The justification for starting at the interactional level is that focusing on units of analysis like sequences allows for the examination of phenomena that are not necessarily observable at the level of the utterance.

In order to determine whether a particular type of mechanism or strategy constituted a recurrent pattern or not, a decision was made on the basis of its frequency of use. Mechanisms and strategies were considered recurrent if they were deployed more than once by the same participant during a given examination and if they were used by different participants along the public hearings. This delimitation permitted to distinguish between discursive behaviors that constituted occasional (or idiosyncratic) instances of use from those that were repeatedly and systematically deployed during the examinations under study.

The criteria used to establish the limits of a sequence were a change in topic, and particularly, a change in the nature of the discursive activity performed. After a recurrent pattern was detected, its structure and sequential organization were described. In some cases, it was also possible to identify variant realizations of the same type of phenomenon, which were then grouped under different subtypes.

The next step consisted in establishing relations between the discursive phenomenon identified and the impact of contextual factors, such as the institutional regulations at play, the communicative goals pursued by participants, and the identity of the lay witness.

As regards the analysis of the multimodal subcorpus, the analytical procedures derive from methodologies used in conversation analysis (Atkinson & Heritage, 1984; Pomerantz, 1984; Schegloff, 2007) and gesture studies (Kendon, 1980, 1992, 2004;

McNeill, 1992; Montes Miró, 2003, 2009; Mendoza-Denton & Jannedy, 2011). The first step consisted in identifying patterns of witness responses that were associated with specific kinds of litigant-questions. Then, the bodily actions that witnesses recurrently produced in combination with verbal responses were described. The following step was to interpret the realization of the multimodal behaviors analyzed in view of the impact of situational and contextual factors.

Lastly, the combined effects achieved through the use of all the interactional mechanisms and strategies identified were interpreted. The next step involved integrating and interpreting the findings in view of contextual factors and explaining their relation to cultural assumptions related to sexualized gendered practices. Finally, general conclusions were drawn.

1.4.1. Constitution of the corpus

The data under analysis is made up of a linguistic subcorpus that consists in the transcripts of twelve examinations, and a multimodal subcorpus comprising 101 video clips featuring interactions between litigants and lay witnesses.

As regards the linguistic data, they derive from the written official records of a criminal trial that took place in San Diego, California, in the year 2002. The defendant, David Westerfield (¹), was found guilty of kidnapping and murdering the victim and sentenced to the death penalty. The official records used in the present study were obtained from the website www.unposted.com. The text producer of this site presents information about the criminal case and claims the defendant was wrongfully convicted of three crimes. Among other pieces of evidence presented as proof of Westerfield's innocence, the site features a letter of a convict (James Allan Selby) in which he purportedly confesses to having murdered the victim. The site producer claims that all the data which form part of public records were not published until after the case was closed. The content of the site, which contradicts the position defended by the media, adds to the value of the data since it is possible to predict the socially controversial

¹ In this study, pseudonyms are not used because the names of all the persons involved in the case were made public in 2001.

nature of the case. The complete written records of the trial are currently available at www.unposted.com/trial/ (²).

The linguistic data under analysis derives from a high profile criminal case. The “official version” of the trial as reflected in the written records comprises court transcripts made by the appointed court reporter. Even though transcripts made by law officials lack the detailed information regarding prosodic, interactional and paralinguistic specifications that those made by a linguist can offer, official trial records are undeniably a useful analytical tool. Firstly, they constitute the institutionally official representation of events and, therefore, they have an impact on the decisions made by judges in successive stages of the case. For example, if a case reaches the Court of Appeals, the official records are the only source that judges base their rulings on as they are considered “the exclusive and official representation of what occurred in a trial” (Ehrlich, 2002: 734). In addition, during the public hearings, these are the transcripts that are read out whenever a litigant requests that a question be repeated. Finally, official records are also used in law school manuals (for example, Tigar, 2003; Schwab, 2007; Siegel, 2010; Iannuzzi, 2011) to introduce future litigants in the practice of legal proceedings.

Regarding the multimodal subcorpus, it consists in 101 video clips showing moments in which non-institutional participants interact with litigants during the evidential part of the trial. The video clips are in average 90 seconds long. Only those clips showing interactional moments between witnesses and litigants were considered (³). Those that include footage of the litigants during closing arguments and the judge instructing the juries were left out of the analysis. The videos, obtained from a San Diego newspaper webpage, www.signonsandiego.com, were available online until the year 2009. The totality of the videos was retrieved in 2010 with explicit permission

² Instructions to access the linguistic data: 1. Go to www.unposted.com/trial/. Once the page is accessed, you will find a list of the days in which the trial took place together with specifications of the witnesses who gave testimony on each day. 2. Click on the selected trial day (the links are written in green letters) (for example, if you clicked on “Day 02- Trial June 5th 2002”, you will access http://www.unposted.com/trial/Day_02-Trial_June_5th_2002/). 3. The page that opens up contains two columns. From the second column, select the testimony of the witness you would like to read. (Some testimonies are longer than others and they may take more than one morning or afternoon). 4. Click on the moment of the trial day in which the selected participant gave testimony.

³ The CD attached to this document contains five video clips featuring extracts from the examination of different lay participants. The clips included are the ones that illustrate the use of gestures analyzed in chapter IV.

given by *San Diego Union Tribune* by mail. As the videos were no longer available at the moment of carrying out the analysis, a series of telephone calls and a written letter requesting permission to use them were necessary to secure the access to the multimodal data.

1.4.2. Selection of the study case

The selection of the Westerfield criminal case is justified on the following grounds. First of all, it is a criminal case with jurisdiction in San Diego, California, but whose repercussions have been observable throughout the US. The mass media, both local and national, broadcast the developments of the search for the victim and the totality of the hearings and sentence. Secondly, the fact that such a heinous crime, like the kidnap and murder of a seven year old, was performed in a high middle class community, such as Sabre Springs, has been portrayed in the mass media as astonishing. This bestows the data with a potential for investigating issues that are socially controversial in nature, such as cultural assumptions regarding violent behavior, and the social evaluations of different kinds of lifestyles. Thirdly, the webpage from which the data were drawn indicates that the court decision triggered conflicting reactions in at least some portions of the American public. Fourthly, the nature of the case is directly pertinent for the research purposes outlined above for two main reasons. In the first place, no unequivocal evidence (including DNA, psychiatric proofs or material witnesses) of Westerfield's liability was presented. Consequently, the role of the use of language was of utmost importance in the development of a case carried out in a jurisdiction with death penalty. In addition, the case features an adult man who is tried for supposedly having kidnapped and murdered a young girl. The charges did not include sexual assault but the possibility for sexual violence was also discussed in open court (⁴). This allows for the exploration of the gender dimension as well as the construction of the two competing versions of the past endorsed by each side in the conflict. In addition, it was possible to obtain not only the official written records of the case but also video footage of the hearings featuring witnesses for both sides and fragments of the closing arguments, the verdict, and the sentence. Having access to such

⁴ The possibility of Danielle van Dam having suffered from sexual assault was a topic discussed with forensic experts.

varied data in English permits the analysis of the verbal mode as well as other semiotic channels in order to shed light onto the complex construction of meaning in face-to-face interactions.

1.4.2.1. The Westerfield criminal case: Media frenzy and private life exposed

In June 2002, David Alan Westerfield was brought to trial for the crimes of kidnapping and murdering 7-year old Danielle van Dam and the misdemeanor of possession of child pornography. Both the trial and the disappearance of the girl received broad media coverage. Local and US national TV stations and journalists were stationed outside the van Dam residence during the 23-day long search for the missing child, and outside the courthouse during the trial that lasted almost two months. The trial itself was broadcast live on local and national TV during the summer of 2002, which featured most of the hearings.

According to media reports (⁵), investigators considered David Westerfield the prime suspect and they focused their attention on him right from the start. On February 5, 2002, three days after Danielle van Dam was reported missing, the police seized Westerfield's motor home in order to search for possible biological and material evidence that linked him to the child's disappearance. Some days later, David Westerfield was arrested and officially charged with the three crimes. He was found guilty on all counts and sentenced to death in August 2002.

Eligibility for the death penalty depends on three factors; first, on the defendant's possession of a prior criminal record, second, on the consequences of the crime on the family and the community at large, and finally on whether the murder took place "under special circumstances". In the case under consideration, the prosecution based their decision to ask for the death penalty on the latter two factors. Previous to his 2002 arrest, Westerfield had been convicted of a minor D.U.I. offense, which did not serve as sufficient ground for petitioning capital punishment. However, the van Dam case was covered by local and national TV and newspapers, which reported on the overwhelming impact the kidnap had on the community. Media coverage took place daily. Newspapers and TV news programs informed daily about the developments in the search for the little girl and later, in the trial. Even former president Bush, in office at

⁵ Source: <http://www.cnn.com/2003/LAW/01/03/westerfield.sentencing/index.html>

that moment, made a statement about the repercussions heinous murders like Danielle van Dam's have in the nation and reminded Americans that the nation will fight the threats against children and that hopeful and practical steps to improve children's safety can and will be taken ⁽⁶⁾. A recurrent theme of media reports centered not only on the day-to-day decisions made in court sessions but in the fact that the tranquility of a planned "upscale neighborhood" had been shattered by the crime ⁽⁷⁾. Also, there were more than two thousand volunteers searching for the girl and different types of events were organized to that effect: private companies donated food and beverage for the rescuers, groups of residents got together to pray for the child, and the like. In addition, and most importantly, the prosecution, led by assistant District Attorney Jeff Dusek, aimed at establishing that Westerfield kidnapped the child and later murdered her. If this could be established as fact beyond reasonable doubt, then Danielle van Dam's murder could be said to have occurred "under special circumstances"; i.e., during the kidnap.

The prosecution based their case primarily on DNA evidence; blood, hair and fingertips belonging to the victim were found on Westerfield's jacket and inside his motor home. The prosecution also put forth the allegation that the accused was sexually attracted to young girls, which triggered his uncontrollable drive to kidnap Danielle. On the other hand, the defense led by Steven Feldman raised doubts about the forensic evidence presented by the prosecution, particularly on the time of death. An entomologist for the defense, for example, argued that the child could not have died earlier than February 16, many days after Westerfield had been put under 24-hour police surveillance. The other main argument put forth by the defense was that the child's parents' lifestyle, which included alcohol and drug consumption and sexual partners swapping, was what put Danielle at risk since it was an open invitation for strangers to have access to their home. The defense also attacked the van Dams for not being forthcoming about their lifestyle to the police, which contributed to casting doubt on their credibility.

⁶ Source: http://www.vanceholmes.com/court/trial_westerfield.html

⁷ Source: <http://articles.latimes.com/2002/aug/19/local/me-vandam19>

1.4.2.2. Living in a planned neighborhood

In 2002, Brenda and Damon van Dam had three children: Derek (10 years old), Danielle (7 years old), and Dylan (5 years old). Some years before, they had decided to move to the suburbs of San Diego. According to their testimony, they chose the community of Sabre Springs, a planned neighborhood located 15 minutes away from San Diego city center, because it was a “family neighborhood” inhabited mainly by white upper middle class young families with children. At the time, Damon van Dam was working as a software engineer at a San Diego software company and Brenda van Dam worked at home selling books to school libraries.

David Alan Westerfield (50 years old at the time), a twice-divorced design engineer and father of two adults, a son and a daughter, was self employed and lived by himself two houses away from the van Dams. The van Dam family had occasional social contacts with their neighbor. They would wave at him from the car when they saw him outside, and Damon and Westerfield would chat for some minutes about Westerfield’s different vehicles parked in front of his house. Brenda and Danielle visited David Westerfield at his house twice during 2001 and 2002. Both times, the mother and her child were going from house to house selling girls scout cookies to the neighbors. In January 2002, one week before Danielle’s disappearance, Brenda knocked on Westerfield’s door offering him some cookies and he agreed to buy a box. On that occasion, both Danielle and Dylan, the couple’s youngest son, were with her. They spent about 20 minutes in the Westerfield residence. The kids went to see the swimming pool for a couple of minutes while Westerfield and Brenda talked about the remodeling that was taking place in his kitchen and about Brenda’s friend, Barbara, who Westerfield had seen at Dad’s Café on a previous occasion and for whom he expressed an interest. According to Brenda’s testimony in court, during that short visit, Westerfield also asked her about the sex parties that were held at her house, which made her feel somehow uncomfortable. At some point during the conversation, Brenda told Westerfield that she would go out with Denise Kemal and Barbara Easton to Dad’s Café that coming Friday only if she could get a babysitter for her two children because her husband had plans to take Derek, the couple’s oldest son, snowboarding that weekend.

1.4.2.3. The kidnap of Danielle van Dam

On February 1, 2002, Brenda van Dam had plans to go out with her two friends, Denise Kemal and Barbara Easton, to Dad's Café and Steakhouse, a family restaurant that turns into a pub during weekend nights. Damon decided to go snowboarding on Saturday instead of Friday so he stayed at home to take care of the children for that night. At approximately 8.30 pm, Denise Kemal and Barbara Easton arrived at Brenda's. Denise and Barbara shared a beer and then they went to the garage to smoke a marijuana cigarette. In order to air the room, Denise opened a side garage door. Some minutes later, the party of three headed towards the nearby bar in Brenda's car. At home, Damon van Dam was watching TV and having dinner with his three kids. He put the three children to bed at around 10:30. That would be the last time Danielle was seen alive.

Sean Brown, bar manager at Dad's Café, saw Brenda and her friends arrive at the bar and later testified about their actions that night. David Westerfield was already at the bar when the three girlfriends arrived. He talked briefly to Brenda and she introduced him to Barbara, with whom he was seen talking for some minutes. Later, Westerfield offered to buy the three women a round of drinks and then he watched them play pool from a distance. At the bar, the three women met with Richard Brady and Keith Stone, friends of both Brenda and Damon's, with whom they danced and shared alcoholic drinks and a game of pool. At some point during the night, the now party of five went outside to Brenda's car to smoke the marijuana cigarette that was first lit at the van Dam's. After that, they went back in and danced until 2 am with different people. Later, during the trial, different witnesses present at Dad's that night would be asked to describe Brenda's and her friends' conducts. The defense attorneys were insistent in their queries about Brenda and her friends' behavior in public. According to court testimonies, at approximately 2 am, the three women went back to the van Dam residence after Brenda had invited Richard Brady and Keith Stone over. When Brenda entered, she noticed a red light blinking on the alarm monitor, which indicated that a door or window was open. She found that the side garage door was open, so she closed it and the blinking light went off. Once there, Barbara went upstairs to the couple's bedroom and lay down with Damon on his bed while the rest of the group ate some leftover pizza in the kitchen. Approximately 10 to 15 minutes later, all the guests took off. According to his testimony in court, Damon van Dam went downstairs and saw

them off. Earlier that night, at 1.45 am, Damon had been awoken by the family dog. He went downstairs and opened a side glass door to let the dog out to the garden. Later, at around 2:45 according to his and Brenda's testimony, when Brenda was already sleeping, he woke up again and, at that time, he found an alarm light blinking. He saw the side glass door open and after closing it, he went back upstairs to bed.

On February 2, 2002, Damon woke up at around 8:30 and started cooking breakfast for his children. Some minutes later, his wife Brenda went down the stairs to join the family. It was a Saturday morning and the van Dams had agreed to baby sit for a neighbor's children. Julie Hennes, who lived across the street, went by the van Dams at approximately 9:30 and left her two children there. The only member of the van Dam family who was not in the kitchen at that moment was 7-year old Danielle, so Brenda went upstairs to wake her daughter up but she found the bedroom empty. That was the moment the van Dams realized that her daughter had disappeared from their home. The couple started looking for the child in the house and the vicinities. Soon after, Brenda made a 911 call to report her daughter missing. The police arrived moments later and asked the couple to leave the house and to take their children somewhere else for the night, so they spent the night at Julie Hennes's and waited until the police gave them permission to go back into the house the following morning. That Saturday morning, police officers interrogated Brenda and Damon van Dam and some of the neighbors.

Search efforts lasted several days. With the passing of time, the van Dams spoke to the police on different occasions. Denise Kemal, Barbara Easton, Keith Stone, and Richard Brady, who were with Brenda at the bar the night the child disappeared, were also interrogated. Other witnesses present at Dad's Café on the night of February 1 were also interviewed: Cherokee Youngs, Patricia Le Page, Sean Brown, Duane Blake, Glennie Nasland, Ivette Wetli, and Ryan Tyrol. On February 4, David Westerfield was interviewed by police officer Paul Redden and by Mark Matthews, a journalist working for a local TV station. Finally on February 27, almost four weeks after Danielle van Dam was reported missing, the girl's body was found in a desert rural area by a group of volunteer San Diego county residents. The time and the cause of death and whether the child had been subjected to sexual assaults could not be established due to the advanced state of decomposition of the body.

On February 22, twenty days after the kid had disappeared from home, David Westerfield was arrested as prime suspect for the kidnapping and possible murder of

Danielle and possession of child pornography. The arrest was made after the police had received DNA results that suggested there were traces of blood that may have belonged to Danielle on Westerfield's jacket and in the interior of his motor home. The police also seized pornographic material found in Westerfield's personal computer and CDs. The charges leveled against Westerfield were the following: Count 1: Murder committed under special circumstances; ie, while the suspect "was engaged in the commission and attempted commission of the crime of kidnapping"; Count 2: Kidnapping of a child under the age of fourteen; and Count 3: Possession of matter depicting a person under eighteen years of age in sexual conduct (⁸).

The trial started on June 4, 2002. Without considering the penalty phase, 118 witnesses were called to give testimony during the trial. From that total, 66 lay witnesses and 52 expert witnesses were interviewed. Also, 199 exhibits were presented as evidence. On August 21, 2002, more than six months after the disappearance of Danielle van Dam, presiding Judge William Mudd sentenced David Alan Westerfield to death by lethal injection for the crimes of kidnapping and murdering Danielle van Dam after refusing to reduce the jury's death recommendation to life without parole. Westerfield was also found guilty of possession of child pornography.

After the criminal trial, the van Dams hired well-known "media" attorney Gloria Allred to act as their lawyer in the civil case against Westerfield. In different media appearances (⁹), Brenda van Dam and her attorney said that they would lobby California lawmakers to introduce changes in the death penalty statute so that anyone who is found guilty of murdering a child would automatically be made eligible for the death penalty. Currently, David Westerfield awaits death at St. Quentin State Penitentiary in San Diego. As yet, the date for his appeal hearing remains unknown.

1.4.3. Selection of the research subjects

From the total number of witnesses that gave testimony during the trial, twelve examinations including both direct and cross-examinations were selected. The selection was based on the following criteria. First, the examinations chosen featured a litigant and a lay witness. Other categories of participants (for example, experts and semi experts) were left out of the analysis. Second, an equal number of female and male

⁸ Source: <http://fl1.findlaw.com/news.findlaw.com/hdocs/docs/westerfield/wstrfld022602cmp.pdf>

⁹ Source: <http://www.cnn.com/2003/LAW/01/02/van.dam.lawsuit/index.html>

witnesses was selected. In addition, in order to investigate cultural assumptions related to sexualized public behavior, the lay participants selected gave testimonies in which the issue about the victim's parents' lifestyle and/or the public conduct of Brenda van Dam (the victim's mother) and her friends was discussed.

The following is a list of the lay participants whose testimonies in court were analyzed. The ordering corresponds to the date of their appearance in court, indicated in parentheses (¹⁰):

1. **Damon van Dam** is the victim's father and the last person to see Danielle van Dam alive. He is a witness for the prosecution. (June 5, 2002)
2. **Brenda van Dam** is the victim's mother and a witness for the prosecution. (June 6, 2002)
3. **Sean Brown** is a manager at Dad's pub and restaurant, where Brenda, her friends and the defendant spent part of the evening when the child was abducted. He is a witness for the prosecution. (June 6, 2002)
4. **Denise Kemal** is Damon and Brenda's friend. He spent the night of the crime at Dad's bar. She is a witness for the prosecution. (June 10, 2002)
5. **Rich Brady** is a friend of the van Dam's. He attended Dad's bar the night the victim disappeared. He is a witness for the prosecution. (June 10, 2002)
6. **Keith Stone** is a friend of the van Dam's. He attended Dad's bar the night the victim was abducted. He is a witness for the prosecution. (June 10, 2002)
7. **Yvette Welti** was a patron at Dad's bar the night the child was abducted. She is a witness for the prosecution. (June 10, 2002)
8. **Cherokee Young** is Patricia Le Page's daughter with whom she attended Dad's bar the night the child was abducted. She is a witness for the defense. (July 3, 2002)
9. **Glennie Nasland** is a friend of the defendant's. She met Westerfield at Dad's bar the night the child was abducted. She is a witness for the defense. (July 3 and 8, 2002)
10. **Patricia Le Page** was a patron at Dad's bar the night the child was abducted. She is a witness for the defense. (July 8, 2002)

¹⁰ Appendix A includes a list of witnesses. Information about the side for which they were summoned is also provided.

11. **Ryan Tyrol** was a patron at Dad's bar the night the child was abducted. He is a witness for the defense. (July 8, 2002)
12. **Duane Blake** was a patron at Dad's bar the night the child was abducted. He is a witness for the defense. (July 8, 2002)

1.5. Organization of the document

Having outlined an introduction to this study, including the state of the art and the theoretical and methodological frameworks, I can proceed to announce the contents of the following sections. In chapter II below, I describe an interactional mechanism that litigants employ frequently which includes the use of questions about everyday expressions. I describe the function that this mechanism is put to perform and the effects its deployment has for the construction of an interested version of events. Chapter III centers on the evocation of cultural knowledge which takes place at decisive moments of an examination. As will be shown, invoking shared knowledge can be used to construct past behaviors and events as condemnable or acceptable ways of behaving in public spaces. In Chapter IV, I analyze witnesses' use of gestures in view of the type of propositional content expressed and the sequential location of the answer in which those gestures are produced. In chapter V, I draw general conclusions derived from the preceding analyses. Then, I discuss some of the implications of the type of methodology employed and I detect potential areas of interest for future research. Finally, I reflect on some of the ethical implications of the present research study.

CHAPTER II: The ‘innocent’ questions about everyday terms

Lay witness examinations constitute a potentially useful site for exploring the construction of competing versions of the past. Previous studies have revealed that a frequent way in which an interested reading of past events is built consists in discrediting witnesses for the other side (Drew, 1992; Conley & O’Barr, 1998; Ehrlich, 2001, 2002; Cotterill, 2003). In addition, as conversation analysts (Drew & Heritage, 1992; Drew & Sorjonen, 1997; Sarangi & Roberts, 1999) have shown, the interactional rules characteristic of the courtroom setting restrict the communicative rights and duties of the different categories of participants.

Different studies of courtroom discourse have identified discursive strategies through which litigants attack the credibility of victims and witnesses particularly during cross-examination. From the point of view of critical sociolinguistics, Eades (2006) shows that litigants manipulate witnesses’ lexical choices by reformulating terms in their questions. The author argues that this discursive behavior exhibited by institutional members contributes to the legitimization of the social control exercised over young Australian aborigines. Ehrlich (2001) analyzes criminal trials and describes a discursive behavior similar to that reported by Eades. The litigants in Ehrlich’s data make frequent use of “selective reformulations” that aim at reshaping and reconstructing the substance of the witness’s answer (2001: 75). Conley and O’Barr’s (1998) study describes discursive strategies displayed by litigants when they are cross-examining victims of rape. These strategies include the use of a) silence to implicitly comment on witnesses’ claims, b) epistemological filters or challenges to the source of information expressed by the witness, c) different types of interrogative sentences to control the extension and form of the witness’s response, d) topic management, and e) implicit comments on the witness’s past conduct.

This chapter explores the relationship between institutional constraints and the generation of implicit meanings that are convenient for one of the parties in the conflict. The focus is on interactional mechanisms that litigants employ frequently during the examinations under study. These mechanisms involve the use of questions about the meaning of everyday expressions, as in “*What do you mean when you say “provocative”?*”. Even when questions about colloquial expressions may serve the purpose of clarifying aspects of meaning that could be confusing for jury members, as

Cotterill (2003) argues, a close examination of the sequences in which the questions occur reveals that their main function goes beyond a mere preoccupation for comprehension. In addition, considering the impact of contextual factors, such as the institutional restrictions at work and the communicative aims pursued by the litigants, can contribute to shed light onto the discursive uses of questions about the meaning of everyday expressions. It will be shown that the success of the mechanism that involves the use of this interactional resource is related to the source that verbalizes those expressions for the first time.

2.1. Questions in institutional settings

The study of the use of questions in institutional contexts has been approached from different theoretical perspectives. Working with a corpus of interactions between witnesses and litigants, Woodbury (1984) carries out a syntactic analysis of litigants' contributions in order to correlate types of interrogative sentences with the degree of discursive control that those forms exercise on interviewees' contributions. According to the author, different types of interrogative sentences can be placed along a continuum: Wh-questions are located at the extreme of less control and declarative sentences with a tag, at the extreme of more control. This type of approach to questions, which is purely grammatical, does not consider the role of the sequential structure in which the questions occur. In addition, it is assumed that different types of interrogative forms perform invariable functions.

Questions have also been investigated from a discourse analytic perspective. Schiffrin (1994) describes different forms that function as question in a corpus of sociolinguistic interviews. The author distinguishes two types of questions; information-seeking questions and information-checking questions. The former are typically used by the interviewer and when they are used by the interviewee, they can signal a change in the activity (1994: 170). The latter are used by both the interviewer and the interviewee in order to check the reception of a particular referent or proposition, or the interlocutor's familiarity with a referent (1994: 172). Schiffrin argues that the participants, the communicative ends and, to a lesser degree, the act sequence are the "communicative elements" that seem to influence the function performed by these two types of questions (1994: 182).

Conversation analysts have also contributed to the understanding of the sequential structures that contain questions. Koshik (2003) studies interrogative sentences used in different institutional contexts which function as challenges to a claim posed in a previous turn. Koshik (2003: 74) concludes that this kind of interrogative sentence is a manifestation of a kind of talk that is not institutional in nature but which can be used to achieve institutional goals. Antaki (2002) examines institutional interviews and describes interactional moves that take place when non-institutional participants produce a type of contribution that is not the one the institutional participant expects. As a response, interviewers tend to delay the confirmation of reception until they obtain the expected response. This study suggests that the interviewers' previous knowledge is the key to understand this type of discursive behavior.

From the point of view of discourse analysis and using data from the O.J. Simpson trial, Cotterill (2003) analyzes the use of questions about everyday expressions in direct and cross-examinations. The author suggests that in her data questions about semantic content were more frequent during direct examination. In addition, she argues that the function of these questions is to "suspend the progression of testimony and return to an aspect which is perceived to be unclear, ambiguous or potentially confusing for the jury" (2003: 133). The author further argues that these questions reflect litigants' orientation to the conversational maxims proposed by Grice's (1989). Questions like '*when you say X, what do you mean?*' can be used "as a request for clarification/elaboration of a previous response", which reflects the examining lawyer's orientation to the maxim of quantity (2003: 133). Alternatively, they can be used as "a request for greater clarification/specificity", which reflects the litigant's orientation to the maxim of manner (2003: 133, 134). In Cotterill's view, the use of questions about semantic content can be interpreted as the manifestation of a litigant's communicative end of constructing a narrative that is clear and convincing for members of the jury (2003: 133).

I will argue that looking at the phenomenon from a point of view that considers the sequential location of these questions can provide a more precise interpretation of the effects created. As will be shown, questions about the semantics of non-technical expressions are never innocent because they guarantee that specific damaging implications be generated.

2.2. Rules of forensic evidence and litigants' expected ways of questioning

The procedures for eliciting evidence during courtroom interrogations are informed by legal rules that delimit the way information is retrieved and provided. Representatives for the other side can object to the substance or form of a question on different grounds. For example, under federal rule of evidence 611 (¹¹), during direct examination litigants are not permitted to ask leading questions, i.e. questions that suggest the content of the expected answer a witness is to provide. Moreover, a question can be challenged for being argumentative when it “seeks to persuade the jury as to some fact rather than to gain new information” (Buckles, 2003: 114) or when it suggests that an examining lawyer is being opinionated, which may indicate that they are harassing a witness (Graham, 2006). It is important to mention here that the American criminal code prohibits examining lawyers to make explicit moral evaluations during examinations; however, it allows them to induce witnesses to do so. This, according to Conley and O’Barr (1998), is a practice that is even encouraged in litigation manuals.

In the following sections, two subtypes of questions about the meaning of everyday expressions are analyzed. As will be shown, the difference between them is related to the participant that first verbalizes the expression.

2.3. Questions about the meaning of everyday expressions

The questions about everyday terms can be classified into two subtypes; those that request information about the meaning of terms verbalized by a witness (analyzed in sections 2.3.1.1 and 2.3.1.2) and those that inquire about the meaning of an expression that is proposed by a litigant (section 2.3.2). As will become clear later on, the reason for this distinction is that the source that verbalizes the term is a key factor that conditions the success of the question.

2.3.1.1. Questions about terms used by witnesses during the ongoing interaction

Let us now turn to the analysis of the interactional mechanism that includes questions about the meaning of everyday expressions. The extract that follows contains many instances of this type of question. Steven Feldman, Westerfield’s defense

¹¹ Source: http://www.law.cornell.edu/rules/fre/rule_611.

attorney, and Patricia Le Page, a witness for the defense, are talking about Brenda van Dam, the victim's mother. Le Page is speaking about Brenda's behavior at a pub during the same night the child was abducted (¹²). As we will see, the use of questions about the meaning of everyday expressions allows the litigant to focus the attention on Brenda's behavior.

Text 1 (¹³). During direct examination. Trial day 17, morning 1.

- a. Defense attorney Feldman: *All right. At some point during the evening did you: your attention get drawn to a woman who you later learned was em Brenda van Dam?*
- b. Patricia Le Page: *(.) Yes.*
- c. Defense attorney Feldman: *What happened? What cause- what caused your attention to be drawn to Bren[da van-*
- d. Patricia Le Page: *[Her behavior.*
- e. Defense attorney Feldman: *What about her behavior?*
- f. Patricia Le Page: *Well (.) she's a flamboyant person. I do not wish to defame Mrs. van Dam. I don't know her age. Maybe this is how younger people act.*
- g. Defense attorney Feldman: *How was she acting?*
- h. Patricia Le Page: *Like I said flamboyant.*
- i. → Defense attorney Feldman: ***What what what behavior do you mean to communicate by use of the word "flamboyant"?***
- j. Patricia Le Page: *((moving her hands from side to side)) Ehm: m: m: m: m: (.) Frisky.*
- k. Defense attorney Feldman: *Frisky. Is that the word you just used?*
- l. Patricia Le Page: *Yes, I did.*
- m. → Defense attorney Feldman: ***And what do you mean to communicate when you use the word "frisky"?***
- n. Patricia Le Page: *She was all over the place.*
- o. → Defense attorney Feldman: *I'm sorry. **What does that mean?***
- p. Patricia Le Page: *That means she was very very much socializing and talking with a lot of people? an' her actions were y' know just (.) frisky.*
- q. → Defense attorney Feldman: *All right. **Does do you mean, when you use the term frisky, does it have any kind of a sexual connotation to it?***
- r. Patricia Le Page: *Not to me.*

The sequence begins with defense attorney Feldman proposing the topic to be discussed; in this case, the behavior exhibited by Brenda van Dam, the victim's mother. After the witness's confirmation in b, defense attorney Feldman asks a question that requests a characterization of Brenda's public behavior. The presupposition (Levinson,

¹² The van Dams realized their daughter, Danielle, was missing from their home on the morning of Saturday, February 2nd. The witness is talking about Brenda van Dam's behavior on the evening of Friday, February 1st.

¹³ As it was possible to have access to a video clip featuring this section of the examination, I have enriched the transcription with corresponding interactional features.

1983) generated by the use of the wh-question, “*What caused your attention to be drawn to Brenda van-*”, is that there was something peculiar about Brenda’s conduct, which, in turn, is represented as the reason why Le Page had noticed her. Le Page’s response, “*Her behavior*”, confirms the litigant’s claims regarding both the implicit and explicit contents. The two wh-questions that follow, “*What about her behavior?*” (in turn e) and “*How was she acting?*” (in g), aim at eliciting further specific information about Brenda’s public demeanor. Let us analyze them in more detail. In turn e, “*What about her behavior?*”, Feldman produces a question in which he recontextualizes a portion of the witness’s contribution in the previous turn. This allows Feldman to act within the boundaries of institutional rules because the content talked about is presented as being offered by the witness herself when, in fact, it is evident that he is guiding the witness into verbalizing a specific kind of content. After that, in turn f, the witness establishes a contrast between her evaluation of Brenda, “*Well (.) she’s a flamboyant person*”, and the typical behavior exhibited by young people, “*Maybe this is how younger people act*”. In addition, the metacommunicative comment “*I do not wish to defame Mrs. van Dam*” triggers conversational inferences related to Brenda van Dam’s conduct; namely, that Brenda’s behavior is somehow reprehensible. With the next question, “*How was she acting?*”, defense attorney Feldman keeps the attention centered on the person he is seeking to attack by further requesting a specification of Brenda’s past actions. In the following turn, the witness repeats the word “*flamboyant*” and, after that a new interactional move begins.

The second interactional move is characterized by talk related to metalinguistic aspects. In turn i, the question about the meaning of “*flamboyant*” allows the defense lawyer to guide the witness into explicating information that, at the surface level, is about a semantic issue. In the following turn, the witness uses another colloquial expression; “*Frisky*”. The two contributions that follow, that is the litigant’s question, “*Frisky. Is that the word you just used?*” and the witness’s answer, “*Yes, I did.*”, constitute an embedded sequence, which reflects the attorney’s orientation to institutional rules that specify that it is the witness the one that should contribute new evidence. In turn m, the litigant asks another question about a term used by the witness in the preceding turn: “*And what do you mean to communicate when you use the word “frisky”?*”. This insistence on the part of the examining lawyer to obtain a particular response goes beyond his eventual concern for clarity because the expressions are

everyday and pose no difficulty for comprehension. After the witness characterizes Brenda's conduct as "*all over the place*", in turn o Feldman asks another question about the semantic content of that expression. Because the witness's contribution in p, "*That means she was very very much socializing and talking with a lot of people? an' her actions were y' know just (.) frisky*", is not damaging to Brenda's positive face, the litigant offers a possible semantic aspect of the meaning of the expression "*frisky*", i.e. that it has sexual connotations. As the witness does not confirm his interpretation ("*Not to me*"), the litigant starts a new subtopic.

The function of questions about semantic meaning is to generate a damaging evaluation through the apparent attention put on the semantics of an expression. Questions, such as "*What behavior do you mean to communicate by use of the word 'flamboyant'?*" and "*And what do you mean to communicate when you use the word 'frisky'?*", presuppose that there is something particular about the meaning of those expressions. Those particularities are made explicit in the witness's answers. Therefore, the ability of a litigant resides partly in being able to induce the witnesses to produce damaging descriptions. The questions about semantic content constitute, then, a request for an evaluation that litigants induce witnesses to verbalize. Furthermore, this type of question and its sequential location generate implicatures. In the examples analyzed above, the inferences are associated with the fact that Brenda van Dam's public behavior is morally reprehensible. As we can see, far from being innocent, these questions are part of a mechanism aimed at generating implicit evaluations and its deployment is related to the institutional rules at play. Far from functioning as mere triggers of clarifications, as Cotterill (2003: 133) argues, these kinds of question aim at implicitly evaluating a witness for the other side.

As we will see next, this mechanism can also be used to the detriment of the witness on the stand. In the extract below, defense attorney Feldman is cross-examining Damon van Dam, the father of the victim and a witness for the prosecution. They are talking about the events that took place at the van Dam residence and that involved Damon and Barbara Easton, a friend of the couple. As will be shown, even though the questions are clearly designed to damage Damon van Dam's positive face, the litigant does not make use of any explicit evaluative element.

Text 2. During cross-examination. Trial day 2, afternoon 1.

- a. Defense attorney Feldman: *And how much time elapsed between the time your wife left the room while you were in bed with Barbara and the next time you recall seeing your wife that evening?*
- b. Damon van Dam: *Three to five minutes.*
- c. Defense attorney Feldman: *And what were you and Barbara doing in that three-to-five-minute period of time?*
- d. Damon van Dam: *Kissed, snuggled a little.*
- e. → Defense attorney Feldman: ***Well, you say “kiss and snuggled a little”. Could you please tell the jury what do you mean by “snuggle a little”?***
- f. Damon van Dam: *I rolled over and put my arm around her, rubbed her back some.*
- g. Defense attorney Feldman: *And where was your wife?*
- h. Damon van Dam: *Downstairs.*
- i. Defense attorney Feldman: *And Barbara was a woman with whom you had had intimate relations previous.*
- j. Damon van Dam: *Yes.*

The extract above illustrates the benefits of using questions about the meaning of expressions in view of the institutional rule that prohibits litigants to openly evaluate a party involved in the conflict. In turn a, defense attorney Feldman requests information about a past event. At the same time, the presupposition ‘you were in bed with Barbara’ triggered by the embedded temporal clause “*while you were in bed with Barbara*” allows Feldman to present a damaging content as shared information. Then, in turn c, the litigant asks another question that, at surface level, is about Damon’s previous contribution because Damon’s “*three to five minutes*” is reformulated as “*three-to-five-minute period of time*” in Feldman’s question. It is evident here that Feldman’s previous knowledge about the case allows him to induce his interlocutor into verbalizing specific types of information. In turn d, the witness verbalizes the elicited content, “*Kissed, snuggle a little.*”. Next, defense attorney Feldman asks a question about the meaning of an expression that reinforces the negative effect: “*Well, you say “kiss and snuggled a little”. Could you please tell the jury what do you mean by “snuggle a little”?*”. The explicit reference to “*the jury*” is, in this case, a further indication that the litigant is covertly sanctioning the witness for his past behavior. This allusion to other ratified addressees may be interpreted as a concern for clarity. However, in view of the activity being carried out, its use here is strategic because it reminds the witness that his actions are being scrutinized by others as well. Damon’s response, “*I rolled over and put my arm around her, rubbed her back some.*”, constitutes the explicitation that the litigant has been seeking. This type of information is not oriented to the clarification of

potential sources of misunderstanding. On the contrary, it is a kind of content that damages Damon van Dam's positive face because it makes explicit sexualized conduct exhibited by Damon's and Barbara Easton, a friend of the van Dams.

The fragment above illustrates how implicit contents harmful for the witness giving testimony are generated without making any explicit evaluation. At first sight, most of the questions in the sequence analyzed above request information about past events. However, the combination of questions about past events with those that elicit information about the semantics of an expression allows defense attorney Feldman to implicitly sanction van Dam's conduct. This type of discursive function cannot be appreciated at utterance level because there is nothing openly evaluative that could hint at it. At the interactional level, what contributes to the generation of a covert evaluation is the combination of questions about the past with a question about the meaning of a particular colloquial expression.

What the litigant achieves through the use of questions like the ones described in this subsection is the explicitation of certain types of social behavior that are morally questionable. As the damaging evaluation is left implicit, the litigant is able to display a discursive behavior that complies with institutional rules.

The examples analyzed so far illustrate numerous cases in which examining lawyers ask questions about the meaning of an expression used during the ongoing interaction. The next section shows that questions about the meaning of expressions can be used in relation to texts produced during previous speech events.

2.3.1.2. Questions about terms used by witnesses in previous speech events

The next fragment shows that the mechanism that includes questions about the meaning of common idiomatic expressions can also be deployed when the participants are negotiating the meanings of a text produced in a previous speech event. In the following extract, defense attorney Feldman is cross-examining Brenda van Dam, the victim's mother. Feldman asks a question about the meaning of a term Brenda used during an interview with a police officer. In sections that are not transcribed, Feldman had asked Brenda about her dancing provocatively with different men and women at Dad's bar during the night of February 1st.

Text 3. During cross-examination. Trial day 3, afternoon 1.

- a. Defense attorney Feldman: *You indicated when you said to detective Labore, “oh, we were kind of all in a line dancing together, so we were kind of all hugging each other. And then the three of us would get together. But there were more people joining in”. **What did you mean to communicate, ma'am?***
- b. Brenda van Dam: *We were all in a line dancing, like you do the line dancing with the shoulder thing or you hold the waist.*

A topic that defense attorney Feldman revisits repeatedly is the public behavior of Brenda van Dam and her friends at a bar. Evidently, the strategically chosen re-textualized portion of talk is not difficult to understand. Expressions like *line dancing* and *hugging each other* are the focus of the question because attention paid to those expressions triggers implications that are left implicit. Let us now discuss some of the meanings that are left unsaid. The fact that Brenda was partying the night her daughter went missing gives rise to implications about the kind of mother she is. Furthermore, making explicit kinds of conduct that are sexualized in nature (“... *we were kind of all hugging each other. And then the three of us would get together. But there were more people joining in*”) generates covert evaluations about that kind of behavior and, in turn, about the type of person Brenda is.

Woodbury (1984) has also examined the strategic use of questions in the context of witness examinations. According to this author, wh-interrogative sentences exert less discursive control than other types of interrogative structures since the latter “ask of the addressee that he (sic) provide or specify the questioned item” (1984: 200). A grammatical perspective cannot account for the function of questions like the ones examined in this chapter because it is assumed that interrogative forms have an invariant function and that the degree of discursive control is inherent to the linguistic form. However, as the examples analyzed show, litigants resort to questions about the meaning of everyday expressions because they allow them to guide their interlocutors into verbalizing content that is beneficial for the version of the past they endorse. As we can see, the semantic dimension is the key to provoke a desired response. Questions focusing on a linguistic expression provide, in fact, a chance to invoke evaluative contents through the elicitation of expected answers.

So far, I have analyzed examples in which the examining lawyers manage to induce witnesses to produce a desired response while still acting within the boundaries

of the institutionally appropriate. The following section focuses on an unsuccessful use of questions about semantic content.

2.3.2. Questions about expressions proposed by the litigant

The subtype of question analyzed in this section is different from the one above in that the participant who first verbalizes the everyday expression is not the witness. In the following extract, prosecutor Dusek is examining Sean Brown, a witness for the people. They are talking about the behavior exhibited by the defendant, David Westerfield, and a friend of his at Dad's bar. At the time of the crime, Sean Brown was working as manager of that pub.

Text 4. During direct examination. Trial day 3, afternoon 2.

- a. District attorney Dusek: *What did they* ((referring to David Westerfield and his friend)) *do?*
- b. Sean Brown: *Same thing. Just, you know, interact, talk within themselves and so forth.*
- c. District attorney Dusek: ***Are you familiar with the phrase "people watcher"?***
- d. Sean Brown: *Yes.*
- e. → District attorney Dusek: ***What does that mean?***
- f. Sean Brown: *Maybe just sitting back and watching people's mannerisms or what they're doing and so forth.*
- g. District attorney Dusek: *Mr. Westerfield a people watcher?*
- h. Defense attorney Boyce: *Objection, relevance, lack of foundation.*
- i. Judge Mudd: *Overruled. You can answer.*
- j. Sean Brown: *Wow, I would guess yes.*

This extract illustrates cases in which a litigant does not manage to induce a witness to produce a desired response. In cases like this, litigants can ask witnesses if they are familiar with the meaning of a particular expression, as in turn c, "*Are you familiar with phrase "people watcher"?*". As we have seen before, the terms are always common idiomatic expressions and belong to the communicative style of witnesses. This is a necessary condition because it guarantees the confirmation of the witness (as can be seen in turn in d) as well as the relevance of the next question about the meaning of the expression, "*What does that mean?*". Even in cases in which the witness's response is not necessarily damaging, as is Sean Brown's "*Maybe just sitting back and watching people's mannerisms or what they're doing and so forth*", the negative connotations are still evoked, in this case, the defendant's incriminatory habit of staring at strangers in bars. In this particular exchange, the judge overrules the objection and the

witness is obliged to answer, “*Wow, I would guess yes.*”. In the data, however, questions about the meaning of expressions proposed by litigants and with no apparent relation with the co-text are frequently objected by the other side. When this is case, the judge grants the objection most of the times. This is illustrated next.

Text 5. During direct examination. Trial day 3, afternoon 2.

- a. District attorney Dusek: *Are you familiar with the term "a hard shell"?*
- b. Sean Brown: *Yes.*
- c. District attorney Dusek: *Would you use that to describe anyone involved in this case?*
- d. Sean Brown: *I would say that I felt David kind of had a hard shell.*
- e. District attorney Dusek: *Why?*
- f. Sean Brown: *Just because I(.) normally*
- g. Defense attorney Feldman: *Objection, irrelevant. Also motion to strike.*
- h. Judge Mudd: *The last portion will be struck.*
- i. District attorney Dusek: *Nothing further, Your Honor.*

Although prosecutor Dusek manages to elicit a damaging evaluation from the witness, the defense lawyer objects the question and the contribution of the witness is struck from the records. This decision seems to be influenced by the institutional rule that prohibits litigants to explicitly evaluate a party in the conflict. In addition, under evidentiary rule 402, a piece of evidence is considered relevant when it seeks to prove any material fact (Buckles 2003: 101), as opposed to using it to prove the litigant’s opinion, which is the case in the example above.

One of the communicative goals of Westerfield’s defense is to discredit witnesses for the other side, particularly Brenda and Damon van Dam, the victim’s parents. This is related to the type of expressions whose meanings are asked by the defense team: *flamboyant, frisky*, as well as others like *to hook up, to be wasted, to drink and dance and party, a girls’ night out*, etc. Evidently, the semantic content of these types of expressions is not difficult to grasp nor do they need clarification in other types of contexts. However, in the lay witness examinations under study, they are the focus of talk because they can be used to covertly attack a witness for the other side.

2.4. Covert evaluations during witness examinations

Describing the interactional sequences in which questions about the meaning of everyday expressions occur made it possible to understand the mechanism that generates implicit contents. The nature of the linguistic expressions and the frequency

with which litigants make use of the questions examined has led to the observation that the function of this type of questions cannot be restricted to an adherence to conversational maxims (Grice, 1989). Even when witnesses' responses to questions about meaning may count as elaborations, as Cotterill (2003: 133) claims, their main function is to generate implicit evaluations.

This chapter has focused on the analysis of an interactional mechanism whose function is to discredit a witness for the other side. Because litigants' talk needs to be deprived of explicit indicators of evaluations, they resort to mechanisms that allow them to covertly assess the past conduct of parties involved in the conflict. The analysis has shown that the covert evaluations are systematically related to behaviors exhibited by witness which are sexualized in nature. This suggests that the evaluation of an interested party can be carried out by making allusions to the kind of person a witness is. As previous studies have shown, (Ehrlich, 2001, 2002; Matoesian, 2001; Larson & Brodsky, 2010), and this chapter further indicates, witnesses' sexuality is strategically evoked in lay witness examinations. As we will see next in chapter III below, there are other ways in which litigants manage to generate implications that are harmful for the positive face of key witnesses involved in the Westerfield case.

CHAPTER III: The evocation of cultural knowledge

In witness examinations, the construction of an interested version of reality can be carried out through a variety of textual resources which include the exploitation of lexical choices (Eades, 2006) and rhetorical resources such as metaphors (Danet, 1980; Cotterill, 2003; Luchjenbroers & Aldridge, 2007). Regarding the manipulation of reference terms and other linguistic resources, Felton Rosulek (2008, 2009) argues that, during closing arguments, the representation of the defendant is related to the communicative goals sought by each side. An interesting finding in these studies is that, while the prosecution and the defense differed in the ways they represent or silence parties involved in the conflict, “[t]he lack of variation among the forms used by prosecution lawyers and those used by defense lawyers suggests that they are all working from the same understanding of how to create representations of social actors that will fit their goals” (Felton Rosulek, 2009: 27).

In the context of sexual assault cases, numerous studies have identified discursive mechanisms through which defense attorneys damage the credibility of rape victims during cross-examination. A recurrent strategy involves eliciting information that alludes to the victim’s sexual history (Matoesian, 1993, 2001; Conley & O’Barr, 1998; Ehrlich, 1998, 2001), which results in the generation of damaging implications about the moral character of the victim. Ehrlich (2007) analyzes rulings of judges at four different stages of a criminal sexual assault case in Canada. She argues that judges’ strikingly different interpretations of representations of women’s behavior during sexual assaults reveal an orientation to ideological assumptions. These cultural ideas or “norms of intelligibility” (2007: 472) associated with gendered practices of consented or coerced sex serve, in part, as the basis on which judicial decisions are made.

From the point of view of conversation analysis, interactional mechanisms that allow for the generation of damaging implications have also been identified (Kompter, 1994; Drew & Sorjonen, 1997). Using data from a rape trial, Drew (1992) analyzes a mechanism that consists in asking questions (or a pair of adjacent questions) that contain representations of the past that challenge the version of the reality defended by the witness. The two contradictory versions “are implicated in, and portrayed through, the description of ‘facts’” produced by each participant (Drew, 1992: 516). The author

concludes that the main function of this mechanism is to discredit the witness on the stand.

In chapter II above, we have seen that the function of the mechanism that includes questions about everyday expressions is to evaluate parties involved in the conflict. As Drew (1992) and Conley and O'Barr (1998) suggest, the generation of implicit meanings that are detrimental for the witness on the stand is a discursive strategy that litigants exploit quite frequently in examinations. The present chapter looks at interactional mechanisms through which litigants lead a witness into verbalizing types of information that are convenient for the version of reality they support.

This chapter examines the effects of activating cultural knowledge at particular moments of an examination and its relation to the construction of an interested reading of the past. As will be shown, litigants combine questions that elicit information about events experienced in the past with those that request information about actions routinely performed in different types of social situations. I will argue that in lay witness examinations, the evocation of shared knowledge is never random or unmotivated. On the contrary, it takes place at crucial moments of an examination, particularly when the nature of a contested past behavior or event is at stake.

From a socio-cognitive view of discourse, van Dijk (1993, 1999) and van Dijk *et al* (1997) argue for the need to account for concrete ways in which knowledge, discourse and culture are related. In order to account for the different types of knowledge that are invoked in examinations, I resort to the concepts of 'event model' and 'situation model' as proposed by van Dijk (1999). Mental representations contained in event models are alluded to when litigants' questions request information about a person's past experiences. On the other hand, representations contained in situation models are invoked when litigants ask questions about routine ways of acting and behaving in different kinds of everyday situations.

Talk that takes place during witness examinations not only concerns information about past actions and states that may have lead to the alleged crime. Surprisingly, litigants frequently guide witnesses into verbalizing content associated with everyday situations such as actions typically carried out by friends, habitual behaviors exhibited by adults at parties, among others. The explicitation of this kind of content enables the generation of inferences that are convenient for the version of the past advocated by the litigant. It will be shown that litigants deploy interactional mechanisms that allow them

to control when witnesses speak about specific past events and when they are to speak about actions generally performed in everyday social situations.

In the following sections, three different interactional mechanisms that litigants initiate repeatedly are analyzed. These mechanisms are characterized by the combination of two types of questions; those that request information about specific past behaviors and those that request information about routines. As will be shown, the strategic invocation of shared knowledge plays a crucial role in the construction of different readings of past conducts and events.

3.1. Past actions as instances of social routines

Before moving on to the analysis of specific cases, it is necessary to mention that an aspect of the version of the past the prosecutor defends is that Brenda van Dam and her friends' public conducts were unmarked or expected. This is at odds with the defense's claim that Brenda and her friends' behavior was peculiar and incongruent with everybody else at Dad's bar.

The extract below shows prosecutor Dusek examining Sean Brown, a witness for the people. At the time of the crime, Brown was working as a manager at Dad's Bar and Restaurant, a pub the van Dams and the defendant used to go out to. The witness is giving testimony about Brenda van Dam's and her friends' conduct at Dad's one week before the child went missing. This extract illustrates the combination of questions about the night of the events with those that aim at activating shared knowledge about going out to a pub.

Text 6. During direct examination. Trial day 3, afternoon 2.

- a. District attorney Dusek: *You indicated that there was a band there that evening?*
- b. Sean Brown: *On the 25th, yes.*
- c. District attorney Dusek: *What happened when the band starts playing?*
- d. Sean Brown: *People get up, dance.*
- e. → District attorney Dusek: *Is that what they're supposed to do?*
- f. Sean Brown: *Yes.*

Text 6 illustrates one of the steps the prosecutor takes in order to construct Brenda van Dam's public behavior as expected. Because prosecutor Dusek defends the claim that Brenda was doing nothing out of the ordinary, he guides the witness into talking about habitual adult behavior at pubs. First, the prosecutor makes a connection between representations that derive from an event model (as in turn a "*You indicated*

that there was a band there that evening?”) and general knowledge about similar situations. The question in c, *“What happened when the band starts playing?”*, elicits information about a past event, *“what happened”*, and it invokes knowledge about the recurrent behavior of adults in pubs, *“when the band starts playing?”*. In the witness’s answer in d, *“People get up, dance”*, the event is represented as a habitual action. In addition, the use of *“people”* helps construct the action as a generalized behavior without any specification of gender. At this moment of the interaction, the meaning of *“people”* is ambiguous because it can refer both to every person who goes out to any pub in the community and to the patrons that were spending the evening at Dad’s bar on February 25th. At this point, these two possible interpretations are useful for the prosecutor; however, this ambiguity will disappear later as the negotiation of meanings moves forward. In addition, the explicitation of shared knowledge like the one invoked here is exactly what the prosecutor seeks because it paves the ground for a comparison between common ways of acting and a specific past behavior.

With the following question in turn e, *“Is that what they’re supposed to do?”*, the situation model GOING OUT TO A PUB (¹⁴) is activated because the information requested alludes to knowledge about typical adult behavior at pubs; in this case, the fact that in bars people dance to music is habitual. As we will see below, prosecutor Dusek will make sure that other features of the situation model GOING OUT TO A PUB get evoked later in the examination of Sean Brown and in other examinations as well.

Before moving on with the analysis of further examples, some considerations about the Westerfield case are in order. One of the arguments put forth by Westerfield’s defense attorneys is that Brenda van Dam’s and her friends’ conduct in Dad’s bar was at odds with the behavior of other patrons. The claim upheld by defense attorney Feldman is that the three women were openly flirtatious with men and women and that this kind of conduct set them apart from other patrons at Dad’s.

Let us now see how the prosecutor guides Sean Brown into saying that Brenda van Dam and her friends were doing nothing out of the ordinary. The extract transcribed below occurs at the beginning of the re-direct examination of Sean Brown. It shows

¹⁴ In this chapter, capital letters indicate cognitive models.

prosecutor Dusek asking Brown specifically about the conduct exhibited by Brenda van Dam and her friends. It is necessary to mention that during cross-examination, defense attorney Feldman had raised doubts about the way the police force had collected evidence, and different witnesses declared that the police reports of their interviews did not reflect their depositions. The focus here is how prosecutor Dusek controls the direction of the interaction so that the witness is made to compare Brenda's behavior with that of other patrons at the bar.

Text 7. During re-direct examination. Trial day 3, afternoon 2.

- a. District attorney Dusek: *Do you remember the first thing you told me?*
- b. Sean Brown: *This was an incorrect statement.*
- c. District attorney Dusek: *What was an incorrect statement?*
- d. Sean Brown: *The statement that the officer had wrote down.*
- e. District attorney Dusek: *That statement was what?*
- f. Sean Brown: ((reading from a copy of the transcripts)) *That she was (.) "Mr. Brown", who was me, "stated that they ((referring to Brenda and her friends)) were partying hard and flirtatious with men and so forth".*
- g. District attorney Dusek: *That wasn't true?*
- h. ⁽¹⁵⁾ Sean Brown: *No. The way I saw it is Brenda and her girlfriends were out there having a fun time (.) as as girlfriends do, and they were- they were not partying hard. I think of partying hard I'm thinking like a beer a shot or a drink a shot a drink a shot a drink a shot. They weren't doing that. They were there to have a good time. They were in good spirits but they were having fun, that's all.*
- i. → District attorney Dusek: ***Did they*** ((referring to Brenda and her friends)) ***appear to be behaving any differently than the other patrons at your place?***
- j. Sean Brown: *No, not at all.*

Through the first two questions, prosecutor Dusek induces the witness to say that the police report was inaccurate because that is beneficial for the version of the past he endorses. In turn e, "*That statement was what?*", the litigant requests a specification. The section of the written document that gets verbalized is related to the witness's statements about Brenda van Dam and her friends' behavior: "*That she was (.) "Mr. Brown", who was me, "stated that they ((referring to Brenda and her friends)) were partying hard and flirtatious with men and so forth".*". The yes-no question "*That wasn't true?*" in turn g is oriented to provoke the verbalization of a kind of content that is beneficial for the version of the past endorsed by the prosecutor. In turn h, Sean

¹⁵ As it was possible to have access to a video clip featuring this contribution, the corresponding interactional features were included.

Brown gives details about the women's behavior that challenge the claim that "*they were partying hard and flirtatious with men and so forth*". First, the witness represents the past event as "*Brenda and her friends were out there having a fun time*". The behavior exhibited by the three women gets compared with the typical behaviors of "*girlfriends*". Then, the witness explicitly challenges the claim that Brenda and her friends' conduct was somehow marked by evoking a feature associated with the situation model PARTYING HARD, "*I think of partying hard I'm thinking a beer a shot or a drink a shot a drink a shot a drink a shot.*". With regard to the expected way of partying hard, which includes the feature 'drinking uninterrupted', Sean Brown represents Brenda and her friends' actions as incompatible with it: "*They weren't doing that. They were there to have a good time. They were in good spirits but they were having fun, that's all.*". With the following question in turn i, "*Did they appear to be behaving any differently than the other patrons at your place?*", the prosecutor elicits a comparison between the conduct exhibited by the three women and that of the other patrons. The provoked answer, "*No, not at all*", further confirms the claim that prosecutor Dusek upholds, i.e. that there is nothing out of the ordinary in the way the women behaved. In this way, the prosecutor's claim that the three women's behavior is congruent with everybody else's gets ratified by the witness on the stand.

The next case further illustrates the interplay between the verbalization of the particular and the evocation of cultural knowledge. In the following extract, prosecutor Dusek claims that when adults go out to bars, they drink, dance and party. Sean Brown's testimony, analyzed above, took place during the third day of public hearings. Thirteen days later, Glennie Nasland, a witness for the defense, is also led to activate the situation model GOING OUT TO A BAR. Here, we see the witness being asked to talk about the events that took place at Dad's bar the night of the crime.

Text 8. During cross-examination. Trial day 16, afternoon 2.

- a. District attorney Dusek: *What were you doing?*
- b. Glennie Nasland: *I was hanging out with my friends, too.*
- c. District attorney Dusek: *Were you drinking?*
- d. Glennie Nasland: *Two drinks.*
- e. District attorney Dusek: *Were you dancing?*
- f. Glennie Nasland: *Yes.*
- g. District attorney Dusek: *Were you partying?*
- h. Glennie Nasland: *Yeah.*

- i. District attorney Dusek: *Basically everybody in there was drinking, weren't they?*
- j. Glennie Nasland: *Yeah.*
- k. District attorney Dusek: *And a lot of people were dancing?*
- l. Glennie Nasland: *Yes.*
- m. District attorney Dusek: *Guys dancing with girls?*
- n. Glennie Nasland: *Yeah.*
- o. District attorney Dusek: *Girls dancing with girls?*
- p. Glennie Nasland: *Yeah.*
- q. District attorney Dusek: *Guys dancing with guys?*
- r. Glennie Nasland: *No.*
- s. District attorney Dusek: *They don't do that, do they? This Susan [girlfriend]*
- t. Glennie Nasland: [*Yeah.*]
- u. District attorney Dusek: [*that you*
introduced the defendant to, is she an Asian extraction?
- v. Glennie Nasland: *Yes.*

In turn a, prosecutor Dusek asks a question that elicits information about a specific past event, “*What were you doing*”. After the witness’s answer, “*I was hanging out with my friends, too*”, the prosecutor asks a series of questions through which characteristics of the situation model GOING OUT TO A PUB are evoked. The questions “*Were you drinking*”, “*Were you dancing*”, “*Were you partying*”, whose propositions get all confirmed, request information about Nasland’s past actions. Simultaneously, they function as arguments in favor of the claim that those kinds of behavior constitute routines performed at a bar. The question in turn i, “*Basically everybody in there was drinking, weren’t they?*”, contains an extreme case formulation. As Pomerantz (1986) and Edwards (1994, 1995) argue, the use of extreme case formulations contributes to construct the activity described as something everybody does, which “serves to normalize the activity” (Edwards, 1994: 217). The generalization is expressed by means of representing the agent of drinking with the indefinite pronoun *everybody* that has a non-specific and general reference which, in this case, includes the people at Dad’s bar. Furthermore, the design of turn i, a declarative followed by a tag, allows the prosecutor to present the information as if it was shared. The use of a tag also makes relevant a confirmation as the preferred second pair-part, which the witness provides in turn j. In this way, the litigant guides the witness into agreeing with his view that drinking at bars is an unmarked behavior. The question in turn k, “*And a lot of people were dancing?*”, contains another generalization. Here, the partitive *a lot of* is used to construct dancing as a characterizing feature of the habitual behavior of adults in pubs. After the witness’s confirmation in turn l, the litigant asks further questions that

activate knowledge related to the mental model DANCING; “*Guys dancing with girls*” and “*Girls dancing with girls*”. In this case, the generalized nature of the activities reported is expressed through the use of plurals, which contributes to background the conduct of individual actors like Brenda and her friends because the attention is put on general patterns of behavior. With “*Guys dancing with guys*”, the prosecutor requests a confirmation associated with another routine carried out by adults at pubs. In turn r, Nasland does not confirm the proposition and after that, in turn s, prosecutor Dusek echoes the witness’s answer “*They don’t do that, do they?*”. The sequence ends with the introduction of a new topic, “*This Susan girlfriend ...*”.

In previous testimonies, the issue of Brenda van Dam dancing with guys and girls was frequently revisited. The argument put forth by Westerfield’s defense is that Brenda had danced with various male and female partners provocatively and that such behavior was inappropriate, i.e. a socially sanctioned way of acting in a public place. What prosecutor Dusek is doing here, through questions like the ones analyzed so far, is guide his interlocutor into adhering to his claims. The construction of subtle, controversial aspects of the past is carried out gradually throughout the hearings and it involves provoking comparisons between specific past actions and generalized patterns of adult behavior.

The following text is taken from the cross-examination of a witness for the defense. In this case, prosecutor Dusek is interviewing Ryan Tyrol, who was also at Dad’s bar the night of the events.

Text 9. During cross-examination. Trial day 17, morning 2.

- a. District attorney Dusek: *Anything unusual about the way they ((referring to Brenda and her friends)) were dancing?*
- b. Ryan Tyrol: *Same as everyone else.*
- c. District attorney Dusek: *Nothing out of the ordinary?*
- d. Ryan Tyrol: *Not really.*
- e. District attorney Dusek: *Not making a scene of themselves on the dance floor?*
- f. Ryan Tyrol: *No.*
- g. District attorney Dusek: *Did you see Brenda van Dam and her friends leave?*
- h. Ryan Tyrol: *Yes, I did.*

In turn a, prosecutor Dusek asks the witness to contrast a particular action, “*the way they were dancing*”, with expected ways of dancing evoked with the use of “*anything unusual*”. In b, “*Same as everyone else.*”, the witness resorts to an extreme case formulation and represents the observed behavior as congruent with that of other

patrons. The question in c, “*Nothing out of the ordinary?*”, a reformulation of the question in turn a, aims at restating a key proposition. Next, with “*Not making a scene of themselves on the dance floor?*”, the prosecutor invokes another feature of the mental model DANCING, that is, making a scene of oneself on the dance floor. The witness does not confirm this, which functions as a further support for the prosecutor’s claims.

In the examinations under study, the witnesses, who gave testimony about the events that took place at Dad’s bar the night of the crime, were systematically asked about the nature of the behavior exhibited by the three women, which suggests that that issue is key for the version of the past upheld by each side. The interactional mechanism analyzed consists in combining questions about a specific past conduct with those through which the scripted nature of the activity is invoked. The cumulative effect of the implications from the various witnesses’ answers aims at constructing Brenda and her friends’ behavior as congruent with the canons of public conduct. As has been shown, the prosecutor resorts to invoking routines performed in public places in order to match the women’s actions with them. Constructing specific past actions as socially shared imbues those actions with normalizing characteristics, and this guarantees that an implicit evaluation gets generated. Therefore, the ultimate aim of the mechanism that consists in comparing past actions with behaviors presented as frequent, expect, and thus “normal” is to positively evaluate parties involved in the conflict.

In the next section, we will see that the activation of cultural knowledge can be exploited in order to achieve the opposite effect. The sequences that will be examined below show the efforts of the litigants to construct specific past actions as incongruent with social expectations.

3.2. Particularizing past behaviors

In this subsection, we will see that alluding to shared patterns of adult conduct is useful to construct a past behavior as particular to the parties involved in the conflict. The fragment below shows prosecutor Dusek cross-examining Glennie Nasland, a witness for the defendant. At this point, it has to be noted that Nasland is a key witness for the defense because she claims that on February 1st, David Westerfield was drunk when he left the bar. One of the arguments put forth by Westerfield’s defense is that the defendant’s state of intoxication would have made it impossible for him to drive back

home, break into the van Dam's residence in the middle of the night, kidnap the child and leave the house unnoticed.

The sequence transcribed next illustrates how evoking expected ways of conduct can be used to the detriment of the witness on the stand. In order to challenge the witness's claim that Westerfield was drunk when he left the bar, prosecutor Dusek resorts to the invocation of features of the mental model BEING A FRIEND.

Text 10. During cross-examination. Trial day 16, afternoon 2.

- a. District attorney Dusek: *You described Mr. Westerfield's condition that night as drunk?*
- b. Glennie Nasland: *Yes.*
- c. District attorney Dusek: *Did you drive him home?*
- d. Glennie Nasland: *No.*
- e. District attorney Dusek: *Is he a friend of yours?*
- f. Glennie Nasland: *Yes.*
- g. District attorney Dusek: *Are you concerned about his safety?*
- h. Glennie Nasland: *Yes.*
- i. District attorney Dusek: *Did you have a car?*
- j. Glennie Nasland: *Yes.*
- k. District attorney Dusek: *How far did he live from Dad's?*
- l. Glennie Nasland: *Five minutes away I think.*
- m. District attorney Dusek: *Did you have anything to do that night?*
- n. Glennie Nasland: *No.*
- o. District attorney Dusek: *Were you drunk?*
- p. Glennie Nasland: *No.*
- q. District attorney Dusek: *You were sober enough to drive a good friend home*
- r. Glennie Nasland: *[Yes.*
- s. District attorney Dusek: *[if he was drunk?*
- t. Glennie Nasland: *Yes.*
- u. District attorney Dusek: *You chose not to?*
- v. Glennie Nasland: *I guess so, yeah.*
- w. District attorney Dusek: *He really wasn't that drunk, was he?*
- x. Glennie Nasland: *Yes, he was. He was drunk when he left the bar.*

What is interesting about this sequence is how the prosecutor lays the grounds for his attack through a series of questions that evoke the expected behavior of people who find themselves in the same situation as the witness. In turn a, "*You described Mr. Westerfield's condition that night as drunk?*", prosecutor Dusek gives voice to Nasland's claim that Westerfield was drunk the night the alleged crime was committed. In order to argue against this, the litigant asks questions that invoke the typical conduct of people in a situation in which a friend gets drunk in a bar and needs to be driven back

home. The question in c, “*Did you drive him home?*”, evokes an action that is presented as the expected way of acting; that is, in cases in which a person gets drunk, a friend will drive them home. As the witness does not confirm this, prosecutor Dusek asks a series of questions (from turn e to u) through which he invokes potential impediments for not having acted as expected. There are questions that allude to Nasland’s close relationship with the defendant and to the moral obligation of assisting friends in need, such as “*Is he a friend of yours?*” in turn e and “*Are you concerned about his safety?*” in g. The confirmation to each of these questions is the provoked response that allows Dusek to ask further questions that invoke other possible reasons for not helping a friend: “*Did you have a car?*” (turn i), “*How far did he live from Dad’s?*” (turn k), “*Did you have anything to do that night?*” (turn m), and “*Were you drunk?*” (turn o). Next, with “*You were sober enough to drive a good friend home [if he was drunk?]*” (turns q and s), the prosecutor expresses an evaluative comment that aims at stressing Nasland’s seemingly incongruent behavior and putting into question the veracity of the proposition expressed in the conditional “*if he was drunk*”. With “*sober enough*”, the degree of Nasland’s state of intoxication is presented as the minimal condition necessary for driving “*a good friend home*”. In addition, categorizing Westerfield as “*a good friend*” alludes to the moral obligation of friends in the evoked situation and suggests that Nasland’s (lack of) action is, at least, incompatible with social expectations. With “*You chose not to?*” in turn u, prosecutor Dusek challenges the witness’s version of the past by inquiring about her lack of action. The exceptional nature of Nasland’s lack of action is used by the prosecutor as an argument against her claim. In the absence of “good reasons” for not having acted as expected, in turn w, “*He really wasn’t drunk, was he?*”, the prosecutor openly challenges the witness’s claim. Here, the use of a declarative sentence followed by a tag induces the interlocutor to produce a confirmatory answer. Even so, the witness resists the attack by sticking to her version of the events, “*Yes, he was*”, and restating her claim, “*He was drunk when he left the bar*”.

Sequences like this show how, through strategic questioning, a litigant retrieves information about specific actions (or lack of action) so that they get contrasted with expected behavior. Inferences about mismatches between the witness’s past behavior and social expectations are generated throughout sequences of turns and they result from the implications of each of the witness’s answers. The evocation of assumed expected conducts functions as a way through which the version of the past endorsed by

the witness is challenged because of the implication that the witness did not act as they were supposed to. Therefore, alluding to mismatches between past actions and social expectations allows litigants to discredit witnesses for the opposition.

As will be shown next, alluding to the peculiar nature of past behaviors is used to discredit not just the witness on the stand but also other parties involved in the conflict. In extract 11 below, the defense attorney is examining Duane Blake, one of his own witnesses. They are talking about Brenda and her friends at Dad's on two consecutive Friday nights, January 25th and February 1st. In turns that are not reproduced in this chapter, Duane Blake says that there was nothing out of the ordinary in the way the three women were behaving during the night of January 25th. However, Brenda and her friends' public conduct on the following Friday night is represented as deviant. This is illustrated in the extract below.

Text 11. During direct examination. Trial day 17, morning 2.

- a. Defense attorney Feldman: *With regard to their ((referring to Brenda and her friends)) behavior on the 1st of February, was it different than their behavior on the 25th of January?*
- b. Duane Blake: *Somewhat.*
- c. Defense attorney Feldman: *Can you please describe how?*
- d. Duane Blake: *Most of the behavior was the same as far as having some cocktails, just kind of running around, doing whatever you do in Dad's cafe in the evenings like that. Both occasions their tail feathers were up.*
- e. Defense attorney Feldman: *What does that mean?*
- f. Duane Blake: *How can I phrase this without being rude?*
- g. Defense attorney Feldman: *Accurately.*
- h. Duane Blake: *Looking for a man, okay.*
- i. Defense attorney Feldman: *Okay. Did you form that opinion as to all three, one, two?*
- j. Duane Blake: *No, just two.*
- k. Defense attorney Feldman: *Which two?*
- l. Duane Blake: *Denise and Barbara.*
- m. Defense attorney Feldman: *All right.*

Having established that the three women behaved "as expected" during the night of January 25th, defense attorney Feldman elicits information about the women's behavior on February 1st. The witness's answer, "*Somewhat*", is followed by a request for specification in c, "*Can you please describe how?*". In turn d, the witness represents the women's behavior as comparable to that exhibited by them the preceding Friday evening, "*Most of the behavior was the same*". The witness also invokes features of the situation model GOING OUT TO A PUB, which include drinking alcohol, moving

around the premises, and “*doing whatever you do in Dad's cafe in the evenings like that*”. The generalized nature of these activities is expressed with the generic use of the second-person pronoun *you* which refers to all the people who attend Dad’s “*in the evenings like that*”, meaning Friday nights as opposed to ‘quieter’ weekday nights. After that, Blake mentions a kind of behavior that is particular to the three women he is talking about, “*Both occasions their tail feathers were up*”. In this case, the represented behavior is attributed to Brenda and her friends through the use of the possessive adjective *their*. The question in e, “*What does that mean*”, is another instance of the type of question analyzed in chapter II. Again we see that its function is to make explicit the semantic content of a common idiomatic expression that, in this case, is metaphorical. Turns f, “*How can I phrase this without being rude*”, and g, “*Accurately*”, constitute an embedded sequence that suggests the witness is attentive to the context model. The metacommunicative comment expressed in f implies that the nature of the behavior is harmful to the women talked about. The delayed answer to the question in turn e is provided in h, “*Looking for a man, okay*”. This provoked response is exactly what the defense attorney is seeking because it makes explicit a sexualized conduct that is attributed to specific parties involved in the case. In turn, the verbalization of the behavior triggers implicit evaluations about the kind of persons the three women are. In turn i, defense attorney Feldman requests a specification, “*Okay. Did you form that opinion as to all three, one, two?*”. The sequence ends with the witness’s answer in turn m, in which he attributes the observed behavior to Denise and Barbara.

This example illustrates multiple instances in which the defense attorney triggers harmful representations of Brenda and her friends’ past behavior. Eliciting a comparison between an unmarked behavior and another one that stands out because it is particular to specific individuals aims at provoking an evaluation of the particularized behavior. In the examinations under study, the past actions that are represented as peculiar are frequently associated with sexualized public conducts. In turn, the explicitation of sexualized behaviors generates implicit evaluations about the three women talked about because they are claims about the type of person those witnesses are. Therefore, initiating the mechanism that allows constructing past behaviors as particular actions is one way through which witnesses for the other side can be discredited.

3.3. Challenges to the categorization of a past event

This subsection explores the relation between cultural knowledge and the categorization of past events. The representation of a past event proposed by a witness can be challenged by asking questions that allude to characteristics that belong to a different mental model. It will be shown that the types of events contested are strategically selected and that the challenges to the nature of the events give rise to implications about the type of person a witness is.

The mechanism analyzed in this section typically contains two successive interactional moves. The first one consists in a question-answer sequence in which the claim upheld by the witness is elicited. The second consists of a sequence (or sequences) of turns in which the litigant's questions invoke features of a mental model that do not correspond to the nature of the event as proposed by the witness.

The following extract shows an instance in which a litigant evokes features of a mental model to confront the version of the past defended by a witness on the stand. In this case, defense attorney Feldman is interviewing a friend of the van Dams' and a witness for the people. At this moment, it is important to mention that Westerfield's defense lawyers argue that the van Dams' lifestyle, which included illegal substance consumption and swapping sexual partners with different couples, was an open invitation for somebody other than the defendant to sneak into the house and kidnap the child.

The extract below shows defense attorney Feldman cross-examining Denise Kemal. They are talking about past incidents involving Kemal and the victim's parents.

Text 12 (¹⁶). During cross-examination. Trial day 4, morning 1.

- a. Defense attorney Feldman: *I would like to direct your attention to Halloween of 2000.*
- b. Denise Kemal: *Okay.*
- c. Defense attorney Feldman: *On Halloween of 2000 did you attend a Halloween party at the van Dam residence?*
- d. Denise Kemal: *Yes. They have a Halloween costume party every year?*
- e. Defense attorney Feldman: *Have you characterized that costume party as risqué?*
- f. Denise Kemal: *No, I wouldn't.*

¹⁶ Access to a video clip featuring this section of the cross-examination allowed me to include the corresponding interactional features.

- g. Defense attorney Feldman: *Ehm on the evening of the Halloween party in the year 2000 ehm you were present with your husband, at that time, correct, Andy?*
 - h. Denise Kemal: *Yes?*
 - i. Defense attorney Feldman: *And later in the evening, you ehm engaged in sexual relations, did you not? with your husband AND Brenda van Dam A:ND Damon van Dam, cor[rect?]*
 - j. Denise Kemal: *[No that's not true.*
 - k. Defense attorney Feldman: *So you never engaged in sexual relations, with Damon and Brenda van Dam?*
 - l. Denise Kemal: *Yes I did, but with Damon, it was more of a swap.*
 - m. Defense attorney Feldman: *[Oh I see.]*
 - n. Denise Kemal: *[Andy was with Brenda, and I was with Damon.*
 - o. Defense attorney Feldman: *Okay. I'm sorry. You swapped.*
 - p. Denise Kemal: *Yes.*
- (..)
- q. Defense attorney Feldman: *D' you tell that to Barbara?*
 - r. District attorney Dusek: *Objection. Irrelevant.*
 - s. Judge Mudd: *Sustained. You need not answer.*

In turn a, defense attorney Feldman proposes the topic “*Halloween of 2000*”, which the witness ratifies in the following turn. In turn c, Feldman asks the witness to confirm her attending the Halloween party at the van Dam residence. In d, Denise represents the event as a “*costume party*”, which evokes connotations of “innocent” entertainment. The categorization of the event offered by the witness in turn d is precisely what the defense attorney defies later on.

The claim put forth by Feldman is introduced in the question in turn e, “*Have you characterized that costume party as risqué?*”. It needs to be said that during the cross-examination of Brenda van Dam, Feldman had hinted at the fact that the parties held at her house included sexual encounters with the guests and that Brenda has declared that during an interview with a police officer. The use of the present perfect in the question in e suggests that defense attorney Feldman is referring to a police report in which Denise may have used the expression *risqué party* to characterize the parties held at the van Dams’.

As in turn f Kemal does not confirm the lawyer’s characterization, the litigant invokes features of the mental model RISQUÉ PARTY, which suggests that the nature of the party was not as innocent as the witness claims. In order to do so, the defense attorney introduces another participant in the past event, Andy, in “*Ehm on the evening of the Halloween party in the year 2000 ehm you were present with your husband, at that time, correct, Andy?*”. The witness confirms this, and after that, Feldman evokes the feature having sexual relations, which helps construct the event as a risqué party:

“*And later in the evening, you ehm engaged in sexual relations, did you not? with your husband AND Brenda van Dam A:ND Damon van Dam, correct?*”. The implication that gets generated here is that a party that includes sexual encounters with multiple partners constitutes a “*risqué party*” and not “*a costume party*” as Kemal claims. As in turn j, “*No that’s not true*”, the witness openly challenges the attorney’s claim, Feldman asks a question that alludes to the mental model INDECENT PERSON. The question in turn k, “*So you never engaged in sexual relations with Damon and Brenda van Dam?*”, contains the discourse marker *so* that signals that the proposition it introduces logically follows from Kemal’s “*No that’s not true*”. In addition, that question contains the adverb *never*, which is an extreme case formulation used to challenge the witness’s claim in turn j. With the answer in l, the witness clarifies the issue, “*Yes I did, but with Damon, it was more of a swap.*”. Here, Kemal accepts having had sex with the van Dams and then, she expresses a concession, “*but with Damon*”, through which she tries to downgrade the negative implication the gets generated. That is, having sex with a man other than her husband is not as damaging for her positive face as having sexual intercourse with multiple partners. The representation of the past event offered by Kemal in turn l, “*it was more of a swap*”, is an attempt at categorizing it as an instance of a type of activity that seems to be less damaging than the one evoked by Feldman. However, categorizing the past event as “*a swap*” (as opposed to a *risqué party*) is still beneficial for the defense attorney because it allows for implicit evaluations to be generated. In this case, the damaging inferences are related to the kind of person Kemal is.

The implicit evaluation that gets generated is possible because the litigant asks questions strategically designed to allude to shared beliefs and opinions associated with activities like “*swapping sexual partners*”. This set of implicit ideas about sexualized conducts is assumed to be shared by the other ratified participants; that is, the judge and the jurors. Therefore, this interactional mechanism aims at damaging the positive face of witnesses on the stand by raising doubts about the kind of person they are.

The last case illustrates another instance in which the defense attorney attacks the positive face of a witness for the prosecution. Here, defense attorney Feldman is cross-examining Brenda van Dam and they are talking about a different Halloween party that took place at Brenda’s in 2001. Once again, what is at stake in this case is the nature of that party.

Text 13. During cross-examination. Trial day 3, afternoon 1.

- a. Defense attorney Feldman: *You told us on direct examination in response to one of Mr. Dusek's questions that you, quote, had never, end quote, had a sex party at your house. Do you recall that answer?*
 - b. Brenda van Dam: *Yes.*
 - c. Defense attorney Feldman: *Now I would like to direct your attention, ma'am, to Halloween of 2001.*
 - d. Brenda van Dam: *Okay.*
 - e. Defense attorney Feldman: *Halloween of 2001 you had a party at your house, did you not?*
 - f. Brenda van Dam: *Yes.*
 - g. Defense attorney Feldman: *Present at that party was Barbara Easton, correct?*
 - h. Brenda van Dam: *Yes.*
 - i. Defense attorney Feldman: *Skip Brauberger, correct?*
 - j. Brenda van Dam: *Yes.*
 - k. Defense attorney Feldman: *Denise Kemal.*
 - l. Brenda van Dam: *Yes.*
 - m. Defense attorney Feldman: *And Denise' husband Andy.*
 - n. Brenda van Dam: *Yes.*
 - o. Defense attorney Feldman: *The party was risqué, was it not?*
 - p. District attorney Dusek: *Objection. Vague as to meaning.*
 - q. Judge Mudd: *Overruled. You may answer.*
 - r. Brenda van Dam: *No.*
 - s. Defense attorney Feldman: *Was there alcohol at the party, ma'am?*
 - t. Brenda van Dam: *Yes.*
- ((some turns are omitted)) ⁽¹⁷⁾
- u. Defense attorney Feldman: *Isn't it true that on Halloween evening in the year 2000 you engaged in sex with Denise and Andy and Brendon and- I'm sorry and Damon?*
 - v. Brenda van Dam: *Yes.*
 - w. Defense attorney Feldman: *So when you told Mr. Dusek that you had never had a sex party at your house, had you forgotten that?*
 - x. Brenda van Dam: *I don't consider that to be a sex party.*

In turn a, “*You told us on direct examination in response to one of Mr. Dusek's questions that you, quote, had never, end quote, had a sex party at your house. Do you recall that answer?*”, defense attorney Feldman represents a past utterance by the witness, which contains the proposition he will challenge. After the witness’s confirmation in b, the defense attorney introduces the topic of the Halloween party, which gets ratified by Brenda in turn d. Then, in turn e, Feldman asks a question about the events that took place in Halloween of 2001. In that question, the event is represented as a “party”; however, the questions that follow elicit information that

¹⁷ The turns omitted contain objections granted by the judge.

evokes features of the mental model SEXUAL PARTIES. In questions g, k, i and m, the defense lawyer inquires about the presence of male and female guests. The claim put forth by Feldman is expressed in turn o, “*The party was risqué, was it not?*”. After the objection, the witness is made to answer but in turn r she challenges Feldman’s claims. In order to defy the witness’s claim, Feldman evokes a feature associated with risqué parties: i.e. that they involve alcohol consumption. Next, in turn u, “*Isn't it true that on Halloween evening in the year 2000 you engaged in sex with Denise and Andy and Brendon and- I'm sorry and Damon?*”, the defense attorney requests a confirmation. As regards this type of “negative interrogative”, Heritage (2002) argues that in the context of broadcast news interviews, this type of turn design is frequently used to “to frame negative or critical propositions while still inviting the recipient’s assent” (2002: 1432-1433). Here, we see the defense lawyer criticizing the witness on the basis of her past actions and at the same time challenging the version of the past she upholds. After Brenda’s confirmation in v, the defense attorney attacks Brenda’s credibility by expressing a logical connection between Brenda’s past talk and the interactional text, “*So when you told Mr. Dusek that you had never had a sex party at your house, had you forgotten that?*”. The sequence ends with Brenda expressing a disagreement, “*I don’t consider that to be a sex party*”. Even so, the litigant has managed to invoke shared beliefs associated with the type of sexual conducts attributed to the witness.

The cases analyzed in this subsection illustrate several instances in which litigants challenge a witness’s categorization of a past event by requesting information about past actions associated with a different subtype of event. Through strategic questioning, litigants make sure that damaging implications get generated. The ultimate aim of the mechanism that allows litigants to challenge the representation of an event is to invoke ideas and opinions about the kinds of situations witnesses take part in. This is one way through which witnesses for the other side are discredited.

3.4. Making sense of past events and behaviors

The analysis of the negotiation of controversial past events shows that, during lay witness examinations, the prosecution and the defense counsels strategically invoke shared cultural knowledge. The effort to construct the nature of contended past behaviors and events as scripted or deviant is related to the version of the past the

litigant endorses and the identity of the witness on the stand. Previous studies have suggested that litigants frequently make use of questions designed to provoke implications that are damaging for the version of events put forth by the witness particularly during cross-examinations (Drew, 1992; Kompter, 1994; Conley & O'Barr, 1998; Eades, 2006). As we have seen in sections 3.1 and 3.2, the interactional mechanisms aimed at triggering comparisons between particular past conducts and assumed routine patterns of behavior is a strategy that functions to either enhance or attack the positive face of individuals involved in the case. In section 3.3 we have seen that invoking the sexual nature of an event in which a witness was involved allows litigants to raise doubts about the kind of person a witness is. As other studies focusing on the role of cultural assumptions associated with sexualized conduct have revealed (Matoesian, 1993; Ehrlich, 2002, 2007), this chapter has shown that provoking implicit evaluations about a witness's sexualized behavior is a discursive strategy frequently used by litigants during the examination of lay witnesses.

Chapters II and III have revealed that the provocation of implicit evaluations is a central component in the construction of an interested reading of reality. The display of the interactional mechanisms analyzed suggests that the generation of implicit evaluations is possible because participants orient themselves to a series of underlying cultural beliefs about sexualized conduct.

Chapter IV below centers on the analysis of the generation of meanings expressed through different semiotic channels. The focus will be on witnesses' use of gestures in relation to the propositional content expressed and the sequential location of the answer in which those gestures are produced.

CHAPTER IV: The impact of a particular type of lawyers' question on witnesses' use of bodily movements

This chapter is an approximation to the study of gestures produced when the communicative activity at hand is perceived as cognitively demanding. Witnesses' use of gestures is analyzed in relation to the propositional content expressed. This chapter focuses on the verbalization of information presented as an estimate and the gestures that accompany it.

The exploitation of multiple semiotic channels by lay participants allows for the analysis of how a gestural action is "organized in relation to speaking and how it contributes to the total meaning of the utterance of which it is part." (Kendon, 2004: 5). In addition, it enables the examination of recurrent non-verbal resources that are used in an institutional context. Specifically, two different kinds of gestures produced by lay witnesses are examined. As will be shown, witnesses systematically produce these gestures when they are faced with cognitively demanding questions. In this respect, questions like "*How often did you used to go to the supermarket at that time?*" are challenging because they require the answerer to make a quick estimate. Witnesses tend to respond to questions like this through various semiotic channels and I analyze the discursive functions performed by two kinds of gestures that co-occur with answers produced in response to difficult questions.

Section 4.2.1 focuses on head shakes that typically cooccur with utterances that contain modalized statements. Section 4.2.2 analyzes the use of a hand movement in combination with a facial gesture that consists in pressing one's lips. I will argue that both these kinds of gestures are bodily movements produced in response to a particular type of question that demands witnesses to provide an estimate. The chapter concludes with a discussion of the functions that these gestures perform and of the impact that the situational context has on use of the gestures examined.

4.1. Speech-accompanying gestures in interactional contexts

Previous studies whose data derive from naturally occurring situations involving face-to-face interactions reveal ways in which gestures can complement or supplement the verbal channel. In general, gestures are said to complement the verbal channel when they communicate a type of content that is similar to those expressed through the verbal

channel. On the other hand, gestures supplement the verbal channel when the type of information they provide is different from that which comes through the linguistic mode.

Montes Miró (2003) analyzes talk shows broadcast in Mexican television and describes specific gestures that accompany propositions whose validity is rejected by the participants in the talk show. These gestures involve moving the hands from a central space of discursive gesticulation towards its periphery, which looks as if speakers were “moving something aside” (¹⁸). Through this type of gestures “speakers are giving indications that there are portions in their discourse that can be eliminated from the argumentation because they are [regarded as] false, irrelevant or unnecessary” (Montes Miró 2003: 249, my translation). In a more recent study, Montes Miró (2009) analyzes the discursive functions of a series of gestures used by Mexican interviewers and interviewees who participate in television shows. The hand gestures analyzed function as self-referential devices. According to the author, there are times in which the deictic gestures complement a verbal message in that they illustrate visually what is being said. There are times, however, in which the deictic gestures supplement verbal messages because they “add further meanings that are related to the speaker’s orientation or subjective stance” (2009: 226, my translation).

Also working with data from three interviews in different Greek TV shows, Koutsombogera and Papageorgiou (2009) describe a series of gestures and the discursive functions they perform. The study aims at describing the distribution of facial, hand and body gestures in relation to two communicative functions; acknowledging or accepting somebody else’s message (giving feedback) and maintaining and yielding the floor (turn management). As regards “giving feedback”, the authors argue that “[m]ultimodal feedback in terms of perception and acceptance of the uttered message is usually expressed through gaze and nods rather than through hand gestures (2009: 44). Furthermore, the authors hold that the type and frequency of gestural action is related to the nature of the turn management dynamics. In this sense, when overlaps occur, participants tend to exhibit a “high density” of non- verbal actions and they “engage all their expressive potential (gestures, facial displays) to maintain the floor” (2009: 45).

¹⁸ The expression in the original in Spanish is “haciendo a un lado”.

Matoesian (2005) and Matoesian and Coldren (2007) have explored the use of embodied action in institutional interviews. Matoesian (2005) analyzes the expression of epistemic stance in the context of a focus interview about legal mandates. The author argues that stance “emerges contingently and incrementally in a lamination of participation” (Goffman, 1981) in which verbal and non-verbal resources interact with each other (Matoesian, 2005: 188). The author concludes that the verbalization of epistemic meanings interacts with “a figure ground opposition between marked and unmarked bodily conduct” (2005: 188). This suggests that studying what constitutes a marked bodily action needs to be accounted for in particular instances of use because this can shed light onto the situated meaning of gestures.

A different type of institutional event is studied by Mendoza-Denton and Jannedy (2011), who describe the co-speech gestures used by a citizen in her address to members of congress at a public town hall meeting in Tucson, Arizona. These authors explore the relationships between gestures and prosody and that between gestures and metaphorical expressions. As regards intonational pitch accents and gestures, the authors claim that in their data “wherever there is a gestural apex [...], there is also pitch accent”, which suggests that “gestural phenomena are in strong co-occurrence with pitch accents” (2011: 292-293). Regarding the relation between metaphorical gestures and verbal contents, the authors argue that, unlike the gestural and intonational alignments, this kind of gestures provide information about the speaker’s conceptualizations of herself, representatives and other social actors, which is not necessarily expressed verbally.

Gestures have also been examined in non-institutional genres. Park (2009) analyzes the relation between reported speech and the use of multimodal resources in multiparty conversations. Three categories of reported speech are distinguished: Quoting oneself, copresent participants and third parties absent during the interaction. The author argues that the relation between the absence of quotative markers and gestures is related to the category of reported speech and the activity at hand. In this way, “[w]hen a non-present character was being quoted, quotative markers and laminator verbs were more frequent, not because multimodal resources are limited in the interaction but because the parties were engaged in a different activity of stance display.” (Park, 2009: 99). The author concludes “that rather than positing a dichotomous relationship where one excludes the other, one can propose the

employment of different degrees of multimodal resources depending on the interactive project at hand.” (2009: 99). This study provides further evidence of the fact that multimodal resources need to be studied in concrete contexts in view of how different factors intervene in the multiple layering of meaning construction.

The study of multimodal resources in courtroom settings is still in its beginnings, however, there are recent studies that ratify the claim that meaning generation is achieved multimodally and that bodily actions contribute, to different degrees, to it. For example, Matoesian (2008) argues that a witness’s resistance behavior is not only performed verbally but also gesturally, through bodily action such as gaze direction and body posture. Moreover, the author revises what, in his view, are “analytic limitations” that include an overemphasis on the description of lawyers’ contributions and “the neglect of multimodal communicative practices” (2008: 197). In this respect, the present chapter is meant as a contribution to the understanding of situated uses of non-verbal resources. The sections that follow focus on the analysis of two kinds of gestures and their relation to the propositional content they accompany.

4.2. Gestures in lay witness examinations

In this section, I describe two kinds of gestures that are produced in response to questions eliciting a specific type of content. As will be shown, the sequential location of a witness’ answer is the key to understand the discursive functions of the gestures that accompany it. The first gesture analyzed consists of a head shake. This type of head movement is typically associated with the emblem (McNeill, 1992) that indicates negation. However, the focus here is on a particular meaning of shaking one’s head that emerges in cases in which there is no linguistic explicitation of negation. As we will see in section 4.2.1 below, this kind of head shake cooccurs with a particular kind of semantic meaning.

Section 4.2.3 deals with a type of gesture that consists in extending the forearm and pointing the hand towards the front. This hand movement can cooccur with a particular facial gesture consisting in pressing the lips, which results in the creation of a

type of meaning that restricts the interpretation of the verbal message. (The video clips featuring all the cases analyzed are included in the CD attached to this document.)⁽¹⁹⁾

4.2.1. The head shake⁽²⁰⁾

The focus here is on a type of gesture that is produced when litigants demand kinds of information that witnesses express in a non-categorical way. The information requested in the question typically consists in specifications of dimensions such as size and manner.

As we will see, head shakes accompany the verbalization of a particular kind of semantic content associated with the speaker's attitude towards what is being expressed. The transcript below corresponds to the examination of Chris Morgan, a witness for the prosecution. Morgan is one of the volunteer searchers who found the corpse of Danielle van Dam in Dehesa Desert, an area located some 40 minutes away from downtown San Diego. In the photogram below, the witness is sitting down leaning on his elbows that are placed on the armrests of the chair. His hands are below the stand and cannot be captured by the camera, but they seem to be put together.

Photogram 1: Chris Morgan's rest position



¹⁹ Instructions to watch the videos: Insert the CD in your computer. You can open the files with vlc or real player, both free platform media players. To download vlc in your computer, go to www.videolan.org/vlc/ and double-click on "download vlc". Follow the instructions on the screen. Select a file from the CD and left click on it. Select the option "abrir con vlc". To download real player, go to www.mx.real.com. Click on "descarga gratuita" and follow the instructions on the screen. Select a file from the CD and left click on it. Select the option "abrir con real player".

²⁰ The realization of a stroke is indicated with an arrow pointing upwards (↑). The beginning and recovery phases of the gestural action will be indicated using comments in-between double parentheses, as in "((beginning of head shake))". The occurrence of beat gestures will be indicated with an arrow pointing downwards (↓).

In the following extract, prosecutor Dusek is examining Chris Morgan about the events that led to the witness's discovery of the corpse of the little girl. (Strokes (²¹) (Kendon, 2004) are indicated with ↑).

Text 14. During direct examination. Trial day 1, afternoon 3.

- a. District attorney Dusek: *What did you see?*
- b. Chris Morgan: *I saw a: (.) badly decayed, young girl on her back e:m an' looked like her head her head was to the right. And e: I'd say she was s:everely decayed.*
- c. District attorney Dusek: *How could you tell?*
- d. Chris Morgan: *Initially by the odor. A:nd, we got a closer look just to confirm what we were seeing, an' we could tell.*
- e. → District attorney Dusek: ***How big did she appear to be?***
- f. → Chris Morgan: *Sh-* ((starts moving his head to the left and back to initial position)) ↑ ***Four feet maybe*** ↑. ***Four feet*** ↑ ***in length***. ((head movements stop))
- g. District attorney Dusek: *Could you tell the race?*
- h. Chris Morgan: *Ehm the body was: ehm really dark brown, but I could tell it was a blonde-haired girl?*
- i. District attorney Dusek: *Did you see any jewelry?*
- j. Chris Morgan: *I did. I saw* ((clears his throat)) *a shiny earring on 'er ehm left ear, ear lobe.*

Prosecutor Dusek's question in turn a, "What did you see?", requests information related to the witness's past experience. The following question in turn c, "How could you tell?", elicits information about Morgan's inference expressed in the previous turn, "And e: I'd say she was s:everely decayed.". Next, in turn e, the litigant asks a question that elicits an estimation, "How big did she **appear** to be?". The request for the expected, approximate character of the information is realized linguistically by "appear". In turn f, we see the deployment of the gesture under analysis. First, the witness utters the beginning of a word, "Sh-", which may have been the consonant sound in "she". Immediately after that, we see the beginning of the gestural action which consists in a continuous movement of the head towards the right and back to the central position. It has to be noted that only the first stroke can be clearly observed and that there seem to be two further strokes that cooccur with "↑ *Four feet maybe* ↑. *Four feet* ↑ *in length*". Photograms 2 and 3 show the deployment of the gesture.

²¹ In Kendon's (2004: 112) terminology, the stroke of a gesture is the moment in which it achieves its peak. The stroke in the gesture examined refers to the moment in which the head reaches the point of furthest remove from the rest (or relaxation) position.

Photogram 2: Head movement to the right (first stroke)



“Sh- ↑ *Four feet maybe ...*”

Photogram 3: Head movement to the central position



In turn f, “*Sh-*” is followed by a movement away from the central position and towards the right (Photogram 2). Then, the speaker moves his head back to the central position (Photogram 3). The articulation of the head shake continues as the witness utters, “*Four feet ↑ in length*” and it ends with the head situated in rest position a little after the completion of the utterance.

As mentioned before, head shakes are used only during the realization of turn f because that is a response that corresponds to a request for an estimate. With “↑ *Four feet maybe ↑. Four feet ↑ in length.*”, Morgan verbalizes information that is presented as tentative, which is linguistically marked with “*maybe*”. This type of information is accompanied by a succession of subtle movements of the head. During the production of the utterance, there are three strokes, the last two of which are less perceivable than the first one. In this way, the expression of tentativeness is synchronized with a bodily movement, which produces a desired effect. Morgan’s head shake seems to signal that he is making a cognitive effort to provide an appropriate answer to the litigant’s question. This cognitive effort is related to the difficulty inherent in calculating the length of the victim’s body. In addition, through his verbal contribution, Chris Morgan manages to provide the information requested, which is nevertheless expressed as an approximation. What seems to be at play here is the witness’s orientation to the Cooperative Principle (Grice, 1989). Even when faced with a cognitively demanding question like “*How big did she appear to be?*”, witnesses like Chris Morgan and others, as we will see, seem to struggle to be as informative as required, thus, contributing with the direction of the interaction.

The following case further illustrates the function of head shakes. The extract below shows Beverly Askey, a witness for the people, being examined by prosecutor Dusek. They are talking about the defendant's motor home which was parked in 'The Silver Strand', a camping site located in a desert area near which the victim's body was later found. In the following photograph, we can see the rest position of the witness on the stand. Beverly Askey is sitting down with both her arms placed on the armrests. Her hands are not visible, but she is clearly holding a pair of glasses.

Photogram 4: Askey's rest position



Before the exchanges below, Beverly Askey had claimed that she saw the defendant's motor home at the camping site and that it was parked nearby hers. She had also said that upon arrival, the driver parked the motor home, closed the front window shutters and never came out of the vehicle. Some minutes after that, a park ranger who was collecting the money for the entrance fee knocked on the motor home door and a man came out. Later in the testimony, we get to know that the man referred to is David Westerfield, the defendant.

The following example illustrates the relation between the type of cognitive activity performed and the type of gesture used. Askey accompanies the first part of an utterance with beat gestures but she makes use of head shakes when the information she is planning to express verbally demands from her an extra cognitive effort. (Head shake strokes are indicated with ↑. Beat gestures are realized by a head movement downwards

and they are indicated with ↓. The symbol is placed before the word that cooccurs with the beat.)

Text 15. During direct examination. Trial day 7, morning 2.

- a. District attorney Dusek: *Describe what happened when the ranger came to this motor home.*
- b. Beverly Askey: *Well I saw him knock on the door and the ↓ man opened the door and came ↓ out and shut the door behind him and ehm,* ((starts shaking her head and moves her hand as if sweeping the air)) *they kin' 'f- if I ↑ remember right, they kind of ↑ walked to the back of the motor home an' ((raises her hand and lowers it to initial position)) were ↑ talking, but ↑ I didn't know, that was all I saw.* ((end of head shake))
- c. → District attorney Dusek: ***Do you know how long the ranger was knocking at the door before he got a response?***
- d. → Beverly Askey: *I* ((starts shaking her head)) ***DON'T ↑ think it was very ↑ long, y' know. I don't ↑ know.*** ((end of head movements))

The first question by the litigant elicits a narrative about the park ranger and the man. In turn b, the witness produces a series of narrative clauses that are visually accompanied by beat gestures indicating salient units in discourse, “*Well, I saw him knock on the door and the ↓ man opened the door and came ↓ out and shut the door behind him and ehm*”. After this utterance, the witness stops producing beats and starts using different kinds of gestural movements. The change in the nature of the gesture employed, i.e. from beats to head shakes, suggests that the witness perceives the information offered in the first part of the utterance, “*Well I saw him knock on the door and the ↓ man opened the door and came ↓ out and shut the door behind him and ehm*”, as distinct from that which she provides in the final part, “*they kin' 'f- if I ↑ remember right, they kind of ↑ walked to the back of the motor home an' were ↑ talking, but ↑ I didn't know, that was all I saw.*”. In this respect, beat gestures function as the ground against which head shakes are the figure that accompany a propositional content that is perceived as different from that which coocurs with unmarked gestures.

Before analyzing the head shakes produced by Beverly, let us describe her hand movement. The witness shakes her head while uttering “*they kin' 'f- if I ↑ remember right*”. Simultaneous with the head shake is a gesture in which the witness lifts her hand moving it from the rest position towards her left shoulder. This hand movement is associated with the deictic referent of “*back*”. Photographs 5 to 8 below show the deployment of the head movement and the hand gesture.

Photogram 5: Slight head movement to the right



Photogram 6: Head movement to the left and beginning of hand movement



Photogram 7: Hand movement (cont.)



Photogram 8: End of hand movement with hand pointing to the left shoulder



“they kin’ ‘f- if I ↑ remember right”

The gesture with the hand in which the speaker appears to be “sweeping the air” constitutes an abstract deictic (Haviland, 2000 in Montes Miró, 2003) because it represents visually the meaning of the referent of “back” in the phrase “*the back of the motor home*”. Regarding the head shake, it starts before the verbalization of “*they kin’ ‘f- if I ↑ remember right*”, it is produced simultaneously with the utterance and it finishes after the utterance has been delivered. This feature of gestures was observed early on by Kendon (1980), who explains that “[g]esticulations typically begin before the verbal articulation of ideas, which suggests that the formulation of ideas, in a form of action which is iconic or analogic to those ideas, is as fundamental a process as the formulation of ideas in verbal form” (1980: 209). The stroke of the head gesture is realized approximately before uttering “*remember*”.

As regards the propositional content, the witness expresses her attitude with respect to what she is saying with “*kind of*” and with a clause that contains a verb of

cognition, “*If I remember right*”. These expressions signal a low degree of commitment towards the information provided. This kind of propositional content is accompanied visually with the head shake. With question c, “*Do you know how long the ranger was knocking at the door before he got a response?*”, prosecutor Dusek elicits information about the duration of a past action. This type of question is cognitively challenging because it demands specification of the duration of an observed action. The nature of the action, a door knock, also adds to the complexity of estimating its duration. Even so, Beverly Askey provides an answer, “*I ((starts shaking her head)) DON’T ↑ think it was very ↑ long, y’ know. I don’t ↑ know. ((end of head movements))*”. Here, the information provided is presented as tentative. The witness uses a clause that contains a verb of cognition, “*I don’t think*”, which signals a low degree of commitment to what is said. Besides, the discourse marker *y’know* functions as a signal that the information presented in “*I DON’T think it was very long*”, is shared. This is related to the difficulty of estimating the duration of the observed door knock. The head shake that accompanies the propositional content expressed seems to suggest that the witness is making an effort and is thinking about a suitable answer. The head shake starts a little after the beginning of the utterance and it continues during its verbalization. The following photograms show the production of the head shake that cooccurs with “*I DON’T ↑ think it was very ↑ long, y’ know. I don’t ↑ know.*”:

Photogram 9: Slight head movement towards the right



Photogram 10: Head movement to the central position



Photogram 11: Head movement to the right



Photogram 12: Head movement to the left



"I DON'T ↑ think it was very ↑ long, y' know. I don't ↑ know."

Through the verbal channel, Askey indicates a low commitment with respect to the information offered. There are features in Askey's response that are indicative of the nature of her response. Through the head movement she appears to be signaling that what is being offered as an answer is just an approximation. In this way, the witness orients herself to the Cooperative Principle in that she provides indications that she is striving to comply with the litigant's demands.

Up to now, the examples in this section have illustrated the use of a gesture that is produced with a specific kind of propositional content. We have seen that the witnesses restrict the interpretation of some utterances through the kinetic channel by shaking their heads. This gesture accompanies the verbalization of modalized content through which speakers express a low degree of commitment towards the information provided. The effort made by witnesses in terms of producing an answer for relatively cognitively demanding questions is realized linguistically and this expression is complemented visually. Both Chris Morgan's and Beverly Askey's use of head shakes is coordinated with the verbalization of information that is presented as tentative. The gestures analyzed seem to accompany verbal contributions which the witnesses regard as an approximation.

We have seen that head shakes can function as a marked bodily conduct when they are used against a background of other unmarked non-verbal resources like beats. It seems fruitful to analyze particular gestures considering not only the propositional content regularly associated with them but also their relation to preceding and following gestures. Next, in section 4.4.2, I describe other gestures that also accompany the expression of tentativeness.

4.2.2. The combination of a hand gesture and facial expressions

The gesture analyzed in this section consists in moving one's hand away from a rest position and pointing it towards the front area. This hand gesture seems to be a manifestation of the kind of cognitive activity that participants are carrying out. As will be shown, the hand gesture tends to be produced in responses to cognitively demanding questions. In this section, two different research subjects (Brenda and Janet) using the same combination are analyzed. In the following section (4.2.2.1), I will show another research subject (Donald) using the hand gesture in response to a question about the meaning of an everyday expression.

Brenda

In the following sequence, prosecutor Dusek is examining Brenda van Dam, the mother of the child victim. They are talking about Brenda's encounter with the defendant a week before the child was abducted and the conversation that took place at that moment. Brenda is leaning forward with her arms on the stand and with the left hand on top of the right one.

Photogram 13: Brenda's rest position



In the extract below, Brenda is giving testimony about what Westerfield told her the day she, Danielle and her youngest son were at his house in order to sell girl-scout cookies.

Text 16. During direct examination. Trial day 3, morning 1.

- a. Brenda van Dam: *But I also told 'im if I was there I might also introduce 'im to Barbara.*
- b. → District attorney Dusek: ***How did the defendant react?***
- c. → Brenda van Dam: (.) ((presses her lips then tilts her head towards the right)) ***He liked the fact that, he might get to meet Barbara?*** ((Lifts her left hand and points it towards the front))
- d. District attorney Dusek: *D'you guys discuss anything else while you were there in the kitchen area?*
- e. Brenda van Dam: *Yes, we did. He made a comment to me he ask me ...*

Let us notice that the question in b, “*How did the defendant react?*”, demands a specification about someone else’s behavior. As a response, the witness uses two distinct bodily actions and afterwards she realizes a verbal response. First, she produces a facial gesture in which she presses her lips, which is combined with a slight head movement towards the right. This is shown next:

Photogram 14: Pressing her lips and tilting her head towards the right before uttering “*He liked the fact that, he might get to meet Barbara?*”



After these bodily actions, Brenda utters “(.) *He liked the fact that, he might get to meet Barbara?*”. There are features in the design of this utterance that point to the fact that Brenda is aware of the nature of her response. First, she delays her answer that is uttered after a brief pause and after the head and facial gestures shown in the photogram above are produced. Delays of talk are interactional features typical of dispreferred responses (Atkinson & Heritage, 1984) and they are indications of the speaker’s awareness of the nature of the response. Second, her use of a rising tone

(indicated with ?) is a prosodic feature whose function is to present the information as shared. That is, Brenda seems to be signaling that she knows she is not offering an informative contribution. Finally, her facial expression and slight head movement are signs of her struggle to find a suitable answer. All these features are related to the witness's awareness that her contribution constitutes a dispreferred response; however, she uses interactional resources and visual cues to hint at the effort she is making. This is further signaled by a hand gesture performed after the utterance.

Photogram 15: Hand gesture after uttering "*He liked the fact that, he might get to meet Barbara?*"



After uttering "*(.) He liked the fact that, he might get to meet Barbara?*", Brenda lifts the left hand and points it to the front. This gesture accompanies an answer triggered by a cognitively challenging question, "*How did the defendant react?*". The difficulty of this question is related to providing an evaluation of someone else's reaction.

Later during the same examination, prosecutor Dusek asks Brenda a question about the reason for her having behaved the way she did when she was at the defendant's house. As we will see, the gesture with her hand seems to be a kinetic manifestation of the cognitive struggle of the witness to cooperate with the direction of the interaction proposed by the litigant.

Text 16 (cont.). During direct examination. Trial day 3, morning 1.

- f. District attorney Dusek: *Did you take his ((referring to Westerfield)) cards?*
- g. Brenda van Dam: *Yes I did.*
- h. District attorney: *Shake hands?*

- i. Brenda van Dam: ((looks upwards and back to where Dusek is standing)) ***I don't recall*** ((lifts her left hand)).
- j. District attorney Dusek: *What happened then?*
- k. Brenda van Dam: *And then* ((sighs)) *he s:aid ehm "why don't you write your and your husband's names down on this piece of paper" an' he said "I have parties" (.)* ((the witness interrupts her narrative because she notices that Dusek is talking to somebody else))

((Brief, two-second long pause in which Dusek seems to be whispering something to one of his assistants))

- l. District attorney Dusek: *Alright.*
- m. Brenda van Dam: *I have barbecue:s? where the where the kids come? an' people bring their (.)* *own food to cook an' ehm I also have ehm he's- I've family parties and I've adult parties.*
- n. District attorney Dusek: *What d'you say?*
- o. Brenda van Dam: *ehm. I finished writing* ((moves her hand imitating the signature movement)) *my name down an' give it to 'im?*
- p. → District attorney Dusek: ***Why d'you do that?***
- q. → Brenda van Dam: ((presses her lips, looks to the front and away from where the litigant stands and lifts her left hand to the front)) ***I was in the middle of writing it down I didn't feel like ripping it up an' taking it away an' being rude.***

In this sequence, there are two further instances of the hand movement analyzed. The effect produced by means of lifting one's hand is related to the type of question posed and the kind of answer offered. The first instance of the hand gesture occurs in turn i. After uttering "*I don't recall*", Brenda lifts her hand and points it to the front area. This is accompanied by the facial gesture we saw before that consists in pressing one's lips.

Photogram 16: Brenda's hand movement and facial gesture produced after uttering "*I don't recall*"



In this case, the hand movement takes place after uttering the clause that contains an explicit negation; *“I don’t recall”*. Therefore, the function of Brenda’s hand movement is related to her awareness that her contribution is not as informative as expected.

Later, the litigant asks a question that demands from the witness a specification of the reasons for having behaved the way she did: *“Why d’you do that?”*. It is this specific kind of request for information that triggers Brenda’s hand gesture. In previous turns, Brenda had specified that it was the defendant the one who started talking about her *“adult parties”* at home. Brenda’s reaction to the litigant’s question first comes through the visual channel: she presses her lips and almost simultaneously she lifts her hand towards the front. This can be seen photogram 17 below.

Photogram 17: Right hand lifted while pressing the lips and looking to the front



This combination of gestures may be associated with the witness’s awareness that her response may not necessarily be the most accurate one. In other words, by means of combining a hand gesture with a facial expression, Brenda hints at her effort to produce an answer appropriate to the type of question. The difficulty of the question is connected with providing an evaluation of her past action. After the facial expression and the hand gesture, the witness utters *“I was in the middle of writing it down I didn’t feel like ripping it up an’ taking it away an’ being rude”*. While doing so, Brenda looks at her interlocutor and at that point there is no other hand gesture.

Photogram 18: Looking at her interlocutor



“I was in the middle of writing it down I didn’t feel like ripping it up an’ taking it away an’ being rude”

The combination of the hand gesture and the facial expression seem to be a manifestation of Brenda’s cognitive effort to provide an answer. In spite of being asked a difficult question, the witness provides an answer, *“I was in the middle of writing it down I didn’t feel like ripping it up an’ taking it away an’ being rude”*. In this way, she manages to meet the requirements of the litigant’s request.

Janet

In order to demonstrate that the use of the hand gesture is not idiosyncratic of a particular speaker, another instance of use is shown. In this case, the witness is Janet Roehr, a neighbor of the community of Sabre Springs, where the van Dams and the defendant lived. She is sitting down with her back against the chair. Both her arms are on the stand and she has placed one hand on top of the other.

Photogram 19: Janet Roehr's rest bodily position



In the extract below, defense attorney Boyce is examining Janet Roehr. They are talking about the defendant's motor home.

Text 17. During direct examination. Trial day 15, afternoon 1.

- a. Defense attorney Boyce: *Miss Roehr do you know if David Westerfield had a motor home?*
- b. Janet Roehr: *Eh yes: he does.*
- c. Defense attorney Boyce: *Did you see it in- parked in the neighborhood within the last e year?*
- d. Janet Roehr: *Yes.*
- e. → Defense attorney Boyce: ***How frequently would you see it parked in the neighborhood?***
- f. → Janet Roehr: (*.. ..*) ((Looks upwards, presses her lips, smiles a bit, lifts both her hands towards the front and puts them back down)) *eehm six to twelve times* ((lifts her left shoulder a bit)) *a year.* ((slightly shakes her head)) ***Or more.***
- g. → Defense attorney Boyce: ***How long would it eehm how long e would you observe that it was parked there before it would leave?***
- h. → Janet Roehr: ***Em varying times anywhere from*** ((lifts her right hand and points it to the front)) ***a day to:: a week*** ((puts her hand down and presses her lips))

First, let us notice that the litigant's questions are increasingly specific regarding the type of information elicited. The first question is general and it does not really pose any difficulty for the witness because her knowledge of the defendant's motor home is the reason for her appearance in court. However, the question in e, "*How frequently would you see it parked in the neighborhood?*" requires Janet to provide an estimate of frequency. Evidently, the frequency of everyday events is hard to calculate and this is

related to this witness's reaction. First, she produces a long pause, which is a feature common in dispreferred responses. The time taken to come up with an answer is spent in the production of a series of facial gestures: she looks upwards and she presses her lips while she shows a brief smile. Concurrently, Janet makes use of a hand gesture similar to the one we saw Brenda van Dam use before. In contrast to Brenda's use of a single hand, Janet uses both her hands as a signal that she is planning the information she is about to verbalize.

Photogram 20: Combining a hand gesture with a facial expression



After producing this combination of hand and facial gestures, Janet puts her hands on top of one another and starts uttering the verbal content.

Photogram 21: Before the utterance, the hands return to the unmarked position



While uttering “*six to twelve times a year*”, Janet slightly elevates the left shoulder (photogram 21). In this way, the witness is making use of multiple semiotic channels to let her interlocutor know that the content of her verbal contribution is just an approximation to a potentially more precise answer. This seems to suggest that there are moments in which we can observe how the expressiveness of the body can be mobilized while carrying out a challenging cognitive activity.

Photogram 22: Slightly moving her right shoulder upwards



“*Six to twelve times a year*”

After uttering “*six to twelve times a year*”, the witness shakes her head twice and presses her lips. As regards the semantic content expressed, the span of time Janet provides in the answer is far from being precise. Nevertheless, the witness’s multiple embodied actions function as indicators that she is trying to be cooperative.

Photogram 23: Head movement towards the left



Photogram 24: Head movement towards the left and lips pressed



After these gestures, Janet adds “*Or more*”, which is another evidence of her struggle to be as informative as possible. The difficulty posed by the litigant’s question seems to be reflected in the use of various semiotic resources. The hand movement in combination with the eye movement upwards and the pressing of her lips, all of which take place at the beginning of turn f, may be a manifestation of the witness’s effort to come up with an acceptable response. In this way, we can see how producing a verbal response, even when it may not be the most accurate, is related to the demands of the context that require witnesses to answer every question posed by a litigant.

Later on, Janet uses her hand once more during turn h. Turns g and h are reproduced again below:

- g. Defense attorney Boyce: *How long would it eehm how long e would you observe that it was parked there before it would leave?*
- h. Janet Roehr: *Em varying times anywhere from* ((lifts her right hand and points it to the front)) *a day to:: a week.* ((puts her hand down and presses her lips))

Here we see that as a response to a question that puts pressure on the witness to provide a specification of frequency, Janet offers a range of time, “*varying times*”, which can go “*anywhere from a day to:: a week*”. In this case, the hand gesture takes place simultaneously with the verbal message:

Photogram 25: Left hand pointing towards the front



“a day to a week”

Turn h constitutes a dispreferred response because it is an inexact response to a question eliciting specificity. The dispreferred nature of the answer can be observed at

the lexical level; “*varying*” and “*anywhere*” are terms whose meanings are indefinite, and providing a range of time, “*from a day to:: a week*”, adds to the imprecise nature of the information offered. As was mentioned above, delaying talk is a common feature found in dispreferred responses (Atkinson & Heritage, 1984: 55). In Janet’s answer, “*Em*” is a delaying device in turn initial position, and within the turn, the lengthening of the vowel sound in “*to::*” has a similar function. The relation between the dispreferred answer and the hand gesture, produced using just one hand, may be explained in terms of the witness’s awareness of the kind of response she is providing. That is, given its location, the gesture acts as a visual sign that the answer given is the best alternative the participant is able to offer as a response to the specificity of the information requested.

In this section, the analysis has focused on a hand gesture that may be combined with others and that seems to be associated with witnesses’ cognitive work when they are faced with requests for specifications.

Next, we will see that other types of question that also demand a cognitive effort on the part of witnesses can also trigger the use of the hand gesture described in this section.

4.2.2.1. Questions about the meaning of everyday expressions and witnesses’ use of hand movements

In chapter II, “The ‘innocent’ questions about everyday terms”, I have analyzed the discursive uses of questions about the meaning of everyday expressions, and we have seen how litigants use this interactional resource to covertly evaluate a person involved in the case. This section deals with witnesses’ verbal and non-verbal responses to precisely that type of question. Questions about the meaning of expressions are similar to those that request an estimate in that both seem to demand an extra cognitive effort on the part of witnesses.

Donald

The example analyzed next illustrates the use of the gesture that consists in raising the hands and pointing them to the front. As we will see, the hand movement accompanies linguistic contents whose formulation is perceived as complicated. In this case, prosecutor Dusek is examining Donald Raymond, a witness for the people, who is

a neighbor of both the van Dams' and the defendant's. Donald is leaning on the stand with his arms on the table and his hands clasped in front of him.

Photogram 26: Donald Raymond's rest position



In the extract below, the witness and the prosecutor are talking about the defendant's conduct on the morning of February 2, the day the van Dams realized her daughter had disappeared from their home.

Text 18. During direct examination. Trial day 7, afternoon 2.

- a. District attorney Dusek: *What was his demeanor ((referring to the defendant)) or attitude when he was speaking with you?*
- b. Donald Raymond: *Agitated.*
- c. → District attorney Dusek: ***What do you mean by that?***
- d. → Donald Raymond: *Eh ((raises both his hands and points them to the front)) ***it's the only word I can think of to describe it.*** He was just- ((lowers his hands and puts them back in initial position)) *I've been out there 13 years volunteering for a few weeks every year, and I've never had anyone agitated over getting too much money back.*
((Laughter coming from the audience))*

Photogram 27 shows the hand gesture that accompanies the metacommunicative comment in turn d.

Photogram 27: Hands raised and pointed towards the front area



“it's the only word I can think of to describe it. He was just-”

In turn c, the litigant asks a question about the meaning of the term “*agitated*”. In turn d, the witness produces a delaying device (Pomerantz, 1984: 71), “*Eh*”, which precedes the hand gesture. The gesture coincides with the utterance “*it's the only word I can think of to describe it. He was just-*”. This example shows that, at times, witnesses express linguistically that they are struggling to produce a particular response. The metacommunicative comment “*it's the only word I can think of to describe it*” is related to the difficulty of expressing the sense of the utterance. Once again, we see that pointing the hands to the front area is associated with a demanding cognitive activity. Right after “*it's the only word I can think of to describe it. He just-*” is uttered, Donald lowers his hands and places them back on the stand. In this case, the signification signaled through gestural channel complements the information provided through the verbal mode. This use of the hand movement is another non-verbal manifestation of the challenging cognitive activity that is being performed.

4.3. The functions of the gestures analyzed

This chapter has centered on the analysis of lay witnesses’ spontaneous use of bodily movements during examinations. The analysis has shown that the use of cognitively demanding questions favors witnesses’ use of head shakes and hand movements sometimes accompanied by facial gestures.

The two kinds of gestures analyzed contribute to the expression of tentativeness because they accompany utterances that contain modalized statements, linguistic expressions of impreciseness or metacommunicative comments associated with the difficulty of formulating an answer. Therefore, the gestures examined are coordinated with speech and they have a complementary role in the production of a single multilayered message. Montes Miró (2003) describes a hand movement associated with the expression of an argumentative position. The hand gestures examined in that study also perform a complementary role but when gesture and speech do not coincide, the meaning expressed through the gestural channel prevails (2003: 266).

Kendon (2004) proposes a set of gesture functions that can be used to explain the role of gestures in concrete instances of use. The author analyzes a hand gesture that can perform modal functions when it “[expresses] the attitude of the speaker towards something” and when “[they] refer to [the speaker’s] estimate or evaluation of something” (2004: 169-170). The analysis above has shown that the meaning of tentativeness is expressed through lexical and grammatical resources and hinted at with the use of features of turn design routinely associated with dispreferred responses. Therefore, the gestures analyzed do not perform modal functions. Rather, they have a modalizing effect because they are synchronized with the verbal expression of tentativeness.

Furthermore, when the gestures observed take place at the end of a turn at talk, they also carry out interactional functions because they can be used as a signal that the participant is yielding the floor. The gestures observed seem to perform different discursive functions simultaneously and, at times, one of them seems to predominate over the others. In the case of the hand gesture analyzed, the interactive function they perform is secondary in importance given that the interactional dynamics is set beforehand and whenever a witness finishes their answer, a litigant will take the floor to ask a further question or to raise an objection. Finally, the gestures examined in this chapter are also connected to the demands posed by the situation because witnesses are obliged to answer each of the questions posed by a litigant. When witnesses find that task complicated, their automatic use of gestures suggests that they are orienting themselves to their situational role.

CHAPTER V: Findings and conclusions

This chapter begins with a summary of chapters II, III and IV. Next, I draw general conclusions on the basis of the discursive phenomena identified. After that, I discuss issues related to the methodology and I identify potential sources for future research. Finally, I consider some of the ethical implications of this research.

The discourse analytic perspective that informed the analysis has enabled me to detect interactional mechanisms that are recurrent in the lay witness examinations studied. In chapter II, we saw how attention paid to linguistic forms is a way through which specific damaging implications can be generated. The deployment of this interactional mechanism allows litigants to ask questions that are only in appearance about the witnesses' contributions, which guarantees that no objections are raised. The generation of an evaluation is successful when litigants are able to guide their interlocutors into verbalizing information that is detrimental to the positive face of parties involved in the conflict. Therefore, the deployment of the interactional mechanism that involves using questions about the meaning of everyday expressions is a strategic behavior because it allows litigants to harm the credibility of witnesses for the other side.

In chapter III, I analyzed different interactional mechanisms through which cultural knowledge is invoked in moments in which the nature of a contested past behavior or event is at stake. As was shown, there is a profuse use of questions through which litigants invoke mental representations contained in different situation models. Alluding to similarities between expected behaviors and a person's past conducts has the effect of constructing the past behavior as unremarkable or as an instance of typical behaviors. On the other hand, invoking knowledge contained in situation models can be used to construct a past behavior as marked and particular to the party talked about. In addition, the strategic evocation of cultural knowledge can also be used to challenge the categorization of a past event that a witness proposes. The interactional mechanisms through which past behaviors and events are made to concur or deviate from social routines generate implicit evaluations because they activate cultural beliefs and opinions associated with those events and conducts that are assumed to be shared by the participants in the examination and by other ratified co-participants.

Various discourse analysts have argued for the need to account for the interrelations between multiple semiotic channels in the study of face-to-face communication (Kendon, 1980, 2004; Fairclough, 1995; Chouliaraki & Fairclough, 1999, Montes Miró, 2003, 2009; Carranza, 2012). In this line, chapter IV looked at the impact that cognitively demanding questions have on the expression of tentativeness and the gestures that accompany it. It was shown that the use of head shakes and the combination of hand movements and facial expressions have a direct connection with the type of information requested and the need to express precision. The gestures examined complement the content expressed through speech and they have a modalizing effect.

The centrality of the verbal mode is undeniably reflected in the number of chapters devoted to its analysis in this research study. Nonetheless, chapter VI is meant as a small contribution to the understanding of how witnesses orient themselves both verbally and non-verbally to the demands of the situation. The use of the gestures described seems to be influenced not only by the speakers' perception of the communicative task at hand but also by the conditions created by the question. The cognitive effort manifested through gestural actions and through the verbal conduct needs also to be accounted for in light of the situational role performed. Because witnesses are obliged to answer every question posed by a litigant, they strive to come up with the information requested even in cases in which the requirements of the question are difficult to satisfy.

Some considerations about the hypotheses outlined in the introductory sections are in order. This study has revealed that litigants frequently resort to interactional mechanisms that allow them to covertly evaluate witnesses for the other side. This finding supports one of the initial hypotheses. On the other hand, the second working hypothesis predicted that representations of violent acts would be abundant given the nature of the crime tried. In this respect, it was hypothesized that there would be representations of the violent nature of the crime and its impact on the community, and particularly, on the lives of the van Dams. Yet, no such issues were addressed during the examinations under study. This could be explained in view of the institutional rules at play which prohibit that matters that are not directly relevant to the case be discussed in open court. However, this study has shown that there are aspects of the witnesses' social

identity which are constructed as directly relevant to the case and which need to be accounted for in view of the contextual factors at play. This will be further explored in section 5.1 below.

5.1. Witnesses' morality on the stand

The interactional mechanism described in chapter II is deployed in order to achieve specific communicative goals. The covert evaluation that gets generated through the display of this mechanism stems from the relationship between the elicited answer and the questions that follow. In other words, the dialogic pair question-answer just prepares the grounds for the following sequence, and it is the latter the one that attributes undesirable qualities to a party in the conflict.

Litigants' use of questions about the meaning of colloquial expressions is never unmotivated. On the contrary, litigants use them frequently because they enable the generation of damaging implications that are convenient for the version of the past they advocate. The social evaluation associated with those kinds of behaviors is only alluded to, which suggests that the success of the mechanism is tied to the subtlety with which an implicit evaluation is provoked.

The examination of the nature of the implications generated shows that in order to damage an individual's positive face, litigants guide their interlocutors into verbalizing past behaviors associated with gendered practices such as exhibiting sexualized conducts with persons other than the spouse and behaving flirtatiously in public spaces. When these actions are attributed to a witness involved in the case, a series of implications about the kind of person that individual is get generated. This shows that the interactional strategy is used to attack witnesses' credibility on basis of their moral standing.

In chapter III, we saw that litigants recurrently allude to cultural knowledge about what constitutes acceptable public conduct. Making a specific behavior concur with routine ways of acting has the effect of normalizing it, which enhances the positive face of the individual talked about. On the other hand, invoking routines can be used to highlight the peculiarities of a past behavior, which damages the positive face of the witness to whom that behavior is attributed. This is particularly so when the behavior at stake is sexualized in nature, because displaying marked sexualized conducts makes available inferences about an individual's morality. Therefore, discrediting a witness

can be carried out by resorting to the dimension of morality because it functions as a sort of reference frame. Such a frame of reference is accessible for any member of the community because everybody has had countless experiences with what is considered right and wrong.

From the point of view of social cognition (van Dijk, 1999), talk that alludes to morality evokes abstract social opinions and values about adult behavior that are shared by members of a community. As van Dijk argues, cultural values function like “reference points”, which are used in social evaluation (1999: 101). Attacking somebody’s credibility on moral grounds adds to the effectiveness of the strategies identified because they depend on types of knowledge that jury members have easy access to.

The view that discourse is constitutive and simultaneously constituting of systems of knowledge and beliefs (Foucault, 1992 [1970]; Fairclough, 1995, 2003) can shed light onto the characteristics of the world that gets constructed through talk that alludes to morality. In this sense, this is a world of binary options in which actions and personality attributes fall either in or out of two mutually opposing categories; namely, the correct and the disapproved of. Depending on which communicative objective is being pursued, strategically chosen past events and behaviors are negotiated in and through discourse in order to determine if they concur with expected canons of public behavior.

As we have seen in chapter III, the interactional conflict centers, at times, on whether a specific past behaviors coincides with the cultural expectations evoked and, at others, on the negotiation of the nature of a past event. The conflict is rarely about whose definitions of moral behavior are evoked. The recurrent use of “offensive lines of questioning” (Larson & Brodsky, 2010) associated with moral issues tells us something about the sort of discursive actions that institutional participants are licensed to perform. As part of the “institutionally relevant activities” (Drew & Sorjonen, 1997), litigants are allowed to perform discursive actions like sanctioning and implicitly judging non-institutional participants’ past conduct and personality attributes. As part of the interactional routine of attacking witness credibility during examinations, litigants recurrently cast doubt upon witnesses’ moral standing. As regards witnesses, they typically carry out supplementary actions: they justify themselves and their actions, they provide reasons for their assumed ‘unfit’ past behavior, and they strive to fit into the

expected behavior. They seldom ⁽²²⁾ challenge an accusation of low moral standing or reject a line of questioning for being irrelevant, insulting or out of place. Therefore, the social asymmetry between litigants and witnesses is reflected in the differential access to perform certain types of discursive actions during an examination.

5.2. Cultural assumptions and values

The analysis of the data has made it possible to identify a set of underlying ideas about adult behavior. In the community in which the trial took place, there are gendered practices associated with “modern” lifestyles that are negatively evaluated by the members of that community. We have had access to those practices through the representations of adult behavior and the (implicit) evaluations that get generated. The generation of covert evaluations is possible because participants share cultural assumptions about sexualized practices such as: a) married women do not engage in sexualized behavior with men other than their husbands; b) married couples do not look for sexual partners outside of their marriage; c) heterosexual women do not engage in sexualized practices with other women, and d) single women who have multiple sexual partners are morally unfit.

In addition, it was possible to detect cultural values; for example, monogamy, fidelity, public décor, decency, family life, traditional family, and responsible parenting. These are some of the underlying values that make possible the moral sanctioning that takes place during the examinations. Interestingly, even those individuals (for example, the van Dams and Denise Kemal) who take part in social practices like swapping sexual partners seem to orient themselves to the conservative values and assumptions discussed above. The analysis has revealed that in the context of lay witness examinations, it pays to be perceived as a morally outstanding citizen because that is a factor that contributes to one’s credibility.

Litigants can successfully resort to evaluate witnesses’ gendered practices because the values attached to those practices, which are part of an ideology (van Dijk, 1999: 92) about sexualized behavior, seem to be stable and this stability guarantees that

²² The only instance of open challenge to an implication of immoral behavior is produced by Damon van Dam during cross-examination. As this is just an isolated case, it cannot be considered part of a recurrent discursive action carried out by (at least) some witnesses.

they not be contested. In the examinations analyzed, witnesses seldom resist allegations of immorality, which is evidence of the degree to which they have become naturalized (Chouliaraki & Fairclough, 1999) and in Gramsci's terms 'commonsense'. In terms of hegemony (Chouliaraki & Fairclough, 1999), the social group made up of institutional members is licensed to reproduce ideas about the 'morally correct' and they are able to remind members of the public of the validity that those ideas still have.

5.3. Morality in the court

As regards the order of discourse (Chouliaraki & Fairclough, 1999; Fairclough, 2003) of the institution from which the data were drawn, the data sample only allows me to comment on manifestations that seem to reveal some ways in which it is constituted. First, it is possible to argue that different discourses coexist in courtroom discourse. As previous studies of courtroom discourse (Conley & O'Barr, 1998; Matoesian, 2001; Ehrlich, 2001, 2002; Larson & Brodsky, 2010; Cederborgh, 2009) have shown, the analysis of the data suggests that the discourse of morality still permeates the American courts.

A further finding of the present study is that the discourse of morality is evoked even with witnesses other than a victim. Therefore, the invocation of morality is not necessarily dependent on the centrality of the witness. Even witnesses whose testimonies can be considered peripheral because they were summoned to provide additional information to the court, can be subjected to moral scrutiny. This seems to suggest that the discourse of morality is a central element in the constitution of the order of discourse of the American institution in which the texts analyzed were produced. The discourse of morality can be traced back to different institutions, such as the family and the church. These institutions and their corrective functions impart prescriptions about behavior and, in the case of the court, this becomes manifest in the implicit moral recommendations given to citizens.

5.4. Reflections on aspects of the methodology and the research process

The data under study were obtained from a webpage whose text producer claims David Westerfield was wrongfully convicted to the death penalty. This position contradicts the attitude towards Westerfield that can be detected in mainstream communication media texts of the year 2002. Those texts do not form part of the corpus

under study, but they were collected in order to get additional contextual information. Evidently, as discourse analysts, we are not immune to external influences nor can we do away with our own opinions and ideological perspective. As an analyst, I cannot deny the fact that others' opinions and my own subjectivity were at play when approaching the data. However, by acknowledging the fact that the analyst's subjectivity and social identity are inescapable, I have tried to be alert and control their incidence. In addition, having access to additional contextual information can only enrich the analysis because it makes it possible to establish relations between the observed phenomena and the contextual factors that may impact on their realization.

Choosing a case study design has allowed me to conduct a detailed analysis of the twelve examinations selected. An advantage of using this type of methodological design was that it proved flexible enough because the direction of the research was dictated by the evidence found in the data. Each chapter focuses on a particular type of phenomenon which was described in relation to the surrounding context, and in view of how a particular contribution relates to following and preceding ones. Describing the interactional mechanisms meant that long sections were devoted to the analysis of the sense of an action with respect to its location in a particular sequence. This resulted in the identification of discursive patterns that, to my knowledge, had not been described in the literature. The examples analyzed are illustrative of the phenomena that are prevalent in the corpus. The conclusions derive not just from the few cases transcribed but from the totality of instances that were detected in the corpus.

A recurrent source of difficulty stemmed from establishing whether a particular discursive phenomenon indeed constituted a recurrent pattern or not. In each chapter, I had to face the decision of whether to talk about relative frequencies or not. The decision made was to delimit the characteristics of the regularities sought for. In this respect, recurrent discursive mechanisms were those that were deployed a) during different examinations and b) at least twice in a single examination. This helped distinguish between those behaviors that constituted isolated instances from phenomena that can be regarded as recurrent.

The nature of the data that comprise the visual subcorpus posed a challenge. The main problem was that the video clips I managed to have access to were of a short duration, which restricted the possibilities for identifying potential objects of study. A further restriction was that there was only one camera filming inside the courthouse,

which could only capture one participant at a time, mainly the witness on the stand. In some of the videos, this single camera was aimed at the litigant, which meant that some segments showing witnesses' reactions were not available. Nevertheless, most of the video clips featured witnesses' upper torso and, most of the times, the hand movements performed. The decision to focus on the interactional level; that is, looking for types of responses associated with particular stimuli, proved useful because it led to the observation that particular head shakes and hand movements were typically used in response to cognitively demanding questions.

5.5. Potential areas of interest for future research

With regard to chapter II, a preliminary observation suggests that questions about the semantic content of expressions are also used when the examinee is an expert. In those types of examination, the expressions about which litigants ask questions typically belong to the field of expertise of the expert. However, reducing the interpretation of this resource to helping jurors understand the meaning of technical terms may turn out to be insufficient. A comparison between the uses of questions about the semantics of different types of expressions may provide a more thorough understanding of the discursive functions of this resource in institutional contexts.

As other discourse analysts suggest (Kendon, 2004, Montes Miró, 2009; Carranza, 2012), further investigation about the multisemiotic nature of meaning generation is needed. For example, the examination of the spatial arrangement of witnesses and litigants may lead to insights into its iconic values. What does the sitting arrangement, for example, tell us about the spaces that categories of participants can claim their own? What type of bodily conduct do witnesses display when litigants abandon a particular spatial position? As Kendon (1992: 329) claims, “[p]ersons jointly interacting, jointly sustain an orientation to a common space to which they have an access that is different from others”. Therefore, what verbal and non-verbal cues are there which help create and sustain a particular understanding of a joint activity? Are changes in the spatial location and postural position of litigants perceived as disjunctive by witnesses? If so, how is this manifest? Hall (1966 in Kendon, 1992: 330) claims that people standing at different degrees of distance have different kinds of information available to them and that this is apparently consequential for the kinds of actions that can be performed. The areas of potential research in the domain of non-verbal

communication in its integration with discourse seem promising because advances in them are not yet parallel to what is already known about verbal communication.

Any of the phenomena analyzed here can be subject to further investigation in other jurisdictions. This is justified given that comparative studies focusing on courtroom discourse are still scarce (cfr. Amadio, 2011; Amadio, in print).

5.6. Ethical implications of this study

Although not frequently and explicitly addressed in scientific papers, an issue that cannot escape treatment is the ethical implications of the research agenda (Chouliaraki & Fairclough, 1999; Fairclough, 2003). Potential text receivers of this text include other discourse analysts interested in the analysis of face-to-face interactions. I am concerned, however, that there is a particular social group that may directly benefit from findings of studies like the one carried out here. One way in which studies like the present one may contribute to “empower the powerless” is by establishing a dialogue with members of organizations working towards guaranteeing the access to fair trials. Furthermore, a dialogue between discourse analysts and litigant lawyers can only encourage self reflection and a critical attitude towards forensic practices. Hopefully, research carried out using naturally occurring data also empowers citizens by unveiling the ways through which uncritical consent is achieved.-

CONVENTIONS FOR TRANSCRIPTION

- ? indicates rising tone
- . indicates falling tone
- , indicates a turn internal pause
- (.) indicates a short pause of not more than 2 seconds long
- (. . .) indicates a pause longer than 2 seconds or otherwise specified
- : indicates lengthened sound
- CAPITAL LETTERS indicate stressed syllable or word
- underlining indicates speech delivered fast
- Fami-* indicates self-repair
- [*because*] square brackets indicate beginning and end of overlap
- ((laughs)) double parentheses indicate comments by the analyst

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Appendix A: List of lay witnesses

Witnesses for the prosecution:

1. Brenda van Dam (The victim's mother)
2. Damon van Dam (The victim's father)
3. Sean Brown (Manager at Dad's bar and restaurant)
4. Denise Kemal (Friend of the van Dam's)
5. Rich Brady (Friend of the van Dam's)
6. Keith Stone (Friend of the van Dam's)
7. Ivette Wetli (A patron at Dad's bar and restaurant)

Witnesses for the defendant:

8. Cherokee Young (A patron at Dad's bar and restaurant)
9. Glennie Nasland (Friend of the defendant's)
10. Patricia Le Page (A patron at Dad's bar and restaurant)
11. Ryan Tyrol (A patron at Dad's bar and restaurant)
12. Duane Blake (A patron at Dad's bar and restaurant)

Appendix B

Figure 1. Diagram of the courtroom

