PhD abstracts (In alphabetical order)

Making a Case: Narrative and Paradigmatic Modes in the Legal–Lay Discourse of the English Jury Trial

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THESIS ABSTRACT

Trial by jury has long been the subject of fierce debate, condemned by crime control adherents as an overly costly system of criminal justice favouring the acquittal of the guilty, defended by due process advocates as a fundamental manifestation of true democracy and the fairest way to arrive at a criminal verdict. Over the past century, there has been a gradual erosion of jury trial in England and Wales, with the result that currently only one per cent of criminal cases are decided by jury, and the government is still pressing for further reduction (Justice 2002). This thesis attempts to provide an explanatory account of linguistic communication between legal professionals and lay jurors in English courts with a view to making a linguistic contribution to the pressing question of the validity and justifiability of jury trial.

   After an introductory chapter, the thesis is divided into three sections. Section I outlines the fundamentals for understanding legal–lay discourse

in jury trials. Chapter 2 discusses the linguistic context of courtroom inter-action and the methodological difficulties inherent in researching language in English Crown Courts, where electronic recording is prohibited. The chapter proposes a solution in the triangulation of both data sources and methods, combining close ethnographic observation of the courtroom with qualitative linguistic analysis of official court transcripts and detailed quantitative analysis of research corpora. A set of corpora were compiled as representative samples of legal–lay genres, including 100 complete witness examinations and 100 judicial summings-up to juries. Chapter 3 sets out the explanatory hypothesis based on Bruner's (1986) cultural-cog-nitive modes. The narrative mode precedes the paradigmatic mode both historically and developmentally and typifies the sociolinguistic practice of 'lay' language users. The paradigmatic mode, which developed with lit-eracy and became the 'prestigious' form of reasoning based on logic and categorization, is evident in the discourse of professional legal argumen-tation. Legal–lay discourse is thus characterized by a tension resulting from the lawyer's need to satisfy both the paradigmatic demands of the law and the lay jury's requirement for narrative-based constructions of social experience. Legal professionals consequently invoke a range of dis-coursal strategies oriented to both modes. Chapter 4 applies the two modes to the structure of the trial as a whole. While the structure of the adversarial phase of the trial is closer to classical debate than narrative, an analysis of prosecution opening statements reveals that barristers are aware of the need to construct a story or stories in planning their case.

Section II explores the role of the barrister as persuasive narrator in witness examination. As narrators, barristers have to balance the desire to instil trust in the witness through spontaneous storytelling with the con-flicting desire to maintain close control over the legal direction that the story takes. The analyses in Chapter 5 of turn length, question type and response type suggest that they tend to fall back on the legally safer option of tight control. When edited together as a single text, though, witness contributions in some examinations do appear to conform to ideal story schemas. It is the cross-examiner's evaluation of the witness as narrator which is the focus of Chapters 6 and 7. Chapter 6 tackles the subject through the systemic–functional semantic resource of JUDGEMENT, or the speaker's assessment of behaviour, and shows how advocates manage to transform the paradigmatic categories of 'veracity' and 'propriety' enshrined in the law into narrativized contexts of lying and wickedness. However, a semantic analysis of evaluation will only take us so far in the pragmatically complex context of jury trial, so Chapter 7 engages in an analysis of some of the more subtle subjectivity based evaluative devices (grammatical projection, forms of address, deixis, discourse *well*). These show just how richly and persuasively cross-examiners manage to exploit the narrative mode for strategic ends despite the paradigmatic constraints.

I argue in Section III that the judge's summing-up to the jury is also a persuasive genre. Chapter 8 provides a detailed analysis of judicial variation in the delivery of legal directions and reveals a very considerable difference between judges with a 'categorizing' tendency and those with a 'narrativizing' one. This reflects a tension between attempting to 'teach' the directions by converging with lay discourse expectations and remaining legally 'safe' by not altering the paradigmatic structures. This tension is also revealed in Chapter 9, which sets out a framework for analysing judges' linguistic modifications of their comments in the summary of evidence. Judges often indicate their perspective, as the following excerpt illustrates:

> I am certainly not going to suggest to you that because Constable Bowles is an *experienced policeman* that he is any more reliable than you or I or anybody else *necessarily* in identifying people. … So, *it is a matter for you*, but *you may think* that that is something that may cause his identification to be the *more reliable*.

Here, the judge reveals his perspective through evaluation (*reliable*), modalization (*necessarily*) and naturalization (*experienced policeman*) but then deflects potential criticism of bias by attributing his comments to others (*you may think*) and by disclaiming responsibility for their potential consequences (*it is a matter for you*).

One key suggestion in this thesis is that the narrative mode is indispensable to the decision-making process and that this is reflected in the discourse practices of legal professionals before juries. Criminal cases fundamentally concern human stories with intentions and vicissitudes which are best evaluated through the narrative mode. The expertise of the jury, as noted by judges in their summings-up, consists in their combined and varied experience of life, which simply cannot be matched by a judge sitting alone. At the same time, jurors need to fit their narrative-based decisions to legal categories, which means they have to converge with the legal mode. The linguistic challenge for legal professionals is how to bring about this convergence. But this same challenge is also a key reason for retaining trial by jury, since it attempts to bridge the gap between the paradigmatic and narrative modes, between law and everyday life.

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'Do You Agree that she would have been Frightened?': An Investigation of Discursive Practices in Police–Suspect Interviews

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THESIS ABSTRACT
Much of the existing linguistic research into the discourse of police interviews, while making valuable contributions to the field of Forensic Linguistics and to frameworks such as discourse analysis, has been undertaken in response to legal disputes over particular interviews. Research investigating the linguistic features of 'ordinary' police interviews, where the language used is not disputed at any stage of the legal process, is less common and this study seeks to contribute to this smaller body of research.

This study investigates participants' discursive practices in three routine police–suspect interviews from Victoria, Australia, within a Critical Discourse Analysis framework. Linguistic tools of analysis drawn from Interactional Sociolinguistics and Conversation Analysis are employed to investigate the findings of prior studies within the fields of psychology and criminology that have suggested that false assumptions underlie the police approach to interviewing. A subsequent investigation of 'myths', an approach used by critical discourse analysts in other institutional settings, reveals both the assumptions underlying the discursive practices of participants and the effect that those beliefs may have on the achievement of institutionally defined goals.

The first stage of data analysis provides a descriptive framework for the interviews, based on the negotiation of participant roles. In particular, an understanding of the interactional negotiation of participation frameworks, drawn from Interactional Sociolinguistics, forms the basis of this analysis. The results indicated that a tri-partite structure (Opening, Information Gathering and Closing) was reflected in both the participants' orientation to shifts in participation frameworks and the changing institutional requirements of the interview process.

Data analysis next identified key interactional features of the interviews using a Conversation Analysis approach to the examination of turn sequences and topic management. An example of this aspect of the

analysis is given below where extracts from one of the interviews are briefly examined in relation to the use of topic management tools in the construction of police and suspect versions of events.

The interaction between a suspect (SPT2) and a primary interviewing officer (pio2) that is described by the transcription in <EX>Extract 1 occurs towards the end of INT2 and follows a discussion of SPT2's possible use of force against his girlfriend, 'Leila'.

Extract 1

276.	pio2:	(0.6) um↓ (.) was there any reason why you had to e::rmØ (.) <u>treat</u>
		'a this way at all↓
277.	SPT2:	(1.2) it was a <u>combination</u> of things (.) y' know∧
278.		I↓ (0.4) didn't like the <u>fact</u> thatØ (0.4) y' know↑
279.	(0.6)	here <u>I</u> am goin' out with a girl⇒
280.		and she⇒ (0.6) jumps into <u>bed</u> with (0.2) one of my⇒ so-called
		<u>mates</u>∧
281.	pio2:	(0.4) OK well regardless of that may have been the <u>case</u>∧
282.	SPT2:	auh-↓
283.	pio2	um⇒ (0.6) not to say whether that the case or <u>not</u>∧
284.		but regardless of that <u>might've</u> been the case⇒
285.		(0.4) do you agree⇒ that that ah⇒ (.) <u>warranted</u> your actions↑
286.		(0.4) by <u>draggin'</u> 'er out by the arm⇒
287.		(.) <u>pullin'</u> 'er by the hair⇒
288.		(0.8) // <u>forcibly</u>* removing 'er from the <u>house</u>∧
289.	SPT2:	nuo-* (1.0) nup∧

In line 276, SPT2 is asked by pio2 if there was *any reason why you had to e::rm↓ (.) <u>treat</u> 'a this way at all↓*. The use of the extreme case in phrases like *any reason...at all* implies that reasons for this sort of behaviour are unlikely to exist, however SPT2 is able to supply a fairly straightforward explanation – Leila's apparent infidelity – which, while it does not excuse his behaviour, certainly provides a reason for it. It is interesting, therefore, that pio2's next turn functions to deny the relevance of SPT2's contribution by overtly excluding his explanation from the set of things which might warrant SPT2's actions 281/pio2: *(0.4) OK well regardless of that may have been the <u>case</u>∧*. From lines 283 to 288, pio2 effectively discards SPT2's version of 'reasons why he assaulted Leila' and then formulates his own version that *there was⇒ (0.6) absolutely no <u>reason</u>↓* for SPT2's behaviour. This new version is presented for confirmation by SPT2, as demonstrated in Extract 2, which immediately follows Extract 1.

Extract 2

290.	Pio2:	(2.0) so there was⇒ (0.6) absolutely no <u>reason</u>↓
291.		(.) <u>why</u> you should have <u>treated</u> 'er in that manner↓
292.	SPT2:	(1.0) nup↓

In the sequence from line 276 to line 292, pio2 elicits one version from SPT2, in which SPT2 gives a reason for his actions, and then he uses his role as interviewer to overtly set aside SPT2's version – *regardless of that may have been the case*Ÿ – and replace it with his own version in which there can be found *absolutely no reason*Ø for SPT2's actions.

This example demonstrates how the police officer utilises the topic management resources available to him as an interviewer in order to construct his own version of events and disregard others. Police interviewers are greatly assisted in this activity by the restricted topic management tools available to suspects and in particular, by the fact that the available tools minimize the obligation on police interviewers to respond to topics initiated by suspects. Thus, a police interviewer is able to ignore topic initiations that contribute to the suspect's version of events. A suspect, on the other hand, is often in the position of having to respond to police topic initiations because they are produced as first pair parts, such as formulations or requests for confirmation, which obligate the recipient to produce a topically relevant response. As a result, the police version of events can be not only constructed, but also favoured as the agreed-to version. This example involving SPT2's reasons for assaulting his girlfriend demonstrates the extent to which a police interviewer can dismiss the suspect's contributions in favour of the police version and then present the police version as a formulation of everything that has been said on the topic. As indicated in Extracts 1 and 2, this results in the agreement by the suspect with a police version that did not represent the suspect's original version of events at all.

By critically examining the results of the data analysis, the study identifies three 'myths' that indicate the assumptions underlying the discursive practices of participants: a myth of *comprehension*; a myth of *threatened authority*; and a myth of *persuasion*.

The conflict between the potential for misunderstandings in the Opening and the Closing and the actual resources used to clarify such misunderstandings when they do occur was described as a *myth of comprehension*. This myth also encompassed the discrepancy between the assumption that only the police institutional utterances would be confusing to suspects and the actual experience of suspects that indicated that other aspects of language use might well cause confusion, as in everyday interaction.

The *myth of threatened authority* arises from the inconsistency between the empowering language used by some police officers in the transition from Opening to Information Gathering and the police 'disempowerment' required for a successful elicitation of a voluntary, suspect-initiated confession. An erroneous belief that it is necessary for the police to maintain overt control over the discourse was found to underlie this myth.

Finally, the unsuccessful attempts by police interviewers to have sus-

pects align to the police version of events, and abandon a competing suspect version which we saw in the example above, is symptomatic of the *myth of persuasion*. Further discussion of the persuasive tactics used by police officers found that attempts to cast the suspect's version in a negative light can be characterized as impositions of a moral framework on the suspect's contributions. Not only is this inappropriate behaviour for an interviewing officer, but it does not effect a realignment by the suspect to the police version in the long term and was therefore counterproductive to the goal of obtaining a voluntary confession.

The thesis concludes that counterproductive police discursive practices could be related to a tendency of interviewing officers to orient exclusively to the police institutional order of discourse and a failure to recognize the role played in the interview by other orders of discourse.

Transcription Key

Symbol	Convention
↑	High rising intonation
∧	Low rising intonation
⇒	Continued intonation
↓	Falling intonation
–	truncated word
(1.7)	1.7 seconds of silence
(.)	Micropause: less than 0.2 seconds
Underline	Stress in utterance
//	next speaker's turn begins in overlap
*	overlapping speech ends
:	Lengthened sound

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Trials of the Voice

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THESIS ABSTRACT

This thesis is based on a case study of 16 provocation cases, which included reported and unreported cases, some appellate judgments and a number of authoritative provocation cases. One case involved a woman who killed another woman, five involved men who killed other men, nine involved men who killed women, and in one the accused killed both a man and a woman. In each instance, the accused sought to raise the defence of provocation in answer to the charge of murder. If successfully argued, the defence of provocation operates to reduce an accused's liability for murder to the lesser crime of manslaughter.

The thesis begins by examining criminological accounts of gendered subjectivity, in light of the turn to 'masculinity' and 'masculinities' and also the turn to the biographical genre in social theory. It was noticed that the formulaic structure of the 'stock' narrative being told by masculinity theorists, who make a link between masculinity and male violence, resembles those being told by defence counsel representing men who kill women (and sometimes other men) who are said to have insulted (provoked) them. The research question was: why, when a man kills a woman, is a common response on the part of some criminologists and legal professionals to tell a story about women's speech?

Having linked these two discursive sites, the thesis goes on to explore the role of literary devices and linguistic conventions – metaphor and metonymy – in shaping and constraining narrative form and force. It can be noted that the formal legal elements that structure the defence of provocation are underpinned by a construction and representation of what *the deceased said or did*. My rereading of the provocation cases offers an account of how the deceased is figured *as insulting*: in the provocation cases how was the speech and behaviour of the deceased transformed in and by a juridical narrative of insult? The narrative of insult is a category specific to the thesis. In summary terms, the linear articulation of this narrative is as follows: 'woman addresses man, man feels insulted, man kills woman, man says he was provoked by woman, law says man is excused'.

In the next section the thesis argues that, rather than understand the context (the trial context or the context of the relationship between the accused and deceased) as dictating the generation of narrative, narratives are always connected to other signifying networks. Here, I argue that it is only by returning the problem of meaning to the domain of semiotics and its notion of framing in art, that we are drawn to the notion of context as text: when read as a text, a context requires as much interpretation as do all texts (Culler, 1988). Throughout the thesis the methodological approach to the analysis of the textuality of provocation and of narrative as an element or aspect of textuality is interdisciplinary. Key developments within poststructuralism, feminist legal theory and film and literary criticism are drawn upon to describe and analyse the textual effects of

linguistic devices and narrative conventions for the construction and representation of the speaking body and of difference (sexual, racial, ethnic, cultural and so on).

The thesis then outlines a critical legal method of reading the provocation cases that accounts for the relation between narrative (and representation) and reality in narrative processes of representation more generally. This section illustrates the textual effects of mobilizing images, metaphors and narrative conventions as they appear in the cases (the transcripts of the reported and appellate judgments) to point to a duality of (feminine) excess and (masculine) loss that works to evoke the accused and deceased into narrative possibility and that erupts within the lexicon of intent. Subsequent chapters focus on a different aspect of the narrative mode of representation at work in the cases I examined, including recurring themes, images and metaphors of content, narrative structure (form and force) and the figurative (visual or imagistic) dimension of making meaning.

The thesis concludes that it is only by bringing disciplines that fetishize 'facts' as their object (such as criminology and law) into relationship with the discipline of literature that one can make evident the structures of blame and responsibility at work in any and all narratives. Yet, the tradition of legal analysis that dominates the modern legal profession today is one that persistently denies or conceals its literary sources and aesthetic arrangements. The thesis calls for a dialogue with law reformers of the provocation defence in Victoria, Australia, to insist that law's 'statements of fact' are always already caught in a system of narration. This has profound implications for efforts to direct reform of the defences to murder to context (the history of the relationship between the accused and deceased, an individual accused's culture of origin) and content (of legal categories such as metaphors of the loss of self-control and the hypothetical ordinary person) alone. If evidence of the history of the relationship between the accused and deceased is evidence of anything it is of the form and force of narrative description for the rhetorical construction of 'truth'. In this light, when contexts are read as texts they are better viewed as acts of framing, as having forms of character, plot and speaking positions already attached. This is how similar narratives of the facts – 's/he asked for it' – can raise different questions of legal doctrine (provocation, self-defence and/or automatism) while at the same time construct a dominant ideology and aesthetic of sexual difference.

Finally, the thesis calls for another dialogue with criminological theorists of masculinity who still seek to fill the 'gap' between representation and reality with one side of a binary pair: masculinity, masculinities. Until such time as criminology is willing to reflect on the sedimented narrative history in which its own categories (masculinity) are thoroughly embedded, we will continue to witness a disavowal of the feminine (and of feminist theory) across discursive sites.

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Reading a Library – Writing a Book: The Significance of Literacies for the Prison Community

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ABSTRACT

This thesis is an ethnographic account of the literacy-related activities, practices and material artefacts generated by and contained within the Prison Community. It describes the inter-relation of literacies with social and institutional identities and looks at the way reading and writing creates and sustains prisoners' networks of communication inside and outside contemporary British prisons. It challenges not only societally established institutions of education and incarceration but dispels a number of myths surrounding prisons, literacy and prisoners.

It begins by outlining my on-going interest in prison literacies, charting my gradual acceptance into the prison system and noting the perspective from which I initially viewed the incarcerated population. This forms a strong basis from which to understand the way in which I approach prisons – from a creative rather than a criminal perspective – and provides a relevant and honest description of my position in the prison environment rather than the more general, less personal descriptions of prison life. I begin by charting my own progression through the system, how I came to be 'in prison', and how I occupied my time, thus allowing the reader to understand that my substantial knowledge has been gained gradually and from a basis of earned trust.

As the study intimates, prisons are culturally specific and often confusing environments with complex and changing rules, regulations, language, ideologies and politics, and in order to assist the reader I provide an appended Glossary of Terms and explanatory endnotes for each

Chapter. I also enrich the text with visual data and text-based materials that I have been given or acquired as a means of further clarification and illustration.

After this personal introduction, Chapters 2, 3 and 4 provide a strong and innovative theoretical base upon which to set the work. These three Chapters serve two fundamental purposes. First, they each reflect basic premises on which my research perspective is grounded and second, they set out to challenge a number of fundamental and traditional beliefs, replacing them with a model more relevant to the support and validation of the everyday lives and literacies of the Prison Community.

Chapter 2 proposes that if prisons are social environments, where 'people' rather than 'prisoners', 'criminals', 'officers' or 'staff' interact and live out their day-to-day lives, they cannot be viewed through a lens of institutional autonomy. Challenges are made to traditional notions of totality and exclusion and replaced with a concept of prisons as organic environments that draw on activities and practices from the outside world, re-creating them within a culturally specific 'third space' setting. Chapter 3 suggests that such an environment can and should support a theory of literacy which acknowledges the context in which it is set. Prison literacy extends beyond and outwith its traditional educational parameters, entering the social lives of people in custodial settings and requiring an appropriate model of multiple literacies. Chapter 4 then acknowledges the multiplicity of reading and writing already undertaken by prisoners and demonstrates that the interest, ability and engagement of prisoners in literacy-related activities and practices extends far beyond conventional understanding and assessment. Freed up by the application of a social theory of literacy, the mass of existing literature produced by or about members of the Prison Community is recognized and validated. Having provided a strong foundation of proof that prisoners exist in a culturally specific 'third space' environment, that a social view of literacy validates their endeavours and that these endeavours are both prolific and focused, Chapter 5 focuses on aspects of data collection. Particular attention is paid to the sensitivity of the research site, with its attendant ethical considerations, and the chapter proposes that qualitative rather than quantitative data produces the most fruitful material for discussion. Here, I also note the importance of recognizing limitations, opportunities for invention and a certain reliance on serendipity.

Chapters 6 and 7 focus specifically on various aspects of day to day literacies engaged with by various members of the Prison Community as they make their way through the prison system. Chapter 6 deals with official and bureaucratic procedures, noting variance in the balance of power and degrees of active and passive participation. Chapter 7 is concerned with the close detail of specific literacy-related activities and practices which are predominantly non-official and often subversive or personal forms of

reading and writing undertaken by prisoners, ranging from graffiti and threatening notes to poetry and letters home. Chapter 8 moves to a meta-level view, concentrating specifically on the relevance of visuality and visibility of prison literacies, claiming that the inclusion of visuality expands conventional notions of literacy, and proposes that both visuality and visibility play a particularly significant role in the literacies of prisons. This meta-level discussion is further expanded in Chapter 9 where the focus moves to the inter-play between space, time and identity, and their relevance to the multiplicity of literacies in prisons.

Chapter 10 is intended not as a closure but as an opportunity to suggest ways forward. Re-viewing prisons through the lens of social networks rather than institutional autonomy, together with re-viewing literacy from a non-institutional, non-educational perspective, allows a number of progressive proposals to be introduced. I conclude by suggesting that these proposals invite possibilities for the application of findings to be used for the benefit of all those within the prison system.