

Attorney/Witness Stories in the Courtroom:  
Analyzing the Collaborative Dialogue of Direct Examination

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Heralded as a model to which much of the rest of the world aspires, the United States of America's system of justice has long been recognized as an adversarial communication context (Adelsward, Aronsson, & Linell, 1988; Atkinson & Drew, 1979; Bennett & Feldman, 1981; Penman, 1987). In America, the trying of an individual frequently occurs due to a claim of legal wrongdoing by a separate party. Although a claim of culpability initiates the legal process, U.S. laws characterize the accused as innocent until proven otherwise. Ultimately, two legal sides (i.e., defendant and prosecution) influence a verdict by advancing and supporting distinct versions of fact for a deciding third party (e.g., jury or judge) in the presence of a fourth (i.e., an audience).

Although both sides (i.e., attorney[s] for or against the accused) are afforded a certain latitude to make their case, only one side ultimately prevails. In this equation, communication plays the principal role in determining truth. As Pound (1941) contends, the "attempt to determine justice or injustice of a contested action" (p. 249) is predicated on human transaction. In fact, every verdict is the result of how well each legal team communicates its unique interpretation of events. Beach (1985) identifies the interface between law and communication this way: "Communication is the major vehicle for doing law, while the law provides a set of practical and moral reasons for communicating about alleged illegal activities" (p. 16). Subsequently, attorney and witness courtroom communication has enormous bearing on a trial's outcome.

In recognizing the nature of America's two-sided approach to justice, it may seem that the scope of attorney and witness courtroom interaction (i.e., direct versus cross examination) would be an equally appealing foci of analysis, but a survey of legal communication literature demonstrates that cross examination, or the questioning of the opposition's witness, has overwhelmingly gained the majority of attention. Yet, the construction of one's story is equally, if not more important to winning a trial than raising doubts regarding the opposing side's rendering of events. For if one side's interpretation of the facts is communicated thoroughly and competently enough, it becomes exceptionally difficult for an opposing party to dispute such a

contention. Consequently, direct examination (i.e., the questioning of one's own witness) appears to have as great an impact as its better known counterpart, cross examination.

In the last three decades, Atkinson and Drew (1979), Bennett and Feldman (1981), and other researchers have made considerable progress examining aspects of the courtroom communication process. For example, conversation analysts have identified such specific communication phenomena as adjacency response (Atkinson & Drew, 1979; Danet, 1980), coerciveness and question form (e.g., Danet & Kermish, 1978; Penman, 1987), and marking receipts (e.g., Atkinson, 1992; Atkinson & Drew, 1979) in the courtroom. Yet, the general process regarding how an attorney establishes a version of events in direct examination has received minimal consideration (Beach, 1985, 1994; Bennett & Feldman, 1981). With this in mind, this study analyzes the talk between a plaintiff and a witness in direct examination. Specifically, this conversation analysis examines the talk of a prosecuting attorney, Joan Bloom, and prime witness, Pat Williams, in the nationally televised Tokar's Murder trial of Georgia aired on Court TV during February of 1997.

The trial focuses on Fred Tokars and his role in his wife, Sarah's, death. A brief but thorough description of the nature of courtroom interaction precedes an overview of research on stories; a phenomena evident in the prosecution's direct examination during the Tokar's murder trial. This analysis then substantiates three findings of story-telling evident in this direct examination. Finally, a summarization and interpretation of these findings is provided for legal and communication research.

### Background

An overview of the courtroom context, its participants, and its social phenomena provide a foundation for designating the method employed here.

#### Overview of courtroom context

To those unfamiliar with both America's system of justice, and the communication process typical to courtrooms, this context often appears to be extremely complex and unusually daunting. Describing how defendants are often effected by courtroom trials, Beach (1994) notes that they, "often appear bewildered by the foreign technicalities and assembly-line proceedings they do not fully understand, but are nevertheless caught up in and for which they are legally responsible" (p. 51). The viewing of any trial raises several issues regarding its setting. Consequently, a consideration of the courtroom's participants and each parties function provides

a framework for considering how the talk of direct examination is socially constructed in this applied context.

The courtroom's participants. Grasping the nature of legal courtroom communication involves several issues; initially, though, an understanding of its participants is fundamental. Although those involved in trial procedures may be categorized various ways, essentially, a United States courtroom involves the following distinct entities: (a) a lawyer representing the accused party on trial (e.g., most frequently an individual) and his or her innocence, (b) a lawyer responsible for demonstrating the guilt of the individual (group, or organization) on trial, (c) a decision-making party (i.e., a judge and jury), and (d) an audience (who often appears in the courtroom and may observe by way of mass media). Although all four parties at trial are present in the courtroom, the two legal sides assume the primary role in the legal process, performing (e.g., Goffman, 1959; 1963) for and to the decision-making party: judge and jury.

Both legal sides may be characterized as teams formed to defend or refute the innocence of the individual or party on trial. The lawyer, or depending on the case - lawyers, responsible for establishing the guilt of the individual on trial are called the prosecution. Conversely, the lawyer, or lawyers, accountable for maintaining the innocence of the individual on trial are termed the defendant. The term "team" accurately depicts the prosecuting and defending attorney's side, because as prescribed by the jurisprudence system, lawyers must present their version of events by way of, for the most part, their own witnesses (i.e., team particularizes more than one member). Moreover, although the prosecution and defense are headed up by a lawyer, each side must make use of witnesses to tell the story. Subsequently, a witness' presentation, individually and collectively, impacts how the decision-making party (i.e., jury or judge) determines truth.

Although seldom addressed in communication literature (e.g., Atkinson & Drew, 1987; Benoit, 1989), judge and jury are the third party in a trial, and their purpose is to make judgements during and at the completion of a trial. The judge monitors the defense and prosecution's presentations providing direction and decisions necessary for fair trial proceedings. The jury gives the trial's verdict after observing the evidence communicated by both legal teams. Although both judge and jury are, for the most part, a silent entity in a courtroom, their presence is imminent; both legal teams present the most persuasive case possible by guiding their witnesses' testimony for the observing jury.

Finally, those attending a trial, other than the legal teams and decision-making parties, may be termed an audience. Although the impact of these observers may seem minimal, it is yet to be known to what extent an audience (i.e., inside and outside the courtroom) impacts a trial's proceedings and verdict (Barber, 1987; Hoyt, 1977; Pfau, Mullen, Diedrich, & Garrow, 1995; Slater & Hans, 1982; White, 1979). Yet, the audience's proximity inside and outside the courtroom must be acknowledged.

Prosecution and defendant's role. As established by legal procedure, the prosecution and defendant must construct a version of facts based upon the arguments provided by the trial's witnesses. Hence, the prosecution and defendant select witnesses that coincide with their position. Lawyers generally, but not exclusively, tend to rely more heavily on their own, or their team's, witnesses than on the opposition's witnesses to present a clear argument of innocence or guilt. When each legal team calls its own witness to construct an argument unique to its line of argument, the process is termed direct examination. Additionally, though, the prosecution and defendant must allow their own witnesses to be questioned by the opposing legal team and the opposition's objective is to call into question a witness' testimony; this is called cross-examination. Despite their dissimilarities, direct and cross examination occur in a similar communicative manner.

Courtroom communication organization. Although it may seem like achieving justice would be somewhat of an uncomplicated process, there are numerous factors which characterize courtroom phenomena. For example, although it is the purpose of each legal team to present a distinct version of the facts (i.e., demonstrating guilt or innocence of the party in question), lawyers are unable to directly present their interpretation of events to the judge and jury. Rather, both the prosecution and defense must establish its case based upon the testimony of the trial's witnesses and exhibits. Subsequently, an attorney must ask a witness information, and the witness is expected to respond in a manner compliant with the question. If an attorney were to choose to make a statement to a witness, it could be perceived as testimony, and lawyers are prohibited from testifying in trials where they represent clients.

Hence, the talk of attorney and witness in direct and cross examination has been determined to occur in a question-and-answer sequence (Atkinson & Drew, 1979). For the most part, this attorney-witness pattern is the status quo. Since the attorney is considered the party responsible for presenting information relevant to determining the accused guilt or innocence, in

direct and cross examination an attorney takes the lead asking the questions relevant to the case, and the witness is obliged to answer the questions provided.

Additionally, attorneys in both direct and cross examination must present evidence that is relevant to the case. Further, the attorney is forbidden to ask leading questions in direct examination (Imwinkelried, 1980). Leading questions suggest the desired answer to the witness (e.g., "Isn't it true that the defendant was going 80 miles per hour?). It is important to acknowledge that the prohibition against asking leading questions in courtroom examination is a norm rather than an absolute rule. Judges may allow attorneys to ask leading questions regarding preliminary matters (e.g., such as a witness' occupation) or foundational matters (e.g., factually based items). In any case, attorneys generally tend to use open-ended questions that begin with terms such as who, what, where, when, why, and how or phrase questions seeking a bipolar (i.e., yes/no questions) response to initiate or perpetuate a distinct story. Even if an attorney's utterance does not appear as a question, those attending the interaction assume the utterance to be a question (Atkinson & Drew, 1979). Similarly, despite the various linguistic forms a witness' response may take, the witness' utterance is perceived in the form of an answer.

Finally, specific to this analysis, attorneys in direct examination are encouraged to: (a) use the simplest most easily understood terms, (b) make each question as short as possible, and (c) be prepared and have the witness prepared for trial (Imwinkelried, 1980). A witness is compelled to tell the truth and may only respond to the questions that the attorney asks.

Acknowledging the courtroom's participants, how each party functions, and the general structure of attorney/witness talk as question-and-answers prefaces a phenomena existent in the prosecuting attorney and witness communication in the Tokar's Murder trial: stories.

#### Story-Telling and the Courtroom

Communication literature (e.g., Atkinson & Drew, 1979; Bennett & Feldman, 1981; Beach & Japp, 1983) has demonstrated that one way an attorney constructs and solidifies his or her legal position is by having witnesses provide a story. According to Bennett and Feldman (1981), stories are defined as "systematic means of storing, bringing up to data, rearranging, comparing, testing, and interpreting available information about social behavior ... testimony... (reading much like) a detective novel or watching a mystery movie" (p. 5). Essentially, stories are communication phenomena where a speaker is afforded an opportunity to elaborate on some

topic of his or her choosing (Mandelbaum, 1989). Communication studies examining stories outside the legal context clarify this phenomena.

General research on stories. According to Beach and Japp (1983), the identification and legitimation of stories as communication phenomena goes in large part to Sacks (1970-1972), Jefferson (1978), and Ryave (1978). These and other researchers (e.g., Goodwin, 1981, 1984) have each provided some understanding of how stories are socially structured in naturally occurring talk. For example, Sacks (1971) originally specified stories as involving a speaker in an extended turn where there are little or no interruptions by attending parties. Yet, more recent research (e.g., Mandelbaum, 1987; 1989) has expanded what is known regarding stories as social phenomena.

In her perennial conversation analysis, Mandelbaum (1987) examines how two people share stories "about events which they participated together" (p. 144). In analyzing the talk of two couples sharing, she substantiates two significant findings. First, Mandelbaum demonstrates that collaborative story-telling exists and is marked by a three-part series of turns which occur in the following sequence: (a) one participant makes an "approach" to a story, (b) a second person, who was a coparticipant in the story, "forwards" the approach, and (c) the "forward" is ratified by the initial participant. Then both the "initiator" and the "forwarder" narrate a story to an audience. In the second finding, Mandelbaum points out that having a knowledgeable recipient present facilitates the stories' telling. As she states, "shared telling is accomplished through monitoring for errors, requesting verification, and complementary telling. Coparticipants...show themselves to being the same conversational party" (p. 162).

Mandelbaum (1989) expands the listener's role in storytelling, further, by noting that a "listener" may assume more than passivity because of the collaborative effort of story "teller" and "recipient." She demonstrates that a stories trajectory (i.e., direction) may be redirected by a coparticipants (i.e., listener's) utterances. Thereby "recipients have the resources to influence the outcome of...activities, and potentially...achieve interpersonal outcomes in their own right (p. 124). Thus, Mandelbaum (1987; 1989) represent recent research regarding stories and their social presentation.

Courtroom research on stories. Stories have also been substantiated in the courtroom (e.g., Beach, 1985, Bennett & Feldman, 1981). As Bennett and Feldman (1981) explain in *Reconstructing reality in the courtroom: Justice and judgement in American culture*, stories

possess three general properties. Specifically, stories: (a) involve narrative descriptions, (b) replicate a past event related in the present, and (c) are interpretations of "specific settings and/or characters, thus providing possible motives, time frames, and plots" (p. 3).

More recently, Beach (1985) points out that the search for a "framework of social judgement [has] led to the recognition that trials are organized around the telling of stories by witnesses, induced by lawyers' questioning maneuvers, to accomplish reality construction (p. 3). Consequently, he extends previous understanding of stories emphasizing the time-traveling naturalistic features existent within discourse and terms this storyifying. Recalling Sacks (1970-1972) identification of the stringing together of stories, or story clusters, Beach (1985) argues that an attorney and witnesses' talk regarding past, present, and future events is a primary method to establish a version of the facts in the courtroom.

In lieu of their research, Bennett and Feldman (1981) and Beach (1985) refrain from identifying that stories are constructed in anything other than an adversarial manner, overlooking how a prosecuting attorney (i.e., plaintiff) and witness communicates during direct courtroom examination.

#### Method

Beach and Japp (1983), Mandelbaum (1987; 1989), Goodwin (1984), Bennett and Feldman (1981), and Beach (1985) clarify how stories have been addressed to date. Drawing on this literature, this research employs conversation analysis to examine a prosecuting attorney and witness in the courtroom's rarely evaluated area of direct examination. The study analyzes the communication of a prosecuting attorney and prime witness in the nationally televised Tokar's Murder Trial aired on Court TV during February of 1997 (Appendix A). In this case, Fred Tokars is on trial for his role in the death of his wife, Sarah. Conversation analysis is used because of its appropriateness for this data, and to expand what communication researchers know regarding the use of stories in the courtroom.

#### Results

Based on a conversation analysis of The Tokars Murder Trial, several distinct findings emerge regarding storytelling in direct examination.

##### Story Themes in the Courtroom

Beach (1985) advances that "trials are organized around the telling of stories by witnesses, induced by lawyers' questioning maneuvers" (p.4). The following transcripts indicate,

the utterances appear in question and answer form, but stories exist, in this direct examination, and are collaboratively constructed around themes oriented to by attorney and witness, alike. Because an attorney, by law, is prohibited from coaching a witness prior to direct examination, attorney and witness wind up adhering to attending to a theme that displays the guilt of the individual on trial: Fred Tokars. As this data demonstrates, a story, or story string (see Footnote 1), may emerge from almost specific utterances - even as simple a theme as a specific date. Several examples from this study's transcript illustrate this phenomena.

Bloom and Williams' dialogue from the Tokar's Murder Trial begins with Bloom prompting (Lines 1-3) Williams to specify where Williams was located in December of 1992. Williams and Bloom's subsequent utterances proceed as follows: (In the following excerpts, Bloom is designated as P [i.e., Prosecution] and Williams is represented by W [i.e., witness].):

- 1 P: To: direct your attention to: (.) December of 199:92.
- 2 W: Where were you, where were you living or where were you
- 3 being housed at that time
- 4 W: I was at Cobb county Women's Facility (+++) in a jail.
- 5 P: What were you in jail for, then
- 6 W: Um, (+++++) possession of cocaine.
- 7 P: (+++) And (.) at that time did you have, uh, did you
- 8 have uh, did you have occasion to request to see, (.)
- 9 uh, (.) police detectives from the homicide division of
- 10 the Cobb county Police Department
- 11 W: Yes, man. Um, I rekanized Fred from um, TV. Um, I had
- 12 met him one time before, and I rekanized him. Ant it
- 13 was in my heart to tell someone that I did know this
- 14 man. And I did. So I gave the officers, uh-,a note that
- 15 and told them that I knew something about it, and asked
- 16 could- could I speak with someone.

Although this initial part of Williams' testimony can be identified as a listing of facts, it also reveals the initiation and development of a story (Beach, 1985).

In passage, Bloom and Williams initially develop their story based upon the plaintiff's advancing of a specific date in lines 1-3. Although this passage begins with a question (which

could be answered in two or three words), their subsequent utterances reflect a configuration whereby each orients herself according to the date in question. For example, Williams, in line 4, provides testimony clarifying where she "was at" during the period in question. Bloom then prompts further story development, by noting "then" (the December 1992 date), and asking for Williams to provide more story material in the next turn (Line 5). After Williams clarifies the reason for her jailing, Bloom again holds to this theme of Williams' whereabouts during December of 1992 (Note the specification "at that time" in line 7). Finally, this brief story reflects temporary closure, by Williams engaging in an extended turn about a "note," and this becomes the theme of the next story.

Although this story about "a note" becomes the new story then, it is important to consider what occurs regarding the theme of the previous story. In lines 4-16, Bloom and Williams' dialogue demonstrates that Bloom's initial question to Williams (i.e., regarding William's whereabouts in December of 1992) effects both speakers subsequent utterances. Further, by advancing a specific date, Bloom provides a macro-level theme which prompts the development of a distinct story which Bloom and Williams attend to (Goffman 1959, 1963). As subsequent turns indicate, both communicators orient their utterances to this date and William's connection to Fred Tokars. Therefore a theme is developed based upon this date and is used to establish Williams' credibility.

Interestingly, though, in addition to Bloom's initial advancement of Williams' whereabouts in December of 1992 (Lines 1-2), Bloom returns to the importance of December 1992 in lines 30-32. Collaboratively they then readdress the previous story providing closure on Williams knowledge of Tokar's illegal behavior regarding in and around this date. In essence, the events behind this date provide much more than meaning than the date itself. Yet, the date provides the underlying theme that both prosecutor and witness return to in story construction and development. Notice:

27 P: =and then two male detectives came in the next day

28 W: No maam it- wel- yea- yes mam it was two male

29 detectives from (.) I think it was Ho:micide Division

30 or somethin

31 P: (+++++) and ((during 4 seconds of pause there is

32 courtroom background noise, coughs, shuffling, maybe

33 mumbling)) do you recall taking to these detectives on  
34 December 24, 1992?

Again, notice that Bloom, acting in the role of questioner, appears to sense that the events of December 1992 need to be prefaced again. Rather inconspicuously, Bloom's referral back to the date, December of 1992, functions like a bookend now encompassing the previous stories (i.e., about a note). In other words, Bloom and Williams begin with a story based on a date, then move to a story regarding Williams note, then return to the date theme to complete the story: Thus, this example reveals a story within a story. Interestingly, if the date, as a theme, were removed, the entire structure of the conversation would be incomprehensible. Conversely, though Bloom and Williams' orienting to this date frames a story which all who attend to it may understand (Goffman, 1959; 1963).

On a second occasion, Bloom and Williams orient their communication to a second date in lines 70-71. Bloom and Williams utterances occur as follows:

70 P: ěkay And (.) directing your attention to um September

71 and October of 1992 how did you make your living at

72 that time

73 W: Prostitution

74 P: ěkay And how long had you been a prostitute

75 W: Approximately twenty years

76 P: Since the time you we:re

77 W: Fourteen (.)

78 P: You're thirty-four now?,

In this case, as in the previous one, Bloom offers another date (Line 71) to which both attorney and witness embark on another thematized story. Without hesitation this new date (i.e., September and October of 1992) becomes the point of reference in developing their subsequent story.

In both cases, Bloom and Williams orient themselves to a specific date and collaborating develop a story based on this theme. Indeed, just as Beach (1985) theorizes, the prosecuting attorney and witnesses' turns still appear in the form of questions and responses. In other words, unlike the past research findings regarding courtroom examination, this macro-level distinction

illustrates that stories are collaboratively advanced by attorney and witness maintain some specific theme (Mandelbaum, 1987; 1989). Additionally, this collaborative story construction occurs fully in the presence of the observing, decision-making party (i.e., judge and jury). Thus, this tenuous social structure compels a reconceptualization of storytelling in courtroom's adversarial context when it occurs in direct examination.

### Story Detailing

In addition to the plaintiff and witness in the Tokar's Murder trial collaborating on a story after a theme has been advanced, Bloom and Williams's utterances also indicate that story details are collaboratively provided supporting the prosecution's argument.

Although communication literature characterizes stories as a means of simplifying past events (e.g., Beach & Japp, 1983), this courtroom examination demonstrates that participants detail past events so those attending to these stories (i.e., judge and jury) clearly understand the prosecution's version. This phenomena, termed here as story detailing, is illustrated in Bloom and Williams' story regarding a note.

9 W: Yes, man. Um, I rekanized Fred from um, TV. Um, I had  
10 met him one time before, and I rekanized him. Ant it  
11 was in my heart to tell someone that I did know this  
12 man. And I did. So I gave the officers, uh-,a note that  
13 and told them that I knew something about it, and asked  
14 could- could I speak with someone.

15 P: Okay, and so you gave th the deputies at the at the  
16 Cobb County Jail note

17 W: =Yes, mam.

18 P: 'kay, a:nd as a result of (+++) and what what was the  
19 note

20 W: The note said that I rekonized Fred Tokars from  
21 television and that I knew something about the cas=I  
22 didn't say what on the note. And that I wished to speak  
23 to whoever was handling the case at the time.

24 P: An- and did the deputies (.) get the no:te=to (.) the  
25 Cobb county Police Department as far as you know=

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26 W: =Yes maam. She di:d because the next- it was the next  
27 day that I talked to- to- two Detectives (+++) that was  
28 on the case.

29 P: So you gave the note to a fe:ma:le deputy at the jail=

30 W: =yes mam=

In this passage, two conversational distinctions support story detailing as a conversational phenomena.

First, it is important to point out that Bloom's utterance prior to line 9 makes no reference to a note. Yet in lines 9-13, Williams launches into the importance of the note she gave to police regarding information she had about Fred Tokar's. This note then becomes the focus of a story theme referenced by Bloom and Williams in seven of the next nine utterances (Lines 9-25). What emerges is a highly coordinated story where both Bloom and Williams collaborate providing micro-level details of this note: (a) its existence (lines 9-14), (b) who wrote it ( lines 20-23), (c) to whom it was given, (d) its contents (lines 13-17), (e) who the note was passed to (lines 12-13), and (f) what was the result of the note (lines 24-28). Again, notice that Bloom and Williams both construct the particulars of this "note" story.

Second, it is clear that Bloom, in leading this direct examination, carefully attends to Williams' comments so that there are no questions left in the judge or jurors' minds. Consequently, Bloom's reaction to Williams giving of the note in line 18, displays a distinct re-orientation in order to clarify the notes contents.

15 P: Okay, and so you gave th the deputies at the at the  
16 Cobb County Jail note

17 W: =Yes, man.

18 P: 'kay, a:nd as a result of (+++) and what what was  
19 the note

20 W: The note said that I reconized Fred Tokars from  
21 television and that I knew something about the cas=I  
22 didn't say what on the note. And that I wished to speak  
23 to whoever was handling the case at the time.

Williams then elaborates on the note, eliminating the likelihood of misunderstanding which might negatively impact the juries' decision.

As is evident, prosecution and witness in direct examination both contribute to a story by providing details, and they do so in a collaborative manner. Beach and Japp (1983) note that, "travel through time is not always open to all interactants" (p. 879). Yet, as this analysis demonstrates, the participants of direct examination courtroom must insure that generalizations are kept to a minimum so the judge and jury are not unclear about the facts of the trial.

#### Inoculation Through Story Delivery

As the initial two findings of this study (i.e., story collaboration regarding a theme and a stories' details) clarify, the direct examination of Pat Williams by Joan Bloom exhibits the question and answer format previously established in communication literature. Yet, Bloom and Williams' utterances reflect another finding which appears to be distinct to direct examination; that is both attorney and witness demonstrate a more cooperative rather than adversarial story construction compared to cross examination's adversarial characterization. Yet, it initially appears to be called into question in the following sequence (in lines 125-530). In Bloom and Williams story, here termed "No Special Treatment," their turns remain in question and answer form, but reflect a distinct method of delivery demonstrated only in two of their many stories.

Notice the following passage.

125 P: Okay, so you wer- you wer- rearrested on the

126 vilation of probation and th- th- new- [cocaine

127 W: [Yes mam

128 P: Is that right. And when you got rearrested did you

129 ca:ll the police and ask fer (.) them to help you=

130 W: =no mam=(shakes head and smiles to herself)

131 P: =Did you call the district attorney's office [and

132 ask for help

133 W: [no mam (+++) I never even thought of doin it

134 P: And how about while you were in jail waiting to go

135 to tri:al on the second case

136 W: No mam=

137 P: Did anybody ask for treatment- any special treatment=

138 W: =No mam

139 P: So you've been to prison twice

140 W: Yes mam

141 P: and never asked for any special treatment or

142 gotten any (.) [}

143 W: [No mam

144 P: (long pause) So in September and October of

145 Nineteen ninety-two: uh- you were making your

146 living as a prostitute. [Correct?

147 W: [Yes mam

148 P: And you (.) you had four children also

149 W: Yes mam

In this sequence, Bloom and Williams reflect a pattern noticeably distinct from their previous stories. In essence, the utterances sequencing pattern is familiar because it is that associated with adversarial cross examination (can be interrupted because of our relationships). Rather than being allowed to complete utterances, turns are more terse, and the attorney frequently talks over the witnesses responses. For example, this type of adversarial dialogue is demonstrated in lines 126 and 127, 142 and 143, and 146 and 147. Subsequently, this quickened, terse pattern brings the following question to mind, Why, since Bloom and Williams appear so cordial in their prior stories, does this sequence occur?

This pattern may be just as quickly understood by recalling that an attorney is experienced in conducting direct and cross-examination. Therefore, Bloom is aware then that the opposing attorney will more then likely resort to adversarial questions to cast aspersions on Williams' testimony. With this in mind, Bloom and Williams' continue their collaboration in generating a story, but emulate cross examination's adversarial pattern (Lines 9-25). For example, Beach (1985) provides the following adversarial, cross examination:

(20) CE:D Prosecution Witness #5, pp. 186-187

Q: He just said, just made the single statement, I'M going to stop taking medication?

A: No, I can't say that's all he said, but that's all that I can remember his saying. It seemed like an unusual thing to say.

Q: And he was acting unusual that day?

A: Well, it's hard for me to say that, because that's the first time I saw him; as I said, this is kind of an unusual thing for a person to say, and that's why I remember it.

Q: You said that it's hard for you to say whether he was acting usual or unusual that day?

A: No, no, I said I really didn't observe him before that, and when I said the rod unusual, I said that seemed like a rather unusual thing to say, and I remember it, but , no, I wouldn't say that there was anything unusual about his behavior other than it seemed that there was something worrying him (Beach, 1985, p. 14).

As Beach (1985) points out, "the ambiguous nature of such evaluations (come to a) point where the witness voices disagreement with the lawyer" (p. 14). As is evident, direct examination's story detailing contrasts dramatically with the characteristic adversarial tone which communication courtroom literature advances. It is of little surprise then, when this adversarial pattern and subsequent paralinguistic emerges, that Bloom alters the story-telling pattern so that Williams is inoculated from the opposing sides communication methods. This story delivery alteration strategically aims to deflect the opposing attorney from gaining leverage in cross examination.

As previously noted, courtroom communication focuses on stories, "guided by how interactants integrate their experiences" into the present sequence (Beach and Japp, 1983). But, an attorney has the capacity to, based on knowledge of the range of legal behaviors, impose a structure conversation to deflect the opposing sides purpose. Nofsinger (1989) notes that distinct roles are maintained by framing and other practices of the participants (p. 228). This third finding illustrates how plaintiff and witness can use story delivery to inoculate the witness from certain types of cross examination.

### Summary and Implications

The following conversation analysis of the Tokars Murder Trial substantiates three distinct findings regarding direct examination. They include: (a) contrary to contextual restraints, plaintiff and witness both collaborate in developing their stories attending to a theme, (b) plaintiff and witness both collaborate in providing the necessary details of a story, and (c) plaintiff and witness may adjust story delivery to inoculate the witness from certain types of

cross examination. All three findings indicate that both prosecuting attorney and witness collaborate by way of stories.

These findings have two distinct implications. First, direct examination needs to be conceptualized as more congenial than other forms of adversarial, courtroom communication. The generalization that all courtroom communication is adversarial, as substantiated here, is short-sighted and inaccurate. A second implication of this study is that it aims to encourage further research assessing how stories are constructed in similar contexts whose question and answer pattern mirrors the courtroom's adversarial tone. For example, story development when parents question children, supervisors question subordinates, or when a police officer questions a suspect prior to trial to determine the individual's knowledge or association with a crime. In both cases, the findings expand what is known regarding the development and delivery of stories in the courtroom, and other contexts where talk occurs naturally.

Additionally though, this study has two apparent limitations. First, this analysis of attorney and witness storytelling in direct examination provides only a partial picture of courtroom communication. Without a doubt, it is vital that these findings (i.e., collaborative thematized story development, collaborative story detailing, and story delivery adjustment) are substantiated by additional communication research methods (e.g., triangulation). Further, these findings are based on the transcripts of one story construction incident. Consequently, the analysis of additional data would serve to further indicate their significance.

America's system of justice has long been recognized as an adversarial communication context, yet this analysis of direct examination demonstrates that contrary to previous courtroom literature, all attorney and witness talk in the courtroom is not contentious. Rather, talk in direct examination actually reflects collaboration in the construction of one of the courtroom's most useful tools for determining the innocence of an individual on trial: the story.

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Footnote

1. Beach (1985) acknowledges the concept of story string as originating in Sacks lectures at the University of California, Irvine(1970-1972).

Author Note

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