

The grammaticalization of participant roles in the constitution of expert identity

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ABSTRACT

Despite the relevance of language use in expert testimony, researchers have rarely scrutinized the linguistic and interactional processes of constructing an expert identity. This study, rather than reifying the concept of EXPERT and leaving it as an unproblematic legal argument, examines how this institutional identity emerges in and through discursive interaction between the prosecuting attorney and a physician (who is also the defendant) in trial cross-examination. Using Goffman's notion of FOOTING, the article examines how both prosecutor and defendant mobilize direct and indirect quotes, repetitive parallelism, epistemic modality, counterfactuals, evidentiality, sequencing, and specialized tokens of the medical register to contextualize shifting into and departing from an expert identity. (Footing, experts, contextualization, verbal performance, legal discourse, grammar in sequential action.)*

The use of expert testimony is an increasingly pervasive and controversial feature of the legal system in the United States. In a prominent study by Saks & Duizend 1983, nearly one-fourth of attorneys and judges surveyed encountered expert testimony in half their criminal cases. A still more recent study by Champagne et al. 1992 found that experts testified in 63% of civil cases over a period of several months. As the O. J. Simpson case demonstrated, many circumstantial evidence cases could not even proceed without the use of such testimony. Given the increasingly complex nature of evidence in such areas as DNA analysis, trace evidence, toxicology, and rape trauma syndrome – as well as the cancer-causing properties of second-hand cigarette smoke, dioxin, Agent Orange, electromagnetic fields, and silicone breast implants, to mention only a few factors – we can expect that the use of expert testimony will increase in the future (Jasanoff 1995).

This is also one of the most controversial aspects of the contemporary legal system (Jones 1994, Harvard 1995, Wilson 1997). While lay witnesses can testify only to their personal observations or to facts known to them, expert witnesses may provide, under Federal Rule 702, opinions and explanations about the fact in issue, based on their specialized training, qualifications, skill, experience, and

knowledge. This specialized role of the expert is troubling to many legal scholars, first, because of the systemic tension between the objective practices of science and the zealous advocacy feature of the adversarial system, which tends to reinforce loyalty at the expense of truth (Jasanoff 1995); and second because of the control of information by the parties to the litigation, which involves manipulation of the information-gathering process so that attorneys present only evidence beneficial to their case (Siegel 1995, Jasanoff 1995:42–68). In practice, this means that, when presenting their cases, attorneys and witnesses incorporate a number of interpersonal, linguistic, and evidential strategies designed to persuade the fact-finder about the truthfulness of their claims; and such features contrast markedly with the impersonal, objective, and empirical practices of sound scientific research in the quest for truth (Roberts 1992, Foster & Huber 1997). Even so, it is precisely such communicative skills that lawyers, judges, and juries find necessary for the effective presentation of expert testimony (Mauret 1996). To put it prosaically, the adversarial system, in stark contrast to science, is not necessarily about truth and falsity, but about winning and losing; and that depends on which side – and which witness – can best finesse reality through the use of language.

Yet despite the relevance of language use in expert testimony, researchers in this field have rarely scrutinized the linguistic and interactional processes of constructing an expert identity – of performing expert knowledge (for exceptions, see Goodwin 1994, Renoe 1996). Instead, they have merely assumed that expert status and knowledge are statically encoded in pre-given qualifications and judicial ruling.¹ This neglect assumes even greater prominence empirically, since the institutional identity of experts and the persuasive impact of their testimony on the jury only emerge from the moment-to-moment details of linguistic interaction in the trial context. That the court has qualified a witness as expert in no way guarantees the persuasive impact of his or her testimony. As a result, the way an expert identity is constructed, deconstructed, and negotiated in real-time discursive interaction remains an unexplicated topic of legal study.²

In this study, rather than reifying the identity of expert and leaving it as an unproblematic legal argument, I examine how this institutional identity emerges in and through discursive interaction between the prosecuting attorney and witness in trial cross-examination.³ Using transcripts of taped testimony in the Kennedy Smith rape trial (cf. Matoesian 1997a,b), I explore the linguistic and discursive details through which an expert medical identity dynamically appears and disappears in the interactional environment of impeaching the witness's technical account of how the victim could have sustained certain injuries during the rape incident. But there is a rather novel twist in the analysis. The witness who provides this technical knowledge is also the defendant who is charged with second-degree sexual battery – a physician whom neither the prosecution nor the defense formally tendered as an expert. This aspect of the trial provides a unique opportunity to analyze the linguistic techniques for shifting into an expert identity, and departing from it, as a strategic method for deflect-

ing blame and accounting for inconsistencies during the course of testimony. Here we can observe how both the defendant and the prosecuting attorney align and re-align a particular witness identity in the performance of professional situated knowledge to manage the practical, moral tasks of impeaching testimony.

The analysis unfolds in several parts. Since the ways in which speakers linguistically align and re-align their legal and conversational identities derive from Goffman's notion of FOOTING (1979), I will first outline that concept and discuss its relevance for the negotiation of expert identity. The next part provides the medical context for shaping the prosecuting attorney's cross-examination of the defendant, and the defendant's response to her questions. Here I focus on the emergency room physician's diagnosis of the alleged victim's physical injuries and its strategic legal relevance for both the prosecution and defense. Next I explore the interactional features of the prosecutor's accusation, and the way that grammatical and interactional features of the defendant's response signal a distinct defendant footing. The following parts examine how the prosecutor and defendant project an expert identity to manage the interpretation of those injuries – the linguistic and interactional techniques they employ to contextualize shifting into and departing from an expert identity. In the process, we can witness in fine-grained detail how participant roles are grammaticalized in sequential action. The next section shows how the defendant and prosecutor, in a surprisingly improvisational moment, co-construct a shift to an expert identity under the auspices of a formally marked departure from that identity. I conclude my analysis with a brief discussion of the sequential organization of accusations in which shifting into and departing from an expert identity occur.

FOOTING

Goffman 1979 introduced the concept of footing as a means of exploring the linguistic negotiation of our social and conversational identities during the ongoing flow of talk: the contextualization cues through which speakers and recipients signal who they are and what they are doing at any given interactional moment (see also Gumperz 1982).⁴ Footing refers to the metapragmatic processes through which speakers/hearers position themselves relative to one another and to their utterances in the framing of experience; a shift in footing transforms our interpretive frame for the embedded action. As Goffman puts it, footing refers to “the multiple senses in which the self of the speaker can appear, that is, the multiple self-implicated projections discoverable in what is said and done” (1979:173).

Much more critically, Goffman finds that the traditional descriptions of speaker/hearer are inadequate to capture the subtle complexities of real-time interaction. As we will see below, Goffman decomposes the participant roles of speaker into more discriminating categories via what he refers to as the “production format”: the animator, who voices the utterance; the author, who composes the words; and

the principal, who is responsible for the words. For instance, the president's press secretary may be the animator, the speech writer the author, and the president the principal. Or all three participant roles may coalesce in a single speaker; however, the production format does not exhaust the various speaker roles that may emerge during the course of talk. By the same token, Goffman decomposes the recipient or hearer role into more specialized categories, such as ratified and unratified participants, with various distinctions within each of these classifications (though, once again, these categories do not exhaust the empirical possibilities). Sometimes Goffman employs the superordinate concept of participation framework to encompass both the production and recipient formats (Duranti 1997:298).

To use two of Goffman's illustrations, speakers may shift footing by attributing their remarks to someone else (149–52). In the case of direct quotes, for example, speakers may manipulate grammatical and linguistic forms such as pronominalization, spatial/temporal deixis, verb tense, and intonation in the reported-speech clause to distance themselves from the quoted information, and to impart an aura of authenticity to what was originally said – in Goffman's terms, to indicate that they are only the “animator” of the reported speech. Another of his examples describes how President Nixon altered his footing from an official presidential role after a news conference to a playful “jokester,” by teasing a female journalist (Helen Thomas) about her appearance. In this case, certain linguistic devices and discursive strategies – such as changes in intonation, topic, lexical choice, and paralinguistic behavior (laughing, grinning) – generate a shift in footing to project a distinct identity for the President, marking a laminated interpretive frame for the definition of situated activity, and thus signaling the type of interaction that is taking place.⁵ As a way of demonstrating the fine-grained and mutual synchronization of actions, Goffman describes, in the same example, how the journalist re-aligned her own footing relative to the president by pirouetting for him: a transformation from journalist to a female model, embedding the latter within the former (124–56). Both these examples reveal the central idea behind footing: our social identities are not static or structurally determined, but contextually situated and interactionally emergent. They possess the moment-by-moment potential to shift into more specialized categories in the fine-grained details of verbal and non-verbal behavior (Levinson 1989, Tannen & Wallat 1993, Hoyle 1993).

In much the same way, I hope to show here how the defendant in a rape trial projects an expert identity through various linguistic forms and discursive processes during hostile cross-examination by the prosecuting attorney. But the linguistic management of this situated identity is far from monologic. The defendant and prosecutor work in concert, weaving in and out of multiple participation frameworks to negotiate the interactional work of impeaching testimony, aligning and re-aligning their relation to each other and to their utterances. As we will see in detail, after the prosecutor's repeated request to explain the alleged vic-

tim's injuries, the defendant activates a footing shift from that of defendant to an expert identity, linguistically anchored and incrementally realized in stylistic repetition, reported speech, epistemic modality, evidentials, sequential positioning, conditionals, and tokens of the medical register. This not only deflects responsibility for the alleged victim's physical injury but also serves to impeach and critically evaluate the testimony of other experts – to introduce competing medical diagnoses of the alleged victim's injuries, and to suggest alternative explanations for them. Through this interpenetration of multiple voices, the defendant fashions an authoritative and persuasive medical voice to contextualize alternative frames for interpreting the alleged victim's injuries, and for marking his talk not as mere self-serving testimony but as representative knowledge of medical authority.

BACKGROUND OF THE CASE

The Kennedy Smith rape trial began on 2 December 1991, and ended with the defendant's acquittal on 11 December 1991, after only 77 minutes of jury deliberation. The rape incident, which occurred in West Palm Beach, Florida, over Easter weekend 1991, involved a member of America's famous first family, who is a physician, and the stepdaughter of a wealthy industrialist. Patricia Bowman (age 29) met William Kennedy Smith (age 30) at the trendy Au Bar nightclub in the early morning hours of 30 March. After the club closed around 3:00 AM, Bowman gave Smith a ride to the Kennedy estate; a short time later, she claimed, he raped her while the two were on the lawn of the estate. Smith was officially charged with second-degree sexual battery (rape without the use of a weapon, a felony charge carrying up to fifteen years in prison), and simple battery (assault resulting in a physical injury or bruise, a misdemeanor carrying up to one year in jail and a one thousand dollar fine).

Most cases of date and acquaintance rape involve little or no physical injury to the victim (or at least no visible sign of external injury; Koss et al. 1988); but the alleged victim in the Kennedy Smith case claimed to have suffered some sort of injury to the right rib area. That the alleged victim might indeed have sustained such an injury was of crucial significance in the trial, because she claimed that the defendant tackled her on the lawn of the estate as she attempted to flee. If this were true or objectively verifiable, it would lend a great deal of credibility to her claim about what transpired during the historical sweep of events; and just as important, it would move the case beyond the "swearing" ("he-said-she-said") contest between Bowman and Smith (so characteristic of date/acquaintance rape cases) to encompass objective medical knowledge. The precise nature and cause of her injury, therefore, became a central focus of inquiry in the case, which unfolded as follows.

Bowman went to the emergency room at Humana Hospital in West Palm Beach on the afternoon of 30 March 1991. She was examined by Dr. Rebecca Prostko,

the emergency room physician on call. During Dr. Prostko's palpation of Bowman's rib area, she made the diagnosis of a rib contusion – damage to or bruise of the underlying tissue from a blunt injury or blow to the body, such as a fall – in the seventh rib bilateral region on the right chest wall. Even though a rib contusion does not disrupt the integrity of the skin, it is characterized usually, though not invariably, by swelling, discoloration, and pain. Put in comparative terms, a contusion is somewhere between a rib fracture – a break in the thoracic skeleton caused by a powerful blow or crushing injury, and determined by X-rays – and rib tenderness: simple pain or abnormal sensitivity to the rib area when it is touched during medical palpation, or in everyday contact with objects. In contrast to a contusion and a fracture, rib tenderness can be caused by any number of unremarkable factors; it may or may not be accompanied by the presence of visible bruising. Two further facts of the case may be relevant here: the radiologist who examined Bowman's X-rays, Dr. Viscotti, found no displaced or deformed rib fracture; he stated that the victim had an unremarkable right rib series (keeping in mind, however, that a contusion diagnosis does not require X-ray verification). Additionally, the attending nurse at the hospital found no external signs of injury on Bowman's body.

To complicate matters further, Bowman had been prescribed the analgesic Naprosyn, an anti-inflammatory drug which inhibits or interferes with platelet function (binding of the blood or promoting coagulation); it thereby increases susceptibility to bruising, under even everyday circumstances, within a six- to eight-hour period. However, Bowman claimed later in testimony that, even though she had been prescribed the drug, she had not taken it for several months.

In sum, the presence or absence of a rib contusion was of no minor significance in the trial. If Bowman had indeed suffered a contusion to the seventh bilateral region on the right chest wall, this would be consistent with her claim that she fell on her ribs during the rape assault because the rather large and well-conditioned defendant tackled her on the lawn. At the very least, if she had suffered such an injury because of the defendant's action, this would be consistent with the charge of misdemeanor battery (unwanted touching); and the jury could have found the defendant guilty of this more minor infraction, regardless of the outcome of the second degree sexual assault charge. On the other hand, if the victim merely had rib tenderness, her injury would represent an insignificant, even trivial, factor for the prosecution's case – something caused by any number of routine factors, and not necessarily a serious trauma.

As an initial appreciation of this delicate yet critical distinction between a rib contusion and rib tenderness, consider defense attorney Roy Black's metaphoric trope in his very short cross-examination of Dr. Prostko. During a lengthy direct examination, Dr. Prostko stated that, as an imprecise estimate, she had conducted between one thousand and two thousand rape exams over a period of nearly two years, a figure based on her working eight or nine 24-hour shifts per month at the hospital from July 1989 to March/April 1991.⁶

- (1) Cross-examination of Dr. Rebecca Prostko (RP) by Defense Attorney Roy Black (RB) ((1:28))
- 001 RB: I also multiplied out (.) how many (.) rape examinations
002 that would be per shift (0.7) an::d I believe it comes out
003 between eleven and twelve per day per two thousand
004 examinations.
005 (0.3)
- 006 RP: Naw that's not true (.) (.hhh) ah- well I didn't say I did two
007 thousand I said ((laughing)) between (.) (.hh) one thousand=
[]
(a thousand)
- 008 RB:
009 RP: =and two thousand. There was also a period of time
010 when I was working more hou::rs than (.) (.hhh) that I was
011 was working probably ()
012 []
- 013 RB: How many do you do on average.
014 (0.7)
- 015 RP: (.hhh) Y'know on weekend they could be five or six, seven.
016 (0.3)
- 017 RB: Onuh average? how many is it.
018 (0.2)
- 019 RP: Y'know that's real hard to::: (3.6) I'd say on weekends
020 each day that I worked and I worked a lot of weekends
021 pretty much three a month (.) um::: (1.3) (.hhh) would be
022 uh- (1.3) uh- I'd have to put on average four.
023 (1.3)
- 024 RB: OK let's ()
025 (.)
- 026 RP: At least
- [[
- 027 RB: One thousand examinations it comes out to five point
028 eight-eight per day (0.9) and to two thousand it comes out
029 to eleven point seven-six per day (0.7) so it would be fair
030 to sa:::y (0.7) that you certainly exaggerated the figures
031 somewhat.
032 (0.4)
- 033 RP: (.hhh) (4.0) u:::h There's no intentional misleading
034 ()
[]
- 035 RB: I'm not saying there is I'm just saying there's just uh-
036 uh little exaggeration. =
- 037 RP: =OK let's say I've seen eight hundred then
038 (0.4)
- 039 RB: OK
040 (0.6)
- 041 RP: OK
- 042 → RB: Like- like you- (.) exaggerating a tenderness into a contusion.
043 (.)
- 044 RP: (.hhh) (0.3) No that's not very fair Mr. Black I- (0.7)
045 (hhh) ((laughter exhale))
046 (2.8)
- 047 RB: Thank you (yer honor) Thank you ((to Dr. Prostko)).

Here defense attorney Roy Black first contextualizes the fact that Dr. Prostko “exaggerated” the estimate of how many rape examinations she had conducted. Second, on line 42, he exploits that exaggeration to impeach the doctor’s credibility through a powerful form of analogic reasoning: just as the doctor exag-

gerated the number of rape examinations, so too she “exaggerated a rib tenderness into a contusion.” As we will see shortly, the defendant also exploits this issue to impeach the doctor’s testimony, though in much more subtle fashion.

THE DEFENDANT FOOTING

It is no coincidence that prosecutor Moira Lasch began her cross-examination of the defendant with the very same medical issue.

- (2) Cross-Examination of William Kennedy Smith (WS) by Prosecuting Attorney Moira Lasch (ML) ((First 9:00 minutes))
- 001 ML: Mister Smith how old are you.
002 (2.7)
- 003 WS: Uhm (0.4) thirty years old (.) excuse me
004 thirty one years old.
005 (0.6)
- 006 ML: You’re thirty one years old correct
007 (1.6)
- 008 WS: That’s correct.
009 (1.0)
- 010 ML: How tall are you.
011 (2.0)
- 012 WS: Six foot two:: and uh half.
013 (2.0)
- 014 ML: How much do you weigh.
015 (5.5)
- 016 WS: Uh hundred and ninety-five pounds.
017 (3.4)
- 018 ML: What size shoe do you wear.
019 (3.2)
- 020 WS: Uh::: eleven and uh half.
021 (1.3)
- 022 ML: What size sport coat do you wear.
023 (3.0)
- 024 WS: Forty-two long.
025 (3.8)
- 026 ML: What size pants do you wear.
027 (2.9)
- 028 WS: Uh::: (.) thirty-five waist.
029 (2.1)
- 030 ML: You’re a big man aren’t you Mi- ()
031 (2.0)
- 032 WS: Yes I am.
033 (2.0)
- 034 ML: You play any sports in school.
035 (2.9)
- 036 WS: You talking about (1.0) uh:::=
037 ML: = Let’s start in high school were you ever
038 on your wrestling team.
039 (0.6)
- 040 WS: No
041 (0.7)
- 042 ML: Ever play any football?
043 (1.8)

GRAMMATICALIZATION OF PARTICIPANT ROLES

- 044 WS: In grade school (0.4) one year.
045 (0.2)
- 046 ML: You've played touch football? haven't you.
047 (2.4)
- 048 WS: Yes I have.
049 (3.7)
- 050 ML: How 'bout other sports, what other sports
051 have you played.
052 (2.6)
- 053 WS: In my life or high school.
054 [
- 055 ML: YES IN YOUR LIFE. ((very caustic))
056 (1.5)
- 057 WS: Um (1.7) played tennis.
058 (1.5)
- 059 ML: You swim?
060 (.)
- 061 WS: I swim.
062 (.)
- 063 ML: You dive?
064 (1.4)
- 065 WS: Um (.) I have- (.) dove yes.
066 (3.2)
- 067 ML: Ever ride a horse.
068 (1.8)
- 069 WS: Yes ((cough))
070 (2.0)
- 071 ML: You're in pretty good physical condition,
072 aren't you.
073 (3.3)
- 074 WS: Yes (1.9) (I think so)=
- 075 ML: = You left a few things outta your story didn't
076 you Mister Smith?
077 (2.2)
- 078 WS: I- I don't know what yer talking about=
079 ML: = Why don't you explain to us how Patty Bowman
080 sustained a contusion to her rib on the morning of
081 March thirtieth, Nineteen Ninety-One.
082 (3.5)
- 083 WS: Miss Lasch I don't know how (1.0) or if Patty
084 Bowman sustained a contusion (0.7) All I can tell you
085 (0.7) is what happened when she was with me (0.8)
086 and I can tell you that she did not (0.5) get a contusion
087 (.) when she was with me.
088 (0.2)
- 089 ML: Well you've heard Doctor Prostko's testimony (.)
090 in fact you've been able to sit here and hear
091 everybody's testimony, haven't you.
092 (2.3)
- 093 WS: Yes I have
094 (0.6)
- 095 ML: (OK) and Doctor Prostko stated in her medical
096 opinion (1.5) she observed a rib contusion
097 on (Patty Bowman) on March thirtieth,
098 Nineteen Ninety-One (0.7) What is your

- 099 explanation of HOW SHE SUSTAINED THAT INJURY?
 100 (4.4)
- 101 WS: Doctor Prostko (1.0) eh– eh– you’re asking me
 102 my explanation. As I said (0.2) all I can tell you
 103 is what happened that night.
 104 (0.5)
- 105 ML: OK
- 106 [[
- 107 WS: Now– (0.5) Doctor Prostko testified (1.0) that
 108 she had a rib contusion (1.0) I also recall (1.7)
 109 that early (.) on (0.8) before charges were filed (1.9)
 110 before my name was even released I believe (1.6) that
 111 there were some medical reports (1.6) released from
 112 that hospital (1.6) which indicated (1.2) that Patty
 113 Bowman had a broken rib
 114 (1.5)
- 115 ML: Well
- 116 [[
- 117 WS: I HAVE heard (0.5) two people testify (1.0) that she
 118 did not have a broken rib (1.0) I also heard (1.2)
 119 her own orthopedic surgeon (1.0) testify (1.3) that she
 120 had (0.6) bilateral tenderness (1.5) If Patty Bowman
 121 had a rib contusion (0.9) on March thirtieth I would
 122 expect that finding (0.4) to be noted by her orthopedic
 123 surgeon one week later (0.7) A rib contusion does
 124 not become bilateral rib tenderness in one week.
 125 (2.3)
- 126 ML: You heard Doctor Prostko testify that on
 127 March thirtieth, Nineteen Ninety-One (0.7) she
 128 observed Patty Bowman and she had a rib
 129 contusion. What you are saying is you
 130 have NO explanation of how she sustained that
 131 injury.
 132 (4.0)
- 133 WS: Uh:: I have no idea (1.1) uh– how Patty Bowman
 134 suffered a rib contusion while she was
 135 with me.
 136 (1.2)
- 137 ML: And you saw some photographs of bruising
 138 on her body didn’t you.
 139 (2.6)
- 140 WS: I have seen some photographs of bruising.
 141 (0.9)
- 142 ML: And you don’t have any idea how she got
 143 those bruises.
 144 (2.4)
- 145 WS: I can tell you (1.0) again all I can tell you (.)
 146 all I can testify to is what happened that night
 147 (1.3) while Patty Bowman was with me she did
 148 did not get those bruises (1.0) If– if
 149 you’re asking me how somebody might get
 150 bruises (0.5) who’s on a blood thinner (0.5) I can
 151 give you (0.7) uh– uh number of different reasons
 152 (1.1) Sh– sh–she may have gotten them dancing (0.7)
 153 she may have gotten them (0.4) chasing around (0.5)

- 154 uh– uh child (0.6) she may have gotten them taking
 155 pantyhose off in a car (0.5) I can't tell you how she
 156 got the bruises. All I can tell you is that she did
 157 not get the bruises (0.5) from me.
 158 (0.6)
- 159 ML: Well (her testimony)
 160 [[
- 161 WS: For one thing she may have even gotten the
 162 bruises (0.5) having sex. But I can tell you (.)
 163 that– her– that she did not get the bruises from
 164 (0.8) being tackled.
 165 (0.2)
- 166 ML: OK you've offered a lot of maybes here
 167 haven't you– (0.4) Mister Smith? You haven't told
 168 us how she sustained those injuries.
 169 (4.2)
- 170 WS: As I said (1.2) all I can tell you (0.7) is what
 171 happened while Patty Bowman was with me.
 172 (0.9)
- 173 ML: Well you're offering a little checklist here
 174 you're not telling us what happened on
 175 March thirtieth, Nineteen Ninety-One? are
 176 you.
 177 (2.0)
- 178 WS: You're asking me questions=
 179 (0.9)
- 180 ML: About March thirtieth.
 181 =[[
- 182 WS: which I have (0.8) no direct– (.) well (0.3) those
 183 questions I wi– can answer and will answer (0.5)
 184 What I cannot answer is (0.7) questions that I– I don't
 185 know the answer to and that has to do with things
 186 that didn't happen when I was there.
 187 (0.8)
- 189 ML: OK now you're stating that she was on a blood
 190 thinner (0.5) Her testimony in court was that she wasn't
 191 taking any Naprosyn (0.5) in– in March of Nineteen
 192 Ninety-One and she stated that she had finished
 193 taking Naprosyn February of Nineteen Ninety-One
 194 (1.0) So that's just speculation on your part isn't it.
 195 (4.3)
- 196 WS: All I know is that Naprosyn had been prescribed for
 197 her and that is why I (0.5) mentioned Naprosyn.
 198 (.)
- 199 ML: Yes you mentioned Naprosyn (0.7) but you didn't follow
 200 up with the fact that her testimony was that she wasn't
 201 taking it in March of Nineteen Ninety-One (0.6) isn't
 202 that right Doc– (0.5) Mister Smith.
 203 (4.0)
- 204 WS: Miss Lasch (0.5) as I've said (0.6) I'm not
 205 here as a doctor (0.7) I'm here to testify about
 206 what happened (1.0) on March twenty-ninth
 207 (0.9) and (0.8) that's all I can testify to.
- 208 ML: How many women sustain a sore pubis
 209 bo– bone in consensual sex Mister Smith.
 210 (2.5)

- 211 WS: I don't know the answer to that question.
 212 (.)
- 213 ML: You seem to be knowledgeable in all these
 214 areas about medicine and- (.) medications. Can't
 215 you offer us some clinical studies where (0.3)
 216 people have obtained or sustained sore pubis
 217 bones in consensual sex.
 218 (4.2)
- 219 WS: No (1.0) uh I do know that Miss Bowman's=
 220 []
- 221 ML: And
- 222 WS: = orthopedic surgeon uh stated that it's very unusual
 223 (0.7) for people to (0.6) present with new injuries
 224 (0.6) uh::: some time after a major trauma (.) and
 225 that's really
- 226 [[
- 227 ML: That's not what he stated=
 228 WS: = Well that's what
 229 (0.4)
- 230 ML: That's what you're saying he stated.
 231 []
- 232 WS: I heard him say and if
 233 I'm mistaken then I- I (.) uh stand corrected.
 234 []
- 235 ML: He stated that his-
 236 (0.7)
- 237 ML: He stated that his findings on April fifth when
 238 he examined Patty Bowman were that she had
 239 a sore pubis bone (1.0) That's what his findings
 240 were and that's what he testified to.
 241 (1.4)
- 242 WS: I believe that you asked him (.) at one point (1.5)
 243 "Is it unusual (2.0) for someone to present (1.0)
 244 with ne::w (.) symptoms (1.6) some time after a trauma"
 245 (0.6) and my understanding was that his response
 246 to that question (1.0) was (.) "Yes (.) very unusual".
 247 (1.1)
- 248 ML: Mister Smith it's not unusual for someone to be
 249 in an auto accident? (0.8) and to feel the pain later is
 250 it? (2.0) That's not unusual is it? (0.7) Often times people
 251 are in shock.
 252 []
- 253 WS: All- all I can tell you (.) is (0.7) what (.) I
 254 heard (.) testified to in this courtroom.
 255 As I said I'm really here (0.7) to talk about
 256 (1.0) what happened on the night (0.6) of March
 257 twenty-ninth . . .

Let me begin with several preliminary and rather gross observations about the question/answer sequences from lines 001–74. The prosecuting attorney begins her cross-examination with a litany of relatively factual yes/no questions about the defendant's height, weight, and athletic prowess, culminating in two general formulations. First, the questions from lines 010–28 culminate in a general formulation (030) about WS's size: that he is a "big man." Second, the questions concerning athletic ability from lines 034–69 culminate in a general formulation

(071–72) about the defendant's physical condition: "You're in pretty good physical condition." Through both, the prosecuting attorney evokes an image of physical disparity between a rather large and well-conditioned defendant and a small, frail victim with limited physical mobility (because of a serious neck injury suffered some years earlier). In a very transparent sense, by contrasting the size and strength of WS with those of the alleged victim, the prosecutor can suggest that the former possesses the physical ability to pursue and tackle the latter, thus causing the type of rib injury discussed previously. As we will see next, she mobilizes this cultural knowledge of bodily difference to project an interpretive background for her forthcoming impeachment of the defendant.

The prosecuting attorney departs from this factual, yes/no questioning format on line 075 with an accusatory puzzle, suggesting that WS omitted some unspecified information during direct examination ("You left a few things *outta* your story.") After his nescient response (078), she presents a partial solution in the form of a request that he explain how the alleged victim sustained a rib contusion on the night of the rape incident – a thoroughly unveiled allusion that he caused the injury. Such a conspicuous shift in questioning strategy, while not very delicate in its accusatory force, may function in at least two important respects. First, the prosecutor can begin with her strongest point in the case. The question is probably improper, because WS is being asked for an opinion based on the opinion testimony of other witnesses rather than his factual observations; however, the prosecutor still conveys her main point to the jury, regardless of his answer or possible defense objection. The accusatory logic operates as follows: Patty was with Will; she suffered a rib contusion while with him; therefore Will caused the contusion. Second, and in very preemptory fashion, her indirect accusation may prompt an awkward yet predictable response from the defendant, such as the lame and perfunctory denials "I don't know" or "She didn't get it from me." Both these can leave WS in the quite vulnerable dilemma of having to concede the facticity of the presupposition that the victim indeed suffered a rib contusion, along with the damaging implications of its causation.

It is thoroughly unremarkable in trial examination, even systemic, that accusations are structured indirectly at the syntactic surface, so that the witness is often left with little opportunity to deny the damaging implications of the question; however, the prosecutor's choice of this particular form of indirectness is remarkable. That is, although the prosecutor initiates testimony with her strongest evidence, the rib contusion, her shift from a yes/no to a WH-questioning strategy also provides an opportunity space for the defendant to give an elaborate narrative in response, and such a strategy severely limits her ability to lead and control him.

This is precisely what happens next. In line 083, the defendant's initial turn unit is organized as an ellipted, *how or if* alternative clause, where the disjunctive *or* coordinates the two subordinate clauses: "how Patty sustained a rib contusion," and "if Patty sustained a rib contusion." Not only is WS nescient of the causal factors leading to the alleged victim's injury: he also questions if she even

sustained such an injury, and, in a very tacit sense, he raises the possibility of alternative or competing diagnoses. In the process, WS goes far beyond a perfunctory denial of blame and challenges the facticity of the presupposition embodied in the prosecutor's question by suggesting that the rib contusion is a problematic, if not questionable, diagnosis (079).

As the turn progresses, WS produces a more prototypic denial ("all I can tell you," 084–87); this contrasts his lack of explanatory "how" information with a more positive claim that the scope of his testimony is indexically anchored to and constrained by the temporal span of direct sensorial evidence acquired during the evening in question – rather than being based on knowledge obtained indirectly through hearsay, inference, or circumstance. Grammatically and semantically, the defendant's answer is organized through what I refer to as a PARTITIVE EVIDENTIAL. This construction (expressing part of the whole) consists of the universal quantifier *all*, the subject noun phrase of *what I can tell you*,⁷ and the temporal adverbial with the embedded comitative, *when she was with me*.⁸ In the epistemological order of things, the combination of the predeterminer *all* + the noun phrase *what I can tell you* identifies the perceptual universe being considered; and the predicate evidential *when she was with me*, marking the source of the information, sets the boundaries of that universe.⁹ First person *I* and the epistemic modal *can* – indicating ability, and marking the degree of commitment to the proposition – further indicate the range and limits of the defendant's perceptual ability during the night of the rape incident. This evidential framing clause, in turn, contextualizes the ensuing specification of observational particulars glossed in and projected through it (*I can tell you that she did not get a contusion when she was with me*), partially repeating the prior partitive evidential (*I can tell you*) and the temporal clause (*when she was with me*).

What is relevant in terms of footing is this. The partitive evidential clause indexes a distinct defendant identity in a full-blown denial of responsibility, based on lack of knowledge; the scope of WS's knowledge is indexically tailored to direct observational facts during his proximal association with the victim – to ownership of experience based on the particulars of what he saw that night, rather than some inferior source of information, such as hearsay or opinion. WS deploys this device to accentuate the epistemological supremacy of reporting firsthand knowledge of the facts in issue, based on his role as a direct eyewitness, as a defendant – the way grammatical form indexes features of social context. As we will see, the defendant recontextualizes this evidential in the form of a partitive construction and temporal clause to project a distinct interactional footing throughout this segment of cross-examination.

SHIFT TO AN EXPERT FOOTING I: ALTERNATIVE DIAGNOSES

In the question/answer sequence of lines 095–124, we can witness a progressive and collaborative shift in footing, with the question/answer sequence of lines

95–103 contextualizing the shift. While the prosecuting attorney's prior question (079) merely requested an explanation, her reformulated question (095) upgrades the evidential status of her prior description of the rib contusion by attributing the source of that diagnosis. She does this through an indirect quote drawn from Dr. Prostko's testimony ("Dr. Prostko stated . . . she observed"). She grammatically alters her own footing by the formal address term, by the verb of saying in the reporting clause (omitting the optional *that* complementizer), and by the back-shift in person and tense (past) in the reported speech clause to speak through the authorial voice of the medical expert. Moreover, this reported diagnosis prefaces a second explanation request (098–99) though this time with increased volume and stress in the subordinate clause ("HOW SHE SUSTAINED THAT INJURY").

In terms of contextualizing the shift, there are several points relevant to the prosecutor's question. First, this second question (095) is clearly improper and thereby (potentially) objectionable, because the non-expert defendant cannot provide opinion testimony on the opinion testimony of other (especially expert) witnesses; he can only give evidence based on his knowledge of the facts.¹⁰ Second, and stipulatively, the question is not just indirect; it may be ambiguous too. There is little doubt, of course, that the question functions interactionally, especially rhetorically, as an indirect accusation; i.e., it possesses the illocutionary point of an accusation (and there appears little doubt that the defendant interpreted it as such). But it could be interpreted more literally, first as a request for a direct sensory explanation, and second as an invitation for the defendant to give an opinion on the medical expert's opinion in the prosecutor's report of Dr. Prostko's testimony. That the prosecutor's question could indeed be interpreted in this second sense is available not only from semantic features of the question, but just as important, from the interactional fact that this second question merely elaborates her prior request for an explanation (line 075). It is a partial repeat of the accusation/denial format. As we have seen in the partitive evidential, the defendant has just furnished a localized telling based on ownership of experience, adapted to the particulars of what he saw that night (on line 083).

Third, the defendant here exploits the prosecutor's indirection to his advantage. He mobilizes the systemic indirection in the prosecutor's question as an interactional resource to co-construct a strategic ambiguity concerning the illocutionary force of the question, and to manipulate his participant footing during this portion of testimony – even though the prosecutor doubtless intends her utterance as a not too thinly veiled accusation in the form of a rhetorical question. Since the prosecutor asks WS for HIS explanation of the alleged victim's injury based on the testimony of Dr. Prostko (079, 095), she opens the door for him to rebut the adverse inferences contained in the doctor's testimony (and the prosecutor's logic of causation built off that testimony). WS does so not only by drawing on Dr. Prostko's diagnosis, but also by drawing on the testimony of other physicians/sources, and by making his own metadiagnostic deductions from these alternative diagnoses. Perhaps unwittingly, the prosecutor contextualizes an op-

portunity space for the defendant to display his own medical knowledge, to give his own metadiagnostic opinion of diagnostic practice – and, most important (as we will see), to provide his own authoritative interpretation about the comparative significance of each diagnosis. In both a linguistic and a legal sense, she opens the door, and he exploits the opportunity.¹¹ Following Goffman, we can see that footing is not a unilateral process but involves instead the mutual alignment of both participants.

If we turn to the defendant's response (101), we can witness the details through which this process unfolds. After an initial reference to Dr. Prostko, WS aborts his turn-in-progress through the prototypic repair format of projection, cut-off, and delay in the address term; then he corrects it by substituting an explicit metapragmatic description of the prosecutor's prior speech act (*you're asking me my explanation*), and he recycles the trajectory of the repaired segment (*Dr. Prostko*) via a resumption of the initial address term on line 107 (*Now– (0.5) Dr. Prostko . . .*). Still more accurately, just prior to his recycled turn, WS partially repeats the partitive evidential (on lines 102–3); but this time he prefaces it with the recurrence adverbial (*as I said*) to mark formally the projected repetition, and he replaces the temporal clause + comitative (*when she was with me*) with the temporal deictic in the form of a distal demonstrative and temporal noun (*that night*).

What does WS accomplish through this metapragmatic description?¹² Why does he formulate the illocutionary point of the question not only, or even primarily, as an accusation, but rather as a request for an explanation, despite its rather transparent accusatory force? And how does such a formulation help to contextualize a shift in footing? By describing the prior speech act as a possible request for an explanation – rather than, say, solely as an accusation or allocation of responsibility – the defendant may define the question in one way rather than another. By the same token, he can use this metapragmatic structuring to steer the issue in a more desirable direction, to reconfigure the trajectory of the accusation/denial format, and to co-contextualize the eminent shift in footing. Even though WS, after the repair, repeats the evidential partitive in his denial of responsibility prior to the shift (hence still maintaining a distinct defendant footing), the metapragmatic formulation provides a version of the prosecutor's question to which his subsequent expert testimony can be seen as responsive, relevant, and on-topic. Thus the metapragmatic description may appear to signal that his forthcoming talk will be seen as an explanation, in particular as one sensitive to the prosecutor's question; but such a reflexive classification does not necessarily mean that the utterance tokens contained in and projected through it will be pre-occupied solely, or even primarily, with explaining the victim's contusion. As it happens, the defendant does not provide an explanation of the victim's contusion, as requested in the prosecutor's question, but gives instead a metadiagnostic opinion on the varying diagnoses from different sources. At just this level of microlinguistic detail, WS strategically exploits the prosecutor's indirectness,

co-constructing or transforming it into ambiguity, and he utilizes that ambiguity as an interactional resource for shifting into an expert footing. In more theoretical terms, this explicit metapragmatics represents a linguistic ideology of reference in which WS's speech act classification refers to and is aligned with the prosecutor's prior speech-act type; but that ideology diverts attention from what his classification is accomplishing as an interactional strategy.¹³

The two question/answer sequences just considered contextualize the shift to an expert footing, and in line 107 we can witness how the shift incrementally materializes. Consider, at the outset, the stressed temporal deictic *now*, occurring with a slight falling intonation and followed by a pause. Following Schiffrin 1987, the use of *now* in such environments may function interactionally less as a temporal adverb than as a discourse marker to differentiate parts of the discourse, and to orient the speaker's stance toward the information being presented, i.e. to coordinate a shift in footing. As the turn progresses, this is just what happens. Following the discourse marker, WS produces a list of four different diagnoses from four different sources, with each individual diagnosis packaged in an indirect quote format. Whereas the prosecuting attorney altered her footing through the evidential voice of Dr. Prostko in the immediately prior turn, the defendant (107–124) not only repeats Dr. Prostko's diagnosis but, in addition, animates and authors the diagnoses of *the hospital*, *two people*, and *her own orthopedic physician* – a metadiagnostic report that hierarchically positions and critically evaluates each token diagnosis. (As we will see in a moment, there is something quite notable about the last list token.) In the process, WS positions himself within the intertextual dialog, manipulating it sequentially and ideologically; he thus interprets, evaluates, and foregrounds the epistemological significance of each token diagnosis. But it is not just the grammatical aspects of the reported speech that are significant, nor is it just the listing of reports that conveys a powerful affect. Rather, what is most significant here is the sequential positioning of each list token, and what can be accomplished with that positioning – an opportunity for the defendant's voice to leak into each diagnostic report, and thus to naturalize a powerful form of discursive hegemony.

As a more technical appreciation of this process, we can see that the defendant organizes the diagnostic reports through a complex layering of parallelistic repetition – a poetic structure that foregrounds, accentuates, and highlights the information being presented.¹⁴ The format is arranged along two intersecting dimensions. First, WS combines a four-part list with an indirect quote, attributing an evidential source in each list member, to generate a bewildering array of competing diagnoses. More specifically, each list member consists of a reporting clause with syntactic identification of the speaker/source (*Dr. Prostko*, *medical reports*, *two people*, and *her own orthopedic surgeon*), with a classification of the speech act verb (*testified*, *indicated*), and with a finite complement indicating the particular diagnosis of the alleged victim's injury (*that she had a rib injury*; *that Patty Bowman had a broken rib*; *that she did not have a broken rib*; *that she had*

bilateral tenderness). Second, after his reference to Dr. Prostko's testimony, WS adds a further layering of evidentiality, embodied within a second parallelistic structure; he displays the source of his knowledge about the varying medical diagnoses through a repetition of evidential verbs and listing adverbials (*I also recall; I have heard; I also heard*). Thus WS not only produces an aesthetic coherence and persuasive unity to the turn-in-progress, drawing attention to the form of talk through the repetition,¹⁵ he also organizes a dual evidentiary format unfolding within a two-dimensional parallelistic structure – a dense, intersecting matrix of evidentiality and parallelistic repetition within the same turn.

Through the parallelistic structure, the defendant constructs an epistemological, polyphonic field of interpenetrating voices. This arranges an indexical layering of truth values to tellings, and it relativizes these values to hierarchically anchored and sequentially situated representations of medical authority; the victim's own orthopedic surgeon is in a sequentially and epistemologically privileged position in the list. In this sequential movement, WS creates a dynamic interplay of competing medical voices in which the participants are ranked epistemologically relative to their sequential position in the repetitive list and to the indexical configuration of medical authority within the diagnostic order. The diagnostic sources are on an unequal footing. Just as impressively, the microcosmic rhythm of the poetic structure imposes an inferential template on the internal configuration of list tokens; this conceals and naturalizes the strategic effect of positioning the orthopedic surgeon's list token as the final element in the sequence, making the sequential placement of that element appear as a natural outcome of medical reality rather than as a selective accomplishment. As the list progresses in its ascending order of epistemological import, the last list token calibrates a gestalt-like evaluative force to the list in its entirety, which is consistent with the defendant's own interests. The prosecuting attorney had mobilized the indirect quote from Dr. Prostko's diagnosis to impeach the defendant; but WS, by mobilizing this poetic device, introduces an array of alternative diagnoses from different sources to impeach Dr. Prostko's credibility and to cast into doubt the prosecutor's accusation. Dr. Prostko's diagnosis is but one among several different diagnoses.¹⁶

BUT THESE ARE NOT JUST DIFFERENT DIAGNOSES. The defendant here employs another epistemological strategy to undermine Dr. Prostko's diagnosis. In juxtaposing the diagnoses, he not only introduces a bewildering array of competing views (creating doubt on this count alone about the accuracy of Dr. Prostko's claim), he also implicitly contrasts her diagnosis with that of the victim's *own orthopedic surgeon*. Thus WS contrasts an orthopedic surgeon – a specialist in the area of correcting deformities in the musculo-skeletal system – with an emergency room physician, a non-specialist in such disorders. On purely medical grounds, the orthopedic surgeon's testimony and expertise is epistemologically superior to those of Dr. Prostko and the other diagnostic sources in the list. Just as important, the orthopedic surgeon is the victim's personal surgeon, someone in-

timately acquainted with her, and is therefore someone who might be partial to her version of events. But the surgeon's diagnosis may be considered even more objective, impartial, and truthful, precisely because it confounds our expectations. By contrast, the emergency room physician routinely deals with rape victims and thus might be expected to favor the alleged victim's version of events. Dr. Prostko's bias, in contrast to the testimony of victim's own orthopedic surgeon, is realized in her "exaggerated" diagnosis, which indeed turns out to meet our expectations.¹⁷

This intersecting parallel structure thus reveals more than mere repetition of different diagnoses in a generic sequential organization. It reveals a form of discursive hegemony in which the epistemological status of each list token iconically corresponds to the sequential configuration of list members (i.e., it is not just the list but the particular configuration of list members that is crucial). It reveals the way in which sequential positioning naturalizes an evaluative matrix to manage the interactional task of negotiating impeachment work. Just as important, it is from the last list token that WS makes certain expert deductions regarding diagnostic procedure and medical practice – indexically marking his own expert knowledge by displaying specialized knowledge of medicine, and foregrounding the list token by drawing inferences from it that are acutely damaging to the prosecution's case.¹⁸

In this regard, consider the ensuing statements (120–24). Notice in particular how WS manipulates an expert footing through the linear order of individual list members. First, he employs a counterfactual conditional (*if/then* clause): "If Patty Bowman had a rib contusion on March thirtieth I would expect that finding to be noted by her orthopedic surgeon one week later." Here he indicates that the proposition in the main or consequence clause is contingent on the *if*-adverbial; yet the hypothetical meaning in the counterfactual amounts to an implied rejection of the condition (McCawley 1981). That the alleged victim had suffered a rib contusion is thus a false proposition.

Second, the defendant footing is marked with the epistemic modal *can* in *all I can tell*, where the partitive evidential indicates testimonial ability based on sensory observation; but the counterfactual consists of the past subjunctive *had* in the conditional clause, with the epistemic prediction modal *would* followed by the prediction verb (*expect*) in the main clause, to express a hypothetical meaning: a past hypothetical or counterfactual interpretation about an unreal (future) proposition. One can almost detect a certain inferential aura about this consequence clause: "As a physician, I would expect . . .". WS is referring not just to a possibility, but to a conditional possibility – his medical opinion about a possible state of affairs. That is the type of testimony only experts provide.

Third, the defendant-as-expert makes a powerful deduction off the counterfactual, which constitutes the climax in the incremental shift to an expert identity: *A rib contusion does not become bilateral rib tenderness in one week* (123–24).¹⁹ Notice the grammaticalization of participant roles in this portion of the answer:

Become is a copular verb indicating a relational process that joins a subject complement to the subject, in this case encoding an absence of a change of state. Since the copular verb encodes a change of state (or its absence), its subject cannot be an agent, and the event encoded by it cannot be an action (*become* is not normally used to talk about deliberate action). WS thus switches from the prosecution issue, about the cause of the condition, to testimony about the condition. Instead of seeing the victim as possessing and the defendant as causing the rib contusion, we perceive a complex diagnostic relationship between two inanimate medical objects. There is no reference to the victim, to the defendant, or to the violent relationship between them. There is no attribution of human agency. The physical injury and logic of medical diagnoses are thrust into the foreground so that they appear to possess an autonomous existence. Agency, causality, and responsibility are left vague; they are pushed into the background and are not explicitly attributed. In this complex intersection of grammar and interaction, the relational clause – with the copular verb linking the temporal, diagnostic relationship between two inanimate medical objects – signals the climax in WS’s incremental shift to an expert footing. In this instance, the climax consists of an emphatic authorial voice in a negative construction, conveying an aura of expert certainty, commitment, and knowledge.²⁰ Such lack of emotionality in the speaker’s voice, and the obliteration of TRANSITIVITY in the clause (in the sense used by Hopper & Thompson 1980), contribute to a rational and unemotional identity, a legitimating aspect of medical discourse. While shifts in footing certainly occur within a single utterance (or an even briefer segment), we can also see in this case how such shifts may progress incrementally over several turns to culminate in a climactic finale.

Yet this aura of expertise is not simply the product of a lone speaker’s voice, nor is WS merely animating or authoring the talk of other physicians. Much more powerfully, he speaks through and merges with the dominant voice of medical authority – which is the principle behind his words.²¹ In doing so, he can strategically dissociate or distance his self-serving defendant testimony (with its own personal knowledge, motives, and interests) from the objective, impersonal, and scientific knowledge of medical authority. He conceals his own hand in constructing such “objective” knowledge, submerging his own subjective self within the rationality of medical science. Just as germane to the above points, WS not only indexes his medical expertise through the technical information he can impart, but he also marks his due prestige by virtue of being a representative of this particular occupational status, connecting himself to the field of medicine and to the hegemonic status of its knowledge. He is, after all, a doctor. As such, he can draw on the cultural opposition of the doctor, who heals victims, vs. rapists, who cause injury. In sum, WS is not just offering another possible diagnosis; he is, much more prominently, providing a metadiagnostic evaluation of the different medical opinions from the various experts in the case – a still higher plane of professional expertise within the medical order.²² Through grammar, sequenc-

ing, and medical knowledge, WS blends voices to create a certain effect, to manipulate his interactional footing as a form of discursive authority.

SHIFT TO AN EXPERT FOOTING, II: ALTERNATIVE EXPLANATIONS

Continuing to line 126, the prosecutor partially repeats her previous question of Dr. Prostko's diagnosis, formulating the defendant's metadiagnostic answer as unresponsive by stressing that he has *no explanation* (of the contusion). In next turn, and in concert with the prosecutor's question, WS (line 133) withholds a full confirmation via the qualified denial (*I have no idea . . .*), followed by the temporal clause and the embedded comitative (*while she was with me*), thus shifting back to the defendant footing. On line 137, the prosecuting attorney shifts her questioning strategy from the rib contusion diagnosis to focus on a symptom of that injury, the victim's bruises; however, as we have seen, that sign is ambiguous, since it is also associated with rib tenderness. This downgraded description of the injury also contextualizes a second opportunity for WS to shift from a defendant to an expert footing.

But not automatically. The prosecutor first obtains a confirmation from WS that he indeed saw *photographs of bruising*. While this might seem to make the accusatory point at least inferentially, in the sense that WS's confirmation could stand as an index for the allocation of responsibility,²³ the prosecutor then moves from the factual question of identification to deliver a more direct accusation (142) concerning the cause of those bruises. Although the prosecutor's turn on line 137 is syntactically formed as a yes/no question, its illocutionary force may be interpreted as yet another indirect accusation, framed in the form of a request for an explanation – though this time the request refers to an explanation for bruising, instead of the contusion. As in the previous metadiagnostic sequence, this second elaborated, more finely developed accusation yields a second shift from a defendant to expert footing, once again beginning with the partitive denial of responsibility.

On lines 145–64, WS presents a lengthy narrative. As in the previous sequence, he begins with a distinct defendant footing, though this time the initial turn components involve a repetition in triplet of the partitive evidential. On 145–48, WS produces the ellipted partitive (*I can tell you* which ellipses the *all of* partitive phrase), then a recycled partitive prefaced by the recurrence adverb and universal quantifier (*again all I can tell you*), and then a third partitive with the ensuing projection gloss (*all I can testify to is what happened that night*). After a short pause, the gloss is unpacked with the denial *she did not get those bruises from me*.

Following this, WS once again initiates an incremental shift to an expert footing, generating the shift with an *if/then* conditional (148–49), though not a counterfactual this time around: “If you're asking me how somebody might get bruises who's on a blood thinner, I can give you uh– number of different reasons (1.1)

...”²⁴ Let me mention several features of this conditional as it relates to the shift. First, the main clause projects a lengthy narrative with a number of explanatory factors for the alleged victim’s bruising. Keep in mind that, even though the defendant does not concur with the prosecutor’s description of a contusion, he does agree with the fact of bruising, a downgraded description that could be a symptom of either a contusion or tenderness. Second, the *if*-adverbial clause incorporates an explicit metapragmatic structuring which, even more than the previous metapragmatic clause, reveals a significant reinterpretation of the prosecutor’s question: It characterizes the prosecutor’s questions as a request for a medical explanation.²⁵ The indefinite pronoun (*somebody*), the past tense epistemic modal (*might* stressed with a fall/rise nuclear tone), and the subject relative clause modifying the subject noun (*who’s on a blood thinner*) not only function to guide the prosecutor’s question in a more favorable direction, and to furnish a version of the question to which his ensuing answer can be seen as responsive; these grammatical categories also index an expert footing. Notice that the indefinite reference to *somebody* does not, at this point, necessarily refer to the victim, even though that eventually turns out to be the reference. In addition, the past-tense epistemic modal *might* semantically indicate possibility or speculation on the part of the defendant; and this meaning departs significantly from what he actually observed (as indicated in the previous *can* modal which means ability). Third, and most important of all, WS’s metapragmatic *if*-adverbial not only refers to the causal factors of bruising, but much more technically, it significantly qualifies that reference, with the subject relative modifying the subject noun, *who is on a blood thinner*. Notice further that WS uses a token of the medical register, *blood thinner*, which quasi-technically refers to a generic class of drugs and, simultaneously, to the pharmacological effects of the drug, rather than the more commonly known brand name *Naprosyn*. He thus does much more than merely trade on the assumption that, as indicated earlier, being prescribed a drug is tantamount to taking it; he can also frame the causative role of the blood thinner in explaining the victim’s bruising.²⁶ Such a foregrounded interpretative frame aligns the symptom of bruising much more with the diagnosis of rib tenderness, rather than rib contusion, along with the evidentiary perquisites associated with it. In just this sense, metapragmatic structuring conceals the strategic effect of his utterance (see Mertz 1992, Silverstein 1993).

As the turn continues (152–64), WS produces a number of possible factors in the alleged victim’s bruising (under the influence of a blood thinner), in the form of a second repetitive list. Whereas the first repetitive list presented an array of competing diagnoses, this second one consists of a number of possible causal factors for the victim’s bruising. This list is also organized as a form of parallelistic repetition, consisting of a three-part list, followed by a negative/positive partitive contrast (*I can’t tell + All I can tell*), and then a delayed (fourth) list token, which is the first part of a second contrastive pair (*she may have even gotten them having sex + but she didn’t get them from being tackled*). But once

again, the repetition is not the crucial factor in the footing shift. Most important, the parallel list consists of three repeating modal perfects (*may have gotten*) – the present perfect of possibility – each followed by a causal possibility initiated with a past progressive verb (*chasing, dancing, taking, having*), and then culminating in a fourth, DELAYED modal perfect (with the embedded adverbial *even*) plus the evidential partitive (*All I can tell you, 157–58*): *may have gotten + dancing; may have gotten + chasing around a child; may have gotten + taking pantyhose off in the car; may have even gotten + having sex*.²⁷ As we saw with the past tense modal *might*, the present tense epistemic modal *may* is stressed with a fall/rise nuclear tone, semantically indicating a “hypothetical” or “speculative” aspect of meaning rather than first-hand sensory observation.²⁸ In the metadiagnostic sequence, we saw that list repetition interacted with reported speech and counterfactuals to generate a bewildering array of competing diagnoses (an identity ambiguity); in the explanation sequence, we can see how list repetition interacts with epistemic modality to generate an array of different causal possibilities for the victim’s injury – further undermining Dr. Prostko’s original diagnosis, the victim’s claim of injury, and the prosecuting attorney’s accusation (by creating a qualified causal ambiguity). In essence, the epistemic modals interact with parallel repetition to allow WS to speculate about these possibilities, raising a reasonable doubt; and since he does not know at first hand how the victim sustained those bruises, his testimony here constitutes more of a medical opinion than a statement of fact.

A related observation is in order. As we have seen, WS exploits modal meaning and the indeterminacy embedded in it for strategic interactional purposes; and through repetition of the modal perfects, he implies that numerous possible factors could explain the victim’s injuries. But epistemic modals do more than merely encode alternative possibilities. They also index the speaker’s authority when voicing an opinion, his/her authority with respect to the truth or probability of a given representation of reality (Hodge & Kress 1993, Wortham & Locher 1996). To be sure, only a medical expert would be competent to provide such sophisticated information. In this sense, the power/knowledge dialectic is revealed not just abstractly or theoretically; rather, it is contingently realized in the lived history of communicative practice, as grammar, meaning, and sequential structure unfold in the intricate rhythms of verbal action.

Even more delicately, the modal list embodies a second layering of moral categorization in the re-negotiation of blame and re-allocation of responsibility. Just as we saw that the diagnostic list mobilized a footing shift to introduce a damaging piece of testimony, so too the modal list generates a second shift to reveal damaging evidence for the prosecution’s case; but here the list tokens embed within each causal possibility blame-relevant inferences about the alleged victim’s behavior and moral character. Most injuriously, the suggestion that the victim took off her pantyhose (in a small sports car) in the presence of a man she had just met at a bar could well convey an impression of sexual interest, or at the

least contributory negligence, on her part. Just as damagingly, it could also create inferences about her sexual history, because only a promiscuous or sexually experienced woman would engage in such behavior. This is a pointed illustration of the plurifunctionality of linguistic elements to encode indirection and patriarchal ideology (in addition to referential content). To summarize the interaction among grammar, sequencing, and the moral order: The epistemic modals mark the defendant's expert identity through the alternative possibilities; the parallel repetition foregrounds the alternatives; and the alternative possibilities encode damaging information about the victim's moral character and sexual history.

SIMULTANEOUSLY SHIFTING INTO AND DEPARTING FROM
AN EXPERT FOOTING

Despite WS's attempts to shift out of the accusation/denial format through manipulation of footing, the prosecuting attorney continues to repeat the general accusation on line 166 and again on line 173 – suggesting, rather sarcastically, that his “expert” answers are unresponsive. WS's response on line 170 repeats the recurrence adverbial (*As I said*) and partitive evidential from the preceding segments, while his answer 178–86 offers a more elaborate formulation of spatio-temporal evidentiality. Both responses maintain a distinct defendant footing via the direct sensory epistemology: “you're asking me questions which I have no direct . . .” and “What I cannot answer is questions that I don't know the answer to and that has to do with things that didn't happen when I was there.”

But even though the defendant initially fails to transform the accusation/denial format, his prior attempt (145) still generates a delayed effect; and, on line 189, we can witness how his previous litany of possible explanations eventually motivates the prosecuting attorney to take up the significant issue of the blood-thinner Naprosyn.²⁹ On line 189, her utterance questions the framing presupposition in WS's conditional *if*-clause (145–64) – that the alleged victim was on a blood thinner – and thus questions his assumption that being prescribed a drug is tantamount to taking it. She further exposes these tacit claims by stating that such assumptions are *just speculation* on his part; and WS, in turn, appears to modulate or realign his previous assessment in the prosecutor's direction by noting that he *mentioned Naprosyn* because the alleged victim had been *prescribed it*.

But something interesting happens next: something in the address term embedded in the prosecuting attorney's negative truth tag (202). After commenting on the defendant's selective interpretation about the victim's use of Naprosyn, the prosecuting attorney initially addresses the defendant with the cut-off projection on “Doc-,” and then, after the prototypic delay, she repairs the projected yet aborted reference with “Mister Smith.”³⁰ The defendant is quick to exploit the slip. Instead of responding to prosecuting attorney's reformulation about Naprosyn, with its attendant implications for his various explanations for bruising, WS responds to the repaired reference in the prosecutor's previous address term, ele-

vating the relevance of his professional status in the process; he thereby utilizes her repair as an interactional resource for initiating the footing shift and for circumventing the topic. Within the same utterance, WS simultaneously employs a metapragmatic depiction in a contrastive format to shift into an expert footing while under the auspices of an “official” departure from that identity (*I’m not here as a doctor, I’m here to . . .*), admonishing the prosecutor in the process (put another way, he officially marks an expert identity while simultaneously distancing himself from it). In so doing, he foregrounds the relevance of the address term and the issue of social identity; he deflects the damaging implications of his prior claims about Naprosyn and leaves those claims in the background. In the fine-grained density of trial talk, we can witness in vivid detail how the defendant shifts alignment to set the agenda, to determine what is relevant, and thereby to negotiate impeachment work. More theoretically, we can witness how WS manipulates footing as a form of discursive hegemony – of power.

DISCUSSION: THE SEQUENTIAL ORGANIZATION OF FOOTING

Why these two components? Why do we find the partitive evidential, on the one hand, and a footing shift to expert testimony, on the other – especially since the latter component contradicts WS’s own prior claim that *all he can talk about is what happened that night*? And why this particular distribution of the components? Why, that is, does the partitive evidential come first, and expert testimony dealing with metadiagnostic and explanatory expertise second? Let me answer these questions along the following lines.

(1) WS’s expert identity is laminated or embedded within the broader defendant footing. First, in a negative sense, he is a defendant denying the accusation, since the jury wants to hear him say that he did not commit the crime; second, in a more positive sense, he is an expert, providing alternative causes for the victim’s injury, or diagnoses for it. By combining these two components, WS can, first, deny the accusation, and second, question the nature, cause, and existence of the victim’s injury, thus managing the interactional dilemma posed by the prosecutor’s indirect question. Just as important, he can demonstrate that he is not trying to “dodge” or avoid the question by relying on his medical expertise and status, which might be interpreted as arrogant.

There is a preference system that corresponds to this footing configuration,³¹ but the preference is not revealed by sequential patterning alone. In this regard, consider the repair on line 101, especially the initial reference to and subsequent repair on *Dr. Prostko*. In this deviant case, WS aborts the initial trajectory of (what turns out to be) the metadiagnostic expert component (101); then he repairs it with the partitive evidential; and then, after the denial, he recycles the original metadiagnosis (107) immediately after the discourse marker *now* – which, as mentioned previously, marks the genesis of the shift to an expert footing. In this way he reconfigures the trajectory of the turn to synchronize with the distribu-

tional preference of “defendant first,” denying the accusation, and “expert second,” providing a metadiagnostic opinion on the varying diagnoses of the alleged victim’s injury. Thus the case for the preference is revealed not only through the pattern but also through repair of deviation from the pattern.³²

(2) In a more functional sense, the sequential organization of shifting into and departing from an expert identity operates as a strategic method of negotiating impeachment work. When the prosecutor repeats her attempt to impeach WS’s testimony on the cause of the contusion or the bruising, he shifts to an expert footing, proffering medical opinion on the varying diagnoses of or explanations for the victim’s injury. If we consider these sequences in more fine-grained detail, we can see that, in the metadiagnostic sequence, the prosecutor produces an accusatory question: How can you explain the contusion? She then upgrades the accusatory force of the question by reporting the evidential source of Dr. Prostko; and after this repetition upgrade, WS shifts into an expert identity in the form of the parallel list, counterfactual, and climactic resolution. The explanatory sequence follows a similar sequential trajectory. The prosecutor produces an “existence of fact” question (fact of bruising); then she upgrades accusatory force in her next turn by asking the defendant to explain the facts he had just agreed to – suggesting that the defendant caused the bruising. This repetition upgrade, like the previous one, elicits a second footing shift by the defendant in the form of the modal perfect list and contrasts.

But when the prosecutor impeaches the defendant’s medical opinion, as in the second repetition question on Naprosyn (199), he re-aligns to a defendant footing in the form of the partitive evidential, claiming that he is merely in court to testify about what he directly witnessed during the evening in question. Another excellent illustration of this discursive strategy occurs in lines 208–257, which I mention only in passing here. In line 208, the prosecutor provides an opportunity for the defendant to shift footing by directly soliciting his medical opinion on the victim’s “sore pubis bone”; after a repetition of the question, he reluctantly offers an indirect quote of the previous testimony from the victim’s orthopedic surgeon (219–225) – a shift into an expert footing, in the sense that he is attempting to explain the sore pubis bone by suggesting that the alleged victim did not have any such soreness (based on the report from the orthopedic surgeon).³³ In 230, the prosecutor contests the accuracy of WS’s attribution of reported speech, and instead offers her own indirect quote of the orthopedic surgeon’s testimony (237). This disagreement sequence is finally resolved after WS, within the same turn (242–46), deploys direct quotes from both the prosecutor’s and orthopedic surgeon’s prior speech,³⁴ persuading the prosecutor to move out of the disagreement sequence (227–46) and into an explicit hypothetical question (248: *Mister Smith it’s not unusual for someone to be in an auto accident and to feel the pain later . . .*).³⁵ In this instance, she asks WS a question that ostensibly attempts to impeach, rather indirectly, the substance of his prior report of the orthopedic surgeon’s testimony, directing him to re-align in a quite marked fashion to a

medical identity. But this question is not directly about his report of the orthopedic surgeon's testimony. It is, more accurately, an attempt to solicit a medical opinion about a hypothetical situation which is unrelated to the victim's specific injury, yet perhaps has some remote bearing on it, and which favors the prosecution's case. (Here the prosecutor also attempts to rehabilitate the rather dismal outcome of her retreat from the disagreement sequence.) In response to the hypothetical, WS shifts back to a defendant footing via the partitive evidential (253–57: *All— all I can tell you . . .*), once again maneuvering into his best defensive position to deal with the prosecutor's impeachment, and once again circumventing the question.

The sequential organization of accusations thus interacts with the constitution of expert identity, in the sense that the defendant utilizes impeachment work as an interactional resource for contextualizing the shift in footing. Manipulation of footing occurs in specific sequential environments to manage the delicate tasks of negotiating impeachment work. WS uses this strategy – sometimes abruptly, sometimes incrementally – to impeach the testimony of the victim, doctors, and other expert witnesses, and to attack the credibility of the prosecutor – throwing her accusations off course, shifting the accusation/denial format, and making her questions appear repetitious, if not indeed inappropriate.³⁶

CONCLUSION

I have shown that expert knowledge and identity are not just static reflections of pre-given qualifications or judicial ruling, but are reflexively embodied in the lived moments of communicative practice. I have explored, in the midst of these moments, how participant roles are grammaticalized in sequential action, how professionally situated knowledge of medical practice is enacted through verbal performance, and how an expert identity is a dynamic interactional achievement, capable of shifting on a moment-by-moment basis in the very linguistic details of its realization. More specifically, I have shown how aspects of grammar intersect with other discursive features to index the shifting alignment between expert and defendant footing, and to create a hegemonic effect in the situated details of verbal performance. In so doing, the style of talk provides an indexical icon of the social identities that the defendant and prosecutor establish for themselves and for each other. As we have seen, in response to the prosecuting attorney's impeachment strategy, WS weaves in and out of different participant roles in order to manage the discursive dilemma posed by her accusation – an improvisational dance of alignment and realignment in the management of impeachment work.

More symbolically, the grammatical shift to an expert footing strategically minimizes the defendant's agency in the sense of being a person who abuses force, and this solves a discursive dilemma in very covert yet powerful fashion: WS needs to deny accusations forcefully, but he needs to do so without fostering

the impression of being presumptuous, of being a person who abuses force. Embedding powerful expert discourse within a defendant footing avoids fostering an impression of arrogance – something one might associate with rapists, who use force and abuse power. Indeed, on the surface the repair *I'm not here as a doctor* . . . conveys a sense of humility and reveals an unassuming quality not typically associated with people who abuse power, while at a much more subtle level it operates as a powerful discourse-controlling strategy.

We might prefer to think that physical entities, such as the alleged victim's rib injury, constitute "real" evidence that can somehow be objectively or perhaps even incontrovertibly documented by scientific medicine.³⁷ What I have proposed here is that the very reality of such evidence is constructed in the first place through language use in context. Was the alleged victim's rib injury caused by a violent rape or, as suggested by the "expert," by consensual sex? What was the precise nature of her injury? A still more fundamental question: Did she even suffer an injury? The ambiguity of medical diagnostic practice and physical injury is, to some extent, contingent on how participant roles are grammaticalized in sequential action. We might wish to respond, in a Foucauldian way, that to employ a discourse requires a command of specialized knowledge of a particular field (and this is certainly true); but what I contend here is that it is also true that such command necessarily includes the power to finesse reality and to animate evidence through mastery of verbal performance. If this is true, then a much broader, symbolic issue still looms prominently: the way in which discursive hegemony inscribes effects on the body. Removal of agency and obliteration of transitivity in the shift to expert footing "medicalize" or depersonalize WS's commentary on very personal aspects of the victim's body – again solving a discursive dilemma, since he is accused of a criminal intrusion of those very same parts of her body. WS is not only able to dominate the victim physically, but what is even more legally relevant so far as the trial is concerned, he is also able to dominate the meaning, interpretation, and evaluation of her injury – an injury that he may have caused.

NOTES

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¹ See Moenssens et al. 1988 and Jasanoff 1995 for instances of this more general trend.

² According to Mauet (1996:273), "Expert testimony must meet two tests. First, it must satisfy the judge by complying with evidence law. Second, it must satisfy the jury by complying with persuasion 'law'." This study addresses the second "law" – though, to be sure, the first test involves language use to persuade as well.

³ For an excellent illustration of this process in another context, see Jacoby & Gonzales 1991.

⁴ Contextualization cues refer to the linguistic and prosodic resources which function as the contextual ground for interpreting utterances, and which (in conjunction with other signs) index socio-cultural information of various sorts (Gumperz 1982).

⁵ A “jokester” frame is here embedded within the broader presidential frame.

⁶ All rape cases in this part of Florida were brought to this hospital.

⁷ The underlying form of *all I can tell you is what*.

⁸ *What happened* is the noun clause complement.

⁹ In English, evidential constructions are not morphologically encoded, as in numerous other languages. Instead, they occur in separate clauses, adverbials, epistemic modals, idiomatic phrases, etc. (Chafe 1986).

¹⁰ In an interview I conducted with defense attorney Roy Black, I questioned him about this particular line of questioning and why he failed to object. He stated that, even though he could have objected to the prosecutor’s questions here, there was no need to because the defendant was handling the questions in a “skillful” fashion.

¹¹ In a strict legal sense, once the prosecutor opens the door in this fashion, there is no way she can later object to WS’s testimony in the form of such technical opinions.

¹² For thorough discussions of metapragmatics, see Mertz 1992 and Silverstein 1993.

¹³ Linguistic ideologies refer to folk beliefs or assumptions about language structure and use (Mertz 1993, Woolard & Schieffelin 1994).

¹⁴ Parallelism is a major form of repetition in poetic discourse; it refers to the repetition of the same or similar structural pattern in adjacent phrases, clauses, sentences, or sequences (Finnegan 1977, Tannen 1987). Repetitive lists are certainly a type of parallelism in this sense (Schiffrin 1994, Ma-toesian 1997a,b).

¹⁵ In this instance and in the forthcoming case to be examined in the next section, it appears that the defendant signals his shift to the hegemonic voice of medical authority through a density of parallel constructions.

¹⁶ In fact, this rhetorical structure pushes Dr. Prostko’s diagnosis and the other diagnoses into the background.

¹⁷ Compare Black’s cross-examination of Dr. Prostko (042).

¹⁸ In this sense, WS specifically marks the last list member by generating sequential expansions off it.

¹⁹ Put another way, the counterfactual sets up the climax of the incremental shift to an expert identity.

²⁰ Such an unqualified statement, of course, is a mark of medical authority.

²¹ For an interesting and provocative analysis of how authority and footing interact in a similar way, see Johnstone 1987.

²² See Starr 1982 and Mischler 1984 for detailed discussions of the high status of diagnostic expertise in the medical profession.

²³ Once again she uses the following accusatory logic: (a) she was with you; (b) she suffered bruises with you; therefore (c) you caused the bruises.

²⁴ Notice that this is most likely a rhetorical question in the form of a conditional, even though WS provides an opportunity space for the prosecutor to respond after the conditional with a 1.1-second pause (i.e., he does not “rush into” the next turn unit). This may well solve a discursive dilemma for the defendant. An expert footing is indexed by a careful speech style involving slower tempo and pausing; hence rushing into the next turn unit, appearing anxious or hurried, might undermine that footing (see Briggs 1996b:229–30 for a similar process involving “counseling” talk). By the same token, WS needs to preserve the turn in order to deliver the main expert components. That the prosecutor fails to self-select at that point, however, solves the dilemma for him.

²⁵ Once again, there is a certain inferential aura emanating from this conditional, in which Smith seems to be saying: “As a physician, I can give you a number of reasons.”

²⁶ Moreover, the use of this term in the medical register indexes his medical identity.

²⁷ Put another way, each nonfinite verb is in an adverbial phrase (*chasing around a child*).

²⁸ The epistemic modals calibrate the epistemological status of knowledge: the ways a speaker can mark different attitudes toward the facticity of the proposition, or modulate facticity. The modals of epistemic possibility, such as *may*, express the speaker’s degree of commitment in the proposition (Palmer 1986).

²⁹ In so doing, the prosecutor may actually reinforce or at least foreground the blood thinner's causative role for bruising.

³⁰ The original reference is to Doctor Smith, of course. Actually, this is her second marked ratification of expert footing for Smith, the first one occurring when she states, *that's just speculation on your part* (194).

³¹ The concept of preference is taken from conversation analysis and refers to the marked ordering of turn components in and across utterances. For instance, the preference for accepting over rejecting an invitation is revealed from the observation that acceptances occur with little or no delay, are direct, and occupy an entire turn. Rejections, on the other hand, are typically delayed, involve hesitation components (such as *Well:::*), and occur with accounts (Heritage 1984).

³² This very preliminary case for the preference also involves the explicit metapragmatic structuring – in which the defendant classifies the prosecutor's prior speech act, and his own subsequent speech act, prior to the footing shift.

³³ The victim's own orthopedic surgeon saw her a week after the rape incident, and this is when she mentioned the sore pubis bone. But she did not mention a sore pubis bone on March 30, just after the alleged rape.

³⁴ As Briggs mentions (1996:27), "reported speech provides authoritative speakers with a powerful rhetorical device for disguising normative messages as simple repetitions of the words of others." I would add to this that direct quotes (a form of reported speech) may also function as strategic devices for finessing the structure of the accusation/disagreement sequence – persuading the opposing party of the epistemological supremacy of one's evidence, and thus leading him to move out of the disagreement. In this instance, WS exploits such discursive resources not only to question the prosecutor's factual knowledge of prior testimony but also to contest her control of the discourse; and he does so in a sufficiently indirect way as to not appear arrogant.

³⁵ This is another ratification of this expert footing and her alignment to that footing.

³⁶ Notice that her question (204) abandons the Naprosyn issue.

³⁷ REAL EVIDENCE is a legal concept that refers to physical (or inanimate) objects or evidence available to direct inspection, rather than from a description through some type of language.

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